

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

IN RE APPOINTMENT OF SPECIAL PROSECUTOR

No. 16 MR 00005

NOTICE OF MOTION

TO: Anita M. Alvarez
Cook County State's Attorney
2650 S. California Avenue
Chicago, Illinois 60608

FILED
2016 FEB 16 AM 9:00
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, ILL.

PLEASE TAKE NOTICE that on Friday, February 26, 2016 at 9:00 a.m. we will appear before the Honorable Leroy K. Martin, Jr., in courtroom 101, at the Circuit Court of Cook County, Criminal Division, and will then and there present the attached *Petition to Appoint a Special Prosecutor to Investigate and Prosecute Police Wrongdoing in the Death of Laquan McDonald*.



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

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DOROTHY BROOK
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY

IN RE APPOINTMENT OF SPECIAL PROSECUTOR

No. 16 MR 00005

PETITION TO APPOINT A SPECIAL PROSECUTOR TO INVESTIGATE AND PROSECUTE POLICE WRONGDOING IN THE DEATH OF LAQUAN MCDONALD

Petitioners For An Independent Prosecutor,¹ by their undersigned attorneys, respectfully petition this Court for entry of an order pursuant to 55 ILCS 5/3-9008 finding that Cook County State's Attorney Anita Alvarez is disqualified from representing the People in connection with the prosecution of Chicago Police Officer Jason Van Dyke as well as any ongoing or future investigation and prosecution of the Chicago Police officers who participated in the falsification of reports, the destruction of evidence, the manipulation and coercion of witnesses and other possible misconduct in the aftermath of the fatal shooting of Laquan McDonald. In support, Petitioners state:

INTRODUCTION

1. A videotape of the fatal shooting of Laquan McDonald has gone viral. The video unambiguously shows Mr. McDonald being shot as he walks away from police officers and then shot again and again as he lies motionless on the ground. The video's anticipated release appears to have caused Cook County State's Attorney Anita Alvarez to charge Chicago Police Officer

¹ Petitioners are listed by name in the attached addendum.

Jason Van Dyke with murder. Although the State's Attorney had access to the video from day one of her investigation, she allowed over 400 days to pass before initiating the murder charges. Hours before the public release of the video (per the order of a Cook County judge), the State's Attorney finally charged Van Dyke.

2. This timing has produced an unprecedented crisis of confidence in the State's Attorney and her office. As this Petition explains, it appears that officers of the Chicago Police Department intimidated witnesses, manufactured witness statements, destroyed evidence, prepared false police reports, and may have provided false grand jury testimony as part of a concerted effort to portray Mr. McDonald's shooting not as it was, but as an act of heroic self-defense in response to Mr. McDonald's aggression toward Van Dyke and the other officers.

3. Many in the public believe that the State's Attorney was willing to adopt this false narrative; that she would have declined to file charges against Mr. Van Dyke if authorities had not been forced by court order to release the video; and that she only reversed course to avoid the certainty of public outrage after the video became available.

4. One thing is certain: but for the fortuity that Mr. McDonald's shooting was captured on videotape, there would be no charges against Officer Van Dyke. The false account of Mr. McDonald's death in the police records would be held up as "truth." Van Dyke would be portrayed as a hero. Mr. McDonald's shooting would be deemed a justified response to the fiction of his crazed attack on the officers. All of this—but for the video—would have been enabled by the lies in the police officers' official reports.

5. With the horror of Mr. McDonald's shooting apparent for the world to see, it is vitally important that the murder charges against Officer Van Dyke be prosecuted with the utmost zeal and independence. The shooting has become emblematic of broken relations between the

City's African American community and the Chicago Police. Particularly in that community, this prosecution is being watched with deep concern.

6. It is also of immense importance to prosecute any members of the Chicago Police Department who can be shown to have engaged in obstruction of justice or official misconduct by attempting to cover up the truth about what happened to Mr. McDonald. Until police officers recognize that they will face certain prosecution for falsifying evidence and concealing official misconduct, there will be no repair of the broken relations between the CPD and the community.

7. This State's Attorney cannot be relied upon to zealously pursue such prosecutions, as is demonstrated not only by the McDonald case, but also by her record in other police misconduct cases. It is therefore a matter of great urgency to appoint an independent special prosecutor to act in her stead with respect to this matter. Petitioners are not alone in this view. *See, e.g.,* Ex. A, Tribune Editorial.

THE AUTHORITIES ATTEMPTED TO COVER UP AN UNJUSTIFIED POLICE SHOOTING

Chicago Police Officer Jason Van Dyke Shot Laquan McDonald without Justification

8. In the evening of October 20, 2014, near the intersection of 4100 S. Pulaski Road in the City of Chicago, 17-year-old Laquan McDonald was shot and killed by Chicago Police Officer Jason D. Van Dyke. Officer Van Dyke shot Mr. McDonald 16 times. Nine of the 16 bullets entered the back side of Mr. McDonald's body. Mr. McDonald was taken to Mount Sinai Hospital, where he was pronounced dead at 10:42 p.m.

9. The dashboard camera video of the shooting was publicly released by court order 13 months later. That video unambiguously shows Mr. McDonald walking away from the police officers as he is shot, execution style, by Officer Van Dyke. Officer Van Dyke fires his first shot about six seconds after he gets out of the squad car. The bullet hits Mr. McDonald as he is

walking away and Mr. McDonald spins and falls to the ground within about two seconds. At that point, Mr. McDonald's body jerks repeatedly as Officer Van Dyke continues to shoot him. Officer Van Dyke fires at Mr. McDonald for another 13 seconds while Mr. McDonald is lying helpless on the ground. The video does not show anyone at the scene providing aid to Mr. McDonald.

**The Fraternal Order of Police and the Chicago Police Department
Disseminate a False Narrative of McDonald's Shooting**

10. Immediately following the shooting, Fraternal Order of Police ("FOP") spokesman Pat Camden gave a statement to the assembled media at the scene of the incident that was dramatically at odds with what is apparent on the video. According to Camden, Mr. McDonald, with a "crazed" look, lunged at police, causing one of the officers to open fire and shoot Mr. McDonald in the chest. Camden stated that the officers who responded were trying to detain Mr. McDonald long enough for a Taser to be brought to the scene. But because Mr. McDonald was "a very serious threat to the officers," the officers were forced to defend themselves. *See* Ex. B, Initial Media Reports.

11. The following day, on October 21, 2014, the Chicago Police Department ("CPD") issued a statement that tersely—and falsely—described the shooting, essentially tracking Camden's account. The CPD statement said that officers "confronted the armed offender who refused to comply with orders to drop [a] knife and continued to approach the officers. As a result of this action, the officer discharged his weapon striking the offender." *See* Ex. C, Preliminary CPD Statement.

Officers Wrote False Police Reports

12. The on-scene officers' accounts of the shooting, which are detailed in police reports that were released to the public on December 4, 2015, mirror the false FOP and CPD statements. *See* Ex. D, Police Reports.

13. Ten officers were on the scene the night Mr. McDonald was killed. Two officers initially responded to the 911 call that a male was breaking into trucks: Officer Thomas J. Gaffney (Beat Car 815R driver) and Officer Joseph P. McElligott (Beat Car 815R passenger). Eight officers then responded to the responding officers' request for assistance: Jason D. Van Dyke (Beat Car 845R passenger) and Joseph J. Walsh (Beat Car 845R driver); Daphne L. Sebastian (Beat Car 813R passenger) and Janet Mondragon (Beat Car 813R driver); Arturo Bacerra (Beat Car 822 driver) and Leticia Velez (Beat Car 822 passenger); and Dora Fontaine (Beat Car 814R passenger) and Ricardo Viramontes (Beat Car 814R driver).

14. Officer Van Dyke stated that when he got out of his squad car, Mr. McDonald was holding a knife in his right hand and was swinging it "in an aggressive, exaggerated manner." Officer Van Dyke, with his handgun drawn, ordered Mr. McDonald to drop the knife multiple times. Mr. McDonald ignored his direction and continued to advance toward Officer Van Dyke. When Mr. McDonald got to within 10 to 15 feet of him, Mr. McDonald looked at Officer Van Dyke and "raised the knife across his chest and over his shoulder, pointing the knife at Van Dyke." Officer Van Dyke believed Mr. McDonald was attacking him with the knife and attempting to kill him. In defense of his life, Officer Van Dyke backpedaled and fired his gun at Mr. McDonald. Mr. McDonald fell to the ground, but continued to move and grasp the knife, refusing to let it go. Officer Van Dyke continued to fire his gun at Mr. McDonald while Mr. McDonald was on the ground, as Mr. McDonald "appeared to be attempting to get up, all the

while continuing to point the knife at Van Dyke.” The slide of Officer Van Dyke’s pistol locked in the rearward position, indicating the weapon was empty. Officer Van Dyke performed a tactical reload of his pistol with a new magazine and then assessed the situation. Mr. McDonald was no longer moving, so “the threat had been mitigated.” *See id.* at 9-10, 132-34.

15. Five of the other officers admitted that they witnessed either all or part of the shooting: Officer Walsh, Officer Sebastian, Officer Mondragon, Officer Fontaine, and Officer Viramontes. All five officers supported Officer Van Dyke’s false account that Mr. McDonald moved or turned threateningly toward him with the knife. Three officers—Walsh, Sebastian, and Viramontes—also vouched for the falsehood that Mr. McDonald continued to move once he fell on the ground. *See id.* at 10-15, 135-46. Specifically, the officers make the following false statements that are recorded in official police reports:

- (a) Officer Walsh asserted that Mr. McDonald ignored the officers’ direction to drop the knife and continued to advance toward them. When Mr. McDonald got to within 12 to 15 feet of the officers, he “swung the knife toward the officers in an aggressive manner.” According to Walsh, Officer Van Dyke continued firing his gun at Mr. McDonald while he was on the ground because Mr. McDonald “continued moving on the ground, attempting to get up, while still armed with the knife.” Officer Walsh reported that Mr. McDonald was attempting to kill the officers when the shots were fired. *See id.* at 11, 135-36.
- (b) Officer Sebastian and Officer Mondragon were in the squad car from which the dashboard camera video was recovered. According to Officer Sebastian, Mr. McDonald turned toward Officer Van Dyke and Officer Walsh, waving his knife. Officer Sebastian heard the two officers repeatedly order Mr. McDonald

to drop the knife. Mr. McDonald ignored the orders and “continued to advance on the officers, waving the knife.” Officer Sebastian heard multiple gunshots and saw Mr. McDonald fall to the ground, “where he continued to move.” *See id.* at 13-14, 141.

(c) Officer Mondragon claimed that Officer Van Dyke and Officer Walsh repeatedly ordered Mr. McDonald to drop the knife as he “got closer and closer to the two officers, continuing to wave the knife.” *See id.* at 14, 142.

(d) Officer Fontaine claimed that Mr. McDonald “ignored the verbal direction [to drop the knife] and instead, raised his right arm toward Officer Van Dyke, as if attacking Van Dyke.” *See id.* at 15, 145.

(e) Officer Viramontes claimed that Mr. McDonald “ignored the verbal direction [to drop the knife] and turned toward Van Dyke and his partner, Officer Joseph Walsh.” Viramontes asserted that after Officer Van Dyke fired multiple shots, Mr. McDonald “fell to the ground but continued to move, attempting to get back up, with the knife still in his hand.” *See id.* at 15, 146.

16. The day after the shooting on October 21, 2014, Lieutenant David R. McNaughton, the incident commander on the night of the shooting, completed a critical response report. In this police report, Lieutenant McNaughton made a “preliminary determination” that Officer Van Dyke’s actions “were in compliance with Department procedures and directives.” *See id.* at 204.

17. A March 16, 2015 case supplementary report authored by CPD Investigator David March officially closed the investigation by the Department, concluding that Officer Van Dyke’s use of deadly force “was within the bounds of the Chicago Police Department’s use of force

guidelines, and in conformity with local ordinances and state law.” In this report, Investigator March noted that the dashboard camera video was viewed and falsely stated that the video was consistent with the accounts of all of the officers. *See id.* at 19, 22.

Officers Threatened and Intimidated Witnesses and Falsified Witness Statements

18. Witnesses were interviewed the night of the shooting. Two of the witnesses taken from the scene to the Area Central Office for interviewing were Alma Benitez and an unnamed male truck driver. The CPD reports of these interviews assert that Alma Benitez was in the Burger King parking lot when she saw Mr. McDonald running southbound on Pulaski Road and many police officers on the street. She allegedly told police that she was trying to get her cell phone to work to record video. She heard eight gunshots fired continuously, but did not see who fired the shots. The truck driver allegedly told police that he was in his truck in the Burger King parking lot when he observed the police pursuing Mr. McDonald; he heard approximately three gunshots but did not see who fired the shots. *See id.* at 18-19, 178-79.

19. There is evidence that some or all of the witness statements recorded in the police reports are false; that the witnesses were in fact taken to the police station, held against their will, interrogated for hours, and harassed and pressured by police to change their stories; and that, after the witnesses repeatedly refused to change their statements, the police resorted to falsifying their accounts in the police reports. Specifically:

(a) Alma Benitez told news reporters that night that the shooting was unnecessary:

“It was super exaggerated. You didn’t need that many cops to begin with. They didn’t need to shoot him. They didn’t. They basically had him face-to-face. There was no purpose why they had to shoot him.” *See Ex. A, Initial Media Reports.* Benitez later told the McDonald family that she was held at

the police station “against her will and intensively questioned for over six hours.” During the questioning, detectives repeatedly attempted to get her to change her statement, saying that her story did not match the video, which they refused to show her. One of the officers told her he was “going to get [her].” She was released around 4:00 a.m., after she demanded a lawyer. Since then, she has been threatened and harassed on multiple occasions. *See* Ex. E, Letters to City Attorneys at 4.

(b) The truck driver, who police allege did not see the shooting, insists that he told multiple police officers at the station that he saw the shooting and that it was “like an execution.” The police officers argued with him and became angry when he would not change his story. *See* Ex. F, Media Reports on Witnesses.

20. Moreover, there is evidence that the police officers on scene ordered some witnesses to leave the scene under threat of arrest without ever interviewing them. A motorist, who witnessed the shooting with his son, reported that a uniformed officer told him to leave the scene immediately or be arrested. *See id.*

Officers May Have Tampered with Video Evidence

21. On the night of the shooting, Mr. McDonald was trailed by police officers through a Burger King parking lot and was shot just south of the restaurant, fewer than 100 yards away. There is evidence that police officers tampered with and deleted video footage from the Burger King security cameras that night. According to Jay Darshane, the district manager for the Burger King, four to five police officers went inside the restaurant after the shooting and demanded access to the surveillance video. The officers stayed at the restaurant until almost midnight and brought in an information technology specialist when it appeared they were having trouble

operating the surveillance system. The next day, when an investigator from the Independent Police Review Authority (“IPRA”) asked to view the security footage, it was discovered that 86 minutes of the video was missing from all cameras—including the critical minutes when Mr. McDonald was being trailed and shot by police. *See* Ex. G, Media Reports on BK Video.

22. According to Mr. Darshane, the cameras and video recorder were all on and working properly that night. Employees at the Burger King did not have the capability to delete or remove any video files from the security system. Thus, there are only two possible explanations for the missing footage: (1) inadvertent moving of the data, rather than copying the data; or (2) intentional deletion. *See* Ex. H, Affidavits.

23. The security cameras, which were running while the officers were inside the Burger King that night, captured footage of officers appearing to tamper with the video. *See* Ex. G, Media Reports on BK Video.

24. The Cook County State’s Attorney has claimed that forensic testing of the Burger King surveillance system shows that the video was not tampered with. But neither the State’s Attorney’s Office nor the CPD have responded to specific questions about how the footage vanished or where it might have gone. *See id.*

25. Additionally, it has recently been revealed that the publicly released dashcam video had no audio (which would have documented, *inter alia*, the sequence of shots, whether a warning was given, and whether any of the officers attempted to intervene to stop Van Dyke) because the batteries had been inserted upside down in the recording device. *See* Ex. I, Media Report on Missing Audio.

**Van Dyke is Belatedly Charged; the Other Officers
Face No State Criminal Consequences for Their Cover-Up**

26. On November 24, 2015, a full 13 months following the McDonald shooting—and just a few hours before the court-ordered public release of the dashboard camera video—Officer Van Dyke was charged with first-degree murder for shooting Mr. McDonald. The timing of this charge has produced a public outcry, with many members of the public convinced that Van Dyke was only charged because the State’s Attorney’s hand was forced by the imminent public release of the dashcam video.

27. Despite the false police reports and evidence of egregious police misconduct, no other officer connected to the McDonald case has been charged with any crime. Van Dyke himself has not been charged with criminal wrongdoing for falsifying his own report of the shooting.

28. The FOP continues to steadfastly back Van Dyke and the other officers involved in the McDonald case. After the release of the false police reports, Dean Angelo, president of the FOP, said that it was a mistake to rely on the video for what happened: “The video does not show what the officers on the scene were able to see.” In a TV interview about Chicago Police culture, Mr. Angelo stated that he “[doesn’t] think today in the year 2015 there’s an officer on this department that knowingly engages in covering up for a fellow officer.” *See Ex. J, Media Reports on Angelo.*

29. The Cook County State’s Attorney has stated that there is an ongoing investigation of the McDonald shooting and has declined comment on whether the other officers will be charged. *See Ex. K, Alvarez 12/01/15 Interview.* This State’s Attorney virtually never charges officers of the Chicago Police Department with perjury, obstruction of justice, or official misconduct when they lie on the witness stand, prepare provably false reports, fabricate evidence,

destroy or conceal evidence, or coerce witnesses—despite the unfortunate regularity with which such misconduct occurs. There is, in other words, no reason to believe that our State’s Attorney will act on the evidence of cover-up in relation to the McDonald shooting.

30. Media reports indicate that there is an ongoing federal investigation into possible civil rights violations by officers at the scene of Mr. McDonald’s death. *See* Ex. L, Media Reports on Federal Investigation. The federal authorities, however, have no jurisdiction to investigate or to charge violations by the officers of any state criminal statutes.

I. CONFLICTS OF INTEREST WITHIN THE STATE’S ATTORNEY’S OFFICE NECESSITATE THE APPOINTMENT OF A SPECIAL PROSECUTOR TO INVESTIGATE POSSIBLE CRIMINAL WRONGDOING OF THE OFFICERS INVOLVED IN THE MCDONALD SHOOTING.

31. Illinois law provides for the appointment of a special prosecutor in cases where the elected State’s Attorney for the County “has an actual conflict of interest in the cause or proceeding.” 55 ILCS 5/3-9008. The appointment of a special prosecutor can occur at any stage in a case, even before formal charges are filed. *Baxter v. Peterlin*, 156 Ill. App. 3d 564, 566 (3d Dist. 1987). Thus, special prosecutors have frequently been appointed to investigate allegations of criminal wrongdoing. *See, e.g., People v. Pawlaczyk*, 189 Ill. 2d 177 (2000); *Matter of Special Prosecutor*, 164 Ill. App. 3d 183 (5th Dist. 1987) (judgment later vacated on unrelated grounds); *People v. Sears*, 49 Ill. 2d 14 (1971).

32. The court’s jurisdiction under the special prosecutor statute may be invoked by the court, by the State’s Attorney’s Office, or, as here, by a private citizen or group of citizens. *See In re Appointment of Special State’s Attorney*, 305 Ill. App. 3d 749, 758 (2d Dist. 1999); *Baxter*, 156 Ill. App. 3d at 566. Though the Circuit Court hearing the petition maintains discretion in determining whether the State’s Attorney’s “interest” in the case warrants the appointment of a special prosecutor, it is the duty of the court to ensure that such judicial discretion is “exercised to

promote the underlying policy of a just, fair and impartial hearing.” *People v. Lanigan*, 353 Ill. App. 3d 422, 430 (1st Dist. 2004) (citation omitted).

A. The State’s Attorney Has a Conflict of Interest that Disqualifies Her from Investigating and Prosecuting Officers Who Attempted to Cover Up the Truth about the McDonald Shooting.

33. There is evidence that officers at the scene may be criminally liable for covering up the truth about the McDonald shooting.

34. *First*, there is probable cause to believe that police officers may have committed obstruction of justice. The obstruction of justice statute, 720 ILCS 5/31-4, criminalizes, among other things, “furnishing of false information” in a criminal investigation. There is reason to believe that the police reports documenting the McDonald shooting “furnished false information”—specifically by falsifying the officers’ own accounts of the shooting and by falsifying eyewitness accounts of the shooting. The obstruction of justice statute also criminalizes the destruction, alteration, concealment, or disguise of physical evidence in a criminal investigation. There is reason to believe that officers tampered with the Burger King surveillance video and deleted footage that captured the officers’ pursuit of Mr. McDonald and the aftermath of the shooting. The obstruction of justice statute additionally criminalizes inducing “a witness having knowledge material to the subject at issue to leave the State or conceal himself or herself.” There is reason to believe that officers told material witnesses to leave the scene before taking their statements, and also that officers intimidated witnesses to get them to change their statements.

35. *Second*, there is probable cause to believe that the officers could have conspired to commit official misconduct in violation of 720 ILCS 5/33-3.² A police officer's duty is to conserve the peace and enforce the criminal law. *See* 65 ILCS 5/11-1-2(a); Chicago, Ill. Code § 2-84-220 *et seq.* If the police officers involved in the shooting acted together to protect Officer Van Dyke over the fair administration of the state's criminal justice system then, under 720 ILCS 5/33-3, the officers may be indicted for intentionally or recklessly failing to perform their mandatory duties as required by law.

36. *Third*, while Petitioners do not have access to the State's Attorney's investigation, it is reasonable to conclude that some or all of the police officers in question have testified before a Cook County Grand Jury, and that their testimony was perjurious in violation of 720 ILCS 5/32-2.

37. This Cook County State's Attorney does not prosecute police officers who cover up official wrongdoing. Perjurious testimony on the part of police is so common in the Cook County criminal court that the police casually and cynically refer to their sworn testimony as "testilying." Despite available evidence in numerous cases that Chicago Police detectives have lied under oath in suppression hearings and in trials, have falsified evidence in cases that have ultimately resulted in exonerations of the accused, or have otherwise covered up official misconduct, the involved detectives virtually never face criminal charges.³

² Section 33-3 states in part that a "public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he . . . [i]ntentionally or recklessly fails to perform any mandatory duty as required by law; or knowingly performs an act which he knows he is forbidden by law to perform[.]"

³ Recently, for example, a Cook County Circuit Court judge described as "garbage" the testimony of Chicago Police detectives who claimed to have gotten a statement from an individual who, by medical testimony, was sedated and incapable of communicating at the time.

38. For example, in February 2014, the State's Attorney overruled her subordinates and instructed them not to file charges against Chicago Police Officer Allyson Bogdalek, even though Bogdalek admitted that she committed perjury and that multiple superiors, police detectives, and her partner had encouraged her to lie. Officer Bogdalek's false testimony occurred at an April 2011 hearing in the case of a man accused of robbing a liquor store and shooting the owner. Bogdalek denied that the victim had been shown photographs of possible suspects prior to the defendant's arrest. That testimony was false; the victim had in fact been shown photos and failed to identify the defendant. *See* Ex. N, Tribune Article on Bogdalek.

39. It is axiomatic under Illinois law that "an attorney cannot represent conflicting interests or undertake to discharge inconsistent duties." *People v. Courtney*, 288 Ill. App. 3d 1025, 1031-32 (3d Dist. 1997) (citation omitted). It follows from this that the political alliances of a State's Attorney "may create sufficient conflict of interest to require the appointment of a special prosecutor." *Baxter*, 156 Ill. App. 3d at 566 ("[A] political alliance may create sufficient conflict of interest to require appointment of a special prosecutor.").

40. This Cook County State's Attorney is dependent upon a political alliance with the FOP and its members. The FOP has shown itself to be committed to the energetic defense of police officers accused of wrongdoing—whatever the facts. As it did in the McDonald case, the FOP works to favorably "spin" the facts of officer involved shootings. *See, e.g.,* Ex. O, Chicago Reader Article on FOP. Similarly, the FOP steadfastly insisted that Jon Burge (who routinely tortured suspects and was ultimately convicted in federal court of lying about the torture) was the victim of a smear campaign. In the same vein, the FOP has been engaged in a decades-long battle

See Ex. M, Tribune Article on Williamson Case. Consistent with long-established custom, no one expects that the detectives will face prosecution for their perjury.

to conceal from public scrutiny the disciplinary records of Chicago Police officers. The FOP often provides lawyers and pays their fees when an officer is brought before the Police Board or criminally prosecuted. They did so for Burge and are now doing so for Van Dyke.

41. This State's Attorney has a political alliance with the FOP and its members that has been of immeasurable value to her. The FOP's endorsement and campaign donations helped Alvarez get elected State's Attorney in 2008 and re-elected in 2012. When Alvarez received the FOP's endorsement in 2012, she publicly declared that she was "thrilled and humbled" to have their endorsement. *See* Ex. P, Alvarez's FB post. The FOP has not endorsed a candidate in the upcoming election, but the State's Attorney has made clear that she would like it, telling an interviewer that she would be "proud" to get that endorsement. *See* Ex. K, Alvarez 12/01/15 Interview.

42. It is common knowledge that the FOP and its membership are a powerful force in Chicago politics. In the 2015 mayoral election, both incumbent Rahm Emmanuel and progressive challenger Chuy Garcia sought the FOP's endorsement. Neither got it. In the aldermanic elections that same year, the FOP endorsed Republican Anthony Napolitano for a city council seat in the 41st Ward at a time when there were no Republicans on the city council. Napolitano won. (Since 1991, only one other Republican has been elected to the City Council.) In the same election, CPD Sergeant Chris Taliaferro, endorsed by the FOP, beat the incumbent, Deborah Graham, and 26-year-CPD veteran Willie Cochran, also endorsed by the FOP, won re-election in the 20th Ward. Twenty-four of the 50 members of the Chicago City Council carry the endorsement of the FOP, including Ed Burke, a former police officer and widely considered to be the most powerful politician in the city after the mayor. *See* Ex. Q, Media Reports on FOP.

43. The current State's Attorney has cast her lot with the FOP. She currently faces a barrage of criticism for her handling of the McDonald homicide and is engaged in a hotly contested battle for reelection. In this political environment, the FOP and its membership are an absolutely vital base of support—one she can ill afford to alienate. For this reason, the State's Attorney must be found to be “beholden” to the FOP for political reasons. Her political alliance with the FOP and its members destroys her independence and makes it impossible for her to “zealously represent the People of the State of Illinois” in any investigation or prosecution of the police officers who were involved in the official cover-up that followed the homicide of Laquan McDonald. She must be disqualified and replaced by an independent special prosecutor. *See Baxter*, 156 Ill. App. 3d at 566.

B. The Same Conflict of Interest Disqualifies the State's Attorney from Prosecuting the Pending Murder Case against Jason Van Dyke.

44. It is widely believed that the current State's Attorney would have preferred not to charge Van Dyke for killing Mr. McDonald and that she did so only because a Cook County judge had ordered the public release of the dashboard camera video—which rendered untenable the proposition that Mr. McDonald's shooting was justifiable self-defense.

45. The State's Attorney has attempted to justify not charging Van Dyke until the day of the release of the dashboard camera video (13 months after Mr. McDonald was killed) by claiming that investigations of police shootings “are highly complex matters” and that she had to wait until the FBI and U.S. Attorney's Office completed their part of a joint investigation. That explanation rings hollow.

46. This State's Attorney typically does not charge police who kill citizens under questionable circumstances. For example, none of the following incidents resulted in any

criminal charges filed against the police officers involved. *See* Ex. R, Materials on Fatal Police Shootings.

- (a) **Jamaal Moore:** 23-year-old Moore was shot and killed by an on-duty officer on December 15, 2012. IPRA found the shooting to be justified, though Moore was not found to have a weapon, and though he was shot at close range after the officer had already run him over in the parking lot. The autopsy report revealed that Moore sustained a gunshot wound to the left side of his back and the left side of his hip. The case was eventually settled by the City for \$1.25 million, after the district court judge noted that the dashcam video from the incident “does not comport fully with [the officers’] versions of events.” That video, according to the court, showed the officer shooting Moore at “point blank range in the left lateral hip” as he tried to run away. *Moore v. City of Chicago*, No. 13 C 483, 2014 WL 2457630, at *3 (N.D. Ill. May 30, 2014).
- (b) **Divonte Young:** 20-year-old Young was shot in the back and killed by an on-duty officer in plainclothes on August 9, 2012, after he allegedly shot at civilians and pointed a gun at the involved officer. No weapon was ever located on or near Young. The autopsy report states that he sustained a gunshot wound that “entered through the right side of his back.” No residual gun discharge was found on Young’s hands. There is currently a lawsuit pending against the City of Chicago stemming from Young’s death. *See Young v. City of Chicago*, No. 13 C 5651, 2014 WL 7205585 (N.D. Ill. Dec. 18, 2014).
- (c) **Derrick Suttle:** 47-year-old Suttle was repeatedly shot and then killed by an off-duty police officer in the police officer’s back alley on February 11, 2012. The involved officer reported to IPRA that he feared for his life when Suttle, maneuvering a vehicle in the alley, ran into the officer. However, an anonymous witness reported that the police officer shot into the van Suttle was driving as he attempted to back up the car in the alley. No video of the incident was recorded.
- (d) **Flint Farmer:** 29-year-old Farmer, who was unarmed, was shot and killed by Chicago Police Officer Gildardo Sierra, leaving Farmer’s 3-year-old daughter without a father. Despite video showing Sierra fire three shots into Farmer’s back as he lay bleeding on a parkway on June 7, 2011, the City found the shooting was justified. Investigators in the Farmer shooting delayed giving Sierra, who was involved in two other shootings within six months of executing Farmer, a breathalyzer for more than five hours, even though Sierra drank “multiple beers” shortly before he repeatedly shot Farmer in the back. The City paid \$4.1 million to settle the civil rights case brought by Farmer’s family.

- (e) **Calvin Cross:** 19-year-old Cross was shot and killed by three on-duty police officers on May 31, 2011, after he allegedly fired shots at the officers as he ran away. The officers fired 45 rounds of ammunition from four weapons including an assault rifle. Bullets hit Cross in his chest, arm, back, face, and little finger on his right hand. Investigators found an old revolver several hundred feet from Cross's path, but tests later showed definitively that the gun was inoperable and did not have Cross's fingerprints; no gun residue was found on Cross's hands. The City paid \$2 million to settle the civil rights lawsuit brought by Cross's family.

- (f) **Cedrick Chapman:** 17-year-old Chapman was shot and killed by an on-duty police officer on January 7, 2013. The officer, who fired four shots, thought Chapman's iPhone box was a gun and claims he saw Chapman turn toward him. Lorenzo Davis, an IPRA investigator, concluded that the shooting was unnecessary because Chapman was running away. A lawsuit is pending against the City stemming from Chapman's death. A video of the shooting from a surveillance camera was released by order of a federal judge on January 14, 2016. The video shows Chapman running away; he never turned toward the officer.

- (g) **Philip Coleman:** 38-year-old Coleman experienced severe trauma at the hands of six police officers in a lockup who repeatedly used a Taser on him and dragged him out of his cell and down a hall by his handcuffs in December 2012; Coleman later died at a hospital after a reaction to an antipsychotic drug. A video showing the officers using brutal force against Coleman was released to the public in December 2015. On December 14, 2015, U.S. District Judge Matthew Kennelly, the federal judge presiding over the Coleman family's civil rights lawsuit against the City, ruled that Officer Keith Kirkland is liable for using excessive force. Judge Kennelly stated: "Officer Kirkland chose to use brutal force when it was no longer necessary. Sergeant Walker conceded during his deposition that the officers could have stood Mr. Coleman up and told him to walk. . . . Officer Kirkland unquestionably used excessive force in pulling Mr. Coleman's hands over his head and dragging him from the cell. No reasonable jury could find otherwise." *Coleman v. City of Chicago*, No. 12 C 10061, 2015 WL 8601702, at *3-4 (N.D. Ill. Dec. 14, 2015).

47. In the rare instances in which this State's Attorney has charged a Chicago Police officer with killing or abusing a citizen, the State's Attorney's Office has failed to win a conviction. For example, after waiting two years, this State's Attorney charged Chicago Police Detective Dante Servin with involuntary manslaughter for intentionally firing his weapon from his moving car at a group of pedestrians and killing one of them. Following the prosecution's

case in chief, the judge presiding over the trial dismissed the case—pointedly finding that the State’s evidence supported a charge of murder (the charge that unquestionably would have been filed if Servin were not a police officer) but did not support the lesser offense that the State’s Attorney had chosen to bring. *See Ex. S, Media Reports on Servin and Evans.*

48. More recently, this State’s Attorney fumbled the prosecution of Chicago Police Commander Glenn Evans for shoving the barrel of his service revolver down the throat of a young African American man, while simultaneously pressing a Taser to the man’s groin and threatening to kill him. This prosecution was supported by damning evidence: the victim’s DNA was found on the barrel of the defendant’s gun. A Cook County Circuit Court judge acquitted the defendant, however—a loss that can be traced, in part, to the State’s Attorney failure to allocate resources to the case and to present critical expert testimony to refute the defense theory that the DNA evidence was the result of the victim’s incidental “touch” of the defendant’s weapon. *Id.*

49. The State’s Attorney’s political alliance with the FOP and its members creates a conflict of interest and disqualifies her from prosecuting the pending murder charges against Jason Van Dyke. The State’s Attorney’s track record in officer involved shooting cases, summarized above, clearly shows that this State’s Attorney lacks the independence and the prosecutorial zeal to effectively represent the People.

50. Moreover, the State’s Attorney’s track record has undermined her credibility, created a crisis of confidence in her and her office, and created the appearance that this State’s Attorney cannot be trusted to zealously and effectively prosecute Officer Van Dyke. *See People v. Lang*, 346 Ill. App. 3d 677, 683 (2d Dist. 2004) (The appointment of a special prosecutor “may be necessary in order to maintain the public’s confidence in the impartiality and integrity of our criminal judicial system.”). Thus, many politicians and activists have called for the appointment

of a special prosecutor in the Van Dyke prosecution, including: a coalition of 100 black pastors; Illinois Congressman Bobby Rush; Jesse Jackson; Alderman Scott Waguespack; former Assistant U.S. Attorney Andrea Zopp, and the Cook County Commissioners. These prominent members of our community have been openly skeptical that this State's Attorney will aggressively and effectively pursue the case against Officer Van Dyke. *See* Ex. T, Media Reports on Groups Calling for a Special Prosecutor.

51. All of these factors require a finding that the State's Attorney is disqualified by personal interest from the Van Dyke prosecution.

**The Appointment of a Special Prosecutor Will Ensure That These Conflicts
Do Not Prevent the Fair Administration of Justice**

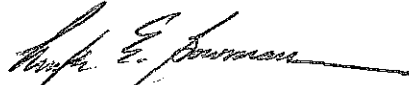
52. It is vital to the administration of justice in this County to have a fair and impartial investigation of whether officers at the scene were, individually or in conspiracy, engaged in a cover-up designed to portray the shooting in a light favorable to the police. It is equally vital to the administration of justice that Van Dyke be prosecuted aggressively and effectively for his actions in the death of Laquan McDonald and for his role in the cover-up conspiracy. The public interest demands that a special prosecutor apply the necessary resources and prosecute Van Dyke and any police officer found to have engaged in an attempt to cover up the truth about the killing of Laquan McDonald.

WHEREFORE, Petitioners respectfully request this Court to appoint a special prosecutor to investigate whether employees of the Chicago Police Department acted intentionally to suppress and conceal evidence, furnish false evidence, coerce witnesses, and generally impede the investigation into the fatal police shooting of Laquan McDonald in October of 2014; to determine whether criminal charges should be brought against any officer who engaged in such conduct in connection with Mr. McDonald's death; and to prosecute Jason Van Dyke on the pending murder

charges. Petitioners further respectfully request that they be permitted to present a list of candidates before the appointment is made, or to otherwise have input into the selection process.

Respectfully submitted,

**PETITIONERS FOR AN
INDEPENDENT PROSECUTOR**

By: 
One of their attorneys

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LIST OF PETITIONERS¹

1. Aldermanic Black Caucus
2. Susan A. Bandes
Centennial Distinguished Professor, DePaul University College of Law
3. Howard B. Brookins
Alderman, 21st Ward
4. Leonard L. Cavise
Emeritus Professor of Law, DePaul University College of Law
5. Chicago Urban League
6. Cook County Bar Association
7. Danny K. Davis
U.S. Representative for Illinois, 7th Congressional District
8. Enlace Chicago
9. Jesús “Chuy” Garcia
Commissioner, Cook County Board of Commissioners
10. Pastor Marvin Hunter
Laquan McDonald’s great uncle
11. Alan Mills
Legal Director, Uptown People’s Law Center
12. Proco Joe Moreno
Alderman, 1st Ward
13. Ricardo Muñoz
Alderman, 22nd Ward
14. National Conference of Black Lawyers
15. Jeffrey J. Neslund
Attorney for the family of Laquan McDonald

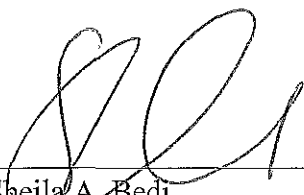
¹ Affiliations are listed solely for purposes of identification.

16. Matthew J. Piers
Partner, Hughes Socol Piers Resnick & Dym, Ltd.
17. Mary Powers
Former President, Citizens Alert
18. Precious Blood Ministry of Reconciliation
19. Rainbow PUSH Coalition
20. Kwame Raoul
Illinois State Senator, 13th Senate District
21. Howard Saffold
Former President, Afro American Patrolman's League
22. Roderick Sawyer
Alderman, 6th Ward
23. Bobby Rush
U.S. Representative for Illinois, 1st Congressional District
24. Ed Smith
28th Ward Committeeman
25. Randolph N. Stone
Clinical Professor of Law and Director of the Criminal & Juvenile Justice Project Clinic,
Mandel Clinic at the University of Chicago Law School
26. Gilbert Villegas
Alderman, 36th Ward
27. Rob Warden
Executive Director Emeritus of the Center on Wrongful Convictions, Northwestern
University School of Law

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that she served the foregoing Notice of Motion and Petition to Appoint a Special Prosecutor to Investigate and Prosecute Police Wrongdoing in the Death of Laquan McDonald by hand delivery before the hour of 11:00 a.m. on Tuesday, February 16, 2016 upon:

Anita M. Alvarez
Cook County State's Attorney
2650 S. California Avenue
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Sheila A. Bedi