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IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF TEXAS
 WACO DIVISION

FILED

NOV 24 2008

CLERK, U.S. DISTRICT COURT
 WESTERN DISTRICT OF TEXAS
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WILLIAM ROBERT BRADSHAW,
 RANDALL LEE GERIK, on behalf of
 themselves and the class of similarly situated
 persons;

Plaintiffs,

v.

MCLENNAN COUNTY; MCLENNAN
 COUNTY SHERIFF'S OFFICE;
 MCLENNAN COUNTY SHERIFF LARRY
 LYNCH, in his individual and official
 capacity; MCLENNAN COUNTY SHERIFF
 DEPUTIES DOES 1 THROUGH 50, AND
 ROES 1 THROUGH 20, INCLUSIVE,

Defendants.

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CASE NO: 6:08-CV-00246 WSS

JURY TRIAL REQUESTED

**FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES FOR
 VIOLATIONS OF CIVIL AND CONSTITUTIONAL RIGHTS
 AND FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

This is an action for declaratory and injunctive relief, damages, and punitive damages against MCLENNAN COUNTY, MCLENNAN COUNTY SHERIFF'S OFFICE; MCLENNAN COUNTY SHERIFF LARRY LYNCH, Individually and in His Official Capacity, MCLENNAN COUNTY SHERIFF DEPUTIES, sued under their fictitious names as DOES 1 THROUGH 50, and ROES 1 THROUGH 20, for violations of Plaintiffs' constitutional rights resulting from application of MCLENNAN COUNTY'S and the MCLENNAN COUNTY SHERIFF'S OFFICE'S policies, practices, and customs concerning the use of strip searches and visual body

cavity searches in MCLENNAN COUNTY Jails. Plaintiffs, for themselves and all those in the class of similarly situated persons, seek an order declaring illegal Defendants' policy of subjecting detainees in their custody to strip and visual body cavity searches before they are arraigned and without having any reasonable suspicion that the searches will be productive of contraband.

Defendants' strip search and visual body cavity search policies, practices, and customs violate those rights of Plaintiffs, and all those they represent, that are secured by the Fourth and Fourteenth Amendments to the United States Constitution and entitle Plaintiffs, and all those similarly situated, to recover damages under the Federal Civil Rights Act (42 U.S.C. § 1983).

Plaintiffs allege against Defendants upon knowledge as to themselves and all matters of public record, and upon information and belief as to all other matters, as follows:

**I.
JURISDICTION AND VENUE**

1. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §§ 1331 and 1343(a)(3) and (4) and the aforementioned statutory and constitutional provisions.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

**II.
PARTIES**

3. Plaintiffs WILLIAM ROBERT BRADSHAW, RANDALL LEE GERIK, and all those similarly situated, are, and at all material times herein, were residents of the state of Texas who were arrested within the period beginning two (2) years before the filing of this Complaint,

and continuing to this date, and who were subjected to strip and/or visual body cavity searches at a MCLENNAN COUNTY Jail, prior to being arraigned and/or without the Defendants first having, and recording in writing, a reasonable suspicion that the searches would be productive of contraband or weapons.

4. Defendant MCLENNAN COUNTY is, and at all material times referred to herein, was a division of the state of Texas, that maintained or permitted an official policy or custom or practice causing or permitting the occurrence of the types of wrongs complained of herein, which wrongs damaged Plaintiffs and all those similarly situated, as herein alleged. Plaintiffs' allegations against MCLENNAN COUNTY are based on acts and omissions of the SHERIFF and his DEPUTIES and on acts and omissions of those who are COUNTY employees, and on the COUNTY's breach of duty to protect Plaintiffs, and all those they represent, from the wrongful conduct of said persons and employees.

5. Defendant MCLENNAN COUNTY SHERIFFS OFFICE was a governmental entity and local public body as those terms are defined in the Texas Civil Practice & Remedies Code, Title 5, Chapter 101(A). At all times material hereto, MCLENNAN COUNTY was the employer and/or supervisor of the individually named Defendants. MCLENNAN COUNTY had a statutory obligation to provide for the confinement of prisoners incarcerated under the COUNTY's jurisdiction. MCLENNAN COUNTY had a statutory obligation to appropriate funds and otherwise provide the necessary funding to maintain and operate a facility for the incarceration of prisoners under the jurisdiction of the COUNTY.

6. Defendant MCLENNAN COUNTY SHERIFF LARRY LYNCH is, and at all material times referred to herein, was a resident of MCLENNAN COUNTY and the duly elected

Sheriff of MCLENNAN COUNTY. In addition, at all times material hereto, Defendant LYNCH was a law enforcement officer and public employee, and was acting within the scope of his duties as well as under color of law. He is sued in his individual and official capacities.

7. Defendants MCLENNAN COUNTY SHERIFF DEPUTIES, sued herein by their fictitious names (Does 1 through 50), are all deputies who, as part of their duties at the MCLENNAN COUNTY Jail, subjected Plaintiffs, and all those they represent, to pre-arraignment strip and/or visual body cavity searches without having, and recording in writing, a reasonable suspicion that the searches would be productive of contraband or weapons.

8. At all material times mentioned herein, each of the Defendants was acting under the color of law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of MCLENNAN COUNTY and/or the MCLENNAN COUNTY SHERIFF'S OFFICE.

9. Defendants whose names are not now known and who are sued by the fictitious names of ROES 1 through 20, are all agents and/or employees of one or another of the other named Defendants who ordered, condoned, authorized, covered up, or were otherwise associated with the implementation of the illegal policy and practices relating to strip searches complained of herein.

10. Defendants MCLENNAN COUNTY, MCLENNAN COUNTY SHERIFF'S OFFICE, and MCLENNAN COUNTY SHERIFF LARRY LYNCH were responsible for the screening, hiring, training, monitoring, supervision, and disciplining of subordinate employees of the MCLENNAN COUNTY Jail, and were the authorities empowering the MCLENNAN COUNTY SHERIFF'S DEPUTIES to incarcerate prisoners under the jurisdiction of MCLENNAN COUNTY. Defendants MCLENNAN COUNTY, MCLENNAN COUNTY

SHERIFF'S OFFICE, and MCLENNAN COUNTY SHERIFF LARRY LYNCH were responsible for administering the Jail facilities and for making, overseeing, and implementing the policies, practices, and customs challenged herein relating to the operation of the MCLENNAN COUNTY Jail.

11. Plaintiffs' allegations against MCLENNAN COUNTY are based on acts and omissions of the SHERIFF, his DEPUTIES, and the acts and omissions of MCLENNAN COUNTY SHERIFF'S OFFICE and their employees, agents, and representatives, as well as on acts and omissions of persons who are MCLENNAN COUNTY employees, and on MCLENNAN COUNTY's breach of its duty to protect Plaintiffs, and all those they represent, from the wrongful conduct of said persons and employees.

12. Defendants MCLENNAN COUNTY SHERIFF'S OFFICE and MCLENNAN COUNTY SHERIFF LARRY LYNCH, in his individual and official capacity, also maintained or permitted an official policy or custom of causing or permitting the occurrence of the types of wrongs complained of herein, which wrongs damaged Plaintiffs, and all those similarly situated, as herein alleged.

13. Class action Plaintiffs are those similarly situated who, during the period beginning two (2) years before the filing of this Complaint, and continuing to this date, were subjected by Defendants to pre-arraignment strip and/or visual body cavity searches without Defendants having, and recording in writing, a reasonable suspicion that the searches would be productive of contraband or weapons.

III. FACTS

14. On or about June 1, 2007, Plaintiff WILLIAM ROBERT BRADSHAW (hereinafter referred to as "BRADSHAW") was pulled over and arrested allegedly for driving under the influence of alcohol in Waco, Texas. BRADSHAW was transported to the MCLENNAN COUNTY Jail and, upon arrival at the MCLENNAN COUNTY Jail, and prior to any appearance before a judge and without there being any reasonable suspicion to believe that he was concealing contraband, BRADSHAW, pursuant to policies, practices, and procedures of Defendants, and each of them, was subjected to a visual body cavity search (strip search) in violation of the Fourth and Fourteenth Amendments to the United States Constitution. BRADSHAW was coerced, forced, and compelled to disrobe for the strip search in an area that could be and was observed by persons who were not participating in the search and who were of the opposite sex.

15. On or about May 3, 2008, Plaintiff RANDALL LEE GERIK (hereinafter referred to as "GERIK") was pulled over and arrested allegedly for driving under the influence of alcohol in Waco, Texas. GERIK was transported to the MCLENNAN COUNTY JAIL and, upon arrival at the MCLENNAN COUNTY Jail, and prior to any appearance before a judge and without there being any reasonable suspicion to believe that he was concealing contraband, GERIK, pursuant to policies, practices, and procedures of Defendants, and each of them, was subjected to a visual body cavity search (strip search) in violation of the Fourth and Fourteenth Amendments to the United States Constitution. GERIK was coerced, forced, and compelled to disrobe for the strip search in an area that could be and was observed by persons who were not participating in the search and who were of the opposite sex.

16. Plaintiffs are informed and believe, and therefore allege, that Defendants routinely follow their policy, practice, and custom of subjecting pre-arraignment detainees, including Plaintiffs, and all those they represent, to strip and visual body cavity searches without first having, and recording in writing, a reasonable suspicion that the search will be productive of contraband or weapons.

17. Plaintiffs are informed and believe, and thereon allege, that Defendants have the ability to identify all such similarly situated Plaintiffs, specifically those who, while in Defendants' custody, at the MCLENNAN COUNTY Jail within two (2) years prior to the filing of this Complaint, were subjected to strip searches and/or visual body cavity searches prior to arraignment without Defendants first having, and recording, a reasonable suspicion that the searches would be productive of contraband or weapons.

18. Defendants MCLENNAN COUNTY, MCLENNAN COUNTY SHERIFF'S OFFICE, and MCLENNAN COUNTY SHERIFF LARRY LYNCH are personally responsible for the promulgation and continuation of the strip search policy, practice, and custom pursuant to which Plaintiffs, and those they represent, were subjected to strip searches.

19. As a result of being subjected to the strip searches complained of herein, Plaintiffs, and each of the persons similarly situated, suffered physical, mental, and emotional distress, invasion of privacy, and violation of due process of law and federal constitutional rights, and are entitled to recover damages according to proof.

IV. CLASS CLAIMS

20. The strip and visual body cavity searches to which Plaintiffs, and all those similarly situated, were subjected were performed pursuant to policies, practices, and customs of

Defendants MCLENNAN COUNTY, MCLENNAN COUNTY SHERIFF'S OFFICE, MCLENNAN COUNTY SHERIFF LARRY LYNCH, and the individual MCLENNAN COUNTY SHERIFF'S DEPUTIES sued herein by the fictitious names 1 through 50, and the individuals whose names are not now known and who are sued by the fictitious names of ROES 1 through 20. The searches complained of herein were performed without regard to the nature of the alleged offenses for which Plaintiffs, and all those similarly situated, had been arrested, without regard to whether or not Plaintiffs, and those they represent, were eligible for being cited and released, without regard to whether or not Plaintiffs, and those similarly situated, were eligible for and/or were released on his or her own recognizance, or on bail. Furthermore, the searches complained of herein were performed without Defendants having a reasonable belief that Plaintiffs, or any of those similarly situated, so searched possessed weapons or contraband, and those facts being articulated and recorded in a supervisor-approved document. And the searches complained of herein were performed without Defendants taking reasonable precautions to make certain that Plaintiffs, and each of those similarly situated, were not observed by others not involved in the search.

21. Plaintiffs bring this action on their own behalf and on behalf of all persons similarly situated pursuant to Rule 23, Federal Rules of Civil Procedure.

22. The class of Plaintiffs is defined to include all persons arrested on charges not involving violence, drugs or weapons who, in the period from and including two (2) years prior to the filing of this Complaint, and continuing until this matter is adjudicated and the practices complained of herein cease, were arrested and subjected to a pre-arraignment strip and/or visual body cavity searches at the MCLENNAN COUNTY Jail without Defendants first having, and

recording in writing, a reasonable suspicion that the searches would be productive of contraband or weapons.

23. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the members of the class are so numerous that joinder of all members is impractical. Plaintiffs do not know the exact number of class members. Plaintiffs are informed and believe, and thereupon allege, that there are more than 10 persons per day who are arrested by Defendants and/or are in the custody of Defendants who are and have been subjected to the searches complained of herein as a result of Defendants' policy, practice, and custom relating to said searches.

24. In accordance with Federal Rules of Civil Procedure, Rule 23(a), Plaintiffs are informed and believe, and thereupon allege, that there are many questions of fact common to the class including, but not limited to: (1) whether Defendants routinely subject all persons arrested to visual body cavity searches prior to arraignment if they intend such persons to be housed in the MCLENNAN COUNTY Jail; (2) whether persons are subjected to strip and/or visual body cavity searches prior to arraignment without there being any reasonable suspicion, based on specific or articulable facts, to believe any particular arrestee has concealed drugs, weapons, and/or contraband in bodily cavities which could be detected by means of a strip and/or visual body cavity search; (3) whether the strip and/or visual body cavity searches are conducted in an area of privacy so that the searches cannot be observed by persons not participating in the searches; and, (4) whether the strip and/or visual body cavity searches are reasonably related to Defendants' penological interest to maintain the security of the jail and whether or not there are less intrusive methods for protecting any such interest.

25. In accordance with Federal Rules of Civil Procedure, Rule 23(a), Plaintiffs are informed and believe, and thereupon allege, that there are many questions of law common to the class including, but not limited to: (1) whether Defendants may perform strip and/or visual body cavity searches on persons prior to their arraignment without reasonable suspicion, based on specific or articulable facts, to believe any particular prearrest detainee has concealed drugs, weapons and/or contraband which would likely be discovered by a strip and/or visual body cavity search; (2) whether Defendants may perform strip and/or visual body cavity searches on persons without first reasonably relating the strip search of the subject to Defendants' penological interest to maintain the security of the jail and determining if there is a less intrusive method to protect that interest; (3) whether strip and/or visual body cavity searches may be conducted in areas where the searches can be observed by people not participating in the search without violating Plaintiffs' federal constitutional rights; and, (4) whether or not Defendants' strip search policy and procedure is in accordance with the Federal Constitution.

26. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the claims of the representative Plaintiffs are typical of the class. Plaintiffs were arrested on offenses not involving violence, drugs or weapons and were searched, prior to arraignment, without Defendants having a reasonable suspicion that a strip or visual body cavity search would produce drugs, weapons or contraband (and without the facts supporting any such suspicion being articulated in a supervisor-approved writing). Representative Plaintiffs have the same interests and suffered the same type of injuries as all of the class members. Plaintiffs' claims arose because of Defendants' policy, practice, and custom of subjecting arrestees to strip and/or visual body cavity searches before arraignment without having, and recording in writing, a reasonable

suspicion that the search would be productive of contraband or weapons. Each class member suffered actual damages as a result of being subjected to a strip and/or visual body cavity search. The actual damages suffered by the representative Plaintiffs are similar in type and amount to the actual damages suffered by each class member.

27. In accordance with Federal Rules of Civil Procedure, Rule 23(a), the representative Plaintiffs will fairly and adequately protect the class interests. Plaintiffs' interests are consistent with and not antagonistic to the interests of the class.

28. In accordance with Federal Rules of Civil Procedure, Rule 23(g)(1), class counsel will fairly and adequately represent the interests of the class, have experience handling similar class actions (*Bull, et al. v. San Francisco, et al.*, USDC, No. Dist. of CA, Case No. C 03-1840 CRB; *Haney, et al. v. Miami-Dade County, et al.*, USDC, So. Dist. of FL, Miami Div., Case No. 04-20516-CIV-Jordan/Brown; *Allison, et al. v. Lincoln County, et al.*, USDC, NM, Case No. CV 05-881 WPJ/WDS; *Gallagher, et al. v. San Mateo County, et al.*, USDC, No. Dist. of CA, Case No. C 04-0448 SBA), are knowledgeable about the applicable law, have the resources necessary to represent the class, and have no conflicts.

29. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(A), prosecution of separate actions by individual members of the class would create a risk that inconsistent or varying adjudications with respect to individual members of the class would establish incompatible standards of conduct for the parties opposing the complaint.

30. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(1)(B), prosecution of separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would, as a

practical matter, substantially impair or impede the interests of the other members of the class to protect their interests.

31. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(2), Plaintiffs are informed and believe, and thereupon allege, that Defendants have acted on grounds generally applicable to the class, thereby making appropriate the final injunctive or declaratory relief with respect to the class as a whole.

32. In accordance with Federal Rules of Civil Procedure, Rule 23(b)(3), this class action is superior to other available methods for the fair and equitable adjudication of the controversy between the parties. Plaintiffs are informed and believe, and thereupon allege, that the interests of members of the class in individually controlling the prosecution of a separate action is low, in that most class members would be unable individually to prosecute any action at all. Plaintiffs also are informed and believe, and thereupon allege, that the amounts at stake for individuals are so small that separate suits would be impracticable. Plaintiffs are informed and believe, and thereupon allege, that most members of the class will not be able to find counsel to represent them. Plaintiffs are informed and believe, and thereupon allege, that it is desirable to concentrate all litigation in one forum because all of the claims arise in the same location; i.e., the MCLENNAN COUNTY Jail. It will promote judicial efficiency to resolve the common questions of law and fact in one forum, rather than in multiple courts.

33. Plaintiffs do not know the identities of all of the class members. Plaintiffs are informed and believe, and thereupon allege, that the identities of the class members may be ascertained from records maintained by Defendants MCLENNAN COUNTY and MCLENNAN COUNTY SHERIFF'S OFFICE. Plaintiffs are informed and believe, and thereupon allege, that

Defendants' records reflect the identities, including addresses and telephone numbers, of the persons who have been held in custody in the MCLENNAN COUNTY Jails. Plaintiffs are informed and believe, and thereupon allege, that records of, and maintained by Defendants reflect who was subject to a strip and/or visual body cavity search, when the search occurred, where the search occurred, whether any reasonable suspicion for the search existed and was recorded in a supervisor-approved writing, whether the search was videotaped, when persons searched were arraigned, and the charges on which such persons were arrested. Plaintiffs are informed and believe, and thereupon allege, that all of the foregoing information is contained in Defendants' computer system and that the information necessary to identify the class members, by last known addresses, and the dates and reasons for their arrests and/or release from custody, is readily available from said computer system.

34. In accordance with Federal Rules of Civil Procedure, Rule 23(c)(2)(b), class members must be furnished with the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. Plaintiffs are informed and believe, and thereupon allege, that Defendants' computer records contain a last known address for class members. Plaintiffs contemplate that individual notice will be given to class members at such last known address by first class mail. Plaintiffs contemplate that the notice will inform class members of the following:

- i. The pendency of the class action and the issues common to the class;
- ii. The nature of the action;
- iii. Their right to "opt out" of the action within a given time, in which event they will not be bound by a decision rendered in the class action;

- iv. Their right, if they do not “opt out,” to be represented by their own counsel and to enter an appearance in the case; otherwise they will be represented by the named class Plaintiffs and the named class Plaintiffs’ counsel; and
- v. Their right, if they do not “opt out,” to share in any recovery in favor of the class, and conversely to be bound by any judgment on the common issues adverse to the class.

V.
FIRST CAUSE OF ACTION
(Civil Rights Violations Under 42 U.S.C. § 1983)

35. Plaintiffs incorporate by reference into this cause of action the allegations in each of the preceding paragraphs, as fully as if realleged and set forth herein.

36. Defendants’ policies, practices, and customs regarding the strip and visual body cavity searches complained of herein violated Plaintiffs’, and all those similarly situated’s, clearly established rights under the Fourth Amendment to be free from unreasonable searches and seizures, violated Plaintiffs’, and all those similarly situated’s, clearly established rights to due process and privacy under the Fourteenth Amendment, and directly and proximately damaged Plaintiffs, and all those similarly situated, as herein alleged, entitling Plaintiffs, and all class members, to recover damages for said constitutional violations pursuant to 42 U.S.C. § 1983.

WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly situated, as hereunder appears.

VI.
SECOND CAUSE OF ACTION
(Declaratory and Injunctive Relief)

37. Plaintiffs incorporate by reference into this second cause of action the allegations of the preceding paragraphs, as fully as if realleged and set forth herein.

38. Plaintiffs, on behalf of themselves and the members of the class, seek a judgment declaring that Defendants must cease the activities described herein and enjoining Defendants from any further strip searches without individualized reasonable suspicion.

39. The constitutional violations alleged herein arise from official policies and practices sanctioned by Defendants. The harm which Plaintiffs and the members of the class have sustained are directly traceable to these officially sanctioned policies and procedures.

40. Plaintiffs and members of the class do not have a plain, adequate, speedy, or complete remedy at law to address the wrongs alleged in this Complaint, and they will suffer irreparable injury as a result of Defendants' misconduct unless injunctive and declaratory relief is granted. Plaintiffs and members of the class are in real and immediate danger of sustaining future, direct injury as a result of Defendants' official policies and practices that are ongoing at the time of this suit.

41. No cognizable burden will be placed on Defendants by requiring that no strip searches be undertaken without individualized reasonable suspicion. The public interest would be greatly enhanced by enforcement of policies and practices which adhere to the requirements of the federal Constitution. Absent injunctive relief, there is no guarantee the Defendants will cease their illegal policies and practices as alleged herein.

42. By reason of the foregoing, Plaintiffs and members of the class are entitled to declaratory and injunctive relief as set forth above.

WHEREFORE, Plaintiffs pray for relief, for themselves and for all persons similarly situated, as hereunder appears.

IX. DAMAGES

43. The above paragraphs are incorporated herein by reference as if fully set forth in this paragraph.

44. As a direct and proximate result of the wrongful and unlawful actions of Defendants, described above, Plaintiffs and the members of the class were injured and have suffered and continue to suffer damages, including but not limited to distress, anguish, suffering, humiliation, deprivation of constitutional rights, and other incidental, consequential, and special damages.

45. Defendants' acts and omissions, as set forth herein, were malicious, reckless, wanton, oppressive, and/or fraudulent, justifying an award of punitive damages against the individually named Defendants in their personal capacities, and against Defendants MCLENNAN COUNTY, MCLENNAN COUNTY SHERIFF'S OFFICE, and MCLENNAN COUNTY SHERIFF LARRY LYNCH, for the purpose of punishment and to deter others from the commission of like offenses.

**X.
PRAYER**

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of the members of the class represented herein, respectfully pray for and demand judgment against the Defendants as follows:

- (a) For judgment against Defendants for compensatory damages, special damages, consequential damages and incidental damages under any or all of the causes of action, in an amount to be determined at the trial of this cause;
- (b) For judgment declaring the rights of the parties;
- (c) For injunctive relief;
- (d) For reasonable attorneys' fees and costs incurred herein;
- (e) For pre-judgment and post-judgment interest in amounts to be determined according to law;
- (f) For an award of punitive and exemplary damages, in an amount to be determined at the trial of this cause; and
- (g) For such other and further relief as the Court deems just and proper.

JURY TRIAL REQUEST

COMES NOW Plaintiffs WILLIAM ROBERT BRADSHAW and RANDALL LEE GERIK, by and through their counsel, below listed, on their own behalf and on behalf of a class of similarly situated persons, and hereby demand trial by jury pursuant to the terms and conditions of Federal Rules of Civil Procedure 38, in regard to all issues in the above-referenced cause.

DATED: November 19, 2008

Respectfully submitted,

By: _____


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William Bradshaw, in his individual capacity, not class members