



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION SPECIAL MEETING
Wednesday, June 18, 2014, 3:00 p.m.**

Bilandic Building
160 N. LaSalle Street, Meeting Room C-500
Chicago, Illinois 60601

MINUTES

PRESENT:

Commissioners

Chairman Cheryl Starks
Leonard Cavise
Doris Green (Alternate)
John Mathias
Marcie Thorp

Staff on dais

Barry Miller (Executive Director)
Rob Olmstead (Staff Attorney)
Dr. Ewa Ewa (CFO, Human Rights Cmsn.)

I. Call to Order/Members Present

On June 18, 2014, shortly after 3:00 p.m., Chairman Cheryl Starks called to order the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC). Chairman Starks and Commissioners Cavise, Green, Mathias, and Thorp were present, constituting a quorum. Approximately 25 members of the public were present.

II. Approval of Minutes

Cmsr. Mathias moved to approve the March 5, 2014 minutes and Cmsr. Thorp seconded; the motion carried.

III. Executive Director's Report

Director Miller informed commissioners that staff is continuing to investigate new cases and ones that have come before the Commission previously. Staff members are interviewing people who may have direct knowledge of any claim of torture including attorneys and others who may have been present at early stages of the case. Staff members are interviewing claimants by video conference from prison with lawyers present at the video conference. Staff members are also using other formal discovery methods. In some cases, interviews of original defense attorneys are taking place, which often require an attorney-client privilege waiver before the attorneys will speak with staff.

Staff members are continuing to repair the Commission's procedures and to improve them going forward, reviewing past determinations and supplementing as necessary. Review of administrative rules is also continuing. Good faith efforts at notifying all victims has occurred in all cases that were referred to the court for review. For difficult-to-locate victims, staff members have sought assistance from the Cook County State's Attorney's office after meeting with leadership of that office in April.

The Commission has informed the head of the State's Attorney's conviction integrity unit that some cases may be referred to her office where appropriate.

Staff members are continuing to discuss with the Illinois Attorney General's office legal representation in cases involving the Commission. Going to court may be necessary to obtain impounded evidence or to enforce Commission subpoenas.

Staff members have renewed relationships with *pro bono* law firms and contracted with a retired federal investigator, who is conducting interviews.

Judge Beibel has appointed a special master to locate Burge victims and TIRC is coordinating with that special master's efforts.

Staff members have also contacted non-Burge claimants to inform them that their claims will not be acted upon in general until the courts resolve jurisdictional issues.

TIRC offices are moving within the Thompson Building from the 5th floor to the 10th floor on about July 1st.

The current statistics for TIRC's caseload are 28 pending Burge cases, 66 pending cases involving officers who previously worked for Jon Burge, and 127 cases that do not relate to Jon Burge. Staff members are submitting 9 cases for consideration by the Commission today. The Hauad case is for more extended consideration and the other 8 are for proposed summary dismissals.

Cmsr. Cavise asked Director Miller if he has heard from the State's Attorney about whether they are going to help to locate victims. Director Miller stated that discussions with the State's Attorney resulted in an agreement that TIRC staff would first try to locate a victims and, if

unsuccessful, the State's Attorney's office would try to assist. Commissioner Mathias asked if the victim notification process was working. Director Miller replied that it was working, but it would be easier if the State's Attorney's Office would provide victim information in all cases.

IV. Budget Report

Dr. Ewa stated that the budget for FY15 remains the same as last year in the amount of \$300K. There are still funds remaining from FY14, some of which will go toward items needed for the move to the 10th floor. Director Miller noted that staff members were able to get a number of used items from the State.

V. Claim of Jaime Hauad, No. 2011.025-H

Director Miller stated that Cmsr. Rob Warden wanted to announce that if he were present, he would not have participated in this matter due to his affiliation with Northwestern because the Blum Legal Clinic represents Mr. Hauad at this time.

Director Miller reviewed two draft orders related to the Hauad case: the first considered the Commission's jurisdiction and the second is an amended disposition of the case. The draft jurisdictional order concludes that the Commission likely does not have jurisdiction of Mr. Hauad's case because it does not involve Jon Burge or officers who ever worked for Burge. The draft jurisdictional order considers legislative history, TIRC Act statutory language, statutory construction canons and arguments by Mr. Hauad's counsel. Mr. Miller reviewed Mr. Hauad's counsel's arguments and the conclusions of the draft jurisdictional order that disagree with them.

Director Miller also reviewed the amended determination, which concludes that there is substantial evidence, including compelling photographic evidence, that Jaime Hauad's shoes were intentionally cut with a paper cutter by police officers while he was in police custody in an attempt to coerce a confession and that the case merits a full review. The amended determination also concludes that there is some evidence that suggests that he may be innocent of the crime for which he was convicted. The determination notes that one of the officers involved was Det. Joseph Medianowski, who has since been convicted of federal racketeering charges.

Director Miller recommended the Commission vote to find the case deserves full judicial review, but also that the Commission deny the claim because of a lack of jurisdiction. Because of his recommendation concerning the Commission's jurisdiction, the Director also recommend that the commission exercise its power under 775 ILCS 40/45 to refer the Hauad matter to the State's Attorney of Cook County along with the findings for review of this case to determine whether the State's Attorney should agree to a post-conviction petition by the claimant and whether the Claimant's statements should be suppressed.

The chair called for crime victim statements; no one came forward.

Rachel Cowen from DLA Piper then addressed the Commission, and expressed that although the Hauad family appreciates the recommendation regarding referral to the State's Attorney,

they feel it will not accomplish anything. She argued that the Commission should disregard Director Miller's recommendation on jurisdiction and find that the torture in the Hauad case is absolutely related to Jon Burge in that it was part of the epidemic of torture of which Commander Burge was a part. She concluded by asking the Commission to rule in Mr. Hauad's favor and to sign the proposed order that she and the family provided the Commission, which would make this case subject to review under the Administrative Procedure Act.

Judge Starks stated she does not believe that the Commission has jurisdiction at this time, and two Circuit Court judges have so held. Judge Starks interpreted the statute's language of "related to" Jon Burge to include officers under his command, or formerly under his command, but not to be so broad as to include "a culture" of torture.

Allison Flaum (a member Mr. Hauad's legal team) argued that the two court cases referred to by Director Miller did not bind the Commission, nor did they fully brief or discuss the jurisdictional issues.

Cmsr. Cavise argued the statute language gives "priority" to Burge cases, which implies there is jurisdiction for non-Burge cases as well. He commented that it is counterintuitive to limit the Commission to Burge cases only.

Cmsr. Mathias commented that there are two serious issues raised by this one case; one is jurisdiction which is dealt with. The other is whether a confession was made. The order raises that issue as well. Mr. Mathias believes the proposed order is the correct one.

Cmsr. Green commented that she is disheartened because, at the outset, it seemed the jurisdiction of the Commission was broad. She is not certain how to interpret the recent court decisions.

Director Miller quoted the statute; and argued that the "priority" language was intended for Burge-related cases in which the claimant was still incarcerated and did not bestow jurisdiction on every police torture case.

Commissioner Cavise again argued the legislative history was unclear and could go either way, so Commissioners should not vote to restrict their own jurisdiction. Commissioner Mathias disagreed and stated it was not a matter of personal preference and that the Commission would find itself on the wrong side of the issue if it did not follow clear statutory language. Judge Starks called for a vote on the order concerning jurisdiction regarding the Claim of Jaime Hauad.

Cmsr. Mathias voted to deny the claim (i.e. voted to adopt the proposed jurisdictional order)

Cmsr. Green voted not to deny the claim (i.e. voted to reject the proposed jurisdictional order)

Chairman Starks voted to deny the claim (i.e. voted to adopt the proposed jurisdictional order)

Cmsr. Thorp voted to deny the claim (i.e. voted to adopt the proposed jurisdictional order)

Cmsr. Cavise voted not to deny the claim (i.e. voted to reject the proposed jurisdictional order)

The Claim of Jaime Hauad was denied by the vote of 3 to 2.

Director Miller requested a separate vote on approving the draft amended determination discussing the findings and referring the matter to the State's Attorney's Office .

Judge Starks called for a motion to approve Director Miller's draft amended determination; Cmsr. Mathis motioned and Cmsr. Thorp seconded. All Commissioners voted in favor of adopting the revised determination and referring the matter to the State's Attorney's Office.

Commissioner Cavise asked if the record would be clear as to the vote that was recorded, and if there was any provision for a dissent. He was advised by the Chair that the vote would be recorded, but that there was no provision for a dissent.

VI. Proposed Summary Dismissals

Willie Moses Adkins: Director Miller stated that Willie Adkins passed away shortly after filing his claim. He believed that there should be a formal disposition noting his death. Judge Starks called for a motion to dismiss the case of Willie Moses Adkins based on lack of jurisdiction due to the death of the claimant. Cmsr. Mathias so moved and Cmsr. Thorp seconded the motion. The vote adopting summary dismissal carried unanimously.

Gerson Carnalla-Ruiz: Director Miller stated the claim of Gerson Carnalla-Ruiz did not appear to involve a claim of torture as defined in the statute and the Commission's Rules. The claim indicated that he was denied bathroom access for up to an hour until he gave a verbal statement. Judge Starks called for a vote and Commissioners voted unanimously to summarily dismiss the case.

Stephen Cavanero: Director Miller stated that Stephen Cavanero was in Federal prison when he passed away during the last month. Judge Starks noted that, under the statute, the Commission lacks jurisdiction over claims concerning deceased persons. Judge Starks called for a vote to dismiss the case of Stephen Cavanero. Commissioners voted unanimously to summarily dismiss the case.

Andre Griffin: Director Miller stated next that Andre Griffin claimed he was hit once on the neck. In September of 2011, Mr. Thomas the former Executive Director, wrote Mr. Griffin and said that this did not appear to be torture and Director Miller agrees. Director Miller recommended summary dismissal. Commissioners voted unanimously to deny the claim. Director Miller and Chairman Starks noted the dismissal was not an endorsement of the alleged behavior, but was necessary because of the statute.

Sherman Morisette: Director Miller noted that the Commission reached a consensus in April, 2012 during executive session to dismiss this case, but did not take a vote in open session. Director Miller noted there was a lack of confession in this case, which is required under the statute. Judge Starks called for a vote to dismiss the case of Sherman Morisette. Commissioners voted unanimously to summarily dismiss.

Virgil Robinson: Director Miller noted that Mr. Robinson's case did not involve a confession. Because there was no confession the claim does not meet the definition of a claim of torture and the matter should be summarily dismissed, Director Miller noted. The Commission has reviewed this before, in October, 2011, in executive session but inadvertently failed to vote in public session, the Director noted. Judge Starks called for a vote and Commissioners voted

unanimously to summarily dismiss the case of Virgil Robinson.

James Sardin: Director Miller noted that James Sardin claimed that a witness was tortured but did not claim that he himself was tortured. Mr. Miller noted that former Director Thomas wrote Mr. Sardin and said the claim did not appear to meet the definition of a claim of torture as required by the statute. Director Miller noted the statute requires that the convicted claimant be the subject of the torture. Judge Starks called for a vote to dismiss the case of James Sardin and Commissioners unanimously voted to summarily dismiss the case of James Sardin.

Robert Villagomez: Director Miller said that Robert Villagomez claimed that he was tortured by Detective Kill in Area 3, but he was not convicted of the crime of which he was accused. Mr. Miller noted the alleged conduct, if true, was abhorrent, but that the statute requires the claimant be convicted of a crime arising from the torture and this case therefore does not come within the jurisdiction of the Commission. Judge Starks called for a vote and Commissioners unanimously voted to summarily dismiss the case of Robert Villagomez.

VII. TIRC Act Section 5(1) phrase “used to obtain the conviction”

Director Miller stated that he would like to discuss with the Commission the phrase in the definition of in the claim of torture regarding whether a tortured confession was “used to obtain a conviction”. This may need an additional rule on to clarify going forward.

Director Miller noted he and the Staff Attorney think that phrase can include scenarios other than the prosecution introducing statements into evidence at trial. For instance, guilty pleas may be included in this definition as may suppressed confessions that prevent a defendant from testifying for fear it may be introduced in response. Chairman Stark, Commissioner Cavise and Commissioner Mathias voiced their opinions on the matter, indicating such scenarios would likely be included. Commissioners Mathias and Thorp noted the definition of the word “confession” may also need to be addressed. Director Miller thanked the Commissioners. Commissioner Cavise suggested that Director Miller and Attorney Olmstead draft language and present it at the next Commission meeting. No vote was taken.

VIII. Commission initiation of DNA testing or registry comparison in select instances

Director Miller stated that he believes it is within the Commissions power to request DNA testing and that [Federal District Court] Judge [Amy] St. Eve has ruled that exculpatory DNA evidence can be relevant to the issue of whether torture occurred. . He wanted to raise the issue with the Commissioners to discern whether, in appropriate cases, the Commission thought that it should seek DNA testing. Commissioner Mathias felt that exculpatory DNA evidence was probative to the issue of whether torture occurred. No vote was taken.

IX. Amendments to the Commission Administrative Rules

Director Miller responded to written comments submitted to the Commission regarding the amended rules and the rule making process going forward. Director Miller addressed Mr. Joseph Heinrich’s letter to the Commission, noting Mr. Heinrich’s presence at the meeting. Director Miller said he respected Mr. Heinrich’s concerns and noted that many of the rules changes initially suggested by him have been adopted. However, Director Miller did not read the statute as requiring the entire Commission conduct the investigation, but that it allows

delegation of investigatory activities. Mr. Miller noted that the staff may submit an amended rule for consideration making that delegation explicit.

Director Miller agreed with Mr. Heinrich that priority should be assigned to Burge claimants still incarcerated, but disagreed that that meant no work on other cases could be done in the meantime.

Director Miller noted the rule on the composition of the administrative record was intended to broaden that record, not narrow it, as Mr. Heinrich had suggested. Mr. Miller also noted there is no intention to stop taping Commission meetings.

Director Miller noted the statute defines the “victim” as a single individual, and that the proposed rule’s limitation of other family members to less speaking time than the victim at meetings is not intended to insult family members of crime victims.

Lastly, Director Miller noted that the definition of torture of which Mr. Heinrich complains has not change from the prior rule and is the standard definition used by the United Nations.

X. Open Meetings Act

Director Miller presented three procedures under the Open Meetings Act that he requested the Commission approve. The procedures allow Commissioners to attend Commission meetings by means other than physical presence (video and audio conference remote attendance); limit the scope of public comments at specially scheduled meetings; and restrict bulky audio-visual equipment to the rear of the room for Commission meetings and prevent disruption at meetings by those audio or video recording.

Judge Starks called for a vote and Commissioners unanimously approved the procedures.

XI. Public Comment

Anabel Perez (the mother of Jaime Hauad) addressed the Commission. She expressed her dissatisfaction with the decision the Commission made with her son’s case of torture. An unidentified speaker expressed concern about treatment of her son at a mental health facility. Jeanette Plummer (the mother of Johnie Plummer) urged the Commission to take action on her son’s pending case. Mark Clements addressed the Commission and expressed his dissatisfaction with the Commission’s vote on the Jaime Hauad case.

XII. Adjournment

The meeting was adjourned at 4:43pm on a motion by Cmsr. Mathias and seconded by Cmsr. Thorp. Judge Starks stated that the next meeting is scheduled for July 16, 2014.