

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

PEOPLE OF THE STATE OF ILLINOIS,)
)
Respondent,)
)
v.)
)
JOHNNIE PLUMMER and VINCENT WADE,)
individually and as representatives of the class of)
still-incarcerated victims of Jon Burge and Burge's)
detectives,)
)
Petitioners.)

Nos. 92 CR 2023601
84 C 01010801

NOTICE OF MOTION

To: See Parties Listed On Attached Service List

PLEASE TAKE NOTICE that on November 5, 2012 at 9:00 a.m., or as soon thereafter as counsel may be heard, I, or another of *amici curiae*'s attorneys, shall appear before the Honorable Judge Biebel, in the courtroom usually occupied by him in Courtroom 101, 50 W Washington St., Chicago, Illinois, and present the Motion For Leave To File Brief Of *Amici Curiae Ad Hoc Committee Of Former Judges, Former Prosecutors, Present And Former Government Officials, Law Professors, And Leaders of Bar Associations, Law Firms, And Other Legal Organizations In Support Of Class Action Petition for Relief Under The Illinois Post-Conviction Hearing Act.*

By:



One of *Amici Curiae*'s Attorneys

David J. Bradford
Bradley M. Yusim
Kyle A. Palazzolo
Jenner & Block LLP (#05003)
353 N. Clark Street
Chicago, Illinois 60654-3456
(P) (312) 222-9350
(F) (312) 840-7799

FILED
12 OCT 16 AM 9:36
ROBERTA SMOVIN
CLERK OF THE CIRCUIT COURT

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ROBERTY BROWN
CLERK OF THE CIRCUIT COURT

12 OCT 16 AM 9:37

FILED

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* AD HOC COMMITTEE
OF FORMER JUDGES, FORMER PROSECUTORS, PRESENT AND FORMER
GOVERNMENT OFFICIALS, LAW PROFESSORS, AND LEADERS OF BAR
ASSOCIATIONS, LAW FIRMS, AND OTHER LEGAL ORGANIZATIONS IN
SUPPORT OF CLASS ACTION PETITION FOR RELIEF UNDER
THE ILLINOIS POST-CONVICTION HEARING ACT**

Amici curiae, by and through their attorneys, hereby move for leave to file the following brief in support of the Class Action Petition for Relief under the Illinois Post-Conviction Hearing Act. In support of this Motion, *amici* state as follows.

1. *Amici* represent a group of 85 individuals from diverse professional experiences, including former judges, former prosecutors, present and former government officials, law professors, and leaders of numerous bar associations, law firms, and other legal organizations.¹

2. Despite their diverse backgrounds and experiences, *amici* share the common and firm belief that the integrity of the criminal justice system and the Court's decision in *People v. Wrice*, 2012 IL 111860, 962 N.E.2d 934 (2012) require a fair opportunity for those who lost their liberty on account of a confession extracted through torture or physical abuse under the watch of

¹ A full list of *amici* is submitted is Exhibit A with the tendered brief.

police Commander Jon Burge to prove their claim.

3. *Amici* respectfully submit that in order to give effect to the Illinois Supreme Court's ruling in *Wrice*, it is necessary for this Court to establish a reliable process for determining which victims of torture under the Burge watch were physically coerced into confessing. Each of those alleged victims is entitled to a day in court to determine the veracity of his allegations. These hearings are not merely important to the incarcerated defendants, they are essential to ensuring that this intolerable blot on our criminal justice system is remedied.

4. If this Court establishes such a process, many of the *amici* are committed to recruiting competent counsel from leading Illinois law firms to represent Petitioners at these hearings on a *pro bono* basis. Only by providing meaningful representation and review for Petitioners' claims, without regard to procedural defenses, can we close this sad chapter in the history of this great State and make clear that our criminal justice system remains an institution of the highest integrity and reliability.

WHEREFORE, for the reasons set forth above, *amici* respectfully request that this Court grant leave to file the Brief Of *Amici Curiae* Ad Hoc Committee Of Former Judges, Former Prosecutors, Present And Former Government Officials, Law Professors, And Leaders of Bar Associations, Law Firms, And Other Legal Organizations In Support Of Class Action Petition for Relief Under The Illinois Post-Conviction Hearing Act.

Dated: October 16, 2012

Respectfully submitted,

Amici Curiae Ad Hoc Committee of Former
Judges and Prosecutors, Government Officials,
Law Professors, and Leaders of Bar Associations,
Law Firms, and Other Legal Organizations

By: 
One of their Attorneys

David J. Bradford
Bradley M. Yusim
Kyle A. Palazzolo
Jenner & Block LLP (#05003)
353 N. Clark Street
Chicago, Illinois 60654-3456
(P) (312) 222-9350
(F) (312) 840-7799

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Nos. 92 CR 2023
84 C 0101080

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT

12 OCT 16 AM 9:37

FILED

**BRIEF OF *AMICI CURIAE* AD HOC COMMITTEE OF FORMER JUDGES, FORMER
PROSECUTORS, PRESENT AND FORMER GOVERNMENT OFFICIALS, LAW
PROFESSORS, AND LEADERS OF BAR ASSOCIATIONS, LAW FIRMS, AND
OTHER LEGAL ORGANIZATIONS IN SUPPORT OF CLASS ACTION
PETITION FOR RELIEF UNDER THE ILLINOIS
POST-CONVICTION HEARING ACT**

Amici curiae represent diverse professional experiences, including former judges, former prosecutors, present and former government officials, law professors, and leaders of numerous bar associations, law firms, and other legal organizations.¹ Despite their diverse professional experiences and perspectives, *amici* share the common and firm belief that the integrity of the criminal justice system and the Court's decision in *People v. Wrice*, 2012 IL 111860, 962 N.E.2d 934 (2012) require a fair opportunity for those who lost their liberty on account of a confession extracted through torture or physical abuse under the watch of police Commander Jon Burge to prove their claim.

Many of the *amici* are committed to recruiting competent counsel from leading Illinois law firms to represent Petitioners at these hearings on a *pro bono* basis.

¹ A full list of *amici* is attached hereto as Exhibit A.

ARGUMENT

Earlier this year, the Illinois Supreme Court emphatically and unequivocally ruled that *no conviction in the State of Illinois can rest in whole or in part on a confession that was the product of torture or other physical coercion*. See *Wrice*, 2012 IL 111860. In the words of this State's highest court: "harmless-error analysis is inapplicable to [a] defendant's post-conviction claim that his confession was the product of physical coercion by police officers at Area 2 headquarters"; the "use of a defendant's physically coerced confession as substantive evidence of his guilt is never harmless error." *Id.* at ¶ 84.

In order to give effect to that ruling, it is necessary for this Court to establish a reliable process for determining which victims of torture under the Burge watch were physically coerced into confessing. Each of those alleged victims is entitled to a day in court to determine the veracity of his allegations. Consistent with the Supreme Court's harmless error ruling in *Wrice*, this Court should address the merits of these claims without regard to procedural defenses.

Illinois courts have long recognized that equity requires the full and fair opportunity to present one's case, and as a result, no procedural defense should preclude a post-conviction decision on the merits of claims as to which there has not been a full and fair opportunity to litigate. See *People v. Pitsonbarger*, 205 Ill. 2d 444, 458 (2002) (finding that "where fundamental fairness so requires" the administrative bar of waiver is excused in successive post-conviction petitions); *Chicago Park Dist. v. Kenroy, Inc.*, 78 Ill. 2d 555, 563-64 (1980) (applying equitable tolling principles when party did not become aware of misconduct until after a separate prosecution revealed the concealment).

No incarcerated Burge torture victim has had a full and fair opportunity to litigate his claim of torture because, until recently, none of them had access to the totality of evidence that

the unimaginable was true, *i.e.*, that there was systematic torture at Area 2 over the course of two decades. Also, until recently, none had the benefit of the Illinois Supreme Court's ruling in *Wrice* that harmless error is not a defense to a conviction based on a confession extracted by torture.

Until recent evidence came to light, there was natural skepticism about the allegations that Burge and those acting under his supervision had committed systematic torture to extract confessions. Only now that there is substantial evidence that torture and physical coercion were relatively common and accepted under Burge's command, can Petitioners receive full and fair consideration of their claims.

We have now learned that Burge's systematic torture began as early as 1973 when Burge and two of his men tortured Anthony Holmes into confessing to a murder by placing a plastic bag over his head, tightening it, and then running electric current to wires that were attached to his handcuffed wrists and ankles. Even in 2003, only the tip of the iceberg was known. An Illinois Governor stated in granting pardons to four of Burge's victims in 2003: "The category of horrors was hard to believe. If I hadn't reviewed the cases myself, I wouldn't believe it. . . . We have evidence from four men . . . all getting beaten and tortured and convicted on the basis of the confessions they allegedly provided." Governor George H. Ryan, Statement at DePaul University College of Law (Jan. 10, 2003). The evidence has now emerged that Burge was engaged in a pattern of systematic torture over the span of two decades. Most recently, in sentencing Burge to prison for perjury and obstruction of justice in 2011, U.S. District Court Judge Lefkow rejected Burge's repeated denials of the torture and stated that "the jury did not believe you and I must agree that I did not either." *U.S. v. Burge*, No. 1:08-cr-00846, Docket No. 407, at 206:4-5 (N.D. Ill. Jan. 21, 2011).

In light of this evidence and the decision in *Wrice*, the case of every alleged victim deserves examination or re-examination to ensure that no person remains incarcerated on account of systematic torture. These hearings are not merely important to the incarcerated defendants, they are essential to ensuring that this intolerable blot on our criminal justice system is remedied. *Amici* submit that neither this Court nor the legal community can underestimate the importance of these hearings to vindicating the integrity of the criminal justice process and the trust of the people of the State of Illinois in that process.

As former U.S. Attorney Patrick Fitzgerald wrote in the Government's Objections to the Presentence Report and Sentencing Memorandum following Burge's conviction, "perhaps the greatest cost of [Burge's] conduct was the impact on the community's trust and confidence in the criminal justice system. During [Burge's] reign, the legitimacy of the criminal justice system was severely compromised, and the social issues of that time became more pronounced because of it." See *U.S. v. Burge*, No. 1:08-cr-00846, Docket No. 336, at 26 (N.D. Ill. Nov. 12, 2010). Although Burge's conviction was an important step in restoring the legitimacy of the criminal justice system, it will never be fully restored without a robust review of Petitioners' claims, unconstrained by procedural defenses that might otherwise apply to post-conviction review.

If this Court grants the relief requested in the Petition and orders evidentiary hearings, some of the *amici* will endeavor to provide legal representation and/or seek to recruit other qualified lawyers to provide representation on a *pro bono* basis, so as to ensure that adequate process is provided to the class members in any hearings on whether their confession was extracted by torture by Burge or those acting under his supervision.

Only by providing meaningful representation and review for Petitioners' claims, without regard to procedural defenses, can we close this sad chapter in the history of this great State and

make clear that our criminal justice system remains an institution of the highest integrity and reliability.

Dated: October 16, 2012

Respectfully submitted,

Amici Curiae Ad Hoc Committee of Former
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David J. Bradford
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Jenner & Block LLP (#05003)
353 N. Clark Street
Chicago, Illinois 60654-3456
(P) (312) 222-9350
(F) (312) 840-7799

APPENDIX A – AMICI CURIAE

| <u>Name</u> | <u>Title</u> |
|---------------------|---|
| Kimball R. Anderson | Partner, Winston & Strawn LLP |
| M. Cherif Bassiouni | President Emeritus, International Human Rights Law Institute, DePaul University College of Law |
| Robert W. Bennett | Nathaniel L. Nathanson Professor of Law and former Dean, Northwestern University School of Law; former President, Chicago Council of Lawyers |
| Bruce Boyer | Clinical Professor of Law, Director, Civitas Child Law Clinic, Loyola University-Chicago Law School |
| David J. Bradford | Partner and Co-Chair, Litigation Department, Jenner & Block LLP |
| Richard J. Brzeczek | Attorney at Law; former Superintendent, Chicago Police Department |
| Leonard Cavise | Professor of Law, DePaul University College of Law |
| Stuart J. Chanen | Partner, Valorem Law Group; former Assistant U.S. Attorney, Northern District of Illinois |
| Myron M. Cherry | Myron M. Cherry & Associates LLC |
| Steven H. Cohen | Founder, Cohen Law Group |
| Jeffrey D. Colman | Partner, Jenner & Block LLP |
| William Conlon | Partner, Sidley Austin LLP; former Assistant U.S. Attorney, Northern District of Illinois |
| Vincent C. Connelly | Partner, Mayer Brown LLP; former Assistant U.S. Attorney, Northern District of Illinois |
| Craig R. Culbertson | Managing Partner, McGuireWoods LLP, Chicago |
| Steven A. Drizin | Legal Director, Center on Wrongful Convictions, Northwestern University School of Law |
| Tyrone C. Fahner | Partner, Mayer Brown LLP; former Attorney General of Illinois; former Illinois Director of Law Enforcement; former Assistant U.S. Attorney, Northern District of Illinois |
| Gabriel A. Fuentes | Partner, Jenner & Block LLP; President, Chicago Council of Lawyers |
| Aviva Futorian | Immediate Past President, John Howard Association of Illinois |

| Name | Title |
|-----------------------|---|
| Craig B. Futterman | Clinical Professor of Law and Director, Civil Rights and Police Accountability Project, University of Chicago Law School |
| Chris C. Gair | Partner, Jenner & Block LLP; former Assistant U.S. Attorney, Northern District of Illinois |
| George F. Galland Jr. | Partner, Miner, Barnhill & Galland; former President, Chicago Council of Lawyers |
| John Gallo | Partner, Sidley Austin LLP; former Assistant U.S. Attorney, Northern District of Illinois |
| Thomas F. Geraghty | James B. Haddad Professor of Law, Northwestern University School of Law |
| Kenneth L. Gillis | Retired Judge, Circuit Court of Cook County; former First Assistant State's Attorney, Cook County |
| Leonard C. Goodman | Len Goodman Law Office |
| Robert L. Graham | Partner, Jenner & Block LLP; former President, Chicago Council of Lawyers |
| Harvey Grossman | Legal Director, ACLU of Illinois |
| Michael Gurland | Partner, Neal, Gerber & Eisenberg, LLP; former New York County (Manhattan) Assistant District Attorney; former Assistant U.S. Attorney, Northern District of Illinois |
| Mary Brigid Hayes | Former Assistant Illinois Attorney General; former Assistant Cook County State's Attorney |
| Austin L. Hirsch | Partner, Reed Smith LLP |
| Patricia Brown Holmes | Partner, Schiff Hardin LLP; former Judge, Circuit Court of Cook County; former Chairman, Illinois Torture Inquiry and Relief Commission; former City of Chicago Chief Assistant Corporation Counsel for Municipal Prosecutions; former Assistant U.S. Attorney, Northern District of Illinois |
| James I. Kaplan | Partner, DLA Piper |
| Richard S. Kling | Professor of Law, IIT Chicago-Kent College of Law |
| Tom Leahy | Former President, Illinois State Bar Association |
| George Leighton | Former Judge, U.S. District Court for the Northern District of Illinois, Illinois Appellate Court, and Circuit Court of Cook County |
| Jeffrey Lennard | Partner, SNR Denton LLP |

| Name | Title |
|-----------------------|---|
| Jon Loevy | Partner, Loevy & Loevy; Lecturer at Law, University of Chicago Law School |
| Michael A. LoVallo | Managing Partner, Chicago Office, Reed Smith LLP |
| John Maki | Executive Director, John Howard Association of Illinois |
| Jeremy Margolis | Partner, Loeb & Loeb LLP; former Illinois Director of Law Enforcement; former Assistant U.S. Attorney, Northern District of Illinois |
| Lawrence C. Marshall | Associate Dean for Clinical Education, Stanford Law School; former Professor of Law, Northwestern University School of Law |
| Terri L. Mascherin | Partner, Jenner & Block LLP |
| Judson H. Miner | Partner, Miner, Barnhill & Galland; former Corporation Counsel, City of Chicago |
| Steven F. Molo | Partner, MoloLamken LLP; former Assistant Illinois Attorney General |
| James S. Montana, Jr. | Partner, Vedder Price PC; former Assistant U.S. Attorney, Northern District of Illinois; former Chief Legal Counsel to Governor Jim Edgar of Illinois |
| Jorge Montes | Former Chairman, Illinois Prisoner Review Board |
| James D. Montgomery | Former Corporation Counsel, City of Chicago |
| Sheila M. Murphy | Former Judge, Circuit Court of Cook County |
| Nan R. Nolan | Former U.S. Magistrate Judge, Northern District of Illinois |
| Martin J. Oberman | Former Alderman, 43rd Ward |
| Steven F. Pflaum | Partner and Pro Bono Committee Chair, Neal, Gerber & Eisenberg LLP; former General Counsel, Chicago Bar Association |
| Stacey Platt | Clinical Professor of Law, Associate Director, Civitas Child Law Clinic, Loyola University-Chicago Law School |
| Mark D. Pollack | Partner, Paul Hastings LLP; former Assistant U.S. Attorney, Northern District of Illinois |
| Karen Y. Ranos | Case Coordinator, Center on Wrongful Convictions, Northwestern University School of Law |
| Kwame Raoul | Illinois State Senator, 13th District |
| Dom J. Rizzi | Retired Judge, Illinois Appellate Court |

| Name | Title |
|-----------------------|---|
| David S. Ruder | Professor of Law Emeritus and former Dean, Northwestern University School of Law; former Chairman, United States Securities and Exchange Commission |
| Ronald S. Safer | Managing Partner, Schiff Harden LLP; former Assistant U.S. Attorney, Northern District of Illinois |
| David J. Scheffer | Mayer Brown/Robert A. Helman Professor of Law, Northwestern University School of Law; former U.S. Ambassador at Large for War Crimes Issues |
| John R. Schmidt | Partner, Mayer Brown LLP; former Deputy Attorney General of the United States; former President, Chicago Council of Lawyers |
| Michael D. Sher | Partner, Neal, Gerber & Eisenberg LLP; former Staff Attorney, Federal Defender Program, Northern District of Illinois |
| Karen G. Shields | Former Judge, Circuit Court of Cook County |
| Lisa S. Simmons | Partner, Edwards Wildman Palmer LLP |
| Jeffrey Singer | Partner, Segal, McCambridge, Singer & Mahoney; former Assistant Cook County State's Attorney |
| William Singer | Of Counsel, Kirkland & Ellis LLP; former Chicago Alderman, 42nd Ward |
| Michele Smith | Alderman, 43rd Ward; former Assistant U.S. Attorney, Northern District of Illinois |
| Raymond J. Smith | Partner, Smith, Johnson & Antholt, LLC; former Assistant U.S. Attorney, Northern District of Illinois |
| Todd A. Smith | Founding Partner, Power, Rogers & Smith, P.C.; Past President, Illinois Trial Lawyers Association; former Assistant Cook County Public Defender |
| Frederick J. Sperling | Partner, Schiff Hardin LLP; former President, Chicago Council of Lawyers |
| David J. Stetler | Founding Principal, Stetler, Duffy & Rotert, Ltd.; former Assistant U.S. Attorney, Northern District of Illinois |
| Jeffrey Stone | Managing Partner, McDermott, Will & Emery; former Assistant U.S. Attorney, Northern District of Illinois |
| Randolph N. Stone | Clinical Professor of Law, University of Chicago Law School; former Cook County Public Defender |

| Name | Title |
|---------------------|---|
| Mary Stowell | Founding Partner and Of Counsel, Stowell & Friedman, Ltd.; former Assistant U.S. Attorney, Northern District of Illinois |
| James R. Streicker | Partner, Cotzirilos, Tighe, Streicker, Poulos & Campbell, Ltd.; former Assistant U.S. Attorney, Northern District of Illinois |
| Thomas P. Sullivan | Partner, Jenner & Block LLP; former U.S. Attorney, Northern District of Illinois |
| Rene A. Torradó Jr. | Partner, Corboy & Demetrio; former President, Chicago Bar Association |
| James R. Thompson | Chairman, Winston & Strawn LLP; former Governor of Illinois; former U.S. Attorney, Northern District of Illinois |
| Scott Turow | Partner, SNR Denton LLP; former Assistant U.S. Attorney, Northern District of Illinois |
| Rob Warden | Executive Director, Center on Wrongful Convictions, Northwestern University School of Law |
| Dan K. Webb | Chairman, Winston & Strawn LLP; former U.S. Attorney, Northern District of Illinois |
| Wayne W. Whalen | Partner, Skadden, Arps, Slate, Meagher & Flom LLP |
| Warren D. Wolfson | Distinguished Visiting Professor of Law, DePaul University College of Law; Retired Judge, Illinois Appellate Court |
| Malcolm C. Young | Director, Program for Prisoner Reentry Strategies, Northwestern University School of Law; 2010 Soros Justice Fellow; former Executive Director, John Howard Association of Illinois |
| Sheldon T. Zenner | Partner, Katten Muchin Rosenman LLP; former Assistant U.S. Attorney, Northern District of Illinois |
| Andrea L. Zopp | President, Chicago Urban League; former First Assistant State's Attorney, Cook County; former Assistant U.S. Attorney, Northern District of Illinois |

CERTIFICATE OF SERVICE

I hereby certify that, on October 16, 2012, I caused copies of the foregoing Motion For Leave To File Brief Of *Amici Curiae* Ad Hoc Committee Of Former Judges, Former Prosecutors, Present And Former Government Officials, Law Professors, And Leaders of Bar Associations, Law Firms, And Other Legal Organizations In Support Of Class Action Petition for Relief Under The Illinois Post-Conviction Hearing Act and the accompanying brief to be served on counsel of record via US mail:

Locke E. Bowman
Sheila A. Bedi
Alexa Van Brunt
Roderick MacArthur Justice Center
Northwestern University School of Law
375 East Chicago Avenue
Chicago, Illinois 60611

Joey L. Mogul
G. Flint Taylor
Ben H. Elson
Sarah Gelsomino
People's Law Office
1180 N. Milwaukee Avenue
Chicago, Illinois 60622

Anita M. Alvarez
Cook County State's Attorney
50 W. Washington St., Suite 500
Chicago, Illinois 60602

Illinois Attorney General's Office
100 W. Randolph Street, #13
Chicago, Illinois 60601

Stuart A. Nudelman
853 N. Elston Avenue
Chicago, Illinois 60642



Kyle A. Palazzolo