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REPARATIONS WON: AN HISTORIC VICTORY IN THE STRUGGLE AGAINST CHICAGO POLICE TORTURE

By G. Flint Taylor[1]

The 20 year reign of police torture that was orchestrated by Commander Jon Burge and implicated former Mayor Richard M. Daley and a myriad of high ranking police and prosecutorial officials, has haunted the City of Chicago for decades. Finally, on May 6, 2015, in response to a movement that has spanned a generation, the Chicago City Council formally recognized this sordid history by passing historic legislation that provided reparations to the survivors of police torture in Chicago.

THE EARLY YEARS

In 2005, lawyers and activists, at the urging of noted Chicago civil rights attorney Standish Willis, turned to the Inter-American Commission for Human Rights (IACHR) and the United Nations Committee Against Torture in order to raise the issue of Chicago police torture to the international community as a human rights issue. Willis enlisted the National Conference of Black Lawyers (NCBL) and U.S. Congressman Danny Davis, and together with the Midwest Coalition for Human Rights, and lawyers from the People's Law Office, (PLO) presented testimony at a hearing before the IACHR[2] and raised the right to financial compensation and full rehabilitation for Chicago police torture

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survivors in a submission to the UN Committee Against Torture[3] (CAT). The next May, when Willis was unable make the trip to Geneva, Switzerland to address the CAT because of court obligations, PLO attorney Joey Mogul did so, and again raised these issues during her appearance before the Committee.

During 2006 and 2007, the people centered call for compensation and full rehabilitation for Chicago police torture survivors was further developed and advanced by attorney Willis, by Black People Against Police Torture, (BPAPT) a grassroots organization, and by NCBL, who demanded, as part of their campaign against the 2016 Olympics being held in Chicago, that Mayor Richard M. Daley and the City of Chicago make a formal apology to all Chicago police torture survivors and provide financial compensation and psychological services to them.[4] Olympic icon John Carlos lent his voice to the struggle against the Olympics,[5] and BPAPT leaders, including Willis, Pat Hill of the African American Police League, and NCBL lawyer Lawrence Kennon, conducted a series of Town Hall meetings to discuss and popularize these and a number of other related police torture issues.

It was during this time that Willis, who had previously played a prominent role in the struggle for reparations for slavery, conceived of the compelling idea that the broad based relief sought both locally and internationally by BPAPT and the antitorture movement be called reparations. BPAPT incorporated this relief into the Illinois Reparations for Police Torture Victims Act, which reflected BPAPT's twin concerns for the Burge victims still in jail, and for healing the long term trauma that torture inflicted on individuals and their families.[6] The Act called for the establishment of a Center For Torture Victims and Families which would provide psychological and psychiatric treatment and vocational assistance, as well as community education and political advocacy, and for the appointment of an Illinois Innocence Inquiry Commission to investigate and determine credible claims of factual innocence from torture victims.[7] These demands were later reasserted to the UN Committee on the Elimination of Racial Discrimination (CERD) in a shadow report and at a hearing which the CERD held in Chicago, and the call for a Commission was realized in 2009, when BPAPT, in combination with the active political sponsorship of Illinois State Senator Kwame Raoul, obtained passage of the Illinois Torture Inquiry and Relief Commission Act, which established a Commission to review claims of torture that arose under the command of Jon Burge.[8]

A MAYORAL APOLOGY?

In October of 2008 Jon Burge was indicted by a Federal Grand Jury in Chicago for lying about whether he tortured African American suspects with electric shock, suffocation, and other medieval techniques from 1972 to 1991. The indictment followed a $20 million settlement that was approved, in January of 2008, by the Chicago City Council and awarded to four African American men who were tortured into giving false confessions and spent decades on death row for crimes they did not commit. At the City Council session that January, from which Mayor Daley was conspicuously absent, African American Aldermen Howard Brookins and Leslie Hairston had offered an impromptu apology to the men. Veteran City Hall reporter Fran Spielman reported Brookins as saying that "this city still owes [an apology to] these people, who spent years in prison and some on Death Row, who were tortured in ways that put Abu Ghraib and Guantanamo Bay to shame. On behalf of the City Council and the corporation counsel, we apologize to all of you."[9]

Directly after Burge's indictment, Spielman gave

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Daley, who was a longtime participant in the torture scandal both as Cook County State's Attorney and as Mayor, an opportunity to apologize. Two years earlier, in response to the release of the Cook County Special Prosecutors' Report that found Burge and his men to have tortured numerous black suspects, an embattled Daley had offered to "apologize to anyone." This time, however, he waxed sarcastic and mocking in response:

> The best way is to say, "OK. I apologize to everybody [for] whatever happened to anybody in the city of Chicago. . . . . So, I apologize to everybody. Whatever happened to them in the city of Chicago in the past, I apologize. I didn't do it, but somebody else did it. Your editorial was bad. I apologize. Your article about the mayor, I apologize. I need an apology from you because you wrote a bad editorial.[10]

Laughing, Daley continued "You do that, and everybody feels good. Fine. But I was not the mayor. I was not the police chief. I did not promote him. You know that. But you've never written that, and you're afraid to. I understand."[11]

I challenged Daley to make a sincere apology, stating that "it is disgraceful and remarkably disrespectful to say that when he's asked to make good on an apology to the victims of the most heinous kind of police abuse and torture in the history of Chicago, particularly when he and his first assistant, Richard Devine, were responsible over 25 years ago for not taking Burge off the street and prosecuting him. . . . Daley has repeatedly sided with Burge and against the victims of torture in scores of cases."[12]

THE MOVEMENT FOR REPARATIONS GATHERS MOMENTUM

In late June of 2010, Burge was convicted of perjury and obstruction of justice, in significant part on the testimony of Anthony Holmes and Melvin Jones, two men who were brutally electric shocked by Burge himself. However, neither of these men, like scores of their fellow survivors, had received any compensation, because they had never been officially exonerated for their alleged crimes and the statute of limitations had long since run out on their claims of torture. Burge's conviction provided a platform to continue the call for restorative justice, and Holmes, Jones, their lawyers, along with Alice Kim, a veteran activist who was working with the Illinois Coalition Against Torture, seized the opportunity to raise the issue of compensation and lack of psychological counseling for all torture survivors on a wide ranging public stage, from Reverend Jesse Jackson's Rainbow Push to Chicago Public Radio, and the demand was later included in a petition that urged a sentence for Burge that was commensurate with his underlying crimes and accounted for his refusal to accept responsibility for his serialized torture.

In late 2010, Mayor Daley announced that he would not run for re-election, and in January of 2011, Jon Burge was sentenced to 4 1/2 years in Federal Prison. At the sentencing hearing Anthony Holmes spoke movingly through tears, saying:

> What I wanted to ask Burge. . . . Why did you do this? Why would you take a statement you knew was not true? You were supposed to be the law. He laughed while he was torturing me.[13]

Adam Green, an Associate Professor of History at the University of Chicago, also testified. Green emphasized the adverse impact that the torture scandal had imposed on Chicago's African American community, and how a fair sentence would help to mitigate the untold damage that it had done.[14]

Following the imposition of the sentence that many felt was far too short, we took the opportunity to again publicly raise the apology issue, telling the press that "the new Mayor will have to apologize to these victims of torture."[15] The new Mayor turned out to be Rahm Emanuel, who distanced himself from Daley and capitalized on his relationship with President Obama to win easily that spring.

On the heels of Burge's conviction, a group of artists and educators joined forces with activists and attorney Joey Mogul to form an organization that would become known as the Chicago Torture Justice Memorials (CTJM). Devoted to restorative justice, CTJM's first project was to call on artists and justice seekers of all kinds to propose how they would memorialize the Chicago Police torture cases and the struggle for justice.[16] At the June 2011 public launch of the project, the group that would later be instrumental in obtaining reparations from the City publicly announced its intention "to honor the survivors of torture, their family members, and the African American communities affected by the torture," and put out a public call for people to submit proposals for the memorials.

A MAYORAL APOLOGY? PART 2

Two months later, the continuing police torture scandal landed squarely in Emanuel's lap after a Federal judge ruled that Daley was a proper defendant in exonerated torture survivor Michael Tillman's civil damages suit. On the heels of the ruling, Daley was subpoenaed to give sworn deposition testimony. Fran Spielman led her story on the Daley ruling in the *Sun Times* with "Mayor Rahm Emanuel walked a political tightrope Wednesday on the explosive police torture allegations that continue to surround convicted former Chicago Police Commander Jon Burge."[17] Emanuel refused to comment on Daley other than to say that the City would pay for his lawyers as they had done for Burge for the previous 23 years. We responded, accusing Emanuel of adopting the same head-in-the-sand line that the City did under Daley while further publicly contending that:

> He doesn't need to do that. He's not involved in this. He should bring a fresh eye to it. Not only should he resolve these cases so taxpayers can compensate the victims rather than the torturers. He should apologize to the African American community and to the victims for this pattern of torture.[18]

A few days later, Emanuel told Spielman in another statement that commanded a front page headline, that it was "time to end" the torture cases, and that he was "working toward" settling the outstanding cases. He refused Spielman's invitation to apologize and added:

> I answered one question. Some people say, "This pulls Rahm into it." . . . That's wrong. . . . This is like the most ridiculous thing I've ever heard. This is the law. [Daley's] allowed to have the cost of his legal defense . . . That's it. I'm not part of it.[19]

In January of 2012, the Human Relations Committee of the Chicago City Council held a hearing on a resolution proposed by the Illinois Coalition Against Torture that declared Chicago to be a "torture free zone." The subcommittee was chaired by Alderman Joe Moore, who would later become a strong supporter of reparations. The Resolution, which was backed by a petition signed by 3500 persons, was thought by many to be symbolic only, and several witnesses who testified at the hearing, including Chilean torture survivor and human rights activist Mario Venegas, raised the issues of financial compensation, an official apology, and funding for the treatment of all police torture survivors.[20] With little fanfare, the full City Council, in a 45-0 vote, subsequently passed the Resolution.

The issue of an apology again hit the local headlines in the summer of 2012, as the Tillman case was settled with the City, giving Daley another pass when it came to his being required to detail his role in the torture scandal under oath. In a Sun Times Op Ed piece, in the media firestorm that accompanied the settlement, and in a subsequent editorial, the demand for an official apology was again raised.[21] Emanuel's response continued to be no. As reported in the *Chicago Tribune*, Emanuel told reporters when asked why he didn't see fit to apologize:

> I am focused on the future of the city, not just about the past. I wanted to settle this, which is what we have done. I also wanted to see this dark chapter in the city's history brought to a close. I think we are achieving it. And to learn the lessons from this moment so we can build a future for the city.[22]

The *Tribune* also published a cutting response that called it an a missed opportunity for Emanuel to show that there had been a "true changing of the guard," and chastised Emanuel for being "tone-deaf to the African American community not to understand that that community still feels very strongly that justice has not been done, and that the city still stands on the wrong side of the issue."[23]

In the fall of 2012 CTJM, which had been conducting roundtables, workshops, readings, performances, and other educative events, opened an Exhibit at the Sullivan Galleries in Chicago entitled "Opening the Black Box, the Charge is Torture," featuring 75 torture related exhibits which were submitted by artists, educators, architects, and activists from across the world as proposals to memorialize the truth about Chicago police torture.[24] Later in the year, CTJM continued to present an ambitious series of cultural and educative events, including a "film festival against torture." At this important stage of the movement for reparations, CTJM cofounder Joey Mogul, drawing on the ideas advanced during the previous several years by Stan Willis, the Midwest Coalition for Human Rights, BPAPT and other reparations pioneers, input from the torture survivors and community members, and relevant precepts of international law, drafted the original Reparations Ordinance.

In June of 2013, in recognition of Torture Awareness Month, the issue of torture reparations was raised in a piece published in the *Huffington Post*:

> What if Mayor Emanuel, on behalf of the City and its Police Department, and Cook County Board President Toni Preckwinkle, on behalf of the County and the State's Attorneys' Office, stood in front of the old Area 2 "House of Screams" at 91st and Cottage Grove and issued a joint apology to all of Chicago's citizens, together with a pledge to create a reparations fund to compensate those still suffering survivors of Chicago police torture who were cheated out of lawsuits by the cover-up of the scandal. This fund could also be used to provide treatment for the psychological damage inflicted and for job training. Perhaps Burge and Daley's publicly funded lawyers could be "persuaded" by the City and its taxpayers to return a healthy portion of their ill-gotten gains to help to fund this effort. Then and only then will the true healing begin.[25]

A MAYORAL APOLOGY

That fall, in September of 2013, the City settled two more torture cases brought on behalf of exonerated torture survivors for a total of $11.2 million. One of the survivors, Ronald Kitchen, had spent 12 of his 21 imprisoned years on death row. Confronted once again by Spielman, Emanuel reversed his field and offered an impromptu apology:

> I am sorry this happened. Let us all now move on. This is a dark chapter on the history of the city of Chicago. I want to build a future for the city. . . . But, we have to close the books on this. We have to reconcile our past. . . . Yes, there has been a settlement. And I do believe that this is a way of saying all of us are sorry about what happened. . .and closing that stain on the city's reputation . . . . That is not who we are."[26]

Cook County Board President Toni Preckwinkle praised the Mayor for his apology, saying that it was "long overdue and entirely appropriate." In a powerful statement for a public official, she acknowledged the role that County prosecutors had played in the torture conspiracy, and further stated that:

> You've got to fess up and acknowledge the difficult, problematic parts of your own history if you're ever going to make any progress forward. Denial gets you nowhere. Refusing to acknowledge those reprehensible parts of our national or local history is self-destructive in the long run.[27]

We took the occasion to call for the City to establish a $20,000,000 fund — an amount equal to that which had been paid out by the City to private lawyers to defend Burge, Daley, and their cohorts — to compensate the survivors who had no legal recourse because of the official cover-up. Until then, "the wound on the city of Chicago will not heal and its conscience will not be cleansed."[28] The City, through its Corporation Counsel Steve Patton, publicly rejected the demand for compensation, saying that "it would be very difficult to justify spending taxpayer dollars to settle a claim that's barred."[29]

On the heels of the apology, attorney Mogul, relying on reparations legislation passed in other countries, revised the Reparations Ordinance to include further input from torture survivors, their family members and communities. The ordinance specifically called for an official apology, compensation to the survivors, tuition-free education at City Colleges for all torture survivors and their families, and a center on the South Side of Chicago that would provide psychological counseling, health care services and vocational training to those affected by law enforcement torture and abuse. The Ordinance also called for the establishment of a fund of at least $20,000,000 to finance these reparations, and required the Chicago Public Schools to teach about the torture cases and the City to sponsor the construction of public torture memorials.

THE REPARATIONS ORDINANCE IS INTRODUCED INTO CITY COUNCIL

Armed with the Ordinance, CTJM member Alice Kim, who had been a leader in the fight against the death penalty and police torture, met with progressive Alderman Joe Moreno, who had a history of fighting for death row torture survivors, and solicited his support and political leadership on the reparations ordinance. Moreno gladly agreed to sponsor the ordinance, and Moreno enlisted Alderman Brookins, who was the chair of the City Council's African American caucus, to be a co-sponsor. On October 16, 2013 they introduced CTJM's Ordinance into the Council.[30] Members of CTJM then took on the task of meeting with numerous progressive members of the Council, explaining the Ordinance and obtaining, one by one, their endorsement. Martha Biondi, a Professor of African American History at Northwestern University, who fought for reparations for slavery and had previously testified in support of such resolutions in City Council, played a pivotal role in obtaining this crucial additional aldermanic support. Two of the enlisted Aldermen, Joe Moore and Roderick Sawyer, joined Moreno and Brookins as political strategists who provided valuable assistance to this effort. A

hearing on the Ordinance was scheduled for March 2014 before the Council's Finance Committee, which was chaired by the politically powerful Alderman Ed Burke, but the hearing was postponed after an aide to Alderman Brookins was indicted by the U.S. Attorney only days before the hearing was due to begin.

In April of 2014, the reparations movement was further buoyed by the entry of Amnesty International into a nascent coalition headed up by CTJM. Amnesty International decided to turn its attention to police torture in the U.S. and agreed to sign on in support of the Reparations Ordinance and in doing so featured Darrell Cannon, who had been subjected to electric shock and a mock execution by two of Burge's main operatives.[31]Several of AI's energetic and highly competent staffers helped to organize a rally, march, and vigil in downtown Chicago during its national convention in April of 2014.[32] Participants in the rally each carried a black flag, created by CTJM members, emblazoned with the name of a different one of the 119 known torture survivors. In a moving ceremony at the end of the rally, each name was read, and the corresponding flag was presented, with each of the flag holders then forming a line facing City Hall.[33]

As the year wore on, other activist groups, including Project NIA and We Charge Genocide, joined the coalition that led the campaign to get the Reparations Ordinance passed, adding new and creative leadership, including Mariame Kaba and Page May, energetic youth, and a strong infusion of young people of color. The number of Aldermanic sponsors grew as a result of the diligent work of CTJM, and a petition drive was initiated. The movement got another shot in the arm when Karen Lewis, the iconic African American president of the Chicago Teacher's Union, who at that time was mounting a strong challenge to Mayor Emanuel in the upcoming Mayoral primary, publicly announced her support for the Ordinance.[34]

ELECTORAL POLITICS

In October of 2014, outrage over the continuing torture scandal boiled up once again as Burge was released to a halfway house after serving 3 1/2 years of his 4 1/2 year sentence. CTJM conducted a well-attended press conference that was covered in the local news, at which torture survivors, their lawyers, and other CTJM members called for the City Council to at long last hold a hearing on the Ordinance while contrasting Burge and his release with a full pension to that of the survivors who had not received "one red cent."[35] The local NBC TV affiliate and the Sun Times both editorialized in favor of reparations,[36] while Spielman, after once again inquiring of Emanuel, reported that he was "riding the fence" on reparations:

> At one point, Emanuel appeared to crack the door open to the idea, telling reporters that there are "a number of things" that the reparations ordinance demanded that he was prepared to "look at and work through. On the money piece, we have to study it," the mayor said, without ruling it out. "As we get ready for what we have to do from a financial standpoint, there must be some way to address those whose statute of limitations has run out. But that doesn't mean there's only one way to do it." The mayor was asked whether that answer should be construed as a "yes, no or maybe." With trademark sarcasm, he replied, "I don't know. You've got all three answers."[37]

The response was again sharp, pointing to the upcoming election and emphasizing Emanuel's lingering unpopularity in the African American community for having closed 49 public schools:

> There is still a tremendous amount of outrage at the unfairness of Burge getting his pension, the city paying $20 million to defend him and not compensating men who have gotten little or nothing despite being tortured by Burge. The political repercussions of him not supporting this important ordinance cannot be overstated.[38]

STEPPING UP THE PRESSURE

In the fall of 2014, CTJM worked with the Midwest Coalition for Human Rights to submit a shadow brief calling on the United Nations Committee Against Torture to specifically recommend that it call on the U.S. Government to support the Reparations Ordinance. CTJM member, Shubra Ohri and We Charge Genocide members journeyed to Geneva, Switzerland and appeared before the CAT where they raised the issue of torture reparations, which are guaranteed under Article 14 of the U.N. Convention Against Torture, and staged a dramatic demonstration to highlight continuing racist police violence in Chicago.[39] A few weeks later, the CAT specifically recommended that the U.S. support the passage of the Reparations Ordinance. [40]

Darrell Cannon and Anthony Holmes, now joined by torture survivor Marc Clements, and several mothers of imprisoned torture survivors, continued to be the face

of the movement. Holmes had received nothing, while Cannon had received a paltry $3000 settlement more than 25 years ago — before the cover-up began to unravel.[41] In December, AI, CTJM, Project NIA and We Charge Genocide lead a five mile march from police headquarters to the Mayor's Office at City Hall, where the marchers delivered petitions signed more than 45,000 people, and then peacefully demonstrated in the hallway outside of his office.[42] The effort also included a Twitter power hour directed at the Mayor with the hashtag #RahmRepNow.

As the February 2015 mayoral primary election approached, the effort to raise the profile of reparations intensified as well. CTJM now had a majority of the 50 Aldermen committed as sponsors, and a significant number of other politicians, aldermanic candidates, and community organizations had come aboard as well. After a concerted effort by the coalition, Jesus "Chuy" Garcia, who had replaced Karen Lewis as Emanuel's main opponent after Lewis had been diagnosed with brain cancer, declared his support for the Ordinance.[43]

Ten days before the election, the Reparations Movement held a rollicking Valentine's Day rally in a downtown church attended by a multi-racial and multi-generational overflow crowd.[44] CTJM distributed a Scorecard, designed by CTJM member Carla Mayer, that recorded which politicians supported the ordinance, and those, with particular emphasis on the Mayor, who had not committed their support. Many of the attendees wore black tee shirts designed by Mayer and distributed by CTJM which had the City of Chicago flag — with a fifth star, black in color, added to represent the torture survivors — emblazoned on the front. The rally was timed to coincide with Burge's release from the Halfway House, which followed by a week Burge's latest refusal to admit any responsibility for his actions, once again in a sworn deposition during which he invoked his Fifth Amendment Right in response to all questions asked.[45] The demand for the long postponed hearing on the Ordinance was the rallying cry. Other actions in support of reparations included a light show in front of the Mayor's house that spelled out "Reparations Now," teach-ins, a sing in at City Hall, Sunday church presentations, and demonstrations on CTA trains and outside of mayoral debates.[46]

TALK AND FIGHT: NEGOTIATIONS NOW

A few days after the Rally, Chicago Corporation Counsel Steve Patton called CTJM lawyers to suggest a post primary election meeting with CTJM representatives at which the City would present its plan for reparations. Patton, who, before becoming Corporation Counsel had negotiated a multibillion dollar settlement on behalf of several leading tobacco companies, cautioned that the meeting would not take the form of negotiations, and that the City was not inclined to provide any compensation to the survivors. The lawyers responded that CTJM's position was that compensation was a nonnegotiable requirement, but CTJM decided to accept the invitation to meet in order to learn what the City had planned and to lobby for its complete reparations package.

CTJM put together a meeting team that included two CTJM lawyers, a representative from BPAPT, three CTJM members, and two representatives from Amnesty International. Patton headed up a group that included representatives from the Mayor's Legislative, Legal, and Human Relations Departments.[47] The first meeting was convened shortly after Emanuel had suffered a surprising setback in the primary election, as he had not won a majority of the vote and was therefore required to face Chuy Garcia in an early April runoff. Nonfinancial issues were at the forefront of the initial discussions, but the team insisted that financial compensation had to be part of the legislation and continued to demand a hearing on the original ordinance. Alderman Burke had at long last set a hearing date for the week after the April election on April 14th, in the wake of the coalition publicly announcing it was going to attend and disrupt the Finance Committee meeting unless there was a hearing set on the Ordinance.[48] Both sides fully understood that, depending on the outcome of the discussions, the City, and Mayor Emanuel, would, to paraphrase Mark Antony in Shakespeare's Julius Caesar, either be "buried" or "praised" at the hearing.

The team met with the City on several occasions throughout March and early April, and the guardedness that, in a couple of instances escalated into outright hostility, was gradually replaced by a mutual spirit of cooperation as both sides recognized the other's good faith and worked out the agreed upon parameters of the nonfinancial issues. At various times, Aldermen Moore, Brookins, and Moreno joined the discussions. The elephant in the room — compensation for the survivors — was discussed with some trepidation, and

as the self-imposed deadline approached, CTJM and its negotiating team reluctantly agreed internally upon a bottom line of $100,000 per survivor. Based on an estimated pool of 120 potential survivors, CTJM adjusted its demand to $12,000,000, and the City responded with an offer of $2-3 million.

Shortly before the hearing, the negotiating team re-evaluated the size of the pool, reluctantly decided to remove the deceased survivors from eligibility for financial compensation, and calculated that in all likelihood the actual compensation pool would be more in the neighborhood of 50 to 60, making the $100,000 per survivor realizable at $5-6 million. The City had reluctantly come up to $5 million and was holding firm, but at the last moment, the City offered a compromise of $5.5 million as the final number.[49] CTJM polled a significant number of survivors, all of whom were approving of the compromise figure, and the offer was accepted on the eve of the hearing.

REPARATIONS WON!

At the Finance Committee hearing, which was held in the main City Hall chamber and was packed with supporters of reparations, the team's agreement with the City, which had been incorporated into a resolution and an amended ordinance, was detailed by Joey Mogul, who had employed expert leadership throughout the reparations campaign, and by Patton, followed by testimony in support by Cannon, Holmes, Amnesty International USA's Executive Director Steve Hawkins, CTJM and BPAPT member Dorothy Burge, and myself.[50] The amended resolution and ordinance, which the Committee approved unanimously, provided for financial compensation to the living survivors; nonfinancial reparations for living survivors, and for the immediate families of all survivors, living and deceased, that included psychological counseling at a south-side center, job training, and free education at the City Colleges; an official apology; the teaching of the torture scandal in the Chicago public schools; and a public memorial.[51]

The Resolution and Ordinance were presented to the full City Council by Alderman Moreno on May 6. Fifteen survivors from as far away as Atlanta and several mothers were in attendance to bear witness to the historic event. They sat together, some with their family members, in the audience, and during his presentation, Alderman Moreno called out each of the survivors' names and each person stood. The Council members then spontaneously rose, turned, faced the standing men, and, in a moment of high emotion, applauded them.[52] After other aldermen, including Moore and Brookins, spoke, Mayor Emanuel delivered an apology that surpassed expectations:

> This is another step but an essential step in righting a wrong, removing a stain on the reputation of this great city. Chicago finally will confront its past and come to terms with it and recognize when something wrong was done and be able to be strong enough to say something was wrong.[53]
>
> Directly addressing the torture survivors and their families, the Mayor continued:
>
> I want to thank you for your persistence. I want to thank you for never giving in and never giving up and allowing the city to join you on that journey to come face-to-face with the past and be honest enough and strong enough to say when we are wrong and try to make right what we've done wrong. This stain cannot be removed from the history of our city. But it can be used as a lesson of what not to do and the responsibility that all of us have.[54]

The resolution and ordinance were adopted by the Council, and the survivors, their families, AI, CTJM, Project NIA, We Charge Genocide, and BPAPT members, the lawyers, and all of the wonderful people who joined the movement for reparations and made the victory possible joined in the celebration that followed. Over the course of the struggle, the movement had once again looked internationally both for support and for examples — Chile, Argentina, and South Africa, to name three[55] successful examples here in the U.S. were precious few — Japanese-Americans who were interned in World War Two, the descendants of the African American victims of the deadly 1923 race riot in Rosewood, Florida, and the victims of the mass sterilizations in North Carolina.[56] The movement was also inspired by the continuing struggle for reparations for slavery, the movement to fully document and memorialize lynchings in the South, by Black People Against Police Torture and the Midwest Coalition for Human Rights, and, most importantly, by the survivors of Chicago police torture and their families. While full compensation for the pain suffered at the hands of the torturers was not (and could not be) obtained — a reality that was pointed out by a *Sun Times* Editorial that otherwise commended the historic accomplishment[57] — the reparations package is both symbolically and in

fact substantial and unique, particularly given that the survivors had no legal recourse. Hopefully, it will serve as a beacon to others across the country who are fighting against racist police violence.

In the words of Darrell Cannon, reparations for Chicago police torture "is something that sets a precedent that has never been done in the history of America. Reparations given to black men tortured by some white detectives. It's historic."[58]

ENDNOTES:

[1]Taylor is an Editor of PMCRLR, has represented survivors of Chicago police torture for nearly 30 years, and worked with the movement to obtain reparations for Chicago police torture.

[2]Willis, Davis and NCBL put out the public call in a Washington, D.C. press conference, the formal request for the hearing was made on behalf of 44 human rights and civil rights organizations in an August 26, 2005 letter to the IACHR, and torture survivor David Bates, MCHR member Bernardine Dohrn, and attorneys Standish Willis, Locke Bowman, Joey Mogul, and I all testified at the hearing. "Panel Hears Claims Of Anti Black Cop Brutality Here," *Chicago Sun Times*, October 15, 2005; email from NCBL member Sali Vicki Casanova Willis.

[3]Sept. 30, 2005 MCHR letter to UNCAT entitled "Issues Regarding United States' Second Periodic Report."

[4]BPAPT Leaflet.

[5]"Can Shame Stop the Games?" *Chicago Reader*, March 23, 2007.

[6]Biondi, Martha, Introduction of Keynote Speaker, Frederick Douglass Institute, University of Rochester, October 2006.

[7]Id.

[8]See, 775 ILCS 40/1 et seq.

[9]"Council-approved torture settlements total almost $20 million," *Chicago Tribune*, January 10, 2008; "$20M Settlement OK'd for Chicago Torture," *Associated Press*, January 10, 2008.

[10]"Daley issues sarcastic apology for torture," *Chicago Sun Times*, October 23, 2008.

[11]Id.

[12]Id.

[13]"Victim to Burge: 'You were supposed to be the law,' ''*Chicago Sun Times*, January 20, 2011.

[14]Testimony of Adam Green, *U.S. v. Burge*, January 20, 2011.

[15]"Ex Chicago cop gets 4 1/2 years in torture case," *Associated Press*, January 21, 2011.

[16]"Monument to police torture victims planned," *Associated Press*, June 24, 2011.

[17]"Mayor Emanuel: Deny Burge city pension, pay for Daley's defense," *Chicago Sun Times*, August 11, 2011.

[18]Id.

[19]Id.

[20]"Chicago Poised to Become First City to Condemn Torture," *In These Times*, January 12, 2012.

[21]"Time for apology in Burge cases," *Chicago Sun Times*, June 22, 2102; "Daley won't have to testify in Burge police torture case, as city settles," *Chicago Sun Times*, July 23, 2012; "Editorial: Cash settlements won't erase Burge fallout," *Chicago Sun Times*, July 25, 2012;

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SUPREME COURT UPDATE

We discuss below two 42 U.S. C § 1983 excessive force cases that the U.S. Supreme Court decided during the last part of its most recent term which should be of special interest to police misconduct litigators.

KINGSLEY V. HENDRICKSON

In *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), the Court determined the proper standard applicable to claims of excessive force brought by pretrial detainees under substantive due process. The question presented was whether, to prove an excessive force claim, a pretrial detainee must show that the officers were subjectively aware that their use of force was unreasonable, or only that the officers' use of that force was objectively unreasonable.

Michael Kingsley, the petitioner, was arrested on a drug charge and detained in a Wisconsin county jail prior to trial. 2015 WL 2473447, *3. On the evening of May 20, 2010, an officer performing a cell check noticed a piece of paper covering the light fixture above Kingsley's bed. *Id.* The officer told Kingsley to remove it; Kingsley refused; subsequently other officers told Kingsley to remove the paper; and each time Kingsley refused. *Id.* The next morning, the jail administrator, Lieutenant Robert Conroy, ordered Kingsley to remove the paper. *Id.* Kingsley once again refused. Conroy then told Kingsley that officers would remove the paper and that he would be moved to a receiving cell in the interim. *Id.*

Shortly thereafter, four officers, including respondents Sergeant Stan Hendrickson and Deputy Sheriff Fritz Degner, approached the cell and ordered Kingsley to stand, back up to the door, and keep his hands behind him. *Id.* When Kingsley refused to comply, the officers handcuffed him, forcibly removed him from the cell, carried him to a receiving cell, and placed him face down on a bunk with his hands handcuffed behind his back. *Id.*

The parties disagreed about what happened next. *Id.* The officers testified that Kingsley resisted their efforts to remove his handcuffs. Kingsley testified that he did not resist. *Id.* However, it was undisputed that Sergeant Hendrickson placed his knee in Kingsley's back and Kingsley told him in impolite language to get off. Kingsley testified that Hendrickson and Degner then slammed his head into the concrete bunk—an allegation the officers deny. *Id.*

It was also undisputed that Hendrickson then directed Degner to stun Kingsley with a Taser; Degner applied a Taser to Kingsley's back for approximately five seconds; the officers then left the handcuffed Kingsley alone in the receiving cell; and officers returned to the cell 15 minutes later and removed Kingsley's handcuffs. *Id.*

Kingsley filed a § 1983 action in federal court claiming that Hendrickson and Degner used excessive force against him in violation of the Fourteenth Amendment's Due Process Clause. *Id.* The District Court judge denied the defendants' motion for summary judgment and Kingsley's excessive force claim proceeded to trial. *Id.* At the conclusion of the trial, the District Court gave an instruction on the excessive force claim, which defined "excessive force" as "force applied recklessly that is unreasonable in light of the facts and circumstances of the time"; required Kingsley to show that the officers "recklessly disregarded [Kingsley's] safety"; and suggested that Kingsley must show the defendants "acted with reckless disregard of [Kingsley's] rights," while telling the jury that it could consider several objective factors in making this determination. *Id.* at *4.

On appeal, Kingsley argued that the correct standard for judging a pretrial detainee's excessive force claim is objective unreasonableness and therefore the jury was improperly instructed. *Id.* The Seventh Circuit affirmed, with Judge David Hamilton dissenting. *Kingsley v. Hendrickson*, 744 F.3d 443 (7th Cir. 2014), cert. granted, 135 S. Ct. 1039, 190 L. Ed. 2d 908 (2015) and vacated and remanded, 135 S. Ct. 2466 (2015). The majority held that the law required a "subjective inquiry" into the officer's state of mind and that there must be "an actual intent to violate [the plaintiff's] rights or reckless disregard for his rights." *Id.* at 451. Judge Hamilton argued that the District Court should have used the Seventh Circuit Pattern Civil Jury Instructions, which require a pretrial detainee claiming excessive force to show only that the use of force was objectively unreasonable, and that the District Court should not have used the word "reckless" in the jury instruction. *Id.* at 455.

Kingsley then petitioned for a writ of certiorari asking the Court to decide whether the requirements of a § 1983 excessive force claim brought by a pretrial detainee must satisfy the subjective standard or only the objective standard. *Kingsley*, 2015 WL 2473447, *4. The Court granted certiorari in light of a disagreement among the Circuits. *Id.*

In a 5-4 decision written by Justice Breyer and joined by Justices Kennedy, Ginsburg, Sotomayor and Kagan, the Court rejected the subjective inquiry used by the District Court and affirmed by the Seventh Circuit, and held that a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable in order to prevail on a substantive due process excessive force claim.

The Court rejected the defendant correctional officers' contention that because this was a prison setting, under *Bell v. Wolfish*, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979), the plaintiff pretrial detainee was required to prove that he was "punished" by them, meaning that the defendants must have been subjectively aware that their use of force was unreasonable. *Kingsley*, 2015 WL 2473447, *6. Rather, the Court found that the objective reasonableness standard was consistent with it precedent:

> *Bell's* focus on "punishment" does not mean that proof of intent (or motive) to punish is required for a pretrial detainee to prevail on a claim that his due process rights were violated. Rather, as *Bell* itself shows (and as our later precedent affirms), a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose. Cf. *Block v. Rutherford,* 468 U.S.

> 576, 585-586, 104 S.Ct. 3227, 82 L.Ed.2d 438 (1984) (where there was no suggestion that the purpose of jail policy of denying contact visitation was to punish inmates, the Court need only evaluate whether the policy was "reasonably related to legitimate governmental objectives" and whether it appears excessive in relation to that objective); *Schall v. Martin,* 467 U.S. 253, 269-271, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984) (similar); see also *United States v. Salerno,* 481 U.S. 739, 747, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987) ("[T]he punitive/regulatory distinction *turns on* 'whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it]' '' (quoting *Schall, supra,* at 269, 104 S.Ct. 2403; emphasis added and some internal quotation marks omitted)). The Court did not suggest in any of these cases, either by its words or its analysis, that its application of *Bell's* objective standard should involve subjective considerations. Our standard is also consistent with our use of an objective "excessive force" standard where officers apply force to a person who, like Kingsley, has been accused but not convicted of a crime, but who, unlike Kingsley, is free on bail. See *Graham, supra.*
>
> *Id.*

The Court further found that an objective standard is "workable" because "[i]t is consistent with the pattern jury instructions used in several Circuits . . . [and] many facilities, including the facility at issue here, train officers to interact with all detainees as if the officers' conduct is subject to an objective reasonableness standard."*Id.* at *7.

The Court explained that an objective standard adequately protects an officer who acts in good faith:

> We recognize that "[r]unning a prison is an inordinately difficult undertaking," *Turner v. Safley,* 482 U.S. 78, 84-85, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987), and that "safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face," *Florence v. Board of Chosen Freeholders of County of Burlington,* 566 U.S. ——, ——, 132 S.Ct. 1510, 1515, 182 L.Ed.2d 566 (2012). Officers facing disturbances "are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." *Graham,* 490 U.S., at 397, 109 S.Ct. 1865. For these reasons, we have stressed that a court must judge the reasonableness of the force used from the perspective and with the knowledge of the defendant officer. We have also explained that a court must take account of the legitimate interests in managing a jail, acknowledging as part of the objective reasonableness analysis that deference to policies and practices needed to maintain order and institutional security is appropriate. See Part II-A, *supra.* And we have limited liability for excessive force to situations in which the use of force was the result of an intentional and knowing act (though we leave open the possibility of including a "reckless" act as well). *Ibid.* Additionally, an officer enjoys qualified immunity and is not liable for excessive force unless he has violated a "clearly established" right, such that "it would [have been] clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier v. Katz,* 533 U.S. 194, 202, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001); see also Brief for United States as *Amicus Curiae* 27-28. It is unlikely (though theoretically possible) that a plaintiff could overcome these hurdles where an officer acted in good faith.
>
> *Id.* at *7.

The Court next considered the lawfulness of the jury instructions given by the District Court in light of its adoption of an objective standard for pretrial detainees' excessive force claims and held that they were erroneous:

> "[R]eckles[s] disregar[d] [of Kingsley's] safety" was listed as an additional requirement, beyond the need to find that "[respondents'] use of force was unreasonable in light of the facts and circumstances at the time." App. 278. See also *ibid.* (Kingsley had to show respondents "used unreasonable force *and* acted with reckless disregard of [Kingsley's] rights" (emphasis added)). And in determining whether respondents "acted with reckless disregard of [Kingsley's] rights," the jury was instructed to "consider . . . [w]hether [respondents] reasonably *believed* there was a threat to the safety of staff or prisoners." *Ibid.* (emphasis added). Together, these features suggested the jury should weigh respondents' subjective reasons for using force and subjective views about the excessiveness of the force. As we have just held, that was error. But because the question whether that error was harmless may depend in part on the detailed specifics of this case, we leave that question for the Court of Appeals to resolve in the first instance.
>
> *Id.* at *10.

Justice Scalia, joined by Chief Justice Roberts and Justice Thomas, dissented, arguing that under *Bell*, the "intentional infliction of punishment upon a pretrial detainee may violate the Fourteenth Amendment, but the infliction of 'objectively unreasonable' force, without more, is not the intentional infliction of punishment." *Id.* at *10. Justice Alito also dissented, claiming that certiorari was improvidently granted because the Court should first determine whether a pretrial detainee can

bring an excessive force claim under the Fourth Amendment before reaching the Fourteenth Amendment substantive due process claim involved in *Kingsley*. *Id.* at *13.

CITY AND COUNTY OF SAN FRANCISCO CALIFORNIA V. SHEEHAN

In *City and County of San Francisco, Calif. v. Sheehan*, 135 S. Ct. 1765 (2015) the Court addressed the question of qualified immunity in the context of a mentally disabled person.

The relevant facts, as relied upon by the Court, are as follows. In August 2008, Respondent Teresa Sheehan, who suffered from a schizoaffective disorder, lived in a private room in a group home for people with mental illness. Heath Hodge, a social worker and counseling supervisor, attempted to visit Sheehan to conduct a welfare check because she had stopped taking her medication, had refused to talk to her psychiatrist, and was no longer changing her clothes or eating.

After knocking on the door and receiving no answer, Hodge entered with a key. Sheehan who was on her bed, did not respond to questions, but then sprang up, yelling, "Get out of here! You don't have a warrant! I have a knife, and I'll kill you if I have to." Hodge left without determining whether she actually possessed a knife, and Sheehan slammed the door shut.

Hodge determined that Sheehan required intervention, took steps to clear the building of other people, and completed an application, pursuant to California law, to have Sheehan detained for temporary evaluation and treatment. On that application, Hodge indicated that Sheehan was a "threat to others" and "gravely disabled," but did not mark that she was a danger to herself. He then called the police and requested assistance to transport Sheehan to a secure facility.

San Francisco police officer Holder responded to the police dispatch, and, after arriving at the home, she sought the assistance of Sergeant Reynolds, a more experienced officer. They then made arrangements with the psychiatric emergency services unit at San Francisco General Hospital for Sheehan's admittance there.

Accompanied by Hodge, the officers went to Sheehan's room, knocked on her door, announced who they were, and told Sheehan that they wanted to help her. Sheehan did not answer, the officers used Hodge's key to enter the room, and Sheehan reacted by grabbing a kitchen knife with a 5 inch blade and began approaching the officers, yelling that she was going to kill them and that she did not need their help. The officers retreated to the hallway, Sheehan closed the door, and the officers called for backup.

The officers were concerned that Sheehan might gather more knives that they had observed in the room or try to escape through the back window. They knew that she was unstable, she had just threatened to kill three people, and that she had a weapon. The officers decided not to wait for back-up even though they had already heard sirens because Reynolds believed that the situation "required [their] immediate attention." In so deciding, they did not consider whether Sheehan's disability should be accommodated. According to Reynolds, Sheehan's mental health was a "secondary issue."

With pistols drawn, the officers re-entered Sheehan's room. With knife in hand, she again yelled for them to leave, and by her own later admission, intended "to resist arrest and to use the knife." Reynolds pepper-sprayed Sheehan in the face, but Sheehan would not drop the knife. When Sheehan was only a few feet away, Holder shot her twice, but she did not collapse, and Reynolds then fired multiple shots. Despite the barrage, Sheehan survived.

Sheehan was prosecuted for assault with a deadly weapon, assault on a peace officer with a deadly weapon, and making criminal threats. The jury acquitted Sheehan of making threats but hung on the assault counts, and prosecutors elected not to retry her.

Sheehan then brought suit, alleging that San Francisco violated the Americans with Disabilities Act of 1990 (ADA) by subduing her in a manner that did not reasonably accommodate her disability. She also brought a 42 U.S.C. § 1983 claim against the officers for violating her Fourth Amendment rights. In support of her claims, she offered expert testimony from a former deputy police chief, Lou Reiter, who opined that the officers contravened their training by not using practices designed to minimize the risk of violence when dealing with the mentally ill.

District Court Judge Charles Breyer granted sum-

mary judgment for the Defendants, holding that officers making an arrest are not required "to first determine whether their actions would comply with the ADA before protecting themselves and others" and that the officers did not violate the Fourth Amendment. On appeal, the Ninth Circuit vacated in part, holding that because the ADA covers public "services, programs, or activities," § 12132, the ADA's accommodation requirement should be read to "to encompass 'anything a public entity does,' '' *Sheehan v. City and County of San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014). The Ninth Circuit agreed "that exigent circumstances inform the reasonableness analysis under the ADA," *Id.*, but concluded that it was for a jury to decide whether San Francisco should have accommodated Sheehan by, for instance, "respect[ing] her comfort zone, engag[ing] in non-threatening communications and us[ing] the passage of time to defuse the situation rather than precipitating a deadly confrontation." *Id.*, at 1233.

As to the officers, the Ninth Circuit held that their initial entry into Sheehan's room was lawful and that, upon their second entry they reasonably used deadly force after the pepper spray failed to stop Sheehan. The court, in a split decision, further held that a jury could find that the officers "provoked" Sheehan by needlessly forcing that second confrontation, (*Id.*, at 1216, 1229), and that it was clearly established that an officer cannot "forcibly enter the home of an armed, mentally ill subject who had been acting irrationally and had threatened anyone who entered when there was no objective need for immediate entry." *Id.*, at 1229.

San Francisco and the officers then petitioned for a writ of certiorari seeking review of the ADA and Fourth Amendment questions, and the Court granted the petition. *City and County of San Francisco, Cal. v. Sheehan*, 135 S. Ct. 702, 190 L. Ed. 2d 434 (2014).

Justice Alito wrote the opinion, with Justice Breyer recusing himself because his brother decided the case in the District Court. The eight remaining Justices unanimously decided that certiorari was improvidently granted on the ADA question because the issue that was presented by the petition — whether the Act applied to arrests — was not properly addressed on the merits. Instead, the City had argued that Sheehan was not a "qualified individual" under the Act.

Six of the eight Justices, with Justices Scalia and Kagan dissenting, decided to address the Fourth Amendment question rather than dismissing it as well. The Court first agreed with the Ninth Circuit that the officers' first entry was reasonable, as was their second — if Sheehan was not disabled — and that their use of force was also legally justified. "The real question, then," Justice Alito wrote, was "whether, despite these dangerous circumstances, the officers violated the Fourth Amendment when they decided to reopen Sheehan's door rather than attempting to accommodate her disability." *City and County of San Francisco California v. Sheehan*, 135 S. Ct at 1775. However, since the City gave "scant attention" to this issue, and instead focused on the question of whether the right was clearly established, the Court chose instead to address that question — "whether the officers' failure to accommodate Sheehan's illness violated clearly established law." *Id.*

The Court chastised the Ninth Circuit for its broad reliance on *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989), invoking the principle previously articulated by the Court in Ashcroft v. al-Kidd, 131 S. Ct. 2074, 2083, 179 L. Ed. 2d 1149 (2011):

> "We have repeatedly told courts—and the Ninth Circuit in particular—not to define clearly established law at a high level of generality." al-Kidd, supra, at ——, 131 S.Ct., at 2084 (citation omitted); cf. Lopez v. Smith, 574 U.S. ——, ——, 135 S.Ct. 1, 3-4, 190 L.Ed.2d 1 (2014) (per curiam). Qualified immunity is no immunity at all if "clearly established" law can simply be defined as the right to be free from unreasonable searches and seizures.

City and County of San Francisco California v. Sheehan, 135 S. Ct at 1775-1776.

The Court then turned to the three Ninth Circuit disability cases upon which the Ninth Circuit relied to find that the particularized Fourth Amendment rights at issue were clearly established:

> When [these three cases] are viewed together, the central error in the Ninth Circuit's reasoning is apparent. The panel majority concluded that these three cases "would have placed any reasonable, competent officer on notice that it is unreasonable to forcibly enter the home of an armed, mentally ill suspect who had been acting irrationally and had threatened anyone who entered when there was no objective need for immediate entry." 743 F.3d, at 1229. But even assuming that is true, no precedent clearly established that there was not "an objective need for immediate entry" here. No matter

> how carefully a reasonable officer read [these cases] beforehand, that officer could not know that reopening Sheehan's door to prevent her from escaping or gathering more weapons would violate the Ninth Circuit's test, even if all the disputed facts are viewed in respondent's favor. Without that "fair notice," an officer is entitled to qualified immunity.

City and County of San Francisco California v. Sheehan, 135 S. Ct at 1777.

The Court next addressed Lou Reiter's expert opinion that the officers contravened their training with regard to disabled persons. The Court summarized that training as follows:

> San Francisco trains its officers when dealing with the mentally ill to "ensure that sufficient resources are brought to the scene," "contain the subject" and "respect the suspect's "comfort zone," "use time to their advantage," and "employ non-threatening verbal communication and open-ended questions to facilitate the subject's participation in communication." . . . Likewise, San Francisco's policy is '' 'to use hostage negotiators' '' when dealing with '' 'a suspect [who] resists arrest by barricading himself.' ''

Id.

However, according to the Court:

> Even if an officer acts contrary to her training, however, (and here, given the generality of that training, it is not at all clear that Reynolds and Holder did so), that does not itself negate qualified immunity where it would otherwise be warranted. Rather, so long as "a reasonable officer could have believed that his conduct was justified," a plaintiff cannot "avoi[d] summary judgment by simply producing an expert's report that an officer's conduct leading up to a deadly confrontation was imprudent, inappropriate, or even reckless."

Id.

Citing several appellate cases where the use of force against disabled people was found to be justified, the Court further concluded that there was not a "robust consensus" of "persuasive authority" that clearly established the right in question, but rather that the "opposite may be true." *Id.* at 1778. The Court then summarized its holding:

> In sum, we hold that qualified immunity applies because these officers had no "fair and clear warning of what the Constitution requires." al-Kidd, supra, at ——, 131 S.Ct., at 2086-2087 (KENNEDY, J., concurring). Because the qualified immunity analysis is straightforward, we need not decide whether the Constitution was violated by the officers' failure to accommodate Sheehan's illness.

City and County of San Francisco California v. Sheehan, 135 S. Ct at 1778.

Justice Scalia, joined by Justice Kagan, dissented from the Court's decision not to dismiss the Fourth Amendment question as improvidently granted, concluding that the issue was not "certworthy," and that although the issue may well have been wrongly decided below, so are many other cases that the Court refuses to review. In a sharp rebuke to the Defendants, Justice Scalia concluded:

> I would not reward such bait-and-switch tactics by proceeding to decide the independently "uncertworthy" second question. And make no mistake about it: Today's judgment is a reward. It gives the individual petitioners all that they seek, and spares San Francisco the significant expense of defending the suit, and satisfying any judgment, against the individual petitioners. I would not encourage future litigants to seek review premised on arguments they never plan to press, secure in the knowledge that once they find a toehold on this Court's docket, we will consider whatever workaday arguments they choose to present in their merits briefs.

Id. at 1779.

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