



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION REGULAR MEETING
August 21, 2019, 3:00 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
Alternate Commissioner Craig Futterman

Commissioners Absent

Commissioner Steven Miller
Commissioner Stephen Thurston

Staff on dais

Rob Olmstead (Executive Director)
Michelle Jenkins (Staff Attorney)
Samuel Cardick (Staff/Grant Attorney)

Staff in Audience

DeAndrea Brown (Administrative Assistant)

I. Call to Order/Members Present

On August 21, 2019, at approximately 3:00 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 Alternates: Pantle, Loeb, Baldwin, Touhy, and Mullenix. Alternate Commissioner Futterman was also in attendance

II. Approval of Minutes

Chair Pantle called for a motion to approve the draft minutes of the April 17, 2019, meeting. The request was moved and seconded. The minutes were unanimously approved by voice vote.

III. Chief Financial Officer's Report

Due to Dr. Ewa's absence, the agenda item was stricken.

IV. Executive Director's Report

Executive Director Olmstead introduced new Staff/Grant Attorney Samuel Cardick and announced that Administrative Assistant DeAndre Brown would soon be leaving the Commission. Director Olmstead noted that Mr. Cardick, in addition to assisting in the disposition of claims, would also be responsible for applying for and administering grant funds in order to increase the rate of case dispositions. He postponed thanking Ms. Brown until she could return to the room.

Director Olmstead announced that former TIRC Chairwoman Cheryl Starks was honored in July by the Chicago Bar Association Foundation with its Richard J. Phelan Public Service Award. She received the award for her long years of public service at the Commission, as well as for a long and distinguished career behind the bench as a Cook County Circuit Court Judge and, before that, as a public sector attorney.

Director Olmstead also noted that the TIRC Statute's deadline for claims had occurred on August 10, 2019. Because that deadline occurred on a Saturday, when no outgoing prison inmate mail is allowed, there may be some inmate claims put into IDOC custody on that date and bearing postmarks from the following Monday whose filing will still be allowed. The Commission received a number of claims before the deadline and as of August 20, 2019, the number of outstanding claims stood at 543.

Finally, Director Olmstead noted that the Commission recently received new liaisons to the governor's office. Olmstead has had several discussions with those liaisons in the past few days regarding appointment of much-needed Commissioners and Alternate Commissioners and expected to see some appointed soon.

Olmstead asked if there were any questions. Commissioner Mullenix asked for more information on appointments. Olmstead noted that in the past two days he had received a number of phone calls from the new governor's liaison discussing possible appointments, which gave Olmstead the impression that the office was taking the need for appointments seriously and would soon act. He noted that Commission staff have passed along several resumes as suggestions. Mullenix inquired whether there would be new Commissioners by October. Olmstead replied that he hoped so.

V. Claims

1) Pledger, Maurice (2011.080-P)

Director Olmstead began by drawing Commissioners' attention to some draft changes in his written recommended determination and the Record of Proceeding Index. He thanked recent law school graduate Whitney Barth, who researched and drafted the bulk of the Pledger recommendation. He

noted that after he gave his recommendation to deny the Pledger claim, Barth would give an oral presentation on why she thinks it should be referred. Olmstead confirmed that crime-victim notifications had been mailed out and staff had received a letter from the mother of the deceased victim. The mother requested the letter be read at the meeting prior to a vote.

Olmstead recounted the facts of the case. Pledger was arrested January 20, 1998, after the murder of Danielle Dubose about 1½ months prior. He was taken to District 3. At his suppression hearing, Pledger claimed he asked arresting officers for a lawyer and to contact his parents and to use the restroom, all of which were ignored or denied. He acknowledged being read only part of his Miranda rights. He claimed District officers yelled at him and smacked the wall above his head, and that he did make some sort of statement as a result. A tactical officer did acknowledge in testimony that at one point Pledger did invoke his right to silence, but that no one at the district interviewed him after that.

Pledger was then taken to Area 2 headquarters and at 3:15 a.m., Detectives Karl, Pesavento and McVickers questioned him. Detectives said he then gave conflicting stories as to what occurred to Dubose, but eventually gave a signed confession at 9:41 a.m. before ASA Kathy Dillon and Det. Karl. At his suppression hearing, he testified Karl denied his requests for an attorney. He was also ridiculed, made to sit in bubble gum and looked at threateningly. Detectives said they could just charge him and he wouldn't see a judge for a year. Pledger also testified that Karl said if he didn't talk, he would bring in some officers who would make him talk, and that if he didn't tell the truth, he would be given the "gas treatment." Pledger testified he thought this meant detectives would gas him right then and there in the police station. On cross-examination, Pledger conceded no one ever hit him, his Miranda rights were on the confession form he signed and Dillon asked him outside of police's presence whether he had been treated well and he said yes to her.

Judge Leo Holt did not believe the allegations of threats and coercion, but did analyze the invocation of the right to silence at the District. Holt ultimately ruled the confession at the Area was removed enough from the District to be lawful.

At trial, Pledger did not raise coercion allegations, but said that he had given a fake story to protect his girlfriend, Arnetta Ross, who had been arrested with him. He feared for what he thought was his unborn child and Ross' health. Pledger claimed Ross killed Dubose.

In Pledger's interview with TIRC, he claimed he thought police could kill him with impunity since no one knew where he was and that Ross suffered from Asthma.

Detectives Karl and Pesavento do have prior allegations of abuse to obtain confessions against them, and there is significant evidence that Karl testified untruthfully at Andrew Wilson's trial.

Olmstead recommended that Commissioners deny the claim on the grounds that, while Pledger adequately alleged coercion, the conduct he alleged did not rise to the level of torture as defined by the TIRC Act. He referred Commissioners to the draft disposition, which extensively explored the legal precedent for that recommendation. Director Olmstead said he did not intend to denigrate the seriousness of the allegations or endorse police misconduct in any way; but only was asserting that what was alleged did not amount to torture and therefore the Commission was without jurisdiction in the matter. He noted that Pledger did allege he feared imminent death by gas treatment, an element of torture in some cases, but also noted that torture cases typically require that belief of impending torture be a reasonable one. Pledger's belief, he said, was based on an episode of the A-Team he saw, and did not constitute a reasonable belief, Olmstead said.

Barth recommended that the claim be referred, and that the allegations did constitute torture. She noted that a prior Commission case, *In re Willie Johnson*, found torture where no beatings had occurred, either. She noted that *Doe v. Qi* allowed for a finding of torture where severe physical harm was imminently feared. She also noted the proposition cited by Olmstead requiring a rational belief that gassing would occur relied on immigration court cases which were not directly on point. Under the totality of the circumstances, Ms. Barth argued, Pledger was denied bathroom breaks and an attorney; was threatened with a beating; was sleep-deprived; and genuinely believed he could be held for a year without seeing a judge, would be killed by gas and his girlfriend and baby would be harmed. Pledger was particularly susceptible to torture threats because he was young and (as friends, co-workers and relatives wrote for his sentencing) he was very naïve, trusting and easily manipulated. Taken together, those events constitute the imposition of severe mental suffering and torture under the Commission's rules.

Commissioners Mullenix, Baldwin, Loeb and Futterman spoke and asked a few clarifying questions of Olmstead and Barth. Futterman asked whether Olmstead believed Pledger's claims. Olmstead said he hadn't reached that issue because he was of the opinion there was no torture alleged. Olmstead did note there was a big credibility issue in Pledger's suppression and trial testimonies being so vastly different, but he could not opine definitively on credibility issues since he hadn't reached them in his recommendation.

Pledger's attorney, Wendelin DeLoach, encouraged Commissioners to adopt Ms. Barth's view of the totality of the circumstances. In her experience with Mr. Pledger, she too found him gullible and thought that contributed to his view of the severity of the threats. Olmstead thanked her for her pro bono representation of Pledger.

Commissioner Loeb asked that a paragraph in the draft be adjusted. Director Olmstead read a replacement sentence, which Commissioners found acceptable to substitute. Commissioner Futterman urged Commissioners, if they voted not to refer the claim to court, to refer it informally to the Cook County State's Attorney's Office.

Director Olmstead then read the letter from the mother of the crime victim. In it, she urged Commissioners not to refer the claim.

Commissioners Baldwin, Mullenix, Loeb and Pantle voted not to refer the claim. Commissioner Touhy voted to refer the claim. By the minimum vote of four negative votes, the claim was not referred to court.

All Commissioners voted to refer informally the claim to the Cook County State's Attorney's Conviction Integrity Unit to review the coercion claims.

2) Allen, Robert (2011.111-A)

Executive Director Rob Olmstead thanked Ellen Fischer, a recent law school graduate, who assisted in investigating and drafting the recommendation in the case but could not be present at the Commission meeting. Director Olmstead concurred with Ms. Fisher's recommendation to deny the claim. Olmstead noted that notification letters had been sent to as many crime victims as could be identified and located.

Olmstead recounted the facts of the claim. Allen was convicted of three separate robberies, one of which involved the attempted murder of a store employee, who was shot. Police records indicated Allen

did make statements to police in at least one of the robberies, but Allen denied making any statements to police. He and codefendant Tony Anderson were questioned at Area 2 and were positively identified by witnesses in all three robberies. Allen was questioned by Detectives Maslanka and McDermott. Allen did not file a motion to suppress statements in any of his cases, but his attorney did file a motion to quash arrest and to dismiss Allen's indictments on technical grounds. Allen testified at the Trak Auto robbery trial but did not allege coercion or torture. He did not testify at the other two robbery trials. No police or prosecutors at any trial testified to any incriminating statements Allen did or did not make. Olmstead noted this raised a question of whether the Commission had jurisdiction over the claims, because the statute requires that a confession must be used to obtain the conviction.

For purposes of review, Olmstead noted the recommendation assumed, but did not decide, that there could be jurisdiction if Allen's statements were then used to gather additional evidence used to convict him. However, even assuming that, Olmstead recommended denial of the claim because Allen never raised torture allegations at the trial stage, the appeal stage or the postconviction stage. He only raised it upon filing with TIRC, and no other evidence supported those allegations. He also noted a problem with Allen's credibility in maintaining he made no statements, when reports indicated otherwise. Additionally, Allen claimed McDermott introduced his manufactured confession at trial; transcripts disprove this.

No crime victims were present to speak.

Commissioners Baldwin, Mullenix, Loeb, Touhy and Pantle voted not to refer the claim to court.

3) Hall, Mikal (2019.611-H)

Director Robert Olmstead recommended that Mr. Hall's claim be summarily dismissed because he was convicted in Rock Island County, which is beyond the Commission's jurisdiction, which is limited to Cook County. Chair Pantle noted for audience members that the statute limits the Commission's jurisdiction to only counties of a population of 3,000,000 or more, which is only Cook County. She noted the Commission was not reaching the merits of the claim. Commissioners Baldwin, Mullenix, Loeb, Touhy and Pantle voted to summarily dismiss the claim.

4) Cooks, Bobby (2019.619-H)

Staff/Grant Attorney Sam Cardick recommended that Mr. Cooks' claim be summarily dismissed because Cooks did not allege that he was tortured, nor did he contend that a confession was used to obtain his conviction, as required by the statute. Director Olmstead concurred in the recommendation. Commissioners Baldwin, Mullenix, Loeb, Touhy and Pantle voted to summarily dismiss the claim.

5) Fernandez, Raul (2019.618-F)

Staff/Grant Attorney Sam Cardick recommended that Mr. Fernandez' claim be summarily dismissed because Fernandez acknowledged that he made no statement or confession to police, as required by the statute. Director Olmstead concurred in the recommendation. Commissioners Baldwin, Mullenix, Loeb, Touhy and Pantle voted to summarily dismiss the claim.

6) Nobles, Donald (2019.612-N)

Staff/Grant Attorney Sam Cardick recommended that Mr. Nobles' claim be summarily dismissed

because Mr. Nobles was convicted in Macon County, which beyond the Commission's jurisdiction, which is limited to Cook County. Director Olmstead concurred in the recommendation. Commissioners Baldwin, Mullenix, Loeb, Touhy and Pantle voted to summarily dismiss the claim.

VI. Public Comment

The chair called for public comments.

Ellen Corley noted she submitted an application to be appointed a Commissioner. She criticized the police's Reid Technique of interrogation. She criticized the Egan Report that investigated Burge torture and the failure to charge other police and prosecutors. She found the Commission's process disappointing and not addressing torture adequately.

Mark Clements of the Chicago Torture Justice Center expressed dismay at the Burton claim not being heard because of a lack of alternate Commissioners. He urged appointment of Commissioners. He disagreed with the outcome in the Allen case. He criticized the pace of claim disposition. Chair Pantle assured Mr. Clements that Director Olmstead had repeatedly requested appointments of the governor's office. Mr. Clements also noted that more black commissioners should be appointed.

Reporter Abby Blachman of Injustice Watch asked several questions of Staff and Commissioners, some of which were answered.

Anabel Perez thanked Commissioners for their work. She asked about claimants Kilroy Watkins and Michael Johnson. Director Olmstead noted that the statute prevented discussion of claims not yet adjudicated.

Charles Gunn thanked Commissioners for their work and asked what advice to claimants could be given to assist them in their claims to give them advantage. Director Olmstead said he could only say what he tells those who initially approach the Commission: that the Commission is neither an advocate nor adversary of claimants; it is an objective, quasi-judicial body. He also noted that Claimants are appointed an attorney to advise them on waivers they must sign for a claim to proceed.

Chair Pantle asked if there were any more comments. There were none.

VII. Executive Director's Report (cont'd)

Director Olmstead again thanked Ms. DeAndrea Brown for her service to the Commission and for excellent work. But he noted the great loss would be the person, not the worker. She is a positive, energetic person whose presence would be missed.

VIII. Adjournment

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