



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION MEETING
Wednesday, September 16, 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 Robert Loeb
Commissioner Steve Miller
Alternate Doris Green (alternate public commissioner)
Commissioner Marcie Thorp

Staff on dais

Rob Olmstead (Interim Executive Director)

I. Call to Order/Members Present

On September 16, 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, Thorp and alternate public commissioner Green, constituting a quorum. Interim Executive Director Rob Olmstead was also present. Chairman Starks also noted that Commissioner Rob Warden was not present because of a previous engagement to which he had committed months prior to this meeting.

II. Approval of Minutes

Approval of the July 22, 2015, minutes were tabled until the November meeting.

III. Executive Director's Report

Interim Executive Director Rob Olmstead reported:

Executive Director Barry Miller's departure in July left TIRC with just one full-time staff member, Rob Olmstead. He has been added by two part-time Public Interest Legal Institute Fellows, Ian Todd and Dan Schufreider. These two fellows were instrumental to the research and drafting of the case presentation for this meeting.

Despite being under-staffed, TIRC's investigations have continued, including issuing subpoenas for records, conducting witness interviews, and enlisting TIRC's part-time investigator to conduct interviews. Mr. Olmstead has secured agreements from two law firms to take on at least one case on a pro bono basis, and one of those firms has agreed to take on multiple cases. Mr. Olmstead believes that securing pro bono assistance from large law firms is key to the Commission accomplishing its mission and encouraged the commissioners to reach out to their contacts at large law firms for assistance.

Additionally, former Executive Director Barry Miller will provide TIRC with pro bono consultation from time to time, particularly on those cases in which he played a large role in investigating.

The Governor's office has granted permission for TIRC to hire a secretary. TIRC has conducted interviews and, in consultation with Chairman Starks, Interim Executive Olmstead and Dr. Ewa recently made an offer to a qualified candidate, Roxanna Malene. Ms. Malene accepted the offer, and she is working with Dr. Ewa to nail down a start date. Ms. Malene is also a licensed attorney.

Interim Executive Director Olmstead and PILI Fellow Dan Schufreider recently sat down with Chicago Police Department representatives and the City's Corporation Counsel to review subpoena processes to ensure that TIRC is receiving all the relevant information it needs and to narrowly tailor subpoenas to avoid overly-burdening CPD and receiving information it does not need. This productive meeting improved TIRC's knowledge of CPD's record keeping processes and CPD's knowledge of TIRC's mission and needs. Chairman Starks and Interim Executive Director Olmstead have also scheduled a meeting with the Circuit Court Clerk's office to have a similar discussion about improving subpoena processes to ensure that TIRC is receiving all the relevant information it needs and to narrowly tailor those requests to avoid overly-burdening the Clerk's office and receiving information it does not.

TIRC received notice that a previous claimant, a Mr. Richards, has filed an administrative review lawsuit of TIRC's dismissal of his claim, and the Illinois Attorney General's office has assigned an attorney to respond to the suit.

TIRC is also working with the Attorney General's Office to put forth a motion to the chief judge to ensure that material in TIRC's administrative record, such as victims and witnesses' personal information and other sensitive material in TIRC's administrative record, such as post-mortem

photos, does not become part of the public record. The motion will also ensure that prosecutors and defense attorneys are still able to access this information and material when necessary to prosecute or defend their cases after TIRC action.

Appointments of attorneys in the special master cases are on hiatus following the retirement of Judge Biebel. The circuit court has recently appointed a replacement, Leroy Martin.

In the appellate courts, the First District recently returned an opinion in the Whirl case, which TIRC referred to the trial court. The trial court dismissed Whirl's post-conviction action and Whirl appealed. The appellate court's reversed and ordered a new suppression hearing.

A job advertisement to fill the executive director position has been posted on the state's website. In consultation with the chair, the closing date for applications was extended two weeks in order to post it with bar associations and to clear up any misconceptions about the position requiring a test. Interim Executive Director Olmstead is applying for the position and so he will not participate in the selection process. A posting for the staff attorney position cannot be posted until there is a vacancy there.

IV. Budget Report

Dr. Ewa was not present, but Interim Executive Director Olmstead reported that because there is still no budget in Springfield, TIRC has no new information in that area.

V. Claims

a. Ivan Smith, No. 2011.001-S

Interim Executive Director Olmstead recounted the facts of this claim and provided his recommendation. He felt it was a close call for commissioners and recommended dismissal, but noted that past executive director Barry Miller recommends the case be referred to court for judicial review.

Mr. Olmstead recounted:

Ivan Smith was convicted of gang-related shootings that occurred in two separate locations on the South Side on August 7, 1991. Ivan Smith was arrested at his mother's house in Ripley, Tennessee in November of 1991. He was in custody at the Tipton County Jail when Illinois authorities came to bring him back to Illinois. The extradition party was unusually large, consisting of Detective James O'Brien, Detective Joseph Stehlik, then-Assistant State's Attorneys Charles Burns and Michael Smith and state's attorney's court reporter Janet Lupa.

Ivan Smith claims that, in the jail cafeteria, O'Brien slapped and punched him to elicit a confession, and that Stehlik and O'Brien placed a phone book on his chest and struck it with a club until he agreed to confess. He claims Michael Smith, not Burns, was present for this. Authorities deny any coercion and say Charles Burns conducted the

interrogation, not Michael Smith.

Supporting Smith's allegations of coercion is the fact that he has consistently claimed such abuse and filed a motion to suppress before his trial. Additionally, Stehlik and Burns dissembled on the stand, denying they traveled to Tennessee to obtain a confession, which is clearly contradicted by the presence of the court reporter. Finally, then-Assistant State's Attorney Burns testified that typing of Smith's confession was delayed because a typewriter had to be obtained from another county. This is contradicted by the sheriff of Tipton County jail, who said typewriters were in abundance throughout the building in 1991. Finally, a Cook County Jail guard testified that one of Ivan Smith's co-defendants, Curtis Milsap, arrived at jail with bruises on his face and limping. Milsap also claimed police abuse.

Detracting from Ivan Smith's claim of torture is the unlikely location of the alleged torture, a foreign jurisdiction in a cafeteria with large windows. Smith acknowledged Tipton guards did not abuse him, and implied that they did not intervene because they could not see what Illinois authorities were doing. However, the guards were close enough to be summoned to handcuff Ivan Smith, and any beating on a phone book would have been extremely loud. Ivan Smith acknowledged the guards were stationed just a few feet from the cafeteria.

Olmstead reviewed other evidence, and recommended dismissal, but acknowledged it was a very close case.

Commissioner Baldwin then asked whether any other cases exist where Burge or his people mistreated suspects outside of Chicago. Interim Executive Director Olmstead responded that he is aware of one case alleging mistreatment at a downstate jail or state police facility but does not remember the outcome of that case.

Commissioner Steve Miller thought the case merited judicial review because of the consistency of claimant's story since the beginning of judicial proceedings, Ivan Smith's motion to suppress. He was disturbed that none of the detectives or ASA's took notes during their interview of claimant. He believes the lack of note-taking was deliberate. Further, neither detective, when asked about coaching, explicitly denied that they had coached the claimant during the interview. Additionally, the number and nature of complaints lodged against Detective O'Brien persuaded Commissioner Miller of the merits of Smith's claim.

Commissioner Loeb found persuasive that Stehlik and O'Brien gave conflicting answers at trial about whether they had reviewed, during the course of questioning Ivan Smith, all of the known details with him. He agreed it is a close case but comes down in favor of referral.

Commissioner Baldwin then stated that she finds that the interrogation taking place in a cafeteria was odd, though she was not troubled by the fact that the typewriters were broken, given the presumably rural location of the jail. She agreed that it was a close case

but came down on the side of dismissal.

Chairman Starks saw issues of credibility on both sides. She also viewed co-defendant Curtis Milsap's corroborated claims of abuse as weighing in Ivan Smith's favor.

Interim Executive Director Olmstead and Chairperson Starks then invited any of the victims' family or representatives to come forward. None did.

Ivan Smith's attorneys, Elliot Zinger and Larry Dreyfuss argued that multiple witnesses and defendants claim coercion in this case, and he does not think all of these witnesses could be lying. He noted the Chevette driven by Ivan Smith was not even inventoried or looked at by authorities, nor was the red LeBaron allegedly used in the drive-by. He accused O'Brien, Stehlik, and McWeeney of being serial torturers.

Chairwoman Starks then called for a vote on Ivan Smith's claim:

Chairwoman Starks and Commissioners Loeb, Steven Miller and Green voted to refer the case to court for judicial review. Commissioners Thorp and Baldwin voted to dismiss the case.

Chairwoman Starks noted that the Commission does not have the requisite votes to confirm or deny (five votes are required to refer and four are required to deny), and tabled the claim.

VII. Public Comment

Mark Clements criticized the Commission for not referring Smith's claim, particularly when the detective in question had thirty-six complaints against him. Clements encouraged everyone to research the issue and stated that the torture issue needs to be brought to close.

Speaker Joe Heinrich disagreed with the Commission for deciding a case without eight voting members and announced that there would be a candlelight vigil at the police memorial to honor Chicago police officers who have died. He invited all to attend.

VIII. Closed Session

The Commission retired to closed session to discuss personnel, release of past closed session-minutes and investigatory matters.

Approximately 20 minutes later, the Commission meeting reconvened in open session.

XI. Final Action on Items Discussed in Closed Session

The Commission voted unanimously to release certain closed-session minutes as specified in closed session and found a need for continuing confidentiality for the remainder.

XI. Setting of 2016 Meeting Calendar

Before the Commission began setting the meeting calendar for 2016, the Commission discussed the need for additional alternate commissioners and the circumstances under which Commissioners can attend by phone.

The Commission then unanimously voted to set the following meeting dates for 2016: January 20, March 30, May 18, July 20, September 21, and November 16.

X. Resolution of Thanks

The Commission unanimously approved a resolution to thank former Executive Director Barry Miller for his service.

XII. Adjournment

The Commission adjourned.