

# CONVENIENT SCAPEGOATS: JUVENILE CONFESSIONS AND EXCULPATORY DNA IN COOK COUNTY, ILLINOIS\*

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## INTRODUCTION

In December 2001, the Chicago Tribune, led by reporters Ken Armstrong, Steve Mills, and Maurice Possley, published a series of investigative reports entitled “Cops and Confessions.” Starting from 1991, these muckraking journalists waded through court documents and police reports of thousands of murder investigations in Cook County, Illinois.<sup>4</sup> What they found was appalling: in at least 247 murder cases over this ten-year period, the police obtained incriminating statements that “were thrown out by the courts as tainted or failed to secure a conviction.”<sup>5</sup>

Included amongst the Tribune’s six-part series was a detailed examination of the practices of Chicago Police Detective Kenneth Boudreau, who was reportedly involved in obtaining confessions from more than a dozen defendants in murder cases where charges were dropped or resulted in findings of not guilty.<sup>6</sup> It included another report that focused on juvenile suspects, with the Tribune investigation reporting that at least seventy-one murder confessions from suspects aged

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<sup>4</sup> See Ken Armstrong, Steve Mills & Maurice Possley, *Coercive and Illegal Tactics Torpedo Scores of Cook County Murder Cases*, CHI. TRIB., Dec. 16, 2001, at A1.

<sup>5</sup> *Id.*

<sup>6</sup> See Maurice Possley, Steve Mills & Ken Armstrong, *Veteran Detective’s Murder Cases Unravel*, CHI. TRIB., Dec. 17, 2001, at A1.

seventeen or under were thrown out or resulted in acquittals.<sup>7</sup> It profiled both the Lori Roscetti murder case and Daniel Taylor's fight to overturn his double murder conviction, both of which involved dubious interlocking confessions that implicated multiple teenagers.<sup>8</sup>

The cases highlighted by these journalists, as well other high-profile mistakes like the false confessions of two young boys to the murder of Ryan Harris,<sup>9</sup> led Cook County and Illinois to implement some significant changes. Effective January 1, 2001, the Illinois General Assembly passed P.A. 91-915, requiring that police provide counsel for juveniles under the age of thirteen when questioned during custodial interrogations about a sexual assault or murder.<sup>10</sup> In 2002, a special prosecutor was appointed to investigate former Chicago Police Area 2 Commander Jon Burge after hundreds of allegations of physical abuse during interrogations had been levied against him and his henchmen in the 1970s and 1980s.<sup>11</sup> Shortly thereafter, in 2003, Illinois became the third state to require police to electronically record at least some custodial interrogations<sup>12</sup>—and the first to do so legislatively—bringing much needed transparency into the interrogation room.<sup>13</sup> And Cook County State's Attorney's Office began implementing training programs for prosecutors and police, focusing on the proper interrogation methods and how to prevent false confessions.<sup>14</sup> These trainings were often led by the Cook County State's Attorney Richard Devine's top assistant—Robert J. Milan—a man instrumental in recognizing the false confessions in the Lori Roscetti case and others.<sup>15</sup> Indeed, it seemed that while the

<sup>7</sup> See Ken Armstrong, Maurice Possley & Steve Mills, *Officers Ignore Laws Set Up to Guard Kids*, CHI. TRIB., Dec. 18, 2001, at A1.

<sup>8</sup> See Steve Mills, Maurice Possley & Ken Armstrong, *When Jail is No Alibi in Murders*, CHI. TRIB. (Dec. 19, 2001), <http://www.chicagotribune.com/news/watchdog/chi-0112190353dec19,0,4983964.story>.

<sup>9</sup> See Alex Kotlowitz, *The Unprotected*, THE NEW YORKER, Feb. 8, 1999, in ROB WARDEN & STEVEN A. DRIZIN, *TRUE STORIES OF FALSE CONFESSIONS* 175-92 (Rob Warden et al. eds., 2009).

<sup>10</sup> See 705 ILL. COMP. STAT. 405/5-170 (2011).

<sup>11</sup> See Steve Mills, *Plea Made For Outside Judges*, CHI. TRIB. (July 23, 2002), [http://articles.chicagotribune.com/2002-07-23/news/0207230246\\_1\\_jon-burge-criminal-court-judges-torture](http://articles.chicagotribune.com/2002-07-23/news/0207230246_1_jon-burge-criminal-court-judges-torture).

<sup>12</sup> See 725 ILL. COMP. STAT. 5/103-2.1 (2005) (requiring police to electronically record custodial interrogations of all murder suspects).

<sup>13</sup> The first state to institute electronic recording of all custodial interrogations was Alaska, which mandated it through a decision from its Supreme Court in *Stephan v. State*, 711 P.2d 1156 (1985). The Minnesota Supreme Court mandated the practice in 1994 in *State v. Scales*, 518 N.W.2d 587 (1994). There are now eighteen states, and the District of Columbia, that have laws relating to electronic recording of custodial interrogations, and scores of other individual police departments from across the country do so voluntarily. States Requiring Electronic Recording of Interrogations, prepared by Rebecca Brown, Innocence Project (on file with authors); see also Thomas P. Sullivan & Andrew W. Vail, *Recent Developments: The Consequences of Law Enforcement Officials Failure to Record Custodial Interviews As Required By Law*, 99 J. CRIM. L. & CRIMINOLOGY 215, 228-34 (2009).

<sup>14</sup> See Jeff Coen, *Prosecutors' Training Targets False Confessions*, CHI. TRIB. (Mar. 30, 2003), [http://articles.chicagotribune.com/2003-03-30/news/0303300446\\_1\\_false-confessions-prosecutors-dna-evidence](http://articles.chicagotribune.com/2003-03-30/news/0303300446_1_false-confessions-prosecutors-dna-evidence).

<sup>15</sup> See *id.* See also Steve Mills & Jeff Coen, *2 men exonerated in 1990 murder*, CHI. TRIB., Jan. 31, 2005 (explaining Milan's decision to drop murder charges against Harold Hill and Dan Young, Jr., after each spent twelve years behind bars, when DNA results undermined their confessions and other

very real problem of false confessions had been exposed, officials were taking practical steps to address the problem, correct past injustices, and prevent other false confessions from occurring.

Today, however, it appears most of this momentum has been lost in Cook County. The appointment of counsel for younger juveniles during interrogations has proven mostly ineffectual, as it is the rare case when a child under the age of thirteen is accused of rape or murder. The Special Prosecutor in charge of the Burge investigation found systematic torture of suspects was committed by Burge and other law enforcement officers, but determined that no charges could be brought against him;<sup>16</sup> it took the intervention of federal prosecutors to send Burge to prison—while his henchmen have continued to suffer no consequences.<sup>17</sup> Even after Burge's federal convictions and four-and-a-half year federal prison sentence, the Cook County pension board voted to have taxpayers continue to foot the bill for Burge's pension, for the rest of his life, at \$3,000 a month.<sup>18</sup>

Perhaps most troublingly of all, however, a new administration at the Cook County State's Attorney's Office, headed by Anita Alvarez, has thrown up continuous roadblocks when confronted by extraordinarily powerful DNA evidence in two cases from the 1990s—known as the Dixmoor Five and Englewood Four—that not only proves eight confessions, all from teenagers, conclusively false and clears nine men convicted of brutal rape-murders, but also identifies the likely true killers. Instead of acknowledging the overwhelming evidence that these confessions—like so many others from this era in Cook County—are false, and that all of the charged teenagers are absolutely innocent, prosecutors spent most of the last year arguing to keep the original convictions intact. This failure to accept the implications of this DNA evidence in these two cases resulted in innocent men spending needless additional months in prison when they should have been home with their families. It also signals two disturbing possibilities: either the State's Attorney's Office is unable to understand the significance of this evidence, or it simply preferred to let innocent men remain in prison rather than acknowledging the errors of the past.

Part I of this Article examines how two cases in Cook County led former First Assistant Cook County State's Attorney Bob Milan to accept the reality of false confessions and wrongful convictions and discusses the reforms he implemented to address the issues. Parts II and III introduce the cases of the Dixmoor Five and Englewood Four, respectively, where post-conviction DNA results received last year provided indisputable evidence that nine convicted teenagers were innocent of crimes from the early 1990s. Part IV examines more

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evidence in support of their convictions).

<sup>16</sup> See Mark Brown, *Common Thread Between Burge, Board Stories*, CHI. SUN-TIMES, July 20, 2006.

<sup>17</sup> See Steve Mills, *Burge Accuser Sues City for More*, CHI. TRIB., Apr. 10, 2011, at A7.

<sup>18</sup> See Ryan Haggerty & Cynthia Dizikes, *Burge Keeps his Pension, Despite Perjury Case*, CHI. TRIB., Jan. 27, 2011, at A6.

closely the Cook County State's Attorney's response to the DNA results in these cases, whether the Office is heeding the warnings of Milan and applying the lessons-learned from previous cases of false confessions and wrongful convictions, and offers suggestions for Cook County's future approach to such cases.

#### I. A PROSECUTOR'S AWAKENING TO THE REALITY OF FALSE CONFESSIONS AND WRONGFUL CONVICTIONS

On October 18, 1986, Lori Roscetti—a second-year medical student at Rush Medical College—was studying for mid-term examinations with a friend late into the night.<sup>19</sup> After finishing their work at about 1:00 a.m., Roscetti, driving her beige Subaru, dropped off her friend and headed toward her own apartment.<sup>20</sup> Several hours later, while on routine patrol, a Chicago police officer discovered the Subaru on railroad property near 16<sup>th</sup> and Loomis; Roscetti's body was laying on the ground next to the car.<sup>21</sup> She was severely beaten, her face almost destroyed by a chunk of concrete and nearly all her ribs fractured from being kicked with excessive force many times.<sup>22</sup> Later testing also revealed she was a victim of sexual assault.<sup>23</sup>

Police began an intensive investigation, focused around a lab report written by Chicago Crime Lab Analyst Pamela Fish, who determined that the semen recovered from the body of Roscetti came from an individual who was a secretor and had Type O blood.<sup>24</sup> Suspects were rounded up over the next several weeks, but all were cleared when tests confirmed they were not Type O secretors.<sup>25</sup>

In early 1987, after a law enforcement analysis profiled Roscetti's assailants as three-to-six individuals who were likely African-American gang members aged fifteen to twenty, the police focused their investigation on two teenagers living in the nearby ABLA Homes Public Housing Development:<sup>26</sup> seventeen-year-old Marcellius Bradford and sixteen-year-old Larry Ollins, both of whom had previous arrests.<sup>27</sup> On January 27, 1988, Bradford was brought in for questioning; after more than fifteen hours in custody, he confessed, implicating not only himself and Ollins, but also Ollins's fourteen-year-old cousin Calvin Ollins.<sup>28</sup> Calvin—a mentally retarded boy who had an IQ ranging from 65-70—was taken into custody in the middle of the night, questioned, and hours later also confessed to the crime.

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<sup>19</sup> See *People v. Ollins*, 179 Ill. Dec. 360, 363 (1<sup>st</sup> Dist. 1992).

<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> See Maurice Possley & Steve Mills, *New Evidence Stirs Doubt Over Murder Convictions*, CHI. TRIB. (May 2, 2001), <http://www.chicagotribune.com/news/watchdog/chi-010502roscetti,0,6560569.story>.

<sup>23</sup> See *id.*

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*

<sup>28</sup> See Possley & Mills, *supra* note 22.

According to police accounts, a couple of weeks later, eighteen-year-old Omar Saunders confessed to participating in the crime as well.<sup>29</sup> Calvin Ollins and Omar Saunders were later convicted of this heinous crime on the basis of their confessions; Larry Ollins, who did not confess, was convicted only after Bradford pled guilty in exchange for a reduced sentence and testified against him.<sup>30</sup> They were convicted despite the fact that none of them were Type O secretors.<sup>31</sup>

The convictions of the four teens were all upheld on direct appeal. In 2001, however, during post-conviction proceedings and at the behest of attorney Kathleen Zellner, Cook County prosecutors, led by Robert Milan, began undertaking their own extensive re-investigation, including previously unavailable DNA testing on semen recovered from the victim's body and clothes.<sup>32</sup> That testing revealed that the semen did not belong to any of the four convicted teenagers, and subsequent testing of pubic hairs found in Roscetti's Subaru also excluded them.<sup>33</sup> Just weeks after this remarkable discovery, on December 5, 2001, prosecutors agreed to vacate the convictions and drop the charges against all four men.<sup>34</sup> Prosecutors took this extraordinary step before they ever identified the source of the semen on the victim's clothes, allowing the four men to finally walk free almost fourteen years after the confessions and arrests.<sup>35</sup>

Just thirty-seven days later, on January 11, 2002, law enforcement received a call from Bernard Roach, who told him that his brother, Duane Roach, and his friend Eddie Harris had told him they were responsible for the Roscetti murder.<sup>36</sup> Subsequent DNA testing confirmed that the two implicated men, both older than law enforcement's suggested profile, were the source of the semen left on the victim.<sup>37</sup> Roach and Harris were later charged and convicted—each pleading

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<sup>29</sup> See *People v. Saunders*, 603 N.E.2d 32, 34 (1<sup>st</sup> Dist. 1992).

<sup>30</sup> See *People v. Ollins*, 601 N.E.2d 922 (1<sup>st</sup> Dist. 1992). See also Matt O'Connor, *Sentencing Closes 'Book Of Horrors'*, CHI. TRIB. (July 29, 1988), <http://www.chicagotribune.com/news/watchdog/chi-880729roscetti,0,2745704.story> (noting that Prosecutor O'Brien, who led the prosecution of all four defendants, believed the chances of convicting Larry Ollins without the testimony of Bradford was less than 50%).

<sup>31</sup> See Possley & Mills, *supra* note 22.

<sup>32</sup> See *id.*

<sup>33</sup> See *id.* See also Steve Mills & Maurice Possley, *DNA Again Excludes 4 in Murder of Roscetti*, CHI. TRIB., Nov. 22, 2001, at A3.

<sup>34</sup> See Steve Mills, Maurice Possley & Kim Barker, *After 15 years, New World Greet Them as Judge Tosses Convictions*, CHI. TRIB. (Dec. 6, 2001), [http://articles.chicagotribune.com/2001-12-06/news/0112060221\\_1\\_ladysmith-black-mambazo-criminal-justice-system-convictions](http://articles.chicagotribune.com/2001-12-06/news/0112060221_1_ladysmith-black-mambazo-criminal-justice-system-convictions).

<sup>35</sup> See Richard A. Devine, *Cook Prosecutors Have Been Candid About Errors*, CHI. TRIB. (Dec. 17, 2002), [http://articles.chicagotribune.com/2002-12-17/news/0212170010\\_1\\_prosecutors-wrongs-press-conference](http://articles.chicagotribune.com/2002-12-17/news/0212170010_1_prosecutors-wrongs-press-conference).

<sup>36</sup> See Maurice Possley, Eric Ferkenhoff & Steve Mills, *Police Arrest 2 in Roscetti Case*, CHI. TRIB. (Feb. 8, 2002), [http://articles.chicagotribune.com/2002-02-08/news/0202080321\\_1\\_police-arrest-duane-roach-larry-ollins](http://articles.chicagotribune.com/2002-02-08/news/0202080321_1_police-arrest-duane-roach-larry-ollins). See also Robert J. Milan, *Preventing and Addressing Wrongful Convictions*, PRAC. PROSECUTOR 35 (2005).

<sup>37</sup> See Possley & Mills, *supra* note 22.

guilty in exchange for seventy-five year prison sentences, finally closing the book on this tragic case.<sup>38</sup>

As the Roscetti case was unraveling in 2001, another seemingly airtight case, in which Milan was also involved,<sup>39</sup> was doing the same. Cook County prosecutors had charged Corethian Bell—a mildly retarded young man who had been diagnosed as a paranoid schizophrenic—with the murder of his own mother, Netta Bell, who was stabbed to death on July 14, 2000.<sup>40</sup> Corethian Bell confessed to this crime, as well as to raping his own mother, on videotape in the early morning hours of July 18, 2000, following fifty hours in custody.<sup>41</sup> While charges were pending, however, DNA analysis connected Deshawn Boyd to the stabbing death of Bell's mother; Boyd had been charged with the rape and attempted stabbing of another woman just five months after Netta Bell's murder.<sup>42</sup> Not long thereafter, on January 4, 2002, prosecutors dropped the charges against Corethian Bell, more than seventeen months after he had confessed.<sup>43</sup>

Bob Milan's connection to these two exonerations, involving three confessions from young men, was his wake-up call to the reality of false confessions. Milan could have quietly moved on. Worse still, he could have attempted to explain away the DNA results and trusted the confessions. But he did neither; instead, Milan used what he learned in these two cases, and his high position as Chief Deputy in the Cook County State's Attorney's Office, to implement trainings in the Office and across the country on false confessions and wrongful convictions.<sup>44</sup>

In conjunction with these trainings, in 2005, Milan published a short article entitled *Preventing and Addressing Wrongful Convictions*<sup>45</sup> in the Practical Prosecutor magazine. In this article, Milan details many of the warning signs prosecutors should look at to avoid charging the wrong person with a serious

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<sup>38</sup> See Jeff Coen, *Guilty Pleas Close a 'Horrible Saga,'* CHI. TRIB. (Dec. 17, 2004), [http://articles.chicagotribune.com/2004-12-17/news/0412170232\\_1\\_guilty-pleas-lori-roscetti-marcellius-bradford](http://articles.chicagotribune.com/2004-12-17/news/0412170232_1_guilty-pleas-lori-roscetti-marcellius-bradford).

<sup>39</sup> See *A confession? Be cautious*, Editorial, CHI. TRIB., June 27, 2005. According to a deposition of Milan, his involvement consisted primarily of reviewing the evidence and instructing the assistant state's attorney in charge of the prosecution to dismiss the case. See Deposition of Robert Milan, Corethian Dion Bell v. Chicago Police Detective M. Cummins et al., No. 02 L 008857, (Apr. 26, 2006) (on file with authors).

<sup>40</sup> See Complaint, Corethian Dion Bell v. Chicago Police Detective M. Cummins et al., (No. 02 L 008857).

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> See Coen, *supra* note 14; see also Deposition of Robert Milan, *supra* note 39 (Milan testified that he had conducted trainings to the Cook County State's Attorney's Office on three or four separate occasions. He also trained Illinois prosecutors statewide, conducted a training for DuPage County prosecutors once, and presented at the National College of District Attorney's Association on two separate occasions. Milan also reported training Missouri prosecutors on one occasion).

<sup>45</sup> See Milan, *supra* note 36, at 35.

offense, even where that individual confessed.<sup>46</sup> The article first warns prosecutors to “[b]eware of the nexus between the crime and arrest.”<sup>47</sup> It is the prosecutor’s duty to examine the evidence presented by law enforcement, and assess the credibility of those implicating the accused.<sup>48</sup>

Milan next states that prosecutors should “[b]eware of cases where co-defendants have no connection with each other.”<sup>49</sup> Milan warns that if you cannot connect the co-defendants to each other, “you may have a serious problem with your case.”<sup>50</sup> Milan also suggests avoiding a charging decision until as much of the physical evidence is examined as possible, “as uninformed decisions lead to wrongful convictions.”<sup>51</sup> Additionally, the accused rap sheet should be scrutinized: it is the rare case where an individual with no criminal background suddenly commits a horrible crime, and Milan notes that three of the four teenage defendants in the Roscetti case had little or no criminal background, while Roach, the real killer, had a series of convictions for violent sexual assaults of women.<sup>52</sup>

As to confessions specifically, Milan instructs prosecutors to “[b]eware of confessions from mentally challenged suspects and juveniles.”<sup>53</sup> Milan notes that it has become “readily apparent” that people do confess to horrible crimes they did not commit, and explains that “young adults, teenagers, or people with low IQs” are often the culprits.<sup>54</sup> Milan further demands that the “confession be fully corroborated prior to charging.”<sup>55</sup> Even a “well meaning detective,” during a lengthy interrogation, “may confront the person with enough information” that the individual may mimic back a seemingly voluntary and detailed false confession.<sup>56</sup> If physical or other evidence contradicts the confession, Milan warns prosecutors to question the reliability of the inculpatory statement.<sup>57</sup>

Milan goes on to state that prosecutors must foster an atmosphere that accepts the possibility of false confessions and wrongful convictions.<sup>58</sup> He urges prosecutors to, among other things, listen to adamant defense attorneys and provide for wrongful conviction trainings.<sup>59</sup> He warns prosecutors, as they uncover a wrongful conviction, to prepare themselves for “ludicrous explanations” from

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<sup>46</sup> *See id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 36.

<sup>52</sup> *See id.*

<sup>53</sup> *Id.* at 35.

<sup>54</sup> *Id.* at 36.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 35-36.

<sup>57</sup> *Id.* at 36.

<sup>58</sup> *See id.*

<sup>59</sup> *See id.*

individuals who have a “vested interest.”<sup>60</sup> He cites an example from the Roscetti case where, in the wake of the DNA results, some law enforcement personnel suggested that the four teenagers were still guilty and that Roach and Harris left their DNA on the victim when they encountered and had sex with her dead body.<sup>61</sup> Milan concludes by demanding that prosecutors “[f]ollow the physical evidence and common sense.”<sup>62</sup>

In 2008, after Richard Devine announced he would not be seeking re-election as Cook County State’s Attorney, he endorsed his top deputy, Bob Milan, in the six-way race to be his successor.<sup>63</sup> The election was won, however, by another career prosecutor from the Office, Anita Alvarez, who held the number three post in the Office in the Devine administration.<sup>64</sup> As Milan retired from the Cook County State’s Attorney’s Office, it remained to be seen whether the new administration would continue down the path of acknowledging the reality of wrongful convictions and false confessions.

## II. THE DIXMOOR FIVE

### *A. The Offense, Investigations, and Interrogations*

After finishing school on November 19, 1991, fourteen-year-old Cateresa Matthews followed the same routine she did every school day: she walked her best friend, Nickole Gandy, to her home and then went to her great-grandmother’s house, who lived just down the street from Nickole in the same south suburban Chicago neighborhood of Dixmoor.<sup>65</sup> As always, Cateresa visited with her great-grandmother, and then called her mother to tell her she was on her way home. Cateresa then walked to the bus stop on Western Avenue, which would take her to her mother’s house. On this mid-November day, however, Cateresa never made it home.<sup>66</sup>

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<sup>60</sup> *Id.*

<sup>61</sup> *See id.* *See also* Deposition of Robert Milan, *supra* note 39, at 26-27 (Milan also cites examples of “ludicrous explanations” from law enforcement, such as individuals saying “maybe Corethian Bell did this with Deshawn Boyd,” even though there is “absolutely no evidence” linking them together and all of Boyd’s crimes were done alone. Milan also asks, if they did it together, why wouldn’t Bell’s confession name Boyd?).

<sup>62</sup> Deposition of Robert Milan, *supra* note 39, at 26-27.

<sup>63</sup> *See* Lee Filas, *Devine Endorses Milan*, DAILY HERALD (Jan. 14, 2008), <https://prev.dailyherald.com/story/?id=112731>.

<sup>64</sup> *See* Dan Mihalopoulos & Michael Higgins, *Alvarez Calls it an Election Win: 2 Top Democrat Rivals Allen and Suffred in Concede in 6-way Race*, CHI. TRIB., Feb. 6, 2008.

<sup>65</sup> *See* Motion For Forensic Testing Pursuant To 725 ILL. COMP. STAT. 5/116-3 at 2-3, *People v. Harden*, No. 92-27247 (Cook Cnty. Cir. Ct. Sept. 4, 2009) [hereinafter *Dixmoor DNA Motion*]; Joint Petition For Relief From Judgment, Immediate Vacation of Convictions, and Release of Petitioners On Their Own Recognizance at 3, *People v. James Harden*, No. 92-27247 (Cook Cnty. Cir. Ct.) [hereinafter *Dixmoor Motion to Vacate*]; Direct Appeal Brief and Argument For Defendants-Appellants at 5, *People v. James Harden et al.*, No. 95-3905 (Cook Cnty. Cir. Ct.) [hereinafter *Dixmoor Direct Appeal Brief*].

<sup>66</sup> *See* *Dixmoor DNA Motion*, *supra* note 65, at 3; *Dixmoor Motion to Vacate*, *supra* note 65, at 3.

Over the next several days, missing person flyers were hung up around the neighborhood as family, friends, and law enforcement searched for Cateresa. Then, on November 22, 1991, three days after Cateresa went missing, Dixmoor police received a short 911 call from an unidentified person, claiming he saw a body near Frank's Pizza by Western, not far from Cateresa's great-grandmother's home. The caller quickly hung up. There is no evidence that law enforcement took any steps in response to this call, and they apparently did not locate the body of which the caller spoke.<sup>67</sup>

Shortly thereafter, several employees of a Motel Six near Dixmoor reported that they saw a girl resembling Cateresa with a white male that same day, November 22, 1991. Law enforcement interviewed the witnesses, checked motel records, and followed up on a lead from another woman who said she spotted Cateresa with a white male at a local restaurant, but nothing came of it.<sup>68</sup>

On December 8, 1991, nineteen days after she vanished, the search for Cateresa came to a tragic conclusion. A passerby named Jesus Novoa discovered Cateresa's body in a field near Interstate 57 in Dixmoor, between Frank's Pizza and where Cateresa was last seen.<sup>69</sup> Cateresa, who was naked from the waist down excepting relatively clean white socks and her underwear dangling from her right ankle, had been shot in the mouth from close range.<sup>70</sup> A spent .25 caliber bullet casing was lying on her chest, and the purple pants she was wearing when she went missing were draped over her legs.<sup>71</sup> Blood was draining from Cateresa's nose and mouth, and there was no evidence of decomposition of her body or any animal bites to indicate that her body had been in the field for any significant length of time.<sup>72</sup> To that end, rigor mortis, which normally remains in the body for approximately twenty-four to forty-eight hours, was still present.<sup>73</sup> Crime scene investigators concluded, based on a lack of drag marks, the spent shell, her clean socks, and the fresh drainage of blood from her mouth, that Cateresa was killed where Novoa discovered the body.<sup>74</sup> A subsequent autopsy report identified the date of death as December 8, 1991.<sup>75</sup> A serology report also identified a single source of semen from inside the young girl's vagina, leading authorities to conclude she had been raped prior to being shot.<sup>76</sup>

The Illinois State Police (ISP) led the investigation into Cateresa's rape-murder—an investigation that quickly went cold. Police reports over the next two

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<sup>67</sup> 911 Call (Nov. 22, 1991) (on file with the authors).

<sup>68</sup> Dixmoor Direct Appeal Brief, *supra* note 65, at 6-7.

<sup>69</sup> Dixmoor DNA Motion, *supra* note 65, at 2-3; Dixmoor Motion to Vacate, *supra* note 65, at 3.

<sup>70</sup> Dixmoor Motion to Vacate, *supra* note 65, at 3.

<sup>71</sup> Dixmoor Direct Appeal Brief, *supra* note 65, at 9.

<sup>72</sup> Dixmoor DNA Motion, *supra* note 65, at 3; Dixmoor Motion to Vacate, *supra* note 65, at 3-4.

<sup>73</sup> Dixmoor Motion to Vacate, *supra* note 65, at 3.

<sup>74</sup> Dixmoore Direct Appeal Brief, *supra* note 65, at 10.

<sup>75</sup> *Id.* at 8-10.

<sup>76</sup> Dixmoor DNA Motion, *supra* note 65, at 3; Dixmoor Motion to Vacate, *supra* note 65, at 4.

months indicate that law enforcement interviewed many friends, relatives, and classmates of Cateresa, but little substantive information was learned. No one, it appeared, knew *what* happened to Cateresa, *when* it happened, *why* it happened, or most importantly, *who* committed this unspeakable act of violence. On February 25, 1992, the investigation abruptly halted. There is no indication of any law enforcement activity into the investigation of Cateresa's murder for the subsequent eight months.

On October 20, 1992, however, almost eleven months after Cateresa first went missing, the stagnant investigation got a break. Dixmoor police contacted ISP to tell them that a fifteen-year-old classmate of Cateresa named Keno Barnes had information about the case.<sup>77</sup> According to reports, Barnes allegedly told lead investigator Tasso Kachiroubas that the day before, on October 19, 1992, another classmate of Cateresa's, Jonathan Barr, told Barnes that he witnessed Cateresa get in a car occupied by Robert Veal, Robert Taylor, and some other boys on November 19, 1991—the day she went missing.<sup>78</sup> This alleged statement from Barnes to police, however, is memorialized only by a paragraph-long police report, and Barnes never testified before a grand jury or at trial.<sup>79</sup>

There are no police records for the next nine days, but then, on October 29, 1992, police questioned Robert Lee Veal, a resident of nearby Harvey, at the State's Attorney's Office at the Markham Courthouse. Veal, a mentally challenged and learning-disabled fifteen year old, did not have an attorney or guardian present during his unrecorded interrogation, which lasted several hours.<sup>80</sup> Ultimately, in the presence of Cook County State's Attorney Robert Milan and Investigator Kachiroubas, Veal signed a handwritten statement prepared by law enforcement confessing his role in the rape and murder of Cateresa on November 19, 1991—the day she was first reported missing.<sup>81</sup> Veal's confession also implicated fifteen-year-olds Taylor and Barr, Barr's seventeen-year-old brother James Harden, and another seventeen-year-old teenager named Shainne Sharp.<sup>82</sup>

Later that day, Taylor, also a Harvey resident, was questioned by Kachiroubas under the same circumstances. After several hours of interrogation, Taylor, like Veal, signed a statement prepared by law enforcement confessing his involvement in Cateresa's rape-murder and implicating the other teenagers as well.<sup>83</sup> Two days later, Dixmoor resident Sharp, who was also alone during the preceding, day-long unrecorded interrogation, signed a handwritten confession to

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<sup>77</sup> Dixmoor DNA Motion, *supra* note 65, at 3; Dixmoor Motion to Vacate, *supra* note 65, at 4; Dixmoor Direct Appeal Brief, *supra* note 65, at 13.

<sup>78</sup> Dixmoor DNA Motion, *supra* note 65, at 3-4.

<sup>79</sup> Dixmoor Direct Appeal Brief, *supra* note 65, at 13.

<sup>80</sup> *Id.*

<sup>81</sup> Dixmoor DNA Motion, *supra* note 65, at 3; Dixmoor Motion to Vacate, *supra* note 65, at 4-5.

<sup>82</sup> Dixmoor Motion to Vacate, *supra* note 65, at 3-4.

<sup>83</sup> Dixmoor Motion to Vacate, *supra* note 65, at 5; *See* Dixmoor Direct Appeal Brief, *supra* note 65, at 13-14.

the November 19, 1991 rape-murder prepared by law enforcement.<sup>84</sup> The statement Sharp signed corresponded with Veal's and Taylor's statements to the extent that he also implicated Barr, Harden, Veal, and Taylor.<sup>85</sup>

While wildly inconsistent on many details, all three confessions indicated that the five teenagers and Cateresa ended up in the field near I-57 where her body was eventually found on the afternoon of November 19, 1991. At that field, the teenagers took turns raping her, and upon conclusion, James Harden took a gun from his pants and shot her in the face. They then left, leaving her body at the scene.<sup>86</sup> Barr, age fifteen, and Harden, age seventeen, were soon after arrested; they did not give any statements. All five teenagers were charged with sexually assaulting and murdering Cateresa, and the police investigation was closed.

### *B. Pre-Trial DNA Testing Excludes All Five Juveniles*

After the confessions and arrests, Cook County prosecutors eagerly sought to conduct DNA testing from the semen recovered from the victim in an attempt to match it to one or more of the juveniles. While Veal's, Taylor's, and Sharp's statements were damning evidence against the five juveniles, linking one or more of them to Cateresa with DNA testing would have been the proverbial nail in the coffin.

In February 1993, William Frank of the ISP crime lab conducted pre-trial RFLP DNA testing on swabs taken from the young victim.<sup>87</sup> His DNA tests identified a single-source male DNA profile from the sperm fraction of the vaginal and rectal swabs. When Frank compared the single-source male DNA profile to the DNA profiles of Barr, Harden, Taylor, Veal, and Sharp, all five were *excluded* as potential contributors of the semen recovered from Cateresa's vagina and rectum.<sup>88</sup> Frank reported the exclusionary DNA results in June 1994, nearly two-and-a-half years after Cateresa's rape-murder and a year-and-a-half after the five juveniles were arrested and charged with first-degree murder and aggravated rape.

According to Frank's June 1994 report, the unknown, single-source male DNA profile was "entered into a computer database of DNA profiles from known sexual offenders," but that "[n]o matching profile has been identified at this

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<sup>84</sup> Dixmoor DNA Motion, *supra* note 65, at 3-4; Dixmoor Motion to Vacate, *supra* note 65, at 5.

<sup>85</sup> Dixmoor Motion to Vacate, *supra* note 65, at 5.

<sup>86</sup> See Dixmoor DNA Motion, *supra* note 65, at 3-4; Dixmoor Motion to Vacate, *supra* note 65, at 4-5.

<sup>87</sup> See Dixmoor DNA Motion, *supra* note 65, at 5; Dixmoor Motion to Vacate, *supra* note 65, at 5; Dixmoor Direct Appeal Brief, *supra* note 65, at 14-15. RFLP testing was the first generation of DNA testing to be used by prosecutors and law enforcement in the late 1980s and early 1990s. KEITH INMAN & NORAH RUDIN, AN INTRODUCTION TO FORENSIC DNA ANALYSIS (1997).

<sup>88</sup> See Dixmoor Direct Appeal Brief, *supra* note 65, at 14-15.

time.”<sup>89</sup> Frank’s report added that the “profile will be periodically searched against this database as additional offender profiles are identified and entered.”<sup>90</sup>

The RFLP DNA database referred to by Frank in his June 1994 report was short-lived, however, because DNA technology rapidly advanced during the mid-1990s and the RFLP database became outdated. As a result, the donor of the unknown, single-source male DNA profile was not identified. Despite the exculpatory pre-trial DNA results, which excluded all five juveniles as potential contributors of the male DNA recovered from Cateresa’s vagina and rectum, the Cook County State’s Attorney’s Office continued on with their prosecution of the five juveniles based on the confessions.

### *C. Barr’s and Taylor’s Transfer to Adult Court*

Because Barr and Taylor were minors at the time of the offense, the State filed a motion pursuant to section 5-4 of the Juvenile Court Act of 1987<sup>91</sup> to have Barr and Taylor tried in an adult criminal court. The transfer decision was at the discretion of the Juvenile Court Judge. In considering the ruling, Judge Arthur Rosenblum found that six factors weighed in favor of transfer to adult court, including the magnitude and seriousness of the offense. Remarkably, however, Judge Rosenblum refused to hold Taylor and Barr over to adult criminal court because, in his opinion, the State would be unable to satisfy the seventh factor: that there was sufficient evidence such that a grand jury would be expected to issue an indictment.<sup>92</sup>

Judge Rosenblum extrapolated, explaining that, based on the autopsy report, “the rape counts may fail.”<sup>93</sup> The judge also noted serious “mistakes” during the investigation,<sup>94</sup> and noted “key” to his decision was that Cateresa’s date of death conflicted with the State’s theory as to when she was raped and murdered:

The Grand Jury is going to wonder about that. They are going to have that inconsistency: When was she killed? . . . [T]here are defects in the case which will be brought to the attention of the Grand Jury and the Grand Jury will say, ‘No. How could they charge these guys with killing and raping this girl on November 19? She didn’t die until December 8.’<sup>95</sup>

Judge Rosenblum also held that even if the grand jury indicted Barr and Taylor, and the case went to trial, “these boys will walk...because they are not going to find them guilty of murder on the date of the charge against them.”<sup>96</sup>

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<sup>89</sup> *People v. Thomas McMillan, Ex. 1*, Illinois State Police, Division of Forensic Services & Identification, DNA Report, by William Frank, June 9, 1994.

<sup>90</sup> Dixmoor DNA Motion, *supra* note 65; *McMillan, Ex. 1*.

<sup>91</sup> See 705 ILL. COMP. STAT. 405/5-4 (1992).

<sup>92</sup> See *In the Interest of R.T. & J.B.*, 648 N.E. 2d 1043, 1045 (Ill. App. Ct. 1995).

<sup>93</sup> *Id.* (quoting the juvenile trial judge).

<sup>94</sup> *In the Interest of R.T. and J.B.*, 648 N.E. 2d at 1046.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* (quoting the juvenile trial judge).

Following Judge Rosenblum's decision, however, the Cook County State's Attorney appealed to the First District Appellate Court, which reversed Judge Rosenblum's decision on March 31, 1995.<sup>97</sup> The appellate court determined that the trial court erred in considering the State's likely success at trial during the transfer hearing.<sup>98</sup> Barr and Taylor, accordingly, were transferred to adult court and tried as adults.

#### *D. Trials*

As the cases inched toward trial, the Cook County State's Attorney's Office realized it had a serious problem: a paucity of evidence against Harden and Barr. Given that the two brothers did not confess, basic constitutional principles would not allow the confessions of Veal, Sharp, and Harden to be used against Harden and Barr at their trials.<sup>99</sup> As there were no other eyewitnesses or physical evidence to support their account, the State was in no position to sustain their burden against the two brothers. The State must have been particularly troubled by this fact, given that from the accounts of the confessions, Harden was the ringleader and triggerman.

The State, however, solved this problem by negotiating sweetheart plea agreements with Veal and Sharp. In exchange for their testimony against the other three teenagers, the State agreed to drop the sexual assault charges and allow them to plead guilty to first degree murder, recommending the statutory minimum sentence of twenty years.<sup>100</sup> Under Illinois law at the time, which allowed for a day of credit for every day served in prison,<sup>101</sup> the two teenagers would likely not serve more than ten years in jail. As the two teenagers had already spent more than two years in pre-trial custody, the deal allowed them to be released in less than eight years; Veal and Sharp, had they refused the deal, would have been facing a possible life sentence, a real possibility given their confessions.

Harden's bench trial commenced first in May of 1995, while Barr and Taylor were tried at the same time, in front of separate juries, nineteen months later in January of 1997. The evidence against each of them, however, was essentially the same. The State relied entirely on the testimony of Veal and Sharp, each of whom generally testified consistent with their confessions. They asserted that the five teenagers all participated in sexually assaulting and murdering Cateresa Matthews on November 19, 1991.<sup>102</sup> Beyond this generality, however, their testimony was otherwise confusingly contradictory and inconsistent on significant details associated with the crime.

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<sup>97</sup> *See id.*

<sup>98</sup> *In the Interest of R.T. & J.B.*, 648 N.E. 2d 1043, 1046 (Ill. App. Ct. 1995).

<sup>99</sup> *See, e.g., Bruton v. United States*, 391 U.S. 123, 127 (1968).

<sup>100</sup> Dixmoor Motion to Vacate, *supra* note 65, at 6.

<sup>101</sup> 38 ILL. COMP. STAT. 1979/1003-6-3(a)(3) (1991).

<sup>102</sup> Against Taylor only, his own confession was also presented by the State.

For starters, Veal and Sharp had wildly different accounts of the time leading up to the sexual assault and murder. Veal gave a detailed narrative of supposedly meeting up with James Harden at a candy store, then getting into a car with everyone but Jonathan Barr, who he said the group picked up, along with Cateresa Matthews later.<sup>103</sup> Sharp, however, said that he was playing basketball when a car pulled up with Veal already in the car with Harden and Taylor, and Harden asked him to shoot dice.<sup>104</sup>

From there, the stories continued to diverge. Veal said the attack on Cateresa started immediately when the group got out of the car at Harden and Barr's house, when Barr supposedly hit her in the face.<sup>105</sup> Sharp, however, continuing with his gambling story, claimed that they played dice in Harden and Barr's basement for an hour before Cateresa was ever assaulted.<sup>106</sup> Their testimony continued to differ on critical points, including who was initially alone with Cateresa,<sup>107</sup> how she got to the field where her body was found,<sup>108</sup> how she was gagged,<sup>109</sup> who raped her and in what order,<sup>110</sup> how Harden supposedly shot her,<sup>111</sup> and what the boys did after the murder.<sup>112</sup>

These numerous and irreconcilable inconsistencies at the trial were also accompanied by other highly exculpatory evidence. At Harden's bench trial, his father, James Harden, Sr., testified that he was at home with his two sons and wife on the afternoon of November 19, 1991.<sup>113</sup> He corroborated his testimony by introducing his paystub for November 19, 1991, which established that he only worked until 11:00 a.m. that day.<sup>114</sup> He also testified that Harden left school early, while Barr was suspended from school that day—so both were there when he arrived home mid-morning.<sup>115</sup> Harden's father explicitly stated that between 11:00 a.m. and 6:40 p.m. that day, his two sons were with him at home the whole day, flatly contradicting the State's evidence which suggested the crime occurred in the late afternoon.<sup>116</sup>

In a decision difficult to explain, Harden's trial counsel essentially ignored the highly exculpatory DNA results, as well as the claims of certain individuals that they saw Cateresa alive at a motel and restaurant after her supposed death. At Barr

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<sup>103</sup> Dixmoor Direct Appeal Brief, *supra* note 65, at 15-20, 27-30.

<sup>104</sup> *Id.* at 18.

<sup>105</sup> *Id.* at 16.

<sup>106</sup> *Id.* at 40.

<sup>107</sup> *Id.* at 15-20, 27-30.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 21.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 48.

and Taylor's jury trial, their attorneys were more thorough, introducing all of this evidence and focusing on these noteworthy problems in the case during argument.<sup>117</sup>

During the State's summations at Barr and Taylor's trials, the State acknowledged that without Veal and Sharp's testimony, it had no case.<sup>118</sup> The State presented no real answer for the confusing physical evidence suggesting that Cateresa could not have been in the field for nineteen days, with rigor mortis present and her body undisturbed by animal bites, simply offering that cold weather can sometimes keep rigor mortis in the body for longer than usual.<sup>119</sup> The State also postulated two possible sources for the unidentified semen recovered from Cateresa's body: (1) it belonged to a consensual partner of Cateresa, with the consensual sex occurring prior to her murder on November 19, 1991; or (2) the semen may have been deposited by a necrophiliac who happened upon Cateresa's body as it was lying in the field.<sup>120</sup> To make both theories more plausible, the State argued that none of the five juveniles ejaculated when they raped Cateresa.<sup>121</sup>

Despite all of this exculpatory evidence—the alibis, the Motel Six employees, the contradictory evidence about time of death, the wild inconsistencies between Sharp and Veal's testimony, and most importantly, the DNA exclusions—the Barr and Taylor juries reached the same result as the judge in Harden's trial: all three teenagers were found guilty of offenses relating to the rape and murder of Cateresa Matthews.<sup>122</sup> They were all sentenced to lengthy prison sentences in excess of eighty years.<sup>123</sup>

#### *E. Direct Appeal and Initial Post-Conviction Proceedings and Post-Conviction DNA Request*

With the exception of some relief that reduced Harden's sentence from 120 to 60 years, all of the defendants' direct appeals were unsuccessful.<sup>124</sup> Initial attempts for post-conviction relief by all of the defendants also failed.<sup>125</sup>

In 2005, however, Barr and Taylor sought post-conviction DNA testing pursuant to Illinois' post-conviction DNA testing statute,<sup>126</sup> seeking to re-test the

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Attorneys for Barr and Taylor introduced evidence, however, demonstrating that the weather got up to over sixty degrees during the nineteen-day period and rain as well. See Dixmoor Direct Appeal Brief, *supra* note 65, at 11-12.

<sup>120</sup> See Transcript of Trial at O-161, 162, *People v. Barr* (Cook Cnty. Cir. Ct.).

<sup>121</sup> *Id.* at O103-104.

<sup>122</sup> Dixmoor Direct Appeal Brief, *supra* note 65, at 4.

<sup>123</sup> *Id.* at 23-24.

<sup>124</sup> See *People v. Harden et al.*, 738 N.E.2d 231 (Ill. App. Ct. 1998) (unpublished table decision); see *People v. Harden*, 741 N.E.2d 231 (Ill. App. Ct. 2000).

<sup>125</sup> See *People v. Harden*, 853 N.E. 2d 430 (Ill. App. Ct. 2003) (unpublished table decision); *People v. Harden*, No. 1-05-3507 (Ill. App. May 15, 2007); *People v. Barr & Taylor*, Nos. 1-05-3505 & 1-05-3699, (Ill. App. Aug. 28, 2007).

<sup>126</sup> See 725 ILL. COMP. STAT. 5/116-3 (2007).

DNA extracts of the vaginal and rectal swabs with modern STR DNA testing.<sup>127</sup> After more than a decade in prison, they still insisted on their innocence and sought a way to prove it once and for all. They asked the court to order this modern form of DNA testing in the hopes of developing a profile that could be uploaded into the FBI's national DNA database—CODIS.<sup>128</sup> The CODIS database, which did not exist in 1994 when the pre-trial DNA testing identified a single-source male DNA profile, contains millions of DNA samples from known and unknown offenders.<sup>129</sup> Barr and Taylor wanted to use CODIS to determine if the previously unknown semen left on the young victim could be matched to an individual in the database.

The State, however, objected to this request, and the same trial court judge who oversaw the trials, Judge Paul Nealis, sustained the State's objection.<sup>130</sup> Barr and Taylor sought relief in the Illinois Appellate Court, but they were also rejected by that court, which concluded that "additional DNA comparison analysis is not 'materially relevant' to the defendants' claims of actual innocence."<sup>131</sup> Finding the evidence against the two petitioners "overwhelming," the court stated that even a CODIS match would not "significantly advance" the defendants' claims of innocence.<sup>132</sup> Concurring Justice Wolfson agreed with the result, but did so with "some disquiet," disagreeing with the majority that the evidence, especially against Barr, was overwhelming.<sup>133</sup> Justice Wolfson called it a "perplexing case," and suggested the time might come, down the road, for further inquiry, but the petitioners were not there yet.<sup>134</sup>

*F. Harden, Taylor, and Barr's Subsequent Request for DNA Testing and Access to CODIS and Additional Post-Conviction Investigation*

Several years later, Tara Thompson, an attorney with the civil rights law firm of Loevy & Loevy and Clinical Lecturer of Law at the University of Chicago Law School's Exoneration Project, was doing her best to convince all who would listen that the time had come for further inquiry. As attorneys for Harden, Thompson, her co-counsel Gayle Horn, and their students spent a good year pounding the pavement and knocking on doors in Harvey and Dixmoor, trying to gather new information and evidence about the case. They were also making inquiries to the Cook County State's Attorney's Office, and Circuit Court Judge Michele Simmons,

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<sup>127</sup> *People v. Barr & Taylor*, Nos. 1-05-3505 & 1-05-3699 (cons.), slip op. at 9 (Ill. App. Ct. Aug. 28, 2007).

<sup>128</sup> "CODIS" stands for Combined DNA Index System. For more information regarding CODIS, see *Combined DNA Index System (CODIS)*, FBI, <http://www.fbi.gov/about-us/lab/codis> (last visited Jan. 19, 2012).

<sup>129</sup> *CODIS Brochure*, FBI, [http://www.fbi.gov/about-us/lab/codis/codis\\_brochure](http://www.fbi.gov/about-us/lab/codis/codis_brochure) (last visited Jan. 19, 2012).

<sup>130</sup> *Barr & Taylor*, slip op. at 10.

<sup>131</sup> *Id.* at 16.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 17 (Wolfson, J., concurring).

<sup>134</sup> *Id.*

who had taken over the case call of the now-retired Judge Nealis, about agreeing to do the same DNA testing previously requested by Barr and Harden. To that end, on September 4, 2009, Thompson filed a *Motion for DNA Testing Pursuant to 725 ILCS 5/116-3* on Harden's behalf.<sup>135</sup> Unfortunately, her litigation and attempts were stalled, as the Dixmoor Police Department repeatedly told her that the DNA extracts had been lost.

In early 2010, after a referral from Jennifer Blagg, who had represented Robert Taylor in his unsuccessful DNA appeal, the Center on Wrongful Convictions of Youth ("CWCY") agreed to co-counsel with Blagg to represent Robert Taylor. Quickly discovering that Thompson was already far along in her representation of Harden, the CWCY entered a court appearance in the matter and joined Thompson's DNA motion. Shortly thereafter, the CWCY contacted the Innocence Project ("IP"), who joined the motion on behalf of Barr.

With all parties now represented, the heat on the Dixmoor Police Department to find the evidence was turned up. At the request of the attorneys, the Dixmoor Chief of Police was subpoenaed to court, where Judge Simmons ordered him to document the steps he had taken to locate the evidence. Eventually, he agreed in court to allow attorneys for the petitioners, as well as a representative of the Cook County State's Attorney's Office, to take a tour of the evidence property room at the police department and to examine the evidence log book. On September 2, 2010, all parties met at the Dixmoor Police Department; upon arrival, however, the Dixmoor Chief reneged on the promises and refused to allow the parties, including the State, to view the property room, and he could not even locate the log book. Remarkably, just over a week later, on September 10, 2010, the Dixmoor Chief reported that the DNA extracts—lost for over a year—had been located.<sup>136</sup>

After this discovery, the Cook County State's Attorney's Office agreed not to object to the latest request for DNA testing and CODIS search. On October 8, 2010, the trial court entered the agreed order.<sup>137</sup>

Meanwhile, as the DNA search and testing was ongoing, local counsels continued to investigate. On June 23, 2010, attorneys for Taylor located Keno Barnes and questioned him about the alleged conversation with Barr. In a written statement, Barnes denied ever having this conversation with Barr or ever telling the police he had this conversation.<sup>138</sup> He claimed Jonathan Barr never told him he

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<sup>135</sup> Dixmoore DNA Motion, *supra* note 65.

<sup>136</sup> After the Dixmoor Five were freed, "Dixmoor police Chief Lanell Gilbert acknowledged the evidence wasn't originally stored in a way that made it easy to find" and stated that the facilities would be "'up to par' soon." David Mercer, *Illinois Man Freed After Murder Conviction Vacated*, ASSOC. PRESS, Nov. 4, 2011.

<sup>137</sup> Agreed Order for Post-Conviction DNA Testing Pursuant to 725 ILL. COMP. STAT. 5/116-3, *People v. Harden*, No. 92-27247 & *People v. Barr & Taylor*, No. 95-23475 (Cook Cty. Cir. Ct. Oct. 8, 2010).

<sup>138</sup> Declaration of Keno Barnes, Joint Petition for Relief from Judgment Ex.5, *People v. Harden*, No. 92 CR 27247 (Cook Cnty. Cir. Ct. Apr. 5. 2011).

saw Cateresa get in a car with Taylor and Veal the day she went missing.<sup>139</sup> Barnes even stated that he had no idea who Tiny Hayward was, someone who, according to police reports, Barnes stated witnessed the conversation between him and Barr.<sup>140</sup>

Several weeks later, attorneys for Taylor and Harden met with Robert Lee Veal at his sister's house in Chicago. Veal, who had been out of prison for almost a decade, had long since moved to Minnesota. During a telephone conversation several days prior with attorneys for Taylor, Veal stated that his confession and testimony against Harden, Barr, and Taylor were untrue.<sup>141</sup> On July 6, 2010, in a sworn affidavit, Veal reiterated this recantation, swearing that he had no idea what happened to Cateresa.<sup>142</sup> He claimed that Investigator Kachiroubas wrote out a narrative of the events, but Veal at all times denied that it was true.<sup>143</sup> Veal then signed the statement, but he did not realize by doing so he was agreeing with the content.<sup>144</sup> Veal also explained that he testified only because he was offered a deal and thought he would go to prison for the rest of his life if he did not take the deal; he understood that he had to testify falsely, consistent with his statement, in order to get the deal.<sup>145</sup>

Armed with this new evidence of innocence, attorneys for the petitioners awaited the results of the court ordered DNA testing. On February 28, 2011, Orchid Cellmark issued a report indicating that it developed a full male, single-source, CODIS-eligible profile from the seminal portion of the vaginal extract.<sup>146</sup> Pursuant to the Agreed Order, Cellmark forwarded their DNA report to the ISP crime lab so the information in the report could be uploaded into CODIS. On March 9, 2011, the attorneys learned that the ISP received a CODIS hit: the male DNA from the semen in the young victim belonged to Willie Randolph.<sup>147</sup>

#### *G. Willie Randolph*

In November 1991, when Matthews' naked, lifeless body was discovered with what we now know was Randolph's semen inside her, Randolph was thirty-three years old and a Dixmoor resident. By this time, he already had an extensive violent criminal history.<sup>148</sup>

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> See Declaration of Robert Veal, Joint Petition for Relief from Judgment Ex. 7, *People v. Harden*, No. 92-27247 (Cook Cnty. Cir. Ct. Apr. 5, 2011).

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Dixmoor Motion to Vacate, *supra* note 65, at 10.

<sup>147</sup> *Id.*

<sup>148</sup> Petitioners' Joint Motion for Discovery, *People v. Harden*, No. 92-27247 (Cook Cnty. Cir. Ct.) [hereinafter Dixmoor Joint Discovery Motion].

On May 17, 1977, Randolph pled guilty to rape, deviate sexual assault, and robbery, and received concurrent sentences of four-eight, four-eight, and two-six years.<sup>149</sup> According to the factual basis detailed during the plea hearing, Randolph and his older brother, Randy Moore,<sup>150</sup> abducted Beverly Williams on the street at 1545 S. Tripp on August 12, 1975.<sup>151</sup> They demanded her money, and then took her to an alley where Moore forced the victim to perform oral sex on him.<sup>152</sup> The two brothers then robbed the victim of approximately \$3 and her food stamps.<sup>153</sup> They next took her to another alley, where Randolph forced her to perform oral sex and intercourse.<sup>154</sup> After this rape, Moore forced the victim to have sexual intercourse.<sup>155</sup> During the assault, Randolph told the victim he had a gun while Moore claimed to have a knife, although neither brandished weapons.<sup>156</sup>

Shortly after Randolph completed his sentence for this rape conviction, he committed another violent offense. On July 1, 1981, Randolph rear-ended a woman who was alone in her car.<sup>157</sup> Both cars pulled off to a private road to assess the damage to the car, when Randolph approached the driver's side of the victim's window, put a small caliber gun to her head, and demanded her purse.<sup>158</sup> Randolph was arrested minutes later in his car, where the police located the woman's purse.<sup>159</sup> He was convicted and sentenced to twenty years in the Illinois Department of Corrections.<sup>160</sup> Randolph was paroled in 1991 shortly before Cateresa's rape-murder, and he reported his address as 1809 W. 142<sup>nd</sup> Street, Dixmoor, Illinois, approximately one mile from where Cateresa's body was discovered.<sup>161</sup>

Randolph's oftentimes violent criminal activity continued steadily after Cateresa's rape-murder. On March 8, 1992, Dixmoor Police arrested Randolph for possession of a controlled substance. Randolph was discovered with crack cocaine as he was wandering through the street disrupting traffic about a block from his

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<sup>149</sup> *Id.* at 4.

<sup>150</sup> Randy Moore, whose aliases include Jeffrey Moore and Charles Wilson, is a habitual violent criminal. He is currently serving life in prison without the opportunity for parole in the Illinois Department of Corrections for his commission of an armed robbery. He has previous convictions for armed violence and armed robbery, as well as the convictions with his brother for the rape, deviate sexual assault, and robbery on South Tripp.

<sup>151</sup> Petitioners' Motion To Admit Evidence of Willie Randolph's Other Crimes and Bad Acts at 4, *People v. James Harden et al.*, No. 92-27247 (Cook Cnty. Cir. Ct.) [hereinafter *Dixmoor Motion To Admit Other Crimes*].

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 4-5.

<sup>157</sup> *Id.* at 5.

<sup>158</sup> *Id.* at 5-6.

<sup>159</sup> *Id.* at 6.

<sup>160</sup> *Id.* at 5.

<sup>161</sup> *Id.* at 6.

home; he pled guilty and received a sentence of two years in prison.<sup>162</sup> On May 29, 1992, Dixmoor Police arrested Randolph for unlawful possession of a weapon by a felon when he discharged his gun in the presence of two women; he was convicted and sentenced to four years for that offense.<sup>163</sup>

In May 1997, Randolph was arrested for domestic battery for assaulting his niece. Arresting officers discovered Randolph on top of the victim, "striking her about the face."<sup>164</sup> A year-and-a-half later in November 1998, Chicago Police arrested Randolph for aggravated assault with a deadly weapon and domestic battery for attacking his then-girlfriend with a knife, causing large lacerations that required stitches.<sup>165</sup> Randolph was convicted and served jail time.<sup>166</sup> Randolph went on to commit several other drug offenses and residential burglaries over the decade, serving separate prison sentences of four-and-a-half years and eight years for some of the crimes.<sup>167</sup>

#### *H. Litigation and Investigation Following the DNA Hit*

Relying on the DNA evidence pointing conclusively to Randolph, as well as the new statements from Veal and Barnes, on March 25, 2011, Petitioners filed a joint motion requesting that Barr's, Harden's, and Taylor's convictions be immediately vacated and that they be released.<sup>168</sup> The State objected to immediate release, and insisted that it was conducting an investigation and needed more time before deciding how it planned to proceed. Judge Simmons sustained the State's objection and the Petitioners remained in custody. Over the next several months, the State engaged in an extensive re-investigation. By this time, Robert Veal had retained attorney Stuart Chanen of Valorem Law Group, and Veal, with Chanen by his side, repeated his recantation to investigators for the State on April 1, 2011.<sup>169</sup>

The State, however, insisted on speaking with Shainne Sharp. Attorneys for the Petitioners had located Sharp, who was at the Westville Correctional Center in Indiana serving time for a drug offense. Over the last year, Sharp had repeatedly refused the attorneys attempts to speak with him, and they needed his consent to get into the jail. The State, however, did not need his consent, and visited him in March 2011. The State represented to the Court that it came away from these interviews believing Sharp was maintaining his trial testimony.

Sharp, who later retained attorney Jerry Peteet, had a different version of this interview. In an April 28, 2011 letter from Sharp's attorney to the Cook County State's Attorney, Peteet explained that the State's Attorney investigators never

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> Dixmoor Motion to Vacate, *supra* note 65.

<sup>169</sup> E-mail from Stuart Chanen to Craig Cooley (on file with authors).

informed Sharp of the discovery of Willie Randolph, and that they merely asked Sharp whether his previous testimony was true.<sup>170</sup> Peteet's letter also expressed that Sharp was recanting his prior testimony: he explained that during his interrogation, he requested his grandmother's presence, but investigators refused his request, and that he maintained his innocence until investigators promised him that he would be able to go home and be with his grandmother if he signed a handwritten statement admitting his role in Cateresa's rape-murder.<sup>171</sup> Peteet also explained that Sharp agreed to testify because prosecutors provided him many benefits at the Cook County jail "as an incentive to maintain" his "false confession" and continued "cooperation," and that he maintained his innocence to all of his relatives and his public defender prior to and after trial.<sup>172</sup> He accepted the State's plea deal "under duress and intimidation."<sup>173</sup>

During this same time period, the State also had several conversations with Willie Randolph. Perhaps unsurprisingly given his lengthy criminal record, Randolph was arrested on April 11, 2011 on a drug case, about one month after his connection to this case was revealed through the DNA testing results.<sup>174</sup> During subsequent interviews, Randolph denied any knowledge of the crime; indeed, he denied knowing Cateresa Matthews, recognizing her picture, or ever having sex with her, a clearly false statement given that his semen was discovered in her body.<sup>175</sup>

Given his denials, the wealth of evidence connecting him to the crime, and, most importantly, the DNA results, there appeared no reason why the State should oppose Petitioners' request for a new trial. When the parties appeared back in court on April 15, 2011, however, the State announced they were objecting to the motion to vacate. Judge Simmons ordered the State to issue a written response, and set the case for status as the parties continued to investigate. Barr, Taylor, and Harden remained in prison.

As investigation on both sides continued, defense attorneys interviewed a woman named Gloria Barlow, who was reportedly Randolph's current girlfriend. In an undocumented interview, she informed counsel that Randolph told her that Cateresa was a prostitute and he paid her for sex. Informal follow-up interviews of Cateresa's friends and family, however, established that Cateresa never engaged in any form of prostitution. Indeed, no one had ever known her to ever date older men.

Petitioners' attorneys also continued to investigate Willie Randolph's background. In doing so, they spoke to Cathy Bowes, the mother of one of

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<sup>170</sup> Letter from Attorney Jerry L. Peteet to Assistant State's Attorney Mark Ertler (May 18, 2011).

<sup>171</sup> *See id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> Dixmoor Motion to Admit Other Crimes, *supra* note 151, Ex. 1 at 2.

<sup>175</sup> *See* Reply in Support of Petitioners' Joint Petition for Relief from Judgment May 9, 2011 at 5-6, *People v. Harden*, No. 92-27247 & *People v. Barry & Taylor*, No. 95-23475 (Cook Cnty. Cir. Ct.).

Randolph's children. In the presence of several attorneys for the Petitioners, Bowes explained that she met Randolph, who was seven or eight years older than she was, in the late 1970s when she was thirteen-years-old.<sup>176</sup> Over the next two weeks, Randolph courted her, until one night he took her to a field near the expressway, and over her screams of protest, he forcibly raped her.<sup>177</sup> Over the next year, Bowes became Randolph's "woman," and he took her to have sex outside in fields on several occasions.<sup>178</sup> According to undocumented follow-up interviews with Bowes, she reported that State Investigators took her to the scene of where Cateresa's body was discovered, and Bowes told them that Randolph took her to the exact spot for sex many times.

Bowes also reported that Randolph violently assaulted her on multiple occasions. The most brutal beating came when Bowes decided to end her relationship with him.<sup>179</sup> When she informed him of this, Randolph started beating her.<sup>180</sup> Bowes ran away and hid in a trunk of a car.<sup>181</sup> After some time passed, and believing it to be safe, she released the emergency latch on the trunk.<sup>182</sup> As she did so, Randolph was waiting, and struck her repeatedly in the head with a crowbar.<sup>183</sup> She was hospitalized, and suffered a concussion, a broken arm, and other injuries.<sup>184</sup> On other occasions, Randolph tossed her out of a moving vehicle, knocked her down while she was holding their newborn son, and threatened to kill her.<sup>185</sup>

Despite the recantations of Veal and Sharp, Randolph's false exculpatory statements and violent criminal history, and Cathy Bowes' corroborative statements, the State continued to oppose any form of relief for the Petitioners. Indeed, by this time, the State had been successful in getting Robert Veal's motions for relief dismissed. Veal's counsel had moved to join Barr, Harden, and Taylor's request for relief, which Judge Simmons had denied due to Veal's guilty plea and trial testimony.<sup>186</sup> As the case proceeded separately, the State filed a motion to dismiss, arguing that because Veal had pled guilty, he could not get relief.<sup>187</sup> The State maintained that if Veal knew his trial testimony was false all along, and that he was innocent of Cateresa's rape-murder, he could have challenged his conviction more than fifteen years ago, and it was too late to do so now in spite of

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<sup>176</sup> Dixmoor Motion to Admit Other Crimes, *supra* note 151, at 4.

<sup>177</sup> *Id.* at 5.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> E-mail from Stuart Chanen to Craig Cooley (on file with authors).

<sup>187</sup> People's Motion to Dismiss Petition for Relief from Judgment of Conviction Pursuant to 735 ILL. COMP. STAT. 4/2-1401 at 4, *People v. Harden*, No. 92-27247 (Cook Cnty. Cir. Ct. Aug. 5, 2011)

all the new evidence of innocence.<sup>188</sup> Judge Simmons agreed, and dismissed Veal's case out of court on September 23, 2011.<sup>189</sup>

The State had also formally asked the court to throw out Harden, Barr, and Taylor's cases despite the ongoing nature of the investigation. On April 29, 2011, the State filed a motion to dismiss the Petitioners' motion to vacate without conducting an evidentiary hearing, arguing that the new information presented to the court was neither new nor relevant.<sup>190</sup> The DNA results did no more than give an identity to what was already known previously: that the semen from the fourteen-year-old victim did not belong to any of the convicted defendants.<sup>191</sup> Relying on the appellate court's previous decision, the State maintained that the "hit" to Willie Randolph, despite his age, false exculpatory statements during confrontation, and violent criminal history, was not relevant.<sup>192</sup> Judge Simmons denied this request to dismiss as a matter of law and the case continued to move toward an evidentiary hearing.

Meanwhile, in October 2011, Shainne Sharp, in the presence of his attorney, agreed to be interviewed by the attorneys for Petitioners and re-interviewed by the State on videotape at the Internal Affairs Division of the Westville Correctional Center in Indiana. During these interviews, Sharp, in no uncertain terms, recanted his confession and trial testimony.<sup>193</sup> He explained that he knew nothing about Cateresa's disappearance, assault, or death.<sup>194</sup> He explained that before his arrest, he was questioned multiple times about Cataresa's death during informal meetings with the Chief of the Dixmoor Police Department, during which he denied knowing anything about the crime.<sup>195</sup> He claimed that investigators coerced him into signing a statement confessing to the crime, believing he would get to go home if he signed.<sup>196</sup> Sharp also explained that he subsequently agreed to testify against Barr, Harden, and Taylor because he was placed in a separate "witness quarters" section of the Cook County Jail, where he received special food, extra yard time, more comfortable living arrangements, and other benefits.<sup>197</sup> The State expressly told Sharp—and Sharp understood—that as long as he cooperated with the State,

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<sup>188</sup> *Id.* at 4-5.

<sup>189</sup> Andy Grimm, *3 Freed After Murder Exoneration Want Co-Defendants Cleared Too in 1991 Case*, CHI. TRIB. (Dec. 2, 2011), [http://articles.chicagotribune.com/2011-12-02/news/chi-3-freed-after-murder-exoneration-want-codefendants-cleared-too-in-1991-case-20111202\\_1\\_murder-conviction-veal-and-shainnie-sharp-cateresa-matthews](http://articles.chicagotribune.com/2011-12-02/news/chi-3-freed-after-murder-exoneration-want-codefendants-cleared-too-in-1991-case-20111202_1_murder-conviction-veal-and-shainnie-sharp-cateresa-matthews).

<sup>190</sup> People's Response to Joint Petition for Relief from Judgment, Apr. 29, 2011, *People v. Harden*, No. 92-27247 (Cook Cnty. Cir. Ct.) [hereinafter *Dixmoor People's Response*].

<sup>191</sup> *Id.* at 5-7.

<sup>192</sup> *Id.*

<sup>193</sup> Petitioners' Joint Motion For Discovery Concerning Shainne Sharp at 1-2, *People v. James Harden et al.*, No. 92-27247 (Cook Cnty. Cir. Ct.) [hereinafter *Sharp Discovery Motion*].

<sup>194</sup> *Id.* at 3-4.

<sup>195</sup> *Id.* at 4-5.

<sup>196</sup> *Id.* at 5.

<sup>197</sup> *Id.*

these privileges would continue.<sup>198</sup> Sharp also explained that he took polygraph examinations and was taken to the scene by the State's Attorney's Office in preparation for his testimony.<sup>199</sup>

After learning this information, Petitioners' attorneys filed a motion for additional discovery on October 27, 2011, raising issues pertaining to *Brady v. Maryland*<sup>200</sup> for the failure of the State's Attorney's Office and the Dixmoor police to reveal exculpatory information to trial counsel for Petitioners, namely, Sharp's receipt of special benefits and his prior statements of innocence to the Dixmoor police.<sup>201</sup> This motion, however, was never heard. Instead, on November 3, 2011, the Cook County State's Attorney's Office, without any warning, abruptly moved to vacate the convictions for all five defendants.<sup>202</sup> The convictions and indictments against Barr, Harden, and Taylor were dismissed that day, and the State alerted the court that they would be agreeing to vacate the convictions and dismiss the charges against Veal and Sharp as well. Nonetheless, in public statements, Cook County State's Attorney Anita Alvarez doubted their innocence, stating, "I don't believe we can say for sure that they're innocent."<sup>203</sup>

As of the date of this writing, no charges have been brought against Willie Randolph. He is in custody of the Illinois Department of Corrections, serving a three year sentence after his April 11, 2011 arrest and subsequent conviction of possession of a controlled substance. During the sentencing hearing in that case, the State never mentioned his connection to the death of Cateresa Matthews or the fact that he was a suspect.

### III. THE ENGLEWOOD FIVE

#### *A. The Chicago Police Department's Mishandling of the Investigations into the Murders of South Side Sex Workers in the 1990s*

Almost three years after Cateresa Matthews went missing, another tragedy of epic proportions was beginning to unfold. On November 7, 1994, at 7:00 a.m., the naked, strangled body of thirty-year-old Nina Glover was discovered, wrapped in a floral sheet, in a dumpster behind 1400 W. Garfield Boulevard in the Englewood neighborhood of Chicago's South Side.<sup>204</sup> The body was discovered by a garbage

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<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> 373 U.S. 83 (1963).

<sup>201</sup> Sharp Discovery Motion, *supra* note 193. Shortly after this purportedly taped interview, counsel learned from the State that the video recording malfunctioned and there was no tape.

<sup>202</sup> See Steve Mills & Andy Grimm, *DNA Tests Exonerate Five Who Served Years For Rape, Slaying of 14-Year-Old*, CHI. TRIB. (Nov. 4, 2011), [http://articles.chicagotribune.com/2011-11-04/news/ct-met-dna-murder-rape-20111104\\_1\\_dixmoor-case-dna-tests-dna-evidence](http://articles.chicagotribune.com/2011-11-04/news/ct-met-dna-murder-rape-20111104_1_dixmoor-case-dna-tests-dna-evidence).

<sup>203</sup> *Id.*

<sup>204</sup> Petitioners' Amended Judgment Motion For Relief From Judgment To Vacate Their Convictions and To Order Their Release From Custody On their Own Recognizance at 1, *People v. Swift et al.*, No. 95-09676 (Cook Cnty. Cir. Ct.) [hereinafter Amended Petition].

man, who quickly called the police.<sup>205</sup> Detective James Cassidy, a seasoned Chicago police officer, was the first officer on the scene.<sup>206</sup> By the time he arrived in those early morning hours, a small group of people had gathered around the scene. Detective Cassidy interviewed some of those people, including Johnny Douglas and Emmett (“Skip”) Cameron, Jr., but reported that they “knew nothing.”<sup>207</sup>

Living in this impoverished section of the city, Glover had a troubled life: she had a drug addiction, and she supported her habit by trading sex for money or drugs.<sup>208</sup> Indeed, initial investigation revealed that Glover was using drugs and engaged in prostitution the night before her death, just one block west of where her body was found, with a man named James Jones, a claim corroborated by Calvin Walker, who allowed Jones and Glover to use his apartment for these activities.<sup>209</sup> Jones reported that he and Glover departed between 11:30 p.m. and 1:00 a.m., exiting the apartment complex together.<sup>210</sup> This was the last time anyone reported seeing Glover until her body was discovered six hours later.

Tragically, the murder of Nina Glover was part of an epidemic. From 1993-2000, there were no fewer than three dozen—and perhaps far more—sexual assaults and murders of prostitutes and female drug users by a variety of men on the South Side of Chicago.<sup>211</sup> Indeed, half a dozen serial killers, if not more, were running rampant in the city, preying on prostitutes—raping them, strangling them, and leaving their bodies in dumpsters and abandoned houses.<sup>212</sup> While South Side residents complained that there were serial killers in their community,<sup>213</sup> it was not until mid-to-late 1998, close to four years after Glover’s body was discovered, that law enforcement came to accept this reality.<sup>214</sup> As police came to terms with it, authorities were also discovering that their previous investigations into these murders were fraught with errors and police-induced false confessions.<sup>215</sup>

For example, in 1998, Hubert Gerald was convicted of six murders by strangulation of “high-risk” women in and around Englewood in 1994 and 1995 based on his confessions, including the murder of Rhonda King.<sup>216</sup> He was

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<sup>205</sup> *Id.* at Ex. 63.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* at Ex. 3

<sup>209</sup> *Id.*

<sup>210</sup> Amended Petition, *supra* note 204, at Ex. 3.

<sup>211</sup> Motion For DNA Testing Pursuant to 725 ILL. COMP. STAT. 5/116-3 at 8, *People v. Swift et al.*, No. 95 CR 09676 (Cook Cnty. Cir. Ct.) [hereinafter DNA Testing Motion].

<sup>212</sup> *Id.* at 8-14.

<sup>213</sup> Sabrina L. Miller & Noreen S. Ahmed-Ullah, *Roseland Fears A Serial Killer*, CHI. TRIB. (June 28, 2000), [http://articles.chicagotribune.com/2000-06-28/news/0006280270\\_1\\_slayings-serial-killer-abandoned](http://articles.chicagotribune.com/2000-06-28/news/0006280270_1_slayings-serial-killer-abandoned) (explaining that police were criticized by Englewood residents for failing to warn them quickly of the dangers of serial killers in the community).

<sup>214</sup> DNA Testing Motion, *supra* note 211, at 8, Ex. 17.

<sup>215</sup> *Id.* at 8-9.

<sup>216</sup> *Id.* at 9, Ex. 18. See Don Terry, *In a Chicago Neighborhood Overrun With Crime, a Serial Killer*

sentenced to death.<sup>217</sup> However, Gerald's convictions and death sentence were vacated at the State's own request when, in 2000, law enforcement became convinced that Gerald's confession to the King strangulation-murder was false after Andre Crawford, a different serial killer, confessed to killing King.<sup>218</sup> Meanwhile, while Gerald was on death row, the State charged a man named Derrick Flewellen with the sexual assault and murder of Lovie Ford based on Flewellen's confession—this confession, however, was later proven false when the DNA recovered from the victim matched to none other than Gerald.<sup>219</sup> Gerald was eventually reconvicted of five strangulation-murders of women (he was never charged with the Ford murder) and is currently serving life in prison without the possibility of parole.<sup>220</sup>

When, in December 1998, Chicago police finally realized that serial killers were preying on Englewood women as far back as 1993, local law enforcement, with the assistance of the Federal Bureau of Investigation, began comparing DNA recovered from the victims of these crimes.<sup>221</sup> The seminal DNA recovered in many of these cases was the same unknown profile, which the police eventually termed the Pattern A killer, subsequently identified as Andre Crawford.<sup>222</sup> After extended pre-trial proceedings, which included the State certifying that it was seeking the death penalty, Crawford was convicted of eleven murders of prostitutes in and around Englewood in 2009, many of which occurred within walking distance of the Glover murder.<sup>223</sup> According to police reports, Crawford strangled, beat, and sexually assaulted his victims—leaving his seminal DNA in at least seven instances—and then left their bodies in abandoned buildings.<sup>224</sup> In at least one instance, Crawford's victim was found wrapped in a sheet, like Glover.<sup>225</sup>

Law enforcement established at least three other patterns of DNA from these South Side sexual assault and murders of women, which they termed Patterns B, C,

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*Almost Walks Away*, N.Y. TIMES (June 26, 1995), <http://www.nytimes.com/1995/06/26/us/in-a-chicago-neighborhood-overrun-with-crime-a-serial-killer-almost-walks-away.html>.

<sup>217</sup> DNA Testing Motion, *supra* note 211, at 9.

<sup>218</sup> *Id.* at 9, Ex. 21. See Steve Mills & Terry Wilson, *State Says It Convicted the Wrong Serial Killer*, CHI. TRIB. (Feb. 11, 2000), [http://articles.chicagotribune.com/2000-0211/news/0002110112\\_1\\_murder-and-rape-charges-chicago-police-hubert-geralds](http://articles.chicagotribune.com/2000-0211/news/0002110112_1_murder-and-rape-charges-chicago-police-hubert-geralds).

<sup>219</sup> DNA Testing Motion, *supra* note 211, at 9.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at 9-10, Ex. 23. See Marla Donato & Naomi Dillon, *35-Year-Old South Side Man Linked to 3 Slayings: Englewood Murder Suspect Charged*, CHI. TRIB. (Oct. 11, 1999), [http://articles.chicagotribune.com/1999-10-11/news/9910110028\\_1\\_sexual-assaults-months-long-investigation-pattern](http://articles.chicagotribune.com/1999-10-11/news/9910110028_1_sexual-assaults-months-long-investigation-pattern).

<sup>222</sup> DNA Testing Motion, *supra* note 211, at 10, Ex. 25. See Marla Donato, *Police Say They Have S. Side Serial Killer*, CHI. TRIB. (Jan. 31, 2000), [http://articles.chicagotribune.com/2000-01-31/news/0001310083\\_1\\_old-fashioned-police-work-murders-sexual-assaults](http://articles.chicagotribune.com/2000-01-31/news/0001310083_1_old-fashioned-police-work-murders-sexual-assaults).

<sup>223</sup> DNA Testing Motion, *supra* note 211, at 10, Ex. 26. See Stefano Esposito, Mary Wisniewski & Lisa Donovan, *To the Victims, I Do Not Think Justice Was Served: Serial Rapist, Killer Gets Life, to Surprise of Victims' Families*, CHI. SUN TIMES, Dec. 19, 2009. Crawford escaped the death penalty and was sentenced to life in prison.

<sup>224</sup> DNA Testing Motion, *supra* note 211, at Ex. 17.

<sup>225</sup> *Id.* at 10.

and D.<sup>226</sup> The Pattern B offender was identified as Bernard Middleton.<sup>227</sup> DNA testing connected Middleton to the rape and strangulation-murder of Jeanne White on October 16, 1995—less than a year after Glover’s murder—as well as the rapes of at least four other women.<sup>228</sup> The body of Ms. White was discovered about one mile due east from where Glover’s body was found.<sup>229</sup>

The Pattern C DNA profile matched to three men—Robert Jarrette, Mike Mallet, and Eugene Rivers—who were later charged with the rape and murder of LaCreesha Avery.<sup>230</sup> Ms. Avery’s body was found on the South Side within four miles of where Glover was found.<sup>231</sup>

The Pattern D offender is now known to be Ronald Macon, who committed at least three sexual assaults and strangulation-murders of prostitutes in 1999.<sup>232</sup> One of Macon’s victims, a woman named Linda Solomon, was discovered wrapped in a sheet, and another, Rosezina Williams, was found in a dumpster<sup>233</sup>—both consistent with how Glover’s body was found.

Incredibly, beyond Gerald and Patterns A-D, we now know there were other serial South Side rapists and murders as well who preyed on women. Geoffrey Griffin began committing violent offenses as far back as 1993, and his first conviction for sexual assault and murder stemmed from bodies found in 1998.<sup>234</sup> Griffin has been convicted of at least six murders and four sexual assaults, and is currently serving life without the possibility of parole in Illinois.<sup>235</sup> All of his murder victims were in the sex trade, and all of them were strangled.<sup>236</sup> His crimes generally occurred a few miles south of where Glover’s body was found in the Roseland District of Chicago.<sup>237</sup>

There is also the confusing situation of Gregory Clepper, who boasted to police of killing as many as forty women.<sup>238</sup> In 1996, he was charged with killing fourteen South Side women over the previous six years, confessing to each one.<sup>239</sup> The cases first began to unravel when, in 1999, seminal DNA recovered from one of the victims, an unidentified black woman whose body was found in the alley in

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<sup>226</sup> See Donato & Dillon, *supra* note 221.

<sup>227</sup> DNA Testing Motion, *supra* note 211, at 10, Ex. 28. See Liam Ford, *DNA Law Ends Long Hunt for Suspect*, CHI. TRIB., May 2, 2003, at C1.

<sup>228</sup> DNA Testing Motion, *supra* note 211, at 10, Ex. 28.

<sup>229</sup> *Id.* at 11.

<sup>230</sup> *Id.* See Donato & Dillon, *supra* note 221.

<sup>231</sup> DNA Testing Motion, *supra* note 211, at 11.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.* at 12. The bodies of some of Griffin’s victims were found decomposing, suggesting the offenses could have been committed well before their discovery. *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.* at 12, Ex. 34. See Eric Ferkenhoff, Maurice Possley, & Steve Mills, *Lab Tests Unravel 12 Murder Cases: Suspect Once Considered As Serial Killer*, CHI. TRIB., Jan. 31, 2001, at N1.

<sup>239</sup> DNA Testing Motion, *supra* note 211, at 12.

the 4900 block of South Champlain Avenue on May 24, 1994, connected not to Clepper but to Earl Mack.<sup>240</sup> After Mack's confession to this crime, the State dropped this charge against Clepper and convicted Mack of this murder.<sup>241</sup> As to the remaining thirteen charges against Clepper, the State pressed forward until early 2001 when it abruptly dropped twelve of the remaining thirteen murder charges against him.<sup>242</sup> In some of those twelve cases, laboratory tests excluded Clepper as a suspect; in others, the evidence pointed to other suspects.<sup>243</sup> As described by one unnamed top police official, it was "not a fine piece of investigative work."<sup>244</sup> Clepper eventually pled guilty to the one remaining charge: the sexual assault and strangulation-murder of Patricia Scott, who was found abandoned in a South Side garbage can in April 1996, about a year-and-a-half after Glover's body was found.<sup>245</sup>

Putting it all together, at the time of this writing, we know the following:

**Murdered South Side women from 1993-2000  
(most of whom were in the sex trade and strangled):**

Andre Crawford: 11

Hubert Gerald: 6

Bernard Middleton: 1

Jarrette/Mallet/Rivers: 1

Ronald Macon: 3

Geoffrey Griffin: 6

Earl Mack: 1

Gregory Clepper: 1

Unknown/uncharged:13 (charges dropped in the Clepper case)

**Total: 43**

At the same time, false confessions were obtained in many of these cases, including confessions proven false by Gerald, Derrick Flewellen, and dozens by Clepper.

*B. The Mis-Investigation of the Murder of Nina Glover*

In November 1994, however, when Nina Glover's strangled body was found disposed of in a garbage can in Englewood, the fact that South Side women were being targeted by multiple serial killers was far from law enforcement's radar. Law enforcement, accordingly, investigated the Glover murder in a vacuum, never considering that a serial offender could have committed the crime.

<sup>240</sup> *Id.* at 12-13.

<sup>241</sup> *Id.* at 13, Ex. 34.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.* at 13.

At the initial stages, the investigation was slow going. The police spoke to James Jones and Calvin Walker—the last two people to see her alive between 11:30 p.m. and 1:00 a.m. the night before—but they were dismissed as suspects.<sup>246</sup> They spoke with Nina Glover’s friends and family, but they provided little information.<sup>247</sup> An autopsy confirmed that Glover was strangled, and a rape kit was conducted by the medical examiner discovered that the vaginal swab tested positive for semen and sperm, but with no suspects to compare against the DNA profile on the sperm, there was little to do with this information.<sup>248</sup>

Four months to the day of the discovery of Glover’s body, however, the Chicago police seemingly got the lead they needed. According to police reports and testimony at trial, on March 7, 1995, eighteen-year-old Jerry Fincher allegedly walked into the police station and voluntarily came forward with information relating to the Glover murder.<sup>249</sup> Fincher, reportedly, was hoping to exchange his information for “some consideration” for a friend of his who was in custody.<sup>250</sup>

Initially, Fincher allegedly told the police that he, his friend Antonio Anderson, and a woman named Elena were present when Nina Glover’s body was discovered in the early morning hours of November 7.<sup>251</sup> At that time, Elena told Fincher that the deceased woman resembled someone she saw being beaten by a black male known as “Pancho” the night before.<sup>252</sup> Pancho, Fincher stated, was a Gangster Disciple, who likely dumped the body of the woman in Blackstone territory in an attempt to frame rival gang members.<sup>253</sup> According to police reports, while Fincher voluntarily remained in custody overnight, law enforcement spoke to Elena and Anderson in an effort to corroborate this story, both of whom denied that it occurred.<sup>254</sup> Fincher also reportedly failed a subsequent lie detector test.<sup>255</sup>

According to police, after being confronted with this information, Fincher’s story began to change.<sup>256</sup> First, Fincher allegedly told law enforcement that on November 6, 1994, at about 9:00 or 10:00 p.m., he saw a black male known to him as “MoMike,” along with someone else, carrying something in a white sheet over their shoulders.<sup>257</sup> Confronted again, Fincher later elaborated, saying he witnessed MoMike, a fellow Blackstone, confront a “hype.”<sup>258</sup> He later watched as two other

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<sup>246</sup> *Id.* at Ex. 3.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.* at Exs. 2, 37.

<sup>249</sup> Amended Petition *supra* note 204, at 4. See DNA Testing Motion *supra* note 211, at Ex. 5.

<sup>250</sup> *Id.*

<sup>251</sup> DNA Testing Motion *supra* note 211, at Ex. 5.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.* at Ex. 5.

<sup>258</sup> *Id.*

Blackstones—"Pud" and "the Undertaker"—took the woman to 5354 S. Bishop.<sup>259</sup> Fincher and another man named "Vincent" then went to the front of the house, looked through a window, and saw the woman performing oral sex on Pud.<sup>260</sup> They later observed the Undertaker having sex with the woman, and then later the Undertaker and MoMike beating the woman.<sup>261</sup> Fincher was then asked to stand lookout by "Big Shorty," while MoMike and the Undertaker carried the body in the sheet to the garbage dumpster.<sup>262</sup> Fincher later identified MoMike as Harold Richardson (16 at the time), the Undertaker as Michael Saunders (15), Pud as Terrill Swift (17), and Vince as Vincent Thames (17).<sup>263</sup> Big Shorty was later identified as William Ephraim.<sup>264</sup>

Based upon this information, according to police reports, now eighteen-year-old Vincent Thames voluntarily came to the police station after being informed of the investigation.<sup>265</sup> Vincent Thames then gave a series of evolving statements, ultimately implicating himself, Swift, Saunders, and Richardson in the rape, beating, and strangulation-murder of Nina Glover in Thames' own basement at 5356 S. Bishop.<sup>266</sup> Thames's statement named Fincher as a lookout; he made no mention of Big Shorty or Ephraim.<sup>267</sup>

Police reports later indicate that Swift, Saunders, and Richardson also voluntarily implicated themselves, as well as Thames and Fincher, in the rape and murder of Glover.<sup>268</sup> Fincher also amended his story to be consistent with that of the other boys, although he alone maintained that Big Shorty was involved.<sup>269</sup> Ultimately, according to police, each of the suspects stated that at approximately 9:00 p.m. on November 6, 1994, the teenagers approached Glover, who they knew only as Pico, on the street because she owed them money.<sup>270</sup> The four primary assailants, all Blackstones, then took Pico to Thames' basement, where they all took turns raping her.<sup>271</sup> After they finished the sexual assault, they beat the victim with their fists and a shovel, until she was bleeding from her head.<sup>272</sup> Richardson

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<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.* at Ex. 5.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.* The statements differ as to which defendant was involved in certain portions of the events. For example, Fincher and Swift state that Richardson alone approached Glover and demanded his money, whereas Thames says it was Swift and Richardson who approached her and Richardson states that Saunders and Richardson approached her. *Id.* at Ex. 9.

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

then strangled her with his bare hands until she died.<sup>273</sup> They then cleaned up the basement with a mop.<sup>274</sup> As some of the boys wrapped the victim in a sheet and carried her to a dumpster a block-and-a-half from the home, the others disposed of the mop and shovel by throwing it in a nearby lagoon.<sup>275</sup>

The final statements of Fincher and Thames were memorialized by Assistant State's Attorney Terrance Johnson in a handwritten statement prepared by him but signed by each of the suspects.<sup>276</sup> For his part, Swift was interviewed by a court reporter, also in the presence of Attorney Johnson, where he recited his confession.<sup>277</sup> Assistant State's Attorney Fabio Valentini memorialized the handwritten statement of Michael Saunders;<sup>278</sup> Valentini also testified that Richardson orally confessed to him, in the presence of his parents, but then refused to formally memorialize his statement.<sup>279</sup>

Within days, Chicago police sent divers into the lagoon, and they recovered what appeared to be a mop handle and a shovel from near the area where the suspects claimed to have disposed of them.<sup>280</sup> Although they never tested the shovel to determine if they could recover forensic evidence, this appeared to be powerful corroborating evidence that the confessions were accurate. Police also took evidence of many brownish stains from Vincent Thames' basement; while much of it tested negative for blood, a few spots on the drapes, a television, and a wall were identified as human blood,<sup>281</sup> which the State presumed belonged to Glover. Given the detail in the confessions, police appeared to have an airtight case going forward. All of the investigators involved, including Detectives Cassidy, Kenneth Boudreau, William Foley, and Thomas Coughlin, among others,<sup>282</sup> appeared to have done excellent investigative work.

### *C. The Trials: From the Englewood Five to the Englewood Four*

Fincher, Thames, Swift, Richardson, and Saunders were all immediately charged with the sexual assault and murder of Glover. As pre-trial proceedings

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<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.* The description of who carried the body one-and-a-half blocks through the streets and disposed of the body is also wildly inconsistent from statement to statement. Fincher reports that Richardson, Big Shorty, and Saunders carried the body; Thames said it was just Richardson and Saunders; Richardson said it was Thames and Saunders; and Swift and Saunders said it was Richardson, Thames, and Saunders. *Id.* at Ex. 9.

<sup>276</sup> *Id.* at Ex. 9.

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*; see *People v. Richardson*, No. 95 CR 09676, at F34-64 (Cook Cnty. Cir. Ct.).

<sup>280</sup> See *People v. Swift*, No. 1-98-2624, at 4 (Dec. 13, 1999) (unpublished order); see also *People's Motion to Dismiss Amended Joint Motion for Relief From Judge Pursuant to 735 ILL. COMP. STAT. 5/2-1401* at Ex. 1, *People v. Thames*, No. 95 CR 09676 (Sept. 14, 2011) [hereinafter *People's Motion to Dismiss*].

<sup>281</sup> *Petitioner's Joint Opposition to the State's Motion to Dismiss* at 2, *People v. Swift*, No. 95 CR 09676 (Sept. 28, 2011) [hereinafter *Joint Opposition*].

<sup>282</sup> *DNA Testing Motion supra* note 211, at Ex. 5.

were ongoing, they requested that the vaginal semen swab taken from the victim be tested against the DNA profiles of each of them, a request to which the State readily acquiesced.<sup>283</sup> This was obviously a risky request: if there was a DNA match, it would be conclusive evidence of their guilt beyond any doubt. But, by this point, all of the teenagers had claimed their innocence to their attorneys, explaining that their confessions were false and coerced, and DNA testing would prove that.

The defendants sent the forensic evidence to Cellmark Diagnostics for DNA testing. Using the DQ-Alpha DNA technology available at that time, Cellmark compared the semen sample to that of each of the defendants and concluded that each of the five teenage defendants was excluded as the source of the DNA.<sup>284</sup> At the request of the State, the Illinois State Police crime lab did follow-up testing and reached the same result.<sup>285</sup>

At this point, the same questions facing the Dixmoor prosecutors were presented again. How could four teenagers vaginally penetrate this woman but not leave a trace of semen? And, for that matter, if it was not their semen, whose was it? The State, however, had detailed and seemingly corroborated confessions—after all, the police recovered the mop and the shovel from the lagoon, and there was human blood recovered from Thames' basement. As they had no ability to figure out who the donor of the semen was, the prosecution concluded that the semen must simply belong to one of the victim's consensual clients prior to her death,<sup>286</sup> and it pressed on.

Soon thereafter, however, the prosecution's case suffered another setback. Cook County Circuit Court Judge Thomas J. Sumner ruled that the confession of Jerry Fincher must be suppressed, as it was illegally obtained.<sup>287</sup> Without the confession from Fincher, the State's case against him had fallen apart, and the prosecution was forced to drop the charges. After three-and-a-half years in custody, and after he allegedly led the police to the true culprits, Fincher walked away a free man.<sup>288</sup>

Thames, Swift, Richardson, and Saunders, however, had no such luck. Saunders testified at pre-trial motions that officers slapped him and pulled an earring out of his ear to cause him to confess.<sup>289</sup> Richardson testified that he never made inculpatory statements to Assistant State's Attorney (ASA) Johnson, despite

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<sup>283</sup> *Id.* at 6.

<sup>284</sup> *Id.* at Ex. 10.

<sup>285</sup> *Id.*

<sup>286</sup> Transcript of Trial at K70, *People v. Terrill Swift*, No. 95 CR 09676 (Cook Cnty. Cir. Ct. May 1, 1998).

<sup>287</sup> DNA Testing Motion, *supra* note 211, at 6.

<sup>288</sup> *Id.*

<sup>289</sup> Trial Proceedings at D83, *People v. Saunders*, No. 95 CR 09676 (Cook Cnty. Cir. Ct. Sept. 17, 1997).

Johnson's testimony to the contrary.<sup>290</sup> Judge Sumner rejected these pleas and allowed the confessions into evidence for each of the defendants.<sup>291</sup>

Richardson and Saunders were tried first and simultaneously. Each waived his right to a jury trial and chose to allow Judge Sumner to decide his fate.<sup>292</sup> The State put on the same evidence against them, overwhelmingly focusing on the confessions during the brief bench trial. ASA Fabio Valentini testified to Saunders' handwritten confession as well as Richardson's oral confession.<sup>293</sup> The State also put on evidence of the lagoon divers' recovery of a mop handle and shovel, and there was a stipulation to the recovery of human blood on the drapes and the DNA exclusions.<sup>294</sup> Neither defendant testified nor did they put on any witnesses. In a terrible oversight, defense counsel for neither defendant brought up the fact that the confessions all put the time of the sexual assault and murder at 9:00 p.m., whereas James Jones and Calvin Walker claimed that Nina Glover was alive and in Walker's apartment between 11:30 p.m. and 1:00 a.m. later that night.

The trial against Terrill Swift was very similar, including defense counsel's failure to bring out the contradiction about time of death. The State, again, focused on Swift's confession and the seemingly corroborative physical evidence. Swift, however, testified in his own defense.<sup>295</sup> He stated that he learned the police were looking for him from his mother on March 9, 1995, as she told them the police came to her house looking for him.<sup>296</sup> Police informed his mother that her son "was hiding someone out."<sup>297</sup> After Swift spoke to his mother, he immediately called the police to address the situation and told them he was at his father's house and was willing to speak to them.<sup>298</sup> Law enforcement came by and asked him to look at some pictures, but he could not identify anyone.<sup>299</sup> They then asked him if he would come to the local police station with them, and told him that his father and uncle could meet him at the station.<sup>300</sup> Swift agreed, but the police tricked his

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<sup>290</sup> Trial Proceedings at 74-76, *People v. Richardson*, No. 95 CR 09676 (Cook Cnty. Cir. Ct. Sept. 16, 1997). Inexplicably, Swift's attorney did not file a pre-trial motion to suppress his confession. It is not clear from court records whether Thames filed pre-trial motions to suppress his confession.

<sup>291</sup> People's Motion to Dismiss, *supra* note 280, at 16-17.

<sup>292</sup> Amended Petition, *supra* note 204, at 5.

<sup>293</sup> Notably, ASA Johnson did not testify to any statements made by Richardson, even though he did so at the pre-trial motion to suppress. As argued by Richardson's attorney pre-trial, the claim Johnson ever spoke to Richardson is put into doubt given that there are no contemporaneous police reports tendered from anyone documenting any statements. Indeed, the only detailed report of any law enforcement personnel speaking to Richardson is a memo drafted by ASA Valentini eight months after the alleged oral confession from Richardson. See Trial Proceedings at A5-23, *People v. Richardson*, No. 95-09676 (Cook Cnty. Cir. Ct. Jan. 5, 1998).

<sup>294</sup> Trial Proceedings at 1181-83, *People v. Richardson*, No. 95-09676 (Cook Cnty. Cir. Ct. Nov. 24, 1997).

<sup>295</sup> Trial Proceedings at K3-61, *People v. Swift*, No. 95-09676 (Cook Cnty. Cir. Ct. May 1, 1998).

<sup>296</sup> *Id.* at K5-6.

<sup>297</sup> *Id.* at K6.

<sup>298</sup> *Id.* at K7.

<sup>299</sup> *Id.*

<sup>300</sup> *Id.* at K8

family and took him to a different police station, where they started interrogating him about the murder.<sup>301</sup> According to Swift, police told him what to say and promised him, if he repeated the story to the State's Attorney, he could go home.<sup>302</sup> Swift did so believing if he did, he would go home.<sup>303</sup> Swift also testified that the police refused his requests to call his mother or an attorney.<sup>304</sup>

In considering each of the cases, Judge Sumner made some revealing comments. For one, he discounted much of the corroborating evidence. As to the shovel and the mop, he questioned whether these were instruments used in the offense: "I agree with the defense, and I don't think the State is going to argue that this could not possibly be, that there is no possibility that it is not the shovel."<sup>305</sup> And as to the mop handle, he said: "That might not be the mop handle."<sup>306</sup> Judge Sumner also noted that the confessions, which claimed that Glover was hit over the head with a shovel up to twelve times, were contradicted by the medical evidence, which "doesn't bear that out."<sup>307</sup> He also noted that despite the fact that the confessions indicated oral sex, "there's no evidence she was sexually assaulted in the mouth."<sup>308</sup> Additionally, Judge Sumner took the police to task for failing to electronically record the interrogation process, noting that "it is easy to record what a person has to say, and then there's no question that they said it."<sup>309</sup> But despite these misgivings, despite the fact that "[t]he State's whole case is a confession[,] and [w]ithout the confession, there is no case,"<sup>310</sup> Judge Sumner convicted each of them, essentially stating that he did not believe someone could falsely confess to such a brutal crime.<sup>311</sup>

Shortly after the convictions, the defendants asked for additional DNA testing.<sup>312</sup> Hubert Gerald had just been convicted, for the first time, of six sexual assaults and strangulation-murders of prostitutes in the Englewood area.<sup>313</sup> Further, news reports had come out about Gregory Clepper's confession to up to forty murders of women.<sup>314</sup> The defendants asked for DNA testing comparing the

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<sup>301</sup> Trial Proceedings at K9, *People v. Swift*, No. 95-09676 (Cook Cnty. Cir. Ct. May 1, 1998).

<sup>302</sup> *Id.* at K15.

<sup>303</sup> *Id.* at K18.

<sup>304</sup> *Id.* at K20.

<sup>305</sup> DNA Testing Motion, *supra* note 211, at Ex. 11; *see* Trial Proceedings at K77, *People v. Swift*, No. 95-09676 (Cook Cnty. Cir. Ct. May 1, 1998).

<sup>306</sup> *Id.*

<sup>307</sup> DNA Testing Motion, *supra* note 211, at Ex. 12; *see* Trial Proceedings at F203, *People v. Richardson & Saunders*, No. 95-09676 (Cook Cnty. Cir. Ct. Nov. 24, 1997).

<sup>308</sup> Trial Proceedings at F206, *People v. Richardson & Saunders*, No. 95-09676 (Cook Cnty. Cir. Ct. Nov. 24, 1997).

<sup>309</sup> *Id.* at F204.

<sup>310</sup> DNA Testing Motion, *supra* note 211, at Ex. 11; *see also* Trial Proceedings at K76, *People v. Swift*, No. 95-09676 (Cook Cnty. Cir. Ct. May 1, 1998).

<sup>311</sup> DNA Testing Motion, *supra* note 211, at Ex. 11-12.

<sup>312</sup> Trial Proceedings at H3-12, *People v. Saunders*, No. 95-09676 (Cook Cnty. Cir. Ct. Dec. 18, 1997).

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

semen sample to the DNA profiles of these men.<sup>315</sup> Over the State's objection, Judge Sumner granted the request as to Gerald's only, stating "[i]f there's a DNA link between Gerald's and Glover, then we're talking about something different altogether."<sup>316</sup> DNA testing on the semen, however, excluded Gerald's as the source, and the convictions remained intact.<sup>317</sup>

Following the convictions of Saunders and Richardson, Thames pled guilty in exchange for a thirty-year prison sentence.<sup>318</sup> The other three were given a chance to speak in allocution prior to the sentence imposed, and all asserted their innocence. Saunders was brief, stating, "I didn't do it" and asserted that he would wait for "justice to take its course."<sup>319</sup> Richardson also spoke just briefly, stating, "I didn't have nothing to do with it."<sup>320</sup> Swift spoke slightly longer, but began by asserting: "I'm here to let the family know, the Judge, my lawyer, and the State, I didn't do this."<sup>321</sup> Ultimately, each was sentenced to between thirty and forty years in prison.<sup>322</sup>

#### *D. The Fight to Re-test the DNA Evidence*

Over the next decade, these four defendants were largely forgotten by the criminal justice system. All were appointed public defenders for their appeals, yet their convictions were all repeatedly affirmed.<sup>323</sup> Vincent Thames made repeated *pro se* attempts to withdraw his guilty plea and asked several times for courts to grant him further DNA testing, but those pleas were all rejected.<sup>324</sup>

In 2009, however, Steven A. Drizin and Joshua Tepfer at the Center on Wrongful Convictions of Youth ("CWCY") began investigating the case. Drizin became interested in the case, in part, because of what he had learned about the 1990s South Side serial killers, and, in part, his history with Detective James Cassidy, who was the lead detective in this case. Drizin had come to know Detective Cassidy from his litigation in the case of A.M., an eleven-year-old boy who was interrogated by Detective Cassidy until he confessed to the murder of an eighty-three-year-old woman in 1994.<sup>325</sup> That confession, however, was suppressed as involuntary by the Seventh Circuit Court of Appeals, who took

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<sup>315</sup> *Id.*

<sup>316</sup> Trial Proceedings at A11-13, *People v. Richardson*, No. 95-09676 (Cook Cnty. Cir. Ct. Dec. 18, 1997); *see also* Reply to People's Motion to Dismiss Petitioner's Request for Post-Conviction DNA Testing Pursuant to 725 ILL. COMP. STAT. 5/116-3 at 8, Ex. A, *People v. Swift*, No. 95-09676 (Cook Cnty. Cir. Ct. Feb. 24, 2011) [hereinafter Reply to DNA Motion].

<sup>317</sup> Reply to DNA Motion, *supra* note 316, at 8.

<sup>318</sup> DNA Testing Motion, *supra* note 211, at 7.

<sup>319</sup> *Id.*

<sup>320</sup> Trial Proceedings at J17, *People v. Richardson*, No. 95-09676 (Cook Cnty. Cir. Ct. Jan. 27, 1998).

<sup>321</sup> DNA Testing Motion, *supra* note 211, at 7.

<sup>322</sup> *Id.*

<sup>323</sup> *Id.* at 8.

<sup>324</sup> *Id.* at Ex. 13; *see* *People v. Thames*, No. 1-09-0528 (Ill. App. Feb. 11, 2010) (unpublished order).

<sup>325</sup> *See* *A.M. v. Butler*, 360 F.3d 787 (7th Cir. 2004).

Detective Cassidy to task for relentlessly accusing young A.M. of lying and for intentionally shielding A.M. from his mother during the interrogation.<sup>326</sup> Detective Cassidy was also the interrogating officer who took the confessions of the seven- and eight-year old boys in the infamous rape and murder of eleven-year-old Ryan Harris in 1998, confessions that were later proven false when seminal DNA recovered from the scene matched to known pedophile Floyd Durr.<sup>327</sup>

After interviewing each of the charged defendants, including Jerry Fincher, Drizin and Tepfer came to believe that further DNA testing was absolutely warranted in this case. Since the previous testing in this case, the local and national CODIS databases had come into existence, which provided the ability to upload the unknown DNA profile into the database to see if it could be matched to another person in the database.<sup>328</sup> The CWCY agreed to represent Swift, and they recruited Peter Neufeld and Craig Cooley from the Innocence Project at Cardozo Law School to represent Saunders.

At the outset, in August 2010, the Petitioners requested the Cook County State's Attorney's Office to agree to upload the unknown male DNA profile from the vaginal swab of Ms. Glover. In a nineteen-page letter that included nineteen separate exhibits, counsel for the Petitioners explained that they suspected the swab could come from one of the previously unknown serial killers who were preying on women in Englewood, and such a match would conclusively prove the four convicted teenagers were all innocent.<sup>329</sup> Counsel outlined how they believed they tracked all of the relevant physical evidence and demonstrated how it was presumptively uncontaminated and available.<sup>330</sup> Counsel also highlighted the many problems in the confessions themselves, explaining why they believed they could be false.<sup>331</sup> After several months of reviewing the request, the Cook County State's Attorney's Office responded that it would not agree to the request for further DNA testing.

On December 3, 2010, counsel for Petitioners filed a lengthy motion for DNA testing in the Circuit Court of Cook County, complete with forty-nine exhibits, in front of Presiding Cook County Criminal Court Judge Paul Biebel.<sup>332</sup> This motion essentially mirrored the arguments in the letter sent to the State's

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<sup>326</sup> See *id.*

<sup>327</sup> See Kotlowitz, *supra* note 9. Cassidy was also involved in at least three other likely false confessions: the case of a 13-year-old confessing to killing Jimmie Haynes, as well as the cases of two adults—Mary Braggs, a 52-year-old woman with an IQ of 54 and Steven Hudson, who alleged Cassidy and his partner physically assaulted him during an interrogation. After the two boys in the Harris murder filed lawsuits, Cassidy was reassigned to the Cook County Medical Examiner's office. See Ken Armstrong, Maurice Possley & Steve Mills, *Officers Ignore Laws Set Up to Guard Kids: Detectives Grill Minors Without Juvenile Officers, Parents Present*, CHI. TRIB. (Dec. 18, 2001), [http://articles.chicagotribune.com/2001-12-18/news/0112180243\\_1\\_chicago-police-minors-confessions](http://articles.chicagotribune.com/2001-12-18/news/0112180243_1_chicago-police-minors-confessions).

<sup>328</sup> DNA Testing Motion, *supra* note 211, at 16-17.

<sup>329</sup> Letter from Craig Cooley to Mark Ertler (Aug. 10, 2010) (on file with authors).

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> DNA Testing Motion, *supra* note 211.

Attorney's Office, highlighting that the DNA evidence was available, and presumptively uncontaminated.<sup>333</sup> Petitioners explained, in detail, all that had been learned about South Side serial killers in the 1990s, and how the objective facts of this case mirror the *modus operandi* of many of those killers but that the unmatched DNA in this case had never been compared to most of them.

True to its word, however, the State's Attorney's Office objected to the motion on January 19, 2011.<sup>334</sup> The State maintained that because the Petitioners were convicted despite DNA exclusions, a "hit" to someone in the CODIS database would provide no relevant information.<sup>335</sup> Acknowledging the new information known about serial killers on the South Side, the State still maintained that "[n]o possible result of DNA testing now holds the potential to exonerate the defendant[s]."<sup>336</sup> A hit to another offender, even a serial killer would be "the proverbial 'red herring.'"<sup>337</sup> On February 24, 2011, Petitioners Swift and Saunders, through counsel, challenged this argument in a written motion.<sup>338</sup> That same day, Tara Thompson from the Exoneration Project at the University of Chicago Law School, on behalf of Harold Richardson, joined the request for DNA testing.<sup>339</sup>

The case was set to be heard on March 3, 2011 in front of Judge Biebel. On that day, however, the State's Attorney's Office withdrew its previous opposition to the request for DNA testing. Several weeks later, after the parties agreed to a testing protocol, Judge Biebel ordered Orchid Cellmark Diagnostics to conduct STR DNA testing on the vaginal swab and for the Illinois State Police to upload any DNA profile obtained into CODIS.<sup>340</sup> On May 13, 2011, all parties learned that DNA testing had been successful, and the single male DNA profile obtained from the swab belonged to Johnny Douglas.

#### *E. Another South Side Serial Killer?*

Johnny Douglas, as you may recall, was present and interviewed by Detective Cassidy outside the dumpster at 7:00 a.m. the morning Nina Glover's body was found. According to police reports, when interviewed, Douglas stated that he "knew nothing."<sup>341</sup>

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<sup>333</sup> *Id.*

<sup>334</sup> People's Motion to Dismiss, *supra* note 280.

<sup>335</sup> *Id.* at 4-5.

<sup>336</sup> *Id.* at 5.

<sup>337</sup> *Id.*

<sup>338</sup> Reply to DNA Motion, *supra* note 316.

<sup>339</sup> Motion to Join Co-Defendants' Motion for DNA Testing, *People v. Harold Richardson*, No. 95-09676 (Cook Cnty. Cir. Ct. Feb. 24, 2011).

<sup>340</sup> Agreed Order For Post-Conviction DNA Testing Pursuant to 725 ILL. COMP. STAT. 5/116-3, *People v. Swift*, No. 95-09676 (Cook Cnty. Cir. Ct. Mar. 29, 2011).

<sup>341</sup> Amended Petition, *supra* note 204, at Ex. 63.

By November 1994, however, Johnny Douglas was very familiar to Chicago law enforcement: the thirty-two-year-old Douglas had amassed a whopping sixty arrests in the city, resulting in twenty-seven convictions.<sup>342</sup> Douglas had also served time for possession of a weapon, burglaries, batteries, and resisting a peace officer, and by that time, he had twenty convictions on his record for theft.<sup>343</sup>

Most significantly, however, by this time, Douglas demonstrated a pattern and practice of violently assaulting sex workers. According to court documents, by November 1994, Douglas had been reported to be involved in four different violent physical and sexual assaults.<sup>344</sup> The first occurred on March 5, 1993, when Chicago Police Officers responded to a call and found Douglas laying on top of Debra Gibson with his mouth on her right breast.<sup>345</sup> Gibson's pants were off and her shirt was pushed up, exposing her breasts.<sup>346</sup> When confronted, Douglas told officers that Gibson agreed to have sex with him for ten dollars, but then demanded more money.<sup>347</sup> They started fighting, and Gibson reported that Douglas hit her on the head with a rock.<sup>348</sup>

Exactly two months later, on May 5, 1993, Brena Hillie went to an abandoned building with Douglas to smoke cocaine.<sup>349</sup> Once inside, Hillie reported to law enforcement that Douglas forced her to disrobe and perform oral sex on him.<sup>350</sup> When Hillie tried to run, Douglas beat her with a stick.<sup>351</sup> Hillie fought back, picking up a broken piece of glass and cutting Douglas before she escaped.<sup>352</sup> Douglas, too, acknowledged that he fought with Hillie after she backed out of an agreement to perform oral sex on him in exchange for cocaine.<sup>353</sup>

A year later, on July 10, 1994, Douglas took Caprice Bramlett to his residence at 300 W. Garfield Blvd., about one-and-a-half miles due west from where Glover's body was found.<sup>354</sup> Bramlett reported that once inside the apartment, Douglas choked her and raped her twice.<sup>355</sup> Douglas was convicted of aggravated sexual assault based on this incident and sentenced to six months in prison.<sup>356</sup>

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<sup>342</sup> *Id.* at Ex. 51-54.

<sup>343</sup> *Id.*

<sup>344</sup> *Id.* at Ex. 56; *see* Motion to Use Proof of Other Crimes Evidence, *People v. John Douglas*, No. 02-9163 (Cook Cnty. Cir. Ct. Feb. 4, 2005) [hereinafter *Douglas Other Crimes Motion*].

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> *Id.* at 2.

<sup>348</sup> *Id.*

<sup>349</sup> *Id.*

<sup>350</sup> Amended Petition, *supra* note 204, at 56.

<sup>351</sup> *Id.*

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*

<sup>356</sup> Per Illinois law, which gives day-for-day credit for time served on most offenses, Douglas likely served no more than three months of that prison term, meaning he was likely out by October and

And exactly seventeen days before Glover was found murdered, on October 21, 1994, Hazel Speight visited Douglas at his apartment.<sup>357</sup> At 9:05 p.m., Douglas grabbed Speight and told her to undress.<sup>358</sup> Douglas was attempting to forcibly sexually penetrate Speight when somebody came to the door.<sup>359</sup> Speight quickly dressed and left the apartment.<sup>360</sup>

All of this information was known to law enforcement at the time they encountered Douglas standing outside the dumpster, at 7:00 a.m., when Glover's body was retrieved. But, by May 13, 2011—the time Douglas's DNA had been connected to the unknown semen recovered from Glover—even more information about Douglas was available: it was also known that Douglas was a convicted murderer. On April 11, 1997, Johnny Douglas murdered Gytonne Marsh, a prostitute with whom Douglas admitted to having sex in exchange for cocaine.<sup>361</sup> Douglas confessed to choking her to death while they had sex.<sup>362</sup> Marsh's mostly nude body was found on the floor of a garage near 71<sup>st</sup> and Rockwell.<sup>363</sup> She had abrasions and bruises to her face, neck, back, buttocks, fingers, forearms, and knees.<sup>364</sup> According to court documents and news reports, Douglas's DNA was found on the victim.<sup>365</sup> In April 2001, Douglas pled guilty to this murder and was sentenced to twenty years' imprisonment.<sup>366</sup>

Soon after this guilty plea, Douglas was charged with a cold case: the 1995 rape and murder of Elaine Martin, as well as the murder of Martin's unborn child.<sup>367</sup> On June 17, 1995, seven months after Nina Glover was murdered, Martin—who had also been engaged in prostitution at the time of her death—was found strangled at the altar of the Clybourn Gospel Church at 1307 N. Clybourn Avenue.<sup>368</sup> Vaginal and rectal swabs taken from Martin matched Douglas, and the State, based on this evidence, initially sought the death penalty against Douglas.<sup>369</sup>

It was during the pendency of these proceedings that the State sought to introduce evidence of Douglas's various other crimes to demonstrate Douglas's intent, knowledge, motive, and *modus operandi*.<sup>370</sup> Indeed, the State sought admission of evidence of the Marsh murder as well as the four other offenses

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therefore on the street in November 1994. See 730 ILL. COMP. STAT. 5/3-6-3(a)(2.1).

<sup>357</sup> Douglas Other Crimes Motion, *supra* note 344.

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> *Id.*

<sup>361</sup> Amended Petition, *supra* note 204, at 10.

<sup>362</sup> *Id.*

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> *Id.* at 11.

<sup>367</sup> *Id.* at 11.

<sup>368</sup> *Id.*

<sup>369</sup> *Id.* The State later withdrew its request for the death penalty. *Id.*

<sup>370</sup> *Id.*

against Gibson, Hillie, Bramlett, and Speight outlined above.<sup>371</sup> The State, moreover, highlighted a fifth assault, the September 28, 1997 sexual assault of Catie Oakes: in that case, Douglas took Oakes to his parents' garage to smoke cocaine, where he then forced her to perform oral sex and to have intercourse.<sup>372</sup> Douglas left his DNA on Oakes' clothing.<sup>373</sup> The State also pointed out in its written motion that, when Douglas was confronted with the five other women he beat and sexually assaulted, he admitted doing so, but said that "nobody believed them because they were 'just whores.'"<sup>374</sup>

The Cook County State's Attorney's Office maintained that all of Douglas's prior crimes were admissible in their prosecution of the 1995 murder of Martin, citing to the similarities in the crimes.<sup>375</sup> The State noted that three of the crimes involved strangulation—Martin and Marsh murders, and the assault of Bramlett.<sup>376</sup> It noted that murders and assaults involved exchanges of drugs for sex.<sup>377</sup> And it further noted that several of the victims were physically assaulted.<sup>378</sup> The court, accepting these arguments, allowed admission of much of this evidence into the case.<sup>379</sup> Somewhat incredibly, Douglas was later acquitted of the murder of Martin.<sup>380</sup>

Shortly after he was released from serving his sentence on the Marsh murder, on June 14, 2008, Douglas was shot to death.<sup>381</sup> By the time of his death, Douglas had amassed eighty-three arrests and thirty-eight convictions in Illinois.<sup>382</sup> The Cook County State's Attorney charged a man named Minosa Winters with first-degree murder in Douglas's death.<sup>383</sup> Winters, however, claimed self-defense, and he sought admission at trial of Douglas's other crimes and reputation for violence in support of his defense.<sup>384</sup> Winters' motion to admit this evidence was granted as to both the 1997 Marsh murder, as well as the 1995 Martin murder, despite Douglas's acquittal.<sup>385</sup> Further, during this prosecution, the Cook County State's Attorney's Office agreed to several stipulations that were entered into evidence.

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<sup>371</sup> *Id.*

<sup>372</sup> Douglas Other Crimes Motion, *supra* note 344, at 3.

<sup>373</sup> *Id.*

<sup>374</sup> *Id.* at 3-4.

<sup>375</sup> *Id.*

<sup>376</sup> *Id.* at 5.

<sup>377</sup> *Id.* at 6.

<sup>378</sup> Douglas Other Crimes Motion, *supra* note 344, at 6.

<sup>379</sup> Amended Petition, *supra* note 204, at 14.

<sup>380</sup> *Id.* at 12.

<sup>381</sup> *Id.* at 15.

<sup>382</sup> *Id.* at 8.

<sup>383</sup> *Id.* at 15.

<sup>384</sup> *Id.* at 15, Ex. 61; see Motion in Limine to Allow Other Crimes and Reputation Evidence As Provided for In *People v. Lynch*, *People v. Winters*, No. 08-14478 (Cook Cnty. Cir. Ct. Nov. 8, 2009).

<sup>385</sup> Amended Petition, *supra* note 204, at 16. Evidence of prior bad acts is admissible even where the prior bad act did not result in a conviction. See, e.g., *Dowling v. United States*, 493 U.S. 342, 349 (1990); *People v. Wilson*, 214 Ill.2d 127, 128 (2005).

Specifically, the State agreed that three detectives would testify that, during their investigation into the murders of Marsh and Martin, they learned of Douglas's reputation in the community for violence.<sup>386</sup> Further, it was stipulated that Douglas's nickname was "Maniac" and that he was "a major bully in the area who had violently attached [*sic*] other people."<sup>387</sup>

By this time, it was abundantly clear to counsel for Petitioners that, by any objective measure, a reasonable trier of fact would have significant doubt about the guilt of the convicted defendants and would believe that Johnny Douglas, who had no connection to any of the teenagers half his age, murdered Nina Glover. In the attorneys' minds, the DNA did not point to one of the South Side serial killers it previously suspected may have been responsible; rather, it identified a violent serial killer that Petitioners had not known about.

Armed with this new evidence, the State immediately decided it wanted to conduct further DNA testing on physical evidence in this case, something all the Petitioners supported. The State focused on the human blood found in Petitioner Thames' basement, which was the purported crime scene according to the confessions. It was soon learned that no DNA testing could be done on the stains on the television or walls, but some DNA results were obtained from one of the stains of human blood on the drapes. That testing revealed that the blood belonged to a male,<sup>388</sup> and thereby it was not Nina Glover's, as originally postulated by the State.

Meanwhile, on July 25, 2011, in a written motion asking the court to vacate the convictions of Swift, Saunders, Richardson, and Thames,<sup>389</sup> the Petitioners presented this mountain of evidence to the court.<sup>390</sup> They pointed to the new DNA evidence, Douglas's pattern and practice of engaging the services of prostitutes and then violently attacking them, the State's own motions and stipulations from previous cases outlining Douglas's violent past, the fact that Douglas was present when Glover's body was taken from the dumpster at 7:00 a.m. on November 7, 1994, and that he claimed to authorities he "knew nothing."<sup>391</sup>

On September 14, 2011, the State filed a motion to dismiss Petitioners claim to relief, arguing that the new evidence did not even require the court to conduct an evidentiary hearing and was insufficient as a matter of law.<sup>392</sup> Repeating its argument from its previous objection to testing the DNA evidence at all, and mirroring its argument in the Dixmoor case, the State claimed, because of the DNA

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<sup>386</sup> *Id.* at 16, Ex. 62.

<sup>387</sup> *Id.*

<sup>388</sup> Joint Opposition, *supra* note 281, at 2.

<sup>389</sup> By this time, Stuart Chanen of the Valorem Law Group had signed on as counsel for Vincent Thames.

<sup>390</sup> Amended Petition, *supra* note 204.

<sup>391</sup> *See generally id.*

<sup>392</sup> People's Motion to Dismiss, *supra* note 280, at 20.

exclusions at trial, the results were neither new nor relevant.<sup>393</sup> The “hit” to Johnny Douglas was nothing more than a “name associated with [the previously unknown] profile” and Douglas was no more than “a convenient scapegoat for petitioners.”<sup>394</sup> The State focused on the fact that Swift led police to the mop and broom, and that “cannot be a mere coincidence.”<sup>395</sup> Further, despite their successful arguments to the contrary when prosecuting Douglas for murder a second time, the State contended that the evidence of Douglas’s other crimes would not be admissible at a new trial against the Petitioners.<sup>396</sup> Finally, the State separately argued that Thames was procedurally barred from relief due to his guilty plea.<sup>397</sup>

In a reply filed on September 28, 2011, the Petitioners repeatedly stressed that they overwhelmingly met the legal standard, which did not require them to prove their innocence but merely to demonstrate that the likely result on retrial would be an acquittal.<sup>398</sup> As to the State’s claim that the mop and shovel were corroborating evidence, Petitioners pointed to the tarnished interrogation record of many of the police officers involved in this case. In addition to lead Detective James Cassidy’s history outlined previously in this Article, Detectives Coughlin, Foley, and Boudreau, all of whom purportedly were involved in Richardson’s oral confession, as well as others, had been alleged to have coerced many involuntary and false confessions over their careers.<sup>399</sup> Boudreau and Foley, in particular, had been alleged to have worked in partnership in many cases involving misconduct during interrogations, and there are no fewer than twenty-four examples of allegations against them that occurred between 1991 and 1995, within the exact same time period as the confessions in this case.<sup>400</sup> Indeed, Boudreau’s tarnished reputation had been the subject of a Chicago Tribune investigation.<sup>401</sup> Given this history, it is not surprising that they may have fabricated evidence in this case. Indeed, there was no evidence that the mop and shovel were ever involved in this case at all, and Judge Sumner doubted that very theory.<sup>402</sup>

On October 10, 2011, when the court was otherwise closed for Columbus Day, Chief Judge Biebel heard three hours of oral argument between the parties. Five weeks later, on November 16, 2011, Judge Biebel vacated the convictions of

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<sup>393</sup> *Id.* at 16.

<sup>394</sup> *Id.* at 16, 19.

<sup>395</sup> *Id.* at 17.

<sup>396</sup> *Id.* at 19.

<sup>397</sup> *Id.* at 14-15.

<sup>398</sup> Joint Opposition, *supra* note 281.

<sup>399</sup> *Id.* at 14-16.

<sup>400</sup> *Id.* at 15-16; Ex. 3.

<sup>401</sup> See Maurice Possley, Steve Mills and Ken Armstrong, *Veteran Detective’s Murder Cases Unravel*, CHI. TRIB. (Dec. 17, 2001), <http://www.chicagotribune.com/news/watchdog/chi-011217confession,0,2469824.story>.

<sup>402</sup> See discussion *supra* note 293.

the Englewood Four.<sup>403</sup> The court was “given pause by the assertion that four adolescent males could engage in unprotected sexual intercourse without leaving any semen in the victim.”<sup>404</sup> Further, citing Judge Sumner’s statement that, “[i]f there’s a DNA match . . . then we’re talking about something different altogether,” Judge Biebel stated that “it is clear to this Court that this new evidence is material, and not cumulative, and it would, by preponderance of the evidence, probably change the result in a new trial.”<sup>405</sup> With that, the four Englewood Petitioners, three of whom were still in the custody of the Illinois Department of Corrections, were set free on bond.

On January 17, 2012, the Englewood Four’s long nightmare finally came to an end. In a court hearing that took no more than a minute, the Cook County State’s Attorney announced that after conducting an “exhaustive review of all the information and the evidence,” the State could not meet their burden of proof.<sup>406</sup> In Alvarez’s statement, she never proclaimed the Englewood Four innocent.<sup>407</sup> Indeed, previously, the Office had repeatedly publicly denied that the DNA evidence proved the men innocent: “DNA evidence is not always the ‘silver bullet’ that it is sometimes perceived to be,” stated State’s Attorney Alvarez to the New York Times.<sup>408</sup> A spokeswoman for the Office also stated that: “There is more to these cases than what has been reported in the media or by lawyers for the defendants.”<sup>409</sup> In a more recent interview on Chicago Public Radio, Ms. Alvarez stated that the DNA hit to Johnny Douglas did not establish his guilt, although she acknowledged the State could not meet its burden against the Englewood defendants.<sup>410</sup>

#### IV. A SEA CHANGE IN THE COOK COUNTY STATE’S ATTORNEY’S POSITION ON WRONGFUL CONVICTIONS AND FALSE CONFESSIONS

##### *A. False Confessions and the Wrongful Conviction of Youth*

The national problem of wrongful convictions is well documented. Since 1989 and the advent of DNA technology, including the Dixmoor and Englewood

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<sup>403</sup> See Order, *People v. Thames*, No. 95 CR 9676 (Cook Cnty. Cir. Ct. Nov. 16, 2011).

<sup>404</sup> *Id.* at 8.

<sup>405</sup> *Id.* at 8-9.

<sup>406</sup> Steve Mills & Jason Meisner, *4 Won’t Face Retrial for ‘94 Killing*, CHI. TRIB. (Jan. 18, 2012), [http://articles.chicagotribune.com/2012-01-18/news/ct-met-englewood-four-hearing-20120118\\_1\\_joshua-tepfer-dna-evidence-dna-testing](http://articles.chicagotribune.com/2012-01-18/news/ct-met-englewood-four-hearing-20120118_1_joshua-tepfer-dna-evidence-dna-testing).

<sup>407</sup> See *id.*

<sup>408</sup> Erica Goode, *When DNA Evidence Suggests ‘Innocent,’ Some Prosecutors Cling to ‘Maybe,’* N.Y. TIMES, Nov. 16, 2001, at A19.

<sup>409</sup> Laura Washington, *Drop retrial for Englewood Four*, CHI. SUN-TIMES (Nov. 30, 2011), <http://www.suntimes.com/news/washington/9061510-452/drop-retrial-for-englewood-four.html>.

<sup>410</sup> See *Cook County State’s Attorney Anita Alvarez discusses wrongful convictions*, WBEZ 91.5 (Jan. 26, 2012), <http://www.wbez.org/episode-segments/2012-01-26/cook-county-states-attorney-anita-alvarez-discusses-wrongful-convictions>.

defendants, there have been 289 individuals exonerated nationwide.<sup>411</sup> Scholars have repeatedly pointed out, however, that this number no doubt represents just the tip of the iceberg: it accounts for only those relatively rare cases where biological material is available to test for DNA.<sup>412</sup> A study published in 2004 documented 340 DNA and non-DNA exonerations over the preceding fifteen-year period.<sup>413</sup> One recent report found that a “conservative estimate is that 1 percent of the US prison population, approximately 20,000 people, are falsely convicted.”<sup>414</sup>

It is equally well documented that one of the leading factors contributing to wrongful convictions is false confessions. Of the first 250 DNA exonerations, forty, or sixteen percent involved false confessions.<sup>415</sup> The Innocence Project now reports false confessions contributed to nearly thirty percent of the 289 DNA exonerations.<sup>416</sup> Teenagers and children, however, are uniquely susceptible to this phenomenon: one study, examining a dataset of 103 wrongful convictions of youth nationwide, found that over thirty-one percent of those exonerees falsely confessed.<sup>417</sup> The U.S. Supreme Court, of late, has begun acknowledging the gravity of this problem: in 2009, in *Corley v. United States*,<sup>418</sup> the Court noted the “mounting empirical evidence that [the] pressures [of police interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed.” And earlier this year, the Court recognized that the problem is “all the more acute—when the subject of custodial interrogation is a juvenile.”<sup>419</sup>

How and why individuals, and especially juveniles, come to falsely confess is the subject of much legal and social science scholarship and outside the scope of

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<sup>411</sup> See INNOCENCE PROJECT, [http://www.innocenceproject.org/Content/Facts\\_on\\_PostConviction\\_DNA\\_Exonerations.php](http://www.innocenceproject.org/Content/Facts_on_PostConviction_DNA_Exonerations.php) (last visited Dec. 14, 2011).

<sup>412</sup> See Keith A. Findley, *Learning from Our Mistakes: A Criminal Justice Commission to Study Wrongful Convictions*, 38 CAL. W. L. REV. 333, 337 (2002) (explaining that “DNA is no panacea. While DNA can and will prevent the mistaken conviction of some wrongly identified suspects, it will not prevent the errors that infect the system in the vast majority of cases where there is no biological evidence left behind by the perpetrator. Such biological evidence rarely exists in the ordinary robbery, shooting, drug transaction or forgery. Moreover, biological evidence is useless where issues of consent or intent, rather than identity, are in dispute. Only in those relatively few cases with dispositive biological evidence will DNA prevent miscarriages of justice. DNA, therefore, presents not a solution, but an opportunity and a challenge.”).

<sup>413</sup> Samuel R. Gross et al., *Exonerations in the United States, 1989 through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 531 (2005).

<sup>414</sup> Beth Schwartzapfel & Hannah Levintova, *How Many Innocent People Are in Prison?*, MOTHER JONES (Dec. 12, 2011), <http://motherjones.com/politics/2011/12/innocent-people-us-prisons>.

<sup>415</sup> See BRANDON L. GARRETT, *CONVICTING THE INNOCENT* 18 (Harvard University Press, 2011).

<sup>416</sup> See Internal Report, *Latest Exoneree Statistics*, Innocence Project (on file with authors).

<sup>417</sup> See Joshua A. Tepfer et al., *Arresting Development: Convictions of Innocent Youth*, 62 RUTGERS L. REV. 887, 904 (2010); see also Gross, et al., *supra* note 413, at 523-24 (finding that the youth in his study were almost three times more likely to falsely confess); Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 945 (2004) (studying 125 proven false confessions in the United States and concluding both that 63% of false confessors were under the age of twenty-five and that 32% were under the age of eighteen).

<sup>418</sup> 129 S. Ct. 1558 (2009) (citing Drizin & Leo, *supra* note 417, at 906-07).

<sup>419</sup> *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011) (citing Brief for Center on Wrongful Convictions of Youth et al. as Amici Curiae 21–22 (collecting empirical studies that “illustrate the heightened risk of false confessions from youth”)).

this Article.<sup>420</sup> Needless to say, however, it has become universally accepted that individuals falsely confess with some frequency during inherently coercive police interrogations. These confessions are often startlingly detailed, the result of mishandled police interrogations that provide suspects with crime details allowing them to create a false, yet detailed, narrative of a crime.<sup>421</sup>

*B. Prosecutorial Response to Post-Conviction Exculpatory DNA Results*

Although there may be more room to debate the validity of claims of wrongful conviction and false confessions in non-DNA cases, the Dixmoor and Englewood defendants were lucky enough to have the gold standard of DNA evidence available to prove their innocence. What is more, these cases are in the category of a more powerful subset of post-conviction DNA results, as both cases involve a DNA “hit” to the true perpetrator of the offense. According to University of Virginia Law Professor Brandon Garrett’s research, just forty-five percent of the first 250 DNA exonerations involved a “hit,” meaning that in the other fifty-five percent of the cases, a mere DNA exclusion was enough to demonstrate a wrongful conviction.<sup>422</sup> Put in the context of the Dixmoor and Englewood cases, where there were DNA exclusions *prior to* trial, this statistic is mindblowing: the pre-trial DNA exclusions from the 1990s alone mirror those of more than half of the *post-conviction* DNA testing results that proved *innocence* from around the country. The Dixmoor Five and the Englewood Four, however, were found guilty beyond a reasonable doubt despite DNA exclusions.

Garrett gathered data about the prosecution’s response to post-conviction DNA results in 194 of the first 250 cases. Overwhelmingly—indeed eighty-eight percent of the time or in 171 of the cases—when prosecutors were confronted with exculpatory DNA results post-conviction, they joined defense motions to vacate the convictions.<sup>423</sup> Moreover, in the twenty-three cases where prosecutors opposed the request, only seven of those cases involved affirmative DNA hits, as opposed to mere DNA exclusions.<sup>424</sup> In short, there were only seven cases nationwide, a mere four percent, where prosecutors opposed vacating a conviction where post-

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<sup>420</sup> See, e.g., Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely, Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979 (1997); Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 3 (2010).

<sup>421</sup> See GARRETT, *supra* note 415, at 20, 28 (explaining that 38 of the 40 false confessions in the DNA dataset were highly detailed, “where detectives claimed that the suspects volunteered key details about the crime, including facts that matched the crime scene evidence or scientific evidence, or accounts by the victim. . . . We now know that in many of these cases, police contaminated the confessions by disclosing facts to the suspects.”); see also *Warney v. New York*, 16 N.Y.3d 438 (2011) (Smith, J., concurring) (explaining that Warney learned the facts included in his false confession from the police).

<sup>422</sup> See GARRETT, *supra* note 415, at 284.

<sup>423</sup> Amended Petition, *supra* note 204, at 3 (citing *Judging Innocence*, [http://www.law.virginia.edu/pdf/faculty/garrett/judging\\_innocence/exonerees\\_postconviction\\_dna\\_testing.pdf](http://www.law.virginia.edu/pdf/faculty/garrett/judging_innocence/exonerees_postconviction_dna_testing.pdf) (last visited Dec. 14, 2011)).

<sup>424</sup> See *id.*

conviction DNA results hit to an alternative suspect.<sup>425</sup> Significantly, according to Innocence Project co-founder Peter Neufeld, there is not a single example in the country where a court refused to vacate a conviction after a DNA hit.<sup>426</sup>

*C. The State's Attorney's Response in Dixmoor and Englewood: Milan's Article Revisited*

Given this national landscape, Cook County State's Attorney Anita Alvarez's response to the Dixmoor and Englewood cases deserves serious scrutiny. Although, after eight months of legal wrangling, the State's Attorney did agree to drop the charges in the Dixmoor case, she did so only after repeatedly arguing that the DNA results matching the semen from the young victim to an adult convicted rapist were neither new nor relevant; indeed, the Office thought so little of the evidence that it sought dismissal "as a matter of law," and maintained that the court did not even need to hold a hearing to evaluate the facts. Until recently, the Office invoked procedural hurdles, even successfully getting Robert Veal's case thrown out on the grounds that his claim was not timely. And even after Ms. Alvarez agreed to dismiss the charges, she publicly doubted their innocence, stating "I don't believe we can say for sure that they're innocent."<sup>427</sup> In the Englewood case, despite the DNA hit to a serial killer standing at the crime scene who had a pattern and practice of preying on women just like Nina Glover, the State's Attorney's Office opposed all forms of relief, maintaining that the confessions trump the DNA evidence and ridiculing the defendants' argument by calling Johnny Douglas "a convenient scapegoat." Even when finally dropping the charges, the Office fell far short of proclaiming the Englewood Four innocent, merely saying it did not believe it could meet its burden of proof against the four men at a retrial.

From the perspective of these authors, who litigate often in Cook County, Ms. Alvarez's position is particularly troubling in that it demonstrates a serious step backwards in the Office's concern about wrongful convictions and false confessions under this administration. The contrast is stark when compared to the former State's Attorney Dick Devine's relatively quick response to the miscarriages of justice in the Roscetti case and the Corethian Bell false confession, and the prosecutorial trainings led by Devine's top assistant Bob Milan instituted after these injustices were rectified. As to the Roscetti case specifically, it is particularly telling that, in that high profile and heated case, Milan and Devine dropped the charges after the DNA exclusion, before there was even a "hit" to the true assailants.

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<sup>425</sup> *See id.*

<sup>426</sup> Transcript of Proceedings, *People v. Swift*, No. 95-09676 (Cook Cnty. Cir. Ct. Oct. 10, 2011).

<sup>427</sup> Steve Mills & Andy Grimm, *Prosecutors Vacate Charges for 5 Who Served Years for Rape, Killing of 14-year-old Girl*, CHI. TRIB. (Nov. 4, 2011), [http://articles.chicagotribune.com/2011-11-04/news/ct-met-dna-murder-rape-20111104\\_1\\_dixmoor-case-dna-tests-dna-evidence](http://articles.chicagotribune.com/2011-11-04/news/ct-met-dna-murder-rape-20111104_1_dixmoor-case-dna-tests-dna-evidence).

What's more, in revisiting Milan's article discussed in Part I of this Article, the Dixmoor and Englewood cases are littered with the warning signs Milan discusses when evaluating new evidence of innocence, and Ms. Alvarez's handling of the matters flatly contradicts Milan's advice for the need to restore public confidence in the prosecutor's office. Consider some of the warnings articulated by Milan when evaluating whether a conviction was in error.

### 1. Beware of the Nexus Between Crime and Arrest

Milan explains that it is the prosecutor's duty to "examine and test the nexus between the crime and arrest" and carefully scrutinize what led the police to the suspect.<sup>428</sup> The Dixmoor investigation, which went nowhere for almost a year, got its alleged big break when a fifteen-year-old classmate of some of the defendants, Keno Barnes, purportedly told the police that on October 19, 1992, Jonathan Barr related to him that the day Cateresa Matthews went missing, he saw her get in a car with Robert Taylor and Robert Lee Veal. This statement from Barr to Barnes was allegedly witnessed by three other individuals: Obda Johnson, Vincent Hayward, and Tiny Hayward. Neither these three individuals, nor Barnes himself, ever testified to these facts. On June 23, 2010, however, Barnes was located by attorneys for Robert Taylor, during which time he was shown a police report of this statement and denied ever making it. He also denied ever having this conversation with Jonathan Barr, and he claimed that he had never heard of anyone named Tiny Hayward.

Of course, there are reasons why Barnes may have lied in his recent statement discounting his involvement: one easy interpretation is he does not want people in the community to know that he "snitched." However, in light of the DNA results in this case, Barnes' more recent claim that he never made the statement—which he made well before the DNA results were ever available—becomes far more plausible. Given the lack of corroborating evidence for his original statement, the claim that Barnes named the three boys is put into some serious doubt. Finally, the fact that the severely-limited, fifteen-year-old Veal—the first to confess—recanted his testimony and confession well before the DNA results were known, and the nexus between the crime and arrest of the Dixmoor defendants is severely damaged.

The Englewood nexus also is rife with problems. The fact of the matter is, given that the case relied entirely on the confessions, the investigating detectives' credibility about the nature of the unrecorded interrogations was plainly at issue. When confronted with the recent DNA results connecting Douglas to the case, prosecutors were armed with far more information about the detectives involved than they ever were at the time of the trial. Since trial, it has been proven that Detective James Cassidy, who orchestrated the investigation, played a key role in

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<sup>428</sup> Deposition of Robert Milan, *supra* note 39, at 35.

coercing several high profile false and involuntary confessions. And, as outlined in Part III above, several other detectives involved in the investigation have been implicated in scores of examples of interrogation-related misconduct, including Detective Boudreau, who was the subject of an investigation by the Chicago Tribune for his role in coercing many false confessions from innocent suspects. In short, the credibility of the officers had come under increased fire. Prosecutors had a duty to question the credibility even more so given that defense attorneys provided them with the recent statement of Jerry Fincher, who stated on videotape—and prior to the new DNA results—that his original confession was false and coerced, a claim he did not have to make given the fact that the double jeopardy provision of the federal constitution meant he no longer faced any criminal jeopardy.<sup>429</sup>

## 2. Beware of Cases Where Co-Defendants Have No Connection with Each Other

If you cannot connect co-defendants, “you may have a serious problem with your case,” cautions Milan.<sup>430</sup> Both the Dixmoor and Englewood cases are testaments to this warning. In Englewood, testimony at trial from Terrill Swift indicated that the Englewood defendants hardly knew each other.<sup>431</sup> Counsels’ post-investigation revealed the same. As far as Dixmoor, prosecutors admitted during opening statements that the five juveniles never associated with each other collectively and Sharp, in his confession and testimony, could not even recall Veal’s name nor could he adequately describe what he looked like. And all post-conviction investigation consistently pointed to Harden and Barr (who are brothers), as well as Sharp, as having no relationship whatsoever with Taylor and Veal, who lived in an entirely different town from the other three. Indeed, in his affidavit recanting his trial testimony, Veal expressed particular disdain for the other three boys, but he maintained he had no idea if they were involved in the crime. As Milan explains, where the co-defendants do not have a connection, it is hard to imagine that they would commit such heinous crimes together and conspire to cover it up.

## 3. Beware of Cases Relying on Unrecorded and Uncorroborated Confessions from Juveniles and the Mentally Challenged

Certain categories of individuals, including teenagers, are particularly susceptible to interrogation-induced false confessions. Where the physical evidence contradicts the confession, “you may have a problem.”<sup>432</sup> Of course, the

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<sup>429</sup> Fincher also had nothing to gain, as the statute of limitations for bringing a civil lawsuit had long since bypassed him.

<sup>430</sup> Deposition of Robert Milan, *supra* note 39, at 35.

<sup>431</sup> Amended Petition, *supra* note 204, at Ex 42; see Trial Proceedings at K23, *People v. Swift*, No. 95-09676 (Cook Cnty. Cir. Ct. May 1, 1998).

<sup>432</sup> Deposition of Robert Milan, *supra* note 39, at 36.

Dixmoor and Englewood cases, combined, involve eight confessions, all from teenagers aged fifteen-to-eighteen.

Of course, in both cases, in light of the DNA results excluding all of the implicated teenagers as the source of the semen, the physical evidence put significant doubt into the reliability of the confessions at the time of trial. The new DNA results—which implicate adult serial offenders with absolutely no connection to any of the defendants—overwhelmingly support the notion that the confessions are entirely false by any objective measure. Additional DNA testing in Englewood that recently showed, contrary to the State’s trial theory, that bloodstains at the purported crime scene did not belong to the victim, eviscerated the State’s claim that the confessions were true accounts of what happened. The Dixmoor case was also faced with the tremendous problem that the confessions appeared to conflict with autopsy reports regarding the time of death, a problem so significant that a juvenile court judge first considering the case concluded that a grand jury would fail to even indict the defendants.<sup>433</sup>

#### 4. Beware of Cases Where the Criminal History of the Charged Defendants is Incompatible with the Crime

Milan rightfully explains that it is a rare case where “an individual with no criminal background suddenly commits a horrible crime.”<sup>434</sup> In Englewood, Vincent Thames had no prior criminal history, whereas Swift, Saunders, and Richardson had only minor arrests that were highly incompatible with the idea that they were capable of abducting, raping, and murdering a woman with their bare hands. All of the Dixmoor defendants had equally minor records that were difficult to reconcile with a crime of that magnitude. Of course, the source of the DNA in each case—Johnny Douglas in Englewood and Willie Randolph in Dixmoor—are documented violent sexual offenders whose criminal profiles are far more consistent with these heinous crimes.

#### 5. Beware of Ludicrous Responses from Prosecutors and Investigators who were Originally Involved in the Case

In discussing “ludicrous responses” from those with a “vested interest” in his article, Milan refers back to the Roscetti case, where “some members of law enforcement theorized that the original defendants raped and murdered Lori and, later, Harris and Roach had sex with the body.”<sup>435</sup> It is sadly ironic that for months after the DNA hit to Willie Randolph, Cook County prosecutors appeared to be accepting this same “ludicrous” theory in the Dixmoor case. At the trials of the Dixmoor defendants, prosecutors postulated that the unknown DNA in the

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<sup>433</sup> See *In the Interest of R.T. & J.B.*, 648 N.E.2d 1043, 1046 (Ill. App. 1<sup>st</sup> Dist. 1995).

<sup>434</sup> Deposition of Robert Milan, *supra* note 39, at 36.

<sup>435</sup> *Id.*

fourteen-year-old victim came from one of two sources: the most likely scenario, according to prosecutors, was that the semen belonged to a boyfriend of the victim, and they put forth evidence from her friends that she had been sexually active; another possibility, however, was the same necrophilia theory lamented by Milan.

Once post-conviction DNA results linked the semen to a thirty-two-year-old Randolph, who had no connection whatsoever with the young victim, the boyfriend theory went by the wayside. From the vantage point of post-conviction defense counsel, and based on our investigation, for some time it appeared that prosecutors were pursuing the theory that Randolph was nothing more than a “wandering necrophiliac,” a theory particularly inane given that the victim had been shot in the face and a spent shell casing was carefully resting on her body, seemingly undisturbed, when she was discovered.

The Englewood case presented a problem of a different ilk: Assistant State’s Attorney Fabio Valentini, who was present during the signed handwritten statement of Michael Saunders and the alleged oral confession of Harold Richardson, now holds the highly influential position of Chief of the Criminal Prosecutions Bureau, “the largest criminal trial division in the State’s Attorney’s Office.”<sup>436</sup> Defense attorneys for the Englewood Four have received no indication that the Cook County State’s Attorney’s Office had even acknowledged the “vested interest” Mr. Valentini had in the outcome of this case. Counsel is also unaware of any steps the Office has taken to assure that Mr. Valentini’s “vested interest” is not influencing its objective look at the evidence in the case.

That such vested interests played a role in how the Cook County State’s Attorney’s Office treated these cases is also implied by the fact that the Office ultimately agreed to testing in both cases, only to turn around once the results came back and argue that such testing was not meaningful. Clearly, the Office has the prerogative to consent to testing yet reserve assessment on the results until they are known, and the authors support policies that will allow liberal use of post-conviction DNA testing in innocence cases. With that in mind, the authors are grateful that the Office cooperated in locating the evidence and avoided what could have been a more contentious road to even obtaining the results.

That said, however, the reality is that the DNA results in this case were almost as exculpatory for Petitioners as one could imagine. In Dixmoor, Willie Randolph had a chillingly violent criminal history, had no connection to the victim, and—given his age—was not someone who could have been her consensual sexual partner. Johnny Douglas was unexplainably at the crime scene when the body was discovered and was a serial killer who preyed on women in the sex trade—what is more, he attacked and murdered his victims in a manner almost identical to the way Glover died. In short, the evidence in both cases is exactly what the Petitioners

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<sup>436</sup> Press Release, Cook County State’s Attorney’s Office, Alvarez Announces New Management Appointments (Jan. 4, 2011), *available at* [http://www.statesattorney.org/index2/press\\_management02.html](http://www.statesattorney.org/index2/press_management02.html).

hoped it would be, and certainly what the State might have envisioned a successful DNA test would show. Why, then, would they completely oppose release in Englewood and do the same in Dixmoor for such a long time, publicly doubting their innocence even when finally relenting? Although these authors have no insight into the State's decision-making process, one possible, yet troubling conclusion is that vested interests within the Office played an influential role once these cases were pushed up the chain of command.

*D. More Questions Going Forward in Cook County*

In many respects, after the new DNA evidence was revealed in the Dixmoor and Englewood cases, the positive results for those nine young men were inevitable. The DNA evidence identifying much older violent criminals were as powerful evidence of their innocence Petitioners could get. There was relatively little doubt that objective arbiters would find this new evidence highly probative and create reasonable doubt that the charged teenagers were of guilty. DNA evidence, after all, is the "gold standard."<sup>437</sup>

As is well documented, however, DNA evidence is only available in a small fraction of the cases, and this type of post-conviction forensic testing is of no use in the vast majority of cases.<sup>438</sup> Perversely, despite the fact that the Dixmoor Five and Englewood Four spent over 140 years in prison combined for crimes they did not commit, they were actually the lucky ones. The overwhelming contributing factor to their convictions—uncorroborated police-induced false confessions from teenagers—no doubt exists in many other cases throughout the county, and DNA evidence is unavailable to aid these investigations. This is especially true in Cook County, given the Chicago Tribune's findings of so many problematic confessions throughout the 1990s and the documented recent history of certain Chicago police officers' pattern and practice of coercing confessions.

Given the State's Attorney's Office reluctance to accept, in the face of DNA evidence, the reality that the juvenile confessions in Dixmoor and Englewood were indeed false and the defendants are innocent, it does not bode well for other defendants who will never be able to develop the same type of powerful evidence of innocence. Sadly, without the support of the State's Attorney's Office, it can be excruciatingly difficult to get courts to revisit claims that confessions are false.

Consider, for example, the cases of Charles Johnson and his three co-defendants, all of whom confessed as teenagers in 1995 to killing two owners of a used car lot on the South Side of Chicago. No DNA evidence is available in that case, but powerful newly-discovered fingerprint evidence, connecting a previously-unknown and uncharged felon to the two crime scenes, was recently presented to

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<sup>437</sup> Michael Lynch, *God's Signature: DNA profiling, the new gold standard in forensic science*, 27-2 ENDEAVOUR 93-97 (June 2003).

<sup>438</sup> See Keith A. Findley, *Learning from Our Mistakes: A Criminal Justice Commission to Study Wrongful Conviction*, 38 CAL. W. L. REV. 333, 337 (2002).

the State's Attorney's Office and the courts.<sup>439</sup> Attorneys for Johnson, including one of the authors of this Article, have contended that given the location of the fingerprints— including a print on the adhesive side of a marketing sticker from one of the vehicles stolen from the lot during the murders—the evidence is just as powerful as the DNA found in the Dixmoor and Englewood cases.<sup>440</sup> The State's Attorney's Office, however, never conducted a serious investigation, and a circuit court judge tossed the case without even conducting an evidentiary hearing.<sup>441</sup>

Or what about Daniel Taylor, who was profiled in a segment in the Tribune's series on confessions in December 2001?<sup>442</sup> Seventeen-year-old Taylor confessed to the double murder of Jeffrey Lassiter and Sharon Haugabook, yet records from the Cook County jail show he was actually in jail at the time all parties agree the murder took place.<sup>443</sup> The prosecution, however, pressed forward and obtained a conviction, arguing that while a "Daniel Taylor" was in jail, it was not *this* Daniel Taylor.<sup>444</sup> The Tribune investigation uncovered that the cellmate of "Daniel Taylor" in the jail at that time, James Anderson, identified *the* convicted-confessor Daniel Taylor as his cellmate, and police reports demonstrate that law enforcement was aware of this fact years earlier.<sup>445</sup> Despite this extraordinarily powerful evidence of innocence uncovered a decade ago, Daniel Taylor remains in prison to this day, his confession trusted by State officials over the physical impossibility that he committed the crime.<sup>446</sup>

Analyzing Milan's warning signs of a wrongful conviction becomes even more important in these and other non-DNA cases. Indeed, Milan himself does not escape scrutiny: although his personal position is unknown, he was in the Office when the new evidence of Daniel Taylor's innocence surfaced, and his support of the exonerations of the Roscetti defendants and Corethian Bell came in DNA cases.<sup>447</sup> The cases, like Dixmoor and Englewood, in which DNA helped prove confessions false are not aberrations and cannot be viewed as such. They highlight a systematic problem of false confessions and possible wrongful convictions of teenagers throughout both Cook County and perhaps beyond. The lessons learned must be applied to all cases across the board, whether DNA is available or not.

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<sup>439</sup> See Jason Meissner, *Judge: Fingerprint Evidence Not Enough For New Trial in '95 Double Murder*, CHI. TRIB. (Dec. 9, 2011), [http://articles.chicagotribune.com/2011-12-09/news/chi-judge-fingerprint-evidence-not-enough-for-new-trial-in-95-double-murder-20111209\\_1\\_fingerprint-evidence-new-trial-double-murder](http://articles.chicagotribune.com/2011-12-09/news/chi-judge-fingerprint-evidence-not-enough-for-new-trial-in-95-double-murder-20111209_1_fingerprint-evidence-new-trial-double-murder).

<sup>440</sup> See *id.*

<sup>441</sup> See *id.*

<sup>442</sup> See Mills et al, *supra* note 8.

<sup>443</sup> See Order, Taylor v. Rednour, No. 11-3212 (7<sup>th</sup> Cir. 2011).

<sup>444</sup> See *id.*

<sup>445</sup> See *id.*

<sup>446</sup> Last year, Daniel Taylor had his first sign of hope in a very long time, when a federal circuit court authorized him to file a successive federal habeas petition. See *id.*

<sup>447</sup> To be fair, Milan may have supported other non-DNA exoneration cases unknown to the authors.

*E. A Proper Response to the Dixmoor and Englewood Tragedies*

Although the Dixmoor and Englewood cases are extraordinary, they are not unprecedented. On April 19, 1989, Trisha Meili, who came to be known as the Central Park Jogger, was savagely raped and beaten in New York's Central Park.<sup>448</sup> Five boys confessed to the crime and were convicted of varying offenses; thirteen years later, in 2002, DNA testing confirmed what Matias Reyes confessed: he, alone, committed this crime.<sup>449</sup> In response to this evidence, District Attorney Robert M. Morgenthau launched an eleven-month extensive investigation, ultimately joining the defense motions to vacate their convictions in a fifty-eight-page memorandum of law detailing their findings.<sup>450</sup>

In response to other potential wrongful convictions or miscarriages of justice, other law enforcement officials have commissioned similar investigations: Westchester County District Attorney Janet DiFiore did so in response to the Jeffrey Deskovic false confession and wrongful conviction;<sup>451</sup> the Will County Sheriff's Department commissioned an independent report in the wake of the Kevin Fox false confession and wrongful incarceration.<sup>452</sup> Given that two historic, multiple defendant wrongful convictions, involving nine juveniles, were revealed on Cook County State's Attorney Anita Alvarez's watch, we would expect that the prudent thing to do would be to commission a similar independent investigation.

Further, as described, the Dixmoor Five and Englewood Four were nothing more than "lucky" to have DNA to prove their innocence. The problems that led to their wrongful convictions—false confessions made during grueling and coercive interrogations of teenagers who, for the most part, were isolated from their loved ones, attorneys, or any supportive adult—are no doubt prevalent in other cases that lack DNA. The State's Attorney should order an independent audit of all past cases where juvenile confessions contributed to a conviction. An independent examination can determine whether the confessions in those cases were adequately corroborated by reliable evidence and can point to cases that may require re-investigations or evidentiary hearings in court. While we applaud Ms. Alvarez's announcement of the establishment of a new Conviction Integrity Unit,<sup>453</sup> we hope it will be accompanied by commissioning an independent audit and review of confession cases.

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<sup>448</sup> See Affirmation of Nancy E. Ryan, Assistant District Attorney, County of New York, in Response to Motion to Vacate Conviction, at ¶ 8, *People v. Wise*, No. 4762/89.

<sup>449</sup> See *id.* ¶ 37-39.

<sup>450</sup> See *id.* ¶ 8.

<sup>451</sup> See WESTCHESTER CNTY. DIST. ATT'Y, REPORT ON THE CONVICTION OF JEFFREY DESKOVIC, PREPARED AT THE REQUEST OF JANET DIFILORE (June 2007).

<sup>452</sup> See Andrews International, Comprehensive Operational Assessment Criminal Investigative Unit, Sheriff's Office – Will County, Illinois, Dec. 16, 2010.

<sup>453</sup> Jason Meisner, *State's attorney announces new unit to review prosecutions*, CHI. TRIB. (Feb. 2, 2012), [http://articles.chicagotribune.com/2012-02-02/news/chi-states-attorney-announces-new-unit-to-review-prosecutions-20120202\\_1\\_innocence-projects-prosecutions-conviction](http://articles.chicagotribune.com/2012-02-02/news/chi-states-attorney-announces-new-unit-to-review-prosecutions-20120202_1_innocence-projects-prosecutions-conviction).

Going forward, when faced with the conundrum of new evidence suggesting that a confession may be false, State's Attorney Alvarez should strongly consider the recommendation of Alan Hirsch and withdraw from the case and ask that a different Office be appointed to conduct the re-investigation. This practice may be particularly important in Cook County, where prosecutors, by taking the final statements of suspects, become a part of the interrogation process and subsequently witnesses at suppression motions and trials. When these cases need to be revisited, and the prosecutors are still part of the Office, it may be too much to ask individuals to overcome their inherent vested interests and remain objective in the re-investigation.

In the wake of the Dixmoor and Englewood tragedies, the State's Attorney's Office would be well served by reinstating the trainings started by Milan under the previous administration. As long as interrogations and confessions are going to remain such a focal point of law enforcement investigations, prosecutors will need to learn how to identify which confessions are true and which are false.

#### CONCLUSION

A fascinating subplot to the Dixmoor case is that in 1992, a young Assistant State's Attorney named Bob Milan was working felony review and was on duty and present when the handwritten confessions of Veal, Taylor, and Sharp were signed. Milan himself testified at the trials of each of them. His testimony, which essentially vouched for the validity of those confessions, contributed to the convictions in this case. Needless to say, his involvement in this case came well before his awakening when he was confronted by the Roscetti and Bell cases.

Given Milan's intimate involvement in the Dixmoor case, would he stand by the lessons he preached, the articles he published, and the trainings he conducted? His convictions and beliefs about false confessions and wrongful convictions were certainly put to the test. These authors have learned, however, that Milan actually took steps to assure that belated justice came to the Dixmoor Five. Milan is to be commended for his courage in the wake of his own, personal discovery that he had involvement in these miscarriages of justice.

The easy thing to do is to pretend that the Dixmoor and Englewood cases are aberrations. The far more appropriate thing to do is learn from these tragic injustices and take real, practical steps to assure they do not happen again. Cook County, the criminal justice systems from and around the country, and the Dixmoor Five and Englewood Four themselves all would be better served if these cases are not swept under the rug and forgotten about. One can only hope that law enforcement officials in Cook County will learn from these tragic injustices, and, when confronted with powerful new evidence of innocence, recognize that it may have been the accused confessor who was the "convenient scapegoat" all along.