

2011

## The Price Is Wrong: The City of Chicago's Dilemma in Funding Jon Burge's Defense

Ryan Carlsen

Follow this and additional works at: <http://lawcommons.luc.edu/pilr>



Part of the [Criminal Procedure Commons](#)

---

### Recommended Citation

Ryan Carlsen, *The Price Is Wrong: The City of Chicago's Dilemma in Funding Jon Burge's Defense*, 16 Pub. Interest L. Rptr. 94 (2011).  
Available at: <http://lawcommons.luc.edu/pilr/vol16/iss2/5>

This Feature is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized administrator of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

*FEATURE ARTICLE*

**THE PRICE IS WRONG: THE  
CITY OF CHICAGO'S  
DILEMMA IN FUNDING  
JON BURGE'S DEFENSE**

*by* RYAN CARLSEN

**O**n June 28, 2010, former Chicago Police Commander Jon Burge was convicted by a jury in federal court of perjury and obstruction of justice.<sup>1</sup> These charges stemmed from Burge's sworn statements in *Hobley v. Burge*, a federal civil rights lawsuit in which he denied that he participated in, witnessed, or knew of police torture.<sup>2</sup> When sentencing Burge to 54 months in prison on January 21, 2011, Judge Joan Humphrey Lefkowitz deplored the fact

that such torture had become “widespread,” concluding that it had “irreparably” undermined and “defiled” the justice system.<sup>3</sup>

Yet despite this conviction and condemnation of Burge’s actions, the City of Chicago continues to pay top trial attorneys hefty legal fees to defend Burge in numerous civil lawsuits brought by alleged victims of his torture.<sup>4</sup> As of December 31, 2010, the City of Chicago had spent \$12.3 million to defend Burge, the City itself and other City employees in cases alleging torture under Burge’s command.<sup>5</sup>

Given Burge’s conviction, attorneys representing the alleged victims are calling for the City to stop financing his defense, arguing that it is legally, politically and morally unjustifiable.<sup>6</sup> Current and former city officials argue, however, that as a result of a 1997 federal appellate court decision, the City has no choice but to pay for Burge’s defense.<sup>7</sup> Meanwhile, the City’s litigation costs continue to rise and the alleged torture victims with pending lawsuits have yet to see any compensation.

#### DISCOVERY AND ACKNOWLEDGEMENT OF TORTURE UNDER BURGE’S COMMAND

In February 1982, two white Chicago Police officers were killed during a routine traffic stop by two African-American men on the south side of Chicago.<sup>8</sup> A five-day manhunt led by Area 2 Lieutenant Jon Burge culminated with the arrest of Andrew and Jackie Wilson, both of whom confessed and were convicted of murder.<sup>9</sup>

From the start, Andrew Wilson claimed that he was tortured by Burge and other detectives, alleging that they suffocated him with a plastic bag, beat and kicked him, handcuffed him across a hot steam radiator, shocked him with an electric generator, and placed a gun in his mouth.<sup>10</sup>

In 1986, Wilson filed a civil rights lawsuit, bringing to light a pattern of torture and abuse of criminal suspects by Jon Burge and detectives under his command.<sup>11</sup> When the case went to trial in 1989, Wilson’s attorneys began receiving anonymous letters which ultimately led to the discovery of evidence of numerous similar cases of torture.<sup>12</sup>

Reinvestigations of complaints by the Chicago Police Department's Office of Professional Standards (OPS) confirmed this new evidence and ultimately concluded that "systematic" torture existed under Burge and that high-ranking officers were aware of the abuse and did nothing to stop it.<sup>13</sup> Based on these conclusions, the City of Chicago fired him in 1993.<sup>14</sup>

In addition, the Illinois Appellate Courts began ordering new hearings and trials for several alleged torture victims.<sup>15</sup> In January 2003, Illinois Governor George Ryan released four of Burge's torture victims from death row, granting them full innocence pardons.<sup>16</sup>

Calls for the prosecution of Burge and his associates led to an investigation by a county-appointed Special Prosecutor.<sup>17</sup> While bringing no indictments, the Special Prosecutor issued a report in 2006, concluding that Burge and his associates acted with impunity in abusing three suspects, and that the police superintendent knew about the torture of Andrew Wilson but failed to discipline Burge.<sup>18</sup>

Following the report, the Chicago City Council acknowledged in 2007 that torture occurred and called for the settlement of all pending civil cases claiming abuse from Burge.<sup>19</sup> Subsequently, on October 21, 2008, U.S. Attorney Patrick Fitzgerald announced a three-count indictment against Burge for perjury and obstruction of justice.<sup>20</sup>

#### FINANCING THE DEFENSE OF THE TORTURE SCANDAL

Since 1986, eleven alleged torture victims have sued Jon Burge and the City of Chicago.<sup>21</sup> These suits have alleged not only that Burge and detectives under his command physically and psychologically tortured the individual plaintiffs, but that City officials had knowledge of the practice and failed to stop or discipline those responsible.<sup>22</sup> As a result, the City of Chicago and various officials in the Police Department were included as defendants in addition to Burge.<sup>23</sup>

The City's payment of legal fees to outside counsel began with the defense against Andrew Wilson's civil lawsuit.<sup>24</sup> While the City primarily defended the Wilson case and three other lawsuits filed in the 1990s through its in-house

counsel, the City approved Burge's choice of outside counsel to represent him.<sup>25</sup>

Burge did not require separate counsel from the city until a conflict of interest arose from his firing in 1993.<sup>26</sup> When a new wave of civil lawsuits was filed in the 2000s, beginning with those individuals pardoned by Governor Ryan, the City began hiring outside counsel to represent all of the defendants.<sup>27</sup>

As of December 31, 2010, the City of Chicago has paid a total of \$11,027,489 in legal fees to outside counsel to defend Burge, itself, and other City employees in civil cases alleging torture under Burge's command.<sup>28</sup> When added to fees the City paid to outside counsel to represent itself in the various torture investigations, the City has paid a total of \$12,382,575 to outside counsel.<sup>29</sup> Another \$21,179,000 has been approved in judgment and settlement payments to ten individuals who have alleged torture in civil suits.<sup>30</sup>

Currently, five civil lawsuits are still pending against Burge and his associates, with four including claims of torture.<sup>31</sup> Since Burge's conviction on June 28, 2010, the city has expended \$1,225,573 on legal fees to outside counsel to defend these cases.<sup>32</sup> In addition, approximately twelve current prisoners are seeking or have been granted new trials based on their torture allegations.<sup>33</sup> If these individuals are released, they also could potentially sue Burge and the City for damages.<sup>34</sup>

#### THE CASE AGAINST THE CITY

Since the City is no longer using its Law Department to defend these cases, the legal fees to private counsel constitute an extra expense, funded by taxpayer dollars.<sup>35</sup> So why is the City paying top dollar to defend Burge when it acknowledges that he committed these acts of torture?

Critics of the spending contend that the City should stop paying for Burge's representation and no longer fight torture claims.<sup>36</sup> They specifically point to pleadings filed in the proceedings to fire Burge where the City admitted not only that Burge tortured specific individuals, but that under Jon Burge's command, it was normal practice to torture African-American suspects.<sup>37</sup>

Flint Taylor, an attorney who represented Andrew Wilson and numerous other alleged victims, claims that it is “legally, politically and morally” unjustifiable for the City to finance Burge’s defense while refusing to compensate his victims.<sup>38</sup> Taylor indicates that while the City exercised its discretion in representing Burge for the past 20 years, it did so in an “unprincipled and disgraceful way,” given the City’s own admissions.<sup>39</sup>

Burge’s criminal conviction, however, should have been the “ultimate cut off” in the City’s payment of his legal fees.<sup>40</sup> A Chicago ordinance, Taylor contends, prohibits the City from covering legal fees for anyone charged or indicted in a criminal case.<sup>41</sup> It would seem that under its own laws, the City can no longer fund Burge’s defense. Yet the City continued to pay Burge’s civil attorneys following his indictment, shelling out \$1.2 million to date since his conviction.<sup>42</sup>

Taylor questions not only the City’s funding of private lawyers for Burge, but its choice in lawyers to represent him.<sup>43</sup> As Taylor points out, Burge has had “the best private lawyers that the city could buy for 22 years.”<sup>44</sup> The growing defense costs, Taylor argues, extend beyond Burge to the outside counsel representing other City defendants in the torture cases.<sup>45</sup>

While the City has a conflict of interest and must hire outside counsel to represent Burge, no such conflict exists with the other City defendants.<sup>46</sup> Taylor argues that the City could hire ten to fifteen new in-house attorneys with half the amount the City is paying private lawyers per year.<sup>47</sup> The outside counsel hired by the City, Taylor states, “is an extravagance.”<sup>48</sup>

Taylor and others argue that not only should the City cut Burge loose, but it should also settle those civil torture lawsuits that remain pending.<sup>49</sup> Taylor posits that that City’s money would be much better spent compensating the victims of Burge’s torture, both those with and without lawsuits, rather than paying legal fees.<sup>50</sup> He points to the 2007 Chicago City Council hearing and resolution which instructed legal counsel representing the city to settle with all remaining plaintiffs in lawsuits against Burge.<sup>51</sup>

## THE CITY'S DILEMMA IN DEFENDING BURGE

While the City of Chicago acknowledges that it is in a tenuous position in representing Burge, it argues that its hands are tied. In *Wilson v. City of Chicago*, the Seventh Circuit Court of Appeals found that when Burge tortured suspects to obtain confessions, he was acting within the scope of his employment as a Chicago police officer.<sup>52</sup> Since Illinois law mandates that the government pay any judgment or settlement for compensatory damages for which an employee acting within the scope of his employment is liable, the Court found that the City was liable for all judgments against Burge.<sup>53</sup>

According to City Law Department spokeswoman Jennifer Hoyle, the City believes that the *Wilson* decision not only requires the City to pay judgments against Burge, but also imposes a duty on it to represent him.<sup>54</sup> Failing to select and pay for Burge's representation, Hoyle argues, could lead to higher judgments against him than if the City continued to represent him.<sup>55</sup>

"It doesn't make sense for us to let him pursue his own legal defense or no defense at all, not hire an attorney at all and have a ridiculously high default judgment entered against him, or have his attorney agree to some outrageous settlement," Hoyle proclaimed.<sup>56</sup>

The City maintains that it is acting in the best interest of the taxpayers by continuing to represent Burge.<sup>57</sup> "As a prudent watchdog of taxpayer money, the City has no choice but to be involved," concluded former Assistant Corporation Counsel Lawrence Rosenthal, who represented the City in the *Wilson* case.<sup>58</sup> While the City believes it is required to represent Burge, Hoyle points out that the City is looking for other options and "continues to reserve the right to raise any additional evidence it may uncover and assert that he was acting outside the scope of his employment."<sup>59</sup>

When it comes to settlement of the torture cases, Hoyle explains that the City cannot settle every claim filed against Burge, and that a "certain amount of due diligence" needs to be expended to determine the validity of the claim.<sup>60</sup> She states that settlement in these cases is "determined on a case-by-case basis, just as in any other case against the City."<sup>61</sup>

Hoyle also cautions against taking a broad interpretation of the city ordinance that Taylor claims prohibits the City from covering Burge's legal fees.<sup>62</sup> By refraining from paying for his defense in his federal criminal trial, she states, the City believes it has followed the ordinance.<sup>63</sup>

#### A RESOLUTION TO THE CITY'S DILEMMA

Taylor does not see the *Wilson* decision as a hindrance to ending the public financing of Burge's lawyers.<sup>64</sup> He points out that *Wilson* only makes the City liable for judgments against Burge, and that "there is nothing in that decision that says you have to pay for the lawyers."<sup>65</sup> For Taylor, the resolution to the City's dilemma is simple: admit liability.<sup>66</sup> If the City admits that it is liable, it can either settle cases or attack plaintiffs' damages at trial.<sup>67</sup>

As a result, Taylor explained, "Burge is taken out of the equation," and the City would not have to represent him.<sup>68</sup> Furthermore, if the City admits liability, the case would be over, as no plaintiffs' attorneys would insist on keeping Burge in the lawsuit.<sup>69</sup>

---

#### NOTES

1 G. Flint Taylor, *Chicago Police Commander Convicted of Lying About Torture*, 9 POLICE MISCONDUCT & C.R. L. REP. 17, 1 (2010).

2 *Id.*

3 Transcript of Sentencing Proceedings, *U.S. v. Burge*, No. 08 CR 846 at 7 (N.D. Ill. Jan. 21, 2011).

4 Interview with G. Flint Taylor, Partner, People's Law Office, in Chi., Ill. (March 1, 2011); Matthew Walberg, 'Rock and a hard place' for city over Burge costs, CHI. TRIB., Aug. 11, 2010, available at [www.chicagotribune.com/news/local/ct-met-burge-costs-20100811,0,1723489.story](http://www.chicagotribune.com/news/local/ct-met-burge-costs-20100811,0,1723489.story).

5 Interview with G. Flint Taylor, *supra* note 4.

6 *Id.*; Walberg, *supra* note 4.

7 Walberg, *supra* note 4.

8 John Conroy, *Deaf to the Screams: The Next State's Attorney to Investigate Police Torture in Chicago will be the First*, CHI. READER, July 31, 2003, available at <http://www.chicagoreader.com/chicago/deaf-to-the-screams/Content?oid=912813>.

9 *Id.*

10 *Id.*

11 G. Flint Taylor, *Chicago Police Ringleader Indicted*, 9 POLICE MISCONDUCT & C.R. L. REP. 7, 2 (2009); John Conroy, *Deaf to the Screams: The Next State's Attorney to Investigate Police*

*Torture in Chicago will be the First*, CHI. READER, July 31, 2003, available at <http://www.chicagoreader.com/chicago/deaf-to-the-screams/Content?oid=912813>.

12 Conroy, *supra* note 8.

13 *Id.*; G. Flint Taylor, *supra* note 11 at 2.

14 Controy, *supra* note 8; G. Flint Taylor, *supra* note 11 at 3.

15 G. Flint Taylor, *supra* note 11 at 3.

16 *Id.*

17 *Id.*

18 *Id.* at 4.

19 TORTURE IN CHICAGO: A SUPPLEMENTARY REPORT ON THE ON-GOING FAILURE OF GOVERNMENT OFFICIALS TO ADEQUATELY DEAL WITH THE SCANDAL, 10-13, (Oct. 29, 2008), available at [http://www.peopleslawoffice.com/site\\_media/article\\_files/10.29.08.Supplementary\\_Report\\_Final\\_.pdf](http://www.peopleslawoffice.com/site_media/article_files/10.29.08.Supplementary_Report_Final_.pdf).

20 G. Flint Taylor, *supra* note 11 at 5.

21 Interview with G. Flint Taylor, *supra* note 4.

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.*

27 *Id.*

28 *Id.*

29 *Id.*

30 *Id.*

31 Natasha Korecki, *Chicagoans to keep on paying for Burge's Misconduct*, CHICAGO SUN TIMES, Mar. 16, 2011, available at <http://www.suntimes.com/4335170-417/chicagoans-to-keep-on-paying-for-burges-misconduct.html>; Interview with G. Flint Taylor, *supra* note 4.

32 Interview with G. Flint Taylor, *supra* note 4.

33 Walberg, *supra* note 4.

34 *Id.*

35 John Conroy, *Follow-Up: The Meter's Still Running and the Mayor's Still Mum*, CHI. READER, July 5, 2007, available at <http://www.chicagoreader.com/chicago/follow-up-the-meters-still-running-and-the-mayors-still-mum/Content?oid=925394>; Interview with G. Flint Taylor, *supra* note 4.

36 Conroy, *supra* note 35.

37 Interview with G. Flint Taylor, *supra* note 4.

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*; CHICAGO, ILL. MUNICIPAL CODE §2-152-170 (2011).

42 Interview with G. Flint Taylor, *supra* note 4.

43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.*

49 Locke Bowman, *City's Head Still in the Sand on Burge Torture Scandal*, HUFFINGTON POST, March 1, 2011, available at <http://www.huffingtonpost.com/locke-bowman/citys-head-still-in->

the-s\_b\_829847.html.; TORTURE IN CHICAGO, *supra* note 15 at 19.; Editorial, *Stop the Financial Torture: Settle Burge Lawsuits Now*, CHI. SUN TIMES, Sept. 25, 2007.

50 Interview with G. Flint Taylor, *supra* note 4.

51 *Id.*; TORTURE IN CHICAGO, *supra* note 15 at 11.

52 *Wilson v. City of Chicago*, 120 F.3d 681, 685 (7th Cir. 1997).

53 745 ILCS 10/9-102 (2011); *Wilson*, 120 F.3d at 685.

54 Phone Interview with Jennifer Hoyle, Spokeswoman, City of Chicago Law Department, in Chi., Ill. (April 15, 2011).

55 *Id.*

56 Walberg, *supra* note 4.

57 Interview with Jennifer Hoyle, *supra* note 54.

58 Walberg, *supra* note 4.

59 Interview with Jennifer Hoyle, *supra* note 54.

60 *Id.*

61 *Id.*

62 *Id.*

63 *Id.*

64 Interview with G. Flint Taylor, *supra* note 4.

65 *Id.*

66 *Id.*

67 *Id.*

68 *Id.*

69 *Id.*