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**DUE PROCESS FOR THE PAST DUE:  
A LEGAL AID ATTORNEY’S ACCOUNT OF  
THE INDIGENT EXPERIENCE IN TODAY’S  
CRIMINAL JUSTICE SYSTEM**

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**I. INTRODUCTION**

Law students learn that the fundamental concept of due process of law is among the key ideals set forth by the Bill of Rights. Law schools do much to instill this ideal of due process in law students but do little to disclose the harsh reality awaiting these idealistic students as they enter legal practice. These naïve new attorneys soon discover that due process of law is not a shield that springs from the parchment of the Bill of Rights to

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protect all citizens from the tyranny of the powerful. Rather, with the blindfold of idealism removed, new attorneys must confront an ugly and disappointing truth. The truth is that, in the daylight of today's urban America, due process is often nothing more than a commodity to be sold to the highest bidder, with the indigent unable to make even an opening offer.

For some attorneys, particularly those who make the decision to shrug off their *pro bono* responsibilities and deal only with those who can afford due process, this disappointment never manifests. In contrast, for many attorneys, particularly those who volunteer or work full-time representing the indigent in civil or criminal matters, the unfulfilled promises of justice for all remain as a disillusionment that persists throughout their daily lives. For these attorneys, and more importantly, for their indigent clients, this disillusionment has led to a mounting distrust in the American judicial system. Indeed, as a legal aid attorney representing indigent people during police investigations of criminal offenses in Chicago, my own confidence in the Cook County criminal justice system has eroded. This erosion occurred slowly as I repeatedly witnessed the lengths to which some members of the Chicago Police Department (CPD) are willing to go as they swiftly administer a brand of justice not outlined in any law school casebook. My hope is that by relating just a few of these experiences, I might help strip away the ideals of those who refuse to believe that due process has become a luxury rather than an entitlement. Certainly, any future debate respecting the pursuit of social justice that is colored by lofty ideals instead of real injustices shall be a futile endeavor.

## II. FIRST DEFENSE LEGAL AID

Adults detained by the police have no right to speak to anyone other than an attorney while they undergo police interroga-

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tion.<sup>1</sup> For people who can afford to hire an attorney to come to the police station and provide legal advice, this situation can be addressed quite easily by a phone call placed by either the detainee or his family to a private criminal defense attorney. Indigent people detained by the police in Illinois, however, have traditionally had no such recourse, because the law providing an indigent person accused of a crime with an attorney does not provide any representation until the person makes his first court appearance.<sup>2</sup> Attorneys consider the time during which a person undergoes police interrogation a critical stage in a criminal defendant's case due to the potential for coerced statements. The founders of First Defense Legal Aid (FDLA) felt a gross inequity existed between those who could afford an attorney's advice during the investigation phase of a criminal prosecution and those who could not. Thus, a group of attorneys and laypeople created FDLA to fill the critical gap in indigent criminal representation that existed between the point that a CPD investigation began and the point that an Assistant Cook County Public Defender accepted the indigent defendant's case.

In offering free, 24-hour legal representation to indigent people undergoing investigations by the CPD, FDLA provides a legal aid service unique to Chicago. No other private organization in the United States currently provides such a service to indigent detainees, thus the position of the FDLA Executive Director has consistently afforded its occupants an extraordinary perspective on the true nature of CPD investigation tactics. Moreover, as FDLA clients and other indigent people move through the Cook County Criminal Court, FDLA attorneys have gained further insight into how the criminal courts react to the reports of these CPD tactics. FDLA's hotline serves not only as a way

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<sup>1</sup> Police must immediately make a reasonable attempt to notify a parent or legal guardian both that a minor is in custody and the minor's location when a juvenile is taken into custody with or without a warrant. *See* 705 Ill. Comp. Stat. 405/3-8(1)(2) (1988).

<sup>2</sup> *See* 725 Ill. Comp. Stat. 5/113-3(a)(b) (1963).

for the families and friends of the indigent accused to request representation for their detained loved ones, but also provides the indigent community a soundboard for all of the injustice experienced by its members as their cases move through the Cook County Criminal Court.

### III. THE CHICAGO POLICE DEPARTMENT

All CPD officers are sworn to uphold a law enforcement code of ethics (hereinafter “Code of Ethics”). Among these principles are the following:

As a law enforcement officer, my fundamental duty is to serve mankind, to safeguard lives and property, to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder *and to respect the constitutional rights of all men to liberty, equality and justice. . . .* I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear of favor, malice or ill will, *never employing unnecessary force or violence* and never accepting gratuities.<sup>3</sup>

Unfortunately, for some CPD officers and detectives, these values often become lost under the pressure to garner convictions. Specifically, because felony convictions often turn upon a CPD detective’s ability to elicit incriminatory statements, the princi-

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<sup>3</sup> Chicago Police Department, *The Law Enforcement Code of Ethics*, <http://www.cityofchicago.org> (follow “Local Government” hyperlink; then follow “City Departments” hyperlink; then follow “Police Board” hyperlink; then follow “Rules and Regulations” hyperlink; then follow “Article 1” hyperlink) (last visited Aug. 17, 2007) (emphasis added).

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ple of respecting a detainee's constitutional rights typically becomes the most disposable. Hundreds of situations encountered by FDLA staff and volunteer attorneys, including myself, strongly support the conclusion that many CPD officers respect the civil rights of the indigent only insofar as those civil rights do not interfere with their investigations. These civil rights violations cover the spectrum of police misconduct, including denial of consultation with an attorney, police beatings of detainees and everything in between.

While nobody can precisely pinpoint a timeframe when the CPD lost its way, it is clear from the investigation of former CPD Commander Jon Burge that the CPD systematically tortured indigent minority suspects as recently as the 1970s and 1980s. Indeed, the court-ordered investigation of Burge and his cohorts identified 148 cases of alleged police torture in the interrogation rooms of CPD Area 2 and Area 3 headquarters. Every one of the victims was an African American.<sup>4</sup> Among the allegations were reports of suffocation using plastic bags, electric shocks using cattle prod, cigarette burns and even electroshocks of the testicles.<sup>5</sup> Unfortunately, while Special State's Attorney Edward J. Egan found that evidence existed to support the claims made in at least half of those 148 cases of alleged torture, his report further concluded that indictments were impossible due to the expiration of the statute of limitations.<sup>6</sup> Egan declared that proof beyond a reasonable doubt existed in three cases examined and that "[w]hile not all the officers named by all the claimants were guilty of prisoner abuse, it is our judgment that the commander of the Violent Crimes section of Detective Areas 2 and 3, Jon Burge was guilty of such abuse."<sup>7</sup>

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<sup>4</sup> Carol Marin, *Burge Report Doesn't Tell Whole Story*, CHICAGO SUN-TIMES, July 23, 2006, at B6.

<sup>5</sup> *Id.*

<sup>6</sup> Edward J. Egan and Robert D. Boyle, *Report of the Special State's Attorney: Appointed And Ordered By The Presiding Judge of The Criminal Division of The Circuit Court of Cook County*, 16 (2006).

<sup>7</sup> *Id.*

Finally, Egan noted, “[i]t necessarily follows that a number of those serving under [Burge’s] command recognized that, if their commander could abuse persons with impunity, so could they.”<sup>8</sup>

Despite this troubling past, one might assume that the days of intimidating indigent detainees into confessions had ended abruptly upon the public dissemination of the details surrounding the alleged deeds of Burge and his cronies. However, as the following accounts suggest, nothing could be further from the truth. While it might seem that the investigation of Burge helped alleviate some of the purely physical coercion techniques, the CPD still ignores the law by using insidious psychological coercion methods. To fully take advantage of these techniques, the CPD regularly violates the rights of indigent detainees by holding them in interrogation rooms without probable cause and by denying them access to an attorney, typically an FDLA attorney retained by the detainee’s family. Although the law permits a detective to lie about evidence or various other matters during questioning in an effort to elicit a response, the psychological techniques to which I refer are far more troublesome than mere lies.

### A. *Interrogations*

For any law enforcement officer, the confession is typically the single best piece of evidence the officer may obtain. Law enforcement officers know that confessions are extremely difficult for defense attorneys to overcome at trial, and a confession often forces the defendant to plead guilty despite the existence of exculpatory evidence.<sup>9</sup> Therefore, it is not surprising that

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<sup>8</sup> *Id.*

<sup>9</sup> See Stephen A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-D.N.A. World*, 82 N.C. L. REV. 891, 923 (2004). (Indeed, “[c]onfession evidence, (regardless of how it was obtained) is so biasing that juries will convict on the basis of confession alone, even when no significant or credible confession confirms the disputed confession and considerable significant and credible evidence disconfirms it.”).

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CPD detectives, in an effort to investigate cases quickly while also preserving a high conviction rate, often focus with extreme precision on eliciting confessions from suspects. Undoubtedly, this focus usually comes at the expense of investigating alternative theories or fully exploring potential forensic evidence. Indications of this tunnel vision on the part of some CPD detectives can be seen in the tactics detectives use to investigate crimes in the poor neighborhoods of Chicago, including the illegal practice of involuntary witness detention.

During their investigations, police officers and detectives may question witnesses and may even ask witnesses to accompany them to a police station for questioning. The CPD's own policy requires that, whenever a detective asks a witness to accompany her to the station and the witness accepts, the detective must inform the witness that he is free to cease answering questions and leave the station at any time.<sup>10</sup> This policy reflects the principle that, unless the police have probable cause to believe that a person has committed a crime, they have no right to detain that person against his will. If the CPD officers and detectives actually followed this policy, there would be little to challenge with respect to violations of the witness-detainees' constitutional rights. FDLA attorneys have found, however, that many CPD detectives not only ignore the CPD policy regarding disclosure of the witness-detainees' right to leave, they regularly go so far as to use the "witness" designation to prevent the uncooperative witness-detainee from invoking his *Miranda* rights.<sup>11</sup> In reality, many CPD detectives use the witness designation to isolate witness-detainees suspected of crimes from all outside influence, including the influence of an attorney hired by the detainee's family. Since the inception of FDLA in 1995, the CPD has regu-

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<sup>10</sup> See Michael Higgins, *Cop Settlement Bans Witness Detention: Lawsuit Said Man Was Held For 30 Hours Against Will*, CHI. TRIB., July 27, 2007.

<sup>11</sup> *Miranda v. Arizona*, 384 U.S. 436, 498 (1966) (extending the constitutionally protected rights to remain silent and to assistance of counsel to suspects beginning at the moment the police initiate a custodial interrogation).

larly denied FDLA staff and volunteer attorneys' access to witness-detainees, usually claiming that the witness-detainee has neither requested representation nor asked to leave.<sup>12</sup> In one recent case, an FDLA volunteer attorney was told this despite the fact that the witness-detainee himself had called the hotline number from the police station and requested that an attorney come to the station to represent him.<sup>13</sup>

The CPD's repeated denials of FDLA attorney access to witness-detainees came to a head in June of 2001. Soon after the fatal shooting of CPD Officer Brian Strouse, the CPD rounded up and detained 11 unwilling people as witnesses, including five juveniles, at the CPD's Area 4 Headquarters.<sup>14</sup> FDLA received a request to represent these 11 witness-detainees soon after their detention, and FDLA attorney Sladjana Vuckovic responded.<sup>15</sup> Soon after her arrival and her request to visit one of the clients, an unknown Area 4 CPD officer grabbed Vuckovic by the arms and forced her down a flight of stairs.<sup>16</sup> The clients in that case were subsequently held at the station for 14 hours and never given access to their lawyers.<sup>17</sup> Shockingly, none of

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<sup>12</sup> In cases where attorneys are denied access to a witness-detainee, CPD officers rarely, if ever, allow the attorney to verify that the witness-detainee wishes to cooperate with the CPD and does not wish to speak with the attorney. Indeed, the attorney typically can only rely on the word of the CPD officers. The information supplied in the text and this supporting footnote is based on personal experience as well as the myriad files kept in the FDLA office, 6400 S. Kedzie Ave., Chicago, Ill., documenting the CPD's practice of witness detention. *See also* FDLA website, <http://www.first-defense.org>.

<sup>13</sup> Documentation of this particular denial of access is on file in the FDLA office, 6400 S. Kedzie Ave., Chicago, Ill. *See also* FDLA website, <http://www.first-defense.org>.

<sup>14</sup> *See* Ofelia Casillas, *Lawyers Sue Over Access to Crime Suspects*, CHI. TRIB., Dec. 19, 2001.

<sup>15</sup> Curtis Lawrence, *Police Block Lawyers From Clients, Suit Alleges*, CHICAGO SUN-TIMES, Dec. 20, 2001, at 13.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

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the clients were ever charged in the case, confirming that they were illegally detained without probable cause.<sup>18</sup>

While one might hope that this would be the only case of a CPD officer forcibly removing an FDLA attorney from a police station for no other reason than her attempt to visit a client, the unfortunate truth is that more examples of this behavior exist. Another incident involved FDLA attorney Dawn Sheikh, who attempted to visit a client detained as a witness to an alleged gang shooting.<sup>19</sup> In that instance, a CPD sergeant, who worked at Area 2 Headquarters and objected to her request, pulled Sheikh down a flight of stairs.<sup>20</sup> For several days after the forcible removal from Area 2, Sheikh had bruises on her arms to remind her of the illegal action taken by the CPD sergeant.<sup>21</sup> Undoubtedly, the forcible removal of an attorney from a police station when that attorney has done nothing more than requested to see her client runs counter to the Code of Ethics that all CPD officers are sworn to uphold.

In all fairness, not all CPD officers resort to physical intimidation when denying attorneys access to clients who have been detained as witnesses. In fact, the CPD has occasionally given FDLA attorneys access to clients detained as witnesses despite the fact that, in many of these cases, the police actually provide the attorney with compelling evidence of an illegal detention. These situations happen often and, depending on the facts, reflect varying levels of the CPD's disregard for the witness-detainees' constitutional rights. In some ways, these instances of illegal detention are equally as disturbing as those times when an attorney is denied access to a witness-detainee. Specifically, these cases demonstrate that the CPD officers and detectives feel so comfortable ignoring the CPD policy requiring them to inform witness-detainees of their right to leave that they shame-

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

lessly flaunt the policy with the knowledge that the witness-detainee's attorney is bound to know the truth about the detention.

A typical example of this blatant disregard for the CPD policy requiring officers to inform witness-detainees of their right to leave can be found in the illegal detention of Juan Ramos.<sup>22</sup> Ramos, 21, was driving his uncle's car when members of a CPD tactical unit pulled over the car and ordered both him and his uncle out. After finding no contraband during a search of Ramos and his uncle's car, the officers demanded that Ramos take them to his home and allow them to search there. When Ramos replied that the officers would need a warrant to conduct a search of his home, the officers arrested Ramos for driving under the influence—despite the fact that Ramos had not consumed any alcohol or drugs that day. The officers handcuffed Ramos and transported him to the nearest CPD station where he underwent no sobriety testing of any kind. Half an hour after arriving at the district station, the officers transferred the handcuffed Ramos to a CPD violent crimes unit in a completely different area of Chicago. Once there, Ramos was handcuffed to a bench in a locked interrogation room. The officers informed Ramos that detectives in this unit wished to question him and that he would wait there until the detectives arrived. After sitting in the room for about an hour and a half, a violent crimes detective entered the room and said he had questions for Ramos, but that he wanted Ramos to sit for awhile longer. After another half hour, the detective returned, and Ramos asked to use the restroom. The detective removed Ramos' handcuffs, took him to the restroom, then returned Ramos to the interrogation room and handcuffed him to the bench again. Forty-five minutes later, the same detective returned and finally stated that Ramos knew something about the murder of two young people in the area

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<sup>22</sup> Client's name changed to protect confidentiality. The details of Ramos' case are stored in the FDLA files at 6400 S. Kedzie Ave., Chicago, Ill. See also FDLA website, <http://www.first-defense.org>.

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and that he wanted him to talk. Ramos said he did not know anything about the murder. The detective removed the handcuffs and left the room.

Five minutes before the detective had asked Ramos about the alleged murder, I arrived at the violent crimes unit and requested to see Ramos. The detective who I spoke with, the same detective who had allowed Ramos to remain handcuffed to the bench in the locked interrogation room, told me he would be right back. After failing to obtain a statement from Ramos and then removing the handcuffs, the detective returned to me and escorted me back to the interrogation room. I asked the detective whether Ramos was under arrest, and the detective replied that he was not. Rather, despite everything that the arresting officers told Ramos about being arrested for driving under the influence, the detective explained to me that a CPD tactical unit brought Ramos in as a witness. I asked whether Ramos was free to leave, and the detective replied that Ramos had the right to leave the station whenever he wanted.

I then returned to the interrogation room and asked Ramos whether he knew that he was a witness and free to leave the station. Ramos responded by showing me his wrists, still red from the hours of being handcuffed to the bench. After photographing his wrists and taking a statement from Ramos, I told him that we were leaving the station. Ramos seemed shocked, but I assured him that he was indeed free to leave police custody. As I left the unit, I asked the detective how Ramos could be free to leave the station while handcuffed to a steel bench. Predictably, the detective replied that he had nothing to do with the handcuffing and that it was the tactical officers who had handcuffed Ramos to the bench.

Unfortunately, FDLA attorneys have found that Ramos' experience is typical of how the CPD treats indigent witness-detainees, with CPD officers and detectives using the witness status as *carte blanche* to hold people indefinitely without attachment of *Miranda* rights. Only in rare cases involving FDLA

intervention do witness-detainees report being told at any time during their detention that they were free to leave. In most cases, the police act in a manner that would lead a reasonable person to believe that he had been arrested. As Ramos' case shows, police deliberately misinform the witness-detainee that he is under arrest, handcuff the witness-detainee for stretches of five to six hours or more and lock the witness-detainee in windowless interrogation rooms without free access to water or bathrooms. Occasionally, a witness-detainee's status will change to that of arrestee if the detectives have fully exploited the witness-detainee status by eliciting incriminating statements. In such cases, however, the detectives still take advantage of CPD policy allowing them to hold the detainee a full 48 hours from the time of arrest and question him further if he has not invoked his constitutional rights.<sup>23</sup> Thus, this practice can result in detention times far exceeding the 48-hour time limit set by the CPD's own policies.

### ***B. Police Brutality***

Several witnesses to the arrest of Wilbur Banks reported that he was beaten severely *after* being hogtied by CPD officers.<sup>24</sup> At some point during the beating, CPD officers broke Banks' leg, requiring an emergency room visit following the arrest. At the CPD station where Banks was eventually taken after treatment, FDLA attorneys observed a man bruised and cut from head to toe. When one views pictures that the attorneys took of his swollen face and battered body, it becomes obvious that, regardless

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<sup>23</sup> Under CPD policy, the police may hold a person for up to 48 hours from the time of arrest before they must charge the person or release him from custody. See Official Blog Site of the Chicago Police Department, <http://cpdweblog.typepad.com/about.html> (last visited Sept. 13, 2007). See also Michael Higgins, *14 May Join Police Custody Suit: Ex-suspects Claim Cop Mistreatment*, CHI. TRIB., Oct. 24, 2003, available at 2003 WLNR 15380410.

<sup>24</sup> Client's name changed to protect confidentiality. The details of Banks' case are stored in the FDLA files at 6400 S. Kedzie Ave., Chicago, Ill. See also FDLA website, <http://www.first-defense.org>.

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of whether Banks offered resistance during his arrest, his resistance did not justify the extent to which CPD officers thrashed him. Furthermore, the CPD officers who took Banks to the hospital did nothing to alleviate the horrible reputation that has made the CPD infamous for its brutality. Clearly visible in one of the pictures of Banks' full leg cast, in a mocking gesture comparing Banks to former world heavyweight champion boxer Leon Spinks, is a signature reading: "Good luck Spinks." Remarkably, the message was even signed by the officers, who wrote: "the 4-0."<sup>25</sup>

While allegations of physical abuse by police trouble nearly all who hear of them, the reality is that much of the alleged police misconduct described to FDLA attorneys involves some form of psychological abuse. As one FDLA client discovered, some CPD officers use methods other than beatings to show their displeasure with a citizen whom the officers deem uncooperative. Police arrested Kevin Thomas, 17, near his home for what the police told him was a drug offense.<sup>26</sup> The officers took him to a police station where detectives planned to interrogate him regarding a recent homicide. Before they got their chance, an FDLA attorney arrived at the station and explained to Thomas how to invoke his constitutional rights. Thomas invoked his rights in response to police questioning, and after 48 hours he was released for lack of evidence on the drug charge. A few weeks later, Thomas' mother received a subpoena in the mail calling Thomas to testify before a grand jury as to his knowledge of the events surrounding the homicide. Thomas called the FDLA offices and asked for representation during the grand jury proceedings, representation that FDLA provided. After reviewing Thomas' potential testimony, FDLA attorneys deter-

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<sup>25</sup> Pictures are stored in the FDLA files at 6400 S. Kedzie Ave., Chicago, Ill. See also FDLA website, <http://www.first-defense.org>.

<sup>26</sup> Client's name changed to protect confidentiality. The details of Thomas' case are stored in the FDLA files at 6400 S. Kedzie Ave., Chicago, Ill. See also FDLA website, <http://www.first-defense.org>.

mined that it was in Thomas' best interest to invoke his Fifth Amendment privilege against self-incrimination unless and until the government offered him full immunity. Thomas satisfied the subpoena and followed his attorneys' advice, asking for immunity in exchange for his testimony. The government informed Thomas that no immunity would be offered.

Several weeks later, Thomas was walking down the street with friends when two CPD officers lacking name tags drove up to the group and told Thomas he was under arrest. They handcuffed him and put him in the back seat of their unmarked car. The officers drove Thomas to the neighborhood of the homicide victim, a local gang member. They drove around the neighborhood while stopping occasionally to call people over to the car to ask them whether they recognized Thomas. At one point, the officers pulled Thomas out of the back seat and handcuffed him to a gate in an open area of the neighborhood, leaving him there for at least half an hour. Eventually, the officers took Thomas to a police station where he was released on his own recognizance with a court date for a misdemeanor drug charge. Of course, the officers did not appear to testify at the court proceeding and the drug charge was dropped. The experience made Thomas fear for his life and displays the lengths to which the CPD will go to retaliate when an indigent person fails to fall into line.

Perhaps the most troubling aspect of the myriad allegations of CPD brutality is the near impunity with which the offending officers continue to commit the acts. When a client alleges police brutality to an FDLA attorney, the attorney photographs any injuries and then instructs the client on how to file a complaint with the Office of Professional Standards (OPS), an investigative arm of the CPD that is supposed to investigate and punish offending officers. Sadly, this advice rarely results in any disciplinary action for the officer or officers responsible for an offense. This fact finds support in the statistics obtained in recently settled federal litigation aimed at ending some of the police abuse perpetrated against the indigent. According to the CPD's

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own statistics, only 82 out of 5357 total complaints of police brutality were sustained by OPS between 2002 and 2004. In other words, only 1.5% of the complaints during those years resulted in any discipline for the offending officers.<sup>27</sup> Moreover, this percentage of sustained complaints of brutality decreased from 2002 to 2004, reaching a low of .48% in 2004.<sup>28</sup> When compared with the national sustained rate of 8% as reported by the United States Department of Justice in 2002, it is clear that complaints of brutality perpetrated by CPD officers are significantly less likely to result in any discipline.<sup>29</sup>

Surely, these numbers do not inspire confidence in OPS among the victims of police brutality nor does it encourage the attorneys who refer the victims to OPS. Indeed, unless a more meaningful system of independent civilian oversight of the police is developed, the distinct minority of CPD officers who regularly perpetrate these unnecessary and violent acts against those they are sworn to protect will continue their abuse. Such a civilian oversight committee would need the power to hand down binding decisions that demonstrate to offending officers the seriousness of their actions. Due at least in part to the long tradition of police brutality typified by CPD officers such as Jon Burge,<sup>30</sup> it would likely take a large number of officer suspensions and firings to purge the CPD of its worst offenders. Only after offending CPD officers realize that severe consequences exist for them on a personal level will they begin to reconsider their mistreatment of the citizenry that employ them.

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<sup>27</sup> Interview with Craig Futterman, Clinical Professor of Law, University of Chicago Law School, in Chicago, Ill. (Apr. 3, 2007). Supporting documents can be found on file in Professor Futterman's office.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See Marin, *supra* note 4; see also Egan, *supra* note 6 and accompanying text.

#### IV. THE COOK COUNTY CRIMINAL COURTS

The problems the indigent face when targeted by the CPD for an investigation are amplified by the Cook County Criminal Court system, a system drastically underfunded when one considers the magnitude of its responsibility. In *Courtroom 302*, author Steve Bogira paints an accurate picture of what the typical indigent defendant faces as he makes his way through the giant machine that sits at the corner of 26th Street and California Avenue in Chicago.<sup>31</sup> Bogira relates the stories and outcomes of numerous cases heard at the Cook County Criminal Court, with each flatly typical of the indigent defendant experience in Cook County and concludes with a morose observation:

Whenever a defendant pleads guilty, most parties are satisfied, even if the defendant happens to be innocent. It's a conviction for the prosecutor and a dispo for the judge, a fee for the private defense lawyer or one fewer case for the [public defender]. The defendant is relieved that he didn't get something worse.<sup>32</sup>

This statement, while possibly accurate with respect to many of the prosecutors, judges and defense lawyers working in the Cook County Criminal Court, does not reflect the true feelings of many of the indigent who have entered guilty pleas. Satisfaction is not a feeling indigent defendants expect to experience or come to know as their cases progress from the investigation into the court system. Rather, indigent defendants or their families frequently complain to FDLA attorneys of their frustration and anger with the criminal justice system. Their confidence in the criminal justice system continues to dwindle, and their anger at being treated differently than those who can afford private attorneys overshadows whatever relief a plea bargain might offer.

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<sup>31</sup> STEVE BOGIRA, *COURTROOM 302* (2005).

<sup>32</sup> *Id.* at 335-36.

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Indigent defendants frequently complain to FDLA about what they see as ineffective assistance provided by their court appointed Assistant Public Defender (APD). Usually, an indigent defendant wants a new attorney, and he will often describe a similar situation to that of countless callers before him. Specifically, the indigent defendant will complain that his APD is forcing him to plead guilty even though he has done nothing wrong. While an APD probably has every intention of representing her clients zealously, the time constraints imposed by overwhelming caseloads may force the APD to encourage her clients to plead guilty even when a defense might otherwise be tenable. Thus, the indigent detainee finds himself stuck in a frustrating situation as he has no ability to hire a private criminal defense attorney with the resources to force the courts to fully evaluate the oftentimes questionable police work supporting the prosecution.

As trying as this current state of affairs is for indigent detainees and their families, imminent budget cuts threaten to rob the already starving criminal justice system of badly needed judges, prosecutors and public defenders. In December of 2006, Cook County Board President Todd Stroger called for a 17% budget cut to all Cook County departments, including the office of the Cook County Public Defender.<sup>33</sup> The budget cut could mean the firing of many assistant public defenders, crippling an office already working on a shoestring budget.<sup>34</sup> The budget cut may affect judges and prosecutors as well. The loss of prosecutors will exacerbate the problem, as indigent defendants wait increasingly longer for their cases to move through the system. Many of these defendants wait in jail for weeks, months or in some cases years while awaiting trial, thereby increasing the pressure on indigent defendants to accept a plea bargain regardless of whether

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<sup>33</sup> Mickey Ciokajlo, *Public Defender Meets Budget Cuts. Layoffs Could Be Required*, *Official Says*, CHI. TRIB., Dec. 28, 2006, at 3.

<sup>34</sup> *Id.*

they have actually committed the alleged crime.<sup>35</sup> With all of these factors working against the indigent defendant, it comes as no surprise to FDLA attorneys that the indigent communities of Chicago continue to voice their disdain for a criminal court system that does little to protect their rights, despite the fact that they are the citizens most likely to be wrongly targeted for prosecution by the CPD.

## V. CONCLUSION

Without a doubt, the manner in which the police and courts treat the indigent provides Americans with an important means of evaluating whether the criminal justice system remains capable of providing due process as required by the Bill of Rights. The observations of FDLA staff and volunteer attorneys reveal that the system in Cook County has broken down to the point that due process may no longer be available to a significant number of the indigent accused. With myopic CPD officers and detectives seeking fast convictions through cases chiefly built around confessions, the indigent need a court system with enough resources to fully evaluate the questionable police work underlying many of the prosecutions. Unfortunately, after indigents leave the investigation phase of a prosecution, they enter a Cook County Criminal Court that cannot handle the sheer number of defendants shuffling through its doors. While the grand scope of the problem engenders a sense of futility in many of those who contemplate possible solutions, the ultimate goal of returning balance to the scales of our criminal justice system is achievable.

First, well-funded, independent civilian oversight of police must become a reality in cities, such as Chicago, where police

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<sup>35</sup> Natasha Korecki, *County Jail Searches for Way to Reduce Overcrowding*, CHICAGO SUN-TIMES, Aug. 26, 2004, at 22. (“[A]n inmate waits an average of 180 days and some even wait years before they’re found guilty or innocent of their charges.”).

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departments tolerate police misconduct. City legislatures and mayors' offices must recognize that the failure to implement independent civilian oversight committees for their police departments constitutes an ongoing blanket pardon for the vast majority of the officers who engage in excessive force or other illegal tactics. As the CPD's own statistics demonstrate, the current system of police oversight for CPD officers has failed.<sup>36</sup> The scandals that currently rock the CPD will continue regularly until those in power approve proposed plans for new independent civilian oversight committees. Undoubtedly, most of the men and women serving Chicago as members of the CPD are good police officers who do not deserve to have their badges tarnished by the misconduct of a troublesome minority. Moreover, the indigents who typically face victimization at the hands of this minority do not deserve the beatings, coercive interrogations or the wrongful convictions that result from a lack of independent civilian oversight of the officers meant to protect them.

Next, rather than shrinking the budgets for the courts, prosecutors and public defenders offices in our nation's busiest criminal courts, as called for in the current budget plans of Cook County, we must drastically expand the budgets and hire many more judges, prosecutors and public defenders. While this remedy will almost certainly require significant costs to taxpayers initially, budget savings will help counteract this burden as the average length of defendants' stays in county jails will almost certainly decline with cases moving quickly through the respective stages. More importantly, the confidence of the indigent community in our court system will slowly return, as the fundamental due process guarantees of the Constitution once again become a reality for even the most economically disadvantaged members of society. With appropriate funding, each APD could carry a caseload light enough that she would have the time and resources to represent each of her clients with the same zeal as any private criminal defense attorney. Indigent defendants

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<sup>36</sup> Interview with Craig Futterman, *supra* note 27 and accompanying text.

would feel less pressure to plead guilty in cases where legitimate defenses or motions could be raised, including suppression motions related to coercion of confessions by the CPD.

An increase in the number of suppression motions would have repercussions not only for the defendants, but for the CPD as well. As more effective indigent defense representation leads to increasing numbers of suppression motions, the CPD will be forced to thoroughly evaluate its interrogation practices. Indeed, the coercive and illegal CPD interrogation practices regularly witnessed by FDLA attorneys would hopefully find little support when scrutinized by the courts following a sharp increase in suppression motions. Eventually, the outcry among prosecutors in response to increasing numbers of prosecutions lost to successful suppression motions would jeopardize the current CPD custom of focusing almost exclusively on the extraction of confessions. The CPD would be forced to respect the civil rights of those they detain or risk losing a much higher percentage of their convictions in the pretrial stage. Thus, improving criminal court systems with significant budget increases would likely have positive secondary effects on the CPD and other police departments that rely heavily on coercive interrogation techniques.

Of course, the idea of raising taxes normally raises the ire of Americans and that ire stands tall in the path of progress. However, until the time comes that Americans take ownership of the criminal justice process and commit to improving both the police and the courts for everyone, including the indigent, they risk creating a class of Americans who no longer respects a process that considers them second class citizens. When the day comes that the indigent population of a city collectively loses respect for that city's criminal justice system, the price of that loss of respect can be severe. One need only look back as far as 1992 and the riots in the indigent communities of Los Angeles following the acquittal of the police officers who were videotaped beating Rodney King to find a stark example of the potential for

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societal breakdown when justice consistently evades a large group of people. For years prior to those riots, Los Angeles, much like today's Chicago, was a powder keg due to the indigent community's lack of faith in the justice system. The Rodney King fiasco simply acted as a spark to set off the upheaval that had been simmering for years. Consequently, cities like Chicago can either choose to address the indigent community's dwindling faith in the criminal justice system or brace for the house of cards to fall when some gross miscarriage of justice is perpetrated by abusive police, an underfunded court system or both. The cost when Los Angeles' house of cards fell in 1992: between 50 and 60 dead, as many as 2500 injured and at least \$446 million in property damage.<sup>37</sup> Time will tell how much Chicago pays.

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<sup>37</sup> Dennis DiPasquale & Edward L. Glaeser, *The Los Angeles Riot and the Economics of Urban Unrest*, 52 *Journal of Urban Economics* 1-2 (1998).

