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Preserving the Integrity of the Court Against Moral Defilement: People v. Wrice and the Question of Whether the Use of a Physically Coerced Confession Can Constitute Harmless Error - Lessons of Wisdom From International Law

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PRESERVING THE INTEGRITY OF THE COURT AGAINST MORAL DEFILEMENT: PEOPLE V. WRICE AND THE QUESTION OF WHETHER THE USE OF A PHYSICALLY COERCED CONFESSION CAN CONSTITUTE HARMLESS ERROR - LESSONS OF WISDOM FROM INTERNATIONAL LAW

BY STEVEN W. BECKER*

“[Pilate] took water, and washed his hands before the multitude, saying, I am innocent of the blood of this just person.”

—Matthew 27:24

However one judges the actions of Pontius Pilate on that fateful day in history more than two thousand years ago, on that occasion Pilate enunciated a timeless principle of jurisprudence, viz., that irrespective of the external pressures exerted on a tribunal – whether they be political or prosecutorial, a court must always maintain its integrity, lest it be deemed complicit in a conviction effected through the moral defilement of its judicial process. In the last decade, this is a theme that courts have had to repeatedly confront in the prosecution of terrorism cases following the events of September 11, 2001.¹ Now, it is the turn of

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¹ See Steven W. Becker, Closing the Door on Justice: Secret Evidence and the Lack of Transparency in Court Proceedings in the Wake of the “War on Ter-
the Illinois Supreme Court to test its moral fortitude in a case involving police torture and the State’s invitation to change existing law to permit prosecutors to use physically coerced confessions as substantive evidence of guilt at trial without fear that the judgment will be automatically reversed on appeal.2

The case of People v. Stanley Wrice is factually unique because Wrice has abundant medical evidence to corroborate his claim that he was tortured by Chicago police personnel during his interrogation in 1982.3 The case is historically important because the Illinois Supreme Court has not addressed a Burge torture case in more than a decade,4 and this is the first such case it has entertained since former Commander Jon Burge’s conviction and sentence on federal charges of obstruction of justice and perjury for lying about his knowledge of the torture of criminal suspects.5 Finally, the case is legally significant because the Court has granted the State’s petition for leave to appeal to revisit its long-standing pronouncement that “[t]he use of a defendant’s coerced confession as substantive evidence of his guilt is never harmless error.”6

The purpose of this article is to analyze this vital legal issue from the perspective of international law sources in the hopes that such collective wisdom may provide guidance to the Court in its resolution of the narrow question before it. As demonstrated below, this question has been extensively litigated in

rorism,” in INTERNATIONAL TERRORISM: THE FUTURE UNCHAINED?, at 1-17 (Steven W. Becker & Davor Derenéinoviæ eds., 2008) (addressing criminal, immigration, and civil cases in which courts were faced with the tension between adhering to traditional court procedures and the unique challenges raised by terrorism cases).

3 See People v. Wrice, 406 Ill. App. 3d 43, 45 (1st Dist. 2010).
4 The last time being in People v. Patterson, 192 Ill. 2d 93 (2000).
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front of the European Court of Human Rights, which has consistently determined that the introduction of evidence obtained by physical torture can never constitute harmless error because its use violates the right to a fair trial. Moreover, high courts from around the world have declared that a new trial is always required in such instances because to allow any conviction so defiled by torture to stand would be to irreparably compromise the integrity of the judicial process.

Part I provides a brief background on the Wrice case in order to set the stage for the present posture of the case in the Illinois Supreme Court. Part II gives an overview of international instruments condemning torture. Part III analyzes the principal issue at bar in Wrice relating to physical torture and harmless error. Part IV describes the distinction between physical torture and threats of violence. Lastly, Part V explains the importance of preserving the integrity of the judicial process by categorically forbidding the State’s use of evidence procured by physical coercion.

I. BRIEF OVERVIEW OF WRICE CASE

Stanley Wrice was arrested on September 9, 1982, along with a number of other suspects, in connection with the sexual assault of K.B. During the subsequent hearing on his motion to suppress the confession, Wrice testified that he had been severely beaten by Sergeant John Byrne and Detective Peter Dignan in the basement of Area 2 police headquarters. In particular, Wrice testified that Byrne struck him on multiple occasions with a flashlight that was approximately fifteen to sixteen inches in length and that Dignan repeatedly struck him with a solid piece of rubber. Furthermore, during his second trip to the basement, “Sergeant Byrne then told defendant to stand up. He did

7 Wrice, supra note 3, at 44.
8 Id.
9 Id. at 44-45.
so. Sergeant Byrne turned defendant around so his back was facing them, put his hands over his head, and kicked his legs apart. Then Sergeant Byrne hit defendant multiple times in the groin with the flashlight. Detective Dignan also hit defendant in the groin with the piece of rubber." According to the assistant state's attorney, thereafter, Wrice gave several oral statements.

The following day, Wrice was examined by a Cook County paramedic, who filled out paperwork memorializing his observation of Wrice's injuries from the waist up. Five days later, Wrice was examined by a physician at Cermak Health Services, who "noted multiple healing bruises on defendant's left anterior leg," after which he concluded that Wrice "had a history of multiple blunt trauma." Byrne and Dignan denied that they physically abused Wrice while he was in custody. Despite the medical confirmation of injury, the trial court denied Wrice's motion to suppress, finding that the officers were credible witnesses.

Following a trial, at which the evidence showed that the victim, K.B., had been beaten, raped, and severely burned while at Wrice's residence, the jury convicted Wrice of rape and deviant sexual assault, as well as armed violence and unlawful restraint. Wrice was sentenced, inter alia, to consecutive terms of imprisonment of sixty years and forty years for rape and deviant sexual assault, respectively.

On direct appeal, Wrice's convictions and sentences on the rape and deviant sexual assault charges were affirmed; however, the reviewing court vacated the armed violence and unlawful re-

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10 Id. at 45.
11 Id.
12 Id.
13 Id.
14 Id.
15 Id. at 46.
16 Id. at 48.
17 Id.
In April 1991, Wrice filed his first post-conviction petition, wherein he alleged, among others issues, that his constitutional rights had been transgressed because Byrne and Dignan beat him while in custody. This petition was summarily dismissed, which dismissal was subsequently affirmed by the appellate court. Then, in May 2000, Wrice filed his first successive post-conviction petition, asserting, among other claims, that, as a result of his being tortured by Byrne and Dignan, his confession was involuntary. After counsel was appointed, the circuit court granted the State’s motion to dismiss, which dismissal was upheld on review.

In October 2007, Wrice filed a petition for leave to file a second successive post-conviction petition asserting that he had new evidence, viz., the 2006 Report of the Special State’s Attorney (Report), to corroborate his claim that his confession was extracted by means of physical torture and that one of the witnesses who testified against him at trial, Bobbie Jo Williams, was likewise beaten in order to procure false testimony against him. The trial court denied Wrice leave to file this second successive petition.

The First District Appellate Court, however, reversed the lower court’s decision and held that Wrice had satisfied the cause-and-prejudice test, which is a statutory prerequisite for

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19 Wrice, supra note 3, at 48.
20 Id.
21 Id.
22 Id. at 48-49.
24 Wrice, supra note 3, at 50.
25 Id.
26 Id. at 52-53.
filing a successive post-conviction petition. With respect to “cause,” the reviewing court ruled that the release of the Report in 2006 constituted an objective factor that prevented Wrice from raising his claim in earlier post-conviction proceedings.

With regard to the “prejudice” prong of the test, the appellate court noted that the Report was not cumulative, that the Illinois Supreme Court declared that “[t]he use of a defendant’s coerced confession as substantive evidence of his guilt is never harmless error,” and that Wrice had satisfied the criteria enunciated in People v. Patterson for avoiding claims of res judicata in torture cases, in that Wrice: “(1) consistently claimed, during his motion to suppress, at trial, and on postconviction review, that he was tortured; (2) his claims of being beaten are strikingly similar to those of other prisoners at Areas 2 and 3; (3) the officers involved, Sergeant Byrne and Detective Dignan, are identified in other allegations of torture; and (4) defendant’s allegations are consistent not only with OPS findings (under the preponderance of the evidence standard of proof) of systemic and methodical torture at Area 2 under Jon Burge, but also with the Report’s findings of torture under the stricter standard of proof beyond a reasonable doubt.” Accordingly, the First District reversed the decision of the trial court and remanded the case for a third-stage evidentiary hearing on Wrice’s torture claims.

The Special State’s Attorney then filed a petition for leave to appeal in which he asked the Illinois Supreme Court to reconsider its position that the use of a coerced confession at trial can never be harmless error. On March 30, 2011, the Court al-

27 See 725 ILCS 5/122-1(f) (West 2006).
28 Wrice, supra note 3, at 52.
29 192 Ill. 2d 93, 154 (2000).
30 Wrice, supra note 3, at 52-53 (quoting People v. Wilson, supra note 6, at 41 (1987) (emphasis added in Wrice)).
31 Id. at 55.
32 Special State’s Attorney, Petition for Leave to Appeal, Case No. 111860, at 7-11 (on file with author).
lowed the Special State’s Attorney’s petition for leave to appeal.\textsuperscript{33}

\textbf{II. \textsc{Overview of International Instruments Condemning Torture}}

The United States Supreme Court has declared that “[t]he opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.”\textsuperscript{34} In fact, the United States Supreme Court has made increasing reference to the instructive nature of “the laws of other countries and to international authorities,”\textsuperscript{35} in a series of landmark decisions over the past decade.\textsuperscript{36}

In this regard, it is well established that “official torture is now prohibited by the law of nations.”\textsuperscript{37} In particular, “the prohibition against torture became widely regarded as a customary norm [of international law] in the 1980s even before the prohibition was codified in a binding treaty . . . .”\textsuperscript{38} Similarly, “[n]o citation of authority is required for the proposition that in a civi-

\textsuperscript{33} People v. Wrice, \textit{supra} note 2.
\textsuperscript{34} \textit{Roper v. Simmons}, 543 U.S 551, 578 (2005).
\textsuperscript{35} \textit{Id.} at 575.
\textsuperscript{36} \textit{See, e.g., Graham v. Florida}, 130 S. Ct. 2011, 2033-34 (2010) (holding that the Eighth Amendment prohibits the imposition of a life-without-parole sentence on juvenile offenders, wherein the Court continued its “longstanding practice in noting the global consensus against the sentencing practice in question”); \textit{Roper, supra} note 34, at 575-78 (citing extensively to international and regional conventions in barring the imposition of the death penalty for juveniles); \textit{Lawrence v. Texas}, 539 U.S. 558, 572-73 (2003) (referring to parallel case decided by the European Court of Human Rights in supporting its decision to strike down criminal statute prohibiting consensual sodomy); \textit{Atkins v. Virginia}, 536 U.S. 304, 316 n.21 (2002) (supporting its conclusion with reference to the fact that “within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved”).
\textsuperscript{37} \textit{Filartiga v. Peña-Irala}, 630 F.2d 876, 884 (2d Cir. 1980).
lized society torture by police officers is an unacceptable means of obtaining confessions from suspects.”

The 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention), which was ratified by the United States on October 21, 1994, defines “torture,” in pertinent part, as: “[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession . . . .” Article 2 of said Convention provides that “[n]o exceptional circumstances whatsoever . . . may be invoked as a justification of torture.” More specifically, Article 15 of the Torture Convention mandates that “[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” Although Article 15 does not explicitly address the issue of harmless error, the Annotations to Article 15 state that “it is clear that a statement made under torture is often an unreliable statement, and it could therefore be contrary to the principle of ‘fair trial’ to invoke such statement before a court. Even in countries whose court procedures are based on a free evaluation of all evidence, it is hardly acceptable that a statement made under torture should be allowed to play any part in court proceedings.”

Furthermore, the recent Resolution of the United Nations Human Rights Council on the subject of “Torture and other

41 Id., art. 2, & 2.
42 Id., art. 15.
cruel, inhuman or degrading treatment or punishment: the role and responsibility of judges, prosecutors and lawyers” expressly “condemns any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions.” In addition, numerous international instruments condemn the use of torture, including, most notably, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Torture is likewise prohibited in all major regional conventions.

Finally, it is particularly significant that in its conclusions and recommendations of July 2006, the United Nations Committee Against Torture highlighted the failure of local governmental authorities to investigate and prosecute allegations of torture involving detectives working under the command of former Commander Jon Burge: “The Committee is concerned with allegations of impunity of some of the State party’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.”

III. PHYSICAL TORTURE AND HARMLESS ERROR

As noted above, the European Court of Human Rights (European Court) has dealt extensively with the question of the use of tortured confessions in criminal trials and its impact upon the denial of a fair trial, irrespective of the existence of other evidence of guilt. To better understand the interplay between these two important principles in the European Court's jurisprudence, it is helpful to reiterate the two relevant articles from the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) at issue, viz., Articles 3 and 6(1).

Article 3 addresses the prohibition on torture: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Article 6(1), on the other hand, concerns the right to a fair trial and reads, in pertinent part: “In the determination of... any criminal charge against him, everyone is entitled to a fair... hearing... by [a]... tribunal.”

In particular, the European Court has consistently held that, in contrast to evidence that may simply have been obtained in violation of domestic law (for example, through improper electronic surveillance), different “considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3,” i.e., by means of torture. As such, the use of evidence extracted by torture “always raises serious issues as to the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction.” This is be-

49 European Convention, supra note 47, art. 3.
50 Id. at art. 6(1).
51 Gäfgen v. Germany (Gr. Chamber), no. 22978/05, 165 (June 1, 2010). See Harutyunyan v. Armenia, no. 36549/03, 62-63 (June 28, 2007); Jalloh v. Germany (Gr. Chamber), no. 54810/00, 98-99 (July 11, 2006).
52 Gäfgen, supra note 51, at 165 (emphasis added). See Levința v. Moldova, no. 17332/03, 99 (Dec. 16, 2008); Harutyunyan, supra note 51, at 63; Göçmen v. Turkey, no. 72000/01, 73 (Oct. 17, 2006); Jalloh, supra note 51, at 99; İçöz v. Turkey (dec.), no. 54919/00, 3 (Jan. 9, 2003).
cause Article 3 “enshrines one of the most fundamental values of democratic societies,” and, “[u]nlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions and no derogation from it is permissible . . . .”

Accordingly, as recently summarized by the Grand Chamber, the European Court “has found in respect of confessions, as such, that the admission of statements obtained as a result of torture . . . as evidence to establish the relevant facts in criminal proceedings rendered the proceedings as a whole unfair.” With great significance for the issue at bar, the Grand Chamber pointed out that “[t]his finding applied irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant’s conviction.” In short, the European Court found that the error in introducing a confession obtained by torture could not be harmless and constituted a violation of the right to a fair trial in transgression of Article 6(1).

In explaining the European Court’s rationale, the following passage from Harutyunyan v. Armenia is illustrative:

Incriminating evidence, whether in the form of a confession or real evidence, obtained as a result of acts of violence or brutality or other forms of treatment which can be characterised as torture should never be relied on as proof of the victim’s guilt, irrespective of its probative value. Any other conclusion would only serve to legitimate indirectly the sort of morally reprehensible conduct which the authors of Article 3 of the Convention

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53 Jallop, supra note 51, at 99.
54 Gafgen, supra note 51, at 166 (citing Harutyunyan, at 63-64, 66; Levinja, at 101, 104-05; and Ors and Others v. Turkey, no. 46213/99, 60 (June 20, 2006)).
55 Id.
56 Id. (emphasis added).
sought to proscribe or, in other words, to 'afford brutality the cloak of law.'

More specifically, the European Court's judgment in *Harutyunyan v. Armenia* directly parallels Mr. Wrice's case. It is important to note that in *Lawrence v. Texas*, the United States Supreme Court explicitly relied upon a parallel case from the European Court to support its decision. In the same manner, the European Court relies upon parallel cases from the United States, as the Grand Chamber did, for example, in the case of *Jalloh v. Germany*, wherein the Court not only quoted extensively from the United States Supreme Court's decision in *Rochin v. California*, but then relied upon language from *Rochin* in concluding that the defendant had been denied a fair trial after being forced to ingest emetics.

In *Harutyunyan*, the European Court held that the defendant was deprived of the right to a fair trial due to the use of evidence derived from torture, irrespective of the presence of other evidence of guilt. The applicant (the defendant in the underlying domestic criminal case) was drafted into the Armenian army and assigned to a military unit on the border with Azerbaijan. In December 1998, serviceman H, one of the six watchmen in the defendant's unit, was found dead, having been killed by a machine-gun shot. Servicemen T and A were also within the applicant's unit.

On March 4, 1999, servicemen T and A were transported to a military police station, where they were beaten by military po-

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58 No. 36549/03 (June 28, 2007).
60 *Id.* at 573.
61 (Gr. Chamber), no. 54810/00 (July 11, 2006).
63 *Harutyunyan*, supra note 51, at 5.
64 *Id.* at 7.
65 *Id.*
lice officers to force them to confess. The following day, the applicant was brought to the same police station. The applicant was initially punched and kicked. The police officers then began to hit the applicant with rubber clubs. On several occasions, the applicant lost consciousness but was revived and was again beaten. Eventually, the police officers began to squeeze the applicant’s fingernails with pliers. The same techniques were applied to servicemen T and A.

On March 5, 1999, serviceman T confessed to the investigator that he had witnessed how the applicant had taken his machine gun and shot serviceman H. Because serviceman A was with serviceman T at the time of the killing, he was coerced into making a statement to the effect that serviceman T had told him that he had witnessed the murder. The police officers continued to torture the applicant, thereby forcing him to confess to the murder. The torture, according to the applicant, continued for a month.

On April 16, 1999, the applicant was interrogated as a suspect by the examining investigator, to whom he confessed that he accidentally shot serviceman H. On April 17, 1999, the applicant again repeated his confession to the investigator and was formally charged with premeditated murder. Upon their release from the police station, servicemen T and A informed the Armenian military prosecutor that they had been coerced into im-

66 Id. at 8.
67 Id.
68 Id. at 9.
69 Id.
70 Id.
71 Id.
72 Id.
73 Id. at 10.
74 Id.
75 Id. at 11.
76 Id.
77 Id. at 12.
78 Id. at 13.
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The applicant. On June 19, 1999, the applicant and servicemen T and A were given medical examinations during which various injuries to their fingers and to A’s head were confirmed.

During proceedings in front of the Syunik Regional Court, the applicant's lawyer moved to suppress the applicant’s confessional statements, as well as the statements made by servicemen T and A, on the grounds that they were extracted by torture. On June 19, 2002, the Syunik Regional Court found the applicant guilty of premeditated murder and sentenced him to ten years’ imprisonment. On October 9, 2002, the relevant military police officers responsible for torturing the applicant and servicemen T and A were convicted in a separate criminal proceeding of abuse of power in connection with this incident and were sentenced to a term of years.

The applicant’s conviction was upheld on direct appeal by the Criminal and Military Court of Appeal and was likewise affirmed by the Court of Cassation (the supreme court).

In front of the European Court, the applicant alleged, *inter alia*, that the use of evidence obtained by torture (in violation of Article 3) during the domestic criminal proceedings violated his right to a fair trial under Article 6(1) of the European Convention. The Armenian government, on the other hand, argued that, although the applicant and witnesses T and A had been tortured and had been forced to make statements, its reviewing court had pointed out that “all the other evidence, . . . taken in its entirety, was sufficient to secure the applicant’s conviction. This included various witness statements, expert opinions and

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79 *Id.* at 14.
80 *Id.* at 15.
81 *Id.* at 24.
82 *Id.* at 25.
83 *Id.* at 24, 29-36.
84 *Id.* at 37-43.
85 *Id.* at 57.
other evidence [such as a ballistic examination confirming that the shell found at the scene had been fired from the same machine-gun model as that issued to the applicant];” in short, the error was harmless.86

The European Court, however, rejected Armenia’s harmless error argument, citing the Court’s longstanding maxim that “different considerations apply to evidence recovered by a measure found to violate Article 3. An issue may arise under Article 6(1) in respect of evidence obtained in violation of Article 3 of the Convention, even if the admission of such evidence was not decisive in securing the conviction.”87 Because the Armenian courts relied upon the applicant’s tortured confessions as substantive evidence of his guilt, as well as upon the statements obtained by physical torture from witnesses T and A that substantiated the applicant’s guilt, the European Court refused to “afford brutality the cloak of law.”88

Accordingly, the European Court concluded that, “regardless of the impact the statements obtained under torture had on the outcome of the applicant’s criminal proceedings, the use of such evidence rendered his trial as a whole unfair” in violation of the fair trial provision contained in Article 6(1) of the European Convention.89

Factually and legally, Stanley Wrice’s case is strikingly similar to Harutyunyan. Both Wrice and the applicant were severely physically tortured by police personnel in order to obtain a confession.90 In fact, both individuals were struck with rubber instruments.91 Substantial medical evidence exists confirming the physical injuries that each individual sustained while in police

86 Id. at 52-53; see also id. at 28.
87 Id. at 63 (emphasis added).
88 Id. at 63-64.
89 Id. at 66.
90 People v. Wrice, supra note 3, at 44-45 (1st Dist. 2010); Harutyunyan, supra note 51, at 9-11.
91 Wrice, supra note 3, at 44-45; Harutyunyan, supra note 51, at 9.
Moreover, just as servicemen T and A were tortured in Harutyunyan to implicate the applicant in the crime, it appears that at least two witnesses in Wrice’s case were also tortured by the police, one of whom was a key witness against Wrice at trial.

Furthermore, in both cases, the police officers alleged to have committed the torture were either convicted of such acts or have been confirmed to have committed previous acts of torture upon other suspects. Finally, in neither case did the government contest that torture took place; instead, each asserted (or, in the present case, asserts) that, despite the presence of torture, the convictions should be sustained on the basis of harmless error.

IV. DISTINCTION BETWEEN PHYSICAL TORTURE AND THREATS OF VIOLENCE

In its brief, the Special State’s Attorney asks the Illinois Supreme Court to overrule “its outdated position” that “[t]he use of a defendant’s coerced confession as substantive evidence of his guilt is never harmless error,” as expressed in People v. Wilson, and instead urges the Court to “follow the directive” of

92 Wrice, supra note 3, at 45; Harutyunyan, supra note 51, at 15.
93 Harutyunyan, supra note 51, at 8-9.
96 Harutyunyan, supra note 51, at 53-54; Special State’s Attorney, Opening Brief, Case No. 111860, at 10-13 (on file with author) [hereinafter Opening Brief].
97 116 Ill. 2d 29 (1987).
Arizona v. Fulminante,\textsuperscript{98} which applied the harmless error rule to involuntary confessions.\textsuperscript{99} In this regard, the Special State's Attorney writes that "Fulminante directly controls the outcome of this case" and that "Fulminante compels Defendant's alleged constitutional violation to be considered a trial error subject to harmless error review."\textsuperscript{100}

In so doing, however, the Special State's Attorney has failed to recognize the fundamental legal distinction between physical torture and threats of violence that is outcome determinative of whether the harmless error doctrine may be invoked, a distinction that is similarly reflected in the jurisprudence of the European Court.

Fulminante did not involve allegations of physical torture. Rather, the defendant in Fulminante was motivated to confess in order to seek protection because of "fear of physical violence" that he likely would sustain from other inmates in prison on account of rumors that he had sexually assaulted and murdered his young step-daughter.\textsuperscript{101} In fact, because the case involved only threats of violence (as opposed to torture), the United States Supreme Court described the question as to whether the defendant's confession was coerced as "a close one."\textsuperscript{102}

In stark contrast, the case of People v. Wilson,\textsuperscript{103} just as the present matter, involved overt physical torture inflicted by government officials in an effort to extract a confession. In particular, Wilson "testified that he was punched, kicked, smothered with a plastic bag, electrically shocked, and forced against a hot radiator . . . until he gave his confession."\textsuperscript{104} Furthermore, just like in Wrice's case, there was plentiful medical evidence sub-

\textsuperscript{99} Opening Brief, \textit{supra} note 96, at 13.
\textsuperscript{100} \textit{Id.} at 11.
\textsuperscript{101} Fulminante, \textit{supra} note 98, at 283, 288.
\textsuperscript{102} \textit{Id.} at 287.
\textsuperscript{103} 116 Ill. 2d 29, 41 (1987).
\textsuperscript{104} \textit{Id.} at 35.
stantiating the physical injuries Wilson sustained while in police custody.\textsuperscript{105}

In international law, there is a substantive, definitional difference between "torture" and "cruel, inhuman or degrading treatment or punishment," which is highlighted by Articles 15 and 16 of the Torture Convention. The former, as previously noted, requires that "[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."\textsuperscript{106} The latter, however, provides that "[e]ach State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."\textsuperscript{107} In other words, although State Parties are categorically prohibited from permitting the introduction into evidence of statements procured by torture, the same mandatory restriction is not imposed \textit{vis-à-vis} evidence deriving from official acts of cruel, inhuman or degrading treatment.

In the context of the harmless error doctrine, this very distinction between physical torture and threats of violence was recently addressed by the European Court in the high-profile case of \textit{Gäfgen v. Germany}.\textsuperscript{108} Therein, the applicant lured the youngest son of a German banking family into his flat and killed him, thereafter demanding ransom money.\textsuperscript{109} After the applicant was arrested, the police discovered half of the ransom

\textsuperscript{105} \textit{Id.} at 36-37.
\textsuperscript{106} \textit{Torture Convention, supra} note 40, art. 15.
\textsuperscript{107} \textit{Id.} at art. 16(1).
\textsuperscript{108} (Gr. Chamber), no. 22978/05 (June 1, 2010).
\textsuperscript{109} \textit{Id.} at 10-12.
money in the applicant's flat.\textsuperscript{110} After consulting with a lawyer, the applicant told the police that two other individuals had kidnapped the boy and had hidden him in a hut by a lake.\textsuperscript{111} Believing that the boy was still alive and in an effort to locate his whereabouts, a Deputy Chief of the Frankfort police ordered another officer to threaten the applicant with physical pain.\textsuperscript{112} More specifically, the officer threatened the applicant that he would bring in a specialist to inflict pain upon him and further threatened that the applicant would be “locked up in a cell with two big ‘Negroes’ who would anally assault him.”\textsuperscript{113} Within ten minutes thereafter, the applicant disclosed the whereabouts of the boy’s body.\textsuperscript{114}

In its judgment, the Grand Chamber confirmed its longstanding rule that where evidence procured by torture is introduced into a criminal trial in violation of Article 3 of the European Convention, the right to a fair trial under Article 6(1) is automatically breached.\textsuperscript{115} Yet, the Court noted that, in one of its earlier judgments, it had “left open the question whether the use of real evidence obtained by an act classified as inhuman and degrading treatment, but falling short of torture, always rendered a trial unfair, that is, irrespective of, in particular, the weight attached to the evidence . . . .”\textsuperscript{116}

Based upon the fact that, at trial, the applicant made a second confession that was determined to be sufficiently attenuated from the earlier confession obtained by threats of violence, the European Court concluded that there was no violation of the applicant’s fair trial rights under Article 6(1) of the European Convention.\textsuperscript{117}

\textsuperscript{110} Id. at 13-14.
\textsuperscript{111} Id. at 14.
\textsuperscript{112} Id. at 15.
\textsuperscript{113} Id. at 26.
\textsuperscript{114} Id. at 16.
\textsuperscript{115} Id. at 165-167.
\textsuperscript{116} Id. at 167.
\textsuperscript{117} Id. at 180, 187-188.
Thus, Gáfgen demonstrates that there is a fundamental distinction between cases involving confessions procured by physical torture, in which the harmless error doctrine is never applicable, and cases involving threats of violence where, depending upon the particular factual circumstances, the harmless error doctrine may apply.

V. PRESERVING THE INTEGRITY OF THE JUDICIAL PROCESS

In addition to “deter[ring] future unlawful police conduct,” another principal purpose underlying the exclusionary rule is “to maintain the integrity of the judicial process.” By way of illustration, in United States v. Fernandez-Caro, the district court granted the defendant’s motion to suppress his confession based upon the undisputed evidence that, while the defendant was across the border in Mexico, the Mexican Federal Judicial Police, not the U.S. immigration officials who later searched his room in Texas, “threatened to kill him, beat him about the face and body, poured water through his nostrils while he was stripped, bound and gagged, and applied electrical shocks to his wet body, among other things.” The district judge ruled that the manner in which the Mexican authorities obtained the defendant’s statement “shock[ed] the conscience of the American court,” finding that “[t]he conduct of the Mexican police officials violated even minimal standards of decency expected in a civilized society.” Remarking that the methods employed “were ‘too close to the rack and the screw’ to be acceptable,” the court granted the motion to suppress.

In discussing the above decision, a commentator explained, “The reason for this exception is that in addition to serving a

121 Id. at 894.
122 Id. at 895.
123 Id. (quoting Rochin v. California, 342 U.S. 165, 172 (1952)).
deterrent function, the torture exclusionary rule serves an important secondary function: to preserve the integrity of the judicial process and the honor of the judicial system."¹²⁴ This assessment is harmonious with the oft-quoted passage from the United States Supreme Court’s decision in *Rochin v. California*,¹²⁵ wherein deputy sheriffs directed a physician to force an emetic solution into the accused’s stomach in an effort to recover several capsules he had swallowed:

Use of involuntary verbal confessions in State criminal trials is constitutionally obnoxious not only because of their unreliability. They are inadmissible under the Due Process Clause even though statements contained in them may be independently established as true. Coerced confessions offend the community’s sense of fair play and decency. So here, to sanction brutal conduct which naturally enough was condemned by the court whose judgment is before us, would be to afford brutality the cloak of law. Nothing would be more calculated to discredit law and thereby to brutalize the temper of a society.¹²⁶

Similarly, the European Court of Human Rights and high courts from nations around the world have clearly articulated a uniform rationale for not applying the harmless error doctrine in criminal cases in which evidence obtained by physical torture is introduced as substantive evidence of a defendant’s guilt. The underlying policy reason for refusing to permit a conviction to stand in the face of the use of a confession procured by torture is that such a practice irreparably tarnishes not only the individual court proceeding and the legal system in general, but the reputation of those who acquiesce in its use, most notably the judges solemnly entrusted with safeguarding the justice process; therefore, to preserve the integrity of judicial proceedings, a new trial that is free from the stain of the tainted evidence is required.

¹²⁵ 342 U.S. 165 (1952).
¹²⁶ Id. at 173-74.

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As noted earlier, the European Court has repeatedly remarked that to permit a criminal conviction marred by the use of tortured evidence to stand "would only serve to legitimate indirectly the sort of morally reprehensible conduct which the authors of Article 3 of the [European] Convention sought to proscribe or, in other words, to 'afford brutality the cloak of law.'"\textsuperscript{127}

Superior tribunals from around the world have reached the same conclusion. For example, in the celebrated torture decision of the House of Lords, \textit{A and others v. Secretary of State for the Home Department (No. 2),}\textsuperscript{128} which involved the propriety of the Secretary of State's submission that statements obtained abroad by torture should be admissible in appeals to the Special Immigration Appeals Commission, Lord Hoffmann eloquently expressed this concept in the opening paragraphs of his opinion:

\ldots \textit{The use of torture is dishonourable. It corrupts and degrades the state which uses it and the legal system which accepts it.} When judicial torture was routine all over Europe, its rejection by the common law was a source of national pride and the admiration of enlightened foreign visitors such as Voltaire and Beccaria. \ldots

\ldots \textit{The rejection of torture by the common law has a special iconic importance as the touchstone of a humane and civilised legal system.} Not only that: the abolition of torture, which was used by the state in Elizabethean and Jacobean times to obtain evidence admitted in trials before the court of Star Chamber, was achieved as part of the great constitutional struggle and civil war which made the government subject to law. Its rejection has a

\textsuperscript{127} \textit{Harutyunyan v. Armenia}, no. 36549/03, 63 (June 28, 2007); \textit{Jalloh v. Germany} (Gr. Chamber), no. 54810/00, 105 (July 11, 2006).
\textsuperscript{128} [2006] 2 A.C. 221 (H.L. December 8, 2005).
constitutional resonance for the English people which cannot be overestimated.\textsuperscript{129}

In addressing the rationale underlying the rule prohibiting the use of such evidence, Lord Hoffmann, after rejecting the claim that the rule was designed to discipline the executive, explained that if the purpose of the rule was rather to preserve the integrity of the judicial process,

then the rule must exclude statements obtained by torture anywhere, since the stain attaching to such evidence will defile an English court whatever the nationality of the torturer. I have no doubt that the purpose of the rule is not to discipline the executive, although this may be an incidental consequence. It is to uphold the integrity of the administration of justice.\textsuperscript{130}

Parenthetically, it should be noted that the United States Supreme Court has remarked that “[t]he United Kingdom’s experience bears particular relevance ... in light of the historic ties between our countries ... .”\textsuperscript{131}

Another very important torture decision bearing upon this question is \textit{Mthembu v. South Africa}.\textsuperscript{132} Therein, the defendant was convicted on the basis of evidence obtained from an alleged accomplice after the police tortured the accomplice by use of electric shock treatment.\textsuperscript{133} The court had to determine whether the defendant received a fair trial.

In addition to other factors, including compliance with the United Nation’s Torture Convention, the court pointed out that public policy, in this context, is concerned not only to ensure that the guilty are held accountable; it is

\begin{itemize}
  \item \textsuperscript{129} \textit{Id.} at 81-83 (emphasis added).
  \item \textsuperscript{130} \textit{Id.} at 91.
  \item \textsuperscript{131} \textit{Roper v. Simmons}, supra note 34, at 577 (2005).
  \item \textsuperscript{133} \textit{Id.} at 17, 19.
\end{itemize}
also concerned with the propriety of the conduct of investigating and prosecutorial agencies in securing evidence against criminal suspects. It involves considering the nature of the violation and the impact that evidence obtained as a result thereof will have, not only on a particular case, but also on the integrity of the administration of justice in the long term.134

In reversing outright three of the defendant’s convictions because “[t]he torture has stained the evidence irredeemably” and because, without such material, there was insufficient evidence to sustain the convictions, the court made the following concluding observations:

To admit [the accomplice’s] testimony . . . would require us to shut our eyes to the manner in which the police obtained this information from him. More seriously, it is tantamount to involving the judicial process in ‘moral defilement.’ This ‘would compromise the integrity of the judicial process (and) dishonour the administration of justice.’ In the long term, the admission of torture-induced evidence can only have a corrosive effect on the criminal justice system. The public interest, in my view, demands its exclusion, irrespective of whether such evidence has an impact on the fairness of the trial.135

134 Id. at 26.

135 Id. at 34, 36 (footnote omitted). See R. v. Collins, [1987] 1 S.C.R. 265, 31 (Can. Sup. Ct. Apr. 9, 1987) (noting that the pertinent section of the Canadian Charter of Rights and Freedoms was designed “to prevent having the administration of justice brought into further disrepute by the admission of the evidence in the proceedings”); People (at the suit of the A-G) v. O’Brien, [1965] I.R. 142, 150 (Ir. Sup. Ct.) (holding that “to countenance the use of evidence extracted or discovered by gross personal violence would . . . involve the state in moral defilement”).
Most recently, in *United States of America v. Khadr*, a Canadian appellate court affirmed the decision of a lower court judge who stayed extradition committal proceedings because the granting of the committal order would taint the integrity of the court due to the requesting state’s conduct. Therein, Khadr, a Canadian citizen, had been abducted in Pakistan, physically beaten until he cooperated with Pakistani intelligence authorities, who interrogated him for intelligence purposes, and secretly detained for fourteen months. The court found that the United States had paid Pakistani intelligence officials a half a million dollars to abduct Khadr and should have been aware that it was likely that he would be mistreated. The FBI then interrogated Khadr in Pakistan. After Khadr was returned to Canada by Pakistani intelligence, the United States filed terrorism-related criminal charges against Khadr and subsequently sought his extradition from Canada.

In light of the physical beatings and deprivations suffered by Khadr in Pakistan, and the statements resulting therefrom, the superior court judge who conducted the extradition committal hearing concluded that “the sum of the human rights violations suffered by Khadr is both shocking and unjustifiable.” Accordingly, the judge stayed the extradition proceedings on the grounds that to permit the proceedings to continue in the face of the requesting state’s misconduct would constitute an abuse of the judicial process and “undermines the justice system.” On appeal, the reviewing judges unanimously affirmed the decision of the superior court judge to stay the extradition proceedings.

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137 *Id.* at §§ 1, 8.
138 *Id.*
139 *Id.* at § 13.
140 *Id.* at §§ 16-17.
141 *Id.* at § 2.
142 *Id.* at §§ 2, 23.
“in order to protect the integrity of the courts and the judicial process.”  

Accordingly, in order to preserve the integrity of the judicial process, the Illinois Supreme Court should, from a policy perspective alone, soundly reject the notion that a conviction predicated in any way upon evidence procured by torture can be sustained.

CONCLUSION

The lessons from international jurisprudence are unmistakable: the harmless error doctrine is inapplicable to any criminal case involving the use of a confession extracted by physical torture, as one can never receive a fair trial under such circumstances. Moreover, courts must decline outright any invitation by prosecutorial authorities to relax the current ban on the use of such tainted evidence, lest the judiciary bloody its own robes in complicity and thereby stain the integrity of the judicial process.

It has been said by prophets of old that “[h]e who ruleth over men must be just.” A tribunal that permits a conviction to stand in the face of the use at trial of a tortured confession forfeits the title of “court of law.” Accordingly, the issue in Wrice is not simply an academic legal inquiry surrounding the applica-

143 Id. at § 52.
144 See M. Cherif Bassiouni, An Appraisal of Torture in International Law and Practice: The Need for an International Convention for the Prevention and Suppression of Torture, in Convention Against Torture: Hearing Before the Committee on Foreign Relations, U.S. Senate, 101st Cong., 2d Sess., 107, 134 (Jan. 30, 1990) (“[T]he use of torture to secure a conviction by obtaining otherwise unavailable incriminating evidence ... violates the integrity of the legal system. The reason is that the integrity of the legal system is indispensable to its credibility and acceptance and thus ultimately to its survival as the effective means of resolving inter-personal and social conflicts. Accordingly, torture cannot be rationalized as a means of sustaining the legal system because it is violative of the integrity of the legal system.”).
145 II Samuel 23:3 (King James).
tion of the doctrine of harmless error; rather, it is a foundational question of ethics that goes to the very heart of the character of the judiciary.

The justices of the Illinois Supreme Court can either choose to remain as conservators of the integrity of the court, or, along with the State, they will become co-conspirators in torture, giving legal sanction to police brutality and infecting the judiciary as an institution by means of moral defilement. In short, there is no middle ground – the answer is painted in hues of either black and white or black and blue.