

**Illinois Criminal Justice Information Authority**

**Minutes**

**illinois task force on constitutional rights and remedies**

20 ILCS 5165/4-5 P.A. 101-652

P.A. 101-24

Thursday, November 15, 2021

2:00 pm—4:00 pm

Location

Via WebEx Video Conference/Teleconference

1**. Call to Order and Roll Call**

* At 2:05, Chair Slaughter, noted that the meeting is called pursuant to the disaster declaration and asked ICJIA General Counsel, Karen Sheley to call the roll. Quorum was achieved with the following present at roll call.

**Attendees**

|  |  |  |  |
| --- | --- | --- | --- |
| **Task Force Member Attendance** | **Present** | **Telephone** | **Absent** |
| Professor Craig Futterman, U of Chicago | X |  |  |
| Joel D’Alba, Shareholder Asher, Gittler & D’Alba |  |  | X |
| Professor Carolyn Shapiro, Kent Law School | X  |  |  |
| General Counsel Tamara Cummings, Illinois FOP | X |  |  |
| Commissioner Larry Rogers Jr., Board of Review Commissioner | X |  |  |
| President Michael Wilder, Black Men Lawyers Association | X |  |  |
| Director Jim Kaitschuk, Illinois Sheriffs’ Assoc. | X |  |  |
| City Manager Christopher Conrad, Highland Park | X |  |  |
| General Counsel Dana O’Malley, Chicago Police Dept. |  |  | X |
| Peter Hanna (designee), ACLU | X |  |  |
| Senator Elgie Sims, State Senator 17th District | X |  |  |
| Representative Justine Slaughter, State Rep. 27th District | X |  |  |
| Deputy Director Matt Davis, Illinois State Police | X |  |  |
| Chief Ashley Wright, Illinois Attorney General | X |  |  |
| Judge Barbara Crowder, Retired Judge | X |  |  |
| Representative Dan Ugaste | X |  |  |
| Senator John Curran | X |  |  |
| Mack Julian | X |  |  |

Note: Mr. D’Alba joined the task force meeting after the roll call vote.

**Also present were:**

Karen Sheley, Crystal D. Johnson – ICJIA General Counsel

Jackie Gilbreath—ICJIA R&A

2. **Old Business**

* Chair Slaughter referred the members’ attention to the Minutes sent to members on November 10, 2021 for the meeting of November 1, 2021.
* He asked for any amendments to the minutes.
* Craig Futterman noted that the date was November 1 and that there were two boxes for the attendees. He further noted that he was present at the roll call vote.
* Representative Slaughter moved to approve the minutes as amended. Mr. Wilder seconded.
* General Counsel Sheley took the following roll call vote, which approved the minutes.

|  |  |
| --- | --- |
| **Task Force Member Vote to Approve Amended Minutes for 11/1/2021** | **Vote** |
| Professor Craig Futterman, U of Chicago | Y |
| Joel D’Alba, Shareholder Asher, Gittler & D’Alba |  |
| Professor Carolyn Shapiro, Kent Law School | Y  |
| General Counsel Tamara Cummings, Illinois FOP | Y |
| Commissioner Larry Rogers Jr., Board of Review Commissioner | No vote |
| President Michael Wilder, Black Men Lawyers Association | Y |
| Director Jim Kaitschuk, Illinois Sheriffs’ Assoc. | Y |
| City Manager Christopher Conrad, Highland Park | Y |
| General Counsel Dana O’Malley, Chicago Police Dept. | Not present |
| Peter Hanna (designee), ACLU | Y |
| Senator Elgie Sims, State Senator 17th District | Y |
| Representative Justine Slaughter, State Rep. 27th District | Y |
| Deputy Director Matt Davis, Illinois State Police | Y |
| Chief Ashley Wright, Illinois Attorney General | Y |
| Judge Barbara Crowder, Retired Judge | Y |
| Representative Dan Ugaste | Y |
| Senator John Curran | Y |

3**. New Business**

* Chair Slaughter asked for recommendations at the next meeting, in writing, and then with presentations from the members.
* Chair Sims noted there was a suggestion that we have another individual come and present before we end our recommendations.
* Chair Slaughter noted that could be part of the day of presentations.
* Representative Ugaste noted that he is open to having additional testimony. He recommended having the task force take police training on the Fourth Amendment.
* General Counsel Cummings noted that there is live training with simulators that test reaction time and that she could set up a training through various agencies if there is an interest.
* Mr. Conrad noted that he had a simulator in Bellville that could be available and offered to answer questions.
* Chair Slaughter asked what the simulator entails and the value.
* Mr. Hanna said it would not be necessary to simulate police training when the task force is addressing the scope of constitutional claims. In *Graham v. Connor*, in which qualified immunity is not addressed, the court granted the benefit of split section decision making—without hindsight—under the Fourth Amendment.
* Representative Slaughter noted that we’re looking at several issues within the task force and one is how the changes would impact the practitioners’ perspective.
* Mr. Kaitschuk described the scenario-based training he noted it could include someone on the street, an active shooter, a traffic stop. The point of the simulation is to inform how officers make decisions.
* Commissioner Rogers reiterated Mr. Hanna’s comment that the split-second decision making is already addressed in the reasonableness standard. It would not be helpful and could be harmful to do the simulator. It is more helpful to have a review of cases.
* Mr. Julion questioned how helpful it would be to have a simulator given that we are lay people and law enforcement is trained to have a different reaction.
* General Counsel Sheley noted that Mr. Julion was mistakenly missed during roll call and was present for the entire meeting.
* Professor Futterman responded that while he sent information about how the federal doctrine has impacted Illinois residents, one thing that hadn’t been put before the task force, was hearing from Illinois residents who sought to have their day in court. Additionally, there may be members of the law enforcement community who see some value in ensuring there is a right for victims of violations of the constitution to have a venue. Regarding simulations, more information is always good, but, he noted, as someone who has participated and taught law enforcement training, as well as sat in on those trainings, the DOJ has raised concerns about the current trainings, that don’t reflect the reality of day to day policing because of an overrepresentation of situations that occur in the tiny percentage of the time. He further noted that training and good policies can prevent decisions from needing to become split second.
* General Counsel Cummings noted that few people on the task force include law enforcement. She further noted that perspective is relevant to context. She further stated that the push around qualified immunity is that a bad outcome is the same as a bad act and the simulator would help put that in perspective.
* Mr. Hanna said that while not everyone is in law enforcement, the members of the committee have experience with law enforcement, either being stopped or working with them in similar spaces. He disagreed that it would be useful.
* Representative Ugaste noted that he could take a motion for it.
* Professor Shapiro said that as a technical matter, it’s not strictly speaking relevant because split second decision making is addressed by the fourth amendment. But she said that she is interested in learning more about the law enforcement experience. She further noted that she thought that Professor Futterman’s suggestion about people who were not able to get their day in court would be welcome, as well as attorneys who couldn’t bring claims.
* Senator Curran asked if November 29th meeting will be the hard date for making recommendations, or if that is a soft cutoff date and there will be additional submissions.
* Chair Slaughter stated that it will be a hard cut off. He asked members to submit their written recommendations before then and asked that they be prepared to present on 11/29. At that meeting, the task force will discuss the following meeting and how to vote and complete the report.
* Senator Curran thanked him, then noted that as a policy maker it is helpful to have an open mind and listening to many perspectives, referencing the training.
* Mr. Conrad suggested that we avoid emotional testimony, but instead focus on data. He asked for the data on Seventh Circuit cases. He suggested that the task force’s our recommendations should consider that we have already done more in Illinois, even prior to the SAFE-T act, than many states. Perhaps we have addressed the issue. Are we seeking a unanimous vote, or a majority?
* General Counsel Sheley said that research should be complete by the next meeting. She also noted that Mr. D’Alba joined.
* Chair Slaughter stated that he plans to do a training on the SAFE-T act during the next meeting. We’ll go over the voting on the meeting of 11/29.
* Mr. Conrad said that he tried to identify the additions to training and accountability in the SAFE-T act in his submission.
* Mr. Davis wrote in the chat that in reviewing a lot of materials he saw references to other jurisdictions that have addressed qualified immunity. He asked if the identification of a witness in another jurisdiction would be helpful.
* Mr. Hanna responded to the concept of emotional testimony. He said that while in private practice he turned down claims because of qualified immunity. He further stated that we cannot get the data on cases that were not brought because of qualified immunity and the impact because officers were not held accountable. You can only measure what happens in cases that were brought; you cannot measure the cases that were never brought. Additionally, he noted that the experts did not suggest only training and accountability, but reform of qualified immunity.
* Mr. Conrad said that Professor Schwartz suggested training and accountability.
* Mr. Hanna disagreed and noted that she has said that the best way to get accountability is to ensure that people can bring a case. She just published an op ed last week advocating a constitutional right of action in this state. He then placed the op ed in the chat: <http://thecommunityword.com/online/blog/2021/10/27/oped-ending-qualified-immunity-wont-ruin-cops-finances-it-will-better-protect-the-public/>
* General Counsel Cummings noted that in fairness, she would also like to see what cases are settled because government attorneys realize that the cases have merit. She noted that data is also not available.
* Mr. Hanna said that settlements are usually not public. He believes that it is usually quieted and would be difficult to assemble.
* Mr. Kaitschuk objected to allegations that police officers are not accountable.
* Mr. D’Alba noted that he believed that Professor Schwartz said that punitive damages also don’t matter. He further noted that the Consent Decree has been in place and that the task force should consider its impact.
* Professor Shapiro noted that she is interested in scope of recommendations, including not only qualified immunity, but also issues around punitive damages.
* Chair Slaughter noted that we are not limited in the scope of constitutional remedies.
* Mr. D’Alba noted that punitive damages have an impact on police officers; there is no indemnification for punitive damages. Officers already have a financial burden due to discipline which is compounded by the threat of punitive damages.
* Mr. Hanna noted that the one piece of legislation that addresses this excludes punitive damages.
* Chair Slaughter thanked everyone for their input. He asked for written recommendations by November 29. On November 29, members will present their culminating thoughts. On that day, it would break into three parts, the presentations, a briefing or dialogue on the votes for the final report, and third, miscellaneous presentations that could also be heard. That is what we look like on the 29th.
* Regarding the simulator discussion, he noted that he and Chairman Sims have an open-door policy on engaging and receiving various requests. He noted that he was not sure it needed to be a requirement of the members, but it can and should be made available.
* Rep Ugaste said that while he believes it would be in the best interest of the task force, he did not think the task force should force anyone to do it. It could be open to everyone.
* Deputy Director Davis asked in the chat if any states required law enforcement agencies to report summary information on all civil settlements (e.g., conduct, dollar amount, etc.).
* After some discussion of schedules, the task force scheduled the meeting to follow November 29; the meeting will be on December 8 from 2-3:30.

4. **Public Comment**

* Chairman Slaughter called for public comment. There was none.

5. **Adjournment**

* Chairman Slaughter thanked the members for the discussion and he moved to adjourn the meeting.
* The motion was seconded by Chris Conrad.
* The meeting was adjourned at 3:27 p.m.