

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : TRIAL TERM PART 59

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Indictment No.:
4762/89

KHAREY WISE, ANTRON McCRAY, STEVEN LOPEZ,
RAYMOND SANTANA, KEVIN RICHARDSON,
YUSEF SALAAM and MICHAEL BRISCOE,

Defendants.

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THOMAS B. GALLIGAN, J.:

Defendants Lopez, Wise, Richardson, McCray, Salaam, and Santana have been indicted and charged with attempted murder in the second degree (Penal Law §§ 110/125.25[1]), Count One; rape in the first degree (Penal Law § 130.35[1], Count Two; sodomy in the first degree (Penal Law § 130.50[1], Count Three; sexual abuse in the first degree (Penal Law § 130.65[1], Count Four; assault in the first degree (Penal Law § 120.10[1] and [3], Counts Five and Six; robbery in the first degree (Penal Law § 160.15[3], Count Seven; robbery in the second degree (Penal Law § 160.10[1] and [2][a], Counts Eight and Nine; assault in the second degree (Penal Law § 120.05 [2] and [6], Counts Ten, Eleven and Twelve; and riot in the first degree (Penal Law § 240.06), Count Thirteen.

Defendant Briscoe is charged only with counts twelve and thirteen.

Pursuant to omnibus motions filed on behalf of the defendants, this court directed Huntley and Dunaway hearings be held as to each defendant and that a Mapp hearing be held as to defendants McCray, Wise, Briscoe, Salaam, and Lopez.

These hearings commenced on October 10, 1989 and concluded November 29, 1989. The People called a total of twenty-nine witnesses on their direct case: Paula DeGregorio, Clayton Frazier, Andrew Novick and George Hansen, technicians from the New York County District Attorney's Office; Mary Ann Cramer, an employee of the New York City Department of Parks and Recreation; Nora Freeman, Law Assistant for the Administrative Judge of the Family Court of the City of New York; Police Officers Raymond Alvarez, John McNamara, Mark Carlson, Eric Reynolds, Robert Powers, Ivelisse Flores, Sergeant Anthony Michalek, Lieutenant Justin Peters, Detectives Jose Rosario, Carlos Gonzalez, Henry Fieldsa, Harry Hildebrandt, John Taglioni, Michael Sheehan, John Freck, John Hartigan, Thomas McKenna, William Kelly, Robert Nugent, Humberto Arroyo, Joseph Neenan, Victor Cornetta, and Assistant District Attorney Linda Fairstein. On rebuttal, the People called Detective Scott Jaffer and recalled Detectives McKenna and Taglioni and ADA Fairstein.

The defendant Steven Lopez called Detective Hartigan and his father, Edelmiro Lopez; Kharey Wise and his mother, Delores Wise, testified in his behalf, as did Detective Hartigan; Kevin Richardson called his mother, Gracie Cuffee, and his sister, Angela Cuffee. Yusef Salaam, his sister, Aisha Salaam, Marilyn Hatcher, his mother's aunt and cousin, Vincent I. Jones, David Nocenti, and Sharonne Salaam, defendant's mother, testified in his behalf. Raymond Santana's grandmother, Natividad Colon, and his father, Raymond Santana, Sr., testified in his behalf.

I make the following findings of fact:

At approximately 9:03 p.m. on the evening of April 19, 1989, Police Officer Raymond Alvarez, of the 23rd Precinct, was assigned to deliver mail to the 24th Precinct. His route, by radio car, brought him to the entrance to Central Park at 106th Street and Fifth Avenue. There, Officer Alvarez observed a group of approximately ten black and Hispanic males aged fourteen to sixteen. As he entered the park, he observed that the group was much larger and consisted of approximately thirty male black and Hispanic youths.

Upon Alvarez's approach, the youths ran south and then southeast. Officer Alvarez shone his spotlight on them as they ran.

Officer Alvarez continued through Central Park, exiting on 106th Street and Central Park West, and drove west to the 24th Precinct. He did not see the youths again before leaving the park.

He stayed at the 24th Precinct for fifteen to twenty minutes and left at approximately 9:23 p.m., and reentered the park at 100th Street and Central Park West. He followed an asphalt bicycle path, proceeding east. When Officer Alvarez was just north of a baseball field located at "North Meadow," his car was approached by a male Hispanic, approximately forty-five years old, who was bleeding from the head. The male told him that less than five minutes before, he had been assaulted at 102nd Street and the East Drive by from five to seven young male black and

Hispanic youths. He indicated that they had repeatedly punched him; hit him in the head, possibly with a rock, and tried to remove property from his pockets.

Officer Alvarez took the individual into his radio car, and, at approximately 9:30 p.m., he reported the incident on the radio. They then continued to drive along the bicycle path, travelling east toward 102nd Street and the East Drive, in search of the perpetrators of the assault.

While on the East Drive, at about 9:30 or 9:40 p.m., Officer Alvarez encountered a male on a bicycle. Alvarez asked him if he had seen a large group of youths and he answered that he had and that they had tried to hit him. The bicyclist described them as being mostly black and Hispanic youths and said he had last seen them north of the 102nd Street Cross Drive on the East Drive. At that time, Officer Alvarez put their description over the radio.

Officer Alvarez then left the man on the bike and continued driving through the park with the injured man. While doing so, he received three calls over his radio regarding a disorderly group in the park. He then received a message from another unit to proceed to a playground at 100th Street near Central Park West to view possible suspects. They drove to that location and at about 9:40 or 9:45 p.m., the man whom Officer Alvarez had brought was asked to view four or five youths who had been taken into custody. He did so but could not make any identi-

fications. At approximately 10:05 p.m., Officer Alvarez and the injured man left the park.

Prior to leaving the playground, Officer Alvarez spoke to Police Officer Eric Reynolds and told him that he had seen a group of youths who had run when they saw the radio car. He also informed Officer Reynolds that the group consisted of between seven to ten male black and Hispanic teens and that they had been spotted on the east side, inside the park.

Officer Reynolds and his partner, Police Officer Robert Powers, had responded to the playground location in their capacity as members of the Central Park Anti-Crime Unit. They were not in uniform and were patrolling the park that evening in a green Parks Department van.

While driving north on Central Park West at approximately 9:30 p.m., they received a radio transmission that seven or eight disorderly male blacks were in the park harassing people. They proceeded to the north end of the park. They entered and continued to the vicinity of 102nd Street, taking roadways and paths, and canvassing from west to east in search of the people described in the radio run.

When they arrived at the East Drive in the area of 102nd Street, Reynolds initially saw nothing. Then he recognized other police vehicles, including Central Park police vehicles and cars from the 23rd Precinct and from the Manhattan North Task Force. Reynolds asked some of the officers at the scene if they had seen anything and they told him they had not.

Officers Reynolds and Powers received a second radio transmission at 9:45 p.m., to the effect that approximately 20-30 male blacks were harassing and assaulting people in the park. They began to further canvass the north end of the park above 96th Street, concentrating on the pathways and dark areas. They saw no one.

While engaged in this canvass, they received a third radio communication which informed them that Sergeant Laile of the Anti-Crime Unit had a group of possible suspects at the playground at 100th Street and the West Drive.

Officer Reynolds and his partner responded to the playground, arriving between 9:45 and 10:00 p.m. They did not stay long at that location, and, after Officer Reynolds spoke to Officer Alvarez, they left to continue canvassing in the north end of the park, concentrating, as before, on the trails and inaccessible areas of the park. They were at the East Drive and 102nd Street when they received a fourth radio communication. In this communication, Sergeant Laile reported that a male jogger had been found at 96th Street and the West Drive off the reservoir, beaten and bleeding profusely from the head. This communication indicated further that a group of male Hispanics and blacks had assaulted the jogger and that they had fled north.

Visible to Officer Reynolds at that time were the headlights of police vehicles north of them and of other police vehicles canvassing east to west across the varied ballfields in

the north end of the park. At that point, Officer Reynolds made a decision to leave the park at 100th Street and to continue the search outside the park. The time was approximately 10:10 p.m.

Officer Ivelisse Flores had been assigned that evening in uniform, in a marked scooter, to cover a robbery post from 75th Street to 79th Street on the West Drive. She was with Sergeant Carabetta on the West Drive between 72nd and 73rd Streets when a report came over her portable radio concerning a disorderly group of thirty to forty male blacks in the vicinity of 102nd or 103rd Street on the East Side. Upon receipt of that information, Sergeant Carabetta left Flores. Officer Flores then received a second radio transmission regarding a disorderly group in the vicinity of 102nd Street. She drove northbound on the West Drive towards 102nd Street.

Officer Flores had gone only one block when two people on a tandem bicycle stopped her. They told her that there were forty young male blacks breaking bottles and drinking, and that they had unsuccessfully attempted to grab the female on the bike at 102nd Street by the West Drive. They also told her that they had put a call through to the Central Park Precinct station house

Officer Flores left them and continued northbound to 102nd Street. When she reached the area of the 102nd Street Cross Drive, she spotted a fire slightly to the north and on the east side of the road. She stopped at the fire and there encountered other police officers, including John McNamara and Mark Carlson.

Officer Flores stayed at the fire for approximately twenty minutes and then received another radio communication to the effect that the group had been seen on the west side of the reservoir. At that point, she left the fire and drove south on the West Drive, turning back towards the reservoir. When she reached 94th or 95th Street, she was informed by radio that there was nothing at the reservoir, so she again proceeded north. At about 95th or 96th Street, Officer Flores asked an elderly male if he had seen anyone coming out of the park. He answered, "Yes" and said "They left the park." He also pointed in the direction of Central Park West. At this point, Officer Flores heard a radio call by Officer Powers. She asked over the radio, "Bobby, what do you have?", but got no answer, and so she kept on driving north.

As she reached the 100th Street exit in the park from the West Drive, Officer Flores saw Reynolds and Powers' Park Department van exiting the park. She watched as the van drove south on the West Drive and made a right turn onto 100th Street. Flores drove right behind them trying to get their attention.

Reynolds and Powers, having exited the park, were driving north on the east side of Central Park West between 101st and 102nd Streets when they observed a group of between ten and fifteen, and perhaps as many as twenty male black and Hispanic teenagers on the west side of the street. They drove north to get a better view of the youths. The group was "walking together" and moving at a "brisk pace". It was an "homogenized" and "densely" configured group, walking northbound. Together, the group took up one fourth of the block.

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The youths came to a stop and some of them began to point toward the Parks Department van. At that moment, Officer Flores, driving her marked scooter, came into Reynolds's view on the right side of the van.

Officer Powers turned left on Central Park West at 102nd Street with Officer Flores driving next to them. When they made the turn, Officer Powers brought the van to a stop on the southwest corner of 102nd Street and Central Park West. Officer Reynolds, wearing a Police Department windbreaker marked "52nd Precinct" and with his badge visible on a chain around his neck, exited the van with Officer Powers. Powers stated to the group, "Stop, Police." With the exception of two individuals the youths started running in all directions. Officer Flores made a quick turn on her scooter and followed them.

Officer Reynolds and Powers then approached the two individuals who had not fled, defendants Steven Lopez and Raymond Santana. The officers' guns were not drawn. They placed the two individuals against a wall and patted down their clothing for weapons. None were found.

Lopez denied having been with the group stating, "We weren't with the group. We weren't with those guys. We didn't do anything." Raymond Santana added, "Yeah, they were going to jump us." Both Lopez and Santana were wide-eyed and appeared shocked.

Officer Powers then joined Officer Flores in pursuit of the fleeing individuals. Officer Reynolds remained behind with Lopez and Santana.

After being frisked, both Santana and Lopez continued to make statements to Officer Reynolds. Santana stated that he had just come from his girlfriend's house and wasn't with the group. Lopez said that he had just come from the movies with his girlfriend and had watched "Leviathan". He also denied that they had been with the group and added that "the group had talked shit about ripping them off". Both Lopez and Santana maintained that they did not know any of the others who had run. Reynolds did not ask questions of either Santana or Lopez nor did he place handcuffs on them.

As Officer Flores pursued the fleeing youths on her scooter, they ran south on Central Park West and made a right on 101st Street going toward Manhattan Avenue. She passed most of them going west on 101st Street and flushed them back to Central Park West. She called on the radio to Powers and told him that they were now heading back in his direction. Some of the youths went into buildings on Central Park West and 101st Street.

When Powers approached 101st Street, ten or eleven youths jumped over a wall and ran into the park between 100 and 101st Streets. Officer Powers pursued them. Officer Flores parked her scooter and ran down 100th Street on a foot path and then inside the park.

Officer Powers blocked the path of a youth in a red jacket who was running back and forth along the inside of the wall. That youth, Lamont McCall, ran up a hill and exited the park at 100th Street and Central Park West, at which point he was apprehended by Sergeant Laile.

Officer Flores saw two or three others run in an eastbound direction toward the baseball fields. She followed and could see them hiding from tree to tree. Officer Powers also saw two youths running east. She and Powers ran side by side after them and Officer Powers broadcast their pursuit. The youths they were chasing crossed the West Drive and ran into an area of the park containing ball fields.

Officer Powers pulled ahead of Officer Flores and reached one of the youths, Kevin Richardson. He tried to tackle Richardson at a ballfield northwest of "North Meadows" and got his hand around his neck, catching him in the right side of the face and they both fell. Officer Powers then turned Richardson around and handcuffed him.

By then, additional police had joined Officers Powers and Flores in the chase through the park. Police Officer Hennigan was with Officer Powers. Officer Kozmalski who had been on a scooter, apprehended a youth named Clarence Thomas and placed him in handcuffs.

After briefly checking the ballfield and finding no other suspects, the police radioed for an additional unit. Sergeant Carabetta and Officer Sullivan responded to the North Meadow in a radio motor patrol car, and Richardson and Thomas were placed in the back seat with Officer Powers.

En route to 100th Street and Central Park West Clarence Thomas began to cry. Without being questioned, he stated, "I know who did the murder. I know who did the murder. I know where he lives and I'll tell you his name." Richardson said that

he also knew who did it and would tell them too. Then Thomas said that it was Antron McCray and that he lived at a particular address on 111th Street. Kevin Richardson concurred saying, "Yeah. That's who did it." Officer Powers believed they were talking about John Loughlin, the male jogger assaulted at 96th Street. Thomas also stated that he knew that the pipe that was used had been left at 97th Street and Central Park West, near the projects.

When they arrived at 100th Street and Central Park West, they met Officer Powers' sergeant, Sergeant Laile, and other officers. Officer Powers got out of the patrol car and informed Sergeant Laile of the statements by Richardson and Thomas.

Officer Powers stayed at 100th Street for approximately ten minutes and then went to rejoin Officer Reynolds at 102nd Street because Powers had the keys to the Parks Department van.

Officer Reynolds had meanwhile radioed for assistance while waiting alone with Santana and Lopez. Sergeant Wheeler and Police Officer Morales responded and Lopez and Santana were placed in their car. When Officer Powers returned, he and Reynolds drove the van back to 100th Street and Central Park West to confer with their sergeant. Lopez and Santana were taken to that location in Sergeant Wheeler's car.

At the northeast corner of the intersection of 100th Street and Central Park West, Officers Powers and Reynolds met with Sergeants Laile, and Wheeler, Officer Hennigan, and other police. Lopez and Santana were there in the custody of Sergeant

Wheeler; Kevin Richardson, Lamont McCall and Clarence Thomas were in the custody of other officers. Sergeant Laile and Officer Powers informed Officer Reynolds that Richardson and Thomas had made statements placing themselves at the attack on John Loughlin. Their discussion lasted about fifteen minutes and included the possibility of conducting a showup with Mr. Loughlin. However, such a showup was not feasible because of the severity of the injuries to Loughlin's eye. While the officers were conferring, either Thomas or Richardson stated to Powers with, respect to Santana and Lopez in the other car, that "they were with us in the park"

Powers and Reynolds then drove the van back to the Central Park Precinct. The drive took about five minutes and they arrived at around 11:00 p.m. The five individuals in custody were brought before the desk at approximately 11:06 p.m. Officer Reynolds gave the officer at the desk the names, addresses, and ages of the defendants so that they could be entered into the blotter. This procedure took approximately ten minutes, after which the defendants were brought to the precinct juvenile room.¹ There, the defendants' handcuffs were removed.

¹Pursuant to section 205.20 of the Uniform Rules of the Family Court, the Administrative Judge for the Family Court within the City of New York, arranges for the inspection and recommendation to the Chief Administrator of the Courts the rooms suitable for questioning of children pursuant to section 305.2 of the Family Court Act.

On April 19, 1989, the Community Affairs Room in the Central Park Precinct; Room 107 in the 20th Precinct, and Room 101 in the 24th Precinct, had been so designated.

Effective May 19, 1989, Room 125 in the 20th Precinct was so designated.

Officer Reynolds then began to process the paper work incident to the defendants' arrests. He did so in the same room as the defendants. While Officer Reynolds worked, defendants Lopez, Santana and Richardson talked among themselves. None of the defendants were crying but they did indicate a desire to go home.

Concomitantly, Officer Powers, in the anti-crime office, began making telephone notification to the defendants' families. He informed them of the defendants' arrest for assault and gave them the location and phone number of the precinct. By 11:30 p.m., Officer Powers had completed his series of phone calls to the defendants' families. He then went into the juvenile room and began to assist Reynolds with his paperwork. He did so by taking "pedigree" information from each of the defendants.

Approximately ten minutes into this process, Officer Powers made a statement to the group of defendants to the effect that they "shouldn't be out here beating up on people. You should be out with your girlfriend." Raymond Santana looked at Steven Lopez, smiled and stated, "I already got mines" and they both laughed.

Later, Steven Lopez asked Officer Powers how many people were in the group when we saw them. Powers responded "approximately 15" and Lopez said "fifteen? And you only caught three." Powers stated "It looks like we caught five" and Lopez said "No way. We weren't with these guys" and Santana said, "Yeah, I never saw these guys before."

The defendants' parents began to arrive at the precinct at around midnight. The first to arrive was Kevin Richardson's mother, Gracie Cuffee. She opened the door to the juvenile room and came in to indicate to Reynolds her presence and identity. Richardson was awake and seated in the back of the room. Officer Reynolds got up and asked Mrs. Cuffee to have a seat outside in the clerical area.

Other parents began to arrive shortly thereafter. As they arrived, either Officer Powers would inform Reynolds of their presence, or the parents themselves would "stick their head in the door" to tell him they were there "looking for their son".

During this time frame Antron McCray, a fifteen year old, and his mother came to the precinct. They had not been called. McCray went into the juvenile room and spoke to Clarence Thomas. Officer Powers asked him his name and McCray responded. Then, in the presence of Mrs. McCray, Officer Powers asked him if he had been with the others earlier that night. McCray answered "Yes," but that he had run when the police chased them. Officer Powers said, "Look me in the eye and tell me the truth; did you beat anybody tonight?" McCray looked away and said, "No." McCray was not arrested at that time and was permitted to leave the precinct.

At approximately 12:35 a.m. -- after waiting for about half an hour -- Mrs. Cuffee asked an officer the reason for the delay and was told they were waiting for Raymond Santana's

father. Twenty or thirty minutes later she told an officer she was very sick and asked again, how much longer they would have to wait.

By 1:30 a.m., Mr. Santana had not yet arrived. Raymond was the only defendant without a parent present. Officer Powers had spoken by phone to Santana's father before 11:30p.m, and he said he would pick his son up. Almost two hours later, the elder Santana had not arrived and Officer Reynolds asked Powers to give him another call. Powers called again and this time got no answer. Officer Reynolds asked Santana to give them another relative's name and he was, at first, reluctant but then gave his sister's name and telephone number.

Officer Reynolds called Santana's sister and spoke to her at 2:15 a.m. Reynolds explained the situation to her and told her that they needed a parent or guardian at the precinct. She told him that she would come but had to make arrangements for her young child. Officer Reynolds gave her directions to the precinct, his name and phone number.

After the phone call to Raymond Santana's sister, Officer Reynolds explained to the waiting parents that the police would do a search for outstanding warrants and that if none were found, the defendants would be given a Family Court Appearance Ticket and allowed to leave as soon as Raymond Santana's family came. It was necessary to wait for resolution of Santana's situation because they would all be given the same return date on their Appearance Ticket.

Although not known to Reynolds and Powers, an unconscious female jogger had been found in Central Park at 1:40 a.m., near the 102nd Street Cross Drive. She had sustained massive injuries.

Santana, at this time, made a statement to Richardson that "They were going to Spofford and that they would all stick together and fuck up anybody who got in their way."

At 2:20 a.m., Detective Jose Rosario was directed by his Night Watch Supervisor, Sergeant Duffy, to go with Detective Gillner to Metropolitan Hospital regarding the female jogger. Detectives Rosario and Gillner arrived at the hospital at 2:45 a.m. They went directly to the Trauma Room. There, seven or eight medical personnel were working feverishly to save her life. She had "severe lacerations, cuts about the face, the head, legs. Her right eye was swollen shut. She was caked in mud [and] blood." She appeared to be comatose and was receiving oxygen. When Detective Rosario asked the medical team about her condition, he was told she was "very, very serious."

The nature and magnitude of her injuries indicated to Detective Rosario that the jogger had put up a struggle and that the assault had likely been perpetrated by more than one individual.

Officers Rubenich and Fortier from the Central Park Precinct were also at the hospital and they told Detective Rosario about the earlier arrests of several young males in

connection with the assault on a male jogger in the park. He was told that that incident also had resulted in severe head injuries and that that victim had been attacked with a metal pipe.

Subsequent to this conversation, Detective Rosario placed a telephone call to the Central Park Precinct, at 2:55 a.m. He spoke to the desk officer and was told they were still waiting for some parents in order to release the youths. Detective Rosario told him to hold the youths; he wanted to talk to them.

Detective Rosario stayed at Metropolitan Hospital for approximately one hour. He then went to the crime scene at Central Park where the female jogger had been found.

At the Central Park precinct, all of the youths except Clarence Thomas were asleep by 3:00 a.m. By 4:00 am Santana's sister had not yet arrived. Officer Reynolds telephoned her again and was told that she would not be picking up her brother. She said, however, that his grandmother could, and she gave Officer Reynolds the phone number for the grandmother. At 4:10 a.m., Officer Reynolds called the grandmother and she agreed to come. Officer Reynolds said he would send a police car. They spoke in English.

A police car was directed from the precinct to the grandmother's residence and returned with her and Raymond Santana, Sr. at some time between 4:30 a.m. and 5:00 a.m. However, the father remained briefly and then went to his job, leaving the grandmother to stay with Raymond Santana Jr.

A little after 4:00 a.m., Officer Reynolds had a conversation with Lieutenant McInerney just outside the precinct's Community Affairs Office. Lieutenant McInerney had been assigned to the Night Watch. He told Officer Reynolds that a woman's body had been found on 102nd Street inside the park. He asked Officer Reynolds to hold the five defendants because detectives wanted to question them.

About the same time, various parents indicated to Officer Reynolds that they wanted to get something to eat for themselves and for their sons. Officer Reynolds told them where stores were open on the West Side. Most, but not all of the adults then left to buy food. When they returned with the food, the five defendants in the juvenile room joined their parents in a waiting room.

At 5:30 a.m., a detective from the Night Watch detail began interviewing the youths one at a time. The first youth interviewed was Lamont McCall. This interview was conducted in the juvenile room, in the presence of McCall's mother, Officer Reynolds, and Detectives Farrell and Whelpley.

Detective Farrell conducted the interview. McCall indicated, in substance, that he went into the park and began assaulting people with a group, including Clarence Thomas, Antron McCray, and two others named Mike - a male, black, aged fourteen to fifteen, and Easy Al.

By 6:00 a.m., warrants on each of the defendants had cleared. The serial interviewing of defendants in the Juvenile Room continued.

Clarence Thomas was interviewed after McCall. Present were Detectives Whelpley and Farell, Officer Reynolds, Thomas and his mother. This interview lasted an hour and a half. Thomas told them that the group came into the park at 110th Street without specific plans for the evening. They started to assault a "bum" and then later went up to the reservoir and assaulted a male jogger with a pipe. He identified Antron McCray and Lamont McCall as having been with him. He said, further, that McCray had assaulted the jogger and indicated that McCray was a male black, fourteen to fifteen years old, and that he lived on 111th Street. When the interviews concluded, Thomas and McCall were given appearance tickets and released to their mothers.

Detective Carlos Gonzalez, assigned to the Central Park Detective Squad, arrived at the precinct while the interview of Clarence Thomas was being conducted. At approximately 9:00 a.m., he was walking through the outer clerical office when Richardson's mother approached and asked if they could take Kevin

next. Detective Gonzalez told Mrs. Cuffee, "as soon as the room is empty, you will be next."

At 9:40 a.m., Detectives Gonzalez and O'Sullivan brought Kevin Richardson, a fourteen-year-old, and his mother into the juvenile room. They introduced themselves, and Detective Gonzalez began the interview by taking pedigree information. Using a Miranda card, he advised them of their rights, addressing himself to both Kevin and his mother. Both answered, "Yes" after each right. Detective Gonzalez concluded the warnings by asking if they were willing to answer questions. Both mother and son said, "Yes." Having obtained waivers, Detective Gonzalez asked Kevin to tell him what happened the night before.

Richardson spoke freely for about twenty minutes. He stated that he and approximately thirty of his friends entered the park at 8:00 p.m. at 110th Street and Fifth Avenue. He said he wanted to beat up some people and that they did beat a male jogger with a pipe, and he described the person who did the beating. Later they all ran off.

While Richardson was talking to Detective Gonzalez, Detective John Hartigan, assigned to the Manhattan North Homicide Squad, arrived at the Central Park Precinct. He and Detective Jaffer were directed to the juvenile room, and they entered at about 10:00 a.m. As Hartigan entered he saw that the side of Richardson's face was scratched, and he indicated with his hand to Gonzalez the existence of the scratch. Detectives Hartigan and Jaffer stayed in the room for a matter of minutes and then went outside between the precinct buildings. Detectives

Gonzalez and O'Sullivan came outside shortly thereafter to advise the other detectives of what was going on. Mrs. Cuffee came out also.

Jaffer and Hartigan approached Mrs. Cuffee and asked if they could talk. She agreed. The detectives told her who they were and why they were there. They told her that a female had been seriously injured and informed her about the scratch on her son's face. They also indicated that it was "important" for her son to tell the truth and it would "behoove" him to do so. Mrs. Cuffee indicated that she wanted the truth as well.

This conversation lasted less than five minutes, after which Detectives Gonzalez and O'Sullivan and Mrs. Cuffee went back into the juvenile room where Detective Gonzalez resumed his inquiries of Richardson.

Detectives Jaffer and Arroyo went to Metropolitan Hospital about twenty minutes later, and Detective Hartigan reentered the juvenile room. Richardson had finished his statement and made no admissions regarding the female jogger. Detective Gonzalez asked Richardson if he had any more information and Richardson answered, "No". Detective Gonzalez then asked him about the scratch on his face. Richardson said he had fallen. Detective Gonzalez responded, in substance, that when he falls he suffers scrapes, not scratches. Richardson then said that he had suffered the scratch when apprehended by the police. Detective Gonzalez told Richardson that he was going to phone the officer at home to confirm or refute Richardson's version of events, saying, "If he did scratch you,

no problem. If he didn't scratch you then you would have problems." Detective Gonzalez stood up and started walking towards the door, telling them he was going to make the call. Just as he reached the door, Richardson made a statement admitting he had been scratched by the female jogger "when we had the fight." Detective Gonzalez returned and said they would begin new questioning and would start from the beginning. The time was 10:10 a.m.

Detective Hartigan took over the interview. Richardson went into more details as to who had been in the park, in what way they participated, and about his fight with the female jogger. He identified some of the people in the park as Al Morris, Chevron Dailey, Lamont, Yerun Bailey Mike and Antron McCray. He gave McCray's address and named Raymond "Bluehat" Santana, Clarence Thomas, Steven Lopez, and Kharey. For Lopez and Kharey, Richardson was also able to give information as to their addresses and apartment numbers. ~~§~~

When Richardson had finished his statement Detective Gonzalez handed him a pad and asked him to put it in writing, in his own words. Mrs. Cuffee said she was tired and asked if her adult daughter, Angela, then at the stationhouse, could take her place.

Detective Gonzalez left the room briefly to check on this with his superiors. Gonzalez returned minutes later to write up a consent form. Mrs. Cuffee signed the form at 11:40 a.m. Detective Gonzalez asked Mrs. Cuffee to advise her daughter that they were conducting an investigation and would Angela extend the same courtesy regarding being cooperative. Angela came in and spoke with her mother for a few minutes. When Angela Cuffee replaced her mother, a detective other than Hartigan read the Miranda rights to Kevin and he nodded affirmatively. Angela was asked if she understood the rights and she said "Yes." Detective Gonzalez left the room with Mrs. Cuffee to request a radio car to transport her home and to inform his supervisor of what was taking place.

Richardson was writing when Detective Gonzalez left and had covered ten to twenty lines. In the presence of Angela he continued to write out a statement of what happened. He was told to take his time and to think about it. After he finished the first page, Detective Hartigan noted that Richardson had neglected to include information about the scratch. He said, "Kevin you're leaving something out now ... is there anything you're ashamed to say because your sister is here?" Richardson said, "You mean the

scratch?" and Hartigan said "Yes." Richardson then included in his written statement reference to the scratch on his face.

After the statement was finished, Detective Hartigan read it out loud to Kevin. Paul Richardson, defendant's father, came into the room after the statement was completed. Detective Hartigan advised him about what was going on and he was informed of Kevin's statement. Mr. Richardson read the statement and he, Angela Cuffee, Kevin and Detectives O'Sullivan and Hartigan signed it.

The interview with Kevin was concluded at, or just after 1:00 p.m. At its conclusion, Detective Hartigan made arrangements to have Kevin Richardson and his family transported to the 20th Precinct.

At 8:00 p.m. on April 20, Detective Henry Fieldsa had Kevin remove all of his clothing and he took fingernail clippings as well. All were marked and turned over to Detective Gonzalez.

Detective Jose Rosario left the crime scene at about 7:00 a.m. and went to the Central Park Precinct where he conferred with and debriefed fellow detectives until 11:30 a.m. At that time he left the precinct with Detectives Whelpley, Farrell, Rivera, Morin and Officer Reynolds to respond to the residences of Clarence Thomas and Antron McCray. They were to ascertain if Thomas and McCray would return to the precinct for further interviews.

They went to the Thomas house first, where they spoke briefly to Clarence and then exited the apartment with Thomas and

his mother. Detective Rosario asked Clarence where his cousin McCray lived. Thomas' mother told him that they were not cousins but good friends. They directed Detective Rosario to the McCray apartment on 111th Street.

At the McCray apartment, Detective Rosario knocked on the door. Antron McCray's father answered and Rosario asked if he and the other officers could come in. Mr. McCray agreed and Morin, Rivera and Reynolds joined Rosario in the apartment. Rosario told McCray that they wanted to talk to Antron and to transport him back to the precinct. His father said that would be fine. Rosario explained further that Antron was a juvenile and that someone would have to accompany him to the precinct. At that point, Antron came into the room. Detective Rosario explained who they were and why they were there. As Antron prepared to leave with them, Detective Rosario asked him, "Are those the clothes that you had on last night?" He said, "No." Both father and son were asked if it would be all right if Antron wore the same clothes as he had the night before. Antron's father agreed.

Antron put on the clothing he had worn the previous night. They were caked with mud and dirt. Antron, his mother and father then left for the precinct with the police.

While en route, Detective Rosario told Antron's parents that they should impress upon Antron that he should tell the truth, no matter how horrible, and that they should also impress on him that they still love him and would still be his parents no matter what he did.

They reached the Central Park Precinct around noon. Shortly thereafter, Thomas, McCray and their families were taken by Detective Hildebrandt to the 20th Precinct.

When the interview of Kevin Richardson was completed about 1:40 p.m. (supra) the interview of Raymond Santana, age fourteen, began in the juvenile room of the Central Park Precinct. Present in addition to Santana, were his grandmother, Mrs. Colon, and Detectives Hartigan, Arroyo and Jaffer.

Detective Arroyo explained in English who the police were and what they were in the process of doing. He spoke in Spanish to Mrs. Colon for a few minutes and she answered in Spanish. Detective Arroyo then advised Santana and his grandmother of his Miranda rights. After each right, Santana was asked if he understood and he acknowledged that he did, answering "Yes" to each question. The grandmother was asked the same questions in Spanish and she shook her head and spoke in Spanish indicating "Yes".

Detective Arroyo then asked Santana if he would tell them what happened in the park. In doing so, he repeated the same question in Spanish to Raymond's grandmother. Detective Hartigan interjected, saying that procedure would take "all day." The grandmother acknowledged this and said in English, "I understand. It's okay." Detective Hartigan asked the grandmother, "Do you understand what I just said?" and she said "Yes." Raymond Santana then said to her, in effect, that it was all right and the detectives proceeded to talk to him.

They asked him to tell them, in his own words, what happened and who he was with, the previous night. Santana provided them with a narrative of the events in the park. In the course of it he identified some of the participants, including Terrence Campbell, Doug, Dave, Jason, Antron, Ramsey Smith, Jamine, Steve - with whom he had gotten caught - and Mike Briscoe from the Taft Houses. He also mentioned Lamont, Orlando and Kevin McCall.

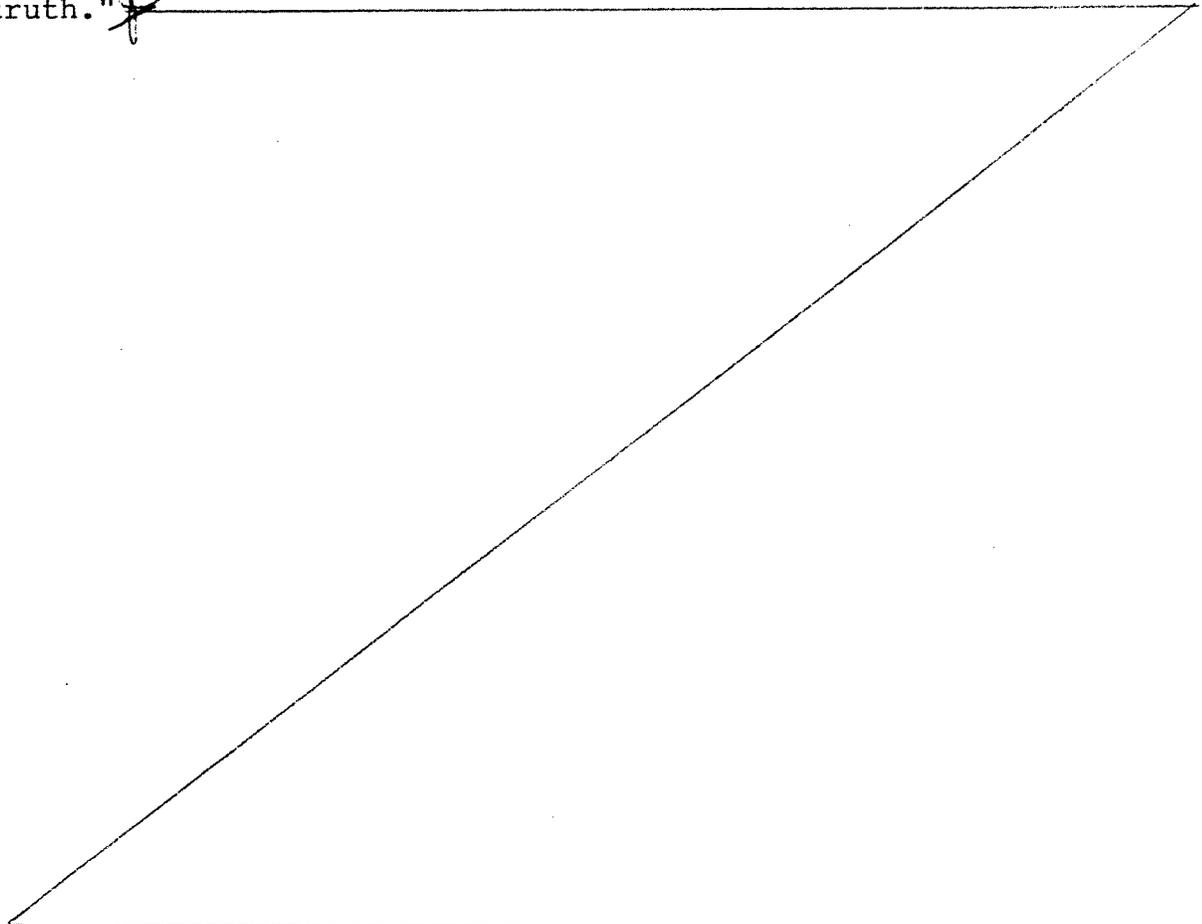
Santana spoke for an hour. When he was finished Detective Arroyo told him they were going to take a written statement and would ask him to sign it. In committing the statement to writing, they proceeded "step by step" with both Detectives Arroyo and Hartigan participating in the questioning and Arroyo doing the writing.

When the written statement was finished, Detective Arroyo read it back to Santana in English. He then handed it to Raymond and asked him to read it. Santana looked at it, turned the pages and then signed it. Detectives Arroyo and Hartigan also signed it. Mrs. Colon was asked to sign, but, speaking in Spanish, she expressed reservations that it might have an adverse impact on Raymond and declined.

Detective Arroyo then left the juvenile room to go to the Detective Squad, taking the statement with him. The time was 4:40 p.m.

Detective Hartigan was alone in the juvenile room with Raymond and his grandmother when Raymond's father was brought in a

few minutes later. Within five to ten minutes, Detective Arroyo had returned and was introduced to Mr. Santana. The detectives had a conversation with Raymond's father in which they told him that his son had given them an account of his activities in Central Park and had signed a statement pertaining to those activities. The statement was shown to Mr. Santana. They indicated further that they had reason to believe that Raymond was more deeply involved than he had admitted and was not being forthright. Detective Hartigan advised Mr. Santana and Raymond that it "would be to the best of his interest to tell the truth, the whole truth."



Detective Arroyo resumed questioning Raymond about the female jogger. Raymond was less responsive than he had been earlier. After approximately twenty minutes, the detectives asked Mr. Santana if he would like to speak to Raymond. Arroyo and Hartigan moved to the opposite end of the room and Raymond, his father, and grandmother spoke together for a few minutes.

The detectives then resumed their questioning in the presence of Raymond's father and grandmother. Raymond's father also tried to elicit responses from Raymond.

This conversation continued for ten to fifteen minutes when Raymond asked if he could speak to Detective Hartigan alone. Hartigan said he would have to have Raymond's father's permission. He turned to the father and explained that Raymond might have something to say but was either ashamed or embarrassed to do so in front of the father. The detective asked the father "would it be all right if I talked to your son without anybody being present, just him and I." The father agreed.

Mr. Santana, Mrs. Colon, and Detective Arroyo then left the juvenile room, leaving Hartigan and Raymond. Santana told Detective Hartigan that he had been present when the female was attacked. He said he had seen people knock her to the ground and hold her while someone hit her with a brick. He also stated that he had "just grabbed her by the tits."

At that Detective Hartigan stopped him, saying he couldn't tell him these things without a parent present. Hartigan told him not to be ashamed and no matter what was going

on he was still going to be their son and they would still love him. He then said to Raymond, "You're going to explain to me, talk to me in front of your father." Raymond said he would.

Detective Arroyo left Mr. Santana and Mrs. Colon to go back to the juvenile room. When he opened the door, Detective Hartigan asked him to get Raymond's father and grandmother.

However, when Detective Arroyo attempted to locate them they could not be found. He searched unsuccessfully for five minutes, after which Hartigan joined him. They searched for five to ten minutes more without success. They went back to the Juvenile room and Detective Arroyo asked Santana if he knew where they had gone. He did not. In fact, Mr. Santana and Mrs. Colon went to a fast food restaurant on 86th Street and 3rd Avenue for hamburgers.

Detective Hartigan then wrote down what Raymond had said to him while they were alone but informed Raymond that he was not going to take a full statement at that time; someone would do that when his father was located. Hartigan wrote the addition on the bottom of the statement Raymond had previously signed. As he wrote, he asked Raymond the names of the people he had seen. When it was written, Detective Hartigan asked Raymond if it was a true statement and if he would sign it. Santana acknowledged that it was true and he signed it. The time was 6:00 p.m. Both Detectives Arroyo and Hartigan also signed the statement at that time.

VI

The interview of Antron McCray commenced at approximately 3:15 p.m., on April 20th, in Room 125 at the 20th Precinct. Present were Detectives McCabe, Hildebrandt and Gonzalez, and McCray's father and mother.

Hildebrandt introduced himself and the other detectives to the McCrays and then took some pedigree information. Following that, he informed Antron that he was going to advise him of his Miranda rights and that he had to indicate whether he understood them. He proceeded to read Antron and his parents the Miranda rights. Antron responded by shaking his head and saying "Yes" to each of the rights. Both Antron and his father indicated they were willing to talk. Hildebrandt then asked Antron to "start from the beginning and tell us what happened that night."

Antron said, in substance, that he had gone into the park with his friend Clarence and about 30 others. They had thrown stones at cars; someone had knocked down and beaten "a bum"; they tried to grab a male and female on a bicycle built for two but they got away; they grabbed a male jogger near the reservoir and knocked him to the ground and hit him with a pipe. After that, he said, the police came; he ran, hid in the mud, and then went home.

After Antron had spoken for twenty to thirty minutes, Detectives Hildebrandt, Gonzalez, and McCabe and Mr. McCray stepped out of the room. Detective Hildebrandt told Antron's father that he felt Antron was not telling the truth. Mr. McCray concurred, saying, "I agree, I can tell when my son is not telling me the

truth." Hildebrandt suggested that the father go into the room and talk to his son and tell him that the police did not feel he was being completely truthful with them. Mr. McCray went into the room alone and spoke to his son and his wife. The detectives joined them several minutes later. At this point the interview resumed.

Antron McCray continued to talk and repeated essentially the same story. When he would reach a point in his narrative that would anticipate a discussion about the female jogger he would become visibly nervous, look down and fidget.

Approximately 15 to 20 minutes after resuming the interview, Detectives Hildebrandt and Gonzalez left the room a second time with Mr. McCray. Hildebrandt asked Mr. McCray if he felt that his son was still holding back, and he said "yes", he felt that "he was keeping something from us." Hildebrandt asked if Mr. McCray thought that "he is embarrassed talking in there about what happened." Mr. McCray said, "maybe it would be better if my wife wasn't there, that he would tell us what happened." The detective asked Mr. McCray "if he would want to talk to his wife" and he said "yes". Detective McCabe was then asked to leave the room so the McCrays could have a private conversation.

After a few minutes, the detectives entered and asked the McCrays what they had decided. Mr. McCray indicated that his wife was going to leave. She stood up and Detective Gonzalez escorted her upstairs to the second floor detective room.

VI

McCray then told his son to be truthful and that if something had happened to the female jogger, to tell them. With Detective Hildebrandt conducting the interview, McCray went into detail about the rape of the female jogger.

He told them she had been jogging along the reservoir when they came upon her and one of them grabbed her. He related that they had removed her clothing and he identified himself as the third individual who had raped her, stating that while he was "on top" somebody else was holding her down.

After this third statement, Detective Gonzalez went upstairs and brought Mrs. McCray back.

Detective Hildebrandt then reduced the statement to writing. He wrote the details down from memory and then read the statement to Antron and his parents. They made some additions and corrections. Between 5:00 and 5:30 p.m., this process was completed and Antron, his father and mother and Detective Hildebrandt signed the statement.

After the conclusion of the written statement, Detective Hildebrandt informed the McCrays that they would be there for some time and that an Assistant District Attorney was probably going to want to talk to their son and possibly take a video statement. In view of this, he said, they might want to get some food. Approximately ten to fifteen minutes after the statement, Mr. McCray went out to purchase something to eat. He returned with pizza and soda.

At about 6:00 p.m., Antron McCray's clothes were taken and he wore a hospital gown while new clothes were being brought to the precinct. The McCray's were transported to the 24th Precinct about midnight. *[Handwritten mark]*

Detective Michael Sheehan arrived at the Central Park Precinct at 4:10 p.m. on April 20, 1989. He was apprised of the status of the investigation into the attack on the female jogger and was asked to assist the uniformed officers in search of a weapon -- a length of pipe. Sheehan left the Central Park Precinct at 4:30 p.m. and made a search of the vicinity of 97th Street and Central Park West. He did not find the pipe and returned to the Central Park Precinct at 5:30 p.m.

Approximately one half hour later, Sheehan met with Detectives Hartigan and Arroyo, who had just left Raymond Santana after he had signed his statement. Detective Hartigan alerted them to the fact that he had taken a statement from Raymond Santana and Santana wanted to add certain things to it but it could not be done until his father was located.

Detective Sheehan was further advised by Sergeant O'Connor that the entire investigation was being shifted to the 20th Precinct where the physical conditions were better.

After speaking to Hartigan and O'Connor, Detective Sheehan was assigned to take Raymond Santana by car to the 20th Precinct. Detectives Jonza and Hall accompanied him. They were also directed to make arrangements to notify Santana's father and get him to the 20th, so that a more complete statement could be taken from Raymond.

They left the Central Park Precinct at 6:00 p.m. Santana sat in the back seat and was not cuffed; Sheehan was driving. On the way to the 20th Precinct the three detectives were discussing the Central Park joggers case and their unsuccessful search for a pipe at the exterior wall at 97th Street

and Central Park West. Sheehan then told Santana they were going to make a detour to 97th Street to look for something.

Santana said, "If you're looking for a pipe, the pipe isn't going to be there, because I know for a fact my friend had the pipe when I left the park". He told them that he left the park with some friends, including Antron, and that Antron had the pipe and broke bulbs with it at a construction site and that they were chased by a security guard.

At 97th Street and Central Park West, Detective Hall made a fast search of the wall, without success. Detective Sheehan walked the length of 97th Street on the north side from Central Park West toward Columbus Avenue with Santana. There was a construction site and about every other bulb was broken. Santana volunteered that he knew where the pipe was and when Sheehan questioned him he said it was next to a fence at 100th Street and Columbus Avenue because he saw Antron drop it there.

They drove to that location and Raymond directed their attention to a fence on the southeast corner. The three detectives and Santana looked around the entire area. While they searched, Detective Sheehan asked Santana as to the whereabouts of the weapon and questioned him also regarding details of the weapon, such as size. They could not find the pipe and gave up the search and continued to the 20th Precinct at 82nd Street between Columbus and Amsterdam Avenues.

On the way, Santana said, "I had nothing to do with the rape. All I did was feel the woman's tits." This was not in response to any question by the police.

Detectives Sheehan, Jonza, Hall and Raymond Santana arrived at the 20th Precinct between 6:30 and 7:00 p.m. Upon their arrival, they went to the Detective Squad on the second floor. Santana was asked to take a seat at a desk.

When Mr. Santana and his mother returned to the Central Park Precinct, after obtaining food for themselves and Raymond, they were told that Raymond was at the 20th Precinct and were transported to that location by police.

After Raymond was brought to the 20th Precinct, his father and grandmother met with him and gave him some food. The grandmother was tired and hungry and both she and her son returned to her home. Thereafter, Mr. Santana received a telephone call to return to the 20th Precinct, which he did.

Detective Sheehan met Mr. Santana when he arrived at the station house and told him that his son had made a statement earlier and wanted to put additional information into it. Shortly thereafter, they checked on the availability of Room 125, but it was not yet available.

One half hour later the room was available and Detectives Sheehan and Jonza escorted Santana and his father from the second floor detective squad to Room 125 on the first floor. Santana took a seat at the side of a desk with his father seated next to him. Raymond was eating potato chips. The interview began at 10:10 p.m. with Detective Sheehan reintroducing himself and Detective Jonza. He then read Santana his Miranda rights. Addressing both Raymond and his father, he advised them that if they didn't understand something, they could stop him at any time. Both father and son answered "Yes" in response to each right.

After the warnings were read, Detective Sheehan asked Raymond to describe what had happened the night before. He indicated that he was interested in knowing whom Raymond had met, where, and when. He asked Raymond to give him as much detail as possible, saying "I know you spoke to John Hartigan. You didn't speak to me yet..... Try not to leave anything out.....Don't be embarrassed about anything in front of your father."

Raymond spoke for about an hour. He was then advised by Detective Sheehan that the detective was going to reduce the statement to writing. The written statement took approximately fifty minutes and was completed at midnight. Raymond and Detective Sheehan signed each page as it was finished. When the statement was completed, Sheehan, Jonza, Raymond, and his father signed it.

Sheehan advised Mr. Santana that representatives from the District Attorney's Office were present in the building and he would be required to sit with his son while Raymond gave a videotaped statement. Mr. Santana expressed no objections. Detective Sheehan told him that this would happen soon, maybe in an hour or two.

Santana and his father left Room 125 and were taken upstairs to the detectives squad room.

Shortly after Detectives Sheehan and Jonza left the Central Park Precinct with Santana, Steven Lopez, fifteen years old, was brought into the precinct juvenile room for an interview. Present also were Steven, his father Edelmiro Lopez, his mother Magdalena Lopez, Detectives Arroyo and Hartigan.

The detectives began the interview between 6:15 p.m. and 6:30 p.m. with an exchange of introductions and Lopez's parents were advised that, because of Steven's age, their presence was necessary if he was to be questioned. Detective Arroyo explained to Steven that they had reason to believe he had taken part in some of the events in the park the night before and the detectives wanted to get his account of what happened. Lopez responded by acknowledging that he would talk to them. Mr. Lopez, at this time, said that he was tired and would like to get the interview underway.

Detective Arroyo then read the Miranda rights to Steven Lopez and he asked both father and son to respond. The first three rights were read and responded to with a "Yes", by both Steven Lopez and his father. However, as to the fourth -- the right to consult with an attorney and to remain silent until that opportunity -- Steven Lopez replied with a "Yes", but his father asked "Does that mean that I have to have an attorney?". Detective Arroyo told him that if he wanted an attorney, he could have one; the choice was up to him. Detective Arroyo then re-read the right, to which the father said "Yes." Mr. Lopez never asked to have an attorney.

Arroyo then began to ask Steven questions. Lopez said Kevin, Yusef, Antron and Lamont were in the park with him. He provided a description of Yusef, to wit, a male black about 16 or 17, who attended Julia Richmond High School on 66th Street. He also gave Yusef's address. They spoke for about an hour, after which Detective Arroyo committed Lopez's statement to writing.

It took another hour to reduce what Lopez had said to written form. After it was finished, Detective Arroyo read it back to Steven. Arroyo asked the father if he wanted to read it and he asked both father and son to sign it. Steven Lopez, his father, and Detectives Hartigan and Arroyo each signed at 9:00 p.m. Steven's mother did not sign the statement.

At that point, Steven had not mentioned the attack on the female jogger. The detectives pursued further questioning focused on that event. They spoke for ten minutes more when Mr. Lopez became angry and voiced his disapproval at what he considered repetitive questions. He stated that his son had answered all of the detectives' questions and he believed his son. He then told the detectives, "No more questions. My son will not provide any more answers." The interview ended immediately and the detectives left the room.

Throughout the morning, afternoon, and evening of April 20th, the detectives had been acquiring information from defendants which implicated Yusef Salaam of 1309 Fifth Avenue and a youth named Kharey. In addition to the quantum of information provided by defendants, there was additional information provided by Al Morris. Detective McKenna had interviewed Morris between 6:30 and 6:45 p.m. at the 20th Precinct. Morris told him that Patrick, Kharey, Shevron, Yerun, Rahem, Yusef, Kevin and Dennis had been present in the park on the night of the 19th. Morris also told Detective McKenna that Yusef Salaam was 16 years old, six feet two, and that he attended Rice High School.

Pursuant to this information, Detective John Taglioni was directed by his supervisor at the 20th Precinct to go to the home of Yusef Salaam and ask him if he would come to the station house to answer some questions.

Detective Taglioni went to 1309 5th Avenue with three other detectives, Hall, Freck, and Bier. In addition to the instructions they had received pertaining to Yusef Salaam, they had been told that if they came across a youth named "Kharey" they should ask him to accompany them as well. They took two cars and left the precinct at approximately 10:30 p.m.

At 1309 5th Avenue, they went to Apt. 21-H. One of the detectives knocked on the door and it was answered by Yusef Salaam's sister Aisha and a younger brother Shareef. His mother was not at home. They identified themselves as detectives. Aisha was asked if Yusef lived there, and she said he did but was not at home. As they spoke, three males came walking down the hall toward the apartment. They were stopped by the detectives and asked them to identify themselves.

Yusef Salaam identified himself. Another gave his name as Kharey Wise. The third individual was Eddie de la Paz. Salaam was asked his age and he told them sixteen. Detective Taglioni thought he looked older so he asked Salaam for proof of his age and Salaam showed him a school transit card. The card reflected a birthdate of 2/27/73. He then asked Salaam if he would accompany them to the station house to talk about the Central Park incident. He said he would.

Detective Freck asked Wise and Eddie de la Paz if they would come to the station house and speak with them and they agreed. None of the three was searched or handcuffed and the police never had their guns drawn. The detectives took Wise, Salaam, and de la Paz downstairs. As they were leaving, someone informed Aisha Salaam that the precinct was at Columbus Avenue and 82nd Street. Because their aunt, Marilyn Hatcher, lived on Columbus Avenue, Aisha asked her brother Shareef to call the aunt and ask her to go to the precinct.

The detectives drove to the precinct in separate cars. No one was handcuffed in either car. Detectives Taglioni and Hall rode with Salaam. Detectives Bier and Freck rode in the other vehicle with Wise and de la Paz.

There was no conversation with Salaam on the way to the precinct. However, in Freck's car, de la Paz said to Detective Freck, "Well, we weren't with the gang last night. We were with them for awhile. Then we went and got haircuts." Wise also said they had gotten haircuts. Prior to that neither Freck nor Bier had said anything to de la Paz or Wise. Detective Freck then asked the youths how old they were. Wise said sixteen; de la Paz, fifteen.

Salaam, Wise and de la Paz arrived at the 20th Precinct between 10:45 p.m. and 11:00 p.m. and were taken to the 3rd floor Sex Crimes Office. Detective Taglioni sat with Salaam and waited for another detective to come to do an interview. He had no conversation with Salaam. Yusef was not handcuffed.

Sharonne Salaam, Yusef's mother, arrived home from the Parson's School of Design at about 10:45 p.m. She was told by her daughter that the police had taken Yusef to a precinct at 82nd Street between Columbus and Amsterdam Avenues. Ms. Salaam prepared to go to the precinct, but prior to leaving she received a call from Marilyn Hatcher who said she was going to the precinct. At 11:05 p.m. David Nocenti, an Assistant United States Attorney in the Eastern District of New York and a "Big Brother" to Yusef Salaam, received a call from Ms. Salaam requesting him to go to the 20th Precinct. This call was made after Ms. Hatcher called.

At 11:05 p.m., Detective McKenna was informed that Yusef Salaam was upstairs in the Sex Crimes Office. He went upstairs and met Detective Taglioni and Salaam. Taglioni introduced Detective McKenna and advised Salaam that Detective McKenna would be interviewing him.

McKenna noticed that Salaam was fiddling nervously with a card and he asked to see it. It was the transit card with Salaam's name, address, and date of birth--(2/27/73)-- on the back. McKenna asked, "Is this you?", and Yusef said "Yes."

Detective Hall entered the room early in the interview.

After the discussion about the transit card, Detective McKenna told Salaam that they were conducting an investigation into an assault on a young woman in Central Park the night before. He told Salaam that the woman was in very serious condition at Metropolitan Hospital.

He then began to read Salaam his Miranda rights. Initially, Salaam shook his head affirmatively in response, but Detective McKenna told him he could not hear him and requested that he say yes or no to the warnings. As the detective continued reading Salaam his rights, Salaam responded "Yes" to each. After the rights were read, Detective Taglioni left the office.

At approximately 11:10 p.m., Marilyn Hatcher, Yusef's aunt, her fiance, Vincent Jones, and his son Keith arrived at the precinct. They entered the precinct together and Hatcher informed the police that she was there to see Yusef Salaam. She was directed to the second floor, where she spoke to a detective and said she wanted to see Yusef Salaam. There followed a discussion in which they were told that they could not see Yusef; only a parent or guardian could.

Meanwhile, Detective McKenna continued to interview Salaam. Having obtained a waiver from Salaam of his Miranda rights, Detective McKenna asked Salaam if he would tell him what had happened. Salaam answered that he didn't know what McKenna was talking about and hadn't been in Central Park.

Detective McKenna advised Salaam that he had conducted a number of interviews that day and that Salaam had been implicated by other persons. He also told Salaam that, from among those people who had been interviewed, some had been released and some arrested. He added, "because you've been implicated, it's quite possible you could be arrested. But it's also possible you could be released, depending on what you have to tell me." Salaam again denied being present in the park.

Detective McKenna told Salaam that they had fingerprints on the jogging pants of the victim and that if his fingerprints were on them they wouldn't need him to tell them anything further. He would compare (the prints) and if his prints were on the pants, he was "going down for the rape." Salaam said, "I didn't rape her. I was there but I didn't rape her." McKenna then said, "Okay. I just want you to tell me what happened. If you were there, you can tell me what happened; and if you didn't rape her, that's okay, too, but you have to tell me what happened." Detective McKenna told Salaam he wanted it from the beginning. Salaam then recounted what happened.

At approximately 11:25 p.m., Nocenti arrived at the precinct. He recognized Marilyn Hatcher and she told him that they had been inside the precinct but had not been allowed to see Salaam because they were not immediate family. Nocenti said he would go inside and find out what was going on.

Inside the precinct he approached an officer sitting at a desk and stated he was a friend of the Salaam family and an attorney. He was told to wait and the officer exited through a door.

Assistant District Attorney Linda Fairstein, was present in the precinct assisting in the investigation, and a detective located her and told her that there was an attorney downstairs for Yusef Salaam.

Fairstein told Sergeant Cleeve that she was going downstairs to meet with the lawyer, and she asked Cleeve to get the detective who was working with Salaam.

Within a minute or two, Detective Taglioni appeared and informed her that Detective McKenna was talking to Salaam. Taglioni handed her a steno pad which he had obtained from McKenna which had the beginning of McKenna's notes of his conversation with Salaam.

The notes were one page in length and included Salaam's name, address, date of birth and a description beginning with Yusef hitting the jogger over the head with a pipe, that she went down, that he hit her again with the pipe, and then started to describe a sexual assault by other participants on the woman jogger. Fairstein handed the notes back to Detective Taglioni and then went downstairs with Sergeant Cleeve and Captain Rowe to

meet Nocenti. They introduced themselves and Nocenti said he was there on behalf of the Salaam family. Nocenti indicated he was not there in his capacity as an attorney or his official capacity as an Assistant United States Attorney but as a friend of the family.

A.D.A. Fairstein took issue with Mr. Nocenti's presence at the precinct. She raised ethical issues and indicated to him that she wanted to call his supervisor. Nocenti denied that he was representing a suspect in a criminal inquiry. He insisted he was there to help.

At approximately 11:40 p.m. he was told that because he was not immediate family and did not represent Yusef, he would have to leave. He went back outside the precinct and told Hatcher and the Joneses that he had not been able to see Salaam.

Yusef Salaam's mother arrived at the precinct minutes later and saw Hatcher, Vincent Jones and Nocenti. They told her they had tried but had been unable to see Salaam.

Together they entered the precinct. The same officer Nocenti had spoken to before was still at the desk. He was informed that Ms. Salaam had arrived. They were instructed to wait.

ADA Fairstein entered the room and met Ms. Salaam. She asked if she could see her son and was told that he was being questioned by detectives and as soon as the questioning was finished, she could see him.

Ms. Salaam indicated that she wanted to speak to Nocenti alone. The group of four went outside.

David Nocenti never told anyone at the precinct that Yusef was fifteen nor did he hear Ms. Salaam tell anyone that he was fifteen.

Between 12:00 and 12:15 a.m. on April 21, Mrs. Salaam reentered with Hatcher and Mr. Jones but not Nocenti. She approached ADA Fairstein and said she wanted to ask some questions. ADA Fairstein explained to her that discussions were to be with immediate family only. After clarifying their relationships, Fairstein said she would prefer that Mr. Jones left and he did.

Ms. Salaam again asked to see her son, to which Fairstein repeated that he was being questioned but that she could see him as soon as the detectives questioning was completed. Ms. Salaam insisted, saying, "I want to see him now. He's a minor."

ADA Fairstein replied that her son had been advised of his rights; he was talking to the police, and she could see him when he was finished. Ms. Salaam then said, "He's 15 years old, I want to see him."

ADA Fairstein expressed surprise and asked Ms. Salaam if she had any form of ID to prove he was fifteen. Then she told Ms. Salaam to wait while she got the detectives and resolved the issue. Immediately she asked Captain Rowe to send someone upstairs to get either the detective who was questioning Salaam or the detective who had brought him to the station house.

Detectives Taglioni and Hall came downstairs within minutes and were introduced to Ms. Salaam. Detective Taglioni told them they could call him Tag. Ms. Salaam indicated concern for her son, and Detective Taglioni reassured her. He said to her, "We're upstairs. They're talking to him right now." Ms. Salaam said, "Well, they shouldn't be talking to him because he's only 15 years old."

Detective Taglioni told her Yusef had showed them proof that he was sixteen. She insisted he was only fifteen.

At that point, ADA Fairstein told Detective Taglioni to get someone upstairs to stop the questioning. Taglioni went up himself and asked Detective McKenna, who was still talking to Yusef, to step out of the room. He then advised McKenna that Yusef Salaam might only be fifteen years of age, and that an attorney was downstairs but he didn't know if the attorney was representing him. This interruption of McKenna by Taglioni was within five minutes of the conversation with Ms. Salaam.

Detective McKenna stepped back into the room and asked Salaam if the ID card which he had seen earlier was his. Salaam said it was. McKenna then asked Yusef how old he was and Salaam said fifteen. Detective McKenna asked Salaam why the date of birth on the ID card reflected sixteen years of age and if he knew how to count. Salaam answered that he put sixteen

down "for the girls."

Detective McKenna broke off conversation with Salaam at that point. He stepped outside the room and conferred briefly with Detective Taglioni. He then came back into the room and told Salaam he wanted the transit card from him. He then told Salaam it was 12:30 a.m. and asked him to sign the rights card, which Salaam did. McKenna and Hall signed it also, and McKenna put down the date April 21, 1989 and the time 00:30.

While Detective Taglioni was upstairs with Detective McKenna, Assistant District Attorney Fairstein had waited in the lobby area briefly. Minutes later she saw Ms. Salaam outside mingling with friends or family of another suspect. Mr. Nocenti was talking with them also. Assistant District Attorney Fairstein asked a detective to bring Mr. Nocenti inside. They had another discussion in which she asked him if he was giving legal advice, and he said he was just answering questions. After further discussion and an admonition Nocenti went back outside.

Within a minute, Ms. Salaam came back inside and told Assistant District Attorney Fairstein they wanted a lawyer and were going to get one for her son. Fairstein noted that the time was 12:30 a.m.

Minutes later, Detective Taglioni came downstairs after speaking to Detective McKenna and told Ms. Salaam that Yusef would not be interviewed any further. Ms. Salaam asked if she could talk to her son. Detective Taglioni conferred with his superiors and permission was given.

He went upstairs and took Yusef down to the first floor. Salaam was not handcuffed. Yusef and his mother then spoke for about ten minutes. At approximately 1:10 a.m. Detective Taglioni brought him back upstairs.

At 12:30 a.m. on April 21, Detective Hartigan commenced the Kharey Wise interview in the sex crimes room with Detective Nugent present. Wise was not handcuffed.

Detective Hartigan began by introducing himself and Detective Nugent. He told Wise that his name had been mentioned in connection with Central Park and they wanted to talk with him about the incident. The detective then asked Wise how old he was, and he said sixteen. Hartigan read Wise his Miranda rights. After each right, Wise answered, "Yes." He did not ask for an attorney, parent, or guardian.

After speaking for one hour, Detective Hartigan advised Wise he was going to put the statement in writing. He told him that he should state in his own words what had happened, that Hartigan would write it down, and then Wise could sign it.

Kharey agreed to that procedure. Detective Hartigan told him to take his time and to go "step by step." When they finished, Hartigan placed the statement in front of Wise and read it to him, underlining every word with his finger as Wise read along. Hartigan, Nugent, and Wise then signed the statement.

When the interview was concluded close to 3:00 a.m., Detective Hartigan left and Detective Nugent asked Wise two questions: one, what had he done with the clothes he had been wearing; and the second concerned statements Wise had earlier made

about a fire he had seen at the 102nd Street Cross Drive. Wise told him he washed his clothes and sneakers when he went home that evening. He also amplified on the location of the fire.

Before Nugent left Wise, he asked Kharey if he wanted anything and Kharey asked for, and was given, two glasses of milk. At about 12:55 a.m. on April 21, Antron McCray gave a videotaped statement in Room 101 of the 24th Precinct.² Present in addition to the defendant were his parents, Detectives Hildebrandt and McCabe, and Assistant District Attorney Lederer. Prior to the interview McCray received his Miranda rights. That interview concluded at 1:30 a.m.

At 2:00 a.m. Raymond Santana and his father were driven by Detectives Sheehan and Jonza from the 20th to the 24th Precinct. Upon arrival, they entered Room 101 where Raymond was to make a videotaped statement. Present in addition to Raymond were his father, and Detectives Sheehan and Arroyo.

At the interview Assistant District Attorney Lederer read him his Miranda rights and he waived them. The interview began at 2:30 and concluded at approximately 3:00 a.m. Fifteen minutes later a video was made of the clothing Santana was wearing on the night of April 19th.

2. After the Santana statement to Detective Sheehan was completed, it was decided to move to the 24th Precinct for any video statements, because an issue arose that the juvenile room used in the 20th precinct had not been formally designated for that purpose even though a proposal had been submitted to so designate it. [see footnote 1]

At about 3:30 a.m., Steven Lopez, after waiving Miranda rights, gave a videotaped statement at the 24th Precinct. The questioning was conducted by Assistant District Attorney Lederer with defendant's parents and Detective Arroyo³ present. The statement concluded at 4:11 a.m.

Just prior to midday on April 21st at the 24th Precinct, Detective Gonzalez took clothing from Steven Lopez after his father brought fresh clothing to the precinct.

3. Arroyo was certain that he had advised Assistant District Attorney Lederer, prior to the Lopez video, that Steven's father had said, after his son's written statement, that he didn't want any more questioning of his son. Ms. Lederer could not stipulate that Arroyo had so advised her. Detective Hartigan had no recollection of having spoken to the District Attorney about the incident.

At 3:45 a.m., Detectives Sheehan and Jonza left the 24th Precinct and drove Raymond Santana and his father to the Santana residence on East 119th Street to get Raymond some fresh clothes.

On the way, the detectives went by 102nd Street and the Cross Drive and stopped at the crime scene.

Detective Sheehan asked Raymond and his father to exit the car. He then asked Raymond if he could show them "some of the pertinent sites, in particular, where the woman was grabbed and where the rape took place."

Raymond pointed to a general area north of the Cross Drive which was heavily wooded and which began to slope down to a ravine. They walked 20-30 feet into the woods, but Raymond indicated it was too dark for him to point out anything of significance.

After no more than twenty minutes at the crime scene, they left the 102nd Street Drive and continued to East 119th Street. At the Santana residence Raymond spoke to his father as to the whereabouts of certain items of clothing he wanted to wear. The father went inside for about fifteen minutes and came out with the clothing and something to eat and drink for his son. Mr. Santana and Raymond then said goodbye, and Sheehan, Jonza and Raymond returned to the 24th Precinct.

When they returned to the precinct Raymond changed his clothes in the presence of Detective Sheehan and turned them over to him. Sheehan took Raymond upstairs and seated him at a desk. Sheehan and Jonza brought the clothing to the 20th Precinct, where

they gave it to Detective Gonzalez. They then returned to the 24th Precinct.

Between 4:00 and 5:00 a.m., Yusef Salaam was taken out of his cell at the 20th Precinct for transference to the 24th. He was wearing a jacket which Gonzalez had been told to voucher because it had stains on it. Salaam was instructed to take off the jacket and he handed it to the detective.

At 4:50 a.m., after receiving and waiving his Miranda rights, Kevin Richardson gave a videotaped statement to ADA Lederer at the 24th Precinct. Present were his father Paul Richardson and Detective Hartigan. The statement concluded at 5:25 a.m.

At approximately 7:00 a.m., Detectives Jonza and Sheehan had a conversation with ADA Fairstein concerning the feasibility of visiting the crime scene during the daylight hours and taking one or more defendants with them.

Pursuant to this and prior to leaving the 24th Precinct, Detective Sheehan spoke to Kevin Richardson who was, at the time, seated with members of his family. Sheehan read Kevin his Miranda rights in the presence of his family. Richardson answered "Yes" to each right.

Detective Sheehan also spoke to Kevin's father and advised him that he wanted to take Kevin to Central Park in the daylight. The father said nothing at that point.

ADA Fairstein also spoke to Mr. Richardson after being told by Detective Sheehan who he was. Their conversation did not last more than two minutes. She told Mr. Richardson that they wanted to go to the park and would like his consent for Kevin to come with them and that the father was entitled to come if he wanted to.

ADA Fairstein also told him they were not going to the crime scene to ask any new questions or to do an interrogation. Rather, they were going to try to put statements that had been made together with locations at the crime scene.

Mr. Richardson said it would be all right if they took Kevin to the crime scene, but that he would wait at the precinct with other family members.

Fairstein then had a conversation with Wise; he was seated by himself. She introduced herself and indicated that she was interested in going with him and the detectives back to the park to look at the area where the crime had occurred. She then read him his Miranda rights, concluding each right with the question "Do you understand that?" Wise said "Yes" in response to each right. ADA Fairstein then said to him, "Having heard everything I just said to you, are you willing to answer my questions now?" Wise said "Yes." The ADA went on to explain that Wise would be asked only a few questions about where he claimed to have been when the jogger was attacked, after which they would return to the precinct so that ADA Lederer could question him further.

They travelled to the Cross Drive at 102nd Street in an

unmarked car. Detective Sheehan was driving with ADA Fairstein next to him and Detective Jonza in the back between Wise and Richardson.⁴

They stopped the car on the West 102nd Street Cross Drive. Richardson was asked to step out of the car. Detective Sheehan asked Richardson if anything looked familiar to him and Richardson pointed to an area in the roadway and said, "This is where we got her."

No other questions were asked of him at that point.

Richardson was sent back to the car and Wise walked over to where Fairstein and Sheehan were standing. Detective Sheehan asked Wise essentially the same question he had asked Richardson and Wise pointed to the roadway and said, "This is where they snatched her." Sheehan asked Wise where he had been and Wise pointed south of the roadway to an area where there are ballfields. Wise said he had been running from the ballfields when they "snatched" her.

They all got back in the car and were directed by a uniformed officer at the scene to a location off the roadway, down a steep incline north of the transverse.

4. In testifying about this trip to the crime scene, Detective Sheehan and ADA Fairstein are in agreement on the substantive events that occurred at the crime scene; however they part company in the sequence of stops in the park and in the order in which Richardson and Wise were called out of the car. Indeed, they have different versions of who was in their car on the way to the crime scene. I credit the testimony of Ms. Fairstein on this issue.

The uniformed officer pointed out an indentation in the mud where the female jogger's body and some of her clothes had been found. Sheehan and Fairstein walked about a third of the way up the slope. They encountered a large tree, surrounded by leaves and branches, and a great deal of what appeared to be dried blood.

Detective Sheehan called to Jonza to send Richardson up to them. Jonza, Wise, and Richardson all got out of the car. Jonza stayed with Wise next to the car, and Richardson walked the 30-40 feet to Sheehan and Fairstein.

In response to Sheehan's question, "Does anything here look familiar to you?", Richardson pointed to an area northwest of a large tree and said, "This is where it happened." Detective Sheehan asked, "What happened?" and Richardson replied, "the raping."

Detective Sheehan then asked Jonza to send Kharey Wise over. Wise and Richardson passed each other going in opposite directions.

As Wise approached Sheehan and Fairstein they could hear Wise muttering out loud, "Damm, damm, that's a lot of blood. Damm, this is really bad, that's a lot of blood."

Neither Sheehan nor Fairstein had asked him a question.

Wise kept repeating statements about the blood and Detective Sheehan interjected, "Why does that surprise you?" Wise answered, "I knew she was bleeding but I didn't know how bad she was. It was really dark, I couldn't see how much blood there was at night". Detective Sheehan followed with a question as to

whether Wise was familiar with the area and Wise started to answer, "This is where we" and he stopped himself and finished, "they raped her."

Sheehan asked, "What happened here? Why is there so much blood here?" and Wise answered, "This is where they dragged her." Again he started to say "we" and changed it to "they".

Wise had earlier stated that he was present when the rape occurred but was hiding behind a tree. Wise was then asked by Sheehan which tree he had been hiding behind. Wise looked around but could not find a tree that supported the position and angle from which he had seen events. No further conversations were held with Kharey Wise at that location. They returned to the car, drove back to the roadway and were leaving the park when ADA Fairstein asked Wise if he had seen Antron McCray breaking lights with a pipe at a construction site on 96th Street. He said he had. She asked him if he could show them that location and he directed Detective Sheehan to an apartment building surrounded by scaffolding on the northwest corner of 96th Street and Central Park West. On the right side of the building every third or fourth light bulb was broken.

They returned to the 24th Precinct about 8:00 a.m.

Kevin Richardson was taken to the crime scene a second time at about 8:30 a.m. Mr. Richardson again consented.

Kevin went with Detectives Hartigan and Nugent. Detective Nugent brought the car below the transverse road. They

got out of the car and walked to the location where a large quantity of dried blood was concentrated. As they walked around the area, Richardson described how they had come from the ballfield and chased the female jogger eastbound on the transverse.

Detective Hartigan asked Kevin about an inconsistency between a statement he had made on videotape and his earlier oral and written statements. The changed version concerned how he had received the scratch on his face; i.e., in his oral and written statements Richardson had said he had gotten scratched when he tried to grab the jogger, but in the video statement he said he had gotten scratched while the woman was on the ground. Hartigan made an entry in his memo book and asked Richardson to sign and acknowledge that he had changed his statement on the video to "clarify" it. Richardson said he would rather talk to his father first. The detective later forgot to ask Kevin and his father about this entry.

They were at Central Park on this occasion for about an hour before returning to the 24th Precinct.

Detective Hartigan then decided to re-interview Kharey Wise because, although Wise had admitted being in the park, significant discrepancies existed in his statement; e.g., Wise had indicated he had been in the park with Eddie de la Paz-- a person everyone else had indicated was not there.

The second interview began at 9:20 a.m. Detective Hartigan did not give Wise Miranda warnings a second time.

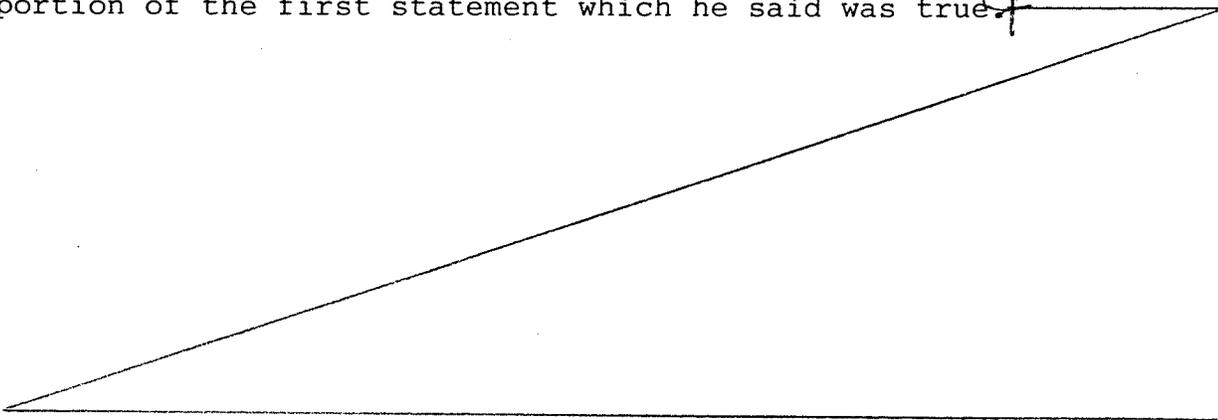
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The detective told Wise that certain information had been brought to their attention and he knew Wise was not telling him the truth. Hartigan enumerated one such apparent falsehood, i.e., that Wise left the park and went home to bed. He asked that Wise tell him the truth and indicated to Wise that others were telling the truth and, in doing so, implicating him.

At times during this interview, Detective Hartigan raised his voice, "out of frustration", but he did not call Kharey names, threaten him or curse him. Wise told Detective Hartigan that what he had said up to a certain point was the truth but the rest was not--it was "made up."

Kharey indicated that everything after the part in the statement about the cab driver was different. Wise said that, unlike what was contained in the statement, he had gone further into the park and that he and Eddie de la Paz had been running in the dark when they saw a female being attacked.

Detective Hartigan then prepared another written statement. He wrote it out in Wise's words and used, verbatim, that portion of the first statement which he said was true.



He then placed the statement in front of Wise and read to out loud, moving his finger along under the words. At the conclusion, both Wise and Detective Hartigan signed it.

Following the conclusion of the second interview with Wise, between 10:00 and 11:00 a.m., detective Hartigan went to the residence of Eddie de la Paz and interviewed him in the presence of his mother. De la Paz told him he was not in the park on the night of April 19. Rather, he was in front of his building when he saw Kharey Wise coming out of the park by himself and he was "scared."

After obtaining that information, Detective Hartigan returned to the 24th Precinct. When he arrived, Wise was being videotaped. The Wise video began at 12:35 p.m. with ADA Lederer and Clements and Detective Nugent present. Miranda rights were given to Kharey.

Detective Hartigan gave a note to the ADA conducting the questioning to the effect that he had just talked to de la Paz and de la Paz had said he was not with Wise the previous evening.

After the video was completed, at about 2:00 p.m. Detective Hartigan brought Wise into the cell block area of the 24th Precinct. They were alone. Hartigan told Wise he had just spoken to de la Paz and that Eddie had denied being with him in the park that evening.

Wise, who was standing with his back against the cells, slumped. Then he said, "You don't understand. He's my blood. He's supposed to swear by everything I said."

Detective Hartigan continued the conversation, saying, "Kharey, the girl is in critical condition. She's likely to die. It's almost two days later. Everybody is out there talking about it and thinking about it. Do you think Eddie is going to put himself in a position where he's going to be involved in a homicide?"

With that, Wise slumped further and slid down the cell bars to the floor. Detective Hartigan asked him to get up and he walked Wise to the far wall in the back of the room. They sat on the floor together and talked. Detective Hartigan told Wise he had been lying and had left himself out of events he had participated in. He said to Wise, "Put yourself in the position of a juror sitting on the bench . . . If you heard a person come in and tell three different stories . . . would you believe what you are saying?"

Wise answered "No". Detective Hartigan then asked him "what are we going to do about this?" Wise said, "I want to tell the truth. Detective Hartigan asked Wise if he would be willing to do another video statement and he said he would.

Arrangements were made and, at 3:15 p.m., Wise gave a second videotaped statement. He again received and waived his Miranda rights. ADA Lederer and Detectives Hartigan and Arroyo were present.

On April 21, 1989, at 1:00 p.m., Detectives Kelly, McKenna, and Freck were directed to the residence of Michael Briscoe on Madison Avenue. They were to speak to him and

ascertain what he had witnessed. They were also to request that he go back with them to the 24th Precinct so that he could be interviewed.

They knocked on the door of the Briscoe apartment and were admitted by an elderly woman. Detective Kelly told her he was a detective and wanted to speak to Michael. She said that Michael had gone to a drug store on 116th Street and Lexington Avenue.

The detectives left and waited downstairs for him. After a few minutes they decided to drive to 116th Street and try to find him.

At 116th Street and Lexington Avenue, the detectives were on the west side of the street when one of them spotted a young man standing in front of a pharmacy whom they thought might be Briscoe.

Detectives Freck and Kelly walked over to him and Kelly asked him if he was Michael Briscoe. Briscoe answered "Yes". Detective Kelly told Briscoe he was from the homicide squad and said they would like to speak to him about the incident in Central Park. He asked Michael if he would come back to the precinct with them and he agreed.

Briscoe entered the police car and sat in the back with Detective Freck. None of the detectives had their guns out and Briscoe was not searched. No conversation took place as they drove to the 24th Precinct.

Once there they took Briscoe into the interview room. Detective Kelly sat down with him and again told him they were interested in investigating the incidents in Central Park and were looking for some help.

At 1:15 p.m., Detective Kelly read Briscoe his Miranda rights. Briscoe answered "Yes," in response to the respective rights and agreed to answer questions.

Detective Kelly began by obtaining pedigree information and Briscoe said he was seventeen years old.

When Detective Kelly asked Michael what had happened in the park on April 19, Briscoe gave Kelly a sequence of events and a list of people who were with him.

His first statement took between twenty and thirty minutes. After the first statement, Detective Kelly told Briscoe that he wanted to commit the statement to writing. He asked Briscoe if he would like to write it out, or if Detective Kelly should; and Michael said Kelly should.

In the written statement, Detective Kelly began to ask more specific questions as to times, exact places, and names while Briscoe again told the sequence of events. The process of writing the statement took approximately thirty to forty-five minutes.

Towards the end of the interview with Briscoe, Detective John Hartigan came into the room and had a brief conversation with him. Hartigan said, "Mike, this isn't the end of the world, tell Detective Kelly the truth. This will all work out." Briscoe did not respond to Hartigan.

After Detective Hartigan left, Kelly continued to take the statement.

At some point, shortly prior to the completion of the interview, Briscoe expressed a desire to call his grandmother. Detective Kelly agreed and asked if he wanted to do it then or wait. He said he would wait.

After concluding the writing at about 2:45 p.m. Detective Kelly read the statement to Briscoe and they made some changes where it was incorrect. Michael Briscoe and Detective Kelly then signed it.

Detective Kelly left the 24th Precinct at approximately 7:30 p.m., to report back to Manhattan North before going off duty. Later, Detective Kelly remembered that he had not provided Briscoe the opportunity to call his grandmother. He made a phone call to the 24th Precinct between 8 and 8:30 p.m., and spoke to Detective Joseph Neenan. Kelly told Neenan that he had promised Briscoe a phone call and asked if Neenan would give him that call.

Detective Neenan went into the precinct detective squad RIP office where Briscoe was sitting and asked him if he would like to make a phone call. Briscoe was brought to a phone by Neenan and Neenan then placed a call to the grandmother. When she answered, Detective Neenan spoke to her and then handed the phone to Briscoe. Neenan heard Michael say to his grandmother, "They think I may be involved in the other thing that happened in the park . . . that's why I'm here."

VI

Early that evening, between 6:30 and 7:00 p.m., Neenan had occasion to take Yusef Salaam to the bathroom. Salaam asked him, "How much time do you think I'd be looking at for what --- happened." Neenan told him "it would depend on his involvement and it would be ultimately up to the judge to decide."

A video statement of Michael Briscoe was taken after he received and waived his Miranda rights at 12:45 a.m., on April 22.

Approximately one half hour later, in the coffee room of the 24th Precinct, Detective Hartigan asked Briscoe to describe the clothing he had been wearing on April 19 in the park and if they might obtain it. Briscoe had no objection and he and Detective Hartigan signed a statement indicating permission. A portion of the statement concerning efforts to get Briscoe's underwear was added after signing but then crossed out.

Briscoe told Detective Hartigan where his clothes were, in the apartment and Detective Victor Cornetta was assigned to retrieve them. Briscoe confirmed to Detective Cornetta that he had signed the form and gave Cornetta the name and phone number of his grandmother. The detective placed a phone call to the grandmother. After apologizing for the late hour, he handed the phone to Michael, who made arrangements for Cornetta to get the clothes.

Detective Neenan accompanied Detective Cornetta to the home of the grandmother, where they were invited in and given a down jacket, a black sweatshirt, one pair of burgundy pants and one pair of black and gray sneakers. The detectives then left the apartment and returned to the 24th Precinct.

On April 21st, between 6:00 p.m., and 9:00 p.m., while Detective Sheehan was on the second floor of the 24th Precinct, he observed Salaam, Richardson, Wise, Santana and Lopez in the holding cell. He could hear laughing and loud talk from that area. He was directed by a supervisor to tell them to "keep quiet." Sheehan went to the cell area. He could hear Wise talking to someone and there were exchanges of handshakes and high five's. They quieted down after Sheehan spoke to them.

ADA Fairstein was at the 24th Precinct about 10:30 p.m., on April 21, when she observed Wise, Lopez, Richardson, Santana, McCray, and Salaam talking in the holding pen.

Wise was laughing and asking, "Did you tell them the one about the guy who was jogging and said you want to race?" Someone in the cell who could not be identified was also laughing and said, "Yeah. I told them that one too, it was really funny." This was followed by a lot of laughter from the pens.

A half hour later Detective Nugent heard laughter and whistling coming from the same cell. Nugent walked toward the cell and observed Santana, Lopez and Wise standing in the front of the cell with their arms sticking through the bars. Amidst the cat-calls and whistling, he heard comments such as "nice legs" and "nice ass" to a female detective, who was nearby

wearing a tight-fitted dress. Santana and Lopez were observed whistling but the person or persons who spoke the words could not be identified. Nugent heard five to six voices. The detective informed the defendants that the precinct was not a "funhouse" and they should "sit down" and "shut up." He had words, in particular, with Steven Lopez, who confronted Nugent in the front of his cell and initially refused to sit down. Nugent told Lopez he had two choices--either he was going to sit down or Nugent was going to sit him down. Lopez sat down

I make the following conclusions of law.

Defendants Raymond Santana and Steven Lopez contend that their statements and physical evidence must be suppressed as the tainted fruit of arrests made without probable cause. Defendant Kevin Richardson does not specifically raise this argument, however the circumstances surrounding his seizure also implicate this issue.

In evaluating the legality of the seizures of these three defendants, I note, at the outset, that probable cause to arrest did not exist as to any of them when they were first stopped by Officers Powers and Reynolds. This conclusion, however, does not end the analysis; rather it is the beginning.

It is "clear that not every seizure constitutes an arrest (see, Terry v Ohio, 392 US 1). Thus, even though it is concluded that a person is seized, this does not mean that the law enforcement officer's actions must be measured, in all instances, against the probable cause standard." (People v Chestnut, 51 NY2d 14, 20, cert denied 449 US 1018.)

An investigative stop short of probable cause is lawful if based upon a reasonable suspicion of criminal activity.

"The absence of probable cause, however, is not dispositive of the outcome here since probable cause is not a necessary predicate for all contact between police and the citizenry in the course of a criminal investigation. (See United States v Mendenhall, 446 US 544, opn of Stewart, J., in which Rehnquist, J., joined.) It is settled that, under appropriate conditions, an officer may briefly detain and question a suspect in a public place on information not amounting to probable cause, for, until an actual arrest occurs, the Constitution demands only that the action of the police be justified at its inception and reasonably related in scope and intensity to the circumstances surrounding the encounter. (See People v Cantor, 36 NY2d 106, 111; Terry v Ohio, 392 US 1, 20; cf. Dunaway

v New York, 442 US 200.)... Thus, in measuring the lawfulness of police conduct, we are called upon to strike a balance between the citizen's inestimable right to personal liberty and security--his 'right to be let alone' (Olmstead v United States, 277 US 438, 478, Brandeis, J., dissenting) -- and the degree to which the seizure is necessary to advance the public interest in the detection of crime and the apprehension of criminals. (See People v Howard, 50 NY2d 583; People v Cantor, supra, p 111; Brown v Texas, 443 US 47, 50-51.) And in weighing those interests the standard to be applied is that of reasonableness, the touchstone of the Fourth Amendment. (See People v Chestnut, 51 NY2d 14; People v Lemmons, 40 NY2d 505, 508; Pennsylvania v Mimms, 434 US 106, 108-109; Delaware v Prouse, 440 US 648, 653-654; Camara v Municipal Ct., 387 US 523.) For '[i]t must always be remembered that what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures' (Elkins v United States, 364 US 206, 222; see also, People v Rivera, 14 NY2d 441, 447, cert denied 379 US 978.)

The reasonableness standard contemplates and permits a flexible set of escalating police responses, provided only that they remain reasonably related in scope and intensity to the information the officer initially has, and to the information he gathers as his encounter with the citizen unfolds. (cf. People v De Bour, 40 NY2d 210.) The greater the specific and articulable indications of criminal activity, the greater may be the officer's intrusion upon the citizen's liberty." (People v Finlayson, 76 AD2d 670, 674-675, lv denied 51 NY2d 1011, cert denied 450 US 931).

The application of the reasonableness standard to the facts of a given case is not "readily, or even usefully, reduced to a neat set of legal rules." (Illinois v Gates, 462 US 213, 232). The Supreme Court of the United States held in United States v Sokolow, 490 US , 109 S Ct 1581, 1587, that where stops are based on "reasonable suspicion" a court "must consider the totality of the circumstances -- the whole picture." United

States v Cortez, 449 US 411, 417, As we said in Cortez: 'the process does not deal with hard certainties, but with probablilities. Long before the law of probablilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as fact-finders are permitted to do the same -- and so are law enforcement officers' Id., at 418, 101 S Ct, at 695."

Here, the "specific and articulable facts" upon which the officers based their suspicions included, but were not limited to, the descriptions provided in the series of radio runs which they received prior to stopping the defendants. While general in many respects, the descriptions did indicate the age of the perpetrators, their sex, and their ethnicity. Significantly, these descriptions were further particularized by the unusual number of perpetrators reported to be grouped together (see, People v Allen, 141 AD2d 405, affd 73 NY2d 378; People v Nowell, 90 AD2d 735; see, also, People v Hicks, 68 NY2d 234; People v Alford, 146 AD2d 635; People v Palmer, 140 Ad2d 720).

The reliability of the officers' information was reinforced by the proximity of the defendants, in time and place, to the commission of the crimes. The evidence established that Officers Powers and Reynolds first observed the defendants within minutes of the previous radio call and less than six blocks north of the assault on 96th Street. Clearly, the conjunction of time and place with the distinct-characteristics of the group as described in the series of radio runs made reasonable the inference that the members of this group might be the

perpetrators of the reported crimes. (People v Perry, 71 NY2d 871; People v Hicks, supra; People v Chestnut, supra; People v Alford, supra; People v Allen, supra.)

The officers' suspicions were further heightened by the fact that the group of which defendants were a part was moving north; the same direction that the previous radio run indicated the perpetrators had fled (see, People v Allen, supra; People v Bowens, 129 AD2d 297).

Moreover, that there was little or no other civilian "traffic" in the area, and the group, when encountered, constituting the only cluster of black and Hispanic youths observed in the immediate vicinity, served to make even more likely the inference that this particular group included the perpetrators (see, People v Hicks, supra; People v Palmer, supra; People v Denby, 125 AD2d 867; People v Brooks, 125 AD2d 481; lv denied 68 NY2d 877; People v Finlayson, supra).

In the light of all the attendant circumstances, therefore, Officers Powers and Reynolds were "entitled, and indeed . . . duty bound to stop the [defendants] and detain [them] for questioning." (People v Finlayson, supra, at p 677 and cases cited therein). When the officers sought to do so, the circumstances before them rapidly escalated. These developments operated to heighten the officers suspicion, and correspondingly elevated the level of intrusion permitted (see, People v De Bour, 40 NY2d 210).

This escalating dynamic was triggered by the flight of all members of the group except Lopez and Santana in direct response to Officer Powers' lawful directive that they stop. Circumstantially, the flight of Lopez and Santana's companions,

including Richardson, provided Officers Reynolds and Powers with an additional basis for suspecting Lopez and Santana (see, People v Boyd, 91 AD2d 1045).

Both Santana and Lopez appeared wide eyed and shocked and then made what the officers knew from their own observations to be false statements as to their relationship to the dispersed group. Their denials that they were with the group and their allegations that the group was going to "jump" them were entirely inconsistent with what the officers recognized as an "homogenized" and dense group of people moving together. Here, as in People v Ortiz, (137 AD2d 727), the false nature of defendants' responses "concerning their activities . . . and their nervous and apprehensive appearance gave the officers additional reasons to suspect that both had committed a crime. Thus, at this point, the officers were clearly justified in detaining [Lopez] and [Santana] pending further investigation (see, People v Hicks, 68 NY2d 234)." (People v Ortiz, supra at p 728; People v Chambers, 52 NY2d 923; People v Williamson, 107 AD2d 727; People v Holt, 121 AD2d 469.)

Similarly, the flight by Richardson raised the level of suspicion as to him. Such flight, upon a lawful inquiry, "indicates a guilty state of mind (see, People v Amarillo, 141 AD2d 551)."(People v Andre A., 146 AD2d 704; People v Grimsley, AD2d , NYLJ Jan. 5, 1990, p 24 col 1.) As in People v Allen, supra, Richardson immediately fled upon the officer's lawful command, "Stop, police." In that case, as here, in the context of the attendant circumstances, the officers were "justified in considering that flight as an escalating factor." (People v Allen, supra, 141 AD2d at p 406.)

Thus, "[a]lthough each factor, standing alone, could be susceptible to an innocent interpretation, a view of the entire circumstances indicates that the officers entertained a reasonable suspicion that [Richardson] had committed a crime ... and was attempting to flee." (People v Evans, 65 NY2d 629, 630).

Accordingly, the factors, all taken together, justified the pursuit and seizure of Richardson by Officer Powers (People v Leung, 68 NY2d 734; People v Allen, supra; People v Hill, 127 AD2d 144, appeal dismissed 70 NY2d 795).

The fact that Richardson's detention, unlike that of Santana and Lopez, was by force does not change this conclusion. Again, as in People v Allen, supra, "When Officer [Powers] pulled

defendant to the ground and handcuffed him after a struggle, he did not arrest him." (Id at 407.) Rather, he effectuated a lawful "nonarrest detention" as a necessary incident to the pursuit of their investigation.

Accordingly, the stop and detention of Lopez, Santana and Richardson for the purpose of further investigation was reasonable in each instance.

The testimony established that the defendants were transported to 100th Street in anticipation of a showup with the victim John Loughlin, who had been robbed and assaulted earlier, and that the feasibility of such a procedure was specifically discussed by the police while the defendants were in their custody at 100th Street. Indeed, Officers Powers and Reynolds had been present at a showup involving another victim prior to their encounter with Santana, Richardson, and Lopez. Manifestly, "Even in the absence of probable cause, the nonarrest detention of an individual, and even transportation to the crime scene for possible identification, is within the bounds of a lawful investigatory stop (People v Hicks, 68 NY2d 234)." (People v Allen, supra, 141 AD2d at p 407; People v Boyd, 78 AD2d 225; People v Pinkney, AD2d , 548 NYS2d 226; United States v Sharp, 470 US 675).

Thereafter, Richardson's volunteered statements, while en route to and at 100th Street, provided the police probable cause to arrest him. (See, People v Allen, supra; People v Wade, 143 AD2d 703).

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His statements about the "murder" were circumstantially incriminating because they revealed information which the officers believed to be consistent with the facts of the Loughlin assault and which, given the short time frame, logically could only have been acquired first hand (see, People v Bay, 67 NY2d 787). His awareness of the violent nature of the prior attack, his concurrence with Thomas concerning their knowledge of the identity of the "murderer ", their demeanor, his apparent presence during the incident with Thomas, who also knew that a weapon had been employed and its location, in combination with his manifest consciousness of guilt in fleeing, made reasonable the inference that he had joined - not just watched - the acts about which he spoke. Moreover, the conclusion that his presence at the crime included his participation was consistent with the officers' information that the crimes had been committed by a large number of perpetrators and that these perpetrators, like Richardson and Thomas, were young, black or Hispanic and male.

Accordingly, the coincidence of their presence in time and place to the crime, their presence with the only large group of youths in the vicinity, their panicked flight, the consistency of their physical characteristics with those described in the radio runs, and their insight into the underlying facts of at least one recent violent crime constituted, upon all the attendant circumstances, probable cause.

"Probable cause requires, not proof beyond a reasonable doubt or evidence sufficient to warrant a conviction (e.g., People v Miner, 42 NY2d 937, 938; People v White, 16 NY2d 270,

273), but merely information which would lead a reasonable person who possesses the same expertise as the officer to conclude, under the circumstances, that a crime is being or was committed" (People v McCray, 51 NY2d 594, 602 and cases cited therein).

Given the existence of probable cause to arrest Richardson and Thomas, the comment at 100th Street by one of them to the effect that Santana and Lopez "were with us in the park" served to establish probable cause as to Santana and Lopez as well. They shared with Richardson the conjunction of time and place of the crime, consistency as to description, presence with the only large group of youths in the vicinity and had demonstrated consciousness of guilt as well: failure to truthfully respond (see, People v Hernandez, 77 AD2d 548).

Further, a statement by a codefendant or accomplice implicating a defendant in the commission of a crime constitutes ample probable cause for an arrest (People v Berzups, 49 NY2d 417; People v Crawford, 113 AD2d 771; People v Rivera, 124 AD2d 69; People v Scherifi, 147 AD2d 663).

In view of the foregoing, it is clear the police action, at every step of the escalating encounter, was properly related in scope to the surrounding circumstances (see, People v DeBour, supra). Neither the initial detention of Santana, Lopez or Richardson, nor their subsequent arrests were, in any respect, precipitous or unreasonable. No taint, therefore, can flow from it.

In reaching this determination, it is worth noting that the subjective views of the police regarding the appropriateness of their seizing the defendants for the crime of unlawful assembly are not binding on the court. "[J]udicial evaluation of police action must be based on objective criteria and not an officer's subjective view of his right to make an arrest." (People v Lopez, 95 AD2d 241, at p 242; People v Peters, 136 AD2d 750.) Moreover, neither are the subjective beliefs of police as to when a de facto arrest has taken place legally binding (see, People v Chestnut, supra, at p 20; People v Hicks, supra). Such a determination is reserved for the court.

At the hearing it was established that the first encounter Kharey Wise and Yusef Salaam had with the police was when they were together with Eddie de la Paz in the hallway of Yusef's apartment on the night of April 20. Defendants maintain that the atmosphere was "police dominated"; they were not free to leave and effectively arrested without probable cause at that time. As a consequence, each moves to suppress statements and physical evidence obtained from them thereafter.

Detective Taglioni and his fellow officers approached defendants Wise and Salaam in a nonthreatening manner, and made brief inquiries of them as to their name and age. Salaam admitted that they knew the police were upstairs when they returned to his floor. Prior to leaving the lobby, either Kharey or Eddie said, "Well, the cops are here. We know we didn't do anything, so since Al and everybody else that went down or got in the police car came back to the complex of Schomberg, then we

thought -- we know we didn't do anything, so why run." The record supports the conclusion that defendants' agreements to go to the precinct were voluntary and unconstrained. (see, People v Yuki, 25 NY2d 585, cert denied 400 US 851; People v Rhodes, 111 AD2d 194; People v Goodrich, 126 AD2d 835; People v Ruffin, 148 AD2d 644; see also, Oregon v Mathiason, 429 US 492).

Therefore, probable cause was not required as a predicate for their presence, and their statements and physical evidence will not be suppressed on that ground.

Although the circumstances under which Michael Briscoe was initially approached by the police differ somewhat from those of Salaam and Wise, the record is clear that Briscoe's decision to accompany the officers to the precinct for questioning was similarly voluntary.

Accordingly, the arguments by the defendants Wise, Salaam and Briscoe that evidence obtained from them must be suppressed for lack of probable cause must fail.

Defendant Richardson contends that the totality of the circumstances do not reflect a knowing and voluntary waiver of his Miranda rights and that the absence of such a waiver mandates suppression of his statements. He submits that his mother and sister were unable to grasp the significance of his Miranda rights because they were not explained to them and, coupled with the "frail and nervous" condition of his mother, effectively rendered them incapable of issuing a valid waiver of Kevin's rights. Richardson does not mention his father's presence during the Miranda rights on at least two occasions.

It is beyond cavil that "special care must be taken to insure the rights of minors who are exposed to the criminal justice system (Matter of Gault, 387 US 1; Haley v Ohio, 332 US 596; cf., Fare v Michael C., 442 US 707)." (People v Ward, 95 AD2d app. 351, 354.) This solicitude is rooted in the long-recognized vulnerability of youths as compared with adults and because of the "great instability which the crisis of adolescence produces." (Haley v Ohio, 332 US 596, 599.)

Notwithstanding such concerns, the totality of the circumstances approach has been deemed "adequate to determine whether there has been a waiver even where interrogation of juveniles is involved." (Fare v Michael C., supra, at p 725.) This approach, in application to the facts of a given case, "... mandates - inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights. (See, North Carolina v Butler, 441 US 369)." (Fare v Michael C., supra, at p 725.)

In this case, one aspect of the special care shown juveniles is reflected in the proper notification of Richardson's mother by the police as required by statute. Mrs. Cuffee's ability to respond to the circumstances is demonstrated by her prompt arrival at the precinct shortly after being notified of her son's situation. Indeed, she was the first parent to respond. Moreover, that she was not passive in the presence of

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the police is evidenced in her taking the initiative to see that Richardson's interview proceeded ahead of other defendants. Clearly, to whatever extent the events of the evening took a physical and emotional toll on her, that toll was itself in part the product of Mrs. Cuffee's comprehension of the gravity of the charges against her son.

I find further that, contrary to defendant's contention, his sister Angela Cuffee was capable of participating in a meaningful way when she succeeded her mother during Kevin's interview. Their testimony at the hearing satisfies me that both Mrs. Cuffee and Angela Cuffee possessed the intelligence to understand Kevin's rights and the ability to press them had they chosen to.

I find as well, upon an application of the totality of the circumstances test, that Kevin Richardson, in addition to his mother and sister, understood his Miranda rights and possessed the emotional and intellectual capacity to waive them (see, Fare v Michael C., supra). His manner and poise reflected this. So too did his appreciation of the significance of the scratch on his face. Further, his reluctance to incriminate himself in the most serious of crimes demonstrated both an understanding of his right not to do so and a realistic sensitivity towards law and its consequences.

Richardson also argues that the police deceived and misled Mrs. Cuffee into believing that his detention was to be temporary, and her waiver of his rights was obtained by a false promise that Kevin would be released to her after his statement. Here, too, this contention is not borne out by the record.

Pursuant to the provision of CPL 60.45(2)(b), a waiver is invalidated and a confession deemed involuntary when obtained from the defendant:

- "(b) By a public servant engaged in law enforcement activity . . .
- (i) by means of any promise or statement of fact, which . . . creates a substantial risk that the defendant might falsely incriminate himself; or
- (ii) in violation of such rights as the defendant may derive from the constitution of this state or of the United States."

In specific circumstances, this standard has been held to render involuntary, waivers that were obtained upon a promise that defendant would not be criminally prosecuted or incarcerated (cf., People v Sunset Bay, 76 AD2d 592 appeal dismissed 54 NY2d 808; People v Fox, 120 AD2d 949). The record in the present case indicates, however, that the police honestly conveyed information to the defendant's mother based upon the facts as they understood them. Indeed, the first two individuals interviewed, Clarence Thomas and Lamont McCall, were released.

However, as the full import of Richardson's participation in a possible homicide came to be understood, statements by the police to his mother -- and to the other parents -- as to the impending release of the defendants stopped.

Nor did other remarks in this record, not specifically mentioned by defendant, create a substantial risk that Richardson would incriminate himself. For example, Detectives Jaffer and Hartigan's suggestions to Mrs. Cuffee that it was "important" to tell the truth and that it would "behoove" Kevin to do so did not constitute improper inducements (People v Perry, 77 AD2d 269; People v Jackson, 143 AD2d 471).

It can only be concluded that no misrepresentations were made to Mrs. Cuffee, Angela Cuffee, Paul Richardson or to Kevin himself such as would induce an involuntary confession within the purview of CPL 60.45.

Richardson also argues that statements which he made at the crime scene, in the absence of a parent, must be suppressed. He maintains that the waiver by his father of his right to be present was obtained by the Assistant District Attorney's allegedly "disingenuous" representation that they were not going to ask Kevin any further questions.

The clear thrust of Assistant District Attorney Fairstein's discussion with Paul Richardson, Kevin's father, was that he could accompany them if he chose, but that no new avenues or subjects of inquiry were to be pursued. This conclusion is

supported not only by the testimony at the hearing but by the inherent illogic of taking a defendant to a crime scene for any reason except to question him about it.

I find that in issuing this waiver, Mr. Richardson was aware of Kevin's rights because they had been read to Kevin in his presence shortly before leaving for the crime scene and at the videotaped interview earlier.

Accordingly, I find that Richardson's statements were obtained upon knowing and voluntary waivers of his rights by all concerned. His motion to suppress these statements is, in all respects, denied.

Raymond Santana seeks suppression of his statements on a variety of statutory and constitutional grounds in addition to the Fourth Amendment discussed supra. He contends that those statements made outside the presence of his father must be suppressed as having been obtained in derogation of the Family Court Act; that the statement to Detective Sheehan in the presence of his father was the product of deceitful representations to the father; that the duration of his prearrestment detention was such as to render his statements involuntary; and that the delay of his arraignment deprived him of his constitutional right to counsel.

He also argues that his statement to Detectives Arroyo and Hartigan must be suppressed because his grandmother should have been provided a Spanish interpreter, and secondly, because Detective Arroyo's translation of the Miranda rights created confusion resulting in the grandmother's not being fully advised.

The arguments advanced by Santana pursuant to the Family Court Act are grounded on his contention that he was not afforded certain statutory protections incorporated in section 305.2 of that Act to which, he claims, his status as a juvenile entitles him. In substance, he contends that the failure of the police to contact his father at work and to secure his presence at each of Raymond's statements violated his rights under the Act, mandating suppression.

This line of argument presents a threshold issue as to whether the provisions of the Family Court Act apply in the Supreme Court. In addressing this issue, I note, parenthetically, that other defendants similarly rely upon the provisions of the Family Court Act.

Both the New York Family Court Act and the Criminal Procedure Law contain specific provisions which pertain to the arrest, without a warrant, of a juvenile. "When a child under 16 is arrested for a crime cognizable in the adult justice system as a 'juvenile offense' the CPL requires that the police officer notify the parent or other legally responsible person of the arrest and the place of detention (CPL 120.90, subd. 7; 140.20, subd. 6, see, also, CPL 140.40, subd. 5). A similar duty is imposed by the Family Court Act in regard to youths the same age who are arrested for acts constituting 'juvenile delinquency'." (People v Susan H., 124 Misc 2d 341, 345).

Moreover, "[t]he Family Court Act, unlike the Criminal Procedure Law, . . . accords minors additional safeguards beyond

parental notification." (People v Susan H., id at 345). Included among these is the obligation, where a parent or guardian is present, to advise them of the Miranda rights, as well as the juvenile. Additional protections raised by other defendants (infra) require that questioning take place only in specially designated facilities and that defendants be taken to court after arrest "with all reasonable speed", or alternatively, that their questioning be limited to a "reasonable period of time." (Family Court Act 305.2, subds. 4, 7.)

A child under the age of sixteen charged as a juvenile offender in the Supreme Court is governed by the provisions of the Criminal Procedure Law. The provisions of the Family Court Act section 305.2 do not apply. However there is some commonality in both and to that extent they are treated the same (see Family Court Act 305.2(3); Criminal Procedure Law section 140.20(6) and 140.40(5))(see People v Bonaparte, 130 AD2d 673, lv. denied, 70 NY2d 703; People v Ward, 95 AD2d 351; People v Castro, 118 Misc 2d 868; see also, People v Acero, 146 AD2d 787; People v Susan H., supra; but see, People v Ventiquattro, 138 AD2d 925).

In any event, the record establishes that those defendants who have specifically raised this issue did in fact receive the additional safeguards mandated by the Family Court Act as is noted in the findings pertaining to them (infra).

Contrary to Santana's position, this record compels the conclusion that the police complied with the notice provisions contained in both CPL 140.20(6) and Family Court Act 305.2(3).

Neither statute mandates the presence of a parent before custodial interrogation can commence. Rather, the CPL requires that the police "immediately notify the parent. . .", and the Family Court Act requires that "every reasonable effort" to give such notice be made.

The provisions of each statute "recognize what is unfortunately, a not uncommon situation--an uncooperative or even hostile parent who refuses to attend the questioning or who is otherwise unavailable. (See, e.g., Matter of Raphael A., 53 AD2d 592.) As long as the police have made reasonable efforts to notify and to await the arrival of the parent, they are free to question. (Matter of Emilio M., 37 NY2d 173; Matter of Raphael A., supra; cf. Matter of Brian P.T., 58 AD2d 868; Matter of Kevin R., 42 AD2d 541). Statements obtained in such circumstances are admissible as long as they are otherwise voluntary." (People v Susan H., supra at p. 346-347).

Thus, both acts anticipate that it may be necessary to question a child when a parent is notified but does not appear. For this reason, "the Family Court Act requires that. . .the parent need be advised of the child's rights only 'if present' (Family Court Act 305.2(7)). Moreover, the statute provides that in determining the appropriateness of questioning, the presence or absence of the child's parents is but one of several factors to be considered (Family Court Act 305.2(8); People v Susan H., supra, at p 346)." (People v Bonaparte, supra at p 675; Matter of Raphael A., 53 AD2d 592).

The police contacted Mr. Santana promptly after their arrival at the Central Park Precinct on the evening of April 19, and made repeated efforts to obtain his presence throughout the following morning. Indeed, they sent a police car to the grandmother's residence in order to obtain her presence before they began to formally question Raymond. Raymond's father came with the grandmother.

The facts further show that Mr. Santana, despite being fully advised with regard to his son's circumstances, left the Central Park Precinct on the morning of April 20 and went to work. During the day he never called to inquire about his son. He returned after work and after he went home. He arrived as Raymond had completed his statement. He again left the Central Park Precinct later that day after consenting to his son's speaking to Detective Hartigan alone. Clearly, the decision by Mr. Santana not to attend the questioning of his son is not attributable to any action or inaction by the police and could not operate to forestall the police inquiries of Raymond. In sum, "[b]ecause the defendant was arrested as a juvenile offender, the police discharged their statutory duty (see, CPL 140.20(6)) by immediately notifying his [father] of the arrest and place of detention." (People v Bonaparte, supra, at p 674.)

Even if the greater protections afforded to juvenile delinquents were applied, I would reach the same conclusion.

Given that he was properly notified, the father's presence was not a condition precedent to the questioning by Detectives Hartigan, Arroyo, or Sheehan, either at the precincts or elsewhere,

and his absence therefrom poses no basis for suppression under either the Family Court Act or the Criminal Procedure Law.

Santana's argument that Detective Sheehan made deceitful representations to his father, thereby obtaining the father's consent to take another statement, is not founded in fact. The record shows, to the contrary, that the detectives delayed further questioning of Santana until the father was present and then commenced their interrogation only after fully and fairly advising the father as to what had previously occurred and as to what they intended to do and after he had an opportunity to speak to his son.

Similarly, the facts adduced at the hearing refute Santana's argument that the circumstances attending his prearraignment detention denied him due process and rendered his statements involuntary. It was established that Raymond slept; he was fed, and that repeated efforts were made by the police to provide him access to a member of his family. The extent to which such access was delayed was clearly a product of his family's behavior, and not that of the police.

Moreover, the alleged debilitating effect upon Raymond from lack of food and sleep are belied by his raucous behavior in the cell block, and his participation, with his codefendants, in the lewd comments and exuberant laughter with which they accepted their incarceration.

Santana's contention that the delay in his arraignment denied him his right to counsel is unavailing. "[A]bsent extraordinary

circumstances, a delay in arraignment is but a factor to consider on an issue of underlying involuntariness (People v Holland, 48 NY2d 861; People v Dairsaw, 46 NY2d 739). And such a delay does not cause the right to counsel to attach automatically." (People v Hopkins, 58 NY2d 1079, 1081.) In applying that general rule to the facts of this case, it should be noted that all of the statements which are the subject of Santana's motion to suppress were obtained within twenty-nine hours of his initial detention.

Moreover, the investigation which the police were pursuing was an extraordinarily complex one, replete with "unexpected revelations". (People v Hopkins, supra). Finally, the delay, to the extent that there was any, was in part caused by the efforts of the police to reach defendant's family and by their reluctance to come to the precinct, or, once there, to remain. For all these reasons, I find that the record reflects no unnecessary delay in arraignment and no basis for finding that Santana's right to counsel was interfered with.

I find that Santana's arguments addressed to his grandmother's understanding of the Miranda warnings are not sustained; in fact, they are undercut by Mrs. Colon's own testimony at the hearing in which she demonstrated an ability to understand English far beyond her willingness to admit it.

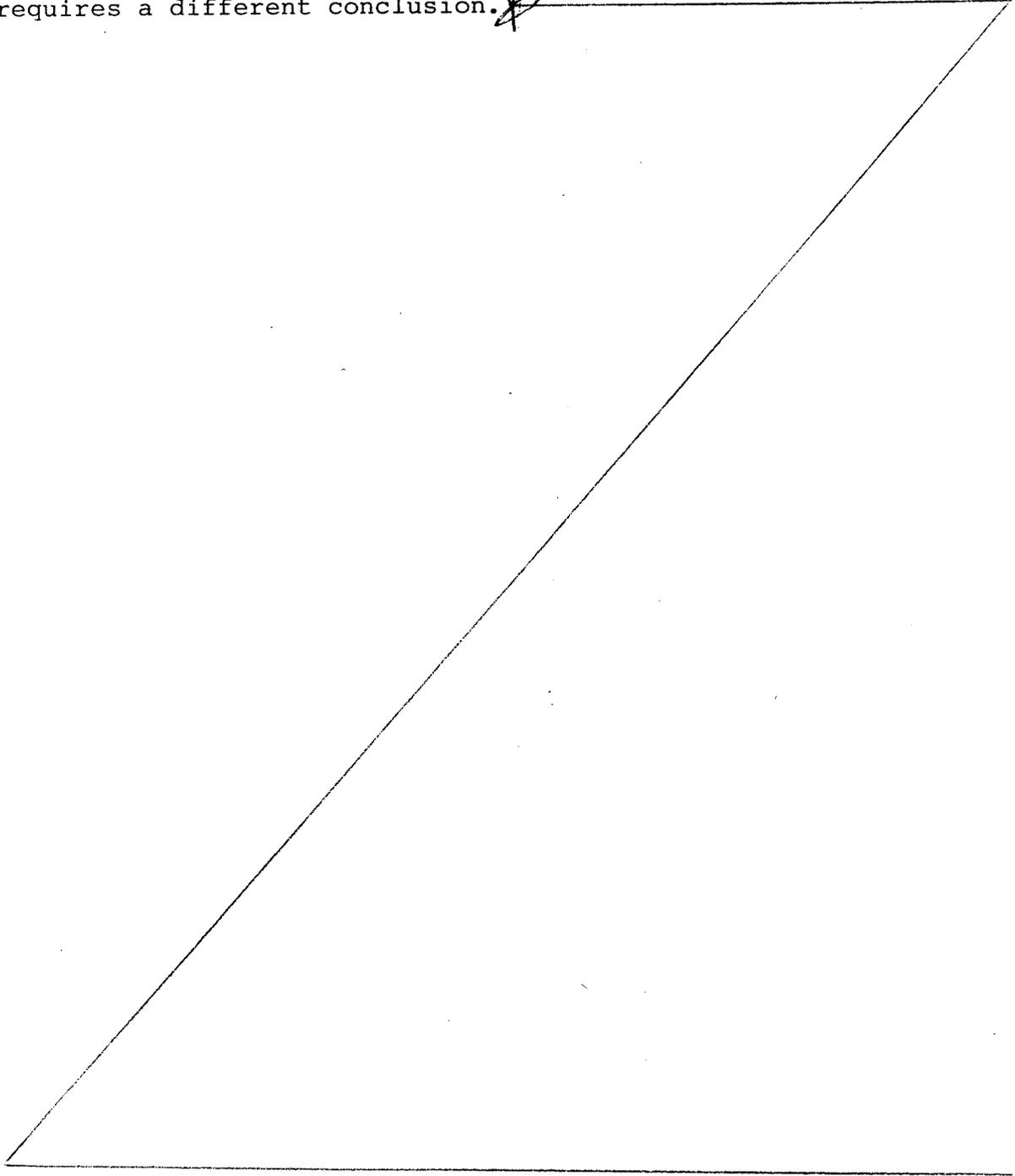
Furthermore, the rights were addressed to her in Spanish by Detective Arroyo and she gave an affirmative response. Thereafter, when a discussion ensued about the simultaneous

translation of Raymond's interview, Mrs. Colon's statement to Detectives Hartigan and Arroyo that "It's okay. I understand" was a clear reflection of her awareness of the events taking place. Her refusal to sign Raymond's first written statement "in case it had any adverse effect on Raymond"--though stated in Spanish--evidenced her understanding of his rights and of the objectives of the police investigation.

In any event, the precautions that the detectives exercised vis-a-vis Mrs. Colon were the result of an abundance of caution and were not statutorily or constitutionally required since Raymond's father had previously been notified of, but waived his right to be present. His cavalier approach to his son's situation was reflected in his initial failure to show up at the precinct when called; his later arrival with his mother after the police sent a car for her and his departure for work before Raymond's case was called; his failure to communicate with anyone concerning his son, while at work. Mr. Santana's itinerant conduct throughout this time and the fact that he left his mother Mrs. Colon to stand with her grandson speaks volumes about him and also belies the argument that she did not understand English.

I therefore find that Raymond Santana's statements at the Central Park Precinct; to Detective Sheehan enroute to and in the 20th Precinct as well as his videotaped statement were obtained upon a knowing and voluntary waiver by him and in a manner consistent with his constitutional and statutory guarantees. His motion to suppress these statements is, in all respects, denied.

However, although not specifically raised by defendant, the circumstances which attended his statement to Officer Powers at the Central Park Precinct, to wit, "I already got mines" requires a different conclusion. ~~*~~



Statements which are the product of custodial interrogation, undertaken in the absence of Miranda warnings and a waiver thereof, must be suppressed. It is clear that Raymond Santana had not been given his rights as of the time that Officer Powers stated to the defendants, "you guys shouldn't be out here beating up on people. You should be out with your girlfriend." The admissibility of Santana's response, depends upon whether Officer Powers' declaratory statement constituted "interrogation". "The term 'interrogation' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." (Rhode Island v Innis, 446 US 291, 301; People v Ferro, 63 NY2d 316 cert denied 472 US 1007; People v Lanahan, 55 NY2d 711).

I find that Powers' statement, despite its declarative nature, should reasonably have been anticipated to produce a potentially incriminating response. It was made directly to the defendants, and its subject matter specifically encompassed the facts underlying their criminal liability, i.e., that they had been beating people (see, People v Ferro, supra; cf., People v Bryant, 59 NY2d 786; People v Wilson, 149 AD2d 376; People v Allnutt, 148 AD2d 993). The People have not carried their burden of proof to establish the admissibility of this statement (see, People v Lanahan, supra; People v Stoesser, 53 NY2d 648).

Steven Lopez has forwarded a number of arguments in support of his motion to suppress statements and clothing. That branch of his motion which was premised on the theory that he was

seized without probable cause has been resolved supra. I now address his remaining contentions, which include the arguments that his detention was unreasonable as violative of the Family Court Act; that his and his father's waivers of Miranda rights were induced by a false promise; that the Miranda warnings and respective interviews should have been translated into Spanish for his mother; that defendant's father invoked his right to counsel when he asked, in substance, whether he should or had to have a lawyer; that defendant's will was overborne by his circumstances; and that the videotape must be suppressed because it was taken after defendant's father had cut off questioning.

With respect to the suppression of physical evidence obtained from him, he contends further that the police did not have his consent to take his clothes.

As incident to his motion to suppress, Lopez also seeks to have the hearing reopened so that he might have the opportunity, denied him previously, to cross-examine witnesses regarding statements other defendants made implicating him.

Lopez's arguments addressed to alleged violations of section 305.2 of the Family Court Act fail both for procedural and substantive reasons. Procedurally, I find that, as indicated supra, the Family Court Act provisions are not applicable to the prosecution of juvenile offenders in Supreme Court.

Substantively, I find that the pertinent Family Court Act provisions were satisfied anyway. Defendant, both at the Central Park Precinct and at the 24th Precinct, was questioned in an officially designated facility. Moreover, the police were under no obligation to take him to Family Court prior to questioning

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and, in the special circumstances of this case, his questioning was for a "reasonable period of time" and concluded as expeditiously as possible. (Family Court Act 305.2[4][b].)

Lopez's argument that the police obtained waivers of Miranda rights from him and his father by means of a false promise regarding Steven's imminent release also fails. There is no evidence that the representations -- which were true as of the time they were made -- operated as inducements in any sense or that as such they created "a substantial risk that the defendant might falsely incriminate himself." (CPL 60.45(2)(b)(i); People v Vail, 90 AD2d 917; People v Rosencrants, 77 AD2d 768).

The further argument that Lopez's statement must be suppressed because his rights and the proceedings were not translated for his mother ignores his father's adult status, as well as the father's ability to translate those proceedings for his wife had he found it warranted. Again, even were I to apply the "greater protections" extended defendants under the Family Court Act, I would find those provisions fully satisfied in this case by the participation of the father. Neither the constitution nor any statute mandates the joint participation of both parents as a prerequisite for the admissibility of a juvenile offender's statements.

The contention that Lopez's father invoked the right to counsel, thereby precluding further interrogation, is not supported in the record. "It is well established that if a suspect 'indicates in any manner and at any stage of the process

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that he wished to consult with an attorney before speaking there can be no questioning' (Miranda v Arizona, 384 US 436, 444-445)." (People v Lubanski, 148 AD2d 947).

However, to be effective, a defendant's expression of such a desire must be unequivocal and explicit. (People v Roe, 73 NY2d 1004; People v Fridman, 71 NY2d 845; cf. People v Esposito, 68 NY2d 961). Here, the question by defendant's father as to whether he had to have an attorney was properly responded to by Detective Arroyo (see, People v Banks, 135 AD2d 643). In that context, the record is clear that the father's question "did not serve to invoke his right to counsel (see, e.g., People v Hicks, 69 NY2d 969)." (People v Banks, id. at pp 645-646).

Lopez next argues, pursuant to CPL 60.45(2)(a), that his statements must be suppressed because the circumstances under which he was kept in custody operated in their totality to overbear his will and thereby provoked an involuntary waiver of his right not to incriminate himself. He alleges in support of this theory, his age, his lack of familiarity with police practices, a twenty-hour delay before he was advised of his rights, his lack of sleep, the absence of a bed and the fact that he was in custody for 22 hours before his first statement was signed and 29 hours before the videotaping began.

CPL 60.45(2)(a) provides, in pertinent part: "A confession, admission or other statement is 'involuntarily made' by a defendant when it is obtained from him:

(a) By any person by the use or threatened use of physical force upon the defendant . . . , or by means of any other improper conduct or undue pressure which impaired the defendant's physical or mental condition to the extent of undermining his ability to make a choice whether or not to make a statement".

An application of that statute to the facts of this case requires that this branch of Lopez's motion be denied. The evidence establishes that Lopez did sleep and was fed. Moreover, his allegation that he was reduced to passivity and subordination is entirely inconsistent with his loud and vulgar behavior when in the pens amongst his codefendants and especially by the aggressive posture that he assumed when Detective Nugent directed him to sit down. Defendant's allegations are refuted by the videotape itself which shows Lopez to be composed and calm.

Defendant further contends that his father's assertion "No more questions. My son will not provide any more answers" made at approximately 9:10 p.m. on April 20, precluded a subsequent waiver by him and his father at 3:30 a.m. on April 21. It follows, he maintains, that his videotaped statement must be suppressed.

"[A] suspect's right to remain silent, once invoked, must be 'scrupulously honored' (Miranda v Arizona, 384 US 436 at p 479; Michigan v Mosley, 423 US 96, 103-104; People v Wander, 47 NY2d 724, 725; see People v Grant, 45 NY2d 366, 373, 376). He may not within a short period thereafter and without a fresh set of warnings be importuned to speak about the same suspected crime (People v Gary, 31 NY2d 68, 70; Michigan v Mosley, 423 US 96, 106, supra; see People v Buxton, 44 NY2d 33, 37)." (People v Ferro, supra, at p 322.)

Clearly, this rule, as contrasted with a defendant's invocation of his right to counsel, does not "per se, prohibit his later being asked to speak upon reiteration of the requisite warnings, provided that the subsequent statement is not the product of 'continued importunity or coercive interrogation in the guise of a request for reconsideration' (People v Gary, 31 NY2d 68, 70)." (People v Buxton, supra, at p 37; People v Collins, 114 AD2d 373; People v Pugh, 70 AD2d 664.)

To hold otherwise, "regardless of the circumstances, would transform the Miranda safeguards into wholly irrational obstacles to legitimate police investigative activity, and

deprive suspects of an opportunity to make informed and intelligent assessments of their interests." (Michigan v Mosley, 423 US 96, 102.)

I find on the facts of this case, that Lopez's right to cut off questioning was "scrupulously honored" (Miranda v Arizona, supra.) Detectives Arroyo and Hartigan immediately cut off questioning upon the father's directive, left the room and further initiatives to question defendant were not undertaken for over six hours. Here, as in People v Cicciarelli, (145 AD2d 938), "the police immediately ceased questioning defendant when he invoked his right to remain silent. Defendant's subsequent statement was made only after the passage of time, without further police pressure and after having been again fully given his Miranda warnings." (People v Cicciarelli, id at p 939; see, People v Jefferson, 139 AD2d 531.)

Accordingly, the waiver which defendant issued in the presence of his mother and father immediately prior to the commencement of his videotaped statement was legally effective and does not provide a basis for suppression.

Lopez has not specifically moved to suppress the statements he made to Officer Powers concerning how many individuals the officers had caught compared to how many they had chased. Nor has Santana moved to suppress that part of the exchange attributable to him.

These statements are admissible as to both defendants because they were spontaneously generated (People v Ferro, supra). Officer Powers' "terse and pointed response to the defendant's questions can in no way be viewed as the functional equivalent of interrogation (People v Rivers, 56 NY2d 476, rearg denied 57 NY2d 775; People v Stoesser, 53 NY2d 648; People v Stevenson, 104 AD2d 835.)" (People v Coleman, 142 AD2d 586, 587.)

Defendant argues that consent to take his clothes was required and that a lack of proof as to consent requires the suppression of that clothing. However, the seizure of Lopez's clothing under the circumstances did not require his consent because it was incident to his lawful arrest (People v Singletary, 35 NY2d 528; see, People v Sweeney, 115 AD2d 502.)

Defendant has also moved to reopen the hearing, arguing that he was improperly precluded from cross-examining witnesses as to statements by other defendants which implicated him. This motion is denied. "Defendant lacks standing to challenge the use of those statements as the basis for his arrest, even assuming they were unconstitutionally obtained (see People v Thomas, 103 AD2d 854, 855; see also, People v Henley, 53 NY2d 403.)" (People v Williams, 115 AD2d 627.)

In any event, reference to the record reveals that counsel for Lopez had an opportunity to cross-examine as to the statements which provided probable cause against him--those of Richardson or Thomas--indeed it was on his cross-examination that this evidence was elicited.

Defendant's motion to redact portions of his video statement is reserved for trial.

Antron McCray seeks to suppress the series of statements that he made to Detective Hildenbrandt on April 20 at the 20th Precinct and the video statement that he gave the following day at the 24th Precinct. He has not put in issue the statement that he made to Officer Powers, when, accompanied by his mother he went to the Central Park Precinct at around midnight on April 20.

McCray initially argues that he was not afforded certain statutory protections incorporated in Family Court Act 305.2. Specifically, he contends, pursuant to subdivision 4 that his statutory rights were violated by the failure of the arresting officers to take him to court "with all reasonable speed" or alternatively, to limit their questioning to a "reasonable period of time" (Family Court Act 305.2 [4][b]). He maintains as well, under the Family Court Act, that the results of his questioning at the 20th Precinct must be suppressed because the room in which that interrogation took place was not, on that date, a properly designated facility.

Defendant also argues that his questioning was custodial and, as such, required a knowing and voluntary waiver of his Miranda rights as a predicate thereto. Pursuant to this line of argument, he contends that his waiver was not voluntary because of misleading and unfair inducements on the part of the detectives.

He also contends that his arraignment was unnecessarily delayed and that this denied him his right to counsel.

I will address, first, the argument that defendant's waiver of his Miranda rights was not fairly and properly obtained. This contention turns initially on whether a reading of his rights and waiver thereof was required under the circumstances. Miranda warnings are required only when there has been such a restriction imposed on a person's freedom as to render him in custody (Miranda v Arizona, supra; Oregon v Mathiason, 429 US 492). "In determining whether a suspect was in custody at the time of the police questioning and therefore entitled to receive pre-interrogation Miranda warnings, the test is not what the defendant thought, but rather what a reasonable man, innocent of any crime, would have thought had he been in the defendant's position (see, People v Yukl, 25 NY2d 585, 589; see also, People v Kwok T., 43 NY2d 213)." (People v Hall, 125 AD2d 698, 700.)

Defendant argues that a number of factors establishes his custodial status: that Antron was not a "mere" witness; rather the police believed they had probable cause to arrest him; the manner in which he was "picked up" at his apartment including the failure of the police to first telephone and the number of police; that the questioning took place at the police precinct instead of at his home; and Detective Rosario's statement to Mr. McCray that a parent "would have" to accompany Antron to the precinct because he was a juvenile.

I find, however, that the presence of these factors either individually or in their totality, did not render Antron's status custodial within the contemplation of People v Yukl, (supra).

There is no obligation inherent in Miranda v Arizona (supra) that the police give warnings to every person whom they question even if they be a suspect or the focus of an investigation (Oregon v Mathiason, supra; People v Liccione, 63 AD2d 305, affd 50 NY2d 850; People v Basso, 140 AD2d 448; People v Scott, 116 AD2d 755.) Nor does the fact that the questioning takes place at a police precinct necessarily render the surrounding circumstances custodial (Oregon v Mathiason, supra; People v Mack, 131 AD2d 784; People v Goodrich, 126 AD2d 835).

Further, while the number of police officers present at the McCray apartment and the fact that they had not called first arguably conveyed certain coercive aspects, such circumstances do not render an environment custodial. "Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect." (Oregon v Mathiason, supra, at p 495; see, People v Liccione, supra.)

Moreover the giving of Miranda rights does not preclude a finding that he was not in custody (People v Feneque, 133 AD2d 646; People v Ross, 134 AD2d 298, lv denied 70 NY2d 937; People v Basso, supra; People v Sohn, 148 AD2d 553).

Pertinent, as well, is recognition of the fact that Antron had earlier gone voluntarily to the precinct with his mother, made significant admissions to Officer Powers and nevertheless been allowed to leave (see, People v Anderson, 127 AD2d 775, lv denied 69 NY2d 947).

I find, therefore, that the defendant, in the presence of his parents, voluntarily agreed to accompany the police to the precinct for the express purpose of questioning and that the circumstances of this questioning were not custodial in nature (see, People v Bertolo, 65 NY2d 111; People v Yukl, supra; People v Young, 113 AD2d 852).

Accordingly, the questioning of defendant did not require a preliminary waiver of Miranda rights. This branch of defendant's motion to suppress statements is, therefore, denied.

Even if I were to find that the circumstances were, or became, custodial (see, People v Hall, supra), a different conclusion would not follow from this record. The testimony established that defendant was given his full Miranda warnings in the presence of both his mother and father and that he waived those rights prior to his interrogation at the 20th Precinct and his videotape at the 24th Precinct. Defendant's contention that his waiver was involuntary because his parents had been misled by the police is not substantiated. The basis for this alleged

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misleading was the statements by Detective Rosario that Antron should "tell the truth, no matter how horrible" and two later conversations between the father and Detectives Hildebrandt, Gonzalez and McCabe outside Antron's presence, in which they discussed whether Antron was telling the truth. In both conversations Mr. McCray agreed with the detectives that the son was not being truthful and on one occasion he relayed that information to Antron and on the second occasion he asked his wife to leave. Contrary to defendant's theory, none of the detective's statements "rise to the level of those promises or statements which create a substantial risk that defendant might falsely incriminate himself. (People v Diaz, 77 AD2d 523, 526 . . . These statements urging defendant to tell the truth . . . are not the kind which involve a substantial risk of inducing a false confession . . .)" (People v Perry, 77 AD2d 269, 273 and cases cited therein).

Moreover, the record reflects that the direct result of the detective's second discussion with Mr. McCray was not a waiver by defendant of any right he had not previously waived, but only that his mother stepped out of the room, leaving Antron with his father and the police. Clearly, the conversations between the detectives and Mr. McCray did not result in any "improper displacement of free choice on the part of the child . . ." (Matter of Raymond W., 44 NY2d 438, 441; cf., People v Diaz, 54 NY2d 967, cert denied 455 US 967).

Therefore, defendant's motion to suppress his statement on the ground that his waiver of rights was illegally obtained is denied.

Neither is defendant's argument that he was denied his right to counsel by the unnecessary delay in his arraignment sustained in this record. The delay in defendant's arraignment was not calculated to deny defendant his right to counsel but was instead necessitated by the dimensions of the investigation and the "gravity of the crimes being investigated." (People v Zehner, 112 AD2d 465, 466.)

The fact that the People "had probable cause did not create a duty to arrest the defendant . . . it was entirely proper for the police to attempt to gain a confession in order to secure the quality and quantity of proof necessary to commence a successful prosecution (see People v Brinsko 115 AD2d 859,860, lv denied 67 NY2d 940; People v Williams, 112 AD2d 259, lv denied 66 NY2d 923; see also, United States v Lovasco, 431 US 783, 791 reh denied 434 US 881)" (People v DiFabio, 134 AD2d 918,919; app dismissed 72 NY2d 949; People v Keller, 148 AD2d 958). The contention, then, by McCray, that he should immediately have been brought before a judge upon being picked up by the police, fails.

The provisions of Family Court Act section 305.2(4) are not pertinent to this determination (see discussion, supra), and in any case they were complied with.

The fact that Room 125 at the 20th Precinct--where McCray gave his statement--was not a designated facility is not material. Indeed, Room 125 was so designated approximately one month later. An irregularity of such minor dimension does not operate to require the application of the exclusionary rule, especially where, as here, "there is no evidence of wilful or negligent disregard of the statutory requirements . . . and no evidence of inattention to such requirements as a pattern or practice, no sufficiently useful prophylactic purpose would be served in penalizing the police for failure to conform to the terms of the statute taken literally" (Matter of Emilio M., 37 NY2d 173, 177; Matter of Luis N., 112 AD2d 86).

Accordingly, McCray's motion to suppress is, in all respects, denied.

Yusef Salaam's motion to suppress is premised on a number of arguments arising under statutory protections embodied in the Criminal Procedure Law and the Family Court Act and under the Fourth, Fifth, and Sixth Amendments to the Constitution.

His argument that he was arrested without probable cause, and that the evidence obtained from him was thereby tainted, has been discussed supra. In addition, he argues that his statements were involuntary because they were not obtained in a manner consistent with the stringent standards afforded

juveniles in that the police did not comply with the statutory requirements contained in the CPL and Family Court Acts; and further, that defendant's statement was not made upon a knowing and intelligent waiver but, rather, was the product of isolation and deceit.

In the first branch of this motion, Salaam contends that his rights were violated by the failure of the police to notify his mother of his arrest as required under Family Court Act 305.2 and CPL 140.20(6).

Clearly, there is no dispute that the police made no effort to notify Salaam's mother. His questioning was commenced outside her presence and completed while she was making unsuccessful efforts to see him.

The record establishes that Salaam misrepresented his age to the police, telling them he was sixteen. I find that the reliance by the police on his misrepresentation was reasonable. The police had been informed earlier by Al Morris that Yusef was sixteen. His school transit card shown to Detective Taglioni showed him to be sixteen. Further, Salaam's appearance is entirely consistent with that of an adolescent sixteen or older (see, People v Coker, 103 Misc 2d 703).

The issue becomes, then, whether the reliance by the police on Salaam's misrepresentation excuses their alleged failure to comply with CPL 140.20 or, arguendo, Family Court Act 305.2. Defendant contends that a failure to comply with the statutory notice provisions requires, per se, the suppression of his statements. The application of the "per se" rule "has

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resulted in an abundance of often inconsistent case law--as courts have alternatively moved toward and away from a per se rule requiring the parent's presence. [For a comprehensive summary of this case law, see, People v Castro, 118 Misc 2d 868]."
" (Matter of Candy M., 142 Misc 2d 718,719.)

Defendant should not derive a benefit from his deliberate falsification. Rather, because any "failure of compliance was the direct result of a deliberate misrepresentation on the part of" Salaam, he is bound by the consequences of that falsehood (Matter of Hector C., 95 Misc 2d 255, 258; People v Coker, supra).

Accordingly, any failure to notify defendant's mother did not operate to foreclose the detectives' right to question him.

I turn, then, to defendant's contention that the police questioning was improperly conducted because he was denied access to his family. "[T]here is no per se rule invalidating a confession where the police isolate an infant defendant from his parents during questioning (People v Taylor, 16 NY2d 1038, 1039-1040, affd after remand 27 NY2d 493)."
" (People v Green, 147 AD2d 955, 957.)

Defendant was given a full set of Miranda warnings; his questioning was of short duration; he had appeared at the precinct voluntarily; and he made no request that his mother be notified or that she be present (Cf. People v Bevilacqua, 45 NY2d 508; People v Ventiquattro, 138 AD2d 925). Most significantly, the police did not employ any deception such as

would "have sealed off the most likely avenue by which the assistance of counsel" might have reached the defendant (People v Townsend, 33 NY2d 37, 41).

The fact that Ms. Salaam's request to see her son was denied "is not in and of itself sufficient reason or basis for excluding the defendant's confession . . ." (People v Hocking, 15 NY2d 973, 975).

Yusef's mother was granted the opportunity to see her son as soon as the police were made aware of his true age. Her earlier access was denied only because he had misled them.

The police did not covertly take Yusef into custody. He went with them voluntarily and the police notified his sister of their destination. That this was understood by his family is borne out by the arrival of his aunt and her friends, his mother, and his Big Brother at the 20th Precinct within a relatively short time thereafter.

Ms. Salaam's opportunity to retain counsel on his behalf was not interfered with. Indeed, the testimony established that she did ultimately invoke defendant's right to counsel, but his questioning had already ceased. The Townsend Court itself recognized the distinguishing factor presented in an earlier case where "[n]o attempt was made by the police to conceal the presence of the defendant or to deceive the family when inquiry was made" (People v Townsend, supra, at p 42; see, People v Hocking, 15 NY2d 973; People v Taylor, 16 NY2d 1038).

Defendant also contends that his statements should be suppressed because they were obtained by trickery and deceit. This allegation is based on the fact that Detective McKenna informed Salaam that he had been implicated by others and that, if his fingerprints were found on the female jogger's outfit, he "was going down for the rape."

The record shows that Detective McKenna's statement to Salaam that he had been implicated by others was truthful. Statements by the police to defendants, informing them that others have implicated them in a crime are not unfairly coercive--(People v Diaz, 54 NY2d 967, cert denied 455 US 957). Although not the case here, this is so even where such statements constitute misrepresentations (see, People v Green, supra; see also, People v Tarsia, 50 NY2d 1). Accordingly those statements provide no basis for defendant's motion to suppress.

To the extent that McKenna's remark about fingerprints was untrue, this statement could, in no way, create a "substantial risk that the defendant might falsely incriminate himself" (CPL 60.45[2][b][i]).

For the foregoing reasons, I find that none of the factors raised by defendant, individually or collectively, were such as to obviate Salaam's ability to issue a knowing and voluntary waiver of his Miranda rights and that such a waiver did issue. His statements to Detective McKenna will not be suppressed. The obtaining of Yusef's signature on the Miranda card after Detective McKenna was aware of Salaam's true age does not affect the voluntariness of his statement but the use of such signature may be addressed in limine at trial.

Salaam does not specifically challenge the admissibility of his statement to Detective Neenan concerning how much "time" he might expect to do. The record establishes that this statement was not provoked by police conduct and was spontaneous in nature (People v Ferro, supra). It is therefore admissible.

Defendant Kharey Wise contends that his statements must be suppressed because they are the product of an arrest made without probable cause and because they were involuntary within the meaning of CPL 60.45. His contention that his statements comprise the tainted fruit of an illegal arrest has been resolved supra.

His argument that his statements were involuntarily obtained under CPL 60.45(2)(a) proceeds on the contention that physical force was employed to obtain them.

The record simply does not sustain that. I note that the video taken of Wise after the time of the alleged beating gave no indication of any bruises.

Nor does the record support Wise's argument that his will was overborne by shouting, intimidation, and the lack of rest, food and drink. Wise slept, ate and received milk when he asked for it. Further, his behavior while in the cell at the 24th Precinct, particularly his laughing and asking his codefendants if they had told the police allegedly humorous incidents involving joggers, belies his contention that he suffered from physical abuse or psychological duress.

Wise also argues that the second statement to Detective Hartigan at 9:20 a.m. on April 21 is inadmissible because it was not preceded by Miranda warnings. The record shows that defendant had been given his warnings twice prior to the taking of that statement: first, before his interview at 12:30 a.m. and then by ADA Fairstein that morning at around 7:00 a.m. There is no "requirement that the Miranda warnings be intoned every single time a suspect in custody is subjected to separate series of questioning within a short time interval." (People v Crosby, 91 AD2d 20, 29, lv denied 58 NY2d 974; People v Adkins, 145 AD2d 937.)

Wise argues that his statements must be suppressed because he was promised that, if he made them, he would be released. The only basis in the record for this proposition is defendant's own testimony, which I find incredible. His motion to suppress statements is in all respects denied.

Defendant Briscoe's motion to suppress is predicated upon an alleged arrest without probable cause and upon the argument that his right to counsel was denied him because the police did not permit him to consult with his grandmother and failed to readvise him of his Miranda warnings.

Defendant's assertion as to his alleged seizure without probable cause has been discussed supra.

His argument that he was denied an opportunity to call his grandmother is specifically refuted in the record by the testimony of Detectives Kelly and Neenan. The proof at the hearing disclosed that he did not indicate an interest in

speaking to his grandmother until his statement was almost completed and then he decided to do it later. Thereafter, he did speak to her on the telephone. Prior to his videotaped statement, he was properly apprised of his Miranda rights and he understood and waived them.

Accordingly, his motion to suppress is without factual or legal support and is denied (People v Crosby, supra).

Defendants' motions for a severance will be determined prior to trial.

Dated: *February* 23, 1990

J.

