



**STATE OF ILLINOIS  
TORTURE INQUIRY AND RELIEF COMMISSION SPECIAL MEETING  
July 18, 2018, 3:00 p.m.**

James R. Thompson Center  
100 W. Randolph Street, Meeting Room 2-025  
Chicago, Illinois 60601

MINUTES

**PRESENT:**

Commissioners Present

Chairwoman Cheryl Starks  
Commissioner Marilyn Baldwin  
Commissioner Robert Loeb  
Commissioner Steven Miller  
Commissioner James Mullenix  
Commissioner Marcie Thorp  
Alternate Commissioner Futterman  
Alternate Commissioner Stephen Thurston

Staff on dais

Rob Olmstead (Executive Director)  
Michelle Jenkins (Staff Attorney)

Staff in Audience:

DeAndrea Brown (Administrative Assistant)

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

On July 18, 2018, at 3:00 p.m., Chairwoman Starks called the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC or Commission) to order. A quorum was established consisting of Commissioners Starks, Loeb, Thorp, Miller, Mullenix, and Alternate Commissioners Futterman, and Thurston.

## **II. Approval of Minutes**

Chairwoman Starks called for a motion to approve the draft minutes of the May 16, 2018, regular meeting. A motion was made by Alternate Commissioner Thorp and seconded by Commissioner Loeb to approve the minutes as written. The minutes were unanimously approved on voice vote.

## **III. Chief Financial Officer's Report**

Due to the CFO's absence, no financial report was given.

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

Executive Director, Rob Olmstead reported that the legislature and the governor approved the request for a budget increase to \$400,000 for the fiscal year that began July 1, 2018. Olmstead hopes to hire one additional attorney to assist with TIRC case load and to dedicate significant time towards grant writing for the purpose of securing additional funds to hire more staff.

The additional attorney job description has been finalized and staff is waiting for approval by Central Management Services (CMS) before posting a solicitation for applications. Olmstead let Commissioners know that approval by CMS was contingent upon approval by the Civil Service Commission of exempt positions at their meeting the following day. He had been in contact with Civil Service Commission and was hopeful regarding approval.

Olmstead reported that a part-time position for a paralegal will also be able to be funded with the budget increase. A TIRC paralegal will be in charge of retrieving files and photographing impounded evidence at the Circuit Court Clerk's Office. Olmstead noted that HRC had begun working with CMS to draft a contract for this position, and once approved, he would move expeditiously to fill the position.

Olmstead thanked law school students Arielle Yoon, David Raban and Zack Henderson from University of Chicago who are volunteering assistance to TIRC for the summer. He also informed the Commissioners of a new partnership with the Chicago Urban League Summer Youth Employment Program. From this partnership, two students (Aric Adams and Zion Holmes) are helping with copying and scanning task to assist with the electronic archival of paper materials. Olmstead thanked the students for their help and particularly, Administrative Assistant DeAndrea Brown, who set up the program and provided supervision to the students.

Chair Starks asked if there were any questions for Director Olmstead. There were none.

## IV. Claims

### 1) Muhammad, Abdul (2014.256-M)

Olmstead noted that 30-day victim notifications to three relatives of the crime victims in this claims had been sent out. He stated that if any of the victims were present, they were welcomed to present their views after Ms. Jenkins' presentation.

[Commissioner Marilyn Baldwin joined the meeting at this point.]

Staff Attorney Michelle Jenkins recommended that the Commission refer the claim of Abdul Muhammad for further judicial review. Jenkins presented an outline and history of the underlying crime and claim. Ms. Jenkins noted:

- Muhammad allege to TIRC that during the course of his interrogation, his access to food, water, and the restroom were held out as rewards for his cooperation with investigative officers, Detectives David Fidyk and Michael McDermott. Muhammad alleges that Detective McDermott pulled out a casefile from a cabinet, emptied its contents and insisted that Muhammad had essentially already been implicated in the crime and should confess. According to Muhammad's interview with TIRC staff, McDermott threatened him, saying the jury would not believe a black man over a "white couple with no reason to lie" and hit Muhammad over the head with the case file five to six times.
- Jenkins noted that allegations of McDermott's comment were documented repeatedly in post-conviction filings by Muhammad as early as 2006.
- Muhammad's attorney Guy Hoch made no motion to suppress statements before trial, nor did Hoch remember any allegations of abuse when interviewed by TIRC, nor did he find any such allegations in his notes of the case. Hoch also mentioned to TIRC staff that he did not recall any issues with lineups with Muhammad's case.
- Muhammad's motion for new trial, his appeal and post-conviction motions made no allegations of abuse or torture, but post-conviction motions alleged Miranda violations.
- At trial, Detective Fidyk was not asked about, nor did he testify to any lineups taking place besides the positive identifications by two witnesses. Before trial, Muhammad's counsel asked for details of any lineups which did not result in identifications of him. Prosecutors responded that all lineup information had been supplied in police reports. Muhammad claims that he was placed in at least four lineups in connection with his interrogation.
- Muhammad's post-conviction petitions repeated allegations that other witnesses viewed him in a lineup and were not able to identify him.
- Despite Hoch not remembering any issues Muhammad had raised with lineups, TIRC located and interviewed at least one witness who had viewed Muhammad in a lineup but failed to identify him as the criminal. The witness's failure to identify Muhammad was apparently not reported to Muhammad's defense team.
- Detective McDermott has been repeatedly accused of torture and has been labeled an admitted perjurer by a state court.

Chairwoman Starks asked if there were questions for Attorney Jenkins. Commissioner Miller understood that the staff's recommendation to refer was based, in large part, upon Muhammad's attorney's failure to raise lineup questions that had been proven to exist, leading to an inference that abuse allegations may have been similarly ignored. However, he was concerned about Muhammad's failure to mention physical abuse in either his pro se filings or the filings of his lawyer, Mr. Hoch. Jenkins recognized the credibility issues Commissioner Miller raised but noted that Hoch felt that, because there was no traditional confession (only tangentially incriminating statements), coercion was a moot issue. Jenkins felt this may have led to abuse issues being unlitigated.

Ms. Jenkins and Mr. Olmstead addressed further questions and comments by Commissioners Mullenix, Baldwin and Thorp.

Chairwoman Starks asked if there were any victim's family members or claimant family members present. No victim's family members were present. Patricia Blue, the aunt of Muhammad, stated that Muhammad told his family that police held him down and beat him. Jermaine Bates, who was brought in the Area 2 police station by Detective McDermott during the time of Muhammad's arrest, stated that he saw Muhammad himself in the interrogation room, handcuffed to wall. Shortly after Bates left from police station, he said Muhammad called the family to let them know he had been abused.

Chairwoman Starks asked if there were counsel present who represented Muhammad. Candice Gorman, the attorney for Mr. Muhammad, mentioned two habeas petitions filed in 2010 where Muhammad alleged being held for three days without food. Gorman highlighted to Commissioners a picture in exhibits she contended displayed Muhammad's lip being swollen. Commissioners took a moment to examine exhibits and a current IDOC picture of Muhammad to compare the differences.

Chairwoman Starks called for a vote. Commissioners unanimously voted to refer the claim for further judicial review.

## **2) Dungey, Aubrey (2011.060-D)**

Staff Attorney Michelle Jenkins presented a recommendation to the Commission to dismiss the claim of Aubrey Dungey due to insufficient evidence of torture to merit judicial review. Jenkins noted that Dungey was Muhammad's co-defendant in the May 4, 1999 murder of Mims. Dungey was accused of driving Muhammad to shoot Mims, and of helping him escape.

Dungey submitted a claim to the Commission in August of 2011, contending that he'd been arrested at gunpoint, beaten and dragged to a squad car by arresting officers. He also claimed that while at Area 2 police station, he was threatened, deprived of sleep, food, water, and continually handcuffed as a part of the investigation.

Jenkins informed the Commissioners that during the interview with TIRC Staff in September 2016, Dungey significantly expanded his torture claims. He repeated claims of

physical abuse by arresting officers, and added details that Arresting Officer Grubbs pistol whipped him in the stomach, alleged for the first time that he fell unconscious from having his head slammed against the car, alleged arresting officers tore his car apart during a search, and gave many other details that were not mentioned in any post-conviction petitions. Dungey, Jenkins noted, did claim before trial in a letter to the Attorney Registration and Disciplinary Commission that he had been beaten by arresting officers and threatened by interrogating detectives. He additionally complained that arresting officers beat him in a complaint to the Office of Professional Standards, but made no allegations against detectives in that complaint.

Jenkins noted TIRC staff interviewed Dungey's trial attorneys, David Eppenstien and Ruth McBeth. Eppenstien opined that Dungey was not the type of person who needed to be prompted or coerced to share information. Both Eppenstein and McBeth noted that Dungey had been challenging to work with, but there had been no indications that Dungey had been beaten by police. Their notes indicated that at their first interview of him after arrest, it was clear there was no basis for a motion to suppress, and that Dungey told them he had gone willingly with officers and talked voluntarily.

Ms. Jenkins recommended that the Commission dismiss Aubrey Dungey's claim due to the lack of consistency in the claims of torture and because the privileged notes of Attorney Eppenstien demonstrated that Dungey's earliest account of his arrest and interrogation was that he voluntarily went with police and tried to talk his way out of a murder indictment.

Chairwoman Starks opened the floor for discussion. Ms. Jenkins addressed questions and comments from Commissioner Futterman.

Chairwoman Starks asked if there were any victim family members present. There were none. Chair Starks opened the floor to family members of claimant. Adrian Dungey, the brother of Aubrey Dungey explained to Commissioners how Aubrey Dungey was not fully aware of the procedures of arrest and the consequences he would face due to him giving statements. Chair Starks explained that she understood his concern and explained to him the rules and limitations of TIRC regarding investigations of claims. Adrian expressed to Commissioners that he believes Aubrey possibly goes from one extreme to the other with his allegations due to mental disorders. Olmstead confirmed that there were notations of psychiatric treatment given by Cermak Hospital records and also mentioned during post-conviction petitions.

Chair Starks opened the floor to the Counsel of Aubrey Dungey, Alexandra Roffman and Victor Henderson. Counsel asked Commissioners to strongly consider pre-trial statements in which Dungey expressed various abuse allegations. Commissioner Mullenix stated that he finds persuasiv Dungey's allegations of abuse made prior to trial and his his submission of a TIRC claim. Commissioners continued discussion.

Chairwoman Starks called for a vote. Commissioners Baldwin, Starks, Thurston, and Mullenix voted to refer the claim to court. Commissioners Thorp, Loeb, and Miller voted to dismiss. Olmstead explained that according to the TIRC statute and rules, at least five affirmative votes are required to refer, and at least four to dismiss. The claim was tabled for another presentation and vote before Commissioners once a vacancy in the Commission is filled by Governor's office.

### **3) Davis, Cedryk (2018.568-D)**

Commission Staff Attorney Michelle Jenkins provided history of Mr. Davis' case. Mr. Davis does not allege abuse against him, but rather against Charles Molett, a witness in Mr. Davis' trial. Mr. Davis does not allege that any tortured confession by Davis was used to obtain his conviction, which is required by the TIRC Act. Jenkins recommended that the claim be dismissed for lack of jurisdiction.

A voice vote was taken to summarily dismiss the Cedryk Davis claim for lack of jurisdiction; Commissioners unanimously voted to summarily dismiss the claim.

## **V. Executive Session**

The chair called for a motion to close the meeting to review past closed-session minutes. Commissioner Loeb so moved and Commissioner Mullenix seconded the motion. Pursuant to the Open Meetings Act (5ILCS 120/2(c)(21)) and 2.06(d), the Commissioners closed the meeting, and reconvened in open session approximately five minutes later.

## **VII. Final Action On Closed-Session Matters**

Chair Starks called for a motion to release in their entirety the November 16, 2016, closed-session minutes; to release that portion of the July 19, 2017, closed-session minutes that dealt with past closed-session minutes; but to keep confidential remaining closed-session minutes not previously approved for release. Commissioner Thorp so moved and Commissioner Baldwin seconded the motion. The motion was unanimously approved on voice vote.

## **VII. Public Comment**

Chair Starks inquired whether there were any members of the public who wished to address the Commission. Mark Clements of the Chicago Justice Center expressed gratitude for the Torture Commission recommendation of Muhammad and encouraged the Commissioners to take a closer look into the Dungey case.

Commissioner Starks asked if there any more comments. There were none.

## **VII. Adjournment**

Commissioner Thurston moved to adjourn; Commissioner Mullenix seconded. The commission voted unanimously to adjourn.