

INTRODUCTION AND STATEMENT OF INTEREST OF THE AMICI

This brief is submitted in support of appellant Aaron Patterson by the Ad Hoc Committee For a Full Inquiry into Police Torture and the Death Penalty (hereinafter, the "amici"). Mr. Patterson's case raises a deeply troubling issue in the administration of capital punishment in Illinois: the reality that there are a number of men, Mr. Patterson among them, who are now under sentence of death and who credibly claim that their convictions were the result in part of confessions that were extracted by torture.

In each case, it is alleged that the torture was applied by detectives working under the command and supervision of Chicago Police Lieutenant Jon Burge, first at the Area 2 Violent Crimes headquarters at 727 East 111th Street in Chicago and, later, at Area 3 headquarters at 2452 West Belmont Avenue. The torture techniques varied from case to case, but included suffocation with plastic bags, ear clappings, the administration of electroshock, and the squeezing of suspects' testicles -- techniques designed to produce excruciating physical and psychological pain while leaving no signs of torture on the suspects' bodies.

Mr. Patterson, who was convicted and sentenced to death for the 1986 murders of Rafaela and Vincent Sanchez, asserts in his present appeal that, because of the ineffectiveness of his trial, post-trial, and appellate attorneys, there has never been a full, fair, and comprehensive inquiry into the truth of his claim that his alleged oral statements were produced as a result of torture he suffered while in the custody of Burge and his men at Area 2. Mr. Patterson's alleged statements were the central and most important evidence leading to his conviction and death sentence. There was no physical evidence connecting him to the Sanchez murders.

Evidence that has come to light during the years since Mr. Patterson's conviction and death sentence (some of which was available and not presented at Mr. Patterson's sentencing hearing) has

established that torture, according to the findings of the Chicago Police Department's own Office of Professional Standards ("OPS"), "did occur" and was "systematic" during Burge's tenure at Areas 2 and 3. See Chicago Police Department OPS Special Project Report of Investigator Michael Goldston. The prevalence and similarity of the claims of torture lend credence to the shocking stories that are told in individual cases, like Mr. Patterson's.

Mr. Patterson testified at a suppression hearing that after his April 30, 1986 arrest, he was taken to Area 2, questioned about the Sanchez murders for about an hour -- crimes as to which Mr. Patterson then and has steadfastly ever since denied all involvement -- and then transported to 11th and State for a polygraph examination. After the polygraph, Mr. Patterson was returned to the Area 2 interview room. There he was confronted by Detective James Pienta, who told him he was "tired of this bullshit." When Mr. Patterson persisted in his denials, Pienta and six other detectives cuffed Mr. Patterson's hands behind his back, turned out the lights, hit Mr. Patterson in the chest and pushed a gray plastic typewriter cover over Mr. Patterson's head until Mr. Patterson almost lost consciousness.

Pienta then threatened to do something worse to Mr. Patterson if he continued to refuse to cooperate. When Mr. Patterson demanded an attorney and said he would not cooperate, the detectives again turned out the lights, punched Mr. Patterson on his body and put the plastic typewriter cover over Mr. Patterson's head, this time suffocating him until the pain and fear became unbearable. At this point, Mr. Patterson told the detectives he would "say anything you say" and he orally acknowledged statements the detectives made to him that he participated in the Sanchez murders.

The detectives then left the room. Mr. Patterson, while he was alone, scratched a message onto the bench in the interview room that read in part: "I lie about murders, police threaten me with

violence, slapped and suffocated me with plastic . . ." A red haired officer -- whom Mr. Patterson has subsequently identified as former Lieutenant Burge -- entered the interview room with an Assistant State's Attorney. The State's Attorney said Burge had told him that Mr. Patterson wanted to make a statement. Mr. Patterson asked the State's Attorney to ask Burge to leave, which he did. Alone with the State's Attorney, Mr. Patterson said he had nothing to say and that he wanted a lawyer. The State's Attorney walked to the door, opened it and told Burge, who was standing just on the other side of the door, that Mr. Patterson did not want to make a statement.

When the State's Attorney left the room, Burge told Mr. Patterson "you're fucking up." He took his handgun and put it on a table top and said "we told you if you don't do what we tell you to, you're going to get something worse than before -- it will have been a snap compared to what you will get." He said that if Mr. Patterson ever tried to reveal what had happened, "it's your word against ours and who are they going to believe, you or us." Burge added that they could do anything they wanted to do to Mr. Patterson. At trial, several of the detectives and Assistant State's Attorneys claimed that Mr. Patterson had made inculpatory oral statements to them.

In his current appeal, Mr. Patterson seeks a full hearing at which he would have an opportunity to establish that during the interrogation Burge and his men acted in conformity with an established modus operandi for extracting confessions through torture. The amici, a diverse group of persons concerned about the fair administration of the criminal justice system, support Mr. Patterson's request for a full hearing. The amici share the conviction that it would gravely undermine the integrity and public confidence in the capital punishment process in Illinois if Mr. Patterson were to be executed without a full and exhaustive inquiry into the allegation that his supposed confession was extracted as a result of a systemic policy of torture. The amici are:

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ARGUMENT

I. WIDESPREAD ABUSE OF ARRESTEES BY BURGE AND THOSE UNDER HIS COMMAND HAS INFECTED THE CAPITAL PUNISHMENT PROCESS.

The reality of torture by Burge and other officers under his command was first presented to this Court by the 1987 appeal of Andrew Wilson, following his conviction and death sentence for the murder of two Chicago police officers. See *People v. Wilson*, 116 Ill. 2d 29, 506 N.E.2d 571 (1987). Wilson testified that he gave a statement confessing to the murders of the police officers because he was tortured by Burge and others at Area 2 police headquarters throughout the day on February 14, 1982. He claimed that he was repeatedly punched, kicked in the eye, smothered with a plastic bag, electrically shocked and forced against a hot radiator until he confessed. 116 Ill. 2d at 35. These allegations were substantiated by photographs and the testimony of doctors who examined Wilson shortly after his interrogation and found numerous cuts, bruises, burn marks, abrasions and bleeding on the surface of Wilson's right eye. *Id.* at 36. This Court had little difficulty concluding that, since the police had failed to provide clear and convincing evidence that

the injuries were inflicted in some other way than during Wilson's interrogation, the confession had to be suppressed. *Id.* at 41.

At the time of Wilson's torture, there had been many complaints from the black community about police torture at Area 2. See *Wilson v. City of Chicago*, 6 F.3d 1233, 1240 (7th Cir. 1993). In the wake of this Court's ruling in Wilson's criminal appeal and civil litigation that Wilson filed against Burge and others in the Federal district court, the Chicago Police Department directed its Office of Professional Standards to conduct an investigation.

The results of the Police Department's own OPS investigation were damning. In addition to substantiating the torture of Wilson, the OPS report concluded, in a separate section sometimes referred to as the "Goldston Report" for the name of its author, that physical abuse, including "planned torture," "did occur" under Burge's command on a "systematic" basis over the span of more than ten years. See Chicago Police Department OPS Special Project Report of Investigator Michael Goldston; R. C1024-59. This conclusion was based on a statistical study of 50 separate alleged incidents of abuse. The Goldston Report included an "intersection study" documenting numerous cases in which persons arrested at different times and without knowledge of claims made by others, made closely similar allegations that they were suffocated with plastic bags, were electrically shocked or were hung from windows. *Id.* When a Federal judge ordered the release to the public of certain materials that had been prepared in the wake of the Report, he commented that "the allegations of police misconduct contained in [the Report and other police documentation] . . . must be exposed to the light of human conscience." *Wiggins v. Burge*, 173 F.R.D. 226, 230 (N.D. Ill. 1997).

In 1991, four years after this Court's decision in Andrew Wilson's criminal appeal and a year after the submission of the Goldston Report, the Superintendent of the Chicago Police Department filed disciplinary charges against Burge and two other detectives involved in the torture of Andrew Wilson. On February 10, 1993, the Police Board issued a decision finding Burge guilty of various Departmental rules violations as a result of his participation in the physical abuse of Wilson and terminating Burge from the Police Department. See *In re Burge et al.* 91-1856-8 (Police Board of the City of Chicago, February 11, 1993). The other two officers were each given 15 month suspensions, since the Board concluded there was insufficient evidence that they participated directly in the abuse. *Id.* The Police Board's decision was subsequently affirmed on appeal to the Circuit Court of Cook County and thereafter, on December 15, 1995, by the Illinois Appellate Court. *O'Hara, et al. v. Police Board of the City of Chicago*, Nos. 94-0999, 94-2462 and 94-2475 (Ill. App. December 15, 1995)

Torture by Burge and his men is a death penalty issue. There are currently no fewer than ten men on Death Row, including Mr. Patterson, who claim that they were abused by detectives under Burge's command. This Court has and will continue to face capital cases, like Mr. Patterson's, in which a defendant credibly contends that his death sentence was produced in part by grotesque barbarity at the hands of detectives of the Chicago Police Department.

The amici believe that this Court cannot in conscience allow the executions of persons like Mr. Patterson, who claim their capital convictions rest on confessions that were tortured from them by Burge and his group, to proceed without a full and complete inquiry. The guilt of Burge and others under his command in the Wilson torture is now incontestable. The evidence from the Goldston Report and in the claims of other arrestees that torture "did occur" and was "systematic" is too clear and too pervasive to ignore. Indeed, lawyers for the City of Chicago itself, who initially

denied the allegations that Burge was guilty of torture, filed a brief in the United States Court of Appeals for the Seventh Circuit after the submission of the Goldston Report reversing their position, acknowledging Burge's actions and claiming that Burge and his men had not acted within the scope of their employment with the City. See *Wilson v. City of Chicago*, No. 96-3083 (7th Cir.), Brief and Appendix of Appellant at 53.

The amici urge this Court to hold that, in the circumstances of Mr. Patterson's case, there must be a full and complete post conviction hearing into the allegations of police abuse, including evidence of similar abuse by Burge and his men in other cases at Areas 2 and 3.

II. THE MERE EXISTENCE OF A PHYSICAL INJURY SHOULD NOT DETERMINE WHETHER EVIDENCE OF OTHER PHYSICAL ABUSE WILL BE ADMITTED IN SUPPORT OF A CLAIM OF AREA 2 POLICE TORTURE.

In prior cases, this Court has strictly limited the circumstances under which a defendant may introduce evidence of physical abuse suffered by others in support of his claim that he was abused by the police in the course of an interrogation. This Court recently gave a succinct restatement of the rule: "[O]ne of the requirements for admitting . . . evidence [of prior police brutality] is that in both the prior allegation of abuse and the case before the court, there is evidence of injury consistent with police brutality." *People v. Hopley*, 182 Ill.2d 404, 448, 696 N.E.2d 313 (1998). Thus, where the defendant has "not shown any injuries which were consistent with the police brutality" it is proper to exclude proffered evidence of brutality in other cases. *Id.* (emphasis added).

Mr. Patterson argues in his appeal that he has shown "injuries which were consistent with the police brutality," namely the psychological after-effects typically exhibited by victims of torture. The amici concur in Mr. Patterson's argument that his demonstration of psychological

injury is sufficient to meet the *Hobley* standard and urge this Court to adopt Mr. Patterson's reasoning.

However, even if the Court were to conclude that the focus should be on the purely physical manifestations of the police abuse, Mr. Patterson's case is still one in which evidence of other police misconduct must be received. This is because, considering Mr. Patterson's physical symptoms alone, the evidence as to his post-interrogation condition is fully consistent with the claims he makes about the abuse perpetrated by Burge's detectives.

The amici acknowledge the important concern reflected in the preliminary requirement that the defendant show his own physical injury. Fraudulent claims of physical abuse must be weeded out before the defendant is allowed to create a lengthy and confusing record about alleged abuses that were not perpetrated upon him. Clearly, as this Court's decisions recognize, the defendant may not be permitted to launch into evidence of police abuse in other cases where there is grave reason to doubt the defendant's claim of abuse in his own case.

The problem with literally requiring the defendant to "show physical injury" before allowing evidence of other abuse, however, is that it can preclude defendants like Mr. Patterson, with serious, credible claims of abuse, from presenting key evidence. Unquestionably, Burge and his associates refined their torture techniques with the objective in mind of leaving no or little observable trace of the abuse on the victim's body. For Burge and his men, the virtue of suffocating Mr. Patterson with a plastic typewriter cover was not only that it would produce debilitating pain and anxiety, but also that it would leave no mark on Mr. Patterson. Administering punches to Mr. Patterson's body had the same advantage. And the same is true of other torture techniques reported by victims of Burge and his subordinates: hanging a suspect from a window; administering electric

shocks; squeezing a suspect's scrotum; or hitting a suspect with a telephone book will produce intense pain or fear or both -- and all can be accomplished without leaving a trace.

The record before the Court in Mr. Patterson's case makes clear that one of Burge's objectives was to prevent detection. At the suppression hearing before his trial, Mr. Patterson testified that the Lieutenant whom he later identified as Burge placed his handgun on a desktop and said to Patterson that if he ever tried to reveal what had been done to him "it's your word against ours and who are they going to believe, you or us."

Unquestionably, evidence of prior, similar police abuse in other cases can and should be admitted to show that the police acted in conformity with an established modus operandi or a common plan or design. *People v. Banks*, 192 Ill. App. 3d 986, 994, 549 N.E.2d 766, 771 (1st Dist. 1989)("Plainly, . . . evidence [of other, similar abuse] tends to show the conduct that these two police officers employ in interrogating suspects who are in custody, and such evidence is therefore probative as to the conduct they employed in the present case to obtain defendant's confession."); *People v. Bates*, 267 Ill. App. 3d 503, 642 N.E.2d 774 (1st Dist. 1994); *People v. Cannon*, 293 Ill. App. 3d 634, 688 N.E.2d 693 (1st Dist. 1997). Evidence of other, similar police abuse can be critical to demonstrating that the defendant actually did suffer the abuse he alleges.

The amici believe that this Court can use Mr. Patterson's case to establish a practical, clear and fair test for whether a defendant may present evidence of prior police abuse, one that accommodates both the need to weed out fraudulent claims and the need to allow evidence of other abuse where it is clearly relevant and probative.

In fact, there are three tiers of cases in which defendants allege physical abuse by the police. In the first tier are cases in which there are physical injuries that corroborate the defendant's claim that he was abused. These cases, of which the Wilson case is one clear example, are ones in which,

under this Court's reasoning in *Hobley* and elsewhere, it would unquestionably be appropriate to allow evidence of prior police abuse. This Court has always recognized the admissibility of other abuse evidence in such cases.

At the other extreme are cases in which the physical evidence refutes the defendant's claim - for example, where a hypothetical defendant claims he was repeatedly struck in the face by a heavy steel object, but contemporaneous photographs show that there are no bruises or other marks of any kind on the defendant's face. In that instance, this Court's prior decisions would properly cut the defendant off from presenting evidence of other police abuse. Clearly, such a defendant could not show "any injuries which were consistent with the police brutality he alleged." *People v. Hobley*, 181 Ill. 2d at 448. Indeed, the lack of physical injury would belie the hypothetical defendant's claim.

The middle tier of cases is different. There are some cases -- like *Mr. Patterson's* and some of the other Area 2 capital cases -- in which, although the defendant cannot "show" observable physical injuries, the lack of such evidence in no way undermines the defendant's claim that he was abused or tortured, and, in fact, is fully consistent with the defendant's claim. For example, where the defendant alleges that he was suffocated with a plastic typewriter cover, no observable physical injury would be expected to remain after the abuse. This fact, however, should not prohibit the defendant from presenting evidence that the same police whom he alleges suffocated him also suffocated other arrestees at different times and, certainly, should not prohibit the defendant from presenting psychological evidence of torture, as *Mr. Patterson* sought to do in the trial court here. Indeed, such evidence would be highly probative of the truth of the defendant's allegation.

The amici urge this Court to recognize the three tiers of cases in which police physical abuse is alleged and to hold -- at least in the particularly troubling context of Chicago Police torture

allegedly perpetrated by Burge and his underlings -- that a defendant like Mr. Patterson who alleges he was tortured in such a way as to leave no telltale marks be allowed to present evidence of other, similar police abuse.

III. IT WOULD BE INTOLERABLE TO EXECUTE MR. PATTERSON WITHOUT A FULL HEARING CONCERNING THE CIRCUMSTANCES OF HIS ALLEGED CONFESSION.

The systematic practice, under former Lieutenant Burge, of torturing suspects at Area 2 police headquarters in order to extract confessions is a blight upon the Illinois criminal justice system. In the life and death context of a capital case like Mr. Patterson's, the allegation that a confession was procured through torture and then used to garner a conviction and death sentence is nothing short of horrifying.

At a minimum, where there are credible allegations that a confession has been extracted by torture and where evidence of the confession has been received and relied upon by the trier of fact, the reliability of a result finding of guilt is subject to grave question. But where the sentence is death, errors cannot be redeemed and untrustworthy findings cannot be tolerated. As the United States Supreme Court has recognized, because death is different, both in its severity and its irrevocability, heightened standards of reliability must be met in any case where a person's life is at stake. *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). See also *Gardner v. Florida*, 430 U.S. 349, 357-58 (1977) ("[f]rom the point of view of society, the action of the sovereign in taking the life of one of its citizens . . . differs dramatically from any other legitimate state action"); *Beck v. Alabama*, 447 U.S. 625, 637-38 (1980) (a capital case requires a higher degree of reliability in the guilt determination process).

Decisive action is therefore required. The State of Illinois cannot execute Aaron Patterson without a full and complete inquiry into whether the evidence used to convict and sentence him was

procured through torture. Primitive barbarism must be consigned to humankind's medieval and ancient history. Torture has no place in the criminal justice system of the State of Illinois. Where torture is alleged -- and alleged credibly, as it is by Mr. Patterson -- there can be surely be no less than a full and complete inquiry. To execute Mr. Patterson when doubts remain as to whether his confession was extracted by torture would be unconscionable.

CONCLUSION

For the foregoing reasons, the amici respectfully urge this Court to remand Mr. Patterson's case for a full and complete hearing into his allegations that he was tortured and abused during his April 30, 1986 interrogation at the Area 2 police headquarters and to specifically direct the trial court to allow evidence of other, similar police interrogation abuses at that hearing.

Respectfully submitted,

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