

**IN THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

Rekia Boyd, Angela Helton, and Martinez Sutton

Petitioners,

v.

United States of America,

Respondent–State.

BRIEF ON THE MERITS

Report No. 374/22

Petition 1720-15

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I. Executive Summary

Rekia Boyd’s murder tells the nightmare of policing in the United States. Her death is the culmination of centuries of racism, sexism, aggressive policing, and impunity for state-sanctioned violence at every level of the U.S. criminal legal system. The murder of Rekia Boyd was an avoidable injustice; however, her death was not an anomaly. Ms. Boyd’s murder and the subsequent failings of the government to bring justice to her family are indicative of the pattern of systemic racism that permeates the actions of law enforcement and the criminal legal system, as well as many other aspects of political, social, and economic life in the United States.

Rekia Boyd was twenty-two years old when she was killed by a Chicago police officer.

Ms. Boyd and her friends were on their way to a store near Douglas Park in Chicago, Illinois. Dante Servin’s (“**Officer Servin**”) home was in the surrounding area. Officer Servin was off duty and claimed to have heard noise from the group. Wearing plainclothes, in an unmarked car, and without identifying himself as an officer, Officer Servin confronted the group and followed them as they attempted to leave. While the group had their backs turned to him, Officer Servin fired five shots, one of which hit Ms. Boyd in the head and killed her whilst she tried to retreat. She was pronounced dead on March 22, 2012.

Officer Servin’s actions were unlawful. Following this unlawful killing, the city of Chicago, the State of Illinois, and the Government of the United States of America (the “**Government**”) also acted unlawfully. They each, individually and collectively, failed to follow proper procedures to investigate, prosecute and punish an extra-judicial killing. They therefore violated Ms. Boyd’s rights as protected by the American Declaration of the Rights and Duties of Man (the “**Declaration**”).

This petition is brought by the Thurgood Marshall Civil Rights Center at Howard University School of Law and Robert F. Kennedy Human Rights on behalf of Angela Helton and Martinez Sutton, Ms. Boyd’s mother and brother, respectively. The Petitioner submits that the United States violated the Petitioner’s rights pursuant to **Article I** (right to life, liberty and personal security); (ii) **Article II** (right to equality before the law); (iii) **Article XVIII**: (right to a fair trial); [(iv) Article XXV (right of protection from arbitrary arrest); and (v) Article XXVI (right to due process of law)] of the Declaration as a result of: failing to create and maintain structures that hold police accountable for the excessive and unlawful use of force against Black people in the United States, failing to hold prosecutors accountable for their discretionary charging of police officers, and failing to act with due diligence to conduct an effective investigation and provide equal and effective access to justice.

On December 19, 2022, the Inter-American Commission on Human Rights (the “**Commission**”) decided that this Petition was admissible in relation to Articles I (right to life, liberty and personal security), II (right to equality before the law) and XVIII (right to a fair trial) (the “**Admissibility Decision**”).

This brief outlines the facts and procedures relevant to this case. In order to place the breaches in context, this brief also discusses the systemic racial and cultural issues which fuel Rekia Boyd’s death and others like it, and addresses the United States’ violations of each aforementioned Article. The brief concludes with proposed remedies and the petitioners’ request for the Commission’s action.

II. Factual and Procedural Background

A. Events Leading to the Killing of Rekia Boyd

On March 21, 2012, in the early hours of the morning, Rekia Boyd and her three friends were walking to a store near Douglas Park.¹ Officer Servin was off-duty in his own home nearby when he claims he heard a loud noise disturbance and decided to take it upon himself to learn more.² In plainclothes,³ in an unmarked vehicle,⁴ and without identifying himself as an officer,⁵ Officer Servin confronted Ms. Boyd and her friends while they were walking along the sidewalk in the vicinity of 3100 West and 15th Place and told them to be quiet.⁶ Officer Servin continued to make several statements to Ms. Boyd and her friends as he slowly drove his car from the mouth of the alley.⁷ Rekia poked fun at Officer Servin and cracked a joke at his expense.⁸

Officer Servin continued to follow Ms. Boyd and her friends as they walked along 15th Place near the mouth of the alleyway.⁹ Antonio Cross (“Mr. Cross”), one of Ms. Boyd’s friends, was on the phone with his cousins and had it held up to his ear when Officer Servin drove up beside him.¹⁰ Mr. Cross, believing that Officer Servin was looking for drugs, verbally told Officer Servin to leave them alone and motioned with his phone for the officer to go away.¹¹ While the group had their backs turned to him, Officer Servin pulled out his gun, pointed it out of the car window and fired five shots at the group.¹² Ms. Boyd and others tried to retreat and seek cover from the rapid gunfire.¹³ However, one of the bullets entered the back of Ms. Boyd’s head, before she could reach safety. One friend rushed to Ms. Boyd’s aid to hold and comfort her but was threatened with arrest and forced to step away from her as she bled out in the street.¹⁴ Another bullet struck Mr. Cross in the hand.¹⁵ Mr. Cross ran off and flagged down a police officer to report the incident.¹⁶ Once other police officers arrived at the scene, Mr. Cross learned Dante Servin was an off-duty officer. Mr. Cross asked Officer Servin why he shot him, and Officer Servin claimed he thought Mr. Cross’ phone was a weapon.¹⁷ Meanwhile, Ms. Boyd was taken to the hospital, where she was pronounced dead on March 22, 2012.¹⁸ Neither Ms. Boyd nor her friends had a weapon.¹⁹

¹ Diane Pathieu & Michelle Gallardo, *Judge Finds Chicago Cop Dante Servin Not Guilty; Courtroom Explodes*, ABC7 CHICAGO (Apr. 21, 2015), <https://abc7chicago.com/dante-servin-chicago-cop-rekia-boyd-not-guilty/672864/>.

² Rekia Boyd FOIA Doc.at 12 (hereinafter “FOIA Doc.”).

³ *Id.* at 39.

⁴ *Id.*

⁵ *Id.* 51

⁶ *Id.* 12

⁷ *Id.*

⁸ *Id.* at 18.

⁹ *Id.* at 39.

¹⁰ *Id.* at 18.

¹¹ *Id.*

¹² African American Policy Forum, et al., *Say Her Name: Resisting Police Brutality Against Black Women* 20 (2015), https://www.aapf.org/files/ugd/1187fd_7db4f9a2e9e94cce9ac6c03b290916d4.pdf.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ FOIA Doc., *supra* note 2, at 18.

¹⁶ *Id.*

¹⁷ *Id.* at 19.

¹⁸ Editorial Board, *Rekia Boyd Shooting was ‘Beyond Reckless,’ so Cop got a Pass*, CHI. TRIBUNE (Apr. 22, 2015),

<https://www.chicagotribune.com/news/opinion/editorials/ct-cop-verdict-servin-edit-0423-20150422-story.html>

¹⁹ Pathieu, *supra* note 1.

When asked why he confronted the group in the first place during an interview conducted by the Independent Police Review Authority (IPRA), Officer Servin asserted, “...*In my head I'm a police officer. Maybe I'm not uniformed but I act as a police officer. Everyone in the neighborhood knows me as a police officer. And I just thought they... they would know I was a policeman.*”²⁰

B. Domestic Procedural Background

i. Wrongful Death Lawsuit

On April 5, 2012, the family of Rekia Boyd filed a wrongful death suit against the City of Chicago that resulted in a \$4.5 million-dollar settlement one year later.²¹

ii. Cook County State Attorney's Office Failure to Properly Investigate Rekia Boyd's Killing

On November 23, 2013—twenty months after the death of Rekia Boyd—Cook County State Attorney Anita Alvarez charged Officer Dante Servin with 1) involuntary manslaughter; 2) reckless discharge of a firearm; and 3) reckless conduct.²² The Cook County State's Attorney's Office prosecutes all misdemeanor and felony crimes committed in Cook County, Illinois. It was the first time in fifteen years a Chicago police officer was charged for shooting and killing an unarmed civilian.

During the investigation, which was replete with errors and irregularities, the State's Attorney discouraged police from taking depositions of Mr. Cross or Officer Servin about what occurred on the night of Ms. Boyd's death.²³ They also waited months to gather key evidence of the shooting.²⁴

The City of Chicago's lawyers did not interview Officer Servin or other witnesses under oath.²⁵ After the city agreed to pay a 4.5 million dollar civil settlement to Rekia Boyd's family, one Cook County prosecutor even wrote to others in his office that the decisions to conduct no depositions in the case “seem[ed] unusual.”²⁶

iii. Cook County's State Attorney's Office Failure to Correctly Charge Dante Servin

On April 20, 2015, Judge Dennis J. Porter of Cook County Circuit Court, in a rare directed verdict, found Officer Servin not guilty.²⁷ Judge Porter considered that Illinois courts have consistently held that when a person points a gun at the intended victim and shoots, the act is intentional and not reckless.²⁸ Specifically, Judge Porter stated, “the act of intentionally firing a gun at some person or persons on the street is an act that is so dangerous it is beyond reckless; it is intentional and the crime, if any there be, is first-degree murder.”²⁹ In other words, the judge found that the State's Attorney had incorrectly charged

²⁰ FOIA Doc., *supra* note 2, at 51.

²¹ Sun-Times Staff, *Emails Raise New Questions about Handling of Rekia Boyd Shooting*, CHI. SUN TIMES (June 24, 2016), <https://chicago.suntimes.com/news/emails-raise-new-questions-about-handling-of-rekia-boyd-shooting/>.

²² Annie Sweeney, *Inside the Failed Prosecution of Chicago Detective Dante Servin*, CHI. TRIBUNE (July 3, 2015), <https://www.chicagotribune.com/news/ct-dante-servin-acquittal-met-20150626-story.html>.

²³ Sun-Times Staff, *supra* note 21.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Mariame Kaba, *Four Years Since a Chicago Police Officer Killed Rekia Boyd, Justice Still Hasn't Been Served*, IN THESE TIMES (Mar. 21, 2016), <http://inthesetimes.com/article/18989/four-years-since-the-shooting-of-rekia-boyd>

²⁸ Editorial Board, *supra* note 18.

²⁹ *Id.*

Servin with involuntary manslaughter when the correct charge should have been first-degree murder, a more serious crime.

Rather than decide to dismiss the case without prejudice—which would have allowed the prosecutors to re-file with the correct charges—Judge Porter acquitted Officer Servin of all charges.³⁰ The judge found it “unfortunate” that the procedural posture of the case prevented the court from reaching the core issue of whether the defendant’s actions were justified.³¹ Troublingly, the judge’s decision allowed Officer Servin to evade justice as he could not be retried on the murder charge by the State due to double jeopardy protections.

iv. *Federal Investigation by U.S. Department of Justice*

On December 7, 2015, the U.S. Department of Justice (DOJ) opened an investigation into the City of Chicago’s Police Department (CPD) and Independent Police Review Authority (IPRA).³² According to the resulting report published on January 13, 2017, the DOJ announced that it found reasonable cause to believe that the Chicago Police Department engages in a pattern or practice of using force, including deadly force, in violation of the Fourth Amendment of the U.S. Constitution.³³

v. *The Chicago Police Department’s Failure to Hold Dante Servin Accountable*

In 2015, Chicago Police Department Superintendent Garry McCarthy recommended that Officer Servin be fired after IPRA found that the shooting was unjustified.³⁴ However, two days before a Chicago Police Board hearing that could have led to his firing, Officer Servin quit.³⁵ Despite his indictment and overwhelming evidence of his abuse and misconduct, Officer Servin remained employed until 2016³⁶ when he resigned with his full pension.³⁷ Since 2018, he has been able to withdraw \$4,700 checks on a monthly basis.³⁸

vi. *Consent Decree*

On August 29, 2017, Illinois Attorney General Lisa Madigan filed a complaint against the City of Chicago pursuant to 42 U.S.C. § 1983; the U.S. Constitution; the Illinois Constitution; the Illinois Civil

³⁰ Kaba, *supra* note 27.

³¹ Editorial Board, *supra* note 18.

³² DEP’T OF JUSTICE, OFF. OF PUBLIC AFF., JUSTICE DEPARTMENT FINDINGS OF INVESTIGATION INTO CHICAGO POLICE DEPARTMENT (2017), <https://www.justice.gov/opa/pr/justice-department-announces-findings-investigation-chicago-police-department>

³³ DEP’T OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT (2017) <https://www.justice.gov/opa/file/925846/download>.

³⁴ Adeshina Emmanuel, *Is It Possible to Take Away Police Officer Dante Servin’s Pension?*, CHI. MAGAZINE (May 18, 2016), <https://www.chicagomag.com/city-life/may-2016/police-officer-dante-servin-pension/>.

³⁵ *Id.*

³⁶ Kaba, *supra* note 27.

³⁷ Annie Sweeney, *Police Detective Dante Servin Resigns Before Possible Firing Over Fatal Shooting*, CHI. TRIBUNE (May. 28, 2016), <https://www.chicagotribune.com/news/breaking/ct-chicago-cop-dante-servin-resigns-met-20160518-story.html>.

³⁸ Andy Grimm, *Judge Refuses to Expunge Former CPD Detective Dante Servin’s Record in Deadly Shooting*, CHI. SUN TIMES (Nov. 19, 2019), <https://chicago.suntimes.com/2019/11/19/20972731/dante-servin-denied-expungement-deadly-shooting-rekia-boyd>.

Rights Act of 2003, 740 ILCS 23/5; and the Illinois Human Rights Act, 775 ILCS 5/5-102(C) to obtain reform of the Chicago Police Department.³⁹

The Illinois Attorney General's Office and the City of Chicago agreed to stay the lawsuit and negotiate an enforceable consent decree based on the findings of the DOJ's investigation and January report that revealed a pattern of civil rights violations caused by systemic deficiencies within CPD. After releasing an initial draft for public comment, the federal judge overseeing the case approved a final draft of the consent decree on January 31, 2019.⁴⁰

The consent decree requires changes in the areas of community policing; impartial policing; crisis intervention; use of force; recruitment, hiring, and promotions; training; supervision; officer wellness and support; accountability and transparency; and data collection, analysis, and management.⁴¹ The decree allows the City of Chicago five years in which to achieve compliance with the decree at which time a hearing will be held to assess whether the Agreement should be terminated. The Agreement will be terminated when the Court finds that the City has achieved full and effective compliance and has maintained such compliance with the material requirements for recruitment, hiring, and promotions; training; and officer wellness and support for at least one year and community policing; impartial policing; crisis intervention; use of force; supervision; accountability and transparency; and data collection, analysis, and management for at least two years.⁴²

In the four years since its approval, Chicago is in "full compliance" with less than 5% of the consent decree requirements.⁴³ Residents and community members report that they do not see any changes in how the police behave, and that officers still engage in aggressive, racially targeted policing.⁴⁴ The federal oversight team overseeing the decree noted in its semi annual report that they have significant concerns about CPD's commitment to constitutional policing.⁴⁵

vii. *Cook County Court Refuses to Expunge Dante Servin's Criminal Record*

In November 2019, Chief Criminal Courts Judge LeRoy Martin Jr. refused to expunge Dante Servin's record stemming from the 2015 criminal trial.⁴⁶ The judge also declined to seal the case records, which would have hidden the files from view of the general public but would still be readily accessible by law

³⁹ Consent Decree, at 1, *State of Illinois v. City of Chicago*, No. 17-cv-6260 (N.D. Il.), available at <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>

⁴⁰ *Consent Decree Documents*, CHICAGOPOLICECONSENTDECREE.COM, <http://chicagopoliceconsentdecree.org/resources/> (last visited July 3, 2023).

⁴¹ Consent Decree, at 1, *State of Illinois v. City of Chicago*, No. 17-cv-6260 (N.D. Il.), available at <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>

⁴² Consent Decree, at 215, *State of Illinois v. City of Chicago*, No. 17-cv-6260 (N.D. Il.), available at <http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>

⁴³ Erik Ortiz, *Chicago's Consent Decree Woes Offer a Warning as Minneapolis Police Face Federal Oversight*, NBC NEWS (June 25, 2023), <https://www.nbcnews.com/news/us-news/chicagos-consent-decree-woes-offer-warning-minneapolis-police-face-fed-rcna90186>.

⁴⁴ *Id.*

⁴⁵ Heather Cherone, *Federal Court Monitor: We Have 'Significant Concerns' About Commitment of Chicago Police to Reform*, WTTW NEWS (June 29, 2023), <https://news.wttw.com/2023/06/29/federal-court-monitor-we-have-significant-concerns-about-commitment-chicago-police-reform>.

⁴⁶ Grimm, *supra* note 38.

enforcement and other government agencies.⁴⁷ The judge noted, “[t]he fact that one is found not guilty does not make one innocent.”⁴⁸

viii. *Proceedings Before the Inter-American Commission of Human Rights*

On May 24, 2015, Petitioners filed this complaint on behalf of Rekia Boyd, Angela Helton, mother to Rekia Boyd, and Martinez Sutton, brother to Rekia Boyd. On April 14, 2022, the United States submitted its response. The Commission issued a Report on Admissibility on December 19, 2022, with instruction for the parties to proceed on the merits under Rule of Procedure Article 37.

The Commission decided, *inter alia*, that the Rekia Boyd claim was admissible in relation to Articles I (right to life, liberty and personal security), II (right to equality before the law) and XVIII (right to a fair trial) of the American Declaration.

C. Contextual Background

i. *Black Women and the U.S. Criminal Legal System*

Black women and girls in the U.S. face unique racialized and gendered state violence at the hands of law enforcement officers and the criminal legal system. As police violence soars, with 2022 being the deadliest year on record for killings by police,⁴⁹ protests to combat this violence have erupted across the nation. Yet, despite the rise in protests, Black women who experience police violence are often overlooked. News coverage of police killings of Black women is difficult to find, and data meant to track issues related to police violence or the criminal legal system often omit the term “Black woman” as a unique marker.⁵⁰ Data aggregated by both race and gender is largely missing from studies, leaving Black women vulnerable to exclusion on discussions on police violence.

The police brutality Black women face is pervasive and varied. It includes sexual assault, beatings, human trafficking, and murder.⁵¹ The ways in which Black womanhood functions in the U.S. renders Black women and girls simultaneously invisible and hypervisible, the first to be condemned but last to receive help, “loud” but voiceless in the national discourse about police brutality.

a) *Black Women’s Erasure as Victims of Violence*

Remnants of the Trans-Atlantic slave trade shape how Black women are viewed and treated by police officers, legal actors, and the media today. Black women are categorically not named as victims when violence is inflicted upon them, namely due to the powerful narratives that emerged about Black womanhood during slavery. When importing Africans into the U.S. became illegal in 1807, White settlers codified the sexual exploitation of enslaved Black women to continue to economically benefit from slavery.⁵² Where previously long-held English laws mandated that the offspring of a free person and enslaved person follow the condition of the father, White slaveholders changed the laws so that children would now follow the condition of the mother.⁵³ This meant that children born from the rapes of enslaved women would inherit the “slave” status of their mothers rather than the “free” status of their slaveholding

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 2022 Police Violence Report, MAPPING POLICE VIOLENCE, <https://policeviolencereport.org/> (last visited May 30, 2023).

⁵⁰ African American Policy Forum, *supra* note 12, at 4.

⁵¹ Michelle S. Jacobs, *The Violent State: Black Women's Invisible Struggle Against Police Violence*, 24 *Wm. & Mary J. Women & L.* 39 (2017).

⁵² *Id.* at 44.

⁵³ *Id.* at 45.

fathers. The economic incentive to rape enslaved Black women to bare more profit was promptly followed by widespread narratives that Black women were sexually insatiable, lascivious beings.⁵⁴ Colonial states that had statutes forbidding rape defined the crime as one that could only happen to white women.⁵⁵ Thus, making Black women “unrapable” both legally and within the U.S. imagination for centuries to come.

Black women face insurmountable obstacles in obtaining any relief for the sexual, physical, and psychological abuses wrought upon them—both then and now. Because they were not seen as “innocent”, “rape-able”, or “ladylike”, they were not able to vindicate their humanity in the courtroom. Enslaved people were also categorically viewed as untruthful in the eyes of jurists.⁵⁶ Scarily enough, that trend continues in modern-day courtrooms. Myths about Black women being untrustworthy liars persist. Their veracity is constantly doubted, especially when it comes to claims regarding harms.⁵⁷ “Legal scholars and legal practitioners also find that judges tend to weigh the testimony of their Black female clients as less credible than the testimony of their abusers.”⁵⁸ Judges also view Black women as aggressive and more inclined to commit violence.⁵⁹

Historically, Black women have been stereotyped as immoral, sexually deviant, untrustworthy, and aggressive. These designated traits render Black women as unworthy of legal protections readily available to other groups both during slavery and onwards. Black women’s continued existence outside of the purview of “victim” may serve as one of the foundational reasons as to why they are overlooked when police killings are reported. Mainstream, national news rarely report stories detailing the deaths of Black women by police, and when they do it is usually following news about the murder of a Black man.⁶⁰ Additionally, Black transgender women are routinely “deadnamed” and misgendered after being killed by police, further skewing the death toll.⁶¹ Black women’s deaths and mistreatment by police are made invisible due to neglectful and uninterested newsrooms. The stories we do learn about primarily come through social media and the families that fight for their abused and fallen loved ones. The dearth of studies and articles made available makes it even more imperative for Black women to be adequately named and positioned as victims of police and state-sanctioned violence.

b) *Black Women and Assumptions of Criminality*

Richard Nixon’s War on Drugs began as a “racially motivated crusade to criminalize Blacks and the anti-war left,” thus commencing the U.S. reign as the incarnation capital of the world.⁶² The 1970s War on

⁵⁴ Paula Giddings, *When and Where I Enter: The Impact of Black Women on Race and Sex in America* 35 (1985).

⁵⁵ Jacobs, *supra* note 51, at 47.

⁵⁶ *Id.* at 49.

⁵⁷ *Id.*

⁵⁸ *Id.* at 50. Similarly, crimes against Black women are punished less severely. An example of this is a precursor to Rekia Boyd’s case, the 1991 case of Latasha Harlins, who was killed by a Korean store owner who assumed she was trying to steal a bottle of orange juice, and shot her in the back of the head from close range, but who only received probation as her penalty. *See also* Erika Smith, *The Killing of Latasha Harlins was 30 Years Ago. Not enough has changed*, LOS ANGELES TIMES (March 17, 2021), <https://www.latimes.com/california/story/2021-03-17/latasha-harlins-memorial-playground-black-lives-matter-south-los-angeles>.

⁵⁹ *Id.* at 51.

⁶⁰ Alex Samuels, Drhumil Mehta & Anna Wiederkehr, *Why Black Women Are Often Missing From Conversations About Police Violence* (May 6, 2021), FIVETHIRTYEIGHT <https://fivethirtyeight.com/features/why-black-women-are-often-missing-from-conversations-about-police-violence/>.

⁶¹ *About #SayHerName*, The African American Policy Forum, <https://www.aapf.org/sayhername> (last visited June 23, 2023).

⁶² Nkechi Taifa, *Race, Mass Incarceration, and the Disastrous War on Drugs*, BRENNAN CTR. FOR JUSTICE (May 10, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs>.

Drugs was followed by harsh, punitive “tough on crime” laws and policies in the 1990s, sweeping millions into prisons and jails over the last fifty years.⁶³ Women and girls were not spared from the destruction of mass incarceration. “Between 1980 and 2021, the number of incarcerated women increased by more than 525%, rising from a total of 26,326 in 1980 to 168,449 in 2021.” Black women are imprisoned at nearly twice the rate of white women, and Black girls are three times more likely to end up in juvenile detention compared to their white counterparts.⁶⁴ These contemporary stats also reflect long-held beliefs about Black women and criminality. For example, in Philadelphia in the late nineteenth century, news stories of “Colored Amazons” attacking white men appeared in the press.⁶⁵ These women were described as brutal, evil, abnormally strong, and unremorseful, especially as compared to white women who committed similar offenses.⁶⁶ It is then no surprise that in modern settings Black women and girls are punished more harshly and viewed less sympathetically by actors in the criminal legal system.

c) Black Women and Police Violence

Police kill Black women asleep in their beds.⁶⁷ Police kill Black women in their homes playing video games with their nephews.⁶⁸ Police kill Black women who get lost and make wrong turns in their cars.⁶⁹ Police officers drag pregnant Black women from their vehicles, kneel on their necks, and taze them.⁷⁰ Police kill Black women for talking on their cell phones.⁷¹ Police handcuff and shove Black girls to the

⁶³ Udi Ofer, *How the 1994 Crime Bill Fed the Mass Incarceration Crisis*, AMERICAN CIVIL LIBERTIES UNION (June 4, 2019), <https://www.aclu.org/news/smart-justice/how-1994-crime-bill-fed-mass-incarceration-crisis>.

⁶⁴ Niki Monazzam & Kristen M. Budd, *Fact Sheet: Incarcerated Women and Girls*, THE SENTENCING PROJECT (Apr. 3, 2022), <https://www.sentencingproject.org/fact-sheet/incarcerated-women-and-girls/>.

⁶⁵ Jacobs, *supra* note 51, at 51.

⁶⁶ *Id.*

⁶⁷ Minyvonne Burke, *Woman Shot and Killed by Kentucky Police in Botched Raid, Family Says*, NBC NEWS (May 13, 2020), <https://www.nbcnews.com/news/us-news/black-woman-shot-killed-after-kentucky-police-entered-her-home-n1205651>.

⁶⁸ Daniella Silva, *Trial Begins for Former Texas Officer Who Shot Black Woman Through a Window in Her Home*, NBC NEWS (Dec. 5, 2022), <https://www.nbcnews.com/news/us-news/trial-begins-former-texas-officer-shot-black-woman-window-home-rcna60209>.

⁶⁹ Aja Romano, *A Transgender Woman Was Shot in Baltimore and No One is Talking About It*, DAILY DOT (Apr. 20, 2015), <https://www.dailydot.com/irl/transgender-sex-worker-mya-hall-death-nsa/>; see also David Montgomery, *Miriam Carey Was Shot at 26 Times by Law Enforcement Near the Capitol in 2013. Her Sister Contrasts Her Fate to the Treatment of the Jan. 6 Rioters*, WASH. POST (Jan. 19, 2021), https://www.washingtonpost.com/lifestyle/magazine/miriam-carey-was-shot-at-26-times-by-law-enforcement-near-the-capitol-in-2013-her-sister-contrasts-her-fate-to-the-treatment-of-the-jan-6-rioters/2021/01/19/0432bdbe-5a51-11eb-a976-bad6431e03e2_story.html.

⁷⁰ Nicholas Reimann, *Fired Miami Gardens Cop Arrested on Charge of Battery of Pregnant Black Woman*, FORBES (June 25, 2020), <https://www.forbes.com/sites/nicholasreimann/2020/06/25/fired-miami-gardens-cop-arrested-on-charge-of-battery-of-pregnant-black-woman/?sh=293758c235ac>.

⁷¹ African American Policy Forum, *supra* note 12, at 11; see also Lolly Bowean, *We Aren't Afraid to March for Justice*, CHI. MAGAZINE (Jan. 3, 2022), <https://www.chicagomag.com/chicago-magazine/january-2022/reasons-we-still-love-chicago/we-arent-afraid-to-march-for-justice/>.

ground at pool parties while they scream out for their mothers.⁷² Police choke and throw Black girls across classrooms during school.⁷³ Police kill sleeping, seven-year-old Black girls during botched raids.⁷⁴

The violence meted out to Black women and girls is varied, brutal, and *lethal*. The violence crosses age ranges and socioeconomic status, exists in densely populated cities, suburbs, and rural areas, and is usually met with impunity. In 2022, only eleven officers—one percent of all officers involved in police killings—were charged with a crime.⁷⁵ This number is more disturbing for cases involving Black women. Between 2015 to 2020 only two officers were charged for on-duty killings of Black women.⁷⁶ Further, when officers do face criminal charges, they are often acquitted or, if convicted, receive much lighter sentences than are typical for civilians convicted of similar offenses.⁷⁷ While police violence affects both Black women and men, the effects of police violence against Black women are alarming.

Black women’s interactions with the police are not solely shaped by perceptions about Black womanhood. They are informed by how police officers perceive their *own* masculinity, or rather apparent threats to that masculinity. Studies have demonstrated that when officers believe their masculinity, authority, or legitimacy is questioned, this can trigger them to commit violence or use excessive force.⁷⁸ Professor Frank R. Cooper noted that “there is a close association between police work and hypermasculinity,” including requiring upper body strength and the ability to beat someone into submission as prerequisites for the job.⁷⁹ The internalized belief that police officers must prove their masculinity manifests through what Cooper describes as “command presence,” defined as an officer’s ability to project an aura of confidence and showing people that he is in charge and decisive.⁸⁰ Command presence is linked to aggressiveness, and an emphasis on command presence from police department higher-ups has been connected to incidents of police brutality.⁸¹ Notably, when asked why he even decided to confront Rekia and her friends in the first place and demand they be quiet, Officer Servin responded, “. . . In my head I'm a police officer. Maybe I'm not a uniformed but I act as a police officer. Everyone in the neighborhood knows me as a police officer. And I just thought. . . they would know I was a policeman.”⁸²

Also pivotal to the role of policing is punishing any sign of disrespect. “Punishment of disrespect stems from the fact that police officers demand deference to the badge.”⁸³ Disobeying their demands, whether in or out of uniform, is a slight to their authority. Cooper highlights that “officers are preoccupied with respect because within the police role ‘there is a distinct connotation of masculinity, virility,

⁷² Kristine Phillips, *Black Teen Who Was Slammed to the Ground by a White Cop at Texas Pool Party Sues for \$5 Million*, WASH. POST (Jan. 5, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/01/05/black-teenager-who-was-slammed-to-the-ground-at-texas-pool-party-sues-ex-cop-city-for-5m/>.

⁷³ German Lopez, *Police Officer in Brutal Spring Valley High School Video Fired*, VOX (Oct. 26, 2015), www.vox.com/2015/10/26/9618246/spring-valley-high-school-police-video.

⁷⁴ Charlie Leduff, *What Killed Aiyana Stanley-Jones?*, MOTHERJONES (Nov/Dec 2010), <https://www.motherjones.com/politics/2010/09/ayana-stanley-jones-detroit/>.

⁷⁵ Police Violence Map, *supra* note 49.

⁷⁶ Alisha Gupta, *Since 2015: 48 Black Women Killed by the Police. And Only 2 Charges*, N.Y. TIMES (Sept. 24, 2020), <https://www.nytimes.com/2020/09/24/us/breonna-taylor-grand-jury-black-women.html>.

⁷⁷ Kimberly Kindy & Kimbriell Kelly, *Thousands Dead, Few Prosecuted*, WASH. POST (Apr. 11, 2015), <http://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/>.

⁷⁸ L. Song Richardson, *Police Racial Violence: Lessons from Social Psychology*, 83 *Fordham L. Rev.* 2961, 2963 (2015). Available at: <https://ir.lawnet.fordham.edu/flr/vol83/iss6/4>.

⁷⁹ Cooper, Frank Rudy, “‘Who’s the Man?’: Masculinities Studies, Terry Stops, and Police Training” 692 (2009). Scholarly Works. 1122. <https://scholars.law.unlv.edu/facpub/1122>

⁸⁰ *Id.* at 692.

⁸¹ *Id.* at 694.

⁸² FOIA Doc., *supra* note 2, at 50.

⁸³ Cooper, *supra* note 79, at 697.

aggressiveness, and all the qualities considered worthy of being a man. Hence, to make deprecatory remarks about the police role is to cast aspersions upon the policemen's conceptions of themselves as men.”⁸⁴ Pressure for an officer to showcase his authority combined with the need to punish anyone who dares show him disrespect creates a deadly cocktail for Black women, who in popular culture are characterized as disagreeable, emasculating, or “full of attitude.” A Black woman challenging a White male police officer is an affront to his authority, masculinity, and legitimacy, which in turn can trigger violence. For Black women, “the exercise of voice leads to further stereotyping, backlash, and death by a thousand cuts.”⁸⁵ Or, in the case of Rekia Boyd cracking a joke at an officer’s expense, results in the use of excessive, lethal force without provocation.

Advocates and activists, specifically Black women, femmes, and mothers, have consistently emphasized the persistent policing problems faced by Black people in the United States and have advocated for more protection of Black communities. The #SayHerName campaign, which launched in 2014, to uplift the stories of Black women whose lives have been brutally snuffed out by state-sanctioned violence. Scholars like Columbia Law School Professor Kimberlé Crenshaw have stated the importance of including the killings of Black women by police as “critical to effectively combating racialized state violence for Black communities and other communities of color.”⁸⁶ The United States has a duty to take urgent action to prevent and remedy the excessive force, lethal by police against Black people in the U.S., especially Black women and girls.

ii. *The Chicago Police Department is Characterized by Excessive Use of Force and Impunity*

a) *Historical Context: Chicago’s Torture Chambers*

The murder of Rekia Boyd was not an isolated incident—she was killed against the backdrop of a documented, pervasive pattern of excessive force, misconduct, and impunity across the United States. This national pattern is thrown into sharp relief in Chicago, where abuse, misconduct, and subsequent impunity have characterized the Chicago Police Department (CPD), the United States’ second-largest municipal police force, and disproportionately impacted Black Chicagoans for decades.

Perhaps the most pernicious example of the racially-targeted excessive use of force and ensuing impunity for officers that characterizes CPD is former Chicago Police Commander Jon Burge’s and a group of detectives under his command’s use of torture to extract confessions from Black Chicagoans during the 1970s and 1980s. During a twenty year period, over 110 Black men and women were tortured under interrogation by Burge and the “Midnight Crew” under his command at Area 2 and 3 Police Headquarters.⁸⁷ Burge and the detectives employed torture techniques including “electrically shocking men’s genitals, ears and fingers with cattle prods or an electric shock box; suffocating individuals with typewriter covers or plastic garbage bags; mock executions with firearms; [and] beatings with telephone books and rubber hoses” while using racist epithets and slurs and making “clear reference to lynchings.”⁸⁸ In a 2014 interview, Burge referred to the individuals tortured by his department as “human vermin.”⁸⁹

⁸⁴ *Id.*

⁸⁵ Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 Iowa L. Rev. 2018, 2044 (2017).

⁸⁶ Kimberlé Crenshaw *Delivers an Exceptional Jing Lyman Lecture*, THE CLAYMAN INST. FOR GENDER RSCH. (Feb. 13, 2017), <https://gender.stanford.edu/news/kimberle-crenshaw-delivers-exceptional-jing-lyman-lecture>.

⁸⁷ *Legal History*, Chicago Police Torture Archive, <https://chicagopolicetorturearchive.com/legal-history> (last visited June 23, 2023)

⁸⁸ *Id.*

⁸⁹ Sam Roberts, *Jon Burge, 70, Ex-Commander in Chicago Police Torture Cases, Dies*, N.Y. TIMES (Sept. 20, 2018), <https://www.nytimes.com/2018/09/20/obituaries/jon-burge-dead.html>.

These acts of torture and racist verbal abuse were used to extract confessions that became “powerful pieces of incriminating evidence” used to secure convictions and, in several cases, death sentences for the survivors of Burge’s campaign of violence.⁹⁰ Where survivors attempted to suppress their confessions on the basis that they were physically coerced in violation of their Fifth and Fourteenth Amendment rights, they were “routinely” seen as less credible than the white officers who denied the torture under oath by white judges who “facilitat[ed] the admission” of their coerced confessions in criminal proceedings.⁹¹ Several survivors were met with offers of reduced sentences from Cook County State’s Attorney Richard Devine in exchange for dropping their allegations of torture at the hands of Burge and the “Midnight Crew.”⁹²

A 1990 report by the Office of Professional Standards (OPS) found evidence of “systematic” and “methodical” physical abuse that amounted to “planned torture” at the hands of CPD officers assigned to Areas 2 and 3 during Burge’s tenure.⁹³ Indeed, the United Nations Committee Against Torture identified the brutalization of Chicagoans in Areas 2 and 3 of the CPD as a potential violation of the United States’ obligations under Article 12 of the Convention Against Torture, calling for the investigation of the allegations of “acts of torture or cruel, inhuman or degrading treatment or punishment” against CPD officers alongside calls to address abuses and close the prison at Guantánamo Bay and prosecute military personnel at Abu Ghraib for crimes of torture.⁹⁴

Despite the overwhelming evidence of torture uncovered by the OPS report and investigative journalists in Chicago⁹⁵ and international condemnation of CPD interrogation practices under Burge, the culture of impunity for officers persisted. Burge suffered no legal consequences for the acts of torture he committed, for which statute of limitations had expired by the time the U.S. Attorney’s office learned of the allegations. Although conspiracy charges could still have been brought against officers involved in the campaign of torture and the ongoing coverup, no criminal prosecutions against members of the “Midnight Crew” were pursued in the decades following its exposure.⁹⁶ Instead, several of Burge’s colleagues who OPS had identified as participants in the torture scheme and for whom the investigators recommended discipline were subsequently “promoted, commended or allowed to retire with full benefits.”⁹⁷ While Burge was ultimately fired following the release of the OPS report, he too was allowed to keep his full CPD pension despite his conviction for perjury and obstruction of justice related to false statements about his participation in torture under oath for which he served just four years in prison.⁹⁸

It is in this context of complete impunity for officers that engage in extra-judicial violence that Dante Servin shot and killed Rekia Boyd while off duty. Officer Servin’s conduct on the morning of March 21, 2012 was both a product and reflection of a culture of policing characterized by the dehumanization and criminalization of Black Chicagoans, a culture that pervades CPD and for which officers face little accountability. Rekia Boyd’s murder is just one tragic episode in what Chicago’s Police Accountability

⁹⁰ Chicago Police Torture Archive, *supra* note 87.

⁹¹ *Id.*

⁹² *Timeline*, Chicago Police Torture Archive, <https://chicagopolicetorturearchive.com/timeline> (last visited June 23, 2023)

⁹³ Chicago: Torture, Shielded from Justice: Police Brutality and Accountability in the United States, Human Rights Watch (1998), <https://www.hrw.org/legacy/reports98/police/uspo53.htm>

⁹⁴ CAT, *Consideration of Reports Submitted by States Parties Under Article 19 Of The Convention*, CAT/C/USA/CO/2, July 25, 2006, <https://digitallibrary.un.org/record/580893?ln=en>.

⁹⁵ *Journalism*, Chicago Police Torture Archive, <https://chicagopolicetorturearchive.com/journalism> (last visited June 23, 2023)

⁹⁶ Human Rights Watch, *supra* note 93.

⁹⁷ *Id.*

⁹⁸ Press Release, Dep’t of Justice, *Justice Department Findings of Investigation Into Chicago Police Department* (Jan. 13, 2017), <https://www.justice.gov/opa/pr/justice-department-announces-findings-investigation-chicago-police-department>

Task Force described as “a long, sad history of death, false imprisonment, [and] physical and verbal abuse” against Black Chicagoans at the hands of police in their 2016 report, “Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities they Serve.”⁹⁹

Like Jon Burge before him, Officer Servin remained employed with the CPD until 2016¹⁰⁰ when he resigned with his full pension despite his indictment and overwhelming evidence of his misconduct.¹⁰¹ In 2013, Ms. Boyd’s family received a financial settlement from the City of Chicago. However, Officer Servin did not contribute one dollar to that amount; the citizens of Chicago paid for his misconduct.

b) *Chicago Police Department’s Continued Abuses in the Wake of Rekia Boyd’s Murder*

In the years since Rekia’s murder, the pattern of racially-targeted excessive use of force and near-complete impunity for officers endemic to the CPD has remained unchanged. A joint report released in 2017 by the United States Department of Justice Civil Rights Division (DOJ) and the United States Attorney’s Office Northern District of Illinois based on their investigation into the City of Chicago’s Police Department (CPD) and the Independent Police Review Authority (IPRA) found that CPD engages in a “pattern or practice” of unconstitutional use of force including use of both deadly and less-lethal force in violation of the Fourth Amendment of the United States Constitution and CPD policy.¹⁰²

This is not the first time CPD’s issues have been highlighted. For nearly 50 years, reviews of CPD’s policing practices have identified significant failures by CPD officers to act lawfully: in 1973, a Blue Ribbon Panel led by former U.S. Congressman Ralph Metcalfe identified a pattern of excessive force and other police abuse directed disproportionately at Chicago’s African American community;¹⁰³ in 1990, an internal CPD report concluded that Jon Burge and his subordinates repeatedly and methodically abused arrestees;¹⁰⁴ in 1997, the Commission on Police Integrity recommended extensive reforms to CPD’s hiring, training, and accountability processes;¹⁰⁵ in the 2000s, court-appointed special prosecutors again concluded that Burge¹⁰⁶ and other CPD officers regularly abused arrestees with impunity; in 2014, a report commissioned by the City recommended sweeping reforms to CPD’s process for disciplining officers;¹⁰⁷ and in 2015, data regarding CPD’s stop-and-frisk practices revealed widespread constitutional violations. In addition to the DOJ report, Chicago’s Police Accountability Task Force concluded that CPD has continued to repeatedly use excessive force and racially discriminatory policing practices.¹⁰⁸ Along with these assessments of CPD’s policing practices, the City’s defense of lawsuits alleging police misconduct has taken a severe financial toll on the City’s taxpayers. Between 2004 and early 2016, the City paid approximately \$642 million in settlements, judgments, and outside legal fees for police misconduct cases.¹⁰⁹

⁹⁹ Police Accountability Task Force, *Recommendations for Reform: Restoring Trust Between the Chicago Police and the Communities They Serve* (2016), available at https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_Executive_Summary_4_13_16-1.pdf

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² U.S. Dep’t of Justice Civil Rights Div. & U.S. Attorney’s Office N. Dist. Of Ill., *Investigation of the Chicago Police Department 5* (Jan. 13, 2017), <https://www.justice.gov/opa/file/925846/download>

¹⁰³ *Id.* at 18.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Chicago police misconduct – a rising financial toll*, BETTER GOV’T ASSOC., <http://www.bettergov.org/news/chicago-police-misconduct-%E2%80%93-a-rising-financial-toll>.

The longstanding policing problems have led to profound mistrust between many Chicago communities and CPD. This mistrust reached its most recent flashpoint in late November 2015, following the release of a videotape depicting the fatal shooting of Laquan McDonald, a 17-year old African American. In response to the release of this videotape, Chicago Mayor Rahm Emanuel announced the creation of the Police Accountability Task Force (“Task Force”) to review the training, oversight, and accountability system for CPD officers.

In April 2016, the Task Force released a report (“Task Force Report,”) finding that “CPD’s response to the violence [in Chicago] is not sufficiently imbued with Constitutional policing tactics” and that “every stage of investigations and discipline is plagued by serious structural and procedural flaws that make real accountability nearly impossible.”¹¹⁰ The videotape of Laquan McDonald’s shooting also prompted the DOJ to investigate whether CPD engages in a pattern or practice of unconstitutional policing, including the use of excessive force.

In January 2017, the DOJ and the U.S. Attorney’s Office for the Northern District of Illinois released a report (“DOJ Report,”) finding that “CPD officers engage in a pattern or practice of using force, including deadly force, that is unreasonable,” and that the pattern “is largely attributable to systemic deficiencies within CPD and the City.” While the DOJ Report acknowledged the reforms the City had announced during the investigation, it stressed the need for long-lasting systemic changes.

(1) The Chicago Police Department Uses Excessive Force in Both Lethal and Non-Lethal Contexts

According to the DOJ Report, CPD officers engage in a repeated pattern of using excessive force when conducting law enforcement activities. Many of these incidents involve the use of deadly force in situations in which less or no force is objectively reasonable—similar to the Rekia Boyd case.

Other incidents noted in the report include concern the use of less-deadly force such as Tasers and batons when even less force or no force whatsoever is appropriate—for example, when a person is not actively resisting arrest, has been sufficiently subdued with handcuffs, or is suspected of having committed minor offenses. In each of these situations, the force used by CPD officers exceeds the bounds established by federal and state law, according to the report.

The report also found that CPD officers engage in a repeated pattern of using deadly force against people fleeing on foot who pose no immediate danger to anyone. Such uses of force violate the U.S. Supreme Court’s holding in *Tennessee v. Garner* that deadly force may be used only if “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”¹¹¹ The repeated occurrence of CPD officers shooting fleeing persons when not needed to protect themselves or led the department of justice to put CPD and the City on notice that corrective action was required. However, these warning signs were not heeded for many years.

In addition, the DOJ found that CPD officers frequently fire more ammunition than is needed to subdue people. In doing so, the officers risk killing or injuring other officers and members of the public and unnecessarily harming people who have been subdued. Officer Servin fired five shots into a crowd before killing Rekia Boyd.

The report further found that CPD’s failure to document and meaningfully review officers’ use of force perpetuates this pattern of unreasonable force. The DOJ identified 203 officer-involved shooting incidents in which at least one civilian was shot between January 1, 2011, and March 21, 2016. In those 203 incidents, 223 civilians were shot. The federal investigators also found numerous incidents where CPD

¹¹⁰ Police Accountability Task Force, *supra* note 99, at 10.

¹¹¹ *Tennessee v. Garner*, 471 U.S. at 11 (1985).

officers chased and shot fleeing persons who posed no immediate threat to officers or the public in clear violation of the U.S. Constitution. CPD officers also exhibited poor discipline in discharging their weapons, reflecting disregard for the safety of innocent bystanders. The DOJ found that three CPD officers fired forty-five rounds at a man during a foot pursuit in a residential area in one incident.

In 2017, CPD announced for the first time that its use-of-force policy would prohibit shooting at a fleeing suspect who did not pose an “imminent threat” to police or others.¹¹² These changes were steps in the right direction; however, numerous CPD officers either were unaware of these policy changes or ignored them.

(2) Discriminatory Impact on Chicago’s Black Residents

The report found that CPD officers’ pattern of using excessive force is disproportionately harmful to Chicago’s Black residents. CPD officers shoot Black people at a disproportionately high rate that has remained virtually unchanged since the disparity was documented by Congressman Metcalfe’s Blue Ribbon Panel in 1973.

Between 1969 and 1970, 75% of individuals fatally shot by CPD officers were Black, although Black people constituted 33% of Chicago’s population in 1970. Nearly 40 years later, the disparity remained roughly the same. The Department’s investigation uncovered a disturbing number of civil rights violations disproportionately affecting Black residents. Although Black citizens comprised one-third of Chicago’s population, they accounted for 74% of the 404 people shot in the City from 2008 to 2015. Black citizens also made up 72% of the CPD’s traffic stops that never resulted in an arrest. In 2018, the Invisible Institute—a non-profit journalism organization focused on police accountability—released a report documenting that Chicago Police are fourteen times more likely to use force against young Black men than against whites. Every five days, on average, a Chicago police officer fired a gun at someone.¹¹³ Moreover, between 2010 and 2014, officers in Chicago fatally killed more people than officials in any major city in the United States.¹¹⁴

According to the DOJ, the statistics for less-lethal use of force are similar: for example, between 2012 and 2015, approximately 76% of the 1,886 individuals Tasered by CPD officers were Black. The data surrounding police misconduct complaints further underscore the discriminatory impact of the City’s law enforcement practices on Black people.

The DOJ Report found that complaints filed by White people were sustained at a rate that is nearly three times higher than the rate for complaints filed by Black people and nearly twice as high as the rate for complaints filed by Latinos. The disparity is even higher with regard to misconduct complaints that allege excessive force. In addition, the DOJ Report found that between 2011 and March 2016, 980 officer misconduct complaints were coded as discriminatory verbal abuse on the basis of race or ethnicity.

c) The City is Deliberately Indifferent to the Chicago Police Department’s Repeated Patterns of Abuse

Accountability for officers who use unreasonable force remains rare. External complaints, threatened and actual lawsuits, and government-commissioned reports, along with the media’s frequent coverage of CPD’s repeated use of excessive force and racially discriminatory police action, have put the City on

¹¹² General Order G03-02-02: Use of Force, Chi. Police Dep’t III.B.1.a (Oct. 16, 2017), <https://news.wttw.com/sites/default/files/article/file-attachments/3-Gen-Order-G03-02-Use-of-Force-2-29-2020.pdf>

¹¹³ *Chicago tops in fatal police shootings among big U.S. cities*, CHICAGO SUN TIMES, (July 26, 2015), <http://chicago.suntimes.com/news/7/71/821982/chicago-police-fatal-shootings>

¹¹⁴ *Id.*

notice of CPD's unconstitutional conduct. Despite the signs, the DOJ found that structural deficiencies within Chicago's investigative entities allow complaints of police misconduct to remain unresolved for unreasonable amounts of time. Additionally, consequences for reported misconduct rarely resulted in a lasting impact on an officer's career. From January 2011 through March 2016, 28.4% of sustained findings resulted in "no discipline imposed" or a "violation noted" which only remains on an officer's disciplinary record for one year. Around 25% of the cases were resolved with a "verbal reprimand," meaning that an officer's supervisor addressed the officer's misconduct verbally but the officers faced no further discipline. Almost half of the cases were resolved with suspensions, the average length of which was just 7.8 days. Only nine—just 1.1%—of all cases were resolved by discharging the offending officers.

The liability for police misconduct is primarily borne by the City of Chicago within the civil legal system. By one count, Chicago has paid out more than \$642 million from 2004 to 2015 in settlements and other costs for police misconduct, including \$106 million in 2014 and 2015 alone.¹¹⁵ These settlements included more than \$5 million in 2016 to a group of Black Chicagoans who were abused and tortured by Jon Burge and the "Midnight Crew" in the 1970s and 1980s,¹¹⁶ \$ 5 million in 2015 to the family of Laquan McDonald, who was shot 16 times by a CPD officer, and, of course, \$4.5 million to the family of Ms. Boyd. The data makes it clear that Chicago has a dark legacy of consistent, grave police misconduct for which the officers themselves face few consequences.

(1) *The Chicago Police Department Routinely Fails to Investigate and Review Use-of-Force Incidents.*

The DOJ report found systemic issues in CPD's review of use-of-force reports. CPD mandates that officers complete a tactical response report ("TRR") any time they use force (with a limited number of exceptions), and promptly notify their immediate supervisors of these incidents. However, the review process for TRRs is inconsistent and inadequate.

When reviewing the TRR form, the DOJ determined the form contained a set of boxes to check that contain boilerplate use-of-force and resistance terms that often do not convey enough detail to provide for meaningful review by supervisors. And while the TRR form contained a textbox for officers to include additional, descriptive information, the textbox is small and rarely used. Under CPD policy, supervisors, in turn, must investigate every use of non-shooting force and review and approve all TRRs.

The DOJ Report states that supervisors typically review for correctness and completeness—rather than to determine whether force was properly used—and approve the TRRs within minutes of submission. In addition, supervisors seldom respond to the scene of an incident, request the Taser deployment report (if a Taser was used), ask the officer to supply additional information, or refer the incident to the reviewing authority, IPRA.

The DOJ Report concluded that the City fails to investigate allegations of officer misconduct adequately and, when appropriate, discipline offending officers. CPD's system of accountability does not adequately identify and investigate allegations of officer misconduct. As a result, officers are not consistently held accountable for engaging in misconduct or deterred from engaging in future misconduct.

The lack of officer accountability is evident in a number of ways. The Task Force Report found, for example, that out of the 28,567 misconduct complaints filed between March 2011 and September 2015, only 2% resulted in actual discipline. The DOJ Report found that only 13 of 980, 1.3% of complaints filed

¹¹⁵ See *supra* note 109.

¹¹⁶ *Id.*

between 2011 and March 2016 alleging discriminatory verbal abuse based on race or ethnicity were ultimately sustained by investigators.

In addition, the Task Force Report found that between October 2007 and September 2015, only two of 409 officer-involved shootings (0.49%) were found to be unjustified. In the small number of cases in which IPRA and the Superintendent have recommended discipline, the Police Board frequently disagreed with the recommendations.

According to the DOJ Report, the City also has not adequately investigated instances of alleged police misconduct when sued by victims. Of the hundreds of such cases since 2004, for which the City has spent over half a billion dollars to settle or pay judgments, only half involved official disciplinary investigations, and fewer than 4% of those investigations resulted in disciplinary recommendations. These systemic flaws not only result in a failure to hold CPD officers accountable for instances of excessive force and racially discriminatory policing practices but also signal to officers that they can engage in misconduct with little to no risk that their actions will result in discipline.

In the wake of each of these reports, the City and CPD endeavored to reform police practices and accountability. However, the pattern of unconstitutional, abusive policing persists. Many of CPD's challenges are not new, stemming from decades of torture and violence. Prior reform efforts have failed to adequately address these challenges. The Commission's intervention is necessary to ensure that the City and CPD can finally break with the patterns of the past, restore trust with Chicago's residents, and stop police violence.

III. Violations Of The American Declaration And Legal Argument

A. Officer Servin acted under State Authority When he fatally shot Rekia Boyd.

The United States has failed to create and maintain structures that hold police accountable for the excessive and unlawful use of force against Black people in the United States. The United States has also failed to hold prosecutors accountable for their discretionary charging of police officers. Officer Servin, acting in an official capacity, unlawfully killed Ms. Boyd and the State failed to act with due diligence to conduct an effective investigation and provide equal and effective access to justice.

In addition, the Commission has regularly observed that issues of police violence and failures by law enforcement must translate to changes in nationwide policies and procedures in order to guarantee non-repetition of these human rights violations. In 2018, the Commission published a report entitled "Police Violence Against Afro-descendants in the United States," which concluded that the U.S. has "systemically failed to adopt preventive measures and to train its police forces to perform their duties in an appropriate fashion."¹¹⁷ The report took into account public hearings, cases, petitions submitted to the Commission, the international obligations of the United States, and other public sources.

These identified failures have resulted in the unjustified and preventable killing of Rekia Boyd, in violation of Ms. Boyd's right to life, equality before the law, and right to a fair trial under Articles I, II, and XVIII.

The entire State structure – including federal, state and municipal authorities – is bound by international human rights standards, including customary obligations, and is obliged to ensure that killings by State forces are necessary and not arbitrary. Further, where this duty is breached, the State must carry out an effective and impartial investigation and hold the perpetrators accountable. This standard is echoed in

¹¹⁷ IACHR, *Report on African Americans, Police Use of Force, and Human Rights in the United States*, OEA/Ser.L/V/II, Doc. 156, November 26, 2018, <https://www.oas.org/en/iachr/reports/pdfs/PoliceUseOfForceAfrosUSA.pdf>

other regional human rights systems, including in Europe where the State is obliged to carry out an effective investigation where Article 2 (the right to life) is engaged – this is often in the form of an inquest or public inquiry.

The international legal standard for determining whether an individual was acting under state authority stems from the *Tadic* decision of the International Criminal Tribunal for the former Yugoslavia, stating:

*A state incurs responsibility for acts in breach of international obligations committed by individuals ...who . . . belong to public entities empowered within the domestic legal system of the state to exercise certain elements of governmental authority.*¹¹⁸

A municipal police department such as the Chicago Police Department (CPD) is a textbook example of such a public entity empowered to “exercise certain elements of governmental authority.” The CPD exercises powers of arrest, detention, and the maintenance of public safety.¹¹⁹ In the same way, individuals who belong to a municipal or public entity who exercise these elements of governmental authority and who act in breach of international obligations, render the State responsible.

Officer Servin was a detective employed by the CPD at the time of the shooting. He first relied on his status as a CPD detective to stop Ms. Boyd and her companions. This was a clear exercise of the State’s police powers. Officer Servin then responded to [his own] noise complaint by approaching Rekia Boyd and ordering the group to quiet down. By responding to the noise complaint, as a police officer would do, Mr. Servin presented himself to Rekia Boyd and her friends as possessing State authority. He told IPRA that even when not in uniform he acts as an officer and approached Ms. Boyd and her friends because he expected them to adhere to his authority.¹²⁰ Mr. Servin then took several steps that demonstrated his belief that he was acting pursuant to the powers of the State. He relied on his status again as a CPD detective when he used lethal force against Ms. Boyd and her friends. Indeed, the CPD filed documentation treating the shooting as an incident involving a ‘CPD official’ and it was the city of Chicago (not Officer Servin himself) that paid a civil settlement to Ms. Boyd’s survivors.¹²¹ Also, similar to a first-respondent police officer, Officer Servin called in the shooting and requested an ambulance and notified police that shots were fired by an officer.¹²² After the police arrived, Mr. Servin again identified himself as a Chicago Police Detective.¹²³

When an individual acts for and on behalf of the State, the State is rendered liable for any actions taken while acting under such authority. Pursuant to 42 U.S.C.A § 1983, an off-duty police officer can still be considered acting in his/her official capacity if the off-duty officer invokes the real or apparent power of the police.¹²⁴ The courts will look to the exact nature of the off-duty officer’s actions rather than solely

¹¹⁸ International Tribunal for the Former Yugoslavia, Appeals Chamber, Prosecutor v. Duško Tadić, Judgment, Case No. IT-94-1-A, 15 July 1999, para. 109 (footnotes omitted).

¹¹⁹ Chicago Police, Department Bureaus & Offices, (Apr. 23, 2019), <https://home.chicagopolice.org/inside-the-cpd/our-mission/>.

¹²⁰ FOIA Doc., *supra* note 2, at 51.

¹²¹ Shaun King, *Smoking gun: Prosecutor Anita Alvarez deliberately undercharged officer who killed Rekia Boyd*, Daily Kos (Apr. 24, 2015), <https://www.dailykos.com/stories/2015/04/24/1379966/-Smoking-Gun-Prosecutor-Anita-Alvarez-deliberately-undercharged-officer-who-killed-Rekia-Boyd>.

¹²² FOIA Doc., *supra* note 2, at 13.

¹²³ *Id.*

¹²⁴ *Pitchell v. Callan*, 13 F.3d 545, 548 (2d Cir. 1994); *United States v. Tarpley*, 945 F.2d 806, 809 (5th Cir. 1991); *Traver v. Meshriy*, 627 F.2d 934, 937–38 (9th Cir. 1980).

whether the officer was on or off duty.¹²⁵ If an off-duty officer performs duties typically delegated to police officers, then the off-duty officer can be a state actor.¹²⁶

It is clear that Officer Servin was a State actor at the time of the shooting. The State has also treated him as such. As such, his actions in violation of the State's international obligations must be imputed to the United States and the United States must be held liable for breaches of its international obligations for its failure to hold Mr. Servin properly accountable through the criminal justice system.

B. Violations of the Declaration

The American Declaration sets out fundamental rights of the individuals, many of which have been recognized by this Commission and other international bodies as encompassing *jus cogens* norms.

The United States is bound to respect an individual's rights protected under the Declaration. This Commission has confirmed that the United States is subject to this obligation and the jurisdiction of the Commission as a Member State of the Organization of American States ("OAS") that deposited its instrument of ratification of the OAS Charter on June 19, 1951, Article 10 of the Commission's Statute and Article 49 of the Commission's Rules of Procedure.

Furthermore, this Commission has clarified that, in accordance with general principles of international law, it will exercise its Charter-based mandate of reviewing petitions pursuant to the Declaration by taking into account other international obligations and instruments:

"Pursuant to the principles of treaty interpretation, the Inter-American Court of Human Rights has likewise endorsed an interpretation of international human rights instruments that takes into account developments in the corpus juris of international human rights law over time and in present day conditions."

In the *Villareal* case, for example, the Commission held that "in interpreting and applying the American Declaration, it is necessary to consider its provisions in the context of developments in the field of international human rights law since the Declaration was first composed and with due regard to other relevant rules of international law applicable to member States against which complaints of violations of the Declaration are properly lodged. Developments in the corpus of international human rights law relevant in interpreting and applying the American Declaration may in turn be drawn from the provisions of other prevailing international and regional human rights instruments."¹²⁷

States' duties emanating from the Declaration are both positive and negative. The Commission emphasized in *Lenahan*¹²⁸ that:

"States are obligated not only to refrain from committing human rights violations contrary to the provisions of the American Declaration, but also to adopt affirmative measures to guarantee that the individuals subject to their jurisdiction can exercise and enjoy the rights contained in the American Declaration."

¹²⁵ See *Revene v. Charles County Comm'rs*, 882 F.2d 870, 872 (4th Cir. 1989).

¹²⁶ See *Stengel v. Belcher*, 522 F.2d 438, 441 (6th Cir. 1975).

¹²⁷ *Ramon Martinez Villareal v. United States*, Case 11.753, Inter-Am. C.H.R., Report No. 52/02, doc. 5 rev. 1 at 821, ¶ 60 (2002) (citing *Juan Raul Garza v. United States*, Case 12.243, Report No. 52/01, OEA/Ser.L/V/II.111, doc. 20 rev. at 1255 ¶¶ 88-89 (2000)); see also *Maya Indigenous Community of the Toledo District v. Belize*, Case 12.053, Inter-Am. C.H.R., Report No. 40/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 ¶¶ 86-88 (2004); *Mary and Carrie Dann v. United States*, *supra* note 171, at ¶¶ 96-97.

¹²⁸ *Lenahan v. United States*, Petition No. 1490-05, Inter-American Comm'n H.R., Report No. 52/07, OEA/Ser/L/V/III.128, doc. 19, ¶ 29 (2007).

Negative duties include the duty not to commit acts or omissions, or implement measures which would violate the rights of individuals guaranteed under the Declaration. In *Bulacio*, the Commission has also held that States cannot enact provisions that exclude liability of state actors for extra-judicial killings.¹²⁹

Some examples of positive duties enumerated by the Commission include but are not limited to:

- Respecting and guaranteeing rights under the Declarations;
- Implementing the rights established by the Declaration in practice with their jurisdiction.
- Adopting measures to give legal effect to, and free and full exercise of those rights. This is heightened in relation to extrajudicial killings by state agents—the State has an obligation to provide a satisfactory and convincing explanation of what happened.
- Investigating, prosecuting and sanctioning violations of those rights, and if possible restoring and providing compensation to victims.

i. Article I of the American Declaration of the Rights and Duties of Man

a) *The State's Duties Pursuant to Article I of the American Declaration*

Article I of the American Declaration states that “every human being has the right to life, liberty and the security of his person.”

The Commission has described this right “as the supreme right of the human being, respect for which the enjoyment of all other rights depends.”¹³⁰ The importance of the right to life is reflected in its incorporation into every key international human rights instrument¹⁴¹ and its supreme status under customary international law.¹³¹

Protection of the right to life of citizens imposes both positive and negative obligations on State parties and all entities exercising state functions within the country's jurisdiction. In practice, this negative obligation means that State entities (and individuals acting pursuant to said entities) have an obligation to not take the life of a law-abiding people and that these actors must be proportionate in their use of force. At the very minimum, the right to life imposes upon States the duty to abstain from arbitrarily killing individuals under their jurisdiction. Positive obligations mean that State authorities must also ensure that they take action to protect the lives of people in their jurisdiction. These duties were clearly breached when Rekia Boyd was killed by Officer Servin.

b) *The State's Duty to Use Proportionate Force and to Prevent Arbitrariness Under International Law*

The duty of the State to use proportionate force and guard against arbitrariness in situations where a person's right to life is likely to be deprived is well documented in almost all international instruments.

The International Covenant on Civil and Political Rights (“ICCPR”) echoes the language of the Declaration in Article 6(1) and makes it clear that “no one shall be arbitrarily deprived of his life.”¹³² The

¹²⁹ *Bulacio v. Argentina*, 2003 Inter-Am. Ct. H.R. (sec. C) No. 100, 10 (Sept. 18, 2003).

¹³⁰ Amer. Decl. H.R. Art. I.

¹³¹ IACHR, Report N° 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007, ¶¶ 251-252; IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, ¶¶ 195-197; IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc.6, October 18, 2006, ¶¶ 102-106; IACHR, *Report on the Rights of Women in Haiti to be Free from Violence and Discrimination*, OEA/Ser.L/V/II, Doc. 64, March 10, 2009, ¶ 90.

¹³² International Covenant on Civil and Political Rights, Art. 6(1) (hereinafter ICCPR).

American Convention on Human Rights, clarifies elements of the American Declaration, also guards explicitly against “arbitrariness.”¹³³

This provision is linked to and should be read together with Article XXV of the American Declaration, which further states, “No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.”¹³⁴ This language is echoed in Article 9 of the ICCPR¹³⁵ and Article 9 of the Universal Declaration of Human Rights (“UDHR”).¹³⁶ With regard to the “procedures established by pre-existing law” referenced by the American Declaration, the use of force by a police officer may be lawful under domestic law in the United States under certain circumstances, but the breaches in this regard are often exacerbated by the fact that many laws in the United States, including laws governing the use of force by police in Illinois, do not comport with the State’s obligations under international law.¹³⁷

The U.N. Human Rights Committee has stressed that all situations where the use of force by authorities of the State has the capacity to deprive life must be treated as situations deserving of the “utmost gravity” and that “the law must strictly control and limit the circumstances in which a person may be deprived of his or her life.”¹³⁸ In General Comment 36, issued in October 2018, the UN Human Rights Committee made it abundantly clear how Article 6 of the ICCPR should be interpreted, clarifying that deprivation of life must be a last resort, and only an option when all other methods of de-escalation have been exhausted.

The Inter-American Court of Human Rights has likewise held that States have a duty to adapt their national laws to ensure that “security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.”¹³⁹ In order to ensure “the conditions required for the full enjoyment and exercise of the right to life,” the use of lethal force, in particular, must be adequately regulated.¹⁴⁰

The Inter-American Court gave further guidance on this principle by holding in *Finca “La Exacta”* that “the use of force should be necessary and proportionate to the needs of the specific situation and the objective to be achieved.”¹⁴¹ In view of the fact that the government in the *Finca “La Exacta”* case had offered “no evidence” demonstrating that the “police agents had reason to believe that their lives or the lives of third parties were in danger,”¹⁴² the Inter-American Court accordingly held that the lethal force used was disproportionate and violated the victims’ right to life.¹⁴³

Similar to the Commission, the European Court of Human Rights (ECHR) has often held that the use of force must be no more than “absolutely necessary” in certain specified situations, including for example,

¹³³ Am. Convention H.R. Art. 4.

¹³⁴ Am. Decl. H.R. Art. XXV.

¹³⁵ International Covenant on Civil and Political Rights, Art. 9.

¹³⁶ Univ. Decl. H.R. Art. 9.

¹³⁷ IACHR Report 2018 ¶ 101.

¹³⁸ Human Rights Comm, *Gen. Comment No. 6; art. 6, (right to life)*, U.N. Doc. HRI/GEN/1/Rev.1, ¶ 3 (1994).

¹³⁹ *Dorzema v. Dominican Republic*, Merits, Reparation, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 251, ¶ 80 (Oct. 24, 2012); *Aranguren v. Venezuela*, Merits, Reparations and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 150, ¶ 66 (July 5, 2006).

¹⁴⁰ *Case of Children’s Rehabilitation*, Merits, Reparation, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 156 (Sept. 2, 2004); *Paquiyauri v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 110, ¶ 128 (July 8, 2004); *Chang v. Guatemala*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No.101, ¶ 152 (Nov. 25, 2003).

¹⁴¹ *Finca “La Exacta” v. Guatemala*, Case 11.382, Report No. 57/02, Inter-Am. C.H.R., Doc. 5 rev. 1 at 650 (2002), para. 40.

¹⁴² *Id.*, para. 43.

¹⁴³ *Id.*

to defend oneself from unlawful violence, effect a lawful arrest or to prevent the escape of a lawfully detained person, (*McCann and Others v. the United Kingdom*, § 148; *Yüksel Erdoğan and Others v. Turkey*, § 86; *Ramsahai and Others v. the Netherlands [GC]*, § 286; *Giuliani and Gaggio v. Italy [GC]*, § 17).

c) *The State's Duty to Use Proportionate Force and to Prevent Arbitrariness Under U.S. Law*

An individual's right to life and the corresponding duties to use proportionate force and to guard against arbitrariness is also preserved in various instruments under U.S. law.

On a federal level, the Fourteenth Amendment to the United States Constitution protects Americans from arbitrary deprivation of life.¹⁴⁴ In a similar vein, the Constitution of the State of Illinois states, "No person shall be deprived of life ... without due process of law."¹⁴⁵ In the specific scenario of killing an individual by firing a gun into a crowd, Illinois criminal law provides that the act of shooting into a crowd is an act so dangerous that it would be considered intentional.¹⁴⁶ In these circumstances, such an act would be grounds for a criminal charge of murder.

Moreover, although these provisions are binding on agents of the State, the legal framework regulating the use of force in the United States still does not fully conform to the requirements of international human rights law or international best practices. For example, the United States has not implemented the standards contained in the U.N. Code of Conduct for Law Enforcement Officials ("U.N. Code of Conduct"),¹⁴⁷ adopted by the U.N. General Assembly in 1979, or the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ("U.N. Basic Principles"),¹⁴⁸ developed at the U.N. conference on crime prevention and the Treatment of Offenders in 1990. These standards, albeit not directly enforceable, together provide authoritative guidance on internationally accepted methods of policing and the use of force.¹⁴⁹ Pursuant to the guidance, law enforcement is to "apply nonviolent means before resorting to the use of force."¹⁵⁰ It is only in situations where force is "unavoidable," that force can be used, and even then the police are exhorted to "exercise restraint in such use and act in proportion to the seriousness of the offence."¹⁵¹ The guidance goes on to make clear that in all circumstances where force is used, police should "minimize damage ... and respect and preserve human life"¹⁵² and dignity.¹⁵³ "[I]ntentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."¹⁵⁴

¹⁴⁴ U.S. Const. amend. XIV.

¹⁴⁵ Constitution of the State of Illinois, Section 2, <http://www.ilga.gov/commission/lrb/conent.htm>.

¹⁴⁶ *People v. Adorno*, 2013 IL App (1st) 110028-U.

¹⁴⁷ U.N. G.A. Res. 34/169, Code of Conduct for Law Enforcement Officials (1979) [hereinafter U.N. Code of Conduct].

¹⁴⁸ United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) [hereinafter U.N. Basic Principles].

¹⁴⁹ See, e.g., Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, n.251 and accompanying text (1998), <https://www.hrw.org/legacy/reports98/police/uspo38.htm> ("While [the U.N. Code of Conduct] is not binding, it does provide authoritative guidance for interpreting international human rights law regarding policing."); Amnesty Int'l, *10 Basic Human Rights Standards for Law Enforcement Officials* (Dec. 1998), <https://www.amnesty.org/download/Documents/156000/pol300041998en.pdf> (citing the U.N. Code of Conduct and the U.N. Basic Principles as authoritative sources on policing standards).

¹⁵⁰ U.N. Basic Principles, *supra* note 148, principle 4

¹⁵¹ U.N. Basic Principles, *supra* note 148, principle 5.

¹⁵² *Id.*

¹⁵³ U.N. Code of Conduct, *supra* note 147, art. 2.

¹⁵⁴ U.N. Basic Principles, *supra* note 148, principle 9.

In the United States, the legal framework for the use of force, training practices, and policing methods do not systematically reflect or uphold these international standards. The discrepancies between the U.S. domestic legal framework and international human rights standards are most stark with regard to the treatment of lethal versus non-lethal force, the circumstances in which recourse to force and lethal force is permissible, and the purposes for which the use of force is deemed legitimate.

In summary, the legal framework for the use of force in the United States does *not* clearly require exhaustion of non-violent or less-than-lethal means before resort to lethal force.¹⁵⁵ Nor does it consistently prohibit the use of force to maintain law and order, prevent escape, or apprehend a suspect, in absence of an imminent threat of death or serious injury.¹⁵⁶ It is true that guidelines issued by the U.S. Department of Justice states that deadly force is unnecessary if non-deadly force is sufficient to accomplish a law enforcement purpose.¹⁵⁷ However, whilst these guidelines improve upon the constitutional standard, they still set the baseline at non-deadly *force* rather than focussing on non-violent means of diffusing a situation where a person's right to life is at stake. This approach is at odds with the standard set forth in the U.N. Basic Principles requiring exhaustion of *alternatives* to force.

d) *The United States Violated Rekia Boyd's Right to Life, Liberty, and Personal Security*

Rekia Boyd's right to life and personal security was violated when she was intentionally shot and fatally wounded in unjustified and arbitrary circumstances by Officer Servin.

It is the Petitioners' position that Rekia Boyd's murder was arbitrary and that Officer Servin failed to use proportionate force as was required pursuant to Article 1 of the Declaration. Rekia Boyd's life was taken by Officer Servin despite her not posing any threat whatsoever to him.

First, Officer Servin's shooting of Ms. Boyd was completely arbitrary. There is no evidence to show that Officer Servin or any third party was ever in mortal danger. Officer Servin was the only person to claim that he saw a gun. No gun was recovered and no other eyewitness corroborated Mr. Servin's allegation. There was in fact no imminent threat or danger to the security and safety of Officer Servin.

¹⁵⁵ For instance, in *Harris v. Serpas*, 745 F.3d 767, 772–73 (5th Cir.), cert. denied, 135 S. Ct. 137 (2014), the U.S. Court of Appeals for the Fifth Circuit ruled that officers were reasonable in fatally shooting Mr. Harris after he raised a knife above his shoulder in a stabbing position. The court reached this decision despite the fact that the officers initially found Mr. Harris lying down on his back and had received no reports that he was a threat to anyone but himself before they used Tasers on him, leading him to become agitated. The court did not contemplate whether officers could have used other less-than-lethal means to deescalate the situation, or consider any of the officers' actions leading up to the shooting. Because the officers "reasonably feared for their safety at the moment of the fatal shooting," the Fifth Circuit concluded that the use of lethal force was not excessive. *Id.* at 773.

¹⁵⁶ For instance, in *McKenney v. Harrison*, the U.S. Court of Appeals for the Eighth Circuit ruled that an officer's fatal Taser of an unarmed person suspected of a misdemeanor as he lunged toward an open window was a reasonable use of force because the individual's sudden movement could be interpreted as an attempt to flee, only a single Taser shock was used, the officer was in a position of having to make a split second decision, and some form of warning was given. There was no evidence that the suspect posed an imminent threat to the life or limb of the law enforcement officers or bystanders. The officer's only apparent objective was bringing this individual into custody. *McKenney v. Harrison*, 635 F.3d 354, 360 (8th Cir. 2011). Permitting the prioritization of law and order over preservation of life does not comport with international human rights law. *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, ¶ 73, U.N. Doc. A/HRC/26/36 (April 1, 2014) (by Christof Heyns).

¹⁵⁷ U.S. Dep't of Justice, *Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies* (2001), <https://www.ncjrs.gov/pdffiles1/ojp/186189.pdf>.

Second, absolutely no methods of de-escalation or non-violent means were considered or employed before the use of force was considered. There appeared to be no assessment of the position by Officer Servin, including whether force was unavoidable as he was required to do by law and pursuant to the relevant international standards. Lethal force was then deployed within a very brief period following his interaction with the group. No attempts were made to minimize damage or to act with restraint in line with the perceived seriousness of the offense in question.

In the circumstances, Officer Servin completely failed to respect and preserve the human life and dignity of Rekia Boyd.

e) *The United States Failed to Ensure An Effective Investigation in Violation Of Article I.*

It is also the Petitioner's position that the ensuing investigation into the death of Ms Boyd also constituted a breach of Ms Boyd's rights under Article I.

It is now settled international human rights law that the right to life should also be read as imposing a requirement to ensure that an effective investigation is undertaken following any arbitrary killing. This is often referred to as the procedural limb of the right to life: the lack of due process in relation to a person's right to life is itself a breach of the State's duty in relation to a person's right to life.

In August 2022, the Inter-American Commission on Human Rights submitted a case to the Inter-American Court on Human Rights concerning violations by Brazil of various provisions of the American Convention on Human Rights including the right to life (Article 4 of the Convention).

The case concerned the disappearance of a rural worker and human rights defender named Almir Muniz da Silva, who had disappeared in the Brazilian state of Paraiba. Prior to his disappearance, Mr da Silva had testified before the Parliamentary Commission of Inquiry on violence in the countryside and alleged that Police Officer Sergio de Souza Azevedo was primarily responsible. In 2002, his disappearance was reported to the police station where Officer Azevedo worked, but no investigation was enacted and the internal investigation was closed with no clarification of the facts or punishment of the offender. In this case, the Commission found that he was murdered by Officer Azevedo, and that the period of six years taken from his disappearance until the archiving of the case was unduly long, excessive and unreasonable. The IACHR found against Brazil on the facts including on the right to life and among other measures, the IACHR recommended to Brazil that it "*develop and conclude an investigation diligently, effectively and within a reasonable time to clarify the facts; identify the possible material and intellectual responsible persons and impose the corresponding sanctions.*"

In the case of *Muravskaya v. Ukraine*,¹⁵⁸ the European Court of Human Rights found that the Ukrainian authorities breached Article 2 of the ECHR (the right to life) when they seriously undermined their duty by not acting quickly enough in relation to a death of an individual who was later determined to have been beaten and later murdered. In that case, a long time was taken to investigate the deceased's death as a killing rather than an accidental death. The investigator in question refused to launch an investigation. The Court stated that where an individual has been killed as a result of the use of force, it was mandatory that there was some form of effective official investigation, which had to be carried out expeditiously. The Strasbourg Court therefore held that in the circumstances, because the State authorities failed to carry out an effective investigation into the disappearance and death of the applicant's son, there had accordingly been a violation of the procedural limb of Article 2 of the Convention.

¹⁵⁸ *Muravskaya v. Ukraine*, App No. 249/03, (July 19, 2023).

Again before the European Court of Human Rights, in *Menson and others v. UK* (2003) 37 EHRR CD 220, the applicants alleged that institutionalized racism within the Metropolitan Police Service led to an inadequate investigation into the murder of a Black man who suffered from schizophrenia and was set on fire by four White youths. In this case, the investigation was hampered by the two police officers who initially responded in a manner that assumed that Mr. Menson had set fire to himself. As a result, they did not investigate the crime scene or try to find his attackers. Prior to his death in hospital, Mr. Menson told his siblings that he had been attacked, and despite numerous requests from his family, the police did not take a statement from him or make any further inquiries. It was left to Mr. Menson's family to leaflet the area and the suspect was finally arrested over a year after the attack.

The Court stated in very strict terms that “... by requiring a State to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, Reports 1998-III, p. 1403, § 36), Article 2 § 1 imposes a duty on that State to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.”

The above makes it clear that Article 1 of the American Declaration of Human Rights should be read in conjunction with the preamble of the document, which states that ‘the international protection of the rights of man should be the principal guide of an evolving American law.’ As such, in order for the rights of those under the jurisdiction of the Declaration to be fulfilled, there must be action on the part of the State to ensure any breaches are investigated and prosecuted.

It is clear from the relevant facts as outlined in paragraph II(B)(v) above that the Chicago Police Department failed to act expediently with haste in relation to Officer Servin, despite his conduct.

In summary, it took the State Attorney twenty months after Rekia Boyd's death to charge Officer Servin, and even so, it was the first time in fifteen years a Chicago police officer was charged for shooting and killing an unarmed civilian. It is well documented that the investigation itself was replete with errors and irregularities: the State Attorney's discouraged the police from taking depositions and it was months before key evidence of the shooting was gathered.

The City of Chicago's lawyers also did not interview Officer Servin or other witnesses under oath. After the city agreed to pay a 4.5 million dollar civil settlement to Rekia Boyd's family, one Cook County prosecutor even wrote to others in his office that the decisions to conduct no depositions in the case “seem[ed] unusual.”

The relevant breaches also extended to the failure to correctly charge Officer Servin. Judge Dennis J. Porter of Cook County Circuit Court, who delivered a rare directed verdict, found Officer Servin not guilty. However, this was on the basis that the State's Attorney had incorrectly charged Servin with involuntary manslaughter when the correct charge should have been first-degree murder, a more serious crime.

A federal investigation was conducted into the City of Chicago's Police Department (CPD) and Independent Police Review Authority (IPRA) jointly by the U.S. Department of Justice (DOJ) and United States Attorney's Office for the Northern District of Illinois. According to the resulting report published on January 13, 2017, the DOJ announced that it found reasonable cause to believe that the Chicago Police Department engaged in a pattern or practice of using force, including deadly force, in violation of the Fourth Amendment of the U.S. Constitution. There has not, however, been any steps taken to establish the relevant facts of Ms. Boyd's killing and/or to impose any sanctions or remedies on Officer Severin or the State, which is a direct contravention of the procedural limb of Article 1.

f) *The United States violated Ms. Helton and Mr. Sutton's right to security of persons*

The United States' failure to hold Mr. Servin accountable for killing Ms. Boyd placed an extensive strain on the health and well-being of Ms. Helton and Mr. Sutton. This constitutes a violation of their right to personal security under Article I of the American Declaration. Article I states, "Every human being has the right to life, liberty and the security of his person."¹⁵⁹

The Inter-American Court has held that "the next of kin of the victims of human rights violations may also be victims" and that States have violated the right to mental and moral integrity of the next of kin of the victims "owing to their suffering as a result of the specific circumstances of the violations perpetrated against their loved ones and the subsequent acts or omissions of the State authorities with regard to the events."¹⁶⁰ Specifically, the Inter-American Court has held that the failure of the public authorities to fully investigate human rights violations and punish those responsible creates a feeling of insecurity and helplessness for the family of the victim.³⁰¹ The Inter-American Court has also found "the absence of effective recourse is an additional source of suffering and anguish for the victims and their next of kin."¹⁶¹ Compliance with the duties to investigate and to punish those responsible for the excessive use of force and unlawful killings is closely linked, according to the Inter-American Court, to "the right of the next of kin of the alleged victims to know what happened and to know who was responsible for the respective events."¹⁶² Accordingly, the State must ensure that the family members can learn the truth.

Ms. Helton and Mr. Sutton suffer daily because Reikia Boyd's life was senselessly taken and Mr. Servin has not been held accountable for it. Mr. Sutton states:

The pain I feel in my heart will never be healed because of the psychological trauma that plays in my head on a constant basis. There was no help offered to help soothe the pain that me and my family feel, no mental health services offered, not even an apology for taking my sister off this earth. The constant harassment I receive from police officers for speaking out about the loss hasn't died down yet. At times I feel like I am the next to die, and it can happen at any given moment. The pain in my mother's eyes along with the constant flow of tears, is never ending. How can I dry up a river of tears with Kleenex? It is hard to explain to my children and my nieces and nephews that their aunt is never coming home. It's tough, especially the youngest ones that always expect for her to walk through the door. In the search for answers, I have just been presented with more problems that seem to have no solutions. I'm still trying to find justice, but what is justice? To me, it's just ice to numb the situation.¹⁶³

As the next of kin, the United States violated Ms. Helton's and Mr. Sutton's right to personal security by failing to meet its obligation to act with due diligence to prevent and protect Ms. Boyd from her death at the hands of Mr. Servin and to hold Mr. Servin accountable. The trauma from Ms. Boyd's death

¹⁵⁹ Amer. Decl. H.R. Art. I.

¹⁶⁰ Inter-American Court, *Caso de la Masacre de Pueblo Bello vs. Colombia*, Sentencia de 31 de enero de 2006, ¶ 154; Inter-American Court, *Caso Gómez Palomino Vs. Perú*, Sentencia de 22 de noviembre de 2005, ¶ 60; Inter-American Court, *Caso de la "Masacre de Mapiripán" Vs. Colombia*, Sentencia de 15 de septiembre de 2005, ¶ 144 y 146; y Inter-American Court, *Caso de las Hermanas Serrano Cruz Vs. El Salvador*, Fondo y Reparaciones, Sentencia de 1 de marzo de 2005, ¶ 113-114.

¹⁶¹ *Masacre de Pueblo Bello v. Colombia*, ¶ 158; "*Masacre de Mapiripán*" v. Colombia, ¶ 145; *Comunidad Moiwana v. Suriname*, June 15, 2000, ¶ 94; *Hermanas Serrano Cruz v. El Salvador*, ¶ 113-115; *Valle Jaramillo v. Colombia*, Nov. 27, 2008.

¹⁶² *Case of García-Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Inter-Am.Ct. H.R.(ser. C) No. 168, ¶ 102 (Nov. 20, 2007); *Case of the "Las Dos Erres" Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Inter-Am. Ct. H.R. (ser. C) No. 211, ¶ 105 (Nov. 24, 2009).

¹⁶³ IACHR Report 2018 ¶ 100.

substantially impacted the lives of her family; moreover, the circumstances surrounding her death and the subsequent acts by the State in relation to it contributed to her family's violation of personal security.

Ms. Boyd's family is left in a state of endless suffering and anguish due to her death at the hands of Mr. Servin. After Ms. Boyd's death, her family had to witness the media's negative and false portrayal of her. Also, her family has a right to know the truth regarding her death, yet, the state denied them this opportunity. As such, the absence of a complete and effective investigation of her death resulted in an additional source of suffering and anguish for her family. The State's failure to prosecute and punish Servin also added to the family's suffering. Despite readily available evidence, the State's Attorney failed to fully prosecute and punish Mr. Servin for the killing of Ms. Boyd. This resulted in the issuance of the rare directed verdict, which acquitted Mr. Servin of all counts and ensured that he cannot be criminally charged again for the killing of Ms. Boyd or held accountable in a court of law. The culture of police impunity that exists within the United States fostered her family's inability to seek recourse for her death. Furthermore, because they have no means to seek justice for Ms. Boyd, Ms. Helton and Mr. Sutton are left in a state of insecurity and helplessness.

ii. Article II of the American Declaration of the Rights and Duties of Man

a) *The State's Duties Pursuant to Article II of the American Declaration*

Article II of the American Declaration makes it clear that, "all persons are equal before the law and have the rights and duties established in [the] Declaration, without distinction as to race, sex, language, creed, or any other factor."¹⁴³ This right to equality and non-discrimination has been repeatedly emphasized as "a fundamental principle of the Inter-American system of human rights."¹⁴⁴ The Commission has determined that the principles within this article are the "backbone of the universal and regional systems for the protection of human rights."¹⁶⁴

In practice, this means that States are obligated "to adopt the measures necessary to recognize and guarantee the effective equality of all persons before the law; to abstain from introducing in their legal framework regulations that are discriminatory towards certain groups either in their face or in practice; and to combat discriminatory practices."¹⁶⁵

The jurisprudence of the Commission has made it clear that the principle of non-discrimination and equality established in Article II "is a particularly significant protection that affects the guarantee of all other rights and freedoms under domestic and international law."¹⁶⁶ Moreover, the Commission has found that this Article is very similar to the right of equal protection of the law included in Articles 1 and 24 of the American Convention and Article 4(f) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.¹⁶⁷ Indeed, the principle of non-discrimination and equality contained in Article II emerged in part, from the acknowledgement of the unequal ways in which society has historically treated certain vulnerable groups, including Black women, and the detrimental effects of this unequal treatment on these groups.¹⁶⁸ The Commission has also made it clear

¹⁶⁴ Lenahan v. United States, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11, ¶ 107 (2011).

¹⁶⁵ IACHR, Report No. 67/06, Case 12.476, *Oscar Elias Bicet et al.* (Cuba), October 21, 2006, paras. 228-231 IACHR Report No. 40/04, Case 12.053, *Maya Indigenous Community* (Belize), October 12, 2004, paras. 162, 166.

¹⁶⁶ *Maya Indigenous Community v. Belize*, *supra* note 165, at ¶ 163.

¹⁶⁷ IACHR, Report No. 54/01, Case 12.051, *Maria da Penha Fernandes* (Brazil), April 16, 2001, paras. 45-50, 120.

¹⁶⁸ I.A. Comm. H.R., Conclusions and Recommendations of the Inter-American Consultation on Women and Violence, at 4-5, OEA/ser. L/II.2.25, CIM/RECOVI/doc. 26/90 rev. 1 (1990).

from its jurisprudence that when it assesses laws and policies based upon this principle, it considers the discriminatory impact of the law, not merely whether it was intended to be discriminatory.¹⁶⁹

Accordingly, the Commission in its decisions has repeatedly interpreted the American Declaration as “requiring States to adopt measures to give legal effect to the rights contained in the American Declaration.”¹⁷⁰ Consistent with all other rights under the Declaration, States are required not only to refrain from committing human rights violations contrary to the provisions of the American Declaration but also, “to adopt affirmative measures to guarantee that the individuals subject to their jurisdiction can exercise and enjoy the rights contained in the American Declaration.”¹⁷¹

Read as a whole, Article II must be interpreted to confer upon a State and its territories a broad duty to ensure the protection of its people, such that the human rights of its inhabitants are equally protected without discrimination on extraneous grounds including but not limited to race, ethnic origin, or gender. States must therefore ensure that their obligations to achieve racial equality and ensure non discrimination extends to all areas of governmental policy and influence, including all elements of law enforcement.

International jurisprudence is well developed on this point: the International Convention on the Elimination of Forms of Racial Discrimination (ICERD) contains the most comprehensive prohibition of racial discrimination: this is taken to mean ‘any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, or human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life’¹⁷² Under ICERD, States parties are required to ensure that they neither take part in any act of racial discrimination nor further programs that lead to racial inequality.¹⁷³ Further, where racism, racial inequality or racial discrimination exists, they have an obligation to take effective and immediate action. It has also been held that the State parties’ obligations to prevent racial inequality and racial discrimination require them not only to undertake remedial action but also preventive action. Under ICERD, these obligations extend to all areas of governmental policy and influence, including all elements of law enforcement.

In light of the fundamental nature of these rights and their extensive consolidation in law, the Inter-American Court has considered that the principles of equality before the law, equal protection of the law, and nondiscrimination constitute *jus cogens* norms.

The American Declaration, pursuant to Article II, offers the same or broadly similar protections and that the guarantee of equality before the law extends to a duty by the State not only to refrain from participating in acts of racial discrimination or inequality, but also to take immediate and effective actions against it, including to prevent such acts. These prohibitions are incumbent on all State actors: Cook County, the city of Chicago, the state of Illinois, and the United States as a whole. Here, all levels of state actors failed to protect Rekia Boyd’s rights under Article II of the American Declaration.

¹⁶⁹ The Situation of People of African Descent in the Americas, IACHR, OEA/Ser.L/V/II. Doc. 62, 5 Dec. 2011, ¶. 92.

¹⁷⁰ Lenahan, *supra* note 164, ¶ 118; *see also* Oscar Elías Bicet v. Cuba, Case 12.476, Inter-Am. Comm’n H.R., Report No. 67/06, ¶¶ 227-231 (2006).

¹⁷¹ Lenahan, *supra* note 164, ¶ 188 (*citing* Wayne Smith, Hugo Armendariz v. United States, Case 12.562, Inter-Am. Comm’n H.R., Report No. 81/10, ¶¶ 61-65 (2010)); Mary and Carrie Dann v. United States, Case 11.140, Inter-Am. Comm’n H.R., Report No. 75/02, ¶¶ 124-145 (2002).

¹⁷² ICERD art. 1(1)

¹⁷³ ICERD art 2

The Commission has defined racial profiling as:

*A tactic adopted for supposed reasons of public safety and protection [...] motivated by stereotypes based on race, color, ethnicity, language, descent, religion, nationality place of birth or a combination of these factors, rather than on objective suspicions, [which] tends to single out individuals or groups in a discriminatory way based on the erroneous assumption that people with such characteristics are prone to engage in specific types of crimes.*¹⁷⁴

The Commission previously found that Black people in the U.S. are disproportionately more likely than the general U.S. population at large to be suspected, stopped, prosecuted, and convicted of crimes.¹⁷⁵ The Commission has also noted that the legal framework for policing in the United States lends itself to discriminatory practices.¹⁷⁶ The Supreme Court found that simply running in a “high crime” area might be enough “reasonable suspicion” for an officer to stop you.¹⁷⁷ This low domestic standard encourages discretionary enforcement by police officers.

This type of policing in the United States is deeply rooted in the history of racial profiling in the United States and has been recorded by various representatives for international institutions.

For example, the UN Special Rapporteur made the following observations::

*There are numerous complaints stating that African Americans are disproportionately affected by such practices of racial profiling and the use of disproportionate and often lethal force. African-Americans are 10 times more likely to be pulled over by police officers for minor traffic offenses than white persons. Such practices must be eradicated.*¹⁷⁸

In a similar vein, the UN High Commissioner for Human Rights added that he was “deeply concerned at the disproportionate number of young African Americans who died in encounters with police officers....”. He noted that it was clear that there was a “deep and festering lack of confidence in the fairness of the justice and law enforcement systems.”¹⁷⁹

Similarly, the Head of the UN Working Group of Experts on People of African Descent stated that there “exist[s] concerns over the longstanding prevalence of racial discrimination faced by African-Americans, particularly in relation to access to justice and discriminatory police practices,” and went on to call “for finalization without undue delay of the on-going investigations into the cases, the delivery of justice and reparations for the victims concerned.”¹⁸⁰

The United States has also consistently come under constant scrutiny by international bodies and independent investigators at the United Nations for the treatment of Black people in the U.S. In the past five years alone, the Committee on the Elimination of Racial Discrimination,¹⁸¹ the Human Rights

¹⁷⁴ IACHR Report 2018 ¶ 72.

¹⁷⁵ *Id.* at ¶ 74, 75.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*; *Illinois v. Wardlow*, 528 U.S. 119, 121–24 (2000).

¹⁷⁸ United Nations Office of the High Commissioner for Human Rights, “Legitimate concerns” over outcome of Michael Brown and Eric Garner cases – UN rights experts, *available at* <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15384&LangID=E>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Comm. on the Elimination of Racial Discrimination, *Concluding Observations on the combined seventh to ninth periodic reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9, ¶ 17(b) (Aug. 29th 2014).

Committee,¹⁸² the U.N. Human Rights Council (in its Universal Periodic Review),¹⁸³ the Committee Against Torture,¹⁸⁴ and the U.N. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, have all addressed the persistence of racial discrimination against Black people in the United States.¹⁸⁵

The Commission has made it clear that it will make findings against States in relation to breaches of Article II of the Declaration in circumstances where State actors kill citizens in circumstances where discrimination is a motivating or underlying factor.

In *Vicky Hernández et al. v. Honduras* (2021), the Court found the state of Honduras had breached Vicky Hernández's rights to Equal Protection before the law (Article 24 of the American Convention on Human Rights and equivalent to Article II of the American Declaration) after she, a transgender woman, was murdered during curfew under the 2009 coup d'état.

b) The State Breached Its Duties Pursuant to Article II By Failing to Prevent Racial Discrimination and Racial Profiling

It is clear that Rekia Boyd's death occurred in the context of a structural system where racial discrimination and racial profiling in Chicago, Illinois, and the United States as a whole is prominent. As set out above, discriminatory police violence is by no means a new phenomenon in the United States or in Chicago. In recent years, however, reinvigorated protests and the organizing efforts of human rights defenders in the movement for Black lives have thrust these injustices into the public eye. For decades, Chicago police have profiled Black people through insults, confrontational stops, and using physical force without reason.

Officer Servin's confrontational approach with the group of Black individuals, including Ms. Boyd, over what he perceived to be a simple noise infraction is telling. He made the decision to intervene and to use his police powers in respect of mere noise, when no infraction or offense had been committed. He later presumed that members of the group owned a weapon, even though there was no evidence that any such weapon existed. He confronted the group and followed them even though they were leaving the area. When their backs were turned, he chose to use his firearm to fire shots into the group.

Rekia Boyd's encounter is consistent with statistics that show that in a civilian encounter, police officers are 17% more likely to physically touch Black people; 18% more likely to push Black people into a wall; 19% more likely to draw weapons on a Black person; 16% more likely to handcuff Black people; 18% more likely to push Black people to the ground; 24% more likely to point a weapon at a Black person; and 25% more likely to use pepper spray or a baton against Black people than White people similar situations.¹⁸⁶ In approaching Rekia Boyd and her friends, Officer Servin had already subjectively determined that they were likely to have been committing an offense. He then disregarded her life by firing multiple shots over his shoulder either intentionally or recklessly into a crowd of unarmed Black Americans.

¹⁸²Human Rights Comm., *Concluding observations on the fourth periodic report of the United States of America*, U.N. Doc. CCPR/C/USA/CO/4, ¶¶ 6–8, 11 (Apr. 23, 2014).

¹⁸³ Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review: U.S.*, U.N. Doc. A/HRC/WG.6/22/L.10 (May 21, 2015).

¹⁸⁴ Comm. Against Torture, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, U.N. Doc. CAT/C/USA/CO/3-5, ¶ 26 (Dec. 14, 2014).

¹⁸⁵ Special Rapporteur on Racism, *Report on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, Human Rights Council, U.N. Doc. A/HRC/29/46 (Apr. 20, 2015) (by Mutuma Ruteere).

¹⁸⁶ Roland G. Fryer, Jr., *An Empirical Analysis of Racial Differences in Police Use of Force*, the Nat'l Bureau of Econ. Research (July 2016) available at <http://www.nber.org/papers/w22399.pdf>.

c) *The United States Breached Its Duties Under Article II by Discriminating Against Ms. Boyd on the Basis of Race*

The United States has a binding obligation to eliminate all forms of racial discrimination.¹⁸⁷

Since 2014, this Commission has expressed its serious concern over discriminatory police violence in the United States.¹⁸⁸ Accordingly, the killings of Eric Garner and Michael Brown were deemed to “represent the continuation of a disturbing pattern of excessive force on the part of police officers towards Black Americans and other persons of color.”¹⁸⁹ Based on this, the Commission urged the United States “to give renewed attention to the possible links between these cases and past cases that demonstrated a pattern of use of excessive force against persons of color.”¹⁹⁰

Recently, the Commission reiterated its concern in the release of a report focusing on police brutality against Black people in the United States. Based on the principle of equality and non-discrimination from Article II of the American Declaration, “arbitrary treatment and distinctions on the basis of race are prohibited under international human rights law, and should be prevented.”¹⁹¹ This principle confers a duty on the United States to “prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect.”¹⁹² This duty requires the State to take “special measures to ensure conditions of true equality for African Americans and other historically marginalized groups.”¹⁹³ Likewise, the Commission has noted that “institutionalized discriminatory law enforcement practices that result in differential treatment on the basis of race... are presumptively incompatible with the American Declaration as a form of racial discrimination.”¹⁹⁴

The Commission has acknowledged that violence and discrimination against Black people in the U.S. is a key contributing factor to police violence against this group¹⁹⁵ and that rectifying this structural discrimination against is “vital for the full exercise of citizenship by Blacks and to foster a more inclusive democracy in the United States.”¹⁹⁶ In the context of violence and discrimination against Black people, the Commission has also considered the need for States, specifically the United States, to act “with due diligence and without delay to address the context which fuels forms of structural discrimination and disparate treatment against Blacks and racial minorities in the United States.”¹⁹⁷ This principle of due diligence encompasses the duty to “investigate, prosecute, and punish cases of police violence, but also

¹⁸⁷ ICERD, art. 2. (defining racial discrimination as, “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”); ICCPR, *supra* note 132, art. 26 (“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); *see also* Nadege Dorzema et al. v. Dominican Republic, Merits, Reparations and Costs, Judgment, Inter-Am Ct. H.R. (Ser C) No. 251 ¶ 231 (Oct. 24, 2012) (relying on the ICERD definition of racial discrimination).

¹⁸⁸ IACHR, Eric Garner and Michael Brown Press Release, Aug. 22, 2014.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ IACHR Report 2018 ¶ 195.

¹⁹² IACHR Report 2018 ¶ 198 (*citing* CERD, Concluding Observations 2014, Sept. 25, 2014, paras. 5, 20.).

¹⁹³ IACHR Report 2018 ¶ 198.

¹⁹⁴ *Id.* at ¶ 199.

¹⁹⁵ *Id.* at ¶ 255.

¹⁹⁶ *Id.* (*citing* IACHR, On-Site Visit Press Release, Oct. 16, 2015.).

¹⁹⁷ *Id.* at ¶ 255.

“to modify [...] institutionalized stereotypes towards Afro-descendant[s]” in order to fulfill its duties to prevent and eradicate discrimination.”¹⁹⁸

Here, the aggressive police practices in the United States are rooted in a history of discrimination and inequality. In fact, historians have documented how the United States’ “first modern-style police forces” were actually slave patrols in the pre-Civil War South.¹⁹⁹ The formal emancipation of the slaves did not end this discrimination and inequality. Following emancipation, police departments in the South—staffed by many former slave patrollers²⁰⁰— enforced Jim Crow laws.²⁰¹ This pattern of excessive police violence even exists in today’s criminal justice system.²⁰² Chicago, in particular, is characterized by a pattern of excessive police violence and subsequent impunity, mainly against Black people. Between the years 2010 and 2014, Chicago officials fatally shot more people than any other major city in the United States.²⁰³

Between the years 2004 to 2015, the city of Chicago has paid out more than \$642 million in civil settlements and other costs associated with police misconduct, including \$106 million in 2014 and 2015 alone.²⁰⁴ While nearly two-thirds of people who lodged complaints against CPD officials between March 2011 and September were Black Chicagoans, white complainants were more than twice as likely as Black complainants to have their complaints upheld, resulting in discipline for the offending CPD official.²⁰⁵ 44% of complainants were women, but men were more than twice as likely to have their complaints sustained as women.²⁰⁶ This data makes it evident that Chicago has a long legacy of consistent, grave police misconduct and impunity,²⁰⁷ with Black Chicagoans and women bearing the brunt of the force.

The killing of Ms. Boyd by Mr. Servin occurred against this backdrop of historical racial discrimination and racially motivated police violence against Black people in the United States in general and Chicago in particular. Her death did not occur in a vacuum. In fact, Ms. Boyd’s death is just one of the many deaths of Black people at the hands of a police officer. In light of this demonstrated pattern of police brutality against Black people, it is difficult to ignore the racial dimensions of the killing of Ms. Boyd: Mr. Servin, a white CPD official, intentionally created a conflict with a group of four Black men and women, escalated the conflict, and began shooting at them, killing Ms. Boyd. Mr. Servin was never held criminally accountable for killing Ms. Boyd. By failing to curb the pattern of excessive use of force by police against Black people, the United States violated Ms. Boyd’s right to equality before the law under Article II of the American Declaration.

¹⁹⁸ *Id.* (citing IACHR, *People of African Descent in the Americas* (2011), para. 162.).

¹⁹⁹ James Conser, Rebecca Paynich & Terry Gingerich, *Law Enforcement in the United States* 50 (3d ed. 2013).

²⁰⁰ *Id.* (“[F]ollowing the Civil War, many slave patrollers moved to employment in city police departments throughout the South, bringing the culture and practice of racism with them.”). Despite policing’s origins, “[r]acism and discrimination were not confined to southern police; it was, and still is, a national problem.” *Id.*

²⁰¹ See generally Jerome H. Skolnick, *Racial Profiling—Then and Now*, 6 *Criminology & Pub. Pol’y* 65, 65–66 (Feb. 2007) (describing briefly the long history of racial profiling and biased policing in the United States); Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 *Colum. Hum. Rts. L. Rev.* 261, 263 (2007) (discussing how the origins of “mass incarceration, capital punishment, and police terror . . . can be traced to black enslavement and whose modern day survival radically contradicts liberal democratic ideals, placing the United States outside the norm of Western nations”).

²⁰² Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 *Colum. Hum. Rts. L. Rev.* 261, 263 (2007).

²⁰³ See *supra* note 113.

²⁰⁴ See *supra* note 109.

²⁰⁵ Citizens Police Data Project, <https://cpdp.co/>.

²⁰⁶ *Id.* Of filed complaints, 55% were filed by men and 44% by women. Of sustained complaints, 69% were filed by men and 30% by women.

²⁰⁷ See also *The Violent Legacy of Chicago’s Police* (Editorial), *N.Y. TIMES*, Apr. 21, 2015, <https://www.nytimes.com/2015/04/21/opinion/the-violent-legacy-of-chicagos-police.html>.

d) *The United States Discriminated Against Ms. Boyd on the Basis of Gender*

It is also now well established under international law that violence against women is a form of discrimination and a violation of human rights. This Commission has recognized that gender-based violence constitutes a form of discrimination, stating that a State's failure to protect women from this type of violence violates their right to equal protection under the law.²⁰⁸

In preventing and punishing violence against women, Article II of the Declaration requires States to act with due diligence.²⁰⁹ In *Jessica Lenahan v. United States*, the Commission specifically addressed the link between discrimination and gender-based violence.²¹⁰ The Commission concluded that a State's failure to act with due diligence to protect women from violence constitutes a form of discrimination, and denies women their right to equality before the law", thereby violating Article II.²¹¹ According to the Commission, the obligations of Article II include "the prevention and eradication of violence against women"; and, States have a duty to eliminate both direct and indirect forms of discrimination."²¹²

The Commission is clear about the 'due diligence principle' imposed on States in right to life cases, which means that they must exercise due diligence in preventing, investigating, prosecuting and punishing violence against women and girls. Specifically, the Commission noted the following

"The protection of the right to life is a critical component of a State's due diligence obligation to protect women from acts of violence. This legal obligation pertains to the entire state institution, including the actions of those entrusted with safeguarding the security of the State, such as the police forces."

Four principles can be derived from the application of the due diligence standard to law.²¹³ First, a State can incur international responsibility for failing to act with due diligence to "prevent, punish, and provide remedies for acts of violence," regardless of who committed the violation.²¹⁴ Second, the States' duty to address violence against women also includes the duty to take measures to prevent and respond to the discrimination that perpetuates the violence.²¹⁵ Third, there is a link between the duty to act with due diligence and a State's obligation to guarantee access to adequate and effective judicial remedies for victims and their families.²¹⁶ Fourth, in adopting measures to prevent all forms of violence against women, States must identify and consider certain groups of women who are subjected to multiple forms of discrimination.²¹⁷

The State's obligations under Article II mirror those under the Convention of Belém do Pará Convention. Further, because the Convention serves as an interpretation of the Declaration, the Convention of Belém

²⁰⁸ *Opuz v. Turkey*, No. 33401/02, Eur. Ct. H.R. (2009), ¶¶ 190–91.

²⁰⁹ *Jessica Lenahan*, *supra* note 164, ¶ 111.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.* at ¶ 120.

²¹³ *Id.* at ¶ 126.

²¹⁴ *Id.* (See generally, IACHR, Report No 28/07, Cases 12.496-12.498, *Claudia Ivette González and Others* (Mexico), March 9, 2007.)

²¹⁵ *Id.* (See also *Maria Eugenia Morales de Sierra* (Guatemala), January 19, 2001, para. 44).

²¹⁶ *Id.* at ¶ 127 (citing *Maria Da Penha Maia Fernandes* (Brazil), Annual Report of the IACHR 2001, paras. 36-44).

²¹⁷ *Id.* at ¶ 127 (citing United Nations General Assembly Resolution, Human Rights Council, *Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention*, A/HRC/14/L.9/Rev.1, 16 June 2010, para. 10).

do Pará is relevant in interpreting Article II of the Declaration.²¹⁸ Moreover, this Commission has held that “there is . . . an integral connection between the guarantees set forth in the Convention of Belém do Pará and the basic rights and freedoms set forth in the American Convention in addressing the human rights violation of violence against women.”²¹⁹ Article 6 of the Convention of Belém do Pará further acknowledges that gender-based violence is discriminatory in nature.²²⁰ According to the Convention of Belém do Pará, a State has a duty to exercise due diligence in preventing and punishing violence against women; this obligation includes the duty to “refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents and institutions act in conformity with this obligation.”²²¹

The State’s obligations under Article II of the American Declaration also reflect the obligations under the Convention on the Elimination of Discrimination Against Women. The CEDAW Committee acknowledges that discrimination against women encompasses gender-based violence. It defines gender-based violence as “violence that is directed at a woman because she is a woman or that affects women disproportionately.”²²² In General Recommendation 19, the CEDAW Committee discusses how gender-based violence “seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”²²³ In General Recommendation 28, the CEDAW Committee emphasized that discrimination against women on the basis of sex and gender, as gender-based violence, includes “violence perpetrated or condoned by the State or its agents regardless of where it occurs.”²²⁴ The CEDAW Committee also emphasizes a State’s responsibility to exercise due diligence, “prevent, investigate, prosecute and punish” gender-based violence.²²⁵ Although neither the Belém do Pará nor the CEDAW is binding on the United States, both serve as persuasive evidence that gender-based violence constitutes a form of discrimination and denies women their right to equality before the law.

In the context of discriminatory and excessive police violence, intersectional identities can increase the risk that a person is exposed to this problem.²²⁶ In fact, the Commission has stated that “discrimination on the basis of race is inseparable from and may be aggravated by discrimination on the basis of other aspects of identity.” These other aspects of identity include gender, disability, situation of homelessness, age, and LGBTI identity.²²⁷

²¹⁸ *Statehood Solidarity Comm. v. United States*, Case 11.204, Inter-Am. Comm’n H.R., Report No. 98/03, OEA/Ser.L/V/II.114, doc. 70 rev.1 ¶ 87 & n.79 (2003) (citing *Juan Raúl Garza v. United States*, Case 12.243, Inter-Am. Comm’n H.R., Report No. 52/01, OEA/Ser.L/V/II.111, doc. 20 rev. ¶ 88–89 (2000)); *see also* Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II.106, doc. 40 rev. ¶ 38 (2000) [hereinafter IACHR Report on the Situation of Asylum Seekers in Canada] (confirming that while the Commission does not directly apply the American Convention in relation to member states that have yet to ratify that treaty, its provisions may well be relevant in informing an interpretation of the principles of the Declaration).

²¹⁹ IACHR, *The Situation of the Rights of Women in Ciudad Juárez, Mexico*, OEA/Ser.L/V/II.117/Doc. 44, March 7, 2003, ¶ 120.

²²⁰ Convention of Belém do Pará, art. 6.

²²¹ *Id.* at art. 7(a).

²²² IACHR, *Situation of the Rights of Women in Ciudad Juárez*, *supra* note 219, ¶ 20.

²²³ U.N. Committee on the Elimination of Discrimination Against Women (CEDAW Committee), General Recommendation 19, ¶ 1 (11th session, 1992).

²²⁴ U.N. Committee on the Elimination of Discrimination Against Women (CEDAW Committee), General Recommendation 28, ¶ 19 (47th session, 2010).

²²⁵ *Id.*

²²⁶ *Id.* at ¶ 95.

²²⁷ *Id.*

In regard to gender, the Commission has noted that intersectionality is important because “discrimination and violence do not always affect women in the same measure.”²²⁸ The Commission has also acknowledged the differential impact of discriminatory police violence on women. According to the Commission, “in addition to being victims of police brutality and killings, women are also disproportionately affected by sexual violence perpetrated by police officers, and experience harassment and barriers to justice for family members who are victims of police violence.”²²⁹ The Commission has also recognized that “Black women may also be disproportionately affected in the aftermath of police killings as they seek justice for their loved ones, and in light of the economic impact that killings of family members may have on their households.”²³⁰

Ms. Boyd’s identity as a Black woman in the United States uniquely shaped her experience of police brutality. After Officer Servin confronted the group, a witness stated that Ms. Boyd made a joke at the officer’s expense. As outlined in paragraph II(C)(i), when a male officer’s sense of masculinity is threatened, there is a higher likelihood that he will commit police violence. Interactions with the police can quickly turn violent or deadly, especially for Black women because they are often characterized as emasculating or punished for “talking back.” For Ms. Boyd, the interaction tragically proved to be lethal.

Her identity worsened the discrimination and inequality that she experienced, and it highlights that discrimination on the basis of race can be inextricably linked to gender. As a Black woman, Ms. Boyd was a member of two groups that traditionally experienced discrimination and marginalization in the United States: women and Black people. Further, this Commission has already recognized that these two groups are historically discriminated against in the United States. As such, Boyd’s identity as Black woman in the United States constitutes a unique class of individuals because her race and gender combine to reinforce her discrimination and inequality. Due to these intersectional factors, Black women in the United States have a history plagued with inequality, discrimination, exclusion, and invisibility.

Ms. Boyd’s race and gender exposed her to a unique form of discrimination different than that of Black men and White women. She is one of hundreds of Black women who have died at the hands of excessive and discriminatory police violence. By failing to end this violence against Black women, the United States violated Ms. Boyd’s right to equality before the law under Article II of the American Declaration.

iii. Article XVIII of the American Declaration of the Rights and Duties of Man

a) *The State’s Duties Pursuant to Article XVIII of the American Declaration*

Article XVIII of the American Declaration states that:

“Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.”²⁷⁷

This right to a fair trial is a fundamental protection that has been subject to much litigation before the Commission and other international tribunals, and should be read alongside Article XXVI:

²²⁸ *Id.* at ¶ 28.

²²⁹ *Id.* at ¶ 160 (*citing* African American Policy Forum & Center for Intersectionality and Social Policy Studies, *Say Her Name: Resisting Police Brutality against Black Women*, July 2015; *see also, e.g.*, Washington Post, *Disgraced ex-cop Daniel Holtzclaw sentenced to 263 years for on-duty rapes, sexual assaults*, Jan. 22, 2016 (“In a racially charged case that attracted national attention, Holtzclaw was accused of committing sex crimes against 13 different African American women while patrolling a low-income neighborhood.”)).

²³⁰ Arts. 10 and 18, Vienna Convention on the Law of Treaties. at ¶ 160

“Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.”

Simply put, if the Judge and prosecuting authority are not impartial, the right to a fair trial cannot be realized. The Inter-American Court of Human Rights has stated that impartiality has both subjective and objective aspects, in a decision that cited the ECHR (*Herrera Ulloa v. Costa Rica*).

The Court in *Herrera Ulloa* specified that the *"impartiality of the tribunal implies that its members do not have a direct interest, a position taken, or a preference for any of the parties and that they are not involved in the controversy."*

Citing the cases of *Pabla KY v. Finland* and *Morris v. the United Kingdom*, the Court held in this regard that:

“First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect. Under the objective test, it must be determined whether, quite apart from the judges’ personal conduct, there are ascertainable facts which may raise doubts as to their impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all in the parties to proceedings.”

b) The United States Violated Ms. Boyd’s and Her Next of Kin’s Right To a Fair Trial and Petition

In the case at hand, the inadequate prosecution and subsequent acquittal of Officer Servin amount to violations of the rights of Ms. Boyd and her family, and the next of kin have not received guarantees that exclude their legitimate doubt in this process. As stated and discussed above, the initial investigation following the killing of Ms. Boyd did not meet the requirements for an expeditious and effective investigation in line with Article I.

Further, the decision of State’s Attorney Anita Alvarez to charge Officer Servin with involuntary manslaughter rather than first-degree murder, a decision which led to his acquittal, is one that breaches fair trial guarantees.

In the instant case, the CPD and the Independent Police Review Authority (“IPRA”) collected key evidence regarding the killing of Ms. Boyd within days or weeks of the incident, including statements from witnesses and from Mr. Servin. The State’s Attorney delayed in issuing an indictment against Mr. Servin for more than 20 months, an unusually long amount of time, in the light of considerable public outcry, insistence from Ms. Helton and Mr. Sutton that Mr. Servin be charged, and the availability of key pieces of evidence. Some of this evidence included the ownership history of the murder weapon, blood tests on a cell phone and knife found at the scene, and interrogations of Officer Servin.

During this time, Mr. Servin continued working for the CPD, and was ultimately charged with involuntary manslaughter, reckless discharge of a firearm, and reckless conduct. Judge Dennis J. Porter of the Cook County Circuit Court, in a rare directed verdict, found Mr. Servin not guilty, observing that the correct charge should have been first-degree murder, a more serious crime, rather than involuntary manslaughter. Because Mr. Servin was charged with involuntary manslaughter and that crime’s *mens rea* of recklessness could not be proved, the case could go no further and Mr. Servin was acquitted on all counts.

The acquittal of Mr. Servin reignited public outcry over the failure to deliver justice for Ms. Boyd. The acquittal was called “chilling,”²³¹ and it was alleged that the prosecution was “deliberately trying to engineer a verdict of ‘not guilty’” prior to the verdict’s release.²³² The prosecution was faulted for failing to charge Mr. Servin with murder, noting that prosecutors typically bring murder charges against those who fire shots into a crowd and kill someone.²³³ The State’s Attorney, Anita Alvarez, stated that her office brought the charge of involuntary manslaughter “in good faith” and “after a careful legal analysis of the evidence as well as the specific circumstances of the crime.”²³⁴ Criticism of the State’s Attorney’s conduct has continued, with one of Chicago’s major newspapers reporting in February 2016 that the State’s Attorney may have mishandled the case based on newly released emails and other records.²³⁵

While Ms. Helton, acting on behalf of Ms. Boyd’s estate, was awarded a monetary settlement from the city of Chicago for the wrongful death of Ms. Boyd, this civil settlement does not absolve the State of its outstanding obligation to deliver criminal accountability for Ms. Boyd’s death.

In *Velasquez-Rodriguez*, the Commission stated that States “must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”²³⁶ Furthermore, the Commission stated that “[i]f the State apparatus acts in such a way that the violation goes unpunished and the victim’s full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.”²³⁷

On these facts, the rights of Ms. Boyd and her mother and brother, Angela Helton and Martinez Sutton, were violated by the failure of the State to deliver judicial accountability against Mr. Servin for causing Ms. Boyd’s preventable and unjustified death. Mr. Servin has yet to be held criminally accountable for the killing of Ms. Boyd. The investigation, indictment and trial of Mr. Servin were all marked by conduct that resulted in an irretrievable failure to deliver justice.

The Inter-American Court has held that disciplinary and administrative remedies are not an “effective and sufficient means for prosecuting, punishing, or making reparation for the consequences of the homicide or extrajudicial execution of persons.”²³⁸ To provide full reparations to victims, States must ensure that remedies include due diligence on the part of the State to prevent, investigate, and punish any violation of the rights recognized under international law.²⁸⁵ Therefore, although the civil settlement was an appropriate partial remedy for the killing of Ms. Boyd, it is not sufficient and is wholly separate from the

²³¹ *Illinois judge calls police killing of Rekia Boyd ‘beyond reckless’ but acquits cop on technicality*, DEMOCRACY NOW (May 20, 2015), https://www.democracynow.org/2015/5/20/illinois_judge_calls_police_killing_of.

²³² *Anita Alvarez needs to admit mistake in Dante Servin charging*, CHICAGO SUN-TIMES (Apr. 22, 2015), <http://chicago.suntimes.com/mary-mitchell/7/71/542558/anita-alvarez-mistake-rekia-boyd-dante-servin>.

²³³ Steve Schmadeke & Jeremy Gerner, *Anger follows acquittal in rare trial of Chicago cop*, CHICAGO TRIBUNE, Apr. 21, 2015, <http://www.chicagotribune.com/news/local/breaking/ct-chicago-police-detective-manslaughter-trial-0421-met-20150420-story.html>. “Bruce Mosbacher, a longtime criminal-defense attorney, defended the judge’s legal reasoning as sound and faulted prosecutors for charging Servin with involuntary manslaughter, calling that a “curious” move that led to a “very distasteful result.” “They didn’t charge what they had,” said Mosbacher, who contended the office typically brings first-degree murder charges against those who kill by firing into a crowd. “They charged this as a compromise in an effort to help an otherwise good officer ... (and) in an effort to split the baby, they had a very unjust result.””

²³⁴ *Id.*

²³⁵ Sun-Times Staff, *supra* note 21.

²³⁶ *Velasquez Rodriguez Case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), para. 166.

²³⁷ *Id.* at ¶ 176.

²³⁸ See Admissibility Petition, *Leydi Dayan Sanchez v. Colombia*, Inter-Am. C.H.R., Report No. 43/02, ¶ 22 (Oct. 9, 2002), available at <http://www.cidh.org/annualrep/2002eng/Colombia.12009.htm>.

State's obligation to hold the perpetrator personally accountable. Ms. Boyd's family cannot receive full reparations for the gross human rights violations until the State addresses the underlying problem of discriminatory and excessive police violence against Black women.

The Commission has stated that mere civil remedies are not always sufficient remedies.²³⁹

Evidence suggests that police officers are rarely found liable in civil suits. Furthermore, many police misconduct cases end in out-of-court settlements, which mean that defendant officers or police departments do not have to acknowledge misconduct, limiting full accountability.²⁴⁰

This Commission has consistently noted that the American Declaration imposes a positive obligation on States to ensure the rights therein are protected.²⁴¹ This Commission has further stated that the role of judicial authorities, including prosecutors, is essential to ensuring access to justice and making it "possible to punish those responsible for human rights violations, compensate the victims and, through a serious, impartial, and effective investigation, inform society regarding the truth about the reported events."²⁴² This Commission has also noted that States must adopt measures to guarantee the effective access of Black Americans in particular to justice, and to take into account the material, economic and juridical obstacles, as well as the systematic exclusion from which Black Americans suffer.²⁴³

Due process requires investigations and prosecutions of police violence to comply with the principles of independence and impartiality.²⁴⁴ The absence of either principle has a negative impact on the free exercise of the right to access justice, and generates mistrust and even fear, which deters people from seeking justice.²⁴⁵ Prosecutors must be able to conduct their own functions independently, autonomously, and impartially.²⁴⁶

The unusual verdict, the subsequent public outcry, and the revelation that the State's Attorney may have mishandled the case—these circumstances underscore the fact that Ms. Boyd and her survivors were not ensured a fair trial through the criminal justice system, violating their rights under Article XVIII of the American Declaration. Prosecutors generally file criminal charges within days; therefore, the State's Attorney took an unusually long amount of time to file charges. The State's Attorney's excessive delay in bringing charges against Mr. Servin violated their rights under Article XXIV. Whether the State's Attorney deliberately mishandled the case or whether she conducted the process irresponsibly is immaterial, as the outcome is the same: the State failed to hold Mr. Servin accountable through the criminal justice system.

²³⁹ *Id.*; Cato Institute: Policemisconduct.net, [The Truth About Police Misconduct Litigation](#), Feb. 22, 2010.

²⁴⁰ *Id.*

²⁴¹ Lenahan, *supra* note 164, ¶ 117.

²⁴² Inter-Am. Comm'n H.R., *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, (Mar. 7, 2006), at ¶ 349.

²⁴³ *The Situation of People of African Descent in the Americas*, *supra* note 169, at ¶ 141.

²⁴⁴ IACHR, *Report on the Human Rights Situation in Venezuela* (2003), ¶ 155 (citing principles 10 and 13 of the U.N. Basic Principles). For its part, the Inter-American Court has stated that the judge in charge of hearing a case must be competent, in addition to being independent and impartial. See *Case of Radilla Pacheco v. Mexico*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 209, ¶ 273 (Nov. 23, 2009); similarly see *Case of Ivcher Bronstein: Merits, Reparations, and Costs*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 112 (Feb. 6, 2001); and *Case of 19 Tradesmen v. Colombia: Merits, Reparations, and Costs*, Inter-Am. Ct. H.R. (ser. C) No. 109, ¶ 167 (July 5, 2004).

²⁴⁵ UN General Assembly, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/8/4, ¶ 34 (May 13, 2008).

²⁴⁶ See United Nations Human Rights Council, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, A/HRC/20/19, ¶ 26 (June 7, 2012).

C. By Extension the State Additionally Violated Rekia Boyd’s Right of Protection from Arbitrary Arrest (Article XXV) and Right to Due Process of Law (Article XXVI)

Rekia Boyd’s rights were also violated under Article XXV (right of protection from arbitrary arrest); and (v) Article XXVI (right to due process of law).

- i. Article XXV of the American Declaration of the Rights and Duties of Man
 - a) *Rekia Boyd’s Killing Was an Unjustified Use of Force and a Violation of the State’s Duties Under Article XXV*

Article XXV of the American Declaration states, “No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law.”²⁴⁷ This language is echoed in Article 9 of the ICCPR²⁴⁸ and Article 9 of the Universal Declaration of Human Rights (“UDHR”).²⁴⁹

In the years leading up to, and the months following the shooting death of Rekia Boyd, the United States faced a crisis of racial profiling and excessive use of force by law enforcement against Black people.

The Commission previously stated that it was alarmed by the rate at which lethal force was disproportionately used against Black people in the United States.²⁵⁰

Specifically, the U.N. has called for police reform in Chicago due to the CPD’s excessive use of lethal force.²⁵¹ Rekia Boyd’s death demonstrates the disproportionate use of lethal force against Black people which has increased in use and frequency over the years.

In *Corumbiara v. Brazil*, this Commission held that for the use of force to be legitimate, it must be “both necessary and proportionate to the situation, ... exercised with moderation and in proportion to the legitimate objective pursued, and in an effort to reduce to a minimum any personal injury and loss of human lives.”²⁵² The Inter-American Court has recognized that, to avoid designation as excessive, “the level of force must be in keeping with the level of resistance offered.”²⁵³ An agent of the state must therefore “apply criteria of differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended and, on this basis, employ negotiating tactics, control, or use of force, as required.”²⁵⁴

In the context of the lethal use of force, under international law, a strict proportionality test applies.²⁵⁵ When police officers employ force that has the capacity to cause death, it is considered proportionate only

²⁴⁷ Am. Decl. H.R. Art. XXV.

²⁴⁸ International Covenant on Civil and Political Rights, Art. 9.

²⁴⁹ Univ. Decl. H.R. Art. 9.

²⁵⁰ IACHR Report 2018 ¶ 91.

²⁵¹ *Id.* at ¶ 96.

²⁵² *Corumbiara v. Brazil*, Case 11.556, Inter-Am Comm’n H.R.. Report No. 77/98, ¶ 174 (March 11, 2004); *see also* *Finca “La Exacta” v. Guatemala*, Case 11.382, Inter-Am. Comm’n H.R., Report No. 57/02, doc. 5 rev. 1, ¶ 40 (2002).

²⁵³ U.N. Basic Principles, *supra* note 148 princs. 5, 9; *Dorzema v. Dominican Republic*, Merits, Reparation, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 251, ¶ 85 (Oct. 24, 2012).

²⁵⁴ U.N. Basic Principles, *supra* note 148, princs. 5, 9.

²⁵⁵ U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, ¶ 67, submitted to the Human Rights Council pursuant to G.A. Res. 17/5, U.N. Doc. A/HRC/26/36 (April 1, 2014) (by Christof Heyns) (“Special considerations apply when (potentially) lethal force is used. In the context of such use of force, the requirement of proportionality can be met only if such force is applied in order to save life or limb. What is required in respect of lethal force is thus not ordinary proportionality but strict proportionality.”)

if exercised to save “life or limb.”²⁵⁶ The use of force to intentionally cause death (“intentional lethal use of force”) is only permitted when “strictly unavoidable in order to protect life.”²⁵⁷ This strict proportionality test dictates that if the lethal use of force is applied in furtherance of any objectives other than to save life or limb, it will be regarded as excessive.²⁵⁸

The Commission declared that:

*[...] excessive force is enabled by a legal framework that is inadequate to ensure that the use of force by law enforcement in the U.S. complies with international law. The Commission notes with concern civil society analyses that indicate that no state’s laws currently comply with the U.S.’ international obligations regarding the use of force . . . At the federal level, the Supreme Court case Tennessee v. Garner and subsequent jurisprudence permits use of lethal force by law enforcement in circumstances other than those permitted under international law.*²⁵⁹

When framing the legally permissible circumstances for the lethal use of firearms, this Commission has quoted the U.N. Basic Principles, which state:

Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

*In the circumstances provided for under the above principle, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.*²⁶⁰

The legal framework regulating the use of force in the United States does not conform to the requirements of international human rights law or international best practices. The United States has not implemented the standards contained in the U.N. Code of Conduct for Law Enforcement Officials (“U.N. Code of Conduct”),²⁶¹ adopted by the U.N. General Assembly in 1979, or the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (“U.N. Basic Principles”),²⁶² developed at a U.N. conference on crime prevention and the treatment of offenders in 1990, which together provide authoritative guidance on internationally accepted methods of policing and the use of force.²⁶³ Together,

²⁵⁶ U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, ¶ 67, submitted to the Human Rights Council pursuant to G.A. Res. 17/5, U.N. Doc. A/HRC/26/36 (April 1, 2014) (by Christof Heyns).

²⁵⁷ U.N. Basic Principles, *supra* note 148, princs. 5, 9; *see also* U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, ¶ 70–71, submitted to the Human Rights Council pursuant to G.A. Res. 17/5, U.N. Doc. A/HRC/26/36 (April 1, 2014) (by Christof Heyns).

²⁵⁸ U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, ¶ 67, submitted to the Human Rights Council pursuant to G.A. Res. 17/5, U.N. Doc. A/HRC/26/36 (April 1, 2014) (by Christof Heyns).

²⁵⁹ IACHR Report at ¶ 97.

²⁶⁰ U.N. Basic Principles, *supra* note 148, princs. 9–10.

²⁶¹ U.N. G.A. Res. 34/169, Code of Conduct for Law Enforcement Officials (1979) [hereinafter U.N. Code of Conduct].

²⁶² United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) [hereinafter U.N. Basic Principles].

²⁶³ *See, e.g.*, Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, n.251 and accompanying text (1998), <https://www.hrw.org/legacy/reports98/police/uspo38.htm> (“While [the U.N.

these two U.N. documents require law enforcement to “apply nonviolent means before resorting to the use of force.”²⁶⁴ If force is “unavoidable,” police must “exercise restraint in such use and act in proportion to the seriousness of the offence.”²⁶⁵ In all circumstances where force is used, police should “minimize damage ... and respect and preserve human life”²⁶⁶ and dignity.²⁶⁷

“[I]ntentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”²⁶⁸

The Commission has held that States have an obligation to “be clear when defining domestic policies on the use of force and pursue strategies to implement the [U.N. Basic Principles].” In the United States, the legal framework for the use of force, training practices, and policing methods do not systematically reflect or uphold these international standards. The discrepancies between the U.S. domestic legal framework and international human rights standards are most stark with regard to the treatment of lethal versus non-lethal force, the circumstances in which recourse to force and lethal force is permissible, and the purposes for which the use of force is deemed legitimate.

In the United States, the standard for the lawful use of force does not distinguish between different degrees or types of force, which precludes the application of a strict proportionality test for the lethal use of force. The Fourth Amendment of the U.S. Constitution, which guarantees the right of the people to be free from unreasonable seizure of their persons, is the primary lens through which courts analyze the use of force by the police.²⁶⁹ The U.S. Supreme Court has decided three central cases defining the scope of the reasonableness test for the use of force—*Tennessee v. Garner* (1985),²⁷⁰ *Graham v. Connor* (1989),²⁷¹ and *Scott v. Harris* (2007)²⁷²—focusing on the “reasonableness” of the officer’s actions under the circumstances, standing in contrast with the U.N. Basic Principles’ distinction between lethal force and other forms of force.²⁷³ In addition, because the constitutional standard regarding the use of force does not treat lethal force as a separate category, permitted in only limited circumstances, there is no uniform floor or baseline for individual state definitions of the use of lethal force. Unsurprisingly, there exists considerable variation in how individual state statutes define lethal force and regulate the circumstances in which it may be used.²⁷⁴

Because of its breadth and lack of specificity, the “reasonableness” standard fails to establish clear guidance regarding the circumstances under which different types of force are proportionate. The U.S. standards governing the use of force not only lack the clarity required by international law, but fails to satisfy the requirements under international law that non-violent and non-lethal means be exhausted

Code of Conduct] is not binding, it does provide authoritative guidance for interpreting international human rights law regarding policing.”); Amnesty Int’l, *10 Basic Human Rights Standards for Law Enforcement Officials* (Dec. 1998), <https://www.amnesty.org/download/Documents/156000/pol300041998en.pdf> (citing the U.N. Code of Conduct and the U.N. Basic Principles as authoritative sources on policing standards).

²⁶⁴ U.N. Basic Principles, *supra* note 148, principle 4.

²⁶⁵ U.N. Basic Principles, *supra* note 148, principle 5.

²⁶⁶ *Id.*

²⁶⁷ U.N. Code of Conduct, *supra* note 147, art. 2.

²⁶⁸ U.N. Basic Principles, *supra* note 148, principle 9.

²⁶⁹ See U.S. Const. amend. IV.

²⁷⁰ *Tennessee v. Garner*, 471 U.S. 1 (1985).

²⁷¹ *Graham v. Connor*, 490 U.S. 386 (1989).

²⁷² *Scott v. Harris*, 550 U.S. 372 (2007). See Tim Longo, *Defining Instrumentalities of Deadly Force*, 27 *Touro L. Rev.* 261, 261–62 (2011). *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) arguably provides a fourth case, as it expanded on the reasoning of *Scott v. Harris*.

²⁷³ U.N. Basic Principles, *supra* note 148, principle 9.

²⁷⁴ Amnesty Int’l, *Deadly Force: Police Use of Lethal Force in the United States* 21 (2015), https://www.amnestyusa.org/sites/default/files/aiusa_deadlyforcereportjune2015.pdf.

before resorting to lethal force, that harm be minimized, and that the objectives justifying lethal force be narrowly defined. The Illinois state law for the use of force by “peace officers” (an Illinois term referring to, *inter alia*, police officers) relies upon this “reasonableness” standard, stating, “... [A peace officer] is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, ...”²⁷⁵

Moreover, the legal framework for the use of force in the United States does not clearly require exhaustion of non-violent or less-than-lethal means before resort to lethal force.²⁷⁶ Nor does it consistently prohibit the use of force to maintain law and order, prevent escape, or apprehend a suspect, in absence of an imminent threat of death or serious injury.²⁷⁷ Guidelines issued by the U.S. Department of Justice state that deadly force is unnecessary if non-deadly force is sufficient to accomplish a law enforcement purpose.²⁷⁸ While these Guidelines represent an improvement upon the constitutional standard, they still set the baseline at non-deadly *force* rather than at non-violent means of diffusing the situation. This approach is at odds with the standard set forth in the U.N. Basic Principles requiring exhaustion of alternatives to force.²⁷⁹

Mr. Servin, acting under State authority as a detective with the CPD, stopped Ms. Boyd and her friends while driving in his private vehicle. He intentionally created a confrontation with Mr. Cross and escalated it. After incorrectly identifying Mr. Cross’s phone for a gun, Mr. Servin began firing at the group and shot Ms. Boyd in the head, fatally wounding her. There was no justification for the altercation and the shooting: neither Mr. Cross nor Ms. Boyd were armed, and Mr. Servin was never in imminent danger from either Mr. Cross or Ms. Boyd. The situation was entirely preventable, as it was Mr. Servin who intentionally decided to confront the group and intentionally decided to start shooting at them. Even if Mr. Servin perceived an imminent threat to his safety, he failed to engage in the procedures mandated under international law to minimize harm, including negotiation and warning the group that he would use lethal force to defend himself. Indeed, even if one applies the “reasonableness” inquiry provided for under U.S. and Illinois law, Mr. Servin has failed to provide evidence that he reasonably believed that he was faced

²⁷⁵ 720 ILCS 5/7-5, Peace officer’s use of force in making arrest.

²⁷⁶ For instance, in *Harris v. Serpas*, 745 F.3d 767, 772–73 (5th Cir.), cert. denied, 135 S. Ct. 137 (2014), the U.S. Court of Appeals for the Fifth Circuit ruled that officers were reasonable in fatally shooting Mr. Harris after he raised a knife above his shoulder in a stabbing position. The court reached this decision despite the fact that the officers initially found Mr. Harris lying down on his back and had received no reports that he was a threat to anyone but himself before they used Tasers on him, leading him to become agitated. The court did not contemplate whether officers could have used other less-than-lethal means to deescalate the situation, or consider any of the officers’ actions leading up to the shooting. Because the officers “reasonably feared for their safety at the moment of the fatal shooting,” the Fifth Circuit concluded that the use of lethal force was not excessive. *Id.* at 773.

²⁷⁷ For instance, in *McKenney v. Harrison*, the U.S. Court of Appeals for the Eighth Circuit ruled that an officer’s fatal Taser-ing of an unarmed person suspected of a misdemeanor as he lunged toward an open window was a reasonable use of force because the individual’s sudden movement could be interpreted as an attempt to flee, only a single Taser shock was used, the officer was in a position of having to make a split second decision, and some form of warning was given. There was no evidence that the suspect posed an imminent threat to the life or limb of the law enforcement officers or bystanders. The officer’s only apparent objective was bringing this individual into custody. *McKenney v. Harrison*, 635 F.3d 354, 360 (8th Cir. 2011). Permitting the prioritization of law and order over preservation of life does not comport with international human rights law. *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, ¶ 73, U.N. Doc. A/HRC/26/36 (April 1, 2014) (by Christof Heyns).

²⁷⁸ U.S. Dep’t of Justice, *Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies* (2001), <https://www.ojp.gov/pdffiles1/ojp/186189.pdf>.

²⁷⁹ See U.N. Basic Principles, *supra* note 148, at principle 4; *see also* U.N. Code of Conduct, *supra* note 147, at art. 3 & cmt. This issue is described by the Inter-American Commission on Human Rights in *Leydi Dayán Sánchez v. Colombia*, Case 12.009, Inter-Am. Comm’n H.R., Report No. 43/08, ¶ 54 (2008).

with the threat of imminent harm: Mr. Cross was unarmed, as was Ms. Boyd, and Mr. Servin intentionally created the confrontation with the group.

The result of the failure of Mr. Servin to meet the standards on the use of force provided under both domestic and international law was that both Ms. Boyd's right to life and protection from the arbitrary deprivation of liberty was irrevocably violated.

b) *The Lack of an Effective Remedy for Rekia Boyd Also Constituted a Violation of the State's Duties Under Article XXV*

International human rights law guarantees individuals the right to an effective remedy for violations of their human rights.²⁸⁰ The United States bears a corresponding duty to provide access to such remedy.²⁸¹ Police impunity lies at the heart of a cycle of violence and discrimination against Black Americans. The prohibition against the arbitrary deprivation of life is ineffective without accessible and independent proceedings to verify the legality of the use of force; thus, the State has a duty to adopt laws and practices for effective investigation.²⁸² As documented in this Commission's report:

In the present system, it continues to be a near impossible task to hold police officers and departments accountable for their excessive use of force, particularly against marginalized communities of color, [...] and there remain severe lacunae in the regulatory and reporting systems for use of force by police officers."²⁸³ *The Commission stated that this lack of oversight and accountability perpetuates disparate treatment of Black Americans.*²⁸⁴

The Inter-American Court has defined impunity as "the absence of any investigation, pursuit, capture, prosecution and conviction" of those responsible for the violations of human rights.²⁸⁵ Further, the Commission has noted that such impunity "corrodes the foundations of a democratic state"²⁸⁶ and "fosters chronic recidivism of human rights violations and the total defenselessness of victims and their relatives."²⁸⁷ Full compliance with the obligations to investigate, prosecute, punish, and provide redress, in accordance with due process, is essential to combat impunity.²⁸⁸ As described above, police officers tend to enjoy wide discretion to use deadly force against civilians. Research indicates that systemic biases within the judicial system also insulate police officers from criminal liability for the violation of rights. Prosecutors are less likely to file charges against members of the police as a result of their professional relationship.²⁸⁹ Furthermore, only state and federal prosecutors, most of whom enjoy wide discretion, may initiate criminal proceedings. While there are state and federal legal recommendations and guidelines for

²⁸⁰ See, e.g., ICCPR, *supra* note 132, arts. 2, 14.

²⁸¹ See, e.g., Inter-Am. Comm'n H.R., *The Situation of People of African Descent in the Americas*, *supra* note 169, at ¶ 141.

²⁸² *Almonacid-Arellano v. Chile*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am Comm'n H.R. (ser. C) No. 154 ¶ 118 (2006).

²⁸³ IACHR Report 2018 ¶ 104.

²⁸⁴ *Id.*

²⁸⁵ *Case of the Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 299 (July 1, 2006); see also *Case of the Mapiripan Massacre v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 134, ¶ 237 (Sept. 15, 2005); *Case of the Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 203 (June 15, 2005); *Case of Serrano-Cruz Sisters v. El Salvador*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 120, ¶ 170 (Mar. 1, 2005).

²⁸⁶ *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 242, ¶ 107.

²⁸⁷ *Id.* at ¶ 108; see also Inter-Am. Comm'n H.R., *Rep. on Citizen Security and Human Rights*, OEA/Ser.L/V/II. doc. 57, 92 (2009), at ¶ 36, <https://www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.IV.htm>.

²⁸⁸ *Report on the Situation of Human Rights Defenders in the Americas*, *supra* note 242, at ¶¶ 124, 256.

²⁸⁹ See Rueben Fischer-Baum, *Allegations of Police Misconduct Rarely Result in Charges*, FIVETHIRTYEIGHT (Nov. 25, 201), <http://fivethirtyeight.com/datalab/allegations-of-police-misconduct-rarely-result-in-charges/>.

when the state may choose to prosecute a crime, there is no duty to prosecute. These recommendations and guidelines mostly note that a prosecutor cannot pursue charges too zealously. Thus, there is little mention of undercharging. The practice of undercharging is even more protected under prosecutorial discretion than overcharging. Therefore, prosecutorial discretion has very little accountability.

The failure of Chicago District Attorney, Anita Alvarez, to appropriately charge Officer Servin with the murder of Rekia Boyd represents a historical and systemic mishandling of deaths of Black people by United States' authorities and disregard for the humanity of Black people.

Alvarez used her unfettered prosecutorial discretion to charge Servin with involuntary manslaughter for the killing of Rekia Boyd. Even against much public outcry for more severe charges, the prosecutor chose the charge of involuntary manslaughter over homicide. Alvarez's choice of charges was a fatal blow to Ms. Boyd's family's quest for justice. Judge Porter ruled that because it is settled law in Illinois that pointing a gun at a group of people requires intent and cannot be reckless or involuntary, he must direct a verdict in Servin's favor.²⁹⁰ Because of double jeopardy, Servin cannot be retried by the State for Rekia's killing on harsher charges. In essence, this has allowed Servin to avoid punishment for the unlawful killing of Rekia Boyd.

Alvarez was accused of intentionally undercharging Officer Servin in order to gain favor with the police department for her re-election by Attorney Sam Adam, Jr.²⁹¹ He stated:

To charge that as reckless conduct and not first-degree murder — either you're doing it because you want to curry favor with the police department or you're completely inept," Adam said. "I think there's no question it was deliberate. She wants to curry favor with the FOP. It took a \$4.5 million settlement to get charges in this case. She was stuck in a hard place. If you charge first-degree murder, the FOP is mad at her. If you don't charge anything, the community is upset. So you play the odds. That says you're thinking about your job, not about what's right."²⁹²

Furthermore, which charge the prosecutor chooses to use can be the determining factor in these cases. In *People v. Adorno*, a man fired a gun over his shoulder into a crowd at a party in Chicago, Illinois.²⁹³ A woman was shot, but no one was mortally wounded.²⁹⁴ Anita Alvarez charged the defendant with first-degree murder and he was convicted.²⁹⁵ Adorno appealed his conviction on the grounds that he was overcharged and over-sentenced; however, Illinois Appellate Court held that it was settled law in the state that when a gun is fired into a crowd, the act is not reckless, it is intentional.²⁹⁶

Illinois courts have clearly and consistently held that when a defendant points a firearm in the direction of an intended victim and fires the weapon, he has not acted recklessly. *People v. Sipp*, 378 Ill. App. 3d 157, 166 (2007). Because defendant knowingly fired his gun in the direction of the crowd, a reckless conduct instruction was not appropriate. [...] Furthermore, specific intent to take a human life is a material element of the offense of attempted murder, but the very fact of firing a gun at a person supports the conclusion that the person doing so acted with the intent to kill.²⁹⁷

Anita Alvarez, the same prosecutor from Rekia Boyd's case, argued in *Adorno* that firing a weapon into a group of people is intentional and thus meets the standard for murder. In the *Adorno* case, Alvarez argued

²⁹⁰ King, *supra* note 121.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *People v. Adorno*, 2013 IL App (1st) 110028-U.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ King, *supra* note 121.

²⁹⁷ *Id.*

that because of settled law regarding firing a gun into a crowd, Adorno must be charged with murder. However, this is the exact opposite argument that was made in the Rekia Boyd case.

This sudden change in legal positioning directly contradicts each other. Here, Alvarez opposes the very precedent she argued for in the *Adorno* case and there is no accountability or reprimand for her behavior, which allowed for the undercharging and release of Mr. Servin. Since there is no accountability concerning charging, the current prosecutorial discretion framework contravenes Article XXV.

ii. Article XXVI of the American Declaration of the Rights and Duties of Man

a) *Rekia Boyd's Right To Protection From Cruel, Inhuman, and Degrading Treatment Was Violated in Contravention Of Article XXVI of the American Declaration*

International human rights law bans all forms of torture and cruel, inhuman or degrading treatment (“CIDT”) universally and without exception.²⁹⁸ Article XXVI of the American Declaration states, *inter alia*, “Every person accused of an offense has the right ... not to receive cruel, infamous or unusual punishment.”²⁹⁹ Article 7 of the ICCPR provides, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 1 of the Convention Against Torture (“CAT”) defines torture as any act which consists of (1) the intentional infliction of severe pain and suffering (physical or mental), (2) involving a public official, either directly or indirectly, (3) for a specific purpose (gaining a confession, obtaining information, punishing, intimidating, or discriminating).³⁰⁰ Article 1 of CAT must be read in conjunction with Article 16 of CAT,³⁰¹ which elaborates on conduct that does not amount to torture but nonetheless constitutes CIDT.³⁰² While this Commission has emphasized the severity of harm in distinguishing CIDT and torture, the line between the two also turns on the perpetrator’s intent.³⁰³ When police use “*non-excessive* force for a *lawful* purpose, then even the deliberate infliction of severe pain or suffering simply does not reach the threshold of CIDT.”

While lawful use of force by police may not constitute torture or CIDT,³⁰⁴ this Commission has noted that excessive and unlawful use of force by police officers could meet this threshold.³⁰⁵ Specifically, in its 2018 report, the Commission highlighted that institutionalized discriminatory law enforcement practices that result in differential treatment on the basis of race, ethnicity, national origin, or other suspect category, including “Stop and Frisk” programs and patterns of policing and police use of force that have a

²⁹⁸ Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. 39/46, art. 1, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (June 26, 1987) (hereinafter CAT).

²⁹⁹ American Declaration on the Rights and Duties of Man, Art. XXVI.

³⁰⁰ CAT, *supra* note 298, art. 1. “[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as...punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind., when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

³⁰¹ CAT, *supra* note 298, art. 16 (State parties are prevented from “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1”)

³⁰² *Gayle v. Jamaica*, Case 12.418, Inter-Am. Comm’n H.R., Report No. 92/05, ¶ 62 (2005) (stating that the Commission and the European Court of Human Rights has found the essential criterion between CIDT and torture, “primarily results from the intensity of the suffering inflicted”).

³⁰³ Manfred Nowak & Elizabeth McArthur, *The distinction between torture and cruel, inhuman or degrading treatment*, *Torture* Vol. 16, No. 3, 148 (2006).

³⁰⁴ CAT, *supra* note 298, art. 1 (“...[CIDT] does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”).

³⁰⁵ *See, e.g., Gayle v. Jamaica*, Case 12.418, Inter-Am. Comm’n H.R., Report No. 92/05, ¶ 63 (2005) (finding that the excessive use of force by police for the purpose of criminal justice was CIDT); *see also Finca “La Exacta” v. Guatemala*, Case 11.382, Inter-Am. Comm’n H.R., Report No. 57/02, doc. 5 rev. 1, ¶ 41 (2002).

disproportionate impact on historically marginalized groups, are “presumptively incompatible with the American Declaration as a form of racial discrimination, and under certain circumstances may additionally constitute a violation of the prohibition on inhuman and degrading treatment.”³⁰⁶ First, force may amount to torture if it is intentionally inflicted, causing severe pain or suffering, for the purposes of interrogation, punishment or intimidation.³⁰⁷ Second, force may amount to torture if it is used in a discriminatory manner.³⁰⁸ Moreover, even if not inflicted for an unlawful purpose, police use of force may constitute ill-treatment, in violation of both of CAT and Article 7 of the ICCPR, when it violates the proportionality principle.³⁰⁹

In the instant case, Mr. Servin’s use of force was both excessive and unlawful, thus amounting to torture or CIDT. Mr. Servin’s use of force was excessive because it was disproportionate in light of the minimal harm presented by Mr. Cross, who was unarmed. As noted above, the Inter-American Court has held that “the use of force should be necessary and proportionate to the needs of the situation and the objective to be achieved.”³¹⁰ The government in the *Finca “La Exacta”* case had offered “no evidence” demonstrating that the “police agents had reason to believe that their lives or the lives of third parties were in danger,”³¹¹ and the Inter-American Court accordingly held that the lethal force used was disproportionate and violated the victims’ right to life.³¹² Similarly, Mr. Servin has failed to demonstrate evidence that his life was in danger, as Mr. Cross was unarmed and Mr. Servin incorrectly and unreasonably identified Mr. Cross’s phone as a gun. Mr. Servin’s use of force was also unlawful, as noted above: Mr. Servin, who intentionally created the confrontation with Mr. Cross, failed to engage in the procedures mandated under international law to avoid the use of force and minimize harm, and failed to even meet the lower standard mandated under U.S. law to demonstrate that his use of lethal force was reasonable under the circumstances, as Mr. Cross was unarmed.

Furthermore, Rekia Boyd was shot and killed by a police officer, with an unregistered weapon, who took the law into his own hands. Officer Servin intentionally shot into a group of Black people after he prematurely and incorrectly determined they were noncompliant, dangerous, and armed. However, Officer Servin’s assumption was proven to be false because no gun was ever recovered. A responsible officer would have assessed the situation and would have called for backup or put out a radio alert for an on-duty officer to handle the noise complaint. However, Servin took no preventative or de-escalation measures before pointing his gun and shooting into the group. There is no existing law that allows for an off-duty officer to make presumptive judgments and use lethal force without threat or fear of his life. Here, Officer Servin, without looking, fires his gun over his shoulder, purposefully intending to kill someone in the group. Ms. Boyd’s right to protection from cruel, infamous or degrading treatment was thus violated by Mr. Servin’s excessive, unlawful, and discriminatory use of force.

³⁰⁶ IACHR 2018 Report at ¶ 199.

³⁰⁷ CAT, *supra* note 298, art. 1 (“the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is *suspected* of having committed, or intimidating or coercing him or a third person...””) (emphasis added); *see also* Inter-American Convention to Prevent and Punish Torture, art. 2 (“any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation...”).

³⁰⁸ CAT, *supra* note 298, art. 1. (“the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... for *any reason based on discrimination* of any kind.”) (emphasis added).

³⁰⁹ See Manfred Nowak & Elizabeth McArthur, *The distinction between torture and cruel, inhuman or degrading treatment*, 16 *Torture* 147, 150 n.7 (2006).

³¹⁰ *Finca “La Exacta” v. Guatemala*, Case 11.382, Report No. 57/02, Inter-Am. C.H.R., Doc. 5 rev. 1 at 650 (2002), para. 40.

³¹¹ *Id.*, para. 43.

³¹² *Id.*

IV. Conclusion and Petition:

The facts alleged in this Petition establish that the United States of America is responsible for the violation of the rights guaranteed under Articles I, II, III, XVIII, XXIV, XXV, and XXVI of the American Declaration. Petitioners respectfully request that the Inter-American Commission on Human Rights:

1. Grant a hearing before the Commission to investigate the facts alleged in this petition.
2. Declare that the United States is responsible for violating Rekia Boyd and her next of kin's rights guaranteed under articles I, II, III, XVIII, XXIV, XXV, and XXVI of the American Declaration of the Rights and Duties of Man. The domestic criminal and civil proceedings following the death of Rekia Boyd were not meaningful or effective.
3. Demand that Dante Servin, the Chicago Police Department, the Cook County State's Attorney's Office, and the State of Illinois through its current Governor J.B. Pritzker publicly apologize to the family of Rekia Boyd for failure to enforce Ms. Boyd's human rights as recognized by the American Declaration.
4. Declare that the murder of Rekia Boyd further demonstrates that U.S. police forces have a widespread, systemic problem with excessive and lethal use of force, and disproportionately target people of color.
5. Call for the U.S. Department of Justice to federally prosecute Dante Servin for the shooting of Rekia Boyd through its highly discretionary "Petite Policy."³¹³
6. Instruct the United States to:
 - a. Ratify and implement 1) the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; 2) the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions; and 3) the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as all of the above agreements, if adhered to in the case of Rekia Boyd, would have prevented her tragic death.
 - b. Prohibit police officers from accepting compensation, including pensions, such as that received by Dante Servin in this case, especially in circumstances where an officer has been found guilty or responsible for killings and/or other forms of police violence, or have otherwise been reprimanded through criminal, civil, or administrative procedures.
 - c. Create a "Rekia Boyd Fund" that 1) subsidizes the costs of mental health counseling and treatment to family members of victims who have been killed by U.S. police officers using the existing police budget in Chicago, IL; and 2) provides monthly compensation for at least a year to grieving families who have lost a family member due to police violence.
 - d. Establish a national, publicly available database tracking police killings and all law enforcement uses of force. Data should be disaggregated by race, nationality, gender, age, sexuality, location, and disability.

³¹³ U.S. Dep't Of Justice, United States Attorneys' Manual § 9-2.031 (1997), *available at* <https://www.justice.gov/jm/jm-9-2000-authority-us-attorney-criminal-division-mattersprior-approvals#9-2.031>.

- e. Amend federal laws 42 U.S.C. § 1983 and 18 U.S.C. § 242 to end qualified immunity and adjust the standard of proof for excessive force claims. When police officers violate a person’s constitutional rights, including lethal use of force, they are often shielded from liability through qualified immunity. Courts evaluate an officer’s use of force based on an “ objective reasonableness” test. The burden to overcome these standards are so high that families are rarely able to seek redress. Such was the case here for the family of Rekia Boyd as federal criminal charges were not pursued due to this high standard.
- f. Adopt the following legislative measures:
 - i. Breathe Act, which would divest federal resources from incarceration and policing, invest in non-punitive, non-carceral approaches to community safety, and establish commissions that study and design reparations related to mass incarceration.³¹⁴
 - ii. Helping Families Heal Act, which would establish government-funded programs to provide mental health support for victims of police brutality and the family members of those affected by police violence.³¹⁵
 - iii. End Racial and Religious Profiling Act, which would prohibit federal, state, and local law enforcement from targeting a person based on actual or perceived race, ethnicity, national origin, religion, gender, gender identity, or sexual orientation.³¹⁶

³¹⁴ *What is the Breathe Act?*, BREATHE ACT, <https://breatheact.org/learn-more/> (last visited July 3, 2023).

³¹⁵ Press Release, Congresswoman Cori Bush, *Congresswoman Bush Introduces Legislation Providing Mental Health Services to Victims of Police Violence* (Sept. 27, 2022), <https://bush.house.gov/media/press-releases/congresswoman-bush-introduces-legislation-providing-mental-health-services-to-victims-of-police-violence>.

³¹⁶ *End Racial and Religious Profiling Act*, HUMAN RIGHTS CAMPAIGN <https://www.hrc.org/resources/end-racial-religious-profiling-act#:~:text=What%20is%20the%20End%20Racial,gender%20identity%2C%20or%20sexual%20orientation> (last visited July 3, 2023).

Exhibits List

Exhibit A Rekia Boyd FOIA Document

Exh. A

Blood Swab Kit (3136 W. 15th Place Sidewalk)
OWNER: Chicago Police Department
POSSESSOR/USER: CHICAGO POLICE DEPARTMENT
PHONE#: 312 - 7448261
QUANTITY: 2
LOCATION FOUND: 3136 W. 15TH PLACE

INV #: 12568132

Evidence
Blood Swab Kit (3146 W. 15th Place Street)
OWNER: Chicago Police Department
POSSESSOR/USER: CHICAGO POLICE DEPARTMENT
PHONE#: 312 - 7448261
QUANTITY: 2
LOCATION FOUND: 3146 W. 15TH PLACE

INV #: 12573681

Evidence
Dvd Disc Of Surveillance Images From Sacred Heart Home (1550 S. Albany Ave.)
OWNER: Sacred Heart Homes
POSSESSOR/USER: CHICAGO POLICE DEPARTMENT
PHONE#: 312 - 7448261
QUANTITY: 1
LOCATION FOUND: 1550 S. ALBANY AVE.

INV #: 12601122

Evidence
Maxell Dvd-R Computer Disc Of Images From In-Car Camera For Beat 1022r And Accompanying Video Data Request Forms
OWNER: Chicago Police Department
POSSESSOR/USER: CHICAGO POLICE DEPARTMENT
PHONE#: 312 - 7448261
QUANTITY: 1
LOCATION FOUND: 2452 W. BELMONT AVE. #2

**PERSONNEL
ASSIGNED:**

Detective/Investigator

HEERDT, Edward W # 20598

Reporting Officer

LORENZ, Jeremy C # 10256 **BEAT:** 1022R

WITNESS(ES):

[REDACTED]

Male / Black / 61 Years

DOB: [REDACTED]-1950

DESCRIPTION: 5'07,150,Black Hair, Short Hair Style, Brown Eyes, Medium Complexion

RES: [REDACTED]
Chicago IL 60623
[REDACTED]

EMPLOYMENT: Retired

OTHER COMMUNICATIONS:

Cellular
Phone:

SSN:

Female / Black / 21 Years

DOB: -1990

DESCRIPTION: 5'02,190,Black Hair, Medium Hair Style, Brown Eyes, Medium Complexion

RES:

Chicago IL 60649

DLN/ID: IL

Male / Black / 23 Years

DOB: -1988

DESCRIPTION: 6'00,200,Black Hair, Short Hair Style, Brown Eyes, Dark Complexion

RES:

Chicago IL 60653

OTHER IDENTIFICATIONS: Type - Other Id # Ir# 1349494
Type - Other Id # Sid# 45980290
Type - Other Id # Fbi# 351099nb1

BOYD, Rekia M

Female / Black / 22 Years

DOB: -1989

DESCRIPTION: 5'07,220,Black Hair, Long Hair Style, Brown Eyes, Medium Complexion

RES:

Chicago IL

SSN:

DLN/ID:

OTHER IDENTIFICATIONS: Type - Other Id # Ir# 1969158
Type - Other Id # Me# 355mar12

Male / Black / 26 Years

DOB: -1985

RES: [REDACTED]
Chicago IL 60612

OTHER INDIVIDUALS INVOLVED:

[REDACTED]

(Person Interviewed
Non-Witness)

Male / Black / 38 Years

DOB: [REDACTED]-1973

RES: [REDACTED]
Chicago IL 60623

DLN/ID: [REDACTED] - IL

[REDACTED]

(Person Interviewed
Non-Witness)

Male / Black / 34 Years

DOB: [REDACTED]-1978

DESCRIPTION: 6'00,250,Black Hair, Medium Hair Style, Brown Eyes, Medium Complexion

RES: [REDACTED]
Chicago IL

<u>Type</u>	<u>Weapon Used</u>	<u>Other Weapon Used</u>
Gun Shot Wound	Handgun	Other - Handgun

HOSPITAL: Mount Sinai

INJURY TREATMENT: Treated And Pronounced

PHYSICIAN NAME: Dr. Ceyashian-1315 Hrs 22mar12

CRIME CODE SUMMARY:

0550 - Assault - Aggravated Po: Handgun

0550 - Assault - Aggravated Po: Handgun

IUCR ASSOCIATIONS:

SERVIN #21133, Dante	(Victim)	
[REDACTED]		(Offender)
BOYD, Rekia, M	(Witness)	
[REDACTED]		(Offender)
BEAMON, Ikca	(Witness)	
[REDACTED]		(Offender)
STEVENS ON, Mantise	(Witness)	
[REDACTED]		(Offender)

INCIDENT NOTIFICATION:

NOTIFICATION DATE & TIME: 03/21/2012:101500

INCIDENT NOTIFICATION: REQUEST TYPE: On Scene
PERSON NAME: ,Brasic
STAR #: 10201
NOTIFICATION DATE & TIME: 03/21/2012:013000
REQUEST TYPE: On Scene
PERSON NAME: ,Smith
STAR #: 17100

INCIDENT NOTIFICATION: NOTIFICATION DATE & TIME: 03/21/2012:013000
REQUEST TYPE: On Scene
PERSON NAME: ,Salazar
STAR #: 20437

INCIDENT NOTIFICATION: NOTIFICATION DATE & TIME: 03/21/2012:011500
REQUEST TYPE: On Scene
PERSON NAME: ,Francis
STAR #: 21040

INCIDENT NOTIFICATION: NOTIFICATION DATE & TIME: 03/21/2012:014500
REQUEST TYPE: On Scene
PERSON NAME: ,Regal
STAR #: 20592

INCIDENT NOTIFICATION: NOTIFICATION DATE & TIME: 03/21/2012:013000
REQUEST TYPE: On Scene
PERSON NAME: ,Francis
STAR #: 20598

INCIDENT NOTIFICATION: NOTIFICATION DATE & TIME: 03/21/2012:013000
REQUEST TYPE: On Scene
PERSON NAME: ,Keller
STAR #: 2102

INCIDENT NOTIFICATION: NOTIFICATION DATE & TIME: 03/21/2012:012000
REQUEST TYPE: On Scene
PERSON NAME: ,Hansson
STAR #: 5329

INCIDENT NOTIFICATION: NOTIFICATION DATE & TIME: 03/21/2012:014500
REQUEST TYPE: On Scene
PERSON NAME: ,Hansson
STAR #: 5329

INCIDENT NOTIFICATION: NOTIFICATION DATE & TIME: 03/21/2012:014400
REQUEST TYPE: On Scene
PERSON NAME: ,Smith
STAR #: 17100

REPORT DISTRIBUTIONS: No Distribution

INVESTIGATION:

CLEARED CLOSED (ARREST AND PROSECUTION) SUPPLEMENT CASE REPORT

THIS IS AREA NORTH DETECTIVE BUREAU IMMEDIATE FIELD RESPONSE SCENE CASE REPORT

RD# HV-207283

CLASSIFICATION:

Assault Aggravated to P.O./Handgun (IUCR Code 0550)

DAY, DATE & TIME OF OCCURRENCE:

Wednesday, 21Mar2012, 0105

DATE & TIME ASSIGNED:

21Mar2012/0200hrs

LOCATION OF OCCURRENCE:

3116 W. 15th Pl/street

VICTIM:

SERVIN, Dante (Chicago Police Officer # 21133)

M/4/43

5101 S. Wentworth

Detective Division Central

Chicago, IL

TX#312-747-8380

Employee# [REDACTED]

Duty Status: Off-Duty in civilian dress

Date of Appointment: 16DEC1991

INJURIES:

SERVIN-None

BOYD-single GSW to left side of head, bullet entered above & behind left ear & lodged near frontal lobe.

[REDACTED]-sustained single graze wound to inside of right hand on thumb heel.

TAKEN TO:

Mount Sinai Hospital

BOYD transported to MT Sinai Hospital by CFD Ambulance, critical condition, moved to ICU#285. Pronounced dead at 1315 hours on 22MAR12 by Dr. Ceyashian (Mount Sinai Hospital). Office of the Cook County Medical Examiner (M.E.#) 355MAR12.

Cross transported to Mount Sinai Hospital by CFD Ambulance

IN CUSTODY:

Aka: [REDACTED]
M/1/39 DOB: [REDACTED] 1972

[REDACTED]
Chicago, IL 60649

Cell# [REDACTED]

SS# [REDACTED]

DL# [REDACTED]

IR#907437

CB#18367704

SID#31163130

FBI#813919NA5

IDOC#B35344

Physical description:

5-07, 160lbs, shaved (bald) black hair, brown eyes, dark complexion, long thin "Fu Manchu" mustache and goatee

DATE, TIME & LOCATION OF ARREST:

21Mar2012, 0105hrs, 3116 W. 15th Pl

CHARGES, COURT DATE & BRANCH:

720ILCS5/12-2-A-1(Aggravated Assault), 11 Apr 12, Br#43-2

ARRESTING OFFICERS:

P/O J. LORENZ #10256 Unit 010/Bt#1022R

P/O P. WALKER #18342 Unit 010/Bt#1022R

WEAPON:

SERVIN-One(1) Glock 9mm, black finish 3.75 inch barrel, semi-auto pistol, model#26, serial#NNA332. Weapon loaded with one (1) Glock 9mm black finish magazine containing three(3) live 'FC' 9mm Luger rounds & two(2) live 9mm Speer rounds. Weapon additionally loaded with one (1) live FC 9mm Luger round inside chamber. Weapon initially recovered by P/O LORENZ (Bt# 1022R). Weapon recovered from P/O LORENZ by F/Is SMITH & BRASIC (Bt# 5802) in presence of DET REGAL (Bt# 5326) & inventoried under CPD Inv# 12567957.

[REDACTED] - Armed with unknown handgun, not recovered.

WEATHER & LIGHTING:

Night time, Clear, warm (70s)/Dark, artificial exterior illumination from city street lamps

MANNER/MOTIVE:

Victim off-duty Chicago Police Officer, operating his personal vehicle, became engaged in a verbal encounter with a male subject who, during the encounter, produced a handgun and charged at the victim officer. The victim officer, fearing for his own safety fired his weapon, striking the offender ([REDACTED]) and witness BOYD (Aggravated Assault to Police Officer).

VEHICLE:

Victim vehicle-2001 black 4dr Mercedes Benz, model C220, IL Police Memorial LP#DS10LE, exp 09/12.

EVIDENCE:

Inventory Numbers-

- 12567755: One(1) Lineup/Photo Spread Advisory Form, recovered & inventoried by DETS MATIAS & LEAVITT(Bt#5313).
- 12567755: Lineup photos & identifiers with STEVENSON (IR#1349494) as subject, recovered & inventoried by DETS MATIAS & LEAVITT (Bt#5313).
- 12567786: One(1) T-Mobile cellular phone recovered from victim BOYD(IR#1969158) MT Sinai, inventoried by DETS DeSALVO & CONLEY(Bt#5313).
- 12567786: One(1) IL State ID#3007-3389-915B recovered from victim BOYD (IR#1969158) at MT Sinai, inventoried by DETS DeSALVO & CONLEY(Bt#5313).
- 12567786: One(1) Link Card#6014532042254493954 recovered from victim BOYD (IR#1969158) at MT Sinai, inventoried by DETS DeSALVO & CONLEY(Bt#5313).
- 12567786: One(1) Social Security Card#335-84-5618 recovered from victim BOYD (IR#1969158) at MT Sinai, inventoried by DETS DeSALVO & CONLEY(Bt#5313)
- 12567786: One(1) Birth Certificate#12-89-6048318 recovered from victim BOYD (IR#1969158) at MT Sinai, inventoried by DETS DeSALVO & CONLEY(Bt#5313)
- 12567786: One(1) empty, clear plastic bag recovered from victim BOYD(IR#1969158) at MT Sinai, inventoried by DETS DeSALVO & CONLEY(Bt#5313).
- 12567906: Two(2) compact discs containing OEMC recordings, recovered & inventoried by DET LABBE(Bt#5329).
- 12567957: One (1) Glock Model26 9 x 19 (9mm) black finish semi auto with 3&1/4" bbl, from P.O. LORNEZ# 10256 in vehicle # 6786 at scene
- 12567957: One (1) FC 9mm Luger cartridge removed from chamber of above weapon
- 12567957: Three (3) FC 9mm Luger cartridges from magazine
- 12567957: Two (2) Speer 9mm Luger cartridges from magazine
- 12567957: One (1) 10 capacity Glock black magazine from above weapon
- 12568000: One (1) Swab box with two swabs used to swab the Glock model 26 in inventory # 12567957
- 12568007: One (1) ISP kit # 12-032 administered to the left hand of Antonio CROSS at 0315 hrs at MT. Sinai (right hand bandaged/bloody)
- 12568007: One (1) ISP GSR Kit # 12-033 administered to both hands of Rekia BOYD at 0347 hrs at MT Sinai Hospital
- 12568031: One (1) White medium sleeveless Hanes T-shirt
- 12568031: One (1) bloodstained with T-shirt with "Palmer Park" writing on it Gildan, size XL
- 12568031: One (1) Pair of socks
- 12568031: One (1) Pair of black "RK" jeans size 34 x 34
- 12568031: One (1) Black belt size 34
- 12568031: One (1) Grey & black pair bloodstained of Nike Air Max gym-type shoes size 10.5
- 12568061: One (1) Pair of Nike white gym shoes, size 8.5
- 12568061: One (1) cut/blood stained blue denim vest (akdmks, size xxl)
- 12568061: One (1) pair blue jeans shorts (Angels, size 16)
- 12568061: One (1) cut tan belt
- 12568085: One (1) Win 9mm Luger +P cartridge case on driver's floor of '96 Mercedes at 3105 W. 15 Pl. (mk#1)
- 12568085: One (1) FC 9mm Luger cartridge case on driver's floor of '96 Mercedes at 3105 W. 15th

Plc. (mk#2)

12568087: One (1) Win 9mm Luger +P cartridge case on street at 3114 W. 15th Plc (mk# 3)

12568087: One (1) Speer 9mm Luger cartridge case on street near curb at 3114 W. 15th Place (mk#4)

12568087: One (1) FC 9mm Luger cartridge case on street at 3114 W. 15th Plc. (mk#5)

12568091: One (1) Bloodstained black LG T Mobile cell phone on street at mouth of alley at 3116 W. 15th Plc. (mk#6)

12568114: One (1) wooden handled folding knife in closed position on parkway grass at 3118 W. 15th Plc.(mk#7)

12568117: One (1) large circular shaped gold colored hoop earring from alley pavement at 3116 W. 15th Plc. (mk#8)

12568121: One (1) 12 oz plastic bottle of Vagisil feminine wash in alley at 3116 W. 15th Plc. (mk# 10)

12568132: One (1) swab box with 2 swabs of blood from alley at 3116 W. 15th Plc. (mk#9)

12568132: One (1) swab box with 2 swabs of blood from street at 3124 W. 15th Plc. (mk#A)

12568132: One (1) swab box with 2 swabs of blood from pass. Side of front bumper of Chevy Malibu at 3122 W. 15th Plc. (mk# U)

12568132: One (1) swab box with 2 swabs of blood from curb at 3122 w. 15th Plc (mk #T)

12568132: One (1) swab box with 2 swabs of blood from sidewalk at 3136 W. 15th Plc (mk# R)

12568132: One (1) swab box with 2 swabs of blood from street at 3146 W. 15th Plc (mk# L)

12573681: One (1) DVD computer disc of surveillance images (Sacred Heart Home)

12601122: One (1) DVD computer disc of in-car camera images from Beat 1022R and accompanying video data request forms

Photographs-

O/A C/U scene and surrounding area at 1526 S. Albany

C/U front address at 1526 S. Albany

C/U street sign on Northwest corner of Albany at 15th Plc

O/A C/U street light on 15th Plc on side of house at 1526 S. Albany

O/A C/U vehicle (Mercedes, lic. DS 10) parked at 3105 W. 15th Plc exterior

O/A C/U firearm evidence (cartridge cases) from front drives floor of vehicle (mk#1 & #2)

O/A C/U firearm evidence in street at 3114 W. 15th Plc (mk# 3,#4,#5)

O/A yard area at 1526 W. 15th Plc

O/A entrance to alley at 3116 W. 15th Plc

O/A C/U entrance at alley on alley pavement a cellular phone (mk# 6)

O/A C/U folding knife on parkway grass at 3118 W. 15th Plc (mk# 7)

O/A C/U broken earring on alley pavement at 3116 W. 15th Plc (mk#8)

O/A C/U blood on alley pavement at 3116 W. 3116 W. 15th Plc (mk#9)

O/A C/U plastic bottle of lotion on alley pavement at 3116 W. Plc (mk#10)

O/A wrought-iron gate in the rear of 1525 S. Albany

O/A alley looking south in rear of 1526 S. Albany

O/A C/U permit parking sign with apparent bullet damage (w/wo scale) at 3114 W. 15th Plc

O/A C/U front address at 3118 W. 15th Plc

O/A west view on 15th Plc from 3118 W. 15th Plc

O/A C/U blood trail in street from 3124 to 3146 W. 15th Plc (markers A to L)

O/A east view on 15th Plc from 3150 W. 15th Plc (street)

O/A C/U east view on 15th Plc (sidewalk)

O/A C/U blood trail on sidewalk from 3144 to 3122 W. 15th Plc (markers M to U)

O/A C/U blood on curb at 3122 W. 15th Plc (marker T)

O/A C/U blood on front passenger bumper of vehicle (Chevy, 2001, lic H69 8052) parked at 3122 W. 15th Plc (marker U)
C/U ID photos of suspect ([REDACTED], Antonio M/B) at Mt Sinai Hospital ER bed # 20
C/U suspect ([REDACTED] bandage right hand
C/U ID photos of suspect (BOYD, Rekia F/B) at Mt Sinai Hospital ER bed# 2
C/U suspect (BOYD, Rekia) photos of her hands
O/A C/U Victim SERVIN'S 1996 Mercedes exterior and interior driver's door damage

PERSONNEL ASSIGNED:

010th District Personnel

P/O J. LORENZ #10256 Bt#1022R(Paper Car)
P/O P. WALKER #18342 Bt#1022R(Paper Car)
P/O W. OLSZEWSKI #18549 Bt#1013R(Scene-Asst Paper)
P/O T. FOLINO # 8669 Bt#1013R(Scene-Asst Paper)
P/O R. WOODS #15143 Bt#1014R(Scene-W/Alley, Albany)
P/O L. CHLEBOWICZ #14885 Bt#1014R(Scene-W/Alley, Albany)
P/O G. CASTRO #16405 Bt#1021R(Scene-15th & Kedzie)
P/O M. HERNANDEZ #14051 Bt#1021R(Scene-15th & Kedzie)
P/O R. MUNOZ #14515 Bt#1031R(Scene-E/Alley, Kedzie)
P/O J. WOJCIK #17858 Bt#1031R(Scene-E/Alley, Kedzie)
P/O J. LANDINI #10264 Bt#1071R(Scene-15th & Albany)
P/O P. PITZER # 5826 Bt#1071R(Scene-15th & Albany)
P/O A. ALAMILLO #15164 Bt#1006H(Scene)
P/O J. VALDOVINOS #11820 Bt#1006H(Scene)
P/O R. CABALLERO #11141 Bt#1006J(Scene)
P/O L. MELENDEZ #17938 Bt#1006J(Scene)
P/O T. PRATSCHER # 4190 Bt#1006R(Scene)
P/O G. SANCHEZ # 5377 Bt#1071R(Scene)
P/O A. ROSEN #11430 Bt#1011R(Custody)
P/O M. FIETKO # 7513 Bt#1011R(Custody)
P/O R. PRUGER #19349 Bt#1071R(Hospital)
P/O M. DAVILA #15614 Bt#1071R(Hospital)
P/O J. GUTIERREZ #16032 Bt#1034R(Transport)
P/O O. NAVARRO # 6059 Bt#1034R(Transport)
SGT G. MAJERCZYK # 2201 Bt#1020R(Scene Supv)
SGT A. SALGADO # 1484 Bt#1030R(Scene Supv)

Forensics

F/I B. SMITH #17100 Bt#5802(Crime Lab)
F/I C. BRASIC #10201 Bt#5802(Crime Lab)
F/I E. HUELS #9601 Bt#5801(Crime Lab)
SGT D. GRANT # 802 Bt#5800(Crime Lab)

CANINE

P.O. G. ORLOWSKI# 6406 BT 4618A (handler)
HARLEY (canine)

INVESTIGATING DETECTIVES:

Area North

DET E. HEERDT #20598 Unit 630/Bt#5364
DET M. REGAL #20592 Unit 630/Bt#5333
DET N. FRANCIS #21040 Unit 630/Bt#5357
DET J. HANSSON #21162 Unit 630/Bt#5351
DET J. LABBE #21049 Unit 630/Bt#5329
DET G. SWIDEREK #20130 Unit 630/Bt#5313A
DET T. CONLEY #21223 Unit 630/Bt#5315
DET S. DeSALVO #20779 Unit 630/Bt#5313
DET H. MATIAS #20897 Unit 630/Bt#5313
DET M. LEAVITT #21081 Unit 630/Bt#5394
DET J. FULLER #20341 Unit 630
DET D. AMATO#20340 Unit 630
SGT J. ROBERTS# 2196 Unit 630/ BT 5310

NOTIFICATIONS:

On scene Command Staff

DEP CHIEF E. JOHNSON# 366 Deputy Chief Patrol

CMDR G. YAMASHIROYA # 660 Det Div North/Unit Commander

LT D. WALSH # 359 Det Div North/Violent Crimes Commander

SGT J. ROBERTS #2196 Det Div North/1st Watch Supervisor

WITNESS/PERSON SHOT:

BOYD, Rekia M.
M.E.# 355MAR12
F/1/22 05Nov1989
3405 W. 79th St
Chicago, IL 60652
SS#335-84-5618
ID#3007-3389-915B
IR#1969158

Physical description:

5-07, 220lbs, long black hair, brown eyes, medium complexion, heavy build

WITNESSES:

[REDACTED]
F/1/21 DOB [REDACTED] 1990

Chicago, IL 60649

5'02" 190lbs

Cell # [REDACTED]

Student: Northern Illinois Univ.

IL ID# [REDACTED]

[REDACTED]
M/1/38

D.O.B.: [REDACTED] 1973

Home Address: [REDACTED] Chicago, IL 60623

Cellular Phone: [REDACTED]
Occupation: Check point supervisor at B&L Rail in Cicero

[REDACTED]
M/1/61
D.O.B.: [REDACTED] 1950
Home Address: [REDACTED] Chicago, IL 60623
Home Phone: [REDACTED]
Cellular Phone: [REDACTED]
SS# [REDACTED]
Occupation: Retired

[REDACTED]
M/1/26 [REDACTED] 1985
[REDACTED]
Chicago, IL 60612
CP# [REDACTED]

[REDACTED]
M/1/23 DOB: 14Aug1988
[REDACTED]
Chicago, IL 606
[REDACTED]
Chicago, IL 60653
No phone
IR#1349494
SID#45980290
FBI#351099NB1
Physical description:
6-00, 200lbs, Short black hair, brown eyes, dark complexion

[REDACTED]
F/1/24 DOB: 14 Aug 87
[REDACTED]
HP [REDACTED]
IR# 2069715
Girlfriend of [REDACTED]

[REDACTED]
M/1/34
D.O.B.: [REDACTED] 978
Home Address: 1 [REDACTED] Chicago, IL
Cellular Phone: [REDACTED]

INVESTIGATION:
On 21 Mar 2012, at 0200 hrs Sgt ROBERTS of the first watch command assigned the reporting detectives to an Aggravated Assault of a police officer investigation. It was related that two persons suffered gun shot wounds during an off-duty officer involved shooting. Detectives REGAL, HEERDT and FRANCIS were assigned to the scene, HANNSON and LABBE were assigned to scene

canvass and DeSALVO and CONLEY were assigned to Mt. Sinai Hospital. The reporting detectives relocated immediately to begin the investigation.

Arriving at the scene the reporting detectives were met by P.O. LORENZ and P.O. WALKER who affirmed the facts reported. They remained on scene and then relocated to the Area North Detective Bureau to assist in the investigation.

On 21 Mar 2012, at 0200 hrs Detective REGAL interviewed on scene CPD Officers T. PRASCER# 4190 and G. SANCHEZ# 5377 BT 1006R who related that they responded to an OEMC Call of "Shots Fired" on 15th Place. The Officers proceeded to 3116 W. 15th Place and observed a marked unit already on scene (BT 1022R). They observed a black female nka BOYD, Rekia at the mouth of the alley, laying on the ground, facedown, and bleeding from the head. Her head was to the northeast and her feet to the southwest. The officers observed another black female nka [REDACTED] standing over the unresponsive BOYD. The Officers also observed a black male nka [REDACTED] sitting in the grass complaining of his bleeding right hand and being shot in the back. The officers checked [REDACTED] back but did not find any gsw or visible injuries to his back. Additionally, [REDACTED] positively identified SERVIN, Dante as the white guy who had shot him in the hand. Officers PRASCER and SANCHEZ remained on scene to take control of the gathering crowd of onlookers. It was during this time that CFD ambulances arrived and transported the injured [REDACTED] and BOYD to Mt Sinai Hospital.

SERVIN, Dante

At 0220 hours, on 21MAR2012, R/D Heerdt interviewed victim officer SERVIN (on scene of incident) in regards to this incident. In essence, SERVIN stated he was in his home at 1526 S. Albany Avenue when he called 911 at approximately 0030 hours to report a loud disturbance in the park across the street from his home. Approximately 30 minutes later, SERVIN left his home to go out through his rear door. SERVIN stated he observed two male blacks and two female blacks in front of his side yard, just south of his home at [REDACTED]. The entire property is secured by a six foot high chained link fence. SERVIN stated the males were being very loud and verbally abusive toward the two females. SERVIN was unable to articulate any specific words spoken by the males but did relate that the actions of the males toward the females appeared aggressive. SERVIN stated he rolled his two garbage cans from his yard to the alley and then entered his vehicle (black Mercedes IL plate [REDACTED] expires 09/12) which was parked on the cement slab west of his house, on his property. SERVIN stated he drove his vehicle west on his property to a wrought iron gate on the west border of his property. SERVIN stated he exited his vehicle and manually opened his sliding gate at which time SERVIN observed two males followed by two females walking westbound on the north sidewalk of the 3100 block of West 15th Place from Albany Avenue. SERVIN stated he re-entered his vehicle and pulled his vehicle out through the gate facing south in the alley and again exited the vehicle to close the sliding gate.

SERVIN stated the group of four continued W/B on 15th Place as he drove his vehicle S/B through the alley approaching the mouth of the alley at 15th Place. SERVIN stated he arrived at the mouth of the alley at 15th Place as the group of four was nearly approaching the same mouth, just east of his vehicle's position. SERVIN stated he began to make a left turn out of the alley to go E/B on 15th Place at which time the two males looked at him, at which time SERVIN said to the males through the open driver's side door window, "Hey guys, you can be in front of the park and no one will call police if you are quiet. People live here." SERVIN stated he then proceeded to drive E/B on 15th Place at an "idle pace" which SERVIN described as barely accelerating. SERVIN stated he then heard a male voice yell, "I don't give a fuck" which caused SERVIN to look to the left and back over

his shoulder to see the source of the statement. SERVIN stated he saw a male black (now identified as offender [REDACTED]) reach into his waistband and recover a gun. SERVIN described the gun as a dark handgun of unknown caliber and type. SERVIN stated that [REDACTED] held the gun up and pointed it at SERVIN while running toward SERVIN diagonally across the parkway. SERVIN stated he winced and tucked as he was bracing for the impact of being shot as he said, "Don't, don't. Police, Police." SERVIN stated he simultaneously pulled his Glock 26 from the holster (on his right hip) with his right hand and raised the gun up, over across his left shoulder and fired 4-5 times out the driver's window at [REDACTED] who was pointing the gun at him. SERVIN stated he was not wearing his seat belt at the time and added that he stopped his car immediately after firing his gun.

SERVIN stated he exited his vehicle and observed the two male blacks running W/B on the north sidewalk and in the street of 15th Place toward Kedzie. SERVIN stated he also observed one female black lying unresponsive on the ground near the mouth of the alley with the other female black standing near her quietly. SERVIN stated he retrieved his cellular phone ([REDACTED]) and called 911, identifying himself as the police, providing a brief account of the incident, and giving a description and direction of flight for the male offenders. SERVIN stated the police arrived on the scene very quickly and took possession of his weapon. SERVIN stated approximately 8-10 minutes after the police arrived, the two male blacks ([REDACTED] and [REDACTED]) returned to the scene and [REDACTED] sat down on the curb at the mouth of the alley and was holding his right hand. SERVIN stated that [REDACTED] was nodding his head, saying, "It was a misunderstanding" two separate times. SERVIN then stated that he told [REDACTED] to stop lying, confronting [REDACTED] and telling [REDACTED] that he ([REDACTED]) tried to shoot him (SERVIN). According to SERVIN, [REDACTED] again said, "It was a misunderstanding" 7-8 times. SERVIN also stated [REDACTED] softly said, "I thought you were looking for a prostitute." Lastly, SERVIN stated he moved his car to the south curb of 15th Place and further east down the block to get it out of the way.

During the investigation, it was learned that victim SERVIN'S residence has multiple cameras affixed to the exterior walls of each side of his home; in particular the side of his residence facing the scene of this incident. SERVIN informed R/D Heerdt that the camera system is inoperable; that it does not work and does not record any images.

SERVIN was directed to a knife on the corner of the alley at 3118 W. 15th Place and asked if he knew who the knife belonged to. SERVIN stated he does not know anything about the knife nor did he see it during the incident.

Det. LABBE #21049 interviewed Bt. 1022R P.O. WALKER #18342 and P.O. LORENZ #10256 on scene. They both related the following in essence but not verbatim. The reporting officers were on patrol in the area of 1500 S. Kedzie when they heard several loud reports which sounded like gunfire. The reporting officers went to the area where the shots were coming from and were flagged down on 15th Place, just east of Kedzie by a male black, now known as [REDACTED] was bleeding from his hand and stated to the officers that the shooter was in a black BMW and there was a female shot in the alley. The officers responded further east, to the mouth of the alley at 3116 W. 15th Pl. and observed a female black, now known as Rekia BOYD, lying face down in the alley. The officers approached the victim who identified himself as a Chicago Police officer, P.O. LORENZ secured the officer's weapon for safety reasons and radioed for assistance. While the officers were securing the scene and calling for assistance, two subjects, now believed to be [REDACTED] and [REDACTED] approached the officers ([REDACTED] flagging down the officers) and identified SERVIN as the person who shot at them. [REDACTED] was yelling that Rekia BOYD was her sister. The officers secured the scene and [REDACTED] and Rekia BOYD

were transported to Mt. Sinai hospital for treatment. [REDACTED] and [REDACTED] left the scene during the preliminary investigation. It is unknown where they went at that time.

The scene was located on the 3100 W. block of 15th Place, which is within a residential street bordered by Albany Ave on the east and Kedzie Ave on the west. It should be noted that just east of Albany Ave is Douglas Park. Albany is a one way street south bound, 15th Place is a one way street west bound and Kedzie is a two way divided street. This area contains two story brick residential buildings with the exception of the Sacred Heart Home located at 1500 block of Albany. Throughout this neighborhood are numerous vacant lots that are being overgrown with weeds, foliage and are littered with construction remnants, cups, papers and discarded landscaping debris. This scene was secured by 010th District personnel and cordoned off by yellow outer and red inner crime scene tape. The entire crime scene was from Albany Ave on the east through 3146 W. 15th Place on the west. The area of the shooting was at the north alley mouth located at 3116 W. 15th Place. [REDACTED] and BOYD were not on scene as the reporting detectives arrived.

There is a continuous blood trail that is observed beginning at the mouth of the north alley (3116 W. 15th Place), the same location from which the offenders fled. This blood trail is on the north sidewalk, which travels west and directly in front of residences and vacant lots to the location of 3146 W. 15th Place, in the street. The blood trail appears to stop in the street at 3146 W. 15th Place for an undetermined period of time and then is observed traveling back east bound in the street. This street blood trail travels along the parked vehicles to the north and returns to the location of 3116 W. 15th Place, near the curb and mouth of the north alley. The mobile crime lab recovered blood swabs, videotaped and photographed said blood trail.

It should also be noted that a canine unit was requested to this scene in efforts to search for the offender's discarded handgun. Canine Handler P.O. G. ORLOWSKI# 6406 BT 4618A arrived with his police dog HARLEY and performed a systematic search of the area. The search of the street, front yards and rear yards, and vacant lots resulted in Harley not being able to locate the offender's handgun. Detective REGAL also walked and canvassed the sidewalk, front yards, vacant lots and alley in efforts to locate the handgun or evidence but the search was negative.

Located at 3105 W. 15th Plc was a black colored 4dr black Mercedes Benz C220 bearing IL plate [REDACTED] expires 09/12 parked, with its driver's window fully lowered and open.. On the floor of the drivers seat area were (2) two spent 9 mm cases; 1- WIN 9mm +P case and 1-FC 9mm Luger case. This vehicle was moved to this location by its owner SERVIN, Dante after the shooting incident took place. At the location of 3114 W. 15th Plc. were (3) three spent 9 mm cases lying on the street; 1- WIN 9mm Luger +P case, 1-Speer 9mm Luger case and 1-FC 9mm Luger case. Slightly north of the shell cases and east of the alley is a no parking sign that was observed with an apparent bullet strike on the black pole to which the sign is affixed, approximately three to four feet above the ground. At the east side of the alley mouth (3116) is a black colored LG cell phone, facing downward with suspect blood smears on the surface. In the grass located at 3118 is a closed folding knife with a wooden handle and silver blade. It would later be learned that this location is where [REDACTED] sat, on the curb and grass, as he returned to the scene. Just inside the mouth of the alley at 3116 is a large yellow (gold) colored hoop earring, directly to the north is a large pool of apparent blood and further north is a plastic bottle of Vagisil lotion. It should be noted that BOYD was already removed from the scene and taken to Mount Sinai Hospital when R/Ds arrived on the scene. However, the pool of suspect blood appears to be coming from where Rekia BOYD was discovered unresponsive and bleeding from the head by first responders. The scene was photographed and video taped via Mobile Crime Lab (see crime scene processing report).

Detective REGAL remained on scene as the Mobile Crime Lab processed the scene and recovered evidence (refer to the evidence section of this report for details).

Detective REGAL observed the Crime Lab BT 5802 F.I. BRASIC and F.I. SMITH recover off-duty officer SERVIN' weapon from P.O. LORENZ' possession at 0524 hrs. Recovered was (1) one Glock, Model 26, semi automatic, 9 mm cal, Serial# NNA332, barrel length 3.5 ", with a black finish. The weapon contained a black 9mm Glock magazine with 5 live rounds and one in the chamber. The chambered round was a (1) FC 9mm Luger cartridge. The magazine held (2) Speer Luger 9mm rounds and (3) FC 9mm Luger rounds. The weapon was inventoried accordingly by the crime lab (see crime lab processing report).

Detectives DeSALVO# 20779 and CONLEY# 21223 BT 5315 were assigned to assist in the investigation and directed to Mount Sinai Hospital where they were met by [REDACTED] who identified herself as a witness to this incident. Detective M. LEAVITT relocated to Mt Sinai and transported [REDACTED] to Area North so she could continue to cooperate with this investigation.

Dets DeSALVO and CONLEY located Rekia BOYD who was in bed #2 of the Emergency Room. BOYD was being treated by DR. SINGH for a single gunshot wound to the left side of her head. BOYD was listed in critical condition.

Dets DeSALVO and CONLEY located offender [REDACTED] in bed #20 of the Emergency Room. [REDACTED] was being treated by DR. PITZELE for a single gunshot wound (graze) to his right hand in the palm. [REDACTED] was in good condition and would be treated and released.

Detectives DeSALVO and CONLEY subsequently learned the identity of the previous unknown male black that accompanied [REDACTED]. DeSALVO and CONLEY learned his name to be [REDACTED] (IR# 1349494).

Bt. 5802 PFI BRASIC# 10201 and PFI SMITH# 17100 arrived at Mt Sinai Hospital and met with Dets DeSALVO and CONLEY in continuance of this investigation.

At 0315hrs Bt. 5802 conducted a swab of [REDACTED] left hand utilizing gunshot residue collection kit# 12-032. Beat 5802 was unable to perform GRS on [REDACTED] right hand due to injury, treatment, and bandages on the right hand of [REDACTED] related to detectives that he was right-handed. Bt. 5802 then collected the clothing that [REDACTED] was wearing, being one pair gray "Nike" gym shoes, one pair white socks, one pair black denim pants, one black leather belt, one white sleeveless tee-shirt, and one white tee-shirt with logo.

At 0347hrs Bt. 5802 conducted a swab of BOYD'S left and right hands utilizing gunshot residue kit# 12-033. Bt. 5802 then collected the clothing that BOYD was wearing. One pair "Nike" gym shoes, one pair blue denim shorts, one blue denim vest, one white leather belt, and one tan belt. BOYD was then transferred to ICU room# 285. Mt. Sinai security tendered a plastic bag containing a T-Mobile cell phone, Illinois ID card# [REDACTED], a LINK card# 6014532042254493954, a Social Security card# [REDACTED] and a Birth certificate, Birth# [REDACTED] all belonging to and recovered from Rekia BOYD. These items were tendered to Det. DeSALVO and inventoried under inventory# 12568061.

At 0400hrs [REDACTED] approached Detectives DE SALVO and CONLEY at Mount Sinai

Hospital. [REDACTED] identified himself as being in the park at the time of this incident. [REDACTED] related that [REDACTED] is his brother, although they are not related. [REDACTED] related that [REDACTED] came to the park in a silver "Jeep" style car/truck. [REDACTED] was with a taller male black and two girls. [REDACTED] only knew [REDACTED]. After about (20) twenty minutes [REDACTED] left the park on foot with the male black and two female blacks. Approximately (5) five minutes later he heard (5) five gunshots. [REDACTED] left the park and went to the direction of the shooting and saw [REDACTED] sitting on the ground resting against a pole.

R/Ds Heerdt and Regal began the effort of reviewing the PCAD record OEMC 911 calls made in regards to this incident.

At 2351 hours, on 20MAR2012, a 911 call came in of "Huge party in the street. People are loud wild drinking drugging NFI." This call was later determined to be from victim officer SERVIN from his cellular phone ([REDACTED]).

On 2315 hours, on 20MAR2012, a 911 call came in of "group of people hanging out in front drinking." At 2350 hours, on 20MAR2012, a 911 call came in of "eta info only-NFI." Both of these calls were from ([REDACTED]) and are the subject of an interview of [REDACTED] contained in the canvass portion of this report.

At 0115 hours, a call was received stating, "someone shot, 12 shots were fired, CFD on the scene." The PCAD indicated that the call originated from the US Cellular number [REDACTED]. R/Ds noted the sequence of numbers as not being valid due to the prefix of 911. Further inquiry with Sgt. C. Galich of the ARP (311 Center) revealed that the number this caller was using was stolen service and the caller is therefore unidentified.

At 0502 hours, R/D Heerdt attempted to contact the nameless caller on the PCAD 911 record from his personal cellular phone. The PCAD report indicated the Cricket caller called from [REDACTED] at 0108 hours (Male caller said there is a person shot, transferred caller and he hung up, call back, voicemail, No further information). A male answered the phone at which time R/D Heerdt identified himself and asked the caller if he would speak to R/D about this incident. The male stated that he did not see the shooting, that he heard the shots, ran over and saw a girl on the ground. At this time, R/D Heerdt asked the male caller for his name and personal information. The male refused to provide R/D with any personal identifying information and said that he did not want anything to do with this. At this time, the caller hung up with R/D.

At 0504 hours, R/D Heerdt attempted to contact the nameless caller on the PCAD 911 record from his personal cellular phone. The PCAD report indicated the T-Mobile caller called from [REDACTED] at 0108 hours (4-5 shots fired) and at 0112 hours (caller would like the police to check out the alley between 15th Street and 15th Place regarding the shots fired). The call went to a voice mail message that indicated the phone owner was a [REDACTED]. R/D left a voice message and contact information, requesting the person to call him in regards to his 911 calls. R/D made multiple additional attempts to make contact via telephone without success. R/D conducted a computer inquiry of the name [REDACTED] and discovered a person of that name living at the address of [REDACTED] on the 2nd floor.

[REDACTED]
Was interviewed at Area North by Detective MATIAS. [REDACTED] was given her witness advisory, stated that she understood, and related the following in essence and not verbatim. [REDACTED] stated

that she was in contact with her old friend Rekia who she also knows as "China". [REDACTED] stated that she was communicating back and fourth with Rekia all morning long on the 20th figuring out where they are going to meet later in the evening. [REDACTED] stated that she met up with Rekia and another male named [REDACTED] at [REDACTED] at 7PM to go out for the night. [REDACTED] stated that they then went in [REDACTED] vehicle to another location near 76th and Damen and they picked up one of [REDACTED] male unknown friend. [REDACTED] stated that they went to get gas nearby then drove around for a while.

[REDACTED] stated that they then drove by 87th and Cottage sometime between 8-10 PM. [REDACTED] stated that they walked to a Citgo gas station and met with [REDACTED] and another unknown male black. [REDACTED] stated that the men were driving a silver truck. [REDACTED] stated that Rekia had set up the meeting with [REDACTED] and the other man throughout the evening and that she had previously seen the men before.

[REDACTED] stated that they all drove to the Garden State liquor store at 59th and State and the unknown male entered the store and bought a bottle of Jose Cuervo tequila. [REDACTED] stated that they drove to 45th street near King Drive and parked and drank a little of the tequila.

[REDACTED] stated that they became bored and they decided to go out west by Douglas Park by Albany and Douglas to see what was going on. [REDACTED] stated that Rekia needed to use the bathroom and [REDACTED] herself and different guys that were at the park went to one of the guys nearby house to use the bathroom. [REDACTED] stated that they returned to the park and [REDACTED] and his friend were not happy that the woman left with other men.

[REDACTED] stated that Rekia, [REDACTED] and the other male friend decided to walk to a local convenient store to buy cigarettes. [REDACTED] stated that [REDACTED] and his male friend walked ahead of them. [REDACTED] stated that they walked on the westbound on 15th place on the north side of the street, on the sidewalk. [REDACTED] stated that Rekia was standing to the right of [REDACTED] and [REDACTED] was walking a few steps of Rekia and the other male was walking a few steps ahead of her. [REDACTED] stated she noticed a black vehicle coming down the alley southbound towards 15th place just west of Albany. [REDACTED] stated that the vehicle stopped at the edge of the alley just before hitting the street blocking the sidewalk as they approached. [REDACTED] stated that the vehicle was being driven by a male white driver. [REDACTED] stated that as the men walked around the vehicle the white guy said "you guys have to be quiet". [REDACTED] stated that the unknown male black friend and [REDACTED] turned around as they passed the vehicle and faced the passenger's side of the vehicle. [REDACTED] stated that vehicle's front windows were open. [REDACTED] stated that the unknown male black began to yell "fuck you" repeatedly at the white driver. [REDACTED] stated that she did not remember hearing [REDACTED] say anything. [REDACTED] stated that she focused on the unknown male black yelling and she did not see anything in his hands. [REDACTED] stated that she did not see if [REDACTED] had anything in his hands. [REDACTED] stated that she suddenly heard several shots and she began to run westbound. [REDACTED] stated that she turned around and noticed the vehicle was pulled up bit further going towards Albany and the white male was shooting over his shoulder from within his vehicle towards them.

[REDACTED] stated that she ran and hid behind some trees and after the shooting stopped she noticed that her friend was shot in the head.

At 0600 hours, Sgt. J. Roberts, Detective Ed Heerdt, Detective Neil Francis, and Detective Swiderek re-located to 4119 W. Wilcox Street and located [REDACTED], [REDACTED], and [REDACTED].

██████████ R/D explained the circumstances of this incident and requested each to come to Area North to assist in this investigation. Each agreed to come and transportation was provided for each to Area North.

At 0625hrs ██████████ was released by DR. PITZELE and given orders to take medication every (6) six hours and provided ██████████ with prescriptions for each medicine. ██████████ was given his first dose of each prescription at the hospital at 0615hrs. ██████████ was then transported to Area North by Bt. 1034R. ██████████ took an additional dose of his medicines at 1230 hours as instructed per the prescription instructions. ██████████ also changed his wound dressings and applied the cleansing agent as directed.

██████████

At 0740 hours Detectives Heerdt and Conley entered Interview Room A at Area North Detective Division and introduced themselves to ██████████. R/D Heerdt advised ██████████ of his Miranda warnings per memory to which ██████████ stated that he understood his rights and agreed to talk to Detectives about this incident. ██████████ stated that he was with his friend ██████████ and two females walking W/B on 15th Place from Albany Avenue. ██████████ stated that he and the others in the group walked up to the mouth of the alley where a black car, driven by a white male was coming out of the alley onto 15th Place. ██████████ stated that the driver of the black car (now known to be SERVIN) asked him a question which ██████████ did not completely understand. ██████████ stated that SERVIN'S driver's side window was down at the time and that the female who ended up shot (Rekia BOYD) cracked some kind of a joke at SERVIN. ██████████ stated that he believed that SERVIN was asking for dope and told SERVIN, "We don't have it. Keep on going."

██████████ clarified that just prior to saying this to SERVIN, he was holding his cellular phone up to his right ear with his right hand. ██████████ stated that as he said the aforementioned statement to SERVIN, he lowered the cellular phone from his right ear and used his right hand (including the cellular phone) to point the cellular phone straight out at SERVIN and wave the phone at SERVIN in a way to tell him to keep moving. ██████████ added that he extended his arm toward SERVIN and waved the right hand and phone multiple times at SERVIN. ██████████ demonstrated the motion numerous times to R/Ds, showing that he pointed the phone straight toward SERVIN just prior to making the waving gesture as ██████████ indicated. ██████████ stated that he may have motioned forward toward SERVIN slightly as he waved the phone at SERVIN. R/D asked ██████████ who he was on the phone with during the aforementioned use of the phone. ██████████ stated that he was not talking to anyone at the time because it was a 'dead' call which ██████████ described as a call that did not go through when dialed by him. ██████████ stated that he then heard 4-5 gunshots and began to run W/B on 15th Place with ██████████ toward Kedzie.

According to ██████████, he observed a marked police car near Kedzie and 15th Place and flagged down the officers, informing the officers that he had been shot and showing his hand injury. ██████████ pointed out SERVIN and his car down the block at which time the police drove down the block and encountered SERVIN. ██████████ stated that he walked down the block, returning to the scene and sat at the curb of the mouth of the alley. ██████████ stated that he was asking for his phone and then went over and picked up his phone from the ground at the mouth of the alley until a police officer told ██████████ to put the phone back on the ground. ██████████ complied with the order of the officer and put the phone back on the ground. ██████████ stated that the female ██████████ told him that he had been shot by a police officer, prompting ██████████ to ask SERVIN why he shot him. ██████████ stated that he did not know if ██████████ said anything to SERVIN prior to the shooting. R/D asked ██████████ if he ever saw a knife at anytime during the incident or if he himself had a knife in his possession at

any time. [REDACTED] denied seeing, possessing, or knowing about any knife during the entire incident he described. [REDACTED] concluded his interview by stating that he understands how the officer could have thought that he was pointing a gun at him based on his own actions that he articulated to R/Ds. R/D Heerdt asked [REDACTED] what he did with the gun the officer saw in his hand. [REDACTED] stated that he did not have a gun.

At 0750hrs, on 21MAR2012, Det. DeSALVO interviewed [REDACTED] in room "D" at Area North. Detective DeSALVO gave [REDACTED] his witness advisory and [REDACTED] stated he understood. The following is a summary of that interview.

[REDACTED] related that he is on Home Monitoring as a condition of release from Cook County Boot camp and is wearing an ankle bracelet. [REDACTED] related that on 20 Mar 2012 he was home and went to bed at approximately 2100hrs. [REDACTED] related that he did not leave his room during the night, until the police came to the house. [REDACTED] related that the police asked him if he knew [REDACTED] and he lied to the Police saying that he didn't know [REDACTED]. [REDACTED] related that he did not know when or if [REDACTED] left or entered the house and had no conversation [REDACTED]

[REDACTED] was interviewed by Det. SWIDEREK on 21 MAR 12, on the second watch at Area North. [REDACTED] was advised of his witness advisory to which he stated he understood.

[REDACTED] related the following in essence. [REDACTED] related that he was drinking in Douglas Park with his friend [REDACTED] aka [REDACTED] and two girls. [REDACTED] related that he knew [REDACTED] for three or four years. [REDACTED] related that at approximately 0100 hours on 21 MAR 12, he, [REDACTED], and the two females walked west on 15th PI from the park. [REDACTED] related they were going to the liquor store on 15th and Kedzie.

[REDACTED] related he was walking with [REDACTED] when they passed Albany and were approaching the alley. [REDACTED] related the two girls were just behind them. [REDACTED] related a vehicle was coming out of the alley towards 15th PI. [REDACTED] related the male driver of the car told them, "Keep the fucking noise down." [REDACTED] related he said "Fuck you" to the driver. [REDACTED] related while this occurred the girls continued walking west on 15th PI.

[REDACTED] related he saw [REDACTED] take his cell phone out of his pocket. [REDACTED] related the car in the alley turned left onto eastbound 15th PI. [REDACTED] related that [REDACTED] held the cell phone in his right hand and pointed the cell phone at the driver of the car like he was holding a gun. [REDACTED] related that [REDACTED] began walking quickly towards the car like he was going to shoot the driver. [REDACTED] related that [REDACTED] was trying to scare the guy in the car.

[REDACTED] related he then heard gunshots and began running westbound on 15th PI. [REDACTED] related that the shooting happened because [REDACTED] pointed his cell phone at the driver like he had a gun. [REDACTED] related that [REDACTED] caught up to him and told him that he was shot in the hand. [REDACTED] related that after the police arrived and put the tape up, he and [REDACTED] returned to the scene. [REDACTED] related that [REDACTED]' cell phone was lying in the alley behind the crime scene tape. [REDACTED] related that [REDACTED] told him to pick the cell phone up. [REDACTED] related he told [REDACTED] that he

would not pick up the cell phone because it was evidence. [REDACTED] later spoke with ASA J. LATTANZIO and gave essentially the same account he gave R/D.

[REDACTED] was interviewed by Det. LEAVITT and Det. MATIAS and should be considered in essence and not a verbatim statement. [REDACTED] was given her witness advisory to which she stated she understood.

[REDACTED] stated that she has been dating [REDACTED] for approximately (4) years. [REDACTED] stated that when [REDACTED] arrived home on today's date he stated to her that someone was shooting at him. When [REDACTED] asked [REDACTED] what had happened [REDACTED] stated to [REDACTED] that a guy came out of a building and told them to keep quiet. [REDACTED] related that [REDACTED], kna [REDACTED], had a cellular phone in his hand and pointed it at the guy who came out of a building and told them to be quiet, pretending that the cellular phone was a gun. [REDACTED] stated that [REDACTED] demonstrated for her how [REDACTED] was pointing the cellular phone pretending it to be a gun. [REDACTED] then showed Detectives Leavitt and Matias how [REDACTED] held his hand out with a cellular phone, just as [REDACTED] did to the guy who came out of the building and told them to keep quiet. [REDACTED] then stated to [REDACTED] that he heard gunshots, and that [REDACTED] got shot in the hand. [REDACTED] stated that [REDACTED] and [REDACTED] ran. [REDACTED] could not provide R/D's with additional information.

During the 2nd watch, on 21MAR2012, Detectives J. Fuller and D. Amato were assigned to assist in the locating and notifying family members of Rekia BOYD as to her whereabouts and condition. R/Ds Fuller and Amato, using department resources, were able to make contact with [REDACTED] ([REDACTED] Dolton, IL 60419/[REDACTED]) brother of Rekia BOYD and made the appropriate notification.

R/Ds notified Felony Review, seeking Aggravated Assault with Firearm to Police Officer charges. At 0830 hours, ASA Joe Latanzio arrived in Area North Detective Division and began his inquiry into this matter by reviewing all available reports. ASA Latanzio interviewed officers and witnesses and conducted handwritten statements with witnesses [REDACTED] and [REDACTED]. ASA Latanzio conducted an oral interview with [REDACTED]

On 21 Mar 12, at 1750 hrs Felony Review ASA Joseph LATTANZIO formally rejected the felony charge of Aggravated Assault with Firearm To Police Officer. Aggravated Assault charges were placed upon arrestee [REDACTED].

On 26MAR2012, R/Ds submitted a request to the Chicago Police Department Telephone Liaison Unit, requesting the phone records for offender [REDACTED]

On 27MAR2012, R/D Heerdt spoke to victim Officer SERVIN via telephone during which time SERVIN related that he discovered damage to the interior driver's side door frame of his 1996 Mercedes vehicle involved in this incident. SERVIN added that the damage was new and that the damage did not exist prior to this incident. SERVIN made arrangements with R/D to meet at Homan Square at 0830 hours on 28MAR2012 for the purpose of R/D assessing the damage and determining a proper course of investigative action to follow.

On 28MAR2012, at 0830 hours, R/Ds Heerdt and Regal met with SERVIN in the west parking lot of the Homan Square police facility. R/Ds were directed to the vehicle damage described by SERVIN.

R/Ds noted the damage to be a hole, approximately the size of a dime (USC), on the lower portion of the driver's side inner door molding. R/Ds suspected the hole may have resulted from the gunshots fired by victim SERVIN during this incident based on the position of the damage and the account of SERVIN as to the direction he fired his weapon. This portion of the driver's side door is the vertical molding that is adjacent the frame adjacent to the rear driver's side door. R/Ds did not observe any suspect exit holes near or around the area of the damage. R/Ds notified Mobile Crime Lab and requested a unit to photograph the damage and process the vehicle to determine if any firearm evidence remained inside the door. Beat 5801 (F/I Huels #9601) was assigned and arrived on the scene at approximately 0900 hours and took photographs of the exterior of SERVIN'S vehicle as well as the aforementioned interior damage. F/I Huels removed and opened the driver's side door panel near the damage and did not discover any firearms/ballistic evidence inside the door molding. Furthermore, R/Ds noted the lack of any damage beneath the plastic molding (near the hole) that would indicate a bullet had passed through the hole in the molding.

On 04APR2012, at 1000 hours, R/Ds Heerd, Regal, and Sgt. J. Roberts attended the Major Case Review for this case at the Illinois State Police Crime Lab. During the review, it was agreed upon that the following evidence be worked up:

- (5) 9mm cartridge casings (Firearms Unit)
- (1) 9mm Glock 26, 1 magazine, and 6 live Luger rounds (Firearms Unit)
- (1) 9mm Glock 26 recovered from victim officer SERVIN (Firearms Unit)
- (1) Sealed bullet envelope of bullet recovered from Rekia BOYD (Firearms Unit)
- (1) GSR Kit (#12-032) administered to [REDACTED] (Trace Unit)
- (1) GSR Kit (#12-033) administered to Rekia BOYD (Trace Unit)
- (1) Wooden handled folding knife (Latent Unit)

On 01MAY2012, R/D Heerd received a Maxell DVD of the images from the CPD in-car camera for marked vehicle Beat 1022R. R/D viewed the images which showed Beat 1022R traveling N/B on Kedzie and turn right to proceed E/B on 15th Place at approximately 0104 hours. At approximately 3150 W. 15th Place, offender [REDACTED] can be seen running up to Beat 1022R, waving his arms apparently attempting to flag down the police car. R/D also observed a male black (now known to be witness [REDACTED]) walking W/B on the north sidewalk of 15th Place, at about the same location as [REDACTED] who was now in the street. Beat 1022R stops their vehicle momentarily at 1:04:58 as [REDACTED] approached the driver door of Beat 1022R. At this time, [REDACTED] goes out of view of the in-car camera, apparently speaking to the officers assigned to Beat 1022R through the driver window. Seconds later, Beat 1022R proceeds E/B on 15th Place, arriving on the scene where victim Detective SERVIN can be observed and is approached by the officers on Beat 1022R. At this time, Beat 1022R begins their preliminary investigation into this matter. The aforementioned DVD for in-car camera images has been inventoried under CPD inventory #12601122.

On 03MAY2012, at 0800 hours, R/Ds Heerd and Regal re-located to [REDACTED] and located [REDACTED]. [REDACTED] affirmed that he was the 911 caller on the PCAD and agreed to be interviewed in regards to this incident. In essence, [REDACTED] stated that he was home in bed, almost asleep when he heard approximately "6 shots in row" from outside his home. [REDACTED] stated that he called 911 right away from his cellular phone and then walked over to his dining room window (along the east wall of his house) overlooking the vacant lot to the east of [REDACTED] building. [REDACTED] stated that he observed a male black running W/B on the north sidewalk of 15th Place in front of the aforementioned vacant lot. [REDACTED] stated that his dining room was open and heard the male black say, "I've been shot." [REDACTED] stated that the male black was holding his hand by the front gate proceeding W/B out of [REDACTED] line of sight. [REDACTED]

stated that he then walked over to the front living room window of his house (overlooking the front of his residence) and was able to see the male black stopped by the alley (just west of [REDACTED] building). [REDACTED] stated that the male black flagged down a police officer in a marked police car on 15th Place, was pointing E/B and saying, "This guy shot me." The marked squad car drove E/B on 15th Place, leaving the male black in front of the alley just west of [REDACTED] house. [REDACTED] stated that he remained in his living room looking out the window. Moments later, according to [REDACTED] he observed the male black who was holding his hand, walking E/B back toward the scene, accompanied by a single person (unknown race) who [REDACTED] believes was a plain-clothes police officer. [REDACTED] stated that the two males were walking toward the scene, via the street, and the male holding his hand was saying, "There he is" and "He is getting away." [REDACTED] stated that he walked down his front stairs to the front outside porch where he saw the ambulance arrive on the scene, tend to the female on the ground, place her on the "stretcher" and carry her to the ambulance. [REDACTED] stated that he could see blood coming from the female's face and observed that paramedics place the female into the ambulance.

R/Ds asked [REDACTED] about the second call he made to 911 in regards to requesting the police to check the alley between 15th Place and 15th Street. [REDACTED] stated that he does not remember exactly when he made the second call to 911, just that he thought the police were slow to respond and that he thought his first call was not taken seriously. [REDACTED] stated that he made the second call in response to voices (approximately 5) he heard in the alley behind his house just after he heard the shots and looked out his east window. [REDACTED] stated that the alley he was referring to was very dark and [REDACTED] stated that he was unable to see anything back there. [REDACTED] stated that his concern was that the voices in the alley made him think they might be involved and he just wanted the police to check it out.

On 03MAY2012, at 0830 hours, R/Ds Heerdt and Regal re-located to the address of 1684 S. Albany Avenue and met with a 911 caller from this incident ([REDACTED], M/1/34, D.O.B.: [REDACTED] 1978, [REDACTED]). [REDACTED] affirmed that he made a 911 call to police on 21MAR2012, at 0024 hours, complaining of people drinking, making noise, throwing bottles on the ground, across the street from his house, in Douglas Park near Pope School. [REDACTED] stated that this type of disturbance is common in the park in the late night hours. [REDACTED] stated that he did not hear any shots on that day, adding that he is aware of the incident where the police got into a shooting down the block. [REDACTED] stated that he learned about the police shooting on the news the following day. [REDACTED] stated that he did not see anyone in the group across the street from his house in possession of a gun when he called the police. R/Ds noted the fact that [REDACTED] residence is approximately 2 blocks south of the scene of this incident.

On 03MAY2012, at approximately 0845 hours, R/D attempted to re-contact PCAD caller from 708-582-0216 who told R/D on 21MAR2012 that he did not want to get involved and refused to identify himself. The call went directly to operator prompt indicating that the phone number called was not a valid number. R/D requested phone subscriber information and phone records for the aforementioned phone number in furtherance of this investigation.

With the aforementioned facts the reporting detective requests that this case be classified as Cleared Closed by Arrest and Prosecution.

Report by:
Detective Mark Regal & Detective Ed Heerdt

STATEMENT OF DETECTIVE DANTE SERVIN

CONDUCTED BY INVESTIGATOR WHITE AND SUPERVISOR HUNT
AND GENERAL COUNSEL MUELLENBACH

ON AUGUST 17, 2015 AT 1125 HOURS

AT THE INDEPENDENT POLICE REVIEW AUTHORITY'S OFFICE

LOG# 1052718
Attachment 200

1 WHITE: This is the audio recorded statement of Detective
2 Servin regarding Log number 1052718 the U number
3 is 12 dash, 0 9. The interview is being taken at
4 IPRA which is at 1615 West Chicago Avenue on
5 today's date August 17th, 2015 and the time right
6 now is 1125 hours. My name is Investigator
7 LaKenya White, that's L A capital K E N Y A.
8 Last name is White, W H I T E, my star is 1 2 2
9 and I'll be conductin' the statement. Also
10 present in the statement is?

11 HUNT: Supervisor Josh Hunt, that's J O S H, H U N T, my
12 star is 28.

13
14 WHITE: And also present is?

15 MUELLENBACH: Eric Muellenbach, M U E L L E N B A C H,
16 General Counsel with the Independent Police
17 Review Authority.

18
19 WHITE: Okay now uh off, I'm sorry Detective Servin
20 before we begin the statement the digital
21 recording device that is bein' used to record
22 your statement is very sensitive and will pick up
23 any whispered conversations in its proximity. If
24 you would like to request a break durin' this
25 statement you may do so verbally by statin' you
26 would like a break or non-verbally by raisin'
27 your hand. Do you understand?

28 DET.SERVIN: Yes ma'am.

29

30 WHITE: Can you please state and spell your first and
31 last name for me please?

32 DET.SERVIN: Dante Servin, D A N T E, S E R V I N.

1

2 WHITE: And Officer what's your star number?

3 DET.SERVIN: Star number is 2 11 33.

4

5 WHITE: And your unit of assignment?

6 DET.SERVIN: 376 currently.

7

8 WHITE: Okay. And what's your current age?

9 DET.SERVIN: 47.

10

11 WHITE: And your date of birth?

12 DET.SERVIN: [REDACTED] 1968.

13

14 WHITE: And what is your day of appointment to the
15 Department?

16 DET.SERVIN: 16 December 1991.

17

18 WHITE: And how long have you been assigned to your
19 present unit?20 DET.SERVIN: Approximately a year and a half, two years
21 maybe.

22

23 WHITE: Okay. And um prior to bein' at Unit 376 where
24 were you at?25 DET.SERVIN: I was assigned to Unit 610. And prior to
26 that I was assigned to Area 4.

27

28 WHITE: Okay. And Unit 610 how long were you um assigned
29 to Unit 610?30 DET.SERVIN: Hmm I'm guessing six months, half a year.
31 Nine months.

32

1 WHITE: And what about Area 4?

2 DET.SERVIN: Uh three to four years possibly.

3

4 WHITE: Okay.

5 DET.SERVIN: And prior to that 10th District.

6

7 WHITE: Okay. Officer Are you aware that this statement
8 has the standing of an official Department
9 report? And that any falsification of any answer
10 to any question would be in direct violation of
11 Department rules and regulations?

12 DET.SERVIN: Yes.

13

14 WHITE: Given that I would like to remind you that
15 failure to provide a complete and accurate
16 statement could result in a finding of a
17 violation of Rule 14 and disciplinary action up
18 to and including separation do you understand?

19 DET.SERVIN: I do.

20

21 WHITE: Have you been advised in writin' of the pacific,
22 specific allegations made against you, the name
23 of the complainants, the date and time of the
24 incident and your administrative proceeding
25 rights?

26 DET.SERVIN: I have.

27

28 WHITE: Are you represented by counsel of your choosing?

29 DET.SERVIN: I am.

30

31 WHITE: I'm gonna ask counsel to identify himself for the
32 record.

1 O'BRIEN: Darren O'Brien.

2

3 WHITE: Uh can you spell that for me sir?

4 O'BRIEN: D A R R E N, O apostrophe capital B R I E N.

5

6 WHITE: Okay and Officer are you prepared to give a
7 statement today?

8 DET.SERVIN: I am. Prior to my statement I'd like to
9 state that uh this statement's not being given
10 voluntarily but under duress. I'm only givin'
11 this statement at this time because I know that I
12 can loose my job if I refuse to give a statement
13 at this time.

14

15 WHITE: Okay. And Detective Servin I'm gonna ask you
16 what was your duty status on the 21st of March
17 2012?

18 DET.SERVIN: I took the day off of work to work for the
19 Board of Elections.

20

21 WHITE: Okay. And did you work the day before uh March
22 20th?

23 DET.SERVIN: I did.

24

25 WHITE: Okay you recall what time?

26 DET.SERVIN: Afternoons.

27

28 WHITE: Afternoons. I'm gonna show you Attachment number
29 171 it's Attendance and Assignment record. Tell
30 me what time you worked that day? Or if you
31 worked at all that day.

1 DET.SERVIN: This indicates I worked days on, on the 20th
2 is that, am I interpreting this correctly?

3

4 WHITE: We're gonna pause a second. (recorder off/on)
5 Okay we're gonna continue the statement. You
6 wanna make a clarification?

7 DET.SERVIN: I wanna clarify that I did not work on the
8 20th of March.

9

10 WHITE: And --

11 DET.SERVIN: 2012.

12

13 WHITE: -- and you did not work on the 21st either
14 correct?

15 DET.SERVIN: I did not.

16

17 WHITE: Okay can you tell me what were you doin' on the
18 21st of March 2012?

19 O'BRIEN: The 20th.

20 DET.SERVIN: The 20th.

21

22 WHITE: The 20th, I'm sorry the 20th.

23 DET.SERVIN: On the 20th of March 2012 I took a day off
24 work to work for the Board of Elections as an
25 investigator. And I was uh assigned initially to
26 69 West Washington.

27

28 WHITE: Okay.

29 DET.SERVIN: And um some time in the afternoon they sent
30 me to Walter Payton High School and I fulfilled
31 my obligations with them. Uh last of which were
32 to drop off 2 election judges at 69 West

1 Washington at approximately 11:00 o'clock, 11:30
2 PM possibly. Somewhere around that time. And
3 then I went home.

4

5 WHITE: Okay. So on the 20th of March uh what time did
6 you wake up that mornin' do you recall?

7 DET.SERVIN: Had to be about 4 in the morning.

8

9 WHITE: Okay.

10 DET.SERVIN: 4:15.

11

12 WHITE: And what time did you have to be at work?

13 DET.SERVIN: Five.

14

15 WHITE: Five. And you get off at what time
16 approximately?

17 DET.SERVIN: 'Bout 11.

18

19 WHITE: 'Bout 11. Okay. And when you got off a work uh
20 where did you go?

21 DET.SERVIN: Home.

22

23 WHITE: Okay where's your home located?

24 DET.SERVIN: [REDACTED]

25

26 WHITE: And how long have you been stayin' at that
27 residence?

28 DET.SERVIN: At that time?

29

30 WHITE: Yes at that time.

31 DET.SERVIN: At that time probably 'bout seven or eight
32 years.

1

2 WHITE: Okay do you still reside there now?

3 DET.SERVIN: I do.

4

5 WHITE: Okay. Um the location uh can you describe the
6 area for me please?

7 DET.SERVIN: Um my house is in front of Douglas Park.

8

9 WHITE: Okay. And Douglas Park is it a popular park or
10 what?

11 DET.SERVIN: It's a, it's a public park.

12

13 WHITE: It's a public park, okay. Do a lotta people
14 hang out there?

15 DET.SERVIN: Sometimes they do.

16

17 WHITE: Okay so when you came home tell me whaddid you do
18 when you came home?19 DET.SERVIN: When I came home I initially tried to get
20 home uh from on Albany from Douglas, from Douglas
21 Boulevard which is 14th Street.

22

23 WHITE: Okay.

24 DET.SERVIN: But there were cars that were double, triple
25 parked. There had to be two, three hundred
26 people outside drinking, smoking weed and
27 drinkin' alcohol. And, and partyin'.

28

29 WHITE: Okay.

30 DET.SERVIN: So I couldn't get home that way so I went
31 around Sacramento and came back, came in from
32 Ogden and [REDACTED], the wrong way on [REDACTED]

1

2 WHITE: Okay.

3 DET.SERVIN: Toward my house.

4

5 WHITE: Okay. Um --

6 DET.SERVIN: Made a left on 15th Place and then I went and
7 parked my car inside my gate.

8

9 WHITE: Okay.

10 DET.SERVIN: I noticed that there were so many people and
11 it sounded like there was gonna be a fight. The
12 language was, was getting loud and aggressive so
13 I called the police.

14

15 WHITE: So let me stop you. And I am gonna stop you from
16 time to time --

17 DET.SERVIN: Sure.

18

19 WHITE: -- because I wanna get as many details as I can.
20 Um the people that were in the park are they
21 right across the street, are they in the middle
22 of the park? How far are they from your home and
23 the park?24 DET.SERVIN: Well it started that, from my memory they
25 started on Douglas and from Douglas to 15th Place
26 and maybe even slightly passed 15th Place along
27 Albany double and tripled parked cars. So when
28 you ask that question, uh for my vantage point
29 two, two blocks, two and a half blocks, 14th, 15th
30 Place, block and a half.

31

32 WHITE: A block and a half.

1 DET.SERVIN: A block and a half.

2

3 WHITE: Okay. So were they deep in the park? Meanin' --

4 DET.SERVIN: Well there's a parkway from my house.

5

6 WHITE: Okay.

7 DET.SERVIN: So they were in the middle of Albany.

8

9 WHITE: Okay.

10 DET.SERVIN: In cars.

11

12 WHITE: Okay.

13 DET.SERVIN: On foot.

14

15 WHITE: Okay.

16 DET.SERVIN: And in the park as well. In, in the play
17 lot, there's a play lot on 15th they were in the
18 play lot and they, they, there were some people
19 from my house as well. But I mean when I say in
20 front of my house at this point they were in the
21 park.

22

23 WHITE: Okay.

24 DET.SERVIN: On the sidewalk at this point.

25

26 WHITE: Okay.

27 DET.SERVIN: That I noticed.

28

29 WHITE: And I know that you stay over there. Have you
30 patrolled this area before?

31 DET.SERVIN: I did.

32

1 WHITE: Okay. Made arrests in this area before?
2 DET.SERVIN: I have.
3
4 WHITE: So you're quite familiar with this area correct?
5 DET.SERVIN: I am.
6
7 WHITE: Okay. So you go park your car correct?
8 DET.SERVIN: Yes.
9
10 WHITE: And whadda you do after that?
11 DET.SERVIN: I go in the house, I call the police and I
12 explain to them about the party. And I tried to
13 uh, I think I said two, three hundred people. I
14 tried to give them an indication as to what I
15 observed.
16
17 WHITE: Okay.
18 DET.SERVIN: What I, what I heard, what I smelled.
19 Think I said there were, there were people
20 smokin' drugs, drinking. And I think I said uh I
21 felt something bad was gonna happen send a squad
22 car.
23
24 WHITE: Okay and I'm gonna pause for a second. (recorder
25 off/on) Okay we're gonna continue. I'm just
26 gonna read back a portion of what was said durin'
27 that 9 1 1 call is that okay with you? And you
28 can let me know if this sounds accurate or not.
29 Um you stated that there was a huge party in the
30 1400 to 1600 block of South Albany and people
31 were drinking, fighting and smoking drugs. Uh
32 you went on to say that it, meaning party was

1 outta control and that he was afraid. Meaning
2 you, that you were afraid that something bad was
3 going to happen. Does that sound familiar?
4 DET.SERVIN: It sounds (inaudible)
5
6 WHITE: Okay now what did you mean by you believe that
7 somethin' bad was gonna happen?
8 DET.SERVIN: Based on the tone of the people that were
9 arguing I thought somebody was gonna get beaten
10 or shot or worse.
11
12 WHITE: Okay and what was the tone?
13 DET.SERVIN: Uh they, I heard yelling, fighting. They
14 were getting loud, aggressive. Uh my instinct as
15 a police officer with my experience I believed
16 that it was gonna blow up, quote unquote. Like
17 there was gonna be a big fight or shooting or
18 something bad.
19
20 WHITE: Okay did you hear anything in particular that
21 alerted you that it was a fight about to take
22 place or somethin' was --
23 DET.SERVIN: Nothing specific comes to mind at this time,
24 no.
25
26 WHITE: Okay. And the number that you called from um [REDACTED]
27 [REDACTED] does that sound familiar to you?
28 DET.SERVIN: That's my cell phone.
29
30 WHITE: That's your cell phone?
31 DET.SERVIN: Yes.
32

1 WHITE: Okay. So you made this call and then what
2 happens?

3 DET.SERVIN: Then I spoke on the phone with some people.
4 Took a shower left the house and as I was getting
5 into my car I, this is when I saw two men and two
6 women directly in front of [REDACTED] South Albany
7 which is the adjacent yard to my house. And
8 there were still people in the park, but there
9 were less people in the park now.

10

11 WHITE: Okay.

12 DET.SERVIN: So I believe that the squad car prob'ly came
13 by and got rid of most of 'em.

14

15 WHITE: Okay. So let me stop you, you made this phone
16 call at 2351 hours does that sound accurate to
17 you?

18 DET.SERVIN: Is that the first phone call?

19

20 WHITE: Yes.

21 DET.SERVIN: That's possibly right.

22

23 WHITE: Okay.

24 DET.SERVIN: Yeah that sounds right.

25

26 WHITE: How long before did you leave your home?

27 DET.SERVIN: About an hour I'm guessing.

28

29 WHITE: An hour.

30 DET.SERVIN: I'm guessing.

31

1 WHITE: Okay and describe the setup of your home if you
2 can please?

3 DET.SERVIN: Yes. Um the very corner is [REDACTED] It, its a
4 vacant lot which, which I own adjacent to my
5 building which is [REDACTED] Behind my building
6 there's a garage and just south of the garage I
7 have a concrete slab where I used to park my car.
8

9 WHITE: Okay do you have a gate or anything around your -
10 -

11 DET.SERVIN: I have a sliding wrought iron gate. Had it
12 on the back, I had it in the rear.
13

14 WHITE: Okay. Any other type a gate around your home?

15 DET.SERVIN: Uh it's fenced off with chain link fence on
16 the sides that's the south. And in the front
17 there's wrought iron.
18

19 WHITE: Okay. Okay. What about any cameras in your home?

20 DET.SERVIN: I have cameras affixed on the exterior.
21

22 WHITE: Okay.

23 DET.SERVIN: Uh the cameras have never worked. They're
24 wireless. And when I bought 'em I think they're
25 called X10, I bought 'em on the internet.
26

27 WHITE: Okay.

28 DET.SERVIN: It cost me 2500 dollars and I had 'em
29 installed and I could never get a signal.
30

31 WHITE: Okay.

32 DET.SERVIN: And uh they never worked ever.

1

2 WHITE: Okay.

3 DET.SERVIN: Never got a picture.

4

5 WHITE: And how long did you have those cameras on the
6 home?

7 DET.SERVIN: Prior to the incident?

8

9 WHITE: Yes.

10 DET.SERVIN: I'm guessing four, five years.

11

12 WHITE: Okay. And you never got 'em to work?

13 DET.SERVIN: I, two different people came to try to fix
14 them.

15

16 WHITE: Okay and those cameras can you tell me where
17 they're located at on your home?18 DET.SERVIN: They're no not exactly. But they're all
19 around.

20

21 WHITE: Okay.

22 DET.SERVIN: I think I have (inaudible) 12 cameras. And
23 once they were installed the idea was to get 'em
24 working and they never functioned.

25

26 WHITE: Okay.

27 DET.SERVIN: So I never got a signal.

28

29 WHITE: Okay. So at some point you decided to leave home
30 correct?

31 DET.SERVIN: Right.

32

1 WHITE: And the reason again is because a what?
2 DET.SERVIN: I was gonna get a bite to eat and then
3 possibly meet somebody.
4
5 WHITE: Okay. And possibly meet whom?
6 DET.SERVIN: A person.
7
8 WHITE: Okay girlfriend, guy what?
9 DET.SERVIN: A girl.
10
11 WHITE: A girl, okay. So you leave home and tell me uh
12 go 'head what happened?
13 DET.SERVIN: I was goin' to Don's Grill on 18th Place and
14 Western get a hamburger.
15
16 WHITE: Okay.
17 DET.SERVIN: That was my idea. So as I come out of my
18 rear door and I'm walkin' toward my car, I hear
19 aggressive language on the sidewalk of 1528
20 South, South Albany.
21
22 WHITE: And I'm gonna stop you right now. Aggressive
23 language what is that?
24 DET.SERVIN: Yelling.
25
26 WHITE: Anything particular?
27 DET.SERVIN: Uh I know there were profanities but I can't
28 remember at this point.
29
30 WHITE: You can't remember the profanities?
31 DET.SERVIN: I, I cannot.
32

1 WHITE: Okay and uh quick thing, can you tell me how you
2 were dressed?
3 DET.SERVIN: I was in civilian, civilian clothes exactly
4 I don't remember what I was wearing.
5
6 WHITE: Okay. Anything, any police attire?
7 DET.SERVIN: Uh my badge on my belt. My holster. My ID
8 and my wallet.
9
10 WHITE: Your ID was in your wallet?
11 DET.SERVIN: Yes ma'am.
12
13 WHITE: What about your weapon?
14 DET.SERVIN: It was on my holster.
15
16 WHITE: It was on your holster.
17 DET.SERVIN: On my right hip.
18
19 WHITE: Your right hip. Okay. So you get in your car,
20 I'm sorry you heard aggressive language is where
21 we were at.
22 DET.SERVIN: I, I heard aggressive language as I walked
23 toward my car and when I looked to, to my left in
24 the front of 1528 South Albany there were two
25 male blacks and two female blacks. They were
26 arguin'.
27
28 WHITE: Okay.
29 DET.SERVIN: It seemed to me like they were arguin'. So
30 I, I heard 'em arguing. I went toward my car, I
31 started the car, I drove it to the rear gate. I
32 unlocked the rear gate and while all this was

1 happening I noticed that the men and women
2 started walking in my direction. From the front
3 of the vacant lot to the rear of the vacant lot
4 along 15th Place.

5

6 WHITE: What sidewalk would that be?

7 DET.SERVIN: The sidewalk, the north sidewalk of 15th
8 Place.

9

10 WHITE: Okay.

11 DET.SERVIN: The men were leading the women by about 10
12 feet.

13

14 WHITE: And let me ask you again, you said you heard
15 arguing correct?

16 DET.SERVIN: At this point, that was initially I heard
17 arguin'.

18

19 WHITE: Okay well at that point right there --

20 DET.SERVIN: Hmm huh.

21

22 WHITE: -- can you recall what the arguing was, the
23 argument was?

24 DET.SERVIN: No.

25

26 WHITE: Okay.

27 DET.SERVIN: During the time that the men made their way
28 toward the alley I was busy opening the gate,
29 takin' out two garbage cans because tom, the next
30 day was gonna be garbage pickup day. So I wasn't
31 really focused on them as much as to what I was
32 doing. I wasn't too concerned about what was

1 goin' on with them. But I understood that the
2 men, it was my, it's my belief that the men were,
3 were berating the women. And uh Antonio Cross
4 was, he was extremely aggressive. He was yelling
5 and he was like kinda swingin' his arms.

6

7 WHITE: Why is it your belief that the men were berating
8 the women?

9 DET.SERVIN: Because of the body language.

10

11 WHITE: What was the body language?

12 DET.SERVIN: The women were about 10 paces behind the men
13 following with their heads down. And I believe
14 that they were consoling one another. They were
15 close, in close proximity to, to one another the
16 two women as the two men led. And, and the men
17 were, were yelling and there was some
18 profanities. And I remember Antonio Cross, the
19 guy on the left was kinda wavin' his arms and
20 swearing.

21

22 WHITE: And when you, what you're just showin' me is like
23 you're goin' up and down with your arms.

24 DET.SERVIN: Right.

25

26 WHITE: Correct? In a bent position correct?

27 DET.SERVIN: Right like kinda flailing or aggressively
28 yelling.

29

30 WHITE: What was the women's uh --

31 DET.SERVIN: Demeanor?

32

1 WHITE: -- body position or demeanor?

2 DET.SERVIN: The women were about 10 paces behind the
3 men. And they were close to one another. That's
4 why I believe they were consoling one another.
5 I, I interpreted all those actions to be that the
6 men were berating the women.

7

8 WHITE: Okay. Okay. So you close your gate or something
9 correct?

10 DET.SERVIN: Well I, I closed, after I let, let, let the
11 garbage cans out, I, I locked my gate. And I
12 was, as I was watchin' 'em they were getting,
13 coming toward the alley. I entered my car, I put
14 the car in drive.

15

16 WHITE: Okay.

17 DET.SERVIN: And as I started to pull away from my rear
18 gate I came to the mouth of the alley.

19

20 WHITE: Okay.

21 DET.SERVIN: At the mouth of the alley this entire time
22 the men were yelling loudly, aggressively. And
23 when I came outta the alley --

24

25 WHITE: Again you can't recall what they were sayin'?

26 DET.SERVIN: I know that they were using profanities but
27 I can't, can't be specific.

28

29 WHITE: Okay. So I'm sorry go ahead.

30 DET.SERVIN: As I came outta the mouth of the alley there
31 were two male blacks at the sidewalk.

32

1 WHITE: And can you identify those males for me today at
2 this moment that you know who -- ?

3 DET.SERVIN: I know for a fact that [REDACTED] was the
4 man on the right. And I believe that it was
5 [REDACTED] on the left.

6

7 WHITE: Okay and I'm gonna spell those names for the
8 record. [REDACTED] Cross, [REDACTED]
9 Mantise, [REDACTED] Stevenson, [REDACTED]
10 [REDACTED] So Mr. Cross and Mr. Stevenson and we can
11 address 'em that way from now on, um they were --

12 DET.SERVIN: Cross and Stevenson.

13

14 WHITE: Yes.

15 DET.SERVIN: Cross, Cross and Stevenson had reached the
16 alley along my fence as I was coming outta the
17 alley.

18

19 WHITE: Okay.

20 DET.SERVIN: And I'm gonna demonstrate this is the alley,
21 this is where my gate is. As I was and I can
22 clearly see through the fence the two men walking
23 and the two women behind them.

24

25 WHITE: And where are they walking, what direction?

26 DET.SERVIN: They're walkin' westbound on 15th Place.

27

28 WHITE: Okay.

29 DET.SERVIN: Along from the front of my building where I
30 had first seen 'em, I exited the back of my house
31 entered my car, got to the gate, opened the gate.
32 As I'm watchin' and opening my gate letting out

1 the garbage cans the group starts coming this
2 way.
3
4 WHITE: Okay.
5 DET.SERVIN: Along the side of my yard.
6
7 WHITE: Okay.
8 DET.SERVIN: With the two men in the lead, and the two
9 women behind them.
10
11 WHITE: Okay.
12 DET.SERVIN: And simultaneously as I'm comin' outta the
13 alley --
14
15 WHITE: And what way are you drivin'?
16 DET.SERVIN: I am driving southbound in the western alley
17 of Albany.
18
19 WHITE: Okay.
20 DET.SERVIN: As I'm driving southbound and I reached the
21 mouth of the alley our paths intersect.
22
23 WHITE: Okay.
24 DET.SERVIN: With [REDACTED] Cross on the left if he's
25 facing westbound and [REDACTED] Stevenson on the
26 right facing westbound.
27
28 WHITE: So it would be safe to say that um Stevenson is
29 north and Cross is south.
30 DET.SERVIN: That's right.
31
32 WHITE: Okay.

1 DET.SERVIN: Right. And from my van, from my perspective
2 in the driver's seat Cross is on my right,
3 Stevenson's on my left.
4
5 WHITE: Okay what about the girls position?
6 DET.SERVIN: The girls were about ten paces, 8 to 10
7 paces behind the men.
8
9 WHITE: And can we identify them for the record. Who you
10 know them to be now?
11 DET.SERVIN: I know one was Rekia Boyd.
12
13 WHITE: Okay.
14 DET.SERVIN: And the other one the other female was [REDACTED]
15 Beamon.
16
17 WHITE: And for the record that's Rekia Boyd, R E K I A,
18 Boyd, B O Y D. Ikca Beamon, [REDACTED] Beamon, B E
19 A M O N. So Ms. Boyd and Ms. Beamon.
20 DET.SERVIN: And I'm not able to tell you where they
21 were.
22
23 WHITE: Okay.
24 DET.SERVIN: Whether left or right.
25
26 WHITE: Okay.
27 DET.SERVIN: So as I reach the sidewalk and they reach
28 the alley, --
29
30 WHITE: Okay.

1 DET.SERVIN: -- from, from a very aggressive yelling and
2 swearing and, and, and body language upon looking
3 at, in my direction both men became quiet.

4

5 WHITE: Okay.

6 DET.SERVIN: My windows were down, my sunroof was open.

7

8 WHITE: Okay.

9 DET.SERVIN: So I must've opened it when I was in the
10 yard.

11

12 WHITE: What type a vehicle are you drivin'?

13 DET.SERVIN: A 19, a black 1996 Mercedes Z220.

14

15 WHITE: Okay. And when you approached the mouth of the
16 alley, um how far are the women behind the men at
17 that point?

18 DET.SERVIN: About ten paces.

19

20 WHITE: Ten paces. Okay.

21 DET.SERVIN: Right. Well they were behind the women the
22 entire length. The women were behind the men the
23 entire, this, from the front to the back is 175
24 feet.

25

26 WHITE: Okay.

27 DET.SERVIN: So the entire length of my yard, the women
28 were behind the men about ten paces.

29

30 WHITE: Okay.

31 DET.SERVIN: That's my guess, 10 paces.

32

1 WHITE: Okay.

2 DET.SERVIN: Um so the men reached the sidewalk and I
3 reached the sidewalk, the mouth of the alley and
4 upon looking in my direction they stopped
5 yelling.

6

7 WHITE: Okay.

8 DET.SERVIN: Suddenly it was very quiet and when, when it
9 became very quiet I took that opportunity to say
10 guys keep it down. I said people live here. Do
11 whatever you want in the park, drinks, smoke,
12 nobody's gonna call the police on ya. But people
13 live here.

14

15 WHITE: Now why did you tell them that?

16 DET.SERVIN: To get peace.

17

18 WHITE: Okay.

19 DET.SERVIN: Restore peace.

20

21 WHITE: Okay.

22 DET.SERVIN: One.

23

24 WHITE: Were they bein' disruptive?

25 DET.SERVIN: They were bein' extremely disruptive.

26

27 WHITE: Okay.

28 DET.SERVIN: I later learned that three or four other
29 people called on the same disturbance.

30

31 WHITE: Okay.

1 DET.SERVIN: My secondary concern also was that possibly
2 these guys might batter the women.

3

4 WHITE: Okay.

5 DET.SERVIN: Because they were so aggressive and the
6 women that they weren't, I can't tell you if they
7 were victimized per se but it, it seemed to me
8 like they were victims of something orally or
9 whatever. But by the body language of the men
10 and the women that was my perception at the time.

11

12 WHITE: Let me ask you this.

13 DET.SERVIN: So I wanted to sooth the situation.

14

15 WHITE: Okay. When you said two to three people called
16 on the same situation --

17 DET.SERVIN: Hmm huh.

18

19 WHITE: Is it this group right here or was it just in
20 general the park?

21 DET.SERVIN: I couldn't say.

22

23 WHITE: Okay.

24 DET.SERVIN: I couldn't say.

25

26 WHITE: I just wanna clarify what you mean by that.

27 DET.SERVIN: I couldn't say.

28

29 WHITE: Okay.

30 DET.SERVIN: I couldn't say but the, from the time I
31 called the police the first time till the time I
32 called the police after the shots were fired I

1 learned that at least three or four other people
2 from my block also called the police.

3

4 WHITE: Gotchu. So when you make the statement to tell
5 him to keep quiet, um were you takin' police
6 action?

7 DET.SERVIN: I was.

8

9 WHITE: Okay. So did you identify yourself as a police
10 officer at that time?

11 DET.SERVIN: Not at that time.

12

13 WHITE: Why not?

14 DET.SERVIN: I didn't wanna be attacked.

15

16 WHITE: You didn't wanna be what I'm sorry?

17 DET.SERVIN: I didn't wanna be attacked.

18

19 WHITE: Okay.

20 DET.SERVIN: I didn't think it was necessary. The man is
21 irate. He's upset. If I approach 'em say I'm
22 the police, I may, I might have been attacked.

23

24 WHITE: Why did you think you were gonna be attacked?

25 DET.SERVIN: Because of his posture. His actions, his
26 demeanor.

27

28 WHITE: Okay.

29 DET.SERVIN: I mean there's no reason to ignite a
30 situation with, with my experience as a police
31 officer, sometimes it's better I felt like I was
32 soothing him. He looked at me, he became quiet

1 and by him I mean ██████████ Cross. When he looked
2 at me I put my hands in the air and I soothed
3 them in a almost whisper of a voice. And I said
4 keep it down. People live here.

5

6 WHITE: Okay.

7 DET.SERVIN: And he listened.

8

9 WHITE: Okay.

10 DET.SERVIN: He kinda leaned in, kinda listened and there
11 was no, no other contact, no other verbal threat
12 made. It was over. The noise stopped.

13

14 WHITE: So you didn't identify yourself as a police
15 officer.

16 DET.SERVIN: Not at that point.

17

18 WHITE: But you didn't wanna ignite the situation.

19 DET.SERVIN: I didn't wanna erupt the situation. I
20 didn't wanna escalate the situation.

21

22 WHITE: So why did you even say anything in the first
23 place?

24 DET.SERVIN: Because it was just perfect timing.

25

26 WHITE: Okay.

27 DET.SERVIN: I mean they saw me, they were quiet. In my
28 head I'm a police officer. Maybe I'm not a
29 uniformed but I act as a police officer.
30 Everyone in the neighborhood knows me as a police
31 officer. And I just thought they, they would
32 know I was a policeman.

1

2 WHITE: Okay so if you're takin' police action shouldn't
3 you identify yourself as a police officer?

4 DET.SERVIN: I don't know if that would've been tactfully
5 smart. I think if I had said hey guys keep it
6 down, police officer. I think I, I coulda been
7 attacked.

8

9 WHITE: Okay.

10 DET.SERVIN: And sometimes in that neighborhood
11 especially people don't like the police.

12

13 WHITE: But you don't know what the outcome woulda been
14 correct?

15 DET.SERVIN: No, I wasn't gonna take a chance.

16

17 WHITE: Okay.

18 DET.SERVIN: I wanted to just go on my way.

19

20 WHITE: Okay.

21 DET.SERVIN: And my intent was never to approach 'em. I
22 think it's important to, to let you know that.

23

24 WHITE: Okay.

25 DET.SERVIN: If, had I wanted to approach them, had I, I
26 coulda within the safety of my fence, I could've
27 approached them and said guys please keep it
28 down.

29

30 WHITE: Okay.

1 DET.SERVIN: From within the safety of my fence. My
2 intent was never to approach 'em. That was never
3 my intent it just happened to occur that way.

4
5 WHITE: Okay.

6 DET.SERVIN: We just happen to meet at my door at the
7 fence line. Timing was just perfect. They
8 stopped yelling. Had they been yelling when they
9 saw me I woulda kept goin'. But when they saw me
10 they became very quiet. And I'm like guys keep
11 it down.

12
13 WHITE: So --

14 DET.SERVIN: In the back of my mind I also had a concern
15 for my tenant. My tenant had vocalized problems
16 with people in the park as well.

17
18 WHITE: Okay.

19 DET.SERVIN: And my neighbors. So in the back of my
20 mind all these things came into play.

21
22 WHITE: Okay. So once you um made the comment and it
23 seems like he quiet down, what happened after
24 that?

25 DET.SERVIN: I continue with my left hand turn. I made a
26 left hand turn onto 15th Place.

27
28 WHITE: Now what's your speed at this point?

29 DET.SERVIN: Uh very slow.

30
31 WHITE: Okay.

32 DET.SERVIN: Almost idle if not cruising, just very slow.

1
2 WHITE: And what was the purpose of goin' slow at that
3 point?
4 DET.SERVIN: There was no reason to go fast.
5
6 WHITE: Okay.
7 DET.SERVIN: I mean I'm goin' down the wrong way on a one
8 way street first of all.
9
10 WHITE: Okay.
11 DET.SERVIN: Second of all --
12
13 WHITE: So 15th Place runs uh what direction?
14 DET.SERVIN: Runs westbound.
15
16 WHITE: Okay.
17 DET.SERVIN: So I made a left to, to go --
18
19 WHITE: Goin' eastbound.
20 DET.SERVIN: -- to go east on a westbound street.
21
22 WHITE: Okay.
23 DET.SERVIN: And the reason for that is because there's a
24 liquor store on the corner of 15th Place and
25 Kedzie.
26
27 WHITE: Okay.
28 DET.SERVIN: And I always avoid that too.
29
30 WHITE: Okay.
31 DET.SERVIN: Especially at that time. If there was a
32 huge party from Douglas Park --

1

2 WHITE: Okay.

3 DET.SERVIN: -- on a Wednesday in the winter at 1:00
4 o'clock in the morning there had to be people
5 drinkin' in front of that liquor store. And all
6 these people from the park had to have purchased
7 all their, all their alcohol from that liquor
8 store. So to avoid all the bums that hang out by
9 the, by the liquor store, I consciously made a
10 left hand turn.

11

12 WHITE: Okay.

13 DET.SERVIN: And also to get away from [REDACTED] Cross,
14 [REDACTED] Stevenson and the whole disruption on uh
15 15th Place and Kedzie in front of the liquor
16 store.

17

18 WHITE: Okay.

19 DET.SERVIN: So it was a safer bet to go toward the park
20 than away from the park.

21

22 WHITE: Okay.

23 DET.SERVIN: And I was going to the hamburger place which
24 is in that direction.

25

26 WHITE: Okay. When you first saw Cross and Stevenson um
27 did you see anything in their hands?

28 DET.SERVIN: No.

29

30 WHITE: No. Okay. So you begin to make a left hand turn

31 --

32 DET.SERVIN: Right.

1

2 WHITE: -- goin' eastbound correct?

3 DET.SERVIN: That's right.

4

5 WHITE: And tell me what happens at that point?

6 DET.SERVIN: As I initiated my left hand turn I suddenly
7 heard man I don't give a fuck or man I don't give
8 a shit, one of those two.

9

10 WHITE: Okay do you know who said, who said --

11 DET.SERVIN: It's my belief that it was [REDACTED] Cross.

12

13 WHITE: Okay.

14 DET.SERVIN: I didn't see who said it. But when I turned
15 I saw, I turned and [REDACTED] Cross was standing
16 not behind me and not directly to the left of me.
17 But he was at a slight angle behind me.

18

19 WHITE: Is your car all the way out the alley at this
20 point?

21 DET.SERVIN: It is.

22

23 WHITE: Okay.

24 DET.SERVIN: It's outta the alley entering onto uh 15th
25 Place.

26

27 WHITE: Okay.

28 DET.SERVIN: And [REDACTED] Cross is standing right about
29 there.

30

31 WHITE: And I need you to describe it for the audio
32 purposes for me.

1 DET.SERVIN: Okay. Uh I'm describing 90 degrees and then
2 I'm opening my arm slightly wider than 90
3 degrees.
4
5 WHITE: Okay.
6 DET.SERVIN: I can't give a numeric value.
7
8 WHITE: Okay that's --
9 DET.SERVIN: My (inaudible) off.
10
11 HUNT: You can use a clock.
12 O'BRIEN: 8:00 o'clock position.
13 HUNT: Yeah if you want to.
14 DET.SERVIN: Okay he's not at the 9:00 o'clock position.
15 This is 12, 9, he's at the 8:00 o'clock position.
16
17 WHITE: Okay. Okay.
18 DET.SERVIN: When, when I hear man I don't give a fuck, I
19 turn and I see [REDACTED] Cross with his hand on his
20 waistband.
21
22 WHITE: Now let me stop you. Again just to be clear, you
23 don't know if Mr. Cross made it or Mr. Stevenson
24 correct?
25 DET.SERVIN: No.
26
27 WHITE: Okay but you know it's a male voice?
28 DET.SERVIN: I believe it was [REDACTED] Cross because of
29 the following actions.
30
31 WHITE: Okay.
32 DET.SERVIN: Of his following actions.

1
2 WHITE: Gotcha. Okay so go ahead.
3 DET.SERVIN: All right it was a male for sure.
4
5 WHITE: Okay.
6 DET.SERVIN: Okay.
7
8 WHITE: So go 'head I'm sorry.
9 DET.SERVIN: So when I turned and I look at the source
10 of, of man I don't give a fuck, I turn and I see
11 [REDACTED] Cross with his hand on his waistband.
12
13 WHITE: Okay.
14 DET.SERVIN: He produces a black gun pointed at me and
15 starts to chase my car in a diagonal manner. My
16 car's still in motion when he starts chasing me.
17
18 WHITE: Now let me stop you. Where's he at when he's
19 touchin' his waistband? Where exactly is he
20 standing?
21 DET.SERVIN: He's standin' on the sidewalk. On the
22 sidewalk exactly where I last saw him.
23
24 WHITE: So he's still standing on that sidewalk uh east
25 of the alley? Or west of the alley?
26 DET.SERVIN: The alley. East. He nev, east.
27
28 WHITE: East of the alley?
29 DET.SERVIN: Yeah. Yeah he never --
30
31 WHITE: He never crossed the alley?
32 DET.SERVIN: He never crossed.

1
2 WHITE: Okay.
3 DET.SERVIN: No he, no one crossed.
4
5 WHITE: Okay.
6 DET.SERVIN: Yeah he's still standing exactly where I
7 last saw him.
8
9 WHITE: Okay. So he's into the alley when you see him.
10 DET.SERVIN: Yes ma'am.
11
12 WHITE: Okay. And I drew this diagram --
13 DET.SERVIN: Thank you.
14
15 WHITE: -- on the board just to let you --
16 DET.SERVIN: Thank you.
17
18 WHITE: -- know to try to get a description of uh does
19 that look accurate --
20 DET.SERVIN: It does.
21
22 WHITE: -- to you as well? Am I off a lil bit?
23 DET.SERVIN: You're off a lot.
24
25 WHITE: (laughs)
26 DET.SERVIN: Wait that's the alley? Yeah, alley, Albany
27 yeah that's right.
28
29 WHITE: Okay and I'm gonna take a picture of this and --
30 DET.SERVIN: Okay.
31
32 WHITE: -- add to the file as well.

1 DET.SERVIN: North is up, yes ma'am.
2
3 WHITE: Okay.
4 DET.SERVIN: All right.
5 O'BRIEN: Can we take a quick break?
6
7 WHITE: Yeah we're gonna pause. (recorder off/on) Okay
8 we're gonna continue. Um so we're talkin' 'bout
9 Mr. Cross and he's on the east uh sidewalk of the
10 alley correct?
11 DET.SERVIN: He's on the --
12
13 WHITE: And that's on the north.
14 DET.SERVIN: On the north side of Albany, east of the
15 alley.
16
17 WHITE: Correct.
18 DET.SERVIN: Where I had last seen 'em.
19
20 WHITE: Okay. Well north of 15th Place, the north
21 sidewalk of 15th Place on east side of the alley.
22 Does that sound correct to you?
23 DET.SERVIN: That's correct.
24
25 WHITE: Okay. So he touches his waistband.
26 DET.SERVIN: He grabs a gun from his waistband.
27
28 WHITE: Okay and describe this gun for me?
29 DET.SERVIN: It's a small black gun.
30
31 WHITE: Okay. Is it semi or a revolver?
32 DET.SERVIN: I can't tell.

1

2 WHITE: Okay.

3 DET.SERVIN: He pulls it up, points it and chases me.

4 Points it at me and chases me across the parkway.

5

6 WHITE: Okay.

7 DET.SERVIN: Pointin' the gun.

8

9 WHITE: So he goes from the sidewalk to the parkway to
10 the street? Is that accurate?11 DET.SERVIN: He makes, he goes from the sidewalk through
12 the parkway to, to within a foot and a half of my
13 car.

14

15 WHITE: A foot and a half of your car.

16 DET.SERVIN: He never gets to the street because when I
17 make my left I made it tight.

18

19 WHITE: Okay.

20 DET.SERVIN: So he never made it to the street.

21

22 WHITE: How far are you from the curb then?

23 DET.SERVIN: I'm guessing three feet.

24

25 WHITE: Three feet.

26 DET.SERVIN: Guessing. I don't know four feet.

27

28 WHITE: Okay. And what's the speed I'm sorry again that
29 you said you were doin'? If you had to guess.30 DET.SERVIN: Very slow, I don't know. Idling, less than
31 idling. I wasn't accelerating.

32

1 WHITE: You were not accelerating?
2 DET.SERVIN: No I was just cautiously proceeding
3 eastbound.
4
5 WHITE: Okay. And again you were cautiously just
6 proceeding just because you were goin' down a one
7 way street is that the only reason?
8 DET.SERVIN: Well I had just came, come outta the alley.
9 So I couldn't of gained any speed at all anyway.
10
11 WHITE: Okay.
12 DET.SERVIN: Yeah.
13
14 WHITE: Okay.
15 DET.SERVIN: I don't know if it consciously or
16 unconsciously but I was goin' very slow.
17
18 WHITE: Okay. So he points his gun and runs towards your
19 vehicle correct?
20 DET.SERVIN: Right.
21
22 WHITE: And your vehicle is still slightly moving
23 correct?
24 DET.SERVIN: At the time he points the gun yes.
25
26 WHITE: Okay and what happens at that point?
27 DET.SERVIN: He, when he points the gun at me and charges
28 toward me, I ducked. I, I ducked, I cowered down
29 and I said don't, don't.
30
31 WHITE: Okay let me stop you. When he's runnin' towards
32 you what hand is the gun in?

1 DET.SERVIN: His right hand.
2
3 WHITE: His right hand. And um is his arm extended?
4 What's the position?
5 DET.SERVIN: His hand is fully extended.
6
7 WHITE: Okay. His arm.
8 DET.SERVIN: And he's takin' long strides toward my car.
9
10 WHITE: Okay. So it wouldn't a took 'em that long to get
11 to your vehicle correct? Is he really runnin' or
12 is he quick pace or what?
13 DET.SERVIN: He got --
14
15 WHITE: Because what's the distance between the sidewalk
16 and, and your --
17 DET.SERVIN: My car?
18
19 WHITE: Yeah.
20 DET.SERVIN: It's not far. Two, two car lengths.
21
22 WHITE: Okay.
23 DET.SERVIN: Fifteen feet maybe.
24
25 WHITE: Okay.
26 DET.SERVIN: Twenty feet tops.
27
28 WHITE: Okay. Okay. So I'm sorry you uh so he's comin'
29 towards your car you said you ducked?
30 DET.SERVIN: I ducked. I cowered down. When I saw him
31 point the gun at me --
32

1 WHITE: Okay.

2 DET.SERVIN: -- and running I don't know if he was
3 running, coming at me at a fast rate.
4

5 WHITE: Okay.

6 DET.SERVIN: Taking long strides, as he's closing in on
7 me, I duck down instinctively without thinking
8 and I said don't.
9

10 WHITE: Now let me stop you. You duck down.

11 DET.SERVIN: Hmm huh.
12

13 WHITE: Are you takin' your eyes off Mr. Cross at that
14 point?

15 DET.SERVIN: Yes.
16

17 WHITE: Okay. So what happens at that point?

18 DET.SERVIN: As I duck down and I said don't, don't and I
19 said this before, it happens fast and it happened
20 slow at the same time. I saw as he was coming
21 toward me, he's pointin' the gun I saw a flash.
22

23 WHITE: Okay.

24 DET.SERVIN: Made me duck. I said don't, don't police,
25 police. And when I drive my hand is here on the
26 right arm rest.
27

28 WHITE: Okay.

29 DET.SERVIN: My hand, my left hand's on the steering
30 wheel.
31

32 WHITE: Okay.

1 DET.SERVIN: And as I ducked don't, don't police, police.
2 I see the muzzle flash and I duck down. I
3 thought I felt a pain in the back of my head.
4
5 WHITE: Okay. What type a pain, just pain? Sharp pain,
6 what?
7 DET.SERVIN: I been hit in the head with, with a brick
8 before.
9
10 WHITE: Okay.
11 DET.SERVIN: Someone crashed into my motorcycle and I was
12 like 19, 20 years old. So it was that type a
13 pain, like a blunt pow.
14
15 WHITE: Have you ever been shot before
16 DET.SERVIN: No.
17
18 WHITE: Okay. So you don't know how it is to be shot
19 correct?
20 DET.SERVIN: No.
21
22 WHITE: Okay.
23 DET.SERVIN: Thank god. So as I'm ducking down I was, I
24 was scared. He's tryin' to kill me. I thought
25 he got me. He got me. And like I, it's hard to
26 explain. Sometimes I think it happened super
27 slow, but I know it happened extremely fast. Cuz
28 I had multiple thoughts. I remember thinkin' of
29 other detectives that have been killed, friend of
30 mine in that same neighborhood as I duck down and
31 I thought he got me, he got me. I felt I was
32 shot in the back of the head. I wasn't sure.

1 And I thought my son, and then at the same time I
2 grabbed my gun, my arm is here, my gun is here.
3
4 WHITE: When you say your arm is here your arm is on your
5 hand, your arm was --
6 DET.SERVIN: Initially my hand is on the armrest. My
7 right hand is on the armrest --
8
9 WHITE: Okay.
10 DET.SERVIN: -- as I drive.
11
12 WHITE: Okay.
13 DET.SERVIN: And but it's inches from my gun.
14
15 WHITE: Okay.
16 DET.SERVIN: So as I ducked down away from the handgun
17 was pointing at me from the flash as I ducked
18 away and I said don't, don't police, police, I
19 responded by looking up. I fired two shots
20 instinctively, one, two and then I fired two more
21 using my sights on ██████████ Cross. As he
22 approached my car.
23
24 WHITE: So let's slow it down. Cause I'm gonna always
25 slow it down lil bit to get uh exact details.
26 DET.SERVIN: I get ya, I'm sorry.
27
28 WHITE: No that's okay.
29 DET.SERVIN: I get emotional.
30
31 WHITE: It's okay. You need to take a break?
32 DET.SERVIN: No.

1

2 WHITE: No, okay. Your gun is on you correct?

3 DET.SERVIN: Yes ma'am.

4

5 WHITE: And that's on your right side correct?

6 DET.SERVIN: Yes.

7

8 WHITE: Is it in the holster?

9 DET.SERVIN: It is.

10

11 WHITE: So you use what hand to get your, remove your
12 weapon? To get your weapon, what hand do you
13 use?

14 DET.SERVIN: My right hand.

15

16 WHITE: Your right hand. Okay. And then describe the
17 position you use to fire your weapon at that
18 time?19 DET.SERVIN: As I cowered down away from the threat, away
20 from [REDACTED] Cross coming at me with his gun, I,
21 I see a muzzle flash, I duck down. I, I yell
22 don't, don't, instinctively and fearfully and I
23 had all these thoughts in slow motion. I took my
24 gun I turned I fired two instinctive at him.
25 Boom, boom at [REDACTED] Cross as he's running
26 toward me. So the first two shots were I believe
27 were within my vehicle.

28

29 WHITE: Okay.

30 DET.SERVIN: The gun had not breached the window of my
31 vehicle. I believe I fired from within my car.

32

1 WHITE: Are you sittin' straight up? Are you duckin'
2 when you're firin' your weapon?
3 DET.SERVIN: No I, when I come up it's just the simple
4 body language. I duck down --
5
6 WHITE: Right.
7 DET.SERVIN: -- if he's [REDACTED] Cross -
8 HUNT: And for the record you're indicating where
9 (inaudible) Muellenbach is --
10 DET.SERVIN: 8:00 o'clock.
11 HUNT: -- is about your 8:00 o'clock position. Okay.
12
13 WHITE: Okay.
14 DET.SERVIN: As I duck down my gun, my hand goes to my
15 gun instinctively as I've been trained I turn up
16 and the first two come instinctive, one, two.
17 HUNT: So you're, just for the record --
18 DET.SERVIN: I twisted my left shoulder.
19
20 HUNT: -- twisted your left shoulder and your hands are
21 about at chest, your right hand is about in the
22 middle of your chest?
23 DET.SERVIN: My right hand is in front of my left nipple.
24 HUNT: Okay.
25
26 WHITE: Okay.
27 DET.SERVIN: Instinctively without my sights.
28
29 WHITE: Okay.
30 DET.SERVIN: At [REDACTED] Cross.
31
32 WHITE: Okay.

1 DET.SERVIN: As he's gaining quickly toward my car.
2
3 WHITE: So when you --
4 DET.SERVIN: With the gun extended.
5
6 WHITE: -- so when you fire the first two shots how far
7 is uh Mr. Cross from you?
8 DET.SERVIN: Uh I'm guessing I couldn't say. Uh --
9
10 WHITE: If you had to guess?
11 DET.SERVIN: -- he, he started within 15, 20 feet. He's
12 prob'ly the same distance maybe 8 feet.
13
14 WHITE: About 8 feet.
15 DET.SERVIN: About 8 feet.
16
17 WHITE: And where's he at at that point is he on the uh
18 parkway, sidewalk still, street, what would you -
19 -
20 DET.SERVIN: I don't know.
21
22 WHITE: -- say he was standing --
23 DET.SERVIN: I, I, I don't wanna guess.
24
25 WHITE: Okay.
26 DET.SERVIN: He could be on the sidewalk. He could be on
27 the parkway.
28
29 WHITE: And where's he in relation to your vehicle, is he
30 by the driver's door, the back driver's side door
31 or --
32 DET.SERVIN: He's approachin' the driver's door. He's --

1

2 WHITE: Okay.

3 DET.SERVIN: -- approaching my door.

4

5 WHITE: He's approachin' the door. Okay.

6 DET.SERVIN: So I fire two instinctively possibly right
7 about where Mr. Muellenbach is.

8

9 WHITE: And we stated that's about 8 feet away correct?

10 DET.SERVIN: Eight, possibly nine.

11

12 WHITE: Okay.

13 DET.SERVIN: Seven. I don't know.

14

15 WHITE: Okay.

16 DET.SERVIN: He keeps coming. I put 'em in my sights and
17 then the next two I shot with my sights. I had
18 'em dead center in the sights, the gun controlled
19 and I don't remember if the vehicle was stopped
20 or not.

21

22 WHITE: Was the vehicle uh stopped the first two times?

23 DET.SERVIN: I, it goes to the same, to the same point.
24 I don't recall stopping the vehicle.

25

26 WHITE: Okay.

27 DET.SERVIN: I don't recall being stopped or moving.

28

29 WHITE: Okay.

30 DET.SERVIN: I recall him coming at me as I was moving.

31

32 WHITE: Okay.

1 DET.SERVIN: And, and I recall havin' to make a split
2 second decision. Hit the gas, try to get outta
3 there and get shot in the back of the head. Or,
4 or duck and fight and I obviously ducked and
5 fought. And based on, on the evidence of the
6 shell casings you know hindsight's 20 20. All
7 the shell casings were tightly grouped.

8

9 WHITE: Okay.

10 DET.SERVIN: So I musta stopped the car. But I don't
11 remember stopping the car.

12

13 WHITE: Okay.

14 DET.SERVIN: So I'm --

15

16 WHITE: I gotcha.

17 DET.SERVIN: -- I believe I shot all four from a
18 stationary position based on, on the tight
19 grouping of the shell casings.

20

21 WHITE: Um and just quick question, I know you stated you
22 use your sights the second time. Did you use
23 your sights the first time, the first two times
24 you fired?

25 DET.SERVIN: No that was instinctive shooting.

26

27 WHITE: Okay. Okay. So whadda you mean by that? Can
28 you be more --

29 DET.SERVIN: We were trained, Chicago Police Academy on
30 the range when faced with, with a, with a life or
31 death situation, when, when deadly force is used
32 against you you don't have to wait till you align

1 your sights and get 'em in your sights and align
2 the sights and fire. We've practiced. When the
3 target turns the threat presents itself, when the
4 gun breaches the holster you begin firing.

5

6 WHITE: Okay.

7 DET.SERVIN: And 80, 90% of the time you're gonna strike
8 your threat.

9

10 WHITE: Okay.

11 DET.SERVIN: Because most of the attacks happen within 25
12 feet.

13

14 WHITE: Okay.

15 DET.SERVIN: And this was in fact was an attack within 25
16 feet.

17

18 WHITE: Okay.

19 DET.SERVIN: So it was instinctive shooting the first two
20 shots. And, and I've been very clear about that.

21

22 WHITE: Okay. So you fired another two shots.

23 DET.SERVIN: That's right.

24

25 WHITE: Is he the same distance at that point?

26 DET.SERVIN: No he was closing.

27

28 WHITE: Okay so at what, at that point what's the
29 distance?

30 DET.SERVIN: I can't, it was simultaneous.

31

32 WHITE: I mean it's just a guess.

1 DET.SERVIN: I can't lock it in. He, he was approachin'
2 me as I was firing.
3
4 WHITE: Okay.
5 DET.SERVIN: He continued to approach as I continued to
6 fire.
7
8 WHITE: Okay.
9 DET.SERVIN: For a total of four shots.
10
11 WHITE: Okay.
12 DET.SERVIN: So I thought, I thought I fired four shots,
13 turned out I fired five.
14
15 WHITE: Okay.
16 DET.SERVIN: They asked me how many shots did you fire, I
17 said four. It turned out there was five shell
18 casings. So I obviously fired five shots.
19
20 WHITE: But you don't know when the last shot occurred?
21 DET.SERVIN: He was still coming toward me.
22
23 WHITE: Okay.
24 DET.SERVIN: And he was close. He was so close that I
25 mean he was right in front of the car.
26
27 WHITE: Okay. So --
28 DET.SERVIN: He, he didn't stop until the fourth shot
29 that's when he gamme his back. So he was really
30 close to the car.
31

1 WHITE: Okay. So as you're firin' your weapon he's still
2 comin' towards you.

3 DET.SERVIN: Yes.

4

5 WHITE: He's not retreatin' away?

6 DET.SERVIN: No.

7

8 WHITE: Okay. So after you uh finished firin' your
9 weapon or why did you stop firin' your weapon?

10 DET.SERVIN: Because the threat stopped.

11

12 WHITE: Okay.

13 DET.SERVIN: He stopped comin' at me.

14

15 WHITE: Okay.

16 DET.SERVIN: So I stopped firing.

17

18 WHITE: Okay so what happened with the gun or his arm?
19 What happened?

20 DET.SERVIN: What happened with what ma'am?

21

22 WHITE: His gun? He has a gun pointed at you correct?

23 DET.SERVIN: That's right.

24

25 WHITE: So what happens --

26 DET.SERVIN: I don't know what happens.

27

28 WHITE: Okay.

29 DET.SERVIN: I'm focused on his chest. I'm focused on my
30 sights.

31

32 WHITE: Okay.

1 DET.SERVIN: Whenever you fire a gun and you start
2 focusing on the sights, you, you, the background
3 becomes blurry.

4
5 WHITE: Okay.

6 DET.SERVIN: Because you're focusing your eyesight can
7 only focus either on the back or the front.

8
9 WHITE: Okay.

10 DET.SERVIN: So he's still comin' toward me and I'm
11 focusing on my sights for sight alignment.

12
13 WHITE: Okay.

14 DET.SERVIN: And I'm center mass. I'm aiming at a center
15 mass and I'm tryin' to shoot into a cross right
16 in the chest.

17
18 WHITE: Okay. So I'm understanding you're tryin' to
19 shoot 'em in the chest but are you focused on the
20 threat too which is that weapon in his hand?

21 DET.SERVIN: I'm focused at his chest.

22
23 WHITE: Okay. Any particular reason why you're not
24 focused on the weapon?

25 DET.SERVIN: I wasn't trained to focus on a weapon.

26
27 WHITE: Okay I mean I need you to tell me that.

28 DET.SERVIN: That's all right ma'am.

29
30 WHITE: That's what I need you to tell me.

31 DET.SERVIN: He was comin' at me with a gun, I ducked.

32

1 WHITE: Okay.
2 DET.SERVIN: In my mind he fired.
3
4 WHITE: Okay.
5 DET.SERVIN: I ducked I'm protecting my life.
6
7 WHITE: Okay.
8 DET.SERVIN: I'm not gonna try to shoot the gun out of
9 his hand. I'm gonna try to stop the threat and
10 I've been trained to shoot for center mass. So
11 I'm shooting at center.
12
13 WHITE: Okay.
14 DET.SERVIN: And I didn't stop shooting until he
15 retreated.
16
17 WHITE: Okay. So he retreated.
18 DET.SERVIN: Right.
19
20 WHITE: And what happens at that point?
21 DET.SERVIN: I exited my vehicle.
22
23 WHITE: Okay immediately?
24 DET.SERVIN: Immediately.
25
26 WHITE: Okay. And what happens?
27 DET.SERVIN: I pointed my gun at him.
28
29 WHITE: Okay.
30 DET.SERVIN: He took off running down the, down the
31 street. Uh [REDACTED] Stevenson took off runnin'
32 down the sidewalk westbound.

1
2 WHITE: So he's in the street and [REDACTED] is on the
3 sidewalk?
4 DET.SERVIN: That's, that's what I believe yes.
5
6 WHITE: Is that still the north sidewalk on 15th Place?
7 DET.SERVIN: It is.
8
9 WHITE: Okay.
10 DET.SERVIN: It is. [REDACTED] on the north sidewalk.
11 [REDACTED] Cross is, is running down the street uh
12 close to the parked cars.
13
14 WHITE: Okay. And are you --
15 DET.SERVIN: He's runnin' westbound.
16
17 WHITE: -- are you focused on him?
18 DET.SERVIN: I'm, I'm focused on [REDACTED] Cross.
19
20 WHITE: Okay.
21 DET.SERVIN: I, I, I, I'm pointin' my weapon at [REDACTED]
22 Cross. I'm covering as he turns to fire.
23
24 WHITE: Okay.
25 DET.SERVIN: As I've been trained to do.
26
27 WHITE: Okay.
28 DET.SERVIN: As I'm covering, as I'm covering he's going
29 westbound. As he's goin' westbound I take my
30 cell phone out and I dial 9 1 1.
31
32 WHITE: Do you do this immediately?

1 DET.SERVIN: Immediately.
2
3 WHITE: So how many would you say seconds or minutes or
4 what?
5 DET.SERVIN: Immediately. Immediately.
6
7 WHITE: Okay.
8 DET.SERVIN: Immediately.
9
10 WHITE: Are you still focused on Mr. Cross?
11 DET.SERVIN: I'm focused on Mr. Cross. My gun's still
12 aimed at his back and I'm dialing 9 1 1.
13
14 WHITE: So you can clearly see him then?
15 DET.SERVIN: Well I'm goin' to my phone and [REDACTED]
16 Cross.
17
18 WHITE: Okay.
19 DET.SERVIN: My phone, [REDACTED] Cross talkin' to the
20 dispatcher and then [REDACTED] Cross was out of
21 view.
22
23 WHITE: Okay. He went out of view after how many feet
24 would you say?
25 DET.SERVIN: I saw, I saw movement. I saw male black
26 duck through the gangways at about the eighth
27 house, the ninth house. There are some vacant
28 lots and some houses. I live on the right and I
29 saw movement going northbound. So that's what I
30 tried to communicate to dispatcher. The clothing
31 that [REDACTED] Cross was wearing and the direction
32 of flight.

1

2 WHITE: Okay.

3 DET.SERVIN: Which to me was northbound through the
4 vacant lots from approximately (pause) I don't
5 know 3240, 3242 West 15th Place I'm guessing.

6

7 WHITE: And the vacant lot is on what side of the street?

8 DET.SERVIN: Vacant lots are on the north side of the
9 street.

10

11 WHITE: Okay.

12 DET.SERVIN: That's direction in which I saw the
13 movement.

14

15 WHITE: Okay.

16 DET.SERVIN: I saw the male black run that way.

17

18 WHITE: And which male black do you believe that to be?

19 DET.SERVIN: I thought it was [REDACTED] Cross. I don't
20 know.

21

22 WHITE: Okay.

23 DET.SERVIN: It coulda been [REDACTED] Stevenson.

24

25 WHITE: But you only saw one?

26 DET.SERVIN: I saw movement.

27

28 WHITE: You just saw movement.

29 DET.SERVIN: I saw movement. I saw --

30

31 WHITE: Okay.

1 DET.SERVIN: -- and then I told everybody they went
2 northbound, northbound through vacant lots.
3
4 WHITE: Okay. So you get on the phone and call 9 1 1.
5 DET.SERVIN: Right.
6
7 WHITE: And whadda you tell 9 1 1?
8 DET.SERVIN: As I'm pointing my gun at [REDACTED] Cross's
9 back as I'm dialing 9 1 1 and I'm communicating
10 and then [REDACTED] Cross disappears outta view I
11 hear a police car racing toward me from, from
12 Kedzie. And I --
13
14 WHITE: Now how many, how long did that take before you
15 heard that? You're on the phone with 9 1 1 how
16 long did that take?
17 DET.SERVIN: It was instantaneous.
18
19 WHITE: Okay.
20 DET.SERVIN: It was simultaneous. As [REDACTED] Cross ducks
21 outta view, disappears from my view and I'm
22 pointing my gun in his back and I'm dialing 9 1 1
23 I hear a car engine racing toward my direction.
24
25 WHITE: And again you don't know if that's [REDACTED] Cross
26 outta view, you just know somebody went outta
27 view?
28 DET.SERVIN: Right.
29
30 WHITE: For the record correct?
31 DET.SERVIN: Right.
32

1 WHITE: Okay. So I'm sorry you hear a police car.

2 DET.SERVIN: I hear a police engine racing toward me. As
3 I'm tryin' to communicate with the dispatcher and
4 I'm tryin' to remember in my mind what [REDACTED]
5 Cross was wearing. You know how you kinda leave
6 the present to go into your memory.

7

8 WHITE: Okay.

9 DET.SERVIN: My, my gun's still pointed and I'm leaving
10 the present to go into my memory, male black
11 wearing white over and I know that there's a
12 police engine racing toward me. I see movement
13 peripherally. I catch a movement at the mouth of
14 the alley.

15

16 WHITE: Okay.

17 DET.SERVIN: And I look over and I look down and there's
18 a female black standing over a fallen female
19 black.

20

21 WHITE: Okay. And who would that be?

22 DET.SERVIN: At that point in time I knew that I shot
23 Rekia Boyd.

24

25 WHITE: Okay.

26 DET.SERVIN: And I felt like I got kicked in the gut.

27

28 WHITE: Okay.

29 DET.SERVIN: It's like my gun was still pointed. I tried
30 to recover myself (inaudible) turn shot. The
31 police cars racin' toward me, I'm tryin' to
32 communicate with the dispatcher. All this is

1 going on at once. And then peripherally I see
2 movement and it's [REDACTED] Beamon standin' over Rekia
3 Boyd.

4
5 WHITE: Okay.

6 DET.SERVIN: And then I felt like I was gonna throw up.

7

8 WHITE: At that point had you said anything to 9 1 1 at
9 that time?

10 DET.SERVIN: I had. I don't know what I said. I, I, I
11 was tryin' to give a description of [REDACTED] Cross
12 and direction of flight. And then that thought
13 left my mind when I saw Rekia Boyd on the ground
14 and her brains all over my alley. And at that
15 point in time I said get an ambulance there's a
16 citizen down.

17

18 WHITE: Need a break?

19 DET.SERVIN: No.

20

21 WHITE: Okay.

22 DET.SERVIN: And at, while all this is goin' on the
23 police car closed the distance and they're
24 orderin' me to drop my gun. Get your hands in
25 the air, we'll, we'll shoot you, we'll fuckin'
26 shoot you. And I'm on the phone with the
27 dispatcher and I'm still tryin' to absorb what's
28 goin' on over here with, with, with Ms., Ms.
29 Boyd. She's bleedin' all over my alley. And,
30 and officer ordered me to drop the gun and I'm,
31 and, and I'm ignoring the officers. I, I tell
32 'em I'm on the phone with the dispatcher. I'm on