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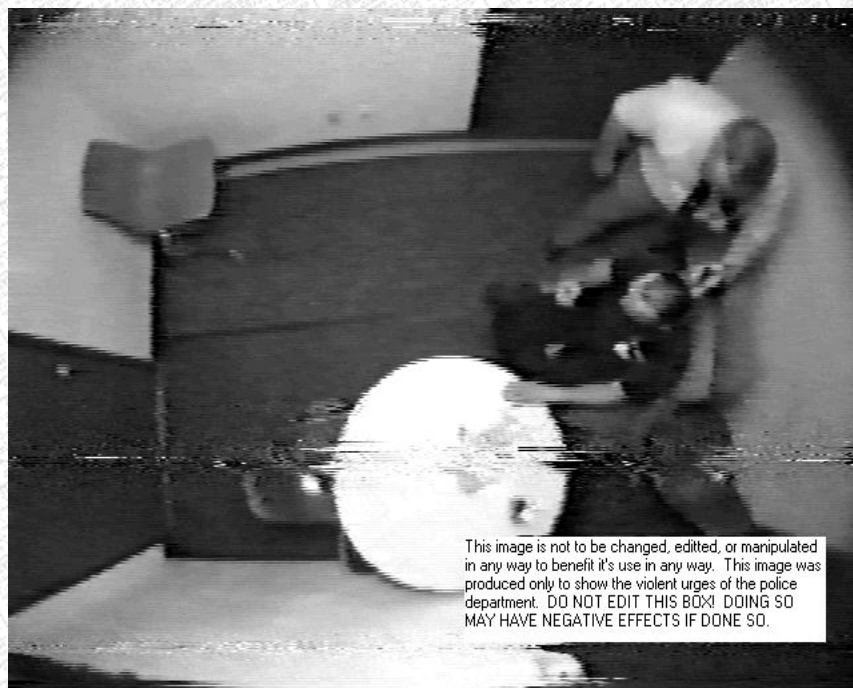
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Under the Gun

After a lengthy investigation that was at times scattershot, overly aggressive, and just plain incompetent, Austin police say they've caught the three young men who killed four teenage girls in an "I Can't Believe It's Yogurt!" shop in 1991.

by Michael Hall



It's a gun, all right, and Detective Robert Merrill is holding it to the back of Mike Scott's head. The detective is standing as if braced for action; the suspect is sitting at a small, round table, his left hand resting on the white surface. From the camera's angle, up high in the cramped interrogation room, you can see Scott's receding hairline. His body language says he is sitting perfectly still. This is his second day of interrogation, and Merrill and a series of other Austin policemen have been yelling and cursing at him for hours. Their frustration is, perhaps, understandable. This is no ordinary interrogation. Scott, they believe, has details about the biggest and most horrific case in the Austin Police Department's history, the slaughter of four teenage girls at an "I Can't Believe It's Yogurt!" store on December 6, 1991. Amy Ayers and her best friend, Sarah Harbison, had gone to visit Eliza Thomas and Jennifer Harbison, who were closing up the store. An intruder or intruders came into the shop, robbed them, and shot them in the head. Three of the girls were then stacked like wood and set on

fire. The fourth had died apart from the others at the front of the store after trying to escape. By the time the police showed up, the girls lay in a pool of water from firemen's hoses. The three were burned so badly they had to be identified by dental records. Detectives stayed all night trying to salvage clues from the horror, and in the light of Saturday morning, they swore they'd catch the killers.

Their zeal went unrewarded. For eight years overwhelmed Austin cops, under immense pressure and hounded by thousands of tips, dozens of false confessions, and rumors of crime-scene blasphemies, stumbled blindly. They chased alleged witches and violent Mexican bikers. They feuded with their own police chief and the Travis County district attorney and tried to get answers from people who had none. A detective, Hector Polanco, was kicked off the yogurt shop task force amid allegations that he had coerced a confession. Task forces came and went, and the crime came no closer to being solved until September 1999, when Mike Scott, after eighteen hours of questioning over four days by Merrill and other detectives, signed a stunningly detailed confession and named three others, all of whom had been questioned by the police back in 1991. A second of the four, Robert Springsteen, also confessed. On October 6 they would once again be in the police's hands, their arrests announced in banner headlines. That afternoon Mayor Kirk Watson, flanked by chief of police Stan Knee and district attorney Ronnie Earle, proclaimed, "On December 6, 1991, we - as a city - lost our innocence. Today we regain our confidence."

Neither was accurate. As any Austinite can tell you, Charles Whitman stole whatever innocence the city had when he climbed the Tower at the University of Texas on August 1, 1966, and massacred sixteen people. As for confidence, the APD's solution - four bad boys for four good girls - seemed too perfect to be true. Perhaps it was. By the summer of 2000 one of the defendants would be free, a hapless young man who had been caught in the net of a police force desperate for arrests. The star detective would admit to withholding the truth about key evidence. A grand juror would call for hearings into whether the district attorney was unfairly rushing the defendants through the grand jury process. A report would reveal that none of the suspects' DNA was found at the scene; indeed, there was not an atom of physical evidence or a single witness that could tie these suspects to the crime. An extraordinary photograph of Detective Merrill holding a gun to Scott's head would show up on the Internet - an image that had come from the APD's own camera during the interrogation that eventually produced the case's most important confession.

And then, just when things couldn't look any worse for the APD, in September came news that threw a harsh light on the only thing the cops had - the confessions. The news concerned a stunningly detailed but decidedly false confession in another Austin murder case. Two innocent men had spent a decade in prison. One of them had been beaten almost to death by a fellow inmate one year after the APD had helped send him away for the rest of his life. The detective was Hector Polanco, the same man who had been transferred from the yogurt shop task force in 1992 for allegedly coercing testimony.

These days Austin is a confident town, supercharged with high tech, big money, and big plans. It is one of the fastest-growing cities in America. In 1991, though, things were different. The story of the yogurt shop investigation is, in part, about how a police force with a small-town mentality found itself confronted with a big-time urban crime and tried its best to solve it. But it's also a tale of how intense political and social pressures brought out, or merely confirmed, the worst instincts in some officers on a police force that was determined to get convictions. The result: a tragedy with even more victims and a police department reeling from mistakes. To chronicle that nine-year investigation, I interviewed current and former Austin policemen, employees of the Department of Public Safety and the Travis County coroner's office, as well as attorneys for the accused and members of the families of the slain girls and the accused men. Certain current police officials, including Chief Knee, Lieutenant Hector Polanco, and Detective Paul Johnson, declined to be interviewed. All the parties in the case have been under a gag order since December 1999.

The Austin police will get their chance to talk soon. With the trial of the first yogurt shop defendant - Robert Springsteen - set to begin next month, Austin police officers will find themselves on trial too, for

incompetence, heavy-handedness, and the kind of corrupt behavior associated with police departments in cities like Los Angeles and New York. As the trial will likely show in exquisite detail, the case against the Austin cops is far less circumstantial than is their case against the defendants.

Austin reacted to the murders of the four girls with disbelief, and its citizens came together as if they had all known the victims. Their mass drew 1,500 mourners. Barbara Ayres, the mother of the two murdered Harbison girls, remembers that the funeral procession was eight miles long. Mary Lieberman, then a social worker with the APD's victim services division, was at a car wash on Burnet Road when the hearses crawled past. "Everybody turned and faced the street and put their hands over their hearts and took their hats off," she recalls. "It was completely spontaneous. I've never seen anything like it." The burned-out yogurt shop on West Anderson Lane was covered with flowers and notes to the four, who had all loved animals, especially horses and lambs, and country music, especially Garth Brooks and George Strait. They were good students. Eliza Thomas and Jennifer Harbison were seniors at Lanier High School, Sarah Harbison was a Lanier freshman, and Amy Ayers an eighth grader at Burnet Middle School.

Citizens mobilized, cutting up white ribbons and pinning them on lapels and car antennas. "Who Killed These Girls?" demanded twelve billboards, donated by a local company, that went up in February. A \$25,000 reward was posted; it eventually climbed to \$125,000. At the six-month anniversary of the crime, 1,200 people marched on the state capitol with white candles behind a "We Will Not Forget" banner. A song of the same title was recorded, "We Are the World"-style, by dozens of local newspeople and musicians, including Joe Ely and Joe King Carrasco.

For the APD, it was a bad year to get a tough case. Earlier, in 1990, Sergeant Bubba Cates, the head of the vice squad, had been fired for excessive force. He was convicted in 1991 of accepting money and sex from a massage parlor owner. Officer Jamie Balagia was fired for drug use; he sued, was reinstated, and then quit, and the ordeal cost the department. "Between Cates and Jamie, morale was shot down," says Gene Freudenberg, a 29-year veteran of the force who retired in 1988. "There wasn't much leadership." Concedes Mike Sheffield, the president of the Austin Police Association, the police union: "We were a dysfunctional family. We were also a small-town department becoming a big-city department." The department would find out how badly undermanned it was in the wake of the events of December 6. That night an officer had seen a fire at the yogurt shop on West Anderson Lane and called for fire trucks, which were dispatched a little before midnight. It was only after firemen had put out the fire that they discovered the bodies of the girls. Though relatively minor, the fire, set to cover the killers' tracks, had been hot enough to melt the top step of an aluminum ladder. When the detectives arrived, sixteen firemen were at the scene, tramping back and forth through four inches of water. For anyone trying to gather physical evidence, the crime scene was a nightmare.

The first detective on the scene that night was John Jones, who would soon become the primary investigator in the case. He described what he saw as "wholesale carnage . . . I looked in there and I go, 'Oh, my God.'" He and his men found a slug and a shell casing from a .380, but not much else; later four .22 bullets were taken from the girls' bodies. From this barren beginning, the case soon became overwhelming. There were no witnesses, but the phone began ringing with hundreds of tips. Some were well-meaning; others were not. Autopsy results were ordered sealed by a judge to foil false confessions and to help apprehend the guilty. That didn't keep crazies from phoning and pledging their guilt. Rumors, fueled by the secrecy, began circulating: hearts cut out, heads cut off, blood on the walls. It was quickly apparent that the APD was in over its head. The homicide unit had only six investigators, four of whom were assigned to the case. "We were making it up as we went along," Jones told me in early December 1999. "There had never been anything like this documented. We had to redefine how we did investigations."

Their first big break came eight days after the killings. A sixteen-year-old boy named Maurice Pierce was arrested at Northcross Mall with a loaded .22 pistol tucked inside the waistband of his pants and sixteen bullets in his pocket. With him was his friend, fifteen-year-old Forrest Welborn. Pierce was handcuffed, taken to the

police station, and questioned by Hector Polanco. In a written statement Pierce said that the .22 was the gun used in the yogurt shop killings. He said that his friend Welborn had borrowed it and that Welborn had told him he had killed the girls. The crime scene slugs were too damaged to be definitively matched with the gun, but Pierce was given a polygraph and he passed. On December 15 officers fitted him with a wire and had him drive around with Welborn, trying to get him to talk about killing the girls. Welborn admitted nothing. He too passed a polygraph test.

The police eventually concluded that neither boy was involved. According to police testimony, they believed that Pierce had a "mental problem" that led him to fabricate the story about the gun and enabled him to pass the polygraph. "It was obvious to everyone," wrote Jones in a report, "that Pierce was trying to force the issue on Welborn, who appeared to have no idea what Pierce was talking about." Still, the police kept the gun. In the course of the investigation, Welborn told detectives about a trip to San Antonio that he and Pierce had taken with two seventeen-year-old friends, Robert Springsteen and Michael Scott, in a stolen Nissan Pathfinder the night after the murders. The police found and questioned the two. All four were let go.

The police were questioning a lot of other people too. "It was bedlam," Jones told me. The highly publicized kidnapping of Colleen Reed stretched the force even thinner. By early January, 25 suspects had been ruled out, including a teenage couple who had confessed to the murders. On Friday, January 3, emboldened by a meeting with an agent from the FBI's Behavioral Science Unit, Detective Jones announced, "It would be safe to say an apprehension is imminent." On Monday, the one-month anniversary of the murders, police chief Jim Everett backtracked from Jones' statement at a press conference, saying there would be no arrests after all. It would not be the last time the police used wishful thinking alongside deductive reasoning.

At the same press conference, the police announced the formation of a task force that included the APD, the Bureau of Alcohol, Tobacco, and Firearms, the Department of Public Safety, the Travis County sheriff's department, the district attorney's office, and the FBI. The FBI had helped come up with a profile of the killers. According to the bureau's analysis, they were probably white and in their late teens to mid-twenties. One had a dominant personality and had led one or more reluctant participants. The leader hung out in the area of the yogurt shop and was familiar with the roads. He was also an emotionally immature underachiever with a criminal record who angered easily. Did the profile - which, in retrospect, looks an awful lot like Maurice Pierce and his three friends - stir any suspicions about the four boys, who had been questioned by the police just two weeks before?

Apparently not. "Everybody in Austin wanted it to be Mexicans or blacks," says former APD officer Jamie Balagia, who, after leaving the force, went to law school and became an attorney who frequently represents police officers. "Nobody wanted it to be white teenagers." Not teenagers who hung out at the mall, at any rate. Teenagers who hung out downtown were another matter. About a week after the killings, police officers began questioning so-called PIBs, or People in Black - primarily high school and college dance-club kids who wore dark clothes and had tattoos. "Because it was a bizarre murder, they started looking for the most bizarre people they could find," one PIB, Cole Ricketson, told the Austin American-Statesman.

Police officers would often show up in the middle of the night and take bewildered PIBs to the station for questioning. The kids claimed that their homes and bodies were searched and that they were given polygraphs. "They questioned me a lot about it," another PIB told a reporter. "They told me I was the one who did it, but they couldn't prove it." Gavin Garcia, a local writer who seemed to the police to be a spokesman for the PIBs, was brought in three times, for six hours each. "I know at least fifty people who were brought in," he says. "Entire rock bands were brought in because their name had something to do with the occult." The first time Garcia was taken downtown, 48 Hours was in the next room, working on a show about the murders. At least one person questioned by police officers said she knew the location of two corpses that had been stolen from Oakwood Cemetery. Other kids were also fingering the grave robber. She was, they said, a witch.

On February 28, with 48 Hours and local news crews in hot pursuit, the APD came crashing through Clair Lavaye's unlocked front door. "The yogurt murder task force is pouncing on a high priestess," said narrator Erin Moriarty on 48 Hours when the show was broadcast a month later. Lavaye, naked, was shown being handcuffed by police officers as the camera bounced around the house, focusing on brooding artwork and a kind of mashed skull. "Dem bones!" said one cop. "I don't think that's a wax copy, guys," said another. In fact, the skull was made of clay. And hundreds of bones seized by the police turned out to be turkey, dog, and rat bones. Instead of being a ringleader of a band of murderous devil worshipers, Lavaye turned out to be a punk rocker with Gothic tastes.

The charges against Lavaye were dropped, and the whole fruitless PIB affair proved to be a fiasco. It also made no sense, because the investigators knew that there was nothing Satanic about the crime scene. And the witch-hunt worked against the police by further fueling the dark rumors about the murders. One story suggested that chickens had been ritualistically placed in the girls' chest cavities; another said that pentagrams had been drawn in blood on the walls. Why else would the cops spend three months chasing through the city's dark side?

Dan Rather's familiar voice was measured with melodrama: "Four all-American teens - executed. A crack police squad desperate to solve the case. And a city on edge frightened by a new reality: It can happen here. Are you safe?" Sleepy Austin was discovering the horrors of big-city crime. 48 Hours cameras followed detectives John Jones and Mike Huckabay as they talked about the 342 suspects, the thousands of phone calls, and the pressure. "There's absolutely no more weight that can be put on my shoulders," said Jones. Patrick Ganne, an Austin criminal defense attorney who has often found himself on the other side of the docket from Austin cops, says about that time: "I can't explain to you the pressure those cops were put under to get results - from the mayor, the DA, the chief: 'Goddammit, get something. Get results.'" They tried. Their net was cast wide and their methods were sometimes unsound. Two days before the 48 Hours episode aired, Hector Polanco was transferred out of the task force to a North Austin substation amid allegations that he had coerced a confession from a suspect on March 15. He wasn't the only cop in trouble. In April APD brass, reacting to the chaos in the homicide department, began replacing investigators. Soon things had gotten so bad that even the district attorney turned against the department. On November 9, 1992, DA Ronnie Earle, with Mayor Bruce Todd and incoming police chief Elizabeth Watson by his side, announced an unprecedented investigation of misconduct in the homicide division. "Unfortunately, this behavior is not the result of the work of just one person or small group of people," said Earle. "Rather, it appears to arise from attitudes among some criminal investigators of 'anything goes' and 'the end justifies the means.'" In other words, it wasn't just Polanco. Earle spoke of "using improper methods to obtain confessions and statements . . . obtaining false and incorrect statements and confessions . . . [and] concealing evidence." Watson scolded her new charges: "It is shocking to me that there could be this breach of ethics that I see."

The Statesman piped in too, noting that the number of criminal investigators had stayed roughly the same since 1977, even though the population had risen by 160,000. As the newspaper pointed out, such a disproportionate number "clearly adds to the pressure to cut legal and ethical corners." The cops were furious at the accusations. "We were treated basically like criminals," says Austin Police Association president Sheffield. "We were interrogated, and that left a very bitter taste in a lot of people's mouths." Five months later, after a review of more than ninety pending homicide cases, Earle announced the results: Questionable interrogation tactics and concealment of information were found in several cases. So was a "serious lack of training for homicide investigators." In response, the APD started a training program for its homicide unit, began taping interrogations, and increased staffing.

In the meantime, the department was mired in a brand new yogurt shop nightmare. Austin detectives, working with the Mexican government, had been trying to question three Mexican nationals indicted in a November 1991 aggravated kidnapping and rape of an Austin woman. On October 22, 1992, the Mexican government announced - without informing the APD - that it had arrested two of the three, including one who fit the

description of a man seen outside the yogurt shop on the night of the murder. The trio's leader was Porfirio Villa Saavedra, a.k.a. the Terminator, the head of the Mierdas Punks, a motorcycle gang. Mexican officials said Saavedra had confessed. But two days later he recanted, claiming at a court hearing that he had been tortured by Mexican police officers. The APD felt helpless. "That was Black Thursday for us," sighed Jones. "It was out of our hands." The APD sent officers to Mexico City several times over the next year to question the suspects and eventually concluded that they had nothing to do with the murders.

The investigation dragged on, even after the task force was drastically scaled back, in June 1993. Then, a year later, Jones, who still had nothing to show for all the work the APD had done, was removed from the case and transferred into the assault division. It was time for a change, said his supervisors. Jones was angry, calling the sudden transfer a "slap in the face" and criticizing the department. "We just couldn't get personnel, even though we asked for it," he complained to the Statesman. "We'd get stuck in petty politics." Jones, who had four girls himself and who had formed deep bonds with the parents of the yogurt shop victims, was diagnosed with symptoms of post-traumatic stress disorder and had started seeing a psychologist. Some on the force were glad to see him go and blamed him for mismanaging the investigation. "He has an ego the size of a washtub," says a former Austin cop. "He's not open-minded. You can be doing a criminal investigation, think you've got it sewed up, and then something surfaces that could change your mind. You've got to be able to look at it in a new way." By the time Jones left, the case had had four supervisors in two and a half years. The police had collected information on more than 1,200 suspects. The offense report was almost five thousand pages long, and there were another eight thousand to ten thousand pages in the computer database.

As Jones and the rest of the police force were discovering, good intentions were not enough. Toward the end of the 48 Hours episode, Jones had looked into the camera and vowed to the killers: "Whoever you are, you're gonna be mine one of these days." But his bravado was hollow, and he diffidently looked away, unable to hold the camera's gaze.

In January 1996, more than four years after the yogurt shop murders, Detective Paul Johnson was assigned to reorganize the case. The meticulous Johnson analyzed the more than five thousand tips Jones had collected and, over the course of a year and a half, reorganized them, then scrutinized each one for any sign that it had not been sufficiently investigated. One of those concerned a teenager named Maurice Pierce, who had been caught with a gun eight days after the murders and who claimed it had been used by a friend to kill the girls. Meanwhile, as the five-year anniversary of the killings came and went, so did Chief Watson. After an awkward start as chief, she had never been accepted by the rank and file, and almost everyone was happy to see her leave town. Her replacement, Stan Knee, was a suburban L.A. police veteran with a reputation as a cop's cop. His hiring was announced in August, just as another yogurt shop task force was getting under way. Later that year, Johnson went to visit Pierce's friend Forrest Welborn, who was living in Lubbock. According to court testimony by Johnson, Welborn said that he didn't remember the night of the murders, but that he was probably at Northcross Mall because that's where he hung out, and that he was probably with Pierce because that's who he hung out with. Welborn denied any involvement and later passed a polygraph. In November 1998 Johnson (who for a while had been assigned out of homicide to work as a street detective) and Detective Douglas Skolaut traveled to Irving to interview Pierce, who was living in nearby Lewisville. Pierce insisted on his own innocence.

Johnson persisted. When a third task force was formed, in August 1999, it concentrated on only a couple of leads, including the one provided in the 1991 interview of Maurice Pierce. The detectives had already talked to the suspects. Now they went to talk to possible witnesses. They called Mike Scott, who lived with his wife and stepdaughter in Buda, and asked if he would come in and talk to them. He did, on September 9. According to Detective Merrill's court testimony, at first Scott denied any involvement in the murders, then minimized his involvement, then gave more and more details, and finally admitted to being part of the crime. Though at times detectives verbally abused Scott and even held a gun to his head, he was cooperative and even seemed eager to help the detectives, accompanying them to the yogurt shop to refresh his memory. Though his story changed

often over the eighteen hours of interrogation, his final, written version, the police felt, was close to being the truth about what had happened at the yogurt shop on the night of December 6. All of the police-station sessions were videotaped, but the September 14 written statement was not.

With one confession in the bag, detectives flew to West Virginia, seeking another. Robert Springsteen had moved to Charleston, where his mother lived, shortly after the murders. He now lived there with his wife and worked odd jobs, including a stint managing a McDonald's restaurant. Over a five-hour, videotaped interview, according to Merrill, Springsteen acted as Scott had - first denying his involvement, then minimizing it, and finally admitting to the crime. Unfortunately for the Austin police, the video camera malfunctioned, and the recording is only about 85 percent audible; in addition, a backup tape of the session ran out after three hours. Even technology, it seemed, was against the APD.

Armed with two confessions, detectives went back to Welborn, now living in Lockhart with his girlfriend. He continued to deny involvement, even under relentless, intimidating interrogation. At one point detectives tried to trap him, using Scott as bait. Skolaut took Welborn to the yogurt shop. According to the detective, Scott walked up behind Welborn, put his hand on his shoulder, and said, "I told them everything. . . . you need to tell them the truth." A startled Welborn replied, "I don't know why the f - you're telling them this."

Even without confessions from Pierce and Welborn, the police decided they had enough evidence to move. In a coordinated raid on October 6, 1999, police officers snared Scott in Austin, Pierce in Lewisville, Welborn in Lockhart, and Springsteen in Charleston. When Mayor Watson, police chief Knee, and DA Earle stood together to announce the arrests, it appeared that Austin had come to the end of a long nightmare. The police department seemed, in fact, at peace with itself for the first time in nearly a decade.

The four men looked dazed and confused in their page-one photos. They turned out to be as unmemorable back in 1991 as the girls, at least in retrospect, are now unforgettable. Scott, Welborn, and Springsteen were McCallum High School students, while Pierce had dropped out of Robbins Academy. Few teachers at the schools recalled them, nor could many of their classmates. Like the murdered girls, they hung out at Northcross Mall. Three of the four came from broken homes, and all would eventually drop out of high school. Pierce, who the police believed was the ringleader, had had several run-ins with the law, including two arrests for theft. They weren't a foursome, though they all knew each other. Pierce, the only one with a car, and Welborn were friends, while Springsteen and Scott, who both had learning disabilities, were friends and even roommates for a short time. When they were arrested, their families angrily pointed out that all four had grown up to be solid citizens who lived normal lives. Three of them held jobs and were in stable relationships with wives or girlfriends, and though all four had had minor scrapes with the law in the nineties, none had done anything violent. Though the police had repeatedly warned family members that the men were going to be arrested, none had fled. Springsteen's father, Robert Springsteen, and Scott's mother, Lisa McClain, insisted that the confessions of their learning-disabled sons had been coerced. The suspects' wives felt even more strongly. "He'd been terrorized," Springsteen's wife, Robin Moss, told a Charleston newspaper. "He was crying, pale, absolutely sick. I think they frightened him to death." According to Mike Scott's wife, Jeannine, the police had taken advantage of his openness to suggestion and his poor memory. "He has a memory like Swiss cheese," she told me.

And the parents asked the question on everyone's mind: How could the four of them keep such a terrible secret for eight years?

Since Welborn and Pierce were juveniles at the time of the murders, they had to be certified to stand trial as adults. At a November hearing, prosecutors had to show that there was probable cause that the two had killed the girls. Police officers testified for the first time in detail about the crime scene, the interrogations, and the two confessions. They played videotapes of interviews with Scott and Welborn. Members of the girls' families, who were hearing certain gruesome details for the first time, wept during the reading of Scott's confession and

later when they heard him give his version of their girls' terrifying last minutes. Both Welborn and Pierce - enemies since the latter had accused the former of murder - sat stone-faced at the defense table with their attorneys. Welborn, with long black hair and a mustache, stared straight ahead. Pierce, a crew-cut blond with a big-boned face, occasionally looked down. According to Mike Scott's written confession, as well as his interrogations as characterized in the testimony of several Austin detectives, Maurice Pierce said he needed money, and he and Robert Springsteen agreed that robbing a place would be the easiest way to get it. They cased the yogurt shop while it was still open, leaving the back door ajar, and returned after closing time. Welborn stayed in the car while the other three entered through the back door. Pierce had a .22 pistol and Springsteen a .380. The boys didn't know there would be two other girls there, sitting in the front of the shop. That was unfortunate because Pierce had said before going in that there weren't going to be any witnesses. In Scott's account, Springsteen made the girls strip and Scott helped bind them with their clothes, and it was Pierce who went crazy when he found only \$12 or \$14 in the register. He screamed at the girls, "Where the f - is the rest of the money?" and then shot one and then another of them. Springsteen raped one of the girls and told Scott to do the same. He tried and couldn't but faked it. Scott then shot the girl after either Pierce or Springsteen told him to. Scott also described how Amy had run to the front of the store but had been caught by Springsteen, and he knew that Amy had been shot twice. After all four were dead, Scott stacked three bodies in the back of the shop, put napkins and cups on them, and set them on fire with lighter fluid. He said that when he, Pierce, and Springsteen went out to the car, Welborn wasn't there, but they picked him up in the parking lot. The whole thing lasted 20 to 25 minutes. Afterward they drove to a bridge about ten or fifteen minutes away, where Scott got rid of a knife he had capriciously taken from the store, and someone, possibly Springsteen, pitched a gun. Over the weekend the four went to San Antonio in a stolen gold Jeep. (Welborn had also spoken of a car theft in 1991, although in his version, the vehicle was a gold Nissan Pathfinder.)

According to Detective Merrill, Springsteen's story corroborated many of Scott's details: Pierce as the boss (he called himself the action man); Welborn as the lookout; Springsteen propping open the back door with a package of cigarettes; Scott trying but failing to have sex with one of the girls. Springsteen said he had raped and shot one of the girls on Pierce's orders and that later, at the bridge, Pierce tossed a gun into the river.

Both men knew an astonishing number of details about the crime scene that were not made public. Springsteen's description of Amy's position, for example - lying on her stomach, with her right hand up and out - was consistent with how the body was found. But Scott had some alarming inconsistencies in his stories. In his interrogations he said he had shot two girls, then one, and then, in the written statement, two again. According to Detective John Hardesty, Scott said Pierce had pistol-whipped one of the girls, but he also said that it was Springsteen who had hit them. At first Scott said he was pretty certain that only three boys were involved, but after Hardesty repeatedly suggested to him that Welborn was outside in the car, Scott included him from then on as the lookout. And only for the written statement did he mention the seemingly memorable fact that Welborn had fled during the crime only to be picked up in the parking lot afterward. As told by Merrill, Springsteen's story clashed with Scott's too. Springsteen said the car was parked near a grassy area, that Pierce had raped one of the girls, and that maybe Scott hadn't shot anybody at all. Not surprisingly, both fingered someone else as the psychotic leader, the action man.

Still, the two confessions convinced district judge Jeanne Meurer that there was probable cause, and she certified Pierce and Welborn as adults. Springsteen was indicted on December 14, 1999 on four counts of capital murder. The indictments of Scott and Pierce followed on December 28. District attorney Ronnie Earle announced he would seek the death penalty against Scott and Springsteen, but because Pierce was legally a juvenile in 1991, Earle was limited to seeking a life sentence against him. Earle also said that the grand jury's term would be extended for ninety days, "for the purpose of investigating the yogurt shop murders." In other words, to get something on Welborn, who had been freed on December 10 on \$375,000 bail.

The calm that followed the indictments was shattered on May 2, 2000, when the Bureau of Alcohol, Tobacco, and Firearms released a report finding that the gun discovered on Pierce in December 1991 - the catalyst for

pursuing these four defendants - was probably not the murder weapon after all. That week, desperate for a murder weapon, officers began the pointless task of dredging the Colorado River under the Loop 360 bridge looking for the gun that both Scott and Springsteen said may have been dumped the night of the murders. Nine years had passed since the killings, and six floods had washed out the river in that time. There was no more apt symbol of the APD's troubles than images on the news of cops literally fishing for clues - at least until later that month, when the photo of Detective Merrill holding the gun to Scott's head showed up in a pretrial motion. Suddenly the case seemed to be falling apart as quickly as it had come together. On June 7, Diana Castañeda, who had been on the grand jury that indicted the three, wrote to Judge Mike Lynch and complained that jurors had been used as "pawns in what I assume to be a rush to judgment." She requested that he hold a hearing about the matter. In September she told me, "I wish this case had been done properly. I'm afraid we have taken the easy way and that all the facts aren't in." Grand jury proceedings are supposed to be secret, and Castañeda's concerns, and the way she expressed them, were anything but.

Two weeks later, in another pretrial hearing, Detective Paul Johnson made a stunning admission: He had been told by an APD ballistics expert back in January 1999 that Pierce's .22 was almost certainly not the gun. That meant that he had known that fact for a year and a half, including during his several hours on the stand at the certification hearings. Johnson said that he had meant to say something about it in a report but that he had forgotten.

It got worse. On June 30 a report from the DPS showed that, after testing for rape and checking fingernails and examining mucus found under one of the girls (presumably Amy), none of the boys' DNA was found at the crime scene. While this didn't exonerate the suspects - DNA could have been destroyed by the fire or the water - it was yet another colossal problem for a DA who has, as the police have stated repeatedly during hearings, no physical evidence tying the suspects to the crime.

That same day, after the second grand jury failed to come up with indictments against Welborn, Judge Jon Wisser threw out all four charges against him. If, as the old saying goes, any competent DA can get a grand jury to indict a ham sandwich, why couldn't Ronnie Earle nail Welborn? For years police officers had questioned him, and for years he had steadfastly denied having anything to do with the killings. "They would get right in my face," Welborn told 48 Hours, "and tell me everything I said was a lie." In December 1999 the DA's office had approached Welborn and told him he could write his own ticket if he agreed to testify that he was outside the yogurt shop in the car while the other three went in. Welborn turned the offer down, saying, "I'm not gonna lie for them." It was a desperate move by prosecutors who still did not have a single witness. "That's not a card the state plays unless it's in serious trouble," says criminal attorney Gary Cohen, who has tried a number of cases in Austin involving the police. "For the state to let him walk signals that they have some serious problems with proof. That man firmly believes he is not culpable in any way." Welborn's father, Jimmie, says, with disgust, "The police felt they could intimidate him about sitting in jail for years waiting trial."

Welborn's lawyer, Robert Icenhauer-Ramirez, was so confident of his client's innocence that he invited district attorney Earle to interview Welborn in his office. Two prosecutors spent more than three hours with the young man and left empty-handed. Even after two grand juries failed to return indictments against Welborn, investigators continued, and continue to this day, to work his case. "Forrest Welborn still remains under investigation for the murders," assistant district attorney Buddy Meyer told the Austin American-Statesman. According to Icenhauer-Ramirez, "The DA is continuing to harass members of Forrest's family - even remote cousins - looking for someone who heard him say, 'I did it.'" Welborn had an auto repair shop in Lockhart before his arrest, but it closed during his two months in jail. Since he got out he's been working various jobs to take care of his son and a new daughter born in August. He turned down repeated requests for an interview. His mother, Sharon Pollard, says he's tired of being lumped in with the others, and he wants to put the whole thing behind him. "These people need to know they can't go ruining people's lives," she says. Her ex-husband, Jimmy, agrees. "I've had enough of their arrogance," he says angrily. "It's hard to believe the police can be so

dishonest . . . Forrest was victimized and stripped of his dignity. It ruined his life."

"Everyone lies" is rule number one in *Homicide: A Year on the Killing Streets*, David Simon's definitive book about the life of detectives. Even the police. In truth, the police have to lie. They spend much of their time dealing with people who lie for a living, and if they didn't mislead suspects in interrogations, they would solve only the easy cases. Legally, cops can tell suspects just about anything, as long as they stop short of lying about the law, and the public accepts a certain amount of mendacity if the cops catch a certain number of crooks. In Austin, even over the past troubled year, as the police took hit after hit to their credibility and competence, many citizens just shrugged their shoulders. It didn't matter that the police didn't have any evidence or eyewitnesses: Those two suspects had confessed. In detail. There is no way they could have made it all up.

Well, actually, there is a way. The latest disaster for the Austin police - the Pizza Hut case, in which Christopher Ochoa, an innocent man, confessed in great detail to a murder he didn't commit (see "Untrue Confessions," at the end of this article) - has shown just how far the Austin police will go to solve a brutal, highly publicized murder. Could the APD have done it again with the yogurt shop murders? Both Ochoa's and Scott's confessions offer a remarkable level of detail, including how the victims had been bound and shot. Both men changed their stories several times, and each account made the teller guiltier. Both fingered someone else as the guy who needed money, the guy who came up with the plan to get it, and the guy who told the confessor to kill, which he did.

Of course, it's impossible to prove that police detectives fed Scott the details of the murders, but we know that they put him through a brutal interrogation that included yelling, swearing, and at least one vivid visual aid. Scott is also the sort of malleable personality - according to his wife, Jeannine, he "can't even write his name on a tough day" - who would be likely to make a false confession. During his first day with the police, he called Jeannine and said, "Dear, I guess I know more about this case than I thought I did." He was eager to please, riding with the cops from his Buda home to the Austin police station four times and to the yogurt shop twice. His eagerness was sometimes frightening. At one point during questioning, he moaned, "I'm scared that I'm not answering your questions the way you-all want answered." Another time he said in despair, "I don't know if this is real."

Tony Díaz, Scott's lawyer, thinks the detectives found easy prey: "These guys are like the guys who question POWs. They say, 'Here's your wife's name and address.' They don't say, 'We're going to go blow her up.' They say, 'Rob, Maurice Pierce has implicated you' - even though that's false. And, 'Rob, we have DNA evidence against you. Rob, you can't claim you were at the Rocky Horror Picture Show because it wasn't playing that night.' But it was!"

Even if the only weapons the police have are the two confessions, that may be enough to convict Springsteen, whose trial is scheduled to start on February 20, and Scott, whose trial will likely be held later this year. "A confession, if believed beyond a reasonable doubt, is enough to convict the confessor, assuming there is independent evidence that a crime was committed," says noted Houston criminal attorney Randy Schaffer. Springsteen's lawyers have already tried to get his confession thrown out, but the court denied their motion; Scott's lawyers have filed a motion to try the same.

Looking ahead, the prosecution will have the biggest problems with Pierce. In Texas a person cannot be convicted solely on the word of a co-conspirator. Some kind of corroborating evidence is needed, and the police have admitted they have none. They finally have at least one witness, although she's eight years late and she did not see the crime committed. Her name is Lusella Jones, and she was in the yogurt shop the night of the killings. On October 4, 1999, said Detective Skolaut, Jones picked Maurice Pierce out of a photo lineup as the one who "looked most like" one of two men in the yogurt shop that night about whom she had a "strange feeling." She couldn't pick out Scott or Springsteen.

The biggest weapon for the defendants will be the bumbling inconsistency of the investigation. "The best thing for any of the defendants," says Balagia, "is for the case to be shown to have been investigated in a slipshod manner. Concentrate on every single mistake." The APD will be put under the microscope, and many of the fiascoes of the past decade will be brought out again: Pierce's 1991 arrest, the witch-hunt, the Mexicans, the DA's investigation of the homicide department, the reliance on Pierce's .22 as the murder weapon, and the persistence of coercion, real or imagined, in the investigation.

Defense attorneys will also hammer at the cops' treatment of the crime scene. Attorneys will ask about the credible tips that didn't make it through the investigators' confusion. Attorneys will ask why the 1,200 other suspects and the dozens of confessors were let go. Why were only Scott and Springsteen believed? They'll ask how the Austin police could allow even the appearance of impropriety in such a high-profile case. How could they have done so much wrong?

The APD party line, of course, is that eventually they got it right. In spite of their mistakes, they kept after the killers until they caught them. "I don't think you can say the original investigators did something wrong," says Mike Sheffield. "Time sometimes makes things happen. Maybe people's consciences get the better of them and maybe part of that is what happened here. Because it wasn't like we missed anything. We identified these folks at the beginning. It's just that there was no breakthrough at the time. They were never forgotten."

Others speak more bluntly about the APD's self-image. "They feel like they've got egg on their faces," asserts one former officer. Says Sheffield: "As long as we have to recruit police officers from the human race, people are going to make mistakes." But is there any chance another Pizza Hut "mistake" was made in the yogurt shop case and these men confessed to something they didn't do? "I think," says Sheffield, "there was an effort made to make sure that didn't happen here."

Of course, police officers are human, and of course, so are suspects. Indeed, it's their very humanness that the police exploit so expertly in investigations. Unfortunately, as the yogurt shop case has shown, the passion of a good detective can easily turn to brutality. We may never know exactly what happened at the yogurt shop that night, but the juries in the upcoming trials will be confronted with several undeniable truths in this case: No physical evidence. No witnesses. And maybe most important: If you hold a gun to a man's head, he's liable to tell you anything.

sidebar

Untrue Confessions

To many people, the confessions of Mike Scott and Robert Springsteen, replete with details only someone present at the crime would know, are their tickets to the death chamber. Why would an innocent person say something like that, and how could he if he wasn't at the scene? In truth, detailed, false confessions are not as rare as one might think, and the Austin police have been involved in several of them. Perhaps the most shocking example of this was the case of Achim Josef Marino, a born-again Christian serving three life sentences in a Texas prison for aggravated robbery. In 1998 he wrote a letter to Governor George W. Bush confessing to raping and shooting a woman named Nancy DePriest at an Austin Pizza Hut in 1988. ". . . I did this awfull [sic] crime and I was alone," he wrote. "I do not know these men nor why they plead [sic] guilty to a crime they never committed." The men he referred to were Christopher Ochoa, who had confessed to the crime, and Richard Danziger, who had not. The detective to whom Ochoa had confessed was Hector Polanco, the lead investigator in the troubled early days of the yogurt shop case. In November 2000, DNA tests, along with the corroboration of other physical evidence Marino had mentioned in his letter to Bush, proved that

Marino was telling the truth and that Ochoa and Danziger are innocent. (The two men await the results of final tests by the Travis County district attorney and, they hope, a judge's decision to free them.)

The story of how the two men came to be convicted of DePriest's savage murder is chilling. Two weeks after her death, Ochoa, then 22, and his friend, Danziger, then 18, pulled into the parking lot of the Pizza Hut and sat for five minutes, drinking beer. Suspicious employees called the police, who picked them up for questioning two days later. Over two days, under interrogation by Detectives Polanco, Bruce Boardman, and Ed Balagia, Ochoa confessed and also fingered Danziger. Though his official story changed several times, in his written confession Ochoa offered plenty of salient details: how DePriest had been hit, how her hands had been tied behind her with her bra, how she had been shot in the back of the head. Ochoa eventually made a deal with the DA, pleading guilty to murder and getting a life sentence and implicating Danziger.

Ochoa's fictional confession was not the only thing Danziger had to deal with. In Danziger's trial for aggravated sexual assault, Detective Boardman (who would later grab a murder suspect and throw him against an interrogation room wall) told how Danziger had known details only someone at the crime scene could have known, such as the kind of gun used (a .22 pistol) and what had been stuffed into the sink to flood the restaurant to destroy evidence (a blue Pizza Hut apron). Danziger himself took the stand and said he didn't know why his friend and the police were lying. Still, it took the jury a little more than three hours to find him guilty; they sentenced him to life in prison. A year later Danziger was beaten severely at the Clements Unit in Amarillo, suffering permanent brain damage, and today he sits, heavily medicated, in a medical ward at Skyview Psychiatric Facility in Rusk.

Even Danziger's trial lawyer, Berkley Bettis, had no reason to doubt Ochoa's confession. "I left that trial feeling the state had proved beyond a reasonable doubt that my client was guilty," he says now. "How could Ochoa have stood on the witness stand and related detail after detail after detail? People just don't do that if they're innocent, or at least I didn't think so." Unless, perhaps, they're guilty of something else, such as being afraid. In a November interview he gave to his attorneys, Ochoa, a former high school honors student who had no criminal record, said he confessed because over the course of two long interrogations, Polanco and the other detectives hollered at him, threatened him with rape by other inmates, and told him he would get "the needle" if he didn't confess to DePriest's murder. When Ochoa was sufficiently terrified, the detective began asking him leading questions, feeding him details. "He was all the time telling me what to say," said Ochoa. For example, he said, "Polanco would say, 'Did he [Danziger] say how good-looking she was?' or something. And I would say, 'Yeah.'" All the while Boardman typed his answers, which eventually sent two innocent men to the pen, and one to oblivion.

"That was a big mistake," admits Mike Sheffield, the president of the Austin Police Association. "We tried and convicted the wrong two men." But, he adds, "Once we knew it was a problem, we set about fixing it. If there is an injustice, you need to correct it." He says the department has been cooperating with the DA in the investigation of the case, though he also says, "Nobody has shown [Polanco] did something wrong."

No, but controversy and accusations of false confessions have shadowed Polanco for years. The Austin detective was accused by Allen Andre Causey of choking him, promising to have inmates rape him, and threatening him with the death penalty during an interrogation following an August 1991 murder. (Causey was convicted and the verdict was later upheld on appeal.) Bruce Bowser confessed to a 1991 murder after a lengthy interrogation during which, he said, Polanco threatened to have his mother and grandmother killed by a man Bowser had robbed. He later recanted the confession. (According to the police, these allegations were never proved.) In October 1991 Richard I. Osaze-Ediae, a Nigerian student, confessed to Polanco that he had committed a murder. Osaze-Ediae later recanted, saying Polanco had told him that he was doomed to be convicted and executed but if he confessed he'd only get ten years. A statement from a witness tying Osaze-Ediae to the murder was also later recanted; the woman said the police had told her she would lose her child if she didn't testify. (The prosecution of Osaze Ediae's case was dropped by the DA after the 1992-93

investigation of the homicide department.) Following a February 1991 murder, Polanco and Brent McDonald were accused of perjury by their own police department for lying about taking a statement from a witness who would later claim he had been fed information by Polanco and others and coerced into signing the statement. (Polanco was suspended from the force and then fired in September 1992 for perjury, but an arbitrator later ruled that he had merely forgotten about the statement and ordered Polanco reinstated; Polanco would eventually win a federal civil rights suit against the city and be awarded \$318,537.)

The APD would like to put as much distance as possible between 1991 and 1999; defense attorneys say that can't be done. "Hector Polanco is the father figure of all the detectives who have come in his stead," says Bettis, who now represents Springsteen. "They have the same convict-at-any-cost mentality." Polanco, now in his late forties, hovers over the yogurt shop case like a bad spirit. He made an appearance at a pretrial hearing in August to answer questions about his 1991 interrogation of Maurice Pierce. The much-decorated lieutenant (who until recently was on extended medical leave and would not be interviewed) shambled slowly into the room, looking like Orson Welles in *Touch of Evil*, his huge frame supported by crutches, while everyone - the families of the girls, the families of the suspects, and even the police - stared with a mix of awe and fear.

Why would an innocent person confess to a crime he didn't commit? Sometimes it depends on who is asking him the questions.

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