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## HOW AND WHY A CODE OF SILENCE BETWEEN STATE'S ATTORNEYS AND POLICE OFFICERS RESULTED IN UNPROSECUTED TORTURE

*Elliott Riebman*

### INTRODUCTION

Beginning in the early 1970s, and spanning two decades, more than 110 African American suspects were systematically tortured by fifteen Chicago police officers all of whom were white.<sup>1</sup> Lieutenant Jon Burge was the commanding officer of all of the perpetrators.<sup>2</sup> Although these officers were protected from prosecution by the code of silence, the culture they created in the Chicago Police Department (CPD) festers to this day, as was recently on display in the Laquan McDonald case.<sup>3</sup>

In May 2006, special prosecutors in the Cook County State's Attorney's Office (CCSAO) (hereinafter the "Special Prosecutors") released a report that followed a four-year investigation into claims against Burge and his officers. The report indicated that 150 people were tortured in the Violent Crimes Unit known as Area 2 on Chicago's South Side.<sup>4</sup> After two years, and more than 700 interviews, the Special Prosecutors concluded that there was credible evidence in 148 of the complaints. However, they could only prove three of these cases beyond a reasonable doubt.<sup>5</sup> The Report also found credible evidence of abuse in about half of the 148 complaints that they had thoroughly investigated.<sup>6</sup>

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<sup>1</sup> Susan Bandes, *Patterns of Injustice: Police Brutality in the Courts*, 47 BUFF. L. REV. 1275, 1288 (1999) (citing *see, e.g., United States ex rel Maxwell v. Gilmore*, 37 F.Supp.2d 1078, 1094 (N.D. Ill. 1999)); G. F. Taylor, *A Long and Winding Road: The Struggle for Justice in the Chicago Police Torture Cases*, 17 PUB. INTEREST L. RPTR. 178, 183 (2012) (provides a thorough and detailed history of Chicago police torture involving Jon Burge and Area 2). Available at: <http://lawecommons.luc.edu/pilr/vol17/iss3/3>.

<sup>2</sup> Taylor, *supra* note 1, at 180.

<sup>3</sup> Clarence Page, *Is the 'Chicago Way' a kill-and-cover-up Culture?*, CHICAGO TRIBUNE, November 27, 2015, available at <http://my.chicagotribune.com/#section/-1/article/p2p-85166578/>.

<sup>4</sup> See Robert Boyle & Edward Egan, *Report of the Special State's Attorney* (2006), <http://www.aele.org/law/2006LROCT/chicagoreport.pdf>.

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

Unfortunately, these findings came 30 years too late, after the statute of limitations had lapsed.<sup>7</sup>

Many are inclined to dismiss the torture in Area 2 as unusual, anecdotal, and unrepresentative.<sup>8</sup> However, in light of the recent investigations into police abuse, it is worth reexamining the practices of Area 2. One can clearly see that the chain of command between the CPD and the CCSAO of the 1970s and early 1980s either broke down or never properly existed. The collusion between police officers and prosecutors through relentless efforts to obtain illegal confessions may have resulted in a tacit unwritten protocol; ‘the ends justify the means’.<sup>9</sup> This mentality corrodes core legal principles such as habeas corpus, and results in deeply troubling miscarriages of justice that continue in Cook County today.

Area 2 still symbolizes failed governmental accountability. This precinct foreshadowed cases of police abuse, misconduct, and a broadly accepted code of silence amongst the CPD, the CCSAO, and Cook County judges that resurfaced in the case of Laquan McDonald.<sup>10</sup>

This article will focus on the torture in Area 2 and its aftermath as it unfolded in Chicago’s courtrooms and government offices. It will analyze the alleged cover-up by the CPD and CCSAO. Further, it will profile individuals involved in Andrew Wilson’s case, such as Police Superintendent Brzeczek and several Assistant State’s Attorney’s (ASAs).<sup>11</sup> Once cases of torture and confirmed medical reports surfaced the responsibility to take action laid with former Mayor Richard M. Daley, the head of the CCSAO at the time of the release of the reports. Richard Devine, Mayor Daley’s first ASA and later the head of the CCSAO, was also directly involved in deciding how to deal with Area 2 and the

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<sup>7</sup> See *id.* at 18. The Illinois statute of limitations bars initiating prosecution of felonies more than three years after the commission of the crime. See *id.*

<sup>8</sup> Bandes, *supra* note 1, at 1278.

<sup>12</sup> See KEVIN DAVIS, DEFENDING THE DAMNED: INSIDE CHICAGO’S COOK COUNTY PUBLIC DEFENDERS OFFICE 101 (Atria 2007) (quoting Andrea Lyons) (in other words, do whatever necessary to get a confession if it puts the bad guy in jail).

<sup>10</sup> Don Babwin, *Chicago teen's death shines light on police code of silence*, Associated Press, Feb. 8, 2016, [http://www.salon.com/2016/02/08/chicago\\_teens\\_death\\_shines\\_light\\_on\\_police\\_code\\_of\\_silence/](http://www.salon.com/2016/02/08/chicago_teens_death_shines_light_on_police_code_of_silence/).

confirmed torture allegations once the first official torture allegations were confirmed.<sup>12</sup>

In Chicago, collusion between police officers and lawyers is nothing new under the sun; in fact, the history of organized crime and corrupt politics traces back almost 100 years.<sup>13</sup> The history of police and judicial corruption in Chicago traces back almost 100 years. As early as 1957, *Life* magazine described CPD as the most corrupt in the nation.<sup>14</sup> In 1960, Walter Spirko, a Chicago reporter, exposed a police burglary ring known as the “Summerdale Scandal” that led to some reforms. However, despite these efforts an atmosphere of corruption remained prevalent into the 1970s.<sup>15</sup>

Before examining what motivated those individuals involved in Area 2, it is important to understand the environment they worked in at the time—Chicago’s south side in the 1970s—and its demographics. The neighborhood population near Area 2 was overwhelmingly poor and black. In surrounding neighborhoods, rumors abounded that police officers had tortured people there for years. However, no official complaints were filed until the early 1970s.<sup>16</sup> Torture allegations came from unconnected sources, and most complaints alleged similar acts perpetrated by the same unit and same men.<sup>17</sup> However, no official complaints were filed until the early 1970s. Despite the allegations against Area 2, the Office of Professional Standards (OPS), an internal agency of CPD, failed to investigate the complaints until 1990.<sup>18</sup> Jon Burge remained in charge at Area 2 until he was terminated in 1993. After complaints were finally investigated and verified, no criminal proceedings were instituted against either Burge or those

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<sup>12</sup> *Id.* at 119-20.

<sup>13</sup> For a history of corruption within the Chicago Police Department (warts and all), see RICHARD LINDBERG, *TO SERVE AND COLLECT: CHICAGO POLITICS AND POLICE CORRUPTION FROM THE LAGER BEER RIOT TO THE SUMMERDALE SCANDAL* (Praeger 1991) (discussing the tie between politics, organized crime, vice, and the police department and revealing how police corruption in Chicago was the result of political drag on the department).

<sup>14</sup> John Conroy, *The Good Cop*, CHICAGO READER, January 5, 2007, available at <http://www.chicagoreader.com/features/stories/goodcop/>.

<sup>15</sup> See *id.*

<sup>16</sup> See Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States* 155 (1998), available at <http://www.hrw.org/reports98/police/>.

<sup>17</sup> Bades, *supra* note 1, at 1288-89.

<sup>22</sup> *Id.* at 1289. The OPS report found systemic torture had been occurring in Area 2 until 1992; however, Mayor Daley condemned the report and the city suppressed its findings. *Id.* at 1301-02.

officers in Area 2 because the statute of limitations had run; Burge remained in charge of Area 2 until he was fired in 1993.<sup>19</sup> According to the Special Prosecutors' Report, prosecutors could bring only a single indictable offense against Police Superintendent Brzeczek for "dereliction of duty." Mr. Brzeczek had actual knowledge of torture at the time it occurred, he failed to take appropriate steps to inform the CCSAO, or to initiate an investigation into Area 2.<sup>20</sup> Instead, all Mr. Brzeczek did was send Mayor Daley a letter explaining that abuse had occurred, and it could be corroborated with medical documentation.<sup>21</sup> Mr. Brzeczek stated in the letter that he would not investigate Wilson's alleged torture unless Daley directed him to do so.<sup>22</sup> Mr. Brzeczek never heard back from former Mayor Daley and no further action was taken.

A rational jury could have inferred that Mr. Brzeczek knew Area 2 officers were prone to beating up suspected cop killers, the Seventh Circuit found that "failing to eliminate a practice cannot be equated to approving it."<sup>23</sup> The court found that Mr. Brzeczek could only be found guilty of dereliction of duty; however, insufficient grounds for civil liability existed to pursue this charge. Some of the people victimized in Area 2 have brought civil cases against the officers and the city; however, the evidentiary rule, which excludes prior acts of brutality, bars almost all findings of municipal liability.<sup>24</sup>

There has been very little community outrage over the torture in Area 2. For whatever reason, the story never garnered enough notoriety necessary to trigger public uproar.<sup>25</sup> Some hoped

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<sup>19</sup> See *In the Matter of the Charges Filed Against Jon Burge*, No. 91-1856 (Chicago Police Board, February 11, 1993).

<sup>24</sup> Boyle & Egan, *supra* note 4, at 16; see also Jodi Rudoren, *Report on Chicago Police Torture is Released*, NEW YORK TIMES, July 19, 2006, available at <http://www.nytimes.com/2006/07/19/us/19cnd-chicago.html?ex=1310961600&en=7d6c899743e68af5&ei=5088&partner=rssnyt&emc=rss>. Robert Boyle, the chief deputy special state's attorney, who led the investigation, condemned Brzeczek, saying, "he did not just do his job poorly, he just didn't do his job." *Id.*

<sup>25</sup> Boyle & Egan, *supra* note 4, at 70.

<sup>22</sup> Taylor, *supra* note 1, at 181. (n. 17 citing Letter from Richard Brzeczek, Police Superintendent, to Richard Daley, State's Attorney, Cook County (Feb. 25, 1982) (on file with G. Flint Taylor); Statement of Richard Brzeczek to special prosecutor, March 9, 2005).

<sup>27</sup> *Wilson v. City of Chicago*, 6 F.3d 1233, 1240 (7th Cir. 1993).

<sup>24</sup> *Id.*

<sup>25</sup> Taylor, *supra* note 1, at 182, stating "Wilson's civil rights case went to trial in February 1989, amid little fanfare. While torture at Area 2 had long been an 'open secret' at Area 2, the police department and the state's attorney's office

that the 2006 report by the United Nations Committee against Torture, calling for an independent investigation of the Chicago police torture,<sup>26</sup> would encourage the U.S. Attorney of the Northern District of Illinois, or the Department of Justice, to initiate an independent investigation into Area 2 and any ongoing cover-up.<sup>27</sup> However, no such investigation has ensued.

This Article will include a detailed analysis of the Andrew Wilson criminal case, which brought ongoing Chicago police torture to light, and then an examination of the 'ends justified the means' attitude held by the CPD and the CCSAO that enabled and protected police torturers like Jon Burge and others in Area 2. This article will then consider the collusion between the CPD and the CCSAO that resulted in a deeper miscarriage of justice, those responsible individuals and public officials who did not take action to end the torture but instead enabled it. The article will then turn to the special prosecutors appointed to investigate Jon Burge and Area 2 and how they produced a biased and flawed report that failed to hold anyone accountable, along with the role racism played in the Cook County court system in the 1970s and 1980s. This article will then explore the impact judges had on handling cases of police torture and false confessions. Lastly, this article will address the roots and history of torture on American soil, in particular, where Jon Burge's tactics came from, the mentality and rationale behind them and what can be done to prevent such horrible abuses by police officers and ensuing cover-ups by public officials in the future, with an eye on the pending first-degree murder charges against a CPD officer in the Laquan McDonald shooting case.

## 1. The Torture of Andrew Wilson

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managed to keep the lid on that secret, and every Cook County judge who heard allegations of torture on motions to suppress rejected them.”

<sup>29</sup> See United Nations Committee Against Torture, Conclusions and Recommendations of the Committee Against Torture, May 18, 2006, *available at* <http://www.state.gov/documents/organization/133838.pdf>.

<sup>30</sup> A 2007 report in response to the Special Prosecutors' Report requested such action. See *Report on the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Systemic Police Torture in Chicago* 49 (April 24, 2007), *available at* <http://peopleslawoffice.com/wp-content/uploads/2012/02/5.8.07.Final-Corrected-Version-of-Report.pdf>. This report was endorsed by 212 individuals and organizations active in the fields of human rights, criminal justice, civil rights, and racial justice including Reverend Jesse L. Jackson Sr., Cherif Bassiouni, Studs Terkel, Andrea Lyon, and Howard Zinn.

The case of Andrew Wilson presents the clearest evidence of torture.<sup>28</sup> Before analyzing the details of Wilson's trial, Burge's testimony, and the failed prosecutorial efforts, it is crucial to first understand the inflammatory nature of Wilson's crime and the specific physical abuse he suffered.

Mr. Wilson was convicted of murdering two Chicago police officers and sentenced to death.<sup>29</sup> The Illinois Supreme Court reversed Wilson's conviction on grounds that his confession should have been suppressed because the state failed to explain how he suffered certain injuries while in police custody.<sup>30</sup> After Wilson was retried and convicted, he was sentenced to life imprisonment.<sup>31</sup>

Following his trial, Mr. Wilson filed a civil rights action naming Superintendent Richard Brzeczek, Police Chief Jon Burge, the city of Chicago and other police officers as defendants.<sup>32</sup> The first trial resulted in a hung jury, and the jury in the second trial delivered a "special verdict," which found that, even though Mr. Wilson's constitutional rights had been violated, all police officers involved were exonerated.<sup>33</sup> The jury also found that the city of Chicago had a "*de facto* policy" that authorized police officers to physically abuse persons suspected of having injured or killed a police officer.<sup>34</sup> The jury concluded that the policy had not been a "direct and proximate cause" of the physical abuse Mr. Wilson suffered.<sup>35</sup> From the jury's perspective, the law basically sanctioned police abuse against a cop killer.

The jury was unaware of the tortured confession of Mr. Wilson because Assistant State's Attorney Lawrence Hyman, who took Wilson's confession, never asked Wilson at trial if his confession was coerced.<sup>36</sup> Mr. Hyman's failure to ask Mr. Wilson if his confession was voluntary represents a "spectacular omission" for an ASA in a murder case, especially one involving the death of a police officer.<sup>37</sup> Mr. Hyman's failure was also shocking because of the nature of the abuse Mr. Wilson sustained while in police custody. Photographs taken at Cook County Jail following Mr.

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<sup>31</sup> Boyle & Egan, *supra* note 4, at 43.

<sup>29</sup> *People v. Wilson*, 116 Ill. 2d 29 (1987).

<sup>30</sup> See *supra* note 27.

<sup>31</sup> *Id.*

<sup>32</sup> *Wilson v. City of Chicago*, 707 F. Supp. 379 (N.D. Ill. 1989).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>37</sup> *Id.*<sup>38</sup> *Id.*

Wilson's interrogation show "burns, cuts, and a pattern of scabs" allegedly left by "alligator clips."<sup>38</sup> Those clip marks turned out to be the strongest evidence supporting Wilson's torture allegations. The allegations also included the administration of electric shock.

Ultimately, the city of Chicago and Andrew Wilson settled the case for payment of \$100,000 damages to Mr. Wilson and covered his \$900,000 in attorneys' fees.<sup>39</sup> After realizing that Wilson's civil suit held water, the CCSAO decided to settle likely to prevent further investigation into Area 2 and other torture victims. The torture cover-up in Wilson's case, which involved systemic suppression and the denial and discrediting of other torture allegations, only begins to illuminate the callous and continuous physical police abuse permitted by the CPD and overlooked by the CCSAO.

The specific abuse inflicted on Mr. Wilson during and following his arrest reveals the level of violence and severity of torture committed. During the arrest, Wilson was thrown to the floor and Jon Burge placed one knee on the small of Wilson's back and the other knee on the back of Wilson's head.<sup>40</sup> Mr. Wilson also testified that other officers kicked, slapped, and hit him with their fists.<sup>41</sup> Upon arriving at Area 2, Mr. Wilson's head was covered with a plastic bag and his arm was burned with a cigarette.<sup>42</sup> He was then handcuffed to a ring on the wall next to a radiator. Later, Jon Burge entered that room and demanded that Mr. Wilson confess; Wilson refused.<sup>43</sup> Another officer then entered the room holding a black box that contained two wires with alligator clips.<sup>44</sup> One clamp was attached to Wilson's left ear and another to his left nostril.<sup>45</sup> Wilson received a shock when the officer cranked the box.

Wilson was then stretched across the radiator and the clamps were placed on his fingers.<sup>46</sup> Jon Burge then took out a device resembling a "curling iron," and rubbed it between Wilson's legs.<sup>47</sup> Mr. Wilson was then taken to another room in

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<sup>38</sup> *Id.*

<sup>39</sup> Boyle & Egan, *supra* note 4, at 44.

<sup>40</sup> *Id.* at 46.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 47.

<sup>47</sup> *Id.* Wilson testified that Burge ran an electric-shock device "up between my legs, my groin area... then he jabbed me with the thing and it slammed me..."



which Jon Burge entered and put a gun in Wilson's mouth and pulled the trigger. Jon Burge told Wilson that the abuse would end if he confessed to the murders of Richard Fahey and Richard O'Brien.<sup>48</sup> It was only at that point that Mr. Wilson agreed to make a statement.<sup>49</sup>

Shortly after Wilson was brought to the Cook County Jail, Dr. John Raba, director of medical services for the Cook County prison hospital, examined him, heard a description of his torture and wrote a letter to Police Superintendent Brzeczek describing the injuries suffered by Andrew Wilson and demanding a full investigation.<sup>50</sup> The letter (the "Raba letter") provided more than a sufficient basis to initiate an investigation. However, following receipt of the letter, neither the CCSAO nor the OPS initiated an investigation of either Area 2 or Jon Burge.

The crucial disconnect occurred when Mr. Brzeczek delivered the Raba letter directly to State's Attorney Daley. Mr. Daley, Mr. Devine, and Mr. Kunkle all received and read the letter and, as their 2006 interviews revealed, were all aware that the letter established criminal conduct in Area 2.<sup>51</sup> This conduct demonstrates the code of silence existed amongst police officers and prosecutors alike. Following receipt of the letter, these three men appear to have engaged in a conspiracy of silence. The key disjunction between Brzeczek, the Raba letter, and the CCSAO's receipt of the letter begins to reveal who had specific information of the ongoing torture, who failed to act during and after Andrew Wilson's trials, and why those people failed to act.

## 2. "The End Justifies the Means"<sup>52</sup>: Attitudes That Enabled and Protected Police Torturers

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into the grille on the window. Then I fell back down, and I think that's when I started spitting up the blood and stuff." See John Conroy, *House of Screams: Torture by Electric Shock: Could it Happen in a Chicago Police Department? Did it Happen in Area 2?*, CHICAGO READER, January 26, 1990, available at <http://www.chicagoreader.com/chicago/house-of-screams/Content?oid=875107>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 48-49. See also Taylor, *supra* note 1, at 181. (n. 14 citing Letter from Dr. John Raba, Medical Services Director, Cook County Prison System, to Richard Brzeczek, Police Superintendent (Feb. 17, 1982) (on file with G. Flint Taylor).

<sup>51</sup> *Report on the Failure of Special Prosecutors*, *supra* note 30, at 11.

<sup>52</sup> KEVIN DAVIS, *DEFENDING THE DAMNED: INSIDE CHICAGO'S COOK COUNTY PUBLIC DEFENDERS OFFICE 101* (2007) (quoting Andrea Lyons). Andrea Lyons explained: "It's the end-justifies-the-means problem... I mean, a guy comes to court with twenty-seven stitches. We all knew what was going on. We really

The “torture of more than 60 black men in Area 2 over a period of more than 13 years could not have occurred without the assistance of numerous individuals and institutions, including judicial officers and judicial institutions.”<sup>53</sup> The scope of the abuse gives rise to a series of unanswered questions: 1) Was this a case of oversight between the police and the CCSAO, or was there something more sinister and insidious behind the neglected investigations?; 2) Was there collusion between police officers and prosecutors for the sake of obtaining confessions, which were, at the time, so crucial to convictions?; 3) Did prosecutors merely look the other way when they learned that confessions were obtained by police abuse? It is as if an unspoken agreement, an unwritten protocol, existed between police officers and prosecutors that “the end justifies the means.”

An examination of Area 2 procedures, specifically focusing on the *Wilson* case, reveals prevailing attitudes and mentalities of the attorneys, police officers, and government officials who each played a part in shielding perpetrators of torture from prosecution.

#### **A. The Deeper Miscarriage of Justice: Collusion Between State’s Attorneys and Police Officers**

The CCSAO and the CPD were mutually dependent in the sense that cops needed prosecutors to affirm their arrests with convictions and prosecutors needed confessions to get those convictions. This interplay often resulted in a blinding desire by both groups to obtain confessions. Although legal requirements for confessions have since been greatly reformed, confession evidence during the 1970s and 1980s was critical to achieving convictions.<sup>54</sup> Thus, prosecutors were often all too willing to turn a blind eye when confronted with allegations of a tortured confession.

While police detectives illegally obtained confessions from many guilty defendants, a surprising number of innocent men were also sentenced to jail and death row due to coerced confessions. In January of 2003, Illinois Governor George H. Ryan granted pardons to four black men on death row who had been tortured by

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tried hard to show it to the juries. But it was your clients’ word against the cops.” *Id.*

<sup>53</sup> Bandes, *supra* note 1, at 1278.

<sup>54</sup> See Timothy O’Neill, “Ruling is Strong Shield on ‘Involuntary’ Confession.” CHICAGO DAILY LAW BULLETIN 148 (2002): 6; see also Welsh S. White, “What Is an Involuntary Confession Now?” 50 RUTGERS LAW REVIEW 2001, 2001–57 (1998).

Jon Burge--Madison Hobley, Leroy Orange, Stanley Howard, and Aaron Patterson—based on actual innocence. Each case reveals a terrible, indelible miscarriage of justice. As Governor Ryan explained:

The category of horrors was hard to believe. If I hadn't reviewed the cases myself, I wouldn't believe it. We have evidence from four men, who did not know each other, all getting beaten and tortured and convicted on the basis of the confessions they allegedly provided. They are perfect examples of what is so terribly broken about our system.<sup>55</sup>

This Article cannot deal with every case of torture and wrongful conviction.<sup>56</sup> Instead, it focuses on the deeper miscarriage of justice underlying all these cases and the shocking absence of criminal liability and political accountability.

Why did prosecutors never charge Burge and his fellow officers for their crimes? Why were Jon Burge and his fellow officers never charged by prosecutors? Exactly who was aware of the police torture in Area 2 and did nothing to stop it? The answers to these questions reveal deeply-rooted flaws in Chicago's justice system, which, ultimately, reflects a widespread lack of accountability in America's core legal and political institutions.

### **B. Daley, Devine, Dereliction of Duty, and Denial**

The *Wilson* case created a conflict of interest for Former Mayor Daley's office. How could the CCSAO fairly and simultaneously prosecute Wilson and the police officers involved in his arrest? Certainly, Mr. Daley could have just referred the matter to the attorney general or the U.S. attorney.<sup>57</sup> Instead, he conferred with his top aides, Richard Devine and William Kunkle, and chose to do nothing.<sup>58</sup> These men were aware of Mr. Wilson's

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<sup>55</sup> Statement of Governor George Ryan, DePaul University School of Law, January 10, 2003.

<sup>61</sup> See also List of Victims, Pozen Family Center for Human Rights, available at <https://humanrights.uchicago.edu/page/list-victims> (for a documented list of 101 known torture victims of Burge and his detectives from 1972-1991, compiled in March of 2005 by the Peoples' Law Office. Since then, more than 30 other victims have come forward with their stories).

<sup>62</sup> Rob Warden, *Ignoring an injustice*, CHICAGO TRIBUNE, April 29, 2007, available at [http://articles.chicagotribune.com/2007-04-29/news/0704271277\\_1\\_richard-brzeczek-torture-special-prosecutors](http://articles.chicagotribune.com/2007-04-29/news/0704271277_1_richard-brzeczek-torture-special-prosecutors).

<sup>58</sup> *Report on the Failure of Special Prosecutors*, *supra* note 30, at 12.

abuse and knew that they had both the authority and the duty to initiate an investigation of Area 2. Instead, they engaged in a “conspiracy of silence.”<sup>59</sup> Richard Daley’s office went on to convict Mr. Wilson based on his tainted confession and he was sentenced to death.<sup>60</sup>

Whether the inaction of Richard Daley, Richard Devine, and William Kunkle was criminal is unclear, but the Special Prosecutor’s Report released in 2006 found only that Police Superintendent Brzecezek was guilty of “dereliction of duty.”<sup>61</sup> In fact, the report placed almost all the responsibility on Mr. Brzecezek, even though he had informed Mr. Daley about Mr. Wilson’s torture from the beginning. Mr. Daley persisted in denying knowledge of torture even as a “mountain of evidence” piled up indicating torture was an “ordinary occurrence” at Area 2.<sup>62</sup> Even after he was elected Mayor, Mr. Daley never requested investigation into Area 2.

Three years into Mayor Daley’s term, he received a report by the OPS stating that Jon Burge and his subordinates had engaged in “systematic” torture and abuse for over a decade.<sup>63</sup> Instead of ordering the CPD to look into the matter, Mayor Daley publicly condemned the OPS’s methodologies and conclusions.<sup>64</sup>

### C. Encouraging Torture: Mayor Daley’s Commendation of Jon Burge

After hearing of Mr. Wilson’s torture allegations and receiving hard evidence to support such claims, Mayor Daley never authorized a single criminal investigation and, thus, the CPD

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<sup>59</sup> *Id.* at 41.

<sup>60</sup> Four years later, Wilson’s conviction was reversed by the Illinois Supreme Court. However, he was again convicted—without his tortured confession—and sentenced to life imprisonment. *See Boyle & Egan, supra* note 4, at 52.

<sup>61</sup> *Id.* at 17.

<sup>62</sup> *Hinton v. Uchtman*, 395 F. 3d 810, 822 (7th Cir. 2005) (Wood, J., concurring).

<sup>63</sup> *See OPS Special Project Conclusion Reports and Findings*, November 2, 1990 (Goldston Report). The OPS investigators found that acts of torturous treatment Wilson suffered were almost identical to other detailed accounts, revealing an astounding pattern or plan by Burge and his detectives to torture certain suspects into confessing to crimes. *See Memorandum In Opposition to Motion to Bar Testimony Concerning other Alleged Victims of Police Misconduct*, filed before the Police Board in the *Matter of Charges Filed against Respondents Jon Burge, John Yucaitis and Patrick O’Hara*, Case Nos. 1856-58, January 22, 1992, p. 1, *cited in Report on the Failure of Special Prosecutors, supra* note 30, at 17.

<sup>64</sup> *See Chicago Tribune*, February 8, 1992, *cited in Report on the Failure of Special Prosecutors, supra* note 30, at 11.

never investigated Area 2.<sup>65</sup> Instead, less than a year after Mr. Daley received the Raba letter documenting Wilson's torture in Area 2, he honored Jon Burge and four other Area 2 detectives involved in the *Wilson* case.<sup>66</sup>

Mayor Daley's decision to honor Jon Burge and his crew amounted to tacit encouragement of their practices. Ignoring acts of torture when one has a duty to intervene may constitute a dereliction of duty, but *praising* those responsible seems much worse. For Mayor Daley, a man with arguably more power, influence, and authority than any other Chicagoan, to commend Jon Burge reverberates with the historic corruption of police and government officials that originally gave Chicago its illicit reputation. Mayor Daley made no mistake; there was no confusion. He knew the identity of the men he was honoring, and exactly what his praise would mean going forward. Mayor Daley's action, and inaction, speak louder than words, and are tantamount to state-sanctioned torture.

In 1986, Andrew Wilson brought a civil rights action in federal court, alleging he was tortured by Burge and several other Area 2 detectives. Daley's second-in-command at the CCSAO, Richard Devine, who had since entered private practice, was selected to represent Jon Burge.<sup>67</sup> At about the same time, Burge was promoted to commander.<sup>68</sup> As corporate counsel, Mr. Devine and his law firm earned more than \$1 million defending Jon Burge and other Area 2 detectives over a period of eight years.<sup>69</sup> Once Mr. Devine became Cook County's State's Attorney, Mr. Devine, "blocked all substantive investigations of Area 2 torture," defended against claims of torture, and continually relied on illegal confessions to uphold convictions.<sup>70</sup> The CCSAO's steadfast refusal to investigate police abuse allegations continued until Paul Biebel, the Presiding Judge of the Criminal Division of the Cook County Circuit Court found that Mr. Devine's office had a "conflict of interest," and disqualified them from prosecuting cases involving police abuse allegations.<sup>71</sup> Although Special Prosecutors

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<sup>65</sup> Brzeczek Dep., *Wilson v. City of Chicago*, pp. 123-24; Brzeczek Affidavit.

<sup>66</sup> *Daley Hails 11 in Crime War*, CHICAGO TRIBUNE (May 20, 1983).

<sup>67</sup> Sept. 25, 2006, and Dec. 11, 2006, depositions of Leroy Martin, and Sept. 27, 2006, and Nov. 14, 2006, depositions of Richard Devine in *Orange v. Burge*, No. 03 C 4433 (N.D. Ill.) and *Cannon v. Burge*, No. 05 C 2192 (N.D. Ill.).

<sup>68</sup> Taylor, *supra* note 1, at 182.

<sup>69</sup> *Report on the Failure of Special Prosecutors*, *supra* note 30, at 13.

<sup>70</sup> *Id.*

<sup>71</sup> *In Re Special Prosecutor*, 2001 Misc. 4, Order and Opinion of Judge Biebel, April 24, 2002.

were eventually appointed to investigate Area 2 in 2002, their efforts were hardly impartial.<sup>72</sup>

#### D. Biases and Flaws of the Special Prosecutors' Report

Following the release of the Special Prosecutor's Report, many perceived the report as "unfair, misleading, and disingenuous."<sup>73</sup> Consequently, a devoted team of volunteer attorneys, researchers, and community activists formed to respond. After nine months, this team submitted a report ("the Report"), which was endorsed by 212 individuals and organizations active in the fields of human rights, criminal justice, civil rights, and racial justice.<sup>74</sup>

The Report claimed that the Special Prosecutors failed to address the "systemic and racist nature" of the "dehumanizing physical and psychological abuse" and never even identified the acts as torture, as defined by the International Convention against Torture.<sup>75</sup> The Report also alleged that the Special Prosecutors' investigation was "flawed by design," and reflected questionable prosecutorial tactics and strategies, stating the following:

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<sup>72</sup> The two attorneys appointed were "former high-ranking assistant state's attorneys with strong connections to the late Richard J. Daley (Richard M. Daley's father) and his Democratic political machine." Taylor, *supra* note 1, at 188. It was later revealed that special prosecutor Edward J. Egan had 9 relatives in the CPD, one of whom served under Burge at Area 2 in the 1980s and participated in the arrest of torture victim Gregory Banks. *Torture report and family ties: Top investigator had nephew on Burge's staff*, CHI. SUN-TIMES, Aug. 6, 2006.

<sup>73</sup> *Id.* at 2.

<sup>74</sup> *The Report on the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Systemic Police Torture in Chicago* was endorsed by individuals including Reverend Jesse L. Jackson Sr., Cherif Bassiouni, Studs Terkel, Andrea Lyon, and Howard Zinn, *available at* <http://peopleslawoffice.com/wp-content/uploads/2012/02/5.8.07.Final-Corrected-Version-of-Report.pdf>.

<sup>75</sup> See Office of the High Commissioner of Human Rights, "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>. The 1984 Convention defines torture as "any 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... when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." *Id.*

[T]he investigation was neither designed nor intended to develop evidence in support of indictments for crimes not barred by the statute of limitations but rather was designed to avoid embarrassing City, County, CPD, and SAO officials responsible for the torture scandal and cover-up, and protecting the City from civil liability.

The Report asserted that the Special Prosecutors could have made indictments within the statute of limitations had they proceeded in a timely fashion.<sup>76</sup> The Report further alleged that the Special Prosecutors failed to hold Mayor Daley, Mr. Devine, and other officials accountable for their roles in the torture scandal. The Special Prosecutors, instead, put all the responsibility on Mr. Brzeczek “in a bizarre perversion of logic,” shifting blame for “Daley’s dereliction of duty to... Brzeczek.”<sup>77</sup> The Special Prosecutors apparently attempted to discredit Mr. Brzeczek and his story, aggressively interrogating him, questioning him under oath, and before a Special Grand Jury.<sup>78</sup> However, Mayor Daley and Mr. Devine were not even questioned until the investigation was wrapping up in early 2006, at which point they were informally interviewed.<sup>79</sup> The most revealing statement made in this process was Mayor Daley and Mr. Devine’s acknowledgement that they had seen the Raba letter.<sup>80</sup>

Before the report was even released, Mr. Brzeczek predicted that he would be made into a “scapegoat” by the Special Prosecutors to absolve Mayor Daley and Mr. Devine.<sup>81</sup> In an apparent attempt to cover their tracks, the Special Prosecutors asked William Kunkle for a sworn statement about communications that he had with Mayor Daley and Mr. Devine. Special Prosecutors took sworn statements from Mayor Daley and Mr. Devine in which both conceded that they received the Raba

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<sup>76</sup> For example, the Report states that Burge could have been indicted for “perjury” and “obstruction of justice” for his 2003 sworn statement at the *Hobley v. Burge* federal court case in which he denied under oath that he had witnessed or participated in any torture or abuse of suspects during his tenure in the CPD. Such crimes would have fallen within the three-year statute of limitations. See *Report on the Failure of Special Prosecutors*, *supra* note 30, at 6.

<sup>77</sup> Warden, *supra* note 62.

<sup>78</sup> Statement of Richard Brzeczek, March 9, 2005; Grand Jury Testimony of Richard Brzeczek, October 5, 2005.

<sup>79</sup> *Report on the Failure of Special Prosecutors*, *supra* note 30, at 11.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

letter and had knowledge of the criminal conduct the letter established.<sup>82</sup>

The strangest and most suspicious aspect of this investigation was that the Special Prosecutors “asked no additional questions” of Mayor Daley and Mr. Devine regarding either their knowledge of the torture at Area 2 or their subsequent inaction.<sup>83</sup> In fact, U.S. Magistrate Judge Geraldine Brown found that Mayor Daley’s statement consisted almost entirely of “leading questions” often prefaced by “long factual recitations.”<sup>84</sup>

More than 50 additional cases of torture arose in Area 2 while Mr. Daley was State’s Attorney. When those torture allegations were raised in court, other ASAs under Mr. Daley “defended the veracity of such confessions,” claiming no torture occurred.<sup>85</sup> Not only does the torture appear to have been “systemic,”<sup>86</sup> but the unwritten protocol for ASAs dealing with torture allegations appears to have been to deny and discredit.

In terms of prosecutorial ethics, a prosecutor shall make known anything that “negate[s] the guilt of the accused” or “mitigates the offense.”<sup>87</sup> Knowledge of tortured confessions constitutes information that a prosecutor has the duty to make known under the Model Rules of Professional Conduct.

One of the clearest documented violations of this principle at Area 2 involved Lawrence Hyman, the ASA who took Mr. Wilson’s confession. According to Mr. Wilson’s testimony, immediately after the interrogation, Mr. Wilson asked Mr. Hyman the following: “You want me to make a statement after they’ve been torturing me?”<sup>88</sup> At that point, Mr. Hyman should have seen

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<sup>82</sup> Statement of Richard M. Daley, June 12, 2006; Statement of Richard Devine, June 15, 2006, cited in *Report on the Failure of Special Prosecutors*, *supra* note 30, at 12.

<sup>83</sup> *Report on the Failure of Special Prosecutors*, *supra* note 30, at 12.

<sup>84</sup> *Hobley v. Burge*, 2007 U.S. Dist. LEXIS 12159, at \*8 n.2 (N.D. Ill. Feb. 23, 2007).

<sup>85</sup> *Report on the Failure of Special Prosecutors*, *supra* note 30, at 13.

<sup>86</sup> See Michael Goldston, *Goldston Report*, based on an internal investigation by the Police Office of Professional Standards (OPS).

<sup>87</sup> MODEL RULES OF PROF’L CONDUCT R. 3.8(d) (2015).

<sup>88</sup> Memorandum in Opposition to Motion to Bar Testimony Concerning Other Alleged Victims of Police Misconduct at 6, In the Matter of Charges Filed Against Police Commander Jon Burge et al., (1992) (Case No. 1856), *available at*

[https://humanrights.uchicago.edu/sites/humanrights.uchicago.edu/files/uploads/Memorandum in Opposition.pdf](https://humanrights.uchicago.edu/sites/humanrights.uchicago.edu/files/uploads/Memorandum%20in%20Opposition.pdf) (citing Testimony of Andrew Wilson, July 7, 10, 11, 1989, at 2956- 59).



vivid evidence of Mr. Wilson's physically battered condition. Still Mr. Hyman did nothing. Instead, Mr. Hyman continued prosecuting the case against Mr. Wilson, obtaining a conviction and the death sentence despite the use of the tortured confession. This prosecutorial misconduct is egregious and, unfortunately, hardly represents an isolated incident. The systemic torture occurring for two decades was enabled by equally systemic prosecutorial misconduct.

What were these prosecutors thinking? Had they become desensitized? Did they believe the torture was justified? Did they believe it was not their duty or their place to intervene? Why was there such a diffusion of responsibility? In answering these questions, it is crucial to understand the underlying, deep-seated community attitudes.

### **E. How the Code of Silence Protecting Jon Burge was Finally Broken**

To place all of the responsibility and blame on former Mayor Daley, Mr. Devine, and Mr. Kunkle, the high-ranking political officials, and the ASAs, like Mr. Hyman, is to ignore all the other players in the law enforcement and legal community that enabled Jon Burge and Area 2 to go unchecked for over twenty years. Socio-cultural factors that contributed to the inaction and the ongoing conspiracy of silence reveal broader culpability in the socio-political community that lurked beneath the surface.

Police officers widely feared breaking the code of silence, which protected Jon Burge and other officers in Area 2. However, two brave cops eventually spoke out. One did so anonymously and another, Detective Frank Laverty, did so publicly and was ostracized. One retired officer from Area 2 explained that more officers and detectives would speak out if they did not fear losing their jobs or other repercussions.<sup>89</sup> The same officer discussed her reticence to testify against Jon Burge:

Examiner: What [is] your belief about what would have happened if you had come forward and rocked the boat with regard to what you know and what you had heard about police torture and about Burge and the Area 2 team?

Byrd: Well, first of all, we would have been frozen out of

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<sup>90</sup> Sworn statement of Doris M. Byrd. *In re: Patterson v. Burge*. Taken 11/9/2004. CD 1, AA Det. Folder, available at <http://humanrights.uchicago.edu/page/faqs>.

the police system. We would have been ostracized. We definitely wouldn't have made rank. We probably would have been stuck in some do-nothing assignment.<sup>90</sup>

In 1982, Detective Laverty, who worked under Jon Burge in Area 2, came forward and exposed the existence of "secret street files"; documents that were not turned over to defense lawyers because they contained inconvenient truths that could hamper prosecutions of suspects who the police had already decided were guilty of crimes.<sup>91</sup> These police records had been illegally maintained for years before Officer Laverty exposed them.

As a whistleblower, Officer Laverty did not escape unscathed. In fact, his decision to break the code of silence established a terrifying protocol for what would happen to officers who spoke out. One retired sergeant at Area 2 recalled a meeting with Jon Burge when Officer Laverty walked in to retrieve a file: "When he left, Burge took out his gun, pointed it at the back of Laverty, and said, 'Bang'."<sup>92</sup> Soon after, Officer Laverty was transferred from the day shift to afternoons and evenings, and assigned to clerical work. Jon Burge told him that he would soon be fired.<sup>93</sup> In the following weeks, the brakes on Officer Laverty's car, which had been serviced at Area 2, failed.<sup>94</sup>

The consequences for breaking the code of silence were clear. To date, only one other officer has come forward, doing so in an anonymous letter sent to the People's Law Office<sup>95</sup> in March 1989. In reference to impending civil suits brought by Andrew Wilson, the letter read:

As I have said previously I do not want to be involved in this affair. That is why I asked for the reassurance that these letters would be kept private. I do not wish to be shunned like Officer Laverty has been. . . . Almost all of

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<sup>90</sup> *Id.*

<sup>91</sup> Conroy, *supra* note 20.

<sup>92</sup> Statement of Doris Byrd, November 9, 2004, pp. 8-12, 16, cited in *Report on the Failure of Special Prosecutors*, *supra* note 30, at 22.

<sup>93</sup> Conroy, *supra* note 17.

<sup>94</sup> *Id.* Laverty believed his brakes had been tampered with by a mechanic whose brother was an Area 2 detective.

<sup>95</sup> For 40 years, People's Law Office has represented victims of the police and other government officials. The Office has fought for justice for people who have been tortured or physically abused, wrongfully arrested or convicted, or unfairly sentenced to death. For more information, see <http://peopleslawoffice.com/issues-and-cases/chicago-police-torture/>.

the detectives and police officers involved know that Wilson [sic] did the murders but they do not approve of the beatings and torture. . . . I advise you to immediately interview a Melvin Jones who is in the Cook County Jail on a murder charge. . . . When you speak with him. . . you will see why it is important.<sup>96</sup>

This letter, among several others mailed in police department envelopes by a still-unidentified person, broke open the Jon Burge scandal.<sup>97</sup> Ultimately, the information that the anonymous informant provided in such letters led attorneys at the People's Law Office, along with other investigators, to discover similar cases of physical abuse.

One significant case involved Melvin Jones, who testified that, when he was interrogated, Jon Burge had a little wooden box with a long cord.<sup>98</sup> Mr. Jones said Jon Burge pulled down Jones' pants to his ankles and electrically shocked his foot, then his thigh and finally his penis.<sup>99</sup> Mr. Jones testified that he kept screaming, telling Jon Burge that he was not supposed to do those things to a person in custody.<sup>100</sup> According to Mr. Jones' testimony, Jon Burge responded by telling Mr. Jones that he had no proof, and then asking Detective Flood, who was present for the shocking, if he had seen anything. Detective Flood then looked at the ceiling and responded that he had not. Mr. Jones stated that Jon Burge said, "[n]o court and no State are going to take your word against a Lieutenant's word."<sup>101</sup> Mr. Jones further stated that Jon Burge pulled out a gun and cocked it, put it up to his head and said he was going to "blow Jones' black head off."<sup>102</sup>

This scene reveals the degree to which Jon Burge felt that he was above the law. Mr. Jones' testimony, which corroborated Mr. Wilson's torture allegations, was taken only nine days after

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<sup>96</sup> Anonymous letter to People's Law Office attorney G. Flint Taylor, March 1989, cited in John Conroy, *The Good Cop*, CHICAGO READER, Jan. 5, 2007, available at <http://www.chicagoreader.com/features/stories/goodcop/>. Taylor referred to the anonymous author as "Deep Badge." See "To Catch a Torturer: One Attorney's 28 Year Pursuit of Racist Chicago Police Commander Jon Burge," *In These Times*, Mar. 30, 2015, available at <http://inthesetimes.com/article/17794/to-catch-a-torturer-one-attorneys-28-year-pursuit-of-racist-chicago-police>.

<sup>97</sup> John Conroy, *supra* note 17.

<sup>98</sup> Transcript of Testimony of Melvin Jones at 68 (Aug. 5, 1982) (No. 82-1605).

<sup>99</sup> *Id.* at 69-70.

<sup>100</sup> *Id.* at 71.

<sup>101</sup> Transcript of Testimony of Melvin Jones, *supra* note 107.

<sup>102</sup> *Id.* at 76-79.

Wilson's confession. The fact that these specific allegations were not investigated at the time they were made illustrates an egregious lack of oversight by police and government officials working on these cases.

**F. "Everybody's White"<sup>103</sup>: Cook County State's Attorneys of the 1970s and 1980s**

It can be counted on one hand the number of black assistant state's attorneys in the 1970s and early 1980s.<sup>104</sup> The disproportion of white to minority prosecutors hints at the racialized mentality of white prosecutors towards black suspects. Steve Bogira's book, *Courtroom 302*, provides a detailed look behind the scenes of Cook County's Leighton Criminal Courthouse, providing insight into the prosecutorial mentality at the time. For example, in Mr. Bogira's book, Judge Daniel Locallo describes a past contest in the local prosecutor's office, called the "Two-Ton Contest," in which rookie prosecutors strove to be the first to convict 2,000 tons of black defendants.<sup>105</sup> The title used by some prosecutors was "Niggers by the Pound."<sup>106</sup>

This anecdote illustrates not only patent racism, but also unconscious racism based on prosecutors' skewed, discriminatory frames of reference. Discriminatory inferences abound when one is surrounded by almost all white lawyers and almost all black defendants every day.

As more and more torture allegations surfaced, each accusing the same Area 2 detectives, the legal community remained curiously silent. The shameful, though likely truthful, explanation is that all of the suspects tortured were black. The racial divide between attorneys and defendants created a disconnect between the morality of those individuals aware of the torture and their actions, a sense of detachment, and desensitization toward these black men as victims. Understanding the prosecutors' racially skewed perspective explains but does not excuse the lack of empathy for victimized black criminals.

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<sup>103</sup> Statement by Frank Avila, Aaron Patterson's attorney, who explained, "I don't want to turn this into a racial issue, but there were no African-American attorneys involved in the investigation." See Oliver Burkeman, *Chicago Police 'Tortured Black Suspects'*, THE GUARDIAN, July 21 2006, available at <http://www.theguardian.com/world/2006/jul/21/usa.oliverburkeman>.

<sup>104</sup> STEVE BOGIRA, *COURTROOM 302: A YEAR BEHIND THE SCENES IN AN AMERICAN CRIMINAL COURTHOUSE* 69 (Knopf 2005).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

To what degree assistant state's attorneys had knowledge of torture occurring in Area 2 is unclear. However, the extent of their awareness of the torture seems moot; either torture occurred or it did not. Numerous collaborating accounts demonstrated "common knowledge" of the illegal interrogations that persisted at Area 2.<sup>107</sup> An anonymous letter sent to Andrew Wilson's attorneys in 1992 explained:

I believe that I have learned something that will blow the lid off your case. You should check for other cases where Lt. Burge was accused (sic) of using this devices (sic). I believe he started many years ago right after he became a detective. . . . I have checked into who was assigned to Area 2 while this was going on and have some comments on the people assigned. You must remember that they all knew as did all of the State's Attorneys and many judges and attorneys in private practice.<sup>108</sup>

As early as the late 1970s, Area 2 torture was "common knowledge" in Cook County's criminal courts.<sup>109</sup> Janet Boyle, a former assistant public defender, who represented Area 2 victims in the late 1970s, said she "heard a lot of rumors and innuendos" in those days about "abuses by Area 2 detectives... particularly 'Red Burge'd.'"<sup>110</sup> An assistant public defender, who later became a Chicago alderman, said that physical abuse at Area 2 was "common knowledge," describing it as a "torture chamber."<sup>111</sup>

Criminal defense attorney, dean and law professor Andrea Lyon, who represented defendants tortured by Jon Burge, explained: "When I would go into lockup to pick up a new case, if someone was bleeding, if their testicles were so swollen that they needed an operation afterwards, I knew who arrested 'em and so did everybody else. This is not a secret, it hasn't been a secret for a long time."<sup>112</sup>

Sergeant Doris Byrd, who worked at Area 2, testified that between 1981 and 1984 it was an "open secret" that the detectives

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<sup>107</sup> *Report on the Failure of Special Prosecutors*, *supra* note 30, at 29.

<sup>108</sup> First and Second Letters from anonymous police source, postmarked February 2, and March 6, 1989, cited in *Report on the Failure of Special Prosecutors*, *supra* note 30, at 20.

<sup>109</sup> *Report on the Failure of Special Prosecutors*, *supra* note 30, at 29.

<sup>110</sup> Summary of Special Prosecutors' Interview with Janet Boyle, April 6, 2005.

<sup>111</sup> Summary of Special Prosecutors' Interview with Tom Allen, July 14, 2005.

<sup>112</sup> Quoted on *Chicago Public Radio*, available at [http://www.wbez.org/Cityroom\\_Read.aspx?storyID=10320](http://www.wbez.org/Cityroom_Read.aspx?storyID=10320).

used telephone books, bags, and an electric shock box to obtain confessions.<sup>113</sup> Area 2 had a “reputation” for its “methods” within the Public Defenders’ Office.<sup>114</sup> One public defender said that when he told a supervisor about his clients’ allegations of being suffocated by a plastic bag, the supervisor replied, “Oh, that would be Area 2.”<sup>115</sup>

If so many people were aware of what went on in Area 2, why was there no reaction or response? Why did state’s attorneys and public defenders, witnessing case after case involving torture claims, do nothing for so long? A collective diffusion of responsibility helps explain the overall inaction of attorneys and police officers. Because no one helped the torture victims initially, the “destruction process” evolved and the harm done to black criminals became normalized.<sup>116</sup>

### G. The Role and Impact of Judges

Torture allegations arose from Area 2 over three decades in hundreds of suppression hearings, trials, and post-conviction proceedings. To date, however, no Cook County judge has found that a single act of torture occurred.<sup>117</sup>

Why have judges never fully addressed the torture allegations? It might be partly because they are more preoccupied with convicting defendants whom they believe are guilty. Also, many judges then and today are yesterday’s ASAs and would likely rather sweep this history under the rug than face the demons of their past. Eleven felony review ASAs who took statements from suspects claiming torture by Jon Burge have become judges, along with several ASAs who defended against torture allegations.<sup>118</sup> Three ASAs directly involved in the *Wilson* case are now Cook County judges: William Kunkle, Frank Deboni, and Gregory R. Ginex.

Judge Nicholas R. Ford, who recorded a confession from an alleged torture victim as an ASA, denied that same victim’s

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<sup>113</sup> *Report on the Failure of Special Prosecutors*, *supra* note 30, at 22. See also Taylor, *supra* note 1, at 182 (citing Nov. 9, 2004, statement of former Area 2 Detective Doris Byrd).

<sup>114</sup> *Id.* at 29.

<sup>115</sup> Summary of Special Prosecutors’ Interview with Lee Carson, May 12, 2004.

<sup>116</sup> See ERVIN STAUB, *THE ROOTS OF EVIL: THE ORIGINS OF GENOCIDE AND OTHER GROUP VIOLENCE* (1989) (exploring the psychological, cultural and societal roots of group aggression, particularly in the context of the Holocaust).

<sup>117</sup> *Report on the Failure of Special Prosecutors*, *supra* note 30, at 43.

<sup>118</sup> *Id.*

post-conviction torture claim from the bench without a hearing.<sup>119</sup> This example illustrates the often insidious cycle between the CCSAO and the judiciary, particularly in looking the other way in the face of a clear conflict of interest.

Consider what might have happened if Mr. Egan and Mr. Boyle's Report did not dismiss criminal liability, but instead found that the CCSAO's refusal to prosecute torturers in Mr. Wilson's case constituted obstruction of justice. Such a finding would implicate former Mayor Daley, the head of the CCSAO, and at least three sitting judges.<sup>120</sup>

If former Mayor Daley, Mr. Devine, and others involved in this ongoing cover-up never face any consequences, their tainted legacies should at least be recorded for posterity.

Area 2 has been extensively documented and civil suits remain ongoing, which may indicate these human rights abuses have been identified and are being rectified. However, the question is whether the circumstances that allowed for Area 2-like environments are still permitted? It is worth examining similar scenarios that gave way to torture by Americans.

### 3. American Torture Parallels: The Dehumanization of Blacks and Muslims

The philosophy ingrained in some officers and prosecutors that physical abuse and torture are justified if such methods result in sending criminals to jail is an issue underlying the recent upsurge in debates about prisoner detainee torture and abuse in Guantánamo Bay, Abu Ghraib, and CIA secret prisons abroad.<sup>121</sup> Infamous photographs of torture are what brought attention to the conditions in Abu Ghraib. The images of abuse made "everyone in the world sit up and take notice immediately."<sup>122</sup>

Similarly, without photographs of Wilson's battered face, including alligator clip marks on his ears, torture in Area 2 may never have been exposed. However, had there been greater

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<sup>119</sup> John Conroy, *Blind Justices*, CHICAGO READER, December 1, 2006, available at <http://www.chicagoreader.com/chicago/blind-justices/Content?oid=923777>.

<sup>120</sup> *Report on the Failure of Special Prosecutors*, *supra* note 30, at 44.

<sup>121</sup> KAREN GREENBERG, *THE TORTURE DEBATE IN AMERICA* (Cambridge Univ. Press 2005) (analyzing arguments on torture put forth by legislators, human rights activists, etc.); *see also* David Luban, *Torture, American-Style*, WASHINGTON POST, Nov. 27, 2005.

<sup>122</sup> S.G. MESTROVIC, *THE TRIALS OF ABU GHRAIB: AN EXPERT WITNESS ACCOUNT OF SHAME AND HONOR* 93 (2007) (describing the background and atmosphere of the trial from a psychological perspective).

documentation and more than just a few photos, as in Abu Ghraib, the torture might have received broader public attention, forcing earlier investigations of Area 2. In comparing the atmosphere of Area 2 to Abu Ghraib, the parallel cultures of permissive violence must be analyzed, as well as how such cultures were formed, and whether such cultures were reinforced by authority figures such as Richard Daley or Donald Rumsfeld, and finally why so many people were willing to look the other way.

### A. Burge's Military History in Vietnam

Jon Burge's military background is an important explanatory factor for his actions at Area 2. Before he was a Chicago Police Lieutenant, Jon Burge was a military police interrogator in the Vietnam War, where he served at a prisoner of war compound.

It was in Vietnam, most likely, that Mr. Burge witnessed, acquired, and honed the torture techniques he applied to suspects in Area 2.<sup>123</sup> Many officers who served with Mr. Burge in Vietnam knew that U.S. soldiers and military police used electric-shock torture on prisoners of war (POW's). Electric shock was delivered with a hand-cranked generator that also functioned as a military field telephone.<sup>124</sup> A childhood friend recounted how Jon Burge was an "electrical whiz," who once rigged up a communications system for a school play that included "a telephone control box which contained a little crank that generated voltage to ring a bell for a closed circuit phone system."<sup>125</sup> The black box technique Jon Burge had mastered as a young man was the same device that U.S. soldiers used in Vietnam, a field telephone that was jimmied into a torture method known as "the Bell telephone hour."<sup>126</sup> By importing these techniques, which had been proven effective in Vietnam's prisoner compounds, to Chicago's South Side, Jon Burge served as a military conduit for torture.

Walter Young, a retired officer, who served the CPD for nearly 36 years and was a detective under Jon Burge in the early 1980s, testified that he overheard references to Vietnam in Area

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<sup>123</sup> Martin Smith, *Bad Apples from a Rotten Tree: Military Training and Atrocities*, COUNTERPUNCH, Aug. 5, 2006, available at <http://www.counterpunch.org/2006/08/05/military-training-and-atrocities/>.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* (citing *Southtown Economist*, *Jon Burge, Grade School Patrol Boy and Electrical Whiz*, (July, 20, 2006).

<sup>126</sup> *Id.*



2.<sup>127</sup> He said that many in the office believed that suspects could be made to talk if the same techniques that had been used in Vietnam on POWs were used. He also noted that the term “Vietnam special” or “Vietnam treatment” was used in Area 2.<sup>128</sup> Based on seeing the black box, and overhearing conversations, Young later deduced that the “Vietnam treatment” probably referred to the use of electric shock.<sup>129</sup>

Other methods of torture transported from Vietnam’s prison compounds to Chicago’s police interrogation rooms have recurred in different American contexts. Guantanamo Bay and Abu Ghraib are the most prominent examples. An analysis of parallels between Area 2, Cuba, and Iraq demonstrates the terrifying commonalities and political climates in which torture has been essentially sanctioned by the government.

### **B. “Bad Apples from a Rotten Tree”<sup>130</sup>**

The “bad apple thesis” suggests that Area 2 and Abu Ghraib illustrate actions of a few bad apples, but are not symptomatic of anything widespread. Such a theory discourages further investigation and broader analyses of torture’s root causes and discounts the importance of preventative measures.

The press has treated Area 2 as the story of one “errant commander.”<sup>131</sup> Jon Burge was painted as the “bad apple,” the mastermind. Once Lieutenant Burge was gone, the story seemed to be over. However, portraying Area 2 as an isolated incident avoids addressing the systemic nature of torture that occurred.

It is a truism, at least among many scholars and experts, that torture is not the action of a few bad apples, but represents a “contaminated orchard,” a systemic flaw, and a fundamental problem ingrained in police and military environments.<sup>132</sup>

### **C. The Torture Mentality and Rationale**

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

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> Smith, *supra* note 134.

<sup>131</sup> See John Conroy, *Town Without Pity*, CHICAGO READER, January 12 1996, available at <http://www.chicagoreader.com/policetorture/>.

<sup>132</sup> See S.G. MESTROVIC, *THE TRIALS OF ABU GHRAIB: AN EXPERT WITNESS ACCOUNT OF SHAME AND HONOR* (2007) (explaining through psychological studies that military torture is not the result of a few bad apples but represents deeper flaws in the military); see also PHILIP ZIMBARDO, *THE LUCIFER EFFECT* (2007).

How do civilians, politicians, and the torturers themselves rationalize their actions? What values are in play? In the cases of Guantanamo or Abu Ghraib, the threat of terrorism, inflammatory patriotism, and dehumanization of foreign enemies all affect the mentalities of the participants.

In the case of Area 2, where Americans were tortured, other values like community safety factor into the equation. 'Protect your community' became the CPD's and CCSAO's rallying cry, as questions of morality, ethics, and human decency were jettisoned. Mr. Daley, Mr. Devine, and so many other assistant state's attorneys must have strongly believed that Jon Burge's strength as a police lieutenant, his 'no holds bars' interrogation methods, were more important than the physical abuse of suspects.

Torture victims are often seen as "agitators," as the community's "poor," as "heretics," and viewed as a threat to society at large.<sup>133</sup> The Area 2 victims were "easily devalued," as many were gang members with extensive police records.<sup>134</sup>

Richard Daley tacitly endorsed Jon Burge's activities and the CPD and CCSAO obediently followed lockstep. Stanley Milgram's experiment<sup>135</sup> helps explain the moral and social failure of lawyers, judges, and others who knew about torture in Area 2 but did nothing. Ordinary, well-intentioned citizens can allow terrible things to happen because of their "obedience to authority."<sup>136</sup> Who was the authority figure in Area 2? All signs point to one man wearing a suit instead of a lab coat, Richard M. Daley. Attorneys and police officers apparently fell in line behind

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<sup>133</sup> See John Conroy, *Town Without Pity*, CHICAGO READER, January 12 1996, available at <http://www.chicagoreader.com/policetorture/>.

<sup>134</sup> *Id.*

<sup>135</sup> Stanley Milgram, *Behavioral Study of Obedience*, 67(4), JOURNAL OF ABNORMAL & SOCIAL PSYCHOLOGY, 371-378 (1963).

<sup>139</sup> Stanley Milgram, *The Perils of Obedience*, Harper Magazine (1974) <http://home.swbell.net/revscat/perilsOfObedience.html> (abridged and adapted from OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW (Harper 1974). Milgram explained: "I set up a simple experiment... to test how much pain an ordinary citizen would inflict on another person simply because he was ordered to by an experimental scientist... The extreme willingness of adults to go to almost any lengths on the command of an authority constitutes the chief finding of the study... Ordinary people, simply doing their jobs, and without any particular hostility on their part, can become agents in a terrible destructive process. Moreover, even when the destructive effects of their work become patently clear, and they are asked to carry out actions incompatible with fundamental standards of morality, relatively few people have the resources needed to resist authority." *Id.*

his lead. Mr. Daley commended Jon Burge and his crew less than a year after well-documented torture allegations were made. In doing so, Mayor Daley sent a clear message that what occurs behind closed police doors, though it might not be pretty, is permissible and even commendable if done in the name of 'protecting the community'. Sadly, it appears this message has persisted in the CPD and CCSAO to this day in light of the Laquan McDonald shooting (October 20, 2014) and handling of the case.

#### **D. The Van Dyke Case and Beyond: What Should Be Done?**

It is critically important how the CCSAO proceeds with the criminal case against CPD Officer Jason Van Dyke who is on trial for first-degree murder<sup>137</sup> and other officers on the scene, who apparently filed false police reports to protect Van Dyke from prosecution but have not been charged.<sup>138</sup> It is hard to imagine a clearer demonstration that the code of silence persists within the CPD. The delay in charging Van Dyke for over 14 months and the timing that the charges were made (a day before a dashcam video was released contradicting the CPD's account) presented grave concerns regarding a conflict of interest between the CCSAO and the CPD.<sup>139</sup> Two petitions requesting the appointment of a special prosecutor in the case were filed based on this conflict of interest,<sup>140</sup> after which State's Attorney Alvarez recused herself and her office from the case.<sup>141</sup> Although this was encouraging, it was a long time coming and only occurred after Alvarez lost her

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<sup>137</sup> *People v. Van Dyke*, No. 15 CR 2062201 (2015).

<sup>138</sup> Monica Davey, *Officers' Statements Differ From Video in Death of Laquan McDonald*, NY TIMES, Dec. 5, 2015, [http://www.nytimes.com/2015/12/06/us/officers-statements-differ-from-video-in-death-of-laquan-mcdonald.html?\\_r=0](http://www.nytimes.com/2015/12/06/us/officers-statements-differ-from-video-in-death-of-laquan-mcdonald.html?_r=0).

<sup>139</sup> Dan Hinkel, Matthew Wahlberg, *Long inquiry before charges in Laquan McDonald shooting prompts scrutiny*, CHICAGO TRIBUNE, Nov. 25, 2015, <http://my.chicagotribune.com/#section/-1/article/p2p-85154955/>. Officer Van Dyke was charged November 24, 2015 with first-degree murder for the October 2014 shooting that left McDonald dead. The charges were announced a day before the anticipated release of the dash-cam video showing the shooting.

<sup>140</sup> Steve Schmadeke, *2 petitions seek special prosecutor in Laquan McDonald shooting case*, CHICAGO TRIBUNE, Feb. 26, 2016, <http://my.chicagotribune.com/#section/-1/article/p2p-86031361/>.

<sup>141</sup> Tonya Francisco, et al., *Alvarez recuses herself in Jason Van Dyke case*, WGN News, May 5, 2016, <http://wgntv.com/2016/05/05/chicago-officer-accused-in-laquan-mcdonalds-death-requests-guard/>.

reelection bid.<sup>142</sup> Hopefully, an unbiased special prosecutor will be appointed who will fairly levy the case and bring out in court the still existing code of silence. The current mayor of Chicago has finally acknowledged that a code of silence exists in the CPD,<sup>143</sup> which is a major step forward as well as city attorneys admitting it exists in court.<sup>144</sup> However, until police officers or State's Attorneys are held accountable for it within the justice system, it will not end.

The issue of local and state police abusing their power during arrests has recently become an issue of national debate, particularly inspired by the shooting of Michael Brown and protests that followed in Ferguson, Missouri in August 2014,<sup>145</sup> and a multitude of other incidents (including the cases of Eric Garner, Walter Scott, and Freddie Gray) involving police brutality in which unarmed African American men have been shot by police officers.<sup>146</sup>

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<sup>142</sup> Dana Ford, *Anita Alvarez concedes bid for third term in Chicago*, *CNN News*, Mar. 15, 2016, <http://www.cnn.com/2016/03/15/politics/anita-alvarez-election/>.

<sup>143</sup> Mayor Rahm Emanuel, Address on Police Accountability to Chicago City Council, December 9, 2015. Full text of speech available at <http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2015/December/12.9.15MREremarks.pdf> (referring to the code of silence as “the tendency to ignore, deny or in some cases cover-up the bad actions of a colleague or colleagues.”). However, Mayor Emanuel has not yet testified about it in court. See John Byrne, *Emanuel silent on potential 'code of silence' testimony*, *CHICAGO TRIBUNE*, May 25, 2016, <http://my.chicagotribune.com/#section/-1/article/p2p-87322587/>.

<sup>144</sup> Andy Grim & Fran Spielman, *City admits 'code of silence,' but Rahm may still have to testify*, *CHI. SUN-TIMES*, May 20, 2016, [http://chicago.suntimes.com/news/code-of-silence-exists-in-cpd-city-attorneys-admit-in-court/](http://chicago.suntimes.com/news/code-of-silence-exists-in-cpd-city-attorneys-admit-in-court/#news/code-of-silence-exists-in-cpd-city-attorneys-admit-in-court/).

<sup>145</sup> See Jim Salter, *A year later, AP reporter recalls early protests in Ferguson that launched national movement*, *U.S. News and World Report* (Aug. 3, 2015), available at <http://www.usnews.com/news/us/articles/2015/08/03/year-later-ap-reporter-recalls-origins-of-ferguson-movement>; see also Cheryl Corley, *Ferguson Activists Hope that Momentum Sparks a National Movement*, *NPR*, April 5, 2015, available at <http://www.npr.org/2015/04/06/396780902/ferguson-activists-hope-that-momentum-sparks-a-national-movement>.

<sup>146</sup> See Sam Sinyangwe, *Why do US police keep killing unarmed black men?* *BBC NEWS* (May 26, 2015), available at <http://www.bbc.com/news/world-us-canada-32740523>. “Black people are three times more likely to be killed by police in the United States than white people. More unarmed black people were killed by police than unarmed white people last year. And that’s taking into account the fact that black people are only 14% of the population.”

Cases in Cook County like the shooting of Laquan McDonald, and others like it around the country, indicate attitudes present in Area 2 still exist today and must be addressed with the gravity, care, and concern they deserve by police officers and prosecutors in order to hold those responsible accountable.

## CONCLUSION

No single trial can fully illustrate the tragic miscarriages of justice permitted to continue for so long in Area 2. Broad prosecutorial misconduct within the CCSAO shielded police from criminal prosecution and allowed the imprisonment of hundreds of defendants with illegally obtained confessions. Victims continue to bring civil suits to this day that have cost Chicago and Cook County nearly \$100 million.<sup>147</sup> Although there has never been an adequate, impartial investigation into Area 2, there has at least been some degree of justice.

In 2010, Jon Burge was charged with obstruction of justice and perjury by the U.S. Attorney's Office for lying under oath about the torture of criminal suspects.<sup>148</sup> At a federal trial in 2011 numerous tortured victims testified in detail about their torture and Mr. Burge "denied he ever tortured suspects or condoned its use, saying that he had never witnessed a cop abusing a suspect in his 30 years with the department."<sup>149</sup> Mr. Burge was convicted and sentenced to 4 and 1/2 years in prison.<sup>150</sup> He served the time and was released in 2015.<sup>151</sup>

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<sup>147</sup> CBS Crimesider Staff, *How Chicago racked up a \$662 million police misconduct bill*, CBS News, March 21, 2016, available at <http://www.cbsnews.com/news/how-chicago-racked-up-a-662-million-police-misconduct-bill/> ("Burge cases -- including settlements and outside lawyers -- have cost the city more than \$92 million").

<sup>148</sup> *U.S. v. Burge*, 2011 WL 167230 (N.D. Ill. 2011).

<sup>149</sup> Jeremy Gorner, *Former Chicago police Cmdr. Jon Burge released from home confinement*, CHICAGO TRIBUNE, February 15, 2015, available at <http://my.chicagotribune.com/#section/-1/article/p2p-82812523/>.

<sup>150</sup> G. Flint Taylor, *Judge Sentences Chicago Police Commander Jon Burge in Torture Case*, Police Misconduct and Civil Rights Report, Vol. 10, No. 2 (March/April 2011), available at <http://peopleslawoffice.com/wp-content/uploads/2012/02/Police-Misconduct-Civil-Rights-Law-Report-Burge-Sentencing.pdf>.

<sup>151</sup> Gorner, *supra* note 161. "Burge continues to generate controversy for collecting a \$4,000-a-month police pension despite costing the city tens of millions of dollars in legal costs because of lawsuits related to the torture and abuse."

Some continue examining the truth behind Area 2, if only to learn how and why it occurred in order to prevent future occurrences. G. Flint Taylor has continued to write articles on Jon Burge<sup>152</sup> as has John Conroy<sup>153</sup> who also wrote a book, *Unspeakable Acts, Ordinary People: The Dynamics of Torture*, that included a case study of Jon Burge and Area 2<sup>154</sup>. Lawyers at the People's Law Office and other civil rights lawyers continue defending Area 2 victims in civil suits, for which the city of Chicago recently paid \$5.5 million in reparations to 57 Burge torture victims.<sup>155</sup>

However, the story of Area 2 still remains relatively obscured and unacknowledged. Former Mayor Daley has suggested that the torture was aberrational, a "shameful episode" that is better forgotten than reexamined.<sup>156</sup> After several protracted investigations, massive documentation, and expert testimony, all of which failed to hold anyone responsible, it is clear that Chicago's legal system is deeply flawed. The question should no longer be how defective the system is, but how it can be best repaired?

In the wake of the Laquan McDonald case, hopefully those concerned with human rights will shine a spotlight on Area 2, a clear example of the CPD's willingness to abuse its power and cover up when necessary. Chicagoans, and all Americans seeing widespread cases of police abuse<sup>157</sup> that has engendered a national

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<sup>152</sup> G. Flint Taylor, *Time for Apology in Burge Cases*, CHICAGO SUN TIMES, June 25, 2012. G. Flint Taylor, *To Catch a Torturer: One Attorney's 28 Year Pursuit of Racist Chicago Police Commander Jon Burge*, IN THESE TIMES, Mar. 30, 2015, available at <http://inthesetimes.com/article/17794/to-catch-a-torturer-one-attorneys-28-year-pursuit-of-racist-chicago-police>.

<sup>153</sup> John Conroy, *Twenty Questions (for Mayor Daley)*, CHICAGO READER, May 11, 2007, available at <http://www.chicagoreader.com/features/stories/twentyquestions/>.

<sup>154</sup> John Conroy, UNSPEAKABLE ACTS, ORDINARY PEOPLE: THE DYNAMICS OF TORTURE (Knopf 2000). For an interview with John Conroy, see Justin Glawe's article *Talking to the Journalist Who Uncovered Police Torture in Chicago*, VICE NEWS, May 15, 2015, available at <http://www.vice.com/read/talking-to-the-journalist-who-uncovered-police-torture-in-chicago-515>.

<sup>155</sup> Fran Spielman, *Chicago pays \$5.5M in reparations to 57 Burge torture victims*, CHICAGO SUN TIMES, January 4, 2016, available at <http://chicago.suntimes.com/politics/chicago-pays-5-5m-in-reparations-to-57-burge-torture-victims/#politics/chicago-pays-5-5m-in-reparations-to-57-burge-torture-victims/>.

<sup>156</sup> Press Statement of Richard M. Daley, July 21, 2006, at 1-2.

<sup>157</sup> See Shaun King, *Police Brutality is Getting Worse and Shows No Signs of Slowing Down*, Sept. 22, 2015 available at <http://www.dailykos.com/stories/2015/9/22/1423847/-Police-brutality-is-getting-worse-and-shows-no-signs-of-slowing-down>. See also Iris Baez, *Are the*

debate,<sup>158</sup> will likely reach the haunting realization that police misconduct is nothing new and that public officials and courts must find new ways to address this problem, as it is not going away anytime soon.

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*Police Getting Away with Murder?*, CNN, August 12, 2014, available at <http://www.cnn.com/2014/08/12/opinion/baez-police-garner-michael-brown-chokehold/> (referencing alleged police abuse and misconduct cases of Michael Brown, Eric Garner and others).

<sup>158</sup> Phillip Swarts, *Multiple police cases collide, forcing debate on tactics*, THE WASHINGTON TIMES, December 4, 2014, available at <http://www.washingtontimes.com/news/2014/dec/4/ferguson-eric-garner-tamir-rice-police-cases-colli/?page=all>.