

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CRIMINAL DIVISION**

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PEOPLE OF THE STATE OF ILLINOIS,	)	82 C 001211-02
	)	88 CR 07771-01
Plaintiff-Respondent,	)	
	)	On referral from the Illinois
v.	)	Torture Relief & Inquiry
	)	Commission
JACKIE WILSON,	)	
	)	Hon. William H. Hooks
Defendant-Petitioner.	)	Judge Presiding

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**Memorandum Opinion and Order**

This matter comes before the Court upon referral for judicial review from the Illinois Torture Relief and Inquiry Commission (TIRC or Commission). In May 2011, the petitioner, Jackie Wilson, filed a claim with TIRC alleging abuse by members of the Chicago Police Department during his interrogation regarding the crime for which he was later convicted and sentenced. The Commission, in May 2015, found there was sufficient evidence that Wilson was tortured, thus meriting judicial review. Accordingly, this Court conducted a hearing pursuant to the TIRC Act (775 ILCS 40/50(a)). This memorandum, opinion, and order follows from the Court's review of those proceedings.

**Background**

Jackie Wilson and his brother, Andrew<sup>1</sup>, were convicted of two counts of murder and two counts of armed robbery. The charges arose from the shooting deaths of

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<sup>1</sup> The Court will refer to Jackie and Andrew Wilson by their first names to avoid confusion.

Chicago police officers William Fahey and Richard O'Brien on February 9, 1982. Originally, the Wilson brothers were tried together before the same jury. Andrew received a death sentence and Jackie was sentenced to natural life imprisonment.

#### First trial

In their first trial in 1983, the evidence showed the account described in Jackie's direct appeal. *People v. Jackie Wilson*, 139 Ill. App. 3d 726 (1985) (*Jackie Wilson I*). The Wilson brothers were at the home of Donald White discussing a plan to help Andrew's friend, Edgar Hope, escape from custody in Cook County Hospital. Hope was arrested for the murder of a Chicago police officer a week earlier. Jackie and others burglarized the house next door to the Whites. Among other items, they took some .38-caliber bullets. They gave the bullets to Andrew who had a .38-caliber revolver. The Wilsons left White's house in their sister's brown Chevrolet. They dropped a friend, Derrick Martin, off at his home.

Later, a police car pulled them over on South Morgan Avenue. Officers Fahey and O'Brien exited the squad car. Jackie, who had been driving the car, got out and walked toward O'Brien. He met O'Brien at the driver side front bumper of the squad car. Jackie could not produce a driver's license. O'Brien patted him down, then walked to the driver's door of the Wilsons' car. Andrew had placed his revolver on the driver's seat. O'Brien reached in, removed it, drew his own firearm and ordered Jackie to "freeze."

Meanwhile, Andrew had exited from the passenger side, took his jacket off, and tossed it back on the seat. Officer Fahey told him to pick it up and bring it to him.

Andrew complied. Fahey found the .38-caliber bullets from the burglary and told Andrew he was under arrest. Andrew resisted Fahey's attempt to place handcuffs on him and a scuffle ensued. Eventually, Andrew pulled Fahey's service revolver from its holster and shot him in the back of the head.

O'Brien held Jackie at gunpoint during the scuffle. After shooting Fahey, Andrew turned and fired a shot at O'Brien. O'Brien was hit and fell to the ground. Andrew called to Jackie, "get his gun." Jackie replied that O'Brien had gotten back up. Andrew then jumped on the trunk of the Chevrolet and shot O'Brien four or five more times. Andrew slid off the trunk, went over to O'Brien, and took both his service revolver and the .38-caliber O'Brien recovered earlier. He returned to the passenger side of the car and yelled to Jackie, "let's get out of here." Jackie was slow to react, shocked by what just occurred. Andrew called to him again to "move." Jackie then got back in the Chevrolet and they drove off.

This narrative derives largely from a court-reported statement Jackie gave to an Assistant State's Attorney (ASA), Lawrence Hyman, on February 14, 1982, while in custody at Area 2 police headquarters. Andrew also gave a court reported statement to Hyman at Area 2 the same day admitting he shot the two officers.

Aside from their statements, one eyewitness, Tyrone Sims, testified at trial he saw the shootings through his apartment window. His account was consistent with Jackie's statement. *Jackie Wilson I*, 139 Ill. App. 3d at 733. He also identified both Andrew and Jackie in a lineup on February 14, 1982. Though, two days prior, Sims identified two different men from photographs. He retracted his identification of the

other men when they appeared in lineup on February 13, 1982. *People v. Andrew Wilson*, 116 Ill. 2d 29, 42 (1987) (*Andrew Wilson I*).

Another witness, DeWayne Hardin, testified he was driving on Morgan and came upon the scene. He observed the squad car with its lights activated behind the brown Chevrolet. He saw the bodies of the two officers on the ground; Andrew getting in the passenger side; and Jackie standing then entering the driver's seat before the car drove away. *Jackie Wilson I*, 139 Ill. App. 3d at 733-34.

Additionally, a detective went to a beauty shop where Andrew lived to arrest him on an unrelated warrant. While there, the detective discovered a sawed off shotgun and revolvers later confirmed as those of Fahey and O'Brien. *Andrew Wilson I*, 116 Ill. 2d at 51.

The State sought the death penalty for both Andrew and Jackie. The jury did find Andrew eligible for a death sentence, but could not agree on the same for Jackie. Jackie, though, was subject to a mandatory natural life sentence, which the court did impose.

#### Jackie's direct appeal

Both convictions were reversed on direct appeal, but for different reasons for each brother. Initially, the appellate court reversed Jackie's conviction based on the trial court's refusal to examine venire persons on their understanding to not hold it against the defendant for failing to testify on his own behalf. In 1984, our supreme court established that principle, along with the State's burden of proof and the defendant's presumption of innocence, should be covered in *voir dire*. *People v. Zehr*, 103 Ill. 2d 472.

(1984). Yet, the supreme court reversed the appellate court's judgment on the basis that *Zehr* was not retroactive. *People v. Jackie Wilson*, 112 Ill. 2d 567 (1986).

On remand, the appellate court again reversed Jackie's conviction. The appellate court found the trial court erred by not severing his trial from Andrew's. And it was prejudicial to allow evidence that Jackie had an outstanding warrant for an unrelated robbery charge. The State's theory was the Wilson brothers were motivated to shoot the officers to avoid arrest. But, Jackie was previously arrested on the charge related to the purported warrant, appeared in court, and was free on bond at the time. The State's evidence failed to establish an active warrant even existed, let alone that Jackie knew about it. *People v. Jackie Wilson*, 161 Ill. App. 3d 995, 1008 (1987) (*Jackie Wilson II*).

#### Andrew's confession and direct appeal

Having received a sentence of death, the supreme court reviewed Andrew's conviction directly. The court found the trial court erred in denying his motion to suppress his confession as involuntary. Andrew was arrested at 5:15 a.m. on February 14, 1982. He gave his court-reported statement around 6 p.m. He was photographed at 8:30 p.m. and transported to Mercy Hospital arriving in the emergency room sometime after 10 p.m. that night. Two police officers, Ferro and Mulvaney, accompanied him. A nurse, Patricia Reynolds, testified Ferro remarked, "if this guy knew what was good for him he would refuse treatment." Reynolds asked Andrew if he wanted to be treated. He answered he did not. Shortly after, when the officers' attention was elsewhere, Andrew indicated he did want treatment and he signed a consent form. When Andrew

undressed to be examined by a physician, Reynolds observed injuries to his chest and a burn on his right thigh.

Dr. Geoffrey Korn examined Andrew and noted 15 separate injuries to his head, chest, and right leg. Those included two cuts on his head needing stitches, a black and bloodied eye, numerous bruises and abrasions on his torso, and a sizable second-degree burn on his right thigh. Dr. Korn prepared to suture the cuts. He then noticed Mulvaney had drawn his gun. Dr. Korn asked him to holster it and Mulvaney refused. Dr. Korn would not continue with a drawn weapon so he left the room. Ferro then went in the exam room. Minutes later Ferro came out and announced Andrew elected to refuse treatment. Dr. Korn attempted to persuade Andrew to let him continue, but Andrew maintained his refusal. The officers took him away after he signed an "against medical advice" form.

The next evening, February 15, the medical director of the health facility for the Cook County jail, Dr. John Raba, saw Andrew after a staff physician reported Andrew presented unusual injuries. The injuries were the same Dr. Korn had observed, but had worsened without treatment. The burns were blistering by this point. Andrew told Dr. Raba he had been beaten, electrically shocked, and held against a radiator. Photographs taken on February 16 of Andrew depicted the injuries. At the suppression hearing, the medical witnesses corroborated that the photos showed the injuries they observed.

Andrew also testified at the hearing. In his account, officers at Area 2 physically abused him throughout the day until he gave his court-reported statement. The abuse included being punched, kicked, smothered with a plastic bag, electrically shocked, and

forced against a hot radiator. At some point, officers took Andrew to meet with Hyman and give a statement. Andrew told Hyman about the abuse. In response, Hyman instructed the officer to take him away. The officers proceeded to subject Andrew to more electrical shocks. Also, while handcuffed to rings on the wall, the officers pressed Andrew against the radiator. Andrew gave his inculpatory statement later. He testified he gave the statement because of the abuse.

The State did not dispute that Andrew incurred injuries while in police custody. However, the State contended that the injuries occurred after he gave his statement and, thus, his confession was voluntary. In support of that position, the presented testimony from witnesses who "were police officers who took part in [Andrew's] arrest and who interrogated him that day." *Andrew Wilson I*, 116 Ill. 2d at 34. ASA Hyman and the court reporter, Michael Hartnett, also testified. All "uniformly denied that [Andrew] was threatened or beaten." *Id.* State witnesses acknowledged the eye injury, but explained it occurred in a scuffle when Andrew was arrested.

In addition, the State presented two photos of Andrew, one from a lineup in the afternoon and one taken at 8:30 p.m. after the confession. In both, he was fully dressed and no injuries were apparent.

Detectives Thomas McKenna and Patrick O'Hara testified Andrew gave them an oral statement admitting to the shootings around 7 a.m. after they had notified Andrew of and he waived his *Miranda* rights. Neither the waiver nor statement were documented.

The trial judge reasoned that the 8:30 p.m. photo did not depict the facial injuries other than the cut near his eye the State had claimed occurred during arrest. The judge also noted the injuries to Andrew's torso and leg were minor and superficial. Dr. Korn had stated those injuries were superficial in the sense that "they did not require major surgery." *Id.* at 38. Ultimately, the judge found the confession was voluntary and denied the motion to suppress.

The supreme court, found the State was required to show by clear and convincing evidence that Andrew's injuries "were not inflicted as a means of producing the confession." *Id.* at 40 ("when it is evident that a defendant has been injured while in police custody, the State must show, by clear and convincing evidence, that the injuries were not inflicted as a means of producing the confession." Though drawn from precedent decades before, this principle has become known as the "*Wilson* rule" in Illinois jurisprudence. See, e.g., *People v. Richardson*, 234 Ill. 2d 233, 255 (2009)). The court then held Andrew's statement should have been suppressed because the State had not met its burden. The evidence was insufficient to show a non-coercive explanation for the injuries and the State "essentially relied on a mere denial." *Id.* at 41.

#### Jackie's suppression hearing

Jackie also moved to suppress his statement on the basis of physical and mental coercion. At the suppression hearing, Jackie testified he was arrested about 8:30 a.m. on February 14 by about 20 officers. While riding in a car with four officers, they started questioning him and said he was "going to say something." He denied knowledge and an officer seated beside started hitting him in the chest with his elbow. An officer in the



front seat turned around and slapped Jackie in the face several times. They arrived at Area 2 around 10 a.m. where Jackie was turned over to Detectives McKenna and O'Hara. Jackie was placed in a room on the second floor. With several detectives around, Jackie was encouraged to "come straight" because he was a "victim of circumstance." Jackie asked to speak with his lawyer and had the lawyer's card. The officers told him he didn't need a "fucking lawyer."

For not answering questions, Jackie was struck with a telephone book and told he would be again if he lied. He was also struck with a dictionary, poked in the chest, and kicked. After hearing Andrew scream and holler from another room, Andrew agreed to answer some questions. A detective asked Jackie about Kojak (Donald White) and Dee (Derrick Martin). Upon answering he didn't know them, Jackie was dragged to another room and shown Derrick Martin, who was also in custody. They brought Jackie back to the interview room and continued beating him. "O'Hara twisted his fingers, stepped on his hands, kicked him in the groin and shoved a cocked revolver in his mouth, asking if that made him nervous." *Jackie Wilson I*, 139 Ill. App. 3d at 730. McKenna warned O'Hara and the others "not to damage the face." *Id.*

At some point, detectives told Jackie they were taking him to the ASA to give a statement. They threatened if he didn't say what they wanted him to the ASA will leave and they will "start all over again." *Id.* After giving the statement to Hyman, transcribed by Hartnett, Jackie said he would not sign it without his attorney present. In response, Hyman left the room. O'Hara threatened to break his fingers if he didn't sign so Jackie acquiesced. O'Hara also ordered Jackie to smile for photo taken by Hartnett.

Four officers, McGuire, Riordan, Nitsche, and Kruppel, who transported Jackie to Area 2, denied he was jabbed, slapped, questioned, or threatened. McKenna and O'Hara both testified that shortly after Jackie arrived at Area 2, they advised him of his *Miranda* rights and he answered their questions about the shootings.

ASA Hyman testified Jackie spoke freely with him after advising him of his rights. Jackie was given a lunch and then provided the transcribed statement finishing about 12:45 p.m. McKenna, O'Hara, Hyman, and Hartnett were present. Hyman did not notice anything that would suggest abuse and stated Jackie did not complain of any mistreatment. Hartnett also testified Jackie did not complain of abuse and he did not notice any bruises, cuts, or marks on him.

The trial court denied Jackie's motion to suppress and the appellate court upheld admission of his statement. Applying a deferential standard, where the finding would only be disturbed if contrary to the manifest weight of the evidence, the court found the evidence was sufficient to find that the statement was voluntary. Such deference was justified, in part, because the trial court observed the witnesses and was in the best position to determine their credibility. *Jackie Wilson I*, 139 Ill. App. 3d at 739. The court pointed to several considerations. First, all State witnesses--police officers, ASA Hyman, and court reporter Hartnett--all denied abusing Jackie, observing abuse, or that Jackie complained of abuse. Second, the post-statement photograph showing Jackie smiling was not included in the record, but as described, nothing indicated it would depict an injury. Third, Jackie admitted he knew his rights and his criminal background underscored his awareness. Last, the court reasoned the evidence refuted Jackie's claim

that hearing Andrew being beaten caused him to confess. In so doing, the court described the evidence from Andrew's suppression hearing. The court essentially credited the State's assertions that Andrew's injuries were not incurred until after his confession and Andrew did not appear injured in photos. *Id.* at 739-40.

That decision was rendered in December 1985. As described, the supreme court evaluated Andrew's statement differently in April 1987. *Andrew Wilson I*, 116 Ill. 2d 29. In light of the supreme court's ruling, Jackie asked the appellate court to reconsider the issue on remand after reversal on the *Zehr* issue. The appellate court distinguished Jackie's claim from Andrew's because Jackie, unlike Andrew, had not established an injury that occurred while in police custody. So the higher, "clear and convincing" burden was not implicated for the State with regard to Jackie. Rather, the standard remained deferential to the trial court's credibility determination. *Jackie Wilson II*, 161 Ill. App. 3d at 999 (quoting *Andrew Wilson I*, 116 Ill. 2d at 40) ("where the only evidence of coercion is the defendant's own testimony, and where this is contradicted by witnesses for the People, then of course the trial court may choose to believe the latter"). The court continued by noting the supreme court made no factual findings regarding how, when, or by whom Andrew was injured; only that the State had not met its burden to prove the injuries didn't occur prior to his confession. *Id.* at 998-99. Without such specifics and considering Jackie gave his statement within a comparatively short time of his arrival at Area 2 (less than 2 hours), the court again found the State met its burden to show Jackie's confession was voluntary. *Id.* at 999.

#### Second trial, conviction, and appeal

Jackie was re-tried in 1989 in a separate jury trial from Andrew. His confession was again introduced. Tyrone Sims testified to the same account he gave in the first trial. As did DeWayne Hardin. Another witness, Thomas Musillami, testified he saw Jackie crouching over O'Brien's body.<sup>2</sup> Testimony that the officers' revolvers were found at the beauty shop was also presented again.

Differing from the first trial, the State entered evidence of statements Jackie made in the Cook County jail while awaiting his retrial. Correctional officers testified about two different altercations. After one, he stated "you should have killed us when you had the chance, killed me when you had the chance, because I already killed two Chicago police officers." *People v. Jackie Wilson*, 257 Ill. App. 3d 670, 675 (1993) (*Jackie Wilson III*). In the second, Jackie threatened to kill a guard "just like I did the other two policemen, way back whenever it was." *Id.*

In addition, another inmate, William Coleman, testified Jackie admitted to him he and Andrew were on their way to break Edgar Hope out and when they were pulled over Jackie said to Andrew, "let's take him." And, according to Coleman's recitation, Jackie said they "blew them away." Coleman further testified about a plot involving several inmates, including Jackie, to break out through an air shaft. Substantial steps were taken to implement the plan. The inmates made a hole to access the shaft and affixed a rope they made within it. Jackie told Coleman he wanted to escape and kill Tyrone Sims.

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<sup>2</sup> It is unclear whether Musillami testified at the first trial based on materials available to the Court.

Jackie was convicted for O'Brien's murder, but acquitted of Fahey's. He was again convicted of armed robbery of the officer's revolvers. Evidence of several prior burglaries and robberies was presented at the sentencing hearing. The court sentenced Jackie to natural life imprisonment for his murder conviction.

On appeal, among other issues, Jackie raised that his confession was involuntary and obtained in violation of his right to counsel. With respect to the coercion claim, Jackie conceded the law of the case doctrine prevented the appellate court from reviewing the issue, since the court determined it in his initial appeal. *Jackie Wilson III*, 257 Ill. App. 3d at 701. Likewise, the court declined to reconsider the matter on that basis. *Id.* The court did review his right to counsel claim with respect to his confession, but rejected it. *Id.* 701-02. Ultimately, the conviction and sentence were affirmed.

### Hearing Evidence

#### Hearing testimony of Jackie Wilson

Jackie's hearing testimony was substantially the same as the account he gave in his original suppression hearing. However, his testimony this time had greater detail and one significant additional allegation.

According to his testimony, he was arrested at 51st and Prairie around 8:30 a.m. on February 14, 1982 by over 20 police officers. He was placed in a squad car. He saw four other people taken into custody including his brother Larry and friend Keith Hawkins. From that location, police took him to Area 1 police headquarters a short ride away. Jackie was handcuffed but states he was not mistreated in any way up to that point.

At Area 1, police put Jackie in lockup. He was processed including having his fingerprints taken. During that, an officer picked up a wanted poster, looked back and forth at it and Jackie, then exclaimed, "that's the motherfucker there." The officer making the fingerprints then slapped him with an open hand. Jackie explained he had given his father's name, Robert Wilson, and the officer was upset with him for lying about his name. The officer who identified Jackie from the poster then said, "don't put your hands on him, someone is coming here to pick him up."

After 10 or 15 minutes in lockup, four new officers came to transport Jackie to Area 2 by car. Two were in the front and two sat to either side of a handcuffed Jackie in the back seat. The ride was 10 to 15 minutes. After leaving the garage and getting on the Dan Ryan expressway, the officer to his right said, "you are going to tell us something. You know something about this," in reference to the Fahey-O'Brien murders. Jackie denied knowing anything about it. The officer responded by saying he was lying and started elbowing him in the chest and ribs. The officers persisted that he knew something and Jackie continued to deny it. The officer to Jackie's left started elbowing him, too. The officer in the front passenger also questioned him. That officer turned and slapped him three times. At this point, Jackie feared for his life because he knew he was wanted for the murders and he was already being beaten on his way to the police station.

Arriving at Area 2, the officers went to the alley and took Jackie through the back and up to a second floor room. The officers who transported him from Area 1 turned him over to others and left. The room was small, had a couple desks, and rings on the

wall. Jackie was handcuffed to a ring and someone slid a chair under him to sit. Initially, a dozen or so officers were present. Almost immediately, they began questioning Jackie without advising him of his rights. All but four officers left the room. Two detectives sat to either side of him and the other two stood. Jackie identified photographs of McKenna and O'Hara as the two who were standing and did the questioning.

Jackie denied any knowledge of the Fahey-O'Brien shootings. McKenna slapped him and said, "you would be wise to come clean and tell us what happened. We already know that you didn't have anything to do with it. What we know from what we have been told, you are a victim of circumstance here." As Jackie continued to deny knowledge, McKenna and O'Hara hit him with closed fists in the head and body and accused him of lying. This pattern persisted and McKenna hit him on the head with a phone book three or four times. Asked to estimate how long the interrogation went on, Jackie answered, "seemed like an eternity, but maybe [an] hour, hour and a half."

At some point, O'Hara asked Jackie if he knew Donald White. Jackie said he didn't and O'Hara continued to hit him saying he was lying. The detectives then detached him from the wall, dragged him to another room, and showed him Donald White. Jackie responded it was Kojak. He only knew Donald White by that nickname. A similar pattern followed with regard to Derrick Martin, who Jackie only knew as Dee.

During the interrogation, McKenna kicked Jackie in the groin causing him to urinate. Other officers twisted his fingers. Jackie was afraid he would never make it out of the station. Later, a fifth officer entered who Jackie identified as Jon Burge. Burge told

the others not to leave marks on Jackie's face. McKenna put a revolver in Jackie's mouth and repeatedly cocked it. He asked Jackie if it made him nervous. Burge and O'Hara were in the room when this happened. Burge told McKenna to take the gun out of Jackie's mouth. According to Jackie, Burge seemed nervous and told McKenna he might accidentally kill him and they would have "real problems."

Later, as Jackie continued to deny he knew anything, Burge said, "I am getting tired of this shit. I got something that will make him talk." Burge left the room and came back with a bag placing it on the desk. He took a black box out of the bag and then detached Jackie from one ring and attached him to one closer to the desk. McKenna put two wires on Jackie's hand. Burge turned a crank "like a jack in the box" and Jackie felt an electrical jolt from his hand through his body. Burge did so two more times "with a smirk on his face." McKenna and O'Hara were in the room when this occurred.

Also during the interrogation, Jackie heard Andrew screaming and hollering. With McKenna and O'Hara in the room, Burge, referring to the Andrew's screaming, told Jackie, "[if] you don't cooperate with us, you [are] getting it next." Jackie was in pain and scared, "uncertain of even coming out of this police station alive." Eventually, Jackie yielded and agreed to give a statement. In his account, the electrical shock were "the last straw."

ASA Hyman came in room saying, "they say you [are going to] make a statement." Jackie asked Hyman to speak with his lawyer, Frederick Solomon, and gave Hyman Solomon's card. Hyman took the card, said "this asshole wants a lawyer," and



left the room. O'Hara and McKenna returned, beat Jackie some more, said, "you don't need [a] fucking lawyer," and told him to tell Hyman everything when he comes back.

When Jackie gave his statement, McKenna, Hyman, and Hartnett were in the room. Jackie testified Hartnett was never in the room when the abuse occurred. Jackie acknowledged Hyman gave *Miranda* warnings and was familiar with them from prior arrests. But, no officer read him *Miranda* warnings before Hyman did. When Hyman questioned Jackie, Hyman never asked how he had been treated or whether he was abused.

#### Anthony Williams

The Petitioner introduced the deposition of Anthony Williams taken April 7, 2011 in regard to the federal case *Logan v. Burge et al.* Williams testified he rented a basement room from the White family, which included brothers Donald, Lamont, and Walter, for a time in 1982. He had met Andrew through Donald. On February 12, he was walking to the house from a laundromat when six police officers stopped and hit him, knocking him to the ground. They accused him of shooting two cops and placed him in handcuffs. He also saw the police taking the White brothers in to custody.

Williams was taken to a police station at 11th and State and put in a small room with a desk and chair. Officer placed a plastic bag over his head and beat him. At one point, an officer put a gun to his head saying something about "that is when Kenny escaped and killed him." Williams protested he know nothing about it, was not involved in anything the White brothers may have done, and just lived with them. The officers continued to beat him and insisting he knew something. Williams later learned

Jon Burge was one of his abusers and specifically remembered Burge saying "shoot the nigger" when the gun was put to his head.

Later, a black police officer came in the room, put a bag over Williams' head, and asked the other officers to step out. The officer took a book, told Williams to pretend he was being hit, and beat the book against the desk. The officer then removed Williams' handcuffs and brought him out to sign a statement.

Williams was kept at a hotel for a week and testified before the grand jury against Andrew and Jackie. The State gave him airfare to travel to New York where he spent six or seven months with family.

#### Donald White

In a deposition taken July 14, 1989, in relation to the civil case *Andrew Wilson v. Chicago et al.*, Donald White testified about being arrested and interrogated in connection to the Fahey-O'Brien murders. Outside his home, numerous police officer stopped him at gunpoint. They asked him about his brother-in-law, Dwight Anthony. Anthony was in a house nearby. Police transported White and Anthony in the same car to a police station. Eventually, both were taken to Area 2.

White was placed in an interrogation room. Detectives Hill, O'Hara, McKenna, and Katalinic questioned him. Others were in the room at various times. White protested he didn't know anything. Hill placed a plastic bag over his head and he was beaten repeatedly. It stopped for a little while. White noticed his two brothers, Lamont and Walter, as well as Anthony were also in interrogation rooms.

After continuing to insist he didn't know anything, the bag was once again placed over his head and the beating resumed. White pleaded with them to stop and eventually yielded saying he would "tell [them] anything [they] wanted to know." Detectives were unsatisfied with his responses. Hill started "playing with his gun" and said he should shoot White and say he was trying to escape.

White took a polygraph. The results did not indicate deception regarding White's own involvement in the Fahey-O'Brien murders, but did as to whether White knew who was. Confronted with those results, White gave the names of Andrew and Jackie Wilson.

In a deposition taken September 23, 2010, White gave a substantially similar account, though he added more details and allegations compared to his 1989 deposition. He added that Burge was among his interrogators. He also stated the detectives used a phone book to strike him when the bag was over his head. He said Hill put the gun in his mouth and played "Russian roulette." Also, Hill and Burge held him out a window by one leg threatening to drop him. He further explained Burge and the other threatened to charge him for a rape. After White agreed to cooperate, the police kept him at a hotel until he testified before the grand jury.

#### Doris Miller

The testimony of Doris Miller given November 12, 1982 (the original suppression hearing) was offered. Miller testified she lived at 11440 South May and she worked a postal carrier. She knew Jackie who lived half a block away. She was asleep on her couch just after midnight on February 14, 1982, when she was awoken by a loud knock

at the door. It was four police officers with guns drawn. They told her she was under arrest for accessory to murder. While transporting her to a police station, the police asked her about Jackie. Miller told them she gave him a ride on Thursday [February 11]. They asked her where. She agreed to direct them to the building where she dropped him off. It was near 63rd and Calumet.

Later, Miller was taken to the police station at 91st and Cottage Grove and later to Area 2. She was placed in a second floor room and handcuffed to the wall. She sat there for hours. At some point, she was taken to a room where Andrew was being held. She said he was sitting on a stool, not wearing a shirt, and was sweaty despite it being cold. Miller was placed in a nearby room where she sat in a chair handcuffed to the window sill. She heard Andrew being beaten. He screamed, hollered, and begged for mercy. Miller was ultimately held for 20 hours, was not allowed to use the restroom, and had to relieve herself in an ashtray.

#### Sammie Lacey

Sammie Lacey appeared in person to testify in the instant matter. Lacey is a former CPD Detective who later became a lawyer. In the early 1980s, he was a detective in the violent crimes unit at Area 2. Burge was a Lieutenant then and in charge of the unit. Lacey said it was common for Burge to be personally involved in interrogations in serious cases. Within the violent crimes unit, which consisted of 50 to 60 detectives, a subgroup of about 20 detectives was known as the "A-team" or more colloquially, the "A-kicking team." The A-team mostly handled homicides.

Lacey was one of only four African-American detectives in the violent crimes unit. None of them were getting assigned to work homicide cases and he felt this was discriminatory. The black detectives took the matter to Leroy Martin, Sr. who was then a Commander. Somehow it got back to Burge that they raised the matter "outside the chain of command." Burge called them in and chewed them out for going over his head.

Burge evaluated detectives in the violent crimes unit. Lacey felt Burge evaluated his performance lower than it deserved, especially after he raised the issue about black detectives not being put on homicide cases. He also knew Frank Lavery. Lavery was a sort of whistleblower who came forward about a "street file" regarding a defendant named George Jones. The street file showed Jones was innocent and in all likelihood it would not have come to light but for Lavery. Burge was displeased and Lacey overheard Burge yelling at Lavery about it. Having seen what happened to Lavery and knowing Burge evaluated him, Lacey feared he could be demoted back to being a patrol officer. In his experience, he knew "you didn't go against Jon Burge."

Lacey was involved in the investigation relating to Fahey and O'Brien, most directly with the White brothers. He remembered stopping by Area 2 on the morning of February 14, 1982 around 9 a.m. Lacey needed a slip signed to get the day off. He was on his way to church afterward. Lacey learned that the police had two suspects in custody at Area 2 and one was named Wilson. He heard screaming and yelling from the second floor.

At some point, Lacey went upstairs and saw Andrew sitting on the floor and handcuffed. Lacey was unsure whether he was cuffed to the wall or something else. Lacey didn't notice any injuries. He did say Andrew looked worried. He never saw Jackie.

#### Doris Byrd

The Petitioner introduced the deposition testimony of Doris Byrd taken November 9, 2004, in relation to *Patterson v. Burge et al.* Byrd, like Lacey, was a violent crimes unit detective at Area 2 in the early 1980s under Burge. She was aware of the George Jones case involving Frank Lavery. On one occasion after that, Byrd, Lavery, and Burge were in a break room together. Lavery exited. Burge drew his gun, pointed it in Lavery's direction, and said, "bang." Later on, Lavery was moved to another unit. Byrd felt no one backed Lavery up for what he did in the George Jones case and it damaged his career.

According to Byrd, it was an "open secret" that Burge used torture. She heard accounts from other officers about hitting suspects with telephone books, putting bags over their heads, and giving electric shocks from a black box. She heard the same from suspects and other people who had been taken in to custody for questioning. During the Fahey and O'Brien investigation, she heard screaming from people in custody. She saw Andrew handcuffed to a radiator. There was a rumor Burge had a mandate from Mayor Byrne to do whatever it takes to clear the Fahey-O'Brien case.

Due to what she saw happen to Lavery, Byrd was reticent to be a whistleblower. She believed Burge purposely gave black detectives low evaluations to keep them in

fear of demotion. Byrd didn't only fear retaliation for the effect it could have on her career. She had a teenage son and worried he could be picked up. She was aware George Jones was the son of a police officer.

#### William Parker

William Parker was a Chicago police officer for 32 years. He gave a deposition on October 4, 2004, in reference to *Patterson v. Burge et al.* In the early 1970s, he was a detective at Area 2. On one occasion, he "heard a loud outcry, a human outcry, I never heard the likes of before." To him, it was obvious someone was crying out in pain. Instinctively, he ran into the room where the cry came. He found a black male on the floor, handcuffed to a radiator, with his pants down and open. Burge and two other detectives were in the room. In response to Parker's entry, one detective took an item off the desk and put it on the floor out of view. A supervising sergeant came along and Parker withdrew. The sergeant later told Parker it was none of his business and he shouldn't barge in to interview rooms. A short time later, Parker was transferred to Area 3. He believed he was transferred because of this incident.

#### Lawrence Hyman

Lawyer and former assistant State's Attorney, Lawrence Hyman, appeared in person with counsel present. He acknowledged he was the supervisor of the felony review unit in February 1982. He invoked his fifth amendment privilege in response to any question concerning the investigation of the Fahey-O'Brien murders.

The State offered a portion of Hyman's deposition testimony taken January 12, 1989 in reference to *Andrew Wilson v. Chicago et al.* In Hyman's account, he was at Area 2

the morning of February 14, 1982. He learned Jackie was in custody at District 2 and arrangements were underway to bring him to Area 2. Hyman called Hartnett who arrived around 10 am. Hyman's recollection of timing was uncertain, but he believed Jackie arrived at Area 2 around 11 am. O'Hara and McKenna spoke to Jackie first without Hyman and informed Hyman Jackie told them of his involvement in the Fahey-O'Brien shootings. Hyman interviewed Jackie around 11:30 am. Hyman, O'Hara, McKenna, and Jackie all ate sandwiches in the same room. Jackie gave an oral statement first and Hartnett was brought in later to record a statement. Hyman was aware Andrew was in another room, but didn't remember what was going on with him at the time he was dealing with Jackie.

Hyman also gave a deposition in 2007 in regard to *Orange v. Burge, et al.*, *Hobley v. Burge et al.*, *Patterson v. Burge et al.*, and *Howard v. Burge et al.* He acknowledged he was chief of felony review from November of 1981 to June of 1982. When asked any question about his involvement in the Fahey-O'Brien investigation, Hyman invoked his fifth amendment privilege. He indicated he did the same previously when questioned by the special prosecutor (Egan and Boyd) investigating allegations of torture under Burge. In the 2007 deposition, Hyman was specifically asked whether he had any communication with then State's Attorney Richard M. Daley or first assistant Richard Devine regarding the Fahey-O'Brien investigation. Hyman invoked the fifth amendment.



In the Special State's Attorney report of July 19, 2006, the special prosecutors found Hyman gave false testimony at the 1982 suppression hearing when he denied Andrew told him he had been tortured.

### Jon Burge

Jon Burge gave a deposition on September 22, 1988, in relation to the federal civil case *Andrew Wilson v. Chicago, et al.* Burge acknowledged that he supervised detectives who conducted interrogations of suspects or witness interviews, but seemed to deny direct involvement. In his description, when a case interested him he would sometimes stand outside the door and listen to what was being said. If he was more directly involved, he might crack the door open a few inches to listen better. Asked whether he monitored the interrogations for coercion or physical violence, Burge said he "never had that occasion arise," but would be interested and take action if "something along those lines" came to his attention.

Burge later testified in the trial before a jury. On March 15, 1989, he acknowledged his familiarity with electrical devices from his work as a mechanic earlier in his life. He also acknowledged familiarity with the crank-powered telephones used by the military from his service in Vietnam. He also testified he was in charge of the Fahey-O'Brien investigation.

Testifying in the same case on July 12, 1989, Burge stated Donald White and Dwight Anthony were initially identified as suspects in the Fahey-O'Brien murders. He agreed Detectives Hill, O'Hara, and McKenna were involved in their interrogation.

Asked whether he ever talked to Donald White or entered the room of his interrogation, Burge said he “may very well have,” but couldn’t remember.

On April 28, 2016, Jackie’s counsel took Burge’s deposition for this case. Before substantive questioning, Burge read a prepared statement:

I would like to state that it is my belief that if I forthrightly answer your questions today that I might place myself in legal jeopardy. Therefore, after conversations with my attorney, I’m going to exercise the rights provided to me by the fifth amendment to the Constitution of the United States of America and will answer no further questions.

Counsel proceeded to question Burge about essentially every allegation in this case; including all the specific allegations of abuse in Jackie’s interrogation. Burge invoked the fifth amendment to each question. Counsel also confronted Burge with e-mail communications from 2014 and 2015 that appear to be from him to Martin Preib, a Chicago police officer and writer who publishes a blog. In the messages, Burge expresses disgust that the City Council established a reparations fund for victims of police torture. He refers to the recipients as “human vermin” and claims he will be vindicated when evidence shows he and others were “dedicated Chicago police detectives who fought, as best we could, the worst, most violent predators on the South Side.” A Sun-Times article published two days after Preib’s post about Burge’s comments reported Burge confirmed by telephone the comments were his. When asked about the comments in the deposition, Burge invoked the fifth amendment.

The deposition was very similar to at least five others in which Burge was questioned about allegations of torture that occurred under his command. (Sep. 1, 2004 *Patterson et al. v. Burge et al.*; March 4, 2010 *Logan v. Burge et al.*; May 10, 2011 *Tillman v.*

*Burge et al. & Cannon v. Kitchen et al.*; Dec. 18, 2012 *Caine v. Burge et al.*; Feb. 9, 2015 *People v. Alonzo Smith* (TIRC-referred claim)).

In another federal civil case, *Hobley v. Burge et al.*, Burge responded to two sets of interrogatories. One interrogatory asked if Burge ever used or was aware of other officers using “any form of verbal or physical coercion of suspects” including “deprivation of sleep,” “physical beatings or hangings; the use of racial slurs or profanity,” or “the use of physical objects to inflict pain, suffering or fear, such as firearms, telephone books, typewriter covers, radiators or machines that deliver an electric shock.” He answered, “I have never used any techniques set forth above as a means of improper coercion of suspects while in detention or during interrogation.” As to whether he was aware of any other officers doing so he responded, “I am not aware of any.” In a second set, Burge answered, “I have not observed nor do I have knowledge of any other examples of physical abuse and/or torture on the part of Chicago police officers at Area 2.” The responses to both sets contained Burge’s signature. Based on his statements, the federal government charged and convicted Burge of perjury and obstruction of an official proceeding. *United States v. Burge*, 711 F.3d 803 (7th Cir. 2013). According to the Seventh Circuit, “the witnesses at trial detailed a record of decades of abuse that is unquestionably horrific.” *Id.* at 808.

#### Thomas McKenna

In a video-recorded deposition taken June 27, 2016, in reference to this case, Jackie’s counsel asked McKenna about his involvement in the Fahey-O’Brien investigation. The questioning included Jackie’s specific allegations of abuse occurring

in his interrogation. To every question, McKenna responded, "I decline to answer that question based on my fifth amendment rights."

McKenna testified in the civil trial in *Andrew Wilson v. Chicago et al.* in 1989. He gave a substantially similar account of the interrogations of Andrew and Jackie as he did at their suppression hearings in 1982. He claimed both gave oral confessions to he and O'Hara shortly after arriving at Area 2. And both gave the same statements later to Hyman. For Jackie's statement, he testified he was in the room the entire time; that Hartnett left to type it up; and Hyman left and returned every so often with new pages and went over them with Jackie.

#### Patrick O'Hara

Patrick O'Hara is deceased. His deposition was taken on September 22, 1988 in reference to *Andrew Wilson v. City of Chicago et al.* He described his involvement in the Fahey-O'Brien investigation. His account spanned a few days and included interviewing Sims, arresting Donald White and Dwight Anthony, searching the beauty shop, and arresting Andrew. O'Hara said Burge was present at Andrew's arrest. He also described obtaining Jackie's statement. His account was substantially similar to McKenna's in which Jackie freely admitted his and Andrew's roles in the murders shortly after arriving at Area 2. He denied Jackie was handcuffed or attached to the wall in the interrogation room.

O'Hara was fired along with Burge and another detective, John Yucaitis, in 1993. In proceedings before the Police Board, a hearing officer found O'Hara's testimony unreliable. The Police Board found O'Hara "knew about [Andrew] Wilson being

physically abused by police officers at Area 2 and failed to stop it, report it and obtain medical attention for Wilson." In a pretrial order in Burge's federal perjury case, Judge Lefkow found O'Hara's testimony, the same testimony submitted by the State in this matter, lacked "circumstantial guarantees of trustworthiness" and barred its introduction.

Dale Riordan, Lawrence Nitsche, Thomas Kripel, Dennis McGuire

The State offered the testimony of these four detectives from the original, 1982 suppression hearing. These are the officers who transported Jackie from the District 2-Area 1 station to Area 2. All denied mistreating him. All insisted Jackie was read *Miranda* warnings.

Michael Hartnett

Michael Hartnett was the court reporter who took Jackie and Andrew's statements. He appeared in person. His account of the events was substantially the same as it was in the original suppression hearing in 1982. The questioning in this hearing also concerned his role with the State's Attorney's Office. Hartnett was licensed with the state as a court reporter. He was employed by the State's Attorney's Office from 1976 to 1983. He would go to police stations or hospitals to take recorded statements. He used a stenograph machine and took notes when statements were given. He would then find a place to type the statement out. He says it was also standard procedure to take a camera to photograph whomever gave a statement.

On February 14, 1982, he got a call around 9 am to come to Area 2. He arrived around 10 am or shortly thereafter. He sat in a common area reading the newspaper

until Hyman got him to take Jackie's statement around noon. He denied that he heard any screaming or yelling while he was waiting. He took his equipment to the room where Jackie was. Hartnett says Jackie was not handcuffed or attached to the wall. Hartnett testified he took down everything Hyman and Jackie said. He then went back to the common area and typed the statement out on a manual typewriter. Periodically, Hyman came and took completed pages back to the interview room. Hartnett witnessed Jackie, Hyman, and McKenna sign the statement. He never observed Jackie protest in any way. At 2:15 pm, Hartnett took Jackie's photograph.

On cross-examination, Hartnett agreed, consistent with his 2010 testimony in Burge's federal trial, that he "didn't give a damn" if Andrew or Jackie had been beaten by the police. In both proceedings, he also said he was surprised to be taking statements from them at all. He explained "every police officer in the City of Chicago" was on a manhunt after the Fahey-O'Brien murders and he figured whoever was involved would be killed in a shootout. Harnett also agreed he had built rapport with the assistant State's Attorneys and detectives over his tenure. He knew Burge and considered him a friend.

Harnett testified he was not present when Jackie was interrogated or gave any oral statements before the one he recorded. He further acknowledged that statements from suspects typically began with going over rights and ended with questions about treatment and voluntariness. And consistent with his testimony from Burge's trial, Hartnett explained sometimes he would stop typing on his machine if the ASA forgot to go over part of the rights. He did so to give them a cue to either start over or go over

what they missed. He denied doing the same with respect to ending questions about treatment and voluntariness despite those also being standard. (Jackie's recorded statement omits such questions). He explained that was up to the ASA. In Burge's trial, Hartnett admitted it was unusual Hyman did not ask those questions of Jackie, Andrew, and Derrick Martin.

Additionally, Hartnett admitted he saw the cut above Andrew's right eye when he took his statement, yet he only took a photograph of him facing straight ahead. In this hearing, he said he did not see many injured suspects over his tenure, but did recall one where a man was covered in blood. In Burge's trial though, Hartnett testified, "I have seen some pretty horrendous things and some alleged defendants sitting in front of me covered with blood." In both cases, he admitted he never documented or reported injuries he noticed. Yet, he was aware he could be called to testify in suppression hearings and be asked questions about the defendant's condition and circumstances of their statement.

#### Richard Kling

Richard Kling, a professor at Chicago Kent College of Law, and Jackie's original trial lawyer testified in person. He acknowledged filing the motion to suppress Jackie's confession and that its allegations derived from information Jackie gave him. Kling could not remember the specifics of his conversations with Jackie in 1982.

#### Chester Batey

The State introduced the deposition testimony of Chester Batey taken February 11, 1989 in relation to *Wilson v. Chicago et al.* Batey was a Chicago police officer. On the

morning of February 14, 1982, he got a call from his father saying to come because he had a tip that would lead to the biggest arrest of his career. Batey's father was a minister. A congregant, Augustus Bradford, came to Batey's father because his son Keith was helping Jackie hide. The elder Bradford feared his son was at risk so he asked Batey's father to contact him. He hoped Batey could make the arrest and protect Keith from being hurt and possibly receive some consideration for assisting the police.

Batey encountered a police sergeant he knew on his way to the church. After receiving the information from Bradford, they called other units and proceeded to the location. Batey eventually kicked the door in to the apartment where Jackie was hiding and found Jackie in a bedroom. Jackie showed his hands and followed other directions Batey gave him. He did not resist arrest.

Batey then transported Jackie to the 2nd district police station where he was booked. Initially, Jackie gave a different name. A sergeant held up a photograph of Jackie and said, "you are Jackie Wilson." Jackie then admitted his identity. Batey asked him why he didn't say so earlier. Jackie responded he was afraid because Batey had his gun drawn and pointed at him when he came in the apartment. Batey questioned Jackie about the Fahey-O'Brien shootings after Jackie was advised of his rights "at least two times that [Batey] knew of." Jackie said he didn't do the shooting. He was just a driver. Jackie implicated his brother as the shooter.

Batey needed to make a written report about the arrest. He got to Area 2 around noon and was there for a few hours. In the later part of the afternoon, Batey went in the



interrogation rooms where Jackie and Andrew were being held. Both were handcuffed to rings on the wall. Neither had noticeable injuries.

#### Frederick Hill

Detective Hill was involved in the Fahey-O'Brien investigation. When called before grand jury in 2005, he invoked his fifth amendment privilege in response to all questions regarding the investigation.

#### Diane Panos

In Burge's federal criminal trial, Panos, a lawyer, testified she met him in a bar in the late 1980s while she was on a date with a police officer. In a conversation with Burge, he said he was tasked with solving the Fahey-O'Brien case and the Wilson brothers were beaten in to confessing. Panos was appalled. Burge opined that if a person confessed to a crime they didn't commit, physical coercion was still "acceptable because the defendant probably engaged in some other criminal activity for which he was guilty so, therefore, it all balanced out." Panos and Burge proceeded to debate some points about criminal justice. Burge's believed criminal defense attorneys are useless and interfere with the administration of justice. He also felt the fourth, fifth, sixth, and fourteenth amendments shouldn't apply to defendants.<sup>3</sup>

#### Kenneth Caddick

Caddick provided an affidavit in 2013 in reference to *Kitchen v. Burge et al.* Caddick was a regular at restaurant in Lansing, Illinois called Popolanos in the 1980s. In

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<sup>3</sup> It appears his views, on the fifth amendment at least, have changed when he is the subject of a civil, criminal, quasi-criminal, post-conviction, or TIRC investigation; in some cases, decades after the relevant events.

1983, he met Burge who was dating the bartender at the time. On one occasion, a news report about the Wilsons' case appeared on the television at the bar while Burge was present. The bartender said to Burge, "tell them how you got the confession" and made a cranking motion.

#### Michael McDermott

In *United States v. Burge*, McDermott said Burge worked five days straight at Area 2, sleeping in his office, on the Fahey-O'Brien investigation. On a different occasion, McDermott saw Burge draw his gun and point it at a suspect, Shaheed Mu'Min, across the room. McDermott's prior grand jury testimony and context suggested this occurred in relation to extracting a confession.

#### Photographs

Some photographs were presented in evidence. One is the picture taken of Jackie at 2:15 pm on February 14, 1982, after his statement. He is seated in a chair at a desk and is smiling. Other photographs were taken at the lineup later the same afternoon. In another, Jackie is standing next to and pointing at a car.

A picture taken by a tribune photographer shows Jackie being taken in to the back door of Area 2. Jackie is handcuffed behind his back, bent forward at the waist with his torso nearly parallel to the ground, and the man leading him through the door is holding Jackie by the back of Jackie's jacket near his neck. The man is in front of Jackie and appears to be gripping the jacket tightly and causing Jackie to be bent over.

### Legal Standard

In 2009, the General Assembly established the Illinois Torture Inquiry and Relief Commission (TIRC or Commission). Public Act 96-223 (eff. Aug. 10, 2009) (TIRC Act, 775 ILCS 40/1 *et seq.*). The purpose of the TIRC Act was to provide "an extraordinary procedure to investigate and determine factual claims of torture related to allegations of torture..." 775 ILCS 40/10. That purpose arose because:

During the 1980's and 1990's, there were a series of allegations that confessions had been coerced by Chicago Police Detectives under the command of Chicago Police Commander Jon Burge by using torture. Burge was suspended from the Chicago Police Department in 1991 and fired in 1993 after the Police Department Review Board ruled that he had in fact used torture.

Between 2002 and 2006, a Cook County Special Prosecutor, retired Justice Edward Egan, investigated these allegations. Special Prosecutor Egan concluded that Burge and officers under his command had likely committed torture, but that any crimes were outside the state statute of limitations and could not be prosecuted.

\* \* \*

Following the release of Special Prosecutor Egan's report, legislative and community efforts intensified to provide new hearings to persons who claimed to have been tortured by Commander Burge and his subordinates. The 2009 passage of the TIRC Act, whose lead sponsor was Senator Kwame Raoul, was a result.

For purposes of the TIRC Act, a "claim of torture" means "a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction." 775 ILCS 40/5(1).

Plainly, the TIRC Act did not provide a remedy for torture *per se*. For instance, it does not provide civil damages for injury resulting from torture. Rather, it refers

credible allegations of torture to the circuit court for review of the claim insofar as it is may bear on the claimant's criminal conviction. 775 ILCS 40/50. In this regard, such claims resemble proceedings under the Postconviction Hearing Act (725 ILCS 5/122-1 *et seq.*), which take place in the court in which the conviction occurred. 725 ILCS 5/122-1(b). Postconviction claims are collateral attacks on a conviction or sentence alleging a substantial denial of constitutional rights in the original trial. *People v. Edwards*, 2012 IL 111711 ¶ 21. "In a post-conviction proceeding, the trial court does not redetermine a defendant's innocence or guilt, but instead examines constitutional issues which escaped earlier review." *People v. Johnson*, 205 Ill. 2d 381, 388 (2002). Such claims are adjudicated in a process that may consist of up to three stages. *People v. Bailey*, 2017 IL 121450, ¶ 18. The first two stages perform a gatekeeping function to screen out allegations that could not or do not make a substantial showing of a constitutional violation. *People v. Rivera*, 198 Ill. 2d 364, 373 (2001); *People v. Gaultney*, 174 Ill. 2d 410, 518 (1996). When claims, taken as true, do make a substantial showing of a constitutional deprivation, they receive an evidentiary hearing for final resolution. 725 ILCS 5/122-6; *Bailey*, 2017 IL 121450, ¶ 18. Likewise, when a majority of the Commission finds by a preponderance of evidence that a claim of torture merits judicial review, TIRC refers the claim to the Cook County Circuit Court for a hearing. 775 ILCS 40/45(c), 50(a).

The TIRC Act does not expressly reference the Postconviction Hearing Act, though. Despite that, TIRC explains on its website that if the Commission refers a claim to court, "a claimant can receive what is referred to in Illinois as a 'third stage post-

conviction hearing.” The appellate court quoted this statement approvingly in *People v. Christian*, 2016 IL App (1st) 140030, ¶ 78. In *Christian*, the appellate court analogized TIRC proceedings to the gatekeeping function of the first two postconviction stages. *Id.* (“the initial screening of the claim is roughly comparable to the first stage [and] the Commission’s inquiry and recommendations are the second stage<sup>4</sup>”). The court also noted that the circuit court does not review TIRC’s findings. *Christian*, 2016 IL App (1st) 140030, ¶ 95 (“the Commission is asked to determine whether there is enough evidence of torture to merit judicial review, the circuit court is asked to determine whether defendant has been tortured. These are two different issues determined by two different entities”). Further, the Commission’s inquiry is not an adversarial proceeding nor does it have other hallmarks of an adjudicative decision. *Id.* ¶¶ 83-88. Thus, TIRC’s findings have no preclusive effect. *Id.* ¶¶ 92, 102, 104.

Rather, just as with postconviction claims, “the circuit court hearing is the third-stage evidentiary hearing.” *Id.* ¶ 78. Likewise, in *People v. Whirl*, the court noted the State’s concession that the judicial review contemplated under the TIRC Act is akin to a third-stage postconviction hearing. 2015 IL App (1st) 111483 ¶ 51. And in *People v. Gibson*, the appellate court further held that the rules of evidence do not apply at an evidentiary hearing on a TIRC-referred claim—just like a third-stage postconviction hearing. 2018 IL App (1st) 162177, ¶ 138.

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<sup>4</sup> Presumably, the Commission’s referral to the Circuit Court for review also effectively removes any *res judicata* or other procedural barriers—matters that would be litigated in second-stage postconviction proceedings.

While there is some clarity on the procedures applicable to an evidentiary hearing on a TIRC claim, what a petitioner must prove to obtain relief is less clear. On its website, TIRC explains the evidentiary hearing “means that the claimant can have a full court hearing before a judge to show by a preponderance of the evidence *that his confession was coerced.*” (emphasis added). And the *Christian* court remarked “the circuit court is asked to determine whether defendant has been tortured.” *Christian*, 2016 IL App (1st) 140030, ¶ 95. Comparable language does not appear in the text of the TIRC Act. Instead, the TIRC Act describes disposition in the circuit court thusly:

Notwithstanding the status of any other postconviction proceedings relating to the petitioner, if the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to rearraignment, retrial, custody, bail or discharge, or for such relief as may be granted under a petition for a certificate of innocence, as may be necessary and proper.

775 ILCS 40/50(a).

This sentence, except the first clause, is “taken, verbatim, from section 122-6 of the Postconviction Hearing Act.” *Gibson*, 2018 IL App 162177, ¶ 135; 725 ILCS 5/122-6. Due to the similarity and “telling reference to ‘other postconviction proceedings’” the appellate court concluded “the legislature intended post-commission judicial review to be understood as a new species of postconviction proceeding.” *Id.* ¶ 135 (emphasis in original).

With the understanding that a TIRC claim is a type of postconviction hearing, the proposition that the petitioner must prove that he was tortured or his confession was coerced is problematic. A petitioner would not necessarily have to prove he was

tortured or his confession was coerced to obtain relief had he brought such a claim under the Postconviction Hearing Act instead of through TIRC. In *Whirl*, the appellate court stated:

the purpose of an evidentiary hearing is not for the court to determine the ultimate issue of whether a confession was coerced \* \* \* the issue at this stage of postconviction proceedings is not whether the confession was voluntary but whether the outcome of the suppression hearing likely would have differed if the officer who denied harming the defendant had been subject to impeachment based on evidence revealing a pattern of abusive tactics employed by that officer in the interrogation of other suspects.

2015 IL App (1st) 111483, ¶ 80; See also, *People v. Patterson*, 192 Ill. 2d 93, 145 (2000). The court found *Whirl* did meet that standard. So it reversed the circuit court which applied a higher standard on *Whirl* to prove he was tortured and his confession was coerced. *Id.* ¶ 81. The appellate court's ruling granted *Whirl* "a new suppression hearing and, if necessary, a trial." *Id.* ¶ 110. *Whirl* was a combined postconviction and TIRC proceeding. Having found *Whirl* entitled to a new suppression hearing under the Postconviction Hearing Act, the court did not address *Whirl*'s TIRC claim for "identical relief." *Id.* ¶ 111.

Yet, a standard requiring the petitioner to prove torture would impose a higher burden on claimants situated like *Whirl*. Since "[a]n evidentiary hearing on a claim of police torture might be held because the claim was referred by the TIRC, or because a petition under the Post-Conviction Hearing Act survived the State's motion to dismiss," and "the General Assembly did not establish the TIRC because victims of police torture needed a remedy that was *harder* to secure than what they already had." *Gibson*, 2018 IL

App (1st) 162177, ¶ 136 (emphasis in original); a TIRC claim is a new species of postconviction claim, but it is not an entirely different animal. That is, substantive law ought to apply equally as it would if the matter had come before the circuit court through a postconviction petition. “[A] court presumes that the legislature did not intend to create absurd, inconvenient, or unjust results.” *People v. Jackson*, 2011 IL 110615, ¶ 12. So if a TIRC claimant meets the standard set forth in *Whirl*, he is entitled to a new suppression hearing.

Nonetheless, a higher standard may apply if the petitioner seeks greater relief through the evidentiary hearing—suppression of the confession and a new trial. That is the relief requested here. *Whirl* found the circuit court applied an incorrect standard with respect to whether the petitioner was entitled to a new suppression hearing only. *Whirl* did not prohibit a joint proceeding or extended inquiry where a circuit court could find a confession was involuntary in addition to or independently from making the finding that a petitioner is entitled to a new suppression hearing by showing “the outcome of the suppression likely would have differed.” *Whirl*, 2015 IL App (1st) 111483, ¶ 80. The *Whirl* court’s remark sets a floor for the circuit court’s inquiry for these type of claims; not a ceiling.

In addition, judicial economy favors resolution in a single proceeding. “[T]he trial court’s inquiry [in a suppression hearing] overlaps significantly with the inquiry at an evidentiary hearing on a claim of police torture.” *Gibson*, 2018 IL App (1st) 162177, ¶ 139. In the evidentiary hearing here, the parties treated the matter as though the voluntariness of Jackie’s confession was the ultimate issue to be decided in this



proceeding. Before the hearing, Jackie expressly pled that he sought suppression of his confession and a new trial. Thus, the State was put on notice and it did actually litigate the issue when it presented and argued its case. So the State would not be prejudiced by resolving the issue now instead of in a new suppression hearing. Additionally, the Court has every reason to believe the evidence and arguments would be identical in a new suppression hearing and, further, that the witnesses who invoked their fifth amendment privilege would do so again.

Moreover, "[t]he trial court is not limited in its remedies by section 122-6 and the purpose of the [Postconviction Hearing] Act, which is to promote the concept of fundamental fairness." *People v. Perez*, 115 Ill. App. 3d 446, 451 (1983). As the *Gibson* court noted, the TIRC Act uses the very same language as section 122-6 of the Postconviction Hearing Act and the TIRC Act shares the same purpose, but for a particular type of claim. Accordingly, the Court is not limited to a certain remedy. Rather, the Court should provide the relief the evidence warrants.

Accordingly, if Jackie's claim satisfies the *Whirl* standard, he is entitled to a new suppression hearing. But, if the hearing evidence also or separately establishes that the State could not meet its burden to prove his statement was voluntary in a new suppression hearing, he should be entitled to have the statement suppressed and a new trial.

With respect to suppression, the fifth amendment to the U.S. constitution commands that no person shall be compelled in any criminal case to be a witness against himself. The fifth amendment's self-incrimination clause applies to the states

through the fourteenth amendment's due process clause. *Malloy v. Hogan*, 378 U.S. 1, 6 (1964).<sup>5</sup> "The constitutional test for the admission of a confession in evidence is whether the confession was made freely, voluntarily, and without compulsion or inducement of any sort." *People v. Davis*, 35 Ill. 2d 202, 205 (1966). "The test for voluntariness is whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed." *People v. Slater*, 228 Ill. 2d 137, 160 (2008) (citation omitted). "In determining whether a statement is voluntary, a court must consider the totality of the circumstances of the particular case; no single factor is dispositive." *People v. Richardson*, 234 Ill. 2d 233, 253 (2009). Factors to consider include the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the detention; the presence of *Miranda* warning; the duration of the questioning; and any physical or mental abuse by the police, including the existence of threats or promises." *Id.* 253-54.

"Where a defendant challenges the admissibility of an inculpatory statement through a motion to suppress, the State bears the burden of proving, by a preponderance of the evidence, that the statement was voluntary. *Id.* 254. "The State carries the initial burden of making a *prima facie* case that the statement was voluntary.

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<sup>5</sup> The United States seminal case of *Brown v. Mississippi*, 297 U.S. 278 (1936) vividly illustrates and underscores why due process forbids confessions obtained by torture. "The *Brown* defendants, not only confessed, but confessed in every matter of detail as demanded by those present; and in this manner the defendants confessed to the crime, and as the whippings progressed and were repeated, they changed or adjusted their confession in all particulars of detail so as to conform to the demands of their torturers. When the confessions had been obtained in the exact form and contents as desired by the mob, they left with the parting admonition and warning that, if the defendants changed their story at any time in any respect from the last stated, the perpetrators of the outrage would administer the same or equally effective treatment." 38 Fordham Urb.L.J. 1221 n 64 (2011).

Once the State makes its *prima facie* case, the burden shifts to the defense to produce some evidence that the confession was involuntary [citations], and the burden reverts back to the State." *Id.*

### Analysis

#### State's initial burden

Arguably, the State could still make a *prima facie* case that Jackie's confession was voluntary. The original suppression hearing testimony of the four officers who transported Jackie to Area 2 includes that he was read *Miranda* warnings and was not subject to any abuse during the ride. Hartnett, who transcribed his statement, says Jackie never complained of abuse nor did he notice anything to make him think Jackie had been abused. Batey, who initially arrested Jackie, also says he was read his rights, admitted he was "just the driver" when he was in lockup at District 2, and seemed fine when Batey saw him later in the afternoon at Area 2. In addition, there are no obvious physical injuries visible in the photographs of Jackie from the lineups or the one taken after finishing his statement. He is smiling in that picture.

#### Evidence of an involuntary statement

Jackie, then, must produce "some evidence" his confession was involuntary. The salient allegations from his original suppression testimony were: (1) he was struck with a phonebook, (2) he was kicked in the groin, (3) he had a gun put in his mouth, (4) he had his fingers twisted and hands stepped on, (5) he heard Andrew screaming from what sounded like a severe beating, (6) he was threatened to have his fingers broken if he didn't sign the statement, and (7) his request to speak with Mr. Solomon was

ignored. In his testimony for this proceeding, Jackie maintained those allegations, but added: (i) Burge was present, (ii) Burge was the one who said "not in the face," (iii) being kicked in the groin caused him to urinate, and (iv) he was given electric shocks from a black box.

Outside of his testimony, his initials look increasingly illegible from beginning to end on the pages of the statement. That tends to corroborate his allegation that detectives twisted his fingers and stepped on his hand causing him to have difficulty writing. But, in contrast, his signature is neatly written. These aspects of the statement are inconclusive.

Yet, there are aspects of the statement that do lend support to Jackie's account. The statement ends abruptly shortly after Hyman asks Jackie whether he talked to lawyer and Jackie tells him about Solomon. He states that he spoke with Solomon one or two days before. Solomon informed him there was no warrant for Jackie's arrest. Though, Solomon was advising his clients to stay off the streets because the police were "picking everybody up" due to the two officers that were killed. Hyman then asks a few more questions about his communication with Solomon and Andrew. He follows with a few questions about the building where Jackie was arrested. The questioning then comes to an abrupt end. Jackie claims that he gave Hyman Solomon's card and asked to speak with him. It seems natural that request would arise after the exchange about Solomon. If Jackie did make that request, it may explain the abrupt end to the statement.

Also, there were no questions about how he had been treated. Jackie is not asked whether he was promised anything, threatened, or coerced in to giving the statement. He is not asked about whether he has been given anything to drink or eat or allowed to use the restroom. The absence of such questioning, in the Court's experience and also indicated by Hartnett's testimony, is highly unusual. The omission suggests deliberate avoidance of responses that might undermine the admissibility of the confession or reveal misconduct.

The State counters that Jackie is simply lying. They point to several aspects of his testimony and offer arguments why he cannot be believed. The Court is neither humored nor persuaded. For one, the State contends Jackie's version "defies the laws of time and physics" because he said the abuse went on for one-and-a-half hours, but there were only 30 minutes between his arrival at Area 2 and meeting with Hyman at 10:30. That argument misconstrues Jackie's testimony. Jackie gave an estimate of one to one-and-a-half hours that "felt like an eternity" in which he suffered abuse. Neither the questions nor answers confined the relevant period to be between arrival at Area 2 and his first encounter with Hyman. To the contrary, Jackie said some abuse occurred after speaking with Hyman and after giving the recorded statement.

Second, the State submits Jackie lied about being at Keith Hawkins' apartment because he was helping with a renovation project; he was actually there to hide. This also mischaracterizes Jackie's testimony. The renovation project was Jackie's explanation of how he knew that building. He did not deny that he was hiding from the police.

Third, the State avers Jackie lied about being handcuffed to a ring on the wall in the interrogation room at Area 2. The State relies on photographs it claims depict the room and do not show rings on the wall. Yet Batey, whose testimony the State offered, specifically said both Jackie and Andrew were cuffed to rings on the wall at Area 2. Several other people taken in to custody claimed they were as well. The photographs are undated and do not refute this fact.

Fourth, the State says Jackie lied because he added significant allegations that he did not allege in his original suppression hearing: Burge was involved his interrogation and gave him electric shocks and he urinated after being kicked in the groin. The mere fact that these were not alleged in 1982 does not negate their credibility. At the time, Jackie was facing the death penalty. His counsel had to handle the case from that standpoint. Counsel had to make strategic choices about what to include in the suppression motion with that in mind; not make an exhaustive record for a proceeding like this one decades later. Contrary to the State's assertion, Kling did not deny Jackie told him about electric shocks. Kling said he could not remember the content of any of his conversations with Jackie before the suppression hearing.

Similar considerations apply to the allegation that being kicked caused him to urinate. The State puts emphasis on this, but it isn't very significant. It's a minor discrepancy and pales in comparison to the consistent allegation that Jackie was kicked in the groin.

Likewise, the State's argument that Jackie lied because in 1982 he said he gave Solomon's card to the detectives, but in this hearing said he gave it to Hyman is not

persuasive. Moreover, small discrepancies about minor details are to be expected over several decades. *Cf. Gibson*, 2018 IL App (1st) 162177, ¶ 125 (“variations in defendant’s accounts do not strike us as anything out of the ordinary. Disparities in fine-grained detail are routinely present in witness’s accounts, particularly those of stressful events”); and *Whirl*, 2015 IL App (1st) 111483, ¶ 84 (“the fact that some of the details of his testimony are slightly different now has marginal relevance”). What is significant, most of Jackie’s “core allegations have remained the same.” *Gibson* ¶ 120.

The State also submits Jackie lied when he explained he is smiling in the picture because he was threatened to do so. The State writes, “there is no plausible explanation for his relaxed smile after being kicked in the testicles, electrocuted, and beaten for more than 2 hours in a car ride and at Area 2.” Since the State chose to phrase it that way, the Court squarely disagrees. If those things happened, a threat may be the only explanation of why he would be smiling. Indeed, a person subjected to such widespread and outrageous police misconduct would without a doubt smile, bow, or even dance if told to do so if that person believed his continued well-being so required. Also, the Tribune photo showing Jackie being dragged in to Area 2 by the scruff of his jacket belies any suggestion his experience at Area 2 was going to be a happy one.

Further, the State asserts Jackie cannot meet his burden because he has not shown any evidence of injury. But, Jackie is not required to prove he was injured in police custody. The only legal consequence of not proving an injury is that the State need only prove his statement was voluntary by a preponderance of the evidence; not face the higher burden to prove by clear and convincing evidence the injury was not

inflicted as a means of producing his confession. *Richardson*, 234 Ill. 2d at 256 (“absent [an injury] the State would have been required to prove the voluntariness of defendant’s inculpatory statement by a preponderance of evidence”). Rather, the inquiry is whether his statement was voluntary under the totality of the circumstances. *Id.* (citing *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961) “Ultimately, the constitutional test for the admission of a confession into evidence remains whether the confession was voluntary”).

Beside, Jackie never claimed he suffered any discernable injuries other than his fingers swelling. The abuse Jackie claims—being hit with a phonebook, kicked in the groin, having a gun stuck in his mouth, and receiving electric shocks—are not actions that necessarily leave evidence. And that was the intent. *Burge*, 711 F.3d at 806 (“The use of [Burge’s] kind of torture was designed to inflict pain and instill fear while leaving minimal marks”). The lack of documented injury does not negate his allegations. Requiring him to show such risks repeating the kind of error in Andrew’s suppression hearing. There, the trial judge disregarded Andrew’s injuries as “superficial” because they didn’t require major surgery. *Andrew Wilson*, 116 Ill. 2d at 38. Abuse need not leave noticeable marks or be so severe as to require surgery to be painful or intimidating.

In addition, the threat conveyed by hearing Andrew being beaten and being told he would be “getting it next” if he didn’t cooperate cannot be discounted. *Arizona v. Fulminante*, 499 U.S. 279, 287 (1991) (“a finding of coercion need not depend upon actual violence by a government agent; a credible threat is sufficient. As we have said,



'coercion can be mental as well as physical, and . . . the blood of the accused is not the only hallmark of an unconstitutional inquisition'" (citations omitted).

In sum, the evidence presented in this proceeding shows that Jackie could present sufficient evidence his confession was involuntary so as to revert the burden back to the State.

#### State's ability to rebut

The State's ability to rebut Jackie's evidence and carry its burden to prove his statement was voluntary by a preponderance of evidence is the pivotal aspect of this case. "Where the only evidence of coercion is the defendant's own testimony, and where this is contradicted by witnesses for the People, then of course the trial court may choose to believe the latter." *Richardson*, 234 Ill. 2d at 255 (quoting *People v. LaFrana*, 4 Ill. 2d 261, 267 (1954)). But in this case, the State has no witnesses capable of contradicting Jackie's allegations who are worthy of belief.

Before addressing credibility, it is important to clarify what parts of the State's evidence are even capable of refuting Jackie's allegations. As explained in the prior section, the lack of documented injury and the photographs do not refute the claims. Jackie never claimed a discernable injury and pattern and practice evidence shows coercive methods employed under Burge were designed to not leave marks.

Likewise, the fact he is smiling in one picture has limited import and is contradicted by the Tribune photo. In fact, at this stage, the State would need to rebut the allegation he was threatened to smile.

The four officers whose original, 1982 testimony was offered give little of probative value. They only dealt with Jackie for a relatively short period; they were not present for the most significant abuse is alleged to have occurred—during the interrogation; their interaction with Jackie is attenuated from his confession; and pattern and practice evidence of torture under Burge calls their credibility in to question. Ultimately, this testimony does not refute Jackie’s core allegations.

Batey’s testimony does not refute Jackie’s allegations either. He also was not present during the interrogation. When he did see Jackie at Area 2, it was late afternoon—hours after the alleged abuse occurred. *Cf. Gibson, 2018 IL App (1st) 162177, ¶ 98* (testifying witnesses who were not present for the interrogation where alleged abuse occurred could not rebut the allegation).

The State relies heavily on Hartnett to refute Jackie’s claims. But Hartnett was not present during the interrogation either. And he left the room to type out the statement in another area. Jackie’s most significant allegations did not occur when Hartnett would have been able to observe.

Compared to the witnesses just mentioned, Hartnett did have much closer involvement in obtaining Jackie’s statement. Yet, rather than refuting that Jackie’s statement was involuntary, Hartnett’s testimony ultimately supports it. The title “court reporter” is not an appropriate label for Hartnett. “Court reporter” suggests independence, disinterest, and the integrity to accurately transcribe and report what was said and took place. Harnett may have had comparable stenographic skills and licensure as court reporters, but the ethics expected of them do not describe how

Hartnett operated. He was not independent from the State's Attorney's office or police department. And his testimony reveals he was part and parcel of their mission to obtain confessions that would be admissible in court irrespective of how it was actually obtained. His admission that he would stop typing to signal ASAs to cover missed *Miranda* rights is telling that Harnett was an active participant toward that end; not a passive, independent transcriber. It was also troubling that he would not record or report injuries or "horrendous things" like a suspect covered in blood, when he was well aware that he may be called to testify about it later. Also troubling was Hartnett's admission he "didn't give a damn" if Andrew and Jackie were beaten. His surprise to be taking statements from them at all assuming they would have been killed by police further reveals his attitude toward them and their constitutional rights. The Court can only conclude Hartnett was infected by the same pattern and practice of Burge's interrogation regime; ready, willing, and able to turn a blind eye to abuse. His entry and exit of the interrogation room was deliberate and calculated to further facilitate the means employed by the detectives to get Jackie to sign and initial the statement. *Cf. People v. Jakes*, 2013 IL App (1st) 113057, ¶ 32 ("silent acceptance of the crime committed by a fellow officer can help persuade their victim that no one associated with police will help him and he will face worse beatings if he tells a police officer, an assistant State's Attorney, or a doctor working for the State about the beatings"). So instead of weighing in favor of the State's case, a fair assessment of Harnett's testimony favors Jackie's.

Thus, only four people remain who could possibly have personal knowledge to refute Jackie's allegations: O'Hara, McKenna, Burge, and Hyman. O'Hara is deceased,

but he did testify about these matters at the original 1982 suppression hearing and a 1988 deposition. The accounts at each were substantially the same. He claims Jackie confessed shortly after arriving at Area 2 and denied any abuse. But, the reliability of O'Hara's testimony about the Wilsons has been rejected by both the Police Board who fired him in 1993 and Judge Lefkow who excluded it in Burge's perjury trial. Those decisions are not binding, but are persuasive. O'Hara's testimony does not rebut Jackie's.

McKenna, Burge, and Hyman all invoked their fifth amendment privilege in response to any probative question concerning this matter. When the only witnesses with personal knowledge of a claimant's allegations of police abuse take the fifth, the claim is not rebutted. *Gibson*, 2018 IL App (1st) 162177, ¶ 102. Worse, the situation compels this Court to draw an adverse inference.

"In a civil action, the fifth amendment does not forbid an adverse inference against a party who refuses to testify in response to probative evidence of alleged misconduct." *Id.* ¶ 85.<sup>6</sup> "As long as there is 'some' evidence to support the complainant's allegations, a court may consider a party's refusal to testify as further evidence of the alleged misconduct." *Id.* (citing *People v. Houar*, 365 Ill. App. 3d 682, 690 (2006)). While discretionary, failure to draw an adverse inference may be error "if there is no good reason why the inference should not [be] drawn." *Id.* ¶ 86 (citing *Whirl*, 2015

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<sup>6</sup> Citing *Whirl*, 2015 IL App (1st) 111483, ¶ 106; *People v. \$1,124,905 U.S. Currency & One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 332 (1997); *Baxter v. Palmigiano*, 425 U.S. 308 (1976).

IL App (1st) 111483, ¶ 107). And “status as a law enforcement officer should lend special significance to invocation of his fifth amendment privilege.” *Id.* ¶ 105.

As discussed, there is some evidence to support Jackie’s allegations. Burge and McKenna were law enforcement officers so their invocation has special significance. Hyman, as an ASA, was in a law enforcement capacity. But more, coupled with his status as a licensed attorney subject to ethical responsibilities and sworn to uphold constitutional values, his invocation carries even greater significance. His attempt to instruct this Court not to draw a negative inference was risible and insulting to the judiciary and bar. Beyond that, the State has failed to provide any “good reason why the inference should not be drawn.” As a result, Burge, McKenna, and especially Hyman’s refusal to testify is further evidence supporting Jackie’s allegations of abuse.

The State contends that adverse inferences should not be drawn because Burge, McKenna, and Hyman are “non-parties.” This argument fails to account for the binding precedent from *Whirl* and *Gibson* instructing circuit courts to draw an adverse inference, in the absence of a good reason not to, when an officer accused of abuse takes the fifth.

Overall, the evidence adduced in this hearing establishes that the State is incapable of rebutting that Jackie’s statement was involuntary. Jackie’s claims and credibility are not unassailable. Ordinarily, adding an allegation as significant as police using a devise to give electric shocks, when not included in an original motion to suppress, would be reason to doubt. The State labels Jackie’s addition of this allegation “a fantastic story.” Such an allegation should be fantastic story. But pattern and practice evidence shows shocking suspects was common. And each witness in a position to

deny it invoked the fifth amendment. Those considerations take the “story” out of the realm of fiction.

Jackie has made the requisite showing, not only that the probability the outcome of his suppression hearing would differ had the witnesses been subject to impeachment; but, more, that the State could not meet its burden to show Jackie’s statement was voluntary in a new suppression hearing. *Whirl*, 2015 IL App (1st) 111483, ¶ 110 (“Indeed, it is impossible to conceive of how the State could prevail at a new suppression hearing with the officer alleged to have coerced a suspect’s confession invoking his privilege against self-incrimination”). Accordingly, a new suppression hearing could only result in a finding that Jackie’s confession was involuntary and his statement would be suppressed.

### **Findings of Fact and Conclusions of Law**

In addition to the foregoing, the Court makes the following findings of fact and conclusions of law:

2. The murders of two white police officers on February 9, 1982 led the Chicago Police Department to conduct the city’s largest manhunt in history. Petitioner’s Rebuttal Designation No.16, February 11, 1988 Batey Tr. at 148:16-22.

3. According to former Chicago Police Department (hereinafter referred to as “CPD”) officer Chester Batey, retaliation was on the mind of everyone at CPD: “That particular moment before I went out, I think there was a feeling of revenge and retaliation and let’s get them and what have you in the mind of every police officer in the city; and when you hear about, like I said, somebody in your profession getting

killed, the first thought is something of that nature..." Petitioner's Designation No. 16, Chester Batey Deposition on February 11, 1989 at 52.

4. Lt. Burge led the investigation into the murders of officers Fahey and O'Brien. Ex. 5, Police Board Opinion at 4; Petitioner's Designation No. 11 at 3015:1-12. The investigation was the most important Lt. Burge ever worked on. Ex. 5, Police Board Opinion at 5. Burge worked day and night between February 9, 1982 and February 14, 1982, never went home, and had little to no sleep. Ex. 5, Police Board Opinion at 5.

5. During this investigation, Lt. Burge was responsible for supervising approximately 50 detectives in the Violent Crimes Unit at Area 2. Ex. 5, Police Board Opinion at 4. According to Burge, these detectives at Area 2 were "under very close supervision" while in the station because he considers himself to be a hands-on supervisor. Petitioners Designation No. 11 at 73:20-74:9. Detectives O'Hara, Yucaitis, and McKenna were some of the detectives under Lt. Burge's command. Ex. 5, Police Board Opinion at 5.

6. McKenna and O'Hara, as longtime Area 2 detectives, played an important role in the investigation, interviewing the eyewitness, interrogating suspects, participating in the arrest of Andrew Wilson, and interrogating Andrew and Jackie Wilson. At every stage of the investigation, from February 9th onward, they took directions from, and reported directly back to, Lt. Burge. Plaintiff's Rebuttal Designations 28 and 29 (O'Hara and McKenna).

7. In February of 1982, Area 2 consisted of a two-story building with a basement at 91st Street and Cottage Grove Avenue in Chicago, Illinois. Id. at 1467:9-16.

8. Doris Byrd retired as a Sergeant in the Chicago Police Department in 2004. Petitioner's Exhibit No. 7, Burge Sentencing Hearing Tr. at 1463:7-18. Byrd was hired at the CPD in 1977 and was later assigned to be a detective in the Area 2 Violent Crimes Unit. Id. at 1464:22-1465:5. According to Byrd, there were a group of detectives named the "A Team" at Area 2. Id. at 1474:7-13. This group consisted of detectives who handled mostly homicides and high publicity cases. Id. at 1474:7-13.

9. Sammy Lacey, a former Sergeant in the CPD, testified that the "A-Team" was a euphemism for Burge's "Ass-kicking" team. 1/16/18 Hearing Tr. at 14:10-17, 52:14-20. According to Byrd, there was visible "camaraderie" between Lt. Burge and the "A Team", as they often socialized with each other outside of the station as well. Petitioner's Exhibit No. 7, Transcript of Burge Sentencing Hearing in U.S. v. Burge at 1477:5-15.

10. Lacey testified that the "A-Team" had a high proportion of cases cleared through confessions. 1/16/18 Hearing Tr. at 26:15-23. Coincidentally, the "A-Team" had access to torture devices at Area 2. First, the building was heated through radiators which "were very hot" to the touch. Petitioner's Exhibit No. 7, Burge Sentencing Hearing Tr. at 1469:1-6. Area 2 had typewriters on the second floor with plastic vinyl covering. Id. at 1470:4-10; Petitioner's Exhibit No. 74.

11. Not only did Burge and his "A-Team" have access to such devices, but Byrd actually heard people being tortured at Area 2 while she was there. Id. at 146:20-147:4. For instance, Byrd heard screaming and other unusual noises coming out of the



interview rooms when the midnight shift was interrogating suspects. Id. Some of these individuals confided in Byrd that they were tortured by the "A-Team." Id. at 147:5-15.

12. Byrd also learned that some of these suspects were tortured with devices such as telephone books, bags, and electroshock. 1/16/18 Hearing Tr. at 147:16-24; 148:5-15. Michael Hartnett, a court-reporter, corroborated Byrd's allegations regarding telephone books when he testified that he saw these books at police stations. 1/30/18 Hearing Tr. at 100:13-15.

13. According to Chester Batey, another CPD officer, each of these methods were also used in Vietnam. OSP Designation No. 7, Chester Batey 1989 Tr. at 124:6-19, 125:1-126:22, 127:4-22; see also Petitioner's Exhibit 55. Lt. Burge served in Vietnam prior to being hired by the Chicago Police Department. Petitioner's Designation No. 11 at 2993:10-24. In Vietnam, Burge possessed field telephones that used a crank to produce electricity. Id.

14. Chester Batey, one of Jackie Wilson's arresting officers, was also familiar with the use of telephone books to beat suspects. When asked whether he knew what a Tucker telephone was, Batey responded "that's the phone book on the head...that's where you take a phone book, place it on a person's head, then you hit the phone book with either a telephone or some type of rod, nightstick, or what have you." OSP Designation No. 7, Chester Batey 1989 Tr. at 124:6-19. When asked whether telephone books were used to prevent bruising during physical abuse of people, Batey responded that he "thought it was to spread the pain out a little more." Id.

15. Det. Byrd later learned from fellow detectives and suspects that the "black box...was running rampantly through the unit up there." 1/16/18 Hearing Tr. at 148:5-

15. According to Byrd, it was an open secret that this type of torture existed at Area 2 under the supervision of Jon Burge. Id. at 148:16-24.

16. Three additional African American Area 2 detectives confirmed that Burge had an electric shock device at Area 2 that he used on African American suspects in the 1970s and 1980s. In the 1970's, Bill Parker saw it in use and Melvin Duncan saw it on a table, while Walter Young saw it in the early 1980s. Petitioner's Designations 4 (Parker); 37 (Duncan); 35 (Byrd) Petitioner's Exhibit 54 (Young.)

17. As is discussed below, the vengeance described by Officer Batey combined with the interrogation methods employed by Lt. Burge and those under his command resulted in the mass torture and abuse of scores of African-Americans during the manhunt.

18. At this hearing, Petitioner has presented essentially un rebutted testimony illustrating that nearly a dozen potential suspects and witnesses were tortured prior to the arrests of Andrew and Jackie Wilson on February 14, 1982.

19. Ronald Samuels was a licensed attorney and president of the Cook County Bar Association in February of 1982. Petitioner's Designation No. 37, Samuels 1989 Trial Tr. at 1243:12-19; 1244:16-1245:1. During the six-day manhunt, Samuels contacted the Office of Professional Standards on behalf of the Cook County Bar Association. Id. at 1245:12-21.

20. In his initial conversation, Samuels revealed that he had "a good number of complaints" of police misconduct and wanted assurance that these "complaints were getting to the Office of Professional Standards." Id. at 1248:19-1249:9. Samuels then outlined the complaints that "people were being beat up, doors were being bust into, people were being held without...warrants issuing for their arrest..." Id. Samuels expressed his serious concerns that "virtually hundreds of people were being arrested and harassed that had no relation or should not have any relation to that alleged killing because of the nature of the description of the persons that they were looking for." Id. at 1249:18-24.

21. By the end of February 11, 1982, Samuels called in sixteen separate complaints regarding the underlying investigation. Id. at 1250:5-17. For example, Samuels revealed complaints about "a police officer holding a gun to a head - to the head of a fourteen-year-old boy. I told him about - I told this individual about the business of holding a person up against a hot radiator. They would back him up against a hot radiator and the legs would burn or something like that...I told him about the bag over the head. There was a complaint about the use of a Jewel grocery bag over the head...There were other complaints that I made, but I remember those specifically." Id. at 1251:7-1252:15.

22. The following day, Samuels had another conversation with the Office of Professional Standards about the complaints of police misconduct. Id. at 1251:17-25. In that call, Samuels learned that OPS "lost 120 complaints that had been made..." Id. That same day, on February 12, 1982, Samuels contacted Superintendent Brzeczek's

office. Id. at 1261:1-20. After leaving numerous messages, letters, and a telegram, Samuels' outreach to Brzeczek was never responded to by anyone at the Chicago Police Department. Id. at 1261:4-1263:1; 1266:19-1270:18.

23. On February 14, 1982, Samuels again called the Office of Professional Standards. Id. at 1257:17-22. In that conversation, OPS confirmed to Samuels that their office had "lost" 120 complaints of police misconduct. Id. at 1258:13-22. The Seventh Circuit Court of Appeals found in its 1993 Andrew Wilson decision that:

*[Supt.] Brzeczek had received many complaints from members of the black community that officers in "Area 2 Violent Crimes," the police unit in which Wilson was tortured, were abusing suspects; such abuse was in fact common in Area 2. Brzeczek had referred the complaints to the office in the police department that is responsible for investigating complaints of police misconduct, but the office had done nothing except lose a lot of the complaints.*

Petitioner's Ex. 3, *Wilson v. City of Chicago*, 6 F.3d 1233 1240 (7th Cir. 1993).

24. Roy Brown was 18 years old when he encountered the police on February 9, 1982. Petitioner's Designation No. 41 at 907:20-25. At the time, Brown was at home on Chicago's south side with Walter Johnson and Larry Milan when the police kicked the door in. Id. at 911:2-11.

25. The plainclothes officers, acting under the supervision of Jon Burge, slammed Larry Milan against the wall and then put their feet on top of Roy Brown, who was lying on the floor. Id. at 911:12-20. After Milan asked what was happening, the police hit him with a flashlight in the face and told him to shut up. Id. at 912:4-16. Milan was then hit again on the back of his legs. Id. at 913:4-7. After tearing up the

house, the officers handcuffed Brown and Milan and placed them in separate police cars. Id. at 913:11-25.

26. Brown was taken to Area 1 Detective division at 51st and Wentworth in Chicago and handcuffed to a hook on the wall. Id. at 916:17-25. Two or three officers quickly retrieved him and took him into a storage room. Id. at 917:14-25. After arriving in the room, the officers punched Brown and applied intense pressure to his ear drums. Id. at 918:20-919:16. While torturing, the officers were instructing Brown to tell them "who killed them police..." Id. at 919:3-4.

27. Because Brown continued to maintain that he knew nothing about the murders, Id. at 920:5-7, an officer retrieved a big bolt cutter from a gray cabinet, said "we're going to cut his fucking finger off" and put Brown's finger inside the bolt cutter. Id. at 921:1-6. This lasted for approximately five minutes until Roy's finger was nearly cut off. Id. at 921:7-8.

28. The officers then retrieved a paddle and began striking Brown with it in the back of his legs while telling him to provide information on "who killed them police." Id. at 921:11-15. By this time, Brown was "delirious with pain and crying and calling on God to help [him]..." Id. at 921:16-18. Shortly thereafter, he was taken upstairs and suffocated with a plastic bag over his head. Id. at 921:19-923:1.

29. The officers eventually took Brown to the roof of Area 1 and continued to suffocate him with a plastic bag over his head. Id. at 923:2-17. He eventually broke free and dropped to his knees. Id. at 923:20-22. Brown, in order to stop the torture, told the police to go to Paul Mike's house to get information on the murders. Id. at 924:3-17. At

the time, Brown knew nothing and had no information indicating that Paul Mike knew anything either. Id. at 924:13-925:3.

30. After being led downstairs, Brown saw his friend Larry Milan, whose "hair was all wild looking, [his] face [was] kind of puffed up and stuff, shirt ripped..." Id. at 925:7-14.

31. Brown also saw another person he knew at Area 1 named Eddie Burke, who was screaming and begging Larry Milan "to tell them what they want to know." Id. at 926:2-11.

32. The police eventually took Brown to a police cruiser and had him identify Paul Mike's residence. Id. at 927:11-24. Brown then saw the police kick in Paul Mike's front door and Mike being removed from the residence. Id. at 928:1-22.

33. Roy Brown was eventually released from custody after the police learned that Paul Mike had nothing to do with the murders. Id. at 930:5-22. Brown eventually sought medical attention from Dr. Neal for the injuries he suffered. Id. at 932:4-933:4.

34. Roy Brown and Larry Milan ultimately filed complaints about their mistreatment at CPD headquarters. Id. at 933:5-934:22. They never received any notification from the police department about the complaints. Id. at 934:23-25.

35. Brown was not known to Jackie Wilson or his lawyer at the time of his motion to suppress and trial, but after his OPS complaint was uncovered, he testified at Andrew Wilson's civil trials in 1989.

36. Paul Mike was 31 in February of 1982 and lived approximately 12 blocks from the scene of the Fahey and O'Brien murders. Petitioner's Designation No. 40 at

997-998. According to Mike, police were "arresting and questioning everybody" the day after the killings. Id. at 998:21-23.

37. In the evening hours of February 10, 1982, Mike was arrested by Chicago Police officers who were working under Burge's supervision. Id. at 999:22-25. The police came into Mike's apartment and began "smacking [him] around and grabbed [his] clothes..." Id. at 1001:6-10. The officers told Mike that they were searching his home because officers got killed. Id. at 1002:10-23.

38. The police began abusing Mike shortly after entering his house. For example, a plainclothes officer smacked him in the face before he was taken to Area 1 for questioning. Id. at 1003:2-24, 1006:3-5.

39. While at the station, Mike was questioned at length about the murders of Officers Fahey and O'Brien. Id. at 1008:2-10. He was handcuffed to a "little hook thing to the wall" and his friend, Roy Brown, was placed in the adjacent interrogation room. Id. at 1010:15-1011:5.

40. Paul Mike was beaten by Chicago Police Officers during his interrogation. Id. at 1011:5-8. These officers beat his genitals, the back of his feet, and his legs with a stick. Id. at 1011:13-24. At some point, Paul was hit several times in the face with an open hand. Id. at 1012:18-24.

41. At various points in the torture session, the officers beat Mike then left the room to question other witnesses. Id. at 1012:4-10. After returning to his interrogation room, the officers continued to beat him. Id. at 1012:6-10. The officers who beat Mike were white and wore plainclothes. Id. at 1012:14-17.

42. Paul Mike also had a meaningful opportunity to witness the mistreatment of other suspects and witnesses as he was left in the bullpen at Area 1 for two days without any meaningful food or a place to sleep. Id. at 1016:16-1017:7. There, Paul saw that the police were "bringing a lot of guys through." Id. at 1014:12. In his view, "they was picking up, you know, everybody." Id. at 1014:18. According to Mike, "everybody in there [was] moaning and a few guys was crying and saying what they picked them up for. They said they had them in there for questioning and they had something to do with the police and they had whipped them...they had whipped some of them kind of real bad. They were laying on the floor hunching, some of them were sleep-hunching, you know, because they were hurting." Id. at 1015:14-22.

43. After being released on February 12, 1982, Paul Mike went with his mother and girlfriend to file a complaint regarding the mistreatment he endured. Id. at 1019:22-1020:24.

44. Mike was not known to Jackie Wilson or his lawyer at the time of his trial and motion to suppress, but after his OPS complaint was uncovered, he testified at Andrew Wilson's civil trials in 1989.

45. Walter Johnson was a teenage boy who lived at 7836 S. Throop St. in February of 1982. Petitioner's Designation No. 39 at 1102:11-17. On February 10, 1982, Johnson was woken up by his father at 3:00 a.m. Id. at 1108:8-10. At the time, there were a number of police officers in his living room who began questioning him extensively about the murder of Officers Fahey and O'Brien. Id. at 1108:15-25. The



officers attempted to take Johnson from the house for further questioning, but his father successfully stopped them from doing so. Id. at 1109:4-12.

46. The police returned to the Johnson residence four hours later. Id. at 1109:15-24. Those officers, working under Burge's supervision, were all white and in plainclothes. Id. at 17-24. Johnson was taken to Area 1 and put in an interrogation room where he was questioned by approximately 5 to 6 police officers. Id. at 1110:15-1111:3.

47. There, the officers began to beat Johnson after he denied any knowledge or involvement in the murders. Id. at 1111:14-1112:25. He was struck by a fist in the mouth with such force that he fell on the floor where the officers kicked him in the groin and stomach. Id. at 1112:13-15, 23-25, 1113:3-21, 1113:24-1114:9. While doing so, the officers were saying "black mother fucker, stinking son of a bitch, and all other words...just a lot of cursing." Id. at 1114:10-19.

48. Johnson was then taken to a hallway where the police again questioned him before throwing him down. Id. at 1115:3-5. Shortly thereafter, the officers put a plastic bag over his head while they continued kicking him in the stomach and groin. Id. at 1115:4-15. Johnson was suffocating while the bag was over his head. Id. at 1115:12-23. He was "was crying out for fear" while the officers tortured him. Id. at 1116:2-6. When Walter requested to go home, the officers told him that he "ain't going anywhere." Id. at 1132:14-16.

49. During the abuse, the police attempted to get Walter Johnson to confess to the murders of Officers Fahey and O'Brien, but he continued to maintain his innocence and was eventually transferred to Area 2. Id. at 1116:7-25, 1117:1-17.

50. After arriving at Area 2, Johnson was placed in a room and again handcuffed to the wall. Id. at 1117:18-24. Shortly thereafter, he was questioned by officers. Id. at 1117:23-24. These officers, too, swore and threatened him like the officers did at Area 1. Id. at 1127:1-4, 1128:3-11. The officers told Walter that "they were going to beat [him] up and kill [him]..." Id. at 1128:10-11.

51. After being released, Johnson gave a statement about the mistreatment he endured to the Police Board. Id. at 1154:3-25. The police commissioner was present for his statement. Id. at 1155:1-10. Walter never heard back from anyone after lodging his complaint. Id. at 1155:11-14.

52. Johnson was not known to Jackie Wilson or his lawyer at the time of his trial and motion to suppress, but after his OPS complaint was uncovered, he testified at Andrew Wilson's civil trials in 1989.

53. Additional complaints of police misconduct were lodged with OPS stemming from the underlying investigation into the deaths of Officers Fahey and O'Brien. Petitioner's Ex. 1, TIRC Opinion at 15.

54. For instance, on February 11, 1982, Sylvia Logan alleged that unknown officers broke down her basement door without a warrant. Id.

55. Alfonso Pinex and his mother complained that he was abused by officers during his arrest on February 9, 1982. Id. During his questioning, Alfonso Pinex was

hit in the head with a flashlight and pistol, choked, and endured a police car door slammed on his legs. According to Alfonso's mother, a police sergeant apologized and explained that someone had implicated her son in the officers' murder. Id.

56. On February 9, 1982, Donald Judkins was at his residence at 7203 S. Halsted when two white plainclothes officers entered with guns drawn and struck him in the head with a fist. Id.

57. On February 12, 1982, four white plainclothes officers searched Eula Owens' home at 6843 S. Carpenter without a warrant. Id. Those officers also arrested her son Nick Owens and struck him several times in his body. Id. at 15-16.

58. On February 14, 1982, Kenneth Harris was stopped by five unknown officers. Id. at 16. Those officers handcuffed him to a car, struck him, kicked him in the hands, legs, and groin. Id. Kenneth was then punched in the face while being questioned about the Wilson brothers. Id.

59. On February 12, 1982, Anthony Williams was arrested and brought to Area 1 for questioning. Petitioner's Designation No. 19 at 21. At the time of his arrest, Williams was knocked to the ground and told that he "was the one that shot two officers." Id. at 21:4-15. Shortly thereafter, he was taken to the residence of Donald White and then brought to the CPD Headquarters at 11th and State. Id.

60. At Police Headquarters, Anthony Williams was tortured at length after being brought into a room, with Burge being one of the officers involved. Id. at 21:16-25:9, 24:8-25:3. First, the officers put a plastic bag on his head and started beating him before beating him with a phone book on his head and ribs. Id. at 22:1-8; Ex. 47,

Affidavit of Anthony Williams at 11. During this time, Burge was trying to get him to “confess to killing two police officers.” When Anthony wouldn’t confess, Burge said “let’s take the handcuffs off of him, take him to the staircase and shoot him, and say he was trying to escape.” Id.

61. As Williams continued refusing to confess, Burge pulled out his gun and said he “was going to shoot this nigger.” Id. The gun that Burge pulled out was a big, long-barreled, silver gun. After pulling the gun out, Burge said that he “ought to kill” Williams. Id. After that, the officers continued torturing Williams as he continued to profess his innocence. Id. at 22:11-18.

62. Burge and company eventually stepped out of the room and a black officer stepped in whom Williams recognized from Altgeld Gardens. Petitioner’s Designation No. 19 at 22:19-23:2. That officer then beat a book on the desk to “pretend that he was torturing [him].” Id. at 23:3-10. Immediately thereafter, Williams was taken from the interrogation room, and he signed a statement that the officers prepared for him. Id. at 23:3-11.

63. Williams’ torture was unknown to Jackie Wilson and his lawyer at his motion to suppress and trial, and was uncovered in 2010 during the Alton Logan lawsuit.

64. On or about February 12, 1982, an eyewitness to the murders made a tentative identification of Donald White as the shooter of Fahey and O’Brien. Petitioner’s Rebuttal Designation 29, O’Hara Deposition at 106:2-5.

65. Donald White was arrested in the evening hours of February 12, 1982.

OSP Designation No. 6 at 40:1-11. As he exited his home, "a bunch of people started coming out of bushes, up under cars, pointing guns, made me get on the ground, told me to freeze. If I am not mistaken, the man [who] looked like [Area 2 detective] Hill told me, 'Move, motherfucker, because I want to kill you anyway,' or, 'All you got to do is move.'" Petitioner's Designation No. 20 at 12:18-13:4. As he got off the ground, White saw approximately 10 to 15 guns pointing at him. Id. at 13:1-4.

66. After his arrest, White witnessed the police apprehend his brother-in-law, Dwight Anthony, whom the witness had tentatively identified as the driver of the car in which the shooter was riding. Id. at 13:6-9, 14:14-24; Petitioner's Rebuttal Designation 29, O'Hara Deposition at 106:2-5. Both Donald White and Dwight Anthony were transferred to CPD headquarters at 11th and State. Petitioner's Designation No. 20 at 16:9-14.

67. Donald White was ultimately taken to the Fifth Floor and was immediately questioned by Detectives Hill, McKenna, O'Hara and Lt. Burge. Petitioner's Designation No. 20 (2010 Dep) at 33:10-15. Additional police were present as well. Petitioner's Designation No. 20 (1989 Dep.) at 17:19. Dwight Anthony was placed in an adjacent interrogation room. Id. at 18:4-6.

68. White was immediately questioned about "who killed the police." Id. at 17:13-14. The officers kept asking him about whether he killed the officers or had any information about who did it. Id. at 18:8-19. After he denied involvement, Hill got mad and said "I am tired of this fucking shit" and then got a black bag and put it over White's head. Id. The next thing he knew, White "had a black plastic bag over [his]

head and somebody started beating [him] for an hour with a phone book." Petitioner's Designation No. 20 (2010 Dep.) at 33:24-34:5. Donald begged the officers to stop and was "begging for [his] life." Id. at 34:17.

69. Hill, McKenna and O'Hara then suffocated Donald White. Petitioner's Designation No. 20 (1989 Dep) at 19:7-11. Donald felt as if he was "about to go unconscious [from] the plastic bag." Id. at 34:18-20. After a period of time, these officers stopped abusing Donald White and brought his brothers Lamont White and Walter White into the room. Id. at 19:12-18. After Donald continued denying any involvement, these officers put the bag back on his head and beat him again. Id. at 19:19-24. He was "screaming ... because [he] couldn't breathe for real then." Id.

70. Throughout his interrogation, Donald White continued getting beaten while Burge and his men kept asking if he killed the police. Id. at 23:5-7. When White responded that he did not, they continued to beat him. Id. at 22:16-22.

71. At some point, Detective Hill told Donald White that if he didn't "cooperate, that he was going to shoot [him], tell [him] to run or push [him] out the window or something." Id. at 26:20-23.

72. Donald White's brothers, Lamont and Walter, were also being tortured and were screaming in the other room. Id. at 20:1-3. After enduring this torture, Donald told his interrogators: "Okay, okay, okay, I will tell you anything you want to know. I tell you anything you want to know." Id. at 20:9-14.

73. Apparently not satisfied with the information White provided, Burge then took the bullets out of the gun, put a bullet in the gun, and said, "we're going to play

Russian roulette" before putting the gun inside Donald's mouth. Id. Burge then cocked the gun two or three times before taking Donald's leg and holding him out of a top floor window by one leg. Id. at 36:1-4. Donald White thought "[he] was going to die." Id. at 36:7.

74. At some point during the interrogation, Donald White was taken for a lie detector test. Just before he died of cancer in 2006, former Area 2 detective Frank Lavery revealed for the first time that a civilian polygraph examiner told him that White was brought to him for the test, and that

*They brought down White [to the polygraph office] so beat up and so bloody that, you know, he thought he should be in the hospital not the polygraph office. He didn't want to give the polygraph. He got into a big fight with them about giving him the polygraph. Because he got into a big fight with them, they fired him.*

Petitioner's Designation No. 2, Lavery Statement at 7.

76. Donald White eventually gave a statement implicating the Wilson brothers on February 13, 1982 at 1:30 a.m. Petitioner's Designation No. 20 (1989 Dep.) at 27:5-9. Detective O'Hara took Donald White's statement. Id. at 13-27:9; OSP Ex. 6. At the time, White believed he "had to sign a statement" and would "do anything they told [him] to do..." Petitioner's Designation No. 20 (2010 Dep.) at 39:6-7.

77. Before Donald White gave his statement, "they beat [my] family, they beat [me], they beat [my] brothers, they beat other people that came from around my house..." Petitioner's Designation No. 20 (1989 Dep.) at 123:18-22.

78. Donald White also informed the police that they might be able to find Andrew Wilson inside Willie's Beauty Shop at 1440 West 115th Street. OSP Designation

No. 5 at 125:16-18; Petitioner's Ex. 5 at 6. Using White's information, the police recovered the service revolvers of Officers Fahey and O'Brien at the beauty shop. Id.; OSP Designation No. 5 at 131:21-132:2. On February 13, 1982, Detective O'Hara "ran the weapons" and verified that the weapons recovered at Willie's Beauty Shop belonged to Officers Fahey and O'Brien. Id. at 142:2-11.

79. By February 14, 1982, Burge and detectives working under his command also realized that Andrew Wilson was previously identified in a line-up conducted in December 1981 by Detectives McKenna and Hill. Petitioner's Exhibit 5 at 6. Wilson was identified in that lineup as the perpetrator of a robbery on December 3, 1981 at a camera shop. Id. at 7. As a parole violator, Andrew Wilson's bond should have been revoked when he was arrested for the robbery. Id. Because of an error, Andrew Wilson was released on bond as a suspect in the robbery. Id. Lt. Burge was annoyed at Detectives Hill and McKenna for allowing Andrew Wilson to be released in December of 1981. Id.

80. O'Hara and McKenna have admitted that they participated in the interrogation of the Whites and Dwight Anthony at police headquarters, and Burge has also admitted to being present during the interrogations. Petitioner's Rebuttal Designations 28, 29, and 30) (McKenna, O'Hara and Burge).

81. Jackie Wilson and his lawyer did not know about the torture of the White brothers and Anthony Williams at his motion to suppress and trial. Andrew Wilson's lawyers were first informed of this evidence in a February 2, 1989 letter from an anonymous police source in which the author wrote: "several witnesses including the White's (sic) were severely beaten at 1121 S. State Street in front of the Chief of



Detectives, the Superintendent of Police and the States Attorneys." Donald White later detailed his torture at a July 1989 deposition in the Andrew Wilson civil case. Petitioner's Exhibit 52 (2/2/89 anonymous letter); Petitioner's Designation 20 (1989 Dep).

82. In 1999 or 2000, Donald White told attorney Richard Kling that he had been recently threatened by those Area 2 detectives "who put a gun in his mouth," including McKenna and Hill. 1/30/18 Hearing Tr. at 158.

83. Derrick Martin, who Burge and his men believed was in the back seat of the Andrew Wilson's car just before the murders took place, was arrested and present at Area 2 on February 14, 1982. Petitioner's Ex. 1 at 3; Petitioner's Rebuttal Designation No. 22 at 33:20-22. On that date, Lt. Burge brought Andrew Wilson into a hallway and Burge said, "is this him?" Id. at 33:6-19. Martin was then brought to a room close to the one where Andrew Wilson was being interrogated. Id. at 34:12-24.

84. At some point, Lt. Burge came into the room and told Area 2 detectives to "find out where he been at." Id. at 37:3-7. The detectives then started kicking and punching Derrick in his body, face, and groin area. Id. at 37:6-16. Burge was present when the officers were abusing Derrick. Id. at 37:17-19.

85. As Martin was being beaten, Burge took Andrew Wilson to the corner of the wall as a detective said "so you like killing police officers, huh" before punching Andrew Wilson in the stomach. Id. at 37:22-38:1.

86. After being punched, Andrew Wilson was taken out of the room by Lt. Burge and Detective O'Hara. Id. at 39:7-14. Martin recalls that "[i]t was a scary situation. Everybody was on edge." Id. at 40:1-2.

87. Martin was eventually brought to the Area 2 mug shot room. Id. at 40:4-9; Petitioner's Ex. 68, Diagram of Area 2. There, Derrick heard "unbearable" screaming from another interrogation room. Petitioner's Rebuttal Designation No.22 at 41:8-12.

88. The screaming was long and Felony Review Supervisor Lawrence Hyman was present for some of it. Id. at 42:12-16. After hearing the screams, Hyman revealed to Martin, "Andrew won't talk" before stating that "[w]hen we get through with him, he going to tell on his momma." Id. at 43:7-9.

89. At approximately 5:15 a.m. on February 14, 1982, Andrew Wilson was arrested at 5301 West Jackson Blvd. in Chicago, Illinois. Petitioner's Ex. 1 at 7; OSP Ex. 12, Testimony of Det. McKenna on November 8, 1982 at 627. Lt. Burge, with Detectives McKenna and O'Hara, (in addition to many others) participated in Andrew's arrest. Petitioner's Rebuttal Designations 28, 29, 30; Ex. 1 at 7.

90. When Andrew was arrested, Deputy Superintendent McCarthy and Sergeant Brannigan grabbed him and threw him to the floor. Id. at 7. While there, Burge placed one of his knees on the small of Andrew's back and the other on the back of Wilson's head. Id.

91. Andrew did not have a shirt on at the time of his arrest and because of that, Supt. McCarthy and Detective Karl testified that there were no marks, bumps, cuts, or blood on Andrew's chest or head. Id. at 8. The Chicago Police Department has

consistently maintained that Andrew did not physically mistreat Andrew during his arrest. Id. at 8.

92. Andrew was ultimately transported to Area 2 headquarters at 9059 South Cottage Grove, arriving between 5:30 a.m. and 6:00 a.m. Petitioner's Ex. 1 at 7; OSP Ex. 12, Testimony of Det. Karl on November 9, 1982 at 917.

93. Prior to transporting Andrew to Area 2, Lt. Burge has claimed that he told Detective Yucaitis, "Don't let anybody get to him. Don't let nobody talk to him. Treat him right." Petitioner's Ex. 1 at 8: According to Andrew, Burge really said "Don't bother him, we will get him at the station." Petitioner's Designation No. 1 at 745:11-12.

94. Detective O'Hara testified that Andrew arrived at Area 2 shortly after 6:00 a.m. on February 14, 1982. Petitioner's Ex. 1 at 9. No one said anything to Andrew on the way to the police station. Petitioner's Designation No. 1, 2/23/89 Tr. at 747:17-20. After arriving, Andrew was taken through the backdoor and hustled up a flight of stairs. Id. at 747:18-20.

95. Approximately four Area 2 officers were present in the room when Andrew arrived. Id. at 748:13:15. Andrew was thrown to the floor after entering the room. Id. at 749:4-13. Immediately thereafter, Andrew was hit, punched, and kicked by the officers in the room. Id. The officers then jerked Andrew back up before throwing him down again. Id. at 749:14-24.

96. At some point, the officers put a black bag over his head and continued hitting him. Id. The bag over Andrew's head nearly caused him to suffocate. Id. at 751:1-6. Andrew "couldn't breathe" which is why he "bit the hole through the bag." Id.

at 751:1-7. This, though, did not deter the officers as they "kept doing what they was doing." Id.

97. Andrew was also slammed into a window before he was hit again and thrown on the floor. Id. at 749:14-750:6. After landing on the floor, one of the officers kicked Andrew in the eye. Id. at 750:2-6. According to Andrew, this is what caused his visible eye injuries. Id. at 750:5-6. As the officers were beating him, Burge walked into the room and instructed them not to mess up his face. Id. at 750:7-14.

98. Subsequent to this first torture session, at about 6:50 am, O'Hara and McKenna entered the room where Andrew was located and they saw the injury to Andrew's eye. Petitioner's Rebuttal Designation 28 at 121-122.

99. Burge assigned them to interrogate Andrew because they had been working on the investigation from the beginning and it was now a "critical part" of the investigation. Petitioner's Rebuttal Designation 28 at 109-111.

100. Andrew was then taken to another room and handcuffed to a ring on the wall. Pet. Designation 1 at 755:10-16, 755:24-756:5. At the time, Andrew had nothing on but his pants and boots. Id. at 758:1.

101. Detective Yucaitis then returned to the interrogation room and requested that Andrew call his brother on the telephone. Id. at 758:6-21. The other officers surrounded Andrew as he was near the phone. Id. Andrew refused to call his brother and was returned back to the room and handcuffed to the wall. Id. at 758:20-24.

102. Burge eventually returned to the room and told Andrew that "his reputation was at stake" and that Andrew "was going to make a statement." Id. at

764:17-19. Shortly thereafter, Yucaitis came back into the room with a bag that was used to suffocate Andrew once again. Id. at 764:20-765:6; 770:14-23.

103. A black box was then taken out that "had a crank on it, a black crank on it, had a wire." Id. at 770:24-25. One of the wires was then pulled out and placed onto Andrew's ear as another was put on his left nostril. Id. at 771:2-9. The wires had clips on them. Id. at 773:7-14. The officer then cranked the device which caused Andrew to begin "hollering real loud." Id. Andrew "kept hollering when he kept cranking." Id. at 771:2-9.

104. Later, Burge joined in on the electroshock and "was doing it, kept cranking it and cranking it, I mean for a long period of time." Id. at 774:10-13. The electroshock had a devastating effect on Andrew: "It stays in your head and it grinds your teeth. It makes your teeth grind. It grinds like that. It grinds, constantly grinds, constantly...It just stays in your head. The pain just stays in your head." Id. at 774:10-23. Burge became frustrated because the wires kept coming off Andrew's ears so he placed them on his fingers. Id. at 775:10-15.

105. At some point later that morning, Detective O'Hara took Andrew to meet with ASA Lawrence Hyman. Id. at 801:23-24; 803:2-10. After Hyman entered the room, Andrew told him: "You want me to make a statement after they have been in there torturing me like that." Id. at 803:18-24. After pausing for 30 seconds, Hyman said "[g]et the jagoff out of here." Id. at 804:1-4. Immediately after, O'Hara took Andrew back to the interrogation room. Id.

106. At this point, Andrew continued refusing to give a statement implicating himself in the underlying murders. Id. at 804:16-18.

107. Andrew sat handcuffed to wall for approximately 30 to 40 minutes before anyone entered the room. Id. at 805:3-20. Burge eventually came back in the room with a brown paper bag and announced that it was "fun time." Id. at 808:10:14; 810:2-5.

108. Shortly thereafter, Burge took out the black box and sat in a chair before proceeding to electroshock Andrew again. Id. at 811:1-812:1. Because Andrew kept rubbing the wire off his ear, Burge and another officer handcuffed him across a radiator. Id. While there, the electroshocking continued. Id. at 812:1-815:20. Andrew's "teeth [were] grinding, flickering in [his] head, pain and all that stuff. [Burge] just kept on doing it over and over and over." Id. at 815:19-25.

109. Andrew recalled that Burge "didn't stop, not once he got me across, he just kept cranking it and his partner, the fat one, kept kicking me in my back, and there was another stud in there too..." Id. at 817:15-20.

110. By this time, Andrew was spitting out blood. Id. at 818:13. He was burned by the radiator. Id. at 818:18-819:13. Eventually, Andrew fell to his knees after he was slammed into the radiator. Id. at 820:8-14.

111. Burge then put everything back in the bag as one of the other officers cleaned up Andrew's face. Id. at 820:19-24. Andrew was then left alone in the room at around 12:30 p.m., the same time that Burge left to attend the press conference at CPD headquarters. Id. at 822:1-4; Petitioner's Exhibit No. 1 at 10-11. Andrew was later transferred to Area 1 at around 3:00 p.m. Id.

112. Andrew was brought into a room after being transferred to Area 1. Petitioner's Designation No 1 at 824:3-22. At some point, Burge entered and was playing with his gun. Id. at 824:24-25. Burge started sticking the gun in Andrew's mouth and "clicking it" before he finally pulled it out. Id. at 825:1-22. Burge was talking to Andrew as he did this. Id.

113. After that, Andrew was placed in a line-up. Id. at 826:4-25. As is shown in the line-up photograph, Andrew's right eye is visibly injured. OSP Ex. 8, Lineup Photograph.

114. After the lineup, Detectives McKenna and O'Hara drove Andrew back to Area 2 for further questioning. Petitioner's Designation No. 1 at 827:8-16. In that car ride, Detective McKenna told Andrew that "he would prefer to kill [him], he would like to shoot [him], he would like to empty his gun in [him]." Id. at 828:5-9.; Petitioner's Rebuttal Designation 23.

115. Andrew was once again brought to the second floor of Area 2. Id. at 831:8-19. Burge entered the room again and asked if Andrew was ready to make a statement or whether they were going to need to torture him again. Id. at 832:1-7. At that point, Andrew finally agreed to give a statement. Id. at 832:8-24.

116. At some point, Michael Hartnett, the court-reporter, typed up Andrew's statement and Hyman read the pages to him one at a time. Id. at 835:2-836:5. Andrew signed the statement at 6:25 p.m. Petitioner's Exhibit No. 1 at 12. There is nothing in Andrew Wilson's statement indicating that it was given voluntarily and free of threats or coercion. PTO, Undisputed Fact (UF) 17. The practice of the State's Attorneys' Office

at that time was to ask those questions during the taking of a statement. Id., UF 18. After giving his statement, Burge came into the room and said, "we are going to fry your black ass." Petitioner's Designation 1 at 844:17-21.

117. Later, Hartnett took a photograph of Andrew at 8:30 p.m. Id. at 12. Petitioner's Designation No. 1 at 836. After his picture was taken, Andrew told Hartnett that "they was going to torture [him] some more like that." Id. at 837:18-22. Hartnett replied by saying that "he couldn't do anything about it" and left. Id.

118. Andrew was subsequently transferred from Area 2. Id. at 838:22-23. Andrew was first taken to the lock-up at 11th and State but was rejected because of his physical condition. Petitioner's Ex. 1 at 13. He was then admitted to Mercy Hospital at 10:45 p.m. where he was given a partial physical examination by Dr. Geoffrey Korn, and nurse Patricia Reynolds. Id. The examination was terminated when Chicago police officer Mulvaney refused to holster his gun and forced Andrew to refuse further treatment. Petitioner's Designations 8, 10. The treatment received by Andrew is discussed further below.

119. In February of 1993, the Chicago Police Board fired Jon Burge for torturing Andrew Wilson, and this decision was affirmed on appeal. Petitioner's Exhibits 5, 6. In its July 19, 2006 Report, The Special State's Attorneys of Cook County found:

*that the evidence in the Andrew Wilson case "would be sufficient to establish guilt beyond a reasonable doubt" against Jon Burge for the "mistreatment" of Andrew Wilson, that "we believe Andrew Wilson's statements that he had been tortured," and that they could "in good faith ask a grand jury to indict and a trial*



*jury to convict Jon Burge of aggravated battery, perjury and obstruction of justice" in the Andrew Wilson case.*

Final Pre-Trial Order (FPTO), Undisputed Fact 1; Petitioner's Exhibit 26.

120. Jackie Wilson was arrested at 5157 South Prairie Avenue at 8:05 a.m. on February 14, 1982. Petitioner's Exhibit No. 1 at 7; 12/27/17 Tr. at 228. After being arrested, Jackie was taken around the corner where he saw his brother Larry Wilson and friend Keith Hawkins handcuffed. Id. at 229. Jackie was then taken on a "short ride" that lasted approximately six minutes to Area 1. Id. at 229:17-20.

121. After arriving at Area 1, Jackie was brought to the lockup before being processed. Id. at 230:4-19. While being processed, an African-American police officer realized Jackie's true identity. Id. at 230:20-231:5. The officer responsible for fingerprinting Jackie then slapped him in the face. Id. at 231:7-11. Jackie was then taken to the lockup while officers called Area 2. Id. at 231:22-232:14.

122. Approximately 10-15 minutes later, Jackie was removed from the lockup and transferred into the custody of four white police detectives from Area 2. Id. at 232:1-23. These officers handcuffed Jackie and placed him in the back of their unmarked police cruiser. Id. at 232:12-19. Jackie estimates that he was at Area 1 for approximately 15 to 20 minutes prior to being transferred. Id. at 233:6-9. It was approximately 9:00 a.m. when Jackie was transferred to Area 2. Id. at 234:6-11.

123. Jackie was handcuffed prior to being placed in the backseat of a squad car by four detectives from Area 2. Id. at 234:1-235:13. Two officers were in the front and an officer surrounded Jackie on each side in back. Id. at 235:5-21.

124. Almost immediately after entering the vehicle, the detective to the right of Jackie told him that he was going to saying something about the murders. Id. at 236:1-24. Jackie was then elbowed by that officer six times in the chest and ribs after he denied any knowledge. Id. at 236:16-24; 237:7-9.

125. After refusing to provide any information, the detective to the left of Jackie joined in the abuse. Id. at 237:16-238:8. This detective also elbowed Jackie on six occasions. Id. at 238:1-8. While being beaten, the detectives kept telling Jackie that he was lying and was "gonna talk..." Id. at 238:9-12.

126. Then, the detective in the front passenger seat turned around and backhanded Jackie three times in the face. Id. at 239:4-16. Although the ride to Area 2 lasted approximately 10 to 15 minutes, Jackie's face, chest and side were in pain upon his arrival. Id. at 239:21-23; 240:4-5.

127. By the time of his arrival at Area 2, Jackie was scared, nervous, and in "fear of [his] life" because he "was wanted for the questioning of two Chicago police officers and [he] was being beaten on the way to a police station." Id. at 238:13-22. After arriving, Jackie was pulled out of the car and ushered into the building through the back. Id. at 241:1-5. As is shown in Petitioner's Exhibit 71, the officer forcibly took Jackie into Area 2 by the back of his neck. Petitioner's Exhibit No. 71, Chicago Tribune Photograph of JW.

128. According to the transporting detectives, Det. Riordan was driving the unmarked police vehicle, Det. Krippel was the front passenger, Det Nitsche was to

Jackie's left in the back seat, and Det. McGuire was to Jackie's right. OSP Designations 10, 37, 55.

129. Jackie Wilson was taken directly to the Case Management Office on the second floor of Area 2. 12/27/17 Tr. at 241:6-15; Id. at 279:5-282:4. Upon entering the room, Jackie was handcuffed to a ring on the side of the wall that had a window. 12/27/17 Tr. at 242:13-24. The detectives who brought him into the room left and Jackie was immediately interrogated about the homicides of officers Fahey and O'Brien. Id. at 242:5-243:7.

130. According to Detective O'Hara, Jackie Wilson's interrogation began around 9:30 a.m. on February 14, 1982. OSP Ex. 5 at 243:2-10. At that time, Detectives McKenna and O'Hara began interrogating Jackie in the Case Management Office. OSP Ex. 5 at 243:2-10. Detectives McKenna and O'Hara interrogated Jackie at the behest and instruction of Lt. Burge and were reporting to him about the interrogation. Id. at 244:24-245:4; Petitioner's Rebuttal Designations 28 and 29. Assistant Cook County ASA Lawrence Hyman was not present when McKenna and O'Hara interrogated Jackie. Id. at 243:11-19.

131. Jackie initially told Detectives McKenna and O'Hara that he had no knowledge of the underlying homicide. 12/27/17 Tr. at 254:4-6. After his denial, Detective McKenna told him that he "would be wise to come clean and tell" them what happened as the officers "already know [he] didn't having anything to do with it...you are a victim of circumstance here." Id. at 255:14-24. Jackie retorted that he knew nothing about the homicide.

132. McKenna responded by striking Jackie 5 to 6 times on his face and body. Id. at 256:4-20. Detective McKenna's abuse caused Jackie great pain. Id. at 256:19-20. Nonetheless, Jackie continued denying involvement. Id. at 257:1-2. In response, Detectives O'Hara and McKenna continued hitting and slapping Jackie all over again while calling him a liar. Id. at 257:1-10.

133. After hearing Jackie's denials, Detective O'Hara proceeded to hit him in his face, chest, and side. Id. at 258:16-20. Jackie was in pain and "worried because this was something [he] had never experienced before." Id. at 259:1-2.

134. At some point, Detective McKenna started hitting Jackie in the head with a phone book. Id. at 259:15-260:14. Jackie was hit by Detective McKenna 3-4 times with the phone book. Id. at 260:1-2. While abusing Jackie, Detective McKenna was making comments such as "You ready to talk now? You gon[na] say something?" Id. at 260:20-21. Detective O'Hara, too, was making comments: "You're lying, you're gonna tell us something eventually, and every time you lie, this is what's gonna happen to you." Id. at 262:5-11. Jackie was disorientated from all the abuse he was suffering. Id. at 260:22-23.

135. Eventually, Detective O'Hara asked Jackie if he knew a person named Donald White. Id. at 265:2-10. Jackie was punched after he denied knowing Donald White. Id. at 266:6-9. He then was uncuffed and dragged to the door where he was shown Donald White, a person that he knew by the nickname of Kojak. Id. at 266:10-24.

136. Jackie was then brought back into the interrogation room, slammed

down into a chair, and handcuffed once again to the wall. Id. at 268:16-18. A short time later, Detective McKenna asked Jackie whether he knew Derrick Martin. Id. at 268:10-11. Jackie was slapped again on his body, chest, ribs, and head approximately 16 times after denying that he knew Derrick. Id. at 268:12-21; 269:17-19. Detective McKenna told Jackie that he was "lying" and that he was "gon[na] come clean" as he continued to beat him. Id. at 269:22-23. At that point, Jackie was uncuffed and walked to the door. Id. at 270:3-9. It was then that Jackie saw Derrick Martin, the person he recognized as "D." Id. at 270:7-12.

137. Shortly thereafter, Detective McKenna kicked Jackie in the groin. Id. at 270:23-271:9. The kick caused Jackie to urinate on himself. Id. at 270:13-16. As he was kicked, McKenna told Jackie that he was "gon[na] talk...gon[na] tell us something." Id. at 271:19-20.

138. By this time, Jackie was "hurt, scared, [and] worried" because he had "never been subjected to this." Id. at 271:23-272:1. Jackie was scared that he would never make out of the station alive. Id. at 272:3.

139. At some point, Lt. Burge joined in Jackie's interrogation. Id. at 272:4-273:19. As Burge entered, Detective O'Hara was slapping Jackie in the face. Id. at 274:20-24. Burge immediately told Detective O'Hara to stop hitting Jackie in the face because "they don't want to leave marks on...[his] face like they did with [his] brother." Id. at 275:12-15.

140. After Burge made this instruction, Detective McKenna started choking Jackie and pulled out a revolver and stuck it in his mouth. Id. at 275:19-25. McKenna

then "start[ed] moving it around in a circular motion, cocking it back and forwards. Cock it and then let it go back down. He didn't let it hit, but he is holding it, easing it back in, cock it back, ease it back in. He is doing this, rolling around in [his] mouth" for a few minutes. Id. at 276:1-13. With a gun in his mouth, McKenna asked Jackie if this made him nervous. Id. at 276:21-23.

141. Jackie thought the same thing he believed was going to happen "all along, they gonna kill me." Id. at 276:14-16. Burge eventually told Detective McKenna to take the gun out of Jackie's mouth. Id. at 277:17-278:6. Up until this point, Jackie continued denying any involvement in the murders. Id. at 278:12-14. Burge eventually became aggravated by Jackie's refusal to give a statement and said "I am getting tired of this shit. I got something that will make him talk." Id. at 285:2-6.

142. Lt. Burge then stepped out of the room and returned with a bag that contained a black box. Id. at 285:14-23. Jackie was then uncuffed from the wall before Burge started putting little wires on his hand. Id. at 286:22-287:19. At that point, Burge "proceeded to wind up a little thing, like it's a little jack in the box, if you will, and [Jackie] felt electrical jolt hit [him] in [his] hand and go through [his] body." Id. at 288:5-10.

143. At the time, Burge "was enjoying himself" and had a "smirk on his face" as he "did it again." Id. at 288:13-16; 289:2-3. Overall, Jackie was electroshocked three times by Burge. Id. at 288:13-16.

144. Not only was Jackie tortured at length, but he could also hear his "brother screaming and hollering..." Id. at 290:22-23. Jackie could hear his brother screaming

and telling the police to "leave him alone." Id. at 291:11. As he heard Andrew screaming, Burge told Jackie that if he didn't cooperate, that he was "getting it next." Id. at 292:3-6. Jackie believed that "what they were doing to [his] brother they was fixing to do to [him]. They was doing this already. [He] had no reason they was gon[na] do otherwise." Id. at 292:9-11.

145. Although Jackie didn't have a watch on, it seemed like he was tortured for an "eternity." Id. at 293:7. Eventually Jackie told them "game over" and that he'd "tell them whatever they wanted to know. Game over. What you want me to say, I am gon[na] say it. [He] want[ed] it to stop." Id. at 290:16-19; 291:1-11.

146. By this time, Jackie was "hurt, scared, [and] uncertain of even coming out of this police station alive." Id. at 292:13-14. He was in pain "all over. Head, face, ribs. Then [they] kicked [him] in the grind [groin]. This electric business." Id. at 292:18-20. In Jackie's words: "I am through. I'm through." Id. He was tired and would tell the police whatever they wanted him to say. According to Jackie, "They say I shot the president, I shot him. I'm tired. I want it to end." Id. at 293:1-3.

147. Shortly thereafter, ASA Lawrence Hyman, came into the room and said that he heard Jackie "was gonna make a statement." Id. at 293:18-22; 297:4-22. Jackie then told Hyman that he wanted to see his lawyer and gave him a business card for his attorney, Frederick Solomon. Id. at 294:3-5. Hyman left after that and Detectives McKenna and O'Hara returned. Id. at 297:19-298:6.

148. Jackie was again beaten by Detectives O'Hara and McKenna as they told him that he didn't "need no fucking lawyer," and that if he requested one again, he

would get tortured once more. Id. at 298:7-13. Jackie believed that the only way he would leave Area 2 alive was if he gave a statement. Id. at 304:10-15.

149. According to Detective O'Hara, he and Detective McKenna "interrogated" Jackie until he was ready to give a statement. OSP Ex. 5 at 245:8-17. Detective O'Hara testified in 1988 that he retrieved Hyman as soon as Jackie Wilson agreed to give a statement. Id. at 245:8-14.

150. Lawrence Hyman took Jackie Wilson's court reported statement in the Case Management Office at 12:20 p.m. 12/27/17 Hearing Tr. at 299:20-300:11. Detective McKenna and the court-reporter, Michael Hartnett, were present when this statement was given. Id. at 299:20-300:11.

151. Hyman never asked Jackie whether he had been treated unfairly by the police, or whether he was physically coerced by any police officer into giving the statement as was the practice in the State's Attorneys' Felony Review Unit at the time. Id. at 301:24-302:7; PTO Undisputed Facts 16, 18.

152. Doris Miller, a carrier for the United States Postal Service, was awakened by loud knocking at her door during the early morning hours of February 14, 1982. Petitioner's Designation No. 3 at 1222-1223. Miller knew the Wilsons since they were children, though she didn't consider Andrew to be a friend. Id. at 1232:11-24. The police went to speak with Doris because Donald White had told O'Hara and McKenna that Doris transported Jackie Wilson at one point during the manhunt. OSP Exhibit 6. After opening the door, Miller was arrested by four white police officers and taken to Area 2 for questioning. Id. at 1223:11-1224:7; 1227:20-22.



153. Once there, Doris Miller was taken to a room, handcuffed to a "thing on the wall," and remained there for "a long time." Id. at 1228:2-1229:24, 1229:1-2; 1229:13-14. She was eventually taken out of that room and brought to a room where Andrew Wilson was sitting inside. Id. at 1230:1-14. At the time, Andrew was sitting on a stool and naked from his waste up. Id. at 1230:22-1231:7.

154. Although the station was cold, Miller noticed that "Andy's body was just full of sweat, it was just sweaty. He was sweaty." Id. at 1231:11-15. After seeing Andrew, she was placed in the room adjacent to his and was again handcuffed to a window sill on the wall. Id. at 1231:16-24. She estimated that the time was around dawn. Id. at 1232:1-7.

155. As Miller sat in a room adjacent to Andrew, she heard the police "beating him. The boy was begging and pleading, somebody have mercy on me, somebody have mercy. They beat him, they beat him over and over again." Id. at 1233:11-15. As she was handcuffed to the window sill, she heard Andrew's "body falling on the floor." Id. at 1233:21-22.

156. According to Miller, Andrew was screaming, hollering, and begging the police to stop torturing him. Id. at 1234:3-9. To her, this abuse lasted "forever...it would stop sometimes." Id. at 1234:9-14. The only thing she heard Andrew Wilson say is "I haven't done anything," over and over again. Id. at 1234:15-19.

157. Later, Miller heard the police tell Andrew, "Look motherfucker, we are going to take you out of here now, and if you try anything we will blow your head off." Id. at 1235:7-12. She did not see or hear Andrew again that day. Id. at 1246:13-16.

158. Doris Miller was not released from custody at Area 2 until 9:00 p.m. on February 14, 1982. Id. at 1246:17-23. She was handcuffed to the windowsill from the twilight of dawn until her release nearly 15 hours later. Id. at 1236:2-8. Although she begged to use the bathroom, the police refused and she was forced to urinate in an ashtray. Id. at 1236:4-15.

159. In the early morning hours of February 14, 1982, detective Sammy Lacey stopped at Area 2 on his way to church. 1/16/18 Tr. at 34:5-15. Lacey estimated that he arrived around 9:00 a.m. or 9:15 a.m. Id. at 41:10-13, 50:8-11.

160. As Lacey exited his car, he could "hear someone screaming and shouting and yelling." Id. at 34:19-24. To Lacey, it was clear that the screams were coming from someone in distress on the second floor of Area 2. Id. at 41:14-18, 35:22-23.

161. After arriving on the second floor, Lacey saw one of the offenders and was informed that his last name was Wilson. Id. at 35:1-3. Lacey later determined that the person he saw was Andrew Wilson. Id. at 53:7-15.

162. As is discussed above, Derrick Martin was present at Area 2 on February 14, 1982. Petitioner's Ex. 1 at 3; Petitioner's Designation 22 at 33:20-22.

163. On that date, Martin was brought to the mug shot room in the front of the second floor at Area 2. Id. at 40:4-9; Petitioner's Ex. 68, Diagram of Area 2.

164. After being placed in that room, Martin heard Jackie Wilson being tortured across the hall from him. Id. at 44:24-46:1. He heard Burge yell at Jackie "tell me that lie again that you weren't at the White family house" before hearing 'a punch...a sound like a fist hitting somebody's face and somebody - and a body failing

over some chairs." To Martin, it sounded "like a fist hitting flesh, a loud thump sound, like a fist" and then he heard "some chairs fall on the floor, aluminum chairs." Id. at 45:16-19.

165. Lt. Burge then told Derrick Martin to come into the hallway. Id. at 43:23-44:1; 46:6-9. When he came out, Martin saw that Burge "had Jackie Wilson trembling with fear. He was very, very scared...he was terrified. You know when you see fear in a person's face?" Id. at 44:4-45:10. After seeing Jackie, Burge told Martin to "tell this motherfucker he was at the White family house." Id. at 46:12-19. After Martin remained silent, Burge threatened to "charge [Martin] with murder, too." Id. at 46:23-24. Martin was then taken back into the photo room. Id. at 47:10-15.

166. As is discussed above, Jackie Wilson was abused during his transport to Area 2 by four detectives. By the time of his arrival, Jackie was scared, nervous, and in "fear of [his] life" because he "was wanted for the questioning of two Chicago police officers and [he] was being beaten on the way to a police station." Id. at 238:13-22.

167. This testimony is corroborated by Petitioner's Exhibit No. 71, the Chicago Tribune Photograph of Jackie Wilson, which shows Jackie being dragged by the back of the neck into the side door of Area 2 by one of the transporting detectives. Id.

168. On February 15, 1982, Jackie Wilson had a brief conversation with his initial attorney, Frederick Solomon. 2/16/18 Hearing Tr. at 241:4-18. In that conversation, Jackie told Solomon that he was "assaulted" by the police. Id. at 241:21-24.

169. In his interview with the TIRC commission, Frederick Solomon confirmed that Jackie complained of being “beaten” during their initial meeting on the morning of his first court appearance. Petitioner’s Ex. 1, 5/20/2015 TIRC Opinion at 17. Because of the passage of time, Solomon could not “recall many details about that meeting...” Id. at 17-18.

170. Richard Kling was trial counsel for Jackie Wilson. 1/30/17 Hearing Tr. at 128:8-10. He began representing Jackie around the time of his arraignment on February 23, 1982. Id. at 147:6-12; OSP Ex. 18, Wilson Docket.

171. Kling filed a motion to suppress for Jackie Wilson on June 30, 1982. OSP Ex. 11, Motion to Suppress Statement; 1/30/17 Hearing Tr. at 148:23-150:2. That motion to suppress made allegations regarding the torture that Jackie Wilson received on February 14, 1982, including, beating, kicking in the groin, beating over the head with a telephone book, and putting a gun in Jackie’s mouth and cocking it. OSP Ex. 11, Motion to Suppress Statement; 1/30/17 Hearing Tr. at 155:10-16. At his November 1982 motion to suppress, Jackie Wilson testified consistently with the allegations of torture set forth in his motion to suppress. OSP Exhibit 12.

172. Aside from telling his attorneys about the torture he endured, Jackie also shared his experience with his brother Andrew Wilson. Petitioner’s Rebuttal Designation 23; 2/16/18 Hearing Tr. at 236:2-24. In Andrew’s deposition on December 15, 1988, he testified about a conversation that he shared with Jackie in the jail on February 15, 1982. Petitioner’s Rebuttal Designation 23.

173. Andrew and Jackie Wilson were placed in a cell together at the Cook County Jail. *Id.* at 271:3-284:10. While there, Jackie told his brother that the police tortured him at Area 2, that they used electroshock, and that he was electroshocked prior to giving his statement. *Id.*; 2/16/18 Hearing Tr. 236:2-24; Petitioner's Rebuttal Designation 23.

174. Jackie Wilson gave his oral statement to Detective McKenna, former Cook County ASA Lawrence Hyman, and court reporter Michael Hartnett in the Case Management Office of Area 2 beginning at 12:20 p.m. OSP Ex. 7, Wilson Court Reported Statement; 1/30/18 Hearing Tr. at 105:14-106:13. It took approximately 23 minutes for Jackie to give his court reported statement. *Id.* at 106:13-23.

175. Hyman was the head of the Felony Review Unit of the Cook County State's Attorneys' Office in February of 1982. February 5, 1982 MTS Tr. at 590:19-591:4. In that capacity, Hyman's responsibility was to take written statements from suspects. *Id.* at 591:5-9.

176. In 1982, it was the practice of the Cook County State's Attorneys' Office to end each statement by asking the suspect if his statement was taken voluntarily. 1/30/18 Hearing Tr. at 71:10-17; 76:16-22; PTO, Undisputed Fact 18. The Office of the Special Prosecutor has admitted that in February of 1982, the normal practice of the Assistant State's Attorneys assigned to Felony Review was to ask suspects during the taking of court reported statements whether they had been physically abused or otherwise mistreated while in police custody. *Id.*

177. Assistant State's Attorneys also often asked suspects whether they were provided with: (1) any food or drinks; (2) cigarettes to smoke; and (3) an opportunity to use the restroom. 1/30/18 Hearing Tr. at 71:22-72:10. According to Hartnett, the responsibility to ask such questions fell upon the shoulders of the Assistant State's Attorneys and no one else. Id. at 72:11-15.

178. On February 14, 1982, Lawrence Hyman never asked Jackie whether he was giving his statement voluntarily. Id. at 110:23-111:2. Jackie was likewise never asked whether he was: (1) provided anything to eat; (2) treated well; (3) mistreated; (4) physically abused; (5) threatened; (6) coerced; or (7) tortured by Chicago Police officers. Id. at 110:110:23-111:24; OSP Ex. 7, Wilson Court Reported Statement.

179. Lawrence Hyman's failure to ask Jackie Wilson whether his statement was voluntary was inconsistent with the practices in place in 1982 at the Cook County State's Attorneys' Office. 1/30/18 Hearing Tr. at 71:10-17; 76:16-22; FPTO Undisputed Fact 18.

180. After taking Jackie's statement, Michael Hartnett transcribed his notes in the small common area. Id. at 106:4-15. It took Hartnett approximately 75-80 minutes to transcribe Jackie's statement into a typed format. Id. at 107:13-15.

181. The typed statement was signed by Jackie Wilson around 2:15 p.m. in the presence of McKenna, Hyman, and Hartnett. OSP Ex. 12, February 5, 1982 MTS Tr. at 599:4-601:6.

182. In its July 19, 2006 Report, the OSP found that the Chief of Felony Review of the Cook County States Attorneys' Office, Lawrence Hyman, gave "false testimony"

when "he denied that Andrew Wilson told him he had been tortured by detectives under the command of Jon Burge." FPTO Undisputed Fact 5; Pet. Ex 26, July 19, 2006 Report at 54.

183. Jackie Wilson has always maintained that he was tortured into giving a statement on February 14, 1982. Jackie testified about the torture he endured at his motion to suppress hearing on November 4, 1982. OSP Ex. 11, Wilson MTS Hearing Tr. at 725-790. At that hearing, Jackie testified about being elbowed about his body and slapped in the face during the car ride to Area 2. *Id.* at 727-734. Jackie further testified that when the officers denied him the right to counsel inside the interrogation room at Area 2, an officer hit him in the chest and kicked him. *Id.*

184. Jackie also testified that he could hear Andrew screaming "as if someone was doing something real bad to him." *Id.* at 743. Jackie averred that an officer instructed the other abusers not to damage his face. *Id.* at 745. He recapped how he was kicked, slapped, shaken around, had his fingers twisted, stepped on, and was hit on the head with a book. *Id.* at 745-746.

185. Jackie further testified that one of his interrogators took out his revolver and stuck it in his mouth, which made him "nervous." *Id.* at 748. During that time, the officer was cocking the gun back and forth. *Id.*

186. Jackie Wilson was never asked whether he was electroshocked at his motion to suppress hearing in November of 1982. *Id.* at 235:11-17. Although the question was never asked, Jackie, prior to his testimony, had informed his attorney and told his brother that he had been electroshocked, and later testified that he had been

electroshocked when asked at his 2010 deposition in *Logan v. Burge*. He also mentioned the electroshock in his statement to the TIRC, and again recounted it in his 2017 deposition in this case. *Id.* at 235:23-236:1; Petitioner's Designation No. 17; Pet. Exhibit 1.

187. Licensed attorney Diane Panos testified that Burge openly admitted to her at a bar that the Wilson brothers "had been beaten...in order to secure a confession." Petitioner's Designation 9, Rebuttal Designation 24 at 1649-1653. Innocence and Constitutional rights were irrelevant to Burge: "if a defendant had confessed to a crime that he hadn't committed, it was acceptable because the defendant probably had engaged in some other criminal activity for which he was guilty so, therefore, it all balanced out," In Burge's view, the Fourth, Fifth and Fourteenth Amendments did not apply to criminal defendants. *Id.*

188. Burge encountered an acquaintance named Kenneth Caddick at a bar within a year of securing statements from the Wilson brothers. During that time, Burge's girlfriend begged him to tell how he obtained a confession from the Wilson brothers while "moving her hand in a cranking motion." Petitioner's Designation 15; Petitioner's Ex. 48, Kenneth Caddick Affidavit at 1. Burge turned red with embarrassment, and signaled her to stop. *Id.* at 1. Burge's girlfriend, April Hagan, later revealed to Caddick that Burge told her that "the Wilson brothers were tortured, that Burge used a black box to question suspects, that the box was used to electroshock suspects, and that Burge learned these tactics while serving in Vietnam." *Id.* at 2.



189. The only surviving law enforcement officials involved in taking Jackie Wilson's statement---former ASA Lawrence Hyman, former Detective Thomas McKenna, and former Lt. Jon Burge--- have repeatedly declined to answer questions about the torture of Jackie Wilson and instead asserted their Fifth Amendment right against self-incrimination.

190. When Thomas McKenna was asked at his June 27, 2016 deposition in this case whether he was aware of any brutality or violence imposed on African-American suspects or witnesses during the investigation into Fahey and O'Brien's deaths, he asserted his Fifth Amendment right against self-incrimination. Petitioner's Designation No. 12, 2016 McKenna Dep. Tr. at 9:6-12.

191. When Thomas McKenna was asked at his deposition in this case whether he tortured Donald White with Area 2 officers that included Hill, O'Hara, and Burge, he asserted his Fifth Amendment right against self-incrimination. *Id.* at 11:24-12:5.

192. When Thomas McKenna was asked at his deposition in this case whether he tortured Dwight Anthony, Walter White, Lamont White, and Anthony Williams during the Fahey and O'Brien investigation, he asserted his Fifth Amendment right against self-incrimination.

193. When Thomas McKenna was asked at his deposition in this case whether he participated in or witnessed Jackie Wilson being repeatedly hit on the head with a telephone book, he asserted his Fifth Amendment right against self-incrimination. *Id.* at 26:5-9.

194. When Thomas McKenna was asked at his deposition in this case whether he could hear Andrew Wilson scream during Jackie's interrogation, he asserted his Fifth Amendment right against self-incrimination. Id. at 29:22-30:1.

195. When Thomas McKenna was asked at his deposition in this case whether he witnessed Detective O'Hara kick Jackie Wilson in his testicles, he asserted his Fifth Amendment right against self-incrimination. Id. at 30:5-8.

196. When Thomas McKenna was asked at his deposition in this case whether he or anyone in his presence twisted Jackie Wilson's fingers and stepped on his hand when he refused to cooperate, he asserted his Fifth Amendment right against self-incrimination. Id. at 30:9-13.

197. When Thomas McKenna was asked at his deposition in this case whether he or anyone in his presence stuck a gun in Jackie Wilson's mouth and cocked the hammer back and forth, he asserted his Fifth Amendment right against self-incrimination. Id. at 30:14-20.

198. When Thomas McKenna was asked at his deposition in this case whether Jon Burge came into the interrogation room and used an electroshock device on Jackie Wilson, he asserted his Fifth Amendment right against self-incrimination. Id. at 32:22-33:1.

199. When Thomas McKenna was asked at his deposition in this case whether he threatened to beat Jackie Wilson again if he complained of torture to the Assistant State's Attorney, he asserted his Fifth Amendment right against self-incrimination. Id. at 29:22-30:1.

200. When Thomas McKenna was asked at his deposition in this case whether the statement Jackie Wilson gave on February 14, 1982 was the product of torture, he asserted his Fifth Amendment right against self-incrimination. Id. at 35:20-23.

201. When Thomas McKenna was asked at his deposition in this case whether Jackie Wilson's February 14, 1982 statement was the product of a pattern and practice of torture and abuse at Area 2 that was led by Jon Burge and other detectives, he asserted his Fifth Amendment right against self-incrimination. Id. at 35:24-36:3.

202. When Thomas McKenna was asked at his deposition in this case whether he gave perjured testimony at Jackie Wilson's Motion to Suppress hearing, on November 4, 1982 when he denied that any abuse of Jackie occurred prior to giving a statement, he asserted his Fifth Amendment right against self-incrimination. Id. at 40:6-16.

203. When Thomas McKenna was asked at his deposition in this case whether he had any knowledge or participation in the torture and abuse of Andrew Wilson, he asserted his Fifth Amendment right against self-incrimination. Id. at 41:15-19.

204. Thomas McKenna also previously asserted his Fifth Amendment rights, through counsel, to the TIRC in 2014 when the TIRC sought his statement concerning his role in the Jackie Wilson case, and in 2010 when Jon Burge sought to call him as a witness to testify about his knowledge and participation in Andrew Wilson's interrogation and torture. Petitioner's Exhibits 69, 77.

205. Based on the invocation of Thomas McKenna's Fifth Amendment right, it can be reasonably inferred that he participated in torturing Jackie Wilson into giving his statement on February 14, 1982. Id. at 216-220:19.

206. When Jon Burge was asked at his deposition in this case whether he was present for or physically placed a plastic bag over the head of Donald White as he was being interrogated at 11th and State, he asserted his Fifth Amendment right against self-incrimination. Id. at 15:19-23.

207. When Jon Burge was asked at his deposition in this case whether he participated in, witnessed, or supervised the torture of Dwight Anthony, he asserted his Fifth Amendment right against self-incrimination. Id. at 16:21-24.

208. When Jon Burge was asked at his deposition in this case whether he participated in, witnessed, or supervised the torture of Anthony Williams, he asserted his Fifth Amendment right against self-incrimination. Id. at 18:10-15.

209. When Jon Burge was asked at his deposition in this case whether he supervised the interrogation of Jackie Wilson on February 14, 1982, he asserted his Fifth Amendment right against self-incrimination. Id. at 20:8-10.

210. When Jon Burge was asked at his deposition in this case whether he participated in, witnessed, or ordered that Jackie Wilson be kicked, poked in the chest, or otherwise beaten on February 14, 1982, he asserted his Fifth Amendment right against self-incrimination. Id. at 21:4-7.

211. When Jon Burge was asked at his deposition in this case whether he

directed, heard, or ordered that Jackie Wilson's face not be damaged, he asserted his Fifth Amendment right against self-incrimination. Id. at 21:11-13.

212. When Jon Burge was asked at his deposition in this case whether he was present in the room or become aware that detective twisted Jackie Wilson's head, slapped him, and otherwise beat him, he asserted his Fifth Amendment right against self-incrimination. Id. at 21:17-21.

213. When Jon Burge was asked at his deposition in this case whether he directed, participated in, or ordered officers to kick Jackie Wilson in the testicles, he asserted his Fifth Amendment right against self-incrimination. Id. at 21:22-25.

214. When Jon Burge was asked at his deposition in this case whether he was present for or participated in a revolver being placed inside Jackie Wilson's mouth, he asserted his Fifth Amendment right against self-incrimination. Id. at 22:3-6.

215. When Jon Burge was asked at his deposition in this case whether he directed, was present for, or otherwise became aware that Jackie Wilson's fingers were twisted and his hand stepped on, he asserted his Fifth Amendment right against self-incrimination. Id. at 22:7-10.

216. When Jon Burge was asked at his deposition in this case whether he came into the room with a black box, put a clip on Jackie Wilson's wrist area, and then cranked the box a couple of times electroshocking Jackie, he asserted his Fifth Amendment right against self-incrimination. Id. at 23:5-8.

217. When Jon Burge was asked at his deposition in this case whether Jackie Wilson's statement was physically coerced by Burge and other officers under his

command, including Detectives O'Hara and McKenna, he asserted his Fifth Amendment right against self-incrimination. Id. at 23:16-20.

218. When Jon Burge was asked at his deposition in this case whether he committed perjury at the 1982 proceedings when he denied any knowledge or participation in the torture of Jackie Wilson, he asserted his Fifth Amendment right against self-incrimination. Id. at 38:5-10.

219. When Jon Burge was asked at his deposition in this case whether participated in the torture and abuse of Andrew Wilson, he asserted his Fifth Amendment right against self-incrimination. Id. at 23:16-20.

220. Jon Burge has previously asserted the Fifth Amendment right when asked about whether he supervised and/or participated in a pattern and practice of torture by electric shock, telephone books, suffocation, and Russian Roulette at Area 2 that included the torture and abuse of the Wilson brothers on the following additional occasions: in the Alonzo Smith post-conviction case (2015); in *Caine v. Burge*, No. 11 C 8996 (N.D. Ill.); in *Michael Tillman v. Burge, et al.*, No. 10 C 4551; in *Kitchen v. Burge, et al.*, No. 10 C 4093 (N.D. Ill.); in *Darrell Cannon v. Jon Burge, et. al.*, No. 05 C 2192 (N.D. Ill.); in *Aaron Patterson v. Jon Burge, et. al.*, No. 03 C 4433 (N.D. Ill.); and before the Special State Grand Jury in 2004. Petitioner's Exhibit 43.

221. On June 28, 2010, Jon Burge was convicted by a federal court jury of committing perjury and obstruction of justice when he denied, under oath, that he had participated in, supervised or had knowledge of the torture of suspects, including, but

not limited to, Andrew Wilson, Anthony Holmes, Melvin Jones, and Shadeed Mu'min.  
Pet. Ex. 6

222. It is also undisputed that the Office of the Special Prosecutor found that the Superintendent of Police "must have believed" that "his subordinates" including Burge had "testified perjurally" at the Wilson brothers' motion to suppress and trial. PTO Undisputed Fact 4.

223. Based on Burge's invocation of his Fifth Amendment right, the finding of the Special Prosecutor, and Burge's conviction for perjury and obstruction of justice, it can be more than reasonably inferred that he participated in torturing Jackie Wilson into giving his statement on February 14, 1982. *Id.* at 216-220:19.

224. When Lawrence Hyman was asked on the stand in this case whether he testified perjurally in 1982 when he was asked about Jackie Wilson's treatment at Area 2, he asserted his Fifth Amendment right against self-incrimination. 12/27/17 Hearing Tr. at 216:3-7.

225. When Lawrence Hyman was asked on the stand in this case whether he knew that Jackie Wilson had been abused by Lt. Burge, Detective O'Hara, and Detective McKenna during his interrogation by being kicked and having a gun placed inside his mouth, he asserted his Fifth Amendment right against self-incrimination. *Id.* at 217:6-19.

226. When Lawrence Hyman was asked on the stand in this case whether he knew that Jackie Wilson had been tortured into giving a statement at the time he took it, he asserted his Fifth Amendment right against self-incrimination. *Id.* at 217:21-23.

227. When Lawrence Hyman was asked on the stand in this case whether he knew that the statement he took from Jackie Wilson on February 14, 1982 was involuntary, he asserted his Fifth Amendment right against self-incrimination. *Id.* at 217:21-23.

228. When confronted on the stand in this case with his failure to ask Jackie Wilson if his statement was provided voluntarily, and asked whether he failed to do so because he knew that Jackie had been coerced into giving his statement, Larry Hyman asserted his Fifth Amendment right against self-incrimination. *Id.* at 219:19-220:3.

229. When Lawrence Hyman was asked on the stand in this case whether he heard Jackie Wilson screaming or being beaten prior to taking his statement, he asserted his Fifth Amendment right against self-incrimination. *Id.* at 220:15-19.

230. When Lawrence Hyman was asked on the stand in this case whether he was aware of the torture of Andrew Wilson, he asserted his Fifth Amendment right against self-incrimination. *Id.* at 206:5-208:6.

231. Lawrence Hyman also previously asserted his Fifth Amendment rights, through counsel, to the TIRC in 2014 when the TIRC sought his statement concerning his role in the Jackie Wilson case, in 2007 in a deposition in the Patterson case when asked about the torture and abuse of Andrew and Jackie Wilson, and in 2005 before the OSP's Special Grand Jury that was investigating inter alia, the torture of the Wilson brothers. Petitioner's Ex. 26, 72; Petitioner's Designation 22.

232. Based on the invocation of Lawrence Hyman's Fifth Amendment right, and the finding of the Special Prosecutor that he gave "false testimony" concerning his



knowledge of the torture of Andrew Wilson, it can be reasonably inferred that he had knowledge that Jackie Wilson was tortured into giving his statement on February 14, 1982. Id. at 216-220:19.

233. Additionally, the three Area 2 detectives who abused Jackie Wilson while transporting him from Area 1 to Area 2 on the morning of February 14, 1982 have, subsequently to their 1982 motion to suppress testimony, on one or more occasions, taken the Fifth Amendment when asked about Area 2 torture and abuse:

Det. Thomas Krippel, (front seat passenger) Petitioner's Rebuttal Designation 5;  
Det. Lawrence Nitsche, (back seat left) Petitioner's Rebuttal Designation 2;  
Det. Dennis McGuire, (back seat right) Petitioner's Rebuttal Designation 3.

234. Based on these detectives' invocation of their Fifth Amendment right, it can be reasonably inferred that they had knowledge of, and participated in, the physical assault on Jackie Wilson while he was being transported to Area 2 on the morning of February 14, 1982.

235. The February 14, 1982 Lineup photograph was taken around 4:35 p.m. at Area 1. Petitioner's Ex. 5, Police Board Opinion at 11.

236. In the photo, displayed below, Jackie Wilson's right eye appears to be swollen and red and is consistent with the torture that he described in his testimony. OSP Ex. 8, February 14, 1982 Photograph; 2/16/18 Hearing Tr. at 238:4-24. Jackie's eye was not red nor swollen prior to the torture. Id. at 239:11-240:9.

237. The OSP found in its July 19, 2006 Report that the evidence in the Andrew Wilson case "would be sufficient to establish guilt beyond a reasonable doubt" against

Jon Burge for the “mistreatment” of Andrew Wilson. FPTO Undisputed Fact 1; Pet. Ex. 26, July 19, 2006 Report at 16.

238. The Special Prosecutor’s Office further found that it “believe[s] Andrew Wilson’s statements that he had been tortured” and that they could “in good faith ask a grand jury to indict and a trial jury to convict Jon Burge of aggravated battery, perjury, and obstruction of justice in the Andrew Wilson case.” FPTO Undisputed Fact 1; Pet. Exhibit 26, July 19, 2006 Report at 63. That Burge and his underlings would torture potential suspects and witnesses, including Andrew Wilson, but then simultaneously reverse course during their simultaneous interrogation of Jackie Wilson defies both reality and the evidence.

239. As the Illinois Supreme Court has held, “extensive medical testimony and photographic evidence corroborates” Andrew Wilson’s torture allegations. Petitioner’s Exhibit No. 2, *People of the State of Illinois v. Andrew Wilson*, 116 Ill 2d 29, at 34 (1987).

240. Patricia Reynolds, a registered nurse, testified that Andrew Wilson arrived at the Mercy Hospital emergency room around 10:15 p.m. or 10:30 p.m. on February 14, 1982 in the presence of CPD officers Ferro and Mulvaney. According to Nurse Reynolds, Officer Ferro said that if Andrew “knew what was good for him he would refuse treatment.” *Id.* After Reynolds asked Andrew whether he wanted treatment, he said that he did not. *Id.*; Petitioner’s Designation 8.

241. Later, when the officers were looking away, Andrew indicated that he wanted treatment and signed his consent form at 10:50 p.m. *Id.* After he was

undressed, the nurse observed injuries on Andrew's chest and a burn on his right thigh. Id.; Petitioner's Designation No. 8.

242. Andrew Wilson was ultimately examined by Dr. Geoffrey Korn at 11:15 p.m. Id.; Petitioner's Designations Nos. 2, 10. Dr. Korn has testified that he noted 15 separate injuries that were apparent on Andrew's head, chest, and right leg. Id. Dr. Korn also observed that Andrew had two cuts on his forehead and one on the back of his head that required stitches. Additionally, Andrew Wilson's right eye was blackened and there was bleeding on the surface of his eye. Id.

243. Dr. Korn further observed bruises on Andrew's chest and several linear abrasions or burns on his chest, shoulder, and chin area. Finally, Dr. Korn saw that Andrew had an abrasion on his right thigh that constituted a second degree burn which was six inches long and nearly 2 inches wide. Id. at 2-3; Petitioner's Designation 10.

244. As Dr. Korn prepared to suture Andrew Wilson's face and head wounds, he saw that Officer Mulvaney drew his service revolver. Dr. Korn asked Mulvaney to holster his gun, a request that was refused. Id. at 3; Petitioner's Designation 10. Dr. Korn left the room and was informed by Officer Ferro that Andrew Wilson was now going to refuse treatment and would go elsewhere. Id. At 11:42 p.m., Andrew Wilson signed a form that "against medical advice" he was refusing treatment. Id. He was then taken away by the two officers. Id.

245. Dr. Korn was shown photographs of Andrew Wilson at the 1982 Motion to Suppress hearing. Id.; Petitioner's Designation 10. The photographs taken of

Andrew on February 16, 1982 depicted “essentially the same” injuries that Dr. Korn noticed in his earlier examination. Id.

246. Dr. John M. Raba, medical director of Cermak Hospital, the facility that provides medical care to inmates at the Cook County Jail, testified that he examined Andrew early in the evening of February 15, 1982. Petitioner’s Exhibit No. 2; Petitioner’s Designation 22. Dr. Raba conducted the examination after receiving a report from one of his staff physicians about Andrew’s “unusual” injuries. Id. According to Dr. Raba, Andrew revealed that he had been beaten, electrically shocked, and held against a radiator. Id. Dr. Raba saw that Andrew had injuries to his right eye, bruises, and lacerations on his forehead, with blistering wounds on his face, chest, and right leg. Id.

247. Dr. Raba observed small, u-shaped marks on Andrew’s ears. Petitioner’s Exhibit No. 2 at 3. Petitioner’s Designation No. 22. These marks are visible in the photographs taken on February 16, 1982. Id.; Petitioner’s Exhibit 64. (Photographs).

248. Dr. Raba took immediate action after examining Andrew Wilson on February 15, 1982. By letter, he informed County officials, including Cook County Board President George Dunne, of his medical observations and formally requested that Superintendent Brzeczek open an investigation. Petitioner’s Ex. 65-66; Petitioner’s Designation No. 22; Petitioner’s Rebuttal Designation No. 26.

249. As is discussed more fully above and below, the Chicago Police Board, on February 11, 1993, fired Jon Burge for his torture and abuse of Andrew Wilson, it suspended O’Hara and Yucaitis for failing to stop the torture or to provide medical treatment, and a federal jury, on June 28, 2010, convicted Burge for perjury and

obstruction of justice for falsely denying that he tortured, inter alia, Andrew Wilson. These decisions were affirmed on appeal. Petitioner's Exhibits 5, 6.

250. In August of 1989 a federal jury in the Andrew Wilson civil case found that the CPD had a policy and practice of "allowing police officers to torture persons suspected of killing or wounding officers" Pet. Exhibit 3, 6 F. 3d at 1240.

251. In June of 1993, the Seventh Circuit in the Wilson civil case found that:

*A rational jury could have inferred from the frequency of the abuse, the number of officers involved in the torture of Wilson, and the number of complaints from the black community, that Brzeczek knew that officers in Area 2 were prone to beat up suspected cop killers.*

Id.

254. On November 2, 1990 OPS Director Gayle Shines approved as "compelling" and forwarded to Superintendent Leroy Martin the 25-page Report and findings made by OPS investigator Michael Goldston concerning allegations of torture and abuse at Area 2 from 1972 to 1985. This Report included the following findings:

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

*The number of incidents in which an Area 2 command member is identified as an accused can lead to only one conclusion. Particular command members were aware of the systematic abuse and participated in it either by actively participating in same or failing to take any action to bring it to an end. This conclusion is also supported by the number of incidents in which Area 2 offices are named as the location of the abuse.*

Petitioner's Exhibits 28 (November 2, 1990 Goldston Report, at 2-3) and 34 (Goldston Testimony).

255. In *U.S. Ex. rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999), Judge Milton Shadur found the following in his decision:

*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.*

Petitioner's Exhibit 20, 37 F. Supp. 2d 1078 at 1094.

256. In her concurring opinion in *Hinton v. Uchtman*, 395 F.3d 810, 822-23 (7th Cir. 2005), Seventh Circuit Court of Appeals Judge Diane Wood found:

*[T]he claim Hinton has made regarding his confession illustrates dramatically the high price our system of criminal justice pays when police abuse runs rampant: a cloud hangs over everything that the bad actors touched . . . [A] mountain of evidence indicates that torture was an ordinary occurrence at the Area 2 station of the Chicago Police Department during the exact time period pertinent to Hinton's case. Eventually, as this sorry tale came to light, the Office of Professional Standards Investigation of the Police Department looked into the allegations, and it issued a report that concluded that police torture under the command of Lt. Jon Burge — the officer in charge of Hinton's case — had been a regular part of the system for more than ten years. And, in language reminiscent of the news reports of 2004 concerning the notorious Abu Ghraib facility in Iraq, the report said that "[t]he type of abuse described was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture." The report detailed specific cases, such as the case of Andrew Wilson, who was taken to Area 2 on February 14, 1982. There a group led by Burge beat Wilson, stuffed a bag over his head, handcuffed him to a radiator, and repeatedly administered electric shocks to his ears, nose, and genitals. See *People v. Wilson*, 506 N.E.2d 571 (Ill. 1987). Burge eventually lost his job with the police, though not until 1992. See *In the Matter of the Charges Filed Against Jon Burge*, No. 91-1856 (Chicago Police Board, February 11, 1993). To this day, Burge has not been prosecuted for any of these actions, though it appears that he at least thinks that he may still be at some risk of prosecution. See, for example, "Cop brutality probe must be thorough, fair," *Chi. Sun-Times*, May 16, 2002*

(editorial); Hal Dardick, "Burge repeatedly takes 5th; Former police commander stays mum on torture questions," *Chi. Tribune*, Sept. 2, 2004 (noting allegations that Burge or people reporting to him had tortured 108 Black and Latino suspects between August 1972 and September 1991). . . . Behavior like that attributed to Burge imposes a huge cost on society: it creates distrust of the police generally, despite the fact that most police officers would abhor such tactics, and it creates a cloud over even the valid convictions in which the problem officer played a role. Indeed, the alleged conduct is so extreme that, if proven, it would fall within the prohibitions established by the United Nations Convention Against Torture ("CAT"), which defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession . . .," thereby violating the fundamental human rights principles that the United States is committed to uphold.

Petitioner's Exhibit 15A.

257. In *People v. Cortez Brown*, (aka Victor Safford) on May 22, 2009, Judge Clayton Crane of the Circuit Court of Cook County vacated Brown's conviction after an evidentiary hearing and ordered a new trial based on findings that Brown had presented "staggering" and "damning" evidence that the detectives under Burge's command similarly tortured other interrogation suspects. Petitioner's Exhibit 17.

258. In *People v. Wrice*, 940 N.E.2d 102, 108-09 (1st Dist. 2010), the Illinois Appellate Court granted Area 2 torture victim Stanley Wrice, who was tortured by Area 2 "asskickers" Sgt. John Byrne and detective Peter Dignan, an evidentiary hearing on a second successive post-conviction petition on the basis of the July 2006 Special Prosecutor's Report and its findings of "widespread systematic torture of prisoners at Area 2." Petitioner's Exhibit 50.

259. At Jon Burge's sentencing hearing in January of 2011, Federal District Judge Joan Lefkow found that there was a "mountain of evidence" of torture, and that:

*When a confession is coerced, the truth of the confession is called into question. When this becomes widespread, as one can infer from the accounts that have been presented here in this court, the administration of justice is undermined irreparably. How can one trust that justice will be served when the justice system has been so defiled? This is why the crimes of obstructing justice and perjury, and even more so when it is about matters relating to the duties of one's office, are serious offenses.*

Petitioner's Exhibit 7.

260. In *People v. Eric Caine*, Judge William Hooks, on March 16, 2011, granted Caine a new trial because the "newly discovered evidence of police abuse" presented by Caine on his post-conviction petition demonstrated a "substantial showing of a deprivation of constitutional rights" that the State could not rebut. Additionally, Judge Hooks further found that absent the coerced confession, the State could not prove its case, and, on the State's own motion, ordered Caine's release from custody after 25 years of incarceration. This relief was awarded in lieu of an evidentiary hearing. Petitioner's Exhibit 16.

261. In *People v. Wrice*, 962 N.E.2d 934, 952-953 (Ill. S. Ct. 2012), the Illinois Supreme Court affirmed the Appellate Court, finding that the "police misconduct alleged in this case--beatings perpetrated by two police officers [Byrne and Dignan] who figured prominently in the systematic abuse and torture of prisoners at Area 2 police headquarters . . . constitutes an egregious violation of an underlying principle of our criminal justice system," and therefore held that harmless-error rule did not apply to "coerced confessions . . . such as the one now before us, involving alleged police brutality and torture." Petitioner's Exhibit 56.



262. In *U.S. v. Burge*, the Seventh Circuit Court of Appeals, while affirming Burge's conviction, found:

*Former Chicago Police Commander Jon Burge presided over an interrogation regime where suspects were suffocated with plastic bags, electrocuted until they lost consciousness, held down against radiators, and had loaded guns pointed at their heads during rounds of Russian roulette. The use of this kind of torture was designed to inflict pain and instill fear while leaving minimal marks. When Burge was asked about these practices in civil interrogatories served on him years later, he lied and denied any knowledge of, or participation in, torture of suspects in police custody. But the jury heard overwhelming evidence to contradict that assertion and convicted Burge for obstruction of justice and perjury.*

Petitioner's Exhibit 6, *U.S. v. Burge*, 711 F.3d 803, 806 (7th Cir. 2013.)

263. In *U.S. v. Burge*, Judge Ann Williams, in her unanimous opinion, further discussed the history of Burge and his confederates' pattern of torture:

*For many years a cloud of suspicion loomed over the violent crimes section of the Area 2 precinct of the Chicago Police Department (CPD) located on Chicago's south side. Jon Burge joined the CPD in 1970 and rose to commanding officer of the violent crimes section in the 1980s, but his career was marked by accusations from over one hundred individuals who claimed that he and officers under his command tortured suspects in order to obtain confessions throughout the 1970s and 1980s. Burge was fired in 1993 after the Office of Professional Standards investigated the allegations, but he was not criminally charged. Years later the Circuit Court of Cook County appointed special prosecutors to investigate the allegations of torture, but due to statutes of limitation, prosecutors never brought direct charges of police brutality against Burge. Eventually, the City of Chicago began to face a series of civil lawsuits from victims seeking damages for the abuse they endured. It was in one of these lawsuits that Burge denied in sworn interrogatory answers that he had knowledge of, or participated in, any acts of torture or physical abuse, and these statements lead to his federal indictment and trial.*

Petitioner's Exhibit 6, *U.S. v. Burge*, 711 F.3d 803, 806 (7th Cir. 2013.)

264. In the Court's decision, Judge Williams summarized the record of decades of abuse that is unquestionably horrific:

*At trial, the government called multiple witnesses to testify about the methods of torture and abuse used by Burge and others at Area 2 in order to establish that Burge lied when he answered the interrogatories in the Hobley case...[T]he witnesses at trial detailed a record of decades of abuse that is unquestionably horrific. The witnesses described how they were suffocated with plastic bags, electrocuted with homemade devices attached to their genitals, beaten, and had guns forced into their mouths during questioning. Burge denied all allegations of abuse, but other witnesses stated that he bragged in the 1980s about how suspects were beaten in order to extract confessions. Another witness testified that Burge told her that he did not care if those tortured were innocent or guilty, because as he saw it, every suspect had surely committed some other offense anyway.*

Id. at 808.

265. In *People v. Wrice*, on remand from the Illinois Supreme Court, Circuit Court Judge Richard Walsh, on December 10, 2013, vacated Wrice's conviction and ordered a new trial after an evidentiary hearing in which both Dignan and Byrne asserted their Fifth Amendment right against self-incrimination and refused to answer any questions concerning their torture and abuse of Wrice or other suspects and witnesses in that case. Concluding that Wrice's statement was coerced and that his rights under Brady were violated, Judge Walsh found that there was "no doubt" that Area 2 Violent Crime detectives were torturing people at Area 2, that it was un rebutted that Dignan and Byrne tortured Wrice, and that Byrne and Dignan committed perjury at Wrice's trial when they denied that they tortured him and witness Bobby Joe Williams. On December 12, 2013, the Special Prosecutor dismissed the charges. Petitioner's Exhibit 9.

266. On September 28, 2015, in *People v. Alonzo Smith*, 83-CR-769 (02) Judge Erica Reddick granted Smith's post-conviction petition, vacated his convictions and

ordered a new trial, finding that the evidence of Area 2 torture offered in support of his physically coerced confession claim was "staggering," that "there was independent evidence of the physical injuries he sustained," and that he "has shown, by a preponderance of the evidence, the Constitutional deprivations alleged." Petitioner's Exhibit 23 pp. 5-6.

267. In its July 19, 2006 Report, the Office of the Special Prosecutor found:

*It is likewise undisputed that Lt. Jon Burge was "guilty of abusing persons with impunity" and that it therefore "necessarily follows that a number of those serving under his command recognized that if their commander could abuse persons with impunity, so could they."*

FPTO Undisputed Fact 2; Exhibit 26; July 19, 2006 Report at 16.

268. In a January 2010 filing in the case of *People v. Petitioner Michael Tillman*, the OSP filed the following statement relating to Tillman's torture and abuse in 1986:

*Evidence existing outside this trial record....includes findings of a pattern and practice of abuse at Area 2 Headquarters during the time period in which the Petitioner was detained and relatedly, subsequent invocations of police officers of their right to the Fifth Amendment of the U.S. Constitution in response to questions concerning that pattern and practice of police abuse at Area 2 Headquarters in regards to numerous suspects. Such evidence is material and not cumulative to the voluntariness of Petitioner's confession and is [o]f such a conclusive nature that it would probably change the result on retrial.*

Final Pretrial Order, Statement of Undisputed Fact No. 7; Petitioner's Ex. 36, January 10, 2010 filing at 5-6.

269. Both in July of 2006 and in its arguments before this Court, the Office of the Special Prosecutor has conceded that torture and abuse at Area 2 under the command of Jon Burge took place on at least 70 occasions. (*People v. Wilson*, 12/27/17 Tr. at 79-80 (O'Rourke argument); Pet. Ex 27.

The preceding findings of facts, which are now incorporated as conclusions of law, come from similarly numbered paragraphs in Petitioner's proposed Statement of Facts.

### Conclusion

Cultural norms, thoughts, and community groupthink are often memorialized by slogans and, at times, by t-shirts. As a citizen, a lawyer, and now as a Judge, I have witnessed well-meaning people exercise their first amendment rights by wearing their philosophy of life on t-shirts and other memorabilia. In this very court room, during the pendency of this important matter, I have observed, without comment, people with a wide variety "rights matter" t-shirts that may be symbolic of a movement.

Recently, and perhaps even today, there will be a person listening to this opinion and order being read wearing a "blue lives matter"<sup>7</sup> t-shirt. Similarly, there have been equally well-meaning persons donning "black lives matter"<sup>8</sup> t-shirts.

Unless the item was offensive or liable to incite violence, I usually don't comment or regulate. However, as I conclude this somewhat comprehensive opinion and order, I take judicial license to use the items I have observed to initiate some thought and respect far beyond those items.

Blue Lives Do Matter! Black Lives Do Matter! And, indeed, All Lives Matter! Whether you come to this court room as a suspect, a rich person, a poor person, an immigrant, an "illegal" immigrant, a murder suspect, a gang member, wrongfully

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<sup>7</sup> "Blue lives matter" is a movement in the United States that addresses the interests and rights of police officers. See, generally, Wikipedia.

<sup>8</sup> "Black lives matter" is a movement originating in the African-American community that campaigns against violence and systemic racism toward black people. See, generally, Wikipedia.

accused, a business owner, a minister, a politician, a drug dealer, a probationer, a senior citizen, a police officer, a victim, your life matters. And yes, even a guilty person's life matters.

Your life matters because our constitution and its Bill of Rights matter. Equally important to the Bill of Rights, the concept of due process rights matter. The concept of due process is one of the most important tenets of our democracy. Due process has developed in to an expansive concept, with the goal of guaranteeing procedural due process in criminal prosecution as well as civil matters.

While James Madison didn't define "due process" he did coin it when he said "no person shall be deprived of life, liberty, or property without due process of law." In the context of criminal procedure, the concept of due process is used to minimize miscarriages of justice. The U.S. Supreme Court started to review and give teeth to the concept of due process in the 1920s and 1930s. In the 1930s, due process was employed by the Supreme Court in its review of the Scottsboro cases. Later, in 1936, the *Brown v. Mississippi* case was decided. As mentioned elsewhere in this opinion, the Court found in *Brown* the due process clause requires that state action must be "consistent with the fundamental principles and liberties which lie at the base of our civil and political institutions." 297 U.S. 278, 285 (1936).

So, in short, all rights matter. The rights of the good; the bad; and the ugly all count. Who is good, who is bad, and who is ugly is not the job of this Court. However, there is more than enough to surmise that what happened in the investigation and interrogation of Jackie Wilson was not good—instead, very bad and ugly. The conduct

