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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

BLAIR SHELTON,

Plaintiff,

vs.

Case No. 95-1994 NZ

Hon. Kurtis T. Wilder

THE POLICE DEPARTMENT OF THE CITY
OF ANN ARBOR; THE CITY OF ANN ARBOR;
and DETECTIVE MICK SCHUBRING in his
Individual Capacity,

Defendants.

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There is no other pending or resolved civil
action arising out of the transaction or
occurrence alleged in the complaint.

FIRST AMENDED COMPLAINT

NOW COMES Plaintiff Blair Shelton, through his attorneys, the
Ann Arbor Chapter of the National Lawyers Guild, and complains

against Defendants as follows:

1. Plaintiff is thirty-seven year old African American man and resident of the City of Ann Arbor, Washtenaw County, Michigan.

2. Plaintiff has no criminal history or record.

3. Plaintiff is a homeowner and, with the exception of one short period, has been continuously employed for over 20 years. Plaintiff works full time as a custodian at Greenhills School in Ann Arbor, a job he has had for approximately six years. Until recently, he also worked part-time at T.J. Maxx, a clothing store in Ann Arbor.

4. Defendant Police Department of the City of Ann Arbor is a department and agency of Defendant City of Ann Arbor.

5. Defendant Mick Schubring is a Detective for Defendant Police Department of Ann Arbor, and upon information and belief, is a resident of Washtenaw County, Michigan. He is being sued in his individual capacity.

6. From 1992 to 1994, a serial rapist sexually assaulted or attempted to sexually assault up to ten women or more in Ann Arbor.

7. Defendants' description of the rapist, although it varied from time to time, was essentially a black male between the ages of 25 and 35 years old and between 5'7" and 6'2" tall.

8. Defendants established and pursued a policy or practice of encouraging Ann Arbor residents to report to the police any men fitting the vague and overly broad description.

9. Defendants went door-to-door in the City of Ann Arbor asking if residents had seen any black men fitting the description,

asking if there were any black families in the neighborhood, and informing residents that there was a reward for information leading to the identification and arrest of the rapist.

10. A \$100,000.00 reward for tips leading to the arrest and conviction of the rapist was offered by The Ann Arbor News and additional reward money was offered by other groups in the community.

11. A system was established whereby, a person could collect a reward even though s/he made an anonymous tip so long as s/he wrote a five-digit number on the tip. No limit was placed on the number of tips a person could give.

12. Due to the large reward, the ability to give anonymous tips, and the general fear of the rapist, among other factors, the police obtained over 1000 tips identifying over 730 African American men in Ann Arbor.

13. Upon information and belief, there are less than 1000 African American men between the ages of 25 and 35 in the City of Ann Arbor.

14. On information and belief, Defendants received a letter from an anonymous person about Blair Shelton. While the letter's author said that she or he did not think that Shelton was the serial rapist, the letter stated that Shelton fit the description of the rapist released by the police.

15. On or about October 26, 1994, Defendant Ann Arbor Police Detective Mick Schubring came to the T.J. Maxx store where Plaintiff was employed to interrogate Plaintiff.

16. Plaintiff was not at the store on that date because it was his day off.

17. Defendant Schubring asked the manager of the store and other employees questions about Plaintiff.

18. Defendant Schubring indicated that Plaintiff was a suspect in the serial rapist investigation.

19. Defendant Schubring left his business card with the manager and told the manager to tell Plaintiff to call him at the police station when Plaintiff came into work.

20. The following morning, on October 27, 1994, when Plaintiff went to work, he was told by an assistant manager at T.J. Maxx that the police were looking for him and that he was a suspect in the serial rapist investigation. The assistant manager told Plaintiff that he should call the police and gave Detective Schubring's business card to Plaintiff.

21. Employees at T.J. Maxx were aware that the police believed Plaintiff to be a suspect in the serial rapist investigation and Plaintiff was humiliated and embarrassed.

22. Plaintiff called the Police Department and said that he would come to the station the next day.

23. The following morning, on October 28, 1994, Plaintiff took off work at T.J. Maxx and went to the Ann Arbor Police Department with his mother to talk to Detective Schubring.

24. Detective Schubring interrogated Plaintiff for approximately one hour.

25. Plaintiff was humiliated by being treated like a heinous

criminal and began to cry.

26. Detective Schubring told Plaintiff that the only way he could clear himself from being a serial rapist suspect was to give blood so that DNA tests could be performed on the blood.

27. Plaintiff did not want to give blood and so informed Defendant Schubring.

28. Defendant Schubring lacked probable cause to obtain a search warrant to force Plaintiff to give blood.

29. Nonetheless, Defendant Schubring threatened Plaintiff that if Plaintiff did not give blood, he would simply get a search warrant to have blood extracted from Plaintiff.

30. Due to the duress that Plaintiff was under because of Schubring's acts, and relying on Schubring's false representation about obtaining a search warrant, Plaintiff believed that he had no choice and he went with Defendant Schubring to the Catherine McAuley Urgent Care Clinic on North Maple Road to have blood drawn.

31. Defendant Schubring never disclosed to Plaintiff that law enforcement agencies would keep the DNA profile obtained from Plaintiff's blood on file for possible use in other criminal investigations regardless of whether Plaintiff's DNA profile proved that he was not the serial rapist.

32. The staff of the urgent care clinic knew that blood was being drawn as part of the serial rapist investigation.

33. Plaintiff was embarrassed and humiliated by having blood taken as part of the rapist investigation and he was crying the entire time the two large tubes of blood were being drawn:

34. Plaintiff is an upstanding and responsible member of the community, not a rapist or any other kind of criminal, and he was emotionally devastated by what he was being subjected to.

35. A painful cyst developed on Plaintiff's arm where the blood was taken and it did not go away for more than three months.

36. Even though the results of the test conclusively proved that Plaintiff was not the serial rapist, upon information and belief, Defendants and/or other state and/or federal law enforcement agencies have retained Plaintiff's DNA profile on record for future uses.

37. Upon information and belief, over 150 innocent African American men in Ann Arbor submitted to blood tests during the serial rapist investigation without knowledge that their DNA profiles would become part of a DNA data bank.

38. Plaintiff's DNA profile and what is left of the blood sample have never been returned to him.

39. On October 28, 1994, a short time after having blood taken at the Catherine McAuley Urgent Care Clinic, Plaintiff walked to the bus stop in the Maple Village Shopping Center to catch an Ann Arbor Transportation Authority bus to work at Greenhills School.

40. An Ann Arbor Police Officer in a police car observed Plaintiff boarding the bus.

41. The police officer exited his patrol car and instructed the bus driver not to leave.

42. The police officer then placed one hand on his gun, and

motioned to Plaintiff with the other hand to come off the bus.

43. The officer questioned Plaintiff about being the serial rapist while the people on the bus watched.

44. Plaintiff explained that the police had just drawn some of his blood for DNA testing and showed the officer the papers that he had been given at the urgent care clinic as proof.

45. After reviewing the papers, the officer told Plaintiff that he was now free to go back on the bus.

46. Plaintiff was humiliated and disgraced by the episode of being taken off the bus to be questioned as if he was the serial rapist.

47. On October 31, 1994, as a direct result of Defendant Schubring coming to Plaintiff's place of employment and informing people that Plaintiff was a serial rapist suspect, T.J. Maxx terminated Plaintiff's employment without notice effective immediately.

48. Plaintiff at all times was an excellent employee who had never been punished, reprimanded or disciplined in any way by T.J. Maxx. The only reason for the termination was the fear that Plaintiff was a serial rapist that had been conveyed to T.J. Maxx by Defendants.

49. Although T.J. Maxx rescinded the employment termination about two weeks later and allowed Plaintiff to return to work, the work environment was hostile from that point forward. Plaintiff was subjected to retaliation in that the work conditions were more onerous and difficult than prior to Detective Schubring's visit to

the store. Additionally, Plaintiff was never compensated for the time period that he was terminated.

50. Because Detective Schubring identified Plaintiff as a serial rapist suspect to his employer, Plaintiff was consistently treated with suspicion, distance and aloofness by his managers and co-employees at T.J. Maxx, and the work environment changed drastically to Plaintiff's detriment since Schubring's visit.

51. On February 17, 1995, Plaintiff was permanently terminated from his employment with T.J. Maxx despite being an excellent employee.

52. In addition to the incident on October 28, 1994, when a police officer removed Plaintiff from a bus to interrogate him, Plaintiff was stopped on the street and questioned by Ann Arbor Police Officers at least seven other times during the serial rapist investigation. During each of these stops Plaintiff reasonably believed that he was not free to leave or disobey the officer's demands.

53. On or about November 1, 1994, at 7:30 a.m., Plaintiff was in line at Barry Bagels in the Kroger Shopping Center on Jackson Road, when an Ann Arbor police officer approached him from behind and pulled on Plaintiff's hair until he turned around. The officer demanded that Plaintiff produce identification. Only after Plaintiff produced the paper from the urgent care clinic showing that he had given blood for DNA tests did the officer permit Plaintiff to get back in line for bagels.

54. On or about November 4, 1995, in the morning, Plaintiff

walked to the Milk Depot on Dexter Avenue and bought a carton of milk before going to work., As he exited the store, he was confronted by two police officers of Defendant Police Department of the City of Ann Arbor with hands on their guns. The officers demanded that Plaintiff produce identification. Only after Plaintiff produced the paper from the urgent care clinic showing that he had given blood for DNA tests did the officers permit Plaintiff to leave.

55. On or about November 7, 1994, at approximately 9:00 p.m., Plaintiff walked to Mr. Lee's Store on Dexter Avenue near his home to return his empty bottles. As he walked through the parking lot towards the store, a patrol car sped towards Plaintiff and an Ann Arbor police officer shined a spotlight in Plaintiff's face. When the officer jumped out of the car in a threatening manner, Plaintiff dropped everything in his hands and put his hands in the air. The officer ordered Plaintiff to turn around and put his hands on the police car and then patted Plaintiff down. Plaintiff started to cry and told the officer that he had a paper in his back pocket proving that he gave blood for a DNA test. The officer took the paper, wrote down some numbers from the paper and then let Plaintiff go. Plaintiff left the parking lot to return home in tears without the bottles.

56. On or about November 19, 1994, Plaintiff was in line for a early afternoon movie at the Fox Village Theater. A patrol car pulled up and two police officers from Defendant Police Department of the City of Ann Arbor asked Plaintiff for identification and

interrogated him about the series of rapes in Ann Arbor. Only after Plaintiff produced the paper from the urgent care clinic showing that he had given blood for DNA tests did the officers permit Plaintiff to leave.

57. On Thanksgiving Day, November 24, 1994, Plaintiff went for a jog in Veterans Park at 7:00 a.m. Two patrol cars from Defendant Police Department of the City of Ann Arbor were parked next to each other in the parking lot by the baseball field in Veterans Park. When one of the officers spotted Plaintiff, he put on the vehicle's red flashing lights and drove over the grass to where Plaintiff was jogging and stopped Plaintiff. The officer demanded to know where Plaintiff was going in such a hurry and Plaintiff told him he was jogging. Only after Plaintiff produced the paper from the urgent care clinic showing that he had given blood for DNA tests did the officers permit Plaintiff to leave. Plaintiff turned around and went home.

58. On or about December 5, 1994, at about 7:30 a.m. as Plaintiff was about to enter T.J. Maxx to go to work, a patrol car from the Ann Arbor Police Department pulled up. An officer exited the car, stopped Plaintiff, and demanded that he produce identification. Only after Plaintiff produced the paper from the urgent care clinic showing that he had given blood for DNA tests did the officers permit Plaintiff to leave. Plaintiff's manager viewed the episode from inside the store.

59. On or about December 9, 1994, at about 8:00 p.m. after work at Greenhills School, Plaintiff was waiting near Glacier Hills

Retirement Community for a bus to take him home. A police officer of the Ann Arbor Police Department pulled up to the bus stop and demanded identification. Plaintiff did not have the paper showing that he had submitted to a DNA test. The police officer took Plaintiff's driver's license into his patrol car and conducted a lien check. It was not until the lien check was completed that the police officer permitted Plaintiff to leave.

60. The repeated stopping and interrogating of Plaintiff was carried out even though there was no individualized, reasonable suspicion that Plaintiff has been, or was about to be involved in criminal activity.

61. Defendants acted intentionally, with gross negligence, or with deliberate indifference to Plaintiff's rights at all times relevant to this complaint.

62. Defendants acted outside the scope of their authority at all times relevant to this complaint.

63. The amount in controversy in this case exceeds \$10,000.00, exclusive of costs, interest and attorney fees.

COUNT I -- ILLEGAL SEARCH AND SEIZURE

64. Plaintiff incorporates by reference all prior paragraphs as though repeated paragraph by paragraph and word for word herein.

65. Article I, Section 11 of the Michigan Constitution provides:

The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation.
[Const 1963, Art I, Set 11.1

66. The Fourth Amendment of the U.S. Constitution provides:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated and no warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [US Const, Am IV.]

67. Police officers are prohibited by Article I, Section 11 of the Michigan Constitution and the Fourth Amendment of the U.S. Constitution from conducting an investigative stop of a person without reasonable, articulable and individualized suspicion that the person has been, is, or is about to be involved in criminal activity.

68. Police officers are prohibited by Article I, Section 11 of the Michigan Constitution and the Fourth Amendment of the U.S. Constitution from arresting a person without probable cause that a person has committed or is committing an offense.

69. Plaintiff's right under Article I, Section 11 of the Michigan Constitution and the Fourth Amendment of the U.S. Constitution to be free from unreasonable searches and seizures was violated by Defendant Police Department of the City of Ann Arbor and Defendant City of Ann Arbor when their police officers arrested Plaintiff, or at a minimum, conducted an investigative stop of Plaintiff on or about the following dates in 1994: October 28, November 1, November 4, November 7, November 19, November 24, December 5, and December 9.

70. These stops or arrests were carried out even though there was no reasonable, articulable and individualized suspicion that

Plaintiff had been, or was about to be, involved in criminal activity.

71. Rather, the stops or arrests were part of a policy or practice of Defendant Ann Arbor Police Department and Defendant City of Ann Arbor during the serial rapist investigation to randomly stop, detain and interrogate African American men.

72. Additionally, Defendant Ann Arbor Police Department and Defendant City of Ann Arbor failed to properly train or instruct its police officers to refrain from randomly stopping, detaining or interrogating African American men during the serial rapist investigation without reasonable, individualized suspicion or probable cause.

73. During the serial rapist investigation, Defendant Ann Arbor Police Department and Defendant City of Ann Arbor had a policy or practice of not only randomly stopping, detaining and interrogating African Americans that fit the very vague description of the serial rapist, but also other African Americans including high school students, men over 35 years of age and others who did not fit the description.

74. Plaintiff's right under the Michigan and U.S. Constitutions to be free of unreasonable searches and seizures was also violated by Defendant Schubring, Defendant Police Department and Defendant City when blood was drawn from Plaintiffs by Defendants.

75. Plaintiff's so-called VVpermissiontt to give blood was procured by deception, coercion and intimidation on the part of

Defendant Schubring. When Plaintiff said he did not want to give blood, Schubring told Plaintiff that he would obtain a search warrant to draw blood when, in fact, probable cause to support the issuance of a search warrant was clearly lacking.

76. Plaintiff was crying and under duress when he was interrogated and he was not experienced in dealing with police officers.

77. Defendants did not disclose to Plaintiff and Plaintiff did not know that if he submitted to blood being drawn, his DNA profile would be retained on file by Defendants or other state or federal law enforcement agencies for use in future criminal investigations or for other reasons.

78. The taking of a blood sample from Plaintiff was part of an unconstitutional policy or practice of Defendant Police Department and Defendant City during the serial rapist investigation to coerce, intimidate, place under duress, and/or deceive African American men so that they would submit to blood tests for DNA testing.

79. Additionally, Defendant Police Department and Defendant City failed to properly train or instruct its police officers to refrain from coercing, intimidating, placing under duress, and/or deceiving African American men into submitting to blood tests for DNA testing during the serial rapist investigation.

80. As a proximate cause of Defendants' acts, policies or practices, and/or failure to train, Plaintiff suffered numerous injuries, including, but not limited to, severe humiliation and

embarrassment, pain and suffering, injury to reputation, and emotional distress.

COUNT II -- EQUAL PROTECTION AND DISCRIMINATION

'81. Plaintiff incorporates by reference all prior paragraphs as though repeated paragraph by paragraph and word for word herein.

82. Article I, Section 2 of the Michigan Constitution provides:

No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. [1963 Const., Art I, S 2.1

03. The Fourteenth Amendment to the U.S. Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." [US Const, Am XIV.]

84. Defendants denied Plaintiff equal protection of the laws, denied him the enjoyment of his civil rights, and discriminated against him based on his race in violation of Article I, Section 2 of the Michigan Constitution and the Fourteenth Amendment to the U.S. Constitution.

85. Defendants would not have instituted a policy or practice of randomly stopping white men on the street if the serial rapist was thought to be white, and Defendants have never instituted such a policy or practice in the past when a rapist or other heinous criminal was thought to be white.

86. Defendants would not have instituted a policy or practice of encouraging, coercing, intimidating or deceiving large numbers

of white men into submitting to DNA blood tests if the serial rapist was thought to be white, and Defendants have never instituted such a policy or practice in the past when a rapist or other heinous criminal was thought to be white.

87. During the serial rapist investigation Defendant Police Department and Defendant City of Ann Arbor failed to train or instruct its police officers to refrain from (1) treating black men differently than they would have treated white men if the rapist was thought to be white, and (2) discriminating against black men.

88. Defendants' intentional policy or practice of treating African American men different from white men cannot be justified as precisely tailored to serve a compelling governmental interest.

89. As a proximate cause of Defendants' acts, policies or practices, and/or failure to train, Plaintiff suffered numerous injuries, including, but not limited to, severe humiliation and embarrassment, pain and suffering, injury to reputation, and emotional distress.

COUNT III -- ELLIOTT-LARSEN CIVIL RIGHTS ACT

90. Plaintiff incorporates by reference all prior paragraphs as though repeated paragraph by paragraph and word for word herein.

91. Section 302 of the Michigan Elliott-Larsen Civil Rights Act provides, in relevant part, I^ta person shall not . . . [d]eny an individual the full and equal enjoyment of the . . . services, . . . privileges, advantages, or accommodation of a . . . public service because of . . . race." MCL 37.2302(a).

92. Defendant Police Department of the City of Ann Arbor and

Defendant City of Ann Arbor are "public services" as defined by MCL 37.2301.

93. Defendants intentionally failed to afford Plaintiff and other African American men the same or equal treatment, services, advantages and/or privileges during the serial rapist investigation that they:

- a. Would have afforded to white men if the serial rapist was thought to be white;
- b. Have afforded to white men in the past when the rapist or other heinous criminal that they were seeking was thought to be white; and
- c. Currently afford white men when the rapist or other heinous criminal that they are seeking is thought to be white.

94. During the serial rapist investigation Defendant Police Department and Defendant City of Ann Arbor purposely failed to train or instruct its police officers to refrain from (1) treating black men differently than they would have treated white men if the rapist was thought to be white, and (2) discriminating against black men.

95. As a proximate cause of Defendants' acts, policies or practices, and/or failure to train, Plaintiff suffered numerous injuries, including, but not limited to, severe humiliation and embarrassment, pain and suffering, injury to reputation, and emotional distress.

COUNT IV -- DUE PROCESS OF LAW

96. Plaintiff incorporates by reference all prior paragraphs as though repeated paragraph by paragraph and word for word herein.

97. Defendants violated Plaintiff's rights under Article I,

Section 17 of the Michigan Constitution and the Fourteenth Amendment to the U.S. Constitution which provides that no person shall be deprived of "life, liberty or property without due process of law."^{tt}

98. Defendants, without due process of law, denied Plaintiff his liberty and/or property interest in his reputation and employment when Defendant Schubring indicated to Plaintiff's manager and co-employees that he was a suspect in the serial rapist investigation.

99. Defendants, without due process of law, deprived Plaintiff of his liberty interest to leave his house, walk down the street and/or enjoy the amenities of his hometown without being unlawfully stopped or harassed by the police.

100. Defendants, without due process of law, deprived Plaintiff of his liberty interest to not be intimidated, coerced, or deceived into having his blood extracted for DNA tests.

101. Defendants acted arbitrarily and capriciously and abused their power by:

- a. Indicating to Plaintiff's manager and co-employees that Plaintiff was a suspect in the serial rapist investigation;
- b. Maintaining a policy or custom of investigating low level tips at the person's place of employment, or by failing to train police officers to refrain from doing so;
- c. Maintaining a policy or custom of randomly stopping, detaining and interrogating African American men during the serial rapist investigation, and/or by failing to train police officers from doing so; and
- d. Maintaining a policy or custom of intimidating,

coercing, or deceiving as many African American men as possible into having his blood extracted for DNA tests, and/or by failing to train police officers to refrain from doing so;

102. As a proximate cause of Defendants' due process violations, Plaintiff suffered numerous injuries, including, but not limited to, loss of employment and wages, severe humiliation and embarrassment, pain and suffering, injury to reputation, and emotional distress.

COUNT V -- SLANDER

103. Plaintiff incorporates by reference all prior paragraphs as though repeated paragraph by paragraph and word for word herein.

104. Defendant Schubring committed slander when he falsely indicated to the manager of T.J. Maxx and other employees that Plaintiff was a suspect in the serial rapist investigation.

105. Schubring's actions in branding Plaintiff a suspect in the serial rapist investigation were grossly negligent or so reckless as to demonstrate a substantial lack of concern for whether Plaintiff would be injured.

106. As a proximate cause of Defendant Schubring indicating that Plaintiff was a suspect, Plaintiff suffered numerous injuries, including, but not limited to, loss of employment and wages, severe humiliation and embarrassment, injury to reputation, and emotional distress.

COUNT VI -- INVASION OF PRIVACY

107. Plaintiff incorporates by reference all prior paragraphs as though repeated paragraph by paragraph and word for word herein.

108. Given the very high number of tips received by

Defendants, Defendant Schubring had a duty to Plaintiff to attempt to investigate or contact him in a manner that would not unduly intrude on his privacy interests, humiliate him or cause him other harm.

109. Defendant Schubring breached this duty by attempting to contact Plaintiff at his place of employment without having first attempted to contact him in a less intrusive manner, and by telling Plaintiff's manager and co-employees that Plaintiff was a suspect in the serial rapist investigation.

110. Defendants intruded into a matter that Plaintiff had a right to keep private by use of an unreasonable or objectionable method.

111. Defendants disclosed highly offensive private information about Plaintiff which was of no legitimate concern to the public as long as Plaintiff was simply a low priority lead.

112. Further, Defendants broadcast to the public or a large number of people information that was unreasonable and highly objectionable by attributing to Plaintiff characteristics or conduct that was false and placed Plaintiff in a false position.

113. As a proximate cause of this invasion of privacy, Plaintiff suffered numerous injuries, including, but not limited to, loss of employment and wages, severe humiliation and embarrassment, injury to reputation, and emotional distress.

COUNT VII -- GROSS NEGLIGENCE

114. Plaintiff incorporates by reference all prior paragraphs as though repeated paragraph by paragraph and word for word herein.

115. Defendant Schubring owed Plaintiff a duty to refrain from grossly negligent conduct, or conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

116. Defendant Schubring breached that duty by failing to protect Plaintiff's privacy by coming to Plaintiff's place of employment and indicating that Plaintiff was a suspect in the serial rapist investigation.

117. Defendant Schubring further breached that duty by intimidating, coercing and deceiving Plaintiff into having blood taken for DNA tests.

118. As a proximate cause of Defendants' actions, Plaintiff suffered numerous injuries, including, but not limited to, loss of employment and wages, severe humiliation and embarrassment, injury to reputation, and emotional distress.

COUNT VIII -- 42 USC 1983

119. At all times relevant to this complaint, Defendants were acting under the color of state law.

120. As set forth above, Defendants deprived Plaintiff of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution.

121. Accordingly, Defendants are liable to Plaintiff under 42 USC 1983.

COUNT IX -- DNA IDENTIFICATION PROFILING SYSTEM ACT

122. The Michigan DNA Identification Profiling System Act provides that DNA identification profiles collected during a criminal investigation "shall be retained only as long as it is

needed for a criminal investigation or criminal prosecution." MCL 28.176; MSA 4.484(6).

123. Plaintiff's blood sample and DNA profile are no longer needed for the criminal investigation of the Ann Arbor serial rapist.

124. DNA analysis of Plaintiff's blood excluded Plaintiff as a suspect in the serial rapist investigation.

125. In June, 1995, Ervin Mitchell, Jr. was convicted as being the Ann Arbor serial rapist beyond a reasonable doubt by a unanimous jury.

126. Evidence was presented at trial that Ervin Mitchell's DNA matched the DNA found in the semen of the rape victims and there was only a one in two trillion chance that another African American would have the same genetic markings.

127. Plaintiff's blood sample and DNA profile are no longer needed for the prosecution of the Ann Arbor serial rapist case.

128. Neither Plaintiff's blood or Plaintiff's DNA analysis were introduced as evidence or even mentioned at Ervin Mitchell, Jr.'9 trial.

129. Plaintiff's blood sample and DNA profile have no apparent exculpatory value for Ervin Mitchell, Jr. See California v Trombetta, 467 US 479, 488-489 (1987).

130. Plaintiff's blood sample and DNA profile are currently being held by the Michigan State Police for the Ann Arbor Police Department and/or the City of Ann Arbor.

131. upon information and belief, the Michigan State Police is

waiting for the City of Ann Arbor Police Department and/or the City of Ann Arbor to tell it what to do with blood samples and DNA profiles of African American men excluded as being suspects during the Ann Arbor serial rapist investigation.

132. Under the DNA Identification Profile System Act, Plaintiff is entitled to have his blood sample and DNA profile either returned or destroyed.

WHEREFORE, Plaintiff requests the following relief:

- A. That this Court assume jurisdiction of this case and grant any and all relief requested;
- B. That this Court find that Defendants violated Plaintiff's right to remain free from unreasonable search and seizures, his rights to equal protection and freedom from race discrimination, his right to due process, and his right to equal treatment by the police;
- C. That, this Court find that Defendant Schubring committed slander, invasion of privacy and gross negligence;
- D. That this Court grant Plaintiff compensatory, exemplary, and/or punitive damages against Defendant City of Ann Arbor Police Department, Defendant City of Ann Arbor, and Defendant Mick Schubring in an amount that is fair and just in excess of \$10,000.00;
- E. That this Court enjoin Defendants from stopping and interrogating Plaintiff unless they have reasonable and individualized belief that he has committed a crime;
- F. That this Court order Defendants return to Plaintiff and

- completely expunge all records, including Plaintiff's blood and DNA profile, police reports and anything else that suggests that Plaintiff was a serial rapist suspect;
- G. That this Court grant Plaintiff reasonable attorneys' fees and costs pursuant to MCL 37.2802, pursuant to 42 USC 1988, and pursuant to any other rule or statute allowing for an award of attorneys' fees and costs; and
- H. That this Court grant Plaintiff such other equitable and legal relief to which he may be entitled.

Respectfully submitted,

ANN ARBOR CHAPTER OF THE
NATIONAL LAWYERS GUILD
Attorneys for Plaintiff

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Dated: