IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

#LETUSBREATHE COLLECTIVE, LAW OFFICE OF THE COOK COUNTY PUBLIC DEFENDER, BLACK LIVES MATTER CHICAGO, STOP CHICAGO, UMEDICS, NATIONAL LAWYERS GUILD CHICAGO, and GOODKIDS MADCITY, Plaintiffs, v. CITY OF CHICAGO, Defendant.	Case No. 2020CH04654 Hon. Judge Pamela Meyerson

MOTION FOR LEAVE TO FILE OVERSIZED BRIEF

Plaintiffs #LETUSBREATHE COLLECTIVE, LAW OFFICE OF THE COOK COUNTY PUBLIC DEFENDER, BLACK LIVES MATTER CHICAGO, STOP CHICAGO, UMEDICS, NATIONAL LAWYERS GUILD CHICAGO, and GOODKIDS MADCITY, by and through their undersigned attorneys, hereby move for leave to file an oversized brief in support of their motion for emergency mandamus and injunctive relief, attached as Exhibit A hereto. In support, Plaintiffs state:

1. On June 23, 2020, Plaintiffs filed a Complaint for Mandamus and Injunctive Relief, challenging the Defendant City of Chicago's failure to comply with its non-discretionary duties under Illinois state law, 725 ILCS 5/103-3 and 725 ILCS 5/103-4, to ensure access to telephones and to counsel to all people in Chicago Police Department (CPD) custody, within a reasonable time (generally within one hour, *see* 20 Ill. Adm. Code § 720.20). The complaint is supported by extensive documentary evidence, including affidavits from the Cook County Public

Defender and its attorneys, as well as by members of the six Plaintiff groups, demonstrating CPD's practice of holding people incommunicado in its police stations. That evidence showed not only that CPD's misconduct is long-standing but that it in fact worsened during the COVID-19 pandemic and during the social uprisings that have been taking place throughout the City since the police killings of George Floyd and Breonna Taylor.

2. The violations set forth in the Complaint have not abated since its filing. Statistical evidence gleaned from bond court surveys conducted in the regular course of business by the Cook County Public Defender, as well as the Chicago Police Department's own arrest reports, show that the City continues to regularly deny phone calls to people in its custody, and to unlawfully delay access to a call to those who are eventually provided phones. Because people continue to face violations of their state law rights, and are subsequently hampered in defending themselves in the criminal legal system as a result, Plaintiffs are moving for emergency relief in the form of a mandamus and Preliminary Injunction, to halt the City's persistent violations of 725 ILCS 5/103-3.

3. The motion for emergency relief is oversized at 29 pages, and thus is beyond the Court's 15-page limit according to the Calendar 11 Standing Order. Plaintiffs seek leave to file the brief at its current page limit.

4. Plaintiffs bear the burden of proving that a preliminary injunction and mandamus are appropriate remedies. *See Buzz Barton & Associates, Inc. v. Giannone*, 108 Ill. 2d 373, 387 (1985) ("In order for a preliminary injunction to issue, a plaintiff must establish (1) that he possesses a clearly ascertained right which needs protection, (2) that he will suffer irreparable harm without the injunction, (3) that there is no adequate remedy at law for his injury, and (4) that he is likely to be successful on the merits of his action."); *Gassman v. Clerk of the Circuit*

Court of Cook County, 2017 IL App (1st) 151738, ¶ 13 (2017) (Mandamus is appropriate where movants establish that "(1) he or she has a clear and affirmative right to relief, (2) the public official has a clear duty to act, and (3) the public official has clear authority to comply with the writ."). Separate and apart from their petition for mandamus, Plaintiffs also bring suit under an implied right of action theory, which requires that they show that "(1) [an individual] is a member of the class for whose benefit the Act was enacted; (2) it is consistent with the underlying purpose of the Act; (3) plaintiff's injury is one the Act was designed to prevent; and (4) it is necessary to provide an adequate remedy for violations of the Act." *Rodgers v. St. Mary's Hospital*, 149 Ill. 2d 302, 308 (1992). In order to effectively demonstrate the factual and legal predicate for each of these multi-prong standards, it was necessary to exceed the Court's page limit.

5. Furthermore, Plaintiffs have gathered additional evidence of violations committed since the Complaint was filed to show that the violations are ongoing. This evidence includes an expert declaration, synthesizing bond court survey records and arrest report records, as well as new attorney declarations, and transcripts from recent court hearings held in CPD stations.

6. Plaintiffs have done their best to be succinct. But the issues at stake here are grave, and Plaintiffs have assembled a robust record to prove the Defendant's systemic violations. Plaintiffs seek leave of the Court to file an oversized brief in order that they can meet their legal burden in an emergency posture.

WHEREFORE, Plaintiffs respectfully request that this Court grant leave for them to file an oversized brief.

Dated: July 22, 2020

Respectfully submitted,

/s Craig B. Futterman

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EXHIBIT A

Petition for Emergency Mandamus and Preliminary Injunction to Enforce 725 ILCS 5/103-3

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

#LETUSBREATHE COLLECTIVE, LAW OFFICE OF THE COOK COUNTY PUBLIC DEFENDER, BLACK LIVES MATTER CHICAGO, STOP CHICAGO, UMEDICS, NATIONAL LAWYERS GUILD CHICAGO, and GOODKIDS MADCITY,	)	Case No. 2020CH04654
Plaintiffs,	)	
v.	)	Hon. Judge Pamela Meyerson
CITY OF CHICAGO,	)	
Defendant.	)	

PETITION FOR EMERGENCY *MANDAMUS* AND
PRELIMINARY INJUNCTION TO ENFORCE 725 ILCS 5/103-3

INTRODUCTION

This case is about ending unlawful incommunicado detention in Chicago police stations. In direct contravention of Illinois law, the City of Chicago and the Chicago Police Department ("CPD") condone and perpetuate a set of policies designed to keep people in police custody from accessing phones or attorneys within the stationhouse. The result is as intended—detainees are held isolated from counsel and made vulnerable to coercive interrogation and abuse. Plaintiffs seek the Court's emergency intervention to end this practice via *mandamus* and an injunction.

CPD's ongoing policy of incommunicado detention, detailed here and in the Complaint for *Mandamus* and Injunctive Relief, violates 725 ILCS 5/103-3, the Right to Communicate with Attorney and Family Statute ("Telephone Access Statute"), a decades-old law enacted to prevent

the practices embraced by CPD, then and now.[1] Codified since 1963, the Telephone Access Statute reflects the underlying human-rights principle that no person shall be "disappeared" from their family or their attorney by state actors, particularly the police. It provides that "[p]ersons who are arrested s*hall have the right* to communicate with an attorney of their choice and a member of their family by making a reasonable number of telephone calls or in any other reasonable manner." (emphasis added). This statutory requirement must, in all but exceptional cases, be effectuated within an hour of a person's arrival at a police station. See 20 Ill. Adm. Code § 720.20(b).

Acting through CPD, the City has systemically contravened this quintessential democratic principle, facilitating such extensive police abuse in its interrogation rooms that Chicago is known as the "the false confession capital" of the United States, and costing taxpayers millions in police misconduct judgments and settlements stemming from wrongful convictions.[2] The City's unlawful policies regarding attorney access made possible the torturous abuses of Chicago Police Commander Jon Burge and his henchmen, committed upon individuals who were kept isolated from lawyers and their families in the bowels of CPD stations.[3] Its pattern of conduct was on

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[1] See American Civil Liberties Union: Illinois Division, *Secret Detention by the Chicago Police* (1959) (excerpts attached as Ex. A) at 5 ("[Incommunicado Detention] does happen to many thousands of people in Chicago each year who are held in police stations for extended periods of time without being charged with any crime, without bail and without communication with the world outside….").

[2] Whet Moser, *Chicago: 'The False Confession Capital of the United States,'* CHICAGO MAGAZINE (Dec. 10, 2012), www.chicagomag.com/Chicago-Magazine/The-312/December-2012-1/Chicago-The-False-Confession-Capital-of-the-United-States/; *Chicago: The False Confession Capital*, CBS NEWS 60 MINUTES (Dec. 19, 2020), www.cbsnews.com/news/chicago-the-false-confession-capital/; Kevin Davis, *The Chicago Police Legacy of Extracting False Confessions is Costing the City Millions*, ABA JOURNAL (Jul. 1, 2018), www.abajournal.com/magazine/article/chicago_police_false_confessions.

[3] See Hal Hardick and John Byrne, *Mayor: Approval of Burge Victims Fund a Step Toward 'Removing a Stain'* CHICAGO TRIBUNE (May 6, 2015), https://www.chicagotribune.com/business/ct-city-council-rauner-cupich-met-20150506-story.html ("Burge and his men allegedly tortured upward of 100 people, many of them African-American South Side men, in efforts to extract confessions from them between early 1972 and late 1991."); see also *What Police Torture Looks Like*, CHICAGO MAGAZINE (July 2018) https://www.chicagomag.com/city-life/July-2018/Ronald-Kitchen/ (Ronald Kitchen detailing being repeatedly denied access to his attorney by Jon Burge and Michael Kill while held at Area 3 and subsequently tortured into falsely confessing); Joan Parkin, *The Legacy of a Torturer*, JACOBIN (Sept. 26,

particular display at the notorious Homan Square station, where hundreds were abused by CPD officers while being held incommunicado.[4] And CPD's denial of access to telephones and to attorneys was well-documented by Chicago's Police Accountability Task Force (whose investigation of CPD practices prefaced that of the United States Department of Justice), by CPD data in response to Freedom of Information Act requests, and by investigative journalists.[5]

Now, CPD's conduct is again in the public spotlight, stemming from its treatment of people in custody during the COVID-19 pandemic, during recent protests in the City, and continuing into the summer months. The world is in the throes of one of the largest social justice movements in history. CPD has arrested thousands of people, including the Organizational Plaintiffs' members, who have raised their voices against systemic CPD violence and racism.[6] They have been detained

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2018), https://jacobinmag.com/2018/09/jon-burge-chicago-police-torture-obituary (describing Burge torture survivors being held without counsel and physically abused).

[4] See Spencer Ackerman, *Inside Chicago's Legacy of Police Abuse: Violence 'As Routine As Traffic Lights'*, THE GUARDIAN (Mar. 3, 2015), https://www.theguardian.com/us-news/2015/mar/03/chicago-police-violence-homan-square (Figures obtained by Chicago's First Defense Legal Aid under a freedom-of-information request found that in 2013, lawyers were able to visit clients in police custody citywide for only 302 out of 143,398 arrestees—a rate of 0.2%); Spencer Ackerman, *Homan Square Revealed: How Chicago Police 'Disappeared' 7,000 People*, THE GUARDIAN (Oct. 19, 2015), https://www.theguardian.com/us-news/2015/oct/19/homan-square-chicago-police-disappeared-thousands (Police allowed lawyers access to Homan Square for only 0.94% of the 7,185 arrests logged from 2004 to 2015. "That percentage aligns with Chicago police's broader practice of providing minimal access to attorneys during the crucial early interrogation stage, when an arrestee's constitutional rights against self-incrimination are most vulnerable.").

[5] See Police Accountability Task Force Report: Recommendations for Reform at 56 (April 2016) https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf ("CPD generally provides phone access only at the end of processing, after interrogation and charging, while arrestees wait in lockup to be released or transferred to county custody. Remarkably, in 2014, only 3 out of every 1,000 arrestees had an attorney at any point while in police custody."); *id*. at 57 ("When individuals in custody attempt to invoke their legal rights to counsel, they report facing hostility from police."); *see also* n. 4, *supra*.

[6] See David Eads, Josh McGhee & Matt Chapman, *Chicago Police Arrested More People for Protesting than Looting in Early Days of Unrest, Contradicting Original Claims*, THE CHICAGO REPORTER (Jun 16, 2020), https://www.chicagoreporter.com/chicago-police-arrested-more-people-for-protesting-than-for-looting-in-early-days-of-unrest-contradicting-original-claims/; Kelly Bauer, *Chicago Police Arrest More than 3,000 People for 'Civil Unrest,' Looting in Last 9 Days*, BLOCK CLUB CHICAGO

in CPD stations without being given access to a telephone in order to call counsel and their families. The protests are continuing, and with them, the arrests and disappearing of detainees.

The City's conduct is consequential. A police station is an "inherently coercive atmosphere." *People v. Nicholas*, 218 Ill. 2d 104, 118 (2005). These conditions are exacerbated when detained people are denied access to telephones, and thus to counsel. Often a person's access to an attorney at the stationhouse is the only bulwark against police misconduct and coercion. *Cf. Escobedo v. State of Illinois*, 378 U.S. 478, 486 (1985) (the time of arrest was the "'stage when legal aid and advice' were most critical to petitioner") (citing *Massiah v. United States*, 377 U.S. 201, 204 (1964)). CPD's failure to comply with the Telephone Access Statute leaves thousands vulnerable to rights violations at the hands of its officers. The impacts radiate beyond the stationhouse, inciting terror and uncertainty in the families of people hidden away by CPD.

Plaintiffs urge this Court to end CPD unlawful policies and practices. Plaintiffs seek entry of a writ of *mandamus* and a preliminary injunction requiring CPD to implement 725 ILCS 5/103-3 in its stations—making telephones, and thus counsel, available for every person in CPD custody.[7]

STATEMENT OF FACTS

In 1963, the Illinois State Legislature passed the Code of Criminal Procedure, the purpose of which is, in part, to "[e]nsure fairness of administration including the elimination of unjustifiable delay . . . [p]rovide for the just determination of every criminal proceeding by a fair and impartial trial and an adequate review, and . . . [p]reserve the public welfare and *secure the fundamental human rights of individuals*." 725 ILCS 5/101-1 (1963) (emphasis added). The Code

(Jun. 8, 2020), https://blockclubchicago.org/2020/06/08/chicago-police-arrested-more-than-3000-people-for-civil-unrest-looting-in-last-9-days/.

[7] Plaintiffs' *mandamus* and injunctive complaint seeks relief under both 725 ILCS 5/103-3 and 725 ILCS 5/103-4. Given the uncontestable nature of the City's obligations here, and the clear evidence of its failure to comply with the statute, this motion asks the Court to provide an emergency remedy pursuant only to 725 ILCS 5/103-3 at this time.

grants numerous rights to arrested individuals under the auspices of Article 103, 725 ILCS 5/103-1 *et seq.*, governing "Rights of Accused"—among them, those enshrined in 725 ILCS 5/103-3:

- The right to communicate with an attorney of their choice "by making a reasonable number of telephone calls or in any other reasonable manner . . . within a reasonable time after arrival at the first place of custody." 725 ILCS 5/103-3(a).

- The right to communicate with "a member of their family by making a reasonable number of telephone calls or in any other reasonable manner . . . within a reasonable time after the arrival at the first place of custody." 725 ILCS 5/103-3(a).

- The right to communicate again with an attorney and a family member upon any transfer of location. 725 ILCS 5/103-3(b).

In 1998, the legislature clarified what it intended by the phrase "reasonable time after arrival at the first place of custody," when the Joint Committee on Administrative Rules held that "reasonable time" is "generally within the first hour[ ] after arrival at the first place of custody." 20 Ill. Adm. Code § 720.20(b). These statutory rights act in tandem with the United States Constitution's Sixth Amendment right to counsel, as well as the due process protections of the Constitution's Fifth and Fourteenth Amendments and those provided by Article I, Section 2 of the Illinois Constitution.[8]

As set forth in Plaintiffs' complaint, the City of Chicago, acting through CPD, has violated and continues to violate the dictates of 725 ILCS 5/103-3. See Complaint for *Mandamus* and

[8] *Cf. Escobedo*, 378 U.S. at 485 (finding Sixth Amendment violation of right to counsel when suspect has been taken into police custody, subject to interrogation and denied request to consult with an attorney) ("When [unindicted] petitioner requested, and was denied, an opportunity to consult with his lawyer, the investigation had ceased to be a general investigation of 'an unsolved crime.' . . . Petitioner had become the accused, and the purpose of the interrogation was to 'get him' to confess his guilt despite his constitutional right not to do so.") (citations omitted); *People v. Washington*, 68 Ill. 2d 186, (1977) (finding incriminating statements made by defendant while in police custody after he had been advised of his rights and requested counsel were inadmissible under Fifth Amendment) ("[I]f police propose to interrogate a person they must make known to him that he is entitled to a lawyer and that if he cannot afford one, a lawyer will be provided for him prior to any interrogation."); *People v. McCauley*, 163 Ill. 2d 414, 423-24 (1994) ("The day is long past in Illinois . . . where attorneys must shout legal advice to their clients . . . through the jailhouse door. . . . Our State constitutional guarantees simply do not permit police to delude custodial suspects, exposed to interrogation, into falsely believing they are without immediately available legal counsel and to also prevent that counsel from accessing and assisting their clients during the interrogation.").

Injunctive Relief (hereinafter Compl.), ¶¶ 22-50. This misconduct is long-standing and predates the statute.[9] The Cook County Public Defender ("Public Defender") and Executive Director of First Defense Legal Aid attest that CPD has historically denied clients' access to phones in the stationhouse. See Affidavit of Eliza Solowiej (Ex. L to the Complaint) ¶ 6; Affidavit of Amy Campanelli (Exhibit A to the Complaint) ¶ 8 ("[C]lients are regularly denied access to a phone to call our office within an hour of being brought into custody, as required by 20 Ill. Adm. Code § 720.20(b))."). CPD officers have admitted it is standard practice to deny individuals in custody access to a phone until they are processed in lock-up (after any interrogation and investigation), hours or even days after the arrest.[10] They have also stated under oath that CPD has no method by which attorneys can speak privately with their clients via phone in stations. See *People v. Doehring*, 14 CR 02583-01, Hr'g Tr. Feb. 13, 2018 (Ex. B hereto) at 44.[11]

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[9] See n. 1, *supra*.

[10] See, *e.g.*, Compl. ¶ 23 (citing Affidavit of Eliza Solowiej (Exhibit L to the Complaint) ¶ 6 ("In April of 2015, Corporate Counsel for the Chicago Police Department along with the Chief of the Bureau of Internal [A]ffairs told me at a meeting at the Office of the Cook County Public Defender that they 'now know,' that virtually no one is able to make calls from the station until the very end of their time in custody due to police procedure."); Affidavit of Cristina Law Merriman (Exhibit P to the Complaint) ¶ 6 ("Sergeant continued to yell and tell me that my client could not call me until after being processed and that this was the procedure."); Affidavit of David Zumba (Exhibit N to the Complaint) ¶ 5 ("Sergeant Sweeney contacted me after stating that he spoke with Chicago Police Department legal resources and informed me that a phone call with [my client] would not be allowed."); Affidavit of Jessica Gingold (Exhibit O to the Complaint) ¶¶ 4-5 ("I explained that I am a lawyer from the Lawndale Christian Legal Center, and that we currently represent CLIENT. I asked to be able to speak with him on the phone. . . . I was told I would only be permitted to speak with him if I came to the 10th District in person."); see also See *People v. Doehring*, 14 CR 02583-01, Hr'g Tr. Feb. 13, 2018 (Ex. B hereto) at 44.

[11] "DEFENSE ATTORNEY: If a person is being interviewed [at Grand and Central Police Station], and they want to speak to an attorney or call an attorney, is there any way that they can have a private conversation with that attorney? DETECTIVE: If an attorney were to arrive. DEFENSE ATTORNEY: No, on the phone, is there any way that they can have a private conversation with the attorney if they asked to call an attorney? DETECTIVE: No. DEFENSE ATTORNEY: So obviously there's no method for them to have a private conversation with a family member as well on the phone, correct? DETECTIVE: Correct. DEFENSE ATTORNEY: You are aware though that they have a statutory right to make a phone call to an attorney or to a family member by law, correct? DETECTIVE. Correct."

These violations are not relegated to the annals of history. *First*, bond court survey data collected between April and June 2020 by the Public Defender in its regular course of business ("survey data") demonstrates that people in custody continue to be routinely denied access to a phone and to the hotline number for defense counsel. Those who are provided a telephone receive significantly delayed access to attorneys, in derogation of the statute and implementing regulations. Compl. ¶¶ 24-27; Rev'd Affidavit of Era Laudermilk (Ex. C hereto); Affidavit of Max Schazenbach (Ex. D hereto). In particular, over the April to June time period, twenty-three percent of those who responded to the bond court survey reported never having been offered a phone call. The data were consistent across time, highlighting CPD's "pattern and practice of not offering phone calls to nearly one-quarter of detainees over the survey time frame, regardless of the day or month of the arrest." Schazenbach Affidavit (Ex. D) ¶¶ 12-13; see also Laudermilk Affidavit (Ex. C) ¶ 9 (From June 1 to June 26, "[o]ne in five (21%) of those surveyed stated that they were never offered a phone call at any point while they were in CPD custody."). For those who *do* obtain access to a phone, the survey data reveals an average wait of 4.0 hours (a mean of 3.7 hours for April and May and 4.2 hours for June); ten percent of those receiving a phone call reported waiting 8 hours or more, and 5% report waited 12 hours or more. Schazenbach Affidavit (Ex. D) ¶ 14; see also Laudermilk Affidavit (Ex. C) ¶ 9 (In June, "[o]f the people who were offered phone access, the average wait time was 4.2 hours, with 59% of those offered a phone call waiting for longer than an hour and 20% waiting for five or more hours."). Overall, the survey data makes clear that CPD is out of compliance with its legal duties about 81% of the time—either offering no phone call or waiting over an hour before offering arrestees a phone call. *Id*. ¶ 15.

Second, data gleaned from CPD arrest reports, obtained from the Public Defender's Office and covering arrests from June 25 to July 5 ("arrest report data"), show strikingly similar patterns.

Schazenbach Affidavit (Ex. D) ¶ 12. The sample includes 359 arrest reports, of which 117 were missing the relevant page in which phone call information should be memorialized. *Id.* ¶ 16. Of the 242 complete records, only 37% record that an arrestee was offered a call. *Id.*[12] Of that subset, the median length of time between transport by CPD and the arrestee receiving a phone call is 3.5 hours; the average length of time is 4.2 hours. *Id.* In short, "the arrest reports are [] consistent with the Survey Data," *id.*, and in fact demonstrate even worse compliance by CPD.

These statistical realities are reflected on the ground. Members of the Organizational Plaintiffs arrested in the ongoing protests confirm that they have been held by CPD, without access to phones and attorneys. See Compl. ¶ 41; see also, *e.g.*, Affidavit of Kristiana Rae Colón (Exhibit C to the Complaint) ¶¶ 3-6 ("Between 6:30-7:30pm, I witnessed Malcolm London, Damon A. Williams, Christopher Isaiah Brown, and Jennifer Pagán be placed under arrest by Chicago police officers, while experiencing significant brutality. . . . It took me approximately 3 hours to locate [them]. . . . Once counsel was obtained, counsel was denied access to the detained for an additional 4.5 hours."); Affidavit of Damon Williams (Exhibit D to the Complaint) ¶¶ 4-7 ("I was in custody for at least four hours before I was allowed to speak to an attorney. I later learned that I had two attorneys attempting to see me for nearly four hours before they were allowed to see me. . . . I was asked to sign a waiver prior to being able to speak with counsel. The officer told that I would have to sign the paper to see my lawyer. . . . I was allowed to speak with counsel in person for approximately 5-7 minutes, in a non-private location."); Affidavit of Malcolm London (Exhibit E

[12] CPD directives require its officers to record in their official arrest reports each time they offer people in their custody access to a phone, including the time and number of all calls. *See* CPD General Order 06-01-04, "Arrestee and In-Custody Communications," Section VI (Feb. 28, 2020), http://directives.chicagopolice.org/directives/data/a7a56e4b-12ccbe26-df812-ccbf-527447d507470630.pdf?ownapi=1; *see also* G06-01, "Processing Persons Under Department Control," Section II(B) (Feb. 28, 2020), http://directives.chicagopolice.org/directives/data/a7a57bf0-12cc8264-cb012-cc84-fb2db6b1606f7dd9.html. Thus CPD's own records provide clear data about CPD's systemic non-compliance with its statutory and regulatory obligations.

to the Complaint) ¶¶ 4-5 ("At approximately 1:30 a.m., about six hours after I was arrested, I was able to see one of my attorneys, Javaron Buckley. I do not know how he located me. . . . At some point in the morning, I was transferred to 51st and Wentworth police station. After arriving at the police station, an[ ] officer who was a family friend came to talk to me. After that officer came to talk to me, I was allowed to make a phone call. I had been in custody for more than 12 hours when I was allowed to make that call."); Affidavit of Chris Brown (Exhibit F to the Complaint) ¶¶ 3-4 ("I was taken to 2nd District, at 51st and Wentworth in Chicago and was never asked if I would like a phone call to call my family or my attorney. . . . During the entire time that I was in custody I was never allowed to speak to an attorney or make a phone call."); Affidavit of Jennifer Pagan (Exhibit G to the Complaint) ¶¶ 5-7 ("I was in custody for at least four hours before I was allowed to speak to an attorney. I later learned that I had two attorneys attempting to see me for nearly three hours before they were allowed to see me. . . . I was offered a phone call after I was fingerprinted and my picture was taken. . . . I was asked to sign a waiver prior to being able to speak with counsel."). Other members of the organizational plaintiffs are able to testify to similar experiences in CPD stations following arrest or detention.

CPD's routine denial of access to attorneys and phone calls is also evident in individual probable cause hearings, conducted pursuant to *Gerstein v. Pugh*, 420 U.S. 103 (1975), which occur in CPD stations after defendants have been held in custody for hours or even days. Transcripts of these hearings, held between December 2019 and May 2020, underscore the difficulties experienced by detainees in gaining access to attorneys while in custody. Subjected to important legal proceedings while cut off from all outside help, detainees are confused about the

charges they are facing and the purpose of the hearing; they express a desire for counsel and, once denied such representation, fear they are being "railroaded" and "hoodwinked."[13]

Lawyers, too, have experienced CPD's violations first-hand. Both prior to and during the protests in May and June 2020, members of the Public Defender and National Lawyers Guild Chicago ("NLG") were systematically prohibited by CPD from accessing clients in police custody. Compl. ¶¶ 42-48. Attorneys with these Plaintiff agencies, as well as other defense counsel, provided affidavits describing being denied phone calls with clients and impeded from discovering where their clients were located within CPD so that they were unable to reach them. See Affidavit of Molly Armour (Exhibit H to the Complaint); Affidavit of Lillian McCartin (Exhibit I to the

[13] Group Ex. E, *Illinois v. Wright,* June 30, 2020 Transcript of Hr'g at 2-3 (COURT: And why was he not brought to court today? DETECTIVE CAVAZOS: ….We were investigating him in a murder and we were trying to get the case approved earlier and our time was close so we had to bring the paperwork for you for the detainment process. . . .DEFENSE ATTORNEY: Judge, as friend of the Court, pursuant to Chief Judge Evans' order which recognizes that our office represents any preinvestigative detainee in the custody of the Chicago Police Department, we would ask to be appointed for the purposes of this hearing. We would object to the extension of time as a severe abrogation of Mr. Wright's constitutional rights. COURT: That will be noted and overruled."); *Id.*, *Illinois v. Watson* June 23, 2020 Transcript of Hr'g at 5 (DEFENDANT: What was the charge? I didn't hear the charges? COURT: Armed robbery, vehicular hijacking -- DEFENDANT: I never had a weapon. How did I -- COURT: Okay. I can't answer any questions. The charges that I have found probable cause are armed robbery, vehicular hijacking with a deadly weapon and aggravated battery. Three counts.") *Id.*, *Illinois v. George Seales*, May 22, 2020 Transcript of Hr'g at 5 ("DEFENDANT: Your Honor, can I say something? THE COURT: No, sir, unfortunately not at this stage of the proceedings. Tomorrow is when you will be able to talk to an attorney. . . . Sir, you need to talk to an attorney[.]"); *Id.*, *Illinois v. Shamonte Bryant*, Feb. 5, 2020 Transcript of Hr'g at 3-4 ("[THE DEFENDANT: T]hey bring me into court without a call. I haven't had a call since I've been grabbed. . . . It was never oh, you can call your sister and tell her what's going on. . . . I don't know—I still barely know what is going on. They just bringing up charges that, you know. I'm just confused. That's all. I just want to know what's going on and why they grabbed me and why I can't talk to my sister."); *Id.*, *Illinois v. Abdelouahed Zaari*, Jan. 9, 2020 Transcript of Hr'g at 3 ("THE COURT: Sir, you have a right to an attorney, so I wouldn't say anything. THE DEFENDANT: Please, Your Honor. Please help me because they think I am homeless. THE COURT: Shh, shh, shh, shh, shh, shh, shh. Don't say anything, sir. THE DEFENDANT: Please. THE COURT: Let the record reflect that we have now concluded the proceedings."); *Id.*, *Illinois v. Marlon Bradley*, Dec. 29, 2019 Transcript of Hr'g at 2-3, ("DEFENDANT: No, I can't relax. I am supposed to have legal representation at any hearing I am at. I don't have no legal representation. I want to say this, for the record, man. I don't have anything. THE COURT: Okay, everything you say is being recorded. DEFENDANT: Yes, yes, sir. But I don't have any legal representation. I feel I am being railroaded, I am being hoodwinked right now, because of the simple fact this man is trying to get me up on some charges. I don't even know what is going on.").

Complaint); Affidavit of Brian Orozco (Exhibit J to the Complaint); Affidavit of David Zumba (Exhibit N to the Complaint); Affidavit of Jessica Gingold (Exhibit O to the Complaint); Affidavit of Cristina Law Merriman (Exhibit P to the Complaint); Aaron Goldstein (Exhibit Q to the Complaint); Affidavit of Stephanie Ciupka (Exhibit R to the Complaint); Affidavit of Samuel Dixon (Exhibit S to the Complaint); Affidavit of Renee Hatcher (Exhibit U to the Complaint); Affidavit of Brendan Shiller (Exhibit V to the Complaint).

Attorneys' evidence also points to the dire consequences faced by clients in police custody who are subject to police questioning on more serious charges. Attorneys with the Public Defender's Police Station Representation Unit (PSRU) attest that CPD officers refused to allow such clients to contact the PSRU until after the clients had been subjected to hours, and even days, of interrogation. 07/16/20 Affidavit of Stephanie Ciupka (Ex. F hereto) ¶¶ 5, 7 ("At 5:12 PM, CLIENT called me from the 9th District [over six hours after his arrest.] He had been questioned by a police officer, and he had asked for a lawyer. The officer did not stop questioning CLIENT after CLIENT requested a lawyer. Further, CLIENT had not been allowed to make any phone calls prior to speaking to me."); 07/15/20 Affidavit of Samuel Dixon (Ex. G hereto) ¶¶ 5, 16, 18 ("From Saturday, June 27th, to our phone call on Tuesday, June 30th, detectives repeatedly questioned CLIENT. CLIENT spoke to about six detectives or law enforcement personnel total . . . .CLIENT was in custody for over two days without being allowed to make a phone call or talk to an attorney, and he was never made aware that PSRU could represent him for free in custody. . . .CLIENT was charged with Class X Armed Robbery with a Firearm."). Individuals subjected to uncounseled interrogation are a much higher risk of waiving their Miranda rights and providing

incriminating statements.[14] These statements are subsequently used against them in their criminal proceedings, enhancing the likelihood of conviction.[15]

The violations have been exacerbated by CPD's policy requiring arrestees to sign CPD Form 11.573-A, "Attorney/711 Visitation Notification Limited Waiver," before allowing them to speak with counsel via telephone. A copy of that Form, which includes the waiver, is attached in Appendix 2 to Ms. Campanelli's affidavit. Ex. A to Plaintiffs' Complaint. Form 11.573-A contains a waiver of arrestees' right to private attorney counsel, stating that police "cannot guarantee full privacy during any telephonic or virtual conversation and that he/she may not use any inadvertent overhear as a basis to defeat criminal charges or in civil litigation should any occur." *Id*. This waiver was personally approved by CPD's General Counsel, Dana O'Malley. Compl. ¶ 36; Campanelli Aff., App. 1; see also Exhibit X to Complaint (CPD memo Reference

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[14] See, *e.g.*, Saul Kassin, Richard M. Leo, Christine A. Messier *et al.*, *Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs*, 31 LAW & HUM. BEHAV. 381, 389, 395 (2007) (in questionnaire of 631 police investigators who reported on their interrogation practices, 81% of "people in general" facing police interrogation waived their Miranda rights, and police elicited self-incriminating statements from 68% of suspects); Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 962 (2004) ("Even in the age of DNA testing, perhaps it should not be surprising that police interrogators continue to extract demonstrably false confessions (despite the Miranda warnings and a host of other procedural safeguards), that prosecutors continue to erroneously indict and prosecute the innocent, and that judges and juries continue to convict factually innocent individuals based on uncorroborated and ultimately false confession evidence."); see also *Secret Detention*, *supra* note 1, at 11 ("The main reason for questioning a suspect in a police station is the coercive influence of arrest and incommunicado detention. The police can question anyone at any time without placing him under arrest. But he may refuse to speak and cannot be forced to answer questions. A man who is restrained and held in isolation from the outside world is more likely to answer questions. This is borne out by the widespread practice of the Chicago police of refusing to allow an arrested person to call a lawyer before he is questioned.").

[15] Richard A. Leo, *Police Interrogation and American* JUSTICE 248-49 (2008) ("A confession sets in motion a seemingly irrefutable presumption of guilt among justice officials, the media, the public, and jurors. This chain of events, in effect, leads each part of the system to be stacked against the confessor; he will be treated more harshly at every stage of the investigative and trial process. He is significantly more likely to be incarcerated prior to trial, charged, pressured to plead guilty, and convicted.…As the case against a false confessor moves from one stage to the next in the criminal justice system, it gathers more force and the error becomes increasingly difficult to reverse.") (internal citations omitted).

Number 256361). The upshot of this form is that people in custody are forced to forfeit their constitutional rights to privileged attorney-client communications in order to obtain counsel.

In sum, detainees continue to face barriers to consulting with counsel while in CPD custody; defense attorneys are regularly proscribed from finding and talking to their clients behind police station walls. As a result of CPD's continuing violations, the Organizational Plaintiffs, the Public Defender, and NLG have experienced, and in the future are likely to experience, irreparable harm without adequate remedy at law. This case calls for immediate judicial action to force CPD to comply with fifty-year-old law governing telephone and attorney access in the stationhouse.

LEGAL STANDARD

Plaintiffs request a preliminary injunction to enforce 725 ILCS 5/103-3 via *mandamus*, 735 ILCS 5/14-101 *et seq.*, and via a private right of action. The purpose of a preliminary injunction is to "prevent a threatened wrong or the further perpetration of an injurious act." *Kalbfleisch ex rel. Kalbfleisch v. Columbia Cmty. Unit Sch. No. 4*, 396 Ill. App. 3d 1105, 1118 (5th Dist. 2009) (citation omitted). Generally, preliminary injunctions are entered to prevent injury by maintaining the status quo. *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 177 (2002). But denial of a legal right "should never be the status quo." *Kalbfleisch*, 396 Ill. App. 3d at 1119. Thus, "sometimes it happens that the status quo is not a condition of rest but, rather, is one of action and the condition of rest is exactly what will inflict the irreparable harm." *Kalbfleisch*, 396 Ill. App. 3d at 1117 (citing *Brooks v. LaSalle Nat. Bank*, 11 Ill. App. 3 791, 799 (1st. Dist. 1973). That is the case here; the City is violating a statute designed to protect the rights of people in custody. Immediate enforcement is necessary to disrupt the status quo. *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 638 (2005) ("'Where the acts sought to be enjoined . . . violate an expressed law,

'the status quo to be preserved could never be a condition of affairs where the respondent would be permitted to continue the acts constituting that violation.'") (citations omitted).

Plaintiffs seeking a preliminary injunction have to establish "(1) a clearly ascertained right in need of protection; (2) irreparable harm in the absence of an injunction; (3) no adequate remedy at law for the injury; and (4) the likelihood of success on the merits." *Klaeren*, 202 Ill. 2d at 177 (citing *Hartlein v. Illinois Power Co.*, 151 Ill.2d 142, 156 (1992)). To prevail, Plaintiffs must raise a "fair question" that each of the elements is satisfied. *Makindu v. Illinois High Sch. Ass'n*, 2015 IL App (2d) 141201 ¶ 31 (2015) (citation omitted). The court may also balance the implicated hardships, *see Delta Medical Systems v. Mid-America Medical Systems., Inc.*, 331 Ill. App. 3d 777, 788 (1st Dist. 2002), and consider the public interests involved. *Kalbfleisch*, 396 Ill. App. 3d at 1119 (citing *Village of Bensenville v. City of Chicago*, 389 Ill. App. 3d 446, 493 (2d Dist. 2009)).

ARGUMENT

I. PLAINTIFFS HAVE A CLEARLY ASCERTAINED RIGHT TO *MANDAMUS* AND TO AN INJUNCTION REQUIRING CPD TO COMPLY WITH THE STATUTE, AND THUS ARE LIKELY TO SUCCEED ON THE MERITS.

The first and fourth prongs of the preliminary injunction standard are intertwined. *Seyller v. County of Kane*, 408 Ill. App. 3d 982, 991 (2d Dist. 2011). Plaintiffs are likely to succeed on the merits if they raise a "fair question" about the existence of the protectable right in question and as to their entitlement to the requested relief, until a decision can be reached on the merits. *Klaeren*, 202 Ill. 2d at 177; see *also Kalbfleisch*, 396 Ill. App. 3d at 1114. Plaintiffs meet these standards. They raise a "fair question" as to whether CPD has refused to provide non-discretionary, state-mandated protections such that Plaintiffs are entitled to judicial enforcement of 725 ILCS 5/103-3. *Cf. Limestone Development Corp. v. Village of Lemont*, 284 Ill. App. 3d 848, 854 (1st Dist.

1996) ("To show a clear and ascertainable right, [plaintiff] must raise a fair question that it has a substantive interest recognized by statute or common law.") (citation omitted).

A. The City, Through CPD, is Expressly Violating 725 ILCS 5/103-3, Which Provides a Clear Right to Attorney Access and Telephones in Custody.

The Telephone Access Statute provides people in CPD custody with an unambiguous and protected right to prompt access (within one hour) to telephones and to attorneys. 725 ILCS 5/103-3(a). By its plain language, the legislation was designed to prevent law enforcement from impeding arrestees—including members of the Organizational Plaintiffs—from communicating with a family member and an attorney, via telephone, at a reasonable time after their arrival in police custody. *Cf. Rosewood Care Center Inc. v. Caterpillar, Inc.*, 226 Ill. 2d 559, 567 (2007) ("The language of the statute is the best indication of legislative intent, and we give that language its plain and ordinary meaning.") (citation omitted). And for more than twenty years, the Joint Committee on Administrative Rules, made up of members of the Illinois Legislature themselves, has interpreted the Telephone Access Statute to require police to give people access to phones within the first hour of arrival at a police station. 20 Ill. Adm. Code § 720.20(b) (1998).[16]

As the facts set forth here and in the Complaint make clear, CPD has violated and continues to violate the rights of people in its custody to these statutory protections. CPD admits these violations via court testimony and statements of officers provided to individual defense attorneys.[17] The bond court survey data and arrest report data shows, in aggregate, that the City is denying phones and access to counsel via telephone to people in custody, city-wide. The testimony of the Public Defender and the leadership of the City's defense counsel agencies confirm that the City's

[16] When, as here, "an agency interprets its own regulation, the agency's interpretation is controlling unless 'plainly erroneous or inconsistent with the regulation.'" *Kronemeyer v. U.S. Bank Nat. Ass'n*, 368 Ill. App. 3d 224, 229 (5th Dist. 2006) (citation omitted).

[17] See n. 10, *supra*.

violations are ongoing. Individual defense lawyers have provided affidavits with detailed evidence of instances of this misconduct in May, June and July 2020, at stations throughout the City. And, perhaps most importantly, the Organizational Plaintiffs' members' accounts make clear that CPD continues to deny telephones and attorney access as a matter of quotidian practice.

B. Plaintiffs Are Entitled to Relief via *Mandamus* and a Private Right of Action.

1. All Plaintiffs Meet the Standard for a Writ of a *Mandamus*.

Plaintiffs are entitled to a writ of *mandamus* to enforce the statute. A "writ of *mandamus* is a judicial order used to compel a public official to perform a nondiscretionary, ministerial duty." *Gassman v. Clerk of the Circuit Court of Cook County*, 2017 IL App (1st) 151738, ¶ 13 (citations omitted). *Mandamus* is appropriate where movants establish that "(1) he or she has a clear and affirmative right to relief, (2) the public official has a clear duty to act, and (3) the public official has clear authority to comply with the writ." *Id*. Each of these factors is met.

First, Plaintiffs have a clear and affirmative right to the relief requested. As set forth in Section A, the statute is plain: people in police detention must be provided access to a telephone, to call family members and to call counsel, promptly. See *Gassman*, 2017 IL App (1st) 151738 ¶¶ 13, 18 (plaintiff established "clear and affirmative right to relief" for purposes of *mandamus* where the statute to be enforced was "clear and unambiguous" and the court had "no need to resort to anything beyond its language"); see also *People v. Prim*, 53 Ill. 2d 62, 69-70 (1972) (the purpose of 725 ILCS 5/103-3 is to allow persons in custody to notify family as to their whereabouts and seek representation). And the Organizational Plaintiffs and their members, the Public Defender, and NLG have each been directly impacted by CPD's unlawful conduct under the Statute; thus, each has a "sufficiently protectable interest pursuant to statute or common law which is alleged to

be injured." *Cedarhurst of Bethalto Real Estate, LLC v. Village of Bethalto*, 2018 IL App. (5th) 170309 ¶ 31 (citations omitted).[18]

Members of the Plaintiff organizations have been arrested by CPD, and in the future are likely to be subject to arrest as a result of their intention to participate in future protests and because of discriminatory policing in Chicago. *See* Compl. ¶¶ 15-20. They are the intended beneficiaries of the Telephone Access Statute. See *Noyola v. Board of Educ. of the City of Chicago*, 179 Ill. 2d 121, 133 (1997) (parents of low-income public school students had standing to seek *mandamus* relief relating to the allocation of state funds for low-income school children) ("Chapter 1 funds are intended to benefit the low-income students responsible for bringing those funds into the school district. Those low-income students have a clear right to the benefits provided by the law."); see also *Grant v. Dimas*, 2019 IL App (1st) 180799 (union had affirmative right to *mandamus* to compel public officials to implement legislative wage increase). The Organizational Plaintiffs are thus properly before the Court to vindicate their interests in fair custodial treatment.

The Public Defender and NLG have separate cognizable interests in pursuing *mandamus* by virtue of their authority to represent people in police custody. The Public Defender provides legal representation to thousands of low-income Cook County residents who are held in custody or who are charged with the commission of any criminal offense, and who the court finds are unable to employ counsel, pursuant to 55 ILCS 5/3-4006. Compl. ¶ 14; see also *Burnette v. Terrell*, 232 Ill. 2d 522, 537 (2009) (describing statutory duties of the Public Defender); Circuit Ct. Ck. Cty. Gen. Adm. Order No. 2017-01 (appointing public defender to represent unrepresented people in police stations). Because of the Public Defender's unique placement in the City's stationhouses,

[18] See also *Retail Liquor Dealers Protective Ass'n v. Schreiber*, 382 Ill. 454, 459 (1943) ("Where the object is the enforcement of a public right, the people are regarded as the real party, an[d] the relator need not show that he has any legal interest in the result.").

the City's conduct in violating the Telephone Access Statute impinges upon its statutory and judicial obligations to represent clients in custody. *See Burnette v. Stroger*, 389 Ill. App. 3d 321, 331 (1st Dist. 2009) (interference with the Public Defender's "ability to carry out his statutorily appointed duty of effective representation" to indigent defendants of Cook County is a "distinct and palpable injury"). NLG, similarly, serves clients in custody, and the Statute likewise harms its ability to do so. Compl. ¶ 19. In other words, CPD's failure to follow black-letter law prevents attorneys with the Public Defender and NLG from fulfilling their ethical responsibilities in the representation of clients—*i.e.*, from doing their jobs. *Cf. Green v. McElroy*, 360 U.S. 474, 492 (1959) (the right "to follow a chosen profession free from unreasonable governmental interference comes within the 'liberty' and 'property' concepts of the Fifth Amendment"); *Doe v. Bolton*, 410 U.S. 179, 197 (1973) (recognizing the fundamental due process right of professionals to be free from unreasonable government interference in the practice of their profession); *McCauley*, 163 Ill. 2d at 444-45 ("[P]olice interference in the attorney-client relationship is the type of governmental misconduct on a matter of central importance to the administration of justice that the Due Process Clause prohibits.") (citation omitted).

The Illinois Supreme Court has also authorized "mandamus-type relief" when, as here, "the issues involved are of great importance to the administration of justice." *Burnette*, 232 Ill. 2d at 544-45. Protecting the right of all Chicagoans to access telephones and counsel—and the outside world—while in police custody is an issue of paramount importance, particularly given Chicago's long history of interrogation room and police station misconduct.

Second, the City has a clear duty to act. *Mandamus* is a particularly appropriate remedy where, as in Chicago, public actors refuse to comply with their non-discretionary statutory obligations. *Noyola*, 179 Ill. 2d at 132-33 ("If public officials have failed to comply with

requirements imposed upon them [by law] a court may compel them to do so by a writ of mandamus.") (citing, *inter alia*, *People ex rel. Sklodowski v. State of Illinois*, 284 Ill. App. 3d 809, 817-18 (1996), *appeal allowed*, 171 Ill. 2d 584 (1997) (action for *mandamus* will lie to compel state officials to comply with statutory requirements regarding funding of state retirement systems)).[19] It is the unquestioned duty of CPD to comply with the Telephone Access Statute. And the statute contemplates no discretion in carrying out that duty. *Cf. Birkett*, 235 Ill. 2d at 76 (*mandamus* will not lie "when the act in question concerns an exercise of an official's discretion").

Third, the City, through CPD, has clear authority to comply with a statute that directs the actions of law enforcement. *See Grant*, 2019 IL App (1st) 180799 ¶ 70 ("The General Assembly appropriated the funds to implement the wage increase. . . . Thus, defendants, by virtue of their positions . . . have clear authority to comply with a writ of *mandamus* to implement a wage increase with funds allocated for that purpose."); *Noyola*, 179 Ill. 2d at 133 ("[T]he School Code imposes specific requirements regarding the use of Chapter 1 funds; defendants are the parties responsible under the law for meeting those requirements; and, according to plaintiffs complaint, defendants have violated the law in contravention of their statutory responsibilities."). The statute gives people in police custody the right to prompt access to a phone. CPD has the responsibility to comply. It is hardly reasonable to believe that CPD, endowed with a budget of almost $1.8 billion in 2020,[20] cannot put into practice a statutory provision passed midway through the last century.

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[19] See also *Dennis E. v. O'Malley*, 256 Ill. App. 3d 334 (1993) (*mandamus* appropriate to compel clerk of the court to comply with her statutory duties); *Carroll v. Miller*, 116 Ill. App. 3d 311 (1983) (*mandamus* appropriate to compel Illinois Department of Public Aid to make assistance payments where recipients have right to such payments and Department has nondiscretionary duty to provide them).

[20] See Dan Hinkel, *While Others Pledge Funding Cuts to Police Forces, Chicago More Hesitant*, CHICAGO TRIBUNE (Jun. 9, 2020), https://www.chicagotribune.com/news/breaking/ct-chicago-police-defunding-20200609-ugem6o353fhc7hch36uhs6mhqq-story.html.

2. Organizational Plaintiffs Have a Clearly Ascertainable Right to Enforcement under 725 ILCS 5/103-3 via an Implied Right of Action.

Separately, and in addition to the *mandamus*, the Organizational Plaintiffs have a clearly ascertainable right to enforce the Telephone Access Statute via a private right of action. A private right of action can be implied "where it is consistent with the underlying purpose of the Act and necessary to achieve the aim of the legislation." *Sawyer Realty Group, Inc. v. Jarvis Corp*., 89 Ill. 2d 379, 386 (1982). This is particularly true where "the public policy underlying certain statutes demands implication of a private remedy to compensate an aggrieved individual belonging to that class of persons whom the statute was designed to protect." *Id*. In other words, an implied right exists when "(1) [an individual] is a member of the class for whose benefit the Act was enacted; (2) it is consistent with the underlying purpose of the Act; (3) plaintiff's injury is one the Act was designed to prevent; and (4) it is necessary to provide an adequate remedy for violations of the Act." *Rodgers v. St. Mary's Hospital*, 149 Ill. 2d 302, 308 (1992). Every factor is present here.

As to the first and third prongs, people who have been or who will be arrested (including affiliates of the Organizational Plaintiffs) are clearly members of the class for whose benefit the Telephone Access Statute was enacted. *Cf. Rosewood Care Center Inc.*, 226 Ill. 2d at 567. The statute was intended to prevent the exact harm incurred by its violation—incommunicado detention. See *Sawyer*, 89 Ill. 2d at 391 ("The plaintiffs were members of the class for whose benefit the statute was enacted. . . . The plaintiffs' injury is one the statute was designed to prevent."). Relatedly, on the remaining factors, an implied right of action is consistent with the purpose of the Telephone Access Statute, and it is required to provide an adequate remedy for prospective violations. *Cf. Pilotto v. Urban Outfitters West LLC*, 2017 IL App (1st) 160844 ¶ 29 (second and fourth elements of private right of action test are often discussed "together").

Illinois courts "have continually demonstrated a willingness to imply a private remedy, where there exists a clear need to effectuate the purpose of an act." *Sawyer*, 89 Ill. 2d at 389; see also *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 393 (1999). As evidenced by the on-going violations of the statute, there is a "clear need" to recognize a private action here, particularly as people in CPD custody who are denied access to a phone lack any alternative remedy under the statute. See *People v. Williams*, 2017 IL App (1st) 142733 ¶ 29 (noting that statute fails to contain any remedy in criminal proceedings). Violations of the statute may, under certain circumstances, support a contiguous constitutional violation, which may in turn trigger the application of the exclusionary rule or other relief, but the statutory violations on their own do not give rise to relief within the criminal legal process. See *People v. Martin*, 121 Ill. App. 3d 196, 210 (2d Dist. 1984) (holding that police violations of the Telephone Access Statute do not result in vacation of conviction or suppression of evidence, absent a constitutional violation). And while the General Assembly authorized criminal prosecutions against officers who intentionally violate the statute,[21] no Illinois prosecutor has brought such a prosecution since the statute came into existence.[22]

To put a finer point on it, individuals at risk of *future* harm stemming from well-established and systemic unlawful CPD conduct have only one remedy to prevent a denial of their rights under this statute: an action for prospective injunctive relief. Without such an action under the Telephone Access Statute, the rights it provides will remain illusory. *Cf. Corgan v. Muehling*, 143 Ill. 2d 296, 315 (1991) ("A private right of action under the Psychologist Registration Act is the only way that

[21] 725 ILCS 5/103-8 states: "Any peace officer who intentionally prevents the exercise by an accused of any right conferred by this Article or who intentionally fails to perform any act required of him by this Article shall be guilty of official misconduct and may be punished in accordance with Section 33-3 of the Criminal Code of 2012."

[22] Plaintiffs' counsel conducted an exhaustive search of every case available on Lexis and Westlaw citing Section 103-8. There was not a single instance of a reported criminal prosecution under the statute.

an aggrieved plaintiff can be made whole, when a defendant fails to comply with the provisions of the Act."). Illinois courts have repeatedly found implied rights of action where no other remedy would ensure essential civil and state rights. See *Noyola*, 284 Ill. App. 3d at 132-33 ("In this situation, where all the State and local entities charged with implementing the General Assembly's mandate have been alleged to have been derelict in doing so, a private right of action is both necessary and proper to provide the school children with an adequate remedy.").[23]

Recognition of an implied right of action is particularly appropriate since the statute, by creating a custodial right, also imposes a corresponding duty upon CPD to provide telephone access in custody. Implied rights are judicially recognized when an entity fails to fulfill statutorily-created duties to a class. See *Board of Educ. of City of Chicago v. A, C and S, Inc*., 131 Ill. 2d 428, 470 (1989) (in determining whether implied right of action exists, "[c]ourts have inquired whether the statute imposes a duty of behavior on the defendant"). The City has done so here; it should be enjoined from causing future harm. *Cf. Nickels*, 343 Ill. App. 3d at 663.

II. PLAINTIFFS WILL EXPERIENCE IRREPARABLE HARM ABSENT THE REQUESTED RELIEF AND HAVE NO ADEQUATE REMEDY AT LAW.

Harm is irreparable where it is "that species of injury that ought not be submitted to on the one hand or inflicted on the other." *Cross Wood Products, Inc. v. Suter*, 97 Ill. App. 3d 282, 286

[23] See also *Fiumetto v. Garrett Enterprises*, Inc., 321 Ill. App. 3d 946, 952-53 (2001) ("In the present case, a private right of action is necessary to make the Unemployment Act effective. Absent such a right, employers could freely coerce employees to refrain from seeking benefits under the Unemployment Act through threats of termination."); *King v. Senior Services Ass'n., Inc*., 341 Ill. App. 3d 264, 270 (2003) ("[A]n implied private cause of action is the only method by which an employee involved in providing services to victims of elder abuse and neglect can seek a remedy for discrimination by her employer. The right to be free from employer discrimination is no right at all if there is no remedy for such discrimination."); *Pechan v. DynaPro, Inc.*, 251 Ill. App. 3d 1072, 1080 (1993) ("We hold that there is an implied private right to damages for individuals who have suffered discrimination under section 9 of the Act."); *cf. Pilotto*, 2017 IL App (1st) 160844 ¶ 29 ("Without express language in the Act prohibiting a private right of action or an established procedure that would be impeded, there is nothing that an implied private right of action would be at odds with.").

(1st Dist. 1981) (citations omitted). Irreparable harm is also satisfied where the injury at issue is "continuing" in nature. *Lucas v. Peters*, 318 Ill. App. 3d 1, 16 (1st Dist. 2000). In order to prevail on the "continuing harm" factor, the injury expected by the plaintiff must be reasonably certain and not merely possible. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Ry.*, 195 Ill. 2d 356, 371-72 (2001) (citation omitted). The irreparable harm standard and adequate remedy at law standard work here in tandem, for "[i]rreparable injury exists where it is difficult to assign pecuniary value to the injury suffered" and "[n]o adequate remedy at law exists where there is evidence that the plaintiff will be subject to constant and frequent transgressions of a continuing nature." *Hamer Holding Group, Inc. v. Elmore*, 202 Ill. App. 3d 994, 1012 (1st Dist. 1990).

Plaintiffs easily establish irreparable harm, and an inadequate remedy, under either test. No person should be subjected to incommunicado detention. *Cross Wood Products, Inc.*, 97 Ill. App. 3d at 286. Incommunicado detention violates the most fundamental principles of Illinois and federal law. See *Haynes v. State of Wash.*, 373 U.S. 503, 514 (1963) (decrying secret and incommunicado detention as anathema to due process).[24] And in the absence of emergency relief, the City will continue to deny Organizational Plaintiffs' members access to telephones and to counsel in police custody, as mandated by state law. *Lucas*, 318 Ill. App. 3d at 16; *cf. Kalbfleisch* 396 Ill. App. 3d at 1116 (school district's on-going prohibition on autistic student bringing service dog to school, in contravention of service animal statute, constituted irreparable harm); see also *Makindu v. Illinois High School Ass'n*, 2015 IL App (2d) 141201 ¶ 42 (2d Dist. 2015) (international

[24] See also *Reck v. Pate*, 367 U.S. 433, 448 (1961) (Douglas, J., concurring) (recognizing that incommunicado detention is "inconsistent with the requirements of that free society which is reflected in the Bill of Rights"); *People v. McCauley*, 163 Ill. 2d 414, 424 (1994) ("[T]he incommunicado interrogation and surrounding coercive environment likely to result . . . is exactly the sort of scenario previously condemned by the United States Supreme Court in *Escobedo* and *Miranda*."); *Miranda v. Arizona*, 384 U.S. 436 (1966) ("[I]ncommunicado interrogation is at odds with one of our Nation's most cherished principles.").

student prohibited from participating in school athletics suffered violation of equal protection and irreparable harm).

That ensuing harm can be established by more than a reasonable certainty. *Callis, Papa, Jackstadt & Halloran, P.C.*, 195 Ill. 2d at 371-72. CPD's statutory violations are not isolated or aberrational; they are systematic and well-documented. Such misconduct works to the detriment of Organizational Plaintiffs' members, who will be denied legal counsel and a systemic check on police overreach. *Cf. McCauley*, 163 Ill. 2d at 441 ("[T]he deliberate denial to a suspect of counsel's assistance has resulted in an involuntary confession violative of due process."). CPD's conduct affects not only the Plaintiffs, but all Chicagoans, who are subject to the same transgressive harms, every day, all over the City. *Cf. People ex rel. Hartigan v. Stianos*, 131 Ill. App. 3d 575, 580 (2d 1985) ("The principle underlying the willingness of the courts to issue statutory injunctions to public bodies to restrain violations of a statute is that harm to the public at large can be presumed from the statutory violation alone."). There can be no adequate remedy at law for ongoing statutory violations. See *Hamer Holding Group, Inc.*, 202 Ill. App. 3d at 1012.

CPD's actions also impede the statutory obligations of the Public Defender, who will suffer irreparable harm from continually being denied access to her clients and the ability to fulfill her mission representing indigent people in the City of Chicago. There is no adequate remedy at law when a public agency is thwarted from complying with its legal mandate. See, *e.g.*, *Seyller*, 408 Ill. App. 3d at 990-991 (granting preliminary injunction after finding an inadequate remedy of law and irreparable harm where county clerk would be unable to fulfill its statutory mandate to its citizens as a result of threatened loss of funding). The attorney members of NLG will be subject to similar irreparable harm by CPD impeding their ability to counsel clients, at one of the most

important stages of the representation. *Cf. Escobedo*, 378 U.S. at 486. In short, the injury caused by lack of prompt access to clients cannot be undone or assuaged by pecuniary damages.

The harms at issue are dire, ongoing, and systemic (to wit, irreparable), and there is no adequate remedy beyond the sought-after injunctive and *mandamus* relief.

III. THE BALANCING OF HARDSHIPS AND PUBLIC INTEREST WEIGH IN FAVOR OF A WRIT OF *MANDAMUS* AND PRELIMINARY INJUNCTION.

In any "balance [of] the equities," there can be no question that Plaintiffs' protected right to counsel and outside communication while in police custody trumps any administrative convenience that may inure to the City in providing phones, telephonic access to counsel, and a private space for calls in its stations. *Cf. Limestone Development Corp.*, 284 Ill. App. 3d at 853 ("In deciding whether to grant a preliminary injunction, the trial court must . . . determine whether a greater burden will be imposed on the defendant by granting the motion than on the plaintiff by denying it."). The City certainly has no lawful interest in maintaining incommunicado detention policies or in delaying phone calls; nor does it have a legitimate complaint about a court order directing it to follow law that has been firmly established for over half a century. Indeed, it is dubious whether the balancing of the hardships is even appropriate here given the City's willful violations of clear statutory law. See *Liebert Corp. v. Mazur,* 357 Ill.App.3d 265, 287 (1st Dist. 2005) (holding that no balance of equities test was necessary because there was strong evidence that defendant knew he was misappropriating plaintiff's trade secrets) ("Courts do not 'balance the harms' where defendants acted despite knowledge of the plaintiff's rights and understood the possible consequences.") (citing *ABC Trans. Nat. Transport, Inc.*, 62 Ill. App. 3d 671, 682-83 (1st Dist. 1978) ("[T]he duty of the courts is to protect rights, and innocent complainants ought not

suffer the loss of their rights because of the expense to the wrongdoer[ ]."). CPD officers have admitted to CPD's failure to follow the statute and evinced clear intent to continue to violate it.[25]

The balance of equities weighs even more strongly in Plaintiffs' favor in the present context of policing in Chicago. CPD is under a federal consent decree as a result of having engaged in a pattern and practice of civil rights abuses, which have been disproportionately borne by members of the Organizational Plaintiffs and clients of the Public Defender and NLG.[26] Police interrogation rooms, outside of public view, have been the primary sites of unlawful and unchecked CPD violence and abuse, leading to untold numbers of wrongful convictions.[27] A significant reason why thousands of people have been protesting in Chicago is because of discriminatory and illegal CPD violence, facilitated by CPD's practice of incommunicado detentions challenged here. Given the harm at stake, Plaintiffs prevail in any equitable balancing test.

Finally, for these same reasons, an injunction vindicating custodial rights is within the public interest. *Fraternal Order of Police, Chicago Lodge No. 7 v. City of Chicago*, 2016 IL App (1st) 143884 ¶ 28 ("[W]hen the injunction implicates important public interests, the court should consider the effect such injunctive relief might have upon the public."); see also *Kalbfleisch*, 396 Ill. App. 3d at 1119. The people of Illinois have a paramount interest in ending incommunicado detention in CPD facilities. It is always in the public interest to ensure officials' compliance with the law. *Cf. Whole Woman's Health Alliance v. Hill,* 937 F.3d 864, 875 (7th Cir. 2019) ("Enforcing a constitutional right is in the public interest."). The Court should do so here.

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[25] See n. 10, *supra*.

[26] U.S. Dep't of Justice, Civil Rights Div., Investigation of the Chicago Police Department (2017), https://www.justice.gov/opa/file/925846/download; Consent Decree, *Illinois v. City of Chicago*, No. 17-cv-6260 (N.D. Ill. Jan. 31, 2019), ECF No. 703, http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf.

[27] See n. 2 and n. 3, *supra*.

WHEREFORE, Plaintiffs respectfully request that this Court enter emergency relief in the form of a writ of *mandamus* and a preliminary injunction. In particular, Plaintiffs respectfully request that this Court:

a) Issue a writ of *mandamus* requiring the City of Chicago to comply with its non-discretionary duties, pursuant to 725 ILCS 5/103-3;

b) Issue an injunction requiring the City of Chicago to comply with 725 ILCS 5/103-3, as set forth in the Complaint ¶ 51, including by mandating that CPD promulgate a policy or policies, via a General Order or otherwise:

    1) Prohibiting CPD officers from denying timely access to counsel for people in detention via telephone.

    2) Requiring its members to provide people in custody access to a phone within an hour of their arrival at a police station, unless documenting exceptional circumstances making it impossible for it to do so.

    3) Requiring its members to provide the telephone numbers of the PSRU to people in CPD custody at the time they are provided access to a phone.

    4) Requiring its members to record in every arrest report and in the CLEAR system (a) that the person in CPD custody was provided access to a phone; (b) that the person in CPD custody made a phone call or calls; (c) the time(s) the person in CPD custody made the call(s); and (d) the phone number(s) the person in custody called. If the person refuses to make a call, CPD members should so indicate. If exceptional circumstances make a phone call impossible, CPD members should so indicate.

5) Eliminating the requirement that an arrestee or detainee who desires access to a phone forfeit constitutional and civil rights to confidential attorney-client communications, as described in Form 11.573-A.

6) Requiring its members to inform defense counsel as to the location of their clients and allow them access to any client requesting counsel, via telephone, within an hour of that person being brought into custody.

7) Requiring its members who are transporting an individual to a CPD or medical facility to notify (while en route) CPD Central Booking of the location of the facility to which they are bringing the individual, and requiring Central Booking to publish a 24-hour phone number that attorneys, family, and members of the public can call to ascertain the location of the individual.

c) Issue an injunction prohibiting the City of Chicago, through CPD, from taking people into custody until such time as it can comply with 725 ILCS 5/103-3.

d) Any such other relief that this Court deems appropriate.

Dated: July 22, 2020

Respectfully submitted,

/s Craig B. Futterman

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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Craig B. Futterman

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

#LETUSBREATHE COLLECTIVE, LAW OFFICE OF THE COOK COUNTY PUBLIC DEFENDER, BLACK LIVES MATTER CHICAGO, STOP CHICAGO, UMEDICS, NATIONAL LAWYERS GUILD CHICAGO, and GOODKIDS MADCITY,	)	Case No. 2020CH04654
Plaintiffs,	)	
v.	)	Hon. Judge Pamela Meyerson
CITY OF CHICAGO,	)	
Defendant.	)	

PLAINTIFFS' EXHIBITS

Exhibit	Description
A	Excerpts from American Civil Liberties Union: Illinois Division, *Secret Detention by the Chicago Police* (1959)
B	*People v. Doehring*, 14 CR 02583-01, Hearing Transcript from February 13, 2018
C	July 21, 2020 Affidavit of Era Laudermilk
D	July 20, 2020 Affidavit of Max Schazenbach
Group Ex. E	Transcripts of Hearings: *Illinois v. Wright* (June 30, 2020), *Illinois v. Watson* (June 23, 2020), *Illinois v. Seales* (May 22, 2020), *Illinois v. Bryant* (February 5, 2020), *Illinois v. Zaari* (January 9, 2020), and *Illinois v. Bradley* (December 29, 2019)
F	July 16, 2020 Affidavit of Stephanie Ciupka
G	July 15, 2020 Affidavit of Samuel Dixon

EXHIBIT A

SECRET DETENTION *by the* CHICAGO POLICE

A REPORT BY THE *American Civil Liberties Union,*
ILLINOIS DIVISION

THE FREE PRESS, GLENCOE, ILLINOIS

DESIGNED BY SIDNEY SOLOMON

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INTRODUCTION

THIS IS A REPORT on the Chicago police practice of holding arrested persons secretly for long periods of time without bringing them promptly before a magistrate, as the law requires. It is the first systematic study ever made of the frequency of lengthy secret detentions by a municipal police force. It is based upon actual cases in the files of the Municipal Court of Chicago. It demonstrates, beyond any question, that each year thousands of persons are held illegally by the Chicago police.

This problem is invisible to the great majority of law abiding citizens who rarely have any direct contact with the police. The poor, and racial and ethnic minorities—these are the people who suffer most from police lawlessness. But police violation of personal liberty can happen to anyone—and has.

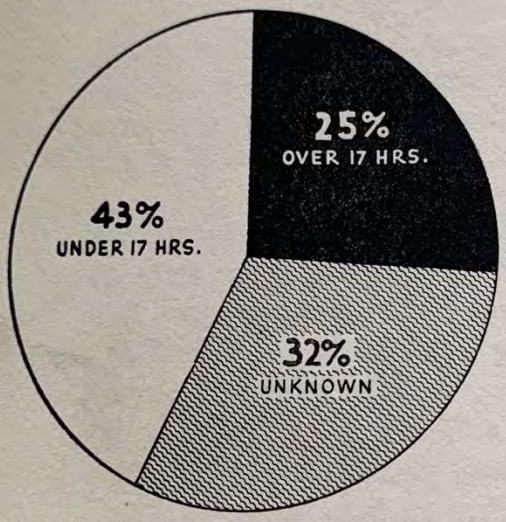
In November, 1953, it happened to Circuit Court Judge John T. Dempsey. Jack Mabley of the Chicago Daily News aptly described the incident in a recent column: "A few years ago a little girl claimed that a man with a dog molested her in a West Side park. One of our distinguished citizens, Judge John T. Dempsey, happened to be walking his dog in a West Side park. Two policemen arrested him, and he was pushed, knocked down, and taken to an abandoned police station. After an hour he was released. He wondered what would have happened to him if he were not a judge." *Daily News,* May 20, 1958. Judge John Gutknecht has stated that "what happened to Judge Dempsey could happen to anyone." *Sun-Times,* November 21, 1953.

It does happen to many thousands of people in Chicago each year who are held in police stations for extended periods of time without being charged with any crime, without bail and without communication with the world outside. A projection of the cases sampled in the ACLU study indicates that in 1956 approximately 20,000 defendants were held incommunicado for at least 17 hours in cases eventually brought before the nine branches of the Municipal Court studied. Almost 2000 of these defendants were

held for 48 hours or more. And these figures do not include any detentions in the other branches of the Municipal Court which handle criminal cases.

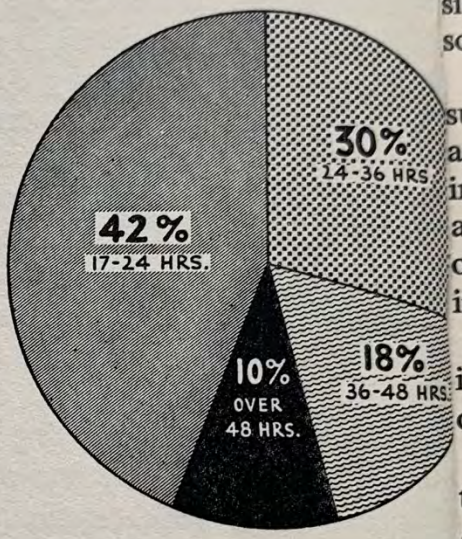
The results of the ACLU study are summarized in the accompanying charts.

Chart 1
Interval between Arrest and Booking as Shown by Police Arrest Slips in Cases Brought to 9 Branches of the Municipal Court of Chicago During the Year 1956



The 32% unknown category represents cases in which police failed to complete arrest slips.

Chart 2
Breakdown of Pre-Booking Detention of More than 17 Hours in Cases Brought to 9 Branches of the Municipal Court of Chicago During the Year 1956



The law requires that the police bring arrested persons promptly to court. This protects the personal liberty of every one of us. Its strict observance is needed to prevent arbitrary arrest and the abuses which inevitably accompany the practice of holding prisoners incommunicado. When a prisoner is brought to court promptly after his arrest, a hearing can then be conducted in which the evidence against him is impartially weighed to see if it is sufficient to justify his being held. A judicial officer can decide whether a crime has been committed and whether there is enough evidence to require holding the prisoner for trial or grand jury action.

of crime for the purpose of questioning him in a police station.

But the police, in effect, insist that they cannot function without the opportunity to question suspects while under arrest and in seclusion. Almost daily the Chicago newspapers report police investigations in which suspects are taken into custody for questioning. Frequently the fictitious charge of disorderly conduct is given as a pretext when these prisoners are eventually brought to court. LeRoy McHugh, veteran police reporter, wrote in the Chicago American on August 29, 1957:

> "In my two score years as a police reporter I have covered many murder investigations. I have seen police officials drag in dozens of persons a day for intensive questioning—just for the record and without any real belief it would aid solution of the case."

The main reason for questioning a suspect in a police station is the coercive influence of arrest and incommunicado detention. The police can question anyone at any time without placing him under arrest. But he may refuse to speak and cannot be forced to answer questions. A man who is restrained and held in isolation from the outside world is more likely to answer questions. This is borne out by the widespread practice of the Chicago police of refusing to allow an arrested person to call a lawyer before he is questioned. It is said that the lawyer will advise him of his right not to answer questions and the police will then find it more difficult to gather the evidence they need to solve crime.

But arrests based on suspicion for the purpose of interrogation are made in flat disregard of the law. The requirement that prisoners be brought to court promptly after they are arrested is intended to prevent just such police misconduct.

As the Illinois Supreme Court has said:

> Our statutes are intended to insure that persons who are arrested shall not be detained without reasonable cause, and to afford them an opportunity to be released upon bail. The fact that there is as yet insufficient evidence to justify preferring charges against a criminal suspect is not an excuse for detention, but is precisely the evil which the statute is aimed at correcting. *Fulford* v. *O'Connor*, 3 Ill. 2d 490, 500 (1954).

> whatever you want is to deprive him of sleep beyond the point of normal exhaustion, questioning him endlessly. Frank & Frank, *Not Guilty* (New York, 1957) p. 181.

Judges have correctly understood that the heart of the problem of prisoner mistreatment lies in the practice of secret detention.

> The procedure breeds coerced confessions. It is the root of the evil. It is the procedure without which the inquisition could not flourish in the country. *Watts* v. *Indiana,* 338 U.S. 49, 57 (1949) (Douglas, J., concurring).

Laws requiring the prompt production of prisoners in court, the United States Supreme Court tells us, are intended to outlaw those

> easy but self-defeating ways in which brutality is substituted for brains as an instrument of crime detection. *McNabb* v. *United States,* 318 U.S. 332, 344 (1943).

POLICE BRUTALITY AND THE CONVICTION OF THE INNOCENT: THE CASE OF LESLIE WAKAT

In the late afternoon of September 21, 1946, Leslie George Wakat was arrested by Chicago police officers "for investigation." On September 23, a relative learned his whereabouts and his wife contacted an attorney who at once filed a petition for habeas corpus on behalf of Wakat. On September 24, Judge Harold G. Ward ruled that Wakat's detention was illegal and ordered his release.

Four hours after Judge Ward's decision, the Chicago police rearrested Wakat "for investigation."

For the next three days, the police held Wakat at the Town Hall Police Station. Soon after his re-arrest, his lawyer attempted to confer with him. He went to the police station, saw that Wakat was in one of the offices there and started toward him. "When I tried to step into the room," Wakat's attorney said, "an officer jumped up and said, 'who the hell are you?' He told me to go into the outer hall and then closed the door. A lieutenant then came out and I told him I represented Mr. Wakat and should be

manner in which Wakat had sustained his injuries ("He grabbed for my revolver and we both tangled and fell down the stairs about 25 or 30 feet"[4]) was demonstrated to be false. According to expert medical testimony, certain of his injuries could not possibly have occurred in the manner claimed by the police.[5]

The Wakat case illustrates the inadequacy of existing legal sanctions against secret detention and police brutality. The laws requiring production of prisoners in court promptly after arrest and the law forbidding imprisonment for the purpose of obtaining a confession were simply ignored and the offenders were not prosecuted. Although a total of 12 Federal court jurors and 12 judges in State and Federal courts found or approved findings that Sgt. Peter Harlib beat Wakat in order to secure a confession and Judge Graber of the Criminal Court of Cook County found that Harlib had lied about material matters in the Wakat case,[6] no disciplinary action has ever been taken against Harlib by his superiors. This is in spite of repeated unanswered communications on the subject from ACLU to Police Commissioner O'Connor.

Wakat's was the rare case in which a prisoner convicted on the basis of a coerced confession was able to prove what happened, obtain a new trial and recover damages in a civil action. But no one can contend that these remedies were adequate to accomplish the purpose of the law, which is to prevent such misconduct, not to put a price on it.

COERCIVE INTERROGATION AND POLICE EFFICIENCY

Police brutality and the conviction of innocent persons are inevitable when police come to rely on coercive interrogation as a major tool in criminal investigation. What is frequently over-

4. Testimony of Sgt. Peter Harlib, in *People* v. *Wakat,* Illinois Supreme Court Gen. No. 32829, Abstract of Record, P. 20 (1953).

5. Testimony of Dr. Alfred Lipsey, in *Wakat v. Harlib,* et al., U.S. Court of Appeals, Gen. No. 12151, Appellants' Appendix, p. 29, Record, pp. 443-48 (7th Cir. 1958).

6. Statement of Judge Graber, *People* v. *Wakat, op. cit.,* n. 4, Abstract p. 30, Record, p. 308.

THE EXTENT OF SECRET DETENTION BY THE CHICAGO POLICE: Results of the ACLU Study

IN MAY 1957, spurred by the controversy over the 90-hour tention without charge of Edward "Bennie" Bedwell in the Grin murder investigation, the Illinois General Assembly passed a l intended to clarify existing law by requiring the police to produ their prisoners in court "forthwith" upon arrest. House Bill N 215 in Senate, 70th General Assembly (1957). (The existing l requires production in court "without unnecessary delay.") T bill was vetoed by Governor Stratton after Police Commissio O'Connor and State's Attorney Adamowski had said that the lc secret detention was a rarity and that the bill would please "o the criminal element." *Chicago Daily Tribune,* May 29, 19

Most public discussion of the "forthwith" bill assumed that persons victimized by long incommunicado imprisonments wer comparatively limited number of "criminals" who occasiona were held too long. Virgil W. Peterson, director of the Chica Crime Commission, speaking with reference to court decisions a statutes outlawing secret detention said, shortly after the "forthwit bill was vetoed, that such doctrines "give criminals more pr tection than law abiding citizens." In the same speech, Peters referred to the "rights, mostly imaginary, of persons accus of crime." *Chicago Tribune,* Sept. 4, 1957. Some months lat Peterson stated, with reference to the "forthwith" bill among othe that "It is a sad commentary that proposed legislation which ai the criminal appears to be passed with ease." Peterson, *A Rep on Chicago Crime in 1957,* Chicago Crime Commission (195 36.

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Governor Stratton did concede that:

> It is probably true that under the present statutes there have been some abuses. Veto message, Illinois State News, 655**57**Bi.

But some of the legislators who passed the "forthwith" bill were convinced that secret police detention was a widespread practice. During the Illinois Senate Debate, Senator Marshall Korshak stated that "During my service in the Cook County State's Attorney's office, I learned that in many cases police held prisoners for two or three days before booking them." *Chicago Daily Tribune,* May 28, 1957:

The discussion of the "forthwith" bill made it clear that an objective study of the facts was necessary.

The ACLU has completed that study; this is its report. It is the first systematic effort ever undertaken in the United States to determine on an empirical basis the frequency and length of secret detentions by a municipal police department.

The ACLU study was based upon raw data obtained from 2038 Chicago Police Department "Arrest Slips." In every case where an individual is arrested, charged with an offense and taken to court, a copy of the police department's basic prisoner record —the arrest slip—is attached to the Municipal Court file on the case. These files are public records, and constitute the official court history of the particular case, from arrest to final disposition by the Municipal Court.

Thus, official court files containing copies of the Chicago Police Department's own records constituted ACLU's source of information concerning the frequency of lengthy secret detentions by the Department.

The 2038 cases sampled by ACLU were drawn from drawers in the file vault of the Municipal Court which contain almost all the non-traffic criminal and quasi-criminal[1] case records for the year 1956. ACLU's researchers had no knowledge of the contents of any file prior to the moment of its selection; the files were "picked blind" without conscious bias. The researchers abstracted the rele-

1. Quasi-criminal offenses are those created by ordinances of the City Council, such as the disorderly conduct ordinance. Criminal offenses are defined by acts of the General Assembly.

vant data from each of the files so chosen, and these data we subsequently tabulated and checked and double-checked again the original work sheets of the samplers. A description of t sampling methods used is contained in Appendix B.

On every arrest slip the arresting officer is supposed to ent the "Time and Date Arrested" and the "Time and Date Booked The length of detention without charge is the period betwe these two times. The term "booking" is crucial. "Booking" mea the time when the policeman enters a formal charge against t prisoner, sets the amount of bail (in minor cases) and designat the branch of court to which he will be taken.

Ordinarily in Chicago a prisoner is held incommunicado unt he is booked. His family does not know where he is; he is n allowed to call a lawyer. On occasion a prisoner's lawyer do learn he is under arrest before he is booked. But more often t prisoner is held incommunicado until he is booked. It is this perio before booking—and this period only—that the ACLU stud covers.

But the situation in Chicago is really much worse than t study indicates.

For booking does not fulfill the legal requirement of a prom hearing before an impartial magistrate. Only appearance in cou or release on bail can do that. Booking takes place in the poli station—and after a prisoner is booked, if bail is not set or if he ca not make bail immediately, he may be held much longer before h appears in court. So this period of additional detention *after* book ing should be added to the period *before* booking. This the ACL study does not do, since figures are not available. Thus, the ACL study significantly understates the actual length of detentions i the cases which were sampled.

The ACLU study also understates the extent of secret dete tions because the police frequently fail to enter the "Time and Da Booked" on the slip, thereby rendering it impossible to ascerta the length of detention prior to booking from the court file. Th was true in approximately one-third of the cases examined in th ACLU study. The Detective Bureau, which has long been notoriou

as the Police Department's most flagrant violator of the rules which require prompt booking and production of prisoners in court, nearly always fails to record the time and date of booking on the copy of the arrest slip which is attached to the court file.

Sixteen branches of the Municipal Court of Chicago dispose of nearly all of the criminal cases brought before that court. ACLU's researchers concentrated upon case files recording proceedings in nine of these 16 branches. The reasons for choosing these nine branches are described in Appendix B. A total of 1686 case files from these nine branches were analyzed.

The nine court branches are listed in the charts on the following pages. In addition to the 1686 cases involving these nine branches, a total of 352 cases from eleven other branches were sampled. The data concerning these cases is reported in Appendix D.

Among the significant facts revealed by the ACLU study are the following:

50% of the police prisoners produced in Felony Court have been held without charge for 17 hours or longer, according to the ACLU sample of 334 cases. Another 30% could not be accounted for in terms of pre-booking detention because of police failure to complete the arrest slip. Only 20% of the files showed on their face that the defendant was booked within 17 hours of his arrest.

Nearly 10% of the defendants produced in Women's Court had been held for 17 hours or longer without charge. Another 29% of the 185 cases in this sample were held for unknown lengths of time.

45% of the 242 Narcotics Court cases examined involved defendants who were held 17 or more hours prior to booking. Another 42% could not be accounted for because of police failure to complete the arrest slip.

One out of every ten Felony Court defendants in the sample had been held for 48 hours or longer. One out of every 20 had been held for 60 hours or longer. One out of every 40 had been held *for at least three days,* before he was charged with an offense.

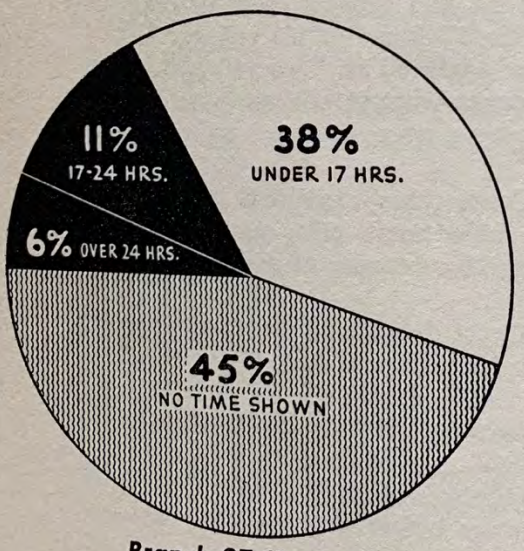
A projection of ACLU's sample of cases in Branch 44 (Felony Court) indicates that in 1956 approximately 3600 defendants in that court were held for 17 or more hours before they were booked.

Similarly, it appears that approximately 700 of these 3600 prisoners were held for two days or longer prior to booking.

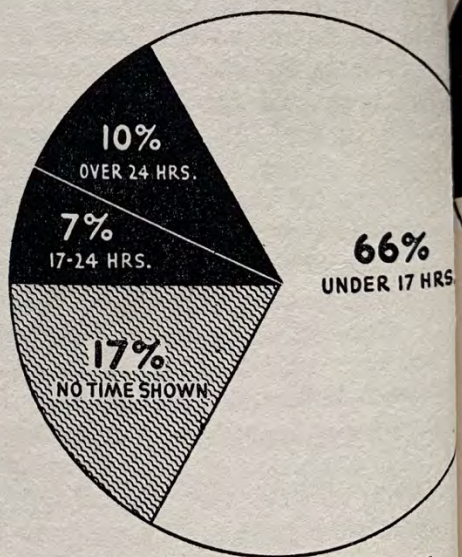
A projection of the ACLU sample indicates that in the nine branches studied approximately 20,000 defendants were held for at least 17 hours prior to booking in 1956. About 2000 of these defendants were held for two days or longer. Approximately 800 of these were held for 60 or more hours. Approximately 350 were held for at least three days without charge, without bail having been set, without any vestige of "due process of law" having been accorded them. These figures are for the nine court branches included in the ACLU Study. They do not include any estimate of detentions in the other branches of the Chicago Municipal Court which handle criminal and quasi-criminal matters.

The following charts summarize the results of the ACL study. Complete figures are in a set of tables contained in Appendi C to this report. Appendix A consists of a technical analysis the ACLU study prepared by Messrs. William Kruskal and Pa Meier of the University of Chicago Department of Statistics.

Length of Detentions between Arrest and Booking in Cases Broug to Nine Branches of the Municipal Court of Chicago during 1956

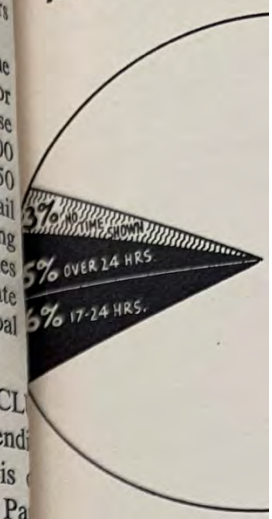


Branch 27 (Rackets)

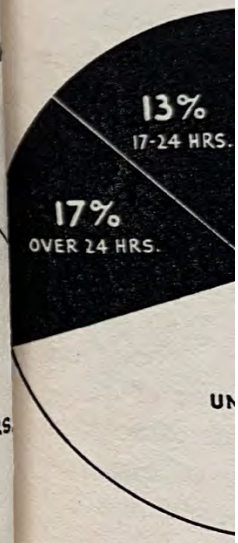


Branch 34 (Wabash Ave.)

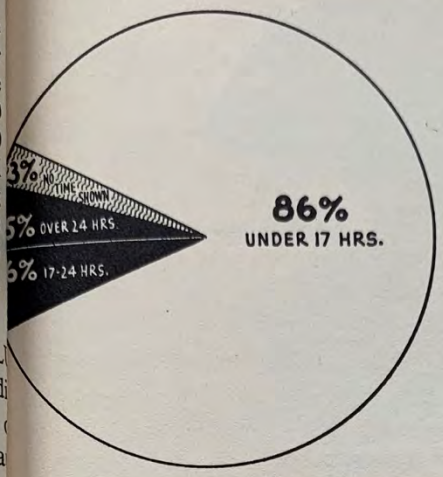
SECRET DETENTI



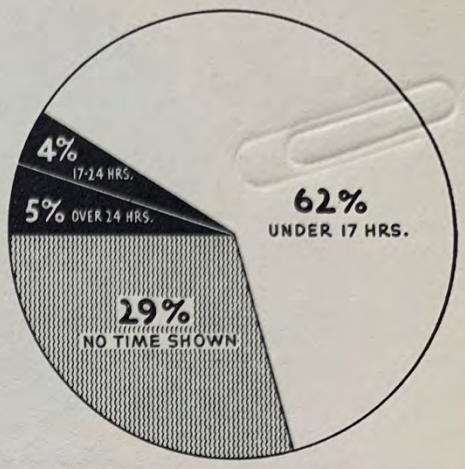
Branch 36 (G



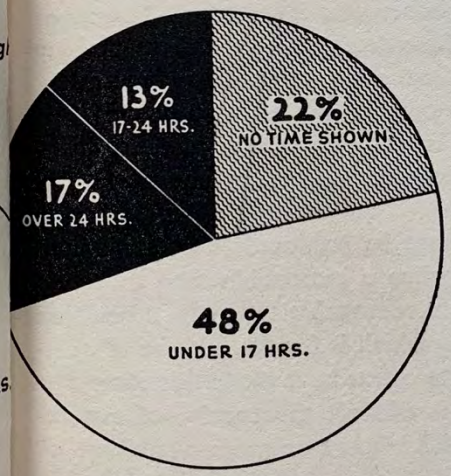
Branches
(Boys and



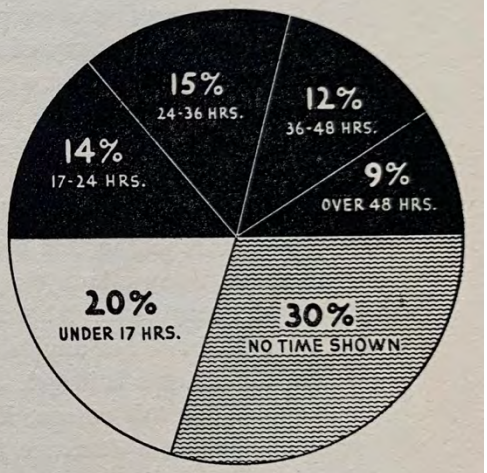
Branch 36 (Grand Crossing)



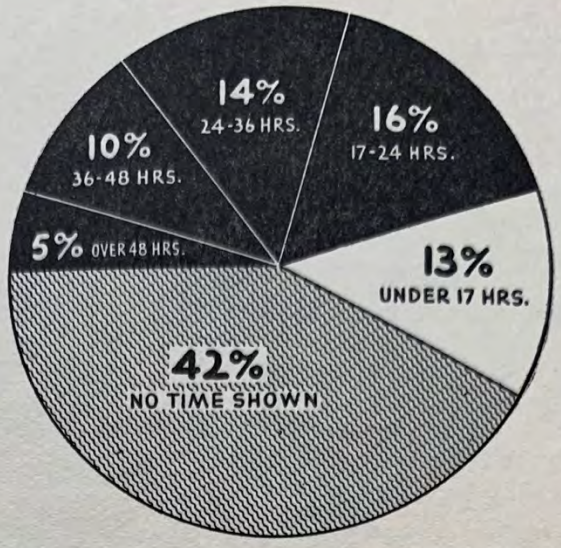
Branch 40 (Women's)



Branches 42, 42A, and 55
(Boys and Allied Branches)



Branch 44 (Felony)



Branch 57 (Narcotics)

The ACLU study proves that lengthy secret detentions are no exceptional abuses, they are a regular police practice in Chicago. This is not to say that every prisoner who is held for 17 hours o more is mistreated. Many of these detentions are due to nothing more than waiting to book a prisoner until the officer who arrested him on one day appears for his shift of duty on the following day. This type of unnecessary delay is not detention for the purpose of questioning but represents an inexcusable indifference to the law and the rights of prisoners.

The law requiring that persons be produced in court without unnecessary delay allows the police a reasonable time to get to the nearest magistrate. What is a reasonable time will depend on the circumstances. But any delay which is for the purpose of questioning the prisoner is illegal. The courts have made this clear time and again. For this reason, it is difficult to conceive of circumstances in which a detention of 17 hours or more would not be illegal.

A complete list of the relevant data in each of the 2038 cases surveyed in this study is available in the ACLU office in Chicago for examination by any interested persons. Each case is identified by its Municipal Court file number.

Exhibit I is a photostatic copy of the official arrest slip—an actual recent case.

III

CONCLUSIONS AND RECOMMENDATIONS

> We are not sentimentalists; we don't believe in "coddling" men accused of crime. We stand for swift and vigorous prosecution and oppose the practices which we have pointed out not merely or even chiefly because they are unlawful, but because in the long run they do much more harm than good.
>
> *Report,* COMMITTEE ON LAWLESS ENFORCEMENT OF LAW, SECTION ON CRIMINAL LAW AND CRIMINOLOGY, AMERICAN BAR ASSOCIATION, p. 17 (1930).

THE ACLU STUDY proves what has long been common knowledge among lawyers and other persons familiar with the operations of the Chicago Police Department—that the practice of holding persons for substantial periods of time in seclusion without bringing them to court is so widespread as to constitute organized police lawlessness.

To a greater degree than perhaps any other servant of government, the police officer is in personal contact with the everyday life and people of his community. To millions of Americans he symbolizes government and the ultimate functions of organized society: protection of life and property, enforcement of the public peace. In a real sense the police officer *is* "the law" to these people. He is the living manifestation of our common determination to preserve order and protect ourselves from those who would invade our "rights."

When the policeman himself becomes an agent of lawlessness, when the most conspicuous representative of public justice violates the very canons he is sworn to enforce, then cynicism flourishes, our society becomes increasingly brutalized and our liberties are endangered.

This report contains serious charges against public officials, charges which are not made lightly. In making them, the American Civil Liberties Union emphasizes that it is not questioning the character or motives of the men entrusted with leadership of the Chicago police. It is calling attention to a police practice which has been with us for years but which we believe violates the letter and the spirit of our fundamental law.

The values at stake were eloquently stated a generation ago by the late Supreme Court Justice Louis D. Brandeis:

> "In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for laws; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution.
>
> *Olmstead* v. *United States,* 277 U.S. 438, 485 (1925).

The police in Chicago frequently attempt to justify their disregard of the law on the ground that they have a difficult job to do. But the practice of secretly holding arrested persons for the purpose of questioning them in a police station is not only a violation of personal liberty; it is also a poor substitute for effective police work. History demonstrates that whenever the police are permitted this arbitrary power, the inevitable abuses are accompanied by a deterioration in police efficiency.

Our police are entitled to all of the public support which they need in order to do a good job, including increased funds to pay adequate salaries and attract men of good caliber and to make use of the most modern crime detection techniques. But they must not

be allowed in the interests of false expediency to sacrifice any of the personal rights which constitute the hallmark of civilized government.

The citizens of Chicago and Illinois are not helpless in the face of the institutionalized violation of civil liberty described in this report.

Specific steps can be taken. Some of them are suggested here.

1. Substantially increased appropriations for the Chicago Police Department should be included in the next annual budget submitted to the City Council. These appropriations should be for the purpose of increasing police salaries, improving police selection and training and taking all other possible action to insure that Chicago has the most efficiently manned and equipped police department which can be obtained.

2. The Police Commissioner should promulgate a police department rule stating that all arrested persons are entitled to contact their families and attorneys upon request, and this rule should be prominently posted in all police stations where it will be seen by all prisoners. Vigorous disciplinary action should be taken against any officer found guilty of violating this rule.

3. The police should be required by law to advise all arrested persons that they are not compelled to answer any questions, that any statements which they make may be used against them, and that they are entitled to call a lawyer and their family. Police interrogation of prisoners who do not consent to being questioned should be forbidden by court rule. This is the practice followed by the agents of the FBI and the police in England, both forces which have an excellent law enforcement record.

4. The Commissioner of Police should be required, either by Municipal Court rule or by city ordinance to account each day to the Chief Justice of the Municipal Court for the prisoners currently in police lockups, giving their names, the time and date of their arrests, and the reason for their continued detention. Such report should be a matter of public record, so that the public can know at all times the frequency and length of prisoner detentions by the police department.

5. The Municipal Court of Chicago should formally promulgate a rule of court under which any judge of that court would be empowered to cite for contempt any police officer found to have been responsible for the illegal detention of a prisoner whose case is eventually brought before him. The Municipal Court has ample power to enact such a rule. By statute, the Illinois General Assembly has made Chicago police officers *ex officio* bailiffs of the Municipal Court. Clearly, given this status, any officer who wilfully breaks the law by holding a prisoner for an unreasonable time before bringing him to court could be held responsible through the contempt procedure.

6. The Illinois General Assembly should enact a statute making inadmissible in evidence at a criminal trial any confession obtained from the defendant in the course of an illegal police detention. This rule would make impossible the conviction of innocent men from whom false confessions have been extorted by violence or psychological coercion. This rule is presently the law in all criminal cases tried in the Federal courts.

7. The States Attorney should begin to enforce the criminal laws against police officers who violate the rights of prisoners.

8. The mayor should establish an independent bureau to receive citizen complaints against members of the police department. This office should be staffed by civilians and located away from City Hall in order to make it clear that all charges of police misconduct will be impartially investigated.

Other measures are required to make this program effective.

The Mayor must require the Commissioner of Police to assert his command powers in an effort to stop illegal detentions by his subordinates. The Department has long been notorious for nonfeasance when it comes to taking action against those in its own ranks who break the law. A current example is the Department's inaction in the case of Sgt. Peter Harlib, described in Part I of this report.

In so acting, Mayor Daley will then be only carrying out his campaign pledges made in the last election when, in response to an ACLU questionnaire which was sent to both mayoralty candi-

dates, he committed himself to a policy of law enforcement against police officers who break the law by holding prisoners illegally. The ACLU questions and Mayor Daley's responses were as follows:

QUESTION: Will you require the police to book every prisoner immediately after arrest?

ANSWER: Yes.

QUESTION: Will you require the police to bring all prisoners to court on the day arrested, if possible, and not later than the following morning?

ANSWER: Yes.

QUESTION: Will you require disciplinary proceedings to be brought against any member of the Police Department who violates either of the foregoing requirements?

ANSWER: Yes.

Chicago's newspapers and its bar also have vital responsibilities. American lawyers and journalists have traditionally been our indispensable first line of defense against invasions of constitutional liberties. Theirs is the duty to inform the public and to press for needed reforms. One of Chicago's leading newspaper executives recently urged mid-western publishers to "keep the eternal spotlight of publicity on public servants." This spotlight must be as aggressively and constantly focused upon violations of civil liberties in the police and criminal law field as it is on the handling of public moneys.

EXHIBIT B

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff,	)	
vs.	)	No. 14 CR 02583-01
CHRISTOPHER DOEHRING,	)	
Defendant.	)	

REPORT OF PROCEEDINGS had in the hearing of the above-entitled cause, before the Honorable WILLIAM G. LACY, Judge of said Court, on Tuesday, the 13th day of February, A.D., 2018.

APPEARANCES:

HON. KIMBERLY M. FOXX,
State's Attorney of Cook County, by
MS. ERICA DILLON,
Assistant State's Attorney,
appeared on behalf of the Plaintiff;

MRS. AMY P. CAMPANELLI,
Public Defender of Cook County, by
MR. CHRISTOPHER ANDERSON,
Assistant Public Defender,
appeared on behalf of the Defendant.

Siobhra Redmond
Official Court Reporter
2650 South California, Room 4-C02
Chicago, Illinois 60608
CSR #084-004552

I N D E X

PEOPLE vs. CHRISTOPHER DOEHRING
NO: 14 CR 02583-01
DATE: 02-13-2018
JUDGE: Honorable William G. Lacy
REPORTER: Siobhra Redmond
PAGES: 1 through 61
PROCEEDINGS: Motions in Limine and Motion to Suppress Statements

WITNESSES:	DX	CX	RD	RC
ANTHONY GREEN				
By Ms. Dillon	24		47	
By Mr. Anderson		42		

CLOSING ARGUMENT:
By Mr. Anderson - P. 49
By Ms. Dillon - P. 52

REBUTTAL ARGUMENT:
By Mr. Anderson - P. 56

THE CLERK: Christopher Doehring.

MR. ANDERSON: Chris Anderson, assistant public defender, on behalf of Mr. Doehring who is present before the Court.

Your Honor, we're here on defendant's six pretrial motions. We are ready to proceed.

MS. DILLON: Assistant State's Attorney Erica Dillon on behalf of the People. We are also ready to proceed.

I believe --

MR. ANDERSON: We've agreed on the order in which to present these. The first one will be defendant's motion in limine to bar evidence of gang reference, activity, affiliation or motive.

THE COURT: Okay.

MS. DILLON: Your Honor, we would not be objecting to this. The State does not intend at this time to present any evidence with regard to gang references, activity or affiliation or as the motive and the intent to commit this crime.

THE COURT: Therefore, that motion is granted.

MS. DILLON: If for some reason something comes to our attention prior to trial, we of course will ask to revisit it.

THE COURT: Just ask for a sidebar.

MS. DILLON: Correct.

THE COURT: Okay.

MR. ANDERSON: The second one is motion to bar the use of evidence of prior conviction to impeach the credibility of the defendant should he testify, also known as a Montgomery motion.

There's two convictions. We'd ask your Honor to preclude those. I believe one of those may possibly be outside the ten years, maybe not, aggravated unlawful use of weapon. He was given two years probation. That was an '09 case. The other one is a home invasion, 2010 case. He was given seven years IDOC.

In any case we believe both of those, that the prejudicial value would greatly, substantially outweigh any probative value if he testified, particularly in this case because in this case defendant is accused of basically a home invasion to rob or kill a person that was suspected of having drugs and then kill him and his girlfriend in their bed. So both of these.

You know, one is a home invasion. Obviously that would be -- The jury, even if it were allowed to impeach the defendant, they would say, well, he's at it again. He must have committed a home invasion on this case.

With respect to aggravated unlawful use of a

weapon, this would, you know, lead the jury to believe well, not only -- maybe he's lying being a felon, but he had a gun before. He must have had a gun again which is a major allegation in this case by many of the witnesses.

With that, your Honor, we'd ask that you -- under the balancing test that you exclude those should he testify.

MS. DILLON: Your Honor, the State's position in this matter is that of course any prior conviction of the defendant is often prejudicial to this defendant. And these particular cases, both of them fall within the guidelines as suggested by Montgomery. The defendant in fact entered a plea of guilty as to both of those counts -- both cases, excuse me, and we believe that should the defendant choose to testify that these two convictions are more probative than prejudicial and ask that they be allowed to impeach his credibility as allowed by Montgomery.

THE COURT: Okay. Is there any dispute as it being within the ten-year timeframe?

MS. DILLON: Not that I can tell, Judge.

THE COURT: Why would you say --

MR. ANDERSON: No.

THE COURT: No, okay.

MR. ANDERSON: It -- I just -- At first glance it looked like possibly the aggravated unlawful use of a weapon but, I mean, we're still 2018, so...

THE COURT: Right, right. Okay. The Court finds with regard to these prior convictions, certainly they fall within the ten-year period. There's no dispute about that as I've just cleared up. They are also felonies publishable by time in the penitentiary. So the question becomes are these convictions more probative than they are prejudicial to the defendant.

With regard to the issue of credibility, the Court finds that when the defendant takes the witness stand, he places his credibility before the trier of fact, be it a judge or a jury. And whoever the trier of fact is must weigh that credibility against the credibility of the witnesses presented by the prosecutor's office.

The Court finds that the conviction for aggravated unlawful use of weapon would be highly probative as to the defendant's credibility should he elect to testify as well as the home invasion.

The Court will also state that if those are introduced into evidence in rebuttal or they are fronted

by the defense, certainly the Court will tender to the jury a curative instruction with regard to what the purpose of these convictions are for, that they are solely for the purpose of -- as these convictions affect the defendant's credibility and his testimony at the time of the trial.

So the motion to bar these prior convictions will be denied.

Now, what is the next one?

MR. ANDERSON: The next one is motion to bar lay witness testimony as to caliber of weapon -- weapons.

In this case we expect that the crucial thing -- First of all, the murder weapon is not recovered, that they -- That's not going to be presented. But there's an issue about the murder weapon's caliber being the same as what witnesses have described defendant being seen with in the past. So we expect that -- And basically a .380 and co-defendant is alleged to have had a .22-caliber.

We believe pursuant to the case that we cited People vs. Hawkins, First District from 1980, 78-502, that it's improper for those lay witnesses to testify as to the caliber either of the co-defendant or defendant, what they saw them with before, unless some sort of

foundation is established that they would be able to say what kind of caliber that is. They may have experience with weapons, maybe it's because they allege defendant told them or co-defendant told them, maybe they examined the gun, something of that nature, but just to say hey, it's this caliber of weapon pursuant to Hawkins we think is not permissible and we ask that they not be allowed to do that.

THE COURT: Under what theory do they get to say they saw him with a weapon before? I don't -- I'm not following that part.

MS. DILLON: I think what the defense is trying to elicit is the fact that several of these witnesses are with the defendants in this case before, during and then after. Various witnesses are with him before, various witnesses are with him during or an approximate time that the crime has occurred and then some are with him immediately after the time the crime has occurred.

THE COURT: I see.

MS. DILLON: So as a result I believe it could be elicited from multiple witnesses either based upon statements of the defendant at the time that they were there that you may have, been elicited during the course our co-conspirator's statements --

THE COURT: Right. Okay.

MS. DILLON: -- with co-defendant in this case --

THE COURT: Right.

MS. DILLON: -- as to a mention of the caliber of weapon and things of that. Of course, Judge, we completely understand and believe that in this case it's -- at this point it would be premature. Obviously if we can't lay the proper foundation as to how they have knowledge, if in fact it's because they saw it at some point during the course of the day, that it was described to them or somehow that hasn't been tendered, we would of course tender those statements to the defense and it would be subject to them for cross-examination if it's not something that's already -- that they already have knowledge of either through statements to the police, handwritten statements, grand jury testimony or videotaped statements.

So we believe that's premature and obviously if we can't lay the proper foundation, we don't believe we would be able to elicit that testimony.

MR. ANDERSON: Just to clarify, this is not regarding witnesses testifying about merely seeing a gun or describing the coloring or something. This just goes

to them saying what caliber it is without some additional foundation.

THE COURT: Well, I guess I'll grant your motion. If they can't lay the proper foundation, then you can ask for a sidebar before they answer any further questions.

So you're right, it's premature but at the same time, I'm going to grant the motion because you have to lay the foundation.

Okay. Next is the jail phone calls.

MR. ANDERSON: Yes, motion to suppress or bar jail phone call testimony.

There are numerous -- I mean, a lot, I can't remember off the top of my head, but dozens of phone calls made by the defendant when he was being held on another case from the jail to people outside the jail. These were recorded. I believe that the State essentially intends to introduce one of those phone calls where the defendant is supposedly within a conversation with a witness that the State may call at trial and essentially is discussing something about this case. And we believe that that is not admissible unless there was some sort of foundation from the State, one, that it was lawfully recovered and, number two, that

there is -- that there wasn't some sort of privacy expectation about that phone call. Essentially it's a wire tap situation and precluded unless the State can establish some exception to that statute, your Honor.

THE COURT: This isn't the type of phone call where they're repeatedly saying --

MS. DILLON: Oh, it is.

MR. ANDERSON: It is.

MS. DILLON: It is, Judge.

MR. ANDERSON: They're repeatedly saying you're being recorded.

MS. DILLON: And use of the system is your consent to being recorded.

THE COURT: Okay. Do you want to argue any further?

MS. DILLON: The only other point is I believe counsel also put in a paragraph with regards to impermissible opinion testimony. And I guess it has to be case specific, specifically if the person who he's engaged in the conversation with can specifically identify what the conversation is about. I understand that. But I believe -- I think if he's -- it may be referencing the fact -- trying to elicit from maybe perhaps a police officer or someone else opinion testimony from them what did he mean by that if he

wasn't actually an active participant within the call. I believe if that's --

Is that correct, Mr. --

MR. ANDERSON: That's correct. Basically there's this -- something about -- this was CP and Sunny, meaning, like, Central Park and Sunnyside. That was -- We're talking about that. So that's what we're trying to address is someone testifying, hey, that's what was meant by this. We believe that that's opinion -- Impermissible opinion testimony is one thing, if it's admitted, if the Court allows it -- for it to be played to the jury or a discussion of what was said. It's another thing to then interpret that, what that actually means.

THE COURT: You mean like some -- like she was saying, an officer --

MR. ANDERSON: An officer or the participant to the phone call, the one that was being called, this is what I meant by that, because there's no way to get into the head of the defendant and it's irrelevant what the witness thought it meant. It is what it is basically. If you do allow it which we're objecting to, if it is allowed, we believe it should just, you know, be played for the jury and then they could make their own

interpretation and be left to perhaps closing arguments as to what that meant, but we think that the conversation speaks for itself.

THE COURT: Okay. Well, I think the statements are admissible given if it's -- if they're the typical telephone conversations that I've heard in many other cases where they're repeatedly being warned basically that whatever is said on the tape can be used against them, that -- and that they are consenting to the tape -- to the recording of the conversations that are taking place between whoever is on either line on the phone and that's for both parties that are on the phone. So they would be admissible as defendant's statements and if there's admissions, there's admissions.

But with regard to the impermissible opinion testimony, I agree with you with regard to any third party who is not subject to -- subject of the conversation -- I'm sorry -- a participant in the conversation. As to someone who is participating in the conversation, I think I would have to listen to the testimony to see to what type of foundation is laid, whether perhaps that individual's state of mind becomes relevant because what they thought the conversation was about, you're right, maybe it's perhaps something

different than the defendant's -- defendant thought the conversation was about, but I'm not going to preclude them from saying what they believed they were talking about and perhaps they can even illuminate why they think that the particular area was what they believe the conversation was about, if that makes any sense.

MR. ANDERSON: It totally does. I believe I understand it, your Honor.

Also one other additional thing was we -- there is some sort of other crimes evidence also on some of the jail recordings. I don't know if the State is seeking to introduce those.

As I told you, there's numerous jail recordings. The primary one that we think they're going to introduce is the one about, hey, it was a sting at CP and Sunny. Other conversations talk about drug sales, defendant supposedly directing a witness to get a Glock or had a Glock or something like this that really don't have anything to do with this case but they're other crimes evidence and we believe that that would be substantially prejudicial and should be barred.

MS. DILLON: Judge, our position is that hopefully by the next court date which if it's going to be the same as the co-defendant, we'll let, you know, obviously

the defense know if in fact we're going to elicit any other crimes evidence. I don't foresee it at this point. I believe it would all be pertinent to the case before your Honor and the jury at that time. But I'll be more specific as to which calls we intend to use.

THE COURT: So he'll know before we go to trial --

MS. DILLON: Absolutely.

THE COURT: -- which statements -- Okay. And then --

MS. DILLON: But of course having knowledge of all the calls should something come up should the defendant choose to testify --

THE COURT: Well, that's a different story.

MS. DILLON: Exactly.

THE COURT: But then we would take a sidebar to discuss those. Okay. So ...

MR. ANDERSON: Do I take it the other crimes issue is we're -- we're not sure yet because we don't know --

THE COURT: We'll hold it in abeyance until she tells you what conversations they're going to use and then you can bring it back up again if that becomes an issue or you can file another crimes motion. Okay.

MR. ANDERSON: The next motion is to bar course of investigation testimony unless permitted in a Cameron

hearing. That's C-A-M-E-R-O-N.

Basically a Cameron hearing is where the State seeks to introduce basically a detective usually testifying here's how I went about this investigation. I talked to so-and-so. After I talked to so-and-so, I did this or then I did this, things of this nature. And -- So that triggers the Court to -- when the defense raises the issue to determine is that going to elicit hearsay testimony or the implication of hearsay testimony? In other words would that suggest to the jury this out-of-court witness telling the detective something incriminating about the defendant when that person never testified and what is the need for the State to present that evidence.

Here we think that that evidence should not come in. It's primarily -- The main one is a witness who we don't believe is even going to testify essentially tells the detectives, there's a witness, Mr. Hough, told me about conversations defendant had with Mr. Hough about this case. So then the police go and talk to Hough and the investigation goes from there. And then they talk to numerous other witnesses who probably will testify and based on those testimonies eventually arrests are made. So we think it would be improper for that

evidence to come in obviously unless those people testify initially as to what they said.

THE COURT: So you're talking about the actual statements themselves, not the fact that the police talked to somebody and then --

MR. ANDERSON: Well, we think it would be especially -- well, the statements themselves but especially with respect to the first person I mentioned, the one where they go and talk to a witness --

THE COURT: Okay.

MR. ANDERSON: -- who leads them on the trail to go talk to the third-party confession witnesses. We don't even think that that person is going to testify but that would be particularly damaging because it would suggest that this nontestifying witness sort of corroborates everything that the testifying witnesses say.

THE COURT: Okay. So the officer goes testify to this you say nontestifying witness and then they go to look and talk to some -- to Hough.

MR. ANDERSON: Right, to third-party confession people and hey, look, that verifies everything else. That would be very, very damaging and we think it would be improper unless there was this other person that testified.

THE COURT: Okay. State.

MS. DILLON: Judge, as the Court is well aware, this case started in 2009 with the murders of the two victims in this case, Angelina Escobar and Alex Santiago. One defendant was charged in 2010 after approximately 18 months of investigation. The second defendant was added in 2014, which is the case before your Honor. So this isn't a simple situation where you can completely disregard all the work that the police did to get to where they -- where we were today.

Course of investigation testimony is proper. It's been held proper multiple times. It's appropriate to introduce course of investigation evidence within the parameters of the general rules of evidence. It's premature at this point to try and determine what the detective is going to testify to until -- for the most part many times in cases like this until that jury is standing outside and waiting to be picked do we know who the witnesses are going to be that will be presented. And of course we would have to stay within the guise and guidelines of the general rules of evidence. Should something come up that would be appropriate for objection, the time for that is actually at trial. And even if you look at the case of the People of the State

of Illinois vs. Benjamin Cameron, the case that's cited in this at 546 N.E.2d 259, that court actually mentioned that the hearing should have been done during the course of the trial, not before trial, not to determine what the witness is going to be allowed to say, it was as the trial was presented.

In addition the other two cases that counsel cites which is People vs. Thompson which is 2016 Ill App 1st 133 648, an opinion filed in March of 2016, again they bring up the fact that it's the basic rules of evidence and if sometimes some -- there's occasion when things may come in but then it goes into a balancing factor of whether it's a harmless error or not. If the court is given a curative instruction should something slip out, all of these cases have decided it's all during the course of trial. It's not done ahead of time.

So what we would deem to present to the Court is let the course of investigation testimony play out, they're usually one of the last witnesses you hear from, you'll have known at that point who all the witnesses the State presented are and of course we would be limited to what we have been able to present at that time without eliciting additional hearsay testimony that

would somehow violate the defendant's rights to a fair trial.

MR. ANDERSON: I've tried other cases with Ms. Dillon and she's never really, you know, done this, so ...

MS. DILLON: Never really? How about just never.

MR. ANDERSON: No, she's never done it. This is out of caution bringing the Court's attention to the issue of the Cameron hearing. And obviously the procedure that she suggested is probably the right way to go about it, as the witness is testifying we could ask for a sidebar for you to conduct such a hearing at that time.

THE COURT: Okay. Well, certainly the Court would not allow the testimony of an out-of-court statement that the State wishes to use for the truth of the matter asserted. Obviously that's hearsay and that would be inadmissible. But as Ms. Dillon has pointed out, the courts have on numerous occasions allowed for the testimony of course of investigation as we commonly refer to it. In People vs. Ochoa, 217 Ill App 1st 140 204, they cited People vs. Gacho, G-A-C-H-O, 122 Ill 2d 221, holding that it was permissible for a police officer to testify that after he spoke to the victim, he went to look for the defendant but indicated that it

would -- but the court indicated that would have been error for the officer to testify to the contents of that conversation.

In fact, in People vs. Sims, 143 Ill 2d at 174 the court has stated that testimony describing the progress of the investigation is admissible even if it suggests that a nontestifying witness implicated the defendant, but again excluding the contents of any conversation.

So I agree with you, if the foundation is laid or if we get off course with regard to potential hearsay testimony, you can ask for a sidebar, but at this point your motion -- that motion to bar course of investigation testimony will be denied without prejudice. Okay.

MR. ANDERSON: And then the final motion is a motion to suppress statements. There's basically two statements that we're trying to suppress. One is after the defendant invokes his right to counsel and it's basically things that the detectives overhear the defendant saying on a telephone call outside the interview room to someone that is being called by the defendant. And then the second statement basically is when defendant comes back into the interview room, the

detectives are asking him questions about the phone call which we say prompts the defendant to react in a way that may be consciousness of guilt. So we believe that that would be sort of nonverbal communication and also to verify the fact of the phone call that was made outside the interview room.

So basically defendant invokes, taken out of the room, makes a phone call to a family member that the detectives overhear allegedly something to the effect of it was all defendant -- co-defendant's fault. It was all his idea. Then coming back in the room and defendant is upset. The detectives ask him questions about the phone call, basically how did she respond, this relative, and then defendant is crying and punching the wall, things of this nature. So that's what we're trying to suppress.

The evidence that we have to present to you is -- I believe it's five clips that show him invoking. Clip 2, the detectives asking him what number he wants to call. Clip 3 is, Okay, let's leave the room to go make the phone call. Clip 4 is coming back in the room right after the phone call. And Clip 5 is a continuation of that and it's just --

MS. DILLON: And they're split into two parts when

it was saved.

MR. ANDERSON: Four and five are basically the same thing. They just were split into two parts.

THE COURT: The actual phone conversation is not recorded.

MR. ANDERSON: It is not recorded.

MS. DILLON: Correct.

MR. ANDERSON: So I believe that the State has the detective to testify as to how this phone call was overheard or what the nature of that was because we don't have that one recording, and we would ask your Honor to watch the five clips. We've all seen it. The defendant has seen it. Perhaps you can watch it on your computer.

MS. DILLON: The detective has seen it as well. So I could lay the foundation with him, if you want.

THE COURT: Okay. And I then I'll watch it and I'll probably rule on it on the 21st.

MS. DILLON: Okay.

MR. ANDERSON: Okay.

THE COURT: Have a seat, sir, at counsel table.

Any opening statements? Or that basically was one. Do you want to say anything?

MR. ANDERSON: That's my opening statement.

MS. DILLON: Judge, we believe that upon reviewing all the evidence, you will deny the defendant's motion.

THE COURT: All right. Thank you.

MS. DILLON: State would call Detective Anthony Green.

THE COURT: Step up please and raise your right hand.

(Witness sworn.)

THE CLERK: Please be seated.

THE COURT: Whenever you're ready.

ANTHONY GREEN,

called as a witness on behalf of the People of the State of Illinois, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. DILLON:

Q. Detective, in a nice, loud voice would you introduce yourself to the Court and spell your last name for the benefit of the court reporter?

A. Detective Anthony Green, G-R-E-E-N.

Q. Detective, by whom are you employed?

A. Chicago Police Department.

Q. How long have you been with the Chicago Police Department?

A. 16 years.
Q. Where are you currently assigned?
A. To the investigative response team.
Q. And where is that located?
A. We work out of Homan Square.
Q. Drawing your attention back to September of 2009, late September of 2009, the 20th and 21st of September 2009, were you working as a detective for the Chicago Police Department at that time?
A. Yes, I was.
Q. Where were you assigned then?
A. The Area 5 Detective Division.
Q. And what shift were you working back then?
A. Midnights.
Q. So what time would your shift start and what time would your shift end?
A. Midnight until approximately 8:00 a.m.
Q. At approximately 1:45 in the morning on or about September 21st of 2009, did you receive an assignment in the vicinity of the location of 3555 West Sunnyside, Apartment No. 3, Chicago, Illinois?
A. I did.
Q. What type of investigation was it?
A. Homicide.

Q. And did that in fact involve a homicide of two people by the name of Angelina Escobar and Alex Santiago?

A. Yes, it did.

Q. Back in 2009 did you have a partner working with you?

A. Yes.

Q. Who was your partner that night?

A. Detective Art Young.

Q. On that night no arrests were made with regards to the investigation; is that correct?

A. That is correct.

Q. Now, over the course of the next few months and into 2011 actually, did you have occasion to continue your investigation?

A. I did.

Q. On or about January 10th of 2011, did you make any arrests related to this case?

A. I did.

Q. At approximately 6:20 that evening who was arrested?

A. Christopher Doehring.

Q. Do you see the person you know as Christopher Doehring here in court today?

A. I do.

Q. Could you point him out and identify an article of clothing for the record please?

A. The individual wearing the tan Cook County Department of Corrections uniform.

MS. DILLON: Your Honor, I'd ask the record to reflect the in-court identification of the defendant.

THE COURT: It may.

BY MS. DILLON:

Q. Now, detective, in 2011 when you arrested the defendant with regards to this investigation, did you have a new partner working with you on the investigation of the murders of Alex Santiago and Angelina Escobar?

A. Yes, I did.

Q. Who was your partner on that day?

A. Detective Michael Landando.

Q. Do you recall what Detective Landando's star number was back in 2011?

A. 20417.

Q. Now, Detective Landando, is he still with the Chicago Police Department?

A. He has since retired.

Q. And is he even living if you know in the State of Illinois?

A. He is not.

Q. So when the arrest of the defendant took place, where did that initially take place?

A. The jail at 26th and California.

Q. Okay. And at that time was the defendant in custody on an unrelated matter?

A. Yes, he was.

Q. When you met with the defendant at approximately 6:20 that evening, where did you meet him in the jail, if you recall?

A. It was in the back of the jail. I don't remember exactly where it was.

Q. At that time was he given to you -- did you take custody of him from members of the Department of Corrections for Cook County?

A. Yes, I did.

Q. Were you responsible for him then as long as you had him in your care, custody and control?

A. Yes, I was.

Q. At that time as part of the investigation, did he remain in the -- Well, let me ask you this, at the time that you arrested him, did he have Cook County Department of Corrections clothes on?

A. At that time yes, he did.

Q. Did you do anything to change his appearance in any way for purposes of the investigation should you need to do lineups or anything like that?

A. I requested that he be given his regular street clothes for when he went with us.

Q. So at that time he was actually placed in civilian dress or whatever he was wearing that he had in his personal items from the jail?

A. Yes.

Q. Now, once you took custody of him in the civilian -- and that was when he was -- he was in civilian dress at that point, correct?

A. Correct.

Q. Where were you taking him?

A. To the Area 5 Detective Division.

Q. Where was that located?

A. At Grand and Central.

Q. Okay. And Detective Landando, was he with you at that time?

A. Yes, he was.

Q. All right. As you were placing -- How were you going to get the defendant there?

A. He were going to drive him.

Q. Okay. Did you in fact take him in a car?

A. Yes.
Q. Once you got inside that car, did Detective Landando advise him of anything in your presence?
A. He advised him of his Miranda rights.
Q. And how did he do that?
A. From memory.
Q. Okay. At that time did the defendant indicate to you that he understood those rights?
A. He did.
Q. Okay. Was any conversation had in the car with regards to the investigation?
A. No.
Q. And why not?
A. Because we were waiting until we arrived back at the Area 5 Detective Division.
Q. What's different at the area than in the car?
A. The questioning of him would have been on video surveillance.
Q. And that would be at the area?
A. Correct.
Q. And there's no video capability to record in a car; is that correct?
A. That is correct.
Q. Was there any conversation with regards to what

had occurred between you, your partner and the defendant in that car?

A. No.

Q. Now, at approximately 6:54 that evening, did you in fact arrive at Area 5 violent crimes?

A. Yes.

Q. Now, you indicated that was at Grand and Central. There's a police district in that building as well?

A. There is.

Q. And where is the police district located? Where is the detective division located?

A. The 25th District is located on the first floor and the detective division was located on the second floor.

Q. Now, you said was. Does Area 5 violent crimes still exist as a violent crimes investigation location at this time?

A. It does not.

Q. Once you arrived just before 7:00 p.m., was he placed in a specific interview room?

A. He was, yes.

Q. Do you recall which interview room that was?

A. Interview Room F.

Q. Okay. And approximately how many different interview rooms are upstairs?

A. I believe there was at least five.

Q. Okay. Now, Interview Room F when he was placed in there, was there any equipment activated in order to record any custodial questioning that took place of the defendant related to your investigation of the homicides of Angelina Escobar and Alex Santiago?

A. Yes.

Q. Once that equipment was activated, was the defendant again advised of anything in your presence by your partner?

A. Yes.

Q. And what was that?

A. Detective Landando again advised him of his Miranda warnings from memory.

Q. And at that time the defendant indicated he understood; is that correct?

A. That's correct.

Q. And at approximately 6:56 that evening, did he in fact invoke any of his rights on that -- that's captured on electronic recording?

A. Yes, he did.

Q. And what did he invoke?

A. He requested an attorney.

Q. And in fact he provided you with the name of two different attorneys that he would request to have represent him; is that right?

A. That is correct.

Q. Now, at that point, did any questioning continue to occur?

A. No.

Q. Pursuant to you having him in your care, custody and control as part of this investigation, did he have to be processed to show he was with you at the area?

A. Yes.

Q. Did that include fingerprints?

A. Yes.

Q. Did that include photograph?

A. Yes.

Q. At approximately 11:14 or so that evening was he in fact taken for that procedure?

A. Yes, he was.

Q. Now, at that time did the defendant use or in your presence request while being processed his phone call?

A. Not in my presence, no.

Q. Shortly after the processing took place at approximately 11:24 or so, approximately ten minutes after he was taken for processing, did he again return to the interview room?

A. He did.

Q. And that is also captured on electronic recording; is that correct?

A. That is correct.

Q. At that time did he make any requests of you and your partner?

A. Yes.

Q. What did he request?

A. He requested to make a phone call.

Q. The interview rooms, do they have telephones in them?

A. They do not.

Q. Are you allowed to give someone that's in your custody a cell phone to use?

A. No.

Q. So in order to provide him with a phone, where would you have to go?

A. Outside of the interview room.

Q. At that time was a room available that he could use to make the phone call?

A. Yes.
Q. So where was that room located in relation to the interview room?
A. Adjacent to it in an office.
Q. What type of office is it?
A. It's a common office on the floor that -- it's just -- extra computers and desks.
Q. Okay. At that time that office, does it have a door?
A. Yes.
Q. Okay. Does that -- Do people come in and out of that office on a regular basis?
A. Yes, they do.
Q. Area 5 midnights, is it commonly a busy place or is it a little bit more of a laid back unit back in 2011?
A. Depending on the time of day and what's going on.
Q. At that time were there other detectives upstairs conducting other investigations with other people there unrelated to your investigation?
A. Yes.
Q. Were they also freely walking about the floor and walking past this office area?

A. Yes.
Q. At approximately 11:31, at that time did you obtain the name of the person that the defendant wanted to call?
A. I believe so, yes.
Q. Was that someone related to him?
A. Yes.
Q. Who was that?
A. His aunt.
Q. And that was a person by the name of Christina Beraro (phonetic)?
A. Yes.
Q. All right. And shortly after that request was made, in fact, did you leave the room and your partner and the defendant to make a phone call in one of those adjacent rooms?
A. Yes.
Q. Now, this phone call lasted for approximately how long?
A. A few minutes.
Q. Okay. And during that few minutes, were you present while he was on the phone?
A. Yes, I was.
Q. Was your partner also present?

A. Yes, he was.
Q. Was the door to that room open or closed?
A. It was open.
Q. Were other detectives walking by?
A. I assume so, yes.
Q. Did you see other people milling about? Was there activity going on outside that room that you recall?
A. Yes.
Q. While that phone call was taking place, did you in fact hear the defendant make the statement to the person he was talking to on the other end of the phone that you took was related -- that you believe was related to this investigation?
A. Yes.
Q. And was that documented?
A. Yes, it was.
Q. Was there any way in that other room to record the conversation that was taking place?
A. No, there was not.
Q. Now, at approximately ten minutes or so to midnight so just before, like, 11:50 or so, did you return to the original interview room after that conversation was completed, that the defendant completed

that he had requested?
A. Yes.
Q. Your partner returned?
A. Yes, he did.
Q. You returned with him; is that right?
A. That is correct.
Q. At that time did your partner say something to the defendant?
A. Yes.
Q. Was it related to the investigation as it -- an inquisition as to what had occurred at the time of the crime?
A. No, it was not.
Q. Were you -- Was he making an inquiry in your presence as to what had occurred or any sort of interrogation of what had occurred at the time of the crime?
A. No, he did not.
Q. What was the defendant's demeanor at that point when he returned to the room initially?
A. To me he appeared very emotional and distraught.
Q. Did he appear to be crying to you?
A. Yes.

Q. After your partner had the opportunity to make an inquiry of him, did the defendant react in a certain way?

A. Yes, he did.

Q. Was that captured on the electronic recording of all conversations that took place within Interview Room F?

A. Yes.

Q. Now, I just want to take your -- take you back for a second. With regards to the phone call that the defendant was allowed to make in the -- in one of the adjacent offices, there is the ability to make phone calls also down in the lockup area where the fingerprinting and the photographing take place; is that correct?

A. That is correct.

Q. That area as well, is that an open area?

A. Yes.

Q. And are there multiple people milling about as well in that processing area as well?

A. Yes.

Q. Other officers coming in and out?

A. Right.

Q. So the privacy level is no -- would you say is

no different than what he had in that -- the office that you gave him; is that correct?

A. That is correct.

Q. Now, detective, you had an opportunity to review some clips prior to your testimony here today related to the motion that you're here to testify on, specifically the defendant's invocation of rights as well as that from electronic recordings taken during the time he was in your care, custody and control; is that right?

A. That is right.

MS. DILLON: Judge, I will call this People's No. 1 or Respondent's No. 1 for the purposes of this motion.

THE COURT: Okay.

BY MS. DILLON:

Q. Showing you the disc, do you recognize what that is?

A. I do.

Q. What do you recognize it to be?

A. A copy of the video that I had watched prior to my --

Q. And in fact --

A. -- testimony.

Q. I'm sorry?

A. Prior to my testimony.
Q. Okay. And you've actually watched the clips that are contained on that actual disc; is that correct?
A. That is correct.
Q. And they fairly and accurately depict the discussions we've been talking about here today?
A. Yes.
MS. DILLON: Your Honor, I'd ask that the identification marks be stricken and that it be admitted into evidence.
THE COURT: Any objection?
MR. ANDERSON: No objection.
THE COURT: All right. That will be admitted into evidence.
MS. DILLON: Judge, if I could just have a moment.
THE COURT: Sure.
MS. DILLON: I think there was one other thing I wanted to ask the detective.
BY MS. DILLON:
Q. Detective, the defendant was in your care, custody and control while he was still -- had pending charges on an unrelated matter; is that correct?
A. That is correct.
Q. You were responsible for him as long as he was

outside the custody of the Cook County Department of Corrections; is that right?

A. That is right.

Q. Could you leave him alone on a room that's not controlled by the electronic recording devices so that he could have privacy to make a phone call?

A. I could not.

Q. Why not?

A. He was arrested for escape at that point.

MS. DILLON: Your Honor, I would tender the witness for cross.

THE COURT: Okay. Cross.

CROSS-EXAMINATION

BY MR. ANDERSON:

Q. Detective, the room where the defendant did make the phone call, did that room have a window?

A. I believe it has windows up on the top, yes.

Q. Would you be able to see into the window -- into the room while the defendant is making a phone call?

A. It's possible that somebody could, yes.

Q. So it would be possible to close the door but also to watch the defendant while he's in the room making the phone call?

A. I would have had to go outside up onto a bridge and then I would be able to see inside. I would have to leave the building to be able to see inside that window.

Q. Okay. Do you mean be outside the building or outside the detective division?

A. No, actually outside the building on the street to be able to see in that outside window.

Q. So it would be difficult but it could be done?

A. I mean, with a pair of binoculars and being on a bridge, I guess yes, you could see in that window.

Q. What I am asking you is can you stand outside and look into the room without using binoculars or something like that?

A. No.

Q. Okay. So it doesn't have an internal window?

A. No.

Q. All right. Is -- If a person that is being interviewed at the Area -- This is Area 5, right?

A. Yes.

Q. Belmont and Western?

A. No, Grand and Central.

Q. It was at Grand and Central?

A. Yes.

Q. Okay. If a person is being interviewed there

and they want to speak to an attorney or call an attorney, is there any way that they can have a private conversation with that attorney?

A. If an attorney were to arrive.

Q. No, on the phone, is there any way that they can have a private conversation with the attorney if they asked to call an attorney?

A. No.

Q. So obviously there's no method for them to have a private conversation with a family member as well on the phone, correct?

A. Correct.

Q. Okay. You are aware though that they have a statutory right to make an phone call to an attorney or to a family member by law, correct?

A. Correct.

Q. So when a person wants to speak to an attorney, how do you handle them having a private conversation with their attorney over the phone?

A. I've never encountered that issue before.

Q. How would you encounter it? How would you handle it?

MS. DILLON: Objection, calls for speculation.

THE COURT: Sustained.

BY MR. ANDERSON:

Q. Were there other things that the defendant said to the person that he was calling?

A. Of course.

Q. Okay. Do you recall what any of those things were?

A. No.

Q. Did you document any of those things?

A. I did not.

Q. The part about it was all Sammy's idea and he didn't want to do it but Sammy talked him into it, is that verbatim what the defendant said?

A. It's speaking in I guess you'd -- not third person because it's saying that he, meaning he is Christopher Doehring.

Q. Okay. Do you recall verbatim what he said?

A. I do not recall exactly verbatim, but it's to the effect of it was Sammy's fault and I didn't want to do it, not that he didn't want to do it.

Q. Okay. So what the defendant said, it's fair to say that what he said was not electronically recorded, correct?

A. That is correct.

Q. And it was not written down simultaneously with

what he was saying?

A. Correct.

Q. Is it fair to say that you were kind of editing out anything that the defendant was saying except anything that you thought might be incriminating with respect to this case?

A. No.

Q. Were you trying to give him privacy about his conversations unless it was something incriminating about this case?

A. No.

Q. Why did you document a summary of something that was incriminating about this case but not the rest of the conversation?

A. Because I believe that that was pertinent to this case.

Q. When the defendant was returned to the room after the conversation, your partner asked him questions about -- he just started asking him questions back in the room, correct?

A. Correct.

Q. And I believe that the State referred to this as his aunt. Actually defendant told you that it was his mother but you subsequently learned that it was

actually his aunt that was called, correct?

A. Correct.

Q. Okay. Your partner asked the defendant when he was returned back to the room essentially does your mother know that you're at Grand and Central, correct?

A. Correct.

Q. And was she crying too?

A. Correct.

Q. And then are you okay, correct?

A. Correct.

Q. And it was at that point that the defendant basically stood up and punched the wall, correct?

A. Correct.

Q. Then there were questions about you and your partner about whether he's okay, don't punch the wall, do you need water, things of that nature, correct?

A. Correct.

Q. But nothing about the phone call, correct?

A. Correct.

MR. ANDERSON: No further questions.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MS. DILLON:

Q. Just to clarify, after the defendant was

returned to the room, aside from inquiring of whether or not the person he spoke to was aware of where the defendant was at that time and subsequent questions related to the defendant's actions, that being for medical care or his checking on his well-being, there was never any further inquiry as to the actual statement that was heard because he had invoked his right to an attorney; is that correct?

A. That is correct.

MS. DILLON: Nothing else.

MR. ANDERSON: Nothing further.

THE COURT: All right. Thank you, detective.

THE WITNESS: Thank you, Judge.

(Witness excused.)

MS. DILLON: Your Honor, I have no other witnesses to present at this time. I would be giving the Court People's Exhibit -- Respondent's Exhibit No. 1 for review.

THE COURT: Do you -- Are they all in -- I mean --

MS. DILLON: Five clips. That's all it is. There's nothing else on there.

THE COURT: Okay. So I don't have to jump anywhere.

MS. DILLON: No, just if you put it on, like, VLC, I think works, the one that looks like a little cone, the

traffic cone.

THE COURT: I'll figure it out or I will have someone try to figure it out.

So the State rests?

MS. DILLON: The State rests.

THE COURT: Does the defense?

MR. ANDERSON: Defense also rests. We have no additional evidence.

THE COURT: Okay. Do you wish to argue then?

MR. ANDERSON: Your Honor, it's our motion.

CLOSING ARGUMENT

BY MR. ANDERSON:

We're -- Our position I believe you're going to take this under advisement --

THE COURT: Yes.

MR. ANDERSON: -- when you review the videos. But the main problem is that we believe that there is this expectation of privacy about defendant's rights that's greater than the federal guarantee but also his rights with respect to communicating with an attorney or a family member about him being held and getting representation.

It appears that there is no method or procedure for that right to be invoked at the station. And we

don't believe that the police can capitalize on not having a procedure for someone to have a private conversation as a way to eavesdrop even if it's not electronically on their conversations to obtain counsel or to speak with counsel.

We believe that the statute that allows them to call a family member is for the purposes also of allowing them to inform them of where they are being held so that they can get counsel there so when they ask for that, there should be some protection about that.

We believe that essentially what the detectives are doing is eavesdropping on the conversation even though it's not electronically, it's essentially eavesdropping. We're going to literally stand at the eaves to listen to what you're saying while you're trying to have a -- what should be a protected conversation for you to secure counsel or something about your rights during your custodial interrogation. And we believe that that was violated by what the detectives did here.

And secondly is when the defendant is brought back into the room after that conversation, I understand that they might have a concern about the defendant hurting himself and are you okay. But that's not where

this went. The first couple of questions are, Does your mother, which is actually his aunt, does she know where you're at and is she crying too? So that has nothing to do with the defendant. That's about the person that he's calling. And that's incriminating for two reasons. One, is it verifies the fact of who he was calling. And number two is it is likely to invoke an incriminating response from the defendant about this conversation supposedly that he had about the offense just minutes before on the phone. After they get the incriminating response where he is basically jumping up and punching the wall and reacting, then they start asking about how he's doing.

So in any case even if you are inclined to allow in this outside-the-room conversation which we think you shouldn't without a doubt, it's improper to try to elicit the defendant to do something to show his guilty consciousness and to verify that the phone call was happening under the guise of are you okay because that's not what the questions were about. It was about the other person on the other end of the phone call. Then after they get the response, then it's like, are you okay? You need to calm down.

So we would ask you to suppress both of those

things.

THE COURT: Do you have any case law on that issue regarding the right to privacy when calling a family member?

MR. ANDERSON: You know, I don't, your Honor. I tried to lay that out in our motion as to our basis for that right in Illinois being greater than federally. But, you know, that's -- if I do come across something, I will make sure I get it to you, but ...

THE COURT: Okay. Ms. Dillon.

CLOSING ARGUMENT

BY MS. DILLON:

Your Honor, I think if you look at the totality of the circumstances, there's many factors here that the Court needs to be aware of when considering how much expectation of privacy the defendant could have actually had.

First of all, he was taken out of the custody of the Cook County Department of Corrections not in the garb that he's wearing here, so should he have somehow made good his escape from Area 5, he would be running down Grand or Central wearing Cook County Department of Corrections clothes. He was actually in civilian dress as you will see on the video. He had a coat. He had a

T-shirt. He had jeans. He had gym shoes. He could have been anybody else running down the street. The detectives were responsible for him from the moment they took custody of him until the moment they returned him back to Cook County.

And also consider the factors of when he actually made the phone call itself. He's in a room with doors open, two detectives are with him the whole time. There's other police officers and detectives milling about on the floor. How much expectation of privacy did he actually have? Also consider that first question that Detective Landando asked him which you will hear on the recording is, does she know where you're at, which means clearly he wasn't listening to the entire conversation. Something that the defendant must have said or act when he was in the course of that conversation is what piqued his interest which is why it was written down. So in some way or form he was half shutoff while this guy was sitting there making his phone call.

Now, take a look and compare also expectation of privacy to being allowed to make this phone call in the second floor of a room of an office located next to the interview room versus actually being able to do it down

in the lockup where there's other offenders, where there's other police officers, where there's lockup keepers, where there's civilian people milling about, he probably got more privacy upstairs than he ever would have had down in the lockup when he made that phone call.

Now, the response. Now looking at the next step, trying to elicit a response from the defendant. Detective Green told you when the defendant came back into that room, and you will be able to see and judge his actions yourself by looking at the video, he is visibly stricken. He is rubbing his eyes, his head is bent down, he's crying. So after the detective asked does she know where you're at, was she crying too, it's a response to what the defendant is doing. It's not further trying to step -- There's no further inquiry at all as to what he had said that they overheard. And then all of his subsequent actions was not based upon any response from a question purported by the detectives. And you'll hear all their conversations. And any follow-up question had to do with his care, how he was and make sure that he was all right, if he needed medical attention for anything.

As a result, Judge, I don't think -- if you want

to take a look, it's the case of the People vs. Outlaw which is 388 Ill App 3d 1072, just for purposes of trying to elicit a response. It's very similar to I guess -- and in this sense because it's not really a statement, it's more nonverbal communication as counsel has stated, it's about routine types of questions that don't constitute interrogation. In this particular case it's specific to booking questions that you come in, you start saying what's your name, where do you live and things of that nature. Now --

So if the defendant has invoked according to this, any subsequent questions that would constitute an interrogation would have to be suppressed because he invoked his right to counsel. However, the interrogation would have to be specific questions or other words or actions that police know are reasonably likely to elicit an incriminating response from the suspect. And that's actually from a United States Supreme Court case of Rhode Island vs. Innis, I-N-N-I-S, that Outlaw quotes which is found at 446 U.S. 291.

As a result here, Judge, they found that routine booking questions, the name, address, date of birth sort of things where defendant then begins starting to talk about the crime or anything of that nature does not

constitute an interrogation because they don't normally elicit incriminating responses. Compare that to the type of questions that you're going to hear asked here and I think you can draw a fair comparison to say that any of his actions that could somehow be showing a consciousness of guilt are themselves actually actions and not statements or words and not protected, number one, and, number two, as such they actually fall within the guise of People vs. Outlaw. And I do have a copy for the Court to look at.

THE COURT: Great. Thank you.

MS. DILLON: That would be something that would normally not elicit an incriminating response. And as such after reviewing everything and the totality of the circumstances, we would ask that you deny the motion.

THE COURT: Okay. Anything else, Mr. Anderson?

REBUTTAL ARGUMENT

BY MR. ANDERSON:

Yes. I just wanted to point out on page 2 of our motion we're sort of relying on, you know, several cases, People vs. Prim, Dickerson vs. Dickerson and People vs. Dough (phonetic) for this issue about the, you know, rights regarding calling family members, being sort of within the number of trying to get in touch with

an attorney. So it's sort of discussing that -- that issue. For example, People vs. Dough (phonetic), the protection extends to confidential communications made to facilitate the rendition of professional legal services. So, you know, that's the authority that I am relying on.

Secondly, the issue about listening to the call, you know, there's the eavesdropping statute and that's where you have to use electronic means but when I'm talking about Illinois, I'm talking about article in Section 6, and that's on page 3 of our motion. And that's basically an invasion of privacy or interception of communication by eavesdropping devices or other means.

So that's what we're talking about here. It's sort of -- It's akin to sort of like a search and seizure issue. You are improperly listening in on something that's protected by an expectation of privacy and we think it's legitimate because although this is the only way that -- the only area that the detectives will allow someone to make a phone call, there's an expectation of privacy that you should have the right to call an attorney or a family member pursuant to statute and have a private communication with them even if

they're like, we're not going to do that so that we can listen in. We can't capitalize on their own facilities not having that means to exercise the right. So that's where we're coming from, your Honor.

THE COURT: I know. But I mean -- And I heard -- You know, I only heard the detective testify and I haven't had a chance to look at this yet but -- at the clips of the video, but when you -- you keep saying eavesdropping. The two detectives were present when he made the phone call, right?

MR. ANDERSON: I understand. I understand --

THE COURT: I mean, they're not, like, near either a wall or a door trying to listen in, correct? I mean --

MR. ANDERSON: I think that they were just like outside the room, like, but, like, clearly they are in a position to listen.

THE COURT: Okay.

MR. ANDERSON: Yeah.

MS. DILLON: I don't know -- believe that was the testimony of the detective.

THE COURT: Well, there was no testimony regarding that issue.

MS. DILLON: So I don't think it can be --

MR. ANDERSON: My understanding was -- well --

THE COURT: You know what, we didn't ask him that, but I mean, it sounded like they were in the same room. I mean -- but I -- You're right, my fault too, I didn't ask him that question.

You know what I'm saying when you say eavesdropping, it's usually the person is unaware that his conversation is being listened to.

MR. ANDERSON: Right, right.

THE COURT: Okay. All right. We have selected a date of March 21st. I'll just rule on that date. And I don't know if there's any other motions pending.

MR. ANDERSON: That's it.

THE COURT: How about for the other case, it's all done too, for Parsons-Salas.

MS. DILLON: The -- Oh, for -- Yes, I do believe Ms. Gill is completed, so that after rulings on this, we can try and figure out a trial date.

THE COURT: Okay. And has there been -- has there already -- have I ruled on severance or is there a severance motion?

MS. DILLON: Severance was granted.

THE COURT: Okay. And I take it it will be two juries.

MR. ANDERSON: Yes.

THE COURT: Okay. We will have to sit down and figure a schedule out for that.

All right. By agreement March 21st for the Court to rule on the final motion and to set the case for trial.

MR. ANDERSON: Thank you.

(The above-entitled cause was continued to March 21st, 2018.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CRIMINAL DIVISION

I, Siobhra Redmond, Official Court Reporter of the Circuit Court of Cook County, County Department - Criminal Division, do hereby certify that I reported in shorthand the proceedings had on the hearing in the aforementioned cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the Report of Proceedings had before the Honorable WILLIAM G. LACY, Judge of said court.

Siobhra Redmond

Siobhra Redmond
Official Shorthand Reporter
License No. 084-004552
Circuit Court of Cook County

Dated this 7th day of March, 2018.

EXHIBIT C

AFFIDAVIT OF ERA LAUDERMILK

I, Era Laudermilk, state as follows:

1. I am a licensed attorney in Chicago and am Deputy of Legislative Affairs at the Law Office of the Cook County Public Defender.

2. On behalf of the Law Office of the Cook County Public Defender, social workers regularly collect social history information from Public Defender clients prior to their appearing in Central Bond Court. This information can include survey questions about whether the client received access to a phone upon arrest and whether the client saw signage posted at the station showing a phone number to call for legal counsel. The social workers submit this information to the Assistant Public Defenders in Central Bond Court. An attorney supervisor subsequently emails all of the completed forms to me.

3. These survey forms are made in the regular course of the Public Defender's business, at the time that bond court clients are surveyed. They are also maintained in the ordinary course of business. I am familiar with how the records are collected and kept.

4. These survey data include whether the defendant was able to speak to an attorney, and if so, how long it took the defendant to get access to a telephone. Between April 16, 2020 and June 26, 2020, the social workers surveyed 2,109 people in bond court.

5. The survey data show that CPD is routinely denying people in police custody access to a phone. Of the 2,109 surveyed, 455 (22%) stated that the Chicago Police never offered them access to a phone at any point while they were detained at the police station. Only 1,478 (70%) stated that they were offered a phone access. Phone access data is missing for the other 8% surveyed.

6. Of the 1,478 individuals who did receive a phone call, more than half waited over an hour after their arrival before they were offered a phone call (824 individuals, 56% of those offered a call). One in five individuals waited for five or more hours (292 individuals, 20% of those offered a call). Eighty-nine individuals waited ten or more hours (6% of those offered a call).

7. The average wait time for individuals who were offered a phone call was 4.0 hours. Eight individuals reported waiting 48 hours after arriving at the police station before they were offered a call.

8. The survey data also show that CPD continues to refuse to provide an attorney's number to individuals upon arrival in a police station. Of the 2,109 individuals surveyed, only 284 (14%) stated that they were provided an attorney's number when they arrived at the police station.

9. These patterns have continued into June. Focusing specifically on the period from June 1 to June 26, 2020, the Assistant Public Defenders surveyed 1,122 people who were proceeding before a bond court judge. One in five (21%) of those surveyed stated that they were never offered a phone call at any point while they were in CPD custody. Only 71% stated that they were offered a phone call, with phone access data missing for the remaining 8%. Furthermore, only 12% of those surveyed in June stated that they were provided an attorney's number at the police station. Of the people who were offered phone access, the average wait time was 4.2 hours, with 59% of those offered a phone call waiting for longer than an hour and 20% waiting for five or more hours.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Era Laudermilk

Dated: July 21, 2020

Era Laudermilk

ANISSA N TORRES
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
February 17, 2024

Anissa N. Torres
July 21, 2020

EXHIBIT D

#LETUSBREATHE COLLECTIVE, LAW OFFICE OF THE COOK COUNTY PUBLIC DEFENDER, BLACK LIVES MATTER CHICAGO, STOP CHICAGO, UMEDICS, NATIONAL LAWYERS GUILD CHICAGO, and GOODKIDS MADCITY,	)	Case No. 2020CH04654
Plaintiffs,	)	
v.	)	Hon. Judge Pamela Meyerson
CITY OF CHICAGO,	)	
Defendant.	)	

DECLARATION OF
PROFESSOR MAX M. SCHANZENBACH

1. *Declaration.* I have been retained by MacArthur Justice Center and Mandel Legal Aid Clinic, counsel for the plaintiffs, to render an expert opinion on certain statistical matters relevant to the above captioned case. In particular, I was asked to review the Complaint for Mandamus and Injunctive Relief dated June 23, 2020 and two datasets that are relevant to the Complaint.

I. EXPERTISE AND RETENTION

2. *Education*. I hold a JD from Yale Law School (2001) and a Ph.D. in economics from Yale University (2002).

3. *Employment and Teaching*. I am the Seigle Family Professor of Law at Northwestern Pritzker School of Law. I joined the Northwestern faculty in 2003 and received tenure in 2006. From 2010 to 2013, I was director of the Searle Center on Law, Regulation, and Economic Growth at Northwestern. I regularly teach Trusts and Estates, Business Associations, Corporations, and the Colloquium on Law and Economics.

4. *Research and Publications.* My research, which is in the law-and-economics tradition, uses economic theory and statistical methods to assess the real-world effects of law and legal institutions. I have published several scholarly articles that use economics and statistics to analyze criminal sentencing policies. The statistical analysis in my scholarly works have relied on both surveys and administrative data. I have published in a variety of peer-reviewed journals, including the *American Economic Journal – Policy; Journal of Legal Studies; Journal of Law, Economics, & Organization; Journal of Human Capital; and Journal of Health Economics*; as well as leading law reviews such as the *Yale Law Journal; Stanford Law Review; University of Chicago Law Review,* and *Northwestern University Law Review*.

5. *Presentations.* I have made numerous invited presentations on my research in both scholarly and practitioner-oriented venues, including presentations on statistical evidence of discrimination in criminal sentencing under the federal sentencing guidelines.

6. *Editorial, Referee, and Professional Association Activity.* From 2012 to 2017, I was co-editor-in-chief of the *American Law and Economics Review*, the journal of the American Law and Economics Association. Additionally, I served on the Board of that association from 2013 to 2016. I have also served as a referee for numerous scholarly journals, including as a referee for articles concerning trust administration and finance.

7. *Advising Consulting and Expert Testimony*. I have served as an expert witness to the United States Department of Justice on matters pertaining to statistical evidence of discrimination. I have also served as an advisory consultant or expert witness to numerous law firms and financial institutions on matters of fiduciary investment and trust administration.

8. *Curriculum Vitae*. My curriculum vitae, which is appended to this report, provides a more comprehensive review of my professional experience and expertise.

9. *Compensation.* I have forgone compensation in the preparation of this report, but I have agreed with plaintiffs' lawyers that I will be compensated at my normal hourly rate of $900 for the purposes of deposition and trial testimony, including travel and preparation time.

II. Assignment and Questions Presented

10. *The Issues Presented.* I understand this litigation concerns the alleged systematic violation of a statutory guarantee of rights to a post-arrest phone call and access to counsel of those arrested in Chicago.

11. *Questions Addressed.* In this Declaration, I have been asked to assess the reasonableness of two different data sources as support for the allegation that arrestees are not provided with a phone call in a manner consistent with the statute and regulations. I understand that the statute requires that those detained must be provided with an opportunity for a phone call within a reasonable time, and that regulations have interpreted this generally to be within one hour of arrival at the place of custody. I reserve the right to supplement my opinions when presented with new evidence or data.

12. *Bases for Opinions and Materials Reviewed*. Counsel provided me with two excel spreadsheets. One contained data compiled from a survey of arrestees (1,973 responding, with a response rate of roughly 90%) conducted by the Cook County Public Defender's between April 16, 2020 to June 26, 2020 and is discussed in the Complaint ("Survey Data"). The second excel spreadsheet was based on Chicago Police Department arrest reports obtained from the Cook County Public Defender's Office. The arrest reports cover all of the Office's clients who appeared in the Central Bond Court the last weekend of June and first weekend of July (the arrests occurring between June 25, 2020 and July 5, 2020) ("Arrest Report Data"). My understanding is that data were in PDF form and entered into the excel spreadsheet by law students working under the supervision of Plaintiffs' counsel. For the purposes of this

declaration, I have assumed that the spreadsheets reliably represent the underlying data.

III. Opinions and Analysis

13. *The Survey Data*. Twenty-three percent of those who responded to the survey reported not being offered a phone call. This rate was fairly consistent over time. Each day or week the survey was conducted, roughly between 20% and 25% of respondents report not being offered a phone call at all while under detention. The consistency of responses do not suggest that any unusual event or outlier (for example, a particularly bad week or a large number of individual responses at any one point) could account for the results. Moreover, the stability of the responses is also inconsistent with respondent bias, or at least would require all respondents surveyed day to day to exhibit the same degree of reporting error or misreporting. In short, in my opinion the Survey Data are reliable and indicate a pattern and practice of not offering phone calls to nearly one-quarter of detainees over the survey time frame, regardless of the day or month of the arrest.

14. The Survey Data also record report how long the detainee waited if the detainee was offered a phone call. The median wait time was 2 hours, and the average wait time was 4.0 hours. The median and average were roughly identical across in the April, May, and June, though June wait times were a bit longer (a mean of 3.7 hours for April and May and 4.2 hours for June). Ten percent of those receiving a phone call reported waiting 8 hours or more, and 5% report waited 12 hours or more.

15. Overall, the survey data indicates that the CPD is out of compliance with the relevant regulations about 81% of the time—either offering no phone call or waiting over an hour before being offered a phone call.

16. *The Arrest Report Data*. I understand that Chicago Police Department arrest reports are supposed to record whether a phone call is made, the number that was called, and the time of the call. There were 359 arrest reports in total, of which 117 were missing the relevant page that would have recorded a phone call or recorded information regarding the phone call in an inconsistent manner. Of the 242 remaining complete records, only 37% record a phone call or offer of a phone call. It seems most likely that many phone calls are not recorded in the Arrest Report Data given the wider availability of phone calls reported in the Survey Data. However, of those records that do contain the information, the median length of time between transport and phone call is 3.5 hours and the average length of time is 4.2 hours. The arrest reports are thus consistent with the Survey Data, and in fact demonstrate even worse compliance.

IV. Conclusion

In my opinion, the data provided to me by plaintiffs' attorneys credibly demonstrate that the Chicago Police Department fails on a systematic basis to provide access to a phone within an hour of arrival at the place of custody and frequently does not provide a phone call at all.

I declare under penalty of perjury the foregoing is true and correct. Executed July 20, 2020.

Max Schanzenbach

ANISSA N TORRES
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
February 17, 2024

Anissa N Torres
July 20, 2020

MAX M. SCHANZENBACH

Northwestern University School of Law
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EDUCATION

YALE (ECONOMICS)		Ph.D. 2002
YALE LAW SCHOOL		J.D. 2001
UNIVERSITY OF OKLAHOMA	B.A. (Economics), with special distinction, 1996	

WORK HISTORY

2015-present	Northwestern Pritzker School of Law	Seigle Family Professor of Law
2006-2015	Northwestern University School of Law	Professor of Law
2010-2013	Searle Center on Law, Regulation, and Economic Growth	Director
2008 (spring)	Harvard Law School	Bruce W. Nichols Visiting Professor of Law
2003-2006	Northwestern University School of Law	Assistant Professor of Law
2002-2003	Honorable Alan E. Norris, U.S. Court of Appeals for the Sixth Circuit, Columbus, OH	Law Clerk

ARTICLES

Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of Environmental, Social, and Governance Investing by a Trustee, **Stanford Law Review** (with Robert Sitkoff) (forthcoming 2020).

Good Cop, Bad Cop: An Analysis of Chicago Civilian Allegations of Police Misconduct, **American Economic Journal: Economic Policy** (with Kyle Rozema) (forthcoming 2019) (interviewed on "Chicago Tonight," begins at 22:00).

Reclaiming Fiduciary Law for the City (with Nadav Shoked), **70 Stanford Law Review 565** (2018).

The Prudent Investor Rule and Market Risk: An Empirical Analysis (with Robert Sitkoff), **14 Journal of Empirical Legal Studies 129** (2017).

Explaining the Public-Sector Pay Gap: The Role of Skill and College Major, **9 Journal of Human Capital 1** (2015).

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The Impact of Tort Reform on Intensity of Treatment: Evidence from Heart Patients (with Ronen Avraham), **39 Journal of Health Economics 273** (2015).

Racial Disparities, Judge Characteristics, and Standards of Review in Sentencing, **171 Journal of Institutional and Theoretical Economics 27** (2015).

Racial Disparities under the Federal Sentencing Guidelines: The Role of Judicial Discretion and Mandatory Minimums (with Joshua Fischman), **9 Journal of Empirical Legal Studies 729** (2012).

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The Impact of Tort Reform on Private Health Insurance Coverage (with Ronen Avraham), **12 American Law & Economics Review 319** (2010).

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Did Reform of Prudent Trust Investment Laws Change Trust Portfolio Allocation? (with Robert Sitkoff), **50 Journal of Law & Economics 681** (2007).

Strategic Judging under the United States Sentencing Guidelines: Positive Political Theory and Evidence, (with Emerson Tiller), **23 Journal of Law, Economics, & Organization 24** (2007).

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Perpetuities or Taxes? Explaining the Rise of the Perpetual Trust (with Robert Sitkoff), **27 Cardozo Law Review 2465** (2006).

Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Taxes (with Robert Sitkoff), **115 Yale Law Journal 356** (2005).

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Exceptions to Employment at Will: Raising Firing Costs or Enforcing Life-Cycle Contracts? **5 American Law & Economics Review 470** (2003).

Network Effects and Antitrust Law: Predation, Affirmative Defenses, and the Case of U.S. v. Microsoft, **2002 Stanford Technology Law Review 4** (2002), available at http://stlr.stanford.edu/STLR/Articles/02_STLR_4/index.htm.

BOOK CHAPTERS

Empirical Analysis of Fiduciary Law (with Jonathan Klick), **Oxford Handbook of Fiduciary Law** (2019).

Medical Malpractice Reform (with Ronen Avraham), **Oxford Handbook of Law and Economics** (2017).

Perpetuities, Taxes, and Asset Protection: An Empirical Assessment of the Jurisdictional Competition for Trust Funds, in 42 Annual Heckerling Institute on Estate Planning (Tina Portando, ed., 2008) (with Robert Sitkoff)

The Employment at Will Doctrine, **Handbook of Career Development**, SAGE publishing (2005).

OTHER WORK

When May a Fiduciary Engage in Environmental, Social, and Governance Investing?, white paper for **Federated Investors** (with Robert Sitkoff) (2018).

Financial Advisers Can't Overlook the Prudent Investor Rule, **Journal of Financial Planning** (August 2016).

Fiduciary Financial Advisors and the Incoherence of A "High-Quality Low-Fee" Safe Harbor, white paper for **Federated Investors** (with Robert Sitkoff) (2015).

Evaluating the Impact of Trust Business on Delaware's Economy white paper prepared for a consortium of Delaware banks and law firms (2011).

The Case Against Public Sector Unions (with John O. McGinnis), **Policy Review** (August 1, 2010).

The Prudent Investor Rule and Trust Asset Allocation: An Empirical Analysis (with Robert Sitkoff), **35 ACTEC Law Journal 314** (2010).

Have Federal Sentencing Practices Really Changed? A Brief Analysis of the Feeney Amendment's Real Concerns, **16 Federal Sentencing Reporter** (April 2004).

MEDIA, OPINION PIECES

Investing for Good Meets the Law (with Robert Sitkoff), **Wall Street Journal** editorial (December 10, 2018).

Good Cop, Bad Cop (appearance on WTTW's **Chicago Tonight**, September 10, 2018, begins at 22:00).

Union Contracts Key to Reducing Police Misconduct, **Chicago Tribune** editorial (November 23, 2015).

College Tenure Has Reached Its Sell-By Date (with John O. McGinnis), **Wall Street Journal** editorial (August 11, 2015).

WORKS IN PROGRESS

The Law and Economics of Fiduciary Investment (with Robert Sitkoff)

Does Discipline Decrease Police Misconduct? Evidence from Chicago Civilian Allegations (with Kyle Rozema)

PARTICIPATION IN MEETINGS AND PROFESSIONAL ORGANIZATIONS

2020
American Bankers Association Annual Meeting, presented *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of Environmental, Social, and Governance Investing by a Trustee*.

2019
Conference on Empirical Legal Studies, presented *Does Discipline Decrease Police Misconduct? Evidence from Chicago Civilian Allegations.*

American Trust Organization Annual Conference, presented *The Law and Economics of Environmental, Social, and Governance Investing by a Fiduciary*

American Banker Association (course on *Difficult Issues in Fiduciary Administration*)

Federated Investors Conference on Environmental, Social, and Governance Investing, presented *The Law and Economics of Environmental, Social, and Governance Investing by a Fiduciary*

fi360 Annual Conference, Nashville TN, presented *The Law and Economics of Environmental, Social, and Governance Investing by a Fiduciary*

Ostrom Workshop Colloquium, Indiana University, presented *Good Cop, Bad Cop: Using Civilian Allegations to Predict Police Misconduct*

2018
Investors and ESG Conference at NYU School of Law, presented *The Law and Economics of Environmental, Social, and Governance Investing by a Fiduciary*

American Law and Economics Association Annual Meeting, presented *Good Cop, Bad Cop: An Analysis of Chicago Civilian Allegations of Police Misconduct*

American Bankers Association, Trust and Wealth Executive Session, presented *The Law and Economics of Environmental, Social, and Governance Investing by a Fiduciary*

University of British Columbia Economics Workshop, presented *Good Cop, Bad Cop: An Analysis of Chicago Civilian Allegations of Police Misconduct*

University of Pennsylvania Law and Economics Workshop, presented *Good Cop, Bad Cop: An Analysis of Chicago Civilian Allegations of Police Misconduct*

2016
University of Texas Law and Economics Workshop, presented *Monitoring Police Officer Conduct through Civilian Allegations: An Analysis Using Chicago Data*

Workshop on Performance Measurement, Northwestern, presented *Monitoring Police Officer Conduct through Civilian Allegations: An Analysis Using Chicago Data*

Society for Institutional and Organizational Economics Annual Meeting, presented *Specific Deterrence and Prison Time: Estimates from Random Judge Assignment*

2015
American Bar Foundation, presented *Specific Deterrence and Prison Time: Estimates from Random Judge Assignment*

2014
American Law and Economics Annual Meeting, presented *The State and Local Pay Penalty*

Conference on Empirical Legal Studies, presented *Market Risk Management and the Prudent Investor Rule: An Empirical Analysis*

2013
Conference on Empirical Legal Studies, presented *The State and Local Pay Penalty*.

American Law and Economics Annual Meeting, presented *The Prudent Investor Rule after the Financial Crisis*.

Annual Heckerling Conference on Estate Planning, presented *Revisiting the Prudent Investor Rule after the Financial Crisis*

2012
University of Texas Law & Economics Workshop, presented *The Prudent Investor Rule after the Financial Crisis*.

University of Chicago Law & Economics Workshop, presented *Racial Disparities under the Federal Sentencing Guidelines: The Role of Judicial Discretion and Mandatory Minimums*.

2011
Conference on Empirical Legal Studies, presented *Racial Disparities, Judicial Discretion, and the United States Sentencing Guidelines*.

Georgetown University, Empirical Health Law Conference, presented *The Impact of Tort Reform on Employer Health Insurance Premiums*.

American Law and Economics Annual Meeting, presented *Racial Disparities, Judicial Discretion, and the United States Sentencing Guidelines*.

Estate Planning Council of Delaware, presented *Evaluating the Impact of Trust Business on Delaware's Economy*

2010

Albany Symposium on the Past and Future of Empirical Sentencing Research (commentator)

University of Chicago, Law and Economics of Race Conference, presented *Racial Disparities, Judicial Discretion, and the United States Sentencing Guidelines*

UCLA School of Law, Law and Economics workshop, presented *Do Standards of Review Matter? The Case of Federal Criminal Sentencing*

2009

University of Southern California, Law, Economics, and Organization workshop, presented *Do Standards of Review Matter? The Case of Federal Criminal Sentencing*

American Law & Economics Association, annual meeting, presented *The Impact of Tort Reform on Employer Health Insurance Premiums*

University of Texas School of Law, presented *The Equal Bequest Puzzle: A Legal Perspective.*

University of Virginia School of Law, presented *The Equal Bequest Puzzle: A Legal Perspective.*

Cornell Law School, presented *The Equal Bequest Puzzle: A Legal Perspective.*

2008

University of Michigan, Law and Economics Workshop, presented *The Impact of Tort Reform on Private Health Insurance Coverage*.

University of Pennsylvania, Law and Economics Workshop, presented *The Impact of Tort Reform on Private Health Insurance Coverage*.

Harvard Law School, Law and Economics Workshop, presented *The Impact of Tort Reform on Private Health Insurance Coverage*.

"The Law of Succession in the 21st Century," conference at UCLA, presented *The Equal Bequest Puzzle: A Legal Perspective*.

Annual Heckerling Institute on Estate Planning, presented *Did Reform of Prudent Trust Investment Laws Change Trust Portfolio Allocation?*

2007

University of Southern California, Law and Economics Workshop, presented *The Impact of Tort Reform on Private Health Insurance Coverage*.

2006

Yale Law School, Law, Economics, and Organization Workshop, presented *Judging under the*

Sentencing Guidelines.

Journal of Empirical Legal Studies Junior Faculty Workshop, Cornell Law School, (commentator).

University of Minnesota Law School Faculty Workshop, presented *Judging under the Sentencing Guidelines*.

Harvard Law School, Law and Economics Workshop, presented *Strategic Judging under the Sentencing Guidelines*.

Boalt Hall School of Law, Law and Economics Workshop, presented *Did Reform of Prudent Trust Investment Laws Change Trust Portfolio Allocation?*

2005
University of Virginia, Law and Economics Workshop, presented *Did Reform of Prudent Trust Investment Laws Change Trust Portfolio Allocation?*

Journal of Empirical Legal Studies Junior Faculty Workshop, Cornell Law School, presented *Did Reform of Prudent Trust Investment Laws Change Trust Portfolio Allocation?*

NBER Summer Institute Law and Economics Section (commentator).

American Law & Economics Association, annual meeting, presented *Strategic Judging under the Sentencing Guidelines.*

University of Illinois College of Law, presented at "The Impact of *Booker*: A Dialogue between Scholars and Practitioners" (roundtable).

Stanford University, Law and Economics Workshop, co-presented *Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Taxes*.

University of Chicago, Spring 2005 Law and Economics Workshop, presented *A Positive Political Theory of Criminal Sentencing: Strategic Judging and the United States Sentencing Guidelines*.

2004
Columbia University, Law and Economics Workshop, presented *A Positive Political Theory of Criminal Sentencing: Strategic Judging and the United States Sentencing Guidelines*.

Tel Aviv University, presented *A Positive Political Theory of Criminal Sentencing: Strategic Judging and the United States Sentencing Guidelines*.

American Law & Economics Association, annual meeting, presented *Racial and Sex Disparities in Prison Sentences: The Effect of District-Level Judicial Demographics*.

PROFESSIONAL SERVICE

Co-Editor in Chief, *American Law and Economics Review* (2012-2017)
Board Member, American Law and Economics Association (2013-2016)
Program Chair, American Law and Economics Association Annual Meeting (2016)

REFEREEING

American Economic Review; American Economic Journal: Economic Policy; Economic Inquiry; *Econometrica; International Review of Law and Economics*; *Journal of Law and Economics; Journal of Law, Economics, and Organization; Journal of Labor Economics*; *Journal of Legal Analysis*; *Journal of Legal Studies; Journal of Empirical Legal Studies; Journal of Political Economy; Quarterly Journal of Economics*; *Review of Economics and Statistics*.

UNIVERSITY SERVICE

Dean Search Committee, chair (2017-2018)
Northwestern University Program Review Council (2015-2018)
Dean Search Committee (2010-2011)
Personnel Committee (2003-2006; 2008 chair; 2011; 2013 chair; 2015, 2016)
Clerkships committee (2003-2005; 2006; 2009)

RECENT TESTIMONY

Federated Investors, Inc., consulting expert (retained June 2018).

JoAnn Howard and Associates et al. v. Cassity et al., United States District Court, Eastern District of Missouri, Case No. 09-CV-1252-ERW (2018) (expert report and deposition).

Lewis Gopher et al. vs. Wells Fargo et al., 17th Judicial Circuit in and for Broward County, Florida, Case No. 16-000592 (19) (2018) (filed declaration).

United States of America v. Abraham Brown et al., United States District Court, Northern District of Illinois (Eastern Division), No. 12 CR 887 (2017) (expert report and testimony at evidentiary hearing).

In Re: Lois H. Loconti v. Joseph D. Loconti, State of New Hampshire Seventh Circuit Court–Family Division, No. #216-2004-DM-00007 (2016) (expert report and trial testimony).

The Revocable Trust of Thomas L. Reeves dated February 26, 1997, State of Pennsylvania Court of Common Pleas of Chester County—Orphan's Court Division, No. 1512-1530 (2015) (expert report).

GROUP EXHIBIT E

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT-FIRST MUNICIPAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

-vs-

TRAYVON WRIGHT,

Defendant.

REPORT OF VIDEO-CONFERENCE PROCEEDINGS had at 2600 South California Avenue, Chicago, IL, in the above-entitled hearing before the Honorable ROBERT KUZAS, Judge of said court, on the 30th day of June, 2020, at 11:20 a.m..

PRESENT:

Detective David Cavazos, Star Number 20312, having appeared.

Mr. Max Suchan,
Assistant Public Defender.

Maureen S. Andrews
Official Court Reporter
CSR #084-002418

THE COURT: All right. This is a matter I'm calling now. This is a probable cause hearing.

Detective, would you please raise your right hand.

(WHEREUPON Detective Cavazos was first duly sworn.)

THE COURT: Do you solemly swear the contents of your affidavit are true and correct to the best of your ability?

DETECTIVE CAVAZOS: Yes, I do, Your Honor.

THE COURT: If you would please introduce yourself.

DETECTIVE CAVAZOS: My name is Detective David Cavazos, C-a-v-a-z-o-s, Star 20312, assigned to Area 2 HGS.

THE COURT: And this is regarding Trayvon Wright, is that correct?

DETECTIVE CAVAZOS: That's correct.

THE COURT: Common spelling?

DETECTIVE CAVAZOS: Yes, sir.

THE COURT: Mr. Wright is currently in custody, is that correct?

DETECTIVE CAVAZOS: Yes, sir.

THE COURT: And why was he not brought to court today?

DETECTIVE CAVAZOS: We had a -- We were investigating him in a murder and we were trying to get the case approved earlier and our time was close so we had to bring the paperwork for you for the detainment process. Also he was charged with a robbery. That is unrelated to the murder.

THE COURT: Okay. All right. I have had an opportunity to review your probable cause with regard to this matter. This is under RD Number JD 177934. The spelling of the name is Wright.

There is a finding of probable cause and this will be at 11:20 a.m. on June 30th, 2020.

DETECTIVE CAVAZOS: Thank you.

MR. SUCHAN: Judge, as a friend of the Court, pursuant to Chief Judge Evans' order which recognizes that our office represents any preinvestigative detainee in the custody of the Chicago Police Department, we would ask to be appointed for the purposes of this hearing.

We would object to the extension of time as a severe abrogation of Mr. Wright's constitutional rights.

THE COURT: That will be noted and overruled.

MR. SUCHAN: Judge, may I just inquire, what police

station Mr. Wright is in custody in?

THE COURT: Yes, you may. Where is he at?

DETECTIVE CAVAZOS: Pardon me?

THE COURT: What station is he at right now?

DETECTIVE CAVAZOS: He is at the Fifth District Station, 727 East 111th Street.

MR. SUCHAN: Thank you, Judge. Thank you, Detective.

THE COURT: This hearing is now terminated. Thank you, Detective.

DETECTIVE CAVAZOS: Thank you. Have a good day.

(WHICH WERE ALL THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - FIRST MUNICIPAL DIVISION

I, Maureen Andrews, Official Court Reporter of the Circuit Court of Cook County, do hereby certify that I reported in shorthand the proceedings had at the hearing in the aforementioned cause; that I thereafter caused the foregoing to be transcribed into typewriting which I hereby certify to be a true and accurate transcript of Report of Proceedings had before the Honorable ROBERT KUZAS, Judge of said court.

Maureen Andrews
Official Court Reporter
CSR# 084-002418

Dated this 30th day of June, 2020.

STATE OF ILLINOIS)
) ss:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - COUNTY DIVISION
FIRST MUNICIPAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	
vs.	PROBABLE CAUSE
TYRESE WATSON, Defendant.	

REPORT OF VIDEO CONFERENCE PROCEEDINGS had in the above-entitled cause taken before the HONORABLE TERESA MOLINA, Judge of said court, on Tuesday, June 23, 2020.

PRESENT:

DETECTIVE HUGHES,
STAR NUMBER 842.

MR. TYRESE WATSON,
Defendant.

Josefina Rosas CSR #084003348
Official Court Reporter

THE COURT: Today is Tuesday, June 23, 2020. The time is now 18:04. This hearing is being conducted remotely due to the COVID-19 outbreak and the defendant is currently at the hospital. I received a call from Sergeant Hughes approximately 14:29 requesting a hearing. Sir, can you state your name?

THE DEFENDANT: Tyrese Watson.

THE COURT: Mr. Watson, your date of birth, please?

THE DEFENDANT: 5-14-84.

THE COURT: 5-14-84?

THE DEFENDANT: Yeah.

THE COURT: Sergeant, can you state your name, star number and employer, please?

OFFICER HUGHES: Sergeant Hughes, 842, University of Chicago Police Department.

THE COURT: Thank you. For the record, the Court has received from Sergeant Hughes the following documents: A twelve page arrest report. A five page offense incident report. A one page felony 101 minute form. Two pages of IDOC warrants. Two pages of Schaumburg warrant. A ten page criminal history for the offender. Two page

prisoner transmittal and six pages of complaints. All right. You can put the camera back on Mr. Watson, please.

I am Judge Teresa Molina. You have been brought to court for a hearing to determine if the police have probable cause to detain you. Under the law within 48 hours of your arrest, the police must ask the Judge to review the alleged facts and decide whether there's probable cause to believe that you have committed an offense. The probable cause hearing is not a trial. I have read the facts of the sworn written statement that the police have provided or I will hear sworn testimony from a police officer or other witness.

If I do not make a finding of probable cause, you will be released. If I make a finding of probable cause, you will remain in custody and be taken to bond court tomorrow, June 24, 2020, for a Judge to set bail in your case. At a bail hearing, you may have hired an attorney to represent you or if you cannot afford to hire an attorney, one will be appointed for you.

Finally, I am not able to answer any questions or speak with you in any way about this

matter at this stage of the proceedings. The Sergeant, please, appear on camera so you can be sworn, please.

(Witness duly sworn.)

THE COURT: Thank you. You can lower your hand. The documents that I indicated previously on the record, are those the documents that you submitted to the Court?

OFFICER HUGHES: Yes.

THE COURT: To the best of your knowledge, is the information contained with those documents true and accurate?

OFFICER HUGHES: Yes, they are.

THE COURT: Thank you. You can put the camera back on Mr. Watson. I have reviewed the documents submitted by the University of Chicago Police Department including the documents that I previously stated.

I find that there is probable cause to detain the defendant on the charges of armed robbery, vehicular hijacking with a deadly weapon and three counts of aggravated battery and I am signing an order indicating as such. The time is now 18:08. That concludes this hearing.

THE DEFENDANT: What was the charge? I didn't hear the charges?

THE COURT: Armed robbery, vehicular hijacking --

THE DEFENDANT: I never had a weapon. How did I --

THE COURT: Okay. I can't answer any questions. The charges that I have found probable cause are armed robbery, vehicular hijacking with a deadly weapon and aggravated battery. Three counts.

Sergeant, I will sign copies of all of the documents that were sent to the Court to the e-mail address that you originally sent them. It will take me a while to get them all signed.

OFFICER HUGHES: Okay.

THE COURT: Thank you. Be safe.

OFFICER HUGHES: Okay. Thank you. You too.

(Which were all proceedings had in above said cause.)

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

I, Josefina Rosas, CSR# 084-003348 an Official Court Reporter for the Circuit Court of Cook County, Judicial Circuit of Illinois, reported in machine shorthand the proceedings had on the hearing in the above-entitled cause and transcribed the same by Computer Aided Transcription, which I hereby certify to be a true and accurate transcript of the evidence had before the Circuit Judge.

_____
Official Court Reporter

Dated this 23rd day
of June, 2020.

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT-FIRST MUNICIPAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,
-vs-
GEORGE SEALES,
Defendant.
No.

PROBABLE CAUSE HEARING

REPORT OF VIDEO CONFERENCE PROCEEDINGS had at the 15th District, Chicago, IL, in the above-entitled hearing before the HONORABLE MICHAEL HOGAN, Judge of said court, on the 22nd day of May, 2020, in Chicago, Illinois, commencing at 4:00 P.M.

PRESENT:

Lieutenant Jaime Sosa, Star No. 329,
Having appeared.

The Defendant,
Having Appeared.

Barbara Brennan
Official Court Reporter
084-0020534

THE COURT: Can I have everybody in the room identify themselves, for the record, please?

LIEUTENANT SOSA: Lieutenant Jaime Sosa.

OFFICER VASQUEZ: Officer Vasquez, Star No. 7519.

OFFICER SCHMITT: Officer Schmitt, 6443.

DEFENDANT: George Seales.

THE COURT: Lieutenant, what is your star number?

LIEUTENANT SOSA: 329.

THE COURT: Mr. Seales, I am Judge Michael Hogan. You have been brought to court for a hearing to determine if the police have probable cause to detain you. Under the law, within 48 hours of your arrest the police must ask a judge to review the alleged facts and decide whether there is probable cause to believe that you have committed an offense. The probable cause hearing is not a trial. I will review the facts and a sworn written statement that the police have provided, or I will hear testimony from a police officer or other witnesses. If I do not make a finding of probable cause, you will be released. If I make a finding of probable cause, you will remain in custody and taken to bond court tomorrow, May 23rd, 2020, for a judge to set bail in your case. At

the bail hearing you will have a hired attorney represent you, or, if you cannot afford to hire an attorney, one will be provided for you.

Finally, I am not able to answer any questions or speak with you in any way about this matter at this stage of the proceedings.

DEFENDANT: I understand, sir.

THE COURT: So, I have received a packet of reports from the Chicago Police Department, including the probable cause statement for judicial determination, the three-page original case incident report, the seven-page arrest report, the defendant's rap sheet -- I do not believe that they need a predicate offense for this charge, they do not, so I will not be considering the rap sheet as part of the probable cause -- as well as the complaint. Now, it looks like to me there is two copies of the same complaint here. So, I believe there is only one complaint.

Lieutenant Sosa, are you going to be the one swearing in?

LIEUTENANT SOSA: Yes, sir.

THE COURT: Can you please raise your right hand?

(Whereupon Lieutenant Sosa was duly sworn to the

contents of the complaint.)

(Lieutenant Sosa was duly sworn.)

THE COURT: So, I am understanding the relationship between the victim and the defendant is that the victim is the defendant's fiancee, is that correct?

LIEUTENANT SOSA: Yes, sir.

THE COURT: Did the victim identify the defendant to officers?

LIEUTENANT SOSA: Yes, sir.

THE COURT: As the person who choked her, correct?

LIEUTENANT SOSA: Yes, sir.

THE COURT: Pushed the victim up against the wall, held her about her throat with his hand, causing visible abrasions to the victim's front neck, correct?

LIEUTENANT SOSA: Yes, sir.

THE COURT: Okay. The victim also related that the defendant pushed her into the wall, causing abrasions to her left arm, correct?

LIEUTENANT SOSA: Yes, sir.

THE COURT: The victim also told officers that, as she attempted to flee, the defendant blocked her exit and physically restrained her attempts to exit the apartment, correct?

LIEUTENANT SOSA: Yes, sir.

THE COURT: And she is the one who called the police, correct?

LIEUTENANT SOSA: Yes, sir.

THE COURT: Based on what was given me, as well as the testimony today, I do believe there is enough for a finding of probable cause. I am making this finding at 4:05 P.M. today.

DEFENDANT: Your Honor, can I say something?

THE COURT: No, sir, unfortunately not at this stage of the proceedings. Tomorrow is when you will be able to talk to an attorney.

DEFENDANT: I was the one abused, Your Honor, I was the one abused, I have proof of abrasions on myself.

THE COURT: Sir, you need to talk to an attorney, as well as give information to the bond court judge. I understand what you are telling me, but I can't talk to you about the case in any way. That is just the constraints of this hearing.

So, I do order that the defendant be taken to bond court no later than tomorrow, May 23rd, 2020. All right, Lieutenant?

LIEUTENANT SOSA: Yes, sir.

THE COURT: I will scan and e-mail the paperwork

back to you. Thank you.

(Which were all the proceedings had in the above-entitled matter.)

STATE OF ILLINOIS)
)
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MUNICIPAL DEPARTMENT-FIRST MUNICIPAL DIVISION

I, BARBARA BRENNAN, an Official Court Reporter for the Circuit Court of Cook County, Illinois, do hereby certify that I reported in shorthand the proceedings had on the hearing in the above-entitled cause; that I, thereafter, caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings.

Barbara Brennan
_____
Barbara Brennan, C.S.R.
Official Court Reporter
#084-002053

5/24/20
_____
DATE

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT-FIRST MUNICIPAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

-vs-

SHAMONTE BRYANT,

Defendant.

REPORT OF PROCEEDINGS had at 5555 West Grand Avenue, Chicago, IL, 60639, in the above-entitled hearing before the Honorable DONALD PANARESE, Judge of said court, on the 5th day of February, 2020, at 1:00 p.m..

PRESENT:

Detective Castaneda, Star Number 20858, having appeared.

The Defendant Shamonte Bryant having appeared.

Maureen S. Andrews
Official Court Reporter
CSR #084-002418

THE DEFENDANT: How are you doing?

THE COURT: Would you mind signing the affidavit.

(WHEREUPON the affidavit was so signed.)

THE COURT: You are Shamonte Bryant?

THE DEFENDANT: Yes, I am.

THE DEPUTY: You are all right there, sir. Just relax and speak to him.

THE DEFENDANT: I have a question. I'm still very confused. They grabbed me from out of Uber going to my auntie's house to get some sleep, to get out the cold.

They grabbed me, put me on the ground and put me in handcuffs. They brought me to the 15th District, told me you had a warrant for another state that I have never entered. Then they said oh, you don't have a warrant but you are under investigation. I said okay. What's the investigation about? Oh, we can't tell you until the detectives get there.

Then some detectives came from another state, city or whatever. They said, um, we gonna have you sign some papers or whatever. I'm not signing anything without a lawyer or my sister present.

They all you fucking did it, a black Audi, you fucking did it. I say huh? And they walked out the room. Then they sent me from the 15th District over

to -- Where are you guys located?

DETECTIVE CASTANEDA: Belmont and Western.

THE DEFENDANT: To Belmont and Western. They send me over there. He talked to me for a second. Well, he really didn't talk. I kind of explained to him what happened throughout my day and then he was like all right, we gonna talk to you. Then they put me in a cage for like 48 hours, 52 hours, whatever; and then they brought me here. And now they talking about a UUW, an armed violence charge and a car.

There is no evidence or no place of putting me nowhere near any of this stuff. They caught me in a Uber going to my auntie's crib. Why did y'all -- What made y'all grab me in the first place? I'm just still lost and confused.

And then they bring me into court without a call. I haven't had a call since I've been grabbed. I haven't talked to my sister. I've talked to my lawyer but that's because they called my sister asking her questions and then she had to find out on her own that I was arrested for something, you know.

It was never oh, you can call your sister and tell her what's going on.

I still really don't know what is going on. I

haven't found out or knew anything about any charges until I got here.

I don't know -- I still barely know what is going on. They just bringing up charges that, you know. I'm just confused. That's all. I just want to know what's going on and why they grabbed me and why I can't talk to my sister.

THE COURT: Okay. Mr. Bryant, I'm finding probable cause to detain you on the charge of aggravated fleeing and eluding, aggravated unlawful use of a weapon by a felon, possession of a stolen motor vehicle and armed violence. Please go with the officers.

DETECTIVE CASTANEDA: Thank you, Your Honor.

THE COURT: Thank you. Let me just sign this.

THE DEFENDANT: He said he's going to detain me for all the charges that you guys brought up but no evidence that I have done any of this stuff.

DETECTIVE CASTANEDA: Have a good one.

THE COURT: You too.

(WHICH WERE ALL THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - FIRST MUNICIPAL DIVISION

I, Maureen Andrews, Official Court Reporter of the Circuit Court of Cook County, do hereby certify that I reported in shorthand the proceedings had at the hearing in the aforementioned cause; that I thereafter caused the foregoing to be transcribed into typewriting which I hereby certify to be a true and accurate transcript of Report of Proceedings had before the Honorable DONALD PANARESE, Judge of said court.

Maureen Andrews
Official Court Reporter
CSR# 084-002418

Dated this 5th day of February, 2020.

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT - FIRST MUNICIPAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, ABDELOUAHED ZAARI, Defendant.	))))))))) Case No.: 20 MC1))))

REPORT OF PROCEEDINGS had at 2452 West Belmont Avenue, Chicago, IL 60618, Belmont and Western Police Station, in the above-entitled hearing, before the HONORABLE CLARENCE BURCH, Judge of said court, on the 9th day of January, A.D., 2020.

PRESENT:

Detective Garrett Suderski, Star Number 20452; having appeared in open court;

The Defendant being present also.

KATRINA E. ALEXANDER, CSR
OFFICIAL COURT REPORTER
CSR NO: 084-003174

THE COURT: Let the record reflect That we are at the location of Belmont and Western. It is now 6:01 p.m. The date is 1-9-2020. We are here for the purposes of determining Gerstein. Officer, please identify yourself for the record.

THE OFFICER: Detective Garrett Suderski, area signed is North, Detective Division. Star number is 20452.

THE COURT: Okay. Let the record reflect that he is tendering me two documents, one is called a probable cause statement for judicial determination. The other one is a copy of the complaint.

THE DETECTIVE: There's multiple complaints here.

THE COURT: All right. We have several complaints here. How many complaints in total do we have?

THE DETECTIVE: Four complaints.

THE COURT: All right. Four complaints. I am now reviewing the complaints and the probable cause statement for the record. After reviewing the complaints and the probable cause statement, there is a finding of probable cause to detain. The defendant's name is --

THE DEFENDANT: A-b-d-e-l-o-u-a-h-e-d. Last name is Z-a-a-r-i. My birthdate is April 8, 1993.

THE COURT: Okay. Thank you, sir.

THE DEFENDANT: You're welcomed.

THE COURT: Let the record reflect that I am now signing a copy of the misdemeanor complaint, dating it and setting the time. I am also signing one of the copies of the probable cause statement. I am also signing a copy of the order. I am turning these documents over to the detective for his records and will receive a copy.

Sir, you will be going to court tomorrow.

THE DEFENDANT: Judge, may I say something?

THE COURT: Yes.

THE DEFENDANT: The police --

THE COURT: Sir, you have a right to an attorney, so I wouldn't say anything.

THE DEFENDANT: Please, Your Honor. Please help me because they think I am homeless.

THE COURT: Shh, shh, shh, shh, shh, shh, shh. Don't say anything, sir.

THE DEFENDANT: Please.

THE COURT: Let the record reflect that we have now concluded the proceedings.

(WHEREUPON, which were all proceedings had.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT - FIRST MUNICIPAL DISTRICT

I, Katrina E. Alexander, CSR, Official Shorthand Reporter of the Circuit Court of Cook County, do hereby certify that I reported in shorthand the evidence had in the above-entitled cause; and that the foregoing is a true and correct transcript of all the evidence heard.

Katrina E. Alexander
_____

Official Shorthand Reporter

Illinois CSR No. 084-003174

Dated this 12th of

January, 2020.

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT-FIRST MUNICIPAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff,
-vs-
MARLON BRADLEY,
Defendant.
19 MC1

REPORT OF PROCEEDINGS had at 2452 West Belmont Ave., Chicago, IL, 60618, Belmont and Western Police Station, in the above-entitled hearing before the HONORABLE CLARENCE BURCH, Judge of said court, on the 29th day of December, 2019, in Chicago, Illinois.

APPEARANCES:

Detective William Bokowski, Star No. 20673.
Having appeared.

The Defendant,
Having appeared.

Barbara Brennan
Official Court Reporter
084-0020534

THE COURT: Good afternoon, sir. How are you doing today? My name is Judge Clarence Burch. You are here for a probable cause hearing, to see if there is probable cause to detain pursuant to Gerstein.

Let the record reflect that we are at the police station at Belmont and Western, the time is now 6:33.

Officer, could you please identify yourself?

DETECTIVE BOKOWSKI: Detective William Bokowski, B-O-K-O-W-S-K-I, Star No. 20673.

THE COURT: I have had an opportunity to look at the complaint and, also, the felony review minutes. I find that there is probable cause to detain. I am now signing the complaint.

DEFENDANT: Excuse me, what is going on?

THE COURT: I am going to tell you in one moment. Just hold on, sir. Just relax.

DEFENDANT: No, I can't relax. I am supposed to have legal representation at any hearing I am at. I don't have no legal representation. I want to say this, for the record, man. I don't have anything.

THE COURT: Okay, everything you say is being recorded.

DEFENDANT: Yes, yes, sir. But I don't have any legal representation. I feel I am being railroaded, I am

being hoodwinked right now, because of the simple fact this man is trying to get me up on some charges. I don't even know what is going on.

THE COURT: Okay, just one second.

DEFENDANT: And I ain't never ever been in any process like this.

THE COURT: I am now signing a copy of the order to detain.

DEFENDANT: And I don't think she even wrote down my part.

THE COURT: She is taking down everything you are saying.

Thank you very much. You can take him back. Thank you.

DEFENDANT: What am I being charged with?

THE COURT: The Detective will explain that to you, sir.

(Which were all the proceedings had in the above-entitled matter.)

STATE OF ILLINOIS)
)
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MUNICIPAL DEPARTMENT-FIRST MUNICIPAL DIVISION

I, BARBARA BRENNAN, an Official Court Reporter for the Circuit Court of Cook County, Illinois, do hereby certify that I reported in shorthand the proceedings had on the hearing in the above-entitled cause; that I, thereafter, caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings.

Barbara Brennan
_____
Barbara Brennan, C.S.R.
Official Court Reporter
#084-002053

1/1/20
_____
DATE

EXHIBIT F

AFFIDAVIT OF STEPHANIE A. CIUPKA

I, Stephanie A. Ciupka, state the following based on personal information:

1. I am a licensed attorney in Illinois and work with the Police Station Representation Unit (PSRU) with the Cook County Public Defender's Office.

2. Due to the COVID-19 pandemic, the Cook County Public Defender's Office came to an agreement with the Chicago Police Department (CPD) that allows Public Defenders from PSRU to represent clients in police custody entirely over the phone. This agreement has been in place since May 15, 2020.

3. On July 10, 2020, I answered calls to the PSRU Station Visit Hotline from 3:00 - 11:00 PM. At or around 3:00 PM, Assistant Public Defender Catherine Stockslager, who worked the morning shift that day, told me that CPD had been unable to provide the location of CLIENT, whose arrest she had learned about from a call to the hotline at 12:40 PM that day.

4. At 4:32 PM, I called CPD Central Booking and asked for the location of CLIENT. I was informed that CLIENT was being held at the 9th District.

5. The Central Booking officer on the phone also shared that CLIENT had been arrested at 10:36 AM that day, about 6 hours prior to my call.

6. At 5:12 PM, I called the 9th District. Officer Harris answered and confirmed that CLIENT was in custody there. She transferred me to Srgt. Todd Jaros to set up a phone call with CLIENT per the aforementioned agreement.

7. At 5:12 PM, CLIENT called me from the 9th District. He had been questioned by a police officer, and he had asked for a lawyer. The officer did not stop questioning CLIENT after CLIENT requested a lawyer. Further, CLIENT had not been allowed to make any phone calls prior to speaking to me.

I declare under the penalty of perjury that the foregoing is true and correct. If called to testify about the contents of this affidavit, I would be competent to do so

Dated: July 16, 2020

S Ciupka

Stephanie A. Ciupka

ANISSA N TORRES
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
February 17, 2024

Anissa N. Torres

July 16th 2020

EXHIBIT G

AFFIDAVIT OF SAMUEL DIXON

I, Samuel Dixon, state the following based on personal information:

1. I am a licensed attorney in Illinois and work with the Police Station Representation Unit with the Cook County Public Defender's Office.

2. On Tuesday, June 30, 2020, at 11:27 a.m., Assistant Public Defender Max Suchan called the Police Station Representation Unit (PSRU) hotline and told me that he just witnessed two detectives do an informal *Gerstein* hearing via Zoom with the Hon. Robert Kuzas for a CLIENT being investigated for a homicide. CLIENT was not represented during this proceeding. APD Suchan learned CLIENT was at District 5 with Area 2 detectives, and APD Suchan could only provide me with a phonetic spelling of CLIENT's name and his RD number.

3. I called the 5th District station for the Chicago Police Department and spoke to Sgt. Michael Infelise (#1824). Sgt. Infelise confirmed that CLIENT was at the 5th District. I then sent my identification and a Notice of Representation and Declaration of Rights to Sgt. Infelise via email. Sgt. Infelise stated that he would allow CLIENT to call me. CLIENT called me at 12:01 p.m.

4. During our phone call, CLIENT explained that he was in the emergency room for a gunshot wound on Saturday, June 27th when detectives arrested him. From Saturday, June 27th, to our phone call on Tuesday, June 30th, CLIENT was transported to and from the hospital multiple times. CLIENT was on pain medication for his injuries and could only maneuver by using crutches.

5. From Saturday, June 27th, to our phone call on Tuesday, June 30th, detectives repeatedly questioned CLIENT. CLIENT spoke to about six detectives or law enforcement personnel total. CLIENT said he only knew one of the detectives as "Michael."

6. CLIENT's first interrogation took place at the hospital and the rest occurred at the 5th District station for the Chicago Police Department.

7. Detectives also made CLIENT do a gunshot residue test. The detectives did not show CLIENT a warrant for the gunshot residue test, and they did not ask for CLIENT's permission.

8. The detectives also brought CLIENT to the alleged scene of the crime on June 29th, and CLIENT was made to reenact the alleged incident.

9. CLIENT told me that while in custody since June 27th, he repeatedly asked for phone calls and was not able to make a single phone call. CLIENT said detectives told him he could not talk to anyone.

10. CLIENT also said that he was not made aware while in custody that he could be appointed a free attorney from the Cook County Public Defender.

11. As a result of my phone call with CLIENT, CLIENT signed the Notice of Representation and Declaration of Rights, asserting his right to remain silent and not to be questioned outside the presence of his attorney.

12. Sgt. Infelise returned the signed Notice of Representation and Declaration of Rights to me via email.

13. I responded explaining that CLIENT had not received a phone call and asked if Sgt. Infelise could allow CLIENT a phone call. Sgt. Infelise responded that he would allow CLIENT to make a phone call and "cannot say what or why anything wasn't allowed while he was upstairs with the detectives over the last 2 days."

14. On Wednesday, July 1, 2020, at 8:36 a.m., I called the 5th District station for the Chicago Police Department again and spoke with a desk officer. The officer told me CLIENT had been transported to central bond court already.

15. I then called CLIENT's mother who told me CLIENT had called CLIENT's sibling on June 30th after Sgt. Infelise allowed CLIENT a phone call.

16. CLIENT was in custody for over two days without being allowed to make a phone call or talk to an attorney, and he was never made aware that PSRU could represent him for free in custody.

17. CLIENT was deprived of the benefit of assistance of counsel and any legal advice during his interrogation by CPD, as a result of CPD's denial of access to a phone. If CLIENT had access to means to contact the PSRU, CLIENT could have then been protected from making incriminating statements.

18. CLIENT was charged with Class X Armed Robbery with a Firearm.

I declare under the penalty of perjury that the foregoing is true and correct. If called to testify about the contents of this affidavit, I would be competent to do so

Dated: July 15th, 2020

/s/ Samuel Dixon

NAME: Samuel Dixon