Police Misconduct and Civil Rights LAW REPORT

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THE WRONGFUL CONVICTION OF JOHNNIE LEE SAVORY

*By G. Flint Taylor**

THE MURDERS

In the afternoon of January 18, 1977, the mother and step father of 14-year-old James Robinson and his 19-year-old sister Connie Cooper returned home and discovered a horrendous murder scene—the bloody bodies of their two children. It was a sensational case, even by the standards of Peoria, a corrupt and violent city with a population of about 120,000 located in western Illinois on the Illinois River. The murders rocked the small Black community of Peoria and the Peoria Police scrambled to solve the case.

The sensational nature of the case was publicly fueled by the Peoria Police Department. According to one published article, "veteran GPD homicide detectives said that the mutilation knife murders were the most ghastly committed in at least the last 50 years in their city and among the most gruesome ever to occur in the state of Illinois." It also quoted the head of the PPD crime laboratory as saying the wounds were "the worst I've seen since I came on the force and I've seen

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a lot of them in more than 20 years." He added that "the wounds were done with an intent to kill—like a maniac did it." The County Coroner was quoted as saying that "the victims were stabbed and slashed something awful with a big sharp instrument" and that they were "the most brutal murders I have seen in a long, long time. It's hard to understand why anyone would—or could—do something like this."

At a press conference held a day or two after the bodies were discovered, the Peoria Police Superintendent, who was brought to Peoria a decade earlier to modernize the Department's practices, detailed in excruciating detail the locations of the stab wounds, including to Connie's vagina, and opined that the nature of the wounds "made sex virtually impossible." He revealed that several suspects had been questioned and released after taking lie detector tests, and said that they had not located a suspected murder weapon, and that "we have no absolute motive, and there is no indication that drugs or alcoholic beverages were involved." He announced that a multi-unit task force of some 22 officers and supervisors had been formed, and further stated that two dozen officers had conducted an exhaustive door to door canvas and that scores of reports had been generated.

THE INTERROGATION AND ARREST OF JOHNNIE LEE SAVORY

After a full week of essentially fruitless around the clock investigation, the PPD learned that someone by the name of Johnny was a friend of James Robinson, so at the urging of a Juvenile Lieutenant, they picked up the 14-year-old Johnnie Lee Savory, who stood barely five feet tall and weighed 100 pounds, at his school and took him to the police station. They then started an interrogation process that would go on for 30 hours over the next two days. Under pressure, Johnnie told the officers that he was with James the night before the murders, that they had played at the Robinson's house, gone out to buy some food, and then returned where Johnnie briefly saw Connie and the parents. Johnnie then walked across town to his house, arriving before midnight, and went to bed.

Not satisfied, the team of interrogators decided to take Johnnie for a polygraph examination which was administered late on the night of the 25th by a former PPD officer, who reported that Johnnie had shown "deception" at the "relevant questions." Johnnie was brought back to the station and, when the officers tried to continue the interrogation, he specifically told them that he did not want to talk further. Despite not having probable cause to arrest him for the murders, they nonetheless took him, after midnight, to the juvenile detention center, where he spent a sleepless night, wanting desperately to go home.

The next morning, Johnnie was returned to the station and, in clear violation of his *Miranda* rights, the interrogators resumed the questioning. His father appeared briefly, but was so upset with the treatment of his son that he was banished from the station, leaving Johnnie with his proba-

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tion officer as his only "advocate." Despite the tag team questioning, Johnnie persisted in recounting his exculpatory statement—that he was with the victims the night before but not the day of the murders. Seizing on some minor contradictions in his story, they increased the pressure, and humiliated him by stripping him naked and plucking hairs from his body.

Frustrated by Johnnie's consistent denial of involvement in the murders, two PPD officers, companioned by the probation officer, took Johnnie back to the polygraph office in the early evening of the 26th. He was then subjected to another polygraph examination, administered by a second former PPD officer. According to Johnnie, this polygrapher became verbally abusive, yelling at him and accusing him of being a murderer, and his bullying reduced Johnnie to tears. It was at this point that Johnnie's will was broken.

He was turned back over to the PPD officers and a broken Johnnie said that he committed the murders. Led by one of the officers, he told a story that combined some of the events of the night before with what the officers had fed him. Intermittently, he would profess his innocence, but the interrogating officer would accuse him of "backtracking," and lead him back to his recitation of his false confession. At about 9 pm on the 26th, after Johnnie refused to sign a written confession, the officers placed Johnnie under arrest for the murders of James Robinson and Connie Cooper.

THE FIRST TRIAL AND APPEAL

After Peoria County Judge Stephen Covey determined Johnnie to be an adult for purposes of trial, and denied his motion to suppress his inculpatory oral statement, Johnnie went to trial in Peoria County in June of 1977. The evidence against him was centered around the statement, and, after a two-day jury trial, in front of an overflow courtroom crowd, he was convicted of the double murders and subsequently sentenced to two concurrent 50-to-100 year sentences. On appeal to the Third District Appellate Court, he was represented by Appellate Defender Ted Gottfried, who raised the voluntariness of Johnnie's confession and the excessiveness of his sentence as appellate issues. In a split 2-1 decision, the Appellate Court reversed and remanded the case. *People v. Savory*, 82 Ill. App. 3d 767, 38 Ill. Dec. 103, 403 N.E.2d 118 (3d Dist. 1980). In doing so, the majority emphasized that Johnnie was a juvenile, was subjected to a very lengthy interrogation, and that he recanted his statement, holding that his statement was not voluntary:

> Finally, when the previously described circumstances are combined with the length of time defendant was questioned, additional support is afforded for the general conclusion the defendant's statements were not proved to be voluntary. The test to be applied in determining the voluntariness of a statement is whether it has been made freely, voluntarily and without compulsion or inducement of any sort or whether the defendant's will was overcome at the time he confessed. (*People v. Prim* (1972), 53 Ill. 2d 62, 289 N.E.2d 601, cert. denied (1973), 412 U.S. 918, 37 L. Ed. 2d 144, 93 S. Ct. 2731.) See *Haley v. Ohio* (1948), 332 U.S. 596, 92 L. Ed. 224, 68 S. Ct. 302, and *People v. Simmons* (1975), 60 Ill. 2d 173, 326 N.E.2d 383, where the courts indicated special care should be given in scrutinizing the record to determine voluntariness where the defendant was a juvenile. At the hearing on the suppression motion the trial court was especially concerned with the period of from 3 o'clock in the afternoon until 11 that night and in particular whether defendant was under arrest during this period and whether the questioning should have been considered custodial interrogation. As a result of the hearing the trial court was satisfied defendant was not in custody prior to his arrest at 11 p.m. because, according to the testimony of the police officers, the defendant was not a suspect during this period of time and in fact other persons had been given polygraph tests without being arrested or charged. Nevertheless, we do have a period of approximately eight hours, interrupted by a meal, of questioning on January 25 and then an additional period of questioning, interrupted by meals, com-

> mencing at about 10:30 in the morning of January 26 and continuing until about 8 p.m. when the inculpatory statements were made. We also observe that thereafter the defendant did not reaffirm his inculpatory statements but in fact recanted them shortly after they were made. Without deciding that the length of questioning would of itself justify suppression of the statements as not voluntary, we do believe the cumulative effect of all of the circumstances does compel the conclusion the prosecution did not sustain its burden of establishing the voluntariness of the statements. We believe the error in admitting the statements requires a new trial because we cannot say beyond a reasonable doubt that it did not contribute to the verdict of the jury under the authority of *Chapman v. California* (1967), 386 U.S. 18, 17 L. Ed. 2d 705, 87 S. Ct. 824.

People v. Savory, 82 Ill. App. 3d at 774-775.

THE SECOND TRIAL

Now, more than three years after Johnnie was first arrested as a 14-year-old, the Peoria County prosecutor and the Peoria Police Department were faced with a serious problem—they no longer had a viable case against Johnnie, a reality that outgoing State's Attorney Michael Mihm publicly conceded when he stated "we cannot retry him without his statement, so that's it, he won't be retried again." State's Attorney John Barra, who replaced Mihm, later echoed him, stating "without (the confession) there is no substantial evidence to tie Savory to the crime or the scene of the crime. I don't know how it would be possible to try him without it." Barra promised that the case would be dismissed in the very near future.

The Peoria Police Department had other ideas, however, and, a month before the case was set for re-trial, detectives persuaded three young members of the Ivy family—Frank, Tina, and Ella—to testify against Johnnie. For the first time, some four years after the murders, they stated that Johnnie had made admissions to them before the murders had become public knowledge that he had accidentally stabbed James Robinson. So, in April of 1981, after a change of venue to Lake County in northern Illinois, Johnnie was tried once again for the double murders. The State presented a case comprised of the Ivys' testimony; admissions by Johnnie which had not been previously suppressed that he had lied about some minor details in his exculpatory statement; a blood stain on a pair of pants that was the same blood type as one of the victims; Johnnie's invocation of silence when the police first picked him up; and a knife obtained from Johnnie's father.

Johnnie's defense offered an alibi and presented evidence of an alternative suspect—the step father who had a history of violence with both James and Connie, was having an illicit affair with Connie, as a Vietnam veteran had post-traumatic stress disorder, was a cocaine addict, and, as a mortician's assistant, was familiar with, and had access to, sharp knives. The defense also offered evidence that the knife belonged to Johnnie's father as did the outsized pants. However, Johnnie's defense counsel neglected to impeach Frank Ivy with a taped interview during which he failed to mention Johnnie's alleged admissions about the stabbings, and was equivocal as to whether Johnnie had made any inculpatory statements at all, and did not follow-up on a jailhouse letter from a fourth Ivy teenager—James—who said he was offered a deal on his burglary charge if he would testify against Johnnie. The lawyer also decided not to call Johnnie to the stand because he was unsure as to whether his suppressed inculpatory statement might be used as impeachment under a *Miranda* exception if he testified. Johnnie was again convicted and his sentencing was set for June 1981.

Before sentencing, Johnnie's trial lawyer had a chance encounter with the assistant state's attorney who had second-chaired for the prosecution in the first trial. Apparently conscience stricken, he confided that he and the lead prosecutor, in consultation with the PPD officer assigned to the case, had decided not to call the

Ivys to the stand in the first trial because their testimony was "very shaky" particularly on the key issue of timing. Johnnie's trial attorney, who said at his recent deposition that he was "amazed" at the prosecutor's admission—an event that he said was unique in his more than 50 years of practice as a criminal defense lawyer—called the prosecutor to the stand at Johnnie's sentencing. Despite the testimony, Johnnie received concurrent sentences of 40 to 80 years.

THE SECOND APPEAL

On appeal, Johnnie raised the related issues of the prosecutor's emphasis on Johnnie's initial silence in his closing argument, and the introduction into evidence of Johnnie's admission that he had lied as to some of the details in his exculpatory statement. With regard to his admission, which was made on the evening of January 25th, the Court examined whether he was in custody at the time he made them:

> Numerous factors are to be considered in this inquiry: the location. . .; time. . .; length. . .; mood and mode (including extent of knowledge of facts possessed by police) of the interrogation; the number of police officers present . . . , and the presence or absence of friends or family of the accused . . . ; any indicia of formal arrest of the subject including physical restraint, show of weapons or force, booking, fingerprinting or informing the person he is under arrest . . . ; the manner in which the person questioned got to the place of interrogation, *i.e.*, voluntarily on his own, in response to a police request, or on a verbal command indicating compulsion. . . ; whether he voluntarily assists police in their investigation . . . ; whether the subject is allowed to walk within and from the location of the interrogation unaccompanied by police . . . ; and the age, intelligence and mental makeup of the accused. . . . We must then apply the objective test and these factors to defendant's interviews by the officers.

People v. Savory, 105 Ill. App. 3d 1023, 1028, 61 Ill. Dec. 737, 435 N.E.2d 226 (2d Dist. 1982). *(internal citations omitted).*

Applying these standards, the Appellate Court held that Johnnie was not in custody when he was first questioned at his school, or when he was first questioned by four officers at the station, but that he was during his 6 p.m. questioning at the station:

> The third interview commencing at 6 p.m. presents different circumstances. Like the second it occurred in a small interrogation room in the police station and lasted about three-quarters of an hour. Defendant had by then been with the police for over 2 1/2 hours. The officers, however, became accusatory as they began doubting defendant's account and they suggested they had reliable information discounting his version of the events. . . . Although defendant had not been formally arrested, physically restrained, booked, or fingerprinted, a reasonable person might well have believed at the third interview, when his story was being discounted, that he was in police custody. While not determinative, the fact that the officers testified defendant was not free to leave the police station (although they did not so inform him) is of some relevance to our inquiry.. . . Similarly, that defendant was but 14 years of age at this time must be considered.
>
> We conclude that at the third session when the officers, who testified they then knew defendant was not being truthful with them, so informed him and pointed out discrepancies between defendant's version and their own information, he was in custody and should have been given *Miranda* warnings.

People v. Savory, 105 Ill App. 3d at 1029. (Internal citations omitted).

Nonetheless, the Court held that "in view of the testimony of the three witnesses [the Ivys] who related defendant's admissions to them of his presence and complicity in the killings, we consider the admission of these statements in trial to be harmless error beyond a reasonable doubt." *Id.* at 1030. Similarly, the Court also held that the prosecutor's highlighting of Johnnie's initial silence was harmless error, and further rejected his assertion that his trial counsel was ineffective for not determining whether his suppressed exculpatory statement could be used as

impeachment under a *Miranda* exception if he called Johnnie to the stand to testify.

RECANTATIONS AND COLLATERAL PROCEEDINGS

Johnnie was now a young man of 19 who was navigating the violent adult penitentiary system, without the protection of membership in a prison gang, and saddled with the added stigma of being publicly accused, but not charged, with the rape of Connie Cooper. While dismayed by the Appellate Court's decision, he continued to maintain his innocence, and to pursue every available avenue to win his freedom. After the Illinois and U.S. Supreme Courts refused to review his conviction on direct review, Johnnie pursued state court post-conviction relief, during which he presented recantations from two of the three Ivys. Frank Ivy had signed a statement stating that his trial testimony was "wrong," was based on information he had heard on the street and that he felt pressured into testifying by Detective Cannon of the Peoria Police Department.

Similarly, Tina Ivy signed two statements admitting that Johnnie did not tell her that he had stabbed James Robinson and Connie Cooper as she had testified at the second trial, and further stated that her testimony was based on rumors she had heard in the street. At the post-conviction hearing, she confirmed in her testimony that Johnnie had never admitted he killed James and Connie, that she had pending criminal charges on her mind at the time she testified in 1981, and at that time, she was on probation for a forgery charge and had been enrolled in a drug rehabilitation program.

Nonetheless, the post-conviction petition was denied, as was Johnnie's subsequent 1984 federal habeas petition which challenged the Appellate Court's previous findings of harmless error. *U.S. ex rel. Savory v. Lane*, 832 F.2d 1011 (7th Cir. 1987). While District Court Judge Charles Kocoras cursorily rejected the habeas petition, the Seventh Circuit felt compelled to address the Ivy testimony in detail in order to hold that the other errors by the trial court were harmless beyond a reasonable doubt. First, the Court found that the Appellate Court's findings concerning the Ivys "were not fairly supported by the record":

> Only one of the witnesses, Ella Ivy, related a conversation regarding the victims which allegedly took place before the bodies were discovered. Additionally, it was only to this witness that the defendant allegedly made the admission that the victims were dead. This witness, in particular, seemed to be confused about the times at which defendant spoke to her, or at least her testimony was inconsistent with that of another of the witnesses upon whose testimony the state relies. Although she testified that the defendant admitted the death and details about the baby and the dog at around 4:00 and 4:30, respectively (also testifying that he was not there at 4:15 when the other two witnesses arrived), her brother testified that he had returned to the home at 3:45, and that the defendant was not there at the time and did not arrive until 5:30.
>
> The other two witnesses testified to admissions allegedly made *after* the brother and the defendant watched a television news account of the slayings. Tina Ivy's testimony, the only testimony that could even arguably be classed as containing a "detailed description" of the wounds the victims suffered, related a conversation which took place *on the following day*, well after the bodies were discovered. Only Frank Ivy's testimony contained any reference to the sister ("She came in the room and he stabbed her, I guess.").
>
> In sum, the record does not support the assertion that defendant admitted to three witnesses that he had stabbed the victims and they were dead before the bodies had been discovered, or that he gave detailed descriptions of the wounds before that discovery. Neither do they support the statement that he admitted his presence and complicity in the killings.

U.S. ex rel Savory v. Lane, 832 F 2d at 1019.

The Seventh Circuit then found, even without the added benefit of the recantations, that "the testimony of the Ivys thus had significantly less

probative force than the Appellate Court's summary suggests. Accordingly, we cannot accord a presumption of correctness to that court's findings." Remarkably the Court then did a one-eighty, by relying on portions of the Ivys' testimony, together with the "damning physical evidence" (the pants, the knife and the hair), to hold that "in light of the state's otherwise strong case, the relatively limited use of tainted evidence, and the lack of probative value the tainted evidence had, we conclude that there is no reasonable possibility that its use contributed to the verdict." *Id*. at 1020.

PRISON LIFE AND LITIGATION

In 1989, Johnnie, then a 26-year-old adult, was locked up in Stateville Penitentiary, a maximum-security hell-hole located in Joliet, Illinois, when he was charged with six disciplinary offenses. Not receiving notice of the disciplinary hearing, he was "convicted" of four of the six offenses, and spent three months in segregation. Despite this official harassment, which not only included unjustified trips to segregated confinement, but also frequent shuttling from one prison to another, Johnnie was pursuing his education, which included training himself as jailhouse lawyer. In 1991 he filed a *pro se 42 U.S.C.A. Sec. 1983* damages case for his unconstitutional banishment to segregation in violation of his due process rights. He was transferred to Hill Correctional Center where he worked with prison officials to make the institution safer for both staff and prisoners. From 1991 to 1995, Johnnie was an informal member of the Hill crisis team, which sought to aid prisoners suffering from severe depression. In one instance, guards asked Johnnie to counsel a fellow prisoner who had attempted suicide. He also counseled many young prisoners to avoid prison gangs. While at Hill, Johnnie intervened to help a young prisoner who had been beaten by prison gang members, and took the young man under his wing and convinced him that, despite the threat from the gang, he would not benefit from joining a prison gang.

Johnnie also continued to litigate, from his prison cell, his due process case against an array of prison officials. In June of 1994, his claims against the high ranking and supervisory defendants were dismissed by Northern District Federal Judge John Grady for lack of personal involvement. *Savory v. O'Leary*, 1994 WL 282289 (N.D. Ill. 1994). Judge Grady denied the motion to dismiss on the claims against the disciplinary committee members who found him guilty of the charges, but he subsequently granted summary judgment to those officers because it was another officer who allegedly failed to give Johnnie notice of the hearing. *Savory v. O'Leary*, 1995 WL 151784 (N.D. Ill. 1995). Unfortunately, Johnnie had not joined that officer within the statute of limitations, and Judge Grady chose not to find that the claim against him related back. *Id*. Hence Johnnie was left with no remedy for the denial of his right to defend himself at the disciplinary hearing.

THE SECOND FEDERAL HABEAS CORPUS PETITION

Also in 1994, Johnnie, now a 31-year-old man who had spent 17 years behind bars, filed, *pro se,* a second federal habeas corpus petition, alleging a violation of the Juvenile Justice Act, a defective indictment, prosecutorial misconduct, ineffective assistance of counsel, and that he was not proved guilty beyond a reasonable doubt. The case was assigned to Northern District Judge David Coar, who addressed the claims on their merits despite the fact that he agreed with the State that they should have been raised in Johnnie's first habeas. *United States ex rel. Savory v. Peters*, 1994 U.S. Dist. LEXIS 18990 (N.D. Il). It was a Pyrrhic victory at best, as Judge Coar went on to reject each of the claims, predominately because they did not raise federal constitutional issues. Johnnie cited a laundry list of attorney conflicts and failures by the two private lawyers who represented him on his prior collateral proceedings, but this too was to no avail. With regard to the reasonable doubt

question, the Court, purportedly applying the standard "that upon the record evidence adduced at trial, no rational trier of fact could have found proof beyond a reasonable doubt," and viewing the evidence in the light most favorable to the guilty verdict, once again relied on the Ivys' discredited testimony, Johnnie's exculpatory statements, and the blood on the pants evidence, to reject that claim. *United States ex rel. Savory v. Peters*, 1994 U.S. Dist. LEXIS at *21-22.

THE FIRST PETITION FOR DNA TESTING

In 1998, the Illinois Legislature adopted legislation that provided for DNA testing. In pertinent part *725 ILCS 5/116-3* provided:

> "(a) A defendant may make a motion * * * for the performance of fingerprint or forensic DNA testing on evidence that was secured in relation to the trial which resulted in his or her conviction, but which was not subject to the testing which is now requested because the technology for the testing was not available at the time of trial."
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> * * *
>
> (b) The defendant must present a prima facie case that:
>
> * * *
>
> (2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect.
>
> (c) the trial court shall allow the testing * * * upon a determination that:
>
> (1) the result of the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence.

Johnnie, through his trusted appellate lawyer Ted Gottfried, quickly moved for DNA testing on the pants and on fingernail scrapings from the victims. Peoria Judge Robert Barnes denied his application, as did the Appellate Court, a year later, in a 2-1 decision. *People v. Savory*, 309 Ill. App. 3d 408, 242 Ill. Dec. 731, 722 N.E.2d 220 (3d Dist. 1999), aff'd but criticized, 197 Ill. 2d 203, 258 Ill. Dec. 530, 756 N.E.2d 804 (2001).

The State first argued on this appeal that Johnnie had no right to appellate review, but the Appellate Court determined that it had jurisdiction to review, *de novo*, Judge Barnes' decision. The majority next focused on the actual innocence language in the statute, and determined that testing should be granted only "where such testing may be dispositive of the defendant's guilt or innocence." 309 Ill App. 3d at 413. Moreover, it further opined that "actual innocence" applied "in a narrow class of cases implicating a fundamental miscarriage of justice," prototypically "where the State has convicted the wrong person of the crime." *Id* at 414. Hence, with regard to testing of the pants, the majority held "although DNA testing carries the possibility of weakening the State's original case against defendant, it does not have the potential to prove him innocent. Accordingly, the trial court did not err in denying defendant's motion." Similarly, it held with regard to the fingernail clippings that

> The victims could potentially have DNA under their fingernails from a number of persons, none of which may belong to their killer. There is no evidence that either of the victims' fingernails ever came into contact with the perpetrator. Therefore, DNA testing in these circumstances is inappropriate; it does not have the potential to prove defendant innocent.

Id. At 416.

Presiding Justice Holdridge dissented. Giving the relevant provision its "plain and ordinary meaning," Justice Holdridge rejected in no uncertain terms that the legislature intended to narrowly limit testing to cases where the results would result in "total vindication" or have the "potential to exonerate the defendant." Material relevancy was the key, and Johnnie's petition met that test in Justice Holdridge's view:

> [T]hose pants stained with blood of the same blood type as one of the victims were the key piece of physical evidence against him. If it could now be shown through DNA testing that the blood on the pants was not the victim's, those results would be "materially relevant" to the defendant's claim of "actual innocence" i.e., a claim of innocence that is free-standing rather that one

> based upon a claim of trial error.. . . For the foregoing reasons, I would reverse the trial court and I dissent on that basis.

Id. At 417.

The Illinois Supreme Court granted leave to appeal and the Northwestern Law School Legal Clinic joined the fight as *amicus curiae*. In a unanimous decision written by Justice McMorrow, the Court awarded Johnnie yet another Pyrrhic victory. *People v. Savory*, 197 Ill. 2d 203, 258 Ill. Dec. 530, 756 N.E.2d 804 (2001) After finding that it had jurisdiction to hear the appeal, it rejected the high standard that the Appellate Court employed to evaluate the right to testing the pants:

> We conclude that an examination of the language in *section 116-3* reveals that it does not contain the restriction the appellate court imposed on it. . . . Accordingly, we hold that *section 116-3* is not limited to situations in which scientific testing of a certain piece of evidence would completely exonerate a defendant.

Id. at 213, 214.

The Court then turned to what it determined to be the correct standard as set forth in the statute—"whether the evidence at issue in this case is 'materially relevant to the defendant's assertion of actual innocence.' " *Id*. at 214. Once again, the Ivys' discredited testimony, together with some of the details in Johnnie's exculpatory statement, provided the Court with the death knell to Johnnie's plea:

> Our examination of the record shows that the testimony regarding the possible source of the bloodstain on the pair of trousers was only a minor part of the State's evidence in this case. A far greater portion of the State's case consisted of defendant's knowledge of certain features of the crime scene, such as the type of food prepared in the kitchen that day and the placement of the television set, which only the offender could have known, and of defendant's statements to Ella, Frankie, and Tina Ivy that he had been at the victims' home the day of the murders and had cut one or both of the victims.

Id. At 214-215.

The Court emphasized the importance of the testimony of Ella Ivy, who, to this point in time, was the only family member who had not recanted:

> Of particular significance in this regard was defendant's admission to Ella Ivy, made during the afternoon of January 18, prior to the discovery of the crimes, that the two victims were dead.

Id. At 215.

Thus, in the Court's view, the blood on the pants was a "minor part of the state's array of evidence," a "collateral issue" that did not warrant DNA testing. *Id*. at 215, 216.

FEDERAL LITIGATION SEEKING DNA EVIDENCE

In 2003, Johnnie, marshalling growing legal and community support, next filed a clemency petition with Democratic Governor Rod Blagojevich and the Prisoner Review Board. In 2005, now represented by a battery of high powered wrongful conviction lawyers from Northwestern's Wrongful Conviction and Criminal Law Clinics, the New York Innocence Project and the prestigious Chicago law firm of Jenner and Block, Johnnie turned again to the Federal Courts, this time filing a *42 U.S. Sec. 1983* lawsuit in the Central District of Illinois seeking access for purposes of DNA testing to (1) the bloodstained pants; (2) hair samples; (3) the pocket knife with traces of blood on it; and (4) samples taken from Johnnie, his father, and others from whom samples were collected. The seven-count complaint alleged several constitutional claims—denial of procedural and substantive due process and access to the courts; cruel and unusual punishment; denial of Johnnie's opportunity to show actual innocence in violation of the Fourteenth Amendment; denial of his access to executive clemency; and denial of his rights to confrontation and compulsory process in violation of the Sixth Amendment. Among the many defendants sued was the City of Peoria.

The case was initially assigned to Central

District Magistrate Judge David Bernthal who issued two successive Reports and Recommendations. In his initial Recommendation, he first found that Johnnie was not precluded from bringing his claims under *Section 1983* because seeking access to evidence for DNA "did not in any way challenge the legality of the state proceedings, and a favorable judgment for Plaintiff in federal court would not invalidate the state court judgment denying Plaintiff's motion for testing pursuant to the Illinois statute." *Savory v. Lyons*, 2005 U.S. Dist. LEXIS 56320 at *12 (C.D. Ill.). After finding that all but two of the claims either did not rise to the level of Constitutional violations or were barred by the statue of limitations, the Magistrate denied the Motion to Dismiss only as to the City and only on the executive clemency and denial of confrontation and compulsory process claims. 2005 U.S. Dist. LEXIS at **12-31. Two months later, the Magistrate reversed himself on the limited denial that he had previously recommended, on the basis that those claims were also barred by the statute of limitations. *Savory v. O'Leary*, 1994 WL 282289 (N.D. Ill. 1994). Three days after Christmas 2005, Central District Court Judge Michael McCuskey accepted the Recommendations and dismissed the entire case. *Savory v. Lyons*, 2005 U.S. Dist. LEXIS 38079, 2005 WL 3543833 (C.D. Ill.) A year later a panel of the Seventh Circuit affirmed the District Court, holding that Johnnie could properly bring his claims under *Section 1983*, but was not entitled to relaxation of the statute of limitations under the alternative doctrines of continuing violation or equitable tolling. *Savory v. Lyons*, 469 F.3d 667 (7th Cir. 2006).

PAROLE, COMMUTATION, DNA TESTING AND A GOVERNOR'S PARDON

Within weeks of this decision, Johnnie made parole, having spent one month shy of 30 years behind bars for crimes he did not commit. He had matured from a small and scared 14-year-old boy into a model prisoner who was committed to helping others. He had earned his GED and vocational certificates for auto body repair, electronics repair, paralegal studies, and music dynamics. He had completed computer science courses offered through Danville Community College and earned six college credits through Lincoln College. He had also participated in many personal development programs and seminars offered in prison. He had connected with organizations who advocated for prisoners' rights and against Draconian prison conditions, and worked closely with them to compel the prison administration to change some of their worst policies and practices. He was an active member in the Peoria Jaycees and the Lifers Club, a charitable organization whose membership included prisoners serving at least 20 years. For three years, he served as vice president of the Jaycees and was vice president of the Lifers Club for two years. In both positions, he worked to mobilize fellow prisoners and persons in the outside community to gather money and food for the homeless and to help fund a park in Peoria. In addition, Johnnie volunteered to help paint the Hill Correctional Center, and served as a personal fitness trainer for many guards.

Upon his release, Johnnie was welcomed to Chicago by wrongfully convicted former prisoners, police torture survivors, community members, and persons of conscience who strongly believed in his innocence. The Reverend Jesse Jackson embraced him and gave him full-time employment at the Rainbow PUSH coalition. He also continued his close relationship with the Northwestern Center on Wrongful Convictions, where mentored recently released exonerees transitioning to a life of freedom.

In 2011, Johnnie and his lawyers finally had a breakthrough when Governor Pat Quinn commuted his sentence, releasing him from parole but keeping his conviction intact. And, of course, he continued to fight, with his lawyers, to obtain DNA testing and to clear his name. The next year, Johnnie filed yet another DNA petition in Peoria County Court, and he journeyed back to

Peoria with a busload of supporters to personally hand-deliver the petition to the county's top prosecutor, "not to antagonize him . . . but to say it's time that this change and I wanted to participate in the change."

By this time, all three Ivys had recanted, including Ella. She had testified at the second trial that she saw Johnnie sometime before 3:00 p.m. and again around 4:00 p.m. at the Ivy's house that Johnnie allegedly stated that he had accidentally cut James Robinson, that James Robinson and Connie Cooper were dead, that Cooper's baby was in the oven, a statement he later retracted and told Ella that the baby was in the bedroom; and that a black knife fell out of Johnnie's pockets during one of the conversations. In her recantation she swore that she never heard Johnnie make any comments about how the victims were killed, she never heard him say anything about the baby being in the oven, she never saw him with a knife and one did not drop out of his pocket, and that she "was confused about different facts of this case" because of hearing rumors, being interviewed by police numerous times, and feeling pressured to testify that Johnnie was responsible.

In August of 2013, more than 36 years after Johnnie's first wrongful conviction, Peoria County Criminal Court Judge Stephen Kouri recognized that Johnnie was entitled to DNA testing. He began his DNA order by noting the remarkable history of Johnnie's case:

> Throughout his incarceration, and subsequent to his release in 2006, Savory has maintained his innocence. In his nearly lifelong mission to obtain exoneration, Savory has filed an avalanche of pleadings at all levels of the State and Federal Court systems, including the United States Supreme Court *(Savory v. Lyons,* 550 U.S. 960 (2007)). He has exhausted virtually every remotely possible legal remedy or recourse available. The various complaints, motions, and petitions have been, at times, filed pro se, and at other times have been filed by or with the support of some of the most prestigious law firms and renowned attorneys in the country. The prolific number of filings have also generated a mountain of case law specific to this case and, on occasion, landmark precedent for unrelated cases both within Illinois and outside this jurisdiction.

People v. Savory, No 77 CF 565, Order of August 6, 2013 at 1-2.

He then noted that since 1998 when Johnnie started his 15-year battle for DNA testing, there was "an alarming number of DNA exonerations of wrongfully convicted defendants," that in an "astonishing number" of these cases "the defendants purportedly confessed or gave other incriminating statements," and that "law enforcement, the defense bar, and the courts have acknowledged DNA testing's unparalleled ability both to exonerate the wrongly convicted and to identify the guilty." *Id*. at 3. He proceeded to analyze the strength of the evidence in Johnnie's case, and the importance to the State's case of the physical evidence that Johnnie sought to test, in light of the materiality provision of the Illinois DNA statute. Looking at the State's arguments at the second trial and its appellate brief, Judge Kouri found that "references to both the physical evidence and (now considered rudimentary) scientific testing were frequent and powerful." *Id*. at 8.

Also, the Judge opined, it was "of the highest significance to this Court that this latest pleading filed by Savory includes for the first time an affidavit of Ella Ivy recanting her trial testimony." Rejecting the State's argument that *res judicata* barred Savory's second state court attempt to seek testing, the Court held that:

> In considering Defendant's request to test the five items, in the aggregate, *together with the recent recantation of Ella Ivy's testimony,* and in the context of the expressed words of the prosecution to the jury and to the Appellate Court, the Court finds that Defendant's request for DNA testing falls squarely within the line of cases where there is limited direct evidence of the identification of the perpetrator and the prosecution used forensic evidence at trial to connect the Defendant to the crime—precisely the type of case

> where the Illinois courts have permitted DNA testing. The requested test results of the five pieces of evidence, taken cumulatively, have the scientific potential to significantly advance Savory's assertion of innocence. This Court has no difficulty whatsoever in making such finding under the statute.

Id. at 10-11. (Emphasis in original.)

Johnnie was now finally able to access, and to test at his own expense, the blood-stained knife, fingernail scrapings from, and hairs found in, the victims' hands, the blood-stained bathroom light switch plate, vaginal swabs from Connie Cooper, and the blood-stained pants.

Not surprisingly, none of the DNA tests, performed in 2014, linked Johnnie to the crime. Tests on the vaginal swabs, switch plate, and hairs excluded Johnnie, but given the lapse of time, there was not a suitable sample to obtain results from the knife or the pants. Unfortunately, the unknown offender or offenders could not be identified.

Heeding the wealth of exculpatory evidence that supported Johnnie's unwavering claims of innocence, Illinois Governor Pat Quinn granted Johnnie a full pardon in 2015. The pardon declared that Johnnie was "acquitted and discharged of and from all further imprisonment and restored to all the rights of citizenship which may have been forfeited by the conviction." The pardon was granted with an "Order Permitting Expungement Under The Provisions Of *20 ILCS 2630/5.2(e)*."

SECTION 1983 DAMAGES CASE

In January of 2017, only days before the statute of limitations ran, Johnnie, represented by a battery of lawyers he dubbed as his "Dream Team," filed his *42 U.S.C.A. Sec 1983* wrongful conviction lawsuit, asserting venue in the Northern District of Illinois. The complaint alleged numerous claims against 16 Peoria police officers, supervisors, the police superintendent, and the City itself—that the individual Defendants coerced a false confession from Johnnie in violation of the *Fifth* and *Fourteenth Amendments*; maliciously prosecuted Johnnie, depriving him of liberty without probable cause in violation of the *Fourth* and *Fourteenth Amendments*; deprived Johnnie of his right to a fair trial, his right not to be wrongfully convicted, and his right to be free of involuntary confinement and servitude in violation of the *Thirteenth* and *Fourteenth Amendments*; and failed to intervene as their fellow officers violated Johnnie's Constitutional rights. Additionally, the complaint alleged that the City's unlawful policies, practices and customs led to his wrongful conviction and imprisonment.

The case was assigned to Northern District Judge Gary Feinerman, a judicial conservative who, as a young lawyer, had served, together with Neil Gorsuch and Brett Kavanaugh, as a clerk for U.S. Supreme Court Justice Anthony Kennedy. Peoria retained the small Chicago law firm of Sotos and Associates, best known for representing notorious Chicago police torturer Jon Burge and his cronies in a series of cases brought by wrongfully convicted torture survivors. The firm, over the past two decades, has collected at least $40 million dollars representing defendants in police misconduct cases.

The Defendants moved to dismiss the complaint, arguing, among other things, that the two-year statute of limitations started to run in 2011 when Johnnie was first fully released from custody by his sentence commutation, rather than when his pardon exonerated him. This argument was contrary to the holding of the Supreme Court in *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994) which had established that a *Section 1983* wrongful conviction case accrued, and thereby the statute of limitations began to run, only after exoneration, but Judge Feinerman, relying on several outlier Seventh Circuit cases that circumvented *Heck*, accepted the Defendants' argument and dismissed Johnnie's case with prejudice. *Savory v. Cannon*, 338 F. Supp. 3d 860 (N.D. Ill. 2017). Adding insult to injury, the Judge, while conced-

ing that "[i]t is possible that Defendants, or at least one or some of them, inflicted a grave injustice on Savory," found that Johnnie had waived an equitable tolling argument, and was further out of luck because "statutes of limitation are unforgiving, even under the most compelling circumstances." *Id*. at 865.

Johnnie appealed to the Seventh Circuit, and a three-judge panel reversed Judge Feinerman's decision. *Savory v. Cannon*, 912 F.3d 1030 (7th Cir. 2019). However, the Court, on the Defendants' motion, granted rehearing *en banc* which nullified the panel's decision.

The *en banc* Court, in a 9-1 decision written by Judge Ilana Rovner, with Judge Frank Easterbrook dissenting, reversed Judge Feinerman. *Savory v. Cannon*, 947 F.3d 409 (7th Cir. 2020), cert. denied, 141 S. Ct. 251, 208 L. Ed. 2d 24 (2020) (*en banc*). The Court analyzed the case in light of the *Heck* decision and its holding that

> [I]n order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a *§ 1983* plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, *28 U.S.C. § 2254*. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under *§ 1983*. Thus, when a state prisoner seeks damages in a *§ 1983* suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the suit. *Heck, 512 U.S. at 486-87* (footnotes omitted; emphasis in original).

Savory v. Cannon, 947 F.3d at 414-415.

Further buttressed by several subsequent Supreme Court decisions, including *Wallace v. Kato*, 549 U.S. 384, 388, 127 S. Ct. 1091, 166 L. Ed. 2d 973 (2007), and *McDonough v. Smith*, 139 S. Ct. 2149, 204 L. Ed. 2d 506 (2019), the Court held that Johnnie's claim did not accrue until he was exonerated by Governor Quinn's 2015 pardon. After distinguishing several of its prior *Heck*-related cases and overruling another, the Court rejected an alternative proposition that the Defendants, sensing that they were losing on appeal, had raised for the first time at the *en banc* oral argument—that Johnnie had not been exonerated within the meaning of *Heck* by the pardon:

> The defendants never suggested until the *en banc* oral argument that there was a third possible date for accrual, one that has yet to occur. Savory's claims have already been more than forty years in the making and we wish to avert further delays due to any misunderstanding of this court's holding today; and so we now clarify that the governor's January 12, 2015, pardon was a favorable termination for the purposes of the *Heck* analysis.

Savory v. Cannon, 947 F 3d at 428.

DISCOVERY IN THE *SEC. 1983* DAMAGES CASE

Remanded back to the District Court, Judge Feinerman denied the Defendants' motion to dismiss as to most of Johnnie's claims. *Savory v. Cannon*, 532 F. Supp. 3d 628 (N.D. Ill. 2021) and subsequently bifurcated the *Monell* policy and practice claims against the City and stayed discovery on those claims. *Savory v. Cannon*, 2022 WL 767169 (N.D. Ill. 2022).

Discovery on the claims against the individual police Defendants has proceeded since October of 2021. Given that Johnnie was first wrongfully convicted more than 46 years ago, the vast majority of the Defendants are either dead or claiming failures in memory due to age and length of time. At her deposition, the officer who took John-

nie's inculpatory statement has taken these obstruction and obfuscation tactics to new heights; key files and documents are missing or have been destroyed; and exculpatory evidence and other material information that was suppressed during Johnnie's criminal proceedings continues to emerge. The 92-year-old former superintendent, while professing to remember almost nothing about Johnnie's case, did make a startling admission that he was down the hall in his office during much of the two-day interrogation, that he was informed about a request that Johnnie had made, but that he purportedly made no effort to monitor, or to intervene in, the interrogation of a 14-year-old boy who he knew was considered to be a suspect in one of the most heinous and high-profile cases in Peoria history.

Johnnie, in contrast, has retained a powerful and traumatic memory of his interrogational abuse, his unfair trials, his incarceration for almost 30 years, and his unending battle to establish his innocence, which he unpacked for the first time in excruciating detail, with a picture of his six-year-old daughter placed on the table next to him for inspiration, in response to the hostile questioning of defense counsel at his June 15, 2022 deposition. He testified how he was placed in segregation for acting as a jailhouse lawyer advocating for other prisoners and for protesting mistreatment by the guards, how his father was humiliated by the guards during a prison visit, and talked more generally about how his imprisonment affected him:

> I felt like a slave through no freedom or liberty and knowing that I had done nothing wrong. And I could never understand why I had to be subjected to that. And I never did not believe that the defendants did not know that I was innocent. And to be in prison and nobody here at this table know what it's like to be a slave, but I do, because I had to work in there. Either you work or you stayed locked up. And locked up means you be in your cell 23 hours a day. Being in solitary confinement. I was in solitary confinement off and on, maybe four or five times. It was for a couple of weeks sometimes or 30 days or 90 days. And sometimes when they have lockdowns, that becomes solitary confinement because you cannot move, you cannot buy nothing to eat, you do not have no visits. You do not have anything. You do not have phone calls, you have nothing. And that can be as long as a year.

Johnnie talked passionately about his recurring nightmares, and recounted how he felt as a terrified 14-year-old, when, with no one present to advocate for him, a tag team of adult officers, over a 30 hour period, grilled him, accused him, locked him up in the juvenile jail, screamed at him, called him a liar and a murderer, ignored his repeated protestations of innocence, stripped him naked, plucked his pubic hair, twice strapped him to a lie detector machine, suggested to him details of the crime, and finally broke his will, compelling him to give a false and manufactured oral confession that he repeatedly tried to repudiate on the spot and refused to sign.

Johnnie's criminal trial lawyer has recently testified that he would have "won the case" if he had the DNA evidence and the Ivy recantations. James and Tina Ivy have died; when deposed, Frank reaffirmed his recantation, while Ella, still obviously "confused" and "very shaky" some 45 years later, vacillated between her recantation and her testimony at trial, depending on who was asking her the questions.

To date, lawyers for the police defendants have collected $2.2 million in fees from the City of Peoria in their disgraceful "scorched earth" defense of the indefensible.

As for Johnnie, it is reasonable to ask why he continues to fight after 45 years, despite all the trauma and injustice that continue to be heaped upon him. Terrill Swift, another innocent juvenile who was wrongfully convicted in the 1990s and exonerated many years later, has offered the perfect response to this question: "The answer is clear: the man is innocent."

POLICE LIED TO GET THE WARRANT TO SEARCH BREONNA TAYLOR'S HOME

By Marjorie Cohn, Truthout

August 14, 2022

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The March 2020 killing of Breonna Taylor, which caused widespread protest around the country, was the result of police lies to obtain a warrant and racist police violence after officers forced their way into her apartment.

On August 4, the Department of Justice (DOJ) announced the federal grand jury indictments of four Louisville Metro Police officers involved in the raid that resulted in Taylor's death.

Three of the officers were accused of violating Taylor's Fourth Amendment rights to be free from unreasonable search and seizure by lying to secure a no-knock warrant. The officers who sought the warrant "knew that the affidavit used to obtain the warrant to search Taylor's home contained information that was false, misleading, and out-of-date; that the affidavit omitted material information; and that the officers lacked probable cause for the search," the indictment reads.

One of the defendants tried to get another officer to lie and say he had previously told him that a drug dealer (Taylor's ex-boyfriend) had used her apartment to receive packages. An officer apparently broke the ubiquitous police code of silence and revealed to prosecutors that his fellow officer asked him to lie.

A judge issued a no-knock warrant based on the officers' misrepresentations. The warrant specified that they did not have to knock and identify themselves as police before entering the apartment.

This case has widely been characterized as a "no-knock" warrant incident. But before police actually conducted the search, the court issued another warrant that required them to knock and announce their presence. The issue that led to their indictment is that the police officers lied to get the warrant.

Taylor and her boyfriend Kenneth Walker were in bed when they heard a loud banging on the door. They asked who was there, fearing it was Taylor's ex trying to break in. But they never heard the police identify themselves. The officers claim that they knocked several times and identified themselves as police officers before entering.

The police used a battering ram to break down the door and Walker fired a gun (which he lawfully possessed) once, striking an officer in the thigh. Officers then fired several shots, hitting Taylor five times. Officer Brett Hankison shot 10 rounds into a bedroom and living room covered with blinds and a blackout curtain. No drugs were found in Taylor's apartment.

Louisville Sgt. Kyle Meany and Detectives Joshua Jaynes and Kelly Hanna Goodlett were charged with making or adopting false statements in the affidavit to obtain the search warrant. Jaynes and Goodlett were accused of conspiring to falsify the affidavit. Hankison was charged with depriving Taylor, her boyfriend and neighbors of their Fourth Amendment rights by firing 10 bullets into a bedroom and living room. The only officer to be charged in state court, Hankison was acquitted of wanton endangerment of neighbors.

Tamika Palmer, Taylor's mother, applauded the federal indictment of the officers, saying, "I've waited 874 days for today."

But those working to abolish the prison system did not celebrate the indictment. Chanelle Helm, co-founder of Louisville Black Lives Matter, said that she understands why people are calling for arresting the officers. But, she added, "If we're asking for the officers to be arrested that's contrary to abolition work."

The abolitionist group Critical Resistance

points out that prosecuting police who have killed and abused civilians fails to reduce the scale of policing, and instead "reinforces the prison industrial complex by portraying killer/corrupt cops as 'bad apples' rather than part of a regular system of violence, and reinforces the idea that prosecution and prison serve real justice."

The bottom line is that real justice cannot come without a full reckoning with the system itself, which is grounded in centuries of oppression.

In March 2021, the International Commission of Inquiry on Systemic Racist Police Violence Against People of African Descent in the United States (for which I served as a rapporteur) found "a pattern and practice of racist police violence in the U.S. in the context of a history of oppression dating back to the extermination of First Nations peoples, the enslavement of Africans, the militarization of U.S. society, and the continued perpetuation of structural racism."

The 188-page commission report details how Black people are targeted, surveilled, brutalized, maimed and killed by law enforcement officers, and concludes that "the brutalization of Black people is compounded by the impunity afforded to offending police officers, most of whom are never charged with a crime." The overarching problem is structural racism embedded in the U.S. legal and policing systems.

If police knowingly or recklessly include false statements in an affidavit to obtain a search warrant, any evidence seized pursuant to the warrant will be suppressed. But that remedy provides no solace to people like Breonna Taylor who are killed as a result of systemic racist police violence.

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THERE ARE GOOD REASONS TO DEFUND THE FBI. THEY HAVE NOTHING TO DO WITH TRUMP

By Alex S. Vitale, Truthout

August 10, 2022

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This week the FBI took the unprecedented step of executing a search warrant on the Mar-a-Lago home of former President Donald Trump. No former president has ever been the subject of such an investigative practice. In response, chief Trump supporter and MAGA cheerleader Marjorie Taylor Greene expressed outrage at the FBI's actions by tweeting, "DEFUND THE FBI!" Far right Rep. Paul Gosar hit similar notes, tweeting, "We must destroy the FBI. We must save America." While this about-face on "Back the Blue" is an amusing example of the right-wing ideological confusion that ensues when lawmakers adhere to diehard Trump loyalism, we on the left should use this moment as an opportunity to explore a plan to actually do that. The FBI should indeed be defunded—though the reasons for that have nothing to do with the fact that the agency searched Donald Trump's home.

The January 6 attack on the Capitol showed us the deep fissures in the Back the Blue concept trotted out by the right in response to the Black Lives Matter protests of recent years. While conservatives claim to support the police, they do so on a very narrow basis. Police authority is desirable to them only as long as it is solely directed at what they perceive to be suspect classes, including poor people, BIPOC communities, trans people, immigrants, anti-fascists, sex workers, and other marginalized groups. Built into right-wing support for the police is an understanding—grounded in history—that police

authority should not be exercised against the powerful classes, including the wealthy, the politically dominant—and white nationalists. This understanding is why many on the right do not view images of "Back the Blue" proponents beating Capitol police with their Trump flags as hypocritical.

This seeming contradiction helps us get to a deeper truth about the nature of police power. The FBI in particular, and the police in general, were not created to provide justice. Instead, the history of the FBI is one of repressing movements for liberation and carrying out wars on marginalized communities in the guise of wars on drugs, crime, terrorism, gangs and communism, among other phenomena determined by the state to be threats. The FBI's long-running stretches of state-sanctioned violence have served to criminalize those that challenge the status quo, either through organized resistance or through survival strategies that interfere with capitalist notions of protecting the private property and individual autonomy of the rich and powerful.

The precursor to the FBI, the Bureau of Investigation, was created in 1908 in large part to investigate political threats to the power of the robber barons. These threats included striking workers, anarchists and communists. Driven initially by fears of communist revolution following the Russian Revolution and then the massive strikes and labor militancy of the 1930s, the Bureau of Investigation became the primary federal tool for surveilling and subverting left organizing. It was taken over by J. Edgar Hoover in 1924 and transformed into the FBI in 1934, when it became a massive domestic intelligence-gathering operation with files on millions of Americans including politicians, celebrities, labor leaders, journalists, religious figures, and anyone suspected of subversive leanings, many of whom were people of color, Jews, and other members of historically oppressed communities. Tim Weiner, in his book, *Enemies: A History of the FBI*, meticulously documents the political origins of the FBI and its dirty tricks.

In the 1960s, Hoover identified a new subversive threat: the civil rights movement. The Counter Intelligence Program (COINTELPRO), was an FBI-created program that spied on and undermined both socialist leaders and civil rights movement leaders like Martin Luther King Jr., and helped coordinate local attacks on the Black Panthers, the Socialist Workers Party, and many other groups. FBI agents attended activist groups' meetings, openly photographed license plates of attendees, wiretapped phones, sent fake correspondences, and used informants to plant false rumors about marital infidelities and police cooperation to sow fear and dissension. The FBI was directly involved with local officials in Chicago who conspired to assassinate Black Panther leader Fred Hampton.

The history of the FBI is one of repressing movements for liberation and carrying out wars on marginalized communities.

The FBI has long been a tool of political subversion used to suppress threats to the status quo. But, in contrast to the claims of Trump loyalists, the focus of the FBI's attacks has rarely been the right-wing extremists that now dominate much of the Republican Party. In his book *Disrupt, Discredit, and Divide*, former FBI agent Michael German points out how federal law enforcement has largely ignored or excused right-wing violence, leaving a focus on Muslim immigrants, environmental activists and the Movement for Black Lives, among other marginalized groups.

Given this history of politically motivated repression, it should be the left calling for defunding and defanging the FBI. Here is a concrete program to begin that process:

1) End the FBI's role in political policing. The FBI should be forced to shut down the intelligence-gathering activities that make possible the subversion tactics at the center of the agency's

history. Following the revelations of COINTELPRO in the 1970s, the Church Committee attempted this through the power of congressional oversight, but many of the FBI's harmful practices remained, although they were better hidden from view and protected by language intended to restrict—but not eliminate—their activities.

2) End the FBI's role in the "war on terror." One of the primary tools in waging this war has been the entrapment of people who are lured into fantastical plots invented by FBI agents so that they can be arrested for planning actions they had no intention or ability to ever complete. The goal of these operations, such as the targeting of an intellectually disabled man in New York who was lured into a FBI-created plot to bomb the Herald Square subway station, seem designed to give the FBI the appearance of winning—to garner support for counterterrorism funding for the agency. We should also dismantle fusion centers and Joint Terrorism Task Forces. As Brendan McQuade documents in *Pacifying the Homeland*, these efforts have had little to do with protecting us from actual violence. Instead, they have morphed into all-purpose "predictive" policing operations that spend much of their time preparing threat assessments for local police and private business interests that both exaggerate the threat of politically motivated violence and use complex algorithms to justify intensive and invasive policing of poor and BIPOC communities.

3) End the FBI's role in the "war on drugs." The war on drugs has been an unmitigated failure, if your metric of success is saving lives and improving community safety. If, however, your metric of success is one of criminalizing political enemies and violently targeting the poor and people of color, then the mission has certainly been accomplished. The federal prohibition on many drugs has been a major driver of mass incarceration, the criminalization of non-white communities and the overdose crisis. Susan Phillips's *Operation Flytrap* shows how the eponymously named FBI anti-drug sting did nothing to end the flow of drugs into Los Angeles, and instead pointlessly criminalized the most vulnerable people in a community hard hit by poverty, unemployment, and public and private sector disinvestment. In addition, we should abolish the Drug Enforcement Agency, and use the savings to invest in police-free harm reduction projects, high-quality and noncoercive drug treatment, and targeted economic development programs.

4) End the FBI's role in so-called violence reduction. Presidents have repeatedly used the FBI as a political tool for looking "tough on crime." "Gang takedowns" and special initiatives have been created to give the appearance of federal action to tackle crime, but have little to show for themselves other than police-perpetrated abuse and mass incarceration. For years the FBI has been using RICO conspiracy laws to target youth violence. As The Policing and Social Justice Project documented in New York City, these takedowns ensnare large numbers of young people based on their associations, rather than direct involvement in violence. City University of New York law professor Babe Howell showed that in one such mass arrest of 120 young people, half of those charged were simply accused of drug-related offenses, despite being called the "worst of the worst" and held without bail for up to two years awaiting dispositions. (However, even if they had been accused of actual violence, there would be no justification for treating them in this way.) Instead of pouring money into "anti-violence" initiatives that are themselves purveyors of violence, we should be looking to community-driven solutions. The New York City G.A.N.G.S. Coalition and others around the U.S. have called instead for investments in community-based anti-violence initiatives and reinvestments in communities devastated by deindustrialization, redlining and austerity.

In 2019, Donald Trump laid out his plan to use the FBI to help with his reelection effort, called Operation Relentless Pursuit. He targeted seven cities run by Democratic mayors to receive infusions of federal agents and money for more local police to engage in intensive policing of "high crime" communities, backed up by intensive federal prosecutions. Local activists in the targeted cities of Memphis, Cleveland, Milwaukee, Baltimore and Albuquerque mobilized against local cooperation with this initiative citing the lack of federal accountability and the need for community investments, not more policing.

These four steps would dramatically shrink the scope and power of the FBI and pave the way toward abolishing an agency that has not provided real justice or protection for large segments of U.S. society. As right-wingers make a bizarre

and twisted case for defunding the FBI, we on the left need to make our own case for defunding the FBI's intrusive and illegitimate political policing. Then we must go further and question the basic function of federal law enforcement in propping up a system of profound inequality, injustice and state violence.

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