



**STATE OF ILLINOIS  
TORTURE INQUIRY AND RELIEF COMMISSION MEETING  
Wednesday, July 20, 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  
Commissioner Marilyn Baldwin  
Commissioner Steven Miller  
Commissioner James Mullenix  
Commissioner Marcie Thorp  
Commissioner Rob Warden  
Alternate Commissioner Timothy O'Neill  
Alternate Commissioner Stephen Thurston  
Commissioner Robert Loeb arrived after the call-to-order

Staff on dais

Rob Olmstead (Executive Director)  
Michelle Jenkins (Staff Attorney)  
Dr. Ewa Ewa (Chief Financial Officer)  
Roxana Malene (Commission Assistant)

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

On July 20, 2016 at approximately 3:05 p.m., Chairwoman Cheryl Starks called to order the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC). Present were Commissioners Baldwin, Loeb, Miller, Mullenix, Thorp, Warden, and alternate Commissioners O'Neill and Thurston, constituting a quorum. Commissioner Loeb arrived later in the meeting.

## **II. Approval of Minutes**

Chairman Starks called for a motion to approve the draft minutes of the May 18, 2016 meeting. Commissioner Baldwin so moved and Commissioner Thurston seconded the motion. The minutes for the meeting were approved unanimously.

## **III. Chief Financial Officer's Report**

Dr. Ewa reported that pursuant to the recent budget compromise, the Commission was allocated partial funding which will be used to partially pay off FY16 debts to vendors in order to maintain functionality of the Commission.

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

Executive Director Rob Olmstead introduced the new Staff Attorney, Ms. Michelle Jenkins, to the Commissioners. Prior to joining the Commission, Ms. Jenkins served as a Staff Attorney to 42 judges in the fourth and sixth districts of the Circuit Courts of Cook County, advising on rulings, motions, and issues of law. Her career includes experience in the Federal Defender Program, the Cook County State's Attorney's Office, and First Defense Legal Aid. Ms. Jenkins thanked the Commission for the opportunity.

Director Olmstead next updated Commissioners on matters related to the police unions' efforts to destroy or de-index police complaint and disciplinary files older than 4 to 7 years old. An Illinois Appellate court ruled July 8, 2016, that such files cannot be destroyed in light of a pending Freedom of Information (FOIA) request. The Fraternal Order of Police expressed the intention to appeal this ruling to the Illinois Supreme Court. While the recent ruling is encouraging, the ruling does not address the ultimate issue of whether the files may ever be destroyed, Director Olmstead noted. None of the four different bills for laws to override the police contract provisions seeking destruction of these records have advanced in the legislative process. Director Olmstead will keep the Commission apprised of the situation.

On a separate matter, Olmstead reported that the Illinois Appellate court's ruling, through the Darrell Fair and Scott Mitchell decision, that the Commission has jurisdiction over cases that involve officers formerly supervised by Burge (Former-Burge cases) will not be appealed by the State's Attorney's Office.

Director Olmstead stated that Senate Bill 392, which would expand the Commission's jurisdiction beyond Burge cases to all of Cook County, passed out of both houses on May 25, 2016. The Bill was sent to the governor on June 23, 2016.

Immediate implications of the bill, which is likely to become law, to the Commission are addressing claims the Commission or the courts already dismissed for lack of a connection to Jon Burge. SB 392 also removes priority criteria from the TIRC Act. Olmstead suggested these concerns can be addressed through the process of administrative rules.

The most significant implication however, is that 128 previously filed claims with no apparent

link to Jon Burge will fall squarely with the Commission's jurisdiction, in addition to the 80 claims related to Jon Burge. Additionally, the staff anticipates it will begin receiving new claims once SB 392 becomes law.

Olmstead reminded the Commissioners and public of the neutral role of the Commission, and its duty to both investigate *and* decide claims. It was previously estimated that it would take 3 to 4 years for the current three full-time staff members to resolve the 80 Burge-related cases. The addition of at least another 128 claims makes apparent that to attain a reasonable case determination pace, the Commission needs additional staff or to revise the scope of its investigations. Olmstead noted that SB 392 does not provide additional funding or resources.

Chairwoman Starks opined that the Commission needs additional staff to function under the anticipated case load so as not to compromise the quality of work of the Commission. She invited the Commissioners to discuss options to address to the anticipated increased workload.

Dr. Ewa stated that his recommendation would be to make a recommendation to the budget office to hire additional staff as soon as the needs of the Commission are assessed. Commissioners then discussed various venues to recruit pro bono services to advance the work of the Commission, ranging from law firms to law students and retired lawyers. Mr. Olmstead noted that he will confer with the Chair to incorporate the Commissioners' suggestions into some concrete proposals for the governor's office.

## **V. Claims**

### **a. The Claim of Reginald BoClair**

Director Olmstead acknowledged the efforts of attorneys at Schiff Hardin LLP in assisting the Commission staff to investigate Mr. BoClair's claim and invited Sebastien Angel, a Schiff Hardin associate, to present the recommendation in the case.

After Mr. Angel summarized the investigation, he recommended that the claim not be referred to circuit court. He noted that Mr. BoClair's long delay in first reporting the abuse and the lack of contemporaneous evidence to corroborate his claim are among the chief reasons for this recommendation. More significant however, is both the State's Attorney's testimony and that of BoClair's Public Defender that they do not recall BoClair making allegations of abuse at the time he confessed.

Several of the victim's family members were present and took the floor to express the extent of their loss and their opposition to referring Mr. BoClair's case to court.

Mr. BoClair's attorney, of Steven Greenberg's office, expressed his office's strong belief in Mr. BoClair's allegations that he was abused and that he had told the state's attorney and his public defender about the abuse.

Commissioner Mullenix asked several questions pertaining to CPD's investigation of the crime, which Mr. Angel and Mr. Olmstead attempted to answer. Commissioner Miller

asked Mr. BoClair's attorney if he had any information contrary to Schiff Hardin's assertion that BoClair made his first allegations of abuse 21 years after the fact. He did not. Commissioners further discussed several other procedural and substantive aspects of BoClair's pretrial strategy and subsequent interviews of the attorneys involved in the trial.

Commissioner Mullenix expressed his unease with the fact that the office of the public defender was unable to find the file of Mr. BoClair. Commissioner Mullenix moved to postpone determination of the claim for a second attempt to retrieve BoClair's file from the Office of the Public Defender. Commissioner Warden seconded the motion. Commissioners Loeb, Baldwin, Miller, Mullenix, and Warden voted to postpone the and attempt to obtain the public defender's file again. Commissioners Starks, Thurston and Thorp opposed the motion. The motion passed, 5-3 and the BoClair determination was tabled.

#### **b. The Claim of Willie Johnson**

Director Olmstead recounted the facts of the Claim:

Willie Johnson was convicted of a murder that occurred on April 22, 1979. The next day Detectives David Dioguardi and Robert Cornfield arrested in the early morning of the next day. Johnson confessed to the murder within an hour of his arrest.

At his hearing on the motion to suppress statements, Johnson testified that he was under the influence of large quantities of alcohol and drugs that he had consumed prior to his arrest. He also testified that Dioguardi had tightened his handcuffs and also threatened him with a beating.

Johnson's claim have been consistent over time, with the exception of his recent addition that he had been struck by an officer at Area 2 on a previous occasion when he was in custody for drug-related investigation. Detective DiGioguardi has a significant history of being accused of abuse and coercion.

Assuming Mr. Johnson's allegations are true, Director Olmstead pointed out that the question in front of the Commissioners is whether the conduct that Mr. Johnson alleges rises to the level of torture. Director Olmstead reviewed the Commission's definition of torture from the Administrative Rules interpreting the Commission's statute and four previous decisions defining torture, and recommended that the case be summarily dismissed for not meeting the definition of torture.

Mark Parts, Mr. Johnson's attorney spoke next and pleaded that Willie Johnson's lack of education, significant intellectual limitations exacerbated by intoxication at the time he confessed, and his previous experience with officers' abusive conduct at Area 2 all contributed to Johnson's belief that he would be hurt if he didn't confess. Within this context, Parts argued, detective Dioguardi's conduct constituted deliberate infliction of severe mental distress.

Mr. Olmstead pointed out that he had obtained Johnson's arrest report and it is not inconceivable that Johnson had the alleged prior experience of abuse at Area 2.

After further discussion, Mr. Olmstead clarified that the issue to be determined is whether the Commission will summarily dismiss the Claim or will advance it to formal investigation.

Commissioner Warden opined that since times of Galileo, torture included behavior such as threatening and displaying instruments of torture without inflicting actual physical pain.

Commissioners Mullenix, Miller, Warden and Thurston voted to proceed to formal inquiry. Commissioners Loeb, Baldwin, Thorp and Starks (initially) voted to dismiss the case. However, upon further discussion, Commissioner Starks reconsidered her vote and voted to proceed to further inquiry. The motion to proceed to formal inquiry passed 5-3.

## **VI. Public Comment**

Chair Starks invited the public to comment. Anabelle Perez, the mother of Jamie Hauad, whose claim had been dismissed for lack of a connection to Burge, asked the Commission to elaborate on what will happen to her son's claim and similar claims in light of SB 392. Mr. Olmstead reiterated that he had recommended that the Commission issue administrative rules addressing Mr. Hauad and similar claimants' cases.

## **XII. Adjournment**

Commissioner Thurston moved to adjourn and Commissioner Mullenix seconded. The motion passed unanimously.