



**STATE OF ILLINOIS  
TORTURE INQUIRY AND RELIEF COMMISSION MEETING  
Wednesday, March 30, 2016, 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 (via telephone conference)  
Commissioner Marilyn Baldwin  
Commissioner Robert Loeb  
Commissioner James Mullenix  
Commissioner Paul H. Roldan  
Commissioner Marcie Thorp  
Commissioner Rob Warden  
Alternate Commissioner Doris Green  
Alternate Commissioner Craig Futterman  
Alternate Commissioner Timothy O'Neill

Staff on dais

Rob Olmstead (Executive Director)  
Roxana Malene (Commission Assistant)

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

On March 30, 2016 at approximately 3:00 p.m., Chairwoman Cheryl Starks called for a motion to allow her to participate in the meeting remotely, via telephone, due to illness, as permitted by the Open Meetings Act, when a member's health prevents her from attending in person. Commissioners so moved, seconded and unanimously approved the request. The Chair then, called to order the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC). Present were Commissioners Baldwin, Loeb, Mullenix, Roldan, Thorp, Warden, and alternate

Commissioners Futterman, Green and O'Neill, constituting a quorum. Executive Director Rob Olmstead was also present. The Report of the Chief Financial Officer was stricken from the Agenda.

## **II. Approval of Minutes**

Chairman Starks called for a motion to approve the minutes of the January 20, 2016 meeting. Commissioner Loeb moved for approval and Commissioner Thorp seconded the motion. The minutes for the meeting were approved unanimously.

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

Executive Director Rob Olmstead updated the Commissioners on recent decisions of the Illinois Appellate Court addressing the scope of the Commission, the standard of decision it uses, the Commission's jurisdiction and its fundamental nature.

First, Mr. Olmstead reminded the public of the Commission's rigorous self-examination in 2014. Prior to 2014, the Commission had taken the view that all torture claims were within its jurisdiction. Mr. Olmstead and the former Executive Director, Barry Miller, re-examined the statute and took the view that the Commission's jurisdiction is limited to claims that are "related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge." Consequently, the Commission divided claims into three categories: Core Burge cases, in which a claimant alleged he was tortured by Jon Burge or an officer then under his supervision; Former Burge cases in which a claimant alleged torture by an officer who had previously been under Burge's supervision but was not, at the time of the alleged torture, under Burge's supervision; and Non Burge cases, in which there was no obvious link to Burge or his supervisees. In 2014, through the Jamie Hauad decision and a revision of the Commission's rules, the Commission took the view that the legislature had empowered TIRC to review only cases with some nexus to Jon Burge and his officers – i.e. Burge and Former Burge cases.

In the Hauad case, the Commission found that there was sufficient evidence of torture to merit judicial review of the allegations, but no evidence that the case was linked to Jon Burge. It therefore dismissed the case, but referred it to the Office of the Cook County State's Attorney Anita Alvarez's Conviction Integrity Unit, in June of 2014. To date, the Commission is not aware of any conclusion that office reached in the Hauad case.

While the Commission concluded in 2014 that it likely did not have jurisdiction over approximately 139 Non Burge cases, it recognized that one Non-Burge claimant, Harvey Allen, had argued in a pending appellate case that the Commission did have jurisdiction over his case. Allowing the judicial process to address this argument, the Commission deferred investigation of the 139 Non Burge cases, and focused on investigating the Core Burge and Former Burge cases. In March, 2016, the Illinois Appellate Court decided Mr. Allen's case and affirmed the Commission's view that it does not have jurisdiction over Non-Burge claims.

In 2014, the Commission also refined its standard of decision. Following a re-examination of the statute, the Commission concluded that it is charged to determine by a preponderance of evidence whether there is sufficient credible evidence of torture meriting judicial review. This is

a lower standard than a determination by a preponderance of evidence that torture occurred. On March 4, 2016, in the Daryl Christian case, the Illinois Appellate Court announced it held a similar view of the Commission's standard of decision.

Another final question pertaining to the Commission's jurisdiction remains pending before Illinois Appellate Court, in the combined appeal of Former Burge claimants Darrell Fair and Scott Mitchell. While the Commission takes the view that Former Burge cases remain within its jurisdiction, Mitchell and Fair's trial courts ruled it did not, and Mitchell and Fair are asking the Appellate Court to overturn those decisions.

Lastly, in 2014, the Commission re-examined and revamped its crime-victim notification procedures. A report of the Illinois Auditor General released in January, 2016 found the Commission in compliance with crime-victim notification procedures.

Director Olmstead updated Commissioners on the possibility that police unions will succeed in destroying or de-indexing police complaint and disciplinary files older than 4 to 7 years old. Mr. Olmstead reminded the Commission that the two unions, the Fraternal Order of Police and the Sergeants' union obtained recent arbitration rulings directing the police to destroy or de-index these files. He noted that City attorneys disagreed, and argue that open record laws and document preservation laws supersede these union contracts. While arbitrators largely agreed with the unions, the arbitrator in the Sergeants' contract recently essentially reversed his initial decision, and ordered the parties to continue negotiations in light of the ongoing Justice Department investigation of patterns and practice of the Chicago Police Department. Director Olmstead will keep the Commission apprised of the outcome of a similar request that the FOP arbitrator revise his ruling.

#### **IV. Non-Burge cases after *People v. Harvey Allen* decision**

In light of the recent Appellate court decision restricting the Commission's jurisdiction to cases linked to Jon Burge, Director Olmstead asked the Commission to weigh in on the future action regarding Non Burge cases. Three options remain: (1) continue to defer investigation, in light of recent media reports regarding a possible appeal by Allen or potential future legislative action regarding the Commission's jurisdiction, (2) summarily dismiss these claims after verifying that none of the officers involved are linked to Jon Burge, or (3) dismiss these claims with leave to reinstate, to accommodate the possibility of either the Illinois Supreme Court or the legislators determine that the Commission does have jurisdiction over Non Burge cases.

Chair Starks opined that the case should be allowed to complete its path through the judicial system before any claims are dismissed, and to give the legislature time to act if it so chooses.

Commissioner Futterman felt that a final court decision decreeing that Non-Burge cases were not in the Commission's jurisdiction mandated dismissal of such cases, regardless of any pending legislation.

Mr. Olmstead noted that the Public Defender of Cook County represented Mr. Allen but had not yet indicated if he would be seeking review in the Illinois Supreme Court. Commissioners

reached a general consensus for waiting for the judicial process in the Allen case to reach a conclusion before taking action on Non Burge cases.

## **V. Claims**

### **a. The Claim of Eugene Horton**

Director Olmstead invited Commission intern Dylan Cowart, who assisted the staff in investigating Mr. Horton's claim, to present the recommendation in the case. Horton was convicted of an armed robbery occurring in February of 1984. Horton gave a verbal confession soon after his arrest, according to Detective David Dioguardi's testimony. The interrogation lasted a maximum of two hours.

Horton did not allege physical coercion but claimed that Jon Burge personally threatened him while Horton was being escorted into the police station before his interrogation. He further claimed to TIRC that his public defender had advised him against including these allegations in the motion to suppress statements. Burge and Detective Dioguardi have a significant history of allegations of participating in or condoning abuse and Mr. Horton argued at his suppression hearing, on direct appeal, and in his post-conviction relief petitions that his statements were involuntary.

However, Horton's allegations in his court proceedings had been directed at the arresting officer, O'Brien. Horton now maintains that O'Brien was not even present in the interrogation room. During the interview with Horton, TIRC identified many other discrepancies between Horton's testimony at the hearing on motion to suppress and Horton's current description of events. When interviewed by TIRC, the Assistant Public Defender who co-chaired Horton's case stated that they would have absolutely included abuse allegations in a motion to suppress had Horton made any, at or near the time of the arrest. Director Olmstead and Mr. Cowart recommended that the Commission dismiss the claim for lack of sufficient evidence of torture.

Commissioner Loeb and Mr. Cowart clarified that the language in the draft opinion should be corrected to reflect that allegations referenced in Horton's successive post-conviction petition were Horton's claims and not the arresting officer's admissions.

Mr. Horton's attorney, James Baranyk, spoke in support of Horton's claim and argued Burge's power and reputation coerced Horton to confess.

Director Olmstead noted that the crime victim of the robbery was notified via mail but was not present before the Commission.

Commissioners Thorp, Warden, Loeb, Roldan, Chair Starks, and Alternate Commissioners Green and O'Neill voted to dismiss the claim and approve the draft of the dismissal determination with the amendment as discussed. Commissioner Green voted in place of Commissioner Baldwin, who had to step out of the meeting during the Horton presentation and vote. Commissioner Mullenix recused himself from the case due to

minor involvement in the case when he had served as a public defender.

#### **VI. Vote on Proposed Language for Administrative Rule Regarding the Voting Order of Multiple Alternate Public-Member Commissioners.**

Director Olmstead reminded the Commissioners that they had directed him in November of 2015 to pursue an administrative rule dictating the order in which alternate public members vote in the event of a primary public member's absence. The Director asked the Commissioners to approve the language presented to them. Commissioner Mullenix moved for a vote on the submission. Commissioner Roldan seconded and the Commission approved the submission unanimously.

#### **VII. Public Comment**

Chair Starks invited public comment; no one came forward.

Chair Starks invited a motion to retire to closed session under Section 2(c)(1) (personnel), Section 2(c)(11) (impending litigation), and Section 2(c)(4) (TIRC Claim 2013.133-S). Commissioner Futterman so moved and Commissioner Mullenix seconded the motion. The motion was approved unanimously.

#### **VIII. Closed Session**

The Commission retired to closed session, reconvening in open session approximately 40 minutes later.

#### **XI. Final Action on Items Discussed in Closed Session**

No final action was called for or taken.

#### **XII. Adjournment**

Commissioner Mullenix moved to adjourn; Commissioner Loeb seconded. The motion passed unanimously.