



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION REGULAR MEETING
December 18, 2018, 2:00 p.m.**

James R. Thompson Center
100 W. Randolph Street, Meeting Room 9-040
Chicago, Illinois 60601

MINUTES

PRESENT:

Commissioners Present

Chairwoman Cheryl Starks
Commissioner Robert Loeb
Commissioner Marilyn Baldwin
Commissioner Tim Touhy (via speakerphone)
Commissioner James Mullenix
Commissioner Marcie Thorp
Commissioner Steve Miller
Alternate Commissioner Stephen Thurston
Alternate Commissioner Craig Futterman

Staff on dais

Dr. Ewa Ewa (HRC CFO)*
Rob Olmstead (Executive Director)*
Michelle Jenkins (Staff Attorney) *

Staff in Audience

DeAndrea Brown (Administrative Assistant)

I. Call to Order/Members Present

On December 18, 2018, at approximately 2:06 p.m., Chairwoman Starks opened the meeting with an announcement that Commissioner Touhy could not physically attend the meeting due to work obligations but would be able to join the meeting at 4 p.m. via telephone. Chairwoman Starks called for a motion to allow Commissioner Touhy to attend the meeting via telephone. Commissioner Loeb so motioned; Commissioner Mullenix seconded. The motion was approved by unanimous voice vote. 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: Starks, Loeb, Baldwin, Mullenix, Thorp, Thurston and Miller. Alternate Commissioner Futterman was also present.

II. Approval of Minutes

Chairwoman Starks called for a motion to approve the draft minutes of the November 14, 2018, regular meeting. A motion was made by Commissioner Mullenix and seconded by Commissioner Thurston to approve the minutes as written. The minutes were unanimously approved on voice vote.

III. Chief Financial Officer's Report

Dr. Ewa reported that all the budget for FY2019 is complete and working on FY2020. He stated that 2020 ISL's (budget requests) are due in March and almost complete. Chair Starks asked if there were any questions. There were none.

IV. Executive Director's Report

Executive Director, Rob Olmstead reported to the Commissioners that the governor's office planned to file an appointment with the Senate to fill the Commission's alternate chair position. Olmstead announced that Chair Cheryl Starks, by the year's end, would reach the maximum term of service allowed by statute and will step down as Chair. For the Commission to continue operating smoothly as the gubernatorial administrations change over, Commissioners needed an appointment to the alternate chair position. Olmstead informed Commissioners that the governor's office will appoint to the alternate position but leave the Chair position open. He stated that this will allow the Commission to continue operating while still allowing the incoming governor to either appoint his own chairperson, or continue operating with the alternate chair. Olmstead stated that the name of the appointment had not yet been announced.

Olmstead reported to the Commissioners that TIRC staff had concluded the interviews for the new staff/grant attorney position and in consultation with the Chair had selected a candidate but had not yet finished negotiations to bring the person on board. Olmstead expects to have the new staff member aboard by the next meeting.

Olmstead informed Commissioner that he began reaching out to other state agencies to explore the feasibility of paying a small stipend to claimant's attorneys in order to increase recruitment of claimant attorneys and thereby increase case dispositions. He stated that as he continues to research the possibilities of this proposal, he will report back to the Commission, so it can decide whether this is a course of action it wishes to pursue.

Olmstead mentioned that he e-mailed all the Commissioners a copy of the Human Rights Commission/TIRC combined annual report for their review. Olmstead thanked HRC for folding TIRC into their report to lessen the Commission's administrative tasks.

Olmstead informed Commissioners that TIRC has had great success with its new contract employee, Bill Marino, in securing files from the Cook County Circuit Court Clerk's Office. Olmstead noted that in some instances, files that had previously taken weeks for TIRC to receive were now being obtained in days, in many instances. Olmstead introduced Mr. Marino and thanked

him for his hard work. Olmstead asked if there were any questions. There were none.

V. Claims

1) Lee, Raymond (2013.167-L)

Executive Director Rob Olmstead informed Commissioners that the next two claims of Lee and Mitchell, were not Burge-related claims, and therefore not normally priority cases, but when TIRC staff asked pro bono counsel to take them on, they believed these claimants were Burge-related due to the detective in question having the same name as a Burge-supervised officer. Olmstead stated that by the time he realized the mistake, counsel had already taken on the claims and begun investigation. Therefore, under Title 2 Administrative Rule 3500.375 (c)(1)(D), which gives priority to the efficient workflow of the Commission, TIRC Staff continued with the investigation of these two claims even though they were not priority Burge matters.

Commissioner Loeb informed the Commission that he served as one of the trial counselors on behalf of Raymond Lee and would like to recuse himself from the panel discussion for both cases of Lee and Mitchell.

Alternate Commissioner Futterman informed Commissioners that as part of his duties with the Mandel Legal Aid Clinic, he represented a person by the name of Corinthian Bell in a civil rights case that was filed in 2002. The case was against the City of Chicago and several Chicago detectives, including a Detective Michael Cummings, one of the accused detectives in the Lee/Mitchell claims. Futterman informed Commissioners that this case was litigated in the Circuit Court of Cook County and alleged that Chicago Detectives coerced a false confession from Mr. Bell in 2000, resulting in criminal charges being filed against Mr. Bell. All criminal charges were dismissed against Bell, and the civil rights lawsuit brought by the Mandel clinic was settled before trial. Futterman stated that his work with the clinic on Mr. Bell's case will not affect his ability to fairly or impartially decide the Lee and Mitchell claims, and that neither he nor the clinic has ever had any involvement with Lee and Mitchell cases. Chair Starks thanked Futterman for the disclosure.

Olmstead informed Commissioners that the law firm of K&L Gates assisted on this recommendation. He stated that the investigation of Raymond Lee and John Mitchell was led by partner Cliff Histed, attorneys Lexi Bond and Nicole Mueller.

Nicole Mueller introduced herself and provided Commissioners with a summary of Raymond Lee claim. She informed Commissioners that Lee filed a claim with TIRC alleging that he confessed to the crimes of first degree murder, home invasion, and burglary after being beaten and tortured by Chicago Police Department Area Two Detectives Michael Cummings, Phillip Graziano, Eileen Heffernan and Daniel Judge in 2000. Mr. Lee alleged that he was taken to the police station and held for two days. He alleged that during this time, he was slapped on the face and on his body multiple times and thrown against a wall. Mr. Lee also alleged that he was intimidated and threatened with additional physical harm and the death penalty. Lee alleged that he was given little food and kept in a room where the light was on the entire time, making it difficult or impossible to sleep. Mr. Lee alleged that after he was held in police custody for

approximately two days, he gave a confession on video and signed a statement based on a promise that he received from the detectives: namely, that if he did not confess to the crimes, Mr. Lee would get the death penalty. If he confessed, detectives could and would ensure that he received a sentence of “a couple of years” for a reduced charge of “strong armed robbery”.

Mueller informed Commissioners that on October 31, 2000, Lee filed A Motion to Quash and Motion to Suppress for lack of probable cause. Judge Sumner granted the Amended Motion to Quash, finding that the police had lacked probable cause to arrest Mr. Lee and no attenuation existed.

Mueller stated that the Illinois courts reversed the trial court's ruling. The appellate court found that Mr. Lee's arrest was supported by probable cause. On remand, Mr. Lee filed an Amended Motion to Suppress alleging that his inculpatory statement was involuntary because it was obtained as a product of police coercion and in violation of his constitutional rights. A hearing on the Amended Motion to Suppress was held by Judge Claps, following Judge Sumner's retirement. Mr. Lee testified regarding the circumstances and events that took place while he was held at the police station and his testimony was in line with the allegations contained in the Amended Motion to Suppress.

Mueller informed Commissioners that three of the detective testified at the hearing on behalf of the State and denied Mr. Lee's allegations. Judge Claps denied Mr. Lee's Amended Motion to Suppress, finding that based on his observation of the “manner of his statement, his mannerisms and his voice and the look in his eyes” on the videotaped confession, Mr. Lee's statement was made voluntarily. Judge Claps further found Mr. Lee's testimony and allegations to be incredible, including his claims that he had invoked his right to counsel during the interviews and that he had only confessed because of the promise of a lesser charge. However, as part of his ruling on the motion, Judge Claps found that “there was physical and psychological coercion.”

Mueller reported that Mr. Lee's allegations in an August 29, 2017 interview with TIRC were largely consistent with testimony from the hearing proceedings and his allegations included in his TIRC Claim Form.

Mueller informed Commissioners that Mr. Lee's trial counselors, Barry Spector and Robert Loeb, reported in interviews that Mr. Lee's claims were consistent throughout the duration of legal proceedings, and even provided notes they had taken of their interviews with Lee.

Mueller informed Commissioners that TIRC investigators reviewed the Complaint Records of Detectives Michael Cummings, Phillip Graziano, Eileen Heffernan, and Daniel Judge. She reported that each Detective had several complaints. In multiple complaints, Detective Cummings was accused of physically harming arrestees. Detectives' complaints were reflective of the allegations of Mr. Lee. Mueller stated that although some of the complaints were not sustained, the number of complaints did provide some evidence of a pattern.

Mueller stated that there were also factors weighing against Mr. Lee's claim. There is a lack of physical evidence, Mr. Lee's videotaped statement at the time of confession denying any coercion or wrongdoing by the officers encountered during the time of arrest, and Judge Claps denying his Motion to Suppress statements. However, because there are substantial reasons to believe Mr.

Lee's allegations of torture, Muller recommended the Commission find sufficient credible evidence of torture and refer the claim for judicial review.

Chairwoman Starks opened the floor for discussion. Executive Director Olmstead noted that TIRC staff did send out notifications to relatives of the victims in this case and invited them to speak if present. None were. Commissioner Mullenix asked counsel whether Judge Claps described what he meant by "physical and psychological coercion." Mueller answered that he had not. Commissioner Mullenix asked Mueller whether she had seen the videotaped confession. She stated that she had. Chairwoman Starks thanked Nicole Mueller and the K & L Gates law firm for their hard work in the investigation

Lee's attorney, Josh Burday, then spoke on behalf of Mr. Lee and encouraged the Commission to refer the claim to court. Dorris Johnson, the mother of Raymond Lee, and Karen Lee, Mr. Lee's sister, also spoke on his behalf.

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

2) Mitchell, John (2013.156-)

K&L Gates attorney Lexi Bond provided Commissioners with a brief overview and summary of Mr. Mitchell's case. Bond stated that Mr. Mitchell alleged that Detective Cummings and his fellow detectives made false promises, denied Mr. Mitchell access to his attorney, food, and the restroom; threatened action against Mr. Mitchell's girlfriend and her daughter; and physically struck and kicked Mr. Mitchell while he was handcuffed during interrogation. She stated that Mr. Mitchell alleged that because of the abuse, he eventually recorded a coerced videotaped confession statement incriminating himself that.

Bond stated that the first record of Mr. Mitchell's allegations was filed November 17, 2000 in a Motion to Quash Arrest and a Motion to Suppress his videotaped statement. They alleging beatings and threats by Detective Cummings during the interrogation that lead to Mr. Mitchell making the statement. Bond stated that the trial court held a hearing on the Motion to Quash and heard testimony from arresting Detective Eileene Heffernan and witnesses to the arrest, including Mr. Mitchell and his girlfriend Monique Matthews. She stated that the court had several hearings and head the motions separately. The Judge credited Ms. Matthews testimony and found that Detective Heffernan lacked credibility and granted the Motion to Quash Arrest. Bond informed Commissioners that after several hearings on the Motion to Suppress, the court denied the motion due to the testimony from Mr. Mitchell and the lack of strong physical evidence of torture.

Bond reported that there was a TIRC interview of Mr. Mitchell, and his statements were largely consistent with the allegations he had made previously.

Bond stated that there were some reasons to doubt Mr. Mitchell's allegations of torture. She summarized that there was little physical evidence of any abuse or injury, the detectives and medical professionals denyied that Mr. Mitchell had any injuries, and the trial court found that there was insufficient evidence to suggest that the statement was coerced.

On balance, however, the evidence supported a recommendation for referral for judicial review.

Chairwoman Starks opened the floor for discussion. Commissioner Mullenix asked counsel to clarify what issues were raised by the appellate court attorney. Bond explained that Mr. Mitchell appealed that some of issues raised in his co-defendants case should've also been raised for his case to support his Motion to Suppress.

Olmstead noted that notices were sent to crime victim's family members and invited any present, to speak. There were none present.

Daniel Nixa, Mitchell's attorney, argued that Mitchell's claims were largely consistent. He mentioned a few quotes from Judge Sumner about the lack of credibility of the testimony of the officers to support his argument that the claim should be referred to court.

No family members on behalf of Mr. Mitchell were present.

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

Executive Director Olmstead thanked Ms. Bond and Ms. Mueller for their work. Olmstead extended his sincerest appreciation to Mr. Histed and the entire K & L Gates firm for their professionalism and dedication to volunteerism. Olmstead noted that their firm has taken on multiple cases for TIRC.

Commissioners took a brief break.

3) Cole, Richie (2016.269-C)

Commissioner Loeb rejoined the panel.

Director Olmstead gave a summary of Mr. Cole's case and noted that Mr. Cole's motion to suppress his statement had been successful and, as a result, the state dropped charges in the case. Olmstead noted that the TIRC Act empowers the Commission to investigate only convictions and because there was no conviction in this case, he recommended that the Commission summarily dismiss this claim for the lack of jurisdiction. Commissioners voted unanimously to summarily dismiss the claim.

4) Fernandez, Armando (2016.457-F)

Olmstead likewise noted that charges against Fernandez had been dropped, and so there was no conviction in his case either. He recommended the claim be dismissed for lack of jurisdiction. Commissioners voted unanimously to summarily dismiss the claim.

5) Gardner, DeShawn (2018.580-G)

Olmstead informed commissioners that Mr. Gardner had acknowledged that he never made a statement or confession to police or prosecutors that was used to convict him. Because of that, Olmstead recommended that the claim be dismissed for lack of jurisdiction because the TIRC Act granted authority to TIRC to investigate only those cases in which a confession had been used to

obtain the conviction. Commissioners voted unanimously to dismiss the claim.

6) Buckner, Vincent (2017.060-D)

Olmstead informed Commissioners that Buckner alleged threats had been used to secure a saliva sample from him that was used to convict him, but that he gave no statement at the time the sample was coerced from him. Buckner also stated that months later, when he did give a statement to police, it was not coerced from him. Olmstead pointed out that existing caselaw does not treat DNA evidence obtained as a “statement,” and that therefore, no coerced or tortured statement had been given in this case. He recommended dismissal for lack of jurisdiction. Commissioners voted unanimously to dismiss the claim.

VII. Setting of 2019 Meetings Schedule

Commissioners then took agenda items out of order to wait for Commissioner Touhy to phone in at 4 p.m. before discussing the Dungey claim. After discussion, Commissioners set the following regular meeting dates for 2019:

February 20, 2019
April 17, 2019
June 19, 2019
August 21, 2019
October 16, 2019
December 18, 2019

Commissioners then took a short break to wait for Commissioner Touhy to telephone in.

V. Claims (resumed)

7) Dungey, Aubree (2011.060. D)

Commissioner Touhy was connected by speakerphone, and Staff Attorney Michelle Jenkins noted for Commissioners that Mr. Dungey’s claim had previously been considered in July, but Commissioners had been deadlocked 4-3 for referral, which did not meet the statutorily minimum 5 votes to refer, nor the regulatory minimum 4 votes to dismiss, resulting in the tabling of the case until an 8th Commissioner could be appointed by the governor’s office. She noted Commissioners had inquired in July about the complaint history of arresting officers. She briefly recounted the facts of Mr. Dungey’s case and his torture allegations. She recounted that Dungey’s attorneys’ notes of his first interview indicated that Dungey represented to his attorneys that he had voluntarily gone with arresting officers and spoken with detectives, and that only later had he alleged that he had been beaten by arresting officers and threatened by interrogating detectives. Ms. Jenkins noted that since July, staff had obtained complaint histories for arresting officers as well as Mr. Dungey’s Cermak Hospital medical records.

Both arresting officers Garcia and Grubbs had extensive complaint histories, Jenkins noted, which weighed in support of Dungey’s claim. However, Dungey’s medical intake form at the jail reflected no injuries of the type he alleged had been inflicted by arresting officers, but they did

contain extensive documentation of tattoos and other existing medical conditions for Dungey, indicating the intake procedures reflected significant attention to detail. Ms. Jenkins again recommended that Mr. Dungey's claim be dismissed for lack of credible evidence of torture.

Chair Starks inquired whether any victim's family members were present. None were.

Mr. Dungey's father spoke on behalf of his son and urged the Commission to refer the claim to court. Mr. Dungey's attorney, Alexandra Hunstein, also spoke in support of Mr. Dungey's claim and encouraged commissioners to refer the claim to court.

Commissioners held a lengthy discussion of the evidence before voting. Commissioners Baldwin, Thorp, Thurston, Starks, Loeb and Miller voted not to refer the claim. Commissioners Touhy and Mullenix voted to refer the claim. The claim was not referred to court.

VI. Resolutions Regarding Departing Commission Members and Chair and Related Discussion

Director Olmstead presented two resolutions thanking Chair Starks and Commissioner Tim O'Neill for their service. He thanked the chair for her service, beginning in 2012, for no pay. He noted that she regularly gave countless hours of labor and consultation.

Chair Starks thanked Mr. Olmstead and all commissioners and staff for their dedication and work. She expressed that it was a pleasure and an honor to serve.

Commissioner Thorp moved to approve the resolution, and Commissioner Baldwin seconded the motion. The resolutions were unanimously approved. F

Director Olmstead presented the chair with a galley proof of a plaque thanking Chair Starks for her service.

VIII. Public Comment

The chair called for any public comment from the audience. There was none.

IV. Adjournment

Commissioner Loeb moved to adjourn; Commissioner Thorp seconded the motion, which was unanimously approved.