

**STATE OF ILLINOIS TORTURE INQUIRY
AND RELIEF COMMISSION**

Meeting of the Torture Inquiry and Relief Commission
March 27, 2013
3:00 p.m.

James R. Thompson Center
Conference Room 9 - 031
100 West Randolph Street
Chicago, IL 60601

MINUTES

PRESENT:

Commissioners

Chairman Cheryl Starks
Doris Green (Alternate)
Hipolito Roldan
Marcie Thorp
Neil Toppel

Executive Director

David Thomas

Attendees
Human Rights Commission

LaNade Bridges
Dr. Ewa Ewa
Donyelle L. Gray
Ruth Dordoe (HRC Coles Fellow)

Members of the Public:

Donald Goldhamer
Kimberly Wallace
James H. Daniel Jr.
James H. Daniel
Gladys Daniel
Bertha Escamilla
Armanda Shackelford
Jeanette Plummer
Anabel Perez
Aidali Oquendo
Aida Valencia
Harriet Parker

I. Call to Order

On March 27, at 3:15 p.m., Chairman Cheryl Starks called to order a meeting of the Illinois Torture Inquire and Relief Commission (TIRC). Pursuant to the Illinois Open Meetings Act, 5 ILCS 120/1 et seq., it was determined that a quorum of the public body was present at the meeting.

II. Introduction of TIRC Commissioners in Attendance

Present are Commissioners Doris Green, Hipolito Roldan, Marcie Thorp, and Neil Toppel.

III. Approval of Minutes

October 2, 2012

The Commission voted to approve the minutes of the October 2, 2012, meeting as submitted by staff. Motion to approve the minutes made by Commissioner Roldan and seconded by Commissioner Toppel. Motion carried 5-0.

December 4, 2012

The Commission voted to approve the minutes of the December 4, 2012, meeting as submitted by staff. Motion to approve the minutes made by Commissioner Green and seconded by Commissioner Thorp. Motion carried 5-0.

IV. Old Business

A. Funding status for FY 13

Chairman Starks provided updates regarding the status of funding issues for TIRC. Chair Starks explained that funding did not come from the State of Illinois but from an alternative source. Chair Starks asked Executive Director David Thomas to provide additional information on the funding.

ED Thomas explained that in October 2012, the Illinois Criminal Justice Information Authority (ICJIA) agreed to provide TIRC a grant in the amount of \$160,000 for one year. TIRC was funded as the same level as before with two employees, ED Thomas who started work on March 25 and a Private Secretary, Rosa Martinez, who will began work on Monday April 1st.

Chair Starks confirmed the length of the grant is for one year; she stated that if all monies are not used the funds are not returned to the general treasury. The funds can continue to be used. Chair Starks believes this grant will take TIRC into FY 14.

Dr. Ewa stated that the funds provided by CJIA will take TIRC into February 2014.

ED Thomas stated that he has been in contact with the *pro bono* firms assisting TIRC; the firms will continue to work with the agency. ED Thomas stated that he spoke with the Department of Corrections today and they will continue to provide the video conferencing through their facility. This is a great help to TIRC because it eliminates traveling to the different prisons, which would be impossible for TIRC and the *pro bono* firms to do. Currently ED Thomas is working on retrieving the claimants' court files from the Clerk's office. TIRC is functionally up and running.

Chair Starks stated the matter of setting TIRC's calendar dates will be addressed later in the meeting. Chair Stark asked ED Thomas if he had any claim recommendations for the Commission. ED Thomas stated that he went through the files of twelve (12) cases today, and believes he can have recommendations within six (6) weeks to two (2) months. ED Thomas would like the Commission to set the next meeting for mid- May; he indicated he could have recommendations at that time. ED Thomas also stated he would like to discuss a suggestion to streamline the TIRC process for reviewing cases, without changing TIRC rules.

Chair Starks stated that ED Thomas will be discussing that suggestion at this time. Chair Starks explained the current process to the members of the public. Once the ED receives a claim, he investigates the claim, either himself or with the assistance of one of the *pro bono* law firms assisting the Commission. When the investigation is complete ED Thomas compiles a recommendation and presents the case to the entire Commission. Chair Starks also said that the present process is for the Commission to discuss the recommendations for the first time at the meeting. In order to streamline the lengthy process, ED Thomas is proposing that he contact each Commissioner prior to the meeting to get a sense of how the Commissioner feels about the recommendation. This would enable the ED to begin working on the next steps before the meeting to accelerate the process. There would be nothing final about the discussion between the ED and the Commissioner. No vote would take place and the Commissioner would not be bound by anything stated to the ED. The Commissioners would not discuss the recommendation with each other.

Chair Starks wondered whether the ED contacting the Commissioners before the meeting to discuss a proposed recommendation could be a violation of the Open Meetings Act. Conversation ensued around this topic.

General Counsel Gray stated her opinion that the ED's discussion of his case recommendations individually with each Commissioner would not violate the Open Meetings Act.

ED Thomas stated again that, as Commissioner Toppel pointed out, there is nothing binding in the discussion with the ED. ED Thomas went on to say the Commissioner can change his or her view, or ask for addition materials at the meeting. Additional conversation ensued regarding this topic.

Chair Starks stated that she does not believe the discussion with the ED would be in violation of the Act because decisions are not being made. The purpose of the discussion with the Commissioners is to streamline the process. When the meetings are

held, the public will know exactly what was done and how the decisions came about. The Commission will then vote and the public will have a chance to give their input regarding the decisions made. Chair Starks asked if a vote was needed. It was determined that a vote was not needed since there were no procedural changes. Chair Starks indicated that the public has been made aware of the process.

Chair Stark stated that Dr. Ewa was present to discuss the budget.

Dr. Ewa stated that the FY13 budget is in place. TIRC now has an ED and assistant to the ED. The budget is for \$160,000 which is good for twelve (12) months. Dr. Ewa stated he sent an email to Chair Starks and ED Thomas to start the process for the FY 14 budget.

Commissioner Green asked if the FY14 budget will come from the state or the current funder. Dr. Ewa stated that the state has no funding for TIRC for FY 14. Chair Starks stated that TIRC will try to get funding from the ICJIA. Chairman Starks stated that TIRC will ask ICJIA to increase the funding for FY 14. TIRC would like to hire a staff attorney. Dr. Ewa asked that the ED and the Chair review the forms and make their recommendations.

ED Thomas asked Dr. Ewa when the fiscal year started for TIRC in regards to the ICJIA funding. Dr. Ewa stated that the fiscal year started in March of 2013 and will end in February 2014. There were no additional questions for Dr. Ewa.

Commissioner Roldan mentioned to ED Thomas that in the October 2nd minutes there was mention of exploring other private sources for funding. Additional conversation ensued regarding funding. ED Thomas stated, in answer to Commissioner Roldan's question, that when TIRC received funding from the ICJIA it was no long necessary to seek other resources.

Commissioner Toppel asked how many pending claims TIRC currently has. ED Thomas stated there are about ninety-eight (98) cases. Commissioner Toppel asked when is the "sunset" provision for TIRC? Chair Starks stated the sunset date is August 2014. Commissioner Toppel went on to say that August 2014 is not far away, and asked whether it is realistic to think TIRC will resolve ninety-eight (98) cases between now and August 2014, or should TIRC spearhead an effort to extend the statute. ED Thomas explained that the sunset provision states one cannot file a claim after August 2014. The statute does not say anything about investigating claims that were previously filed. ED Thomas did not see why TIRC should not try to get an extension for filing claims. Chair Starks stated it will always depend on funding, and it would be good to have funding going into 2015 to continue to address all TIRC claims. Anyone with a claim must file by August 2014.

Commissioner Toppel asked if any of the TIRC claims filed in the Circuit Court have had hearings. ED Thomas stated he lost track of the claims during TIRC's hiatus but plans to reach out to the attorneys representing the claimants to learn the status of the cases. ED Thomas went on to say that there was a class action law suit filed on behalf of the potential Burge victims. This case is before Judge Biebel on April 11th for a ruling on a

motion to dismiss. ED Thomas stated he will have more information at the next meeting on the claims that are back in court.

Chair Starks explained to the public that there was a class action law suit filed on behalf of the individuals who claimed they were tortured and beaten into giving false confessions by Burge or his subordinates, and as a result were incarcerated and convicted. Chair Starks stated the Commission will keep the public abreast of any actions taken.

ED Thomas explained that one area which is not overlapping with the Commission is that the class action law suit is for Burge claims only. TIRC cases are not only Burge claims, although approximately 95% of the claims are directed towards Burge subordinates.

The meeting turned to comments by the public.

V. Public Comments

Mr. James Daniels asked, once the Commission receives the recommendations from the ED, if the Commission agrees with the recommendations what steps are taken? Chair Starks explained that, once the Commission agrees with a recommendation that the claim is credible, the case goes to Chief Judge Timothy Evans, who will assign the case to the criminal courts. From that point Judge Biebel will assign the case to a judge who was not part of the original case. Mr. Daniels asked if the Commission has to go through the State Attorney's office. Chair Starks stated no, and restated the above process of how cases are assigned and given a new hearing.

Ms. Armanda Shackelford stated that her son is Gerald Reed. Ms. Shackelford thanked the Commission for what has been done for her son. Ms. Shackelford stated her son goes back to court April 22nd, and she is hopeful the judge will make a decision. Her son is waiting for Judge Biebel to make a decision on April 11th. Chair Starks acknowledged Ms. Shackelford's sentiments and stated this is the Commission's charter, to allow these young men to be given an opportunity to speak. Chair Starks stated that hopefully justice will prevail. Commissioner Toppel asked who the attorney is on the case. Ms. Shackelford stated Andrea Lyons is the attorney for her son.

Ms. Jeanette Plummer stated her son's name is Johnny Plummer. Ms. Plummer stated that her son is involved in the class action law suit. Ms. Plummer asked if that case determines that torture did not take place, what will be the outcome. Chair Starks stated that the Commission has his petition and that his claim will be investigated and proceed irrespective of the class action law suit, which is separate from his claims of torture with TIRC. Ms. Plummer stated that Judge Evans gave instructions not to bring Johnny Plummer back to court and to deny him a new hearing. Chair Starks explained that Judge Timothy Evans is a Chief Judge and does not hear cases. ED Thomas stated that Evans is a common name and therefore Ms. Plummer is probably speaking about a different Judge Evans.

Ms. Gladys Daniels' son is in jail; he has been there for thirty-five (35) years serving a life sentence. The problem is he cannot get a lawyer to help him or even to listen to his case. Ms. Daniels stated her son falls under the Burge claims indirectly through an associate under Mr. Burge. Ms. Daniels feels this is the reason why no one will talk to her son. Commissioner Toppel asked if her son has filed a complaint with TIRC. Ms. Daniels indicated that her son has filed a complaint with TIRC. ED Thomas confirmed that Erwin Daniels has filed a complaint with TIRC. Chair Starks explained that the investigative process was halted due to TIRC not have funding to process the claims. Now that TIRC has funding the investigative process will move forward, and Mr. Daniels' complaint will be reviewed in turn and be given every consideration.

Mr. Donald Goldhamer asked how TIRC budget dollars are allocated in regards to the investigation and staffing needs. Chair Starks stated that TIRC has a small budget that pays the ED and his assistant. TIRC has volunteer law firms that assist with the investigative process and follow-up work. The other overhead expenses for TIRC are printing, phone bills, and copying service. Chair Starks went on to say that money is needed for a staff attorney or paralegal to assist the investigative process. Chair Starks stated that, if TIRC had more staff, the turnaround time would be shortened. Right now TIRC is operating on a limited budget.

Mr. James Daniels asked if the *pro bono* attorneys can only get information if TIRC first processes the information and delivers it to their firms. Mr. Daniels asked, when the funding is depleted, will the *pro bono* attorneys continue to help? Chair Starks stated that these firms continued to work on the cases when TIRC was out of commission.

Ms. Gladys Daniels presented a letter that her son received from TIRC. She asked if there was a list to indicate where Mr. Daniels' case is in terms of status and being investigated. ED Thomas stated there is a list of the claims and that TIRC investigates the claims as far as practicable in the order they are filed. There are exceptions to the rule, for example when TIRC is unable to obtain documents from the Clerk's Office. In that situation TIRC would move on to the next case. Ms. Daniels asked to get a copy of the list of claimants. ED Thomas stated that the list is internal to TIRC. Chair Starks stated Ms. Daniels can be given information where her son is on the list, and that TIRC will not provide a list with information concerning other claimants. ED Thomas assured Ms. Daniels that her son is on TIRC's case list.

Chair Starks stated that all claimants should always contact TIRC to see if their information has been received. ED Thomas stated that TIRC will always confirm information received. The procedure is to assign each case a case number; the claimant is sent a copy of TIRC's letter of procedural information, along with a case number. In the event a follow up letter is not received after a claim has been filed, the claimant should follow-up with TIRC. ED Thomas stated that claimants can tell where the case is on the list by the case number. The case numbers start with the year filed followed by the case's position on the list. For example, 2011.65 indicates that this case was filed in 2011 and is 65th on the list.

Mr. Donald Goldhamer asked if the Commissioners or the ED can suggest ways in which public organizations concerned with civil liberties can assist in making sure that TIRC's funding continues. Mr. Goldhamer went on to say that the function of TIRC is critical and there is a blemish on the State of Illinois because the cases have not been dealt with properly. There is a civil coalition concerned with the cases. ED Thomas stated that Mr. Goldhamer is fully aware of the process, which is political as well as difficult. Chair Starks encouraged everyone to contact their state representatives to encourage them to ensure funding. Let the representatives who vote and appropriate funds know about the importance of TIRC's work.

Mr. James Daniels asked, when TIRC is reviewing a case, what types of issues and merits are being looked at for it to receive a favorable recommendation. ED Thomas stated TIRC is looking at factors such as the existence of physical corroboration that torture took place, consistency in asserting the claim, and the background of the police officers accused to see if there are similar complaints of torture. Each case is different and it is impossible to single out any particular item because they are all taken into consideration. Commissioner Green stated that TIRC is also looking to make sure the person confessed to the crime because of torture. ED Thomas stated that the confession had to be used in the courts to obtain the conviction. ED Thomas went on to say these are requirements for TIRC to consider claims.

Ms. Bertha Escamilla stated that her son was tortured and there is evidence. Ms. Escamilla's son signed a confession that the police gave him that the police had written. ED Thomas stated this type of signed confession meets the requirement for TIRC.

Ms. Aida Valencia asked if TIRC will continue to accept new cases with the new funding. ED Thomas stated yes, and that the claim form is on the website. The form can be downloaded.

Ms. Schakelford stated a friend would like to file a claim but does not have a computer. ED Thomas instructed her to call TIRC to have the forms mailed or to stop by the office on the 5th floor of the Thompson Center to pick up the forms.

Chair Starks closed the floor to public questions.

VI. Miscellaneous Matters

Chair Starks stated a full calendar would not be discussed at this time. The next meeting will be scheduled for May 15th at 3:00 p.m.

ED Thomas stated the Commissioners could turn in their Ethics training forms at the meeting on May 15th.

VII. Adjournment

The meeting was adjourned at 4:02 p.m. Motion made by Commissioner Toppel with a second by Commissioner Roldan. Motion carried 5-0.

Respectfully submitted,

LaNade Bridges

Private Secretary