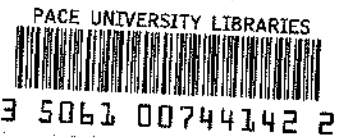




STATE OF NEW YORK  
DEPARTMENT OF LAW  
120 BROADWAY  
NEW YORK, NY 10271



ROBERT ABRAMS  
Attorney General

Dear New Yorker:

On January 26, 1987, Governor Cuomo appointed me Special Prosecutor for the Tawana Brawley case. On February 29, a special Grand Jury was impanelled to determine whether any crime had been committed against Tawana Brawley, whether law enforcement agencies had engaged in a coverup to protect the perpetrators of such a crime and whether sufficient evidence existed to warrant returning an indictment or indictments.

Over the next eight months, the Grand Jury exhaustively investigated every aspect of the evidence available to determine what may have happened to Ms. Brawley. The Grand Jury heard in excess of 6,000 pages of testimony from more than 180 witnesses and received more than 250 exhibits into evidence.

After these months of investigation, the Grand Jury found no evidence that a crime had been committed against Tawana Brawley and returned no indictments. The Grand Jury did, however, approve a detailed and thorough Report concerning the allegations made by Ms. Brawley, her family and her advisors. Public release of this Report was authorized by State Supreme Court Justice Angelo J. Ingrassia.

At the time the Grand Jury Report was released, I expressed publicly my strong view that the advisors to Tawana Brawley -- Reverend Al Sharpton and lawyers Alton H. Maddox, Jr., and C. Vernon Mason -- had engaged in an utterly reckless, dishonest and destructive course of conduct. In particular, I found it appalling that members of the bar would behave in such an irresponsible fashion, and I chose to file disciplinary charges concerning Mr. Maddox and Mr. Mason with the appropriate Grievance Committees. In these letters, I outlined repeated instances where I believe the lawyers violated disciplinary rules governing the conduct of attorneys.

While the allegations in this case turned out to be false, nonetheless, there are important lessons to be learned. First, the issue of racial violence is one of extraordinary difficulty and sensitivity. Our nation's history has been tarnished by racism, and racism and racial violence are facts of life we must confront and address. We must renew and increase our efforts to

deter and punish acts of racial violence by passing the bias violence bill Governor Cuomo and I have proposed, and we must continue our efforts to make all sectors of the criminal justice system responsive to the problem of racial violence.

Second, there are many people who are cynical of government's commitment to see justice done in racial violence cases. If the cynicism is allowed to deepen and fester, it can too easily be exploited by the type of dishonesty, opportunism and hucksterism displayed by the Brawley advisors in their pursuit of their personal and political agendas.

Finally, the fact that the allegations in this case proved false must not become an excuse for members of the public or those in law enforcement to dismiss or be more skeptical of allegations of racial violence or sexual assault. It would be tragic if this case raises any further barriers to the effective prosecution of racial or sexual violence cases. Perhaps the greatest disservice performed by the Brawley family advisors is the reckless manner in which they jeopardized the prospects of future victims of violence to obtain justice.

This volume contains the full text of the Grand Jury report, the Grand Jury's legislative recommendations, the legislative recommendations which I have proposed and forwarded to the Governor, and the disciplinary letters I filed concerning the attorneys. To reduce the cost of reproduction and mailing, the documents have been reprinted here single spaced and copied on both sides, but nothing that was in the original has been omitted.

Sincerely,

A handwritten signature in cursive script that reads "Robert Abrams". The signature is written in dark ink and is positioned above the printed name.

ROBERT ABRAMS

THIS VOLUME CONTAINS THE FOLLOWING DOCUMENTS  
RELATING TO THE TAWANA BRAWLEY CASE:

THE GRAND JURY REPORT

THE GRAND JURY REPORT CONTAINING  
LEGISLATIVE RECOMMENDATIONS

LEGISLATIVE RECOMMENDATIONS OF THE  
ATTORNEY GENERAL

DISCIPLINARY LETTERS

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REPORT OF THE GRAND JURY  
OF THE SUPREME COURT  
STATE OF NEW YORK  
COUNTY OF DUTCHESS  
ISSUED PURSUANT TO  
CRIMINAL PROCEDURE LAW  
SECTION 190.85 SUBDIVISION (1)(b)

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1988

THE GRAND JURY OF THE SUPREME COURT  
OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

THIS GRAND JURY WAS IMPANELLED UPON APPLICATION  
OF ATTORNEY GENERAL ROBERT ABRAMS ON FEBRUARY  
29, 1988 BY THE HON. ANGELO J. INGRASSIA,  
JUSTICE OF THE SUPREME COURT

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## INTRODUCTION

Tawana Brawley, a black, fifteen-year-old high school student from Wappingers Falls, New York, did not return to her home on the evening of Tuesday, November 24, 1987. She was found at approximately 1:30 p.m. on Saturday, November 28, by residents of her family's former apartment complex, partially clothed, with feces smeared on her body and racial epithets written on her torso and clothing. She appeared to be dazed.

An investigation of this incident was initially undertaken by the Dutchess County District Attorney. On January 20, 1988, after determining that a conflict of interest prevented him from proceeding further, the District Attorney applied for the appointment of a Special District Attorney under the provisions of County Law Section 701. A Special District Attorney was appointed on January 21, but that individual applied to be relieved on January 22, citing a conflict of interest.

On January 26, 1988, pursuant to the provisions of Executive Law Section 63(2), the Governor issued an Executive Order requiring the Attorney General to supersede the District Attorney of Dutchess County for the purpose of conducting an investigation before a Grand Jury into the following matters:

- (a) any and all unlawful acts or omissions or alleged unlawful acts or omissions by any person in relation to an incident involving Tawana Brawley;
- (b) any and all unlawful acts or omissions or alleged unlawful acts or omissions by any person in relation to the investigation of an incident involving Tawana Brawley; and
- (c) any and all acts and omissions and alleged acts and omissions occurring heretofore or hereafter to obstruct, hinder or interfere with any inquiry, prosecution, trial or judgment pursuant to or connected with this requirement.

This Grand Jury was impanelled on February 29, 1988, to carry out the investigation. The Grand Jury sought to determine whether a crime was committed; if so, the nature of that crime and when, where and by whom it was committed; whether any law enforcement official attempted to conceal the commission of a crime or the identity of its perpetrator; and whether evidence sufficient to return an indictment or indictments existed.

During the course of our investigation, the Grand Jury heard in excess of 6,000 pages of testimony from more than 180 witnesses, and received more than 250 exhibits into evidence. Tawana Brawley did not testify.

In addition to hearing numerous witnesses who did or potentially did have direct knowledge relevant to our investigation, the Grand Jury also heard testimony from experts in a variety of fields, including forensic serology, hair and fiber analysis, latent fingerprint identification, document and handwriting analysis, firearms and tool mark identification, forensic chemistry, forensic pathology and forensic psychiatry.

With the aid of expert testimony, we examined and evaluated physical evidence pertinent to our investigation, including clothing, fibers and other evidence found at or near the scene of Ms. Brawley's discovery. We also examined medical records and other documentary evidence.

A Grand Jury can return an indictment charging a person with a crime only if it finds competent, credible evidence of every element of an offense and a defendant's commission thereof. Based upon our investigation, the Grand Jury has found no legally sufficient evidence to charge any person with a crime or to establish that a crime occurred.

Ordinarily, such a finding would conclude the work of a Grand Jury. However, public accusations were made that certain individuals committed crimes against Tawana Brawley. One of the individuals publicly accused was Dutchess County Assistant District Attorney Steven Pagonis, a public servant. Mr. Pagonis waived his statutory and constitutional rights to immunity against self-incrimination and testified under oath before this Grand Jury. During the course of his testimony, Mr. Pagonis requested the Grand Jury to issue a report to clear his name.

Pursuant to Section 190.85 of the Criminal Procedure Law, the Grand Jury may issue such a report if, after investigation of a public servant, "it finds no misconduct, non-feasance or neglect in office by him." The nature of the allegations in this case may be properly interpreted as an accusation that a law enforcement official used his position to force sexual relations and that he participated in or enjoyed the benefit of a cover-up. Thus, this Grand Jury concludes that the public accusations against Mr. Pagonis were allegations of "misconduct, non-feasance or neglect in office" and, therefore, that he has standing to make this request. Upon the evidence heard and after due deliberation, the Grand Jury voted to issue this report.

The role of the Grand Jury in issuing a report exonerating a public servant for misconduct, non-feasance or neglect in office is a unique and important one. Public accusations of a crime, in addition to ruining a person's reputation, can destroy the ability of a public servant to function effectively even where a Grand Jury has found no evidence to support an indictment. This is especially true if the accused is a law enforcement officer. Public confidence in the accused official and our

system of justice may not be fully restored and maintained without some means of putting the accusations to rest.

For these reasons, this report reviews the public accusations, as well as the evidence obtained during our investigation. Our review of the public accusations is legally limited to whether or not they are valid. We do not believe that questions of the motivation of those making them are legally within the purview of this report.

The Grand Jury entered this matter to investigate any unlawful acts that may have been perpetrated against Tawana Brawley. Although we have not found any evidence to substantiate her allegations, we remain concerned about the welfare of this young woman who was only 15 years of age in November of 1987.

It goes without saying that Ms. Brawley's testimony would have been of inestimable value to our investigation. As a result, we extended two written invitations to her and ultimately voted to subpoena her. However, we have heard testimony that Ms. Brawley did not return to school in Monticello, New York at the start of the school year in September, 1988, and has enrolled in high school in another state. We concluded that the two previously extended invitations have sufficiently notified Ms. Brawley of our desire to hear from her and that this report need not be further delayed. Accordingly, we withdrew our subpoena.

Finally, the Grand Jury recognizes the limitations that the law places upon Grand Jury reports. There may be questions that some think should be answered that are not dealt with by this report. The Grand Jury, however, may not go beyond the limitations imposed upon it by law. We believe that we have answered all those questions that we were lawfully permitted to address.

#### THE EVENTS SURROUNDING THE DISAPPEARANCE AND THE DISCOVERY OF TAWANA BRAWLEY

##### Ms. Brawley's Residences and Family Background

On November 24, 1987, Tawana Brawley was living at 4-D Carmine Drive in Wappingers Falls, New York, with her mother Glenda Brawley, her mother's companion Ralph King and her half-brother Tyice.

Tawana Brawley had lived with her mother until she was approximately six months of age, when both she and her mother moved to Monticello to live with Juanita and Matthew Strong, Glenda Brawley's sister and brother-in-law. Glenda Brawley subsequently moved to another apartment in Monticello and later to Poughkeepsie, leaving Tawana Brawley in the care of the Strongs until about age 5. Tawana Brawley then returned to live with her mother in Poughkeepsie until sometime in 1983 when, at age 11, she went back to her aunt and uncle in Monticello. At that time, Juanita and Matthew Strong, who have since been

divorced, obtained legal custody of their niece, which they continue to hold jointly. At the age of 14, Ms. Brawley returned to her mother and lived with her, first in the Montclair Town Houses and later at Apt. 19A Carnaby Drive in the Pavillion Apartment complex, both in the Town of Wappingers. In November, 1987, they moved to the Carmine Drive address in Wappingers Falls.

#### The Disappearance of Tawana Brawley

On Monday, November 23, 1987, a week after transferring from John Jay High School to Roy C. Ketcham High School, Ms. Brawley "skipped" school and, with her friend William B. (a pseudonym), who drove her in his car, visited friends at John Jay, her old school. After visiting Poughkeepsie High School and spending some time at John Jay, Ms. Brawley and some friends went to McDonald's for lunch. She then stayed at William B.'s home until approximately 2:30 p.m., when she was driven to the location in Wappingers Falls where, had she gone to Ketcham as usual, she would have been dropped off by the school bus.

On the following day, Tuesday, November 24, 1987, William B. and another Ketcham High School classmate met Ms. Brawley near her home in Wappingers Falls. Rather than proceeding to Ketcham for classes, Ms. Brawley asked the driver to take her to Newburgh.

At that time, witnesses agree, she was wearing acid washed jeans and jacket. Witnesses could not agree on the color of her blouse or the color of her shoes. One witness recalled she was wearing a gold necklace and two rings. She was carrying a small black pocketbook with a black strap, school textbooks, a binder and a spiral notebook. She had a skirt and blouse on top of the books.

In Newburgh, Ms. Brawley, carrying her books and clothes, went to the apartment of Cathy W. (a pseudonym) on Clinton Street, arriving between 7:15 and 7:30 a.m. She did not leave anything in the car. A friend of Cathy W. then drove her to the apartment of Cathy W.'s mother on Smith Street in Newburgh. There she changed into a green-black acid washed skirt, black stockings, black shoes and a black blouse.

Ms. Brawley and Mrs. W. took a cab to the Newburgh bus station and then a bus to the Orange County Jail in Goshen where David W. (a pseudonym), who is Cathy W.'s brother and a former boyfriend of Ms. Brawley, was incarcerated. According to David W., he and Ms. Brawley had gone out together for approximately five months in 1986 and then had broken up, but they continued to see each other on and off throughout 1987. He was incarcerated on October 13, 1987, and was released on February 9, 1988.

In order to gain admission to the jail, Tawana Brawley represented she was Mrs. W.'s daughter. She and David W. spent 15 to 20 minutes with each other.

There had been an incident at the Orange County Jail on the night of November 21, 1987, in which some of the guards were accused of wearing sheets on their heads. David W. was aware of the incident, but did not see it and was not involved. He testified that he did not mention it to Ms. Brawley during her visit on November 24 but did tell her that he had recently had an altercation with two corrections officers. A press account of the alleged incident with the white sheets appeared in a local newspaper on November 24.

Mrs. W. appeared as a witness before us and testified that, upon leaving the jail, she and Ms. Brawley were passed on the street by a red pick-up truck with gray stripes and twin vertical exhaust pipes behind the cab. Mrs. W. said the pick-up truck made a U-turn and passed them again. The truck contained two white men, who "stared hard" at Ms. Brawley. According to Mrs. W., the truck did not return. Mrs. W. and Ms. Brawley waited in Goshen for the bus, rode it to Middletown where there was a layover and then to Newburgh. They then went from the Newburgh bus station to Mrs. W.'s apartment. At no point did Mrs. W. see the pick-up truck again.

They arrived at the apartment at approximately 5:25 p.m. Mrs. W. testified that she urged Ms. Brawley to catch the 6:00 p.m. bus home, but that Ms. Brawley was reluctant to leave. When Mrs. W. told her, "If you don't catch the bus, you'll get in trouble," Ms. Brawley replied, "I'm already in trouble." Ms. Brawley told Mrs. W. she had returned from a party at 5:00 a.m., two hours after she was supposed to have been home. (Other testimony established that the party in question occurred on November 7, 1987.) As a result of her returning home late, she was "grounded." She said that her mother had verified her story about why she got home late from the party but that her step-father was keeping "on and on and on" and "wouldn't let go." Mrs. W. offered her the opportunity to spend the night, but at approximately 8:00 p.m., Ms. Brawley took a cab to the Shortline Bus Terminal in Newburgh. At this time, she was wearing the acid washed jeans and jacket, a black blouse and black shoes. She was carrying her other clothes in a supermarket bag, her school books and a round, black bag.

A passenger told us that he initiated a conversation with Ms. Brawley and found her to be friendly. On the bus, the driver recognized Ms. Brawley as the stepdaughter of his fellow employee Ralph King and as someone who had previously traveled on his bus. The passenger got off in Fishkill, leaving only Ms. Brawley, one other passenger whose identity was never learned, and the driver.

Ms. Brawley expressed her desire to be dropped off in Wappingers Falls, but the driver testified that since the bus had gone via Fishkill to drop a passenger, he was required to proceed on Route 9 through the Town of Wappingers rather than on Route 9-D through Wappingers Falls. He told Ms. Brawley he could not go off route to take her to her front door. When he prepared to

pull over in front of a Mexican restaurant on Route 9, a spot where he knew Ms. Brawley had met the bus on previous occasions, she asked him to drive further north.

When they arrived at Paino's Mobil station at the intersection of Route 9 and Meyers Corner Road, she asked him to stop. The Mobil station was open and several people were buying gasoline, according to the driver. When Ms. Brawley told the driver there would not be anyone to meet her, he suggested that she call from a phone at Paino's. She replied that her family had just moved and did not have a phone yet. There was testimony, however, that the phone service at the new apartment on Carmine Drive had been turned on four days earlier on November 20, 1987, that the same number was retained from the previous apartment, and that Ms. Brawley had made several calls from her home on the evening of November 23.

The driver said Ms. Brawley got off the bus and walked south on Route 9 toward Meyers Corner Road. She did not leave anything on the bus.

#### Glenda Brawley at the Pavillion Apartments

The Pavillion Apartments in the Town of Wappingers is a condominium development comprised of 18 two-story residential buildings, each of which has 16 apartments, grouped in units of four. The buildings are situated along two roughly parallel roads, Carnaby Drive and Scarborough Lane. Carnaby loops slightly at one point, and intersects and terminates at Scarborough, which continues on and ends in a cul-de-sac. The development has its own sewage treatment plant on Carnaby Drive directly opposite the building which contains the units 17, 19, 21 and 23 Carnaby. The rear of that building and a number of other buildings on Carnaby share a large open grassy back-yard area with several buildings on Scarborough. A number of residents of this building own dogs, and the common area in the vicinity of Apt. 19A was strewn with dog feces in November 1987.

On Saturday, November 28, 1987, Glenda Brawley arrived at the Pavillion Complex between 1:00 and 1:15 p.m. She was observed by neighbors sitting in her car in front of 19A Carnaby for a period of time from approximately 1:30 to 1:45 p.m. She later stated to law enforcement officials that she picked up her mail inside the hallway of 19 Carnaby Drive from the mailbox, which was full, and went inside her former apartment, 19A, to see if her daughter was there. She also reported having found the apartment "spotless" and "immaculate." She said she saw a pair of white boots in the closet that did not belong to any member of the family.

According to the mail carrier for the Pavillion Complex, he had delivered the mail on November 28 at approximately 1:00 p.m. On November 30, the following Monday, he noticed that the mailbox for 19A still contained mail from previous deliveries. He removed the mail and returned it to the Post Office.

#### The Discovery of Tawana Brawley

At approximately 1:30 p.m., on Saturday, November 28, a Scarborough Lane resident, who was vacuuming, looked through her sliding glass back door across the common area between the Carnaby Drive apartments and the Scarborough Lane apartments and observed Tawana Brawley in a squatting position. She was just behind the building which contained units 17, 19, 21 and 23 Carnaby Drive, a few feet from the back door to her family's former apartment at 19A. There was no one else in the area.

According to this witness, Ms. Brawley, after looking around for a couple of seconds, stepped into a large plastic garbage bag and pulled it up to her neck. She remained stationary for another couple of seconds and continued to look around. She then hopped two times and lay down on the swampy ground beneath an air conditioner on the back wall of an apartment at 17 Carnaby Drive. When she did not move, the neighbor called the sheriff.

At 1:44 p.m., the Dutchess County Sheriff's Office received the Scarborough Lane resident's call. A few minutes later, the woman and her husband -- he had just come home -- observed a Sheriff's car arrive and drive past the front of the building behind which Ms. Brawley was lying. The Sheriff's Office then telephoned the woman and asked for further directions. The woman's husband and another neighbor he had summoned went out, met the deputy sheriff and, at approximately 1:58 p.m., led him back to Ms. Brawley.

The Grand Jury heard testimony from the residents and the deputy. They described Ms. Brawley as lying in a fetal position directly behind unit 17 with the garbage bag up to her head. She did not appear fully conscious and did not respond when the deputy talked to her and moved her. She did not speak, but twice opened and immediately shut her eyes.

There was a strong smell of feces emanating from the garbage bag and Ms. Brawley's clothes, hair, arms, chest, stomach, calves and feet were smeared with feces, though her face was clean. She had a grayish, cotton-like substance in her nostrils and ears. She was dressed in a dirty and torn pink blouse which had lettering on it,\* acid washed jeans that had been burnt in the crotch and were missing a portion from the rear, and one pink shoe which had been cut.\*\* She was not wearing any panties or bra. She had a black blouse wrapped around her head upon which she was biting down. Her clothes were dry. Her hair was short and matted.

\* It was later determined that "KKK" and "NIGGER" were written on the blouse.

\*\* It was later determined that the word "NIGGER" was cut into the side of the shoe.

After observing Ms. Brawley's condition, the deputy radioed for an ambulance. The Sloper-Willen Ambulance Service, located nearby on McFarland Road, received the emergency call from the Sheriff's Department at 2:03 p.m. An ambulance with two emergency medical technicians aboard arrived at the Pavillion at approximately 2:05 p.m.

The emergency medical technicians, both of whom testified before us, found Ms. Brawley in the condition previously described by the neighbors and Sheriff's deputy. To them, she appeared unconscious and unresponsive. One technician ripped open the plastic bag and surveyed Ms. Brawley's body. She found no injuries, cuts, bleeding, swelling or deformity, although the burnt jeans and red marks on her thighs initially led the EMT to think she may have been burned. The technicians decided to take her to St. Francis Hospital in Poughkeepsie and administered treatments while enroute in the ambulance. The technicians' evaluation of her condition and the treatments they administered are described later in this report.

#### Search of Apt. 19A and Vicinity

During the afternoon, Sheriff's personnel searched the Pavillion Apartments and secured evidence. A detective from the Dutchess County Sheriff's Office arrived at the Pavillion at 2:45 p.m. and, along with the deputy who had remained on the scene, canvassed residents, searched the area in which Ms. Brawley was found and the wooded area behind the sewage plant. A garbage dumpster located approximately 50 yards from 19A Carnaby was searched, but it was almost full, and the search, which lasted five to six minutes, was limited to removing some of the garbage on the top. No effort was made to empty the contents of individual garbage bags, and no evidence relating to Ms. Brawley was found.

The plastic bag in which Ms. Brawley was discovered had been left on the ground by the ambulance technicians. A Pavillion resident who was assisting the deputy search the area lifted the bag, and a pair of black leather ladies' gloves and a black strap fell to the ground. The gloves were covered with fecal material. When the bag was removed by the deputy, he found a piece of cotton-like material resembling that observed in Ms. Brawley's nostrils and ears, three pieces of burnt cloth (which appear to be part of a face cloth or towel) and a black webbed belt which had been cut.

The detective and deputy also entered 19A, the former King/Brawley apartment. The management company had provided a key, although the front door was found to be unlocked and the windows were partially open. The electricity was on and the refrigerator was operating. (The deputy recalled finding an almost empty milk carton and one other item in the refrigerator. He could not recall what the other item was.)

The deputy observed that the apartment was "dirty" and appeared as if it had not been vacuumed for some time. There was a cracker on the floor and burnt material, which the witness thought might have been denim, scattered around. Also found were a ball of cotton-like material and a match stick. There were singe marks on the rug.

The apartment was noticeably warm. An electrical baseboard heater, turned on high, was lying face-down on the rug near the back door, and there was a strong smell in the apartment described variously as that of burnt rubber and burning wire insulation.

In a closet opposite the front door, they found a tire rim and a pair of white boots the outer surface of which appeared to have been cut, exposing a white cotton-like insulation material.

The deputy locked the front and back doors upon completion of the inspection of the apartment, but it was impossible to secure one window because of a broken lock. Items observed in the apartment and at the scene where Ms. Brawley was found were secured by the Sheriff's Department on Saturday, November 28.

Subsequent searches of the apartment disclosed additional items not found on Saturday, November 28.

On Tuesday, December 1, two detectives opened the washing machine in the apartment and recovered an acid washed denim jacket, a pair of denim jeans and a ball of cotton-like material similar to the fiber in the boots found previously. There were feces on the jacket and jeans. Rug scrapings from the living room carpet were also secured.

On December 8, investigators recovered a candle from outside the rear door, a bottle cap and burnt residue from the stove. The rug was vacuumed for debris with a forensic vacuum, and a sample of a red stain on the wall was taken with a cotton swab.

Fingerprints were lifted from the glass door, windows and washer/dryer on December 8, and again on December 13 when a portable laser unit was brought in.

On March 9, 1988, investigators recovered a two-inch double-edge razor blade from underneath a heating element, a metal nail file from the bathroom medicine cabinet, a false fingernail from the bedroom closet floor, feces from underneath the agitator of the washing machine and the contents from the drainpipe of the kitchen sink. The razor blade was recovered in the same spot at which a crime scene photo taken in December showed the glint of a metal object underneath the baseboard heater.

On June 17, 1988 (the apartment had been unoccupied since the Brawleys moved out in November, 1987) six pieces of carpet were cut from the living room. In addition, hair samples were obtained from two dogs who were regularly walked in the immediate vicinity behind Apt. 19A.

All items recovered were submitted to the FBI Laboratory in Washington, D.C.

#### Events at St. Francis Hospital on November 28

The ambulance arrived at St. Francis Hospital at 2:39 p.m., and Tawana Brawley was admitted as a "Jane Doe." Although she did not initially react to voices or commands and appeared to be unconscious, the emergency room physician testified that Ms. Brawley was never unconscious during her presence in the emergency room based on several factors including a physical reaction test, the opening by Ms. Brawley of her eyes in response to the physician's voice and her ability to follow commands, including sitting up and placing her legs in stirrups. The only evidence of injuries, discolorations or bruises on Ms. Brawley were a swollen left arm where the I.V. inserted while she was in the ambulance had infiltrated, and a bruise, approximately the size of a quarter, on her scalp behind her left ear.

Her clothing was removed, and on her chest and torso, the words "KKK", "NIGG", "ETE SHI", "NIGGER" and "BITCH" were written in a black substance that, according to the emergency room nurse, resembled charcoal. The emergency room physician's evaluation and diagnosis will be discussed more fully later in this report.

A Dutchess County Sheriff's Office detective on call was dispatched at 2:10 p.m. and was the first law enforcement officer to arrive at St. Francis Hospital. He is a specialist in fire and arson crimes and was called because the emergency medical technicians initially reported that Ms. Brawley may have been burned. The detective took evidentiary photographs of Ms. Brawley. A Sheriff's deputy also took Polaroid photographs of Ms. Brawley which were used in a canvass of residents of the Pavillion in an attempt to identify her.

The detective secured all the clothing that had been removed from Ms. Brawley in the hospital. The clothing had been pushed underneath the bed by the foot of one of the emergency medical technicians. All the clothing items were eventually forwarded to the FBI for analysis. A broken, orange-colored pill was discovered on top of the pile of clothing as it lay underneath Ms. Brawley's bed. It too was sent to the FBI lab.

The material that had remained in Ms. Brawley's nostrils was removed and discarded by the emergency room physician. The physician testified that the material appeared to be rough and of a synthetic nature which was different from the cotton balls used in the hospital.

Because of the racial epithets written on Ms. Brawley, the detectives at the hospital felt there was a possibility of a civil rights violation and the Sheriff's Office notified the FBI in Newburgh and New York City.

At 4:30 p.m., in the hospital, Ms. Brawley's body was washed with a wet cloth except for the pubic perineal region which was not washed, douched or placed in contact with a change of clothing. None of the fecal material or the charcoal-like writing material that was removed from the body was saved.

The detective assigned to the Pavillion testified that at about 5:35 p.m., a resident identified a photograph which had been brought from St. Francis Hospital as a photograph of Tawana Brawley. The detective called Glenda Brawley from the resident's apartment at approximately 5:50 p.m. and informed her that her daughter had a problem and was in St. Francis Hospital. He said he wished to come to Carmine Drive to show her a photograph in order to obtain a positive identification, and at approximately 6:25 p.m., the detective and the deputy who had been searching the scene met with Glenda Brawley. Also present was her young son, Tyice.

Glenda Brawley identified the photograph as being of her daughter. She also provided identifying information such as full name and date of birth. In response to the detective's questions, Glenda Brawley said that her daughter had run away from home to Newburgh on Tuesday, November 24, to visit her boyfriend in jail. She said that Juanita Brawley had made several trips to Newburgh to find Tawana Brawley and that Ralph King had also gone once. When asked if her daughter had any psychological problems that may have prompted her running away, Glenda Brawley said there were no psychological problems but that she had stayed late at a party two weeks earlier, was on punishment, and was not allowed to go out.

According to the detective and deputy, during their conversation, Glenda Brawley appeared calm and collected. She said she would not be going to the hospital because Tyice had a cold. She showed no signs of emotion until receiving a phone call from Juanita Brawley who was already at St. Francis Hospital. Glenda Brawley then became very upset, saying, "They cut my baby's hair! They cut my baby's hair!" She left immediately thereafter for the hospital.

At the hospital, the Sheriff's detective made several requests of the emergency room physician to utilize the rape kit protocol. At the time, however, the physician had found no physical evidence of a rape -- unconsciousness, bleeding, injuries or bruises in Ms. Brawley's pelvic area -- nor had Ms. Brawley made any statements that she was raped. Thus, the physician felt that the rape kit examination was not appropriate.

During the afternoon, a detective assigned to the Sheriff's Juvenile Aid Bureau, which deals with crimes committed by and against children, arrived at the hospital, as did a deputy, a uniformed lieutenant and the lieutenant in charge of the detective bureau from the Sheriff's Office. No detective was able to interview Ms. Brawley because she did not respond to their questions. The family requested a black police officer. In response to the family's wishes, the Sheriff's officials arranged for a black police officer from the Poughkeepsie Police Department to attempt to interview Ms. Brawley. They also informed Juanita and Glenda Brawley that the FBI had been notified.

The black officer arrived at 7:45 p.m. and interviewed Tawana Brawley in the presence of her mother and aunt. Ms. Brawley's eyes were open, but she had an "extremely spacey" look on her face, according to the officer. She communicated to the officer through nods of the head, shrugs of the shoulder, and notes written on the officer's notebook. She uttered just one word during the 20-minute interview. This interview is detailed later in this report.

The story she conveyed was that she had been repeatedly raped in a wooded area by a group of white men, at least one of whom was a "white cop." She did not accuse anyone by name.

After the interview with the Poughkeepsie police officer in which Ms. Brawley indicated that she had been sexually abused, the emergency room physician administered the rape kit regularly used by the hospital and provided by the New York State Police.

Upon completion of the protocol, the rape kit was sealed by the emergency room nurse and turned over to the detective, who stored it in a refrigerator at the Sheriff's Office until December 2, when he sent the sealed rape kit to the FBI lab. The kit arrived, sealed, on December 3, 1987.

The staff social worker for the Victims Assistance Program at St. Francis arrived at approximately 9:30 p.m. and interviewed Tawana Brawley. The social worker observed that Ms. Brawley appeared exhausted and dazed but able to comprehend the information conveyed to her. Ms. Brawley told the social worker she was having difficulty talking because her throat hurt, but she did manage to answer several questions regarding her family and school by nodding and speaking in a very soft voice. Ms. Brawley also told the social worker that she did not want to talk any further to the police. In response to a question, Ms. Brawley told the social worker that there was someone in her family she felt close to and with whom she could discuss what had happened to her. Additionally, she asked the social worker if it was Thanksgiving yet, and the social worker informed her of the day and date.

At 10:00 p.m., Ms. Brawley was put in a wheelchair and discharged. She had no physical injuries that necessitated her hospitalization and did not complain of being unable to walk.

The treating physician testified that the family had requested hospitalization, but, as the patient required no medical treatment, the doctor felt that her apparent traumatic experience could best be dealt with at home with people she loved, rather than in the hospital. The family was told that if they did not agree, Ms. Brawley could remain in the hospital and that if they found anything that needed further attention, they were welcome to bring her back to the hospital. The family then voiced no objection to her discharge. Ms. Brawley was given referrals to a gynecologist and the crime victims agency.

Upon returning home, Juanita Brawley contacted a New York City television station and requested that a reporter visit Ms. Brawley. She also called the FBI, indicating that the family did not trust the police and feared that this racial attack would not be handled correctly.

On Sunday morning, November 29, the social worker from St. Francis Hospital visited the Brawley home and observed that although Ms. Brawley's voice was weak, she was alert and able to answer questions, though none were asked about the recent events. Ms. Brawley did exhibit some animation when discussing school sports, answering some of the social worker's questions with sentences. When advised that victims are sometimes threatened so they will not cooperate with the police and then asked if this had happened to her, Ms. Brawley nodded affirmatively. She did not say who had threatened her.

Glenda Brawley indicated to the social worker that a reporter from a New York City television station would be coming to interview Tawana Brawley that day. The social worker advised Glenda Brawley that if Ms. Brawley were interviewed, her name would be used on television. Glenda Brawley said she was sure her daughter's name would not be used because she was under age. The social worker then spoke with Tawana Brawley, telling her that she had a right to decide if she wanted to be interviewed. The reporter subsequently arrived and interviewed Tawana Brawley, her mother and aunt.

Following the interview, Tawana Brawley indicated to the social worker that she did not want it shown on television. Both Glenda and Juanita Brawley urged her to allow the interview to be shown and Tawana Brawley consented. The social worker again told the two adults that a victim, particularly a teenager, may have difficulty coping with publicity, but they insisted that they feared the incident would be covered up. They told Ms. Brawley that she had to be strong, that they all had to be strong.

#### THE ALLEGATIONS OF WHAT WAS DONE TO TAWANA BRAWLEY

The Grand Jury's investigation has been hampered by not having had the benefit of testimony from Tawana Brawley. We have, however, heard testimony from a number of witnesses with whom Tawana Brawley and members of her family have spoken since the incident.

#### Interviews with Law Enforcement and Medical Personnel

Ms. Brawley's first description of what happened to her was given to the black Poughkeepsie police officer who spoke to her in St. Francis Hospital on the Saturday she was discovered.

Ms. Brawley did not respond when the officer first asked her what happened, but while questioning her, he leaned over the bed, and when he asked if she could say who did it, she grabbed the silver police badge on his uniform coat. The officer asked her what she meant, and when she did not respond, he gave her his duty notebook on which she wrote the words "white cop." When he asked her if she meant that a cop had done whatever had been done to her, she nodded. The officer then asked Ms. Brawley where it happened and she wrote the word "woods" in his notebook. The officer asked Ms. Brawley where the woods were located, but received no response. He then asked Ms. Brawley if she was raped and she wrote the words "a lot." The officer asked by whom, and she wrote the word "first" and drew an arrow towards the words "white cop." When the officer attempted to get a description from Ms. Brawley, she was unresponsive and stared off into space. At one point, because Ms. Brawley was not giving any verbal response, the officer had her bat her eyes once for yes and twice for no. The officer also asked Ms. Brawley if the person was black and when she did not respond, he asked if the person was white and Ms. Brawley nodded yes. Ms. Brawley did not respond when asked if there had been one person or two. The officer asked if there were three, and she nodded. Ms. Brawley also nodded affirmatively to the officer's questions about the person's clothing being dark and black and about the person's age being close to his own, which is 32. The officer asked if the person's vehicle was light or dark and Ms. Brawley wrote the word "dark." The officer asked if Ms. Brawley knew the person driving the car and she wrote the word "no." The officer asked Ms. Brawley if she heard any identification used among the men and she did not respond. When he asked if anybody had had any conversation, she said the word "son." This was the only word Ms. Brawley spoke during the entire interview. The officer then asked Ms. Brawley if someone had called the white cop "son" and she shook her head no. He then asked if the white cop had called someone else "son," and she nodded yes.

The interview lasted 20 minutes, at which point the officer left Ms. Brawley for a period of time while medical treatment was rendered. He returned later and attempted to gain

more information, in particular a physical description of the perpetrators. Ms. Brawley nodded in answer to his questions, "Was they as tall as me?" (6'4") and, "Was he thin?" When asked his hair color, she pointed to a nurse in the room who had strawberry blond or reddish-brown hair. At this point, the officer left and resumed patrol.

As a result of the information given to the Poughkeepsie police officer, a rape kit examination was performed by the emergency room physician. As part of that examination, the physician began by asking Ms. Brawley several questions which were answered solely with nods and shrugs. She nodded affirmatively to the questions: "I understand you said you were assaulted?"; "Was this by three men?"; and "Were they white men?"; But when Ms. Brawley was asked, "Were there more?", she shrugged her shoulders. In response to the question, "Did they hit you?", Ms. Brawley pointed to an area of her scalp behind her left ear. When asked, "Does anything hurt?", Ms. Brawley again pointed to the same area of her scalp, where the physician found a round, flat, discolored bruise approximately the size of a quarter. The bruise did not appear tender or fresh, and when it was pressed, Ms. Brawley did not wince or pull away in pain. The physician asked Ms. Brawley if she was grabbed, pushed, twisted or hurt anywhere else, and Ms. Brawley shrugged her shoulders, indicating a negative answer.

When asked if anal sex had occurred, Ms. Brawley shrugged her shoulders and shook her head from side to side. When asked if oral sex had occurred, Ms. Brawley indicated yes by nodding. When asked if vaginal sex had occurred, Ms. Brawley "nodded in sort of a half 'no' and shrugged her shoulders again," according to the physician.

At approximately 2:17 p.m. on Sunday, November 29, detectives from the Dutchess County Sheriff's Office attempted to interview Ms. Brawley at her home. At the time, according to the detectives, she apparently was asleep on a sofa in the living room. Glenda Brawley, Ralph King and, primarily, Juanita Brawley told the detectives what had happened to Tawana Brawley -- that she had come back from Newburgh on a Shortline bus between 4 and 5 p.m. on Tuesday, November 24, and got off the bus at the Exxon Station on Route 9D. A dark-colored police-type car with two white men inside pulled up. One of the men got out, grabbed Ms. Brawley by the hair and pulled her into the car. She screamed and called for the police, but the man said, "I am the police," and struck her on the head. She was taken in the car to a wooded area, in an unknown location, where there were four or five men in addition to the two in the car. Ms. Brawley was sexually abused, defecated on, urinated on and tortured for four days. She had also been raped, sodomized and had feces rubbed on her body and hair. Her hair had been cut, and on her chest were written the letters "KKK" and other words. The detectives left without talking to Tawana Brawley.

On Monday, November 30, at approximately 1:05 p.m., a detective from the Sheriff's office; two Senior Assistant District Attorneys, one of whom specialized in the prosecution of child sex abuse cases; and a Special Agent for FBI civil rights investigations arrived at the Carmine Drive apartment. Present in the apartment and also present during the interview were Tawana Brawley, her cousin, her mother and aunt, Ralph King, and an attorney with the Public Defender's Office who was also president of the Newburgh Chapter of the NAACP.

Tawana Brawley was lying on a fold-out couch in the living room and appeared somewhat dazed and disheveled, apparently lapsing in and out of consciousness. She did not appear to be fully aware of what was going on around her. She answered most of the detective's questions with a monosyllabic whisper or nod of her head such that he was usually unable to either hear or understand the response. Because of this, her aunt or her cousin related most of Ms. Brawley's answers. In order to obtain a response, the questions generally had to be asked in a leading or suggestive manner.

Ms. Brawley indicated in response to the detective's questions that a friend drove her to an apartment in Newburgh. She did not know what time she arrived. She then went to the jail in Goshen with her boyfriend's mother, for a visit with her boyfriend. She stayed at the jail for about two hours and took a bus back to Newburgh. In Newburgh, she took a cab from her boyfriend's mother's apartment to the Newburgh bus station and arrived in the Town of Wappingers after dark. She got off the bus at the service station across from the the Key Bank and started walking alongside the road over a hill. A dark four-door car with two men inside approached, and a white man wearing a black jacket with a silver badge hit her, pulled her by the hair into the back seat of the car and got into the back seat himself. Ms. Brawley was lying down on the seat and did not see what the driver looked like. She recalled being at a place where there were three men dressed in dark clothes, but did not know where she was, although she thought she was in the woods. She was struck again on the head by the man who had previously hit her. One of the men was tall with blond hair and a mustache. He was also wearing a shoulder holster. She recalled feeling cold. The men urinated on her and in her mouth. Ms. Brawley had no recollection of what happened after that, nor of what happened to her on Wednesday, Thursday, Friday or Saturday, nor of how she arrived at the Pavillion Apartments.

The interview lasted approximately 45 minutes. It was the last time Ms. Brawley communicated in any manner whatsoever with anyone from a law enforcement agency.

#### Additional Statements of Ms. Brawley

The limited information that Ms. Brawley provided at St. Francis Hospital on Saturday, November 28, and at her home on Monday, November 30, was the only information that Ms. Brawley ever gave to law enforcement. Neither meeting can truly be called an interview as that term would be commonly understood. At the hospital she spoke but one word to law enforcement and often communicated by accepting the options offered to her by the questioner. The height of an assailant was, for example, the same as that of the officer interviewing her and the assailant's hair color was the same as that of the nurse in the room.

The interview in the home on Monday, November 30, was similar. Ms. Brawley's answers were often suggested or filtered through members of her family. One person present at this meeting told us that Ms. Brawley responded only to leading questions.

The information derived from this interview differed in some significant respects from the information the family had provided to the police on the day before. The account her family provided was more specific and graphic than the information Ms. Brawley related. Moreover, the time she got off the bus varied by approximately three hours, and the location where she got off the bus was on a different road about a mile away. There was, however, no opportunity to reconcile these discrepancies.

The Grand Jury sought to determine if Ms. Brawley had provided anyone with a more detailed account of what had occurred. Most of the witnesses who testified about conversations with Ms. Brawley after Saturday, November 28, said that she declined to discuss the incident or that they had felt that it would be inappropriate to raise it. One witness testified that Ms. Brawley had written to him and said she would tell him "anything you want to know about anything one day."

The Grand Jury did, however, learn of a few conversations that may have been relevant. On Monday, November 30, she told a relative that she wanted whoever "did it" to her to be killed. The next day she mumbled to a friend, without elaboration, the words "six cops." To another friend on the same day she said that "they lied," without explaining what she meant.

In one conversation with a friend, Ms. Brawley said that press accounts that she was not raped were untrue and that press accounts that she was made to perform oral sex were also untrue.

A witness told us that Ms. Brawley "was definite that there were at least three" assailants. That same witness also testified that she believed the claim of six assailants came from a relative of Ms. Brawley's because that number may have sounded more "effective."

The Grand Jury heard recordings of two conversations that Ms. Brawley had with a friend who agreed to record them at the request of the State Police and Dutchess County Sheriff. The calls were made on December 22 and 23, 1987.

In the first conversation Ms. Brawley initially told the caller that she did not want to talk about the incident. The conversation continued however and included the following:

(C: Caller; B: Ms. Brawley)  
C: Is it true what they be writing in the paper?  
B: No.  
C: It ain't?  
B: Well, part of it is.  
C: What part is true?  
B: I was 15 and I (inaudible) me and I did go to Ketcham.

Other aspects of the conversation dealt with the clothes Ms. Brawley wore on November 24, her presence in Newburgh on that day, and the location where Ms. Brawley got off the bus on November 24. At that point Ms. Brawley said: "That's all I have to say. I'm not saying anything else." The conversation continued, however:

C: What this guy supposed to look like, was that part true in the paper?  
B: They wrote it in the paper? I don't know what did they write?  
C: About ah, green car (inaudible)  
B: I don't know nothing to say about it. I don't know where they got that from.  
C: What happened to the guy who was supposed to come to you with the badge? That was fake too?  
B: No, that was fake. (inaudible)

A few seconds later, the caller stated to Ms. Brawley:

C: You don't know nothing.  
B: (inaudible) No, I do remember (inaudible).

On December 23, a second call was made. In that call Ms. Brawley asked if the call was "being taped" and accused the caller of striking a deal with authorities.

In this conversation, Ms. Brawley said her legs hurt and complained of headaches. When asked if she was doing better, she replied: "No, it backfired. Now it hurts, I don't do nothin'." Ms. Brawley was reluctant throughout to discuss the incident.

C: I can't know?  
B: You already read about it.  
C: What you tell me? Half of that wasn't right, right?

B: Yeah, but most of it, the right that you read was  
C: Now, now listen to you.  
B: It was right. Everything. I can't tell you stuff I don't remember.

Later in the conversation, Ms. Brawley stated "But I don't remember the whole thing, so how can I tell you. I don't remember." The conversation then was:

C: You don't remember?  
B: No.  
C: Are you kidding?  
B: No.

A short time later, the conversation was:

C: Can, can't I know  
B: Yes. But how can I tell you something I don't remember?  
C: Then tell me what you remember.  
B: I can tell you what they lied about.  
C: What?  
B: There wasn't no green car.

Later in the conversation, Ms. Brawley repeated: "I don't remember. So how can I tell you what I don't remember." She then said: "I remember more than what I told you. But just a little bit and that doesn't make any difference what I remember."

Later, as the caller continued to press for details, Ms. Brawley said:

B: You know, one of them killed himself.  
C: Who?  
B: One of them, killed himself.  
C: One of them?  
B: Uh huh.  
C: Who?  
B: The cop.  
C: Who, what's his name?  
B: The cop killed himself, committed suicide, he killed himself.  
C: Where was this?  
B: In Wappingers.  
C: How'd he kill himself?  
B: He shot himself in the head.  
C: It was in the papers?  
B: No, they put a news blackout on it.  
C: Yeah.  
B: Yup. There was like a little bit on it an article, you know.  
C: You know, I mean you remember the faces?

B: One.  
C: One of them?  
B: Yes.  
C: Who? That was the one, that what's his name that approached you on the...  
B: Nobody approached me.  
C: Oh the one that showed you the badge.  
B: Yeah.  
C: And you won't tell on him?  
B: I remember everything.  
C: That's what I don't understand.  
B: What?  
C: That's what I don't understand. If they did this to you, why don't you want to tell.  
B: Cause I don't know who.  
C: You don't know?  
B: No.  
C: You don't remember, you just remember faces.  
B: Yup.  
C: That's what you saying. Is you lying?  
B: No. But I remember one of them. I may have touched him like I remember like what he had on.  
C: That's the one who supposed to have shot himself in the head?  
B: No, I'm not gonna say nothing. They didn't do nothing.  
C: What you mean they didn't do nothing.  
B: The people over here?  
C: Um hmmm.  
B: They (inaudible) they don't know if I come (inaudible)  
C: So they, they just said.  
B: They didn't do anything.

Near the end of the conversation she was asked:

C: Where in the hell was you during these four days?  
B: I don't know.  
C: You don't remember.  
B: I don't know. I told you, I don't remember nothing.

To the knowledge of this Grand Jury no other calls were recorded.

The Grand Jury heard testimony from numerous police officers, medical personnel, friends of Ms. Brawley and two relatives. The Grand Jury could not find any witness who said that Ms. Brawley provided any more detailed description of what occurred to her or who was responsible than has been thus far detailed in this report.

Furthermore, Glenda Brawley told a physician at the Westchester County Medical Center on Tuesday, December 1, that her daughter had been unable to give a full account of what happened and that what she had said was neither clear nor reliable. Glenda Brawley stated that she had been trying to piece Ms. Brawley's story together over the weekend and told the physician that Ms. Brawley had been abused, raped and molested by a group of white males. Two days later, Glenda Brawley told a psychiatrist from the same hospital that her daughter was not very communicative and had not been able to say much about what happened to her.

Ms. Brawley never named her attackers at St. Francis Hospital. She has never named them to anyone in law enforcement, nor to anyone at all, to the Grand Jury's knowledge.

#### Ms. Brawley's "Notes"

We heard testimony that on Tuesday, December 1, 1987, Ms. Brawley wrote two or three separate notes stating, "I want him dead" and one note stating, "I want Scoralick." Ms. Brawley made no statement explaining the meaning of the note or notes, to the Grand Jury's knowledge. The Sheriff of Dutchess County is Fred W. Scoralick.

The "I want Scoralick" note was seen by more than one person, although its present whereabouts are unknown. There was testimony that the note was written in an atmosphere of hostility toward the Sheriff. The family had seen the Sheriff on television on Sunday, November 29, and perceived his statements as criticizing the family for not cooperating. On Monday, November 30, and Tuesday, December 1, members of the family and others present in the home made hostile and uncomplimentary comments about the Sheriff's appearance on television. These statements were made in the presence of Ms. Brawley.

Only one witness saw the "I want him dead" notes, and her testimony was partially contradicted by another witness. She recalled one such note having been written about 45 minutes before the "I want Scoralick" note and thought perhaps another such note was written later. She also testified that Ms. Brawley had written a series of messages for friends of hers on the same sheets of paper that the phrase "I want him dead" was written. The sheets of paper were given to a schoolmate who was to pass along the messages. The schoolmate testified that she received the sheets of paper, passed on the messages and threw away the sheets of paper on which they were written, but she said the words "I want him dead" or "I want Scoralick" were not on the pieces of paper.

Thus, it is not clear if any "I want him dead" notes were written, and, if they were, the Grand Jury cannot find a connection in the testimony to the "I want Scoralick" note.

Sheriff Scoralick testified under a waiver of immunity that he had never met Ms. Brawley and only learned of the note when contacted by reporters for a local newspaper.

#### Other Allegations

The Grand Jury heard testimony that persons other than Tawana Brawley and members of her family have made public accusations that Assistant Dutchess County District Attorney Steven Pagonis, a deceased part-time police officer named Harry Crist, and a state trooper perpetrated an attack upon Tawana Brawley. Those making the accusations did not respond to invitations to testify before the Grand Jury.

#### Summary

The allegations as to what may have happened to Tawana Brawley were never made in detail. Her own statements were sketchy and at times contradictory. For example, although she indicated to the black police officer at the hospital that she had been raped, she appeared to indicate to the emergency room physician that she had not. She did clearly tell the emergency room physician that she was forced to have oral sex, but she subsequently told a friend that a published report to that effect was untrue.

The core of Tawana Brawley's allegation is that she was abducted on Tuesday, November 24, taken to a wooded area, and repeatedly sexually assaulted by at least three men, at least one of whom was a "white cop." To the knowledge of the Grand Jury, she has never named her alleged attackers.

#### THE EVIDENCE AS TO TAWANA BRAWLEY'S WHEREABOUTS

In the absence of testimony from Tawana Brawley, and due to the very limited information she provided on the two occasions police authorities were able to interview her, the Grand Jury has had to rely on other evidence to determine where she was and what might have happened to her during her four-day disappearance.

This evidence includes testimony as to efforts by members of her family to locate her during the four-day period; testimony from friends, acquaintances and former neighbors concerning possible sightings of her during this period; the discovery of textbooks that she may have been carrying at the time of her disappearance; and the evaluation by forensic experts of physical evidence recovered from her body, her clothing and the vicinity of her discovery.

#### The Family's Efforts to Locate Her

During the early evening of either Tuesday, November 24 or Wednesday, November 25, a black woman who identified herself as Tawana Brawley's aunt appeared at the Newburgh Police Department and told the desk officer that her niece had run away from

Wappingers Falls and was believed to be somewhere in the vicinity of Liberty Street in Newburgh. The Sergeant who spoke to the woman initially recalled that she came on Wednesday, November 25, but after he checked his duty schedule, he concluded it was Tuesday, November 24.

Because Tawana Brawley's home was in Wappingers Falls, the desk officer informed her aunt that a missing person report had to be filed with the Wappingers Falls Police Department, which should be asked to direct a teletype to the Newburgh Police. The desk officer also asked for a photograph of Tawana Brawley, but her aunt did not have one with her. No missing person report concerning Tawana Brawley was in fact filed until Saturday, November 28, when Glenda Brawley visited the Wappingers Falls Police Department.

During the period following Tawana Brawley's disappearance, her mother called several of her friends and Cathy W., whose apartment in Newburgh Ms. Brawley had visited on November 24, to inquire about her whereabouts. On Thursday, November 26, Thanksgiving Day, Ralph King asked William B. to drive him to the apartment of Cathy W. in Newburgh. Mr. King knocked on the door of the apartment, but there was no answer.

On the next day, Friday, November 27, Juanita Brawley went to Cathy W.'s apartment in Newburgh and accused her of kidnapping Tawana Brawley. Juanita Brawley also telephoned her former husband and made several other trips to Newburgh looking for her niece.

On Saturday, November 28, after leaving the Pavillion Apartment Complex, Glenda Brawley drove to the Wappingers Falls Police Department to report Tawana Brawley missing. She arrived at the police station at 2:02 p.m. According to the officer who took the report, Glenda Brawley first stated that her daughter had been missing since the preceding Tuesday, then corrected herself and said she had actually been missing since Monday, November 23, and that she may have been in Newburgh. When the officer asked Glenda Brawley why she had waited until Saturday to report this, she responded that she worked nights at IBM and did not have a car. (There was testimony that Glenda Brawley's route from work to home passed near the Wappinger Falls police station, and that there were three vehicles in the Brawley/King household.) Glenda Brawley left a photograph of Tawana Brawley and described her as wearing a blue jeans skirt, black shoes, a black top and a gold chain. The officer who took the report and another who was present described Glenda Brawley's demeanor as calm.

Glenda Brawley then drove to the Newburgh Police Department. At 4:20 p.m., she reported to the desk officer that her daughter was missing from Wappingers Falls, and had been seen in the area of Liberty and South Streets in Newburgh. The desk officer described Glenda Brawley's demeanor as calm and pleasant during the fifteen minutes she remained at the station. The

officer did not prepare a missing person report because Tawana Brawley had disappeared from Wappingers Falls, but did record the information and was given a photo.

#### Alleged Newburgh Sightings

The Grand Jury examined the possibility that Tawana Brawley was in Newburgh during the period of her disappearance.

William B., who drove Ms. Brawley to Newburgh on Tuesday, November 24, told an FBI agent in March of 1988, that he had received a phone call from Ms. Brawley on Wednesday, November 25, during which she told him she was not going home and asked him not to tell her parents. He later recanted that story. In his appearance before the Grand Jury, William B. testified that he was telling the truth when he said she never made that call.

The Grand Jury heard the testimony of individuals who, according to the testimony of others, had said that they had seen Ms. Brawley in Newburgh during this period. However, when these individuals testified, they denied having seen her.

One witness maintained before the Grand Jury that he did see Ms. Brawley in Newburgh during this period. He claimed that he had been previously introduced to her by a boyfriend of hers. This witness testified he saw her with an unidentified girl on the afternoon of either November 25, 26 or 27, on Lander Street in Newburgh. He stated he saw her twice meet and engage in conversations with an individual on the street whom he identified. He identified one other person as also being present when this occurred.

These two individuals -- the one to whom Ms. Brawley allegedly spoke and the other who was allegedly present -- both testified and denied the incident.

The witness who claimed he saw her admitted that he had previously lied to investigators about also seeing her in a private home in Newburgh on the same day he saw her on the street. This witness also admitted that he was a crack dealer and that he had been drinking heavily on the day in question. In view of the inconsistencies in his story and the lack of corroboration, the Grand Jury did not accept his account as credible evidence of Ms. Brawley's presence in Newburgh.

The Grand Jury knows of no credible evidence that Tawana Brawley was in Newburgh during her four-day disappearance.

#### The Discovery of Ms. Brawley's Textbooks

Several witnesses who saw Ms. Brawley before she disappeared on Tuesday, November 24, testified about books she carried that day. William B., the friend who drove Ms. Brawley to Newburgh that morning, told us she had "three or four" books,

including one or two textbooks which he described as "an integrated math book or a Spanish book." William B. also recalled Ms. Brawley carrying a "spiral notebook." The other friend in the car when Ms. Brawley went to Newburgh recalled "a couple of books, as in few," which he described as "like school books," but he could not be specific when asked whether he meant textbooks or notebooks.

Cathy W., the woman who lived at the apartment where Ms. Brawley first went when she arrived in Newburgh, also recalled that Ms. Brawley had "two or three hardcover books" with her, which looked "like text covered books from school." The witness could not remember what subjects the books involved, but did recall Ms. Brawley also had a hardcover looseleaf notebook.

Mrs. W., Cathy W.'s mother, who accompanied Ms. Brawley to the Orange County jail, recalled Ms. Brawley carrying what "look[ed] like school books." Mrs. W. did not identify the books with any greater specificity.

The bus driver who said he let Ms. Brawley off at Route 9 in Wappingers Falls that evening described what he believed were "several...school books curled in her arms." During his testimony the bus driver remembered "big textbook-type books" but could not recall if Ms. Brawley had any notebooks. When she left the bus, Ms. Brawley took her books with her.

When Ms. Brawley was found on November 28, there were no books with her. None were found inside her former apartment at 19A Carnaby Drive or in the vicinity of the building.

We heard testimony from a friend of Ms. Brawley who said he shared a locker with her at Ketcham High School. The locker did not have an automatic locking mechanism or a separate lock. After he agreed to share his locker with Ms. Brawley, the friend observed that she put a composition book, a soft cover Spanish workbook and a red hardcover social studies book into the top part of the locker. After hearing that Ms. Brawley had been abducted, the friend looked into the top part of the shared locker "out of curiosity" and saw the same three books.

On March 17, 1988, members of the Attorney General's task force investigating this case interviewed a Ketcham High School classmate of Ms. Brawley's about several different subjects related to the investigation, but the subject of textbooks was not discussed. The next day, several of Ms. Brawley's textbooks were discovered on the teacher's desk in a classroom located ten feet from Ms. Brawley's locker. With Ms. Brawley's books were those of the friend with whom she shared the locker.

The books were not in the classroom the previous day, and both the teacher who last used the room and the custodian who cleaned it later testified that they had left it locked. There were no signs of forced entry into the room. However, there was testimony that all classrooms shared a common key, and it was not

unheard-of for students to have access to the key. Later on March 18, a composition book bearing the name "Tawana Brawley" was found in a first floor stairwell of the high school.

The classmate initially interviewed on March 17 testified that he did not know anything about Ms. Brawley's books or how they arrived in the room where they were found on March 18. The friend with whom Ms. Brawley shared the locker noticed that his books were missing when he went to the locker on March 18. He also saw that Ms. Brawley's books were no longer in the top part of the locker where he had last seen them, but he had not checked that portion of the locker since shortly after Ms. Brawley was found.

The friend with whom Ms. Brawley shared a locker examined the books that were discovered in the classroom and on the stairwell. He identified his books and the three books of Ms. Brawley which he said had been in his locker. He examined the other books of Ms. Brawley which were found in the classroom -- an English book, a Chemistry text and a notebook -- and stated that they had never been in his locker. Of the books issued by Ketcham High School to Ms. Brawley, all but a Spanish textbook were found on the teacher's desk on March 18. Thus, based on the accounts of witnesses who saw her with more than one book on November 24, the Grand Jury cannot rule out the possibility that books that she had with her that day appeared at her school in March.

We have heard testimony that Ms. Brawley said that on the day she disappeared she was carrying two books, one of which was a Spanish book. Ms. Brawley made this statement after the discovery of the school books had been publicly reported, and the Grand Jury is uncertain as to whether those reports may have affected this account.

#### Evidence of Ms. Brawley's Presence in the Woods

The Grand Jury found no evidence that Ms. Brawley spent any length of time in a wooded area.

FBI Special Agent (S/A) Michael Malone, an expert in hair and fiber analysis, examined the jeans, pink shirt and pink shoe that Ms. Brawley was wearing on Saturday, November 28, as well as the black blouse that had been around her head, the ladies' gloves that had been in the plastic bag with her, the bag itself, and the burnt cloth and the cotton-like material (subsequently identified as DuPont Hollofil) found with the bag. He also examined the acid washed denim jacket and jeans found in the washing machine inside Apt. 19A. He further examined the pubic hair combings, fingernail scrapings and clippings, debris removed from her body and hair samples which were obtained as part of the rape kit at St. Francis Hospital. He also studied photographs taken at the hospital of Ms. Brawley.

S/A Malone has examined evidence in approximately fifteen hundred rape cases. Several hundred of those rapes were alleged to have taken place in the woods. In his opinion, it would be impossible for a person to spend any length of time in the woods without picking up a great deal of plant materials on the person or clothing. He stated you would expect to find things like needles, leaves, pieces of wood, twigs and grass fragments. He noted that most rapes take place on the ground. He testified, "Normally you're going to find it all over the clothes, many times in the hair of the individual, pubic combings, all over the body, just everywhere." S/A Malone found "absolutely no plant material."

This Grand Jury also considered the other medical and scientific evidence that is detailed more fully in other sections of this report. Despite weather that dipped to the freezing mark several times during the four-day period, Ms. Brawley exhibited no signs of exposure. She was not dehydrated or malnourished; her breath did not have a bad odor. There were no bruises or scuff marks on her body consistent with having been on the ground. The Grand Jury found no evidence consistent with a person having been sexually assaulted in a wooded area and no evidence that Ms. Brawley spent four days or any significant part thereof in a wooded area.

#### Evidence of Ms. Brawley's Presence at the Pavillion Apartment Complex

The Grand Jury heard accounts from several witnesses, examined certain items of physical evidence, and received expert forensic testimony, all of which pointed to the possibility of Ms. Brawley's presence at the Pavillion Apartment Complex during the period of her disappearance.

#### Pavillion Sightings

On the morning of Thursday, November 26, Thanksgiving Day, a resident of Scarborough Lane arose at approximately 7:30 a.m. The resident and his wife were going to his mother-in-law's for Thanksgiving dinner. They had baked five or six pies and had to get everything together for the trip.

While his wife was getting ready, he went into the dining room and looked out the rear of his apartment. The rear of his apartment adjoins the common area that separates his building from the rear of the buildings on Carnaby Drive. Behind the building that contained units 17, 19, 21, 23 Carnaby, he observed a black woman. He described her as being in her teens or early twenties, wearing an acid washed denim jacket. Her hair was "matted down as if she had slept on it, was flat in the back, and the sides were sticking up as if she had just gotten up." The length of the hair was halfway between the ears and the shoulder.

She was first observed standing about fifteen feet from the rear of the building between units 19 and 17. The resident saw her grab the top of her jacket and clutch it as if for warmth.

The resident observed her walk toward the end window of unit 17 then to the rear corner of the building when she "bent down and she peeked up towards Carnaby Drive...as she made that turn, she walked along the side of the building in a walking position as if she was sneaking up on something, trying not to be seen." When she arrived at the front corner of the building on Carnaby, the resident described her actions as follows:

She then bent down again and she looked across the front of those buildings on that side. So she stood there for a couple of seconds. Then she gave a fast glance to the right, looking down the parking lot of those buildings, down that way. She then turned around and hurried back, not at a fast pace but at a kind of a brisk pace, and she walked around the building again and went into the third patio door.

The resident identified the third patio door as that of Apt. 19A Carnaby Drive. The resident distinguished the way the person walked back to the apartment from the way she walked to the front of the building. He testified, "she looked as though she knew where she was going, not sneaking around or anything, she just went right back."

The resident stated he has never met Tawana Brawley. He stated he did not get a good enough look at the person to make a positive identification. He examined photographs of Ms. Brawley and said that the person he saw on Thanksgiving was consistent with the appearance of Ms. Brawley.

We note from evidence we received that another black teenage girl residing at the Pavillion Apartments in November, 1987, also fits this description. This young woman is approximately the same height as Ms. Brawley, has the same complexion, owns a denim jacket similar to the one worn by Ms. Brawley and, from a distance, could be mistaken for Ms. Brawley. However, this young woman, who is a friend of Tawana Brawley, testified that she spent the evening and night of Wednesday, November 25, all of Thursday, Thanksgiving Day, and the morning of Friday, November 27, with her family visiting relatives in Pennsylvania.

Although this friend of Ms. Brawley did testify that she visited the former Brawley apartment between 9:30 and 10:30 a.m. on Sunday, November 29, the Grand Jury believes that she was not the young woman the Scarborough Lane resident testified he observed. Because it was raining on Sunday morning, Ms. Brawley's friend was carrying an umbrella, which is inconsistent with the observation of the Scarborough Lane resident. Also, she

testified that she entered the apartment by walking from the front of the building housing Apt. 19A to the rear and sliding open the patio door, which was unlocked because her brother had spent the previous night inside the apartment.\* Consequently, her movements do not match what the Scarborough Lane resident said he observed on Thanksgiving morning.

There were other indications that Apt. 19A was occupied by someone during the period from Tuesday, November 24, to Saturday, November 28, 1987.

A Carnaby Drive neighbor testified that he heard a door slam in Apt. 19A at approximately 7:00 p.m. on either Tuesday, November 24, or Wednesday, November 25. He also saw a light on inside the apartment for "quite a few days" prior to and after November 24. His wife testified that she saw a light shining from inside Apt. 19A on either Tuesday, November 24, or Wednesday, November 25. He also testified that on Friday, November 27, at approximately 9:30 a.m., there was loud music coming from either Apt. 19A, which is adjacent to his apartment, or Apt. 19D, which is directly above his apartment. The resident in 19D testified that she did not play any loud music during November and did not have any visitors on Friday, November 27, or Saturday, November 28.

The Grand Jury also heard evidence that certain items found in Apt. 19A at the time of Ms. Brawley's discovery had recently been taken from a neighbor's apartment. During their searches of the Brawley's former apartment, investigators found a pair of denim jeans in the washing machine, and in a closet, a pair of white boots, which had been cut open, exposing the

\* At approximately 1:00 a.m. on Sunday, November 29, this young woman's teenage brother left his family's apartment in the Pavillion complex after an argument with his mother and spent the night in the former Brawley apartment. He had been a friend of Ms. Brawley for two years and knew the apartment was empty because Ms. Brawley had told him earlier in November that she was moving. He made two trips to the apartment that Sunday: at midnight to bring some personal belongings, and at 1:00 a.m. to stay. He entered by opening a window in the rear over the air conditioner and spent the night alone in the apartment, sleeping on the rug directly under the living room window. The only light he turned on in the apartment was in the bathroom, which had no windows. He also turned on the heat for the night and turned it off the following morning. He had no radio or television and made no noise.

At approximately 9:30 a.m. on the morning of Sunday, November 29, his sister went to the apartment and returned a short while later with his mother. He left the apartment, taking all his possessions, at approximately 10:30 a.m. and did not return.

insulation material (subsequently identified as DuPont Hollofil). A neighbor who lived in the adjoining apartment identified both of those items as belonging to her. She had noticed the boots missing from her apartment on Friday, November 27.

Investigators also found in the washing machine with the neighbor's denim jeans, an acid washed denim jacket with a piece of white cotton-like material (subsequently identified as DuPont Hollofil) inside it. This jacket was identified by William B. as his jacket which he had lent to Ms. Brawley and which she was wearing when he dropped her off in Newburgh on the morning of Tuesday, November 24.

As described later in this report, FBI forensic experts examined these items and other evidence from Apt. 19A and by means of hair and fiber analysis were able to further connect Ms. Brawley with Apt. 19A.

The Grand Jury believes that another resident of the Pavillion Apartment Complex may have more information concerning Ms. Brawley's whereabouts during the period of her disappearance than she was willing to reveal in her testimony. This individual is a friend and former classmate of Ms. Brawley.

She admitted in her testimony that on Saturday, November 28, 1987, she told her father that at 1 p.m. that day (which is shortly before Ms. Brawley was first sighted by a Pavillion resident) a "friend" came by her apartment, but she did not allow this friend to enter. She admitted in her testimony that she subsequently told investigators that she had indeed allowed the "friend" to enter and that they had visited for a while.

She testified that she was mistaken in what she told her father on Saturday, November 28, and later to investigators; that the "friend" had not come to her home at 1 p.m. on that day; and that no one had. The "friend", she said, had either been there on a different Saturday, or may not have been there at all. The "friend" she identified is another Pavillion resident and friend of Ms. Brawley, who testified that she was with her family in Peekskill from Thursday, November 26, until Saturday night, November 28.

The Grand Jury does not find the witness's explanation credible and believes she may be concealing information concerning Tawana Brawley.

#### Forensic Evidence

Testimony by forensic experts concerning physical evidence found on Ms. Brawley's body, her clothing and in the vicinity of the Brawley's former apartment, sheds further light on Ms. Brawley's whereabouts between Tuesday, November 24, and Saturday, November 28.

As noted earlier, FBI Special Agent Michael Malone, an expert in hair and fiber analysis, examined Ms. Brawley's pubic hair combings, fingernail scrapings and clippings, debris removed from her body and hair samples, all of which were recovered during her examination at St. Francis Hospital. He also examined the clothing she was wearing and the items found at the scene. As noted above, he did not find plant materials on Ms. Brawley's body or clothing, which would have been present if she had spent any length of time in the woods. However, he did find hair and fibers that indicated Ms. Brawley's presence in Apt. 19A.

S/A Malone found hairs and two different types of fiber on Tawana Brawley and the clothing and items associated with her and the scene. He found pubic hairs consistent with hers in the denim pants found in the washing machine in Apt. 19A. He found head hairs consistent with hers in Apt. 19A, although that was not surprising since she had recently lived there. He found other unidentified Negroid hairs in the apartment. He found a total of five carpet fibers on the jeans she was wearing, the pink shoe, the webbed black strap found with her and the black blouse. These carpet fibers matched the carpet fibers from the rug in Apt. 19A.

S/A Malone also found white DuPont Hollofil fibers in Ms. Brawley's pubic hair combing and in dog feces on the left black glove found in the plastic bag in which she was found. The clumps of white material found near her and in the jean jacket in the washing machine were found to be Hollofil. These fibers perfectly matched the Hollofil fiber in the cut-open white boots found in Apt. 19A. Hollofil fiber is used only in insulation.

S/A Malone stated that based on studies done in England by the Central Research Establishment, 80 percent of the fibers transferred to an individual are gone after only four hours of normal activity; 96 percent are gone after 36 hours. It was his opinion, therefore, that the presence on Ms. Brawley's clothing of five carpet fibers consistent with the carpet fibers from the carpet in Apt. 19A leads to two conclusions: first Ms. Brawley must have been inside the apartment within the two days prior to her discovery; second, originally she had many more of these carpet fibers on her.

He did not find any Caucasian head hairs in Apt. 19A or any Caucasian pubic hairs on any of the items recovered from Ms. Brawley's body, her clothing, or from the scene. He found one Caucasian bleached blonde head hair, a few inches long, on the black blouse that had been wrapped around Ms. Brawley's head at the scene. There was testimony that her clothing had fallen to the floor under the stretcher in the emergency room. In S/A Malone's opinion, this evidence was thereby contaminated because the hair could have been picked up from the hospital floor.

Other expert forensic testimony compared the feces present on Ms. Brawley's clothing and on the clothing found in Apt. 19A with the feces of a neighbor's dog. FBI Special Agent Douglas Deedrick, an expert in hair and fiber analysis, found dog hairs in the feces found on the pink shirt, pink shoe and the black gloves which were in the bag when Ms. Brawley was discovered. He also found dog hairs in the feces on the denim pants which were found in the washing machine in Apt. 19A. After examining the dog hairs embedded in the fecal material on these items, and determining that these hairs had gone through a digestive tract, he concluded that the material was dog feces. He compared these hairs to hairs from the dog belonging to the occupants of Apt. 19B Carnaby Drive and hairs from the dog belonging to the occupants of Apt. 21A Carnaby Drive. According to S/A Deedrick, the dog hair found in the feces on the clothing Ms. Brawley was wearing and on the denim pants found in Apt. 19A are inconsistent with the hair from the Apt. 19B dog; they are consistent with the hair from the Apt. 21A dog. S/A Deedrick testified that, in his opinion, he felt "strongly that dog could have been the source of the hairs."

In examining the black, ladies' gloves found inside the bag with Ms. Brawley, he noted that the feces was smeared on the palms and came up between the fingers and onto the back of the fingers, as though the person wearing the gloves had pressed down on a mass of the feces. The fecal material on the pink shoe was found mostly on the sole, as if the feces had been stepped in.

FBI Special Agent Robert Murphy, an expert in firearms and tool mark identification, examined the white boots, the pink shoe, the black leather strap and the black webbed belt. He also examined the word "NIGGER" which appeared to be cut into the instep of the pink shoe. He determined that the cut of the word in the pink shoe is more characteristic of a single-bladed or sharp-bladed tool, like the razor found in Apt. 19A, than a shearing action type tool, such as scissors. He also stated that the cuts in the white boots and black straps could have been made by the razor found in Apt. 19A or by a shearing action type tool.

Finally, FBI Special Agent Thomas Lynch, an expert in forensic chemistry, examined a number of other materials using light and electron scanning microscopes, including the charred portion of the face cloth material found near Ms. Brawley, a charred portion of the jeans she was wearing, and the charred material found inside Apt. 19A, which he identified as charred cotton. He also examined the material that constituted the writing on the pink shirt. His findings, which are discussed in more detail below, are that the writing was made with charred cotton fibers, and that the charred materials he examined could have produced the writing on the pink shirt.

To recapitulate, the forensic evidence shows that Ms. Brawley spent some time in Apt. 19A during the two days prior to November 28, and that her contact with that apartment was more than fleeting. The relatively large number of carpet fibers found on her clothing which matched the carpet fibers from Apt. 19A show that she had recent and significant contact with Apt. 19A. Similarly, the white DuPont Hollofil fibers which were found in Ms. Brawley's pubic hair combing match the fibers from the white boots found in Apt. 19A. This same fiber was recovered in a clump near the spot Ms. Brawley was found, and on the left black glove found in the plastic bag she was in. Ms. Brawley's pubic hair was present in the denim pants found in the washing machine inside Apt. 19A. Dog hair found in feces on the pink shoe, the pink shirt Ms. Brawley was wearing, and the black ladies' gloves found in the bag with her is consistent with dog hair found in the feces on the denim pants which were recovered from the washing machine in Apt. 19A. Finally, the acid washed denim jacket, with a clump of Hollofil inside it, found in the washing machine, was the jacket she wore on Tuesday, November 24.

The forensic evidence also shows that everything needed to put Ms. Brawley in the condition in which she was found was present in and around Apt. 19A. The dog hairs found in the feces on the pink shirt and pink shoe Ms. Brawley was wearing, the black gloves found in the bag with her, and on the denim pants found in the washing machine, match the hair from the dog belonging to the occupants of Apt. 21A Carnaby Drive. This dog was permitted to defecate in the area behind Apt. 19A and Apt. 21A Carnaby Drive. A razor that could have cut the word "NIGGER" into the pink shoe she was wearing, cut open the white boots, and cut the black leather strap and the black webbed belt, was found in Apt. 19A. Finally, the charred cotton fiber from the charred face cloth found near her, the charred jeans she was wearing and the charred materials found in Apt. 19A was consistent with the charred cotton material used to write the words "KKK" and "NIGGER" on the pink shirt she was wearing.

#### THE EVIDENCE AS TO TAWANA BRAWLEY'S MEDICAL CONDITION

The Grand Jury examined a significant amount of evidence concerning the medical condition in which Tawana Brawley was found on Saturday, November 28, including testimony and written reports from the ambulance technicians who picked her up, the medical personnel at St. Francis Hospital who treated her that same day, a gynecologist who saw her on Monday, December 1, and physicians at the Westchester County Medical Center who saw her on Tuesday, December 2, and on subsequent days.

The Grand Jury also heard testimony from two forensic pathologists who reviewed the testimony and written reports of the personnel who treated Tawana Brawley. Based on their review, the pathologists offered opinions on Ms. Brawley's medical and physical condition and the quality of care she had received.

### Treatment by the Ambulance Technicians

Upon their arrival at the Pavillion Apartment Complex on Saturday, November 28, the emergency medical technicians (EMTs) from Sloper-Willen Ambulance Service found Ms. Brawley in a fetal position in the plastic bag with her head sticking out. She had a black blouse around her head and maintained a biting grip on it.

Their first course of action was to check for responsiveness, the primary airway, breathing, and circulation. One EMT testified that when she first saw Ms. Brawley, she appeared unconscious and unresponsive. There was no visible reaction to a sternal rub that was applied in order to cause pain and obtain a response. An ammonia inhalant was passed under Ms. Brawley's nose, and there was no reaction. The EMT attributed this to the presence of cotton-like material in her nostrils.

During the course of the EMT's exam, Ms. Brawley reached out and grabbed, with both of her hands, the hand of one of the EMTs. The EMT could not easily get her hand away from Ms. Brawley's grip and had to forcibly pull Ms. Brawley's hands off. The EMT attempted to check Ms. Brawley's pupils and encountered difficulty in opening her eyes. She testified that she had to use some force to open them. She stated that Ms. Brawley's pupils were dilated and reacted only slightly.

One EMT conducted a head-to-toe survey and found no injuries, cuts, bleeding, swelling or deformity. She testified that Ms. Brawley "just appeared like she was, for an unknown reason, just laying behind the building." The EMT took her vital signs and recorded her as having shallow respiration with a weak and slightly irregular pulse. The EMT observed that she was wearing burnt jeans and had redness on her legs and stated in the written report prepared later that there were burns on her legs. (Subsequent examination at the hospital showed that there were actually no burns.)

The two EMTs attempted to get Ms. Brawley out of the fetal position and tried to pull her legs out so she would lie flat but were unable to do so.

In the ambulance the I.V. was started and Ms. Brawley exhibited no visible reaction to the needle's insertion. Dextrose was administered via the I.V., as well as Narcan. Narcan is a narcotic antagonist that would cause a reaction in a patient who was under the influence of certain narcotic drugs but has no effect on Valium, cocaine and certain other drugs. There was no reaction to the administration of the Narcan. Prior to their arrival at the hospital, the vein in which the I.V. was inserted collapsed, and the fluid, instead of entering the vein, infiltrated the tissue. As a result of this, the I.V. was removed to be reinserted at the hospital.

After arriving at the hospital, the EMTs filled out reports. Among other things, the EMTs used a standard scoring system called the Glasgow Coma Score, which is used as a quick means of broadly assessing the condition of a trauma victim. They scored Tawana Brawley as a three on a scale of three to fifteen. (This assessment, which was contradicted by other medical evidence, will be discussed later in the report.)

Ms. Brawley was taken from the Pavillion by the ambulance at 2:22 p.m. She arrived as a "Jane Doe" at St. Francis Hospital in Poughkeepsie at 2:39 p.m.

### Treatment at St. Francis Hospital

Immediately after Ms. Brawley's arrival, she was examined by the emergency room physician, a specialist in emergency medicine since 1981. Initially, Ms. Brawley did not react to voices or commands and appeared to be unconscious. However, the physician determined that she was never unconscious in the emergency room. After having initially resisted the physician's efforts to open her eyelids, Ms. Brawley subsequently opened her eyes when the physician said to her, "I know you can hear me, so open your eyes." The physician also performed a consciousness test by raising Ms. Brawley's arm directly above her face and letting it fall. If the patient is unconscious, the arm will strike his or her face; a conscious patient will be aware of the threat to his or her face and will alter the course of the arm's fall, according to the physician. In Ms. Brawley's case, her arm did not strike her face.

In the course of the examination and treatment, Ms. Brawley was able to follow commands, sit up and lean over, push herself down on the stretcher, place her legs in stirrups, move her legs to position herself, and physically react to the normal discomfort caused by aspects of the examination. Ms. Brawley did not complain of any pain during this examination.

Neither the physician nor an emergency room nurse found evidence of any injuries, broken bones, discolorations, contusions or bruises, other than a small bruise on the back of her head and the swollen left arm where the I.V. inserted in the ambulance had infiltrated. The physician described the bruise as being approximately the size of a quarter. It was not tender, there was no collection of fluid underneath it, and when the doctor touched it, Ms. Brawley did not wince or pull away in pain. The doctor estimated that the bruise did not appear to be fresh and could have been one day to several days old. She testified that the bruise was unlikely to have been able to cause unconsciousness.

There were no bruises, lacerations, tenderness or blood in the rectal area, and there was no evidence of trauma to the mouth or the back of the throat. An examination of the vaginal and pelvic areas did not reveal any cuts, dried blood, bruising, swelling, deep redness or any other evidence of injury, nor was there any in the surrounding outside skin.

Examination of Ms. Brawley's legs where one EMT thought she noticed burns disclosed that there were in fact no burns. Moreover, there were no burns anywhere on Ms. Brawley's body.

There was no evidence of exposure, low body temperature, dehydration or undernourishment. (Weather reports introduced into evidence indicated that the temperatures for the days Ms. Brawley was missing were as follows:

	Low	High
Tuesday, November 24	30° at 5 a.m.	57° at 2 p.m.
Wednesday, November 25	32° at 1 a.m.	50° at 2 p.m.
Thursday, November 26	32° at 12 a.m.	50° at 12 p.m.
Friday, November 27	31° at 4 a.m.	40° at 2 p.m.
Saturday, November 28	34° at 1 a.m.	43° at 2 p.m.)

Her teeth were clean, and her mouth did not have a bad odor. In her testimony, the emergency room physician noted that a typical person who came into the emergency room having been out in the environment would not have brushed her teeth or have good hygiene of the mouth. This would result in a bad odor, even if the person was out only overnight. Ms. Brawley's good dental hygiene was inconsistent with not having brushed her teeth in three or four days. No evidence of urine was found in Ms. Brawley's mouth.

Ms. Brawley's respiration was noted by hospital personnel at 22 breaths per minute, her pulse was 78 and regular, her temperature stable at 99 degrees, and her blood pressure 138/98.

A blood test was conducted which revealed no evidence of alcohol.

Ms. Brawley voided urine in the stretcher in the emergency room two times. This precluded the taking of a urine sample for testing. The physician determined no physical reason for Ms. Brawley to have been incontinent.

The emergency room physician administered the standard rape kit provided by the New York State Police.

The rape kit involved several procedures:

- 1) wipings and cultures were taken from Ms. Brawley's vaginal area and checked for sperm motility (i.e., sperm that may have been present and moving); this was microscopically

- examined immediately and no motile sperm was detected, although a white discharge of trichomonas was present;
- 2) pubic hair was combed for any materials trapped in it;
- 3) pubic hair was pulled;
- 4) debris that had adhered to Ms. Brawley was collected;
- 5) vaginal swabs and smears were taken and placed on slides;
- 6) rectal swabs and smears were taken and placed on slides;
- 7) swabs of the mouth were taken and placed on slides;
- 8) Ms. Brawley's fingernails were clipped and the material embedded in them was collected;
- 9) a saliva sample was taken;
- 10) hair was pulled from different areas on Ms. Brawley's head;
- 11) blood was drawn.

The results of the laboratory analysis of the rape kit evidence are discussed later in this report.

Further blood tests were conducted by FBI Special Agent Thomas Lynch, an expert in forensic chemistry, who analyzed the sample of Ms. Brawley's blood from the rape kit. He found no evidence of alcohol or any of four hundred drugs, including Valium. The blood was not tested for marijuana or LSD. He also tested the orange pill that was found on her clothing at the hospital and found it to contain what is commonly known as Valium. (The circumstances under which the pill was found on the floor at the hospital make it possible that it was not brought in with Ms. Brawley.)

#### Gynecological Examination

On Tuesday, December 1, 1987, Ms. Brawley was examined by a gynecologist from a nearby city. Before her examination, Ms. Brawley's aunt informed the doctor that her niece was unable to walk or talk. The physical examination was restricted because Ms. Brawley "appeared to be in pain," according to the gynecologist's testimony. She grimaced when the gynecologist attempted to move her head, appeared to be in pain when attempting to position herself in the stirrups and would not cooperate with the cervical examination because of the pain. However, the gynecologist did not observe any black or blue marks or swelling on Ms. Brawley's legs and found no physical reason for her inability to walk. The gynecologist also concluded that Ms. Brawley did not have any gynecological problem, and there was no need to admit her to a hospital as a gynecological patient.

Treatment at Westchester County Medical Center

On Tuesday, December 1, 1987, Tawana Brawley was examined in the Westchester County Medical Center Emergency Room by a pediatric resident physician. Glenda Brawley told the physician that because her daughter was shy, she would answer all the questions and give the medical history. Glenda Brawley told the physician that the account she would give of what happened to Tawana Brawley might not be reliable or be a good history because Ms. Brawley had been unable to give her a full idea of what happened. According to Glenda Brawley, Tawana Brawley was in good general health until she was abused, raped and molested by a group of white males. Now she was suffering from slow speech, headache, hip pain, inability to walk, pain above the left eye, pain in the left shoulder, pain in the left side of the neck, pain in the left arm (from an I.V. infiltrate), pain and tenderness in the lower abdominal area, and pain in the lower back. She also had no control over her urge to urinate. Tawana Brawley was present while Glenda Brawley related these complaints and appeared to be in agreement with her mother's statements.

The doctor's report of the examination recorded a mildly tender area above her eye and tenderness on the left side of her neck, her left shoulder, ribs, pelvic area and hip. Ms. Brawley was either unable or unwilling to move her legs, but had full range of motion in her arms, hands, neck and feet. She reacted normally to light touches on her arms, legs, hands and feet and exhibited normal motor functions, indicating she was able to move in response to signals sent from the brain, and had good and equal bilateral strength, adequately resisting the pulling of arms and legs. Her reflexes in the arms, hands, knees and feet were within the acceptable limits for a healthy person. There were no bruises on Ms. Brawley, or swelling, except for her left arm. X-rays of her hips, ribs, and left shoulder were negative, and her blood and urine tests were normal. She was menstruating at the time. Her left hand grasp was weaker than her right, and she was able to push both feet against a nurse's hands with equal strength.

During the exam, Tawana Brawley and her mother were friendly and agreeable and did not seem gravely concerned about any immediate problem. Glenda Brawley stated that everything had been done to her satisfaction at St. Francis Hospital, and she just wanted a physical exam for her daughter. Ms. Brawley was given an appointment with the adolescent medicine department, but was not admitted on Tuesday, December 1, because the physical findings did not warrant hospitalization. However, according to another physician at the Medical Center, "[i]t was decided that [Tawana Brawley] should be called back to the hospital and admitted because this case had already been in the press and was therefore somewhat high profile, and because this would be the best manner in which to coordinate all the necessary services for her."

Tawana Brawley was admitted to Westchester County Medical Center on Wednesday, December 2 (and was discharged on Friday, December 4). A resident physician in the emergency room and an assistant professor of pediatrics at the Medical Center examined Tawana Brawley. She did not respond to any questions, and her mother provided a brief history. The examination revealed that she had no physical problems though she said she was unable to walk, was weak and exhibited low muscle power. When asked, she said she was unable to move her arms and legs, and when told to stand, she dropped to the floor. She had tenderness in her lower abdominal area and a bruise on the back of the head, though otherwise did not appear to be in any pain. Skull X-rays were negative, her vital signs were normal, she had a one-inch abrasion over the right breast that was described as a scratch, no lacerations in the vagina, nor any redness or bleeding of the cervix, and her arms and legs had a full range of motion when manipulated by the physician.

The pediatrics professor's impression on Wednesday, December 2, was of an alleged sexual and physical abuse, which was based on the history provided by Glenda Brawley, as well as a possible conversion reaction, a condition in which physical symptoms are produced by the unconscious mind. A psychiatric consultation was ordered.

Ms. Brawley was then examined on that same day by a specialist in pediatric neurology. In the examination, Ms. Brawley exhibited signs of weakness in her arms and legs when undergoing specific strength tests, but when she had to adjust or move her body in order to assume new positions, she showed no sign of weakness or paralysis and was able to move her legs without pain. She exhibited normal reflexes in her legs and reacted normally to the plantar response test (stroking the bottom of the foot). There were no spinal cord, nerve or muscle problems nor were there any areas of her legs or arms that did not have sensation. There was no evidence of brain swelling or concussion.

The neurologist testified that Ms. Brawley was "unconcerned," and, in his judgment, not acting properly for one who had undergone such a traumatic event: "that even though you're telling somebody that you're paralyzed and you've obviously apparently been through a lot, you are for some reason quite happy and acting like everything is okay, when it doesn't appear to be okay at all. It was an inappropriate affect for the situation." He concluded that Ms. Brawley's complaints were nonphysiologic, but rather psychogenic.

On Thursday, December 3, 1987, Ms. Brawley was again examined by the professor of pediatrics. Ms. Brawley reported improvements in the strength of her left arm and left leg, but in subjective tests, in which the results are able to be controlled by the patient, Ms. Brawley exhibited decreased strength in her left arm and both legs. A test was conducted in which Ms. Brawley's left arm was held above her face and dropped. The hand

did not strike her face, which indicated that there was no organic basis for the weakness. Therefore, according to the physician, this movement by Ms. Brawley could be attributable to either conversion reaction or malingering. Malingering was defined by the physician as a condition in which the patient consciously either feigns or prolongs a certain symptom.

Ms. Brawley was examined again by the pediatrics professor on Friday, December 4, 1987, and showed both subjective and physical improvement in her arm and legs, and no evidence of neurological disease. Ms. Brawley's complaints of paresthesia (tingling or numbness) and absence of sensation varied from examination to examination. The professor's impression was "conversion reaction and/or post-traumatic stress disorder." Malingering was still considered a possible diagnosis. A December 7, 1987 examination produced the same impression.

Ms. Brawley was discharged from the Westchester Medical Center on Friday, December 4, 1987. At the time of Ms. Brawley's discharge, the pediatrics professor who was the discharging physician had not entered a "discharge diagnosis," nor did she sign the face sheet of Ms. Brawley's medical records. The Department of Medical Records later entered a discharge diagnosis of "multiple contusions." Upon being advised of this invalid discharge diagnosis, the discharging physician crossed out the erroneous diagnosis, wrote "error," dated and initialed it, and wrote her discharge diagnosis of "conversion reaction and alleged sexual abuse."

A computer printout, which was a "billing abstract" prepared for the billing department of the medical center listed "rape" as a discharge diagnosis for Ms. Brawley. The printout was prepared for billing and research purposes by a billing department coder who reviewed Ms. Brawley's medical records and abstracted the diagnoses into a numeric code to conform to the guidelines of the World Health Organization. The physician's discharge diagnosis of "alleged sexual abuse" was numerically coded as "rape" because that is the closest code available under the guidelines. There is no numeric code for either "sexual abuse" or for "alleged."

The discharging physician did not make a diagnosis of rape. She testified that she "would not in any circumstance make a medical diagnosis of rape...because it was not my role as a physician to determine what may have occurred." No diagnosis of "rape" was entered by any physician in any part of the Westchester County Medical Center records for Tawana Brawley, and there were no test results or findings by any of the examining and treating physicians at the medical center that indicated that sexual activity had taken place or that she had been raped.

Ms. Brawley met several times with a child and adolescent psychiatrist at Westchester Medical Center. These meetings will be discussed later in this report.

#### Evaluation by Forensic Pathologists

The Grand Jury heard testimony from two experts in forensic pathology concerning their evaluation of the medical condition in which Tawana Brawley was found on Saturday, November 28.\*

Dr. Michael Baden is a physician, medical examiner, and forensic pathologist and is currently the Director of the Forensic Sciences Unit of the New York State Police. He is a former Chief Medical Examiner for the City of New York and was the chief forensic pathologist and chief medical consultant to the United States House of Representatives Select Committee on

Dr. Baden reviewed Ms. Brawley's condition and treatment when she was in the care of the EMTs, St. Francis Hospital and Westchester County Medical Center.

Dr. Baden examined the reports of the EMTs and their testimony along with the testimony of the witnesses who observed her when she was found. Dr. Baden testified at some length regarding the observations and actions of the EMTs.

Dr. Baden testified that Tawana Brawley's respiratory rate of 8 to 10 breaths per minute, which was reported by the ambulance technicians, was consistent with her being relaxed and is not a sign of "any debility or abnormality." He testified that her pulse rate of 60 or 62 is "a little bit slow, but again consistent with resting." This rate is consistent with her being not "frightened" but rather that she was "calm." He also noted that her pulse was repeatedly found to be in the range of 60 when she was tested in the Westchester County Medical Center several days later.

He testified that her blood pressure on Saturday, November 28, as recorded by the EMT (90/50), was "a little bit low," but that it was not unusual for an adolescent and that it was consistent with the readings recorded at the Westchester County Medical Center several days later.

\* The Grand Jury's investigation was assisted by the testimony of four medical experts: Dr. Michael Baden, Dr. Justin Uku, Dr. Erza Griffith and Dr. Park Elliot Dietz. They were granted access to the testimony of witnesses and evidence presented to this Grand Jury through an order of the Supervising Judge of the Grand Jury issued pursuant to Criminal Procedure Law § 190.25(4). Assassinations that reviewed the deaths of President John Kennedy and the Reverend Dr. Martin Luther King, Jr. He is a visiting professor of pathology at Albert Einstein School of Medicine in New York City, associate professor of forensic medicine at New York University School of Medicine, adjunct professor of law at New York Law School, visiting professor at John Jay School of Criminal Justice and teaches at Columbia University School of Physicians and Surgeons.

He concluded that he regarded her vital signs on Saturday as "as being consistent with good health" and that "she has no physical problems, no physical abnormalities, no injuries."

Dr. Baden also reviewed the Sloper-Willen Community Ambulance Service reports. In his view, the findings of the EMT were "rough estimates" of Ms. Brawley's condition taken on three separate occasions during a 17-minute period in an emergency situation. The goal of the EMTs was to provide the best emergency medical care, that is, to assume the worst and treat for the worst with the hospital eventually providing the appropriate medical treatment. Their purpose is not to give a medical evaluation of what happened.

The Pre-hospital Care Report, which is filled out by the EMT after returning to the office, contains, among other information, a listing of the vital signs, the level of consciousness, and the GCS, or Glasgow Coma Score. Dr. Baden explained that the GCS is a system for quickly evaluating how critically ill a patient is, most commonly from head trauma. There are three items that are considered in computing the score. The GCS listed here was 3, the lowest possible score. That score would mean that Ms. Brawley was virtually brain dead. Dr. Baden testified that in his opinion, this score was clearly "wrong" and "not at all valid."

A patient should receive a score of one if the patient cannot open the eyes. If a patient can open the eyes, the score should be four. Where, as here, the person resists opening the eyes, the score should also be four. The second category measured is motor response: if the patient cannot move, the score should be one. If the person can move, the score should be six. Here Ms. Brawley grabbed the EMT's wrist. She should have received a score of six. The third category is verbal response. The worst score is one and the best five. There is a difficulty in determining whether a person cannot or does not want to talk. Nonetheless, Ms. Brawley's GCS should have been at least ten out of fifteen, a good score, according to Dr. Baden, rather than three.

Dr. Baden also testified that, from his review of the testimony of the ambulance technicians, the sternum rub test may not have been done properly. The EMTs had concluded from the test that Tawana Brawley was unconscious. Dr. Baden noted that correct application of the sternum rub test "requires a certain sadism" on the part of the doctor and that it involves putting "severe pressure" on the chest, not just a "rub." If the test had been done correctly, he believes Ms. Brawley would have winced. He also said that a negative response to the sternum rub test indicates a condition that "doesn't come and go in 20 minutes" and that at St. Francis Hospital, she was clearly not unconscious.

The reports filed by the EMT indicated that Ms. Brawley's pupils were non-reactive and dilated, although the EMT testified that her pupils, in fact, reacted slightly. In either event, these findings are unremarkable under the circumstances, according to Dr. Baden. Twenty minutes later in the hospital the findings were perfectly normal.

Dr. Baden testified that, in his opinion, Ms. Brawley "was not in severe trouble immediately and physically at the time she was picked up."

Dr. Baden testified that in his opinion, Ms. Brawley received good and appropriate medical care from the ambulance technicians, though he disputed their diagnostic findings, and good and appropriate care at St. Francis Hospital. It was also his opinion that the emergency room physician collected the evidence for the rape kit properly and professionally. He noted that for "criminal justice" reasons, he would have wished for more evidence to have been saved, but also acknowledged that a physician's first concern is to treat a patient accurately, carefully and in a caring manner -- not to secure evidence. He felt that nothing much was lost as a result of the time that elapsed between Ms. Brawley's arrival at the hospital and the administration of the rape kit. He also noted that not much was lost because her body, other than the pubic perineal region, had been washed prior to the administration of the rape kit, since her body had been photographed with the fecal matter and markings still on it and the fecal matter on her clothing had been preserved.

Dr. Baden also gave his opinion that the care at Westchester County Medical Center was appropriate and within accepted medical standards. He also believed the care was necessary. Ms. Brawley had physical complaints that had to be evaluated, and the emotional impact of the alleged assault had to be evaluated.

Dr. Baden concluded his testimony by saying that "there's no evidence, in my opinion, within a reasonable degree of medical certainty of any physical trauma at all." He also concluded, based upon the medical reports from Westchester County Medical Center, that there were "no physical reasons she couldn't walk."

He testified that further evaluation of her condition at the time of her discovery on Saturday and of her apparent inability to walk subsequently should be left to psychiatrists.

Dr. Justin Uku, a forensic pathologist and the Chief Medical Examiner of Erie County (his other credentials are listed later in this report) who testified extensively on other aspects of this case, briefly commented on Tawana Brawley's medical condition. He testified that "from my review of the medical evidence there was nothing that should have caused the position, the situation she was in" when she was found on Saturday, November 28.

#### THE EVIDENCE AS TO A POSSIBLE SEXUAL ASSAULT

The Grand Jury examined evidence concerning the possibility that Tawana Brawley was sexually assaulted. This evidence consisted of testimony of the doctors who examined her, testimony of FBI experts who analyzed the evidence gathered in the rape kit and other physical evidence secured during the course of the investigation, and testimony from two forensic pathologists who reviewed these FBI reports and the medical reports concerning her condition.

#### Medical Evidence

The testimony of the doctors who examined Ms. Brawley on and after November 28 has been detailed in prior sections of this report. No semen was found on Ms. Brawley at St. Francis Hospital and no motile sperm was detected on the slides examined at the hospital. As previously noted, there were no bruises, lacerations, tenderness or blood in the rectal area and no evidence of trauma to the mouth or back of the throat. There were no cuts, dried blood, bruising, swelling, deep redness or any other evidence of injury to the vaginal or pelvic area, nor was there any in the surrounding outside skin.

#### Testimony of the Forensic Serologist

Special Agent Joseph Errera of the FBI, an expert in forensic serology, performed serological tests of the evidence gathered in the rape kit. The rape kit included Ms. Brawley's blood and saliva samples, swabs of Ms. Brawley's mouth, vagina and rectum that were applied to glass microscope slides, and material gathered from under Ms. Brawley's fingernails.

S/A Errera tested the blood and saliva samples and determined that Ms. Brawley's ABO blood group was B and that she is a secretor; that is, her other body fluids would contain factors associated with group B individuals. He examined the materials gathered from Ms. Brawley's fingernails and the specimens from the swabs of Ms. Brawley's mouth, vagina and rectum. He did not find blood, sperm cells or P-30 (prostate antigen), a substance unique to semen, in any of the items examined.

S/A Errera testified that individual physiological factors, such as the stage of the female's menstrual cycle, the amount of her bodily secretions, or the amount of bacteria in her body cavities, can affect the degree to which semen deposited in her body cavities will be degraded or diluted and made undetectable. He testified that the period 48 hours after ejaculation is the optimal time during which to take samples for the presence of semen in the victim's orifices. He further testified that in his

opinion there is a very high likelihood that semen would be found in the body cavities of a female if three or more males repeatedly ejaculated into her orifices over a four-day period, and there was no effort to remove the semen by internal washing, and the victim was examined within 48 hours of the last sexual activity.

S/A Errera also performed tests for blood and semen on the clothing Ms. Brawley was wearing when she was found; the black straps, burnt cloth, and black gloves found near or in the bag in which she was found; the bag itself and bags used to package evidence; and the clothing, white cotton-like material, a five-dollar bill found in the white boots (by FBI technicians at the lab), and a stain removed from the wall, all found in Apt. 19A. He testified that in testing for semen on such items, he locates a stain visually with the aid of an ultraviolet light. He then conducts tests on the stain, screening for acid phosphatase, an enzyme or protein found in semen, and for choline, a chemical substance produced in the male's seminal vesicle and found in semen. If he finds those two chemical substances in the stain, in order to confirm that semen is present, he looks for sperm cells under a microscope, and tests for the presence of P-30. If he either finds sperm cells or detects P-30, he identifies the stain as containing semen. He testified that dry semen stains can last up to thirty or forty years on clothing that has not been laundered and has been stored at relatively cold temperatures in a dry condition.

S/A Errera did not find blood or semen stains on any of the items.

#### Testimony of the Hair and Fiber Expert

As noted earlier, S/A Michael Malone, an expert in hair and fiber analysis, testified that he did not find evidence of plant material on Tawana Brawley, her clothing, the items found with her, in her pubic combings and the other items he examined. The absence of such evidence is inconsistent with a sexual assault having occurred in a wooded area. S/A Malone provided additional evidence relevant to the question of whether or not Ms. Brawley was the victim of a sexual attack.

S/A Malone briefly explained the transfer theory of Locard. Simply put, it means that if two people come into close contact with one another, there will be a transfer of either hairs, fibers or both. S/A Malone testified that in his opinion if three Caucasian men sexually assaulted a person he would expect a transfer of a large number of Caucasian hairs, especially pubic hairs. He would expect to find this even if the assailants wore condoms.

S/A Malone found no pubic hairs of any kind, other than Ms. Brawley's, on any of the items he examined. He found no Caucasian hairs of any kind on Ms. Brawley, in her pubic hair combings, fingernail scrapings, or in Apt. 19A. He found a

single Caucasian bleached blond hair which was several inches long on the black blouse that had been wrapped around Ms. Brawley's head when found. This blouse had fallen to the floor at St. Francis Hospital and was kicked under her stretcher in the emergency room. In S/A Malone's opinion, this blouse was thereby contaminated, and the hair could have been picked up on the hospital floor. S/A Malone found unidentified Negroid hairs in Apt. 19A, and a pubic hair matching Ms. Brawley's in the jeans found in the washing machine. Head hairs consistent with hers were found in Apt. 19A and on the right black ladies' glove found in the plastic bag with her. He found no other significant hairs.

#### Testimony of the Forensic Pathologists

Dr. Michael Baden, Director of the Forensic Sciences Unit of the New York State Police, testified as an expert in the field of forensic pathology. He testified that, based on his experience, in a case where a fifteen-year-old girl is sexually assaulted by three or more men over a period of four days in a wooded area, he would expect to find physical evidence to corroborate the allegations. He would expect to find confirming laboratory findings of body fluids in the orifices involved. There would be trace evidence from the assailants of fibers, hairs, semen, saliva. There would be grass, leaves, soil, pine needles, etc. on the body and the clothing if the attack took place in the woods. There would be some physical injury, such as bruises or marks in the vaginal or perineal area. There might be marks where the victim was punched, handled or squeezed.

Dr. Baden examined the medical records, the relevant physical evidence and much of the testimony presented to this Grand Jury. He stated that he found no evidence consistent with an allegation that Ms. Brawley had been repeatedly sexually assaulted over a period of four days by at least three men in a wooded area. It was his expert opinion that the lack of any evidence of physical injury, of sexual contact, of trace evidence of hairs, fibers and plant materials was inconsistent with an allegation of sexual assault by multiple assailants in a wooded area over a period of four days.

If the allegations concerning what happened to Ms. Brawley had been different, the evidence he would expect to find would be different. If Ms. Brawley had been assaulted only orally, he would not expect to find evidence of semen. However, he would expect some injury to a fifteen-year-old female assaulted by three men. If Ms. Brawley had been forced to have oral sexual activity and then was unconscious for a period of time, it is more likely that evidence of semen would be present. If three men ejaculated into an unconscious person's mouth, it is very likely that the victim would either suffocate or develop very severe pneumonia. An unconscious person loses the gag reflex. Without the gag reflex, foreign materials can go down the windpipe, causing suffocation, or can get into the lungs, causing pneumonia.

Dr. Justin Uku is a forensic pathologist who is currently the Chief Medical Examiner for the County of Erie. He has also served as a medical examiner in Nigeria and New York City. In addition to his medical degree, he has a diploma in clinical pathology from the University of London, has taught in medical schools in Nigeria and is an Associate Clinical Professor in Pathology at the State University of New York at Buffalo. He testified as an expert in the field of forensic pathology.

He testified that, based on his experience, in a case where a fifteen-year-old female is sexually assaulted by three or more men over a period of four days in a wooded area, he would expect to find physical evidence to corroborate the allegations.

He would expect to find evidence of exposure, malnutrition and dehydration. He would expect to find evidence of the assault such as physical injury, scrapes, abrasions, bruises on her arms and legs, a black eye, bruises in the mouth if she was slapped, and bruises and scratches in the pelvic area. He would expect to find seminal fluid in the body cavities and on the clothes. He would also expect to find leaves and soil on her body and clothing.

Dr. Uku examined the medical records, the relevant physical evidence and much of the testimony presented to this Grand Jury. He stated that he found no evidence consistent with an allegation that Ms. Brawley had been repeatedly sexually assaulted over a period of four days by at least three men in a wooded area. It was his expert opinion that the lack of any evidence of physical injury, of sexual contact, of trace evidence of hairs, fibers and plant materials, was inconsistent with an allegation of sexual assault by multiple assailants in a wooded area over a period of four days.

Dr. Uku testified that the evidence he would expect to find would vary depending on the nature of the alleged assault. If the assault had taken place in a house, he would expect to find trace evidence from the house. If Ms. Brawley did not resist the attack, he would not expect scratches but he would still expect some bruises either in the mouth, vagina or rectum. If Ms. Brawley were assaulted only orally, he would still expect to find some bruises because she would have had to be held somehow.

As to the length of time evidence could be expected to last, Dr. Uku testified that even if the attack had occurred on Tuesday night only, he would still expect to find bruises, and scratches to a lesser extent, four days later. He would also still expect to find evidence of semen on Saturday if several men had ejaculated into her Tuesday night.

Dr. Uku concluded that, "The absence of any of the factors I mentioned before on the body would seem to discount that such an assault took place."

#### THE PSYCHIATRIC EVIDENCE

Over the course of the period from Saturday, November 28, through Friday, December 4, 1987, Tawana Brawley was seen by at least seven physicians. None of them found any physical basis for her seeming unresponsiveness at the time of her discovery or the physical symptoms she manifested later on, including her limping and inability to walk. Several suggested to the Grand Jury that the cause of these apparent symptoms was psychological rather than physical.

The Grand Jury heard evidence from three psychiatrists. One is an adolescent psychiatrist at Westchester County Medical Center who met with Tawana Brawley, and the other two are experts in forensic psychiatry.

The three psychiatrists testified as to the possible diagnoses which might explain Tawana Brawley's condition on Saturday, November 28, and her subsequent symptoms.

Their testimony included frequent references to psychiatric terminology, particularly the following three terms:

-- Post traumatic stress disorder, a condition in which the patient has suffered a severely stressful event and is experiencing acute anxiety symptoms which are of significant duration.

-- Conversion disorder, a condition in which an individual has a loss of physical functioning that suggests a physical disorder, but is actually a direct expression of a psychological conflict or need. Such a disturbance is not voluntarily controlled and is not explained by any physical disorder that may be present.

-- Malingering, a condition in which the patient consciously and deliberately displays false physical or emotional symptoms.

#### Tawana Brawley's Meetings with the Westchester County Medical Center Psychiatrist

Tawana Brawley met with an adolescent psychiatrist at Westchester County Medical Center on several occasions during her stay and on several more occasions after her discharge during December and January. This psychiatrist testified concerning the meetings with Tawana Brawley and her family.

At the first meeting on the morning of Thursday, December 3, 1987, Glenda Brawley and Ralph King, who were eager to cooperate, provided all the family history including statements that they had had no difficulties with Tawana Brawley and that Ms. Brawley adhered to their rule that she had to be in the house every night before dark. When asked if Tawana Brawley had ever stayed away for a night without calling, they initially

responded that that had never occurred but subsequently said that it might have. (In a conversation with a Medical Center social worker on the same day, Glenda Brawley stated that her daughter had, on occasion, stayed away overnight without calling.)

Neither Glenda Brawley nor Mr. King could tell the psychiatrist much about the incident, other than the way she was found, with her hair cut, feces smeared on her body and "KKK" written on her. Glenda Brawley stated that her daughter was not very communicative, seemed dazed and could not tell her much.

Tawana Brawley responded to the psychiatrist with one- or two-word answers, mostly "yes" or "no". She was alert, able to relate and had good reality perception. Other than insisting that she felt ugly since the event, she refused to talk about the incident, although she did say she might talk some day to her cousin or a friend about it. She was fearful of returning to school and the neighborhood because of all the publicity. The psychiatrist felt after this initial meeting that Ms. Brawley may have been malingering or suffering a conversion disorder.

The second meeting was held in the afternoon of that same day, and Ms. Brawley's mood appeared to have improved from the morning. She was sitting up, talking about getting a wig, thinking about the future and, in general, was more communicative than before.

The third meeting was held on Friday, December 4. Ms. Brawley continued to show improvement in her interaction, and the psychiatrist recommended that she be discharged.

The fourth meeting was held on December 7, after her discharge from the hospital. Glenda Brawley was reluctant to leave her daughter alone with the psychiatrist, but agreed to after mild urging. Tawana Brawley, who arrived in a wheelchair, talked about numerous meetings she had had with lawyers and ministers and acknowledged that she knew she would have to discuss the incident at some point but was still reluctant to do so. She was, however, spontaneous when talking about other subjects, especially her brother, cousin and uncle. The psychiatrist's impression was that Ms. Brawley was making a good recovery emotionally, but legal complications were interfering with her adaptation to a bad experience. Ms. Brawley did not appear ready to return to school and a normal social life and did not appear to enjoy the attention she was receiving. She did not want to go back home, preferring to stay with her uncle. The psychiatrist felt Ms. Brawley's inability to walk and move her left arm resulted from a combination of a conscious determination, in which she was motivated to maintain a symptom, and by an unconscious determination, the conversion disorder. The psychiatrist was unable to determine what percentage of either condition actually existed.

The fifth meeting was held on December 11. At this time, Ms. Brawley was walking with a cane. Ms. Brawley told the psychiatrist that she could not talk to anyone without an attorney present, though the psychiatrist was an exception. She stated that she felt her family was in danger, that her whereabouts were supposed to be secret, and that her friends were not allowed to visit for fear of their security. The psychiatrist felt that Ms. Brawley was troubled by the atmosphere of suspiciousness, danger and pending legal actions and would have liked to forget the incident, but felt an obligation to her family to participate. Nonetheless, the psychiatrist felt that, from a psychiatric point of view, Ms. Brawley was making a good recovery.

The sixth meeting was held on December 14. Ms. Brawley was still limping and using a cane but did not want to seek physical therapy. The psychiatrist observed that Ms. Brawley was in a good mood and felt that she was in good shape emotionally and more ready to talk of the incident. However, Ms. Brawley did not want to talk of the experience.

The content of meetings between Ms. Brawley and the psychiatrist and other physicians held after December 15 remain confidential and unavailable to the Grand Jury due to Ms. Brawley's reaching sixteen years of age and her refusal to waive the physician-patient privilege. The exception to this privilege, authorized by section 4504 of the Civil Practice Law and Rules of this State, allowed testimony to be given by a physician regarding a person under 16 years of age who may have been the victim of a sex crime. The psychiatrist and the other physicians who have treated Ms. Brawley, in compliance with a court ruling pertaining to this issue, were unable to testify as to conversations, evaluations and diagnoses from subsequent encounters with Ms. Brawley. The ruling allowed testimony as to their visual observations only after her 16th birthday.

The psychiatrist's conclusion regarding Ms. Brawley's condition ruled out post traumatic stress disorder because Ms. Brawley showed no symptoms of reliving the experience. Rather, based on the family history as given, her condition was considered more in the nature of a conversion disorder. The psychiatrist testified that because she did not enjoy the perfect confidence of Ms. Brawley, she could not reach a conclusion as to whether a diagnosis of malingering was appropriate, although she considered that as a possibility. She also felt that since Ms. Brawley was recovering, it did not seem useful from a psychiatric point of view to consider malingering as a diagnosis.

When she appeared before the Grand Jury, the psychiatrist was asked to consider the relevance of two hypothetical situations and their possible effect on a diagnosis. In the first hypothetical, she was asked to consider the effect on her diagnosis if Ms. Brawley had a history of not coming home at night or not coming home when she was supposed to and then being

disciplined by being grounded or physically struck by a parent or guardian. The doctor found this a relevant factor which might have given somewhat more weight to a diagnosis of malingering, without ruling out other diagnoses.

In the second hypothetical, the psychiatrist was asked to consider the effect on her diagnosis if, on the same days the psychiatrist observed her using a cane and walking with a limp, others saw her walking or running normally. The psychiatrist stated she would have concluded the limp was not a real one and therefore "at least at that point there was an element of pretense in it." As to the relevance to a diagnosis of malingering, conversion disorder or post traumatic stress disorder, she testified: "It would move me further to a consideration of malingering, without eliminating the possibility that it started as a conversion disorder."

The Grand Jury heard evidence, not available to the psychiatrist at Westchester County Medical Center, relevant to both hypothetical situations posed to the psychiatrist -- whether Ms. Brawley had stayed away from home and been disciplined and whether she was able to walk normally at times the psychiatrist saw her walking with a limp. That testimony is summarized here.

#### Testimony Concerning Prior Incidents of Being Away from Home

When Ms. Brawley was in the eighth grade in Monticello, she spent the night at a friend's apartment, according to the testimony of the friend. He testified that they fell asleep watching television. On the following morning, Glenda Brawley and Juanita Brawley came to the apartment, and Tawana, expressing fear, hid in the closet. When she came out of the closet, they grabbed her, but she broke away and ran out of the apartment.

During the weekend of May 2 through 4, 1986, Ms. Brawley and a girlfriend went to Beacon and remained there because they did not have enough money to take the bus back. On the first night, Friday, the girlfriend stayed at one house and Ms. Brawley stayed at another. On the next day the girlfriend returned home, and Ms. Brawley remained in Beacon. She spent Saturday night at another friend's home. The following day, Sunday, Glenda Brawley picked up the girlfriend, who took her to Beacon and showed her the home of the boy with whom Tawana Brawley was staying. Upon finding her daughter, Glenda Brawley grabbed her by the hair, pulling some of it out, and struck her on the face with her fists. She was struck again in the car on the way home.

On November 7, 1987, Tawana Brawley attended a Sweet 16 party in Fishkill which ended between 1:00 and 2:00 a.m. Ms. Brawley and some friends went afterward to a friend's home, and when she returned to her home at 5:00 a.m., Ralph King was waiting for her. She was punished by being grounded and losing her phone privileges. It was apparently this episode to which

Tawana Brawley was referring after her visit to David W. at the jail on November 24 when she told Mrs. W. that she was "already in trouble" at home.

Testimony Concerning Tawana Brawley's Limping and Apparent Inability to Walk

The Grand Jury heard testimony from a number of persons who observed Tawana Brawley during December, 1987 and January, 1988 including the Westchester County Medical Center psychiatrist, several investigators, neighbors and friends. Their observations as to her ability to walk normally did not show a consistent pattern.

-- On December 7, the psychiatrist observed her in a wheelchair.

-- On December 8, a friend testified she could not walk and needed assistance bathing and dressing.

-- On December 9, a state police investigator observed her walking without a limp.

-- On December 11, the psychiatrist observed her walking with a cane.

-- On December 14, the psychiatrist observed her limping and using a cane.

-- Also on December 14, a state police lieutenant and an investigator said she "scurried" upstairs at the Brawley home without a limp.

-- In the middle of December, a Carmine Drive neighbor observed her walking without a limp.

-- On December 18, the psychiatrist observed her walking without a cane and limping.

-- On December 21, the psychiatrist observed her limping.

-- On December 28, the psychiatrist observed her limping.

-- At the end of December, a relative testified, she was walking with a cane.

-- On January 4, the psychiatrist observed her walking normally.

-- Also on January 4, a pediatrician at the Westchester County Medical Center saw Ms. Brawley on a follow-up visit and observed her walking with a limp.

-- In the middle of January, neighbors testified, she was no longer limping.

-- At the end of January, a witness observed her limping.

Testimony of the Forensic Psychiatrists

Dr. Ezra Griffith, a psychiatrist, is an Associate Professor at the Yale University School of Medicine and Acting Chief of the Connecticut Mental Health Center. While at Yale, he has served as the Associate Chief and then Chief of the hospital's inpatient service. He is board certified in the fields of

general psychiatry and forensic psychiatry and has published in the areas of transcultural and ethnic psychiatry, religion and psychiatry, and forensic psychiatry. In his clinical experience he has evaluated cases of sexual victimization and sexual offenses. He has also done research in certain aspects of conversion disorder. He holds a joint appointment at Yale University as an associate professor in the Department of Afro-American Studies.

Dr. Griffith reviewed physical evidence, medical records and testimony before this grand jury prior to testifying as an expert in forensic psychiatry.

He was asked to review the diagnostic evaluations of Ms. Brawley and give an opinion regarding the most likely diagnosis of her condition on Saturday, November 28, and thereafter. He viewed her as having two categories of complaint: first, a stressful experience; and second, medical complaints. Her medical complaints were inability to move the lower limbs, inability to use the left upper limb, paresthesia, or tingling, in the two lower limbs and loss of sensation in certain areas of her body. In addition, when she was first found, she appeared to be unresponsive.

First Dr. Griffith looked for an organic or neurological basis for her medical complaints. The important evidence for Dr. Griffith in assessing the medical complaints were certain eyewitness accounts of her behavior and condition on Saturday, November 28, and afterward.

He noted that Ms. Brawley was seen by an emergency room physician, a resident, a pediatrician and a neurologist. They all concluded there was no organic basis for her medical complaints.

Moreover, he noted, Ms. Brawley was seen on November 28 getting into a bag and then hopping. While seeming to be unresponsive, she resisted having her eyes opened by the emergency medical technicians and she grasped an EMT's hand with both of hers. While there was an apparent claim of paralysis, which began when she was found, she resisted being positioned in the ambulance, cooperated with her examination at St. Francis hospital and was able to place her lower limbs in stirrups. On December 14, she was seen in her home scurrying up the stairs without a limp and on the same day walking with a limp and using a cane when seen by medical personnel at WCMC. A neurologist who examined her at WCMC was unable to find any sensory loss. The neurologist found her complaints of tingling and loss of sensation shifting and inconstant. Consideration of all of these elements led Dr. Griffith to the conclusion that she did not have any neurological or other physical disorder.

Once Dr. Griffith reached this conclusion he began to consider psychiatric evidence. In a case where a person claims to have gone through as serious an experience as Ms. Brawley

described, Dr. Griffith testified that there are several diagnostic categories he would consider.

First, he considered the possibility of a severe psychosis where the patient might have hallucinations, be disoriented or delusional. He found no evidence in the testimony of the doctors who treated her to support that diagnosis. Second, he considered a diagnosis of post traumatic stress disorder. He rejected that diagnosis for three reasons. The character and existence of the stressful event in this case was not certain enough. The expected symptoms were not present: acute anxiety, intrusive thoughts, flashbacks to the incident, dreams. Ms. Brawley's condition improved more rapidly than would be expected in a case of post traumatic stress disorder.

The other two diagnoses he considered were conversion disorder and malingering.

Dr. Griffith diagnosed Ms. Brawley as "malingering her complaints" of unresponsiveness when found and, subsequently, her inability to move the lower limbs, her inability to use the left upper limb, the tingling in the two lower limbs and the loss of sensation in certain areas of her body. Dr. Griffith detailed the evidence that led to his choice of malingering as the diagnosis rather than conversion disorder. Ms. Brawley was seen squatting, getting into a bag and then hopping. This evidence was important because it showed that Ms. Brawley was functioning on a "certain sophisticated level" at the time she was found. For example, a young child, instead of hopping, might attempt to walk in a bag and would trip. While appearing unresponsive, Ms. Brawley took actions which clearly indicated consciousness: she resisted opening her eyes and being positioned in the stretcher in the ambulance. She also held onto a blouse with her teeth and grabbed the EMT's wrist with both hands. While there was an apparent claim of paralysis, she moved her lower body in the hospital for the gynecological examination.

In Dr. Griffith's opinion, there were further inconsistencies between her behavior and her medical complaints. On December 1, she was unable to participate in the examination the gynecologist wished to perform, yet she easily cooperated with the same examination in the hospital a few days before. She claimed areas of sensation loss which were not substantiated by a neurologist. On December 7, a psychiatrist saw her in a wheelchair, yet on December 9, she was observed to get up, walk out of her living room and go upstairs by a state police officer. On December 14, she was observed by the same state police officer and another state police officer scurry upstairs without a limp. Also on December 14, a psychiatrist saw her walk with a limp and a cane, and she was seen by a pediatrician walking with a limp. Dr. Griffith noted that it seemed she walked with a limp when she knew she was being observed. All these observations led Dr. Griffith to the conclusion that Ms. Brawley was intentionally providing false or exaggerated symptoms.

Dr. Griffith also reviewed this case in relation to the phenomenon of false allegations in cases of alleged sexual assaults. A false allegation in regard to sexual assault is "an untrue claim about a sexual experience and victimization," although it does not necessarily preclude the possibility that something did, in fact, happen to the person. In psychiatry it is viewed as a situation where an individual does something unacceptable, finds it difficult to accept responsibility for this conduct, and then sets up a false allegation which allows that individual to be transformed from what that individual sees as being a bad or guilty person into an innocent person. The person, therefore, diminishes responsibility for the guilt-inducing act.

In this case, Dr. Griffith came to consider the phenomenon of false allegations of sexual assault after he had concluded that the medical, psychiatric and physical evidence seemed not to support Ms. Brawley's allegations and complaints. The allegations of being assaulted over a four-day period by at least three men in the woods seemed not to be supported by the physical or medical evidence. For example, there was no evidence of physical trauma and no medical evidence to support non-responsiveness, claims of loss of activity of the limbs, paresthesia, and loss of sensation.

Dr. Griffith then considered the evidence in light of what are considered the characteristics of false allegations of sexual assault. He evaluated the evidence anew to see if it formed a pattern consistent with the patterns known in cases of false allegations. Dr. Griffith testified regarding the following characteristics of false allegation cases and their applicability to this case.

In false allegation cases, he noted, it is likely that the complainant claims not to know the identity of the offender. There also tend to be multiple assailants alleged, psychologically allowing the person to show that resistance was impossible. The person also may claim to have been overcome by force and to have no memory of the details of the assault. Often, the place of the assault cannot be described. Dr. Griffith found all these elements present in this case. False allegations tend to be either very vague or extremely detailed. Here he found marked vagueness.

In false allegations, he continued, there may be non-severe wounds. Here the wounds are non-existent, in spite of a claim of being assaulted by several individuals. There also tends to be indifference to the wounds, as here where Ms. Brawley refused an offer of physical therapy. There tend to be inconsistencies in the physical evidence. Here, the pants are burned, but there were no burns on the body. Feces was applied to the body but not to the face. The cotton-like substance found in the nose and ears is also inconsistent with the allegation of an assault. The use of a sharp instrument to write on the shoe and

then the use of a non-harmful writing instrument on the body is inconsistent with an assault. There is often an absence of laboratory evidence confirming the allegation, as is true here. In addition, there may be behavior following the incident that is inconsistent with a serious trauma.

Individuals who make false allegations often have numerous personal and relationship problems. Dr. Griffith believed there is evidence of that here. In false allegations, the individual may know of other cases of false allegations. Here, the evidence is not clear.\* Another factor sometimes present in false allegation cases is a previous psychiatric history. There is no evidence of that in this case. In false allegations, the individual is often uncooperative with the authorities since the individual does not want the experience elucidated. The report may be to friends and not to the police.

Dr. Griffith cautioned that the presence of any one characteristic of a false allegation is not enough to determine that a complaint is in fact a false allegation. He stressed that one must consider the totality of the characteristics. It is the totality of characteristics, considered along with the lack of corroboration of the original complaint and along with the medical evidence which does not show an actual disorder, that points toward the likelihood of a false allegation. Dr. Griffith testified that his evaluation refers only to the specific allegation that Ms. Brawley was sexually assaulted over a period of four days by three men in the woods. It says nothing about what might actually have occurred during the four-day period.

Dr. Park Elliott Dietz is a psychiatrist with a subspecialty in forensic psychiatry. He is a Professor of Behavioral Medicine and Psychiatry and Professor of Law at the University of Virginia School of Medicine and School of Law. In addition, he is the Medical Director of the Institute of Law, Psychiatry and Public Policy, an academic institute for research, education and services in the areas of law and psychiatry. He is a psychiatric consultant for the National Center for the Analysis of Violent Crime at the FBI Academy in Quantico, Virginia, and a Forensic Psychiatrist for the New York State Police Forensic Sciences Unit.

\* In connection with the issue of possible exposure to similar stories, the Grand Jury heard testimony that in the Fall of 1987, a black teenage girl who had previously been a classmate of Ms. Brawley reported that two white men had abducted and raped her. She later admitted that the story was false. Ms. Brawley, according to testimony of a friend, knew this teenaged girl and spent some time among a group of friends, which included the girl, all of whom were aware of the false abduction incident although she could not specifically say whether Tawana Brawley knew the story.

Dr. Dietz has served as a psychiatric resident at Johns Hopkins Hospital and the Hospital of the University of Pennsylvania where he was also the chief fellow in forensic psychiatry. He has been an Assistant Professor of Psychiatry at Harvard Medical School and Director of Forensic Psychiatry at the Commonwealth of Massachusetts's Bridgewater State Hospital for the criminally insane.

He has researched and published in the areas of violent crime, legal medicine, sexual offenses and deviations. He was retained by the United States Attorney's Office in Washington, D.C. to evaluate John Hinckley in connection with his attempted assassination of President Reagan and to testify at the trial.

Dr. Dietz reviewed physical evidence, medical records and testimony presented to this Grand Jury prior to testifying as an expert in forensic psychiatry.

Dr. Dietz presented his approach to, and evaluation of, the evidence in this case. Whenever someone who is observed to be unresponsive or complains of inability to move his limbs or support himself, the first thing a physician considers is a neurological problem. In this case, the possibility of neurological damage is contradicted by the evidence.

Dr. Dietz was led to reject the possibility of neurological damage by a number of observations made of Ms. Brawley within hours of her discovery. She is seen stepping into a bag and hopping, yet within fifteen minutes, she seems unresponsive to voices and to pain from rubbing the sternum. It is his opinion that there are few biological possibilities that could account for a person going from conscious, willful behavior, like stepping into a bag, to unconsciousness, back to conscious behavior like sitting up and writing words, all within a three-hour period, without treatment.

Dr. Dietz stated that it becomes clearer that observations made of Ms. Brawley within hours of her discovery form a biologically impossible pattern: while seemingly unresponsive to words and pain, she grabbed the EMT's hands, resisted having her eyes opened and resisted being repositioned on the stretcher. Resisting eye opening and repositioning proves consciousness. It was his opinion, therefore, that unconsciousness could not be the explanation for her lack of response to voice and pain.

Dr. Dietz testified that it is also impossible for a person who cannot walk or stand because of neurological damage to move on a stretcher or to lift or help lift her legs into stirrups. He also said it was impossible, without treatment, to walk within a few weeks after any traumatic form of paralysis. Therefore, in his opinion, her difficulty walking could not be a result of neurological damage.

He next considered whether her seeming unresponsiveness and inability to walk were a result of a conversion disorder or malingering. According to Dr. Dietz, malingering means that a person is pretending to have disabilities in order to achieve a goal, such as relief from responsibility or escape from an undesired situation.

Dr. Dietz stated that, in his opinion, the same observations made of Ms. Brawley on the day she was found, detailed above, show not only that her difficulties were not neurological, but also that she was malingering. He found that those actions were voluntary and within her control. In a conversion disorder, by contrast, the mind is causing the symptoms, outside the person's voluntary control.

There is further evidence of her voluntary control of her symptoms which show that she was malingering, in particular, the discrepancies observed in her ability to walk during the month of December.

Dr. Dietz also testified that factors cited in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders suggestive of malingering are present in this case.

Dr. Dietz considered the phenomenon of false allegations of sexual assaults in relation to this case. He explained that false allegations of sexual assault are designed by the complainant to solve some predicament. The false allegation shifts the responsibility for the predicament from the complainant to someone else. It also shifts responsibility for solving the predicament to someone else, frequently the police. Not all false allegations are complete fabrications. Sometimes a real sexual assault is described differently or exaggerated.

Studies have shown that certain characteristics appear more often in cases of false allegations than in cases of true sexual assaults, though they may appear in true cases. There is no single characteristic or number of characteristics that can be relied on to distinguish the true sexual assault from a false allegation. Nonetheless, there is a pattern that can be recognized that is highly suggestive of a false allegation.

Dr. Dietz believes, based on his own research and his consultation with FBI Supervisory Special Agent Robert R. Hazelwood, the leading authority on false allegations in Dr. Dietz's view, that there are 20 characteristics that have appeared in false allegation cases:

- The story tends to be bizarre or sensational;
- The pseudo-victim injures herself, sometimes seriously, or simulates injury for the purpose of gaining support;
- The pseudo-victim presents herself in such a way that people believe no one would do this to herself;

- The pseudo-victim does not initially report the incident to police;
- A stranger is accused;
- The pseudo-victim claims that overwhelming force was used or that she resisted greatly or that there were multiple assailants;
- The account is either overly detailed or very vague;
- The pseudo-victim reports having her eyes closed during the attack or that she was unconscious, or passed out, or has no memory of what happened or was drugged, and so cannot provide details;
- The pseudo-victim is indifferent to her injuries;
- The expected laboratory findings are absent;
- The pseudo-victim is vague about the location of the assault or there is no evidence at the scene to corroborate the complaint;
- Damage to the clothing is inconsistent with the injuries;
- There are escalating personal problems in the life of the pseudo-victim;
- The pseudo-victim has been exposed in the past to accounts of similar things;
- The pseudo-victim's post-assault behavior is inconsistent with the allegations;
- The pseudo-victim is uncooperative with the investigation;
- When the pseudo-victim talks to the authorities, she tends to steer the conversation away from the specific to the unprovable;
- There is writing on the body of the pseudo-victim;
- There is a history of making other false allegations;
- There is a history of extensive medical care.

Dr. Dietz stated that he did not find evidence in the record that Ms. Brawley had made prior false allegations or had an extensive history of prior medical care. Dr. Dietz cited evidence in the record that if accepted by the jury would be illustrative of each of the other 18 characteristics of false allegation cases.

Dr. Dietz analyzed Ms. Brawley's physical appearance when she was found in light of what is known about the behavior of assailants. Dr. Dietz is currently involved in a project with FBI Agent Hazelwood and Dr. Janet Warren of the University of Virginia to study the characteristics of sexually sadistic offenders. Offenders commit sexual assaults for a variety of reasons, some reasons are more common than others and only some reasons account for doing things that are degrading and humiliating to victims. As Ms. Brawley appeared in a degraded manner, Dr. Dietz considered how offenders who degrade their victims behave and why they do it.

There are two principal reasons that offenders degrade their victims. The first reason is anger. Angry rapists often punch their victims in the face and the face is a significant

target. There were no injuries at all to Ms. Brawley's face. Even the fecal smearing avoided the face. An angry rapist who chose to smear feces on a woman would smear the face and probably attempt to put the feces in her mouth. More important, however, angry rapists are not known to smear their victims with feces.

The other motive for degradation is sexual sadism. Sexually sadistic offenders can hold their victims captive for periods of time and degrade and humiliate them. They will torture their victims with physical means that leave scars and often kill them. Here, Ms. Brawley was not injured.

Most sexually sadistic offenders operate alone, according to Dr. Dietz. A significant number operate with a partner, but not in a group of three or more.

Dr. Dietz did not see any reason that an offender would put cotton-like material into Ms. Brawley's nose and ears or wrap her head in the black blouse, and did see reasons why Ms. Brawley might do so. The cut hair, if it was cut, the wearing of burned clothing and the fecal smearing can all be seen as non-permanent degradation of oneself.

Dr. Dietz concluded that Tawana Brawley's physical appearance when she was found is consistent with self-infliction and a false allegation. It is inconsistent with known patterns of offender behavior.

#### THE EVIDENCE AS TO TAWANA BRAWLEY'S PHYSICAL APPEARANCE

In many ways the most striking aspect of this case was Ms. Brawley's physical appearance at the time she was discovered -- her hair matted and apparently cut, racial epithets written on her chest and clothing, and dog feces smeared in her hair and on much of her body.

In addition to our efforts to ascertain Tawana Brawley's whereabouts over the four-day period of her disappearance, to assess her medical condition at the time of her discovery, to determine whether or not she was sexually assaulted, and to assess her psychological condition, this Grand Jury also attempted to determine how she came to appear in the physical condition in which she was found.

#### Tawana Brawley's Hair

The Grand Jury heard testimony that, in the weeks prior to her disappearance, Tawana Brawley wore a hair weave which was approximately shoulder length. When she was discovered on Saturday, November 28, her hair was described as "short." Witnesses at the hospital described it as matted and caked with feces.

One police officer testified that her hair appeared jagged, as if someone had grabbed it, pulled it straight up and cut it with a knife. A nurse said her hair was uneven and appeared to have been chopped or cut off.

It also appears that Tawana Brawley's relatives believed her hair to have been cut, as indicated by Glenda Brawley's reaction when her sister, Juanita Brawley, called from the hospital, apparently to report on Tawana Brawley's condition. As described by the Sheriff's personnel present at the time Glenda Brawley said, "They cut my baby's hair! They cut my baby's hair!" She was clearly agitated by this news. Glenda Brawley also mentioned the fact of her daughter's hair having been cut to the psychiatrist at the Westchester County Medical Center on December 3.

We note here that two of Tawana Brawley's friends testified that she attached the hair weave to her hair in October of 1987, at which time her own hair was approximately three inches long, short on the top and longer at the back. When wearing the weave, the hair at the front of her head was her own, and the weave caused her hair to appear long in the back. It is not known whether Ms. Brawley was still wearing the weave on November 24, when she was observed to have shoulder length hair, nor is it known whether removal of the weave would have left her hair appearing jagged or chopped, as described above.

#### Writing on Ms. Brawley's Shirt.

FBI Special Agent Thomas Lynch, an expert in forensic chemistry, testified concerning a series of examinations he made of charred material from several sources: the charred face cloth type material found with the plastic bag in which Ms. Brawley was found, the charred portion of the jeans she was wearing when she was found, burnt material found on the carpet inside Apt. 19A, the writing on the pink shirt Ms. Brawley was wearing, material found inside the black ladies' gloves and material found embedded under her fingernails.

S/A Lynch subjected these materials to examination using light and electron microscopes. He made microscopic photographs which the Grand Jurors were able to examine. He also performed certain tests.

The face cloth type material found with the plastic bag Ms. Brawley was found in, the burnt jeans she was wearing and the pieces of burnt material that had been found inside Apt. 19A were all found to be charred cotton fibers which exhibited the same microscopic characteristics.

He noted that charred cotton fibers have "very distinctive" characteristics which make them distinguishable from other fibers, though he noted that all purely cotton fibers have these same characteristics and that cotton from two different sources, such as the face cloth and the jeans, would be indistinguishable from each other.

S/A Lynch also microscopically examined the writing on the pink shirt Ms. Brawley had been wearing when found. He cut out a portion of one of the "K's" written on the shirt and by use of a scanning electron microscope and transmission electron microscope determined that the writing on the shirt was made with charred cotton fibers.

He purchased a new pink cotton shirt similar to the one Ms. Brawley had been wearing and, grasping the face cloth, used it to write the letter "K" on the new shirt. He testified that he was "quite surprised at the similarity in color" between writing produced in this test and the writing on Ms. Brawley's shirt. As the shirt was manipulated, this writing faded in a way similar to the way the letters on Ms. Brawley's shirt had faded. Microscopic comparison showed that the two sets of fibers were, in S/A Lynch's words, "incredibly similar" and "very much consistent with each other."

Further tests showed that the writing produced by charcoal briquettes was "totally dissimilar" to that on the pink blouse and, similarly, that charred wood, "could not have been used."

#### Writing on Ms. Brawley's Body

S/A Steven Grantham, an expert in handwriting analysis, testified that he had examined photographs taken at St. Francis Hospital of the writing on Ms. Brawley's body. He stated that it could not be determined what material was used in the writing solely from the photographs.

S/A Grantham testified that he performed experiments using various items as writing instruments in an attempt to visually duplicate the writing upon Ms. Brawley. He wrote on the torso of a medium skin toned male using a charcoal briquette, a burnt broom stick, an eyebrow pencil, the edge of a burnt cotton towel and the residue of burnt cotton mixed with water. He was able to produce the burnt cotton residue in several ways including by merely grinding the cloth between his fingers and mixing the residue with water which formed a black paste-like substance. He photographed the results of his experiments and compared them to the photographs of Ms. Brawley.

The briquette, burnt broom stick and burnt towel performed poorly as writing instruments and the writing did not resemble the writing on Ms. Brawley. S/A Grantham explained that the eyebrow pencil and the writing with the burnt cotton residue "performed well" in the test. The writing line of both of these items compared well in terms of width and tone with the writing on Ms. Brawley's body. However, both the writing on Ms. Brawley's body and that produced with the burnt cotton residue had a charcoal appearance, whereas the eyebrow pencil produced a shine. The writing with the eyebrow pencil was evenly distributed. The writing observed on Ms. Brawley's body and that

produced with the burnt cotton residue were not evenly distributed. For example, he noted that on one of the "K's" written on Ms. Brawley's body, the outer edges of the letter were highlighted. A similar effect was noted on letters he had written with the burnt cotton residue.

S/A Grantham testified that the writing produced with the burnt cotton residue, when compared with the writing on Ms. Brawley's body, was visually similar with no differences. S/A Grantham was able to write with the burnt cotton residue by using a cotton swab, the edge of a towel, and the knotted ends of cotton towel strips. The size of the knot and the width of the strips determined the width of the writing.

Finally, in an experiment in which the eyebrow pencil was used, the model was able to write on his torso, without using a mirror, the same letters that were written on Ms. Brawley's torso. S/A Grantham testified that the writing instrument used was not important and that the point of this experiment was to demonstrate that it is possible for an individual to write on his or her torso.

#### Fibers in Gloves and Under Fingernails

S/A Lynch also examined the two black gloves found in the bag in which Tawana Brawley was discovered on Saturday, November 28. The Grand Jury previously heard testimony that the feces were smeared on the palms and came up between the fingers and onto the backs of the fingers as though the person wearing the gloves had pressed down on a mass of the feces. The Grand Jury also heard testimony that head hairs consistent with Tawana Brawley's were found on the right glove, and testimony that the ambulance technicians and hospital personnel observed feces smeared in Tawana Brawley's hair.

S/A Lynch cut off the tips of the fingers of the ladies' gloves found with Tawana Brawley and turned them inside out. He discovered charred cotton fibers inside the middle and pinky fingers of the right glove and bundles of such fibers in the thumb. He found charred cotton fibers in the ring finger and bundles of such fibers in the thumb of the left glove. S/A Lynch examined the fibers microscopically and concluded that they had "exactly similar characteristics" to the fibers from the charred face cloth found underneath the bag in which Ms. Brawley was found.

S/A Lynch also examined fibers which had adhered to the underneath side of fingernails from Tawana Brawley's right and left hands. (Fingernail clippings are a standard part of the rape kit and were taken by the emergency room physician at St. Francis Hospital.) The fibers were charred cotton and in S/A Lynch's words, "the same" as the fibers from inside the gloves. The Grand Jury notes that one of the Sloper-Willen emergency medical technicians noted on her report that Tawana Brawley's hand appeared to be "covered w/ soot" when she was found on November 28.

## THE ALLEGATIONS AGAINST STEVEN PAGONES AND OTHERS

The Grand Jury has heard testimony that Dutchess County Assistant District Attorney Steven Pagonos and others in law enforcement were publicly accused of being involved in an attack on Tawana Brawley. Moreover, the Grand Jury heard testimony that public allegations were made that these individuals were protected through an elaborate cover-up engaged in by the Dutchess County District Attorney's Office, the Dutchess County Sheriff's Office and other law enforcement agencies.

The only allegations against Mr. Pagonos and the others were unsworn statements made in public forums. Those making the allegations were invited to appear before this Grand Jury; they did not. Despite their failure to offer evidence to substantiate the allegations, the Grand Jury investigated the accusations fully.

Steven Pagonos appeared before this Grand Jury, waived his constitutional right of immunity, and testified concerning his activities during the period of Tawana Brawley's disappearance. Mr. Pagonos requested the Grand Jury to issue a report clearing him of the charges leveled publicly against him. The nature of the allegations in this case may be properly interpreted as an accusation that a law enforcement official used his position to force sexual relations and that he participated in or enjoyed the benefit of a cover-up. Thus, this Grand Jury concludes that the public accusations against Mr. Pagonos were allegations of "misconduct, non-feasance or neglect in office," as specified in Criminal Procedure Law Section 190.85, and, therefore, that he has standing to make this request.

This report details all aspects of the Grand Jury investigation which are relevant to the question of whether Assistant District Attorney Pagonos committed an attack on Tawana Brawley; participated in a cover-up; or engaged in any other misconduct with respect to Tawana Brawley.

In particular, the report has already discussed the Grand Jury's exhaustive investigation into what may have happened to Tawana Brawley from Tuesday, November 24, through Saturday, November 28, and into whether any attack was perpetrated on her.

In this section, the report will detail parallel investigations undertaken by the Grand Jury which also concerns the accusations against Mr. Pagonos:

--The Grand Jury investigated the actions of local law enforcement agencies from the beginning of this case until the withdrawal of the District Attorney and Special District Attorney. This investigation sought to determine whether any of their actions were consistent with the allegations that a cover-up had been engineered to protect Mr. Pagonos and others in law enforcement.

--Further, the Grand Jury investigated the circumstances surrounding the death of Harry Crist, Jr., a part-time police officer who was a friend of Steven Pagonos and who was also accused of attacking Tawana Brawley. As noted below, it was the timing and circumstances of Mr. Crist's death and Mr. Pagonos's friendship with him which first subjected Mr. Pagonos to the public accusations.

--Finally, the Grand Jury heard Mr. Pagonos's testimony and the testimony of witnesses called to corroborate his statements.

### Allegations of a Cover-up

In assessing evidence as to whether Assistant District Attorney Pagonos was involved in an attack on Tawana Brawley, this Grand Jury examined evidence relating to an alleged cover-up by law enforcement officials. Such a cover-up, if it had occurred, could have concealed Mr. Pagonos's involvement or the involvement of others in law enforcement in an incident involving Ms. Brawley.

The cry of cover-up in this case was first made by Ralph King in the hallway of the emergency room of St. Francis Hospital on the evening of Saturday, November 28, 1987. Accounts vary as to the time of Mr. King's arrival, with witnesses saying he arrived as early as 7:40 p.m. or as late as 8:49 p.m. According to those present, he was talking loudly and causing a commotion. He was heard yelling: "Don't talk to those white fucking cops, they're not going to help us. We're going to hire a lawyer and get all those white cops in court and make them tell us what they done." He was also heard to say: "Cops, you're not going to do this. You jammed up my daughter before. You're not going to cover it up. I'm not an ignorant nigger. I will call a lawyer." Three law enforcement officers and the emergency room physician testified that they noticed the odor of alcohol on Mr. King.

The allegation of a cover-up was subsequently repeated by other members of the Brawley family, by their attorney and by others. It became the public justification for the family's refusal to cooperate with the investigation of the District Attorney and with this investigation.

As noted previously, the Grand Jury had only general public accusations of a cover-up to pursue. No individual appeared before this body and swore under penalty of perjury that any person in law enforcement committed any act that was intended to cover up for anyone. However, the Grand Jury did hear testimony from a close associate of the individuals making the public allegations. He testified that at no time, to his knowledge, did the accusers possess any concrete evidence to support their accusations of a cover-up. He further testified that the accusers had stated that it did not matter what the facts were and that they did not need to know the facts.

This Grand Jury reviewed the law enforcement response to the allegations of criminal conduct against Ms. Brawley. We focused on a number of areas, including the amount and type of resources devoted to the investigation, the securing of physical evidence, the attempts to secure Tawana Brawley's cooperation, and the reasons for the disqualification of the District Attorney and the Special District Attorney.

The Grand Jury heard testimony of persons familiar with the investigation both from within the agencies involved and from outside. In addition, the Grand Jury heard the testimony of Dutchess County District Attorney William V. Grady, Dutchess County Sheriff Fred W. Scoralick and Assistant District Attorney Pagonos. Each testified before the grand jury voluntarily after executing a waiver of immunity.

#### Evaluation of the Handling of the Investigation

##### Assignment of Personnel to the Investigation

On Saturday, November 28, within minutes after Tawana Brawley was seen by a deputy sheriff, detectives of the Sheriff's Department were notified. A detective on call, who also was the detective who specialized in arson cases, went immediately to the hospital. It was this detective who first requested that a rape kit examination be performed. He was later joined by the detective lieutenant, a detective who specialized in juvenile cases, a uniformed lieutenant and other uniformed personnel. Another detective was sent to the Pavillion to join the uniformed deputy on the scene. Later that day, they were joined by other uniformed personnel. The Sheriff was in personal contact with his staff at the hospital.

On Sunday, November 29, the detective lieutenant spoke personally to the District Attorney. Three detectives, including a female detective, went to the Brawley residence on that Sunday and attempted unsuccessfully to interview Ms. Brawley.

The next morning, Monday, November 30, the District Attorney assigned three Assistant District Attorneys to work on the investigation. The three prosecutors met with officers of the Sheriff's Department that morning. Later, two of the prosecutors joined a detective from the Sheriff's Office and an FBI Special Agent who handles civil rights complaints and went to the Brawley residence, where Ms. Brawley was interviewed for the second and last time.

Within three days of the discovery of Tawana Brawley, the Dutchess County Sheriff's Office had assigned at least 10 officers to the investigation, and the Dutchess County District Attorney had assigned three Assistants. Subsequently, additional staff were assigned. At one point, all of the Sheriff's twelve detectives were involved in the investigation. The District

Attorney himself went to the Brawley home and met with members of the family. The Chief Assistant District Attorney was placed in charge of the Grand Jury presentation.

#### The Involvement of Other Law Enforcement Agencies

In addition to committing a large number of personnel to the investigation, local agencies also integrated other law enforcement agencies into the investigation. On Saturday, November 28, when it became known that racial epithets had been written on Ms. Brawley's body (and prior to her claim to the Poughkeepsie police officer that she had been raped by a "white cop"), the Dutchess County Sheriff's Office alerted the Federal Bureau of Investigation that there was evidence indicating possible civil rights violations. An FBI agent who was assigned to the case attended one of the two law enforcement interviews with Tawana Brawley.

Subsequently, the local authorities decided that the rape kit and all of the other physical evidence would be analyzed in the FBI crime laboratory in Washington.

On Sunday, December 6, the Director of Criminal Justice of the State of New York offered the Sheriff the assistance of the State Police. The Sheriff accepted, and the State Police joined the investigation the next day. The State Police investigators assigned to the case were paired with the Sheriff's detectives with as many as 10 or 12 investigators and detectives on the investigation at a time.

#### Securing the Physical Evidence

As detailed earlier in this report, it was Sheriff's personnel who first requested that a rape kit be performed at St. Francis Hospital. As already discussed, the Grand Jury heard expert medical opinion that the rape kit was properly and professionally completed at St. Francis Hospital and testimony that the rape kit was properly sealed and that the seal was intact when it arrived at the FBI's lab for analysis.

In addition, Sheriff's deputies and detectives took photographs of Tawana Brawley at the hospital for both identification and evidentiary purposes. They also secured Tawana Brawley's clothing and other physical evidence at the hospital. However, they did not arrange for samples of the feces and writing material from her body to be saved. Dr. Michael Baden testified that he would have wished for "criminal justice," as distinct from medical, reasons that such materials had been saved, though he noted that nothing much was lost because her body had been photographed with the fecal matter and writing still on it and the fecal matter on her clothing had been preserved.

On Saturday, November 28, Sheriff's office personnel also secured extensive physical evidence at the Pavillion Apartment complex. They searched the immediate area in which Ms. Brawley was found, a garbage dumpster located nearby, and the wooded area in back of the sewage plant. They secured the plastic bag, hand gloves, strap, and other material found at the time of her discovery. From inside Apt. 19A Carnaby Drive, Sheriff's personnel secured additional evidence. However, not all evidence in the apartment was discovered during this initial search. Additional searches were conducted on December 1 and December 8, and more evidence was discovered each time.

A fingerprint expert canvassed the apartment on December 8 and December 13 for latent prints, the second time with a portable laser unit. On December 8, the apartment was forensically vacuumed for hairs and fibers.

The Attempts to Interview and Secure the Cooperation of Tawana Brawley

The Grand Jury heard testimony indicating that among the law enforcement personnel assigned to the investigation were blacks, women and staff with experience dealing with victims of sexual assaults. District Attorney Grady assigned a white female Senior Assistant District Attorney who specialized in child sexual abuse cases. He also asked a black male Senior Assistant District Attorney to work on the case. The District Attorney testified that he assigned the black prosecutor in view of Ms. Brawley's "reluctance to talk to any white officers" at St. Francis Hospital. He felt that "it might be beneficial in terms of developing a liaison and confidence with the family."

The State Police assigned the Senior Investigator in charge of their Child Abuse and Exploitation Unit, a woman with fifteen years experience. The Superintendent of the State Police personally assigned a black lieutenant as his liaison with the investigation. This lieutenant was asked to establish contact with the Brawley family.

The FBI assigned a female Special Agent who handles civil rights complaints.

The local authorities also made numerous attempts to interview Tawana Brawley and secure her cooperation:

-- On Saturday, November 28, the Sheriff's Department detectives asked a black Poughkeepsie police officer to speak with Ms. Brawley at St. Francis Hospital in response to requests from the Brawley family.

-- On Sunday, November 29, three Sheriff's personnel visited the Brawley residence in an attempt to interview her.

-- On Monday, November 30, two Assistant District Attorneys, the female Assistant specializing in child abuse cases and the black Assistant; a Sheriff's detective; and the female FBI Special Agent who handles civil rights complaints went to the Brawley residence and interviewed Tawana Brawley. This was the last time she spoke to law enforcement personnel.

-- In early December, the Dutchess County District Attorney learned that a New York City attorney had been retained to represent the family of Tawana Brawley. On December 7, 8, 9, 10 and 11, the District Attorney personally called the attorney's office and left messages. None of his calls was returned. During the week of December 7, two members of the New York State Police made a personal visit to the attorney's office. They were informed that the attorney was aware that the District Attorney was attempting to reach him and that he would contact the District Attorney in due time.

-- On December 8, the District Attorney and an Assistant District Attorney went to the Carmine Drive apartment in an attempt to interview Tawana Brawley, but she was not present. The District Attorney spoke to Glenda Brawley in what he described as a "cordial" and "productive" conversation which lasted twenty minutes. At that point, however, Ralph King entered and was very hostile, interspersing his comments with obscenities and accusations. At one point, Mr. King raised the issue of schooling for Tawana Brawley. Soon thereafter, the District Attorney's office arranged for home-bound education for her.

-- On the evening of December 8, the State Police lieutenant, the State Police senior investigator and an Assistant District Attorney went to the Carmine Drive Apartment. When they arrived, only Glenda Brawley was present. They requested an opportunity to interview Tawana Brawley, to which Glenda Brawley consented, provided that the attorney agreed.

--On December 9, the State Police senior investigator visited the Brawley residence in an unsuccessful attempt to interview Tawana Brawley. During the visit Ralph King complained that his car had been tampered with, and the investigator arranged for the car to be inspected by the State Police. The investigator also offered to drive Tawana Brawley to the Westchester County Medical Center for a doctor's appointment.

-- On December 14, a team including the State Police lieutenant asked Tawana Brawley's family for direct access to her in order to obtain additional information regarding her disappearance. The family eventually agreed, contingent on the "permission" of their family attorney. There was no interview with Ms. Brawley at that time.

-- On December 14, the District Attorney again called the attorney's office, but his call was not returned.

-- On December 15, the State Police lieutenant and a State Police investigator hand delivered a letter from District Attorney Grady to Glenda Brawley (a copy was mailed to the attorney) requesting that Ms. Brawley come to the District Attorney's office on December 17 for an interview. Glenda Brawley once again agreed to allow investigators to interview Ms. Brawley, if the attorney consented.

-- On December 24, the District Attorney wrote to Glenda Brawley and to the attorney, informing them that a Grand Jury was being impaneled and that he would like to prepare Tawana Brawley on January 5 for her Grand Jury appearance. When she did not appear on January 5, the District Attorney wrote to the family attorney on January 6 informing him that the District Attorney's Office would subpoena Tawana Brawley, Glenda Brawley and Juanita Brawley for appearances before the Grand Jury on January 13.

--On January 6, the Chief Assistant District Attorney and a State Police investigator went to the Carmine Drive apartment to serve the three subpoenas. Ralph King answered the door, but refused to allow them to enter. The Chief Assistant District Attorney informed him of the return date of the subpoenas.

--Also on January 6, the family's attorney called District Attorney Grady to relay a complaint from Ralph King about the service of the subpoenas. Mr. Grady asked the attorney for an opportunity to interview Tawana Brawley, and the attorney replied, "The time is not right," according to District Attorney Grady. The attorney then said he would get back in touch with the District Attorney, but he did not.

-- On January 13, the three subpoenaed witnesses, Glenda Brawley, Juanita Brawley and Tawana Brawley, did not appear at the Grand Jury, though Ralph King, who was not subpoenaed, did. An Assistant District Attorney asked Mr. King whether the Brawley family members who had been subpoenaed would be present. Mr. King responded in what was described to us as a "very abusive, very profane" manner that if he "wanted to know...he should ask them [the subpoenaed witnesses] himself."

-- After Mr. King left the grand jury area, the District Attorney asked a State Police investigator to attempt to speak to the attorney, who was at a coffee shop across the street from the courthouse with Mr. King and others. The investigator asked the attorney whether he would meet with the District Attorney in connection with the grand jury presentation. The attorney replied by saying "I'll see." However, he did not meet with the District Attorney.

#### Attempts to Assess Tawana Brawley's Emotional Condition

The District Attorney also testified about conversations he had with the child psychiatrist who treated Ms. Brawley at the Westchester County Medical Center. The District Attorney said he spoke to the psychiatrist to determine "whether she felt [that] within the foreseeable future, Tawana would be in a position of being able to talk to us, because...we didn't want to further traumatize her when she got to the point where she could converse clearly and [then] have her suffer a relapse to her previous state." When he first spoke to the psychiatrist on December 9, the psychiatrist suggested that the District Attorney "wait awhile" pending her treatment.

The District Attorney also spoke with a lawyer from the National Office of the NAACP. This lawyer gave the District Attorney the name of a black child psychologist from Boston who, in turn, referred the District Attorney to another "very qualified" psychologist "who would be happy to get involved if the need arose."

Ultimately, by mid-December, the psychiatrist from the Westchester County Medical Center advised the District Attorney that there was no medical reason to preclude conversations with Ms. Brawley, but none occurred.

#### The Photo Array

On December 8, Glenda Brawley asked investigators who visited her residence to supply the Brawley family with photographs of all the police officers in the Mid-Hudson Valley.

In his testimony before this Grand Jury, the District Attorney told us that while this request was not "denied," it did present several practical and legal difficulties. The District Attorney explained that in an investigation where a complainant "describes the account of the incident and describes the individual [who allegedly committed the crime] to the extent that we might know who could potentially be involved," photographs of persons who might meet that description could be shown. Instead, he testified, the District Attorney's office was asked to, in essence, "drop off 20 photographs on [a] Friday, come back on a Monday and let us know...if you see anybody that you recognize. That's not the way we do business in this county."

The "description" of an attacker as being a "white cop" did not assist in the creation of an appropriate photographic array because of the large number of persons in Dutchess County who carry a badge. The District Attorney testified:

We have seven different state penal institutions in this county, employing thousands of individuals. They are peace officers. We have the Dutchess County Sheriff's Department,

New York State Police, whose headquarters are in this county and we have 20 different part-time agencies in this county and [a]ll wear badges. In addition, we have people in this county who live here...who are corrections officers...So obviously, tactically or strategically it didn't make any sense to provide them with what would have to amount to literally thousands of photographs. We needed more information.

The investigators requested more information from Tawana Brawley regarding the identification of her attackers, specifically to expand upon her very limited description so they would have a better description to work with in order to establish whether a police officer was involved. Glenda Brawley said that her daughter was still too traumatized to be able to talk to them.

During that same visit, Glenda Brawley also asked that the death of part-time police officer Harry Crist, Jr. be investigated. On December 7, a local newspaper had reported a complaint by a community organization that the police should follow up on the suicide in the previous week of a part-time police officer. The investigators informed her that Crist's death was already being investigated and they were now looking to see if he had any involvement in an attack on Tawana Brawley.

As the District Attorney's Office continued to investigate the allegations concerning Mr. Crist's death, a decision was made to prepare a photo array including his picture. An Assistant District Attorney involved in the investigation told us that as the case was being prepared for presentation to a Grand Jury, he instructed investigators that if Ms. Brawley came in to testify "we want to have photographs available to show...[I]f we reach that point we want to be able to have a photographic array set to give to Tawana or anybody else to start making identifications."

An array was prepared which included the Crist photograph and others of persons similar in appearance. It was delivered to the District Attorney's office for presentation to Ms. Brawley during her Grand Jury appearance. However, Ms. Brawley did not appear.

Disqualification of the District Attorney  
and the Special District Attorney

The Grand Jury has examined the chain of events that led both the District Attorney of Dutchess County and the private attorneys appointed to replace him to request that they be removed from handling this investigation.

On December 8, Glenda Brawley noted the death of Harry Crist, Jr., the part-time police officer, and asked that he be investigated for a possible connection to the attack on her daughter.

Approximately a week after Harry Crist, Jr.'s death, his name appeared in a newspaper article about the Brawley case. On the day of or the day following the article, Assistant District Attorney Steven Pagonos advised District Attorney Grady that he knew Crist and had been with him on November 28, the Saturday before his death. He further told the District Attorney of their activities on that date. Mr. Pagonos also advised the District Attorney that he had gone to Mr. Crist's home on December 2 after he learned of Crist's death.

Mr. Pagonos also advised the Assistant District Attorney handling the Grand Jury investigation of the Brawley matter of this information, and that Assistant asked Mr. Pagonos if he could obtain a photo of the officer without upsetting the deceased officer's family. The photo would be utilized in a photo array being prepared. Mr. Pagonos obtained the photograph; his doing so was his only involvement in the Brawley investigation.

In late December, a friend of Tawana Brawley agreed that his telephone conversations with Ms. Brawley could be recorded. These conversations are described in more detail elsewhere in this report. In the second telephone call, after inquiring if the call was "on tape or something" and saying to the caller that the authorities "probably struck a deal with you," Ms. Brawley and the caller had the following conversation:

(C: Caller; B: Ms. Brawley)

B: You know, one of them killed himself.  
C: Who?  
B: One of them killed himself.  
C: One of them?  
B: Uh huh.  
C: Who?  
B: The cop.  
C: Who, what's his name?  
B: The cop killed himself, committed suicide, he killed himself.  
C: Where was this?  
B: In Wappingers.  
C: How'd he kill himself?  
B: He shot himself in the head.  
C: It was in the papers?  
B: No, they put a news blackout on it.  
C: Yeah.  
B: Yup. There was like a little bit on it an article, you know.

In this same conversation, however, Ms. Brawley also said that she did not know who attacked her.

On Wednesday, January 13, the postal carrier who delivers to the Pavillion complex appeared at the first Grand Jury. While preparing to testify, he advised the Assistant District Attorneys handling the presentation that he had seen four white men in a white "troop car" at about 1 p.m. on either Friday, November 27, or Saturday, November 28, on Scarborough Lane in the Pavillion Apartment Complex. When asked what he meant by a troop car, he described it as a former police car.

With this new information in hand, the Assistant District Attorney presenting the case reviewed his files and the State Police file regarding Mr. Crist's death. The most significant factor in that review was that Steven Pagones had stated that on Saturday, November 28, he, Mr. Crist, a state trooper and another friend had gone shopping in Danbury, Connecticut.

On the morning of January 14, 1988, the Assistant District Attorney handling the investigation asked Steven Pagones several questions in light of the new developments. Mr. Pagones said that he and his friends had travelled in Mr. Crist's car on that Saturday, and described it as a gray, silver gray or pewter former "troop car." He added it could have looked "whitish" in color.

The Assistant District Attorney informed the District Attorney of that information. They decided to speak to Mr. Pagones further, and he substantially restated his activities with his friends for that Saturday. During the further conversation, Mr. Pagones related his recollection that Mr. Crist, while on the way to Danbury, asked whether anyone had heard of a missing girl. At some point during this second interview, either Mr. Pagones or a questioner at the interview raised the possibility that Mr. Crist used the phrase "a girl in a bag of shit" or "a girl in a bag." Mr. Pagones stated immediately that he was not certain that Mr. Crist used such a phrase. This conversation is discussed later in this report.

The District Attorney testified that at this juncture, he believed that it would be necessary to resolve questions involving Mr. Pagones and Mr. Crist. The District Attorney testified that he believed that the mail carrier's statement raised the following possibility: if the mail carrier's sighting was on Saturday, not Friday, and if the car he saw was Mr. Crist's car, then there would be a conflict with Mr. Pagones's testimony that the four friends drove to Danbury on that Saturday. Moreover, their whereabouts on Saturday could be crucial, as that was the day on which Tawana Brawley was discovered.

The District Attorney testified that it was necessary to the investigation to resolve these issues but that he and his staff questioned whether they could do so without creating an appearance of impropriety inasmuch as they would be investigating

matters involving a member of the District Attorney's staff. The District Attorney testified that he decided to stop further presentation of evidence to the existing Grand Jury and to consult with senior state and federal criminal justice officials.

On the following Wednesday, January 20, the District Attorney applied before Dutchess County Court Judge Judith Hillery for the appointment under County Law Section 701 of a Special District Attorney. This section states in pertinent part that:

Whenever the district attorney....is disqualified from acting in a particular case...., the court may, by an order entered in its minutes, appoint some attorney at law residing in the county, to act as special district attorney during the...., disqualification of the district attorney..

Judge Hillery granted the application and at approximately 9:30 a.m. on January 21, 1988, advised David B. Sall, a local attorney, that he had been appointed as Special District Attorney in this case. At the Special District Attorney's request, a second local attorney was also appointed to assist him.

Mr. Sall is a former Assistant District Attorney in Kings County and, at the time of his appointment, was also a Special District Attorney in another unrelated matter in Dutchess County. He lives and maintains his practice in Dutchess County. The majority of his cases are criminal, and at the time, all but one of his criminal cases were in Dutchess County.

At the time of his appointment, Mr. Sall was not advised as to the nature of the conflict that caused Mr. Grady's disqualification.

The Special District Attorney initially made an appointment with Glenda Brawley to see her on the morning of January 22. On that morning, however, Mr. Sall found a message left by Glenda Brawley on his answering machine stating that she was canceling the appointment on the advice of her attorneys.

On January 22, Mr. Sall and his assistant met with District Attorney Grady and learned for the first time the nature of the conflict. After leaving the District Attorney's office, Mr. Sall and his Assistant conferred and concluded that they also were confronting a conflict of interest.

Mr. Sall testified before this Grand Jury:

....it was my belief that at some point it would be incumbent upon me as a special district attorney to investigate the office of

the district attorney to see whether or not the conflict of interest that was present in that office could have had any influence upon the investigation and the gathering of evidence which had gone on prior to our involvement.

We saw that as a conflict of interest for us as, essentially criminal trial attorneys, going forward with that matter.

\* \* \* \*

I was pretty much between the rock and the hard place, as it were, in that I believed it would be incumbent upon me if I continued as special district attorney to investigate, to any extent, the very office that was prosecuting defendants that I was representing.

I saw that as a potential down the road, in one aspect, of causing me to be relieved as counsel to those individuals. Ethically, attorneys are forbidden to take any knowing steps which would cause them to abandon the interests of their clients. I was in a quandary over that possibility.

Mr. Sall made an application to Judge Hillery on January 22 requesting that he and his assistant be relieved. The application was granted on the same day. Subsequently, an application was made to the Governor that the District Attorney be superseded by the Attorney General pursuant to Executive Law Section 63(2).

Canon 9 of the Code of Professional Responsibility for attorneys provides:

A LAWYER SHOULD AVOID EVEN THE APPEARANCE OF PROFESSIONAL IMPROPRIETY.

The District Attorney and Special District Attorney testified that they perceived that their continued involvement in the investigation would create potential conflicts of interest and that they sought removal from the investigation to eliminate such potential conflicts in accordance with their understanding of their duties as lawyers.

#### Harry Crist, Jr.

Harry Crist, Jr., a part-time police officer with the Town of Fishkill who lived in the Village of Wappingers Falls, died on Tuesday, December 1, as a result of a gunshot wound to the head. The timing and circumstances of his death led to speculation and unsupported public assertions that he had been involved in an attack upon Tawana Brawley and that his death was either a suicide motivated by guilt over that involvement or a murder committed by others involved in the incident to prevent him from talking.

Subsequently, further public statements were made accusing friends of Mr. Crist, including Assistant District Attorney Steven Pagones, of also being involved in the alleged crimes committed against Tawana Brawley.

On December 8, Glenda Brawley mentioned Mr. Crist's death to investigators who visited her house and asked that it be investigated to see if he had anything to do with the attack on her daughter.

As noted earlier, during a tape recorded conversation with a friend on December 23, Tawana Brawley referred to a police officer who killed himself. Earlier in the conversation, she inquired if the call was taped and asked the caller if he had struck a deal with authorities. The conversation is quoted in two prior sections of this report.

The Grand Jury has investigated the circumstances of Mr. Crist's death and his activity during the period of Tuesday, November 24 through Saturday, November 28, 1987. The Grand Jury has heard testimony from experts in the field of forensic pathology, questioned document analysis, fingerprints, ballistics and gun shot residue analysis, as well as the testimony of investigators, family members, co-workers and friends regarding the circumstances of the officer's death and his whereabouts during the four-day period. The following facts have been established:

At approximately 11:45 p.m. on Tuesday, December 1, 1987, Mr. Crist's landlady, who lived in the apartment underneath his, returned home and observed his bedroom light on. The only vehicles in the driveway belonged to Mr. Crist. She later heard someone walk down the stairs, lock the door and return up the stairs. She described the apartment as not well soundproofed and said she heard no voices or walking around from upstairs. Shortly after midnight she heard "a noise, which sounded like a shot. And I thought it was very loud, very loud noise..." She returned to bed thinking the sound was just a car backfiring. She heard no one leave the building after that sound.

On the morning of Wednesday, December 2, the State Police were summoned to the apartment by a friend of Mr. Crist who had found the body. This friend, a state trooper, had gone to the apartment to retrieve an item he had left on a prior visit. He had his own key to the apartment.

When officers responded, the deceased was found in his bedroom lying on the bed; a .357 magnum revolver with blood on it was found next to the body; and a note was on the floor. A wound under the chin was clearly visible. There was no sign of a struggle anywhere in the apartment and no evidence that the body had been moved prior to the arrival of police.

The note found at the scene was introduced into evidence and read to the Grand Jury. The Grand Jury believes it would be unduly painful to Mr. Crist's family and would serve no probative purpose to repeat its contents in detail. In essence, the note cited the deceased's ineligibility to become a New York State Trooper, his unhappiness with his non-police job and his inability to handle his problems. It makes no mention, whatsoever, direct or implied, of the Brawley incident. The facts cited in the letter and the problems in his personal life were substantiated by the testimony of several witnesses, including relatives and friends. Three members of his family identified the handwriting on the note as Mr. Crist's. This note was also examined by an independent examiner of questioned documents, Joseph P. McNally, who compared it to known samples of Mr. Crist's writings from his places of employment and concluded that the note was written by the deceased.

The Grand Jury has also heard testimony that on the Friday before his death, November 27, Mr. Crist learned that the woman he had been seeing might be ending their relationship. On Tuesday, December 1, at about 9:30 p.m., the end of the relationship was confirmed in a telephone call.

The gun found next to the body was registered to Mr. Crist, and tests showed that the blood on it was the same type as the blood of the deceased. The presence of blood, and also oil, on the gun made it difficult to recover fingerprints. A partial fingerprint found on the revolver did not contain enough characteristics to permit any comparisons. Ballistics evidence established that the bullet removed from the deceased was fired from that gun.

Dr. Samarendia Basu, a Ph.D. in physics, and a research scientist at the New York State Police Crime Laboratory, testified regarding a Gun Shot Residue (GSR) test performed on the deceased police officer. Dr. Basu explained that when a gun is fired, clouds of vapors are emitted from the muzzle (front) and breach (rear) of the gun. These vapors contain gunshot residue. The particles from the breach are different in shape from those emitted from the muzzle. Thus the location, amount

and shape of the particles can tell the expert much about the manner in which a gun was fired. Dr. Basu concluded that the wound was self-inflicted, with the gun held tightly in the right hand and with the left hand held tightly approximately three inches behind, supporting the right hand. Significantly, there was an overlapping of the different types of gunshot residue on the hands which resulted when the residue from the muzzle rebounded off the wound and superimposed over the breach residue that had already settled on the back of the right hand.

Dr. Michael Baden, an expert in the field of forensic pathology, reviewed the initial autopsy, photographs of the scene and other forensic evidence regarding Mr. Crist's death. He confirmed the initial autopsy's findings that death was caused by a single penetrating gunshot wound of the head. Dr. Baden testified that the wound was a contact wound, that the pattern of blood on the body indicated the body had not been moved and that the position where the weapon was found was typical for a suicide. Dr. Baden concluded "...my opinion is strongly that not only is it suicide, but it isn't a close call."

FBI Agent Michael Malone testified that he had examined hairs and fibers from Mr. Crist's apartment and car and from four state police cars which were or might have been used by the state trooper who was Mr. Crist's friend and who found his body. No hairs or fibers from Tawana Brawley or Apt. 19A Carnaby Drive were found in either Mr. Crist's apartment or any of the cars. No hairs or fibers from Mr. Crist's apartment or the cars were found on Tawana Brawley or in Apt. 19A Carnaby Drive. Moreover, no Caucasian hairs were found in Apt. 19A Carnaby Drive.

Investigator Ralph Gagliardi, a State Police fingerprint expert, testified that he had secured latent fingerprints from Apt. 19A Carnaby Drive and compared them to the fingerprints of Mr. Crist, Mr. Pagonis and their friend the state trooper. There was no match.

The Grand Jury also heard testimony sufficient to account for a large percentage of Mr. Crist's activity and whereabouts during the period from Tuesday, November 24, through Saturday, November 28. Some of this testimony is of a personal nature and to be included here would unduly infringe upon the privacy of others. Furthermore, to provide specific detail of his activity would serve only to allow others to create further accusations tailored to coincide with the facts. The Grand Jury heard testimony that the deceased police officer conducted his work and social activities in a normal manner over this period and could not have spent four days or any substantial portion of the four-day period with Tawana Brawley.

As previously noted, Steven Pagones testified that on Saturday, November 28, the day Tawana Brawley was discovered, he joined Mr. Crist, the state trooper who subsequently found Mr. Crist's body, and another friend on a trip to a shopping mall in Danbury, Connecticut. The four friends were driven by Mr. Crist in his car.

The Grand Jury considered the statement of the mail carrier regarding his sighting of a "troop car" at the Pavillion Complex. It was the District Attorney's view that to investigate the potential contradiction between the mail carrier's assertions and those of Mr. Pagones would create a potential conflict of interest. This Grand Jury did investigate fully the implications of the mail carrier's statement.

The mail carrier testified in this Grand Jury that at approximately 1 p.m. on a day during the week of November 23 to November 28 he saw an all-white four-door car that looked like an unmarked troop car. He did not notice either the license plate number or the state the plate was from. The car was full of male adults, at least four and perhaps six. No females or blacks were observed. He described the occupants as white and middle-aged and could provide no further descriptions. The car was first observed travelling slowly up Scarborough Lane toward a cul-de-sac and later heading back in the other direction. It was never observed on Carnaby Drive.

The mail carrier testified he did not remember the exact day he saw the car, but recalled it was very warm and "had to be close to 60 degrees." He reviewed certified weather reports for the area for that week. The temperature at 1:47 p.m. on Saturday, November 28, was 43 degrees; at 1:45 p.m. on Friday, November 27, it was 40 degrees; the temperature for Thursday, November 26, at 1:52 p.m. was 50 degrees; and for Wednesday, November 25, at 1:50 p.m. it was also 50 degrees; the temperature at 1:49 p.m. on Tuesday, November 24, was 57 degrees. The mail carrier then testified: "I would be pretty certain to say that I saw the car on Tuesday, that warm day."

The mail carrier testified that investigators had shown him a car and that he got a good close look at it. He testified that the car he was shown by the investigators was silver and the car he had seen at the Pavillion was white. When asked: "Was that the car that you saw in the Pavillion during the week of November 23rd through November 28th?", he replied: "I would have to say no." The mail carrier was also shown photographs of four other vehicles and testified that none of those vehicles was the one he saw at the Pavillion.

Subsequent testimony demonstrated that the silver car the mail carrier was shown was Mr. Crist's and that the photographs of the other four vehicles were of state police vehicles that Mr. Crist's friend, the state trooper who discovered his body, had used or had access to in November, 1987.

The Grand Jury also received into evidence store receipts found in Mr. Crist's apartment. The receipts were from stores in the mall in Danbury where Mr. Pagones testified the four friends had gone. The receipts were dated November 28.

The Grand Jury also considered the conversation that Steven Pagones recalled happening on the way to Danbury. Mr. Pagones said the conversation occurred around noon on Saturday, which would have been prior to the time Tawana Brawley was discovered. When Pagones was interviewed in the District Attorneys office on January 14, 1988 regarding his trip to Danbury, he recalled that Mr. Crist had inquired as to whether anyone had heard of a missing girl. At some point during the interview on January 14, either Mr. Pagones or a questioner raised the possibility that Mr. Crist had used the phrase "a girl in a bag of shit" or "a girl in a bag." Mr. Pagones stated immediately that he was not certain that Mr. Crist used such phrases and that he (Pagones) may have been adding things he heard after the incident. Mr. Pagones testified before this Grand Jury that at the time of the January 14 meeting, those phrases were very familiar from having been mentioned in news accounts and around the office. He testified he was certain that Mr. Crist did not mention either of those phrases in the car on November 28. The Grand Jury accepts as credible Mr. Pagones's testimony that the conversation on November 28 consisted of no more than an inquiry as to whether anyone heard of a missing girl and in fact made no mention of a "girl in a bag" or "girl in a bag of shit."

The Grand Jury also heard testimony that no one had filed a report with the Wappingers Falls police concerning Tawana Brawley's disappearance until the afternoon of November 28. The Grand Jury also heard testimony that there was another fifteen-year-old girl missing from Wappingers Falls from late October until late December, 1987. This was reported to the Wappingers Falls Police Department, which in turn sent a teletype to all neighboring police departments. In addition, a supplementary missing person report was prepared and mailed or hand delivered to all local police departments. Both of these reports were sent to the Town of Fishkill Police Department where Mr. Crist was employed.

#### Steven Pagones

It must be stated at the outset that no witness appeared before this Grand Jury and accused Steven Pagones of anything. No forensic evidence linked Mr. Pagones in any way to Tawana Brawley or her former apartment, and none of his fingerprints were found in the apartment. The only allegations against Mr. Pagones were unsworn statements made in public forums.

The Grand Jury heard testimony from an individual who was a close associate of those who made the public accusations against Mr. Crist, Mr. Pagones, and their friend, the state trooper. He testified that, to the accusers, Mr. Crist was a

suspect because of the timing and circumstances of his death. Mr. Pagonos and the state trooper were suspects because of their friendship with Mr. Crist, as well as the fact that they both worked in law enforcement and that their fathers both held high positions in the criminal justice system.

The associate testified that some of the accusations were based on nothing more than newspaper articles. For example, he stated that accusations that Mr. Crist was murdered were based on a newspaper article which did not say whether or not a gun was found at the scene of his death. Likewise, an accusation that the Irish Republican Army was involved in an attack on Tawana Brawley stemmed from a barroom conversation with reporters to the effect that certain IRA prisoners had smeared feces on themselves as a protest.

The Grand Jury has concluded that Mr. Crist's death was a suicide motivated by reasons that had nothing to do with Tawana Brawley or with anything that may or may not have happened to her. Yet the stigma of the accusations continues to hang over Assistant District Attorney Pagonos and others publicly named.

Everything thus far contained in this report -- the evidence of Tawana Brawley's whereabouts during the four-day period; the evidence concerning her medical, physical and psychiatric condition at the time of her discovery; the evidence concerning whether or not a cover-up was perpetrated; the evidence concerning the shopping trip on November 28; and the evidence concerning Mr. Crist's death -- discounts the possibility that Assistant District Attorney Steven Pagonos was involved in an attack upon Tawana Brawley.

Moreover, the Grand Jury had the benefit of testimony from Mr. Pagonos himself, who, like a number of witnesses who appeared before this Grand Jury, was asked to execute a waiver of immunity. Each time such a request was made of a witness we were advised that the witness had no obligation to waive these rights and that we could draw no adverse inference against the witness if the witness declined to do so. As citizens we also accept as a basic principle of the American system of justice that a person is innocent until proven guilty and has no obligation to prove himself or herself innocent. Thus, we recognized the rights that Assistant District Attorney Pagonos willingly gave up in his decision to appear before us.

The Grand Jury heard testimony from Steven Pagonos, thirteen witnesses who saw him during the period from Tuesday, November 24, through Saturday, November 28, and four witnesses who authenticated records which also served to establish his whereabouts. We also examined photographs taken during this period which further established where Mr. Pagonos was. Further, we were supplied with the names of 49 other witnesses whom we were advised we had the discretion to call. The Grand Jury concluded that the testimony of additional witnesses was not necessary.

Mr. Pagonos in his testimony was able to substantially account for his whereabouts for virtually every hour of the period from Tuesday evening, November 24 through Saturday, November 28, 1987. Mr. Pagonos testified that he has never met Tawana Brawley. He answered all questions asked of him.

The Grand Jury believes that to specify any further the whereabouts of Steven Pagonos during this time period and identify the witnesses who corroborate his whereabouts would serve no purpose other than to invade Mr. Pagonos's privacy and to expose him to additional allegations tailored to the facts we disclose in this report. The Grand Jury believes that those publicly named and their families have suffered too much already and we choose not to be an instrument that could be used to facilitate additional false allegations.

#### CONCLUSIONS

This report addresses the question of whether Assistant District Attorney Steven Pagonos committed misconduct, non-feasance or neglect in office.

Specifically, Mr. Pagonos was publicly accused of taking part in an abduction and sexual assault of Tawana Brawley. In order to answer that question it was necessary for the Grand Jury to resolve a great number of questions of fact and reach conclusions based on the facts as we determined them. The Grand Jury had to examine the evidence as to the possible commission of a crime against Tawana Brawley and endeavor to determine the nature of any such crime and the circumstances of its commission. While pursuing this aspect of its investigation, the Grand Jury conducted a parallel inquiry into whether any crimes so committed were in fact committed by Steven Pagonos. Set forth below are a number of the key factual determinations and conclusions that the Grand Jury reached enroute to our ultimate conclusion in this matter.

#### The Discovery of Tawana Brawley

Tawana Brawley was found on Saturday, November 28, 1987, in the common area several feet from the rear of her former residence at 19A Carnaby Drive in the Pavillion Apartments, Town of Wappingers, New York.

She was first observed between 1:30 and 1:44 p.m. stepping into a large plastic garbage bag and pulling it up around her. She remained stationary for a couple of seconds, looked around, hopped a few feet, and then, while still inside the bag, lay on the ground near the back wall of 17 Carnaby Drive.

At approximately the same time Tawana Brawley was observed behind 17-19 Carnaby Drive, her mother, Glenda Brawley, was present in front of Apt. 19A Carnaby Drive.

#### Tawana Brawley's Condition

When discovered, Tawana Brawley was not suffering from exposure. If an individual had been outdoors continuously from Tuesday evening, November 24, to Saturday afternoon, November 28, when the temperature several times dropped to the freezing point, there is a high probability the individual would have suffered from exposure.

When discovered, Tawana Brawley was not malnourished. If an individual had been deprived of food for four days, there is a high probability that there would have been evidence of malnourishment.

When discovered, Tawana Brawley did not have a bad odor to her breath. If an individual was prevented from practicing oral hygiene for a four day period, there is a high probability that there would have been a bad odor to the breath.

When discovered, there were no burns on any part of Tawana Brawley's body. The jeans that Tawana Brawley was wearing when found had been burned in the crotch area. If an individual had been wearing the jeans in which Tawana Brawley was found when the jeans were burned, there would be burns on the body.

When discovered, Tawana Brawley had no injuries, broken bones, discolorations, contusions, or bruises, other than a slight scratch on her right breast and a quarter-sized bruise behind her left ear. The bruise was not tender or fresh, there was no collection of fluid underneath, and she did not wince or pull away when it was touched. The bruise was one to several days old and whatever caused it was unlikely to have been able to cause unconsciousness.

Tawana Brawley was conscious when found and at St. Francis Hospital.

- She stepped into the plastic bag in which she was found and hopped twice and lay down;
- She opened and closed her eyes twice prior to the arrival of the EMTs;
- She resisted the opening of her eyes by the EMT;
- She was biting down on a blouse that was wrapped around her head;
- She grabbed with both of her hands the arm of one of the EMTs;
- She resisted the EMTs' attempts to straighten her legs out on the stretcher upon which she was placed;

- In a consciousness test, the emergency room physician raised Tawana Brawley's arm over her face. The arm, when released, fell away from her face indicating her conscious decision to avoid hitting her face;
- She resisted the emergency room physician's efforts to open her eyelids;
- She subsequently opened her eyes when the emergency room physician said "I know you can hear me so open your eyes.";

There was no physical basis for either Tawana Brawley's claimed inability to walk on the days that followed November 28, or for her subsequent difficulty in walking in the weeks that followed.

#### Tawana Brawley's Allegations

To the knowledge of the Grand Jury, Tawana Brawley never provided a detailed account of her allegations, a detailed description of her alleged attackers, or named her alleged assailants to anyone.

- Tawana Brawley provided information to law enforcement on only two occasions -- Saturday, November 28, at St. Francis Hospital and Monday, November 30, at home. The information she provided was extremely limited. Neither occasion could truly be called an interview as that term is commonly understood;
- Tawana Brawley never provided a detailed account of her allegations to anyone at St. Francis Hospital or to anyone in law enforcement at any time;
- Tawana Brawley never provided more than a sketchy description of one of her alleged assailants to anyone at St. Francis Hospital or to anyone in law enforcement at any time;
- Tawana Brawley never named her alleged attackers at St. Francis Hospital or to anyone in law enforcement at any time;

#### No Evidence of Sexual Assault

There was no medical or forensic evidence that a sexual assault was committed on Tawana Brawley. If a 15-year old girl had been forcibly raped or sodomized by multiple assailants over a four day period, there is a high probability that medical or forensic evidence would have been found.

- There were no bruises, lacerations, tenderness or blood in the rectal area of Tawana Brawley;
- There was no trauma to the mouth or the back of the throat of Ms. Brawley;

- There were no cuts, dried blood, bruising, swelling, deep redness or other injury to Ms. Brawley's vaginal and pelvic area or the surrounding skin;
- There was no semen found in Ms. Brawley's mouth, or on her body;
- There was no motile sperm found in a microscopic examination of vaginal slides prepared at St. Francis Hospital;
- Laboratory tests on the rape kit found no blood, sperm cells, or P-30 (a prostate antigen that is a substance unique to semen) on any of the materials gathered from Ms. Brawley's fingernails, or in the specimens taken from the swabs of her mouth, rectum, or vagina;
- There were no semen stains or blood on any of the clothes Ms. Brawley was wearing;
- There was no urine found in Ms. Brawley's mouth;
- There were no foreign pubic hairs in the pubic combings taken from Ms. Brawley;
- There was no plant material found on Ms. Brawley or her clothing. If an individual was sexually assaulted in a wooded area or spent significant time in a wooded area, there is a high probability that there would have been plant materials on the individual's body and clothing.

#### Tawana Brawley's Presence in Her Former Apartment

At some point between Tuesday evening, November 24, and the time she was found on Saturday, November 28, Tawana Brawley had significant contact with and spent a period of undetermined duration in Apartment 19A.

- On Thursday, November 26, Thanksgiving Day, a young black girl wearing an acid washed denim jacket fitting the physical description of Tawana Brawley was in Apartment 19A.
- The acid washed denim jacket Ms. Brawley wore on November 24 was found in the washing machine in Apt. 19A;
- In the same washing machine was a pair of jeans which contained a pubic hair consistent with Ms. Brawley's;
- Those jeans had dog feces on them. The feces contained dog hairs which were consistent with the dog hairs in the dog feces on the pink shirt and shoe Ms. Brawley wore when she was found and the gloves which were in the plastic bag in which she was found;

- Those jeans and a pair of white boots found in a closet in Apt. 19A had been taken from the apartment across the hall. The neighbor noticed the boots missing on Friday, November 27;
- Those boots had been cut, exposing DuPont Hollofil insulation; Hollofil fibers were found in Ms. Brawley's pubic hair and in the feces on the left glove found with her; a piece of loose Hollofil was recovered from underneath the plastic garbage bag in which Ms. Brawley was found, and another clump of Hollofil was found inside the acid washed denim jacket in the washing machine;
- Carpet fibers consistent with those from Apartment 19A were found on the jeans, blouse and shoe Ms. Brawley was wearing when discovered on November 28;
- A burnt seam of denim and other charred cotton materials were scattered on the living room floor;

#### Tawana Brawley's Access to Materials that Could Have Created the Condition in Which She Appeared on November 28.

All of the items and instrumentalities necessary to create the condition in which Tawana Brawley appeared on Saturday, November 28, were present inside of or in the immediate vicinity of Apartment 19A.

- The razor blade found inside Apartment 19A is consistent with the instrument used to cut the word "NIGGER" into the side of Ms. Brawley's pink shoe and to cut open the white boots. There was no blood found inside the shoe, and we conclude that the shoe could not have been worn when cut;
- The feces found on the pink blouse and shoe Ms. Brawley was wearing when found, on the gloves found in the bag in which she was discovered and on the jeans in the washing machine contained dog hairs which were consistent with the hairs from a dog owned by the occupant of Apartment 21A. This dog was walked in the common area behind the building containing 17-19-21-23 Carnaby and feces from this dog was on the ground in November 1987;
- The feces found on the pink shoe was located mostly on the sole, as if the feces had been stepped in;
- The feces found on the glove was smeared on the palms and came up between the fingers onto the back of the fingers as though the person wearing the gloves had pressed down upon a mass of feces;

- Head hairs consistent with Ms. Brawley's were found on the right glove of the black, ladies' gloves found in the bag in which she was discovered;
- Hollofil has the same visual appearance as cotton and may have been the substance observed in her nose and ears which was described by the emergency room physician as rough and of a synthetic nature. A piece of Hollofil was found with the bag in which she was discovered;
- The writing on Tawana Brawley's body is visually consistent with writing produced using moistened charred cotton fiber residue;
- The writing on Tawana Brawley's pink shirt was done with charred cotton;
- Pieces of charred cotton fibers were found on the carpet inside Apartment 19A;
- Three pieces of charred burnt cotton cloth, which appear to be part of a face cloth or towel were found with the bag in which Tawana Brawley was discovered;
- Charred cotton fibers were found in the tips of the black, ladies' gloves that were found with the bag in which Tawana Brawley was discovered;
- Charred cotton fibers were found embedded under Tawana Brawley's fingernails.

#### Conclusions as to What Occurred and Where it Occurred

Based upon all of the evidence that has been presented to the Grand Jury, we conclude that Tawana Brawley was not the victim of a forcible sexual assault by multiple assailants over a four-day period. There is no evidence that any sexual assault occurred. Tawana Brawley had significant contact with Apartment 19A Carnaby Drive at some time during her four-day disappearance. All of the items and instrumentalities necessary to account for the state of her appearance on Saturday, November 28, were present inside of or in the immediate vicinity of Apartment 19A. The Grand Jury concludes that Tawana Brawley was present in or near Apt. 19A when put into the condition in which she was discovered. The Grand Jury further concludes there is nothing in regard to Tawana Brawley's appearance on November 28 that is inconsistent with this condition having been self-inflicted.

#### No Evidence of a Cover-up

There is no evidence that a cover-up occurred or was attempted in this case. The actions of the law enforcement agencies and officials involved were inconsistent with any attempt at a cover-up.

- Significant numbers of personnel were assigned to the investigation by the Dutchess County Sheriff's Office and District Attorney's Office;

- The Federal Bureau of Investigation was contacted by the Sheriff's Office while Tawana Brawley was still in St. Francis Hospital. The FBI was contacted based on the racial epithets on her body even before she indicated that a "white cop" was involved;
- All of the key evidence in the case was sent to the FBI Laboratory in Washington, D.C.;
- The State Police were brought into the investigation;
- The agencies involved in the investigation assigned both blacks and women to the investigation. The agencies involved in the investigation assigned personnel with specialized expertise including expertise in civil rights cases and sexual abuse cases;
- Persistent efforts were made to secure the cooperation of Tawana Brawley and her family.

#### Withdrawal of the District Attorney and Special District Attorney

The Grand Jury believes that the withdrawal of the District Attorney and the Special District Attorney, although not obligatory, was not an inappropriate response to their concern that there might be a potential conflict of interest. Their withdrawal is inconsistent with the allegations of a cover-up.

#### Police Officer Harry Crist, Jr.'s Lack of Involvement

The death of Harry Crist, Jr. was a suicide completely unrelated to Tawana Brawley, committed with his own gun which was found at the scene. His suicide note made no mention, directly or indirectly, of Tawana Brawley. Harry Crist, Jr. had no connection with any incident involving Tawana Brawley between Tuesday evening, November 24, 1987 and Saturday afternoon, November 28, 1987.

#### Assistant District Attorney Steven Pagonis's Lack of Involvement

In addition to the evidence we reviewed concerning the occurrence of an alleged sexual assault on Tawana Brawley, we also heard the testimony of Steven Pagonis and that of the witnesses called on his behalf and reviewed documentary and photographic evidence Mr. Pagonis produced. There is no forensic or other evidence that in any way connects Mr. Pagonis to any incident involving Tawana Brawley. The testimony of Mr. Pagonis, his witnesses and documentary and photographic evidence were credible and persuasive and established Mr. Pagonis's whereabouts for virtually every hour of the period between Tuesday evening, November 24, 1987 and Saturday afternoon, November 28, 1987. Steven Pagonis had no connection with any incident involving Tawana Brawley during those four days.

THEREFORE:

WE THE GRAND JURY OF THE SUPREME COURT, STATE OF NEW YORK, COUNTY OF DUTCHESS IMPANELLED ON FEBRUARY 29, 1988, HAVING CONDUCTED AN INVESTIGATION, AND BASED UPON THE PREPONDERANCE OF THE CREDIBLE AND LEGALLY ADMISSIBLE EVIDENCE, CONCLUDE THAT THE UNSWORN PUBLIC ALLEGATIONS AGAINST DUTCHESS COUNTY ASSISTANT DISTRICT ATTORNEY STEVEN PAGONES ARE FALSE, HAVE NO BASIS IN FACT AND THAT HE COMMITTED NO MISCONDUCT, NON-FEASANCE OR NEGLECT IN OFFICE.

Foreman of the Grand Jury

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REPORT OF THE GRAND JURY  
OF THE SUPREME COURT  
STATE OF NEW YORK  
COUNTY OF DUTCHESS  
ISSUED PURSUANT TO  
CRIMINAL PROCEDURE LAW  
SECTION 190.85 SUBDIVISION (1)(c)

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THE GRAND JURY OF THE SUPREME COURT  
OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

THIS GRAND JURY WAS IMPANELLED UPON APPLICATION  
OF ATTORNEY GENERAL ROBERT ABRAMS ON FEBRUARY  
29, 1988 BY THE HON. ANGELO J. INGRASSIA,  
JUSTICE OF THE SUPREME COURT

## INTRODUCTION

This Grand Jury was impanelled on February 29, 1988 for the purpose of investigating matters delineated in Executive Order No. 106 issued by the Governor of the State of New York on January 26, 1988. The Grand Jury commenced an investigation in early March and has heard in excess of 6,000 pages of testimony from more than 180 witnesses and received over 250 exhibits into evidence.

As might be expected, an investigation of this duration and magnitude delves into many different factual and legal questions. In the course of the Grand Jury's inquiry, the Grand Jury periodically received instruction from our legal advisors on specific areas of the law relevant to the matters at hand. At other times, questions from members of the Grand Jury prompted further legal instruction. Pursuant to our oaths, we were bound to accept the law as it was given to us. As Grand Jurors, however, we also have the opportunity to play a role in changing those laws that the Grand Jury believes are in need of revision.

The Grand Jury has the discretion pursuant to Criminal Procedure Law §190.85(1)(c), to submit to the Court that impanelled the Grand Jury a report:

Proposing recommendations for legislative, executive or administrative action in the public interest based upon stated findings.

The Grand Jury has identified a number of deficiencies and impediments in existing law that are appropriate subjects for legislative action. Therefore, this Grand Jury has decided to exercise its discretion and submit to the Court this report recommending legislative action in the public interest based upon stated findings.

STATED FINDINGS

The Grand Jury found that the District Attorney of Dutchess County disqualified himself from this investigation in January, 1988, after he determined that it would be necessary to resolve certain questions concerning a member of his staff and a deceased part-time police officer. The District Attorney perceived that his continued involvement in the investigation was a potential conflict of interest which might have created the appearance of impropriety. On January 20, 1988, he applied in the Dutchess County Court for the appointment of a Special District Attorney under the provisions of County Law Section 701. This section states in pertinent part that:

Whenever the district attorney...is disqualified from acting in a particular case...., the court may, by an order entered in its minutes, appoint some attorney at law residing in the county, to act as special district attorney during the.... disqualification of the district attorney...

The County Court granted the District Attorney's application and on January 21, 1988, advised a local attorney that he had been appointed as Special District Attorney in this case. At the Special District Attorney's request, a second local attorney was also appointed to assist him.

The Special District Attorney was a former Assistant District Attorney in Kings County and, at the time of his appointment, was also a Special District Attorney in another unrelated matter in Dutchess County. He lives and maintains his practice in Dutchess County. The majority of his cases are criminal, and, at the time of his appointment, all but one of his criminal cases were in Dutchess County.

At the time of his appointment, the Special District Attorney had not been advised as to the nature of the conflict that caused the District Attorney's disqualification.

On January 22, 1988, the Special District Attorney and his assistant met with the District Attorney and learned for the first time that the conflict involved a member of the District Attorney's staff. After leaving the District Attorney's office, the Special District Attorney and his assistant conferred and concluded that they also were confronting a conflict of interest.

The Special District Attorney testified before this Grand Jury:

....it was my belief that at some point it would be incumbent upon me as a special district attorney to investigate the office of the district attorney to see whether or not the conflict of interest that was present in that office could have had any influence upon the investigation and the gathering of evidence which had gone on prior to our involvement.

We saw that as a conflict of interest for us as, essentially criminal trial attorneys, going forward with that matter.

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I was pretty much between the rock and the hard place, as it were, in that I believed it would be incumbent upon me if I continued as special district attorney to investigate, to any extent, the very office that was prosecuting defendants that I was representing.

I saw that as a potential down the road, in one aspect, of causing me to be relieved as counsel to those individuals. Ethically, attorneys are forbidden to take any knowing steps which would cause them to abandon the interests of their clients. I was in a quandary over that possibility.

The Special District Attorney made an application to the County Court on January 22 requesting that he and his assistant be relieved. The application was granted on the same day. Subsequently, pursuant to Executive Law Section 63(2), an application was made to the Governor for the Attorney General to supersede the District Attorney.

We find that County Law Section 701, which provides for the appointment of a Special District Attorney to take the place of a District Attorney when he or she is disqualified from acting, is inadequate when applied to the types of problems which arose in this case. Under current law, the Court is restricted to appointing an attorney "residing in the county" when it finds that a Special District Attorney is required.

To be effective, Special District Attorneys must have a working knowledge of the Penal Law and Criminal Procedure Law, and must be experienced in handling criminal cases. These criteria virtually dictate that a Special District Attorney must be an active, practicing criminal defense attorney. However, any such attorney who resides in the county in which the matter

requiring investigation arises is almost certain to be already representing clients being prosecuted by the District Attorney. In the matter before this Grand Jury, all but one of the Special District Attorney's clients in criminal cases were being prosecuted in Dutchess County. In cases where the disqualification of the District Attorney is based on a possible connection between the District Attorney or an Assistant District Attorney and the matter being investigated (as occurred here), the Special District Attorney will be placed in an untenable position. He will be required to investigate potentially criminal acts by a prosecutor who is likely, at the same time, to be prosecuting some of his clients. The Special District Attorney's duty to his clients could jeopardize his effectiveness as a prosecutor and, conversely, his role as a prosecutor could prove inimical to the interests of his clients.

#### RECOMMENDATION

The Grand Jury recommends that County Law §701 be amended to provide that any attorney residing within the judicial district in which the county is located may be eligible for appointment to replace a disqualified District Attorney. This will significantly expand the pool of available attorneys and allow appointing courts to locate experienced criminal attorneys who do not face the type of conflict that arose in this matter.

This recommendation, however, may not adequately address the situation in New York City, where, we are advised, the boundaries of three judicial districts coincide with the boundaries of three of the five counties. As we have not examined the effect County Law Section 701 has had on the appointment of Special District Attorneys in New York City, we express no opinion as to whether New York City should be treated separately in an amended Section 701.

#### IMMUNITY

#### STATED FINDINGS

From the outset of this investigation we have been aware that in New York State any witness who appears before a Grand Jury, whether voluntarily or under compulsion, receives immunity "for or on account of any transaction, matter or thing" related to his or her testimony.

The Grand Jury heard testimony from three individuals who admitted to having participated in street-level drug transactions. Our questions were specifically limited to events during the month of November, 1987, so that we would not confer immunity for any criminal transactions they may have engaged in before or after that month. Although there was no evidence that these individuals were under investigation for these activities at the time of their appearance before us, the Grand Jury cannot accept as logical or just a law that would prevent their prosecution based upon evidence that was derived separately and independently of their testimony before this Grand Jury. Even if these individuals were being actively investigated for these crimes, this Grand Jury should not be forced to choose between evidence relevant to this investigation and thwarting an unrelated prosecution.

The Grand Jury heard testimony of possible criminal activity unrelated to this case. The Grand Jury considered the risk of conferring immunity for this unrelated criminal activity in deciding against subpoenaing certain individuals.

Our legal advisor has instructed us that the United States Constitution does not require a grant of immunity as broad as New York State law mandates. We have been further informed that the federal government and a number of other states have statutes which compel a witness to testify but, as required by the Constitution, prohibit governmental use of his or her testimony.

The United States Supreme Court has held that the constitutional privilege against self-incrimination requires only that a witness be protected from the direct or indirect use of his or her compelled testimony. This means that such testimony may not be used as evidence against the witness nor as a lead to gather evidence. However, the witness does not receive immunity from prosecution, and may be tried and convicted of crimes so long as the basis of the prosecution is evidence gathered independently of the witness's grand jury testimony.

#### RECOMMENDATION

The Grand Jury recommends that the Legislature adopt a statute similar to the federal statute which compels a witness to testify before a grand jury but prohibits governmental use of his or her testimony while still allowing prosecution based upon evidence obtained independently of the witness's testimony.

STATED FINDINGS

The law of New York State provides that certain communications are privileged; that is, the contents of those communications cannot be divulged through compulsion by a governmental body, including a grand jury. The purpose of shielding such communications from disclosure is to encourage people to talk freely without fear that their statements will be used against them in the future. Two statutory privileges in New York State are the physician-patient privilege, which includes dentists and nurses, and the social worker-client privilege. In both cases, however, no privilege applies where the patient or client, at the time of treatment or counselling, is under the age of sixteen years and may have been the victim of a crime.

This age exception to the physician-patient privilege and the social worker-client privilege seeks to protect a child who may have been a victim of a crime perpetrated by a known individual. In such a situation, the child victim often is threatened, intimidated or coerced not to report the crime to law enforcement authorities. Thus, a physician or social worker, by virtue of his or her professional role, may be the only person who has access to evidence of a crime.

In the matter which was investigated by this Grand Jury, a crime was alleged to have been committed between November 24 and November 28, 1987, when the alleged victim was 15 years old. Her initial treatment by physicians and counselling by social workers and psychiatrists, which began on November 28, fell within the exception to the statutory privileges. Because she was regarded as a possible crime victim, her communications during the course of her treatment and counselling up to December 15, 1987 remained within the exception and, therefore, subject to disclosure to law enforcement authorities. On that date, when she reached her 16th birthday, the exception to the privileges ceased to operate and communications beyond that date were not available to us. This resulted in a situation in which the alleged victim was still receiving medical treatment and counselling as a direct result of the events of November 24-28, when she was 15 years of age, yet law enforcement access to the care given to and information obtained from her was terminated solely by virtue of her attaining 16 years of age.

Because of the nature of many crimes committed against children, a considerable amount of time and expertise by caregivers is often required before reliable facts, otherwise unavailable to or withheld from law enforcement authorities, may emerge from the victim. If the perpetrator is, in fact, an individual known to the victim, the victim may be subjected to scrutiny and placed under duress aimed at preventing him or her from coming forward with the facts. A trusted physician, psychiatrist or social worker may be the only responsible person who is privy to

evidence of a crime. The facts of the crime, the identification of the perpetrator and the full physical and psychological impact may be revealed only incrementally, based on fragmentary recollections by the victim. A physician, psychiatrist or social worker may require weeks, or even months, to piece together a victim's account before arriving at a conclusion as to whether or not a crime was committed and who may have committed it.

RECOMMENDATION

The Grand Jury recommends that the Legislature amend Civil Practice Law and Rules Sections 4504(b) and 4508(3) so that the exception to the physician-patient and social worker-client privileges applies to all communications relating to evidence of crimes that may have been committed against a child victim under 16 years of age. It should be the age of the child victim at the time of the alleged crime rather than the age at the time the care is given that is the governing factor in determining whether the communication is privileged and unavailable to law enforcement.

DEFAMATION OF A DECEASED PERSON

STATED FINDINGS

The Grand Jury heard evidence that a deceased part-time police officer was publicly accused of participating in an alleged rape and abduction of a 15 year old girl that occurred between November 24 and 28, 1987.

The Grand Jury thoroughly investigated the officer's death and any potential involvement he might have had in the alleged incident. The Grand Jury concluded that the officer's death was a suicide unrelated to any incident involving the 15 year old girl and that he had no involvement with any alleged incident involving the girl between November 24 and 28, 1987. The Grand Jury heard testimony from the family of the deceased officer and the pain they experienced from these public accusations was evident.

Under present law the family of a deceased person may not bring a lawsuit for defamation of the deceased person even if the allegations are knowingly false and maliciously made.

RECOMMENDATION

The Grand Jury recommends that legislation be considered which would allow the immediate relative of a deceased individual to bring a cause of action for defamation in a case where the deceased is knowingly and falsely accused of committing a felony.

WE THE GRAND JURY OF THE SUPREME COURT, STATE OF NEW YORK, COUNTY OF DUTCHESS PURSUANT TO THE PROVISIONS OF CRIMINAL PROCEDURE LAW SECTION 190.85(1)(c) BASED UPON OUR STATED FINDING SUBMIT THIS REPORT RECOMMENDING LEGISLATIVE ACTIONS IN THE PUBLIC INTEREST.

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FOREMAN

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**LEGISLATIVE RECOMMENDATIONS**

**OF THE ATTORNEY GENERAL**

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The Grand Jury of the Supreme Court, Dutchess County, issued a report pursuant to Criminal Procedure Law Section 190.85(1)(c) which sets forth legislative recommendations based upon the stated findings of its investigation. The Grand Jury's authority was restricted to the investigation of alleged criminal activity in Dutchess County and, accordingly, could only make findings and recommendations based upon actions which occurred in Dutchess County.

As Attorney General, I am not limited by the geographic boundaries of a specific county in proposing legislative recommendations. There is information known to me and in the public domain regarding activity which many people assume is already criminal and which virtually everyone agrees should be criminal -- yet, it cannot be penalized under existing New York law.

The knowing harboring of a fugitive is conduct which should not only be condemned but penalized by the law. The Hindering Prosecution statute, contained in Penal Law Sections 205.50, 205.55, 205.60 and 205.65, criminalizes the harboring or concealing of a fugitive, but only when that fugitive is being sought for a felony offense. Thus, though Glenda Brawley had been found to be in criminal contempt under the Judiciary Law and had been sentenced to 30 days incarceration, since she was not convicted of a felony, those who knowingly harbored her could not be prosecuted for Hindering Prosecution.

New Yorkers will be distressed to learn that this State does not have an Obstruction of Justice statute. The Federal government has such a statute in Chapter 18 United States Code Section 1503. This section, applicable to federal grand jury proceedings, makes it a felony, punishable by up to 5 years imprisonment and a fine not to exceed \$5,000, when any person "corruptly influences, obstructs or impedes, or endeavors to influence, obstruct or impede, the due administration of justice."

New York's counterpart to the federal statute is inadequate. Obstructing Governmental Administration (Penal Law Section 195.05) is a misdemeanor, and unlike the federal provision covering all "corrupt" obstructions of justice, only applies when there is violence, a threat of violence, or a separate criminal act associated with efforts to impede a grand jury. These limitations on the types of obstructions subject to prosecution allows unscrupulous persons, without fear of punishment, the opportunity to pursue actions which attempt to obstruct a grand jury's efforts to fully examine the matters with which it has been charged to investigate.

Accordingly, I will prepare and submit to the Legislature a bill to amend Hindering Prosecution in the Third Degree, P.L. 205.55, to include penalties for those who harbor or conceal persons wanted for misdemeanors. Further, I will submit an Obstruction of Justice statute modeled on the federal statute contained in 18 U.S.C. 1503.



STATE OF NEW YORK  
DEPARTMENT OF LAW  
120 BROADWAY  
NEW YORK, N. Y. 10271

ROBERT ABRAMS  
ATTORNEY GENERAL

October 6, 1988

BY HAND

Grievance Committee for the  
Second and Eleventh Judicial Districts  
Municipal Building - 12th Floor  
210 Joralemon Street  
Brooklyn, NY 11201

Disciplinary Committee for the  
First Judicial Department  
41 Madison Avenue - 39th Floor  
New York, NY 10010

Dear Committee Members:

On January 26, 1988, Governor Mario M. Cuomo issued an Executive Order requiring me to supersede the District Attorney of Dutchess County to conduct a Grand Jury investigation into the alleged abduction and assault of Tawana Brawley. A Grand Jury was thereafter impanelled which conducted an exhaustive investigation into these charges.

A report by the Grand Jury of its investigation and findings has just been issued. That report, copies of which are enclosed, concludes that public charges made by Ms. Brawley's legal advisors and others acting on her behalf, including the charge that certain named individuals participated in an attack on Ms. Brawley, have no basis in fact. One of the accused individuals is a law enforcement officer who requested the Grand Jury's report to clear his name.

Throughout the course of the investigation, Ms. Brawley and members of her family have been represented by Alton H. Maddox, Jr., Esq., an attorney practicing in the Second Judicial District, and C. Vernon Mason, Esq., an attorney practicing in the First Judicial Department. I am writing to bring to the attention of your respective committees conduct and statements by Mr. Maddox and Mr. Mason during their

representation of Tawana Brawley and her family which I believe constitute serious violations of the Code of Professional Responsibility.

As I believe you are aware from the extensive media coverage that it has received, the investigation of this matter has been a long and difficult one. The Grand Jury's effort to uncover the truth was seriously and deliberately impeded by the refusal of Ms. Brawley and members of her family to cooperate and other tactics employed by Mr. Maddox and Mr. Mason. These tactics included making public statements they knew or had reason to know were false, including statements accusing innocent persons of assault, rape and murder; counseling their clients to engage in conduct they knew to be illegal; and assisting their clients to evade and defy the mandate of the Grand Jury.

Specifically, as described below and documented by the enclosed exhibits, Mr. Maddox and Mr. Mason have engaged in a course of conduct which I believe violates at least four Disciplinary Rules of the Code of Professional Responsibility.

(i) Violations of D.R. 7-102 (A) (5)

In his representation of a client, a lawyer shall not knowingly make a false statement of law or fact.

On repeated occasions during the course of representing Ms. Brawley and her family in connection with the Grand Jury investigation, Mr. Maddox and Mr. Mason made false statements of fact under circumstances indicating that they knew of the falsity of their statements, "deliberately closed [their] eyes to facts they had a duty to see, ... or recklessly stated as facts things of which [they were] ignorant." U.S. v. Benjamin, 328 F.2d 854, 862 (2d Cir.), cert. denied, 377 U.S. 953 (1964). In making these statements, I believe Mr. Maddox and Mr. Mason violated Disciplinary Rule 7-102(A) (5).

The foregoing includes the following false statements:

- By Mr. Maddox and Mr. Mason, that Assistant District Attorney Steven Pagonis "was one of the attackers" of Ms. Brawley, and by Mr. Maddox, that he (Maddox) had "direct evidence" of this [Ex. 1];

- By Mr. Maddox, that Harry Crist, Jr., a Town of Fishkill police officer, also participated in an assault on Ms. Brawley; that he did not commit suicide, but was murdered because he was about to confess his involvement; and that the weapon with which he committed suicide was not found at the scene [Ex. 2];

- By Mr. Mason, that Ms. Brawley told her advisers that the five or six white men involved in assaulting her devised a scheme to leave her to die near her family's home [Ex. 3];

- By Mr. Maddox and Mr. Mason, that Ms. Brawley gave details of her alleged assault to the F.B.I. and State authorities in "four interviews", and that she identified "several" of those involved in the attack [Ex. 4];

- By Mr. Maddox and Mr. Mason, that law enforcement authorities, including District Attorney Grady and the Attorney General, know the identities of individuals who assaulted Ms. Brawley, have sufficient information to make arrests, and are engaged in a cover-up [Ex. 5];

- By Mr. Maddox, that Governor Cuomo has seen an F.B.I. report that identified the perpetrators of an assault on Ms. Brawley [Ex. 6];

- By Mr. Mason, that Governor Cuomo appointed the Attorney General to cover-up a crime and exonerate the suspects [Ex. 7];

- By Mr. Maddox, that local officials in Dutchess County who are engaged in a cover-up of the Brawley case have organized crime links and that the F.B.I. and the U.S. Attorney's Office in the Southern District "are in cahoots with mobsters" [Ex. 8];

- By Mr. Mason, that Deputy Attorney General Charles J. Hynes said that Dutchess County Sheriff Scoralick discarded and destroyed evidence [Ex. 9];

- By Mr. Mason, that the ambulance attendants who transported Ms. Brawley to the hospital on November 28, 1987, "wanted her to die" [Ex. 10];

- By Mr. Maddox, that medical personnel at St. Francis hospital did not perform a rape test on Ms. Brawley, and conspired with personnel of the Dutchess County Sheriff's office to tamper with and destroy the rape kit and other evidence of tests performed on Ms. Brawley [Ex. 11];

- By Mr. Mason, that tests performed at the Westchester County Medical Center detected "five different kinds of sperm" on Ms. Brawley's body [Ex. 12];

- By Mr. Mason, that Governor Cuomo "tried to set up Al Sharpton for physical assassination" [Ex. 13];

- By Mr. Maddox, that the Attorney General engaged in sexual acts in front of a picture of Ms. Brawley [Ex. 14];

- By Mr. Maddox and Mr. Mason, that the Attorney General approved the dissemination to a news organization of photographs of Ms. Brawley and police reports concerning the investigation, and, by Mr. Mason, that Timothy Gilles of the Attorney General's staff "is releasing testimony from the [Grand Jury] witnesses every day, everybody who testifies" [Ex. 15];

- By Mr. Maddox, that "The Governor is part of the Mafia. The mob trained him and provided educational funds for him. There is a link between Mario Cuomo, Steve Pagones, and the Mafia" [Ex. 15A];

- By Mr. Maddox, that "This is a mob-controlled State" [Ex. 15A];

- By Mr. Maddox, that "The Attorney General never provided medical evidence to the Grand Jury" [Ex. 15A];

- By Mr. Mason, that a WCBS - TV reporter bribed witnesses with "several hundred dollars" to fabricate a story concerning Ms. Brawley's presence in Newburgh during the time of her disappearance [Ex. 16].

All of these statements are false, and I believe that Mr. Maddox and Mr. Mason knew or should have known this. Many of the statements are contradicted by facts known to Mr. Maddox and Mr. Mason or readily available to them or their clients. Examples of these are statements concerning what Ms. Brawley told investigators, and the findings and conclusions of medical personnel who examined her. (See, Report of the Grand Jury, at pp. 28-40, 64-71). Other statements were made with no factual basis whatsoever. For example, a witness who was a former associate of the Brawley family advisors has stated publicly that when Mr. Maddox asserted that A.D.A. Pagones was one of Ms. Brawley's attackers, he had no facts to support this allegation. [Ex. 16A].

Mr. Maddox and Mr. Mason intended these false statements to have the widest possible public dissemination. All the statements were made in the presence of reporters. Most were made at press conferences, in interviews with the media, or during television and radio broadcasts. Some of the statements were made in a public court hearing before Supreme Court Justice Angelo J. Ingrassia on June 6, 1988.

On June 2, 1988, I sent letters to Mr. Maddox and Mr. Mason inviting them to appear before the Grand Jury to provide it with the "evidence" they claimed to have supporting their public statements that certain named individuals participated in crimes against Ms. Brawley. The letter specifically warned them that if they failed to produce the evidence they claimed to possess, I would conclude that they did not actually have any. Neither attorney responded to my letter. They were also given an opportunity by Justice Ingrassia to provide any evidence they had to support the charges they made during the hearing before him on June 6. Again, neither attorney attempted to do so.

I have concluded that neither attorney ever had any such "evidence", and that in making these charges they knew them to be false or were deliberately ignorant of their falsity. As the Ninth Circuit Court of Appeals has held, a lawyer's "deliberate ignorance" can constitute "the equivalent of knowledge of the truth." Wyle v. R.J. Reynolds Industries, Inc., 709 F. 2d 585, 590 (9th Cir. 1983).

The Second Circuit Court of Appeals has observed that "scurrilous statements, which indicate a reckless disregard by counsel for the facts of record, exceed the bounds of responsible advocacy in our adversarial system and merit consideration by the . . . Grievance Committee for appropriate action." United States v. Gleason, 616 F. 2d 2, 27 n. 19 (2d Cir. 1979). One is hard pressed to imagine statements more scurrilous and in flagrant disregard of the truth, or more deserving of disciplinary scrutiny, than those that have been made by Mr. Maddox and Mr. Mason in the course of their representation of the Brawley family.

(ii) Violations of D.R. 7-102 (A) (7)

In his representation of a client, a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

Mr. Maddox and Mr. Mason counseled their client Glenda Brawley, Tawana's mother, to refuse a lawful mandate to testify before the Grand Jury, and thereafter actively assisted Mrs. Brawley to evade arrest for criminal contempt. By counseling and assisting Mrs. Brawley in conduct they knew to be illegal, I believe Mr. Maddox and Mr. Mason violated Disciplinary Rule 7-102 (A) (7).

On May 8, 1988, a Grand Jury subpoena was served on Mrs. Brawley, directing her to appear to testify on May 24, 1988. Acting on the advice and counsel of her attorneys, Mr. Maddox and Mr. Mason, Mrs. Brawley failed to appear on that date. On June 6, 1988, Mrs. Brawley was adjudged by Supreme Court Justice Angelo Ingrassia to be in criminal contempt and sentenced to 30 days in jail and a \$250 fine. Mrs. Brawley thereafter evaded arrest by taking refuge in a church, where her supporters - including Mr. Maddox and Mr. Mason - warned that force would be required if an attempt were made to arrest her. On July 16, 1988, Mrs. Brawley fled the State, again with the active assistance of Mr. Maddox and Mr. Mason and their supporters, who threatened resistance if authorities attempted to stop her.

Both Mr. Maddox and Mr. Mason have suggested on numerous occasions in statements to the press that they counseled Glenda Brawley and other members of the Brawley family to defy any request or mandate for their testimony before the Grand Jury. [Ex. 17, 18]. Mr. Mason and Mr. Maddox went out of their way to make public the fact that they had advised Mrs. Brawley to defy the Grand Jury subpoena. On the morning of May 24, at the time Mrs. Brawley had been directed to appear to testify, both attorneys joined her in a live radio broadcast, during which Mr. Mason announced that "Glenda Brawley is now fifty minutes in defiance of an illegal subpoena." [Ex. 18]. Mr. Maddox participated in the broadcast by telephone. [Ex. 18].

There is evidence that the attorneys' counseling of the Brawley family went beyond merely rendering advice and took the form of instructions and directions to the Brawley family not to cooperate in any way with the Grand Jury investigation. On February 17, 1988, Mr. Mason, in the presence of Mr. Maddox, told reporters that the Brawley family's refusal to cooperate with the investigation "is the decision that by conscience we have to make on behalf of Tawana Brawley." [Ex. 16, emphasis added]. A few days earlier, Juanita Brawley, Tawana's aunt, told a reporter that she had been contacted by investigators but had not told them anything because "Mr. Maddox would kill me." [Ex. 19].

There is no question that Mr. Maddox and Mr. Mason knew that Glenda Brawley's conduct in refusing to testify was illegal. At the June 6 hearing before Judge Ingrassia on the application to hold Mrs. Brawley in criminal contempt, both lawyers refused to raise any issue of fact or offer any legal defense in support of their client. In response to the Judge's urging that the attorneys assert a defense on Mrs. Brawley's behalf other than "that black people cannot get justice," Mr. Maddox replied, "I have no defense." [Ex. 20].

Mr. Maddox and Mr. Mason began their effort to assist Mrs. Brawley to evade arrest on June 6, even before she was adjudged guilty of criminal contempt. At approximately 3:30 p.m. that day, during the course of the contempt proceeding, Judge Ingrassia called a brief recess. Knowing that they would offer no defense and that a finding of contempt and jail sentence were virtually inevitable, Mr. Maddox and Mr. Mason left the courtroom to confer in the street outside the courthouse with the Rev. Al Sharpton, another Brawley family advisor. After this conference, Rev. Sharpton announced to the press:

"It appears the Judge is dragging his feet. We're going to show him how seriously we take this. Mrs. Brawley and us [sic] are leaving." [Ex. 21].

The public record clearly shows that Mr. Maddox and Mr. Mason have become just such a motivating force by counseling their client, Glenda Brawley, to defy the Grand Jury's mandate for her testimony and assisting her to evade arrest for contempt. In so doing, I believe that they have far exceeded the bounds of propriety.

(iii) Violations of D.R. 7-109(B)

A lawyer shall not advise or cause a person to secrete himself or to leave the jurisdiction of a tribunal for the purpose of making himself unavailable as a witness therein.

Based on statements they and Brawley family members have made to the press [Ex. 27-38], I believe Mr. Maddox and Mr. Mason have advised Tawana Brawley to make herself unavailable as a witness before the Grand Jury, and have counseled taking steps to physically prevent service of a subpoena. By this course of conduct, I submit that Mr. Maddox and Mr. Mason have violated Disciplinary Rule 7-109(B).

Both Mr. Maddox and Mr. Mason have indicated in public statements that they have counseled Ms. Brawley not to testify before the Grand Jury, and that they would take action to ensure that a subpoena was not served on her [Ex. 28-37]. On April 30, 1988, both attorneys reportedly "told a crowd of 300 . . . at a Brooklyn church that they will attempt to keep Tawana Brawley from being served with a subpoena." [Ex. 35]. According to another report, Mr. Maddox later elaborated on their plans by stating that Ms. Brawley's supporters would set up a 24 hour patrol to block service of a Grand Jury subpoena. [Ex. 34, 36].

On one occasion, Rev. Al Sharpton reportedly "spirited" Ms. Brawley "into hiding," telling reporters: "Where we're taking her, ain't nobody going to find her." [Ex. 29]. Rev. Sharpton later told a reporter that he took Ms. Brawley into hiding on the orders of Mr. Mason and Mr. Maddox. [Ex. 30].

The Grand Jury ultimately voted to subpoena Ms. Brawley. In September, after hearing evidence that Ms. Brawley had failed to report to the school in Monticello, New York, which she formerly attended, and had relocated to Virginia Beach, Virginia, the Grand Jury voted to withdraw the subpoena. See Grand Jury Report, p.5.

The public record indicates that Mr. Maddox and Mr. Mason counseled steps to evade service of any subpoena that might be issued for Ms. Brawley's testimony. In my view, this conduct violated the Code of Professional Responsibility.

(iv) Violations of D.R. 1-102(A)(5)

A lawyer shall not engage in conduct that is prejudicial to the administration of justice.

By all of the acts and statements described above, Mr. Maddox and Mr. Mason have engaged in a course of conduct that is prejudicial to the administration of justice, in violation of Disciplinary Rule 1-102(A)(5).

Mr. Mason has asserted, "We cannot get justice for Tawana Brawley, not in the courts of the State of New York." (Newsday, June 8, 1988, at 5, 26). The only conceivable object of the tactics he and Mr. Maddox have employed is to make this statement a self-fulfilling prophecy. By counseling the Brawley family not to cooperate with law enforcement authorities, by spreading lies and false information, and by advising their clients to defy and evade the mandate of the Grand Jury and the Court, Mr. Maddox and Mr. Mason have made every effort to prevent the criminal justice system from uncovering the truth of what happened to Tawana Brawley.

As demonstrated by the thorough investigation of the Grand Jury and the report of its findings, their efforts have failed. However, I do not believe that disciplinary committees of the Bar can or should overlook their conduct, the injury their tactics have caused to innocent persons, or the time and expense they have cost the public authorities involved in investigating their spurious charges. Accordingly, I request that your committees investigate these matters with a view towards taking appropriate disciplinary action.

My office stands ready to assist your committees in any way you may request. If you have any questions, or need any further information, please do not hesitate to contact my First Assistant, Scott Greathead, or the Chief of my Criminal Prosecutions Bureau, John M. Ryan.

Sincerely,

  
ROBERT ABRAMS