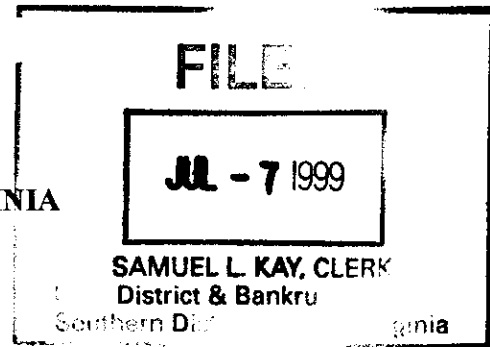


IN THE UNITED STATES COURTS  
SOUTHERN DISTRICT OF WEST VIRGINIA  
BLUEFIELD DIVISION



**ROBERT LEMONT ELLISON and  
TERA RENAE WILLIAMS, as next friend  
and on behalf of NAKIA CHANTEL WILLIAMS,  
an infant,**

**Plaintiffs,**

**1 '99-0576**

**v.**

**CIVIL ACTION NO. \_\_\_\_\_**

**THE CITY OF BLUEFIELD; BLUEFIELD  
POLICE DEPARTMENT; C. N. BLIZZARD,  
individually and in his capacity as Chief of  
the Bluefield Police Department; C. SCOTT MYERS,  
individually and in his official capacity as a corporal  
and officer of the Bluefield Police Department;  
D. M. DILLOW, individually and in his official capacity  
as an officer of the Bluefield Police Department;  
TOM HELTON, individually and in his official capacity  
as a lieutenant and officer of the Bluefield Police  
Department; J. M. WILLIAMS, individually and in  
his official capacity as an officer of the Bluefield Police  
Department; and JOHN DOES police officers and  
non-uniformed employees of the Bluefield Police  
Department, the identities and number of whom are  
presently unknown,**

**Defendants.**

**COMPLAINT**

Plaintiff Robert Lemont Ellison, individually, and Tera Renae Williams, as next friend and on behalf of Nakia Chantel Williams, an infant, by and through their attorneys, Johnnie Cochran, Jr., R. Edison Hill, and Brian E. Hurley, state and aver as follows:

## **INTRODUCTION**

1. This action arises out of one of the more shameful, vicious, and cruel acts of police brutality in the history of West Virginia and the cover-up and concealment of that brutality by The City of Bluefield, West Virginia (hereinafter referred to as “Bluefield”).

2. By this action, plaintiffs seek both monetary compensation from the individual defendants for the unconstitutional and tortious conduct of Bluefield police officers who broke the neck of and paralyzed Robert Lemont Ellison (hereinafter referred to as “Robbie Ellison”), Bluefield police officers who witnessed the brutal conduct and did not intervene to stop it, Bluefield police officers who had knowledge of the brutal conduct and deliberately chose not to report what they knew, thereby creating a “blue wall” of silence and lies to obstruct justice and conceal the truth, and the chief of police of Bluefield who was fully aware of this history of abusive and brutal behavior of Bluefield police officers and refused to take the action necessary to eliminate that behavior.

3. By this action, plaintiffs also seek monetary and injunctive relief from Bluefield for its unconstitutional and tortious customs, policies and practices that caused the injuries sustained by plaintiffs. Those customs, policies, and practices include: (a) a pattern and practice of Bluefield police officers to use excessive force; (b) the condoning and preserving of a “code of silence” environment in which even the most violent Bluefield police officers knew that they would be insulated from swift and effective investigation and prosecution and conviction for their most brazen acts of brutality; (c) the grossly inadequate training of Bluefield police officers; (d) the grossly inadequate supervision of Bluefield police officers known to be violent; (e) the failure to discipline Bluefield police officers who have engaged in the excessive use of force; (f) the intentional concealment and cover-up by Bluefield, including by one or more of its policymakers, of the

unconstitutional and tortious conduct that caused plaintiffs' injuries; and (g) the authorization and/or ratification by Bluefield, by one or more of its policymakers, of the unconstitutional and tortious conduct that caused plaintiffs' injuries. This institutional indifference inevitably resulted in the extraordinary and tragic injuries inflicted on Robbie Ellison, a 20 year old African American who has been left paralyzed from the neck down, will never again be able to move any part of his body below his neck, and has been rendered permanently quadriplegic.

4. The baby daughter of Robbie Ellison, Nakia Chantel Williams, born September 30, 1998, will never know her father as he was before this tragic and permanently disabling injury was sustained on September 17, 1998. She will forever be deprived of his companionship as a healthy individual, able to walk and utilize his legs, arms, and hands for the benefit and love of his child.

#### **FACTUAL AND GENERAL ALLEGATIONS**

5. During the early morning hours of September 17, 1998, Robbie Ellison, a resident of Bluefield, Mercer County, West Virginia, was out with his brother Michael Ellison and friends Rodney Adkins and Eric Hendricks. Like Robbie Ellison, Michael Ellison and those friends are African Americans. At that time, Robbie Ellison was in the back seat on the passenger side of a white Pontiac Grand Am automobile, which was parked near Neons Bar & Grill, a nightclub located at the corner of Jefferson and Stowers Street in Bluefield. Michael Ellison and the others were getting in or already in the car, and they were preparing to immediately leave the area. At no time was Robbie Ellison breaking any laws or acting in any manner that would cause any reasonable, prudent person, whether a police officer or not, to believe that he was breaking any laws. Nor was Robbie Ellison at any time acting in a loud, boisterous, or uncivilized manner.

6. At or about 2:30 a.m. on September 17, 1998, there had been a disturbance at Neons Bar & Grill involving several female patrons. Those patrons left Neons Bar & Grill, and while outside and along the street, those several females began kicking and otherwise damaging a car parked along the street. The proprietor or someone in a managerial position at Neons Bar & Grill called the Bluefield Police Department. Shortly thereafter, officers of the Bluefield Police Department, including, but not limited to, Corporal C. Scott Myers, Officer D. M. Dillow, and Officer J. M. Williams, arrived on the scene in two or more police cruisers. The said police officers did nothing to investigate the disturbance involving the females and their destruction of property from kicking and hitting the parked car. Rather, when these police officers saw Robbie Ellison and his companions, Corporal Myers and Officer Dillow (both Caucasians) engaged in loud, abusive, and threatening language towards Robbie Ellison and his three companions, using profanity and offensive insults.

7. When Michael Ellison responded to the police officers and inquired why the police were asking them to leave, Corporal Myers and/or Officer Dillow pulled Michael Ellison from the car, handcuffed him, threw him on the ground or street, and held his head down. Michael Ellison tried repeatedly to raise his head, but on each attempt, one or both of these police officers pushed/forced Michael Ellison's head back down.

8. Plaintiff Robbie Ellison verbally expressed concern for what these police officers were doing to his brother, Michael. As a result of his verbal inquiry, Corporal Myers and/or Officer Dillow pulled Robbie Ellison from the back seat of the car in which he was sitting, body-slammed him on the back of the car with such force as to break the antennae from the car and cause injury to the face and mouth of Robbie Ellison, leaving blood on the back of the white car. The police officers, or one of them, then handcuffed Robbie Ellison's hands behind his back with standard police-issued handcuffs.

Corporal Myers and/or Officer Dillow then maliciously, deliberately, intentionally, wilfully, wantonly, carelessly, negligently, and/or with deliberate indifference struck Robbie Lemont Ellison on his head with their hands and/or a hard object, perhaps a night stick. Then, while plaintiff Robbie Ellison's hands were still cuffed behind his back, Corporal Myers and/or Officer Dillow did one or more times maliciously, deliberately, intentionally, wilfully, wantonly, carelessly, negligently, and/or with deliberate indifference slam Robbie Ellison's head and body to the surface of the asphalt street.

9. The violent, physical acts committed by Corporal Myers and/or Officer Dillow upon Robbie Ellison were committed without provocation and with such great and excessive force as to cause the bones in the neck of Robbie Ellison to break. Specifically, Robbie Ellison's neck was broken at the cervical vertebrae levels known medically as C4 and C5.

10. After his neck was broken, Robbie Ellison could not move, and as he lay in the street with his hands cuffed behind his back, he told the police officers that he could not move and that he was hurt.

11. Acting further maliciously, deliberately, intentionally, wilfully, wantonly, carelessly, negligently, and/or with deliberate indifference, Corporal Myers and/or Officer Dillow taunted Robbie Lemont Ellison by ignoring his plea for help and his statement that he was hurt and could not move, and the said police officers tried to force him to get up. Corporal Myers and Officer Dillow then grabbed him, each under an arm of Robbie Ellison while his hands were still cuffed behind his back, and dragged him face down, with his feet, legs, knees, lower body, and waist all dragging the asphalt street, a distance of approximately 130 feet where they dropped him on the street and left him.

12. After an ambulance finally arrived, the emergency medical technician or someone from the ambulance offering emergency medical assistance was required to urge the police officers to

remove the handcuffs from the wrists of Robbie Ellison so they could attempt to provide emergency medical care to him. After Robbie Ellison was transported in the ambulance to the Bluefield Regional Medical Center, he was diagnosed as being permanently paralyzed from his neck down as a result of having his neck broken and his spinal cord severed at the level of the neck between cervical vertebrae numbers four and five.

13. Robbie Ellison's permanent condition is known as "quadriplegia," and he is permanently and totally disabled, having been rendered unable to control any part of his body below his neck and deprived of any feeling in his body below his neck, except for a little feeling in his shoulders. Moreover, this severing of the spinal cord in this particular location has caused an impairment in Robbie Ellison's ability to breathe, and for approximately seven months after his injuries he has been required to have assisted breathing by using a ventilator during a portion of each day. For this purpose, a hole has been cut in Robbie Ellison's throat in what is medically known as a tracheostomy. It is through this tracheostomy that an oxygen tube has been placed to provide Robbie Ellison with the oxygen required to keep him alive. However, recently, Robbie Ellison has seemed to improve so as to allow him to breathe without the assistance of the ventilator. Robbie Ellison now requires, and he will require for the rest of his life, round-the-clock medical monitoring and much medical assistance.

14. Robbie Ellison was admitted to the intensive care unit of the Bluefield Regional Medical Center in the early morning hours of September 17, 1998, and he remained there until his discharge on October 22, 1998, when he was taken directly to an acute care rehabilitation hospital. While Robbie Ellison was a patient in the intensive care unit of the Bluefield Regional Medical Center, he was required to undergo surgery on his cervical spine to have several of his vertebrae "fused"

together, meaning that they were surgically wired together for the purpose of stabilizing his neck to prevent further injury.

15. During the entire time that Robbie Ellison was being physically assaulted as described above, before and after his hands were cuffed behind his back, his neck broken when he was body-slammed to the asphalt surface of the roadway, and dragged a distance of 130 feet with a broken neck, when any reasonable and prudent person would have known that Robbie Ellison was suffering from severe injuries, Officer J. M. Williams stood idly by, never once attempting to save Robbie Ellison from this brutal and savage physical assault and deprivation of constitutional rights. Rather, in allowing these acts to take place with his knowledge and implicit consent, Officer Williams participated as a conspirator with the final result being that Robbie Ellison is quadriplegic, having been rendered permanently paralyzed from the neck down.

16. It is believed that the conspiracy to cover up this savage treatment of Robbie Ellison began immediately following the incident; that the participating and observing officers identified above conspired to conceal the truth of what happened, and that these officers took action to charge Robbie Ellison with criminal conduct on three counts, that being "resisting arrest," "obstructing justice," and "assault on an officer." Corporal C. Scott Myers was the signing officer responsible for Robbie Ellison being charged with these criminal offenses. Neither Officer Dillow nor Officer Williams objected to these charges being filed against Robbie Ellison, despite knowing the falsity of the charges and the cruel and savage treatment inflicted upon Robbie Ellison by Corporal Myers and Officer Dillow, with the knowledge and implicit consent of Officer Williams.

17. C. N. Blizzard, Chief of the Bluefield Police Department, appointed Lieutenant Tom Helton of the Bluefield Police Department to conduct an internal investigation of the events

surrounding this incident which resulted in the severe and permanently disabling injuries to Robbie Ellison. As part of that investigation, Lieutenant Tom Helton inspected the location of the incident and interviewed the following persons: Delores Thompson, Clifton Henderson, Melinda Gail Williams, Herb Petticord, James Adkins, Eric Hendricks, Officer Dillow, Officer J. M. Williams, Corporal Myers, Lasheba Shaffers, Tonja Simmons, Sean Cantrell, Lieutenant Glenn Sutphin, Edward Jarrett III, Fireman Robert Vest, Keith Beckett, and Dr. Koja. Consistent with Bluefield's practice and pattern of concealing acts of excessive force by its police officers, Lieutenant Tom Helton arbitrarily, capriciously, and falsely concluded that the police officers involved in the incident resulting in the breaking of Robbie Ellison's neck, thereby causing his quadriplegia, did nothing improper. In coming to this conclusion, Lieutenant Tom Helton arbitrarily and capriciously adopts as truthful the statements of Corporal C. Scott Myers, Officer D. M. Dillow, and Officer J. M. Williams, and at the same time totally discounts the statements of other witnesses interviewed, including (according to the written "Internal Investigation" report dated October 12, 1998, prepared for Chief C. N. Blizzard by Lieutenant Tom Helton) those of:

(a) Clifton Henderson, interviewed by Detective Sergeant Jones and Lieutenant Tom Helton, who stated "the officer had Robbie up against the car and was beating Robbie with his fists. He hit him in the face and chest,"

(b) Lasheba Shaffers, who stated that police officers Myers and Dillow were hitting Robbie Ellison with their fists and possibly with a "billy stick," all while Robbie Ellison was handcuffed.

In sum, Lieutenant Tom Helton participated in the conspiracy to cover up and conceal the above-described wrongful acts of the members of Bluefield Police Department.



18. It is believed that the conspiracy to cover up the savage and brutal treatment of Robbie Ellison began immediately following the event that resulted in Robbie Ellison's neck being broken, and it quickly spread beyond the three officers who were present to Chief of Police Blizzard, Lieutenant Helton, and other officers who are/were members of the Bluefield Police Department.

19. Ultimate responsibility for the horrific and brutal events of September 17, 1998, and the concealment and cover-up rests with Bluefield, the Bluefield Police Department, and Bluefield's policymakers, including Chief of Police Blizzard. Together, they, through their customs, policies, and practices, have established, encouraged, and maintained the "code of silence" or the "blue wall" by which the violations of individuals' civil rights have increased and been concealed.

20. The policies, customs, and practices of Bluefield Police Department and Chief of Police Blizzard have promoted an atmosphere in which even the very worst police officers know that evidence of their misdeeds depriving citizens of their civil rights, no matter how awful, will be hidden by members of the Bluefield Police Department, including, but not limited to, the chief of police, that being C. N. Blizzard. With the imposition of punitive damages against all defendants, with the exception Bluefield, plaintiffs hope to deter defendants and to bring an end to this intolerable cycle of violence and silence.

#### **JURISDICTION**

21. This action is brought pursuant to 42 U.S.C. §§ 1981, 1983, 1985, 1986, and 1988; the First, Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution; and the laws of the state of West Virginia. Jurisdiction is founded upon 28 U.S.C. §§ 1331, 1343(1-4), and 2202. Plaintiffs further invoke the supplemental jurisdiction of this Court to adjudicate pendant state law claims pursuant to 28 U.S.C. § 1367.

22. Venue is proper in this district under 28 U.S.C. § 1391(b).

**PARTIES**

23. Plaintiffs Robbie Ellison and Tera Renae Williams, as next friend and on behalf of Nakia Chantel Williams, an infant, are residents and citizens of Bluefield, state of West Virginia, although Robbie Ellison is presently staying in a medical facility outside of the state of West Virginia.

24. Defendant Bluefield is a municipal corporation within the state of West Virginia and the public employer of the police officers named as defendants in this action.

25. Defendant Bluefield Police Department is an agency of Bluefield, existing and operating by virtue of the laws of the state of West Virginia and Bluefield.

26. In addition to the facts alleged in the following subparagraphs, the following defendants are sued in their individual and official capacities, and all have acted within the scope of their employment and under the color of state law, to-wit, under the color of the statutes, ordinances, regulations, policies, customs, and usages of the state of West Virginia and/or Bluefield:

(a) Defendant C. N. Blizzard at all relevant times was the chief of police of the defendant Bluefield Police Department and was a policymaker of Bluefield;

(b) Defendant C. Scott Myers at all relevant times was a police officer of defendant Bluefield Police Department;

(c) Defendant D. M. Dillow at all relevant times was a police officer of defendant Bluefield Police Department;

(d) Defendant Tom Helton at all relevant times was a police officer of defendant Bluefield Police Department;

(e) Defendant J. M. Williams at all relevant times was a police officer of defendant Bluefield Police Department; and

(f) Defendant John Does at all relevant times were police officers and non-uniformed employees of defendant Bluefield Police Department, the identities and number of whom are presently unknown.

### **LOSS OF PARENTAL CONSORTIUM**

27. Nakia Chantel Williams, natural daughter of plaintiff Robbie Ellison, was born two weeks following this event that caused permanent paralysis and quadriplegia to Robbie Ellison. Although they are not married, Tera Renae Williams, who is the mother of Nakia Chantel Williams, and Robbie Ellison still share a love for one another and for their daughter. As a direct and proximate result of the aforestated joint and several conduct of the defendants herein, Nakia Chantel Williams, an infant, has been and forever will be deprived of the natural affection and companionship of her father, Robbie Ellison. She will also be deprived of the economic benefit of having a father who is capable of earning an income through his own labor. Thus, Tera Renae Williams, as next friend and on behalf of Nakia Chantel Williams, an infant, makes a claim for the loss of parental consortium for the reasons aforestated.

### **DAMAGES**

28. As a direct and proximate result of the aforestated customs, policies, practices, and acts of the defendants, Robbie Ellison has suffered the following injuries and damages:

- (a) violations of his rights under the First, Fourth, Fifth, Eighth, Thirteenth, and Fourteenth Amendments to the United States Constitution;
- (b) the loss of physical liberty, including total and permanent disability;

(c) life-threatening physical injuries, pain and suffering, extreme fear, emotional trauma, the necessity of experiencing life-threatening surgery, the incurrence of substantial bills for health care in that he has been required to have round-the-clock professional health care, and he will for the rest of his life be required to have round-the-clock professional health care;

(d) economic damages, including loss of income and future health care needs for the rest of his life which are expected to calculate in present-day value in the multiple millions of dollars; and

(e) humiliation, embarrassment, and the utter and complete loss of enjoyment of life.

The physical, psychological, and economic consequences of the defendants' actions continue to date, and upon information and belief, will continue into the future for the rest of Robbie Ellison's natural life, which at this point in time is expected to be an additional 50 to 60 years, given that he is now only 20 years of age, and based upon optimal care will have a normal life expectancy in relation to the number of years he is expected to live.

### **CAUSES OF ACTION**

#### **Count I**

##### **42 U.S.C. § 1983 Conspiracy**

29. Paragraphs 1 through 28 are incorporated by reference as though fully set forth.

30. The individual defendants, under color of law, conspired with each other, the Bluefield Police Department, and others and reached a mutual understanding and acted to undertake a course of conduct to injure, oppress, threaten, and intimidate Robbie Ellison in the free exercise and

enjoyment of his rights and privileges and equal protection of the law secured to him by the Constitution, including the rights to be free from the intentional use of unreasonable force; to be free from unreasonable searches and seizures; to associate and speak freely; to have access to and seek redress in the courts; to be free from false arrest, false detention; and to receive prompt and proper medical attention.

31. The Bluefield Police Department, through its agents, is believed to be a willful participant in joint action with officers acting under color of law. It is believed that the agents, officers, and members of the Bluefield Police Department participated in the conspiracy to further the illegal and improper purposes and goals of the organization, including the goal of maintaining the "code of silence."

32. As was part of the conspiracy, defendants Myers and Dillow did, among other acts, physically assault Robbie Ellison before and after his hands were cuffed behind his back, while he was in police custody, and even after his neck was broken and he was paralyzed from the neck down and pleading for help, telling these police officers that he was hurt and could not move.

33. In furtherance of the conspiracy to conceal and cover up the acts of brutality, resulting in permanent and total paralysis of Robbie Ellison, defendants engaged in the following:

- (a) falsely arrested and detained by handcuffing Robbie Ellison;
- (b) fabricated and contrived the criminal charges lodged against Robbie Ellison;
- (c) deliberately suppressed the truth, although they were aware of the brutality and the use of excessive force that rendered Robbie Ellison quadriplegic and were required to report it immediately; and

(d) submitted false police reports, statements, or testimony to support and corroborate the fabricated charges lodged against Robbie Ellison and to insulate Corporal C. Scott Myers, Officer D. M. Dillow, and Officer J. M. Williams from administrative and criminal sanctions.

## **Count II**

### **42 U.S.C. § 1983—Unreasonable and Excessive Force**

34. Paragraphs 1 through 33 are incorporated by reference as though fully set forth.

35. By their conduct, defendants Myers and Dillow under color of law deprived Robbie Ellison of his constitutional right to be free from excessive and unreasonable force.

36. Robbie Ellison claims damages for the injuries and damages set forth above.

## **Count III**

### **42 U.S.C. § 1983—False Arrest and Detainment**

37. Paragraphs 1 through 36 are incorporated by reference as though fully set forth.

38. By their conduct and under color of law, defendants Myers, Dillow, and Williams deprived Robbie Ellison of his constitutional right to be free from false arrest and false detainment.

39. Robbie Ellison claims damages for the injuries and damages set forth above.

## **Count IV**

### **42 U.S.C. § 1983—Delay and Denial of Medical Treatment and Failure to Protect While in Custody**

40. Paragraphs 1 through 39 are incorporated by reference as though fully set forth.

41. After he had been handcuffed and his neck was broken by Corporal Myers, police officers Myers and Dillow ignored Robbie Ellison's statement that he was hurt and could not move.

Rather, those defendants picked him up under his arms and savagely and brutally dragged him along an asphalt surface for approximately 130 feet, where they dropped him to the street surface, leaving him handcuffed until medical personnel insisted that the handcuffs be removed. This conduct of police officers Myers and Dillow, which at all times was under color of law, was a deliberate deprivation of Robbie Ellison's constitutional rights to immediate medical attention and protection while a prisoner, which perpetuated and exacerbated the physical and mental pain of Robbie Ellison.

### **Count V**

#### **42 U.S.C. § 1983—Failure to Intercede**

42. Paragraphs 1 through 41 are incorporated by reference as though fully set forth.

43. By his conduct and under color of state law, it is believed that defendant Williams had opportunities to intercede on behalf of Robbie Ellison to prevent the excessive use of force and had a duty to do so, but due to his intentional conduct or deliberate indifference, declined or refused to do so.

44. As a direct and proximate result, Robbie Ellison suffered the injuries and damages described above.

### **Count VI**

#### **42 U.S.C. §§ 1981, 1983—First, Fourth, and Fourteenth Amendment Violations**

45. Paragraphs 1 through 44 are incorporated by reference as though fully set forth.

46. By their conduct and under color of law, all individual defendants acted so as to deprive Robbie Ellison of his First Amendment right to have access to and seek redress in the courts.

47. The defendants engaged in a cover-up in order to conceal the wrongful and unlawful conduct taken against Robbie Ellison.

48. The defendants' efforts to conceal the truth continue to the detriment of Robbie Ellison.

49. As a direct and proximate result, Robbie Ellison suffered the injuries and damages described above.

## **Count VII**

### **42 U.S.C. §§ 1985(3)—Conspiracy with Racial Animus**

50. Paragraphs 1 through 49 are incorporated by reference as though fully set forth.

51. The individual defendants under color of law conspired with each other and reached a mutual understanding and acted to undertake a course of conduct to injure, oppress, threaten, and intimidate Robbie Ellison in the free exercise of the rights and privileges and equal protection of the law secured to him by the Constitution, including the rights: to be free from intentional use of unreasonable force; to associate and speak freely; to have access and seek redress in the courts; to be free from false arrest, false detainment; and to receive prompt and proper medical attention.

52. It was part of the conspiracy that defendants Myers and Dillow did, among other acts, physically assault Robbie Ellison while he was in police custody and control and both before and after his hands were cuffed behind his back.

53. In furtherance of the conspiracy and to conceal the crimes and misconduct of defendants Myers and Dillow, all of the defendants, with the exception of the municipality, Bluefield, engaged in a cover-up.

54. The conduct of the defendants was motivated by racial animus and by their desire to injure, oppress, threaten, and intimidate Robbie Ellison because of his race, which is African-American. Although defendant Officer J. M. Williams himself is an African-American, he was



intimidated by his superior officer Corporal Myers, and Officer Williams refused to take any action to protect the constitutional rights and liberties of Robbie Ellison because it would have put him in a bad light with the said superior officer.

55. As a direct and proximate result of defendants' conduct, Robbie Ellison suffered the injuries and damages described above.

### **Count VIII**

#### **42 U.S.C. § 1986—Action for Neglect to Prevent**

56. Paragraphs 1 through 55 are incorporated by reference as though fully set forth.

57. On information and belief, the individual defendants and the John Doe defendants had knowledge that a cover-up, and 42 U.S.C. § 1985(3) conspiracy to cover-up the brutality perpetrated against Robbie Ellison were in progress, had the power to prevent or aid in preventing the cover-up and conspiracy from continuing, and neglected or refused to do so.

58. With reasonable diligence, these defendants could and should have properly reported the brutality to superiors. Their failure contributed to Robbie Ellison's deprivation of constitutional rights, including his First Amendment right to have access and seek redress in the courts.

### **Count IX**

#### **42 U.S.C. § 1983—Supervisory Liability**

59. Paragraphs 1 through 58 are incorporated by reference as though fully set forth.

60. Defendant C. N. Blizzard, chief of the Bluefield Police Department, was at all relevant times in a supervisory position over defendants Myers and Dillow, with oversight responsibility for Corporal Myers and Officer Dillow. Chief Blizzard was responsible for training, instruction, supervision, and discipline of these two officers who brutalized Robbie Ellison and caused his

complete and total quadriplegia paralysis and his resultant total disability. At all relevant times, Chief Blizzard was a policymaker of Bluefield.

61. It is believed that defendant Chief Blizzard has received complaints about the conduct of Corporal Myers and Officer Dillow in the past, knew about their past complaints, aberrant behavior, and infractions, or, in the exercise of due diligence, should have perceived that these officers had conduct and disciplinary problems that posed a pervasive and unreasonable risk of harm to Robbie Ellison.

62. Defendant Chief Blizzard knew, or in the exercise of due diligence should have known, that the conduct Corporal Myers and Officer Dillow displayed toward Robbie Ellison was likely to occur.

63. It is believed that defendant Chief Blizzard failed to take preventive and remedial measures to guard against the brutality and cover-up committed by Lietenant Helton, Corporal Myers, Officer Dillow, and Officer Williams. Had Chief Blizzard taken appropriate action, Robbie Ellison would not have been injured.

64. The failure of defendant Chief Blizzard to properly train, supervise, and discipline Corporal Myers and Officer Dillow before the date of this tragic incident amounted to recklessness, gross negligence, deliberate indifference, or intentional misconduct which directly caused the deprivations and severe injuries suffered by Robbie Ellison.

**Count X**

**42 U.S.C. § 1983—*Monell* Claim**

65. Paragraphs 1 through 64 are incorporated by reference as though fully set forth.

66. Prior to September 17, 1998, Bluefield developed and maintained policies and customs exhibiting deliberate indifference to the constitutional rights of its citizens, which caused the violations of Robbie Ellison's rights. Moreover, after Bluefield became aware that Robbie Ellison's rights had been violated by the defendant officers it, by its cover-up and concealment, Bluefield acquiesced in and ratified the wrongful conduct of the defendant officers.

67. It was the policy and/or custom of Bluefield to investigate inadequately and improperly civilian complaints of police misconduct. Instead, acts of brutality were tolerated by Bluefield. The Internal Affairs Bureau of the Bluefield Police Department has substantially failed to investigate, deliberate, and discipline transgressors. The Bluefield Police Department investigations of brutality rarely lead to administrative trials or hearings, and when they do and the charges are somehow sustained, the punishment is minimal, lacking any deterrent effect.

68. Bluefield has been on notice for more than a decade that brutality is widespread and that particular reforms need to be implemented. Bluefield has been repeatedly cautioned that a systemic tolerance for brutality exists throughout the Bluefield Police Department. This is the problem. The Chief of Police and supervisors within the Bluefield Police Department create the atmosphere that nothing is really wrong with a bit of unnecessary force because they believe this is the only way to fight crime today, and they have acquiesced in and ratified that conduct.

69. It was the policy and/or custom of Bluefield to train, supervise, and discipline officers inadequately, including the defendant officers, thereby failing to discourage constitutional violations on the part of its police officers.

70. It was and is the policy of Bluefield to give police officers suspected of criminally assaulting civilians special and preferential treatment. Further, Bluefield has almost without exception

tolerated, condoned, and thereby promoted the conduct of police officers involved in excessive use of force. Just one month before Robbie Ellison was so severely and permanently injured, Corporal Myers shot and killed a civilian while in the line of duty, that individual being Fred Starling. It is plaintiff's belief and understanding that Corporal Myers was not suspended for any period of time, even with pay, for the purpose of Internal Affairs investigating the incident to determine the propriety of the shooting death of Fred Starling or to assess the psychological state of Corporal Myers. This is contrary to standard police practice.

71. Police officers in the Bluefield Police Department have for years engaged in a pattern and practice of actively and passively concealing the misconduct of fellow officers by failing to come forward or failing to accurately give evidence as to misconduct of which they are aware, thereby establishing and perpetrating a "code of silence."

72. This "code of silence" is a custom deeply ingrained in the members of the Bluefield Police Department so as to constitute the actual policy of the Bluefield Police Department and Bluefield.

73. Bluefield has been deliberately indifferent to the need for more or different training, rules or regulations relating to the use of force and to police officers who witness or have information regarding misconduct by fellow officers. Bluefield has failed to properly sanction or discipline officers who have used excessive force and/or are aware of and substantially conceal and/or aid and abet violations of constitutional rights of citizens by other Bluefield Police Department police officers, thereby causing and encouraging Bluefield police officers, including the individual defendant officers in this case, to violate the rights of citizens such as Robbie Ellison.

74. It is believed that Bluefield has maintained either no system or an inadequate system of review of officers who withhold knowledge or give false information regarding misconduct by fellow officers. This failure to identify and track such officers, including the defendant officers, or to discipline, more closely supervise, or retrain such officers who engage in the “code of silence.” causes Bluefield police officers to believe that they can engage in misconduct, secure in the knowledge that their fellow officers will neither intervene nor give evidence against them. These systemic deficiencies include, but are not limited to:

(a) preparation of investigative reports designed to vindicate the conduct of officers who give false information about the misconduct of other officers, who falsely deny knowledge about misconduct that they were in a position to observe;

(b) preparation of investigative reports that uncritically rely solely on the word of police officers and that systematically fail to credit testimony of non-police witnesses, such as in the case of Robbie Ellison;

(c) preparation of investigative reports that omit or ignore factual information and physical evidence that contradict the accounts of police officers;

(d) issuance of public statements exonerating officers involved in such incidents prior to the completion of investigation;

(e) failure to have meaningful review of investigative reports by responsible superior officers for accuracy or completeness, including consideration of the conduct of officers who were not actively engaged in the misconduct that was the subject of the investigation, and acceptance of conclusions that are not supported by the evidence or that contradict such evidence; and

(f) failure to identify potential “code of silence” violations and to maintain accurate records of allegations of such misconduct.

75. Bluefield, prior to and at the time of this incident, was aware of the need for more or different training, rules, regulations, investigation and discipline relating to its police officers, including those who practice the “code of silence,” and was deliberately indifferent to that need.

76. The foregoing acts, omissions, systemic deficiencies, and deliberate indifference to the danger of harm to citizens like Robbie Ellison and the need for more or different training and discipline are policies, practices, and customs of Bluefield and have caused police officers, including the officer defendants in this case, to believe that they can violate the rights of citizens with impunity and that their fellow officers would conceal such conduct, including swearing falsely and committing perjury, all with the foreseeable result that officers are more likely to violate the constitutional rights of citizens.

77. As a direct and proximate result of Bluefield’s deliberate indifference, defendants violated Robbie Ellison’s constitutional rights for which he suffered substantial damages.

## **Count XI**

### **Pendent Claim of Gross Negligence and Negligence**

78. Paragraphs 1 through 77 are incorporated by reference as though fully set forth.

79. Defendant Bluefield Police Department and Chief of Police Blizzard have been reckless, grossly negligent, and negligent in the supervision, training, and monitoring of Bluefield’s police officers, including those who are suspected of crimes and misconduct, or police officers who are witnesses to crimes and misconduct by their fellow officers.

80. Defendants Bluefield Police Department and Chief of Police Blizzard have a duty to make sure its police officers do not violate their duties as police officers to report crimes and misconduct by fellow officers.

81. Defendants Bluefield Police Department and Chief of Police Blizzard have been reckless, grossly negligent, and negligent in the inspection of and training they provided to Bluefield's police officers with respect to their responsibilities to report crimes or misconduct by other police officers.

82. Defendants Bluefield Police Department and Chief of Police Blizzard have been on notice for many years that Bluefield's police officers have played a role in the improper obstruction of civil and criminal investigation of Bluefield's police officers.

83. Defendants Bluefield Police Department and Chief of Police Blizzard knew or should have known that their policies and practices have contributed to improper concealment of admissions of wrongdoing by police officers to other police officers and law enforcement agents and a "code of silence" was being followed by police officers to cover-up crimes and misconduct.

84. Defendant Bluefield Police Department and Chief of Police Blizzard knew or should have known that their policies and practices, as well as their reckless, grossly negligent, and negligent supervision and training of Bluefield police officers, created an atmosphere where the most violent police officers felt assured that their most brazen acts of misconduct would not be swiftly and effectively investigated and prosecuted.

85. The mistreatment and inhumane infliction of bodily harm to Robbie Ellison previously set forth, and the subsequent cover-up of those events, were reasonably foreseeable results of defendants Bluefield Police Department and Chief of Police Blizzard's negligent conduct.

## **Count XII**

### **Pendent Claim of Assault and Battery**

86. Paragraphs 1 through 85 are incorporated by reference as though fully set forth.

87. By their actions, as set forth above, defendants Myers and Dillow committed atrocious acts of battery against Robbie Ellison which included forcefully throwing him to the asphalt street surface on his face and head when he was already under police custody and control, thereby breaking his neck and causing permanent paralysis. Then, after Robbie Ellison pleaded for help because he was hurt and could not move, the said defendant officers dragged Robbie Ellison (with his hands cuffed behind his back, with his head dangling with a broken neck, and with his waist, legs, and feet dragging the ground) a distance of approximately 130 feet, thereby worsening the injuries already inflicted. This use of physical force against Robbie Ellison was unnecessary and excessive.

88. Bluefield is responsible for the excessive and unnecessary physical force used by defendants Myers and Dillow because it occurred while they were acting within the scope of their employment, specifically in the course of arresting Robbie Ellison, and while they were executing their responsibility to hold him safely in police custody.

89. As a result of the excessive and unnecessary physical force used against him, Robbie Ellison suffered severe and serious physical and mental injuries, leaving him permanently paralyzed from his neck all the way to the tip of his toes, including his arms, torso, legs, and all parts of the body below the neck normally moved voluntarily.



### **Count XIII**

#### **Pendent Claims of False Arrest and False Detainment**

90. Paragraphs 1 through 89 are incorporated by reference as though fully set forth.

91. Robbie Ellison was wrongfully, unlawfully, and unjustifiably charged, arrested, detained, and deprived of his liberty against his will and was handcuffed with his hands behind his back and literally dragged for a distance of approximately 130 feet after his neck was broken and he pleaded with Officers Myers and Dillow to help him because he was hurt.

92. At all relevant times, these defendants acted forcibly in apprehending Robbie Ellison.

93. The wrongful, unjustifiable, and unlawful apprehension, arrest, detention, and handcuffing of Robbie Ellison were carried out without a warrant. While the other African-American companions with Robbie Ellison were arrested and imprisoned, Robbie Ellison was imprisoned in his own body. Robbie Ellison he was taken to the Bluefield Regional Medical Center, where he was diagnosed with a severed spinal cord at the levels of C4 and C5 of the cervical spine, or neck, and diagnosed with permanent quadriplegia paralysis. At that point, since Robbie Ellison was literally imprisoned in his own body in the hospital, the defendant Bluefield Police Department and its defendant officers Myers and Dillow refused or declined to take Robbie Ellison to jail because they knew that by insisting upon his incarceration in jail, Bluefield would then be responsible for what were obviously going to be enormous medical bills.

94. At all times mentioned, the wrongful, unlawful, and false arrest and detainment of Robbie Ellison was without right or probable cause and was forcible and against his will.

95. All of the foregoing occurred without any threat or provocation on the part of Robbie Ellison.

96. At all relevant times, defendants Myers and Dillow, who were responsible for the false arrest and detainment of Robbie Ellison, were employees of the Bluefield Police Department and Bluefield, were acting under color of law, and were acting for, upon, and in furtherance of the business of their employers and within the scope of their employment. Further, Chief of Police Blizzard subsequently authorized and/or acquiesced in the false arrest of Robbie Ellison.

97. As the result of the false arrest and detainment, Robbie Ellison was subjected to humiliation, ridicule, disgrace, was required to incur bills for legal services rendered, and was otherwise injured and damaged.

#### **Count XIV**

##### **Pendent Claims of Intentional and Negligent Infliction of Emotional Distress**

98. Paragraphs 1 through 97 are incorporated by reference as though fully set forth.

99. In the course of physically assaulting Robbie Ellison about his head, body-slammng him on the trunk of the car from which he was taken, further body-slammng him on the asphalt road surface on his head after he was handcuffed, and falsely arresting and detaining him, the individual defendants and unknown John Doe police officers embarked upon a malicious, wilful, reckless, and grossly negligent course of conduct intended to cause Robbie Ellison to suffer extreme mental and emotional distress, agony, and anxiety.

100. One objective of this extreme and outrageous course of conduct was to inflict severe mental and emotional distress upon Robbie Ellison so as to intimidate, terrify, and dissuade him from exposing the vicious assault and inhumane treatment upon him, the false arrest and detainment and the unconscionable delay and denial of medical treatment Robbie Ellison endured.

101. Defendants Corporal Myers, Officer Dillow, and Officer Williams either knew or should have known that Robbie Ellison had been severely injured after his neck was broken, after he was body-slammed to the asphalt street surface and he told them that he was hurt and could not move, and their failure to immediately immobilize his neck and get him to a hospital for immediate treatment would create unreasonable risk of bodily harm. Further, those defendants knew or should have known that the failure to obtain such treatment promptly would cause Robbie Ellison extreme mental pain and anguish, and worsen the physical injuries already inflicted upon him. Nonetheless, all of these defendants breached their duty to obtain proper and timely medical treatment for Robbie Ellison.

102. The individual defendant police officers, including Chief of Police Blizzard and Lieutenant Helton, intentionally or recklessly caused Robbie Ellison to suffer mental and emotional distress by impeding and obstructing the exposure of the vicious physical assault and injury he suffered, the false arrest and detainment he endured, and the wanton delay and denial of medical treatment he experienced.

103. The aforesaid acts of intentional and reckless infliction of emotional and mental distress of defendants constitute misconduct of an egregious nature that exceeds all bounds usually tolerated by a civilized society.

#### **Count XV**

#### **Pendent Claims of Negligence for Failing to Care, Protect, and Obtain Medical Treatment**

104. Paragraphs 1 through 103 are incorporated by reference as though fully set forth.

105. As Bluefield police officers, Corporal Myers, Officer Dillow, and Officer Williams had a duty to care, protect, and obtain proper and timely medical treatment for Robbie Ellison while he was being held in their custody.

106. These defendants knew or should have known about the severe injuries Robbie Ellison had suffered and were negligent in their failure to protect him from further injury by immobilizing his head and neck and seeking proper and prompt medical treatment. Their action and inaction is an unconscionable and unnecessary denial and delay in medical treatment Robbie Ellison required. Rather, after Robbie Ellison pleaded for help and told the said police officers that he was hurt and could not move, Corporal Myers and Officer Dillow dragged him while his hands were cuffed behind his back by each of them picking him up by his arms and dragging him with his torso, legs, and feet dragging the asphalt road surface for a distance of approximately 130 feet, where they dropped him to the road, still handcuffed, awaiting medical assistance from an ambulance.

#### **Count XVI**

##### **Pendent Claim of Prima Facie Tort**

107. Paragraphs 1 through 106 are incorporated by reference as though fully set forth.

108. By their actions, as set forth above, defendants Myers and Dillow inflicted bodily harm upon Robbie Ellison, without excuse or justification out of disinterested malevolence.

#### **Count XVII**

##### **Pendent Claim—Respondeat Superior**

109. Paragraphs 1 through 108 are incorporated by reference though fully set forth.

110. At all relevant times, all defendant employees of Bluefield and the Bluefield Police Department were acting for, upon, in furtherance of the business of their employer, under color of law, and within the scope of their employment.

111. Consequently, Bluefield is liable under the doctrine of respondeat superior for their tortious actions.

### **Count XVIII**

#### **42 U.S.C. § 1983 and Pendent Claim by Tera Renae Williams on Behalf of Nakia Chantel Williams, an Infant**

112. At all times relevant to this action, Tera Renae Williams was and is the natural mother to Nakia Chantel Williams, an infant, born September 30, 1998. Nakia Chantel Williams is the natural daughter of Robbie Ellison, and as such, she was and is entitled to the comfort, enjoyment, society and services of her natural father. By reason of the foregoing conduct by the defendants, Nakia Chantel Williams was and will be deprived of the comfort and enjoyment of the services and society of her natural father, which are guaranteed to her under the laws and Constitution of the state of West Virginia and can be adjudicated in this litigation under this Court's supplementary jurisdiction. Moreover, defendants' conduct undermine Nakia Chantel Williams' liberty interest guaranteed by the laws and Constitution of the United States in preserving the integrity and stability of the paternal relationship between her and her father, Robbie Ellison, from intervention by the state without due process of law. Nakia Chantel Williams has suffered and will suffer in the future for the rest of her life from the loss of parental consortium in that she will forever be deprived of the benefit of and the natural love derived from a healthy father, which Robbie Ellison would have been had he

not sustained this permanent and total quadriplegia paralysis as a direct and proximate result of the defendants' aforestated conduct.

**RELIEF SOUGHT**

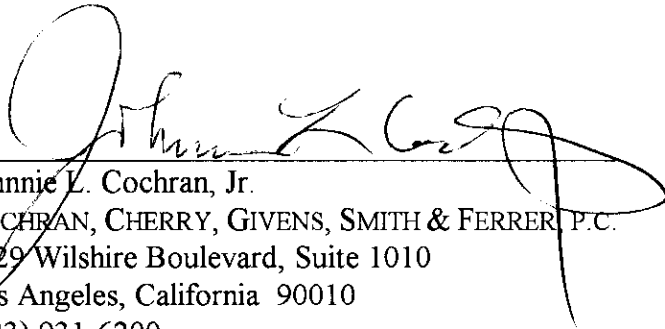
WHEREFORE, plaintiffs request the following relief:

1. an award of compensatory damages jointly and severally against all defendants in an amount to be determined at trial;
2. an award of punitive damages against the individual defendants in an amount to be determined at trial;
3. an order by which Bluefield is directed to change its policies, the implementation of which caused the deprivation of the plaintiffs' constitutional rights, to require that: first, Bluefield police officers receive proper training with respect to the use of force; second, Bluefield police officers who use excessive force are promptly and properly disciplined; and third, an independent agency conduct complete and unbiased investigations of claims of misconduct on the part of Bluefield police officers;
4. disbursement, costs, and attorneys' fees; and
5. for such other and further relief as this Court may deem just and proper.

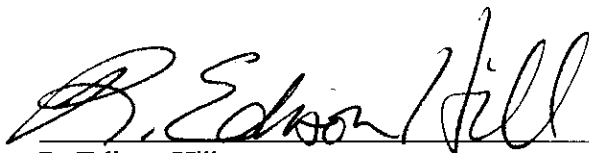
PLAINTIFFS DEMAND A TRIAL BY JURY.

Dated: July 7, 1999

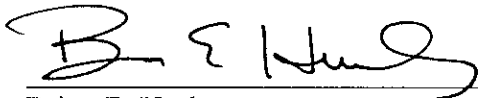
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