



STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION SPECIAL MEETING Wednesday,
March 25, 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
Doris Green (voting alternate for public member commissioners)
Rob Warden
Craig Futterman (voting alternate for law professor commissioner)

Staff on dais

Barry Miller (Executive Director)
Rob Olmstead (Staff Attorney)

I. Call to Order/Members Present

On March 25, 2015, at approximately 3:00 p.m., Chairman Cheryl Starks called to order the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC). Chairman Starks and Commissioner Warden were present, together with voting Alternate Commissioners Green and Futterman, constituting a quorum.

II. Approval of Minutes

Chairman Starks called for a motion to approve both the open-session and closed-session September 17, 2014 minutes. Upon motion and second, the minutes were approved.

III. Executive Director's Report

Executive Director Barry Miller reported that:

- The appointments of Commissioners Dahm, Mathias, and Thorp and Alternate

Commissioner Scruton were withdrawn by Gov. Rauner, leaving four Commissioners serving: Chairman Starks, and Commissioners Len Cavise, Paul Roldan, and Rob Warden. Alternate Commissioners Craig Futterman (Cavise's alternate) and Doris Green (public members' alternative) also remain. All remaining Commissioners' and Alternate Commissioners' terms are expired. A minimum of five Commissioners are needed to refer cases to Circuit Court. The Governor's Office has been made aware of the need for appointments in order to consider claims.

- Director Miller reviewed the Commission's history regarding jurisdictional issues, including its revision of its rules in 2014 to clarify that the Commission has jurisdiction over cases involving officers who formerly served under Commander Jon Burge. The Commission is investigating about 25 cases involving officers who were serving under Jon Burge ("Burge cases") at the time of the alleged torture, and about 65 cases of officers who had previously served under Jon Burge at the time of the alleged torture ("former Burge cases"). About 120 claims do not involve Burge or officers previously under his command ("non-Burge"), and are being treated as outside the Commission's jurisdiction per its decision in the *Jaime Hauad* claim. He estimated that perhaps 15 of the total of Burge and former Burge claims involved people who are not now in custody; the rest remain in custody.
- Two recent court rulings dispute the Commission's jurisdiction. Judge Coughlin in *People v. Scott Mitchell* (referred by the Commission to Court in July, 2013), ruled on Feb. 11, 2015, that the Commission erroneously asserted jurisdiction over the former-Burge case. Respectfully, the Commission disagrees, and notes the statute gives the Commission jurisdiction over cases "related to" Jon Burge and his officers. The Commission believes the ruling does not heed established case law that defers to an administrative agency's interpretation of its own statute. Mitchell's counsel is planning to appeal. Chairman Starks and Director Miller wrote the Attorney General's Office, seeking permission to file a friend-of-the-court brief. The AG's office has preliminarily indicated it likely will approve that request.
- The second court ruling concerned the *Jaime Hauad* claim, which the Commission dismissed as not being related to Jon Burge or officers under his command. Nonetheless, the Commission referred the case to the State's Attorney's Conviction Integrity Unit because of compelling evidence of police misconduct and potential evidence of innocence. On January 6, 2015, in a post-conviction petition brought by Hauad's lawyers, Judge Sacks denied that petition and criticized the Commission for referring the case to the State's Attorney rather than dismissing it without comment. Judge Sacks interpreted Section 45 of the TIRC Act as limiting its referral power to Burge-related matters. Again, the Commission staff respectfully disagrees, because Section 45 expressly gives the Commission the power to refer matters "to such other parties or entities as the Commission in its discretion shall deem appropriate." Additionally, any person or body may always call a matter to the attention of the appropriate government body with jurisdiction. While the Director said he did not intend to make a habit of commenting on judge's rulings in cases referred by the Commission, he felt compelled to respond to Judge Sacks' contention that Hauad's attorneys "had a great deal of input into the Torture Commission Proceeding," since that carried a possible implication of impropriety. The

Director said that was an unfair allegation given the Commission's extensive review and discussion of evidence both supporting and detracting from Hauad's claims. The Director noted that Judge Sacks relied on some of the Commission's discussion of the evidence that was unfavorable to Hauad in making his ruling, but that the ruling failed to address the evidence favorable to Hauad, including photographs of lineups, letters from a potential suspect to Hauad, and the role of an officer involved in the case who was later convicted of corruption charges.

- State Senator Iris Martinez has proposed a bill (SB 1813) to broaden the Commission's jurisdiction beyond cases involving Burge and his officers and to extend the deadline for claims another five years.
- The Commission staff has worked to notify crime victims in closed cases not previously notified by the prior administration (whether or not notification was technically required), and continues to notify crime victims in active cases.
- Staff is actively investigating claims, securing records from the Clerk of the Circuit Court, the police, and other agencies; using a court order to access and review impounded evidence; and interviewing witnesses (issuing deposition subpoenas where necessary); and recruiting counsel for claimants so that they can be interviewed. The Commission has also retained a medical expert and sought his opinion to review evidence.
- Commissioners have been provided a confidential chart summarizing the approximately 30 claims that are actively being investigated. The remaining Burge priority cases are being actively investigated.
- Staff have, in a few cases, asked for limited attorney-client privilege waivers to interview trial or appellate counsel for claimants. These interviews have often been helpful.
- Judge Biebel recently appointed counsel for four Burge-era defendants identified by the Court's Special Master. The next court date is April 28, 2015. The court proceedings in Judge Biebel's court are separate from TIRC proceedings.

IV. Budget Report

In Dr. Ewa's absence, Director Miller gave the budget report. He noted that the Commission's budget will likely remain flat at its prior \$300,000 allotment, less the 2.25% cut approved by the House, should that pass the Senate. To date, the Commission has spent less than \$200,000 this fiscal year. Central Management Services informed the Commission it will be charging, retroactively, the Commission \$20,000 in rent for the offices on the 10th floor, to which it moved to in July. This was not an anticipated expense. The Commission's secretarial position is currently vacant and the Commission has been asked to not fill it full time, but only on a part-time basis through the end of the fiscal year (June 30) as part of general cost-saving efforts in state government.

V. Resolutions of Appreciation

Commissioner Futterman moved and Commissioner Warden seconded a motion to pass five resolutions thanking outgoing Commissioners/Alternate Commissioners Father Charles Dahm, John Mathias, Marcie Thorp, and Natalie Scruton, as well as law student Kelli Greenwood Anderson, who recently assisted the Commission in its investigation of a case. The motion passed unanimously.

VI. Public Comment

- Jerry Heinrich voiced his opinion that the Commission has only accomplished bringing grief to murder victims' families and giving convicts false hope. He believes there is no longer a need for the Commission. He also believes Senate Bill 1813 should not pass.
- Mary Heinrich commented that convicts now have two bites of the apple – the Commission and the Special Master in the court system before Judge Biebel.

VII. Closed Session

Judge Starks and Director Miller called for a motion to move to closed session to discuss investigatory matters, personnel matters and to review the need for confidentiality of previous closed-session minutes. Commissioner Green so moved, Commissioner Warden seconded, and the motion carried unanimously.

* * *

Approximately 13 minutes later, the Commission meeting reconvened in open session.

VIII. Action on closed-session matters.

Commissioner Futterman moved that the Commission find that there was no longer a need for continued confidentiality for the entirety of the closed-session minutes of August 23, 2011, October 31, 2011 and June 5, 2012; that there was no longer a need for continued confidentiality for certain portions (as discussed in closed session) of the April 11, 2011, April 3, 2012 and May 15, 2013 closed-session minutes; and that there is a continuing need for confidentiality of the entirety of the remainder of the Commission's closed-session minutes. The motion was seconded by Commissioner Warden and passed unanimously.

XI. Adjournment

Director Miller announced the next meeting is tentatively scheduled for May 20, 2015 at 3 p.m.

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