

# **TORTURE IN CHICAGO**

A supplementary report on the on-going failure  
of government officials to adequately deal with  
the scandal

**October 29, 2008**

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*I believe that were this to take place in any other city in America, it would be on the front page of every major newspaper. And this is obscene and outrageous that we're even having a discussion today about the payment that is due the victims of torture. I think in light of what has happened at Abu Ghraib, in Iraq with respect to torture victims, I am shocked and saddened at the fact that we are having to engage in hearings such as these . . . . We need to stop with this nonsense. I join with my colleagues in saying this has got to stop.*

*Alderman Sandi Jackson, Chicago City Council Hearing on Police Torture, July 24, 2007*

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*This was a serial torture operation that ran out of Area 2...The pattern was there. Everybody knew what was going on. . . . [E]verybody in this room, everybody in this building, everybody in the police department, everybody in the State's Attorney's office, would like to get this anvil of Jon Burge off our neck and I think that there are creative ways to do that.*

*Alderman Thomas Allen, Chicago City Council Hearing on Police Torture, July 24, 2007*

## **INTRODUCTION**

More than two years ago, on July 19, 2006, the Cook County Special Prosecutors, after a four year investigation that cost the taxpayers approximately \$7 million, failed to indict Jon Burge or any other of the other alleged Chicago police torturers, but instead issued a thoroughly inadequate report.<sup>1</sup> There was widespread community outrage, and in response, on April 24, 2007, a diverse group of more than 200 organizations and individuals, including torture victims and their family members, attorneys, legal academics, civil and human rights, religious and political leaders, and community activists, issued a "shadow" report entitled "Report on the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate

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<sup>1</sup> The 292 page Report of the Special State's Attorney did make several significant findings, including that three torture victims were abused "beyond a reasonable doubt" by Jon Burge and several of his men; that Burge and his midnight crew abused suspects "with impunity;" and that the police superintendent, Richard Brzeczek, knew of the torture of Andrew Wilson in 1982 and should have acted to fire Burge at that time. Report of the Special State's Attorney, pp. 16-17, 86-88.

Systemic Police Torture in Chicago.” (The “Shadow Report”).<sup>2</sup> This Shadow Report documented that the Special Prosecutors:

1. Failed to bring criminal charges against members of the Chicago Police Department despite the apparent existence of numerous provable offenses within the statute of limitations.
2. 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.
3. 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.
4. 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.
5. Conducted an investigation that was hopelessly flawed and calculated to obfuscate the truth about the torture scandal.
6. 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.
7. Failed to document the role of judges of the Criminal Division of the Cook County Circuit Court in the torture scandal.
8. Had appearances of a conflict of interest and bias in favor of those whom they had been appointed to investigate.

In conclusion, the Shadow Report made the following demands on the City of Chicago, the County of Cook, the Illinois Attorney General, the U.S. Attorney’s Office, and the U.S. Congress:

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<sup>2</sup> The entire Shadow Report is posted at:  
<http://www.law.northwestern.edu/macarthur/police/area2.html>

1. 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.
2. That 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 in the Shadow Report.
3. That 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.
4. That the City of Chicago stop spending public funds to defend the torturers in civil cases.
5. That 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.
6. That 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.

While there has been some significant action taken in response to these demands, the undersigned have concluded that those steps have been both inadequate and require additional action, as set forth in this Supplementary Report.<sup>3</sup>

### **THE FEDERAL INVESTIGATION**

The Shadow Report was served on the U.S. Attorney for the Northern District of Illinois, Patrick Fitzgerald. Shortly thereafter, the County Board Resolution calling for a Federal investigation and prosecutions was passed. On September 20, 2007, five City of Chicago Aldermen, led by Alderman Ed Smith, delivered a letter to Mr. Fitzgerald that sought Federal prosecutions. The letter set forth the basis for the prosecutions:

We believe that federal prosecution of Burge and his men is possible and that the five-year Federal statute of limitations would not be a bar. Burge and the others could be prosecuted for perjury, for obstruction of justice and for an ongoing conspiracy to cover up their torture scheme. For example, in November 2003, Burge submitted sworn

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<sup>3</sup> This Supplementary Report is endorsed by more than 260 organizations and individuals, including torture victims and their family members, attorneys, legal academics, civil and human rights, religious and political leaders, and community activists. See, pp. 29-40 *infra*.

interrogatory answers in the federal case of *Hobley v. Burge* in which he denied that he had witnessed or participated in any torture or abuse of suspects during his tenure in the Chicago Police Department. Recently numerous other Burge associates have given detailed sworn depositions in Federal Court where they have also denied any involvement or knowledge of torture at Area 2. These sworn statements are demonstrably false and could provide the basis for perjury, obstruction of justice, and conspiracy prosecutions.

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The Area 2 torture scandal continues to cast a long shadow over the Chicago Police Department and the Cook County criminal justice system. It is appalling that none of the offending police officers has ever been criminally charged. Most recently, the United Nations Committee Against Torture has expressed the same sentiment in a report that links Chicago with Abu Ghraib and Guantanamo. On behalf of our constituents, we urge you to take all possible action to prosecute Jon Burge and his men for their actions in the aftermath of their torture of African American men at Area 2 and Area 3 police headquarters.<sup>4</sup>

Since the systemic nature of Area 2 torture first became known in 1989, there had been repeated unsuccessful attempts to convince successive U.S. Attorneys and U.S. Attorney Generals to investigate and prosecute Burge and his men for violations of Federal law. Additionally, in May of 2006, the U.N. Committee Against Torture had cited its concern that the US Government was in violation of the Convention Against Torture with respect to the Chicago Police torture cases. Specifically, the U.N. Committee noted the limited investigation and lack of prosecution in the torture cases, and called on the U.S. Government to promptly, thoroughly and impartially investigate these cases and bring the perpetrators to justice.<sup>5</sup> Moreover, in 2007, the UN Special Rapporteur on Torture had addressed the U.S. State Department, requesting its response as to why the U.S. Government had not investigated or prosecuted those implicated in the Chicago Police Torture scandal.

On September 26, 2007, U.S. Attorney Fitzgerald announced that he was conducting an “active” and “serious” torture investigation:

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<sup>4</sup> The letter, which was also signed by Aldermen Pat Dowell, Bob Fioretti, Billy Ocasio, and Helen Shiller, is attached as Appendix A.

<sup>5</sup> The U.N. CAT Conclusions and Recommendations are posted on the following website: <http://www2.ohchr.org/english/bodies/cat/cats36.htm>

The United States Attorney's Office is conducting an active criminal investigation into allegations of perjury, false statements, and obstruction of justice by officers who served in the Chicago Police Department in the 1980s in relation to currently pending federal civil lawsuits in which persons in Chicago Police department custody during those years allege they were abused.<sup>6</sup>

On June 11 2008, the *Chicago Sun Times* reported on its front page that five to ten former Area 2 detectives had been subpoenaed to a Federal Grand Jury, which "according to sources" is "a clear sign [that] a criminal investigation into Commander Jon Burge and others is ramping up."<sup>7</sup> The next day the *Sun Times* editorialized that "alleged torture by cops needs [a] thorough probe," and that "citizens can have confidence in their legal system only when they know that wrongdoers will be punished without favor," and further opined that:

We have full confidence in U.S. Attorney Patrick Fitzgerald's office running the investigation. Fitzgerald and his crack team seem, at times, to be the only ones around here who can figure out how to prosecute certain bad guys, whether its crooked cops or political players trading city jobs for campaign work. But for all of Fitzgerald's efforts, his investigation might be going nowhere were it not for principled people who shoved an unpopular issue uphill for many years. People such as journalist John Conroy, who wrote detailed and damning stories about police torture for the Chicago Reader before it became a hot issue. People such as Ald. Ed Smith who has been strident in his criticism at the city council. People such as the attorneys at the People's Law Office, who have been tough advocates for the men whose liberties were violated in the shadows of police interrogation rooms.<sup>8</sup>

On October 21, 2008, U.S. Attorney Fitzgerald announced a three count indictment against Jon Burge for perjury and obstruction of justice. The indictment alleged that Burge "was present for, and at times participated in, the torture and physical abuse of a person being questioned on one or more occasions."<sup>9</sup> In addition, the indictment alleged that Burge "was aware that detectives he was supervising engaged in torture and physical abuse of a person being questioned on one or more occasions." The indictment further alleged that by lying under oath in November of 2003 when asked if he had ever used, or was aware of the use of, torture

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<sup>6</sup> The U.S. Attorney's Statement is attached as Appendix B.

<sup>7</sup> This *Sun-Times* news report is attached as Appendix C.

<sup>8</sup> This *Sun-Times* editorial is attached as Appendix D.

<sup>9</sup> The October 21, 2008 Indictment is attached as attached as Appendix E.

techniques during questioning, Burge committed the federal crimes of obstruction of justice and perjury.

While announcing the indictment, U.S. Attorney Fitzgerald stated that the “investigation is continuing,” and that:

The charges should serve as a warning to officers who worked for Burge . . . and if their lifeline is to hang on a perceived code of silence, they may be hanging on air . . . Anyone who thinks that they (sic) can safely lie in a grand jury, relying upon an unspoken conspiracy of silence, is taking a great risk.<sup>10</sup>

We are certainly heartened by the progress of the Federal investigation, and the indictment of Jon Burge. We urge City, County and Federal officials to continue to vigilantly monitor this investigation and to continue to urge the indictment and prosecution of those additional Burge confederates who can be shown to have been criminally involved in the torture. Similarly, we call on the U.S. Attorney to obtain appropriate additional indictments, consistent with the evidence, for perjury, obstruction of justice, false statements and/or conspiracy against John Byrne, Peter Dignan, and, in his discretion, other implicated Area 2 and Area 3 officers.

#### **THE ILLINOIS ATTORNEY GENERAL AND TORTURE VICTIMS WHO ARE STILL IMPRISONED**

In April of 2003, the Presiding Judge of the Criminal Division of the Cook County Circuit Court recused Cook County State’s Attorney Richard Devine and the State’s Attorney’s Office from all Area 2 torture criminal prosecutions on the basis of conflict of interest, and appointed the Illinois Attorney General’s Office, headed by Attorney General Lisa Madigan, to represent the State in the continued prosecution of the 25 torture victims<sup>11</sup> who remain in prison on the basis of tortured confessions.<sup>12</sup> The Shadow Report was tendered to Attorney General

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<sup>10</sup> The U.S. Attorney Press Release of October 21, 2008 is attached as Appendix F and the *Chicago Tribune*, article of October 21, 2008, entitled “Feds Catch up with Burge,” is attached as Appendix G.

<sup>11</sup> A list of these imprisoned torture victims is attached as Appendix H.

<sup>12</sup> The motion to recuse had been brought by torture victims who were then on death row, and

Madigan, and the Cook County Board Resolution urging new hearings for these men soon followed. Since then, two imprisoned victims, James Andrews and Cortez Brown, have been granted Court ordered hearings, and Andrews has subsequently been released.<sup>13</sup> While Madigan has made many promises to act justly, both publicly and in meetings with attorneys, more than five years after she took over the cases, and more than two years after the release of the Special Prosecutor's Report, the remaining men languish in prison, many without remedies, unless the Attorney General acts. In contrast, in Los Angeles, during the Ramparts police scandal, the District Attorney dealt with 1500 cases that were tainted by 50 brutal and corrupt police officers, dismissing more than 100, in less than two years. Most recently, the Campaign to End the Death Penalty has led bi-monthly demonstrations in front of Madigan's office, calling for her to agree to new hearings for all of the torture victims still behind bars, but to which Madigan's office has made only this reply:

[All Burge-related cases] are in various stages of the post-conviction process, [and] ethically, the attorney general is obligated to handle each case individually based on the facts and history of the case. No two cases are the same.<sup>14</sup>

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who opposed the appointment of Madigan's office because several former Cook County assistant state's attorneys who had been supervisors in the SAO at the height of the torture scandal were, at the time of the Attorney General's appointment, serving as supervisors in the Attorney General's criminal division. At least one of those supervisors is now involved in representing the State in the cases of the imprisoned torture victims who seek new hearings.

<sup>13</sup> Andrews, who has consistently maintained his innocence, was granted a new trial after a Cook County Criminal Court Judge vacated his murder convictions, finding that he presented sufficient evidence to demonstrate he was coerced into confessing to both crimes by Area 2 detectives. The Attorney General subsequently dismissed Andrews' criminal cases because there was insufficient evidence linking him to either of the crimes without the coerced confessions. Cortez Brown was granted a new hearing on his claims of Area 3 coercion by the Illinois Appellate Court, and he now awaits his hearing in the trial court.

<sup>14</sup> Alternet, 7/23/08, "How Scores of Black Men Were Tortured Into Giving False Confessions by Chicago Police." This article, which discusses at length the case of one of the still imprisoned torture victims, Michael Tillman, is posted at:

[http://www.alternet.org/rights/92374/how\\_scores\\_of\\_black\\_men\\_were\\_tortured\\_into\\_giving\\_false\\_confessions\\_by\\_chicago\\_police/?page=entire](http://www.alternet.org/rights/92374/how_scores_of_black_men_were_tortured_into_giving_false_confessions_by_chicago_police/?page=entire). Another recent media report on the still imprisoned victims is posted at:

<http://www.chicagopublicradio.org/Content.aspx?audioID=26951>

It is clear that the use of a confession obtained by torture in a criminal proceeding against the torture victim not only violates the U.S. Constitution, but also is in violation of Article 15 of Convention Against Torture. We therefore call on the Attorney General to promptly agree to the grant of new hearings for all the remaining imprisoned torture victims at which they can present evidence that their confessions were coerced from them. We further urge the Attorney General to refuse to offer the testimony of Burge and his fellow officers at these hearings.

### **THE CITY OF CHICAGO**

At the time of the release of the Shadow Report, the City of Chicago was embroiled in defending itself and numerous alleged torturers, including Jon Burge, in five civil law suits brought by exonerated torture victims Darrell Cannon, Leroy Orange, Madison Hobley, Stanley Howard, and Aaron Patterson. Months before, the City had agreed to settle three of the five cases for a total of \$14.8 million, but had subsequently refused to finalize the agreement. Many Chicago City Council members had protested the City's failure to honor its settlement agreement and its continued defense of Burge and his men in the torture cases, which, at that time, had cost the City taxpayers nearly \$10 million. The Shadow Report was served upon all 50 members of City Council, and, in response, City Council members introduced two resolutions. The first, introduced on May 19, 2007, and supported by a majority of Aldermen, called for hearings before the Council's Police and Fire Committee, at which the Special Prosecutors were asked to appear in order to explain their findings and failure to seek indictments. The second resolution, introduced on July 19, 2007 by thirteen City Council members, sought a hearing before the Council's Finance Committee and called on the Council to "swiftly approve a settlement in all outstanding cases which will end this shameful chapter in this City's history." The resolution further stated:

WHEREAS, The undeniable atrocities of former Chicago Police Commander Jon Burge and his associates, substantiated by a report of the Special Prosecutor, have generated a

debt of an estimated \$10 million in legal fees accumulated defending both the city and the accused officers involved; and

WHEREAS, The multiple private legal firms engaged in their defense are continuing to generate billable hours even though independent legal experts have proffered the opinion that the city's case is untenable; and

WHEREAS, The City of Chicago's insurance carrier will not cover any defense attorney's fees eventually leaving this mounting and unnecessary debt for the taxpayers for the city to pay; and

WHEREAS, It is in the City of Chicago's best interest to limit its exposure and ultimate liability by settling all the cases stemming from the wrongdoing of Burge and his cohorts. Each day that passes adds to the cost of this indefensible case and encourages the plaintiffs to increase their cash demands; and

WHEREAS, The Honorable Ed H. Smith and the Honorable Howard Brookins Jr. have informed this august body of this serious breach of fiduciary responsibility to the taxpaying public; now therefore

BE IT RESOLVED That we, the undersigned members of the City of Chicago City Council, assembled here this 19<sup>th</sup> Day of July, 2007 AD, do hereby exhort the City of Chicago's Corporation Counsel to cease and desist the continuing accumulation of attorney's fees in defense of Jon Burge and other officers who participated with him in these heinous and indefensible acts and instruct the legal counsel representing the city in this matter to fashion a settlement with all *Burge, et al* plaintiffs. Furthermore, we appeal to our colleagues on the Finance Committee to deny any more payments for outside legal counsel regarding defense of the Burge matter and swiftly approve a settlement in all outstanding cases that will end this shameful chapter in this city's history.<sup>15</sup>

That same day, Finance Committee Chairman Edward Burke declared that "the Burge situation of course is a tragedy for all of us. [It is] an embarrassment for the City, an embarrassment for the profession of law enforcement." On July 24, 2007, the City Council's Committee on Police and Fire held a public hearing on police torture pursuant to the May 19 resolution. A majority of the entire City Council attended, and highlights of the hearing included a video of three torture victims describing their torture, and Burge taking the Fifth Amendment when asked if he tortured these men.<sup>16</sup> The Special Prosecutors declined to appear. The

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<sup>15</sup> This Resolution is attached as Appendix I.

<sup>16</sup> The video of Burge and his victims is posted at: <http://video.google.com/videoplay?docid=-1740730225342200983&q=Jon+Burge+and+Chicago&ei=DUN2SLqkNYic4QKG5NiVCw&hl=en>

overwhelming sentiment of the Aldermen in attendance concerning Burge and the police torture cases was perhaps best captured by Committee Chairman Isaac Carothers, who stated:

I think there's no doubt that everybody in the chamber, I believe everybody in this building, I believe in this city believes that certainly Burge committed these atrocities. I think we all know that. . . . You're preaching to the choir when you're talking about what Burge did because everyone believes and knows what Burge did.

Transcript of City Council Proceedings, July 24, 2007, pp. 34-35.<sup>17</sup>

Alderman Ed Smith, a ranking member of the Finance Committee and one of the co-sponsors of the July 19, 2007 Settlement Resolution, re-emphasized that it was imperative for City Council to remedy the injury that Burge and his men had wrought:

I have seen a lot of disgraces in the police department since I have been in Chicago, but this is absolutely the worst that I have ever seen. . . . Now, these atrocities that were committed would not have been committed had someone not condoned it or either acquiesced when it was going on because apparently no one said anything and it just kept happening and because of that, a lot of people endured some abuse, severe pain and almost lost their lives because of this man. . . . Now, it is incumbent upon the City,<sup>18</sup> it is incumbent upon us, everyone who has a concern about this to do something about it.

Id. at 43-44, 46-47.

Alderman Bob Fioretti repeatedly called for the rapid settlement of all five of the pending torture cases:

As you know, I have been pushing globally for a settlement of all the cases . . . I do want to make sure that we resolve to settle these cases... We will have this body ask our Corporation Counsel to resolve these cases... You know what, they [Burge and his lawyers] will keep going on and litigating and litigating and litigating and we will never get to the end of these cases, and they have to come to an end. . . . so we can get the full total global picture to put an end to all these cases as soon as possible and quit dragging it out.

Id. at 95, 100-101.

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<sup>17</sup> The video of the Aldermanic statements is posted at: <http://video.google.com/videosearch?q=burge+police+torture+hearings%3A+Public+Officials+Speak+out&hl=en&sitesearch=#>

<sup>18</sup> Alderman Beale also echoed these sentiments: "When something like this hits us, that we see that there is such a hole in our system, not only does the City Council have an obligation to address it, the police department has an obligation to address it, federal prosecutors. . . . We just cannot let this stand." Id. at 51-52.

Aldermen Allen asserted that City Council wanted “a change in the direction from the administration as to how we deal with Burge.” (Id. at 33-34), and Committee Chairman Carothers closed the hearing by pledging further City Council action:

As a result of these hearings I really believe that there will be other resolutions and possibly other ordinances coming forth as we deal with this very serious and important issue.

Id. at 225.

The City Council Finance Committee hearing on the City’s continued defense of the torture cases and the failure to honor the settlements was set for October of 2007. In preparation, several Aldermen requested that a statistical expert project the range of exposure in additional attorney’s fees, costs, and judgments for which the City could be liable in the five pending torture cases if the City persisted in defending them. The expert projected that the cases could cost the City taxpayers in the range of \$96 to \$195 million.<sup>19</sup> When this report was publicly released, the *Chicago Sun-Times* ran a September 25, 2007 editorial entitled “Stop the Financial Torture: Settle the Burge Lawsuits Now.”<sup>20</sup> On the eve of the October hearing, the City announced that it had reopened negotiations, and the hearing was continued generally. In December of 2007, it was announced that an agreement to settle four of the five cases - - - Hobley, Orange, Howard and Patterson - - - for a total of \$19.8 million had been reached. The settlement was heralded by the *Chicago Sun-Times* as the “end of a nightmare” and unanimously approved by City Council on January 9, 2008. Mayor Richard M. Daley was quoted as saying that it was the “end of a tragic chapter,” but several City Council members, including Aldermen Brookins, Preckwinkle and Fioretti, noted that the City had made no effort to settle the Cannon

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<sup>19</sup> This September 11, 2007 Report of the expert, Steven Whitman, Phd., is attached as Appendix J.

<sup>20</sup> The *Sun-Times* editorial is attached as Appendix K.

case, and called on the City to honor its pledge to settle all of the cases and thereby end its costly defense of the torture cases.

## **Compensation, Reparations, and Treatment for Torture Victims**

### **The Darrell Cannon Case**

In a recent interview, Darrell Cannon, whose case against the City still remains unsettled, described his November 1983 torture as follows:

They drove me to a site, where there's a big huge pipe you drive through. It was an isolated area. They told me nobody would hear or know anything about what happened to me. [Area 2 detective] Dignan got out a shot-gun and he said, "Nigger, look." And he showed me the shotgun shell. He said "Now, listen Nigger," then turned around and I thought he was putting the shell up in the shotgun because it sounded like that. Then he turned back around and he said, "Nigger, you going to tell us what we want to hear." When I replied "No," he shoved the shot gun in my mouth and he kept saying, "You're gonna tell me what I want to hear." And when I refused, one of the other [officers] told him, "Pull the trigger, blow that nigger's head off." And they pulled the trigger. They did this on three separate occasions. And the third time they did it, it seemed like when I heard the trigger click, that the back of my brains were being blown out. That's what my mind was telling me. I could feel my hair stand up on my head. . . . [Then Area 2 Sergeant] Byrne used the electric cattle prod on me . . . he stuck it to my testicles . . . and they kept hitting me with the cattle prod, telling me that, they knew what had happened, and they wanted me to confirm it. They were asking me questions about it. I refused to answer and they kept hitting me with that cattle prod. [Finally I said] "Ok, I'll tell you anything you want to hear. Anything." To get them to stop doing that.

In this interview, Cannon further described the racism which was so much a part of his torture:

You don't call me "Niggers" throughout the day unless you are racist, and they said it so downright nasty. So there's no doubt in my mind that racism played a huge role in what happened to me, because they enjoyed this. You know, this wasn't something that was sickening to them. . . . They laughed. They smiled, and that is why my anger has been so high, because I continuously saw how they smiled, how [they] enjoyed this. If I had been white, I doubt very seriously if I would have been treated that badly. But because of the fact that I am Afro-American, who's going to believe me? You know, in court --- nobody. I wasn't a human being to them. . . . I was just "a nigger" to them, that's it. They kept using that word like that was my name . . . they had no respect for me being a human being. . . . I [felt] anger, frustration, embarrassment, and all of those things still exist today. You know it hasn't changed. It's as if this was done to me yesterday. And those emotions I still feel. It's been 24 years and I've never . . . I have never been able to, to get over it. And I don't know if I will. I just don't know. . . . I've lost too much. You know,

my parents, my brother, my nephew, an adopted son. So I don't know. But I'll keep on going, and I'll continue to talk about it regardless of how it makes me feel.

As a result of his torture, Cannon gave a confession, was charged with being an accomplice to a murder on the basis of his confession, and was later convicted and given a life sentence. In 1986, Cannon, while serving his prison term, brought a *pro se* civil rights lawsuit alleging torture. Unaware of the evidence of systemic torture at Area 2 that had been covered up by Burge, Byrne, Dignan, the Police Department, and the City, Cannon reluctantly accepted a \$3,000 settlement, of which his share was \$1,243, in late 1987.

In 1992, the Police Department's Office of Professional Standards (OPS), pursuant to court order, released the Goldston Report, which found that Cannon's torture was part of "systematic" torture and abuse at Area 2 and that Byrne and Dignan, who were two of Burge's most trusted midnight crew operatives, were major "players" in this pattern of torture. As a result, the OPS reopened its investigation of Cannon's case, and OPS investigator Veronica Tillman, after an extensive re-investigation, found that Byrne and Dignan had repeatedly electric shocked Cannon, subjected him to a mock execution with a shotgun, and racially abused him, (January 31, 1994 OPS Report and Findings of Investigator Veronica Tillman) but OPS Director Gayle Shines secreted the file and findings in her office for more than four years while Cannon was re-convicted at a Court ordered re-trial, again without access to any of this evidence. In 1997, the Illinois Appellate Court granted Cannon a new motion to suppress hearing based on the newly discovered evidence, (*People v. Cannon*, 293 Ill. App. 3d 634 (1997)) and this hearing commenced in 1999. The State's Attorney's Office, rather than calling Byrne and Dignan to falsely deny the torture, instead dismissed his murder case in 2004, 21 years after he was convicted on the sole basis of his tortured confession.

Cannon filed suit in 2005, basing his claim on the newly discovered evidence and findings of systemic torture at Area 2, the City's admission that he was tortured, and his many

years in prison on the basis of his tortured confession. The City moved to dismiss Cannon's claim, arguing that the \$3,000 settlement precluded his new case. Federal District Court Judge Amy St. Eve denied the City's motion and ordered that the case proceed, holding that Cannon's evidence of "fraud" by the Area 2 defendants and the City defeated the City's reliance on the paltry \$3,000 settlement, and that the following language in the case of *Bell v. Milwaukee* applied with "equal force" to Cannon's case:

The fraud in this case is sufficient to nullify an otherwise valid settlement and dismissal. This is not a case in which the defendant simply lied and thereby made the plaintiff's proof of his case difficult. Rather, this is a case of massive conspiracy by high ranking . . . officials to prevent the disclosure of the true facts. This conspiracy prevented the proper functioning of the judicial system.

*Cannon v. Burge*, 2006 U.S. Dist. LEXIS 4040 at \*25 (N.D. Ill. 2006), quoting *Bell v. Milwaukee*, 536 F. Supp. 462, 465-66 (E.D. Wis. 1982), affirmed, 746 F.2d 1205 (7<sup>th</sup> Cir. 1984).

Despite City Council's asserted commitment to settle all of the torture cases, and Cannon's offer to settle for a similar amount to that accepted by each the other four torture victims, (\$5 million), the City continues to refuse to negotiate with Cannon, who was finally released from prison, still suffering physically and psychologically, in April of 2007, and who has been a model citizen ever since. The sole basis offered by the City for its refusal to negotiate is its already defeated argument that it already settled Cannon's prior case for \$3,000. The City has already expended approximately \$870,000 defending Burge and his men in Cannon's case alone, has recently retained a fourth law firm to defend Area 2 witnesses who are invoking the Fifth Amendment,<sup>21</sup> and the expert's projections are that the City risks spending an additional

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<sup>21</sup> Burge and his fellow Area 2 Defendants are represented by Sotos and Associates; the City and two other City Defendants are represented by Dykema Gossett; two other former high ranking police officials are represented by Greene and Letts; and the non-cooperating Area 2 witnesses are represented by Clausen Miller. In contrast, the African American Area 2 detectives who came forward and revealed that Burge's torture ring was an "open secret" at Area 2 are left to fend for themselves when they are grilled by this battery of City-financed lawyers at depositions.

\$22.2 million to \$55.2 million in attorneys' fees and judgment if it persists in refusing to settle Cannon's case.<sup>22</sup>

Most disturbingly, by continuing to defend Burge and his men in the Cannon case, the City is also *de facto* funding their civil lawyers' use of the civil discovery process to develop Burge and his men's defense to pending and potential future federal criminal charges - - - a result that directly contradicts the stated intent of City Council to obtain successful federal prosecutions of Burge and his men, undermines the only remaining avenue for terminating their pensions,<sup>23</sup> and is directly contrary to City Council ordinance. For example, a witness who had previously testified before the Federal Grand Jury that indicted Burge for perjury and obstruction of justice *in the civil torture cases* and continues to investigate whether Byrne, Dignan, and other Burge confederates have committed similar offenses, recently testified at a deposition in the *Cannon* civil case that an "intoxicated" Burge had made several inculpatory statements<sup>24</sup> as well as a "vile and vulgar" sexually harassing comment to her. Professing great fear and reluctance, she was cross examined by Burge's lawyer in an attempt to minimize her testimony. Similarly, Burge's lawyers have deposed and a large number of torture victims and African American detectives who are also potential witnesses against Burge and his men in any criminal prosecution brought against them, have scheduled depositions of many additional witnesses

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<sup>22</sup> The projected Cannon breakdown in expert Whitman's September report was \$3,273,930 in additional defense fees and costs, \$13 million to \$46 million in potential damages, and \$5,907,563 in fees to Cannon's lawyers if he prevails at trial. See Appendix J. A breakdown of the fees already paid to private counsel in the Cannon case can be found in Appendix L.

<sup>23</sup> The City, which made no effort to revoke Burge's pension when he was fired in 1993, maintains that it must continue to pay his and his fellow officers' pensions absent criminal conviction.

<sup>24</sup> Burge told her that the Wilson brothers were beaten, that criminal defendants were "dogs," that if they did not commit the crime for which they were arrested, they committed other crimes, that the Fourth, Fifth and Fourteenth Amendments did not apply to them, and that criminal defense lawyers were the police's worst enemies.

adverse to Burge's criminal interests, and have continued to pursue Burge's defense even after his indictment.

The City's defense of Burge in the civil cases, which was discretionary with the Mayor and the Finance Committee before his indictment, is now expressly prohibited by the City of Chicago Municipal Code, Sec. 2-152-170,<sup>25</sup> which states as follows:

If any claim or action, either civil or criminal in nature, is instituted against a current or former elected official, current or former appointed official or current or former employee of the city of Chicago or any agency of the city of Chicago where such claim arises out of any act or omission, made in good faith, occurring within the scope of such persons office or employment, the chairman of the committee on finance of the city council, with the approval and concurrence of the mayor, *may* at the request of such person appoint counsel to defend such person against any such claim or action. ***Provided, however, that no city funds shall be expended directly or indirectly for payment of legal services rendered on behalf of any person upon the charge of such person by criminal complaint, information or indictment in criminal proceedings, and any appointment of counsel shall terminate.*** Provided further, that upon the conclusion of the criminal proceedings such person may request reimbursement of legal expenses and costs pursuant to the procedures set out herein, if such person has been acquitted or found not guilty or if all charges against such person in the action have been dismissed.<sup>26</sup>

### **Reparations and Treatment**

The City has not only refused to settle the *Cannon* case, but has also failed to even consider establishing a fund for the compensation and treatment of torture victims who cannot seek compensation in the Courts due to a statute of limitations that bars any civil litigation brought on their behalf. Many of the men who were torture victims are no longer in prison, and have been left to deal with post-traumatic stress disorder, anger management, dependency problems, physical ailments, and joblessness without any aid whatsoever. These victims include

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<sup>25</sup> A copy of the ordinance can be found in Appendix M.

<sup>26</sup> When pressed, the City has repeatedly claimed that it is required to continue defending Burge pursuant to the decision of the Seventh Circuit in *Wilson v. City of Chicago*, 120 F. 3d. 681 (7<sup>th</sup> Cir. 1997). In fact, as recognized by Alderman Helen Shiller at the July 24, 2007 City Council hearing, the *Wilson* case does not require the City to defend Burge and his men, but rather only to indemnify for any judgment obtained against them.

Anthony Holmes, Burge's first known electric shock victim, who was released from prison after thirty-three years without treatment or a legal remedy,<sup>27</sup> and Melvin Jones, who was a key witness for the City in its successful effort to fire Burge in 1993, and is now very ill and homeless.<sup>28</sup>

Recent figures obtained through FOIA requests show that the City has paid private lawyers \$10,307,673 to defend Burge and the City in the civil torture cases, \$527,464 to private lawyers to fire Burge, and at least \$10.7 million in pensions, plus health benefits, to the twenty-six Area 2 defendants in the torture cases,<sup>29</sup> and \$21,154,000 to nine of the torture victims and their lawyers. Hence, the City has already spent approximately \$43 million in the Burge torture cases, and continues to financially compensate and provide legal defense to Burge, who now has been indicted, and numerous other alleged torturers who, like Burge, have been found to have violated state, federal and international law, while the vast majority of their victims remain without treatment or other compensation.

Rather than to continue to fund Burge's defense in the *Cannon* case, particularly now that Burge has been indicted, the City should immediately settle that case and, in accordance with its obligations under Article 14 of the United Nations Convention Against Torture (CAT),<sup>30</sup> create a fund, commensurate with the pensions and medical benefits paid to the alleged torturers, to

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<sup>27</sup> A video of Holmes describing his torture can be viewed at :  
<http://video.google.com/videoplay?docid=-1740730225342200983&q=Jon+Burge+and+Chicago&ei=DUN2SLqkNYic4QKG5NiVCw&hl=en>

<sup>28</sup> *Chicago Sun Times*, October 22, 2008, "Outrage Lies at the Heart of Burge Charges," attached as Appendix N and *Chicago Tribune*, October 23, 2008 "Chicago Torture Victims Face Uphill Legal Battle," attached as Appendix O.

<sup>29</sup> The total pension payments to these men per year are, when the 3% annual cost of living increase is considered, presently at least \$1.25 million, plus health care benefits. A breakdown of all the taxpayer money, including pensions, paid to date by the City in the Burge torture cases can be found in Appendix L.

<sup>30</sup> Article 14 of the Convention Against Torture provides that "Each state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible."

compensate and provide treatment to all of the torture victims, such as Anthony Holmes and Melvin Jones, who have no legal remedy, but have suffered, and continue to suffer, great psychological harm as a result of their torture and its successful cover-up by police and City officials. Additionally, we urge the City Council to promptly reconvene hearings to fully investigate the continued use of taxpayer's money to fund the defense of the torture cases and to pay the pensions of established police torturers.

### **COOK COUNTY AND THE COOK COUNTY STATE'S ATTORNEYS' OFFICE**

The Shadow Report was highly critical of former Cook County State's Attorney Richard Daley, present State's Attorney Richard Devine, the Cook County State's Attorneys' Office, and the Cook County Special Prosecutors, and copies of the Report were therefore also served on the Cook County Board of Commissioners. In response, seven Commissioners, led by the Chairman of the Committee on Criminal Justice, Earlean Collins, introduced a Resolution which called for a hearing:

WHEREAS it has been acknowledged in opinions of the Illinois Appellate Court, the Illinois Supreme Court, the United States District Court, the United States Court of Appeals for the Seventh Circuit, the Chicago Police Department's own Office of Professional Standards, and elsewhere that Burge and his subordinates committed numerous acts of torture against African American men at Area 2 police headquarters;

WHEREAS it is alleged that shortly after their appointment, special prosecutors Egan and Boyle were presented with indictable offenses committed by Burge and Area 2 detectives under his command and that such offenses had occurred within the three year statute of limitations; and

WHEREAS special prosecutors Egan and Boyle sought no indictments at the conclusion of their investigation, claiming that the statute of limitations barred prosecution of any of the perpetrators of Area 2 torture; and

WHEREAS more than 210 individuals and organizations active in the areas of human rights, criminal justice, civil rights and racial justice have prepared a Report entitled "Report on the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Systemic Police Torture in Chicago;"

NOW THEREFORE BE IT RESOLVED that the Criminal Justice Committee of the Cook County Board of Commissioners conduct a public hearing on the investigation

conducted by Special States Attorneys Edward J. Egan and Robert D. Boyle.<sup>31</sup>

Commissioner Collins formally requested that Special Prosecutors Egan and Boyle, who had billed Cook County taxpayers approximately \$7 million for their investigation, appear at the hearing to “speak and answer questions” about their Report, but they refused to do so, and instead ironically accused the signers of the Shadow Report of using the Board in an attempt to “gouge millions of dollars of public money from the County Board.”<sup>32</sup> The hearing proceeded on June 13, 2007, and the witnesses included several torture victims, experts on torture, community activists, an international law expert, and a former Area 2 detective who walked in on a Burge torture scene.<sup>33</sup> In response to the hearing, the County Board, on July 10, 2007, passed three resolutions:

1. Resolution in Support of a Complete Investigation and Prosecution by the U.S. Attorney For the Northern District of Illinois of all Indictable Federal Crimes Committed by Jon Burge and His Men;
2. Resolution in Support of New Hearing for Police Torture Victims Wrongfully Convicted and Incarcerated;
3. Resolution in Support of State and Federal Legislative Action to Establish the Crime of Torture.<sup>34</sup>

A majority of the Board of Commissioners, highly disturbed by the evidence presented at the hearing, the Special Prosecutors’ refusal to appear, and their assertion that they were writing a “Supplemental Report” that would attempt to rebut the findings of the Shadow Report, subsequently passed a fourth resolution, entitled “Suspension of Payments to Edward J. Egan as Special State’s Attorney and Robert D. Boyle as Chief Deputy Special State’s Attorney for any and all Future Investigative Services Pertaining to Commander Jon Burge and Men Under his

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<sup>31</sup> This May 17, 2007 Resolution is attached as Appendix P.

<sup>32</sup> This June 11, 2007 letter from Special Prosecutor Egan is attached as Appendix Q.

<sup>33</sup> Excerpts from the Cook County Board hearing are posted at:

<http://video.google.com/videosearch?q=cook+county+board+torture+hearings&hl=en&sitesearch=#>

<sup>34</sup> These Resolutions are attached as Appendix R.

Command.”<sup>35</sup> After a closed door meeting with the Chief Judge who appointed the Special Prosecutors, the County Board subsequently agreed to continue payments after the Special Prosecutors assured them that their continuing work was limited to responding to subpoenas and other requests from the U.S. Attorney and other parties in criminal and civil litigation.<sup>36</sup>

A short time later, the Special Prosecutors issued an eighty-two page “Supplement to the Report of The Special State’s Attorney.” Rather than to objectively address the findings of the Shadow Report with additional investigation or analysis, the Supplement featured a wide ranging *ad hominem* attack on the signatories of the Shadow Report and members of the media, and a rambling attempt to justify the failures of the investigation and to explain away the Special Prosecutors’ conflict of interest. Supplement, pp. 20, 22, 32.

The County Board hearing and resolutions, although significant, did not satisfy the County’s obligations to address its significant role in the ongoing torture scandal. State’s Attorney Devine and several former Assistant State’s Attorneys have been named as Defendants in four of the five civil torture cases.<sup>37</sup> In these cases, Devine is alleged to have suppressed and covered up evidence of systemic torture and failed to investigate or prosecute Area 2 torturers from 1982 to the present, a twenty-six year period during which he served, consecutively, as State’s Attorney Richard Daley’s First Assistant, as a private lawyer whose firm defended Burge, Byrne, Dignan, and several other Area 2 officers in several civil torture cases, and as State’s Attorney of Cook County.<sup>38</sup> Several former Assistant States Attorneys are accused of being

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<sup>35</sup> This Resolution, dated September 6, 2007, is attached as Appendix S.

<sup>36</sup> *Chicago Sun-Times*, October 4, 2007; *Daily Herald*, October 11, 2007.

<sup>37</sup> The cases are *Orange v Burge*, *Howard v. City of Chicago*, *Patterson v. Burge*, and *Cannon v. Burge*.

<sup>38</sup> In *Orange*, the trial judge recently granted Devine’s motion for summary judgment, finding that he was not directly involved in Orange’s interrogation or prosecution, that the torture evidence that he allegedly suppressed was not sufficiently exculpatory to change the outcome of Orange’s criminal prosecution, and that he was entitled to absolute prosecutorial immunity for

present when the Plaintiff-victims were tortured, participating in the coercing and manufacture of the Plaintiffs' false and coerced confessions, and perpetrating wrongful convictions and imprisonment by using these tortured confessions to prosecute the torture victims.<sup>39</sup> Moreover, Devine, unlike Mayor Daley, has refused to accept the findings of the Special Prosecutors that Burge and his men abused several torture victims "beyond a reasonable doubt," and that they abused suspects "with impunity."<sup>40</sup>

Additionally, unlike the City, the County has steadfastly refused to negotiate or settle with any of the four torture plaintiffs, and, to date, the County Board, which is ultimately responsible for settling County cases, has refused to independently and objectively review this position.<sup>41</sup> Moreover, the County has taken no other steps to accept any responsibility for the role of the State's Attorneys' Office in the torture scandal, or to compensate any of the other victims who have no civil claims due to the statute of limitations. We call on the County Board to hold new hearings, this time focused on the role of the State's Attorneys' Office in the torture scandal, and to contribute to a fund providing reparations to the torture victims.

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refusing to investigate or prosecute Burge, and for continuing Orange's wrongful imprisonment. *Orange v. Burge*, 2008 U.S. Dist. Lexis 73528 (N.D. Ill. Sept. 29, 2008)

<sup>39</sup> Also in the *Orange* case, the trial Judge recently denied the summary judgment motion of former supervising Assistant State's Attorney and current Criminal Court Judge Dennis Dernbach, finding that the evidence, much of which was undisputed by his lawyer, concerning Dernbach's presence during Orange's interrogation, his contemporaneous knowledge that Orange and his co-defendant were being tortured by Burge and his men, his role in coercing and manufacturing Orange's false confession, and his false testimony about these events at Orange's criminal trial, was sufficient to require Dernbach to stand trial for these egregious constitutional violations. *Orange v. Burge*, 2008 U.S. Dist. Lexis 75103 (N.D. Ill. Sept. 29, 2008)

<sup>40</sup> After the Burge indictment was released, Daley refused to accept any responsibility for his well documented role in the torture scandal, particularly his refusal to prosecute Burge while State's Attorney of Cook County. See, *Chicago Sun Times*, October 21, 2008, "Daley Accepts no Responsibility for Burge Torture Cases," attached as Appendix T; Daley also sarcastically responded when asked to make good on a prior promise to apologize to the torture victims. October 24, 2008 *Chicago Sun Times*, "Daley's Mocking Burge Apology," attached as Appendix U.

<sup>41</sup> After rendering his summary judgment decisions, the trial Judge in the *Orange* case again "strongly encouraged" the parties to discuss settlement. *Orange* Order of Sept. 29, 2008.

## INTERNATIONAL ACTIONS, HEARINGS AND REPORTS

In the fall of 2005, attorneys, torture victim David Bates, and activists testified about Chicago police torture before the Inter American Commission on Human Rights in Washington, D.C. This was followed by a presentation to the U.N. Committee Against Torture, which, in a May 19, 2006 Report, linked Chicago police torture to the atrocities at Abu Ghraib and Guantanamo and further stated:

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.<sup>42</sup>

This Report was followed in March of 2007 by a similar report by the U.N. Special Rapporteur on Torture, which also directly raised the issue that "at least 24 individuals are currently serving prison terms on the basis of confessions which may have been obtained by torture or ill-treatment."<sup>43</sup>

Also, shortly after Special Prosecutors Egan and Boyle released their Report, Black People Against Police Torture (BPAPT) began a campaign to raise the City's failure to fully address the torture question as a reason for opposing the selection of Chicago as the site for the 2016 Olympic Games. Former Olympian John Carlos, who is remembered for the black-power

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<sup>42</sup> Conclusions and Recommendations of the U.N. Committee Against Torture, May 19, 2006, para. 25, p. 7, attached as Appendix V.

<sup>43</sup> March 20, 2007 Addendum to Report of the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, attached in relevant part as Appendix W.

salute he and gold medalist Tommie Smith made from the winners' podium at the 1968 Olympic Games, came to Chicago and became a spokesman for the protest:

I want the mayor to get off his fanny and address this issue. He was the state's attorney when this torture was taking place. The mayor needs to step up to the plate and get this thing resolved. It's not even just about the Olympics coming to Chicago. It's for Chicago too. These individuals who tortured shed a bad light on many good police officers that they have in the city.<sup>44</sup>

BPAPT also sent a 250-page notebook filled with reports and newspaper clippings about the Burge cases to the U.S. Olympic Committee in Colorado Springs, and when the committee came to Chicago in March of 2007, several members of the group gathered in Washington Park in an unsuccessful attempt to meet the Mayor and Olympic Committee when they toured the probable location for the games.<sup>45</sup> BPAPT continues to raise the torture issue in the context of the 2016 Olympics, as reflected in a recent commentary in the *In These Times* magazine.<sup>46</sup>

In his statement to the Chicago City Council, Cook County Clerk and former Alderman David Orr voiced similar concerns about the City's image around the world:

This scandal has certainly created a bad shot for our City's image. It has drawn worldwide attention from organizations which oppose torture and human rights violations such as Amnesty International . . . This is not the kind of international attention that we want or need. We love our city, therefore, we have to make sure we correct this.

July 24, 2007 City Council Hearing Transcript, p. 57.

In May of 2008, the U.N. Special Rapporteur on Racism, law professor Dou Dou Diene from Senegal, came to Chicago and conducted two days of hearings as part of a nationwide fact finding mission. Among the featured topics at the hearing was Chicago police torture. Torture

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<sup>44</sup> *Chicago Reader*, "Can Shame Stop the Games?" March 23, 2007.

<sup>45</sup> Police officers demanded that the BPAPT members leave the park as the Mayor and the Committee members approached on a bus. When BPAPT demurred, arguing that it was a public park, Daley and the Committee members decided to stay on the bus and abandon their tour of the Park, purportedly because there was snow on the ground. *Chicago Reader*, "Can Shame Stop the Games?" March 23, 2007.

<sup>46</sup> August 2008 *In These Times* "Chicago's Olympic Dreams Undeserved."

victims Darrell Cannon, Anthony Holmes and David Bates all testified, and the Rapporteur personally articulated his concern about this issue to the victims at the conclusion of the hearing.

It is clear that the international work that has been done has been instrumental in bringing national and international attention to the continuing Chicago police torture scandal, and has strengthened the demand for prosecutions. We urge all of the involved international bodies to continue their scrutiny and attention to the numerous issues that remain to be dealt with by the City of Chicago, Cook County, the Illinois Attorney General, the U.S. Attorney's Office, and State and Federal legislative bodies.

#### **STATE AND FEDERAL LEGISLATION**

Community groups, led by Black People Against Police Torture, have initiated a bill entitled "Illinois Torture Inquiry and Relief Commission Act" which was introduced as an amendment to House Bill 5032 and passed by the Illinois House in May of 2008.<sup>47</sup> This bill provides that any person convicted of a felony "asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is some credible evidence related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge" is entitled to a hearing before an independent eight member Commission comprised of a sitting Judge, a former prosecutor, a law school professor, a defense lawyer, a former public defender, and three laypersons. Amendment to House Bill 5032, 95<sup>th</sup> General Assembly, Sec. 25. The Commission shall "conduct inquiries into claims of torture with priority given to those cases in which the convicted person is incarcerated solely for the crime which he claims torture by Jon Burge or officers under his command," it shall investigate cases that it accepts for review, and, at the completion of each inquiry, it shall "prepare written reports outlining Commission

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<sup>47</sup> The Amendment to House Bill 5032 is attached as Appendix X.

investigations and recommendations to the trial court.” Id. The Bill will be considered by the Illinois Senate in November of 2008.

In September of 2007, U.S. Congressman Danny Davis (D-Il.), who had previously called on the City to “cease defending Burge and others involved in these illegal, immoral, repugnant activities,”<sup>48</sup> publicly pledged to introduce a bill in the U.S. House of Representatives that would make torture committed by law enforcement officials a federal crime, which, like genocide and war crimes, would not have a statute of limitations. Torture would be defined pursuant to international standards, and the statute would apply to local, state and federal law enforcement officials. This bill is in the drafting stage, and should be presented in the near future. No similar state law is presently under consideration in Illinois. We therefore urge the Illinois Senate to pass the torture Commission legislation, and further urge the U.S. Congress and the Illinois General Assembly to enact legislation that criminalizes torture by U.S., state and local law enforcement officials.

### **THE FRATERNAL ORDER OF POLICE**

The Fraternal Order of Police (FOP) continues to staunchly defend Jon Burge and his fellow accused torturers. When the City moved to fire Burge in 1992, the FOP paid for Burge and his fellow officers’ defense before the Chicago Police Board. In 1993, the FOP attempted to enter a float in support of Burge and his men in the annual St. Patrick’s Day Parade. In 2004 and 2005, the FOP supplied lawyers to many of the Area 2 officers who took the Fifth Amendment before the Special Prosecutors’ Grand Jury. Presently, the FOP is supplying lawyers to at least some of the Area 2 detectives who have appeared before the Federal Grand Jury, has criticized the Burge indictment as “political,” and is contemplating providing Burge’s criminal defense. While we have no quarrel with Burge and his men having competent counsel at their own

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<sup>48</sup> July 24, 2007 City Council Hearing Transcript, pp. 60-61.

expense, we also strongly believe that the collaboration of the City of Chicago and the FOP to supply them with free counsel for more than 20 years at a cost well in excess of \$10,000,000, has facilitated, and continues to facilitate, a conspiracy of silence in the torture cases. We call on the FOP, an organization that is required to fairly represent the interests of all law abiding Chicago officers below the rank of sergeant, regardless of race, to finally disassociate itself from further defense of Commander Burge, Sergeant John Byrne, Lieutenant Peter Dignan and any other implicated officer whom it is not contractually obligated to represent, so that they and their fellow officers, for the first time, will be required to hire their own counsel and to make their own individual decisions concerning whether to vitiate the police code of silence and cooperate with the ongoing federal investigation.<sup>49</sup>

#### **CONCLUSION AND CALL TO ACTION**

While much has been accomplished since the Shadow Report was released, much is also left to be done. Burge's close associates remain on the streets, as of yet uncharged and unprosecuted. While the City and County have already collectively expended more than \$53,000,000 in the torture scandal, Darrell Cannon, Anthony Holmes, and numerous other torture victims remain uncompensated and untreated, more than a score languish in prison without hearings, the Cook County State's Attorney's Office refuses to accept any responsibility for its significant role in the torture scandal, and Burge and his men continue to collect City pensions, and to receive free legal defense, We therefore call for the following additional action:

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<sup>49</sup> The FOP is mandated to represent Chicago police officers below the rank of sergeant only. Hence, three of the main targets of the U.S. Attorneys' investigation - - - Burge, Byrne and Dignan - - - should be outside of its coverage. Additionally, the FOP, like the City, has made no effort whatsoever to afford representation to African-American officers who have broken the code of silence and given damning testimony against Burge and his men to the Federal Grand Jury. Furthermore, according to the African American Police League, requests for FOP representation are normally rigorously evaluated before an FOP Board, which often denies the request.

- I. That the United States Attorney obtain appropriate additional indictments, consistent with the evidence, for perjury, obstruction of justice, false statements and/or conspiracy against John Byrne, Peter Dignan, and, in his discretion, other implicated Area 2 and Area 3 officers;
- II. That Illinois Attorney General Lisa Madigan agree to prompt hearings for all torture victims who remain in prison as a result of confessions allegedly tortured from them by Burge and his men, that she refuse to utilize the testimony of Burge and his confederates at the new hearings, and that she publicly support the bill establishing an independent torture Commission which is before the Illinois Senate;
- III. That the Chicago City Council immediately terminate the funding of the civil defense of Jon Burge and his men and reconvene hearings to consider the failure to settle the Darrell Cannon case, discontinuation of pension payments to Burge and his men, and the establishment of a fund, comparable to the yearly pensions paid to Burge and his men, for compensation and treatment of torture victims who otherwise have no legal remedy;
- IV. That the Cook County Board reconvene hearings to investigate the role of Cook County State's Attorneys Office in the torture scandal, and the failure of the County to accept moral or financial responsibility for the SAO's significant role in the scandal;
- V. That the County join with the City in establishing a fund for the purpose of making financial reparations to the torture victims;
- VI. That the Illinois General Assembly and the United States Congress pass statutes specifically establishing torture by law enforcement officers as a criminal offense without a statute of limitations.
- VII. That the Fraternal Order of Police immediately cease and desist from financing or otherwise providing for the criminal defense of Jon Burge, John Byrne, Peter Dignan, and any other implicated officer whom it is not contractually obligated to represent.

RESPECTFULLY SUBMITTED BY:  
(In Alphabetical Order)

October 29, 2008

**INDIVIDUALS\***

Rev. Ira Acree, Greater St. John Church

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

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

\* Organizations are listed in this Section for identification purposes only.

Russell Ainsworth, Civil Rights Attorney, Loevy and Loevy

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

David A. Ansell, MD, MPH, Chief Medical Officer, Rush University Medical Center

Professor Michael Avery, Professor of Law, Suffolk Law School, co-author, *Police Misconduct: Law and Litigation*; immediate past president, National Lawyers Guild

Sandra L. Babcock, Associate Clinical Professor and Clinical Director, Center for International Human Rights, Northwestern University School of Law

Julien Ball, Chicago Campaign to End the Death Penalty

Susan Bandies, Professor, DePaul University School of Law

Gregory Banks, Torture Victim

Rev. Willie Barrow, Chairman Emeritus, Rainbow Push Coalition

Cherif Bassiouni, Distinguished Research Professor of Law, DePaul University College of Law, President of the International Human Rights Law Institute; Co-chair, Committee of Experts on the Draft Convention on the Prevention and Suppression of Torture; United Nations Sub-Committee on the Prevention of Discrimination and Protection of Minorities

David Bates, Chicago Police Torture Victim

Kay Berkson, Board Member, Jewish Council on Urban Affairs

Adele Bernhard, Professor of Law, Pace Law School

Martha Biondi, Associate Professor of African American Studies, Northwestern University

Timuel Black, Professor Emeritus, Chicago City Colleges

Joel Bleifuss, Editor, *In These Times*

Jane Bohman, Executive Director, Illinois Coalition to Abolish the Death Penalty

Nancy Bothne, former Midwest Regional Director, Amnesty International

Walter Boyd, Director of Repatriate Opportunities, Protestants for the Common Good

Locke E. Bowman, Legal Director, MacArthur Justice Center

David Bradford, Partner, Jenner & Block

Wallace "Gator" Bradley, Urban Translator

Matt Brandon, retired Chicago Police Officer and Board Member, Citizens Alert

John C. Brittain, Chief Counsel and Senior Deputy Director, National Lawyers Committee for Civil Rights under Law; former Dean, Thurgood Marshall School of Law, Texas Southern University; Former President, National Lawyers Guild

Daryle Brown, Prison Ministry, Trinity United Church of Christ

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

Nick Brustin, Civil Rights Attorney, Cochran, Neufeld and Scheck

Dr. Margaret Burroughs, founder, DuSable Museum

Darrell Cannon, Area 2 Police Torture Victim

Phillip J Carrigan, PhD, John Howard Association

Vickie Casanova, National Conference of Black Lawyers

Douglass W. Cassel, Director, Center for Civil and Human Rights, Notre Dame Law School

Leonard Cavise, Professor of Law, DePaul University College of Law

Mardge Cohen, MD, Department of Medicine, Stroger Hospital and Professor of Medicine, Rush University

Robert L. Cohen, MD, Federal Appointment Monitor, Prison Medical Care

Marjorie Cohn, International Human Rights Professor, Thomas Jefferson School of Law; President, National Lawyers Guild; U.S. representative to executive committee, American Association of Jurists

Cathryn Crawford, Attorney for Torture Victim Leroy Orange

Jerry Crawley, Former Chicago Police Officer, Guardians Police Organization

Jeffrey Cummings, partner, Miner, Barnhill & Galland

Dennis Cunningham, Civil Rights Attorney, San Francisco, California

Carl Davidson, Campaign to Stop Funding Torture in Iraq

Danny K. Davis, U.S. Representative, Seventh District of Illinois

Madeline DeLeone, Executive Director, The Innocence Project, Benjamin N. Cardozo School of Law

Rev. Martin Deppe, former Chairperson , Alliance to End Repression

Leon Despres, former Fifth Ward Alderman; Partner, Despres, Shwartz & Geoghehan; author, *Challenging the Daley Machine: A Chicago Alderman's Memoir*; and recipient, Benton Medal for Distinguished Public Service

Michael E. Deutsch, attorney for Palestinian-American torture victim Muhammad Salah

Bernardine Dohrn, Director, Children and Family Justice Center, Northwestern University School of Law

Steven A. Drizin, Clinical Professor of Law, Northwestern University School of Law, Legal Director, Center on Wrongful Convictions

Clarice Durham, Co-chairperson, National Alliance Against Racist and Political Repression

J. Soffiyah Elijah, Deputy Director, Criminal Justice Institute, Harvard Law School

Bertha Escamilla, mother of brutality victim Nick Escamilla

Nick Escamilla, brutality victim

Mary Fabri, Director, Torture Treatment Services & International Training, Marjorie Kovler Center of Heartland Alliance

James Fennerty, Past President, Chicago Chapter, National Lawyers Guild

Kurt Feuer, Attorney for Madison Hobley

Belden Fields, Professor Emeritus of Political Science, University of Illinois, Champaign-Urbana

Rev. Cy Fields, New Landmark Church

Nathson Fields, former death row inmate

Keith Findley, Co-founder and Co-director, Wisconsin Innocence Project

Alison Flaum, Clinical Professor of Law, Northwestern University School of Law

Linda Flores, mother of wrongfully convicted John Galvin

Rev. Paul Robeson Ford, Covenant United Church of Christ

Signe Waller Foxworth, Survivor of the 1979 Greensboro Massacre

Maxine Franklin, mother of Jerry Gillespie, wrongfully convicted brutality victim

Gerald Frazier, President, Citizens Alert

Barbara Frye, University of Minnesota Human Rights Program

Jim Fuerst, Author and Professor Emeritus, Loyola University, Chicago

Aviva Futorian, Chair, Long-Term Prisoner Policy Project

Craig Futterman, Clinical Professor of Law, Mandel Legal Aid Clinic, University of Chicago Law School

Dickey Gaines, former Death Row inmate, released after new trial

Jenni Gainsborough, Director, Washington Office, Penal Reform International

Thomas Geraghty, Director, Bluhm Legal Clinic, Northwestern University School of Law

Mark Godsey, Professor of Law, University of Cincinnati College of Law; Faculty Director, Ohio Innocence Project

William Goodman, Former Legal Director, Center for Constitutional Rights (CCR)

H. Candace Gorman, Human Rights Lawyer for Guantanamo Detainees

H. Michael Gray, filmmaker, author and screenwriter

Rev. Doris Green, Men and Women in Prison Ministries

Samuel R. Gross, Thomas and Mabel Long Professor of Law, University of Michigan Law School

Susan Gzesh, Director, Human Rights Program, University of Chicago

Ron Hampton, Executive Director, National Black Police Association

Mimi Harris, Board Member, Jewish Council on Urban Affairs

Rev. Marshall Hatch, New Mt. Pilgrim Baptist Church

Kenan Heise, Author and Journalist

Mildred Henry, mother of Area 3 torture victim Kilroy Watkins

Pat Hill, Executive Director, African American Police League

Pearl Hirshfield, Artist and Activist

Charles Hoffman, Board Member, Illinois Coalition to Abolish the Death Penalty

Jani Hoft, People's Law Office

Sidney Hollander, Former Board President, Jewish Council on Urban Affairs

Anthony Holmes, Chicago Area 2 Police Torture Victim

Sharon Howard, Black Student Psychological Association

State Representative Constance A. "Connie" Howard

Stanley Howard, Area 2 Police Torture Victim

Mary Howell, Civil Rights Lawyer, New Orleans, Louisiana

Reverend Jesse L. Jackson Sr., Founder and President, Rainbow PUSH Coalition

Jonathan L. Jackson, National Spokesman, Rainbow Push Coalition

Reverend Paul Jakes Jr., Pastor, Old St. Paul Missionary Baptist Church

Carolyn Johnson, mother of torture victim Marcus Wiggins, member Centennial Baptist Church, Rainbow PUSH

Gloria Johnson, mother of Montell Johnson, victim of IDOC medical neglect

Mary Johnson, Named Petitioner, Motion for Appointment of a Special Prosecutor, and mother of torture victim Michael Johnson

Scott Kamin, Attorney at Law

Michael Kanovitz, Civil Rights Attorney, Loevy and Loevy

Robin Kaufman, Campaign to End the Death Penalty

Lawrence Kennon, Named Petitioner, Motion for Appointment of a Special Prosecutor; Past President, Cook County Bar Association

Rashid Khalidi, Edward Said Professor of Arab Studies, Middle East Institute, Columbia University

Alice Kim, The Public Square, Illinois Humanities Council

Barbara S. Kirschner, M.D., Professor of Pediatrics, the University of Chicago, and wife of Robert H. Kirschner, M.D., deceased

Richard Kling, Clinical Professor of Law, Chicago Kent College of Law

Jeanne Kracher, Executive Director, Crossroads Fund

Nancy Kurshan, MSW, Chicago Public Schools Social Worker

Maria Lahood, Attorney, Center for Constitutional Rights

Richard A. Leo, Associate Professor of Law, University of San Francisco School of Law

Doris Lewis, Black People Against Police Torture

Reverend Gregory Livingston, Rainbow PUSH Coalition

Jon Loevy, Attorney for Stanley Howard and Madison Hoblely

Professor Jose E. Lopez, Executive Director, Puerto Rican Cultural Center.

Andrea Lyon, Dean, Clinical Studies, DePaul College of Law

Joseph Margulies, MacArthur Justice Center, Northwestern University School of Law; author, *Guantanamo, and the Abuse of Presidential Power*

Claude Marks, Freedom Archives

Lawrence C. Marshall, Associate Dean for Public Service and Clinical Education and Director of Clinical Education, Stanford Law School

Marlene Martin, National Director, Campaign to End the Death Penalty

Tonya McClary, Former Director, Criminal Justice Section, American Friends Service Committee

Catherine McMillan, RN, MHA, The Innocence Perspective Network

Sr. Mary Ellen Meckley, Sisters of Charity, BVM

Alan Mill, People's Law Center

Alejandro Molina co-coordinator, National Boricua Human Rights Network

Jonathan Moore, Civil Rights Attorney, New York, New York

Michelle Morales, co-coordinator, National Boricua Human Rights Network

Calvin S. Morris, Ph.D., Executive Director, Community Renewal Society; co-President, Justice Coalition of Greater Chicago

Michael McConnell, Regional Director, American Friends Service Committee (AFSC)

Jeanne Mirer, Secretary General, International Association of Defense Lawyers

Judson H. Miner, partner, Miner, Barnhill & Galland and former Corporation Counsel, City of Chicago

Joey L. Mogul,\* attorney for Darrell Cannon and Leroy Orange

Clyde E. Murphy, Director, Chicago Lawyers Committee for Civil Rights Under Law

Prexy Nesbitt, Adjunct Professor, Columbia College

Peter Neufeld, Co-founder, Innocence Project, Benjamin N. Cardozo School of Law

Charles Ogletree, Harvard Law School Jesse Climenko Professor of Law, and Founding and Executive Director of the Charles Hamilton Houston Institute for Race and Justice

David Orr, Cook County Clerk

Peter Orris, MD, MPH, Professor and Chief of Service, Environmental and Occupational Medicine, University of Illinois at Chicago Medical Center

Amisha Patel, Coordinator, Grassroots Collaborative

Ted Pearson, Co-chairperson, National Alliance Against Racist and Political Repression

Rev. Michael L. Pflieger, Pastor, Faith Community of St. Sabina

Robin Phillips, Executive Director, Advocates for Human Rights

Matthew Piers, Partner, Hughes, Socol, Piers, Resnick & Dym, Ltd, and former Deputy Corporation Counsel for Litigation, City of Chicago

Melinda Power, Civil Rights Attorney, Chicago, Illinois

Mary Powers, Named Petitioner, Motion for Appointment of a Special Prosecutor

Jennifer Prestholdt, JD, MALD, Deputy Director, The Advocates for Human Rights

David Protes, Director, The Medill Innocence Project, Northwestern University

Coy Pugh, former Illinois State Representative

Gordon Quinn, Filmmaker, Kartemquin Films

Michael L. Radelet, Chairman, Department of Sociology, University of Colorado

Frank Ralph, attorney for Petitioners who Secured the Appointment of the Special Prosecutors

Vanessa Ramos, Secretary General of the American Association of Jurists

Jane Ramsey, Executive Director, Jewish Committee on Urban Affairs; co-President, Justice Coalition of Greater Chicago

Michael Ratner, President, Center for Constitutional Rights

Ahmed Rehab, Executive Director, Council on American-Islamic Relations (CAIR)-Chicago

Laurie Jo Reynolds, Tamms Year Ten Campaign

Andrea J. Ritchie, Attorney at Law, and Human Rights Activist, New York City

Don Rose, Political Consultant

Leonard S. Rubinowitz, Professor of Law, Northwestern School of Law

Bill Ryan, Publisher, Stateville Speaks newspaper and Citizens for Earned Release

Howard Saffold, founder, Positive Anti-Crime Thrust

Steven Saltzman, Editor, Civil Rights Litigation and Attorney Fees Annual Handbook

Reverend Dr. Al Sampson, Pastor, Fernwood United Methodist Church; President, Chicago Metropolitan Council of Black Churches, President, SCLC/MLK Chicago Chapter

Barry Scheck, Co-founder, The Innocence Project, Benjamin N. Cardozo School of Law; Past President, National Association of Criminal Defense Lawyers

Gordon Schiff, MD, Cook County Hospital, Professor of Medicine Rush University

Professor Lawrence Schlam, Attorney, DeKalb, Illinois

Ron Shansky, M.D. and former Medical Director, Illinois Department of Corrections

Brenda Shead, former Chicago Police Sergeant; President, The Guardians Police Organization

Dick Simpson, Chair, Department of Political Science, University of Illinois at Chicago; Former Alderman, Forty-fourth Ward

Tracy Siska, President, Chicago Justice Project

A.Sage Smith, Director of Client Services, Center on Wrongful Convictions, Northwestern University School of Law

Jean Maclean Snyder, Attorney at Law

Brian Spears, Civil Rights and Police Brutality Attorney, Atlanta

Robert Starks, Professor, Education and Development, Northeastern Illinois University

Burton Steck, Jewish Voice for Peace

Bryan Stevenson, Executive Director, Justice Initiative of Alabama

Randolph N. Stone, Clinical Professor of Law, University of Chicago Mandel Legal Aid Clinic;  
former Public Defender of Cook County

G. Flint Taylor Jr., Attorney for Andrew Wilson, Darrell Cannon, Leroy Orange, and Several  
Other Chicago Police Torture Victims

Lydia Taylor, Former Executive Director of the Justice Coalition of Greater Chicago

Studs Terkel, Author/Interviewer

Erica Thompson, People's Law Office, attorney for Palestinian Torture Victim Muhammad  
Salah

Jeanne Tillman, mother of Area 2 Torture Victim Michael Tillman

Doug Tjapkes, President, Humanity for Prisoners

Beauty Turner, Founder, Poor People's Millennium Movement

Rev. Larry E. Turpin, United Church of Hyde Park

Jeffrey Urdangen, Clinical Professor of Law, Northwestern University School of Law

Enrique Valdez, Area 3 Torture Victim

Rev. Oscar Walden, Torture Victim

Rob Warden, Executive Director, Center on Wrongful Convictions, Northwestern University  
School of Law

Roger S. Wareham, Esq., International Secretary-General of the International Association  
Against Torture

Steven Weinberg, Author of Center for Public Integrity Report on Prosecutorial Misconduct;  
Former Executive Director, Investigative Reporters & Editors

Giudi Weiss, Justice Coalition of Greater Chicago, Gray Panthers

Burns H. Weston, Bessie Dutton Murray Distinguished Professor of Law Emeritus and Senior  
Scholar, Center for Human Rights, The University of Iowa

Steve Whitman, PhD., Health Researcher

Standish Willis, National Conference of Black Lawyers

Rita Wilson, teacher, Pictou, Nova Scotia

Paul Wright, Editor Prison Legal News

Dr. Quentin Young, M.D., Chairman, Health & Medicine Policy Research Group; Former Medical Director, Cook County Hospital

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**

Advocates for Human Rights

African American Police League

American Association of Jurists

American Friends Service Committee, Chicago Chapter

Amnesty International, DePaul University Chapter

Black People Against Police Torture

Bluhm Legal Clinic, Northwestern University School of Law

Campaign to End the Death Penalty

Campaign to Stop Funding Torture in Iraq

Center on Wrongful Convictions

Center for Constitutional Rights (CCR)

Center for Justice in Capital Cases, DePaul University College of Law

Champaign Urbana Citizens for Peace and Justice

Chicago Coalition for Police Accountability

Chicago Committee Against Police Torture

Chicago Committee to Defend the Bill of Rights

Chicago Justice Project

Children and Family Justice Center, Northwestern University Law School

Christian Council on Urban Affairs

Citizens Alert

Citizens for Earned Release

Committee for the Defense of Human Rights

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

Eighth Day Center for Justice

Freedom Archives

Gray Panthers  
Humanity for Prisoners  
The Guardians Police Organization  
Illinois Coalition to Abolish the Death Penalty  
Illinois Prison Talk  
The Innocence Project, Benjamin N. Cardozo School of Law  
International Association Against Torture  
Jewish Council on Urban Affairs  
Justice Coalition of Greater Chicago  
Leaders Network  
Loevy and Loevy  
MacArthur Justice Center  
Mandel Legal Aid Clinic, University of Chicago  
Midwest Coalition for Human Rights  
National Alliance Against Racist and Political Repression  
National Black Police Association  
National Boricua Human Rights Network  
National Conference of Black Lawyers  
National Lawyers Guild  
National Lawyers Guild, Chicago Chapter  
National Police Accountability Project of the National Lawyers Guild  
The Organization of Black Students (University of Chicago)  
People's Law Office  
Poor People Millennium Movement  
Positive Anti-Crime Thrust (PACT)  
Protestants for the Common Good  
Rainbow PUSH Coalition  
Stateville Speaks  
Tamms Year 10