



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION REGULAR MEETING
October 16, 2019, 2:00 p.m.**

Bilandic Building
160 N. LaSalle St., Meeting Room N-502
Chicago, Illinois 60601

MINUTES

PRESENT:

Commissioners Present

Alternate Chairwoman Kathleen Pantle
Commissioner Robert Loeb
Commissioner Marilyn Baldwin
Commissioner Tim Touhy
Commissioner James Mullenix
Commissioner Barry Miller
Commissioner Steven Miller
Commissioner Stephen Thurston
Alternate Commissioner Autry Phillips

Commissioners Absent

Alternate Commissioner Craig Futterman

Staff on dais

Rob Olmstead (Executive Director)
Michelle Jenkins (Staff Attorney)
Samuel Cardick (Staff/Grant Attorney)
Dr. Ewa Ewa (Chief Financial Officer Human Rights Commission)

Staff in Audience

None

I. Call to Order/Members Present

On October 16, 2019, at approximately 2:00 p.m., the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC or Commission) was called to order. A quorum was established consisting of the following: Commissioners and Alternate Commissioners: Pantle, Loeb, Baldwin, Touhy, Mullenix, Barry Miller, Steven Miller, and Stephen Thurston. Alternate Autry Phillips was also in

attendance.

II. Approval of Minutes

Chair Pantle asked if any Commissioners wanted any changes to the draft minutes of the August 21, 2019 meeting. None did. Commissioner Loeb moved to adopt the draft and was seconded by Commissioner Touhy. The minutes were unanimously approved by voice vote.

III. Executive Director's Report

Executive Director Olmstead introduced new Commissioners Barry Miller and Autry Phillips. Mr. Phillips was appointed Alternate Public Member Commissioner. He is the executive director of the Target Area Development Corporation, a social justice organization which performs violence interventions, facilitates offender community re-entry and advocates for criminal justice reforms. Commissioner Barry Miller, the former TIRC executive director, fills the Former Prosecuting Attorney Commissioner position. He is a former Assistant U.S. Attorney with private sector and Federal Administrative Law Judge experience. Director Olmstead reported that the Commission's liaison to the governor's office, Bria Scudder, indicated that further appointments could be expected soon.

Director Olmstead announced that Staff/Grant Attorney Sam Cardick was leaving the Commission. Despite his short time with the Commission, he accomplished a great deal, particularly in the area of grant opportunity investigations. Olmstead reported that he and the Alternate Chair Pantle had conferred on replacing both Mr. Cardick and the Administrative Assistant, but were awaiting approval by the governor's office to extend offers regarding both positions.

Director Olmstead reported that the Commission has 542 claims pending. Of those, 118 are likely Burge-related. To better address those outstanding claims, Olmstead said, he and Alternate Chair Pantle met with the governor's office October 11, 2019 to discuss future funding.

Olmstead noted that Mr. Cardick's research indicated that many grant agencies will not fund quasi-judiciary government agencies that provide no direct legal services. While there are still avenues for grants to pursue, it is becoming increasingly clear that grants alone will not allow the Commission to investigate and rule on claims in a timely manner. Accordingly, Olmstead and Pantle advised the governor's office that the Commission will be making a significantly increased budget request to reduce the claim backlog. A dollar amount has not yet been finalized. Olmstead said.

The Commission wants to impart to the governor's office and the legislature how involved claim dispositions are. Although the Commission is called a quasi-judicial agency, it is very different from the judiciary in that it does not have adversarial parties to gather the evidence and present it to it. Instead, the Commission itself must gather records, interview witnesses, investigate both sides of a claim and organize the evidence in an efficient manner for Commissioners. Olmstead noted that the legislature has consistently underestimated the amount of claims with which the Commission would be faced. In 2009, legislators estimated the statute would apply to just 27 claims. More than eight times that many were actually received. Worse, in 2016, no consultation was made with TIRC to anticipate how statutory changes might increase claims or affect the commission. Two things must happen in order to address claims in a timely manner, Olmstead said. The Commission must become more efficient internally and it must receive more resources. He and the chair are devising plans to do both.

IV. Chief Financial Officer's Report

Dr. Ewa reported Director Olmstead and Human Rights Commission Staff met to devise plans for requesting additional resources for TIRC, and will likely follow the method the HRC used to address its backlog: employing contract attorneys to immediately reduce the backlog. Dr. Ewa said he had received positive feedback so far from the Governor's Office, but no numbers have yet been finalized.

V. Claims

1) Burton, Alnoraindus (2011.103-B)

Alternate Chair Pantle recused herself from Mr. Burton's claim because she had served as an assistant public defender for a co-defendant of Burton's. She asked Commissioner Loeb to act as Chair for the Burton case. After some discussion, Commissioner Mullenix also recused himself from the case because he had served as a witness to a document Burton's attorney, Public Defender Mary Danahy, had filed in the case. Commissioner Barry Miller noted that in his prior role, he had served as executive director when Mr. Burton's claim (and others not yet adjudicated) was being investigated. He did not see that as inconsistent with his role of Commissioner, but invited any discussion by Commissioners. Director Olmstead noted that the statute itself charges Commissioners with investigatory responsibility, so it appeared to anticipate and approve of any investigatory participation by Commissioners.

Commissioner Loeb, acting as chair for the claim, called for the presentation of the recommendation. Director Olmstead noted that the law firm of McDermott Will & Emery assisted in the investigation of the claim. This presentation was somewhat unique in that the MW&E team and Director Olmstead differed on the recommendation. Accordingly, Olmstead said, MW&E attorneys would present the facts of the case and their recommendation, followed by a recommendation by Director Olmstead. Olmstead noted Commissioners had drafts of both recommendations before them. Olmstead pointed out for Commissioners changes in the drafts that had occurred since they had been delivered to Commissioners. He also noted that required notices had been sent to last known addresses of crime victim family members.

Attorneys Dan Campbell and Jared Cloud addressed the Commission. Campbell noted MW&E had assisted the Commission before with other claims. He also noted that MW&E attorney Brigid McCarthy had also assisted in the investigation, but was not present today. MW&E recommended the Commission refer the Burton claim to court for further review, and discussed the facts of the case.

Evidence at trial showed that the victim, Anthony Watkins, was beaten and shot to death by Burton and two co-defendants. Campbell empathized with the victims and noted the disturbing nature of the crime, but pointed out that the inquiry at hand was whether Mr. Burton was tortured.

Campbell reviewed the investigation performed in the case. He also noted that one of the requirements of the statute is that the claimant's confession was used to obtain his conviction. Campbell noted that Burton's confession was not introduced into evidence at trial. However, co-defendant Shaw has signed an affidavit stating that Mr. Burton's confession was used to "flip" Mr. Shaw into giving a statement about the crime and, ultimately, into obtaining Shaw's testimony against Mr. Burton at Burton's trial in September of 1991. Shaw's testimony, therefore, was "fruit of the poisonous tree" stemming from Burton's confession. Additionally, Burton may have been prevented from taking the stand at trial for fear of impeachment by his statement, and thus the confession may have been used to convict in that

way as well.

Campbell believes two key facts merited referral. First, Burton had been consistent in alleging that he was slapped and punched in the face, hit on the hands with a stick, and finally, kicked in the groin. Second, the allegations of being struck on the hand are corroborated by the Public Defender's bruise sheet indicating Burton's knuckles were swollen at the time he first appeared in court on these charges. Campbell also believes that medical records cannot be ruled out as evidence of the alleged abuse. Shaw's affidavit also serves as corroborating evidence. Additionally, Detective Michael Kill has a long history of allegations of abuse of prisoners during interrogations. Campbell agreed that the police interrogation timeline put forth by Mr. Burton (7 days in custody without food and water) is provably false. All the evidence amounts to a close call, but Campbell believed the supporting evidence met the Commission's standard for referral.

Director Olmstead thanked MW&E for their investigation and recommendation. He noted that he agreed with the MW&E assessment that the jurisdictional bar for review was met in that there was sufficient evidence that Burton's confession was used to convict in that it was used to elicit a confession from Shaw and, ultimately, to get Shaw to testify and convict Burton.

However, Olmstead recommended denial of the claim under the following analysis. He believed there were three main factors recommending the claim: Mr. Burton's claim of torture, the Public Defender's bruise sheet and Detective Kill's Pattern & Practice history. Mr. Olmstead noted that the Commission has typically required something more beyond just Pattern & Practice to refer a claim to court. Olmstead believed that Mr. Burton's shifting-and-ever-growing claims rendered *all* his allegations incredible, and that evidence in the record explained any swelling of Burton's knuckles as *aggressive* injuries, not abuse injuries. Olmstead felt *only* the pattern and practice evidence recommended the claim, which was not enough.

Olmstead reviewed Burton's inconsistencies, including an expansion of his original claims to include: a late identification of Kelly as the officer who kicked him, wavering as to whether Burton mentioned the abuse to an assistant state's attorney, wavering as to whether one or *both* hands were struck with a stick, choking by Kill, being stripped of clothing and exposed to cold temperatures, beatings with a phone book, being choking into unconsciousness, presentation by officers of a pre-prepared confession, three drafts of a confession by the assistant state's attorney, self-urination, self-defecation, participation in the interrogation by Jon Burge himself, and suspension of his body in mid-air from a handcuff ring. Additionally, Olmstead pointed out that the record documented multiple instances of beatings or fights at which Burton was present that explained any swelling of knuckles.

JoAnn Dean, the mother of the victim, Mr. Watkins, addressed the Commissioners and urged them not to refer the claim to court. Patricia Burton, the aunt of Mr. Burton, addressed the Commissioners and urged them to refer the claim to court. Devlin Schoop, the attorney for Burton, addressed the Commissioners and urged them to refer the claim to court.

Commissioners made various inquiries, which Campbell and Olmstead attempted to address, reviewing medical and other evidence.

Mr. Loeb then called for a vote. Commissioners Touhy, Thurston, Barry Miller, Steven Miller, Baldwin and Loeb voted unanimously to refer the claim. Commissioners Pantle and Mullenix abstained from voting due to their recusal, and Alternate Commissioner Phillips was ineligible to vote because all public member Commissioners were present and had voted.

2) Watkins, Kilroy (2011.058-B)

Executive Director Rob Olmstead presented the recommendation regarding Kilroy Watkins. He noted that notices had been sent to the last known addresses of family members of the victim. He also noted that while Commission regulations give priority to claimants still incarcerated, they also give priority to cases supporting the operational efficiency of the Commission. In this case, most of the investigation had been completed by the time the claimant was released on parole, and so it was more efficient to conclude the case than hold it in abeyance until all other incarcerated claimants' cases were adjudicated.

Olmstead reviewed the facts of the case. Watkins was arrested on January 15, 1992 for the August 27, 1991 murder of Leroy Porter, and for two unrelated armed robberies. Mr. Watkins' statement to police identified a co-defendant as the shooter, but Judge Themis Karnezis found Watkins guilty on an accountability theory. Watkins was interrogated at Area 3 by Detectives Halloran and Boudreau. However, prior to that, Watkins was interrogated at Area 1 by other detectives about the unrelated robberies. Police reports indicate Watkins invoked his right to silence not once, but twice, at Area 1. He was then transferred to Area 3. Watkins gave a written statement to Assistant State's Attorney Ron Weidhuner and signed it. Watkins testified at his suppression hearing. Watkins testified Halloran assured him he would be a witness, not a defendant; that detectives denied requests for an attorney, and that Boudreau slapped him and grabbed his neck, causing Watkins to give a statement.

Olmstead recounted that staff had interviewed ASA Weidhuner and found him credible in denying knowledge of any abuse. Olmstead also reviewed inconsistencies over time in Watkins' statements about abuse, but noted that Watkins had generally been consistent in his initial allegations.

Olmstead said that, on balance, while there were concerning inconsistencies in Mr. Watkins' story, the pattern and practice history of Boudreau and Halloran combined with police's own records showing that Watkins had invoked his right to silence in a lesser charge just prior to being interrogated about the murder suggested that Watkins invoked his rights with Halloran and Boudreau, and that was not honored. This made the allegation of torture more likely, and worthy of judicial review, Olmstead said.

No crime victims came forward to make statements. Watkins addressed the Commission, urging Commissioners to refer his claim to court.

Commissioner Mullenix recused himself from the claim because he had had some involvement in the case as a public defender. Alternate Chair Pantle concurred with Olmstead's recommendation, and particularly in regards to Mr. Weidhuner's credibility. She found the documented invocation of silence by Watkins in the robbery case very persuasive. She also thought the evidence of Watkins' guilt in the murder case was very weak, which gave detectives a motive to induce a statement.

Commissioners Touhy, Thurston, Barry Miller, Loeb, Steven Miller, Baldwin and Pantle voted unanimously to refer the claim to court. Mullenix was recused from voting, and Alternate Commissioner Phillips was ineligible to vote because all primary public member commissioners were present and had voted.

3) Jones, Robert (2019.640-J)

Alternate Chair Pantle explained to audience members that the following cases were recommended summary dismissals. The votes on the claims, she explained, did not necessarily reflect on the merits

of the claims, but rather reflected that the claims were outside of the jurisdiction given to the Commission by the legislature.

Staff/Grant Attorney Sam Cardick noted that Mr. Jones' claim alleged torture committed by Jo Daviess County authorities. Because the TIRC Act only allows review of claims occurring in counties of a population of 3,000,000 or more, Mr. Jones' claim was beyond the Commission's jurisdiction. Mr. Cardick urged the Commission to summarily dismiss the claim as beyond its jurisdiction. Commissioner Mullenix voiced his personal opinion that the Commission does not, but should have, jurisdiction over out-of-Cook-County Claims. Commissioners then voted 8-0 to summarily dismiss the claim.

4) Sweet, Derek (2019.650-S)

Director Olmstead noted that Mr. Sweet was convicted of murder in McDonough County, which put his claim beyond the jurisdiction of the Commission. Olmstead recommended the claim be summarily dismissed as outside the Commission's jurisdiction. Commissioners then voted 8-0 to summarily dismiss the claim.

5) Valle, Ernesto (2019.651-V)

Director Olmstead pointed Commissioners to a slight change on page 2 of the draft to review before voting. Staff Attorney Michelle Jenkins then recommended that Mr. Valle's claim be summarily dismissed because Mr. Valle's conviction occurred in Kane County, which was outside the Commission's jurisdiction. Commissioners then voted 8-0 to summarily dismiss the claim.

6) Montgomery, Derek (2019.656-M)

Director Olmstead recommended that Mr. Montgomery's claim be summarily dismissed because he acknowledged that he had not been tortured in order to elicit a confession. Rather, Montgomery alleged that officers lied in testifying that Montgomery gave an incriminating statement. Mr. Olmstead pointed out that the statute required that a claimant have been tortured in order to give the Commission jurisdiction over the claim. Olmstead noted the Commission does not condone police misconduct of any kind but nonetheless recommended that the Commission summarily dismiss the claim as falling outside its jurisdiction. Commissioners then voted 8-0 to summarily dismiss the claim.

7) Richter, William (2019.663-R)

Staff/Grant Attorney Sam Cardick noted that Mr. Richter's conviction occurred in Macon County. Because the statute only allows review of claims occurring in counties of a population of 3,000,000 or more, Mr. Richter's claim was beyond the Commission's jurisdiction. Mr. Cardick urged the Commission to summarily dismiss the claim as beyond its jurisdiction. Commissioners then voted 8-0 to summarily dismiss the claim.

8) Neeley, Jarvis (2019.665-N)

Staff Attorney Michelle Jenkins noted that Mr. Neeley had been convicted of murder in Peoria County. Because the statute only allows review of claims occurring in counties of a population of 3,000,000 or more, Mr. Neeley's claim was beyond the Commission's jurisdiction. Ms. Jenkins urged the Commission to summarily dismiss the claim as beyond its jurisdiction. Commissioners then voted 8-0

to summarily dismiss the claim.

VI. Public Comment

The chair called for public comments.

Ted Pearson of the Chicago Alliance Against Racist and Political Oppression thanked the Commission for its thoroughness on the claims discussed. He urged the governor and the legislature to properly fund the Commission.

Mary Johnson said she heard that her son's case had been dismissed. She asked if the original documents she had supplied to the Commission in the case could be returned to her. Director Olmstead said he would look for the originals to return to her.

VIII. Adjournment

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