



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION REGULAR MEETING
Wednesday, January 18, 2017, 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 Marcie Thorp
Alternate Commissioner Futterman
Alternate Commissioner Timothy O'Neill
Alternate Commissioner Stephen Thurston

Staff on dais

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

I. Call to Order/Members Present

On January 18, 2017, at approximately 3:14 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, Thorp, and Alternate Commissioners, O'Neill and Futterman, constituting a quorum.

II. Approval of Minutes

Chairwoman Starks called for a motion to approve the draft minutes of the November 16, 2016, regular meeting and the November 30, 2016, special meeting. Commissioner Miller moved to approve the minutes, and Commissioner Mullenix seconded the motion. The minutes for the November meetings were unanimously approved.

III. Executive Director's Report

Executive Director Rob Olmstead noted that Commissioners Rob Warden and Paul Roldan, as well as Alternate Commissioner Doris Green, had left the commission with the expiration of their terms on December 31. Director Olmstead is gathering names of those interested in replacing the Commissioners to pass along to the governor's appointment office. Olmstead noted he and Staff Attorney Michelle Jenkins and Private Secretary Roxana Malene had submitted the annual report of the legislature, in consultation with the chair.

Director Olmstead reported that since the legislature's expansion of the Commission's jurisdiction in July, 2016, the Commission has received 156 new claims. In accordance with the statute's revision, the Commission revised its administrative rules to bring them into compliance with the revised statute. The first notice of proposed rules was published October 14, 2016, in the Illinois Register. In the following 45-day comment period, the Commission received one comment from the staff of the Joint Committee on Administrative Rules regarding a vaguely worded line in the proposed rules. The Commission met Nov. 30, 2016, in a special meeting to revise that line and address JCAR staff's concern. Staff Attorney Michelle Jenkins then informally submitted the proposed rules to JCAR staff for preliminary analysis, and then formal submitted them by mail today. Olmstead expressed optimism that the rules would be enacted before the next meeting of the Commission in March.

Director Olmstead also informed Commissioners that future sharing of proposed decisions and supporting materials before meetings would be done electronically to save on postage and time. Chair Starks inquired as to whether there was any concern about the new practice; no commissioners expressed any.

IV. Claims

1) Day, Arnold (2011.095-D)

Director Olmstead introduced and acknowledged the efforts of attorneys at Butler Rubin Saltarelli and Boyd in assisting the Commission staff. Attorneys Carter Stewart and Mark Schwartz presented the recommendation to refer Mr. Day's claim to court to the Commission.

Mr. Stewart recounted the facts of Mr. Day's claim for the Commission. Day was arrested on Feb. 4, 1992, and taken to Area 2. He gave written statements confessing to the separate, unrelated murders of Rafael Garcia and Jerrod Erving. He filed motions to suppress both confessions, alleging he was choked by Det. Foley, who he claimed also threatened to throw him out a window. The suppression motions were denied. At a jury trial, Mr. Day repeated the Foley coercion allegations and, despite the written confession,

was acquitted of the Garcia murder. A separate jury convicted him of the Erving murder.

Mr. Stewart detailed the consistencies and inconsistencies in Mr. Day's various accounts over the years of Mr. Day's incarceration, and answered Commissioners' questions about them. Mr. Stewart recommended the case be referred to court for judicial review for several reasons. A strong factor to be considered, he noted, was that the two confessions took place contemporaneously, and one jury heard the abuse allegations, credited them and acquitted Mr. Day. That calls into question the reliability of the other confession. Mr. Stewart also noted that the Erving confession, as originally made by Day and recorded, was physically inconsistent with the crime scene. Stewart also noted the extensive history of abuse complaints against Det. Foley.

Director Olmstead stated that notification had been sent to the crime victims in the case and asked if any were present and wished to speak. No one responded. He also noted Mr. Day's attorney, Mr. Steve Greenberg, had been notified and wished to address the Commission. Mr. Greenberg briefly spoke, urging the Commission to refer Mr. Day's claim to court.

Commissioners Baldwin, Thorp, Miller, Loeb, Mullenix, and Thurston and Chairman Starks voted to refer the claim to court. There were no dissensions. Director Olmstead and Chairman Starks thanked Messrs. Stewart and Schwartz for their work.

2) Deloney, Javan (2011.045-D)

Director Olmstead introduced Attorney Timothy O'Brien of Latham and Watkins, who presented the recommendation on the claim. Mr. O'Brien recounted the facts of the case, a multiple-homicide, drive-by shooting on August 7, 1991. Mr. Deloney was arrested the next day. Mr. Deloney alleged he was beaten with fists and elbows by detectives he could not identify at his trial beyond referring to his primary abuser as a "silver-haired" detective. He reviewed for Commissioners various consistencies and inconsistencies to Deloney's statements about the abuse over the years. Several factors led Mr. O'Brien to recommend the Commission refer the claim to court, including Mr. Deloney's selection of Det. William Foley from a blind photo array staged by the TIRC in 2015. Det. Foley was not present at trial, but Det. McWeeny testified Foley had, in fact, questioned Deloney at least once. Additionally, some of the officers involved, including Foley, have lengthy abuse complaints against them. Lastly, Deloney's co-defendant, Mr. Milsap, also alleged abuse, and had a jail guard testify at his suppression hearing that Milsap arrived on the jail tier after his arrest bruised and limping.

Commissioner Miller stated that he thought that the evidence in the case not only merited referral to court for judicial review, but he thought that the Commission should go further and find it more likely than not, by a preponderance of the evidence, that torture occurred.

Director Olmstead confirmed notification had been sent to crime victims and invited any present to speak. No one responded. Olmstead also noted that Mr. Deloney's attorney, Elliot Zinger, wished to address the Commission. Commissioners discussed various facts of the claim and Commissioner Loeb inquired as to whether Deloney's Aunt Eva Deloney, who made a complaint about Deloney's treatment to the Office of Professional

Standards, was an available witness. Mr. Deloney's mother, Curtistine Deloney, who was present, replied that Eva Deloney died in 2014. Curtistine Deloney answered question from the Commission and urged the Commission to refer Deloney's claim to court. Deloney's attorney then addressed the Commission and also argued that Mr. Deloney's claim should be referred to court for judicial review.

Commissioners Baldwin, Thorp, Miller, Loeb, Mullenix, Thurston, and Chair Starks voted to find sufficient evidence of torture meriting referral of the claim to court for judicial review.

Commissioner Miller then moved that the Commission supplement the recommendation with a finding that it was more likely than not that torture occurred. Director Olmstead disagreed, arguing that that sort of finding should be reserved for near-certain cases of torture, and that in this instance, the Commission was without the photograph (because the court clerk's office could not locate it) used at trial that Deloney's attorneys maintained demonstrated abuse, in addition to other reasons. The chair stated she agreed with the director. Mullenix stated his agreement with Commissioner Miller.

Commissioners Baldwin, Miller, Loeb, Mullenix and Thurston voted in favor to add language finding, by a preponderance of evidence, that torture occurred. Commissioners Thorp and Chair Starks voted against the addition. The motion passed. Director Olmstead then reviewed with Commissioners the exact language he would add to the determination in accordance with their vote for additional language.

The Commission thanked Mr. O'Brien for his work on the case.

3) Nash, Gregory (2013.168-N)

Director Olmstead introduced Ryan Hedges and Rebecca Dandy of the law firm Vedder Price, to present the recommendation on the Nash claim. Ms. Dandy reviewed the facts of Mr. Nash's claim. Nash was arrested on Oct. 12, 1983 in connection with the shooting of an off-duty police officer. Nash alleges he was interrogated by Detectives Glynn and Basile, threatened with abuse and slapped by Basile. Nash alleged further abuse by unidentified officers over two days, such as baggings and beatings with a wooden object. Ultimately, Mr. Nash confessed to the shooting, the rape of a woman, and several armed robberies. Ms. Dandy reviewed the consistencies and inconsistencies of the various statements Nash made about the alleged abuse.

Ms. Dandy recommended that the claim be referred to court for judicial review for several reasons, including the lengthy amount of time he was in custody before giving eight, type-written confessions in quick succession on October 14, 1983; the abuse complaint history of the officers involved; and the general consistency of Mr. Nash's claims over time.

Director Olmstead stated 30-day notifications had been sent to crime victims and asked if any were present and wished to address the Commission. There was no response.

Mr. Karl Leonard, Mr. Nash's attorney, addressed the Commission, arguing in favor of a

referral to court for further judicial review.

Ms. Dandy and Mr. Hedges answered further questions from Commissioners. Commissioner Thorp inquired as to whether the referral order would refer both the aggravated battery case involving the off-duty Chicago Police officer and the rape case. Director Olmstead confirmed that the recommended order would refer both criminal cases to the court for judicial review.

Commissioners Baldwin, Miller, Loeb, Thurston and Chair Starks voted to refer both criminal cases to the court for further review. Commissioner Thorp voted to refer only as to the aggravated battery involving the off-duty Chicago police officer; she voted not to refer the rape case.

The Commission thanked Ms. Dandy and Mr. Hedges for their work on the claim.

V. Resolutions to thank departing Commissioners Paul Roldan and Rob Warden and Alternate Commissioner Doris Green.

Commissioner Loeb moved, and Commissioner Thorp seconded, a motion to approve resolutions thanking Commissioners Roldan and Warden and Alternate Commissioner Doris Green for their years of service to the Commission.

VI. Public Comment

Wallace “Gator” Bradley, identifying himself as President of United Peace, Inc. and an urban translator, thanked the Commission for its decision on the Javan Deloney claim.

Lizandra Hauad identified herself as the wife of inmate Jaime Hauad. She asked how much longer his case would take and whether there were any updates on the revisions to the Commission’s Administrative Rules regarding the new legislation expanding the Commission’s jurisdiction.

Director Olmstead noted that he could not speak to a specific case, but noted that in his report to the Commission, he reported that the Commission had just sent its “second notice” to the Joint Committee on Administrative Rules, which would likely be scheduling a hearing on those rules. He expressed hope that JCAR would act before the next Commission meeting. The proposed rules, if approved, would reinstate previously dismissed cases that were dismissed solely on jurisdictional grounds that the legislature had subsequently broadened by statute. Director Olmstead could not provide any estimate on disposition times for any specific case, but noted that the administrative rules, as proposed, allowed the Commission to reinvestigate or add additional material as it saw fit.

Mary L. Johnson inquired about her son, Michael Johnson, and materials he had submitted to the Commission. Director Olmstead invited Ms. Johnson to call him the next day to follow up.

A woman identifying herself as Queen Sister of It Takes a Village Organization spoke on the

Deloney case and said her last name is the same as Mr. Deloney's. She thanked the Commission, and Commissioner Miller in particular, for their votes.

Mark Clements spoke on police accountability and thanked the Commission.

VII. Closed Session t

Chair Starks and Director Olmstead announced the necessity for a brief closed session to discuss pending and probable litigation matters. Commissioner Miller moved to go into closed session; Commissioner Thurston seconded. The motion was unanimously approved.

The Commission retired to closed session and reconvened in public session a short time later. Upon return, Chair Starks noted that no final action would be taken on any of the matters discussed in closed session.

XI. Adjournment

The Commission voted unanimously to adjourn.