



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION REGULAR MEETING
August 19, 2020, 2:00 p.m.**

Virtual Meeting
held via WebEx Software

MINUTES

PRESENT:

Commissioners Present

Alternate Chairwoman Kathleen Pantle
Commissioner Baldwin
Commissioner Robert Loeb
Commissioner Barry Miller
Commissioner Steven Miller
Commissioner Mullenix
Commissioner Stephen Thurston
Alternate Commissioner Craig Futterman

Commissioners Absent

Commissioner Tim Touhy
Alternate Commissioner Autry Phillips

Staff Present

Rob Olmstead (Executive Director)
Michelle Jenkins (Staff Attorney)
DeAndrea Brown (Administrative Assistant)

I. Call to Order/Members Present

On August 19, 2020, at approximately 2:00 p.m., the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC or Commission) was called to order. Alternate/Acting Chair Pantle noted the meeting was being held virtually under executive order allowing it due to the pandemic and after a finding that holding an in-person meeting would be impractical and imprudent. Pantle made a roll call attendance check. A quorum was established consisting of five voting-eligible Commissioners: Alternate Pantle and Commissioners Loeb, Barry Miller, Steven Miller, and Thurston. Alternate Commissioner Futterman was also present but did not count toward the quorum.

APPROVED 12/16/2020

II. Approval of Minutes

Chair Pantle called for a motion to approve the draft minutes of the June 17, 2020, meeting. A motion was made by Commissioner Thurston and seconded by Commissioner Loeb to approve the minutes as written. Commissioner Baldwin joined the meeting prior to a roll call approval of minutes. The minutes were unanimously approved 6-0 by roll-call vote of the primary commissioners' present.

Commissioner Mullenix joined the meeting after the approval of minutes.

III. Executive Director's Report

Director Olmstead informed Commissioners that Staff Attorney Michelle Jenkins had been presented with an opportunity with the Illinois Department of Juvenile Justice to be Deputy Chief of intergovernmental Affairs and would be taking advantage of that opportunity at the end of August. Olmstead highlighted Jenkins contributions and service to the Illinois Torture Commission and thanked her for all her hard work. Olmstead asked Jenkins if she had any final words for Commissioners.

Jenkins thanked Commissioners for their commitment to TIRC and the space to learn from their expertise. She mentioned that her service to TIRC was an honor and hoped to work with them again.

Commissioners thanked Ms. Jenkins and wished her the best in future endeavors.

Olmstead stated that with Jenkins' departure, he would be working quickly to post and fill her position because that position description had already been approved by CMS. Olmstead noted that Chair Pantle, Dr. Ewa, and himself had already interviewed for the grant staff attorney position and would be extending an offer on that position later that afternoon. Olmstead informed Commissioner that he was still awaiting approval for other position descriptions by CMS and hoped to post soon for interviews.

Olmstead mentioned that TIRC's new administrative rules had been submitted by Michelle Jenkins, paving the way to engage counsel for claimants for a modest fee. Olmstead informed Commissioners that he began working on the standard contract and intended to begin recruiting counsel under it as soon as the conclusion of the meeting. The ability to hire counsel for claimants rather than search for volunteers should speed up the pace of dispositions, he noted.

Olmstead welcomed questions from Commissioners. There were none.

IV. Claims

1) Morales, Jesus (2013.149-M)

Executive Director Rob Olmstead informed Commissioners that crime victim family notifications were sent out and any of those victim relatives that were present and wanted to address Commissioner, would be afforded that opportunity before Commissioners voted on the claim.

Olmstead informed Commissioners that the claim of Morales was researched and drafted by Gerry Saltarelli, a name partner of the former firm Butler, Ruben, Saltarelli & Boyd. He mentioned that Mr.

Saltarelli's investigation of Morales' claim was time-intensive due to the need for several interviews with the claimant to ensure proper translation capabilities and to secure the opinion of a medical expert. Olmstead thanked Mr. Saltarelli for his commitment and patience throughout the investigation process.

Olmstead informed Commissioners that he and Mr. Saltarelli were in almost complete agreement on the facts of the case, but, slightly differed on the interpretation of those facts. Those viewpoints led to two possible outcomes. Olmstead noted that when TIRC enlists the aid, expertise, and time of pro bono counsel, Commissioners should hear their unvarnished recommendation. However, the statute also requires that the Executive Director give his recommendation in each case. Commissioners were provided with two different written recommendations in the matter of Jesus Morales. Olmstead informed Commissioners that Mr. Saltarelli would deliver the facts and his recommendation first, then he would follow up with a brief explanation as to why he came to a different conclusion and recommendation. He also mentioned that due to time constraints, he requested and was assisted by Commissioner Barry Miller in his written recommendation.

Commissioner Miller informed Commissioners on the extent in which he assisted the drafting of the recommendation on Jesus Morales. He also thanked TIRC PILI Fellow, Evelyn Cai for her research and also expressed his sincerest appreciation for Mr. Saltarelli's investigation.

Saltarelli stated facts of the case. He informed Commissioners of the consistency of complaints by Morales. Morales claimed to suffer from a serious diabetic condition and sleep deprivation, affecting his ability to think and reason to make a voluntary statement to Chicago Police. Saltarelli stated that the consistency of these allegations were reflected in Morales' court records. Both the diabetic coma issue and the sleep deprivation had been litigated in his motion to suppress, on direct appeal and in a habeas corpus action. All courts denied Morales' claims.

Saltarelli stated that the sleep deprivation issue is where he and Executive Director Olmstead interpreted things differently. Saltarelli expressed that although sleep deprivation was asserted, it was never the focus and emphasis of Mr. Morales claims. Saltarelli was focused more on the diabetic coma claim and its impact on Morales' mental condition at the time. He stated that the sleep deprivation never become a central focus by the courts.

Saltarelli gave the timeline of Mr. Morales claim from the time he was arrested until the time he was taken into custody for interrogation by Detective McWeeny and felony review by ASA Donald Lyman. Saltarelli informed Commissioners that McWeeny and Lyman were aware of Morales' diabetic condition after Morales stated that he needed insulin. Arrangements were made for Morales to be treated for the condition then returned to Area 4 later. Saltarelli noted Morales also received food after being released from the hospital. After making his signed statement, Morales had to be transported to another hospital where he was treated with fluids and insulin. There had been several hours in between the signing of the statement and second insulin treatment.

Saltarelli believed that the denial of medical care for a serious medical condition can constitute torture. Morales claim was supported by Dr. Buckingham's testimony during the motion to suppress. Dr. Buckingham opined that at some point, Morales entered into ketoacidosis, the forerunner of diabetic coma, which is serious and can be fatal. Buckingham testified that in his opinion, ketoacidosis builds up over time and that sometime between his first visit to Anthony's hospital and the arrival at Cook County Hospital, he slipped into this condition and was so distressed by the condition that he was in the position of one who had been tortured.

Saltarelli informed Commissioners that Morales testified consistently that he could not understand

anything that was being said to him during the time the statement given, that he felt physically ill, and needed sleep. The state present its own expert doctor at the motion to suppress and that doctor drew the directly opposite conclusions based on the same medical records. The court denied the motion without explanation.

Saltarelli informed Commissioners that TIRC staff did have medical records reviewed and analyzed by TIRC's independent medical expert Dr. Kaufman. His opinion concluded that the records and the data in the lab reports did not support Dr. Buckingham's testimony and that Morales had never entered ketoacidosis.

Saltarelli felt that the evidence did not suggest that the sleep deprivation constituted torture. He noted no complaints were recorded in the medical records when Morales was discharged from Saint Anthony's hospital, nor did he complain of sleep deprivation. Saltarelli acknowledged and made note that Morales had been up approximately 27 ½ hours when he gave his final confession, but he did not believe that to be torture. Saltarelli stated that the facts are insufficient evidence of torture to refer this claim to the court.

Director Olmstead thanked Mr. Saltarelli for his time and investigation in the claim of Morales. Olmstead mentioned that he and Saltarelli agreed on the facts of the case and neither of them credited Morales' contention that at the time he confessed he was in a diabetic coma and was not aware of what he was saying while confessing. Not only did Morales' own attorney withdraw the claim of a diabetic coma before trial, but medical expert Dr. Kaufman conclusively refuted that contention. Olmstead noted that Dr. Kaufman is not shy about confirming when medical evidence corroborates a claim as he did in prior cases.

Olmstead, however, felt that credible objective evidence – which came mostly from state witnesses confirmed Morales gave his confession after more than 27 hours of being awake. Olmstead stated that there is vagueness in the Illinois case law as to when sleep deprivation makes a confession involuntary. He mentioned that recent studies since that conviction have illustrated how sleep deprivation can constitute torture and Army guidelines indicate that sleep deprivation begins at 16 hours. Olmstead recommended that Commissioners remember the TIRC standard which does not require a determination by a preponderance of evidence that torture occurred, but only a finding of sufficient evidence of torture to merit further inquiry by a judge. For those reasons, Olmstead believed this claim merited sufficient evidence of torture for judicial review.

Chair Pantle opened the floor for discussion. Commissioner Baldwin addressed her concerns of the sleep deprivation issue along with the delayed dose of insulin and food. She stated how that may affect one's mental state. Commissioner Futterman questioned whether Morales mentioned anything about the lack of sleep for 27 hours during TIRC Interview. Saltarelli did confirm that Morales did say during TIRC interview that he only had a short amount of sleep during the entire ordeal. Commissioner Barry Miller agreed with Director Olmstead that there was sufficient credible evidence for judicial review. Commissioner Loeb asked if there would be two separate motions of referral, one going to State's Attorney's Conviction Integrity Unit. Director Olmstead clarified that his recommendation was that the claim should be reviewed by courts. Commissioners continued to discuss the issue of sleep deprivation and how it is measured. Director Olmstead recommended both formal referral to the court and informal referral to the Chicago Police Department and the State's Attorney's Conviction Integrity Unit.

Chair Pantle asked if there were any relatives of the crime victim present. There were none.

Chair Pantle asked if any family members of Morales wanted to address Commissioners. Mrs. Morales, the wife of Jesus Morales, spoke about her relationship with the claimant and thanked Commissioners for investigating and reviewing his claim.

Josh Loevy, the claimant's attorney, thanked Mr. Saltarelli for his hard work and investigation. He asked Commissioners to take in consideration Morales' vulnerability and language barriers during the time of investigation.

Chair Pantle called for a vote. Commissioners unanimously voted to refer the claim to the Circuit Court of Cook County. Chair Pantle called for another vote to informally refer the claim to Chicago Police Department and Cook County State's Attorney's Office. Commissioners unanimously voted to informally refer the claim of Jesus Morales. Commissioner Loeb made a motion to also refer the claim to the Conviction Integrity Unit, Commissioner Steve Miller seconded. Commissioners unanimously voted to refer.

2) McGowan, Ramone (2011.061-M)

Director Olmstead informed Commissioners that the case of Ramone McGowan was investigated by University of Chicago law school graduate, Arielle Yoon. Olmstead thanked Yoon for the extensive research and hours of work dedicated to this claim. Olmstead informed Commissioners that after he presented his recommendation, Arielle would explain why she disagreed with his recommendation. Olmstead noted that crime victim notifications were sent out and mentioned that if any victim's family members were present, they would be allowed to address commissioners before voting on the claim.

Olmstead stated the facts in the underlying crime. He informed Commissioners that Ramon McGowan was convicted of the April 13, 1993 attempted robbery of two elderly men, Stanley Kichler and John Stoginski. Olmstead stated that McGowan was convicted of Kichler's murder on an accountability theory after McGowan's co-defendant fatally shot Kichler when he resisted the robbery. Olmstead informed Commissioners that McGowan was arrested around 8:30 p.m., and the following morning gave a signed statement identifying his co-defendant as the. Olmstead stated that McGowan's attorney, George Howard, filed a dual-purpose motion to quash arrests and suppress evidence and a motion to suppress statements as involuntary. Howard's initial memorandum and support of the suppression motion mentioned that McGowan was very fearful and not thinking clearly. Later, Howard amended the motion to add that McGowan's request for counsel were ignored. Neither versions of the motions alleged physical coercion.

Olmstead informed Commissioners that McGowan testified at his motion to quash arrest, alleging that officers had slammed him forcefully onto their car during his arrest and they threatened to shoot him in the back. Olmstead mention that McGowan claimed Detective Allen Szudarski as his main interrogator, but experienced multiple detectives coming in and out of the interrogation room. McGowan alleged that an unidentified detective grabbed him forcefully by the collar and commanded him to start telling detectives what they wanted to know.

Olmstead stated that McGowan's attorney did not amend the motion to suppress to include the allegations of physical grabbing nor ask any detectives about it at the motion to suppress. The Judge ruled that the confession was voluntary. There were other irregularities, including an eyewitness who vacillated on whether he had seen one of the defendants shortly after the shooting. Olmstead noted that McGowan came to describe the grabbing as "choking" 16 years later, and added claims of being smacked on the head. There was also significant pattern and practice evidence against the detectives in the case, Olmstead said. While Olmstead found McGowan's allegation of grabbing by the collar

consistent, he did not believe the later characterization of ‘choking’ as credible. Because Olmstead did not think merely grabbing someone by the collar constituted torture, he recommended the claim be denied.

Yoon argued for referral. She found persuasive the fact that Howard, who faced later disciplinary action from the Attorney Registration and Disciplinary Commission in other matters and supported McGowan’s contention that Howard did not fully litigate his claims of torture. She also cited cases in which grabbing someone by the collar was characterized as significant violence. She also found persuasive the extensive pattern and practice history against the officers involved.

Acting/Alternate Chair supported the recommendation to deny the claim, and stated her reasons. Commissioner Barry Miller also expressed support for not referring. Although he believed there may have been misconduct in the case, he was concerned the severity of the misconduct had grown significantly. Steve Miller concurred, but was concerned that records in the case had disappeared. Commissioner Baldwin expressed support for denial of the claim.

Carrie Zukas, the niece of Stanley Kitchler, spoke in favor of denial of the claim.

On a roll call vote, Commissioners Baldwin, Loeb, B. Miller, S. Miller, and Pantle voted to deny the claim. Commissioners J. Mullenix and S. Thurston voted to refer. The claim was denied by a vote of 5-2.

Commissioners then voted unanimously, with one exception, in a roll call vote to informally refer the claim to the Cook County State’s Attorney’s Conviction Integrity Unit for consideration. Commissioner Baldwin voted not to informally refer.

3) Blalock, Harold (2014.232-B)

Olmstead noted victim notification had been performed. He noted that Ms. Jenkins investigated the claim and recommended denial of the claim, a recommendation with which Olmstead agreed. Ms. Jenkins recounted the facts of the case. Blalock was convicted of the 1999 murder of Veronica Riley. Blalock did allege in a motion to suppress that he had been slapped and the officers involved had a long pattern and practice history. But weighing against Mr. Blalock’s claim was his trial testimony in which he repudiated his motion to suppress allegations. At trial, Blalock testified that no one had threatened him. Jenkins also noted that Blalock later greatly expanded his abuse claims against the officers involved.

Commissioner Steve Miller supported referral, citing the initial motion to suppress as well as allegations of physical abuse by a witness.

No relatives of the victim or the claimant were present. Mr. Blalock’s attorney, Joel Flaxman spoke in support of referral of the claim to court, and noted the low educational level and intelligence of his clients, which he felt explained some of the inconsistencies in Blalock’s testimony. He also found it plausible that Blalock believed he was instructed by his attorney not to re-assert the abuse allegations.

It was discovered that Commissioner Baldwin was no longer on the call. In a roll call vote, Commissioners Loeb, B. Miller, J. Mullenix, S. Thurston and Pantle voted not to refer. Commissioner S. Miller voted to refer.

Commissioner Baldwin rejoined the call.

4) **Johnson, Michael (2019.673-J)**

Director Olmstead recommended summary dismissal of Mr. Johnson's claims. He noted that Johnson acknowledged that he made no statement against himself in the case, which left the Commission without jurisdiction under the TIRC Act.

On a roll call vote, Commissioners voted 7-0 to summarily dismiss Mr. Johnson's claim.

5) **Neely, Juan (2017.530-N)**

Director Olmstead recommended summary dismissal of Mr. Neely's claim. He noted that the claim had been drafted by Public Interest Legal Institute Fellow Evelyn Cai. She presented the facts of the case. Mr. Neely claimed that his co-defendant was tortured into giving evidence against Neely, but Neely had not been tortured, nor had he made any statements against his own interests. Because the TIRC Act gives the Commission jurisdiction over only cases in which the claimant himself was tortured into making a statement that was used to convict him, Cai recommended summary dismissal for lack of jurisdiction. Olmstead concurred.

On a roll call vote, Commissioners voted 7-0 to summarily dismiss Mr. Neely's claim.

6) **Wiggins, Marcus (2017.487-W)**

Ms. Cai recounted the facts of the case. Mr. Wiggins claimed he had been tortured by police in a previous investigation, but not during this case. He also claimed that he had not made statements in the case. Because of that, Cai recommended summary dismissal of the claim for lack of jurisdiction. Olmstead concurred.

On a roll call vote, Commissioners voted 7-0 to summarily dismiss Mr. Neely's claim.

VI. Public Comment

The chair called for public comments. There were none.

VII. Closed Session

Chair Pantle called for a roll call vote to go into closed session to discuss litigation. Commission Futterman made a motion, Baldwin seconded. Commissioners unanimously voted to go into Closed Session.

VII. Final Action on Closed Session Item

Commissioners returned to open session, and checked online for any public participants waiting to rejoin the meeting. There were none. Chair Pantle called for a motion to ask the Attorney General to defend the Commission's Administrative Rule defining tortured confession in the matter of *People v. Abdul Muhammad*. Commissioner Baldwin so moved and Commissioner Loeb seconded. On a roll

call vote, Commissioners voted to approve the motion, excepting Commissioner Barry Miller, who abstained from the vote. The motion passed.

VIII. Adjournment

Commissioner Loeb moved to adjourn; Commissioner Thurston seconded. On a roll call vote, Commissioners unanimously voted to adjourn.