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The Struggle for Reparations in the Burge Torture Cases: The Grassroots Struggle that Could

Joey L. Mogul*

On May 6, 2015, the City of Chicago passed unprecedented legislation providing reparations to Black people tortured by a former Chicago Police Commander and a ring of detectives under his command. This historic moment was the culmination of a forty-year struggle that involved decades of litigation, organizing and investigative journalism. It is also was the product of a grassroots effort that boldly dared to imagine, struggle for, and win a holistic package of relief that far surpassed remedies available through the U.S. civil legal system.

There are many morals to the story of the four decades-long odyssey seeking justice on behalf of the torture survivors and their family members. One is that the legal system failed the survivors, Black communities, and the pursuit of justice time and time again. Another is a lesson about building power, and how attorneys and legal workers can work with, alongside, and in support of people directly impacted by the criminal legal system to achieve a measure of justice and accountability our legal system is incapable of providing.

POLICE TORTURE ON CHICAGO'S SOUTHSIDE

From 1972 to 1991, over 110 Black men and women were tortured by former Chicago Police Commander Jon Burge and a ring of white detectives under his command at Area 2 and 3 Police Headquarters in Chicago, Illinois. The torture techniques included electrically shocking men's genitals, ears, and

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fingers with cattle prods or an electric shock box;¹ suffocating individuals with typewriter covers or plastic garbage bags; mock executions with firearms; beatings with telephone books and rubber hoses; and, in one instance, anally raping a man with a cattle prod.²

In addition to inflicting excruciating physical pain, the detectives also routinely tormented the survivors with racist epithets and slurs throughout their interrogations.³ Darrell Cannon recounts that, throughout his interrogation, he no longer had a name and was only known as “nigger.” The electric shock box was commonly referred to as the “nigger box.” Detectives threatened to hang Gregory Banks, another torture survivor, “like other niggers” - making a clear reference to lynchings.

Burge and his men systematically engaged in acts of torture and racist verbal abuse to extract confessions, which were then introduced as powerful pieces of incriminating evidence at scores of survivors’ trials to secure their convictions and, in eleven cases, to obtain their death sentences. In the vast majority of these cases, the survivors complained about the torture and abuse they suffered at the hands of Burge and his men in their criminal proceedings, seeking to suppress their confessions on the basis that they were physically coerced in violation of their Fifth and Fourteenth Amendment rights.⁴ In so doing, they courageously testified at hearings before judges and later before juries, laying bare the details of their painful, terrifying, humiliating, and degrading interrogations. At each of these proceedings, the detectives routinely and cavalierly denied under oath that any torture or coercion occurred. Judges and juries routinely credited the word of white police detectives over those of Black torture survivors, facilitating the admission of these confessions in the criminal proceedings.

¹ See John Conroy, *Tools of the Trade*, CHICAGO READER, Feb. 4, 2005, <http://www.chicagoreader.com/chicago/tools-of-torture/Content?oid=917876>. The electric shock box was styled on the “tucker telephone,” a device used by many military personnel in the Vietnam War. Prior to joining the Chicago Police Department in 1968, Burge was a military police officer in Vietnam.

² See *Report on the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Systematic Police Torture*, pp. 31-35, available at <http://peopleslawoffice.com/wp-content/uploads/2012/02/5.8.07.Final-Corrected-Version-of-Report.pdf> [hereinafter *Report*]; See also *Report, Appendix C, Victim’s Chart*, available at <http://peopleslawoffice.com/wp-content/uploads/2014/01/1.6.14.-Documented-TortureSurvivorsunderBurge.pdf>.

³ I am uncomfortable using this language, but I do so because it demonstrates the racism which was at the heart of what motivated the acts of torture.

⁴ See *Brown v. Mississippi*, 297 U.S. 278 (1936); *Jackson v. Denno*, 378 U.S. 368 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966).

HOW THE TRUTH ABOUT THE RACIST POLICE TORTURE CAME TO LIGHT

The first case of torture that garnered significant publicity was that of Andrew Wilson. Wilson was accused of killing two white Chicago Police officers, William Fahey and Richard O'Brien, on February 9, 1982. Shortly after the police officers were shot on the street, the Chicago Police Department launched a vicious manhunt to capture those responsible, during which scores of African-American homes on the South Side were ransacked, people were stopped and frisked on the street, and several young Black men were dragged into Police Headquarters and tortured to learn the whereabouts of the prime suspect, Andrew Wilson.⁵

On February 14, 1982, Wilson was found, arrested, and transported to Area 2 Police Headquarters where Burge and others handcuffed him across a hot radiator in an interrogation room. The officers then electrically shocked Wilson's ears, lip, genitals, back and fingers with the electric shock box, causing him to flinch and sustain burns to his chest, thighs, and chin from the radiator. The detectives also used a plastic garbage to suffocate him, beat him about the head and body, and burned him with a cigarette.⁶

After Wilson confessed, he was transported to Cook County Jail where, for the first time since his interrogation, he received a full physical examination and medical treatment for his injuries. Dr. John Raba, the head of the medical unit, noted that Wilson sustained several physical injuries, including a battered right eye, bruises, swelling and abrasions on his face and head, and blisters on his right thigh, cheek and chest that were consistent with radiator burns.⁷ Unlike so many of the other torture survivors – whose torture was concealed by methods that intentionally left no marks – Wilson sustained visible injuries, providing irrefutable proof that he was tortured.

Troubled, Dr. Raba wrote the Superintendent of the CPD, Richard Brzeczek, demanding that Brzeczek conduct an investigation into Wilson's allegations of electric shock and physical abuse. Brzeczek, in turn, wrote to the

⁵ John Conroy, *House of Screams: Torture by Electroshock: Could it happen in a Chicago police station? Did it happen at Area 2?*, CHICAGO READER, Jan. 25, 1990, <http://www.chicagoreader.com/chicago/house-of-screams/Content?oid=875107>.

⁶ *Wilson v. City of Chicago*, 86 C 2368 (N.D. Ill.), Feb. 22, 1989 (Andrew Wilson's testimony) (transcript on file with author).

⁷ See Letter from Dr. John Raba, Medical Director, Cermak (Prison) Health Services, to Richard J. Brzeczek, Superintendent, Chicago Police Department (Feb. 17, 1982), available at http://chicagotorture.org/files/2012/03/08/Evidence_Wilson_Dr_Raba.pdf (last visited May 7, 2016).

head of the Cook County State's Attorneys' Office who, back in 1982, was Richard M. Daley, who later became Chicago's longest serving Mayor. Brzeczek forwarded Dr. Raba's letter to Daley and informed him that he would not conduct an investigation into Wilson's allegations of torture and abuse unless advised to do so by Daley, expressing a desire not to interfere with Daley's prosecution of Wilson for the murders of Fahey and O'Brien.⁸ Daley and his office never responded to Brzeczek's letter and neither Daley nor Brzeczek conducted an investigation into allegations of torture or the officers' crimes. Instead, Daley and his staff repeatedly denied Wilson was tortured, successfully opposed his motion to suppress his confession and, in successfully doing so, used Wilson's confession against him to convict him and obtain a death sentence.⁹ As a result of Daley and Brzeczek's refusal to take any action whatsoever, at least seventy more Black men were tortured by Burge and men under his command over a twenty-year period.

Wilson subsequently filed a *pro se* federal civil rights lawsuit seeking vindication for the torture he endured and sought the assistance of lawyers to represent him. Despite the unpopularity of Wilson's cause, Jeffery Haas, John Stainthorp and Flint Taylor of the People's Law Office (PLO) agreed to represent him.¹⁰ In the course of the civil litigation, the PLO received letters from an anonymous police source—subsequently dubbed “Deep Badge”—who disclosed a wealth of information about torture practices under Burge's command at Area 2, including names of officers who engaged in torture, nicknaming them “Burge's asskickers.” Deep Badge also identified Melvin Jones as a man who was tortured by Burge only nine days before Wilson's interrogation.¹¹

⁸ Letter from Richard J. Brzeczek to Richard M. Daley, Cook County State's Attorney (Feb. 25, 1982) (on file with author).

⁹ *People v. Wilson*, 116 Ill. 2d 29 (Ill. S.Ct. 1987).

¹⁰ After Mr. Wilson's civil rights case, Mr. Taylor continued to use the legal system to uncover and document the truth in the Burge torture cases representing several other torture survivors in post-conviction proceedings and federal civil rights cases for decades. He consistently fought against the entry of protective orders sealing this information from public dissemination to ensure the public would have access to the information and evidence in the Chicago Police torture cases.

¹¹ See Letters from “Ty,” Anonymous, to Flint Taylor (Wilson's counsel) (postmarked Feb. 2, 1989, Mar. 6, 1989, Mar. 15, 1989, and June 16, 1989) (on file with author), available at <https://web.archive.org/web/20150908014553/http://humanrights.uchicago.edu/page/selected-statements-cpd-detectives>; See also *Wilson v. City of Chicago*, 6 F.3d 1233, 1238 (7th Cir. 1993).

¹¹ See Letter from Dr. John Raba, Medical Director, Cermak (Prison) Health Services, to Richard J. Brzeczek, Superintendent, Chicago Police Department (Feb. 17, 1982), available at

Following Deep Badge's leads, Haas, Stainthorp and Taylor tracked down twenty-five other Black men who alleged they were tortured at Area 2 Police Headquarters, confirming that Wilson's torture was not an isolated incident, but simply one instance in a larger racist pattern and practice of torture. This was powerful evidence to corroborate Wilson's allegations and that have been admitted pursuant to FED. R. EVID. 404(b) at his civil rights trial.¹² The judge presiding over Wilson's civil proceedings, however, would not admit this relevant and damning evidence. Instead, the judge allowed Burge's defense counsel to present a slew of irrelevant evidence relating to the murders of Officers Fahey and O'Brien.¹³ Consequently, Wilson did not prevail in the trial court.¹⁴

Fortunately, the struggle for justice was not confined to the courtroom alone. Citizens Alert, a police accountability organization, along with the Task Force to Confront Police Violence, armed with the evidence from Wilson's civil case and exposés by journalist John Conroy on Burge's reign of torture,¹⁵ demanded that Burge and other implicated detectives be fired from the CPD. Their campaign was endorsed by fifty local organizations, ranging from Clergy and Laity Concerned to Queer Nation, who joined them in demonstrations at the federal courthouse, Police Headquarters, and Chicago's City Hall.¹⁶ They were relentless in their efforts to hold Burge and others accountable.

Eventually, the political winds began to change. The Office of Professional Standards (OPS), the department responsible for investigating allegations of excessive force by members of the CPD, re-opened its investigation and sustained Wilson's allegations of torture. OPS also conducted a larger investigation into allegations of torture and abuse from Area 2 and concluded, in what is now referred to as the Goldston Report, that the abuse at Area 2 Police Headquarters was "systematic," and that "[p]articular command members were

http://chicagotorture.org/files/2012/03/08/Evidence_Wilson_Dr_Raba.pdf (last visited May 7, 2016).

¹¹ See Letter from Richard J. Brzeczek, to Richard M. Daley, (on file with author).

¹² *Id.* at 1238.

¹³ *Id.* at 1236-38.

¹⁴ *Id.* at 1236.

¹⁵ The first article published by John Conroy was entitled *House of Screams*. See Conroy, *supra* note 5.

¹⁶ John Conroy, *Town Without Pity*, CHICAGO READER, Jan. 11, 1996, <http://www.chicagoreader.com/chicago/town-without-pity/Content?oid=889464>.

aware of the systematic abuse and either actively participated in it or failed to take any action to bring it to an end.”¹⁷

The CPD initiated disciplinary hearings and subsequently terminated Burge from the department in 1993, representing a significant victory for accountability that could not have been achieved through civil litigation alone.

THE DEATH ROW 10

While Wilson was seeking to vindicate his rights in federal court, scores of Burge torture survivors were literally fighting for their lives behind bars. At the time of Burge’s termination from the CPD, there were ten known Burge torture survivors on Illinois’ death row.¹⁸ These men were seeking relief from criminal convictions and death sentences in appeals and post-conviction petitions, arguing that there was a pattern and practice of torture within the CPD, citing Burge’s termination and the findings made in the Goldston Report as strong corroboration of their allegations that their confessions were physically coerced. Yet, they were routinely denied relief by the Circuit Courts and Illinois Supreme Court, despite this new, game-changing evidence.¹⁹

The men on the row were fed up with waiting for justice in the courts, and seeking to control their own lives and destinies, they courageously began to organize themselves by calling themselves “The Death Row 10.” The Death Row 10 urged their family members to attend court hearings and speak out on their behalf. They also wrote to organizers and activists beseeching them to stage teach-ins and protests about their cases and plight for justice. Aaron Patterson, one of the most prominent survivors on death row, boldly called and wrote to members of the press from his prison cell demanding the press report

¹⁷ Francine Sanders & Michael Goldston, Special Project Conclusion Reports (The Burge Investigation) (“Sanders-Goldston Report”), Office of Professional Standards, Nov. 2, 1990, available at <https://web.archive.org/web/20150929114212/http://humanrights.uchicago.edu/sites/humanrights.uchicago.edu/files/uploads/GoldstonSanders.pdf>.

¹⁸ These men included Cortez Brown, Stanley Howard, Madison Hobley, Leonard Kidd, Derrick King, Ronald Kitchen, Jerry Mahaffey, Reginal Mahaffey, Andrew Maxwell, Leroy Orange, and Aaron Patterson.

¹⁹ See *People v. Orange*, 168 Ill.2d 138, 148-49 (1995); *People v. Maxwell* (“Maxwell II”), 173 Ill. 2d 102, 119-222 (1996); *People v. Hobley*, 182 Ill.2d 404, 446-50 (1998). After the Campaign for the Death Row 10 was underway, the Illinois Supreme Court reversed course and granted evidentiary hearings to two Burge torture survivors, Aaron Patterson and Derrick King, in *People v. Patterson*, 192 Ill.2d 93 (2000) and *People v. King*, 192 Ill. 2d 189 (2000), creating a new rule for the admission of evidence pertaining to allegations of police misconduct in criminal and post-conviction proceedings.

on his case and court proceedings and question Burge and the other officers responsible for the torture.

Family members responded to their calls, becoming their ambassadors, fearlessly and tirelessly speaking out in support of their loved ones, attending rallies, going to churches and speaking to scores of students about the Death Row 10. The Death Row 10 joined forces with the Campaign to End the Death Penalty (CEDP) to organize events, featuring members of the Death Row 10 calling in to speak to audiences “live from death row” in a style first popularized by political prisoner Mumia Abu-Jamal. In so doing, the survivors made it clear that they would speak for themselves, ignoring the admonition of counsel that anything they say could be used against them in their court proceedings. According to Alice Kim, an organizer with the CEDP who later helped to co-found the Chicago Torture Justice Memorials, by providing a platform for the voices of the Death Row 10 to be heard directly by audiences all around the country, survivors and organizers were able to interrupt the prevailing narrative of death row prisoners as the “worst of the worst.”

As the campaigns for the Death Row 10 and Aaron Patterson were gaining traction, the press was questioning the fairness and efficacy of the death penalty. In the late 1990s and early 2000s, thirteen people sentenced to die were exonerated on the basis of innocence, leading then-Illinois Governor George Ryan to issue a moratorium on all executions on January 31, 2000, becoming the first state in the nation.²⁰

As it was becoming increasingly clear that Governor Ryan would not seek re-election in 2002, several lawyers representing capital defendants hatched a plan to seek clemency on behalf of all those on Illinois’ death row. The effort for clemency eventually became a highly visible public campaign, leading to over 200 public clemency hearings before the Illinois Prisoner Review Board where both family members of people on death row, including the Death Row 10, and family members of murder victims spoke on behalf of their loved ones. The hearings were emotionally charged and heartbreaking, as attention was focused on the flawed nature of the criminal legal system, including the role played by the Burge torture cases, while also exposing the wells of pain and loss among families of those no longer in the world. Ultimately, the campaign was successful.

On January 2, 2003, Governor Ryan pardoned four of the Burge torture survivors – Madison Hobley, Stanley Howard, Leroy Orange, and Aaron Pat-

²⁰ See Rob Warden, *How and Why the Illinois Abolished the Death Penalty*, 30 *LAW & INEQ.* 245 (2012), available at <http://www.deathpenaltyinfo.org/documents/RWardenIL.pdf>.

terson – on the basis of innocence. The following day, Governor Ryan declared the death penalty was fatally flawed and commuted the death sentences of all prisoners then on death row.²¹

It was another phenomenal victory for justice that did not come through the courts, but rather, was the product of extrajudicial actions by survivors, attorneys, and activists in concert that later contributed to the abolition of the death penalty in Illinois in 2011.

IMPUNITY FOR THEIR CRIMES

As efforts to support the Death Row 10 were gaining momentum, it also became painfully clear that Burge and other officers guilty of torture enjoyed impunity for their crimes. While Burge was fired by the CPD, he retained his city-funded pension, and no other officer was terminated, let alone disciplined. Instead, many were promoted and allowed to retire with their full pensions intact.

In response to this injustice, I, as part of a group of death penalty attorneys who represented some of the Death Row 10, along with several organizers, started the Campaign to Prosecute Police Torture (CPPT). The goal of the campaign was to secure the appointment of a special prosecutor to investigate and prosecute Burge and others. CPPT was well aware that the statute of limitations had expired for prosecuting any crimes of torture that the officers had committed²² but believed that the officers could and should be held responsible for their crimes of perjury and obstruction of justice for consistently denying that they engaged in acts of torture in on-going court proceedings.²³

While the legal effort prevailed and Chief Judge of the Circuit Court Paul Biebel, Jr. granted the petition to appoint a special prosecutor,²⁴ the campaign did not control who would be chosen as a Special Prosecutor. Two former Cook County States' Attorneys who worked under Daley at the State's Attorney's Office, Edward Egan and Robert Boyle, were selected to lead the investi-

²¹ *Id.*

²² The statute of limitations for a felony under Illinois law was, and remains to be, three years. *See* 720 ILCS 5/3-5. Under federal law, the statute for relevant crimes is five years. *See* 18 U.S.C. § 3282.

²³ Frank Ralph, a co-founder of CPPT and an attorney with the Office of the State Appellate Defender, drafted the initial petition for a special prosecutor, and Locke Bowman of the MacArthur Justice Center represented the campaign in the court proceedings.

²⁴ *In Re Appointment of Special Prosecutor*, 2004 Misc. 4 (Circuit Court of Cook County, Apr. 24, 2002).

gation into Burge and other detectives' alleged crimes.²⁵ After two years, it became apparent that their investigation was not going to lead to any indictments whatsoever.

TAKING BURGE TO THE UNITED NATIONS

Then, in 2004, the pictures of the torture, abuse and harassment of Iraqi detainees by U.S. military officers at the Abu Ghraib prison in Iraq were published, causing a national and international uproar about the use of torture practices by military officials.²⁶ In a stark contrast, the torture of Black people by law enforcement officials in the U.S., including the torture on Chicago's own South Side, continued to go without redress. The sharp juxtaposition propelled Standish Kwame Willis, a renowned civil rights attorney and activist who later founded Black People against Police Torture (BPAPT), to mount an effort to bring the Burge torture cases to international fora.

In May of 2006, the UN Committee Against Torture (CAT) was evaluating the U.S. Government's compliance with the UN Convention Against Torture in Geneva, Switzerland. While the U.S. delegation implicitly acknowledged there were some "missteps" during the "War on Terror" sparked by the September 11, 2001 attacks, they insisted the U.S.'s record in complying with the Convention on U.S. soil was commendable. Domestic advocates also attended the hearings and had the opportunity to present evidence of torture committed in the U.S. by police, prison, and immigration officials. As part of this effort, I had the privilege of presenting the Burge torture cases to the Committee members.

After two days of formal hearings with the U.S. governmental delegation and reviewing reams of reports and primary sources, the UN CAT issued a scathing indictment of the U.S. Government's failure to comply with the UN Convention Against Torture on May 19, 2006. In addition to calling on the U.S. Government to close the prison at Guantánamo Bay and prosecute the chain of command at Abu Ghraib for crimes of torture, the Committee noted the "limited investigation and lack of prosecution" at Area 2 and 3 Police

²⁵ See generally *Report*, *supra* note 2.

²⁶ Seymour M. Hersh, *Chain of Command: How the Department of Defense Mishandled the disaster at Abu Ghraib*, THE NEW YORKER, May 17, 2004, <http://www.newyorker.com/magazine/2004/05/17/chain-of-command-2>.

Headquarters, and it called on the U.S. government “to bring [the] perpetrators to justice.”²⁷

It was a momentous occasion, validating the long silenced, disbelieved, and ignored voices of the torture survivors, many of whom were deeply moved by the notion of the highest human rights body in the world publicly holding the U.S. accountable on the world stage for the torture they endured. It was also poignant for the Committee to equally condemn the torture practiced here at home as well as that done abroad. The UN CAT’s findings made national and international news, airing on all of the local nightly news channels. Once again, the whole world was watching Chicago.

A month after the UN CAT issued its findings, the special prosecutors concluded their investigation, finding that Burge and other detectives under his command committed crimes of aggravated battery and armed violence, surprising no one. However, the special prosecutors claimed they could not prosecute Burge and others because the statute of limitations had expired—not only on these physical violations, but also for the crimes of perjury or obstruction of justice for repeated false testimony denying the acts of torture. To briefly summarize the results of their four-year, \$7 million investigation, it was too bad, so sad, time to close the book on this unfortunate story.²⁸

Torture survivors, their family members, CPPT and other activists and attorneys refused to take no for an answer. Organizations, including BPAPT, marched in the streets and held rallies at Daley Plaza. We convened a hearing at the Cook County Board and obtained the passage of a resolution calling on the U.S. Attorney’s Office to prosecute Burge and his men for the crimes they committed. Others organized a letter writing campaign and petition drive demanding that the U.S. Attorney in the Northern District of Illinois bring charges against Burge.

A year and half after the UN CAT issued its findings, Burge was indicted by the U.S. Attorney’s Office of the Northern District of Illinois and U.S. Department of Justice for two counts of perjury and one count of obstruction of justice for falsely denying he and others engaged in torture in a civil rights case.

²⁷ See UN COMMITTEE AGAINST TORTURE, *Concluding Observations*, CAT/C/USA/CO/2, para 25, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fUSA%2fCO%2f2&Lang=en.

²⁸ See “A Report on the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Police Torture in Chicago,” <http://peopleslawoffice.com/wp-content/uploads/2012/02/5.8.07.Final-Corrected-Version-of-Report.pdf> (last visited Oct. 10, 2016).

On June 28, 2010, after torture survivors Anthony Holmes, Melvin Jones, Shadeed Mu'min and Gregory Banks courageously testified against Burge, Burge was found guilty of all three counts, and in January 2011 he was sentenced to serve four and half years in prison.²⁹

BURGE'S CONVICTION: A HOLLOW VICTORY

While Burge's conviction was significant, the victory was a hollow one. Burge's conviction failed to address the material needs of the torture survivors. Many of the survivors continued to suffer psychologically from the torture they endured, experiencing flashbacks and nightmares of their interrogations, but there was no place for them to obtain any psychological counseling or assistance. Moreover, the vast majority of torture survivors, including Anthony Holmes, Melvin Jones, and Shadeed Mu'min, had no legal recourse to seek any financial compensation or redress. The statute of limitations on any civil claims they could have brought expired decades ago, as many languished in their prison cells fighting their criminal prosecution and convictions.³⁰ As BPAPT argued in 2008, the Burge torture survivors were entitled to reparations.

PUBLIC MEMORIALS AND REPARATIONS

In January 2011, on the heels of Burge's conviction, Chicago Torture Justice Memorials (CTJM), a group of artists, activists, educators, survivors and attorneys, formed to focus on the creation of public memorials, one component of reparations, in the Burge torture cases. From the outset, we grappled with how to honestly and respectfully depict the racist violence inflicted on the survivors and their ongoing suffering, while also giving life to their resilience, resistance and decades of struggle for justice.

²⁹ Matthew Walberg & William Lee, *Burge Found Guilty: Jury finds former police commander lied when he denied torture allegations*, CHICAGO TRIBUNE, June 28, 2010 http://articles.chicagotribune.com/2010-06-28/news/ct-met-burge-trial-0629-20100628_1_burge-chicago-police-cmdr-special-cook-county-prosecutors; *Former Chicago Police Officer Sentenced for Lying About Police Torture*, U.S DEPARTMENT OF JUSTICE, <https://www.justice.gov/opa/pr/former-chicago-police-officer-jon-burge-sentenced-lying-about-police-torture> (last visited Oct. 10, 2016).

³⁰ Claims brought pursuant to 42 U.S.C. § 1983 against a local law enforcement official (e.g., excessive force) must be brought within two years of the incident in Illinois. See *Wilson v. Garcia*, 471 U.S. 261, 280 (1985). Claims brought pursuant to Illinois law against a local law enforcement official (e.g., battery, assault) must be brought within one-year of the incident. See 745 Ill. Comp. Stat. 10/8-101.

After putting out an open call to all justice seekers to submit speculative proposals for memorials, CTJM held numerous events across the City of Chicago—art charrettes, pechakucha presentations, and a round table discussion with the torture survivors—where we confronted new questions and continued to challenge ourselves to imagine, beyond the confines of the law, what true justice would look like for the survivors and all those affected.

A year and half later, in October of 2012, CTJM mounted our first exhibition, entitled “Opening the Black Box: The Charge Is Torture” featuring over 70 of the speculative memorials submitted.³¹ They included a wide range of artistic mediums, including architectural proposals, photographs, soundtracks, and sculptures. Lucky Pierre, an art collective, created one hundred direct actions the public could take in response to the torture cases. Teachers and professors submitted their syllabi on how they would teach the Burge torture cases, from high school art classes to college seminars on international human rights. Carla Mayer, a CTJM member, submitted a proposal to add an additional star to the Chicago flag to memorialize the Burge torture cases, which later became the iconic image in the reparations campaign. I submitted a draft of the reparations ordinance as a speculative memorial.

As we continued to reflect on reparations in the Burge torture cases, CTJM focused on international human rights law and the principles of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.³² We also researched reparations schemes for other gross human rights violations in other countries, looking at redress provided to the survivors of the “Dirty War” in Argentina, those tortured and killed under General Augusto Pinochet’s regime in Chile, the torture of the Mau Mau by British colonizers in Kenya, and those torturing in South Africa. We looked to the redress provided to Black survivors of a massacre by a white mob in the Rosewood, Florida in 1923; the Civil Liberties Act of 1988, providing compensation to the Japanese Americans and Aleut residents who were forcefully detained and/or relocated during World War Two; and the compensation provided to people forcibly sterilized in North Carolina in the 1900s.³³ Relying on these examples

³¹ To view the proposals, see *Proposals*, CHICAGO TORTURE JUSTICE MEMORIALS, <http://chicagotorture.org/proposals> (last visited on Oct. 4, 2016).

³² See UN COMMITTEE AGAINST TORTURE, *General Comment*, No. 3, CAT/C/CG/3 (Dec. 13, 2012) (“General Comment 3”).

³³ See *Rosewood*, FLORIDA DIVISION OF LIBRARY AND INFORMATION SERVICES, <http://dos.myflorida.com/library-archives/research/explore-our-resources/florida-history-culture-and-heritage/rosewood/> (last visited on Oct. 10, 2016) (for Florida state legislation pertaining to the Rosewood Massacre); the Civil Liberties Act of 1998, 50a U.S.C. § 1989b et seq, *available at*

as templates and reflecting an input from the survivors and submissions to the art exhibition, I revamped the ordinance, striving to root it in a restorative justice framework.

THE BEGINNING OF THE REPARATIONS CAMPAIGN (#RahmRepNow)

In the fall of 2013, an opportunity presented itself to file the reparations ordinance before Chicago's City Council. On September 11th, the Council voted to approve a \$12.3 million settlement for Ronald Kitchen and Marvin Reeves, both of whom were tortured, wrongfully convicted, and spent twenty-one years in prison for a quintuple murder they did not commit.³⁴ Shortly after the vote, Fran Spielman of the Chicago Sun-Times asked Mayor Emanuel whether the settlement served as an apology for the torture cases. Mayor Emanuel acknowledged that the cases were a "dark" chapter and a "stain on the City's reputation" but said that he wanted to build a city for the future. He summarized his sentiments by saying "I am sorry this happened. Let us all now move on."

Mayor Emanuel's "apology" infuriated many of the torture survivors and other members of CTJM who felt it was half-hearted, insincere, and dismissive. It motivated us to file the reparations ordinance before the City Council to let Mayor Emanuel and the city know that we could not and would not move on, and that we would continue to demand that the City of Chicago take responsibility and make amends for the enormous, on-going harm caused in the Burge torture cases.

When we filed the ordinance, many of us never thought in our wildest dreams it would pass. Although we had little experience with City Council politics, we educated ourselves on how to reach out to and gain aldermanic

<https://www.gpo.gov/fdsys/pkg/STATUTE-102/pdf/STATUTE-102-Pg903.pdf> (last visited Oct. 10, 2016); Eugenics Asexualization and Sterilization Compensation Program, §143B-426.50, et seq., *available at* <http://www.sterilizationvictims.nc.gov/documents/NCGS143B-426.50-57.pdf> (last visited Oct. 10, 2016); *see also* Commission to Study Reparations Proposals for African-Americans Act, H.R. 40, 113th Cong. (1st Sess. 2013), *available at* <https://www.congress.gov/bill/113th-congress/house-bill/40> (introduced by House Representative John Conyers every year in Congress since 1989).

³⁴ Unlike others, Ronald Kitchen and Marvin Reeves were able to sue to seek redress for their wrongful convictions and imprisonment pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994) after they successfully vacated their murder convictions. Due the expiration of time, some of the Burge torture survivors were unable to challenge their convictions, while others were not innocent of the crimes they were convicted of and therefore would never have the opportunity to sue to seek redress for the torture they endured.

support for the ordinance. While there were many setbacks along the way, over time, our call for justice for the survivors of police torture gained powerful allies, including Amnesty International, USA, which joined the campaign in the spring of 2014. By September 2014, we were able to secure the public endorsement of twenty-six aldermen and women, only one vote shy to make the bill into law. We were committed to making the reparations ordinance an issue in the upcoming local elections.

WE CHARGE GENOCIDE

As election season was underway, the UN Committee Against Torture was again reviewing the US Government's compliance with the UN Convention Against Torture in November of 2014. Earlier that spring, a new intergenerational grassroots group called We Charge Genocide ("WCG") formed after one of their dear friends, Dominique "Damo" Franklin, a young Black man, died after he was tased by Chicago Police officers. Damo's friends were devastated. Mariame Kaba, a revolutionary thinker, abolitionist, and founder of Project NIA, developed the ingenious idea of sending an all-youth of color delegation to the UN to once again raise the issue of racist police violence—this time centering the experiences of youth of color in Chicago, and naming the delegation in honor of the historic Civil Rights Congress's petition "We Charge Genocide" filed with the United Nations General Assembly in 1951.³⁵ The delegation, along with a CTJM representative, attorney Shubra Ohri, also asked the UN CAT to support the reparations ordinance.

The WCG delegation was bold and courageous, taking the UN CAT hearing by storm. They staged a protest inside the UN hearing room in Geneva, Switzerland, capturing the attention of the UN Committee members, the US delegation, and the international media. Weeks later, on November 20, 2014, the UN Committee issued its report citing its on-going concerns regarding racist police violence in Chicago, noting particular concerns about violence against African American and Latinx youth, and again cited the Burge torture cases, calling on the US Government to support the passage of the "Chicago Police Torture Reparations Ordinance."³⁶ Soon thereafter, CTJM and AI joined forces with Project NIA and WCG to form an unstoppable, multi-racial, and intergenerational grassroots coalition to pass the ordinance.

³⁵ See WE CHARGE GENOCIDE, <http://wechargegenocide.org> (last visited Sept. 22, 2016).

³⁶ UN COMMITTEE AGAINST TORTURE, *Concluding Observations*, CAT/C/USA/CO/3-5, para 26(d), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FUSA%2FCO%2F3-5&Lang=en.

THE ELECTION SEASON AND THE PASSAGE OF REPARATIONS LEGISLATION

Over the next six months, during the height of the election season, the Reparations Coalition, along with several allies, held events and directs actions throughout the city demanding that Mayor Emanuel, other mayoral candidates and individuals seeking aldermanic office support the ordinance. People sang in, 'died-in,' and curated a pop-up art memorial at City Hall; held a Kwanza action at Daley Plaza; created a light installation demanding "Reparations Now" outside of Mayor Emanuel's home; took over CTA trains; and held Twitter power hours, using social media every step of way with the unifying hashtag #RahmRepNow. Fueled by the attention brought to police violence against Black people by the Black Lives Matter movement, the reparations ordinance became the key demand at every police brutality demonstration in the City.

On Valentine's Day, 2015, on the eve of the mayoral election, we held a raucous rally for reparations at the storied Chicago Temple with hundreds in attendance. We called on Mayor Emanuel to "have a heart" and pass the reparations ordinance, and we passed out a voter's guide entitled "Who's Right on Reparations" listing which of the mayoral and aldermanic candidates supported the ordinance. Days after the rally, CTJM received a call from Corporation Counsel Steve Patton asking for a meeting to discuss the ordinance.

The following week, Mayor Emanuel failed to get fifty percent of the vote, prompting a run-off election in April of 2015. We then had a series of meetings with Mayor Emanuel's administration that were at times heated and contentious. We succeeded in forcing the administration to meet many of our demands, but we also made some very painful compromises. Right after the run-off election, we reached an agreement with Mayor Emanuel and his administration.

Ultimately, the legislation that passed as a result of the negotiations provided for the creation of a \$5.5 million reparations fund to pay up to \$100,000 to each eligible Burge torture survivor still alive; the provision of counseling services to police torture survivors and family members at a dedicated facility on the South Side of Chicago; free tuition at Chicago's City Colleges for Burge torture survivors and their family members, including their grandchildren; job placement for Burge torture survivors in programs for formerly incarcerated people; priority access to City of Chicago's re-entry support services, including job training and placement, counseling, food, & transportation assistance, senior care, health care, and small business support services; a

formal apology from the Mayor and City Council for the torture committed by Burge and his men; a permanent public memorial acknowledging the torture committed by Burge and his men; and a history curriculum on the Burge torture cases to be taught to all Chicago Public School students in the 8th and 10th grades.

On May 6th, the reparations legislation was presented to the City Council for a vote. Fourteen of the torture survivors were in attendance, and upon the unanimous passage of legislation, they received a standing ovation from Mayor Emanuel and the council members. It was a transformative moment. Years ago, the Chicago Reader branded Chicago a “Town Without Pity,” and on May 6th, we made it a city that cared.³⁷ At the victory party that night, Darrell Cannon, a leader of the reparations campaign, marveled with tears in his eyes: “Reparations? For Black people? In America?”

The passage of the reparations legislation made history. It is the first time a municipality in the U.S. has provided reparations for racially motivated police violence. The movement made the city of Chicago provide money to survivors and for services it was not legally obligated to.

CONCLUSION

Throughout the continuing saga of the Chicago police torture cases, the legal system failed the survivors and community every step of the way. The courts failed to stop Burge and others from torturing Black men and women for decades, or prevent the use of their coerced confessions to obtain wrongful convictions. State and federal prosecutors failed to hold Burge and other detectives fully accountable for their crimes and international human rights violations. The civil legal system was not designed to provide, and therefore incapable of providing, the holistic redress needed by all of those harmed by Burge and his men.

While lawyers and legal workers played an indispensable role in these cases, zealously advocating for their clients and using both the criminal and civil cases to investigate and document the torture practices and those harmed, the courts were not the vehicle that yielded the measure of justice achieved in these cases. Lawyers could not have litigated this to success. It was the power of the people – torture survivors, family members, organizers, activists, lawyers and legal workers – that made this dream into a reality.

³⁷ See Conroy, *supra* note 16.

The reparations package is not a perfect solution, and it is not a panacea for stopping and redressing racist police violence. But for decades, we have witnessed this perpetual cycle of racist police violence, righteous responses, and then failed prosecutions of killer and torturing police officers. A call for reparations that are expansive in scope and that center the needs of people targeted for police violence may be a new way for us to think about accountability and justice for police brutality in the face of our fatally flawed legal system.