

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Ivan Smith

TIRC Claim No. 2011.001-S
(Relates to Cook County Circuit
Court Cases 91-CR-21147;
92-CR-23)

CASE DISPOSITION

Pursuant to 775 ILCS 40/45(c) and 2 Ill. Adm. Code 3500.385(b), the Commission (TIRC) concludes that, by a preponderance of the evidence, there is sufficient evidence of torture of the claimant, Ivan Smith, to merit judicial review. This decision is based upon the Findings of Fact and Conclusions set forth below, as well as the supporting record attached hereto.

I. EXECUTIVE SUMMARY

Ivan Smith alleges he was beaten by Area 3 detectives James O'Brien and Joseph Stehlik in order to secure a confession to a triple homicide on Chicago's South Side. The alleged torture occurred in Tipton County Jail in Covington, Tennessee in November, 1991.¹ Smith alleges O'Brien hit him about the head, punched him in the chest, and then Stehlik and O'Brien held a phone book over his chest and beat it with a wooden stick until Ivan Smith agreed to confess. Ivan Smith gave and signed a 21-page statement admitting to participation in the shootings. See Exhibit A.

The circumstantial evidence supporting Smith's claim is strong, although there is little direct evidence of torture of Ivan Smith. Detective O'Brien has a history of numerous complaints alleging abuse to secure confessions; Illinois Authorities were clearly anxious to obtain a confession — a fact that Detective Stehlik and State's Attorney Burns tried not to admit at Smith's trial — and strong evidence that another suspect in the case was abused during the course of his interrogation. For these reasons, the Commission finds it appropriate to refer this claim for judicial review.

¹ Commander Jon Burge, who headed Area 3, was suspended on November 12, 1991, a few days before O'Brien and Stehlik interviewed Ivan Smith in Tennessee.

II. BACKGROUND

A. The Crime

Ivan Smith's claim arises from a gang dispute on the South Side of Chicago that ended with three people dead and three injured. Smith was subsequently convicted of three counts of murder for his role in these deaths as well as two counts of attempted murder. He received a life sentence.

On the afternoon or evening of August 7, 1991, according to the testimony of victims given at Smith's trial, Ivan Smith, also known as "Tojo", drove by a building at 6556-6558 S. Peoria in a gray Chevette.² Ivan Smith was a member of the Black Disciples street gang, and the building was the drug dealing territory of the Gangster Disciples, with whom the Black Disciples were at war at the time.³ George Cruthird and Jerome Taylor were members of the Gangster Disciples and sold drugs in front of the building.⁴ Both had known Smith for a number of years.⁵ According to Taylor, Smith threw up a Black Disciples gang sign and shouted a Black Disciples slogan as he drove by in the Chevette, and one of their fellow Gangster Disciples responded in kind.⁶ Someone from the Gangster Disciples' "security" on the third floor of the building then shot at Smith's car from inside the building, and Smith reportedly drove away and shouted that he would be back.⁷

Later that evening, around 10 or 11 p.m., Cruthird and Taylor were selling drugs in front of the building with a third individual, Rhenardo Bussle, 13, who was Taylor's cousin.⁸ According to Cruthird, three cars approached the building, with the middle of the three being a red and white taxi. Taylor testified that there were only two cars, a red LeBaron and the taxi.⁹ Cruthird testified that Smith was driving the taxi; Taylor could not see the driver's face, but he

² Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf); Testimony of Jerome Taylor, ROP of May 9, 1994 (00020155.pdf). Cruthird's name is sometimes alternately spelled "Cruthard" in court records.

³ Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf); Testimony of Jerome Taylor, ROP of May 9, 1994 (00020155.pdf).

⁴ Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf); Testimony of Jerome Taylor, ROP of May 9, 1994 (00020155.pdf).

⁵ Ivan Smith trial testimony of George Cruthird on May 6, 1994 (00020154.pdf); Ivan Smith trial testimony of Jerome Taylor on May 9, 1994 (00020155.pdf).

⁶ Testimony of Jerome Taylor, ROP of May 9, 1994 (00020155.pdf).

⁷ Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf); Testimony of Jerome Taylor, ROP of May 9, 1994 (00020155.pdf).

⁸ Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf); Testimony of Jerome Taylor, ROP of May 9, 1994 (00020155.pdf); Testimony of Rhonda Bussle, ROP of May 6, 1994 (00020154.pdf).

⁹ Testimony of Jerome Taylor, ROP of May 9, 1994 (00020155.pdf).

noticed that the driver had a “little curl” hairstyle under a hat.¹⁰ Taylor knew that Smith had this sort of hairstyle.¹¹

As the taxi rolled past the building, its roof light remained on, but its other lights turned off.¹² Then, the taxi’s front and rear passenger-side windows opened, and “lights” (gun blasts) flashed from inside the taxi.¹³ The taxi then drove away, leaving Cruthird and Taylor with non-fatal bullet wounds.¹⁴ Their companion, Bussle, was also shot and later died from his wound.

A few minutes later, the same red and white taxi was reportedly used in a second drive-by shooting nearby, at 516 W. 71st Street. Three people were shot in that incident, and John Coleman and Gregory Archibald died of their gunshot wounds.¹⁵

B. The Police Investigation

Police arrived at the South Peoria scene and were told by witnesses that a red and white taxi was involved in the shooting.¹⁶ An eyewitness who lived in the building next door testified that he saw a red and white taxi driving down South Peoria turn off its headlights before shots came from the cab.¹⁷ Witness Delores Scroggins Bowden, after telling police at the scene that she saw a man matching Smith’s description driving a taxi through the area around the time of the shooting, testified she could not remember events from that night. She also testified she was scared to testify and still lived in the neighborhood.¹⁸

Two detectives investigating the shootings, James O’Brien and Joseph Stehlik, came across a taxi matching the description provided by witnesses abandoned in a nearby vacant lot.¹⁹ The abandoned taxi contained numerous shell casings and appeared to have been hotwired using a screwdriver.²⁰ A witness who lived across the street from the vacant lot told the police that a short, lone black male with a white-rimmed hat had walked away from the taxi.²¹ O’Brien later

¹⁰ Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf); Testimony of Jerome Taylor, ROP of May 9, 1994 (00020155.pdf).

¹¹ Testimony of Jerome Taylor, ROP of May 9, 1994 (00020155.pdf).

¹² Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf).

¹³ Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf).

¹⁴ Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf).

¹⁵ Testimony of Officer Longley, ROP of May 9, 1994 (00020155.pdf); Testimony of Detective James O’Brien, ROP of May 9, 1994 (00020155.pdf).

¹⁶ Testimony of Officer Patrick Doyle, ROP of May 6, 1994 (00020154.pdf).

¹⁷ Testimony of DeWitt Watkins, ROP of May 6, 1994 (00020154.pdf).

¹⁸ Testimony of Delores Scroggins Bowden, ROP of May 6, 1994 (00020154.pdf).

¹⁹ Testimony of Detective James O’Brien, ROP of May 9, 1994 (00020155.pdf).

²⁰ Testimony of Detective James O’Brien, ROP of May 9, 1994 (00020155.pdf).

²¹ Testimony of Delores Scroggins Bowden, ROP of May 6, 1994 (00020154.pdf); Testimony of Detective James O’Brien, ROP of May 9, 1994 (00020155.pdf).

learned that the taxi had been stolen from a nearby taxi company.²² The next day, O'Brien found a gray Chevette parked nearby with bullet holes in it and having a temporary license plate that identified Smith as the owner.²³ This car subsequently disappeared until it was found a year and a half later.²⁴

An evidence technician found no fingerprints inside the taxi.²⁵ The Chevette was not examined by an evidence technician at the time O'Brien initially found it.²⁶

Based on this investigation, Illinois authorities tied Ivan Smith to the two shootings and issued a warrant for his arrest in connection with the shootings. Ivan Smith was subsequently arrested under this warrant in Tennessee, and Illinois authorities traveled there to bring Smith back to Chicago for trial. The Illinois authorities' treatment of Smith while in Tennessee provides the basis for his torture claim and is discussed in greater detail below.

Both Cruthird and Taylor spoke with police near the scene and Cruthird also spoke with them at the hospital after the shootings but neither implicated Smith during those initial encounters.²⁷ Cruthird eventually gave a statement implicating Smith almost two years after the shooting just before his sentencing in a drug trafficking case.²⁸ In exchange, Cruthird may have received a recommendation for sentencing to a medium-security prison, rather than maximum-security prison. Cruthird also received the minimum sentence for his drug trafficking.²⁹ Taylor also gave a statement implicating Smith in April, 1993, long after the shooting.³⁰ He testified that he was under pressure from his aunt, Rhenardo Bussle's mother, to testify.³¹

C. Procedural History of Trial, Appeal and Post-Conviction Petitions

Ivan Smith was tried separately, but at the same time as co-defendants Javan Deloney, Maurice Deloney, Terrence Brooks and Curtis Milsap. Smith elected to have a jury trial while his co-defendants chose bench trials.

Ivan Smith filed a motion to suppress his confession, alleging police and a prosecutor had physically coerced his statement with beatings. On May 6, 1994, with the jury already selected,

²² Testimony of Detective James O'Brien, ROP of May 9, 1994 (00020155.pdf).

²³ Testimony of Detective James O'Brien, ROP of May 9, 1994 (00020155.pdf).

²⁴ Testimony of Detective James O'Brien, ROP of May 9, 1994 (00020155.pdf).

²⁵ Testimony of Detective James O'Brien, ROP of May 9, 1994 (00020155.pdf).

²⁶ Testimony of Officer Moran, ROP of May 9, 1994 (00020155.pdf).

²⁷ Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf).

²⁸ Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf).

²⁹ Testimony of George Cruthird, ROP of May 6, 1994 (00020154.pdf).

³⁰ Testimony of Jerome Taylor, ROP of May 9, 1994 (00020155.pdf).

³¹ Testimony of Jerome Taylor, ROP of May 9, 1994 (00020155.pdf).

attorneys for Smith noted that their three pre-trial motions, including the motion to suppress his confessions and arrests had not yet been ruled on.³² Judge Earl Strayhorn asked whether he had heard evidence on them, and then summarily denied them, along with co-defendant Curtis Milsap's motions. Smith's attorney then asked Strayhorn to hear his arguments on the motions, which was allowed. Milsap's motion was denied without benefit of argument from the state; Smith's was denied after the prosecutor made a rebuttal argument.

On May 12, 1994, the jury found Smith guilty of three counts of murder and two counts of attempted murder. Judge Strayhorn found Brooks and Javan Deloney guilty, but acquitted Milsap and Maurice Deloney. In Ivan Smith's appeal, he argued, among other things, that he should have been allowed to cross examine Assistant State's Attorney Charles Burns more extensively about the circumstances of Ivan Smith's confession. The appellate court denied the appeal on December 17, 1996, and found the cross-examination limitation reasonable. Additionally, it pointed out that Ivan Smith's attorney could have re-called Burns during his case if he thought more detail needed to be elicited from him.

In 1997, Ivan Smith filed a post-conviction petition, which the trial judge found frivolous and dismissed without a hearing. An appeal of that decision was denied on June 30, 2000. The Illinois Supreme Court vacated that decision in December 29, 2000, under its supervisory powers and ordered the appellate court to reconsider its decision in light of more recent decisions. On June 20, 2001, the appellate court again denied the appeal, in part on the grounds that Ivan Smith had only argued physical coercion at his motion to suppress hearing, not at trial.³³

In 2002, Ivan Smith filed a habeas petition in federal court.³⁴ Citing the Illinois post-conviction statute, the judge ruled the coercion issue procedurally defaulted.

³² ROP, May 6, 1994, L-30-42.

³³ *People v. Smith*, 1-97-4686 (1st Dist, 3 Div., June 20, 2001) (Burke, J) (2001.6.20 SMITH, Ivan post-conviction ruling.pdf)

While Ivan Smith did testify to the alleged beatings at trial, it apparently was not argued at trial or in the motion for a new trial.

³⁴ *I. Smith v. Uchtman*, 2005 WL 1766368 (July 22, 2005, Hibbler, J.)

III. FINDINGS OF FACT

A. Ivan Smith's Allegations

1) Ivan Smith's Written Motion to Suppress (*See Exhibit 1*)

Ivan Smith's written motion to suppress³⁵ alleges:

Ivan Smith was interrogated by Tennessee and Chicago police and ASAs Mike Smith and Charles Burns. Ivan Smith was beaten with nightsticks and axe handles and fists by Chicago and Tennessee police. Ivan Smith's testimony was also obtained with psychological and mental coercion in that the authorities lied and told him his fingerprints were on the cab used in the crime and that he would receive further beatings if he didn't sign a statement. No *Miranda* warnings were given and Ivan Smith's requests for his mother or an attorney were denied. The statement Ivan Smith signed was made by police outside defendant's presence and never actually spoken by defendant.³⁶

2) Ivan Smith's Motion to Suppress Testimony (*See Exhibit 2*)

Ivan Smith testified on April 15, 1994 at the hearing on his motion to suppress³⁷ as follows:

Ivan Smith was arrested sometime in November, 1991 in Ripley, Tennessee, by Lauderdale County police. He was taken to the Lauderdale County jail and held there for about two to three hours. While there, he was handcuffed and choked by arresting officers for being a "city slicker * * * com[ing] all the way down here and try[ing] to disrupt our home." They told him Chicago police were coming and transferred him to the Tipton County jail.

At Tipton County jail, an attorney identifying himself as an extradition attorney appeared with Ivan Smith in court and advised him not to answer any questions from Chicago police unless his mother or a lawyer were present. Tipton officers did not mistreat him.

At least one day after Ivan Smith arrived at Tipton County jail, and possibly more, Illinois authorities arrived to interview him. Detectives O'Brien and Stehlik, Assistant State's Attorney Michael Smith, and a female court reporter, whose name Ivan Smith could not

³⁵ *People v. I. Smith*, Defendant's Motion to Suppress, filed Feb. 10, 1993 (I.Smith.Mot.to.suppress.pdf).

³⁶ Another copy of this motion to suppress from the public defender's file obtained by the special prosecutor may indicate the allegation regarding the statement being made outside police presence and not actually stated by Ivan Smith was later stricken by the public defender. (00020773.pdf).

³⁷ ROP of April 15, 1994 (Judge Earl Strayhorn) (00018110.pdf).

remember, visited him.³⁸ O'Brien and Stehlik asked him about the Chicago murders, and Ivan Smith replied he was not talking without his lawyer or mother present. Chicago authorities told Ivan Smith he could not have a lawyer or call his mother until he arrived in Chicago. O'Brien, Stehlik and Mike Smith then took him to a "back room" but did not close the door.³⁹ No one else was present.

Illinois authorities told him that his friends had given statements implicating him and that his fingerprints were on the steering wheel of the cab used in the shootings. They informed him co-defendant Terry Brooks had not made a statement and they needed someone to testify against him. Ivan Smith refused, and O'Brien slapped his face and asked him if he was going to cooperate. Ivan Smith again asked for his mother or lawyer. O'Brien slapped the back of his head, and Ivan Smith, already handcuffed at the ankle to the table, stood up in response. Stehlik called Tipton officers, who handcuffed his hands behind his back and left. O'Brien asked him another question, and Ivan Smith did not respond. O'Brien punched Ivan Smith in the chest. O'Brien, Stehlik and Mike Smith wanted him to give a statement admitting he was the driver of the cab used in the shootings. After being punched in the chest, Ivan Smith said that it didn't hurt. O'Brien noted he had "all the time in the world" because he was being paid for being in Tennessee. O'Brien continued to punch him and then forced his shoulders down onto the bench. Stehlik laid a phone book on Ivan Smith's chest and one of the detectives hit the book repeatedly with "[a] little, thin oak stick," causing him pain and inhibiting his breathing. The detective paused, and asked him another question; Ivan Smith again refused to talk and the beating resumed. When the detective paused again, he said if Ivan Smith did not cooperate, "we'll do this back in Chicago and do it the right way." Ivan Smith agreed to cooperate and gave a statement to the court reporter.

After the statement, Mike Smith had a vase with flowers in it and asked Ivan Smith to grab it. Ivan Smith refused, so O'Brien also instructed him to grab it, which Ivan Smith did, and O'Brien then "took pictures." After the session, Ivan Smith examined his chest for marks, but saw none. Back in Chicago, in Division 6 of the jail, he asked a guard for medical attention due to his ribs hurting and officers beating him; the guards did not believe him and did not let him see a doctor. On cross-examination, Ivan Smith acknowledged he was interrogated in the Tipton jail cafeteria, which was a pretty big room. Asked if it had two brick walls and two glass walls, Ivan Smith replied "It should be." He denied two state's attorneys were in Tipton, and described Mike Smith as short and white, with black hair. He denied any tall, white skinny ASA was present. He described the stick used to beat him as 18-24 inches and black. When officers arrived at the jail, Ivan Smith was taken to the front desk for a few minutes and then walked with

³⁸ Records show that Ivan Smith had been at the Tipton County Jail for approximately two weeks when Illinois authorities arrived to interview him.

³⁹ Although Ivan Smith referred to this as a "back room" on first reference, this appears to be a reference to its relation to Tipton guards and inmates' cells. He later confirmed it was the cafeteria.

O'Brien, Stehlik and Mike Smith back to the cafeteria. He did not remember how long he was in Tipton jail before Chicago officials arrived.

3) Ivan Smith's Trial Testimony (*See Exhibit 3*)

On May 10, 1994, Ivan Smith testified at his trial as follows:

Ivan Smith's trial testimony regarding the alleged torture was mostly consistent with his suppression testimony, although he noted this time that the extradition lawyer had *not* appeared with him in court, only visited him in jail. He testified that Mike Smith had coached him on what to tell the court reporter. Regarding the crime itself, Ivan Smith testified he had left Chicago for Tennessee on July 1 or July 2, 1991, prior to the murders. On cross examination, he was confronted with title-transfer documents for the purchase of his Chevette, all dated July 24, 1991. When questioned about the stick and where it came from, he noted there were many cleaning crews around (possibly intimating it was a broom stick). He was also confronted with jail intake paperwork that recorded he smoked half a pack of cigarettes every two days, but noted no health or injury complaints, and Cermak hospital treatment papers for a sexually transmitted disease that also lacked any complaints of injury. Confronted with the paperwork, Ivan Smith testified he didn't remember much about either the interaction with the intake worker or the doctor. There was no redirect examination.⁴⁰

4) Ivan Smith's Statement to the Office of the Special Prosecutor (*See Exhibit 4*)

On September 6, 2005, Ivan Smith gave an interview to the Office of the Special Prosecutor, alleging the following.⁴¹

Ivan Smith's statements regarding the beating were largely consistent with previous versions. Pressed on where the stick had come from, he speculated that it came from "control," or the area where the Tipton guards were stationed. Smith also believed that he was transferred to Tipton County jail in Covington from the Lauderdale County Jail in Ripley because his family had complained about the choking and so he was moved. That required him to be transported back and forth to Ripley (Lauderdale's county seat) for court appearances. He acknowledged Tipton guards had designated him as "high risk" and always handcuffed him while taking him anywhere. He said the person who presented him extradition papers at night in the jail was not a lawyer; "I told him, all right, just get it [the extradition] over with."

In the interview with the Illinois authorities, Ivan Smith initially denied involvement in the murders. Mike Smith left the room and came back with a file box and showed him morgue

⁴⁰ Ivan Smith trial testimony, ROP May 10, 1994, 158-211 (Judge Strayhorn) (00020156.pdf)

⁴¹ Sworn Interview of Ivan Smith, Sept. 6, 2005 (00020403.docx).

pictures of the victims and co-defendants' statements. The beating went on for 30 minutes to an hour. The Tipton County officers who had escorted him were sitting "way up front, so they couldn't see nothing," although he also repeated the story about Tipton County guards coming in to shackle him when called by Chicago police. Once he agreed to say what Mike Smith wanted, the tutoring took 30 minutes to an hour. Later, with the court reporter present and taking down his statements, Mike Smith sat next to him and quietly corrected him when he would mess up the story. Ivan Smith was not sure whether the court reporter could hear Mike Smith. The court reporter wasn't far away (3-6 feet) but wasn't right next to them because there was only one outlet into which she could plug her recording machine. Giving the court-reported statement did not take long. Ivan Smith remembered it was 21 pages.

The next day, the Illinois authorities picked him up and took him by their hotel. After that, they went to McDonald's and then to Elvis Presley's home, where they had him flash a gang sign in front of the brick wall and photographed him. Only Mike Smith, Stehlik and O'Brien were present for that. Then they took him to the flight home. He was taken to 33rd and California for a lineup where he was identified by Cruthird. Then he was taken to jail at 26th and California. No abuse occurred in Chicago. Ivan Smith never filed a complaint with Office of Professional Standards or Chicago Police. Ivan Smith saw Javan Deloney in court and told him what happened to him. He also saw Maurice Deloney and Brooks. Later he saw Milsap, who said he had been kicked in the testicles by police. No one at the jail believed Milsap until he started peeing blood. Ivan Smith said everyone got beaten except for Brooks, because he was arrested while in court.

On follow-up questioning, Ivan Smith said the court reporter was also at Elvis' house and in the car. O'Brien and Stehlik were in the back with him, Mike Smith was driving and the court reporter was in the front passenger seat. He never saw Chuck Burns.

5) Ivan Smith's Statement to TIRC

On April 11, 2014, Ivan Smith told TIRC staff members the following:

His account to TIRC of the beating was largely consistent with his previous statements and his TIRC claim form (*See Exhibit 5*). In this interview, however, he said that he was not shackled at the ankles until he stood up upon being slapped and that Stehlik called Tipton County authorities in. He also said that Stehlik struck the first few blows with the stick, and then changed places with O'Brien (a description that was also in his TIRC claim form). He described the "chow hall" as being a "few feet" from the control center and having three brick walls and one glass wall to the hallway. He claimed Burns, at trial, had described interrogating Ivan Smith

in an “interrogation room” rather than a cafeteria.⁴² Ivan Smith described the cafeteria as having all metal tables except for a wooden table where staff ate. He repeated his allegation that Mike Smith was whispering cues to him while the court reporter took the statement. Ivan Smith described the ASA who took his statement as being short with black hair. He did not see where the phone book and stick used to beat him came from. Regarding his trial testimony that he left for Tennessee on July 1 or July 2 of 1991, Smith claimed it was a “mix-up” and said he just knew that he left Chicago shortly after he bought the car.⁴³ He claimed not to have met the Deloneys until they first appeared in court together in connection with the murders.

B. Illinois Authorities’ Versions of Events

1) Detective James O’Brien

a) O’Brien’s Motion to Suppress Testimony (*See* Exhibit 6)

Detective James O’Brien testified on April 15, 1994 at Ivan Smith’s Motion to Suppress Hearing as follows:⁴⁴

ASA’s Burns and Smith, Detectives O’Brien and Stehlik and court reporter Janet Lupa traveled to Tennessee to interview and retrieve Ivan Smith on November 22, 1991. At the jail, O’Brien, Stehlik and Burns were directed to a cafeteria with picnic tables in rows. No Tennessee officers or other inmates were in the room. Two of the walls of the cafeteria were pretty much all glass, and O’Brien could see inmates walking back and forth down the hallway on the other side of the glass. O’Brien and his companions were in the cafeteria for approximately four and a half hours from about 6 pm until about 10:30 pm. Shortly after they arrived in the cafeteria, Ivan Smith was brought in by Tipton County officers, who then left the room. Ivan Smith was advised of his rights and, after denying involvement in the homicides for 5-10 minutes, admitted his participation. Approximately an hour later, Lupa was brought in and took Ivan Smith’s statement. Lupa then took about two hours to type the statement up.

When she came back from typing up the statement, they reviewed it with Ivan Smith, which took about a half an hour. O’Brien, Ivan Smith, and Burns all signed every page of the statement. Afterwards, the court reporter took a Polaroid photograph (which O’Brien signed) of Smith sitting at one of the picnic tables in the cafeteria. O’Brien denied any mistreatment of, threats to or coaching of Ivan Smith, or that Ivan Smith was ever handcuffed or shackled at the

⁴² In fact, Burns’ trial transcript shows him referring to the room on first reference and many other times as a cafeteria. *See* ROP of May 10, 1994, N80 (00020156.pdf). Although Burns does at one point also refer to it as an “interview room” (N91) in testimony and in the court-reported statement (N112), this seems insignificant as Burns’ description is an accurate reference to the dual purpose the cafeteria was serving.

⁴³ Car purchase paperwork was dated July 24.

⁴⁴ ROP of April 15, 1994, 52-75 (00020771.pdf).

ankles, or that they told Ivan Smith his fingerprints were found on the cab. Ivan Smith never asked for a lawyer or his mother. No one took notes in the interview until Lupa came in for the court-reported statement.

Asked on cross examination whether it was true that, during the course of the initial interview of Ivan Smith, “Burns, Stehlik and yourself told Ivan everything you had learned in the investigation of the homicides up to that point,” O’Brien responded, “Not that I recall.”

b) O’Brien’s Trial Testimony

Detective O’Brien testified at trial about the criminal investigation, but was not asked questions about Ivan Smith’s interrogation in Tennessee.

c) O’Brien’s Statement to TIRC (*See Exhibit 7*)

On January 27, 2015, O’Brien told TIRC staff members the following:

He could not recall who made the decision to travel to Tennessee to interview Ivan Smith. It was somewhat unusual in that normally two trips were made – one to interview a suspect and another to extradite. He did not know why it was necessary for five people to go; he was not the one who decided who went. Upon arrival in Memphis they rented a car and drove directly to the jail. He could not remember whether they rented one car or two; he surmised it was two. He did not know why two ASA’s were necessary, but surmised perhaps it was because it was a “heater” triple homicide case. Mike Smith and Janet Lupa were not present for the initial interview of Ivan Smith; they waited elsewhere in the building.

Ivan Smith was not handcuffed during the interview, which occurred in a cafeteria with laminated tables. Prisoners were given peanut butter and crackers in their cells because the Illinois authorities and Smith were using the cafeteria for the interview. Guards walked by the windows in the cafeteria during the interview, but he did not recalling seeing inmates.

O’Brien did not recall what prompted Ivan Smith to admit his involvement; it may have been mentioned that his co-defendants were already talking. He denied anyone abused or coached Ivan Smith, and said that no sticks or phone books were present in the cafeteria. He surmised Covington’s phone book wouldn’t have been very big anyway.

O’Brien recalled it taking a long time for Lupa to type up the statement. Burns and O’Brien made small talk with Ivan Smith while it was prepared. Shown the picture of Ivan Smith in the cafeteria, O’Brien did not recall all the items, including a vase, on the table. O’Brien stated that he would have moved the vase so that Ivan Smith couldn’t have grabbed it. He also did not

know why Ivan Smith kept insisting Mike Smith was the ASA who took his statement, rather than Charles Burns. He said that Ivan Smith and Mike Smith never met while they were in Tennessee. He did not know why Mike Smith traveled to Tennessee but did not participate in the interview of Ivan Smith. O'Brien believes that only he and Stehlik returned to the jail in the morning to pick up Ivan Smith. He recalled driving by Graceland that morning on the way to the airport but does not recall stopping and taking any pictures of Ivan Smith there.

2) Detective Joseph Stehlik

a) Stehlik's Motion to Suppress Testimony (*See Exhibit 8*)

On April 15, 1994, Stehlik testified at the motion-to-suppress hearing as follows:⁴⁵

Stehlik's testimony largely mirrored that of O'Brien's; he denied any abuse or coaching of Ivan Smith. Stehlik described the lunchroom as having two glass walls, a solid wall, and a rear wall with a food serving area. Around 7:15 p.m., Lupa, the court reporter, came into the lunchroom and Stehlik left. Stehlik did not see Ivan Smith again that evening except for a brief passing in the jail hallway as guards returned Ivan Smith to his cell.

In response to questioning on cross-examination, Stehlik acknowledged that Ivan Smith initially denied having knowledge of the murders but admitted his involvement about 10 to 15 minutes into the interview. Stehlik did not know what made Ivan Smith change his mind and confess.

Asked whether it was true that the Illinois authorities "told Ivan everything you knew about what happened on that August 7th shooting," Stehlik responded "During the conversation I believe that came up too."

b) Stehlik's Trial Testimony (*See Exhibit 9*)

On May 10, 1994, Stehlik testified at trial as follows:

Asked his purpose in traveling to Tennessee, Stehlik mentioned only retrieving Ivan Smith. Asked why a court reporter was necessary, he conceded she was brought along because "he [Ivan Smith] was going to be given an option whether he would like a statement." Stehlik denied that he or anyone had asked Tipton County authorities for a room in which to interrogate Ivan Smith; the guards simply brought Ivan Smith to them in the cafeteria.⁴⁶

⁴⁵ ROP of April 15, 1994 (00020771.pdf).

⁴⁶ May 10, 1994 ROP, N31-N42 (Stehlik Trial Testimony 5.10.94.pdf)

c) Stehlik's Statement to TIRC (*See Exhibit 10*)

He did not know whose decision it was to travel to Tennessee to interview Ivan Smith. They arrived in Memphis and rented one car for everyone, arriving at the jail around 6 p.m. He could not recall why all five people were needed for the trip. It was the only time he had traveled with two Assistant State's Attorneys on an extradition trip. He did not recall the layout of the jail or whether other government offices were located in the building.

Ivan Smith was not restrained during the interview. He did not recall why they interviewed him in Tennessee rather than Chicago. After about an hour of interviewing Ivan Smith with Burns and O'Brien, Stehlik stepped out to get Lupa and waited with Mike Smith while the court-reported statement was taken. Shown the Polaroid of Ivan Smith, he said he didn't remember Ivan Smith's face or the vase being on the table. He thought the room looked vaguely familiar.

He did not see Lupa while she was typing up the statement, and he remained with Mike Smith until they left the jail. Stehlik did not return to the cafeteria. Mike Smith never spoke with Ivan Smith at the jail; Mike Smith was with Stehlik when he saw Ivan Smith being escorted back to his cell. Stehlik believed Mike Smith came along to Tennessee because of Mike Smith's experience prosecuting gang cases.

Stehlik does not believe the ASA's accompanied him and O'Brien the next day when they picked Ivan Smith up at the jail. They did drive past Graceland on the way to the airport, but he does not recall taking a picture of Ivan Smith there.

3) Assistant State's Attorney Charles Burns

a) Burns' Motion to Suppress Testimony

It does not appear that Burns was called to testify at the motion to suppress.

b) Burns' Trial Testimony (*See Exhibit 11*)

On May 10, 1994, Burns testified at trial as follows:

Burns arranged for himself, Mike Smith, O'Brien, Stehlik and Lupa to fly to Memphis on November 22, 1991. They arrived there late and rented a car to drive to Tipton County Jail. It was located in a small town, he believes Ripley⁴⁷, Tennessee. They arrived around 6 p.m. The

⁴⁷ Tipton County Jail is in Covington, Tennessee; Lauderdale County Jail is in Ripley, Tennessee. Ivan Smith was arrested in Ripley, Tennessee.

jail was in a two-story building. On the first floor were police offices, dispatch offices and administrative offices; the jail was on the second floor. O'Brien, Stehlik and Burns went up to the second floor, where they were directed to the cafeteria. Two walls were cinder block or brick and the other two walls were glass. The door to the cafeteria was never closed while they were there. Ivan Smith was brought in. They discussed the shootings for about an hour, and Burns then went downstairs to get Ms. Lupa. Stehlik and Mike Smith stayed on the first floor while Burns and Lupa went up and took Ivan Smith's statement.

After the statement, Burns and Lupa went downstairs. Burns stayed with her "for a period of time, because we were trying to find a typewriter. Apparently, there was no typewriter at Tipton County Jail and ended up calling, I believe it was a police officer from another County that was able to bring a typewriter to the jail. I then saw Ms. Lupa begin to type up, type up her notes." The typing took about two hours. Smith then walked back upstairs with the typed statement (without Lupa), and Ivan Smith, O'Brien and Burns signed the statement and made corrections and additions; "After that, a photograph was taken by Mr. Smith." O'Brien, Ivan Smith and Burns signed the back of the photo.

On cross examination, Burns said he didn't know if Tipton County had a court reporter, and he made no inquiries about that beforehand. He acknowledged that Ivan Smith initially denied involvement in the murders. Burns requested that Lupa accompany them.

c) Burns Statement to the Office of the Special Prosecutor (*See Exhibit 12*)

Burns told special prosecutors the allegation he or anyone coached Ivan Smith on what to say was "ludicrous" and that there was nothing unusual about the interview or extradition.

d) Burns' Statement⁴⁸ to TIRC (*See Exhibit 13*)

On June 12, 2015, former ASA Charles Burns told TIRC staff the following:

The Chief of the Cook County State's Attorney's Office's Criminal Bureau was responsible for determining who went to Tennessee; that man is now DuPage County State's Attorney.⁴⁹

It was routine procedure to send two ASAs to conduct a suspect interview as part of an extradition; it was not unusual. Burns did not believe Mike Smith was ever with Ivan Smith the

⁴⁸ Burns initially declined to meet with TIRC, partly on the grounds that he believed the case was not within TIRC's jurisdiction. He instead agreed to answer questions submitted in writing. After TIRC again requested an interview, he agreed to meet with staff.

⁴⁹ The DuPage County State's Attorney is currently Robert Berlin.

evening of the interview. The transcription of Ivan Smith's court-reported interview was not stopped at any time to coach or provide Ivan Smith with an answer.

TIRC staff informed Burns that the former Tipton County sheriff had informed TIRC there were a number of typewriters available in that building and asked why Burns had testified another one had to be brought from another county. Burns said he remembered a typewriter had to be brought from another county. They had arrived after 7 p.m. and the jail was the only portion of the building still open. Burns assumed it was Tipton personnel who called around for the typewriter. All Burns knew was that it took a long time for the statement to be typed up, and he remembered being told that the typewriter had to be brought from another county. Burns believed Janet Lupa told him that.

Burns said he did not stay with Ivan Smith while the statement was being typed. Burns believed Ivan Smith was returned to his cell while the statement was typed. Burns did not believe Ivan Smith would have been allowed to stay alone in the cafeteria.

Shown the Polaroid of Ivan Smith, Burns did not recall anything about the room or the items on the table. Burns did not take the photo. Burns did not recall whether he rode to the airport with Ivan Smith the next day. Burns, O'Brien, Stehlik, Mike Smith, Janet Lupa and Ivan Smith all took the same flight back to Chicago. The detectives made the arrangements for the interview of Ivan Smith.

4) Court Reporter Janet Lupa

a) Lupa's statement to the Office of the Special Prosecutor (*See Exhibit 14*)

Lupa could not recall specific details of the trip. She said if she had the statement and photograph she took, she might remember further details. She said she had never seen evidence of abuse of a suspect during her career.

b) Lupa's interview with TIRC (*See Exhibit 15*)

On April 21, 2014, Lupa told TIRC staff the following:

She did not remember many details of the trip. She remembered traveling with Burns and a detective. She spent one night in Tennessee. She waited in a room while others conducted Ivan Smith's initial interview and remembers seeing a flyer for a bail bondsman on the wall of the room. No one waited with her. She never saw or heard any signs of threats to, or abuse of, Ivan Smith. Everything he said would have been included in her transcript. She could not recall the interview room but remembered it wasn't a jail cell. She did not believe Ivan Smith was

handcuffed during the interview. She assumed she took a photo of Ivan Smith because that was her job; she would have recorded on the back of the photo the time and date it was taken. She does not know why she was asked to travel to Tennessee for the interview. Ivan Smith was transported back to Chicago with them. She did not recall stopping at Graceland to take a photo of Ivan Smith with an assistant state's attorney.

c) Lupa's court-reported statement to TIRC (*See Exhibit 16*)

In a follow-up interview on June 25, 2015, Lupa told TIRC staff:

She did not specifically remember the trip to Tennessee, although she remembered taking three trips out of state during her career. Ivan Smith's statement did refresh her memory that O'Brien and Burns were there, but she does not remember the presence of Mike Smith or Stehlik. She remembers sitting in a room with a bail bondsman's numbers on the wall while she waited to be called into the interview. She did not remember whether she brought a typewriter with her, but believes she went into another room to type up the statement. She does not remember anyone being with her while she typed it up. She estimated it would take her an hour and a half to type up 21 pages. She was routinely present when the statement would be signed by the suspect, but not necessarily when the suspect went over the statement with the assistant state's attorney prior to signing it in her presence. She does not remember there being a problem with a typewriter or telling anyone a typewriter had to be brought from another county. Generally speaking, she never remembers any suspect being handcuffed in her presence during her career while she took a statement, nor any suspect ever looking like they were in bad shape.

5) Assistant State's Attorney Mike Smith

a) Mike Smith's Statement to the Office of the Special Prosecutor (*See Exhibit 17*)

On October 11, 20015, Mike Smith told the OSP that neither he nor anyone else coached Ivan Smith or told him what to say in his confession. He said he went as a second prosecutor because he was expected to see the case through to the end.

b) Mike Smith's Statement to TIRC (*See Exhibit 18*)

Mike Smith's account was largely consistent with the other Illinois authorities' accounts of the trip. Chuck Burns asked Mike Smith to travel to Tennessee. They arrived at the jail around 6 p.m. Mike Smith was brought along as a resource because he knew the case better than anyone else and he acted as a resource for the others. It might have been possible for him to have been available by phone rather than travel, but the trip was hastily arranged with little time for a

briefing or arrangements of that type. In addition, it was a triple homicide, a death penalty case, and therefore somewhat unusual in that regard.

Upon arrival, he and Lupa remained on the first floor while Burns, O'Brien and Stehlik interviewed Ivan Smith. About an hour later, Burns came down and got Lupa to take the court-reported statement. Stehlik then came downstairs and waited with Mike Smith. About 45-minutes to an hour later, Lupa came back looking for a typewriter. The preparation of the statement was delayed until a typewriter was brought in from outside the facility. Around 10:30 p.m., Burns returned and informed him the statement had been completed. Mike Smith went upstairs and had a brief chat with Ivan Smith while they waited for Tipton jail officials to escort him back to his cell.

C. TIRC Investigation

1) Pattern and Practice Evidence (*See Exhibits 19 and 20*)

TIRC subpoenaed the Chicago Police Department and the Independent Police Review Authority (IPRA) for records related to complaints against Detectives O'Brien and Stehlik. The Chicago Police Department had no record of complaints against Stehlik⁵⁰, but a list of 32 complaints against O'Brien. *See Exhibit 19.* IPRA supplied four additional complaints against O'Brien, one of which (a complaint by George Anderson) was also against Stehlik.

Of the 36 complaints against O'Brien investigated by the Office of Professional Standards or its successor agency IPRA, two were sustained, 21 were not sustained, O'Brien was exonerated in four instances, and seven were deemed unfounded (the final findings for the two remaining complaints are either not listed on O'Brien's complaint registry or listed as N/A).

Documentation for all complaints was not available. CPD or IPRA supplied files on 18 of the 36 complaints. The 18 files are summarized in Exhibit 20. Of those 18 complaints, 12 alleged use of physical force to obtain or attempt to obtain a confession. One of the two "sustained" complaints involved O'Brien questioning a juvenile without an adult present. No information on the other sustained complaint (described on the list as "miscellaneous" in nature) was supplied.

One of the complaints deemed "not sustained" was that of Robert Wilson, convicted of cutting a woman in the face at a bus stop. Wilson was arrested the next day while standing at the same bus stop. He alleged O'Brien slapped or hit him several times in the head at the station and

⁵⁰ This CPD response that Stehlik had no complaints, however, appears to be inaccurate, as one of the O'Brien complaints, CR# 205492, was also filed against Stehlik. TIRC requested a recheck of CPD's files, but the response was not available in time for issuance of this determination.

told him he should confess. After 30 hours in custody, Wilson did. In the weeks after Wilson's arrest, five similar attacks on women occurred, but a trial judge refused to admit evidence of them at trial. When a federal judge ordered a retrial and the similar attacks admitted into evidence, the victim recanted and said she had initially told O'Brien and two other detectives that Wilson looked older than her attacker, but one of the detectives insisted she had to give an unequivocal identification. The Cook County State's Attorney re-investigated the case and decided not to retry Wilson.

Wilson was released from prison, received a gubernatorial pardon based on innocence, and received a \$3.6 million settlement in 2012 for a lawsuit against O'Brien, the city and the county.⁵¹

The complaint against both Stehlik and O'Brien is by George Anderson, who alleged Stehlik and O'Brien obtained his confession by using a pipe or hose to beat a phone book held over his chest. TIRC referred Anderson's case to court for further judicial review.

2) Information from the Tipton County Sheriff (*See Exhibits 21 and 22*)

On April 30, 2014 and February, 6, 2015, a TIRC investigator spoke with Buddy Lewis, who was Sheriff of Tipton County at the time of the Ivan Smith interview. At that time, the jail was on the second floor of the Criminal Justice building in Covington, Tennessee. The court facilities, court clerk's office, judges' chambers, sheriff's office and Covington police department were on the first floor. There were typically four deputies on patrol during each shift and three employees working in the jail during any given shift. The chief jailor at the time is now deceased. There was no interrogation room on the second floor. Lewis could not imagine the cafeteria being used for interview purposes because it was very noisy and would be in use for dinner until 8 or 9 p.m. each evening. The jail office on the second floor contained a typewriter and other office equipment in 1991. Sheriff's Offices on the first floor contained five to seven typewriters. He never had to borrow a typewriter from another facility.

Shown the Polaroid photograph of Ivan Smith, Lewis confirmed the Tipton County Jail cafeteria had tables like that in the picture, but he could not be certain it was taken in Tipton County Jail because there was nothing distinctive in the background. Lewis was not in the jail facility daily and had never eaten there. The jail was overcrowded in 1991. Lewis did not recall seeing a vase on the table in the cafeteria like the one in the photograph. If he had seen it, he

⁵¹ See Spielman, Fran, *Chicago Sun-Times*, "\$3.6 mil. For man wrongly imprisoned for 9 years," March 13, 2012 (2012.3.12 ST Robert Wilson story.docx); see also *Wilson v. O'Brien*, Memorandum in Support of Defendants' Motion for Partial Summary Judgment, Nov. 15, 2010, at 2 (acknowledging O'Brien and two other detectives were the detectives who presented the victim with the photo array) (Doc 216 Defs' memo for summary judg.pdf).

would have had his chief jailor remove the vase and the glass condiment bottles for safety reasons.

3) Possible Abuse of Ivan Smith's Co-Defendants

In making his closing argument on his client's motion to suppress, Curtis Milsap's lawyer summarized his evidence and noted that he had called a Cook County jail guard, Roland Allen, who testified he would not accept Milsap into his wing of the jail because of bruises on Milsap's face and a noticeable limp. Milsap had alleged being slapped during his interrogation and being kicked in the testicles.⁵² There is testimony that Milsap was examined and had tenderness in his testicle, although the medical cause is disputed. Allen's testimony was not contained in records available to TIRC, and the prosecution's summary rebuttal contained no mention of Allen's testimony, either. However, what appear to be handwritten prosecutors' trial notes do show a Roland Allen being called to testify by the defense on either March 21, 1994 or April 5, 1994. *See Exhibit 29*⁵³

Co-Defendant Javan Deloney also alleged abuse by detectives whom he was unable to identify at trial. He also alleged he saw detectives strike and knock Maurice Deloney to the ground at the police station.⁵⁴

4) Polaroid Photograph of Ivan Smith (*See Exhibit 23*)

TIRC obtained a copy of the impounded Polaroid photograph taken of Ivan Smith in Tennessee after the court-reported statement was taken. His chest is not visible, but his face shows no obvious injuries.

5) Signatures

a) Ivan Smith's signatures (*See Exhibit 24*)

Ivan Smith's counsel suggested the date discrepancy between Ivan Smith's testimony about when he bought his car and left for Tennessee might have been due to delayed paperwork and an unscrupulous car dealer who may have even added Smith's signature. TIRC compared Ivan Smith's signature on his court-reported statement with that of the signature of Ivan Smith

⁵² In Milsap's written motion-to-suppress, he could not identify the two detectives who interrogated him. In his interview with the special prosecutor, he said one of them might have been O'Brien. *See Milsap's written motion to suppress and OSP closing report on Milsap (C. Milsap mot.to.suppress..pdf) (OSP Milsap closing report.pdf)*

⁵³ *See (00019635.pdf), page 6 of 35-page .pdf file.*

⁵⁴ *See People v. Javon [sic] Deloney, 1-95-0199 (1st Dist, Sixth Div., March 21, 1997) (Greiman, J.) (Javon Deloney 1997.3.21 Appeal.pdf)*

on the car-purchase paperwork. The two appear very similar.⁵⁵ Additionally, Ivan Smith did not suggest in his interview that his signature had been forged.

b) Charles Burns' signatures (*See Exhibit 25*)

Because Ivan Smith insisted that his court-reported statement was taken by ASA Mike Smith and not ASA Charles Burns, TIRC compared Charles Burns' signature on Ivan Smith's court-reported statement with the signature of Charles Burns on another, contemporaneous confession in an unrelated criminal case. The signatures appear similar.

6) Smith's Attorneys' Contentions

Smith's Attorneys', Larry Dreyfus and Elliot Zinger, submitted a number of letters on behalf of their client. *See Exhibit 27*. They point out that almost all of the witnesses in this case, including wounded victims, have recanted their identifications.⁵⁶ They note that some detectives involved in the investigation have taken the Fifth Amendment in other cases.⁵⁷ They also provided a diagram of the cafeteria as made by Ivan Smith, contending that there was an alcove in the cafeteria that offered seclusion of view from Tipton authorities. *See Exhibit 28*.

They point to a number of conflicts between confessions as evidence of their unreliability and coerced nature. For instance, Ivan Smith's confession places himself as the driver of the taxi, Brooks as the front seat passenger, Javan Deloney as the rear, center-seat passenger, Milsap as the rear, driver's-side passenger, and an unnamed individual as the rear, passenger's-side occupant.⁵⁸ Smith did not identify anyone in a LeBaron that followed the taxi. Curtis Milsap's confession, conversely, puts Smith in the taxi driver's seat, a man named Ronald McKenzie next to Smith, and Javan Deloney next to McKenzie in the front seat. Milsap said he sat behind Smith while Maurice Deloney sat in the rear passenger's-side seat. Milsap does not mention a LeBaron. In a third confession, Javan Deloney confesses to driving the LeBaron with Maurice Deloney in the front and another friend, Ollie Bays, in the back, while Smith drove the taxi containing Brooks, Milsap and another man.⁵⁹

⁵⁵ Although we use the term "signature," Ivan Smith apparently prints his signature rather than using cursive writing.

⁵⁶ The Illinois Supreme Court in *People v. Brooks* noted that the recantations were suspect because they occurred during a truce between the two warring gangs, and that one of the recanting witnesses, Taylor, denied he was accompanied to court by another man, but then left court with that same man. 187 Ill.2d 91, 133 (1999).

⁵⁷ O'Brien took the Fifth Amendment in the case of Cortez Brown, a/k/a Victor Safford, whose murder conviction was overturned in 2009 because of allegations of torture. O'Brien's attorney, Mr. Fahy, told TIRC that O'Brien later offered to prosecutors to take the stand in the case, but was not called to do so because Brown reached a plea agreement with prosecutors. O'Brien also initially invoked his Fifth Amendment rights in the Robert Wilson case, but later changed his mind and gave a deposition in that case.

⁵⁸ *See* Smith court-reported statement, Exhibit A.

⁵⁹ *See* Statements of Javan Deloney and Curtis Milsap, August 9, 1991 and August 19, 1991 (2015.10.28 379298 Various Reports – response to subpoena 2015-051.pdf, pp. 146-149, 185-188).

IV. STANDARD OF PROOF

The Commission was created by the General Assembly following the report of Special Prosecutor Egan and the subsequent federal indictment of Jon Burge in order to address the evidence that had been developed of widespread torture of suspects by officers who had served under Burge. The General Assembly noted the procedural rules of courts that, under normal circumstances, limit the ability of convicted persons to re-examine old convictions.⁶⁰ It created this body in 2009 because of a special need to review convictions related to Burge and the officers who had worked under him, based on the evidence that had already been developed that the law enforcement and judicial systems had failed to address adequately the consequences of the demonstrated pattern of torture.

The Commission was not tasked by the General Assembly to conduct full, adversarial, evidentiary hearings concerning the likelihood of torture, or even to make a final finding of fact that torture likely occurred. That remains the role of the courts. Instead, 775 ILCS 40/45(c) provides a lower burden for claimants:

If 5 or more of the 8 voting members of the Commission conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case shall be referred to the Chief Judge of the Circuit Court of Cook County. [Emphasis added.]

Because of the Commission's role as a gatekeeper for a new hearing in Court, it has interpreted this language, by rule, as not requiring that it be more likely than not that any particular fact occurred but rather that there is sufficient evidence to merit judicial review. 2 IAC 3500.385(b)(1).⁶¹

While notable, the Commission does not consider these discrepancies dispositive of coercion. Additionally, the Commission also does not share Smith's attorneys' belief that the LeBaron was the sole creation of Ronnell Hudson or that police did not actively search for it. Police reports indicated they questioned Ronnell Hudson (the car's owner) as to its whereabouts and he claimed not knowing where it was. Reports also show they issued a "point-to-point" internal police bulletin asking officers to be on the lookout for the car, that they investigated someone driving a car of similar description (black over red convertible), and that a beat officer's report, completed just five hours after the shooting, and before Hudson's statement was taken, documented that shooting victim Allen Epton reported he saw both a taxi and a red LeBaron. See "2015.10.28 379295 Various Reports Response to subpoena 2015-051.pdf," pp. 95-96, 120, 125, 131; See also "2015.10.28 RD 379298 Perm. Ret. File. Response to subpoena 015-051.pdf," pp. 6

⁶⁰See, e.g., *People v. Edwards*, 2012 IL 111711, 969 N.E.2d 829 (2012).

⁶¹In general, the approach the Commission has taken is akin to the concept of "probable cause;" that is, there must be enough evidence that the claim should get a hearing in court. See FAQ No. 8, <https://www.illinois.gov/tirc/Pages/FAQs.aspx/>. Note that the Commission is free under its rules, where it chooses, to make findings of fact. 2 IAC 3500.385(b)(2).

V. ANALYSIS

A. Facts Supporting Ivan Smith's Torture Claim

1) Pattern and Practice

Records document 36 complaints lodged against Detective O'Brien, at least 12 of which alleged the use of physical force while attempting to elicit confessions. One of these was the complaint filed by Robert Wilson, who confessed to a crime after being in custody for 30 hours. The charges were later dropped, and Wilson received a gubernatorial pardon based on innocence. While TIRC has record of only one complaint against Detective Stehlik, that complaint was lodged against him and Detective O'Brien jointly for tactics that closely parallel Ivan Smith's allegations. George Anderson alleged that O'Brien and Stehlik held a phone book over his chest and beat it with a pipe or hose. The number and type of allegations against the detectives weighs in Smith's favor.

2) Motivation to Obtain a Confession and Authorities' Credibility

Only witness testimony and co-defendants' statements tied Ivan Smith to the crime. Physical evidence of bullet holes in Ivan Smith's Chevette only tied the car to the earlier altercation in the day, not the murders. Additionally, the confessions obtained from multiple suspects vary greatly with each other. Therefore, there would be strong motivation to obtain a confession from Ivan Smith.

Four of the five members of the traveling party conceded in interviews with TIRC that bringing two Assistant State's Attorneys to an extradition/interview was unusual. One of the State's Attorneys, Mike Smith, flew down to Tennessee, but did not attend the interview.⁶² The only explanations provided for the extra State's Attorney were that Mike Smith knew the case best and acted as a resource for the others.

The size and composition of the Illinois extradition group makes it obvious that authorities intended to obtain a confession from Smith. In addition to the unusual step of bringing multiple State's Attorneys, the only plausible reason to bring a court reporter on an overnight trip is that authorities hoped to secure a confession before returning to Chicago. Yet, when asked about this during Smith's trial, Stehlik denied the purpose in traveling to Tennessee was to secure a confession from Ivan Smith, and Charles Burns parried long and hard with a defense attorney before conceding that securing a statement was, in fact, a purpose of the trip. This is odd considering there is nothing inherently wrong with trying to secure a confession from

⁶² We note that Mike Smith, had he attended the interview, likely could not have prosecuted the case because he would have become a witness to Ivan Smith's statement.

a suspect, be it at home or in a foreign jurisdiction. Stehlik and Burns only hurt their credibility by not readily admitting this.

O'Brien and Stehlik also contradicted each other during the suppression hearing when asked if they had told Ivan Smith everything they knew about the shooting during their interrogation of him. O'Brien said they hadn't; Stehlik said they had. Such prevarications weigh against these witnesses' credibility.

At trial, Stehlik denied anyone requested a room in which to interview Ivan Smith, and claimed Tipton authorities had just handed him over in the cafeteria. Yet O'Brien told TIRC that prison officials served prisoners dinner in their cells that night because Illinois authorities were using the cafeteria to interview Ivan Smith. It is unlikely Tipton authorities would have gone to such accommodating lengths if a specific request for a room had not been made. This highly dubious assertion casts doubt on Stehlik's credibility.

Finally, the claim by several of the authorities that a typewriter needed to be fetched from a different location also weighs on the credibility of both State's Attorneys who made the trip to Tennessee. Ivan Smith's timeline, which he gives as being questioned for up to two hours prior to the court reporter taking his statement, suggests that he may have been interrogated for a longer period of time than Illinois Authorities claim, and the time needed to retrieve a typewriter could explain that missing extra time. Buddy Lewis, the Tipton County Sheriff in November of 1991, could think of no reason why the jail would not have an available typewriter.

3) Possible Abuse of Ivan Smith's Co-Defendants

In making his closing argument on his client's motion to suppress, Curtis Milsap's lawyer summarized his evidence and noted that he had called a Cook County jail guard, Roland Allen, who testified that he would not accept Milsap into his wing of the jail because of bruises on his face and a noticeable limp. Milsap had alleged being slapped in the face and kicked in the testicles during his interrogation. There is testimony that Milsap was examined and had tenderness in his testicle, although the medical cause of that tenderness (trauma vs. infection) is disputed. Allen's testimony was not contained in records available to TIRC, and the prosecution's summary rebuttal contained no mention of Allen's testimony. However, assuming Milsap's attorney's summation of Allen's testimony is accurate, this is strong evidence that one of Ivan Smith's co-defendants was tortured and weighs in Ivan Smith's favor.

4) Differing Accounts of Illinois Authorities' Whereabouts While the Statement was Typed

Burns told TIRC that he did not stay with Ivan Smith while the court reporter typed the statement.⁶³ O'Brien, however, told TIRC that he and Burns made small talk with Ivan Smith while the statement was prepared.⁶⁴ Burns did not believe Mike Smith was ever with Ivan Smith the night of the confession.⁶⁵ Similarly, O'Brien reported Mike Smith was never in the room with Ivan Smith.⁶⁶ Mike Smith told TIRC he went upstairs into the jail after the confession had been signed, saw Ivan Smith, and had a brief conversation with him.⁶⁷

5) Posed Photos

Ivan Smith claims that the Assistant State's Attorney questioning him made him pose while holding a flower vase in the cafeteria and that he was also forced to pose for a photograph outside Graceland. While no pictures obtained by TIRC confirm this, the Polaroid taken of Ivan Smith in the jail does confirm a flower vase was present.

The Polaroid photograph of Ivan Smith showing a flower vase also shows several glass condiment bottles on the table. Detective O'Brien himself noted that it is unusual to allow an inmate so close to potential weapons. Likewise, Tipton Sheriff Buddy Lewis said he would have instructed his jailor to remove such a vase had he seen it. No one can explain its presence.

Detectives said they did not recall or could not remember taking any pictures at Graceland of Ivan Smith. This wording is a distinct departure from their unequivocal denials of any abuse or beating of Smith occurring. Additionally, both acknowledged passing by Graceland.

Posing while holding a flower vase is a highly specific allegation not common or well-known in our torture cases, and the photographic evidence that such a vase was available is at least partially corroborative of Ivan Smith's story. Similarly, the admitted proximity to Graceland makes the allegation of posed photos there at least possible.

⁶³ Witness Interview Report_Charles Burns [6-12-15], 2 (Witness Interview Report_Charles Burns).

⁶⁴ Witness Interview Report _James Obrien [1-27-15], 5 (Witness Interview Report _James Obrien [1-27-15].docx).

⁶⁵ See n. 54, *supra*, at 2.

⁶⁶ See n. 55, *supra*, at 5.

⁶⁷ Witness Interview Report_Michael Smith [8-26-14], 3 (Witness Interview Report_Michael Smith [8-26-14].pdf)

B. Facts Casting Doubt on Ivan Smith's Torture Claim

1) Ivan Smith's Credibility

a. Ivan Smith's History of Self-Serving Prevarication

Ivan Smith has proven himself willing to be less than truthful or mistaken when doing so would potentially help his case. TIRC uncovered several examples of this over the course of its investigation into Smith's torture claims.

Two examples stand out. The first is Smith's trial claim that he left Chicago on July 1 or 2, 1991. The Chicago car purchase paper work dated July 24, 1991, directly refutes this claim.⁶⁸ The other example comes from Smith's apparently selective memory. Ivan Smith recalled minute details when testifying at his suppression hearing about whom he tried to tell at the Cook County Jail and Cermak Hospital about his abuse.⁶⁹ Yet when confronted with medical and intake records and asked about those specific interactions, Ivan Smith's testimony became very vague and inconsistent with his previous — just moments earlier — level of recall.⁷⁰ This weighs against his credibility, particularly the credibility of his statements that he tried to report abuse to jail and hospital personnel.

b. Improbability of Setting

Unlike most claims the Commission reviews, the alleged torture did not occur in an interrogation room of a Chicago Area police station. Rather, it is alleged to have occurred in a foreign jurisdiction in a room that Ivan Smith himself acknowledged had large windows and an open door, making its interior open to anyone passing by in the jail hallways.⁷¹ The risk of discovery would have been greater than in a closed Chicago interrogation room.

Additionally, Ivan Smith told the Commission the "control" room where the Tipton County guards were stationed was a "few feet" away from where he was being questioned,

⁶⁸ During Ivan Smith's interview with TIRC, his attorneys suggested Ivan Smith first testified he left in July without mentioning an exact date and arrived at the July 1 and 2nd date by simply answering affirmatively when his attorney suggested those dates. However, the motion-to-suppress transcript shows that while Ivan Smith did first state July generally, when asked an open-ended question again about leaving, it was Ivan Smith who came up with the July 1-2 timeframe. *See* ROP May 10, 1994, N-159, N-162. Their explanation that an unscrupulous car dealer may have taken his money and then filled out the paper work for him, signing his name and dating it later also seems unlikely in light of the resemblance of the signatures on the paperwork to his confession signature. *See* Exhibit 24.

⁶⁹ *See* ROP, May 10, 1994, N-182 (00020156.pdf)

⁷⁰ *See* ROP, May 10, 1994, N-192-197 (00020156.pdf).

⁷¹ *See* ROP, April 15, 1994, I-9, I-22 (00018110.pdf) (noting that Chicago authorities did not close the door and confirming the State's description of the cafeteria.).

though Ivan Smith's lawyers contend the view of Ivan Smith was blocked by the alcove. TIRC was unable to obtain jail floor plans to accurately assess whether this claim is accurate. If the jail guards were within earshot, however, they would have likely heard what would have been the very loud contact of a nightstick upon a phone book. This would have required the Tipton County guards' complicity, which would have widened the circle of those participating in or ignoring the abuse, thus making it more unlikely.

Another problem caused by the setting of the alleged abuse is the origin of the nightstick or baton with which the detectives allegedly beat Ivan Smith. In his interview with the Special Prosecutor, Smith suggested it came from the Tipton guards' control center. If O'Brien's statement to TIRC regarding having to surrender his firearm upon entry to the jail is accurate (a common procedure at jails), it also stands to reason that Tipton authorities would not have been keen on him bringing a nightstick into the jail. Alternately, obtaining a stick from a guard again requires widening the circle of knowledge about the abuse, making it less likely.

c. The Mike Smith/Charles Burns Allegation

Ivan Smith has remained steadfast in alleging that ASA Mike Smith, not ASA Chuck Burns, took his statement. For this to be accurate, Mike Smith would have had to have forged Charles Burns' name 22 times, which does not seem likely given the similarity of Burns' signature on Smith's confession to those on a contemporaneous confession Burns is supposed to have taken. *See Exhibit 25.* Alternately, it would have required Mike Smith *not* to sign the confession at the same time that Ivan Smith did, have Chuck Burns sign it at another time, and then return it to court reporter Lupa. Although Ms. Lupa told the Commission that she is not necessarily present during the signing of the confession, she did typically take the Polaroid photo of the defendant after a confession, which is also signed "Charles Burns." Falsifying this would probably have required Lupa's participation, thus widening the circle of those aware of the deception, which makes it more unlikely.

d. Allegation of Coaching During the Court-Reported Statement

Ivan Smith alleged that Mike Smith would whisper preferred answers to him during his court-reported statement. Again, this would have required Lupa's participation or at least willful ignorance, widening the circle and making it more unlikely.

e. Ivan Smith's Criminal History

Ivan Smith was arrested on January 23, 1989, for possession of a stolen motor vehicle. The case was later dropped. He was arrested March 28, 1989, for mob action, which was also dropped. While his prior criminal history is not extensive, it weighs against credibility.

2) Lack of Corroborating Evidence

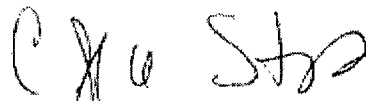
Not only did Ivan Smith never file a complaint with the Office of Professional Standards, there is no record that Ivan Smith made any complaints about the abuse upon his arrival at the jail. While it is possible that his complaints were ignored, this is a factor that weighs against him.

VI. CONCLUSION

The irregularities with authorities' version of events regarding Ivan Smith caused TIRC staff to take a very close look at this case. The typewriter account is troubling, as are the different accounts of who was with Ivan Smith when. Also troubling was Stehlik and Burns' coy testimony about their intent to secure Ivan Smith's confession in Tennessee. O'Brien's complaint history and the strong evidence of abuse of Milsap also factored into this close examination of the case.

Despite issues with Ivan Smith's credibility, the Commission finds that these factors amount to sufficient credible evidence of torture *of Ivan Smith*. While the Commission does not credit every explanation offered by Ivan Smith, the pattern and practice evidence against the police officers in this case, especially Detective O'Brien, is concerning, especially when viewed alongside the Illinois Authorities' motivation to obtain a confession, their reticence to admit their rather obvious motivation for bringing such a large group to Tennessee, and the strong evidence that another suspect in the case was physically abused. Smith's allegations of O'Brien slapping him in the head are disturbingly similar to the allegations raised by Robert Wilson, a man who confessed to aggravated battery in O'Brien presence, but was later exonerated. The Commission is also troubled that no one among the two experienced detectives and the experienced prosecutor who were present admits to taking notes during the initial interview of Ivan Smith where a court reporter was not present. The Commission finds that the cumulative weight of the evidence tips the scale in favor of judicial review.

January 20, 2016



Cheryl Starks

Chair

Illinois Torture Inquiry and Relief Commission