



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION SPECIAL MEETING Wednesday,
September 17, 2014, 3:00 p.m.**

James R. Thompson Center
100 W. Randolph Street, Meeting Room 9-031
Chicago, Illinois 60601

MINUTES

PRESENT:

Commissioners

Chairman Cheryl Starks
Charles Dahm
John Mathias
Paul Roldan
Natalie Scruton (non-voting alternate to Commissioner Mathias)
Marcie Thorp
Doris Green (voting alternate for Commissioner Rob Warden)

Staff on dais

Barry Miller (Executive Director)
Rob Olmstead (Staff Attorney)

I. Call to Order/Members Present

On September 17, 2014, at approximately 3:02 p.m., Chairman Cheryl Starks called to order the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC). Chairman Starks and Commissioners Green, Mathias, Roldan, and Thorp were present, constituting a quorum. Alternate Commissioner Scruton was also present. Commissioner Dahm joined the meeting after the budget report.

II. Approval of Minutes

Chairman Starks called for a motion to approve the July 16, 2014 minutes. Commissioner

Mathias moved that the Minutes be approved and submitted. Commissioner Roldan seconded and the motion carried unanimously.

III. Executive Director's Report

Executive Director Barry Miller reported that:

- The Joint Committee on Administrative Rules (JCAR) approved the revised rules with minor technical revisions. The rules take effect September 19, 2014. Chariman Cheryl Starks and Miller met with management at the Attorney General's Office. Following the meeting, the Attorney General filed a motion with presiding Judge Biebel for permission for Commission Staff to review impounded evidence at the Circuit Court Clerk's office. (The motion was granted.) The Clerk's Office has been very cooperative in allowing TIRC to review impounded files and evidence, although it can only pull a few cases at a time.
- Staff Attorney Rob Olmstead and Miller met with the City of Chicago's Corporation Council and lawyers from his staff, the police department and the Independent Police Review Authority. The Corporation Council was very cooperative, and the Commission has improved procedures for obtaining information by subpoena from the police department.
- Director Miller attended an in-chambers conference before Judge Biebel on September 16th, 2014 with Dean Yellen, the Special Master he appointed for locating victims in the core Burge cases. Also attending were retired Judge Nudelman who is the Special State's Attorney Judge Biebel appointed to handle the Burge cases, and attorneys for the putative class, Flint Taylor and Joey Mogel. The Commission continues to cooperate with the special Master.
- Commission staff continues to investigate the core Burge cases and anticipate presenting additional cases to the Commission soon. Since the last Commission meeting, TIRC staff have issued deposition subpoenas in cases, which has helped advance investigations.
- Intern Ryan Wallenstein of the University of Chicago recently completed his internship. Director Miller thanked Wallenstein for his work.
- The Commission anticipates hiring a part-time law clerk in the upcoming weeks and receiving two more interns from the University of Chicago.

Director Miller noted that during the past few months, the Commission considered how to interpret certain words in the definition of Claim of Torture as defined in Section 5 of the Act. Today's cases deal further with determining what falls into that definition.

IV. Budget Report

Dr Ewa Ewa stated that the budget has not been cut and there is money to fill a law clerk position.

V. Closed Session

Judge Starks called for a motion to move to closed session under sections 2(c)4 and 2(c)14 of the Open Meetings Act so that the Commission consider evidence and discuss prior, current, and future criminal investigations in cases not yet made public. Commissioner Mathias so moved, Commissioner Green seconded, and the motion carried unanimously.

As the meeting was moving into closed session, Chairman Starks recognized that Commissioner Dahm had joined the meeting.

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At approximately 3:55pm the Commission Meeting reconvened in Public Session.

VI. Possible action on closed session claims.

Judge Starks stated that the matters discussed in the Closed Session have been referred for additional investigation.

VII. Claim of Tony Anderson - 2011.014-A

Director Miller reminded Commissioners that TIRC referred the Claim of Tony Anderson to the court in 2013 as one meriting judicial review. It was returned to the Commission by the Chief Judge of the Circuit Court with a request that TIRC clarify which of Mr. Anderson's 13 convictions TIRC intended to refer to the Court. Director Miller invited counsel for Mr. Anderson (David B. Owen, who was present) and the Special State's Attorney, former Judge Stuart Nudelman. Miller relayed that Judge Nudelman did not think it appropriate for his office to participate. Miller also noted that the crime victims involved in the case were notified; he invited any in attendance who wished to speak to do so. (No one stepped forward or spoke up.)

Director Miller reviewed the history of the case. On April 18, 1990, Tony Anderson was arrested with Robert Allen. He was taken to a police station and questioned about an auto theft, but Anderson asserted his right to silence. (A detective later acknowledged this invocation.) Later the same day, Anderson was taken to Area 2 and questioned by detectives from Area 2 and Area 3 about a number of other crimes.

Anderson claimed he was threatened with a gun by Detective McDermott and beaten with a nightstick by Detective Maslanka. The police denied this. There are a number of reasons to doubt the police officers' version of events. They include the fact that in the Alphonso Pinex case, Special Prosecutor Egan found there was enough evidence to charge Maslanka and McDermott with abuse. Also, McDermott testified at the Burge criminal trial in a manner that was inconsistent with his grand jury testimony. McDermott and Maslanka have taken the Fifth Amendment in regards to questions of police torture in the past.

Anderson eventually confessed at Area 2 to a number of crimes, but no written confession has been located. He was charged on more than 100 counts in 13 separate crimes. His motion to suppress failed. At a bench trial for attempted murder, Maslanka orally introduced Anderson's confession and number of witnesses identified Anderson as the offender. He was convicted. At a jury trial, Anderson was convicted of armed robbery. Prosecutors said at the beginning of that trial that no confession would be introduced.

Anderson then pled guilty to the remaining 11 charges, but the guilty pleas were entered under unusual circumstances. Anderson was scheduled to go to trial for first-degree murder, but his attorney did not show for three days. On the third day, a Wednesday, the attorney was found at his home, apparently injured and intoxicated, and was hospitalized. That day, the judge

cautioned Mr. Anderson that it appeared his lawyer would not be able in the near future to represent him. Anderson said he did not wish to change lawyers.

On Friday, Anderson's lawyer appeared, and the judge accepted Anderson's guilty pleas, which the attorney said were based on a conversation between him and Anderson that took place 10 days earlier. The lawyer did not make clear that he had met with Anderson more recently. There is not a clear record that the attorney was competent to advise Anderson at the time of the pleas.

The 11 pleas can be categorized as follows:

- In six cases, prosecutors mentioned the confession in the plea colloquy.
- In five cases, they did not. It is not clear if Anderson confessed in those five cases.

Anderson later filed an unsuccessful motion to vacate his pleas; he claimed his attorney pressured him to plead guilty and that his attorney was drunk and incompetent. He also renewed his claims of physically coerced confessions.

Thus, there are four categories among the 13 cases:

- One bench trial in which the confession was used;
- One jury trial in which the confession was not introduced;
- Six pleas in which the confession was mentioned during the colloquy; and
- Five pleas in which the confession was not mentioned during the colloquy.

The special prosecutor and Anderson's attorney agree that the bench trial and the six guilty pleas where the colloquy mentioned the pleas were properly referred to court by the Commission. The Commission has therefore been asked to resolve whether the jury trial and the five other guilty pleas should be referred to court.

Miller noted he asked the special prosecutor and Mr. Owens to address a number of questions, including whether there was a written confession and whether Anderson confessed to the five crimes to which he pled guilty where a confession was not mentioned in the colloquy.

Mr. Owens addressed the Commission and gave the Commission some written material. He said he had spoken to his client, who contends he did have ineffective assistance of counsel. At the trial, an oral statement was admitted. In the other trial (11985 case), there was an oral statement given by Mr. Anderson. The transcript shows that prosecutors warned Mr. Anderson that if he used an alibi defense or testified on his own behalf, they would introduce his oral statement, so there was a confession and it was threatened to be used against him. Accordingly, Mr. Owens said, the confession was used to convict Anderson as defined by the TIRC Act, because it affected his decision on whether to take the stand.

Owens said Mr. Anderson submits that he confessed in 10 of the 11 plea cases [the attempted escape charge is excluded because that charge was made after he was interrogated]. The escape charge is among the five plea cases where the confession was not mentioned in the colloquy. That leaves four pleas at issue.

Mr. Owens said Mr. Anderson avers that during the global plea negotiations, he believed a

confession would be used in all the cases. Because of this global negotiation, Mr. Owens believes the attempted escape case could be referred by TIRC to the Court even though there was no confession.

Miller noted that the special prosecutor had not located police reports for the four pleas in question, which might indicate whether there was an oral confession.

Owens said he believes that the discovery of the transcript memorializing the threat of the use of the confession in the 1985 trial has brought Anderson and the special prosecutor into agreement that both trial cases can be referred to court.

Mathias said he is concerned about the four cases where there isn't evidence that a confession was given. Owens said evidence of that might be in the grand jury testimony, which he hasn't obtained yet, or in the state's attorney's files, which he's happy to review.

Miller said this illustrates why this case is so convoluted. He said the transcript provided today suggests the confession was used to obtain the conviction in the 1985 trial, which TIRC didn't know before. Miller suggested the Commission might want to put the matter over to search for evidence there was a confession in the four remaining pleas. Mathias said it mattered to him whether there was or was not a confession.

Owens argued that the threat to use the documented confessions in the two trials and six plea cases carries over to the remaining cases where it has not been conclusively established a confession was made, because the established confessions were used as part of the global plea negotiations to obtain convictions in the other cases.

Miller asked Commissioners if they wanted to decide the issues today or to put the case over to see if Anderson's attorney could produce evidence of a confession in the four remaining plea cases and also whether the Special Prosecutor now agrees both trial cases qualify under the statute. Mathias thought additional time and information was needed.

Judge Starks stated that the Commission will table Tony Anderson's case for now.

VIII. Claim of Anthony Brown - 2014.229-B

Miller recommended summary dismissal of the Anthony Brown claim. Miller stated that Mr. Brown did not indicate on his Claim Form that a tortured confession was used to convict him, the appellate decisions did not suggest that happened, and that Brown did not respond to a letter from the Commission on that point. For those reasons, staff recommend dismissal.

Commissioners voted unanimously to dismiss the claim.

IX. Claim of Richard Johnson - 2014.215-J

Miller stated that Mr. Johnson's Claim Form shows that he did not claim that he was tortured into confessing or that a tortured confession was used against him. Miller recommended summary dismissal of the Richard Johnson claim. Commissioners voted unanimously to dismiss the claim.

X. Public Comment

Anabel Perez addressed the Commission regarding her son's (Jaime Hauad) case. She thanked the Commission for its referral of the case to Anita Alvarez's Conviction Integrity unit. She asked the Commission to sign a petition to encourage the case to be reopened. Judge Starks said the body must remain impartial and cannot sign petitions of that nature.

XI. Adjournment

The meeting was adjourned at approximately 4:45p.m.

Judge Starks stated that the next meeting is scheduled for November 19, 2014.