



**STATE OF ILLINOIS  
TORTURE INQUIRY AND RELIEF COMMISSION MEETING  
Wednesday, May 20, 2015, 3:00 p.m.**

James R. Thompson Center  
100 W. Randolph Street, Meeting Room 9-040  
Chicago, Illinois 60601

MINUTES

**PRESENT:**

Commissioners

Chairman Cheryl Starks  
Commissioner Shahram Dana  
Commissioner Robert Loeb  
Commissioner Steven Miller  
Commissioner Paul Roldan  
Commissioner Marcie Thorp  
Alternate Commissioner Doris Green (public member alternate, present via telephone)  
Alternate Craig Futterman (alternate for law professor commissioner)

Staff on dais

Barry Miller (Executive Director)  
Rob Olmstead (Staff Attorney)  
Dr. Ewa Ewa (Human Rights Commission CFO)  
Jade Lambert (*pro bono* outside counsel)

**I. Call to Order/Members Present**

On May 20, 2015, at approximately 3:00 p.m., Chairman Cheryl Starks called to order the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC). Present were Chairman Starks and Commissioners Dana, Loeb, S. Miller, Thorp and Roldan, constituting a quorum. Commissioner S. Miller moved to allow Commissioner Green to attend via telephone; Commissioner Dana seconded. Commissioners unanimously

(Minutes approved 7.22.2015)

approved.

## **II. Approval of Minutes**

Chairman Starks called for a motion to approve both the open-session and closed-session March 25, 2015 minutes. Commissioner Thorp moved approval; Commissioner Roldan seconded; Commissioners unanimously approved.

## **III. Executive Director's Report**

Executive Director Barry Miller:

- Welcomed new Commissioners Dana, Loeb and Steven Miller, and re-appointed Commissioner Thorp.
- Discussed the Commission's jurisdiction over "former Burge" cases. The Commission's decision in the Jaime Hauad case in 2014 and its revised rules enacted in 2014 made clear that the Commission believes it has jurisdiction over claims of torture by Jon Burge or officers then under the supervision of Jon Burge, and claims of torture by officers previously supervised by Jon Burge, but not those claims of torture by officers never previously supervised by Jon Burge. He noted two trial court rulings in the Fair and Mitchell cases found the Commission did not have jurisdiction over "former Burge" cases. The two claimants have appealed those rulings via private counsel, and the appeals have been consolidated. In consultation with the Attorney General's Office, Chairman Starks has filed an affidavit in that appeal on behalf of the Commission asking for a prompt ruling on the issue of jurisdiction. The Attorney General's Office is considering filing a friend-of-the-court brief on behalf of the Commission explaining and endorsing the Commission's view of its jurisdiction.
- Reported that the Illinois Senate passed a bill sponsored by Senator Iris Martinez expanding the Commission's jurisdiction to all Cook County police torture claims and reopening the claim-filing period. The bill did not advance to the full Illinois House, and appears to be dead for this legislative session.
- Reported that the Commission continues to notify crime victims; subpoena and interview witnesses; gather records from the court, the police and other agencies; depose witnesses; interviewing claimants; obtain expert medical opinions where appropriate; and supplement previous decisions where appropriate.
- Director Miller attended the April court proceedings before Judge Biebel of Cook County Criminal Court in the case involving the special master (Dean Yellen of Loyola). Although the proceedings do not directly affect TIRC activities, Director Miller attended to observe and answer any questions the court may have.

The City of Chicago recently passed a reparations ordinance for torture victims. The city ordinance providing for financial reparations is separate from TIRC activities, although some claimants may be filing claims with both TIRC and the city.

[Commissioner Futterman arrived at this point during the Director's report.]

- Reported that the Commission has received donated services from law firms and from

legal interns, but is currently hampered by the absence of a secretary.

Commissioner Roldan asked when the appellate court might rule on the jurisdictional issue. Director Miller said he hopes for a decision in six to twelve months, but cannot guarantee it.

#### **IV. Budget Report**

Dr. Ewa reported the Commission is hopeful that the Commission will maintain its 2015 budget of approximately \$300,000 for FY 2016.

#### **V. Claims**

##### **A. Ramsey Lewis**

Director Miller recommended the claim of Ramsey Lewis be summarily dismissed because Lewis' criminal conviction was ultimately reversed by the appellate court and his record expunged. Therefore, Mr. Lewis' claim does not fall within TIRC's statutory jurisdiction. Commissioners Roldan, Dana, S. Miller, Loeb, Thorp, Green, and Starks voted unanimously to summarily dismiss the claim. Commissioner Futterman, as Commissioner Loeb's alternate, did not vote.

##### **B. Willie Pannell**

Director Miller recommended that Mr. Pannell's claim be dismissed because he did not allege that he was tortured into confessing, nor that a tortured confession was used to convict him. Commissioners Roldan, Dana, S. Miller, Loeb, Thorp, Green and Starks unanimously voted to summarily dismiss the claim. Commissioner Futterman, as Commissioner Loeb's alternate, did not vote.

##### **C. David Turner**

Director Miller reported that Mr. Turner filed a claim stating that Gerald Reed had been tortured into giving a false statement that was used to convict Mr. Turner. The TIRC statute applies only to those giving tortured confessions against themselves. The prior administration accepted the claim but did not log it in because it apparently did not fall within the Commission's jurisdiction. Director Miller is presenting it for summary dismissal because the Commission's rules require it be presented to the Commission. Commissioners Roldan voted to dismiss. Commissioner Dana joined the vote to dismiss, but noted he was disturbed that these cases do not fall within the Commission's very narrow jurisdiction, and asked the Commission consider referring the case to the State's Attorney's Conviction Integrity Unit (CIU). Director Miller stated the staff had not investigated this claim in order to determine whether it should be referred to the CIU. He noted the Commission's limited resources prevent full investigation of every claim not within its jurisdiction. As it stands, Director Miller anticipates it taking 2-3 years to finish the cases within TIRC's jurisdiction; investigating claims not in TIRC's jurisdiction would take even longer. If the Commission wishes to refer the case to the CIU, Director Miller felt it should do so

making clear it had not investigated the circumstances of the case. Also voting to summarily dismiss were Commissioners S. Miller, Loeb, Thorp, Green and Starks also voted to summarily dismiss the claim. Commissioner Futterman, as Commissioner Loeb's alternate, did not vote.

D. Delandis Adams and Marvin Scott (co-defendants)

Director Miller recommended that Mr. Adams' case be summarily dismissed because the TIRC statute requires that a claim involve a crime in which the tortured confession being used to convict the person. Mr. Adams' claim is that he was tortured during an earlier police interrogation of him about an earlier crime (of which Adams was eventually acquitted), not that he was tortured into confessing to the crime that was the subject of his conviction.

Director Miller recommended that Mr. Scott's claim also be summarily dismissed because Mr. Scott did not allege that he was tortured into confessing to the crime of which he was convicted. Commission staff wrote Mr. Scott asking for clarification, but he did not respond. Mr. Scott's appellate opinions did not mention any statements made to police. Director Miller recommended summary dismissal, but said he understood if Commissioners wanted further investigation to confirm the Scott case is outside the Commission's jurisdiction.

Commissioner Dana suggested sending the Adams case to the CIU. Director Miller again suggested that if the Commission wishes to do so, it do so making clear it had not investigated the circumstances of the case. Commissioner Dana recommended moving a footnote about the history of the detective involved, Michael McDermott, to the main text of the decision. Director Miller said if no one objected, he would do so. No Commissioners objected. Commissioners Roldan, S. Miller, Loeb, Green and Starks also voted to summarily dismiss. Commissioners Thorp and Green abstained from the vote. Commissioner Dana voted against dismissal. Commissioner Futterman, as Commissioner Loeb's alternate, did not vote. The dismissal of Adams' claim passed.

Commissioner S. Miller suggested the staff do more investigation on the Scott case because Scott's claim form notes his court transcripts support his torture claim, and the appellate opinions do not discuss what cross-examination Scott faced in testifying at his trial. He may have had any statement he made to police used to convict him, S. Miller noted. Chairman Starks noted that Scott checked a box indicating that the confession was not used against him at trial, but suggested that at least another letter to the claimant was in order. Commissioner S. Miller voted no on summary dismissal and moved that the staff to obtain the Scott trial transcripts. Commissioner Dana agreed with Commissioner S. Miller. Commissioner Loeb suggested a vote on tabling the matter until more information could be obtained. Chairman Starks called for a vote on deferring. Commissioners Dana, S. Miller, Loeb, Green and Starks voted to defer. Commissioner Thorp said she did not object to deferring. Commissioner Futterman, an alternate for Commissioner Loeb, did not vote.

#### E. Christopher Peoples

Director Miller recommended Mr. Peoples claim be summarily dismissed because Mr. Peoples did not claim torture; rather he claims he was held for more than 48 hours and that a detective fabricated a statement against him, which is not within the Commission's jurisdiction. Commissioners Roldan, Dana, S. Miller, Loeb, Thorp, Green and Starks voted to dismiss. Commissioner Futterman, an alternate for Commissioner Loeb, did not vote.

#### F. Jackie Wilson

Director Miller noted he has recused himself from this matter and left the meeting. Commissioner Loeb recused himself from the matter, noting that as an Assistant State's Attorney, he had had some involvement with the case. Staff Attorney Rob Olmstead noted the case was originally presented to the Commission on May 20, 2013 but was returned in September, 2013 so that crime victim family members could be properly notified and the case reinvestigated. Olmstead noted that family members' input had since been received and the case re-investigated with the assistance of Perkins Coie attorney Jade Lambert.

Olmstead summarized the crime, which involved the murder of two Chicago Police officers, Richard O'Brien and William Fahey after the traffic stop of Jackie Wilson and his brother Andrew Wilson. Both were arrested and each claimed they had been beaten in order to secure their confessions.

Olmstead noted there were credibility issues with the testifying detectives, the Assistant State's Attorney and Jackie Wilson. Detectives and ASA Hyman each testified at Jackie Wilson's suppression hearing that neither brother was mistreated, but documented physical injuries showed Andrew Wilson received burns, cuts and bruises while in police custody. Jackie Wilson recently added claims of electroshock, despite not having made those claims at his suppression hearing.

Olmstead noted that the Commission's standard is not whether it was more likely than not that torture occurred, only whether there was sufficient credible evidence of torture meriting judicial review. He recommended that Commissioners refer the case to court not based on Jackie Wilson's testimony, but on corroborating evidence indicative of torture. In particular, a Chicago police detective testified to hearing screams the morning of Jackie and Andrew's arrest, at least seven suspects or witnesses in the case filed complaints of beatings or illegal police conduct *prior to* Andrew's court appearance where his injuries became widely known, and both brothers were not asked by Assistant State's Attorney Lawrence Hyman whether they had been threatened, a standard practice. Both Hyman and Detective McKenna indicated to the Commission they would invoke their Fifth Amendment privilege if called to testify before the Commission.

Crime victims' family members then spoke. Erin Fahey, daughter of Richard Fahey, voiced her opposition to referring the case to court, noting Jackie Wilson's lack of credibility. Casey Wills, the brother of Officer Fahey, said the thought of Jackie Wilson possibly being granted a new trial was very painful, and opposed referral. She noted Jackie was convicted not only by his confession, but by an eyewitness. John Fahey, brother of Officer Fahey, noted no commission is looking out for his brother's interests. His brother is the true victim. He opposed referral. Joan Frangella, sister of Officer Fahey, noted Jackie Wilson was equally responsible as Andrew Wilson for the officers' deaths and deserves to be in prison. She noted her family's suffering and opposed referral. Pat Fahey, Officer Fahey's brother, noted the officers were the real victims, not the Wilsons. He opposed referral.

Chairman Starks expressed her sympathy for the Officers' family. Commissioner S. Miller. Commissioner S. Miller also expressed his sympathy, but noted that, for him, the totality of the evidence indicates a judge should take a fresh look at the confession. Commissioner Thorp vigorously opposed referral, chiefly due to Jackie Wilson's unreliability. She noted his confession came shortly after his arrival at the station, and she believes there was no need to torture him, because he mistakenly believed he was giving statements that would exculpate him, but in fact inculpated him. She believes Jackie would have had marks on his face if all the abuse he claimed actually occurred. Commissioner Dana also expressed his sympathy for the family, but noted the threshold to refer to court is low. Commissioner Green expressed sympathy for the family. Commissioner Futterman, voting due to Loeb's recusal, voted to refer the case to court and expressed sympathy for the family, but felt that there was enough evidence of torture to put the issue before a judge. Commissioner Roldan noted his feelings as a human being were in conflict with his intellectual responsibilities. He voted to refer the case to court. Commissioners Dana, Green and S. Miller voted to refer the case to court. Commissioners Thorp and Starks voted against referral. The claim was referred to court by a vote of 5-2.

Director Miller returned to the room.

## **VI. Public Comment**

- Mark Clements voiced his opinion that the Commission's review of cases was moving too slowly. Commissioner Dana expressed a willingness to meet more frequently. Chairman Starks said the problem was not availability of Commissioners, but complexity of cases and staffing, which is currently just two full-time staff members.
- Joseph Heinrich stated that the TIRC statute says all eight Commissioners shall vote, but only seven voted today. Director Miller disagreed that the law required the Commission's business to completely halt if all eight Commissioners' positions were not appointed.

## **V. Claims (continued)**

G. Tony Anderson

Director Miller noted this claim, previously decided, is back before the Commission by order of the court for clarification of which of Tony Anderson's criminal charges were intended by the Commission to be referred to court and whether all involved confessions. Director Miller recommended that all of Mr. Anderson's charges be referred to court except the charge of escape, which happened after the other charges and involved no claims of torture. On many of the remaining charges, the special prosecutor and Anderson's attorney agree on referral. On the remainder, they disagree.

Director Miller said that the evidence on one of the disputed charges shows that the prosecutor in the original trial stated on the record that Anderson's confession to that charge would be used if Anderson took the stand, which indicates there was an alleged confession that was used to convict him.

Director Miller recounted the facts of the case, which included a universal plea negotiation on all the charges except the escape charge. Commissioner Loeb was strongly persuaded by the nature of the universal plea agreement Anderson entered into; he felt the universal negotiation of the plea indicated that Anderson's confession meant a confession was used to obtain a conviction in all cases but the escape. Commissioners Roldan, Dana, S. Miller, Loeb, Thorp, Starks and Green voted to refer to court all charges except for the escape charge.

The presence of David Owens, attorney for Anderson, was noted.

## **VII. Closed Session**

Chairman Starks noted the need to move to closed session to discuss an ongoing investigation. Commissioner Green moved to enter executive session; Commissioner Roldan seconded. Attorney Olmstead noted the Commission was moving to executive session under sections 2(c)(4) and 2(c)(14) of the Open Meetings Act. Commissioners unanimously agreed to move to closed session.

Approximately 22 minutes later, the Commission meeting reconvened in open session.

## **VIII. Resolution of Appreciation.**

Chairman Starks called for a motion for a resolution of appreciation of the service of outgoing Commissioner Len Cavise. Commissioner Roldan so moved and Commissioner Dana seconded. Chair Starks noted the Commission was unanimous in its approval of the motion.

## **XI. Adjournment**

Director Miller addressed Commissioner Dana's suggestion of more frequent meetings; he noted the two months between meetings was necessary due to staffing limitations and 30-day notification requirements. Chairman Starks noted special meetings can be called as needed. Chairman Starks agreed a two-month schedule was realistic. Director Miller noted the future meeting schedule consisted of July 15, September 16 and November 18 meeting dates. Due to scheduling conflicts, Commissioners rescheduled the first meeting to July 22.

Commissioner Green moved to adjourn; Commissioner Dana seconded. The meeting was unanimously adjourned.