

IN THE CIRCUIT COURT OF COOK COUNTY
CRIMINAL DEPARTMENT, CRIMINAL DIVISION

In Re:
ILLINOIS TORTURE AND
RELIEF COMMISSION

CLAIM OF JAMIE HAUAD
TIRC Claim No. 2011.025H

COMMISSIONER'S DISSENT TO THE "ORDER CONCERNING JURISDICTION"
RECOMMENDATION FILED BY THE ILLINOIS TORTURE AND RELIEF COMMISSION ON
JUNE 19, 2014

On June 19, 2014, the Illinois Torture and Relief Commission (TIRC) filed a recommendation in the case of Jamie Hauad, recommending that the petition for review under the TIRC statute be dismissed for failure of jurisdiction. The TIRC had initially referred the Hauad case for evaluation on May 20, 2013 with no jurisdictional issues and recommending that the case be reviewed because there was credible evidence of torture. That referral was withdrawn and reconsidered by the TIRC for reasons having nothing to do with the jurisdictional issue in question now. The central premise of this most recent recommendation, adopted by a meeting of the Commissioners by a 3-2 vote of the Commissioners present, was that the TIRC is statutorily mandated to consider only those cases where the torture was committed by then Chicago Police Commander Jon Burge himself or by any Chicago police officer working under Burge. That recommendation was based upon a Memorandum filed by the Executive Director of the TIRC who had interpreted the TIRC statute to be restricted only to cases arising involving Burge and his cohorts. The Executive Director cited not only pertinent statutory language but also the fact that two Circuit Court Judges, considering cases on review from the Commission, have determined that the torture statute restricts inquiry only to Burge cases.

I dissent from the recommendation of the majority present on the day of the TIRC vote on this statutory interpretation. I file my dissent pursuant to Sec. 3500.385(c) of the TIRC statute, 775 ILCS 40/45(c). The basis of my dissent is that the recommendation of the TIRC is

not only interpretationally unjustified but that it flies in the face of the initial purpose of the statute, thereby leaving those persons tortured into confessing by Chicago police officers in other, non-Burge cases totally without recourse. Such a result, in my view, is an insult to the communities that have suffered torture at the hands of the Chicago police for decades, a failure of justice to those defendants who have had the misfortune to be tortured into confessing by officers not in the Burge “gang,” and a frustration of the intent of the Illinois legislators who passed the TIRC statute and the Governor of Illinois who signed it.

The language of the statute is quite clear. The TIRC has power “to conduct inquiries into claims of torture with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime to which he or she claims torture by John Burge or officers under his command.” 775 ILCS 40/35(2). “Priority” was the word chosen to be given to Burge and Burge-related cases. That statutory language is understandable. Burge and his crew had tortured literally hundreds of defendants into confessions that were later used against them at trial, oftentimes in cases where there was precious little other evidence. Hundreds of people are wasting away in the penitentiaries of Illinois because of that torture. Hundreds of families are without their loved ones, hundreds of children don’t know their incarcerated fathers. The stain upon Chicago of the Burge torture crew reached all over the world and into the United Nations. The reputation of Chicago as a murder capital is worsened by the collective recollection of the Burge tortures. The millions of dollars spent to defend Burge and incarcerate those defendants who were actually innocent is an intolerable burden on the city and state budget. However, we in the Commission have received a large number of complaints that the Burge crew was not the only torture crew in the City during those years and well beyond. In the Hauad case itself, one of the officers involved is Joseph Miedzianowski, long known as an abuser of defendants, a fixer of cases and who was eventually convicted of a string of criminal felonies and is serving a life sentence. It’s hard to believe that the Commission shouldn’t look at cases in which he and officers like him were involved.

According to data provided by the Executive Director (the specifics of which should remain confidential), the TIRC has a large number of non-Burge cases still pending. The citizens of Illinois and their elected representatives have long known that torture was not restricted to Area 2 where Burge operated and that, in fact, torture was, then at least, part of the culture of the CPD. That knowledge was part of the foundation upon which the TIRC statute was built.¹ The TIRC itself now has the cases on file to prove that torture was widespread throughout a large portion of the CPD.

In other places in the statute, the word “priority” is not used. For example, Par. II(1) of 775 ILCS 40/5(1) states that the Commission can hear any “claim of torture” which is defined as a case for which “there is some credible evidence [that the torture is] related to torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge.” What does “related to” mean? The language is imprecise and not altogether clear in its intent. One can argue, as the TIRC Executive Director does, that “related to” is merely duplicative of “under the supervision of.” It is the position of this Dissent that the statute was not so narrowly designed and that because of its remedial nature, there is no reason why it should be directed at solely one person and his cohorts. The statute was designed to remediate a problem that was perceived then and is perceived now by the courts of Illinois as systematic. Torture. That problem is not just the misdoings of one person, since convicted and incarcerated himself, but it’s the abuse by the many officers of the CPD named by defendant after defendant as torturers in the name of getting a conviction.

¹ The TIRC statute’s main sponsor, Sen. Kwame Raoul, said during Senate hearing on the proposed TIRC, “This is not about trying to incarcerate Jon Burge; the federal prosecutor is already working on that.” *Id.* at 26-27. And then later, [T]his is about people who were tortured in police departments utilizing methods such as electrodes to testicles, suffocating with tops of typewriter - typewriter covers. And there are people who may currently be incarcerated who may not be - need to be there. And there are people who may have served time who may want to clear their name. And this torture commission would allow them a vehicle to do so.” This dissenter submits that Sen. Raoul was addressing exactly what needed to be addressed - not just the actions of Area 2 officers, but the problem of torture in Chicago in general.

It is amazing to me that the Commission, singularly progressive in its conception, laudable as a governmental response to a serious social problem, could hamstring itself by an overly legalistic parsing of statutory words that, even to lawyers, show at least two possible reasonable interpretations. Why would the Commissioners, supposedly among the citizens most interested in minimizing the damage cause by torture, take such a narrow view of their own mandate? No appellate court has required us to confine ourselves to Burge cases. The evidence is to the contrary in the large numbers of non-Burge cases that have been reviewed by Illinois appellate courts and where convictions have been reversed regardless of which police officer did the torturing.

I would respectfully submit that the Commission has wrongly interpreted its stated function and that the Chief Judge should not be deterred by the Commission's interpretation of the mandating statute. What the Commission says about whether there was or was not torture contributing to a confession that was used in getting a conviction is important and entitled to great deference. What the Commission thinks is the proper interpretation of the enabling statute is not entitled to any greater relevance than any other legal interpretation. It is for that reason that I file this Dissent.

LEONARD L. CAVISE
COMMISSIONER
ILLINOIS TORTURE AND RELIEF COMMISSION

DATE: July 28, 2014