PARDON DOCKET NO. _____

Before The

ILLINOIS PRISONER REVIEW BOARD

Spring Term, 2014

ADVISING THE HONORABLE PATRICK QUINN, GOVERNOR

In the Matter of

ANTHONY MCKINNEY

PETITION FOR EXECUTIVE CLEMENCY

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Table of Contents

I. Introduction

Petitioner ANTHONY MCKINNEY, by his attorney STEVEN A. DRIZIN and law students WESLEY MORRISSETTE and JONATHAN JACOBSON, of NORTHWESTERN UNIVERSITY'S BLUHM LEGAL CLINIC, respectfully applies, pursuant 730 ILCS 5/3-3-13 and the applicable rules of the Illinois Prisoner Review Board, for a pardon on the basis of his innocence.

II. Required Information

The following information regarding Anthony McKinney is provided in compliance with the Illinois Prisoner Review Board's Guidelines for Executive Clemency:

Anthony was convicted of first-degree murder in Cook County, Illinois under the name Anthony McKinney. He has never used an alias. The court docket number for the offense is No. 78 CR 5267. He was sentenced to natural life on January 13, 1982, and died in prison on August 27, 2013. At the time of his death, Anthony had a post-conviction petition based on newly discovered evidence of actual innocence that had been pending in the Criminal Division of the Circuit Court of Cook County for nearly five years.

Anthony's social security number was 331-54-3317. His state prisoner identification number was N-20136. He has never previously asked for executive clemency for any conviction. Anthony was never convicted as an adult for any crime prior to the conviction giving rise to this petition. He had a burglary conviction in 1977 and had been arrested on a possession charge stemming from drug use that was later dropped.

Part III of this petition addresses the Governor's authority to grant a posthumous pardon. Anthony's personal history appears in Section IV. The procedural history of this case is set forth

in Section V. The required statement of facts for the offense is set forth in Section VI. Reasons for granting clemency appear in Section VII.

This petition has been filed at the direction of Michael McKinney, Anthony's brother, who current resides at:

Mike McKinney
17650 Springfield St.
Country Club Hills, IL, 60478

III. Gubernatorial Authority To Grant a Posthumous Pardon

The Governor has the authority to provide a posthumous grant of executive clemency. The Illinois Constitution provides that the Governor "may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as he thinks proper." Ill. Const. art V § 12. As the Illinois Supreme Court recently recognized, the Governor's pardon power under the Illinois Constitution is extremely broad. "His acts in the exercise of the power can be controlled only by his conscience and his sense of public duty." *People ex rel. Madigan v. Snyder*, 804 N.E.2d 546, 556 (Ill. 2004) (citations omitted).

The Court went on to explain that the "only restriction this court has heretofore found on the Governor's clemency power is that he may not change a conviction for one crime into a conviction for another." *Id.* at 557. There is therefore no reason to doubt the Governor's constitutional authority to issue a posthumous pardon. It follows logically, then, that the Prisoner Review Board has the power to issue a recommendation that the Governor grant clemency even when the individual applying is deceased.

American history is replete with posthumous pardons, both at the state and federal level. They have been granted at least twenty times for 107 people, twelve of whom had been executed. *See* Ex. 11, Stephen Greenspan, Death Penalty Information Center, *Posthumous Pardons*

Granted in American History (2011). Though there have been no posthumous pardons in Illinois, the primary reason is likely the dearth of decedents or friends willing to make such a request. Upon issuing a posthumous pardon in 1999, President William Clinton stated that such a grant of executive clemency "teaches us that, although the wheels of justice turn slowly at times, still they turn. It teaches that time can heal old wounds and redemption comes to those who persist in a righteous cause." President William Clinton, Remarks on the Posthumous Pardon of Lieutenant Henry O. Flipper (Feb. 19, 1999).

IV. Personal History of Anthony McKinney

Anthony McKinney was born in Robbins, Ill., on May 14, 1960. In the early 1970s, Anthony and his family moved to Harvey, Ill. It was Anthony's first time living in an integrated neighborhood. He embraced the opportunity to meet people from a different culture. He got along well with his neighbors despite racial tension in the city. Even at a young age, Anthony understood the concept of hard work. He had several jobs throughout his childhood, including a paper route and a job at a neighborhood hardware store.

Anthony developed several different interests as he grew older. He loved music and would listen to rhythm and blues singers like Earth, Wind & Fire and the Ohio Players. He enjoyed auto mechanics and would work on cars. Anthony never served in the military.

Anthony also loved sports like baseball and basketball, though undoubtedly his favorite sport was boxing. Anthony would train at the neighborhood boxing gym several times a week. He idolized Muhammad Ali and tried to model his boxing style after Ali's. He never missed a televised Ali fight and his brother recalls that Anthony would shadow box in the mirror between rounds of Ali's fights.

As a result of his erroneous arrest and incarceration, Anthony never had a chance to fully live his life. He was robbed of innumerable opportunities. He never married. He never had children. Instead, after spending the vast majority of his life in prison, at fifty-three years old, Anthony died alone in his prison cell on August 27, 2013. He died waiting for the justice system to give him the opportunity to prove his innocence.

V. Procedural History

On September 15, 1978, Donald Lundahl, a white security guard, was robbed and shot to death as he sat in his car outside a Masonic Temple in Harvey. Within a few days, Anthony McKinney, an eighteen-year old black youth, was arrested and charged with the crime.

On December 10, 1981, a jury found Anthony guilty of murder and armed robbery. The State sought the death penalty. After Anthony waived his right to a jury for the capital sentencing hearing, Judge Richard Samuels sentenced Anthony to natural life on January 13, 1982. The judgment was affirmed by a state appellate court on August 30, 1983. *See People v. Anthony McKinney*, 117 Ill. App. 3d 591 (1st Dist. 1983).

On February 22, 2006, Anthony filed a motion for post-conviction fingerprint testing under 725 ILCS 5/116-3, requesting that fingerprint lifts from the the victim's car be run through the Integrated Automated Fingerprint Identification System. Before trial, it was determined that the prints did not come from Anthony or the victim. Although the Cook County Circuit Court ordered that the prints be submitted to the Illinois State Police crime lab for analysis, the lab analyst concluded that the prints were not suitable for submission to the fingerprint database. *See* Ex. 6.

Anthony filed a petition for post-conviction relief on October 29, 2008. He filed an amended petition on February 10, 2010. While his petition was pending, on August 27, 2013, he

died in prison. The circumstances of his death remain cloudy, but the death certificate lists "sudden death in schizophrenia" as the cause.[1] Anthony had not previously filed a post-conviction petition, nor had he filed a clemency petition.

VI. Factual History Of The Case

A. The City of Harvey and the Harvey Police Department

During the 1960s and 1970s, Harvey went through a drastic transformation, both demographically and socioeconomically. Prior to the 1960s, Harvey had been a traditionally white Chicago suburb. In 1960, the city had a population of 29,071, 93.1% of whom were white. Blacks accounted for only 6.8% of the city's population. From 1960 to 1970, Harvey's black population rose to 30.9%. By 1980, blacks accounted for roughly 66% of the city's population. *See generally* Carol Rahn, *Local Elites and Social Change: A Case Study of Harvey, Illinois* Ph.D. diss., University of Chicago 1980. According to the 2010 census, Harvey is now 75.3% black and only 3.6% white.

During this change in racial composition, the city divided into four different neighborhoods with unequal socioeconomic statuses—one predominantly black neighborhood, one predominantly white neighborhood, and two mixed neighborhoods. In 1970, the median household income was $2,000 higher in the predominantly white neighborhood than in the predominantly black neighborhood. Blacks in Harvey were also, on average, younger than Whites and more likely to be unemployed.

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[1] Studies have shown that individuals suffering from schizophrenia—as Anthony did—are three times more likely than healthy individuals to die from sudden unexplained cardiac arrest. *See* Ex. 24, Hannu Koponen et al., *Schizophrenia and Sudden Cardiac Death—A Review*, 62 Nordic J. Psychiatry 342, 342 (2008).

This increase in the black population coincided with an exodus of local businesses and an increase in crime. Companies like Perfection Gear (500 employees), Allis Chalmers (2,000 employees), Maremont (700 employees), and List Industries (200 employees) all moved their headquarters out of the city. Harvey saw a string of race riots in the mid- to late 1960s: the "Gin Bottle Riot" of 1964; racial violence at Thornton Township High School; and the race riots of 1969. In 1971, Harvey had the highest crime rate of all south suburbs and it continued to climb another 34% between 1974 and 1975. Overall, Harvey began to gain a reputation as a suburban ghetto and many white residents blamed it on the influx of blacks.

These changes shaped the Harvey Police Department, which developed a reputation for violence and corruption. Federal investigations and indictments, as well as private civil rights suits, have plagued the Harvey Police Department and its detectives for nearly forty years. The detective in charge of the investigation into the murder for which Anthony was convicted—Detective Coleman McCarthy—had a history of abusive behavior toward witnesses and suspects. Indeed, he was indicted along with two other former Harvey police officers for beating a man who testified about police abuse before the Harvey civil service commission. The beating was discovered as part of an ongoing Federal Bureau of Investigation inquiry into police corruption in Harvey. *See* Ex. 25, John O'Brien, *3 Ex-Harvey Cops Indicted in Beating*, Chicago Tribune, June 2, 1987, *available at* http://articles.chicagotribune.com/1987-06-02/news/8702100490_1_burglary-ring-harvey-indictment. The investigation targeted Harvey police who had allegedly been involved in a burglary ring, though the defendants were ultimately acquitted. *See id.*

B. The Crime

On September 15, 1978, Donald Lundahl, a security guard who had been on duty in his car at the Masonic Temple on 153rd Street near Lexington Avenue, was robbed and shot to death. *See* R. 297, 333, 396. A coworker found Mr. Lundahl's body in the driver's seat of his car, which was parked in front of the Masonic Temple. *See* R. 333–36. The first officer to respond to the scene received a call about the incident at 10:03 p.m. *See* Ex. 8, Harvey Police Continuation Report, 9/25/78, p. 2. The police estimated that the murder occurred between 9:30 p.m. and 9:45 p.m. *See id.* at p. 1. Mr. Lundahl died of a shotgun wound to the back of his head. *See* R. 395–96.

Harvey Police Detectives Coleman McCarthy and Thomas Morrison were in charge of the investigation into Lundahl's death. *See* R. 368.

C. Anthony McKinney's Erroneous Conviction

1. Anthony Activities on the Night of the Murder

On September 15, 1978, beginning at 7:00 p.m., Chicago (or Central Standard) Time, Muhammad Ali fought Leon Spinks for the heavyweight championship boxing title. Anthony watched the entire televised Ali- Spinks fight at his family's home at 15147 South Loomis Avenue in Harvey. *See* R. 497, 498, 543; Ex. 26, Map of Harvey Including Relevant Locations, for a guide to this and other key locations. Anthony watched the fight with his father Robert McKinney and his father's friend Donnell Hood, and did not leave the house.. *See* R. 497–99, 521, 523.

After the fight ended, Robert McKinney and Donnell Hood left Anthony at the McKinney residence and went to buy alcohol from a liquor store located on 154th Street, near Myrtle Avenue. *See* R. 498, 500. The two men walked south on Loomis Avenue until they reached 153rd Street. *See* R. 501–02. At the intersection of 153rd and Loomis, they saw police

cars one block east on Lexington Avenue; they walked past and continued to the liquor store. *See* R. 501–02.

At about 10:30 p.m., after the judges had declared Ali the winner and new heavyweight champion and just after the conclusion of the post-fight analysis on television, *see* Ex. 4, ABC Fight Log; Part VII.B, Anthony left the McKinney house to go to a party at a karate school located on 154th Street next door to the liquor store. *See* R. 523, 544. The walk to the party took about ten minutes, and when Anthony arrived at the party, he stood outside talking to some friends for about twenty minutes. *See* R. 523, 544–45.

2. The Chase

Anthony was standing outside the karate school talking with his friends when a young man named Tony Parham approached and said he wanted to speak to him. *See* R. 524. Anthony noticed several youths—including Darnell Fearence, *see* Ex. 3—come running from around the corner of the building. *See* R. 524. Fearing he was about to be jumped, Anthony ran away in an attempt to get home. *See* R. 524.

He ran south on Loomis Avenue. *See* R. 524. Lena Haller (also known as Ms. Sasco) was with her family in her front yard near the corner of 154th and Loomis and saw a group of youths chasing Anthony in the direction of her house. *See* R. 468–69, 470. Anthony jumped over a fence and into Ms. Haller's yard. *See* R. 470–71, 524, 546. The teenagers then stopped chasing Anthony and stood outside Ms. Haller's yard. *See* R. 547. Ms. Haller noticed that the youths chasing Anthony were carrying chains, knives and pipes. *See* R. 471, 547. Anthony told Ms. Haller that he needed help. *See* R. 470, 524. She instructed him to ask for help from the police officers who were standing nearby on 153rd Street, between Lexington and Loomis Avenues. *See* R. 472, 524.

Anthony jumped out of Ms. Haller's yard and sprinted toward the police officers. *See* R. 524. The young men chased Anthony from her yard but stopped when they saw that Anthony was headed for the police. *See id.* A crowd of spectators was gathered around the scene of Donald Lundahl's murder. *See* R. 359. When Anthony reached the police, he told Detective Coleman McCarthy that he was being chased by a group of armed young men and needed help. *See* R. 524, 547, 549–50. The youths chasing Anthony were close enough that Det. McCarthy should have seen them. *See* R. 550.

While at the crime scene, Det. McCarthy saw Anthony McKinney running down Loomis Avenue toward 153rd Street. *See* R. 353–54, 473. Det. McCarthy also saw Anthony's younger brother Michael McKinney near the scene. *See* R. 347. Det. McCarthy took both McKinney brothers into custody and sent them to the Harvey police station for questioning about the Lundahl murder. *See* R. 347, 473, 524–25. The Harvey police held the McKinney brothers at the station overnight. *See* R. 525.

3. The First Interrogation

On September 16, 1978, at approximately 11:50 a.m., Det. McCarthy questioned Anthony about the Lundahl shooting in the presence of Detective Thomas Morrison and Michael McKinney. *See* R. 526. Anthony said he knew nothing about the murder. *See* R. 527. With no indication that either Anthony or Michael was involved in the shooting, the Harvey police released the McKinney brothers that afternoon. *See* R. 347, 359. Dets. McCarthy and Morrison offered the boys a $500 reward for information about the shooting. *See* R. 551.

4. The Second Interrogation and the Confession

Detectives McCarthy and Morrison arrested Anthony four days later, on the morning of September 20, 1978, and transported him to the police station. *See* R. 529. During this trip, Det.

McCarthy said he knew that Anthony had killed Mr. Lundahl. *See* R. 529. Det. McCarthy also told Anthony that Mr. Lundahl's son was at the station waiting to kill Anthony and that Det. McCarthy would let him do it. *See* R. 529–30.

When they arrived at the police station, the detectives took Anthony directly to the Detective Division. *See* R. 530. On the way, Anthony noticed a tall, blond Caucasian man wearing a white t-shirt and carrying a gun in the front of his pants. *See* R. 530. This man was not wearing a uniform or a badge. *See* R. 530. When they reached the Detective Division, Anthony was placed in a chair, still handcuffed behind his back. *See* R. 531. Det. McCarthy told Anthony that there were eyewitnesses who had seen Anthony shoot Mr. Lundahl. *See* R. 531. Anthony responded that he did not know what Det. McCarthy was talking about. *See* R. 531. Det. McCarthy then said that he could arrange for Anthony to be released after six months in a mental institution if Anthony told the truth. *See* R. 531. Anthony again said he had no idea what Det. McCarthy was talking about and that the detectives had the wrong person. *See* R. 531.

After Anthony repeated that he did not shoot Mr. Lundahl, Det. Morrison hit Anthony across the back with a pipe. *See* R. 531, 541. Det. McCarthy once more asked Anthony to tell the truth; Anthony insisted he did not know anything. *See* R. 531. The detectives then knocked Anthony off his chair and onto the floor, and Det. McCarthy kicked him in the stomach. *See* R. 531–32. Det. McCarthy took a "dent snatcher" from a filing cabinet and beat Anthony so that his knees and arms were numb and the skin on his elbows and knees was torn. *See* R. 521, 532, 541, 557.

At some point after Det. McCarthy kicked Anthony, the man with the white t-shirt came into the room. *See* R. 534. This man took the gun out of his trousers, cocked it, and put it to Anthony's head. *See id.* One of the detectives opened the back door to the office and tried to drag

Anthony over to the door, telling him he might as well confess. *See id.* When Anthony persisted in his denial of guilt, the detectives continued beating him. *See id.*

Eventually, one of the detectives pulled out a form, handed Anthony a pen, and told him to sign his name on the form. *See* R. 535. Still handcuffed behind his back, Anthony told the detectives refused to confess to a homicide he did not commit. *See* R. 535. The officers continued to beat Anthony until his body ached and he agreed to sign the form. *See* R. 535. His handcuffs were removed just long enough for Anthony to sign the papers. *See* R. 542. He was then re-handcuffed, taken back to a cell, and locked up. *See* R. 536, 542. Anthony testified at trial that he did not shoot Mr. Lundahl or take his wallet, and that he never told the police he committed the crime. *See* R. 538, 542, 554.

5. Alleged Eyewitnesses to the Shooting (Prosecution Evidence)

According to Det. McCarthy, two teenagers named Wayne Phillips and Dennis Pettis told him that they witnessed Anthony shoot Mr. Lundahl. *See* R. 341, 346. Mr. Pettis, however, did not appear at trial to testify; he went into "hiding" a few days beforehand and his family refused to disclose his whereabouts. *See* R. 423, 439–40.[2]

Mr. Phillips, however, did testify at trial. He testified that on the night of September 15, 1978, he was watching the Ali-Spinks fight at his brother's house at 15219 South Loomis Avenue. *See* R. 308–10, 322. He told the jury that at the end of the ninth round of this fifteen-round championship bout, he left the house to buy beer. *See* R. 310, 320–21. Mr. Phillips, eighteen years old at the time of the crime, said he ran into his friend Mr. Pettis, then fifteen years old, on the way to the liquor store. *See* R. 312. Mr. Phillips testified that while he and Mr.

[2] Dennis Pettis signed a statement for the police that was consistent with Wayne Phillips's trial testimony, and Mr. Pettis testified before the grand jury. *See* Ex. 5, Pettis Statement to Police; Ex. 1, Dennis Pettis Affidavit.

Pettis were standing on the southeast corner of 153rd and Loomis, they saw Anthony by the driver's side of Mr. Lundahl's car. *See* R. 311–13. According to Mr. Phillips, Mr. Lundahl's car was parked approximately fifty yards away from them, facing east, so that Mr. Phillips and Mr. Pettis were looking at the rear passenger side of the vehicle. *See* R. 323–24. Mr. Phillips testified that Anthony aimed a shotgun into the window of the car and said to Mr. Lundahl, "Your money or your life," and then, "Well, you just going to have to die." R. 314. Mr. Phillips said he saw Anthony fire the gun, take something out of the car, and run down the alley. *See* R. 314–15. He testified that he and Mr. Pettis went to Mr. Pettis's house and later returned to the crime scene. *See* R. 315, 330. Although the police were at the scene investigating the murder, neither Mr. Phillips nor Mr. Pettis told police they had witnessed the crime. *See* R. 317, 330, 346, 348.

6. Police Version of the Interrogation and Confession

Det. McCarthy testified at trial that as a result of his conversations with Wayne Phillips and Dennis Pettis, he decided to question Anthony as a suspect in the Lundahl murder. *See* R. 341. On the morning of September 20, 1978—five days after the murder—Dets. McCarthy and Morrison picked up Anthony and drove him to the Harvey police station. *See* R. 341, 342. Det. McCarthy testified that he did not speak to Anthony during the drive. *See* R. 361. At the police station, Anthony was processed in the booking area and then taken to the Detective Division. *See* R. 343. Det. McCarthy stated that Det. Morrison advised Anthony of his constitutional rights pursuant to a form and that Anthony filled out and signed the form. *See* R. 343–44.

When Dets. McCarthy and Morrison first asked Anthony about the shooting of Mr. Lundahl, Anthony said he knew nothing about it. *See* R. 345. According to Det. McCarthy, however, after he told Anthony that witnesses had seen Anthony commit the crime, Anthony confessed to shooting Mr. Lundahl and taking his wallet. *See* R. 346. Det. Morrison took notes

about what Anthony said, and a secretary at the station typed up a statement based on Det. Morrison's notes (even though it was very early in the morning). *See* R. 27, 348–49. No assistant state's attorney was present for either the interrogations or the confession. Both Anthony and the detectives signed the statement. *See* R. 349–50.

According to Det. McCarthy, after the statement had been signed, Anthony added that he had taken three dollars from the victim's wallet. *See* R. 351.

7. Lack of Corroborating Evidence

Det. McCarthy testified that he searched for the shotgun and the victim's wallet in the vacant lot where Anthony allegedly said he discarded them, but neither Det. McCarthy nor any other police officer ever found them. *See* R. 350. Police evidence technicians dusted the victim's car and lifted six latent fingerprints, some of which were on the driver's side door near the window, the very area from which the fatal shots had been fired. *See* R. 362, 371. None of the latent prints matched either the victim's or Anthony's fingerprints. *See* R. 373.

8. Sentencing Hearing

The State sought the death penalty, and the defense waived a jury for sentencing. *See* R. 669, 673. At the sentencing hearing, which took place on January 13, 1982, the parties stipulated to death penalty eligibility based on the conviction of murder in the course of an armed robbery. *See* R. 676. (Anthony was eighteen years old at the time of the offense.)

The only evidence in aggravation offered by the State, besides the facts of the Lundahl murder itself, was Anthony's 1977 burglary conviction for which he was sentenced to two years' probation. *See* R. 677–81.

In mitigation, the defense introduced evidence that Anthony had been diagnosed with mental difficulties both prior to his arrest and during his pretrial incarceration, and that he had

suffered a stress reaction after his own brother was murdered (also prior to his arrest). *See* R. 682–84. Further, defense counsel reiterated Anthony's claim of a coerced confession and discussed evidence he had uncovered during his investigation of the case—which he was unable to produce in court—that both Dennis Pettis and Wayne Phillips were beaten by the police and forced to implicate Anthony. *See* R. 684–86. Finally, counsel described at length the basis for his belief that Anthony's conviction represented a miscarriage of justice. *See* R. 686–96; Ex. 7.

The trial court found sufficient mitigating factors to preclude the imposition of the death penalty. *See* R. 697. Citing only the nature of the murder conviction itself, Anthony's prior burglary conviction, the court's lack of "optimism" that Anthony had rehabilitative potential, and Anthony's lack of expressed remorse, the court sentenced Anthony to natural life imprisonment. *See* R. 706–08.

VII. Reasons For Granting Clemency

A. Anthony McKinney Was Convicted on the Basis of Coerced False Witness Testimony Which Has Since Been Recanted

There was no physical evidence tying Anthony McKinney to the murder of Donald Lundahl. There was no gun recovered. No fingerprints or DNA linked Anthony to the crime. The Harvey Police Department used force and brutality to extract a false confession from Anthony and false eyewitness testimony from Mr. Phillips and Mr. Pettis. Since that time, all three of these parties have openly and repeatedly stated that they were coerced into making false statements implicating Anthony in Mr. Lundahl's murder.

1. Wayne Phillips

Eighteen-year-old Wayne Phillips was the sole individual to testify at trial that he saw Anthony McKinney shoot Mr. Lundahl. Mr. Phillips testified that he was watching the Ali-

Spinks boxing match at his brother's house, but left at the end of the *ninth round* to purchase beer. At this point, according to his testimony, he met Mr. Pettis on the street and witnessed the murder. *See* R. 309–14. The testimony was consistent with a signed statement that Mr. Phillips gave to the Harvey police on September 19, 1978. Mr. Phillips, however, repudiated both his statement to police and his trial testimony.

On February 4, 2006, Mr. Phillips signed an affidavit admitting that the statements he made to police and at trial were untrue. He explained that the Harvey police intimidated him into claiming that Anthony committed the crime. *See* Ex. 2, Wayne Phillips Affidavit, 2/4/06. In his affidavit, Mr. Phillips swore that a few days after the shooting, he and Mr. Pettis were stopped by Dets. McCarthy and Morrison. They were taken to the Harvey police station. *See id.* at 2. Mr. Phillips and Mr. Pettis were placed in separate rooms for questioning.

Mr. Phillips explained that he "could hear the police beating up Dennis Pettis in the other room . . . [and] could hear Dennis hollering and screaming . . . ." *See id.* The detectives also pushed Mr. Phillips against the wall, yelled at him, slammed objects down on the table, and scared him. In the face of this intimidation, Mr. Phillips decided to cooperate with the police and say anything the police told him to say. The teenager agreed to the officers' story so that they would release both he and Mr. Pettis. *See id.* As a result of this coercion, Mr. Phillips signed a piece of paper stating that he saw Anthony shoot the security guard. *See id.* Det. McCarthy told Mr. Phillips to include in the statement that he heard Anthony say, "Your money or your life." *See id.*

The officers later rehearsed Mr. Phillips's court testimony with him. *See id.* at 3. Mr. Phillips did what the police instructed him to do and lied at trial; he explained that he did so

because he was "scared of what they would do if I didn't go along with their story." *Id.* Mr. Phillips died in 2009. *See* Ex. 9.

2. Dennis Pettis

On September 19, 1978, Dennis Pettis—then fifteen years old—signed a statement for the Harvey police explaining that he left his house at the end of the *tenth round* of the Ali-Spinks fight, and that he saw Anthony shoot the security guard while he was talking to Wayne Phillips on the corner of 153rd Street and Loomis—a city block away from the crime scene. *See* Ex. 5. Although Mr. Pettis testified before the grand jury, *see* Ex. 1, Dennis Pettis Affidavit, 10/8/05, at 3, neither the State nor the defense served him with a trial subpoena because he was "in hiding." Mr. Pettis, however, could not bear to lie again about seeing Anthony the night of the murder, and fled Harvey to avoid testifying at Anthony's trial. *See* R. 423, 439, 685. He would not return to the city for many ears.

Like Mr. Phillips, Mr. Pettis has since retracted his statement to the police. On October 8, 2005, Mr. Pettis signed an affidavit explaining that both his statement to the police and his grand jury testimony were fabricated. *See* Ex. 1. Mr. Pettis's affidavit not only negates his own earlier statements, but also contradicts and refutes Mr. Phillips's trial testimony. In his affidavit, Mr. Phillips details the physical abuse and coercion he endured at the hands of Dets. McCarthy and Morrison.

Mr. Pettis confirms that police picked him up along with Mr. Phillips on 154th Street, two nights after the shooting. *See id.* at 2. The police told Mr. Pettis that if he "didn't give Anthony McKinney up, Anthony would give [him] up." *Id.* at 3. When Mr. Pettis refused to implicate Anthony, the officers began to beat him. Mr. Pettis states that they "hit me, punched me, kicked me, and tried to intimidate me." *Id.* This went on for over an hour and a half. *See id.*

at 3. The officers also implied that they would kill Mr. Pettis if he "said anything different from what they were telling [him] to say." *Id.* The beating and intimidation were so intense that Mr. Pettis was "scared for [his] life when [he] was in that interrogation room." *Id.* Because Mr. Pettis feared that the officers would kill him if he did not cooperate, he ultimately agreed to Det. Morrison's demand that he write a statement saying that he had seen Anthony commit the crime. *See id.* at 3–4. This fear of the police is also what led Pettis to testify consistent with his statement before the grand jury. *See id.* at 4.

Significantly, Mr. Pettis's statement is also supported by a formal offer of proof given by his sister, Gwendolyn Pettis. Though the jury did not hear her testimony,[3] Ms. Pettis stated that she saw her brother and Mr. Phillips the day after they were interrogated by Dets. McCarthy and Morrison. *See* R. 434. Mr. Phillips told her that he and Mr. Pettis had been kept overnight at the police station, that they had been beaten, and that they had been instructed to say that Anthony shot the security guard. *See id.* Ms. Pettis noticed at this time that her brother Mr. Pettis was walking bent over, as if he were hurt. *See* R. 435. After they returned home, Mr. Pettis showed Ms. Pettis the bruises on his back; she also felt a knot on his lower back. *See* R. 436–37.

Mr. Pettis did not appear in court to testify at Anthony's trial because he "did not want to lie again, and [he] was scared of what McCarthy and Morrison would do to [him] if [he] told the truth" on the stand. *See id.* To this day, Mr. Pettis still insists that his testimony was false and that he *never* saw Anthony McKinney on the night of the murder.

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[3] The trial court excluded Ms. Pettis's testimony from trial as a discovery sanction for defense counsel's failure to include her on his list of witnesses. The court made this ruling despite defense counsel's explanation that he did not discover Ms. Pettis's prospective testimony until after the trial had commenced, while unsuccessfully attempting to subpoena her brother Mr. Pettis. *See* R. 428, 660.

B. The Alleged Eyewitness Accounts Are Demonstrably False Based on the ABC Television Log Detailing the Timeline of the Major Heavyweight Boxing Match Both Witnesses Say They Were Watching on the Night of the Murder.

Both before and during trial, prosecutors and police sought to pin down the precise timing for when the alleged eyewitnesses, Dennis Pettis and Wayne Phillips, observed the murder. Both witnesses claimed to have been watching the ABC television broadcast of the Ali-Spinks boxing match. Both claimed to remember the exact round when they stopped watching the fight. Counsel for petitioner has obtained a written log from ABC detailing the timing of the fight. That log—coupled with evidence presented conclusively at trial about the timing of the murder—demonstrates that neither Mr. Phillips nor Mr. Pettis could have witnessed the crime.[4]

The relevant police report states that the shooting took place between 9:30 and 9:45 p.m. *See* Ex. 8 at 1. The police department received the call about the security guard's death at 10:03 p.m., *id.* at 2, but one of Donald Lundahl's coworkers—who did not witness the murder or hear gunshots—made that call to police after finding Mr. Lundahl dead in his car. *See* R. 333–36. Thus, the call was not placed immediately after the shooting.

The ABC log provides the times when each round began and ended and when there were commercial breaks, and explains the important events in the fight. *See* Ex. 4.[5] This log

[4] The Muhammad Ali-Leon Spinks bout was the second of the year between these two heavyweight champions. Spinks had taken Ali's title by beating him in a fifteen-round decision on February 15, 1978. In the rematch in New Orleans on September 15, 1978, Ali regained the heavyweight crown, besting Spinks in a fifteen-round unanimous decision. The victory was historic; by beating Spinks, Ali became the first three-time heavyweight champion in history. *See* Ex. 12, Jack Hawn, *Ali Turns Back Clock and Wins Title Again*, L.A. Times, Sept. 16, 1978, at B1.

[5] Post-conviction counsel made a diligent but unsuccessful effort to obtain an affidavit to accompany this log. *See* Ex. 13.

conclusively shows that the statements Mr. Phillips and Mr. Pettis gave to the police about witnessing the crime were false.

Mr. Phillips testified at trial that he left his brother's house at the end of the *ninth round* of the Ali-Spinks boxing match. *See* R. 310. The ninth round began at 9:59:48 p.m. and ended at 10:02:49 p.m. *See* Ex. 4 at 12.[6] Even if Mr. Phillips left the house at exactly 10:02:49, the moment the fight ended, he could not have been at the corner of 153rd and Loomis until *after* the shooting had already occurred, which was some time before the police received the phone call at 10:03.

Mr. Pettis's signed statement to the police indicated that he left his house at the end of the *tenth round* of the Ali-Spinks fight. *See* Ex. 5. The tenth round began at 10:03:49 p.m. and ended at 10:07:45 p.m. *See* Ex. 4 at 12–13. Thus, according to his own statement to the police, Mr. Pettis could not have been at the scene of the crime until *after* the crime had already been committed.

C. Detectives at the Harvey Police Department Have a Long History of Using Highly Coercive Tactics that Are Present Both in This Case and in Others

Detectives at the Harvey Police Department have a history of brutality that surfaced in this case where they beat and coerced a confession from Anthony McKinney, beat then-fifteen-year-old Dennis Pettis into fingering Anthony as the perpetrator, and intimidated Wayne Phillips into similarly implicating Anthony in the murder. Detectives at the Department also physically abused at least one other witness in Anthony's case. The Department has since faced continuing

[6] The ABC broadcast began at 7:00 p.m., Chicago time. *See* Ex. 14. The ABC television log for the broadcast contains entries beginning at "0:00." *See* Ex. 4 at 1. Therefore, when the log shows that the first round of the Ali-Spinks fight began at "2:27:48," *see id.* at 10, this means it started at 9:27:48 p.m., Chicago time.

scrutiny from federal authorities. Indeed, Det. McCarthy was federally indicted and faced a litany of private federal civil rights lawsuits for violating the constitutional rights of Harvey citizens.

Anthony McKinney—an eighteen-year-old alone in an interrogation room—was beaten bloody by the detectives in this case. *See* R. 541; Part VI.C.4. Similar tactics were used on the witnesses who were coerced into testifying against him. *See* Part VII.A. But these were not isolated incidents. On December 30, 2008, investigators from the Office of the Cook County State's Attorney's Office interviewed Robert McGruder, a Harvey resident who was twenty years old at the time of the Lundahl murder and who described himself as a friend of Anthony McKinney's in 1978. *See* Ex. 15 at 2. Mr. McGruder told the State's Attorney's investigators that on the night of the Lundahl murder, Dets. McCarthy and Morrison took him to the Harvey police station and questioned him about the murder. Mr. McGruder further stated that Det. McCarthy beat him in an interview room at the station. *See id.* Mr. McGruder said that on three or four subsequent occasions, Dets. McCarthy and Morrison gave him money and told him they were wrong for hitting him. *See id.*[7]

Petitioner has also discovered new evidence that Det. McCarthy frequently used improper techniques—including promises, threats, and physical force—against both suspects and civilians. In addition to the sworn statements of Mr. Phillips and Mr. Pettis, the following cases contain allegations of misconduct by Det. McCarthy:

James Smylie was arrested for murder in Harvey on August 17, 1978, less than a month before Anthony McKinney's arrest. *See* Ex. 16, *People v. Smylie*, 103 Ill. App. 3d 679, 681–82

[7] These allegations are supported by an investigative report from the Cook County State's Attorney's Office. Petitioner presumes that this report is sufficiently reliable to obviate the need for Petitioner to obtain an affidavit from Robert McGruder.

(1st Dist. 1981). Smylie alleged that he never signed a confession; instead, at McCarthy's behest, he signed a blank sheet of paper on which his confession was later typed. *See id.* at 683. (Det. Morrison claimed at trial that Smylie voluntarily confessed to the murder but said he was too nervous to write out the statement and asked Det. Morrison to do it for him, and that Det. McCarthy dictated the statement to a secretary in the office—Phyllis Egelbrecht—who typed it up before Smylie signed it. *See id.* at 682.) Smylie's account of the signing of the confession is strikingly similar to Anthony's testimony on the same subject—indeed, Egelbrecht is the same secretary who allegedly typed up Anthony's statement. *See* R. 13, 349.

On August 2, 1979, Victor Johnson was arrested for rape and murder. *See* Ex. 17, *People v. Johnson*, 132 Ill. App. 3d 1, 2, 5 (1st Dist. 1985). Johnson testified that he was coerced into giving a false confession when Det. McCarthy threatened him with a gun after picking him up in a police car. *See* Ex. 18, *U.S. ex rel. Johnson v. Lane*, 639 F. Supp. 260, 264 (N.D. Ill. 1986). According to Mr. Johnson, Det. McCarthy told him to confess to the crime or else he would be sent to a mental hospital or to prison for the rest of his life—and possibly electrocuted. *See id.* In the face of this intimidation, Mr. Johnson confessed to the crime. *See id.* Det. McCarthy claimed that Mr. Johnson voluntarily confessed and that a secretary typed up a statement from Det. McCarthy's notes, which Mr. Johnson signed. *See* Ex. 17, *People v. Johnson*, 132 Ill. App. 3d at 4. Thus, like both Anthony McKinney and James Smylie, Mr. Johnson reported that Det. McCarthy used intimidation to induce him to sign a statement that had been typed by a secretary at Det. McCarthy's direction.

Det. McCarthy was one of the defendants in a 1980 federal civil rights lawsuit filed by Reuben Poindexter. According to the complaint, on December 4, 1975, Mr. Poindexter was present during the interrogation and attempted arrest of his nephew by Harvey police officers,

including Det. McCarthy. Without provocation, the police began to beat Mr. Poindexter. One of the officers, Det. Nick Graves, struck Mr. Poindexter on the head several times with a blackjack, and Det. McCarthy twisted Mr. Poindexter's arm and hit him in the side with his fist. The officers also struck Mr. Poindexter in his left eye, forced him to his knees, dragged him to a police car, and took him to the Harvey Police Department. At the station, the officers verbally abused him and attempted to intimidate him into signing a statement that he had assaulted Det. Graves. The officers brought another young man into Mr. Poindexter's cell, showed the youth how Mr. Poindexter had been beaten and bruised, and told the youth, "This is what could happen to you." *See* Ex. 19, Reuben Poindexter Complaint; Ex. 20, Reuben Poindexter First Amended Complaint.[8]

In 1983, Lavin Balfour filed a federal civil rights lawsuit against Harvey Police Dets. McCarthy and Daniel Fike, among others, for intimidating and threatening Mr. Balfour after he was arrested for murder. According to the complaint, on June 4, 1981, Mr. Balfour got into a fight with a Harvey fireman named Richard Rodgers, and Mr. Rodgers died of his injuries. While Mr. Balfour was held in the Harvey police lockup on suspicion of murder, Dets. McCarthy and Fike allowed two other men access to the cell in which Mr. Balfour was confined. One of those men, who claimed to be Mr. Rodgers' brother, pointed a gun at Mr. Balfour and threatened to kill him. *See* Ex. 21, Lavin Balfour Complaint; Ex. 22, Lavin Balfour Amended Complaint. A federal civil jury returned a verdict in Mr. Balfour's favor against Dets. McCarthy and Fike, though the jury did not assess damages against Det. McCarthy. *See* Ex. 23, Balfour Mem. in Opp. to Def's Post-Trial Motion at 2. The threat against Balfour by an armed man claiming to be

[8] On information and belief, and according to Mr. Poindexter's attorney, former Judge Loretta C. Douglas, the lawsuit was settled and Mr. Poindexter received a monetary award.

the murder victim's brother is reminiscent of Anthony McKinney's account of being threatened with a gun by a non-uniformed man at the police station after Det. McCarthy told him that Mr. Lundahl's son was waiting there to kill him.

Finally, the federal indictment against Det. McCarthy, discussed *supra* Part VI.A, involved not just Det. McCarthy but multiple other officers in the Harvey Police Department. The officers were alleged to have been running a "burglars-in-blue" theft ring in which they staged raids to steal cash and narcotics from drug dealers and gamblers. See O'Brien, *supra.*

The Department has hardly rehabilitated its image. In 2008, Federal Bureau of Investigation agents raided the Harvey police station and arrested four officers on charges of protecting large shipments of drugs. *See* Ex. 10, Matthew Walberg, *FBI Raids Harvey Police Headquarters*, Chicago Tribune, Dec. 6, 2008, *available at* http://articles.chicagotribune.com/2008-12-06/news/0812050417_1_police-headquarters-raids-police-officers. A four-year investigation by the U.S. Department of Justice, which concluded in 2012, found that the Department's "system for reporting, reviewing, and investigating use of force is grossly deficient and creates a high risk of excessive force. As a result, [the Harvey Police Department] is a department devoid of supervisory oversight and accountability, that tacitly endorses heavy-handed uses of force that were likely avoidable." *See* Ex. 27, Letter from Jonathan M. Smith, Chief, U.S. Dep't of Justice Civil Rights Division, to Eric J. Kellogg, Mayor, City of Harvey (Jan. 18, 2012), *available at* http://www.justice.gov/crt/about/spl/documents/harvey_findings_1-18-12.pdf.

D. Anthony Drake Confessed to Being Present for Mr. Lundahl's Murder and Told His Cellmate, Darnell Fearence, that Anthony Was Not Involved.

Newly discovered evidence has identified Anthony Drake—who as a young man lived in Harvey and knew Anthony McKinney—as present when Donald Lundahl was murdered. In a series of statements over the last decade to students and investigators working on Anthony's behalf, Mr. Drake has stated that he participated in the crime along with several other young men. In each of these statements, he told investigators that Anthony McKinney was not even present when Mr. Lundahl was killed.

After Anthony McKinney filed his post-conviction petition in 2008, the Cook County State's Attorney's Office raised questions about the circumstances under which some of Mr. Drake's statements had been taken, focusing in particular on a videotaped confession taken by journalism students working under the supervision of then-Northwestern University Professor David Protess. In this clemency petition, we do not rely on that statement or any of the statements made directly from Mr. Drake to students or investigators working for Anthony. Instead, we rely on Mr. Drake's confession to Darnell Fearence, a cellmate of Mr. Drake's while the two men were serving time in the Illinois Department of Corrections in 1991. *See* Ex. 3, ¶ 13.

Mr. Fearence lived in the same neighborhood as Anthony McKinney, though he and Anthony were enemies in 1978. *See* Ex. 3, ¶ 6. Still, Mr. Fearence has consistently proclaimed Anthony's innocence. Mr. Fearence has confirmed Anthony's innocence in two significant ways. First, he told investigators that he was involved in a fight with Anthony McKinney at the time that the murder occurred. According to Mr. Fearence and other corroborating witnesses, he was part of the group of gang members who chased Anthony through the streets of Harvey into a neighbor's yard. *See* Part VI.C.2. When the neighbor would not let Anthony hide in her yard, Anthony ran to the police for help. Initially, Anthony was arrested and targeted because he ran

directly into the arms of police investigating the Lundahl murder. Mr. Fearence also told investigators that Anthony did not have a gun that night.

Second, while they were serving time together, Mr. Drake told Mr. Fearence that he was present for Mr. Lundahl's murder and that Anthony McKinney was not involved at all. Both Mr. Fearence and Mr. Drake have confirmed that they were cellmates together in the Illinois River Correctional Center in the summer of 1991. *See* Ex. 3; Ex. 28, Cook County State's Attorney Interview with Anthony Drake, 10/28/08, p. 3. Officials at Illinois River also confirmed that Mr. Drake and Mr. Fearence were both incarcerated at that facility from April 17, 1991, until August 21, 1991. At that time, Mr. Drake was incarcerated for a different murder. *See* Ex. 29. This information was obtained by the Center on Wrongful Convictions independently from the Medill investigation conducted by Professor Protess. The circumstances surrounding the statement—which completely exonerates Anthony McKinney—strongly suggest its veracity.

E. Traditional Avenues of Justice Have Failed to Bring Anthony McKinney and His Family Justice

Anthony McKinney has been denied justice at every turn by the criminal justice system in Cook County. Harvey detectives coerced him into confessing to a crime he did not commit. These same officers terrorized two teenagers and pressured them to identify Anthony as the man they saw shoot Donald Lundahl. One of the teenagers—Dennis Pettis—felt so threatened by the officers that he fled Harvey and went into hiding to avoid lying under oath at Anthony's trial. Anthony was convicted at trial based on the coerced and false testimony of the other teenager—Wayne Phillips. At trial, Anthony professed his innocence and told the court that his confession had been coerced by Det. McCarthy and his partner. He was convicted in December 1981.

It was not until 1999 that new life was breathed into his case. In a chance encounter at a Harvey medical clinic that year, Wayne Phillips ran into Michael McKinney, Anthony's brother. Mr. Phillips had not seen Michael McKinney in many years. When Mr. Phillips saw Mr. McKinney, he immediately began to sob and to apologize for falsely identifying Anthony as Donald Lundahl's murderer. Mr. Phillips also told Michael McKinney that the police had beaten him up in order to force him to give false testimony about Anthony. This chance encounter set Mr. McKinney on a quest to prove his brother's innocence.

That quest led Michael McKinney to contact the Northwestern University Medill School of Journalism's Innocence Project and the Law School's Center on Wrongful Convictions. He asked both projects to work on his brother's case. In 2004, led by Professor David Protess, Medill journalism students conducted numerous interviews of witnesses who provided information that exonerates Anthony McKinney of Mr. Lundahl's murder. In videotaped interviews, Mr. Pettis and Mr. Philips both stated that they were coerced into falsely testifying against Anthony; Anthony Drake stated that he was present for Mr. Lundahl's murder and that Anthony McKinney was not involved; and Darnell Fearence stated that he fought with Anthony McKinney the night of the murder and knows that Anthony was not involved in Lundahl's murder.

Based on this and other information, Anthony McKinney filed his first post-conviction petition on October 29, 2008, requesting an evidentiary hearing and the authority to subpoena witnesses, documents, and other discovery, and other relief. In 2009, Cook County State's Attorney Anita Alvarez filed a motion for discovery requesting the disclosure of the journalism students' interview notes, their grades, their e-mails, and other information both related and unrelated to their work on the McKinney case. This led to a prolonged court battle between

Professor Protess and the State's Attorney's office relating to the scope of the subpoenas. Although these issues were eventually resolved, Anthony McKinney never had the opportunity to present his newly discovered evidence of actual innocence in a court of law. He died suddenly on August 27, 2013 before the trial court could schedule a hearing on the merits of his petition.

VIII. Conclusion

Former United States President William Howard Taft, who was also a Chief Justice of the United States Supreme Court, once noted that clemency is an essential component to just government, writing that "[e]xecutive clemency exists to afford relief from undue harshness or *evident mistake* in the operation or enforcement of the criminal law. *Ex Parte Grossman*, 267 U.S. 87, 120 (1925) (emphasis added). One of the errors that has been rectified through the clemency process—both here in Illinois and throughout the country—is the inability or unwillingness of courts to acknowledge the "actual innocence" of a wrongfully convicted man or woman.

Dr. Martin Luther King, Jr. once said that the "the arc of the moral universe is long, but it bends toward justice." Gary May, *Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy* 144 (2013). To date, justice has eluded Anthony McKinney and his family. The time has come for the arc of the moral universe to bend their way, and only one person—the Governor of the State of Illinois—has the power to give the McKinney family justice. We now ask that the Prisoner Review Board recommend, and that the Governor grant, a posthumous pardon to Anthony and provide a measure of solace and justice to his family.

VERIFICATION AND CONSENT

I, Michael McKinney, declare under penalty of perjury that all of the assertions made in this petition are complete, truthful and accurate. I also declare under penalty of perjury that I consent to the filing of the foregoing Petition for Executive Clemency.

Michael McKinney

Subscribed and sworn to
before me this 20th day of
January, 2014.

NOTARY PUBLIC

OFFICIAL SEAL
IESHA GAINES
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 11/16/2016

DECLARATION OF COUNSEL

I, Steven A. Drizin, one of the attorneys for Anthony McKinney, declare under penalty of perjury that, on January 22nd, 2014, I mailed copies of the above Petition for Executive Clemency to:

1. Cook County's State's Attorney Anita Alvarez, 69 W. Washington, Suite 3200, Chicago, IL, 60602
2. Chief Judge Timothy C. Evans, 50 W. Washington Street, Room 2600, Chicago, IL 60602

Steven A. Drizin
Counsel for Petitioner

Subscribed and sworn to before me
On January 21, 2014

Dolores G. Angeles
NOTARY PUBLIC

OFFICIAL SEAL
DOLORES G. ANGELES
NOTARY PUBLIC-STATE OF ILLINOIS
MY COMMISSION EXPIRES 04/26/2015

List of Exhibits

Exhibit 1	Dennis Pettis Affidavit, 10/8/05
Exhibit 2	Wayne Phillips Affidavit, 2/4/06
Exhibit 3	Darnell Fearence Affidavit, 5/1/06
Exhibit 4	ABC Fight Log
Exhibit 5	Dennis Pettis Statement to Police, 9/19/78
Exhibit 6	Illinois State Crime Lab Report on Crime Scene Fingerprints
Exhibit 7	Anthony McKinney Trial Transcript (Mitigation)
Exhibit 8	Harvey Police Continuation Report, 9/25/78
Exhibit 9	Wayne Phillips Memorial Pamphlet
Exhibit 10	Matthew Walberg, *FBI Raids Harvey Police Headquarters*, Chicago Tribune, Dec. 6, 2008
Exhibit 11	Stephen Greenspan, Death Penalty Information Center, *Posthumous Pardons Granted in American History* (2011)
Exhibit 12	Jack Hawn, *Ali Turns Back Clock and Wins Title Again*, L.A. Times, Sept. 16, 1978, at B1
Exhibit 13	Rachel Julis Affidavit, 2/20/07
Exhibit 14	Chicago Tribune TV Listings, 9/15/78
Exhibit 15	Roger McGruder Interview with Cook County SA, 12/29/08-12/30/08
Exhibit 16	*People v. Smylie*, 103 Ill. App. 3d 679 (1st Dist. 1981)
Exhibit 17	*People v. Johnson*, 132 Ill. App. 3d 1 (1st Dist. 1985)
Exhibit 18	*U.S. ex rel. Johnson v. Lane*, 639 F. Supp. 260 (N.D. Ill. 1986)
Exhibit 19	Reuben Poindexter Complaint, 3/19/80
Exhibit 20	Reuben Poindexter First Amended Complaint, 2/3/82
Exhibit 21	Lavin Balfour Complaint, 3/3/83
Exhibit 22	Lavin Balfour Amended Complaint, 6/30/89
Exhibit 23	Balfour v. Kline, 1987 U.S. Dist. LEXIS 1168 (N.D. Ill. 1987)
Exhibit 24	Hannu Koponen et al., *Schizophrenia and Sudden Cardiac Death—A Review*, 62 Nordic J. Psychiatry 342 (2008)
Exhibit 25	John O'Brien, *3 Ex-Harvey Cops Indicted in Beating*, Chicago Tribune, June 2, 1987
Exhibit 26	Map of Harvey Including Relevant Locations
Exhibit 27	Letter from Jonathan M. Smith, Chief, U.S. Dep't of Justice Civil Rights Division, to Eric J. Kellogg, Mayor, City of Harvey (Jan. 18, 2012)
Exhibit 28	Anthony Drake Interview with Cook County SA, 10/28/08
Exhibit 29	Anthony Drake Illinois Department of Corrections Record

Exhibit 1

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF DENNIS PETTIS

I, Dennis Pettis, being duly sworn, do state on oath that the following facts are true to the best of my knowledge:

1. I was born in Chicago, Illinois on 5/21/63. I am 42 years old. My current address is 14121 S. Dearborn St., Riverdale, Illinois 60827. I have lived there for 11 years. I am currently employed in the maintenance department at Ingalls hospital. I have been employed here for the past 17 years. I am married with six children.

2. I knew Anthony McKinney in the late 1970's but we were not friends.

3. I understand that this affidavit may be filed in court in the case of *People v. Anthony McKinney*, No. 78 CR 5267, Cook County, Illinois.

4. On the night of the Ali-Spinks boxing match in September, 1978, I was at my house at 153rd Street and Lexington in Harvey, watching the fight on TV. I was approximately 15 years old at the time.

5. After the boxing match was over, I went out the back door of my house and cut through the vacant lot behind my house to go over to Earl Jackson's house at 15307 Loomis, which is near the corner of 153rd Street and Loomis.

6. I started walking north on Loomis to get to Earl Jackson's house, and I saw Wayne Phillips across 153rd Street, walking towards me on Loomis. I called out to Wayne, and we met at the corner of 153rd Street and Loomis.

7. When I got to the corner, I saw a crowd of people, police officers, and an ambulance down the street in front of the Masonic Temple.

8. Wayne Phillips and I walked down the street to see what had happened. Someone in the crowd told me that the security guard had been shot. Earl was not there.

9. While I was standing at the scene of the murder, the police asked me if I saw anything. I said no.

10. I stayed at the scene of the murder for about ten or fifteen minutes and then left. I am not sure, but I think I went to Earl Jackson's house.

11. I did not see anyone shoot anyone else that night.

12. At no point that night did I see Anthony McKinney.

13. I never saw Anthony McKinney shoot anyone.

14. I never saw Anthony McKinney with a gun.

15. Two nights after the shooting, I was walking eastbound with Wayne Phillips on 154th Street, near Turlington Avenue, when Officers McCarthy and Morrison motioned us over to their police car. They asked us some questions and then made us get into the car to go down to the police station with them.

16. At the police station, McCarthy and Morrison put Wayne Phillips and me in separate rooms. McCarthy and Morrison questioned me, and I told them that I did not see the murder and did not know anything about it. But they told me that Wayne said that he had seen the murder and that I was with him and saw the murder, too. McCarthy and Morrison told me that they knew I had seen something but that I just didn't want to say so.

17. I told McCarthy and Morrison that what they were saying was not true. I told them that I did not see Wayne Phillips until I ran into him on the street after the boxing match, after the murder had already taken place.

18. McCarthy and Morrison gave me the impression that if I went along with their story, I would get the reward money that the police department was offering for information on the murder.

19. McCarthy and Morrison also told me that if I didn't give Anthony McKinney up, Anthony would give me up.

20. After I refused to go along with the story that McCarthy and Morrison said Wayne Phillips had told them, McCarthy and Morrison started to beat me up. They hit me, punched me, kicked me, and tried to intimidate me. For about an hour and a half or two hours, one officer would beat me up while the other left the room. Then they would switch and the other officer would come in the room to beat me up. They implied that they were going to kill me if I said anything different from what they were telling me to say.

21. I was scared for my life when I was in that interrogation room.

22. McCarthy and Morrison told me that as soon as I went along with Wayne Phillips' story, I could go home. McCarthy and Morrison told me that Earl Jackson, Wayne Phillips, and I had been over at Earl's house watching the Ali-Spinks fight. McCarthy and Morrison told me that Wayne and I left Earl's house and saw Anthony McKinney shoot the security guard from a block away.

23. Morrison told me to write down that after leaving Earl Jackson's house, Wayne Phillips and I saw Anthony McKinney shoot the security guard. I wrote down Morrison's

statement because I wanted to leave that room alive. What I wrote down was not true, but I signed it because I wanted to go home.

24. I testified in front of a Grand Jury.

25. I testified that I had seen Anthony McKinney kill the security guard.

26. I lied in front of the Grand Jury because I was scared of what McCarthy and Morrison would do to me if I didn't go along with their story.

27. I did not testify at Anthony McKinney's trial.

28. I did not want to testify at Anthony McKinney's trial because I did not want to lie again, and I was scared of what McCarthy and Morrison would do to me if I told the truth. So I left Harvey out of fear about three weeks after they interrogated me and went to live with my auntie on the west side of Chicago. I lived there for about seven years. I was living there for two years before I even felt safe enough to go back to Harvey at all. After that, I would periodically sneak in and out of Harvey, but I would never stay for long.

29. I am coming forward with the truth now because I am no longer afraid that McCarthy and Morrison will hurt me.

30. Before the night of the murder, I had never had a personal encounter with the Harvey police, but I knew that other black people in my neighborhood felt that the white police officers picked on them for no reason. The Harvey residents did not trust the police.

31. I never discussed what McCarthy and Morrison did to me at the police station with anyone except my mother Lillie Pettis, auntie Ruby White and, sister Gwen Pettis until students at Northwestern University's Medill School of Journalism interviewed me recently.

32. I am making this statement of my own free will. I have not been threatened in any way or promised anything in connection with the making of this statement.

Dennis Pettis

SUBSCRIBED AND SWORN TO BEFORE ME
this 8th day of October, 2005.

NOTARY PUBLIC

"OFFICIAL SEAL"
NORMA HEREDIA
Notary Public, State of Illinois
My Commission Expires July 08, 2009

Exhibit 2

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF WAYNE PHILLIPS

I, Wayne Phillips, being duly sworn, do state on oath that the following facts are true to the best of my knowledge:

1. I was born on Wayne Phillips WP March 3, 1960. I am 45 years of age.

2. I knew Tony McKinney in Harvey, Illinois, in the 1970's. We did not get along. I am the same Wayne Phillips who testified at Tony McKinney's trial in 1980. I understand that this affidavit may be filed in court in the case of *People v. Anthony McKinney*, No. 78 CR 5267, Cook County, Illinois.

3. On the night of the Ali-Spinks boxing match in September 1978, I was watching the fight at my brother's house near 152nd Street and Loomis. I was about 17 years old at the time.

4. At some point that evening, I left my brother's house and went outside. I saw Dennis Pettis and spoke with him.

5. There was a lot of activity that night on 153rd Street because a security guard from the Masonic Temple had been shot.

6. I did not see Tony McKinney with a gun that night, and I did not see Tony McKinney shoot the security guard.

7. A couple of days after the shooting, I was walking down the street with Dennis Pettis when Officers McCarthy and Morrison stopped us. They put me and Dennis Pettis into their police car and took us to the Harvey police station.

Wayne Phillips

8. At the police station, Dennis and I were put into different rooms. An officer grabbed me and told me he knew I was the murderer. He told me I would go to prison for the rest of my life because someone said I shot the man.

9. I could hear the police beating up Dennis Pettis in the other room. I could hear Dennis hollering and screaming. Because of that, I started cooperating and saying what the police wanted me to say. I agreed to the story they told me so that they would let us go.

10. The police officers roughed me up. They pushed me against the wall, yelled at me, slammed things down on the table, made a lot of noise, and scared me.

11. The police told me to sign a piece of paper. They told me to remember what was on it and say that I saw Tony McKinney shoot the man. I did not see Tony McKinney shoot anyone.

12. McCarthy said that I heard Tony McKinney say: "Your money or your life." I never heard Tony McKinney say those words. The first time I heard those words was at the police station when McCarthy spoke them.

13. The police told me to say in court that I saw Tony McKinney shoot the security guard. In court, I repeated what the police told me to say: that I had seen Tony McKinney shoot the security guard in front of the Masonic Temple in Harvey.

14. I lied at Tony's trial because I was still afraid of the police. I was scared of what they would do if I didn't go along with their story.

15. Until recently, I never told anyone what the officers did to me at the police station, except possibly my brother.

16. I am making this statement of my own free will. I have not been threatened in

Wayne Phillips

any way or promised anything in connection with the making of this statement.

Wayne Phillips

Wayne Phillips

SUBSCRIBED AND SWORN TO BEFORE ME
this 4th day of February, 2006.

NOTARY PUBLIC

"OFFICIAL SEAL"
Sheila M. Brimage
Notary Public, State of Illinois
My Commission Exp. 09/14/2008

Exhibit 3

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF DARNELL FEARENCE

I, Darnell Fearence, being duly sworn, do state on oath that the following facts are true to the best of my knowledge:

1. I am forty-seven years old. I have lived in Harvey, Illinois, since 1972.

2. I work as a landscaper and a carpenter.

3. I understand that this affidavit may be filed in court in the case of *People v. Anthony McKinney*, No. 78 CR 5267, Cook County, Illinois.

4. On the night of September 15, 1978, I went to a party at the karate club on 154th street in Harvey, Illinois. It was one of those neighborhood parties that were often held on the weekends for no particular reason and were open to anyone who wanted to come.

5. There were about fifty people at the party I went to on September 15, 1978. People were dancing and drinking.

6. Prior to the karate school party, Anthony McKinney and I had gotten into a physical fight. During that incident, Anthony McKinney had thrown a car battery onto the windshield of my 1978 Camaro. The windshield broke and my hood was damaged. I had the car repaired, but I was still extremely angry with Anthony McKinney. After that fight I looked for him all over the neighborhood so I could retaliate against him for the damage he did to my car.

7. I saw Anthony McKinney at the karate school party and exchanged angry

D. F.

words with him about my car. When he ran away, my friends Tony Parham and George Capers, my brother Sherman Fearence, and I started chasing after him down the street.

8. We chased Anthony McKinney into a yard. We started beating him up in the yard.

9. A woman yelled at us to quit fighting and to get out of her yard. She said that the police were nearby and pointed toward where they were, which was on 153rd Street.

10. Anthony McKinney jumped over the fence and ran out of the yard. My brother, my friends and I jumped over the fence after Anthony. We kept chasing him down the block. We saw police squad cars at the end of the block. We stopped chasing Anthony, turned around, and ran in the opposite direction to avoid the police.

11. Anthony McKinney kept running towards the police to get away from us.

12. I found out a few days later that Anthony McKinney had been charged with the murder that happened the night I chased him from the karate school party.

13. In approximately summer of 1991, I was incarcerated in D.F. the Illinois Department of Corrections in the same institution as Tony Drake. Tony Drake told me that he knew that Magooda (Roger McGruder) and ~~someone else~~ Robert "Bird" Anderson D.F. committed the murder of the security guard outside the Masonic Temple in Harvey in September 1978. He also said he knew Anthony McKinney was not there. D.F.

14. Approximately two years ago, while I was mowing a lawn in Country Club Hills, Illinois, I saw Mike McKinney. He told me that his brother Anthony McKinney was still in prison for the murder that happened on September 15, 1978.

15. I am making this statement of my own free will. I have not been

D.F.

threatened in any way or promised anything to make this statement.

Darnell Fearence

SUBSCRIBED AND SWORN TO BEFORE ME
this 1st day of May, 2006.

NOTARY PUBLIC

Exhibit 4

EDITING WORK SHEET
AND LOGGING FORM

PAGE # _____

NY 0623-09-78 R.1
NY 1037-09-78 R.2
~~NY 5311-09-78 R.3~~

EVENT: BOXING
MUHAMMAD ALI/LEON SPINKS
PLACE: SUPERDOME-NEW ORLEANS, LA.
AND PRELIMINARIES:
VOS#: VICTOR GALINDEZ
#(5) MIKE ROSSMAN VS

REEL#:
VTR DATE:
AIR DATE: FRI., SEPT. 15, 1978

PRELIM #1-(ON AIR)- DANNY LOPEZ VS JUAN MALVEREZ

NOTES	TIME INDIVIDUAL	TIME RUNNING
TEASE: MUHAMMAD ALI O/C W/ DIALOGUE		0:00
FOOTAGE OF SPINKS/ALI - PREVIOUS FIGHT		0:38
VIEW - AERIAL - OF SUPERDOME - NEW ORLEANS, LA.		1:11
" OF INSIDE OF SUPERDOME		1:28
SUPERS OF TONIGHTS "CARD"		1:39
OPBBD — BUDWEISER		2:04
LIVE SHOT OF SUPERDOME		2:21
HOWARD COSELL O/C W/ COMMENTS		2:38
INTROS CHRIS SCHENKEL - CO-ANNCR - O/C W/ COMMENTS		3:16
COSELL INTROS FRANK GIFFORD - CO-ANNCR - O/C W/ COM.		4:09
OVER HEAD VIEW OF RING		4:58
FIRST PRELIM - FTHRWT - DANNY "LITTLE RED" LOPEZ VS JUAN MALVEREZ		
DANNY LOPEZ - (CLOSE-UP) IN RING - (KNICKNAMED "LITTLE RED" BECAUSE PART NIGERIAN)		5:26
JUAN MALVEREZ - " " "		5:46
PLAYING OF ARGENTINE NATIONAL ANTHEM		6:07
AND "AMERICA"		6:52
SHOT OF LOPEZ + AMER FLAG		7:16
VIEW OF RING - V/O BY COSELL EXPLAINING "JUDGING"		7:50
ALTERNATE VIEWS OF FIGHTERS - IN RING		8:45
INTRO OF FIGHTERS BY RING ANNCR		9:35
ROUND I		10:17
LOPEZ GOES DOWN - BY SUCCESSION OF RTS + LEFTS		10:48
LOPEZ UP - FIGHT CONTINUES		11:30
GOOD COMB BY JUAN -		12:42
END ROUND I		13:16
REPLAY OF KNOCKDOWN		13:23
LOPEZ IN CORNER		13:42
MALVEREZ " "		14:09
ROUND II		14:17

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EDITING WORK SHEET
AND LOGGING FORM

PAGE # ____

EVENT: _____ REEL #: _____

PLACE: _____ VTR DATE: _____

WOS #: _____ AIR DATE: _____

NOTES	TIME INDIVIDUAL	TIME RUNNING
JUAN KNOCKED DOWN & OUT BY LOPEZ		14:46
REPLAY OF KNOCKOUT		15:30
LOPEZ WALKS AROUND RING W/ INDIAN HEADDRESS		16:00
VIEW OF JUAN ON HIS BACK -- STILL UNCONSCIOUS!		16:29
JUAN BEING HELPED TO HIS FEET -		16:45
REPLAY OF RIGHT + LEFT THAT KNOCKED OUT JUAN		16:54
DANNY - "LITTLE RED" LOPEZ" - O/C INTRVW - RINGSIDE,		17:13
BY HOWARD COSELL - (DANNY - W/ INDIAN HEADDRESS)		
COMM #1 - @ BUDWEISER		18:40
@ PONTIAC		
VIEW OF 60,000 FANS - (POSSIBLY 70,000!)		19:40
LOPEZ LEAVING RING - SCHENKEL V/O		20:00
FAR SHOT OF RING		20:35
LOPEZ LEAVING		20:49
VIEW OF RING		21:11
FAR SHOT OF RING		21:25
"UP CLOSE & PERSONAL" VICTOR GALINDEZ - WBA LT. HVWT CHAMP FINALS OF WORLD CUP - SOCCER PAST FOOTAGE		21:50
LUNA PARK STADIUM -		22:10
GALINDEZ / AHUMADA FOOTAGE		22:30
" / KATES "		22:50
" / GREGORY "		23:35
GALINDEZ O/C - SPEAKING SPANISH - W/ TITLES		23:48
" WORKING-OUT		23:58
" ON MOTORCYCLE		25:08
" O/C - SPEAKING SPANISH - W/ TITLES		25:20
COMM #2 - @ U.S. ARMY		25:44
@ VICS SINEX		

EDITING WORK SHEET
AND LOGGING FORM

EVENT: REEL #:

PLACE: VTR DATE:

WOS #: AIR DATE:

NOTES	TIME		
		INDIVIDUAL	RUNNING
FAR SHOT OF RING - SCHENKEL V/O			26:43
SHOT OF CROWD			27:08
CONTENDER MIKE ROSSMAN / NIXON - PAST FOOTAGE (FIGHTS)			27:28
" / QUARRY - "	"	"	27:46
" / LOPEZ - "	"	"	28:00
" / BENNETT - "	"	"	28:15
" / MATTY ROSS -	"	"	28:38
MIKE ROSSMAN - O/C INTRVW BY COSELL			29:00
COMM #3 - @ AMC			30:42
@ BUDWEISER			31:42
ARENA - VIEW OF CROWD			31:48
MUHAMMAD ALI - SITTING IN DRESSING ROOM "CALMLY"			32:16
LEON SPINKS - IN DRESSING ROOM - W/ OTHERS			33:09
" " - "LAUGHING"			33:50
COSELL V/O SCENE OF RING - ANNOUNCES FIRST "WOMAN" WEIGHT INTO RING AND DISROBED			33:55
ALI SITTING - "SOMBERLY" - IN DRESSING ROOM			34:03
FRANK GIFFORD O/C W/ DABNEY COLEMAN - TV ACTOR			35:15
RANDY COLEMAN - "SON" - O/C			36:10
VIEW OF CROWD			36:39
VIDEOTAPED EARLIER - LUJAN / DAVILLA - PREVIOUSLY (EARLIER TONIGHT) FOUGHT - FOOTAGE -			37:09
LAST ROUND ACTION - 15TH ROUND - (BANTAMWT)			
LUJAN, (JORGE) WON!			40:22
COMM #4 - @ A.R.M.			40:41
@ McCULLOCH			
COMING UP - PRELIM. CHMPNSHP LT. HVYWT MATCH - VICTOR GALINDEZ VS MIKE ROSSMAN			41:41
MIKE ROSSMAN IN RING			42:00
VICTOR GALINDEZ IN RING			42:34
PROMO - ABC WWOS SAT			43:10

AND LOGGING FORM

EVENT: REEL #:

PLACE: VTR DATE:

WOS #: AIR DATE:

NOTES	TIME INDIVIDUAL	TIME RUNNING
NET IDENT + STATION BREAK		43:32
ACTOR HUGH O'BRIAN & GIFFORD O/C - RINGSIDE, DISCUSSING - ALI/SPINKS FIGHT -		44:05
RING - RING ANNOUNCER INTROS FIGHTERS -		44:53
MIKE ROSSMAN - (NEW JERSEY) - BLUE TRUNKS		46:06
VICTOR GALINDEZ - (ARGENTINA) - RED TRUNKS		46:18
		1
ROUND I		46:58
"MEASURING" EACH OTHER		47:30
STIFF LEFT JAB BY ROSSMAN		47:56
INACTIVE FIRST RND - END ROUND I		49:57
COMM #5 - @ BUDWEISER		49:59
@ SEARS		
RING - ROUND II - IN PROGRESS		50:59
PUNCHES BEING THROWN - "SPARINGLY"		52:15
ACTION PICKING-UP - END ROUND II		53:28
NEWSCAST - "NEWS BRIEF"		53:59
"79 FORD - COMING" - ANNOUNCEMENT		54:39
RING - OVERHEAD VIEW - ROUND III - IN PROGRESS		54:58
GALINDEZ LANDING SOME GOOD BLOWS - MIKE AGAINST ROPES		56:30
GOOD COMBO BY VICTOR		57:22
END ROUND III		57:57
		"
		58:02
ALI + JOHNNY CASH SITTING TOGETHER, TALKING		58:26
LEON SPINKS + CHILD - ~~CLOSE-UPS~~ (CHILD ON LAP) -		58:35

AND LOGGING FORM

EVENT: REEL #:

PLACE: VTR DATE:

WOS #: AIR DATE:

NOTES	TIME INDIVIDUAL	TIME RUNNING
ROUND IV		58:58
ROSSMAN AGAINST ROPES - VICTOR PUNCHES		1:1:18
VICTOR LANDS LEFT		1:1:50
END ROUND IV		1:1:58
ALI - O/C INTRVWD IN DRESSING RM W/JOHNNY CASH		1:2:04
JOHN TRAVOLTA + LISA MINELLI JOIN - (BY GIFFORD)		1:2:43
ROUND V		1:2:59
ROSSMAN IN CORNER - BOTH PUNCHING - NO		1:3:30
DAMAGE!		
BOTH PUNCHING IN CLINCH		1:4:57
END ROUND V		1:5:58
LEON SPINKS + NEPHEW, CHARLIE, ON LAP - O/C		1:6:06
INTRVWD BY GIFFORD IN DRESSING ROOM		
RING -		1:6:44
ROUND VI		1:6:59
ROSSMAN IN CORNER AGAIN - TAKING PUNCHES		1:8:55
GALINDEZ - RT EYE BLEEDING		1:9:34
END ROUND VI		1:9:58
COMM #6 - @ AVCO		1:10:01
@ SINE-OFF		
RING - OVERHEAD - ROUND VII - IN PROGRESS		1:11:00
GALINDEZ EYE BLEEDING - (RT)		1:12:15
END ROUND VII		1:13:58
COMM #7 - @ BUDWEISER		1:14:01
@ J.C. PENNEY		

EDITING WORK SHEET AND LOGGING FORM

EVENT: _____ REEL #: _____

PLACE: _____ VTR DATE: _____

WOS #: _____ AIR DATE: _____

NOTES	TIME INDIVIDUAL	TIME RUNNING
ROUND VIII		1:15:00
BOTH - HOOKS - JABS - CLINCHES -, NOTHING		1:16:01
UNUSUAL!		
GOOD RIGHT LEAD BY ROSSMAN, FINDS VICTOR'S		1:17:10
FACE		
END ROUND VIII		1:17:58
COMM #8 - @ UNITED AIR LINES		1:17:59
@ OWENS-CORNING		
ROUND IX - OVERHEAD SHOT - IN PROGRESS		1:18:59
ROSSMAN CATCHES VICTOR W/BEAUT LEFT		1:21:31
NET IDENT + STA BREAK		1:21:59
ROUND X		1:22:58
ROSSMAN: COOL + JABBING		1:23:50
CUT OVER VICTOR'S RT EYE, BLEEDING		1:24:30
VICTOR ON ROPES - REFEREE DOES NOT BREAK CLINCHES		1:25:32
END ROUND X		1:26:00
ACTOR LORNE GREEN - O/C W/ FRANK GIFFORD - DISCUSSING ALI/SPINKS.		1:26:08
ROUND XI		1:27:00
ROSSMAN WORKING ON VICTOR'S RT. EYE -		1:27:30
VICTOR'S EYE - - - - LOOKS BAD!		1:28:00
ROSSMAN IN CORNER + ON ROPES - BOTH		1:28:47
PUNCHING IN CLINCH -		
G-ALINDEZ LOOKS AT REFEREE-TO BREAK CLINCH		1:29:42
COMM #9 - @ ANHEUSER-BUSCH		1:30:01
@ MAZDA		

EVENT: REEL #:

PLACE: VTR DATE:

WOS #: AIR DATE:

NOTES	TIME INDIVIDUAL	TIME RUNNING
ROUND XII		1:31:00
ROSSMAN SCORES GOOD LEFT & COMB		1:31:43
GOOD EXCHANGING! CUTOVER VICTOR'S LEFT		1:33:08
EYE, ALSO.		
END ROUND XII - GALINDEZ UNSTEADY, AS		1:34:01
HE GOES TO HIS CORNER		
VICTOR IN CORNER - (CLOSE-UP)		1:34:57
ROUND XIII		1:34:58
VICTOR BLOODY - BEING PUMMELED, IN CORNER -		1:35:41
GALINDEZ GIVES UP - ROSSMAN WINS!		1:35:53
ROSSMAN NEW CHAMPION!		1:36:30
COSELL INTRVWS ROSSMAN o/c - IN RING -		1:36:46
ROSSMAN'S MOTHER HUGS SON, IN RING		
REPLAY		1:37:30
OFFICIAL ANNOUNCEMENT - ROSSMAN - NEW LT. HVYWT CHAMP!		1:38:05
INTRVW CONTINUES		1:38:32
VIEW OF GALINDEZ		1:39:06
COMM #10 - @ ROLAIDS		1:39:23
@ RCA - "COLORTRAK"		
RING CENTER - HOWARD COSELL o/c		1:40:23
REPLAY - ROUND XIII		1:40:41
" - ROUND XIII - FINAL ROUND		1:41:21
COSELL o/c IN RING - RW/COMMENTS RE		1:41:45
PAST FIGHT FOOTAGE - SPINKS & SIXTO SORIA (MONTREAL OLYMPICS)		1:42:22
SPINKS KNOCKS SORIA DOWN & WINS!		1:42:58
" / LEDOUX		1:43:46
PAST FOOTAGE - SPINKS & ALI - PREVIOUS FIGHT		1:44:03
" " " " - ROUND XV		1:44:50

AND LOGGING FORM

EVENT: _____ REEL #: _____

PLACE: _____ VTR DATE: _____

WOS #: _____ AIR DATE: _____

NOTES	TIME INDIVIDUAL	TIME RUNNING
COSELL & LEON SPINKS - O/C INTRVW		1:45:54
PAST FOOTAGE OF SPINKS DRINKING FROM BROWN BOTTLE DURING		1:46:25
PREV. FIGHT W/ ALI - COSELL RECALLS "QUESTIONS OF CONTENTS".		
VIEW OF SUPERDOME		1:47:23
PROMO-SUNTV PROGS-"LASSIE" + "BATTLESTAR GALACTICA" SUNTV		1:47:44
NET IDENT AND STA BREAK		1:48:04
SEGMENT ON CAREER OF ALI -		
EARLY PICTURE OF CASSIUS CLAY - (ALI)		1:49:19
PAST FOOTAGE OF ALI'S FIGHTS -		1:49:31
AS CASSIUS CLAY - ("ALI SHUFFLE")		1:50:01
EARLY INTRVW O/C OF CASSIUS		1:50:21
HUNSAICER - MTEFF MATCHES WITH CLAY - (RESPECTIVELY)		1:50:53
ALI - MOUTHING-OFF RE - HENRY COOPER - OPPONENT		1:51:41
ALI GOES DOWN - BUT BEATS COOPER IN 5TH		1:52:02
PAST FOOTAGE CONTINUES		1:52:03
ALI/LISTON FIGHT		1:52:55
" " - 1965		1:53:45
SLO-MO OF "QUESTIONABLE PUNCH" TO LISTON BY ALI		1:54:00
PATERSON & COOPER VS ALI - (RESPECTIVELY)		1:54:50
ALI VS. LONDON		1:55:10
" " MILDENBERGER - WEST GERMANY		1:55:29
" " WILLIAMS -		1:55:40
" " TERREL		1:56:07
EARLY INTRVW OF ALI BY COSELL		1:56:23
ALI VS FOLLEY		1:56:48
" ON CANVAS		1:57:05
ALI'S MILITARY DISPUTE		1:57:10
ALI O/C RE: ARMY INCIDENT - ("ARMED FORCES INDUCTION")		1:57:33
" VS QUARRY		1:57:38
" " BONAVENA		1:58:13

AND LOGGING FORM

EVENT: REEL #:

PLACE: VTR DATE:

WOS #: AIR DATE:

NOTES	TIME		
		INDIVIDUAL	RUNNING
ALI VS FRAZIER			1:58:59
" KNOCKED DOWN BY FRAZIER'S LEFT			1:59:21
" VS NORTON			2:59:37
ALI VS FRAZIER — 1974			2:0:17
" " FOREMAN			2:0:36
" " FRAZIER-1975-"THRILLER FROM MANILLA"			2:1:00
" " JIMMY YOUNG			2:1:29
" " SPINKS - LAS VEGAS - 1978			2:1:48
COSELL O/C			2:2:05
ALI - O/C INTRVW - (VIDEOTAPED EARLIER TODAY) BY COSELL			2:2:21
LEON SPINKS IN DRESSING ROOM - "READY"			2:4:23
TV ACTOR ROBIN WILLIAMS OF "MORK & MINDY" - NEW FROM ABC SHOW DEBUTS - THURS - SEPT. 21.			2:4:46
FALL TV PROG; - O/C W/GIFFORD - RINGSIDE			
VIEW - FAR SHOT OF RING - SHOWING HUGE CROWD			2:5:40
JOE FRAZIER - IN RING			2:6:55
V/O - COSELL W/COMMENTS OVER VIEW OF CROWD			2:7:30
SPINKS IN DRESS. RM			2:8:25
ALI COMING DOWN AISLE TO RING - "SURROUNDED" BY POLICE & ENTOURAGE			2:8:49
ALI ENTERS RING - CROWD ROARS!			2:12:03
MID B BD - BUDWEISER			2:12:35
COMM #11 - @ BUDWEISER @ TOYOTA			2:12:42
ALI IN RING - WAITING			2:13:42
SPINKS COMING DOWN AISLE TO RING - W/"10-GALLON-HAT" ON!			2:14:05

AND LOGGING FORM

EVENT: _____ REEL #: _____

PLACE: _____ VTR DATE: _____

WOS #: _____ AIR DATE: _____

NOTES	TIME INDIVIDUAL	TIME RUNNING
ALI WARMING-UP IN RING		2:15:22
SPINKS COMING DOWN AISLE		2:16:18
ALI TALKING TO BUNDINI, IN RING		2:17:05
SPINKS STEPS INTO RING		2:17:20
SPINKS IN RING		2:17:50
COMM # 12 - @ ALLSTATE		2:18:03
@ BUDWEISER		
PROMO - LOVE BOAT + FANTASY ISLAND		2:19:03
ARENA - RING VIEW		2:19:22
JOE FRAZIER SINGS "STAR SPANGLED BANNER"		2:19:45
"OVERLAY" OF ALI + SHOT OF SPINKS		2:20:54
FRAZIER LEAVES RING		2:21:39
ALI - (CLOSE-UP)		2:21:55
SPINKS - " "		2:22:00
RING-ANNOUNCER PRESENTS BOUT - (CHAMP CLARK)		2:22:21
ALI IN CORNER		2:23:23
SPINKS " "		2:23:33
CLARK INTROS ALI - (NO EXPRESSION ON FACE)		2:23:49
" " SPINKS - (ALSO SERIOUS)		2:24:23
SPINKS HUGGED BY BROTHER MICHAEL -		2:24:55
ALI AND BUNDINI IN CORNER		2:25:19
SPINKS IN CORNER, KNEELING IN PRAYER		2:25:32
ALI + ANGELO DUNDEE		2:26:31
INSTRUCTIONS TO FIGHTERS	AGAIN	2:26:50
COSELL ANNOUNCES THAT OFFICIALS WERE CHECKING FOR "BROWN BOTTLE AND CONTENTS", IN SPINKS' CORNER.		2:27:35
ROUND I		2:27:48
GOOD LEFT BY ALI		2:29:04
ANOTHER " " " "		2:29:47

EVENT: REEL #:

PLACE: VTR DATE:

WOS #: AIR DATE:

NOTES	TIME INDIVIDUAL	TIME RUNNING
HEAVY MAULING + CLINCHING		2:30:20
COMM #13 - @ MINOLTA XJ7		2:30:48
@ BUDWEISER		
ROUND II		2:31:48
SPINKS MAULING		2:33:29
FIRST COMBO BY ALI		2:33:48
LFT + RT BY ALI		2:34:18
COMM #14 - @ GILLETTE - ATRA		2:34:48
@ MAZDA		
ROUND III - OVERHEAD - IN PROGRESS		2:35:49
ALI LANDS LEFT		2:37:25
END ROUND III		2:38:48
SYLV. STALLONE & FRANK GIFFORD - RINGSIDE - o/c DISCUSSING FIGHT.		2:38:49
ROUND IV		2:39:49
SPINKS RUSHES ALI, PUNCHING - NO DAMAGE		2:41:27
COMM #15 - @ BUDWEISER		2:42:49
@ RCA		
ROUND V		2:43:49
ALI ON ROPES - BUT SCORES W/RT		2:45:20
COMM #16 - @ PONTIAC		2:46:49
@ ATARI		

EVENT: REEL #:

PLACE: VTR DATE:

WOS #: AIR DATE:

NOTES	TIME INDIVIDUAL	TIME RUNNING
ROUND VI		2:47:49
ALI JABS - BACKS AWAY - & CLINCHES		2:49:52
GOOD LEFT TO ALI'S FACE BY SPINKS		2:50:22
COMM # 17 - @ POLAROID		2:50:49
@ BUDWEISER		
ROUND VII		2:51:48
BEAUTIFUL COMBO BY ALI		2:53:57
LARRY HOLMES & GIFFORD o/cw/COMMENTS		2:54:50
ALI -		2:55:39
SPINKS -		2:55:47
ROUND VIII		2:55:49
SPINKS SHAKEN BY ALI RT		2:56:45
ALI LANDS - SCORES 2 GOOD PUNCHES		2:57:43
COMM #18 - @ AMC		2:58:50
@ SONY		
ROUND IX		2:59:48
SPINKS SCORES TWICE IN CLINCH		3:1:00
COMM #19 - @ CITIBANK		3:2:49
@ UNITED AIRLINES		
ROUND X		3:3:49
COSELL SAYS "BROWN BOTTLE" CHECKED AGAIN		3:3:59
ALI SHUFFLE!!		3:4:48
COMBO UPPERCUTS BY ALI		3:6:40

AND LOGGING FORM

EVENT: _____ REEL #: _____

PLACE: _____ VTR DATE: _____

WOS #: _____ AIR DATE: _____

NOTES	TIME INDIVIDUAL	TIME RUNNING
SPINKS IN CORNER		3:6:55
ALI " "		3:7:45
ROUND XI		3:7:49
ALI LANDS GOOD RIGHT		3:8:19
LFT LEAD + " " BY ALI		3:9:40
ALI LFT SCORES		3:10:00
ALI's CORNER		3:10:49
ROUND XII		3:11:49
BEAUTIFUL LEFT BY ALI		3:13:00
NICE LEFT JAB " "		3:14:03
NICE COMBO BY ALI		3:14:22
COMM # 20 - @ BIC		3:14:50
@ ANHEUSER-BUSCH		
ROUND XIII		3:15:49
ALI STILL DANCING!		3:16:20
TWO LEFTS + A RT. BY ALI		3:18:05
BEAUT RT BY ALI		3:18:27
COMM #21 - @ COMTREX		3:18:50
@ AMC		
ROUND XIV		3:19:49
BEAUT. FLURRY BY ALI		3:20:14
NICE RIGHT BY SPINKS TO ALI's HEAD		3:21:18
COMM #22 - @ CANON, "AE-1		3:22:49
@ GILLETTE - "ATRA"		

AND LOGGING FORM

EVENT: REEL #:

PLACE: VTR DATE:

WOS #: AIR DATE:

NOTES	TIME INDIVIDUAL	TIME RUNNING
ROUND XV		3:23:50
ALI STILL DANCING! -- ON TOES!		3:25:53
END ROUND XV!		3:26:53
CROWD POURS INTO RING! - PANDEMONIUM!		3:27:13
RING FILLED WITH POLICE!		3:28:00
ALI WAVING, + TELLING CROWD - "I'M THE GREATEST"! ("3RD TIME!" (HOLDS UP 3 FINGERS!))		3:28:45
ALI COMBING HAIR + CLOWNING!		3:29:15
COSELL IN RING, INTRVWNG ALI (OR TRYING TO)!		3:30:17
RING PACKED WITH PEOPLE! - ASKS ALI WHETHER HE WILL RETIRE - ALI ANSWERS, "I DONT KNOW!"		
OFFICIAL DECISION - ① 10 ALI —		3:32:58
② 11 ALI —		
③ 10 ALI —		
BY UNANIMOUS DECISION — "ALI RECLAIMS + REGAINS CHAMPIONSHIP"!		3:33:43
COMM # 23 - @ PONTIAC		3:34:33
② BAN		
RING - ALI BEING CONGRATULATED BY CROWD IN RING PANDEMONIUM STILL ENSUES!		3:35:32
CLOSING REMARKS - GIFFORD		3:36:38
CLOSING CREDITS		3:36:47
CLOSING - BBD - ANHEUSER-BUSCH		37:31
UNITED AIRLINES PLUG - AUDIO + VIDEO		3:37:41
SEE: PAST FOOTAGE OF ALI - SPEAKING TO CROWD, TRAINING - "HORSING" AROUND WITH COSELL		3:38:00
HOLDING CHILD --		3:39:38

EVENT: _____ REEL #: _____

PLACE: _____ VTR DATE: _____

WOS #: _____ AIR DATE: _____

NOTES	TIME	
	INDIVIDUAL	RUNNING
PROMO - SAT - "NCAA FOOTBALL" & "WWOS"		3:40:02
END OF PROGRAM!		3:40:21

Alex Wallau
President
Operations and Administration

ABC TV Network
500 South Buena Vista Street
Burbank, CA 91521-4778
(818) 460-5500
Fax (818) 460-5660
E-mail: alex.wallau@abc.com

Exhibit 5

STATEMENT

TIME 11:00 P.M. DATE 19 Sept. 1978 PLACE Harvey Police Department

I, _____ HAVING been advised of my rights under the FIFTH AMENDMENT to the CONSTITUTION as to compulsory self incrimination, my right of counsel and my right of trial, and knowing that anything that I say may be used against me in a court of law, and knowing that I do not have to make any statement at all do hereby volunteer the following to Detectives Mc Carthy & Morrison who has identified himself as detectives for the Harvey Police Department.

On 19 Sept. 1978, at approximately 2300 hours, Investigators Mc Carthy and Morrison interviewed the above Dennis Pettis, in regards to the above Homicide that occurred on 15 Sept. 1978. On 19 Sept 1978, Dennis Pettis told Investigators Mc Carthy and Morrison that on 15 Sept. 1978, he was at Earl Jackson's house at 15303 Loomis, where he was watching the Ali fight. Dennis Pettis stated that at the end of the 10th round, he left and walked toward 153rd & Lexington, where Wayne Phillips called to him and said, "Dennis, come here." Right after that, Dennis said he heard a shot. He looked toward the area where the shot came from, and he saw Tony Mc Kinney standing by a car, with a shotgun in his hand. Dennis said the car was parked next to the Temple, under a street light, on 153rd Street. He then said he saw Tony Mc Kinney reach in the car, grab something and run south, thru the alley, next to the Temple, towards 154th Street. ~~XXXXXXXXX~~ Dennis said he and ~~XXXX~~ Wayne ran towards 154th street, on Loomis, and when they got to 154th Street, they saw Tony Mc Kinney come running out of the alley. Dennis said Tony did not have the gun in hishand, at this time. After this, Dennis said he and Wayne went back to his house at 15314 Lexington and stayed there for about 15 minutes, until they saw the squads come to the scene.

Dennis said he then went over by the Temple and saw Tony Mc Kinney standing in the crowd, looking towards the car.

Question: Dennis, what side of the car was Tony standing on, when he shot the man??

Answer: The driver's side.

Question: What was Tony wearing?

Answer: Short black pants and a red tank top. He also had a red and white glove on his ~~XXXXXXXXX~~ left hand.

Question: Did Tony know you saw him shoot the man?

Answer: Yes, because he looked toward us after he shot the man and on Tuesday, 19 September 1978, at about 3:30 or 4:00 P.M., he walked up to me and told me if I told what I saw, he would kill me, too.

I have read the above statement and it is true. + Dennis Pettis

I have read the above statement consisting of one pages and attest that it is a true and accurate account of the events which took place on 15 September 1978. It was given by me freely and voluntarily, without fear of threat or promise of reward.

Witnessed by Det T. Morrison #206 + Dennis Pettis
Signature

Witnessed by _____

Exhibit 6

ILLINOIS STATE POLICE
Division of Forensic Services
Rockford Forensic Science Laboratory
Suite 400 * 200 South Wyman Street
Rockford, Illinois 61101-1235
(815) 987-7419 (Voice) * 1-(800) 255-3323 (TDD)

Rod R. Blagojevich
Governor

Larry G. Trent
Director

May 3, 2006

LABORATORY REPORT

CRIMINALISTICS SECTION
COOK COUNTY SHERIFF'S POLICE
HEADQUARTERS
1401 SOUTH MAYBROOK DRIVE
MAYWOOD IL 60153

Laboratory Case #M78-004449
Agency Case #12108/780631

OFFENSE: Murder
SUSPECT: Anthony McKinney
VICTIM: Donald A. Lundahl

The following evidence was submitted to the Rockford Forensic Science Laboratory by Registered Mail on May 1, 2006:

EXHIBIT	ITEM SUBMITTED
1A	Sealed envelope
1B1	Sealed envelope
1B2	Sealed envelope
6	Sealed envelope
6A	One lift
6B	One lift
6C	One lift
6D	One lift
6E	One lift
6F	One lift

EXAMINATION AND RESULTS:
An AFIS evaluation of Exhibits #6A, #6B, #6D, #6E and #6F revealed no latent impressions suitable for AFIS processing.

Examination of Exhibit #6C revealed no latent impressions suitable for comparison.

REMARKS:
Further examination has been deferred. Any additional inquiries pertaining to this case should be directed to this laboratory. The evidence will be returned at the Westchester Forensic Science Laboratory.

The above results relate only to the items tested.

Respectfully submitted,

M. Leanne Gray
Forensic Scientist

cc: Westchester Forensic Science Laboratory
ASA Andy Dalkin-COOK COUNTY STATE'S ATTORNEY CRIM COURT

Exhibit 7

Drome, as well as Therapist Copeland and Babcher, B-A-B-C-H-E-R, relating to some problems in 1977.

I have also noted the reports of the Circuit Court Psychiatric Institute in 1978 and the reports of the Prison Health Services of 1980 and '81.

Proceed, Mr. Broussard.

MR. BROUSSARD: Judge, and also under 9-1B I have a statement to make with regard to evidence.

THE COURT: 9-1B?

MR. BROUSSARD: B.

THE COURT: Yes.

MR. BROUSSARD: Essentially, Your Honor, the statement is not technically mitigating, but I think it will contain factors which Your Honor can take into account in considering this issue. I don't mean to relitigate the issues.

The jury has decided the issues on what evidence it heard, but I think Your Honor should be apprised of the situation.

Essentially, Anthony Mc Kinney's Defense in the case was he did not commit the acts and any piece of paper he signed was because of physical coercion and he signed it under duress.

Your Honor heard his testimony on the Motion

to Suppress the Confession and you also heard his testimony at trial about what happened to him on that date.

However, what Your Honor did not hear was items which could not in this form be brought to your attention in a proper way. Certain items of investigation revealed that Dennis Pettis was interviewed by an Investigator, who had been employed by Mr. Stanley Strezlecki, who had represented Anthony Mc Kinney on an earlier date.

The Investigator had a statement from Dennis Pettis wherein Dennis Pettis told him he was beat by the Police and made to implicate Anthony Mc Kinney as the murderer in this case.

I only bring that to Your Honor's attention, because I received what I believed some corroborating information as to that fact during my investigation. I made numerous attempts to locate Dennis Pettis, but he was reluctant to appear in Court; reluctant to make him amenable to subpoena power. I was aided in this by his mother, Mrs. Pettis, who was fairly obstinate in not wanting her son to participate in these proceedings. I don't know the root motive behind her obstinacy but it is evident she had some fear.

Another member, Sharon Pettis was equally as obstinate in not indicating the whereabouts of her brother, but did indicate there was some fear because Dennis had been beat. One member of the family, Gwen Pettis, did stand up and agree to testify and I presented her testimony through a sworn Offer of Proof and she said essentially her brother had been missing and she and her sister went looking for her brother and her brother was located walking down the street near their home with a Wayne Phillips who testified in this case.

Wayne Phillips and Dennis Pettis both indicated to Gwen Pettis and her sister, Sharon Pettis, that they had been beat by the Police and compelled to implicate Anthony Mc Kinney. I don't know the motivation behind why the Police - - why the Police selected Anthony Mc Kinney. I have a theory, but I don't have any basis in fact behind the motivation and I will tell Your Honor my theory in a moment.

I think it is a naive Defense Lawyer who always accepts his client's representation at face value without first finding some hard and fast evidence of some type, corroboration, for his client's position. That's not to say Defense Lawyers suborn perjury or

look the other way.

It is just I think we always view not only the Prosecutorial evidence with skepticism but proposed Defense evidence with skepticism to maintain objectivity and to keep in touch with reality and ethical consideration that goes with defending a criminal Defendant.

Many, many clients will tell about being coerced by Police, but I think in this case here there was independent corroboration of what had happened in terms of Police tactics used in this case when representation of fear by the community in terms of the type of tactics the Police use in the community. I think Your Honor should keep that in mind that the fear in the community is real and not always in response to what conduct they may exhibit.

I know that realistically the Police have a very difficult job on the street and sometimes it is necessary to use pragmatic tactics to enforce the law that could not be continenced in the law.

They have a very largely hostile job and there is a line the Police cross and I think they crossed it in this case.

During my investigation I had to locate a Mrs. Lena Sasco. She testified in Court and I think

her testimony is truthful and her representations were truthful. I located her after the State had rested their case. There were some items she told me and there was a very small detail that nobody except -- nobody on the Defense side, not the brother, Michael Mc Kinney or Anthony Mc Kinney. Nobody could know the significance of this little fact. She told me Anthony was being chased by these people and she had some confusion, she could tell the brothers apart but got the names confused. Mrs. Sasco was also present and I discovered some of her children knew the difference between them. One of her daughters went to school with Michael. One thing she heard was when the boys chased Anthony they said he had stolen a driving glove from the car of one of them. A red and white driving glove. That's why they chased him. They chased Anthony over the fence and under the wing of Coleman Mc Carthy and Coleman Mc Carthy was the one who directed Anthony be put in the car and he was taken to the Police Station under protective custody and kept overnight and released the next afternoon.

Anthony Mc Kinney was joined in the Police Station by his brother Michael who was out looking for Anthony Mc Kinney.

The significance about that thing about the glove is this: in the initial report on the description that Wayne Phillips gave to Coleman Mc Carthy which is a black and white statement that is typed out that Wayne Phillips signed, the description he gave is that Anthony Mc Kinney had this red and white driving glove on and that was really one of the keys that turned it in my mind and that removed skepticism in my mind, but if some people said Anthony stole the glove how could he steal a glove from the people that supposedly he was wearing before the murder and at the time of the murder when it was clear from this innocuous fact he didn't have the glove if he stole it. That's one of the things that stuck out in my mind that indicated that somebody was not being completely frank with the Court.

The other thing in the statement of Wayne Phillips, it was signed by Wayne Phillips. It was a typed statement. The statement Dennis Pettis gave was also typed and signed by him, but at one point there was another form where Dennis Pettis was told to write down what he saw in his own handwriting and he wrote down about this occurrence except for one thing. He didn't mention Anthony Mc Kinney's name anyplace in the

statement when he wrote it in his own handwriting and the writing was of such a nature there was no reason for him not to be able to write down in his own handwriting I saw Anthony Mc Kinney shoot the guard. It was not the writing and language of an idiot or an illiterate. I think it was in there because when Dennis wrote it it was not the truth and it had to be fabricated for him.

I think it is a miscarriage of justice. The Police wanted to solve this crime. They may have been led to believe Anthony was the perpetrator and therefore any tactic they used to putting together the case was justified, but I think the dictates of justice and repressive - - are the dictates are reprehensible to our way of justice.

The overwhelming Police take pride in the fact when they put a case together. The victories they realize are hard won. Police work, investigation work is not an easy job. It is a very difficult job and that's why we need men who are professional and whose integrity is without question and it is with a great deal of reluctance that I bring any Police Officer's integrity and truthfulness in question, but I think I must bring the integrity of the Police Officers in this

case because of these facts.

The other things that have happened and as of yet is not developed, but I have received information another person named Anthony Drake is the person who shot Donald Lundahl and I will tell Your Honor the contents or the way I received that information.

THE COURT: Just a minute. Sheriff, we won't recess.

(Thereupon the Judge left the bench.)

THE COURT: Thank you. Please proceed.

MR. BROUSSARD: The information was that Anthony Drakes was the person who actually committed this murder. The information came at somewhat the eleventh hour, pretty close to the twelfth hour and it came from Michael Mc Kinney, who is the Defendant's brother, who told me that around Thanksgiving he was at a lounge in the Markham area, I believe it was, and that Anthony Drakes had made an admission to him that he shot the man. Another young lady who was here with Michael said she was also present and I talked to her outside of Michael Mc Kinney's presence and she said there were a couple of other people who came to the trial who were friends of Anthony or Michael's but not relatives who

claimed they were present when Anthony Drake made this statement.

Essentially, the statement that exists is that there is a person named Robert Mc Gruder, another person whose last name was Anderson and a fourth person whose name is unknown at this time approached the man, robbed the man and Anthony Drakes had taken Mr. Lundahl's money and as he was getting ready to leave or fleeing, I am not sure of the exact distance of that scenario he turned around and shot Mr. Lundahl after the money was taken.

That was essentially the statement and I divulged that information to the Court before and I divulged it to the State's Attorney under a reservation of not giving that information developed to the point either satisfactory to the State's Attorney to nolle this case or develop some case to Anthony Drake.

When I divulged that matter to the State's Attorney that name was known to them as one of the local hoodlums in the area. I have never heard of the name, but he is some person of ill repute.

Anthony Drakes is allegedly now in custody on a burglary charge and I will assume he is represented by Counsel. Therefore, the propriety of an

interview with him or developing an investigation surrounding him while he is represented by a Lawyer and the practicality of that is doubtful at this time.

There was some other information that came to my attention last Friday and this is somewhat of a coincidence. Michael Mc Kinney told me he initially heard about this type of thing on the street and the rumor in the community from Mrs. Sasco and other people who know nothing about the details in this case that all are fairly steadfast in saying that Mr. - - that Anthony Mc Kinney didn't murder this man.

The rumor in the community - - there was also some information that a Police Officer, and I don't know who the Police Officer is, a year or so ago, or at least a year or so ago, made some remarks in this Courtroom and I was not present, that the Police even knew Anthony Mc Kinney did not commit the murder, but it was their suspicion that Michael Mc Kinney was the murderer.

Last Friday when we were commencing these proceedings it came to my attention a young man appeared before Your Honor, had some information about this case and that was a gentleman named Pittman. I tried to talk to Mr. Pittman about this and his Lawyer

Michael Logan allowed me to talk about it. Mr. Pittman was very equivocal and reluctant, but he said he knew definitely Anthony Mc Kinney didn't do it, but wouldn't give me the solution. His attitude was what was done was done. Mr. Pittman is the one who first divulged the information Mr. Drakes and his cohorts committed the murder and I tried to pump Mr. Pittman as to how he acquired the knowledge and he said Anthony Drakes made an admission to him. He did not divulge the information. He said he knew who did it and that was fairly accurate. That he was glad when I led him into it, did these people do it. That's what he would say, but I don't know. He couched the facts in equivocal terms to avoid attribution, but it was clear to me he knew and had some substantial basis and knowledge and also, apparently, Tony, he and Michael Mc Kinney did not have any affinity or there would be a reason or bias for him to be in Anthony Mc Kinney's favor and I think that is one of the things Your Honor has to be aware of.

The people have divulged this information up front and relatives of Anthony Mc Kinney, but I have also received information from other parties who have no affinity, but who are reluctant to come to Court and

tell the Court or State's Attorney this or they know who did it and have a reasonable belief and knowledge he did it.

I bring these other facts to Your Honor's attention, because I know that Courts and juries are supposed to be omniscient and talk about facts and what the evidence shows as though the decision we are forced to make are true, ultimately true in the sense - - not a cosmic sense that is an emulatable proof, but what I am saying is somewhat relative; relative, what do we know and relative, what we can consider and I would like Your Honor to relatively take into account, take some of these other facts I have told Your Honor as to be bearing upon what the disposition of this case should be.

It is my hope this information can be developed to a point that ultimately can result in the truth coming out that Anthony Mc Kinney was not the perpetrator of this offense.

Be as it may, Your Honor is faced with the fact Anthony has been convicted of murder;

The fact Anthony was convicted of armed robbery and the fact you have to do something about that today. That is a harsh fact for Anthony to face,

but it is one that he nevertheless has to face, but I thought it was important to apprise Your Honor of these other factors that have some bearing on the case.

THE COURT: Have you anything further in mitigation?

MR. BROUSSARD: No, Your Honor.

MR. O'DONNELL: Judge, I don't know if there is an appropriate response; if I should make a response to that or not.

THE COURT: Well, at this point it would be incumbent on me, I suggest, to indicate whether or not there are any mitigating factors so as to preclude or suggest other than the death penalty.

The Court has considered, of course, first of all, the aggravating factors provided in 9-1-B6.

The Court has considered the factors in aggravation and mitigation under 9-1-B and C. Particularly, under 9-1C together with any relevant information and, of course, such information as a requirement that while it is not subject to rules of evidence it should be reliable, so I have considered also the reliable information.

As well as the reports by reliable

Exhibit 8

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. C R N	4. PAGE
HOMICIDE	25 Sep 78	8193-78	1

VICTIM: LUNDAHL, Donald Alan, 14825 Morgan & 155th & Center, DOB 10 Oct 24, age 54, M/W, 6', 185 lbs., brn. hair, blue eyes, s/s 350-16-6935, Security Officer for Graham Security

IN CUSTODY: MC KINNEY, Anthony, 15147 Loomis, s/s 331-54-3317, 331-60-1020 333-54-3317 and 331-54-3316 and 338-69-7208 and 331-67-0256

ARR. OFCR: Dets. Morrison and Mc Carthy

DATE TIME ARR: 20 Sep 78, 1230 A.M.

CHARGES COURT: Armed Robbery, Murder; Court, 15320 Broadway, Branch 55

INJURIES: The victim received a shotgun wound to the left side of the head

TAKEN TO: Ingalls Memorial Hospital, 155 & Wood St., Harvey

WEAPON: Shotgun

LOCATION: South side of 153rd St., btw. Loomis and Lexington

DATE TIME OCC: 15 Sep 78, believed to be between 9:30 and 9:45 P.M.

WEATHER LTNG: Average, artificial/excellent

MANNER MOTIVE: Subject shot and killed the victim in an Armed Robbery/monetary

IDENTIFIED BY: The victim was identified by his employer, Richard Graham at the Cook County Morgue

EVIDENCE: Verbal and written statements given by the defendant, Anthony Mc Kinney; Signed statement given by Wayne Phillips, witness, signed statement given by Dennis Pettis, witness, signed statement given by James Miller

STATEMENTS: Written statement given by James Miller; signed statement given by Wayne Phillips, witness; signed statement given by Dennis Pettis, witness; signed statement given by Anthony Mc Kinney, defendant; verbal statement given by Anthony McKinney, defendant

INTERVIEWED: Ofcr. D. Neil; neighbors in the vicinity of the stooting; employer of victim, Richard Graham; Security Officer for Graham Security, J. Pleczykowski; Dorothy Lavin; Michael McKinney; Anthony McKinney; Wayne Phillips; Dennis Pettis; James Miller; field contacts

INVESTIGATION: On 15 Sep 78, at 10:10 P.M., R/Is were called to the scene of a Homicide, at 153rd & Lexington. Upon arrival, R/I observed a middle aged, M/W, identified as Donald Lundahl, lying across the front seat of his vehicle, on his back, with his head facing to the south, on the passenger side, and his feet facing to the north, on the driver's side.

The victim had a large wound below the left ear, which appeared to be caus ed by a shotgun.

CRI

6. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
Det. T. Morrison	200			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
HOMICIDE	25 Sep 78	8198-78	2

INVESTIGATION: The right passenger's door and window, were covered with what appeared to be blood, and what appeared to be flesh and brain tissue.

The vehicle, which the victim was in, was a '72 Ford, 4 door, bearing Ill. '78 plates, YG2754. The vehicle was parked on the south side of 153rd Street, between Lexington and Loomis, facing east, directly below a street light.

Ofcr. Neil, who received the original call at 2203 hours, stated that when he arrived on the scene, he spoke with the complainant, J. Pieczykowski, who stated, while he was on patrol, for Graham Security, he had checked on the Graham Guard, at 153 & Lexington, who was guarding the Masonic Temple and that he had found him slumped against the passenger side door, of his vehicle, and summoned Police.

Ofcr. Neil stated, upon his arrival, he examined the victim, and noticed that the left side of his head had sustained a gunshot wound.

Rescue 8 was called, and D. Sisk and F. Hauenschild, from the Harvey Fire Department, arrived on the scene, and stated that there were no vital signs. After this, Ofcr. Neil stated he called for the Detectives and his Shift Supervisor, Sgt. Morris, notified the Medical Examiner's office.

Ofcr. Neil stated he then spoke with residents in the area, with negative results. One resident of 15315 Lexington, Ms. Myrtle,Dernacher, did however, state, she heard some type of a scream, between 2145 and 2200 hours.

The Superintendant of Graham Security, Mr. Scully, stated that he had talked to the victim, at 2010 hours, and that everything appeared to be normal, at this time.

Evidence Technicians, Daniel Leikus and Chuck Pearson, along with other County ETs, examined the scrime scene, fingerprinted the vehicle, the victim was in, retrieved personal papers, of the victim, which were found on the front seat and took photographs, of the scene.

Medical Examiner, Wallace, arrived on the scene at 2355 hours, and advised, after the body was pronounced dead at Ingalls' Memorial Hospital, the body should be transported to the Cook County Morgue.

Dr. Smedley of Ingalls Memorial Hospital, pronounced the victim, Donald Lundahl, dead on arrival, at 0038 hours, 26 Sep 78. After this, the body was transported to Cook County Morgue by D. Moore, from the Harvey Fire Department.

The victim's vehicle was towed to the Harvey Police Department, where it was processed, more thoroughly by the County Evidence Technicians.

CRN 8198-78

5. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
Det. T. Morrison	206			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. C R N	4. PAGE
OMICIDE	25 Sep 78	8198-78	3

VESTIGATION:

While canvassing the area for possible evidence or for a possible eyewitness, R/Is spoke with a Mrs. Lena Sasco, 15329 Loomis. Mrs. Sasco stated that sometime prior to 10:00 P.M. she saw Michael McKinney running down the street and he stopped and said to her, "Did you hear about the guy who was blown away, down the street?"

When Mrs. Sasco stated "What do you mean, blown away?" he said, "His head was blown off."

Mrs. Sasco said she asked Michael McKinney how did he know that and he said, "Never mind," then left the area.

After this, R/Is had returned to the scene, of the shooting and Michael McKinney and his brother, Anthony McKinney, were seen standing in the front of the crowd of people, which had been drawn to the area, because of the incident. Both subjects were placed in custody, for investigation, and transported to the Harvey Police station.

At the station, Anthony and Michael were both individually advised of their Rights under Miranda, after being advised of these Rights, each subject was asked if he understood these Rights. Both stated yes, they did. Then asked "Understanding these Rights, do you wish to waive them?" They stated yes, they did, they had nothing to hide.

R/I asked Michael McKinney how he knew that the person, in the vehicle had been shot and why he was running down the street, at about the same time the incident had occurred. Michael McKinney replied that he had been at the scene, whenthe Police arrived and they observed that the man was bleeding from the head.

Anthony McKinney stated he was drawn to the scene, by all the police cars and just wondered what was going on.

After the interview was concluded, both subject were released, without charge.

R/Is continued the investigation, by interviewing numerous people, in the area of 153rd & Lexington.

On 19 Sep 78, approximately 1100 P.M., R/I received a call, from a female, who wished to remain anonymous, who stated that she had knowledge about the shooting and that she knew that a subject named Anthony McKinney had shot the man. She also stated she knew who a witness was to the incident, but at this time, did not want to give his name, because he was afraid to tell Police waht he had seen.

She stated she would contact R/I, at a later time, and advise him of what other information that she could get.

At approximately 10:30 on 19 Sep 78, two witnesses came

CONTINUED

5. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	9. REPORT REVIEWED BY:
Det. T. Morrison	706			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
HOMICIDE	25 Sep 78	8198-78	4

INVESTIGATION: forward and stated they had seen the shooting of the man and wished to tell Police everything they knew about it.

The first subject's name is Wayne Phillips. Wayne Phillips lives at 228 E. 150th Street and is 18 years of age. During the interview, Mr. Phillips told R/Is that on 15 Sep 78, he was at hisdbrother's house, watching the Ali-Spinks fight. He said that around the 10th round of the fight, his brother had asked him to go to the store for him, so he left his brother's home and walked towards the corner of 153rd & Loomis.

He stated that when he got to the northwest corner of the intersection of 153rd & Loomis, he walked across the street, to the east side of the street, where he saw Dennis Pettis standing, who is a friend of his.

At this point, he stated he also saw Tony Mc Kinney standing in the street, next to a brown car. He said he saw the window of the car was open and that Tony McKinney had a shotgun, partially inside the window of the car. The next thing he knew, he heard Tony McKinney say in a loud voice, "Your money or your life."

Wayne stated the next thing he heard was Tony McKinney say, "Well then, you are just going to have to die."

At this point, Wayne Phillips said he observed and heard Tony McKinney shoot the man. When R/I asked Wayne Phillips what Tony McKinney did after he shot the man and she said that he observed Tony McKinney lean into the car and take the man's wallet from him.

The next thing he knew, Tony McKinney turned around, pointed the gun at him and ran southbound, in the alley, between Lexington and Loomis.

Wayne stated, at this point, he and Dennis Pettis ran southbound on Loomis to 154th street. When they got to 154th Street, Wayne said that he saw Tony McKinney, coming out of the alley, and he no longer had the gun in his hand. Wayne observed Tony go eastbound on 154th Street, and then northbound on Lexington.

R/Is asked Wayne what he did after this and he stated that he and Dennis went back to where the man was shot and saw Tony McKinney standing there, in the crowd of people, looking at the man who had been shot.

Wayne Phillips said that on 19 Sep 78, at approximately 4:00 P.M., he was at Dennis Pettis' house, at 15314 Lexington, in the back yard, when Tony McKinney walked into the yard and said, "If you want your life, keep your mouth shut."

This statement was typed for Wayne Phillips, read by Wayne Phillips, and signed by Wayne Phillips. This was witnessed by Dets. Mc Carthy and Morrison, at 11:00 P.M., on 19 Sep 78, in the Harvey Police Department.

CRN 8198-78

5. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
Det. T. Morrison	200			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
HOMICIDE	25 Sep 78	6198-78	5

INVESTIGATION: The second witness, Dennis Pettis, lives at 15314 Lexington, and is 15 years of age. Dennis Pettis related the following to R/Is.

He said that on 15 Sep 78, he was at Earl Jackson's house, 15303 Loomis and he was watching the Ali fight. Dennis Pettis said that, at the end of the 10th round, he had left and walked towards 153rd & Lexington, where he saw Wayne Phillips, who called to him and said, "Dennis, come here."

Right after that, Dennis said he heard a shot, and he looked towards the area, where the shot came from and saw Tony McKinney standing by a car, with a shotgun in his hands.

Dennis said the car was parked next to the Temple, referring to the Masonic Temple, under a street light, on 153rd Street. Dennis said he then saw Tony McKinney reach into the car and grab something and run south, thru the alley, between Lexington and Loomis.

The next thing that Dennis said that he did was run towards 154th Street, with Wayne Phillips. Dennis said that when they got to 154th Street, he saw Tony McKinney come running out of the alley, but that he no longer had the shotgun in his hand.

After this, Dennis said that he and Wayne went back to his house, at 15314 Lexington, and stayed there for about 15 minutes, until they saw the squads come to the scene.

Dennis said that they then went over to the Temple and he saw Tony McKinney standing in the crowd, looking towards the car.

R/Is asked Dennis what side of the car Tony McKinney was standing on, when he shot the man, and he replied the driver's side. He was also asked what Tony was wearing. He stated that he was wearing short black pants and a red tank top shirt. Dennis also remembered Tony McKinney wearing a red and white glove on his left hand.

R/Is also asked Dennis Pettis if the thought Tony knew that he had seen him shoot the man. Dennis replied, "Yes, because he looked towards us, after he shot the man, and on Tuesday, 19 Sep 78, at about 3:30 or 4:00 P.M., Tony waled up to me and told me if I told what I saw, he would kill me too."

This statement was type written for Dennis Pettis, read by Dennis Pettis and signed by Dennis Pettis. R/Is, Mc Carthy and Morrison witnessed the statement, which was given on 19 Sep 78, at approximately 2300 hours.

On 19 Sep 78, at 12:30 A.M., Dets. Joseph and Jones took a written statement from James Miller, who said that he also knew Tony McKinney and that on 14 Sep 78, at about 12:45 P.M., he was at Tony McKinney's house and saw a sawed off shotgun, standing against the wall, in the corner, of Tony's bedroom.

CRN 6198-78

6. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY
Det. T. Morrison	206			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
HOMICIDE	25 Sep 78	0198-78	6

INVESTIGATION:

This written statement was signed by James Miller and witnessed by Dets. F. Joseph and J. Jones, at approximately 12:30, on 19 Sep 78.

With this information, R/Is contacted ASA Cliff Johnson, who authorized Felony Complaints against Anthony McKinney for Murder and Armed Robbery.

Judge Sullivan signed the Arrest Warrant and set no Bail.

At 12:30 A.M., on 20 Sep 78, Dets. Morrison and Mc Carthy arrested Anthony McKinney, standing on the corner of 153rd and Lexington.

Anthony McKinney was advised of his Rights, under Miranda, and placed in the squad car, and transported to the Harvey Police Station. At the Harvey Police station, Anthony McKinney was again advised of his Rights, under Miranda, and asked if he understood these Rights. He stated, "Yes, I do."

Anthony McKinney was then given a Constitutional Rights of Person in Custody form to read and fill out. Anthony McKinney was read the Constitutional Rights of Person in Custody from, by R/I, and then he read the form himself, and answered each question, signing the same. This was witnessed by Dets. Morrison and Mc Carthy, on 20 Sep 78, at 1:30 A.M.

During the interview, Anthony McKinney was again told he was under Arrest for the Armed Robbery and Murder of Donald Lundahl. Anthony McKinney said that he didn't know why he was arrested, that he had nothing to do with the killing, of the man.

R/I asked asked Anthony McKinney what he was doing in the area of the shooting, on the night he said that he had just come from a party at 154th Street, and that he saw all the squads and wondered what was going on, so he came over to look.

Anthony McKinney then asked for something to drink, so he was given a Pepsi by R/I.

After Anthony McKinney finished the Pepsi, R/Is started the interview again. Anthony McKinney still denied any knowledge of the shooting, until he was confronted with the fact that witnesses had seen him shoot and rob the man.

After being advised of this, he stated, "Ok, I'm going to tell you the truth about what happened.

Anthony said he was walking from his house, to go up to a party on 154th street, and he walked thru the alley, from his house, between Lexington and Loomis and when he got to the end of the alley, at 153rd Street, between Lexington and Loomis, he saw a Security Guard, sitting in his car, on the side of the Masonic Temple.

CRN 0198-78

6. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
Det. T. Morrison	206			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. C R N	4. PAGE
HOMICIDE	25 Sep 78	#198-78	7

INVESTIGATION:

Anthony McKinney said that he walked up to him and told him that it was going to be his money or his life. Anthony said when the man refused to give him his wallet, the next thing he know, the gun went off, and that he had shot the man, in the head.

Anthony McKinney said then he then reached in and took the man's wallet out of his pocket and started going through it. He then took off running with it, through the alley, towards 154th Street.

When Tony was asked what he did with the gun and the wallet, he said he threw them in the bushes, in a vacant lot, in the alley between Lexington and Loomis, and then, after that, he ran towards 154th Street, then went back down Lexington and came back to where the man was shot.

Anthony McKinney further stated that the next day, he went back to look for the gun, but couldn't find it.

This statement was typed for Anthony McKinney, read by Anthony McKinney and signed by Anthony McKinney. This statement was witnessed by Dets. Morrison and Mc Carthy, at 2:00 A.M., on 20 Sep 78.

After Anthony McKinney had signed the statement that he had given, he was agina asked to go over what he had told R/Is. Everything he said was the same, as in the original statement, except that he had remembered, that before throwing the wallet, he took three one dollar bills, out of it.

Anthony McKinney was placed in the Lock-up and R/Is went back to the scene and attempted to locate the weapon, with negative results.

On 20 Sep 78, R/Is transported Dennis Pettis and Wayne Phillips to 26th & California, where they spoke with ASA Loretta Hardimann. After speaking with ASA Hardimann, the two eyewitnesses testified before the Grand Jury and a True Bill was returned, indicting Anthony McKinney for Murder (Felony) and Armed Robbery and UUW.

On 21 Sep 78, Anthony McKinney was taken before Judge Samuels for arraignment, but due to the fact that Anthony McKinney's Private Attorney did not appear, the case was continued to the 22 Sep 78, when his Private Attorney failed to appear, again, so Public Defender, Pavlic, was appointed and Anthony McKinney was arraigned.

The case is now set for 29 Sep 78.

Case closed by Arrest.

CRN #198-78

6. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
Det. T. Morrison	206			

HARVEY POLICE CONTINUATION REPORT

2. DATE	3. C.R.N.	4. PAGE
30 Jun 80	8198-78	2

R/I appeared in room 105, Markham Court, on the charges against the defendant, Anthony Mc Kinney, charged with Murder and Armed Robbery, of the victim, Donald Lundahl.

Case continued to 24 Jul 80, room 105.

Case continued.

STAR NO.	7. APPROVING SUPERVISOR	STAR NO.	8. REPORT REVIEWED BY:
Mc Carthy 203			

CRN 8198-78

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. C.R.N	4. PAGE
HOMICIDE	25 Sep 78	6198-78	1

VICTIM: LUNDAHL, Donald Alan, 14825 Morgan & 155th & Center, DOB 12 Oct 23, age 54, M/W, 6', 185 lbs., brn. hair, blue eyes, s/s 353-11-0936, Security Officer for Graham Security

IN CUSTODY: MC KINNEY, Anthony, 15147 Loomis, s/s 331-54-3317, 331-60-2970, 333-54-3317 and 331-54-3316 and 338-69-7208 and 331-62-0038

ARR. OFCR: Dets. Morrison and Mc Carthy

DATE TIME ARR: 20 Sep 78, 1230 A.M.

CHARGES COURT: Armed Robbery, Murder; Court, 15320 Broadway, Branch 55

INJURIES: The victim received a shotgun wound to the left side of the head

TAKEN TO: Ingalls Memorial Hospital, 155 & Wood St., Harvey

WEAPON: Shotgun

LOCATION: South side of 153rd St., btw. Loomis and Lexington

DATE TIME OCC: 15 Sep 78, believed to be between 9:30 and 9:45 P.M.

WEATHER LTNG: Average, artificial/excellent

MANNER MOTIVE: Subject shot and killed the victim in an Armed Robbery/monetary ga

IDENTIFIED BY: The victim was identified by his employer, Richard Graham at the Cook County Morgue

EVIDENCE: Verbal and written statements given by the defendant, Anthony Mc Kinney; Signed statement given by Wayne Phillips, witness, signed statement given by Dennis Pettis, witness, signed statement given by James Miller

STATEMENTS: Written statement given by James Miller; signed statement given by Wayne Phillips, witness; signed statement given by Dennis Pettis, witness; signed statement given by Anthony Mc Kinney, defendant; verbal statement given by Anthony McKinney, defendant

INTERVIEWED: Ofcr. D. Neil; neighbors in the vicinity of the shooting; employer of victim, Richard Graham, Security Officer for Graham Security, J. Pieczykawski; Dorothy Layln; Michael McKinney; Anthony McKinney; Wayne Phillips; Dennis Pettis; James Miller; field contacts

INVESTIGATION: On 15 Sep 78, at 10:10 P.M., R/Is were called to the scene of a Homicide, at 153rd & Lexington. Upon arrival, R/I observed a middle aged, M/W, identified as Donald Lundahl, lying across the front seat of his vehicle, on his back, with his head facing to the south, on the passenger side, and his feet facing to the north, on the driver's side.

The victim had a large wound below the left ear, which appeared to be caused by a shotgun.

CRI

6. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
Det. T. Morrison	206			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
HOMICIDE	25 Sep 78	8198-78	2

INVESTIGATION: The right passenger's door and window, were covered with what appeared to be blood, and what appeared to be flesh and brain tissue.

The vehicle, which the victim was in, was a '72 Ford, 4 door, bearing Ill. '78 plates, YG2754. The vehicle was parked on the south side of 153rd Street, between Lexington and Loomis, facing east, directly below a street light.

Ofcr. Neil, who received the original call at 2203 hours, stated that when he arrived on the scene, he spoke with the complainant, J. Pieczykowski, who stated, while he was on patrol, for Graham Security, he had checked on the Graham Guard, at 153 & Lexington, who was guarding the Masonic Temple and that he had found him slumped against the passenger side door, of his vehicle, and summoned Police.

Ofcr. Neil stated, upon his arrival, he examined the victim, and noticed that the left side of his head had sustained a gaping wound.

Rescue 8 was called, and D. Sisk and F. Hauenschild, from the Harvey Fire Department, arrived on the scene, and stated that there were no vital signs. After this, Ofcr. Neil stated he called for the Detectives and his Shift Supervisor, Sgt. Morris, notified the Medical Examiner's office.

Ofcr. Neil stated he then spoke with residents in the area, with negative results. One resident of 15315 Lexington, Ms. Myrtle,Dernacher, did however, state, she heard some type of a scream, between 2145 and 2200 hours.

The Superintendant of Graham Security, Mr. Scully, stated that he had talked to the victim, at 2010 hours, and that everything appeared to be normal, at this time.

Evidence Technicians, Daniel Zeikus and Chuck Pearson, along with other County ETs, examined the scrime scene, fingerprinted the vehicle, the victim was in, retrieved personal papers, of the victim, which were found on the front seat and took photographs, of the scene.

Medical Examiner, Wallace, arrived on the scene at 2354 hours, and advised, after the body was pronounced dead at Ingalls Memorial Hospital, the body should be transported to the Cook County Morgue.

Dr. Smedley of Ingalls Memorial Hospital, pronounced the victim, Donald Landahl, dead on arrival, at 0038 hours, 16 Sep. 78, After this, the body was transported to Cook County Morgue by D. Moore, from the Harvey Fire Department.

The victim's vehicle was towed to the Harvey Police Department, where it was processed, more thoroughly by the County Evidence Technicians.

CRN 8198-78

5. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	9. REPORT REVIEWED BY:
Det. T. Morrison	206			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
HOMICIDE	25 Sep 78	8198-78	3

INVESTIGATION:

While canvassing the area for possible evidence or for a possible eyewitness, R/Is spoke with a Mrs. Lena Sasco, 15129 Loomis. Mrs. Sasco stated that sometime prior to 10:00 P.M. she saw Michael McKinney running down the street and he stopped and said to her, "Did you hear about the guy who was blown away down the street?"

When Mrs. Sasco stated "What do you mean, blown away?" he said, "His head was blown off."

Mrs. Sasco said she asked Michael McKinney how did he know that and he said, "Never mind." then left the area.

After this, R/Is had returned to the scene, of the shooting and Michael McKinney and his brother, Anthony McKinney, were seen standing in the front of the crowd of people, which had been drawn to the area, because of the incident. Both subjects were placed in custody, for investigation, and transported to the Harvey Police station.

At the station, Anthony and Michael were both individually advised of their Rights under Miranda, after being advised of these Rights, each subject was asked if he understood these Rights. Both stated yes, they did. Then asked "Understanding these Rights, do you wish to waive them?" They stated yes, they did, they had nothing to hide.

R/I asked Michael McKinney how he knew that the person, in the vehicle had been shot and why he was running down the street, at about the same time the incident had occurred. Michael McKinney replied that he had been at the scene, whenthe Police arrived and they observed that the man was bleeding from the head.

Anthony McKinney stated he was drawn to the scene, by all the police cars and just wondered what was going on.

After the interview was concluded, both subject were released, without charge.

R/Is continued the investigation, by interviewing numerous people, in the area of 155rd & Lexington.

On 19 Sep 78, approximately 8:00 P.M., R/I received a call from a female, who wished to remain anonymous, who stated that she had knowledge about the shooting and that she knew that a subject named Anthony McKinney had shot the man. She also stated she knew who a witness was to the incident, but at this time, did not want to give his name, because he was afraid to tell Police waht he had seen.

She stated she would contact R/I, at a later time, and advise him of what other information that she could get.

At approximately 10:30 on 19 Sep 78, two witnesses came

CRN 8198-78

REPORTING OFFICER	STAR NO	APPROVING SUPERVISOR	STAR NO	REPORT REVIEWED BY:
Det. T. Morrison	166			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
HOMICIDE	25 Sep 78	8198-78	4

INVESTIGATION: forward and stated they had seen the shooting of the man and wished to tell Police everything they knew about it.

The first subject's name is Wayne Phillips. Wayne Phillips lives at 228 E. 150th Street and is 18 years of age. During the interview, Mr. Phillips told R/Is that on 15 Sep 78, he was at hisdbrother's house, watching the Ali-Spinks fight. He said that around the 10th round of the fight, his brother had asked him to go to the store for him, so he left his brother's home and walked towards the corner of 153rd & Loomis.

He stated that when he got to the northwest corner of the intersection of 153rd & Loomis, he walked across the street, to the east side of the street, where he saw Dennis Pettis standing, who is a friend of his.

At this point, he stated he also saw Tony Mc Kinney standing in the street, next to a brown car. He said he saw the window of the car was open and that Tony McKinney had a shotgun, partially inside the window of the car. The next thing he knew, he heard Tony McKinney say in a loud voice, "Your money or your life."

Wayne stated the next thing he heard was Tony McKinney say, "Well then, you are just going to have to die."

At this point, Wayne Phillips said he observed and heard Tony McKinney shoot the man. When R/I asked Wayne Phillips what Tony McKinney did after he shot the man and she said that he observed Tony McKinney lean into the car and take the man's wallet from him.

The next thing he knew, Tony McKinney turned around, pointed the gun at him and ran southbound, in the alley, between Lexington and Loomis.

Wayne stated, at this point, he and Dennis Pettis ran southbound on Loomis to 154th street. When they got to 154th Street, Wayne said that he saw Tony McKinney, coming out of the alley, and he no longer had the gun in his hand. Wayne observed Tony go eastbound on 154th Street, and then northbound on Lexington.

R/Is asked Wayne what he did after this and he stated that he and Dennis went back to where the man was shot and saw Tony McKinney standing there, in the crowd of people, looking at the man who had been shot.

Wayne Phillips said that on 19 Sep 78, at approximately 4:00 P.M., he was at Dennis Pettis' house, at 15314 Lexington, in the back yard, when Tony McKinney walked into the yard and said, "If you want your life, keep your mouth shut."

This statement was typed for Wayne Phillips, read by Wayne Phillips, and signed by Wayne Phillips. This was witnessed by Dets. Mc Carthy and Morrison, at 11:00 P.M., on 19 Sep 78, in the Harvey Police Department.

CRN 8198-78

5. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
Det. T. Morrison	206			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
HOMICIDE	25 Sep 78	5198-78	5

INVESTIGATION: The second witness, Dennis Pettis, lives at 15314 Lexington, and is 15 years of age. Dennis Pettis related the following to R/Is.

He said that on 15 Sep 78, he was at Earl Jackson's house, 15303 Loomis and he was watching the Ali fight. Dennis Pettis said that, at the end of the 10th round, he had left and walked towards 153rd & Lexington, where he saw Wayne Phillips, who called to him and said, "Dennis, come here."

Right after that, Dennis said he heard a shot, and he looked towards the area, where the shot came from and saw Tony McKinney standing by a car, with a shotgun in his hands.

Dennis said the car was parked next to the Temple, referring to the Masonic Temple, under a street light, on 153rd Street. Dennis said he then saw Tony McKinney reach into the car and grab something and run south, thru the alley, between Lexington and Loomis.

The next thing that Dennis said that he did was run towards 154th Street, with Wayne Phillips. Dennis said that when they got to 154th Street, he saw Tony McKinney come running out of the alley, but that he no longer had the shotgun in his hand.

After this, Dennis said that he and Wayne went back to his house, at 15314 Lexington, and stayed there for about 15 minutes, until they saw the squads come to the scene.

Dennis said that they then went over to the Temple and he saw Tony McKinney standing in the crowd, looking towards the car.

R/Is asked Dennis what side of the car Tony McKinney was standing on, when he shot the man, and he replied the driver's side. He was also asked what Tony was wearing. He stated that he was wearing short black pants and a red tank top shirt. Dennis also remembered Tony McKinney wearing a red and white glove on his left hand.

R/Is also asked Dennis Pettis if he thought Tony knew that he had seen him shoot the man. Dennis replied, "Yes, because he looked towards us, after he shot the man, and on Tuesday, 12 Sep 78, at about 3:30 or 4:00 P.M., Tony waled up to me and told me if I told what I saw, he would kill me too."

This statement was type written for Dennis Pettis, read by Dennis Pettis and signed by Dennis Pettis. R/Is, Mc Carthy and Morrison witnessed the statement, which was given on 19 Sep 78, at approximately 2300 hours.

On 19 Sep 78, at 12:30 A.M., Dets. Joseph and Jones took a written statement from James Miller, who said that he also knew Tony McKinney and that on 14 Sep 78, at about 12:45 P.M., he was at Tony McKinney's house and saw a sawed off shotgun, standing against the wall, in the corner, of Tony's bedroom.

CRN 5198-78

6. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY
Det. T. Morrison	206			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
HOMICIDE	25 Sep 78	6198-78	6

INVESTIGATION:

This written statement was signed by James Miller and witnessed by Dets. F. Joseph and J. Jones, at approximately 12:30, on 19 Sep 78.

With this information, R/Is contacted ASA Cliff Johnson, who authorized Felony Complaints against Anthony McKinney for Murder and Armed Robbery.

Judge Sullivan signed the Arrest Warrant and set no Bail.

At 12:30 A.M., on 20 Sep 78, Dets. Morrison and Mc Carthy arrested Anthony McKinney, standing on the corner of 153rd and Lexington.

Anthony McKinney was advised of his Rights, under Miranda, and placed in the squad car, and transported to the Harvey Police Station. At the Harvey Police station, Anthony McKinney was again advised of his Rights, under Miranda, and asked if he understood these Rights. He stated, "Yes, I do."

Anthony McKinney was then given a Constitutional Rights of Person in Custody form to read and fill out. Anthony McKinney was read the Constitutional Rights of Person in Custody from, by R/I, and then he read the form himself, and answered each question, signing the same. This was witnessed by Dets. Morrison and Mc Carthy, on 20 Sep 78, at 1:30 A.M.

During the interview, Anthony McKinney was again told he was under Arrest for the Armed Robbery and Murder of Donald Lundahl. Anthony McKinney said that he didn't know why he was arrested, that he had nothing to do with the killing, of the man.

R/I asked asked Anthony McKinney what he was doing in the area of the shooting, on the night he said that he had just come from a party at 154th Street, and that he saw all the squads and wondered what was going on, so he came over to look.

Anthony McKinney then asked for something to drink, so he was given a Pepsi by R/I.

After Anthony McKinney finished the Pepsi, R/Is started the interview again. Anthony McKinney still denied any knowledge of the shooting, until he was confronted with the fact that witnesses had seen him shoot and rob the man.

After being advised of this, he stated, "Ok, I'm going to tell you the truth about what happened.

Anthony said he was walking from his house, to go up to a party on 154th street, and he walked thru the alley, from his house, between Lexington and Loomis and when he got to the end of the alley, at 153rd Street, between Lexington and Loomis, he saw a Security Guard, sitting in his car, on the side of the Masonic Temple.

CRN 6198-78

6. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
Det. T. Morrison	206			

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
HOMICIDE	25 Sep 78	8198-78	7

INVESTIGATION: Anthony McKinney said that he walked up to him and told him that it was going to be his money or his life. Anthony said when the man refused to give him his wallet, the next thing he knew, the gun went off, and that he had shot the man, in the head.

Anthony McKinney said then he then reached in and took the man's wallet out of his pocket and started going through it. He then took off running with it, through the alley, towards 154th Street.

When Tony was asked what he did with the gun and the wallet, he said he threw them in the bushes, in a vacant lot, in the alley between Lexington and Loomis, and then, after that, he ran towards 154th Street, then went back down Lexington and came over to where the man was shot.

Anthony McKinney further stated that the next day, he went back to look for the gun, but couldn't find it.

This statement was typed for Anthony McKinney, read by Anthony McKinney and signed by Anthony McKinney. This statement was witnessed by Dets. Morrison and Mc Carthy, at 2:00 A.M., on 20 Sep 78.

After Anthony McKinney had signed the statement that he had given, he was agina asked to go over what he had told R/Is. Everything he said was the same, as in the original statement, except that he had remembered, that before throwing the wallet, he took three one dollar bills, out of it.

Anthony McKinney was placed in the lock-up and R/Is went back to the scene and attempted to locate the weapon, with negative results.

On 20 Sep 78, R/Is transported Dennis Fettis and Wayne Phillips to 26th & California, where they spoke with ASA Loretta Hardimann. After speaking with ASA Hardimann, the two eyewitnesses testified before the Grand Jury and a True Bill was returned, indicting Anthony McKinney for Murder (Felony) and Armed Robbery and UUW.

On 21 Sep 78, Anthony McKinney was taken before Judge Samuels for arraignment, but due to the fact that Anthony McKinney's Private Attorney did not appear, the case was continued to the 22 Sep 78, when his Private Attorney failed to appear, again, so Public Defender, Pavlic, was appointed and Anthony McKinney was arraigned.

The case is now set for 29 Sep 78.

Case closed by Arrest.

CRN 8198-78

6. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
Det. T. Morrison	206			

HARVEY POLICE CONTINUATION REPORT

	2. DATE	3. C.R.N	4. PAGE
	30 Jun 80	8198-78	8

R/I appeared in room 108, Markham Court, on the charges against the defendant, Anthony Mc Kinney, charged with Murder and Armed Robbery, of the victim, Donald Lundahl.

Case continued to 24 Jul 80, room 108.

Case continued.

STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
	Mc Carthy 205		

CRM. REPORT 2.0

HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
Homicide	9 Dec. 1981	8198-78	9

COURT:

The jury was selected on December 8, 1981 for the charges of Murder and Armed Robbery placed against the defendant, Anthony McKinney, in that on September 15, 1978, he shot and killed Donald A. Lundahl, who was a security guard for Graham Security working at the Masonic Temple at 153rd. & Lexington.

On December 9, 1981, Reporting Investigator testified before the jury. The witness, Wayne Phillips, also testified. Second witness, Dennis Pettis, refused to give testimony.

Case has been continued for more evidence to December 10, 1981. Results of the trial to follow.

CRN 8198-78

6. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
Det. C. McCarthy	205	Lyle M. Abbott		

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HARVEY POLICE CONTINUATION REPORT

1. INCIDENT	2. DATE	3. CRN	4. PAGE
HOMICIDE	13 Jan 82	8198-78	10

COURT:

On 11 Dec 81, the Jury returned a verdict on the defendant, Anthony Mc Kinney, of Guilty, for killing Donald A. Lundahl, and the Jury also found the defendant, Anthony Mc Kinney guilty of the Armed Robbery, of the victim, Donald A. Lundahl.

On 13 Jan 82, the defendant, Anthony Mc Kinney, was sentenced by the Honorable Judge Richard Samuels. Judge Samuels sentenced the defendant, Anthony Mc Kinney, to Natural Life Imprisonment.

Case closed.

CMC 018-78

6. REPORTING OFFICER	STAR NO	7. APPROVING SUPERVISOR	STAR NO	8. REPORT REVIEWED BY:
Det. C. Mc Carthy	205	Lieut. M. Abbott (Jr.)		

Exhibit 9

Pallbearers:

Jerome Phillips Kyron Phillips Timothy Phillips

Honorary Pallbearers:

Joel Phillips
James Phillips
Deacon Armour Phillips Jr.
Charles Phillips Sr.
Armour Phillips III
Harvey Perkins

"Don't Quit School & Be A Fool"

When I was in school, I had it made.
My clothes was sharp and my hair was laid.
Yeah, I was cool.
My friend whooped a white boy
and they kicked twelve of us out of school.
Yeah, I was cool. I started to steal.
While they were getting their diplomas.
I was making those bills. Yeah, I was cool.
But ended in jail and let you tell that's a place of hell.
You got a choice to be cool like me
Or stay in school til you get a Ph.D

By, Wayne Phillips

"You have the skills inside of you to go the distance. Don't give up."

Acknowledgements:

The family wishes to extend their gratitude for your prayers, and the many acts of kindness that strengthen them during their time of need.

Professional Funeral Arrangements Entrusted To:

Midwest Memorial Chapel

"Our Service Speaks For Itself."

5040 S.Western Avenue
Chicago, Illinois 60609
(773) 737-6959

26 West 154th Street
Harvey, Illinois 60426
(708) 339-8300 - 8301

James Thomas - CEO/President/Director

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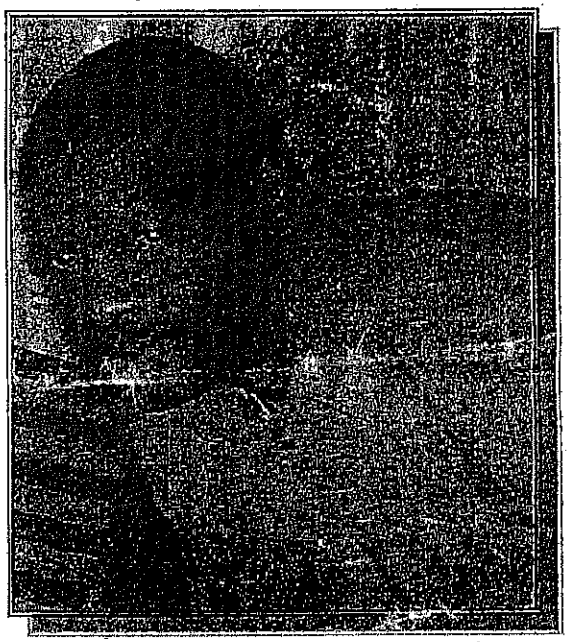
In Loving Memory

Sunrise:
March 3, 1960

Of

Sunset:
April 22, 2009

Bro. Wayne Anthony Phillips



II Timothy 1:12.....for I know whom I have believed, and am persuaded that he is able to keep that which I have committed unto him against that day.

Saturday, May 2, 2009

Wake: 10:30 A.M. Funeral: 11:00 A.M.

Midwest Memorial Chapel

26 West 154th Street
Harvey, Illinois

Elder Joel Johnson, Officiating

Exhibit 10

Back to previous page

ProQuest

document 1 of 1

FBI raids HQ of Harvey police

Walberg, Matthew. **Chicago Tribune** [Chicago, Ill] 06 Dec 2008: 1.12.

Abstract (summary)

A source familiar with Harvey police said the search was in part a result of a January 2007 raid on the department by members of the Cook County state's attorney office and sheriff's police as well as the Illinois State Police.

Full Text

Just days after four Harvey police officers were arrested on charges of protecting large-scale drug shipments, FBI agents raided the village police headquarters Friday.

Agents, who had a search warrant, arrived at the station about 9 a.m. and stayed until midafternoon, FBI spokesman Ross Rice said. He would not discuss what investigators were seeking or whether the search was connected to Tuesday's charges against the four Harvey officers and 11 other law-enforcement officers.

Sources said agents on Friday directed Harvey police officers and other civilian employees to a conference room while they searched the premises. Agents were seen bringing in cases that sometimes house equipment to search and copy computer files.

A source familiar with Harvey police said the search was in part a result of a January 2007 raid on the department by members of the Cook County state's attorney office and sheriff's police as well as the Illinois State Police.

In that raid, the task force took documents, computer files and other evidence on long-unsolved violent crimes. The task force quickly began solving some cases and bringing charges.

A statement from the village said the department was cooperating with the FBI search.

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mwalberg@tribune.com

Credit: By Matthew Walberg, TRIBUNE REPORTER Tribune reporter Mary Owen contributed to this report.

Indexing (details)

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Exhibit 11

Posthumous Pardons Granted in American History

Stephen Greenspan, PhD

Distributed through the Death Penalty Information Center, March 2011. (www.deathpenaltyinfo.org).

The author is Clinical Professor of Psychiatry at the University of Colorado. He can be contacted at stephen.greenspan@gmail.com.

Introduction

I am a psychologist and authority on developmental disabilities who frequently testifies in *Atkins v. Virginia* hearings where a claim of mental retardation has been raised as grounds for exemption from imposition of the death penalty. I recently participated in a successful effort to secure a posthumous pardon for Joe Arridy, a man with significant intellectual impairment, who was executed in 1939 at age 23, solely on the basis of what most consider a false and fabricated confession. In working with David A. Martinez, the Denver attorney who spearheaded the pardon effort, I produced two documents: an afidavit in which I analyzed the nature and extent of Arridy's intellectual incompetence (Greenspan, in press), and a historical compilation of all of the posthumous pardons granted in American history. The current paper is an updated and slightly expanded version of the latter document.

The need for a listing of posthumous pardons stems from the widespread belief that such pardons are rare and inappropriate. The list shows that while posthumous pardons are by no means common, they are becoming increasingly less rare. As for the question of appropriateness, I think that the case descriptions illustrate why restoring the good name of a dead person is often a desirable, indeed necessary, policy. As discussed in the concluding section, such relief is especially needed when the person died as the direct result of a miscarriage of justice.

Listing of Cases by Jurisdiction

Information about posthumous pardons has been gathered from internet and published sources. I believe that this list is all-inclusive, but it is possible that it is not. Any reader who knows of an overlooked posthumous pardon action is encouraged to contact the author. The following list is organized alphabetically according to governmental jurisdiction, with a paragraph devoted to describing each posthumous pardon action (which sometimes involved more than one pardoned person). In jurisdictions where more than one posthumous pardon action has occurred, they are presented in chronological order, beginning with the earliest case.

Arizona

In 1990, Governor Rose Mofford gave a posthumous pardon to Joseph L. Chacon, Alex S. Contreras, James Ellis, James Denny and Curtis Springfield. These were prison inmates (for offenses including aggravated assault, armed robbery and manslaughter) who served on a firefighting detail, and who lost their lives while fighting a major wild fire. The governor's proclamations indicated that these men, without thought for their own lives and safety, lost their lives "while fighting a forest fire in order to protect lives and property of the citizens of Arizona". The pardons, thus, were meant to honor these inmates for their bravery and sacrifice.

California

In 1996, Governor Pete Wilson granted a posthumous pardon to Jack Ryan, who served 25 years in prison for murder. The ground for the pardon was actual innocence. Ryan's innocence became known after one of his accusers admitted to committing perjury. Governor Wilson pardoned him despite a rule which stated individuals must submit their own clemency petition. As in other profiled cases, the governor acted on the basis of fairness rather than specific legal authority.

Colorado

In 2011, Governor Bill Ritter granted a posthumous pardon to Joe Arridy, who was executed in 1939 at the age of 23. Arridy, the son of Syrian immigrants, was a man with significant mental retardation, who walked off the grounds of a state school with some other residents and was later arrested for vagrancy in a rail yard. An overly zealous sheriff interrogated Arridy for the rape-murder of a 15-year-old girl, and secured a confession filled with inaccuracies. When another man was found to have committed the crime alone, the sheriff got Arridy to amend his confession to include the other man. Arridy's trial, in which his court-appointed attorney conceded his guilt and put on no defense, was conducted in a climate of public hysteria. That fact, along with Arridy's obvious legal incompetence and substantial evidence of innocence, was cited by the governor in his pardon proclamation.

Florida

In 2010, Governor Charlie Christ recommended, and the Florida Clemency Board granted, a pardon to Jim Morrison, the late frontman for the rock band "The Doors. " The pardon was for two misdemeanor convictions stemming from an incident in 1969. Performing at a concert in Miami, a drunken Morrison allegedly asked the audience "do you want to see my cock?" and then dropped his pants and simulated masturbation. Sentenced in 1970 to six months in jail for lewd behavior and profanity, Morrison died of a drug overdose while appealing the sentence.

Georgia

In 1986, the Georgia Board of Pardons and Paroles granted Leo Frank a posthumous pardon. However, the pardon was not based on actual innocence but on the fact that his lynching, fueled by anti-Semitism, deprived him of his further right to appeal. Frank was convicted of murdering Mary Phagan, a 13-year-old employee of a factory Frank managed. His housekeeper placed him at home at the time of the murder. He was convicted with the help of Jim Conley, who was arrested two days after Frank was arrested. Conley was arrested after he was seen washing blood off his shirt, and he also admitted to writing two notes that were found near the victim's body. This information was kept from the Grand Jury that indicted Frank. Frank's sentence was commuted to a life sentence after a review of the evidence and letters from the trial judge who was having second thoughts. On

August 17, 1915 Frank was kidnapped from the Prison Hospital and lynched by a mob of 25 men.

In 2005, the state of Georgia granted a posthumous pardon to Lena Baker, a Black woman who was executed in 1945 for killing a white man whom she was hired to take of. Baker, the only woman to die in Georgia's electric chair, claimed that the man had enslaved her and threatened her life. A jury of all white men convicted her after a one day trial.

Illinois

In 1893, Governor John P. Altgeld pardoned Albert Parsons, August Spies, Adolph Fischer, and George Engel, who were hanged for their participation in the May 1886 Haymarket Square riot. He also pardoned Louis Lingg, who committed suicide in his cell. The riot started as a demonstration for an eight-hour work-day, and was peaceful until the police charged the crowd. Someone who has never been identified set off a bomb and some police officers were killed, most by friendly fire. The condemned men were never tied to the crime and there was apparent government tampering with the jury selection process. A new governor decided it was a miscarriage of justice, and granted a pardon to all who were convicted, including some who had been given lengthy sentences. The Haymarket affair is commemorated in the Federal holiday of Labor Day, which started on May 1 as May Day and later was moved to September.

Maryland

In 1994, Governor William Donald Schaefer granted a posthumous pardon to Jerome S. Cardin, who was convicted of stealing from the bank which he co-owned. Cardin only served one year in prison and was released due to his failing health. Governor Schaefer pardoned Cardin based on "his lifetime of philanthropic service, time served in prison, and payment of $10 million in restitution."

In 2001, Governor Parris Glendening granted a posthumous pardon to John Snowden, a Black ice wagon merchant who was hanged in 1919, for the rape and murder of the wife of a prominent white businessman. The execution of Snowden, who professed his innocence all the way to the gallows, was called by many black leaders a "legal lynching". Two key trial witnesses recanted their testimony, and 11 of the 12 jurors wrote letters asking the governor to commute the sentence. Eight decades after Snowden's execution, Governor Glendening pardoned him stating that the execution "may well have been a miscarriage of justice".

Massachusetts

In 1977, Governor Michael Dukakis granted a quasi-posthumous pardon (he said he would if had the authority, but wasn't sure he did, but everyone should treat the statement as a pardon). The recipients of the quasi-pardon were two Italian immigrant anarchists: Nicola Sacco and Bartolomew Vanzetti. They were executed in 1927 for the robbery and murder of the paymaster and a guard at a shoe factory.

This was a notoriously controversial verdict, which was protested internationally and by many famous Americans, including later Supreme Court Justice Felix Frankfurter. Although the guilt or innocence of the defendants is still in dispute, there are few who today consider them to have received a fair trial.

Montana

In 2006, Governor Brian Schweitzer, whose grandparents emigrated to America from Germany, granted posthumous pardons to 75 men and 3 women who were mostly also of German descent. They were convicted (some to lengthy prison terms) under a state sedition statute enacted during World War One to punish people who were not considered sufficiently patriotic.

Nebraska

In 1987, Governor Bob Kerrey granted a posthumous pardon to William Jackson Marion, on the 100th anniversary of his hanging. Marion was convicted and executed for the murder of a man who had disappeared but who turned up alive after Marion was executed.

New York

In 2003 Governor George Pataki granted a posthumous pardon to famous comedian Lenny Bruce for an obscenity conviction. During a performance in 1964, Bruce used more than 100 "obscene" words, for which he was later convicted on a

misdemeanor obscenity charge. Bruce died of a drug overdose in 1966 before he could get his appeal to court.

Oklahoma

In 1966, Governor Frank Keating granted a posthumous pardon to J .B. Stradford, a Black businessman who was convicted of inciting a riot that killed an estimated 250 people and destroyed a large section of Tulsa, Oklahoma in 1921. One of the most notorious race riots in American history, the incident was triggered by whites who were rampaging over a rumored sexual assault by a Black man of a white woman. By many accounts, Stratford, who later became an attorney, was actually a peacemaker who was attempting to stop a lynching.

Pennsylvania

In 1979, Governor Milton Shapp granted a posthumous pardon to Jack Kehoe, who was executed in 1878 for the murder of a mine foreman. The claim was that Kehoe, an elected official, was the leader of the Molly Maguires, a secret society of Irish immigrant coal miners who used terrorist tactics to protest sizeable wage cuts by coal mine operators in northeastern Pennsylvania. The execution of Kehoe, the last of 20 reputed members of the Maguires to be executed, was intended to set an example. A 1970 movie titled *The Molly Maguires*, with Sean Connery playing Kehoe, undoubtedly helped to bring attention to Kehoe's cause. A pardon was granted with the support of the parole board and the district attorney

who stated that the "trial was conducted in an atmosphere of religious, social, and ethnic tension." They stated the execution of Kehoe was "a miscarriage of justice."

South Carolina

In 2009, the South Carolina Parole and Pardons Board unanimously granted a posthumous pardon to Thomas and Meeks Griffin, two African-American brothers who were executed in 1915 for a crime of which they are now believed to be innocent. They were convicted on the basis of testimony by another African-American man who is now considered to have been the actual murderer of John Lewis, a 73-year-old Confederate war veteran. An especially controversial aspect of the Griffins' 1913 conviction is that their lawyer was given only one day to prepare for trial, a fact that the South Carolina high court later ruled was insignificant to the outcome of the case.

Texas

In 2010, Texas Gov. Rick Perry pardoned Tim Cole, a man who died in prison in 1999 of complications of asthma at age 39 for the 1985 rape of a Texas Tech University student. The pardon was issued after DNA evidence showed that the actual offender was Jerry Wayne Johnson, an already-imprisoned serial rapist who had written several letters to court officials as early as 1995 confessing the crime. As a result of this case, the Texas legislature passed the Tim Cole act, which

mandates very generous compensation for each year that someone is wrongly imprisoned.

United States

In 1975, President Gerald Ford granted a posthumous amnesty pardon to Confederate General Robert E. Lee, restoring full citizenship rights that had been removed as a result of his military leadership of the Southern secession. This pardon is different from others covered here, in that Lee never was subjected to a judicial proceeding (he was granted a parole by Union General Ulysses S. Grant) and was never incarcerated. Furthermore, President Andrew Johnson provided two amnesties covering all Conferedate soldiers, although Lee's application for restoration of citizenship (which required him to swear an oath of allegiance) was apparently never acted upon because of an administrative oversight.

In 1999, President Bill Clinton granted a posthumous pardon to Lt. Henry O. Flipper, the first African-American cadet to graduate from West Point. Lt. Flipper was the Acting Commissary officer at Ft. Davis, Texas, supervising the accounting and payments from persons buying goods from the Army. In 1881, he discovered a deficiency of approximately $2,400 in the funds entrusted to him. Lt. Flipper did not report the missing funds because he intended to make up the deficit himself. Although acquitted of a charge of embezzlement, Lt. Flipper was dishonorably discharged, a punishment which an Army review panel in 1977 decided was

"overly harsh and unjust." Attorneys for Lt. Flipper's descendants attacked the long-standing White House policy of not awarding posthumous presidential pardons. They argued that the modern legal standard for granting a pardon is whether the totality of circumstances in granting the pardon will promote public welfare. They also argued that State governors had granted posthumous pardons, and that the President's power was at least as expansive. Finally, they rebutted the argument that a posthumous pardon would cause many more requests, by asserting that in states that have granted such posthumous pardons, very few additional requests were made.

In 2008, President George W. Bush granted a posthumous pardon to Charles Winters, a Florida resident who served eighteen months in prison for smuggling three surplus B-17 bombers to the brand new state of Israel, in violation of the Neutrality Act of 1939. Winters, a Christian with war-time service as a civilian purchasing agent for the military, used his connections to supply Israel, without compensation, planes considered critical to the beleaguered country's survival. In 1961, Winters (nicknamed the "godfather of the Israeli air force"), was honored by the Israeli government, and his ashes were buried in Jerusalem after his death in 1984. The posthumous pardon , supported by prominent American Jews including *Schindler's List* director Steven Spielberg, reflected the changed nature of the

relationship between the U.S. and Israel, and the fact that Winters' co-conspirator, who actually masterminded the scheme, did not receive any jail time.

Conclusion

On at least 20 occasions in American history, posthumous pardons, involving 107 individuals, 12 of them executed, have been granted. The reasons for these pardons can be placed in the following somewhat overlapping categories: (a) proven or very likely innocence (Joe Arridy in Colorado; Tim Cole in Texas; the Griffin brothers in South Carolina; William Jackson Marion in Nebraska; J.B. Stradford in Oklahoma; Jack Ryan in California; John Snowden in Maryland); (b) biased and unfair trial or post-trial proceedings (Arridy; the Griffin brothers; Jack Kehoe in Pennsylvania; Sacco and Vanzetti in Massachusetts; the Haymarkt Square protesters in Illinois; Leo Frank and Lena Baker in Georgia); (c) changed political, moral or legal climate (Lenny Bruce in New York; Jim Morrison in Florida; the German immigrants in Montana; Charles Wright, in Federal jurisdiction); (d) reward for exemplary character (the firefighters in Arizona; Jerome S. Cardin in Maryland); and (f) excessive sentence (Henry O. Flipper in Federal/ military jurisdiction).

There seems to be an accelerating rate of posthumous pardons, likely reflecting a growing understanding from recent cases that innocent people are frequently convicted, and sometimes executed, often as a result of unfair and

biased trial processes or prosecutorial and police misconduct (Cohen, 2003; Drizin & Leo, 2004; Huff, Rattner & Sagarin, 1996). The accelerated rate also likely reflects the fact that as posthumous pardons become more common, advocates for a particular candidate are likely to feel encouraged. As a rule, these campaigns are on behalf of individuals who are deeply deserving, which is why the recent unsuccessful campaign to pardon the 19th century New Mexico desperado "Billy the Kid" (William H. Bonney, also known as Henry McCarty) was especially problemmatic. That is because the outlaw killed two lawmen subsequent to escaping from jail, after the Territorial governor supposedly reneged on a promise to pardon him if he testified before a Grand Jury. The feeling among opponents of that petition was that posthumous pardons should be reserved for clearly deserving and sympathetic cases and Billy, despite his celebrity, hardly qualified as such.

Pardons to living people are symbolic, in that the main beneft to the recipient is the restoration of honor (Moore, 1997). Pardons to dead people are doubly symbolic, in that the recipients are no longer around to feel honored. Such symbolism is important, however, in demonstrating that we live in a society which is willing to make amends for grievously unjust governmental acts. Of all of those acts, the ones most clearly deserving of symbolic reversal are cases where an innocent person was executed, usually as a result of a deeply flawed, and often racially biased, judicial process.

References

Cohen, S. (2003). The wrong men: America's epidemic of wrongful death row convictions. New York: Carrol and Graf Publishers.

Drizin, S. & Leo, R.A. (2004), The problem of false confessions in the post-DNA world. North Carolina Law Review, 82, 891-1007.

Greenspan, S. (in press). The execution of Joe Arridy: Comments by a forensic expert. Intellectual and Developmental Disabilities.

Huff, C.R., Rattner, A. & Sagarin, E. (1996). Convicted but innocent: Wrongful conviction and public policy. Thousand Oaks, CA: Sage Publications.

Moore, K. D. (1997). Pardons: Justice, mercy, and the public interest. New York: Oxford University Press.

Exhibit 12

Ali Puts Some Teeth Back Into Heavyweight Title

JIM MURRAY

NEW ORLEANS—Well, we're well out of *that*.

To the intense relief of almost everybody. Leon Spinks is no longer the heavyweight champion of the cosmos. The heavyweight champion has teeth.

Everything's all right in Glocamorra. Yes, Virginia, there is a Santa Claus.

It was a lousy fight. It was as one-sided as a lynching. I've seen better fights in Hollywood night clubs. Leon Spinks had a no-hitter going the last time I looked. Talk about hitting them where they ain't. Spinks spent the night throwing punches in places Ali had left several minutes before.

It was great if you're crazy about clinches. Ali is just a shell of his former self but against Spinks, that's more than enough.

The huge crowd paid more money than anyone ever has for a prizefight. It was the dullest title fight since the second Sharkey-Schmeling. A bull fight has more suspense.

If I paid $200 to watch this gavotte, I'd be on the horn to the Better Business Bureau. I not only didn't give Spinks a round, I didn't even give him a minute. Why he bothered to put on gloves we'll never know.

Somebody should send Leon a picture of Ali.

He never got close enough to him to tell what color his eyes were. Spinks looked like a guy looking for a collar button all night. Spinks looked like a guy going the wrong way on an escalator all night. They would have walked out on this fight at the old St. Nick's Arena or started to sing "Let Me Call You Sweetheart" by the fourth round.

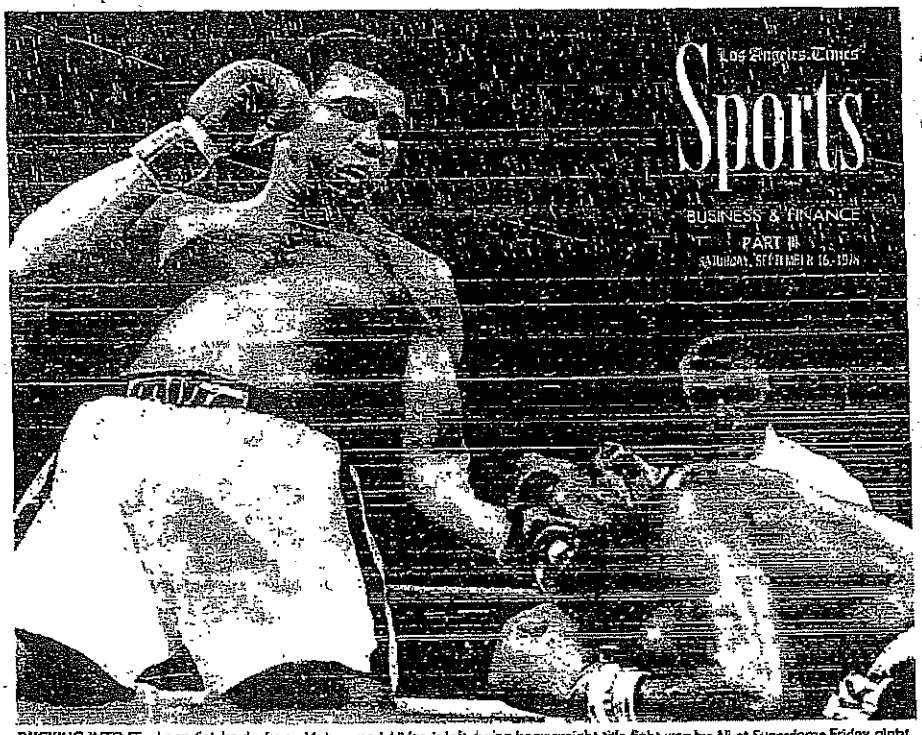
So Muhammad 'Ali is the heavyweight champion once more. The earache goes on. The mystery is how he ever lost the title to Spinks in the first place. Of course, it was the seventh round before Ali noticed he was there. He was too busy talking till then. And he was 6-7 by the time Spinks caught his attention.

It was not one of Ali's artistic performances. It was a clutch and grab victory, right out of Joey Maxim's fight plan. Spinks didn't appear to have any plan. But he caught a very good game. He called a shutout. Two of the officials thought they detected Spinks winning four rounds. I wouldn't want to go on any hunting trips with them.

It was such an easy fight, you wonder if Ali will stick to his game plan of serving out his six months and then hanging them up. No one ever got $3 million any easier. A haircut is more bother. If it weren't for the hype, you would have sworn it was the walk-on bout at the Olympic. The suspense went out of the bout right after the introductions. Leon was 15 minutes late entering the ring. He made his fight like a guy trying to climb the Empire State Building. On the outside.

Ali never extended himself. It was probably his easiest pay night since Brian London.

So, the dance isn't over yet. The fight probably should never have been licensed. Leon turned back into a guy with only eight pro fights under his belt in the ring with one of the sannier operators in the sweet science. Ali would have had a tougher time with the heavy bag. The parade will go on for another six months. And, if Leon Spinks is the class of what's out there, Ali may one day be the only heavyweight champion in history in bifocals. He could beat Leon Spinkses if he had to climb in the ring on a cane. At least there'll be no rematch. If he gets a rematch so should the captain of the Titanic.



DUCKING INTO IT—Leon Spinks ducks as Muhammad Ali lands left during heavyweight title fight won by Ali at Superdome Friday night. AP Wirephoto

Ali Turns Back Clock and Wins Title Again

Becomes Champion for the Third Time With Unanimous Decision Over Spinks

BY JACK HAWN
Times Staff Writer

NEW ORLEANS—The Ghost of Cassius Clay—floating, stinging and shuffling—swooped down on The Vampire Friday night and Muhammad Ali once again is on top of the fistic world.

Although only an imitation of the Clay of yesteryear, Ali rose to the occasion to win a lopsided 15-round unanimous decision over Leon Spinks before a roaring Superdome crowd of some 70,000 and a TV audience in the millions.

Reclaiming the heavyweight championship he lost on a split decision to Spinks last Feb. 15 at the Las Vegas Hilton, Ali made the brash, 25-year-old ex-Marine look like the amateur that most consider him to be. Now that his pro record is 7-1-1, there isn't much argument.

Despite the "super" buildup, pre-fight hoopla and electricity generated over this attraction, which set a record gate of about $6 million, the fight itself lacked the excitement and drama of the original.

Ali, 36 and going on retirement, became the first man in history to win the heavyweight championship three times. And he made it look easy.

Ali, a 2-1 favorite, should have been an "out" choice based on his performance, a drastic reversal of the first match.

He was no butterfly Friday, but he can still sting. He won virtually every round, frustrating the charging Spinks almost throughout the fight.

The officials were a bit generous, it seemed, in giving the dethroned World Boxing Assn. champion as many rounds as they did.

Referee Lucien Joubert and Judge Ernest Cojoe favored Ali, 10-4-1 each, and Judge Herman Dutreix agreed, 11-4. The Times card had Ali in front, 13-2.

So outclassed was Spinks that one of the rounds he got, the fifth, was taken away from Ali by the referee for holding with his glove behind Spinks' neck.

The first round might have gone to Spinks and the former Olympic light-heavyweight champion clearly won the 15th. However, there weren't many other occasions when he was able to sustain an attack long enough to win a round.

Bobbing and backpedaling, jabbing and clinching, Ali set the pattern early. Spinks charged but seldom was able to land effective combinations. However, he was not without his moments of fleeting success.

Ali's best rounds were the third, fifth, seventh, eighth, 10th, 11th and 12th—particularly the last two, which closely resembled some of the fury they exchanged the first time around.

There were merely spurts of excitement this time. Ali, looking less than sleek at 221 (3½ pounds less than before), negated the strength and pursuit of Spinks by clinching when it became advantageous.

Spinks, 201 compared to 197½ last February, never was in command or close to it as was the case when he won the title.

Ali resorted to little clowning, although he did a fast shuffle after the bell ending the seventh round in the delight of the huge crowd. Moments earlier, he and Spinks had exchanged some heavy blows in mid-ring.

In the 11th, when Ali connected with a solid right to the chin, actor Hugh O'Brian, cheering him on at ringside, shouted, "Let's go home."

But, Ali didn't—and possibly never did—have the punch to put away young Spinks, who had a 128-7 amateur record and has proved durable as a pro.

The 11th round, by far, was the most thrilling in a fight that wasn't abundant with thrills. Each was rocked by solid punches but the bell interrupted the action.

As the battle neared conclusion, it became apparent that Spinks was aware of the futility of his situation. With the scoring by the round system, there is no opportunity to make

Please Turn to Page B, Col. 3

The Fight Cards

REFEREE LUCIEN JOUBERT
AAA SSS AAA AAA 15S—A10-4-1

JUDGE HERMAN DUTREIS
AAA SSA AAA AAS ASA—A11-4-0

JUDGE ERNEST COJOE
SAA SSA AAA AAA SAE—A10-4-1

Ali Reveals Training in Secret

BY SKIP BAYLESS
Times Staff Writer

NEW ORLEANS—As his entourage screamed, "Tell 'em, Champ," Muhammad Ali scolded the press for not believing in him and said he'll wait about six months before deciding whether he'll retire.

"The title is too hard to get," Ali said after winning a unanimous decision over Leon Spinks Friday night. "I'm going to keep it six months and then make a decision. If I decide to retire, I'll hold a big retirement party. If not, I'll fight somebody."

Ali said he trained like never before after Spinks upset him last February. That regimen, he said, was a key to winning the title for the third time.

"I went to Deer Lake (Pa.) and chopped trees and ran every morning and I tricked you all," Ali said, eyes wide, in his mock-serious style. "I started training three months before you knew it. I had it all set up. I made suckers out of all you all. I'm from the House of Shock.

"No, you said, it's not possible. Ali is 36. He's too old. Spinks is 25 and young. My legs would go. Time magazine said, Dick Young (of the New York Daily News) said I couldn't do it. Now I want you all to bow and call me champ."

Then he led his followers in a responsive chant. He would say, "I'm the greatest of all times," and they would echo, "All times!"

In contrast, the Spinks interview was a solemn affair. Humble in defeat, Spinks simply said his mind wasn't on the fight.

"I was ready for the fight, man," said Spinks, whose play-now, train-later habits had been questioned. "But a man can go into a fight with his body ready and not his mind."

The first two times he was asked why his mind was elsewhere, he said, "You tell me." But the third time he said:

"It may have been on the problems the heavyweight championship has brought me . . . who knows? I can't let the world bother me anymore. I've got to do my training like I'm supposed to and handle my business like I'm supposed to."

Since winning the title, the product of a St. Louis ghetto has run from his out-of-the-ring problems: a manager he said he wanted to get rid of, lawyers who wanted to manage him, four different trainers, an outspoken wife

Please Turn to Page B, Col. 1

Dodgers Reach 3 Million; Sutton Ties Record, 5-0

BY SCOTT OSTLER
Times Staff Writer

Don Sutton is a history buff, so he fit right in Friday night at Dodger Stadium. He was pitching on the night the Dodgers hit the three million mark in attendance, a major league first.

And he shut out the Atlanta Braves, 5-0, for his 49th career shutout, tying him with Don Drysdale for the club record, and tying him for 14th place on the all-time major league list with Drysdale and Early Wynn.

It's not historical, but the Dodgers did win their sixth straight game and reduced their magic number to seven, with 14 games remaining.

The attendance was 47,188, giving the Dodgers 3,011,368 for the season. When the three million announcement was made in the sixth inning, the fans gave themselves a standing ovation, and the Dodgers all came out of the dugout to give their fans a standing ovation.

They made the night even more pleasant for their fans by scoring a run in the first on Steve Garvey's sacrifice fly, two more in the fourth on Lee Lacy's two-run homer, and two in the seventh on Garvey's run-scoring triple. He scored on the play when second baseman Glenn Hubbard's relay throw to third sailed wide and into the Dodger dugout.

Bill North made a diving catch of

Angels Get Royal Beating, 3-2, Trail by 4½ Games

BY ROSS NEWHAN
Times Staff Writer

KANSAS CITY—"We wanted to win," Hal McRae, the Kansas City designated hitter was saying in a noisy clubhouse after the Royals beat the Angels, 3-2, Friday night, "because they had held Nolan Ryan back a day to pitch against us.

"We wanted to win because he was throwing at us, trying to intimidate us. I make my living at the plate. He's never going to intimidate me. It just made us that much more aggressive."

Aggressive?

face, where they are carpetbaggers of the first order. They have a 50-21 record that includes 19 wins in the last 25 games.

The Royals get 11 more games at home, including two with the Angels. Manager Jim Fregosi said, "We've got to win both. It's that simple."

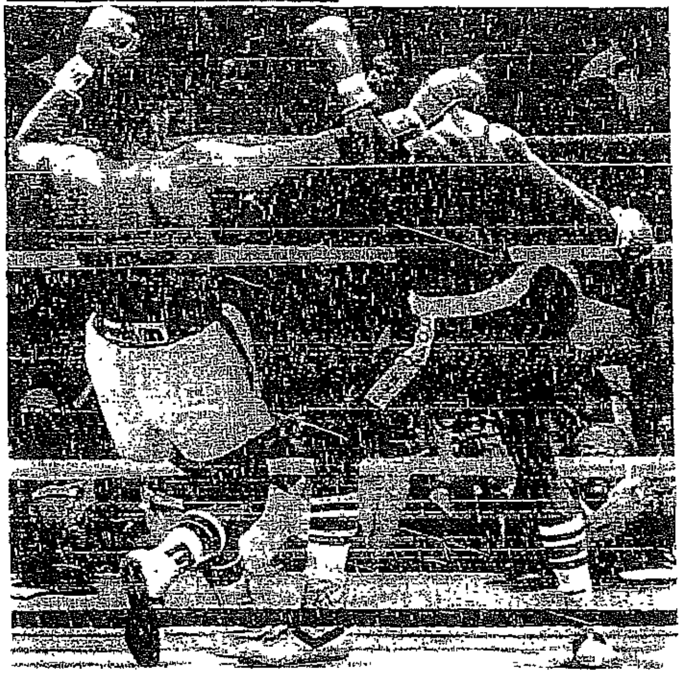
Amid a clubhouse celebration devoid only of champagne, Kansas City manager Whitey Herzog said, "I was hoping to win at least two of these three. Now, even if the Angels win

Lopez Scores KO Over Malvarez

Galindez Is Upset; Luhan Decisions Davila

NEW ORLEANS (AP)—Danny (Little Red) Lopez, knocked down in the first 30 seconds of the fight, knocked out Juan Malvarez with a smashing right hand in the second round and retained his World Boxing Council featherweight championship Friday night at the Superdome.

In a World Boxing Assn. bantamweight title fight, counter-punching



ARMED COMBAT—Muhammad Ali, left, and Leon Spinks appear to be tangled up as they go at it in rather unorthodox style at Superdome where Ali regained title on unanimous decision. AP Wirephoto

ALI REVEALS TRAINING IN SECRET

Continued from First Page

and a number of parasites who seemed to want part of his "gusto" (the lavish life of a heavyweight champ).

Spinks has spent many a late night cruising in his customized Cadillac or Lincoln limo or boogying in the nearest disco.

"I just didn't fight the way I was trained," Spinks said. "I tried to follow what they (trainer Sam Soloman and brother Michael) said. But my heart just wasn't in it."

George Benton, the Philadelphia trainer who was supposed to advise Spinks, left ringside in a huff after six rounds. "It's no sense in me even trying," said Benton.

Benton and Soloman have had words over who had the last say with Spinks. It was Benton who was credited with providing the decisive strategy in the first fight: pounding Ali's arms while he lay against the ropes.

Asked about the confusion in his corner, Spinks said: "There was no confusion in my corner."

Spinks said he didn't tire and he wasn't hurt. And he said Ali's new strategy—dancing and feinting and jabbing like the Ali of old—didn't bother him.

"I didn't know what he was going to do and it didn't matter," Spinks said. "I just didn't do what I was supposed to do." Asked what that was, Spinks said, "That's for you to know and me to find out."

Ali's I-told-you-so act quickly wore thin, and many journalists walked out of an interview room which had been overrun by his followers.

"No, I can't dance, they said," Ali went on. "Did I dance for 15 rounds? No, I didn't dance. No, I didn't. No." His entourage was making more noise than the entire Superdome crowd had.

Ali continued to pound the racial theme he had repeated all week.

"I'll be the first black man to retire as champion," he said. "I'll be the first black man you white reporters can't talk bad about."

But he had nothing but praise for Spinks, who gave him a shot at a rematch.

"He's a good man," Ali said. "He was in good shape and he was courageous."

Ali ducked question after question about why he handled Spinks so easily this time. Lured into the center of the ring, Spinks was quickly exposed as pretender to the throne, unpolished at best. Most of the night his wild flailing hit nothing but the smoky air.

Ali's interview ended with him yelling into the microphone about his new around-the-globe organization for peace, WORLD, and him thanking Allah, "who gave me my power."

Back at the door to Spinks' locker room, members of his entourage stood as if in mourning. Their party, their seven-month fling, may soon be over. Though Spinks earned $3.75 million for the fight, much of it already has been spent.

Sam Soloman said he has no plans about when Spinks will fight again. He, too, seemed puzzled about what had been wrong with his fighter.

"In the eighth round, Ali was tired and I knew he was ready to be had," Solomon said. "There was something wrong. He (Spinks) was listening to me, but his heart wasn't in it. He trained well."

When the fight was over, Spinks immediately congratulated Ali—"He's still my idol"—smiled, and waved to the crowd. He seemed to be thanking America for his taste of the champion's life. Now he'll have to work his way back up the heavyweight ladder.

"I wish I still had it," he said of the title. Then he smiled as he prepared to leave. "Ten-four, good buddies," he said.

ALI REGAINS HIS TITLE

Continued from First Page

up points in a hurry. Spinks' only hope was a knockout.

He tried desperately—perhaps just as desperately as Ali tried in the 15th round last February, when he sensed he needed an electrifying finish to pull it out.

But Ali, slick and still a master at maneuvering, never was in danger in the closing stages Friday. He lost the 15th, but regained the title, nonetheless.

He accomplished his goal, perhaps not as dramatically as his fans had hoped, but it was clear he needed an incentive to spur him back on top.

He first won the title Feb. 25, 1964, when he knocked out Sonny Liston in Miami, then regained it 10 years later, when he stopped George Foreman in the eighth round in Zaire.

Spinks, at least, went the distance.

The gap-toothed former St. Louis street fighter undoubtedly will return, but with a $3.75 million purse (slightly more than Ali's) it's likely he'll take time to enjoy himself.

Ali's future? Who can be certain? His next fight will be No. 60 (he's 56-3 now) but he says he doesn't "think" he'll ever fight again.

It sounds familiar.

Ringside Seats, 198 Feet Away, Still Cost $200

From Times Wire Services

NEW ORLEANS—They called them ringside seats—but 198 feet from the center of the Superdome ring, angry ticket-holders straining over heads and around a television tower felt otherwise.

"I'm disappointed," said New Yorker Dave Casale. He was preparing to view the Leon Spinks-Muhammad Ali heavyweight championship bout from the farthest reaches of the Superdome floor.

"I took out an order on these tickets two months ago," he said. "At least we can make out two fuzzy images."

On the other side of the arena, four businessmen from Texas looked through steel scaffolding set up for two ABC television cameras. Nearly half of the elevated ring was obstructed.

When asked if the seats were worth $200, Buddy Dryden replied, "We were just discussing that. The tower makes it rough. But once we got here there was no turning back."

Many fans watched the bout from the 18-story terrace level—at $25 a seat.

Sitting perched in the dome's highest bleachers, Winky Benbow of Dallas was depending more on his ears than on his eyes to experience the fight.

"If you don't have binoculars, you just have to rely on the excitement of the crowd," Benbow said. "But it's worth it just to be up here."

★

Before the main event, the crowd roared loudest for the Lady in Red, Edy Williams of Malibu, who jumped into the ring and took off her dress. Topless, she was trying to get bottomless when Chet Cummings, a Top Rank public relations man, threw his coat over her and pulled her from the ring . . . World Boxing Council champion Larry Holmes was at ringside with the latest heavyweight fad—a bodyguard . . . Joe Frazier, Ali's old nemesis, sang the National Anthem.

If you weren't in black tie or long dress, you weren't dressed properly. One of the flashiest dressed was a gray-bearded man in a gold and green sequined suit and wide-brimmed sequined hat and over-sized sequined sunglasses . . . The Indiana football team, which plays at Louisiana State today, sat in the cheap ($25) seats. But the Pittsburgh team, which plays at Tulane, wasn't allowed to come. Coach Jackie Sherill had their floor at the Hilton, fight headquarters, under guard so none of his players could slip out (the fight was blacked out within a 200-mile radius).

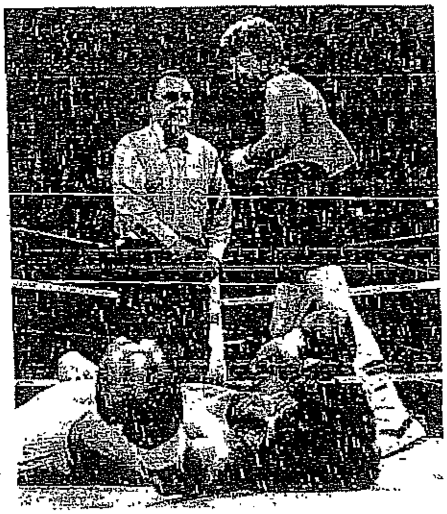
Rough Riders in Denver

The Los Angeles Rough Riders face the Denver Stars today in Denver in the first round of Major League Rodeo playoffs. The winner advances to the rodeo Super Bowl in October. The Rough Riders are 8-15 and the Stars are 20-3.

Golf Results

INVITATIONAL TOURNAMENT
At Friendly Hills
18-Hole Leaders

[illegible]



KO ARTIST—Danny (Little Red) Lopez of Alhambra walks away from Juan Malvarez of Argentina after knocking him out to retain his WBC featherweight championship in a preliminary to the Spinks-Ali heavyweight title fight in New Orleans Friday night. AP Wirephoto

LOPEZ GETS KO IN 2ND

Continued from First Page

The Lopez fight had hardly begun when the champion found himself on the canvas after a right-left-right by Malvarez.

Lopez got up quickly and took a pounding the rest of the round from left hooks and rights to the head. But he would not go down.

In the second round—after Malvarez had landed a solid hook—Lopez beat the Argentine to the punch with a straight, crashing right to the jaw that dropped Malvarez on his stomach, where he took the 10-count from referee Marcello Bertini of Italy.

Malvarez remained on the floor for a couple of minutes after the fight had ended at 45 seconds of the second round, but he was able to leave the ring under his own power.

The victory for Lopez was his 14th straight since Jan 18, 1975. Thirteen have been by knockouts.

Lopez, of Alhambra, who weighed 125¼, one-half pound less than Malvarez, has a record of 38-3-0 with 36 knockouts and has defended his title successfully four times since winning it by outpointing David Kotey in Ghana on Nov. 5, 1976.

Lujan of Panama did his most effective scoring with a jab and left hook while backing away from the pressing 5-2 Davila. Lujan, 5-5, used his reach advantage effectively.

There were no knockdowns although Lujan came close to scoring one in the fourth round. He sent Davila, of Pomona, staggering several steps backward with a smashing left hook, but failed to follow up.

Davila had Lujan in trouble in the ninth round when he shook him with a right to the jaw just at the bell.

Rossman, a Turnersville, N.J., native who fights out of New York, leaped into the air and Galindez nodded his head in approval that he was a beaten man. There were tears rolling down Rossman's face as he saluted his fans among the crowd of nearly 80,000.

Rossman, ranked No. 6 in the world by the WBA, opened a severe cut over the champion's right eye and then pounded his way to the decision that ended Galindez's 41-fight winning streak.

Rossman, considered an underdog because of a sixth-round knockout loss to Alvaro (Yaqui) Lopez in New York in March, opened up a cut over Galindez's right eye in the second round and then turned his face into a scarlet mask. Both fighters were covered with blood as Rossman, 22, seemed to grow steadily stronger than his 29-year-old opponent in the closing rounds.

Exhibit 13

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT OF RACHEL JULIS

I, Rachel Julis, being duly sworn, do state on oath that the following facts are true to the best of my knowledge:

1. I understand that this affidavit may be filed in court in the case of *People v. Anthony McKinney*, No. 78 CR 5267, Cook County, Illinois.

2. I am currently a third-year law student in the clinical program at Northwestern University School of Law, and am assigned to work on Anthony McKinney's case.

3. I have contacted a number of people at the American Broadcasting Company (ABC) to find out how ABC created the fight logs that detail the boxing match between Leon Spinks and Muhammad Ali on September 15, 1978.

4. Louis Argianas, an ABC records clerk, recalled giving a copy of these fight logs to a group of students a few years ago.

5. After she learned that the fight logs were being used in a legal matter, Ms. Argianas declined to answer any questions without a subpoena.

Rachel Julis

SUBSCRIBED AND SWORN TO BEFORE ME
this 20th day of February, 2007.

NOTARY PUBLIC

OFFICIAL SEAL
ZAKIA S HOLLY
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:10/06/08

Exhibit 14

6J.

because they are rather personal, but here is what I want to get across:

It turned out that this man had never known my husband! He makes a practice of reading the newspapers to find out where funerals are, how old the deceased was, where he lived, the number of children, name of the lodges he belonged to, etc. Then he calls on the widow to get acquainted, saying he had been a good friend of her husband's.

If I hadn't accidentally found out that he did this to other widows, I might have gotten even more seriously involved than I did. And it would have cost me a lot of money, too. Please print this as a warning to other unsuspecting widows.

Houston Reader

Dear Reader: Forewarned is forearmed. Thanks for writing.

CONFIDENTIAL TO Should I, Ms.: Don't put him on the spot by asking him to tell you in so many words. When a boy stops calling a girl, he is silently telling her that it's all over. Accept it, and turn your attention elsewhere.

For Abby's booklet "How to Write Letters for All Occasions," send $1 and a long, stamped (28 cents) envelope to Abby, 132 Lasky Dr., Beverly Hills, Cal. 90212.

...cause of SIDS

...d using it in my child.

Mrs. Rebecca W., Poughkeepsie, N. Y.

...one of the trade names for a combination ...ed of two anti-bacterial agents — ... and sulfamethoxazole. The other trade ... the United States for the same ... is Bactrim. This drug has been widely ...eral years in treatment of urinary tract ...

...ntly, this combined drug was approved ... Food and Drug Administration (FDA) ...ent acute middle-ear infections in ...me pediatricians now use it, although ... amoxicillin is prescribed more often for ...ons.

... Bactrim, as with all drugs, must be ...ly and in appropriate doses. But I think ... misleading to call them "powerful" and ... use in adults.

...o in common emergencies is easy to find ...ton's informative booklet "First Aid." ...send $1.50 to "First Aid," c/o The ...ture, P. O. Box 259, Harwood, N. J. ...checks payable to Newspaperbooks.

15 SEP 15

5:50 (5) Meditation
5:55 (2) Thought for the Day
(11) News
6:00 (2) Summer Semester
(5) Knowledge
6:15 (9) 5 Minutes to Live By
6:15 (7) Reflections
6:20 (9) News
6:24 (7) News
6:25 (2) Top o' the Morning
6:30 (7) It's Worth Knowing (R)
(5) Today in Chicago
(7) Perspectives (R)
(32) Newstalk
6:55 (2) WBBM Editorial
(7) Earl Nightingale
(9) News
7:00 (2) News
(5) Today
(7) Good Morning America
(9) Ray Rayner
(11) Sesame Street
(32) Woody Woodpecker
8:00 (2) Captain Kangaroo
(11) Electric Company
(32) Popeye
8:15 (20) Child Development
8:30 (11) Family Affair (R)
(11) Mister Rogers' Neighborhood
(32) Flintstones
8:45 (20) Biology 101
9:00 (2) All in the Family
(5) Card Sharks
(7) A.M. Chicago
(9) Movie "The High Cost of Loving."
(11) Sesame Street
(26) Opening Stock Market
(32) Partridge Family
9:30 (2) The Price Is Right
(5) Mary Tyler Moore (R)
(26) Most Active Stocks/Commodities
(32) Please Don't Eat the Daisies (R)
(44) Mundo Hispano
10:00 (5) High Rollers
(7) Happy Days (R)
(11) Mister Rogers' Neighborhood
(26) News
(32) That Girl (R)
10:15 (26) Most Active Stocks/Commodities
10:30 (2) Love of Life
(5) Wheel of Fortune
(7) Family Feud
(11) Electric Company
(26) Ask an Expert
(32) Green Acres (R)
(38) 700 Club
10:58 (9) WGN Editorial
11:00 (2) The Young and the Restless
(5) America Alive!
(7) $20,000 Pyramid
(9) Phil Donahue
(11) Paint Along With Nancy (R)
(26) News
(32) Romper Room
11:15 (26) Most Active Stocks
11:30 (2) Search for Tomorrow
(7) Ryan's Hope
(11) Lilias, Yoga, and You
(26) Ask an Expert
(32) Tennessee Tuxedo

Friday Afternoon

12:00 (2) Noonbreak
(5) News—Jorie Luloff
(7) All My Children
(9) Bozo's Circus
(11) French Chef
(26) News
(32) Underdog
(44) Space Angel
12:15 (26) Most Active Stocks/Commodities
12:20 (26) Ask an Expert
12:30 (2) As the World Turns
(5) Days of Our Lives
(11) Over Easy (R)
(32) Banana Splits
(44) High Hopes
12:50 (26) Earnings Report
1:00 (7) One Life to Live
(9) News
(11) Dick Cavett (R)
(26) News
(32) Courtship of Eddie's Father (R)
(44) Movie "Big Combo."
1:05 (26) Market Basket
1:15 (9) Lead Off Man
1:30 (2) Guiding Light
(5) The Doctors
(9) Baseball Cubs vs. St. Louis Cardinals
(11) The Pallisers (R)
(26) Ask an Expert
(32) Lucy (R)
2:00 (5) Another World
(7) General Hospital
(26) News
(32) Beverly Hillbillies (R)
2:30 (2) M*A*S*H (R)
(26) Ask an Expert
(32) Magilla Gorilla
(44) Popeye
3:00 (2) Match Game
(5) Hollywood Squares
(7) Edge of Night
(26) News
(32) Casper
(44) Super Heroes
3:15 (26) Most Active Stocks
3:30 (26) Market Wrap-up
(2) Dinah!
(5) Newlywed Game

(44) Woody Woodpecker
(44) Speed Racer
3:45 (26) For or Against
4:00 (2) Mary Tyler Moore (R)
(9) Gilligan's Island
(11) Mister Rogers' Neighborhood
(26) Soul Train
(32) Tom & Jerry
(44) Spider Man
4:30 (5) News—Lucky Henry
(9) I Dream of Jeannie (R)
(11) Sesame Street
(26) Black's View of the News
(32) Three Stooges
(44) Ultra Man
4:45 (26) Today's Racing
5:00 (2) News—Walter Jacobson
(5) News—Ruddle Henry
(7) News—Grady Murphy
(26) Wheels
(32) Brady Bunch Hour (R)
(44) Rifleman (R)
5:15 (38) God's Word for Today
5:30 (2) News—Walter Cronkite
(7) ABC News
(9) My Three Sons
(11) Electric Company
(26) Carolina
(32) Captain Andy
(44) F Troop (R)

Friday Evening

6:00 (2) News—Kurtis-Porterfield
(5) News—Chancellor Brinkley
(7) News—Flynn-Daly
(9) Andy Griffith (R)
(11) Zoom
(32) Six Million Dollar Man (R)
(26) Backyard
(44) Have Gun, Will Travel (R)
6:30 (5) Please Stand By (Premiere)
(9) Dick Van Dyke
(11) Over Easy (R)
(26) Informacion
(38) The Rock
(44) Wyatt Earp (R)
7:00 (2) Incredible Hulk
(5) Movie "Starship Invasions."
(7) Boxing
(9) Star Trek (R)
(11) Chicago Week in Review
(26) La Criada Bien Criada
(32) Emergency One!
(38) Chicago
(44) Hazel (R)
7:30 (11) MacNeil/Lehrer Report
(26) Roger Dulce Hogar
(44) Gomer Pyle (R)
8:00 (2) Movie "Grand Theft Auto"
(9) Movie "Go West."
(11) Washington Week in Review
(26) Lo Mejor del Cine Espanol
(32) Merv Griffin
(38) 700 Club (R)
8:30 (11) Wall Street Week
(38) Today in Bible Prophecy
9:00 (5) Quincy (R)
(11) Bill Moyers' Journal: International Report
(38) Science and the Bible
9:30 (32) Honeymooners
(38) Good News
(44) Room 222 (R)
10:00 (2) News—Kurtis-Jacobson
(5) News—Jim Ruddle
(7) News—Flynn-Daly
(9) News—Jack Taylor
(11) Dick Cavett (R)
(26) Informacion
(32) Sanford & Son
(38) Jimmy Swaggart
(44) Untouchables (R)
10:30 (2) The New Avengers (Premiere)
(5) Tonight
(7) Rona Barrett Previews New Shows
(9) Movie "Counterfeit Traitor."
(11) Movie "Breaking the Sound Barrier."
(26) La Venganza
(32) Beachfront Bride
(38) PTL Club
11:00 (7) Baretta (R)
(32) Three Stooges
(44) Movie "Blood Legacy."
11:30 (26) Soccer
(32) Newstalk
11:40 (2) Movie "Murder on Flight 502."
12:00 (5) Midnight Special
(11) Take Five
12:07 (7) Friday Night
12:20 (11) Captioned News
12:30 (38) God's Word for Today
1:00 (7) Movie "Gargoyles."
1:10 (9) News
1:30 (5) Everyman
1:40 (26) Rock Concert (Season Premiere)
1:40 (9) Movie "An Act of Reparation"
2:00 (5) Not for Women Only (R)
3:20 (5) News
3:19 (2) News
3:25 (7) Common Ground, Inc.
3:32 (2) Victory at Sea

Muhammad Ali tries to regain "the" world heavyweight boxing title from Leon Spinks in a live telecast from New Orleans at 7 p.m. Friday on Channel 7.

Friday's best TV movies

For complete movie listings, see your TV Week.

9 a.m.—Channel 9
"THE HIGH COST OF LOVING"

(1958) Until 10:55 a.m. A veteran fellow becomes solidly paranoid when his wife says she's expecting a baby and he's on the verge of losing his job.

3:30 p.m.—Channel 7
"DIVORCE, AMERICAN STYLE"

Directed by Bud Yorkin

(1967) Until 5 p.m. (Color) This smug, satirical stab at divorce is also a misanthropic view of society where owning a house in suburbia that you can't afford is the ultimate status symbol.

7 p.m.—Channel 5
"STARSHIP INVASIONS"
(First run)

Robert Vaughn
Christopher Lee

(1977) Until 8:30 p.m. (Color) Earth receives space visitors who would like to call the planet home, but they are met with fear and violence.

8:00 p.m.—Channel 2
"GRAND THEFT AUTO"
(First run)

Directed by Ron Howard

(1977) Until 10 p.m. (Color) A young couple's plans to quietly elope are shot to pieces by fortune hunters, making their honeymoon one big car chase.

8 p.m.—Channel 9
"GO WEST"

Directed by Edward Buzzell

(1941) Until 10 p.m. The Marx Bros. turn up in the "Wild West," giving a whole new meaning to the term.

10:30 p.m.—Channel 9
"COUNTERFEIT TRAITOR"

Directed by George Seaton

(1962) Until 1:25 a.m. (Color) True story of a Swedish businessman who was blackmailed by the British government to spy on the Nazis during the war.

Friday's TV highlights

6:30 p.m.—5—"Please Stand By" (premiere). The story of the Lambert family, owners of the world's smallest television station — KRDS in DeQueen, N. M., starring Richard Schaal, Elinor Donahue, and Marcie Barkin.

7 p.m.—7—"WBA World Heavyweight Championship." Muhammad Ali attempts to regain the title he lost to Leon Spinks last February. Live from the Superdome in New Orleans.

10:30 p.m.—7—"Rona Barrett Previews the New Shows on ABC." Scenes from new ABC series and interviews with their stars, including Robert Urich, Rue McClanahan, Dabney Coleman, Robin Williams, and Judd Hirsch.

Midnight—5—"Midnight Special." Larry Gatlin welcomes Tony Orlando, Tavares, Evelyn King, the Cars, the Jeff Kutash Dancers, and Devo.

1:40 a.m.—2—"Rock Concert" (season premiere). Marilyn McCoo and Billy Davis Jr., Paul McCartney and Wings, Mass featuring Frankie Beverly, the Disco Dance Dimension, Richard Belzer, and George Miller.

By Gary Deeb
TV-Radio critic

RON HUNTER has a new job. So does Maury Povich. Thus, the former Chicago news anchors, who were a team last year at WMAQ-Ch. 5, have landed on their feet after being fired from their most recent positions.

Hunter, the $225,000-a-year anchor at Channel 5 until his dismissal in July, has caught on with KYW-TV, a respected Group W station in Philadelphia. He'll be principal anchor of the 11 p.m. newscast, and sources say he'll probably soon assume those duties for the 6 p.m. newscast as well.

His KYW salary is an estimated $90,000 a year on a three-year, no-cut contract. Hunter goes on the air in Philadelphia on Oct. 9.

MEANWHILE, Povich has snared twin assignments at KGO-TV, the ABC-owned station in San Francisco. He's hosting "A.M. San Francisco," the local morning talk show, and it's understood that he'll also begin coanchoring one of the station's newscasts this fall.

Povich quit Chicago Channel 5 last year and joined KNXT-TV, the CBS-owned station in Los Angeles. But he was fired last spring and spent several months job hunting before winning the San Francisco opening.

In other local broadcast developments:

Gary Deeb's column is in Sportsweek

Ron Hunter (left) and Maury Povich: Landing on their feet.

• WJEZ-FM, an automated country music station, is shifting to a "more contemporary" country format featuring live disk jockeys and a heavier accent on album selections. The switch is targeted for Oct. 2. Craig Scott, national program director for the parent Plough Broadcasting chain, says WJEZ will call itself "Z-104" and will devote more time to news, especially during the morning. WIND, the AM sister station to WJEZ, will stick to its country music format.

• Lee Rodgers, who worked at WIND Radio as a deejay [illegible] 1962 and 1970, has been re... the station's 1-to-4 p.m. tal[k] host. Rodgers recently has [been] doing fill-in work at WIND [which] switches to a news-and-tal[k] on Sept. 25. After leaving in 1970, Rodgers was prog[ram di]rector of several stations, [includ]ing WGBS in Miami.

• Al Mitchell, one of the staffers departing WIND a[s the] station drops its music, [joins] WBBM-FM as program di[rector] and morning man. He'll b[e on the] air between 5:30 and 10 a.[m.] daily.

September 15, 1978 Chicago Tribune TV Listing

Exhibit 15

Cook County State's Attorney's Office
Investigations Bureau

INVESTIGATIVE REPORT

08-CL-947	78-C-5267	01
FILE/CONTROL#	DOCKET#	REPORT#
Anthony McKinney		December 30, 2008
SUBJECT		DATE DRAFTED
Interview of Robert McGruder	December 29-30, 2008	Michael Paoletti #435
SYNOPSIS OF REPORT	PERIOD COVERED	INVESTIGATOR(S)

In 1978 Anthony McKinney was convicted for the murder of Donald Lundahl. Lundahl was sitting in his car parked in the area of 153rd and Lexington, Harvey, Illinois when he was shot at close range with a shotgun.

On December 30, 2008, at approximately 0930 hours, Cook County State's Attorney's Office (CCSAO), Investigations Bureau, Investigator D. Brannigan and Reporting Investigator ("R/I") M. Paoletti, interviewed Robert McGruder about the murder of Donald Lundahl. This interview took place inside of R/I's assigned vehicle as Robert McGruder wanted to meet Investigators away from his residence.

Investigator D. Brannigan and R/I identified themselves to Robert McGruder by showing official photographic identification and badges. Investigators asked Robert McGruder if he would answer questions about the murder of Donald Lundahl. Robert McGruder agreed to be interviewed. The following is a summary of that interview.

Robert McGruder told Investigators that neither he or his brother (Roger McGruder) killed the security guard. Robert McGruder also told Investigators that he knew that Tony Drakes has told people that Roger McGruder killed the security guard.

Investigators asked Robert McGruder how he knew that Tony Drakes told people that Roger McGruder killed the security guard. Robert McGruder told Investigators that some students from Northwestern University showed him a video in which Tony Drakes implicates his brother, Roger McGruder. Robert McGruder told Investigators that the Students from Northwestern University first confronted him at the Markham Courthouse, outside of a courtroom where he had pending charges. The students approached Robert McGruder by telling him they were taking a survey about Anthony McKinney. Robert McGruder told Investigators that he did not speak with the students at that time. Robert McGruder then told Investigators that he had two meetings with the students from Northwestern University at his mother's home, 15740 S. Marshfield, Harvey, Illinois and one meeting at the USA Restaurant on 159th Street. Robert McGruder told Investigators that he does not believe he was videotaped by the students. Robert McGruder told Investigators that the students did take notes. Robert McGruder also told Investigators that only two to three students were present during the interviews and nobody else was present.

Investigators asked Robert McGruder if he could recall what he was doing on the night of the Spinx/Ali fight. Robert McGruder told Investigators that he watched the Spinx/Ali fight at his brothers, Roger McGruder, apartment, 147th and Winchester, Harvey, Illinois. Rhonda McGruder (wife of Roger), Billy Hambrick (a cousin of the McGruder's) and Stanley Brey were also at the apartment watching the Spinx/Ali fight. Robert McGruder left the apartment with Stanley Brey and went to a party at a karate club, approximately 154th and Myrtle, Harvey, Illinois. Robert McGruder

could not recall if he and Stanley Brey left the apartment during the fight or after the fight ended. Robert McGruder and Stanley Brey left the party at the Karate Club at approximately 1:00 a.m. because they were not old enough to stay any longer. Robert McGruder and Stanley Brey were walking home when they were approached by Detective's McCarthy and Morrissey, Harvey Police Department. Robert McGruder was taken to the Harvey Police Station by the detectives and questioned about the murder of a security officer. Stanley Brey was not taken to the Harvey Police Station. While at the Harvey Police Station, Robert McGruder saw Anthony McKinney in either an open room or an interview room. Robert McGruder was interviewed by Detective McCarthy. Robert McGruder told Investigators that Detective McCarthy beat him in an interview room at the Harvey Police Department. Robert McGruder told Investigators that he was released from the Harvey Police Department and he walked back to his brother's, Roger McGruder, apartment.

Investigators asked Robert McGruder if he saw Anthony McKinney that day. Robert McGruder told Investigators that he was friends with Anthony McKinney and may have been with Anthony McKinney during the day. Robert McGruder was certain that Anthony McKinney was not at his brother's apartment watching the fight nor was he (Anthony McKinney) at the karate club for the party, while he (Robert McGruder) was at the karate club.

Robert McGruder added that on approximately three to four occasions, after he was questioned about the murder of the Security Officer, Harvey Police Department Detectives McCarthy and Morrissey gave him (Robert) $30.00 to $40.00. Investigators asked Robert McGruder why the Detectives gave him money. Robert McGruder told Investigators that the detectives told him they were wrong for hitting him in the police station. Investigators asked Robert McGruder if he was with anyone when Detectives McCarthy and Morrissey gave him the money. Robert McGruder told Investigators that he was not with anyone when the Detectives paid him the money.

Robert McGruder told Investigators that he was a member of the Gangster Disciple street gang at the time of the Spinx/Ali fight. Anthony McKinney was a member of the Vice Lords Street Gang at the time of the Spinx/Ali fight. Robert McGruder told Investigators that despite being members of different gangs he and Anthony were friends who would hang out together. Robert McGruder would often spend the night at Anthony McKinney's home on Bonnis Street in Harvey. Robert McGruder told Investigators that Anthony McKinney took medication to control his temper. Robert McGruder did not know the name of the medication but knew that if Anthony McKinney did not take the medication he (Anthony) could become violent.

PERSONAL INFORMATION:

Name:	Robert McGruder
DOB:	02/22/1958
SS#:	323521986
Address:	325 W 154th Street, Harvey, IL
TX#:	None
IR#:	434882
SID#:	IL17156370
FBI#:	303748T5
Employment:	None
DL#:	M50076058053

INVESTIGATOR(S) [signature] FEB 5, 2009 DATE

SUPERVISOR'S APPROVAL [signature] #345 02/18/09 DATE

Exhibit 16

103 Ill. App. 3d 679, *; 431 N.E.2d 1130, **;
1981 Ill. App. LEXIS 3869, ***; 59 Ill. Dec. 373

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JAMES SMYLIE, Defendant-Appellant

No. 80-1633

Appellate Court of Illinois, First District, Second Division

103 Ill. App. 3d 679; 431 N.E.2d 1130; 1981 Ill. App. LEXIS 3869; 59 Ill. Dec. 373

December 29, 1981, Filed

SUBSEQUENT HISTORY: [***1]

Rehearing Denied January 26, 1982.

PRIOR HISTORY:

Appeal from the Circuit Court of Cook County; the Hon. DWIGHT McKAY, Judge, presiding.

DISPOSITION:

Judgment affirmed.

LexisNexis(R) Headnotes

COUNSEL:

Ralph Ruebner, Steve Clark, and Barbara Kamm, all of State Appellate Defender's Office, of Chicago, for appellant.

Richard M. Daley, State's Attorney, of Chicago (Michael E. Shabat, Kevin Sweeney, and Richard J. Cosentino, Assistant State's Attorneys, of counsel), for the People.

JUDGES:

Justice Stamos delivered the opinion of the court. Hartman, P.J., and Downing, J., concur.

OPINIONBY:

STAMOS

OPINION:

[*681] [**1132] James Smylie was charged by information with the murder of Lawrence Sanders. After a jury trial, Smylie was found guilty of murder and sentenced to 25 years in the Illinois Department of Corrections. Defendant appeals, asserting: (1) he was denied a fair trial by the trial court's limitation of defense counsel's cross-examination of two police officers; (2) he was denied due process and a fair trial by the State's improper closing argument; (3) he was denied a fair trial when the trial court admitted into evidence a number of prejudicial photographs of the decedent; and (4) he was not proved [***2] guilty beyond a reasonable doubt.

On August 17, 1978, at about 4 a.m., a Harvey police officer responded to a radio dispatch to investigate the area of 158th Street and Lincoln Avenue for a man face down in the street. The officer found the body of Lawrence Sanders, who had been shot four times at close range. The State's evidence was as follows.

Detective McCarthy of the Harvey police department interviewed the decedent's girlfriend, Peggy Price, at her home on the evening of August 17, 1978. She said that at 1 a.m. on August 17, she was sleeping with the decedent when defendant knocked on the door and said he wished to talk to the decedent. The decedent was awakened and after some coaxing by defendant, went for a ride with defendant in the latter's car. Price testified that she recognized defendant's voice and appearance from the two or three times she had met him previously. She also testified that she heard defendant tell the decedent that he needed the $ 60 owed him. When she looked out the window of the apartment as the man left, Price saw the decedent get into the car with defendant. McCarthy, along with Detective Thomas Morrison and others, went to defendant's house [***3] and were told defendant wasn't there. They then went to defendant's brother's house. A man answered and identified himself as James Smylie. He was arrested and taken to the Harvey Police Station. At the station, the man told the officers he was John Smylie, not James Smylie, and said he told them he was James because there were arrest warrants for traffic violations issued against him (John) in Chicago. McCarthy left the station but returned when he was informed that defendant had

come to the police station to turn himself in for the murder of Lawrence Sanders.

Officer Rizzi, who was working the front desk of the police station [*682] when defendant arrived, testified that defendant came in and said they were "holding the wrong guy" and that "he was there to give himself up" for killing Sanders. Morrison testified that defendant was given his rights and that defendant filled out a constitutional rights from acknowledging that he understood his rights. Defendant then gave an oral statement confessing to the killing of Sanders.

When he was asked to complete a written statement, defendant began but said he was too nervous to write and asked Morrison to write it out for him. [***4] Morrison said he couldn't do that but said he would have it typed. Detective McCarthy, with defendant present, dictated a statement to Phyllis Egelbrecht, a civilian typist, who typed it on a statement form. Defendant read the statement and signed it. Morrison denied asking defendant to take a paraffin test.

During cross-examination, defense counsel attempted to question Morrison concerning the information he received from Peggy Price. The State objected on the ground that such testimony was hearsay. Defense counsel responded that the testimony was not hearsay since it would not be used to prove the truth of the matter asserted. Defense counsel said it would be used to show that the police had sufficient information to fabricate defendant's alleged confession. The trial court ruled that the testimony was irrelevant and immaterial to the issue of the voluntariness of the confession.

[**1133] Defendant offered the following evidence in his case-in-chief. A stipulation was read stating that if called to testify, Michael Schaeffer, a toxicologist, would say that he tested specimens of decedent's blood, urine and bile and did not detect the presence of alcohol. [***5] Defendant argues that this proves the confession was fabricated since it states that defendant and the decedent went for "a few drinks" prior to the shooting. Jimmy Cole, who lived with defendant's mother, testified that defendant was in his mother's house at midnight on the morning of the killing. Defendant's wife testified that she and defendant went to bed between 11 and 12 on the night of August 16 and that defendant did not leave the house anytime that night. Defendant's brother Gregory testified that he and defendant went to the Harvey police station to bail out their brother John and that defendant never said he was there to turn himself in. Jerry Robinson, who had known the decedent for about six months, testified that he went to pick decedent up on the night of August 16. Robinson said he was accompanied by another friend, James Walker, who waited in the car while Robinson went to get decedent. Decedent went with the two men to a bar in Harvey. They became separated and Robinson and Walker left when the couldn't locate decedent.

Robert Beseth, a private investigator hired by defense counsel, testified that he interviewed Peggy Price at her apartment on September [***6] [*683] 25, 1979, and again on February 10, 1980. At the latter meeting Beseth was accompanied by defense counsel and Jerry Robinson. Beseth testified that Price told them that Robinson resembled defendant to the extent that the two could have been brothers and that Robinson could have been the man who picked up the decedent the night he was killed. According to Beseth, who said he did not take notes during the interviews but instead composed reports a short time thereafter, Price told him that the man who picked up Sanders remained in the hallway and that she saw the decedent leave the apartment and enter what appeared to be a blue Cadillac. This account conflicted with Price's testimony that Beseth took notes during the interview on February 10 and that he never asked her if Robinson looked like defendant or if Robinson could have been the man who picked up the decedent in the early morning of August 17, 1978. Price also denied telling Beseth that the man who picked up the decedent remained in the hallway and denied saying that the decedent left in a blue Cadillac.

Defendant testified on his own behalf and corroborated the testimony of the other defense witnesses. He stated [***7] that he never went to see the decedent on the night in question, that he went to the police station to bail his brother out of jail and not to turn himself in, and that he did not shoot Lawrence Sanders. He further testified that while in custody, he was told by Detective McCarthy to press his hands on seven sheets of paper to test if he had fired a gun within the last three days. One of these sheets was attached to a clipboard and had some writing on the top. Defendant signed this sheet at McCarthy's insistence. Defendant stated that the sheet of paper bearing his alleged confession was blank when he signed it.

During rebuttal, Detective McCarthy testified that he interviewed defendant on the morning of August 18. Also present at that time were Detective Morrison and the secretary, Phyllis Egelbrecht. Defendant asked Morrison to write out the statement. Morrison said he couldn't but would have it typed by Egelbrecht. The completed statement was read to defendant, who said it was correct and signed it. Morrison and McCarthy, who both denied using a clipboard, signed the statement as witnesses. The portion of defense counsel's cross-examination of McCarthy dealing with information [***8] he had gathered prior to the confession was limited because the trial judge ruled it went beyond the scope of the direct examination. Phyllis Egelbrecht

testified and corroborated McCarthy's testimony and said there were no signatures on the bottom of the statement form when she typed it.

The case was submitted to the jury, which returned a verdict of guilty on the [**1134] charge of murder. Defendant's motion for a new trial was denied, and defendant was sentenced to 25 years in prison.

Defendant's first contention on appeal is that he was denied a fair trial [*684] by the trial court's limitation of defense counsel's cross-examination of Detectives Morrison and McCarthy. This, defendant urges, prevented him from presenting his theory that the confession was manufactured by the police. Specifically, defendant endeavored to show that after interviewing Peggy Price, the police had sufficient information to fabricate the alleged confession. According to defendant's theory, the police had him place his hand on a sheet of paper for the stated purpose of testing if he had fired a gun within the last three days. This piece of paper was attached to a clipboard [***9] and had some printing on the top which was covered by the clip portion of the clipboard. Pursuant to instructions by the police, defendant signed the bottom of the paper. The police later typed a confession in the space where defendant had placed his hand. We note that defendant never mentioned the fact that the confession was typed on a form that had printing at both the top *and* the bottom of the sheet. The printing on the bottom of the sheet read: "I have read the above statement consisting of pages and attest that it is a true and accurate account of the events which took place on . It was given by me freely and voluntarily, without fear of threat or promise of reward." Following this printing was space for the signatures of the person making the statement and two witnesses. During the cross-examination of Detectives Morrison and McCarthy, defense counsel attempted to elicit what they were told by Peggy Price. The State's objections during cross-examination of Morrison were sustained on the ground that such testimony was irrelevant and immaterial to the issue of voluntariness of the confession. The State's objections during cross-examination of McCarthy [***10] were sustained because the questioning went beyond the scope of the direct examination.

The scope of cross-examination in a criminal case rests largely within the discretion of the trial court and its decision will not be disturbed unless there has been an abuse of discretion which has prejudiced the defendant. (*People v. McElroy (1980), 81 Ill. App. 3d 1067, 1072, 401 N.E.2d 1069.)* Irrelevant evidence which would only serve to confuse or mislead the jury may properly be excluded without violating defendant's right to confront witnesses. (*McElroy*, at 1072.) However, the accused in a criminal prosecution should be given wide latitude in cross-examination State's witnesses, and the examiner should be allowed to develop all circumstances tending to explain, qualify, or discredit the testimony of an adverse witness. *People v. Gamboa (1975), 30 Ill. App. 3d 242, 251, 332 N.E.2d 543.*

In the case at bar, the trial judge ruled that testimony regarding what the police knew prior to defendant's alleged confession was irrelevant to the central issue, *i.e.*, the voluntariness of the confession. The issue defendant sought to put before the jury, however, was not the voluntariness [***11] [*685] of the confession but rather its authenticity. In seeking to show that the police had sufficient information to manufacture the confession, defense counsel questioned Officers Morrison and McCarthy about what they learned from Peggy Price prior to the time defendant allegedly made his confession. The cross-examination of Officer McCarthy went well beyond the scope of his testimony on direct examination and was therefore properly limited. Defense counsel should, however, have been permitted to show in his cross-examination of Morrison that, prior to defendant's coming to the police station, the police had enough information to fabricate the confession.

We find, however, that the error was harmless. Improper limitation of cross-examination warrants reversal only where there has been a clear abuse of discretion and a showing of manifest prejudice to the defendant. (*People v. Halteman* [**1135] *(1956), 10 Ill. 2d 74, 86, 139 N.E.2d 286.)* An error in restricting cross-examination may be deemed harmless where the prosecution does not rely solely on the credibility of the witness sought to be cross-examined. (See *People v. Patterson* 1980), *88 Ill.* [***12] *App. 3d 168, 175, 410 N.E.2d 396.)* In the case at bar the jury knew that the police had begun their investigation into Sander's death prior to defendant's coming to the police station. It was also clear that the police interviewed Peggy Price prior to defendant's arrest. In addition, defense counsel made full use of his opportunity in closing argument to argue his theory that the confession was manufactured. We also note that when the State asked Peggy Price whether she told the police that defendant had come to her home and left with decedent, defense counsel's objection was sustained. It would be incongruous to hold that defendant was prejudiced by his inability to elicit information where defense counsel successfully objected to the prosecution's inquiries that in all likelihood would have elicited the same information defendant sought to introduce. See generally *People v. Kalpak (1957), 10 Ill. 2d 411, 424, 140 N.E.2d 726.*

Defendant's next contention is that he was denied due process and a fair trial because of the State's allegedly improper remarks during closing arguments. Defendant claims that he was prejudiced by the

prosecution's repeated attacks on defense counsel's [***13] character, such as accusing defense counsel of concocting the defense, of suborning perjury and of misleading the jury. Defendant further argues that he was prejudiced when the prosecution misstated the evidence and made reference to defendant's failure to call James Walker as a witness.

Courts have generally held that a defendant's failure to raise an issue in his written motion for a new trial constitutes a waiver of that issue and it cannot be urged as a ground for reversal on appeal. This waiver rule applies to constitutional as well as other issues. (*People v. Pickett (1973), 54 Ill. 2d 280, 296 N.E.2d 856.)* A post-trial motion that includes only [*686] general allegations is insufficient to properly preserve a matter for review. (See *People v. Goble (1976), 41 Ill. App. 3d 491, 499, 354 N.E.2d 108* (post-trial motion that raised "such other grounds and each and every error as may appear from the Report of Proceedings" held insufficient to preserve error for review); *People v. Rogers (1975), 32 Ill. App. 3d 788, 790, 336 N.E.2d 784,* (post-trial motion that said defendant "hereby presents may and all errors, and requests relief from this court, or if denied, [***14] from the courts on review" did not preserve errors for review since to do so would destroy the rationale behind post-trial motions, *i.e.*, to allow the trial court to correct its own errors).) In a recent appellate court case, allegations in a motion for a new trial that the State's closing arguments were inflammatory, prejudicial, infringed upon defendant's right to counsel and "exhorted the jury to convict the defendant based on matters which [are] dehors the record in violation of the defendant's rights under the Sixth and Fourteenth Amendment" were held insufficient to inform the trial court of the alleged errors and thus waived them for purposes of review. (*People v. Turk (1981), 101 Ill. App. 3d 522, 428 N.E.2d 510,* Nowhere in defendant's post-trial motion is there mention of attacks on defense counsel. The motion is worded in broad, general language without reference to remarks attacking the character of defense counsel. In *People v. Rivera (1978), 62 Ill. App. 3d 401, 378 N.E.2d 1293,* however, a defendant's allegation in his motion for a new trial that he was denied a fair trial because of the assistant State's Attorney's "prejudicial inflamatory [*sic*] [***15] and erroneous statements in closing argument" was held sufficient to apprise the trial court of the error relied on. *(62 Ill. App. 3d 401, 406.)* Without specifically ruling on the sufficiency of defendant's motion for a new trial in the instant case, we will assume that the errors he alleges were not waived.

[**1136] It is error to charge defense counsel with using improper tactics to defend his client. Such errors exist when the defense is accused of fabricating its case or of suborning perjury (*People v. Lavoy (1980), 91 Ill. App. 3d 639, 644, 415 N.E.2d 487.)* However, where the prosecution merely charges defense counsel with obscuring the evidence, no reversible error is committed. (*Lavoy*, at 644.) Even improper remarks by the prosecutor do not constitute reversible error unless they result in substantial prejudice to the defendant (*People v. Johnson (1979), 73 Ill. App. 3d 431, 434, 392 N.E.2d 587),* or are a material factor in the defendant's conviction. *People v. Swets (1962), 24 Ill. 2d 418, 423, 182 N.E.2d 150.*

In accusing defense counsel of concocting the defense, the prosecution in the case at bar went beyond the bounds of permissible [***16] comment. (See *People v. Gamboa (1975), 30 Ill. App. 3d 242, 250, 332 N.E.2d 543.)* We find, however, that this and the other allegedly improper attacks on defense counsel did not substantially prejudice defendant nor did they [*687] constitute a material factor in his conviction. We therefore decline to grant defendant a new trial. See also *People v. Porter (1981), 96 Ill. App. 3d 976, 984-87, 422 N.E.2d 213.*

We note in this regard that the vast majority of defense counsel's objections to the prosecution's remarks were sustained. The fact that the assistant State's Attorney inexcusably chose to ignore some of the court's admonitions does not change the nature of the error in this case. We also note that defense counsel's argument was clearly more than an attack on the credibility of the State's witnesses; it impliedly included accusations of perjury and the falsifying of evidence. Defense counsel specifically accused the police of being evil, racist and unethical. The prosecutions overzealous behavior is more readily understood in light of defense counsel's argument and theory of the case. See generally *People v. Griggs (1977), 51 Ill. App. 3d 224, 226, 366* [***17] *N.E.2d 581.*

There is no question that defendant preserved his allegation that it was prejudicial error for the State, in its closing, to attempt to shift the burden of proof to defendant by commenting on defendant's failure to call James Walker as a witness. Walker was the person who, according to Jerry Robinson's testimony, accompanied Robinson when he allegedly picked the decedent up in the early morning of August 17, 1978. The comments relied on by defendant are the prosecution's reference to Walker as an alibi witness who failed to testify and the statement that Walker was not called to testify by the defense "because he wouldn't back up Robinson's statement." An objection to the latter remark was sustained. Defense counsel, however, did not at that time request the trial court to inform the jury not to consider Walker's absence as indicating his testimony would contradict Robinson's.

As with other comments by the prosecution, this reference to defendant's failure to call James Walker, even if improper, does not constitute reversible error unless it results in substantial prejudice to the accused. (See *People v. Nilsson (1970), 44 Ill. 2d 244, 248, 255 N.E.2d 432,* [***18] *cert. denied* (1970), *398 U.S. 954, 26 L. Ed. 2d 296, 90 S. Ct. 1881.)* In view of the trial court's sustaining of defense counsel's objection, the tangential nature of Walker's potential testimony (see *People v. Beller (1979), 74 Ill. 2d 514, 526, 386 N.E.2d 857),* and the strength of the State's evidence against defendant, we conclude that the remarks were harmless beyond a reasonable doubt. See *People v. Olejniczak (1979), 73 Ill. App. 3d 112, 123-24, 390 N.E.2d 1339.*

We nevertheless feel obligated to point out the conflicting authority in Illinois regarding the propriety of the State's comment on a defendant's failure to call a witness. (See *Nilsson,* at 248, and cases cited therein.) The basic rule, set out in *People v. Munday (1917), 280 Ill. 32, 117 N.E. 296,* is that since the State has the burden of proving the [**1137] defendant's guilt, it is [*688] improper to imply an argument that the defendant has a duty to produce a witness when that witness is equally accessible to the State. (*Munday,* at 47.) Our supreme court appears to have carved out an exception to the *Munday* rule where the absent witness is an alibi witness. In [***19] *People v. Blakes (1976), 63 Ill. 2d 354, 348 N.E.2d 170,* the court found no error in the State's comment on defendant's failure to call alibi witnesses named in defendant's testimony. (See *Blakes,* at 358-60.) In *People v. Beller (1979), 74 Ill. 2d 514, 386 N.E.2d 857,* the court held that a prosecutor's comment on the defendant's failure to call a witness was improper because the witness was not an alibi witness and there was no showing that he was not equally available to both parties. *Beller,* at 526; see also *People v. Smith (1969), 105 Ill. App. 2d 8, 11-12, 245 N.E.2d 23.*

The confusion arises when one considers our supreme court's opinions in *People v. Williams (1968), 40 Ill. 2d 522, 240 N.E.2d 645, cert. denied* (1969), *393 U.S. 1123, 22 L. Ed. 2d 129, 89 S. Ct. 1004,* and *People v. Blakes (1976), 63 Ill. 2d 354, 348 N.E.2d 170,* which quoted the following from *Williams*:

> "'[A] jury in its deliberations is not limited to a consideration of that which is, strictly speaking, testimony. To the contrary, it may properly consider any facts developed in the trial from which a reasonable inference may be drawn for or against either party. For [***20] instance, if it is developed in a trial that a witness exists, presumably under the control of a defendant, who can throw light upon a vital matter, and he is not produced, certainly a jury may fairly consider that fact, and, likewise, counsel would have a legitimate right to comment thereon. * * *
>
> [I]t is our conclusion that though failure to call a witness or produce evidence may not be relied on as substantial proof of the charges, nonetheless, if other evidence tends to prove the guilt of a defendant and he fails to bring in evidence within his control in explanation or refutation, his omission to do so is a circumstance entitled to some weight in the minds of the jury, and, as such, is a legitimate subject of comment by the prosecution.'" (*Blakes,* at 359-60, quoting *Williams,* at 528-29.)

It is true that *Williams* involved the defendant's failure to produce certain physical evidence and the witnesses in *Blakes* were, in fact, alibi witnesses. The logic of the court's opinion, however, is not so limited. (See also *People v. Lion (1957), 10 Ill. 2d 208, 216, 139 N.E.2d 757.)* In *People v. Pepper (1971), 2 Ill. App. 3d 621, 276 N.E.2d 416,* the appellate [***21] court attempted to distinguish *Williams,* noting that the supreme court there concerned itself with the question of self-incrimination and the right of a defendant to testify. (*Pepper,* at 624.) In our opinion, this distinction ignores the plain language in *Williams* that the prosecution may comment, [*689] although not rely, on the defendant's failure to produce evidence within his control to explain or refute the prosecution's evidence. In view of these differing views on the propriety of prosecutorial comment on a defendant's failure to produce a witness or an item of physical evidence, the confusion of the bar, particularly prosecuting attorneys, is understandable.

Defendant's next contention is that he was denied a fair trial when the trial court improperly admitted into evidence numerous inflammatory photographs of decedent's body. Defendant argues that the gruesome photographs prejudiced defendant and had little probative value. The admission of photographs of a murder victim is a matter reserved to the sound discretion of the trial court. (*People v. Myers (1966), 35 Ill. 2d 311, 331, 220 N.E.2d 297.)* Even gruesome photographs are admissible when they [***22] are relevant and establish some fact in issue. (See *People v. Owens (1976), 65 Ill. 2d 83, 90, 357 N.E.2d 465, cert. denied* (1977), *430 U.S. 955, 51 L. Ed. 2d 805, 97 S. Ct. 1600; People v. Henenberg (1973), 55 Ill. 2d 5, 13-14, 302 N.E.2d 27.)* In *People v. Lindgren (1980), 79 Ill. 2d 129, 143-44, 402* [**1138] *N.E.2d 238,* our supreme

court held that it was not an abuse of discretion to admit two photographs showing a victim whose genitals had been severed and placed in his mouth. The court in that case ruled that such photographs were probative of the cause of death, the amount of force used in the murder, the condition of the scene of the crime, and tended to corroborate the testimony of the pathologist, the coroner and several other witnesses. Likewise, in *People v. Gerecke (1977), 45 Ill. App. 3d 510, 359 N.E.2d 1178,* the court held that the two color photographs of the victim taken at the murder scene and three color photographs taken at the morgue were properly admitted because they were relevant to prove the cause of death and the identity of the victim. The court also held that the pictures were not unnecessarily cumulative even though [***23] there was oral testimony concerning the same issues. *(45 Ill. App. 3d 510, 514.)* In the case at bar, the photographs of the victim's bullet-ridden body were relevant to prove the cause of death, the identity of the victim and to corroborate the portion of the confession stating that "[I] emptied my piece" into Sanders. We find it was not an abuse of discretion for the trial court to admit these photographs.

Defendant's final contention on appeal is that he was not proved guilty beyond a reasonable doubt. Defendant's position at trial and on appeal is that the written confession introduced at trial and the oral confessions testified to by Rizzi, Morrison, McCarthy and Egelbrecht were fabricated. Defendant also asserts that Peggy Price erroneously identified him as the man who picked decedent up a few hours prior to decedent's death. The standard of review we are bound to is that a conviction will not be reversed on appeal unless the evidence presented is [*690] so improbable or so palpably contrary to the verdict as to raise a reasonable doubt of guilt.(*People v. Lewis (1979), 75 Ill. App. 3d 259, 281, 393 N.E.2d 1098.)* Where the testimony is conflicting but legally [***24] sufficient if the prosecution's evidence is believed, the question is for the trier of fact. (*People v. Carpenter (1963), 28 Ill. 2d 116, 122, 190 N.E.2d 738.)* The trier of fact may accept all, part or none of a confession and discrepancies between a confession and other evidence are for the trier of fact to assess. *People v. Schultz (1981), 99 Ill. App. 3d 762, 770, 425 N.E.2d 1267.*

The jury in the present case chose to believe the testimony of the State's witnesses. Such evidence was clearly sufficient to prove defendant guilty beyond a reasonable doubt. Peggy Price testified that defendant was with decedent a few hours before the decedent was murdered. There was also a written confession signed by defendant and corroborated by oral confessions heard by three police officers and a civilian secretary. The testimony of those who heard the oral confessions and witnessed the circumstances of the written confession was devoid of any material inconsistencies. We conclude the evidence presented was not so improbable or so palpably contrary to the verdict as to raise a reasonable doubt of defendant's guilt.

The judgment of the trial court is affirmed. [***25]

Affirmed.

Exhibit 17

132 Ill. App. 3d 1, *; 476 N.E.2d 1321, **;
1985 Ill. App. LEXIS 1782, ***; 87 Ill. Dec. 329

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. VICTOR JOHNSON et al., Defendants-Appellants

Nos. 81-1779, 81-1861 cons.

Appellate Court of Illinois, First District, Third Division

132 Ill. App. 3d 1; 476 N.E.2d 1321; 1985 Ill. App. LEXIS 1782; 87 Ill. Dec. 329

March 29, 1985, Filed

PRIOR HISTORY: [***1] Appeal from the Circuit Court of Cook County; the Hon. Richard L. Samuels, Judge, presiding.

DISPOSITION: Affirmed in part, and reversed in part and remanded.

COUNSEL: James J. Doherty, Public Defender, of Chicago (James H. Reddy, Assistant Public Defender, of counsel), for appellant Victor Johnson.

Steven Clark and Barbara Kamm, both of State Appellate Defender's Office, of Chicago, for appellant Darnell Jones.

Richard M. Daley, State's Attorney, of Chicago (Michael E. Shabat, Michele A. Grimaldi, and Maria Elena Gonzales, Assistant State's Attorneys, of counsel), for the People.

JUDGES: JUSTICE McGILLICUDDY delivered the opinion of the court. WHITE, P.J., and RIZZI, J., concur.

OPINION BY: McGILLICUDDY

OPINION

[*3] [**1322] Following a jury trial, defendants Victor Johnson and Darnell Jones were each convicted of unlawful restraint, aggravated kidnaping, deviate sexual assault, armed robbery, rape and murder. The defendants were sentenced to extended terms for each offense except that the offenses of unlawful restraint merged into the offenses of aggravated kidnaping. Both men appeal. Johnson contends that (1) the trial court erred in denying his motion for severance and (2) [***2] the trial court erred in imposing extended-term sentences for the lesser offenses of which he was convicted. Jones contends that (1) the trial court abused its discretion by sentencing him without a complete presentence report and refusing to either order a new report or continue the sentencing hearing so that Jones' mental health records could be obtained; (2) the trial court erred in imposing extended-term sentences for the lesser offenses of which he was convicted; (3) the court erred in imposing an extended-term sentence for murder where the conviction was based on an accountability theory and (4) the court erred in ordering his other sentences to run consecutively to the sentence for aggravated kidnaping.

[**1323] On July 31, 1979, the body of a female was found in the alley behind 14729 Cooper Street in Harvey. The body was identified as that of Fannie Mae Gause. At trial, Dr. Yuksel Konacki of the Cook County medical examiner's office testified that on July 31, 1979, he had performed an autopsy on Fannie Mae Gause. He stated that the cause of her death was a shotgun wound to the chest at very close range.

Two days later, at approximately 4 a.m., defendant [***3] Jones was involved in a car accident at an intersection in Oak Park. He and a companion were arrested and taken to the hospital for treatment of injuries sustained in the accident. At the time of the arrest, police recovered a .12-gauge sawed-off shotgun and a .25-caliber pistol. Approximately an hour and a half later, Jones was taken from the hospital to the Oak Park police station. Craig Ford, the arresting officer, testified that he had advised Jones of his *Miranda* rights and that Jones indicated that he understood them. Officer Ford further testified that Jones told him he had witnessed a shooting in Harvey two or three days earlier. Officer Ford then contacted the Harvey police department. At about 6:30 a.m., Detective Coleman McCarthy of the Harvey police came to the Oak Park police station.

At trial, Detective McCarthy testified that he also read Jones his *Miranda* rights and Jones indicated he wanted to talk to him. McCarthy further testified that Jones gave him the following account of the events leading to the murder of Fannie Mae Gause: On July 31, [*4] 1979, he and Victor Johnson were driving around Chicago in a stolen car when they saw a woman walking [***4] down the street near 87th Street and King Drive. They pulled over to the curb. Jones got out of the car

and walked up to a building as though to ring the doorbell. As the woman passed alongside the car, Jones forced her into it. He then robbed her of 30 cents. Johnson and Jones drove off with the woman and Jones raped her, sexually assaulted her and forced her to perform deviate sexual acts. Johnson took the Sibley Boulevard exit off the Dan Ryan Expressway and stopped the car in an alley in Harvey. He then raped the woman. The defendants allowed the woman to get dressed and they got out of the car. The moment she got out of the car, the woman began to scream and plead with the defendants for her life. Johnson slapped her and told her to stop screaming but she continued. Johnson then shot her in the chest with a shotgun. Jones told McCarthy that two days later, Johnson sawed the barrel off the shotgun. Jones gave McCarthy Johnson's address and a physical description of him. On cross-examination, McCarthy stated that Jones said he had told Johnson to let the woman go.

McCarthy then testified that after speaking to Jones, he went to Chicago police department Area 2 Homicide [***5] and, with their assistance, conducted surveillance of the area of Johnson's home at approximately 5 o'clock that evening. At 6 p.m., Johnson was arrested and taken to the police station. He was given the *Miranda* warnings but indicated that he understood them and wanted to talk. He also signed a form waiver of his constitutional rights.

McCarthy testified that Johnson then gave him an account of the murder. McCarthy's account of Johnson's statement was substantially the same as Jones' statement, although Johnson did not admit raping the woman. McCarthy asked Johnson if he would make a written statement. Johnson agreed but said he could not write legibly. McCarthy's secretary then typed the notes McCarthy had made of Johnson's statement. Johnson read the typed statement and signed it.

On August 8, 1979, McCarthy went to see Jones again in order to get a written statement and to determine whether Jones had anything to add to his account. After being read his *Miranda* rights, Jones dictated his statement to McCarthy, read it and signed it.

Defense counsel objected prior to McCarthy's testimony regarding the statements he received from Johnson and Jones. The court first [***6] admonished the jury that Jones' statement was to be considered only as to [**1324] Jones and not as to Johnson. When McCarthy started to testify about Johnson's statement, the court admonished the jury to consider the statement only in regard to Johnson and not as to Jones. At that [*5] time, the court again advised the jury that McCarthy's testimony as to Jones' statement could be considered only as to Jones.

Assistant State's Attorney Michael Madden also testified that on August 3, 1979, he took a written statement from Victor Johnson about the events of July 31. Johnson's statement to Madden was substantially similar to his statement to McCarthy. In his statement to Madden, Johnson stated that after he returned to Chicago, he pulled out the shell that was fired from the shotgun, burned the rear part off and threw the cap away on his neighbor's roof. The court admonished the jury that Madden's testimony had been received as to Johnson only and not as to Jones. All three written statements were published to the jury after further admonishments by the court.

Johnson and Jones were tried before the same jury. Johnson testified at trial but Jones did not. [***7] After closing arguments were heard, the jury was instructed that any evidence limited to one defendant was not to be considered as to the other defendant. The jury returned guilty verdicts against each defendant for murder, armed robbery, rape, aggravated kidnaping, deviate sexual assault and unlawful restraint.

We first address the common issue presented for review. Both defendants appeal the imposition of extended-term sentences for the lesser offenses of which they were convicted. In addition to extended terms of 80 years for murder, defendants were each sentenced to extended terms of 60 years for rape, 60 years for deviate sexual assault, 60 years for armed robbery and 30 years for aggravated kidnaping.

In *People v. Jordan (1984), 103 Ill. 2d 192, 205-06, 469 N.E.2d 569, 575*, our supreme court recently clarified the law relating to the propriety of imposing multiple extended-term sentences. The court reaffirmed its decision in *People v. Evans (1981), 87 Ill. 2d 77, 429 N.E.2d 520*, and stated that when a defendant has been convicted of multiple offenses of differing classes, an extended-term sentence may be imposed only for the conviction within the most serious class [***8] and only if that offense was accompanied by brutal or heinous behavior.

In the instant case, the trial court found that all the offenses of which both men were convicted were accompanied by brutal and heinous behavior. The extended-term sentences for murder were thus appropriate under the *Jordan* standard. The extended terms imposed for the lesser offenses, however, were improper and must be vacated. Both defendants should be resentenced for the lesser offenses.

Johnson also contends that the trial court erred in denying his motion for severance where he and Jones were tried before the same jury and where Jones' corroborative statement implicating Johnson was not subject to cross-examination because Jones did not testify. In

[*6] support of his argument, Johnson cites *Bruton v. United States (1968), 391 U.S. 123, 20 L. Ed. 2d 476, 88 S. Ct. 1620*. In *Bruton*, the supreme court held that the introduction into evidence of the statement of a nontestifying defendant implicating a codefendant violated that defendant's sixth amendment right to confrontation, regardless of whether the jury was given appropriate limiting instructions. The Illinois Supreme Court, however, [***9] has held that no violation of the *Bruton* rule occurs where the defendant claiming the benefit of that rule has himself made a similar inculpatory statement which is also in evidence. *People v. Rosochacki (1969), 41 Ill. 2d 483, 244 N.E.2d 136*; *People v. Cart (1981), 102 Ill. App. 3d 173, 429 N.E.2d 553*; *People v. Moore (1978), 65 Ill. App. 3d 712, 382 N.E.2d 810, cert. denied* (1980), *444 U.S. 1043, 62 L. Ed. 2d 729, 100 S. Ct. 729*.

Although at trial Johnson denied any involvement in the crimes against Fannie Mae Gause, his two signed inculpatory [**1325] statements were introduced into evidence, as was the oral statement he made to Detective McCarthy. Johnson's statements were corroborative of Jones' and were even more detailed. We find, therefore, that there was no violation of the *Bruton* rule. The trial court did not err in denying Johnson's motion for severance.

Jones' first argument on appeal is that the trial court abused its discretion in sentencing him after defense counsel informed the court that the presentence report was incomplete. At Jones' sentencing hearing, his counsel pointed out that the report failed to include any mention [***10] of Jones' stay at the Tinley Park Mental Hospital and, in fact, indicated that Jones had no mental health history. Defense counsel asked the court to reorder a presentencing investigation and requested that the sentencing hearing be continued in order that Jones' mental health records could be obtained. The court overruled the request and noted that the report had been available to defense counsel for one week prior to the sentencing hearing.

In *People v. Meeks (1980), 81 Ill. 2d 524, 411 N.E.2d 9*, the supreme court reversed an order of the appellate court which had required the defendant to be resentenced because defendant's presentence report was insufficient. In *Meeks*, the presentence report had not mentioned sentencing alternatives or community programs to assist in defendant's rehabilitation as required by the Uniform Code of Corrections. (Ill. Rev. Stat. 1979, ch. 38, par. 1005 -- 3 -- 2(a)(2).) Although the supreme court agreed with the finding of the appellate court that the presentence report in *Meeks* did not fully comply with the requirements of the code, it held that the issue had not been preserved for review. The court noted that counsel had not called [***11] the matter to the trial [*7] court's attention prior to defendant's sentencing hearing, despite the fact that the presentence report had been available to and read by counsel three days prior to the hearing. The supreme court found that any objections to the presentence report had been waived.

Similarly, in the case at bar, Jones' presentence report was available to counsel for at least seven days prior to Jones' sentencing hearing. Counsel, however, did not move for a new report or for a continuance to obtain his client's mental health records until the hearing was underway. Therefore, counsel failed to properly preserve this issue for review. The trial court did not abuse its discretion in sentencing Jones without the additional data. See *People v. Sigman (1976), 42 Ill. App. 3d 624, 356 N.E.2d 400, cert. denied* (1977), *434 U.S. 839, 54 L. Ed. 2d 102, 98 S. Ct. 133*.

Jones next argues that the court erred in sentencing him to an extended term for murder. He contends that his behavior was not sufficiently brutal or heinous or indicative of wanton cruelty to warrant the imposition of an extended term. In support of his argument, Jones points out that the basis [***12] of his conviction was felony murder and that he did not kill the victim.

It is well established that a trial court has wide discretion in imposing a sentence, and that its determination should not be altered on review absent a clear abuse of that discretion. (*People v. La Pointe (1981), 88 Ill. 2d 482, 431 N.E.2d 344*; *People v. Cox (1980), 82 Ill. 2d 268, 412 N.E.2d 541*.) Further, in imposing an extended-term sentence, the court should properly focus on the offense rather than the nature of the offender's participation. (*People v. Rowe (1983), 115 Ill. App. 3d 322, 329, 450 N.E.2d 804, aff'd* (1984), *103 Ill. 2d 192, 214-15, 469 N.E.2d 569*; *People v. Gray (1980), 87 Ill. App. 3d 142, 153, 408 N.E.2d 1150, cert. denied* (1981), *450 U.S. 1032, 68 L. Ed. 2d 228, 101 S. Ct. 1745*.) Section 5 -- 5 -- 3.2(b)(2) of the Unified Code of Corrections provides that the court may impose an extended-term sentence when the defendant is convicted of any felony and the court finds the offense was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. Ill. Rev. Stat. 1979, ch. 38, par. 1005 -- 5 -- 3.2(b)(2).

[**1326] In *Rowe* [***13] and *Gray*, this court upheld the imposition of extended-term sentences where the defendant's conviction was based on an accountability theory and where the court found there was brutal and heinous conduct on behalf of the defendant indicating wanton cruelty.

At Jones' sentencing hearing, the court stated:

> "* * * By way of aggravation, clearly the defendant himself caused serious harm. Fortunately for him he did not pull

> the [*8] trigger and he is the only one, I think, is going to benefit from that. Otherwise I think he would be looking at the possibility of capital punishment.
>
> * * *
>
> This defendant, while he didn't grab the gun and shoot, he certainly, from the testimony and the evidence that is in, facilitated and helped place the idea of such conduct into his co-defendant's mind.
>
> The court further finds that these offenses and each of them were accompanied by exceptional brutality or heinous behavior indicative of wanton cruelty such as to authorize extended term."

It was not error to sentence Jones to an extended term for murder.

Finally, Jones contends that the trial court erred in sentencing him to consecutive sentences. He maintains that the court's determination [***14] that such sentences were necessary for the protection of society was based on allegedly unreliable testimony regarding Jones' original arrest in Oak Park and his attempts to escape while in custody. Section 5 -- 8 -- 4(b) of the Unified Code of Corrections provides that the court may impose a consecutive sentence only if, having regard to the nature and circumstances of the offense and the history and character of the defendant, it determines that such a term is required to protect the public from further criminal conduct by the defendant. Ill. Rev. Stat. 1979, ch. 38, par. 1005 -- 8 -- 4(b).

At Jones' sentencing hearing, an assistant State's Attorney testified that he had knowledge of two efforts by Jones to escape from custody. Defense counsel objected on the basis that this was hearsay. In determining what evidence is admissible at a sentencing hearing, the trial court is not limited by the ordinary rules of evidence. (*People v. Williamson (1979), 69 Ill. App. 3d 1037, 388 N.E.2d 240.*) Further, defense counsel was able to cross-examine the assistant State's Attorney at the hearing regarding the attempted escapes. After a review of the record, we find that the evidence [***15] was competent and that the court did not abuse its discretion in sentencing Jones to consecutive sentences in order to protect society.

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed in part and reversed and remanded in part.

Affirmed in part and reversed and remanded in part.

Exhibit 18

639 F. Supp. 260, *; 1986 U.S. Dist. LEXIS 25379, **

UNITED STATES OF AMERICA ex rel. VICTOR JOHNSON, Petitioner, v. MICHAEL P. LANE, Respondent

No. 85 C 7093

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

639 F. Supp. 260; 1986 U.S. Dist. LEXIS 25379

May 16, 1986

JUDGES: [**1] Susan Getzendanner, District Judge.

OPINION BY: GETZENDANNER

OPINION

[*260] SUSAN GETZENDANNER, District Judge:

MEMORANDUM OPINION AND ORDER

This petition for a writ of habeas corpus is before the court on cross-motions for summary judgment pursuant to *Fed.R.Civ.P. 56.* Petitioner Victor Johnson is a prisoner in the custody of respondent at the Joliet Branch of the Illinois State Penitentiary as a result of his conviction after a jury trial for murder, rape, deviate sexual assault, armed robbery, and aggravated kidnapping. The Illinois Appellate Court upheld his conviction, though his case was [*261] remanded for resentencing. *See People v. Johnson, 132 Ill.App.3d 1, 476 N.E.2d 1321, 87 Ill. Dec. 329 (1st Dist. 1985).* The Illinois Supreme Court denied his petition for leave to appeal. Ill. Official Reports (106 Ill.2d, No. 12) 21, Nos. 61727, 61800 cons. (May term 1985) (published June 12, 1985). This court has jurisdiction under *28 U.S.C. § 2254.*

Petitioner asserts that his *sixth amendment* right to confrontation, as construed in *Bruton v. United States, 391 U.S. 123, 20 L. Ed. 2d 476, 88 S. Ct. 1620 (1968),* was violated because a non-testifying codefendant's confessions [**2] implicating petitioner were introduced at their joint trial. Petitioner took the stand, denied his guilt, and repudiated his own confessions on the ground that he made them under coercion and under promises of special treatment. However, the trial court had found earlier that petitioner's confessions were voluntarily made.

Respondent asserts that the codefendant's confessions interlocked with petitioner's own, and that the codefendant's confessions were accordingly *per se* admissible in a joint trial under the plurality precepts in *Parker v. Randolph, 442 U.S. 62, 60 L. Ed. 2d 713, 99 S. Ct. 2132 (1979),* as long as the jury was instructed to consider the codefendant's confessions against the codefendant only. Such an instruction was given in the instant case. Petitioner responds, however, that the *per se* rule of *Parker v. Randolph* is inapplicable in the context of a repudiated confession.

For the reasons explained herein, the court holds that the codefendant's confessions interlocked with petitioner's, that the *per se* rule of *Parker* does not apply, but that any error in their introduction was harmless beyond a reasonable doubt. Accordingly, the petition is [**3] denied.

Facts

On July 31, 1979, a then-unknown woman was found dead of a shotgun wound in a Harvey, Illinois alley. Not until August 5, 1979, was she identified as Fannay Mae Gause. Meanwhile, on August 2, Darnell Jones was involved in a traffic accident in Oak Park, Illinois, and was arrested after a shotgun was found in his car. During police station interrogation, Jones told police he had witnessed a Harvey shooting two days earlier. In response to the Oak Park police's call, Harvey Detective Coleman McCarthy then arrived and questioned Jones. On the basis of his interview with Jones, McCarthy subsequently arrested petitioner, and petitioner then made certain statements of his own.

Prior to trial of petitioner and Jones, both defendants unsuccessfully moved to suppress their respective confessions and to sever their joint trial. Neither defendant testified at the suppression hearing. On the motion to sever, defense trial counsel argued that introduction of each defendant's confessions during a joint trial would violate the other defendant's *Bruton* confrontation rights. The prosecutor responded that each defendant's confessions interlocked with the other's and were thus [**4] admissible as an exception to the *Bruton* rule.

Because the issues of the case are critically affected by the interplay of petitioner's and his codefendant's respective sets of statements as published to the jury and

testified to at trial, the court relates the statements and testimony in some detail.

A. Detective McCarthy's Testimony and Defendants' Statements.

At trial, Detective McCarthy testified that co-defendant Jones gave him an oral statement on August 2 and a written statement on August 8, which varied in minor respects but in essence told the following tale of crime. The written statement was entered into evidence. In Jones's version of events, he and petitioner were riding in a stolen car on July 31 and looking for a robbery victim. They stopped the car near 87th Street and King Drive in Chicago, where as a ruse Jones pretended to ring a doorbell and then, at the point of a.25-caliber automatic revolver, forced a woman passerby to enter the car. He then forced her to give up thirty cents, which was all the money she had, and he handed it to [*262] petitioner, who was at the wheel. With the three of them in the car, petitioner then drove the car down [**5] 87th Street while Jones sexually assaulted the woman, and then forcibly engaged her in vaginal intercourse, anal intercourse, and fellatio.

During this time, petitioner drove the car onto the Dan Ryan Expressway and then south to 127th Street, where he left the highway but promptly reentered it, and continued to Sibley Boulevard, where he again exited. After this second exit, petitioner drove into a Harvey alley while the woman was still being forced to fellate Jones. After she stopped, petitioner began sexual intercourse with her, but eventually she was allowed to dress herself. (In his August 8 written statement, which was entered into evidence and published to the jury, Jones elaborated on petitioner's role by saying that petitioner had also had anal intercourse with the woman and that it was petitioner who had opposed releasing her while Jones had favored letting her go.)

The three of them got out of the car. The woman began to scream for help, pleaded for her life, promised not to call the police, and spoke of her three children. Petitioner slapped the woman, told her to shut up, and then shot her in the chest with a shotgun when she continued to scream and plead. Petitioner [**6] then dropped the shotgun, Jones picked it up, the two of them drove back to Chicago, and petitioner sawed off the shotgun barrel two days later.

McCarthy testified that after obtaining the address and physical description of petitioner from Jones, he arrested petitioner as the latter rode away from his house. At the Harvey police station, petitioner made an oral statement regarding the crimes. McCarthy made notes of what petitioner told him and then had the notes transcribed into a typewritten statement that petitioner signed. A second transcript based on an assistant state's attorney's subsequent interrogation of petitioner was prepared and signed by petitioner later on the same night. Both the typewritten statement and the transcript were entered into evidence.

B. Similarities and Differences Between Defendants' Statements.

The specific content of petitioner's statements can best be described by comparing them with Jones's statements. McCarthy's testimony shows that the details in Jones's statements were largely paralleled by those in petitioner's first (oral) statement, including a reference to the woman's three children. Significant differences were as follows: (1) [**7] petitioner did not mention receiving the woman's thirty cents from Jones; (2) petitioner stated that, except for kissing her and feeling her breasts (which he said felt empty), he had no sexual relations with the woman; and (3) petitioner stated that Jones opposed releasing the woman and that Jones as well as petitioner had slapped her as she was screaming. In addition, petitioner's oral statement contained numerous details not provided by Jones, such as the woman having carried a grocery bag and having lost a shoe in the initial struggle, petitioner's familiarity with Harvey because of his girlfriend's residing there, and petitioner's having removed the ammunition from the gun after returning home and having thrown it onto a neighbor's roof from which it rolled onto the ground.

Petitioner's first written statement contained most of the details in his oral statement as well as numerous others. This written statement quoted the woman as having referred three times to her three children. This statement described the woman's clothing, the alley where the murder occurred, the exit from the expressway to go to Harvey, and the Harvey street on which petitioner's girlfriend lived. In this [**8] statement, petitioner said he had forced Jones to cease intercourse with the woman after the woman had begun to bleed and (contrary to Jones's statement) that Jones had begun anal intercourse only after arriving at the alley. Petitioner mentioned that he had burned part of the fatal shell after returning home before throwing the rest of it away, and that the the shotgun [*263] was a.12 gauge Montgomery Ward weapon.

McCarthy testified that petitioner's second written statement, in the form of questions and answers by an assistant state's attorney and petitioner, was taken and transcribed by a court reporter late on the night of petitioner's arrest, and was then signed by petitioner. This statement contained the following additional details not in petitioner's earlier statements: the stolen car was a two-door brown Ford LTD with a vinyl top; the woman was black; and the pistol was a.25-caliber automatic.

Jones's first statement had also mentioned this latter detail.

In this second written statement, petitioner again mentioned that the woman had lost a shoe, and again declared that the woman had spoken of her three children when threatened in the car and before being shot. Petitioner [**9] again mentioned leaving the expressway early at 127th Street, and gave a detailed description of stoplights and the direction of turns after exiting the expressway. Petitioner added that he did not have sexual intercourse with the woman and had not intended to do so, because he was sore from having had intercourse with his girlfriend on the previous morning. In this statement, petitioner said that after returning home, he removed the round that had been fired, burned the rear part off, and threw the cap onto the neighbor's roof. During this statement, petitioner said that he had seen no brand name on the shotgun but "was told" that the label said "Montgomery Ward." (R. 444).

In this final written statement, petitioner also said that he had attended "CVS" (Chicago Vocational High School) for two years but had been expelled after getting into trouble with the principal. He added that he had tried to enter Corliss High School at 103d Street and Cottage Grove Avenue but had been refused admission.

In summary, the chief differences between petitioner's statements and those of Jones, apart from petitioner's added detail, lay in petitioner's denial of having had sexual relations himself [**10] with the victim, his disagreement with Jones as to who had treated the victim more unfavorably in the last moments of the criminal episode, and his failure to acknowledge having received the thirty cents in robbery proceeds from Jones. As will be seen, the wealth of detail in petitioner's statements allowed the prosecution considerable opportunity to impugn his credibility when he repudiated the use statements at trial.

C. The Corroborating Evidence.

In addition to hearing McCarthy's testimony and the confessions of the two codefendants, the jury was apprised of the following facts. At approximately 3:00 a.m. on July 31, 1979, Pearl Mays was driving down an alley in Harvey when she discovered the body of a black female. Ms. Mays called the police (R. 261-62), and Officer Sylvester Jones of the Harvey Police Department arrived at the scene. Officer Jones observed that the woman had sustained a large shotgun wound and that there was only one shoe to be found in the vicinity of the woman's body. (R. 267-68). Officer Jones knew the wound to be a shotgun wound due to pellets found around the wound and on the woman's body. (*Id.*) Numerous pictures of the victim's body were [**11] entered into evidence. (R. 263-64).

The jury was also shown a twelve gauge Ward's shotgun and a twenty-five caliber starter pistol which were found in Jones's car, (R. 289, 304-05), and a matching shotgun barrel stock found somewhat later in a south side field. Finally, the jury heard from Harvey Police Officer Ron Ziolkowski that on August 3, 1979, he went to petitioner's address and located three spent shotgun shells of the Winchester Western make. (R. 474-77). Previous testimony had established that Winchester Western shells were consistent with the live shell found in the sawed-off shotgun and the pellets found in the victim's body. (R. 326-28).

D. Petitioner's Testimony.

When petitioner took the stand, he admitted to having made the earlier confessions [*264] but disclaimed their accuracy. According to petitioner, McCarthy initially threatened him with a gun when petitioner failed to identify himself after being arrested. In the car, McCarthy questioned him about a murder, showed him a picture of the victim, and told him he knew petitioner had been in a mental hospital. Petitioner himself had not yet told McCarthy who he was or that he had been in a hospital. [**12] At the police station, McCarthy told him that Darnell Jones had made a statement implicating petitioner and that petitioner could either cooperate and be sent to a hospital or spend the rest of his life in the penitentiary and perhaps be electrocuted. After going over Jones's story several times with petitioner, McCarthy finally persuaded petitioner to give in and cooperate.

Petitioner claimed he signed the false statement "because [McCarthy] told me he was going to get me some help and I was afraid, because he told me I be in the penitentiary the rest of my life." (sic) After returning to the lockup and thinking about the dead woman's photo, petitioner became upset and tried to hang himself with the shirt he was wearing. He had tried to kill himself on other past occasions. The shirt tore. McCarthy returned and asked him what he was doing, and then McCarthy took him back to his office, told him to sign the statement and not to worry, that the police were going to get him some help, and that the state's attorney would arrive soon, at which time he should continue to cooperate and say that the police had not promised him anything. A police photograph of himself, which had previously [**13] been offered as evidence by the prosecution, showed him wearing a red coat that McCarthy gave him after petitioner had torn his shirt in the suicide attempt.

Petitioner's testimony continued that when the assistant state's attorney arrived, petitioner answered his ques-

tions in accordance with what McCarthy and he had rehearsed. When asked the unrehearsed question about his high school career, he made up an untrue answer, the fact being that he had never attended Chicago Vocational High School. His statements regarding the crimes were all untrue except for the detail about being sore from having had sex with his girlfriend on July 31, 1979. Petitioner claimed he was asleep at home on the night of July 31, 1979, and knew he was not in Harvey.

On cross-examination petitioner denied that he had ever had a girlfriend in Harvey and knew his way around Harvey. He said McCarthy had never told him to say that the woman's breasts felt empty; he had made that statement on the basis of the picture of her wound. He said McCarthy had not told him to say he threw the shotgun shell onto the lot next door but that he and his stepfather had in fact disarmed and thrown away a bag of shells there about [**14] one week before in order to prevent his brother from using them.

Asked why one of the recovered shells had been grossly deformed and was of the Winchester Western make, he said that other shells in the lot had been similarly treated and could have been found by the police. Asked whether McCarthy had told him the victim had three children, he said he did not know, that some of the contents of his statements were rehearsed and others he had to make up, and that McCarthy had not rehearsed the number of children. Previous testimony had shown that the murdered woman in fact had three children.

On cross-examination, petitioner testified that he had made up the story about CVS because he thought it would make his statement look better, though he now realized it made it look worse for him. In his direct testimony, petitioner said that after completing the eighth grade and starting the ninth in a remedial school, he had tried to get into CVS and Corliss but could not do so because he was "in and out of" Chicago Read and Tinley Park mental health centers at that time. It was at one of these centers where he met Darrell Jones. Petitioner also testified that he had related all the details about [**15] the trip to Harvey because McCarthy had told him about them, using Jones's statement as a [*265] basis, and not because of any independent familiarity of his own with the route. He did, however, acknowledge knowing how to get to Harvey. [1]

1 The court notes that presentence reports indeed show petitioner to have been seen on numerous occasions in psychotherapeutic settings, including those at Chicago Read and Tinley Park, but no evidence other than petitioner's own testimony was offered to show that his codefendant had ever known him there or that the codefendant or the police had ever known of petitioner's psychotherapy. The same presentence reports note professional opinions that petitioner displayed marked manipulativeness in dealing with adverse facts.

In closing argument, the prosecution attacked petitioner's allegation that he had confessed because of a promise to be sent to a mental hospital, asking: "If a man didn't do anything, what kind of choice is that?" The prosecution emphasized that neither [**16] petitioner nor his codefendant could have known from the police how many children to quote the murdered woman as claiming, because at the time of the defendants' original confessions the police were still unaware of the victim's identity. The prosecution attacked petitioner's statement that he had never been to Harvey, pointing out the specific route described in his confessions; challenged petitioner's statement that he had only touched the victim's breast but had not had intercourse with her, adding that on an accountability theory the prosecution need not prove petitioner's physical participation in each act charged; and referred to the deformed shell found next to petitioner's house. The prosecutor did *not* stress the similarities between Jones's and petitioner's statements as a ground for disbelieving the latter's testimony, although he did point out the discrepancies between the two confessions. (Tr. 619-20).

Legal Discussion

A. Per Se Admissibility of Interlocking Confession.

The basic issue in this case concerns the extent to which the *sixth amendment* right to confront adverse witnesses precludes the prosecution from introducing a codefendant's confession [**17] when (1) the defendant and codefendant are tried jointly, (2) the codefendant's confession tends to implicate the defendant, and (3) the codefendant cannot be cross-examined because he does not take the stand. In *Bruton v. United States, 391 U.S. 123, 20 L. Ed. 2d 476, 88 S. Ct. 1620 (1968)*, the Supreme Court held that the admission in a joint trial of the "powerfully incriminating" statements of a nontestifying codefendant impermissibly infringed the other defendant's right of confrontation. *Id. at 135-136.* Though acknowledging that "[a] defendant is entitled to a fair trial but not a perfect one," the Court held that cautionary instructions to use the out of court confession only against the confessor could not cure the defect. *Id. at 137.*

In *Harrington v. California, 395 U.S. 250, 253-54, 23 L. Ed. 2d 284, 89 S. Ct. 1726 (1969)*, the Court held that a violation of the *Bruton* rule, in light of other "overwhelming" evidence of guilt, might be harmless beyond a reasonable doubt and thus fail to constitute reversible error. This harmless error approach character-

ized the Court's later decision in *Schneble v. Florida, 405 U.S. 427, 31 L. Ed. 2d 340, 92 S. Ct.* [**18] *1056 (1972)*, when use of a non-testifying codefendant's statements was approved because they merely interlocked with and corroborated parts of the defendant's own detailed confession and the other "independent" and "overwhelming" evidence. *Id. at 431.*

Presented again with a case of interlocking confessions in *Parker v. Randolph, 442 U.S. 62, 60 L. Ed. 2d 713, 99 S. Ct. 2132 (1979)*, a four-Justice plurality of the Court reasoned that when a defendant has admitted his own guilt, use of his codefendant's confession implicating him at their joint trial "will seldom, if ever, be of the devastating character referred to in *Bruton*" and that the "admission of interlocking confessions with proper limiting instructions" is *per se* constitutional. *Id. at 73-74.* (Rehnquist, J., with Burger, C.J., Stewart, J., and White, [*266] J.). The Court reasoned that the *sixth amendment* right of confrontation "has far less practical value to a defendant who has confessed to the crime than to one who has consistently maintained his innocence," and that "successfully impeaching a codefendant's confession on cross-examination would likely yield small advantage to the defendant whose [**19] own admission of guilt stands before the jury unchallenged." *Id. at 73.* Thus, "when the defendant's own confession is properly before the jury . . . the constitutional scales tip the other way" than they had in *Bruton. Id. at 74.*

The four other *Parker* Justices -- including Justice Blackmun, who concurred in the plurality's judgment and thus made it the judgment of the Court -- felt that each case in which a non-testifying codefendant's interlocking confession was introduced should be analyzed for harmlessness of any *Bruton* error and not treated as immune from the *Bruton* rule. Because of the posture of the particular case, three of these Justices not only rejected the prevailing plurality's reasoning, *id. at 82-91*, but were unable to find the *Bruton* error at issue harmless. *Id. at 81-82.* (Stevens, J., with Brennan and Marshall, JJ., dissenting). Justice Blackmun, however, concurred in the *Parker* judgment because, while he "would not adopt a rigid *per se* rule," *id. at 79*, he felt that any *Bruton* error in the case had indeed been harmless beyond a reasonable doubt. *Id. at 77.*

Respondent contends that the prevailing plurality opinion [**20] in *Parker* established the rule that, notwithstanding *Bruton*, a nontestifying codefendant's confession is always admissible in a joint trial as long as it interlocks with a confession by defendant that is already properly before the jury and the jury is instructed to consider the interlocking confession solely as to the codefendant. Since petitioner's confession was properly before the jury and an appropriate instruction had been given, respondent argues that petitioner's confession was admissible *per se.* Petitioner contends, however, in reliance on Justice Blackmun's decisive *Parker* concurrence, that the *Parker* case stands only for the rule that a harmless error analysis must be done before introduction of an interlocking confession can be approved, and that under such an analysis in the case at bar, use of the codefendant's confession should be held reversible error.

Whether *Parker* stands for a rule that interlocking confessions are admissible *per se* has not been decided by the Court of Appeals for this circuit. Several Seventh Circuit decisions, however, have at least alternatively applied a harmless error test to codefendants' interlocking confessions [**21] even when defendants did not repudiate their own confessions. *See United States ex rel. Colon v. DeRobertis, 774 F.2d 801, 806 (7th Cir. 1985); Riner v. Owens, 764 F.2d 1253, 1260 (7th Cir. 1985), cert. denied, 475 U.S. 1055, 106 S. Ct. 1282, 89 L. Ed. 2d 589 (1986); Montes v. Jenkins, 626 F.2d 584, 587-88 (7th Cir. 1980); United States v. Spinks, 470 F.2d 64, 66* (7th Cir.), *cert. denied, 409 U.S. 1011, 34 L. Ed. 2d 305, 93 S. Ct. 456 (1972).* In addition, one decision in this circuit has strongly suggested in dictum that when (as here) a defendant has repudiated his confession, introduction of the codefendant's interlocking confession may be reversible error unless there is sufficient additional corroborating evidence of the defendant's guilt. *United States v. Fleming, 594 F.2d 598, 603-04* (7th Cir.), *cert. denied, 442 U.S. 931, 61 L. Ed. 2d 299, 99 S. Ct. 2863 (1979).*

A harmless error test in consonance with Justice Blackmun's *Parker* concurrence is apparently applied in the Eighth Circuit. *See, e.g., United States v. Iron Thunder, 714 F.2d 765, 771 (8th Cir. 1983)* (alternative holding); *United States v. Parker, 622 F.2d 298, 301 (8th Cir.* [**22] *1980), cert. denied sub nom 449 U.S. 851, 101 S. Ct. 143, 66 L. Ed. 2d 63 (1980) Todd v. United States,* (stating that harmless error analysis continues to be preferable to *per se* approach even after *Parker v. Randolph.*) The Second Circuit, by contrast, has treated the interlocking confessions situation as an [*267] "exception to the *Bruton* rule" and not as harmless error notwithstanding the fact "that a defendant takes the stand and denies his guilt, thus implicitly repudiating his inculpatory admissions." *Tamilio v. Fogg, 713 F.2d 18, 20-21 (2d Cir. 1983), cert. denied, 464 U.S. 1041, 79 L. Ed. 2d 170, 104 S. Ct. 706 (1984).* However, the Second Circuit apparently adopted a *per se* approach prior to *Parker v. Randolph* whereas the Seventh Circuit apparently did not. *Compare United States ex rel. Dukes v. Wallack, 414 F.2d 246, 247 (2d Cir. 1969) with United States v. Fleming, 594 F.2d 598, 602-03* (7th Cir.), *cert. denied, 442 U.S. 931, 61 L. Ed. 2d 299, 99 S. Ct. 2863 (1979).* Given the state of the law in this circuit, the court believes that *Parker v. Randolph* requires a harmless error

analysis to be made before introduction [**23] of a co-defendant's interlocking confession at a joint trial can be sustained.

This view is strengthened by the Supreme Court's announcement in *Marks v. United States, 430 U.S. 188, 51 L. Ed. 2d 260, 97 S. Ct. 990 (1977)*, that "when a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds'. . . ." *Id. at 193* (quoting *Gregg v. Georgia, 428 U.S. 153, 169, 49 L. Ed. 2d 859, 96 S. Ct. 2909 n.15 (1976)* (opinion of Stewart, Powell, and Stevens, JJ.). In *Parker v. Randolph*, the "narrowest grounds" were presumably provided by Justice Blackmun's concurrence, which joined in the judgment on harmless error grounds and not on the broader *per se* theory advanced by the prevailing plurality. Justice Blackmun's view thus "constituted the holding of the Court and provided the governing standards." *Marks, 430 U.S. at 194.*

Were this court nevertheless to adopt the *Parker* plurality's approach as a *per se* rule that would generally allow use of interlocking confessions, such a rule [**24] still would not logically reach the present case. The *Parker* respondents failed to take the stand and challenge their confessions, and the plurality's opinion specifically noted that "successfully impeaching a codefendant's confession on cross-examination would likely yield small advantage to the defendant *whose own admission of guilt stands before the jury unchallenged." Parker, 442 U.S. at 73* (emphasis supplied). The plurality reasoned that "the incriminating statements of a codefendant will seldom, if ever, be of the 'devastating' character referred to in *Bruton* when the incriminated defendant has admitted his own guilt." *Id.* The corollary of this reasoning is that when a defendant *has* denied his guilt by repudiating a confession, a codefendant's interlocking confession that is unrelieved by the opportunity to cross-examine may very well be "devastating" to his case.

The Seventh Circuit recognized in dicta in *United States v. Fleming* that non-repudiation can be critical to the weight given a confession and thus to the harmlessness of an interlocking confession. *594 F.2d at 603-04.* Although the Second Circuit has followed a *per se* approach for interlocking [**25] confessions even when a defendant has repudiated his own confession, all of the decisions applying that rule did so in the context of additional corroborating evidence which the courts found to render any possible *Bruton* violation harmless beyond a reasonable doubt. *See Tamilio, 713 F.2d at 21*; *Dukes, 414 F.2d at 247*; *Felton v. Harris, 482 F. Supp. 448, 456 (S.D.N.Y. 1979)*. This court concludes that regardless of how the teaching of *Parker v. Randolph* is characterized, it cannot realistically be viewed as immunizing an interlocking confession from harmless error scrutiny when the principal confession has been repudiated at trial.

B. Whether the Alleged Bruton Error Was Harmless.

In analyzing for harmless error in the present case, the court must first determine the extent to which codefendant Jones's confession truly interlocked with [*268] petitioner's repudiated one. To interlock, confessions "need not be absolutely identical . . . but only . . . be 'substantially the same and consistent on the major elements of the crime involved.'" *United States v. Dizdar, 581 F.2d 1031, 1038 (2d Cir. 1978)* (quoting *United States ex rel. Duff v. Zelker* [**26] , *452 F.2d 1009 (2d Cir. 1971))*. In this circuit, statements have been held to be interlocking because there was "no doubt that the same crimes were described" even though "the admissions were not absolutely identical and some of the descriptive details were garbled in the retelling." *United States v. Fleming, 594 F.2d 598, 604* (7th Cir.), *cert. denied, 442 U.S. 931, 61 L. Ed. 2d 299, 99 S. Ct. 2863 (1979)*. Even when statements not only dealt with different aspects of a crime but also contradicted each other as to the time of its commission, they were held sufficiently interlocking because "as to motive, plot and execution . . . they [were] essentially the same." *United States ex rel. Ortiz v. Fritz, 476 F.2d 37, 39* (2d Cir.), *cert. denied, 414 U.S. 1075, 38 L. Ed. 2d 482, 94 S. Ct. 591 (1973)*. In *Parker v. Randolph*, the confessions interlocked because they "'clearly demonstrated the involvement of each, as to crucial facts such as time, location, felonious activity, and awareness of the overall plan or scheme.'" *442 U.S. at 67-68* (quoting from the Tennessee Supreme Court's unpublished opinion in the state appeal).

In this case, petitioner's confession was substantially [**27] identical to Jones's on the time, manner, plot, and execution of the crime. The principal discrepancy between the present petitioner's confessions and those of his codefendant involved the question whether petitioner himself engaged in sexual activity with the victim or directly received the proceeds of robbing her. However, petitioner was indicted on an accountability theory under Illinois law, *see* Criminal Code of 1961, §§ 5-2, 5-3, Ill.Rev.Stat. ch. 38, paras. 5-2, 5-3 (1985), as was Jones on the murder charge. The jury found both defendants guilty of both crimes. Thus, if with criminal intent he aided or abetted his codefendant's sexual assault and armed robbery, he was equally liable to conviction, and petitioner has not argued to this court that the *Bruton* error went only to the rape or robbery charges.

By offering nothing to disprove his criminal intent or his abetment, petitioner's own confessions sufficiently interlocked with the codefendant's regardless of whether petitioner's admitted activity corresponded in every

physical particular to that of the codefendant. The fact that, after all crimes but the murder had occurred, petitioner's confessions would depict him [**28] as more leniently inclined toward the victim than was his codefendant does not alter the fact that petitioner admitted having aimed and fired the fatal shot. The interlock is complete up to and including the moment of the victim's death. *See also Parker v. Randolph, 442 U.S. at 67* (interlocking confessions allowed where robbery participation sustained felony murder convictions); *Tamilio v. Fogg, 713 F.2d 18, 21 (2d Cir. 1983)* (proof of appellee's participation in fatal robbery established his guilt of felony murder though his statement had not acknowledged that he did the actual killing).

If Jones's confession had been merely cumulative of petitioner's own unchallenged confession, it would be difficult to contend that its introduction could have prejudiced petitioner to the point of constituting reversible error. In such a case, as was noted in *United States v. Fleming*, "the devastating risk that the jury will be unable to disregard the co-defendant's statement is not present because the defendant's own similar statement is in evidence," *594 F.2d at 603*, and petitioner "would still be faced with his own admission even if the other's admission was excluded." *Id. at* [**29] *604*. Moreover, as in *Schneble v. Florida*, petitioner's confessions were "minutely detailed and completely consistent with the objective evidence." Because Jones's confessions were substantially similar to petitioner's and because in terms of legal accountability they were virtually identical, the court concludes that any *Bruton* error was harmless unless [*269] the joint introduction of confessions prejudiced petitioner's attempted repudiation. Accordingly, the court turns to that issue.

The Seventh Circuit has repeatedly recognized that when a confession is repudiated, a particularly careful balance must be struck between the *Bruton* rule and the interlocking confession exception. For example, in *Fleming*, which involved unrepudiated statements, the court qualified its characterization: "*Where the statement is not repudiated*, it may be powerful evidence of guilt. . . ." *594 F.2d at 603* (emphasis added). In *Montes v. Jenkins, 626 F.2d 584, 589 (7th Cir. 1980)*, introduction of a codefendant's identical statement was harmless when "no significant doubt was cast at trial on Montes' confession," "the jury had no reason to disbelieve it," there was no repudiation, [**30] and Montes did not "demonstrate any fact or circumstance that seriously cast doubt on the veracity of that confession." Indeed, the prevailing *Parker* plurality couched its views in terms of unchallenged confessions. *442 U.S. at 73-74* at n.7. However, the *Fleming* court also noted that even when a nontestifying codefendant's statement is admitted as against a defendant's denial of ever having confessed himself, "additional corroborating evidence may make the error harmless beyond a reasonable doubt." *594 F.2d at 603*, citing *Harrington v. California, 395 U.S. 250, 23 L. Ed. 2d 284, 89 S. Ct. 1726 (1969)*. If that is so in the case of a defendant who denies having confessed, it logically follows that a similarly situated defendant who admits having confessed but denies the accuracy of his statement cannot escape the impact of the harmless error analysis.

A case remarkably like the present one is *Felton v. Harris, 482 F. Supp. 448 (S.D.N.Y. 1979)*. In that case, the defendant had been approached by the police after being implicated by his codefendant, confessed in great detail to the crime, but then testified before the jury that his confession was false and that he simply [**31] parroted what the police told him to say. *Id. at 454*. The jury was shown his own confession and that of his codefendant, who had not taken the stand. In his petition for habeas relief, the defendant claimed that admission of his codefendant's confession violated *Bruton*.

Applying the Second Circuit's *per se* approach to interlocking confessions, Judge Weinfeld ruled that *Bruton* was not violated. He noted, however, that even were it assumed that *Bruton* applied to interlocking confessions, the error was harmless beyond a reasonable doubt. Judge Weinfeld in particular noted that the petitioner admitted having made the incriminating confession, that the confession matched the independent corroborative evidence before the jury, and that although the codefendant's confession implicated petitioner in only one out of three murders to which the petitioner had confessed, petitioner was convicted of all three. *Id. at 454-456*. As the Judge noted, "Once the jury rejected petitioner's disclaimer of his confession, and upon its face the disavowal does appear most implausible, the evidence that he committed the murders was most powerful." *Id. at 456*.

The present case also [**32] involves a confession supported by corroborative evidence and an inherently implausible repudiation of that confession. Petitioner claimed that his confession had been "coached" by McCarthy, yet admitted at trial that certain details were of his own making, in particular his statement about the victim's having three children and about his having thrown the deformed shotgun shell onto his neighbor's roof. The victim indeed had three children, and the shotgun shell found next to petitioner's house was of a brand consistent with the pellets recovered from the victim's body. Petitioner's in-court testimony was further unbelievable in that he denied on cross-examination knowing his way around Harvey even though his confession gave a detailed description of stoplights and turns he took after exiting the expressway at 127th Street. Finally, petitioner's confession contained certain details about the

death not in Jones's confession which would have been known only to the murderer.

[*270] Thus, as in *Felton*, the evidence of petitioner's guilt was "most powerful," and there is little possibility that the jury might have tended to believe petitioner's recantation and acquitted. The [**33] only portion of petitioner's confessions even remotely tending to bolster his theory of police coaching was the exchange between him and the police questioner as to the brand name on the shotgun. Petitioner's reply that he had been "told" the name was Montgomery Ward could conceivably mean that he had been told that detail by a police questioner as opposed to his codefendant, but this point was not even argued to the jury (nor to this court). Such ambiguity is thin support for his story of coaching, which was otherwise totally without corroboration.

More important for our purposes, however, is the interplay between Jones's confession and petitioner's testimony. Even were there a reasonable possibility that the jury could have believed petitioner's repudiation, there is no reasonable possibility that the introduction of Jones's confessions might have contributed to their decision to disbelieve petitioner's testimony. Petitioner did not deny having made his confessions, but argued that the police coerced his confession and rehearsed his answers using Jones's first confession as a script. It was petitioner, and not the prosecutor, who injected Jones's confession into his own case.

[**34] Petitioner should thus not be heard to complain that Jones's confession unfairly hampered his defense: had the men been tried separately, petitioner would still have needed Jones's confession to corroborate his story of repudiation. Each time a detail in Jones's confession matched a detail in petitioner's own, his defense theory was bolstered -- *if* the jury was inclined to believe the repudiation. The repudiation's lack of persuasiveness cannot be reasonably traced to the interlocking confessions, since parallels between the two confessions were necessary for petitioner's testimony to be believed at all. Indeed petitioner must have implicitly recognized this by putting Jones's confession into issue in his own case and testifying as he did.

Under all these circumstances, the jury logically must have viewed petitioner's attempt at repudiation to be inherently incredible without regard for the incriminating character of Jones's parallel confessions. Once the jury made that determination, petitioner's own confession -- "probably the most probative and damaging evidence that can be admitted against him," *Bruton, 391 U.S. at 139* (White, J. dissenting) -- would have rendered Jones's [**35] confessions "insignificant by comparison" in determining petitioner's guilt on the substantive charges. *Parker, 442 U.S. at 71.*

The court notes further in this regard that the prosecutor did not take advantage of petitioner's trial testimony to invoke Jones's statements as evidence of petitioner's guilt in closing argument. The prosecutor stressed the unbelievability of petitioner's testimony and the way his confession matched the known evidence about the murder. The only time Jones's confession was mentioned in connection with petitioner's testimony was to point out the numerous details in petitioner's confession which were absent from the statements made by Jones; such argument was proper response to petitioner's contention that Jones's statement had been the script from which McCarthy coerced petitioner's confession, and was in any event not objected to at trial.

Accordingly, the respondent's motion for summary judgment is granted, and the petition for a writ of habeas corpus is denied.

It is so ordered.

Exhibit 19

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGE FLAUM

REUBEN POINDEXTER,

Plaintiff,

vs.

CITY OF HARVEY, a municipal corporation; DETECTIVE NICK GRAVES; OFFICER ANTHONY DAVIS; OFFICER WM. LINKUS; and DETECTIVE COLEMAN McCARTHY, individually and as police officers of the City of Harvey; L. LOWER, individually and as Chief of Police of the City of Harvey,

Defendants.

NO. 80C1352

JURY DEMAND

C O M P L A I N T

COUNT I.

1. Plaintiff is a black male person and a citizen of the State of Illinois, and was at all times relevant hereto.

2. The Defendant, CITY OF HARVEY, is a municipal corporation; incorporated under Illinois Law and liable for the misconduct of its agents.

3. The Defendants are all citizens of the State of Illinois and residents of this judicial circuit.

4. The matter in controversy exceeds TEN THOUSAND and no/100ths DOLLARS ($10,000.00).

5. This action arises under Title 42 of the United States Code, Sections 1343, 1983 and 1985 and this Court has jurisdiction of the action under Title 28 of the U.S. Code, Sections

1331, 1332 and 1343.

6. At all times pertinent to this Complaint, the Defendant, NICK GRAVES, was a Detective of the City of Harvey, State of Illinois; The Defendant, OFFICER ANTHONY DAVIS, was a Police Officer of the City of Harvey, Illinois; the Defendant, WILLIAM LINKUS, was a Police Officer of the City of Harvey, Illinois, and in doing the acts and things hereinafter set forth, said Defendants were acting, in their respective capacities as stated, under color of an Ordinance of the City of Harvey, State of Illinois, namely of the Municipal Code of the City of Harvey, namely Chapter 38, Sections 12-3a and 31-1.

7. During all times material to this Complaint, L. LOWER was the duly appointed Chief of Police in charge of the police force of the CITY OF HARVEY, State of Illinois. As such, he was responsible for the supervision and training of police officers and the conduct of the Harvey Police towards citizens, and particularly black citizens residing in said community.

8. That on or about December 4, 1975, the Plaintiff was on the premises at 14907 Leavitt in the City of Harvey, Illinois during the Defendants interrogation and attempted arrest of his nephew, Issac Poindexter, when during said time the Defendant, NICK GRAVES, without any cause or provocation by the Plaintiff, struck him on the head several times with a blackjack; and the Defendant, ANTHONY DAVIS, without any cause or provocation by the Plaintiff, grabbed the Plaintiff's arm, twisted the Plaintiff's arm, hit him

with his fist in the side; and the Defendant, WILLIAM LINKUS, without any cause or provocation by the Plaintiff, struck Plaintiff on the head with his fist and all the Defendants did brutally assault the Plaintiff, including striking him in the left eye, forced him to his knees, shouted at him that he was going to jail, dragged him along, and drove him in a police vehicle to the Harvey Police Department.

9. Said taking into custody was not only made without a warrant, but the Plaintiff was behaving in an orderly and lawful manner and no offense of any kind was being committed or had been committed in the presence of or against said police officers.

10. Following this, Plaintiff was incarcerated in the City of Harvey jail, where he was verbally abused by said Defendants.

11. That while Plaintiff was at said police station, the Defendants did bring in some other young man and while the Plaintiff sat beaten, bruised and disheveled said to the young man, "This is what could happen to you", and that thereafter the Defendants did further attempt to intimidate the Plaintiff into signing a statement that the Plaintiff had assaulted the Defendant, DETECTIVE NICK GRAVES.

12. On the same day, Defendant, NICK GRAVES, swore out an affidavit charging the Plaintiff with the offense of Battery and Obstruction of a Peace Officer, pursuant to which a Complaint was issued by the Defendant, CITY OF HARVEY POLICE DEPARTMENT, as Charges 756-93528 and 756-93529.

13. That during said incarceration the Plaintiff was in need of medical attention because of the beating suffered at the hands of said Defendants, and repeatedly requested medical assistance, which Defendants refused.

14. That immediately subsequent to his release by Defendants, Plaintiff sought medical care at the Ingalls Memorial Hospital, where he had x-rays taken for head injury and treatment for his eye injuries and thereafter visited an eye clinic in Harvey and has subsequently been under the care of various physicians for continuing head and eye problems, as well as neurological damage.

15. That on June 24, 1976 to July 21, 1976, the Plaintiff was tried before a jury which returned a verdict of acquittal.

16. Plaintiff, as has been alleged, was not engaged in the commission of any offense against the ordinances of the CITY OF HARVEY, or the laws of the State of Illinois, at the time of said arrest, and the charges brought against him were a mere pretext to provide color for the arrest, punishment, and beating of Plaintiff for exercising his lawful and constitutional right to associate and speak freely.

17. Plaintiff has been subjected, because of the above recited acts, to deprivation by the Defendants, under color of law, and of the customs and usages of the State of Illinois, of rights, privileges and immunities secured to him by the Constitution and laws of the United States and particularly his rights of association and speech guaranteed under the First Amendment to said U.S. Constitution, his rights to security of

person and freedom from arrest, except upon probable cause, supported by oath or affirmation, guaranteed by the Fourth Amendment to said Constitution, his right to be informed of the true nature and cause of the accusation against him, guaranteed by the Sixth Amendment to said Constitution, his right to be free from cruel and unusual punishment as guaranteed by the Eighth Amendment to said Constitution, and his rights not to be deprived of liberty without due process of law, guaranteed by the Fifth and Fourteenth Amendments to said Constitution, his rights reserved or retained under the Ninth and Tenth Amendments to said Constitution and his right to equal protection of the laws through state action guaranteed under the Fourteenth Amendment of said Constitution.

18. Plaintiff alleges that in doing the acts above complained of the Defendants were conspirators engaged in a scheme and conspiracy designed and intended to deny and deprive him of rights guaranteed to him under the Constitution and laws of the United States and particularly those hereinabove enumerated.

19. Plaintiff alleges that as the direct consequences and results of the acts of Defendants hereinabove complained of, Plaintiff was deprived of liberty for a substantial period of time, suffered much anxiety and distress, much discomfort and embarrasment, physical pain and suffering, his reputation was and continues to be impaired, has lost much time from work and required to expend substantial sums of money for medical expenses and will continue to expend large sums in the future as well as the costs of defending himself from the charges against him.

20. Said acts complained of by Plaintiff set forth herein were committed by Defendants, each of them and all of them, wilfully, intentionally, maliciously and without legal justification and for the sole purpose of depriving Plaintiff of his Constitutional Rights.

WHEREFORE, the Plaintiff claims damages against the Defendants for compensatory damages in the amount of ONE MILLION ($1,000,000.00) DOLLARS, punitive damages of TWO MILLION FIVE HUNDRED THOUSAND ($2,500,000.00) DOLLARS, and attorneys fees and costs of this suit, and such other relief as the Court deems just and demands trial by jury.

COUNT II.

1-20. Plaintiff hereby realleges Paragraphs 1 to 20, inclusive, of Count I as Paragraphs 1 to 20, inclusive, of Count II of this Complaint.

21. At all times material to this Complaint, Defendants, DETECTIVE NICK GRAVES, OFFICER ANTHONY DAVIS, OFFICER WM. LINKUS and DETECTIVE COLEMAN McCARTHY, were lawfully employed officials officers, and agents of the Defendant, CITY OF HARVEY, and were acting within the scope of their employment.

22. While acting in that capacity said individual Defendants did commit illegal and wrongful acts and omissions as set forth in the preceding paragraphs, which illegal and wrongful acts did directly and proximately injure the Plaintiff.

23. Defendant, CITY OF HARVEY, under 28 U.S.C. §1331

and the Fourteenth Amendment to the U.S. Constitution is liable for the acts or omissions of its employees and agents which deprived Plaintiff of his rights, privileges and immunities guaranteed under the Constitution and laws of the United States and under the Civil Rights Acts under the theory of respondeat superior.

WHEREFORE, the Plaintiff claims damages against the Defendants for compensatory damages in the amount of ONE MILLION ($1,000,000.00) DOLLARS, punitive damages of TWO MILLION FIVE HUNDRED THOUSAND ($2,500,000.00) DOLLARS, and attorneys fees and costs of this suit, and such other relief as the Court deems just and demands trial by jury.

COUNT III.

1-20. Plaintiff hereby realleges Paragraphs 1 to 20, inclusive, of Count I as Paragraphs 1 to 20, inclusive, of Count III of this Complaint.

21. That at all times material to this Complaint, Defendant L. LOWER was the Chief of Police of the CITY OF HARVEY, and in that capacity was the Chief Executive Officer of the Police Department, responsible for the general management and control of the Department, with full and complete authority to administer the Department. In that capacity, Defendant L. LOWER was the agent of the CITY OF HARVEY and engaged in the conduct complained of in the course and scope of said employment.

22. As Chief of Police, Defendant L. LOWER had the duty to define and institute effective practices and procedures insuring that the rights, privileges and immunities guaranteed citizens by the Constitution and laws of the United States were not violated by the acts or omissions of Defendant Police Detectives and officers. Defendant L. LOWER further had a duty to insure that such practices and procedures were properly implemented and followed by the Defendants.

23. Defendant L. LOWER knew or should have known that the Defendant Police Detectives and officers under his command were likely to commit the acts complained of herein; and particularly that in the past, black citizens had been subject to racial epethets and verbal and physical abuse under his command.

WHEREFORE, the Plaintiff claims damages against the Defendants for compensatory damages in the amount of ONE MILLION ($1,000,000.00) DOLLARS, punitive damages of TWO MILLION FIVE HUNDRED THOUSAND ($2,500,000.00) DOLLARS, and attorneys fees and costs of this suit, and such other relief as the Court deems just and demands trial by jury.

COUNT IV.

1-4. Plaintiff hereby realleges Paragraphs 1 to 4, inclusive, of Count I as Paragraphs 1 to 4, inclusive, of Count IV of this Complaint.

5. This action arises under Title 42 of the United States Code, Section 1343, 1981 and this Court has jurisdiction

of the action under Title 28, United States Code, §1331, 1332 and 1343.

6. The rights, privileges and immunities sought to be secured in this action are rights, privileges and immunities guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution and by 42 U.S. Code §1981.

7. Plaintiff is a black citizen of the United States, and the Defendants, DETECTIVE NICK GRAVES and OFFICER WM. LINKUS are white citizens of the United States.

8-22. Plaintiff hereby realleges Paragraphs 6 through 20, inclusive, of Court I as Paragraphs 8 through 22, inclusive, of Count IV of this Complaint.

23. Plaintiff alleges that had he not been a black, he would not have suffered the deprivation of rights and physical harm suffered as a result of the acts of the Defendants alleged in this Complaint.

WHEREFORE, the Plaintiff claims compensatory damages against the Defendants in the amount of ONE MILLION ($1,000,000.00) DOLLARS, punitive damages of TWO MILLION FIVE HUNDRED THOUSAND ($2,500,000.00) DOLLARS, and attorneys fees and costs of this

suit, and such other relief as the Court deems just and demands trial by jury.

REUBEN POINDEXTER, Plaintiff

Reuben Poindexter

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

REUBEN POINDEXTER, being duly sworn upon oath, deposes and states that he has read the above and foregoing Complaint by him subscribed and that the contents thereof are true in substance and in fact.

Reuben Poindexter
REUBEN POINDEXTER

SUBSCRIBED and SWORN to before me this 17th day of March, 1980.

Marlene D. Karnuth
Notary Public

LORETTA C. DOUGLAS
Attorney for Plaintiff
One North LaSalle St. - Suite 4220
Chicago, Illinois 60602
PHONE: 372 - 4220

Exhibit 20

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

REUBEN POINDEXTER,

Plaintiff,

v.

CITY OF HARVEY, A Municipal Corporation; DETECTIVE NICK GRAVES; OFFICER ANTHONY DAVIS; OFFICER WM. LINKUS; and DETECTIVE COLEMAN McCARTHY, Individually and as Police officers of the City of Harvey; L. LOWER, individually and a Chief of Police of the City of Harvey,

Defendants.

No. 80 C 1352
JURY DEMANDED

FIRST AMENDED COMPLAINT
COUNT I.

1. Plaintiff is a black male person and a citizen of the State of Illinois, and was at all times relevant hereto.

2. The Defendant, CITY OF HARVEY, is a municipal corporation; incorporated under Illinois Law and liable for the misconduct of its agents.

3. The Defendants are all citizens of the State of Illinois and residents of this judicial circuit.

4. The matter in controversy exceeds TEN THOUSAND and no/100ths DOLLARS ($10,000.00).

5. This action arises under Title 42 of the United States Code, Sections 1343 and 1983 and this Court has jurisdiction of the action under Title 28 of the U.S. Code, Sections 1331, 1332 and 1343.

6. At all times pertinent to this Complaint, the Defendants, NICK GRAVES and the Defendant COLEMAN McCARTHY, were

Detectives of the CITY OF HARVEY, State of Illinois; The Defendant, OFFICER ANTHONY DAVIS, was a Police Officer of the City of Harvey, Illinois; the Defendant, WILLIAM LINKUS, was a Police Officer of the City of Harvey, Illinois, and in doing the acts and things hereinafter set forth, said Defendants were acting, in their respective capacities as stated, under color of an Ordinance of the City of Harvey, State of Illinois, namely of the Municipal Code of the City of Harvey, State of Illinois, namely Chapter 38, Sections 12-3a and 31-1.

7. During all times material to this Complaint, L. LOWER was the duly appointed Chief of Police in charge of the police force of the CITY OF HARVEY, State of Illinois. As such, he and the Defendant, CITY OF HARVEY, were responsible for the supervision and training of police officers and the conduct of the Harvey Police towards citizens, and particularly black citizens residing in said community.

8. That on or about December 4, 1975, the Plaintiff was on the premises at 14907 Leavitt in the City of Harvey, Illinois during the Defendants interrogation and attempted arrest of his nephew, Issac Poindexter, when during said time the Defendant, NICK GRAVES, without any cause or provocation by the Plaintiff, struck him on the head several times with a blackjack; and the Defendants, COLEMAN McCARTHY, and ANTHONY DAVIS, without any cause or provocation by the Plaintiff, grabbed the Plaintiff's arm, twisted the Plaintiff's arm, hit him with his fist in the side; and the Defendant, WILLIAM LINKUS, without any cause or provocation by the Plaintiff, struck Plaintiff on the head with his fist and all the Defendants did brutally

assault the Plaintiff, including striking him in the left eye, forced him to his knees, shouted at him that he wa going to jail, dragged him along, and drove him in a police vehicle to the Harvey Police Department.

9. Said taking into custody was not only made without a warrant, but the Plaintiff was behaving in an orderly and lawful manner and no offense of any kind was being committed or had been committed in the presence of or against said police officers.

10. Following this, Plaintiff was incarcerated in the City of Harvey jail, where he was verbally abused by said Defendants.

11. That while Plaintiff was at said police station, the Defendants did bring in some other young man and while the Plaintiff sat beaten, bruised and disheveled said to the young man, "This is what could happen to you", and that thereafter the Defendants did further attempt to intimidate the Plaintiff into signing a statement that the Plaintiff had assaulted the Defendant, DETECTIVE NICK GRAVES.

12. On the same day, Defendant, NICK GRAVES, swore out an affidavit charging the Plaintiff with the offense of Battery and Obstruction of a Peace Officer, pursuant to which a Complaint was issued by the Defendant, CITY OF HARVEY POLICE DEPARTMENT, as Charges 756-93528 and 756-93529.

13. That during said incarceration the Plaintiff was in need of medical attention because of the beating suffered at the hands of said Defendants, and repeatedly requested medical assistance, which Defendants refused.

14. That immediately subequent to his release by Defendants, Plaintiff sought medical care at the Ingalls Memorial Hospital, where he had x-rays taken for head injury and treatment for his eye injuries and thereafter visited an eye clinic in Harvey and has subsequently been under the care of various physicians for continuing head and eye problems, as well as neurological damage.

15. That on June 24, 1976 to July 21, 1976, the Plaintiff was tried before a jury which returned a verdict of acquittal.

16. Plaintiff, as has been alleged, was not engaged in the commission of any offense against the ordinances of the CITY OF HARVEY, or the laws of the State of Illinois, at the time of said arrest, and the charges brought against him were a mere pretext to provide color for the arrest, punishment, and beating of Plaintiff for exercising his lawful and constitutional right to associate and speak freely.

17. Plaintiff has been subjected, because of the above recited acts, to deprivation by the Defendants, under color of law, and of the customs and usages of the State of Illinois, of rights, privileges and immunities secured to him by the Constitution and laws of the United States and particularly his rights of association and speech guaranteed under the First Amendment to said U.S. Constitution, his rights to security of person and freedom from arrest, except upon probable cause, supported by oath or affirmation, guaranteed by the Fourth Amendment to said Constitution, his right to be informed of the true nature and cause of the accusation against him, guaranteed

by the Sixth Amendment to said Constitution, his rights reserved or retained under the Ninth and Tenth Amendments to said Constitution and his right to equal protection of the laws through state action guaranteed under the Fourteenth Amendment of said Constitution.

18. Plaintiff alleges that in doing the acts above complained of the Defendants were conspirators engaged in a scheme and conspiracy designed and intended to deny and deprive him of rights guaranteed to him under the Constitution and laws of the United States and particularly those hereinabove enumerated.

19. That the Defendant, CITY OF HARVEY at all times relevant hereto maintained a policy and custom or a de facto policy or custom which encouraged and permitted the Defendants, DETECTIVE NICK GRAVES, OFFICER ANTHONY DAVIS, OFFICER WM. LINKUS and DETECTIVE COLEMAN McCARTHY to engage in the above acts which engendered the constitutional deprivations alleged herein, and more specifically the Defendant, CITY OF HARVEY.

a) failed to respond to past instances of police misconduct vis-a-vis blacks.

b) was reckless in its disregard of the rights of black residents to be free from injuries and unconstitutional actions such as those suffered by the plaintiff.

c) failed to discipline its police officers and detectives for such unconstitutional attacks on black residents.

d) failed to take remedial steps, while having full knowledge of a pattern of constitutionally offensive acts by its officers & detectives.

20. Plaintiff alleges that as the direct consequences and results of the acts of Defendants hereinabove complained

of, Plaintiff was deprived of liberty for a substantial period of time, suffered much anxiety and distress, much discomfort and embarrassment, physical pain and suffering, his reputation was and continues to be impaired, has lost much time from work and required to expend substantial sums of money for medical expenses and will continue to expend large sums in the future as well as costs of defending himself from the charges against him.

21. Said acts complained of by Plaintiff set forth herein were committed by Defendants, each of them and all of them, wilfully, intentionally, maliciously and without legal justification and for the sole purpose of depriving Plaintiff of his Constitutional Rights.

WHEREFORE, the Plaintiff claims damages against the Defendants for compensatory damages in the amount of ONE MILLION ($1,000,000.00) DOLLARS, punitive damages of TWO MILLION FIVE HUNDRED THOUSAND($2,500,000.00) DOLLARS, and attorneys fees and costs of this suit, and such other relief as the Court deems just and demands trial by jury.

COUNT II

1-4. Plaintiff hereby realleges Paragraphs 1 to 4, inclusive, of Count I as Paragrahs 1 to 4, inclusive, of Count II of this Complaint.

5. That this action arises under 42 U.S.C. Sec. 1985 and jurisdiction is founded on 28 U.S.C. Sec. 1331, 1332, 1343.

6. That at all times relevant hereto and as to all acts complained of herein the Defendants acted with a

class-based, individiously discriminatory animus.

7-22. Plaintiff hereby realleges Paragraph 6 thru 21 inclusive of Count I as Paragraph 7 thru 22 of Count II hereof.

WHEREFORE, the Plaintiff claims damages against the Defendants for compensatory damages in the amount of ONE MILLION ($1,000,000.00) DOLLARS, punitive damages of TWO MILLION FIVE HUNDRED THOUSAND ($2,500,000.00) DOLLARS, and attorneys fees and costs of this suit, and such other relief as the Court deems just and demands trial by jury.

COUNT III

1-21. Plaintiff hereby realleges Paragraphs 1 to 21, inclusive, of Count I as Paragraphs 1 to 21, inclusive, of Count III of this Complaint.

22. That at all times material to this Complaint, Defendant, L. LOWER was the Chief of Police of the CITY OF HARVEY, and in that capacity was the Chief Executive Officer of the Police Department, both he and the Defendant, CITY OF HARVEY were responsible for the general management, and control, of the Department, and the training and conduct of the Defendants, DETECTIVE NICK GRAVES, DETECTIVE COLEMAN McCARTHY, OFFICER ANTHONY DAVIS & OFFICER WILLIAM LINKUS, with full complete authority to administer the Department. In that capacity, Defendant L. LOWER was the agent of the CITY OF HARVEY and engaged in the conduct complained of in the course and scope of said employment.

23. As Chief of Police, Defendant L. LOWER, the Defendant, CITY OF HARVEY, had the duty to define and institute

effective practices and procedures insuring that the rights, privileges and immunities guaranteed citizens by the Constitution and laws of the United States were not violated by the acts or omissions of Defendant Police Detectives and officers. Defendants L. LOWER, and the CITY OF HARVEY, further had a duty to insure that such practices and procedures were properly implemented and followed by the Defendants.

24. Defendants, L. LOWER and the CITY OF HARVEY, knew or should have known that the Defendant Police Detectives and Officers under their command were likely to commit acts complained of herein; and particularly that in the past, black citizens had been subject to racial epithets and verbal and physical abuse by the Harvey Police Department.

WHEREFORE, the Plaintiff claims damages against the Defendants for compensatory damages in the amount of ONE MILLION ($1,000,000.00) DOLLARS, punitive damages of TWO MILLION FIVE HUNDRED THOUSAND ($2,500,000.00) DOLLARS, and attorneys fees and costs of this suit, and such other relief as the Court deems just and demands trial by jury.

COUNT IV

1-4. Plaintiff hereby realleges Paragraphs 1 to 4, inclusive, of Count I as Paragraphs 1 to 4, inclusive, of Count IV of this Complaint.

5. This action arises under Title 42 of the United States Code, Section 1343, 1981 and this Court has jurisdiction of the action under Title 28, United States Code, 1331, 1332, and 1343.

6. The rights, privileges and immunities sought to

be secured in this action are rights, privileges and immunities guaranteed by the due process and equal protection clauses of the Fourteenth Amendments to the U.S. Constitution and by 42 U.S. Code 1981.

7-22. Plaintiff hereby realleges Paragraph 6 through 21, inclusive, of Count I as Paragraphs 7 through 22 inclusive, of Count IV of this Complaint.

23. Plaintiff alleges that had he not been a black, he would not have suffered the deprivation of rights and physical harm suffered as a result of the acts of the Defendants alleged in this Complaint.

WHEREFORE, the Plaintiff claims compensatory damages against the Defendants in the amount of ONE MILLION ($1,000,000.00) DOLLARS, punitive damages of TWO MILLION FIVE HUNDRED THOUSAND ($2,500,000.00) DOLLARS, and attorneys fees and costs of this suit, and such other relief as the Court deems just and demands trial by jury.

REUBEN POINDEXTER, Plaintiff

Reuben Poindexter

LORETTA C. DOUGLAS
LORETTA C. DOUGLAS
& ASSOCIATES, LTD.
SUITE 4314
55 E. MONROE
CHICAGO, IL 60603
PHONE: 372-4220

Exhibit 21

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ORIGINAL COPY

LAVIN T. BALFOUR

(Enter above the full name of the plaintiff or plaintiffs in this action)

vs.

Case No. _____ (To be supplied by the Clerk)

ASA - Mitchell A. KLINE

ASA - Perry ELT

Detectives Fike & McCarthy

F.D. - Danny Moore

Witnesses: Carl Douglas, Rufus Terrell, Herbert Cooper.

DOCKETED
FEB - 2 1983

FILED
MAR 3 1983
H. STUART CUNNINGHAM, CLERK
UNITED STATES DISTRICT COURT

RECEIVED
H. STUART CUNNINGHAM
CLERK, U. S. DISTRICT COURT

(Enter above the full name of the defendants in this action).

COMPLAINT UNDER THE CIVIL RIGHTS ACT, TITLE 42 SECTION 1983 U.S.C.

Previous Lawsuits:

A. Have you begun other lawsuits in state or federal court relating to your imprisonment?

YES ( ) NO ( )

B. If your answer is yes, did any of these lawsuits deal with the same facts involved in this action or otherwise relate to your claim?

YES ( ) NO ( )

C. If your answer to B is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit:

Plaintiffs: _____

Defendants: SEE OTHER PAGES

2. Court (if federal court, name the district; if state court, name the county): COOK COUNTY

3. Docket number: CASE# 816-005192 INDICTMENT# 81-160527

4. Name of judge to whom case was assigned: SAMUELS

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?) Will be Appealed Feb. 7, 1983

6. Approximate date of filing lawsuit: JAN. 11, 1983

7. Approximate date of disposition: JAN. 3, 1983

Place of present confinement: COOK COUNTY JAIL

A. Is there a prisoner grievance procedure in this institution?

YES ( ) NO (✓)

B. If the facts in your complaint relate to your imprisonment, did you use the prisoner grievance procedure to seek relief?

YES ( ) NO (✓)

C. If your answer is YES:

1. What steps did you take? NONE

2. What was the result? NONE

D. If your answer is NO, explain why not; _____

Parties:

(In item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of plaintiff Lavin T. Balfour #8120385

Address 2700 S. California Ave., Chi. Ill. 1-N Div. 6

(In item B below, place the full name of the defendant in the first blank, his official position in the second blank, and his place of employment in the third blank. Use item C for the names, positions, and places of employment of any additional defendants.)

B. Defendant Mitchell A. Kline is employed as an Assistant State's Attorney at the Markham Civic Center, 16501 S. Kedzie Parkway, Markham, Illinois

C. Additional Defendants: Assistant State's Attorney, Perry (whose first name is unknown to me) is employed at the above address also.

for additional Defendants, see following page

Statement of Claim

State here as briefly as possible the facts of your case. Describe precisely how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheet if necessary.)

Detective Daniel P. Fike, is employed as a police officer for the city of Harvey, Ill.

Detective McCarthy, (whose first name is unknown to me), is employed as a police officer for the city of Harvey, Illinois.

Danny Moore, is employed as a fireman for the city of Harvey, Illinois — his home address is unknown to me.

Carl Douglas, is employed at the Oak Forest Hospital, Oak Forest, Illinois.

Rufus Terrell and Herbie Cooper operate a garage where they repair autos at 15203 S. Wood St., Harvey, Illinois.

The home addresses of Douglas, Terrell and Cooper are unknown to me, but can be obtained, I imagine, through the Harvey Police Department or the State's Attorney's Office.

HERBERT COOPER 289 W. 154TH ST. HARVEY ILL. APT 7, 331-6
CARL PRESTION DOUGLAS 19343 SO. OAK COUNTRY HILLS
957-145

The Statement of Claim is that on the morning of June 4, 1981, Detectives Fike and McCarthy caused my life to be put in jeopardy while I was in their custody and under their direct control, and

that they conspired with Assistant States Attorneys Kline and Perry, and Defendants Cooper, Terrell, and Douglas, each conspiring with one another to deprive me of a fair trial in that they manufactured and manipulated testimony which was used against me during a trial to convict me of the alleged offense of murder.

At approximately 1:30 a.m., on June 4th, 81, while I was in the Harvey Police Dept. lock-up, a restricted area, Detectives Fike and McCarthy allowed Danny Moore and a man unknown to me, to enter the cell I was housed in, unescorted by any police officer and completely out of the view of any police officer.

Upon entering the cell the man unknown to me produced a gun and put it to my

head stating that he was going to kill me because I killed his brother. Danny Moore reached for the gun and was able to subdue the man and get him out of the cell. They then started arguing about my fate, and Mr. Moore managed to get the man out of the lock-up area.

While the above occurred there was not a single police officer in view or in attendance.

Immediately after the above occurred Det. Fike came to the cell I was housed in and stated, "I'll get you yet, Nigger. I told you once, and I'm telling you again!" A few minutes later, Det. Mc Carthy came to the cell and smiled at me, saying nothing.

The next morning while I was being taken to court, I asked both detectives why they let Danny Moore, and the man unknown to me into the cell, and the answer I received was, "who are you talking about?"

My contention with regard to Defendant Moore is that upon entering the restricted area where I was housed, he was aware of the fact that the unknown man had a gun, and what he intended doing, but that as the scene started to unfold, he had second thoughts.

As a consequence of the above, I was confined in the Cermak Hospital from June 5th, until late July or early August, under the care of Dr. Jim Lynch, suffering from emotional-shock, etc., and then on outpatient status while here at the jail, receiving medication for the above.

With regard to the conspiracy to deprive me of a fair trial, the conspiracy started at the time of my arrest and continued until the day of my trial as follows:

That the three witnesses against me, Terrell, Douglas, and Cooper, while in the company of Detectives Fike and McCarthy, and States Attorney Kline, the night of my arrest at the Harvey Police Department, agreed as to what their testimony would be, and

that at the time of my trial this agreement culminated in a conspiracy when States Attorney Perry prepared the three witnesses, Terrell, Douglas, and Cooper, to give testimony against me, each in the company of one another during this preparation.

In conclusion I would like to state that any error herein is an error of omission rather than commission

V. Relief:

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

I am asking that this Court find in my favor and award me monetary compensation in the amount of two-million-dollars.

Signed this 6th day of 11, 1983

Lavin T. Balfour #8120385
1-N, Div. 6
Cook County Jail
2700 S. California Ave.
Chicago, Il. 60608

(Signature of plaintiff
or plaintiffs)

I declare under penalty of perjury
that the foregoing is true and correct.

Executed on 1-11-83
(Date)

Lavin T Balfour
(Signature)

Exhibit 22

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

LAVIN T. BALFOUR,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 83 C 0661
	)	Judge James Zagel
DANIEL FIKE, et al.,	)	
	)	
Defendants.	)	

DOCKETED
JUN 30 1989

AMENDED COMPLAINT

Lavin T. Balfour, by his undersigned attorney, complains of the above-named defendants and states as follows:

1. The plaintiff alleges that the defendants' actions, alleged below, violated rights secured by the Fourteenth Amendment to the United States Constitution. His claim arises under Title 42, United States Code, Section 1983. Jurisdiction is founded on Title 28, Sections 1331 and 1343(a)(3).

2. At all pertinent times the plaintiff Lavin Balfour was a resident of the State of Illinois.

3. At all pertinent times the defendants Fike, McCarthy, and Eaves were duly appointed employees of the City of Harvey, Illinois, as members of its Police Department, and the defendant Moore was employed by the city's fire department. Each defendant acted in his official capacity.

4. At all pertinent times the defendants were acting in the scope of their authority and under color of state law.

159

5. During the afternoon of June 4, 1981, as the plaintiff attempted to sell roofing shingles to one of a number of persons gathered behind a home in Harvey, the plaintiff Balfour was attacked by one Richard Rodgers, a Harvey fireman, who was then intoxicated under the standards established by the laws of the State of Illinois.

6. A fight then occurred between the men. In defending himself the plaintiff Balfour rendered Rodgers unconscious. Rodgers subsequently died.

7. That evening, at about 8:00 p.m., the plaintiff Lavin Balfour was arrested because of the altercation and was incarcerated in the Harvey Police Department lock-up.

8. On previous occasions the defendant Fike had beaten, harassed, and threatened Mr. Balfour. Following Balfour's arrest on June 4th, the defendant Fike came to Balfour's cell at about 10:30 p.m., and said, "I have you now."

9. At about 1:30 a.m. on June 5, 1981, when the plaintiff was alone in the cellblock of the lock-up, he heard the defendants Fike and McCarthy speaking from outside the cellblock. Moments later the defendants Eaves and Moore entered the cellblock.

10. In the company of Moore, Eaves removed an automatic handgun from a shoulder holster he wore, prepared the weapon for firing by pulling back and releasing its slide, and announced that he was going to kill Mr. Balfour for what Balfour had done to Rodgers.

11. For several minutes the defendant Eaves kept the gun pointed at Mr. Balfour and repeated in an angry tone his intention to kill Balfour. Finally, the defendant Moore pointed the gun away from Balfour and pulled Eaves out of the cellblock area.

12. Several minutes later the defendant Fike entered the cellblock. He held up a bullet and said to Balfour, "Nigger, this bullet has your name on it." McCarthy then entered the cellblock.

13. When the plaintiff Balfour asked the defendants why they had permitted the defendants Eaves and Moore to enter the cellblock, McCarthy smiled; neither answered.

14. As a direct and proximate consequence of the foregoing conduct by the defendants, the plaintiff Balfour suffered extreme fear and emotional trauma which produced a mental breakdown the effects of which continue to the present time and will persist in the future.

15. The foregoing acts by the defendants were without justification and constituted excessive and unreasonable force against the plaintiff.

16. The defendants committed the foregoing acts wilfully and maliciously, or with callous and reckless indifference to Mr. Balfour's rights, they acted jointly and in concert, with the intention of harming the plaintiff and for the purpose of depriving him of his constitutional right to be free of unreasonable official seizures and force.

17. The foregoing acts by the defendants therefore render them liable to the plaintiff pursuant to the Fourteenth Amendment to the United States Constitution and Title 42, United States Code, Section 1983.

WHEREFORE, the plaintiff seeks the award of a judgment for compensatory and punitive damages in an amount to be determined by the jury; and such other relief as the Court deems proper, including costs and fees pursuant to Title 42, United States Code, Section 1988.

Respectfully submitted,

Thomas D. Decker
Attorney for plaintiff

Thomas D. Decker
Thomas D. Decker & Associates, Ltd.
135 South LaSalle Street
Suite 1527
Chicago, IL 60603
263-4180

Exhibit 23

1 of 5 DOCUMENTS

LAVIN T. BALFOUR, Plaintiff, v. ASSISTANT STATE'S ATTORNEY MITCHELL A. KLINE, et al., Defendants

No. 83 C 661

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

1987 U.S. Dist. LEXIS 1168

February 11, 1987, Decided

OPINIONBY: [*1]

NORDBERG

OPINION:

MEMORANDUM OPINION AND ORDER

Plaintiff Lavin T. Balfour brings this pro se action pursuant to *42 U.S.C. § § 1983* and 1985(2) seeking two million dollars for the alleged violation of his constitutional rights. Named as defendants are Assistant State's Attorneys Mitchell Kline and Paul Perry; Officers Coleman McCarthy, David Fike, and Denard Eaves of the Harvey, Illinois Police Department; Harvey firefighter Danny Moore; and Carl Douglas, Rufus Terrell, and Herbert Cooper, three citizens who gave testimony at the trial that resulted in Balfour's conviction for murder. All defendants save the private citizens have moved to dismiss the complaint for failure to state a claim upon which relief may be granted.

The complaint alleges essentially two claims. The first claim (Count I) arises out of an incident that took place in the early morning of June 4, 1981. n1 Balfour was confined in the lockup of the Harvey Police Department. He alleges Fike and McCarthy opened his cell to give access to Moore and Eaves. Eaves entered the cell and placed a gun to Balfour's head and threatened to kill him for killing his brother. Moore grabbed the gun and took Eaves out of Balfour's cell. Moore [*2] and Eaves argued that then left the lockup area. A few minutes later, Fike came to Balfour's cell and told him, "I'll get you yet, Nigger. I told you once, and I'm telling you again."

n1 From records filed with the Court, it appears the incident actually occurred on June 5, 1981. The Court, however, will continue to use the date alleged in the complaint.

Balfour alleges he suffered emotional shock as a result of the incident. He was confined to Cermak Hospital for two months under a doctor's care and required further outpatient treatment after his return to jail.

Balfour's second claim (Count II) concerns an alleged conspiracy to deprive him of a fair trial. According to the complaint, the conspiracy began on the day of Balfour's arrest. Balfour asserts that three witnesses against him, Terrell, Douglas, and Cooper, agreed to what their testimony would be at his trial on the night he was arrested. He avers that Fike, McCarthy, and Kline were present at the time the witness reached their agreement. He further alleges that Perry prepared the witness before trial each in the presence of the other.

The Court cannot grant a motion to dismiss under *Rule 12(b)(6) of the Federal Rules* [*3] *of Civil Procedure* unless it appears "beyond doubt" that plaintiff can prove no set of facts which would entitle him to relief. *Conley v. Gibson, 355 U.S. 41, 45-46 (1957).* In making this determination, all material facts alleged in the complaint must be taken as true. *Greene v. Finley, 749 F.2d 467, 468 (7th Cir. 1984).* Moreover, because Balfour is acting as his own attorney, the Court must accord his pleadings a liberal construction. See *Haines v. Kerner, 404 U.S. 519 (1972).* With these precepts in mind, the Court turns to review Balfour's claims.

Count I - Excessive Use of Force

Balfour contends that the acts of Eaves, Moore, Fike, and McCarthy constituted an intentional infliction of emotional distress depriving him of his due process

right to be secured in his person. To prevail on a claim under Section 1983, plaintiff must allege and prove both that he was deprived of a right protected by the Constitution or laws of the United States and that the deprivation was committed by a person acting under color of state law. See *Parratt v. Taylor, 451 U.S. 527, 535 (1981).* Defendants argue that the allegations of the complaint concerning the alleged assault fail to [*4] evidence the presence of either of these elements essential to a cause of action under Section 1983. The Court disagrees.

In *Ingraham v. Wright, 430 U.S. 651, 673 (1977),* the Supreme Court recognized that the "right to be free from . . . unjustified intrusions on personal security" is "among the historic liberties" protected by due process. This fundamental liberty interest in personal security extends to those who are confined in pretrial detention. See *Bell v. Wolfish, 441 U.S. 520, 535 (1979).* While the government may impose necessary restrictions on pretrial detainees, it cannot punish them. *Id. at 536-37.* Intentional infliction of harm or the imposition of arbitrary and purposeless conditions or restrictions are tantamount to punishment and violate due process. *Id. at 538-39.* On the other hand, restrains or conditions that reasonably relate to some legitimate institutional interest, such as maintaining security, do not amount to constitutionally prohibited punishment. *Id. at 540.*

It follows from Bell that the use of force against a pretrial detainee will not always transgress constitutional limits. Defendants contend that is the case here. Citing *Nelson* [*5] *v. Herdzik, 559 F. Supp. 27 (W.D.N.Y. 1983),* and *Coyle v. Hughes, 436 F. Supp. 591 (W.D. Okla. 1977),* defendants, characterizing the allegations as a mere verbal threat, maintain the complaint fails to state a claim cognizable under Section 1983. While some defendants concede the possibility that Balfour may have alleged enough for a tort claim, they argue that the tort is not of constitutional significance and therefore not actionable under Section 1983.

The Court agrees that not every claim of assault or battery gives rise to a constitutional tort actionable under Section 1983. In the oft-quoted words of Judge Friendly, "not every push or shove . . . violates a prisoner's constitutional rights." *Johnson v. Glick, 481 F.2d 1028, 1033* (2d Cir.), cert. denied, *414 U.S. 1033 (1973).* The question of when a use of force against a pretrial detainee amounts to punishment in violation of due process is thus a matter of degree. To determine whether the degree of force used is a mere state tort or a constitutional deprivation, the Court must look to the circumstances surrounding the particular assault or battery at issue in the case. This determination then, by necessity, "requires [*6] a certain amount of line-drawing, and must be resolved on a case-by-case basis." *Gumz v. Morrissette, 772 F.2d 1395, 1400 (7th Cir. 1985),* cert. denied, *106 S.Ct. 1644 (1986).* In Gumz, the Seventh Circuit adopted a three-part standard for determining whether a plaintiff has a colorable due process claim against a police officer for excessive use of force.

According to this standard the use of force is unconstitutional if it (1) caused severe injuries, (2) was grossly disproportionate to the need for actino under the circumstances, and (3) was inspired by malice rather than merely careless of unwise excess of zeal so that it amounted to an abuse of power that shocks the conscience. *Id. at 1400* (citations omitted). Analyzing Balfour's allegations in light of this three-part standard, the Court cannot conclude beyond doubt that he can prove no set of facts in support of his claim in Count I.

The allegations of the complaint, which for purposes of this opinion the Court must accept as true, leave little doubt that Eaves and those he acted in concert with intended by psychically, if not physically, harm Balfour. Not only were his actions maliciously motivated, but they [*7] were wholly without any justifiable state purpose. Eaves allegedly was the policeman brother of the man Balfour was accused of killing. He entered Balfour's cell with a gun at 1:30 a.m. After threatening to kill Balfour with the gun, he had to be subdued from inflicting further harm. The clear implication of these allegations is that Eaves, taking advantage of his position as a policeman, sought to take the law into his own hands and summarily punish Balfour in retaliation for the loss of his brother. These allegations do not suggest negligence, as defendants maintain. Rather they reflect precisely the kind of governmental abuse of power against which the Due Process Clause is intended to protect. See *Daniels v. Williams, 106 S.Ct. 662, 665 (1986).* Such allegations of totally unwarranted force inflicted on a pretrial detainee out of purely malicious intent easily meet the second and third prongs of the Gumz excessive force standard.

The requirement of severe injuries presents a more difficult problem. In Gumz, the court reversed the verdict of a jury that had awarded damages to a plaintiff who suffered emotional distress during an arrest effectuated with an excessive demonstration [*8] of manpower and firepower. Although the plaintiff had experienced heart problems shortly after his arrest, the jury specifically found that the show of force at the time of the arrest did not cause the physical injuries. Gumz therefore held that emotional distress, in the circumstances of that case, was not enough to "implicate the type of 'brutal and demeaning' attack on the psyche . . . which would be actionable under § 1983." *Gumz, 772 F.2d at 1402.* The court was careful to point out, however, that severe bodily injuries were not an absolute requirement for a constitutionally recognized claim of excessive force. "Circumstances involving actions of state officials maliciously designed .

. . to evoke an extreme emotional response from an individual could violate Fourteenth Amendment due process guarantees (even if the emotional distress suffered by the individual did not result in any observable symptoms)." *Id. at 1401-02.*

Several factors distinguished this case from Gumz. First is the fact that Balfour alleges that the emotional shock of the assault was so great as to require hospitalization and medication for several months after the incident. Thus, according to [*9] the complaint, the emotional distress did, unlike that in Gumz, result in observable physical symptoms. Balfour's claim also differs markedly from the facts of the Gumz case in that the excessive force at issue in Gumz arose in the context of an attempt to execute a valid arrest warrant. Defendants in this case, however, had no valid reason for attempting to use any force whatsoever against Balfour. Finally, the difference in the posture of this case is significant. This case is before the Court on motions to dismiss a pro se complaint, not after trial. The Court must be careful not to act too hastily and dismiss at this early stage of the proceedings a potentially meritorious claim that may be obscured by the layman plaintiff's inability to plead in detail all the necessary elements of his cause of action or to marshall all the facts required to support his claim. It is enough to plead sufficient facts to outline the real possibility of a constitutional violation. See *Jones v. Morris, 777 F.2d 1277, 1280 (7th Cir. 1985).*

The Court's finding that Balfour has stated a claim for relief in Count I of the complaint finds further support in *Burton v. Livingston, 792* [*10] *F.2d 97 (8th Cir. 1986).* In Burton, a prison guard pointed a revolved at a prisoner, cocked it, and threatened to shoot. The prisoner had just given testimony against another guard. Another correctional officer intervened before the guard could act on his words. As in this case, racially derogatory words accompanied the threat. The court, distinguishing some of the cases cited by defendants, concluded that these allegations stated a due process claim.

> The complaint describes in plain words a wanton act of cruelty which, if it occurred, was brutal despite the fact it resulted in no measurable physical injury to the prisoner. The day has passed when an inmate must show a court the scars of torture in order to make out a complaint under § 1983. We hold that a prisoner retains at least the right to be free from the terror of instant and unexpected death at the whim of his allegedly bigoted custodians.

Id. at 100. The relevant facts in Burton are nearly identical to those alleged hear. The Court therefore concurs with the Eighth Circuit's analysis and holds Balfour's allegations of assault are of sufficient constitutional dimension to withstand a motion to dismiss.

Defendant [*11] also argues that the allegations of the complaint do not evidence the state action required under Section 1983. They maintain that Moore and Eaves were private parties. They therefore reason that the alleged assault did not take place under color of state law.

Defendants contest Balfour's failure to plead state action. While true that Balfour does not allege in black letters that defendants acted under color of state law, he, as a pro se litigant, is not beholden to such technecalities. Moore and Eaves are both public officials of Harvey. A public official acts under color of state law when he exercises power possessed by virtue of state law and made possible only by the authority vested in him by state law. *Luger v. Edmundson Oil Co., 457 U.S. 922, 923 (1982).* Furthermore, a private party who acts jointly with a state official who abuses his authority also acts under color of state law. *Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970).* Existence of a joint plan or conspiracy may be demonstrated by circumstantial evidence. *Moore v. Marketplace Restaurant, 754 F.2d 1336, 1352 (7th Cir. 1985).* Even if Moore and Eaves were not acting in an official capacity at the time [*12] of the assault on Balfour, the complaint alleges enough indicia of joint action with McCarthy and Fike to bring them within the ambit of Section 1983 liability. Only a myopic reading of the complaint could conclude otherwise.

Balfour alleges Fike and McCarthy let Moore and Eaves into his cell at 1:30 a.m. They apparently were left in the cell without any police supervision. No on-duty officers were present when Eaves pulled the gun on Balfour. Shortly after Eaves left the lockup, Fike came to Balfour's cell yelling "I'll get you yet, Nigger." A few minutes later, McCarthy came to Balfour's cell smiling.

Balfour was accused of killing a fireman. A short time after his arrest, another fireman and the victim's brother appeared in his cell and threatened him with a gun. Presumably the Harvey Police Department does not allow the general public free and open access to the cells of prisoners in lockup. Most certainly they wouldn't allow private individuals to carry guns into the cells at 1:30 a.m. without supervision. The natural and logical inference is that Moore and Eaves gained entry to Balfour's cell only by virtue of their official position and with the tacit approval and assistance [*13] of Fike and McCarthy. Therefore, the assault on Balfour was a product of joint action or a conspiracy among Eaves, Fike, and Moore, and McCarthy. The conspiracy involves state actors and is actionable under Section 1983. Accordingly, finding that the complaint alleges both a constitutional violation and state action, the Court denies the motion to dismiss of Eaves, Fike, and Moore, and McCarthy. n2

n2 Moore's efforts to keep Eaves from causing further harm to Balfour do not necessarily relieve him of liability. To escape liability, Moore would have had to withdraw from the conspiracy before any overt act was taken in furtherance of the conspiratorial agreement. See *United States v. Read, 658 F.2d 1225, 1232 (7th Cir. 1981)*. Balfour alleges Moore knew Eaves had a gun when they entered the cell and had second thoughts after "the scene started to unfold." Because his act of withdrawal did not take place until after the assault, Moore may still be held accountable if Balfour can prove his allegations.

Count II - Conspiracy to Convict

Balfour also contends that Assistant State's Attorneys Kline and Perry conspired with three private citizens to deprive him of a fair trial. He [*14] asserts the prosecutors "intimidated and coerced" the witness into the commission of perjury in violation of *42 U.S.C. § § 1983* and 1985(2). His assertion is based on the allegations that the prosecutors prepared the three witnesses, each in the presence of the others, and agreed in advance as to what the witnesses would say in their testimony.

Balfour's complaint fails to allege a cause of action under Section 1985(2). A conspiracy under Section 1985(2) is not actionable unless it is motivated by some racial animus or other type of class-based discrimination. *Lowe v. Letsinger, 772 F.2d 308, 311 (7th Cir. 1985)*. Nowhere does Balfour suggest that the alleged conspiracy to deprive him of a fair trial was a product of class-based discrimination.

Balfour's Section 1983 claim against Kline and Mitchell is barred by the doctrine of prosecutorial immunity. Prosecutors enjoy absolute immunity from damages under Section 1983 for acts performed within the scope of their quasi-judicial roles as advocates in initiating a prosecution and presenting the State's case. *Imbler v. Pachtman, 424 U.S. 409, 430-31 (1976)*. This Circuit gives a broad reading to Imbler in determining what activities [*15] constitute quasi-judicial functions protected by absolute immunity. *Henderson v. Lopez, 790 F.2d 44, 46 (7th Cir. 1986)*. Inducing witnesses to commit perjury during pretrial interviews and preparation is something intimately associated with the judicial phase of a prosecution and therefore is entitled to the immunity Imbler extends to quasi-judicial functions. See *Heidelberg v. Hammer, 577 F.2d 429, 432 (7th Cir. 1978)*; see also *Fullman v. Graddick, 739 F.2d 553, 559 (11th Cir. 1984); Cook v. Houston Post, 616 F.2d 791, 793 (5th Cir. 1980)*. Therefore, the Court dismisses Count II of the complaint.

The Court, on its own motion, dismisses Balfour's claims against Cooper, Douglas, and Terrell, and three private citizens who testified at Balfour's trial. Like the prosecutor's, these witnesses are entitled to immunity. As the Supreme Court noted in *Briscoe v. LaHue, 460 U.S. 325, 340-41 (1983)*, Section 1983 did not create an exception to the rule at common law barring civil damage suits against witnesses who give testimony in judicial proceedings. Because the private citizens named in the complaint are absolutely immune, the Court dismisses the complaint as against [*16] them pursuant to *28 U.S.C. § 1915*(d).

In conclusion, the Court grants the motions to dismiss Count II of the complaint and denies the motions to dismiss Count I. Defendants Mitchell, Perry, Douglas, Cooper, and Terrell are dismissed. Defendants Fike, McCarthy, Moore, and Eaves are given twenty days to answer Count I.

JOHN A. NORDBERG, United States District Judge

Exhibit 24

informa
healthcare

Schizophrenia and sudden cardiac death—A review

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Koponen H, Alaräisänen A, Saari K, Pelkonen O, Huikuri H, Raatikainen MJP, Savolainen M, Isohanni M. Schizophrenia and sudden cardiac death—A review. Nord J Psychiatry 2008;62:342–345. Oslo. ISSN 0803–9488.

Schizophrenia is a devastating mental disorder, which is often associated with severe loss of functioning and shortened life expectancy. Suicides and accidents are well-known causes of the excess mortality, but patients with schizophrenia have also been reported to be three times as likely to experience sudden unexpected death as individuals from the general population. This review is aimed to offer an update of the prevalence and mechanisms for sudden cardiac death in schizophrenia. The PubMed database was searched from 1966 up to May 2007 with key words schizophrenia AND " sudden cardiac death" OR "autonomic dysfunction" OR "torsades de pointes". Part of the high death rates may be explained by long-lasting negative health habits, disease- and treatment-related metabolic disorders, and consequent increased frequencies of cardiovascular diseases. The antipsychotic medications may also increase the risk as some antipsychotics may cause prolongation of QT-time, serious ventricular arrhythmias and predispose to sudden death. Autonomic dysfunction seen as low heart rate variability and decreased baroreflex sensitivity may also contribute via malignant arrhythmias. Due to the complex interaction of various risk factors for sudden death, the patients need a comprehensive follow-up of their physical health. In addition, more studies on the role and prevalence of autonomic dysfunction in psychotic patients are needed.

• *Antipsychotic medication, Arrhythmias, Autonomic dysfunction, Mortality, Schizophrenia, Sudden death, Torsades de pointes.*

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Schizophrenia is a devastating mental disorder, which is often associated with severe loss of functioning and a high mortality rate. In schizophrenia patients, the mortality rate may be two to four times higher as that of the general population (1). Well-known reasons for this include suicides, accidents, violence and substance abuse (2, 3). Despite high risk of unnatural death, about two-thirds of the deaths in schizophrenic patients are due to natural causes, most commonly cardiovascular, neoplastic or respiratory diseases (2). Different factors related to the underlying central nervous system pathology, antipsychotic medications, lifestyle (e.g. smoking, general neglect of health, poor diet), and impaired access to healthcare services may also contribute to the increased mortality. Risk factors for sudden cardiac death are less well-known, but age, hypertension, left ventricular hypertrophy, intraventricular conduction block, elevated serum cholesterol, glucose intolerance, decreased pulmonary vital capacity, smoking, overweight and elevated heart rate have been implicated (4).

Due to the paucity and limited clinical relevance of data, we discuss in this review the risk and mechanisms of sudden cardiac death among schizophrenia patients based on systematic PubMed database search from 1966 to the end of May 2007 with key words schizophrenia AND " sudden cardiac death" (17 papers), OR "autonomic dysfunction" (20 papers) OR "torsades de pointes" (27 papers).

Clinical implications

In schizophrenic patients, the cardiovascular diseases nowadays consist of 40–45% of all natural deaths, and patients with schizophrenia have been reported to be three times as likely to experience sudden unexpected death. Because of the high frequency of unhealthy life habits, metabolic side-effects of antipsychotic medications and

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consequent increased risk to cardiovascular diseases, the patients are in a need of regular follow-up of their physical health. Polypharmacy with compounds known to prolong the QT interval should be avoided.

Incidence and risk factors of sudden cardiac death in schizophrenia

Sudden cardiac death is defined as death from a cardiac cause within a short time (minutes to hours) after symptoms initially appear, often without warning (4). In the general population, the reported incidence rates vary from 0.19 to 1.9 per 1000 inhabitants per year, and it accounts for about 10% of all natural deaths and over 50% of all cardiovascular mortality (4, 5). Because up to 80% of individuals who suffer sudden cardiac death have coronary artery disease, the prevalence of sudden cardiac death is highest between 45 and 75 years. However, on an individual level, initial symptoms are often non-specific, and even in those taken to indicate ischemia (angina pectoralis), tachyarrhythmia (palpitations) or congestive heart failure (dyspnea), the symptoms can only be considered suggestive (6).

Nowadays in schizophrenia patients, the cardiovascular diseases, such as coronary heart disease, are increasingly important consisting of 40–45% of all natural deaths (7–10). Patients with schizophrenia have been reported to be three times as likely to experience sudden unexpected death as individuals from the general population (11, 12). Patients using antipsychotics have higher rates of cardiac arrest or ventricular arrhythmias than controls, the ratios ranging from 1.7 to 5.3 (13–16). In the study of Ray et al. (14), the risk was greatest among a group of patients who had a significant heart disease (e.g. hypertensive or ischemic heart disease, cardiomyopathy or conduction disorders). In addition, polypharmacy and substance abuse may also contribute to increased mortality (17, 18). Smoking is also an important risk factor, and the effects of smoking may be mediated by an increase in platelet adhesiveness and release of cathecholamines (6).

Mechanisms and predictors of sudden cardiac death

Autonomic dysfunction

Sympathetic and parasympathetic systems are considered the principal rapidly reacting systems that control the heart rate. The autonomic nervous system is able to change cardiac beat-to-beat interval length, and analysis of this heart rate variability (HRV) can furnish non-invasive indexes of cardiac autonomic modulation. In addition to HRV, decreased baroreflex sensitivity after administration of vasoactive compound phenylephrine has also been used in the evaluation of autonomic dysfunction (19). After myocardial infarction, sudden death has been shown to depend on an imbalance between sympathetic and vagal output to the heart. Increased sympathetic activity is associated with a high risk of malignant ventricular arrhythmias, and the increased vagal tone is supposed to have a protecting effect. Breakdown of human heart rate dynamics has been observed in various disease states, such as heart failure, and it indicates an increased risk of mortality and life-threatening arrhythmias in patients with and without structural heart disease (20, 21).

Low heart rate variability has also been observed in schizophrenic patients (5, 22). The mechanisms by which the vagal activity is suppressed in schizophrenia are obscure, but disturbances in the cortico-subcortical circuits modulating the autonomic nervous system have been suggested by Bär and coworkers (22). Previous studies have also referred a role for amygdala, insula, prefrontal cortex and temporal poles in cerebrogenic cardiovascular disturbances and sudden death (23). Neuroimaging studies have established that also schizophrenia is associated with brain dysmorphology (24), as volumetric deficits have been reported in the hippocampus, cortical gray matter, and in cingulate and orbitofrontal cortex (25). Although it is not precisely known whether these structures can modify the cardioregulatory functioning in schizophrenic patients, these changes may contribute to the increased risk of sudden death (26). Low HRV has also been found in association with the use of tricyclic antidepressants, clozapine and thioridazine (27, 28). Thus the dysfunction of cardioregulatory system may also be associated to functional and medication-related mechanisms rather than structural changes.

QT interval prolongation and arrhythmias caused by antipsychotic drugs

One important cause of sudden death is the polymorphic ventricular tachycardia called torsades de pointes (TdP). The ability of some antipsychotic agents and other medications to block the rapid component of the delayed rectifier potassium current results in homogeneous lengthening of action potential resembling hereditary long QT interval syndrome, which has been regarded as a proxy to TdP. Key factors predisposing to the antipsychotic-use induced prolongation of the QT interval and TdP are listed in Table 1 (29, 30). The risk of drug-induced prolongation of the QT interval is increased also by mutations in at least seven genes encoding structural subunits of cardiac ion channels affecting sodium or potassium transport. The prevalence of congenital long QT syndrome is about one in 5000. Carriers of these genetic variants are more prone to sudden cardiac death when exposed to QT interval-prolonging drugs (31).

Table 1. Factors predisposing to the antipsychotics-use induced prolongation of QT- interval and torsades de pointes.

Prolonged baseline QT
Female gender
Advanced age
Bradycardia
Diuretic use
Hypokalemia
Hypomagnesemia
Congestive heart failure, cardiac hypertrophy
Combinations of drugs (ion channel blockers, cytochrome P450 enzymes inhibitors), t.eg.
Genetic polymorphism of gene encoding cardiac ion channels and simultaneous use of QT-prolonging medications, t.eg. fluoroquinolone or macrolide antibiotics, quinidine, sotalol, amiodarone, ibutilide
High antipsychotic doses or genetic polymorphism in liver metabolizing enzymes resulting in high concentrations

Among the common antipsychotics, the use of thioridazine seems to involve the highest risk of prolongation of QT interval and TdP (16). Hovever, also pimozide, sulpiride and droperidol (a butyrophenone used in neuroleptic analgesia) as well as high-potency neuroleptics, such as haloperidol and fluphenazine, have been occasionally described to prolong QT interval (29, 32, 33). In clinical studies, mostly modest QT interval prolongation (i.e. less than 30 ms) has also been associated to amisulpride, clozapine, olanzapine, quetiapine, risperidone, sertindole, ziprasidone and zotepine (29, 34); data on the effect of aripiprazole on QT interval is still scarce. The QT interval prolongation is not invariably associated with increased risk of TdP, but it may, however, be a warning sign for TdP. The QT interval changes caused by antipsychotics may be significantly emphasized by other drugs affecting their metabolism. The combined effects can most commonly be explained by inhibitory effects on cytochrome P450 enzymes (35), such as CYP-1A2, CYP-2D6 and CYP-3A4. Simultaneous use of other drugs with direct QT interval-prolonging action (e.g. fluoroquinolone or macrolide antibiotics, quinidine, sotalol, amiodarone, ibutilide) also increase the risk of TdP.

Conclusions

In the clinical setting, sudden death resulting from cardiac arrhythmias is an important cause of mortality. However, as different mechanisms can cause sudden cardiac death, and because many of the victims do not have specific preliminary symptoms or signs, a preventive approach to the problem is complicated. All psychotic patients, or if inaccessible, their caregivers or relatives, should be questioned about family history, particularly sudden premature death, to look for familial long QT syndromes. Previous heart disease in the patient should be elicited and documented, as secondary preventive measures, such as abstinence from smoking, exercise, weight reduction, control of high blood pressure, blood glucose and lipid abnormalities could be employed. The parasympathetic hypofunction in schizophrenia may also be related to the increased risk of sudden death, but the value of autonomic dysfunction indexes, such as altered heart rate dynamics or decreased baroreflex sensitivity, in the prediction of this risk should be evaluated in future prospective studies (36).

In the drug treatment, polypharmacy with compounds known to prolong the QT interval should be avoided, as should the use of drugs known to have anticholinergic properties, or inhibit relevant cytochrome isoenzymes. High-risk patients include those with a personal or family history of QT prolongation; those with pre-existing heart disease or cardiac symptoms; patients in whom polypharmacy is unavoidable; those who require high doses; those with unreliable treatment adherence; and those abusing other drugs (30).

Because of the high frequency of unhealthy life habits, and disorder- and medication-related risk factors to cardiovascular diseases and sudden death, the patients are in a need of regular follow-up of their physical health (Table 2; 36). This close follow-up may also decrease their high mortality rates.

Table 2. Monitoring protocol for schizophrenia patients (36).

	Baseline	4 weeks	8 weeks	12 weeks	Quarterly	Annually	Every 5 years
Family history	x					x	
Body mass index	x	x	x	x	x		
Waist circumference	x					x	
Blood pressure	x			x		x	
fP-Glucose	x			x		x	
Cholesterol, HDL-cholesterol, triglycerides	x			x			x
ECG	x			x		x	

HDL, high-density lipoprotein; ECG, electrocardiogram.

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References

1. Mortensen PB. Mortality and physical illness in schizophrenia. In: Murray RM, Jones PB, Susse E, Van Os J, Cannon M, editors. The epidemiology of schizophrenia. Cambridge: Cambridge University Press; 2003.
2. Brown S, Inskip H, Barraclough B. Causes of excess mortality of schizophrenia. Br J Psychiatry 2000;177:212–7.
3. Bandelow B, Fritze J, Ruther E. Increased mortality in schizophrenia and the possible influence of antipsychotic treatment. Int J Psych Clin Pract 1998;2 Suppl 2:S49–57.
4. Straus SMJM, Bleumink GS, Dieleman JP, van der Lei J, Stricker BHC, Sturkenboom MCJM. The incidence of sudden cardiac death in general population. J Clin Epidemiol 2004;57:98–102.
5. Jindal R, MacKenzie EM, Baker GB, Yeragani VK. Cardiac risk and schizophrenia. J Psychiatry Neurosci 2005;30:393–5.
6. Zipes DP, Wellens HJJ. Sudden cardiac death. Circulation 1998;98: 2334–51.
7. Heilä H, Haukka J, Suvisaari J, Lönnqvist J. Mortality among patients with schizophrenia and reduced psychiatric hospital care. Psychol Med 2005;35:725–32.
8. Chute D, Grove C, Rajasekhara B, Smialek JE. Schizophrenia and sudden death: A medical examiner case study. Am J Forensic Med Pathol 1999;20:131–5.
9. Ösby U, Correia N, Brandt L, Ekbom A, Sparen P. Mortality and causes of death in schizophrenia in Stockholm County, Sweden. Sch Research 2000;45:21–8.
10. Stark C, MacLeod M, Hall D, O'Brien F, Pelosi A. Mortality after discharge from long-term psychiatric care in Scotland, 1977–94: A retrospective cohort study. BMC Public Health 2003;3:30–4.
11. Appleby L, Thomas S, Ferrier N, Lewis G, Shaw J, Amos T. Sudden unexplained death in psychiatric in-patients. Br J Psychiatry 2000;176:405–6.
12. Ruschena D, Mullen PE, Burgess P, Cordner SM, Barry-Walsh J, Drummer OH, et al. Sudden death in psychiatric patients. Br J Psychiatry 1998;172:331–6.
13. Mehtonen OP, Aranko K, Mälkonen L, Vapaatalo H. A survey of sudden death associated with the use of antipsychotic or antidepressant drugs: 49 cases in Finland. Acta Psych Scand 1991;84: 58–64.
14. Ray WA, Meredith S, Thapa PB, Meador KG, Hall K, Murray KT. Antipsychotics and the risk of sudden cardiac death. Arch Gen Psychiatry 2001;58:1161–7.
15. Hennessy S, Bilker WB, Knauss JS, Margolis DJ, Kimmel SE, Reynolds RF, et al. Cardiac arrest and ventricular arrhythmia in patients taking antipsychotic drugs: Cohort study using administrative data. BMJ 2002;325:1070–2.
16. Reilly JG, Ayis SA, Ferrier IN, Jones SJ, Thomas SHL. Thioridazine and sudden unexplained death in psychiatric in-patients. Br J Psychiatry 2002;180:515–22.
17. Waddington JL, Youssef HA, Kinsella A. Mortality in schizophrenia. Antipsychotic polypharmacy and the absence of adjunctive anticholinergics over the course of a 10-year prospective study. Br J Psychiatry 1998;173:325–9.
18. Joukamaa M, Heliövaara M, Knekt P, Aromaa A, Raitasalo R, Lehtinen V. Schizophrenia, neuroleptic medication and mortality. Br J Psychiatry 2006;188:122–7.
19. La Rovere MT, Bersano C, Gnemmi M, Specchia, Schwartz PJ. Exercise-induced increase in baroreflex sensitivity predicts improved prognosis after myocardial infarction. Circulation 2002;106:945–9.
20. Huikuri HV, Mäkikallio TH, Peng C-K, Goldberg AL, Hintze U, Moller M. Fractal correlation properties of R-R interval dynamics and mortality in patients with depressed left ventricular function after an acute myocardial infarction. Circulation 2000;101:47–53.
21. Huikuri HV, Mäkikallio TH, Raatikainen MJP, Perkiömäki J, Castellanos A, Myerburg RJ. Prediction of sudden cardiac death: Appraisal of the studies and methods assessing sudden arrhythmic death. Circulation 2003;108:110–5.
22. Bär KJ, Letzsch A, Jochum T, Wagner G, Greiner W, Sauer H. Loss of efferent vagal activity in acute schizophrenia. J Psychiatry Res 2005;39:519–27.
23. Williams LM, Das P, Harris AW, Liddell BB, Brammer MJ, Olivieri G, et al. Dysregulation of arousal and amygdala-prefrontal systems in paranoid schizophrenia. Am J Psychiatry 2004;161: 480–9.
24. Ridler K, Veijola JM, Tanskanen P, Miettunen J, Chitnis X, Sucling J, et al. Fronto-cerebellar systems are associated with infant motor and adult executive functions in healthy adults but not in schizophrenia. Proc Natl Acad Sci USA 2006;103:15651–6.
25. Davatzikos C, Shen D, Gur RC, Wu X, Liu D, Fan Y, et al. Whole-brain morphometric study of schizophrenia revealing a spatially complex set of focal abnormalities. Arch Gen Psychiatry 2005;62: 1218–27.
26. Crithley HD, Taggart P, Sutton PM, Holdright DR, Batchvarov V, Hnatkova K, et al. Mental stress and sudden cardiac death: Asymmetric midbrain activity as a linking mechanism. Brain 2005; 128:75–85.
27. Cohen H, Loewenthal U, Mater M, Kotler M. Association of autonomic dysfunction and clozapine. Heart rate variability and risk for sudden death in patients with schizophrenia on long-term psychotropic medication. Br J Psychiatry 2001;179:167–71.
28. Silke B, Cambell C, King DJ. The potential cardiotoxicity of antipsychotic drugs as assessed by heart rate variability. J Psychopharmacol 2002;16:355–60.
29. Kang UG, Kwon JS, Ahn YM, et al. Electrocardiographic abnormalities in patients treated with clozapine. J Clin Psychiatry 2000;61:441–6.
30. Glassman AH, Bigger JT. Antipsychotic drugs: Prolonged QTc interval, torsades de pointes, and sudden death. Am J Psychiatry 2001;158:1774–82.
31. Titier K, Girodet P-O, Verdoux H, et al. Atypical antipsychotics. From potassium channels to Torsade de Pointes and sudden death. Drug Safety 2005;28:35–51.
32. Hassaballa HA, Balk RA. Torsades de pointes associated with the administration of intravenous haloperidol. Am J Therapeutics 2003;10:58–60.
33. Welch R, Chue P. Antipsychotic agents and QT changes. J Psychiatry Neurosci 2000;25:154–60.
34. Kelly DL, Love RC. Ziprasidone and the QTc interval: Pharmacokinetic and pharmacodynamic considerations. Psychopharmacol Bull 2001;35:66–79.
35. Kiviniemi AM, Tulppo MP, Wichterle D, Hautala AJ, Tiinanen S, Seppänen T, et al. Novel spectral indexes of heart rate variability as predictors of sudden and non-sudden cardiac death after an acute myocardial infarction. Ann Med 2007;39:54–62.
36. American Diabetes Association, American Psychiatric Association, American Association of Clinical Endocrinologists, North American Association for the Study of Obesity: Consensus development conference on antipsychotic drugs and obesity and diabetes. Diabetes Care 2004;27:596–601

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Exhibit 25

3 ex-Harvey cops indicted in beating
O'Brien, John
Chicago Tribune (1963-Current file); Jun 2, 1987; Chicago Tribune
pg. A3

3 ex-Harvey cops indicted in beating

By John O'Brien

A former Harvey police lieutenant and two of his sons were among five people indicted Monday on charges that they violated the civil rights of a man who was beaten after he implicated two other Harvey officers in a burglary ring.

The indictment, announced by U.S. Atty. Anton Valukas, is the first derived from a 2½-year FBI investigation of alleged police corruption in Harvey, a south suburb with a 70-member police department.

Those named in the civil-rights charges were John Jordan Sr., 51, a former Harvey police lieutenant; two of his sons, John Jordan Jr., 32, and Patrick Jordan, 26; Coleman McCarthy, 37; and James Evans, 45, all of Harvey.

John Jordan Jr. is a former Harvey patrol officer. McCarthy is a former Harvey detective who left the force last year after he was paid $49,000 for an injury suffered while on duty.

All five are accused of plotting the June 10, 1982, beating of Alieck John Kelly, 35, a convicted thief, for his testimony before the Harvey civil service commission.

At the time, the commission was investigating charges that two other officers were members of a burglars-in-blue theft ring that came to light after a service station break-in. They later resigned from the force under circumstances unrelated to the assault case.

According to the indictment, Kelly, was confronted at gunpoint and pistol-whipped outside his home in Hazel Crest by all the defendants, except Jordan Sr., who allegedly "procured the beating."

The attack, in the early-morning hours, came two days after Kelly implicated the two other officers in testimony before the civil service commission. The following developments also had occurred:

● A police guard on Kelly, posted while he was a commission witness, was abruptly withdrawn the night before the beating on orders of Police Chief Bruce Terry, who resigned last June amid controversy over his handling of the department.

● Only hours before the beating, Kelly and Jordan Sr. engaged in a bloody tavern fistfight that was witnessed by some of the defendants and which left Jordan Sr. nearly unconscious.

Kelly underwent facial reconstruction as a result of his beating, allegedly at the hands of Jordan's sons, McCarthy and Evans, the latter a friend of the former officers.

Kelly later sued the City of Harvey for damages.

Cook County Circuit Court records show he collected $15,000 and full payment of his medical bills in an out-of-court settlement that included a clause the settlement "remain confidential." He was later placed in the federal witness-protection program.

In addition to the civil rights charges, the three-count federal indictment, obtained by Assistant U.S. Atty. Steven Miller, charged all five defendants in connection with a gun used in the attack.

The continuing Harvey investigation apparently is aimed at allegations that certain officers staged raids inside and outside the city to steal cash and narcotics from drug dealers and gamblers.

According to the sources, some officers carried out raids in nearby Phoenix and Dixmoor in which several thousands of dollars were seized along with cocaine and marijuana but in which no arrests were made.

Exhibit 26

Google Maps

Address **Harvey, IL**

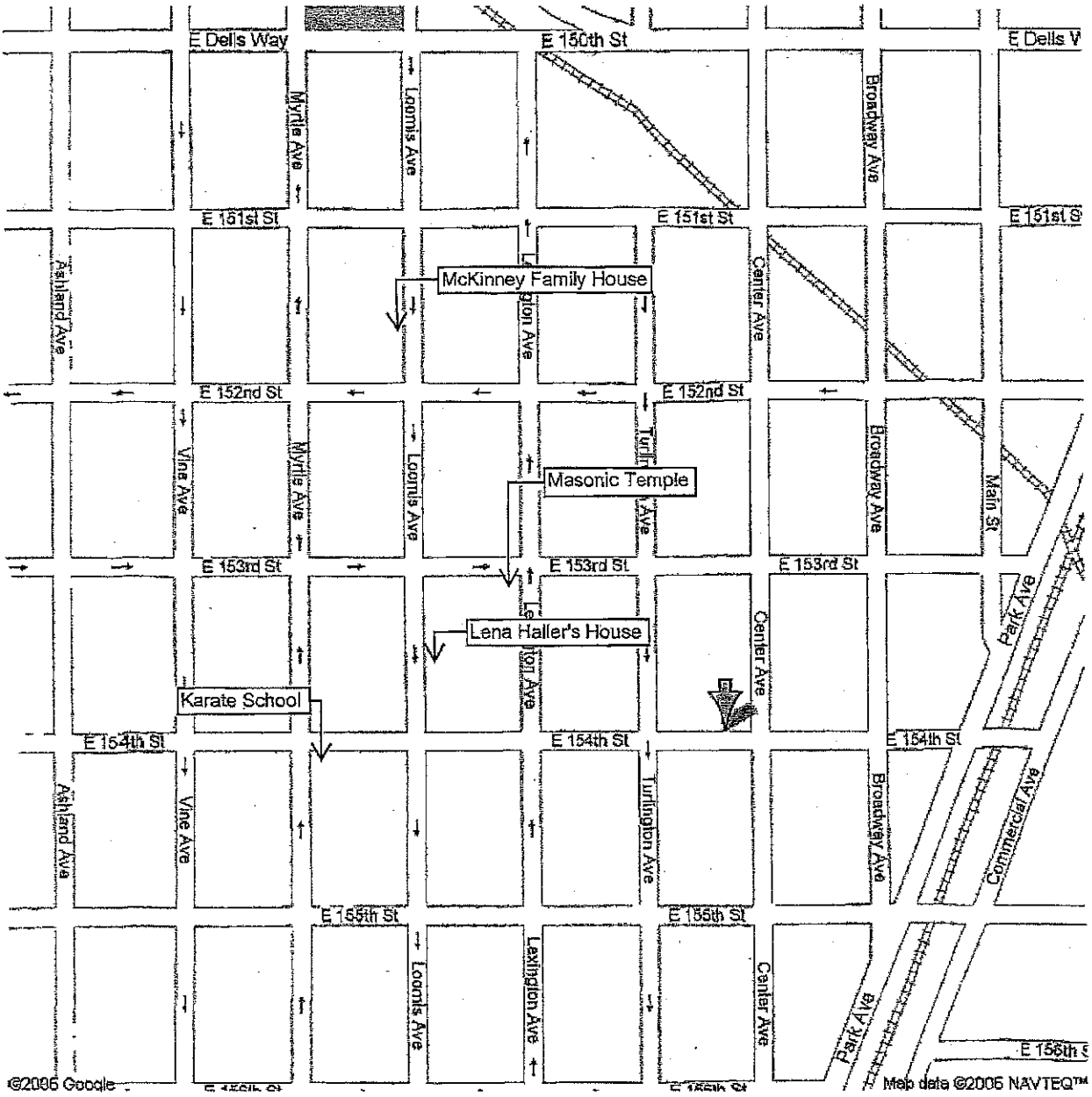

Exhibit 27

U.S. Department of Justice
Civil Rights Division

JMS:LC:ACL:RJO:BJ:mrb
DJ 207-23-8

Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530

January 18, 2012

Via Electronic Mail and First Class Mail

The Honorable Eric J. Kellogg
Mayor
City of Harvey
15320 Broadway Avenue
Harvey, Illinois 60426

Chief Denard Eaves
Harvey Police Department
15301 Dixie Highway
Harvey, Illinois 60426

Re: Harvey Police Department

Dear Mayor Kellogg and Chief Eaves:

On December 12, 2008, the Special Litigation Section of the United States Department of Justice Civil Rights Division initiated an investigation of the City of Harvey, Illinois Police Department ("HPD"), pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. We have completed our investigation. We do not make findings that there is a pattern or practice of constitutional or federal law violations and are closing our investigation. However, we do conclude that there are serious deficiencies in the operation of the Harvey Police Department that create an unreasonable risk that constitutional violations will occur. This letter details the results of our investigation and provides recommendations for reform.

We conclude that HPD's system for reporting, reviewing, and investigating use of force is grossly deficient and creates a high risk of excessive force. The continued failure to collect data and use it to identify problems and mitigate future risk creates the opportunity for constitutional violations from a resulting pattern of incidents of unjustified or excessive force. Addressing these deficiencies should be HPD's highest priority, as we believe that these lapses, if not corrected, may result in unnecessary injury and/or loss of life to officers or civilians. These deficiencies also could expose HPD to significant legal liability.

We have reason to believe that the leadership at HPD will take appropriate measures to address the deficiencies we detail in this letter. Chief Denard Eaves and HPD staff have been helpful and professional throughout the course of our investigation. The City has provided us with access to records and personnel, and responded to our requests, before, during, and after our onsite visit. If appropriate measures are not taken, we may re-open our investigation.

The recommendations provided below were developed in close consultation with our police practices experts and follow the productive dialogue we had with HPD supervisors and officers and Harvey officials. Going forward, we strongly urge HPD to consider the technical assistance recommendations contained in this letter and the attached technical assistance report in revising its policies and procedures. We would be happy to provide you with examples of policies used by other police departments.

I. RESULTS OF INVESTIGATION

HPD first came to the attention of the Special Litigation Section in 2007 when there were numerous press accounts questioning HPD's use of force practices. The City of Harvey is located in the Chicago Southland region, approximately 20 miles south of downtown Chicago, Illinois. According to 2010 census data, Harvey has a population of 25,282, of which 76% are African-American, 19% are Hispanic, and 4% are white.[1] HPD consists of 61 officers: 40 patrol officers, 9 sergeants, 5 detectives, 5 commanders, a Deputy Chief, and the Chief.[2]

On January 24, 2007, a task force of the Cook County State's Attorney's Office, the Illinois State Police Public Integrity Unit, and the Cook County Sheriff's Office conducted a raid of HPD searching for records and evidence related to dozens of unsolved murders and other violent crimes.[3] Reportedly, investigators were focused on locating evidence held by HPD but never used to bring cases to trial.[4] During this same time, there were numerous press reports and private lawsuits alleging that HPD officers routinely used excessive force during and after arrests. Many of the encounters resulted in serious injuries to the subjects, including a fractured spine, broken jaw, fractured bones in the face and neck, head injuries, a dislocated shoulder, facial nerve damage, and broken teeth. In an interview with a local newspaper, an HPD employee who ran the HPD's holding cell said that HPD officers routinely beat and choked suspects and hog-tied them on the floor of their cells where they soiled themselves.[5]

Against this backdrop, the Special Litigation Section, aided by its expert consultants, conducted an in-depth analysis of HPD's operational policies and of all reported use-of-force incidents, applying the legal standard of objective reasonableness articulated in Graham v. Connor, 490 U.S. 386, 388 (1989). Uses of excessive force by police officers in the course of an arrest, investigatory stop, or other seizure violate the Fourth Amendment.[6] Id. at 394-95. The analysis requires a balancing of "the nature and quality of the intrusion on the individual's

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[1] Illinois Census 2010, http://quickfacts.census.gov/qfd/states/17/1733383.html (last visited Jan. 18, 2012).

[2] City of Harvey, http://www.cityofharvey.org/site2/index.php?option=com_content&task=view&id=43&Itemid=54 (last visited Jan. 18, 2012).

[3] Matthew Walberg, et al., State, County Raid Harvey Police Force, Chicago Tribune, Jan. 25, 2007.

[4] Id.

[5] Jonathan Lipman, A Different Law Reigns Inside Harvey's Lockup, Daily Southtown, Jul. 23, 2006.

[6] A seizure – i.e., by means of physical force or show of authority – is the event that triggers Fourth Amendment protections. Acevedo v. Canterbury, 457 F.3d 721, 724 (7th Cir. 2006) (citing Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968)).

Fourth Amendment interests" against the governmental interests. Id. at 396; Abdullahi v. City of Madison, 423 F.3d 763, 768 (7th Cir. 2005). The criteria courts apply to assess an excessive force claim include the severity of the crime at issue, whether the suspect presents an immediate safety threat to the officers or others, and whether the suspect is actively resisting or attempting to evade arrest. Abdullahi, 423 F.3d at 768 (citing Graham, 490 U.S. at 396). Courts judge the reasonableness of the use of force "from the perspective of a reasonable officer on the scene, rather than with the 20-20 vision of hindsight." Cyrus v. Mukwonago, 624 F.3d 856, 862 (7th Cir. 2010) (quoting Graham, 490 U.S. at 396).

In applying these standards to HPD practices, the Special Litigation Section and its consultants reviewed arrest and incident reports, disciplinary investigations, and citizen complaints from 2009 and 2010. Our overall assessment of HPD is that its system for reporting, reviewing, and investigating use of force is grossly inadequate. As a result, HPD is a department devoid of supervisory oversight and accountability, that tacitly endorses heavy-handed uses of force that were likely avoidable. While we did not find a pattern of harm, the failure to have an adequate system in place creates unreasonable risk. The failure to collect data and use it to identify problems and mitigate risk can in some instances be part of a constitutional violation.

Current common practices in policing require, at a minimum, documentation from the officer using force and an investigation by a supervisor or internal affairs into each use of force beyond soft hands or compliant cuffing. Reports of all use of force incidents need a thorough account of the resistance and use of force in order to properly explain the reasonableness of each level of force as it was employed. HPD reports lack these elements.

First, HPD officers' reports fail to provide a sufficient description of the nature of the resistance encountered. Instead of describing the arrestee's physical actions and behavior, the reports simply contain a summary statement that the arrestee was uncooperative, resisted, pulled away, or became combative. These one-word descriptions do not make clear whether the resistance was defensive, active, or assaultive. In 20% of the cases reviewed, there was no description of the nature of the resistance that preceded the use of force.

Second, the description of the force used by the officer in HPD reports is inadequate. HPD officers failed to provide sufficient description of the force or compliance technique they used to gain control. Rather, they used summary descriptions such as "I used the force necessary to subdue him" or "I used the force necessary to effectuate the arrest." In one example, the reporting officer indicated that he deployed OC Spray "to effect the arrest" when the suspect was already under arrest and was being finger printed in the cell area. An officer's use of force report should contain specific information regarding the force or compliance technique used. Failure to do so evinces a lack of accountability by the officer and can amount to a department sanctioned failure to provide sufficient information. Further, such a description does not provide the arresting officer with the proper documentation to testify regarding the matter months or years following the incident.

Of the cases reviewed by our consultants, at best ten percent might be considered to include an adequate description of the arrestee's resistance and the officer's actions. HPD's failure to insist that its officers thoroughly document each use of force helps to foster an environment in which constitutional violations are more likely, as officers will know they will not be held accountable. See Kopf v. Wing, 942 F.2d 265, 269 (4th Cir. 1991) (noting that a

department's policy of destroying use of force reports after a short amount of time and of forbidding photographs of injuries caused by police dogs may create an impression among officers that any wrongdoing will not be documented or punished).

The failure to properly describe the resistance faced or force used makes it virtually impossible for HPD to know whether officers are using the appropriate amount of force, or if they are applying force in a constitutionally-suspect manner. See Vetter v. Dozier, No. 06-CV-3528, 2010 WL 1333315, *2 (N.D. Ill. Mar. 31, 2010) (noting that a "deliberate indifference case can be maintained on a willful blindness theory," where an investigation into allegations of officer misconduct was "patently perfunctory"); see also McKnight v. Dist. of Columbia, 412 F. Supp. 2d 127, 133 (D.D.C. 2006) (stating that a municipality may be liable for a constitutional violation "for its failure to investigate incidents of force, and by extension, its failure to discipline officers for use of excessive force"); Brown v. City of Margate, 842 F. Supp 515, 517 n.2 (S.D. Fla. 1993) ("The City must, however, acknowledge that allegations of a police department's failure to maintain thorough and accurate records of [complaints of excessive use of force] could be considered as evidence of deliberate indifference."), aff'd, 56 F.3d 1390 (11th Cir. 1995) (emphasis omitted); Cox v. Dist. of Columbia, 821 F. Supp. 1, 13 (D.D.C. 1993) (finding that municipality's "patently inadequate system of investigation of excessive force complaints constitutes a custom or practice of deliberate indifference to the rights of persons who come in contact with District police officers"), aff'd, 40 F.3d 475 (D.C. Cir. 1994).

In most of the cases reviewed, HPD officers failed to state whether or not the arrestee sustained any injuries or received medical care. The identities of assisting officers, with the common exception of the arresting officer's partner, are not included in the case report. Though several of the narratives identified supervisors who were on the scene when the incident took place, none otherwise indicated a supervisor was notified or called to the scene. While supervisors sign the reports, there is no indication they have taken corrective action to address the lack of information in use of force reports. In fact, it appears that supervisors continue to sanction or rubber stamp the reports as written. We found no indication that any supervisor approved or disapproved any use of force and no indication that any supervisor recommended an internal affairs investigation into any level of force used.

For example, in an incident involving the use of an ASP baton "to effect the arrest," the narrative does not specifically state that the officer struck the arrestee in the head with the ASP, but there is a note that the subject had a head injury that needed treatment (CRN 9919C-09). An ASP strike to the head would constitute deadly force. The report does not provide any information that the officer thought his life was in jeopardy or that he was in danger of serious bodily injury. There is no evidence that a supervisor was notified, responded to the scene of the incident or the hospital, or conducted an investigation into the ASP head strike.

Due to the inadequacy of the use of force reporting and review, and the policy deficiencies described below, we have serious concerns regarding the potential for excessive uses of force by HPD officers. As outlined above, examples of important factors to consider when determining the reasonableness of the force used are: the severity of the crime; whether the subject poses an immediate threat to the officer; and how the subject was resisting. Abdullahi, 423 F.3d at 768 (citing Graham, 490 U.S. at 396). In the cases reviewed, the most common offenses charged were minor ordinance violations where the officer came upon the subject allegedly violating an ordinance and subsequently used force to arrest the subject. In

almost half of the cases reviewed, the subject was arrested for what the officer deemed a failure to respect the officer's authority, commonly referred to as "contempt of cop."[7] Because there is no official charge for "contempt of cop," officers often explain the interaction by charging the person with disorderly conduct, resisting arrest, and/or assaulting an officer. These arrests may be designed to justify use of force or other excessive authority where there may have been no legitimate justification for that exercise of authority.[8]

While it is difficult to reach a final conclusion without the benefit of civilian and officer witness statements, it is apparent that, at best, some of those incidents could have had a better outcome if the officer had employed different tactics. At worst, some of these incidents constitute prosecutable excessive force. Though most of the force used, with two exceptions, was low level – OC Spray or hard hands – some of that force was likely avoidable. Further, from the events documented in the files, it appears that HPD officers have been trained to reach for OC Spray before placing even soft hands on the subject.[9] Additionally, it appears that it is not a common practice for the officers to give (when practicable) a warning to the subject before using the spray.[10] Finally, when OC spray was used, the narrative did not indicate the duration or number of spray blasts. Only a few of the narratives reported flushing the OC from the subject. These deficiencies increase the likelihood that excessive force persists unchecked.

II. RECOMMENDATIONS TO REVISE POLICIES AND PROCEDURES TO ADDRESS AREAS OF CONCERN

Basic elements of effective policing include clear policies, training, and accountability. HPD's failure to provide sufficient guidance, training, and support to its officers, as well as its failure to implement systems to ensure officers are wielding their authority effectively and safely, have created an environment that permits and promotes constitutional harm. Courts have long acknowledged that deficiencies in systems and operations can unequivocally lead or contribute to constitutional violations. In City of Canton v. Harris, 489 U.S. 378 (1989), the Supreme Court held a municipality liable for failing to adequately train its law enforcement officers, recognizing that a law enforcement agency's inadequate practices and decision-making can cause constitutional harm. Id. at 387. The deficiencies in policies and procedures identified below and in the attached Technical Assistance Report must be corrected for legitimate, sustainable reform to occur. Without this comprehensive reform, HPD will maintain a high risk of unconstitutional conduct.

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[7] See Human Rights Watch, Shielded from Justice: Police Brutality and Accountability in the United States (1998), available at http://www.columbia.edu/itc/journalism/cases/katrina/Human%20Rights%20Watch/uspohtml/uspo20.htm

[8] Id.

[9] OC Spray falls above soft hands on a use of force continuum. A use of force continuum, as more thoroughly described in the attached Technical Assistance Report, is a diagram, guide, or chart that illustrates a progression of various descriptions of use of force that may be employed consistent with policy.

[10] Deploying pepper spray without a warning, when feasible, can constitute excessive use of force. See, e.g., Graham v. Hildebrand, 203 Fed. App'x 726, 731 (7th Cir. 2006) (denying officer's motion for summary judgment where the officer "simply shot pepper spray without warning" "because a jury could find that a reasonable officer . . . would have known . . . that dispersing pepper spray in their faces was an excessive use of force").

Policies and procedures are the primary means by which police departments communicate their standards and expectations to their officers. Clear and well-drafted policies are essential to ensuring constitutional police practices. Officers need to know what is permitted and what is prohibited. Police managers need policies to guide their work and hold officers accountable. Accordingly, it is essential that HPD's policies be comprehensive, comprehensible, up-to-date, and consistent with relevant legal standards and contemporary police practices. Outdated policies and ineffective external oversight can exacerbate a police department's failure to ensure constitutional policing and erode the public's confidence in its efforts.

As we discuss in the attached Technical Assistance Report, several of HPD's policies and procedures are inconsistent with generally accepted police practices and are insufficiently detailed to provide the appropriate guidance for officer conduct. These deficiencies – even in general policies – can have a significant impact on the scope, quality, and effectiveness of HPD's efforts to investigate and review officers' uses of force and will be barriers to effective use of force policies. The recommendations made in the Report include:

- Reworking HPD's policies on use of force, including adding specific prohibitions against the use of excessive force, unwarranted physical force, or verbal abuse by HPD members. The policy also must have a continuum of control/force that dictates which level of force is authorized in accordance with the level of the subject's resistance, and should define key terms such as lethal force, less lethal force, and force. Finally, the policy must also have clear instructions on documenting use of force incidents, including a requirement to document and investigate any use of force involving a firearm, or resulting in injury to a civilian or an officer.

- Requiring HPD Watch Commanders to respond to the scene of any incident in which HPD officers use deadly force or any force that results in serious injury, to ensure that all injured are provided care, that the scene is protected, and that a complete and thorough investigation is initiated.

- Implementing an Early Intervention System ("EIS")[11] that contains information on all investigations and complaints regarding HPD officers, including non-sustained complaints, complaints prior to final disposition, discipline, and other supervisory corrective measures. The EIS should also include all uses of force, arrests and charges, searches and seizures, service calls, training, awards and commendations, sick leave, civil lawsuits, and other items relevant to an officer's conduct. HPD supervisors, including command staff, should regularly review this data for every officer they supervise to ensure that patterns of possible misconduct are identified, analyzed, and addressed properly by command staff.

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[11] An Early Intervention System ("EIS"), or Early Warning System ("EWS"), is a data-based police management tool designated to identify potentially problematic behavior and allow early intervention to correct misconduct and assist in identifying deficiencies in supervision, management, and policies. Police departments typically use EIS data regularly and affirmatively to promote best professional police practices, accountability, and proactive management; to manage the risk of police misconduct and potential liability; to evaluate and audit the performance of officers and units; and to identify, manage, and control at-risk officers, conduct, and situations.

- Modifying the parameters of the internal affairs investigation procedures to complement those of the Cook County Public Integrity Task Force, including requiring internal affairs to conduct investigations of injury to suspects or allegations of excessive force not involving firearms or serious injury, and requiring an administrative investigation even when there is an ongoing criminal investigation of an HPD officer (unless it would jeopardize the criminal investigation).

- Revising HPD's process of handling citizen complaints against officers, including eliminating restrictions on the acceptance of anonymous complaints, and eliminating language in the policy that permits HPD employees to disregard complaints from intoxicated or mentally ill individuals, or complaints they consider to be minor in nature.

III. CONCLUSION

We strongly urge HPD to consider and adopt the recommendations in the attached Technical Assistance Report. If you have any questions, please do not hesitate to contact me at (202) 514-5393, Special Counsel Laura Coon at (202) 514-1089, or Trial Attorney Alyssa Lareau at (202) 305-2994.

Sincerely,

Jonathan M. Smith
Chief

Enclosure

cc: Patrick J. Fitzgerald
United States Attorney
for the Northern District of Illinois
(via Electronic Mail)

Exhibit 28

OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS

INVESTIGATIVE REPORT

CONTROL NO: 08PC-1273	REPORTING DATE:	PREPARED BY INVESTIGATOR:	SYNOPSIS OF REPORT:
CASE NO: 78C-5267	30 October 2008	Brannigan #334	Witness Interview

Date of Assignment: 28 October 2008

Assignment: Videotape Interview

Subject Information: DRAKES, Anthony M/B/49yrs. 29 Nov 58
SS# 321-54-5782, IR# 482479, SID# IL15662170
Currently Resident of Illinois Department of
Corrections (IDOC)-Pinckneyville, IDOC# N-81391

Evidence & Inventory: Original Panasonic Video Tape of the 30Oct08 DRAKES interview - Inventoried under CCSAO #40987

Assigned Personnel: Brannigan #334

Investigation: Anthony McKINNEY was convicted for the 1978 murder of Donald LUNDAHL. LUNDAHL was sitting in his car parked at 153rd and Lexington in Harvey, Illinois when he was shot at close range with a shotgun and killed.

Students from the Northwestern School of Journalism presented a video interview with Anthony DRAKES stating that he (DRAKES) was present when LUNDAHL was murdered and Anthony McKINNEY was not the shooter and was not on the scene. In the video interview DRAKES stated that the shooter was a Roger MAGROODER.

On September 18, 2008, at approximately 11:05 AM Reporting Investigator (R/I), Assistant State's Attorney (ASA) Stack and ASA Cook met with DRAKES in interview room #1 at the Pinckneyville facility. DRAKES was advised that R/I, ASA Stack and ASA Cook represented the Cook County State's Attorney's Office. R/I asked DRAKES if he would consent to an interview regarding his video with the Northwestern students and events surrounding this investigation. He agreed and was interviewed.

R/I and ASA Cook returned to Pinckneyville on October 30, 2008 in order to re-interview

DRAKES and to document the interview on videotape. At approximately 1:50 PM R/I and ASA Cook met with DRAKES in the Assistant Warden of Operations' conference room. DRAKES was again advised that R/I and ASA Cook represented the Cook County State's Attorney's Office. R/I asked DRAKES if he would consent to a videotaped interview and he agreed.

Prior to beginning the videotaped interview DRAKES was asked about his educational background. DRAKES said he did not finish high school and did not have his GED. He said he could read and write and had taken some college courses. DRAKES was next asked to read the report documenting the September 18, 2008 interview in order to refresh his memory and to review it for accuracy and completeness; he did. ASA Cook then read the report out loud while McKINNEY again reviewed his copy. DRAKES said it accurately reflected the previous interview. He said since the last interview he, as requested, had been thinking about the case and recalled additional events. R/I asked him what else he recalled.

In summary DRAKES commented that he never knew the victim was killed with a shotgun until he reviewed the report of his September 18, 2008 interview and noted that fact in the initial paragraph. DRAKES said he did not tell the students the victim was killed with a shotgun.

DRAKES continued by saying he now recalled that he had two encounters with Michael McKINNEY, not one. He sated the first time Michael McKINNEY said anything about him (DRAKES) having to tell the Police that Anthony McKINNEY did not shoot the victim occurred when they encountered each other at the Markham Courthouse. DRAKES was unsure why he was at the courthouse and did not know why Michael McKINNEY was at the courthouse, but said he encountered Michael McKINNEY and this was the first time Michael McKINNEY demanded DRAKES tell the Police that Anthony McKINNEY did not shoot the victim. DRAKES said the second time was the previously mentioned incident (see report of September 18, 2008) outside the lounge in Dixmoor, Illinois.

DRAKES went on to say that when he was asking for money and being told by the students that they could not give him money he recalled at some point "Sergio" took him to the side and said something to the effect that he ("Sergio") would work things out and talk to the kids to get him some money. He thought this first happened while they were at the Wendy's, and/or as he and "Sergio" went to the Motormart. After the Motormart, which is where "Sergio" gave him the $10.00 for the beer and cigarettes, they went to the park. Here "Sergio" spoke with the students. DRAKES could not remember if he and "Sergio" discussed a specific amount of money for the interview, but "Sergio" assured him more than once he would deal with the students in order to get some money from them. DRAKES said at one point while at the park "Sergio" and the male student were talking, and as they talked the male student took out a large role of USC. DRAKES said he believed that "Sergio" and the male student intended for him to see the large role of money. He was sure this was after the trip to the Motormart for beer and cigarettes. DRAKES recalled that sometime after they were all at the park he was told that a cab would come for him after he gave an interview and the driver would have his (DRAKES') money. It was at this time that DRAKES decided to do the interview as he believed he would get

money. He said that he saw the cab and watched as "Sergio" and the male student met and talked with the cab driver. He observed one of them giving something to the cab driver and he gave the interview. After the interview DRAKES got in the cab and got his money from the driver. ASA Cook asked DRAKES if he went home after the interview and DRAKES said he did not. He said the cab driver took him to the Jamestown housing development where he knew he could purchase some crack with the money from the interview. He thought they were at the park around 7:00PM. He based this on the probation conditions he believed he was on at the time of the interview. It was DRAKES' recollection that at the time of the park interview he was on probation, and a condition of the probation was that he had to be home by 7:00 PM. He recalled that he wanted to get the interview over with in order to be home in case there was a probation check.

DRAKES then wanted to know when the conversation that took place in the Skins lounge was supposed to have occurred. He was told that it was reported to have occurred sometime around December 1981, possibly in early 1982. DRAKES said he did not think he was around the Harvey area in December 1981. DRAKES stated he believed he spent most of 1981 in California. He said initially he and his friend Bernard BLACKWELL went to San Francisco, California and hung around with DRAKES' cousin Alvin PONCE and with a girl named Kim FINCH that he had gone to school with. After a month or two BLACKWELL went back to the Chicago area and DRAKES then went to San Diego where he stayed and had a long-term relationship with a female. He believed he did not return to the Chicagoland area until 1983. DRAKES was asked how was it that he was able to remember the dates. He said he based the time frame on when his friend Michael PITTMAN was arrested. DRAKES went on to explain that sometime in 1981 he remembered being in PITTMAN'S residence waiting for him to come home. DRAKES said PITTMAN never made it home as he got arrested. DRAKES stated it was his recollection that this arrest was not to long after PITTMAN had been released from prison, and he believed PITTMAN was released from prison in late 1980 or early 1981. He stated that it was shortly after PITTMAN'S arrest he went to California.

DRAKES next mentioned that he and Darnell FEARENCE did not get along at all. He said they did not get along when they were younger and did not get along when they found themselves serving time together.

At this point R/I advised DRAKES that it was time to begin the video interview. The video equipment was activated and DRAKES was interviewed by ASA Cook regarding events surrounding this case. During the video taped interview DRAKES again stated, among other things, that he did not witness the shooting of the security guard and was given money by the students for his interview. The tape documenting this interview was subsequently inventoried by R/I.

After the video DRAKES reiterated that he was sure he first met the students at a Jack-in-the-Box restaurant and they then went to the Wendy's.

He again commented that he did not know the victim LUNDAHL was killed with a shotgun. He went on to say he recalled telling the students while they video taped him that the victim was shot with a pistol. DRAKES was asked if there was anything else he recalled and he said not at this time. He was asked if would consent to an additional interview if necessary and he replied that he would. ASA Cook advised DRAKES that he may be called upon to testify and DRAKES said he had no problem with going to court. At this time the interview was ended.

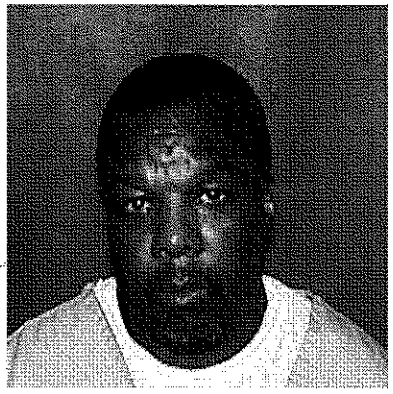
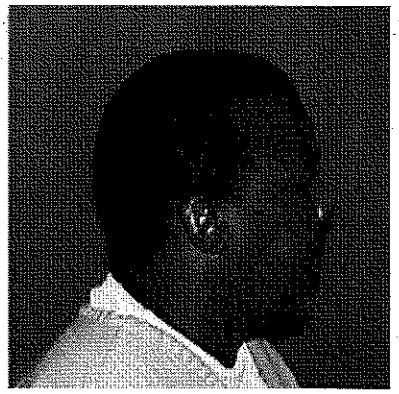
INVESTIGATOR: Brampa #334

SUPERVISORY REVIEW: J Sand #430

Exhibit 29

ILLINOIS DEPARTMENT OF CORRECTIONS
INTERNET INMATE STATUS

AS OF: Monday, January 20, 2014

N81391 - DRAKE, ANTHONY

Parent Institution: ILLINOIS RIVER CORRECTIONAL CENTER
Offender Status: IN CUSTODY
Location: ILLINOIS RIVER

PHYSICAL PROFILE

Date of Birth: 11/29/1958
Weight: 175 lbs.
Hair: Black
Sex: Male
Height: 5 ft. 08 in.
Race: Black
Eyes: Brown

MARKS, SCARS, & TATTOOS

TATTOO, ARM, RIGHT UPPER - "MO TOE"
TATTOO, FOREARM, LEFT - "JANICE"
TATTOO, ARM, LEFT UPPER - "TONY"

ADMISSION / RELEASE / DISCHARGE INFO

Admission Date: 11/29/2011
Projected Parole Date: 07/12/2015
Last Paroled Date:
Projected Discharge Date: 07/12/2019

SENTENCING INFORMATION

MITTIMUS:	11CF937
CLASS:	3
COUNT:	1
OFFENSE:	AGG BATTERY/USE DEADLY WEAPON
CUSTODY DATE:	07/07/2011
SENTENCE:	8 Years 0 Months 0 Days
COUNTY:	ST-CLAIR
SENTENCE DISCHARGED?:	NO

MITTIMUS:	11CF937
CLASS:	4
COUNT:	1
OFFENSE:	DOMESTIC BTRY/BODILY HARM PRI
CUSTODY DATE:	07/07/2011
SENTENCE:	6 Years 0 Months 0 Days
COUNTY:	ST-CLAIR
SENTENCE DISCHARGED?:	NO
MITTIMUS:	06CF709
CLASS:	2
COUNT:	1
OFFENSE:	AGGRAVATED DOMESTIC BATTERY
CUSTODY DATE:	05/01/2006
SENTENCE:	4 Years 6 Months 0 Days
COUNTY:	ST-CLAIR
SENTENCE DISCHARGED?:	YES
MITTIMUS:	03CF734
CLASS:	4
COUNT:	1
OFFENSE:	KNOWINGLY DMG PROP/SCHOOL <300
CUSTODY DATE:	10/14/2004
SENTENCE:	2 Years 0 Months 0 Days
COUNTY:	ST-CLAIR
SENTENCE DISCHARGED?:	YES
MITTIMUS:	86CR011201
CLASS:	M
COUNT:	1
OFFENSE:	MURDER/INTENT TO KILL/INJURE
CUSTODY DATE:	12/18/1985
SENTENCE:	29 Years 0 Months 0 Days
COUNTY:	COOK
SENTENCE DISCHARGED?:	YES
MITTIMUS:	86CR011201
CLASS:	X
COUNT:	1
OFFENSE:	ARMED ROBBERY
CUSTODY DATE:	12/18/1985
SENTENCE:	10 Years 0 Months 0 Days
COUNTY:	COOK
SENTENCE DISCHARGED?:	YES
MITTIMUS:	86CR011201
CLASS:	2

COUNT:	1
OFFENSE:	RECEIVE/POSS/SELL STOLEN VEH
CUSTODY DATE:	12/18/1985
SENTENCE:	7 Years 0 Months 0 Days
COUNTY:	COOK
SENTENCE DISCHARGED?:	YES

conduct another search
return to the IDOC homepage

Illinois Department of Corrections
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