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Steven W. Becker

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**WHEN JUDGES JUDGE THEMSELVES: THE  
CHICAGO POLICE TORTURE SCANDAL AND  
THE CONTINUING QUEST FOR JUSTICE IN  
THE CASE OF *PEOPLE V. KEITH WALKER***

BY  
STEVEN W. BECKER\*

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“No citation of authority is required for the proposition that in a civilized society torture by police officers is an unacceptable means of obtaining confessions from suspects.”

– Presiding Justice Wolfson,  
*People v. Cannon*, 688  
N.E.2d 693, 696  
(Ill. App. Ct. 1997).

Most people would be shocked to learn that Chicago, Illinois, has been plagued by a police torture scandal dating back more

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\* Assistant Appellate Defender, Office of the State Appellate Defender, First District, Chicago, Illinois; Senior Research Fellow, International Human Rights Law Institute, DePaul University College of Law, Chicago, Illinois; Co-Rédacteur en Chef, *Revue Internationale de Droit Pénal* (France).

The author represented Keith Walker, an alleged police torture victim, throughout his collateral appeal process, which generated two separate decisions by the Illinois Appellate Court in Mr. Walker’s favor. *See People v. Walker*, No. 1-04-2212 (1st Dist. May 30, 2006) (Rule 23 Order) (vacating summary dismissal of post-conviction petition, remanding case for further proceedings, and ordering trial judge to recuse himself); *People v. Walker*, No. 1-07-0095 (1st Dist. Mar. 22, 2007) (Order) (reversing summary dismissal of post-conviction petition, remanding case for further proceedings, and ordering that case be heard before different judge).

The views expressed in this article are the author’s own and do not necessarily reflect the views of the organizations with which he is affiliated.

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than 30 years. What is worse, however, is the realization that there is a continuing conspiracy to cover-up this festering wound on Illinois' criminal justice system by current and former prosecutors, one of whom is the current Mayor of Chicago,<sup>1</sup> police oversight organizations, and, most appallingly, members of the judiciary, who are sworn to uphold the law and are bound by ethical canons to be impartial arbiters in the resolution of legal controversies.

Sadly, because of the incestuous relationship between prosecutors and the judiciary in Cook County (which includes Chicago), torture victims, their lawyers, and human rights organizations have been forced to seek justice in international forums, because they have been unable to receive fair hearings at the trial court level. For example, in its conclusions and recommendations of May 18, 2006, the United Nations Committee Against Torture highlighted this entrenched effort to provide impunity to police detectives who are alleged to have extracted confessions by torture:

The Committee is concerned with allegations of impunity of some of the State party's law-enforcement personnel in respect of acts of torture or cruel, inhuman, or degrading treatment or punishment. The Committee notes the limited investigation and lack of prosecution in respect of the allegations of torture perpetrated in areas 2 and 3 of the Chicago Police Department.<sup>2</sup>

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<sup>1</sup> See John Conroy, *Twenty Questions: Lawyers for Police Torture Victims are Trying to Get Mayor Daley on the Stand. We've Got a Few Things to Ask Him Too*, CHI. READER, May 11, 2007, §1, at 1.

<sup>2</sup> United Nations Committee Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention*, ¶ 25, CAT/C/USA/CO/2 (May 18, 2006).

Similarly, lawyers and human rights groups have sought relief for these torture practices with the Inter-American Commission on Human Rights.<sup>3</sup>

In this regard, the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines “torture,” in pertinent part, as: “[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession . . . .”<sup>4</sup> Article 2 of the Convention provides that “[n]o exceptional circumstances whatsoever . . . may be invoked as a justification of torture.”<sup>5</sup> Furthermore, Article 15 of the Torture Convention specifies that “[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”<sup>6</sup> Moreover, under Illinois law, it is a felony to compel a confession or information by force or threat.<sup>7</sup>

### BRIEF OVERVIEW OF POLICE TORTURE IN CHICAGO

It is well documented that between 1973 and the fall of 1991, at Detective Areas 2 and 3 of the Chicago Police Department, Commander Jon Burge and detectives working under his command allegedly tortured more than 100 criminal suspects by

<sup>3</sup> See Steve Ivey, *Human-Rights Group Asked to Aid Burge Probe: International Panel is Arm of the OAS*, CHI. TRIB., Oct. 15, 2005, § 1, at 9.

<sup>4</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, art. 1, ¶ 1, U.N. GAOR 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (Dec. 10, 1984).

<sup>5</sup> *Id.* at art. 2, ¶ 2.

<sup>6</sup> *Id.* at art. 15.

<sup>7</sup> See 720 ILL. COMP. STAT. 5/12-7(a) (2006) (“[A] person who, with intent to obtain a confession, statement or information regarding any offense, inflicts or threatens imminent bodily harm upon the person threatened or upon any other person commits the offense of compelling a confession or information by force or threat.”).

methods including electric shock to the genitals, “baggings” (i.e., suffocation by plastic typewriter cover or bag), “Russian roulette,” mock executions, and beatings.<sup>8</sup> The gravity of these torture practices first surfaced in connection with the Andrew Wilson case.<sup>9</sup> In September 1990, internal investigator Michael Goldston issued the following conclusions after studying numerous cases of alleged torture that occurred at Area 2 police headquarters over a period of more than a decade:

In the matter of alleged physical abuse, the preponderance of the evidence is that abuse did occur and that it was systematic. The time span involved covers more than ten years. The type of abuse described was not limited to the usual beating, *but went into such esoteric areas as psychological techniques and planned torture*. The evidence presented by some individuals convinced juries and appellate courts that personnel assigned to Area 2 engaged in methodical abuse.

The number of incidents in which an Area 2 command member is identified as an accused can lead to only one conclusion. Particular command members were aware of the systematic abuse and

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<sup>8</sup> See CENTER ON WRONGFUL CONVICTIONS, NORTHWESTERN UNIVERSITY SCHOOL OF LAW, REPORT ON THE FAILURE OF SPECIAL PROSECUTORS EDWARD J. EGAN AND ROBERT D. BOYLE TO FAIRLY INVESTIGATE SYSTEMIC POLICE TORTURE IN CHICAGO 31-34 (Apr. 24, 2007) [hereinafter REPORT ON THE FAILURE OF SPECIAL PROSECUTORS], available at <http://www.law.northwestern.edu/cwc/issues/causesandremedies/Policemisconduct/Torture/TortureReport.pdf>; John Conroy, *Deaf to the Screams: The Next State's Attorney to Investigate Police Torture in Chicago Will be the First*, CHI. READER, Aug. 1, 2003, at 1.

<sup>9</sup> For a detailed account of the history of the Andrew Wilson case, see JOHN CONROY, UNSPEAKABLE ACTS, ORDINARY PEOPLE: THE DYNAMICS OF TORTURE (2000). See also FRANCINE J. SANDERS, OFFICE OF PROFESSIONAL STANDARDS, CHICAGO POLICE DEPARTMENT, REPORT OF INVESTIGATOR FRANCINE SANDERS, STAR #28, OFFICE OF PROFESSIONAL STANDARDS, RE: ANALYSIS OF WILSON CASE (Oct. 26, 1990).

perpetuated it either by actively participating in same or failing to take any action to bring it to an end. This conclusion is also supported by the number of incidents in which the Area 2 offices are named as the location of the abuse.<sup>10</sup>

Later that year, Amnesty International issued its own directive seeking an investigation into police torture practices in Chicago.<sup>11</sup>

The federal courts in Chicago subsequently came to the same conclusion about the systemic nature of police torture in Chicago. In 1999, a United States District Court judge wrote:

It is now common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions. Both internal police accounts and numerous lawsuits and appeals brought by suspects alleging such abuse substantiate that those beatings and other means of torture occurred as an established practice, not just on an isolated basis.<sup>12</sup>

Likewise, Judge Diane Wood of the United States Court of Appeals for the Seventh Circuit explained that “a mountain of evidence indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department.”<sup>13</sup>

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<sup>10</sup> MICHAEL GOLDSTON, OFFICE OF PROFESSIONAL STANDARDS, CHICAGO POLICE DEPARTMENT, REPORT OF INVESTIGATOR MICHAEL GOLDSTON, STAR #73, OFFICE OF PROFESSIONAL STANDARDS, RE: HISTORY OF ALLEGATIONS OF MISCONDUCT BY AREA TWO PERSONNEL 3 (Sept. 28, 1990) (emphasis added).

<sup>11</sup> Amnesty International, United States of America: Allegations of Police Torture in Chicago, Illinois, AMR/51/42/90 (Dec. 1990).

<sup>12</sup> United States ex rel. Maxwell v. Gilmore, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999).

<sup>13</sup> Hinton v. Uchtman, 395 F.3d 810, 822 (7th Cir. 2005) (Wood, J., concurring).

Most stunning, however, was Illinois Governor George Ryan's address at the DePaul University College of Law on January 10, 2003, in which he courageously excoriated the state of the criminal justice system in Illinois and then pardoned four death row inmates who had been tortured by Area 2 detectives and whom he concluded were innocent.<sup>14</sup> Interestingly, Governor Ryan pinpointed the judiciary as the entity most responsible for failing to render justice in these cases:

What I can't understand is why the courts can't find a way to act in the interest of justice. Here we have four more men who were wrongfully convicted and sentenced to die by the state for crimes the courts should have seen they did not commit. We have evidence from four men who did not know each other, all getting beaten and tortured and convicted on the basis of the confessions they allegedly provide.

They are perfect examples of what is so terribly broken about our system.

These cases call out for someone to act. They call out for justice, they cry out for reform.<sup>15</sup>

Despite repeated efforts to effect reform, as described below, the judiciary in Cook County has, almost without exception, remained deaf to Governor Ryan's call.

### **BIAS IN THE JUDICIARY AND THE SPECIAL PROSECUTORS' REPORT**

On April 5, 2001, a petition was filed with the chief judge of the Cook County Criminal Court seeking the appointment of a special prosecutor to investigate allegations of "torture, perjury,

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<sup>14</sup> George Ryan, Governor of Illinois, Address at the DePaul University College of Law, at 12 (Jan. 10, 2003) (on file with author).

<sup>15</sup> *Id.*

obstruction of justice, conspiracy to obstruct justice, and other offenses by police officers under the command of Jon Burge at Area 2 and later Area 3 headquarters in the City of Chicago during the period from 1973 to the present.”<sup>16</sup> The petition sought the appointment of a special prosecutor, in part, on the grounds that the Cook County State’s Attorney’s Office and, more specifically, Richard A. Devine, the then-Cook County State’s Attorney, labored under a *per se* conflict of interest, because his former law firm was paid more than \$800,000 to represent Jon Burge and other officers in connection with torture allegations and that Devine, himself, had personally represented Burge.<sup>17</sup> On April 24, 2002, Presiding Judge Paul Biebel, Jr., granted the petition, wherein he ruled that State’s Attorney Devine suffered under a *per se* conflict of interest, that the entire Cook County State’s Attorney’s Office was disqualified from further involvement,<sup>18</sup> and that Edward J. Egan should be appointed as special prosecutor, to be assisted by Robert D. Boyle.<sup>19</sup>

Soon thereafter, the torture victims sought to have their cases reassigned to judges outside of the Circuit Court of Cook County, because they asserted that it would be impossible for them to receive fair hearings on the grounds that an overwhelming majority of the sitting judges in the Felony Division of the Cook County Criminal Court, and in the Cook County judiciary, in general, had previous involvement with Area 2 or Area 3 tor-

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<sup>16</sup> Petition for Appointment of a Special Prosecutor at 1, *In re Appointment of Special Prosecutor*, No. 2001 Misc. #4 (Apr. 5, 2001).

<sup>17</sup> *Id.* at 7-10.

<sup>18</sup> See Jeff Coen, *State to Get Burge Cases; Judge Removes County Prosecutors Over Possible Conflicts*, CHI. TRIB., Apr. 10, 2003, Metro, § 2, at 1 (discussing Judge Biebel’s April 9, 2003 order for the Illinois Attorney General’s Office to take over cases involving post-conviction petitions in the Burge torture cases).

<sup>19</sup> Memorandum Opinion and Order at 7-8, *In re Appointment of Special Prosecutor*, No. 2001 Misc. #4 (Apr. 24, 2002).



ture cases.<sup>20</sup> In particular, the petition pointed out the startling fact that 50 of the 61 felony court judges in Cook County were either, *inter alia*, former prosecutors during the period in which statements allegedly coerced by torture were obtained, former police detectives or officers, or attorneys who had defended police officers in civil actions.<sup>21</sup> In addition, nearly one-third of these judges had direct and material involvement in the Burge torture cases.<sup>22</sup> Accordingly, the petitioners sought an impartial forum to have their cases heard because

[g]iven the myriad of personal and professional relationships between the sitting judges and present and former Cook County [Assistant State's Attorneys], it would create an impermissible conflict of interest and raise an appearance of impropriety, to allow Cook County Judges to preside over these torture cases in which they may have to weigh the credibility of their present and former colleagues and generally make findings which could be viewed as undermining the integrity and reputation of the [State's Attorney's Office], the Cook County judiciary, and the entire Cook County criminal justice system.<sup>23</sup>

On April 9, 2003, Chief Judge Biebel denied the petitioners' request to have their cases transferred out of Cook County.<sup>24</sup> In declining to grant the relief sought, he wrote, "The removal of Petitioners' cases from Cook County would, in essence, be an acknowledgement that the judges therein are incapable of fulfil-

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<sup>20</sup> See Memorandum in Support of Petition to Reassign Petitioners' Cases to Judges Outside the Circuit Court of Cook County at 1-3, In re Appointment of Special Prosecutor, No. 2001 Misc. #4 (July 24, 2002).

<sup>21</sup> *Id.* at 4.

<sup>22</sup> *Id.* at 4-5.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> Conroy, *supra* note 8.

ling their duty.”<sup>25</sup> Unfortunately, as evidenced by Keith Walker’s case, which is detailed in the next section, the judiciary has demonstrated, not only its inability, but also, its conscious refusal to adjudicate police torture cases in an impartial manner.

In July 2006, after spending an estimated seven million dollars,<sup>26</sup> the Special Prosecutors issued their Report (Special Prosecutors’ Report or Report), in which they concluded that, although “prisoner abuse” occurred at Areas 2 and 3 under Commander Jon Burge, the statute of limitations barred any prosecutions of those responsible.<sup>27</sup> In the Report, however, the Special Prosecutors seemed to spend most of their time deflecting criticism from former prosecutors, including former Cook County State’s Attorney and present Mayor Richard M. Daley, and discrediting the alleged torture victims rather than documenting the systemic pattern of torture that occurred in Chicago.<sup>28</sup> In fact, possibly the most absurd conclusion in the entire Report is the following: “Although the [Andrew] Wilson case was the focus of our investigation, it extended beyond the Wilson case until November, 1991 when Burge was suspended. Although there are numerous complaints of other acts of brutality which we suspect or believe occurred at Detective Areas 2 and 3, *we have not been able to uncover any proof that investigation and prosecution of any of those complaints was covered up by any police or prosecutive personnel.*”<sup>29</sup> Considering the overwhelming evidence of collusion between the prosecutors and police in the Chicago torture scandal, this remark seems more apropos for a law enforcement public relations campaign than

<sup>25</sup> John Conroy, *Blind Justices: The Prosecutors Who Sent Police Torture Victims to Prison are Now the Judges Who Keep Them There*, CHI. READER, Nov. 30, 2006, at 24, available at <http://www.chicagoreader.com/features/stories/blindjustices/>.

<sup>26</sup> Abdon M. Pallasch & Stefano Esposito, *The Burge Report: Suspects Tortured But It’s Too Late for Charges*, CHI. SUN-TIMES, July 20, 2006, at 6.

<sup>27</sup> EDWARD J. EGAN & ROBERT D. BOYLE, REPORT OF THE SPECIAL STATE’S ATTORNEY 16-36 (July 19, 2006).

<sup>28</sup> *Id.* at 67-156, 169-265.

<sup>29</sup> *Id.* at 152 (emphasis added).

for a serious legal study drafted by legitimate truth seekers. As veteran investigative journalist John Conroy adeptly pointed out, if the Special Prosecutors were correct in their estimation that torture occurred in “about half” of the 148 cases they reviewed, “[a]nd as no officer ever admitted to any coercion, [then] those detectives presumably committed hundreds of acts of perjury. In how many of those cases did a skeptical judge suppress a confession because he or she felt it had been coerced? Zero.<sup>30</sup> . . . Nor did the state’s attorney’s office prosecute a single officer for perjury, misconduct, or assault.”<sup>31</sup>

Shortly after the release of the Special Prosecutors’ Report, its entire credibility was placed at issue by revelations that Special Prosecutor Edward Egan had a nephew, a police detective at Area 2 police headquarters, who worked under Jon Burge,<sup>32</sup> and that his nephew spoke to him very highly of Burge during the investigation.<sup>33</sup>

Then, in April 2007, a coalition of more than 200 prominent lawyers, politicians, professors, and human rights organizations issued its *Report of the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Systemic Police Torture in Chicago* (Coalition Report).<sup>34</sup> According to the Coalition Report, “[t]he record strongly suggests that the Special

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<sup>30</sup> As Mr. Conroy notes, “Judge Earl Strayhorn once suppressed a confession for the ‘oppressive atmosphere’ in which it was given, but he didn’t conclude that physical abuse had taken place.” Conroy, *supra* note 25, at 22. See *People v. Clemon*, 630 N.E.2d 1120, 1121-24 (Ill. App. Ct. 1994) (affirming trial court’s suppression of defendant’s confession at Area 3 in 1991 on the grounds that it was obtained in a coercive environment).

<sup>31</sup> Conroy, *supra* note 25, at 22.

<sup>32</sup> Abdon M. Pallasch & Frank Main, *Torture Report and Family Ties: Top Investigator had Nephew on Burge’s Staff*, CHI. SUN-TIMES, Aug. 6, 2006, at 7A; Abdon M. Pallasch & Frank Main, *Lawyer: Conflict in Burge Probe – Says Egan ‘Understated’ Nephew’s Potential Role in Inquiry*, CHI. SUN-TIMES, Aug. 8, 2006, at 8.

<sup>33</sup> Abdon M. Pallasch, *Police Torture Investigator Spoke Highly of Burge in ‘02*, CHI. SUN-TIMES, Aug. 16, 2006, at 10.

<sup>34</sup> REPORT ON THE FAILURE OF SPECIAL PROSECUTORS, *supra* note 8.

Prosecutors' investigation and resultant Report, which cost the taxpayers of Cook County \$7 million, were driven, at least in part, by pro-law enforcement bias and conflict of interest, were riddled with omissions, inconsistencies, half truths, and misrepresentations, and reflect shoddy investigation and questionable prosecutorial tactics and strategies."<sup>35</sup> Among other deficiencies, the Coalition Report alleged that the Special Prosecutors "[c]onducted an investigation . . . calculated to obfuscate the truth about the torture scandal"; "[i]gnored 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"; and "[f]ailed to document the role of judges of the Criminal Division of the Cook County Circuit Court in the torture scandal."<sup>36</sup>

In October 2008, however, a federal indictment was issued against former Chicago Police Commander Jon Burge, alleging that Burge committed perjury and obstruction of justice in connection with his responses in civil litigation, in which he denied that he tortured or physically abused suspects, and likewise, denied knowledge of the use of such tactics by those officers working under his command.<sup>37</sup> In addition, the U.S. Attorney's Office announced that "the torture investigation is ongoing and further charges against other former officers could be forthcoming."<sup>38</sup>

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<sup>35</sup> *Id.* at 48.

<sup>36</sup> *Id.* at 3.

<sup>37</sup> Press Release, U.S. Dep't of Justice, U.S. Indicts Former Chicago Police Cmdr. Jon Burge on Perjury, Obstruction of Justice Charges Related to Alleged Torture and Physical Abuse by Burge and Other Officers (Oct. 21, 2008) (on file with author). See Steve Mills & Jeff Coen, *Feds Catch Up with Burge: Notorious Ex-Chicago Commander Charged with Lying About Torture*, CHI. TRIB., Oct. 22, 2008, at 1, 23; Natasha Korecki et al., *Feds: It's Just the Beginning – Feds Will Try to Prove Ex-Cop Tortured Suspects and Knew that Other Officers Did, Too*, CHI. SUN-TIMES, Oct. 22, 2008, at 2-3.

<sup>38</sup> Mike Robinson, *Burge Accused of Lying Under Oath About Torture*, CHI. DAILY L. BULL., Oct. 21, 2008, at 1.

### THE CASE OF KEITH WALKER

On December 1, 2006, the *Chicago Reader* newspaper ran a cover story by John Conroy entitled, *Blind Justices? The Prosecutors who Sent Police Torture Victims to Prison are Now the Judges who Keep Them There*.<sup>39</sup> The article concerned the almost insurmountable hurdles faced by Keith Walker in obtaining a fair hearing on his torture allegations and exposed, in no uncertain terms, the bias faced by torture victims in the Cook County Criminal Court.<sup>40</sup> The article, not only had an immediate impact on judges, but also, helped to rejuvenate the call for justice with respect to the Burge torture scandal. In this latter regard, on December 8, 2006, Dorothy Brown, the well-respected Clerk of the Circuit Court of Cook County and then-candidate for Mayor of Chicago, held a press conference at the Dirksen Federal Building, in which she called for a renewed investigation by the United States Attorney's Office into the Chicago police torture cases,<sup>41</sup> specifically relying on the revelations contained in Conroy's article.<sup>42</sup>

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<sup>39</sup> See *supra* note 25.

<sup>40</sup> See generally *Id.*

<sup>41</sup> See Dorothy Brown, Statement on Federal Request for Probe of Alleged Cover-Up of Burge Torture Cases, Dec. 8, 2006 (on file with author). My thanks to John Davis, Ms. Brown's press secretary, for providing me with a copy of her remarks.

<sup>42</sup> With reference to the *Chicago Reader* article, Ms. Brown stated:

I, like so many residents of Chicago and around the world, have been appalled by these despicable acts. But people are even more horrified by the apparent "conspiracy" to cover them up. The specter of such a conspiracy was raised to new heights this past week, by John Conroy's article in the *Chicago Reader*.

*Id.* at 3.

### A. *Pertinent Facts of Mr. Walker's Case*

Keith Walker was charged with, *inter alia*, first degree murder and attempted armed robbery of Shawn Wicks in 1991.<sup>43</sup>

Prior to trial, Walker filed a motion to suppress his confession, alleging that in June 1991 he was taken to the police station and interrogated, during which he was beaten about the head and face with fists, kicked with feet, and subjected to electric shock by means of an electric box that was placed on his skin.<sup>44</sup> In addition, the motion alleged that Walker was later arrested on July 2, 1991, and then gave a statement “as a result of fear and dread of repeated and renewed beatings and e[l]ectric box treatment.”<sup>45</sup>

At the hearing on the motion to suppress statements, the State called four detectives and one assistant state’s attorney. The lead detective on Walker’s case, Detective Daniel McWeeny, a close associate of Jon Burge,<sup>46</sup> testified that he interrogated Walker on a number of occasions at Area 3 police headquarters between June 3 and June 4, 1991. McWeeny denied that Walker was subject to any physical abuse or torture by himself or anyone he had seen. The three other detectives called by the State gave a similar list of denials that Walker had been subject to physical coercion.

Nick Ford, the assistant state’s attorney (ASA) who testified at the hearing, stated that he held several lengthy conversations

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<sup>43</sup> The facts are taken, unless otherwise noted, from Walker’s briefs in his first appeal from the summary dismissal of his post-conviction petition. See Opening Brief at 5-9, 16-19, *People v. Walker*, No. 1-04-2212 (filed Nov. 2, 2005) [hereinafter Opening Brief]; Supplemental Brief at 2, *People v. Walker*, No. 1-04-2212 (filed Feb. 24, 2006) [hereinafter Supplemental Brief].

<sup>44</sup> Opening Brief, *supra* note 43, at 5.

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

<sup>46</sup> Detective McWeeny was granted immunity by the Special Prosecutors toward the latter portion of their investigation. See Steve Mills & Maurice Possley, *3 Burge Cops Get Immunity in Torture Case*, CHI. TRIB., Dec. 2, 2005, at 1.

with Walker on July 3, 1991, in connection with securing a statement from Walker. ASA Ford stated that he obtained an oral and written statement from Walker. In addition, ASA Ford denied that he or anyone in his presence subjected Walker to any type of physical coercion or psychological coercion.

Walker testified as the sole defense witness. Walker testified that between June 3 and June 4, 1991, he was interrogated in an interview room at Area 3, in which he was handcuffed to the wall. Walker testified that on the evening of June 3, 1991, he was hit in the face and kicked in his left leg by a detective. Walker further stated that he was jolted by a black electric shock box twice on the first day of his interrogation and twice on the second day. In addition, Walker testified that McWeeny attempted to get him to sign a written statement during his first night in custody. Based on a credibility assessment, the judge denied the suppression motion.

Following the bench trial, in which his confession featured prominently, Walker was convicted of first degree murder and attempted armed robbery. Walker was sentenced to natural life in prison.

On direct appeal, the sole issue raised involved the trial court's decision to admit the victim's questionable identification of Walker as the shooter as a dying declaration. The appellate court affirmed Walker's convictions and sentence in April 1997.

In January 1998, Nicholas R. Ford was appointed as a judge to the Circuit Court of Cook County.

In March 2004, Walker submitted a *pro se* post-conviction petition, which is a statutory means of collaterally challenging one's criminal conviction, alleging, *inter alia*, that he was denied constitutional due process of law because he was beaten and coerced by Detective McWeeny and others to give a confession. In his petition, Walker referred to numerous cases pertaining to a systemic and methodical practice of torture at Area 2 police headquarters, the Chicago Police Department's Office of Pro-

fessional Standards Reports concerning police torture, the firing of Commander Jon Burge, etc.

On April 20, 2004, Judge Nicholas R. Ford summarily dismissed Walker's petition, stating, "In total it is my view that this petition for post-conviction relief is patently frivolous and without merit and will be dismissed in accordance without finding."<sup>47</sup>

### ***B. First Post-Conviction Appeal***

On appeal, Walker initially argued that the trial judge erred in summarily dismissing his post-conviction petition on the merits, because he properly stated the "gist of a constitutional claim,"<sup>48</sup> the legal standard required to advance the case to the next stage of collateral proceedings.<sup>49</sup> Yet, after full briefing was complete, Walker's appellate counsel discovered that Judge Ford should have recused himself from sitting on Walker's case. Accordingly, on February 24, 2006, Walker's attorney submitted a supplemental brief, arguing that "Judge Nicholas R. Ford was disqualified from ruling on Keith Walker's post-conviction petition because, prior to his elevation to the bench, Judge Ford was an assistant state's attorney and personally participated in Walker's case as a material witness for the State at Walker's suppression hearing and, in fact, personally took Walker's confession – the very confession that Walker alleges in his petition was extracted by torture."<sup>50</sup> Thus, Walker contended that Judge Ford's order summarily dismissing his petition was void, that the order must be reversed, and that the matter should be remanded for further post-conviction proceedings in front of another judge.<sup>51</sup>

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<sup>47</sup> Transcript of Proceedings at A3, *People v. Walker*, No. 91 CR 22976-01 (Apr. 20, 2004).

<sup>48</sup> See Opening Brief, *supra* note 43, at 11.

<sup>49</sup> See *People v. Edwards*, 757 N.E.2d 442, 445 (Ill. 2001).

<sup>50</sup> Supplemental Brief, *supra* note 43, at 3.

<sup>51</sup> *Id.*



In this regard, Illinois Supreme Court Rule 63(C)(1)(b), which is also known as Canon 3 of the Judicial Code, provides, in pertinent part:

(1) A judge *shall* disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(b) the judge served as a lawyer in the matter in controversy . . . or *the judge has been a material witness concerning it.*<sup>52</sup>

Similarly, Illinois Supreme Court Rule 63(C)(1)(a) provides, in pertinent part, that “[a] judge shall disqualify himself ” where the judge has “personal knowledge of disputed evidentiary facts concerning the proceeding.”<sup>53</sup> Walker supported his claim by referring to published judicial biographies and asserted that “it appears almost certain that the ASA ‘Nick Ford’ who testified against Walker at his suppression hearing in 1994 . . . is the same Judge Nicholas R. Ford who denied Walker’s post-conviction petition in 2004.”<sup>54</sup> Very uncharacteristically, the Attorney General filed no response brief.

On May 30, 2006, the First Division of the Illinois Appellate Court, First District, ruled in Walker’s favor, vacated Judge Ford’s summary dismissal of Walker’s post-conviction petition, and remanded the case for further proceedings under Illinois’ Post-Conviction Hearing Act (Act).<sup>55</sup> The appellate court further stated, “On remand, we direct Judge Ford to determine whether he is the same Nicholas Ford who testified at defendant’s suppression hearing. If he answers that question in the affirmative, he should recuse himself and the matter should be reassigned.”<sup>56</sup>

<sup>52</sup> ILL. SUP. CT. R. 63(C)(1)(b) (West 2008) (emphasis added).

<sup>53</sup> *Id.* at § 63(C)(1)(a).

<sup>54</sup> Supplemental Brief, *supra* note 43, at 7.

<sup>55</sup> Rule 23 Order at 5, *People v. Walker*, No. 1-04-2212 (May 30, 2006).

<sup>56</sup> *Id.*

Despite Judge Ford's express breach of a well-established canon of judicial conduct forbidding a judge from ruling on a case in which he was formerly a material witness (and, in this case, the violation was even more egregious because Ford took the very confession being challenged in the petition), the appellate panel was amazingly deferential to Judge Ford. In fact, the reviewing panel went out of its way to note in its Order that "[t]here is no indication that Judge Ford was aware of this conflict or that he was motivated or biased in his decision."<sup>57</sup> What is one possible explanation for this overly "compassionate" treatment of Judge Ford? One need look no further than the author of the appellate court's decision in Walker's case, Justice Margaret Stanton McBride.<sup>58</sup> As detailed extensively by John Conroy, Justice McBride, like Judge Ford, was a former assistant state's attorney and was, herself, involved in several high-profile Burge torture cases, having personally taken Derrick King's confession in 1980 and also having been put "on notice" by the judiciary in 1986 to investigate Aaron Patterson's claims that he was tortured.<sup>59</sup> Significantly, in 2000, the Illinois Supreme Court reversed the dismissals of both King and Patterson's post-conviction petitions and ordered that their cases be remanded for evidentiary hearings for a determination of whether their statements were coerced.<sup>60</sup>

After Walker's case returned to the trial court, Judge Ford recused himself.<sup>61</sup>

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> See Conroy, *supra* note 25, at 24.

<sup>60</sup> *People v. Patterson*, 735 N.E.2d 616, 645 (Ill. 2000); *People v. King*, 735 N.E.2d 569, 576 (Ill. 2000).

<sup>61</sup> Conroy, *supra* note 25, at 24.

### C. *Second Post-Conviction Appeal*

Following Judge Ford's recusal, Walker's case was re-assigned to Judge Lon Shultz.<sup>62</sup>

In its Order vacating Judge Ford's ruling, the appellate court specifically remanded Walker's case "to the circuit court for further [post-conviction] proceedings under the Act. 725 ILCS 5/122-4 through 122-6 (West 2004)."<sup>63</sup> By referring to section 122-4 of the Act, the appellate court explicitly remanded the case for "second-stage" post-conviction proceedings, where, if indigent, Walker would be entitled to the appointment of counsel and the opportunity to amend his *pro se* post-conviction petition.<sup>64</sup>

Yet, despite the appellate court's mandate that the case be remanded for second-stage proceedings, on October 11, 2006, Judge Shultz, treating Walker's case as if it were still in first-stage proceedings, summarily dismissed Walker's post-conviction petition without affording Walker the right to counsel or to amend his petition.<sup>65</sup>

In an effort to avoid an unnecessary and time-consuming appeal, Walker submitted a timely motion in the trial court to vacate Judge Shultz's summary dismissal order, pointing out that such a ruling was contrary to the express mandate of the appellate court and requesting that he be entitled to his statutory rights of appointment of counsel and amendment.<sup>66</sup> Judge Shultz, however, denied Walker's request and let his previous order stand.<sup>67</sup>

<sup>62</sup> Motion for Summary Remand at 3, *People v. Walker*, No. 1-07-0095, (filed Mar. 6, 2007) [hereinafter Motion for Summary Remand].

<sup>63</sup> Rule 23 Order at 5, *People v. Walker*, No. 1-04-2212 (May 30, 2006).

<sup>64</sup> See 725 ILL. COMP. STAT. 5/122-4 (2004).

<sup>65</sup> Order at 10, *People v. Walker*, No. 91 CR 22976 (Oct. 11, 2006) (Shultz, J.).

<sup>66</sup> Motion to Vacate the Order of October 11, 2006 and Proceed with Post-Conviction Proceedings Pursuant to Appellate Court Mandate at 2, *People v. Walker*, No. 91 CR 22976 (01) (filed Nov. 8, 2006).

<sup>67</sup> Motion for Summary Remand, *supra* note 62, at 3.

Why would Judge Shultz, an experienced trial judge presumably well acquainted with post-conviction procedures, openly disregard the appellate court's express mandate, when the law is unequivocal that where a case is remanded by the appellate court with specific directions as to the action to be taken, it is the duty of the trial court to follow those directions?<sup>68</sup> Again, one possible explanation may be tendered for consideration. Like Judge Ford, Judge Shultz was a former assistant state's attorney, and he personally prosecuted Lonza Holmes, who testified that he was tortured by Jon Burge.<sup>69</sup> In addition, when they were assistant state's attorneys, ASA Nick Ford took over one of Shultz's most high-profile cases when Shultz was elevated to the bench.<sup>70</sup> Could Judge Shultz's concern over whether a fellow judicial colleague (and former prosecutor) might be implicated in a torture case have had any bearing on his decision to summarily deprive Walker of his statutory rights and to callously ignore the appellate court's mandate?

Following Judge Shultz's refusal to vacate his order, Walker filed a Motion for Summary Remand in the appellate court, requesting, not only that Shultz's order summarily dismissing Walker's post-conviction be reversed, but also, that Shultz be removed off the case because of his former involvement in a Burge torture case and his close pre-elevation relationship with Nick Ford: "These circumstances lead even a casual observer to question whether Judge Shultz might potentially be motivated

<sup>68</sup> See *Norris v. Nat'l Union Fire Ins. Co.*, 857 N.E.2d 859, 863 (Ill. App. Ct. 2006) ("On remand, the trial court was bound to follow this court's directions."); *Harris Trust & Sav. Bank v. Otis Elevator Co.*, 696 N.E.2d 697, 700 (Ill. App. Ct. 1998) (followed by *Norris*); *Foster v. Civil Serv. Comm'n*, 627 N.E.2d 285, 290 (Ill. App. Ct. 1993) ("When a reviewing court remands a matter with specific instructions, the trial court is powerless to undertake any proceedings beyond those specified therein."); *Aguilar v. Safeway Ins. Co.*, 582 N.E.2d 1362, 1365 (Ill. App. Ct. 1991) (noting that where a reviewing court remands cause with specific instructions, "they must be followed exactly").

<sup>69</sup> Conroy, *supra* note 25, at 24.

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

by self-interest to not treat Walker's torture claim fairly."<sup>71</sup> The Attorney General filed an opposition to Walker's motion.<sup>72</sup>

On March 22, 2007, the appellate court granted Walker's motion for summary remand, reversed the trial court's summary dismissal of Walker's post-conviction petition, and remanded the case again for second-stage post-conviction proceedings in front of a judge other than Judge Shultz.<sup>73</sup> Interestingly, the decision was signed by all four justices on the panel of the First Division, including Presiding Justice McBride.<sup>74</sup>

#### *D. Second-Stage Post-Conviction Proceedings on Remand*

On remand, Walker's case was re-assigned to Judge Joseph Claps.<sup>75</sup> Standish Willis, a veteran Chicago attorney, took over Walker's case and, in December 2008, filed a detailed amended post-conviction petition on Walker's behalf,<sup>76</sup> in which he contended that: (1) Walker's tortured confession violated his constitutional rights;<sup>77</sup> (2) the State transgressed *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to turn over information favorable to Walker, which was either exculpatory or impeaching;<sup>78</sup> (3) trial counsel and appellate counsel on direct appeal were ineffective for failing to present evidence of and to investigate

<sup>71</sup> Motion for Summary Remand, *supra* note 62, at 5.

<sup>72</sup> Opposition to Motion for Summary Remand, *People v. Walker*, No. 1-07-0095 (served Mar. 20, 2007).

<sup>73</sup> Order at 1, *People v. Walker*, No. 1-07-0095 (Mar. 22, 2007).

<sup>74</sup> This is the first time that the author has ever received an order signed by all four justices. Presumably, there may have been a concern that, due to the subject matter, Justice McBride should have recused herself from the case, and therefore, to legitimate the decision, the order was signed by three additional justices.

<sup>75</sup> Cook County Circuit Court Docket Sheet at 113, *People v. Walker*, Case No. 91 CR 2297601.

<sup>76</sup> Amended Post-Conviction Petition, *People v. Walker*, No. 91 CR 22976 (filed Dec. 18, 2008) (on file with author).

<sup>77</sup> *Id.* at 14-17.

<sup>78</sup> *Id.* at 17-20.

claims of police torture;<sup>79</sup> and (4) Walker was actually innocent, “since the evidence at trial included essentially, only suspect testimony from a known torturer to support Walker’s conviction . . . .”<sup>80</sup>

The Illinois Attorney General’s Office filed a formal answer to Walker’s amended petition arguing, *inter alia*, that “[b]ecause petitioner’s allegations of police abuse lack credibility, his post-conviction petition is both untimely and his coercion claim is forfeited, as there is no basis to excuse his untimeliness or forfeiture.”<sup>81</sup>

In response,<sup>82</sup> Walker cited to new evidence, which had surfaced since Walker’s conviction, indicative of a pattern and practice of torture by Chicago police detectives, including the fact that Walker’s co-defendant, Tyshawn Ross, had been granted an evidentiary hearing based on his allegation that he had likewise been subject to electric shock treatment by Detective McWeeny and other Burge detectives,<sup>83</sup> that Detective McWeeny had repeatedly invoked his Fifth Amendment privilege against self-incrimination in various civil proceedings,<sup>84</sup> and that three Chicago police detectives/officers had come forward confirming abusive tactics by Burge and his “midnight crew,” as well as the existence of an electrical shock box.<sup>85</sup> In addition, Walker pointed to the stunning train of events in the case of James Andrews,<sup>86</sup> who also alleged that he was abused by Detective

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<sup>79</sup> *Id.* at 20-22.

<sup>80</sup> *Id.* at 22.

<sup>81</sup> Answer, *People v. Walker*, No. 91 CR 22976 (filed Mar. 20, 2009) (on file with author).

<sup>82</sup> Walker’s Response to the State’s Answer to His Amended Post-Conviction Petition, *People v. Walker*, No. 91 CR 22976 (filed Apr. 29, 2009) (on file with author).

<sup>83</sup> *Id.* at 6-7.

<sup>84</sup> *Id.* at 7-9.

<sup>85</sup> *Id.* at 9-10.

<sup>86</sup> *Id.* at 5-6. James Andrews’ case would never have come to light without the indefatigable work of Jennifer Blagg, a former colleague of the author’s at the Office of the State Appellate Defender.

McWeeny, *viz.*, the trial court's August 2007 grant of a new hearing on Andrews' motion to suppress statements after it conducted a full evidentiary hearing,<sup>87</sup> Judge Sumner's vacatur of Andrews' 1984 conviction and order for a new trial,<sup>88</sup> and the Illinois Attorney General's dramatic February 2008 decision not to prosecute Andrews further, thereby dropping two murder charges.<sup>89</sup>

On August 7, 2009, Judge Claps ordered that the case advance to third-stage post-conviction proceedings and rejected the Attorney General's request to deny Walker's petition.<sup>90</sup> At the time of this writing, Keith Walker is presently awaiting a full evidentiary hearing on his torture claims.

### CONCLUSION

Mr. Walker has been in prison now for close to 20 years, and his case is one of the extremely rare cases that has returned to the trial court with the opportunity for him to prove that his confession was coerced by electric shock, a method of torture well-documented as having been employed by Jon Burge and his confederates against criminal suspects. What is more disheartening, however, is that it is even more rare to find a judge in Cook County untainted by Chicago's torture scandal, let alone a judge who is willing to impartially hear a torture case and to objectively assess the evidence, even if it implicates police detectives, former prosecutors, or fellow judges.

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<sup>87</sup> Order, *People v. Andrews*, No. 83 CR 4979 (Aug. 14, 2007).

<sup>88</sup> Kayce T. Ataiyero, *Retrial Granted in '80s Killing: Defendant Says Cops Coerced Him into Confessing*, CHI. TRIB., Oct. 16, 2007, at A1.

<sup>89</sup> Dave Newbart, *State Drops Murder Case Tied to Burge: Man Claiming He was Tortured to Confess Won't Face New Trial*, CHI. SUN-TIMES, Feb. 2, 2008, <http://www.suntimes.com/news/metro/773576,%20SCT-NWS-BURGE02.article>.

<sup>90</sup> Cook County Circuit Court Docket Sheet at 129, Case No. 91 CR 2297601.

The right to a fair hearing in front of a fair tribunal “requires not only the absence of actual bias but also the absence of the probability of bias.”<sup>91</sup> Furthermore, the United States Supreme Court has declared that “justice must satisfy the appearance of justice.”<sup>92</sup> Yet, as a result of its marked pro-law enforcement bias and its fraternity of former prosecutors, the Cook County judiciary has, up until very recently, remained adamant as the final link in a continuing conspiracy to conceal a scandal that has corrupted Chicago for more than three decades. Judge Sumner’s courageous rulings in the *Andrews* case clearly provide a welcome glimmer of hope.

The stain of injustice, however, will only seep deeper into the fabric of our society unless the judges of Cook County purge from their numbers those infecting the character of fairness in our criminal courts. Until that happens, one can only conclude, along with the Prophet Daniel, who interpreted the ominous handwriting on the wall, that “Thou art weighed in the balances, and art found wanting.”<sup>93</sup>

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<sup>91</sup> *People v. Hawkins*, 690 N.E.2d 999, 1003 (Ill. 1998).

<sup>92</sup> *In re Murchison*, 349 U.S. 133, 136 (1955). See also *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S. Ct. 2252, 2265 (2009) (holding that recusal was constitutionally mandated based solely upon an appearance of bias).

<sup>93</sup> *Daniel 5:27* (King James).



