Portrait of Impunity - Part I

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The special prosecutor's report on allegations that African-American suspects were tortured by former police commander Jon Burge and officers under his command, released on July 19, reaches three broad conclusions:

- Burge and other officers committed serious crimes. Although the report does not use the word "torture," deputy special state's attorney Robert Boyle did so at the press conference at which it was released.

- They cannot be prosecuted for those crimes, because the statute of limitations has run.

- The Chicago Police Department and the Cook County State's Attorney have corrected the underlying conditions that allowed Burge and his men to commit crimes with impunity. "I don't believe," Boyle said at the press conference, "this could happen again."

In a statement issued on July 21, Mayor Daley echoed the last of these conclusions. The City supported the release of the report, he said, "because the public deserves to know the full story of this shameful episode in our history." Citizens also need to know "that the city has, in the two decades since, put in place a series of safeguards aimed at preventing such abuses."

"As a Department," Police Superintendent Cline declared in a July 19 statement, "we take this matter very seriously because past perceptions can erode all the good work and progress that has been accomplished over the years."

More recently, on September 7, when four Special Operations officers accused of robbing drug dealers were indicted, Superintendent Cline and Cook County State's Attorney Devine took the occasion to press the argument that the CPD aggressively investigates allegations of misconduct. "This case happened," Cline said, "because the Chicago Police Department made it happen."

The next day Mayor Daley praised Cline and his department. "They did a thorough investigation and they uncovered it. That says a lot about the Chicago Police Department—about investigating themselves." He added, "The Chicago Police Department is doing this. No one else is doing it. They're doing it."

For the most part, the press has uncritically accepted official claims that the structural conditions that allowed Burge and his associates to operate with impunity have been corrected. Thus, for example, on the public television program "Chicago Week in

Review" on September 8, Andy Shaw of ABC 7 News observed of the Special Operations indictments:

I'm mostly surprised at the stupidity of these elite officers to actually think that you can shake down a lot of drug dealers, and because they're drug dealers you're going to do it with impunity. I can't imagine how you could think you could get away with this.

None of the veteran journalists participating in the panel discussion challenged this assessment.

Do the facts support the official narrative? Has the CPD instituted reforms that serve to prevent abuses? Do victims of police misconduct now have effective forms of recourse?

Apart from advances in technology and forensics that reduce the possibility of mistaken identity, the Mayor and Superintendent cite several major reforms. Let's consider each in turn:

Videotaping of interrogations. "The most important step" taken to protect suspects during interrogations, according to the Superintendent, is "the videotaping of interrogations so there is a record of the conduct of officers as well as those being questioned." He did not mention that videotaping is limited to murder cases. (Why doesn't the same logic apply to other serious crimes?) In any case, this is a significant advance. It was one of the recommendations of the Illinois Commission on Capital Punishment. The CPD, as well as a number of other police departments in the state, resisted the proposed reform on the grounds it would hamper law enforcement and be unduly expensive. It was enacted by the state legislature in 2003 and took effect in 2005. The CPD's history of opposing the videotaping of interrogations, which it now heralds as a key measure in combating police abuse, does not make the reform any less welcome. It does underscore that meaningful change will not be achieved without sustained pressure on the department.

Policies regarding treatment of witnesses. Among "advances to protect witnesses" cited by the Superintendent is "a new special order that outlines how witnesses are treated while discussing cases with investigators." This special order "provides clear-cut instructions to detectives on our standards on how witnesses should be treated." Again, these reforms were not initiated by the CPD but imposed on it. The special order was adopted in the context of *Ayala v. City of Chicago*, a class action suit brought against the CPD by the Mandel Clinic and MacArthur Justice Center of the University of Chicago Law School. The suit claims that witnesses have been detained and held in locked interview rooms against their will, in some instances for several days. It seeks injunctive relief against such practices. The judge was at the point of entering an injunction when the City adopted its new policy in January of this year. The case is ongoing. The plaintiffs argue that CPD practices with respect to witnesses remain constitutionally deficient.

Limit on how long suspects may be held without being charged. The Superintendent stated that the CPD adopted in 2003 a policy that requires suspects to be released within 48 hours if they are not formally charged. This policy is in fact a matter of belated,

minimal compliance with longstanding constitutional precedents. The United States Supreme Court held in *Gerstein v. Pugh* in 1975 that the Fourth Amendment requires a "prompt" judicial determination of probable cause as a prerequisite for detention. In *County of Riverside v. McLaughlin* in 1991 the Court interpreted "prompt" to mean that the outer limit a suspect could reasonably held without being brought before a judge for a determination of probable cause was 48 hours. Beyond 48 hours, the burden of proof shifts to the government to show that there was an emergency or other extraordinary circumstance to justify the protracted detention. The CPD only adopted this policy after many challenges, in both civil and criminal cases, to its detention practice. Again, while any movement, no matter how feeble, toward compliance with constitutional standards is welcome, such movement has only been achieved through repeated challenges to CPD policies and practices.

New personnel performance management system. The Mayor and Superintendent report dramatic improvements in the CPD's system for monitoring officers. According to the Superintendent, the department has "made significant advances in officer accountability with the recently announced personnel performance management system." And Mayor Daley stated: "we have put in place a new personnel performance management system to detect patterns of misconduct on the part of individual officers, so the department can intervene early, modify their behavior or separate them from the force." They are referring to the personnel suite of the CPD's state-of-the-art information-based management system I-CLEAR. As I reported in "Kicking the Pigeon," the monitoring functions of the personnel suite exist only on paper. They have not been implemented. As of February 2005, academic evaluators of I-CLEAR stated that the personnel component "remained in the conceptual stage." On April 15, 2006, the *Sun-Times* reported that Superintendent Cline had announced a new computerized system that will track various job performance measures and flag problems requiring intervention. The article noted, "No timetable has been set for launching the new system." There is no evidence that the system was implemented during the three months between the Superintendent's April 15 announcement and his July 19 statement. His phrasing is thus technically accurate: the "personnel performance management system" has been "recently announced." But what does the Mayor mean when he says the system is "in place"?

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Portrait of Impunity - Part II

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In the aftermath of the special prosecutor's report on abuses committed by Commander Burge and officers under him in the 1970's and 1980's, Mayor Daley took pains to reassure the public "that the city has, in the two decades since, put in place a series of safeguards aimed at preventing such abuses." Police Superintendent Cline struck a similar note. "The Chicago Police Department," he said, "is a very different Department today since that period of time." Among the safeguards the Mayor and Superintendent

highlighted is a new "a personnel performance management system" designed to ensure police accountability. As I reported in the first part of this article, that system exists on paper but not in practice. It has been announced but not implemented.

What do we know about the effectiveness of the system the City *in fact* has in place? Does the CPD conduct adequate investigations of citizen complaints? Do officers in the field operate with an awareness that their supervisors will hold them accountable and impose appropriate discipline if they commit crimes against citizens?

Answers to these questions emerge from statistics provided by the City in *Bond v. Utreras*, the federal civil rights case described in "Kicking the Pigeon."

Citizen complaints are investigated by two sections within the CPD. The Office of Professional Standards (OPS) is responsible for excessive force complaints; and the Internal Affairs Division (IAD) handles other categories of complaint. If a complaint is sustained by OPS or IAD and is not reversed by the Police Board, various forms of discipline may be imposed. These range from reprimands to suspensions of varying lengths to termination. For the purposes of analysis, the plaintiff's attorney in the *Bond* case, Prof. Craig Futterman of the Mandel Clinic of the University of Chicago Law School, defines "meaningful discipline" as a suspension of seven days or more.

Let's begin with the grand totals. During the years 2002-2004, citizens filed 10,150 complaints alleging police abuses in the categories of excessive force, illegal arrest, illegal searches, racial and sexual abuse. Investigations of those 10,150 complaints by OPS and IAD yielded just *18 cases* in which the accused officer received meaningful discipline. In other words, an officer accused of abusing a citizen had a 99.8% chance of not receiving any meaningful discipline.

When you break out particular categories of police misconduct, this stunning ratio of complaints to meaningful discipline holds:

Type of misconduct	**Total complaints**	**Meaningful discipline imposed**	**%**
Excessive force	5,358	15	0.27%
Illegal search	3,837	1	0.03%
Illegal arrest	661	0	0.00%

It is hard to believe officers with criminal tendencies would be deterred from wrongdoing by such odds. On the contrary, these numbers evoke conditions of impunity under which abusive officers can operate without fear of punishment.

Police abuse is not random. It is a highly concentrated phenomenon. Law enforcement professionals and critics generally agree that a small percentage of officers commit most of the abuses. The statistics disclosed in *Bond v. Utreras* reflect this phenomenon:

- During the last five years, 662 officers had ten or more complaints. In a police force of roughly 13,500, these “repeaters” represent 5% of the force.

- During the 2002-2004 period, the City investigated 18,077 misconduct allegations. (This total includes administrative infractions, bribery, substance abuse, and so on, as well as direct abuse of citizens.) 7,864—44%—of the 18,077 complaints name the 662 repeaters.

According to Futterman, these strong patterns do not affect investigation outcomes: repeaters, like the officer population as a whole, had a 0.2% chance—2 in 1,000 odds—of receiving meaningful discipline.

What are we to make of these statistics? Some defenders of the status quo argue that the number of complaints is inflated by false accusations designed to frustrate officers in the performance of their duties. Although it is hard to credit the proposition that thousands of citizens each year file false complaints against the police, this sort of argument cannot be definitively refuted. It should be noted, though, that dispute over the number of complaints cuts both ways. Critics of the CPD’s investigatory practices argue that police misconduct is grossly under-reported because of various disincentives to filing a complaint; among them, lack of faith in the process and fear of reprisals.

Another argument often made is that effective officers attract complaints. In its most extreme form, this argument sees complaints as a measure of effectiveness: citizens complain *because* the accused officers are doing their jobs.

This logic is an insult to the substantial majority of officers who are never accused of abusing citizens. Let’s take another look at the repeater figures. If 662 officers account for 7,864 of the 18,077 total complaints, that means 12,838 officers are responsible for the remaining 10,213 complaints. In light of the strong repeater dynamic—officers accused of abuse are accused multiple times—it is reasonable to assume these 10,213 complaints are attributable to 2,043 officers with five complaints each. That would mean 80% of the force has no complaints. Are we to conclude that those officers are ineffective?

The counter-argument is that many police officers do not interact with citizens in ways that would give rise to complaints. Those who draw the most complaints, so the argument goes, are working on the front lines of "the war" against gangs and rugs. This is indeed the heart of the matter. When police scandals have erupted in Chicago and elsewhere they have almost always involved elite gang tactical units, such as the Special Operations Section, working in low-income black and Hispanic neighborhoods.

In view of this history, one would expect the CPD to closely monitor such units. Yet the City has acknowledged in *Bond v. Utreras* that it does not track complaints by unit. In other words, it chooses not to know things within its power to know about patterns of abuse.

The implications of the statistics we have—and those we don't have because the City refuses to connect the dots—are clear. They reflect a state of affairs in which officers with criminal tendencies enjoy all but complete impunity. Thirty years after the first abuses alleged to have occurred under Commander Burge, thirteen years after Burge was fired, four years after the special prosecutors were appointed, and two months after they released their report, that is the ongoing human rights scandal disclosed by the City's own numbers.

Jamie Kalven

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