

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

MAY 02 2008

MICHAEL N. MILBY, CLERK OF COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**SUSAN CARNABY, INDIVIDUALLY and
AS REPRESENTATIVE OF THE
ESTATE OF ROLAND CARNABY,
DECEASED,**

Plaintiff,

v.

**CITY OF HOUSTON, HPD OFFICER
CHARLES FOSTER and HPD
OFFICER ANDREW J. WASHINGTON,
Defendants.**

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CIVIL ACTION NO.: _____

H-08 -1366

PLAINTIFF SUSAN CARNABY'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THIS COURT:

**NOW COMES SUSAN CARNABY, INDIVIDUALLY and AS
REPRESENTATIVE OF THE ESTATE OF ROLAND CARNABY, DECEASED and files
this original complaint against the City of Houston and HPD officers Charles Foster and Andrew
J. Washington and sets forth as follows:**

JURISDICTION AND VENUE

1. This Court has jurisdiction over Plaintiff's federal claims, under 28 U.S.C. §§ 1331 and, 2201, 42 U.S.C. §§ 1983 and 1988, and supplemental jurisdiction, under 28 U.S.C. § 1367(a), to hear Plaintiff's state law claims under the Texas Tort Claims Act and other state law, if any.

2. Venue is proper in this Court, under 28 U.S.C. § 1391(b), because the incident at issue took place in Harris County, Texas, within the United States Southern District of Texas.

PARTIES

3. Plaintiff is a resident of Brazoria County, Texas.
4. Defendant Charles Foster is a City of Houston police officer and can be served with process at the Houston Police Department at 61 Reisner in Houston, Texas.
5. Defendant Andrew J. Washington is a City of Houston police officer and can be served with process at the Houston Police Department at 61 Reisner in Houston, Texas.
6. Defendant City of Houston is a municipality within the Southern District of Texas.

FACTS

7. On April 29, 2008 in the early afternoon the Houston Police Department stopped Roland Carnaby, 52, for speeding in the south of Houston, Texas. Roland showed the officer his identification and the officer checked Roland's background via the squad car computers. Roland then drove off and a police chase ensued. At the beginning of the chase officers checked Roland's record and found that he was not wanted by the law and had never been convicted or even arrested for a crime in his entire life. The police officers also confirmed that Roland had passed the rigorous background checks needed to obtain a lawful Texas concealed handgun permit.¹ Despite this knowledge HPD chased Roland at speeds over 120 miles an hour through Houston streets and highways endangering any man, woman or child that they passed.

8. Roland came to stop. With full knowledge of Roland's background police attacked the vehicle with nightsticks and weapons drawn shouting for Roland to get out. When Roland complied an officer slammed Roland with the SUV door. Houston Police Officers Two

¹ Houston police officers claim the because Roland had a concealed handgun permit this made him *more dangerous* than someone who does not have a concealed handgun permit.

officers at shot Roland Carnaby. Instead of administering any aid to the gunshot wound(s) the officers handcuffed Roland and left him lying facedown on the street.

9. Roland died of a gunshot wound to the BACK which caused catastrophic loss of blood. Houston Police Chief Hurtt, policymaker for the City of Houston, viewed the various videotapes and evidence and stated that the actions of the police were consistent with the policies and practices of Houston, Texas.

10. The two officers who shot at Roland have sustained disciplinary records including suspensions from duty for offenses including theft, violent striking of a prisoner, failure to abide by laws, not being truthful, insubordination and speeding.

11. The following shootings of civilians by the Houston Police Department also involve questions of improper procedures regarding shooting when not in objective fear of their lives or the lives of others, stopping suspects in vehicles and extracting suspects from vehicles (this list is not exhaustive).

4/11/08 - Tim Stokes, b/m, 28, killed when shot by Houston PD Sgt. Charles W. Jones (24-yr vet, North Patrol Div.), off duty and in plain clothes. Jones was visiting a friend when he heard a noise in the apartment parking lot. He looked out a window and saw someone breaking into his friend's car. When he approached the car and saw Stokes inside it, he claims he identified himself as a police officer and "gave verbal commands" to him. Jones further claims that Stokes then lunged at him with a screwdriver, and he shot twice, striking Stokes in the chest. Stokes is the 6th person known to have been shot to death this year by a Harris County police officer.

4/9/08 - L. Mendez, 31, wounded when shot by Houston PD officer Carl T. Sanders, a 15-yr vet. Sanders tried to make a traffic stop, and a short pursuit followed. When Mendez was forced to stop at a dead end street, he began to run away on nearby railroad tracks. Sanders followed. Claiming he thought Mendez had a gun, Sanders shot once, striking him in the ankle.

3/4/08 - Glenn Moreau, killed when shot by Houston PD officers C. Andersen, A. Rendon, R. Jennings, O. Maldonado, M. Franklin, and C. Darlow.

2/22/08 - Marcus Anthony Alvarez, h/m, 22, killed when shot by Houston PD officers Osvaldo R. Gutierrez (Westside Patrol, 2-yr vet), Noe Juarez (12-yr vet) and Andrew Egras (4-yr vet). Alvarez and a companion had robbed someone outside a nightclub where the officers were working off-duty, and began shooting when the officers approached them. Alvarez was killed, and officer Gutierrez was shot in the leg. Alvarez is the second person known to have been shot to death this year by a Harris County police officer.

2/20/08 - Demetrik Hurts, wounded when shot by Houston PD officer B. Gill.

2/13/08 - Havanna P. Garcia, h/f, 29, wounded when shot by Houston PD officers A. Arriaga, J.R. Salinas and F. Cardoza (all 5-yr vets assigned to Southeast Patrol Division). Police say Garcia was driving a stolen car, and when they tried to stop her, they claim she "became evasive" and tried to strike them with the car while they were on foot. All the officers shot at her, and she was struck in the elbow.

1/15/08 - Jose Ayala, h/m, 21, critically wounded when shot by 8 Houston PD officers. The officers are: G. Rodriguez (24-yr vet), J.A. Cantu (15-yr vet), M.T. Romero (23-yr vet), T.D. Haase (24-yr vet), J.B. Byrd (28-yr vet), J.L. Thomas (23-yr vet), all assigned to Eastside Patrol Div., and Sgt. R. Rodriguez (23-yr vet), and officer A.C. Dealejandro (22-yr vet), both assigned to South Central Patrol Div. Officers had stopped Ayala's vehicle to arrest him for probation violation. A chase ensued and, when Ayala finally stopped and got out of his car, officers claim he pointed a weapon at them and they opened fire. They claim he then tried to enter a house but failed, pointed a weapon at them, and they again fired on him. The weapon turned out to be a BB gun.

2/31/07 - J. Varges, wounded when shot by Houston PD officer Richard Martinez, 27 (2-yr vet, Southeast Patrol Div.), working off-duty as an apartment security guard. Martinez noticed a woman crying for help as she sat in a car with a man; the woman told him the man had raped her. When Martinez tried to arrest Varges he was knocked to the ground. Martinez then fired once, hitting Varges. It is unknown how seriously he was injured. (*media reports*)

10/18/07 - Raymond Smith Jr.

b/m, 29, killed when shot twice by Houston PD officer Brian Marshall Bueno (5-yr vet), who claimed he feared for his life when the unarmed and naked Smith allegedly chased him. Bueno was ticketing another driver when Bueno stopped and got out of his pickup truck. He asked the other driver (apparently someone he knew) if Bueno was (expletive) with him, and an argument between Smith and Bueno ensued. Bueno began to pat him down, and witnesses say Smith's pants fell down. They say that when Smith tried to pull them up Bueno shot him with a Taser, which had no effect except possibly to annoy Smith, because he then tore off all his clothes and ran into some nearby woods. Bueno followed, but then claims Smith charged at him, so he shot him. Smith fell, but got up and ran to the patrol car, where police claim he tried to drive away. Bueno and backup officers pulled him out of the car, and Smith ran back into the woods, where he died. Smith is the 10th person known to have been shot to death this year by a Harris County police officer.

8/14/07 - Brittnee S. King

b/f, 18, wounded when shot on her 18th birthday by Houston PD officer Patrick Carraway (sworn in just 4 months ago, assigned to Northeast Patrol Div.) Officers saw a passenger in King's vehicle throw some trash out the window and tried to stop her. Apparently, King was near her home, and she instead continued driving to her apartment complex, where a code was required to enter. As she began punching in the code, Carraway claimed he saw a shiny object in her left hand, and shot her. King's mother says the "shiny object" was likely the bracelets she was wearing that night.

7/31/07 - Reginald Lee Sumbler, b/m, 21, killed when shot multiple times by Houston PD officers Sergeant P.E. Ogden III (Eastside Patrol Division), Officer H.M. Wagner Jr.(5-yr veteran, Southeast Patrol Division), Officer T.S. Warren (Special Operations Division), and Officers Patrick J. Straker, A. Gonzales, R.L. Kent, and R.J. McCusker (SWAT). Police say

Sumbler had called them, saying he wanted to die. The first officer to respond found him outside his home, holding a gun and a Bible. A CIT officer then spoke to him for nearly an hour, convincing him to move away from his gun and read his Bible. As he did so, SWAT officers arrived and began surrounding him. Alarmed by SWAT's arrival, police say Sumbler grabbed the gun; at least one witness said he didn't pick up the gun at this point. Police claim he then pointed it at the officers; witnesses say he did not. One of the officers shot once, and Sumbler fell backward into a ditch. He then grabbed for the gun, and all seven officers opened fire. Sumbler is the 8th person known to have been shot to death this year by Harris County police officers.

See also 10/23/06 - Straker kills Mohammad Rafi; and 8/13/01 - Straker kills McLoren Anthony Jones; and 9/2/03 - Straker kills Mary J. Beasley; and 6/10/99 - Straker kills Demetrio Martine Hernandez; and

8/11/05 - Wagner kills Ronald Charles Newman.

7/21/07 - Steven Guillory, b/m, 39 and *mentally ill*, killed when shot by Houston PD officers T.K. Richardson and R.B. Wieners. Police say Guillory had threatened his mother with a knife, and she called 911 for help, telling them that her son was mentally ill. When officers arrived they said Guillory had a large pipe and appeared agitated. After about 20 minutes the officers moved away and called for backup; Guillory then began smashing the patrol car's windows and headlights. When the second officers arrived Guillory's mother told them her son was schizophrenic and bipolar, begging them not to shoot him. But they allege that Guillory threw the pipe at them, and Richardson and Wieners then shot him at least once. Once again, the Crisis Intervention Team either was not summoned or failed to respond to this call. Guillory is the 7th person known to have been shot to death this year by a Harris County police officer.

7/21/07 - B. Pierre, is wounded when shot by Houston PD officer E. Browhow after robbing some women at gunpoint. Browhow chased and caught him, and a struggle ensued as Pierre tried to take the officer's gun. Browhow managed to hold on to the gun, but shot Pierre in the leg.

7/3/07 - John F. Burks, b/m, 17, wounded when shot by Houston PD narcotics officer M. A. Dominguez (2-yr vet, Fondren Patrol), who says Burks tried to run over him. Working undercover, Dominguez was sitting in his unmarked car in a parking lot when he observed what he believed to be a drug deal. He apparently called uniformed officers, and when they tried to arrest Burks, Dominguez claims Burks accelerated rapidly toward him. (But the HPD news release states that Burks "swerved around the officer and his unmarked patrol vehicle.") Dominguez fired several shots at Burks, striking him in both wrists.

See also 5/30/07 - Dominguez' partner shoots J. Rivas, 16.

6/8/07 - Anthony Daniel Williams, b/m, 28, wounded when shot by Houston PD officer E.B. Cisneros (15-yr vet). Williams had stolen a car at gunpoint, and was fleeing from police when he crashed the car. He fled on foot, and was hiding behind a library book drop box when Cisneros ordered him to put his hands up and get on the ground. At first he complied, but then Cisneros claims he dropped his hands as if reaching for a weapon and made an overt move toward him. Cisneros then shot Williams in the chest, claiming he feared for his life. Williams did not have a weapon, and none has been found.

6/3/07 - Clifford Jackson Fairfax, b/m, 42, wounded when shot in the leg by Houston PD officer R. Madrid (16-yr vet, North Patrol Div.) Fairfax was burglarizing a home when he saw the homeowner and Madrid pulled up to the house. He jumped through a window and began running away. Madrid claims Fairfax was holding a black object and turned towards him with it in his hand. Claiming he thought Fairfax was about to shoot him, Madrid fired once, striking Fairfax in

the leg. The black object was Fairfax's wallet.

6/2/07 - Darrell Gragert, 42, killed when shot by Harris County sheriff's deputy A. Waybright (5-yr vet), who found Gragert sitting in his car behind a car wash at 3:30 a.m. As the officer approached, Gragert got out of his car and said he was having car trouble. When he got back in his car to get his I.D., Waybright claims he started the car and reached behind his seat, refusing to show his hands. He then claims Gragert accelerated rapidly in reverse toward him. Waybright shot at Gragert three times, striking him in the hand and upper torso. It is unclear how a gunshot could have struck Gragert in his torso, since the deputy allegedly was standing behind the car. It appears Waybright violated HCSO policy by shooting at a moving vehicle. Gragert died an hour later. He is the 6th person known to have been shot to death this year by a Harris County police officer.

5/30/07 - J. Rivas, h/m, 16, wounded when shot by Houston PD officer P. Kopulos as Rivas struggled with Kopulos' partner, M.A. Dominguez (both 2-yr veterans with Fondren Patrol). The officers say they saw two men and Rivas jaywalking and "acting suspicious," and began patting them down. When they found a gun on one of the men, the officers claim Rivas pulled a gun from his waistband and pointed it at them. Dominguez grabbed his hand. They further claim that Rivas shot at Dominguez as they struggled over the gun, grazing his cheek. Kopulos then fired two shots at Rivas, hitting him at least once. He was taken to the hospital in critical condition.

See also, 7/3/07 - Dominguez shoots John Burks.

5/12/07 - Alex Macario Rivera, aka Hegnor Irias h/m, 22, killed when shot in the back by Houston PD officer K.R. Barnes (9-yr veteran, Fondren Patrol), who was talking to a woman whose purse was stolen. As they spoke, a man identified a passerby as the person that had previously robbed him at gunpoint. Barnes approached Rivera, who allegedly "fled" into a nearby apartment complex. Police first claimed that Rivera then ran toward Barnes with a pistol, refused to drop the gun, and Barnes fired twice, hitting Rivera in the upper torso. Two days later officers admit that Rivera was shot in the back. Rivera is the 5th person known to have been shot to death this year by a Harris County police officer.

5/10/07 - Alejo Castaneda Gonzalez, h/m, wounded when shot by Houston PD officer R.E. Briggs (16-yr veteran, Narcotics Div.), who was conducting an investigation when Gonzalez allegedly confronted him with a gun. Briggs claims Gonzalez fired at him, and Briggs shot once, striking Gonzalez in the abdomen. He is in stable condition.

5/9/07 - C. Bennett, 26, wounded when shot by Harris County sheriff's deputy J. Garcia, a 15-yr vet. A motorist said he was being followed by another car and was directed to stop at a gas station where a deputy was waiting. When the deputy stopped the car, the passenger got out and tried to hide between other cars. Garcia claims he saw Bennett drop a magazine clip as he ran toward some nearby woods with a pistol in his hand. He further claims Bennett then turned toward him, and Garcia fired several shots, hitting Bennett at least once in the chest. He was Life-Flighted to Ben Taub Hospital in stable condition.

5/6/07 - Marnell Robertson Villarreal, b/f, 42 and *mentally ill*, killed when shot once at Houston PD headquarters by HPD officer A.B. Clay, a 9-yr vet. Villarreal had first requested to speak to an investigator about a case involving her, but was refused entry because her name was flagged as someone who had previously tried to bring weapons into the building. Officers then saw her "wandering" on the street in front of headquarters, and again refused her entry when she asked to use the bathroom. She later rushed into the building, allegedly with a knife in her hand (*Note: A witness claims it was similar to a butter knife*), crying out, "Shoot me, kill me. I want to end

this." As she focused her attention on Clay, officer E.D. Smith (5-yr vet), shot her with a Taser, which apparently failed to make contact. Clay then shot her in the chest. Villarreal was convicted in November of unlawfully carrying a weapon, and was ordered at that time to have a psychiatric examination; it is not known if the examination was arranged by the court or any other authority. Once again, no CIT officer was summoned, despite her unusual behavior for several hours before she was killed. Villarreal is the 4th person known to have been shot to death this year by a Harris County police officer.

5/3/07 D. Rogers, shot by off-duty Houston PD SWAT officer Gilbert Reyes (28-yr vet) after robbing a restaurant. Reyes had just left a restaurant near the one that was robbed, and chased Rogers in his car. When he caught up with him, Reyes claims Rogers threatened him with a gun, and he shot him. Rogers ran into some nearby woods and was able to get to his home, where he called 911 to report he had been shot; and the police then arrested him.

4/25/07 - Joseph Juan Flores, h/m, 23, wounded when shot by Houston PD narcotics officers F.P. Scoggins III and F. Rodriguez Jr., who were attempting to serve a search warrant. Officers claim there was no response to their knock, and forced their way into the apartment. They further claim Flores was pointing a gun at them at they entered, and both officers fired, striking Flores.

2/10/07 - Michael Gene Meloy, w/m, 38 and apparently *mentally ill*, killed when Houston PD officer Scott C. Dalton (14-yr vet, NE Patrol Div.), shoots him in the torso with a shotgun. Meloy had robbed a liquor store then tried to hide behind the store. When the police found him, he began walking away, and officers followed him for several blocks, offering to take him to a hospital. According to a witness, who said he seemed "crazy but calm," Meloy responded, "You can't help me, just shoot me." Officers claim he lunged at them with a knife, and Dalton shot him. Despite his strange behavior, no CIT officer was reported to have been called. Meloy is the 3rd person known to have been shot to death this year by a Harris County police officer.

1/26/07 - Edward Thomas, 20, shot in the head, shoulder and side by Houston PD detectives M.W. Hamby, 47 (26-yr vet), and T.D. Butler, 34 (12-yr vet), who saw Thomas sitting in their unmarked car as they approached after having lunch. The officers say they identified themselves as police and ordered Thomas to surrender; instead, Thomas jumped into his own car (parked next to the detectives), and drove toward them. Hamby and Butler both opened fire, shooting three times through the windshield and twice in each of the front doors. At least 11 shots were fired at Thomas, who was unarmed. 1/9/07 - Robert McIntosh

b/m, 23, shot three times and killed by Houston PD officer Leonard P. Smith, who had stopped the car in which McIntosh was a passenger for a broken tail light. Smith found the driver had a warrant from another county, and began to question McIntosh. He claims McIntosh pushed him, and ran. A struggle ensued after Smith caught up to him and shot him with a Taser. McIntosh then broke Smith's thumb when he managed to take the Taser away from him. Smith claims he then feared for his life, shot McIntosh, and handcuffed him. However, a witness (the wife of a church pastor) who saw the entire incident, and others claim that Smith shot McIntosh three times after he was handcuffed and on the ground. McIntosh was unarmed; he is the 2nd person known to have been shot to death this year by a Harris County police officer.

1/7/07 - Omar B. Esparza

h/m, 21 and known by police to be *mentally ill*, killed when shot by Houston PD officer Rodney D. Chaison Jr. (5-yr veteran). Esparza's parents had called 911 for help in taking him to a psychiatric facility for evaluation after he locked the family out of the house. Police claim that he had assaulted his sister and was destroying their house with a hammer; the family dispute that

claim and say Esparza did neither. (Those who were later inside the home said the home was orderly and there was no evidence of destruction; the 18-yr-old sister said her brother never assaulted her.) After police arrived they assured the family that their son would not be harmed; a CIT officer arrived and allegedly tried to talk Esparza out of the home, without success. After two hours, the CIT officer authorized other officers to enter the home to take Esparza into custody. The officers claim Esparza charged them with the hammer, and Pineda shot him dead. The father said he heard five shots within minutes of the officers entering his home, but the family was kept waiting 4 to 5 hours outside, not knowing their son was dead because the officers would give them no information about his condition. An ambulance was finally summoned after about 3 hours. Although police had prior knowledge that Esparza was mentally ill, they failed to request a CIT officer before entering his home. Esparza is the 1st person known to have been shot to death this year by a Harris County police officer.

12/15/06 - James Edward Smith, b/m, 51, shot to death by Houston PD Sgt. K.D. Anthony (5-yr veteran) and officer W.E. Reiser (11-yr veteran). They had responded to a call from an off-duty officer working security, who said he checked on a disturbance in an apartment and was told not to come in or he would be killed. When Anthony and Reiser arrived, they claim they heard a woman begging the man not to stab her. The officers went inside and say they found the man standing with a knife poised over the woman's head. They claim the man then charged at them, and both Anthony and Reiser fired, striking him in the chest and abdomen. Smith is the 12th person known to have been shot to death this year by Harris County police officers.

10/24/06 - Unidentified and unarmed 14-yr-old boy, shot by Houston PD undercover officer J. Rincones, conducting an afternoon auto-theft sting. During their negotiations, six men attacked Rincones (a 13-yr veteran), and he fired two shots, hitting the boy in the leg. It is not known if the boy was one of those that attacked the officer, or just a resident of the apartment complex. This boy is the 23rd person known to have been wounded this year when shot by a Harris County police officer.

10/23/06 - Mohammad Rafi, 27, shot and killed by Houston PD SWAT officer Patrick J. Straker. Rafi violated a restraining order and entered the back door of his estranged wife's employer, where he stabbed her to death. Straker shot Rafi after about two hours, when he allegedly pointed a weapon at officers from inside the store. He is the 11th person known to have been shot to death this year by a Harris County police officer.

See also 7/31/07 - Straker kills Reginald Lee Sumbler; and 8/13/01 - Straker kills McLoren Anthony Jones; and 9/2/03 - Straker kills Mary J. Beasley; and 6/10/99 - Straker kills Demetrio Martine Hernandez.

10/23/06 - R. Taylor is shot and killed by off-duty Houston PD officer Richard Kennedy (7-yr veteran), who saw a parked car with an open door while patrolling a neighborhood. When he stopped to investigate, the door was closed and Taylor was standing near the car. He fled when Kennedy approached him, and hid in the backyard of a nearby residence. Kennedy claims that when he found him, Taylor turned around with a knife in each hand, refused to drop them, and "charged" at him. Kennedy shot him in the chest, killing him. Taylor is the 10th person known to have been shot to death this year by a Harris County police officer.

8/23/06 - Unidentified man known as Gordo, shot twice in "center mass" by Houston PD officer Daniel W. Starr (Northwest Patrol Div., 21-yr veteran). A security guard saw two men with guns at an apartment complex, and called police. When Starr found one of the men hiding in some bushes, he ordered him out. The man then shot at Starr, who returned fire, striking him multiple

times; his condition is unknown. Starr was struck twice in the chest but, despite the August heat, was wearing his bulletproof vest, which deflected two bullets, probably saving his life. He was not injured. "Gordo" is the 18th person known to have been wounded this year when shot by a Harris County police officer.

8/8/06 - Unidentified 15-yr-old boy, wounded when shot by undercover Houston PD officer G. McDonald, who was conducting a prostitution sting with another officer. The officers claim the boy shot at them as they were arresting a suspected prostitute, and ran when they shot at him. He was found a short distance away with a gunshot wound in the abdomen. The boy is the 17th person known to have been wounded this year when shot by Harris County police officers.

8/4/06 - Allan Fernando Alvarez - h/m, 24, wounded when shot in the face by Houston PD Sgt. R. Garza (22-yr veteran, Eastside Patrol Div.) Officers were searching for Alvarez and a companion after they had just robbed a business. When Garza raised the lid on a garbage can, he claims Alvarez, who was unarmed, "popped out of the can in a threatening manner," and he shot him. Alvarez is the 16th person known to have been wounded this year when shot by a Harris County police officer.

8/1/06 - Steven Ferrel - w/m, 37, wounded when shot at least twice by Houston PD SWAT officers A. Orozco, Anthony R. Pisaro, 41, and S. Hamala. Ferrel was suspected of a robbery and told a dispatch operator that he would shoot himself if the police came into his motel room. A female that was in the room with him was released unharmed; police claim she was a hostage. Police say Ferrel came out of the room "waving" a shotgun and a pistol, then began to point them at the officers when they shot him. Ferrel is the 15th person known to have been wounded this year when shot by Harris County police officers.

See also 8/1/01 - Pisaro kills Haywood Louis Ogburn, 32; and 3/12/01 - Pisaro wounds John Jones Jr.; and 8/7/98 - Pisaro shoots fellow officer Richard Pedraza; and 1/1/93 - Pisaro shoots and kills Amos Perry, age 15; and on 12/20/91, Pisaro paralyzes Rosalind Joyce Bell.

7/13/06 - Rene Miguel Sanchez - h/m, 35, shot in the neck and head and killed by Houston PD officer Richard Pina (13-yr veteran, Clear Lake Div.) Pina responded to a family disturbance call; he claims Sanchez refused to open the door or let him speak to his wife, who was standing beside him. Pina claims Sanchez raised a pistol, then brought it down "in a threatening manner." Pina fired three times, hitting Sanchez twice. Sanchez is the 9th person known to have been shot to death this year by a Harris County police officer.

7/5/06 - Harold Joseph Natale - b/m, 29, wounded when shot by off-duty Houston PD officer G. Gutierrez, who had been called by a family member reporting someone breaking into her garage. Gutierrez found Natale pushing a large toolbox. When Gutierrez tried to arrest him, a struggle ensued, and Natale was shot in the foot. Natale is the 14th person known to have been wounded this year when shot by a Harris County police officer.

6/29/06 - I. Naranjo and S. Martinez - wounded when shot by Pasadena PD officer E. Hudson (5- or 6-yr veteran), who says he found them "acting suspiciously" when he responded to a disturbance call. He claims they tried to run over him, and fired his gun once; the same bullet struck the driver in the wrist and the passenger in the leg. Neither injury was serious. Naranjo and Martinez are the 12th and 13th persons known to have been wounded this year when shot by a Harris County police officer.

6/19/06 - E. Tyrone - shot and killed by Houston PD officers R. Curl and K. Crellin (27- and 15-yr veterans). Tyrone robbed a bank with a BB gun, then went across the street to a Jack-In-The-Box. As she stood in line, the officers approached her and claim she pulled a pistol and pointed it

at them. They shot her "at least twice" in the abdomen. Tyrone is the 8th person known to have been shot to death this year by Harris County police officers.

6/1/06 - Eric William Goodman - w/m, 47, wounded when shot once (variously reported as in the chest, stomach, and abdomen) by Houston PD officer Michael J. Hightower (24-yr veteran, Westside Patrol Div.) Responding to a disturbance call, officers found Goodman in his boxer shorts with a pistol in the back waistband, arguing with a woman. When told to "show his hands," police claim he instead turned and began pointing the pistol at them; Hightower then shot him. Goodman is the 11th person known to have been wounded this year when shot by a Harris County police officer.

5/19/06 - J. Bullock - killed when shot by Houston PD officer J.D. Green, 43 (16-yr veteran, Northeast Patrol Div.) Bullock and two others were leaving a store after robbing it, when officer Green arrived. Bullock allegedly shot at Green, who returned fire with a shotgun. Bullock died in the hospital. Bullock is the 7th person known to have been shot to death this year by a Harris County police officer.

5/4/06 - Leroy Cooper - b/m, 54, wounded when shot by Houston PD Sgt. D.J. Culak, 52 (28-yr veteran). Officers found Cooper in a trailer at the HPD Vehicle Compound. When ordered to stop what he was doing (allegedly stealing tools), police claim he charged at Culak with a tire iron, who then shot Cooper several times. He was taken to the hospital in serious condition. Cooper is the tenth person known to have been wounded this year when shot by a Harris County police officer.

4/22/06 - Carlos Vela Trevino - h/m, 38, wounded when shot in the foot, buttocks, and both thighs by Houston PD Sgt. A. Porras (32-yr veteran), and officers L.G. Gay III (11-yr veteran) and R.L. Mason (25-yr veteran), all from the Tactical Operations Div., K-9 unit. Police were called to a domestic dispute by a neighbor, who reported hearing gunshots and screaming from a nearby home. After a woman and two children left the home, officers entered and found Trevino in a bedroom. Trevino allegedly began firing at the officers, who returned fire, injuring Trevino. Trevino is the ninth person known to have been wounded this year when shot by a Harris County police officer.

4/5/06 - J. Okusaga - wounded when shot in the hand by Houston PD officer E. LaCourt, who had responded to an assault call. Witnesses said Okusaga and a companion had tried to rob and then beat a 75-yr-old man, and they called for police. Police claim that Okusaga "made an overt motion to his back" as they tried to take him into custody, and LaCourt shot him. The elderly man was taken to the hospital in good condition.

4/4/06 - Frederick Tippet - 37, wounded when shot in the neck and arm by unidentified member of Pasadena multi-agency drug task force. Several officers, driving unmarked cars, tried to stop Tippet's pickup. (It is not specified whether Tippet was driving or was a passenger.) In an effort to escape, Tippet's vehicle rammed one of the officer's cars, and another officer fired shots, hitting Tippet. The driver continued trying to escape and rammed another officer's car, who got out and shot three times at the pickup. It is possible that Tippet was unaware the pursuing cars were driven by police officers.

4/2/06 - Kevin O'Neal Harrison - b/m, 18, shot and killed by Baytown PD officers G. Slaven and W. Nelson. Police claim Harrison intended to force the elderly homeowners to withdraw money from an ATM. Instead, the wife managed to call police from another room; when they arrived, officers said Harrison raised his gun at them. They then shot him several times. Harrison is the 6th person known to have been shot to death this year by Harris County police officers.

3/15/06 - Robert Paul Cantrell - w/m, 36, critically wounded when shot by Houston PD officer Ryan G. Gardiner (a 4-yr veteran from Northeast Patrol Div.) Gardiner followed Cantrell to a gas station because the car he was driving was reported stolen. As Cantrell came out of the station's store, Gardiner ordered him to lie on the ground. He claims Cantrell instead "dived into the stolen vehicle," reaching under the passenger seat. Gardiner then shot at him five times. No weapon was reported to have been found in the car.

3/11/06 - William Petty - 29, shot in the abdomen and killed by Houston PD narcotics officer D.L. Deblanc, who had gone to Petty's apartment to buy drugs. Petty opened the door with a "gun" in his waistband. Deblanc claims he shot Petty when he reached for the gun, later discovered to be a toy pistol. Petty is the fourth person known to have been shot to death this year by a Harris County police officer.

2/23/06 - Levi Balderas - h/m, wounded when shot in the leg by Houston PD officers N. Patel (age 34; 10-yr veteran) and A. Yanez (age 40; 14-yr veteran), both from the Eastside Div. Gang Unit. Officers say Balderas and another person were burglarizing cars at a restaurant parking lot, and Balderas rammed their car with his pickup when they tried to arrest him. Claiming he accelerated toward them, both officers fired, and Balderas was hit in the leg. Police do not explain how Balderas was hit in the leg if the officers fired while in front of his vehicle.

2/8/06 - Unidentified 16-yr-old girl threatening suicide is wounded when shot in the foot by Houston PD officer C.W. Jackson (Westside Patrol Division). Police say the girl was brandishing a knife as she moved toward them, and Jackson shot twice as he stumbled backward, hitting her foot. Officers then took the knife from her. Once again, no member of HPD's Critical Incident Team responded to this urgent call involving a mentally ill person. This girl is the second person known to have been wounded this year when shot by a Harris County police officer.

2/2/06 - Jeremy Ethon Roberson

b/m, 28, killed when shot by Houston PD officers W. Crank, M. Jones, D. Bejarano, E. Bratton, J. Brown, Fisher, Kelly, Russell and Davis. Roberson had kidnapped his girlfriend and her 4-year-old child in Dallas, and was chased by officers from several law enforcement agencies as he drove to Houston. He eventually crashed his car and as it came to a rest, numerous officers approached and shot him. The girlfriend and her child were not harmed. Roberson is the third person known to have been shot to death this year by Harris County police officers.

1/4/06 - J. "Pepe" Tapia - h/m between 16-20 yrs, wounded when shot by off-duty Houston PD officer R. Adams, who had approached Tapia to question him about a robbery. Police claim that Tapia pulled a pistol and attempted to shoot Adams, but apparently the pistol jammed. Adams shot him as he fled. Tapia is the first person known to have been wounded this year when shot by a Harris County police officer.

12/24/05 - Theolonious Paul Henry - b/m, 40, critically injured when shot by Houston PD officers A.A. Ferrer and R.D. Gonzales (both 8-yr veterans, Southeast Patrol Div.) Henry was assaulting his estranged girlfriend. When police arrived, they saw him shoot at her, then allegedly point his pistol at the officers, and they shot him, striking him multiple times in his upper torso. The girlfriend received minor grazing wounds to her head and arm.

12/15/05 - Aurelio Ivan Chavez - h/m, 24, killed, and two unidentified Hispanic men wounded when shot by unnamed Houston PD undercover narcotics officers. Police claim that Chavez, Michael Martinez, 22, Rodolfo Antonio Villalta, 19, and Richard Garza, 17, attempted to rob the officers during a drug buy, and gunshots were exchanged. It is unknown which two of the men were wounded. One of the officers was in good condition after being shot in the abdomen and

ankle. Chavez is the 20th person known to have been shot to death this year by Harris County police officers.

12/5/05 - Jonathan Ray Ford - 22, shot twice in the waist by off-duty Houston PD officer Mario A. Valles, 37 (10-yr veteran Fondren Patrol Div.) Valles and his partner had stopped Ford and a companion after learning they were in a stolen SUV used that day in several robberies. When Ford got out of the car with a gun, police say he refused to put it down, and Valles shot him.

11/7/05 - Angelina Brewer - w/f, 47, known to be mentally ill, killed when shot 15 times, including 5 in the back, by Houston PD sergeants C.E. Anderson and K.H. Bounds, 24- and 13-yr veterans respectively, and officer L.T. Gibson, a 5-yr veteran; all are from the North Patrol Division. Brewer's employer had called 911 about 11 am to report she may be suicidal and asking that someone check on her. In the meantime, Brewer asked her sister to be with her, and picked her up. The sister spoke to Brewer's employer by cell phone as they drove around. When Brewer saw a police car following her, she began to pull over, but when more police cars appeared, she drove off, but soon stopped at an abandoned gas station around 4:30 pm (about 5 hours after HPD was first called). Numerous police cars immediately surrounded Brewer's truck. Brewer's sister opened the door and slid the gun toward the officers, who failed to retrieve it. Both girls got out of the truck and when Brewer picked up the gun and began to stand up, the officers shot her. According to her sister, Brewer never threatened or pointed the gun at her or any of the approximately 20 officers surrounding them. No CIT officer ever attempted to speak to Brewer during the 4- to 5-hour interval after HPD was first notified of Angelina's condition. Her sister was shot in the foot during the assault. Brewer is the 19th person known to have been shot to death this year by Harris County police officers.

11/3/05 - Jose Pino (h/m) and Juan Bautista (h/m) killed, and Jose Contreras (h/m) and Ivan Lopez (h/m) wounded when shot by FBI agents D.M. Hays, L. Greene, M.W. Bobbitt, C.O. Acosta, C.D. Honza, K.B. Erickson, M.A. Telle and M.E. Stokes during an anti-gang raid targeting MS-13 members. All of the victims are believed to be h/m in their early to mid-20s. Pino and Bautista are the 17th and 18th persons known to have been shot to death this year by Harris County police officers.

9/9/05 - Juan Ramon Aguilar - h/m, shot twice and killed by HPD officer Mark T. Chapnick (North Patrol Div.), who had stopped Aguilar's SUV as he tried to pick up teenage girls. Chapnick claims Aguilar refused to obey his commands, and a struggle ensued. Chapnick shot him with a Taser, with little effect, and claims Aguilar then attacked, beat him in the face and tried to take his weapon. Chapnick then shot and killed Aguilar. Aguilar is the 15th person known to have been shot to death this year by a Harris County police officer.

8/11/05 - Ronald Charles Newman, 52, shot in the head and killed. Houston PD officer H.M. Wagner Jr. (3-yr veteran, Southeast Patrol Div.) claims Newman shot at him several times after he stopped him for outstanding warrants. Newman's son said his father was not a violent person and had no ill feelings toward police. Newman is the 14th person known to have been shot to death this year in an incident involving a Harris county police officer.

See also, 7/31/07 - Wagner is one of seven officers that kill Reginald Lee Sumbler.

7/25/05 - Bridget Clare Dolan, w/f, 26, shot several times and killed by Houston PD officer K.W. Rogers (a 15-yr veteran assigned to Clear Lake Patrol Div.) and League City police Sgt. P.R. Odin. Dolan and another woman had stolen beer from a convenience store. After a lengthy chase, Dolan ran into an apartment complex and, when cornered by police, allegedly began alternately pointing a gun at her head, then at officers. Despite knowing her gun was jammed, Rogers and

Odin claim they were "forced" to shoot Dolan. Dolan is the 13th person known to have been shot to death this year by a Harris County police officer.

7/20/05 - Michael Wayne Brooks - w/m, 40, killed when shot twice in the side by Houston PD officers Charles C. Robertson, 56, and Christian C. Lyall, 37 (Westside Patrol Div.) Officers claim they shot him after he pointed a pistol at them while "ranting and raving" in a shopping center parking lot. Brooks' family and friends say this behavior was uncharacteristic, and he had recently opened his own business. They theorize that he was given drugs when he ran into an old friend. Brooks is the 12th person known to have been shot to death this year by a Harris County police officer.

7/19/05 - Steven Lopez - killed when shot in the head by Houston PD officer Noe Hernandez, a 10-year veteran, and his father when he tried to break into a neighbor's car. Lopez is the 11th person known to have been shot to death this year by a Harris County police officer

7/6/05 - Ronald Hamilton, b/m, 31, and Shedrick White, b/m, 32, wounded when shot by Houston PD officers T.A. Adams (10-yr veteran), J.L. Scales, 35 (3-yr veteran), and K.L. Raven (3 1/2-yr veteran), all from Fondren Patrol Div. The officers responded to a burglary call and found White and Hamilton robbing three men inside a store. Police say they refused to drop their weapons, instead pointing them at the officers, who fired at them multiple times.

7/1/05 - W. Burkhalter, killed when shot several times in the chest, arm and hip, by Houston PD patrol officers Justin H. Kennedy, 26, and Thomas E. Hardin, 27 (both 3-year veterans with Westside Patrol), responding to a stolen car report. The officers claim Burkhalter pulled a pistol when they approached, and they shot him; no shots were fired by Burkhalter. Burkhalter is the ninth person known to have been shot to death this year by Harris County police officers.

6/19/05 - Ngoc Van Nghiem, a/m, 31, critically wounded when shot in the abdomen by Houston PD officer James M. Garris, working off-duty as a security guard. Garris says he shot at (but didn't hit) Nghiem when he pointed a pistol at a group in a restaurant. Nghiem then turned toward Garris, who fired and hit him in the abdomen.

6/9/05 - Timothy Thomas, b/m, 26, wounded when struck in the abdomen, chest and arm when shot by Houston PD officer Bobby Thompson, a 19-yr veteran of Westside Patrol. Thompson had stopped Thomas for an unspecified traffic violation, and Thomas got out of his car. When ordered to get back in his car, Thompson claims he instead reached under the front seat, so he shot him. There was no weapon.

5/26/05 - Kristopher Lee Banks - 22, killed when shot once in the stomach by Houston PD undercover narcotics officer P.S. Weido, a 15-yr veteran. Weido claims that when Banks offered to sell him drugs, he gave him \$40. Banks demanded more and threatened to shoot Weido if he didn't pay more; that's when Weido shot him. A piece of wood was found in Banks' pocket; he died at scene. Banks is the seventh person known to have been shot to death this year by a Harris County police officer.

4/25/05 - Marlon Rainford - b/m, 19, wounded when tasered and shot by Houston PD officer G. Fletcher. Police claim Rainford was acting suspiciously at an auto repair shop; when they responded, they say Rainford tried to run over them, ramming a patrol car.

3/7/05 - J'Korderic Jermaine Jefferson, b/m, 23, killed when shot in the face by Houston P.D. officer Gregory P. Countie (25-yr veteran, Southeast Patrol Div.) Jefferson had taken a hostage after shooting and wounding three others. Countie shot him after Jefferson placed the hostage in his truck. Jefferson is the fifth person known to have been shot to death this year by a Harris County police officer.

2/23/05 - Alan Leroy Hunter, Jr., b/m, 26, killed when shot twice in the head by Houston PD officer Anthony R. Arevalo (5-yr veteran, Westside Patrol Div.), who says he heard gunfire, saw Hunter standing beside his pickup with a gun, thought he was threatening another motorist, and he shot him. Hunter's passenger disputes that, saying they were being chased by another car. Hunter stopped, got out and fired a warning shot into the air, then started to drive away when Arevalo shot him. The police report says "Hunter's vehicle rolled forward (after the shooting) approximately 100 yards and struck a fence," and evidence shows the officer shot through the driver's side window. Hunter's mother also says she saw her son's body inside the truck with the window broken. Hunter is the fourth person known to have been shot to death this year by a Harris County police officer.

1/3/05 - Alex Mendez - h/m, 26, shot and killed by Houston PD officers David Justin Patterson (5-yr veteran) and Vasilis Harisis (3 1/2-yr veteran), both with Southeast Patrol Div. Officers claim Mendez had a shotgun as he got out of his car, and both fired at him at least six times, killing him. They had stopped Mendez because his paper license plate was crooked. Mendez is the first person known to have been shot to death this year by Harris County police officers.

1/2/05 - Angel Villeda, h/m, 34; and Jose Antonio Hernandez, h/m, 33, wounded when shot by off-duty Houston PD Sgt. Tony Nguyen, 38 (12-yr veteran, Internal Affairs Div). Nguyen claims Villeda twice tried to run his car off the road. He got out of his car and shot 3 times at the tires of Villeda's van as he drove toward him, then shot twice more as the van moved past him. (It is a violation of HPD's policy to shoot at a moving vehicle.) Villeda was shot in the hand, and Hernandez was shot in the leg. But Villeda and Hernandez claim Nguyen reacted in road rage when their van pulled out in front of his car from a side road, saying both Nguyen and his wife made finger gestures as they passed their van. Nguyen's car spun around, facing Villeda's, and he shot at the van as it passed him. Villeda stopped at a store, and as Hernandez walked toward the store intending to call police, Nguyen fired a shot near his feet, ordering him to stop. Nguyen was no-billed by a grand jury.

Violation of Fourth Amendment

12. The Fourth Amendment guarantees everyone the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *U.S. Const. amend. IV*.

13. Defendants violated Mr. Carnaby's Fourth Amendment rights when they shot him and then failed to provide medical treatment resulting in his death. The City of Houston has custom, practice, policy and procedure of not disciplining nor retraining officers who use excessive force on suspects, violate chase policies or any policies regarding safe apprehension of suspects in vehicles.

Violation of Fourteenth Amendment

14. The Fourteenth Amendment guarantees everyone the right not to be deprived of liberty without due process of law. *U.S. Const. amend. XIV*.

15. Defendants violated Mr. Carnaby's Fourteenth Amendment rights when they seized him and unlawfully deprived him of his freedom by such shooting him in the back and killing him and not providing medical care without legal justification.

Conspiracy to Deprive Mr. Carnaby of Federal Constitutional Rights

16. Upon information and belief, Defendants agreed to, and did, work in concert to deprive Mr. Carnaby of his civil rights as described above actionable as a conspiracy under 42 USC Section 1983

Ratification

17. Despite the video evidence and that Mr. Carnaby died of a shot to the back Washington and Foster there was no retraining, discipline or consequence to officers Washington and Foster for excessive force and failure to provide medical care and as such these practices were ratified by the City of Houston indicating a custom, policy, practice and procedure by the City of Houston of allowing all the aforementioned bad acts of Washington and Foster. *Grandstaff v. City of Borger*, 767 F.2d 161 (5th Cir. 1985), *cert. denied*, 480 U.S. 916 (1987).

Assault and Battery

18. Defendants assaulted and battered, and caused bodily injury to, Plaintiff, intentionally, knowingly, and recklessly when they made contact with his person.

Intentional Infliction of Emotional Distress

19. Mr. Carnaby's estate can recover for intentional infliction of emotional distress against Defendants because they acted willfully and recklessly, and their conduct was extreme

and outrageous. Defendants proximately caused Mr. Carnaby severe emotional distress.

DAMAGES

20. Plaintiff and the estate of Mr. Carnaby are entitled to recover damages against Defendants, separately and jointly, for the violations of his federal constitutional rights and under the Texas Tort Claims Act.

21. Plaintiff is entitled to recover punitive damages against each Defendant because the actions of each were outrageous, reckless, willful, malicious, and grossly negligent.

LIABILITY OF THE CITY OF HOUSTON UNDER THE TEXAS TORT CLAIMS ACT

22. Plaintiffs allege that at all times material hereto and during the course of events set forth above, the individual defendants were employees of the City of Houston, acting in their capacity as police officers within the course and scope of their employment.

23. Plaintiffs allege that the death of Roland Carnaby was caused by the use of tangible personal property, a gun.

24. Plaintiffs allege that each individual defendant committed the following acts of negligence which jointly and severely were a proximate cause of the death of the deceased:

- a. Negligence in using his firearm.
- b. Negligently discharging his weapon or permitting its discharge, killing the deceased.
- c. Negligent maintenance of the gun
- d. and committing other acts of omission and commission which constituted negligence and were a proximate cause of the death of Mr. Carnaby.

25. Plaintiffs allege that the City of Houston is liable under the Texas Tort Claims Act for the negligence of Defendants Washington and Foster which proximately caused the death of

Mr. Carnaby.

DAMAGES

26. As a result of the foregoing acts and conduct of the Defendants, Defendants are jointly and severally liable to Plaintiffs for damages incurred.

27. In particular, Plaintiffs, in their capacities as Heirs and Representatives asserting survival claims on behalf of Roland Carnaby's Estate, have incurred damages including, but not limited to, the following:

- a. Severe physical pain and mental anguish suffered by Roland Carnaby prior to his death; and
- b. Reasonable funeral and burial expenses incurred.

28. Furthermore, Plaintiffs, in their individual capacities asserting wrongful death claims, have incurred damages including, but not limited to, the following:

- a. Loss of consortium, including loss of affection, solace, companionship, society, emotional support and love in the past and in the future;
- b. Pecuniary loss, including loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value in the past and in the future; and
- c. Mental anguish, including emotional pain, torment and suffering in the past and in the future.

ALTERNATIVE PLEADINGS

29. To the extent facts and/or causes of action pled in this petition are in conflict, they are pled in the alternative.

DECLARATORY RELIEF

30. Plaintiff seeks declaratory relief against Defendants, delineating his rights under,

and Defendants' violations of, the United States and Texas Constitutions.

INJUNCTIVE RELIEF

31. Because Mr. Carnaby died at the hands of HPD exercised official policies and practices of the City of Houston plaintiff seeks changes in those customs and practices

ATTORNEYS' FEES

32. Plaintiffs are entitled to recover attorneys' fees and costs under 42 U.S.C. Section 1988, from Defendants.

PRAYER

Accordingly, Plaintiffs request that this Honorable Court award:

a. Compensatory damages to Plaintiffs and against Defendants, jointly and severally, in an amount in excess of the minimal jurisdictional limits this Court for all the causes of action alleged above;

b. Pre- and post-judgment interest at the maximum rate allowed by law;

c. Plaintiffs' costs and attorneys fees pursuant to 42 § U.S.C. §1988;

d. declaratory and injunctive relief;

e. punitive damages against all individual defendants; and

f. Such other and further relief, both general and special, at law and in equity,

to which Plaintiffs may show themselves justly entitled.

RESPECTFULLY SUBMITTED
LAW OFFICE OF RANDALL L. KALLINEN

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