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Litigating Police Misconduct: Does the Litigation Process Matter? Does it Work?

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**Litigating Police Misconduct: Does the Litigation
Process Matter? Does it Work?**

TRANSCRIPT OF PROCEEDINGS held at Northwestern University School of Law, Thorne Auditorium, 375 East Chicago Avenue, Chicago, Illinois, on the 13th day of November, A.D. 2015, at 11:00 a.m.

MODERATOR: MR. LOCKE E. BOWMAN, Clinical Professor of Law at Northwestern University School of Law, and Executive Director of the Roderick and Solange MacArthur Justice Center.

PANELISTS:

MS. BRIGITT KELLER, Executive Director, National Police Accountability Project (New York);

MR. CRAIG B. FUTTERMAN, Clinical Professor, University of Chicago;

MR. JAMIE KALVEN, Writer and Executive Director, Invisible Institute (Chicago);

MR. G. FLINT TAYLOR, Founding Partner, People's Law Office (Chicago);

MR. SAMUEL E. ADAM, JR., Founder, the Law Offices of Samuel E. Adam (Chicago).

PROFESSOR BOWMAN: And welcome to our first panel of the day, entitled "Litigating Police

Misconduct: Does the Litigation Process Matter? Does it Work?" We're very privileged to have today five really exceptional panelists. Their bios are available to you. Time is short. Let me just give you a brief introduction of each of them.

Brigitt Keller is director of the National Lawyers Guild Police Accountability Project (NPAP). NPAP trains and supports lawyers who do police misconduct litigation and it advocates for police accountability.

Next to Brigitt is Craig Futterman, the founder of the Civil Rights and Police Accountability Project at the University of Chicago Law School, where he is clinical professor of law. Craig is one of Chicago's leading civil rights lawyers.

Jamie is seated all the way down, the handsome man with the white hair and the beard. Jamie is a remarkable author and advocate. He's the executive director of the Invisible Institute. He's the author of a remarkable memoir called "Working with Available Light." And he is a plaintiff, as you will hear.

And then, I skipped over Flint Taylor, one of the founding attorneys of the People's Law Office and the undisputed dean of Chicago's Plaintiffs Civil Rights Bar. He needs no further introduction.

And then, all the way on the end is the wonderful Sam Adam, Jr., one of Chicago's most skilled and effective criminal defense trial lawyers and, therefore, by definition, a fierce opponent of police overreach.

So let's start with Brigitt.

MS. KELLER: Good morning. So NPAP is a nonprofit organization dedicated to preventing police abuse of power. So that's an important task. It also means that we have to ask the question, "Is civil litigation for damages indeed suited to prevent law enforcement misconduct?" And when you usually ask this question, are money damages suited to prevent police misconduct, you usually get two answers.

One is a resounding yes, of course. And the other one is a resounding no, of course not. And there is very little middle ground. But what both groups of people who either say no or yes have in common is the assumption that police departments, police chiefs, police commissioners, make their decisions to respond to lawsuits or to not respond to lawsuits, based on accurate information. And so, they go and look up cases, that they research the decisions of the cases and base their decisions whether to change policy or not on an informed decision and either say yes, we need to change policy because it's simply costing us too much money, or, on the other hand, say we will not change policy because violence or police misconduct or a certain police behavior is just sort of the cost of doing business or the lawsuits are that, the cost of doing business.

One of our members, Joanna Schwartz, a professor at UCLA, conducted a survey to see whether police chiefs and police commissioners indeed base their decisions on information they generate from lawsuits. And what she found was quite disturbing, in my view. What she found was that two-thirds of the police departments in the United States and over 80% of the sheriff's departments do not systematically assess or analyze the decisions and the lawsuits that were conducted against the police departments.

What this basically means is that there is no real evaluation of cases. There is no evaluation whether discipline is warranted or whether training should be changed. And so, even departments who have some form of system to evaluate cases usually falter in the implementation phase. And what we really know today is that most police departments do not know what the problems are. What's really interesting, obviously, is that what you can say if you don't know what the problem is, you also can't find a solution.

And I think New York is a very good example for this. New York does not have a system to evaluate lawsuits. However, what they have is an annual firearms discharge report. The interesting part about this shows really how important the gathering of data is and how much the gathering of data indeed can change policy and training.

The NYPD started to gather information about firearms discharge. And just to give you a couple of numbers, in 1973, the NYPD had 994 shooting incidents. In 2014, there were seventy-nine shooting incidents. In 1973, 2,510 shots were fired. In 2014, it was 282 shots. In 1971, ninety-three civilians were killed in shooting incidents in New York City. In 2014, it was eight people. What I'm trying to say with this is that gathering data and evaluating this data can really bring about very important changes. And I think that the firearms report is really something that proves this.

It is interesting that there doesn't seem to be a big interest to do the same with lawsuits that could indeed bring about important information to change training and policy. So what I find important, or what I try to say with this, is if we as advocates and attorneys want to bring change, we need to continue to bring these lawsuits, but at the same time, demand that police departments gather information, analyze this information, and report on that information.

I also want to say something about the current political climate, how I experience, how we experience it at NPAP and how important it is to look at this climate and to sort of figure out what is important.

So it seems to me that we have a historic moment after Ferguson in that we have sustained media attention that is very different from previous cases where the media attention, whenever something happened, there was a lot of attention, and when the incident was over, it kind of tapered off. And I think that's somewhat different today. The attention is more sustained.

And at the same time, what we experience is a massive backlash from police departments. Again, New York is a very good example of this; the mayor was very open to reform and is certainly, to a certain degree, still open to reform. But political pressure from police unions, from the police department, have really changed not only his rhetoric, but certainly, [changed] his rhetoric.

So, I think what we face today is this sustained, very important attention to police misconduct which is also evidenced in the *Guardian* newspaper that Locke just mentioned, *The Counted*, and also, a series of articles in the *Washington Post* about police misconduct. So those are all very important developments. But at the same time, we have a real backlash that we have to address.

The next thing that I wanted to talk about is a project that we are currently undertaking at NPAP to support litigation and make it more effective. What we are trying to do is organize a capacity building conference for next spring. And what we are trying to do with this conference is bring together youth advocates and Section 1983 litigators. And the context, obviously, in which this happens is that we realize more and more that children and youth become victims of police misconduct. We also know that we currently have about 19,000 school resource officers that are in schools in the United States.

And so, our initiative with our conference, we are trying to bring together these two groups of people so that they can profit from, benefit from each other's expertise. Because what we know is that while some of our members are indeed litigating cases where the clients are children or youth, many don't. Many haven't taken on cases where the clients are children or youth because they don't feel particularly comfortable. Most of our attorneys work, in the majority of cases, with adults, mostly males. And so, many of our attorneys don't feel necessarily comfortable working with children.

Also, for youth advocates, they know a lot about laws that protect youth in their particular area of work, but they do not necessarily have the skills to see whether an incident that has happened may amount to a lawsuit. So, we are trying to bring these two professional groups together to create a conference where we'll discuss the particular problems. But also, out of this project or this conference, we hope that a sustainable project will grow where youth advocates and Section 1983 litigators can continue to work together.

I mean I'm sure you have seen the video about the girl in South Carolina who refused to put her phone away and was literally dragged across or thrown across the room

by a school resource officer. And I'm sure you also heard about the cases of the seven-, eight-, nine-year-old children who are literally half my size and are put in handcuffs. And because they are so small, the handcuffs are put on their upper arms.

And so, I think it's really time that we put a lot of effort into addressing police misconduct against children and youth.

PROFESSOR BOWMAN: Thank you so much, Brigitt. Having heard about the importance of data, it's fully fitting that we turn to Jamie and Craig right now for a presentation on that very subject.

MR. FUTTERMAN: Thank you. Good morning. So as Brigitt said, "Does litigation play a role in police reform? Does it matter?"

My hero coming up, outside my own grandparents of course, was Malcolm X. A strong man, exemplified excellence in everything he did. Our freedom-fighter. He spoke truth, made it plain. Just before I was born, Malcolm famously declared—and y'all know this, I'm not saying anything y'all don't know—he was like, "We declare our right on this earth to be a man, to be a human being, to be respected as a human being, to be given the rights of a human being in this society, on this earth, in this day, which we intend to bring into existence by any means necessary."

That's Malcolm though, so I can't do Malcolm. I'm not Malcolm.

That's how I see litigation though, is one of many means, as one tool and only one tool. It's not the end all, be all. And let's be plain about that. You know, it's a tool that can both create and limit the possibilities for change at the same time, especially if we're not careful. I mean it's been a tool, as we also know, to reinforce power or hierarchies and to maintain the status quo as well. But I believe that when used intelligently and in a combination with other strategies, such as direct action advocacy organizing, that litigation can support movements to change the world.

So our story—and I'm sticking to it—is until the housing projects were torn down and entire communities disappeared in Chicago, Jamie and I—you'll hear from him in a second—along with our colleagues, worked from the ground floor of Stateway Gardens, which was a public housing development on Chicago's South Side. For many of my law students, it became a second home, a second base of operations away from the law school for about seven years. And Jamie was there years before we got there. And he was there full-time, us, part-time.

State Street Corridor—that's where Stateway sat—made up the largest concentration of public housing and, indeed, poverty in the entire nation. It was about a four-mile stretch of ten- and seventeen-story high-rise apartment buildings filled with thousands of our nation's struggling families, poorest families, struggling to make it. Everybody who lived in Stateway was black.

During that time, Jamie introduced my students and I to a woman, Diane, a fifty-year-old public school janitor and single parent who lived at Stateway. Neighbors knew Diane as a friendly face, and most importantly, someone who always just seemed to have some delicious-smelling food. And I could eat. But then, folks just stopped seeing her. That friendly face and the smell of her home-cooked meals were just nowhere to be found.

And it turns out that over the course of about a year, a team of five Chicago police tactical officers subjected Diane to a series of repeated assaults on her body, on her home,

her family, and even her religion. This group of officers, who many of y'all know now or know of, widely known as the Skullcap Crew, forced her on two occasions to disrobe and bare some of the most private parts of her body. They threatened her with a loaded gun, needle-nose pliers, a screwdriver, leaving her to believe that they were going to rape or kill her. They beat and choked her, assaulted her with racist, sexual epithets of the very worst kind, tore up her home, desecrated religious objects sacred to her, threatened to plant drugs on her and her son. They beat her teenage son. And they even brought a middle-aged man, a middle-aged neighbor into the home, into her home and forced her teenage son to beat the older black man just for their amusement, like a staged cock fight.

We learned these five guys, these five officers, had engaged in a years-long pattern of this, of abuse of black folks in public housing in Chicago on the South Side. We heard multiple firsthand reports of their abuse, including their sadistic, sexual abuse of Diane. But what distinguished them above all—and Jamie talks about this as well—was just their utter overt racism and the particular pleasure that they seemed to take in these racist acts. But most of all, they knew that they could abuse black folk in public housing with absolute certainty that nothing was going to happen to them.

So litigation now. Our clinic then brings a civil rights lawsuit, seeking to expose and redress their torture of our friend Diane. And as a part of our investigation, as a part of this litigation, we get six years of Chicago police data about every Chicago complaint that involved police brutality and a number of other serious categories of abuse, like racial and sexual abuse, breaking into people's homes, planting evidence on people. And when we analyzed this data, when we analyzed Chicago's own data, we saw exactly why the members of the Skullcap Crew believed that they could operate with impunity in places like Stateway Gardens.

We learned that the Police Department refused to examine patterns of abuse in black and brown communities in Chicago, that the probability that the members of the Skullcap Crew would ever be severely disciplined was virtually nonexistent, that fellow police officers would cover for them each and every time they were accused of abusing black folks. And we also saw that the Department's practices for the actual investigative files and how they investigated police misconduct were designed to ensure that officers like them would be absolutely immune from discipline when they abused people, practices that violate basically every canon of professional investigation 101.

We also got what Flint rightfully called a repeater list—Flint deserves credit for this—and that was a list of Chicago police officers who amassed the most misconduct complaints in the entire city. However, at the same time, all this information, all this stuff that I'm just telling you we got, hidden from the public, given to us only under a super-secret protective order.

So Jamie—and I'm skipping a lot of stuff in the middle so we can get to the fun stuff— we ultimately bring a state Freedom of Information Act lawsuit, seeking public access to these records. Ben Elson of the People's Law Office and Sam Liskow of the Loevy firm graciously join us, with both those offices donating their time for free. And after a nearly five-year fight, we establish the legal precedent in Illinois that police misconduct records belong to the public. Police misconduct records belong to the people, including the identities of officers accused of misconduct and the completed investigation files, all of that public. It went down last year.

And so, to bring this home, it is one thing for there to be a legal principle, but now, there is another thing about putting it into action. So to bring it home, we just together launched a database called the Citizens Police Data Project. It doesn't roll off my tongue yet, but it will—CPDP. Okay. But this database gives everybody—people, researchers, lawyers, activists, organizers, policymakers, ordinary folk, all of us—access [to] about every single police misconduct complaint in Chicago. That's the goal. As of right now, in this database, it contains information about every single police misconduct complaint within the last four and a half years, and also information about complaints about what we just talked about, about repeater officers that date all the way back to 2001.

If we're successful—because we've got some ongoing stuff still going on that we're going to talk about this in a second—the entire community will have access to every single police misconduct complaint in Chicago from 1967 to the present. That's what we're fighting for. There has never been anything like this as Brigitt was talking about in terms of data information in the nation. Nothing. I mean now, we can be data nerds, but we're talking about a fundamental redistribution of power from the police to the people.

And here is the last thing I just want to say before I bring up Jamie to show us this. Change isn't going to happen by itself. Opening police departments doesn't automatically get rid of racism or sexism within the departments. It doesn't end the code of silence. It doesn't guarantee fair and thorough, high-quality investigations into police misconduct, and it certainly doesn't end patterns of police abuse.

But what it does is it creates the conditions to accomplish each and every one of those things that I just mentioned if we act and if we make use of the information. I mean at the end of the day, it's what we all do with this knowledge. It's our own actions. I mean, so this thing that generates this real power, this database that resides now within all of us in the community—and that's where we talk about litigation, one of the means—this is where all those other strategies have really got to come to the floor and take priority because this is the power of local innovation, advocacy, activism. And that's what's going to create real accountability.

And let me have Jamie show us what we got, and Brigitt, two of our partners.

MR. KALVEN: Thank you, Craig. As Craig suggested, the launch of the database earlier this week was the culmination of a long journey for a lot of collaborators. It also brought us to a threshold and to something new and something created by litigation that lies beyond litigation and creates some possibilities that we're just beginning to understand. So this is very much a work in progress.

Building on a couple of Craig's remarks before we give you a tour, after the FOIA decision in the case Craig mentioned that established that police misconduct files are public, we were—I won't call it a quandary—but we had a moment of reckoning with the implications of this very welcome development. And several things became very clear to us. One was this information belongs to the public.

You know, I'm a journalist. And journalists are subject to a particular kind of hubris of thinking that they embody the public interest. And so, you know, they're also—think of the NSA papers. There are all sorts of great bodies of information and data that are actually held as a proprietary matter by journalists to harvest stories from.

For us, it was clear that when I first intervened in federal court on behalf of the public, and then, with the help of the People's Law Office, Mandel Clinic, and Loevy &

Loevy pursued the FOIA case in the state court—when we said "public," we actually meant public. So the just cornerstone of this initiative is this information belongs to the public. But as Craig says, there is then the question of what do people do with it, what tools do people need to really operationalize the transparency that's been created as a matter of legal principle.

The transparency is not self-executing. It's up to us. And there is power within our reach as citizens. Citizens is a broad category, embracing journalists and lawyers, if we exercise it.

So a lot of our work has gone in this last year. I want to introduce our colleague, Rajiv Sinclair, who is really overseeing the technological and design work in creating this database. And what lies behind it is this vision of creating a public resource that continues to expand and become more refined because we all participate in building it going forward. We're sort of making the down payment with the information that was at issue in the Kalven case and that has been obtained through subsequent FOIA requests.

But our hope going forward is that all of you and other collaborators not in this room—investigative journalists, data analysts, lawyers who access relevant documents—will once you've made whatever use, filed your story, litigated your case, will contribute those documents to this expanding public resource rather than just putting them in cold storage.

So with that, I want to show you what it looks like. This is the landing page you'll come to if you go to the URL. And this is the database. As you'll see, it's a geographic matrix when you first come, a heat map. There are several different ways of investigating the map—by police districts, wards, the conventional Chicago neighborhood demarcations, and by police beats, police beats being the most granular, the most geographically specific.

If you look on the right, there are sort of the aggregate numbers, you know, overall or with respect to any geographic units. So these are the total numbers. Now, we're in, what, in Grand Crossing. And you get a breakdown of numbers in Grand Crossing. So it's, you know, great fun to play with this.

And go back to the full-scale map. Craig was invoking the work on South State Street years ago in public housing and this kind of city within the city of high-rise public housing; now completely disappeared. One of the things that was overwhelmingly apparent to us in that setting was how geographically concentrated certain patterns of policing and police abuse are. This map illustrates it. The intense areas of the map are the neighborhoods and parts of the city where most complaints of police abuse come from. It won't surprise you that they're concentrated on the South Side and the West Side.

I think over time, we will import other data sets into this map; socioeconomic, demographic information, school outcomes, various measures of abandonment and depletion in neighborhoods, vacant lots, boarded-up buildings, patterns of violent crime, areas of the lowest clearance rates of the police. We know—although we haven't, you know, fully done this—that those maps are going to align pretty tightly with this one.

So, part of what this data represents is the sort of racial geography of the patterns of police abuse and allows us, going forward, to sort of build that picture more fully and make it immediate and compelling for people. You know, the great deal that both the litigation that Craig talked about and my journalism over the years as we've gotten data and been able to make these sorts of analyses of how the system works and doesn't work has focused on our ability to know things and not know them at the same time, particularly

with respect to issues of race—you know, our will to not know things that are within our power to know.

And—to use the word that was used earlier in the keynote speech—the sort of ongoing diagnosis of these systems is very much about how we go about not knowing things that we're capable of knowing. What's so powerful about this sort of demonstration is it gives us the tools to know things and puts it right in front of us.

Let's scroll down a little bit. I just want to give you a little more sense. And then, I encourage you to just play with the tool and let us know how to improve it and what you're learning and what's missing from it. So now, you see this is the entire universe of data. These are the officers with the most complaints against them. If you click on a particular officer, first of all, you see the areas where there are gaps in the data; Craig will talk more about that in terms of what we have and what we don't have.

We have a huge wealth of data. And at the same time, it's fragmentary. There is a great deal more out there to capture.

But what we get here is this is sort of the relational universe of a given officer. So everybody who has been co-accused with him in the complaints that we have and then, you have the complaints themselves, so a disciplinary sort of profile of individual officers. Where we have the underlying CRs, so-called, the investigations, we have linked those as PDFs. And part of the project going forward is to amass through FOIA and through the sort of larger collaborative project that I was talking about before, where users of the site also contribute to it, one of the things that we'll be building will be an unprecedented library of CRs, so it's not just the portrait, but also, the CR.

I just want to make one more sort of broad observation and then, we should tell you about some of the continuing battles we're engaged in over the data. Marvelous, brilliant technological and design work has gone into this, [and] will continue to go into it. I mean it's an ongoing process of web development and design. And we're committed to pursuing that. But we're always at pains to emphasize that this is not a technological project. This is not a big data project. There are projects that are a matter of getting your arms around, you know, huge bodies of data and finding an algorithm that solves some problem. That's not the nature of the problem of police accountability. There could be systems vastly more adequate than the ones that are in place right now that use index cards and pencils, if there were a will to know.

So the really important thing about the threshold we've passed over is not the cool technological stuff that we're able to do with the tools that we now have, it's that this information is public. So going forward with the publicness of this information, and especially to the extent that we collectively can keep building it, we're in a new place where the arguments, the debates, the necessarily contentious back and forth about police reform, about appropriate remedies and interventions, can take place with reference to a common body of evidence. And it's the city's evidence and that is I think a game-changer if we step up. That's a game changer.

You know, the official secrecy, as Craig was alluding to before, diminishes our power as citizens by withholding from us public information that we need to be fully effective as citizens. It's also a rhetorical tool and a highly effective rhetorical tool. If you knew what we know, you would accept the way we're exercising power. That no longer is possible with this kind of information.

So I want to yield to Craig because we do want to update you on some of the—there is a major counterattack against this principle of transparency and threatening this very data that we want to bring you up to date on.

MR. FUTTERMAN: I'll be quick, too. One initial point though, as Jamie said, as far as this is only going to be as good in the future as the information that everyone is willing to share. And this goes to everyone acting and sharing.

So lawyers who are out here, criminal defense lawyers, civil rights lawyers, share your transcripts. Share your CRs. Share your civil lawsuits. Share the results of the civil lawsuits. They will all become part of this database that can be used by everybody. Point No. 1.

But so, as Jamie explained, we requested—and we requested every single complaint that goes all the way back to 1967, as we said. And the City, to its credit, agreed to produce the stuff to us, just like it negotiated when Flint, me, Jamie, John Loevy, and others sat at the negotiating table with them. However, though, this is what Jamie is talking about. The FOP, the Police Union, and the Police Supervisors Unions sued the City to keep them from giving us or anybody else police misconduct records that are more than four years old. This Judge Flynn, who this case is pending before in Cook County Chancery, entered a preliminary injunction, stopping the release. His order is on appeal. We got amicus briefs also up there.

And the City, even more to its credit, is actually trying to defend this principle and is fighting right now, believe it or not, with us in making this information public under FOIA.

But there is a real and immediate risk of a bonfire right now. Unions are fighting to destroy—not just we can't have them, but destroy so that they'll never exist—destroy all of these records. This includes the evidence of police torture that so many of you and people like Flint have spent so much time, and other activists in this room as well, exposing and redressing by Burge and his henchmen.

We still have, as I said, an Illinois Torture Commission. We still have more than 100 people in prison right now with live claims that they're there because of police torture. They're talking about destroying all that evidence and destroying the records of that torture. So if the police unions have their way, all that stuff goes up in flames. All that stuff goes up in smoke.

This just happened last week. None of you heard about it. It wasn't reported in the press, probably one of the most important things you need to know. A week ago, the Police Sergeants Union, Lieutenants Union, and Captains Union, got an arbitrator to say this. They won an arbitration with the City. The arbitrator ordered the City to purge all records more than five years old from all of its databases. So we're talking about stuff that was just ordered less than a week ago to be erased, and erase all this knowledge.

So we've got to stop this. And so, there is a role for litigation. And we're going to be in court Monday, seeking to get an injunction and a stay to try to stop this from happening. But that's not going to just do it by itself. That may be, at best, a temporary fix. Or we can get a stay. But that creates the opportunities for everybody here to fight to activate and not just this litigation stuff.

The only way we're going to get a permanent solution is this requires a change in law. It's a really easy change in law in the Illinois Public Records Act, just say thou shalt

not destroy police misconduct records. Just that simple. In the same point, Cook County Local Records Commission, Toni Preckwinkle's commission, with one swoop of hand can order, at least for right now, that these records don't get destroyed.

Talk to your legislators. Activate. Organize. Here is a concrete demand, because we're talking about this stuff being destroyed.

Lawyers everywhere out here and in the City are worried about lawsuits, write that anti-spoilation letter. Threaten if you destroy this stuff, you're going to be liable to everybody because there are still people sitting in jail right now. Deploy every means at our disposal, not just litigation, but all means at our disposal, because it really requires all of us to care enough about the lives of the most marginalized among us if we're going to be successful with this.

This is just the start of something that can be something great, and it's a tool that we're happy to be a part of and honored to be a part of that really belongs to everyone here. Thanks.

PROFESSOR BOWMAN: Sam Adam, we're going to turn to you.

MR. ADAM: Good morning, everybody. I was so thankful he stood up because I cannot sit still, so I appreciate you standing up so I can talk a little bit. And I hope you can all hear me.

I purposefully did not make any prearranged remarks because I wanted to hear from the panel. These are people that I literally grew up knowing, respecting. Flint Taylor literally is a person I've known since I was probably six or seven years old because he and my father go back that far. He's an actual hero of mine for the things that he has done. And I know he's going to talk, but he should get a round of applause, at least from my perspective.

Because things are changing only because we have a panel such as this. As you guys probably know, I mostly do criminal defense on the federal level and on the state level. I'm moving slowly in—sorry, Flint—into the civil rights area. I work with a firm, Erickson & Oppenheimer, and so, I'm slowly moving into that because one of the reasons that I see that this is very important and one of the things that I think not enough people understand is we have tools. We actually have tools as lawyers. We actually have tools as people, regular citizens, that don't get talked that much about. And one of the tools that I'm going to ask Mr. Bowman if I could speak on was the use of the media and the law.

Every single body in here knows who Jon Burge is. Everybody knows what Jon Burge was accused of. Everybody knows what Jon Burge did. And there is only one major reason for it. The major reason for it is—while we had people that are doing the basic work and working it up and giving their lives and dedicating themselves to rooting all those things out—but the reason we know it is because the media put it out there. The reason it's of international interest is because the media took it, understood it. It was presented so well by the likes of Flint and the rest of the people who did it. That's a tool.

We are, as human beings, are 80% visual. That's what we are, 80% visual. If we see something, we typically believe it because we saw it. We typically get interested because we saw it. Now, if we hear something and we don't see it, we become either skeptical or we buy it, but it's nowhere near as powerful as when you see it.

And so, in my experience of being a lawyer for the last seventeen years and watching my father, who was a criminal defense lawyer for fifty-two years, the use of the media can be a powerful tool in making people get interested.

I've heard a lot of things, I've done a lot of research, especially because I'm into stocks. And so, one of the things I'm researching was Apple as a stock. I started listening to the things that Apple was doing. And now that Tim Cook is the head of it, I listen to the things he said. And then, while I was doing it, the very minute I was doing that, I was on CNBC watching Squawk Box, it came on that that young man, or I suppose middle-aged man, in South Carolina where the officer had dropped down the Taser. And it was on tape. And it was videoed on an Apple phone, on an iPhone. And it hit me, it literally hit me right then. I said, "This is the future of how we're going to make changes." Tim Cook—nobody I've ever heard said this—is the future of civil rights in this country. Nick Woodman, who is the CEO of GoPro, is the future of civil rights litigation and making changes, not because they're out here doing what Flint does and what they do. He's the future and they're the future because we are going to see it with our own eyes. GoPro is working on a drone and a drone is going to be attached to a GoPro camera.

Now, what happens when those GoPro—whether we like it or not, whether we think it violates civil rights or not, it's coming. It's coming. And so, when those cameras show an officer who tells the judge in his reports that the African-American man jumped out of the automobile, punched me, and ran, and then, turned around and pointed a gun at me so I had to shoot him in the back, you're actually going to be seeing it day in and day out via those cameras. It's coming.

The only reason why, in my personal opinion, that Chicago is now doing the vests with the cameras is pressure that came out in the media. If the media doesn't put pressure on Emanuel, who needs to be elected, who needs campaign contributions, what happens? It goes under the wayside, just like it did all those years with Burge.

I hear all the time, Burge, Burge, Burge. But how many of those judges sitting at 26th and California heard the defendants come in and say, "He tortured me. He beat me. He put a plastic bag on my head. He hooked electronics to my testicles." And every single one of those judges heard Burge or Burge's groupies. And what do they say? I believe them. Oh, I believe them. Oh, he's lying. Motion to suppress, denied. And as it turns out, thirty years later, we're now facing everything that Flint Taylor and the likes have been saying for years.

Well, that's changing. The Tim Cooks and the Nick Woodmans and the citizens out here that are no longer afraid to show it can now put that on the news, can now tell a journalist what is taking place. And you can see it. And that's what's going to spark change.

Now, how do we as lawyers use that? You know, the only information I've ever received, the only experience I have ever gotten came from listening to others. I learned from my father. I learned from Flint. I learned from the lawyers at 26th Street. One of the things that they told me over the years, always stayed with me and I actually use it in court. It typically goes nowhere, but I always use it in court because it's true. For sixty-plus years, the law in this country was separate but equal. That was the law of the land from the highest court in this country, separate but equal. But Thurgood Marshall challenged it on due process grounds, challenged it at the state level, challenged it at the state supreme courts, challenged it in federal court until *Brown v. Board of Education*.

Now, what does that tell us as lawyers? Whatever the law is can change if you use your tools. And one of the tools we have certainly as criminal defense lawyers that I think every single person in here needs to employ if you're going to do that kind of work is [the] due process clause.

Right now, anybody give me the definition of due process.

A VOICE: Fairness.

MR. ADAM: All right. That's what you say. Anybody else? That's my point. Due process is what we say it is. And you'll never have to worry about putting a motion in a criminal case when you attach it to due process. Everything that Jamie just put up here, attach it to a motion and say, "We want to use this in there, based on due process. We say this is what fairness is. This is fundamental fairness." When you have research that is done, attach it to a motion, and say, "Look. It's fundamentally fair that we bring this in to the jury."

Now, the judge may not use it at the trial level, but now, you've got a point on appeal if you lose. And then, that moves up. And then, that moves up. And sooner or later, if we get pressure, via civil suits, via the media, you've changed. And you always can tell them, Thurgood Marshall said it was the law of the land, but he changed it. That's what I want to impress upon you.

The last thing that Mr. Bowman asked me to do was give you an example of how impractical sense is. Practically speaking, this can be successful. And very recently, we were fortunate enough to have a motion denied in federal court.

What happened in the case is a young man was walking home in Harvey. And one of the Harvey police officers told him, "Hey, come here." And he kept walking. And I'm not going to exaggerate. I'm just going to give you basic facts. He ends up being shot in the back of both legs. He falls forward. And according to the officer, who now admits to stepping on his back as he shot, he looks down and sees a gun. Because this is a police officer shooting, they called out the Illinois State Police. And out come the Illinois State Police who do the crime scene.

Yet, when they get back to the police station, of course, the photographs that they took were somehow corrupted. There were no photographs of the scene. There were no photographs of the gun. There were DNA swabs taken, and, of course, never tested. There were fingerprints that were supposedly taken with latents that were found on the gun that don't come back to the client.

When asked in the criminal case—yes, I said criminal—they charged my client with armed violence, fifteen to thirty at 85% because they said he had a little bit of marijuana on him at the same time he had a gun. So the criminal case is pending in Markham. And we filed a lawsuit in federal court.

Now, typically what happens is you stay the civil case in federal court, but Judge Guzman wouldn't do it, so they were going simultaneously. And lo and behold, once I started doing them simultaneously, I got one of the officers who took the pictures in the criminal case to take the Fifth on what happened to those photos.

A law enforcement officer took the Fifth. Now, I don't have to tell you how excited I was. But what happened is once that occurred, they settled the case in the federal. It's an undisclosed amount, but they settled the case in the federal. Yet Anita Alvarez continued to go on the criminal case.

Thank God, Phil Rogers of NBC took an interest in it. And I kept telling Phil, "Look, let me talk to them and explain it. I want to give you an opportunity." They wouldn't do it. That night, when I found out they would not dismiss the case after the officers settled and took the Fifth, Phil Rogers did a report, laid it out. The next day, they dismissed the case, the next day. "Sam, can you come out? I can't believe you did it. I can't believe what a jerk you are." NOLI CROSS.

Now, that's not a testament to me. That's not. And the point of me telling you this isn't to tell you how brilliant I am. Anybody could have, should have, and would have done that.

The point is the political pressure in this town, the political pressure in Chi-Raq can be used to change the culture, can be used to change not only what we know as facts, but who we're going to be in 2050, in 2075. And it's up to you to use those tools. You are the next Flint Taylor. Use it. Thank you.

PROFESSOR BOWMAN: So now, we hear from the first Flint Taylor.

MR. TAYLOR: I have to say to Sam, the check's in the mail.

Being a dean of civil rights litigation as Locke referred me to I think means two things: you measure your career and your work in decades rather than years, and you get to go last on a panel like this.

There are two questions that are posed to this panel. And they're not really the same question. The first question is, does litigation against dealing with police misconduct work and second, does it matter? Well, I wouldn't be here forty-five years after I graduated from this law school if I didn't think that it mattered, so I'll answer that question with a very resounding yes.

Does litigation dealing with police misconduct work? I think that's a more complicated question. I think that the people who have gone before me on this panel and who have fought these cases over the years in this city and across the country can answer that question as well, if not better, than I can. And I think they are a testament to that it does, at least in some circumstances, work.

But when we talk about it working, we need to look at what we mean by "working." And we can't just mean does it work in the sense that we get relief in a particular case. It can't just mean that we change some policy or practice of the police department, although those things are very important. But it has to be broader than that. Particularly in the larger cases, we have to talk about things like educating—that the information that you all are getting, you're educating people, whether you put it on the Internet, whether you speak to ten people or a hundred people, however you do it; talking to the media, obviously.

We have a hero of the media with the Jon Burge case who is sitting here today in John Conroy.

We talked to the media. We talked to John. And John, in collaboration with us, was successful in exposing the police torture cases back in the day. We're talking about supporting and working with movements because without movements, without activists, without people in struggle, the work that we do becomes less and less meaningful.

And we're talking not only about reforming the police and changing police policies, but we're talking about fighting back. We're talking about protecting the advances that we've made. We're talking about fighting against counter-offenses like we're seeing with

the police now, the counter-offenses coming in the wake of Ferguson, coming in the wake of all of the advances and all the exposure that the iPhones and the struggles and Black Lives Matter and We Charge Genocide and all the organizations have taken up. So it's working hand in glove with those organizations to fight back. Not only do we step forward sometimes, but we fight back and we keep from stepping backwards from the gains that we've made.

In the time that I have, I want to talk about a somewhat unique fight that I have been involved in, but one that I think will give some encouragement and shine some light on the idea of whether people's lawyers and the idea of working with movements does, in fact, work to accomplish some of those goals that I just mentioned. And that, of course, is the Jon Burge torture cases.

Jon Burge started torturing people in 1973. It didn't really come to light until 1982 when some very courageous public defenders took some very frightening pictures of Andrew Wilson, who had been tortured after he allegedly killed two white police officers in the City of Chicago.

That case went to a motion to suppress. Burge and all of his men were accused of torturing Andrew Wilson in the Criminal Court of Cook County. And it went nowhere. Those pictures were ignored by the judge, a Cook County judge who was complicit, no doubt, with state's attorneys in the torture, at least indirectly. And Andrew Wilson got the death penalty, based on a confession that was tortured by electric shock, by suffocation, and by other forms of torture.

Andrew Wilson, desperate, filed his own lawsuit. Andrew Wilson had a first grade education. He filed a pro se lawsuit. And no one would represent him.

Finally, he came to us—and I see John Stainthorp sitting in the audience—and myself and Jeff Haas. And our office took up the case in the mid-1980s. We had no hope of winning the case. We just thought that torture, in whatever form against whomever it was against, was against not only the Constitution of this country, but against all human rights.

So we took up the case. And we fought the case. And we ended up in federal court in 1989. And during sixteen weeks of trial, over two trials because there was a mistrial, we were able to uncover, through the help of an anonymous police source, who we called the Badge, the fact that the torture by Jon Burge was not just of Andrew Wilson and his brother Jackie, but it was systemic. And we attempted to put that on in court. And all that bought us was contempt citations.

We were not able to do that in court, but we were able to, with a young at that time, reporter who sat through every day of those sixteen weeks, bring that evidence to public light. And after we brought it to public light, it led to several things. With the help of a movement that was born from that trial and from that evidence, it led to protest, to civil disobedience, and it led to the reopening of the torture cases. It led to ultimately the firing of Jon Burge. And later, it led to cases, raising in the context of the death penalty, the torture of men who were on Death Row.

So that fight that we did in court and the exposure that we did out of court and the community agitation that went on outside the parameters of the courtroom and the education that went on around the torture.

And I use the word "torture." And everybody uses the word "torture" now. But back when we started to do these cases, nobody wanted to use the word "torture." Nobody looked

at it as torture, particularly not the media when, once in a while, they reported on it. So we self-consciously called it torture because that was what it was. We were attempting to, and ultimately with everyone else's help, we did change the narrative. We changed the narrative to that it was torture, that it was human rights violations, that it was overtly racist. It was systemically racist. Those were all things that we strove for as we got deeper and deeper into the police torture cases.

And after we were able to, hand-in-hand with many people here at Northwestern and in the community, use this information to attack the death penalty, to get a moratorium against the death penalty, to not only have Governor Ryan have clemency for all the people on Death Row, but four of the men who were tortured who were on Death Row were granted innocence pardons.

So we went along. And that work was able to accomplish, with many others taking the lead, that significant accomplishment.

After those men got out, we were able to use their lawsuits to further develop evidence. We were able to develop the fact that there were black detectives who finally, after they retired, were willing to talk about the torture. At that point, because of these lawsuits, Jon Burge got some very bad legal advice and he answered some interrogatories and lied about torturing people. That led later to his indictment and conviction for perjury. The work that we did in the '80s and the '90s and the work that the movement and the political people did led to that indictment.

And also, when I talk about litigation and talk about what lawyers can do, we can do it beyond the confines of a federal court or a state court. Some of the best work that was done in the early and mid-2000s was in the international forum. It was taking the cases to the Organization of American States. It was taking the cases to the United Nations Committee Against Torture. And those were very significant things that we did, that people did, that the movement did, as well as taking it to City Council, having hearings at City Council, having hearings at the Cook County Board. All of these things came together to lead to the indictment of Jon Burge after he made that mistake of lying under oath.

So also, I don't want to forget with the leadership of Locke Bowman and Joey Mogul and others, a special prosecutor was appointed in the early 2000s. Now, they appointed two special prosecutors that were under the thumb of the powers that be—the Daleys, the Machine—but even they had to ultimately issue a report. And that report found, at least in some cases, there was torture. And the media was very, very taken with that. So even though we'd condemned that report and wrote a counter-report, the fact that they had made those findings helped to credit the idea that this was torture, and that it was systemic. And that report ultimately led, along with all the evidence that we'd uncovered and all of the movement that was behind it, to Burge's indictment and ultimate conviction in 2010.

So what else more recently has happened is, of course, the wonderful struggle for reparations. Many of the men who were tortured were not as "lucky" or fortunate as to have lawsuits because they were not exonerated. They did not get pardons on the basis of innocence. They did not get certificates of innocence after their cases were dismissed after many decades in jail. These men just were released. They were tortured decades ago. They had no legal recourse for what they suffered.

Well, the movement for reparations made a difference with those men. And using the politics of this city and using the realities of what was happening in the movement itself, it was accomplished this year that reparations were accepted by the City of Chicago.

Monetary compensation as well as many services were obtained for the men who had no legal recourse.

But we still aren't done in terms of what we're trying to accomplish and what needs to be done inside and outside of the courtroom. Most recently, litigation in the state courts got appointment of attorneys to represent some of the men who are still in prison on the basis of torture.

I mentioned reparations. Also, the fact is that one of the other major things that was accomplished in the last few years was legislative. And that was based on the organization, Black People Against Police Torture, and others. Legislation was obtained to create the Torture Inquiry and Relief Commission. And that commission was embodied with the power to recommend and order the rehearing of cases of torture under Burge. And several of those cases have, in fact, come back to court. So those cases are still being litigated. Two or three men this past year were exonerated. And the cases continue. And they've gone full circle because now, thirty years after we represented Andrew Wilson, his brother, Jackie Wilson, who was also charged and convicted of that double murder and who was also tortured by Burge, his case has now come back via the Torture Commission to the criminal courts. And so, we are now representing Jackie Wilson thirty years after we represented Andrew Wilson.

So we have to continue the work that we're doing. I think it's meaningful. I think it's important. I think it's broader than just what happens within the courtroom, obviously.

I want to conclude by quoting one of my favorite people; he was one of the founders of the People's Law Office. And full disclosure, I was a law student at Northwestern when the People's Law Office was founded in 1969. I was working with the People's Law Office. And I like to take credit for helping to found it. And, in fact, I was there on the ground floor. But Dennis Cunningham was a lawyer who was really one of the real moving forces in the founding of the People's Law Office. Dennis used to have a saying when things would get tough and we would have our chins kind of down here someplace, and we didn't think we would be able to go anywhere in some of these big cases that we were working on. He'd look, and he'd say, "It's a great life if you don't weaken." And I just want to paraphrase that in terms of all of us and all that we can do. It's great and meaningful work if you don't weaken. Thank you.

PROFESSOR BOWMAN: So I think we have a little bit of time for questions. Am I right? Yes.

A VOICE: I have two questions. One, your call to action for those of us who are lawyers and now are retired and maybe have some extra time, do you guys have some plans, some programs, some recommendations as to how a civil litigator, jury trial lawyer, could get involved? I think it would be helpful, whether you're a lawyer or not, to know, you know, how do we respond, Mr. Adam, to your exhortation to participate or to the other encouragements that we've received to get involved and try to make a difference.

And as an ancillary question, I just wonder if any of the panelists have ever suffered harassment from the police because of your actions.

MR. TAYLOR: I can answer the second part of the question. We have from time to time. And we are the subject of a lot of police blogs. And we're the subject of some vitriolic

attacks. And we have been ever since we've been involved in the Fred Hampton case and more recently in the torture cases. There has been no physical violence that I know of against us, but we certainly are very self-conscious, at times anyway, of the fact that there are people in fairly high places and with weapons and others that don't like us very much.

MR. ADAM: I can't say it's because of police brutality or because of things I did with the police, I received I don't know how many hundreds of death threats during the Blagojevich trial, but that was from people out there who just hated that man. So not from that per se, but I have.

But to answer your other question, one of the things I think you can do, and I wish you would do it with me, which is the way in which I try cases and have been trained to try cases is you sit down, and you throw out ideas, no matter how silly, no matter how hysterical, or no matter how crazy. And the more you test me on my ideas, the more I get prepared to lay them out.

Judge Pincham, you know, another one—in fact, I'm named after him, my middle name is Eugene—he used to have a person in his office by the name of Fowlkes. And I heard stories growing up of how whatever Pincham said, Fowlkes would say the opposite. If it was night, Fowlkes would tell you, "Look outside. Don't you see the sun?" "No, Fowlkes. That's a streetlight." Do you know what I mean? He would test him. But the one thing that always came from him was Pincham then was a much better lawyer because of it.

I wish you retired lawyers would call me or call other law firms or do these things and say, "Listen. One way I can contribute to you is let me come over on a Saturday and run a case by me. And let me tell you what I think." That's one way in which someone of your sort can certainly help.

Lastly, one thing I want to make sure that I tell everybody this, too, is if you're going to be a trial lawyer, run every idea you have by your secretary, or by your wife, or husband, especially if they're not lawyers. The reason I say that is everyone sitting on your jury is a non-lawyer 99.9% of the time. If you can't sell a non-lawyer who you sleep with next to you on your idea, you ain't selling that to the twelve folks sitting there. Run it by regular, ordinary, everyday people. And I promise you, your ideas, when you finally do give your closing argument, will be the best they can.

A VOICE: I lived and died on jury research. And I couldn't agree with you more, but not the wife and not the secretary. They know you too well. You've got to do other people.

MR. ADAM: Other people. Right. Yes, sir.

MR. FUTTERMAN: I'm sorry. Can I say two things in response to the question?

So first about the retaliation. I think all of us have been subject to threats and still currently are. But one thing I want to also say about it, because I don't want to demonize everyone, is that at the same time when—and up until yesterday, I read something on a police blog about going to my home and hurting my children in terms of how serious it can get. But on the other hand, too, I also hear from police officers almost every day who hate this crap and have worked with people like Flint and like me and who need to be empowered, who have been often silenced by this culture of silence, who would like to

organize and have the power to organize as well and need our support as well. Because there are good folks out there who aren't trying to do this kind of—and actually, not just not trying to do this, but want to get rid of these jerks as much as any of us do.

The second point about what you can do, when I started this project, when I started the project, now, fifteen years ago in Chicago, the first thing after doing a lot of outreach and talking to folks, like the dean being Flint, is that I wound up getting probably as many as ten calls a day.

And it's so obvious and still obvious to this day that there are far more people in need who have no access to counsel, far more people who have potentially meritorious cases, but very little damages. And people sometimes are like, "Oh, this is a case we can never win, never make money on." Take these cases. That's the thing. That's more than anything else, there are people who are in real need right now who cannot get a lawyer. Step up. You need them.

A VOICE: This is a question for Craig about the FOP counterattack. When the Chicago Coalition for Police Accountability had meetings with the City, we were told we didn't have to worry about destruction of records of police misconduct because there was a federal injunction that was still in effect. What is the status of that?

MR. FUTTERMAN: Well, the City argued—and I just want to say, I want to give the City at least some credit because I do a lot of criticism of the police department here and for good reason, but one thing that I have to—that I appreciate, and credit is due, is I know this came after many, many years of litigation. But they said, "Okay. We're going to stand behind this principle of transparency." And they have. And I've seen them in court. I've seen their papers. I've seen the arbitration, have fought these attacks from the Union to try both to preserve this stuff, and also, to—while this is more debatable, they haven't been as great at complying with this, with individual requests.

But to your point, they've argued in that arbitration, the arbitration that I just referred to, that there are federal orders that exist that say they can't. The arbitrator said, "Too bad." The arbitrator said, "Destroy." And actually, the arbitrator said, "Purge."

There is a second arbitration that can be decided any day because the language in the supervisor's contract said purge, and that means get rid of all the electronic data. The second one, the contract says destroy, destroy all of the underlying records. That can be decided any day. There is a real risk. It's that simple. The City knows that. And that's why I speak also to the lawyers. The City knows. And part of their defense was that they [said], "Look, Mr. Arbitrator, in this situation, if we do what the Union wants us to do, we can face massive, massive liability." And they can, not just as a result of lawsuits that have been filed, but as Flint talked about, there are still people in jail right now that date back to and folks who the Public Defender's Office still represents, who are in prison right now who were subject to torture. And so, if they destroy these records, they destroy this important evidence, knowing that this is the potential subject of litigation, they can face massive liability. I think it's incumbent upon the lawyers also in this room to let them know and publicly write that letter, write to the press as well, this op-ed, that yes, you will, if you destroy these records.

PROFESSOR BOWMAN: We are at the end of our time, and then some. Please join me in giving a warm round of applause to our wonderful panel.