



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION MEETING
Wednesday, July 22, 2015, 3:00 p.m.**

Michael A. Bilandic Building
160 N. LaSalle Street, Meeting Room N-505
Chicago, Illinois

MINUTES

PRESENT:

Commissioners

Chairman Cheryl Starks
Commissioner Marilyn Baldwin
Commissioner Shahram Dana (via telephone)
Commissioner Robert Loeb
Commissioner Steve Miller
Commissioner Paul Roldan
Commissioner Marcie Thorp
Commissioner Rob Warden
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)

I. Call to Order/Members Present

On July 22, 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 Baldwin, Loeb, S. Miller, Roldan, Thorp and Warden, constituting a quorum. Commissioner Loeb moved to allow Commissioner

Dana to attend via telephone; Commissioner S. Miller seconded. Commissioners unanimously approved.

II. Approval of Minutes

Chairman Starks called for a motion to approve both the open-session and closed-session May 20, 2015 minutes. Commissioner Loeb moved approval; Commissioner S. Miller seconded; No Commissioners objected.

III. Executive Director's Report

Executive Director Barry Miller:

- Welcomed new Commissioner Baldwin.
- Discussed staffing issues. Director Miller noted the Commission has been approved to fill its secretary vacancy. Interviews have been conducted. The Commission has arranged for assistance by two PILI (Public Interest Law Initiative) fellows during the summer.
- Reported that Judge Biebel has appointed lawyers to several convicts as part of a group lawsuit alleging torture by Jon Burge and his officers. Biebel is retiring, which may slow the process of appointment of lawyers for parties to that lawsuit.
- Noted he has been sued by a claimant who alleges racial discrimination based on the order his case is being handled. He views it as meritless lawsuit, and the Attorney General's office is defending the lawsuit.
- Announced his resignation to take another position he had applied for before coming to TIRC. He regrets not being able to finish his work at TIRC because it is important to give those who were convicted with coerced confessions due process; to restore address the stain Jon Burge left on the justice system; to remind officers that coerced confessions will not be tolerated; and to clear the names of law enforcement personnel unjustly accused of coercion. He thanked the Commission and his staff

IV. Budget Report

Dr. Ewa reported that the legislature has not yet passed a state budget in Springfield but was hopeful it would be resolved soon.

V. Claims

a. Jerry Mahaffey, No. 2011.043-M

Chair Starks noted there were two possible conflicts of interest with Commissioners with regards to this claim and asked Commissioners Warden and Baldwin to address them.

Commissioner Warden said he had recently been made aware that his colleague at the Center on Wrongful Convictions, Lawrence Marshall, had participated in a clemency hearing for Jerry Mahaffey in 2002, so he was recusing himself from this case.

Commissioner Baldwin was previously a crime victims' advocate for the Cook County State's Attorney's Office and was familiar with this case only like all the other Cook County Cases. She was the only one who handled every death penalty case in Cook County. She feels if she recused herself in this case, she would have to recuse herself in all Cook County Death Penalty cases, which she worked on. She therefore, did not recuse herself from this case.

Chairman Starks noted she had no authority to remove any commissioner, and that determination of conflicts of interest is up to each individual commissioner.

Executive Director Miller reviewed the history of the claim, noting it had been returned from court because the Commission failed to notify crime victims' family members in 2013, and the Commission has repeatedly apologized for that error. When Executive Director Miller came on in 2014, he committed to reinvestigating the matter. He noted the horrendous nature of the crime. He does not believe Jerry Mahaffey's protestations of innocence to be credible.

In reinvestigating the matter, TIRC staff obtained impounded evidence, obtaining additional material from the Chicago Police Department via subpoena, soliciting a pathologist's evaluation of certain items, taking depositions of two of Mahaffey's siblings (Cedric Mahaffey, who turned Jerry Mahaffey into police and Lorraine Mahaffey), interviewing the former Assistant State's Attorney who took the confession, deposing Lt. Byrne, who lead the arrest teams. Byrne took the Fifth Amendment in response to questions. TIRC staff attempted to reach two other detectives involved in the case: one took the Fifth Amendment and TIRC did not reach the other. Two other detectives are now deceased. TIRC staff also obtained medical records for Terry Mahaffey, Jerry's brother, who was also arrested and claimed he was also beaten by police.

Chairman Miller noted Jerry Mahaffey's Polaroid appears to show a slight mark on his right nostril. Lineup photos also show a scratch or cut there too and possible dried blood, and possible marks or bruising on the face. A pathologist's opinion suggests these are consistent with, although certainly not conclusive of, Jerry Mahaffey's claim. The pathologist said that the nose injury is also possibly consistent with incurring injury during the crime, but the possible dried blood was not, and it was more likely the injuries were incurred the same day as the photo. A booking photo from the next day does not show, as clearly, the same mark. The profile view is cut off on the negative and does not show the nostril.

J. Mahaffey certainly does not appear as injured as, for example, Andrew Wilson did after

his abuse, but the marks are consistent with his claim. Additional telling evidence is the hospital record of Terry Mahaffey's visit to the hospital on September 5. Terry was arrested the same day as Jerry Mahaffey, but was not charged. It is not clear when Terry was released. Terry testified at trial that he had been beaten by police and went to the hospital several days later. Records indicate he reported he vomited blood and was sore all over from a beating. It was unclear whether the beating or vomiting was on the third. The medical records document a bruise on his sternum and blood in his stool.

Lorraine also reported Terry was beaten and his nose broken, although the records do not substantiate this latter claim. She also claimed to have seen Jerry Mahaffey led from his apartment with his face bloodied. That is similar to the story Jerry's wife, Carol, told at trial about him being led out with his face bruised. Both Cedrick and Lorraine testified that Jerry Mahaffey did not have the marks in the lineup photographs prior to his arrest.

Cedric confirmed his testimony that Jerry confessed to him that he had committed the murders. Jerry Mahaffey's trial lawyer told TIRC Jerry told him of the beating by the police at their first meeting soon after his arrest. The Commission could not reach Jerry Mahaffey's brother, Roosevelt Ross.

Miller noted that none of the testimony is perfectly consistent, nor is his recommendation based on Jerry Mahaffey's credibility. The question is not whether torture occurred beyond a reasonable doubt; the statute asks whether, by a preponderance of evidence, there is sufficient evidence of torture to merit judicial review. This does not require it was more likely than not that a particular fact occurred. In general, the standard is akin to a probable cause determination – that there is enough evidence to have a judge take a look.

Miller felt is likely that Terry Mahaffey was beaten. It is unlikely police beat him and not the other brothers. Jerry and Reginald Mahaffey, although not credible, have claimed abuse from the beginning. Therefore, he recommends the case be referred for judicial review.

Family members of the victims, JoEllen and Dean Pueschel, and Rick Pueschel, then spoke and began with a recording by Rick Pueschel, which was accompanied by posterboard photographs of the crime scene displayed for Commissioners.

Rick Pueschel said two trials, appeals and a clemency hearing had already thoroughly examined the issue of torture before TIRC did. Jerry Mahaffey took Rick's Little League baseball bats to beat his parents to death. Rick saw them the next morning, dead. He himself was attacked twice. When he awoke the next morning he told his dead mother he loved her. Rick can identify both Reginald and Jerry Mahaffey as the assailants. Belongings from their apartment were recovered from the Mahaffeyes, and a confession was not necessary.

Jerry Heinrich, JoEllen Pueschel's brother, spoke next, and recounted Jerry Mahaffey's escape from jail. He noted that one day after the arrest, there was no evidence of the mark

on the nose. He noted that courts have discounted Jerry Mahaffey's neighbor's account of hearing abuse as not specific enough. Police are not expected to be quiet when making an arrest. The Special Prosecutor's report also does not support a conclusion of abuse. The Commission should also draw a negative inference from Jerry Mahaffey refusing to talk to the Special Prosecutor's investigators.

John Heinrich, brother of JoEllen Pueschel, spoke next. He believes that Jerry Mahaffey's medical records do not support abuse. The EMT who filled out intake papers noted Jerry Mahaffey was in good health and did not claim abuse. Medical records four days later, after he saw his attorney, were the first claim of abuse. He complained of pain and dizzy spells. The doctor noted no swelling and minimal tenderness and diagnosed soft tissue trauma. Later, he was seen by another doctor who reported old scars and an "abrasion" on his ribs. An x-ray and EKG were negative for fractures. The doctor characterized the mark as a scratch. Mahaffey signed off on all of those reports. This disproves the torture claim.

Mary Heinrich noted Jerry Mahaffey has had several bites of the apple. U.S. District Judge Zagel and the Seventh U.S. Circuit Court did not believe Jerry Mahaffey; this commission should not either. Jerry Mahaffey claims he was fed details of the crime, but he alerted them to details about the van that were only confirmed after his confession.

Joe Heinrich, brother of JoEllen Pueschel, noted that he saw Jerry Mahaffey on the day of his arrest saw no signs of injury. Detectives did not hide Mahaffey when they transported him. They brought him across the city, past the press and others.

Jerry Heinrich, brother of JoEllen Pueschel, read a statement on behalf of Dawn Pueschel. Mahaffey's statement that he memorized his lengthy confession is incredible, as is his claim he did not know Miranda warnings, despite 19 previous arrests. The statement also quoted Judge Zagel from Mahaffey's habeas hearing in regards to the photo, saying the photo showed "no sign of substantial injury" and also that the "EMT... recorded no sign of police brutality."

Joe Heinrich spoke on behalf of Jim Heinrich, JoEllen Pueschel's brother. The Heinrich's have shown beyond a reasonable doubt that Mahaffey is not credible. He believes that the Mahaffey case is a trophy for those who want Mahaffey free, at the expense of justice.

The Commissioners then asked questions and made comments:

Commissioner Steven Miller noted that this was an emotionally powerful presentation by family but noted the context is a pattern and practice of Burge and his employees of torture. The standard for the Commission is a very low bar, only determining whether there's credible evidence for judge to hear the evidence and he feels there is evidence that corroborates the claim of torture.

Commission Loeb noted that past post-conviction rulings were made on findings that included finding no pattern (at that time) of brutality at Area 2. That has since changed

and is a significant factor.

Commissioner Thorp took issue with the previous remark that the standard is a low bar since it is preponderance of evidence, the same standard used in civil cases. She doesn't think Mahaffey gets anywhere near a preponderance of torture because the "best thing" Mahaffey puts forward is a scratch on his nose without swelling and that the pathologist noted could have come from his committing the crime.

Executive Director Miller clarified that the standard is a preponderance of evidence that there is sufficient evidence to merit judicial review, which he views as a lower standard, though the exact level is up to each individual commissioner. Also, there were indications of other, current damage to the face.

Commissioner Baldwin noted there was enough evidence to convict the Mahaffey's without the confession.

Commissioners then voted on the claim of torture. Chairman Starks and Commissioners Dana, Loeb and Steven Miller voted to refer the claim of torture to court for further review. Commissioners Roldan, Thorp and Baldwin voted to dismiss the claim.

The chair noted that claims need either five votes to refer to court or four votes to dismiss and, under the rules, neither threshold was reached, so the claim would be tabled until a meeting when all eight commissioners were in attendance.

b. Erwin Daniel, No. 2011.057-D

Director Miller noted the Daniel Claim was handled with assistance from the law firm of Mayer Brown.

Executive Director Miller recounted the following facts of the case.

Daniel was arrested on June 15, 1985. Commander Jon Burge and Det. Joseph Danzl were personally involved in the case. The claimant raised no claim of abuse at his Motion to Suppress hearing or at trial. Daniel first raised an abuse claim after twenty years, when he wrote to Special Prosecutor Egan claiming he was hit on the side with a flashlight and threatened with a gun. Daniel, in an interview with the special prosecutor, said he didn't consider the flashlight a big deal at the time. In his TIRC claim, Daniel identified Burge as his assailant and stated that the flashlight blow had caused stomach problems to this day.

Given the 20 year delay in reporting the alleged abuse and Daniel's changing story, Director Miller recommended the claim be dismissed.

Gladys Daniels (mother of claimant) stated Erwin has been in jail for forty years and was beat up by the police. When police were seeking Daniel, they came to her house and kicked in her door and told her they were going to kill him without telling her what it was

in regards to.

The Commission then voted unanimously to dismiss Daniel's Claim of Torture.

c. James Gibson, No. 2013.139-G

Director Miller noted that McDermott & Will attorneys Nicholas Rosinia and Jared Cloud assisted the Commission in investigating and evaluating Gibson's claim. Miller summarized that on December 30, 1989, after three days at Area 3 without charge, Gibson gave a statement to detectives under Burge placing himself at the scene of a double murder. Upon release and before he was then arrested, Gibson filed a complaint claiming abuse and maintained his claim of abuse to his attorney and doctors after his arrest. Photos appear to show a swollen and bruised rib cage.

The crime victims' family was invited to come forward if present, but none did.

Lorraine Brown, Gibson's older sister, stated that when her brother was first picked up, detectives at Area 3 said he'd be released soon. When he came home, Gibson had a burn on his arm, so she filed a complaint.

Commissioners then voted on Gibson's claim of torture.

Commissioners Warden, Thorp, Loeb, Roldan, Steven Miller and Chairwoman Starks voted to refer the case to court for further review. Commissioner Baldwin voted to dismiss. Commissioner Dana abstained from voting.

VI. Public Comment

Sean Kelly said he believed that Commissioners Loeb and Miller had already made their decision despite the evidence before them.

Kelly Innis, a friend of Heinrich/Pueschel family, said that Commission is putting the victims' families through torture.

Katie Heinrich stated that delaying the decision minimizes the true victims, the family of the murder victims and rewards Jerry Mahaffey. She also criticized Commissioners for failing to attend all meetings.

Jim Lyon, who met the Heinrich/Puschel family after the crime occurred, called the Commission's decision reprehensible and called for the defunding of the Commission.

Don Norman said the rules mandate that failing to reach five votes to refer requires the dismissal of the claim. Director Miller disagreed, and noted that the rules require four negative votes to dismiss.

Mark Clements, stated that he was a Burge torture victim and began speaking to victim family members. The chair instructed him to address only the panel. He said this case should not continue dragging on. No one wants to admit it, but Burge did torture suspects.

VII. Closed Session

The Commission then retired to closed session to discuss personnel matters and investigatory

matters.

Approximately 13 minutes later, the Commission meeting reconvened in open session. Chairwoman Starks recommend that Staff Attorney Rob Olmstead be appointed to serve as Interim Executive Director until a job posting could be posted and permanent replacement selected. Commissioner Roldan so moved and Commissioner Loeb seconded. The Commission voted unanimously to appoint Olmstead interim executive director.

Commissioner Steven Miller thanked Director Barry Miller for his service. Chairwoman Starks agreed and also thanked Director Miller. Commissioner Baldwin thanked all who appeared to speak.

XI. Adjournment

The Commission adjourned.