

THE CHICAGO POLICE TORTURE SCANDAL: A LEGAL AND POLITICAL HISTORY

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INTRODUCTION

In 1969, a military police sergeant named Jon Burge returned from his tour of duty at a prisoner of war camp in South Vietnam and soon thereafter became a Chicago police officer. Assigned to a Southside District, he soon began working with several other Vietnam veterans who would later form the backbone of a crew of almost exclusively white Chicago police detectives who would torture at least 118 African American criminal suspects.¹

In the spring of 1972, Burge was promoted to detective, and assigned to the midnight shift at Area 2 police headquarters. Months later, in a highly sensational case where a young white boy was brutally beaten by several Black burglars, Burge and several of his fellow detectives beat several suspects, taking one seventeen-year-old to a deserted area to beat him.² The coordinated brutality yielded confessions, the four suspects pled guilty, and their claims of abuse were never fully litigated.

The next May, Burge and his midnight crew escalated their brutality, employing torture tactics that Burge had most likely learned from his fellow soldiers in Vietnam.³ After executing an early-morning raid, Burge and fellow detective John Yucaitis transported arrestee Anthony Holmes back to Area 2, administered repeated electrical shocks from a device housed in a box, and nearly suffocated Holmes by placing a bag over his head.⁴ Holmes was overcome with pain so intense that he thought he was dying; he passed out, and he subsequently gave a detailed stationhouse confession to an assistant Cook County Felony Review prosecutor implicating himself in a murder that he later insisted he did not commit.⁵

Holmes told his aunt about his torture when she visited him at Area 2 later that morning, and subsequently told the assistant public defenders who were assigned to represent him on the murder case.⁶ The lawyers, no doubt skeptical about such a draconian

¹ *118 Known Burge Area 2 and 3 Torture Victims 1972-1991* (Chart), PEOPLE'S LAW OFFICE, available at <http://peopleslawoffice.com/wp-content/uploads/2014/01/1.6.14-Documented-TortureSurvivorsunderBurge.pdf>.

² Sworn Statement of Rodney Mastin at 13, *Patterson v. Burge*, No. 03C4433 (N.D. Ill. July 24, 2004).

³ See John Conroy, *Tools of Torture*, CHI. READER (Feb. 3, 2005), <http://www.chicagoreader.com/chicago/tools-of-torture/Content?oid=917876>.

⁴ People's Law Office, *Chicago Police Commander Jon Burge and his Victims*, YOUTUBE (July 2007), <http://www.youtube.com/watch?v=Tjo2ZAUQai8>.

⁵ *Id.*

⁶ Unsworn Statement of Anthony Holmes at 9, *Patterson v. Burge*, No. 03C4433 (N.D. Ill. Apr. 19, 2004).

story, chose not to pursue a motion to suppress the confession but instead tried the case before a veteran Cook County judge who, like so many of his judicial colleagues, was formerly a Cook County prosecutor.⁷ The judge rejected Holmes's defense—that there was no corroboration for the confession—and convicted him of murder. Thirty years later, Holmes was released on parole.⁸

Burge and the Area 2 midnight crew of white robbery detectives continued to torture selected African American suspects throughout the 1970s, and their elevated success rate in clearing serious felony cases and obtaining confessions earned Burge a promotion to sergeant in 1977 and to lieutenant in 1980.⁹ Burge's electric shock device, which he referred to as the "nigger¹⁰ box," was sometimes on display on a table in the Robbery office, and continued to be a signature of their interrogations in high profile cases.¹¹ On one occasion, a Black Area 2 detective named Bill Parker walked in on a Burge torture scene, but when he reported it to a supervisor, he was reprimanded and transferred out of Area 2.¹²

I. THE WILSON CRIMINAL CASE

In the early 1980s, the Chicago Police Department reorganized its detective division, and Burge was put in charge of Area 2's newly created Violent Crimes Unit. At about the same time, Rich-

⁷ One of Holmes's attorneys, Lawrence Suffredin, who later went on to become a well-known Cook County commissioner, testified as a government witness about these events at Burge's criminal prosecution in 2010. See Transcript of Proceedings on May 27, 2010 – Trial Vol. 2A, *United States v. Burge*, No. 08 CR 846 (N.D. Ill.) (direct examination of Lawrence Suffredin).

⁸ The Illinois Appellate Court, following previous Illinois precedent, reversed Holmes's conviction, holding that corroboration was required, but the Illinois Supreme Court reversed and reinstated Holmes' conviction. *People v. Holmes*, 347 N.E.2d 407 (Ill. App. Ct. 1976), *rev'd*, 67 Ill. 2d 236 (Ill. 1977).

⁹ Testimony of Jon Burge, *United States v. Burge*, No. 08 CR 846 (N.D. Ill. June 17, 2010).

¹⁰ [*Editor-in-chief's note.* To accurately reflect the racist roots upon which, among other things, the horrors of the Chicago police torture scandal were founded, this Article contains some verbatim quotes with derogatory references to Black people. Out of respect for, and in solidarity with, the numerous victims of police torture detailed here—both recognized and unrecognized—*CUNY Law Review* believes that it is of utmost importance to not obscure this reality and thus has chosen to leave the quotes as is.]

¹¹ Affidavit of Melvin Duncan, *Patterson v. Burge*, 328 F. Supp. 2d 878 (N.D. Ill. 2004) (No. 03 C 4433); Sworn Statement of Tony Thompson at 20–26, *Patterson v. Burge*, 328 F. Supp. 2d 878 (N.D. Ill. 2004) (No. 03 C 4433).

¹² Sworn statement of William Parker at 7–12, 16–17, *Patterson v. Burge*, 328 F. Supp. 2d 878 (N.D. Ill. 2004) (No. 03 C 4433).

ard M. Daley, the son of Chicago's legendary mayor, was elected the State's Attorney of Cook County. In February of 1982, after two white Chicago gang unit officers were shot and killed on the South Side, Police Superintendent Richard Brzeczek and Mayor Jane Byrne launched the largest manhunt in the history of the City, and Burge was placed in charge of the operation.

Police kicked down doors and terrorized scores of African Americans in what Jesse Jackson of Operation PUSH and Renault Robinson of the Afro American Police League condemned as "martial law" that "smack[ed] of Nazi Germany."¹³ Suspected witnesses were smothered with bags and threatened with 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.¹⁴

After five days of wanton brutality, two brothers, Andrew and Jackie Wilson, were arrested for the crime. Andrew, who was identified as the shooter, was arrested by Burge and his Area 2 associates, and brought back to the Area, where he was initially bagged, beaten, and burned with a cigarette lighter.¹⁵ Burge and Yucaitis then took over the torture, handcuffing Wilson across a ribbed steam radiator and repeatedly shocking him on the nose, ears, lips, and genitals with Burge's shock box. The shocks, which were transmitted from a hand crank generator through wires and alligator clips, jolted Wilson against the radiator and seriously burned his face, chest, and leg.¹⁶ The torture was repeated throughout the day, and when Wilson at first refused to give a formal confession and instead told the Felony Review prosecutor that he was being tortured, the prosecutor sent Wilson back to Burge for more abuse.¹⁷

Wilson and his brother Jackie, who was also tortured, both ultimately confessed, but Andrew's injuries were so pronounced that the police lockup keeper refused to accept him into lockup. Medical personnel documented his injuries and the public defender who was appointed to represent him took graphic pictures.¹⁸ The

¹³ See *Cops Accused of Brutality*, CHI. TRIB., Feb. 18, 1982, at 3; Chinta Strausberg, *Police, Bar Group Ask 'Manhunt' Probe*, CHI. DEFENDER, Feb. 18, 1982, at 3.

¹⁴ Deposition of Donald G. White at 2653, *Wilson v. City of Chicago*, 900 F. Supp. 1015 (N.D. Ill. 1995) (No. 86 C 2360); Affidavit of Anthony Williams, *Logan v. Burge*, No. 09 C 5471 (N.D. Ill. Mar. 7, 2011).

¹⁵ John Conroy, *House of Screams*, CHI. READER (Jan. 25, 1990), <http://www.chicago-reader.com/chicago/house-of-screams/Content?oid=875107>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

director of medical services at the Cook County Jail, Dr. John Raba, examined Wilson, heard him describe his torture, and wrote a letter to Police Superintendent Brzeczek describing Wilson's injuries and demanding a full investigation.¹⁹ Brzeczek—who would later admit that he upbraided several of his high level deputies for being present at Area 2 and permitting Wilson to be tortured—delivered Dr. Raba's letter directly to State's Attorney Daley, accompanied with a cover letter confiding that he would not investigate Wilson's alleged torture unless Daley directed him to do so.²⁰ After consulting with his first assistant, Richard Devine, and another top level assistant, William Kunkle, Daley decided not to investigate; instead, he and Brzeczek both publicly commended Burge,²¹ and Kunkle proceeded to prosecute Andrew Wilson and his brother Jackie. The Wilson brothers moved to suppress their confessions, and an extensive hearing was held at which Burge and his men all denied that they abused the Wilsons. The trial judge denied the motions, both Wilsons were convicted, and Andrew was sentenced to death, while Jackie received a life sentence. Andrew's case was directly appealed as of right to the Illinois Supreme Court, which reversed his conviction.²² The court recounted Wilson's testimony of how he was repeatedly electric-shocked and burned, and detailed "some 15 separate injuries that were apparent on the defendant's head, chest, and right leg":

Two cuts on the defendant's forehead and one on the back of his head required stitches; the defendant's right eye had been blackened, and there was bleeding on the surface of that eye. Dr. Korn also observed bruises on the defendant's chest and several linear abrasions or burns on the defendant's chest, shoulder, and chin area. Finally, Dr. Korn saw on the defendant's right thigh an abrasion from a second-degree burn; it was six inches long and 1 1/2 to 2 inches wide.²³

The Court then held:

[T]he defendant's injuries in this case cannot be disputed, and only several facial injuries were explained by the State. Because

¹⁹ Letter from Dr. John Raba, Med. Dir., Cook Cnty. Jail, to Richard Brzeczek, Superintendent, Chi. Police Dep't (Feb. 17, 1982) (on file with author).

²⁰ Letter from Richard Brzeczek, Superintendent, Chi. Police Dep't, to Richard Daley, State's Attorney of Cook Cnty. (Feb. 25, 1982) (on file with author); Statement of Richard Brzeczek to the Special Prosecutor (Mar. 9, 2005) (on file with author).

²¹ Personnel Order No. 82-369, Chicago Department of Police Unit Meritorious Performance Award (Sept. 1, 1982) (on file with author); *Daley Hails 11 in Crime War*, CHI. TRIB., May 20, 1983.

²² *People v. Wilson*, 506 N.E.2d 571 (Ill. 1987).

²³ *Id.* at 573.

the State failed to show by clear and convincing evidence that the confession was not the product of coercion . . . the defendant's statement should have been suppressed as having been involuntarily given. The use of a defendant's coerced confession as substantive evidence of his guilt is never harmless error, and the cause must therefore be remanded for a new trial.²⁴

After remand, Wilson was re-tried without his confession and was again convicted. When one juror refused to vote for the death penalty, Wilson was sentenced to two natural life sentences.²⁵

II. THE ANDREW WILSON CIVIL CASE

In 1986, while Andrew Wilson was sitting on death row, he filed a *pro se* 42 U.S.C. § 1983 complaint in the U.S. District Court for the Northern District of Illinois, alleging that he was tortured by Burge and several of his detectives. After a series of appointed lawyers withdrew, lawyers from the People's Law Office took on Wilson's representation in 1987 and filed an amended complaint, which added a *Monell*²⁶ policy-and-practice claim against the City of Chicago and former Police Superintendent Brzeczek. Burge and the then-current Superintendent of Police, Leroy Martin, convinced the Chicago City Council's Finance Committee to retain William Kunkle, who was formerly a high-level State's Attorney under Daley, to represent Burge and his fellow officers at the taxpayers' expense. Kunkle had personally prosecuted Wilson and had subsequently gone into private practice at a law firm where Richard Devine, Daley's former first assistant, was a partner.

The case survived the City and Brzeczek's motion to dismiss,²⁷ and later, on summary judgment, District Court Judge Brian Barnett Duff found there to be enough evidence in support of Wilson's claims against those same defendants to require a trial on the merits.²⁸ The key *Monell* allegation upheld by the court was that

²⁴ *Id.* at 576.

²⁵ Jackie Wilson's case was originally reversed by the Illinois Appellate Court on the basis that a constitutionally mandated *voir dire* question was not asked. *See People v. Wilson*, 487 N.E.2d 1015 (Ill. App. Ct, 1985). The Illinois Supreme Court reversed and remanded to the Appellate Court, *People v. Wilson*, 513 N.E.2d 844 (Ill. 1986), which then reversed Jackie Wilson's conviction on the separate basis that his case should have been severed from Andrew's. *People v. Wilson*, 515 N.E.2d 812 (Ill. App. Ct. 1987). Jackie Wilson was re-tried separately, was re-convicted of one of the two murders and sentenced to natural life.

²⁶ *Monell v. Dep't of Soc. Servs. of New York*, 436 U.S. 658 (1978).

²⁷ *Wilson v. City of Chicago*, 684 F. Supp. 982 (N.D. Ill. 1989) (denying motion to dismiss).

²⁸ *Wilson v. City of Chicago*, 707 F. Supp. 379, 384 (N.D. Ill. 1989).

[t]here existed in February 1982 in the City of Chicago a de facto policy, practice and/or custom of Chicago Police Officers exacting unconstitutional revenge and punishment against persons who they alleged had injured or killed a fellow officer. This revenge and punishment included beating, kicking, torturing, shooting, and/or executing such a person, both for the purpose of inflicting pain, injury and punishment on that person, and also for the purpose of forcing that person to make an inculpatory statement.²⁹

Wilson's civil-rights case went to trial in February 1989.³⁰ While torture at Area 2 had long been an "open secret" there,³¹ both Wilson's lawyers and the public at large were ignorant of the depth and breadth of the decades-long pattern and practice of torture under Burge.

III. 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 asserted that the torture was deeply racist and systemic. The source, who was dubbed "Deep Badge" by the lawyers, named numerous of Burge's "asskickers," implicated State's Attorney Daley and Mayor Jane Byrne in the scandal, and specifically identified another torture victim, Melvin Jones, who, he asserted, was tortured by Burge with electric shock only days before Wilson.³²

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.³³ Nonetheless, Judge Duff would not permit Jones to testify at the trial, holding that although the evidence was "explosive," the "surprise and prejudice of the testimony to the defendants was manifest."³⁴

In contrast, Judge Duff permitted Burge's City-financed law-

²⁹ *Id.*

³⁰ See Mary Ann Williams, *Torture in Chicago*, CHI. LAWYER, Mar. 1989, at 1, 13–15.

³¹ Nov. 9, 2004 Sworn Statement of Doris Byrd at 11, *Patterson v. Burge*, 328 F. Supp. 2d 878 (N.D. Ill. 2004) (No. 03 C 4433).

³² See Letters from "Ty," Anonymous, to Flint Taylor (Wilson's counsel) (post-marked Feb. 2, 1989, Mar. 6, 1989, Mar. 15, 1989, and June 16, 1989) (on file with author). See also Transcript of Testimony of Melvin Jones before the Chicago Police Board at 844, *In re Charges Filed Against Burge*, Nos. 1856–1858 (Jan. 22, 1992).

³³ The trial judge had granted the motion, but not on the grounds of physical coercion.

³⁴ *Wilson v. City of Chicago*, No. 86 C 2360, 1989 WL 65189, at *5. (N.D. Ill. June 5, 1989). The Jones breakthrough would open the door to the discovery and documentation, over the next two decades, of nearly 120 victims of torture by Burge and his men. See *118 Known Burge Area 2 and 3 Torture Victims 1972-1991* (Chart), PEOPLE'S

yers to present weeks of highly prejudicial and irrelevant evidence about the police murders for which Wilson stood convicted. After eight weeks of trial, the racially mixed jury hung, and a mistrial was declared. The Jones evidence had led Wilson's lawyers to a number of additional victims of Area 2 torture, and they presented them to Judge Duff in an unsuccessful attempt to have this evidence presented at the retrial under Federal Rule of Evidence 404(b), as well as to further establish the City's pattern and practice. Frustrated by his refusal to permit the admission of the newly discovered evidence, and his extreme bias in favor of Burge and his fellow defendants, Wilson's lawyers moved to recuse Duff, pursuant to 28 U.S.C. §§ 144 and 455, but he unceremoniously denied the motion after a rancorous hearing.³⁵

At the retrial, which commenced in the summer of 1989, Judge Duff permitted Burge's lawyers to again present weeks of evidence about the police murders for which Wilson stood convicted. He repeatedly cited Wilson's lawyers for contempt when they attempted to introduce the newly discovered evidence of torture and protested the unremitting admission of the plethora of police murder evidence.³⁶ Remarkably, the all-white jury, which was selected after the Judge gave the defendants twice as many peremptory challenges as the plaintiff, 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, and awarding zero damages.³⁷

On appeal, the Seventh Circuit reversed Judge Duff and ordered a new trial. It found that Duff had erroneously admitted a "massive amount of highly inflammatory evidence" concerning the police murders and that the theories upon which the judge admitted the evidence were not "remotely plausible."³⁸ The court went on to find that the barring of the Jones evidence was also error:

While the judge was far too generous in allowing the defendants to present evidence, he was far too chary in allowing the plaintiff to present evidence. He kept out on grounds of relevance the plainly relevant testimony of Melvin Jones, who claimed to have been subjected to electroshock by Burge and other officers nine

LAW OFFICE, *available at* <http://peopleslawoffice.com/wp-content/uploads/2014/01/1.6.14-Documented-TortureSurvivorsunderBurge.pdf>.

³⁵ *Wilson v. City of Chicago*, 710 F. Supp. 1168 (N.D. Ill. 1989).

³⁶ 13 JOHN STAINTHORP & G. FLINT TAYLOR, *LITIGATING POLICE TORTURE IN CHI., CIVIL RIGHTS LITIG. & ATTORNEY FEES ANNUAL HANDBOOK* (1997).

³⁷ *Id.*

³⁸ *Wilson v. City of Chicago*, 6 F.3d 1233, 1237 (7th Cir. 1993).

days before the interrogation of Wilson. If Burge had used an electroshock device on another suspect only a few days previously, this made it more likely (the operational meaning of “relevant”) that he had used it on Wilson. Another excluded defense witness, Donald White, would have testified that he was arrested as a suspect in the murder of the two police officers shortly before Wilson’s arrest and was taken to a police station where he was beaten for several hours by Burge and other defendant officers. Although evidence of prior bad acts is inadmissible to prove a propensity to commit such acts, it is admissible for other purposes, including intent, opportunity, preparation, and plan. . . . Jones’s evidence would have served all four of these purposes, White’s all but the third (preparation); and, since Burge had denied under cross-examination that he had ever had or used an electroshock instrument, Jones’s evidence could also have been used to impeach that denial.³⁹

The court then held that Judge Duff’s errors were not harmless but rather required a new trial:

The plaintiff’s case was strong, as evidenced by the decisions of the Supreme Court of Illinois and the Police Board of Chicago. The torrent of inflammatory evidence and argument that the judge allowed the jury to consider may well have been decisive. Evidence that the jury was in fact confused is found in its verdict, which declared that Wilson’s rights had been violated but not by any of the individual defendants or even by the city’s policy (as the jury found it to be) of authorizing the abuse of suspected cop killers. By whom then?⁴⁰

The court then turned to Wilson’s policy-and-practice claim. After reluctantly accepting the City’s concession that Superintendent Brzeczek was the final policymaker for the City, the Court asked whether he had “formulated, announced, approved, encouraged, acquiesced in, or otherwise adopted a policy of physical abuse of suspected cop killers.”⁴¹ Answering its own question, the court first found that

Brzeczek had received many complaints from members of the [B]lack community that officers in “Area 2 Violent Crimes,” the police unit in which Wilson was tortured, were abusing suspects; such abuse was in fact common in Area 2. Brzeczek had referred the complaints to the office in the police department that is responsible for investigating complaints of police misconduct, but the office had done nothing except lose a lot of the complaints.

³⁹ *Id.* at 1238.

⁴⁰ *Id.*

⁴¹ *Id.* at 1240.

Brzeczek had written the state's attorney that he would do nothing further unless the state's attorney assured him that doing something would not interfere with the prosecution of Wilson; the letter was not answered, so true to his word Brzeczek did nothing further. Brzeczek had downplayed the gravity of the problem in Area 2 in discussions with [B]lack police officers. He had even signed a commendation for Burge, though it had been prepared by others for his signature and he may not have noticed Burge's name.⁴²

While the court further found that "a rational jury could have inferred from the frequency of the abuse, the number of officers involved in the torture of Wilson, and the number of complaints from the [B]lack community, that Brzeczek knew that officers in Area 2 were prone to beat up suspected cop killers," it nonetheless absolved the City because his steps to eliminate the practice, no matter how ineffectual, established that he was not deliberately indifferent:

He referred the complaints to the unit within the police department that is responsible for investigating police abuses. It was the plaintiff's responsibility to show that in doing this Brzeczek was not acting in good faith to extirpate the practice. That was not shown. At worst, the evidence suggests that Brzeczek did not respond quickly or effectively, as he should have done; that he was careless, maybe even grossly so given the volume of complaints. More was needed to show that he approved the practice. Failing to eliminate a practice cannot be equated to approving it. Otherwise every inept police chief in the country would be deemed to approve, and therefore become answerable in damages to all the victims of the misconduct of the officers under his command. . . .⁴³

IV. OFFICE OF PROFESSIONAL STANDARDS REPORTS

While the trial judge would not permit the other acts of torture by Burge to be introduced as evidence, it was instrumental in compelling the CPD's Office of Professional Standards to reopen its disciplinary investigation in the Wilson case and also to open a parallel investigation into the alleged pattern and practice of torture at Area 2. In the fall of 1990 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

⁴² *Id.*

⁴³ *Wilson v City of Chicago*, 6 F.3d 1233, 1240 (7th Cir. 1993).

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their torture of Andrew Wilson.⁴⁴ The Superintendent concurred, and they were suspended from the force pending a termination hearing before the Chicago Police Board.⁴⁵

The parallel OPS investigation into the systemic nature of Area 2 torture was conducted by OPS investigator Michael Goldston, and its damning findings were approved by the OPS Chief Administrator.⁴⁶ Goldston's 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.⁴⁷

CPD Superintendent Martin, who had previously been Burge's commander at Area 2, suppressed the report⁴⁸ until lawyers from the People's Law Office obtained it under a protective order. In February 1992, U.S. District Judge Milton Shadur ordered that the report could be publicly released, and the report's findings received widespread local, national, and international coverage. In response, Martin and Mayor Richard M. Daley, who had been elected in 1989, publicly condemned the findings, calling them "only allegations . . . rumors, stories, things like that."⁴⁹

V. THE FIRING OF JON BURGE

Burge, Yucaitis, and O'Hara were put on trial before the Chicago Police Board for the torture of Andrew Wilson only days after the Goldston Report was made public.⁵⁰ 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

⁴⁴ FRANCINE SANDERS, OFFICE OF PROF'L STANDARDS, CHI. POLICE DEP'T, ANALYSIS OF *Wilson* Case 63-66 (Sept. 26, 1990).

⁴⁵ OFFICE OF PROF'L STANDARDS, CHI. POLICE DEP'T, RECOMMENDATION FOR SEPARATION 1-2 (Oct. 11, 1991).

⁴⁶ MICHAEL GOLDSTON, CHI. POLICE DEP'T OFFICE OF PROF'L STANDARDS, HISTORY OF ALLEGATIONS OF MISCONDUCT BY AREA TWO PERSONNEL (Nov. 2, 1990).

⁴⁷ *Id.* at 3.

⁴⁸ See Expert Opinion of Anthony Bouza, *Orange v. Burge*, No. 04 C 168, 2005 WL 742641 (N.D. Ill. March 30, 2005); Declaration of G. Flint Taylor filed March 22, 2011, *Cannon v. Burge*, No. 05 C 2192, 2011 WL 4361529 (N.D. Ill. Sept. 19, 2011).

⁴⁹ David Jackson, *13 Years of Cop Torture Alleged, Daley, Martin, Rip Internal Police Reports*, CHI. TRIB. (Feb. 8, 1992), http://articles.chicagotribune.com/1992-02-08/news/9201120603_1_jon-burge-torture-chicago-police-board.

⁵⁰ The hearing began on Feb. 10, 1992, and was completed on March 20, 1992. See generally Transcript of Proceedings Before the Chicago Police Board, *In re Charges Filed Against Burge*, Nos. 1856-1858 (Jan. 22, 1992).

to crimes.”⁵¹ Wilson, Melvin Jones, and a third Burge torture victim, Shadeed Mu’min, all testified for the City during the six-week hearing.⁵² William Kunkle, who had made approximately \$1 million defending Burge, Yucaitis, and O’Hara in the civil case, was retained by the Fraternal Order of Police to represent the charged officers before the Police Board.

A year later, in February 1993, the Police Board released its written decision, finding that Burge physically abused Wilson, and that Burge, Yucaitis, and O’Hara all failed to stop the abuse and provide medical care. The Board then ordered that Burge be fired and Yucaitis and O’Hara suspended for 15 months.⁵³ The lengthy decision did not brand the officers’ conduct as torture nor specifically find that Wilson was electric-shocked, burned, or bagged, but it was nonetheless considered to be a significant victory by the anti-torture movement.⁵⁴

VI. WILSON CIVIL SUIT ON REMAND

When the *Wilson* case came back to the District Court from the Seventh Circuit, it was reassigned to Judge Robert Gettleman, a judge with a background in civil-rights law who took a decidedly different approach to the case than Judge Duff.⁵⁵ Wilson’s lawyers amended the complaint to rejoin the City, alleging that it was directly liable for defendants Burge, Yucaitis, and O’Hara’s actions under chapter 745, section 9-102 of the Illinois Compiled Statutes, while the defendant officers filed a third-party complaint against

⁵¹ City’s Memorandum in Opposition to Motion to Bar Testimony Concerning Other Alleged Victims of Police Misconduct at 1, *In re* Charges Filed against Burge, Nos. 1856–58 (Jan. 22, 1992).

⁵² Transcript of Testimony by Andrew Wilson at 104, *In re* Charges Filed against Burge, Nos. 1856-1858 (1992); Transcript of Testimony of Melvin Jones at 844, *In re* Charges Filed Against Burge, Nos. 1856-1858 (1992); Transcript of Testimony of Shadeed Mu’min at 1055, *In re* Charges Filed Against Burge, Nos. 1856-1858 (1992).

⁵³ *In re* Charges Filed Against Jon Burge Nos. 91-1856-1858, at 35–39 (Chi. Police Bd. Feb. 11, 1993) (ruling). The decision was affirmed in 1994 by Cook County Judge Thomas O’Brien, and in December 1995 by the Illinois Appellate Court. *See* Order at 20–28, *Burge v. Chi. Police Bd.*, Nos. 1-94-0999, 1-94-2462, 1-94-2475 (consolidated) (Ill. App. Ct. Dec. 15, 1995).

⁵⁴ 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. Charles Nicodemus, *Cop Loses Job Over Torture*, CHI. SUN-TIMES, Feb. 11, 1993, at 5.

⁵⁵ Duff subsequently resigned from active service, reportedly after the U.S. Department of Justice filed a disciplinary complaint connected to his continuing erratic behavior in other cases. *See* Maurice Possley & Matt O’Connor, *Controversial U.S. Judge Steps Down from U.S. Bench*, CHI. TRIB. (Oct. 11, 1996), http://articles.chicagotribune.com/1996-10-11/news/9610110249_1_7th-circuit-complaint-removing.

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the City alleging their right to indemnification.⁵⁶ The City, while still paying for their officers' defense, moved to dismiss, claiming for the first time that their officers' actions in abusing Wilson were outside the scope of their employment and thereby did not come within the statute.⁵⁷ After finding that the court had supplemental jurisdiction pursuant to 28 U.S.C. § 1367, and that the parties had standing to assert these claims, Judge Gettleman denied the motion to dismiss, holding that whether the officers' actions were within the scope of their employment was a question of fact:

[W]hether the City will be obligated to indemnify the Officers (or will be directly liable to plaintiff) depends on the Officers' actions when arresting and interrogating plaintiff. If those actions go beyond the scope of their duty as police officers, or could be classified as willful, then perhaps the City will not be found liable. That factual question, however, is obviously intertwined with the factual question in the underlying federal action.⁵⁸

Wilson also moved for partial summary judgment, arguing that pursuant to principles of collateral estoppel, the administrative findings of the Police Board, made after a six-week evidentiary hearing, established the officers' liability for "excessive use of force" by Burge, failure to prevent abuse by all the officers, and failure to provide prompt medical attention.⁵⁹ The court first set forth the legal standard established by the United States Supreme Court in *University of Tennessee v. Elliott*.⁶⁰ In *Elliott*, the Supreme Court stated:

When a State agency acting in a judicial capacity . . . resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, federal courts must give the agency's fact finding the same preclusive effect to which it would be entitled in the State's courts.⁶¹

Judge Gettleman found that the Police Board's determination met the *Elliott* standard:

The Officers assert, however, that the Board's decision is too vague to determine exactly what factual issues were actually decided, whether the issues decided were essential to its decision,

⁵⁶ 745 ILL. COMP. STAT. ANN. 10/9-102 (West 2002).

⁵⁷ The City had previously admitted in its answer to the original complaint that Burge and Yucaitis were acting within the scope of their employment.

⁵⁸ *Wilson v. City of Chicago*, 1995 U.S. Dist. LEXIS 205, at *10-11 (N.D. Ill. Jan. 5, 1995).

⁵⁹ *Wilson v. City of Chicago*, 900 F. Supp. 1015, 1024-25 (N.D. Ill. 1995).

⁶⁰ 478 U.S. 788, 799 (1986).

⁶¹ *Id.*

and whether those issues are identical to the issues in the instant case. They argue that because the Board's decision contains such language as "and/or," there is a question as to what specific conduct the Officers were found to have engaged in. The court disagrees. The findings of the Board provide that Burge did: (1) "strike and/or kick and/or otherwise physically abuse or maltreat [plaintiff] . . . and/or cause or aggravate physical or injuries to the person of [plaintiff]"; (2) "after having knowledge or reasonable basis to believe that other police officers . . . were physically abusing or maltreating [plaintiff] . . . improperly failed to take any action to stop such physical abuse or maltreatment" The findings are equally specific as to Yucaitis and O'Hara with respect to their knowledge of and failure to prevent such abuse or provide for or secure medical care for plaintiff. The court concludes that such findings are sufficiently specific for purposes of collateral estoppel.⁶²

Given the fact that the Police Board decision was then on appeal to the Illinois Appellate Court, Judge Gettleman entered a stayed summary judgment against Burge and his Area 2 co-defendants pending final appellate resolution of the Police Board case. Wilson then agreed to settle his claims against Burge and O'Hara for a total of \$1 million in damages and attorneys' fees. The City refused to pay the settlement, the judge entered judgment, and the City appealed to the Seventh Circuit.⁶³

On appeal, the Seventh Circuit affirmed. It rejected the City's argument that the District Court did not have jurisdiction, finding that the principle of ancillary jurisdiction permitted Wilson's re-joinder of the City after the *Monell* claim was lost.⁶⁴ The court defined the controlling issue to be "whether Burge was acting within the scope of his employment by the City when he tortured Wilson,"⁶⁵ and held that he was:

Burge . . . was not pursuing a frolic of his own. He was enforcing the criminal law of Illinois overzealously by extracting confessions from criminal suspects by improper means. He was, as it were, too loyal an employee. He was acting squarely within the scope of his employment.⁶⁶

⁶² *Wilson*, 900 F. Supp. at 1026.

⁶³ Wilson requested dismissal for the case against Yucaitis, who had died, and liability for the settlement was then divided equally between Burge and O'Hara. The appeal was taken on the portion of the settlement against Burge only, with the City agreeing to pay O'Hara's portion. The total amount ultimately collected by Wilson and his lawyers, after appeal, amounted to \$1.1 million.

⁶⁴ See *Wilson v. City of Chicago*, 120 F.3d 681 (7th Cir. 1997).

⁶⁵ *Id.* at 684.

⁶⁶ *Id.* at 685.

VII. AREA 2 TORTURE BY BURGE'S MIDNIGHT CREW

In 1982, after State's Attorney Daley refused to investigate and prosecute Burge and his confederates for the torture of Andrew Wilson, Burge installed his boyhood friend, John Byrne, as the sergeant in charge of the midnight shift at Area 2 Violent Crimes. This crew of white Burge loyalists soon became known internally as Burge's Asskickers,⁶⁷ and proceeded to continue the practice of torturing selected African American suspects who were arrested for particularly violent crimes. Among the scores of documented cases of torture and abuse by the midnight crew that followed Daley's inaction over the next six years were those of co-defendants Gregory Banks and David Bates, Darrell Cannon, co-defendants Stanley Wrice and Lee Holmes, co-defendants Michael Tillman and Steven Bell, and Eric Caine. All these men were convicted on the basis of confessions tortured from them, as were ten other men, including Leroy Orange, Stanley Howard, Aaron Patterson, and Madison Hogley, all of whom were sentenced to death.

VIII. THE BANKS AND BATES CASES

Gregory Banks and David Bates were arrested in late October 1983 for the murder of a drug dealer and brought to Area 2 Violent Crimes for interrogation. The midnight crew, led by Byrne and his trusted associates, detectives Peter Dignan and Charles Grunhard, took over the questioning, and obtained confessions to the crime from both men. Banks later alleged that he confessed after Byrne put a revolver in his mouth and Dignan took out a plastic bag, said that they had "something for niggers," and proceeded to place the bag over his head.⁶⁸ The tactic, known as "dry submarino,"⁶⁹ simulates suffocation, and Byrne and Dignan exacerbated the torture by kicking and punching Banks while he could not breathe and thought he was about to die.⁷⁰ Bates independently described a similar experience, including repeated baggings, at the hands of Byrne and Grunhard. While Banks suffered physical injuries, Bates did not.⁷¹

⁶⁷ See Letter from "Ty," Anonymous, to Flint Taylor (postmarked Mar. 6, 1989) (on file with author).

⁶⁸ *People v. Banks*, 549 N.E.2d 766, 768 (Ill. App. Ct. 1989).

⁶⁹ See generally Masha Lisitsyna, *The "Dry Submarino": Police Torture in Kazakhstan*, OPEN SOCIETY FOUND. (Apr. 27, 2010), <http://www.opensocietyfoundations.org/voices/dry-submarino-police-torture-kazakhstan>.

⁷⁰ *Banks*, 549 N.E.2d at 768.

⁷¹ *Id.* at 769; Testimony of Gregory Banks, *United States v. Burge*, No. 08 CR 846 (N.D. Ill. June 10, 2010).

Banks and Bates moved to suppress their confessions and sought to call Lee Holmes, who alleged that he was “bagged” by Byrne and Dignan thirteen months before Banks and Bates were tortured, but the Judge denied both this request and the motions to suppress. Both men appealed, and in December 1989, the Illinois Appellate Court, in the wake of the *Wilson* civil trials, reversed Banks’ conviction. Citing *Miranda v. Arizona*⁷² and *Brewer v. Williams*,⁷³ the Court first admonished that

[T]he trial judge must keep in mind that ours is an adversary criminal justice system, and there must not be any naiveté that it is otherwise. The stark realities of our adversary criminal justice system are such that what occurs within the confines of a police station during custodial interrogation when there is no attorney present is not always what the unsophisticated would expect.⁷⁴

Following the decision in *People v. Andrew Wilson*,⁷⁵ the court found that the State had not established “by clear and convincing evidence that defendant’s injuries were not inflicted as a means of producing the confession.”⁷⁶ Noting that “in our system of government, the use of a defendant’s coerced confession as substantive evidence of his guilt cannot be considered harmless error,”⁷⁷ the court remanded the case for a new trial while making a powerful condemnation of police torture in support:

We believe that this case is another reminder of the grave responsibility that trial judges have and must be willing to exercise when ruling on motions to suppress based on charges of police brutality and racial intimidation. If our constitutional rights and guarantees are to be in fact enjoyed equally by all our citizens, trial judges must ensure that those suspected of crimes do not relinquish their constitutional rights and guarantees solely because they become matched up against an uncaring or overzealous law enforcement officer who may be bent on obtaining a confession without regard to the suspect’s constitutional rights and guarantees. In this regard, trial judges must bear in mind that while we no longer see cases involving the use of the rack and thumbscrew to obtain confessions, we are seeing cases, like the present case, involving punching, kicking and placing a plastic bag over a suspect’s head to obtain confessions When trial judges do not courageously and forthrightly exercise

⁷² 384 U.S. 436, 448–58 (1966).

⁷³ 430 U.S. 387, 399 (1977).

⁷⁴ *Banks*, 549 N.E.2d at 766, 770.

⁷⁵ *People v. Wilson*, 506 N.E.2d 571 (Ill. 1987).

⁷⁶ *People v. Banks*, 549 N.E.2d 766, 770 (Ill. App. Ct. 1989).

⁷⁷ *Id.*

their responsibility to suppress confessions obtained by such means, they pervert our criminal justice system as much as the few misguided law enforcement officers who obtain confessions in utter disregard of the rights guaranteed to every citizen—including criminal suspects—by our constitution. Moreover, trial judges must be most circumspect when it appears that a right guaranteed to every citizen by our constitution may have been violated by police brutality or racial discrimination, for those affected are invariably the poorest, the weakest and the least educated, who are not sophisticated enough or do not have the resources to see and ensure that they are not denied the protections afforded by the rights and guarantees of our constitution.⁷⁸

On remand, the state dismissed the charges rather than retry Banks, and he was released after serving seven years in prison. He later filed a civil suit and received a \$96,000 settlement.⁷⁹ Bates also appealed, claiming that his confession was a product of an illegal arrest and physical coercion. The court distinguished Bates's case from Banks's on the basis that Bates had no physical injury, and affirmed the trial court's determination that Bates's confession was not physically coerced.⁸⁰ The court did find that Bates's arrest was without probable cause and remanded the case on the question of whether his confession was a product of his illegal arrest.⁸¹ On remand, the trial judge refused to consider the Goldston and Sanders OPS Reports, and found that the confession was sufficiently attenuated from the arrest to make it admissible.⁸² Bates again appealed, and the appellate court reversed, holding that the reports were relevant to "the purpose and flagrancy of police misconduct," a standard which the U.S. Supreme Court had established in *Brown v. Illinois*⁸³ as part of the attenuation test.⁸⁴ The State proceeded to retry Bates, but could present no competent evidence, and the judge dismissed Bates's case in December 1995. Having spent eleven years in jail, Bates then brought a civil suit that he settled for approximately \$66,000.⁸⁵

⁷⁸ *Id.* at 771. The court also found that Holmes' testimony that he was bagged and beaten thirteen months prior to Banks was clearly relevant and not too remote in time. *Id.* at 771–72.

⁷⁹ *Banks v. Burge*, No. 91-C-6470 (N.D. Ill. Aug. 18, 1993).

⁸⁰ *People v. Bates (Bates I)*, 578 N.E.2d 240 (Ill. App. Ct. 1991).

⁸¹ *Id.*

⁸² *People v. Bates (Bates II)*, 642 N.E.2d 774, 776 (Ill. App. Ct. 1994).

⁸³ 422 U.S. 590, 604 (1975).

⁸⁴ *Bates II*, 642 N.E.2d at 774.

⁸⁵ *See Bates v. Byrne*, No. 96-C-7061 (N.D. Ill. May 5, 1997).

IX. THE CANNON CRIMINAL CASE

Darrell Cannon was arrested for murder only days after Banks and Bates by a contingent of Area 2 officers who placed him in a detective car where Dignan told him that they had a “scientific way of questioning niggers.”⁸⁶ When Cannon refused to talk, Byrne, Dignan, and Grunhard took him to a remote site on the far south-east side of Chicago, where Dignan forced the barrel of a shotgun into Cannon’s mouth and pulled the trigger.⁸⁷ He repeated this mock execution twice more, after which he and Byrne pulled down Cannon’s pants and repeatedly shocked him on the genitals with a cattle prod. After a subsequent round of electric shocking, Cannon gave a statement implicating himself as accountable in the murder.⁸⁸

Cannon’s motion to suppress was denied by a judge who would later go to federal prison for taking bribes.⁸⁹ Cannon eventually appealed; his conviction was reversed, and he was retried in 1994 after a successor judge denied him the right to re-litigate his motion to suppress.⁹⁰ He again appealed, armed with a record that included numerous other cases where Byrne and Dignan were accused of torturing and abusing other African American suspects.⁹¹ The appellate court remanded the case to the trial court for a new motion to suppress hearing. The court, following *People v. Banks* and *Wilson v. City of Chicago*, held that the other torture allegations were relevant to show motive, plan, intent, and course of conduct, and to impeach Dignan and Byrne. In so doing, the court also held that the newly discovered evidence defeated principles of collateral estoppel and *res judicata*, and reiterated that the admission of a coerced confession can never be harmless error:

No citation of authority is required for the proposition that in a civilized society torture by police officers is an unacceptable means of obtaining confessions from suspects. The use of a defendant’s coerced confession as substantive evidence of his guilt

⁸⁶ Transcript of Darrell Cannon’s Testimony at Motion to Suppress Hearing at 17, *People v. Cannon*, No. 83-11830 (Cir. Ct. Cook County Mar. 27, 1984) [hereinafter Cannon Testimony]; see also KosWORKS, *Police Torture Chicago Style: Darrell Cannon, Anthony Holmes and Flint Taylor Speak Out*, YOUTUBE (Jan. 10, 2012), <http://www.youtube.com/watch?v=AGCZ-qcjFto>.

⁸⁷ Cannon Testimony, *supra* note 86, at 37–38, *People v. Cannon*, No. 83-11830 (Cir. Ct. Cook County March 27, 1984); see also KosWORKS, *supra* note 86.

⁸⁸ Cannon Testimony, *supra* note 86, at 43–48. See also KosWORKS, *supra* note 86 (Cannon recounting his torture).

⁸⁹ See *Bracy v. Gramley*, 520 U.S. 899 (1997).

⁹⁰ *People v. Cannon*, 688 N.E.2d 693, 696 (Ill. App. Ct. 1997).

⁹¹ *Id.* at 695.

never is harmless error.⁹²

In finding the other allegations of torture relevant, the court powerfully rejected the State's argument that the torture employed in the other cases was too dissimilar to Cannon's to be admissible:

To say, as the State does, that there is a qualitative distinction between shocking one suspect's genitals with a cattle prod and beating another with a flashlight, or inserting a shotgun in a suspect's mouth as opposed to a handgun, is to trivialize established principles for decent law enforcement. Under that view, accepted standards descend to banality. Minor differences in technique do not alter the nature of the torturer's work.⁹³

On remand, Cannon's lawyers presented evidence of other acts of torture by Byrne and Dignan, and documentation of the pattern and practice of torture that included the Goldston Report and its findings that Byrne and Dignan were "players" in Burge's pattern and practice.⁹⁴ Cannon's lawyers also offered a long-suppressed 1994 OPS report that specifically found that Cannon had been tortured by Byrne, Dignan, and Grunhard,⁹⁵ as well as expert psychological evidence that further corroborated Cannon's claims of torture. In 2004, the State dismissed Cannon's case without presenting Byrne and Dignan as witnesses in the still pending motion to suppress hearing, but the Illinois Parole Board refused to release him because of a parole hold that was premised on the dismissed case. Finally, in 2007, after two parole hearings and an order from a Cook County judge, Cannon was released from prison after serving twenty-four years.⁹⁶

X. THE DEATH ROW CASES

In the early 1990s, the legal and political struggle began to focus on the torture victims who had been sent to death row. These prisoners joined together and formed the Death Row Ten.⁹⁷ Pri-

⁹² *Id.* at 696.

⁹³ *Id.* at 697.

⁹⁴ See MICHAEL GOLDSTON, CHI. POLICE DEP'T, OFFICE OF PROF'L STANDARDS, HISTORY OF ALLEGATIONS OF MISCONDUCT BY AREA TWO PERSONNEL (Nov. 2, 1990); CHI. POLICE DEP'T, OFFICE OF PROF'L STANDARDS, SUPPLEMENTAL REPORT (April 30, 1991).

⁹⁵ Declaration of G. Flint Taylor filed March 22, 2011, Cannon v. Burge, No. 05 C 2192, 2011 WL 4361529 (N.D. Ill. Sept. 19, 2011); VERONICA TILLMAN, CHI. POLICE DEP'T OFFICE OF PROF'L STANDARDS, SUPPLEMENTARY SUMMARY REPORT, COMPLAINT REGISTER No. 134723 (Jan. 1994); report also filed in *Cannon*, 2011 WL 4361529.

⁹⁶ Cannon v. Ill. Prisoner Review Bd., No. 04-CH-16620, slip op. at 13, 15, 19 (Cir. Ct. Cook County Nov. 22, 2006).

⁹⁷ See Flint Taylor, *Police Torture and the Death Penalty in Illinois: Ten Years Later*,

mary among them were Aaron Patterson,⁹⁸ Madison Hobley,⁹⁹ Leroy Orange,¹⁰⁰ and Stanley Howard.¹⁰¹ Orange had been repeatedly electric-shocked by Burge, while the others had been bagged and beaten by his midnight crew. All four of them lost on direct appeal,¹⁰² and Hobley and Orange also lost their post-conviction torture claims in the Illinois Supreme Court,¹⁰³ in part because they could not show physical injuries that the Illinois Supreme Court, in a perverse application of *People v. Wilson*, had articulated as a requirement in their cases.

In 1994, Patterson, represented by lawyers from the People's Law Office, filed a post-conviction claim in which he marshaled all the newly discovered torture evidence that had come to light since his 1988 motion to suppress hearing and trial. He also included his subsequent identification of Jon Burge as the red-haired officer who participated in his torture and offered photographs of etchings he had made in the interrogation room bench the night of his torture which stated that he was suffocated with plastic. The trial judge dismissed the petition, and Patterson, who had no documented physical injuries, appealed directly to the Illinois Supreme Court. Confronted with the *Wilson* physical injury standard, Patterson's lawyers placed Chicago police torture in the context of the history of torture, international law, and its definition by the United Nations Committee Against Torture (CAT) in order to argue that a major component of torture was to inflict serious pain during interrogations without leaving marks or visible injury.¹⁰⁴

The case was argued and decided together with two other Chicago police torture cases,¹⁰⁵ and in August 2000 the Supreme Court issued a landmark decision in the *Patterson* case. After re-

NATION (Jan. 11, 2013), <http://www.thenation.com/article/172152/police-torture-and-death-penalty-illinois-ten-years-later>.

⁹⁸ *People v. Patterson*, 610 N.E.2d 16 (Ill. 1992).

⁹⁹ *People v. Hobley*, 637 N.E.2d 992 (Ill. 1994).

¹⁰⁰ *People v. Orange*, 521 N.E.2d 69 (Ill. 1988).

¹⁰¹ *People v. Howard*, 588 N.E.2d 1044 (Ill. 1991).

¹⁰² *Patterson*, 610 N.E.2d at 16; *Hobley*, 637 N.E.2d at 992; *Howard*, 588 N.E.2d at 1044; *Orange*, 521 N.E.2d at 69.

¹⁰³ *People v. Orange*, 659 N.E.2d 935 (Ill. 1995); *People v. Hobley*, 696 N.E.2d 313 (Ill. 1998). The Illinois Supreme Court granted Hobley a post-conviction hearing on other grounds.

¹⁰⁴ See Reply Brief and Argument for Defendant-Appellant at 3–7; *People v. Patterson*, 610 N.E.2d 16 (Ill. 1992) (No. 82711).

¹⁰⁵ *People v. King*, 735 N.E.2d 569 (Ill. 2000); *People v. Kitchen*, 727 N.E.2d 189 (Ill. 2000). The Supreme Court, following its decision in *Patterson*, reversed the trial court's denial of an evidentiary hearing in *King*, and reversed the trial court's denial of leave to file an amended post-conviction petition in *Kitchen*.

jecting several ineffective assistance of counsel arguments, the court, in an opinion written by Justice Rathje, found that fundamental fairness defeated the *res judicata* effect of its prior *Patterson* decision,¹⁰⁶ and held that Patterson was entitled to an evidentiary hearing on the question of newly discovered torture evidence.¹⁰⁷ Rejecting the State's reliance on a number of the court's prior decisions, including *People v. Wilson*, *People v. Hobley*, and *People v. Orange*, the court modified the physical injury rule:

[T]he fact that the defendant has suffered a physical injury is only one of many factors to consider when determining whether evidence of prior allegations of police brutality are admissible. The question of relevancy is a determination to be made by the trial court after a consideration of, *inter alia*, the defendant's allegations of torture and their similarity to the prior allegations.¹⁰⁸

The court detailed the newly discovered evidence, including sixty incidents of torture that implicated Burge and the detectives who tortured Patterson, the OPS Goldston and Sanders Reports, and several judicial and administrative decisions, and evaluated their relevance in light of the decisions in *People v. Cannon*, *People v. Banks*, *Wilson v. Burge*, and *People v. Hobley*. The court found that the sixty incidents, some of which were contained in a proffer offered in the *Wilson* civil case, were not unduly remote:

Many of the claims detailed in the plaintiff's proffer are remote in time from defendant's claims. The amount of time separating the incidents is a relevant consideration when determining admissibility. . . . Even incidents that are remote in time can become relevant, however, if the party presenting the evidence can present evidence of other incidents that occurred in the interim. Thus, a single incident years removed has little relevance. However, a series of incidents spanning several years can be relevant to establishing a claim of a pattern and practice of torture. Consequently, we believe that the claims detailed in the proffer should be considered new evidence, but only if defendant can establish the later discovery of other torture allegations linking defendant's claims to those contained in the proffer.¹⁰⁹

In conclusion, the court found that all of this evidence was relevant and should be considered by the trial court:

After reviewing the new evidence relied upon by defendant, we

¹⁰⁶ *Patterson*, 610 N.E.2d at 16.

¹⁰⁷ *Patterson*, 735 N.E.2d 616 (Ill. 2000).

¹⁰⁸ *Id.* at 645.

¹⁰⁹ *Id.* at 642–43.

believe that it is material and that, as pleaded, would likely change the result upon retrial. In particular, we note that defendant has consistently claimed that he was tortured. In fact, he made this claim during his first court appearance. Moreover, defendant's claims are now and have always been strikingly similar to other claims involving the use of a typewriter cover to simulate suffocation. Additionally, defendant describes the use of a gun as a threat and beatings that do not leave physical evidence. Further, the officers that defendant alleges were involved in his case are officers that are identified in other allegations of torture. Finally, defendant's allegations are consistent with the OPS findings that torture, as alleged by defendant, was systemic and methodical at Area 2 under the command of Burge.¹¹⁰

XI. AREA 3 DETECTIVE HEADQUARTERS

In August 1986, Burge was promoted to commander and put in charge of the Bomb and Arson Unit. He stayed there until January 1988, when he was transferred, at his request, to Area 3 Detective Headquarters, on Chicago's predominantly African-American West Side. Commander Burge brought Byrne and several trusted Area 2 detectives with him to Area 3. In August of 1988, Burge and his detectives "solved" a quintuple murder by arresting Ronald Kitchen and Marvin Reeves for the crimes. Burge personally participated in Kitchen's interrogation, and after he collaborated with several detectives under his command to repeatedly beat Kitchen with a telephone book and a phone receiver, Kitchen gave a false confession.¹¹¹ Kitchen and Reeves were both convicted, and Kitchen was sentenced to death, while Reeves received a life sentence.¹¹²

A steady stream of police torture allegations began to emanate from Area 3, culminating in September of 1991 with a case where eleven young men, most of whom were juveniles, were rounded up for questioning about a murder. They were brought to Area 3 where, they alleged, they were tortured and abused. The youngest of the boys was Marcus Wiggins, a diminutive thirteen-year-old who was mentally delayed. Wiggins claimed that he was electric-shocked by one of Burge's transplanted detectives into giving a false confes-

¹¹⁰ *Id.* at 645.

¹¹¹ KosWorks, *Ronald Kitchen: Tortured, Framed, and Sentenced to Death*, YouTube (Nov. 19, 2011), <http://www.youtube.com/watch?v=A0sJXxPkZLg> (Kitchen recounting his torture).

¹¹² See G. Flint Taylor, *Three Torture Victims Exonerated, Another Granted a New Trial*, 9 POLICE MISCONDUCT & CIVIL RIGHTS LAW REPORTER, No. 14, Mar.-Apr. 2010, at 4.

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sion, and several of the other juveniles also alleged shockings and beatings.¹¹³ Eight of the young men, including the only non-juvenile, Jesse Clemon, were charged with the murder. They moved to suppress their confessions, and, ultimately, all of the cases were dismissed. In Clemon's case, Earl Strayhorn, a well-respected African-American judge, became the first Cook County trial judge to hold, albeit indirectly, that Burge or his underlings coerced a statement from a suspect. Finding that a witness who corroborated Wiggins' assertions that he was electric-shocked to be "very credible," Judge Strayhorn suppressed Clemon's confession:

Given the atmosphere that existed in that District with eleven people under suspicion in custody in the same location, the atmosphere must have been horrendously oppressive and I am going to suppress the statements.¹¹⁴

The Illinois Appellate Court affirmed the trial judge, and Clemon was set free.¹¹⁵

In January of 1993, Wiggins brought a 42 U.S.C. § 1983 lawsuit that alleged that his torture and wrongful arrest were caused by a pattern and practice of torture.¹¹⁶ During discovery, Wiggins' counsel compelled the City to produce several suppressed OPS disciplinary files which contained findings that Byrne, Dignan, and several other Burge detectives tortured and abused several suspects.¹¹⁷ After Wiggins settled his case, his counsel sought to publicly release the files; the City opposed their motion, and the trial judge ordered them released:

In essence, this Court concludes that the allegations of police misconduct in the disputed documents before the Court must receive public exposure in order to insure that the significant public interest is served. As Martin Luther King, Jr. stated in his now famous letter from the Birmingham County Jail in April of 1963: Like a boil that can never be cured as long as it is covered up but must be opened with all its pus-flowing ugliness to the natural medicines of air and light, injustice must likewise be exposed, with all of the tension its exposing creates, to the light of human conscience and the air of national opinion before it can be cured." Similarly, this Court concludes that the allegations of

¹¹³ *People v. Clemon*, 630 N.E.2d 1120 (Ill. App. Ct. 1994); June 4, 1996 Deposition of Marcus Wiggins at 303:1-308:7, *Wiggins v. Burge*, 173 F.R.D. 226 (N.D. Ill. 1997) (No. 93 C 199).

¹¹⁴ *Clemon*, 630 N.E.2d at 1123.

¹¹⁵ *Id.*

¹¹⁶ See Deposition of Marcus Wiggins, *supra* note 113, at 303:1-308:7.

¹¹⁷ Declaration of G. Flint Taylor at 13-17, *Cannon v. Burge*, No. 05 C 2192, 2011 WL 4351529 (N.D. Ill. Sept. 19, 2011).

police misconduct contained in the disputed files must be exposed to the light of human conscience and the air of natural opinion.¹¹⁸

Two years later, in 1999, Federal Judge Milton Shadur, who had previously ordered the Goldston Report released, made the first unequivocal judicial determination that there was a pattern and practice of torture and abuse under Burge at Area 2:

It is now common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions. Both internal police accounts and numerous lawsuits and appeals brought by suspects alleging such abuse substantiate that those beatings and other means of torture occurred as an established practice, not just on an isolated basis.¹¹⁹

XII. GUBERNATORIAL PARDONS

In 2000, in response to the heightened focus on the death penalty and its relationship to police torture, Illinois Governor George Ryan ordered a moratorium on the death penalty. Three years later, after a long and highly publicized battle between proponents and opponents of the death penalty, Ryan, as he left office, commuted all 163 Illinois death sentences to life without parole, and granted innocence pardons to Leroy Orange, Madison Hobley, Aaron Patterson, and Stanley Howard.¹²⁰ The basis for these pardons was that all four men had been tortured into giving false confessions by Burge and his men. In an impassioned statement, Ryan described his rationale:

The category of horrors was hard to believe. If I hadn't reviewed the cases myself, I wouldn't believe it [W]e have evidence from four men, who did not know each other, all getting beaten and tortured and convicted on the basis of the confessions they allegedly provided. They are perfect examples of what is so terribly broken about our system.¹²¹

¹¹⁸ *Wiggins*, 173 F.R.D. at 230.

¹¹⁹ *United States ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999). Judge Shadur made this determination in support of his granting an evidentiary hearing to Area 2 torture victim Andrew Maxwell on his federal habeas corpus petition.

¹²⁰ See G. Flint Taylor, *A Historic Moment for the Human Rights Movement: Illinois Governor Ryan Grants Pardons and Mass Clemency*, 7 POLICE MISCONDUCT & CIVIL RIGHTS LAW REPORTER, No. 7, Jan.-Feb. 2003, at 75.

¹²¹ *Id.* at 75, 77.

Hobley, Orange, and Patterson were immediately released, while Howard remained imprisoned on another conviction.

XIII. APPOINTMENT OF THE COOK COUNTY SPECIAL PROSECUTORS

Since the early 1990s, lawyers for the torture victims had periodically made the demand for a special prosecutor to investigate the serious crimes that were alleged in the ever-increasing number of documented torture cases. These demands went unrealized until 2001, when the lawyers, together with community activists, mounted a campaign that resulted in the filing of a petition before Cook County Criminal Division Chief Judge Paul Biebel that sought the appointment of a special prosecutor. The basis for the petition was Cook County State's Attorney Richard Devine's alleged conflict of interest that arose from his and his law firm's prior representation of Burge in the *Wilson* civil litigation. In April of 2002, Judge Biebel granted the petition, finding, pursuant to chapter 55, section 3-9008 of the Illinois Compiled Statutes and relevant Illinois precedent,¹²² that Devine's prior representation of Burge created both an "appearance of impropriety" and a *per se* conflict of interest which was imputed to the entire Cook County State's Attorney's Office.¹²³ In what would later prove to be a very controversial decision, Judge Biebel appointed as Special Prosecutors two former Assistant Cook County State's Attorneys, Edward Egan and Robert Boyle, who had played key supervisory roles in the 1960s during the reign of Mayor Richard J. Daley.¹²⁴

Later in 2002, lawyers for the Death Row Ten moved to remove Devine's office from defending the State in all Burge related post-conviction cases and for the entire Cook County Bench to be disqualified from hearing the cases.¹²⁵ The disqualification of the State's Attorney's Office was premised on Devine's conflict, the appearance of impropriety, and Judge Biebel's prior ruling, while the judicial disqualification request was based on the fact that a large percentage of Cook County judges were former Assistant State's

¹²² 55 ILL. COMP. STAT. ANN. 5/3-9008 (West 2001); *People v. Coslet*, 364 N.E.2d 67, 70 (Ill. 1977); *People v. Gerold*, 107 N.E. 165 (Ill. 1914); *People v. Courtney*, 687 N.E.2d 521, 526 (Ill. App. Ct. 1977).

¹²³ *In re Appointment of Special Prosecutor*, No. 90 CR 11985, 2002 WL 34491483 (Cir. Ct. Cook County April. 24, 2002).

¹²⁴ See, e.g., Abdon M. Pallasch & Frank Main, *Did Leaders of Burge Inquiry Favor City Hall?: E-mails Show Top Daley Lawyer Pleased With Their Selection*, CHI. SUN-TIMES, July 31, 2006, at 10.

¹²⁵ See Memorandum Opinion and Order of Apr. 9, 2003 at 3, *In re Appointment of Special Prosecutor*, No. 2001 Misc. 4, (Apr. 24, 2002).

Attorneys, with a substantial number having been directly involved either in taking confessions from men who alleged torture, or had been involved in the prosecution of cases where a tortured confession was at issue.¹²⁶ Judge Biebel found that Devine did not have a *per se* conflict, but disqualified the State's Attorney's Office nonetheless because of a potential conflict that arose from the possibility that Burge might be a potential witness in one or more of the cases.¹²⁷ Over the objection of the torture victims' lawyers, the judge appointed the Illinois Attorney General to represent the State in the cases. Judge Biebel also rejected the argument that the appearance of impropriety required the disqualification of the Cook County bench, finding that:

This Court agrees that public confidence in the judiciary is of substantial importance. However, the Court disagrees that removing the cases from the Cook County Judiciary is the best way to foster such confidence. The best remedy for any perceived lack of faith is to allow the judges of this jurisdiction to preside over these matters with diligence and impartiality, as they have been sworn to do. The removal of Petitioners' cases from Cook County would, in essence, be an acknowledgement that the judges therein are incapable of fulfilling their duty. This Court declines to draw such a conclusion.¹²⁸

XIV. CIVIL SUITS BY THE PARDONED PRISONERS

In late 2003 and early 2004, the four pardoned torture survivors each brought 42 U.S.C. § 1983 suits alleging that they were tortured into giving false confessions that led to their wrongful convictions and imprisonment.¹²⁹ They further alleged that their torture and wrongful convictions were caused, in part, by a widespread racially based pattern and practice of torture, and that their wrongful convictions were continued as a result of a broad-based conspiracy by high-level police officials, acting together with Burge, his associates, and State's Attorney Richard Devine, to cover up the pattern and practice of Burge-related torture.¹³⁰

¹²⁶ See John Conroy, *Deaf to the Screams*, CHI. READER, (July 31, 2003), <http://www.chicagoreader.com/chicago/deaf-to-the-screams/Content?oid=912813>.

¹²⁷ Memorandum Opinion and Order of April 9, 2003, at 12–13, *In re* Appointment of Special Prosecutor, No. 2001 Misc. 4 (April 24, 2002).

¹²⁸ *Id.* at 25–26.

¹²⁹ See *Orange v. Burge*, No. 04 C 0168, 2005 WL 74264 (N.D. Ill. Mar. 30, 2005); *Patterson v. Burge*, 328 F. Supp. 2d 878 (N.D. Ill. 2004); *Hobley v. Burge*, No. 03 C 3678, 2004 WL 856439 (N.D. Ill. June 2, 2004); *Howard v. City of Chicago*, No. 03 C 8481, 2004 WL 2397281 (N.D. Ill. Oct. 22, 2004).

¹³⁰ See G. Flint Taylor, *Pardoned Illinois Prisoners Bring Torture and Wrongful Convic-*

The defendants' motions to dismiss were denied in almost all respects,¹³¹ and discovery proceeded in the cases. People's Law Office lawyers, who represented Orange and Patterson, embarked on an investigation that yielded numerous statements that they obtained from recently discovered torture victims and five African-American detectives who had retired from the force. The former detectives, no longer living in fear of the police code of silence and official retaliation,¹³² for the first time revealed a wealth of evidence that corroborated that the pattern and practice of torture under Burge was an "open secret at Area 2."¹³³ These former detectives revealed that they had seen what appeared to be Burge's torture box,¹³⁴ had walked in on torture scenes,¹³⁵ had overheard discussions concerning the use of plastic bags, telephone books, and the "Vietnamese treatment" to obtain statements,¹³⁶ and had heard screams coming from the interrogation room.¹³⁷ They further asserted "the [B]lack box . . . was running rampantly through the little unit up there,"¹³⁸ that Burge enforced the "code of silence" with threats of violence,¹³⁹ and that Burge was an avowed racist¹⁴⁰ who was rumored to be a Ku Klux Klan member.¹⁴¹

During discovery, the torture victims' lawyers took scores of depositions and posited hundreds of interrogatories, and on al-

tion Claims, 7 POLICE MISCONDUCT & CIVIL RIGHTS LAW REPORTER, No. 13, Jan.-Feb. 2014.

¹³¹ *Id.*

¹³² See, e.g., November 9, 2004 Sworn Statement of Doris Byrd at 41-43, Patterson v. Burge, 328 F. Supp. 2d 878 (N.D. Ill. 2004) (No. 03 C 4433).

¹³³ *Id.* at 11.

¹³⁴ Affidavit of Melvin Duncan on May 20, 2004, at ¶¶ 5-10, Patterson v. Burge, 328 F. Supp. 2d 878 (N.D. Ill. 2004) (No. 03 C 4433); Statement of Walter Young on November 2, 2004 at 6-7, Patterson v. Burge, 328 F. Supp. 2d 878 (N.D. Ill. 2004) (No. 03 C 4433).

¹³⁵ See November 9, 2004 Sworn Statement of Doris Byrd, *supra* note 132, at 13-14; Statement of William Parker on Oct. 12, 2004 at 7-16, Patterson v. Burge, 328 F. Supp. 2d 878 (N.D. Ill. 2004) (No. 03 C 4433); Statement of Walter Young, *supra* note 134, at 9-10.

¹³⁶ Sworn Statement of Doris Byrd, *supra* note 132, at 10-12; Affidavit of Melvin Duncan, *supra* note 134, at ¶¶ 1, 4, 5-10; Statement of Walter Young, *supra* note 134, at 8-9, 27-28.

¹³⁷ Sworn Statement of Doris Byrd at 9, Patterson v. Burge, 328 F. Supp. 2d 878 (N.D. Ill. 2004) (No. 03 C 4433).

¹³⁸ *Id.* at 10-11.

¹³⁹ *Id.* at 6-7.

¹⁴⁰ *Id.* at 26-27; Statement of Walter Young on November 2, 2004, at 30-31, Patterson v. Burge, 328 F. Supp. 2d 878 (N.D. Ill. 2004) (No. 03 C 4433); Statement of Sammy Lacey on October 12, 2004, at 20-21, 28, Patterson v. Burge, 328 F. Supp. 2d 878 (N.D. Ill. 2004) (No. 03 C 4433).

¹⁴¹ Statement of Walter Young, *supra* note 134, at 31-32; Sworn Statement of Doris Byrd, *supra* note 132, at 27.

most all occasions, Burge and his fellow officers, citing the ongoing investigation by the special prosecutors, invoked the Fifth Amendment to all torture-related questions. However, at the very inception of discovery, Burge made what would later prove to be a critical mistake—he denied under oath in interrogatory answers that he had participated in or witnessed any acts of torture and abuse.

None of the four plaintiffs had joined Richard M. Daley as a defendant in his case, but they all sought his deposition as a material witness as State's Attorney and Mayor on their *Monell* and conspiracy claims. In February 2007, Magistrate Judge Geraldine Soat Brown ordered that Daley sit for his deposition on Madison Hopley's *Monell* claims.¹⁴² However, in what would become a recurring theme, the City subsequently agreed to settle the four cases for a total of \$19.8 million, and the Chicago City Council approved the settlement in January of 2008.¹⁴³ Daley consequently avoided testifying.

XV. THE INTERNATIONAL CAMPAIGN

From the beginning of the public struggle against police torture in the late 1980s, People's Law Office lawyers and anti-torture activists had consistently identified the racially motivated abuse perpetrated by Burge and his confederates as torture rather than police brutality, as the media preferred to call it. At their behest, the Chicago City Council held a widely publicized hearing on the torture cases on Christmas Eve 1990 at which one of Andrew Wilson's lawyers, international torture expert Dr. Robert Kirschner, and County Commissioner Danny Davis presented evidence.¹⁴⁴ Shortly thereafter, Amnesty International took up the cause, calling for an investigation by the Illinois Attorney General's Office.¹⁴⁵ In the *Patterson* case, PLO lawyers, for first time in a police torture-related court proceeding, argued the relevance of the international history of torture to the Burge cases, and their arguments

¹⁴² Hopley v. Burge, No. 03 C 3678, 2007 WL 551569, at *8 (N.D. Ill. Feb. 22, 2007).

¹⁴³ Fran Spielman, *This Tragic Chapter . . . Is Closed*, CHI. SUN-TIMES, Jan. 10, 2008, at 8. The City had agreed to settle with three of the four men for \$14.8 million more than a year earlier, but the City refused to execute the agreement. See Rudolph Bush, *Burge Claimants Allege City Backed Out of \$14.8 Million Settlement*, CHI. TRIB., Feb. 20, 2007. Judge Soat Brown released her Daley decision two days after the City's attempt to back out of the settlement became public.

¹⁴⁴ See Transcript of Hearing before Chicago City Council Subcomm. on Finance (Dec. 24, 1990) (on file with author).

¹⁴⁵ See Ray Long, *Police Torture Probe Sought Here*, CHI. SUN-TIMES, Jan. 28, 1991, at 1.

led to a landmark change in the law.¹⁴⁶

In 2005, the anti-torture movement, frustrated by the pace and tenor of the ongoing investigation by the Special Prosecutors' Office, petitioned for and obtained a hearing before the Inter American Commission for Human Rights (IACHR) of the Organization of American States.¹⁴⁷ At this hearing, 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.¹⁴⁸

The movement next turned to the United Nations Committee Against Torture (CAT). The Midwest Committee for Human Rights and lawyers from the People's Law Office, together with numerous national human rights organizations, presented the 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.¹⁴⁹ A lawyer from the People's Law Office appeared before CAT in Geneva, Switzerland to argue the case for U.S. prosecutions of Burge and his men.¹⁵⁰ In May 2006, the CAT, in its "principal subjects of concern and recommendations concerning the United States" section of its report found:

The Committee is concerned with allegations of impunity of some of the State party's [U.S.'s] law enforcement personnel in respect of acts of torture or cruel, inhuman or degrading treatment or punishment. The Committee notes the limited investigation and lack of prosecution in respect of the allegations of torture perpetrated in areas 2 and 3 of the Chicago Police Department. (article 12) The State party should promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punish-

¹⁴⁶ See Reply Brief and Argument for Defendant-Appellant at 3-7, *People v. Patterson*, 610 N.E.2d 16 (Ill. 1992) (No. 82711).

¹⁴⁷ Approximately fifty 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 signed the petition. See Letters from Locke E. Bowman et. al, McArthur Justice Ctr. at the Univ. of Chi. Law Sch., to the Exec. Secretariat, Inter-Am. Comm'n on Human Rights (postmarked Aug. 26, 2005 and Sept. 6, 2005) (on file with author) (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).

¹⁴⁸ Dennis Conrad, *Panel Hears Claims of Anti-Black Cop Brutality Here*, CHI. SUN-TIMES, Oct. 15, 2005.

¹⁴⁹ See *cf.* Memorandum from Midwest Comm. for Human Rights (MCHR) to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (Sept. 30, 2005).

¹⁵⁰ See Diantha Parker, *U.N. Investigates Alleged Torture*, WBEZ Chicago Public Radio broadcast, May 5, 2006 (transcript on file with author).

ment by law enforcement personnel and bring perpetrators to justice, in order to fulfill its obligations under article 12 of the Convention. The State party should also provide the Committee with information on the ongoing investigations and prosecution relating to the above-mentioned case.¹⁵¹

XVI. THE SPECIAL PROSECUTORS' REPORT

In July 2006, after a four-year investigation that cost Cook County taxpayers \$7 million, Special Prosecutors Egan and Boyle returned no indictments, but rather issued a report that absolved Richard M. Daley, Richard Devine, and all but one of the numerous high-level Chicago Police officials who had been implicated in the decades-long scandal.¹⁵² In the report, the Special Prosecutors did make a number of findings that would prove to be of significance in subsequent legal proceedings:

- The evidence established beyond a reasonable doubt that Burge committed aggravated battery, obstruction of justice, and perjury when he abused Andrew Wilson and later testified falsely about it.¹⁵³
- The evidence established beyond a reasonable doubt that Area 2 Midnight detectives Ronald Boffo and James Lotito physically abused Philip Adkins and committed aggravated battery against him.¹⁵⁴
- The evidence established beyond a reasonable doubt that Area 2 detectives Anthony Maslanka and Michael McDermott physically abused Alphonso Pinex and committed aggravated battery, perjury, and obstruction of justice.¹⁵⁵
- There were “many other cases” in which the Special Prosecutors believed that the persons, including Melvin Jones, Shadeed Mu'min, and Michael Johnson, were abused but “proof beyond

¹⁵¹ U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee Against Torture, 36th Sess., May 1–19, 2006, at 7, CAT/C/USA/CO/2 (May 18, 2006). In May 2008, similar evidence was presented to the U.N. Rapporteur on Racism at a hearing conducted in Chicago. See MidwestHumanRights, *Joey Mogul's Testimony to UN Special Rapporteur on Racism*, YOUTUBE (May 29, 2008), <http://www.youtube.com/watch?v=90dH2WOL34w>.

¹⁵² See Report of the Cook County Special State's Attorney, *In re* Appointment of Special Prosecutor, No. 2001 Misc. 4 (July 19, 2006) [hereinafter Special Prosecutors' Report].

¹⁵³ *Id.* at 16, 63.

¹⁵⁴ *Id.* at 16. The evidence established that Adkins was brutally beaten about his head and body with a flashlight, causing him to defecate on himself, and that racial epithets were directed at him. *Id.* at 266–75.

¹⁵⁵ *Id.* at 16.

a reasonable doubt” was absent.¹⁵⁶

- Burge, the “commander of the Violent Crimes Section of Detective Areas 2 and 3,” was “guilty [of] abus[ing] persons with impunity,” and that it therefore “necessarily follows that a number of those serving under his command recognized that if their commander could abuse persons with impunity, so could they.”¹⁵⁷
- Chicago Police Superintendent Richard J. Brzeczek was guilty of a “dereliction of duty” and “did not act in good faith in the investigation of the claim of Andrew Wilson,” because Brzeczek “believed that officers in the Violent Crimes unit of Detective Area 2 had tortured Andrew Wilson,” and that Brzeczek “kept Burge in command at Area 2, and issued a letter of commendation to all of the detectives at Area 2.”¹⁵⁸
- Brzeczek “received and believed evidence that a prisoner [Andrew Wilson] had been brutalized by the Superintendent’s subordinates; that the prisoner had confessed; that those subordinates had testified under oath on a motion to suppress and before a jury, and he [Brzeczek] had to believe, they [Burge and Yucaitis] testified perjuriously; *that the prisoner had been sentenced to death*, and that that Superintendent still remained silent for over twenty years.”¹⁵⁹
- The U.S. Court of Appeals for the Seventh Circuit, in its 1993 consideration of the City’s liability in the *Wilson* civil case, was misled concerning Superintendent Brzeczek’s contemporaneous knowledge that Burge and his subordinates tortured Wilson because Brzeczek concealed those views until after the case was concluded.¹⁶⁰
- The Chief of Felony Review of the Cook County States Attorney’s Office, Lawrence Hyman, gave “false testimony” when “he denied that Andrew Wilson told him he had been tortured by

¹⁵⁶ *Id.* at 12–13. The evidence established that Burge electrically shocked Jones on his penis, thigh, and foot, struck him in the head with a stapler, threatened him with a revolver, and threatened to “blow [his] [B]lack brains out;” that Burge suffocated Mu’min with a plastic typewriter cover, threatened him with a revolver, subjected him to Russian Roulette, and repeatedly used racial epithets; and that Burge electrically shocked and beat Johnson. *See* Testimony of Melvin Jones, *United States v. Burge*, No. 08 CR 846 (N.D. Ill. May 27, 2010); Testimony of Shadeed Mu’min, *United States v. Burge*, No. 08 CR 846 (N.D. Ill. June 15, 2010); Special Prosecutors Report, *supra* note 152, at 12–13, 87.

¹⁵⁷ Special Prosecutors’ Report, *supra* note 152, at 16.

¹⁵⁸ *Id.* at 17.

¹⁵⁹ *Id.* at 86–87 (emphasis in original).

¹⁶⁰ *Id.* at 87–88.

detectives under the command of Jon Burge.”¹⁶¹

- No meaningful police investigation was conducted, nor any police witness questioned either in the *Wilson* case, or in the Michael Johnson electric shock case, which occurred a few months after Wilson, and had “glaring similarities” to the Wilson allegations.¹⁶²
- “[S]omething should have been done about the ‘disgrace and embarrassment’ [at Area 2] 24 years ago” by the Chicago Police Superintendent.¹⁶³
- If action had been taken against Jon Burge at the time of the Andrew Wilson case, or even shortly thereafter, the appointment of the Special Prosecutor would not have been necessary.¹⁶⁴
- This action should have included, “at the very least,” the Superintendent’s removal of Burge from any investigative command and a “complete shake-up at detective Area 2.”¹⁶⁵

XVII. RESPONSE TO THE SPECIAL PROSECUTORS’ REPORT

The lawyers for the torture victims, human rights activists, and much of the African-American community were outraged by the Special Prosecutors’ failure to indict for perjury, obstruction of justice, and conspiracy, and their failure to properly assess blame. Their anger was fueled by the discovery that Special Prosecutor Egan had nine relatives who were Chicago Police officers, one of whom served under Burge at Area 2 in the 1980s and participated in the arrest of torture victim Gregory Banks.¹⁶⁶ As a result, lawyers from the People’s Law Office, together with Northwestern Law School’s Center on Wrongful Convictions, drafted a Shadow Report that was signed by more than 200 organizations and individuals from the human rights, criminal justice and racial justice movements.¹⁶⁷ The Shadow Report, which was released in April 2007, found that the Special Prosecutors:

- Did not bring criminal charges against members of the Chicago

¹⁶¹ *Id.* at 54.

¹⁶² *Id.* at 12–13, 87–88.

¹⁶³ Special Prosecutors’ Report, *supra* note 152, at 89.

¹⁶⁴ *Id.* at 88.

¹⁶⁵ *Id.*

¹⁶⁶ Abdon M. Pallasch & Frank Main, *Torture Report and Family Ties: Top Investigator Had Nephew on Burge’s Staff*, CHI. SUN-TIMES, Aug. 6, 2006, at A7.

¹⁶⁷ REPORT ON THE FAILURE OF SPECIAL PROSECUTORS EDWARD J. EGAN AND ROBERT D. BOYLE TO FAIRLY INVESTIGATE SYSTEMIC POLICE TORTURE IN CHICAGO at 2 (April 24, 2007).

Police Department despite the apparent existence of numerous provable offenses within the statute of limitations.

- Ignored the failure of former Cook County State's Attorney Richard M. Daley, State's Attorney Richard A. Devine, and various other high-ranking officials to investigate and prosecute police officers who engaged in a documented pattern of torture and wrongful prosecution of torture victims.
- Did not document the systemic and racist nature of the torture and did not brand it as such in accordance with the international definition of torture.
- Unfairly evaluated the credibility of the alleged torturers and of their victims and unfairly attempted to discredit torture victims who had pending civil or criminal cases.
- Conducted an investigation that was hopelessly flawed and calculated to obfuscate the truth about the torture scandal.
- Ignored a wealth of evidence establishing that there was a widespread and continuing cover-up of the torture scandal—a conspiracy of silence—implicating high officials of the City of Chicago, the Chicago Police Department, and the Cook County State's Attorney's Office.
- Failed to document the role of judges of the Criminal Division of the Cook County Circuit Court in the torture scandal.
- Had appearances of conflict of interest and bias in favor of those whom they had been appointed to investigate.¹⁶⁸

The Shadow Report provided the vehicle for obtaining public hearings, first before the Cook County Board of Commissioners, then later before the Chicago City Council. At the hearings, both of which took place in the summer of 2007, the testimony of several torture survivors, their lawyers, experts on torture, and community activists was presented; at the City Council hearing, an African-American detective who had witnessed a Burge torture scene testified, and a video of Burge repeatedly invoking the Fifth Amendment was presented.¹⁶⁹

In the aftermath of the hearings, the Cook County Board passed three Resolutions, which called for the following action:

¹⁶⁸ *Id.* at 2–3.

¹⁶⁹ Cook Cnty. Bd. of Comm'rs Hearing (June 13, 2007), <http://video.google.com/videoplay?docid=-7235577585903007387#>. See also Transcript of Proceedings from Chicago City Council Committee on Police and Fire, Discussion of Special State Attorney's Findings at 118 (July 24, 2007); Chicago City Council Hearing: Burge and His Victims (July 24, 2007) (video) (on file with author); Chicago City Council Hearing: Testimony of Former Area 2 Detective William Parker (July 24, 2007) (video) (on file with author).

- The Cook County Board of Commissioners fully supports any action taken by the United States Attorneys of the Northern District of Illinois in the investigation and prosecution of any and all federal crimes allegedly committed by Burge and his men.
- The Cook County Board of Commissioners recommends that the Illinois Attorney General initiate new hearings for the twenty-six Chicago Police torture victims who were wrongfully convicted and remain incarcerated in the State of Illinois.
- The Cook County Board of Commissioners recommends to the legislature of the State of Illinois and the Congress of the United States the passage of legislation explicitly proscribing the crime of torture as defined by Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment and provide that there be no statute of limitations for this crime.¹⁷⁰

During the City Council proceedings, numerous Council members, including Daley stalwarts Ed Burke, the longtime powerful Chairman of the Finance Committee, and Ike Carrothers, the chairman of the Police and Fire Committee, made strong statements condemning the pattern and practice of torture under Burge as “embarrass[ing],”¹⁷¹ “heinous crimes,”¹⁷² “scurrilous,”¹⁷³ “atrocities,”¹⁷⁴ the “worst [disgrace]” in the history of the Chicago Police Department,¹⁷⁵ and akin to the torture at Abu Ghraib.¹⁷⁶ Another Daley Alderman, Tom Allen, who had previously served as a Cook County Assistant Public Defender, summed up the professed sentiment of the Council:

This was a serial torture operation that ran out of Area 2
The pattern was there. Everybody knew what was going on
Now, everybody in this room, everybody in this building, everybody in the police department, everybody in the State’s Attor-

¹⁷⁰ COOK CNTY BD. OF COMM’RS RES. 07-R-288-290 (July 10, 2007). The Board had requested that Special Prosecutors Egan and Boyle appear at the hearing, and when they refused to do so, it passed an additional Resolution that called for the County to discontinue any future payments to the Special Prosecutors’ Office. COOK CNTY BD. OF COMM’RS RES. 07-R-342 (Sept. 6, 2007).

¹⁷¹ Transcript of Proceedings from Chicago City Council Committee on Police and Fire, Statement of Alderman Edward Burke (July 19, 2007).

¹⁷² Transcript of Proceedings from Chicago City Council Committee on Police and Fire, Discussion of Special State Attorney’s Findings at 48–49 (July 24, 2007) (statement of Alderman Joe Moore).

¹⁷³ *Id.* at 33–34 (statement of Alderman Tom Allen).

¹⁷⁴ *Id.* at 34–35 (statement of Alderman Isaac Carrothers).

¹⁷⁵ *Id.* at 43–44 (statement of Alderman Ed Smith).

¹⁷⁶ *Id.* at 104 (statement of Alderman Sandi Jackson).

ney's Office, you would like to get this anvil of Jon Burge off our neck and I think that there are creative ways to do that.¹⁷⁷

XVIII. THE PROSECUTION OF JON BURGE

In the wake of the hearings, several aldermen delivered a letter to the U.S. Attorney demanding that Burge be prosecuted for perjury.¹⁷⁸ Only days later, in response to the building public and political pressure, U.S. Attorney Patrick Fitzgerald announced that his office was investigating Burge and his men,¹⁷⁹ and in October 2008 Fitzgerald announced that Burge had been arrested on a three-count indictment alleging perjury and obstruction of justice.¹⁸⁰ The indictment was based on the allegedly false sworn statements he made nearly five years earlier in his *Hobley* interrogatory answers.

In late May 2010, Burge went on trial before a packed courtroom and a federal jury comprised of eleven whites and one African American.¹⁸¹ Among the key witnesses against Burge were three of his victims—Anthony Holmes, Shadeed Mu'min, and Melvin Jones; the prior testimony of Andrew Wilson, who had died in the penitentiary in November of 2007, was read to the jury.¹⁸² Former Area 2 detective Michael McDermott, who had been granted immunity from prosecution, was a reluctant witness for the government, and when he tried to equivocate, portions of his grand-jury testimony, in which he admitted to seeing Burge torture Mu'min by placing a piece of plastic over his face, was read to the jury as impeachment.¹⁸³ Two of the African-American detectives who had given statements in the civil cases also testified for the prosecution. Burge took the stand in his defense and denied everything, but his fellow officers all declared their intention to invoke the Fifth Amendment and were therefore not called as defense witnesses.¹⁸⁴

¹⁷⁷ *Id.* at 37, 40 (statements of Alderman Tom Allen).

¹⁷⁸ Monique Garcia, *Aldermen Call for Federal Prosecution of Burge*, CHI. TRIB., Sept. 20, 2007.

¹⁷⁹ U.S. Attorney, *FBI Probing Allegations of Police Torture*, CHI. SUN-TIMES, Sept. 27, 2007.

¹⁸⁰ Steve Mills & Jeff Coen, *Feds Catch Up With Burge*, CHI. TRIB., Oct. 22, 2008; G. Flint Taylor, *Torture Ringleader Indicted*, 9 POLICE MISCONDUCT & CIVIL RIGHTS LAW REPORTER 7, Jan.–Feb. 2009, at 1.

¹⁸¹ G. Flint Taylor, *Chicago Police Commander Convicted of Lying About Torture*, 9 POLICE MISCONDUCT & CIVIL RIGHTS LAW REPORTER 17, Sept.–Oct. 2010.

¹⁸² *Id.*

¹⁸³ *Id.*; Rummana Hussain, *Burge Cop's Story Changes*, CHI. SUN-TIMES, June 15, 2010.

¹⁸⁴ John Conroy, *Burge Trial: Former Prosecutor and Seven Detectives to Take the Fifth*, WBEZ CHI. PUB. RADIO (June 4, 2010), <http://www.wbez.org/jconroy/2010/06/burge-trial-former-police-chief-wants-to-take-the-fifth/26215>; John Conroy, *Burge Trial:*

The jury retired to deliberate in late June 2010, 37 years after Burge tortured Anthony Holmes. While the jury was out, Burge, still unrepentant, allegedly asked a courtroom observer whether he thought the jury would “believe that bunch of niggers?”¹⁸⁵ The next day the jury brought back its verdict of guilty on all three counts.

In January 2011, trial judge Joan Lefkow conducted a two-day sentencing hearing, at which 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 their importance to Chicago’s African-American community.¹⁸⁶ The judge then sentenced Burge to four-and-a-half years in the federal penitentiary, finding that she, like the jury, did not believe Burge when he denied torturing suspects; that certain victims of his torture were “terrified” and had to leave the City; that there was a “mountain of evidence” that supported the testimony of the torture survivor witnesses; that she inferred that coerced confessions under Burge were “widespread,” and thereby “defiled” and “irreparably” “undermined” the justice system; and that Burge committed perjury to avoid “exposing [his] long history of misconduct, undermining [his] long history of denial that these events occurred.”¹⁸⁷ The judge further found that “too many times I have seen officers sit in the witness box . . . and give implausible [testimony] to defend themselves or a fellow officer against accusations of wrongdoing;” she decried the “dismal failure of leadership in the [Chicago Police] Department” and the long time failure to act by “others, such as the United States Attorney and the State’s Attorney.”¹⁸⁸ In March 2011, Burge reported to Butner Federal Penitentiary in North Carolina to begin serving his sentence.¹⁸⁹

Former Police Chief Wants to Take the Fifth, WBEZ CHI. PUB. RADIO, (June 15, 2010), <http://www.wbez.org/jconroy/2010/06/burge-trial-former-police-chief-wants-to-take-the-fifth/26215>.

¹⁸⁵ G. Flint Taylor, *Racism, Torture and Impunity in Chicago*, NATION, March 11-18, 2013, at 2.

¹⁸⁶ Transcript of Testimony of Professor Adam Green at 131–32, *United States v. Burge*, No. 08 CR 846, 2011 WL 13471 (N.D. Ill. July 1, 2011), available at <http://peopleslawoffice.com/wp-content/uploads/2012/02/1.20.11.Testimony-of-Adam-Green-in-US-v.-Burge.pdf>; see also G. Flint Taylor, *Judge Sentences Chicago Police Commander Jon Burge in Torture Case*, 10 POLICE MISCONDUCT & CIVIL RIGHTS LAW REPORTER 2, Mar.–Apr. 2011.

¹⁸⁷ Sentencing Transcript at 4–8, 10, *United States v. Burge*, No. 08 CR 846, 2011 WL 13471 (N.D. Ill. Jan. 21, 2011).

¹⁸⁸ *Id.*

¹⁸⁹ *As Burge Heads to Prison, Torture Questions Linger*, CHI. TRIB., March 15, 2011. In February of 2014 the Department of Justice informed some of Burge’s victims that he

XIX. MORE EXONERATIONS AND LAWSUITS

Since Burge's indictment in 2008, nine more African-American men have been released from prison on the basis that inculpatory statements were tortured from them or from witnesses by Burge and his men as part of Burge's pattern and practice of torture.¹⁹⁰ While the State dismissed several of the cases without a hearing, in several others judges ordered new trials after conducting evidentiary hearings before the State decided to dismiss the cases. Five of the men—Michael Tillman, Ronald Kitchen, Marvin Reeves, Eric Caine, and Alton Logan—received certificates of innocence pursuant to chapter 735, section 2-702 of the Illinois Compiled Statutes from the Cook County courts after their cases were dismissed, while two of the men were released after they accepted plea deals.¹⁹¹ In one case—that of Stanley Wrice—the State appealed the grant of an evidentiary hearing all the way to the Illinois Supreme Court.¹⁹²

XX. THE STANLEY WRICE CASE

Stanley Wrice was tortured by Burge confederates John Byrne and Peter Dignan in September 1982, and he gave what he has always maintained was a false confession to a violent rape that he did not commit. After Special Prosecutors Egan and Boyle issued their Report in 2006, Wrice pursued a successive post-conviction petition in which he alleged that the findings in the Report about Burge's midnight crew constituted newly discovered evidence. The trial judge, a former assistant state's attorney under Daley, dismissed the petition, but the Illinois Appellate Court reversed and remanded, finding that the Report and its findings of "widespread systematic torture of prisoners at Area 2" provided the basis for a new evidentiary hearing.¹⁹³ Special Prosecutor Stuart Nudelman, a former Cook County Judge who had been appointed in 2009 by

had been approved for release to a halfway house in Tampa, Florida, starting on October 2, 2014. Mills, Steve, *Burge to move to halfway house in fall*, Chi. Trib. Feb. 23, 2014.

¹⁹⁰ G. Flint Taylor, *supra* note 117, at 1; Post-Conviction Orders, *People v. Caine*, No. 86 CR 6091 (02) (Cir. Ct. Cook County Jan. 15, 2011 & March 16, 2011); Order from Petitioner's Appeal, *People v. Cortez Brown*, 953 N.E.2d 81 (Ill. App. Ct. 2007) (No. 1-05-0928); Transcript of Court's Oral Order, *People v. Cortez Brown*, (Cir. Ct. Cook County May 22, 2009); Transcript of Court's Order, *People v. Wrice*, No. 82 C 8655 (03) (Cir. Ct. Cook County Dec. 10, 2013); Post-Conviction Order, *People v. Andrews*, Nos. 83 CR 4978 and 83 CR 4979 (Cir. Ct. Cook County Aug. 14, 2007).

¹⁹¹ 735 ILL. COMP. STAT. ANN. 5/2-702 (West 2014).

¹⁹² See *People v. Wrice*, 940 N.E.2d 102, 108–10 (Ill. App. Ct. 2010); *People v. Wrice*, 962 N.E.2d 934, 952–53 (Ill. 2012).

¹⁹³ *People v. Wrice*, 940 N.E.2d 102, 108–10 (Ill. App. Ct. 2010).

Judge Biebel to replace the Attorney General's Office in Burge related post-conviction cases,¹⁹⁴ appealed the case to the Illinois Supreme Court on the grounds that admission of Wrice's confession at trial, even if it were the product of torture, was harmless error. The Supreme Court, in a landmark decision, rejected this argument in no uncertain terms, finding that

the police misconduct alleged in this case—beatings perpetrated by two police officers [Byrne and Dignan] who figured prominently in the systematic abuse and torture of prisoners at Area 2 police headquarters . . . constitutes an egregious violation of an underlying principle of our criminal justice system[.]¹⁹⁵

The court therefore held that the harmless-error rule did not apply to “coerced confessions . . . such as the one now before us, involving alleged police brutality and torture.”¹⁹⁶

On remand, the trial judge recused herself, because of her connection to unnamed witnesses in the case, witnesses who were thought to be the trial prosecutor and former State's Attorney Daley. The case was then sent to Judge Richard Walsh, who was randomly selected from a list of judges who had no connection to the State's Attorney's Office during Daley's tenure there. In December 2013, Judge Walsh vacated Wrice's conviction and ordered a new trial after an evidentiary hearing at which both Dignan and Byrne asserted their Fifth Amendment privilege against self-incrimination and refused to answer any questions concerning their torture and abuse of Wrice.¹⁹⁷ Concluding that Wrice's statement was coerced and that his rights under *Brady v. Maryland*¹⁹⁸ were violated, Judge Walsh found that there was “no doubt” that detectives were torturing suspects at Area 2, that it was un rebutted that Dignan and Byrne tortured Wrice, and that Byrne and Dignan committed perjury at Wrice's trial when they denied that they tortured him and witness Bobby Joe Williams.¹⁹⁹ On December 12, 2013, the Special Prosecutor finally gave up his vindictive crusade and dismissed the charges against Wrice.

¹⁹⁴ In his order, he rejected the argument that the State's Attorney's conflict was cured by Richard Devine's retirement and his replacement by Anita Alvarez. See Memorandum Opinion and Order, *People v. Smith*, 83 C 769 (Cir. Ct. Cook County Apr. 8, 2009).

¹⁹⁵ *People v. Wrice*, 962 N.E.2d 934, 952–53 (Ill. 2012)

¹⁹⁶ *Id.* at 953.

¹⁹⁷ Transcript of Court's Order at 2–3, *People v. Wrice*, No. 82 C 8655 (03) (Cir. Ct. Cook County Dec. 10, 2013).

¹⁹⁸ 373 U.S. 83 (1963).

¹⁹⁹ Transcript of Court's Order, *supra* note 197, at 2–3.

XXI. THE CANNON CIVIL SUIT

After his criminal case was dismissed in 2004, Darrell Cannon filed a torture and wrongful conviction lawsuit under 42 U.S.C. §§ 1983 and 1985. Represented by lawyers from the People's Law Office and MacArthur Justice Center, his complaint was patterned after the policy and practice complaints those lawyers had filed in the *Orange* and *Patterson* cases. However, unlike in those cases, Cannon faced a significant obstacle—in 1986, while ensconced in the bowels of the Illinois prison system, Cannon had filed a handwritten *pro se* damages complaint alleging that he was tortured by Byrne and Dignan, and two years later, before the newly discovered evidence of torture had begun to surface, Cannon, on the advice of his court-appointed lawyer, reluctantly accepted the City of Chicago's offer of a nuisance value settlement of \$3,000, of which he netted \$1,247, and signed a broadly worded release that included all claims related to his torture that might arise in the future.²⁰⁰

The City and the police defendants moved to dismiss Cannon's second suit, arguing that the 1988 settlement agreement barred Cannon from pursuing further compensation against any and all City officials on all of his newly pleaded claims. In 2006, the trial judge, Amy St. Eve, rejected this argument, holding, in conformance with the Seventh Circuit Court of Appeals' landmark decision in *Bell v. Milwaukee*,²⁰¹ that the massive conspiracy to cover up the torture scandal constituted a fraud by the police defendants and the City which thereby rendered the 1988 settlement a nullity.²⁰²

At the 2007 Chicago City Council hearings on the Burge torture scandal, a special emphasis was placed on ending the City-financed defense of Burge in the five then-pending civil damages cases, which up to that point totaled more than \$10 million. Several council members and U.S. Congressman Danny Davis publicly called on Mayor Daley and the City's legal department to settle all of the outstanding torture cases, including Cannon's.²⁰³ Within

²⁰⁰ Cannon v. Burge, No. 05 C 2192, 2006 WL 273544, at *10–11 (N.D. Ill. Feb. 2, 2006); G. Flint Taylor, *The Torture of Darrell Cannon: A Case that the City of Chicago Cannot Win*, HUFFINGTON POST (Aug. 10, 2012, 12:14 PM), http://www.huffingtonpost.com/g-flint-taylor/darrell-cannon-case_b_1762150.html.

²⁰¹ 746 F.2d. 1205 (7th Cir. 1984). *Bell* was an extraordinary police killing case where the court voided another unconscionably small settlement after an extensive police cover up was exposed by the partner of the police shooter twenty years after the shooting.

²⁰² Cannon, 2006 WL 273544, at *10–11.

²⁰³ Transcript of Proceedings from Chicago City Council Committee on Police and Fire, Statement of Alderman Bob Fioretti at 95, 100–01 (July 24, 2007); *id.* at 104

months, the City settled four of the five cases for a total of \$19.8 million, but refused to offer a nickel to Cannon, arguing that he was not entitled to a second bite of the apple. Instead of settling, the City poured \$1.8 million in legal fees into further contesting Cannon's case. In 2011 Judge St. Eve reversed her field and granted the City's motion for summary judgment on the question of whether the 1988 settlement precluded Cannon's new suit.²⁰⁴ In so doing, the judge deemed the cover-up irrelevant to the issue of fraud because Cannon knew he had been tortured and therefore, in her view, was not deceived.²⁰⁵

Cannon appealed the decision to the Seventh Circuit Court of Appeals. Relying in large part on *Bell*, the appeal presented the fundamental question of whether Burge, Byrne, and Dignan, their now notorious midnight crew, and the entire City power structure could utilize their wholesale cover-up of the worst police scandal in the history of the City of Chicago to deprive a torture victim of his fair day in court and his right to reasonable compensation.

In January of 2013, a three-judge panel of the Seventh Circuit Court of Appeals heard arguments in the case. Led by Judge Ilana Rovner, the Court repeatedly excoriated the City for its position in the case. Addressing the City's lawyer, Judge Rovner first stated:

And before you even introduce yourself, I want to start you off because it seems to me that the City has misread *Bell*. In both *Bell* and this case the determinative fact is not what the Plaintiffs knew but what the Plaintiffs could not prove because of the cover-up. In each case the plaintiffs or the plaintiff's surviving representative knew the officers engaged in wrongful conduct and in each case the extensive cover-ups prevented them from proving it.²⁰⁶

After the City's lawyer offered a response, Judge Rovner continued her pointed inquiry:

Look, if a defendant destroys evidence of wrongdoing and the plaintiff knows that the defendant destroyed that evidence, does that knowledge preclude the plaintiff from later claiming fraud in the inducement of a settlement? If so, does that mean that the more successfully you lie, you cheat, you commit fraud, in litigation, the greater your reward for forcing a small settle-

(statement of Alderman Sandi Jackson); *id.* at 60–61 (statement of former Alderman and Congressman Danny Davis).

²⁰⁴ Cannon v. Burge, 05 C 2192, 2011 WL 4361529, at *31 (N.D. Ill. Sept. 19, 2011).

²⁰⁵ *Id.*

²⁰⁶ Oral Argument at 15:44–16:24, Cannon v. Burge, 752 F.3d 1079 (7th Cir. 2014) (No. 12-1529), *available at* http://media.ca7.uscourts.gov/sound/2013/sp.12-1529.12-1529_01_22_2013.mp3.

ment? I do not, I cannot see how this is different. I try—I cannot see how this is different.²⁰⁷

Judge Rovner then rebutted the City lawyer’s assertion that the police defendants simply denied that they tortured Cannon, stating that “they didn’t just deny, they lied, they cheated, they committed fraud, they committed cover-ups”²⁰⁸

Calling the City’s “no fraud” argument “unavailing” . . . which she made “to be kind,” Judge Rovner summarized the facts in the record:

Here are the facts on summary judgment. These officers take a man with a prior murder conviction. Then they lie, then they torture him into making a statement that leads to a second murder conviction, then they lie about it, then they destroy evidence, then they engage in this incredibly lengthy cover-up with other city officials. You’ve got to help me. [On] [w]hat planet does he have a meaningful redress in the courts under those circumstances? I mean, of course he was forced to settle unfavorably because the officers and perhaps the City have made it virtually impossible for him to prove his case. You would have us enforce a settlement procured by defendants who so rigged the deck that no Plaintiff could have proven a legitimate claim and that to me seems to be the bottom line here.²⁰⁹

Judge Rovner then dismantled the City’s argument that Cannon’s lawyer was required to ask the defendants during his initial case if they had tortured other suspects:

Judge Rovner: That astonishes me, that argument because, in other words, he is supposed to have asked in discovery, “By the way, have these officers tortured anyone else? Is the City helping these officers cover-up other criminal acts?” Was he obliged to ask them if they were committing additional criminal acts? How do you suppose they would have answered?

City’s Lawyer: Your honor, I don’t know how they would have answered. . . .

Judge Rovner: “Yes, yes we are criminals?” Of course you know.²¹⁰

Judge Sarah Barker, sitting by designation from the Southern District of Indiana, then suggested that “where it’s completely futile, because of corruption basically, you’ve deprived him of access to the courts, haven’t you?”²¹¹ Judge Rovner then returned to the

²⁰⁷ *Id.* at 17:33–18:08.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 18:56–20:10.

²¹⁰ *Id.* at 20:34–21:05.

²¹¹ *Id.* at 21:36–21:48.

City's argument that Cannon should have further questioned the police conspirators:

Judge Rovner: So why is Burge in prison right now? Why, bottom line, why do you think he is in prison right now? What was it that put him in prison right now?

City's Lawyer: He was convicted of committing perjury for denying acts of torture, yes.

Judge Rovner: Exactly.²¹²

Judge Rovner then addressed the question of the settlement's unconscionability:

[A]t the time he settled, there was no way for him to even begin to prove his case for torture, much less prove the cover-up. He was, you know, he's in prison for murder, based on the confession that he now alleges, and indeed alleged from the very beginning, was the result of torture, his bargaining position was absolutely non-existent in those circumstances, and it was non-existent because the Defendants obtained that condition through a confession that was given under torture and then covered up the torture, and that to me is the bottom line here.²¹³

Judge Rovner, calling it "a miracle" that the truth had come out, again underscored the symmetry between Cannon's case and *Bell* decision:

Under *Bell*, the Plaintiffs, it seems to me, have shown exactly what they need to show, and any other result would mean that defendants could engage in a decade-long cover-up with impunity. The plaintiffs might "know" in quotes that there's a cover-up, in the sense that they know that the police are lying, but that's a great distance from being able to prove that that's the case . . . it seems to me that if the Defendant successfully suppressed the truth in an effort to force an unfavorable settlement out of the Plaintiff, they should not be rewarded for the success of their scheme when the truth eventually comes out.²¹⁴

As the City's argument concluded, Judge Barker returned to the paltry settlement given to Cannon in 1988:

[G]iven all the things you know now and all the corruption that came to light, and the facts that have settled out in a different way than anybody understood or would admit at the time the settlement agreement was entered into, don't you think that it's a thin reed on which you're attempting to hang your resolution

²¹² Oral Argument at 22:10-22:25, *Cannon v. Burge*, 752 F.3d 1079 (7th Cir. 2014) (No. 12-1529), available at http://media.ca7.uscourts.gov/sound/2013/sp.12-1529.12-1529_01_22_2013.mp3.

²¹³ *Id.* at 22:36-23:10.

²¹⁴ *Id.* at 23:32-24:23, 25:09-25:21.

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to say, given all of that, \$3,000 is a fair settlement . . . ?²¹⁵

Sixteen months later, in a stunning reversal from its position at oral argument, the Seventh Circuit panel, in a lengthy opinion authored by Judge Rovner, affirmed the District Court's grant of summary judgment. Judge Rovner set the tone for the panel's decision in her opening paragraph. Relegating to a footnote the fact that Burge, who was the lead defendant in the case, stood accused of torture by more than 100 African-American men, and was in the penitentiary for committing perjury and obstruction of justice, she wrote:

This appeal casts a harsh light on some of the darkest corners of life in Chicago. The plaintiff, at the time of the events giving rise to this suit, was a general in the El Rukn street gang, out on parole for a murder conviction, when he became embroiled in a second murder. Among the defendants are several disgraced police officers, including the infamous Jon Burge, a man whose name evokes shame and disgust in the City of Chicago.²¹⁶

The panel then proceeded to reject, one by one, all of the arguments that Judge Rovner and her fellow panel members had previously embraced. The panel held that Cannon's wrongful conviction claim, which did not arise, under *Heck v. Humphrey*,²¹⁷ until his criminal case was dismissed in 2004, was also covered by the 1988 release,²¹⁸ and refused to find that the settlement was the product of fraud,²¹⁹ despite what Judge Rovner called, at oral argument, an "extensive criminal cover-up" that made it "virtually impossible" for Cannon to prove his case.²²⁰ Repeatedly asserting that Cannon and his lawyer did not pursue the pattern-and-practice evidence before he settled, while minimizing the cover-up and the role of high-ranking City officials in it, and reducing the decades of perjury and destruction of evidence by the named defendants to a "he said, they said controversy,"²²¹ the panel distinguished *Bell*, likening Cannon's case to two previously decided garden-variety po-

²¹⁵ *Id.* at 29:08–29:34

²¹⁶ *Cannon v. Burge*, 752 F.3d 1079 at 1081 (7th Cir. 2014).

²¹⁷ 512 U.S. 474, 486–90 (1994). *Heck* held that a 42 U.S.C. §1983 claim for wrongful conviction is not ripe until and unless the plaintiff is exonerated from his conviction.

²¹⁸ *Cannon*, 752 F. 3d at 1083–84.

²¹⁹ *Id.* at 1085.

²²⁰ Oral Argument at 24:5–25:10, *Cannon v. Burge*, 752 F.3d 1079 (7th Cir. 2014) (No. 12-1529), available at http://media.ca7.uscourts.gov/sound/2013/sp.12-1529.12-1529_01_22_2013.mp3.

²²¹ *Cannon*, 752 F. 3d 1079 at 1086.

lice misconduct cases.²²² Emphasizing Cannon's criminal history and prior gang membership, the panel also refused to find that Cannon's \$1,267 settlement was unconscionable despite Cannon's unequal bargaining position at the time, and the multimillion-dollar settlements subsequently obtained by other similarly situated torture victims after the truth about the torture scandal came to light.²²³ In so doing, the panel stated that "what the officers did to Cannon was unconscionable," but the "settlement was not."²²⁴

In conclusion, the panel, in what Cannon's lawyers termed in their Motion for Rehearing as a "moral judgment masquerading as legal reasoning,"²²⁵ again blamed the victim, as it did throughout the opinion, and washed their hands of the matter:

This case casts a pall of shame over the City of Chicago: on the police officers who abused the position of power entrusted to them, on the initial trial judge who was later imprisoned for accepting bribes to fix murder cases, on City officials who turned a blind eye to (and in some instances actively concealed) the claims of scores of African-American men that they were being bizarrely and horrifically abused at Area 2, and last but not least on Cannon himself, who was a convicted murderer out on parole when, by his own admission, he drove a car for his fellow El Rukn general as a murder was committed in the back seat, and then helped dispose of the body and conceal the crime. It is difficult to conceive of a just outcome given the appalling actions by almost everyone associated with these events but the law regarding the finality of settlements governs the result.²²⁶

In Cannon's rehearing petition, his lawyers contrasted Cannon's situation with that of his torturers:

It is truly ironic, in light of the Panel's broad based condemnation, that Cannon, after serving 24 years in prison, has been a model citizen since his release more than seven years ago and has devoted his life to speaking to youth about the horrors of prison and to quelling gang violence as a CEASEFire supervisor while Burge is in prison; Byrne and Dignan barely escaped federal indictment for committing perjury in Cannon's case; and that all three of them, as well as their numerous confederates, all invoke the Fifth Amendment whenever they are asked under oath if they tortured any of the 118 now known victims of tor-

²²² *Id.* at 1085–87.

²²³ *Id.* at 1088.

²²⁴ Cannon v. Burge, 752 F.3d 1079 at 1104 (7th Cir. 2014).

²²⁵ Appellant Darrell Cannon's Petition for Rehearing En Banc at 12, Cannon v. Burge, No. 12-1529 (7th Cir. filed June 10, 2014).

²²⁶ Cannon v. Burge, 752 F.3d 1079, at 1104 (7th Cir. 2014).

ture. Additionally, while Cannon is told to be satisfied with \$1267 (minus appellate costs) for his trouble, Burge, Byrne and Dignan continue to collect their pensions - - - FOIA records obtained by the People's Law Office from the Police Pension Board document a total of over \$2 million to date - - - and they have reaped the benefit of legal representation by private lawyers whom the City has now paid more than \$1.8 million in this case alone.²²⁷

In conclusion, Cannon's lawyers re-emphasized the extraordinary nature of his case:

This is, without question, an exceptional case. It is demonstrated by its facts, as well as by the panel's opinion. Additionally, it is a case of national and international importance, as it is now the subject of Amnesty International's Global Campaign Against Torture, and implicates Article 14 of the Convention Against Torture (CAT) under which the United States is obligated to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible."²²⁸

On May 27, 2014, the full Seventh Circuit Court denied Cannon's petition without dissent.²²⁹

XXII. TILLMAN AND KITCHEN CIVIL SUITS: DALEY JOINED AS A DEFENDANT

Six of the nine men who were released since 2007 filed torture and wrongful conviction suits in federal court, pursuant to the U.S. Supreme Court decision in *Heck v. Humphrey*.²³⁰ Tillman and Kitchen, represented by the People's Law Office and MacArthur Justice Center lawyers, each brought wide-ranging conspiracy claims under 42 U.S.C. §§ 1983, 1985, and state law, which, for the first time, named Richard M. Daley as a conspiring defendant.²³¹

²²⁷ Appellant Darrell Cannon's Petition for Rehearing *En Banc* at 14 n.12, Cannon v. Burge, No. 12-1529 (7th Cir. filed June 10, 2014) (footnote omitted).

²²⁸ *Id.* at 14-15, quoting Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, art. 1, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 23 I.L.M. 1027 (1984). The United States signed the CAT on April 18, 1988, and ratified it on October 21, 1994, subject to certain declarations, reservations, and understandings.

²²⁹ Cannon v. Burge, No. 12-1529 (7th Cir. 2014) order of May 27, 2014.

²³⁰ Two of the men—Cortez Brown (also known as Victor Safford) and Eric Johnson—were barred from suing by the *Heck* decision because they pled guilty in exchange for substantial sentence reductions, while Stanley Wrice filed a petition for a certificate of innocence in May 2014.

²³¹ Their lawyers had previously attempted to amend the complaint in the Cannon

While the district court judge in *Kitchen* dismissed Daley,²³² Rebecca Pallmeyer, who was the district court judge in *Tillman*, denied Daley's motion to dismiss.²³³ In her lengthy opinion, Judge Pallmeyer summarized Tillman's allegations of torture and abuse:

[Burge detectives] Boffo and Dignan questioned Plaintiff while he was handcuffed to a wall, and Boffo struck Plaintiff on the head. At another point, [detective] Hines struck Plaintiff in the head and the stomach, causing him to vomit, and drove Plaintiff to a secluded location, forced Plaintiff to his knees, held a gun to his head, and threatened to kill him "like you killed that woman." . . . Hines struck Plaintiff on his back and head with a telephone book, causing his nose to bleed on his clothing and in the interrogation room, then forced Plaintiff to clean up the blood with paper towels. Defendant Boffo kicked Plaintiff in the leg, and [detectives] Boffo, Dignan, Hines, and Yucaitis used their thumbs to push against Plaintiff's ears, pushed his head back, and poured 7-Up into his nose. Plaintiff also alleges that Defendants Yucaitis and Dignan repeatedly subjected him to near-suffocation by placing a plastic bag over his head, and that Defendant Dignan hit Plaintiff on the leg with his flashlight and waved the flame from a cigarette lighter under his arm. During the course of this interrogation, Plaintiff was not allowed to speak with a family member or an attorney. Plaintiff ultimately agreed to cooperate, and Defendant Yucaitis later testified that Plaintiff made oral admissions concerning his involvement in the crime.²³⁴

With regard to Daley, Tillman alleged a course of conduct that began in the early stages of Daley's eight year term as State's Attorney of Cook County and continued throughout his twenty-year reign as Mayor. In summary, Tillman alleged that:

Former Mayor and State's Attorney Richard M. Daley and former Chicago Police Superintendent LeRoy Martin refused and failed to investigate a pattern of torture carried out at Area 2 prior to Plaintiff's arrest, proximately causing Plaintiff's torture and wrongful conviction. Plaintiff claims that Daley, Martin, former Chicago Police Superintendent Terry Hillard, former aide to the Chicago Police Superintendent, Thomas Needham, and

case to add a RICO claim that included Daley, but the amendment was rejected by the trial judge. *See Cannon v. Burge*, No. 05 C 2192, 2007 WL 2278265 (N.D. Ill. Aug. 8, 2007).

²³² *Kitchen v. Burge*, 781 F. Supp. 2d 721,735 (N.D. Ill. 2011).

²³³ *Tillman v. Burge*, 813 F. Supp. 2d 946, 968 (N.D. Ill. 2011).

²³⁴ *Id.* at 956; *see* KosWorks, *Michael Tillman: The Torture and Wrongful Conviction of an Innocent Man*, YOUTUBE (Nov. 7, 2011), <http://www.youtube.com/watch?v=SL8k67seaRA>.

former Office of Professional Standards Director Gayle Shines all conspired to suppress evidence of police torture that Plaintiff claims would have been exculpatory.²³⁵

The Court later further detailed the allegations against Daley: Plaintiff's Complaint includes allegations regarding the torture of other individuals in Area 2, including the high-profile case of Andrew Wilson. . . . Plaintiff alleges that the named Defendants in this case, along with others, engaged in this practice, failed to intervene to end it, and suppressed information regarding this extensive pattern of abuse. Plaintiff alleges that as Mayor and State's Attorney, Defendant Richard Daley had personal knowledge of the alleged abuses perpetrated by Burge and other Defendants at Area 2, Plaintiff asserts that, had Daley and Martin investigated the allegations of abuse at Area 2 prior to his arrest, he would not have been tortured and would not have been wrongfully convicted. Plaintiff further alleges that as a result of a conspiracy between Daley, Martin, Hillard, Needham, Shines and others to suppress information about torture at Area 2, "Plaintiff's wrongful prosecution was continued, his exoneration was delayed and his imprisonment lasted far longer than it otherwise would have." According to Plaintiff, between 1989 and 1992, Daley and Martin were given "additional actual notice that Burge was the leader of a group of Chicago detectives that systematically tortured and abused African American suspects" through an Amnesty International report and public hearings. Plaintiff alleges that in 1996, despite his knowledge that findings of torture and abuse had been made against Defendant Dignan, Daley promoted Dignan to lieutenant. Plaintiff also alleges that Daley, against the advice of his senior advisers, "personally insisted" throughout his tenure that the City of Chicago "continue to finance the defense of Burge, Byrne, Dignan, and other Area 2 detectives, despite his personal knowledge that Burge committed acts of torture."²³⁶

While the judge dismissed Daley from Tillman's § 1983 suppression of evidence claim, finding that his actions while State's Attorney were covered by prosecutorial immunity and his actions as mayor did not constitute suppression of evidence—and also excused him from Tillman's § 1983 coercive interrogation claim—she held that Tillman had sufficiently pleaded § 1983, § 1985, § 1986, and state-law conspiracies against all of the defendants, including Daley:

[Tillman's] allegations suggest that Plaintiff's torture was more

²³⁵ *Tillman*, 813 F. Supp. 2d at 953–54.

²³⁶ *Id.* at 958.

than just an isolated incident, and suggest, further, that the suppression of the truth about what occurred at Area 2 was the result of coordinated efforts that continued for some time. . . . As discussed above, the Defendant Officers are alleged to have participated directly in the torture, as did Burge; [Assistant State's Attorney] Frenzer allegedly did so as well, by attempting to take a statement when he knew the torture was ongoing; Martin and Daley are said to have undermined and obstructed findings of torture; Shines allegedly suppressed findings of torture; and Plaintiff claims that Needham and Hillard continued to suppress findings and undermine investigations into torture at Area 2 after they took office. Plaintiff has listed a litany of actions at Area 2 furthering and concealing the abuse that took place there . . . and has also provided specific allegations regarding acts of torture performed on this Plaintiff and on others. . . . These allegations are sufficient to allege a § 1983 conspiracy.²³⁷

Upholding the § 1985 and § 1986 conspiracies, the court determined that “[Tillman] has alleged that all or nearly all of the victims of the alleged conspiracy were members of the same class, and that racial epithets were commonly used during the course of this torture. Those allegations lend sufficient credence to Plaintiff's claims at the pleading stage.”²³⁸ Finally, the court also upheld Tillman's state-law conspiracy claim, restating the alleged conspiracy, and Daley's role in it, in broad and powerful terms:

Though he does not again outline the specifics of these actions in Count X, the allegations are the same—that Defendant Officers, Burge, and Frenzer participated in the torture itself and that Daley, Hillard, Martin, Needham, and Shines covered up and suppressed evidence of that pattern and practice of torture of which Plaintiff was a victim.²³⁹

XXIII. LEGISLATIVE INITIATIVES

In 2009, the Illinois Legislature created the Illinois Torture Inquiry and Relief Commission (TIRC)²⁴⁰ in response to demands from community groups and lawyers for the torture victims, and it continues to review more than 100 complaints filed by Illinois prisoners who allege torture and abuse. Under its mandate, it has remanded sixteen cases to the Cook County courts for evidentiary

²³⁷ *Id.* at 976.

²³⁸ *Id.* at 977–78.

²³⁹ *Id.* at 978.

²⁴⁰ See Illinois Torture Inquiry and Relief Commission Act, 775 ILL. COMP. STAT. ANN. 40/45 (West 2009).

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hearings,²⁴¹ and has done so despite recurring funding crises and political attacks orchestrated by Cook County State's Attorney Anita Alvarez, whose office continues to be disqualified from appearing in Burge-related cases.²⁴²

Local and national activists and lawyers also collaborated with Chicago Congressman Danny Davis in drafting and championing the Law Enforcement Torture Prevention Act of 2011, which would make police torture a federal crime without a statute of limitations.²⁴³ 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.²⁴⁴ Unfortunately, the bill has little chance of passing while the House of Representatives continues to be controlled by conservative Republicans.

Locally, 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, and the resolution, which was sponsored by Alderman Joe Moore, passed by a unanimous vote in January 2012.²⁴⁵ In October of 2013, Aldermen Joe Moreno and Howard Brookins, in response to an organizing campaign by the Chicago Torture Justice Memorials Project and lawyers from the People's Law Office, introduced a reparations ordinance that would require the city to administer financial reparations to all torture survivors who are unable to sue for financial compensation because the statute of limitations for such claims has expired; provide all torture survivors and their families with tuition-free education at City Colleges; create a center on the South Side of Chicago that would provide psychological counseling, health care services and vocational training to those affected by law

²⁴¹ *Ill. Torture Inquiry and Relief Commission Decisions*, TORTURE INQUIRY & RELIEF COMM'N, <http://www2.illinois.gov/itrc/Pages/TIRCDDecision.aspx> (last visited May 26, 2014).

²⁴² See G. Flint Taylor, *Unholy Alliance Seeks to Dismantle Illinois Torture Commission*, HUFFINGTON POST (October 16, 2013, 1:16 PM), http://www.huffingtonpost.com/g-flint-taylor/unholy-alliance-seeks-to_b_4103757.html.

²⁴³ Law Enforcement Torture Prevention Act of 2011, H.R. 3781, 112th Cong. § 250 (2012).

²⁴⁴ *Congressional Briefing on LEPTA*, PREVENT TORTURE: SUPPORT THE LAW ENFORCEMENT TORTURE PREVENTION ACT (LETPA) BLOG (Mar. 29, 2012), http://tortureprevention.blogspot.com/2012/03/congressional-briefing-on-letpa-1-17-12_29.html (featuring statements by Congressman Davis, torture survivor Darrell Cannon, National Police Accountability Project Executive Director Brigitt Keller, and People's Law Office attorney G. Flint Taylor).

²⁴⁵ "Torture Free" Chicago Resolution, ILL. COAL. AGAINST TORTURE (ICAT) (Jan. 18, 2012), <http://illinoiscat.org/torture-free-chicago-resolution/>.

enforcement torture and abuse; and require the Chicago Public Schools to teach about these cases. The ordinance also calls for public torture memorials and a formal apology from Chicago's leaders to those who were tortured and their communities.²⁴⁶

XXIV. BURGE CONVICTION AFFIRMED

In April 2013, a three-judge panel of the Seventh Circuit Court of Appeals upheld Burge's perjury and obstruction of justice conviction. The opinion was written by Judge Ann Williams, the only African-American judge in the history of the Seventh Circuit. Introducing the court's decision, Judge Williams wrote:

Former Chicago Police Commander Jon Burge presided over an interrogation regime where suspects were suffocated with plastic bags, electrocuted until they lost consciousness, held down against radiators, and had loaded guns pointed at their heads during rounds of Russian roulette. The use of this kind of torture was designed to inflict pain and instill fear while leaving minimal marks. When Burge was asked about these practices in civil interrogatories served on him years later, he lied and denied any knowledge of, or participation in, torture of suspects in police custody. But the jury heard overwhelming evidence to contradict that assertion and convicted Burge for obstruction of justice and perjury.²⁴⁷

Judge Williams further discussed the history of Burge and his confederates' pattern of torture:

For many years a cloud of suspicion loomed over the violent crimes section of the Area 2 precinct of the Chicago Police Department (CPD) located on Chicago's south side. Jon Burge joined the CPD in 1970 and rose to commanding officer of the violent crimes section in the 1980s, but his career was marked by accusations from over one hundred individuals who claimed that he and officers under his command tortured suspects in order to obtain confessions throughout the 1970s and 1980s. Burge was fired in 1993 after the Office of Professional Standards investigated the allegations, but he was not criminally charged. Years later the Circuit Court of Cook County appointed special prosecutors to investigate the allegations of torture, but due to statutes of limitation, prosecutors never brought

²⁴⁶ *Ordinance Seeks Reparations for Chicago Police Torture Survivors*, CHI. TORTURE JUSTICE MEMORIALS (n.d.), available at <http://chicagotorture.org/articles/ordinance-seeks-reparations-chicago-police-torture-survivors/> (last visited Sept. 15, 2014). As of October, 2014, a majority of the City Council members had signed on to the Ordinance, and it was awaiting a public hearing before the Council's Finance Committee.

²⁴⁷ *U.S. v. Burge*, 711 F.3d 803, 806 (7th Cir. 2013).

direct charges of police brutality against Burge. Eventually, the City of Chicago began to face a series of civil lawsuits from victims seeking damages for the abuse they endured.²⁴⁸

Judge Williams summarized the “horrific” evidence that the government introduced against Burge at trial:

At trial, the government called multiple witnesses to testify about the methods of torture and abuse used by Burge and others at Area 2 in order to establish that Burge lied when he answered the interrogatories in the Hopley case . . . [T]he witnesses at trial detailed a record of decades of abuse that is unquestionably horrific. The witnesses described how they were suffocated with plastic bags, electrocuted with homemade devices attached to their genitals, beaten, and had guns forced into their mouths during questioning. Burge denied all allegations of abuse, but other witnesses stated that he bragged in the 1980s about how suspects were beaten in order to extract confessions. Another witness testified that Burge told her that he did not care if those tortured were innocent or guilty, because as he saw it, every suspect had surely committed some other offense anyway.²⁴⁹

The court then went on to dismiss Burge’s assertions of trial and sentencing errors, which it summarized as follows:

Burge raises several challenges to his convictions on appeal, which we do not find persuasive because the evidence shows that he lied when he answered the interrogatories, his false statements impeded an official proceeding, and they were material to the outcome of the civil case. Overall, we conclude that no errors were committed by the court and Burge received a fair trial. Finally, Burge objects to the district court’s reference to a victim impact letter at his sentencing, but it is well established that hearsay is admissible at sentencing hearings, so we affirm.²⁵⁰

XXV. SETTLEMENTS IN THE CIVIL CASES

Since 2007, the amount of taxpayer money paid to private lawyers to defend Burge and his alleged co-conspirators, including Daley, in torture-related cases has more than doubled to over \$21 million.²⁵¹ In the *Tillman* and *Kitchen* cases, as the deposition of

²⁴⁸ *Id.* at 807.

²⁴⁹ *Id.* at 808.

²⁵⁰ *Id.* at 806.

²⁵¹ These numbers have been compiled by the People’s Law Office from figures obtained from the City through Freedom of Information Act requests and from other public information. See PEOPLE’S LAW OFFICE, SUMMARY OF DOCUMENTED CITY AND

Daley approached, settlements with the City totaling \$11.5 million were reached, and, as of September 2014, the City had paid out \$64.1 million in settlements in the torture cases.²⁵² When the amounts expended by the City to pay Burge's pension, by the county to pay Special Prosecutors and settlements against county prosecutors, and by the State to fund the Illinois Torture Inquiry and Relief Commission and to compensate wrongfully convicted torture victims under the Illinois Court of Claims Act²⁵³ are included, the total exceeds \$100 million.²⁵⁴ Factoring in the more than \$22 million paid to Burge's confederates in pension money over the years,²⁵⁵ and the money expended by the federal government to investigate and prosecute Burge, the ever-mounting total is estimated at \$125 million.

CONCLUSION

Over the decades since the Chicago police torture scandal first became known, much has been accomplished. Men have been freed from prison and death row, and many of them have been compensated for their torture and wrongful convictions; Burge, once a highly decorated police commander, has been fired and, much later, convicted and sent to prison to serve four-and-half years with fellow prisoner Bernie Madoff; a Torture Commission has been created, is reviewing many additional torture complaints, and has recommended hearings in a number of them; a special master has been appointed to search for additional imprisoned torture victims; Special Prosecutors Egan and Boyle reluctantly acknowledged that crimes were committed by Burge and his men; the role of former Chicago Mayor Richard M. Daley has been recognized by a federal judge; and Chicago Mayor Rahm Emanuel has offered a begrudging public apology for Burge's crimes.²⁵⁶ As significant as these victories, hard won by lawyers and activists, is the fact that the legal, political, and public perception of the allega-

COUNTY EXPENDITURES IN BURGE TORTURE SCANDAL (last updated Sept. 30, 2014) [hereinafter BURGE EXPENDITURES] (on file with author).

²⁵² *Id.*

²⁵³ 705 ILL. COMP. STAT. ANN. 505/1-29 (West 2014).

²⁵⁴ BURGE EXPENDITURES, *supra* note 251.

²⁵⁵ See PEOPLE'S LAW OFFICE, PENSIONS PAID TO AREA 2 AND 3 OFFICERS ACCUSED OF TORTURE UNDER JON BURGE (through SEPT. 2014) [hereinafter TORTURE PENSIONS] (on file with author).

²⁵⁶ See Fran Spielman & Tina Sfondeles, *Rahm 'Sorry' For Burge Crimes*, CHI. SUN-TIMES, Sept. 12, 2013; Flint Taylor, *Rahm Emanuel Apologizes for Police Torture. Now What?*, NATION (Sept. 18, 2013), <http://www.thenation.com/article/176247/rahm-emanuel-apologizes-police-torture-now-what>.

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tions of a pattern and practice of racially motivated police torture in Chicago has turned 180 degrees from a dismissive disbelief that was fueled by an all-encompassing official cover-up to an accepted historical reality that was placed by the United Nations in the same category as U.S. torture at Abu Ghraib and Guantanamo Bay, and commands front-page headlines in Chicago when the mayor offers an apology.

Nonetheless, much remains to be accomplished. Burge still receives his pension;²⁵⁷ somewhere between fifteen and forty Burge victims remain behind bars;²⁵⁸ many others, including Anthony Holmes and Darrell Cannon, have received embarrassingly little or no compensation; all of Burge's key operatives, particularly John Byrne and Peter Dignan, have escaped prosecution for their perjury and obstruction of justice;²⁵⁹ and a federal statute that would prevent such injustices languishes unpassed in the U.S. House of Representatives. This unfinished business looms before the lawyers and activists who have waged these battles over the decades, and must be completed before the City of Chicago can remove the stain of the police torture scandal from its collective conscience.

²⁵⁷ In a decision that further fanned community outrage, the Police Pension Board decided in a 4-4 vote that Burge could continue to collect his police pension despite his conviction. Illinois Attorney General Lisa Madigan challenged this decision by bringing suit in Cook County Chancery Court. The case was dismissed by the trial judge, the appellate court reversed, and the Illinois Supreme Court, in a four to three decision, reversed the Appellate Court, holding that Burge can continue to collect his pension, which has now reached the total of nearly \$700,000. *See* State of Illinois v. Burge, No. 11 CH 04366, 2011 WL 4073313 (Cir. Ct. Cook County Sept. 2, 2012) (Novak, J.); *rev'd sub nom.* People *ex rel.* Madigan v. Burge, 981 N.E. 2d 1058 (Ill. App. Ct. 2012); *rev'd*, 2014 IL 115635 (Ill. S. Ct. 2014). *See also* TORTURE PENSIONS, *supra* note 255.

²⁵⁸ In 2013, the People's Law Office and the MacArthur Justice Center filed a state class action case under the Post-Conviction Hearing Act, 725 ILL. COMP. STAT. ANN 5/122-1-8 (West 2014), that sought evidentiary hearings for a class of prisoners comprised of all Burge-related torture victims who remain behind bars. *See* Notice of Hearing and Class Action Petition, Plummer v. People, Nos. 84 CR 21451, 91 CR 10108 (Cir. Ct. Cook County Oct. 16, 2012). On March 12, 2014, Chief Judge Biebel dismissed the class action, but appointed a special master, Dean David Yellen of the Loyola Law School, "to identify all incarcerated individuals who have valid claims of coerced confessions at the hands of Commander Burge and those under his authority . . . and to present their names to this Court for the appointment of private *pro bono* counsel to assist them in litigating their individual claims under the Post Conviction Hearing Act." Plummer v. People, Nos. 84 CR 21451, 91 CR 10108 at 8 (Cir. Ct. Cook Cnty. Mar. 12, 2014).

²⁵⁹ *See* G. Flint Taylor, *A Slap in the Face of Torture Victims*, CHI. SUN-TIMES (Nov. 27, 2012), <http://www.suntimes.com/news/otherviews/16658057-452/a-slap-in-the-face-of-torture-victims.html#.U3-n95RdVIg>.

