

# **A Long and Winding Road: The Struggle for Justice in the Chicago Police Torture Cases<sup>1</sup>**

By G. Flint Taylor<sup>2</sup>

In the early morning hours of May 29, 1973, Anthony Holmes was taken to Area 2 detective headquarters where he was tortured by recently promoted Chicago police detective Jon Burge and several other detectives who worked with Burge on the Area's midnight shift. The torture included repeated shockings from an electrical device housed in a box, and suffocation with a bag placed over Holmes' head.<sup>3</sup> Holmes passed out from the pain, felt that he was dying, and, as a result, gave a detailed stationhouse confession to an assistant Cook County state's attorney implicating himself in a murder that he has later insisted he did not commit.<sup>4</sup>

And so began one of the most far-reaching and long-lasting scandals in the annals of Chicago police history — a scandal that featured two decades of brutal and systemic violence perpetrated on more than 110 African American suspects, implicated at least two Chicago mayors, numerous officials at the highest levels of the Chicago Police Department and the Cook County State's Attorney's Office, and members of the Cook County judiciary, and continues to this day.

This article will examine this sordid history and the 25-year struggle fought by the torture survivors and their families, a group of dedicated lawyers, community activists and

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<sup>2</sup> Taylor is a founding partner of the People's Law Office and has represented survivors of police torture in Chicago for more than 25 years. Other PLO attorneys who have worked on the torture cases over the years include Jeffrey Haas, John Stainthorp, Joey Mogul, Tim Lohraff, Ben Elson, Sarah Gelsomino, Michael Deutsch and Jan Susler.

<sup>3</sup> For a more complete description of Holmes' torture, see *Chicago Police Commander Jon Burge and his Victims*, which can be viewed at <http://www.youtube.com/watch?v=Tjo2ZAUQai8&feature=email>.

<sup>4</sup> Although this confession was the only evidence against him, Holmes' lawyers chose not to challenge his torture-induced admissions by filing a motion to suppress and presenting his chilling story to a Cook County Criminal Courts judge. Holmes was convicted, and spent the next 30 years in the penitentiary.

organizations, and a precious few reporters and politicians to expose these crimes against humanity and to pursue justice for those who were tortured.

### **Police Torture: The Early Years**

Throughout the 1970s, Burge spearheaded a torture ring at Area 2 that featured the repeated use of electric shock, a tactic he most likely learned while serving as a military police sergeant in a prisoner of war camp in South Vietnam during the Vietnam War.<sup>5</sup> On one occasion, a black Area 2 detective walked in on a Burge torture scene, but when he reported it to a supervisor, he was told to mind his own business and was quickly transferred out of Area 2.<sup>6</sup> Another black detective saw what appeared to be the torture box, which Burge sometimes referred to as the “nigger box,” sitting on a table near the sergeant’s desk at Area 2.<sup>7</sup>

Neither of these detectives, nor any other Area 2 officer, exposed Area 2’s “dirty little secret.” Torture by the midnight shift continued unabated, and assistant state’s attorneys participated in the interrogations, took the tortured confessions, and used the confessions to prosecute and convict. Thanks to Burge and his fellow detectives, Area 2 could boast of outstanding arrest and conviction rates, and Burge, who was fast becoming a rising star in the department, was promoted to sergeant.<sup>8</sup>

### **The Andrew Wilson Case**

In the early 1980s, Burge was again promoted, this time to lieutenant, and placed in charge of a newly created Violent Crimes Unit at Area 2. At about the same time, Richard M.

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<sup>5</sup> See John Conroy, *Tools of Torture*, Chicago Reader, Feb. 3, 2005, <http://www.chicagoreader.com/chicago/tools-of-torture/Content?oid=917876>.

<sup>6</sup> October 4, 2004, statement of William Parker.

<sup>7</sup> May 20, 2004, affidavit of Melvin Duncan; March 5, 2005, statement of Tony Thompson.

<sup>8</sup> Testimony at Burge’s 2011 sentencing hearing established that Burge progressed through the CPD ranks at an unprecedented pace. See, G. Flint Taylor, *Judge Sentences Chicago Police Commander Jon Burge in Torture Case*, *Police Misconduct and Civil Rights Law Reporter*, Vol. 10, No. 2, March-April 2011.

Daley was elected state's attorney of Cook County. In February 1982, after two white Chicago gang-crimes officers were shot and killed on the South Side, Police Superintendent Richard Brzeczek and Mayor Jane Byrne instituted the largest manhunt in the history of the City, and Burge was placed in charge of the search.

Police kicked down doors and brutalized scores of citizens in what African American leaders condemned as “martial law” that “smack[ed] of Nazi Germany.”<sup>9</sup> Suspected witnesses were tortured with bags and bolt cutters, and Burge and his detectives took several young men — whom they wrongly suspected to be the killers — to police headquarters, where they tortured them.<sup>10</sup>

### **The Torture of Andrew Wilson**

Five days after the murders, Burge and his men arrested two brothers, Andrew and Jackie Wilson, for the crime. Burge and his longtime associate, John Yucaitis, subjected Andrew, who was identified as the shooter, to a regimen of torture that included bagging him, beating him, and burning him with a cigarette lighter.<sup>11</sup> They handcuffed him across a ribbed steam radiator and shocked him on the nose, ears, lips and genitals with Burge's shock box, jolting him against the radiator and leaving serious burns on his face, chest, and leg.<sup>12</sup>

Wilson's injuries were so pronounced that the police lockup keeper refused to accept him into lockup, and they were documented by medical personnel and his appointed lawyer, whose

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<sup>9</sup> These statements were made by the Rev. Jesse Jackson of Operation PUSH and Renault Robinson of the Afro American Police League. See *Cops Accused of Brutality*, Chicago Tribune, Feb. 18, 1982; *Police, Bar Group Ask 'Manhunt' Probe*, Chicago Defender, Feb. 18, 1982.

<sup>10</sup> July 14, 1989, deposition of Donald White; March 7, 2011, affidavit of Anthony Williams.

<sup>11</sup> For a more detailed description of Wilson's torture, see John Conroy, House of Screams, Chicago Reader, Jan. 26, 1990, which can be found at <http://www.chicagoreader.com/chicago/house-of-screams/Content?oid=875107>.

<sup>12</sup> *Id.*

investigators took graphic pictures.<sup>13</sup> The director of medical services, Dr. John Raba, examined Wilson, heard his description of his torture, and wrote a letter to Police Superintendent Brzeczek describing Wilson's injuries and demanding a full investigation.<sup>14</sup>

Wilson was brought to court, and the sensationalized coverage of the murders and manhunt by the mainstream media, for a short interval, included Wilson's ghastly appearance. In contrast, the Chicago Defender, the City's venerable African American newspaper, gave full coverage to the systemic brutality visited upon Chicago's African American community.<sup>15</sup> Several local African American groups collected approximately 200 police misconduct complaints and conducted a community hearing, but the police department's own disciplinary agency managed to "lose" the vast majority of the complaints made.<sup>16</sup>

Brzeczek — who would admit, decades later, that he excoriated several high level deputies for permitting Wilson to be tortured — delivered Dr. Raba's letter directly to State's Attorney Daley, with a pronouncement that he would not investigate Wilson's alleged torture unless Daley directed him to do so.<sup>17</sup> After consulting with his first assistant, Richard Devine, Daley decided not to investigate; instead, he and Brzeczek both publicly commended Burge.<sup>18</sup> Consequently, Burge and his Area 2 cohorts were left to continue their systemic torture.

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<sup>13</sup> John Conroy, *House of Screams*, Chicago Reader, Jan. 26, 1990.

<sup>14</sup> February 17, 1982, letter from Raba to Brzeczek.

<sup>15</sup> Study of University of Chicago African American History Professor Adam Green, presented as part of a forum titled *The Chicago Police Torture Cases, 1972-2011: FactiCity, Accountability and the Struggle to Gain Justice*, Harvard University, Dec. 2, 2011.

<sup>16</sup> *Police, Bar Group Ask 'Manhunt' Probe*, Chicago Defender, Feb. 18, 1982; *Wilson v. City of Chicago*, 6 F.3d 1233 (7<sup>th</sup> Cir. 1993).

<sup>17</sup> Feb. 25, 1982, letter from Brzeczek to Daley; Statement of Richard Brzeczek to the Special Prosecutor, March 9, 2005.

<sup>18</sup> Sept. 1, 1982, CPD Unit Meritorious Performance Award; *Daley Hails 11 in Crime War*, Chicago Tribune, May 20, 1983.

## Area 2 Torture Continues on the Midnight Shift

Further emboldened, Burge brought his friend from childhood, Sgt. John Byrne, to head up Area 2's midnight shift. On this shift detectives tortured scores of African American suspects, coercing confessions that sent them to prison, sometimes to death row, for crimes that, in at least a substantial number of cases, they did not commit.<sup>19</sup> State's Attorney Daley continued to condone this behavior, and specifically approved his assistants' seeking of the death penalty in several torture cases.<sup>20</sup>

In 1986, Andrew Wilson, now under a death sentence, filed a *pro se* civil rights action in federal court, alleging that he was tortured by Burge, Yucaitis and several other Area 2 detectives. At about the same time, Burge was promoted to commander. After several appointed lawyers bowed out of Wilson's civil rights case, lawyers from the People's Law Office agreed to represent him. At the recommendation of newly appointed Police Superintendent Leroy Martin, the Chicago City Council agreed to retain and finance Burge's choice of defense lawyers — the law firm of Richard Devine, who was now in private practice.<sup>21</sup>

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<sup>19</sup> Torture victims who were later exonerated by innocence pardons, certificates of innocence, or dismissal of their cases include Michael Tillman, Madison Hogley, Ronald Kitchen, Marvin Reeves, Leroy Orange, Eric Caine, Aaron Patterson, Stanley Howard, Gregory Banks, Darrell Cannon, David Bates, and Marcus Wiggins. See G. Flint Taylor, *A Historic Moment for the Human Rights Movement: Illinois Governor Ryan Grants Pardons and Mass Clemency*, Police Misconduct and Civil Rights Law Reporter, Vol. 7, No. 7 Jan.-Feb. 2003; G. Flint Taylor, *Three Torture Victims Exonerated, Another Granted a New Trial*, Police Misconduct and Civil Rights Law Reporter, Vol. 9, No. 14, March-April 2010. See also *People v. Banks*, 192 Ill. App. 3d 986 (1989); *People v. Bates*, 267 Ill. App. 3d 503 (1994); *People v. Cannon*, 293 Ill. App. 3d 634 (1997); and *People v. Caine*, No. 86 CR 6091, Order of January 15, 2011; and the civil rights damages complaints filed in the Northern District of Illinois in *Banks v. Burge*, 91 C 6470; *Bates v. Burge*, No. 96 C 7061; *Cannon v. Burge*, No. 05 C 2192; *Wiggins v. Burge*, No. 93 C 193; and *Caine v. Burge*, No. 11 C 8996 (N.D. Ill.).

<sup>20</sup> These cases include those of torture survivors Leroy Orange, Darrell Cannon, Michael Tillman, Stephen Bell, Aaron Patterson, and Stanley Howard. See civil rights damages complaint filed in *Tillman v. Burge*, No. 10 C 4551 (N.D. Ill.).

<sup>21</sup> Sept. 25, 2006, and Dec. 11, 2006, depositions of Leroy Martin and Sept. 27, 2006, and Nov. 14, 2006, depositions of Richard Devine in *Orange v. Burge*, No 03 C 4433 (N.D. Ill.) and *Cannon v. Burge*, No. 05 C 2192 (N.D. Ill.).

Wilson's civil rights case went to trial in February 1989, amid little fanfare.<sup>22</sup> While torture at Area 2 had long been an "open secret" at Area 2,<sup>23</sup> the police department and the state's attorney's office managed to keep the lid on that secret, and every Cook County judge who heard allegations of torture on motions to suppress rejected them. Hence, Wilson's lawyers, and the public at large, were ignorant of the depth and breadth of the torture scandal.

### **The Anonymous Letters From "Deep Badge"**

During the trial, Wilson's lawyers received several anonymous letters from a police source who was close to Burge. The source, dubbed "Deep Badge" by the lawyers, asserted that the torture was deeply racist and systemic. Deep Badge named numerous of Burge's "asskickers," implicated States Attorney Daley and Mayor Jane Byrne in the scandal, and specifically identified another torture victim, Melvin Jones, who was tortured by Burge with electric shock only days before Wilson.<sup>24</sup>

The lawyers located Jones in the Cook County Jail, confirmed his story, and obtained a transcript of his testimony at his 1982 motion-to-suppress hearing where he first detailed his torture. While the trial judge, Brian Barnett Duff, would not permit Jones to testify at the trial, this breakthrough would open the door to the discovery and documentation, over the next two decades, of more than 110 victims of torture by Burge and his men.<sup>25</sup>

The eight-week Wilson civil rights trial ended with a hung jury, but Wilson's lawyers had begun to uncover and document more cases of Area 2 torture. The lawyers presented them to

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<sup>22</sup> The most comprehensive article, titled *Torture in Chicago*, was published in March 1989 in the *Chicago Lawyer*.

<sup>23</sup> Nov. 9, 2004, statement of former Area 2 Detective Doris Byrd.

<sup>24</sup> Anonymous letters from "Ty" to Flint Taylor, postmarked Feb. 2, 1989, March 6, 1989, March 15, 1989, and June 16, 1989.

<sup>25</sup> Chart, *112 Known Burge Area 2 And 3 Torture Victims 1972-1991*, compiled by People's Law Office, last updated in April of 2011.

Judge Duff in an unsuccessful attempt to have this evidence presented at the retrial that was scheduled to start in the summer of 1989.<sup>26</sup>

At the retrial, Judge Duff permitted Burge's City-financed lawyers to present weeks of what the Seventh Circuit Court of Appeals would later find to be highly prejudicial and irrelevant evidence about the police murders for which Wilson stood convicted.<sup>27</sup> Remarkably, the all-white jury nonetheless returned a split verdict, absolving Burge from violating Wilson's constitutional rights, but finding that the police department had a policy of abusing persons accused of killing police officers.<sup>28</sup>

The hotly contested trials and the revelations that the torture was systemic in nature engendered some sporadic media attention. Wilson's lawyers insisted on calling the abuse "torture" rather than brutality, and slowly the media followed suit. John Conroy, an investigative reporter for the Chicago Reader, covered both trials, and in early 1990, set forth in detail the systemic nature of the torture in an article aptly entitled "House of Screams."<sup>29</sup>

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<sup>26</sup> John Stainthorp, with G. Flint Taylor, *Litigating Police Torture in Chicago*, Civil Rights Litigation and Attorney Fees Annual Handbook, Vol. 13 (1997).

<sup>27</sup> Wilson's criminal trial judge had denied Wilson's motion to suppress his torture-induced confession, and, in 1983, he had been convicted and sentenced to death. In 1987, the Illinois Supreme Court reversed his conviction finding that, given Wilson's injuries, the state had not met its burden in establishing that his confession was not coerced. See *People v. Wilson*, 116 Ill. 2d 29 (1987). In 1988 Wilson was reconvicted without the confession and received a life sentence.

<sup>28</sup> John Stainthorp, with G. Flint Taylor, *Litigating Police Torture in Chicago*, Civil Rights Litigation and Attorney Fees Annual Handbook, Vol. 13 (1997).

<sup>29</sup> *House of Screams*, Chicago Reader, January 26, 1990, <http://www.chicagoreader.com/chicago/house-of-screams/Content?oid=875107>. This was the first of a series of in-depth articles Conroy wrote on the torture scandal for the Reader over the next two decades. These articles are archived at <http://www.chicagoreader.com/chicago/police-torture-in-chicago-jon-burge-scandal-articles-by-john-conroy/Content?oid=1210030>.

## **Community Activism Intensifies**

Community groups and police watchdog organizations, led by Citizens Alert, also took notice, and began to publicize the issue and organize around it. On the heels of the trials, the head of the police department's Office of Professional Standards (OPS), David Fogel, after unsuccessfully requesting a federal investigation, was compelled to open an internal police investigation into the allegations.<sup>30</sup>

On Christmas Eve 1990, the Chicago City Council held a widely publicized hearing on the torture cases at which Wilson's lawyers, torture expert Robert Kirschner, and County Commissioner Danny Davis presented evidence, and shortly thereafter, Amnesty International requested that the Illinois Attorney General's Office conduct an independent investigation.<sup>31</sup>

For the next several years, activists led by the Task Force to Confront Police Violence and Citizens Alert staged sit-ins at City Council, led a march to now-Mayor Richard M. Daley's house, made repeated appearances at the Chicago Police Board, and demanded meetings with Police Superintendent Martin to discuss the OPS investigation.<sup>32</sup>

## **The OPS Reports**

In the fall of 1991 the OPS, in a detailed report authored by investigator Francine Sanders, recommended that Burge, Yucaitis and a third detective, Patrick O'Hara, be fired for their torture of Andrew Wilson.<sup>33</sup> The Superintendent concurred, and they were suspended from

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<sup>30</sup> Deposition of David Fogel in *Cannon v. Burge*, No. 05 C 2192, June 24, 2008.

<sup>31</sup> *Police Torture Probe Sought Here*, Chicago Sun Times, Jan. 28, 1991; transcript of Dec. 24, 1990, hearing before the City Council Subcommittee on Finance.

<sup>32</sup> *The End of the Nightstick*, a documentary which details these and other related actions, can be viewed at [http://misc.docuwat.ch/videos/?alternative=2&channel\\_id=0&skip=0&subpage=video&video\\_id=1263](http://misc.docuwat.ch/videos/?alternative=2&channel_id=0&skip=0&subpage=video&video_id=1263).

<sup>33</sup> OPS Special Projects Summary Report, Sept. 26, 1990.

the force.<sup>34</sup> Only weeks before the suspensions, a 13-year-old boy, Marcus Wiggins, was tortured with electric shock by detectives under Burge and Byrne's command.<sup>35</sup>

Unknown to the general public, there had also been a parallel OPS investigation into the systemic nature of Area 2 torture, conducted by OPS investigator Michael Goldston; its damning findings had been approved by Gayle Shines, the OPS Chief Administrator who had succeeded Fogel as head of OPS. The Goldston Report found that suspects held in custody at Area 2 had been subjected to "systematic" and "methodical" "abuse," that the abuse included "planned torture," and that Area 2 command personnel were "aware of the systematic abuse" and encouraged it by "actively participating" or failing to take action to stop it.<sup>36</sup>

CPD Superintendent Martin, who had previously been Burge's commander at Area 2, suppressed the report and secretly sought to have the findings discredited by cronies at the Police Foundation.<sup>37</sup> By court order, lawyers from the People's Law Office obtained the report and, in February 1992, released it at a press conference that received widespread local, national, and international coverage. In response, Martin and Mayor Daley publicly condemned the findings, calling them "only allegations . . . rumors, stories, things like that."<sup>38</sup>

### **The Firing of Jon Burge**

Burge, Yucaitis and O'Hara were put on trial before the Chicago Police

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<sup>34</sup> Recommendation for Separation, Oct. 11, 1991.

<sup>35</sup> For a detailed description of Wiggins' torture, see the June 4, 1996, deposition of Marcus Wiggins.

<sup>36</sup> OPS Special Project Conclusion Reports and Findings, Nov. 2, 1990 (Goldston Report).

<sup>37</sup> Sept. 25, 2006, and Dec. 11, 2006, depositions of Leroy Martin, and his communications with the Police Foundation. A scathing analysis of Martin's conduct was made by former Minneapolis Police Superintendent Anthony Bouza in his Aug. 19, 2006, expert opinion that was filed in *Orange v. Burge* No. 04 C 168 (N.D. Ill.).

<sup>38</sup> *13 Years of Cop Torture Alleged, Daley, Martin, Rip Internal Police Reports*, Chicago Tribune, Feb. 8, 1992.

Board for the torture of Andrew Wilson only weeks after the Goldston Report was made public.<sup>39</sup> A large Fraternal Order of Police (FOP) fundraiser for the accused officers' defense drew extensive media coverage, as did a demonstration staged, at risk of life and limb, by the Task Force to Confront Police Violence, in front of the hall where the fundraiser took place.<sup>40</sup> In pleadings filed by the City in the police board case, its lawyers admitted for the first time that there was "an astounding pattern or plan on the part of [Burge and Yucaitis] to torture certain suspects . . . into confessing to crimes."<sup>41</sup> Wilson, Melvin Jones, and a third Burge torture victim, Shadeed Mumin, all testified for the City during the six-week hearing.<sup>42</sup>

The City retained lawyers who were prosecuting Burge withheld public comment during the hearing, so Wilson's lawyers and community activists provided the media with the perspective of those who sought justice for Wilson and all police torture survivors, emphasizing that the evidence established torture rather than simply brutality. The struggle to expose police torture was further advanced by the subsequent release of a documentary film that later aired on PBS, which highlighted the work of activists and lawyers in bringing the torture scandal to light.<sup>43</sup>

A year later, in February 1993, the Chicago Police Board released its written decision – finding Burge and Yucaitis guilty of abusing Wilson, and ordering that Burge be fired and

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<sup>39</sup> The hearing began on Feb. 10, 1992, and was completed on March 20, 1992. See transcript of proceedings before the Chicago Police Board in Case Nos. 1856-58.

<sup>40</sup> See, *The End of the Nightstick*, which can be viewed at:  
[http://misc.docuwat.ch/videos/?alternative=2&channel\\_id=0&skip=0&subpage=video&video\\_id=1263](http://misc.docuwat.ch/videos/?alternative=2&channel_id=0&skip=0&subpage=video&video_id=1263).

<sup>41</sup> City's Memorandum In Opposition to Motion to Bar Testimony Concerning Other Alleged Victims of Police Misconduct, filed before the Chicago Police Board, *In the Matter of Charges Filed against Respondents Jon Burge, John Yucaitis and Patrick O'Hara*, Case Nos.1856-58, Jan. 22, 1992.

<sup>42</sup> Police Board testimony of Andrew Wilson, Feb. 10, and 12, 1992; Police Board testimony of Melvin Jones, Feb. 19, 1992; Police Board testimony of Shadeed Mumin, Feb. 20, 1992.

<sup>43</sup> The documentary, titled *The End of the Nightstick*, aired on the PBS show POV and can be viewed at  
[http://misc.docuwat.ch/videos/?alternative=2&channel\\_id=0&skip=0&subpage=video&video\\_id=1263](http://misc.docuwat.ch/videos/?alternative=2&channel_id=0&skip=0&subpage=video&video_id=1263).

Yucaitis suspended for 15 months.<sup>44</sup> While the lengthy decision did not brand the officers' conduct as torture nor specifically find that Wilson was electric-shocked, burned or bagged, it was rightfully claimed as a significant victory by those who had fought for justice in the torture cases.<sup>45</sup>

The FOP reacted quite differently by condemning the decision as political and attempting to enter a float honoring Burge and Yucaitis in the City's 1993 St. Patrick's Day Parade. The public outrage, particularly in the African American community, occasioned by this attempt led to front-page headlines, and the FOP was forced to withdraw the float.<sup>46</sup>

Later that year, the Seventh Circuit Court of Appeals reversed the verdicts in the Wilson civil rights trials, finding that Wilson had been unfairly prejudiced by the onslaught of evidence about the police murders and was entitled to present the evidence from other torture victims such as Melvin Jones and Shadeed Mumin.<sup>47</sup> The case was then reassigned to District Court Judge Robert Gettleman, who ruled that the Police Board's finding of abuse was controlling and thereby entered judgment in favor of Wilson.<sup>48</sup>

The City, now admitting that Wilson and Jones were tortured by Burge, attempted to avoid responsibility by asserting that Burge was acting outside the scope of his employment, but

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<sup>44</sup> *In the Matter of the Firing of Jon Burge, John Yucaitis and Patrick O'Hara*, Nos. 91-1856-1858, Chicago Police Board, Police Board Decision of Feb. 11, 1993. Yucaitis, who was acquitted on some of the charges, received a 15-month suspension, and O'Hara was acquitted of all charges.

<sup>45</sup> One of Wilson's lawyers was quoted as saying that "justice had finally been done," that "the person in charge of the systematic torture had been fired," but that the department should "clean house," and "implement" the Goldston Report. *Cop Loses Job over Torture*, Chicago Sun-Times, Feb. 11, 1993.

<sup>46</sup> *Sinking FOP's Float Saved City's Image*, Chicago Sun-Times, March 11, 1993; *FOP's Float a Bust as Parade Decks Plan*, Chicago Sun-Times, March 14, 1993.

<sup>47</sup> *Wilson v. City of Chicago*, 6 F.3d 1233 (7<sup>th</sup> Cir. 1993).

<sup>48</sup> *Wilson v. City of Chicago*, 900 F. Supp. 1015 (N.D. Ill. 1995).

this argument was rejected by the Seventh Circuit on a second appeal,<sup>49</sup> and in 1997 Wilson and his lawyers obtained a \$1.1 million damages and attorneys' fees judgment.

### **The Focus Shifts**

During the mid to late 1990s, the legal and activist focus shifted to the criminal courts with the emphasis on death row cases. Ten death row prisoners who all alleged that they had been tortured into giving false confessions by Burge and his men banded together to form the "Death Row Ten."<sup>50</sup>

Activists on the outside, led by the Campaign to End the Death Penalty, the Aaron Patterson Defense Committee, and the families of the men, held demonstrations and other public events, sometimes arranging for one of the Death Row Ten to speak by telephone to the crowd. Contemporaneously, the Coalition Against the Death Penalty, and lawyers at Northwestern and DePaul were organizing against the death penalty itself, and these efforts led to Illinois Governor George Ryan's imposition of a moratorium on executions in January of 2000.<sup>51</sup>

A few years before, People's Law Office lawyers had taken up the case of death row prisoner Aaron Patterson, filing a post-conviction petition that raised the wealth of torture evidence that had been uncovered since his conviction in 1989. Patterson's case made its way to the Illinois Supreme Court, where his lawyers raised the issue of international law.<sup>52</sup>

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<sup>49</sup> *Wilson v. City of Chicago*, 120 F.3d 681 (7<sup>th</sup> Cir. 1997).

<sup>50</sup> See, e.g., *The Death Row Ten*, at <http://ccadp.org/deathrow10.htm>.

<sup>51</sup> See governor's press release, *Governor Ryan Declares Moratorium On Executions, Will Appoint Commission To Review Capital Punishment System*, Jan. 31, 2000, which can be viewed at: <http://www.illinois.gov/pressreleases/showpressrelease.cfm?subjectid=3&recnum=359>.

<sup>52</sup> See *People v. Patterson*, Reply Brief of Petitioner in the Illinois Supreme Court, No. 82711, filed June 8, 1999.

At oral argument, which was filmed by a CBS “60 Minutes 2” crew for a segment on Chicago police torture,<sup>53</sup> the lawyers stressed that the nature of torture mandated that the court’s previous rule requiring a criminal defendant to show physical evidence of torture in order to successfully challenge his confession should be overruled. In companion decisions handed down in the fall of 2000, the Illinois Supreme Court modified its prior rule and granted Patterson and two other Death Row Ten prisoners new hearings at which they could present evidence of systemic torture.<sup>54</sup>

### **Another Phase of the CPD Cover-up**

In the early 1990s, the OPS reopened a number of Area 2 torture investigations, and investigators recommended sustained findings in six cases.<sup>55</sup> OPS Director Gayle Shines refused to act on the findings, and instead secreted the files in her office for five years.<sup>56</sup> Ultimately, in 1998, CPD Superintendent Hillard, who had recently been appointed, and his chief counsel, Thomas Needham, summarily overruled the findings, but lawyers from the People’s Law Office were subsequently able to bring these files to light, and a front-page Chicago Tribune story followed.<sup>57</sup>

In August 1999, a contingent of concerned public officials, activists, and organizations, led by Citizens Alert and including members of Congress, the Illinois Legislature, and the Cook County Board, formally requested that Hillard empanel an independent investigation to look into this “obvious violation of police regulations, procedure and legal process by certain OPS and

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<sup>53</sup> The *60 Minutes 2* segment on Chicago police torture aired on Dec. 7, 1999.

<sup>54</sup> See *People v. Patterson*, 192 Ill. S.Ct. 93 (2000); *People v. King*, 192 Ill. S.Ct. 189 (2000); *People v. Kitchen*, 2000 Ill. LEXIS 339 (2000).

<sup>55</sup> These cases included those of Darrell Cannon and death row prisoner Stanley Howard. See the reopened OPS files in Complaint Register Nos. 126802, 134723, 142017, 142201, 188617, and 200390.

<sup>56</sup> *Brutality Probe Haunts City, Cops Go Unpunished Despite OPS Findings Suspects Were Tortured*, Chicago Tribune, Feb. 23, 1999.

<sup>57</sup> *Id.*; May 3, 1999, deposition of Terry Hillard in *Santiago v. Marquez*, No. 97 C 2775 (N.D. Ill.).

police officials during torture investigations.”<sup>58</sup> Hillard met with members of the contingent, but took no action.

The movement against police torture also continued to demand an independent criminal investigation into the allegations of systemic torture. During the Clinton administration, a Chicago delegation, led by U.S. Rep. Bobby Rush, traveled to Washington, D.C., and met with U.S. Attorney General Janet Reno.<sup>59</sup> At this meeting the pattern of police torture was emphasized as part of a plea for a wide-ranging investigation of Chicago police practices, but no federal investigation was forthcoming.<sup>60</sup> Rush also held hearings in Chicago, where evidence of torture was presented.

### **Appointment of a Special Prosecutor and Gubernatorial Innocence Pardons**

Frustrated by the continuing refusal to investigate and prosecute, lawyers from the MacArthur Justice Center, the Cook County Bar Association, the People’s Law Office, the Illinois Appellate Defenders Office, and the National Conference of Black Lawyers, together with Citizens Alert and the mother of an imprisoned torture victim, spearheaded a coalition that sought the appointment of a special prosecutor to investigate the allegations of systemic torture at Area 2.<sup>61</sup>

In April 2001, a formal petition for the appointment of a special prosecutor, alleging that the then-current state’s attorney of Cook County, Richard Devine, had a conflict of interest arising from his law firm’s previous representation of Burge in the Wilson civil rights case, was

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<sup>58</sup> Letter to Police Superintendent Terry Hillard, Aug. 2, 1999.

<sup>59</sup> *Rush’s group asks Reno for brutality probe*, Chicago Sun-Times, July 27, 1999.

<sup>60</sup> *Id.*

<sup>61</sup> *Group demands probe of alleged cop brutality*, Chicago Sun-Times, April 6, 2001; *Special Prosecutor Urged For Cop Torture Probe*, Chicago Tribune, April 6, 2001.

filed before the chief judge of the Cook County Criminal Courts, Paul Biebel.<sup>62</sup> A year later, Judge Biebel found there to be a conflict, granted the petition, and appointed as special prosecutors two attorneys who were former high-ranking assistant state's attorneys with strong connections to Richard J. Daley and his Democratic political machine.<sup>63</sup>

The coming together of the struggles against the death penalty and police torture gathered strength in the early years of the new century, and in January 2003, Governor George Ryan, on successive days, granted innocence pardons to death row torture survivors Madison Hobley, Leroy Orange, Stanley Howard and Aaron Patterson, and then commuted the sentences of all the other men and women on Illinois' death row to life in prison without parole.<sup>64</sup>

State's Attorney Devine bitterly opposed the pardons and commutations, and a second petition, this one to remove Devine and his office from representing the state in all post-conviction cases where Burge-related torture was alleged, was filed before Judge Biebel. This petition not only re-raised Devine's conflict, but also documented the significant role that assistant state's attorneys had played in taking torture induced confessions and using those confessions to obtain tainted convictions.<sup>65</sup> In April 2003, Judge Biebel granted the petition and appointed the Office of the Illinois Attorney General to represent the state.<sup>66</sup> By early 2004, all four of the pardoned torture survivors had filed federal damages actions alleging that their

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<sup>62</sup> *Petition for Appointment of Special Prosecutor*, No. 2001 Misc. 4, filed on April 5, 2001.

<sup>63</sup> *In re Appointment of Special Prosecutor*, No. 2001 Misc. 4, Opinion and Order of April 24, 2002. *Did leaders of Burge inquiry favor City Hall?* Chicago Sun-Times, July 31, 2006. It was later revealed that Special Prosecutor Edward J. Egan had nine relatives in the Chicago Police Department, one of whom served under Burge at Area 2 in the 1980s and participated in the arrest of torture victim Gregory Banks. *Torture report and family ties: Top investigator had nephew on Burge's staff*, Chicago Sun-Times, Aug. 6, 2006.

<sup>64</sup> See G. Flint Taylor, *A Historic Moment for the Human Rights Movement: Illinois Governor Ryan Grants Pardons and Mass Clemency*, Police Misconduct and Civil Rights Law Reporter, Vol. 7, No. 7 (Jan.-Feb. 2003).

<sup>65</sup> For a detailed review of the role of the Cook County State's Attorney's Office in the torture scandal, see John Conroy, *Deaf to the Screams*, Chicago Reader, Aug. 1, 2003.

<sup>66</sup> *In re Appointment of Special Prosecutor*, No. 2001 Misc. 4, Opinion and Order of April 9, 2003.

wrongful convictions and imprisonment were a direct result of the false confessions that Burge and his men had extracted as part of the pattern and practice of torture and cover-up that they directed and implemented.<sup>67</sup>

These lawsuits gave the lawyers for the pardoned survivors a revitalized avenue to obtain even more evidence of this pattern, including witness statements from five retired African American detectives who revealed that they periodically heard screams, saw the torture box, and knew that torture by Burge and Byrne's midnight crew was an "open secret" at Area 2 during the 1980s.<sup>68</sup>

Scores of detectives, including Burge and all of the midnight crew, pleaded the Fifth Amendment when called to testify at their depositions, but Burge initially committed a crucial mistake that would later lead to his indictment for perjury and obstruction of justice by denying in sworn written interrogatory answers that he knew of, or participated in, torture at any time while he was a police officer.<sup>69</sup>

### **The Movement Turns to the International Arena**

Frustrated by the approach of the special prosecutors, who had repeatedly shown hostility to the torture survivors and their lawyers and had rejected community requests for independent African American lawyers to be added to their team, the movement against police torture turned to the international arena to further plead its case.

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<sup>67</sup> See G. Flint Taylor, *Pardoned Illinois Prisoners Bring Torture and Wrongful Conviction Claims*, Police Misconduct and Civil Rights Law Reporter, Vol. 7 No. 13 (Jan.-Feb. 2004).

<sup>68</sup> See Nov. 9, 2004, statement of Doris Bird; Oct. 4, 2004, statement of William Parker; Oct. 12, 2004, statement of Sammy Lacey; Nov. 2, 2004, statement of Walter Young; and May 20, 2004, affidavit of Melvin Duncan.

<sup>69</sup> Burge's answers to interrogatories in *Hobley v. Burge*, No. 03 C 3678, dated Nov. 25, 2003.

A group of approximately 50 organizations and individuals, including the Midwest Committee for Human Rights (MCHR), the National Lawyers Guild, the National Conference of Black Lawyers, the NAACP, the ACLU, and the Christian Council on Urban Affairs, petitioned and obtained a hearing before the Inter American Commission for Human Rights (IACHR).<sup>70</sup> At this hearing, which was held in Washington, D.C., in October 2005, a Burge torture survivor, lawyers from the People's Law Office, and several activists testified and presented evidence to the commission.<sup>71</sup>

The movement then turned to the United Nations Committee Against Torture (CAT). The MCHR and lawyers from the People's Law Office, who joined with numerous national human rights organizations, presented the unresolved issue of Chicago police torture to CAT as part of a broader picture of systemic U.S. human rights violations that also included torture at Guantanamo Bay and Abu Ghraib.<sup>72</sup>

In May 2006, a lawyer from the People's Law Office appeared before CAT in Geneva, Switzerland to personally argue the case for U.S. prosecutions of Burge and his men. In a significant victory for the movement, CAT subsequently issued a report that linked Chicago police torture to Guantanamo Bay and Abu Ghraib while calling on the U.S. government to “promptly, thoroughly and impartially investigate” all acts of Area 2 and 3 torture and to “bring the perpetrators to justice.”<sup>73</sup>

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<sup>70</sup> See letters to the IACHR, which is part of the Organization of American States (OAS), dated Aug. 26, 2005, and Sept. 6, 2005, alleging that the pattern and practice of torture violated the *American Declaration of the Rights and Duties of Man*, and requesting a general interest hearing.

<sup>71</sup> *Panel Hears Claims Of Anti-Black Cop Brutality Here*, Chicago Sun-Times, Oct. 15, 2005.

<sup>72</sup> See Sept. 30, 2005, memorandum from MCHR to CAT, *Re: Issues Regarding U.S. Second Periodic Report*.

<sup>73</sup> See *U.N. Investigates Alleged Torture*, WBEZ Chicago Public Radio, May 5, 2006; United Nations Commission Against Torture, *Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee Against Torture*, May 18, 2006. In May 2008 similar

## A Report but No Indictments

Meanwhile, in early 2006, the special prosecutors announced that they were concluding their investigation. Despite the existence of some prosecutable perjury, obstruction of justice, and conspiracy charges against Burge and his confederates, it was becoming apparent that no indictments would be forthcoming.

During the spring of 2006, the special prosecutors on several occasions informed Judge Biebel in open court that their report was not yet ready, while lawyers for Burge and his confederates fought to keep the report secret.<sup>74</sup> Lawyers for the torture survivors pressed for its release while using these occasions to explain to the media and the public why indictments were both necessary and obtainable and to focus on the central role of former State's Attorney Richard M. Daley in rejecting the opportunity to prosecute Burge when he was first appraised of Burge's criminal conduct decades before.<sup>75</sup>

Finally, in July 2006, the special prosecutors issued their 192-page report, which was accompanied by front-page headlines, top-of-the-news coverage, and newspaper editorials.<sup>76</sup> In their report, the special prosecutors found that abuse occurred beyond a reasonable doubt in three cases, including Wilson's, and that it likely occurred in many others; they also singled out former Police Superintendent Brzeczek for his failure to investigate or fire Burge.<sup>77</sup>

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testimony was presented to the U.N. Rapporteur on Racism at a hearing conducted in Chicago. See <http://www.youtube.com/watch?v=90dH2WOL34w&feature=related>.

<sup>74</sup> See *Black Caucus urges release of Burge report*, Chicago Sun-Times, May 6, 2006.

<sup>75</sup> See, e.g., *Report Near On Alleged '70s Police Torture*, Chicago Sun-Times, April 28, 2006; *Release Of Police Torture Report Delayed Again*, Associated Press, June 2, 2006.

<sup>76</sup> See, e.g., *Cops Used Torture*, Chicago Tribune, July 20, 2006; *Getting away with torture*, Chicago Tribune editorial, July 20, 2006; *No Statute of Limitations on Disbarment for Torture*, Chicago Sun-Times Editorial, July 21, 2006.

<sup>77</sup> *Report of the Special State's Attorney*, July 19, 2006.

The special prosecutors attempted to justify their refusal to bring perjury and obstruction of justice indictments, and they invoked the statute of limitations as the basis for not indicting for the torture itself.<sup>78</sup> The report absolved Daley and Devine, ignored the systemic and racist nature of the torture, and steadfastly avoided calling electric shock, suffocation, and mock executions torture.<sup>79</sup> Reacting to the report, Daley condemned the torture but carefully avoided taking any responsibility for the torture scandal.<sup>80</sup>

### **Reaction to the Special Prosecutors' Report**

Fueled by community outrage at the failure to indict or to place responsibility where it belonged, lawyers and activists at the People's Law Office, the MacArthur Justice Center, and Northwestern Law School's Wrongful Convictions Center embarked on the task of drafting a "shadow report." This report set forth in detail the evidence and findings that were ignored by the special prosecutors, and it explained why Burge and his men could be, and should be, indicted.<sup>81</sup> The shadow report also called on the Chicago, Cook County, and U.S. governments to take action.<sup>82</sup>

More than 200 local and national human rights, civil rights and anti-racist organizations and activists signed the shadow report, and it was released at a press conference in April 2007.<sup>83</sup>

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Statement of Mayor Richard M. Daley, *Special Prosecutors Report*, July 21, 2006.

<sup>81</sup> *Report on the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Systemic Police Torture in Chicago*, April 24, 2007.

<sup>82</sup> *Id.*

<sup>83</sup> See, e.g., *New report blasts probe into cop torture*, Chicago Tribune, April 25, 2007.

The report led to the holding of open hearings before the Cook County Board and Chicago City Council at which torture survivors, torture experts, lawyers, and activists all testified.<sup>84</sup>

Evidence presented at the City Council hearing also established that the City had, at that time, spent more than \$10 million in taxpayer money to defend Burge and the City in the damages cases, while the special prosecutors had been paid \$7 million for their work.<sup>85</sup> A Chicago Sun-Times Editorial decried the City's continued role in defending Burge and for his pension to be "pulled."<sup>86</sup>

At this point a substantial number of City and county politicians became actively and vocally involved, and a number of them spoke out at the City Council hearing, condemning the torture, calling on the City to stop defending Burge in the civil rights damages cases, and calling on the U.S. attorney for the Northern District of Illinois to prosecute Burge for perjury and obstruction of justice.<sup>87</sup>

### **A Federal Investigation, More Exonerations, and an Indictment**

In the wake of the special prosecutors' report as well as the shadow report, the CAT findings, the City and county hearings, and the public outcry, U.S. Attorney Patrick Fitzgerald announced that his office was investigating Burge for possible federal offenses.<sup>88</sup> A few months

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<sup>84</sup> The Cook County Board hearing of June 13, 2007, can be viewed at <http://video.google.com/videoplay?docid=-7235577585903007387#>. See also Chicago City Council Committee on Police and Fire, *Transcript of Proceedings*, July 24, 2007. A video of Burge and his victims that was shown at the City Council hearing can be viewed at <http://video.google.com/videoplay?docid=-1740730225342200983#>. Former Area 2 Detective William Parker's testimony before the council can be viewed at <http://video.google.com/videoplay?docid=6163137098482065389#>.

<sup>85</sup> These figures were compiled by People's Law Office lawyers from numerous Freedom of Information Act documents obtained from the City and county.

<sup>86</sup> *Pull his Pension*, editorial, Chicago Sun-Times, July 25, 2007.

<sup>87</sup> Chicago City Council Committee on Police and Fire, *Transcript of Proceedings*, July 24, 2007; *New strategy on Burge pressed*, Chicago Tribune, July 25, 2007.

<sup>88</sup> Statement of U.S. Attorney Patrick Fitzgerald, Sept. 26, 2007.

later, the City settled the torture cases brought by the four pardoned torture survivors for a total of \$19.8 million.<sup>89</sup>

Several of the torture victims, particularly Darrell Cannon and Anthony Holmes, who had been recently released after spending decades in prison, became eloquent spokesmen for the movement, telling their stories at churches and community meetings, on radio and television, and at Rainbow PUSH, which became a strong advocate for justice in the torture cases.<sup>90</sup>

Several TV reporters, newspaper columnists and radio personalities, particularly Cliff Kelly of WVON Radio and Carol Marin of the Chicago Sun-Times and WMAQ TV, gave serious attention to the torture scandal. Another important community group, Black People Against Police Torture, organized town hall meetings to discuss the torture cases, and joined with other groups to oppose Mayor Daley's attempt to bring the 2016 Olympics to Chicago.<sup>91</sup>

On Oct. 21, 2008, banner headlines announced that Jon Burge had been arrested in Florida on an indictment charging him with three counts of perjury and obstruction of justice for

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<sup>89</sup> *\$20M Settlement OK'd for Chicago Torture*, Chicago Sun-Times, Jan. 10, 2008. The City had agreed to settle with three of the four men for \$14.8 million more than a year previously, but the City refused to execute the agreement. *Burge claimants allege City backed out of \$14.8 million settlement*, Chicago Tribune, Feb. 20, 2007.

<sup>90</sup> To view Cannon recounting his torture, see <http://www.youtube.com/watch?v=AgCZ-qcjFto&feature=email>. Cannon was granted a new suppression hearing in 1997 (see *People v. Cannon*, 293 Ill. App. 3d 634 (1997)), and after the hearing was conducted, the state dismissed his case, but he was not released until 2007. While in prison, he filed a lawsuit alleging torture, and he reluctantly settled it for \$3,000 in 1988, before the evidence of systemic torture started to come to light. After the state dismissed his case in 2004, Cannon filed a torture and wrongful conviction suit, alleging that the cover-up of the pattern and practice of torture constituted fraud, denied him access to the courts, and nullified his original agreement to settle. The district judge initially let the suit go forward (see *Cannon v. Burge*, 2006 U.S. Dist. LEXIS 4040 (2006)) but later granted the City defendants' summary judgment motion on the grounds that Cannon's original settlement precluded him from suing. *Cannon v. Burge*, 2011 U.S. Dist. LEXIS 105715 (2011). The City has spent \$1.75 million defending the case, which is now on appeal.

<sup>91</sup> The campaign included bringing 1968 Olympic hero John Carlos to Chicago to speak out about police torture, sending documentation about police torture to the Olympic Committee, and greeting the committee with a demonstration when it came to Chicago to meet with City authorities and view the potential site for the games. See, e.g., B. Joravsky, *Can Shame Stop the Games?* Chicago Reader, March 23, 2007; *Chicago must SAY NO to Daley's Olympics*, Chicago Defender, March 15, 2007.

lying about torture in his November 2003 interrogatory answers.<sup>92</sup> U.S. Attorney Fitzgerald contemporaneously announced that his office was also investigating Burge associates for similar offenses.<sup>93</sup> When asked, Mayor Daley took no responsibility for the torture, but rather issued what the Chicago Sun Times characterized as a “sarcastic apology.”<sup>94</sup>

Buoyed by this victory, lawyers and activists turned their attention to the twenty-five torture survivors who still languished behind bars as a result of torture induced confessions. In May 2009, after an evidentiary hearing, a Cook County Circuit Court judge found that torture victim Victor Safford’s confessions to two separate murders had been coerced pursuant to systemic Burge-related torture, and he was released later that year.<sup>95</sup> Safford, who had converted to Islam while incarcerated, was supported by the Nation of Islam and other community activists and religious leaders who regularly attended court and publicized his case.

More releases followed. In July 2009, former death row prisoner Ronald Kitchen, who had been tortured into confessing by Burge, and Kitchen’s co-defendant, Marvin Reeves, were exonerated and released after spending 21 years in the penitentiary for crimes they did not commit.<sup>96</sup> In January 2010, torture survivor Michael Tillman was similarly exonerated and released,<sup>97</sup> and this exoneration was front-page news.<sup>98</sup>

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<sup>92</sup> *Feds catch up with Burge*, Chicago Tribune, Oct. 22, 2008; G. Flint Taylor, *Torture Ringleader Indicted*, Police Misconduct and Civil Rights Law Reporter, Vol. 9, No. 7 Jan.-Feb. 2009.

<sup>93</sup> See G. Flint Taylor, *Torture Ringleader Indicted*, Police Misconduct and Civil Rights Law Reporter, Vol. 9, No. 7 Jan.-Feb. 2009.

<sup>94</sup> *Daley accepts no responsibility for Burge torture cases*, Chicago Sun-Times, Oct. 22, 2008; *Daley issues sarcastic apology for torture*, Chicago Sun-Times, Oct. 23, 2008.

<sup>95</sup> G. Flint Taylor, *Three Torture Victims Exonerated, Another Granted a New Trial*, Police Misconduct and Civil Rights Law Reporter, Vol. 9, No. 14, March-April 2010.

<sup>96</sup> To view Kitchen recounting his torture, see *Crimes Against Humanity: Ronald Kitchen: Tortured, Framed , and Sentenced to Death* at <http://www.youtube.com/watch?v=A0sJXxPkZLg&feature=related>.

<sup>97</sup> To view Tillman recounting his torture and wrongful conviction, see *Michael Tillman: The Torture and Wrongful Conviction of an Innocent Man*, <http://www.youtube.com/watch?v=SI8k67seaRA&feature=related>.

## **The Burge Obstruction-of-Justice Trial**

In May 2010, amid much publiCity, a demonstration, and an overflow courtroom, Jon Burge went on trial for perjury and obstruction of justice. Three key witnesses against Burge were Anthony Holmes, Shadeed Mumin and Melvin Jones; the testimony of Andrew Wilson, who had died in the penitentiary in November or 2007, was read to the jury.<sup>99</sup>

A confederate of Burge's who had been granted immunity from prosecution was a reluctant witness for the government, and two African American detectives also testified for the prosecution.<sup>100</sup> Burge took the stand in his defense to deny everything, but the members of his Area 2 "asskickers" team declared their intention to invoke the Fifth Amendment and were therefore not called as defense witnesses.<sup>101</sup>

On several occasions, the month-long trial captured front-page headlines, but its coverage was significantly diminished by the start of the corruption trial of former Illinois Gov. Rod Blagojevich in early June.<sup>102</sup> People's Law Office lawyers reported on the trial to the African American community through daily appearances on Cliff Kelly's radio show, John Conroy

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<sup>98</sup> *Three Torture Victims Exonerated, Another Granted a New Trial*, Police Misconduct and Civil Rights Law Reporter, Vol. 9, No. 14, March-April 2010. See also *Alleged Police Torture Victim Goes Free*, Chicago Tribune, Jan. 15, 2010.

<sup>99</sup> G. Flint Taylor, *Chicago Police Commander Convicted of Lying About Torture*, Police Misconduct and Civil Rights Law Reporter, Vol. 9, No. 17, Sept.-Oct. 2010.

<sup>100</sup> *Id.*; *Burge cop's story changes*, Chicago Sun-Times, June 15, 2010.

<sup>101</sup> *Id.*; *Burge trial: Former prosecutor and seven detectives to take the Fifth*, John Conroy, Vocolo Blog, WBEZ Chicago Public Radio, June 4, 2010; *Burge Trial: Former Police Chief wants to take the Fifth*, Vocolo Blog, WBEZ Chicago Public Radio, June 15, 2010.

<sup>102</sup> According to one blog, 50 reporters awaited Blagojevich's entry into the federal courthouse on his first day of trial. *The Blago Trial Begins*, The Blagosphere, June 3, 2010.

posted a daily blog on the trial for the local National Public Radio station, and Burge torture survivors also commented publicly.<sup>103</sup>

On June 28, 2010, the movement against police torture claimed another important victory when the jury of eleven whites and one black returned a guilty verdict against Burge on all three counts of the indictment.<sup>104</sup> On the heels of the verdict, Tillman and Kitchen filed civil rights damages lawsuits alleging torture and wrongful convictions. The lawsuits named Richard M. Daley as a co-conspirator with Burge, his midnight crew, the assistant state's attorneys who participated in their interrogations, and numerous former high-ranking police officials.<sup>105</sup>

Undeterred by Burge's conviction, the City renewed its commitment to provide these defendants, including Burge, with private lawyers at the taxpayers' expense. The Police Pension Board, in a decision that further fanned community outrage, decided in a 4-4 vote that Burge could continue to collect his police pension despite his conviction.<sup>106</sup>

In the fall of 2010, Richard M. Daley, who had served as Chicago's mayor for more than 20 years, announced that he would not run for re-election.<sup>107</sup> Activists attempted to put the

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<sup>103</sup> Cliff Kelly, a former Chicago alderman, is a longtime host on WVON's popular *Talk of Chicago* show. Torture survivors Darrell Cannon, Anthony Holmes, and Melvin Jones all made public statements on television, radio, and in print. See, e.g., *Trial Begins for Ex-Chicago Police Lt. Accused of Torturing More than 100 African American Men*, Democracy NOW!, May 24, 2010, [http://www.democracynow.org/2010/5/24/trial\\_begins\\_for\\_ex\\_chicago\\_police](http://www.democracynow.org/2010/5/24/trial_begins_for_ex_chicago_police); *Alleged Burge victim reacts to conviction*, WLS TV 7, June 29, 2010.

<sup>104</sup> *Chicago Police Commander Convicted of Lying About Torture*, Police Misconduct and Civil Rights Law Reporter, Vol. 9, No. 17, Sept.-Oct. 2010; *Burge Guilty in Torture Trial*, Chicago Sun-Times, June 29, 2010.

<sup>105</sup> See complaints in *Kitchen v. Burge*, 10 C 4093, (N.D. Ill.), filed on July 1, 2010, and *Tillman v. Burge*, No 10 C 4551 (N.D. Ill.), filed on July 21, 2010.

<sup>106</sup> Illinois Attorney General Lisa Madigan challenged this decision by bringing suit in Cook County Chancery Court, but the case was dismissed and is on appeal. See *State of Illinois v. Burge et al.*, No. 11 CH 04366, Memorandum Opinion and Order of Sept. 2, 2011 (Novak, J.). Burge has collected more than \$500,000 in pension money since 1997, while the thirty or so Area 2 and 3 detectives and supervisors who have been implicated in the scandal have collected a total in excess of 15 million to date. See, *Pinstripe Patronage, Chicago Style*, which can be viewed at <http://peopleslawoffice.com/pinstripe-patronage-millions-paid-to-attorneys-defending-police-in-civil-rights-cases/>

<sup>107</sup> *Rep. Danny Davis to run for Chicago mayor*, The Hill's Blog Briefing Room, Nov. 10, 2010, at <http://thehill.com/blogs/blog-briefing-room/news/128279-rep-danny-davis-to-run-for-chicago-mayor>.

torture issue on the agenda of the several candidates who subsequently declared for the office, and U.S. Rep. Danny Davis made it a central theme of his campaign.<sup>108</sup> However, his campaign was short lived as he was compelled to withdraw from the race by forces within the African American community, and the other candidates, particularly the eventual winner, Rahm Emanuel, studiously avoided addressing how they would deal with the City's continuing role in the torture scandal.<sup>109</sup>

In January 2011, U.S. District Judge Joan Lefkow, after conducting a two-day hearing, imposed a four-and-a-half-year sentence on Burge.<sup>110</sup> During the hearing, Anthony Holmes spoke movingly about the meaning of the conviction and sentence to the survivors of torture, and African American history professor Adam Green articulated the importance of restorative justice to Chicago's African American community.<sup>111</sup>

Judge Lefkow, in her findings, without naming names, condemned police and prosecutorial leadership for its role in facilitating the scandal.<sup>112</sup> In March 2011, Burge reported to Butner Federal Penitentiary in North Carolina to begin serving his sentence.<sup>113</sup>

### **The Struggle for Justice Continues**

Several community groups and organizations have continued to press for justice in the torture struggle. The Chicago Torture Justice Memorials Project — a group of artists and other activists — organized community meetings with a focus on creating proper memorials “to honor the survivors of torture, their family members, the African American communities affected by

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<sup>108</sup> See speech of Danny K. Davis titled *Chicago City Government Reform*, delivered on Dec. 27, 2010.

<sup>109</sup> *Davis drops out, endorses Braun*, Chicago Tribune, Dec. 31, 2010.

<sup>110</sup> G. Flint Taylor, *Judge Sentences Chicago Police Commander Jon Burge in Torture Case*, Police Misconduct and Civil Rights Law Reporter, Vol. 10, No. 2, March-April 2011.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *As Burge heads to prison, torture questions linger*, Chicago Tribune, March 15, 2011.

the torture,” and the “struggle for justice waged by torture survivors and their families, attorneys, community organizers, and people from every neighborhood and walk of life in Chicago.”<sup>114</sup>

The Illinois Coalition Against Torture gathered more than 3,500 signatures in support of a City Council resolution that declared Chicago a torture-free zone. With Alderman Joe Moore’s sponsorship, the resolution passed by a unanimous vote in January 2012.<sup>115</sup> And in May of 2012, a powerful play about the police torture scandal entitled *My Kind of Town* and written by John Conroy opened at the TimeLine Theatre in Chicago.<sup>116</sup>

Local and national activists and lawyers continued to work with Congressman Davis in championing the Law Enforcement Torture Prevention Act of 2011, an act that would make police torture a federal crime without a statute of limitations.<sup>117</sup> Davis reintroduced the legislation in January 2012 after a congressional briefing that featured presentations on Chicago police torture as well as other police and prison human rights violations.<sup>118</sup>

The Illinois Torture Commission, which was created as a result of the work of Black People Against Police Torture and other community groups, began its review of numerous cases, despite a crisis in funding that threatens its continued work.<sup>119</sup>

## **More Legal Victories**

In March 2011, torture victim Eric Caine, who had spent 25 years in

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<sup>114</sup> For more about the Memorials Project, see <http://chicagotorture.org/>.

<sup>115</sup> The resolution can be viewed at <http://illinoiscat.wordpress.com/torture-free-chicago-resolution/>.

<sup>116</sup> See, [http://www.timelinetheatre.com/my\\_kind\\_of\\_town/index.htm](http://www.timelinetheatre.com/my_kind_of_town/index.htm); Chicago Sun Times Editorial, May 17, 2012, *No real innocents in Burge’s world of torture*.

<sup>117</sup> The bill can be viewed at <http://thomas.loc.gov/cgi-bin/query/z?c112:H.R.3781>.

<sup>118</sup> To view the briefing, which included statements by Congressman Davis, torture survivor Darrell Cannon, National Police Accountability Project Executive Director Brigitt Keller and People’s Law Office attorney Flint Taylor at: [http://tortureprevention.blogspot.com/2012/03/congressional-briefing-on-letpa-1-17-12\\_29.html](http://tortureprevention.blogspot.com/2012/03/congressional-briefing-on-letpa-1-17-12_29.html)

<sup>119</sup> See *Quinn seeks more money for torture commission*, Associated Press, March 8, 2012.

prison, was released after a Cook County judge ordered that he be given a hearing on his allegations that his confession was tortured from him.<sup>120</sup> Several other torture victims, including Stanley Wrice, were also granted new hearings, and Special Prosecutor Stuart Nudelman appealed the ruling in Wrice's case to the Illinois Supreme Court, arguing that it was "harmless error" to admit his confession into evidence, even if it had been obtained by torture.<sup>121</sup> The Illinois Supreme Court rejected this disturbing argument in a landmark decision that will hopefully clear the way for obtaining new hearings for the some 15 men who still remain in prison on the basis of tortured confessions.<sup>122</sup>

In the spring and summer of 2011, the federal judges in the Tillman and Kitchen cases delivered decisions that, in the main, upheld the legal claims alleged.<sup>123</sup> In her precedent setting decision, U.S. District Judge Rebecca Pallmeyer decided in July 2011 that former Mayor Richard M. Daley could be held as a conspiring defendant in the Tillman case.<sup>124</sup>

While this decision initially passed below the public radar, a front-page and top-of-the-news exclusive by reporter Carol Marin that trumpeted "Daley The Defendant" later brought a wave of public attention to an issue that had festered for years, particularly in the African American community – Daley's unpunished role in the torture scandal.<sup>125</sup>

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<sup>120</sup> *People v. Caine*, No. 86 CR 6091, order of Jan. 15, 2011; *Man freed after 2 decades behind bars*, Chicago Tribune, March 17, 2011.

<sup>121</sup> *People v. Wrice*, 406 Ill. App. 3d 43 (2010), affirmed, \_\_\_ Ill. S. Ct \_\_\_, 2012 Ill. LEXIS 306 (Feb. 2, 2012).

<sup>122</sup> *Id.*

<sup>123</sup> *Tillman v. Burge*, 2011 U.S. Dist. LEXIS 79320 (N.D. Ill. July 20, 2011), reconsideration denied, *Tillman v. Burge*, 2011 U.S. Dist. LEXIS 126627 (N.D. Ill., Nov. 2, 2011); *Kitchen v. Burge*, 2011 U.S. Dist. LEXIS 42021 (N.D. Ill., April 19, 2011); and *Kitchen v. Burge*, 2012 U.S. Dist. LEXIS 120599 (N.D. Ill., Feb. 1, 2012).

<sup>124</sup> Conversely, U.S. District Judge Elaine Bucklo, who presides over the *Kitchen* case, dismissed Daley from Kitchen's suit. *Kitchen v. Burge*, 2011 U.S. Dist. LEXIS 42021 (N.D. Ill., April 19, 2011).

<sup>125</sup> *Daley as Defendant*, Chicago Sun-Times, Aug. 10, 2011.

Tillman’s lawyers quickly declared that they would seek to depose Daley under oath, and newly elected Mayor Rahm Emanuel, after at first attempting to avoid the issue, vowed, in another front-page exclusive, that it was “time we end” what the Chicago Sun-Times characterized as “one of the ugliest chapters in the history of the Chicago Police Department.”<sup>126</sup> Emanuel further asserted that he was “working towards” settling the cases.<sup>127</sup> After eight months of delay, and a motion to compel his testimony, Daley’s lawyers finally agreed to produce him for deposition, which is now set for July of 2013, but they have declared an intention to ask the judge to order that his videoed testimony be kept secret.<sup>128</sup> Despite Mayor Emanuel’s statements, the City has still not settled the cases, and the taxpayers continue to pay additional millions to defend Burge, Daley, and their alleged co-conspirators.<sup>129</sup> In contrast, Cook County recently settled Michael Tillman’s claim against the assistant prosecutor who was allegedly contemporaneously aware that Tillman was being tortured and made no effort to stop the abuse.<sup>130</sup>

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<sup>126</sup> *It’s Time We End It, Mayor Urges End to Burge Chapter*, Chicago Sun-Times, Aug. 16, 2011.

<sup>127</sup> *Id.*

<sup>128</sup> *Daley to testify in police torture lawsuit*, Chicago Tribune, April 11, 2012; *Daley can set the record right*, Chicago Sun Times Editorial, April 11, 2012.

<sup>129</sup> See, *Burge-related lawsuit against Daley moving forward*, WBEZ Chicago Public Radio, March 7, 2012. *Kitchen v. Burge*, 10 C 4093, Minute Order of May 22, 2012. FOIA records produced by the City show that, as of May 1, 2012, the City had paid nearly \$15.3 million in taxpayer money to private lawyers for representing Burge, his co-conspirators, and the City in torture-related legal proceedings, and paid an additional \$22.4 million in settlements and judgments to torture survivors and their attorneys. In addition, Cook County has spent at least \$9 million in public funds to pay the special prosecutors, private defense lawyers, and settlements obtained by several torture survivors. See, *Pinstripe Patronage, Chicago Style*, which can be viewed at <http://peopleslawoffice.com/pinstripe-patronage-millions-paid-to-attorneys-defending-police-in-civil-rights-cases/> Most disturbingly, the City’s Corporation Counsel has recently retained a law firm to defend Burge and his confederates that is headed by two lawyers who have recently been cited for “unethical conduct” in another torture and wrongful conviction case. See, *Walden v. City of Chicago*, 2012 U.S. Dist LEXIS 30962, \*39-42. (N.D. Ill). The City’s has given these lawyers license and an unlimited checkbook to pursue a fundamentally dishonest and thoroughly discredited defense in the *Tillman* and *Kitchen* cases - - that the exonerated Plaintiffs, who have been found to be factually innocent by the Cook County Courts, were not tortured into giving false confessions but rather are in fact guilty.

<sup>130</sup> See, *County pays \$600,000 to get out of Burge torture case*, Chicago Tribune, May 14, 2012.

Meanwhile, the ongoing federal perjury and obstruction-of-justice investigation that has targeted several of Burge's confederates has yet to yield any additional indictments.

### **And the Beat Must Go On . . .**

As the Chicago police torture scandal approaches its 40-year mark, the struggle against police torture has, against great odds, obtained many important victories. Originally only faintly heard from distant prison cells, the cry for justice has gathered strength as torture survivors, their families, and the African American community joined with dedicated lawyers, community activists, human rights advocates, journalists, and politicians to advance this historic fight for justice.

However, much remains to be done, and the struggle for justice in the torture cases continues, together with an equally important effort to expose and record for history the complete and truthful account of the horrific crimes committed. In the meantime, this scandal continues to stain the conscience of the City of Chicago.