



STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION SPECIAL MEETING
Wednesday, March 5, 2014, 3:00 p.m.

Thompson Center
100 West Randolph Street, Meeting Room 9-031
Chicago, Illinois 60601

MINUTES

PRESENT:

Commissioners

Chairman Cheryl Starks
Charles Dahm
Craig Futterman (Alternate, acting for Commissioner Cavise)
Doris Green (Alternate)
Hipolito ("Paul") Roldan
Marcie Thorp
Rob Warden

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 March 5, 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 Dahm, Futterman, Green, Roldan and Warden were present, constituting a quorum. Approximately 20 members of the public were present.

II. Approval of Minutes

Commissioners unanimously approved the January 22, 2014 minutes by voice vote.

III. Executive Director's Report

Director Miller discussed the administrative record to be filed with the Cook County Circuit Court for those cases in which the Commission finds that credible evidence of torture exists and merits judicial review. Past court filings usually consisted of the decision and a few exhibits. The Executive Director noted he had consulted with the Chairman and, for cases where the Commission recommends referral to the Circuit Court, the Director and Staff Attorney recommend filing with the court those materials considered by the Commission together with a recording of the Commission's decision. The Director has begun to supplement the record in past cases in which the Commission decided that the evidence merited judicial review and will also submit such a record for cases moving forward.

Cmsr. Marcie Thorp entered the meeting at 3.03 p.m.

Director Miller updated Commissioners on the status of Commission and court decisions. The Commission has decided 30 matters, not counting three that were withdrawn from the Circuit Court. In five cases, the Commission decided it had no jurisdiction because an incriminating statement had not been used to convict the claimant, and in 1 the claimant had died. Of those six cases, three involved officers who were serving under Commander Burge at the time of the alleged torture, and three cases involved officers who had formerly served under Commander Burge. In 10 additional cases, the Commission decided there was not enough credible evidence of torture to merit judicial review. Of the 10 dismissed cases, one occurred while Burge was a supervisor of the officers involved; five involved officers who had formerly served under Burge, and four involved officers who appear not to be related to Commander Burge. The Commission has so far decided in 14 cases that there was credible evidence of torture warranting judicial review. Of those 14 cases, five occurred under Commander Burge's supervision, seven involved officers who had formerly served under Commander Burge, and two were non-Burge cases.

The Director is aware of four Circuit Court decisions regarding claims the Commission has referred to the court for a hearing. In the Murray case, Judge McHale ruled that the Commission has no jurisdiction over non-Burge cases. In the Darrell Fair case, Judge Slattery-Boyle ruled that the Commission does not have jurisdiction over a claim involving an officer who formerly served under Burge. That ruling is being appealed. In the Christian case, a former Burge case, Judge Cannon ruled that there was no credible evidence that Mr. Christian was entitled to relief on his claim of torture. In the Whirl case, a former Burge case, Judge Alonzo found Mr. Whirl was not credible and denied relief. There are still pending in the Circuit Court five cases involving Burge subordinates, four cases involving former subordinates of Commander Burge and one non-Burge case. Three cases involving former Burge officers will soon be in the Appellate Court.

The Director has sent the Commissioners a draft letter to send to claimants who have filed claims with the Commission but whose claims do not appear to involve officers who ever worked under Burge. Commission staff will send this letter out to the non-Burge claimants.

Director Miller updated Commissioners on the status of victim notification, noting staff now has access to better databases for searches for victim information, and has also made arrangements

with some state agencies for cooperation in locating victims.

The Director advised he is working on a contract to engage a retired federal agent to serve as a Commission investigator. Staff is also interviewing law students to work as interns to help with victim identification and preparatory work for investigations.

The Director noted he revised the draft mission statement per Commissioners' comments and it will soon be posted to the website.

Cmsr. Roldan asked the Director to elaborate on that category of cases involving officers formerly supervised by Burge. Director Miller stated the draft amendment of the rules which the Commission will consider addresses that point. Commission staff is proposing that the Commission amend the rules to make clear that "related to" in the statute encompasses officers formerly supervised by Jon Burge.

Director Miller informed Commissioners that a ruling is expected soon by Judge Beibel in a lawsuit seeking class-action status for convicted persons claiming torture at the hands of Jon Burge.

IV. Draft Amendments to Administrative Rules

The Director stated that, once the proposed rules are published, the public will have periods for submitting comments and the Commission will have further opportunity to make revisions under the state procedures for amending the rules. Some of the major issues that are addressed in the proposed rules changes are:

1. Restoring the statutory language to the rule's definition of a "Claim of Torture," to require that a "claim of torture" should be related to Jon Burge;
2. Defining "related to" to include cases involving officers who had formerly been supervised by Burge;
3. Noting that claim forms for non-Burge cases will be accepted but not investigated until appellate courts rule on jurisdiction in these cases;
4. Defining victim's rights;
5. Deleting the summary referral process;
6. Shifting the factors listed as justifying summary referral to factors among those to be considered in reaching determinations of whether a claim is sufficiently credible to be referred for judicial review;
7. Adding language to clarify the contents of the administrative record;
8. Specifying voting requirements to make clear that four votes are necessary to find a claim not credible and
9. Deleting forms that are not required.

During the presentation of major points, Commissioner Roldan asked whether any changes were being contemplated to the definition of "torture." Director Miller responded that no changes were anticipated, and the Commission would likely be called on in the future to decide on a case-by-case basis whether certain actions constituted torture.

Cmsr. Dahm moved that the Commission approve the substance of the rule amendments, subject to corrections of the form required by the Joint Committee on Administrative Rules and approval of the chair as to the exact language, and Cmsr. Roldan seconded. The motion carried unanimously on a voice vote.

V. Policy on questioning claimants regarding the underlying crime

Chairman Starks and Director Miller asked the Commission for direction on whether Commission staff should ever question claimants about the underlying crime. Director Miller noted there may be instances where factual inquiries about torture may tend to incriminate or exculpate regarding the underlying crime. The Commissioners had an extensive discussion about the issue and noted that inquiry about facts connected to the underlying crime may sometimes be relevant to the Commission's mission of determining credibility of allegations of torture. A consensus was reached that the practice should not be done in every instance, nor never done, but that it should be used in limited instances and only when relevant to a determination of whether torture occurred.

Director Miller promised to update the Commission if and when issue arose in the future in order to review and adjust if necessary. No vote was taken.

VI. Public Comment

Rachel Cowen of DLA Piper, an attorney for claimant Jamie Hauad, gave Commissioners handouts on why she believes the Commission has jurisdiction over Mr. Hauad's case and why she believes it is related to Jon Burge. She also believes the Appellate Court will not provide an answer on jurisdiction for the Commission, because the cases pending there will be dismissed because the State's Attorney's Office failed to seek administrative review within 35 days.

Helen Charity of Black People Against Police Torture said she appreciated the Commission's efforts, but noted that she hated to see that Dave Thomas was taken away from the Commission.

Mark Clements noted that incarcerated claimants are frustrated with the pace of the Commission. He also referenced pending legislation calling for a crime victim's representative on the Commission. If that occurs, he believes a torture victim should also be on the Commission.

James Daniel asked questions about the procedures of the Commission, which Director Miller answered.

Anabel Perez, mother of Jaime Hauad, noted her son has been in jail for 17 years and needs to come home.

Michael Sack asked a question about Commission procedures which Chairman Starks answered

VII. Adjournment

The meeting was adjourned at 5:01pm on a unanimous voice vote. Green. Judge Starks stated that the next meeting is scheduled for May 21, 2014.