

Truth Stories: Credibility Determinations at the Illinois Torture Inquiry and Relief Commission

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This is the first scholarly Article to investigate the inner workings of the Illinois Torture Inquiry and Relief Commission (“TIRC”). The TIRC was established by statute in 2009 to provide legal redress for victims of police torture. Prisoners who claim that their convictions were based on confessions coerced by police torture can utilize the procedures available at the TIRC to obtain judicial review of their cases. For those who have exhausted all appeals and post-conviction remedies, the TIRC represents the tantalizing promise of justice long denied. To be eligible for relief, however, the claimant must first meet the TIRC’s strict four-element test for credibility. This Article argues that through its over-reliance on these credibility standards, the TIRC effectively inscribes and reproduces a dominant narrative of police torture, one that promotes a “bad apples” myth and ignores the contributing factors of broader-scale forces such as racism and inadequate police accountability mechanisms. By accepting certain claims of torture as credible and rejecting others, the TIRC engages in the construction of a socio-legal truth about Chicago’s police torture crisis.

This Article explores the truth-making function of the TIRC, examining its adjudicatory processes under the framework of what Andrew Woolford and R.S. Ratner call “the informal-formal justice complex.” The TIRC is an informal justice practice in that it provides a forum for the adjudication of police torture claims in a space created outside the formal legal system. In reality, however, the TIRC straddles

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the line between formal and informal justice systems, and this awkward position is the source of ongoing tensions. Like other informal justice practices, the TIRC relies on the State to provide the authority to execute its mission; this dependent relationship generates results that tend to ultimately reinforce State power. Fortunately, social movements maintaining a position outside of the complex have cultivated a number of counterpublics as alternate discursive spaces used to challenge State power. The Article ends with a consideration of two alternative forums for justice—the Survivor’s Roundtable and the People’s Hearings on Police Crimes.

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INTRODUCTION

“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.”¹

Revelations of corruption, abuse, and misconduct by police and other law enforcement officers throughout the country are all too familiar.² New York,³ Los Angeles,⁴ and New Orleans,⁵ among other cities, have each experienced their own well-publicized police brutality scandals. Police torture, however, is a qualitatively different thing.

The Chicago Police Department (“CPD”) is responsible not only for the severe beatings of criminal suspects and other individuals in its custody, but also for electrocutions, baggings, wallings, food and sleep deprivation, sexual humiliation, mock executions, and Russian Roulette;⁶ cruelties that sound more like the Central Intelligence Agency’s (“CIA”) “enhanced interrogation techniques” used on terrorist suspects held overseas after the September 11 attacks. CPD officers used these techniques to obtain confessions, punctuating the interrogation sessions with racial epithets designed to demean their victims.⁷ These confessions were later introduced into evidence at

1. United States *ex rel.* Maxwell v. Gilmore, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999).

2. Since 1996, October 22 has served as the National Day of Protest Against Police Brutality. See Akil Al-Jundi et al., *History and Background of October 22*, OCTOBER 22ND COALITION TO STOP POLICE BRUTALITY, REPRESSION, & CRIMINALIZATION GENERATION (June 1996), <http://www.october22.org/HistoryBackground.html>; see also *Times Topics: Police Brutality, Misconduct and Shootings*, N.Y. TIMES, http://topics.nytimes.com/top/reference/times-topics/subjects/p/police_brutality_and_misconduct/ (last visited Mar. 8, 2014) (compiling N.Y. Times national coverage of police brutality, misconduct, and shootings).

3. See, e.g., Casey Gane-McCalla, *Top 5 Worst NYPD Brutality Moments*, NEWSONE.COM (Dec. 8, 2008), <http://newsone.com/52571/top-5-worst-nypd-brutality-moments/>.

4. See, e.g., Robert Faturechi & Jack Leonard, *18 current, former L.A. County sheriff's deputies face federal charges*, L.A. TIMES, Dec. 9, 2013, <http://www.latimes.com/local/la-me-sheriff-arrests-20131210,0,4405792.story#axzz2oH9OWbXR> (noting widespread “illegal conduct” by L.A. sheriff’s deputies); see also Lou Cannon, *One Bad Cop*, N.Y. TIMES, Oct. 1, 2000, <http://www.nytimes.com/2000/10/01/magazine/one-bad-cop.html?pagewanted=all&src=pm> (describing police misconduct in the Los Angeles Police Department’s Rampart CRASH Division).

5. See, e.g., Naomi Martin, *NAACP calls for investigations into allegations of police brutality in Mardi Gras incident*, NOLA.COM, http://www.nola.com/crime/index.ssf/2013/02/naACP_calls_for_investigations.html (last updated Mar. 8, 2013, 11:29 AM); Sabrina Shankman et al., *After Katrina, New Orleans Cops Were Told They Could Shoot Looters*, PROPUBLICA (July 24, 2012, 3:35 PM), <https://www.propublica.org/nola/story/nopd-order-to-shoot-looters-hurricane-katrina> (reporting the criminal prosecutions of New Orleans Police Department officers involved in the Danziger Bridge shooting during the immediate aftermath of the levee breaks after Hurricane Katrina in 2005).

6. Cf. Kim D. Chanbonpin, *“We Don’t Want Dollars, Just Change”*: Narrative Counter-Terrorism Strategy, an Inclusive Model for Social Healing, and the Truth About Torture Commission, 6 NW. J. L. & SOC. POL’Y 1, 5 (2011).

7. See, e.g., Flint Taylor, *Racism, Torture and Impunity in Chicago*, NATION (Feb. 20, 2013),

criminal trials, and were often the only bases for convictions.⁸ Some victims of police torture have been incarcerated since 1982.⁹

Established by statute¹⁰ in 2009 after a long grassroots organizing campaign, the Illinois Torture Inquiry and Relief Commission (“TIRC” or “the Commission”) offers one last chance for those incarcerated individuals to argue, in an informal justice setting, that their convictions depended on confessions illegally coerced by police torture. Designed to provide an extraordinary remedy¹¹ for victims of police torture, the TIRC has proved to be less a vehicle for truth-seeking, and more a Hail-Mary play for state prisoners who have long since exhausted all other types of formal judicial relief.

Each claim of torture at the TIRC is first scrutinized for credibility under a strict four-element test.¹² The Commission’s rules place the burden on the petitioner to show, for example, that his or her claim is

<http://www.thenation.com/article/173027/racism-torture-and-impunity-chicago> [hereinafter Taylor, *Racism, Torture*] (describing the police use of racial slurs during torture).

8. See, e.g., Claim of Kevin Murray, TIRC No. 2012.08-M, at 1–2 (July 25, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Kevin%20Murray.pdf> (finding that the claimant withstood thirty-five hours of confinement with beatings before he made the confession that was the only evidence at trial linking the claimant to the crime); Claim of Robert Smith, TIRC No. 2011.024-S, at 2 (July 25, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Robert%20Smith.pdf> (finding that without the claimant’s confession, the prosecution’s case against the claimant would have been very weak); Claim of Harvey Allen, TIRC No. 2011.017-A, at 2 (May 20, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Harvey%20Allen.pdf> (finding that the claimant’s confession played a significant role in the claimant’s conviction); Claim of Darrell Fair, TIRC No. 2011.018-F, at 1–2 (May 20, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Darrell%20Fair.pdf> (same).

9. Jackie Wilson, one of the claimants before the TIRC, has been incarcerated since his arrest in 1982. See Jason Meisner, *State panel to back hearings into 7 claims of police torture*, CHI. TRIB., May 17, 2013, http://articles.chicagotribune.com/2013-05-17/news/ct-met-burge-torture-20130517_1_jackie-wilson-torture-claims-illinois-torture-inquiry. Stanley Wrice was arrested in September 1982. EDWARD J. EGAN & ROBERT D. BOYLE, REPORT OF THE SPECIAL STATE’S ATTORNEY 116 (2006) [hereinafter SSA REPORT], available at <http://www.chicagojustice.org/foi/relevant-documents-of-interest/report-of-the-special-states-attorney-critique-of-that-report>. The Cook County Circuit Court first commissioned the SSA Report in 2002, but it was not released until four years later, in 2006. See CHRISTINA ABRAHAMS ET AL., THE FAILURE OF SPECIAL PROSECUTORS EDWARD J. EGAN AND ROBERT D. BOYLE TO FAIRLY INVESTIGATE POLICE TORTURE IN CHICAGO I (2007) [hereinafter SHADOW REPORT], available at <http://peopleslawoffice.com/wp-content/uploads/2012/02/5.8.07.Final-Corrected-Version-ofReport.pdf>; see also Jodie Rudoren, *Report on Chicago Police Torture is Released*, N.Y. TIMES, July 19, 2006, <http://www.nytimes.com/2006/07/19/us/19cnd-chicago.html>.

10. 775 ILL. COMP. STAT. 40/1–40/99 (2013).

11. 775 ILL. COMP. STAT. 40/10 provides, in relevant part: “This Act establishes an extraordinary procedure to investigate and determine factual claims of torture related to allegations of torture.”

12. See ILL. ADMIN. CODE tit. 2, § 3500.370(a) (2013).

“strikingly similar to other claims of torture”¹³ contained in the 1992 CPD’s Office of Professional Standards (“OPS”) Report¹⁴ and the 2006 Special State’s Attorney’s (“SSA”) Report.¹⁵ As of December 2013, fourteen cases out of the twenty-five reviewed thus far have met these criteria, and have been forwarded to the Chief Judge of the Cook County Circuit Court.¹⁶

As a function of the strict credibility standards, however, the successful claims at the Commission have hewn closely to the “bad apples” myth of police torture that has congealed over the past twenty years and has now essentially calcified. The dominant narrative goes something like this: the police torture scandal can be traced to a single source—CPD Lieutenant Jon Burge, commander of the South Side’s Area Two police headquarters. Burge and his subordinates personally participated in a large but finite number of abuses, each incident characterized by the use of barbarous devices such as electrocution machines and cattle prods. Burge’s victims were exclusively African American males. As soon as the City of Chicago became aware of the scandal, it immediately initiated efforts to contain the abuses.¹⁷ The City suspended Burge in 1991¹⁸ and, after the requisite hearing before the Police Board, separated him from the police force in 1993.¹⁹ Later, the City of Chicago and Cook County commissioned official reports that chronicled Burge’s abuses and concluded that “systematic torture” had existed at Area Two.²⁰ Problem solved. According to the dominant narrative, police torture is a regrettable part of Chicago’s otherwise

13. See *id.* § 3500.370(a)(2) (“The claim is strikingly similar to other claims of torture contained in the Reports of the Chicago Police Department’s Office of Professional Standards, and the Report of the Special State’s Attorney, regarding their investigations of Jon Burge and police officers under his command . . .”).

14. OFFICE OF PROF’L STANDARDS, SPECIAL PROJECT CONCLUSION REPORTS (1990) [hereinafter OPS REPORT]. Completed in 1990, the OPS Report was not made public until a federal court order in 1992. See UNIV. OF CHI., SUMMARY OF EVIDENCE OF MONELL POLICY AND PRACTICE OF TORTURE AND COVER-UP, AND OF DEFENDANTS MARTIN’S, SHINES’, NEEDHAM’S AND HILLARD’S INVOLVEMENT [REDACTED] ¶¶ 101–06 (2010) [hereinafter *Summary of Evidence*], available at <https://humanrights.sites.uchicago.edu/sites/humanrights.uchicago.edu/files/uploads/SummaryofEvidence.pdf>.

15. SSA REPORT, *supra* note 9. The Cook County Circuit Court first commissioned the SSA Report in 2002, but it was not released until four years later, in 2006. See SHADOW REPORT, *supra* note 9, at 1; Rudoren, *supra* note 9.

16. See *infra* Part IV.

17. For the full discussion of the dominant narrative of police torture in Chicago, see *infra* Part II.A; see also OPS REPORT, *supra* note 14, at 75.

18. CPD Superintendent Leroy Martin initiated Police Board charges against Burge in 1991. SSA REPORT, *supra* note 9, at 121.

19. See *infra* Part II.

20. OPS REPORT, *supra* note 14, at 1, 6; SSA REPORT, *supra* note 9, at 16.

great history.

And yet, this is not the complete story, and the Commission's credibility determinations do not accurately measure the full truth of the police torture crisis. As a result, petitioners with legitimate claims that do not fit the tight narrative space delineated by the Commission's rules have been left without a legal remedy.²¹

This Article explores the truth-making function of the TIRC, examining its adjudicatory processes under the framework of what Andrew Woolford and R.S. Ratner call "the informal-formal justice complex."²² After providing some background on Chicago's history of police torture in Part I, Part II situates the Commission within the informal-formal justice complex framework. Superficially, like truth commissions, the TIRC is an informal justice practice in that it provides a forum for the adjudication of police torture claims in a space created outside of the boundaries of the formal legal system. In reality, however, the TIRC straddles the line between formal and informal justice systems, and this awkward position is the source of ongoing tensions for informal justice practices like the TIRC. The architecture of informal justice may be distinct from formal legal structures, but many informal systems rely on the State to provide the authority for executing their missions.²³ This dynamic of dependency inevitably generates incentives for informal systems to revert back to practices that have the result of reenacting formal justice practices, thus ultimately reinforcing the State. It is this hybrid role that is emblematic of the informal-formal justice complex.²⁴

And although it is not a truth commission, through the act of accepting certain claims as credible and rejecting others because they do not conform to the dominant narrative, the Commission actively engages in the construction of a socio-legal truth about Chicago's police torture crisis. Specifically, it is through the credibility standards used in the TIRC's summary disposition process by which the State's dominant narrative of police torture becomes ingrained in the law. Using Michel

21. See *ITRC Home*, ILL. TORTURE INQUIRY & RELIEF COMMISSION, <http://www2.illinois.gov/itrc/Pages/default.aspx> (last visited Mar. 8, 2014). To date, the Commission has declined to refer a total of eleven claims. See *TIRC Decisions*, ILL. TORTURE INQUIRY & RELIEF COMMISSION, <http://www2.illinois.gov/itrc/Pages/TIRCDecision.aspx> (last visited Mar. 8, 2014).

22. See generally ANDREW WOOLFORD & R.S. RATNER, *INFORMAL RECKONINGS: CONFLICT RESOLUTION IN MEDIATION, RESTORATIVE JUSTICE AND REPARATIONS* 4 (2008). Woolford and Ratner credit sociologists David Garland and Richard Sparks with the origins of this term. *Id.* at 32 (citing David Garland & Richard Sparks, *Criminology, Social Theory and the Challenge of Our Times*, 40 BRIT. J. CRIMINOLOGY 189, 199 (2000)).

23. *Id.* at 11–13.

24. *Id.*

Foucault's insights on State power,²⁵ Part III critiques the Commission's reliance on summary disposition as its chief implement in constructing its version of the truth. Part III observes that, like other informal justice practices, the TIRC has become re-purposed. Instead of empowering its participants, the TIRC is serving the State's interests in maintaining the status quo by rejecting police torture claims that do not conform to the dominant narrative.

Part IV proposes two alternatives to the TIRC's summary disposition process, one intrinsic to the Commission, and another extrinsic. Intrinsically, the TIRC has the power, pursuant to statute, to conduct a more comprehensive investigation into claims of torture. It has not yet fully exercised these powers, but Part IV argues that it should. Part IV closes by considering the notion of a "counterpublic"; a third option between the poles of formal and informal justice. A counterpublic maintains a space for public participation that strategically engages and also disengages with the justice complex in order to check the State's tendency to coopt informal justice practices.²⁶ Because they demand a reckoning from the complex, counterpublics are vital and necessary counterparts to informal justice practices such as the TIRC. The Chicago police accountability movement has nurtured a number of counterpublics and Part IV describes two of them—the Survivor's Roundtable and the People's Hearings on Police Crimes. A conclusion follows.

I. FACTUAL BACKGROUND: POLICE TORTURE IN CHICAGO (1970–PRESENT)

No fewer than 117 individuals were the victims of police torture under Burge's direct command from 1972 to 1991.²⁷ Some of the same detectives and police officers who cut their teeth under Burge's

25. See *infra* Part II.C.

26. See *infra* Part IV.B.

27. See *110 Known Burge Area 2 and 3 Torture Victims 1972-1991*, PEOPLE'S L. OFF., <http://peopleslawoffice.com/wp-content/uploads/2012/02/Known-Torture-Victims.pdf> (last visited Mar. 9, 2014). The People's Law Office and Northwestern University School of Law's Clinic class action complaint lists 117 victims of police torture. Class Action Petition for Relief Under the Illinois Post-Conviction Hearing Act at 8–11, *People v. Plummer*, No. 91 CR 21451 (Cir. Ct. Cook Cnty. Oct. 16, 2012), available at <http://www2.illinois.gov/itrc/Documents/Class%20Action%20Petition%20for%20Relief%20Under%20the%20Illinois%20PostConviction%20Hearing%20Act.pdf>. The University of Chicago's Human Rights Program counts 135 victims, which is the number announced by the special prosecutor. Univ. of Chi., *Timeline*, HUM. RTS. PROGRAM, <http://humanrights.uchicago.edu/page/timeline> (last visited Mar. 9, 2014) [hereinafter HUMAN RIGHTS PROGRAM Timeline].

guidance continue to police the Chicago streets today.²⁸ So it should come as no surprise that even after the Police Board finally dismissed Burge from his position in 1993,²⁹ the police have continued to victimize individuals suspected of having committed crimes.³⁰ To be clear, police violence remains a reality in the City of Chicago.³¹ This Part provides factual background on the police torture crisis in Chicago, beginning with the Burge era (1970–1993).³² The Burge portion of this history draws heavily from the OPS Report and the SSA Report, as these two sources comprise the basis of the dominant narrative and reinforce the myth that Burge and his subordinates were merely “bad apples” on the police force. This Part then departs from the dominant narrative by describing police violence after Burge was discharged in 1993 continuing to the present day. Having laid the historical foundation for why it became necessary, this Part concludes by providing a brief summary of Illinois’s 2009 Torture Inquiry and Relief Commission Act.

A. *The Burge Era*

The 1990 OPS Report and the 2006 SSA Report provide the foundation of the official and dominant narrative regarding police torture in Chicago.³³ In summary, the dominant narrative concedes that the torture program at Area Two police headquarters was widespread and organized from on high. Jon Burge, the commanding officer at Area Two, sat on the top of the torture hierarchy, overseeing a regime in

28. See, e.g., SHADOW REPORT, *supra* note 9, at 30–31; *Summary of Evidence*, *supra* note 14, at 110–11; cf. ALFRED MCCOY, A QUESTION OF TORTURE: CIA INTERROGATION, FROM THE COLD WAR TO THE WAR ON TERROR (2006).

29. HUMAN RIGHTS PROGRAM Timeline, *supra* note 27.

30. See, e.g., Second Amended Class Action Complaint at 2, 33–34, *Jones v. Burge*, No. 11-CV-4143 (N.D. Ill. Jan. 15, 2013) [hereinafter *Jones SACAC*].

31. In November 2012, a federal jury awarded \$850,000 to Karolina Obrycka after she won her lawsuit against the CPD. Five years earlier, Obrycka was working as a bartender when Anthony Abbate, an off-duty CPD officer, came behind the bar and beat her. At the heart of Obrycka’s suit against the City was her claim that Abbate did what he did because the CPD’s code of silence created a culture of impunity. Annie Sweeney & Jason Meisner, *Police cover-up found in bartender beating*, CHI. TRIB., Nov. 14, 2012, http://articles.chicagotribune.com/2012-11-14/news/ct-met-abbate-verdict-20121114_1_karolina-obrycka-officer-anthony-abbate-jury-rules; see also *infra* Part I.B.

32. Burge joined CPD in 1970 and was dismissed in 1993. John Conroy, *Tools of Torture*, CHI. READER (Feb. 3, 2005), <http://www.chicagoreader.com/chicago/tools-of-torture/Content?oid=917876>.

33. Incidentally, plaintiffs suing in civil court alleging section 1983 violations have relied on the reports. Similarly, the Illinois state courts have relied on these reports when reviewing successive post-conviction claims. See, e.g., *People v. Wrice*, 962 N.E.2d 934, 944–45 (Ill. 2012) (chronicling the use of the OPS and SSA reports by the defendant and the lower courts).

which he also directly participated. There were over 100 victims, all of them African American males.³⁴ The official reports document the variety of torture instruments and methods used by Burge and his handful of confederates.³⁵

The reports rely extensively on numerous victim statements that share remarkable similarities, the exact details of the torture program often overlapping in their descriptions. The consistency with which the victims have reported their torture while in police custody lends credibility to their stories, but the stock story³⁶ that has been consolidated through the reports has also erected insurmountable barriers for victims whose stories depart from the accepted narrative. The central organizing feature of the dominant narrative is that Burge and his cronies were nothing more than a few “bad apples” that spoiled the barrel.³⁷ According to prevailing wisdom, once the Burge threat was contained, the integrity of the police department was restored.³⁸

34. Much of the public discourse about Chicago’s police torture crisis involves repeated references to the African American male victims, to the exclusion of all others. *See, e.g.*, Press Release, Roderick MacArthur Justice Ctr., Class Action Suit Calls for New Hearings for Still-Incarcerated Burge Torture Victims (Oct. 16, 2012), *available at* http://www.law.northwestern.edu/legalclinic/macarthur/projects/police/documents/PressRelease_BurgeClassActionFiling.pdf; Liliana Segura, *Chicago’s Dark Legacy of Police Torture*, NATION (July 19, 2012), <http://www.thenation.com/article/168965/chicagos-dark-legacy-police-torture>; *see also Chicago Police Torture*, PEOPLE’S L. OFF., <http://peopleslawoffice.com/issues-and-cases/chicago-police-torture/> (last visited Mar. 9, 2014); Taylor, *Racism, Torture*, *supra* note 7.

35. The SSA Report names five police officers involved in torture cases in which guilt could be proved beyond a reasonable doubt—Jon Burge, Anthony Maslanka, Michael McDermott, James Lotito, and Ronald Boffo. SSA REPORT, *supra* note 9, at 16. During the July 19, 2006 press conference announcing the release of the SSA Report, the SSA declared that the torture allegations centered around “the Midnight Crew”; “eight to twelve policemen out of a unit of forty-four.” SHADOW REPORT, *supra* note 9, at 5.

36. A stock story is the prevailing narrative that is told and re-told by dominant cultural institutions, such as courts or schools. By definition, stock stories are one-dimensional stories that simplify complex historical events. *See, e.g.*, LEE ANNE BELL ET AL., THE STORYTELLING PROJECT CURRICULUM: LEARNING ABOUT RACE AND RACISM THROUGH STORYTELLING AND THE ARTS 36–37 (2010), *available at* http://www.columbia.edu/itc/barnard/education/stp/stp_curriculum.pdf.

37. Elyse Bruce, *One Bad Apple Spoils the Whole Barrel*, HISTORICALLY SPEAKING BLOG (Mar. 27, 2013), <http://idiomation.wordpress.com/2013/03/27/one-bad-apple-spoils-the-whole-barrel/>.

38. On September 11, 2013, Chicago Mayor Rahm Emanuel referred to the police torture crisis as a “dark chapter” in Chicago’s history, continuing:

I do believe this [\$12.3 million settlement to torture victims] is a way of saying all of us are sorry about what happened here in the city, and closing that period of time, that stain on the city’s reputation, its history and now being able to embark on a new part of the city and a new way of actually doing business. And that is not who we are, and we all are one or another obviously sorry.

Hal Dardick & John Byrne, *Mayor: ‘Sorry’ for Burge torture era*, CHI. TRIB., Sept. 11, 2013, <http://articles.chicagotribune.com/2013-09-11/news/chi-city-council-settles-burge-torture-cases->

The dominant narrative presents a snapshot version of the police torture crisis, as if the scene, its cast of characters, and their props were somehow frozen in time.

The OPS Report was commissioned in March 1990, when investigators³⁹ were tasked with “reinvestigating” Andrew Wilson’s claim that he had been tortured during his 1982 arrest for the murders of two CPD officers.⁴⁰ One portion of the OPS report—dubbed the Sanders Report for its author Francine Sanders—is limited to a consideration of Andrew Wilson’s allegations against Burge and the other CPD officers named by Wilson in his civil suit.⁴¹ Sanders ultimately concluded that Burge tortured Wilson by administering repeated electric shocks to his body.⁴²

Another portion, drafted by Michael Goldston and thus referred to as the Goldston Report, considered a broader question—whether there was systematic police abuse at Area Two during the time of Wilson’s interrogation and, if so, the degree to which Area Two command personnel were culpable.⁴³ Goldston concluded that torture was “systematic” under Burge’s leadership, and that the abuse “was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture.”⁴⁴ Goldston suggested the reason the torture program had continued for so long was because CPD command personnel, although aware that suspects were being tortured, simply failed to intervene. In Goldston’s words: “Particular command members were aware of the systematic abuse and perpetuated

for-123-million-20130911_1_burge-victims-burge-era-torture-era; see also Fran Spielman & Tina Sfondedes, *Emanuel apologizes for torture under former Chicago Police commander, cohorts*, CHI. SUN-TIMES, Sept. 13, 2013, <http://www.suntimes.com/22500577-761/emanuel-apologizes-for-torture-under-former-chicago-police-commander-cohorts.html>.

39. The body responsible for investigating claims of police misconduct—OPS—was actually originally under the broader aegis of CPD. OPS was replaced by the Independent Police Review Authority (“IPRA”) in 2007. See *About IPRA*, CITY OF CHI. INDEP. POLICE REV. AUTHORITY, <http://www.iprachicago.org/about.html> (last visited Mar. 9, 2014).

40. OPS REPORT, *supra* note 14, at 1. The OPS Report was dated November 2, 1990, about seven months after it was commissioned. *Id.* The Sanders Report is dated October 26, 1990. *Id.* at 27. The Goldston Report is dated September 28, 1990. *Id.* at 4. It was not made public, however, until two years later, when a federal judge ordered its release. HUMAN RIGHTS PROGRAM Timeline, *supra* note 27.

41. OPS REPORT, *supra* note 14, at 76. It is curious that the Sanders Report is circumscribed in this manner because Andrew Wilson was accused with his brother, Jackie Wilson, of having killed the two officers and the brothers both claimed that they had been tortured by the police. See *id.* at 76–78; SSA REPORT, *supra* note 9, at 45. The brothers were also tried together. *People v. Wilson*, 515 N.E.2d 812, 814 (Ill. App. Ct. 1987).

42. OPS REPORT, *supra* note 14, at 138–39.

43. *Id.* at 1, 5.

44. *Id.* at 6.

it either by actively participating in [the] same or failing to take any action to bring it to an end.”⁴⁵ In reaching these conclusions, Goldston relied on a database of approximately fifty victims whose names were culled from numerous sources,⁴⁶ including John Conroy’s report for the *Chicago Reader*.⁴⁷

Besides Wilson’s, the OPS Report investigated forty-nine other claims⁴⁸ and closed with recommendations that the charges against Burge, and Detectives John Yucaitis and Patrick O’Hara be sustained.⁴⁹ After a fifteen-month-long investigation, the Police Board ultimately dismissed Burge in 1993.⁵⁰ By this time, Burge had worked for CPD for twenty-three years, during which time he received at least four promotions and thirteen commendations.⁵¹ One of the commendations came from Police Superintendent Richard J. Brzeczek and was awarded to Burge and the entire unit at Area Two following the Wilson arrest.⁵²

45. *Id.*

46. *Id.* at 4, 8, 24. These fifty names were taken from incidents reported during the period of May 1973 through October 1986. Burge was named as an individual participant in over half of the thirty-five cases where victims could be identified. *Id.* at 24. Burge remained on active duty on the police force until 1991, when he was suspended. See *High-Ranking Chicago Police Officer Suspended in Brutality Probe*, ASSOCIATED PRESS (Nov. 8, 1991, 10:27 PM), <http://www.apnewsarchive.com/1991/High-Ranking-Chicago-Police-Officer-Suspended-in-Brutality-Probe/id-650671258e35c42c6c2db0fd30fa567a>.

47. OPS REPORT, *supra* note 14, at 4 (citing John Conroy, *House of Screams*, CHI. READER (Jan. 25, 1990), <http://www.chicagoreader.com/chicago/house-of-screams/Content?oid=875107> [hereinafter Conroy, *House of Screams*]). The *Chicago Reader* has a webpage dedicated to Conroy’s dogged reporting on the police torture crisis. John Conroy, *Police Torture in Chicago: An Archive of articles by John Conroy on police torture, Jon Burge, and Related Issues*, CHI. READER (Oct. 8, 2009), <http://www.chicagoreader.com/chicago/police-torture-in-chicago-jon-burge-scandal-articles-by-john-conroy/Content?oid=1210030>. Conroy has also authored a stage play. JOHN CONROY, *MY KIND OF TOWN* (2012).

48. OPS REPORT, *supra* note 14, at 8–12. The SSA Report considered a total of 246 complaints. SSA REPORT, *supra* note 9, at 8–9. One hundred forty-eight of these were pursued in full and are attached as an appendix to the Special Prosecutor’s Report. *Id.* at 9. The remaining ninety-eight were deemed irrelevant to the Special Prosecutor’s mandate, for a variety of reasons. *Id.* One of these reasons was because the complaints “did not involve Jon Burge or his officers.” *Id.*

49. OPS REPORT, *supra* note 14, at 138–41. OPS found that there was insufficient evidence to sustain charges against the fourth officer named by Wilson, Detective Fred Hill. *Id.* at 138. The SSA Report reached the same conclusion. SSA REPORT, *supra* note 9, at 65.

50. Yucaitis and O’Hara were later reinstated. See Sharman Stein, *Police Board Fires Burge for Brutality*, CHI. TRIB., Feb. 11, 1993, http://articles.chicagotribune.com/1993-02-11/news/9303177820_1_wilson-case-police-board-jon-burge; see also *Summary of Evidence*, *supra* note 14.

51. See Conroy, *House of Screams*, *supra* note 47 (“[Burge’s] personnel file contains 13 commendations and a letter of praise from the U.S. Department of Justice. He has been promoted repeatedly, has served as commander of the Bomb and Arson Unit, and is now commander of the detective division in Area 3. When he took his seat in Judge Duff’s courtroom to answer Andrew Wilson’s charges, Burge outranked 99 percent of the policemen in the city.”).

52. SSA REPORT, *supra* note 9, at 83–84.

After his dismissal, Burge was allowed to retire with his police pension and moved to Florida.⁵³

A special prosecutor produced a second report investigating the Burge-era torture in 2002. Under pressure from organized community groups,⁵⁴ the Chief Judge of the Criminal Division of the Circuit Court of Cook County appointed an SSA to conduct an investigation.⁵⁵ Four years later, the SSA released a 292-page report, finding that there were “many cases” in which it was reasonable to believe that Burge and those subordinate to him had tortured criminal suspects.⁵⁶ The SSA Report concluded that Burge was guilty of abusing persons with impunity and that therefore it “necessarily follow[ed] that a number of those serving under his command recognized that, if their commander could [do so], so could they.”⁵⁷ However, the SSA reasoned, because the three-year statute of limitations for torture-related crimes had run by the date of the report’s release, the SSA would not be able to pursue criminal prosecutions of the police officers named in it.⁵⁸

53. See Andrew Maloney & Marc Karlinsky, *High court accepts Burge pension case*, CHI. DAILY L. BULL., May 29, 2013; Matthew Walberg, *Burge: Boat name not tied to police torture*, CHI. BREAKING NEWS (June 21, 2010), http://articles.chicagobreakingnews.com/2010-06-21/news/28514637_1_officers-william-fahey-jon-burge-ricky-shaw; see also *People v. Burge*, No. 11 CH 04366 (Cir. Ct. Cook Cnty. Sept. 2, 2011) (dismissing action brought by Illinois Attorney General to enforce Illinois Pension Code). The Pension Board had previously deadlocked in a 4–4 vote on the question, a result that allowed Burge to retain his \$3000 monthly pension. Steve Schmadeke, *Burge pension in question again*, CHI. TRIB., Dec. 2, 2012, http://articles.chicagotribune.com/2012-12-02/news/ct-met-burge-pension-ruling-1202-20121202_1_burge-pension-pension-board-chicago-police-cmdr. In 2013, the *Chicago Sun-Times* reported that thirty-two CPD officers who were either fired or resigned before being fired cost the City of Chicago \$1.2 million annually. See Tim Novak & Chris Fusco, *Fired as Chicago cops—and collecting city pensions*, CHI. SUN-TIMES, June 24, 2013, <http://www.suntimes.com/20585644-761/fired-as-chicago-cops-and-collecting-city-pensions.html>. Although he is currently serving his sentence for federal perjury and obstruction of justice charges, Burge still collects his police pension. See Schmadeke, *supra* note 53.

54. *In re Appointment of Special Prosecutor*, No. 90 CR 11985, 2002 WL 34491483, at *1 (Cir. Ct. Cook Cnty. Apr. 24, 2002) (considering appointment of a Special Prosecutor to investigate allegations of “torture, perjury, obstruction of justice, conspiracy to obstruct justice, and other offenses by police officers under the command of Jon Burge at Area [Two] and later Area [Three] headquarters in the City of Chicago during the period from 1973 to the present”).

55. *Id.* at *8.

56. SSA REPORT, *supra* note 9, at 16.

57. *Id.* at 12, 16, 63.

58. 720 ILL. COMP. STAT. 5/3-5 (2013); SSA REPORT, *supra* note 9, at 35–36. Illinois criminalizes compelling confession or information by force or threat. 720 ILL. COMP. STAT. 5/12-7. Other potential criminal charges include aggravated battery, obstruction of justice, perjury, and conspiracy. See Mark Brown, *Common Thread Between Burge, Board Stories*, CHI. SUN-TIMES, July 20, 2006, at 2; Jodi Rudoren, *Inquiry Finds Police Abuse, but Says Law Bars Trial*, N.Y. TIMES, July 20, 2006, http://www.nytimes.com/2006/07/20/us/20chicago.html?_r=3&oref=slogin&.

The OPS and SSA reports are central to the formation of the dominant narrative about police torture in Chicago. On one hand, together they confirm the horrific abuses suffered by victims at the hands of police officers acting under the color of law. On the other, the story the reports tell focus on a particular group of individuals, operating in a particular location, using particular torture implements or techniques. The dominant narrative casts Burge as the lead antagonist, the central figure who controlled all aspects of the torture regime. In fact, the SSA Report specifically excluded consideration of an additional ninety-eight claims of police abuse because “among other reasons, they did not involve Jon Burge or his officers.”⁵⁹ Therefore, according to the dominant narrative, the crisis ended when Burge was removed from the police force in 1993. The story presented by the OPS and SSA reports is one unrealistically frozen in time and one that promotes the “bad apples” myth of Chicago’s police torture crisis. But the story does not end there.

B. 1993 to Present

Fifteen years after the SSA Report, the U.S. Department of Justice indicted Burge for federal perjury and obstruction of justice felony charges based on his sworn statements denying that he knew of or participated in the torture of suspects while he was a CPD officer.⁶⁰ In 2010, a federal jury convicted Burge of these ancillary crimes,⁶¹ but neither he nor any other CPD officer has faced prosecution for the substantive offenses related to police torture.⁶² In January 2011, Judge Joan Humphrey Lefkowitz sentenced Burge to fifty-four months in prison.⁶³ During the sentencing hearing, Judge Lefkowitz announced:

When a confession is coerced, the truth of the confession is called into question. When this becomes widespread, as one can infer from the

59. SSA REPORT, *supra* note 9, at 9; *see also infra* notes 239–44 and accompanying text.

60. Press Release, U.S. Dep’t of Justice, U.S. Indicts Former Chicago Police Cmdr. Jon Burge on Perjury, Obstruction of Justice Charges Related to Alleged Torture and Physical Abuse by Burge and Other Officers (Oct. 21, 2008), *available at* http://www.justice.gov/usao/iln/pr/chicago/2008/pr1021_01.pdf; *see also* Grand Jury Indictment, United States v. Burge, No. 08-cr-00846 (N.D. Ill. 2008), *available at* <http://www.innocenceproject.org/docs/burge.pdf>.

61. Matthew Walberg & William Lee, *Burge found guilty*, CHI. TRIB., June 28, 2010, http://articles.chicagotribune.com/2010-06-28/news/ct-met-burge-trial-0629-20100628_1_burge-chicago-police-cmdr-special-cook-county-prosecutors.

62. *See supra* note 58 and accompanying text.

63. Transcript of Proceedings, *Burge*, No. 08-cr-00846 (N.D. Ill. Jan. 21, 2011) [hereinafter Transcript, *Burge Sentencing Hearing*], *available at* <http://peopleslawoffice.com/wp-content/uploads/2012/02/Jon-Burge-sentenced-to-prison-for-torture.pdf>; *see also* Rachael Levy, *Appeals court upholds Burge conviction*, CHI. TRIB., Apr. 2, 2013, http://articles.chicagotribune.com/2013-04-02/news/ct-met-burge-appealdenied040220130402_1_jon-burge-abuse-trial-judge.

accounts that have been presented [during trial], the administration of justice is undermined irreparably. How can one trust that justice will be served when the justice system has been so defiled?⁶⁴

Although the official accounts of police torture during the Burge era make the problem seem isolated to certain individuals and to a certain geographic location, the reality of the police torture epidemic is that its effects have been widespread and the Burge-era practices have not ended with Burge's termination. In fact, Judge Lefkow's sentencing statements highlight the diffuse impact of Burge's crimes, which reach past the immediate victims to infect the entire community with an enduring fear and distrust of the police.⁶⁵ The use of torturous methods by police to obtain evidence in criminal investigations did not begin with Burge,⁶⁶ however, nor did this practice did not end with him. In the years since Burge was discharged, police violence has remained an abiding feature of the Chicago landscape.⁶⁷

In 2013, the Independent Police Review Authority ("IPRA"), the successor to OPS, released a report summarizing investigations it conducted between 2010 and 2012.⁶⁸ IPRA is the municipal agency responsible for receiving all allegations of police misconduct.⁶⁹ During this reporting period, IPRA retained 5613 of the 17,108 complaints

64. Transcript, Burge Sentencing Hearing, *supra* note 63, at 7.

65. *See id.* at 4–6; *see Jones SACAC*, *supra* note 30, ¶¶ 317–23 (alleging, inter alia, that “[b]ecause members of the Class distrust the police, they have been reluctant to seek aid, assistance, or protection from the police or other law enforcement. This means that members of the Class are less likely to aid law enforcement in criminal investigations even when they have material information that can be used to bring criminal suspects to justice.”); *see also Hinton v. Uchtman*, 395 F.3d 810, 822 (7th Cir. 2005) (Wood, J., concurring) (“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.”).

66. *See, e.g., G. Flint Taylor, 80-Year-Old Chicago Police Torture Victim About to Obtain His Final Vindication*, HUFFINGTON POST (Sept. 11, 2012, 1:14 PM), http://www.huffingtonpost.com/g-flint-taylor/oscar-walden-settlement_b_1872852.html (recounting Oscar Walden's January 1952 victimization by CPD).

67. The 2012 Resolution Proclaiming Chicago to be a Torture Free Zone incorporates the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment's definition of “torture.” CHI. CITY COUNCIL, RESOLUTION PROCLAIMING CHICAGO TO BE A TORTURE FREE ZONE (2012), *available at* <http://illinoiscat.wordpress.com/torture-free-chicago-resolution/>.

68. *See* ILANA B.R. ROSENZWEIG, INDEP. POLICE REVIEW AUTH., ANNUAL REPORT 2010–2012, at 6 (2012) [hereinafter IPRA, ANNUAL REPORT 2010–2012], *available at* http://www.ipra-chicago.org/IPRA_AnnualReport2010-2012.pdf.

69. *About IPRA*, *supra* note 39; *see also* CHI., ILL., MUN. CODE § 2-57-040 (2013). Once IPRA determines that it has proper jurisdiction over a complaint, it initiates an investigation that includes an interview of the complainant, and may include other witness interviews and the gathering of physical evidence. *See* IPRA, Annual Report 2010–2012, *supra* note 68, at 34.

made.⁷⁰ During that reporting period, 2578 of these were excessive force allegations; 278 involved verbal abuse with bias; and 203 were officer-involved shootings.⁷¹ Additionally, there were ninety-three extraordinary occurrences, defined as “a death or injury to a person while in police custody or other extraordinary or unusual occurrence in a lockup facility” and four total allegations of coercion.⁷² During the first three quarters of 2013, IPRA initiated 1541 new investigations.⁷³ Fifty-two of these involved “extraordinary occurrences.”⁷⁴

In November 2011, for example, two African American men were found hanged in their jail cells at the Calumet Area lockup on Chicago’s South Side.⁷⁵ Melvin Woods’s body was discovered by a jail guard at 1:30 AM on November 17.⁷⁶ Develt Bradford’s body was found in the same manner, at the same time, four days later on November 21.⁷⁷ CPD announced that the deaths were suicides,⁷⁸ but their families alleged that Woods and Bradford had become the victims of police misconduct.⁷⁹

70. *See id.* at 30–31.

71. *See id.* In 2011, the *Chicago Sun-Times* reported that officer-involved shootings “climbed 50 percent from 36 in 2006 to 54 in 2010.” Frank Main, *Cops who shoot someone now have 24 hours to talk to independent reviewers*, CHI. SUN-TIMES, June 28, 2011, <http://www.suntimes.com/6229386-417/cops-who-shoot-someone-now-have-24-hours-to-talk-to-independent-reviewers.html>; *see also* Kyla Gardner, *Police-involved shootings among African Americans on the rise*, CHI. REP. (July 2, 2012), <http://www.chicagoreporter.com/police-involved-shootings-among-african-americans-rise#.UrDkSY1HiFc>.

72. *See* IPRA, Annual Report 2010–2012, *supra* note 68, at 30–31.

73. *See generally* *Quarterly Reports*, IPRA, http://www.iprachicago.org/quarterly_report_2013.html (last visited Apr. 10, 2014). The way in which IPRA collects and reports on its data is not without critics. *See* Janine Hoft, *Analysis of Quarterly Report from Independent Review Authority (IPRA)*, PEOPLE’S L. OFF. (July 27, 2012), <http://peopleslawoffice.com/analysis-of-quarterly-report-ipra-chicago-police-accountability-brutality-civil-rights/> (“The data revealed by IPRA does not appropriately or adequately reflect the incidents of police misconduct in the City of Chicago.”); *see also* JOHN HAGEDORN ET AL., CRIME, CORRUPTION AND COVER-UPS IN THE CHICAGO POLICE DEPARTMENT 22 (2013), *available at* <http://www.uic.edu/depts/pols/ChicagoPolitics/policecorruption.pdf>.

74. *See* INDEP. POLICE REVIEW AUTH., QUARTERLY REPORT JULY 1, 2013–SEPTEMBER 30, 2013, at 5 (Oct. 15, 2013), *available at* <http://www.iprachicago.org/2013-10-15Quarterly%20Reports.pdf>.

75. Becky Schlikerman & Peter Nickeas, *Second man commits suicide at South Side jail*, CHI. TRIB., Nov. 21, 2011, http://articles.chicagotribune.com/2011-11-21/news/ct-met-chicago-police-lockup-suicides-20111121_1_lockup-second-man-suicide.

76. *Id.*

77. *See id.*

78. *Id.* Woods had been arrested for aggravated assault after a domestic violence incident in his home. *Id.* His body was found hanging by his underwear at 1:30 AM on November 17, 2011. *Id.* Four days later, at the same time (1:30 AM), Develt Bradford was found hanging by his pajamas in his cell at the same jail. *Id.*

79. The Bradford family filed suit against CPD on December 28, 2011, alleging wrongful death and negligence claims. *Attorneys: ‘Suicides’ At Police Station Lockup Are Suspicious*, CBS CHI. (Dec. 28, 2011), <http://chicago.cbslocal.com/2011/12/28/attorneys-suicides-at-police->

The Bradford family's attorney noted that, in both cases, video monitors in the jail cells were off during their deaths.⁸⁰ The attorney also highlighted the fact that the deaths occurred in the same vicinity as former Area Two police headquarters.⁸¹

Police torture of criminal suspects is not, however, limited to the predominantly African American South Side. Reynaldo Guevara, a former CPD detective in Area Five on the city's northwest side, is accused of beating at least forty criminal suspects between 1983 and 1998 and threatening them to make false confessions.⁸² One of them was Gabriel Solache, a Mexican national,⁸³ who claimed that, in 1998, Guevara intermittently beat him and another man over a forty-hour period to obtain a confession.⁸⁴ Solache was later convicted of murder on the strength of that confession.⁸⁵ In another west side murder case, the primary witness against Armando Serrano and Jose Montanez was a jailhouse informant who later recanted his testimony, explaining that Guevara had threatened, intimidated, and physically abused him to obtain that testimony.⁸⁶

The most recent allegations of police torture appear in Angel Perez's federal civil suit against CPD Officer Jorge L. Lopez.⁸⁷ Perez alleges that, on October 21, 2012, Lopez and another officer took Perez to the

station-lockup-are-suspicious/.

80. See Kim Janssen, *U.S. Rep. Davis calls for federal probe into lockup hangings*, CHI. SUN-TIMES, Dec. 28, 2011, <http://www.suntimes.com/news/9686627-418/family-of-one-of-two-men-found-hung-in-same-jail-sues-city.html>.

81. *Id.* Sam Adam, Jr., the attorney representing the Bradford family, noted that the lockup was in the same Area Two where Jon Burge once ran the show. See also OPS REPORT, *supra* note 14, at 20 (listing two cases of hanging).

82. See Editorial, *Check out all abuse claims against one cop*, CHI. SUN-TIMES, May 13, 2013, <http://www.suntimes.com/opinions/20084502-474/editorial-check-out-all-abuse-claims-against-one-cop.html> [hereinafter SUN-TIMES May 2013 Editorial]; Matthew Walberg, *Wrongful conviction case focuses on a retired cop and a convicted felon*, CHI. TRIB., Dec. 25, 2010, http://articles.chicagotribune.com/2010-12-25/news/ct-met-northwestern-wrongful-convicti20101225_1_medill-innocence-project-wrongful-conviction-case-new-trial; see also Jack Bouboushian, *Free After 21 Years, Innocent Man Sues Chicago*, COURTHOUSE NEWS (June 11, 2012, 7:55 AM), <http://www.courthousenews.com/2012/06/11/47310.htm> (reporting on Jacques Rivera's suit against the City of Chicago and police detectives for using unduly suggestive tactics that resulted in a witness picking him out of a line-up).

83. See DEADLINE (Big Mouth Productions 2004) (documenting the story of Gabriel Solache); see also *Deadline The Movie, Characters*, BIG MOUTH PRODUCTIONS, http://deadlinethemovie.com/characters/gabriel_solache.php (last visited Feb. 25, 2014) [hereinafter *Deadline The Movie*].

84. See David Protess, *Police Scandal Eludes Media Radar*, HUFFINGTON POST (May 14, 2014, 11:14 AM), http://www.huffingtonpost.com/david-protess/armando-serrano-jose-montanez_b_3268573.html; see, e.g., *Deadline The Movie*, *supra* note 83.

85. Protess, *supra* note 84.

86. *Id.*

87. See Complaint at 5–6, *Perez v. Lopez*, No. 1:13-cv-05431 (N.D. Ill. June 20, 2013).

Harrison Street police station on the Near West Side.⁸⁸ The officers wanted Perez to set up a drug purchase from “Dwayne,” a contact in Perez’s cellular phone.⁸⁹ Perez refused to do so and requested a lawyer.⁹⁰ The police ignored his request and then resorted to physical force to coerce Perez’s cooperation—sitting on him, digging out his eye sockets, and pushing their elbows into his back and head.⁹¹ Several hours later, Lopez allegedly sodomized Perez with his service revolver.⁹²

The methods of police torture chronicled in the OPS and SSA reports include “esoteric” treatments such as electric shocks, hangings, and baggings.⁹³ The listed abuses are horrific in nature, but excessive force in the form of general beatings, although seemingly mundane by comparison, is equally unlawful, but remains common police practice. In 2009, for example, a complaint made to IPRA alleged that two CPD officers, Officer A and Officer B, had engaged in inappropriate conduct.⁹⁴ IPRA recommended sustaining⁹⁵ charges that Officer A

stopped, detained, and/or handcuffed the Victim without justification; pointed a firearm the at the Victim without justification; pushed and/or slammed the Victim against a wall and onto the ground without justification; forcibly kicked the Victim’s feet apart; threw the Victim’s personal property to the ground and/or kicked his shoes into the street; failed to complete a Field Contact card for the Victim and an unknown male; and later provided IPRA with false statements.⁹⁶

IPRA recommended sustaining similar allegations made against Officer B.⁹⁷ These incidents occurred in the Fifteenth District on the west side of Chicago, in the Austin neighborhood.⁹⁸

88. *Id.* at 4.

89. *Id.* at 4–5.

90. *Id.*

91. *Id.* at 5.

92. *Id.*

93. OPS REPORT, *supra* note 14, at 18–22. *See generally* SSA REPORT, *supra* note 9. “Bagging” refers to instances where the torturer placed a plastic bag over the victim’s head to constrict breathing. Sometimes, instead of a plastic bag, the police used typewriter covers. *See* OPS REPORT, *supra* note 14, at 24; Press Release, U.S. Dep’t of Justice, *supra* note 60, at 4–5.

94. INDEP. POLICE REVIEW AUTH., QUARTERLY REPORT APRIL 1, 2013–JUNE 30, 2013, at 10 (July 15, 2013) [hereinafter IPRA, QUARTERLY REPORT 2], *available at* <http://www.iprachicago.org/2013-07-15Quarterly%20Reports.pdf>.

95. IPRA defines a “sustained” case as one in which “[t]he allegation is supported by sufficient evidence to justify disciplinary action.” IPRA, ANNUAL REPORT 2010–2012, *supra* note 68, at 35.

96. IPRA, QUARTERLY REPORT 2, *supra* note 94, at 9.

97. *Id.* at 10.

98. *Id.* at 9 (listing the incidents occurring in CPD’s Fifteenth District); *15th District – Austin*, CHI. POLICE, <https://portal.chicagopolice.org/portal/page/portal/ClearPath/Communities/Di>

These cases demonstrate that the crisis of police torture is more far-reaching than the “bad apples” myth suggests. The Burge era ended in 1993, but the criminally accused continue to assert claims of police violence, sometimes amounting to torture, today. The dominant narrative claims that Burge and his confederates targeted only African American men, but there have also been white, Latino, and female victims of police torture.⁹⁹ The dominant narrative insists that Burge’s influence was limited to Area Two and perhaps Area Three where he later took a command post, but recent claims indicate that the torture practices that may have originated under Burge’s leadership in Area Two have migrated into other police stations across the city.¹⁰⁰

The dominant narrative leaves many truths untold. Although it is now “common knowledge” that Burge and his associates tortured individuals in police custody,¹⁰¹ what is less well known is that not one of the police officers who tortured was prosecuted for their crimes. Moreover, many of those implicated in the police torture scandal have moved on to other positions of power. The SSA Report concluded that the relevant statutes of limitations had expired, and therefore these police officers could not be brought to justice in the criminal courts.¹⁰² Police officers named in the OPS and SSA reports are, like Burge, allowed to collect their police pensions.¹⁰³ Assistant State’s Attorneys whose professional careers were enhanced by convictions based on coerced confessions are now state court judges.¹⁰⁴ Richard M. Daley, the Cook County State’s Attorney during the Burge era and former

stricts/District15 (last visited Feb. 24, 2014).

99. See, e.g., Claim of Jaime Hauad, TIRC No. 2011-025-H, at 1 (May 13, 2013) (currently unavailable online); OPS REPORT, *supra* note 14, at 8 (Attachment B–Spreadsheet/Order by Victim Name) (listing four African American female victims: Nora Jordan, Doris Miller, Pearlie Stuckey, and Leontine Wilborn, and one white male: Thomas Liss); Protess, *supra* note 84 (reporting on Armando Serrano’s and Jose Montanez’s wrongful conviction hearing, during which they alleged that Detective Reynaldo Guevara of Area Five coerced them to make false statements). Detective Guevara has been accused of abusive conduct during police interrogations in at least dozens of cases. SUN-TIMES May 2013 Editorial, *supra* note 82.

100. See SHADOW REPORT, *supra* note 9, at 31.

101. United States *ex rel.* Maxwell v. Gilmore, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999).

102. SSA REPORT, *supra* note 9, at 13, 18–36.

103. See, e.g., *Summary of Evidence*, *supra* note 14, ¶ 580.

104. See, e.g., SHADOW REPORT, *supra* note 9, at 43–44; see also Claim of Vincent Wade, TIRC No. 2011-009-W, at 2 (May 20, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Vincent%20Wade.pdf> (Wade’s trial judge was a former Area Two detective). After Gerald Reed’s claim of torture at the TIRC was forwarded to the Circuit Court for judicial review, he requested that three judges be excluded from the randomization process used to assign judges because of their personal involvement in various aspects of the police torture scandal. Transcript of Proceedings, *People v. Reed*, No. 90 CR 25846-01 (Cir. Ct. Cook Cnty. Sept. 18, 2012). His request was granted. *Id.*

Mayor, is a frequent defendant in civil suits, and has been accused of knowing of and condoning Burge's actions.¹⁰⁵ Thus far, however, claims that the torture hierarchy reached into the highest echelons of municipal and State power have been left untested in the civil courts due to the application of various governmental immunity defenses.¹⁰⁶

C. *The Illinois Torture Inquiry and Relief Commission Act*

Although Burge had already been fired, and two government reports had officially concluded that police torture in Chicago had been systematic and widespread, community activists believed that some other means for effecting justice was necessary. Individuals who had been convicted of crimes on the strength of confessions coerced by police torture remained in prison, having long ago exhausted all available formal legal avenues to challenge their convictions.¹⁰⁷ A community organization called Black People Against Police Torture ("BPAPT") engaged in sustained lobbying at the state capitol for additional remedies.¹⁰⁸ In 2007, BPAPT led a campaign against the

105. See *Tillman v. Burge*, 813 F. Supp. 2d 946, 989–90 (N.D. Ill. 2011). The district court rejected Mayor Daley's immunity defense arguments and denied his motion to dismiss. *Id.* at 982. The city settled the case, however, before Tillman was able to depose Daley. John Byrne & Hal Dardick, *City settles Burge torture case, avoids Daley deposition*, CHI. TRIB., July 23, 2012, http://articles.chicagotribune.com/2012-07-23/news/chi-city-settles-burge-torture-case-avoids-daley-deposition-20120723_1_burge-torture-burge-victims-daley-deposition.

106. At one point, it seemed that the trend of allowing city and state officials to avoid making sworn statements regarding their individual involvement in police torture would be coming to an end. In July 2013, former-Mayor Richard M. Daley was served with a subpoena in Stanley Wrice's post-conviction petition proceedings. Frank Main, *Former Mayor Richard M. Daley subpoenaed to testify in police-torture case*, CHI. SUN-TIMES, July 12, 2013, <http://www.suntimes.com/news/21273547-418/former-mayor-richard-m-daley-subpoenaed-to-testify-in-police-torture-case.html?intcmp=emailheadlines>. In November, however, Judge Richard Walsh ruled that Daley would not be required to testify. Rummana Hussain, *Former Mayor Daley won't have to testify in man's bid to overturn conviction*, CHI. SUN-TIMES, Nov. 13, 2013, <http://www.suntimes.com/news/metro/23734891-418/former-mayor-daley-wont-have-to-testify-in-mans-bid-to-overturn-conviction.html>.

107. Brief of Persons Concerned about the Integrity of the Illinois Criminal Justice System as Amici Curiae in Support of Petitioner-Appellee at 2 n.1, *People v. Wrice*, 962 N.E.2d 934 (Ill. 2011) (No. 111860), available at <http://www.law.northwestern.edu/legalclinic/macarthur/projects/police/documents/StanleyWriceAmicusBrief.pdf> (listing fourteen additional names). They had already exhausted their formal judicial remedies in the form of appeals and post-conviction petitions. See 3 JOSEPH V. COLLINA & KAREN L. STAFFORD, ILLINOIS JURISPRUDENCE § 28:57 (2012).

108. BPAPT was organized in the summer of 2006, in partnership with the National Conference of Black Lawyers ("NCBL"), after a series of NCBL-sponsored town hall meetings on the subject of the Burge police torture crisis. NAT'L CONF. BLACK LAW., <http://www.ncbl.org/chapters/chicago-chapter> (last visited Feb. 16, 2014). Prior to BPAPT's formation, the grassroots movement against police torture in Chicago had been led and supported primarily by progressive white lawyers and activists. See La Risa R. Lynch, *Activist Wants Ex-Cop Accused of Torture Jailed and Police Torture Outlawed*, FINAL CALL (June 12, 2010, 1:28

retention of state judges who had been implicated in the police torture scandal.¹⁰⁹ It was during this time that BPAPT conceived the idea of a torture inquiry commission and drafted the TIRC bill.¹¹⁰ Thereafter BPAPT organized a series of town-hall meetings to educate the public about the proposed Commission, engaged in a letter-writing campaign, and shuttled busloads of community members to Springfield, Illinois to educate legislators about the bill.¹¹¹

Governor Patrick Quinn signed the TIRC bill into law on August 10, 2009,¹¹² and then appointed eight commissioners to the TIRC to work on an unpaid, voluntary basis.¹¹³ In February 2011, the commissioners hired an Executive Director (“the Director”).¹¹⁴ The TIRC received at

PM), http://www.finalcall.com/artman/publish/National_News_2/article_7053.shtml. BPAPT was therefore created specifically for the purpose of providing a grassroots, community-based organizational structure to advocate for the particular concerns of Chicago’s African American community, the community from which a majority of the police torture victims had come. Standish Willis, one of the founders of BPAPT, explained: “The absence of Black involvement didn’t mean they were not concern[ed]. . . . There just was no vehicle to mobilize them.” *Id.* BPAPT’s first direct actions were therefore designed “to announce the Black Community’s organized involvement in this struggle.” NAT’L CONF. BLACK LAW., *supra*. In the fall of 2006, BPAPT led numerous demonstrations through downtown Chicago. *Id.*

109. Delores McCain, *Community activists criticize the Burge Report*, AUSTIN WKLY. NEWS (Aug. 2, 2006, 10:00 PM), <http://www.austinweeklynews.com/News/Articles/8-2-2006/Community-activists-criticize-the-Burge-Report/> (speaking out against judges implicated in the police abuse scandal and also discussing reparations); Lou Paulsen, *Silent march hits police torture*, WORKERS WORLD (Sept. 21, 2006, 12:58 AM), <http://www.workers.org/2006/us/chicago-cops-0928/>.

110. At a May 2012 BPAPT meeting convened for the purpose of organizing a response to the state legislature’s failure to make adequate appropriations for the TIRC, Willis recalled that he modeled the TIRC bill after the Greensboro Truth and Reconciliation Commission. Standish Willis, Remarks at May 10, 2012 BPAPT Meeting (May 10, 2012) (transcript on file with author).

111. *Stan Willis: A Biography*, CHI. COMMITTEE TO DEFEND BILL RTS., <http://www.ccdbr.org/stan-willis-a-biography/> (last visited Feb. 16, 2014); *see also History*, ILL. TORTURE INQUIRY & RELIEF COMMISSION, <https://www2.illinois.gov/itrc/Pages/default.aspx> (last visited Mar. 8, 2014) [hereinafter *TIRC History*].

112. Steve Mills, *State torture panel faces an abrupt ending*, CHI. TRIB., June 4, 2012, http://articles.chicagotribune.com/2012-06-04/news/ct-met-torture-commission20120605_1_police-torture-jon-burge-chicago-police. The bill was introduced during successive legislative sessions in 2007 and 2008, but finally passed in 2009. *TIRC History*, *supra* note 111.

113. 775 ILL. COMP. STAT. 40/20, 40/25 (2013). The original commissioners were: its chair, Judge Patricia Brown-Holmes (ret.), Rob Acton, Leonard Cavise, Daniel Coyne, Neil Toppel, Paul Roldan, Rob Warden, and Andrea Zopp. The alternates were Judge Bernetta Bush (ret.), Doris Green, Marcie Thorp, and Reverend Jeanette Wilson. *TIRC History*, *supra* note 111.

114. The Commission hired former Chicago-Kent Clinical Law Professor David Thomas to serve as the Commission’s first Executive Director. *ITIRC Home*, ILL. TORTURE INQUIRY & RELIEF COMMISSION, <http://www2.illinois.gov/itrc/Pages/default.aspx> (last visited Feb. 24, 2014). Thomas resigned from this position in September 2013. Frank Main, *Head of panel investigating police torture claims quits under fire*, CHI. SUN-TIMES, Sept. 25, 2013, <http://www.suntimes.com/22793775-418/head-of-panel-investigating-police-torture-claims-quits->

least seventy police torture claims within the first six months of its existence.¹¹⁵ The Commission actually shut its doors for a few months in 2012, however, thanks to the state legislature's failure to appropriate any funds.¹¹⁶ Fortunately, a federal grant of \$160,000 allowed the TIRC to re-open in October 2012.¹¹⁷

The Commission has issued decisions in twenty-eight¹¹⁸ cases to date. It dismissed eleven, but found "sufficient evidence of torture to conclude that the Claim is credible and merits judicial review for appropriate relief" in the other cases.¹¹⁹ The Commission has forwarded successful claims to Judge Timothy Evans, Chief of the

under-fire.html. The Commission named James Sledge as the interim director on October 1, 2013. Thomas Frisbie, *Torture panel hires interim director*, VOICES: HOME OF THE SUN-TIMES BLOGS (Oct. 1, 2013, 4:57 PM), <http://voices.suntimes.com/early-and-often/backtalk/torture-panel-hires-interim-executive-director/>. In December 2013, the Commission hired Barry A. Miller, a former assistant U.S. Attorney, as the new Executive Director. Editorial, *Good choice to head torture inquiry panel*, CHI. SUN-TIMES, Dec. 30, 2013, <http://www.suntimes.com/opinions/24675253-474/good-choice-to-head-torture-inquiry-panel.html>.

115. ILL. TORTURE INQUIRY & RELIEF COMM'N, MEETING MINUTES 4 (Aug. 23, 2011), available at <http://www2.illinois.gov/itrc/Documents/Minutes%20August%202011.pdf>. At the May 15, 2013 meeting of the Commission, Director Thomas estimated that the Commission had approximately 100 cases still awaiting disposition. ILL. TORTURE INQUIRY & RELIEF COMM'N, MEETING MINUTES (May 15, 2013), available at <http://www2.illinois.gov/itrc/Documents/Meeting%20Minutes%20May%202013.pdf>.

116. Editorial, *Find the Truth About Allegations of Torture*, CHI. SUN-TIMES, June 29, 2012, <http://www.suntimes.com/opinions/13481474-474/editorial-find-the-truth-about-allegations-of-torture.html>; Mills, *supra* note 112; Sarah Childress, *Chicago Police Torture Probe Closes with Cases Pending*, PBS.ORG (June 6, 2012, 5:25 PM), <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/chicago-police-torture-probe-closes-with-cases-pending/>; Karen Hawkins, *Illinois Torture Panel Broke: Commission to Investigate Police Torture Running Out of Money*, HUFFINGTON POST (Apr. 6, 2012, 3:40 PM), http://www.huffingtonpost.com/2012/02/07/illinois-torture-panel-br_n_1260723.html.

117. Rob Wildeboer, *Imprisoned Burge victims get new hope*, WBEZ.ORG (Oct. 15, 2012), <http://www.wbez.org/news/imprisoned-burge-victims-get-new-hope-103113>; see also ILL. HUMAN RIGHTS COMM'N, 2012 ANNUAL REPORT (2012), available at <http://www2.illinois.gov/ihrc/Documents/Annual%20Report%202012%20Final.pdf> (detailing the distribution of federal funds); Jack Cutrone, Exec. Dir., Ill. Criminal Justice Info. Auth., October 2012 Meeting Supplemental Memorandum 1 (Oct. 11, 2012), available at http://www.icjia.state.il.us/public/pdf/budget/Materials_10112012.pdf (recommending a designation of \$160,000 of federal funds to the TIRC).

118. See *TIRC Decisions*, ILL. TORTURE INQUIRY & RELIEF COMMISSION, <http://www2.illinois.gov/itrc/Pages/TIRCDecision.aspx> (last visited Feb. 16, 2014) (listing twenty-five cases). In September 2013, three cases (Jamie Hauad, Jerry Mahaffey, and Jackie Wilson) that had been forwarded to the Circuit Court were rescinded. ILL. TORTURE INQUIRY & RELIEF COMM'N, MEETING MINUTES 9 (Sept. 25, 2013) [hereinafter TIRC September 2013 Meeting Minutes], available at <http://www2.illinois.gov/itrc/Documents/Meeting%20Minutes%20September%202013.pdf>.

119. The first five claims referred to by the Circuit Court belong to George Ellis Anderson, Shawn Whirl, David Randle, Darryl Christian, and Gerald Reed. See, e.g., Claim of George Ellis Anderson, TIRC No. 2011.016-A, at 1 (June 13, 2012), <https://www2.illinois.gov/itrc/Documents/ANDERSON%20amended%20determination%20without%20markup.pdf>.

Circuit Court of Cook County, who has assigned them a judge in the Criminal Division for review and other “appropriate relief.”¹²⁰ The TIRC Act provides that “appropriate relief” may include an order to vacate the petitioner’s conviction and sentence, along with an order for arraignment, retrial, or even a certificate of innocence.¹²¹ On April 11, 2013, Judge Paul Biebel ordered the appointment of a new special prosecutor in the first five TIRC cases.¹²²

II. FRAMING THE TIRC WITHIN THE INFORMAL-FORMAL JUSTICE COMPLEX

Part II situates the TIRC within the informal-formal justice complex framework. This model is useful in trying to make sense of the TIRC, because the TIRC embodies characteristics of both formal and informal justice practices. Part II begins by describing the salient differences between formal and informal justice practices. It then discusses the ongoing Truth and Reconciliation Commission of Canada (“TRC Canada”), which represents, on its face, a mode of informal justice. Using the TRC Canada as an example, Part II concludes that the distinctions between formal and informal justice practices are overstated, and in reality, these labels perpetuate a false binary. A more accurate way to describe how informal justice practices work is to understand them as part of an informal-formal justice complex.

A. *Formal vs. Informal Justice Practices*

The formal justice system is characterized by its dependence on rigid legal rules as well as the predominance of legal professionals in its daily operation. Whether it is as the police, the prosecution, the judiciary, or the prison authority, the State intervenes at every stage of a criminal prosecution and trial and asserts its authority by controlling the

120. Press Release, Circuit Court of Cook Cnty., Chief Judge Evans assigns judges in five Burge torture claims (Sept. 18, 2012), *available at* [http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/articleid/1701/Default.aspx?dnnprintmode=true&mid=889&SkinSrc=\[G\]Skins%2F_default%2FNo+Skin&ContainerSrc=\[G\]Containers%2F_default%2FNo+Container](http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/articleid/1701/Default.aspx?dnnprintmode=true&mid=889&SkinSrc=[G]Skins%2F_default%2FNo+Skin&ContainerSrc=[G]Containers%2F_default%2FNo+Container).

121. 775 ILL. COMP. STAT. 40/50(a) (2013).

122. *People v. Plummer*, Nos. 90CR 12036, 91CR22152, 91CR22460, 91CR21451, 92CR20236, 84C10108, 87CR15089, 89CR15497 (Cir. Ct. Cook Cnty. May 7, 2013) (order appointing Special Prosecutor), *available at* <http://www2.illinois.gov/itrc/Documents/Order%20Appointing%20Special%20Prosecutor.pdf>; Rummana Hussain, *Judge to name special prosecutor in latest claims of torture under Burge*, CHI. SUN-TIMES, Apr. 11, 2013, <http://www.suntimes.com/news/metro/19425645-418/special-prosecutor-to-handle-latest-round-of-abuse-claims-under-burge.html>; Jason Meisner, *Special prosecutor will be appointed in 5 new Burge torture cases*, CHI. TRIB., Apr. 12, 2013, <http://www.chicagotribune.com/news/local/ct-met-jon-burge-ruling-20130412,0,6345594.story>.

proceedings.¹²³ Moreover, at every stage of the criminal process, the accused and his or her victim are subordinate to their legal representatives upon whom they must rely to navigate through the complex formal justice system.

After the police arrest a criminal suspect, the accused is brought in front of a neutral magistrate to be arraigned.¹²⁴ If the accused is indigent, the court appoints an attorney to serve as defense counsel.¹²⁵ The prosecution (legal counsel representing the State) and defense counsel may then engage in plea bargaining, but if a settlement is not reached, the criminal case goes to trial.¹²⁶ Prior to trial, the court empanels a jury, the members of which serve as fact finders during trial and who will ultimately deliver a verdict regarding the accused's guilt.¹²⁷ During trial, the prosecution bears the burden of proving—beyond a reasonable doubt—that the accused is guilty of the charged crime.¹²⁸ To do this, the prosecution introduces testimonial and physical evidence to persuade the jury that the accused is guilty. To enter evidence into the trial record, both parties are required to comply with the strictures of the jurisdiction's rules of evidence.¹²⁹ Under these rules, otherwise relevant evidence about the accused's guilt or innocence can be excluded from trial for a host of legalistic reasons: perhaps it is ruled to be prejudicial¹³⁰ or hearsay,¹³¹ or perhaps the police have violated the defendant's constitutional rights in obtaining the evidence.¹³² If the jury reaches a guilty verdict, the defendant goes to prison for a term determined by the trial judge during a sentencing hearing.¹³³ It is not unusual for defendants to pursue judicial appeals

123. “We commonly refer to state-administered and bureaucratic justice processes as ‘formal,’ while negotiated and mediated justice processes are designated as ‘informal.’” WOOLFORD & RATNER, *supra* note 22, at 1.

124. *See, e.g.*, U.S. CONST. amend. IV; *Commonwealth v. Dixon*, 938 N.E.2d 878, 886 (Mass. 2010).

125. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

126. *See* PAUL BUTLER, *LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE* 2 (2009); ANGELA J. DAVIS, *ARBITRARY JUSTICE: THE POWER OF THE AMERICAN PROSECUTOR* 44–45 (2d ed. 2009).

127. Trial by jury is the default in the United States, but a criminal defendant may waive the constitutional right to trial by jury in which case the trial judge will serve as the fact finder. U.S. CONST. amend. VII.

128. *Apprendi v. New Jersey*, 530 U.S. 466, 552 (2000); *Sullivan v. Louisiana*, 508 U.S. 275, 277–78 (1993); *In re Winship*, 397 U.S. 358, 364 (1970).

129. *See, e.g.*, FED. R. EVID.; ILL. R. EVID.

130. FED. R. EVID. 403.

131. *Id.* 801.

132. *Mapp v. Ohio*, 367 U.S. 643, 656–57 (1961) (creating the exclusionary rule); *Weeks v. United States*, 232 U.S. 383, 399 (1919).

after a conviction.¹³⁴

The successful performance of a criminal trial might bring justice to a crime victim, but it does not present a challenge to any of the structural deficiencies of the criminal justice system itself. The formal justice system is simply not designed to confront its own flaws, such as racial disparities in police enforcement and judicial sentencing, the boundless discretion of prosecutors, the overwhelming case loads of public defenders, and the perverse incentives of the private prison industrial complex that fuel political impulses toward over-criminalization.¹³⁵

An informal justice practice, by contrast, is better positioned to confront the systemic and historical causes of widespread social harms. Informal justice “refers to those forms of justice that are said to take place outside of the formal courtroom, in settings that are less rule-bound and adversarial.”¹³⁶ Gerald P. López describes the motivations behind commitments to informal justice practices as an aspiration “to achieve a radically participatory and egalitarian democracy, where full citizenship is a concrete everyday reality and not just a vague promise.”¹³⁷ Informal justice methods of conflict resolution, such as truth commissions, reparations, restorative justice programs, and mediation, are often praised because they “possess a communicative potential that might be harnessed to the projects of social and judicial transformation.”¹³⁸ They are meant to be deliberative bodies that function only with the participation of multiple stakeholders and that operate independently of formal legal actors.¹³⁹ From this perspective, formal justice bodies such as courts alienate all those but the legal professionals who have been trained to maneuver the judiciary’s byzantine paths to the final resolution of legal disputes.¹⁴⁰ In contrast, informal justice practices have the potential to diminish the coercive power of state-run institutions by encouraging participants to create

133. Sentencing guidelines can determine the minimum and maximum penalties available under the law. Federal sentencing guidelines are not mandatory. *United States v. Booker*, 543 U.S. 220, 249 (2005).

134. ANDREA D. LYON ET AL., *POST-CONVICTION PRACTICE: A MANUAL FOR ILLINOIS ATTORNEYS* 3 n.3 (2012).

135. *See, e.g.*, BUTLER, *supra* note 126; DAVIS, *supra* note 126; *see also* MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 2 (2012).

136. WOOLFORD & RATNER, *supra* note 22, at 1.

137. *Rebellious Lawyering Workshop and Speaker Series Course Description*, UCLA SCH. L., <https://curriculum.law.ucla.edu/Guide/Course/141> (last visited Feb. 16, 2014).

138. WOOLFORD & RATNER, *supra* note 22, at vii.

139. *Id.* at 8–9, 44–47.

140. *Id.* at 2.

their own mechanisms for the just resolution of conflicts.¹⁴¹ By privileging citizen participation, informal justice practices are meant to build community empowerment while at the same time decentralizing State power. If informal justice practices are to keep “the promise of a justice that is more empowering, participatory and accessible,”¹⁴² however, its advocates must remain vigilant in guarding against State incursions into the independence of these bodies.

B. *The Canadian Example*

The Truth and Reconciliation Commission of Canada is a contemporary example of an informal justice practice that attempts to take account a much broader set of interests than can be represented in the formal justice system. The TRC Canada mandate provides: “The truth telling and reconciliation process as part of an overall holistic and comprehensive response to the Indian Residential School legacy is a sincere indication and acknowledgement of the injustices and harms experienced by Aboriginal people and the need for continued healing.”¹⁴³ The TRC Canada seeks to acknowledge the role of the government and other social institutions, like churches, in perpetrating historical and contemporary harms to the First Nations, Métis, and Inuit peoples. It is one component of a larger effort to identify both discrete and systemic injuries done by longstanding Canadian public policy and practices.

For over 100 years, the Canadian government forced Aboriginal¹⁴⁴ families to send their children to distant boarding schools,¹⁴⁵ the last of

141. *See id.* at 8–9.

142. *Id.* at 1 (citing ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT* (1994)).

143. *Introduction*, TRUTH & RECONCILIATION COMMISSION CAN., <http://www.trc.ca/websites/trcinstitution/index.php?p=7#Principles> (last visited Feb. 23, 2014).

144. “Aboriginal” is the term that appears in the TRC Canada’s documents to refer to the original inhabitants of what is now Canada, a term that is inclusive of First Nations, Inuit, and Métis peoples. The Indigenous Foundations website at the University of British Columbia explains:

[F]or the last few decades the most inclusive term in general usage in Canada has been “Aboriginal,” a term that gained significant currency with its use in the repatriated Canadian Constitution of 1982. The Constitution itself was a site of struggle for Native rights in Canada, and in the negotiations leading to the inclusion of section 35, which acknowledges Aboriginal rights, “Aboriginal” became the mutually accepted term.

Aboriginal Identity and Terminology, INDIGENOUS FOUND., <http://indigenousfoundations.arts.ubc.ca/?id=9494> (last visited Feb. 23, 2014).

145. THE TRUTH & RECONCILIATION COMM’N OF CAN., *THEY CAME FOR THE CHILDREN: CANADA, ABORIGINAL PEOPLES, AND RESIDENTIAL SCHOOLS 6* (2012) [hereinafter *THEY CAME FOR THE CHILDREN*], available at http://www.attendancemarketing.com/~atmk/TRC_jd/Res

which closed in 1996.¹⁴⁶ The unequivocal mission of the schools was to assimilate Aboriginal children into the Canadian mainstream by severing the cultural and social ties that bound them to their families and their communities.¹⁴⁷ Apart from the incalculable harm to the children's cultures and communities, administrators, teachers, and staff at the residential schools also routinely engaged in the physical, emotional, and sexual abuse of the school children.¹⁴⁸

To achieve its twin goals of truth-seeking and reconciliation, TRC Canada gathers statements from residential school survivors, their families, and other members of the public who have been impacted by the Indian Residential Schools ("IRS") legacy.¹⁴⁹ TRC Canada has hosted a number of national and local "statement gathering" sessions to acknowledge experiences, provide a safe setting for statement givers, and promote awareness among Canadians about the IRS system.¹⁵⁰ Participants have access to mental health services at statement gathering sessions as well as upon their return home.¹⁵¹ Those who have provided statements have described the process of speaking and being

SchoolHistory_2012_02_24_Webposting.pdf.

146. PAULETTE REGAN, UNSETTLING THE SETTLER WITHIN: INDIAN RESIDENTIAL SCHOOLS, TRUTH TELLING, AND RECONCILIATION IN CANADA 4 (2010).

147. Fred Hiltz, *Remembering the Children: The Church and Aboriginal Leaders Tour*, in RESPONSE, RESPONSIBILITY, AND RENEWAL: CANADA'S TRUTH AND RECONCILIATION JOURNEY 233, 235 (Gregory Younging et al. eds., 2009) [hereinafter RESPONSE, RESPONSIBILITY, AND RENEWAL], available at <http://www.ahf.ca/downloads/trc2.pdf>. For example, children were not allowed to speak their own languages at the schools. THE TRUTH & RECONCILIATION COMMISSION OF CAN., INTERIM REPORT 26 (2012), available at http://www.attendancemarketing.com/~attmk/TRC_jd/Interim_report_English_electronic_copy.pdf.

148. THEY CAME FOR THE CHILDREN, *supra* note 145, at 1.

149. *Establishment, Powers, Duties and Procedures of the Commission*, TRUTH & RECONCILIATION COMMISSION CAN., <http://www.trc.ca/websites/trcinstitution/index.php?p=7#two> (last visited Feb. 23, 2014). By the time the TRC Canada completes its mandate in 2014, it will have hosted a total of seven national public events. The TRC also hosts smaller local community events and invites participants to give statements through private statements, Commissioner's Sharing Panels, and Sharing Circles. See *Statement Gathering*, TRUTH & RECONCILIATION COMMISSION CAN., <http://www.trc.ca/websites/trcinstitution/index.php?p=102> (last visited Feb. 23, 2014).

150. *Goals*, TRUTH & RECONCILIATION COMMISSION CAN., <http://www.trc.ca/websites/trcinstitution/index.php?p=7#one> (last visited Feb. 23, 2014).

151. In addition to the TRC Canada, the Indian Residential Schools Settlement Agreement mandated other measures to address the horrors of the residential schools, including reparations payments, commemoration projects, and funds for mental health services and other healing initiatives. See *Backgrounder—Changes to the Indian Act Affecting Indian Residential Schools*, ABORIGINAL AFF. & N. DEV. CAN., <http://www.aadnc-aandc.gc.ca/eng/1100100015573/1100100015574> (last visited Feb. 23, 2014). The Aboriginal Healing Foundation provides mental health care benefits to statement givers on-site and after they return home. THE ABORIGINAL HEALING FOUND., 2013 ANNUAL REPORT 7 (2013), available at <http://www.ahf.ca/downloads/2013-ahf-annual-report-english.pdf>.

heard as a cathartic one.¹⁵²

The TRC Canada is emphatically not a “formal legal process”;¹⁵³ it does not have the power to compel witness testimony through subpoena, for example.¹⁵⁴ Participation in TRC Canada events and activities is “entirely voluntary.”¹⁵⁵ That the TRC Canada is not a formal legal process is by design. Years of police investigation, criminal prosecution, and civil litigation regarding the residential schools preceded the formation of the TRC Canada,¹⁵⁶ and each of those methods of formal justice had shortcomings. Criminal prosecutions, for example, brought little consolation to former IRS students because many of those responsible for the abuses had already died by the close of investigations.¹⁵⁷

Prior to the establishment of the TRC Canada, lawyers filed

152. See REGAN, *supra* note 146, at 171–92; *Journey of Reconciliation Arrives in Saskatoon*, CANADIAN BAHÁ'Í NEWS SERVICE (June 28, 2012), <http://www.bahainews.ca/en/node/756>; *Residential School Survivors Fear Network End*, CBC NEWS CANADA (Mar. 19, 2010, 2:59 PM), <http://www.cbc.ca/news/canada/residential-school-survivors-fear-network-end-1.907879>; see also Audrey R. Chapman & Hugo van der Merwe, *Introduction to TRUTH AND RECONCILIATION IN SOUTH AFRICA: DID THE TRC DELIVER?* 13, 13–14 (Audrey R. Chapman & Hugo van der Merwe eds., 2008). For critiques of the TRC Canada, see RECONCILING CANADA: CRITICAL PERSPECTIVES ON THE CULTURE OF REDRESS (Jennifer Henderson & Pauline Wakeham eds., 2013); Roland Chrisjohn & Tanya Wasacase, *Half-Truths and Whole Lies: Rhetoric in the “Apology” and the Truth and Reconciliation Commission*, in RESPONSE, RESPONSIBILITY, AND RENEWAL, *supra* note 147, at 219, 219; Rosemary L. Nagy, *The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission*, 2012 INT'L J. TRANSITIONAL JUST. 1.

153. The mandate provides that the Commissioners “shall not hold formal hearings, nor act as a public inquiry, nor conduct a formal legal process.” *Establishment, Powers, Duties and Procedures of the Commission*, *supra* note 149, at 2(b).

154. *Id.* at 2(c). It appears that the TRC Canada does, however, have the power to litigate. In January 2013, the TRC Canada won a judgment against the Canadian government, obligating it to share millions of documents in its archival record regarding the Indian Residential Schools. *Fontaine v. Canada* (Att’y Gen.), Nos. CV-00-192059, CV-12-447891, [2013] B.C.S.C. 756 (Jan. 30, 2013) (Can.); see Colin Perkel, *Residential Schools Lawsuit: Truth and Reconciliation Commission Takes Ottawa to Court*, HUFFINGTON POST CAN. (Dec. 3, 2012), http://www.huffingtonpost.ca/2012/12/03/residentialschoolslawsuit_n_2230100.html#slide=more204418; The Canadian Press, *Ottawa ordered to provide all residential schools documents*, CBC NEWS (Jan. 30, 2013), <http://www.cbc.ca/news/canada/story/2013/01/30/pol-cp-truth-reconciliation-commission-documents.html>.

155. *Establishment, Powers, Duties and Procedures of the Commission*, *supra* note 149, at 2(c). The FAQs section of the TRC Canada provides: “The TRC is not a criminal tribunal and the Commissioners do not have subpoena powers. The Commission will listen to Survivors and others affected by Residential School by way of Statement Gathering and other truth-sharing processes.” *FAQs*, TRUTH & RECONCILIATION COMMISSION CAN., <http://www.trc.ca/websites/trcinstitution/index.php?p=10> (last visited Feb. 23, 2014).

156. See, e.g., REGAN, *supra* note 146, at 8–9. TRC Canada was also preceded by the now-defunct and largely ineffectual Alternative Dispute Resolution Program. *Id.* at 16, 111–42.

157. *Id.* at 8–9.

individual and class action lawsuits against the Government of Canada and the churches that ran the residential schools.¹⁵⁸ Yet when the trials began, some plaintiffs reported feeling re-victimized in being required to shoehorn their individual stories into the procedural requirements of civil litigation. In the words of one observer, “the civil litigation process itself often . . . dehumaniz[es] those who may seek not only financial compensation but a restoration of their human dignity.”¹⁵⁹ Moreover, although litigation is adept at resolving claims based on discrete events and individual experiences,¹⁶⁰ it is not conducive to the recognition of collective, inter-generational injuries wrought by structural and systemic causes.¹⁶¹

In contrast, TRC Canada has acknowledged that the IRS legacy has had a negative, inter-generational impact not limited to the survivors of the residential schools.¹⁶² Students were the direct targets of the schools’ mission to “civilize,” and they experienced direct injuries in the form of psychological, physical, and sexual assaults.¹⁶³ But the TRC Canada recognizes that the harms inflicted by the IRS were not limited to students.¹⁶⁴ The IRS program permanently severed the students’ ties to their families and communities.¹⁶⁵ IRS survivors who had children could not always be affectionate or provide support because of their own unhealed trauma.¹⁶⁶ The discrete injuries experienced by individual students have had lasting, inter-generational impacts, a phenomenon explicitly recognized in the TRC Canada’s informal justice work.

C. *The Informal-Formal Justice Complex*

In theory, the distinction between formal and informal justice

158. *Id.* at 6–7.

159. *Id.* at 9.

160. *Id.*

161. *See id.* at 123.

162. “The damage extended far beyond the numbers of children who attended these schools: families, communities, and cultures all suffered.” *Id.* at 26.

163. *Id.*

164. *See, e.g.,* THEY CAME FOR THE CHILDREN, *supra* note 145, at 77; *id.* at 85–86; *id.* at 89; *id.* at 93; *see also* CONSTANCE DEITER, FROM OUR MOTHER’S ARMS: THE INTERGENERATIONAL IMPACT OF RESIDENTIAL SCHOOLS IN SASKATCHEWAN (1999).

165. THEY CAME FOR THE CHILDREN, *supra* note 145, at 79. “In 1919 Sarah-Jane Essau, an Aboriginal woman from Moosehide in the Yukon, wrote that when children returned from residential school, ‘they won’t have anything to do with us; they want to be with white people; they grow away from us.’” *Id.*

166. “George Amato, who went to the St. Bernard school in Alberta for nine years, asked, ‘How are we supposed to know how to be a parent when you don’t have any guidance from anybody? All I had in me all my life was anger.’” *Id.*

practices is clear-cut. In practice, however, the two are actually closely aligned, even overlapping, making the distinction between the two a false binary. Informal justice mechanisms like the TRC Canada or the TIRC actually occupy a liminal space between the formal and informal justice worlds; a borderlands called the informal-formal justice complex.¹⁶⁷ This is a term that describes “the cultural, economic and political relations within the juridical field through which adversarial/punitive and conciliatory/restorative justice forms coexist and reinforce one another.”¹⁶⁸ Despite outward differences, formal and informal legal practices are actually interlocking, and in combination, tend to reproduce the legal and social status quo.¹⁶⁹

The work of governmentality scholars describes the setting in which State power is distributed through the operation of informal justice practices.¹⁷⁰ Eventually and inexorably, informal justice efforts, which were originally meant to provide an alternative to the State’s monopoly in dispute resolution, become coopted by the State.¹⁷¹ In some instances the co-optation process is overt, as when informal bodies rely on the State for financial or administrative support, or for the power to execute any orders that may result from the informal practice.¹⁷² In others, the stability of the status quo is achieved through a hegemonic process whereby individual actors make decisions unconsciously shaped by formal justice standards.

Foucault observed and chronicled the development of these “arts of governance” on the rise in the sixteenth century.¹⁷³ Around this time, coercive State power began to transform its appearance, becoming less garish and much more subtle and refined.¹⁷⁴ Under this new regime, the State would no longer have to rely on overt mechanisms of control,

167. WOOLFORD & RATNER, *supra* note 22, at 32.

168. *Id.*

169. *See id.* at 21.

170. Woolford and Ratner identify neoliberalism as the driving economic and political force behind contemporary power plays within the juridical field. It is the neoliberal agenda, therefore, that subtly guides the operation, practices, and outcomes of informal justice practices caught in the informal-formal justice complex. *Id.* at 34–37. For example, neoliberalism promotes the notions of free-market capitalism and negotiation. As a result, informal justice practices are expected to “compete in quasi-market conditions” for government funding. *Id.* at 34.

171. *Id.* at 21; *see also* DAVIS, *supra* note 126, at 9.

172. *See* WOOLFORD & RATNER, *supra* note 22, at 20–21.

173. *Id.* at 21 (citing Michel Foucault, *Governmentality*, in *THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY WITH TWO LECTURES AND AN INTERVIEW WITH MICHEL FOUCAULT* 276, 276 (Graham Burchell et al. eds., 1993)); *see* MICHEL FOUCAULT, *ETHICS, SUBJECTIVITY AND TRUTH* (Paul Rabinow ed., 1994); *see also* ALAN SHERIDAN, *MICHEL FOUCAULT: THE WILL TO TRUTH* 218–19 (1980).

174. WOOLFORD & RATNER, *supra* note 22, at 22.

but could depend instead on the self-restraint of a populace who were convinced their choices were autonomous ones when in fact the range of options had been previously circumscribed.¹⁷⁵ By creating and propagating a set of norms and expectations that appeared to be natural, “governance narrow[ed] the boundaries of what [was] thinkable”¹⁷⁶ so that citizens “c[a]me to internalise societal controls, and to play an active role in monitoring their own conduct.”¹⁷⁷

According to the complex model, therefore, informal justice practices face the constant threat of co-optation by both private interests and the State. In the case of TRC Canada, for example, benefits accruing to the residential school survivors and their families ought to be considered in light of the benefit to the Canadian government in the form of billions of dollars saved in litigation costs and settlement monies. Critics of the TRC Canada have charged that reconciliation is not the same as substantive policy change or material reparation.¹⁷⁸ Despite the recognition that TRC Canada gives to inter-generational harms, it ignores or at least is not well-positioned to acknowledge the role of colonialism and imperialism in the establishment of the IRS.¹⁷⁹ Other observers are concerned with the statement gathering method as the TRC Canada’s primary means for promoting reconciliation.¹⁸⁰

Like TRC Canada, the TIRC is emblematic of the informal-formal justice complex because it straddles the line between formal justice as practiced in the courts and informal justice as practiced by lay citizen-participants in non-judicial venues. The formal criminal justice system had already foreclosed relief for incarcerated victims of police torture, so BPAPT conceived of the Commission as an informal justice alternative, a non-judicial body empowered to provide “extraordinary” relief.¹⁸¹ It exists only through the authority of the Illinois General Assembly, however, and is also dependent upon the legislature for

175. *Id.*

176. *Id.* at 20.

177. *Id.* at 23.

178. Gerald Taiaiake Alfred, *Restitution is the Real Pathway to Justice for Indigenous Peoples*, in *RESPONSE, RESPONSIBILITY, AND RENEWAL*, *supra* note 147, at 181, 181.

179. *Id.* at 183–84.

180. *See, e.g.*, Roger I. Simon, *Towards a Hopeful Practice of Worrying: The Problematics of Listening and the Educative Responsibilities of Canada’s Truth and Reconciliation Commission*, in *RECONCILING CANADA: CRITICAL PERSPECTIVES ON THE CULTURE OF REDRESS* 129, 132 (Jennifer Henderson & Pauline Wakeham eds., 2013). Simon notes that speaking is only one side of a multi-faceted and complex reconciliation process, and asks whether the TRC Canada is doing enough to encourage listening. *Id.*

181. *See supra* notes 108–11 and accompanying text.

annual appropriations.¹⁸² Its powers emanate from the TIRC Act and its rules are regulated under the state's Administrative Law Act.¹⁸³ Finally, although it has the ability to hear and decide claims, the only relief to which a successful petitioner is entitled is a referral to the Circuit Court "for further/appropriate relief."¹⁸⁴ In a very real sense, the informal Commission is dependent on the formal powers of the state judiciary to effect the relief that it promises to successful claimants.

Conceptualizing the TIRC as a part of a "complex" reveals that the TIRC is an instrument of State power, despite the fact that it provides extraordinary relief for victims of police torture. In other words, by reproducing the dominant narrative of police torture—a stabilizing move that ultimately results in a general legitimization of police powers—the TIRC has become another outlet for the exercise of State power. Although it is not actually a "truth commission," by accepting certain claims of torture as credible and rejecting others, the TIRC engages in the construction of a particular socio-legal truth about Chicago's police torture crisis. The next Part investigates the ways in which the TIRC's credibility determinations create and reinforce a dominant narrative about police torture—one which, by throwing the spotlight on a few "bad apples," renders invisible the State's complicity in police torture.

III. CREDIBILITY DETERMINATIONS AT THE TIRC

The governmentality principles discussed above shed light on the problematic nature of the TIRC's reliance on summary dispositions as its primary method for handling claims of torture.¹⁸⁵ Referrals to the Circuit Court through the summary disposition process depend on the Commission's determination that a claim is "credible" using a strict four-element test, designed to filter out inauthentic claims of police torture.¹⁸⁶ While the test provides an efficient sorting mechanism, the

182. 775 ILL. COMP. STAT. 40/25(b) (2013).

183. *Id.* § 40/35.

184. 775 ILL. COMP. STAT. 40/50(a) provides:

[I]f the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment of sentence in the former proceedings and such supplementary orders as to arraignment, 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.

185. The TIRC used its summary referral procedure in six of the fourteen cases it has forwarded to the Circuit Court for judicial review. *See TIRC Decisions, supra* note 21. The TIRC used the summary disposition process in each of the eleven cases it dismissed. In total, therefore, the TIRC has utilized summary dispositions in seventeen of its twenty-five cases. *Id.*

186. ILL. ADMIN. CODE tit. 2, § 3500.370(a) (2013).

credibility standards do not necessarily facilitate a search for the truth. The truth formed through the TIRC process ends up being nothing more than one version of the truth,¹⁸⁷ but a distinctly important one, in that the TIRC's version of the truth has the imprimatur of the State.

Foucault's insights about power form the basis for a critique of the credibility determination standards imposed by the TIRC.¹⁸⁸ What the Commission accepts and treats as credible truth is actually the product of its own decisions about what to treat as true. Truth is not neutral, universal, or singular.¹⁸⁹ Multiple truths exist, which compete with other claimed truths. For Foucault, each truth is an assertion of power and social institutions engage in a type of violence through the exertion of power when they impose their version of truth.¹⁹⁰

The verdict at the end of a criminal trial, for example, is truth in that the power of the State compels the interested parties to accept its truth.¹⁹¹ It is, however, only one truth. The public debate about racial profiling and stand-your-ground laws¹⁹² in the aftermath of George Zimmerman's acquittal for the shooting death of Trayvon Martin¹⁹³ reveals that there are at least two competing versions of the truth at trial, but only one which receives the sanction of the State. In an informal justice body like the TRC Canada, by contrast, the power to create truth

187. For example, the South Africa Truth and Reconciliation's final report considered at least four different types of truth: "factual or forensic truth; personal or narrative truth; social or 'dialogue' truth and healing and restorative truth." 5 TRUTH & RECONCILIATION COMM'N, TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA REPORT 29-45 (1999).

188. See *supra* notes 173-77 and accompanying text (describing Foucault's chronicles of the evolution of State power).

189. The Truth is actually the function of two forces: (1) the discourse that captures and expresses reality and (2) the social conditions of the multitudes of people that experience that reality. John Fiske, *Admissible Postmodernity: Some Remarks on Rodney King, O.J. Simpson, and Contemporary Culture*, 30 U.S.F. L. REV. 917, 917 (1996).

190. Audrey R. Chapman & Patrick Ball, *The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala*, 23 HUM. RTS. Q. 1, 5 (2001) (citing MICHEL FOUCAULT, *POWER/KNOWLEDGE: SELECTED INTERVIEWS AND OTHER WRITINGS, 1972-1977*, at 133 (Colin Gordon ed., Colin Gordon et. al trans., 1980)).

191. "The death of Trayvon Martin was a tragedy I know this case has elicited strong passions. And in the wake of the verdict, I know those passions may be running even higher. But we are a nation of laws, and a jury has spoken." Barack Obama, U.S. President, Statement in Response to the Death of Trayvon Martin (July 14, 2013), available at <http://www.whitehouse.gov/the-press-office/2013/07/14/statement-president> (asking the nation to heed the Martin family's "call for calm reflection").

192. See, e.g., Addie Rolnick & Priscilla Ocen, *Why we must do more than repeal 'stand your ground' laws*, AL-JAZEERA ENG. (Aug. 3, 2013, 3:05 PM), <http://www.aljazeera.com/indepth/opinion/2013/07/2013728142158307153.html>.

193. Lizette Alvarez & Cara Buckley, *Zimmerman is Acquitted in Trayvon Martin Killing*, N.Y. TIMES, July 14, 2013, <http://www.nytimes.com/2013/07/15/us/george-zimmerman-verdict-trayvon-martin.html>.

is theoretically distributed amongst the participants who come forward to share their stories. In the end, however, the truth that emerges from the TRC Canada will also be accompanied by the authority of the State. Similarly, the truth project of the TIRC involves a clash of various expressions and subjectivities that has, through the implementation of the TIRC's credibility determination standards, reinforced a particular narrative. This critique is not unique to the TIRC; any formal or informal adjudicatory body, including trials and truth commissions, is engaged in the hotly contested exercise of constructing truths.¹⁹⁴ But whereas the work of truth commissions like the TRC Canada has been to construct a history of a critical event through the participation of a variety of stakeholders, the TIRC begins at the end. As discussed below, the TIRC has adopted the stock story of police torture in Chicago, and demands that its petitioners conform their submissions to the prevailing narrative.

Through its dependence on a four-element test for credibility, the TIRC inscribes and reproduces the dominant narrative of police torture in Chicago thereby reinforcing the status quo, protecting the State's interests in controlling the historical narrative regarding police torture, and limiting avenues of legal relief for victims. Moreover, this process ultimately results in a general legitimization of the State's police powers. The remainder of this Part describes how the dominant narrative about the police torture crisis is inscribed and reproduced in the law through the procedures of the TIRC. Although it has other procedural mechanisms available, the Commission has predominantly used its summary disposition process to adjudicate claims of torture. This Part first describes the summary disposition process and then explains how it is that this process effectively reinforces the dominant narrative about Chicago's police torture crisis.

A. The Summary Disposition Process

In August 2011, after a public notice and comment period, the TIRC published administrative rules to govern its procedures. In doing so, the TIRC selected credibility as its primary criteria for meritorious claims.¹⁹⁵ A claimant¹⁹⁶ begins the TIRC process by filing a Claim

194. See Chapman & Ball, *supra* note 190, at 8 (“In many ways, truth commissions ‘shape’ or socially construct rather than ‘find’ truth.”).

195. See 35 Ill. Reg. 15125, 15125–26 (Sep. 9, 2011), available at <http://www2.illinois.gov/itrc/Documents/Illinois%20Register%20Volume%2035,%20Issue%2037.pdf>; Press Release, Torture Inquiry & Relief Comm’n, Illinois Torture Inquiry and Relief Commission Publishes Proposed Rules (June 9, 2011), available at <http://www2.illinois.gov/itrc/Documents/Press%20Release%20Publication%20of%20Admin%20Rules%20June%209,%202011.pdf>. The Special

Form.¹⁹⁷ When the Commission receives a claim, it is screened by the Director to determine whether it is a “claim of torture” within the meaning of the TIRC Act.¹⁹⁸ If so, the claim is filed and a claim number is assigned.¹⁹⁹ Once a claim has been properly filed,²⁰⁰ the Director performs an informal inquiry regarding the claim and can make two different recommendations. If the Director finds that “there appears to be no reasonable possibility that the claim is credible,” he will recommend summary dismissal.²⁰¹ Alternatively, if he finds that the claim is credible, the Director can recommend summary referral for “the appropriate relief” directly to the Chief Judge of the Circuit Court of Cook County.²⁰² The Commission then votes on the Director’s recommendations; a majority of five votes is required to either accept or to reject the recommendation.²⁰³

State’s Attorneys likewise relied on notions of credibility to guide their 2006 Report. SSA REPORT, *supra* note 9, at 6 (“[C]redibility was the primary test.”).

196. The rules of the Commission refer to the claimant as the “convicted person,” defined as “the person asserting the claim of torture under the [Illinois TIRC] Act.” ILL. ADMIN. CODE tit. 20, § 2000.10 (2013) (citing 775 ILL. COMP. STAT. 40/5(3) (2013)).

197. *Id.* § 3500.330; *see also id.* § 2000 app.B (the Claim Form).

198. *Id.* § 2000.10 (“‘Claim of torture’ means a claim on behalf of a living person convicted of a felony in Illinois asserting that the person was tortured into confessing to the crime for which the person was convicted, the tortured confession was used to obtain the conviction, and there is some credible evidence related to the allegations of torture.” (citing 775 ILL. COMP. STAT. 40/5(1))). The TIRC’s rules do not limit eligible claims to prisoners who were tortured by Burge or any police officer acting under Burge’s supervision. *Cf.* 775 ILL. COMP. STAT. 40/5(1) (defining claim of torture). The TIRC rules do, however, give priority to Burge era cases. ILL. ADMIN. CODE tit. 2, § 3500.375(c) (citing 775 ILL. COMP. STAT. 40/35(2)).

199. *Id.* § 3500.340(c).

200. Before the case can proceed past this phase, the claimant is required to execute a written document waiving his “right against self-incrimination under the United States Constitution and the Constitution of the State of Illinois.” *Id.* § 3500.350(b). Because of the significance of this waiver, each claimant is granted the right to the advice of counsel before the waiver is signed. *Id.* § 3500.350(c). Moreover, the claimant must “agree to cooperate fully with the Commission and agree to provide full disclosure regarding the torture inquiry.” *Id.* § 3500.350(b). If at any point during the pendency of the case, the Commission determines that the claimant is “uncooperative,” the Commission “shall discontinue the inquiry.” *Id.* § 3500.375(g) (citing 775 ILL. COMP. STAT. 40/40(g)).

201. *Id.* § 3500.360(b).

202. *Id.* § 2000.50(a) (“If the Commission concludes there is sufficient eviden[ce] of torture to merit judicial review, the Chair shall request the Chief Judge of the Circuit Court of Cook County to assign the case to a trial judge for consideration of the evidence and the appropriate relief.”). Although the Chair will recommend that the case be referred to a different trial judge than the one who originally presided over the claimant’s criminal (or post-conviction) proceedings, it appears that the Chief Judge retains discretion in making that assignment. *See id.* § 2000.50(b) (“The Chair shall recommend that the case be assigned to a judge other than the judge who tried the criminal case and other than the judge who presided over any previous post-conviction proceedings.”).

203. *See id.* § 3500.320 (requiring a majority of quorum members).

Under the TIRC's rules, a claim of torture must satisfy each of four conditions to qualify for the Director's summary referral recommendation.²⁰⁴ First, the petitioner must have "consistently claimed to have been tortured."²⁰⁵ Second, the petitioner's claim must be "strikingly similar to other claims of torture" recorded in the 1992 OPS Report and in the 2006 SSA Report.²⁰⁶ Third, the officers named in the petitioner's claim must also be "identified in other cases alleging torture."²⁰⁷ Fourth and finally, the petitioner's claim must be "consistent with the [1992 OPS Report's] findings of systematic and methodical torture at Area [Two] under Jon Burge."²⁰⁸

In making its determination regarding the credibility of a torture claim, the Commission possesses almost absolute discretion. A petitioner whose claim is found to be not credible does not have a right to request reconsideration; the Commission's decision is final.²⁰⁹ Final decisions of the Commission are subject to independent judicial review under Illinois's Administrative Review Law,²¹⁰ but the courts are effectively constrained from engaging in a thorough review because the only determination that the Commission makes under its summary disposition process is the credibility of the petitioner's claim of torture. Credibility determinations are findings of fact, and thus, lie exclusively within the discretionary province of the Commission.²¹¹ In Illinois,

204. The TIRC's credibility standards appear to be derived from an Illinois Supreme Court case involving a post-conviction petition. *People v. Patterson*, 735 N.E.2d 616, 645 (Ill. 2000). In *Patterson*, the court held that the petitioner was entitled to an evidentiary hearing on his claim that his confession had been coerced:

After reviewing the new evidence relied upon by defendant, we believe that it is material and that, as pleaded, would likely change the result upon retrial. In particular, we note that defendant has consistently claimed that he was tortured. In fact, he made this claim during his first court appearance. Moreover, defendant's claims are now and have always been strikingly similar to other claims involving the use of a typewriter cover to simulate suffocation. Additionally, defendant describes the use of a gun as a threat and beatings that do not leave physical evidence. Further, the officers that defendant alleges were involved in his case are officers that are identified in other allegations of torture. Finally, defendant's allegations are consistent with the OPS findings that torture, as alleged by defendant, was systemic and methodical at Area [Two] under the command of Burge.

Id.; see also *People v. Wrice*, 962 N.E.2d 934, 945 (Ill. 2012) (applying the *Patterson* test in a successive post-conviction petition case).

205. ILL. ADMIN. CODE tit. 2, § 3500.370(a)(1).

206. *Id.* § 3500.370(a)(2).

207. *Id.* § 3500.370(a)(3).

208. *Id.* § 3500.370(a)(4).

209. 775 ILL. COMP. STAT. 40/55(a) (2013).

210. *Id.* § 5/3-100-5/3-113. The Commission is an independent body under the Illinois Human Rights Commission, a state administrative agency. *Id.* § 40/15(a).

211. See *Clark v. Ill. Human Rights Comm'n*, 728 N.E.2d 582, 587 (Ill. App. Ct. 2000) (citing

courts defer to an agency's findings of fact unless they are contrary to the manifest weight of the evidence.²¹² Thus, the judicial review that is available is not likely to be meaningful.

Out of the cases it has adjudicated thus far, the TIRC has found ten of them to be not credible,²¹³ including the telling example of a claim made by John Knight, a man who is serving a sentence of natural life for convictions on two counts of first degree murder.²¹⁴ The Commission rejected Knight's claim of torture in June 2012, concluding that "there [was] not sufficient evidence of torture to conclude that the Claim is credible."²¹⁵ Knight had claimed that he "was slapped, choked to within minutes of passing out, threatened of being killed, had a gun put to my head and the trigger pulled several times" after his arrest on May 26, 1996.²¹⁶ Knight's description is similar to and consistent with official government reports regarding the torture methods used at Area Two,²¹⁷ and therefore seems to satisfy the TIRC's second and fourth conditions for credibility. The third ground for credibility is satisfied because Detective Michael McDermott, the CPD officer who Knight claims tortured him, figures prominently in the 2006 SSA Report, and has been personally implicated in at least fourteen other police torture cases.²¹⁸

Therefore, the only ground on which Knight's claim appears to fail is on the first condition for credibility. Knight had not furnished specific

Zaderaka v. Ill. Human Rights Comm'n, 545 N.E.2d 684 (Ill. 1989)) ("With regard to the factual finds of an administrative agency, all findings are deemed *prima facie* true and correct.").

212. *Id.* at 586. "An agency's finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. A reviewing court is not justified in reversing a finding made by an agency if it finds that the opposite conclusion is reasonable or it might have ruled differently." *Id.* (internal citations omitted).

213. The TIRC has denied eleven total claims. *See TIRC Decisions, supra* note 21. But in one of the eleven, the TIRC concluded that it did not have jurisdiction to adjudicate the claim under the TIRC Act. Claim of Raymond Washington, TIRC No. 2011.003-W, at 1 (June 21, 2012), <http://www2.illinois.gov/itrc/Documents/Raymond%20Washington%20Claim%20Disposition.PDF>.

214. Claim of John Knight, TIRC No. 2011.005-K, at 4 (June 21, 2012), <http://www2.illinois.gov/itrc/Documents/John%20Knight%20Case%20Disposition.PDF>.

215. *Id.* at 1.

216. *Id.*

217. *See, e.g.,* OPS REPORT, *supra* note 14, at 10 (listing several incidents of beating and threats with weapons, such as the case of Shaheed Mumin (weapons and bagging)).

218. But for the statute of limitations bar on prosecution, the SSA Report concluded that there was sufficient evidence to prove, beyond a reasonable doubt, Detective McDermott's guilt in the torture of Alfonzo Pinex. SSA REPORT, *supra* note 9, at 16. Interestingly, the fact that Detective McDermott has a record of other torture and abuse allegations with the TIRC is not mentioned within the text of Knight's two-page case disposition. *See Claim of John Knight*, TIRC No. 2011.005-K, at 4-5.

details about his torture prior to filing a claim with the TIRC. In his original 1996 motion to suppress, Knight had instead offered the unembellished claim that he had been “physically coerced and lied to by the police causing him to make certain statements.”²¹⁹ The Commission noted that Knight had numerous opportunities to provide details about his torture claim prior to 2011—as he had filed two post-conviction petitions—but did not.²²⁰

Before it rejected Knight’s claim, the Commission had conducted an investigation regarding Knight’s decision not to have previously reported his claim of torture.²²¹ Knight explained simply that his defense counsel had instructed him not to raise it “because it could not be proven.”²²² Knight’s defense counsel was reportedly “very cooperative and very credible” when interviewed by the Commission’s investigators, and stated that he would have raised the torture claim had Knight presented it to him at the time.²²³ The Commission found the defense counsel’s statements to be more credible than Knight’s and therefore concluded that there was “no reasonable possibility that the Claim [was] credible.”²²⁴ The Commission further discounted Knight’s credibility because he “was not mentioned” in the SSA Report.²²⁵

In crediting his defense counsel’s version of events over Knight’s, the TIRC reproduced the problems with decisions made by trial courts in the original criminal cases of the police torture victims, in which courts consistently found the testimony of police officers more credible than that of the criminal defendants.²²⁶ The longevity of the Chicago police

219. *Id.* at 7.

220. *Id.* at 1. The TIRC disposition refers to Knight’s testimony during the motion to suppress, his testimony during trial, and two post-conviction petitions (2002 and 2004).

221. *See id.* at 1–2. An informal inquiry at the TIRC may include “all reasonable steps to interview the convicted person, interview[s] of any witnesses identified by the convicted person, and review [of] any documents provided by the convicted person.” ILL. ADMIN. CODE tit. 2, § 3500.360(a) (2013).

222. *Claim of John Knight*, TIRC No. 2011.005-K, at 1.

223. *Id.*

224. *Id.* at 2.

225. *Id.* at 1. Although Knight is not individually named in the SSA Report, Detective McDermott is. *See* SSA REPORT, *supra* note 9, at 16. Furthermore, although the Special State’s Attorney was charged with investigating allegations of police torture and other offenses, the 2006 SSA Report is candid in disclosing the fact that it was unable to obtain access to important information during its investigation, including numerous police, OPS, and medical records. *Id.* at 6–7.

226. In each of following successful claims to the TIRC, the Commission noted that an original motion to suppress had been filed and heard, but denied only after the hearing judge credited the testimony of the police officers over that of the petitioner. *See, e.g.*, Claim of Anthony Jakes, TIRC No. 2011.035-J, at 2 (July 25, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Anthony%20Jakes.pdf>; Claim of Scott Mitchell, TIRC No.

torture regime rested, in large part, on credibility assumptions made in favor of the police. After being tortured, the accused would confess and then would be prosecuted on the strength of that confession. The accused would then file a motion to suppress statements, alleging that the evidence was the result of physical and/or psychological coercion. The trial court would be faced with making a determination of credibility, weighing the testimony of the accused against that of the investigating police officers.²²⁷ In many cases, Burge himself was called as a witness and testified under oath that he did not harm or see anyone else harm the criminal defendant.²²⁸ In the vast majority of cases, the trial court found the police officers' testimonies more credible than the defendant's, and the defendant's motion to suppress was denied and the allegedly coerced confession was then admitted into evidence.²²⁹ The defendant would then be convicted of the charged crime.²³⁰

2011.034-M, at 2 (July 25, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Scott%20Mitchell.pdf>; Claim of Kevin Murray, TIRC No. 2012.108-M, at 2 (July 25, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Kevin%20Murray.pdf>; Claim of Robert Smith, TIRC No. 2011.024-S, at 1–2 (July 25, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Robert%20Smith.pdf>; Claim of Tony Anderson, TIRC No. 2011.014-A, at 1 (May 20, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Tony%20Anderson.pdf>; Claim of Vincent Wade, TIRC No. 2011.009-W, at 1–2 (May 20, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Vincent%20Wade.pdf>. Anthony Holmes was called to testify at an evidentiary hearing following a successful TIRC claim. Transcript of Record at 17–55, *People v. Plummer*, No. 90-CR-12036 (Cir. Ct. Cook Cnty. Jan. 13, 2014). When asked why he had not filed an OPS report regarding his alleged torture, Holmes succinctly explained his frustration with the criminal justice system: “Let me say this one more time. Didn’t nobody believe me. Just like you’re sitting there saying I did this and I did that, ain’t nobody believed me then. The only one—10, 20 years later, 30 years later, they finally starting believing me.” *Id.* at 47.

227. See, e.g., *Jones SACAC*, *supra* note 30, at 13. During Melvin Jones’s 1983 murder trial, the judge declared:

This case, like most others, boils down to the issue of credibility. The police have testified as to certain alleged admissions that were made by [Jones], and [he] denies making any statements, and it is claimed—and I cannot state it any other way—that he is being framed by the police My conclusion is that [Jones] was prosecuted . . . because he did make the statements [confessing his guilt].

Id.

228. See *id.* at 36–40 (listing the instances in which the officers testified); see, e.g., *People v. Wilson*, 506 N.E.2d 571, 572 (Ill. 1987); *People v. Hinton*, 706 N.E.2d 1017, 1020 (Ill. App. Ct. 1998).

229. See, e.g., *Wilson*, 506 N.E.2d at 581; *Hinton*, 706 N.E.2d at 1021.

230. Cf. *People v. Wrice*, 962 N.E.2d 934, 944 (Ill. 2012) (“Defendant argued that the new evidence of abuse and beatings practiced at Area [Two] [and revealed in the 1992 OPS Report] . . . would have increased the likelihood that his coerced statements would have been suppressed and the outcome of his trial would have been different.”).

B. Reification of the Dominant Narrative

The immediate quandary that prompted the TIRC Act was that torture victims had been convicted on the strength of their coerced confessions, and had already exhausted their statutory post-conviction remedies. The Commission provides a legal mechanism for incarcerated police torture victims to obtain new relief in the form of judicial review of their criminal cases. In its effort to provide extraordinary relief to state prisoners who were the victims of police torture, the TIRC has arguably been successful. As of August 2013, the Commission has considered twenty-eight cases,²³¹ eleven of which have been referred to the Circuit Court for additional relief.²³²

While the Commission has provided relief for some incarcerated victims of police torture, it is less clear that the Commission has achieved transformative social change in the manner desired of informal justice practices. Again, this is the informal-formal justice complex in operation. The law is institutionally and structurally averse to change, and though it allows challenges to the status quo, it also requires that those challenges meet the law's preexisting requirements.²³³ By funneling challenges to the existing order through the existing mechanisms of power, "change can be moderated and truly disruptive transformation can be avoided."²³⁴ As a result, claims that have been referred to the Circuit Court have hewn closely to the dominant narrative of the Chicago police torture scandal. In contrast to truth forums in other parts of the world, in which participants have been encouraged to present highly personalized accounts of their experience with racial violence and other forms of human rights violations,²³⁵ to

231. The TIRC had actually adjudicated twenty-eight claims prior to September 25, 2013, but on that day voted to rescind three. See TIRC September 2013 Meeting Minutes, *supra* note 118, at 9.

232. At present, it appears that the successful petitioners are requesting stage-three evidentiary hearings under the state Post-Conviction Act. The stage-three evidentiary hearings will allow petitioners to argue that the confessions which supported their criminal convictions were coerced through police torture. Most petitioners had raised these claims during their trials or during pre-trial motions to suppress, of course, but did not have the benefit of numerous published official reports finding "systematic torture" by the Chicago Police Department to lend credibility to their individual claims. At the evidentiary-hearing stage, the Circuit Court may order new trials or the Special State's Attorney appointed to oversee these cases may move to dismiss charges.

233. Eskridge argues that successful social movements eventually join the traditional political structure and must eventually succumb to mainstream legal doctrine, an effect Eskridge calls "channeling." See William N. Eskridge Jr., *Channeling: Identity-Based Social Movements and Public Law*, 150 U. PA. L. REV. 419, 423 (2001).

234. Gerald Torres, *Legal Change*, 55 CLEV. ST. L. REV. 135, 137 (2007).

235. See *supra* Part II.B (discussing the TRC Canada); see also TERESA GODWIN PHELPS, SHATTERED VOICES: LANGUAGE, VIOLENCE, AND THE WORK OF TRUTH COMMISSIONS 45, 57–

avail themselves of relief under the Illinois Commission's rules, claimants are strictly constrained to a narrative format selected and constructed by others.

The version of truth promoted by the TIRC dispositions to date coalesces with the dominant narrative of police torture. The dominant narrative provides, for example, that the Chicago police torture crisis ended when Burge was fired in 1993 and the TIRC dispositions record seems to support that view. Seven of the eleven cases (64%) found by the TIRC not to be credible involved claims of torture that occurred after 1993.²³⁶ By comparison, only two of the fourteen cases (14%) found by the TIRC to be credible involved claims of torture that occurred after that date.²³⁷ The dominant narrative also asserts that Burge and a few other "bad apples" were the ones responsible for torture. Thirteen out of the fourteen cases forwarded to the Circuit Court (93%) implicated Burge or his direct subordinates at Area Two, and later, Area Three.²³⁸

Kevin Murray's was the only TIRC case not implicating Burge or his direct subordinates that was forwarded to the Circuit Court, and in November 2013, Judge Michael McHale dismissed Murray's motion to

58, 74–79 (2006). *But see* MARK SANDERS, *AMBIGUITIES OF WITNESSING: LAW AND LITERATURE IN THE TIME OF A TRUTH COMMISSION* 151–61 (2007) (contending that even firsthand testimonies are ultimately mediated by the third-person voice of the truth commission report authors).

236. Claim of James Hinton, TIRC No. 2011.031-H, at 1 (July 26, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20James%20Hinton.pdf>; Claim of Sidney McCray, TIRC No. 2011.088-M, at 1 (July 26, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Sidney%20McCray.pdf>; Claim of William Atkins, TIRC No. 2011.011-A, at 1 (May 20, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20William%20Atkins.pdf>; Claim of Joseph Davis, TIRC No. 2011.010-D, at 1 (May 20, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Joseph%20Davis.pdf>; Claim of Lindsey Anderson, TIRC No. 2011-002-A, at 1 (June 21, 2012) (alleged incident in 1994); Claim of William Ephraim, TIRC No. 2011.012-E, at 1 (June 21, 2012), <http://www2.illinois.gov/itrc/Documents/William%20Ephraim%20Case%20Disposition.PDF>; Claim of John Knight, TIRC No. 2011.005-K, at 1 (June 21, 2012), <http://www2.illinois.gov/itrc/Documents/John%20Knight%20Case%20Disposition.PDF> (alleged incident in 1996).

237. Claim of Scott Mitchell, TIRC No. 2011.034-M, at 1 (July 25, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Scott%20Mitchell.pdf>; Claim of Darrell Fair, TIRC No. 2011.018-F, at 1 (May 20, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Darrell%20Fair.pdf>.

238. A possible explanation for this result is that the TIRC rules provide for priority consideration of Burge era claims. *See* ILL. ADMIN. CODE tit. 2, § 3500.375(c) (2013) (citing 775 ILL. COMP. STAT. 40/35(2) (2013)). As of November 2013, the TIRC is still processing an additional 165 open claims. ILL. TORTURE INQUIRY & RELIEF COMM'N, MEETING MINUTES 3 (Nov. 20, 2013) [hereinafter TIRC November 2013 Meeting Minutes], *available at* <http://www2.illinois.gov/itrc/Documents/Meeting%20Minutes%20November%2020,%202013.pdf>.

set an evidentiary hearing date.²³⁹ In his TIRC claim, Murray alleged that in January 1988, CPD Detective Kristen Kato took Murray from his home to the Area Four Violent Crimes Unit located in the City's West Side.²⁴⁰ There, police detectives interrogated him for over thirty-five hours while they slapped, punched, and kicked him.²⁴¹ The TIRC concluded that Murray's claim was credible, relying in part on "an abundance of pattern and practice evidence" that Detective Kato beat suspects.²⁴² On his own motion, however, Judge McHale declared: "This [case] doesn't have anything to do with Jon Burge, and I dismiss the motion based on that."²⁴³ Although the TIRC has processed claims alleging torture outside of Burge's command areas, in his oral ruling, Judge McHale cited the TIRC Act, which limits claims to "allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge."²⁴⁴ The TIRC Act itself applies only to claims filed within five years of its effective date, as if police torture could be reined in by this statutory deadline.²⁴⁵

Additionally, the dominant narrative provides that claims of torture must be consistent with the types of sadistic abuses collected in the OPS and SSA reports, such as electrocution, bagging, and Russian Roulette. In practice, the TIRC has rejected less esoteric claims that tell of chest-slapping,²⁴⁶ food and sleep deprivation,²⁴⁷ and psychological coercion²⁴⁸ as inconsistent with the types of torture contained in the official reports. Under the TIRC Act, torture is defined as "any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted upon a person for the purpose of obtaining from

239. Transcript of Proceedings at 2–3, *People v. Murray*, No. 88-CR-02309 (Cir. Ct. Cook Cnty. Nov. 6, 2013) [hereinafter *Murray Transcript*].

240. Claim of Kevin Murray, TIRC No. 2012.108-M, at 1 (July 25, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Kevin%20Murray.pdf>.

241. *Id.*

242. *Id.* at 3.

243. *Murray Transcript*, *supra* note 239, at 3.

244. *Id.* (citing 775 ILL. COMP. STAT. 40/5(1) (2013)). If Judge McHale's reading of the statute is correct, the TIRC Act contradicts itself at section 35(2) which provides: "priority [is] to be given to those cases in which the convicted person is currently incarcerated solely for the crime to which he or she claims torture by Jon Burge or officers under his command, or both." 775 ILL. COMP. STAT. 40/35(2). The TIRC rules do not limit claims in this manner. *See* ILL. ADMIN. CODE tit. 20, § 2000.10 (2013) (defining "claim of torture").

245. 775 ILL. COMP. STAT. 40/70.

246. *See, e.g.*, Claim of Lindsey Anderson, TIRC No. 2011-002-A, at 1 (July 21, 2012), <http://www2.illinois.gov/itrc/Documents/Lindsey%20Anderson%20Claim%20Disposition.PDF>.

247. *See, e.g.*, Claim of William Ephraim, TIRC No. 2011-012-E, at 1 (July 21, 2012), <http://www2.illinois.gov/itrc/Documents/William%20Ephraim%20Case%20Disposition.PDF>.

248. *See, e.g.*, Claim of James Hinton, TIRC No. 2011-031-H, at 1 (July 26, 2012), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20James%20Hinton.pdf>.

that person a confession to a crime.”²⁴⁹ Because this definition requires an inculpatory statement, the TIRC has rejected claims that involved statements which were exculpatory²⁵⁰ or statements that were not introduced into evidence by the State.²⁵¹

Because it is inextricably linked with the formal justice system, which is itself aligned with the interests and power of the State, it is unclear and remains to be seen whether the TIRC can provide transformative social change in the form of López’s vision of a “radically participatory and egalitarian democracy.”²⁵² In other words, there are limits to the Commission’s ability to provide lasting relief against police torture and other police violence. Some may view these limits as evidence of the Commission’s integrity and credibility, and the legitimacy of the law itself as an institution. But this Article argues that the TIRC’s summary disposition procedure is an example of what Reva Seigel calls “preservation-through-transformation”²⁵³ by which the institution of law reifies its own power by allowing for incremental change. This result frustrates the goals of the TIRC as an informal justice practice by crystalizing an incomplete version of the “truth” about police torture in Chicago. Without more, without an accompanying culture shift,²⁵⁴ only incremental change and even

249. ILL. ADMIN. CODE tit. 20, § 2000.10.

250. See Claim of Terrell Drew, TIRC No. 2011-040-T, at 2 (May 20, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Drew%20Terrell.pdf>.

251. Claim of Raymond Washington, TIRC No. 2011.003-W, at 1 (June 21, 2012), <http://www2.illinois.gov/itrc/Documents/Raymond%20Washington%20Claim%20Disposition.PDF>.

This approach is inconsistent with relevant Illinois case law, which provides that “a defendant’s assertion that he did not confess does not preclude the alternative argument that any confession should be suppressed.” *People v. Wrice*, 962 N.E.2d 934, 946 (Ill. 2012) (citing *Ashcraft v. Tennessee*, 322 U.S. 143, 152 n.7 (1944); *People v. Manning*, 695 N.E.2d 423, 428 (Ill. 1998); *People v. Norfleet*, 194 N.E.2d 220, 221–22 (Ill. 1963)).

252. See *supra* note 137 and accompanying text; see also WOOLFORD & RATNER, *supra* note 22, at 14 (defining a “social justice orientation” as “a view that informal justice should serve to meet the needs and improve the lives of community members”).

253. Reva B. Seigel, “The Rule of Love”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2119 (1996); see also Reva B. Seigel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1113 (1997).

254. Thomas B. Stoddard proposed a useful method for understanding and assessing the TIRC, one that complements the informal-formal justice complex model. Stoddard identified two levels at which social change advocates confront the power of law and the legal system. Thomas B. Stoddard, *Bleeding Heart: Reflections on Using the Law to Make Social Change*, 72 N.Y.U. L. REV. 967, 972–73 (1997). The first is through “rule-shifting.” Rule-shifting involves lawyers advocating for a more equal distribution of rights, typically through the litigation of individual cases. The nature of litigation means that the performance of rule-shifting work is a hierarchical, lawyer-dominated process in which clients are merely bystanders. Stoddard calls the second level, “culture-shifting.” In a culture-shifting process, subordinated communities themselves take the lead in broad-based social change movements. When lawyers play a role in culture-shifting, it

retrenchment will result.

IV. ALTERNATIVES TO SUMMARY DISPOSITION

For claimants whose victimization matches the official police torture narrative, summary disposition is probably the most efficient way to obtain relief. But petitioners with discordant experiences of police torture are likely to have their claims summarily dismissed. The TIRC's use of strict credibility standards excludes certain, non-conforming voices in its socio-legal construction of the truth. To address these shortcomings, this Part presents two alternatives to the TIRC's summary dispositions: (1) the use of the TIRC's evidentiary hearing powers and (2) the proliferation of informal justice counterpublics.

A. The TIRC's Evidentiary Hearing Powers

Summary disposition is not the only means available to the TIRC to adjudicate claims. If neither summary dismissal nor summary referral is pursued, the Director has statutory authority to initiate a formal inquiry.²⁵⁵ The purpose of a formal inquiry is to “determine if a claim of torture is credible and merits judicial review for appropriate relief.”²⁵⁶ Under these terms, the credibility of a claim is still an issue, but the standards for making a credibility determination are not limited to the four-element test. Instead, the Commission is empowered to employ a variety of different investigative functions—including serving subpoenas, issuing written interrogatories, conducting physical and/or psychological examinations of the claimants, hiring experts, and conducting on-site visits to detention centers or other locations—in its search for the truth behind a claim of torture.²⁵⁷ After a formal inquiry is completed, the Director is responsible for producing a written report and for providing a final disposition recommendation to the Commission.²⁵⁸

At the close of the formal inquiry, the Commission members may

should be as co-equal collaborators with members of the lead community. *See also* ALFREDO MIRANDÉ, *RASCUACHE LAWYER: TOWARD A THEORY OF ORDINARY LITIGATION* 239 (2011) (suggesting an evolution in the legal profession, namely that lawyers recognize and value the expertise of the client). Whereas rule-shifting addresses making the processes of the law more fair, culture-shifting challenges the assumptions of justice and equality for all that prop up the meta-narrative of the law. The Commission and the counterpublics that exist alongside it are examples of rule-shifting and culture-shifting.

255. ILL. ADMIN. CODE tit. 20, § 3500.375 (2013).

256. *Id.* § 2000.30.

257. *Id.* §§ 3500.375(a)(1)–(8).

258. *Id.* § 3500.375(i).

elect to hold an evidentiary hearing²⁵⁹ during which the Director presents a summary of his report and a recommendation.²⁶⁰ The Commission may require the presence of witnesses and the production of evidence at an evidentiary hearing through its subpoena powers.²⁶¹ Evidentiary hearings are open to the public and are recorded by audio and transcribed.²⁶² The votes of individual Commission members during the proceedings are also recorded.²⁶³

At first blush, an evidentiary hearing under the TIRC Act would seem to operate under procedural rules similar to those applicable in criminal or civil courtrooms. There are, however, at least two significant differences between the formal justice of the courtroom and informal justice of the TIRC's formal inquiry. First, the TIRC accords special considerations for crime victims,²⁶⁴ including the right to participate in formal inquiry proceedings.²⁶⁵ When a case is submitted to the formal inquiry process, the TIRC Act requires the Director to provide written notification to the crime victim or the victim's surviving parent, spouse, child, or sibling.²⁶⁶ The victim is entitled to participate in the Commission's inquiry process by attending proceedings²⁶⁷ or by providing written submissions to the Director during the pendency of

259. *Id.* § 3500.380(a); *see also id.* § 3500.375(i).

260. *Id.* §§ 3500.380(a)(1)–(2).

261. *Id.* § 3500.380(a)(4); *see also id.* § 2000.40 (describing the subpoena process).

262. *Id.* § 3500.380(c) (subject to the provisions of the Open Meetings Act).

263. *Id.*

264. *Id.* § 2000.10 (defining “victim” as “the victim of the crime of which the person claiming torture has been convicted, including, if that person is deceased, the next of kin of that person, which shall be the parent, spouse, child, or sibling of the deceased”); *see also* 775 ILL. COMP. STAT. 40/5(5) (2013) (defining “victim” in the same manner).

265. ILL. ADMIN. CODE tit. 20, § 3500.390(a). The victim has a right to present written correspondence to the Director throughout the inquiry. *See also* ILL. COMP. STAT. 40/40(c) (declaring that the victim “has the right to present his or her views and concerns throughout the Commission’s investigation”). This provision, which allows crime victims the right to participate in TIRC proceedings, was at the center of a controversy that ultimately led to the resignation of David Thomas, the TIRC’s first executive director. *See, e.g.,* Editorial, *Slow walk to Burge justice appears to be getting slower*, CHI. SUN-TIMES, Sept. 13, 2013, <http://www.suntimes.com/opinions/22545421-474/slow-walk-to-burge-justice-appears-to-be-getting-slower.html> [hereinafter Editorial]; Frank Main, *Head of panel investigating police torture quits under fire*, CHI. SUN-TIMES, Sept. 25, 2013, <http://www.suntimes.com/22793775-418/head-of-panel-investigating-police-torture-claims-quits-under-fire.html>; G. Flint Taylor, *Unholy Alliance Seeks to Dismantle Illinois Torture Commission*, HUFFINGTON POST (Oct. 16, 2013, 1:16PM), http://www.huffingtonpost.com/g-flint-taylor/unholy-alliance-seeks-to-_b_4103757.html; *see also* TIRC September 2013 Meeting Minutes, *supra* note 118, at 4–5.

266. 775 ILL. COMP. STAT. 40/5(5); ILL. ADMIN. CODE tit. 20, § 2000.10.

267. ILL. ADMIN. CODE tit. 20, § 3500.390(b). The victim may be permitted to attend proceedings that are otherwise closed to the public, but must provide written notification to the Director at least ten days in advance of the proceedings. *Id.*

the formal inquiry.²⁶⁸ The victim may also be invited to testify at the proceedings.²⁶⁹ In doing so, the TIRC has adopted an inclusive approach to informal justice, one in which multiple stakeholders are called to participate.²⁷⁰

Second, while the TIRC's rules require consideration of "all the relevant evidence,"²⁷¹ they do not include a corresponding limitation excluding relevant evidence that might be prejudicial. In fact, there are no rules that appear to limit the scope of proper inquiry. As compared to a criminal trial whose ultimate verdict is based solely on the evidence admissible in court, the Commissioners are entitled to consider a wide scope of relevant information during the formal inquiry process. Formal inquiries and evidentiary hearings open the door to a less streamlined and more complicated version of claims of police torture, one that includes even the perspectives of the victims of the petitioner's crime.

Because the TIRC's formal inquiry takes an inclusive approach, the formal inquiry—unlike the summary disposition mechanism—empowers the TIRC to challenge the dominant narrative of police torture embodied by the OPS and SSA official reports. Indeed, the TIRC's difficulty in making credibility determinations in close cases illustrates the need for the evidentiary hearing process. Unfortunately, the potential to reach this transformative goal has not yet been achieved due to the Commission's exclusive use of summary disposition.

Previous cases considered by the TIRC demonstrate the potential value of evidentiary hearings. During its May 15, 2013 meeting, the Commission considered ten claims including the cases of Harvey Allen²⁷² and William Atkins.²⁷³ Ultimately, the Commissioners

268. *Id.* § 3500.390(a) (citing 775 ILL. COMP. STAT. 40/40(e)).

269. *Id.* § 3500.390(c).

270. It is true, however, that Stan Willis, the author of the TIRC Act, has stated that he "included family notification as a courtesy, but said family members would rarely have relevant testimony about torture claims. They don't know what happened inside police stations, where torture allegedly took place." Editorial, *supra* note 265.

271. ILL. ADMIN. CODE tit. 20, § 3500.380(d).

272. Claim of Harvey Allen, TIRC No. 2011.017-A, at 3 (May 15, 2013), <http://www2.illinois.gov/itrc/Documents/Case%20Disposition%20Harvey%20Allen.pdf>. Allen was sentenced to life in prison on multiple murder convictions and to seven years on a related arson conviction. *Id.* at 2. Allen's TIRC claim alleges that he was interrogated by police detectives at Areas One and Three for approximately forty-five hours. *Id.* at 1. During this time he was punched and kneed in the groin, and had a sharp object pressed against his throat. *Id.* Allen eventually provided a confession. *Id.* The State's case relied almost solely on Allen's confession. *Id.* at 2.

273. Claim of William Atkins, TIRC No. 2011.011-A, at 2 (May 15, 2013), <https://www2.illinois.gov/itrc/Documents/Case%20Disposition%20William%20Atkins.pdf>. Atkins is currently serving a life sentence at Menard Correctional Facility. *Id.* at 4 ex.A.

unanimously voted to refer the Allen case and—in a split decision—not to refer the Atkins case.²⁷⁴ In the Allen case, the Director had originally recommended summary dismissal, observing that although Allen had consistently claimed to have been tortured during his December 1985 interrogation, Allen had not presented any corroborating evidence to support his claim.²⁷⁵ Furthermore, during the hearing on Allen's motion to suppress statements, his lawyer did not ask any questions regarding the torture allegations.²⁷⁶ Because it is the petitioner's burden to prove credibility under the TIRC rules, the Director argued, Allen's claim had not met the requisite preponderance of the evidence standard.²⁷⁷ After discussion, however, the Commissioners voted unanimously to find the claim credible and to refer the case to Circuit Court.²⁷⁸

By contrast, the Commissioners heard the Director's recommendation to summarily dismiss Atkins's case, then discussed but postponed their vote until the close of the meeting.²⁷⁹ As in the Allen case, Atkins had consistently claimed to have been tortured during his interrogation in 2003.²⁸⁰ The description of his torture—being taunted by racial slurs and choked with a tie so that he broke his false teeth and lost consciousness—was the same in Atkins's original motion to suppress.²⁸¹ Atkins had testified to the same during his original motion to suppress hearing.²⁸² The Director observed, however, that Atkins had not submitted any corroborating evidence to support his claim and therefore had not met his burden of proving credibility by a preponderance of the evidence.²⁸³ Specifically, Atkins could provide no contemporaneous medical records indicating broken or damaged teeth.²⁸⁴ The Commissioners returned to the Atkins case after reviewing all other claims on the agenda, and finally voted seven-to-one

274. ILL. TORTURE INQUIRY & RELIEF COMM'N, MEETING MINUTES 6 (May 15, 2013) [hereinafter TIRC May 2013 Meeting Minutes], available at <http://www2.illinois.gov/itrc/Documents/Meeting%20Minutes%20May%202015,%202013.pdf>.

275. *Id.* at 5.

276. *Claim of Harvey Allen*, TIRC No. 2011.017-A, at 1–2.

277. TIRC May 2013 Meeting Minutes, *supra* note 274, at 5.

278. *See id.* The meeting minutes provide, in part: “A short discussion ensued whether Mr. Allen's trial attorney made a strategic decision not to pursue the Motion to Suppress but instead focused on the lack of probable cause for arrest.” *Id.*

279. *Id.* at 6.

280. Claim of William Atkins, TIRC No. 2011.011-A, at 1 (May 15, 2013), <https://www2.illinois.gov/itrc/Documents/Case%20Disposition%20William%20Atkins.pdf>.

281. *Id.*; TIRC May 2013 Meeting Minutes, *supra* note 274, at 6.

282. *Claim of William Atkins*, TIRC No. 2011.011-A, at 1.

283. TIRC May 2013 Meeting Minutes, *supra* note 274, at 6.

284. *Id.*; *see also Claim of William Atkins*, TIRC No. 2011.011-A, at 2.

to find the claim not credible.²⁸⁵

In each of these disputed cases, the Commission could have requested an evidentiary hearing to resolve stated doubts or to obtain additional evidence.²⁸⁶ An evidentiary hearing might have been particularly helpful, as the petitioners themselves could have been called to testify to aid the Commission in making its credibility determination.²⁸⁷ Judges and fact finders surely are not infallible when it comes to determining witness credibility, but public testimony is an established method by which the formal justice system adjudicates legal disputes.²⁸⁸

The benefits of evidentiary hearings at the TIRC that were just described likely outweigh any burdens. Certainly, some disadvantages accompany the use of evidentiary hearings under the TIRC's formal inquiry process. Most of these are detrimental, if at all, to the State. As the TIRC was formed in express recognition of the abuses performed by the State and its agents against the petitioners,²⁸⁹ the potential downsides should not prevent the Commission from fulfilling its purpose. And because the TIRC acts as a clearinghouse for claims of torture, sending claims that merit judicial review on to the Circuit Court for further action, the State would have additional opportunities to represent its interests in future adversarial proceedings.

A foremost consideration is the potential bias that the Commission may have in favor of a petitioner if he or she personally appears to present testimony regarding police torture. Live testimony from a petitioner claiming police torture could influence the Commission's deliberations. Witnesses appearing before the Commission may be questioned by individual members, but do not face the rigors of cross-examination performed by a State's Attorney at trial. In this setting, Commissioners may be predisposed to ruling in favor of sympathetic petitioners.²⁹⁰ This is a valid concern, but the possible sympathy or bias

285. TIRC May 2013 Meeting Minutes, *supra* note 274, at 6 (Commissioner Leonard Cavise, dissenting).

286. In fact, Chair Starks raised this possibility during the May 2013 meeting, when she "inquired whether the Commission would like to interview the trial attorney." *Id.* at 5.

287. See, e.g., Gregory L. Ogden, *The Role of Demeanor Evidence in Determining Credibility of Witnesses in Factfinding: The Views of ALJs*, 20 J. NAT'L ASS'N ADMIN. L. JUDGES 1, 3 (2000) (discussing the value of evidentiary hearings for the purpose of making credibility determinations).

288. See, e.g., Mark Spottswood, *Live Hearings and Paper Trials*, 38 FLA. ST. U. L. REV. 827, 829–30 (2011); James P. Timony, *Demeanor Credibility*, 49 CATH. U. L. REV. 903, 903–05 (2000); Olin Guy Welborn III, *Demeanor*, 76 CORNELL L. REV. 1075, 1091–95 (1991).

289. See *TIRC History*, *supra* note 111.

290. Indeed, many of the victims' family members who spoke during the TIRC's September

in favor of the petitioner is counterweighed by the opportunity provided to the crime victim or the victim's surviving family to present statements. Unlike criminal trials, the TIRC process affords the crime victims the right to participate in proceedings.²⁹¹

An additional concern regarding the costs of evidentiary hearings is related to efficiency. In the three years that the TIRC has been active, it has so far adjudicated twenty-five cases out of an estimated 170 claims filed.²⁹² The output rate indicates that the summary disposition process is costly both in terms of time and money. Evidentiary hearings before the TIRC would siphon additional resources away from an already limited pool.

The disadvantages related to the use of evidentiary hearings, however, are outweighed by the potential benefits. If the goal of the TIRC is to accomplish justice in the form of judicial review of criminal cases tainted by credible claims of police torture,²⁹³ then the balance of the costs and benefits should be weighted more heavily in favor of petitioners. The TIRC processes represent a thorough consideration of the petitioner's claim that he or she was tortured by the police, and a finding that a claim is not credible is the petitioner's last chance to prove that his or her criminal conviction was the result of torture.

B. Police Accountability Counterpublics

As the preceding Parts have demonstrated, although the TIRC could

25, 2013 meeting perceived a bias in favor of the petitioners. *See* TIRC September 2013 Meeting Minutes, *supra* note 118, at 5–9. For example, Joe Heinrich, brother of Jo Ellen and Dean Pueschel, murdered by Jerry Mahaffey said,

This commission has investigated and referred 17 cases to court. He stated that he reviewed all the posted minutes and not one commissioner asks about the victims. . . . Before being appointed to this commission many commissioners were already involved in Burge-related issues and were already decided that any person interrogated by him or under him should go free.

Id. at 6–7.

291. In all likelihood, the provision allowing crime victims and their family members to participate in the TIRC's proceedings will be utilized frequently in future cases. *See id.* at 5–9; *see also supra* text accompanying note 270.

292. *See* TIRC November 2013 Meeting Minutes, *supra* note 238.

293. As TIRC Chair Cheryl Starks noted during the Commission's September 2013 meeting:

[T]he commission does not determine guilt or innocence[;] the commission's job is not simply to set anyone free. The commission is tasked with the specific purpose of determining whether a person was coerced . . . into giving a confession. If the commission finds that there is credible evidence based [upon] our investigations we will then refer the case to the circuit court. The circuit court will take a look at the case and it will determine whether or not this case deserves to get a trial. . . . The commission's purpose is to protect the integrity of the legal system.

TIRC September 2013 Meeting Minutes, *supra* note 118, at 5.

be labeled a type of “informal justice,” it remains steeped in the conventions of formal justice. Also, like other informal justice mechanisms, the TIRC is vulnerable to the charge that it—regardless of the innovative means it uses to obtain relief for the petitioners that come before it—ultimately achieves the ends that the State intends.²⁹⁴ Specifically, the TIRC aggrandizes State power by promoting the official, “bad apples” myth of police torture. The rules and practice of the TIRC have greatly limited its potential to be an institution of transformative justice by restricting petitioners’ opportunities to present experiences with police torture that run counter to the dominant narrative.²⁹⁵ These observations do not discount the substantial benefits afforded to claimants who have obtained relief from the Commission; for the fourteen incarcerated men whose convictions will now be reviewed, the TIRC has accomplished a feat that formal justice had previously denied them. Recognizing the deficiencies of the TIRC as it exists in the informal-formal justice complex simply means that the TIRC is not all that is necessary by way of public response to police torture in Chicago.

Beyond the courtroom and the TIRC lies at least a third option, what Woolford and Ratner term an “informal justice counterpublic.”²⁹⁶ Mindful of the unrelenting threat posed by the State on the independence of informal justice mechanisms, the remainder of this Part proposes that counterpublics serve as a check on this cooptation process. A counterpublic is a “parallel discursive arena[] where members of subordinated social groups invent and circulate counterdiscourses . . . to formulate oppositional interpretations of their identities, interests, and needs.”²⁹⁷ An informal justice counterpublic, then, is a discursive space that sits apart from both conventional, formal methods of conflict resolution as well as their informal justice alternatives. In other words, counterpublics are “arenas for the expression and mobilisation of social and legal criticism [to] create momentum toward a truly transformative justice.”²⁹⁸ In recognition of

294. See WOOLFORD & RATNER, *supra* note 22, at 117 (“In so doing, it enables the maintenance and reproduction of a juridical field that privileges the interventions of legal professionals and extends the reach of neoliberal governmentality by enlisting informal empowerment to the task of individual responsabilisation.”).

295. See *id.* at 121 (“Rather than sparking a continuous critical struggle that deeply probes the causes and sources of social injustice, informal justice empowerment tends to encourage subjects who forswear and/or minimise conflict.”).

296. *Id.* at 123–31.

297. Nancy Fraser, *Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy*, 25/26 SOC. TEXT 56, 67 (1990) (using the term “subaltern counterpublics”).

298. WOOLFORD & RATNER, *supra* note 22, at tit. page.

the fact that informal justice mechanisms are inexorably looped back into a subservient relationship with the State, informal justice counterpublics are deliberately and strategically constructed for the purpose of mounting a constant, external challenge to the justice system as a whole. Operationally, this might mean that a given counterpublic “oscillate[s] between engagement in and withdrawal from the informal-formal justice complex.”²⁹⁹

The “comfort women” from Korea, China, the Philippines, and elsewhere in Asia³⁰⁰ who were used as sex slaves by the Japanese military during World War II and the Mothers (and Grandmothers) of the Plaza de Mayo in Argentina whose children were disappeared by the military junta have been cited as examples of contemporary counterpublics.³⁰¹ Both groups have engaged in protests demanding that their respective states publicly acknowledge their crimes. Japan, for instance, was willing to provide an unofficial apology to the women and also arranged for reparations payments collected from private sources.³⁰² The surviving comfort women rejected these offers, however, because acceptance would have allowed the Japanese government to avoid accepting responsibility for its wartime human rights abuses.³⁰³

In recent years, the Mothers of the Plaza de Mayo (“the Mothers”) group has broadened the scope of its advocacy. The Mothers still meet every week to commemorate their loved ones who were disappeared during Argentina’s Dirty Wars,³⁰⁴ but have also rallied to support broader social causes. In 2003, for example, the Mothers protested the austerity programs imposed by the International Monetary Fund and World Bank, urging the government to stop making external debt

299. *Id.* at 123.

300. See TOSHIYUKI TANAKA, JAPAN’S COMFORT WOMEN: SEXUAL SLAVERY AND PROSTITUTION DURING WORLD WAR II AND THE US OCCUPATION 64–65 (2002) (noting that the Japanese army also exploited Dutch women of European and Indo-European descent).

301. *Id.* at 128; see also Gregory Malandrucchio, *Mothers of Chicago Police Torture Victims Demand the Return of Their Disappeared Sons*, USCOP.COM (May 12, 2013), <http://www.uscop.org/mothers-of-chicago-police-torture-victims-demand-the-return-of-their-disappeared-sons/> (comparing the mothers of Chicago police torture victims to the Mothers of the May Plaza).

302. Kazuko Watanabe, *Trafficking in Women’s Bodies, Then and Now: The Issue of Military “Comfort Women,”* 27 WOMEN’S STUD. Q. 19, 21 (1999).

303. See Colin Joyce, *Japanese PM denies wartime ‘comfort women’ were forced*, TELEGRAPH, Mar. 3, 2007, <http://www.telegraph.co.uk/news/worldnews/1544471/Japanese-PM-denies-wartime-comfort-women-were-forced.html>.

304. See Alexei Barrionuevo, *Argentine Church Faces “Dirty War” Past*, N.Y. TIMES, Sept. 17, 2007, http://www.nytimes.com/2007/09/17/world/americas/17church.html?_r=0.

payments.³⁰⁵ The continued resistance to State authority performed by the Mothers fulfills the role of informal justice counterpublics by rebuking the tendency of the State to dominate formal justice systems and to co-opt informal justice practices.

In this light, we can now consider counterpublics that have emerged in opposition to the dominant narrative about police torture in Chicago. It is important to recall that the TIRC is just one in a greater collection of community-based initiatives to aid torture victims and their communities, to ensure greater police accountability, and to provide for more citizen participation in these processes. Counterpublics throughout Chicago also serve as public reminders that police torture is not merely a thing of the past, and challenge the legitimacy of a racist, abusive police force.

Some community initiatives are, like the TIRC, focused on reform of the criminal justice system from a legal perspective. Without a doubt, this is due, in large part, to the longtime leadership of lawyers like Standish Willis,³⁰⁶ Lawrence Kennon,³⁰⁷ G. Flint Taylor,³⁰⁸ Joey Mogul,³⁰⁹ and others. For example, in January 2012, the Illinois Coalition Against Torture led efforts to persuade the City Council to pass a “Torture Free” Chicago Resolution.³¹⁰ Currently, the Chicago Alliance Against Racist and Political Repression (“CAARPR”) is engaged in a campaign for a Civilian Police Accountability Council.³¹¹ The Council would replace the IPRA³¹² with sixty community members

305. See Elizabeth Borland, *The Mature Resistance of Argentina’s Madres de la Plaza de Mayo*, in *LATIN AMERICAN SOCIAL MOVEMENTS: GLOBALIZATION, DEMOCRATIZATION, AND TRANSNATIONAL NETWORKS* 115, 115–16, 123–25 (Hank Johnston & Paul D. Almeida eds. 2006) (discussing protests by the Mothers of the Plaza de Mayo regarding neoliberalism).

306. See *Stan Willis: A Biography*, *supra* note 111 and accompanying text.

307. See *Lawrence E. Kennon*, POWER & DIXON, P.C., http://www.poweranddixon.com/lk_bio.php (last visited Mar. 31, 2014).

308. See *Flint Taylor*, PEOPLE’S L. OFF., <http://peopleslawoffice.com/about-civil-rights-lawyers/attorney-staff-bios/flint-taylor/> (last visited Feb. 15, 2014).

309. See *Joey L. Mogul*, PEOPLE’S L. OFF., <http://peopleslawoffice.com/about-civil-rights-lawyers/attorney-staff-bios/joey-l-mogul/> (last visited Feb. 15, 2014).

310. “*Torture Free*” *Chicago Resolution*, ILL. COALITION AGAINST TORTURE, <http://illinois.cat.wordpress.com/torture-free-chicago-resolution/> (last visited Feb. 15, 2014).

311. *Proposal: Model Legislation for a Police Control Council*, CHI. ALLIANCE AGAINST RACIST AND POL. REPRESSION, <http://stoppolicecrimes.com/> (last visited Apr. 10, 2014) [hereinafter *Model PCC Bill*].

312. OPS, IPRA’s predecessor, was a department under the aegis of the CPD. IPRA replaced OPS in 2007. IPRA is a city agency independent of CPD and completely staffed by civilians. *About IPRA*, *supra* note 39; see also *supra* Part II.B (discussing IPRA’s quarterly and annual reports). In July 2012, IPRA’s second quarterly report revealed that it had sustained 1% of the claims within its jurisdiction. INDEP. POLICE REVIEW AUTH., QUARTERLY REPORT: APRIL 1, 2012–JUNE 30, 2012 (July 16, 2012), available at <http://www.iprachicago.org/2012-07-15Quarterly%20Report%20Abstracts%20REVISED%20LM.pdf>. Based on these numbers,

elected at large and as representatives from each of the sixteen wards.³¹³ Calling attention to racism and racial discrimination in policing is central to the proposed Council's work, and the draft legislation pays special and particular attention to structural causes of discrimination on the basis of race, class, and geography. An early version of the CAARPR's draft legislation explicitly provided that the Council would have the power and duty to: "[i]nvestigate the extent to which present police employment, structure, budget, and rules and regulations promote systematic discrimination on the basis of: (1) Race[;] (2) Economic Status[; and] (3) Geographic Location."³¹⁴ Therefore, the Council would be responsible for both redressing past instances of police abuse and looking forward to create solutions that address the structural causes of police brutality.

Other counterpublics are devoted to providing direct services for torture victims. During its TIRC lobbying campaign, BPAPT also drafted the "Chicago Reparations Ordinance for Burge Torture Victims and Their Families."³¹⁵ The ordinance would have created a community center designed to provide a supportive environment for the torture victims and their families to work together on repairing their lives as they prepare to reenter the larger community.³¹⁶ Through this proposed ordinance, BPAPT sought a legal-statutory means to provide social services. In tandem with the extraordinary relief provided by the TIRC, the reparations ordinance recognized that obtaining freedom from incarceration would not be the only remedy that a police torture victim might need. Upon release, a person who had been separated from his or her family, friends, and community for an extended period of time would likely need assistance during the transition from prison to civilian living.³¹⁷

critics of IPRA have alleged that it has failed to make a net positive impact on the problem of police accountability. *See, e.g.,* Hoft, *supra* note 73.

313. Model PCC Bill, *supra* note 311, at pt.III.

314. *Id.* at pt.II.A.

315. NAT'L CONF. BLACK LAW., *supra* note 108.

316. *Id.*

317. In October 2013, two members of the Chicago City Council proposed an ordinance that would create a police torture reparations commission. Hal Dardick & John Byrne, *Alderman call for Burge reparations*, CHI. TRIB., Oct. 17, 2013, http://articles.chicagotribune.com/2013-10-17/news/ct-met-chicago-city-council-1017-20131017_1_burge-victims-police-torture-torture-victims. Besides providing compensation for the torture victims who are barred from seeking redress in the courts on statute of limitations grounds, the \$20 million proposal would also set up a counseling, health care, and job training center; allow victims and their family members to attend City of Chicago colleges tuition-free; establish a public school curriculum addressing Chicago's history of police torture; and create a public memorial. Press Release, People's Law Office (Oct. 16, 2013), *available at* <http://peopleslawoffice.com/wp-content/uploads/2013/10/>

This Part closes with discussion of two additional anti-police torture and police accountability counterpublics—the Survivors’ Roundtable and the People’s Hearings on Police Crimes. By providing an unmediated voice to those impacted by police violence, these discursive spaces directly confront the shortcomings previously identified regarding the TIRC. Whereas the TIRC promotes a neat, circumscribed narrative regarding police torture, these counterpublics upset any easy understanding about the impact of police torture on the lives of its victims and on the lived experience of their communities. Men and women of all races who have recounted in these spaces their recent encounters with police excesses present effective challenges to the dominant narrative, which posits that police torture against African-American men has been eliminated. The testimonies presented here add to the public record of police torture in ways that problematize the simple narrative of victimization that emanates from the dominant narrative of police torture. Furthermore, as their names imply, these counterpublics were created to be informal justice spaces, organized and managed by the public as represented by: individual victims, their mothers, and their children; church groups; artists; and other community members.

The Survivors Roundtable was facilitated by the Chicago Torture Justice Memorial (“CTJM”) Project.³¹⁸ CTJM’s primary goal is to establish a permanent public memorial dedicated to police torture victims, but on October 29, 2011, the organization gathered four survivors of police torture—Anthony Holmes, Darrell Cannon, Mark Clements, and David Bates—and invited them to speak out about their torture, their time in prison, and their lives after prison.³¹⁹ Their remarks, unmediated by court rules or formal credibility determinations, offered a necessary counterweight to the dominant narrative of police torture. Besides gruesome descriptions of the torture implements used against them, these men also shared what torture felt like, physically and mentally, both in the moment and in the many moments of

10.16.13-PressRelease.Reparations.pdf. The ordinance also calls for a formal apology to torture victims and their families. *Id.*; see also *Ordinance Seeks Reparations for Police Torture Survivors*, CHI. TORTURE JUST. MEMORIALS, <http://chicagotorture.org/articles/ordinance-seeks-reparations-chicago-police-torture-survivors/> (last visited Feb. 15, 2014) (providing the text of the proposed ordinance).

318. CHI. TORTURE JUST. MEMORIALS, <http://chicagotorture.org/> (last visited Feb. 15, 2014).

319. Can TV, *Torture Survivors - A Roundtable*, YOUTUBE (Dec. 14, 2011), <http://www.youtube.com/watch?v=e58Cb119KCA>; see also *Torture Survivors: A Roundtable*, CHI. TORTURE JUST. MEMORIALS (Oct. 29, 2011), <http://chicagotorture.org/events/torture-survivors-roundtable/>.

remembering since then.³²⁰ David Bates reflected:

[O]ne of the things that's not discussed is the mindset of the individuals who were torturing the African American men. The look on their face[s]. You hear about being choked, about the shotgun, you hear about all these things. But you never hear about the facial expressions of these men as they did what they did. So I had a plastic bag placed over my head and passed out. I had a chance to look directly into the eye of the person who was torturing me. And if he wasn't having an orgasm; if he wasn't reaching a climax. We just got to talk. I'm an adult; I can go back and relive it like it's yesterday. I didn't know what sadism was back then. I didn't know about none of those terms. I didn't know any of that. But as I become an adult, I go back and relive it daily. I understood that there was plenty of satisfaction They got plenty of satisfaction out of torturing us; sexually, spiritually, psychologically. It was there. And they loved to see us cry, hurt, pain, all that.³²¹

Bates then said something that any lawyer would have counseled her client not to repeat in court: "When they did what they did, they changed me. Honestly, they made me a man."³²² This statement is jarring because it does not cohere with the public's expectations of what a torture victim should say. Becoming a man is typically associated with some rite of passage, a proud moment. Indeed, Bates sounds oddly gratified when he says this.

Besides propagating the "bad apples" myth of police torture, the dominant narrative is also harmful in the way it assigns stock character roles. The dominant narrative positions petitioners as victims of police torture. Indeed, "victim" is the terminology that has been used throughout this Article to refer to those men and women who endured physical, mental, and emotion coercion at the hands of the police. The Survivor's Roundtable and other counterpublic venues change the dynamic of the story from a narrative of victimhood to a narrative of victimization.³²³ By allowing the survivors to speak for themselves in a

320. *Testimonies*, CHI. TORTURE JUST. MEMORIALS, <http://chicagotorture.org/history/#testimonies> (last visited Feb. 15, 2014); see also PROJECT NIA, HISTORICAL MOMENTS OF POLICING, VIOLENCE, AND RESISTANCE 7–10 (2013), available at http://chicagotorture.org/files/2013/04/04/Project_NIA_Pamphlet__Historical_Moments_of_Policing_Violence_and_Resistance.pdf.

321. David Bates, *Torture Survivors - A Roundtable*, CHI. CAN TV 27:11, <http://cantvchicago.mirocommunity.org/video/15516/torture-survivors-a-roundtable> (last visited Feb. 15, 2014) [hereinafter CAN TV Video].

322. *Id.* at 28:31.

323. See Simon, *supra* note 180, at 132. Simon problematizes the personal narrative format used by TRC Canada, concerned that non-Aboriginal spectators of the listening events might reduce the individual speaker to the mere subject of State violence, lacking any agency.

minimally mediated format, the speakers are transformed from victims or mere subjects of police torture into autonomous agents. Survivors of police torture are more than what was done to them. In this arena, a more complex and complicated version of the truth begins to form. Survivors of torture can announce that, for example, they were not “angels.”³²⁴ The men who were electrocuted by police are no longer relegated to objects whose sole purpose is to serve as a receptacle of our pity. That David Bates declared that he “became a man” when he was tortured does not also mean that the criminality of the police actions (placing a bag over his head and beating him to confess) can be justified.

Reframing the narrative from victimhood to victimization also introduces the opportunity to confront the systemic, structural deficiencies of the criminal justice system. Police torture does not thrive unless there is a culture of acquiescence and impunity; on this point the OPS and SSA reports agree. But whereas the official narrative promotes the fanciful notion that police violence has been curbed, those who participated in the series of People’s Hearings on Police Crimes have a different story to tell.

Anti-police-torture counterpublics in Chicago have created spaces for others, indirectly impacted by police torture and other unlawful police violence, in recognition that the harms of police torture have ripple effects throughout the community. On July 21, 2012, a People’s Hearing on Police Crimes was held in Englewood on the city’s south side, drawing over 100 people for the purpose of hearing the testimony of individuals, families, and communities impacted by police misconduct.³²⁵ A second People’s Hearing was held on February 23, 2013 at the University of Chicago.³²⁶

According to Simon, the TRC Canada “has the potential to deny a person a subjectivity that is self-constituting.” *Id.* at 131.

324. See CAN TV Video, *supra* note 321 (“I have never confessed to be a[n] angel in my life.”).

325. *Peoples Hearing on Police Crimes and Police Brutality: Testimony on Police Shootings, Excessive Force and Other Misconduct*, PEOPLE’S L. OFF. <http://peopleslawoffice.com/peoples-hearing-police-crimes-police-brutality-shooting-chicago/> (last visited Feb. 15, 2014) [hereinafter PLO, People’s Hearing]; see also Mike Siviwe Elliott, *The People’s Hearing on Police Crimes! Chicago- July 21, 2012*, YOUTUBE (July 28, 2012), <https://www.youtube.com/watch?v=8YV8dsjVHpU>.

326. *Call to a Second People’s Hearing on Police Crimes*, OCCUPY CHI., <http://occupychi.org/2013/02/11/call-second-people-s-hearing-police-crimes> (last visited Feb. 15, 2014); *Second People’s Hearing on Police Crimes*, U. CHI., <http://event.uchicago.edu/maincampus/detail.php?guid=CAL402882f83cf82743013cf870206a00000010eventscaendar@u-chicago.edu> (last visited Feb. 15, 2014); see also Malandrucio, *supra* note 301 (summarizing the event).

Martinez Sutton³²⁷ recounted the shooting death of his sister Rekia Boyd by off-duty CPD Detective Dante Servin.³²⁸ Servin was off-duty when he approached a small group of people exiting a store, and chided them for making too much noise. Servin claimed self-defense, stating that he saw a member of the group carrying a gun, and fired his unregistered handgun at the group in response, striking Boyd in the back of her head.³²⁹ The gun that Servin claimed to see was actually a black cellular phone.³³⁰ Sutton was just one among a large group who described their own or their family member's experiences with police brutality.

The witnesses at the People's Hearing drew connections between police torture, other forms of unlawful police violence, and the general culture of impunity. Representatives from various social movements such as Occupy Chicago, the National Jericho Movement, and the Arab American Action Network spoke in solidarity with the victims of police violence.³³¹ The speakers highlighted the interlocking systems of oppression that support police violence in Chicago, white supremacy, and the repression of social movements. Others drew comparisons between the Federal Bureau of Investigation's targeting of Arab Americans and Muslim Americans to the racial profiling practices of local police.³³² Counterpublics also serve the goal of culture-shifting through sustained community actions involving broad-based coalitions of black and brown communities, churches, and gay rights groups.

As the comfort women and the Mothers do by refusing reparations short of comprehensive recognition of and redress for state crimes, torture survivors are transforming traumatic moments into culture-shifting movements by participating in the Roundtable and the People's Hearing. It is true that the work performed in these spaces is unable to provide state-sponsored redress or other remedies, but this is actually beside the point. These counterpublics reject the power of the State, preferring instead to cultivate independent spaces for deliberation and community building separate and apart from the State. The existence of these counterpublics ensures that alternative accounts of the police

327. Mike Siviwe Elliott, *Rekia Boyd's Brother at the 2nd People's Hearing on Police Crimes*, YOUTUBE (Dec. 9, 2013), http://www.youtube.com/watch?v=D_PuPOyLAM0.

328. See, e.g., Michael Lansu, *Off-duty Chicago cop charged in shooting that killed woman*, CHI. SUN-TIMES, Nov. 25, 2013, <http://www.suntimes.com/23987971-418/off-duty-chicago-cop-charged-in-shooting-that-killed-woman.html>.

329. *Id.*

330. *Id.* On November 25, 2013, the State's Attorney's office indicted Servin on charges of involuntary manslaughter, reckless discharge of a firearm, and reckless conduct. *Id.*

331. PLO, People's Hearing, *supra* note 325.

332. *Id.*

torture crisis are disseminated to challenge the dominant narrative told by the TIRC.

CONCLUSION

The Illinois TIRC has served as the terrain upon which this Article has mapped the informal-formal justice complex. As the model predicts, the TIRC is neither a truly informal nor a truly formal justice practice; rather, it straddles the line between two modes of conflict resolution. The TIRC is a showcase of some of the dynamic qualities of informal justice practices. By circumventing the existing legal barriers for judicial relief, the TIRC provides access to an extraordinary remedy for police torture victims. It allows those who are currently incarcerated to show that their criminal convictions are tainted by a tortured confession and offers the possibility that these tainted convictions may be subject to judicial review. In doing so, however, the TIRC also betrays a significant shortcoming of informal justice; inevitably, the relief provided by the TIRC is inextricably tied to the power of the State. Once the TIRC makes a decision about the credibility of the claim of torture, it must shuffle the case back to the state judiciary for execution of the legal remedy.

For claimants whose victimization matches the official story of police torture, summary disposition is certainly the most efficient way to obtain entry back into the formal judicial system. If the claimant's experience of police torture does not match the official narrative, however, it is most likely that his or her claim will be rejected. This Article has argued that, despite the deliberative and participatory benefits that attend informal justice practices, the TIRC should conduct more searching inquiries into claims of torture through its evidentiary hearing powers. An evidentiary hearing could allow petitioners a forum in which to present transformative counter-narratives to challenge the dominant Burge-"bad apples" myth. A more formal process may be suspect under the model of the informal-formal justice complex described above, but the value of formal processes need not be abandoned altogether. Finally, the community work that helped to establish the TIRC has also laid the groundwork for collaborative informal justice counterpublics. The Chicago Torture Justice Memorial and the Police Accountability movement, described above, are just two examples of myriad projects that a coalition of interested community groups have initiated to remind the public that police torture in Chicago is not merely a thing of the past.