

Patterns and Practices

Author : Elizabeth Ruth Dale

Date : July 30, 2014

Kim D. Chanbonpin, [Truth Stories: Credibility Determination at the Illinois Torture Inquiry and Relief Commission](#), 45 *Loy. U. Chi. L.J.* 1085 (2014).

These days, I think a lot about police torture.

To be more precise, these days I am wrestling with problems of how to “prove” police torture occurred. And that’s why I recently read [Kim D. Chanbonpin](#)’s article “Truth Stories: Credibility Determinations at the Illinois Torture Inquiry and Relief Commission.”

The question at the heart of the problem I am struggling with is straightforward enough: How can one evaluate a claim of police torture when the only source of the claim is the alleged victim and when the police and prosecutors categorically deny that anything occurred?

As anyone who is familiar with [Chicago civil rights litigation knows](#), claims of police torture have been a problem for the court system for nearly thirty years. In fact, they were a problem for Illinois courts long before Jon Burge began to work for the police department: In 1938, the jury and judge in a murder trial in Chicago were confronted with a claim by Robert Nixon that he falsely confessed to murder only because he had been repeatedly tortured over several days by Chicago police officers, who beat him, hung him by his arms from a wall as they interrogated him, and held him outside a window with the threat they would drop him if he did not confess to several murders. To counter Nixon’s claims, the State called over 40 police officers to the stand; they all testified that they had not abused Nixon or seen any other officer do so.

Invited by the State’s Attorney to consider who had the most reason to lie, the judge and jury concluded that Nixon, a young black man charged with a particularly heinous murder of a firefighter’s wife, would be most inclined to fabricate evidence. As a result, they sentenced him to death. The Illinois Supreme Court agreed for a slightly different reason. Noting that 23 police officers, “shown to be all of the officers in charge of defendant from the time of his arrest until after the statements and re-enactment were made,” had testified that they had not harmed Nixon and had not seen any other officer do so, the court concluded the state had effectively rebutted Nixon’s claims (371 Ill. 318, 324-325 (1939)).

As a practical matter, the Illinois Supreme Court was wrong on the very point it seemed to find crucial: The trial court did not hear testimony from everyone who had custody of Nixon for several of the periods in which he claimed he was tortured. But the sheer volume of the police testimony discouraged that sort of close reading that would make that gap obvious, and so Robert Nixon died on the electric chair in June 1939. He was not yet twenty-years old.

My efforts to tell the story of the Nixon case have forced me to confront the problems that claims of police torture pose for historians, as well. The usual methods of historical research, which would try to prove or disprove a contested claim through the painstaking reconstruction of events pieced together from other records and sources, are rarely viable alternatives for historians trying to unravel police practices. As Alfred W. McCoy noted in *Policing America’s Empire* (2009), his study of the U.S. surveillance state in the Philippines, “Armies usually preserve their papers for posterity while police and secret service tend to conceal or destroy their records.” (P. 12.) Destroy, or simply fail to keep records at all. In Robert Nixon’s case, it has been impossible to reconstruct who had custody of Nixon for the nineteen days he was in custody before he was brought before a judge for the simple reason that the lock-up keepers were not required

to record who took prisoners out of the lock-up.

One alternative, discussed in detail in Chanbonpin's article, is to look for a pattern and practice. Typically, this approach involves reviewing multiple cases involving claims of torture to try to see if victim complaints suggest patterns of conduct. If such a pattern emerges, the next step is to test an individual's claim against that model to see how closely it matches. While a match, even a close one, does not *prove* the claim of torture is true (it would not, for example, trump other evidence that cast doubt on the credibility of the claim), it is a way to try to come closer to reconstructing what happened.

That was essentially the approach I planned to use in my study of Robert Nixon's case. It is also the basic approach used by the [Illinois Torture Inquiry and Relief Commission](#), created in 2010 to investigate claims of police torture against the Chicago Police Department. Chanbonpin's article sketches the creation of that Commission as a result of the torture claims in Chicago, as well as its deliberations and conclusions since that date. Most crucially, from my perspective, the article raises questions about the problems of pattern and practice investigation. As Chanbonpin notes, "like other informal justice practices, the TIRC has become re-purposed. Instead of empowering its participants, the TIRC is serving the state's interests in maintaining the status quo by rejecting police torture claims that do not conform to the dominant narrative." (P. 5.)

Chanbonpin's criticism is directed, to some degree, at the specific pattern and practice model relied on by the TRIC, a model that accepts the idea that police torture in Chicago was the product of a few bad apples working with Jon Burge and therefore excludes claims of torture that cannot be traced to particular stations or particular officers. But Chanbonpin's discussion raises larger issues about the purpose of this sort of inquiry, and the role of restorative justice. While Chanbonpin's appeal to the idea of counter-publics, and the idea that speaking truth to both power and the powerless may be more important than the adjudication of claims, is framed as an exploration of public accountability, the discussion raises interesting questions of the role of evidence, and its relation to inquiry, for legal historians.

Those are fundamental issues of what we are about when we explore a historical event. Are we trying to reveal what really happened, with the result that we fail (or should give up) if we cannot pin that down? Are we trying to establish that it was more likely than not that something happened, in order to reveal and raise questions about a practice that would otherwise remain hidden from the historical record? How, if we rely on patterns to try to make a point, do we keep our pattern from shaping or silencing our narrative?

Those are not just questions about legal history; they are also questions of historical ethics. In the end, I suspect I will still consider Robert Nixon's claims of police torture in 1938 in the context of a larger pattern of torture claims made between 1919 and 1939. But because of this article, I will think about that process differently.

Cite as: Elizabeth Ruth Dale, *Patterns and Practices*, JOTWELL (July 30, 2014) (reviewing Kim D. Chanbonpin, *Truth Stories: Credibility Determination at the Illinois Torture Inquiry and Relief Commission*, 45 **Loy. U. Chi. L.J.** 1085 (2014)), <http://legalhist.jotwell.com/patterns-and-practices/>.