AMENDED PETITION FOR EXECUTIVE CLEMENCY

April 2002 Docket

To: The Honorable George H. Ryan
Governor of the State of Illinois

Attn: Illinois Prisoner Review Board
319 East Madison Street, Suite A
Springfield, Illinois 62701

From: William Heirens
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Summary of Convictions and Type of Clemency Sought

On September 5, 1946, William Heirens was sentenced to three life terms in prison for the murders of Josephine Ross, Frances Brown, and Suzanne Degnan. The sentences were to run consecutively, although concurrent with a term of one year to life in an unrelated conviction for burglary, assault, and robbery. All of the sentences were imposed following pleas of guilty pursuant to a plea agreement. All case numbers, offenses, dates of offenses, and sentences are found in Exhibit 1 (attached). The convictions arose

from the Circuit Court of Cook County, Illinois. The petitioner was convicted under the name William Heirens. He has no aliases. His social security number is 328-22-2481 and his prison register number is C-06103.

Heirens was paroled on the Degnan murder on December 15, 1965. He completed the parole on June 15 of that year and was given a discharge on the Degnan murder sentence. On May 13, 1993, the Illinois Prisoner Review Board notified Heirens that "the lesser sentences have been satisfied . . ." (Attached as Exhibit 2) The "lesser sentences" include all the sentences listed in Exhibit 1 except the murder sentences.

Although he has satisfied these sentences, Heirens has not yet been provided with discharges for them. Section 3-3-8 of the Code, providing for discharge, is inoperable in this case. As noted in Council Commentary for Section 3-3-8, the pardoning power of the Governor continues to be the means to effectuate the discharge of "satisfied" sentences. This petition therefore seeks commutation on the remaining murder sentences (46-1594 and 46-1654) to effectuate their discharge. Heirens's last clemency bid was in April of 1995. It was denied in January of 1999.

Most Recent Efforts to Obtain Clemency for William Heirens

In April of 1995, a team headed by defense attorney Jed Stone presented, for the first time before the Prisoner Review Board, the case for Heirens's innocence in the murders of Suzanne Degnan, Josephine Ross, and Frances Brown. Because Heirens, as a 17 year-old boy, pled guilty to these murders nearly half a century prior to that hearing, the evidence against Heirens never had been put to the test of the adversary system. Stone's team — composed of psychiatrists, lawyers, handwriting analysts, fingerprint experts, concerned citizens, and friends of Heirens — carefully analyzed the evidence in each of the murder cases.

Under close scrutiny, the evidence that Heirens committed any of the murders was shown to have been weak. Among the team's findings:

1. "Hidden indentation" writing allegedly uncovered by *Chicago Daily News* artist Frank San Hamel — evidence which glossed the pages of the Chicago papers for weeks and was influential in turning public opinion against Heirens — was a fraud and a hoax.

2. Handwriting on the Degnan ransom note was not Heirens's.

3. A much-publicized lipstick message on the Brown wall — "For heavens sake catch me before I kill more. I cannot control myself"-- was not in Heirens's writing and was not written by the author of the Degnan ransom note.

4. A purported fingerprint on the "face" of the Degnan ransom note was really on the back of the note, making the evidence not confirmable.

5. A so-called "bloody fingerprint" found on a doorjamb in the Brown apartment was, in fact, a "rolled" fingerprint like those seen on fingerprint cards at police stations — and unlike those most often found at crime scenes.

6. Analysis of the confessions revealed numerous inconsistencies between the confessions and the known facts of the crimes — a signature elements in most false confessions. Heirens was wrong about basic facts about the crimes, including locations, times, and related events.

The Stone team also raised the specter that another suspect, Richard Thomas, may have been the actual killer of Suzanne Degnan. Thomas, who confessed to Degnan's murder to the Phoenix police before Heirens was arrested, was a male nurse with the medical background that police believed was necessary to have dismembered Degnan's body. Thomas also had a criminal history of sexually abusing his young daughter, and a conviction for attempted kidnaping and extortion in which he used a ransom note. He became a suspect when a Phoenix police forensic expert noticed striking similarities between Thomas's

handwriting and the handwriting on the Degnan ransom note. Stone's experts concurred that Thomas's handwriting more closely matched the writing on the ransom note than that of Heirens.

Stone's attempt to prove Heirens's innocence was hampered by the fact that most of the evidence in the Degnan, Brown, and Ross cases had been either lost or destroyed and almost all of the principals involved in the investigation were deceased. Moreover, at the time of the 1995 petition, claims that long imprisoned inmates were actually innocent were given little credibility. The prevailing view of most insiders and outsiders of the criminal justice system was that mistakes, especially in capital cases, were rare, and that if they occurred, they were discovered in the appeals and post-conviction process. Despite Stone's best efforts, neither the Prisoner Review Board nor Governor Edgar recommended clemency for Heirens.

I. Introduction

Although there is more than a reasonable doubt's worth of evidence to suggest that William Heirens is innocent of the murders of Suzanne Degnan, Josephine Ross, and Frances Brown, this petition — presented by Northwestern University School of Law's Center on Wrongful Convictions (CWC)[1] and Children and Family Justice Center (CFJC)[2] — will not argue the issue of innocence. The case of

[1] The CWC is dedicated to identifying and rectifying wrongful convictions and other serious miscarriages of justice. The CWC has three components: representation, research, and public education. CWC faculty, staff and cooperating outside attorneys, and Bluhm Legal Clinic Students investigate possible wrongful convictions and represent imprisoned clients with claims of actual innocence. The research and public education components focus on developing initiatives that raise public awareness of the prevalence, causes, and social costs of wrongful convictions and promote substantive reform of the criminal justice system.

[2] The CFJC is a multi-faceted children's law center, an interdisciplinary policy and training center for the justice needs of adolescents and their families, providing critical knowledge about youth law and practice, matters associated with the administration of justice, and the preparation of scholars and professionals who advocate for children. Like the CWC, the CFJC has three components: representation, research, and public education. Ten clinical faculty members and Bluhm Legal clinic students represent children and adolescents in a wide variety of cases, including matters before the Prisoner Review Board and wrongful convictions. In our public education and law reform work, the CFJC has been a leader in efforts to abolish the juvenile death penalty nationwide and has researched and analyzed false confession cases involving children and teenagers.

innocence was made, and made compellingly, by Jed Stone almost seven years ago. We will not argue it because we can not yet conclusively prove it in light of the fact that many of the police files are missing and most of the original evidence has been destroyed or lost. Thus, we are not asking that William Heirens be pardoned in connection with these killings, although we reserve the right to do so if we uncover new evidence which exonerates him. Rather we are asking the Prisoner Review Board and the Governor to look at Heirens's case through three lenses: (1) new understandings of the sources of wrongful convictions which call into question the reliability of Heirens's conviction; (2) the historic use of executive clemency powers to remedy injustices which the courts have failed to remedy; and (3) the role of the Prisoner Review Board and the Governor as the guardians of the concept of rehabilitation, justice, mercy, and compassionate release in a criminal justice system that has all but abandoned these fundamental tenets.

We have agreed to represent William Heirens because we believe that, irrespective of Heirens's guilt or innocence, his case stands out as one of the grossest miscarriages of justice in the history of the United States. His conviction is contaminated by more sources of error — prosecutorial misconduct, police misconduct, incompetent defense counsel, unprecedented prejudicial pre-trial publicity (orchestrated by police and prosecutors), junk science, probable false confessions,[3] and mistaken eyewitness

[3] Richard A. Leo and Richard J. Ofshe, in a landmark investigation of false confession cases — *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. Crim. L. & Criminology 429 (1998) — categorized false confessions into three groups: proven false confessions, highly probable false confessions, and probable false confessions. Proven ones are those in which "the confessor's innocence was established by at least one dispositive piece of independent evidence" (e.g. the murder victim turned up alive, the true perpetrator was caught and proven guilty, scientific evidence established innocence) and the confession statement itself lacked internal indicia of reliability. Highly probable false confessions are those in which "the evidence overwhelmingly indicated that the defendant's confession statement was false," no credible independent evidence supported the conclusion that the confession was true, the physical or other significant independent evidence strongly supported the conclusion that the confession was false, the confession lacked internal reliability, and innocence was established beyond a reasonable doubt. Probable false confessions are those in which no physical or other significant credible evidence supported the conclusion that the defendant was guilty, there was evidence supporting the conclusion that the confession was

identification — than any other case we have studied. Any one of these factors alone would be enough to have wrongfully convicted an innocent man, but the combination of all of them in a single case leaves us, as it should leave the Governor and Prisoner Review Board, with no confidence in the result.

We have also agreed to represent William Heirens because, since his public and highly orchestrated confession more than 55 years ago, he has struggled in vain to clear his name. The justice system has turned a deaf ear to his claims of innocence and a blind eye to the obvious injustices that were done to him.

When the court system fails to remedy injustices, the duty to do so falls within the ambit of the Governor's clemency powers. It was precisely this situation — the inability of the criminal justice system to assure justice in capital cases — that led Governor Ryan to impose a moratorium on all executions.

Finally, we have also agreed to represent William Heirens because his record of accomplishment in the Illinois prison system is unparalleled and beyond reproach. For decades, the Department of Corrections has evaluated him as a low-risk inmate, placing him in minimum security prisons, giving him unescorted day passes, and awarding him positions of trust and access within the prison system. He has been incarcerated longer than any other inmate in Illinois — from the age of 17 to the age of 73 — and is one of the longest serving inmates in United States history. During that entire time frame, not only has he had a near spotless disciplinary record, he has never been cited for any inappropriate sexual behavior, any violence, or any burglary or theft. His life behind bars is living proof that people, especially youthful offenders, should not be defined by the worst things they have ever done; they are malleable, their

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false, the confession lacked internal indicia of reliability, and the preponderance of evidence indicated that the person who confessed was innocent. Although most of the original evidence in the Heirens case has been destroyed and many of the police files and court records are lost, Heirens's confession, by the Ofshe-Leo standards, is at least a "probable false confession" and perhaps a "highly probable" one.

personalities are not yet fixed, and they have the capacity to change their ways. During Heirens's time in custody, many convicted murderers, including several of whom were on death row, have been released, despite the fact that these offenders posed far greater risk to the public and their accomplishments within the institution paled in comparison to Heirens's.

Since the time of his most recent clemency petition, Heirens's deteriorating health — diabetes — has required that he be transferred from the Vienna Correctional Center to the Dixon Correctional Center, a facility which can better meet his increasingly costly medical needs. His age and his infirmities not only lower the risk of his re-offending, but provide a powerful argument for the policy of compassionate release which is beginning to influence states as they struggle to reduce burgeoning prison populations and control prison costs.

Nearly 20 years ago, in 1983, University of Chicago Professor of Law Norval Morris exclaimed: "A marvelously decent humanity would release him [Heirens] now." That statement rings even truer today. It is time to let William Heirens spend the twilight of his life out from behind bars.

II. Biography of William Heirens

A. Childhood and Adolescence

William Heirens was born on November 15, 1928, in Evanston, Illinois. His parents, Margaret Modaff and George Heirens, met through their families, who had immigrated from Luxembourg and made their living from greenhouses or florist shops. Three years after Heirens was born, Margaret gave birth to another son, Jere. Following Heirens's arrest, George, Margaret, and Jere changed their names from Heirens to Hill and his parents divorced. Both Margaret and George remarried, but Margaret's second

marriage also ended in divorce. George Hill died on January 30, 1980, Jere on June 10, 1987, and Margaret on May 21, 1998.

The Heirens family was, in many ways, a troubled one. The depression had robbed Margaret and George of their livelihood as owners of a flower shop and their relationship became increasingly challenged by financial problems. George Heirens, who was employed for many years as a security guard, often spent his paycheck at the local bar, and Margaret, a talented seamstress, supplemented the family income with various jobs. Margaret became increasingly despondent over George's lack of responsibility and after Heirens was convicted in 1946, they divorced.

Heirens spent his grade school years in three Chicago parochial schools: St. Margaret Mary's, St. Ignatius, and St. Mary's of the Lake. During those years, his grades were average and above, and the nuns found him to be creative and helpful, if inclined to daydream. Shortly before his graduation from St. Mary's of the Lake, Heirens was arrested for burglary, and a large array of stolen goods was recovered from a rooftop near his home. Newspapers labeled the incident a "ne Boy Wave of Crime"and, after three weeks, Heirens was sent to the Gibault School for Boys in Terre Haute, Indiana. At the end of the year, Heirens was allowed to return home and, before the summer was over, he was arrested for burglary once more. This time Heirens was sent as a boarder to St. Bede Academy in Peru, Illinois, where he worked in the library, excelled in school, and participated in wrestling.

Shortly after he began his senior year at St. Bede, Heirens was notified by the University of Chicago that, as a result of entrance exams he had taken during the summer, he had been accepted for an accelerated program. Determined that "after all the disappointments I had caused my parents, this was an opportunity for me to make them proud of me for a change," Heirens transferred immediately to the

University of Chicago. After spending his high school years at boarding schools, Heirens enjoyed the university social life and, in particular, spending time with young women. JoAnn Slama, his girlfriend at the time of his arrest, told police he was a "perfect gentleman," adding that she liked him very much. Although Heirens had promised himself that he would no longer burglarize, the financial pressures of school and dating undermined that resolve, and in June of 1946, shortly before beginning his sophomore year at the University of Chicago, he was arrested for an attempted burglary of the Pera home at the Wayne Manor Apartments on Wayne Avenue. It was this arrest which triggered the police investigation that ultimately led to his conviction in the murders of Suzanne Degnan, Frances Brown, and Josephine Ross.

At an early age, Heirens helped his father, who operated a greenhouse and later a flower shop (abandoned in 1942), delivering flowers and doing chores. Thereafter, after school he worked as a delivery boy for a grocery store. It was during this period that Heirens's burglary habits began. At 15, he worked at the Carnegie Steel Mill (U.S. Steel) during school vacation as a machinist helper. In his 16th year, he also worked at the steel mill during the summer as an electrician's helper. While at the University of Chicago, he was employed part-time as an usher at Orchestra Hall.

Except for his years at boarding school, Heirens had lived in the Chicago area all his life before going to prison. He had never been convicted of a felony before the instant offenses. He is unmarried and was not in the military service.

B. Incarceration

During William Heirens's long years of incarceration he has worked hard to improve himself and the lives of those around him. For the first few years of his incarceration, as a result of depression and a

desire to be away from any public exposure, Heirens was held in the Psychiatric Division at Menard Correctional Center, and then, with increased emotional stability, in the General Division.

In 1951, he transferred to Stateville Prison, which was to be his home for the next 24 years. It was here that his productive years began. Heirens spent five years in the Vocational School at Stateville learning radio and TV repair, and during this period he taught this craft to other prisoners. He was employed in the prison garment industry for ten years in the position of office manager. The garment industry employed 350 inmates, manufacturing everything from handkerchiefs to dress suits and uniforms. For five years, he worked for the Stateville school program as secretary to the superintendent, filling in as a mathematics and English instructor when needed, and preparing fellow prisoners to obtain their GED certificates. Transferred to the Stateville Honor Farm in 1970, he spent five years in the radio-TV repair shop maintaining TVs and radios for the institution and staff.

In 1975, Heirens was encouraged to transfer to a minimum security prison, Vienna Correctional Center. Upon arrival at Vienna, he immediately enrolled in the Emergency Medical Technician program, completing the program and working on the prison's ambulance service for a short time. He worked in the prison library for about seven years, maintaining the law library and helping fellow prisoners resolve their legal problems. Heirens was also allowed to participate in a day release program which employed him in the local orchard. When Father Tom Miller came to Vienna as a part-time Catholic Chaplain, Heirens began his employment as secretary to the chaplain, a position he held until his transfer to Dixon Correctional Center in 1998. Besides constant and productive employment, Heirens founded the "Seven Steps" program at Vienna, a self improvement organization for inmates and was active in the formation of the Cursillo

movement, a three-day religious retreat. Currently, he is employed in the business office at Dixon, where he recently received a certificate as a valued employee.

Throughout his incarceration, Heirens has sought self-improvement programs. In the early years, the prison did not provide college level courses, so Heirens took correspondence courses from various universities at his own expense. Later, when the prison system did begin to offer college level courses, Heirens completed many of the offerings. When arrangements were made for prisoners to obtain a college degree, Heirens was the first Illinois prisoner to receive a degree and, in 1972, he graduated from Lewis University with a degree in liberal arts. He continued to study after graduation and has amassed a total of 250 credit hours.

When he first entered the prison system, Heirens began to draw on the lined paper provided him, sending pictures home to his mother. He developed his artistic talents, becoming an expert in calligraphy and watercolor painting. His paintings have won blue ribbons at art shows and his work is in constant demand. Heirens often gives these paintings as gifts to friends.

Mindful of the societal changes that have taken place since his imprisonment, Heirens has availed himself of opportunities to keep up with these changes so that he can be a productive citizen when released. Shortly before transferring to Dixon, he completed a basic course in computers provided by the prison school program.

A lifetime of achievement in prison has brought praise from all who know him, including an ex-warden who commented that Heirens was instrumental in developing the educational and library systems in Illinois prisons. And there are accolades from the same parole board which refuses to release him: "You

have done beautiful things"; "I've never seen so much accomplishment"; "I think you are a good example of what rehabilitation is all about."

III. The Crimes, Police Investigation, and Conviction of William Heirens[4]

A. The Crimes

William Heirens was convicted of three murders. In June 1945, Josephine Ross was found stabbed to death in her Chicago apartment. In December 1945, Frances Brown was shot to death in her Chicago apartment. The words "For heavens sake catch me before I kill more. I cannot control myself" were found scrawled in lipstick on her apartment wall. In January 1946, James Degnan lived with his wife, Helen, 9-year-old daughter, Betty, and 6-year-old daughter, Suzanne, in a comfortable house on the north side of Chicago. Degnan headed the Office of Price Administration, a powerful agency established to put artificial ceilings on consumer goods and services in order to control post-war run-away inflation.

In the early morning hours of January 7, 1946, Suzanne Degnan was kidnaped from her home. In horror, police began to discover her dismembered body parts in the sewers of her north side neighborhood. The autopsy later revealed that the child had been strangled.

This crime, more than the murder of Brown, and more than the murder of Ross, shocked the citizens of Chicago. The public's fear and anger were stoked and prodded by the press. Newspaper headlines screamed for the arrest of Suzanne Degnan's killer. The story was carried by the media throughout the United States and abroad.

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[4] The facts in this section of this Petition have been independently verified, but originally were disclosed by Dolores Kennedy in her book *William Heirens, His Day in Court* (Bonus Books, 1991).

Police noted the professional dismemberment. They suspected a butcher or medically trained person as the killer. Another lead came from three eyewitnesses who reported seeing a man and woman carrying a large wrapped bundle into a waiting car near the Degnan home at 2:00 a.m., shortly after Suzanne's abduction.

Months passed without resolution. Mothers kept their children indoors. A killer was on the loose. And the newspapers daily mocked the police for failing to apprehend the killer. The pressure on the police and the State's Attorney's Office to solve the crime was enormous and both the police and prosecutors performed poorly under the pressure. Several times police announced that they had arrested Suzanne's killer, only to later announce that they had the wrong man. Most notably, police arrested Hector Verburgh, the 65-year-old janitor in charge of maintaining the building where the killer had dismembered Suzanne's body. According to Verburgh, the police tortured him relentlessly for more than two days. After his release, Verburgh had to be taken to a local hospital where he spent ten days recovering from the abuse he suffered at the hands of his interrogators. At the hospital, Verburgh described his ordeal to reporters:

> "Oh, they hanged me up, they blindfolded me. I can't put up my arms, they are sore. They had handcuffs on me for hours and hours. They threw me in the cell and blindfolded me. They handcuffed my hands behind my back and pulled me up on bars until my toes touched the floor. I no eat, I go to the hospital. Oh, I am so sick. Any more and I would have confessed to anything."

Verburgh's lawsuit against 17 members of the Chicago Police Department was settled on the eve of trial for $20,000 — $15,000 payable to Verburgh, and $5,000 payable to his wife, who had been pressured to implicate him.

So desperate were the police to solve the Degnan crime that they enlisted the assistance of *Chicago Daily News* artist Frank San Hamel to analyze the handwriting on the Degnan ransom note to see if he could

get any leads. Three days after the murder, San Hamel reported to the police that he had found "hidden indentation writing" on the photograph of the ransom note he was using for his analysis. Chicago Police Chief Walter Storms was so excited by San Hamel's "discovery" that he turned the original note over to San Hamel (breaking the police chain of custody). This "indentation writing" was a complete hoax, but it was to play a critical role in turning public opinion against Heirens when San Hamel later falsely claimed to find writing on the ransom note which linked Heirens to the Degnan murder and to several other crimes, including, incredibly, the Pera burglary, the very crime for which he was arrested on June 26, 1946, and which led police to suspect him in the almost 7- month-old Degnan murder. No one bothered to question how it was that Heirens knew about the Peras, whose home he would not enter for almost seven months.

B. The Arrest and Investigation

On June 26, 1946, Heirens was arrested on Farwell Avenue in Rogers Park, Chicago, on a burglary charge, after he had been spotted stealing a dollar bill from a wallet in the home of Joanne Pera by a neighbor. In an altercation with police officers following a chase, he was struck on the head and knocked unconscious. He was taken to the county jail hospital, Bridewell. Immediately, the police leaped to the conclusion that Heirens was involved in the Degnan murder and set out to make a case against him for that crime. Without obtaining a search warrant and without probable cause to search Heirens's residences and his belongings, the police raided Heirens's college dorm and gathered many of his belongings. Thereafter, they began an interrogation, which was to last for the next six days, in an effort to wring a confession out of him for the Degnan and other unsolved murders.

Police and prosecutors were so desperate to get a confession from Heirens that they trampled on his constitutional rights, interrogating the teenager around the clock while he was still recovering from his injuries. They isolated him from his parents, prevented him from sleeping, and offered him little in the way of food or drink. Unhappy with the boy's answers, the State's Attorney retained a pre-eminent psychiatrist, Dr. Roy Grinker, paid him the then-princely sum of $1,000, and ordered him to inject Heirens with sodium pentothal, the so-called truth-serum, to "get the truth out of him." This battery was inflicted on the teenager without his consent or the consent of his parents. State's Attorney William J. Tuohy denied being present for the test or even knowing about it. It was not until 1952, when the now Judge Tuohy was forced to testify under oath at Heirens's post-conviction petition, that he admitted that he not only knew about it, but that he had authorized it.

Some time on Heirens's fifth day of custody, a different doctor and nurse gave him a spinal tap, an agonizing procedure which was performed without anesthesia, purportedly to rule out that Heirens was brain damaged. While Heirens was still in agony from the procedure, several police officers picked up the teen, carried him into a police car, and drove him to the detective bureau for a lie detector test, which was administered without his consent. A second lie detector test was administered the next day, again without his consent. Both test results were inconclusive.

On July 2, 1946, Heirens was transferred to the Cook County Jail, where he was placed in the infirmary to recover from his ordeal. A picture of the prostrate Heirens attempting to sign in at the County Jail captures the condition in which he was left after the torturous treatment he had received from Chicago law enforcement. (A copy of this picture is attached as Exhibit 3). Even under this grueling and prolonged questioning, Heirens continued to maintain his innocence.

Heirens remained in the infirmary for about a week and then was transferred to a cell. During this period, his defense counsel were summoned to the prosecutor's office where they were told that if Heirens would confess to the Degnan, Brown, and Ross murders and plead guilty to all the other charges brought against him, the State would assure that there would be no death penalty and that the penalty would be one life term, all sentences running concurrently. Prosecutors told the defense counsel that Heirens would go to prison for life on the burglary charges alone. Defense counsel capitulated and agreed to cooperate with the prosecution and to obtain confessions and pleas of guilty from their client. Heirens had not even yet been indicted for murder when defense counsel, without telling Heirens, decided to abandon their duty to him and to him alone.

From the time of his arrest, the five Chicago newspapers vied with each other for circulation as they tried William Heirens for murder in front page headlines. "Compelling" evidence, much of it false, was leaked by prosecutors and police and printed in the newspapers. Even before this "evidence" had surfaced, police and prosecutors publicly announced that they had their man. As the case against Heirens appeared to grow, news reporters were the first to know about developments. They reported that the message on the Brown apartment wall matched known samples of Heirens's writing. Handwriting on the Degnan ransom note also was said to match. Hidden indentation writings on the ransom note purportedly tied Heirens to the Degnan crime. An eyewitness identified Heirens as the man he saw fleeing the Degnan murder scene. A bloody fingerprint on the doorjamb of the Brown apartment was Heirens's. The face of the Degnan note bore Heirens's little fingerprint. There was no evidence in the Ross case, but authorities thought it likely that the same person killed Brown and Ross. The prosecution spoke and the press reported it as if it were the gospel truth, failing to subject this evidence to any serious scrutiny.

As if this prosecutorial pipeline to the press was not prejudicial enough, the press itself took great liberties with the truth in its reporting on the Heirens investigation. In addition to San Hamel's fictitious indentation writing, George Wright of the *Chicago Tribune* breached all journalistic ethics when he concocted a confession and published it as if it were the truth. On Tuesday July 16, 1946, Wright penned the front page story "The Heirens Story! How He Killed Suzanne Degnan and 2 Women." Quoting "unimpeachable sources," Wright's story claimed that Heirens killed Degnan for ransom, shot Frances Brown, waited on her fire escape and then returned to stab her, and stabbed Josephine Ross when she awoke during an attempted burglary. The *Chicago Sun*, which had run a story on the same morning as Wright's story in which it claimed that Heirens had not confessed, reversed itself in later editions and simply ran the *Tribune*'s confession. Other papers followed suit.

C. The Conviction

The *Chicago Herald American* reported that the news of the confession story had caused Heirens to become hysterical and to demand to see the warden of the county jail. The *Herald American* described how Heirens adamantly denied confessing to anybody and exclaimed in desperation "What are they going to pin on me next?"

The concocted *Chicago Tribune* story broke Heirens's will and spirit. Urged again by his lawyers to accept the plea bargain offered by the State, he now agreed to confess. Unbeknownst to Heirens, State's Attorney Tuohy had invited every police officer involved in the investigation and a full contingent of reporters and photographers to witness Heirens's confession on July 30, 1946. But Heirens ruined the party. Instead of delivering the promised confession, when Tuohy asked Heirens to "tell the truth" about the murders,

Heirens responded, "I don't know" and "I don't remember." An angry State's Attorney then changed the plea bargain from concurrent to consecutive sentences.

Several days later, after more prodding from his parents and defense attorneys, Heirens confessed to all three murders in another public spectacle in order to avoid what he was led to believe was certain death in the electric chair. Part of the plea agreement required that Heirens "reenact" the murders for the benefit of the Chicago press. Hundreds of onlookers appeared at these reenactments just to get a glimpse of Heirens, the boy whom the press had labeled a "Jekyll and Hyde." (A copy of the picture of staged reenactments is attached as Exhibit 4).

On September 4, 1946, in a perfunctory proceeding, Heirens pled guilty in court. That night, he tried to hang himself in his jail cell. The next day, at his sentencing hearing, the State called a bevy of witnesses, including numerous police officers involved in Heirens's arrest, fingerprint experts, handwriting experts, mental health professionals who had examined him, and others. Throughout this entire proceeding (much of which was never transcribed because the court reporter died before he could type up his notes), counsel for the defense raised no objections and asked no questions of witnesses. Then, at the close of the evidence, both State's Attorney William Tuohy and lead defense counsel John Coghlan rose to make concluding remarks.

The bizarre self-congratulatory remarks of both men about their roles in resolving the case, the numerous compliments they bestowed on one another, and the acknowledgment by Heirens's defense

counsel that at some point, he abdicated his duty to his client in favor of a higher public duty, have been fodder for law review articles and law school ethics classes ever since.[5]

Contrary to his puffery in the press and his negotiations with defense counsel, State's Attorney Tuohy all but admitted that he had no chance of securing anything other than a single conviction of burglary and assault against Heirens for his theft of one dollar in the Pera burglary and the ensuing altercation with the arresting officers. The illegal search conducted by the police had compromised most of the burglary cases and prevented him from admitting into evidence the stolen items recovered from Heirens's dormroom. "All the prosecution had in the Degnan case was a partial fingerprint and that on the ransom note," exclaimed Tuohy, and "[t]he small likelihood of a successful murder prosecution of William Heirens early prompted the State's Attorney's Office to seek out and obtain the cooperative help of defense counsel, and through them, of their client." Tuohy talked about defense counsel as if they were performing the ultimate public service in sacrificing their client: "Without the aid of the defense, we would to this day have no answer for the death of Josephine Ross. Without their aid, to this day a great and sincere public doubt might remain as to the guilt of William Heirens in the killing of Suzanne Degnan and Frances Brown." Before sitting down, State's Attorney Tuohy, urged the Court "to sentence the defendant to an imprisonment from which he shall never return."

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[5] For example, Northwestern University School of Law Professor Jon R. Waltz wrote about the Heirens case in a law review article published in 1964. Jon R. Waltz, *Inadequacy of Trial Defense Representation as a Ground for Post-Conviction Reversal*, 59 NW. U. L. REV. 289 (1964). Waltz was critical of the Illinois Supreme Court's decision denying post-conviction relief, arguing that the Court had dodged the central question asked of it: "whether defense counsel are free to act upon an agreement with third parties that the welfare of society in general would benefit from their client's conviction." The Honorable Shelvin Singer, a retired Cook County Circuit Court Judge who served 12½ years in the Felony Trial Division, and was a criminal procedure and criminal law professor at IIT/Chicago-Kent College of Law for 29 years, used the Heirens case to teach legal ethics of defense lawyers and competency of defense counsel. *See* copies of the relevant pages of the Waltz article and the Singer statement, which are attached as Exhibit 5.

John Coghlan, the lead defense attorney, followed Tuohy and began by thanking Tuohy for his kind remarks. He explained that the appearance of the fingerprint evidence in the public press connecting Heirens to the Degnan case caused him to seek out a cooperative agreement with the State. Given his client's puzzling mental status, Coghlan believed that it would be unfair to execute Heirens, but also decided that "any course on our part which would assist in having him returned to society would be equally unfair." In a complete abdication of his role as defense counsel, Coghlan concluded by telling the Court that "I submit to you . . . that, in my mind, it makes little difference whether the sentences run concurrently or consecutively. A sentence of life in this case is life."

Ten weeks after his arrest, Heirens began serving consecutive life sentences. The case was closed. Chicago's children went back to the parks and beaches to play. Mothers and fathers slept soundly. Chicago's bogeyman had been locked up and the key had been thrown away. His own defense attorney had made sure of that.

IV. William Heirens's Story

It is one thing to read the facts about the Heirens case from contemporaneous news accounts, court transcripts, police reports and other court records, but it is even more chilling to hear William Heirens describe, in his own words, what it felt like to be a teenager in the middle of the maelstrom that was the Degnan murder investigation. Heirens has described his account of these events numerous times in court pleadings, at parole hearings, and in interviews. Changes in the rules for clemency petitions now require that he recite them again here:

On June 26, 1946, I was arrested on the north side of Chicago following a burglary. In the process, I was beaten over the head and on my left hand as I sought to protect my head from blows struck by a

police officer with stacked flower pots. After my head was sutured at the local hospital, my head and hand were bandaged and I was taken unconscious to the Bridewell hospital, where my head was x-rayed and I was cuffed to a bed in the main ward.

Early on June 27th my fingerprints were taken by Sgt. Laffey. I was again x-rayed and taken to a separate examining room where I was grilled about various unsolved crimes, especially the Suzanne Degnan, Frances Brown, and Josephine Ross murders. I was told that my fingerprints matched those found on a ransom note in the Degnan case. My fingerprints were not claimed to be found in the Degnan home, nor were mine the unidentified prints found on the child's bedroom windowsill.

During that period, my living quarters were searched by the police and materials found there were confiscated. I was interrogated under sodium pentothal by the prosecution without my permission or that of my parents; I was given a spinal tap and immediately taken for a trip to the Chicago Detective Bureau where I was given two lie detector tests; I was continually interrogated until I finally was transferred from police custody to the county jail on July 2, 1946.

Rumors were that I had confessed while in police custody — and even to this day many people assume that is true. About this, when asked, Wilbur Crowley, the First Assistant State's Attorney, stated for the court record: "You never confessed guilt in police custody."

During my last days in police custody, even before I met with my defense attorneys, Mr. Crowley propositioned me, promising a single life sentence (all sentences running concurrently) if I would confess and plead guilty to three murders and all other charges. I refused this plea bargain offer and continued to maintain my innocence of murder.

Defense counsel testified that: "Somewhere around July 7, Crowley was desirous of seeing me, so on the first occasion when I was in the criminal courts building, I went into his office."

Afterward, defense counsel — John Coghlan and Roland Towle — conferred with me in the county jail about their meeting with Crowley. I was told that out of the 29 indictments (besides murder) 24 would fall on a motion to suppress evidence because it was obtained through illegal search and seizure leaving the five that would put me in for life. I learned that Crowley was "anxious" to settle the case on a plea bargain. The prosecution initiated a plea bargain settlement and not the defense.

Defense counsel saw and talked to me while I was in the county jail, but they limited their inquiries to the state of my health and the burglaries (not murder because I hadn't been charged with murder and might never be). My main concern was with obtaining a fair trial in view of the great amount of negative publicity my case was receiving.

I was told there were various methods of securing a fair trial in spite of bad publicity, but after reviewing the options, change of venue, waiting for the "heat" to die down, waiving a jury trial in favor of a bench trial, nothing seemed satisfactory.

An assessment of the situation was given on August 4 by a British journalist writing for the *London Sunday Pictorial* under the headline "Condemned Before His Trial, America Calls This Justice." It continued: "While all America waits for a man to be charged in one of the most complex murder cases in history, a suspected youth has already been tried in the pages of Chicago newspapers. And he has been found guilty."

Defense counsel did not always paint a gloomy picture. They discovered that Frank San Hamel of the *Chicago Daily News* had faked indentation writing on the Degnan ransom note in order to link the note to me. And they had learned that the only "eyewitness" had lied about seeing me at the site of the crime.

At all times, defense counsel reminded me of the prosecution's offer to settle the case on a plea bargain. I didn't seek to settle the case on a plea bargain; it was the prosecution's call. If I were convicted of murder, the death sentence was almost certain with the clamor going on, and, if not convicted of murder, I would be convicted of burglary, which meant I would be imprisoned for the rest of my life according to the prosecution. So I was in a no-win situation and I didn't learn until later all the reasons why my lawyers kept pressuring me to accept the plea bargain. Malachy Coghlan, John's older brother, who also represented me, was running for the office of State's Attorney of Cook County and he was having difficulty obtaining party endorsement while he was handling the case. Throughout this period there were pickets in front of the Coghlans' homes demonstrating against them for representing me.

On July 15, I was visited by defense counsel in the county jail and told to decide whether or not I would accept the prosecution's offer and I told them I would need a day to think it over. That evening, the jail radio announced on the news that I had confessed. The next day the *Chicago Tribune* headlined "The Heirens Story! How He Killed Suzanne Degnan and 2 Women," with a complete confession story to the murders of Suzanne Degnan, Frances Brown, and Josephine Ross. This was the proverbial last straw. True, the *Tribune*'s story was false, but people would believe it and that was what mattered. The *Tribune*'s competitors (four other newspapers and even the wire services) came out with their own confession stories, not to be outdone by the *Tribune*. Thus all hope of a fair trial was dashed. Had it not been for this publicity,

I would have insisted on going to trial because evidence of my innocence was beginning to surface and Craig Rice, a New York reporter who was convinced of my innocence, had begun to work on my behalf.

On July 16, defense counsel began questioning me about the murders as the first step in the plea bargaining process. John Coghlan made notes and subsequently had them typed up into what has come to be called the "chapel confession." Coghlan also had typed up a plea bargain contract in which I was to receive one concurrent sentence of life on all charges in exchange for my confession and pleas of guilty.

On July 26, I was presented with the contract entitled "Directions to Attorneys," which I signed in the presence of my parents in the chapel of the county jail. The confession story Coghlan had typed up was given to me to read and sign. Coghlan had changed some facts in the story and asked me to correct those parts on the typed confession; by making those changes, Coghlan thought it would make the confession more authentic. Coghlan had to call those parts to my attention for correction because his representations seemed better than what I had concocted. Needless to say, the whole process was being covered by the press in the sense that confessions were being made and that I was guilty of three murders just as the newspapers had been saying all along.

On July 25, I was indicted on the Brown and Degnan murders.

On July 30, I was taken to the office of State's Attorney William J. Tuohy in order for me to make confessions and reenact the murders as part of the plea bargain contract. Mr. Tuohy, apparently because he had a large audience, made a statement that he would get to the "truth." As he continued in this fashion, I began to get angry and the emotion washed away the fear of being put to death. The first time he paused, I asked him if he really wanted the truth and he said he did. As questioning began, I answered all the preliminary questions (name, address, etc.). When it came to the murders, I said that I had no memory of

having committed them — the most truthful response I could make. Some people felt I should have said I was innocent rather than having no memory. The press said I had a dual personality and I had begun to wonder if this were the case. By this time I had acquired enough knowledge about the murders from what I had read and been told, and I told Mr. Tuohy that I was willing to make the confessions based on this.

This didn't satisfy the State's Attorney. Defense counsel were upset, especially Malachy Coghlan. My parents were called to persuade me to make the expected confession and I told them I had no memory of killing anyone.

After I was taken back to my cell, the jail radio blasted me for not confessing, as did the press. Nobody ventured that I was innocent. There was absolutely no way I could get a fair trial now, so when I next saw defense counsel, I said I would give the prosecution what it wanted. John Coghlan told me that I had embarrassed the State's Attorney, who told Coghlan that the deal was no longer for a single life sentence, but three consecutive life sentences. I had embarrassed the State's Attorney and this was my punishment. I am the only prisoner serving a sentence for embarrassing a prosecutor; I completed a life sentence when I was discharged on the Degnan murder sentence in 1966.

On August 6, I went to Tuohy's office again. It was just as crowded as before, but this time I made the confessions as required. It was difficult because the interrogator tried to get me to reveal information that wasn't known before, but I only knew what I had read or heard about the crimes. When I perceived that the interrogator was getting angry and frustrated because I kept saying that I didn't remember, I changed tactics. I said I got sexual satisfaction from burglarizing. When I said that, the interrogator stopped focusing on the details of the crimes and started pursuing the sex angle. In truth, I got no sexual satisfaction from burglarizing; the constant fear of being caught would have obviated that. When the interrogator returned to

details of the crimes, I took another tact. I said I had eaten a donut in an all-night restaurant following the Degnan murder. The waitress and policeman who I said were in the restaurant at the time couldn't remember whether this was so because six months had lapsed.

During the reenactment, I was especially observant. For example, in the Degnan child's bedroom, I was asked if the furniture was in the same position. There was a good chance that it had been changed or I wouldn't have been asked the question. I remembered a newspaper photograph of the child's bedroom which showed the covers of the bed being neatly turned back. It was this picture that prompted people to think the child's father had committed the crime because if a stranger took the child, Suzanne would have struggled, causing the bedding to be rumpled. Even if she were murdered in her bed, her struggle for life would have rumpled the bed. This photograph in my memory told me the furniture had been moved around from where it was the night of the murder. So I avoided some mistakes by using what I learned from newspapers.

On July 25, I was indicted on the Degnan and Brown murders and after the confession, I was indicted on the Ross murder where the confession was the sole evidence provided to the grand jury.

After the confessions, I was to be examined by psychiatrists to see if I were sane enough to stand trial. Defense counsel picked a psychiatrist who had boasted that he didn't approve of an insanity defense. The prosecution picked Dr. Haines, who had attended the sodium pentothal interrogation. These two picked Dr. Foster Kennedy, their mentor in the field of non-Freudian psychiatry.

I dissembled as best I could, using the George Murman tag that was put on me by the press and using the sex angle that had worked so well during the confession. The results didn't buy me more time as

I was trying for before I was convicted — more time would have allowed new evidence in my favor to develop.

On September 4, I was taken into court and pled guilty as agreed to in the plea bargain contract, and on September 5, I was sentenced to three consecutive life sentences and a consecutive one-year-to-life term embracing concurrent terms for the burglaries and assaults. Not one of these sentences involved a sex crime.

From the day the *Tribune* faked the confession story forcing me to accept the plea bargain, I took on the role of Scheherazade, who was obliged to spin tales to save her life. For the past 45 years, I have litigated in the hope of obtaining the trial denied me in 1946. During the past ten years, investigation into the evidence used against me proves my innocence.

V. Argument

A. The Question of Clemency for Heirens must Now Be Evaluated in Light of New Understandings of the Sources of Wrongful Convictions in the United States, and Particularly in Illinois

In the almost seven years since attorney Jed Stone last appeared before the Prisoner Review Board seeking clemency for Heirens, a revolution has taken place in terms of the knowledge and understanding of wrongful convictions. According to figures compiled by the Innocence Project at Cardozo Law School, DNA testing has exonerated 104 men and women who had been convicted and sentenced to prison.[6]

The Innocence Project's analysis of the factors leading to wrongful convictions in the first 74 of these cases shows that mistaken eyewitness identification was a factor in 81% of the cases, serology

[6] *See* Cardozo School of Law, Innocence Project, http://www.innocenceproject.org.

inclusion (blood typing of semen, saliva, and bloodstains) in 51%, police misconduct in 50%, prosecutorial misconduct in 45%, microscopic hair comparison in 35%, defective or fraudulent science in 34%, bad lawyering in 32%, false confessions in 22%; false witness testimony in 20%, informants/snitches in 19%), other forensic inclusions (comparisons of fingerprints, fibers, and other physical evidence) in 7%, and DNA Inclusions in 1%. These DNA exonerations have exposed a criminal justice system that had become complacent about its fairness and accuracy, had turned a deaf ear to the claims of innocent men who had been wrongfully convicted, and was overly confident in the ability of the adversarial process to prevent miscarriages of justice from taking place.

Analysis of the DNA exonerations not only has told us that many mistakes are made but why they are made. As Barry Scheck, Peter Neufeld, and Jim Dwyer wrote in *Actual Innocence,*[7] in their groundbreaking 1999 book on wrongful convictions:

> Sometimes eyewitnesses make mistakes. Snitches tell lies, confessions are coerced or fabricated. Racism trumps the truth. Lab tests are rigged. Defense lawyers sleep. Prosecutors lie. DNA testing is to justice what the telescope is for the stars: not a lesson in biochemistry, not a display of the wonders of a magnifying optical glass, but a way to see things as they really are. It is a revelation machine.

Perhaps nowhere, in the past seven years, has this revelation machine exposed these hard truths about our justice system more than in Illinois, and perhaps no organization has been more involved in educating the public and policymakers about the sources of wrongful convictions than the CWC.

Since the death penalty was reinstated in Illinois in 1977, 13 men have been exonerated and released from death row in Illinois — 4.9% of all persons sentenced to death since capital punishment was

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[7] Scheck, et. al., *Actual Innocence: Five Days to Execution, and Other Dispatches from the Wrongly Convicted,* Doubleday, 1999.

restored in the mid-1970s. That is the highest percentage of death row exonerations in the nation. Summaries of the 13 cases are available at the CWC website.[8]

Ten of the 13 exonerations have occurred since Jed Stone last argued for Heirens's release. These cases were permeated by the same sources of wrongful convictions that appear time and time again: mistaken eyewitness identification, false confessions, prosecutorial misconduct, police misconduct, defense incompetence, and junk science.

The exonerations of the 13 Illinois death row inmates led Governor Ryan to declare a moratorium on the death penalty in February of 2000, and to appoint a blue-ribbon commission to evaluate the Illinois death penalty system to determine if the system could be fixed.

Since the Governor declared the moratorium, the parade of wrongful convictions, both in the nation and in Illinois, has continued. According to Scheck, Neufeld, and Dwyer between the time of the release of *Actual Innocence* at the end of 1999, and the release of the updated paperback version of *Actual Innocence* released in March 2001, "DNA tests have freed one innocent person from prison or death row every eighteen days — sixteen people in 10 months." The astonishing error rate underestimates the true scope of the number of errors because it does not account for the scores of defendants who have been charged with crimes, only to be released before trial after DNA exonerates them. It also fails to account for the many defendants who have been exonerated in cases where no DNA testing was done. Finally, as Scheck, Neufeld, and Dwyer point out, the error rate "could easily have been one or two people going free

[8] *See* www.law.northwestern.edu/depts/clinic/wrongful/exonerations/Illinois.htm.

every day if biological evidence had not been lost or destroyed in thousands of cases, or if more prisoners enjoyed access to DNA testing."

In Illinois, in the approximate time frame since *Actual Innocence* was first released in 1999, four of the state's 13 death row exonerations occurred — those of Anthony Porter, Ronald Jones, Steve Smith, and Steve Manning. Numerous other murder charges have been dropped or convictions vacated since 1999, including most recently the tragic case of Larry Ollins, Calvin Ollins, Marcellus Bradford, and Omar Saunders, the four young men who were wrongfully convicted of the murder of Chicago-Rush medical student Lori Roscetti.[9] In the Roscetti murder, based on a tip, the Chicago police recently solved the case in just 37 days, arresting two men who have re-enacted the murders and confessed to them on videotape and been linked to the crime through DNA evidence.

This new context — the revolution in understanding the frequency and sources of error in the criminal justice system — compels the Prisoner Review Board and the Governor to reexamine the case of William Heirens and consider his petition for executive clemency. Prosecutorial and police misconduct, incompetence of defense counsel, mistaken eyewitness identification, defective and fraudulent science, probable false confessions, and prejudicial pre-trial publicity all played a role in Heirens's conviction. In fact, given the presence of all these ingredients, the Heirens case is the recipe for a textbook wrongful conviction. This petition will now examine these ingredients in turn.

1. Prosecutorial Misconduct

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[9] For a complete list of all of the post-conviction murder cases, see the Report of the CWC: *False Confessions and Other Contributing Factors in Wrongful Murder Convictions in Illinois since the William Heirens Case*, attached as Exhibit 6.

Since the advent of DNA testing and subsequent discoveries of wrongful convictions, our understanding of prosecutorial misconduct and the role it plays in causing wrongful convictions has vastly increased. It is now beyond dispute that prosecutorial misconduct is often the driving force behind a wrongful conviction. Such a claim, if made at the time of Heirens's case, or even at the time of Heirens's last clemency petition, would have been paid little heed. Today, however, the central role that prosecutorial misconduct has played in numerous Illinois wrongful convictions compels the Prisoner Review Board and the Governor to scrutinize the prosecutorial misconduct in the Heirens case. Prosecutorial misconduct played a role in 40.9% of 44 documented wrongful murder convictions in Illinois in the nearly six decades since the Heirens case *(see* Exhibit 6). It simply can no longer be ignored.

a. Prosecutorial Misconduct in the Heirens Case

Armed with the newfound knowledge uncovered about prosecutorial misconduct both in Illinois and throughout the country, and the key role such conduct has played in wrongful convictions, it is critical that the Governor and the Prisoner Review Board objectively reassess the prosecutors' unlawful behavior in the 1946 investigation, interrogation, and conviction of 17- year-old Heirens. There is no question that State's Attorney William Tuohy and Assistant State's Attorney Wilbert Crowley committed numerous acts of severe misconduct that we recognize as signs of a wrongful conviction today. At the time these acts were outrageous, unprecedented and even criminal, but were not questioned by the uncritical positions of authority or the fawning press corps hungry for any scraps of information that prosecutors could feed them. Although the Illinois Supreme Court later criticized these acts in its 1954 opinion and called them "flagrant violations" of Heirens's constitutional rights, deserving "the severest condemnation," the Court also found no

"substantial connection" between this conduct and Heirens's later pleas of guilty.[10] In so finding, the Court ignored the role that the police and prosecutors played in fanning public hysteria by repeatedly telling the press that Heirens was guilty when they had no proof to support that proposition. It is doubtful that a court looking at this record today, in light of all that we have learned about the role of prosecutorial misconduct and the substantial evidence pointing toward Heirens's innocence, would make such a finding.

The misconduct of prosecutors generally can be divided into four categories of injustice: (1) colluding with the press and intentionally making extrajudicial disclosures that jeopardized the possibility of a fair trial, (2) using physical abuse and mental coercion to obtain a confession and guilty plea, (3) pursuing a guilty plea when confronted with a lack of evidence and a suspect who persistently asserted his innocence, and (4) arbitrarily increasing the murder sentence in retaliation for Heirens asserting his innocence. Any one of these serious forms of prosecutorial misconduct standing alone would be grounds for reversing Heirens's conviction, and are reason to doubt both the fairness of the process by which it was obtained and the veracity of the conviction itself. Taken together, they amount to one of the worst cases of prosecutorial misconduct in Illinois history.

i) Unlawful Collusion With the Press and Public Disclosures that Minimized the Chances for a Fair Trial

When dealing with a hungry press during a criminal investigation, a diligent, fair State's Attorney will delicately balance his dual obligations as the people's attorney and an attorney acting within our standards of justice. While a prosecutor may at times be obliged to inform the public about certain aspects of a criminal case, he is also bound by the obligations of justice to refrain from making extrajudicial

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[10] *See People v. Heirens*, 122 N.E.2d 231, 237 (1954).

statements that could impair a suspect's right to a fair trial or manipulating the media for his own personal gain. Twenty years after the Heirens case, the Supreme Court demonstrated this principle in *Shepard v. Maxwell,*[11] reversing Dr. Sam Shepard's highly publicized murder conviction. "Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation," held the court, "but is highly censurable and worthy of disciplinary measures." Among the court's reasons for reversing Dr. Shepard's murder conviction was the prosecution's leaking of inadmissible evidence to the news media and making unlawful extrajudicial statements about the suspect's guilt and his failure to cooperate during interrogation.

In addition, both the American Bar Association's Model Ethical Rules and the Rules of the Illinois Supreme Court on Professional Conduct prohibit public disclosures that courts have recognized as impediments to a fair trial. Illinois Rule 3.6 bars a prosecutor from making statements to the press about the content of a suspect's confession, the likelihood of a guilty plea, and his opinion on the suspect's guilt or innocence. Illinois Rule 3.8 poses an even higher duty on prosecutors by charging them with an oversight responsibility, ensuring that others involved in a criminal investigation, namely the press and police, do not make extrajudicial statements that would impede a fair trial.

States Attorney Tuohy's appalling behavior before the press during the investigation of Heirens far exceeded the boundaries ethical guidelines draw to ensure a fair trial. The Heirens case was clearly one of the most publicized in the nation's history. The news media worked furiously both to inflame and to appease the public's fear and frustration about the murder of Suzanne Degnan. Sensational headlines proclaimed

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[11] 384 U.S. 333 (1966)

Heirens's guilt from the earliest stages of his apprehension.[12] Faced with such a media frenzy, State's Attorney Tuohy breached his judicial duties by fueling the fire with his opinions on Heirens's guilt (headlines quoted Tuohy's assertion that "This Man is the Killer"[13]) and questionable damning evidence against him. Ultimately, Tuohy had an "open-door policy" toward the press; he allowed them to publish a copy of the boy's inaccurate confessions, be present during his confession, and be privy to evidence such as the ransom note and fingerprints during the course of the investigation.

When Tuohy wasn't talking to the press himself, Chief of Police Storms and other police officers were, further poisoning any chance that Heirens could receive a fair trial. While awaiting FBI confirmation on a fingerprint of Heirens, Storms told reporters that "Heirens looks like the one" and claimed that he had killed a woman named Estelle Carey, whom he could not have killed because she was murdered when he was attending a boarding school in Terre Haute, Indiana. "I put him all the way from Estelle Carey on," Storms was quoted as saying. "He's guilty of that one, too. I am certain that Laffey will identify a palm print found on the site of the Carey crime as belonging to Heirens." Meanwhile, Sergeant Thomas Laffey, the fingerprint expert examining the ransom note, was told reporters that "right off I didn't like him." Tuohy did nothing to stop such prejudicial utterings to the press, clearly violating his duty to ensure that police, as participants in the state's investigation, did not make statements jeopardizing Heirens's right to a fair trial.

Equally shameful was the way State's Attorney Tuohy and Chief Storms solicited amateur press members to help "investigate" the murders and publicly uncover evidence against Heirens. Tuohy himself

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[12] "The Heirens Story! How he Killed Suzanne Degnan and Two Women," *Chicago Daily Tribune*, July 16, 1946; *Prints Link Heirens to 'Lipstick' Murder*, Chicago Sun, July 13, 1946; *Prints of Boy 17 Match. New Degnan Break*, Chicago Sun, June 29, 1946; *U of C Student Quizzed, Degnan Prints Match*, Chicago Sun, June 28, 1946.

[13] *Chicago Sun*, July 13, 1946.

publicly thanked the press and admitted, "The papers kept the story alive for months. They focused public attention on it. We wouldn't be as far as we are if it were not for the paper's help." This solicitation created a climate in which San Hamel, an artist for the *Daily News*, was given possession of the Degnan ransom note from the police and played detective, revealing hidden indentation writing that put forth hidden "clues" implicating Heirens. The *Daily News* even went so far as to publish an enlarged version of the note so readers could help detect these clues which would move the prosecution closer to coercing a confession out of Heirens.

While we may realize higher standards for the prosecution in dealing with the press today than existed at the time of Heirens's trial, there can be no doubt that the extreme misconduct demonstrated by States Attorney Tuohy undermined Heirens's ability to receive a fair trial. Such misconduct is exactly the type that causes a wrongful conviction.

ii) The Extreme Physical Abuse and Mental Coercion Inflicted on a Juvenile to Obtain a Confession and Guilty Plea

While a prosecutor may welcome a plea of guilty and may use persuasive negotiating to obtain one; he may not do so without limits. The Supreme Court unequivocally held in *Brady v. United States*[14] that "the agents of the State may not produce a plea by actual or threatened physical harm or by mental coercion overbearing the will of the defendant."

There is little question that State's Attorney Tuohy and Assistant State's Attorney Crowley, for six days and nights, attempted to force 17-year-old Heirens into confessing by using and allowing heinous interrogation tactics. When that failed, they used the press to bring Heirens to his knees and compel him to

[14] 397 U.S. 742 (1970)

plead guilty. Among their many offenses was authorizing the injection of Heirens with sodium pentothol (the so-called truth serum)[15] and interrogating him for three hours while he was under the influence of the illegal drug. Other physical abuse imposed on Heirens included burning his testicles with ether and giving him a spinal tap with no anesthetic preparation or recovery time. Throughout the six days and nights of interrogation, Heirens was not permitted to sleep or eat and was strapped to his hospital bed. His parents were kept from him for four days and his attorneys for six. This constant barrage of physical abuse and interrogation administered by the police and prosecutors clearly indicates that Heirens was not in a state to confess or plea guilty voluntarily. By the standards of any day, just one of these examples of the prosecutors' behavior during interrogation would be enough to warrant reversal of a conviction.[16]

It is naive to think that these heavy-handed tactics had no effect on Heirens's ultimate decision to plead guilty. Although Heirens did not confess to these crimes during the six days, even when under the

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[15] The September 11 terrorist attacks have re-raised the question of when it is permissible, if it ever is permissible, to use coercive techniques such as truth serums to gain information from a suspect. Even in the wake of such a monumental tragedy and the very real threat of future attacks to the United States, and even during a time of war, administering sodium pentothol on terrorist suspects is not recognized as a lawful or even useful option. Despite much public discussion and commentary, the general population remains suspect of the appropriateness of such a tactic. *See, e.g.*, Alan Dershowitz, *Can There Ever Be a More Torturous Road To Justice?* Los Angeles Times, Nov. 8, 2001 (suggesting that in order to legitimately use truth serum we must legalize its use and administer it under a "torture warrant" whereby the suspect has immunity after agreeing to be injected and questioned); Frank J. Murray, *Using Truth Serum As An Option to Probes: Court OK Likely to Keep Public Safe*, Washington Times, Nov. 8, 2001; Vicki Haddock, *To Get to the Truth, is Torture or Coercion Ever Justified?* San Francisco Chronicle, Nov. 18, 2001; Steve Chapman, "Should We Use Torture to Stop Terrorism?" *Chicago Tribune*, Nov. 1, 2002. Considering that many people today believe that the use of the truth serum against Al Qaeda terrorists crosses the line, we must think of just how unconscionable State's Attorney Tuohy's decision was to inject a 17-year-old boy with the drug against his will in 1946.

[16] The contents of the sodium pentothal interview, although recorded, have never been released by the Cook County State's Attorney's Office. Without a transcript of this interview, it is impossible to know precisely what these incriminating statements were and whether they originated in the minds of Heirens or were suggested to him by his interrogators. What is known is that Heirens did not confess to the murders. Reporters from other newspapers suspected that statements made by Heirens during the sodium pentothal interview were the "unimpeachable source" of George Wright's later faked confession story. This has never been verified. In any event, the failure of the State's Attorney to produce the notes of this interview, today, would be considered a discovery violation which itself would call for reversal of Heirens's conviction.

influence of sodium pentothal,[17] Heirens allegedly made incriminating statements in which he blamed the Degnan murder on an imaginary colleague named George Murman. Assistant State's Attorney Wilbur Crowley pronounced that the results of the sodium pentothal interview "told him all he needed to know" about Heirens's involvement in the murder. Heirens's mumblings about George gave the press all the ammunition it needed to portray Heirens as a dangerous Jekyll and Hyde-like character, a theme the press, prosecutors and police returned to time and time again in contaminating any potential jury pool for Heirens's trial. And finally, Heirens himself later embellished on the George fantasy in a desperate and failed attempt to portray himself as insane. Viewed in this light, the sodium pentothal interview was substantially connected to Heirens's decision to later plead guilty. It was the first card in a house of cards that later toppled when the pressure to maintain his innocence in the face of certain death, caused the 17 year-old to surrender.

iii) The Relentless Pursuit of a Confession and Guilty Plea When Faced With Minimal, Questionable Evidence and a Youth Who Repeatedly Asserted His Innocence

When a prosecutor is confronted with a lack of evidence to lawfully pursue an investigation and a suspect who professes his innocence, the context is ripe for misconduct. For instance, under *Brady*, prosecutors cannot lawfully induce guilty pleas by making threats to charge suspects with crimes that are not justified with evidence. Under the Illinois ethical regulations, prosecutors also may not pursue investigations and convictions when they have no evidence demonstrating a suspect's guilt.[18] Likewise, when a suspect

[18] "A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when such prosecutor or lawyer knows or reasonably should know that the charges are not supported by probable cause." Rule 3.8(a), *Special Responsibilities of a Prosecutor*, Rules of the Supreme Court of Illinois (January 2001). This rule is applicable to Illinois prosecutors pursuant to 28 U.S.C. § 530B (2001), which holds federal prosecutors accountable under the state ethical rules in which they practice.

repeatedly asserts his innocence, § 9-27.440 of the United States Attorney's Manual,[19] which lays out the principles of federal prosecution, undisputedly advises prosecutors to go to trial to prove a conviction on the evidence rather than induce a guilty plea. The reasoning of the Department of Justice is clear: "Involvement by attorneys for the government in the inducement of guilty pleas by defendants who protest their innocence may create an appearance of prosecutorial overreaching."

State's Attorney Tuohy's words at Heirens's sentencing hearing reveal the lack of evidence he had to prosecute Heirens for the murders to which he pled guilty. Tuohy freely admitted that:

> [W]ithout the aid of the defense, we would to this day have no answer for the death of Josephine Ross. Without their aid, to this day a great and sincere public doubt might remain as to the guilt of William Heirens in the killing of Suzanne Degnan and Frances Brown.

With almost no admissible evidence implicating Heirens in the murders, Tuohy continued to use the threat of the death penalty for the murder convictions to coerce Heirens to plead guilty. In fact, police and prosecutors even threatened to charge Heirens with the Estelle Carey murder, which he could not have committed.

This pressure was all the more egregious in light of Heirens's persistent assertions of his innocence until the day of his final confession. Even during the first public confession organized by the prosecution, Heirens recanted and told the State's Attorney he was innocent of the murders. Thus, not only were the investigation and plea negotiation especially susceptible to prosecutorial misconduct, State's Attorney Tuohy unlawfully acted when he very publicly pursued a conviction with a lack of evidence, threatened Heirens with

[19] *See* United States Attorney's Manuel, http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/.

convictions, and fought for a confession and guilty plea from a boy who unequivocally professed his innocence.

iv) Vindictive Retaliation: Raising Heirens's Sentence in Response to a Botched Public Confession

Misconduct by a prosecutor rises to the severe level of prosecutorial vindictiveness when the prosecution actually retaliates against a suspect for doing something that the law plainly permits him to do. The Supreme Court held in *United States v. Goodwin*[20] that, in a pre-trial setting, a prosecutor who raises an offered sentence acts vindictively when there are compelling circumstances raising a presumption of vindictiveness or a showing of actual retaliation. For example, prosecutorial vindictiveness has been held in a Lake County, Illinois, case to have occurred when a prosecutor failed to honor a promise to a suspect that if he passed a polygraph test the charges would be dismissed.[21]

The events which occurred between the first deal offered to Heirens and his final confession and re-enactment of the crimes, present compelling circumstances of prosecutorial vindictiveness. Upon an offer by the State's Attorney, Heirens first agreed to confess to the murders in exchange for three life sentences running concurrently. However, when the day to confess arrived, Heirens was unexpectedly led to a room crowded with more than thirty people, including reporters, all of whom were awaiting a very public confession of his guilt. (A photo of this scene is attached as Exhibit 7.) In the midst of this media circus and in response to the State's Attorney's lengthy preamble in which he announced that the truth would finally be told, Heirens decided not to give them the long awaited public confession and made one final attempt to assert his

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[20] 457 U.S. 368 (1982).

[21] *See United States v. Starks*, 478 N.E.2d 350 (Ill. 1985; Ronnie L. Starks took the polygraph and passed, but was convicted and sentenced to 11 years anyway.

innocence. Clearly angered by Heirens's failure to perform in this staged confession, Tuohy immediately changed the plea deal, stating that in return for a confession Heirens would now receive three life sentences, to be served consecutively. Raising the stakes in such an arbitrary and capricious manner is retaliation of the worst kind in that it was done to punish Heirens for maintaining his innocence. If this does not amount to actual retaliation, the circumstances of the failed public confession surely are compelling enough to raise a presumption that Tuohy increased Heirens's sentence with the vindictive motive of punishing him for not confessing that day.

2. Defense Incompetence

Inept defense counsel has been proven to be a major source of wrongful convictions in Illinois. In a 1999 investigation, the *Chicago Tribune* reported that since Illinois reinstated the death penalty in 1977, 26 Death Row inmates received a new trial or sentencing because their attorneys' incompetence rendered their convictions or sentences unfair, and scores of others were denied relief even though their attorneys performed pathetically. The *Tribune* further reported that 33 our of some 265 defendants who had been sentenced to death in Illinois were represented by attorneys who were later disbarred or suspended from the practice of the law.[22]

By all accounts, John Coghlan, the lead defense attorney for the Heirens defense team, was a skilled and highly respected criminal defense attorney. This reputation has helped blunt some of the criticism of his representation of Heirens over the years, as has the perception that in negotiating a plea for Heirens, Coghlan did what was necessary to save Heirens's life. But under closer scrutiny, Coghlan's actions appear

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[22] Ken Armstrong and Steve Mills, *Inept Defenses Cloud Verdicts With their Lives at Stake, Defendants in Illinois Capital Trials Need the Best Attorneys Available But They Often Get Some of the Worst,* Chicago Tribune, Nov. 15, 1999.

inexplicable and indefensible. In hindsight, it looks rather like he abandoned a desperate and distraught 17-year-old boy in his time of need and convinced him that he had only two choices: cooperate and confess or die. Instead of living up to his duty to zealously defend Heirens, he became convinced that he had a duty to the general public. Instead of being part of the solution for Heirens, he became part of the problem. In essence, he joined hands with the State's Attorney William Tuohy, the judge and the press, in a cooperative venture to put William Heirens away for the rest of his life.

The influence that Coghlan had on the emotionally unstable 17-year-old, who was under unbearable pressure to confess to the murder of Suzanne Degnan, is virtually unimaginable. In addition to the constant and almost daily calls for Heirens's lynching by the press and an irate public, Heirens was urged by both his parents (who were unsophisticated and relied on advice of counsel) and attorneys to plead guilty and accept life imprisonment, even though the possibilities of a death penalty were actually remote. In 1954, Calvin P. Sawyier and Arthur Seder, two respected attorneys who had been appointed to represent Heirens in proceedings before the Illinois Supreme Court, described the pressure:

> Coghlan and the defense team wielded their influence by (1) advising him to make a "deal" practically right from the start; (2) by moving forward toward entering pleas of guilty when the State, by its own admission, probably could not have obtained a conviction; (3) by telling Heirens that they were "provoked" at his refusal to make a confession to the state's attorney and stating they wished to be advised whether he wanted them to continue to represent him; (4) by assuring petitioner that he would be eligible for parole like everyone else, but stating to the court that they were "collectively agreed" that it would be "unfair" to assist him in ever returning to society.

This "cooperation" toward securing a conviction, although perhaps the most egregious of defense counsels' errors, was just one in a litany of errors that calls their conduct into question and undermines the reliability of Heirens's conviction. The record reveals a laundry list of conduct which reads like a textbook case of ineffectiveness. The defense team:

1. Failed to investigate the State's evidence (it took 48 years for the gravity of this error to be measured when Jed Stone and his team of experts exposed just how tissue thin the case was against Heirens);

2. Failed to move to suppress the State's illegally obtained evidence;

3. Failed to seek discovery of the sodium pentothal interview;

4. Failed to pursue evidence of Heirens's innocence (the most obvious instance of this is that they pled Heirens guilty to several burglaries which he could not possibly have committed);

5. Failed to seek any relief from the court in order to stop the flood of prejudicial pre-trial publicity;

6. Failed to move for a change of venue;

7. Failed to have Heirens examined to determine if he was sane at the time of the alleged crimes. This is especially odd given John Coghlan's concern about Heirens mental state and the concerns raised by Dr. Grinker about Heirens's comments during the sodium pentothal interview;

8. Overestimated the strengths of the State's case against Heirens and oversold the likelihood that Heirens would get a life sentence based on the burglaries alone (just how weak these cases were was revealed by the State's Attorney in his own closing statement);

9. Routinely revealed confidential and privileged attorney-client information to the press. For example, Malachy Coghlan, John's brother, told reporters that Heirens had made "an abstract statement of fact in the three murders" and "was willing to confess" even before the scheduled confession took place. Moreover, when the Coghlans arranged for a rehearsal of Heirens's confession in the chapel of the County Jail in the presence of his parents, they arranged for members of the press and photographers to take pictures of the event. Although they promised Heirens and his parents that the contents of the so-called "chapel confession" would be kept private, information from the confession wound up in a story written by George Wright of the *Chicago Tribune* the following day; and

10. Agreed that Heirens would "re-enact the confessions" in the presence of reporters and the public; failed to cross-examine any of the state's witnesses at

> the sentencing hearing, or to object to the admissibility of any of the testimony offered by the State.

Again, any one of the above errors would alone raise questions about the caliber of Heirens's defense. Combined, these errors leave little doubt that their representation was ineffective.

Sadly, Heirens's claims of incompetence of counsel have never received a full and fair hearing in court. When the Illinois Supreme Court rejected Heirens claims that his defense team was ineffective and disloyal, the Court gave far too much deference to the fact that the Coghlans had been retained and paid a fee. In 1954, Illinois used the sham/farce test to evaluate the conduct of private counsel. Under that test, "Mistakes of counsel will not amount to a denial of due process unless on the whole the representation is of such low caliber as to be equivalent to no representation at all, and to reduce the proceedings to a farce or sham."[23] The test by which Illinois courts judged appointed counsel was more stringent, keeping with other effectiveness tests used nationally. The Illinois two-tiered standard was rejected by the United States Supreme Court in 1980. As a result, Illinois adopted the standards set by the United States Supreme Court, rejecting the sham/farce test as unconstitutional and making no distinction between retained and appointed counsel. Heirens thereupon requested the Illinois Supreme Court to reconsider its 1954 decision in his case, but the court refused to do so.

Although the Illinois Supreme Court and, later, two members of the Seventh Circuit refused to condemn the legal representation received by Heirens, the gravity of the injustice done to Heirens did not escape the notice or the indignation of Judge Luther M. Swygert. Swygert, who was a career prosecutor in both state and federal court, before being elevated to the bench, was obviously embarrassed by the conduct

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[23] *People v. Heirens*, 122 N.E.2d 231 (Ill. 1954), at 238.

of the prosecutors, defense attorneys, and the trial judge. His words, in his dissenting opinion in *Heirens v. Mizell*,[24] captured perfectly the picture of an adversarial justice system which had broken down in the summer of 1946:

> This case presents the picture of a public prosecutor and defense counsel, if not indeed the trial judge, buckling under public pressure of a hysterical and sensation-seeking press bent upon obtaining retribution for a horrendous act. The State's Attorney and defense counsel usurped the judicial function, complying with the community scheme inspired by the press to convict the defendant without his day in court. The proceeding on September 4, at which the defendant entered his pleas of guilty and was sentenced, was in reality a post-mortem of a prior public trial conducted by and in the press. Such a spectacle does little to inspire confidence in our judicial process.

Northwestern School of Law students working on this Petition under the direction of CWC and CFJC attorneys searched diligently for any case anywhere in which defense misconduct rivaled that of the Heirens defense team's. They found none, although one was close: In North Carolina, Russell Tucker was convicted in 1996 shooting and killing a Kmart security officer. Tucker was sentenced to death and, after an unsuccessful appeal, was scheduled to die on December 7, 2000. He was given a late reprieve, however, when the North Carolina Supreme Court reinstated an appeal on his behalf. His "second chance" came courtesy of his appellate attorney, David B. Smith, admitted that he had "sabotaged" Tucker's post-conviction petition.

On October 24, 2000, Smith told three other attorneys that he "had decided that Mr. Tucker deserved to die, and [that he] would not do anything to prevent the execution." Smith also admitted to having purposefully canceled and missed several meetings with his co-counsel so that his co-counsel might misinterpret evidence, and that he knowingly allowed his co-counsel to miss a deadline for filing an appeal.

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[24] 782 F.2d 449, 454 (7th Cir. 1968),.

Wracked by guilt, and unable to sleep, Smith came clean because he felt horrible about failing to provide Tucker a defense. He was quoted as saying, "Russell Tucker deserves an attorney who fights for him and not an *agent provocateur* for the State."[25]

Like David B. Smith, John Coghlan and the other members of the Heirens defense team usurped the judicial function by not only deciding that Heirens was guilty early on in the case, but deciding that "any course on [their] part which would assist in having [Heirens] returned to society would be . . . unfair." Not only did Coghlan state for the record that Heirens deserved a life sentence, he went one step further, agreeing with the prosecutor's recommendation that Heirens should never be released from prison and telling the court that he cared not whether Heirens's sentences were concurrent or consecutive because "a sentence of life in this case means life."

Russell Tucker was fortunate. His attorney's attack of conscience led the North Carolina Supreme Court to reinstate his appeal. He will have another shot to get his case heard. The same cannot be said for Heirens who has been trying for over 55 years to get the same chance. Judge Swygert voted to vacate Heirens plea in 1968 and to give him that chance, but two other members of the Seventh Circuit disagreed. Now, with court options exhausted, Heirens's last chance for justice lies with the Prisoner Review Board and the Governor.

3. Defective or Fraudulent ("Junk") Science

The debunking of supposedly expert scientific testimony has become startlingly common in American courts. In addition to hair and fiber analysis, handwriting identification, "bloodhound" evidence,

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[25] See Matt Fleischer, *His Defense Attorney Wanted Him Dead But Death Row Appeal Lawyer Confessed to Sabotage at 11th Hour*, National Law Journal, Nov. 2000.

spectrographic voice recognition, and forensic odontology ("bitemark evidence") have all been found to lack the necessary scientific basis to be used as conclusive proof of guilt in a criminal trial. In a startling new development, even fingerprint evidence, the previously untouchable "science," has been exposed as lacking in a scientific basis. DNA is the new gold standard of scientific evidence and when the other kinds of scientific evidence are measured against DNA, all too often they turn out to be fool's gold.

Not only has the "science" itself come under attack, but the scientists who have been conducting the tests have been exposed as frauds as well. In light of the new understandings about scientific evidence, the so-called scientific evidence which played a role in the Heirens case, needs to be reevaluated. We will examine the evidence, notably the "indentation writing," the handwriting evidence and the fingerprint evidence, paying particular attention to the way in which the fingerprint evidence was mishandled by the Chicago Police Department in ways that further undermine its reliability.

a. "Hidden Indentation" Writing: The Degnan Ransom Note

Frank San Hamel's purported discovery of hidden indentation writing certainly played a role in sending Bill Heirens to prison. The discovery convinced numerous Chicagoans that Heirens was the killer of Suzanne Degnan and amplified the public outcry for his conviction. However, the hidden indentation writing did not exist. It was a fraud and a hoax. Yet the *Chicago Daily News* was still taking credit for helping to break the Heirens's case 33 years after the fact[26] — a testament to the enduring power of one of the great many myths that surrounds the Heirens's conviction and ample evidence that the press was less interested in reporting the truth than in selling newspapers and helping prosecutors convict Heirens. The truth is that the

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[26] Norman Mark, "Artist's Keen Eye Downfall of Heirens," *Chicago Daily News*, Oct. 21, 1975.

FBI put the myth to rest as early as March 22, 1946, when it wrote that "no evidence was found [on the ransom note] of indentations or other markings which could be interpreted as indented writing, words, letters, or figures. The results claimed by San Hamel indicated either a lack of knowledge on his part or a deliberate attempt to deceive."

b. Handwriting: The Degnan Ransom Note and Lipstick Message Scrawled on the Brown Wall

Shortly after the Degnan murder, Chicago police attempted to determine if the same person who scrawled "for heavens sake catch me before I kill more I cannot control myself" in lipstick on the wall of Frances Brown's apartment had written the Degnan ransom note. On January 7, 1946, immediately after the Degnan kidnapping and long before Bill Heirens entered the picture, Charles Wilson, head of the police crime detection laboratory, announced, "[T]he writing on the Degnan ransom note bears no resemblance to the lipstick message." Rudolph B. Salmon, another handwriting identification expert, reported that "[t]here is no sufficient similarity of characteristics in the writings to warrant or justify the opinion that they were written by the same person." Finally, and most importantly, Herbert J. Walter, one of the most highly respected handwriting experts of his day, and the man whose testimony helped convict Bruno Richard Hauptmann of the murder of Charles Lindbergh's son, told *Chicago's American* at the time that he did not believe the two writings were done by the same person as there were 'a few superficial similarities and a great many dissimilarities."

Remarkably, after Heirens was arrested, Walter changed his tune. Hired by the State's Attorney for $300 a day, Walter testified before the grand jury that after examining the ransom note under a microscope and comparing it with known samples of Heirens's writing, he had determined that there were similarities and

differences but that the "similarities" marked Heirens as the writer of the ransom note. The differences, he explained, were as a result of Heirens's attempted disguise of his handwriting. Moreover, Walter also identified Heirens as the author of the lipstick message which he said was "free unpremeditated writing" and "not greatly disguised." Despite his complete about face with regard to his findings and the obvious disagreement among the other experts who looked at the handwriting samples, Walter's handwriting testimony went unchallenged at Heirens's sentencing hearing. Heirens's attorneys sat silently at counsel's table and neither objected during Walter's testimony nor asked him any questions during cross-examination.

History has not been kind to Herbert J. Walter or his findings in the Heirens case. Not only has the "science" of handwriting analysis taken a hit, especially when compared with the science of DNA evidence, but numerous other handwriting examiners have disputed his findings, including:

1. R. W. Hellstrom, a certified and licensed handwriting examiner at Inter-Graph Associates, Inc. in Oak Lawn, was hired by the Cook County Public Defender's Office in 1990. On April 14, 1990, he concluded after extensive study of the lipstick writing, the ransom note, and other writing samples that ". . . none of the questioned materials matches the writing of Mr. Heirens. So different is the script that no comparison could be found."

2. Diane Marsh, Marie Gerage, Frederick Dudink, and Elizabeth Biestek, who concluded, to their surprise, at a handwriting workshop that "the handwriting on the Suzanne Degnan ransom note and the handwriting on the Frances Brown wall do not compare favorably with the handwriting sample attributed by William Heirens and most probably were written by someone other than Heirens."[27]

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[27] In a report prepared for Heirens's most recent clemency hearing, at which Biestek testified, Biestek found "no similarities" between the ransom note and lipstick writing and "no indication they were written by the same writer," notwithstanding the fact that the authors of the specimens may have tried to disguise their writing. Biestek also found "no similarities" between Heirens writing and the writing in the lipstick message and the ransom note. It was her opinion, that William Heirens did not write the ransom note or the lipstick writing. Morever, she delivered a new bombshell: Based on her comparisons of writings of Richard Russell Thomas, who had confessed to the murder of Suzanne Degnan in 1946 to Phoenix police, Biestek concluded that "it is my opinion that it is probable that the Thomas writings and the ransom note were written by the same person." Biestek also noted that this finding had been made by Charles B. Arnold, head of the forgery detail of the Phoenix police, when after examining Thomas's

3. David Grimes, the FBI's handwriting expert for 12 years before his retirement, who was retained by ABC's Prime Time Live in 1996 to compare Heirens's writing to the ransom note. On the show, which aired on August 7, 1996, Grimes stated unequivocally, "He [Heirens] did not write the writing on the wall and ransom note."

c. Fingerprint Evidence

Until recently, fingerprint identification had escaped the rigorous scrutiny given to other forensic pseudo-sciences. Most people still regard fingerprint evidence as the epitome of science in the service of law; indeed, it is often viewed the model to which all other forensic sciences aspire. That faith in fingerprinting may be coming to an end. On January 7, 2002, Judge Louis H. Pollak of the Eastern District of Pennsylvania, in *United States v. Carlos Ivan Llera Plaza, et al.*,[28] ruled that fingerprint identification did not satisfy the requirements for the admissibility of expert witness testimony under *Daubert v. Merrell Dow Pharmaceuticals*.[29] Judge Pollak allowed fingerprint experts to present evidence to a jury, but he did not allow them to claim that a particular fingerprint "matched" a particular person. Wrote Judge Pollak:

> The court finds that ACE-V [the technique that fingerprint examiners use to identify latent fingerprints] does not adequately satisfy the "scientific" criterion of testing (the first *Daubert* factor) or the "scientific" criterion of peer review (the second *Daubert* factor). Further, the court finds that the information of record is unpersuasive, one way or another, as to ACE-V's "scientific" rate of error (the first aspect of *Daubert*'s third factor), and that, at the critical evaluation stage, ACE-V does not operate under uniformly accepted "scientific" standards (the second aspect of *Daubert*'s third factor).

The Court essentially agreed with fingerprint expert David Stoney that the strongly held belief that fingerprints can be matched to one person alone is "the product of probabilistic intuitions widely shared

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writing with his unaccustomed left hand, there was "an unmistakable similarity to that on a reproduction of the Degnan ransom note."

[28] 179 F. Supp 2d 492 (2002).

[29] 509 U.S. 579 (1993).

among fingerprint examiners, not of scientific research. There is no justification based on conventional science, no theoretical model, statistics, or empirical validation process." Or, as Arizona State University law professor Michael Saks put it, "A vote to admit fingerprints is a rejection of conventional science as the criterion for admission. A vote for science is a vote to exclude fingerprint expert opinions."[30]

These legal developments require a reexamination of the fingerprint evidence used to convict William Heirens, the evidence generally believed, since 1946, to have been the most damning evidence against Heirens. From his arrest to the present, fingerprints found on the Suzanne Degnan ransom note and on the doorjamb in Frances Brown's apartment have been the only physical evidence linking Heirens to the murders of Degnan and Brown. In 1946, the police announced that those fingerprints presented "indisputable" proof that Heirens committed the murders. That opinion has been repeated for 55 years by those who want Heirens to remain in prison. But how reliable was the fingerprint evidence in Heirens's case?

As explained above, fingerprint identification is now being exposed as unscientific. In light of these new studies, even the strongest fingerprint evidence should be viewed skeptically. But a new analysis of the fingerprint evidence by the CWC reveals that the fingerprint evidence in Heirens's case was not strong. The method used to identify Heirens's fingerprints fell below even the rather lax standards of the 1940s. Furthermore, the identification of Heirens's fingerprints on the Degnan ransom note could never have withstood the scrutiny of a jury: fingerprints mysteriously appeared and disappeared on the note, Heirens's prints seemed to magically appear on the note after the note has been examined by the FBI and after Heirens had been arrested, numerous people handled the note after it was found, the chain of custody of the note was

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[30] Both quoted in Simon Cole, "The Myth of Fingerprints: A Forensic Science Stands Trial," Lingua Franca: The Journal of Academic Life, Nov. 2000.

broken, and the fingerprint expert's analysis of the prints changed over time. Police also initially announced that Heirens's fingerprints did not match the "bloody" print found in Frances Brown's apartment, only to change their mind later. In fact, recent analysis by experts hired by Jed Stone, suggests that the print was not "bloody." Finally, considering the immense pressure on the Chicago police to solve the Degnan case, it is not implausible that an enterprising officer, convinced of Heirens's guilt, decided to fabricate fingerprint evidence where none had existed before. It is to that proposition that we turn first in our discussion of the fingerprint evidence.

i) Fingerprints can be Forged

The FBI first identified a fingerprint forgery by a law enforcement officer in 1925. More were soon reported. At the 1929 meeting of the International Association for Identification, Edward Parker reported a forgery in a Kansas burglary case. This report prompted a number of people present at the meeting to reveal similar cases. A Mr. Axtell reported a fingerprint forgery in New Mexico and a Mr. Jones reported one in Minneapolis. There is no way to know how many incidents of forgery there really have been since that time, but between 1930 and 1960 the FBI "exposed at least 15 cases of fabrication of latent prints from 13 different states in all regions of the country." Fingerprint examiner Pat Wertheim reasonably believes that "these cases number in the hundreds or even thousands during the twentieth century. . . . A disturbing percentage of experienced examiners polled . . . described personal exposure to at least one of these cases during their careers."[31]

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[31] Pat A. Wertheim, "Detection of Forged and Fabricated Latent Prints: Historical Review and Ethical Implications of the Falsification of Latent Fingerprint Evidence," 48 *J. Forensic Identification* 652-681 (1994).

Fingerprint examiners claim that no forgery can withstand expert scrutiny and that experienced examiners invariably can detect traces of fabrication. The problem is that few declared fingerprint matches are rigorously examined for evidence of forgery. As for how frequently fabrications occur, Professor Andre Moenssens, has observed: "We don't really know [because] documented cases have come to light only by accident or after a particularly tenacious investigator revealed them."[32]

That is what happened on May 26, 1992, when the U.S. Department of Justice reported to New York State Police that it had uncovered fingerprint fabrication by state troopers. A 4-year investigation had discovered approximately 40 cases over 8 years in which troopers had fabricated fingerprint evidence. Furthermore, the fabricated evidence was not once challenged by defense attorneys. Nelson Roth, the lead investigator in the scandal, wrote that "in most if not all of the cases where fingerprint evidence was significant, the defense attorneys were surprisingly complacent about the fingerprint evidence and did little, if anything, to challenge it. . . . It does not appear that a latent fingerprint expert participated on behalf of the defense in any of the tainted cases."[33] The New York scandal revealed the extent of the trust extended to fingerprint examiners, how little defense attorneys scrutinize fingerprint evidence, and how rare is the retention of an expert by the defense. In their confessions, the troopers themselves acknowledged that they chose to fabricate fingerprint evidence because it was so thoroughly trusted that they knew it would go unquestioned.

Heirens's defense lawyers did nothing to scrutinize the fingerprint evidence introduced against their client at the sentencing hearing. They did not retain an expert, did not challenge the chain of custody, and did not question the examiners over their shifting opinions about the source of the prints. Because the evidence no longer exists or has been hopelessly compromised, we never will know whether the evidence would have

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[32] Andre Moenssens, "Novel Scientific Evidence in Criminal Cases: Some Words of Caution," 84 J. *Crim. L & Criminology* 13 (1993).

[33] Simon Cole, *Suspect Identities: A History of Fingerprinting and Criminal Identification* (Harvard University Press, 2001).

held up in court. Moreover, if the prints were in fact fabricated, those responsible will never be held accountable.

ii) Fingerprint Evidence on the Degnan Ransom Note

Suzanne Degnan was abducted at approximately 1:00 a.m. on January 7, 1946. The following morning, Jim Degnan discovered that Suzanne was missing and notified the Chicago Police. While examining Suzanne's room, Detective Otto Kreuzer found a ransom note with writing on both sides. The front read , "Get $20,000 ready & waite [sic] for word. Do not notify the FBI or police. Bills in $5's and $10's." The back read, "Burn this for her safty [sic]."

The Chicago crime laboratory was unable to raise any fingerprints on the ransom note, so on January 18, 1946, Captain Timothy O'Connor took the note to the FBI laboratory in Washington in the hope that the FBI's more sophisticated methods might succeed where the Chicago lab had failed. The FBI subjected the ransom note to an iodine fuming process, the then-contemporary method of raising latent prints from paper. The FBI photographed the note immediately after the iodine fuming process, because prints begin to fade immediately after that process has been completed. Captain O'Connor testified to seeing only two fingerprints appear on the front of the ransom note following the iodine fuming process.[34] He did not mention seeing any prints on the reverse side of the note.

When Captain O'Connor returned from Washington, he gave photographs of the ransom note with the raised prints to Sergeant Thomas Laffey, the Chicago Police Department's fingerprint expert. Laffey announced to the press that the fingerprints on the ransom note were "so incomplete that it is impossible to classify them." Still, Laffey compared the "incomplete" prints on the note with the fingerprints of everyone arrested between January 1946, and June 29, 1946. He was unable to find a match, though Heirens was arrested and fingerprinted on May 1, 1946, for a weapons violation.

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[34] *See* transcript of Heirens's Sentencing Hearing, 31-32: "Q: Calling your attention to what appears to be a fingerprint in the lower right hand corner and on the left side of the paper, are those the fingerprints that you saw appear as the fumes and the silver nitrate were placed on the paper"; A: Yes, sir.").

The record of the process through which the Chicago Police Department concluded that Heirens's fingerprints matched those found on the Degnan ransom note is incomplete and sometimes contradictory. Heirens was arrested for the Pera burglary on June 26, 1946. Three days later, Sergeant Laffey announced that he had matched Heirens's fingerprints to one of the prints found on the ransom note. The Chicago police announced that Laffey had found 9 points of comparison between Heirens's fingerprints and a print of a left little finger found on the note. Though the FBI standard for identification of a fingerprint was 12 matching points, Captain Emmett Evans, Chief of the Chicago Crime Detection Bureau, stated that the 9-point identification provided "indisputable" evidence that Heirens had handled the ransom note. The police soon announced that Heirens's palm print also matched the second print on the front of the ransom note. Based on these two prints, State's Attorney Tuohy announced that "[t]here can be no doubt now" about Heirens's guilt. However, at the same press conference he stated, "We have not enough evidence to indict, to say nothing of convict."

On July 13, 1946, long after the prints had been returned from the FBI, Chicago Police Chief Walter Storms announced that Sergeant Laffey had discovered "a new palm print" on the reverse side of the ransom note. Storms said of the purported discovery: "The print is the third found on the note. It checks with Heirens's print on 10 points. . . . No other prints have been found on the note than those linked to Heirens. This is absolutely the last print on the note. . . . This shows that Heirens was the only person to handle the note."

There are a number of reasons to question this "discovery" and the subsequent identification of Heirens's palm print. First, the inability of the Chicago police to raise any prints on the note caused them to send the note to the FBI for analysis. Second, Captain O'Connor identified only two prints on the ransom note after the FBI submitted the note to the iodine fuming process in January, both of them on the front of the note. Furthermore, prints begin to fade immediately after the fuming process is complete, making the discovery of a new print highly unlikely. Third, Laffey had been working on the Degnan case almost exclusively for six months without finding any additional prints. He only discovered the palm print on the back of the note two weeks after Heirens was arrested. Fourth, soon after O'Connor returned with the note from

the FBI, the police had given the original ransom note to *Chicago Daily News* artist Frank San Hamel so that he could investigate the hidden indentation writing on the note. Such a break in the chain of custody would have made any further discoveries of fingerprints on the note inadmissible in court and would have compromised the integrity of the prints already on the note.[35]

That the prints had been compromised is evident in the remarks of Charles Wilson, chief of Chicago's Crime Detection Laboratory, who stated: "When we got the Degnan ransom note, it came late after other people had photographed and handled it." Similarly, an FBI report of March 22, 1946, long before Heirens's arrest, stated that "[i]t is evident that the note has been handled considerably." Both statements directly contradict Chief Storms' later assertion that Heirens was "the only person to handle the note." Finally, Laffey's 10-point identification of the palmprint on the back of the note still fell short of the FBI's 12-point standard.

Furthermore, the palm print that Laffey discovered on the back of the note was, apparently, not "absolutely the last print on the note," as Chief Storms had claimed. At Heirens's sentencing hearing on September 5, 1946, Laffey identified a second fingerprint on the reverse side of the note that matched Heirens's prints at 10 points. Laffey also claimed that the palm print on the reverse side of the note matched Heirens at 12 points — not 10 as he had originally stated. Strangely, at the sentencing hearing Laffey only identified a single print on the front of the note and did not identify it is a match to Heirens. Thus, the two prints discussed at the sentencing hearing were both "discovered" after Heirens had been arrested. The two prints on the front of the note that Captain O'Connor identified and that had been announced as

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[35] *See People v. Rice*, 10 N.W.2d 912 (1943, holding that a break in the chain of custody of evidence constitutes reversible error.

"indisputable" proof of Heirens's guilt were hardly mentioned at the hearing and neither was presented as a match to Heirens.

Again, not one of these problems with the fingerprints was exposed by Heirens's defense counsel. Despite the fact that all of this evidence was available to use to impeach the experts who testified and undermine the reliability of the fingerprint evidence, the Heirens defense team simply sat silently at the counsel table and allowed the evidence to be admitted without objection.

iii) Fingerprint Evidence in Brown Apartment

On December 10, 1945, Frances Brown was murdered in her apartment. Initially, Chicago police investigating the crime scene found no fingerprints. However, several days after the initial investigation, police found what they called a "bloody, smudged print" of an "end joint" and a "middle joint" of a right index finger on the doorjamb between the bathroom and the dressing room. The police photographed the print, but were unable to match it to any fingerprints on file.

When Sergeant Laffey claimed to have matched Heirens's prints to the Degnan ransom note on June 30, 1946, the police and the office of the State's Attorney began to compare Heirens's prints to latent prints raised at the scenes of several other unsolved crimes, including the murder of Frances Brown. Initially, this proved a dead-end. On June 30, Captain Emmett Evans told reporters that Heirens had been cleared of suspicion in the Brown murder because the fingerprint left in the apartment was not his. However, twelve days later, the police again changed their minds. Chief Storms not only announced that the print in the Brown apartment did, in fact, match Heirens's, but that it matched on 22 points.

However, at Heirens's sentencing hearing, Sergeant Laffey testified that the "end joint" print found at Brown's apartment matched Heirens's prints on only 8 points, while the "middle joint" matched on 6 points. Again, both of these "identifications" fall far short of the 12-point standard required by the FBI. In fact, the "middle joint" identification does not even meet Laffey's own "seven or eight" point standard.

4. Mistaken Eyewitness Examination

According to the data from the Innocence Project's database, mistaken eyewitness identification is the leading cause of wrongful convictions. Out of the first 74 DNA exonerations analyzed by the Innocence Project, 60 (81%) of the wrongful convictions involved mistaken identification evidence. In a report released by the CWC in conjunction with this petition, CWC staff and students discovered that of 46 wrongful convictions in Illinois murder cases 27 (59%) involved mistaken identifications.

One of the most critical pieces of evidence linking Heirens to the murder of Suzanne Degnan was the eyewitness identification testimony of George Subgrunski. Shortly after the Degnan murder, Subgrunski reported to police that he had seen a man, about 35 years old, weighing 170 pounds and standing about five feet nine inches tall, dressed in a light colored fedora and a dark overcoat walking in the vicinity of the Degnan home around 1:00 a.m. carrying a shopping bag. Although as late as July 11, Subgrunski could not identify Heirens as the man he saw after being shown a picture of him by police, Subgrunski did identify him when he viewed Heirens in court on July 16th. The newspapers reported that Subgrunski's eyewitness testimony solidified the State's case against Heirens. His testimony helped secure an indictment against Heirens for the murder of Degnan.

Subgrunski's identification of Heirens was later discredited. When it came time to put evidence of Heirens's guilt in the record at his sentencing hearing, prosecutors did not call him. While Subgrunski's identification of Heirens was big news, the fact that he had been discredited was barely discussed. Although the

mistaken identification did not figure directly in Heirens's conviction, it was one more piece of evidence which left the general public with the impression that the evidence against Heirens was overwhelming and contributed to a rush to judgment in his case.

5. A False Confession

Since 1995, there has also been increased attention given to the problem of false confessions, attention which requires that the Governor and Parole Board give greater weight to Heirens's claims that his confessions were false. What was generally perceived to be an isolated problem in the criminal justice system, is now understood to be much more widespread. Dozens of men, women and children have been cleared by DNA evidence of crimes, particularly murders, to which they had confessed. Widespread false confession scandals have been documented in the *Washington Post*[36] (involving Prince Georges County) and the South Florida newspapers (Broward and Miami-Dade Counties) to go along with numerous sporadic cases of false confessions which have been uncovered around the country. In the week immediately proceeding this filing, two new false confession cases hit the papers — the case of Bruce Gotschalk, a Pennsylvania man who was coerced more than 15 years ago by police interrogation tactics to confess to a rape which DNA evidence now proves he did not commit and the case of Timothy Brown and Keith King, two teenagers who were beaten and threatened by Broward County sheriffs more than a decade ago into confessing to the murder of a police officer.[37]

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[36] *See* April Witt, *Allegations of Abuses Mar Murder Cases*, Washington Post, June 3, 2001, at A01; April Witt, *In Pr. George's Homicides, No Rest for the Suspects*, Washington Post, June 4, 2001, at A01 (6/4/01); April Witt, *Police Bend, Suspend Rules; Pr. George's Officers Deny Suspects Lawyers, Observers Say*, Washington Post, June 5, 2001, at A01; April Witt, *Police Tactics Taint Court Rulings*, Washington Post, June 6, 2001, at A01.

[37] *See* Sara Rimer, "DNA Testing In Rape Cases Frees Prisoner After 15 Years," *New York Times*, Feb. 15, 2002, and Paula McMahon, et al, "Sheriff Reopens Investigation Into Deputy's Slaying in 1990," *Sun-Sentinel*, Feb. 9, 2002.

No jurisdiction has been more tainted by false confessions than Illinois. Since 1995, case after Illinois case of coerced or fabricated false confessions has been exposed, prompting repeated calls for a mandatory requirement that all interrogations of suspects be videotaped.[38] The convictions of seven of our death row exonerations were tainted by false confessions. Ronald Jones, Gary Gauger, Rolando Cruz, and Alejandro Hernandez each gave — or was said to have given — false statements implicating themselves in murders they did not commit. Joseph Burrows was convicted on the basis of the false and coerced confession of codefendant Ralph Frye, who also was innocent, and Verneal Jimerson and Dennis Williams (as well as their co-defendants Kenneth Addams and Willie Rainge, who were not sentenced to death) were convicted, in part based on the false and coerced testimony of Paula Gray.

In December of last year, the *Chicago Tribune* ran a four-part series, detailing just how widespread are Illinois' problems of police interrogation abuses and false confessions.[39] The series examined all murder cases filed in Cook County over a 10-year-period beginning in 1991 and found that 247 had been compromised by police officers who illegally obtained incriminating statements that were later found inadmissible in court. Perhaps the most chilling finding of the series was that police obtained scores of confessions, many of them proven false, from the most vulnerable suspects — the mentally retarded, children, and teenagers.

Several other factors — common to known false confessions — also were present in the Heirens case:

1. When the known facts of the murders to which Heirens confessed are compared with his versions, it is apparent that he was wrong about important facts, locations, and events relating

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[38] For summaries of the false and problematic interrogation cases, see *The Problem of False Confessions in Illinois,* http://www.law.northwestern.edu/clinic/news/index.htm#false.

[39] Ken Armstrong et al., "Coercive and Illegal Police Tactics Torpedo Scores of Cook County Murder Cases," *Chicago Tribune*, Dec. 16, 2001.

to the crimes. (A comparison of the inconsistencies between the murder confessions and the facts is attached as Exhibit 8).

2. The horrific nature of the crimes themselves and the ensuing publicity created a desperate environment ripe for producing a false confession. Crimes such as the Degnan murder, especially if unsolved for long periods, place enormous pressure on police departments to apprehend a culprit and can lead to police overzealousness, which in turn can lead to false confessions. The pressure might originate internally, as when a police officer or a child is killed, or might originate externally due to public opinion and the media. The police investigating the murder of Suzanne Degnan were subject to both kinds of pressure. The degree of not only local and national but international media attention dedicated to the Degnan murder is remarkable even by today's standards. Modern day examples of such "heater cases" abound and the wrongful convictions of the four young men in the Lori Roscetti murder, Rolando Cruz and Alex Hernandez in the murder of Jeanine Nicarico, and the two little boys in the Ryan Harris case are just a few of many examples in Illinois.

3. The case involved serious crimes carrying the death penalty — factors that place enormous pressure on suspects. The psychological interrogation techniques employed by police in such cases were designed to force a suspect to choose between one of two unappealing alternatives. Police interrogators are trained to use a combination of lies and trickery, including false claims about the strength of the evidence against the suspect, as well as promises of leniency or threats of harm, both express and implied. The goal is to force the suspect to believe that he or she must choose between confessing, which will bring leniency, or maintaining innocence, which will bring certain, swift, and harsh punishment. As the perceived risk of receiving a stiff sentence rises, the more likely it becomes that an innocent suspect will confess to crimes he did not commit. This leads to the counter intuitive conclusion that a suspect may be more likely to confess to a capital crime than to shoplifting.[40]

4. Heirens was also extremely vulnerable because he was, by all accounts, emotionally unstable and highly suggestible both before his arrest for the Pera burglary and throughout his time in custody. Although he was highly intelligent, this particular personality trait — suggestibility — made him much more like the mentally retarded suspects and younger children who are prone to giving false confessions. That Heirens was highly suggestible is beyond dispute. Every psychiatrist who examined him at the time noted that Heirens was easily led and the Illinois Supreme Court, in 1954, in denying his post-conviction petition, noted that Heirens was "young, emotionally, unstable, and highly susceptible to suggestions."[41]

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[40] *See* Richard J. Ofshe and Richard A. Leo, "The Decision to Confess Falsely, Rational Choice and Irrational Action," 74 *Denv. L. Rev.* 979 (1997), at 1077-78..

[41] *People v. Heirens*, 4 Ill.2d 131, 134 (Ill. 1954).

Aside from these main indicators, another phenomena which accompanies false confessions with alarming frequency, is also present in the Heirens case. This disturbing phenomenon is the manner in which the police will "close" as many cases as they can on a suspect. This phenomena was evident most recently in the false confessions of Jerry Frank Townsend in Florida. Townsend, a mentally retarded man, confessed to killing four women whom DNA later determined were killed by another man, Eddie Lee Mosely.[42] The same thing happened in Chicago in the cases of two alleged serial killers — Gregory Clepper and Hubert Geralds. Eager to close out a number of unsolved murders and rapes, Chicago police pinned many of these crimes on Geralds and Clepper. DNA evidence later determined that several of these crimes were committed by other men.[43]

In Heirens's case, police officers attempted to link him to many unsolved murders and burglaries from the inception, including several which Heirens could not possibly have committed, most notably the murder of Estelle Carey. In fact, even after Heirens pled guilty, he learned that he had pled to committing several burglaries that he could not possibly have committed.

Any one of these factors alone would cause concern about the presence of false confession evidence in the case of William Heirens. Combined, they raise more than a reasonable doubt about Heirens's claims that he confessed to the murders to save his life.

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[42] *See* Ardy Friedberg and Jason T. Smith, "Townsend Released; Judge Cites "An Enormous Tragedy"; Attorneys Say Suspect Was Easily Led to Confess," *Sun-Sentinel*, June 16, 2001, at 1A.

[43] *See* Eric Ferkenhoff et al., "Lab Tests Unravel 12 Murder Cases; Suspect Once Considered As Serial Killer," *Chicago Tribune*, Jan. 31, 2001; Steve Mills and Terry Wilson, "State Says It Convicted The Wrong Serial Killer," *Chicago Tribune*, Feb. 11, 2000.

B. William Heirens is an Ideal Candidate for Executive Clemency Given the Purposes of Clemency and the History of its Use in Illinois

Clemency is the power of an executive to intervene in the sentencing of a criminal defendant to prevent injustice from occurring. It is an act of mercy — relief imparted by the executive after the justice system has run its course. Law Professor Michael B. Lavinsky, in a 1965 examination of the clemency power in Illinois, observed:

> The power of executive clemency exists . . . as a device to afford relief from undue severity or apparent error in the application of the criminal law, as a device for tempering justice with mercy by allowing for a consideration of the totality of circumstances which may properly mitigate guilt. [T]he concept of clemency, "represents the sense of human weakness, the recognition of human fallibility, the cry of human compassion. It is a confession of imperfect wisdom. . . ."[44]

Clemency is a fundamental component to just government, as Chief Justice William Howard Taft explained:

> Executive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford remedy it has always been thought essential in proper governments . . . to vest in some authority other than the courts power to ameliorate or avoid particular criminal judgments.[45]

For more than 55 years, the justice system has turned a blind eye to William Heirens's claims that he was wrongfully convicted. It has all but ignored his claims that his case was contaminated by prosecutorial misconduct, defense incompetence, and unprecedented prejudicial pre-trial publicity. While the Illinois Supreme Court condemned the conduct of the law enforcement officials in Heirens's case, the court found that there was no

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[44] Michael B. Lavinsky, "Executive Clemency: Study of a Decisional Problem Arising in the Terminal Stages of the Criminal Process," 42 *Chi-Kent L. Rev.*13, 15 (1965), quoting "Executive Clemency in Capital Cases," 39 *N.Y.U. L.Rev.* 136, 178 and n.146 (1964).

[45] Linda Ammons, "Discretionary Justice: A Legal and Policy Analysis of a Governor's Use of the Clemency Power in the Cases of Incarcerated Battered Women, "3 *J.L.& Pol'y* 1, 30 (1994).

"substantial connection" between this conduct and Heirens's later pleas of guilty. In so doing, the Court ignored the relentless misconduct of police and prosecutors after his interrogation in fanning public hysteria by repeatedly telling the press that Heirens was guilty, even though they knew that they could not prove it. Outside of the interrogation room, police and prosecutors used the press and the threat of the death penalty to pressure Heirens into pleading guilty. With the public calling for his scalp, the very real possibility that he would be executed if convicted, the impossibility of a fair trial given the contamination of the jury pool, and his attorneys and his parents pressuring him to plead guilty and not risk the chance of a conviction, it is entirely plausible that Heirens believed that he "had to be guilty to live."

Justice has also eluded Heirens in his quest to gain his release from the Prisoner Review Board. When Magistrate Gerald B. Cohn ruled in 1983 that the Prisoner Review Board could not apply newer, stricter rules for parole to justify keeping the rehabilitated Heirens behind bars any longer, Illinois police, prosecutors and the press again inflamed the public's ire and waged a public campaign to keep Heirens behind bars. Seven former police superintendents of police, the Cook County State's Attorney, and the surviving members of the Degnan family, formed a Committee to Remember Suzanne Degnan, traveled to Springfield, and persuaded the Illinois General Assembly to pass a Senate Resolution urging the Prisoner Review Board not to release Heirens. In the midst of this campaign, the Seventh Circuit Court of Appeals, caved in to public pressure, and changed its own standard for resolving *ex post facto* issues in order to enable it to reverse Magistrate Cohn's order. That this change in the law was tailor made to suit William Heirens became apparent a few years later when the Seventh Circuit again reversed itself, but not in Heirens's case.[46]

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[46] *Compare Heirens v. Maxwell*, 729 F.2d 449 (7th Cir. 1984) with *Prater v. U.S Parole Commission*, 802 F.2d 948 (7th Cir. 1986). In *Prater*, Judge Swygert wrote: "In retrospect I believe the original panel decision in *Heirens* was erroneously decided."

Heirens also took the Prisoner Review Board to court to force them to calculate his sentence correctly according to their own regulations. In 1973, Illinois put into effect the Unified Code of Corrections. Under Section 5-8-4(e) of the Code, Heirens's remaining consecutive terms were aggregated. Heirens requested that he continue to serve his consecutive terms in sequence, fulfilling his sentences as imposed by the trial court and as he had the Degnan sentence (Exhibit 9). His election was denied. Heirens filed a civil rights suit in federal district court to effectuate his election and was denied. In the process, the Attorney General filed an affidavit by the executive secretary of the Parole and Pardon Board which showed that if Heirens were allowed to fulfill his sentences in sequence, he would be eligible for release on his last one-year-to-life sentence in 1984 (Exhibit 10).

In 1978, Illinois abandoned indeterminate sentencing and adopted a determinate sentencing scheme. Legislative hearings had determined the Prisoner Review Board to be incapable of making fair parole decisions. The hearings also determined that society would be better served with a determinate sentence and statutory good time where release was not decided by the parole board, but by the trial court's imposition of sentence.

This switch to determinate sentencing also amended the aggregation formula (Sect. 5-8-4(e)), creating a maximum term of incarceration for consecutive sentences whose terms had been aggregated. This term became 80 years (40 plus 40), less good time credits which, for William Heirens, put his maximum term of incarceration in 1984. When 1984 arrived, Heirens requested that the Department of Corrections release him from incarceration to serve the balance of his court-imposed sentence on parole. The Department of Corrections refused to do so and Heirens again went to compel them to comply with the statute.

Again public opinion was orchestrated to influence the Fifth District Appellate Court. The State had been contending that the alternative "natural life" sentence was to be used in the aggregation formula instead of the 20 to 40 year term in Sect. 5-8-1 of the Code for murder. The Appellate Court agreed that the new "natural life"

could not apply, but denied relief by saying Heirens's original life sentences were determinate terms (they are "definite" terms) and determinate terms cannot be aggregated.[47] According to this decision, Heirens's sentences should not have been aggregated, but the Prisoner Review Board has ignored this decision and continues with the aggregation treatment.

The justice system has also all but ignored Heirens remarkable record of accomplishment within the Department of Corrections. Although the Prisoner Review Board has paid lip service to it throughout the years and has even praised Heirens from time to time, it has never seriously considered releasing Heirens. Despite a near perfect record within Department of Corrections and the fact that the Department of Corrections has long regarded Heirens as a low security risk, he has received few votes for his release in more than 30 parole decisions.

After the Seventh Circuit reversed its own precedent to keep Heirens in prison, Heirens's attorney at the time, Michael Nash, summed up the situation perfectly when he was quoted as saying: "When Bill Heirens stands before a court of law, justice peeks." When the court system is only willing to take a peek at unprecedented police and prosecutorial misconduct, defense incompetence, prejudicial press coverage and the other sources of error which infected Heirens's conviction, when it has twisted and stretched the law and reason in order to block his efforts to gain his release, the duty to take a full, fair, and unbiased look at this evidence falls on the executive branch and its clemency powers. These are precisely the kinds of injustices that the clemency power was designed to remedy.

In deciding whether or not to grant clemency, Governor Ryan has many examples to choose from in Illinois history. In 1893, Governor John Peter Altgeld pardoned the three surviving anarchists who had been

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[47] *Heirens v. Illinois Prisoner Review Board*, 162 Ill. App. 3d 762, 516 N.E. 2d 613 (5th Dist. 1987).

wrongfully convicted in the 1886 bombing in Chicago's Haymarket Square. Altgeld's review of the record convinced him that the men had been denied a fair trial and that the judge, prosecutor, and jury were all to blame for the unfairness. Paul Crump, one of Chicago's most notorious killers, was convicted and sentenced to death in the 1953 slaying of a plant guard in the Chicago stockyards. Governor Otto Kerner commuted the sentence from death to a term of years and Crump was eventually paroled.

The case of Nathan Leopold is also worth consulting, in part because the horrific nature of Leopold's crime led the trial judge and the prosecutor to issue statements at sentencing that were nearly identical to those issued by State's Attorney Tuohy and John Coghlan at Heirens's sentencing. Judge John Caverly, in sparing the lives of Leopold and co-defendant Richard Loeb, sentenced the boys to terms of life plus 99 years and urged the Pardon Board never to release them. Governor Adlai E. Stevenson's commutation of Nathan Leopold's sentence to a term of years paved the way for his eventual parole in 1958. Leopold was 19, and Loeb 18, when they killed 14-year-old Bobby Franks for thrills in what was called "the crime of the century." Nevertheless, Leopold's impressive record of rehabilitation and accomplishment within the institution, convinced Governor Stevenson that a commutation was in order. Leopold was paroled after serving 33 years in 1958. He continued to contribute to society after he was released. After attending graduate school at the University of Puerto Rico and obtaining a master's degree, Leopold taught at the university, did research in the social service program of Puerto Rico's department of health, worked for an urban renewal and housing agency, and wrote and published a book on ornithology and performed research in leprosy at the University of Puerto Rico School of Medicine.[48]

Heirens's record of accomplishment in the Department of Corrections is as impressive as Leopold's, and Heirens's disciplinary record is even more exemplary than Leopold's. Leopold received "many" disciplinary

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[48] Hal Higdon, *Leopold and Loeb: The Crime of the Century*, University of Illinois Press (2d ed. 1999).

notices during his imprisonment and was even sent to solitary confinement at least twice. Heirens, however, has had a nearly spotless disciplinary record. Furthermore, at 17, Heirens was younger than Leopold was at the time of his crimes and unlike Leopold, about whom there is no doubt about his guilt, there remains more than a reasonable doubt about Heirens's guilt in the murders of Degnan, Ross, and Brown. Nor was Leopold's conviction contaminated by prosecutorial misconduct, defense incompetence, or the other sources of wrongful convictions which haunt Heirens's case. Leopold was represented by Clarence Darrow, whose mitigation efforts to save Leopold's life were legendary and whose summation to the judge is a classic.

C. As the Guardian of the Doctrines of Rehabilitation, Justice, Mercy, Grace, and Compassionate Release in a Justice System that no longer has much use for these concepts, the Prisoner Review Board and the Governor Should Grant Clemency to William Heirens

Today's criminal justice system is far less forgiving than the criminal justice systems of the past. Mandatory minimum sentences, the abolition of parole, "truth-in sentencing" laws, "three strikes and you're out," transferring juveniles to adult court, are all policies which have all but eliminated mercy from our criminal justice system, and sadly, to an increasing extent from our juvenile justice system. These policies prevent judges and parole boards from taking into account individual circumstances and limit their ability to mitigate harsh sentences with mercy. As a result of these policies, the clemency power has become critically important; it is one of the last refuges for mercy, grace, and compassion that is left. If ever a case cries our for mercy, it is the case of William Heirens.

In his last request for clemency, Heirens presented the testimony of Dr. Bernard Rubin, a psychiatrist who evaluated him. Rubin concluded that:

> Mr. Heirens is rehabilitated by any measure that one can use. He feels empathy for the families of the murder victims. He has worked actively, productively, and continuously in intellectual, vocational and

> recreational areas. He has accepted the responsibility of living in minimum security since 1976. He has developed and maintained a network of friends and correspondents. I therefore recommend that he be released from prison, and that for some period thereafter he have psychiatric surveillance, support and treatment.

Dr. Rubin was only the latest in a long line of persons, including several persons on the Prisoner Review Board and many others within the corrections field who have reached the same conclusion.

Seven years have passed since Heirens last appeared before this Board and those years have not been kind to Heirens. In that time frame, his diabetes has flared up repeatedly, requiring that he be transferred from Vienna Correctional Center, his home of more than 20 years, to Dixon, a medical facility which can better meet his medical needs. Although his life is not in immediate danger, if the diabetes continues to progress, as it often does with age, the cost of keeping Heirens alive in prison will continue to mount. According to 1995 Bureau of Justice statistics, housing prisoners over age 55 costs state and federal governments more than $2 billion per year (approximately $69,000 per elderly prisoner as opposed to $22,000 for other prisoners). Heirens's declining health, and his age, should be grounds for a compassionate release.

The costs of housing elderly inmates are exorbitant, especially if one considers that the number of elderly inmates in most state prison systems is expected to mushroom as a result of draconian sentencing policies. Many states already are under court orders to reduce prison overcrowding and the elderly inmates are an increasingly attractive way to reduce overcrowding. They also present a very low risk of reoffending once released. More than half — 51.4% — of parolees/probationers returned to prison are between the ages of 18 and 29. Only 1.4% are 55 or older.

These two factors — increased cost and reduced risk — have led several states to pass legislation targeting the elderly for early release. Texas recently passed HB 772 which allows persons suffering from

"persistent inveterate ailments" to be released into proper facilities so as to manage their conditions and to make them eligible for supervised release appropriate to their security risk. Virginia passed HB 1762 which makes, with certain exceptions, any felon over age 65 who has served a minimum of five years or any felon over 60 who has served at least ten years, eligible for release.[49]

In the *Merchant of Venice*, Act IV, Scene 1, William Shakespeare wrote, in referring to the clemency power:

> *The quality of mercy is not strain'd.*
> *It droppeth as the gentle rain from heaven;*
> *Upon the place beneath; it is twice blest;*
> *It blesseth him that gives and him that takes;*
> *'Tis mightiest in the mightiest: it becomes*
> *The throned monarch better than his crown;*
> *His sceptre shows the force of temporal power,*
> *The attribute to awe and majesty,*
> *Wherein doth sit the dread and fear of kings;*
> *But mercy is above the sceptred sway;*
> *It is enthroned in the hearts of kings;*
> *It is an attribute to God himself;*
> *And earthly power doth then show likest God's*
> *When mercy seasons justice.*

For nearly 56 years, the State of Illinois has housed, fed and cared for William Heirens. Without question, the crimes to which he stood convicted required punishment. Without question, the 17 year-old boy who burgled in 1946 was required to be sent to prison. But the man who is before this Board and the Governor seeking clemency is not the same impulsive adolescent who was a repeat burglar. William Heirens has grown, he has matured, he has even excelled under difficult conditions. It is time to release this senior from prison. Even if one believes that Heirens committed one or more of the murders, it is time to let mercy season justice.

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[49] *See* Ryan S. King & Marc Mauer, *State Sentencing and Corrections Policy in an Era of Fiscal Restraint*, (Feb. 2002), http://www.sentencingproject.org/news/rkmm-fnl.pdf.

VI. Parole Plans

Recognizing that Heirens will be reentering a world from which he has been removed for more than 55 years, arrangements have been made for Heirens to live in secure, stable environments. Immediately upon release, he will be welcomed at St. Leonard's House, a residential setting in Chicago, Illinois, for a stay of three to four months. Established in 1954, St. Leonard's House provides case management services, psychological programming, and employment assistance to ex-offenders. Counseling at St. Leonard's is related to the development of life and coping skills and will allow Heirens a sure and steady first step back into society.

Following his stay at St. Leonard's, Heirens will reside in a religious community in western Illinois, which, in order to avoid premature publicity, will remain nameless for now. This community will furnish him with room and board, and place him in employment commensurate with his physical condition. Counseling will continue to be available and his financial and medical needs will be met through outside assistance. Heirens has maintained a large circle of friends during his incarceration, and they anticipate playing an active role in his life as a free man.

WHEREFORE, William Heriens prays that:

1. Clemency be granted on the lesser sentences, which the Board has deemed satisfied, to effectuate their discharge.

2. Clemency be granted on the three murders — the Degnan murder for which Petitioner was discharged in 1966 and the Ross and Brown Murders for which Petitioner is now imprisoned — and that the sentences on these crimes be commuted to time-served so that Petitioner may be discharged.

3. Such other relief under the executive powers of clemency that will result in the discharge of the Petitioner from custody.

Respectfully submitted,

WILLIAM HEIRENS

By: *[Signature of Steven A. Drizin*

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Subscribed and Sworn to before me this 4TH day of March 2002.

[Signature of Notary Public]
Notary Public

[NOTARY SEAL]