



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION SPECIAL MEETING
Wednesday, November 16, 2016, 3:00 p.m.**

James R. Thompson Center
100 W. Randolph Street, Meeting Room 9-040
Chicago, Illinois 60601

MINUTES

PRESENT:

Commissioners

Chairwoman Cheryl Starks
Commissioner Marilyn Baldwin
Commissioner Robert Loeb
Commissioner Steven Miller
Commissioner James Mullenix
Commissioner Paul Roldan
Commissioner Marcie Thorp
Alternate Commissioner Futterman
Alternate Commissioner Timothy O'Neill

Staff on dais

Rob Olmstead (Executive Director)
Michelle Jenkins (Staff Attorney)
Roxana Malene (Commission Assistant)

I. Call to Order/Members Present

On November 16, 2016, at approximately 3:04 p.m., Chairwoman Cheryl Starks called to order the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC or Commission). Present were Commissioners Baldwin, Loeb, Miller, Mullenix, Roldan, Thorp, and alternate Commissioner, O'Neill, constituting a quorum. Alternate Commissioner Craig Futterman joined the panel later during the meeting.

II. Approval of Minutes

Chairwoman Starks called for a motion to approve the draft minutes of the September 21, 2016, meeting. Commissioner Loeb so moved, and Commissioner Thorp seconded the motion. The minutes for the September meeting were unanimously approved.

III. Executive Director's Report

Executive Director Rob Olmstead informed the Commissioners that the staff has been extremely busy with the influx of correspondence subsequent to the expansion of the Commission's jurisdiction through Public Act 99-688. At least 101 new claim forms have been received. The staff is using the help of high school and law school interns to respond to requests for new claims and to record new claims. An additional intern has begun looking into grants and funds alternative to the state budget to assist the Commission with its future work on these incoming new cases. Director Olmstead also informed the Commissioners that he will meet to discuss with the Chair the need for staff and resources to address the incoming cases, with the resulting needs to be published in the Commission's annual report to the legislators.

The amendments to the Commission's Administrative Rules were published by the Illinois Secretary of State in the state's Register on October 14, 2016, meeting the first notice requirement. Passage of a period of 45 days for comment from that date will allow for a second publication before the rules can be approved. JCAR has suggested one small revision, which will be addressed with the Commission at a future meeting.

IV. Claims

1) BoClair, Reginald (2011.106-B)

Director Olmstead acknowledged the efforts of attorneys at Schiff Hardin LLP in assisting the Commission staff to investigate Mr. BoClair's claim and invited Sebastien Angel, a Schiff Hardin associate, to present the recommendation in the case.

Mr. Angel reminded the Commission that this claim had been heard at its July 20th meeting and that Commissioners had at that time instructed the staff, assisted by Schiff Hardin, to continue attempts to locate Mr. BoClair's record in the Public Defender's Office. Attempts having been again unsuccessful, and for the reasons presented at the July 20, 2016 meeting, Mr. Angel recommended that the claim not be referred to circuit court.

Commissioner Mullenix noted that in his many years of experience with the Public Defender's Office he never experienced inability to locate a murder conviction file. Director Olmstead also noted that there have been a couple of other instances when the Public Defender was unable to locate files for TIRC. Chairwoman Starks noted that in her experience as a judge in the civil division there have been instances when court files were lost forever and also when she discovered information from unrelated cases in the files she worked with.

Mr. Matt McQuaid, representing Mr. BoClair on behalf of Steven Greenberg's office, spoke next. He argued that abuse was common at the time BoClair was interrogated, and

reiterated BoClair's specific affidavit allegations and his contention that he told his Public Defenders of the beatings. He argued Boclair's early silence regarding torture was potentially legal strategy, and that BoClair's claim should be referred.

Commissioners then discussed whether further attempts to locate Mr. BoClair's file could be fruitful in discovering information relevant to whether Mr. BoClair informed his pre-trial attorney of his alleged beating in police custody. Commissioners ultimately decided to proceed with a vote.

Commissioners Baldwin, Loeb, Miller, Roldan, Starks, and Thorp voted to approve Mr. Angel's recommendation not to refer the claim to court. Commissioner Mullenix voted against the recommendation. By a vote of 6 to 1, the Commission declined to refer the case to circuit court.

2) Gardner, Stanley (2011.084-G)

Director Olmstead acknowledged the efforts of attorneys at K & L Gates in assisting the Commission's staff to investigate Mr. Gardner's case and invited Cliff Histed to present his recommendation in the case.

After Mr. Histed summarized the investigation, he recommended that the claim not be referred to circuit court. He noted that factors supporting Mr. Garner's claim are a history of numerous complaints against detective O'Brien, who conducted the investigation of Mr. Garner's criminal case along with other detectives; Gardner filed a Motion to Quash Arrest and Suppress Statements in which he claimed he was tortured and threatened by a unknown and unnamed officer; and Gardner's claim that he had two prior violent encounters with detective O'Brien before the incident discussed in this case.

Weighing against Mr. Gardner's claim is a videotaped statement he gave in police custody where he denied being tortured or abused, as well as a lack of evidence of abuse in the mug shots presumably taken a day after his interview; Gardner's later ability to name O'Brien, Halloran, and Kowalski as his abusers when he failed to identify any of them in his earlier Motion to Quash Arrest and Suppress Statements; his failure at his motion-to-quash testimony to address torture at all; and the testimony of the Assistant State's Attorney on call at the police that Gardner privately reported to her that he had not been abused before he gave his videotaped statement.

After covering several other reasons supporting his recommendation, Mr. Histed recommended that the claim not be referred to circuit court.

Director Olmstead invited any victims that were notified and were present in the meeting to speak if they wished to do so. No one came forward.

Commissioner Roldan asked for some additional factual information regarding the underlying criminal case and received it.

Alternate Commissioner Futterman commented that the ultimate issue before the Commission is whether there is sufficient credible evidence of torture. He was bothered

by O'Brien's extensive history of complaints lodged against him for abuse(including in a case which the Commission referred to court) and complaints of coerced witnesses who implicated innocent people. He also pointed out that BoClair did file a motion to suppress. Futterman added that he would vote to refer if he was entitled to vote today.

Director Olmstead noted that Gardner stated unequivocally in his interview that he knew who O'Brien was based on his prior encounters. TIRC staff tracked down those two previous interactions and documentation supported Gardner's claim that he knew O'Brien well based on those interaction. However, despite Gardner's familiarity with O'Brien he could not identify his abuser at trial, which cuts against his current contention that O'Brien is the abuser.

Chairwoman Starks concluded that TIRC staff and assisting counsel had thoroughly investigated the claim and called on the Commissioners to make any other comments.

Commissioner Mullenix voiced his concern regarding possible alternative explanations to why Gardner did not testify to abuse at the hearings on his motions and detective O'Brien's extensive history of complaints.

Commissioners Thorp, Baldwin, Roldan, and Chair Starks voted to adopt Mr. Histed's recommendation not to refer, and Commissioners Loeb, Miller, and Mullinix voted to refer, against the recommendation. By a vote of 4 to 3, the Commission declined to refer the case to circuit court.

3) Maxson, Mark (2011.019-M)

Director Olmstead summarized the crime for which Mr. Maxson was convicted, the evidence underlying the conviction, and the findings of the judge presiding over Mr. Maxson's hearing on his pre-trial motions. He noted that the Commission had, in 2014, requested DNA testing in accordance with case law that dictates that innocence is relevant to whether a confession was coerced. Ultimately Maxson's own attorneys' motion for the DNA testing filed in 2015 was granted and results were returned in 2016. Consequently, the state's attorney dropped all charges against Maxson and another suspect was charged with the crime after he allegedly confessed. Maxson was freed and awarded a certificate of innocence on October 27, 2016.

Maxson's criminal conviction having been reversed, the Commission lost its jurisdiction over his claim and can offer no meaningful relief to Mr. Maxson. Director Olmstead recommended dismissal, but with the finding that Commissioners conclude there would be sufficient evidence of torture to refer to court if jurisdiction were present. In support of his recommendation, he cited to the forensic evidence of innocence, Maxson's early allegations of coercion; the length of custodial detention before he confessed and the documented pattern and practice evidence against Detective William Marley. He noted that such a recommendation does not definitively conclude that torture occurred, and Director Olmstead highlighted factors suggesting the opposite: Maxson's weak credibility; his tendency to increase the level of severity of threats over time; Maxson's deliberate misrepresentation to the Commission that there were photographs of his bruises from police (when at trial he had agreed the bruises were caused by inmates); and expert

testimony as to Maxson's suggestibility and susceptibility to say anything to avoid conflict.

Director Olmstead suggested that the Commission refer its report in the Maxson case to incoming State's Attorney-elect Kim Foxx in order 1) to allow Ms. Foxx to examine the case and draw any lessons to be learned, including whether any procedural changes are warranted with respect to evidence discovered after defendants have been charged and 2) to encourage her to examine the practice of deliberately inserting errors in written confessions in order to have the confessor initial corrections to bolster voluntariness. Mr. Olmstead also encouraged Ms. Foxx to make public the interviews with prosecutors and police involved in Maxson's case at the proper time.

Olmstead noted that the mother of the victim in Mr. Maxson's criminal case, Ms. Owens, expressed her pain at the loss of her child and the regret that Maxson spent decades in prison for this crime, in a letter directed to Maxson and supplied to the Commission. Chairwoman Starks expressed appreciation for Ms. Owens' grief and invited her to speak to the Commission. Ms. Owens expressed unease as to why Maxson had interacted with her son at all on the day of his disappearance. She also expressed disappointment that Maxson was not himself present at the meeting.

Director Olmstead recommended the Commission dismiss Maxson's claim and issue a separate order of referral to Ms. Foxx. Commissioner Futterman asked if it was possible that the dismissal be referred to other agencies (Chicago Police Department and the Independent Police Review Authority), as well.

Commissioners voted unanimously to dismiss Mr. Maxson's case for lack of jurisdiction. On Commissioner Futterman's motion, seconded by Commissioner Thorp, Commissioners unanimously agreed to refer the dismissal report to CPD and IPRA, in addition to State's Attorney-elect Kim Foxx.

4) Rodriguez, Jesus (2013.176-R)

Director Olmstead recommended that Mr. Rodriguez' claim be dismissed for lack of cooperation. The Commission staff wrote to Mr. Rodriguez on three separate occasions between 2014 and 2016 to ask for clarification with respect to his allegation of torture. Rodriguez did not respond to any of the Commission's inquiries. Because Mr. Rodriguez failed to respond to repeated requests to provide basic details about his claim, Director Olmstead recommended the case be summarily dismissed. Commissioners voted unanimously to dismiss.

5) Wiggins, Marcus (2016.376-W)

Director Olmstead noted that Mr. Wiggins' claim relates to a juvenile criminal case that resulted in Mr. Wiggins' acquittal. Although Mr. Wiggins is currently incarcerated for a criminal conviction unrelated to this claim, the Commission's decision today relates to and affects exclusively Wiggins' allegations in his juvenile case. TIRC's statutory framework requires it to hear only cases that resulted in a criminal conviction. Because Mr. Wiggins was acquitted of this charge, Olmstead recommended dismissing the case

for lack of jurisdiction. Commissioners unanimously dismissed.

VI. Setting of 2017 meeting dates

Commissioners approved the dates for the Commission's 2017 meetings. Subject to any emergent change, the Commission will meet on the dates that follow:

- 1) January 18, 2017
- 2) March 29, 2017
- 3) May 17, 2017
- 4) July 19, 2017
- 5) September 20, 2017
- 6) November 15, 2017

Chairwoman Starks noted that this schedule does not include special meetings potentially needed to address issues throughout the year. She then invited the public to comment.

VII. Public Comment

An unidentified member of the public in attendance opined that she had expected the Commission to hear the case of Dante Servin or Dante Brown. Director Olmstead and Staff Attorney Jenkins clarified that case was not on the agenda for today.

VIII. Closed Session per section 2(c)(21) of the Open Meetings Act

On Commissioner Baldwin's motion, seconded by Commissioner Thorp, the Commission retired to closed session to review past closed-session minutes for the need for continuing confidentiality, reconvening in open session approximately 6 minutes later.

XI. Final Action on Items Discussed in Closed Session

Chairwoman Starks requested a motion to release only Section (e) of the May 18, 2016, meeting minutes, and that other closed-session minutes still confidential remain confidential. Commissioner Roldan so moved, seconded by Commissioner Baldwin. Commissioners unanimously moved to approve the release of only Section (e) of the May 18, 2016 closed minutes.

VII. Adjournment

Commissioner Thorp moved to adjourn and Commissioner Baldwin seconded. The motion passed unanimously.