

2001

## Let the Cameras Roll: Mandatory Videotaping of Interrogations Is the Solution to Illinois' Problem of False Confessions

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### Recommended Citation

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# Let the Cameras Roll: Mandatory Videotaping of Interrogations Is the Solution to Illinois' Problem of False Confessions

Steven A. Drizin & Beth A. Colgan\*

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## I. INTRODUCTION

The Illinois State Legislature recently embarked on an ambitious enterprise by attempting to mandate the videotaping of police interrogations. The push for this legislation arose from a spate of false confession cases and questionable interrogations that have plagued Illinois law enforcement and undermined the general public's faith in the criminal justice system. This Article examines the history of problematic interrogations in Illinois, in part by detailing a number of these cases to show the importance of requiring the electronic recording of interrogations. This Article then follows the path of the proposed videotaping legislation through its many revisions to its ultimate demise. It is our hope that this case study of Illinois' recent experience can better prepare other proponents of videotaping interrogations for their own struggles to improve their state criminal justice systems.

The videotaping of interrogations is not a novel concept. Three states—Alaska, Minnesota, and Texas—currently require recording of interrogations in some form.<sup>1</sup> Though not required to do so, a growing number of law enforcement authorities have started experimenting with videotaping interrogations and/or confessions. Indeed, a 1993 U.S. Justice Department report found that at least one-third of the nation's largest police departments were videotaping some interrogations and confessions.<sup>2</sup> This study concluded that videotaping interrogations gave judges a greater ability to assess the voluntariness of confessions,<sup>3</sup> led to an increase in convictions and plea bargains,<sup>4</sup> and led to fewer charges of police misconduct.<sup>5</sup> The study also found that, after some initial resistance, police departments and prosecutors came to embrace

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1. The Supreme Court of Alaska ruled in 1985 that the state constitution's due process clause required that police electronically record suspect interrogations when the suspect is taken into a place of detention and recording is feasible. *Stephen v. State*, 711 P.2d 1156, 1158 (Alaska 1985). In 1994, Minnesota's Supreme Court followed Alaska's lead, ruling that "all custodial interrogation . . . and all questioning shall be recorded where feasible and must be recorded when questioning occurs at a place of detention." *State v. Scales*, 518 N.W.2d 587, 588 (Minn. 1994). In Texas, the legislature enacted a law in 1979 that bars admission of oral confessions unless they are electronically recorded. TEX. CRIM. P. CODE ANN. § 38.22(3) (West 2000).

2. William A. Geller, *Videotaping Interrogations and Confessions*, in NATIONAL INSTITUTE OF JUSTICE, U.S. DEPT. OF JUSTICE, RESEARCH IN BRIEF (Mar. 1993); see also Cathy Young, *Miranda Morass*, REASON, Apr. 1, 2000, available at <http://www.reason.com/0004/fe.cy.miranda.html> (stating that at least 2,400 police departments audio- or videotape confessions and interrogations).

3. Geller, *supra* note 2, at 9.

4. See *infra* notes 332-48, 367-72 and accompanying text (arguing that video recording is good public policy towards stopping police brutality and improving public interrogations).

5. Geller, *supra* note 2, at 6.

videotaping.<sup>6</sup> Given these findings, it seems that a law mandating the videotaping of interrogations would be supported by law enforcement. Ironically, however, the introduction of a videotaping bill in Illinois caused police and prosecutors to join together in an effort to crush the legislation.

Part II of this Article examines the checkered history of law enforcement in Illinois that led to the call to videotape interrogations.<sup>7</sup> This Part details the confession problem in Illinois, highlighting many examples of proven false confessions, probable false confessions, and problematic interrogations that have been brought to the public's attention.<sup>8</sup> Part II will also discuss responses to the confession problem by the general public, Governor George Ryan, the Chicago Police Department and Cook County State's Attorney's Office.<sup>9</sup> Part III of this Article analyzes the legislation introduced in Illinois regarding videotaping of interrogations by enumerating the positions of proponents and opponents to the legislation, describing the resulting compromised version of the legislation, and analyzing the ultimate collapse of the bill.<sup>10</sup>

Even though this recent effort at reform was defeated, this Article concludes that the time has come for Illinois law enforcement to videotape interrogations. The many false confession and problematic interrogation cases in Illinois involving both children and adults, discovered in research and discussed herein, support this conclusion.<sup>11</sup> Studying these cases highlights fundamental flaws in the criminal justice system.

Protecting against false confessions, while a useful lens for study, is not the only basis for this Article's conclusions. The primary reason for

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6. *Id.*

7. *See infra* Part II (arguing that the pressure for videotaping was mounting as many innocent inmates were exonerated after being jailed for statements made to the police).

8. *See infra* Part II.A (examining the wide scope of the problem presented by policy misconduct extending past Chicago to the whole nation and not limited to police misconduct but also prosecutorial misconduct).

9. *See infra* Part II.B (discussing the response to the confession problem with an analysis of news reports and task force reports).

10. *See infra* Part III (providing an analysis of the introduction and development of House Bill 4697).

11. Indeed, the sheer number of false confession and problematic interrogation cases show that the problem in Illinois' law enforcement is a "systemic, institutional pattern" rather than "anecdotal, fragmented, and isolated." Susan Bandes, *Patterns of Injustice: Police Brutality in the Courts*, 47 BUFF. L. REV. 1275 (1999) (examining the tendency of courts to see police brutality as unconnected anecdotal incidents rather than part of an interrelated series of events). We believe that legal reform is more likely to occur in this area once it is recognized that the problems which lead to false confessions and problematic interrogations are systemic.

supporting these reforms is that they strike a balance between the important truth-finding function of the criminal justice system and the significant need to protect the constitutional rights guaranteed to all in our society.<sup>12</sup> In addition to creating better and more informed decisions by police, prosecutors, judges, and juries, videotaping interrogations will save valuable court time by reducing frivolous motions to suppress, will induce guilty pleas, and will protect honest police officers from false allegations that they abused defendants. Reviewing the literature on videotaping, this Article provides support for all of these benefits and demonstrates that these benefits greatly outweigh the costs of videotaping interrogations. This Article also demonstrates that many of the costs are illusory—mere excuses created by law enforcement to mask their opposition to any opening of the interrogation process to public scrutiny.

## II. THE NEED FOR VIDEOTAPING OF INTERROGATIONS IN ILLINOIS

In February 1993, the Chicago Police Board fired Commander Jon Burge, a Chicago police officer who supervised detectives working at Chicago's Area Two police headquarters. For years, suspects and defendants claimed that Commander Burge, and other officers under his authority, tortured them during interrogations in order to obtain confessions to unsolved homicides.<sup>13</sup> For years, the courts rejected these claims, and judges and juries had convicted these defendants, ten of whom were eventually sentenced to death. In 1993, however, the Chicago Police Board found credible evidence that torture had occurred and relieved Commander Burge of his duties.<sup>14</sup> In order to prevent such

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12. The Supreme Court has said, "We find ample room in [the criminal justice] system . . . which is designed to enhance the search for truth in the criminal trial by insuring both the defendant and the State ample opportunity to investigate certain facts crucial to the determination of guilt or innocence." *Wardius v. Oregon*, 412 U.S. 470, 474 (1973) (quoting *Williams v. Florida*, 399 U.S. 78, 82; (1970)) (finding that an Oregon statute forbidding the introduction of alibi evidence violated due process); see also *Sawyer v. Whitley*, 505 U.S. 333, 356 (1992) (Blackmun, J., concurring) (stating that the truth finding function of the criminal justice system should be tempered by respect for constitutional rights); *California v. Green*, 399 U.S. 149, 158 (1970) (noting that an important factor of confrontation and cross examination is that they advance the pursuit of truth).

13. United States District Judge Milton Shadur wrote in response to an appeal that, "[i]t is now common knowledge . . . that in the early to mid-1980s, Chicago Police Commander Jon Burge and many of the officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions." *United States v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999); see also JOHN CONROY, UNSPEAKABLE ACTS, ORDINARY PEOPLE: THE DYNAMICS OF TORTURE 69 (2000) (describing torture perpetrated by Burge); Steve Mills & Ken Armstrong, *A Tortured Path to Death Row; The Failure of the Death Penalty in Illinois*, CHI. TRIB., Nov. 17, 1999, § 1, at 1, available at 1999 WL 2933090.

14. Charles Nicodemus, *Lawyers Urge Review of 10 Capital Cases*, CHI. SUN-TIMES, Feb. 3,

abuses in the future, the Chicago Police Board also recommended that Chicago police officers and Cook County State's Attorneys begin to videotape confessions. In the wake of a trend among other states to videotape confessions and, in light of the Burge firing, the Editorial Board of the *Chicago Tribune*, Illinois' largest circulated paper, issued a series of editorials urging that Chicago law enforcement start videotaping confessions.<sup>15</sup>

Despite the *Tribune's* editorials, the Chicago Police Board's recommendation, and mounting pressure from activists and academics,<sup>16</sup> little, if anything, was done to implement videotaping in Chicago or Illinois. In 1993, then Chicago Superintendent of Police Matt Rodriguez and then Cook County State's Attorney Jack O'Malley agreed to study the issue.<sup>17</sup> No such study was ever released and the videotaping issue was shelved. Five years later, in July 1998, not a single confession or interrogation of a suspect had been videotaped in Chicago.

By July 1998, official pressure to videotape interrogations had decreased despite the occurrence of several high-profile injustices in the intervening five years that should have inspired support for videotaping. Several death row inmates had been exonerated, including Rolando Cruz and Gary Gauger, both of whom were convicted based on alleged statements they had made to the police.<sup>18</sup> Moreover, the courts were also beginning to take more seriously the cases of the "Death Row 10"

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1999, at 23, available at 1999 WL 6524007. Commander Burge was allowed to retire on full pension. *Id.*

15. Editorial, *Police Should Go to the Videotape*, CHI. TRIB., Feb. 14, 1993, § 1, at 2, available at 1993 WL 11040746. It should be noted that John Conroy, who wrote detailed stories about the systematic torture of suspects at Area Two under Commander Burge for Chicago's alternative weekly paper, *The Reader*, has written a book on torture in which he takes the *Chicago Tribune* (and other mainstream Chicago media outlets) to task for failing to report and investigate allegations of torture. CONROY, *supra* note 13, at 228, 240.

16. Ron Lepinkas, *Focus in on Officers' Interrogations*, CHI. TRIB., Dec. 19, 1993, § 1, at 3, available at 1993 WL 11836344. Timothy O'Neill, a law professor at Chicago's John Marshall Law School, also discussed this issue. Timothy P. O'Neill, *Police Interrogations Should Be Taped*, CHI. DAILY L. BULL., Sept. 22, 1994, at 6, available at WL 9/22/94 CHIDL6. Mary Powers, the Coordinator of Citizens' Alert in Chicago, has also voiced her concern. Mary D. Powers, *Taping of Suspects*, CHI. TRIB., Jan. 1, 1994, § 1, at 2, available at 1994 WL 6535502; see also Patrick A. Tuite, *Videos Could Provide a Blockbuster Defense*, CHI. LAWYER, Nov. 1995, at 10, available at LEXIS, News Library, Chicago Lawyer File.

17. Charles Nicodemus & Jim Casey, *Videotape Confessions? More Cops Are Doing It*, CHI. SUN-TIMES, Feb. 17, 1993, at 4, available at 1993 WL 6516096; William Recktenwald, *Study Backs Use of Videotape in Police Questioning*, CHI. TRIB., Mar. 17, 1993, § 1, at 1, available at 1993 WL 11050785.

18. See *infra* notes 102-13, 122-31 and accompanying text (providing analyses on cases based on confessions that were overturned).

and others who claimed to have been tortured by Burge and his detectives.<sup>19</sup> While these and other cases of police and prosecutorial misconduct cast a pall over the Illinois' criminal justice system, especially in Cook County, they failed to generate momentum for videotaping. That abruptly changed in July 1998 with the murder of Ryan Harris, a watershed event in Illinois history that brought the idea of videotaping back into the limelight and, for the first time, penetrated the public's consciousness.<sup>20</sup>

Ryan Harris was an eleven-year-old girl who was murdered in July 1998 on Chicago's South Side. Her tragic murder led to even more heartbreak when two boys, aged seven and eight, were charged with the crime based on statements they gave to the police during a stationhouse interrogation.<sup>21</sup> As the interrogation was not electronically recorded, it was unclear exactly how the boys came to waive their *Miranda* rights or eventually to confess. What became clear, after the boys were subjected to psychological examination, house arrest, and several court hearings, however, was that the boys could not have committed the crime.<sup>22</sup> After the discovery of DNA found in semen on Ryan's clothes some three weeks after the boys had been charged, prosecutors had no choice but to drop the charges against the boys.<sup>23</sup>

Several weeks before charges were dropped against the two little boys, both the *Chicago Tribune* and the *Chicago Sun-Times* ran articles reintroducing the idea of videotaping interrogations into the public mainstream.<sup>24</sup> Videotaping interrogations of children, these articles suggested, was essential because children are especially vulnerable to police coercion and, thus, more likely to confess to crimes they did not commit. As the case evolved and it became apparent that these children

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19. See *infra* notes 237-58 and accompanying text (providing examples of police brutality during interrogations).

20. See *infra* notes 49-76 and accompanying text (charting the interrogation and incarceration of two boys accused of killing Ryan Harris).

21. Marla Donato, *2 Boys, 7 and 8, Cited in Killing*, CHI. TRIB., Aug. 10, 1998, § 1, at 1, available at 1998 WL 28844384.

22. Maurice Possley & Judy Peres, *Fight Looms Over Boys' Confessions: 7 and 8 Year Old's Grasp of Police Questioning at Issue in Slaying the Girl*, CHI. TRIB., Aug. 10, 1998, § 1, at 1, available at 1998 WL 2884792.

23. Pam Belluck, *Murder Charges Dropped Against 2 Boys in Chicago*, N.Y. TIMES, Sept. 5, 1998, at A1, available at 1998 WL 5425610.

24. John Carpenter, *Tape a Powerful Tool for Cops*, CHI. SUN-TIMES, Aug. 20, 1998, at 6, available at 1998 WL 5594376; Judy Peres & Abdon M. Pallasch, *Confession Debate: To Tape or Not?*, CHI. TRIB., Aug. 20, 1998, § 1, at 1, available at 1998 WL 2887418; Editorial, *Seeing Can Be Believing*, CHI. TRIB., Aug. 21, 1998, § 1, at 26, available at LEXIS, News Library, Chicago Tribune File; see also *Police Should Tape Interrogations*, CHI. DAILY HERALD, Sept. 13, 1998, at 16, available at 1998 WL 27768933.

could not have committed the crime, calls for videotaping all interrogations increased. These calls only grew louder throughout the fall of 1998 and 1999 as case after case of false confessions and problematic interrogations<sup>25</sup> involving children and adults were reported in the Chicago papers.<sup>26</sup>

In the spring of 1999, the first piece of legislation regarding videotaping was introduced into the Illinois House of Representatives. The bill, sponsored by Representative Monique Davis, called for videotaping of all confessions in capital cases.<sup>27</sup> A second bill was introduced by Representative Sara Feigenholtz.<sup>28</sup> Representative Davis' bill failed to pass the House, and Representative Feigenholtz's bill was tabled.<sup>29</sup> Subsequently, the House established the Illinois House of Representatives Task Force on Videotaping Interrogations and Confessions ("House Task Force"). The House Task Force heard testimony during the summer and fall of 1999.<sup>30</sup>

In early 2000, Illinois Speaker of the House Michael Madigan introduced his own bill, House Bill No. 4697 ("H.B. 4697") that would have required all custodial interrogations of adult suspects in homicide and sex crime cases to be videotaped.<sup>31</sup> The bill, recognizing that juveniles require greater protections than adults, extended the videotaping requirement to all non-probationable offenses for which

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25. We have defined "confessions" to include not only direct admissions, such as "I did it" statements, but also dream or vision statements that contain details police believe only the perpetrator would know, and hypotheticals provided by the defendant that contain incriminating details. "False confessions" are defined as confessions where it has been proven or is at least probable that the confession was untrue. "Problematic interrogations" are those that raise questions regarding police brutality and misconduct which would be clarified if the interrogations would have been videotaped.

26. Failure of law enforcement officials to embrace videotaping of interrogations was met with skepticism by some. See, e.g., Steve Chapman, *Who's Afraid of Videotaped Confessions?*, CHI. TRIB., Sept. 13, 1998, § 1, at 19, available at 1998 WL 2895289 (stating that "[t]he police department treats videotaping as if it were some bizarre idea dreamed up yesterday by naïve intellectuals").

27. H.B. 722, 91st Gen. Assem., Reg. Sess. (Ill. 1999).

28. H.B. 1674, 91st Gen. Assem., Reg. Sess. (Ill. 1999).

29. Dave McKinney, *Videotape Bill Fails in House*, CHI. SUN-TIMES, Mar. 26, 1999, at 18, available at 1999 WL 6531564.

30. *Illinois House of Representatives Task Force on Videotaping Interrogations & Confessions* (July 23, 1999) [hereinafter *Task Force on Videotaping I*]; *Illinois House of Representatives Task Force on Videotaping Interrogations & Confessions*, Volume II (Sept. 17, 1999) [hereinafter *Task Force on Videotaping II*]; Maurice Possley & Ray Long, *Bill Seeks Statewide Taping of Suspects*, CHI. TRIB., Feb. 8, 2000, § 2, at 1, available at 2000 WL 3634325.

31. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000); see also Ray Long & Maurice Possley, *Videotaping of Suspects Gets Push: House Panel Backs Mandatory Use in Interrogations*, CHI. TRIB., Feb. 18, 2000, § 1, at 1, available at 2000 WL 3637798.

juveniles were charged.<sup>32</sup> H.B. 4697 initially passed without objection out of the Illinois House Judiciary Committee.<sup>33</sup>

### A. *The Confession Problem in Illinois*

The Ryan Harris case is by no means unique to Chicago or to Illinois. In recent years, numerous Illinois cases have surfaced where false confessions were given during police interrogations, including several cases involving innocent men who were convicted and sentenced to death.<sup>34</sup> Nevertheless, the Ryan Harris case likely led to H.B. 4697 because it involved two small innocent boys, a fact that angered and offended the public more than other false confession cases involving adults or teens.<sup>35</sup> Section 1 of this Part begins with an explanation of the authors' definition of "innocence" and then proceeds with descriptions of many of the recent false confession cases in Illinois. Section 2 discusses other problematic confessions, including cases in which the failure to videotape the interrogation process may have let guilty people go free.<sup>36</sup>

The detailed descriptions of these cases from throughout Illinois demonstrate that police misconduct in the interrogation room is not just a Chicago problem, but rather a statewide problem. They also demonstrate that the false confession problem is not just a police misconduct issue but is also one of prosecutorial misconduct. These descriptions support this Article's premise that it is imperative, not only for the credibility of law enforcement, but for the integrity of the entire justice system, that Illinois police officers be required to videotape interrogations as soon as possible.

#### 1. The Cases

This Article divides cases into two categories. The first category includes cases in which the confessors appear to be innocent. The second category includes other problematic situations in which the

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32. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000).

33. H.B. 4697 passed through the House Judiciary Committee on a vote of 12-0 with one representative voting present. Long & Possley, *supra* note 31, at 1.

34. However, the Ryan Harris case is said to have "come to symbolize how poorly the justice system handles kids." Abraham McLaughlin, *Easing Get-Tough Approach on Juveniles: Chicago, Backing the National Trend, Stresses Rehabilitation Over Punishment for the Very Young*, CHRISTIAN SCI. MONITOR, Aug. 16, 1999, at 1, available at 1999 WL 5381608.

35. Indeed, "[a]s those cases made shamefully clear, forced confessions and other misconduct happens too often." Editorial, *We're All Watching*, CHI. SUN-TIMES, Feb. 10, 2000, at 35, available at 2000 WL 6667783 [hereinafter *We're All Watching*].

36. See, e.g., *infra* notes 452-56 and accompanying text.

validity of the confessions are doubtful or the circumstances of the interrogation are in dispute. As in the first category, the justice process would have been greatly aided if the interrogations in this category had been videotaped.

The cases have been further divided into two sub-categories—false confessions given by children and false confessions given by adults—to highlight the particular peril that children face in interrogations.<sup>37</sup> As shown below, the two little boys in the Ryan Harris case are just two of many children who are the victims of false confessions in Illinois.

Currently, three of the leading commentators on false confessions are engaged in an ongoing debate regarding the appropriate definition of “innocent” to be used when analyzing false confession cases. Professors Richard A. Leo and Richard J. Ofshe produced a study of sixty false confession cases in which they categorized cases as “proven false confessions,” “highly probable false confessions,” or “probable false confessions.”<sup>38</sup> In a critique of this study, Professor Paul G. Cassell argues that the definition of innocence should be more restrictive and only include cases in which the existence of a false confession is undisputed.<sup>39</sup> Professor Cassell maintains that the most preferable cases for study are those in which law enforcement officers

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37. We have defined children as persons under eighteen years of age. According to DePaul University Law School Professor Jane Rutherford, interrogations are particularly difficult for children because:

Interviews are not necessarily recorded. They do not have a set limit of duration. Some of them last more than six hours, which is a tremendously long time for a child, even a school-age child. That's all day at school . . . You'll find that children will often want to say virtually anything to get out of the room. And that often will be enhanced by a police officer saying, "Well, just tell me the truth and then you can go," . . . They'll try what they think is the truth and if they don't get to leave they'll keep changing their story till they come up with what will let them go. They have no idea of the seriousness of the trouble they can get into.

Jeanne Galatzer-Levy, *Harris Case a 'Wake-Up Call' on Kids' Confessions*, CHI. TRIB., Mar. 22, 2000, § 5, at 1, available at LEXIS, News Library, Chicago Tribune File.

38. Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429, 434-38 (1998).

39. Paul G. Cassell, *The Guilty and the "Innocent": An Examination of Alleged Cases of Wrongful Conviction from False Confessions*, 22 HARV. J.L. & PUB. POL'Y 523, 537 (1999) (arguing that “[t]he only way to avoid this problem of the researcher as judge and jury is to confine analysis to cases of undisputed wrongful convictions”). In his article, Professor Cassell analyzes only cases where false confessions resulted in wrongful convictions. This article, however, will address not only cases that ended in conviction but also cases where the confessors were subjected to some formal trial procedure or substantial deprivation of liberty.

and prosecutors admit that the confessor was, in fact, innocent of the crime with which he was convicted.<sup>40</sup>

Although Professor Cassell's inclination to limit any analysis to cases where innocence has been proven is well-founded, we reject his conclusion that the only confession cases worth studying are those in which prosecutors and law enforcement officers admit false statements were made.<sup>41</sup> The State of Illinois has failed to acknowledge the innocence of defendants even where scientific evidence has proven their innocence,<sup>42</sup> where evidence shows it was physically impossible for the confessor to have committed the crime,<sup>43</sup> or where another person was later convicted of the crime.<sup>44</sup> Regardless of the impetus for not admitting mistake in these cases—whether to limit civil liability<sup>45</sup> or simply because of an internal culture that eschews such admissions<sup>46</sup>—restricting the definition of “innocence” to cases where

40. *Id.* at 581.

41. One commentator has remarked:

In building a case for trial, the work of police serves as the foundation. When their investigations are tainted by credible charges that confessions were coerced, the integrity of a conviction suffers, and questions of guilt or innocence linger after the trial ends. In death-penalty cases, police misconduct undermines society's expectations that its harshest punishment will be meted out only with certainty.

Mills & Armstrong, *supra* note 13, at 1.

42. See *supra* notes 18-23 and accompanying text (examining at the effects of police brutality on confessions); *infra* notes 49-76 and accompanying text (analyzing the Ryan Harris case and the problems associated with procuring a confession); see also *infra* notes 105, 114-21, 137-45 and accompanying text (comparing the individual cases of Derrick Flewellen, Ronald Jones, and Steven Linscott and the problems that arose from their confessions).

43. See *infra* notes 83-92 and accompanying text (regarding Don Olmetti).

44. See *infra* notes 77-82 and accompanying text (discussing the case of Charlie King); *infra* notes 83-101 and accompanying text (discussing the cases of Don Olmetti, Rodney Brown, Antwan Coleman, Eric Henley, and Roderick Singleton); *infra* notes 114-36 and accompanying text (discussing the cases of Derrick Flewellen, Herbert Gerald, Gary Gaugher, and Andre V. Jones).

45. For example, in February 2000, Philip Prossnitz, one of the prosecutors in the Gary Gauger case, was running for McHenry County State's Attorney. When his opponent criticized him for “convict[ing] an innocent man,” Prossnitz reprimanded his opponent for “creating liability for a multimillion-dollar judgment against the county by admitting the county did something wrong.” *State's Attorney Candidate Hits Foes Over Gauger Case*, CHI. TRIB., Feb. 26, 2000, § 1, at 5, available at 2000 WL 3640139; see also *infra* notes 122-31 and accompanying text (regarding Gary Gauger).

46. Even some law enforcement officials recognize the problem of police admitting that their interrogation tactics have led to a false confession. See, e.g., Gail Johnson, *False Confessions and Fundamental Fairness: The Need for Electronic Recording of Custodial Interrogations*, 6 B.U. PUB. INT. L.J. 719, 742 (1997). Detective Nat Laurendi was involved in obtaining an allegedly false confession from a child, Peter Reilly, and commented on the practice:

[L]aw enforcement people—and I know because I've been one for 25 years—will never change their minds. Neither will prosecutors. They build up their resources; they have to fight the oncoming enemy; this is a pattern throughout the United States.

the State admits it was wrong is not feasible under these circumstances.<sup>47</sup> Therefore, for the purposes of this Article “innocence” is defined to include all cases where physical or scientific evidence exonerates the confessor by showing that she did not, or was physically

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Police and prosecutors and judges will never change their minds once a person has been convicted and given justice, a fair trial.

*Id.*

Most recently, this problem has become evident in the investigation of the Rampart scandal in the Los Angeles Police Department (“LAPD”). Allegations that corruption in the LAPD extended into the prosecutors office has resulted in calls for independent analysis of the problem in that city’s criminal justice system. Daniel B. Wood, *One Precinct Stirs a Criminal-Justice Crisis: A Scandal in the LAPD’s Rampart Division Spreads Up into the Courts, Raising Justice-System Doubts Nationwide*, CHRISTIAN SCI. MONITOR, Feb. 18, 2000, at 1, available at 2000 WL 4426074. Myra Raeder, former chair of the American Bar Association Criminal Justice Section has stated that the situation in Los Angeles “is a national wake-up call that we are letting the integrity of the court system disintegrate . . . . Prosecutors are beholden to police and police to prosecutors in terms of their ability to put on a successful case. Any reform that is successful will have to reach into both arenas . . . .” *Id.*

Prosecutorial misconduct was addressed by an Illinois Senate Task Force in March 2000. *Report of the Illinois Senate Minority Leader’s Task Force on the Criminal Justice System*, at 20 (Mar. 2000) [hereinafter *Task Force on Criminal Justice System*] (on file with authors). The report of this Task Force stated:

While the incentives for prosecutorial misconduct seem few, the reasons for its persistence may be more from the lack of true disincentives. There are many reasons, both personal and professional, why prosecutors act in such a way that rises to the level of misconduct. Prosecutors want to put away dangerous criminals, provide some justice to victims or their survivors, and ensure the public that the streets are safer. Privately, many prosecutors talk of their fear of letting a dangerous person go free and of losing the confidence and esteem they receive from their peers. In many State’s Attorney’s offices, convictions mean promotions for Assistant State’s Attorneys, and very few State’s Attorneys run for office without reference to their conviction percentages.

*Id.*

47. For example, a caller to WVON-AM talk show asked guest Chicago Mayor Richard M. Daley why he had not yet apologized to the two boys wrongfully arrested and their families for the handling of the Ryan Harris murder investigation. *See supra* notes 21-23; *infra* notes 49-76 and accompanying text. The mayor responded by saying, “I can’t get into that . . . . It’s a continuing criminal investigation. You cannot make it politics.” Fran Spielman, *Black Community Gives Mayor Firm Grilling During Radio Show*, CHI. SUN-TIMES, Dec. 23, 1998, at 18, available at 1998 WL 5612800. Daley did eventually apologize, although it was viewed with skepticism by many because the apology did not come until after the boys’ attorneys threatened to file a civil suit against the city. Chinta Strausberg, *City Admits Errors in Harris Case*, CHI. DEFENDER, Apr. 26, 1999, at 1. This reality was recognized by Cook County Criminal Court Judge Thomas Sumner, who stated, “Sometimes in this system—in this process we have which is presumed to ferret out the truth—the truth gets obscured in the process of winning and losing.” This statement was made from the bench as Judge Sumner dismissed charges against Eddie Huggins. James Hill & Steve Mills, *Judge Rejects ‘Confession’ of Teen to Murder*, CHI. TRIB., Apr. 30, 1999, § 1, at 1, available at 1999 WL 2868499; *see also infra* notes 165-74 and accompanying text.

unable to, commit the crime and cases where another person was proven guilty of the crime.<sup>48</sup>

a. Cases of Innocence

i. Children

1. Ryan Harris

On July 27, 1998, an eleven-year-old girl named Ryan Harris, living with her godmother for the summer in Chicago's Englewood neighborhood so that she could attend summer camp, disappeared.<sup>49</sup> She was last seen riding her shiny blue Road Warrior bike away from her godmother's home.<sup>50</sup> After her godmother filed a missing person's report and had fliers printed up with her picture, she and others from the community searched the area near her home.<sup>51</sup> Ryan's body was discovered less than twenty-four hours later among tall weeds in the back yard of an occupied two-story building located only two blocks from where she was last seen.<sup>52</sup> She had been badly beaten about the head, her underpants stuffed in her mouth in an apparent attempt to gag her, and there was evidence she had been sexually assaulted.<sup>53</sup> Police reported finding leaves and pieces of bushes in her mouth.<sup>54</sup>

On Sunday, August 9, 1998, the Chicago Police charged two boys, aged seven and eight, with the murder of Ryan Harris. Exactly what

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48. This definition closely mirrors that of Leo and Ofshe's category of "proven false confessions." That category is defined as confessions where

the confessor's innocence was established by at least one dispositive piece of independent evidence. For example, a defendant's confession was classified as proven false if the murder victim turned up alive, the true perpetrator was caught and proven guilty, or scientific evidence exonerated the defendant. Not only was the confessor definitively excluded by dispositive evidence, but the confession statement itself also lacked internal indicia of reliability. Any disputed confession cases that fell short of this standard—no matter how questionable the confession and no matter how much direct or circumstantial evidence indicated the suspect was innocent—was excluded from this category.

Leo & Ofshe, *supra* note 38, at 436-37.

49. Donato, *supra* note 21, at 1.

50. Rosalind Rossi & Brenda Warner Rotzoll, *Boys' Ordeal Leaves Searing Questions*, CHI. SUN-TIMES, Sept. 6, 1998, at 8, available at 1998 WL 55966291.

51. See Donato, *supra* note 21, at 1; see also Maurice Possley, *Police Reports Could Aid Boys: How Cops Built Case; Adult Male Listed as Early Suspect*, CHI. TRIB., Aug. 16, 1998, § 1, at 1, available at 1998 WL 2886101.

52. See Donato, *supra* note 21, at 1.

53. Possley, *supra* note 51, at 1; see also Phil Kadner, *It's the People of Illinois Versus a 7-Year-Old*, DAILY SOUTHTOWN, Aug. 12, 1998, at A3.

54. *Metro Briefs*, CHI. SUN-TIMES, July 30, 1998, available at 1998 WL 559143.

happened when the two boys were questioned at the police station remains unclear.<sup>55</sup> Based on oral statements allegedly obtained from the boys, the police believed that the girl had been hit on the head with a brick because the boys had wanted her bike.<sup>56</sup> The police theorized that the seven-year-old had hit Ryan in the head with a rock, causing her to fall from her bike.<sup>57</sup> The boys then presumably dragged her into the weeds.<sup>58</sup> The seven-year-old supposedly told the police that the boys

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55. Although it is policy in Cook County that confessions in all murder cases be court-reported, the alleged confessions in the Ryan Harris case were not court-reported. See *Task Force on Videotaping 1*, *supra* note 30, at 33 (outlining the testimony of Tom Needham, General Counsel to Chicago Police Superintendent Terry Hillard). According to David Erickson, First Assistant State's Attorney of Cook County, "the defendant has to agree to give a court-reported statement. If the defendant doesn't agree to give that court-reported statement, then there is no court-reported statement." *Id.* at 36.

What is known can be gathered from the cursory notes taken by officers that interrogated the boys. *Interrogating Officers' Notes of the Seven-Year-Old Boy* [hereinafter *Notes of Seven*] (on file with the authors); *Interrogating Officers' Notes of the Eight-Year-Old Boy* [hereinafter *Notes of Eight*] (on file with the authors). In each interrogation room were three detectives and two youth officers. Maurice Possley, *Police Say Suspects Not Too Small to Kill*, CHI. TRIB., Aug. 11, 1998, § 1, at 1, available at 1998 WL 2884666. One officer wrote: "[t]o lie was wrong—Good Boys Don't Lie. Good Boy? Said yes." *Notes of Eight, supra*. The officers also reportedly fed the children Happy Meals and "held hands because they were all 'friends.'" John Carpenter & Lorraine Forte, *How Cops Quizzed Boys in Murder*, CHI. SUN-TIMES, Aug. 29, 1998, at 1, available at 1998 WL 5595520. Anne Graffam Walker, a forensic linguist, stated at a Northwestern University School of Law conference, 'Protecting Children, Preserving the Truth,' that this was inappropriate and that detectives should "never hold hands with a child during an interview." Galatzer-Levy, *supra* note 37, at 1. Walker further explained that, "[t]his approach is only likely to raise the pressure of the interrogation on the child." *Id.* (emphasis added). Such efforts to create a friendly atmosphere often are a standard feature of preinterrogation police interviews:

Once investigators identify a likely or possible suspect, they often conduct what appears to be an interview. This session may truly be an investigative interview or it may be an opening move in what the investigator intends to develop into an interrogation. At this point investigators neither take a hostile tone nor tell the individual that he is a suspect. Instead, they treat him respectfully and are likely to say they need his help in solving the crime. Under the non-threatening guise of information-gathering, the interrogator typically begins by obtaining an account of the suspect's relations with the victim, his knowledge of the offense, and his whereabouts at the time of the crime. The goal is to obtain information that elevates the person into a likely or principal suspect and ties him to a baseline account that establishes his knowledge of, and alibi for, the crime.

Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979, 987 (1997).

56. *Notes of Seven, supra* note 55; *Notes of Eight, supra* note 55; see also John Carpenter & Curtis Lawrence, *Boys Linked to Murder; Girl, 11, May Have Been Killed for Bike*, CHI. SUN-TIMES, Aug. 10, 1998, at 1, available at 1998 WL 5593062 (quoting Police Sergeant Stan Zaborac as saying, "[T]he disappearance of the bicycle would suggest a motive").

57. The eight-year-old allegedly said that the seven-year-old had hit her with a rock. *Notes of Eight, supra* note 55.

58. *Notes of Seven, supra* note 55; *Notes of Eight, supra* note 55.

removed her shorts, then played with her body “softly” rubbing leaves around her eyes and mouth.<sup>59</sup> After she fell from the bike, the seven-year-old “[played] with her body.”<sup>60</sup> The eight-year-old “said he got on his bike and rode off to go home to watch cartoons.”<sup>61</sup> The boys were charged because of their statements and because “[i]n their statements, there [were] elements of this case that would only be known to the detectives or the perpetrators.”<sup>62</sup> Although there was evidence that the girl had been sexually assaulted with a foreign object, neither boy was charged with a sex crime.<sup>63</sup> Instead, both boys were charged in a delinquency petition with first degree murder.<sup>64</sup> They were taken to a psychiatric hospital pending their appearance in court the next day.

The next morning, the trial court found probable cause that the boys had murdered Ryan Harris, based on the testimony of one police officer who summarized the boys’ statements.<sup>65</sup> The court refused to release the boys, deciding instead to keep them confined in the psychiatric hospital until mental health professionals could evaluate them.<sup>66</sup> Three days later, two experts, a psychiatrist and a psychologist recommended that they be released, finding that the boys were not a danger to others.<sup>67</sup> The judge released the boys to their parents but ordered the boys held on home confinement pending trial.<sup>68</sup> He also placed them on

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59. *Notes of Seven*, *supra* note 55.

60. Possley, *supra* note 55, at 1 (quoting testimony of Detective Allen Nathaniel); *see also Notes of Eight*, *supra* note 55.

61. Possley, *supra* note 55, at 1 (quoting testimony of Detective Allen Nathaniel); *see also Notes of Eight*, *supra* note 55.

62. Possley, *supra* note 51, at 1 (quoting Police Sergeant Stanley Zaborac); *see also Carpenter & Lawrence*, *supra* note 56, at 1.

63. Possley, *supra* note 51, at 1.

64. Donato, *supra* note 21, at 1.

65. Possley, *supra* note 51, at 1; Lindsey Tanner, *Kids Charged in Beating Death*, ASSOCIATED PRESS, Aug. 10, 1998, available at 1998 WL 6706317.

66. M.L. Elrick & Anne Bowhay, *Judge Sends Young Suspects Back to Hospital*, DAILY SOUTHTOWN, Aug. 12, 1998, at A1; Lorraine Forte & John Carpenter, *Tests Ordered for Child Suspects*, CHI. SUN-TIMES, Aug. 12, 1998, at 2, available at 1998 WL 5593275; Possley & Peres, *supra* note 22, at 1; Shelia Washington, *What Now for Accused Killers?*, CHI. DEFENDER, Aug. 12, 1998, at 1.

67. Psychologist Maisha Hamilton-Bennett testified as to one of the boys’ conditions. She stated that the eight-year-old “is not a danger to others. He’s going through a very traumatic experience, but he’s not in the need of hospitalization, and should be released and returned to his parents.” Lorraine Forte, *Young Suspects Go Home*, CHI. SUN-TIMES, Aug. 14, 1998, at 1, available at 1998 WL 5593437. Psychiatrist Louis James Kraus also testified that the seven-year-old “would be best off if he was with his mother and father” and “could be at . . . risk of psychic harm” if he stayed at the psychiatric hospital. *Id.* In spite of this recommendation, prosecutors requested that the children be held in a shelter. *See id.*

68. *Id.*; *Two Chicago Boys Accused in Slaying of Girl, 11, Released*, PHILA. INQUIRER, Aug. 14, 1998, at A3, available at 1998 WL 8914442.

electronic monitoring; special electronic ankle bracelets had to be custom made to fit the small boys.<sup>69</sup>

Three weeks later, in a stunning move, prosecutors announced that they were dropping charges against the boys because the crime lab had discovered semen on the girl's underpants.<sup>70</sup> Both Chicago Police Superintendent Terry Hillard and Cook County State's Attorney Richard Devine, however, stopped short of declaring the boys innocent and clearing them of charges. In fact, Superintendent Hillard still maintained that the boys were involved in the crime, insisting that the "facts take us to these young boys."<sup>71</sup> Superintendent Hillard and State's Attorney Devine still would not exonerate the boys even after DNA found on Ryan Harris was later shown to match perfectly with the DNA of Floyd M. Durr, an adult already charged with sexually assaulting three other young girls in the Englewood neighborhoods.<sup>72</sup>

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69. Forte, *supra* note 67, at 1. A week later, the electronic ankle bracelets were ordered removed, and the children were allowed to go outside with either a parent or grandparent. Maurice Possley, *Young Suspects Become Freer*, CHI. TRIB., Aug. 21, 1998, § 1, at 1; *see also* Lorraine Forte, *Monitors Ordered Off Boys in Harris Case*, CHI. SUN-TIMES, Aug. 21, 1998, at 10, available at 1998 WL 5594490.

70. Maurice Possley & Steve Mills, *Tests Find Semen on Girl's Clothes*, CHI. TRIB., Sept. 5, 1998, § 1, at 1, available at 1998 WL 2892765; *see also* Belluck, *supra* note 23, at A1; Jeremy Manier & Sue Ellen Christian, *Crime Lab Findings All in a Day's Work*, CHI. TRIB., Sept. 6, 1998, § 1, at 14, available at 1998 WL 2893015. As it is extremely unlikely for boys so young to have produced the semen, proceeding under the charges would have been difficult at best.

71. Possley & Mills, *supra* note 70, at 1. Even when plans to create a videotaping program were announced, Cook County State's Attorney Richard Devine "insisted that the changes [were] not an acknowledgement that the authorities bungled the Harris investigation . . ." Flynn McRoberts & Judy Peres, *Homicide Suspects May Go to Videotape Confessions on Camera*, CHI. TRIB., Oct. 2, 1998, § 1, at 1, available at 1998 WL 2901795.

72. *See* Peter Annin & John McCormick, *Who Killed Ryan Harris?*, NEWSWEEK, Oct. 5, 1998, at 42; Pam Belluck, *Boys' Release in a Murder Doesn't End a City's Pain*, N.Y. TIMES, Sept. 26, 1998, at A8, available at 1998 WL 5428643. Mayor Daley also specifically stated that the implication of Durr did not clear the two boys. Chinta Strausberg, *Daley: Harris Witness Doesn't Absolve Kids*, CHI. DEFENDER, Oct. 13, 1998, at 1. He did not officially apologize for the botched investigation until April 1999. Strausberg, *supra* note 47, at 1. What made this stance by city and county officials even more baffling was the fact that there was also significant evidence that pointed away from the boys and did not match with their confessions. Steve Mills & Maurice Possley, *Cops Ignored Clues that Case was Weak*, CHI. TRIB., Sept. 6, 1998, § 1, at 1, available at 1998 WL 2893234. Further, Durr has since been convicted of three counts of predatory criminal sexual assault and one count of aggravated kidnapping for his attack on a ten-year-old girl on January 14, 1998. Janan Hanna, *Ryan Harris Suspect Guilty in Another Case*, CHI. TRIB., May 12, 2000, § 2, at 1, available at 2000 WL 3664769.

This case shows the inherent difficulty in allowing the definition of "innocence" to hinge on an official proclamation of innocence by police and prosecutors. The two young confessors in this case could not physically have committed the sexual assault and another person who matches the DNA has been charged with the crime. It is difficult to see how these boys could be described as anything but innocent.

Police and prosecutors also adamantly defended the conduct of the detectives involved.<sup>73</sup> State's Attorney Devine was quoted as saying that "the police acted in good faith and conducted a thorough investigation."<sup>74</sup> Within the next few days, the Mayor publicly stood by his police officers. He defended their actions, saying that he believed his police put "their heart and soul into the investigation."<sup>75</sup> He was also quoted as saying: "There is no apology here. This is a tragedy."<sup>76</sup>

## 2. Charlie King

In July 1992, Charlie King, a seventeen-year-old mentally retarded boy with an I.Q. of 57, confessed to strangling a nine-year-old child in an East St. Louis school where he worked as a janitor.<sup>77</sup> King gave a written confession after three days of interrogations, during which time he asked for crayons and coloring books.<sup>78</sup> St. Clair County Sheriff Mearl Justus read the confession and believed that it was not possible for King to have given the statement.<sup>79</sup> King was held for thirteen months, during which time the court attempted to determine if he was competent to stand trial.<sup>80</sup> While King was in jail, two more children were killed, leading to the arrest of Lorenzo Fayne, King's co-worker at the school. Fayne confessed to those two murders and to those of three other children—including the child that King was purported to have killed.<sup>81</sup> Prosecutors dropped charges against King on August 18, 1993, though they have never acknowledged King's innocence.<sup>82</sup>

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73. Possley & Mills, *supra* note 70, at 1; see also Leon Pitt & Curtis Lawrence, *Boy Saw Murder, Mom Says*, CHI. SUN-TIMES, Sept. 5, 1998, at 1, available at 1998 WL 5596455.

74. Possley & Mills, *supra* note 70, at 1.

75. Chinta Strausberg, *Daley Defends Police in Harris Case*, CHI. DEFENDER, Sept. 10, 1998, at 3.

76. *Id.*; see also John Kass, *It's Time for Daley to Take Action to Heal the Ryan Harris Rift*, CHI. TRIB., Sept. 7, 1998, § 1, at 3, available at 1998 WL 2893429.

77. *Confession of Multiple Child Killer Frees Retarded Man After Year of Confinement*, ST. LOUIS POST-DISPATCH, Apr. 12, 1998, at A7, available at 1998 WL 3329629. The police were under extreme pressure from the East St. Louis community to solve this crime. Mayor Gordon Bush and the city offered a \$5,500 reward for information regarding the crime. *Id.* Citizens were so outraged about the crime that after King was arrested, they began harassing his parents to such an extent that they moved to an undisclosed town in Arkansas. *Id.*

78. *Id.* Police who conducted the interrogation were aware that King had some sort of mental problem, but insist that they didn't understand to what degree he was mentally retarded. *Id.*

79. *Id.* (quoting Sheriff Justus as stating, "When I read it, I thought, 'There's no way in hell this guy could give that kind of statement.'").

80. *Id.* During this time he was sent to the Menard Correctional Center's mental institution to be evaluated. While at Menard, King suffered from depression and reportedly could not understand why he was being held. *Id.*

81. *Id.*

82. *Id.* (quoting Sheriff Justus as stating, "When Fayne admitted to it, the state's attorney just

### 3. Don Olmetti

As a sixteen-year-old, Don Olmetti was arrested for shooting and killing a teacher while trying to steal her purse.<sup>83</sup> Olmetti, who is borderline mentally retarded, was at a police station for eighteen hours before confessing to the crime.<sup>84</sup> Olmetti claims that police beat him and forced him to sign the written confession.<sup>85</sup> At Olmetti's bond hearing, prosecutors described how he shot and killed Morton Elementary school teacher, Sonia Hernandez, in Morton's parking lot after she recognized him during a robbery that netted Olmetti only four dollars.<sup>86</sup> Assistant State's Attorney Don Lyman stated that Olmetti then rode the bus home, took a nap, and watched cartoons.<sup>87</sup> Bond for Olmetti was set at \$3 million dollars.<sup>88</sup>

Olmetti spent two years in the Cook County Jail, though the State was aware of alibi witnesses as early as April 1997.<sup>89</sup> Additionally, attendance records placed Olmetti in school at the time of the murder.<sup>90</sup> Murder charges were finally dropped against Olmetti in 1999.<sup>91</sup> After an analysis of the case, Cook County State's Attorney's Office spokesman, Bob Benjamin, admitted, "Our investigation convinced us pretty thoroughly that these charges should not have been filed."<sup>92</sup>

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booted him out of here . . . . There was no 'I'm sorry,' or nothing.").

83. Diane Struzzi, *Murder Case Dropped, Teen Still Held*, CHI. TRIB., May 18, 1999, § 2, at 1, available at 1999 WL 2874342.

84. *Id.*

85. James Hill, *Youth Jailed for 2 Years Goes Home*, CHI. TRIB., May 21, 1999, § 2, at 1, available at 1999 WL 2875614.

86. Rosalind Rossi & Ernest Tucker, *Suspect in Murder of Teacher was on School Suspension*, CHI. SUN-TIMES, Apr. 5, 1997, at 7, available at 1997 WL 6344428.

87. *Id.*

88. *Id.* The Chicago Public Schools Chief Executive Officer used the Olmetti case as an example of why a broad school expulsion policy was needed, one which would allow the transfer of students to alternative schools as soon as they are charged with some off-campus offenses. See also Fran Spielman & Rosalind Rossi, *Off-Campus Arrest Could Boot Kids*, CHI. SUN-TIMES, Mar. 11, 1997, at 3, available at 1997 WL 6340562. Such a policy was ultimately adopted by the Chicago Public Schools. Eric Ferkenhoff, *City Schools Clamp Down on Violence By Students*, CHI. SUN-TIMES, May 1, 1997, at 7, available at 1997 WL 3544401.

89. Hill, *supra* note 85, at 1. Olmetti was released on reduced bond on two subsequent charges related to weapons he allegedly made for protection while incarcerated in the Cook County Jail. *Id.*

90. Struzzi, *supra* note 83, at 1.

91. *Id.*

92. *Id.*

#### 4. Rodney Brown, Antwan Coleman, Eric Henley, and Roderick Singleton

In April 1990, a homeless man was beaten to death in a cemetery in Alton, Illinois.<sup>93</sup> Five teenagers were arrested, and, after being interrogated, four of the five confessed.<sup>94</sup> Police did not videotape the interrogations, but did videotape the confessions.<sup>95</sup> The teenagers ranged in age from fourteen-years-old to seventeen-years-old, and at least one of the boys was learning disabled.<sup>96</sup> When a private investigator, hired by the boys' lawyers, obtained a written confession from one of the actual killers the following July, the prosecution dropped charges against the five.<sup>97</sup> In actuality, the five boys merely happened upon the victim after two other teenagers had beaten him to death.<sup>98</sup> One of the killers pled guilty to the charges; charges against the other were dropped after the Assistant State's Attorney was caught on videotape promising him immunity.<sup>99</sup> The State's Attorney admitted that the confessions were false but determined that "proper and acceptable interrogation techniques" were utilized and that the multiple false confessions were merely "an unbelievable coincidence."<sup>100</sup> At least one of the boys brought a civil suit, resulting in a confidential settlement.<sup>101</sup>

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93. Robert Kelly, *Charges Dismissed Against Last Defendant in Cemetery Killing*, ST. LOUIS POST-DISPATCH, Oct. 31, 1990, at A1.

94. Michael D. Sorkin, *Charges to be Dropped Against Teens in Killing*, ST. LOUIS POST-DISPATCH, July 14, 1990, at A1.

95. Brian Brueggemann, *Bill Would Require Police to Videotape Interrogations*, BELLEVILLE NEWS-DEMOCRAT, Feb. 27, 2000, at 3B (citing defense attorney Jack Carey).

96. Michael D. Sorkin, *Teens Cleared of Killing Homeless Man in Alton*, ST. LOUIS POST-DISPATCH, July 17, 1990, at A1.

97. *Id.*

98. *Id.* The five boys did admit to stealing the victim's truck. *Id.*

99. Kelly, *supra* note 93, at A1; Robert Kelly, *Judge Rejects Withdrawal of Guilty Plea*, ST. LOUIS POST-DISPATCH, Sept. 7, 1990, at A9.

100. Robert Kelly, *Alton Police Cleared in Arrest of Four Teens*, ST. LOUIS POST-DISPATCH, Aug. 7, 1990, at A6. The State's Attorney launched an investigation into the interrogation procedures used. The investigation was complicated by comments made by Assistant State's Attorney Don W. Weber, who stated that the youths were part of a "segment of black people who are liars" in response to the boys' claims that they had falsely confessed. Robert Kelly, *Probe Continues into Teens' Confession*, ST. LOUIS POST-DISPATCH, July 31, 1990, at A6. After Weber's resignation, an investigation was completed, clearing the police of any wrongdoing and recommending no changes to police interrogation procedures. One of the defense attorneys criticized the report as a whitewash because the State's Attorney had stated that the police had done nothing wrong prior to the inception of the investigation. Michael D. Sorkin, *Prosecutor: Police to be Cleared; Haine Says Alton Police Acted Professionally in Teens' Confession*, ST. LOUIS POST-DISPATCH, July 27, 1990, at A11.

101. Brueggemann, *supra* note 95, at 3B.

*ii. Adults*

## 1. Rolando Cruz

Perhaps the most notorious adult “confession” case is that of freed death row inmate Rolando Cruz.<sup>102</sup> Cruz spent eleven years on death row for the abduction and murder of a child, ten-year-old Jeanine Nicarico, in DuPage County in 1983.<sup>103</sup> Although there was no physical evidence or witness testimony linking Cruz to the crime, he was tried, convicted twice, and twice sentenced to death.<sup>104</sup> On the eve of Cruz’s second trial, prosecutors claimed that Cruz had made a “dream statement” to interrogators in which he related details of the crime only the killer could know.<sup>105</sup> This “dream statement” was not recorded in any police reports or videotaped.<sup>106</sup> At Cruz’s third trial in

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102. Joseph P. Shapiro, *The Wrong Men on Death Row*, U.S. NEWS & WORLD REP., Nov. 9, 1998, at 22, available at 1998 WL 8127577. Charged and tried along with Cruz were Alejandro Hernandez and Stephen Buckley. Hernandez was also convicted and received a second trial in which he was convicted and sentenced to eighty years in prison. A mistrial was declared in the case against Buckley, and charges against him were eventually dropped. Maurice Possley, *A 12-Year Legal Horror: The Nicarico Nightmare; Admitted Lie Sinks Cruz Case*, CHI. TRIB., Nov. 5, 1995, § 1, at 1, available at 1995 WL 6262629.

103. Possley, *supra* note 102, at 1.

104. Both trials were overturned on procedural grounds. *People v. Cruz*, 643 N.E.2d 636 (Ill. 1994); *People v. Cruz*, 521 N.E.2d 18 (Ill. 1988).

105. Detective Thomas Vosburgh claimed that after Cruz told him and Detective Dennis Kurzawa that Cruz had a vision which in some ways matched details of the crime, he called Lt. James Montesano to find out how the two detectives should proceed. Possley, *supra* note 102, at 1.

This is not the only situation in which a “dream statement” has been used to obtain a conviction of an innocent. Steven Linscott spent three and a half years in prison after being convicted of the murder of an Oak Park, Illinois woman who lived next door to the halfway house where Linscott worked. *After 12-Year Ordeal, He Finally Has Found Peace*, ST. PETERSBURG TIMES, Sept. 30, 1994, at 12A, available at 1994 WL 4798860 [hereinafter *After 12-Year Ordeal*]. Linscott told police that he had a dream on the night of the murder in which he saw a man attack and kill a black woman. *Id.* Some of the details of the dream were similar to the murder, although the actual victim was white. *Id.* The police took the “dream” as a confession and charged Linscott for the rape and murder of the woman; he was later convicted. *Id.*; see also Leo & Ofshe, *supra* note 38, at 454. His conviction was overturned when tests showed that the DNA evidence left at the scene belonged to someone other than Linscott. *After 12-Year Ordeal, supra.* Although prosecutors involved in the case, including current Judge John Morrissey, were denounced for misrepresenting evidence to the jury during trial, the State has never admitted that Linscott is innocent. Linscott has stated that he is satisfied without having a proclamation of innocence because “[w]hen this crowd drops a case, that’s better than a jury decision that says you’re not guilty . . . . That’s the best exoneration possible.” *After 12-Year Ordeal, supra*; see also Steve Mills & Ken Armstrong, *Judge Under Fire Takes Himself Off Murder Appeal*, CHI. TRIB., Jan. 15, 2000, § 1, at 1, available at 2000 WL 3626921 (naming Judge Morrissey as one of the Linscott prosecutors).

106. Detectives Vosburgh and Kurzawa claimed that they made no notation in police reports about the “dream statement” because prosecutors would ask Cruz questions regarding the

1995, Lt. James Montesano, a key State's witness, recanted his earlier testimony that he was informed by Cruz's interrogators that Cruz gave the "vision statement" and testified that he had actually been out of the state during the time of Cruz's interrogation.<sup>107</sup> After hearing the Lieutenant's recantation, DuPage County Circuit Court Judge Ronald Mehling directed a verdict for Cruz, ending his ordeal.<sup>108</sup>

Only a year after Cruz was first incarcerated, another man, Brian Dugan, after pleading guilty to the murders of another girl and a woman in exchange for sentences of life in prison without the possibility of parole, offered to confess to the Nicarico murder if DuPage prosecutors agreed not to seek the death penalty in the *Nicarico* case.<sup>109</sup> In a "hypothetical" confession, Dugan recanted in exacting detail how he killed Jeanine Nicarico.<sup>110</sup> DNA evidence later connected Dugan to the Nicarico murder.<sup>111</sup> To this day, however, Dugan has not been tried for the Nicarico murder because prosecutors say that inconsistencies in his story make him unbelievable.<sup>112</sup> Civil suits brought by Cruz, Alejandro

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statement under oath three days later when Cruz was placed before a grand jury. Possley, *supra* note 102, at 1. However, no questions regarding the alleged "vision" were asked during the grand jury hearing. *Id.* In the forty-five minute long ruling for a directed verdict Judge Ronald Mehling later gave, he asked "Why didn't they make a police report? . . . [Prosecutor] Tom Knight says, 'I'll ask him in front of the grand jury.' Well, actions speak louder than words." *Id.*

107. Lt. Montesano realized he was out of the state at the time of questioning after finding two credit card receipts for purchases he made in Florida. *Id.*

108. *Id.*

109. Robert McCoppin, *No Solution in Sight for Nicarico Case*, CHI. DAILY HERALD, July 4, 1999, at 1, available at 1999 WL 21724012. DuPage prosecutors would not accept the terms of Dugan's plea offer. *Id.*

110. Possley, *supra* note 102, at 1.

111. Shapiro, *supra* note 102, at 26. In light of the new DNA evidence the prosecution changed its theory to accommodate the DNA by arguing that Cruz and Hernandez had committed the crime with Dugan. Possley, *supra* note 102, at 1. Judge Mehling declared that this theory was not proven at trial. *Id.* One commentator has referred to this theory-swapping exercise as "a bit of prosecutorial gymnastics I call the Full Twisting DuPage—radically changing the theory of the crime in light of exculpatory evidence in order to preserve a conviction." Eric Zorn, *What Will It Take to Bring Justice to Death Row?*, CHI. TRIB., Feb. 5, 1999, § 1, at 1, available at 1999 WL 2859034.

112. *Man Jailed 12 Years is Freed in Trial for Girl's Killing; Acquittal Comes After Twice Being Convicted*, BALT. SUN, Nov. 5, 1995, at 18A, available at 1995 WL 2472391. Prosecutors have also failed to acknowledge Cruz's innocence. After the directed verdict in Cruz's trial, DuPage County State's Attorney Anthony Peccarelli stated, "We disagree with the judge's decision." *Id.* However, an Assistant State Attorney General and a Sheriff's detective resigned in protest over the case because they believed Cruz and Hernandez to be innocent. *Id.* Professors Ofshe and Leo argue that the Cruz case is not a false confession case because the trial court found that the "confession" never occurred. Instead, they classify the Cruz case as an invented confession case. Leo & Ofshe, *supra* note 38, at 441 n.29. Regardless of how the case is categorized, a videotape of Cruz's interrogation would have conclusively resolved the question of whether Cruz ever made a "dream statement." Judge Mehling said: "Did Rolando Cruz ever

Hernandez and Stephen Buckley, who were both charged with this crime in addition to Cruz, were recently settled by DuPage County for \$3.5 million.<sup>113</sup>

## 2. Derrick Flewellen and Hubert Geraldts

Derrick Flewellen confessed to murdering two women in Chicago in 1995.<sup>114</sup> A late 1999 DNA test of semen from one of those victims, however, matched that of Hubert Geraldts, a serial killer on death row for six other murders.<sup>115</sup> DNA failed to link Flewellen with the second victim, even though Flewellen stated in his written confession that he had performed a sex act with her.<sup>116</sup> Flewellen claims he gave the statement because Chicago police detectives coerced and beat him during an interrogation.<sup>117</sup> A friend of Flewellen's, who was outside of the interrogation room during his police questioning, stated that he heard screaming and noises consistent with Flewellen's allegations of being beaten.<sup>118</sup> The State maintained that Flewellen was involved, pointing to eight oral statements and a final written statement Flewellen

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make the dream statement? I don't think I have to answer that because I'm finding the defendant not guilty. This case is closed." Possley, *supra* note 102, at 1. The "dream statement" figured prominently in the criminal trial of the "DuPage 7"—four sheriff's officers and three former prosecutors—who were prosecuted for inventing the "dream statement" in an attempt to frame Cruz. Leo & Ofshe, *supra* note 38, at 441 n.29. Ironically, a videotape of Cruz's interrogation would have saved DuPage County law enforcement officers from their own ordeal of being prosecuted.

113. John Chase, *Angry DuPage Settles Cruz Suits*, CHI. TRIB., Sept. 27, 2000, § 1, at 1, available at 2000 WL 3713598; see also *supra* note 102 (discussing the trials of Hernandez and Buckley).

114. Maurice Possley, *DNA Topples Case Built on Confessions*, CHI. TRIB., Dec. 1, 1999, § 1, at 1, available at 1999 WL 2937036.

115. *Id.* Geraldts was a mildly mentally retarded man, arrested in Chicago for a string of murders committed in 1994 and 1995. Steve Mills & Terry Wilson, *State Says it Convicted the Wrong Killer*, CHI. TRIB., Feb. 11, 2000, § 1, at 1, available at 2000 WL 3635362. Police have used DNA evidence to tie Geraldts to four of the six murders. *Id.*

116. Possley, *supra* note 114, at 1. Her death was initially classified as undetermined but possibly the result of a severe lung infection. *Id.* The cause of death was upgraded to murder only after Flewellen confessed. *Id.*

117. *Id.*

118. *Id.* The witness, Gregory Watkins, testified at a pretrial hearing:

I could hear him screaming . . . I heard him scream and I heard him say, "No, no" and I heard something like . . . [At that point, Watkins thumped the witness stand with his fist.] I heard smacks, screams . . . thumping . . . like someone was beaten up or something . . . It went along for about a half-hour and then it stopped and it started back up again, and then I didn't hear no more.

*Id.*

gave confessing to the crimes.<sup>119</sup> Judge Marcus Salone, however, acquitted Flewellen in November 1999 based on the DNA evidence.<sup>120</sup>

Ironically, in January 2000, the State sought to vacate all six of Gerald's murder convictions after a new serial killer, Andre Crawford, confessed on videotape to killing ten women, including one woman that Gerald had confessed to killing. Because Crawford's videotaped confession was more detailed than Gerald's confession, the State now believes that Gerald's confession to the murder of Rhonda King was false. At the time of this writing, the State planned on retrying Gerald on the other five murders.<sup>121</sup>

### 3. Gary Gauger

In 1993, Gary Gauger's parents were found brutally murdered on their farm in Richmond in McHenry County.<sup>122</sup> The police focused their investigation on Gauger because he claimed to have been sleeping near where the bodies were found.<sup>123</sup> Police interrogated him for at least eighteen hours, during which time they told him that they had irrefutable proof that he had killed his parents.<sup>124</sup> Trusting in the officers, Gauger stated it was possible he had committed the crime and that he must have blacked out because he did not remember committing the crime.<sup>125</sup> Police helped Gauger construct a hypothetical explanation for how the murders occurred.<sup>126</sup>

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119. *Id.* Police spokesman Pat Camden's response to the DNA evidence exonerating Flewellen was, "We arrested and charged the right individual. Charges were approved by the state's attorney. What happens in the next step in the judicial process, that's up to them." *Id.* Robert Benjamin, spokesman for the Cook County State's Attorney's Office stated that prosecutors "believe [the victim] had sex with Hubert Gerald but that [Flewellen] killed her." *Id.* This is the same type of theory swapping that the State has done in the Rolando Cruz and Ronald Jones cases. See *supra* notes 102-13; *infra* notes 137-45 and accompanying text (both describing situations in which the prosecution has changed the theory of the crime after exculpatory evidence is found in order to preserve the conviction of the man originally convicted of the crime).

120. Mills & Wilson, *supra* note 115, at 1.

121. *Id.*

122. Shapiro, *supra* note 102, at 22.

123. *Id.* at 24.

124. *Id.* The presentation of such irrefutable "proof" is a technique police use to show a suspect that "his immediate future inevitably involves arrest, prosecution, and imprisonment or execution." Ofshe & Leo, *supra* note 55, at 990.

125. Shapiro, *supra* note 102, at 24 (quoting Gauger as saying, "My parents had just been murdered and these were the good guys . . . I know it sounds naïve now, but when they told me they wouldn't lie to me, I believed them."). In a recent radio commentary, Gary Gauger gave a firsthand account of his interrogation. Chicago Matters, *Seeking Justice, Personal Essay: "A Man Freed from Death Row"* (WBEZ radio broadcast, May 11, 2000), available at <http://www.wbez.org>; see also *List of Inmates Freed from Illinois' Death Row*, CHI. DAILY LAW

Prosecutors considered Gauger's statements to be a confession and used them to convict him of the murders.<sup>127</sup> He spent almost a year on death row, and three and a half years in total behind bars, until an appellate court overturned his conviction because the confession had been improperly obtained.<sup>128</sup> The state has since brought charges against two members of the Outlaw motorcycle gang for Gauger's parents' murders after federal authorities taped incriminating statements made by gang members.<sup>129</sup> One of the gang members has pled guilty.<sup>130</sup> To this day, McHenry County prosecutors have refused to acknowledge any wrongdoing in Gauger's conviction. In fact, in defending a civil suit which Gauger has filed against the police officers who interrogated him, an attorney for McHenry County and the

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BULL., Feb. 1, 2000, at 1. This is not atypical, as "[t]he innocent who has been persuaded of his guilt is also likely to be motivated to answer the interrogator's questions because he feels both shock and genuine remorse about what he has concluded he has done." Ofshe & Leo, *supra* note 55, at 993. This type of confession is called a "persuaded false confession" by Ofshe and Leo. *Id.* at 999.

Although persuaded false confessions are typically neither intended nor recognized by investigators, they follow a common pattern. Investigators typically open an interrogation by confronting the suspect with evidence of his guilt. If the suspect is innocent, the supposed evidence will be either erroneous or fabricated. If an innocent person believes that the evidence exists, he may become confused because he cannot account for the incriminating facts that contradict his memory of where he was when the crime occurred and his knowledge that he has no awareness of committing the crime. The investigator may lead the suspect to resolve his dilemma by persuading him that he has experienced some form of amnesia.

*Id.* at 999-1000.

126. Shapiro, *supra* note 102, at 24. Ironically, "when an individual has a weak memory for an event, the individual may acquiesce more easily to suggestive questions about the event." John E.B. Myers et. al., *Psychological Research on Children Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 28 PAC. L.J. 3, 7 n.10 (1996). Further, "the success of memory implantations in adult participants seems to hinge on many of the same factors that [have been] found to be suggestive in . . . interviews with children. For example, repetition of the misinformation, visual imagery induction, and the status of the suggester (interviewer) are important factors." Maggie Brook et al., *Reliability and Credibility of Young Children's Reports, From Research to Policy and Practice*, 53 AMER. PSYCHOL. 136, 147 (1998).

127. Shapiro, *supra* note 102, at 24.

128. *Indictment Vindicates Victim's Son*, WIS. ST. J., June 11, 1997, at 2A, available at 1997 WL 7065530.

129. *Id.* The indictment stated that Randall "Madman" Miller and James "Preacher" Schneider had beaten and stabbed Gauger's parents to death. *Id.*; see also Shapiro, *supra* note 102, at 26.

130. Mills & Wilson, *supra* note 115, at 1. It should be noted that Ofshe and Leo classified Gauger's case as a "highly probable false confession." However, the arrest of two men and the guilty plea of one of them, events which occurred after Ofshe and Leo's article was published, allow for Gauger's case to be upgraded to a proven false confession. See Leo & Ofshe, *supra* note 38, at 462-63.

McHenry County State's Attorney, Gary Pack, have blamed Gauger for getting himself into the predicament by confessing.<sup>131</sup>

#### 4. Andre V. Jones

In September 1979, Andre V. Jones confessed to a murder in St. Clair County.<sup>132</sup> Jones claims that the police officer who conducted the interrogation, Robert Miller, made veiled threats against Jones' family and girlfriend, bribed him with money which was added to his jail account, and gave him Valium.<sup>133</sup> He also alleges that Miller showed him autopsy and police reports that enabled Jones to fabricate a story that matched the crime in part.<sup>134</sup> The confession, handwritten by Miller, was extremely detailed. Ironically, the level of detail helped Jones in the end, as a grand jury refused to indict him because so many of those details did not match the facts of the crime.<sup>135</sup> In 1985, a St. Louis man, Glennon E. Engleman, pled guilty to the murder.<sup>136</sup>

#### 5. Ronald Jones

Ronald Jones confessed to raping and murdering a woman on Chicago's South Side in 1985.<sup>137</sup> Jones claims the confession came only after police interrogators beat him.<sup>138</sup> Jones was tried, convicted, and sentenced to death in 1989.<sup>139</sup> In 1997, DNA tests revealed that the semen found on the victim did not belong to Jones.<sup>140</sup> After

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131. Bill Cole, *Defense Attorney Challenges Gauger's Civil Suit; Lawyer Also Rejects Idea Man Wasn't a Part of Parents' Murder*, CHI. DAILY HERALD, Dec. 11, 1999, at 1, available at 1999 WL 26409133; see also *Cleared of Charges, Man Now Seeks Compensation*, AP, Oct. 8, 2000, APWIRE 02:13:00 (quoting State's Attorney Gary Pack as saying, "His own words convicted him, that's the bottom line"); Press Release, Associated Press, *Cleared of Charges, Man Now Seeks Compensation* (Oct. 8, 2000) (on file with author).

132. Bill Smith & Charles Bosworth, Jr., *Deputy's Tactics Spurred Questions*, ST. LOUIS POST-DISPATCH, Feb. 25, 1999, at B1, available at 1999 WL 3012522.

133. *Id.* Miller has also been implicated in another false confession case. See *infra* notes 191-206 and accompanying text (regarding Gregory Bowman).

134. Smith & Bosworth, *supra* note 132, at B1.

135. *Id.* Jones remains in prison on other charges. *Id.*

136. *Id.*

137. Ken Armstrong & Steve Mills, *Flawed Murder Cases Prompt Calls for Probe*, CHI. TRIB., Jan. 24, 2000, § 1, at 1, available at 2000 WL 3629579.

138. *Id.* Jones is quoted as saying that Chicago police beat him "until I just couldn't take it no more." *Id.*

139. Steve Mills, *Ex-Inmate Seeks Pardon in '85 Murder, Rape Case*, CHI. TRIB., Jan. 5, 2000, § 2, at 3, available at 2000 WL 3623540.

140. *Id.* DNA testing was initially refused by Judge John Morrissey; testing was later ordered by the Illinois Supreme Court. Judge Morrissey has since been chastised for his unwillingness to order DNA testing. Mills & Armstrong, *supra* note 105, at 1.

“inexplicably dragging [their] feet,”<sup>141</sup> prosecutors finally dropped the charges against Jones two years later. Jones was released from jail in May 1999, after spending fourteen years on death row for a crime he did not commit.<sup>142</sup> Jones sought a pardon, but the State’s Attorney’s Office did not support his request,<sup>143</sup> contending that Jones is still a suspect under the theory that someone else raped the victim and then Jones killed her.<sup>144</sup> On June 15, 2000, Governor George Ryan granted a full pardon to Ronald Jones, enabling Jones to recover up to \$140,000 in compensation in a state court of claims. Jones has also filed a wrongful prosecution lawsuit.<sup>145</sup>

#### b. Problematic Interrogations

Apart from the proven false confession cases detailed above, Professors Ofshe and Leo would classify a number of cases recently highlighted in local press coverage as highly probable and probable false confession cases.<sup>146</sup> These cases are worth studying, regardless of

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141. Zorn, *supra* note 111, at 1.

142. *Id.*

143. Mills, *supra* note 139, at 3. The pardon hearing was held on January 4, 2000. Gary Wisby, *Exonerated Yes, But Not Quite Free*, CHI. SUN-TIMES, Feb. 21, 2000, at 20, available at 2000 WL 6669612.

144. Mills, *supra* note 139, at 3. Cook County prosecutors first argued that only one person committed the murder and rape. Now that DNA evidence has cleared Jones of the rape, the State contends that someone else raped the victim and Jones murdered her. Jones’ attorney, Richard Cunningham, is quoted as saying that the State’s revised theory “borders on the ludicrous,” because Jones never implicated another person in his confession to both the rape and the murder. *Id.*; see also Eric Zorn, *DNA Evidence Continues to Cast Doubt on Retrial*, CHI. TRIB., Nov. 27, 1997, § 2, at 1, available at 1997 WL 3614947 (referring to prosecution’s attempt to fit DNA evidence into a new theory as “having to concoct the sorts of far-fetched, multi-perpetrator conspiracy scenarios that made the DuPage County state’s attorney’s office look like such desperate buffoons in the last trial of Rolando Cruz, another instance in which the state tried to run a DNA stop sign in an effort to defend an increasingly indefensible ‘confession’”). Ironically, this is the same technique of changing theories to fit unexpected DNA evidence to a suspicious confession that the State is pursuing in the Flewellen case. See *supra* notes 114-21 and accompanying text. It is important to note that charges against Jones were dropped after prosecutors “interviewed over 100 people in their investigation but still could not link Jones to the crime.” Mills, *supra* note 139, at 3.

145. Raoul V. Mowatt, *Ex-Con Hits System that Put Him on Death Row*, CHI. TRIB., Mar. 3, 2000, § 2, at 5, available at 2000 WL 3641786. Prosecutors, who have never apologized to Jones, are not taking a formal position on his bid for clemency, although in a letter to the Illinois Prison Review Board, the Cook County State’s Attorney’s Office wrote that it still considers Jones a suspect. *Id.*; see also Ray Long and Steve Mills, *3 Ex-Death Row Inmates Can Sue State After Pardons by Gov. Ryan*, CHI. TRIB., June 20, 2000, § 2, at 3, available at 2000 WL 3676959; Tom McCann, *Former Death Row Inmate Files Suit, \$50 Million Sought from City, Four Cops*, CHI. TRIB., May 17, 2000, § 2, at 7, available at 2000 WL 3665797; Tim Novak, *Pardon Disparity Questioned*, CHI. SUN-TIMES, Sept. 7, 2000, at 8, available at 2000 WL 6689217.

146. Obviously, there is some degree of subjectivity involved in classifying these cases to any specific degree of probability. See generally, e.g., Cassell, *supra* note 39; Leo & Ofshe, *supra*

whether or not they involve persons who are truly innocent. If the confessors are truly innocent, then it confirms that there is a substantial and ongoing need to have a more accurate view of what happens during police interrogations. Conversely, if the claims that these confessions are false are untrue, then a view into the interrogation room could save police from any question of culpability, or even the appearance of impropriety. Videotaping also protects police officers in cases in which confessions are not obtained but police conduct is called into question. The frequency of claims regarding police misconduct during interrogations undoubtedly impacts public perception of police and prosecutors, an issue that has become increasingly important in Illinois.<sup>147</sup> In each of these cases, if there had been a videotaped record of what happened in the interrogation room, the question of the guilt or innocence of these people, and the propriety of the officers' conduct, might finally be resolved.

*i. Children*

1. Mario Hayes

Seventeen-year-old Mario Hayes was arrested for murder, along with five other teenagers, in October 1996.<sup>148</sup> Hayes and three of the other teens claim that Chicago police officers physically mistreated them during their interrogation until they confessed.<sup>149</sup> After the interrogations, six State's Attorneys witnessed the boys' confessions, each of which was court-reported.<sup>150</sup> Not only did Hayes confess to the murder, but several of the other boys stated in their confessions that Mario was present.<sup>151</sup> Although Cook County Jail records showed that Hayes was incarcerated on the night of the murder, a judge refused to

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note 38; Ofshe & Leo, *supra* note 55. While we currently do not have enough information to declare these adults and children unquestionably "innocent," we do believe that there is enough questions regarding the truth of their confessions to merit discussing these cases herein.

147. See *infra* notes 259-73 and accompanying text (discussing public perception of official misconduct and general mistrust of police).

148. Steve Mills, *Cops Launch Inquiry into Confession; Probe Focuses on Man Charged in Fatal Beating*, CHI. TRIB., May 1, 1998, § 2, at 4, available at 1998 WL 2851835.

149. *Id.* Several of the boys reported being slapped, kicked, and punched by officers. Steve Mills & Maurice Possley, 'Killer' in Jail When Crime Committed; Teen Accuses Cop of Coercing Him into Admitting Guilt, CHI. TRIB., Apr. 29, 1998, § 1, at 1, available at 1998 WL 2850937. One boy states that he was locked in a locker at one point. *Id.* Mario's twin brother, Marcus, even contends that he was brought a glass of urine to drink after requesting water. *Id.* An internal investigation by Chicago's Office of Professional Standards was opened to investigate the charges. Mills, *supra* note 148, at 4.

150. Mills & Possley, *supra* note 149, at 1.

151. *Id.*

grant Hayes bond because of these confessions.<sup>152</sup> The State attacked the legitimacy of the jail records,<sup>153</sup> but in December 1998, the confession was suppressed.<sup>154</sup> The State failed to dismiss charges against Hayes, however, claiming that the jail records were improperly kept.<sup>155</sup> Hayes was subjected to two trials; his first trial resulted in a hung jury, with the jurors deadlocked at 11-1 favoring acquittal.<sup>156</sup> In June 1999, a Cook County jury finally acquitted Hayes.<sup>157</sup>

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152. Maurice Possley, *Man's Jail Alibi Doesn't Set Him Free on Bond; Judge Cites Confessions in Slaying*, CHI. TRIB., Apr. 30, 1998, § 2, at 1, available at 1998 WL 2851464. Judge Fred Suria stated, "I have five statements from five co-defendants and an independent witness that indicate that Mario Hayes was in fact at the scene when this went down and participated . . . . In fact, I have Mario Hayes' own statement indicating that he was present." *Id.* Judge Suria also stated that he was not ruling on whether or not jail records showing Hayes was in custody were accurate, but that he would leave that as "a matter for the trier of fact at the trial." *Id.* It should be noted that there were concerns presented by Hayes' attorney, Bryan Shultz, regarding the independent witness which placed Hayes at the scene. Maurice Possley, *Controversy Still Clouding Murder Case; Eyewitness Changed Story, Lawyer Says*, CHI. TRIB., Feb. 16, 1999, § 2, at 1, available at 1999 WL 2844763. The witness' statements changed significantly from the time he was first questioned until he later testified. *Id.* Additionally, police paid for the witness' rent and a hotel room. *Id.* A drug charge which was pending against the witness was also dropped following his grand jury testimony. Terry Wilson, *2 Juries are Told of Fatal Beating; Witness Says Twins Among Attackers*, CHI. TRIB., Feb. 19, 1999, § 2, at 3, available at 1999 WL 2845252.

153. Prosecutor John Kirby "accused the sheriff's office, which oversees the jail, of employing a 19th Century record keeping system" during the pretrial hearing. Possley, *supra* note 152, at 1. The State would go on to attempt to prove that the records showing Hayes was incarcerated at the time of the murder were faulty, but to no avail. Steve Mills, *2nd Check Confirms Accused Killer's Story; He Was in Jail at the Time of Murder, Records Show*, CHI. TRIB., May 5, 1998, § 2, at 1, available at 1998 WL 2853220. As the investigation into the jail records continued, several key records disappeared—ironically, the records related to the exact time of the murder—but reams of other documents still covered the time before and the time after the killing. Steve Mills, *Missing Jail Records Cloud Death; Man's Whereabouts Questioned in Killing*, CHI. TRIB., Nov. 9, 1998, § 2, at 3, available at 1998 WL 2914647; Abdon M. Pallasch, *Prosecutors Risk Penalty Over Missing Jail Records*, CHI. TRIB., Nov. 10, 1998, § 2, at 6, available at 1998 WL 2917644.

154. James Hill, *Jailed Suspect's Murder Confession Thrown Out*, CHI. TRIB., Dec. 17, 1998, § 2, at 1, available at 1998 WL 23516225. Judge Suria stated: "Simply because I have ruled in favor of the defense does not mean that I believe [Hayes] was in jail . . . . It simply means that the state has failed to prove by a preponderance of the evidence that he wasn't." *Id.*

155. *Id.* After the confession was thrown out, prosecutors stated they would proceed with the trial. *Id.* Hayes' attorney, Bryan Schultz, criticized the decision in stating, "It's a miscarriage of justice to go forward with a prosecution when there is evidence that he was in jail. . . . Going forward now threatens to make a mockery of the judicial system." *Id.*

156. Maurice Possley, *1 Hayes Brother Guilty; Mistrial for Other*, CHI. TRIB., Feb. 27, 1999, § 1, at 5, available at 1999 WL 2847863. The one holdout juror stated that he did not believe the jail records because they were handwritten and contained some inconsistencies. *Id.*

157. James Hill, *Evidence in Murder Case Too Flawed to Suit Jury*, CHI. TRIB., June 8, 1999, § 2, at 1, available at 1999 WL 2881088.

## 2. Lanard Guider

Lanard Guider was a seventeen-year-old with no police record when he was arrested for murder in Villa Park in July 1997.<sup>158</sup> Guider claims that police officers beat him until he confessed.<sup>159</sup> He reported that, "Every time I said I didn't know what they were talking about, they hit me. They just kept on hitting me."<sup>160</sup> After the interrogation, Guider's mother managed to sneak a camera into the jail and take photographs of Guider's injuries.<sup>161</sup> Additionally, after giving the confession, Guider reported the abuse to Assistant State's Attorney Ross Eagle, a prosecutor in the Felony Review Unit.<sup>162</sup> Guider spent sixteen months in jail until his mother was able to borrow \$30,000 to pay his bail.<sup>163</sup> Then in May 1999, charges against Guider were suddenly dropped because, according to Cook County First Assistant State's Attorney David Erickson, Eagle had never reported Guider's complaints that he had been brutalized during the interrogation.<sup>164</sup>

## 3. Eddie Huggins

Eddie Huggins was arrested for murder in Chicago on January 15, 1998.<sup>165</sup> During the several hours of interrogation that followed, no attorney or parent accompanied the fifteen-year-old Huggins.<sup>166</sup> Huggins claims that he was intoxicated when arrested and that, throughout the interrogation, police officers threatened him.<sup>167</sup> Finally giving up at 4:00 a.m., Huggins signed a four-page written confession in

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158. Steve Mills, *Brutality Claim Sets 1 More Free*, CHI. TRIB., May 21, 1999, § 1, at 1, available at 1999 WL 2875436.

159. *Id.*; see also *Innocent Suspect Freed After 2 Years*, WASH. POST, May 22, 1999, at A10, available at 1999 WL 17004409; S.A. Mawhorr, *Murder Charge Dropped as Man Says Cops Beat Him*, CHI. DAILY HERALD, May 22, 1999, at 4, available at 1999 WL 19052377.

160. Mills, *supra* note 158, at 1.

161. Mawhorr, *supra* note 159, at 4. Guider's mother stated that: "His head was swelled like an elephant. . . . They beat him like a dog." *Id.*

162. Mills, *supra* note 158, at 1.

163. *Id.*

164. *Id.* Eagle, however, claimed he told another prosecutor, Victoria Klegman, of Guider's allegations. *Id.* Ironically, Eagle's punishment for failure to report the complaints was to be transferred to juvenile court; he chose to resign. *Id.* First Assistant State's Attorney David Erickson stated, "We felt that the actions of the assistant state's attorney compromised the integrity of the evidence in the case." *Id.*

165. Maurice Possley & Steve Mills, *Little Adds Up in Murder Case; Youth Admits Stabbing; Autopsy Shows No Knife Wounds*, CHI. TRIB., Mar. 21, 1999, § 1, at 1, available at 1999 WL 2855525.

166. *Id.*

167. *Id.*

which he admitted stabbing a woman to death.<sup>168</sup> The only problem was that the medical examiner found no stab wounds on the victim's body.<sup>169</sup> Despite that glaring contradiction, and though no physical evidence—including non-matching semen taken from the victim—linked Huggins to the crime,<sup>170</sup> he spent over a year in jail awaiting trial as an adult for the murder.<sup>171</sup> The State even went so far as to accuse Huggins of stabbing the woman during its opening statement at Huggins' trial.<sup>172</sup> Judge Thomas Sumner refused to submit the case to a jury, directing a verdict of not guilty at the close of the State's case.<sup>173</sup> Since the acquittal, the State has not brought charges against the youth who originally accused Huggins, even though blood from the victim was found on that youth's jacket and he has a history of assaulting women.<sup>174</sup>

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168. *Id.*

169. *Id.*

170. Maurice Possley, *Teen Loses 1 Lawyer, Gains a Team; Bond Ruling is Delayed in Strange Murder Case*, CHI. TRIB., Mar. 26, 1999, § 2, at 4, available at 1999 WL 2857295.

171. James Hill, *No Knife Wounds Found in 'Stabbed' Body; Testimony on Autopsy Contradicts Disputed Confession*, CHI. TRIB., Apr. 29, 1999, § 2, at 1, available at 1999 WL 2868275. This situation shows that:

Because both guilty and innocent suspects can be made to say 'I did it,' a mere general admission, absent additional indicia of reliability provided by the fit between the confessor's description of the crime and the crime facts and/or corroborating evidence derived from the confession . . . is not a sufficiently strong indicator of guilt on which to base an arrest.

Ofshe & Leo, *supra* note 55, at 991.

Judge Thomas R. Sumner showed continued concern over the case. For example, in ruling that Huggins' bond should be reduced so that he could leave jail a year after being arrested, Judge Sumner stated, "This case has been before me 15 times, at least 15 times, since last February. . . . What we do have is a person who has languished in custody for a year now, a little over a year, when it appears that something should have been done during discovery. . . ." James Hill, *Teen in Puzzling Case Free on Reduced Bond; Suspect in Murder Held More than Year*, CHI. TRIB., Mar. 30, 1999, § 2, at 1, available at 1999 WL 2858436.

172. James Hill, *Trial Begins in Perplexing Murder Case*, CHI. TRIB., Apr. 27, 1999, § 2, at 4, available at 1999 WL 2867455 (quoting prosecutor Caren Armbrust). In these situations "[w]hen children provide inconsistent or bizarre evidence, it is either ignored or else interpreted within the framework of the biased interviewer's initial hypothesis." Maggie Bruck, Stephen J. Ceci, & Helene Hembrooke, *Reliability and Credibility of Young Children's Reports; From Research to Policy and Practice*, 53 AM. PSYCHOLOGIST 136, 140 (1998).

173. Hill & Mills, *supra* note 47, at 1.

174. Possley & Mills, *supra* note 165, at 1. The man that initially accused Huggins of the crime did so after being arrested on a drug charge. *Id.* He offered to supply information about the murder in exchange for leniency. *Id.* Additionally, DNA matching the victim's blood was found on the jacket of the youth who fingered Huggins. *Id.*; Possley, *supra* note 170, at 4.

## 4. A.M.

In October 1994, A.M., an eleven-year-old boy with no prior criminal background and no history of violence, was convicted in Chicago for murdering his eighty-three-year-old neighbor.<sup>175</sup> At the time of the murder, A.M. was only ten-years-old. The only evidence against the boy was an oral confession he gave to Detective James Cassidy, the same detective who obtained the alleged statements from the two little boys in the Ryan Harris case.<sup>176</sup> Chicago police obtained the confession outside of the presence of the boy's attorney, parents, relatives, and a youth officer.<sup>177</sup>

The objective facts of the crime point away from A.M. as well. A long, uninterrupted blood streak leading from the kitchen to the bathroom indicated that the victim, who weighed 173 pounds, was dragged through her apartment.<sup>178</sup> At the time of the murder, however, A.M. weighed less than 100 pounds.<sup>179</sup> Additionally, no fingerprints left in the apartment matched the boy's and a partial footprint and palm print left at the scene could not be linked to the boy.<sup>180</sup> The State maintains that the boy confessed to killing her out of rage because she had called him a "nigger."<sup>181</sup> The boy allegedly told Detective Cassidy that he went to the apartment to kill the victim, not to rob her. There was, however, evidence that robbery was the motive, including the fact that the victim's bedroom was ransacked, there were pry marks on her back porch door, her purse had been rifled through, and a gold watch and diamond ring were reported missing.<sup>182</sup> Further, psychologists who

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175. Amy Bach, *True Crime, False Confession*, THE NATION, Feb. 8, 1999, at 21, available at 1999 WL 9306862.

176. Maurice Possley, *Officer in Harris Case Coaxed Similar Confession in '94*, CHI. TRIB., Sept. 10, 1998, § 1, at 1, available at 1998 WL 2894147; see also *supra* notes 49-76 and accompanying text (discussing the Harris case in more detail). After hearing that Detective Cassidy was involved in the Ryan Harris case, the original trial judge in A.M.'s case, Judge Stuart Lubin thought back to the trial. He stated, "There were some inconsistencies, but I didn't feel that they established a reasonable doubt. . . . I just don't know." Possley, *supra*; see also Bach, *supra* note 175, at 21.

177. Possley, *supra* note 176, at 1. Under Illinois Law, arresting officers must take juvenile suspects to the nearest juvenile officer without "unnecessary delay." 705 ILL. COMP. STAT. 405/3-8(2) (West 1992). The presence of a youth officer during questioning, especially if no parent is present, is an important factor in a court's determination of whether a juvenile's statement is voluntary. See, e.g., *In re R.T.*, 729 N.E.2d 889, 896 (Ill. App. 1st Dist. 2000).

178. Possley, *supra* note 176, at 1.

179. Jon Jeter, *Chicago Police Criticized for 'Frame-Up,' in Children's Confession*, WASH. POST, Sept. 11, 1998, at A03, available at 1998 WL 16555264.

180. Possley, *supra* note 176, at 1.

181. Bach, *supra* note 175, at 22; Jeter, *supra* note 179, at A03; Possley, *supra* note 176, at 1.

182. Possley, *supra* note 176, at 1.

examined A.M. shortly after the murder found no evidence of rage in the boy, prompting them to question whether he was involved in the crime.<sup>183</sup> A.M. recanted his confession as soon as his mother arrived at the stationhouse and refused to sign a written confession.<sup>184</sup> In October 1999, almost five years after the conviction, a federal judge in the United States District Court for the Northern District of Illinois in Chicago reopened A.M.'s case and ordered a new hearing into the circumstances of his confession.<sup>185</sup>

### 5. Dustan Pennington

Sixteen-year-old Dustan Pennington was arrested for the murder of a female hotel clerk in East Alton in 1998.<sup>186</sup> He claims he signed a written confession only after police threatened him with life imprisonment during thirteen hours of interrogation.<sup>187</sup> Witnesses placed Pennington elsewhere at the time of the murder, and another man charged with the murder stated that Pennington was not involved.<sup>188</sup> Pennington was tried as an adult for the crime. Pennington's attorneys, John Rekowski and Ron Slemer, were able to obtain a taped conversation in which two other men discussed committing the crime; subsequently, Rekowski convinced one of the two men to confess.<sup>189</sup> Pennington was acquitted at trial and the two other men were subsequently charged with the crime.<sup>190</sup>

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183. Bach, *supra* note 175, at 21; Possley, *supra* note 176, at 1; Sean Rapacki, *Bullied: When Kids Confess Under Duress*, CLEV. FREE TIMES, Jan. 19-25, 2000, available at <http://www.freetimes.com/issues/818/features-cover.php3>.

184. Possley, *supra* note 176, at 1; Bach, *supra* note 175, at 21.

185. *Judge Questions Detectives Actions in 11-Year-Old's Confession*, STATE J.-REG. (Springfield, Ill.), Oct. 20, 1999, at 8, available at 1999 WL 29627263; Charles Nicodemus, *Confessions Uncoerced, Cop Says*, CHI. SUN-TIMES, Jan. 13, 2000, at 16, available at 2000 WL 6664305; Maurice Possley, *Boy Convicted of Slaying at Age 10 Appeals*, CHI. TRIB., Jan. 11, 2000, § 2, at 1, available at 2000 WL 3625410; Maurice Possley, *Cop Denies Threatening Boy to Confess*, CHI. TRIB., Jan. 13, 2000, § 2, at 3, available at 2000 WL 3626148; Maurice Possley, *Judge Questions Cop's Conduct in Boy's Confession; 1993 Murder Case Ordered Reopened*, CHI. TRIB., Oct. 19, 1999, § 1, at 1, available at 1999 WL 2923276; Cam Simpson, *Boy's Murder Confession in '94 Challenged*, CHI. SUN-TIMES, Sept. 11, 1998, available at 1998 WL 2925037; see also *Troubling Questions Demand Answers*, CHI. TRIB., Oct. 24, 1999, § 1, at 18, available at 1999 WL 2925037.

186. Charles Bosworth, Jr., *Suspect at Motel is Indicted*, ST. LOUIS POST-DISPATCH, Feb. 10, 1989, at A8.

187. Robert Kelly, *Youth Cleared in Slaying*, ST. LOUIS POST-DISPATCH, Jan. 27, 1989, at A1.

188. Bosworth, *supra* note 186, at A8.

189. Brueggemann, *supra* note 95, at 3B.

190. *Id.*

*ii. Adults*

## 1. Gregory Bowman

Gregory Bowman was arrested and eventually confessed to murdering two women in separate incidents in Belleville in 1978.<sup>191</sup> Investigating officer Robert Miller enlisted a jail-house snitch, Danny Stark—a man selected because of his abilities as a con artist—to approach Bowman to tell him he would help Bowman escape if he confessed to the two murders.<sup>192</sup> Bowman agreed to the plan because he was sure he had solid alibis for both killings.<sup>193</sup> He and Stark read newspaper articles to develop a story.<sup>194</sup> Bowman recanted his confession a few days later, however, when Stark did not show up to help him escape.<sup>195</sup> Officer Miller placed him in solitary confinement as punishment for recanting his confession.<sup>196</sup> After a bench trial, Bowman was sentenced to life imprisonment without the possibility of parole.<sup>197</sup>

Clyde Kuehn, State's Attorney at the time of Bowman's trial, agrees that this trick might have been enough to make an innocent man confess, and certainly would be enough to suppress a confession.<sup>198</sup> With no confession and no physical evidence linking Bowman to the

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191. *St. Clair County Deputy Admits Tricking Murder Confession Out of Suspect in '78*, STATE J.-REG. (Springfield, Ill.), Feb. 23, 1999, at 8, available at 1999 WL 8524953 [hereinafter *Deputy Admits I*].

192. *Id.* Bowman had been arrested for another crime for which he was in jail at the time. *Id.* Miller developed this plan after learning of Bowman's fear of being sent back to prison. *Deputy Admits Tricking Convict into Confessing*, ST. LOUIS POST-DISPATCH, Feb. 22, 1999, at A1, available at 1999 WL 3012135 [hereinafter *Deputy Admits II*].

193. *Deputy Admits II*, *supra* note 192, at A1. Cassell would consider this a "suspect-induced" rather than a "police-induced" false confession because Bowman confessed as part of an escape plan. See Cassell, *supra* note 39, at 583 n.372. However, given the nature of the trickery by Miller, the authors believe that this false confession was at least partially induced by inappropriate police conduct. The fact that Miller allegedly tricked Andre V. Jones into confessing supports the decision to classify this as a false confession. See *supra* notes 132-36 and accompanying text (discussing the Jones case in more detail).

194. This claim is supported because Miller secretly audiotaped a conversation he had with Bowman in which Bowman stated: "Everything I told you was either in the paper (or the) police reports 'cause I had copies of all those police reports." Carolyn Tuft, *Box of Articles Could Back Up Convict's Claim*, ST. LOUIS POST-DISPATCH, Apr. 26, 1999, at D1.

195. *Deputy Admits II*, *supra* note 192, at A1; Carolyn Tuft, *Prosecutors Have Not Obeyed Evidence Order in St. Clair County Case*, ST. LOUIS POST-DISPATCH, Nov. 13, 1999, at A7.

196. *Deputy Admits II*, *supra* note 192, at A1.

197. Carolyn Tuft, *DNA Evidence from '78 Murders Was Destroyed; Gregory Bowman Sought Testing to Prove Innocence; Test Wasn't Available 20 Years Ago*, ST. LOUIS POST-DISPATCH, Apr. 26, 1999, at D1, available at 1999 WL 3021455.

198. See *Deputy Admits II*, *supra* note 192, at A1.

crimes,<sup>199</sup> it is likely charges would have been dropped. Additionally, a former FBI investigator specializing in serial killings believes Bowman did not commit the murders because they do not fit his criminal profile. Rather, the murders fit the profile of Dale R. Anderson, a man serving a life sentence for several murders in the Belleville area and who is potentially responsible for several others.<sup>200</sup> Moreover, Anderson's car was similar to one used in one of the killings, whereas Bowman's vehicle did not match,<sup>201</sup> and Anderson knew one of the victims from his church.<sup>202</sup> Finally, several witnesses could have provided Bowman with alibis on the nights of the murders.<sup>203</sup> Unfortunately, police destroyed DNA evidence that might have helped clear Bowman.<sup>204</sup> As such, Bowman is currently serving life in prison without the possibility of parole for the murders. In June 1999, Bowman filed an appeal seeking a new trial based in large part on evidence showing that Miller had tricked Bowman into confessing.<sup>205</sup> An order was issued granting Bowman the right to gather evidence to support his case, but the St. Clair County State's Attorney's Office failed to comply with the order and sought to remove the judge from the case.<sup>206</sup>

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199. Carolyn Tuft, *Into the Dark Side*, ST. LOUIS POST-DISPATCH, June 3, 1999, at G1, available at 1999 WL 3026952.

200. Carolyn Tuft & Bill Smith, *Convict Fits Pattern of a Serial Killer; Dale Anderson Murdered Others, Leading Expert Believes; Series: Who Killed Audrey Cardenas?*, ST. LOUIS POST-DISPATCH, Feb. 21, 1999, at A1, available at 1999 WL 3011987; see also Brueggemann, *supra* note 95, at 3B; *infra* notes 223-33 and accompanying text (regarding Rodney Woidtke). For a detailed description of an interview of Anderson conducted by Ressler, see Tuft, *supra* note 199, at G1.

201. *Deputy Admits I*, *supra* note 191, at 8; Carolyn Tuft, *Girl's Friends Say Wrong Man Is in Prison; 20 Years Later, Questions Remain in the Slaying of Belleville 14-Year-Old Elizabeth West*, ST. LOUIS POST-DISPATCH, Mar. 15, 1999, at D1, available at 1999 WL 3015344.

202. Tuft, *supra* note 201, at D1. Judge Kuehn has acknowledged that Ressler's investigation into Anderson's guilt shows that "[t]here is no question that [the crimes] all fit a pattern." Tuft, *supra* note 199, at G1.

203. *Deputy Admits II*, *supra* note 192, at A1.

204. Tuft, *supra* note 197, at D1. Law enforcement officials have stated that the evidence was destroyed in order to make room for evidence in more recent cases; oddly, evidence that supported the State's case against Bowman was not destroyed. *Id.*

205. Carolyn Tuft, *Bowman Claims Innocence in Killing of Two in Belleville, Seeks New Trial*, ST. LOUIS POST-DISPATCH, June 6, 1999, at C7, available at 1999 WL 3027276.

206. Tuft, *supra* note 194, at D1. St. Clair County Circuit Judge Roger Scrivner refused to remove himself from the case. Carolyn Tuft, *Judge Won't Step Down in Appeal in Murder Cases, As Prosecutors Had Sought; He Orders State's Attorney to Turn Over All Evidence This Week*, ST. LOUIS POST-DISPATCH, Nov. 23, 1999, at B4, available at 1999 WL 3056369.

## 2. Miguel Castillo

Miguel Castillo was convicted in 1991 in Chicago for murder.<sup>207</sup> Castillo allegedly gave an oral confession, the only evidence connecting him to the killing.<sup>208</sup> His attorneys, however, state that a witness can testify that Castillo's interrogator was not fluent in Spanish and that, at the time, Castillo could not speak English.<sup>209</sup> Castillo has also claimed that he was beaten during the interrogation and that two of the three officers involved were later disciplined for brutalizing suspects in other cases.<sup>210</sup> Castillo's case took a twist when State Representative William Delgado gave attorneys at the People's Law Office a letter he had received from Castillo that included court records showing him to be imprisoned on another charge when the victim was killed.<sup>211</sup> On September 25, 2000, Judge Lon Schultz ordered a new trial for Castillo and released him on his own recognizance. Prosecutors did not object to Castillo's request for a new trial, agreeing that evidence from two defense experts indicated that the victim died before May 11, 1998, a time frame in which Castillo was in jail. Prosecutors are evaluating whether to retry Castillo.<sup>212</sup>

## 3. Reginald Cole

On October 20, 1999, authorities transported Reginald Cole from the Illinois River Correctional Facility to the Cook County Jail to be questioned regarding a murder.<sup>213</sup> During questioning on October 30, 1999, at the Wentworth District Station house in Chicago, police claim that Cole attacked the interrogating officer during the interrogation, grabbed the officer's gun, shot at the officer,<sup>214</sup> and then shot himself in

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207. Steve Mills, *Lawyers Seeking New Murder Trial, Ask Judge to Step Down*, CHI. TRIB., Dec. 16, 1999, § 2, at 3, available at 1999 WL 2942230.

208. Elizabeth Amon, *Risky Business: Battling a Judge; A Chicago Firm Takes on a Judge It Believed to be Biased, and Wins*, NAT'L L.J., Jan. 31, 2000, at A12, available at WL 1/31/00 NLJ A12 (col 2); Steve Mills, *Judge Has Doubts on '91 Conviction: Murder Evidence 'Was Close.'* *Jurist Says*, CHI. TRIB., Dec. 3, 1999, § 2, at 1, available at 1999 WL 2938019.

209. Mills, *supra* note 208, at 1.

210. Amon, *supra* note 208, at A12. In a strange twist, Judge Morrissey reported that there had been no complaints sustained against the officers, when in reality one of the interrogators had previously been suspended on a brutality charge. Mills, *supra* note 207, at 3.

211. Amon, *supra* note 208, at A12. Additionally, the original trial judge, John Morrissey, has expressed doubts about Castillo's guilt. Mills, *supra* note 208, at 3.

212. Mickey Ciokajlo, *Inmate Released, New Trial Ordered in 1998 Slaying*, CHI. TRIB., Sept. 26, 2000, § 2, at 1, available at 2000 WL 3713377.

213. Monica Davey, *Cops Denied Guns During Questioning; Order Follows Death in Wentworth Station*, CHI. TRIB., Dec. 1, 1999, § 2, at 1, available at 1999 WL 2937306.

214. *Id.*; Margaret O'Brien, *Judge Won't Use Cop-Torture Testimony*, CHI. TRIB., Sept. 24, 1999, § 2, at 4, available at 1999 WL 2915216. Police reports regarding the total number of

the head.<sup>215</sup> Officers also claimed that, after shooting himself, Cole was still such a threat that two other officers came into the room and shot Cole in his torso and arm.<sup>216</sup> In this case, “[t]here are no video or audio recordings in the interrogation, so the department’s implausible account is the official one.”<sup>217</sup> Although one police spokesman reported that police shot Cole during a struggle, the Cook County medical examiner ruled the death a suicide.<sup>218</sup>

After the shooting, police spokesman Pat Camden explained that it was the practice of many Chicago police officers to wear guns during custodial interrogations.<sup>219</sup> Chicago Police Superintendent Terry Hillard responded to the incident by asking police commanders to make recommendations on how to avoid incidents similar to the Cole shooting. The recommendation and resulting policy was sensible: police officers were no longer allowed to take weapons into an interrogation room.<sup>220</sup>

The Cook County Bar Association responded to Cole’s death by pressing the City Council to replace the internal Office of Professional Standards with an external and independent body to review police conduct.<sup>221</sup> Cole’s family also filed a petition to appoint a special prosecutor to investigate the shooting and has since filed a civil suit against the Chicago Police Department.<sup>222</sup>

shots fired have varied. Davey, *supra* note 213, at 1. Police have explained that this inconsistency is a result of new information being learned in an ongoing investigation. *Id.*

215. See Davey, *supra* note 213, at 1.

216. See Salim Muwakkil, Commentary, *The Implausible Plots of Police Stories*, CHI. TRIB., Nov. 8, 1999, § 1, at 17, available at 1999 WL 2930318.

217. *Id.*

218. *Id.*; O’Brien, *supra* note 214, at 4.

219. *City Police Seek Ways to Prevent Station Shootings*, CHI. TRIB., Nov. 14, 1999, § 2, at 5, available at 1999 WL 2931841.

220. Davey, *supra* note 213, at 1; Terry Wilson, *Police Guns to Be Locked Up During Questioning*, CHI. TRIB., Dec. 2, 1999, § 2, at 4, available at 1999 WL 2937544.

221. Davey, *supra* note 213, at 1. The Bar Association also requested that the U.S. Department of Justice investigate the matter. The Chicago Police Department responded to that request by stating that “after the fatal shootings of two unarmed civilians [earlier in the year], Supt. Terry Hillard . . . announced plans to forward all internal investigations of police shootings to the federal authorities.” *Id.*

222. Frank Main, *New Probe of Death at Cop Station Sought*, CHI. SUN-TIMES, Feb. 9, 2000, at 19, available at 2000 WL 6667610; Steve Mills, *Call For Special Prosecutor; Lawyer Suspicious About Man’s Death in Police Custody*, CHI. TRIB., Feb. 9, 2000, § 2, at 3, available at 2000 WL 3634660. There is widespread skepticism about the police story. However, as one commentator pointed out, “[i]t almost doesn’t matter whether . . . the police version of how . . . Cole came to be shot to death in the Wentworth District station last weekend is true or not. The sad fact is that almost nobody outside the community of police and their strongest supporters will take such a story at face value any longer.” Editorial, *The High Cost of Excessive Force*, CHI.

#### 4. Rodney Woidtke

Police arrested Rodney Woidtke, a mentally ill homeless man, in June 1988, for the murder of Audrey Cardenas, an intern at the *Belleville News Democrat*.<sup>223</sup> Woidtke confessed to the crime after police questioning and was sentenced to forty-five years in prison.<sup>224</sup> His confession was the only evidence linking him to Cardenas' murder. Since his conviction, however, the bizarre behavior of Dale R. Anderson, a man whom some experts believe is responsible for the killings to which Gregory Bowman confessed, cast serious doubt on Woidtke's conviction.<sup>225</sup> Just prior to Woidtke's sentencing, Anderson broke into a home in east Belleville and brutally murdered a pregnant woman and her three-year-old son.<sup>226</sup> Before killing the mother, he forced her to write a note stating that she had knowledge that Anderson's former supervisors at the Illinois Department of Public Aid killed Cardenas.<sup>227</sup> Anderson also wrote extensively in his diary about Cardenas and had been in Cardenas' home at least once.<sup>228</sup> Police also found a "souvenir" that Anderson may have taken from Cardenas' home that Anderson claims he got from a man who witnessed Cardenas being kidnapped.<sup>229</sup> Anderson also posed as a police officer investigating the Cardenas murder and called the offices of the Belleville News-Democrat shortly after Cardenas was reported missing, telling reporters that he knew who had kidnapped Cardenas.<sup>230</sup> The lead investigator in the Cardenas murder, Dee Heil, has held a longstanding belief that

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TRIB., Nov. 4, 1999, § 1, at 28, available at 1999 WL 2928921; see also Muwakkil, *supra* note 216, at 17 (stating that "[t]he story that is being used to justify Cole's death requires such a leap of faith, even the staunchest police advocates are shaking their heads in disbelief").

223. Carolyn Tuft, *Court Orders New Trial for Woidtke*, ST. LOUIS POST-DISPATCH, Apr. 28, 2000, at A1, available at 2000 WL 3522703.

224. *Id.*; Tuft & Smith, *supra* note 200, at A1. Former FBI Agent Robert K. Ressler "believes Woidtke's paranoid schizophrenic condition would have prevented him from planning anything in his life, much less a murder." Tuft & Smith, *supra* note 200, at A1.

225. Carolyn Tuft, *Baricevic Testifies He Didn't Consider Anderson a Suspect Lawyers Seek New Trial in Killing of Reporter*, ST. LOUIS POST-DISPATCH, Feb. 2, 1999, at B4, available at 1999 WL 3009366; see also *supra* notes 191-206. Ressler, an expert on serial killers, believes that Anderson killed Cardenas. Tuft & Smith, *supra* note 200, at A1. In stating that he believed Woidtke is innocent, Ressler stated, "Get him out of prison." *Id.*

226. Carolyn Tuft & Bill Smith, *Woidtke Declared Innocence Again in Killing*, ST. LOUIS POST-DISPATCH, Jan. 30, 1999, at A12, available at LEXIS, News Library, St. Louis Post-Dispatch file.

227. *Id.*

228. Tuft & Smith, *supra* note 200, at A1.

229. *Id.*

230. Phil Luciano, *Killer's Story Seems to Get Darker and Darker*, PEORIA J. STAR, Apr. 1, 1998, at A1, available at 1998 WL 5759739.

Woidtke did not commit the murder.<sup>231</sup> The Illinois Appellate Court granted Woidtke a new trial on April 27, 2000, ruling that Woidtke's attorney, who also represented Anderson, had a conflict of interest and that the trial court erred by dismissing Woidtke's post-conviction claims of actual innocence without a hearing.<sup>232</sup> St. Clair County State's Attorney, Bob Haida, is planning to retry Woidtke for Cardenas' murder.<sup>233</sup>

### *iii. Area Two Investigations*

Over fifty suspects interrogated by Chicago police officers of the Area Two precinct claim to have been tortured during their interrogations.<sup>234</sup> Particularly troubling is a group of men known as the "Death Row 10" who have stated that they gave false confessions to Commander Jon Burge and detectives from Chicago's Area Two Police headquarters under his command.<sup>235</sup> Others not given the death penalty

231. Tuft, *supra* note 223, at A1.

232. *See id.* In a concurring opinion, Justice Gordon E. Maag stated:

[I write separately] [t]o state my strong personal belief that the actions of the trial court and counsel in allowing the defendant's post-conviction petition to languish for years without even a hearing are unconscionable. I can perceive of no reasonable explanation for such conduct. I am confident, given our disposition, that this matter will now receive immediate attention and be concluded promptly, whatever the outcome.

Jim Dey, *Justice Sometimes Runs Off the Track*, NEWS-GAZETTE (Champaign, Ill.), May 20, 2000, at A6, available at 2000 WL 25716836.

233. Carolyn Tuft, *11 Years Ago Rodney Woidtke Went to Jail for Murder; In October, He Will be Tried for the Killing Again*, ST. LOUIS POST-DISPATCH, Aug. 13, 2000, at A1, available at 2000 WL 3541935.

234. Mills & Armstrong, *supra* note 13, at 1; *see also* Sasha Abramsky, *The Serious Torture Squad*, THE INDEPENDENT (London, U.K.), Dec. 12, 1999, at 11, available at 1999 WL 30723660 (detailing the case against Commander Jon Burge); *Task Force on Criminal Justice System*, *supra* note 46, at 9-11. The brutality involved in the conduct of the police officers is exceptional:

During a period of at least thirteen years, more than sixty men, all of them black, have alleged that they were physically abused, and in fact, tortured by several named officers in the Area Two Violent Crimes Unit on Chicago's South Side (footnote omitted). Certain types of torture, by certain officers, were alleged repeatedly, including suffocation with a typewriter cover, electroshock with a specially constructed black box, hanging by handcuffs for hours, a cattle prod to the testicles, and Russian roulette with a gun in the suspect's mouth (footnote omitted). The allegations were corroborated not only by defense attorneys and emergency room physicians, but by several other respected groups including a broad-based Chicago citizens coalition, an investigative group from the internal police review agency, and Amnesty International (footnote omitted).

Bandes, *supra* note 11, at 1276-77.

235. *The Death Row 10*, CHI. SUN-TIMES, Feb. 26, 1999, at 6, available at 1999 WL 6527247; Nicodemus & Casey, *supra* note 17, at 4. The ten men are Madison Hobley, Stanley Howard, Leonard Kidd, Derrick King, Ronald Kitchen, Reginald Mahaffey, Jerry Mahaffey,

also claim to have confessed falsely to end their interrogations.<sup>236</sup> Several of these cases are detailed below.

### 1. Darrell Cannon

Darrell Cannon was convicted of murder in 1983 and sentenced to life in prison. He claims that he only confessed to committing the murder after Chicago police took him to a remote location and tortured him, including applying a cattle prod to his genitalia, and forcing a shotgun, which Cannon didn't know was unloaded, into his mouth and pulling the trigger.<sup>237</sup> Cannon does not deny being present during the killing, but he denies committing the murder or having prior knowledge that a murder was planned.<sup>238</sup> Now represented by the People's Law Office, Cannon is seeking a new trial. The Illinois Appellate Court recently ordered trial Judge John Morrissey to conduct an evidentiary hearing on the matter.<sup>239</sup>

### 2. Madison Hobley

In 1987, a Chicago apartment building fire killed Madison Hobley's wife, son, and five other people.<sup>240</sup> Police arrested Hobley who claimed he was beaten and suffocated during his interrogation.<sup>241</sup> The police officers involved testified that Hobley confessed to the crime, though there is no documentation of the alleged confession. One officer claims

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Andrew Maxwell, Leroy Orange, and Aaron Patterson. *The Death Row 10, supra*. It should be noted that the president of Chicago's Fraternal Order of Police ("FOP") believes each of these men to be guilty. Martha Irvine, *Death Row Inmates Say Confessions Coerced*, GRAND RAPIDS PRESS (Ill.), July 8, 1999, at A7, available at 1999 WL 17328514 (quoting FOP President Bill Nolan as saying: "These guys were all murderers . . . They were all guilty, and now they're looking for a way to get out of jail, so they're blaming Jon Burge.").

Investigation into the claims of torture is still underway. Although internal reports which support these claims were completed in 1994, Tom Needham, a lawyer for the Chicago Police Department, "quietly shelved the reports. With no notice to the defense attorneys or complaining witnesses, Needham wrote a memo advising [the Office of Professional Standards] to clear the officers and classify the cases 'not sustained.'" Eric Zorn, *Death-Penalty Panel is Perfect Forum for this Inmate's Story*, CHI. TRIB., Mar. 13, 2000, § 2, at 1, available at 2000 WL 3645222. Needham continues to represent the Chicago Police Department on these issues. *Id.*

236. Leslie Jones McCloud, *Justice Coalition Plans Oversight*, CHI. DEFENDER, June 19, 1999, at 1 (discussing the case of Aaron Patterson, as well as Eddie Huggins and Mario Hayes).

237. Abramsky, *supra* note 234, at 11.

238. *Id.*

239. *Id.*; O'Brien, *supra* note 214, at 4. Judge Morrissey has since stepped down from the case, which has been reassigned to Judge Lawrence Fox. See Janan Hanna, *Witness Tells of Torture by Police, Pattern of Police Brutality Tied to Murder Appeal*, CHI. TRIB., Apr. 20, 2000, § 2, at 1, available at 2000 WL 3658032.

240. *The Death Row 10, supra* note 235, at 6.

241. See Mills & Armstrong, *supra* note 13, at 1.

that he took notes of the confession, but threw them away after they were damaged by water.<sup>242</sup> Further complicating the case, prosecutors may have suppressed reports showing that Hobley's fingerprints were not on one gas can used to set the blaze. Police destroyed the other gas can involved in the incident.<sup>243</sup> Hobley was convicted of the crime and is currently on death row. He is seeking a new trial.

### 3. Stanley Howard

Stanley Howard signed seven pages of a court-reported confession for a 1984 murder in Chicago. Howard claims he did so only after Area Two police officers punched and kicked him and placed a plastic typewriter cover over his head for a period of over forty-three hours.<sup>244</sup> He also claims that police took him to the scene of the murder and told him to run so that they could shoot him in what would appear to be an escape attempt.<sup>245</sup> Medical reports support Howard's claims of police abuse.<sup>246</sup> The trial judge, however, refused to throw out the confession. In 1987, Howard was convicted and sentenced to death, even though no physical evidence linked him to the crime and initial witness testimony did not match with the confession.<sup>247</sup> Howard remains on death row and is seeking a new trial.

### 4. Leroy Orange

Leroy Orange has spent the over fourteen years on death row after being convicted of murdering four people in Chicago in 1984.<sup>248</sup> Orange claims that the Area Two police officers who interrogated him put an airtight bag over his head, squeezed his testicles, and used an

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242. *Id.*

243. *Death Row Inmate to Get New Hearing*, CHI. SUN-TIMES, May 31, 1998, at 22, available at 1998 WL 5583136; Steve Mills, *Death Row Inmate Claims He Was Forced to Confess*, CHI. TRIB., Oct. 4, 1998, § 1, at 1, available at 1998 WL 2902626.

244. Zorn, *supra* note 235, at 1; Mills & Armstrong, *supra* note 13, at 1. A suspect being questioned in the interrogation room next to Howard's has stated that he heard Howard screaming and that he saw a detective coming out of Howard's interrogation room with what looked like a typewriter cover. Mills & Armstrong, *supra* note 13, at 1.

245. Mills & Armstrong, *supra* note 13, at 1.

246. *Id.* Howard had been to the hospital because of injuries sustained during a police chase prior to his arrest. He returned to the hospital after the interrogation, and medical records showed that he had suffered new injuries that were consistent with his story of abuse. *Id.* Even in light of these medical reports the trial judge allowed the confession into evidence. Judge John J. Mannion, a former police officer and state's attorney, stated: "Are you going to believe [Howard] over three police officers?" *Id.*

247. *Id.*

248. *Id.*

electric shock device on his arms and in his rectum.<sup>249</sup> Orange has explained that, “They kept asking me questions about the murders, but I couldn’t provide them with any answers. . . . So they started in on me. When I couldn’t handle it no more, I agreed to go along with the program.”<sup>250</sup> Other than his confession, no physical evidence linked Orange to the crime. His half-brother, Leonard Kidd, testified at trial that he alone committed the murders.<sup>251</sup> Orange’s case was argued before the Illinois Supreme Court on September 12, 2000, and a ruling is anticipated before the end of the year.<sup>252</sup>

### 5. Aaron Patterson

Aaron Patterson, a known gang leader and son of a lieutenant in the Chicago Police Department, was convicted of committing a double murder in Chicago in 1986.<sup>253</sup> Patterson states that during police questioning, Area Two officers suffocated him with a plastic typewriter cover and beat him repeatedly.<sup>254</sup> While the interrogation proceeded, Patterson managed to use a paper clip to scratch the words “Aaron. I lie about murders” and the date into the bench on which he sat. Next to those words he scratched, “Police threatened me with violence. Slapped and suffocated me with plastic. No lawyer or dad. No phone. . . .”<sup>255</sup> Patterson also refused to sign a written confession.<sup>256</sup> The confession

249. *Id.*; see also Hanna, *supra* note 239, at 1.

250. Mills & Armstrong, *supra* note 13, at 1. Orange has stated that:

They took me to an interrogation room, asked me some questions. I was unable to provide answers. They left the room. They came back and asked me some more questions. They left the room again. Then the light went out. Then a few of them came in with a plastic bag and put it over my head. I was handcuffed, behind my back, to the wall. . . . [T]he process repeated maybe a couple of more times. . . . That evening, after some time had passed, they started some electric shock business. They handcuff you to the ring on the wall, face you forward. And they assured me that I was going to talk. . . . [After shocking Orange on the arms] they turned me into the wall, pulled my pants down, and I felt them try to insert something in my rectum . . . and the thing they tried to put in my rectum it hit my scrotum and shocked, and I felt like somebody kept pushing grease in my rectum, and once they put whatever it was inside of me it shocked and hurt like hell.

Ken Shulman & Speedy Rice, *We, On Death Row*, UNITED COLORS OF BENETTON at <http://www.benetton.com/deathrow> (Jan. 2000).

251. Kidd had previously implicated Orange in statements to the police that he claims he only made under duress. Mills & Armstrong, *supra* note 13, at 1.

252. Aaron Chambers, *Justices Begin New Term with 3 Capital Cases*, CHI. DAILY L. BULL., Sep. 12, 2000, at 1, available at WL 9/12/00 CHIDL B 1.

253. Mills, *supra* note 243, at 1; see also John Conroy, *Pure Torture*, CHI. READER, Dec. 3, 1999, available at [http://www.chicagoreader.com/torture/991203\\_1.html](http://www.chicagoreader.com/torture/991203_1.html).

254. Conroy, *supra* note 253; Mills & Armstrong, *supra* note 13, at 1.

255. Irvine, *supra* note 235, at A7; Zorn, *supra* note 111, at 1.

256. Mills, *supra* note 243, at 1.

was central to the case because no physical evidence connected Patterson to the crime.<sup>257</sup> Additionally, the primary prosecution witness claims that police coerced her into testifying against Patterson by threatening to put her in jail.<sup>258</sup> Patterson is currently seeking a new trial.

## B. Response to the Confession Problem in Illinois

### 1. Response of the Public Generally

One cost of false confessions that is particularly difficult to quantify is the effect reports of these situations have on the general public's psyche.<sup>259</sup> In Illinois, public outcry to the onslaught of false confessions and police misconduct allegations quickly followed news reports of each incident.<sup>260</sup> A *Chicago Tribune* poll showed that, in

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257. *Id.*

258. Mills & Armstrong, *supra* note 13, at 1; Mills, *supra* note 243, at 1 (quoting the witness as stating, "I lied on that witness stand. They made me say things that wasn't true. . . . I know that I did wrong getting up on that stand. But it let nothing happen to me.").

259. "Even though most people believe that outright torture to obtain confessions is, for the most part, a thing of the past in our nation, still, there are lingering doubts held to different extents in different communities about the genuine voluntariness of a number of confessions taken behind closed stationhouse doors." *Task Force on Videotaping I, supra* note 30, at 9.

260. *Police Morale and Police Credibility*, CHI. TRIB., May 1, 1998, § 1, at 22, available at 1998 WL 2851720 ("Police credibility in Chicago has taken several major hits lately, and the prospect is for more damage in the weeks and months ahead as several current investigations go forward."). The problem in Illinois is considered so extensive that in October 1999 Amnesty International investigated police brutality in Chicago. Carolyn Coglianese, Editorial, *Video Phobia*, CHI. TRIB., Mar. 18, 2000, § 1, at 24, available at 2000 WL 3646931. Illinois, however, is not alone in this problem. *E.g.*, David E. Rovella, *Cop Scandals Take Toll; Jurors, Wary of Police Testimony, Acquit More Often, DAs Say*, NAT. L. J., May 22, 2000, at A1, available at WL 5/22/00 NLJ A1 (col. 2); Daniel B. Wood, *Why the Police are Hard to Police; From New York to L.A., The Latest Charges of Abuse Show How Tough It Is*, CHRISTIAN SCI. MONITOR, Sept. 27, 1999, at 1, available at 1999 WL 5382684. For example, in New York, tensions between police and citizens have risen since the questionable shooting of Amadou Diallo, an unarmed African immigrant, and after the sodomization of Abner Louima by officers in a New York City police station. *See* Bandes, *supra* note 11, at 1284-85; Julie Deardorff, *Jury Acquits 4 NYC Cops in Diallo Case; Verdict Met with Relief, Protests*, CHI. TRIB., Feb. 26, 2000, § 1, at 1, available at 2000 WL 3640077; *Protesters Assail Acquittal of 4 Cops; Crowd in Harlem Shouts, 'Murderers!'*, CHI. TRIB., Feb. 27, 2000, § 1, at 6, available at 2000 WL 3640298.

Another city that is reeling from mistrust of police is Los Angeles, where several police officers have been accused of "beat[ing], fram[ing], [stealing] from and [shooting] innocent people." *Key Figure in Probe of LAPD is Sentenced*, CHI. TRIB., Feb. 26, 2000, § 1, at 8, available at 2000 WL 3640084; *see also* Cathryn E. Stewart & G. Flint Taylor, Editorial, *Law & Order, California-Style; Look West, Cook County, Look West*, CHI. TRIB., Mar. 1, 2000, § 1, at 19, available at 2000 WL 3640911. At the time of this writing, fifty-seven people who were unjustly imprisoned as a result of this activity had been released and twenty police officers had been fired. Wood, *supra* note 46, at 1. The complexity of the network of crime allegedly within the LAPD is extraordinary:

Illinois, “voters rank police corruption to be as serious an issue as schools and jobs, and more serious than crime itself. . . .”<sup>261</sup> The public has shown signs of concern that the same police work that led to faulty confessions has allowed true criminals to go free and continue perpetrating crimes against the community.<sup>262</sup> Others in the community have complained about growing mistrust of police and prosecutors.<sup>263</sup>

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Former Los Angeles Police Department officer Rafael Perez, the police informant, has said there was an organized criminal subculture within the LAPD that not only committed crimes but celebrated them in a secret fraternity, awarding plaques to officers who wounded or killed. Some 2,000 pages of transcripts implicate more than 70 officers for either committing crimes or knowing about them and helping to cover them up.

*Id.* It appears that some prosecutors not only knew of this systemic corruption, but even encouraged it. *Id.* Criminal justice reform advocates have stated that the problems in Los Angeles are a perfect example of why videotaping of interrogations is needed. *Id.* As of this writing, at least one former defendant, Oscar Ochoa, has filed a civil suit, claiming that LAPD officers forced him to confess to a crime he did not commit. *Rampart Case*, CITY NEWS SERVICE, Sept. 27, 2000, available at LEXIS, News Library, City News Service File.

261. Steve Mills, *One Step to Reform, 2 Steps Back; Corruption, Brutality Charges Still Tarnish Police*, CHI. TRIB., Feb. 11, 1999, § 1, at 1, available at 1999 WL 2844672; see also Coglianese, *supra* note 260, at 24 (“In Chicago, there is ample evidence that police brutality goes well beyond the high-profile cases. Many citizens of Chicago are more afraid of the police than they are of street crime.”).

262. See, e.g., *Confessions of a Multiple Child Killer*, *supra* note 77. In this article Clyde Kuehn, attorney for Charlie King and now a judge, is quoted as saying, “In my 20 years as an attorney, this strikes me as the clearest example of how fragile and fallible the system is. My client spent a year in custody, while the killer was lurking around free.” *Id.* Gary Gauger also reflected on this concern regarding the true killer in the Nicarico murder for which Rolando Cruz was imprisoned: “the worst part about being wrongfully convicted is knowing that the guilty person is free.” Shapiro, *supra* note 102, at 26. The victim Gauger most thinks about seven-year-old Melissa Ackerman. *Id.* The little girl was grabbed from her bicycle, sodomized, and left in an irrigation ditch, her body so unrecognizable that she could be identified only by dental records. *Id.* She was killed by Brian Dugan, while Rolando Cruz and Alejandro Hernandez sat behind bars, falsely convicted of another child’s murder likely committed by Dugan. *Id.*; see also *supra* notes 102-13 and accompanying text. Members of the Englewood community in Chicago pressured police to look for the real killer from the time the seven- and eight-year-old boys were arrested for Harris’ murder. DeNeen L. Brown, *As 2 Boys Face Murder Trial, South Side Neighbors Voice Disbelief*, WASH. POST, Aug. 16, 1998, at A03, available at 1999 WL 16550309; Clarence Page, *Doing Kids’ Time for Adult Crimes*, CHI. TRIB., Aug. 16, 1998, § 1, at 15, available at 1998 WL 2886059; Carpenter & Lawrence, *supra* note 56, at 1; see also Teresa Puentes & Juanita Poe, *Charges Dropped Against 2 Boys*, CHI. TRIB., Sept. 5, 1998, § 1, at 1, available at 1998 WL 2892775. A concern that failure to videotape could lead to guilty persons going free was also evident in public questioning of why FBI agents didn’t tape the interrogation of Oklahoma City bombing suspect, Terry Nichols. Michael Higgins, *Taping Police Interrogations May End the Lies With . . . Irrefutable Evidence*, ABA J., May 1988, at 18, available at WL 84-May ABAJ 18.

263. After the Ryan Harris murder, Robert Starks, professor of political science at Northeastern Illinois University, stated, “The residents are living in terror, both because there is a pedophile still roaming the streets and because they feel that the police have no real intention of protecting them.” Jeter, *supra* note 179, at A03; see also Leslie Jones McCloud, *Fed Help Sought to End Cop Abuse*, CHI. DEFENDER, May 11, 1999.

One citizen complained in a *Chicago Tribune* letter to the editor that innocent people are sent to prison because the prosecutors are willing to participate in faulty convictions in exchange for political and professional gain.<sup>264</sup>

Mistrust of police in Chicago appears to be particularly heightened in the city's minority communities.<sup>265</sup> Representative Monique Davis has stated bluntly that members of the African-American community do not trust the Chicago police.<sup>266</sup> A probe conducted by the Illinois Senate Minority Leader's Task Force on the Criminal Justice System also reported the problem of police mistrust is particularly prominent among racial minorities.<sup>267</sup>

264. The letter stated:

The culture of prosecutorial and judicial cynicism [the *Chicago Tribune*] describe[s] in these important cases can be found throughout the criminal justice system. Political clout leads to jobs in the state's attorney's office and the judicial slating process (with judgeships frequently filled by former prosecutors). Often it seems that the entire system is less concerned with the administration of justice than it is with amassing statistics in order to support individual political ambition and races for higher office.

Far too many people are convicted of crimes they did not commit because of slipshod, cynical prosecutions and convictions. Far too many cases are pushed because prosecutors shrug their shoulders and say, "If he ain't guilty of this one, he's guilty of something."

Well, no! Far too many people are in jail who aren't guilty of anything but living in a community whose political leaders care less about determining guilt or innocence than they do about making themselves look good for the next election.

Gerald Zero, *Innocent Prisoners*, CHI. TRIB., Feb. 5, 2000, § 1, at 22, available at 2000 WL 3633507; see also *Police Morale and Police Credibility*, supra note 260, at 22 ("Chicago may, indeed, have a problem with police morale. But Chicago has a much more stark and dangerous problem: police who don't tell the truth."); Zorn, supra note 144, at 1 ("All told, it looks more than ever as though Ronald Jones will be next on the long list of exonerated former Illinois Death Row inmates. Will [Cook County State's Attorney Richard] Devine's name be next on the companion list of top prosecutors who didn't know when to quit?").

265. See, e.g., Puente & Poe, supra note 262; Laura S. Washington, *In Englewood, Familiar Feelings of Misunderstanding and Mistrust*, CHI. TRIB., Aug. 30, 1998, § 1, at 1, available at 1998 WL 2890714.

266. Representative Davis stated that: "[I]n the City of Chicago, especially in the African-American community, we do not trust the police, and part of the reason for that mistrust was quite evident recently when two innocent college graduates were killed by the police with varying stories from different police witnesses at the scene." *Task Force on Videotaping I*, supra note 30, at 239 (including statement of Representative Monique Davis). The possibility of racial bias in the imposition of the death penalty in Illinois has also been recognized by the Illinois Senate Task Force on the Criminal Justice System. *Task Force on Criminal Justice System*, supra note 46, at 9.

267. The report stated:

The societal cost of this problem is immense, "in the tens of millions of dollars in damages that citizens pay every year in response to victims' lawsuits; in police criminality and in the corruption of ideals of public service; in the ensuing police mistrust that—particularly in communities of racial minorities—creates a rift between police and the public."

Two traffic chases leading to police shooting and killing two young African-Americans furthered distrust among minorities in Chicago.<sup>268</sup> Following the second shooting, demonstrators protested in front of police headquarters, carrying signs with slogans such as, "Protect us from the racist police," and "Stop police and prosecutorial brutality."<sup>269</sup> While these two incidents did not involve police interrogations, they do show a growing sense of frustration among members of the public regarding recent conduct of police and prosecutors in Illinois.<sup>270</sup>

The most visible public response came from groups opposing the death penalty. In November 1998, the movement to require the videotaping of interrogations received a boost following the National Conference on Wrongful Convictions and the Death Penalty, held at Northwestern University School of Law, another watershed event in criminal law history.<sup>271</sup> At the conference, more than thirty men and women who had been wrongfully convicted of capital crimes told their stories to a national audience. Many of these tales of injustice involved false and coerced confessions and coerced witness statements. Experts who gathered at the conference and several of the wrongfully convicted endorsed videotaping interrogations as a necessary reform to fix Illinois' broken death penalty system.<sup>272</sup> This conference, coupled with

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*Task Force on Criminal Justice System*, *supra* note 46, at 9 (quoting *Shielded from Justice: Police Brutality and Accountability in the United States*, HUMAN RIGHTS WATCH SPECIAL REPORT, June 1998).

268. Todd Lighty & Gary Washburn, *Cop's Version of Shooting, Report Differ; Details Contained in Police Document Cast Doubt on Officer's Account of Student's Death*, CHI. TRIB., June 18, 1999, § 1, at 1, available at 1999 WL 2884405. The use of excessive force against minorities is a problem throughout the United States. See *Bandes*, *supra* note 11, at 1281 & n.35.

269. Lighty & Washburn, *supra* note 268, at 1. The Fraternal Order of Police, on the other hand, held a rally to support the officers involved in one of the shootings. Muwakkil, *supra* note 216, at 17.

270. Distrust of the police is further hampered because police shootings were at a "decade-long high in 1998 and were keeping pace in 1999." Muwakkil, *supra* note 216, at 17. Additionally, the investigation of the Death Row 10 has shown that while Commander Burge and the other police officers involved are all white, each of the Death Row 10 is black. Irvine, *supra* note 235. A citizens' watchdog group called the Justice Coalition of Greater Chicago was formed as a result of concern over police misconduct. The organization's leaders have expressed great concern regarding plans by Cook County authorities to tape only confessions rather than entire interrogations of suspects. Leslie Jones McCloud, *New Group Formed in Response to Police Issues*, CHI. DEFENDER, June 19, 1999.

271. See Alex Rodriguez, *Freed from Death Row; Wrongfully Convicted Speak Against Capital Punishment*, CHI. SUN-TIMES, Nov. 15, 1998, at 15, available at 1998 WL 5606945.

272. See Lawrence C. Marshall, *Innocence and Death Lessons the State Must Heed Before It Kills Again*, CHI. TRIB., Feb. 11, 1999, § 1, at 29, available at 1999 WL 2842984. In their new book, *Actual Innocence*, law professors Barry Scheck and Peter Neufeld and journalist Jim Dwyer also call for videotaping of interrogations as a solution to ensure that innocents are not wrongfully convicted. JIM DWYER, PETER NEUFELD & BARRY SCHECK, *ACTUAL INNOCENCE* 256 (2000)

several other high profile exonerations of death row inmates in 1999, most notably the exoneration of Anthony Porter,<sup>273</sup> were instrumental in leading Illinois Governor George Ryan to declare a moratorium on Illinois executions.

## 2. Response of Governor George Ryan

On January 31, 2000, Illinois Governor George Ryan placed a moratorium on the death penalty, stating that the “system is fraught with error—and there is no margin for error when it comes to putting someone else to death.”<sup>274</sup> Ryan cited the wrongful convictions of thirteen death row inmates as the source of his concern over capital punishment. Three of those cases—Rolando Cruz, Gary Gauger and Ronald Jones—involved false confessions.<sup>275</sup> Joseph Burrows, another of the innocents on death row, was convicted based upon the false

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[hereinafter ACTUAL INNOCENCE].

273. Porter was convicted and sentenced to death for a double murder in 1982. William H. Freivogal, Editorial, *Lessons from 13 Innocent Men*, ST. LOUIS POST-DISPATCH, Apr. 30, 2000, at B3, available at 2000 WL 3523076; Jeff Jacoby, *Supporters of Capital Punishment Can Cheer Gov. Ryan's Decision*, BOSTON GLOBE, Feb. 28, 2000, at A15, available at 2000 WL 3315026. After spending sixteen years on death row, Porter was exonerated and released after a group of Northwestern University journalism students and a private investigator uncovered the real killer and obtained a videotaped confession from the guilty man. John Kass, *With Porter Free. Who's Sorry Now? Not Our Mayor*, CHI. TRIB., Feb. 11, 1999, § 1, at 3, available at 1999 WL 2843054. Only a few months earlier, he came within forty-eight hours of being executed but was granted a stay by the Illinois Supreme Court. *Id.* Chicago Mayor Richard Daley refused to apologize for Porter's wrongful conviction. *Id.*

274. Pat Karlak, *Death Penalty Put on Hold; Governor Says 'Shameful Record' Behind Moratorium on Executions*, CHI. DAILY HERALD, Feb. 1, 2000, at 1, available at 2000 WL 11962947. The moratorium has led to a push for similar legislation in at least five other states and the federal government. Mike Dorning, *Bill Targets Mistakes in Capital Cases*, CHI. TRIB., Feb. 12, 2000, § 1, at 1, available at 2000 WL 3635811; Press Release, Associated Press, Robert Tanner, Illinois Fuels Hopes for Nation's Death Penalty Opponents; 5 States Mulling Halt (Feb. 10, 2000) (on file with author). Additionally, the American Bar Association called for a nationwide moratorium in 1997. *Id.*

Governor Ryan's decision led to a flood of letters to the editor both in support and opposition to the moratorium. *See, e.g.*, Ruth A. Adcock & the Brewer Family, Editorial, *Victim Families Want Death Penalty*, CHI. TRIB., Feb. 19, 2000, § 1, at 16, available at LEXIS, News Library, Chicago Tribune File; William G. Paul, President, American Bar Association, Editorial, *Ryan's Example*, CHI. TRIB., Feb. 9, 2000, § 1, at 16, available at 2000 WL 3634847; Gail Rice, Editorial, *Families Oppose Executions*, CHI. TRIB., Feb. 26, 2000, § 1, at 24, available at 2000 WL 3640009; Daniel John Sobieski, Editorial, *Deterring Murder with Death*, CHI. TRIB., Feb. 12, 2000, § 1, at 20, available at 2000 WL 3635823; Bishop James Alan Wilkowsky, Evangelical Catholic Diocese of the Northwest, Editorial, *Sanctity of Life*, CHI. TRIB., Feb. 9, 2000, § 1, at 16, available at 2000 WL 363485.

275. *See supra* notes 102-13 and accompanying text (discussing Cruz's alleged dream statement); *supra* notes 122-31 and accompanying text (discussing Gauger's alleged statement that he blacked out and then committed the crime); *supra* notes 137-45 and accompanying text (discussing Jones' post-beating confession).

confession and testimony of Ralph Frye.<sup>276</sup> After instituting the moratorium, the convictions of a sixth death row inmate, Hubert Gerald, were vacated after it was learned that he falsely confessed to a killing.<sup>277</sup> Governor Ryan has established a panel to study the problem of wrongful convictions.<sup>278</sup>

### 3. Response of the Chicago Police Department and the Cook County State's Attorney

Recognizing "that there are some lingering doubts among fair-minded people everywhere in Illinois about what's going on in our

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276. In June 1989, Joseph Burrows was convicted of killing William Dulin, an eighty-eight-year-old man from Iroquois County. Jeffrey Bills, *Death Row Battle Ends in Freedom*, CHI. TRIB., Sept. 9, 1994, § 1, at 1, available at 1994 WL 6493696 [hereinafter Bills, *Death Row Battle*]. He was framed by Gayle Potter, the real killer, who murdered Dulin by herself but blamed the crime on two accomplices, Burrows and Ralph Frye, a friend of Burrows. Critical to Burrows's conviction was Frye's tape-recorded confession in which he admitted to killing Dulin with Burrows and Potter. According to Frye, Investigator Robert George coerced the confession, threatening to lock him up for a long time and feeding him details of the crime one by one which he repeated back on the tape. Frye even insists that George stopped the tape several times so that he could adjust his story to fit the actual facts of the crime. Frye was an easy mark, groggy from sleeping pills he had taken before being interrogated, and severely learning-disabled with an I.Q. of 76 (borderline mentally retarded). Frye's story evolved from the time of his confession to the time of Burrows's trial, in part because he repeatedly rehearsed his testimony with Potter, who was inexplicably placed in a jail cell next to Frye's. Over a period of weeks, Potter "scared the living daylight" out of Frye, convincing him that any inconsistencies between their stories would lead them both to death row. Frye's testimony was critical to Burrows's conviction at his second trial (the first ended with a hung jury). Barry Siegel, *The Framing of Joe Burrows*, LA TIMES, Dec. 18, 1994, available at 1994 WL 2379786. Frye himself was wrongfully convicted and sentenced to twenty-three years in prison. Bills, *Death Row Battle*, *supra*. After Burrows's conviction, Gail Potter recanted her testimony and admitted to killing Dulin herself. Frye also recanted (he had recanted several times in the past). Burrows was freed in September 1994 after the judge granted his motion for a new trial in light of the evidence. Siegel, *supra*. Shortly thereafter, Frye was released. His murder charges were dismissed, but he pleaded guilty to perjury. Jeffrey Bills, *Man is Freed After Being Cleared of 1988 Murder*, CHI. TRIB., July 8, 1996, § 2, at 3, available at 1996 WL 2687942.

277. See *supra* notes 114-21 and accompanying text (discussing Flewellen's acquittal and Gerald's retrial).

278. Karlak, *supra* note 274, at 1. Since Governor Ryan declared the moratorium, the Chicago Council of Lawyers issued a report on the death penalty system in Illinois. Among the seventeen recommendations for change, the report proposed that "videotaping of custodial interrogations and confessions [be required] in homicide cases. If the prosecution is unable to show good cause why interrogations and confessions were not videotaped, statements by the defendant would be inadmissible." *Press Statement on the Death Penalty Report*, at [http://www.chicagocouncil.org/news/press/death\\_penalty.html](http://www.chicagocouncil.org/news/press/death_penalty.html) (last visited Nov. 15, 2000).

Governor Ryan has stated that he would consider a permanent ban on the death penalty in Illinois if the panel he has appointed to review the procedure recommended that he do so. Tom McCann, *Ryan Is Noncommittal on Death Penalty Ban; He's Awaiting Panel's Report*, CHI. TRIB., May 12, 2000, § 2, at 9, available at 2000 WL 3664779.

criminal justice system,”<sup>279</sup> the Cook County State’s Attorney’s Office (“CCSA”) and the Chicago Police Department (“CPD”) joined together to develop a new policy regarding interrogations.<sup>280</sup> The two organizations agreed to videotape juvenile and adult confessions in homicide cases.<sup>281</sup>

Under the CCSA/CPD plan, interrogations would not be videotaped. Once the suspect decided to give a confession, but before videotaping of any statement, the suspect would be given the option of giving an oral, written, court-reported, or videotaped statement.<sup>282</sup> If the suspect opted to give a videotaped confession, the videotaping would be conducted by court-reporters trained as videographers<sup>283</sup> and the CCSA would maintain control and possession of the videotapes.<sup>284</sup> At the beginning of each videotaped statement, the suspect would be asked questions about his treatment during the interrogation.<sup>285</sup> Authorities would then read the suspect’s *Miranda* warnings on the videotape and then ask him to sign a waiver of those rights as well as a waiver stating that he had consented to being videotaped.<sup>286</sup> Authorities would conduct the videotaping through one-way mirrors with a stand-alone camera that would allow for both close-ups of evidence and wide angle shots of the

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279. *Task Force on Videotaping I*, *supra* note 30, at 31-32.

280. McRoberts & Peres, *supra* note 71, at 1. This new policy was spurred on by the Ryan Harris debacle. *See also* Molly Sullivan, *Videotaped Interrogations Focus of Debate*, DAILY SOUTHTOWN, Sept. 6, 1998, at A3.

281. Lorraine Forte, *Cops Prepare to Videotape Confessions*, CHI. SUN-TIMES, Oct. 2, 1998, at 1, available at 1998 WL 5601347; Chinta Strausberg, *Agreement to Tape Juvenile Confessions*, CHI. DEFENDER, Oct. 3, 1998; McRoberts & Peres, *supra* note 71, at 1. The groups also created a felony review unit through which state’s attorneys are supposed to review all cases in which children are arrested for murder prior to the child being charged. At this time, Cook County State’s Attorney Richard Devine also appointed a “Commission on Juvenile Competency to study the problem of children under 10 years old charged with committing crimes.” News Release, Richard A. Devine, Cook County State’s Attorney, *Devine Appoints State’s Attorney Commission to Study Children Under Age 10 Charged with Crimes*, at <http://www.statesattorney.org/aweb/pres10yo.htm> (Sept. 29, 1998).

282. *Task Force on Videotaping I*, *supra* note 30, at 72.

283. *Id.* at 37.

284. *Id.* at 36-37. The Cook County State’s Attorney reports that this decision was made “to ensure what we would believe to be the integrity of the evidence.” *Id.*

285. “The suspect will be asked by the detective and the State’s Attorney on the video camera, ‘How were you treated?’ ‘Do you have any complaints about the way you were treated?’ ‘Is there anything you want to say right now?’” *Id.* at 32-33.

286. *Id.* at 45-46 (testimony of Robert Milan, supervisor of the Cook County Felony Review Unit).

room.<sup>287</sup> After the accused gave his confession, a copy of the original tape would be made; later, the statements would be fully transcribed.<sup>288</sup>

Critics immediately assailed the policy, pointing out that the children in the Ryan Harris case and other innocents convicted by false confessions might still have been convicted under the plan because only confessions, and not interrogations, would be taped.<sup>289</sup> The difference between taping the final confession versus taping the entire interrogation was not lost on the public. A *Chicago Sun-Times* poll conducted after the proposal was announced found nearly three out of four Illinoisians supported videotaping of entire interrogations, not just confessions.<sup>290</sup> Support transgressed demographic and party lines.<sup>291</sup>

### III. ILLINOIS HOUSE BILL 4697

Speaker of the Illinois House of Representatives, Michael Madigan, introduced House Bill 4697 (“H.B. 4697”) on February 7, 2000.<sup>292</sup> The bill mandated the videotaping of interrogations of juveniles and adults

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287. *Id.*

288. *Id.*

289. See, e.g., Steven A. Drizin, Editorial, *Quelling an Outcry with Meaningless Reforms*, CHI. DAILY LAW BULL., Oct. 8, 1998, at 6, available at WL 10/8/98 CHDLB 6; Rita A. Fry, Cook County Public Defender, & Randolph N. Stone, University of Chicago Law School, Editorial, *Community Shut Out of Videotaping Issue*, CHI. SUN-TIMES, Nov. 8, 1998, available at 1998 WL 5606282; Carolyn A. Gold & Katherine E. Walz, First Defense Legal Aid, Editorial, *Entire Arrest Process Should Be Videotaped*, CHI. SUN-TIMES, Oct. 15, 1998, at 28, available at 1998 WL 5602697; Caryl Sortwell & Chris Geovanis, Neighbors Against Police Brutality, Editorial, *Videos Not Enough*, CHI. TRIB., Oct. 7, 1998, available at LEXIS, News Library, Chicago Tribune File; Chinta Strausberg, Editorial, *New Videotaped Confessions by Cops Fall Short of Goals*, CHI. DEFENDER, Apr. 27, 1999.

290. Scott Fornek, *The Bears: Who Cares?; Few Say it's Vital for Team to Stay in City*, CHI. SUN-TIMES, Oct. 23, 1998, at 1, available at 1998 WL 5603901.

291. *Id.* The notion that videotaping interrogations was preferable to videotaping the final confession only was also endorsed by the Attorney General's Office in a letter to the legislative committee on videotaping interrogations. Similarly, the DuPage County Sheriff's Office, the law enforcement agency most responsible for convicting Rolando Cruz, announced its intent to videotape interrogations in serious felony cases. Both the Attorney General's Office and the DuPage Sheriff's Office recommended a voluntary, rather than a mandatory, rule on videotaping. Ray Long, *Secretly Tape Suspects, Attorney General Urges*, CHI. TRIB., Aug. 11, 1999, § 1, at 1, available at 1999 WL 2901358; see Cornelia Grumman, *Attorney General is Open to Taped Murder Confessions*, CHI. TRIB., May 27, 1999, § 2, at 10, available at 1999 WL 2877568 (quoting the Attorney General's letter as saying, “[t]o further improve the accuracy and fairness of death penalty litigation, I would like to see an expanded use of videotaped station-house interrogations and confessions in homicide investigations across the state.”); see also Becky Beaupre, *DuPage to Video Interrogations*, CHI. SUN-TIMES, June 24, 1999, at 120, available at 1999 WL 6545246; Long, *supra*, at 1.

292. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000); see also Possley & Long, *supra* note 30, at 1.

for certain violent offenses.<sup>293</sup> In explaining the impetus behind H.B. 4697, Speaker Madigan stated:

The goal here is the truth. We avoid the 'he said' 'she said' debate if the interrogation is on film and can be seen by the judge and the jury, and not only do we want to reduce the unlawful or coercive conduct on the part of law enforcement, as rare as that may be, we also want to reduce the number of occasions where claims of police coercion are falsely made, and the only way we know for certain what went on in an interrogation room is if we see it here and hear it on videotape.<sup>294</sup>

Speaker Madigan formed a House Task Force, co-chaired by Representatives Monique Davis and Sara Feigenholtz, to study the issues surrounding videotaping of interrogations in Illinois.<sup>295</sup> In the summer and fall of 1999, police, prosecutors, defense attorneys, academics and concerned citizens testified before the House Task Force to express support and concern regarding the proposed legislation.<sup>296</sup>

Five months after the House Task Force convened, Speaker Madigan and the bill's co-sponsor, Representative John Turner, introduced H.B. 4697. The bill mandated the videotaping of interrogations and confessions for homicides and sexual assaults.<sup>297</sup> The first version of H.B. 4697 states that:

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293. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000).

294. *Task Force on Videotaping II*, *supra* note 30, at 145 (outlining statement of Speaker Michael Madigan); *see also* Kurt Erickson, *Videotaped Confessions in House Spotlight*, PANTAGRAPH (Bloomington, Ill.), Feb. 9, 2000, available at 2000 WL 7783728 (quoting Speaker Madigan as stating: "There have been too many questions raised about prosecutor and police conduct. . . . I believe the majority are honorable people who follow the law. But these steps must be taken to assure the public.").

295. Possley & Long, *supra* note 30, at 1.

296. The House Task Force convened in two sessions. In the first session, the following people testified: Bill Geller, Director of Geller & Associates, a consulting firm specializing in research and development of policy for police departments and other city agencies, civil rights organizations, and the United States Justice Department, and the author of the only national study documenting the use of videotaping during police interrogations; Kankakee City Chief of Police Bill Doster; Kankakee County Sheriff Jim Bukowski; Tom Needham, General Counsel to Chicago Police Superintendent Terry Hillard; David Erickson, First Assistant State's Attorney for Cook County; Bob Milan, supervisor of the City of Chicago Felony Review Unit. *See Task Force on Videotaping I*, *supra* note 30. At the second session, testimony was given by: Dr. Richard Ofshe, a sociologist at the University of California at Berkeley; Dr. Richard Leo, a criminologist at the University of California at Irvine; Lt. Col. Ken Bouche, Illinois State Police; Lt. Col. William Davis, Illinois State Police; Greg O'Reilly, Criminal Justice Counsel for Cook County Public Defender Rita Fry; Steven Drizin, Supervising Attorney, Northwestern University School of Law's Children and Family Justice Center; Reverend Oscar Walden, Emmanuel Temple Church of Chicago; Shirley Madigan; Dorothe Ernest; retired Judge Eugene Pincham. *Task Force on Videotaping II*, *supra* note 30.

297. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000). Homicides include first degree murder; second degree murder; intentional homicide of an unborn child; voluntary manslaughter of an unborn child; involuntary manslaughter and reckless homicide; involuntary manslaughter

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and reckless homicide of an unborn child; and drug induced homicide. Sexual assaults include criminal sexual assault; aggravated criminal sexual assault; predatory criminal sexual assault of a child; criminal sexual abuse; and aggravated criminal sexual abuse. *Id.*

There are two additional portions of H.B. 4697. The first creates an exception to the Illinois eavesdropping law, so that interrogations could be videotaped without gaining consent of the suspect. *Id.* This section exempted from the eavesdropping statute:

Electronic recordings, including but not limited to, motion picture, videotape, or other visual and audio recording, made of a custodial interrogation of an individual by a law enforcement officer under Section 5-401.5 of the Juvenile Court Act of 1987 or Section 103-2.1 of the Code of Criminal Procedure of 1963.

*Id.* This change reflects a law enforcement concern that suspects would refuse to continue an interrogation if they knew that they were being videotaped. As there has been little opposition or debate regarding this portion of H.B. 4697, it will not be discussed at length here. *See, e.g., Task Force on Videotaping II, supra* note 30 (including testimony of Lt. Col. Bouche, who testified that “[n]onconsensual unannounced videotaping is the best method to ensure that a suspect is neither quieted nor embellished solely due to the presence of the camera”); *see also* Kate Shank, *Roll the Video*, CHI. TRIB., July 20, 1999, § 1, at 14, available at 1999 WL 2894259. *But see Task Force on Videotaping I, supra* note 30, at 38. (including the following statement by Dave Erickson from the State’s Attorney’s Office: “[I]f someone is going to be videotaped they should know they’re being videotaped. They should see the camera, not have a camera in a peephole in a wall, and be told about it.”).

The second portion of H.B. 4697 required that an attorney be present for interrogations of juveniles under seventeen for non-probationable offenses, prior to the waiver of *Miranda* rights. This portion of the bill reflects a growing concern about the ability of children to knowingly waive their *Miranda* rights. Research conducted on the competence of children in relation to criminal matters has shown that this concern is well justified, as children are less able than adults to understand the complexities of the criminal justice system. *See, e.g.,* CHARLES A. MURRAY, *THE LINK BETWEEN LEARNING DISABILITIES AND JUVENILE DELINQUENCY* (U.S. Dept. of Just. 1976); Dorothy Crawford, *The Link Between Delinquency and Learning Disabilities*, 24(4) *JUDGES’ J.* 23 (Fall 1985); Thomas Grisso, *Juvenile Competency to Stand Trial; Questions in an Era of Punitive Reform*, 12 *CRIM. JUSTICE* 4, 7 (Fall 1987) (arguing that trying children as adults may not be appropriate due to their inability to comprehend the criminal justice system); Robert E. Shepherd, Jr. & Barbara A. Zaremba, *When a Disabled Juvenile Confesses to a Crime: Should it Be Admissible?*, *CRIM. JUSTICE* 31, 34 (Winter 1995) (citing a 1992 study conducted by Zaremba entitled, *Comprehension of Miranda Rights by 14-18 Year Old African-American and Caucasian Males with and without Learning Disabilities* (Ed. D. Diss., School of Educ., College of William & Mary, 1992)); *see also* Pam Belluck, *Lawyers Struggle in Defense of Children in Deadly Times*, N.Y. TIMES, Aug. 17, 1998, at A1, available at 1998 WL 5423041 (quoting defense attorneys discussing the difficulties of representing young children because of their inability to comprehend the criminal justice system.).

Additionally, once in the midst of a custodial interrogation, a child’s situation is more precarious than an adult’s because children are extraordinarily susceptible to the tactics used by police to elicit information and, therefore, more likely to give false confessions. Stephen J. Ceci et al., *Memory in Context: The Case of Prospective Remembering*, in *MEMORY DEVELOPMENT: UNIVERSAL CHANGES AND INDIVIDUAL DIFFERENCES* (Franz E. Wienert & Marion Perlmutter eds., 1998) (measuring the impact of stress on children’s memory in comparing responses of children in their home with responses in an unfamiliar environment); Bruck, Ceci & Hembrooke, *supra* note 172; Myers, *supra* note 126, at 17 (stating that “multiple interviews are thought to add stress to already vulnerable children . . . [and] the more interviews there are, the more likely one or more interviewers will ask unnecessarily suggestive questions”); J. Karen Saywitz & Rebecca Nathanson, *Children’s Testimony and Their Perceptions of Stress In and Out of the Courtroom*, 17 *CHILD ABUSE & NEGLECT* 613 (1993) (studying the difference in children’s memory during a

No oral, written, or sign language statement of an accused made as a result of a custodial interrogation shall be admissible as evidence against the accused in any criminal proceeding brought under [specific sections] of the Criminal Code of 1961, unless: . . . an electronic video and audio recording is made of the custodial interrogation.<sup>298</sup>

If a statement was not videotaped, then the statement was deemed inadmissible against the suspect in any criminal proceeding.<sup>299</sup>

This exclusionary rule was tempered with certain exceptions. Exceptions included statements made in open court during a trial or before a grand jury,<sup>300</sup> *res gestae* statements,<sup>301</sup> statements that are not the product of a custodial interrogation,<sup>302</sup> statements made in circumstances where videotaping was not feasible,<sup>303</sup> and statements used to impeach the credibility of the accused as a witness.<sup>304</sup> If the State seeks to prove that any of these exceptions should apply, it must do so by a preponderance of the evidence,<sup>305</sup> except if the State asserts that videotaping was not feasible<sup>306</sup> under the particular circumstances of the case, it must prove this by clear and convincing evidence.<sup>307</sup>

Each of these components was mirrored in a separate section so that videotaping would be required in interrogations involving juveniles as well.<sup>308</sup> Early in the debates over videotaping, First Assistant State's Attorney and former Cook County Circuit Court Judge David Erickson supported this idea; in testimony before the House Task Force he stated that videotaping was an appropriate tool for determining the

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mock trial with that of a class room); see also BARRY C. FELD, *BAD KIDS; RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* 123 (1999) (arguing for a mandatory "non-waivable" right to counsel for juveniles because "[t]he decision to put young offenders on the same procedural footing as adult criminal defendants results in practical inequality and a distinct disadvantage because of their own immaturity and greater vulnerability to adult coercion").

Although the issue of children's vulnerability during custodial interrogation is outside the scope of this paper, the authors applaud Speaker Madigan's attempt to provide further protection for children in the stationhouse.

298. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000).

299. *Id.*

300. *Id.*

301. *Id.* *Res gestae* statements are "[t]he events at issue, or other events contemporaneous with them. In evidence law, words and statements about the *res gestae* are usually admissible under a hearsay exception." BLACK'S LAW DICTIONARY 1310 (7th ed. 1999).

302. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000).

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.*

voluntariness of statements given by juveniles.<sup>309</sup> Since giving that testimony, however, neither Erickson, nor anyone else from the Cook County State's Attorneys office, has expressed support for this portion of H.B. 4697.

Not surprisingly, law enforcement agencies throughout the state expressed varying levels of concern in reaction to H.B. 4697.<sup>310</sup> Part A of this section explains objections of law enforcement officials to H.B. 4697's videotaping requirement and addresses the rebuttal of proponents to those arguments. Part B describes the compromise bill resulting from concerns presented by both opponents and proponents. Part C concludes this section by detailing the eventual fall of H.B. 4697.

### A. Law Enforcement Objections to H.B. 4697

Several major law enforcement groups in Illinois opposed H.B. 4697.<sup>311</sup> DuPage County State's Attorney Joseph Birkett voiced what many law enforcement officials believe when he stated, "We want to applaud and encourage increased use (of videotaping)—it's the best way to preserve evidence. But this goes way too far."<sup>312</sup> St. Clair

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309. Erickson stated:

We had talked about the possibility of expanding this next into the juvenile court system so that all juvenile crimes of violence, and I put that by crimes against person, *statements there from beginning to end*, anything said by a kid is taped. And the reason . . . the State's Attorney talked about that being a good idea is besides being a tool that goes into court to determine voluntariness, quite possibly, it could be a tool that is a diagnostic tool, a tool that a psychiatrist or psychologist who may be treating a child who may be a youthful sex offender can look at statements made by a child right after the incident happened and make a determination as to what type of treatment or help this child could receive.

*Task Force on Videotaping I*, *supra* note 30, at 41-42 (emphasis added). Erickson showed further support later in his testimony in stating:

[I]f a child did commit a crime and they said something and they explained why they did what they did, whether it's truthful or not truthful, I think it would be helpful that the person who's going to treat the child have the opportunity to see that within some close proximity to the event.

*Id.* at 85-86.

310. See Dave McKinney & William L. Hatfield, *Police Chiefs Hit Madigan Plan to Tape Suspects*, CHI. SUN-TIMES, Feb. 9, 2000, at 28, available at 2000 WL 6667660 (quoting Cook County First Assistant State's Attorney David Erickson as stating that the Cook County State's Attorney's Office had questions about the bill but was not initially opposed to it).

311. This is not unusual. In a study conducted by the U.S. Department of Justice on the use of videotaping interrogations and confessions across the United States, "[c]onversations with police officers and prosecutors who do not videotape suspects' statements revealed strong views against doing so." Geller, *supra* note 2, at 3.

312. Don Thompson, *Prosecutors Cool to Madigan's Videotaping Bill*, DAILY HERALD, Feb. 9, 2000, at 15, available at 2000 WL 11964824; see also Brueggemann, *supra* note 95, at 3B; Joe Mahr, *Bill Would Require Police to Videotape Questioning of Killers, Sex Offenders*, STATE J.-

County State's Attorney Bob Haida declared that H.B. 4697 "further empowers a suspect to deter police. . . . They've already got the power. They can say, 'I want a lawyer' or 'I don't want to talk to you.' Why should criminals have another tool to deter police?"<sup>313</sup> Generally, however, police and prosecutors appear to be willing to support legislation that would give police the discretion to videotape confessions, but were opposed to H.B. 4697's mandate of videotaping of the entire interrogation.<sup>314</sup> Reasons for their opposition to H.B. 4697, discussed in greater detail below, included the desire to tape confessions rather than entire interrogations, concerns about exactly when videotaping is required and the cost of implementing videotaping programs. Responses to these areas of opposition will also be detailed.

### 1. Interrogations v. Confessions

Although videotaping of confessions is already occurring in a limited fashion in Cook County, police and prosecutors there and across the state are wary of extending videotaping to include both the confession and the interrogation that preceded it.<sup>315</sup> Police argue that mandating videotaping of interrogations would be too likely to interfere with police work and be too onerous a burden for the judicial system.<sup>316</sup>

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REG. (Springfield, Ill.), Feb. 8, 2000, at 11, *available at* 2000 WL 22764367 (quoting Rantoul Police Chief Paul Dollins, lobbyist for the Illinois Association Chiefs of Police, as stating that if H.B. 4697 became law "[l]aw enforcement would be further constrained, and we don't want to see any more constraints on our ability to do our job"). At least one law enforcement official has stated that he feels the false confession cases are not a sufficient reason to introduce this type of legislation; he has suggested that the appropriate response would be simply to "go after those bad cops . . . and clean up our own shops." Brueggemann, *supra* note 95, at 3B (quoting George Koertge, Director of the Illinois Association of Chiefs of Police); *see also Cops: Let's Not Go to the Videotape; Law Enforcement Cold to Madigan's Plan to Tape Interrogations*, DAILY SOUTHTOWN, Feb. 9, 2000 [hereinafter *Cops*] (quoting Chief Dollins as stating, "This type of proposal is not new. We see it basically as an obstruction or hindrance."). *But see* Erickson, *supra* note 294 (quoting Normal Police Department Lt. Tony Daniels as saying, "I don't think it would be a hindrance. Personally, I think it would be a plus for us.").

313. Brueggemann, *supra* note 95, at 3B.

314. *See Task Force on Videotaping II*, *supra* note 30, at 174 (arguing that appropriate legislation would "allow[] the scope and location of videotaping to be determined by the investigating agency").

315. "[T]he Illinois State Police support the position that videotaping confessions and interrogations should be allowed and strongly encouraged but not mandated." *Id.* Oddly, in his testimony before the House Task Force, Cook County First Assistant State's Attorney David Erickson stated, "Whether it expands later to interrogations, we leave that as an open subject, and we wouldn't be in charge of that anyway. That's a police function. That's not a prosecutorial function, and the feelings on that go one way or another." *Id.* at 43.

316. *See, e.g.,* Craig Savoye, *In More States, Police Have to Get It on Tape; Illinois is the Latest to Consider Mandatory Videotaping When Police Question Suspects*, CHRISTIAN SCI. MONITOR, Mar. 16, 2000, at 2, *available at* LEXIS, News Library (quoting Sean Smoot, chief

Opponents suggest that these problems can be cured in two ways. First, they argue that no confession should be excluded simply because it was not videotaped, but rather that the failure to videotape should be taken into consideration as another factor in the totality of circumstances test employed by courts to determine if a statement is voluntary.<sup>317</sup> Second, they believe that videotaping should not be mandatory, but rather left to the discretion of law enforcement officers who can assess the particular circumstances of each case and determine what action should be taken.<sup>318</sup>

a. Interference with Police Work

The argument that mandatory videotaping of interrogations would interfere with police work is based upon concerns that the program is not feasible and that videotaping will undermine the effectiveness of the interrogation itself.

i. Feasibility

Law enforcement officials cite many circumstances that occur during the investigation of crimes that make videotaping difficult, if not impossible.<sup>319</sup> For example, police may need to obtain information from a suspect at the scene of a crime to prevent further criminal activity or harm.<sup>320</sup> Officers may not be able to reach a location where a video camera is located, particularly in rural areas.<sup>321</sup> Additionally, a

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legal counsel for the Police Benevolent and Protective Association of Illinois, as stating: “We don’t object to the concept of videotaping; it’s the mandatory nature of the law we don’t like”). Opponents to H.B. 4697 also argue that videotaping interrogations would be too costly. This issue is discussed separately below. *See infra* notes 389-424 and accompanying text (weighing financial costs of videotaping interrogations with long term benefits of preventing false confessions and avoiding expensive litigation).

317. On February 16, 2000, a meeting was held in Springfield, Illinois at which opponents to and proponents of H.B. 4697 were invited to voice their concerns regarding the legislation so that the bill’s drafters would have guidance in revising the bill. Notes of Beth A. Colgan from Revision Meeting I (Feb. 16, 2000) [hereinafter Revision Meeting I] (on file with authors). A second meeting was held on February 23, 2000. Notes of Beth A. Colgan from Revision Meeting II (Feb. 23, 2000) [hereinafter Revision Meeting II] (on file with authors). At the first meeting, Cook County Assistant State’s Attorney David Bonoma remarked that, “The failure to videotape, on its own, can never be the reason that a murderer goes free.” Revision Meeting I, *supra*.

318. *See generally Task Force on Videotaping II, supra* note 30, at 173.

319. “[C]onditions will inevitably occur where videotaping is impractical or counterproductive to capture interrogations or confessions made through mandatory videotaping, a problem that could cripple law enforcement’s ability to function.” *Id.*

320. It should be noted that proponents have not opposed the addition of an exigent circumstances exception that would address this type of situation.

321. *See generally infra* notes 386-88 and accompanying text (discussing various logistical problems associated with videotaping interrogations).

suspect may blurt out a confession without prompting by the police officers. Opponents of H.B. 4697 worried that the mandate would exclude true confessions in these cases, thereby hampering law enforcement efforts.

Proponents of H.B. 4697 took issue with the argument that videotaping of interrogations is not feasible. Proponents agreed that an exigent circumstances exception to the bill's exclusionary rule was warranted but believed that the numerous exceptions contained in the original bill adequately addressed feasibility concerns voiced by law enforcement.<sup>322</sup> Apart from the exigent circumstances exception, the general feasibility exception would have allowed officers to show that it was not possible for them to record the particular interrogation.<sup>323</sup> The *res gestae* exception excluded statements given by a suspect not yet interrogated by the police.<sup>324</sup> Proponents argued that these statements would allow police to continue investigative work while still providing protection to suspects.

#### *ii. Impairing Interrogations*

Opponents also feared that videotaping statements would impair the effectiveness of the interrogation itself. Officers believe that suspects will decline to talk to the police if they know cameras are recording their statements.<sup>325</sup> Although H.B. 4697 created an eavesdropping exception that would allow police to videotape suspects surreptitiously, "police say it wouldn't take long for the word to get out on the streets."<sup>326</sup> Concern was also expressed that officers would decline to use some interrogation techniques, because such techniques, although legal, could be misconstrued by juries as being overly manipulative.<sup>327</sup> These officers feared that commonly used tactics such as aggressive

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322. George Koertge, Director of the Illinois Association of Chiefs of Police, said, "[T]he exemptions will be a constant matter of courtroom debate." Brueggemann, *supra* note 95, at 3B.

323. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000).

324. *Id.* Such spontaneous admissions would not be covered by H.B. 4697 in any event because they are not the product of an "interrogation." See *Rhode Island v. Innis*, 446 U.S. 291 (1980) (defining interrogation broadly to include express questioning and any words or actions by the police which the police should know would be likely to elicit an incriminating response).

325. Roger Richards, Director of the Southwest Illinois Law Enforcement Commission, has stated, "To initially walk in with a camera on, I think that creates some undue pressure, and I'm not sure that people are going to cooperate as freely." Brueggemann, *supra* note 95, at 3B.

326. *Id.*

327. *Id.* But see Chapman, *supra* note 26, at 19 (quoting Denver Chief Deputy District Attorney Lamar Sims as reporting that "he has never had a defendant acquitted because a jury was squeamish about how the police behaved on tape").

behavior or profane language, or even attempts to gain the trust of a suspect, might make police seem less credible in the eyes of jurors.

Proponents of H.B. 4697 pointed to the experience of other police departments in an attempt to allay fears that interrogations would be less effective if they are videotaped. City of Kankakee Chief of Police Bill Doster has explained that in Kankakee police were originally reluctant to videotape interrogations but that the program proved to be an important tool for his department.<sup>328</sup> Proponents also argued that suspects would not be less inclined to talk, in part because the exception to Illinois' eavesdropping statute included in H.B. 4697 allowed the police to videotape surreptitiously.<sup>329</sup> Proponents also pointed to the experience of other states, many of whom have been taping for years, to show that, in these states, videotaping has not impaired interrogations. Denver Police Sergeant Jon Priest, for example, has stated that videotaping "doesn't effect what [suspects] say."<sup>330</sup> Proponents also pointed to the experience of other cities and states as reported by William Geller, the author of a United States Department of Justice study on videotaping, who found that videotaping "aided in the search for truth."<sup>331</sup>

Proponents stated that the use of videotaping could become an enormous asset to police as they attempt to secure convictions. First and foremost, police departments that currently videotape interrogations report that allegations of police misconduct have dropped since the inception of their videotaping programs.<sup>332</sup> This result, in fact, was one

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328. Doster stated:

[T]here was initially a great reluctance on the part of detectives to engage in videotaping. We heard the same horror stories that we heard when the Miranda decision came out that people will refuse to talk to us, that people won't give statements, that interrogations and that interviews are a thing of the past, and just the opposite occurred. . . . [A]s we've moved on with the technology, we discovered that they enjoyed it, and they began to hone their own skills in terms of interviews and to be able to assess their own weaknesses and strengths, and we were still getting confessions and statements.

*Task Force on Videotaping I*, *supra* note 30, at 19-20; *see also infra* notes 341-42 and accompanying text.

329. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000).

330. Chapman, *supra* note 26, at 19. Denver police tape both interrogations and confessions. Coglianesse, *supra* note 260, at 24.

331. Geller stated: "I found good news during on-site interviews with all the key criminal justice system players in a dozen cities which were already using video technology to document interrogations or confessions. The news is that they all reported the technology aided in the search for the truth." *Task Force on Videotaping I*, *supra* note 30, at 10.

332. Geller, *supra* note 2, at 6. Of departments surveyed, 43.5% reported that the number of allegations decreased, 38.7% reported that the number of allegations remained the same, and 17.8% reported that allegations increased. *Id.*; *see also* Peres & Pallasch, *supra* note 24, at 1

impetus behind H.B. 4697.<sup>333</sup> The bill's co-sponsor, Representative Turner, explained that H.B. 4697 would protect law enforcement from fabricated claims of abuse.<sup>334</sup> In fact, some defense attorneys oppose videotaping because oral, "[w]ritten and, to a certain extent, audiotaped confessions are easier for the defense to attack as the product of coercion or fabrication."<sup>335</sup>

An Illinois Senate Task Force has recommended that videotaping interrogations would be the best method of protecting police officers and restoring public confidence in law enforcement.<sup>336</sup> Videotaping has already been successfully instituted in Illinois for the very purpose of curbing citizen complaints against police.<sup>337</sup> Several Illinois police and sheriffs departments have begun outfitting police cars with video cameras to "provide indisputable evidence in court and . . . protect officers from charges of abuse."<sup>338</sup>

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("Videotaping has served to immunize police against some allegations that confessions were coerced. A 1992 U.S. Justice Department survey of hundreds of police departments found charges of police misconduct declined after taping began."); *Police to Keep Videotaping Interviews; Judge Rejected Evidence Recorded for Recent Case*, BANGOR DAILY NEWS (Me.), Apr. 18, 2000, available at 2000 WL 4262691 (quoting Portland, Maine Police Chief Michael Chitwood as stating that videotaping interrogations helps curb charges of police brutality); Editorial, *Taping Interviews Will Protect Both Suspects and Detectives; The Practice Should Continue Despite Last Week's Decision to Toss Out a Confession*, PORTLAND PRESS HERALD (Me.), Apr. 19, 2000, at 10A, available at 2000 WL 5080280.

333. Representative Sid Mathias, a member of the Illinois House of Representatives Task Force on Videotaping Interrogations and Confessions, stated, "I think one of the things we have to realize is that by videotaping the entire process, this really protects the police . . . officers who in general . . . try to do the right thing, and this will protect them." *Task Force on Videotaping II*, *supra* note 30, at 232-33 (including statement of Representative Sid Mathias).

334. Turner explained that he "think[s] some might be reluctant [to support H.B. 4697] until it's explained that it's actually a pro-law-enforcement bill. It gives protections to law enforcement officers just as it does to defendants." *Mahr*, *supra* note 312, at 11.

335. Geller, *supra* note 2, at 7. Kankakee County Sheriff Jim Bukowski reports that prior to videotaping interrogations, in motions to suppress, there was always the suggestion that "something untoward must have occurred to get someone to confess." *Task Force on Videotaping II*, *supra* note 30, at 22 (including testimony of Kankakee County Sheriff Bukowski).

336. "The most direct way to deal with perceptions of police misconduct and coerced or fabricated confessions, while maintaining the maximum impact of voluntary confessions and protecting officers from fabricated claims of abuse is to videotape confessions." *Task Force on Criminal Justice System*, *supra* note 46, at 17. In an analogous context, Cook County Sheriff Michael Sheahan has stated that videotaping traffic stops is good police policy because, "If this individual says that our officer brutalized him, we've got a true picture of what our officer did. There's nothing more telling than a picture." Bradley Keoun, *Video Cameras in Squad Cars Gain Popularity Among Police*, CHI. TRIB., May 22, 2000, § 2, at 2, available at 2000 WL 3668081.

337. See *infra* notes 409-20 and accompanying text (describing the various ways Illinois' police are currently using video to fight crime).

338. Cindy Wojdyla Cain, *An Impartial Witness; Police Find that Video Helps Close Cases and Protect the Public*, THE HERALD NEWS (Joliet, Ill.), June 7, 1999, at A1. The tapes from

Videotaping also benefits the police by improving the ability of police to gather and document information involving a particular crime. In a national survey, police departments that videotaped interrogations noted that videotaping the entire process captures all of the suspect's statements, thereby preserving what may later prove to be essential evidence as well as spontaneous statements that a suspect may not be willing to repeat.<sup>339</sup>

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these car cameras have already been used to stop at least one false accusation of police misconduct where a driver accused a police officer of using racial slurs against her. The officer reported that he "just pulled out the tape and mailed them a copy. That closed the issue." *Id.* In Chicago, two questionable shootings led to a push by police to equip cars with video cameras. Lighty & Washburn, *supra* note 268, at 1. Chicago Police Superintendent Terry Hilliard stated:

I just think cameras are going to help stem some of those allegations about misconduct, about verbal abuse . . . It's not only for the safety of the citizens, but for the police officers, to dispel some of those rumors that the entire Chicago Police Department is corrupt, abusive and using excessive force day in and day out.

*Id.*; see also Keoun, *supra* note 336, at 2 (citing law enforcement officials as stating that video cameras would be used to tape traffic stops in order to curb police brutality complaints); Chinta Strausberg, *Pols Ask Video Cams in Cop Cars to Deter Abuse, Plus Ban on Tinted Windows*, CHI. DEFENDER, June 10, 1999, at 10 (reporting that Chicago Alderman requested that video cameras be placed in cop cars to reduce complaints of police brutality claims and suits against the city). Additionally, Clarence N. Wood, Chairman of Chicago's Commission on Human Relations released a statement supporting the placement of video cameras in police cars:

Videotaping police stops is a step in the right direction. The Chicago Police Department should take immediate action to equip its vehicles with video cameras and train officers in their implications and proper use, if only to reinforce the truth of a mutual interest. The public and police are on the same side, that of civic order, in our system designed at its best to ensure justice and equality for all. We delay at our own risk, and society's.

Press Release, Clarence N. Wood, Chicago Commission on Human Relations, Taping Police Stops is a Good Idea in Need of Fast-Track Implementation (Aug. 9, 1999) (on file with authors).

339. Geller, *supra* note 2, at 5. The survey noted that "a seemingly trivial comment by a suspect under interrogation might prove crucial at trial but be lost in a recap." *Id.* These officers explain that "a suspect might say, 'I was there but I didn't do anything.' This may seem unimportant at the time, but capturing the 'I was there . . .' admission on videotape would more than likely prevent an alibi defense at trial." *Id.*; see also *Task Force on Videotaping I*, *supra* note 30, at 90 ("You lose that odd statement that may not seem terribly relevant at the time."). Failure to tape the entire interrogation creates a risk of "los[ing] potentially valuable information that a suspect might say spontaneously and then refuse to repeat on videotape after having time to realize it might be incriminating." Geller, *supra* note 2, at 5; *Task Force on Videotaping I*, *supra* note 30, at 91 ("You might lose the whole thing because in the time it takes for the state's attorney to come by, perhaps the person changes his or her mind."). Furthermore:

We chose to take [sic] the entire interrogation to overcome the issue that we offer any inducements; how is the person treated. So we did that from an altruistic standpoint, and to show you I'm not a nice guy particularly, we also did it for a tactical reason because even if a person does confess, there are maybe some inconsistent statements that the person made during that interrogation that can be used later on in court to overcome an alibi, overcome some other things.

*Task Force on Videotaping I*, *supra* note 30, at 88-89. An unusual twist in a Minnesota case shows just how valuable a tool videotaping can be. Hennepin County officers "surreptitious[ly]

Videotaping can also provide police with improvements in training.<sup>340</sup> For example, many agencies use tapes to help train police in proper interrogation techniques.<sup>341</sup> Videotapes may also help police obtain confessions; some departments “show an accomplice’s taped confession to an uncooperative suspect and thus possibly stimulate a change in attitude.”<sup>342</sup>

Illinois police officers also expressed concern that certain interrogation techniques may offend judges and juries despite their legality.<sup>343</sup> While several police agencies experienced a temporary negative impact on interrogation procedures, officers successfully adapted to being videotaped and may have even improved their skills in the process.<sup>344</sup> In fact, the national study on videotaping interrogations

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videotap[ed] a . . . suspect who claimed to be blind. When officers left the room he flipped around a piece of paper to read it better.” Savoye, *supra* note 316, at 2.

340. In fact, “[t]he vast majority of surveyed agencies that videotape interviews believed that videotaping has led to improvements in police interrogations.” Geller, *supra* note 2, at 5. In this study, 36.4% of police departments reported that videotaping “helped somewhat” and 47.8% reported that videotaping “helped a lot” in improving interrogation techniques. *Id.*; see also Keoun, *supra* note 336, at 2 (quoting Illinois police officer Larry Harrison as stating, “With the video camera, it makes you a better officer because you know you’re being videotaped. . . . I would never want to work without a camera. If I had to, I’d feel it was a disadvantage.”).

341. Geller, *supra* note 2, at 6; see also *Task Force on Videotaping I*, *supra* note 30, at 13-14 (stating that “[p]olice supervisors could better identify which detectives needed some refresher training on interrogation tactics”). For example, David Zulawski, a former police officer who now trains police in interrogation techniques at the Maine Criminal Justice Academy, uses tapes of actual interrogations to teach proper techniques. Grace Murphy, *Police Stand Behind Videotaping Their Interrogations of Suspects; Despite a Judge’s Criticism, Officers Say the Tapes Can Be Helpful*, PORTLAND PRESS HERALD (Me.), Apr. 17, 2000, at 1B, available at 2000 WL 5080169.

342. Geller, *supra* note 2, at 6.

343. Brueggemann, *supra* note 95, at 3B. Fred E. Inbau, often considered the father of modern interrogation techniques, stated that, “Of necessity, criminal interrogators must deal with criminal offenders on a somewhat lower moral plane than that upon which ethical, law-abiding citizens are expected to conduct their everyday affairs.” Fred E. Inbau, *Police Interrogation—A Practical Necessity*, 52 J. CRIM. L.C. & P.S. 16, 19-20 (1961).

344. It was found that

[d]etectives reverted to a more balanced approach once they became accustomed to being taped; they realized that they could maintain professionalism while using traditional tactics. For example, when interrogators use profanity, as long as they are following up on the suspect’s choice of words to communicate clearly rather than gratuitously or in an intimidating manner, it does not seem to bother judges or juries.

Geller, *supra* note 2, at 6. In Minnesota, where electronic recording of confessions is required, see *supra* note 1, District Attorney Amy Klobuchar has stated that it “has not hurt our cases to have juries observe how the police interrogate suspects . . . . It hasn’t hurt our conviction rate in any way.” Savoye, *supra* note 316, at 2. But see George Coppola et al., *Recorded Interrogations and Confessions in Alaska and Minnesota*, OLR RESEARCH REPORT, Nov. 10, 1999, available at <http://www.cga.state.ct.us/ps99/rpt/olr/99-r-1062.doc>, at 4-5 (citing one prosecutor from Minnesota and one police officer from Alaska who believed that the technique of lying about

showed that, in areas where videotaping was used, “fewer cops were accused of ‘testilying’ on the witness stand.”<sup>345</sup> Police officers are often subject to rigorous cross-examination on what exactly occurred in an interrogation room; with a videotape of the interrogation, cross-examinations become superfluous. This benefit was underscored for the House Task Force by the testimony of Dorothe Ernest, the mother of a young woman who was brutally murdered in Philadelphia.<sup>346</sup> Although the two defendants in her daughter’s murder had given signed written confessions, they were acquitted because the jury believed that the two men might have been beaten into confessing.<sup>347</sup> Ernest testified that “We need to protect our police. The poor detectives in Kim’s case were belittled on the stand, accused of putting in overtime to pad their salaries. I mean, they had character assassinations, and yet these guys go back out in the street risking their lives to protect us.”<sup>348</sup>

#### b. Creation of an Onerous Burden on the Judicial Process

Opponents argued that the videotaping of entire interrogations would produce hours and hours of videotape<sup>349</sup> and that requiring prosecutors, defense attorneys, and judges to watch the lengthy tapes would impose an onerous burden. Proponents of H.B. 4697, on the other hand, did not believe that requiring the videotaping of interrogations would place a burden on attorneys and judges.

First, watching videotape is similar to reading pages upon pages of transcripts to determine admissibility of certain items.<sup>350</sup> Both can require substantial time, so reviewing videotape is not a unique burden.

Second, a videotape record provides a more complete record from which a judge can make essential *Miranda* determinations such as voluntariness of confessions, presence of warnings, and waiver of rights.<sup>351</sup> By viewing the entire interrogation, judges can see the

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evidence may make some juries uncomfortable).

345. *Task Force on Videotaping I*, *supra* note 30, at 14.

346. *Task Force on Videotaping II*, *supra* note 30, at 227-31 (including testimony of Dorothe Ernest); *see also* Ray Long & Maurice Possley, *Videotaping of Suspects Gets Push House Backs Mandatory Use in Interrogations*, CHI. TRIB., Feb. 18, 2000, § 2, at 1, available at 2000 WL 3637798.

347. *Task Force on Videotaping II*, *supra* note 30, at 229.

348. *Id.* at 231. Ernest described the two police detectives who conducted the interrogation as “men I would be proud to have as a brother. These are good people, very good people.” *Id.* at 229.

349. *See Hillard Criticizes Bill on Taped Confessions*, CHI. TRIB., Feb. 19, 2000, § 1, at 5, available at 2000 WL 3638065.

350. Comments of House Representative Douglas Scott, Revision Meeting II, *supra* note 317.

351. *See* Leo & Ofshe, *supra* note 38, at 494; *see also* Lee v. Illinois, 476 U.S. 530, 540

suspect's demeanor, whether police read a suspect *Miranda* warnings,<sup>352</sup> what, if any, questions the suspect asked during recitation of the *Miranda* warnings, and whether there was a true understanding that led to a constitutionally required knowing and voluntary waiver of rights.<sup>353</sup> To proponents, this method is superior to viewing the written

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(1986) ("To foster such a system, the Constitution provides certain safeguards to promote to the greatest possible degree society's interest in having the accused and the accuser engage in an open and even contest in public trial."). Leo & Ofshe also add:

The practice of recording creates an objective and exact record of the interrogation process that all parties—police, prosecutors, defense attorneys, judges, juries—can review at any time. The existence of an exact record of the interrogation is crucial for determining the voluntariness and reliability of any confession statement, especially if the confession is internally inconsistent, is contradicted by some of the case facts, or was elicited by coercive methods or from highly suggestible individuals.

Leo & Ofshe, *supra* note 38, at 494.

352. In a recent case emanating from Minnesota, an FBI agent interrogating a murder suspect was captured on videotape giving the suspect only partial *Miranda* warnings and then repeatedly ignoring the suspects' requests for an attorney. See Richard Meryhew & Pat Doyle, *Strategy in Jenson Confession Criticized; Dale Jenson's Rights Were Violated in the Interview about Jessica Swanson's Death, a County Attorney Said; But He Also Concluded that No State Laws Were Broken*, STAR TRIB. (Minneapolis-St. Paul, Minn.), Apr. 25, 2000, at 01A, available at 2000 WL 6970118.

353. For example, in the Ryan Harris case, the judge would have been able to view officers explaining "kiddie rights" to the eight-year-old to determine if he really understood what he was doing when he "[s]aid would talk without mother or lawyer." *Notes of Eight, supra* note 55; see also Carpenter & Forte, *supra* note 55, at 1; Lorraine Forte & John Carpenter, *Why 2 Boys Stand Accused of Murder*, CHI. SUN-TIMES, Aug. 30, 1998, at 8, available at 1998 WL 5595683; Maurice Possley, *How Cops Got Boys to Talk*, CHI. TRIB., Aug. 30, 1998, § 1, at 1, available at 1998 WL 2890908. One commentator remarked:

It'd be nice to see and hear the tape of all the interactions between the Chicago police and the pint-sized former suspects in the Ryan Harris murder, wouldn't it? We could hear what they said when, what was said to them and their affect and posture throughout. It's possible, after all, that we might come away with more confidence rather than less integrity of the officials involved . . . .

Eric Zorn, *The Evidence Is In: Police Must Tape Interrogations*, CHI. TRIB., Sept. 7, 1998, § 2, at 1, available at 1998 WL 2893289. In commenting on how videotaping of interrogations has been implemented in Minnesota, Barry Feld, law professor at the University of Minnesota, stated:

These types of court rules work to the benefit of both the prosecution and the defense by providing an objective record of exactly what happened. And to the extent that the criminal justice process is supposed to determine the truth, it's hard to see how anybody could be opposed to having an objective record of the entire process.

Possley & Long, *supra* note 30, at 1. A videotape of an entire interrogation can also be helpful in special circumstances, for instance when the suspect is non-English speaking and a translator is utilized. In these situations, "[t]he tape captures the precise translation, facial expressions, and gestures used in the police questions or comments, the interpreter's translation, and the suspect's statement. The defense can hire a translator to study the video for erroneous translations which might be prejudicial to the defendant." Geller, *supra* note 2, at 7. This would be helpful in the Miguel Castillo case, *supra* notes 207-12.

notes of an interrogator because the trier of fact is actually able to see and hear what led up to the confession.<sup>354</sup>

Third, a videotape record helps alleviate the problem of suggestive confessions. Viewing an exact record of interrogation dialogue can also help to determine whether the suspect provided given information independently or whether the interrogator—either intentionally or unintentionally—tarnished the confession by giving away details of the crime to the suspect throughout the interrogation.<sup>355</sup> This is not an argument suggesting that every person who denies involvement at the beginning of an interrogation is uninvolved and only learns information from the police. In fact, the credibility of a confession which follows a suspect's initial denial of guilt will be improved because a video would show that police did not taint the confession.<sup>356</sup> If, however, the videotape shows that the information given by the suspect is initially replete with errors and that only after listening to the interrogating officers is the suspect able to give an accurate confession, then the confession is likely false.<sup>357</sup>

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354. *Task Force on Videotaping I*, *supra* note 30, at 10 (“It is much easier for an impartial trier of fact to tell whether a confession was coerced by seeing and hearing the key moments in the interrogation room than by listening to lawyers argue [sic] over the meaning of words on a page.”).

355. Johnson, *supra* note 46, at 735 (“It provides an objective means of distinguishing the suspect's actual level of knowledge about the crime from the details suggested to him by the police.”); *see also* Cassell, *supra* note 39, at 599 (arguing that videotaping should replace *Miranda*); Long & Possley, *supra* note 31, at 1 (quoting Barry Scheck, co-founder of the Innocence Project, as saying, “The problem when you get false confessions is that you have the importation of information from police to suspect, deliberately or unintentionally. It is repeated over an extended period of time. . . . Ultimately police say the suspect has key facts only the perpetrator could know.”). Professor Cassel notes:

Without such a recording, it will be impossible to determine whether an alleged consistency of the confession is due to what a suspect learned from the police or knew from committing the crime. But even with such a recording scheme in place, in close cases the courts still will have to make difficult determinations.

Cassell, *supra* note 39, at 598.

356. For example,

[I]f you watch organically a natural conversation which has a beginning and a middle and ends in a way that most people would find logical, which if somebody says ‘I didn't do it,’ then you can watch step by step what the process is of a person changing their mind. If you can watch the change, then you can see that it wasn't the product of oppression but rather of realizing that . . . you have the bloody knife, you have the . . . T-shirt with the blood stains on it or whatever evidence, and it becomes a lot more convincing, and the exculpatory statements then are put in proper perspective.

*Task Force on Videotaping I*, *supra* note 30, at 100-01.

357. For example,

If an interrogator inquires about provable matters and/or seeks to derive new evidence from the suspect and the confession statement is replete with demonstrable errors about the crime scene and does not lead police to new evidence, then the narrative should be

In either case, videotaping allows a judge to see exactly what occurred in the interrogation room. Judges report that “decisions to admit confessions in evidence and to convict or acquit are more credible when the suspect is questioned on camera.”<sup>358</sup> In Illinois’ Kankakee County, prosecutors have not lost a single motion to suppress a confession in the five years that they’ve been videotaping interrogations.<sup>359</sup> Kankakee Sheriff Jim Bukowski reports that “[l]awyers still file a motion to suppress, [but] when they see the testimony [on video], they change that right away. That’s no longer an issue, and we’ve never lost a motion to suppress since we’ve started video interviewing, so it’s an excellent tool.”<sup>360</sup>

Fourth, viewing an entire interrogation puts what happens during a confession into context. Proponents believe that the extra time involved in viewing videotapes of entire interrogations is worthwhile, particularly if the alternative is to view a videotape of just a confession, which would not show what occurred during the interrogation. Attorneys and judges in other jurisdictions have expressed concern that such “recaps” have a rehearsed quality to them and “minimize the apparent remorse of the defendant,” making the suspect “seem atypically cold and callous.”<sup>361</sup> This could hamper the ability of the defense to show that a suspect is remorseful at both trial and sentencing, a factor that even prosecutors have admitted helps them obtain convictions and longer sentences.<sup>362</sup>

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recognized as consistent with the capabilities of someone who has given a false confession, and it should be considered evidence demonstrating the unreliability of the statement and tending to support a suspect’s innocence.

Ofshe & Leo, *supra* note 55, at 997.

358. Geller, *supra* note 2, at 9. In fact, videotaping of interrogations in Illinois’ Kankakee County was the suggestion of Chief Judge Daniel Gould, who believed it would help in determining voluntariness of waivers and statements. *See Task Force on Videotaping I, supra* note 30, at 22.

359. *Task Force on Videotaping I, supra* note 30, at 23-24.

360. *Id.*

361. Geller, *supra* note 2, at 5; *see also Task Force on Videotaping I, supra* note 30, at 91 (“It can be unfair to the accused because what may have come out over the course of a three- or four-hour interrogation is an enormous amount of remorse which, by the 15th time that the person tells it before they turn on the videotape, is all gone.”); *id.* at 92 (“[Y]ou could have a very long interrogation, and maybe a person has been inebriated, and by the time they turn on the video, [he’s] not drunk anymore.”).

Attorney Jack Carey, who represented the four boys who falsely confessed to a murder in Alton, Illinois, *see supra* notes 93-101 and accompanying text, points to videotapes of his clients’ confessions in which it was obvious that the boys “had rehearsed it over and over again.” Brueggemann, *supra* note 95, at 3B.

362. Peoria County State’s Attorney Kevin Lyons explained how compelling it is to see someone confessing on video when they are calm, “smoking and drinking Mt. Dew.” Revision

The extra time spent reviewing interrogations is valuable because the “recap” confessions are unreliable, out of context, and do not show coercion as well as do uninterrupted interrogations. Some defense attorneys fear that allowing the jury or judge to view only the confession may also make it more difficult for innocent people to prove that they were coerced into confessing. Public Defender Greg O’Reilly testified to the House Task Force that the use of recaps might make it more difficult for innocent people who have falsely confessed to prove their innocence because there is a compelling recording of the suspect himself stating that he committed the crime.<sup>363</sup> A videotape of the interrogation, however, would show exactly what happened and allow a trier of fact to base decisions regarding admissibility and believability on a broader and more accurate base of information. Madison County Public Defender John Rekowski has stated that, “We just want to see to it that the whole truth hits the courtroom, unadulterated and untwisted.”<sup>364</sup>

Former Judge R. Eugene Pincham also warns that videotaping just the confession will give defense attorneys even greater ammunition to attack the credibility of police officers and the voluntariness of the confession.<sup>365</sup> Judge Pincham suggests that the failure to videotape the confession could be raised to imply that something nefarious occurred during the interrogation which the police are trying to hide.<sup>366</sup>

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Meeting II, *supra* note 317.

363. O’Reilly stated:

How did the innocent man confess? In fact, there’s some concern amongst the defense bar that if you were to implement that written statements are acceptable and you don’t have to videotape it or a position such as we’ll just take a recap of the confession itself, people like [Ronald] Jones, rather than being released from death row, might actually have a tougher time getting out of death row because they’re innocent, they’re factually innocent, but you now have him saying in his own words “I did it.” Nobody knows why he said that, so if anything, you hazard tilting the balance in favor of the prosecution even more.

*Task Force on Videotaping II*, *supra* note 30, at 182-83 (including testimony of Greg O’Reilly, Cook County Public Defender); *see also* Drizin, *supra* note 289, at 6.

364. Brueggemann, *supra* note 95, at 3B.

365. Judge Pincham, a defense attorney in the Ryan Harris and Eddie Huggins Cases, has stated that videotaping only confessions will give “defense attorneys a field day.” *Task Force on Videotaping II*, *supra* note 30, at 256 (including testimony of R. Eugene Pincham); *see also* Rovella, *supra* note 260, at A1 (noting that some defense attorneys in Los Angeles have been using the Rampart police scandal to question the credibility of police officers testifying in other cases). Lisa Schreibersdorf, a lawyer at Brooklyn Defender Services, has stated, “Instead of trying to convince people that it’s possible that the police lie, we are now confronted with jurors who say, ‘Yeah. We know police lie.’” Rovella, *supra* note 260, at A1.

366. Judge Pincham stated:

Any defense lawyer worth his salt will create a very, very serious question in the minds

Whether or not defense attorneys are hampered by the use of a “recap” or will use it to their advantage in attacking the credibility of the police officers, proponents agree that videotaping just confessions does nothing to ease the problems that H.B. 4697 was developed to address.

Finally, prosecutors working under similar requirements grow to like the use of videotaped interrogations, because they actually help the State’s case at trial and add legitimacy to police work in the eyes of the jury. Prosecutors “were in virtually unanimous agreement that videotaping helped them assess the State’s case and prepare for trial.”<sup>367</sup> Seeing the video of the interrogation also “gives the prosecutor a crack . . . at seeing the defendant’s demeanor and how he responds to questions . . . . That’s been one of the objections by some defense attorneys.”<sup>368</sup> Further, knowing exactly what the suspect said during the interrogation reportedly gave prosecutors great leverage during plea bargain negotiations.<sup>369</sup>

Even in cases that go to trial, videotaping is helpful to prosecutors. Apart from helping to prove the voluntariness of a confession,<sup>370</sup>

of any fact-finder on the integrity of a confession that is videoed if only the confession is videoed, and the cross-examination would go something like this:

‘You’ve been in law enforcement 20 years. Not your first time in court, is it? You want to do the right thing, don’t you, and you want to present to the court the best evidence, don’t you, and you knew when you were questioning this man it was going to be challenged, didn’t you, and knowing that, you didn’t video it, did you, and the reason it isn’t videoed is because what you did to him before you began to take the confession, isn’t that right? Well, what did you do to him? Oh, you didn’t do anything to him? If you didn’t do anything to him, why didn’t you video it? Oh, you say he told you he was going to confess free and voluntarily before you got him on the camera, but you don’t have that on camera.’

*Task Force on Videotaping II*, *supra* note 30, at 255-56; *see also Task Force on Videotaping II*, *supra* note 30, at 186. Greg O’Reilly, a Cook County public defender, pointed to a list of people who were wrongfully convicted based on false confessions, and noted:

All those people might confess again. All of them are false confessions. Every one of those cases, first thing is we’re going to be in court challenging the interrogation and the process. We’re going to be litigating it. When they’re released after being wrongfully imprisoned, we’ll be suing them again.

*Task Force on Videotaping II*, *supra* note 30, at 186.

367. Geller, *supra* note 2, at 6; *see also Coppolo*, *supra* note 344, at 5.

368. *Task Force on Videotaping II*, *supra* note 30, at 181.

369. Geller, *supra* note 2, at 9. Not a single law enforcement agency reported that videotaping had a negative impact on the ability to obtain guilty pleas. *Id.* Of those surveyed, 55.4% reported that videotaping “helped a lot,” 27.3% reported that it “helped somewhat,” and 17.3% reported that it had “no effect.” *Id.*; *see also Coppolo*, *supra* note 344, at 6.

370. *See supra* notes 350-64 and accompanying text (explaining how videotaping confessions will not be burdensome on judges and attorneys and how requiring a videotape will provide a more complete record to judge the credibility of the confession).

videotaping also works well in convincing juries of a defendant's guilt because they back up police testimony, thereby "mak[ing] police work credible."<sup>371</sup> Further, prosecutors reported that videotapes also helped in obtaining longer sentences after a guilty verdict.<sup>372</sup>

### c. Opponents "Cures"

The opponents' "cures" for H.B. 4697 were also rejected by those supporting the bill. Proponents took particular issue with opponents' suggestion that H.B. 4697 not be implemented in a way that resulted in the exclusion of evidence where interrogations were not videotaped. The exclusionary rule is viewed as a necessary way of keeping the bill from becoming meaningless. Madison County Public Defender John Rekowski held to this view, stating that "[i]f we don't have a sanction, we don't have a right. . . . There has to be some sanction or it will be an interesting law that will never be honored."<sup>373</sup> Proponents argued that the totality of circumstances test has not worked to exclude faulty confessions in far too many cases in Illinois,<sup>374</sup> and, therefore, the exclusionary rule was needed.

The idea that the decision of whether to videotape should be left to law enforcement officers was equally abhorrent to the bill's proponents. They likened that suggestion to "the fox . . . guarding the henhouse, whether it's a good fox or a bad fox."<sup>375</sup> Proponents pointed again to the spate of problematic confession cases to show that, while most

371. Geller, *supra* note 2, at 9; see also Joe Mahr, *Taping Interrogations Subject of Hearings: Lawmakers Consider Idea Police Oppose*, STATE J.-REG. (Springfield, Ill.), July 22, 1999, available at <http://www.sj-r.com/news/99/07/221.q.htm> (quoting Will County First Assistant State's Attorney Doug DeBoer as stating, "I can wheel a TV set into the courtroom and press 'play.' It makes it a lot easier for juries to understand and realize exactly what a defendant said."); Savoye, *supra* note 316, at 2 (quoting Minnesota District Attorney Amy Klobbuchar as stating that it is an asset to prosecution to be able to show jurors how a defendant appeared at the time of arrest, rather than how a defendant looks during trial).

The credibility of police testimony seems to be deteriorating in large measure, particularly in communities such as Los Angeles and New York that have been plagued by police corruption scandals. Rovella, *supra* note 260, at A1. Both prosecutors and defense attorneys have begun to report that "the trust jurors used to place in police officers who take the witness stand" has been eroded by high profile police corruption cases throughout the country. *Id.* They believe that this mistrust has led to an increase in acquittals and hung juries in cases where police testimony is crucial. *Id.* One prosecutor in Brooklyn, New York stated that, "[w]here I once would bring a cop on the stand to finish out a story in the grand jury, now if it's not . . . required, I won't do it." *Id.*

372. Geller, *supra* note 2, at 9.

373. Revision Meeting I, *supra* note 317.

374. See *supra* Part II (showing the need for videotaping and interrogation through case examples of questionable confessions in Illinois).

375. *Task Force on Videotaping II*, *supra* note 30, at 187.

police officers work within the bounds of the law, the inappropriate actions of some officers require that a check is placed on interrogation procedures.

## 2. Issues Regarding the Scope of the Interrogation and Logistics of Videotaping

Opponents to H.B. 4697 raised two additional concerns. The first was how to define “custodial interrogation” for purposes of triggering the bill’s mandatory videotaping requirement. The second related to the logistical problems of having more suspects to question than the number of available rooms equipped with video cameras.

Police representatives and Representative Jim Durkin first raised the issue of defining custodial interrogation at the initial meeting organized by the bill’s drafters in Springfield, Illinois on February 16, 2000.<sup>376</sup> These parties expressed concern that the bill did not specifically designate a point at which videotaping must begin. They complained that H.B. 4697’s requirement that videotaping must begin at the onset of any custodial interrogation<sup>377</sup> did not provide them with enough guidance. Ironically, Lt. Col. Ken Bouche of the Illinois State Police extolled the virtues of using custodial interrogation as a guideline for videotaping during earlier testimony in front of the House Task Force. At that time, Lt. Col. Bouche touted the notion that custodial interrogation was clearly defined under *Miranda* to the point where *Miranda* warnings were required would be the same point at which videotaping would begin.<sup>378</sup>

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376. At this meeting, Bob Buckley, General Counsel for Chicago Police Superintendent Terry Hillard stated that, “One of the main reasons that we’re having difficulty is that there is no bright line of when the cameras go on.” Revision Meeting I, *supra* note 317. Joining with him in this concern was Lt. Col. Ken Bouche of the Illinois Association of Chiefs of Police. *Id.*; see also Long & Possley, *supra* note 31, at 1 (quoting Rep. Durkin as saying, “My concern is that while someone may be in custody under the law, it also doesn’t mean they are in the police station. . . . We need to define some rules as to when does custody begin for purposes of the bill.”).

377. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000).

378. Lt. Col. Bouche stated:

[T]here’s a balance between interrogation and interviews of witnesses, and police and prosecutors know that people are generally witnesses before they become suspects. There’s always a point in time where that occurs, so that’s why custodial interrogation is such an important part because it’s a *clear defined point in the law where we would say if Miranda is required, then this is a clear point where videotaping can come in*, and it takes the question out of . . . did the police try to get around it, *because there’s so much clear law, and when Miranda is required, it would be easy to make that distinction that videotaping would be necessary.*

*Task Force on Videotaping II*, *supra* note 30, at 249-50 (emphasis added). Lt. Col. Bouche also stated that “we believe that videotaping confessions is a wonderful tool, and it should start with

Proponents of H.B. 4697 used arguments similar to Lt. Col. Bouche's in responding to critics' concerns that "custodial interrogation" was not sufficiently defined in the bill.<sup>379</sup> Proponents pointed to a wide body of caselaw, in particular *Miranda v. Arizona*<sup>380</sup> and its progeny, through which courts have set the parameters of what constitutes both "custody"<sup>381</sup> and "interrogation."<sup>382</sup>

Opponents also pointed out that there are numerous logistical difficulties in implementing a videotaping program and that these difficulties are often unique to individual law enforcement agencies. For example, even though videotaping of interrogations has been successful in Kankakee County, Cook County police officials argued that a mandatory system would be unworkable in Chicago where a significantly larger number of interrogations would fall under H.B. 4697.<sup>383</sup> Tom Needham, General Counsel to Chicago Police Superintendent Terry Hillard, protested that a mandatory videotaping program would cripple Chicago law enforcement due to the sheer number of felony arrests made by Chicago police.<sup>384</sup> Needham went on to explain that in situations where one or two rooms are equipped with

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the interrogation. It should start when Miranda is applied." *Id.* at 235.

379. For example, defense attorney John Rekowski stated that the definition of custodial interrogation is "something that's litigated in our courts every day. . . . I think it is kind of a false issue. This bill leaves open that question; that is something wisely left to the judgment of the courts. . . . You don't need to define custody to mandate that custodial interrogations be videotaped." Revision Meeting I, *supra* note 317.

380. *Miranda v. Arizona*, 384 U.S. 436 (1966) (establishing that warnings must be given by police before custodial interrogations according to the Fifth Amendment).

381. *See Brekemer v. McCarthy*, 468 U.S. 420 (1984) (holding that a person is in custody if a reasonable person would have thought that he was not free to leave); *see also Stansbury v. California*, 511 U.S. 318 (1994) (holding unanimously that the police officer's intent regarding whether or not a suspect is in custody does not determine whether the suspect was actually in custody); *Minnesota v. Murphy*, 465 U.S. 420 (1984) (finding that questioning of an individual by his probation officer at the probation office was not a custodial situation).

382. *See Rhode Island v. Innis*, 446 U.S. 291 (1980) (defining interrogation as words or actions on the part of the police that they should know are likely to entice an incriminating response).

383. *Task Force on Videotaping I, supra* note 30, at 31 ("[T]he Chicago Police Department makes between 50,000 and 60,000 felony arrests a year, and just that volume . . . would make it very difficult, if not impossible, to live under a system where there was a legislative mandate that the entire interrogation be taped.").

384. *Id.* Needham also described a typical weekend night in a Chicago stationhouse:

There might be six to eight or ten interview rooms that are all being used at the same time by different teams of detectives working on different cases, and at the same time, there will be a bench outside these rooms with witnesses or potential suspects waiting to be interviewed.

*Id.* at 103.

video equipment, it would be difficult to coordinate the use of the rooms so that mandatory videotaping can occur.

Representative Julie Hamos took issue with Needham's statistics regarding the 50,000 to 60,000 felony arrests per year in Chicago, pointing out that it was a faulty comparison with less populated counties. After a series of questions by Representative Hamos, Needham was forced to admit that really only 300 to 400 of these arrests would be subject to mandatory videotaping under the H.B. 4697.<sup>385</sup>

Proponents also maintained that the situation presented by Needham is a worst case scenario easily avoidable by conducting interrogations

385. The exchange was as follows:

REPRESENTATIVE HAMOS: We said [of the 50- to 60,000 arrests] there are 400 arrests roughly for homicide. We're only talking major homicide cases and major felony maybe, right?

MR. NEEDHAM: Right.

REPRESENTATIVE HAMOS: 400 arrests. Of those 400, we said 80 result in actually a confession, but what percent would you say actually voluntarily agree to talk to the police back at the station?

MR. NEEDHAM: About half I'd say, but I would say something I don't think was clear from Mr. Erickson's remarks. . . . [W]e typically wind up with anywhere from two to—I've had cases when I was a prosecutor with ten people charged with one murder, and they all play various roles in it, so the actual number of people that were charged with those murders is large . . .

REPRESENTATIVE HAMOS: So it could be 800 defendants?

MR. NEEDHAM: It could be. I would say it's more . . .

REPRESENTATIVE HAMOS: But half of them voluntarily agreed to come back to the station and talk to the police?

MR. NEEDHAM: Right, to make some kind of statement, whether it be inculpatory or exculpatory, I'd say about half has been my experience.

REPRESENTATIVE HAMOS: Okay. So what we really are talking about, Kankakee said that it had 50 homicides in five years, but we're [not] really talking about 50- or 60,000. We're talking about maybe three or four hundred, okay? . . . Now, in homicide cases in Chicago right now, those three or four hundred people who agreed to talk, are they always taken back to those five areas?

MR. NEEDHAM: Homicides, yes.

REPRESENTATIVE HAMOS: Okay. So we're talking about five areas, and in those five areas, you said eight to ten rooms, interrogation rooms.

MR. NEEDHAM: Yes.

REPRESENTATIVE HAMOS: Okay. So even if we're talking, just to get a sense of scope here, if we're talking about equipping every single room . . . if we were talking about five areas and ten rooms each, we're talking about 50 cameras, right, for the City of Chicago to interrogate three or four hundred defendants. So let's not put it in sort of like it's either Chicago with 50- or 60,000 felonies or small jurisdictions.

*Task Force on Videotaping I*, *supra* note 30, at 112-16. The argument that Chicago is too large a city to feasibly handle videotaping interrogations is further undercut by the fact that several large cities, such as New York (the Bronx), Houston, Denver and San Diego, already are videotaping interrogations. Coglianesse, *supra* note 260, at 24.

falling under the bill in rooms equipped for videotaping, while using other rooms for the remainder of crimes.<sup>386</sup> Further, some proponents of the bill felt that this argument ignored the rationale behind videotaping. For example, Representative Davis chastised Needham for his concern, stating that the police should want to utilize a tool which would improve their ability to gather evidence of guilt or innocence, particularly given their history of convicting innocent people in Illinois.<sup>387</sup> Proponents of H.B. 4697 did, however, acknowledge that to solve these logistical problems, funding and training must be forthcoming.

A different problem exists for rural counties. Often the distance between an arrest and a stationhouse where video equipment is available will be great, raising questions about the feasibility of mandatory videotaping in those areas. As mentioned above, the feasibility exception in the original bill appears to address this problem. Law enforcement officials, however, have expressed concern that the feasibility exception is not sufficient to account for these circumstances.<sup>388</sup>

### 3. Cost of Implementing the Bill

Opponents to H.B. 4697 have stressed their belief that videotaping interrogations is cost prohibitive.<sup>389</sup> It is true that videotaping

386. "It's going to be a rare calamity that's going to cause you to have every interrogation room running at the same time, so worst case, you're right, but it can cost a lot less than that because you can easily put the interrogations in [cases falling under the bill] . . . into the rooms that are properly equipped." *Task Force on Videotaping I, supra* note 30, at 116-17.

387. Davis stated:

[N]o matter how many cases we have, it should make us want to be more absolutely sure of what we're doing. . . . I don't think we should say "We're going to be less thorough or less absolutely sure this person is guilty because of all the cases we have." "We have so many cases, we have to just do this to get rid of them," and that might be why we had those 12 or 11 people on death row, *on death row*, and had it not been for technology like DNA . . . these men would be dead today. So, I mean, we can no longer continue this wholesale arrest, prosecution, 40 years in prison, or death row without some thoroughness and accuracy, and these videotapes that are being used in Kankakee, and even if they are a smaller district to patrol, they have a smaller number of people to do the patrolling, and they have a smaller number of room[s]. We have more people, more detectives, more police officers, more space, so we should be able to do it better.

*Task Force on Videotaping I, supra* note 30, at 104-05; *see also supra* note 268 (stating that the use of excessive force against minorities is a problem throughout the United States).

388. *See generally* Revision Meeting I, *supra* note 317; Revision Meeting II, *supra* note 317.

389. In fact, "[c]ost was the explanation most agencies around the country gave for not videotaping interrogations." Geller, *supra* note 2, at 3. Illinois Senate President James Philip, has also expressed concern that videotaping interrogations might be too expensive. Cops, *supra* note 312.

interrogations, rather than just confessions, would result in increased costs for both the price of videotape and storage.<sup>390</sup> Additional costs involved in implementing the bill would include purchasing video equipment, altering interrogation rooms, and training for police officers.<sup>391</sup> In Chicago, prior implementation of its policy to videotape confessions alleviates many of these costs.<sup>392</sup> The City of Kankakee, which is currently videotaping interrogations and confessions, spent approximately \$5,000 to equip each interrogation room they use for videotaping.<sup>393</sup>

Although now adamant that cost is a nearly insurmountable barrier, when initially implementing the plan to videotape confessions,<sup>394</sup> Assistant State's Attorney David Erickson stated, "If we were going to do this in Chicago and Cook County, we wanted to do it the best way possible. . . . So to us, the extra work, the extra money, whatever it was, was important . . . ."<sup>395</sup> Additionally, Speaker Madigan has agreed "that the state could fund localities that can't afford the videotaping equipment, or that those localities could videotape interrogations at state police district offices."<sup>396</sup> There may also be federal assistance available to support videotaping programs,<sup>397</sup> as well as assistance from private sources.<sup>398</sup>

Proponents of the bill also argued that the costs of failing to implement a videotaping program far outweigh the costs of videotaping.<sup>399</sup> In Illinois, the costs of criminal and civil litigation

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390. Geller, *supra* note 2, at 4.

391. It should be noted that these latter costs will be incurred regardless of whether entire interrogations or only confessions are recorded.

392. See *supra* notes 280-91 and accompanying text (explaining the policy regarding interrogations in homicide cases implemented by the Chicago Police Department). The City of Chicago absorbed the majority of the costs. *Task Force on Videotaping I, supra* note 30, at 39-40.

393. *Task Force on Videotaping I, supra* note 30, at 22. This may be slightly more expensive than rooms equipped with standard equipment because the City of Kankakee's rooms have been equipped with hidden cameras and microphones. *Task Force on Videotaping I, supra* note 30, at 25.

394. See *supra* notes 280-91 and accompanying text.

395. *Task Force on Videotaping I, supra* note 30, at 63-64.

396. Brueggemann, *supra* note 95, at 3B.

397. In his testimony, Bill Geller suggested that it would be possible to apply for block grants through the Bureau of Justice Assistance. *Task Force on Videotaping I, supra* note 30, at 108.

398. For example, Mother's Against Drunk Driving ("MADD") has funded the cost of installing videocameras in police cars for law enforcement agencies throughout the country. See James Kimberly, *MADD's Holiday Gifts: Cameras, Breath Testers for Squad Cars*, CHI. DAILY HERALD, Dec. 16, 1998, at 1, available at 1998 WL 27846207.

399. Dorothe Ernest, the Hinsdale mother whose daughter, Kimberly Ernest, was murdered on the streets of Philadelphia, argued passionately about the costs of failing to videotape, pointing to

involving the false and problematic confession cases listed in Part II has been enormous. In the Rolando Cruz case, for example, there were three criminal trials for Cruz, two more for his co-defendant Alejandro Hernandez, and one for Stephen Buckley.<sup>400</sup> There was an additional criminal trial during which the police and prosecutors that allegedly framed Cruz were tried.<sup>401</sup> Subsequently, Cruz, Hernandez, and Buckley have each sued the police, prosecutors, and DuPage County,<sup>402</sup> which led to additional suits by DuPage County against its insurer, Lloyd's of London. These lawsuits were ultimately settled for \$3.5 million.<sup>403</sup> Additionally, in April 1999, the City of Chicago voted to settle two excessive force cases for \$1.3 million,<sup>404</sup> and agreed to over \$1 million in settlements in some of the Area Two cases.<sup>405</sup> The two young boys from the Ryan Harris case are seeking \$100 million in damages.<sup>406</sup> Between 1992 and 1998, the City of Chicago paid over \$34 million in settlements for excessive force cases, which an Illinois Senate Task Force labeled as "merely the latest [of] such verdict[s] in a continuing trend."<sup>407</sup> In light of these circumstances, proponents argued that "the cost of recording equipment and videotape is miniscule compared with the cost of going to trial with tainted evidence, and

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the fact that the suspected killers of her daughter were acquitted because the jurors believed their claim of abuse:

If we keep the status quo, the result will be more cases of alleged false confessions, more cases of alleged police coercion, and more litigation that the taxpayers will have to pay for to determine who was telling the truth about a statement that resulted from an interrogation of a defendant.

*Task Force on Videotaping I*, *supra* note 30, at 146; *see also id.* at 230 ("And so videotaping can be used not only to prevent false convictions. Videotaping could have saved Philadelphia four weeks of a sequestered trial, the countless hours of prosecution, the huge media to-do. A videotape would have made it very, very clear. A trial would not have been necessary.").

400. Possley, *supra* note 102, at 1.

401. Robert McCoppin, *Trial to Start Against Prosecutors, Investigators*, CHI. DAILY HERALD, Apr. 6, 1999, at 6, available at 1999 WL 16940716; Maurice Possley & Ken Armstrong, *Historic Case Sent Ripples Through Legal Community*, CHI. TRIB., June 6, 1999, § 1, at 1, available at 1999 WL 2880692.

402. *See Hernandez v. County of DuPage*, No. 96 C 8030, 1997 WL 598132 (N.D. Ill. Sept. 19, 1997); *Cruz v. County of DuPage*, No. 96 C 7170, 1997 WL 589463 (N.D. Ill. Sept. 17, 1997); *Buckley v. County of DuPage*, No. 88 C 1939, 1996 WL 10899 (N.D. Ill. Jan. 9, 1996).

403. *See, e.g., Cruz v. County of DuPage*, No. 96 C 7170, 1998 WL 832642 (N.D. Ill. Nov. 23, 1998); *see also* John Chase, *Angry DuPage Settles Cruz Suits; 3 Former Defendants to Split \$3.5 Million*, CHI. TRIB., Sept. 27, 2000, § 1, at 1, available at 2000 WL 3713598.

404. *Police Morale and Police Credibility*, *supra* note 260, at 22.

405. Mills & Armstrong, *supra* note 13, at 1.

406. Lorraine Forte, *Boy's Lawyer Suing City, Police*, CHI. SUN-TIMES, Feb. 17, 1999, at 23, available at 1999 WL 6526046.

407. *Task Force on Criminal Justice System*, *supra* note 46, at 11; *see also The High Cost of Excessive Force*, Editorial, CHI. TRIB., Nov. 4, 1999, § 1, at 28, available at 1999 WL 2928921.

defending police and prosecutors accused of unscrupulous or unethical conduct that results in a wrongful conviction."<sup>408</sup>

That police and prosecutors find the use of videotaping to be cost effective in other criminal justice activities, but not during interrogations, is puzzling. For example, in August 1999, the Chicago Police Department and the Cook County State's Attorney's Office completed a six-month investigation during which time they "videotaped hundreds of hours of drug sales."<sup>409</sup> The videotape was subsequently used in order to show conclusively what occurred during the drug transactions.<sup>410</sup> Cook County State's Attorney Richard Devine has touted the videotaping program as giving judges an opportunity to see a more complete picture of what actually occurred during the investigations, noting that the videos would "tell the real story."<sup>411</sup>

Some Chicago police cars are being equipped with cameras that could cost up to \$17.5 million, with an additional \$1.1 million being directed to purchase thirty-one new squad cars for Cook County sheriff's officers.<sup>412</sup> Additionally, video cameras mounted on unmarked State Police cars now capture video footage of unsafe drivers for use in court.<sup>413</sup> In Clarendon Hills, a Chicago suburb, police have begun to videotape license plates to help find parking violators.<sup>414</sup> Video cameras installed in Illinois toll-road booths to record the license plates of people who do not pay for the toll are being updated for a cost of \$1.4 million.<sup>415</sup> Additionally, officials in Cook and Kane Counties are now conducting bond hearings through a video networking system.<sup>416</sup>

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408. *We're All Watching*, *supra* note 35, at 35.

409. Terry Wilson, *40 Arrested After Cops Capture Drug Deals on Video*, CHI. TRIB., Aug. 6, 1999, § 2, at 3, available at 1999 WL 2899737.

410. *See id.*

411. Gary Washburn, *Police Going to Tape in Drug Crackdown*, CHI. TRIB., Feb. 3, 1999, § 2, at 2, available at 1999 WL 2840474.

412. Keoun, *supra* note 336, at 2 (noting that the \$1.1 million dollar package was received through a federal grant); Chinta Strausberg, *Chief Plans Cameras in Squad Cars*, CHI. DEFENDER, June 18, 1999, at 1; *see also* Jim Ritter, *Sheriff Tries Out Cameras in Cars*, CHI. SUN-TIMES, Aug. 9, 1999, at 3, available at 1999 WL 6551362.

413. Charles Nicodemus, *Cops Target Road Rage; Video Nabs 'Malicious' Drivers*, CHI. SUN-TIMES, Feb. 25, 1998, at 1, available at 1998 WL 5568536. William Geller testified that, "It costs less than one squad car to outfit several interrogation rooms in most of the agencies I visited; a cost seen as well worth the benefits by interviewees." *Task Force on Videotaping I*, *supra* note 30, at 12.

414. Philip Franchine, *Cameras Help Clarendon Hills Crack Down on Illegal Parking*, CHI. SUN-TIMES, Apr. 8, 1996, at 18, available at 1996 WL 6739916.

415. Rogers Worthington, *New Cameras to Focus on Toll Cheaters*, CHI. TRIB., May 4, 1999, § 2, at 1, available at 1999 WL 2869984.

416. Phil Borchmann, *Bond Cases on Camera Testing Well in County; But Some Lawyers*

Failure to videotape interrogations erodes public confidence in law enforcement authorities, resulting in a systemic cost that is high but not easily quantified. The release of several death row inmates in recent years has led to public outcry that more needs to be done to insure that innocent people are not convicted. Proponents of H.B. 4697 were hopeful that videotaping interrogations would be a giant step forward in curbing this problem,<sup>417</sup> a necessary reform to restore public confidence in police and prosecutors.<sup>418</sup> Kankakee Sheriff Bukowski explained that his county began videotaping for precisely this reason—to curb community suspicions of abusive police interrogation techniques.<sup>419</sup> Kankakee Chief of Police Bill Doster agreed, remarking that videotaping interrogations is a good tool for improving community police relations.<sup>420</sup>

When innocent people are convicted, public confidence is undermined and public safety is compromised because the true perpetrators of what are often heinous crimes have been left on the streets to continue harming the public.<sup>421</sup> Dorothe Ernest echoed this

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*Want Client Contact*, CHI. TRIB., June 15, 1999, § 2, at 1, available at 1999 WL 2883567. The system includes a closed-circuit monitor through which people in courtrooms can view and speak to inmates in the jail. *See id.*

417. Speaker Madigan has explained that:

our intent is not to thwart legitimate law enforcement. Our intent is to provide protections for people who are vulnerable and also to provide a system that will permit the prosecutors to do a better job in terms of working to the truth in determining who is guilty and who is not guilty.

*Task Force on Videotaping II*, *supra* note 30, at 147.

418. Speaker Madigan has stated that, “These questions cost the criminal justice system not only in terms of resources for trials and appeals but also in terms of the public’s confidence that a defendant’s confession was given voluntarily so that it can be the basis for a conviction of that person.” *Id.* at 145.

419. *Task Force on Videotaping I*, *supra* note 30, at 23 (quoting Sheriff Bukowski, who explained that his county began videotaping “because we thought we could gain a lot more from the community. If there was suspicion that we were doing something to trick or coerce defendants into confessing, we needed to clear that up.”).

420. *Id.* at 119-20. Chief Doster stated that “it fits in the community police role in terms of being open and above board with the entire community, being willing to show the community what we do, and being willing to say . . . it’s the right thing because we’re willing to let the light of truth shine.” *Id.* Chief Doster also testified that the Kankakee City Police Department “think[s] [videotaping is] important for our credibility to be open and honest with the community.” *Id.* at 21.

421. Professor Paul Cassell argues that the problem of the guilty remaining free—what he terms “lost confessions”—is more damaging to society than the problem of false confessions. *See Cassell*, *supra* note 39, at 526. Cassell defines “lost confessions” as “confessions that police fail to obtain from guilty criminals that might help innocent persons who would otherwise come under suspicion for committing a crime.” *See id.* at 525. Although Cassell believes that *Miranda* warnings are the major source of lost confessions, he agrees that the best way to solve the problem of lost confessions is to videotape police interrogations. *See id.* at 533-34.

sentiment when she stated to the House Task Force that “I think being falsely accused is horrific. I think having two guilty murderers out in the street . . . is equally as horrific.”<sup>422</sup> False confessions can also create a problem when the State seeks to prosecute another suspect whom it subsequently accuses of the crime.<sup>423</sup> Proponents of H.B. 4697 pointed out that videotaping could curb these problems, thereby improving the safety of the public, which, in turn, serves to bolster the reputation of the police.<sup>424</sup>

### B. The Compromise Bill

After listening to the concerns of both opponents and proponents of H.B. 4697, legislators redrafted and re-released the bill on March 1, 2000 (hereinafter “Compromise Bill”).<sup>425</sup> While some of the changes dismayed both opponents and proponents of H.B. 4697,<sup>426</sup> both generally agreed that the Speaker and staff had made significant steps in addressing earlier complaints,<sup>427</sup> particularly by appropriating funding

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422. *Task Force on Videotaping II*, *supra* note 30, at 229.

423. See Smith & Bosworth, *supra* note 132, at B1 (detailing F. Lee Bailey’s use of Andre V. Jones’ false confession to cast doubt on his own client’s guilt by claiming Jones had to have been involved in the killing because he confessed to specific details of the crime).

424. “It’s a thing we forget, that all these wrongful convictions, a killer goes free, so there’s a law enforcement kick at the end of this equation if we get the right person.” *Task Force on Videotaping II*, *supra* note 30, at 184.

425. A meeting was held in Springfield, Illinois on March 1, 2000, at which time the “Compromise Bill” was released. See Notes of Beth A. Colgan from Revision Meeting III (Mar. 1, 2000) [hereinafter Revision Meeting III] (on file with authors). As in Revision Meetings I and II, proponents and opponents were invited to voice concerns. See *id.*; Revision Meeting I, *supra* note 317; Revision Meeting II, *supra* note 317. While the bill introduced at this meeting effectively replaced “H.B. 4697,” for the purpose of clarity, the original bill will be referred to as “H.B. 4697.” H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000). The re-drafted bill will be referred to as “Compromise Bill.” H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000), *amended by* H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000) on Mar. 3, 2000.

426. For example, DuPage County State’s Attorney Joe Birkett stated, “I believe that the proposed bill is outrageous.” Revision Meeting III, *supra* note 425.

427. See, e.g., Revision Meeting III, *supra* note 425. At this meeting, Lt. Col. Bouche stated, “The changes that were made are substantial and I think that that shows that the proponents of the bill as well as those of us that have been giving you a hard time about it are not that far apart . . .” *Id.*

There were some changes that met with no resistance from either side. First, the addition of an “exigent circumstances” exception that did not preclude admissibility went unchallenged. See H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000), *amended by* H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000) on Mar. 3, 2000; see also *New York v. Quarles*, 467 U.S. 649 (1984) (creating an exigent circumstances exception to the requirements of *Miranda*). Second, both sides agreed that an exception for statements made during a custodial interrogation that occurs out of state was also added. See *id.* Finally, H.B. 4697’s exception for all statements that are not the product of a custodial interrogation was replaced by several other exceptions, including an exemption for statements made in response to routine booking questions, see *id.*, and for

for equipment<sup>428</sup> and training.<sup>429</sup>

The most significant change in the Compromise Bill was the abandonment of the original exclusionary rule in favor of a presumption of inadmissibility for failure to videotape custodial interrogations.<sup>430</sup> To overcome that presumption, prosecutors would need to show by clear and convincing evidence that the statement was both voluntary and reliable.<sup>431</sup> Neither side was happy with this change. Opponents of H.B. 4697 felt that a presumption of inadmissibility was too high a burden of proof.<sup>432</sup> Proponents, on the other hand, felt that the failure to exclude non-videotaped statements would encourage law enforcement to ignore the videotaping requirement, depriving the trier of fact of a significantly more complete record of the facts.<sup>433</sup> Concerns were also raised that law enforcement would rather “hang judges out to dry” by forcing them to exclude confessions rather than videotape the interrogations.<sup>434</sup>

There were also changes to the list of exceptions in the Compromise Bill, the most dramatic of which was an exception for “a statement made during a custodial interrogation by a suspect who agrees, prior to making the statement, to respond to the interrogator’s questions only if either a video or audio recording, or both, is not made of the statement.”<sup>435</sup> Professor Thomas F. Geraghty, of Northwestern University School of Law, criticized this exception, suggesting that

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“spontaneous statement[s] that [are] not made in response to a question,” *id.* It is not clear how these two new exceptions are different from the original exception in H.B. 4697, but they seem to have been added to appease the concerns of law enforcement. *See* Revision Meeting III, *supra* note 425 (Statement of Judge Getty (retired)) (explaining that several changes were made to the bill in response to concerns that had been voiced by law enforcement officials).

428. The bill stated, “The Authority, from appropriations made to it for that purpose, shall make grants available to local law enforcement agencies for the purpose of purchasing equipment for video and audio recording of interrogations.” H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000), *amended* by H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000) on Mar. 3, 2000.

429. The bill stated, “From appropriations made to it for that purpose, the Board shall initiate, administer, and conduct training programs for permanent police officers, part-time police officers, and recruits on the methods and technical aspects of conducting video and audio recordings of interrogations.” *Id.*

430. *See id.*

431. *Id.*

432. Revision Meeting III, *supra* note 425 (remark of DuPage County State’s Attorney Joe Birkett). *Id.* Cook County First Assistant State’s Attorney David Erickson also echoed the feeling that the burden was too high. *Id.*

433. Revision Meeting III, *supra* note 425 (remark of Professor Thomas Geraghty of Northwestern University Law School).

434. *See* Revision Meeting III, *supra* note 425 (remark of the author, Steven A. Drizin).

435. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000), *amended* by H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000) on Mar. 3, 2000.

“there is a danger that suspects might be encouraged to forego the videotaping requirement,” and therefore the complete and accurate record that is sought through this legislation could be circumvented.<sup>436</sup> Proponents of H.B. 4697 were also worried by an added exception for “a statement by a suspect who is being interrogated simultaneously with other suspects concerning the same offense, but only to the extent that no electronic recording equipment (video or audio) is available because it is being utilized for the interrogations of the other suspects for the same offense.”<sup>437</sup> They suggested that this problem could be solved by requiring audiotaping of the confessions in rooms that were not equipped with video equipment in circumstances where multiple suspects are being questioned simultaneously.<sup>438</sup>

The Compromise Bill retained the provision mandating that all custodial interrogations be videotaped,<sup>439</sup> but modified the requirement to apply only to interrogations taking place in the stationhouse during a custodial interrogation.<sup>440</sup> The Compromise Bill revisions also defined “custodial interrogation,” as “any interrogation during which the person being interrogated is not free to leave and a question is asked that is designed to elicit an incriminating response.”<sup>441</sup> As in H.B. 4697, the requirement was limited only to cases involving homicides and sexual assaults for adults.<sup>442</sup> Whereas videotaping of interrogations of juveniles was required in H.B. 4697 for any “non-probationable offense,” the Compromise Bill equated the offense requirements in both the juvenile and adult sections.<sup>443</sup>

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436. See Revision Meeting III, *supra* note 425.

437. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000), *amended by* H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000) on Mar. 3, 2000.

438. Revision Meeting III, *supra* note 425.

439. See H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000), *amended by* H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000) on Mar. 3, 2000. This is supported by a Senate Task Force finding that, “In order to maximize the protections for both police and the accused and to ensure the integrity of the process, the videotaping of custodial interrogations must not be optional, at least for the most serious offenses.” *Task Force on Criminal Justice System*, *supra* note 46, at 17.

440. See H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000), *amended by* H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000) on Mar. 3, 2000.

441. *Id.*

442. Homicides include first degree murder, intentional homicide of an unborn child, second degree murder, voluntary manslaughter of an unborn child, involuntary manslaughter and reckless homicide, involuntary manslaughter and reckless homicide of an unborn child, and drug induced homicide. See 720 ILL. COMP. STAT. 5/9-1 to 9-3.3 (2000). Sexual assaults include criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, and aggravated criminal sexual abuse. *Id.* §§ 5/12-13 to 12-16.

443. H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000), *amended by* H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000) on Mar. 3, 2000.

Despite the significant concessions, law enforcement officials, in particular the Chicago Police Department<sup>444</sup> and the Illinois State Chiefs of Police Association,<sup>445</sup> still would not support the Compromise Bill so long as videotaping was mandatory. Lt. Col. Bouche explained that he “can’t, in good faith, support a bill that will put bad people out on the streets.”<sup>446</sup> Lt. Col. Bouche also stated that in Minnesota, where videotaping is mandatory, there have been significant problems with the requirement interfering with police work.<sup>447</sup> Opponents insisted that the bill be further revised to allow for a voluntary “requirement” that police videotape.<sup>448</sup>

The refusal on the part of law enforcement to budge on the mandatory nature of the bill frustrated H.B. 4697’s proponents. Madison County Public Defender John Rekowski noted that throughout the revision process, opponents to mandatory videotaping insisted on making changes to almost every other provision of H.B. 4697 but would not even entertain a discussion about the requirement that videotaping be mandatory. Rekowski remarked that this reminded him of the adage, “[w]hat’s mine is mine, and what’s yours we’ll negotiate over.”<sup>449</sup>

Proponents of H.B. 4697 also bristled at the suggestion that the legislation was designed in a way that would put “bad people out on the streets,”<sup>450</sup> pointing to an incident occurring just one week prior to the release of the Compromise Bill which showed that mandatory taping might have prevented a guilty man from going free.<sup>451</sup> On February 23, 2000, Frank Bradford was acquitted by a jury of shooting to death an off-duty Chicago police officer in September 1996.<sup>452</sup> A co-defendant

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444. The Chicago Police Department was represented by Bob Buckley, General Counsel to Police Superintendent Terry Hilliard. See Revision Meeting III, *supra* note 425.

445. The Illinois State Chiefs of Police Association was represented by Lt. Col. Bouche. See Revision Meeting III, *supra* note 425 (statement of Lt. Col. Bouche).

446. *Id.*

447. *Id.*

448. As pointed out by Judge Michael Getty, a former legislator, prosecutor, and a retired Cook County trial court judge who was retained by Speaker Madigan to try to broker a compromise, the bill is, in fact, voluntary for a two year period, because the mandatory provision would not go into effect until two years after the bill became law. Revision Meeting III, *supra* note 425; H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000), *amended by* H.B. 4697, 91st Gen. Assem., Reg. Sess. (Ill. 2000) on Mar. 3, 2000. The eavesdropping exception, and funding and training provisions would go into effect immediately.

449. Revision Meeting III, *supra* note 425 (remark of defense attorney John Rekowski).

450. *Id.*

451. *Id.*

452. Jennifer Peltz, *Defendant Acquitted in Killing of Officer During 1996 Robbery*, CHI. TRIB., Feb. 23, 2000, § 2, at 3, available at 2000 WL 3639039 [hereinafter Peltz, *Defendant Acquitted*]; Jennifer Peltz, *Prosecutors at Murder Trial Sketch Cop’s Last Minutes*, CHI. TRIB.,

who was tried before a judge was convicted.<sup>453</sup> Both prosecutors and defense attorneys acknowledge that Bradford's signed written confession, which he testified was coerced, was central to the State's case.<sup>454</sup> Bradford testified that the police had coerced him into giving a confession after seventy-two hours of interrogation, claiming that he never read it before signing it. Jurors apparently believed Bradford.<sup>455</sup> If police had been mandated to videotape the interrogation, proponents say the alleged cop killer would not have gone free.<sup>456</sup>

Proponents also disputed the notion that Minnesota law enforcement officers found mandatory videotaping problematic.<sup>457</sup> Proponents cited interviews conducted with police officers from St. Paul and Minneapolis in which the officers declared that electronic recording was a "tremendous tool,"<sup>458</sup> offered protection against false allegations of abuse, and had no effect on conviction rates.<sup>459</sup> A November 1999 study conducted by the Connecticut General Assembly's Office of Legislative Research found widespread support for mandatory videotaping in both Alaska and Minnesota.<sup>460</sup> A defense attorney and three police officers from Alaska were interviewed, as well as two public defenders, two prosecutors, and a police officer from Minnesota.<sup>461</sup> All of those interviewed believed that the mandatory nature of videotaping in their respective states should be preserved.<sup>462</sup>

Finally, proponents voiced concern over the limitation of the mandatory requirement to only those custodial interrogations that occur

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Feb. 18, 2000, § 2, at 6, available at 2000 WL 3637780.

453. Jennifer Peltz, *Gun Supplier is Found Guilty in Cop's Death*, CHI. TRIB., Feb. 24, 2000, § 2, at 5, available at 2000 WL 3639462.

454. Peltz, *Defendant Acquitted*, *supra* note 452, at 3.

455. *Id.*

456. This acquittal of an alleged cop-killer was the second time in a four-month span that a predominately white jury acquitted a defendant who had confessed to murder. In November 1999, a jury disregarded a juvenile defendant's confession to murder, apparently believing the juvenile's claim that Cicero police had coerced the confession. Maurice Possley, *Jury Acquits 16-Year-Old in '97 Slaying: Boy Claimed His Confession Coerced by Authorities*, CHI. TRIB., Nov. 20, 1999, § 1, at 5, available at 1999 WL 2933863. The acquittal suggests that although distrust of police officers may be more endemic to minority communities, it is not confined to them. See *supra* notes 265-70 and accompanying text.

457. See Revision Meeting III, *supra* note 425; see also *supra* notes 437-48.

458. Interview by Kate Shank, Northwestern University Law School, Class of 2001, with Lt. Mark Kempe, St. Paul Police Department, St. Paul, Minn. (Feb. 24, 2000).

459. Interview by Kate Shank, Northwestern University Law School, Class of 2001, with Lt. Jerry Petti, Minneapolis Police Department (Feb. 24, 2000).

460. Coppolo, *supra* note 344, *passim*.

461. *Id.* at 2-3.

462. *Id.* at 3.

within the stationhouse. The concern was that this change “might encourage interrogations to occur outside of police stations.”<sup>463</sup> While it is well known that most officers prefer to conduct interrogations in the controlled environment of the stationhouse,<sup>464</sup> it is hard to discredit this possibility, especially in light of information gathered regarding how Commander Burge systematically interrogated and tortured suspects outside of the stationhouse.<sup>465</sup> Proponents suggested that this change could be adapted slightly to require audio-taping of all interrogations conducted away from the stationhouse,<sup>466</sup> a suggestion that seems workable, given plans in some parts of Illinois to equip officers with wireless microphones to record conversations during traffic stops.<sup>467</sup>

The nature of the arguments on both sides were identical to the objections voiced throughout the drafting process, showing that the two sides “philosophically don’t agree with the mandatory nature of videotaping.”<sup>468</sup> This disagreement later proved to be the death knell of H.B. 4697.

### *C. The Final Campaign Against Videotaping*

Following the release of the Compromise Bill, opponents to mandatory videotaping launched a vigorous and ultimately successful campaign to defeat the legislation. As part of this campaign, a “Legislative Alert” released by the Illinois law enforcement community<sup>469</sup> made the following claims:

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463. Revision Meeting III, *supra* note 425; *see also supra* note 433 (discussing Geraghty’s statement).

464. *Task Force on Videotaping II, supra* note 30, at 248 (stating “most of our interviews we want to have in a controlled environment”); *see also supra* note 297 (discussing Lt. Col. Bouche’s testimony)

465. Mills & Armstrong, *supra* note 13, at 1.

466. Revision Meeting III, *supra* note 425; *see also supra* note 434 (discussing Drizin’s statement).

467. Jim Ritter, *Sheriff Tries Out Cameras in Cars*, CHI. SUN-TIMES, Aug. 9, 1999, at 3, available at 1999 WL 6551362. Additionally, Lt. Col. Bouche suggested that it would be too difficult to videotape interrogations conducted outside of the stationhouse, so “one of the possible ways to get around that is by supplementing it with audio.” *Task Force on Videotaping II, supra* note 30, at 248; *see also supra* note 297 (discussing Lt. Col. Bouche’s testimony).

468. Revision Meeting III, *supra* note 425 (remark of Representative Douglas Scott).

469. The “Legislative Alert” was released on behalf of the Illinois Association of Chiefs of Police, Illinois Sheriffs’ Association, Illinois Fraternal Order of Police, Police Benevolent and Protective Association, Chicago Police Department, Illinois State Police, Kankakee Police Department and the State’s Attorneys. *See Legislative Alert; Illinois Law Enforcement Opposes Mandatory Videotaping* (Mar. 2, 2000) (on file with authors).

- This legislation creates a whole new set of standards (hoops and hurdles) for law enforcement to resolve serious crimes and convict guilty persons;
- this legislation reflects major expansion of rights of the accused at the expense of crime victims, public safety, and law enforcement;
- no other state legislature in this country has passed mandatory videotaping of interrogations;
- a vote against mandatory videotaping legislation is a vote for public safety;
- the concept of voluntary videotaping confessions is acceptable, but the unequivocal mandate in every situation simply will not work for officers and investigators on the street; and
- this legislation will allow those who have committed horrendous crimes, such as rape and murder to walk free on procedural technicalities.<sup>470</sup>

Although the Illinois State Bar Association reacted swiftly to this “Legislative Alert” by releasing a “Truth Alert,”<sup>471</sup> law enforcement’s memorandum seemed to have hit its mark. Opponents to videotaping interrogations were able to spin the numerous false confessions and problematic interrogations as unrelated “rare instances where mistakes were made, and not the general rule.”<sup>472</sup> In doing so, “officials offer[ed] the familiar, reassuring story of rotten apples scrupulously picked out of an otherwise pristine barrel.”<sup>473</sup> By casting the status quo

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470. *Id.* After this release was made public, Paul Dollins, manager of government relations for the Illinois Association of Chiefs of Police, stated, “This is a major expansion of the rights of the accused at the expense of public safety.” Galatzer-Levy, *supra* note 37, at 1.

471. *Truth Alert* (Mar. 3, 2000) (on file with authors). This press release stated:

The time is now to utilize all possible technology to protect the public, guarantee convictions of the guilty and to put Illinois in the forefront of modern law enforcement. Videotaping of interrogations is the DNA of confessions. It guarantees their reliability and trustworthiness. Law enforcement has nothing to fear from the truth.

*Id.*

472. Galatzer-Levy, *supra* note 37, at 1 (noting the explanation of Paul Dollins, manager of government relations for the Illinois Association of Chiefs of Police, of the Ryan Harris case).

473. Bandes, *supra* note 11, at 1287 (describing how law enforcement officials refuse to see patterns in incidents of police brutality). The problem of false confessions and problematic interrogations is strongly linked to the problem of police brutality, and the societal factors that allow these problems to continue are strikingly similar.

The willful blindness afflicts every level and branch of government. The resilience of police brutality thrives on compartmentalization, failures to act, and deflection and denial of responsibility. Police brutality is the product of many institutional failures. Indeed, as many who have studied it believe, it could not thrive without the complicity of the society police serve. And certainly it could not thrive without the complicity of

as something less than a systemic problem, the onus was taken off of the Illinois legislature to respond with the imposition of a systematic solution like videotaping interrogations. Quietly, in the waning days of the legislation session, H.B. 4697 slipped out of the spotlight as its sponsors failed to introduce it for a vote by the full House of Representatives.

#### IV. CONCLUSION

With H.B. 4697, Illinois law enforcement had a chance to redeem itself, to restore integrity to the system, and to bolster the truth-finding function of the law. Instead, the failure to enact H.B. 4697 into law became just one more example that “society lacks in general, and political figures and police administrators in particular, the political will to take the steps necessary to institute real oversight, real accountability, real scrutiny.”<sup>474</sup> Such change may only occur when it becomes more widely recognized that the problems H.B. 4697 sought to address are not rare, but systemic.<sup>475</sup>

Proponents of videotaping interrogations learned the hard way what a powerful machine law enforcement is in Illinois and how quickly and adeptly that group can coalesce around a cause. Even though there is an ever-growing pattern of false confession and problematic interrogation cases in Illinois, and increasing outrage on behalf of the Illinois citizenry, Illinois’ elected representatives buckled under pressure from law enforcement and allowed H.B. 4697 to die a quiet death.

The rise and fall of H.B. 4697 shows that many in law enforcement are still reluctant to change the status quo, even when doing so might protect them from claims of abuse. This is not surprising. Police department opposition to videotaping mirrors the opposition mounted nearly thirty-five years ago when the United States Supreme Court decided *Miranda v. Arizona*.<sup>476</sup> Even today, after the *Miranda* warnings

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the court system.

*Id.* at 1287-88.

474. Daniel B. Wood, *Why the Police are Hard to Police: From New York to L.A. the Latest Charges of Abuse Show How Tough It Is*, CHRISTIAN SCI. MONITOR, Sept. 27, 1999, at 1, available at 1999 WL 5382684 (quoting John Crew, head of the American Civil Liberties Union’s Police Practices Project).

475. “When governmental misconduct is fragmented and anecdotalized, it is less threatening and easier to dismiss.” Bandes, *supra* note 11, at 1318. Other jurisdictions are now starting to acknowledge that the way interrogations are currently conducted is problematic, and some are considering videotaping as a solution. *E.g.*, Brendan Lyons, *Recording Suspects’ Statements Considered*, TIMES UNION (Albany, N.Y.), Apr. 5, 2000, at B1 (Capitol Region), available at 2000 WL 6738944.

476. 384 U.S. 436 (1966).

have become a standard part of police procedure, many law enforcement groups filed briefs in *Dickerson v. United States*, urging the United States Supreme Court to declare that the protections granted in *Miranda* are not constitutionally guaranteed.<sup>477</sup> Ironically, Professor Paul Cassell, who successfully championed this view in arguing *Dickerson* in front of the Fourth Circuit Court of Appeals, and who argued unsuccessfully for *Miranda*'s abolition before the United States Supreme Court, is a strong supporter of mandatory videotaping of interrogations.<sup>478</sup> It is disheartening that Illinois law enforcement officials have even separated from Cassell in their continued opposition to videotaping interrogations.

More disturbing, however, has been the reaction of so many Illinois prosecutors who have opposed videotaping interrogations with equal vigor. Prosecutors, as officers of the court, have a duty to seek justice, a duty that should rise above their desire to win a conviction in any individual case. Videotaping interrogations would enable prosecutors to see exactly what took place in the interrogation room, giving them the ability to resolve claims by a defendant that he was coerced into confessing. Recording would also enable prosecutors to assess the strength of their cases *before* filing charges, potentially preventing false confession cases from entering the system before they damage not only the defendant, but the integrity of the justice system itself.<sup>479</sup> In light of this, their opposition to videotaping interrogations seems to fly in the face of their duty to seek out the truth.<sup>480</sup>

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477. 120 S. Ct. 2326 (2000) (holding that *Miranda* warnings are constitutionally required prerequisites of any statements procured through custodial interrogation). The International Association of Chiefs of Police, Inc., the National Sheriff's Association, and the Virginia Association of Police filed amicus curiae briefs. See Brief of Amici Curiae Americans for Effective Law Enforcement, Inc. et al., *Dickerson v. U.S.*, 120 S. Ct. 2326 (No. 99-5525). Several other police organizations also submitted amicus briefs. See Brief of Amici Curiae Federal Bureau of Investigation Agents Association, *Dickerson v. U.S.*, 120 S. Ct. 2326 (2000) (No. 99-5525); Brief of Amici Curiae Fraternal Order of Police, *Dickerson v. U.S.*, 120 S. Ct. 2326 (2000) (No. 99-5525); see also Joan Biskupic, *Miranda Warning Under Attack: Police Groups Urging High Court to Dump It*, DENV. POST, Apr. 10, 2000, at 1, available at 2000 WL 4458393.

478. See Young, *supra* note 2.

479. E.g., Patricia Manson, *Justice Itself on Trial; Trial in DuPage 7 Case Prosecution, Defense Reverse Roles in Rare Proceeding*, CHI. DAILY L. BULL., Apr. 24, 1999, at 1, available at WL 04/24/99 CHIDLB 1 (stating in reference to the trial of four sheriff's officers and three former prosecutors for prosecutorial misconduct in the Rolando Cruz case, "[a]lso being judged, the observers say, is the ability of the American legal system to deliver justice when prosecutors become the prosecuted").

480. This has led to a great deal of concern and criticism. Larry Pozner, president of the National Association of Criminal Defense Lawyers has stated,

There is so little accountability of prosecutors for their misconduct that it's virtually a

The opposition of Illinois prosecutors to videotaping interrogations also demonstrates that they have not taken to heart the criticism of their role in the many false confession cases and other injustices which have been uncovered in recent years.<sup>481</sup> In these cases, when evidence of a false confession came to light, the almost instinctive response of many Illinois prosecutors has been to salvage the case—to find a solution that protects the police officers, upholds the confession, and insulates those involved in the case from civil liability. They have often gone to great lengths, spinning out newfangled theories as to how the crime still could have been committed by the defendant, even in light of the new evidence.<sup>482</sup> They have refused to blame the detectives for their interrogation techniques,<sup>483</sup> even going so far as laying blame on the innocent defendants for falsely confessing.<sup>484</sup> They have rarely second-guessed their decisions to side blindly with the detectives when allegations of police abuse have surfaced. These actions have damaged their credibility in the eyes of the public and undermined public confidence in the justice system. In opposing videotaping, Illinois prosecutors missed a golden opportunity to rebuild their tarnished image.

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free-for-all, do whatever you want. . . . The chances of being apprehended, charged and convicted are infinitesimally small. . . . We'll grant a new trial occasionally, we'll let somebody out of prison occasionally, but how the innocent got into prison in the first place is not something we're very interested in discovering and certainly not in punishing.

Possley & Armstrong, *supra* note 401, at 1.

481. *Inept Defenses Cloud Verdicts; With Their Lives at Stake, Defendants in Capital Trials Need the Best Attorneys Available, But They Often Get Some of the Worst*, CHI. TRIB., Nov. 15, 1999, § 1, at 1, available at 1999 WL 2932352; Steve Mills & Ken Armstrong, *Convicted by a Hair*, CHI. TRIB., Nov. 18, 1999, § 1, at 1, available at 1999 WL 2933194; Steve Mills & Ken Armstrong, *Death Row Justice Derailed; Bias, Errors & Incompetence in Capital Cases Have Turned Illinois' Harshes Punishment into Its Least Credible*, CHI. TRIB., Nov. 14, 1999, § 1, at 1, available at 1999 WL 2932178; Steve Mills & Ken Armstrong, *The Inside Informant*, CHI. TRIB., Nov. 16, 1999, § 1, at 1, available at 1999 WL 2933041; Steve Mills & Ken Armstrong, *String of Exonerations Spurs Legislative, Judicial Panels to Study Reforms*, CHI. TRIB., Nov. 16, 1999, § 1, at 1, available at 1999 WL 2932558; see also Possley & Armstrong, *supra* note 401, at 1 (quoting Joseph F. Lawless, attorney and author of a textbook on prosecutorial misconduct, as stating, "People who are charged with enforcing the law need to remember that the law applies to them as well. . . . Because. . . prosecutions [for prosecutorial misconduct] have been so rare, many of them forget it.").

482. See *supra* notes 102-13 and accompanying text (regarding Rolando Cruz); *supra* notes 148-57 and accompanying text (regarding Mario Hayes).

483. See *supra* notes 49-76 and accompanying text (regarding Ryan Harris); *supra* notes 93-101 and accompanying text (regarding Rodney Brown, Antwon Coleman, Eric Henley, and Roderick Singleton).

484. See *supra* notes 122-31 and accompanying text (regarding Gary Gauger).

Perhaps the active opposition of prosecutors and police to videotaping interrogations provides the strongest argument for a *mandatory* requirement that all custodial interrogations be videotaped. As long as prosecutors and police officers would rather insist on pretending that police officers do not violate the rights of suspects, instead of endorsing a solution that will document whether or not such abuse occurred, police officers will continue to have license to abuse the rights of suspects. As long as police officers can act with impunity, there will be no end to the false confessions and other problematic interrogations which have plagued Illinois.

Although the videotaping bill was defeated in Illinois, proponents of videotaping interrogations should view it as a temporary setback rather than an end to their struggle. Momentum for videotaping will continue to build both in Illinois and throughout the nation. As we were completing this article, several significant events happened in Illinois that assure that videotaping interrogations will remain on the radar screen of the general public. Hearings into the allegations of torture in Chicago's Area Two have begun.<sup>485</sup> Also, DNA evidence has forced Cook County prosecutors to reduce murder charges against one defendant who had confessed to murdering his girlfriend<sup>486</sup> and to drop charges against another man, an alleged serial sexual predator and murderer who falsely confessed to at least one of fourteen murders he's been charged with.<sup>487</sup> The Illinois Appellate Court reversed the murder conviction of Rodney Woidtke, raising serious questions about the truth of his confession in its opinion,<sup>488</sup> and yet another false confession case was revealed in Knox County.<sup>489</sup>

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485. Hanna, *supra* note 239, at 1.

486. Vanessa Gezari, *Murder Charge Reduced as DNA Points to Different Man*, CHI. TRIB., Apr. 4, 2000, § 2, at 1, available at 2000 WL 3652704.

487. Janan Hanna, *Suspect in 14 Killings Cleared in 1; DNA Links Woman's Death to Another Man*, CHI. TRIB., May 5, 2000, § 2, at 1, available at 2000 WL 3662701. In this case, Gregory Clepper, a suspect in a string of sexual assaults and murders in Chicago, had given a written confession for a murder. DNA evidence found on the victim later showed that another man, Earl Mack Jr., was the actual perpetrator. *Id.*

488. See *supra* notes 225-33 (discussing evidence that another man may be Cardenas' killer).

489. Karen McDonald, *Couple Cleared in Heist*, JOURNAL STAR (Peoria, Ill.), May 11, 2000, available at 2000 WL 20637218. In this case, a husband and wife, Scott and Teresa Sornberger, were charged with bank robbery; Teresa Sornberger gave a written confession that her husband committed the crime and that she acted as an accomplice. *Id.* The Sornbergers spent 118 days in jail before FBI agents were able to determine that it was not Scott Sornberger who appeared in the bank's security video. *Id.* Although Teresa Sornberger has claimed that she confessed after coercion, she has since pled guilty to obstructing justice for giving the false confession and was sentenced to time served. Karen McDonald, *Woman Made False Confession; She Said that She Robbed Bank Because She Was Afraid of DCFS*, JOURNAL STAR (Peoria, Ill.), May 12, 2000,

More recently, the Special Supreme Court Committee on capital cases has recommended that the legislature revisit the videotaping of interrogations,<sup>490</sup> and the Union League Club of Chicago, a civic group founded in 1879, has joined the debate, issuing a series of recommendations, including the mandatory videotaping of all custodial interrogations.<sup>491</sup> The *Chicago Tribune's* Editorial Board has continued to call for videotaping interrogations, printing its most pointed editorial to date, calling the idea "utterly obvious" and rebutting all of the main arguments of police and prosecutors who have opposed videotaping.<sup>492</sup> All of these events strengthen the case for mandatory videotaping of interrogations and will bring added pressure to bear on legislators to pass legislation when they go back into session in the Spring of 2001.

Outside of Illinois, pressure is building for videotaping and will continue to build. DNA technology has already cleared scores of defendants years after their convictions, many of whom had confessed to their crimes and some of whom were on death row,<sup>493</sup> and DNA technology is certain to clear many other defendants who confessed. Several other state legislatures have studied videotaping.<sup>494</sup> Calls for videotaping in New York City were made after Abner Louima was tortured in a Brooklyn stationhouse,<sup>495</sup> and videotaping police

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*available at* 2000 WL 20637256. One officer has admitted that he may have said to Sornberger that he would report her to DCFS, but the other interrogating officer has denied that this happened. *Id.* Whether or not it occurred would be clear if the interrogation had been videotaped. See Karen McDonald, *Description of Robber, Method Nearly Identical*, JOURNAL STAR (Peoria, Ill.), May 12, 2000, *available at* 2000 WL 20637250; Karen McDonald, *False Confession Demands Review of Interviewing Tactics*, JOURNAL STAR (Peoria, Ill.), May 15, 2000, *available at* 2000 WL 20637666.

490. Steve Mills, *Illinois Judges' Panel Fine-Tunes Proposals on Death Penalty*, CHI. TRIB., Nov. 2, 2000, § 2, at 4, *available at* 2000 WL 3728343.

491. Daniel C. Vock, *Panel to Look Over Flawed Capital Cases Recommended*, CHI. DAILY L. BULL., Oct. 27, 2000, at 1, *available at* WL 10/27/00 CHIDL B 1.

492. Editorial, *Let's Go to the Videotape*, CHI. TRIB., Nov. 3, 2000, § 1, at 22, *available at* 2000 WL 3728625.

493. See, e.g., ACTUAL INNOCENCE, *supra* note 272.

494. See, e.g., Stephen Ohlemacher, *Study on Taped Confessions Planned*, HARTFORD COURANT, Apr. 2, 1999, at A3, *available at* 1999 WL 6357171 (referring to a legislative committee's research on videotaping of interrogations); see also Mary K. Feeney, *Record Confessions? Forum Debates Issue*, HARTFORD COURANT, Sept. 17, 1995, at C1, *available at* 1995 WL 1014994 (reporting on a forum exploring wrongful criminal convictions). New York is also considering mandating that their Internal Affairs officers tape record all field interviews. This potential change in policy has been suggested in light of numerous discrepancies between what witnesses questioned in the Abner Louima case and what Internal Affairs investigation files contained. Graham Rayman, *NYPD May Require Witness Taping*, NEWSDAY, Mar. 2, 2000, at A33, *available at* 2000 WL 10000938.

495. Helen Peterson, *Silence Sought in Louima Case, Cop Sez*, N.Y. DAILY NEWS, Feb. 10, 2000, at 10, *available at* 2000 WL 4596448.

interviews is one of the proposed reforms being suggested in the wake of the Ramparts scandal in Los Angeles.<sup>496</sup> As more police departments experiment with video technology and grow comfortable with it, they will come to realize that its benefits greatly outweigh its costs. As taxpayers are forced to foot the bill for hundreds of millions of dollars in civil judgments arising out of police misconduct,<sup>497</sup> the search for systemic reforms that will curb police misconduct will inevitably lead to videotaping.

Illinois' recent experience with a mandatory videotaping bill can serve to educate policymakers both inside and outside Illinois about the merits of videotaping. Hopefully, the fall of H.B. 4697 will not be in vain, but rather will shed light on the problem of false confessions and the necessity of videotaping interrogations and will inspire lawmakers throughout the country to push for this much-needed reform of the criminal justice system.

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496. Matt Lait, *Assembly Speaker Proposes Hearings on Rampart Issues Police: County Public Defender Is Asked for Plan to Help Lawmakers Address Justice System's Failures*, LA TIMES, May 2, 2000, at B1, available at 2000 WL 2236942.

497. E.g., Patt Morrison, *Lights, Camera, Arrest*, LA TIMES, Apr. 21, 2000, at B1, available at 2000 WL 2233417 (stating that in the coming year fifty cents of every dollar in the city budget will have to be spent in relation to the Rampart scandal lawsuits).