



**STATE OF ILLINOIS  
TORTURE INQUIRY AND RELIEF COMMISSION MEETING  
Wednesday, November 18, 2016, 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  
Alternate Craig Futterman (alternate)  
Commissioner James Mullenix  
Commissioner Steve Miller  
Commissioner Robert Loeb  
Commissioner Paul Hipolito Roldan  
Commissioner Marcie Thorp  
Commissioner Marilyn Baldwin  
Alternate Doris Green (alternate)  
Commissioner Rob Warden

Staff on dais

Rob Olmstead (Interim Executive Director)  
Dr. Ewa Ewa (Human Rights Commission CFO)  
Roxana Malene (Commission Assistant)

**I. Call to Order/Members Present**

On November 18, 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 Mullenix, Miller, Loeb, Roldan, Thorp, Baldwin, Warden, and alternate public commissioners Green and Futterman, constituting a quorum. Interim

Executive Director Rob Olmstead was also present.

## **II. Approval of Minutes**

Chairman Starks called for a motion to approve the open-session and closed-session minutes of the July 22, 2015 and September 16, 2015 meetings. Commissioner Loeb moved for approval and Commissioner Roldan seconded the motion. The minutes for both meetings were approved unanimously.

## **III. Interim Executive Director's Report**

Interim Executive Director Rob Olmstead introduced new Commissioner Mullenix, a former Cook County Public Defender, who replaces Commissioner Shahram Dana, who moved out of state. Mr. Olmstead noted that the Governor also appointed Alternate Commissioner Timothy O'Neill, a former Cook County Public Defender as well and a current law professor at the John Marshall Law School. Commissioner O'Neill will be present at future meetings.

Mr. Olmstead reported that at least one additional appointment for an Alternate Public Commissioner is expected in the near future, necessitating the passage of an internal rule indicating in which order public-member alternates vote. Mr. Olmstead asked that the rule, already on the agenda, be taken up out of order after the claims on the agenda were resolved.

Mr. Olmstead introduced new staff member Ms. Roxana Malene, an attorney who formerly worked for the City of Chicago and whose law school internship experience includes work in the Extraordinary Chambers in the Courts of Cambodia, a U.N. tribunal that investigated and prosecuted crimes committed by the Khmer Rouge in Cambodia. Mr. Olmstead noted that the Commission is fortunate to have someone of Ms. Malene's caliber in this position.

Mr. Olmstead reported he and Ms. Malene had recruited an additional pro bono law firm to help with claim investigations.

Mr. Olmstead updated the Commission on the progress of TIRC's discussions with its lawyer, the Attorney General's (AG's) Office, in order to file a motion to protect certain sensitive information that is part of most administrative records that TIRC must file with the Circuit Court. Such information includes victims and witnesses' personal information and other sensitive material in TIRC's administrative record, such as addresses, dates of birth, social security numbers, and post-mortem photos. TIRC recently requested a meeting with the AG's Office supervisor to discuss the issue.

Mr. Olmstead also reported that the Commission had had some success recently obtaining long-awaited court files from the clerk's office by offering Ms. Malene's assistance with scanning in some limited instances.

Mr. Olmstead reported that since the Commission's last meeting a TIRC claimant, Mr. Shawn Whirl, had been released from prison in mid-October after the Special Prosecutor declined to re-prosecute in the wake of an Appellate Court decision suppressing Mr. Whirl's confession.

Lastly, he noted that, in response to a complaint it received, the Illinois Attorney General's Office had recently issued an opinion that the Commission did not violate the Open Meetings Act when a Commissioner had participated in a meeting by phone.

#### **IV. Budget Report**

Dr. Ewa reported that the director of budget in Springfield requested that the Commissions provide a provisional budget for FY17 with four scenarios: 1) a flat budget, 2) a maintenance budget, 3) a 10% reduction budget, and 4) a 20% reduction budget. All these scenarios have been provided and are under review. However, as of today, for FY16, the State of Illinois does not have a budget.

Dr. Ewa also reported that applications for the Executive Director had been received and were under review. Chairman Starks is to select how many candidates will be interviewed and Dr. Ewa hoped that the interviewing process would begin by the end of December.

#### **V. Claims**

##### **a. Claim of Jerry Mahaffey**

Interim Executive Director Olmstead recounted the facts of this claim and provided his recommendation that the claim be referred to court for judicial review in light of several factors, including photographic evidence of marks on Jerry Mahaffey and the apparent police abuse (documented by hospital records) of Jerry Mahaffey's brother, Terry Mahaffey, at the same time Jerry Mahaffey was in custody.

Among the evidence not suggesting torture, Mr. Olmstead noted, is Mahaffey's lack of documentation of immediate reports of any torture or injury at the Cook County jail intake area, and the statements of former Assistant State's Attorney (ASA) Irv Miller, who reported seeing no signs of abuse.

Mr. Olmstead noted that TIRC staff provided Commissioners numerous emails asking the Commission not to refer the case to court or being otherwise supportive of the victims' family.

Crime victims' family members then addressed the Commission.

Mr. John Heinrich, the brother of victim Joanne Pueschel, read a statement summarizing the evidence against Mahaffey's injury. He noted the lack of injury in the medical report drafted the day after Mahaffey's arrest. He also said he had consulted with pathologists who disagreed with the Commission's pathologist about the mug shot of Jerry Mahaffey being consistent with allegations of torture.

Jerry Heinrich noted that TIRC staff had erroneously said that Jerry Mahaffey's lineup photo was taken six days after the crime, rather than the correct four days later, and that

this error may have contributed to the Commission's pathologist believing the photo indicative of abuse, rather than of injuries received by Jerry Mahaffey from the victims of the crime.

Joseph Heinrich, pointed out to transcripts and testimony in which Ms. Loraine Mahaffey was not mentioned as being present at the apartment when Jerry was arrested. He also then played an audio file of a media interview with Ms. Mahaffey at the time of the arrest, in which she made no allegations of torture. He also noted that former Assistant State's Attorney Irving Miller, who took Jerry Mahaffey's testimony, was present and willing to answer questions.

Mary Heinrich also spoke on behalf of not referring Jerry Mahaffey's claim to court.

Chair Starks invited former ASA Irv Miller to respond to questions from the Commissioners. After taking an oath, Mr. Miller informed commissioners that he had at various points been alone with Jerry Mahaffey without detectives present and that Mahaffey gave no indication he'd been mistreated. He had not seen Terry Mahaffey that day; Terry was interviewed by another Assistant State's Attorney.

Commissioner Steve Miller inquired into Irv Miller's practice of having a court reporter insert minor mistakes into a defendant's statement in order to buttress the statement by having the defendant correct those errors, and whether the practice was appropriate. Mr. Miller responded that it was common practice in the State's Attorney's Office and not unethical.

Commissioner Baldwin asked Mr. Miller if he had noticed any discomfort, pain, or inability to sit or move by Jerry Mahaffey at the time he took Jerry's statement. Mr. Miller responded that he did not notice any discomfort on Jerry Mahaffey's part.

Mr. Miller acknowledged that he was not present at Jerry Mahaffey's apartment when he was arrested and when he alleges the physical abuse occurred.

Alternate Commissioner Futterman asked whether the expert pathology reports referred to by the victims' family had been submitted to the Commission for review. Mr. Olmstead responded they had not. Family members offered to submit them at a later date.

Commissioner Baldwin commented that she believed the evidence suggested that the police, in this instance, did not need to and did not physically force a confession out of the suspect.

Commissioner Miller believed the consistent allegations by the claimant and other evidence suggested the claim should be referred to court.

After some outbursts, Chair Starks warned the victims' family to cease being disruptive. One person was escorted out.

Commissioner Warden recused himself from the vote.

Commissioner Thorp put stated her disagreement with TIRC administrative rules requiring four negative votes to dismiss a claim. Chair Starks and Mr. Olmstead recounted why the rule had been created and they believed it was necessary.

Commissioner Thorp thought the evidence was overwhelming that torture had not occurred and said referral of the case to court would be a travesty.

Commissioner Loeb emphasized that the Commission is to look at whether there is “sufficient evidence of torture to merit judicial review,” or, in other words, whether a judge needs to take a look at this to determine if torture occurred. He felt the various evidence suggesting there was torture and other evidence suggesting there was no torture deserved to be put in front of a judge.

Commissioner Baldwin reiterated her opposition to referral.

Commissioner Roldan noted he did not believe torture had occurred.

Commissioners Mullenix, Miller, and Loeb voted to refer the claim for review. Commissioners Roldan, Thorp, Green, Baldwin and Starks voted against referral.

With the Commission voting not to refer, Mr. Olmstead noted he would redraft the determination to reflect the will of the Commissioners for final approval. The Chair and Commissioner Green noted that they found persuasive Mr. Irv Miller’s testimony.

**b. Claim of Rickey Robinson**

Interim Executive Director Olmstead recounted the facts of this claim and provided his recommendation that the claim be denied. Weighing against referral was Robinson’s long delay in ever claiming torture and his trial attorney’s statements that Robinson had never alleged any mistreatment to him. In Robinson’s favor, he passed a Chicago Police polygraph test in which he denied involvement in the murder, and the detective involved in the case had a long history of abuse claims and findings by courts against his reliability. Mr. Olmstead pointed out that polygraph examinations are not admissible as trial evidence due to their unreliability and that Mr. Robinson had later contradicted positions he took during that polygraph examination.

Mr. Olmstead also noted that a letter from the victim’s mother had been given to Commissioners.

The victim’s uncle, Mr. Kenneth Bivens, told commissioners he was present at Robinson’s trial and he never heard Robinson allege torture. He encouraged Commissioners not to give Mr. Robinson another chance at freedom

Ms. Ruth Greenwood, Mr. Robinson’s attorney, reiterated the favorable polygraph test

results and noted the threats were consistent with threats alleged in other torture cases.

Commissioners discussed the case, and asked whether Mr. Robinson's trial attorney had any notes or files from the case. Mr. Olmstead did not know, and Commissioner Miller moved to table the case until that could be ascertained. Commissioner Mullenix seconded the motion which was approved by a majority of commissioners.

**c. Claim of Ivan Smith**

Interim Executive Director Olmstead recounted the facts of this claim and recommended against referring the case to court for judicial review.

Ivan Smith was convicted of gang-related shootings that occurred in two separate locations on the South Side on August 7, 1991.

Supporting Smith's allegations of coercion is consistency over time in his allegations and certain trial testimony contradictions between the two detectives who took Smith's confession. Additionally, 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 was contradicted by the sheriff of Tipton County jail, who said typewriters were in abundance throughout the building in 1991. Also, 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 jail cafeteria with large windows on the corridor. 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 of a phone book with a baton would have been extremely loud. Ivan Smith acknowledged the guards were stationed just a few feet from the cafeteria.

Crime victim's family members, who had been notified of the proceedings, were not present. Counsel for Smith reiterated points from written submissions he had delivered to the Commission, including several discrepancies between co-defendants' testimonies. He also emphasized Detective O'Brien's long history of police-abuse complaints.

Commissioner Miller found convincing the consistency of Mr. Smith's abuse claims and the presence of a vase in a photograph of Mr. Smith taken at the Tennessee jail, suggested that the circumstances of the photograph were staged. He urged referral.

Chair Starks thought the case a close call.

Commissioner Warden noted that he believes the case was a close call as well. He noted that the flower vase in the photo looks suspicious in addition to other irregularities.

Commissioner Mullenix believed staff in Tennessee would have been unlikely to interfere with Chicago detectives' interrogation since an extradition was imminent.

The Chair then called for a vote. Commissioners Mullenix, Miller, Loeb, Roldan, Warden, and Chair Starks voted to refer the case to the Circuit Court for review. Commissioners Thorp and Baldwin vote against referral to Circuit Court.

Mr. Olmstead noted he would redraft the determination to reflect the will of the Commission and submit it for final approval.

## **VI. Public Comment**

Wallace "Gator" Bradley thanked the Commission for referring Mr. Smith's claim and commended the Commission for its thoroughness. Mark Clements thanked the Commission for "finally getting a good public defender" and said investigations must proceed faster.

## **VII. Resolution on Internal Management of the Commission when Multiple Public Member Alternates are Available to Substitute for an Original Public Commissioner**

Interim Director Olmstead explained the reasoning behind the need for this resolution. Given the recent appointment of alternate members, it is now likely that two or more alternate public members will be present at meetings and thus available to substitute for a primary public Commissioner. To prevent confusion on which alternates should vote, he proposed an internal rule that alternates vote in order of seniority. In the event of equal seniority, public-member alternates who vote in alphabetical order.

Commissioner Loeb suggested approval of the internal rule, but also urged that the rule be promulgated as an Administrative Rule through the Joint Committee on Administrative Rules as well. All Commissioners unanimously approved the internal rule under Resolution 15-008 and authorized Interim Executive Director Olmstead to promulgate it as an Administrative Rule as well.

## **VIII. Closed Session**

By unanimously approved motion, the Commission retired to closed session to discuss personnel matters. Approximately 3 minutes later, the Commission reconvened in open session.

## **XI. Final Action on Items Discussed in Closed Session**

No final action was taken on any matters discussed in closed session.

## **XII. Adjournment**

Commissioner Green moved to adjourn; Commissioner Miller seconded. The motion passed unanimously.