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A REPORT ON

THE FAILURE OF  
SPECIAL PROSECUTORS

EDWARD J. EGAN

AND

ROBERT D. BOYLE

TO FAIRLY INVESTIGATE  
POLICE TORTURE IN CHICAGO

**REPORT ON THE FAILURE OF SPECIAL PROSECUTORS  
EDWARD J. EGAN AND ROBERT D. BOYLE TO FAIRLY INVESTIGATE  
SYSTEMIC POLICE TORTURE IN CHICAGO**

*[Burge] put some handcuffs on my ankles, then he took one wire and put it on my ankles, he took the other wire and put it behind my back, on the handcuffs behind my back. Then after that, when he — then he went and got a plastic bag, put it over my head, and he told me, don't bite through it. I thought, man, you ain't fixing to put this on my head, so I bit through it. So he went and got another bag and put it on my head and he twisted it. When he twisted it, it cut my air off and I started shaking, but I'm still breathing because I'm still trying to suck it in where I could bite this one, but I couldn't because the other bag was there and kept me from biting through it. So then he hit me with the voltage. When he hit me with the voltage, that's when I started gritting, crying, hollering . . . It feel like a thousand needles going through my body. And then after that, it just feel like, you know — it feel like something just burning me from the inside, and, um, I shook, I gritted, I hollered, then I passed out.*

*Torture victim Anthony Holmes  
Statement Provided to Special Prosecutors*

## **INTRODUCTION**

On April 24, 2002, Paul Biebel, the Presiding Judge of the Criminal Division of the Cook County Circuit Court, ruled that State's Attorney Richard A. Devine had an actual conflict of interest in investigating police torture allegations because he and a law firm with which he had been associated had defended Jon Burge in a civil rights lawsuit brought by torture victim Andrew Wilson. Judge Biebel appointed Edward J. Egan as Special State's Attorney and Robert D. Boyle as Chief Deputy Special State's Attorney (hereinafter Special Prosecutors) to investigate the torture allegations. (*In Re Special Prosecutor*, 2001 Misc. 4, Order and Opinion of Judge Biebel, April 24, 2002). After a four-year investigation that cost Cook County taxpayers \$7 million, the Special Prosecutors sought no indictments but rather on July 19, 2006, filed a 292-page Report of the Special State's Attorney (hereinafter Special Prosecutors' Report, or Report).

After the Report was released, there was a widespread perception, particularly in the African-American community, that the Report was unfair, misleading, and disingenuous, and that the Special Prosecutors should have brought criminal charges against the alleged torturers. As a result of the dissatisfaction, a team of volunteer attorneys, researchers, and community activists was formed to respond to the Report. The team devoted the next nine months to that effort, resulting in this report, which has been endorsed by 212 individuals and organizations active in the fields of human rights, criminal justice, civil rights, and racial justice.<sup>1</sup>

## **SUMMARY OF FINDINGS.**

The research team concluded that the Special Prosecutors:

- Did not bring criminal charges against members of the Chicago Police Department despite the apparent existence of numerous provable offenses within the statute of limitations.
- Ignored the failure of former Cook County State's Attorney Richard M. Daley, State's Attorney Richard A. Devine, and various other high-ranking officials to investigate and prosecute police officers who engaged in a documented pattern of torture and wrongful prosecution of torture victims.
- Did not document the systemic and racist nature of the torture and did not brand it as such in accordance with the international definition of torture.<sup>2</sup>

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<sup>1</sup> The names of endorsing organizations and individuals appear at the end of the report. Those whose names are followed by asterisks participated in researching, writing, editing, and producing this report. The team had access to the entire public record of the torture scandal. Most documents cited herein are posted at <http://humanrights.uchicago.edu/chicagotorture/>.

<sup>2</sup> The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 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, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, 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."

- Unfairly evaluated the credibility of the alleged torturers and of their victims and unfairly attempted to discredit torture victims who had pending civil or criminal cases.
- Conducted an investigation that was hopelessly flawed and calculated to obfuscate the truth about the torture scandal.
- Ignored a wealth of evidence establishing that there was a widespread and continuing cover-up of the torture scandal — a conspiracy of silence — implicating high officials of the City of Chicago, the Chicago Police Department, and the Cook County State's Attorney's Office.
- Failed to document the role of judges of the Criminal Division of the Cook County Circuit Court in the torture scandal.
- Had appearances of conflict of interest and bias in favor of those whom they had been appointed to investigate.

## **B ACKGROUND**

To understand what the undersigned believe to be the inadequacies and failures of the Special Prosecutors' investigation and Report, it is essential first to understand the Special Prosecutors' principal findings, which were:

- That the evidence established beyond a reasonable doubt that "Jon Burge and at least one other officer [John Yucaitis] committed armed violence, intimidation, official misconduct, and aggravated battery when they abused Andrew Wilson at Area 2 on February 14, 1982, and committed perjury when they testified at Wilson's first trial on November 9, 1982."<sup>3</sup> (Special Prosecutors' Report, p. 16)
- That the evidence established beyond a reasonable doubt that Area 2 Detectives Anthony Maslanka and Michael McDermott physically abused Alphonso Pinex and committed aggravated battery, perjury, and obstruction of justice. (Id.)

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<sup>3</sup> The evidence indicated that Wilson was shocked with a black electric shock box on his ears, lips, and genitals, suffocated with a plastic bag, beaten about his head and body, burned on a hot radiator to which he was handcuffed and burned with cigarette butts.

- That the evidence established beyond a reasonable doubt that Area 2 Detectives James Lotito and Ronald Boffo abused Philip Adkins and committed aggravated battery against him.<sup>4</sup> (Id.)
- That there were “many other cases” in which the Special Prosecutors “believed”<sup>5</sup> that the persons (including Melvin Jones, Shaded Mumin, and Michael Johnson ) were abused but “proof beyond a reasonable doubt [was] absent.” (Id.)
- That Burge, the commander of the Violent Crimes Section of Detective Areas 2 and 3, was “guilty [of] abus[ing] persons with impunity,” and that it therefore “necessarily follows that a number of those serving under his command recognized that if their commander could abuse persons with impunity, so could they.” (Id.)
- That Police Superintendent Richard J. Brzeczek was guilty of a “dereliction of duty” and “did not act in good faith in the investigation of Andrew Wilson,” because Brzeczek “believed at the time that officers at Area 2 had tortured Andrew Wilson,” and that Brzeczek “kept Burge in command at Area 2, and issued a letter of commendation to all of the detectives at Area 2.” (Id. at 17)
- That Brzeczek “received and believed evidence that a prisoner [Andrew Wilson] had been brutalized by the Superintendent’s subordinates, that the prisoner had confessed, that those subordinates had testified under oath on a motion to suppress and before a jury and he [Brzeczek] had to believe, they testified perjuriously, *that the prisoner had been sentenced to death*, and that for 20 years the Superintendent still remained silent.” (Id. at 86-87) (*emphasis in original*)
- That the U.S. Court of Appeals for the Seventh Circuit in its 1993 consideration of the City’s liability in the Wilson civil case was misled concerning Superintendent Brzeczek’s contemporaneous knowledge that Burge and his subordinates tortured Wilson because Brzeczek concealed those views until after the case was concluded. (Id. at 87-88)
- That the Chief of Felony Review of the Cook County States Attorneys’ Office, Lawrence Hyman, gave “false testimony” when “he denied that Andrew Wilson told him he had been tortured by detectives under the command of Jon Burge.” (Id. at 54)

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<sup>4</sup> The evidence indicated that Adkins was beaten about his head and body with a flashlight, causing him to defecate on himself, and called racial epithets.

<sup>5</sup> The evidence indicated that Burge electrically shocked Jones on his penis, thigh and foot, struck him in the head with a stapler, threatened him with a revolver, and threatened to “blow [his] black brains out;” that Burge suffocated Mumin with a plastic typewriter cover, threatened him with a revolver, subjected him to Russian Roulette, and repeatedly used racial epithets; and that Burge electrically shocked and beat Johnson.

- That no meaningful police investigation was conducted, nor any police witness questioned either in the Wilson case, or in the Michael Johnson electric-shock case, which occurred a few months after Wilson, and had “glaring similarities” to the Wilson allegations. (Id. at 71-73; 88)
- That “something should have been done about the disgrace and embarrassment [at Area 2] 24 years ago” by the Chicago Police Superintendent. (Id. at 89)
- That if action had been taken against Jon Burge at the time of the Andrew Wilson case, or even shortly thereafter, the appointment of the Special Prosecutors would not have been necessary. (Id. at 88)
- That this action should have included, “at the very least,” the Superintendent’s removal of Burge from any investigative command and a “complete shake-up at detective Area 2.” (Id. at 88)

At a press conference after release of the Report, the Special Prosecutors stated that, of the 148 cases they investigated, they believed that abuse occurred in 74, or approximately half of the cases, and that the torture allegations “seemed to center on a crew known as the Midnight Crew.” “There are a number of officers who seem to predominate relative to the number of allegations that are made, allegations that we have said that we think happened,” said Boyle. “It centers basically around eight to twelve policemen out of a unit of forty-four.” (Transcript of the Press Conference of the Special Prosecutors, July 19, 2006)

Despite the findings presented in the Report and the statements at the press conference, the Special Prosecutors sought no indictments, concluding that “the statute of limitations bars any prosecution of any officers.” (Special Prosecutors’ Report, p. 13)

## INDICTABLE CASES WHICH THE SPECIAL PROSECUTORS COULD HAVE BROUGHT WITHIN THE STATUTE OF LIMITATIONS

*The Special Prosecutors did not bring criminal charges against members of the Chicago Police Department despite the apparent existence of numerous provable offenses within the statute of limitations.*

The Special Prosecutors' Report stated that neither Burge nor any of his subordinates could be indicted because the three-year Illinois statute of limitations had run on all their alleged crimes. This assertion was and is unsupported and unsupportable by the record. In truth, shortly after their appointment, the Special Prosecutors were presented with evidence of indictable offenses within the statute of limitations. Furthermore, during the four-year Special Prosecutors' investigation, numerous additional indictable offenses occurred, including perjury, obstruction of justice, official misconduct, and conspiracy.

Officers who could have been indicted within the statute of limitations, and the offenses for which they could have been indicted, if the Special Prosecutors had proceeded in a timely fashion, include:

**Jon Burge** — The Special Prosecutors found, beyond a reasonable doubt, that Burge tortured Andrew Wilson, and, when he denied doing so at Wilson's 1982 trial, committed perjury and obstructed justice. Furthermore, during the Wilson federal court proceedings, Burge denied under oath, once in 1988 and twice in 1989, that he had tortured Wilson. At a Police Board hearing in 1992, he again denied torturing Wilson. Non-conspiracy charges based on those false denials may have been barred by the three-year statute of limitations. However, in November 2003, during the *Hobley v. Burge* federal court case, Burge once more denied under oath that he had witnessed or participated in any torture or abuse of suspects during his tenure in the Police Department. Therefore, Burge could have been indicted for perjury and obstruction of justice for his 2003 sworn statement, as these denials were in the face of numerous credible cases of torture.

**John Byrne** — John Byrne, a disbarred lawyer,<sup>6</sup> was the sergeant in charge of the midnight shift at Area 2 and by his own admission Burge's "right hand man" from 1982 to 1986. On March 1, 2001, in a sworn deposition taken in a state court post-conviction case brought on behalf of torture victim Aaron Patterson, Byrne denied torturing, abusing or witnessing the torture or abuse of any of more than ten individuals. Many of the torture claims in these cases have been validated in court and by administrative bodies, including the cases of Gregory Banks, David Bates, Darrell Cannon, Stanley Howard, Lee Holmes, Philip Adkins, Marcus Wiggins, Aaron Patterson, and Thomas Craft. Byrne's sworn denials occurred well within the three-year statute of limitations, and could have been the basis for a series of perjury<sup>7</sup> and obstruction of justice<sup>8</sup> charges. In early 2004, Egan and Boyle were warned that the statute would soon expire on these alleged offenses. Nonetheless, they neither sought an indictment of Byrne nor sought a statute of limitations waiver from him before the March 2004 deadline. In August 2004, the Special Prosecutors had another opportunity to indict Byrne when he gave them an oral statement that he had not participated in or witnessed any acts of torture, (including the Banks and Cannon cases) took the Fifth Amendment before the Grand Jury the same day, then offered, the next day, to give the Special Prosecutors a formal, unsworn, court reported statement denying all torture at Area 2. (Deposition of John Byrne in *Cannon v. Burge*, December 14, 2006, and exhibits thereto) At his 2006 deposition, Byrne admitted that he refused to give denials under oath because he feared being charged with perjury. Furthermore, he conceded that his unsworn denials could expose him to obstruction of justice charges, but that he felt such an eventuality was highly unlikely. Byrne's legal maneuver supplied the Special Prosecutors with wholesale denials of torture on behalf of Burge and the other 25 detectives who refused to cooperate with the Special Prosecutors' investigation, yet the Special Prosecutors neither took a formal court-reported statement from Byrne nor indicted him for obstruction of justice.

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<sup>6</sup> On November 26, 1996, Byrne, who had become a lawyer while serving as a detective, was disbarred as an attorney in Illinois. This disbarment was based on eleven separate counts of attorney misconduct. The ARDC found that Byrne had engaged in actions that "defeated the administration of justice and brought the legal system into disrepute" on seven occasions; that he "committed dishonesty, fraud, deceit or misrepresentation" on four occasions; and that he "made statements of material fact or law to a tribunal which he knew or reasonably should have known were false" on one occasion. (Deposition of John Byrne in *People v. Patterson*, March 1, 2001) At his deposition, Byrne admitted to the allegations in each of the 11 Counts brought by the ARDC. (Id.)

<sup>7</sup> In Illinois, "a person commits perjury when, under oath or affirmation, in a proceeding in any other matter where by law such oath or affirmation is required, he makes a false statement, material to the issue or point in question, which he does not believe to be true." (720 ILCS 5/32-2(a))

<sup>8</sup> In Illinois, "a person obstructs justice when, with the intent to prevent the apprehension or obstruct the prosecution or defense of any person he knowingly commits any of the following acts: (a) Destroys, alters, conceals or disguises physical evidence, plants false evidence, *furnishes false information*, or (b) Induces a witness having knowledge material to the subject at issue to leave the State or conceal himself; or (c) Possessing knowledge material to the subject at issue, he leaves the State or conceals himself. ." (720 ILCS 5/31-4) (*emphasis added*)



**James Lotito** — The Special Prosecutors found that James Lotito, a member of the midnight shift, and Ronald Boffo had severely beaten Philip Adkins. However, in November 2003 in sworn interrogatories in the *Hobley* case, Lotito denied, under oath, that he had participated in or witnessed *any* acts of torture and abuse. As a result, Lotito could have been indicted for perjury and obstruction of justice for his denials in either the Adkins case or for several other cases of torture, including Stanley Howard and Madison Hobley.

**Daniel McWeeny** — Daniel McWeeny was named as a participant — often “the statement taker” — in a number of torture and abuse cases, including those of Melvin Jones, Stanley Howard, Aaron Patterson, Darrell Cannon, Madison Hobley, James Andrews, L.C. Riley, and Leroy Orange. In November 2003, during the Special Prosecutors’ investigation of the Hobley case, McWeeny denied under oath that he had participated in or witnessed *any* acts of torture and abuse. Furthermore, torture witness David Bates has subsequently alleged that in September 2004, McWeeny intimidated him at his home after he appeared as a witness at Cannon’s parole revocation hearing. In November 2005, McWeeny was granted use immunity by the Special Prosecutors, then appeared before the Special Grand Jury and denied any wrongdoing. In April and June 2006, on four separate occasions in two federal court torture cases, McWeeny denied, twice while under oath, that he saw or participated in *any* acts of torture or abuse. Hence, McWeeny could have been indicted for perjury for all of these acts and for obstruction of justice for all of them except his testimony before the Special Grand Jury.

**John Paladino** — John Paladino, was another Area 2 midnight shift detective who, along with his partner, Anthony Maslanka, was named in numerous cases of torture, including the Hobley, Mumin and Cody cases. Paladino was also named by thirteen-year-old torture victim Marcus Wiggins, who alleged that he was electric-shocked in September 1991. In 1996, in sworn federal court testimony, Paladino denied participating in or witnessing *any* torture at Areas 2 and 3. In November 2003, in the Hobley case, Paladino denied under oath in sworn interrogatories that he had participated in or witnessed *any* acts of torture and abuse. Hence, Paladino could have been indicted for perjury and obstruction of justice for his 2003 sworn denials.

**Fred Hill and Patrick Garrity** — Fred Hill was a long time Area 2 detective who was named as a torturer and witness in the Donald White and Andrew Wilson cases. In sworn federal court testimony given in June 2006 in the *Evans v. City of Chicago* case, Hill denied knowledge of, or participation in, *any* acts of torture or abuse. Hence, he could have been indicted for these sworn denials. In late 2005, after the Special Prosecutors granted him immunity, Patrick Garrity, according to his lawyer, also denied *any* wrongdoing before the grand jury; as a result, he could have been indicted for perjury.<sup>9</sup>

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<sup>9</sup> There are also at least eight additional Area 2 officers and supervisors who could have been charged with obstruction of justice and perjury within the 3 year statute of limitations for denying any knowledge of torture and abuse.

### **Conspiracy to obstruct justice**

The evidence clearly supports the conclusion that the Area 2 supervisors and detectives named above committed numerous acts of obstruction of justice within the statute of limitations. The Special Prosecutors — by their own admission — believed that these and other Area 2 officers committed more than 70 separate acts of torture as well as numerous testimonial acts of obstruction of justice, perjury, and cover-up which were outside of the three year statute. At the very least, the Special Prosecutors also could have indicted these officers for conspiracy to obstruct justice for committing, with a shared intent and motive, the acts committed within the statute. Moreover, it would also have been reasonable for the Special Prosecutors to have defined the conspiracy more broadly, and used some or all of the earlier evidence of torture and cover-up as part of the proof of the ongoing obstruction of justice conspiracy which continues today.<sup>10</sup>

### **FAILURE TO HOLD DALEY, DEVINE, AND OTHER OFFICIALS ACCOUNTABLE FOR THEIR ROLES IN THE TORTURE SCANDAL**

*The Special Prosecutors ignored the failure of former Cook County State's Attorney Richard M. Daley, State's Attorney Richard A. Devine, and various other high-ranking officials to investigate and prosecute police officers who engaged in a documented pattern of torture and wrongful prosecution of torture victims.*

The Special Prosecutors largely ignored or obfuscated the roles in the torture scandal of various high-level officials of the City of Chicago, the Chicago Police Department, and the Cook County State's Attorney's Office. Among officials who knew that prisoners were being tortured by Burge and his subordinates, and who had the power and duty to intervene to stop the torture,

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<sup>10</sup> Since the Special Prosecutors issued their Report, approximately 15 former Area 2 supervisors and detectives, including Byrne, Dignan, McWeeny, and Paladino, have given additional, detailed, sworn federal court testimony denying any involvement or knowledge of torture. These denials are clearly within the five year Federal statute of limitations for the offenses of obstruction of justice, perjury, conspiracy, and racketeering. A comprehensive list of these potential criminal acts, from 1979 to the present, can be found in Appendix A.

were Richard M. Daley, both in his capacity as State's Attorney until 1989 and as Mayor since then; Richard A. Devine, the First Assistant State's Attorney under Daley and presently the State's Attorney; and Jane M. Byrne, who was Mayor when the torture allegations surfaced.

Within weeks of their appointment, the Special Prosecutors were notified that Richard Brzeczek, the Superintendent of Police in 1982 when Andrew Wilson was tortured at Area 2, had stated that he was certain that there had been torture at Area 2 under Burge. (*Chicago Tonight*, WTTW TV 11, April 30, 2002)

Brzeczek subsequently told the Special Prosecutors that in 1982 — after Dr. John Raba, the director of Cermak Medical Services, notified him by letter that Wilson claimed to have been tortured at Area 2 and that Wilson's allegation was corroborated by photographs and medical evidence — he wrote to State's Attorney Daley, notifying him of the allegation and enclosing a copy of Dr. Raba's letter. Brzeczek's letter to Daley stated that he was deferring investigation of Wilson's allegations until or unless the State's Attorney's Office authorized him to proceed. (Id.) Brzeczek also informed the Special Prosecutors that he believed that he had informed Mayor Byrne of the torture evidence sent to him by Dr. Raba. (Id.)

Instead of capitalizing on a *cooperative* Brzeczek and his knowledge of the evidence supporting Wilson's allegations and investigating the roles that Daley, Devine, Byrne, and other officials played in the ensuing cover-up of the on-going torture, the Special Prosecutors attempted to discredit both Brzeczek and his story. The Special Prosecutors repeatedly questioned Brzeczek under oath, and brought him before the Special Grand Jury, where, despite appearing voluntarily and without immunity, he was aggressively interrogated by both Egan and Boyle. (Statement of Richard Brzeczek, March 9, 2005; Grand Jury Testimony of Richard Brzeczek, October 5, 2005)

In contrast, there is not a single written memo, statement, or transcript documenting any formal or informal questioning of Daley, Devine, Byrne, or of any of their high ranking subordinates, until after the Special Prosecutors announced in early 2006 that their investigation was wrapping up and their Report would soon be issued. Then, apparently as an after thought, the Special Prosecutors conducted brief, informal interviews with Daley, Devine, and Byrne. In these interviews, which were not transcribed by the Special Prosecutors, Daley and Devine acknowledged that they had seen the Brzeczek letter. Byrne denied that Brzeczek had ever told her about Dr. Raba's letter. She did admit that she had met with Burge three times while he was leading a manhunt for the men who killed Police Officers William Fahey and Richard O'Brien on February 9, 1982 — the crime in connection with which Andrew Wilson was tortured. The manhunt, she added, was pursuant to her plan for "direct action." (Special Prosecutors' Memoranda dated January 6, January 16, and February 2, 2006)

In April 2006, the Special Prosecutors publicly stated that there would be no indictments and that the Report was essentially complete. The release of the Report, however, was delayed because attorneys for Burge and his subordinates appeared before Judge Biebel and opposed its release. In May, the media began to question why there would be no indictments. Lawyers for the victims responded that the responsibility fell on Daley and Devine because they *should have* indicted Burge for Wilson's torture 24 years earlier. At this point, Brzeczek predicted in widely reported interviews that the Special Prosecutors would scapegoat him in order to absolve Daley and Devine.

Apparently to defend against Brzeczek's charge, Egan and Boyle launched a last minute "investigation" of Daley and Devine's role in the Wilson case. The Special Prosecutors began by taking a sworn statement from former First Deputy State's Attorney William Kunkle, who

had been next in command to Daley and Devine when Wilson was tortured. In his statement, Kunkle revealed several communications with Daley and Devine concerning the Brzeczek letter and its contents, and acknowledged that they all knew that the facts in the letter established criminal conduct. (Statement of William Kunkle, May 10, 2006) In his statement, Kunkle also removed himself from the chain of responsibility for refusing to investigate and prosecute Burge, instead passing it on to Daley, Devine, and the Special Prosecutions Unit of the State's Attorneys' Office (Id.) Confronted with this apparently unanticipated turn of events, Egan and Boyle attacked and attempted to discredit Kunkle (Special Prosecutors' Report, pp. 126-30)

In June 2006, in response to Kunkle's claims, the Special Prosecutors took sworn statements from Daley and Devine. In his statement, Daley backed off his prior *informal* concession that he most likely received the Brzeczek letter, while Devine conceded the knowledge that Kunkle attributed to him and Daley, thereby corroborating their central role in the failure to investigate and prosecute Burge for torturing Wilson. (Statement of Richard M. Daley, June 12, 2006; Statement of Richard Devine, June 15, 2006)<sup>11</sup>

The Special Prosecutors asked no additional questions of Daley and Devine concerning their subsequently acquired knowledge of torture at Area 2 or about their failure to take action during Daley's tenure as State's Attorney and Mayor and during Devine's tenure as State's Attorney. U.S. Magistrate Judge Geraldine Soat Brown has recently found that "the statement taken by the Special Prosecutor from Mr. Daley contains little useful information. It consists almost entirely of leading questions posed by [Egan and Boyle], often prefaced by long factual

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<sup>11</sup> According to Devine, after Daley had given his June statement, but before Devine gave his three days later, they discussed the substance of Daley's testimony, particularly that portion where Daley asserted that he delegated responsibility to his subordinates in Wilson and other cases when he was State's Attorney.

recitations.” (*Hobley v. Burge*, Memorandum Opinion and Order of Magistrate Judge Brown, 2007 U.S. Dist. LEXIS 12159, February 23, 2007) Brown then ordered that Daley sit for what the *Chicago Tribune* described as a “blockbuster” deposition. (Id.; *Chicago Tribune*, February 25, 2007)

The evidence before the Special Prosecutors also revealed that while Daley was State’s Attorney, more than 50 additional cases of torture arose in Area 2. Assistant State’s Attorneys (hereinafter ASAs) sought — and obtained — death sentences in several such cases. In addition, ASAs under Daley took purported confessions from a number of torture victims. When torture allegations were raised in court by victims, other Daley ASAs defended the veracity of such confessions, claiming that no torture had occurred.

Then, in 1992, three years after Daley became Mayor, he received a report (hereinafter the Goldston Report), based on an internal investigation by Michael Goldston of the Police Office of Professional Standards (hereinafter OPS), stating that Burge and his subordinates had engaged in “systematic” torture and abuse for more than a decade.

Instead of taking the Goldston Report seriously and ordering the Chicago Police Department (hereinafter CPD) to take action, Daley publicly condemned the OPS methodologies and conclusions. (*Chicago Tribune*, February 8, 1992) The evidence before the Special Prosecutors also showed that for eight years Devine and his law firm, acting as specially appointed corporation counsel, earned more than \$1 million defending Burge against Wilson’s and other victims’ charges of torture, then, for the next five years, as the State’s Attorney of Cook County, Devine blocked all substantive investigations of Area 2 torture, defended against

the claims of torture raised by criminal defendants, and continued to rely on these defendants' confessions obtained by torture in arguing that their convictions should be upheld.<sup>12</sup>

None of this evidence was explored with Daley, Devine, or anyone else, nor does it appear that it was seriously scrutinized by the Special Prosecutors. Moreover, neither Daley nor Devine receive *any* blame or criticism in the Special Prosecutors' Report for their failures to investigate and prosecute *anyone* involved in the torture scandal. Instead, the Report criticized Brzeczek and, to a lesser extent, Kunkle, for not taking action that Daley and Devine should have taken but did not.

Without the participation of Daley and Devine as silent accomplices, the torture at Areas 2 and 3 could not have continued. Yet the Special Prosecutors did not expressly blame Daley or Devine, saying only that, "The actions of the State's Attorney's Office and the Chicago police department do not redound to their credit" (Special Prosecutors' Report, p. 151) and reflected "a bit of slippage in the State's Attorney's Office." (Chicago Tribune, July 20, 2006)

#### **FAILURE TO DOCUMENT THE SYSTEMIC AND RACIST NATURE OF THE TORTURE AND TO BRAND IT AS TORTURE**

*The Special Prosecutors did not document the systemic and racist nature of the torture and did not brand it as such in accordance with the international definition of torture.*

In evaluating the individual cases of torture and the credibility of the victims, the Special Prosecutors did not analyze or utilize a vast amount of evidence of common scheme, plan, and motive by Burge and his men to torture suspects. Similarly, the Special Prosecutors refused to

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<sup>12</sup> The refusal to investigate continued from 1997 until 2002 when Judge Biebel found that Devine and his office had an actual conflict of interest and appointed the Special Prosecutors to investigate Area 2 torture. In April of 2003, Judge Biebel disqualified Devine and the SAO from further involvement in prosecuting cases where the defendant alleged police torture.

rely on the numerous official findings, admissions, and decisions of individual and systemic torture. The Report never finds that the “abuse” described above was in reality torture as defined by state, federal or international law. Neither does the Report discuss or condemn the racist nature of the torture or the admitted racist attitudes of the torturers. In fact, those who committed torture, with the exception of Burge, were not named in the Report.

Moreover, there was no mention of the fact the torture techniques alleged were similar in many cases — electric shock, suffocation by baggings, mock executions, and beatings designed to leave no marks — even though the Special Prosecutors professed to find many of the allegations believable. Additionally, there is no mention of the hundreds of times that Area 2 and 3 detectives and supervisors appeared in court and testified that they had not witnessed, participated in, or otherwise become aware of torture, even though the Special Prosecutors professed to believe many of the torture claims that the officers had denied under oath.

In the face of all of this evidence, the Report stated only, without further analysis, that Burge was “guilty” of “abus[ing] persons with impunity,” that it therefore “necessarily follows that a number of those serving under his command recognized that if their commander could abuse persons with impunity, so could they,” and that “there are many other cases that lead us to believe or suspect that the claimants were abused.”<sup>13</sup>

Not once did the Report use the word “torture,” using in its place such terms as “abuse” and “mistreatment.” It was only at the press conference following release of the Report that the Special Prosecutors somewhat reluctantly acknowledged that the conduct amounted to torture. Also, it was only at the post-release press conference that they reluctantly stated that they

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<sup>13</sup> Special Prosecutor Boyle said that they “believed” that abuse had taken place in “about half” of the 148 cases they investigated.



believed abuse had occurred in 74 of the cases; that the allegations “seemed to center on a crew known as the midnight crew;” and that “there are a number of officers who seem to predominate relative to the number of allegations that are made, allegations that we have said that we think happened.”

### **Findings, decisions, and admissions<sup>14</sup>**

In 1990, Michael Goldston completed his study of some fifty alleged torture cases that occurred from 1972 through 1985 in Area 2 and made the following findings in a report submitted to Police Superintendent Leroy Martin, who previously had served as Burge’s commander at Area 2:

As to the matter of alleged physical abuse, the preponderance of the evidence is that abuse did occur and that it was systematic. The time span involved covers more than ten years. The type of abuse described was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture. The evidence presented by some individuals convinced juries and appellate courts that personnel assigned to Area 2 engaged in methodical abuse. The number of incidents in which an Area 2 command member is identified as an accused can lead to only one conclusion. Particular command members were aware of the systematic abuse and participated in it either by actively participating in same or failing to take any action to bring it to an end. This conclusion is also supported by the number of incidents in which Area 2 offices are named as the location of the abuse. (OPS Special Project Conclusion Reports and Findings, November 2, 1990 (Goldston Report))

In supplemental findings, the OPS found that Detectives Jon Burge, John Byrne, Peter Dignan, John Yucaitis, and Charles Grunhard were “players” who were repeatedly named as abusers. (OPS Director Shines’ letter to CPD Superintendent Martin and attached supplemental findings, April 30, 1991) Among the fifty cases studied, there were nine cases of electric shock, eleven cases of suffocation by bagging, one hanging, and one threatened hanging. (Id.)

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<sup>14</sup> A complete listing and summary of all these findings, decisions and admissions can be found in Appendix B.

In January 1992, City lawyers, on behalf of CPD Superintendent Leroy Martin and the City, filed the following judicial admission at Police Board Hearings concerning the testimony of “seven additional victims of torture tactics at Area II headquarters:”<sup>15</sup>

The testimony regarding similar acts sets forth detailed accounts of tortuous treatment that are almost identical to the torture suffered by Andrew Wilson. The testimony reveals an astounding pattern or plan on the part of respondents [Burge, Yucaitis and O’Hara] to torture certain suspects, often with substantial criminal records, into confessing to crimes or to condone such activity. (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)

In 1993 and 1994, OPS investigators found:

- That Area 2 Sergeant John Byrne struck Darrell Cannon with a cattle prod on his testicles and penis and in his mouth, repeatedly called Cannon a “nigger;” and held a 9 mm handgun to Cannon’s head; that Detective Peter Dignan played Russian roulette with a shotgun, attempted to lift Cannon by his handcuffs, and put a shotgun to Cannon’s head; and that detective Charles Grunhard lifted Cannon up while Byrne held onto the cuffs; (OPS Investigator Tillman’s findings in CR No. 134723)
- That Area 2 Detectives Ronald Boffo and James Lotito repeatedly struck Philip Adkins about the body and groin area with a flashlight; and that Lotito and Dignan made false reports to OPS concerning Adkins’ injuries; (OPS Investigator Lawrence’s findings in CR No. 142201)
- That Byrne and Grunhard used excessive force against Gregory Banks; that Byrne testified falsely in court that Gregory Banks was not physically abused in police custody; that Byrne, Dignan, Grunhard, and Robert Dwyer failed to report to a supervisor the use of excessive force against Banks; and that Byrne, Dignan, Dwyer and Grunhard gave false information while providing a statement to OPS about Banks; (OPS Investigator Cosey’s findings in CR No. 188617)
- That Byrne and Boffo repeatedly struck and kicked Stanley Howard about the body and leg; and that Lotito repeatedly struck Howard about the body and jerked

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<sup>15</sup> The seven victims relied upon by the City were Leroy Orange, Melvin Jones, Anthony Holmes, George Powell, Donald White, Shadeed Mumin, and Lawrence Poree. (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, pp. 7-14)

Howard's body in the air causing the handcuffs to cut into Howard's wrists; (OPS Investigator Lawrence's Findings in CR No. 142017)

- That Dignan and Area 2 Detective David Dioguardi struck Lee Holmes with a rubber hose and placed a plastic bag over Holmes's head. (OPS Investigator Tillman's Findings in CR No. 126802)

On May 15, 1995, the City of Chicago admitted in a judicial filing in federal court that Jon Burge had in fact tortured Melvin Jones by threatening him with a gun and electrically shocking his genitals while Jones was handcuffed to a wall at Area 2. (*Wilson v. City of Chicago*, 86-C-2360, Local Rule 12 N Statement of the City, ¶ 26.) In *Wilson v. City of Chicago*, 120 F.3d 681, 683-85 (7<sup>th</sup> Cir. 1997), the City, in its appellate brief, conceded that "a properly instructed jury could have reasonably found that Burge participated in *such savage torture* of Wilson that the outrageousness of his conduct removed him from the scope of his employment," and the Seventh Circuit Court of Appeals held that Burge acted "within the scope of his employment" with the City "when he tortured Wilson," stating:

Burge was not pursuing a frolic of his own. He was enforcing the criminal law of Illinois overzealously by extracting confessions from criminal suspects by improper means. He was, as it were, too loyal an employee. He was acting squarely within the scope of his employment. (*Wilson*, 120 F.3d, at 683-85)

In 1999, U.S. District Court Judge Milton I. Shadur found:

It is now common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions. Both internal police accounts and numerous lawsuits and appeals brought by suspects alleging such abuse substantiate that those beatings and other means of torture occurred as an established practice, not just on an isolated basis. (*U.S. ex. rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999))

In January of 2003, Illinois Governor George H. Ryan granted four death row Burge torture victims, Madison Hobley, Leroy Orange, Stanley Howard, and Aaron Patterson, pardons based on innocence, finding:

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. (Statement of Governor George Ryan, DePaul University School of Law, January 10, 2003)

In her concurring opinion in *Hinton v. Uchtman*, 395 F 3d 810, 822-23 (7<sup>th</sup> Cir. 2005), Seventh Circuit Court of Appeals Judge Diane Wood found that "police abuse ran rampant" at Area 2 under Burge and that:

[A] mountain of evidence indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department during the exact time period pertinent to Hinton's case [November 1983]. Eventually, as this sorry tale came to light, the Office of Professional Standards Investigation of the Police Department looked into the allegations, and it issued a report that concluded that police torture under the command of Lt. Jon Burge — the officer in charge of Hinton's case — had been a regular part of the system for more than ten years. And, in language reminiscent of the news reports of 2004 concerning the notorious Abu Ghraib facility in Iraq, the report said that "[t]he type of abuse described was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture." The report detailed specific cases . . . Behavior like that attributed to Burge imposes a huge cost on society: it creates distrust of the police generally, despite the fact that most police officers would abhor such tactics, and it creates a cloud over even the valid convictions in which the problem officer played a role. Indeed, the alleged conduct is so extreme that, if proven, it would fall within the prohibitions established by the United Nations Convention Against Torture ("CAT"), which 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 . . .," thereby violating the fundamental human rights principles that the United States is committed to uphold.

Only months after the *Hinton* decision, on May 19, 2006, the United Nations Committee Against Torture (CAT) stated that:

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

by law enforcement personnel and bring perpetrators to justice, in order to fulfill its obligations under article 12 of the Convention. The State party should also provide the Committee with information on the ongoing investigations and prosecution relating to the above-mentioned case. (Conclusions and Recommendations of the UN Committee Against Torture, May 19, 2006, & 25, p. 7)<sup>16</sup>

### **Statements and testimony by Area 2 officers**

The Special Prosecutors were presented with numerous statements of Area 2 detectives that corroborated the existence of systemic, racist torture at Area 2, but no mention of this evidence can be found in their Report. The first source was a series of letters sent in 1989 to Andrew Wilson's lawyers during his civil trial by an anonymous Area 2 source. This source correctly identified torture victim Melvin Jones, named the core members of Burge's torture crew, including Byrne, Dignan, Yucaitis, Paladino, Hill, and Glynn, and stated:

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. (First and Second Letters from anonymous police source, postmarked February 2, and March 6, 1989)

The source also asserted that Donald White and his brothers — who were picked up in connection with the murder of Chicago Police Officers Fahey and O'Brien — were beaten at police headquarters with the knowledge of State's Attorney Daley, Mayor Byrne, Superintendent Brzeczek, and Chief of Detectives William Hanhardt:

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<sup>16</sup> In response to the public furor after the release of the Special Prosecutors' Report, Mayor Daley, while refusing to admit to his role in the scandal, made the following public admissions in a July 21, 2006 press statement: That the City "strongly supported the release of the Special Prosecutors' Report on the practice of abuse and torture of suspects in the 1970's and 1980's at the Calumet Police District [Area 2]" because "the public has the right to know about this shameful episode in our history;" that "no suspect should be subjected to the abuses detailed in [the Special Prosecutors'] Report, and no suspect should ever be coerced into confessing to crimes he did not commit. This fundamentally undermines our system of justice and destroys public confidence. It should never happen;" and that "Burge and his Unit" participated in a "pattern of misconduct." (Press Statement of Richard M. Daley, July 21, 2006, pp. 1-2)

Several witnesses including the Whites were severely beaten at 1121 S. State Street in front of the Chief of Detectives, the Superintendent of Police and the State's Attorneys, that Mayor Byrne and State's Attorney Daley were aware of the actions of the detectives, that ASA Angarola told both of them and condoned their actions . . . Mayor Byrne and State's Attorney Daley ordered that numerous complaints filed against the police as a result of this crime not be investigated, and that this order was carried out by an OPS investigator named Buckley who is close to Alderman Burke. (First Letter from anonymous police source, postmarked February 2, 1989)

In subsequent letters, the source further stated that:

Burge hates black people and is an ego maniac. He'd do anything to further himself. . . [T]he common cord is Burge. The machines and plastic bags were his and he is the person who encouraged their use. You will find that the people with him were either weak and easily led or sadists. He probably did this because it was easier than spending the time and the effort talking people into confessing. . . You could check in the taverns at 103<sup>rd</sup> and at 92 and Western and you will find that Burge youse (sic) to brag about everyone he beat. (Third and Fourth Letters from anonymous police source, postmarked March 15 and June 16, 1989)

During the Special Prosecutors' investigation, five retired African American, former Area 2 detectives broke the code of silence by giving sworn testimony to lawyers representing several *pardoned* torture victims. One of the five, Detective William Parker, testified that while working at Area 2 as a robbery detective in September 1973, he heard a shrill cry coming from an interrogation room. As he opened the door to the interrogation room, he saw an African American man, handcuffed to radiator with his pants pulled down. Next to the man were Jon Burge and two other white detectives. Surprised to see Parker at the door, one of the detectives took something off the desk and put it on the floor. He later concluded that the detectives were attempting to conceal Burge's electric-shock box. Parker described the African American male as looking panicked, scared and in pain. Following the incident, one of the detectives told Parker that their investigation was not any of his business and that he had no right to barge in while they were interrogating the suspect. Not long after the incident Parker was transferred out of Area 2. (Statement of William Parker, October 4, 2004, pp. 5-16)

In November 2004, Sergeant Doris Byrd testified that between 1981 and 1984, while she worked at Area 2, detective Frank Lavery came forward (during the George Jones trial) and exposed the existence of secret street files used by Chicago Police detectives. In what Byrd called a message to other officers who considered breaking their code of silence, Burge pointed a gun at the back of Lavery's head as he left a room at Area 2 and said "bang." Furthermore, she testified that while she was assigned to Area 2 she would often remain on duty after 1:00 a.m. and on occasion would hear screaming and other unusual noises coming from interview rooms. She remembered hearing detainees saying "stop hitting me," or "what are you hitting me for?" Byrd further testified that she was told by individuals who were interrogated at Area 2 that detectives had physically abused them with telephone books, plastic bags, and an electric shock box. She said that "the black box was running rampant through the little Unit up there," that she heard about it both from detectives and suspects, that the telephone books, bags, and the electric shock box were an "open secret" at Area 2, and that this kind of abuse was linked to Burge and Byrne and the midnight shift. (Statement of Doris Byrd, November 9, 2004, pp. 8-12, 16)

Moreover, Byrd testified that when she was in the Area 2 stationhouse during the manhunt for the killers of police officers Fahey and O'Brien in 1982, she observed an African American man attached to a hot radiator. She said it was her understanding that Burge was given a mandate by Mayor Byrne to do anything he had to do, including using torture tactics, to solve the murders of Fahey and O'Brien. According to Byrd, following Gregory Banks' arrest, detectives working the midnight shift obtained a statement from him which she understood was obtained by torture. She further stated that it was well known that Burge and his subordinates used torture to obtain confessions and it was an "open secret" at Area 2. She further testified that Burge was a racist, that Byrne, Dignan, Paladino, Hill, George Basile, and Frank Glynn

were all members of his torture team, and that after an anonymous police source named her as a possible “weak link,” she received a call from a Chicago Police Captain who was a friend of Dignan’s named Phelan, who said that Dignan was worried about her testifying against him. (Id. at 13, 22-23, 26-29)

Melvin Duncan, a retired homicide detective who worked at Area 2 during the 1970s, gave a sworn affidavit to victims’ attorneys in May 2004 in which he stated that during a visit to the Area 2 Robbery Office, he saw a dark wooden box. He thought the box could give electric shocks, like an electrical device with a crank, wires and prongs which his father had demonstrated on him and his brother when he was a child. He further stated that while working at Area 2 he sometimes heard loud and unusual noises coming from the Area 2 Robbery Unit Office and that he heard that certain detectives used an electrical box and cattle prods on people to obtain confessions. He further averred that while working with detective Peter Dignan at Area 2, he formed the opinion, based on Dignan’s treatment of an African American crime victim, that Dignan had racist attitudes. (Affidavit of Melvin Duncan, May 20, 2004, pp.1, 4, 5-7, 10)

In a sworn statement dated November 2, 2004, Walter Young testified that in 1980, while he was assigned to Area 2, that he saw a box-like object with what appeared to be a crank in the basement of Area 2, and that after hearing stories and conversations from other Area 2 detectives, he concluded that the box he saw might have been the electrical box that was said to have been used on certain people brought into the Area. He further testified that in the conversations that he overheard at Area 2, there were references to the Vietnamese and Vietnam, that suspects could be made to talk if the same techniques were basically used that were used in Vietnam, that the term “Vietnam special” or “Vietnam treatment” was used, and that based on seeing the box, and overhearing conversations, he later deducted that the



“Vietnam treatment” probably referred to the use of electric shock.<sup>17</sup> Young testified that on one occasion, while walking past an interview room, he heard unusual noises, saw Burge walking out of the room, and an African American suspect sitting on the floor handcuffed to a ring on the wall. Young further stated that Burge had a reputation of being forceful in his investigations, that during the manhunt for the killers of officers Fahey and O’Brien in February 1982, he overheard conversations from detectives that force was being used on suspects, and that he heard Area 2 detectives say that a phone book would sometimes help people refresh their memories, that phone books don’t leave marks, and that plastic bags help to cushion the phone book. Young also concluded from the way he and his fellow African American detectives were treated by Jon Burge, that Burge was a racist. (Statement of Walter Young, November 2, 2004, pp. 2-4, 6-8, 10, 12, 18, 27-28, 31)

In his October 17, 2004 sworn statement to victims’ attorneys, former Area 2 detective Sammy Lacey testified that during the 1980s police personnel working at the Fifth District police station (which was on the first floor of Area 2), asked him “what was going on on midnights,” and “what are they doing to people up there on midnights?” Lacey further averred that Jon Burge was often present at Area 2 when Lacey left work at the end of his shift at midnight and “if there was any questioning, he was there.” He stated that he was present at Police Headquarters when Donald White was brought there as a suspect in the Fahey and

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<sup>17</sup> Burge was a military police interrogator assigned to a prisoner of war compound in Vietnam. In his February 2005 article entitled *The Tools of Torture*, *Chicago Reader* John Conroy reported on his interviews with officers who served with Burge in Vietnam, and their knowledge of the use of electric-shock torture on POWs by U.S. soldiers and military policemen. This electric shock torture was delivered by a hand cranked generator that also served as a military field telephone. Additionally, a childhood friend of Burge’s, radio personality Ed Schwartz, recounted how Burge was an “electrical whiz” who rigged up a communications system for a school play which included “a telephone control box which contained a little crank that generated voltage to ring a bell for a closed circuit phone system.” (*Southtown Economist*, “Jon Burge, Grade School Patrol Boy and Electrical Whiz,” July, 20, 2006)

O'Brien murders, and that he was left downstairs with Commander Milton Deas, (who is African American), while Burge and Chief of Detectives William Hanhardt took White to another floor where White alleged that Burge and his men tortured him. (Statement of Sammy Lacey, October 17, 2004, pp. 16-17; Deposition of Donald White in *Wilson v. City v. Chicago*)

In his statement, Lacey said that when Burge left Area 2 to work at Area 3, many of the midnight shift detectives went with him. Lacey went on to say that he heard (off the record) that strange things were going on there and that a lot of confessions were being obtained. Lacey further stated that Burge did not permit African American detectives to work the midnight shift or to investigate homicides, and that when Area 2 Commander Leroy Martin was notified of this scheme, Burge found out and subsequently berated the African American detectives the next day. (Statement of Sammy Lacey, October 17, 2004, pp. 16-20; Statement of Sammy Lacey to the Special Prosecutors, October 12, 2004)

On September 20, 2004, Investigator Mort Smith interviewed Barry Mastin, an African American and former Area 2 general assignments detective who worked on the first floor of Area 2 from 1972 to 1977. He said that it was an "open secret" that certain white detectives tortured and abused suspects on the second floor. He said that suspects were often brought through the back door and held incommunicado for several days. He also heard that a suspect was held out the window by his ankles during an interrogation, accidentally dropped and charged with attempted escape. (Mort Smith Memorandum of interview with Barry Mastin, January 25, 2005) In late 1993, OPS investigator Veronica Tillman interviewed Raymond Peterson, the building engineer at the old Area 2, located at 91<sup>st</sup> and Cottage Grove. According to Peterson, Area 2 had a "nasty reputation" and that "a lot of abuse went on in that station." (OPS Investigator Tillman Interview with Raymond Peterson in CR No. 202019)

Less than a month before he died, white Area 2 homicide detective Frank Lavery gave a sworn statement concerning his knowledge of Burge, Area 2 torture, and the racist attitudes that predominated at Area 2. Lavery testified that one robbery detective told him that he “wasn’t going to kiss no nigger’s ass if he was transferred into homicide.” (Statement of Frank Lavery, November 10, 2006, p. 3) Lavery further stated that “unfortunately” the term “nigger” was commonly used at Area 2. Among those with racist attitudes, Burge “stood out as having more of that attitude.” (Id. at 4, 16)

Lavery further testified that when he made the arrest of Donald White (for the murders of Fahey and O’Brien on February 12, 1982), and was preparing to transport him back to Area 2, Burge took the prisoner from him. In response, Lavery testified that he told Burge “I’m turning him over to you and there ain’t nothing wrong with him; he hasn’t been touched.” (Id. at 4-5) Lavery said that he feared that White would be harmed. (Id. at 5) According to Lavery, Burge took White to Police Headquarters, where Lavery heard that despite repeatedly maintaining his innocence in the murder of the police officers, White was extensively beaten by Area 2 detectives while in the presence of Burge and Chief of Detectives Hanhardt. (Id. at 6-7) Lavery further learned that White was subsequently taken to a civilian polygraph examiner who worked for the CPD at Police Headquarters. The polygrapher later confirmed to Lavery that Burge and Hanhardt had been involved in the beating, and said that White was so bloody and beaten when he was brought in for the polygraph that White “should have been in the hospital, not a polygraph office.” (Id. at 8) A “big argument” ensued, and the polygraph examiner was later fired for his resistance to polygraphing White. (Id. at 8-10) The Special Prosecutors did not interview Lavery.

Additionally, in a March 2004 sworn videotaped statement, Eileen Pryweller, sister of Area 2 detective Robert Dwyer, stated that she had a conversation with her brother and Jon

Burge at Dwyer's house in mid-January, 1987. During that conversation, Burge and Dwyer described how they dealt with "niggers" during interrogations, stating that they'd "give them hell," "beat the shit out of them, throw them against walls, burn them against the radiator, smother them, poke them with objects, [and] do something to some guys' testicles." Pryweller further testified that Dwyer said, "this skinny little nigger, boy I got him [by] just torturing him, smothering him," while Burge laughed. They made an additional reference concerning this torture victim's case that established that they were talking about Madison Hobley. She further testified that Burge seemed proud of his torture tactics, that he and Dwyer were "full of hate," that Burge "described some techniques that he had that no one could even fathom," and that Dwyer said he could "make anyone confess to anything." Pryweller went on to say that in the summer of 2002, while visiting Marin County, California, for her sister's funeral, her brother, Robert Dwyer, approached her and in a private conversation, brought up Burge and the 1987 conversation, and conveyed what she perceived to be a threat. (Statement of Eileen Pryweller, March 11, 2004, pp. 5-6, 9-13, 24-32)

#### **Admissions by Area 2 officers**

The Special Prosecutors were also presented with a series of admissions made in sworn testimony by numerous Area 2 officers, that the use of racial epithets, particularly the racist term "nigger," was commonly used by Burge, Byrne, and numerous of their detectives at Area 2. Specifically, John Byrne, in sworn testimony at his March 1, 2001 deposition in *People v. Patterson*, and Peter Dignan, in his 1996 sworn deposition in *Wiggins v. Burge*, both admitted that they, Burge and other Area 2 officers commonly used the term "nigger." (Deposition of John Byrne in *People v. Patterson*, pp. 67-68, 136, 181; Deposition of Peter Dignan in *Wiggins v. Burge*, pp. 60-63, 64-65) Additionally, in sworn depositions given in the cases of *Evans v.*

*City of Chicago and Terry v. City of Chicago*, Sergeant Thomas Ferry, and detectives Fred Hill, Tony Katalinic, Joseph DiGiacomo, and John Ryan also admitted to either repeatedly using the term, or of hearing other detectives repeatedly use it. Ferry also admitted that Burge had a reputation for mistreating suspects during the time that Ferry was a sergeant at Area 2 in the late 1970s and early 1980s. The Special Prosecutors' Report makes no mention of these admissions.

### **Expert opinions and testimony of assistant public defenders**

The Special Prosecutor was also presented with the opinions of several internationally respected experts on torture and police practices. Dr. Robert Kirschner testified in a suppression hearing in an Area 2 case that over a 15-year period he had evaluated approximately two hundred torture victims around the world, and that he had often been called on to evaluate whether there was systematic torture being practiced by the police and other governmental authorities. Kirschner further testified that he had done much of his work on behalf of the United Nations, for whom he had written portions of a protocol that defined the methodologies of torture and how to properly investigate and evaluate cases of alleged torture. (Testimony of Robert Kirschner, *People v. Cannon*, November 11, 1999, pp. 5-6, 10-45, 57-59, 69, 80-81, 90-93, 96) Dr. Kirschner further testified that in his opinion there was a pattern and practice of torture at Area 2 and later at Area 3 Headquarters under the command of Jon Burge, and that this opinion was based, *inter alia*, on his evaluations of several alleged Area 2 and 3 torture victims, including Andrew Wilson, Darrell Cannon, Leroy Orange and Marcus Wiggins; the fact that frequent allegations of electric shock, bagging, and Russian Roulette only arose from Area 2 and later from Area 3 Headquarters while Jon Burge was the commander, and not against other officers in other station houses; and that the patterns and methodologies at Area 2 and 3 under Burge and

Byrne closely mirrored those which he observed, investigated, and evaluated in places such as Turkey and Israel. (Id. at 5-6, 10-45, 57-59, 69, 80-81, 90-93, 96)

Kirschner, who also served for many years as Deputy Chief Cook County Medical Examiner, also testified that during his work on homicide cases, he had discussions with detectives who acknowledged that there was torture at Area 2. (Id.) That Area 2 torture was common knowledge in the Criminal Courts of Cook County as early as the late 1970s was also confirmed by several Cook County Assistant Public Defenders who were interviewed by the Special Prosecutors. Specifically, former Assistant Public Defender Janet Boyle, who represented Area 2 victims in the late 1970s, told the Special Prosecutors that she “heard a lot of rumors and innuendos” in those days about “abuses by Area 2 detectives,” “particularly Red Burge.” (Summary of Special Prosecutors’ Interview with Janet Boyle, April 6, 2005) Assistant Public Defender Tom Allen, who represented victims Sylvester Green and Eric Smith in the early 1980s, and is now a Chicago alderman, stated that it was “common knowledge” that abuse took place at Area 2 which he described as a “torture chamber” and that this abuse included electric shock, baggings, and beatings with a telephone book. (Summary of Special Prosecutors’ Interview with Tom Allen, July 14, 2005)

Lee Carson, a Unit Supervisor in the Public Defender’s Office, represented torture victims Gregory Banks, Thomas Craft and Alex Moore in the mid 1980s. He stated that Area 2 had a “reputation” for its “methods” within the Public Defenders’ Office, and when he told a supervisor about Banks’ allegations that he had been bagged, the supervisor responded, “Oh, that would be Area 2.” (Summary of Special Prosecutors’ Interview with Lee Carson, May 12, 2004) Carson said that he started to document “patterns” of abuse, including baggings, arising from Area 2, that Area 2 detectives “knew how to inflict pain without leaving marks in a number of

ways,” and that Area 2 detectives were “skillful in their ability to have a different funny story” to explain the allegations of torture and abuse in each case. (Id.) He specifically named Byrne, Dignan, and Grunhard as frequently named torturers, said that torture and abuse at Area 2 was “common knowledge” in the 1980s, that “everyone down there [Area 2] knew about it but weren’t talking about it,” and said that his senior supervisors, including Tom Allen and James Epstein, told him that “there’s (sic) a lot of complaints that come out of that place.” (Special Prosecutors’ Memorandum from Matens to Boyle, July 10, 2005)

Dr. Antonio Martinez, who had treated two hundred victims of torture and supervised treatment in eight hundred other such cases, evaluated several Area 2 victims and found psychological markers consistent with torture. (Testimony of Antonio Martinez in *People v. Cannon*, July 17, 1999, pp. 10-11, 32, 53, 58-59) Dr. Ross Romine, who worked for the Cermak Health Services, told the Special Prosecutors that “ear cupping” injuries were common at the jail and that it was common knowledge among the staff that they were the result of arrestees being slapped on the side of the head by police. (Special Prosecutors’ Summary of Interview with Ross Romine, August 30, 2004)

Anthony Bouza, the former Police Superintendent of the City of Minneapolis, and a former New York City Borough Commander, hired by victims’ attorneys in the civil cases, proffered the following opinions, which also were supplied to the Special Prosecutors:

- That, from 1972 to 1991, the City of Chicago had a systemic practice of subjecting African-Americans who were interrogated by Area 2 and 3 detectives and supervisors to abusive and coercive interrogations with the intended result of coercing, fabricating or otherwise creating false and/or unreliable inculpatory evidence to be used against the interrogated suspect without regard to his actual guilt or innocence.
- That, from 1972 to the present, the City of Chicago has, as a matter of practice, systemically failed to properly supervise, discipline or control detectives and supervisors at Area 2 and Area 3 who have repeatedly been accused of abuse of

African-American suspects during interrogations in order to coerce and fabricate inculpatory statements to be used against them.

- That there has been, from 1972 to the present, a systemic code of silence within the City of Chicago and its police department, particularly with regard to police abuse, and the resultant coercion and fabrication of evidence by Area 2 and Area 3 detectives.
- That at least since February of 1982, the highest ranking officials in City and County Governments, the Police Department, and the City Council, including Jane Byrne, Richard Brzeczek, Richard Daley, Richard Devine, and numerous police command personnel, were aware that there was a serious and systemic problem at Area 2 concerning the abuse of African-American suspects in order to coerce and fabricate confessions, and that they encouraged and condoned this practice.
- That the systemic abuse, interrogations, and the resultant coercion and fabrication of evidence by Area 2 and 3 detectives and supervisors were done with racial animus and discriminatory intent. (Bouza Opinions tendered in *Hobley v. Burge* on October 20, 2005 and in *Orange v. Burge* on August 19, 2006)

### **Statistical analysis of documented cases of torture under Burge**

Attorneys for the victims of torture have documented one hundred and seven (107) cases of police torture and abuse at Area 2, and later, at Area 3, from mid 1972 until Burge's suspension from the Police Department in the fall of 1991.<sup>18</sup> A summary of these cases is attached as Appendix C. The Special Prosecutors had the documentation as to each and every one of these cases, and also investigated another forty-one cases that either did not arise under Burge's command, or did not involve allegations of torture or other serious physical abuse. In the vast majority of the 107 cases, the torture was contemporaneously documented by outcry evidence, medical evidence, motions to suppress testimony, OPS complaints, and/or testimony by victims and witnesses. Before the anonymous police source brought the Melvin Jones case to

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<sup>18</sup> For a complete summary of each of the 107 documented cases, including the name of the victim, the date and nature of the alleged torture, and the names of the alleged torturers, see Appendix C of this Report.



light in 1989, Burge, his men, the Cook County State's Attorneys' Office, and the CPD had successfully kept the systemic nature of the torture hidden. Two years later, the OPS studied fifty Area 2 cases that had been discovered, nine of which alleged electric shock, and eleven of which alleged baggings. It was on these fifty cases that the OPS made, in the Goldston Report, its findings of systemic abuse and torture at Area 2. At the time the Special Prosecutors began their investigation in 2002, there were approximately seventy documented Area 2 torture cases, and the remainder of the known documented cases were uncovered by victims' attorneys and by the Special Prosecutors during subsequent investigation.

Of the 107 Area 2 and 3 torture cases that are now known, 80 occurred at Area 2 between 1972 and 1987. A closer analysis of the torture in those years reveals that all but one of the 80 cases arose during the time periods when Burge was a midnight shift robbery detective, (1972-74), midnight shift Robbery Sergeant (1977-80), and commanding Lieutenant of the Violent Crime Unit at Area 2 (1981-86) and while John Byrne was the midnight shift sergeant at Area 2 (1982-86). When Burge and Byrne moved to the Bomb and Arson Unit, torture at Area 2 subsided, except for the 1987 torture of Madison Hobley, and Hobley's interrogation was conducted by Area 2 detectives under the joint supervision of Bomb and Arson Commander Burge and new Area 2 Violent Crimes Lieutenant Phil Cline, who recently retired as CPD Superintendent. In 1988, then Superintendent Leroy Martin, who had been Burge's commander at Area 2 in 1983, reassigned Burge to be Commander of Area 3 Detective Division, and Burge brought Byrne, Paladino, McWeeny, and Maslanka to Area 3 shortly thereafter. Torture cases, some twenty-six in number, were then reported in Area 3 from 1988 to 1991, while the only

documented case from Area 2 was the Anderson case, in which several Area 3 detectives, transferred from Area 2, worked together with their former confederates at Area 2.

A further analysis of the 107 torture cases shows that one or more detectives or supervisors were identified by name in 92 of the cases. A total of 67 different officers were identified by victims, testimony, or reports in one or more of the cases. Sixty-four of the 67 officers were white. Forty-six worked at Area 2 under Burge and Byrne, 11 under Burge and Byrne at Area 3, and three worked at both Area 2 and 3 under Burge and Byrne. Burge was named as directly involved in 35 cases, and was the supervising Lieutenant or Commander in virtually all of the remaining cases, while Byrne was named as directly involved in twenty cases, and was a supervising sergeant in numerous additional cases. Dignan was named in 17 cases, Paladino in 13, Yucaitis in 12, McWeeny in 11, Maslanka in 10, Dwyer in 9, and Madigan in eight. Twelve additional detectives were named between five and seven times.<sup>19</sup> All together, 21 Area 2 detectives and supervisors were named in five or more torture cases.

### **Electric shock, suffocation, and racist abuse**

Further analysis shows that torture by electric shock was alleged in twenty-two cases, and the threat of electric shock in four additional cases. In most of these cases, the electric shock was administered by a generator housed in a dark box, with a cattle prod or curling iron type device used on other occasions. Burge was alleged to be directly involved in 15 of these cases, while Yucaitis, Byrne, Dignan, McWeeny, Hoke, Paladino, and Maslanka were also named as being involved in multiple shockings.

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<sup>19</sup> Grunhard, Pienta, and Basile were named seven times, Hoke, Dioguardi, Lotito, Kill, and Boffo six times, and McGuire, McNally, McDermott, and Corless, five times.

Suffocation by typewriter cover or plastic bags were alleged in 23 cases. Burge was directly involved in 10 of those suffocation cases, Byrne in eight, Grunhard in five, Dignan, McWeeny, Yucaitis, Boffo and Lotito in four, and Dwyer, Paladino, Pienta, Dioguardi, and Bajenski in three. Six additional detectives were involved in two bagging cases, and 14 detectives were involved in one bagging case.<sup>20</sup>

Racial epithets, almost always including the term “nigger,” were reported in twenty cases. On at least one occasion the electric shock box was referred to as the “nigger box,” and on another occasion the box was introduced with “this is what we’ve got for niggers like you.” One victim was threatened with hanging, “like they had other niggers,” while on another occasion, suffocation by bagging was introduced by “we have something for niggers.” One victim had a gun put to his head and the detective threatened to “blow his black brains out.”

### **Mock executions and beatings**

Mock executions and gun threats were reported on 15 occasions. Most frequently, this terrifying act took the form of “Russian roulette” — guns to the head or in the mouth — while on one occasion Byrne and Dignan acted out a shotgun mock execution. On five other occasions, the victim was beaten with a pistol or a shotgun. An alleged suicide occurred after one interrogation, suicide was attempted in another, and there were three threatened hangings.

Beatings with a flashlight were reported thirteen times, with a phone book thirteen times, with a nightstick six times, with a rubber hose or lead pipe three times, and with a small baseball bat once. On thirty-six occasions, the victims alleged attacks on their genitals, by

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<sup>20</sup> Madigan, Hoke, McNally, McGuire, Flood and McCann were involved in two bagging cases, while Hill, Glynn, Mokry, McCabe, O’Hara, McKenna, Joe Gorman, Corless, McDermott, Marley, Basile, Leracz, Krippel, and Hines were named in one case.

shocking, kicking, or striking with an object, while on six occasions, the victim was choked or gagged. On four occasions the victim alleged burning, on three occasions, the victim was subjected to ear cupping or thumb pressure to the ears, and on two occasions, the victim was threatened with interrogation by detective Joe Gorman, who was notorious for his role in the Black Panther Police raid. On two occasions, the victim was suspended by his handcuffs, on two occasions either stripped naked or into his underwear, and on one occasion, had his head placed in a toilet bowl. Sleep, food, and bathroom deprivation was also a common complaint.

All of the foregoing information, which was available to the Special Prosecutors, clearly demonstrates the systemic and racist nature of the torture.

### **THE SPECIAL PROSECUTORS' INVESTIGATION WAS DEEPLY FLAWED FROM THE START**

*The Special Prosecutors conducted an investigation that was hopelessly flawed and calculated to obfuscate the truth about the torture scandal.*

Despite the fact that the majority of the victims had previously testified extensively under oath in prior proceedings as to their torture experiences, the Special Prosecutors, ignoring common prosecutorial practice, spent an inordinate amount of time and money re-questioning each and every torture victim willing to cooperate.<sup>21</sup> While the Special Prosecutors displayed a great deference toward the public officials whom they questioned, they showed an equal amount of insensitivity to those who were the victims and, in some cases, continued to suffer serious mental distress and anguish as a result of having been tortured. Furthermore, as noted

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<sup>21</sup> Prosecutors, as a practice, do not take formal statements from victims in cases they are prosecuting because such statements must be provided to defense attorneys before trial and are often used by the defense to attack the victims' credibility.

previously, the Special Prosecutors attacked the credibility of the one ranking police witness they were handed at the inception of the investigation — Superintendent Brzeczek.

At least ten different grand juries were used, yet only five witnesses provided substantive testimony. No African-American detectives were called, nor were any of the torture victims or their corroborating witnesses. Several leads concerning detectives who had witnessed abuse by Burge and privately complained about it were not pursued, while at least one detective, who was involved in several important torture cases, including Andrew Wilson's, was told that he was not a target of the investigation, and then not pursued.

The Special Prosecutors ignored key Burge operative John Byrne's offer to formalize his denials before a court reporter; other key supervisory and command witnesses were either not interviewed at all, or their interviews were not transcribed or even summarized in memoranda.<sup>22</sup> Of the 44 known ASAs who took statements from 56 of the victims, only 17 were interviewed, and the interviews pertained to only 25 of the cases. None was offered immunity, and only one, Lawrence Hyman, was called before a grand jury.

More than three and a half years after the investigation began, the Special Prosecutors granted immunity to four officers, without obtaining written proffers of their testimony, and without assurances that they would give truthful evidence concerning their actual knowledge of torture. If even one of these officers had been indicted for his denials before the grand jury, and immunity then strategically given to additional officers who were deeply involved in the torture, and to several involved ASAs, the code of silence might well have been pierced.

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<sup>22</sup> There is no memo of the interview of key witnesses CPD Deputy Superintendent Lyons, CPD Deputy Superintendent McCarthy and Jeffrey Kent, head of the Special Prosecutions Bureau of the SAO, in the 1980s; other key figures were not even interviewed. Devine was interviewed, but there is no written record of what he said.

Moreover, the recommendations of several of the African American Assistant Special Prosecutors were overruled and ignored — most significantly when Tommy Brewer urged early in the investigation that police witnesses be aggressively pursued, and when the late Donald Hubert found that there was compelling evidence that Madison Hobley had been tortured by bagging and beating. (Assistant Special Prosecutor Donald Hubert’s Memorandum on Madison Hobley’s Investigation, July 6, 2004)

### **THE CREDIBILITY OF THE ALLEGED TORTURERS — AS OPPOSED TO THAT OF THEIR ALLEGED VICTIMS**

*The Special Prosecutors unfairly evaluated the credibility of the alleged torturers and of their victims and unfairly attempted to discredit torture victims who had pending civil or criminal cases.*

While the credibility of the victims — the vast majority of whom cooperated with the Special Prosecutors’ investigation — was attacked in the Report, there was no analysis of the credibility of the alleged torturers, or the lack of it. The officers’ lack of credibility is demonstrated not only by the prevalence of many similar allegations by torture victims, but also by numerous inconsistencies, omissions, distortions, and falsehoods, which permeate the alleged torturers’ prior testimony in the victims’ criminal cases, the testimony of Area 2 African American detectives, and the OPS findings that Area 2 officers lied in a significant number of cases. If the victims’ allegations were credible, as the Special Prosecutors found many of them to be, it would follow that the officers’ denials under oath in the victims’ criminal cases were false. Yet the Special Prosecutors made such findings in only three cases. In addition, the Report also ignored repeated admissions of former Superintendent Martin and former OPS Director David Fogel, and the findings of several courts, that there existed within the CPD a code of

silence which manifested itself in the refusal of officers to testify against their fellow officers, particularly in police abuse cases.

Moreover, the Special Prosecutors chose to evaluate each case individually, using the highest legal standard available — reasonable doubt — rather than the standard applicable to a prosecutor seeking an indictment — probable cause. They made no evidentiary use of the “astounding” pattern of similar acts of torture by Burge, Byrne, Dignan, and their group of officers that occurred both before and after the individual case being evaluated, as well as sometimes to several co-defendants in the same case. This is the kind of proof that prosecutors routinely offer as substantive evidence, particularly in cases, such as rape prosecutions, where the credibility of the victim comes under attack from defense counsel. Moreover, the Special Prosecutors’ refusal to utilize this evidence flaunted prior appellate decisions in several of the victims’ cases where the court relied on this very evidence. Nor is there any evaluation of this pattern of torture evidence as an ongoing criminal conspiracy, the overt acts of which are these numerous individual cases, scores of which the Special Prosecutors professed to find credible.

Additionally, the Special Prosecutors chose to stand in the shoes of a hypothetical judge and make evidentiary rulings on the wealth of evidence that further corroborated the acts of torture, invariably divining, with little or no basis, that the evidence would not be admissible in a future prosecution. This evidence included the findings of the Goldston Report, outcry evidence to lawyers, doctors, judges, and family members, etchings documenting torture by suffocation in an interrogation room bench, the testimony of doctors and psychologists, including several who are internationally recognized in the field of identifying psychological markers of torture on their victims, the findings of torture and perjury by OPS investigators in several cases, and the expert opinions of an independent former police superintendent. In many

instances, the Illinois Appellate and Supreme Courts had relied on this very evidence to reverse the convictions of the victim, or to grant him a new hearing on his torture claims.

In each case, the Special Prosecutors placed primary emphasis on the underlying crimes for which the victims of torture were arrested and imprisoned, rather than on the torture itself. The victim was turned once again into the accused, interrogated by the Special Prosecutors, often without counsel, about inconsistencies in his tortured confession and his defense to the crime. In contrast, Burge and his subordinates all appeared with multiple counsel, supplied free of charge by the City and the Fraternal Order of Police, and either presented denials that stood unchallenged by the Special Prosecutors, or refused to testify. While the Special Prosecutors' Report highlighted alleged victim inconsistencies, and Andrew Wilson's prior invocation of the Fifth Amendment, the Report did not mention inconsistencies in the detectives' statements, their flaunting of immunity, or their refusal to cooperate with the investigation.<sup>23</sup>

More disturbingly, the Special Prosecutors placed particular emphasis on discrediting the four death row inmates — Hopley, Patterson, Orange, and Howard — who were granted pardons based on innocence by Governor Ryan and who had multi-million dollar federal lawsuits pending. In fact, the Special Prosecutors granted several of the defendants in the federal civil cases immunity from prosecution, apparently with an unusual incentive — that they would not pursue perjury charges against them — so they could testify in the pending federal cases.

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<sup>23</sup> Wilson invoked the Fifth Amendment not in the Special Prosecutors' investigation and not regarding torture, while the detectives invoked the Fifth Amendment in the Special Prosecutors' investigation and in reference to torture. The Report lists forty Area 2 and Area 3 officers who were subpoenaed by the Special Prosecutors, but is silent about whether the officers cooperated, whether any were granted immunity and, if so, whether they continued to deny knowledge of torture. However, documents subsequently obtained by victims' attorneys, as well as statements made in open court and to the media, reveal that the vast majority of the officers subpoenaed either took the Fifth Amendment before the Grand Jury or, after grants of immunity, denied any knowledge of torture.



Additionally, the Special Prosecutors suppressed a finding by their own assistant, Donald Hubert, that Madison Hobley had been tortured. They also concluded that although Patterson had been beaten and suffocated, his case should nonetheless be closed because the evidence would not, in their opinion, be admissible in court. In the Leroy Orange case, they implied that Orange was untruthful, despite the absence of any corroborating evidence in the Report, and ignored medical and witness corroboration of the torture. The Report also ignored the City's specific admission that Orange was the victim of Burge's "astounding pattern or plan . . . to torture certain suspects . . . into confessing to crimes or to condone such activity." (January 22, 1992 City 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*, Cases No.1856-58) Instead they lifted, without attribution, substantial portions of the State's Attorney's memorandum in opposition to the pardon and an Illinois Supreme Court opinion in the case. In a further attempt to discredit Orange, the Special Prosecutors relied on the testimony of his criminal defense attorney, who not only failed to challenge the use of his tortured confession at trial, but who was also found ineffective during Orange's sentencing proceedings and subsequently disciplined by the Attorney Registration and Disciplinary Commission.<sup>24</sup>

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<sup>24</sup> After the Release of the Special Prosecutors' Report, the City of Chicago, in November 2006, agreed to settle the Hobley, Orange, and Howard cases for a total of \$14.8 million. In exchange, they obtained the agreement of those Plaintiffs not to sue Mayor Richard M. Daley for his actions while State's Attorney or to depose him as a witness in those cases. The City has subsequently refused to sign the settlement agreement, and its alleged bad faith in refusing to do so is now the subject of proceedings to enforce the settlement in Federal Court. (See *Chicago Sun Times*, February 25, 2007) The County has yet to make a settlement offer to these Plaintiffs to resolve their claims that Richard Devine and several Assistant Cook County State's Attorneys were also responsible for their wrongful convictions and imprisonment on death row.

## THE CONSPIRACY OF SILENCE AT THE HIGHEST LEVELS

*The Special Prosecutors ignored a wealth of evidence establishing that there was a widespread and continuing cover-up of the torture scandal — a conspiracy of silence — implicating high officials of the City of Chicago, the Chicago Police Department, and the Cook County State's Attorney's Office.*

The Special Prosecutors found that official action should have been taken in 1982 against Burge and his men for the torture of Andrew Wilson, but nonetheless absolved those who should have taken such action — Daley and Devine — of any responsibility. The stated reason for absolving them was that Wilson would not give ASAs a statement at a time when he was awaiting trial in a capital case.

The reasoning, however, was clearly spurious. Prosecutors often bring cases without victim cooperation — in murder cases, for instance. The truth is that in 1982 there was ample independent evidence to establish that Wilson had been tortured by Burge and his men. Wilson's cooperation was hardly necessary in view the evidence, which included:

- Medical documentation of radiator burns on Wilson's chest and face and bruises and lacerations to his face and body, including a battered right eye.
- Photographs of the radiator burns, bruises and lacerations, and alligator-clip markings on his ears.
- A statement from a woman held in the adjoining interrogation room that she heard Wilson repeatedly screaming and sounds of him being thrown to the floor.
- A statement from a CPD deputy commander that Wilson had no marks on his face or upper body when he was arrested.
- Evidence that the police lock-up keeper refused to accept Wilson because of his physical condition.
- Statements by a treating nurse and doctor that police who brought Wilson to the Cook County jail medical facility threatened him in an attempt to get him to refuse treatment.
- A statement from a commander that he saw Wilson at Area 2 with blood on his face.

- A statement from Dr. Raba that Wilson told him that he had been electric-shocked, burned, and beaten at Area 2.
- A statement from the lawyer who first visited Wilson that he complained of electric shock and had serious visible injuries.
- Evidence that there had been a number of other allegations of similar torture at Area 2.

With this evidence, responsible prosecutors would have taken appropriate action. Since Daley and Devine had an obvious conflict — they could hardly prosecute Wilson and his torturers at the same time — the proper course of action would have been to have referred the torture allegations either to the Illinois Attorney General or United States Attorney. Rather than sending the case elsewhere for investigation, however, Daley and Devine became the torturers' silent conspirators.

The Special Prosecutors also were presented with clear evidence that nearly 50 felony review ASAs from 1973 through 1993 were present at Area 2 during the interrogations of at least 56 alleged torture victims. Many of the alleged victims either showed signs of severe abuse or complained to the ASA, yet the ASAs nonetheless took their statements and later swore at suppression hearings that there had been no torture.

Daley, Devine, and their ASAs were hardly alone in their dereliction of duty and involvement in the torture cover-up. Among others who were aware of torture allegations but did nothing were CPD Superintendents Terry Hillard and Leroy Martin, OPS Director Gayle Shines, State's Attorneys Cecil A. Partee and Jack O'Malley, and CPD Counsel Thomas Needham, all of whom were absolved of wrongdoing by the Special Prosecutors.<sup>25</sup>

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<sup>25</sup> For a detailed treatment of the facts demonstrating the complicity of these officials in the continuing cover-up of the torture scandal see Appendix E.

## **THE COOK COUNTY JUDICIARY'S COMPLICITY IN THE TORTURE SCANDAL**

*The Special Prosecutors failed to document the role of judges of the Criminal Division of the Cook County Circuit Court in the torture scandal.*

Over the last three decades, torture allegations arising from Areas 2 and 3 have been made in hundreds of suppression hearings, trials, and post-conviction proceedings in the Criminal Division of the Cook County Circuit, but no judge has ever found that a single act of torture occurred. Eleven felony review ASAs who took statements from suspects who claimed to have been tortured by Burge and his men have become judges, as have several other ASAs who defended against torture allegations.

Three ASAs involved in the Wilson case — William J. Kunkle, Frank Deboni, and Gregory R. Ginex — are now Cook County judges, and former State's Attorney O'Malley is an Appellate Court Judge. Recent deposition testimony in the *Orange* civil case also reveals that at least one sitting Criminal Division judge, Dennis A. Dernbach, gave money to Burge's defense fund and attended a Burge fundraiser. (Deposition of Dernbach in *Orange v. Burge*) According to the *Chicago Reader*, Judge Nicholas R. Ford, who as an ASA took a confession from an alleged torture victim, denied that same alleged victim's post conviction torture claim without a hearing. (*Chicago Reader*, December 1, 2006)

Had the Special Prosecutors found torture, obstruction of justice, perjury, or cover-up in specific cases, it would have impeached the decisions of the numerous Criminal Division judges in those cases, and, in cases which are still pending, call the convictions into question. Additionally, such findings would implicate the felony review and trial ASAs in those cases, including those who are now sitting judges. Likewise, finding that the SAO's refusal to prosecute

the torturers in the Wilson case was an obstruction of justice would not only implicate the Mayor and the State's Attorney, but also three sitting judges.

### **SPECIAL PROSECUTORS' APPEARANCES OF CONFLICT OF INTEREST AND BIAS**

*The Special Prosecutors had appearances of conflict of interest and bias in favor of those whom they had been appointed to investigate.*

At the time of the Special Prosecutors' appointment, it was public knowledge that Egan and Boyle had long-standing ties to the Cook County State's Attorney's Office and the Cook County Regular Democratic Organization.

It was not until after the Special Prosecutors' Report was issued, however, that the *Chicago Sun-Times* learned that Egan was the uncle of a violent crimes detective, William Egan, who had worked under Burge at Area 2 from 1982 to 1986. The *Sun-Times* also reported that Egan's grandfather, father, three uncles, two brothers, and a second nephew had all been CPD officers, holding ranks ranging from sergeant to captain and detective. The most troubling familial connection was that with Area 2 Detective Egan, who had participated with Burge and another officer in the 1983 arrest of torture victim Gregory Banks, whose case was investigated by the Special Prosecutors. (*Chicago Sun Times*, August 6, 2006)

Detectives Egan and Burge turned Banks over to the notorious midnight shift headed by Sergeant John Byrne. Banks's co-defendant, David Bates, likewise was turned over to the midnight crew. Both confessed. At their trial in 1985, both testified that they had been beaten repeatedly, suffocated with a plastic bag, and racially taunted by Detectives Byrne and Dignan. (*People v. Banks*, 549 N.E.2d 766 (1989), *People v. Bates*, 642 N.E.2d 774 (1994))

Bates and Banks were convicted, but their convictions were reversed by the Illinois Appellate Court based on the evidence that they had been tortured. (Id.) After prosecutors dismissed the charges against both men, the City settled their civil rights claims for substantial sums. The officer who arrested Bates was an African American detective, Doris Byrd, who said in a sworn statement provided to the Special Prosecutors that the torture of suspects by Burge and the midnight crew was an “open secret” at Area 2 in the early 1980s, and that she often heard screams coming from the interrogation rooms. (Statement of Doris Byrd, November 9, 2004, pp. 9-11, 16-17, 21-24) Nonetheless, the Special Prosecutors found the evidence in the Banks case insufficient to support any criminal charges against Byrne or Dignan.

After the evidence of Egan’s possible conflict of interest surfaced, he told several different stories to the media. First, he told the *Sun Times* reporter who broke the story that he had disclosed the information concerning his nephew to Judge Biebel and to Locke E. Bowman, the legal director of the MacArthur Justice Center, an attorney who had sought the appointment of the Special Prosecutors. Judge Biebel did not remember the conversation and Bowman said he “could not imagine” that Egan told him his nephew was an Area 2 detective who worked for Burge. (*Chicago Sun Times*, August 6, 2006)

Egan then told the *Chicago Tribune* that his nephew did not work for Burge and that he had disclosed his nephew’s involvement in the Banks case shortly after he was appointed. (*Chicago Tribune*, August 6, 2006) Egan also asserted that he was “certain” that his nephew was a tactical officer rather than a detective working for Burge.

After his nephew’s personnel records were obtained, however, Egan said that he might have been “mistaken” when he denied that his nephew was an Area 2 detective. (*Chicago*

*Tribune*, August 8, 2006) Furthermore, he also asserted that he talked to his nephew only “three times in 20 years, always at wakes.” (*Chicago Sun Times*, August 7, 2006)

Shortly after Egan made his conflicting statements, an audio tape made by a filmmaker six months after Egan allegedly made his off-the-record disclosures surfaced. During this taped interview, Egan made several additional statements indicative of a pro-Burge bias. When asked what sort of a man Burge was, Egan said a fellow judge had described Burge as “personable” and “hardworking.” Egan then volunteered that at the onset of the investigation he had discovered that he had a nephew who had arrested an alleged torture victim.

He said that, if his nephew had anything to do with the alleged torture, he would have to report it to Judge Biebel and “maybe get out of” the investigation. His nephew told him what Egan had been hearing “from everybody” — that Burge was a “great, hard worker” and that his nephew was “only” the officer who arrested Banks. (*Chicago Sun Times*, August 16, 2006)

Hence, from the taped statements and Judge Egan’s various statements to the media, it appears that he approved of findings regarding the Banks case, in which his nephew was a possible witness to Burge’s involvement in torture. The record also indicates that Judge Egan either did not disclose these facts to Judge Biebel, or, if he did, that his disclosure was incomplete and off the record, and that after the evidence of his conflict of interest and bias was publicly revealed, he repeatedly changed his story to fit the emerging evidence.

Egan and Boyle both also had reputations that apparently made their appointment welcome news at City Hall. According to the *Sun-Times*, Jeffrey Given, a top assistant of Chicago Corporation Counsel Mara Georges, sent Georges this email message:

By all accounts, Edward Egan and his top assistant, Robert Boyle, are very good choices for special prosecutors. Nick [Trovato, a high level Assistant Corporation Counsel] knows them and John Goggin at Hinshaw [& Culbertson, a law firm representing the

City in torture cases] knows both of them very well. They will likely be fair to the City and the CPD and our guess is that they will not be inclined to turn it into the kind of unfocused witch hunt that the PLO [People's Law Office] and their ilk would ideally push for. (*Chicago Sun Times*, July 31, 2006)

Egan had been an ASA under two Democratic State's Attorneys prior to leaving the office under Republican Ben Adamowski. In private practice, Egan defended one of the police officers charged in the Summerdale scandal in 1961. After Democrat Daniel P. Ward recaptured the State's Attorney's office, Egan returned as Ward's first assistant. With the backing of Richard J. Daley, Egan became a Circuit Court judge and then an Appellate Court judge. In 1976, he left the bench when Daley slated him for State's Attorney against Republican Bernard Carey, who had defeated Edward V. Hanrahan for re-election four years earlier. After losing that election,<sup>26</sup> Egan went into private practice before returning to the Appellate Court in 1988.

Boyle had been Chief of the Criminal Division of the State's Attorney's Office under Hanrahan in 1969 when officers under Hanrahan's direction raided a west side apartment and shot Black Panthers Fred Hampton and Mark Clark to death. In an effort to defend the police action in that case, Boyle, Hanrahan, and First Assistant State's Attorney Richard Jalovec provided photographs purporting to show bullet holes indicating that the Panthers had fired shots. In truth, however, the purported bullet holes were nail heads. (Report of the January 1970 Federal Grand Jury, Northern District of Illinois, p. 16) After Boyle left the State's Attorneys' Office, he entered private practice, and subsequently became a law partner of former Democratic Congressman Morgan Murphy Jr., who "was considered a member of Mayor Richard J. Daley's 'inner circle,'" while his father was "a close associate" of the mayor. (*Chicago Tribune*, February 22, 1970)

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<sup>26</sup> During the campaign, Egan told a reporter, "Everything I ever got I owe to the State's Attorney's Office." (*Chicago Tribune*, October 31, 1976)



In May of 2005, during the Special Prosecutors' investigation, Boyle, Murphy, and Murphy's son, Morgan Murphy III, were found civilly liable by a Wisconsin jury for mail fraud, securities fraud, embezzlement, racketeering, and theft, and ordered to pay \$242 million in damages. The jury found that they had concealed Murphy's alleged business ties to two purported Chicago mob figures, while brokering a potential Kenosha casino deal for the Menominee Indian tribe. (*Milwaukee Journal Sentinel*, May 25, 2005) This case was subsequently settled for \$7.5 million. (*Milwaukee Journal Sentinel*, September 29, 2005)

## **CONCLUSION AND CALL FOR ACTION**

The record strongly suggests that the Special Prosecutors' investigation and resultant Report, which cost the taxpayers of Cook County \$7 million, were driven, at least in part, by pro-law-enforcement bias and conflict of interest, were riddled with omissions, inconsistencies, half truths and misrepresentations, and reflect shoddy investigation and questionable prosecutorial tactics and strategies. The Report also failed to address the systemic and racist nature of the dehumanizing physical and psychological abuse, or to identify it as torture, in accordance with the international definition. Additionally, the record suggests that the 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.

Based on the findings set forth above, the undersigned respectfully request that:

- The Cook County Board hold a public hearing to investigate the squandering of public resources by the Special Prosecutors on an investigation that appears to have been flawed by design.
- The U.S. Attorney for the Northern District of Illinois and U.S. Department of Justice conduct an independent investigation into all of the criminal conduct implicated by the evidence outlined above.
- The City of Chicago and the County of Cook establish a fund to provide compensation and treatment for the more than one hundred victims of torture who may be barred from obtaining relief by the statute of limitations.
- The City of Chicago stop spending public funds to defend the torturers in civil cases.
- The Illinois Attorney General agree to new criminal court hearings for persons behind bars who were convicted in whole or in part on the basis of confessions obtained by Burge and his subordinates.
- The Special Prosecutors make public all transcripts, documents, and other materials gathered during their investigation.
- The U.S. Congress, the United Nations Committee Against Torture (CAT), and the Inter-American Commission on Human Rights continue to monitor the City, County and U.S. Government's responses to the above demands.

*The last time before they brought the statement in and had me to talk to them, I come to, and I thought I was dead then because they was lifting me off the floor trying to pump air into me because I wasn't breathing. I remember that. I thought I was dead because all I could see was blackness and I said, man, this is it. I'm gone. When I looked up, they brought me back. I said, man, I'm on a seesaw, here we go again. I can't take no more of this. They did it again. So they asked me some questions, I answered them. I answered more questions. Then I said, man, I ain't going through this no more. So I said, I ain't saying nothing else. So then they put me back through it again, and the last time, I thought that was it. That was it.*

*Torture victim Anthony Holmes  
Statement Provided to Special Prosecutors*

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<sup>27</sup> Freedom of Information Act and other public documents establish that, as of March 15, 2007, the City of Chicago has paid \$8.5 million to private lawyers to defend Burge, his men, and the City in the Burge torture cases, and another \$500,000 to fire him. Over the last six months alone, the City paid out nearly \$1 million to defend Burge and itself in the five pending civil torture cases. A summary of these expenditures can be found in Appendix D.

RESPECTFULLY SUBMITTED BY:  
(In Alphabetical Order)

April 24, 2007

## **INDIVIDUALS**

Christina Abraham, Civil Rights Coordinator, Council on American-Islamic Relations (CAIR)

Bill Allison, Clinical Professor of Law, University of Texas School of Law, and Director, Texas Center for Actual Innocence

Albert Alschuler, Professor of Law, Northwestern University School of Law

Anthony Amsterdam, University Professor, New York University School of Law

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Shawn Armbrust, Executive Director, Mid-Atlantic Innocence Project

Barbara R. Arnwine, Executive Director, Lawyers' Committee for Civil Rights Under Law, Washington, DC

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David Bates, Chicago Police Torture Victim

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Dorothy Brown, Circuit Court Clerk and recent candidate for Mayor of the City of Chicago

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Anthony Holmes, Chicago Police Torture Victim

Constance A. Howard, Illinois State Representative

Stanley Howard, Chicago Police Torture Victim

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Standish Willis, National Conference of Black Lawyers

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Wilbourne Woods, Former Chicago Police Officer

Quentin Young, M.D., former Medical Director, Cook County Hospital

Marvin Zalman, Professor, Department of Criminal Justice, Wayne State University

Cliff Zimmerman, Dean of Students, Northwestern University Law School

Howard Zinn, Professor Emeritus, Department of Political Science, Boston University; Historian and author, *A People's History of the United States*

## **ORGANIZATIONS**

African American Police League

American Association of Jurists

American Friends Service Committee, Chicago Chapter

American Friends Service Committee, National Committee on Criminal Justice

Amnesty International U.S.A., Midwest Regional Office

Amnesty International, Group 50, Evanston, Illinois

The Association in Defense of the Wrongly Convicted

Blacks In Government, Southeast Wisconsin Chapter

Black People Against Police Torture

Bluhm Legal Clinic, Northwestern University School of Law

California Innocence Project

Campaign to End the Death Penalty

Center on Wrongful Convictions

Centro Sin Fronteras

Center for Constitutional Rights (CCR)

Chicago Committee Against Police Torture

Chicago Committee to Defend the Bill of Rights

Children and Family Justice Center, Northwestern University Law School

Christian Council on Urban Affairs

Citizens Alert

The Committee For A Better Chicago

Community Renewal Society

Cook County Bar Association

Council on American-Islamic Relations (CAIR)-Chicago

The Council of Islamic Organizations of Greater Chicago (CIOGC)

Crossroads Fund

December 12th Movement International Secretariat

Eighth Day Center for Justice

Florida Innocence Initiative

Global Rights

Greensboro Justice Fund

The Guardians Police Organization  
Illinois Coalition to Abolish the Death Penalty  
Illinois Association of Criminal Defense Lawyers (IACDL)  
The Innocence Project, Benjamin N. Cardozo School of Law  
International Association Against Torture  
International Association of Defense Lawyers  
Jewish Council on Urban Affairs  
MacArthur Justice Center  
Midwest Committee for Human Rights  
National Alliance Against Racist and Political Repression  
National Association of Black Law Enforcement Officers, Inc.  
National Black Police Association  
National Boricua Human Rights Network  
National Conference of Black Lawyers  
National Lawyers Guild  
National Lawyers Guild, Chicago Chapter  
National Coalition on Police Accountability (NCOPA)  
National Police Accountability Project of the National Lawyers Guild  
Northern California Innocence Project  
People's Law Office  
Positive Anti-Crime Thrust (PACT)  
Protestants for the Common Good  
Rainbow PUSH Coalition