U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING MEETING

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FRIDAY, MARCH 22, 2019

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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C. at 1:30 p.m., Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair

DEBO P. ADEGBILE, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

** Present via telephone*

STAFF PRESENT:

TERESA ADAMS

CAROLYN ALLEN, MWRO

ROBERT AMARTEY

LASHONDA BRENSON

KATHERINE CULLITON-GONZALEZ

PAMELA DUNSTON, Chief, ASCD

ALFREDA GREENE

TINALOUISE MARTIN, OM

DAVID MUSSATT, Chief, RPCU

WARREN ORR

LENORE OSTROWSKY

JOHN RATCLIFFE

CORRINE SANDERS, CRO

JUANA SMITH

BRIAN WALCH

MARIK XAVIER-BRIER, Ph.D.

MICHELE YORKMAN-RAMEY

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

A G E N D A

P R O C E E D I N G S

1:30 p.m.

CHAIR LHAMON: Okay. This meeting of the U.S. Commission on Civil Rights comes to order at 1:30 p.m. on March 22, 2019. The meeting takes place at the Commission's Headquarters, located at 1331 Pennsylvania Avenue Northwest, Washington, D.C., 20425.

I'm Chair Catherine Lhamon and the Commissioners who are present in addition to me are Vice Chair Timmons-Goodson, Commissioner Narasaki, Commissioner Heriot, Commissioner Kirsanow, Commissioner Kladney. I understand, Commissioner Yaki, that you're on the telephone, can you confirm?

COMMISSIONER YAKI: I am.

CHAIR LHAMON: Thank you. Quorum of the Commissioners is present. Is the court reporter present? I need a verbal yes for the court reporter.

COURT REPORTER: Yes.

CHAIR LHAMON: Thank you. Is the Staff Director present?

STAFF DIRECTOR MORALES: Present.

CHAIR LHAMON: Thank you. The meeting now comes to order. I see that Commissioner Adegbile is joining us as well.

I. APPROVAL OF AGENDA

CHAIR LHAMON: Is there a motion to approve the agenda for this business meeting?

VICE CHAIR TIMMONS-GOODSON: So moved.

CHAIR LHAMON: Thank you. Is there a second?

COMMISSIONER NARASAKI: I second.

CHAIR LHAMON: Thank you. I'll begin the call for amendments with one of my own, adding a discussion and vote on the Wyoming State Advisory Committee Chair appointment.

I also move to amend the agenda to place the voting items at the top of the agenda, as I understand that at least one Commissioner will need to leave in order to catch a flight.

Is there a second for my amendments?

COMMISSIONER HERIOT: Second.

CHAIR LHAMON: Thank you. Are there any other amendments?

COMMISSIONER YAKI: I have an amendment.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Yes. I'd like to amend the agenda to include a vote on a draft statement I circulated earlier this week from the Commission regarding the enforcing of hate crimes against white

nationalism.

CHAIR LHAMON: Okay. Thank you. Is there a second?

COMMISSIONER KLADNEY: Second.

CHAIR LHAMON: Thank you. Are there any other amendments? If there are none, let's vote to -- oh, sorry.

COMMISSIONER KIRSANOW: Chair, I'm --

CHAIR LHAMON: I think your microphone is off, Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes. I was just uncertain --

CHAIR LHAMON: Do you want to turn your microphone on?

COMMISSIONER KIRSANOW: It appeared as if Commissioner Yaki's, at least according to the email I had, I though Commissioner Yaki's statement was already included in the agenda. Is it not?

CHAIR LHAMON: It's not. So --

COMMISSIONER KIRSANOW: Okay. Then, I would also move that my statement be included in the agenda.

CHAIR LHAMON: Is there a second?

COMMISSIONER HERIOT: Second.

CHAIR LHAMON: Are there any other

amendments? Hearing none, let's vote to approve the agenda, as amended. All those in favor, say aye.

(Chorus of ayes.)

CHAIR LHAMON: Any opposed? Any abstentions? The motion passes unanimously.

II. BUSINESS MEETING

A. PRESENTATION BY REBECCA ERBELDING, PH.D., UNITED STATES HOLOCAUST MEMORIAL MUSEUM: AMERICAN RESPONSES TO THE RISE OF NAZISM AND THE REFUGEE CRISIS IN THE 1930S AND 1940S

CHAIR LHAMON: Our first item on the agenda today is the next iteration of the Commission's speaker series, titled American Responses to the Rise of Nazism and the Refugee Crisis in the 1930s and 1940s.

The Commission was privileged this morning to receive a tour at the U.S. Holocaust Memorial Museum, specifically of the exhibit titled Americans and the Holocaust.

Special thanks to Stacy Burdett, who I see is here in our audience, for inviting us and for coordinating our visit. She is the Museum's Government and External Relations Director. We very much appreciated it.

We're grateful now to welcome back to the

Commission Dr. Rebecca Erbelding, who has been an archivist, curator, and historian at the United States Holocaust Memorial Museum for 15 years. And we learned this morning, she's been affiliated with the Museum for 17 years.

She holds a Ph.D. in American History from George Mason University. Her first book, titled Rescue Board: The Untold Story of America's Efforts to Save the Jews of Europe, was published by Doubleday in April 2018, and just won the 2018 National Jewish Book Award, JDC-Herbert Katzki Award, for outstanding writing based on archival material. Congratulations.

We heard from Dr. Erbelding two years ago regarding the MS St. Louis, and we are very glad to have her again with us today. So, Dr. Erbelding, the floor is yours.

DR. ERBELDING: I want to start by thanking the Commissioners for inviting me today, and also for coming to the Museum this morning to see the Americans and the Holocaust exhibit, which, for anyone listening who did not come, is available online, for people who can't make it to Washington.

The exhibit is part of a major new initiative to share new research on the United States during the Holocaust, and to explore, along with our

visitors, what Americans knew and what they did during the Nazi era.

I'm a historian who works on these questions. And so, my role this afternoon is to present information on the factors that played into American responses to the refugee crisis in the 1930s and the 1940s.

The context of the period is crucial here. It's not meant as an excuse for inaction, nor is it mean to provide a litany of reasons that we can cherry-pick from for political purposes, to argue why this period of history is similar or different from today.

Instead, when we look at the U.S. in the 1930s and 1940s, we realize that the past is not a foreign country. We can't look back and assume that all decisions were clear in the past, that it was an easy call, but that everything is just more complicated today.

Decisions in the 1930s and 1940s, particularly about refugees, about national security, about economic insecurity, and about the roles and responsibilities of America and Americans were difficult.

Americans had fears and challenges, just

as we do today. But this is a reality and should not become an excuse, just as it shouldn't today.

Before I get into the particular details of the refugee crisis in the 1930s, I heard a quote recently that I'd like to share.

In The Plot Against America, Philip Roth's novel about a dystopian America aligned with Nazi Germany, he wrote, the relentless unforeseen is what we schoolchildren studied as history. Harmless history, where everything unexpected in its own time is chronicled on the page as inevitable. The terror of the unforeseen is what the science of history hides, turning a disaster into an epic.

We don't want to hide the terror of the unforeseen, we want to resurface it. We want to remind our visitors of it. Mainly, particularly when we look at the Holocaust, we have a tendency to read history backwards.

We have images of concentration camps in our minds and we skip too readily to the end of the story. But Americans back then don't have those images at hand. They've not seen them.

The Holocaust has not happened yet. There is no word, genocide, and there won't be that word until 1944. It is unforeseen and it will be terrible.

But Americans are acting or choosing not to act without this knowledge.

Until the 1920s, the United States was open to immigrants without numerical limits, so long as they were considered physically, mentally, and morally healthy, and would not become a burden on the State.

The exceptions, of course, were Chinese immigration, which was banned with few exceptions after 1882, and Japanese immigration, which the Japanese Government promised to restrict in 1907, in order to avoid their own version of the Chinese Exclusion Act.

The right to naturalize and become a citizen was still limited to free white persons of good character, and after the Civil War, to African Americans. Asian immigrants could not become citizens until 1952.

In the first 15 years of the 20th Century, an average of about 900,000 persons immigrated to the United States each year. Some years, it was over a million people. In fact, the U.S. grew about one percent every year just through immigration.

These are the immigrants we tend to picture. People who are arriving at Ellis Island,

waving at the Statue of Liberty, going and presenting their paperwork in the hopes of qualifying for admission.

In those first 15 years of the 20th Century, 40 to 50 percent of those immigrants listed their racial category as either Polish, Italian, or Hebrew.

But during World War I immigration drops, as it becomes more difficult to leave Europe. And then, by the time the war is over, Congress becomes determined to limit immigration.

There's a confluence of factors that lead to this change. First, the U.S. becomes deeply isolationist after World War I. The Senate doesn't approve of President Wilson's plan to join the League of Nations and throughout the 1920s, the U.S. demilitarizes, vowing never to go to war again.

And this results in anti-immigration sentiment, because they felt as though the pressure of large numbers of foreign-born who had close ties overseas might pressure the U.S. to intervene in future conflicts.

There's the worldwide influenza pandemic in 1919, which led to 650,000 deaths in the United States. And Americans understand that disease as

infiltrating the U.S. from overseas.

At the time, history books are focused on the closure of the American frontier and wrapped American history up in this idea that the country had been a place of opportunity for the many, so long as we could expand. But now that the frontier was closed, that we had settled from sea to shining sea, those opportunities were going to be limited from now on.

Their fears surrounding the Russian Revolution and there are anarchist terrorist attacks and bombings in the U.S., in L.A., on Wall Street. And there are red scares here, roundups and deportations of anarchists and labor activists, many of whom were Jewish or immigrants or both.

And perhaps most crucially, the desire to limit immigration was based in eugenic pseudoscience. Social Darwinism, the idea that biologically, some people are better than others and that by cultivating good racial stock, America could retain it's white, Protestant, so-called superior culture, and void being soiled by immigrants.

Eugenic researchers calculated that between 40 and 50 percent of all arriving immigrants were feeble-minded. Americans read mass-market books,

like The Passing of the Great Race, which argued that there was a superior Nordic race responsible for all progress and that this race was in danger.

Or, and this is another title, The Rising Tide of Color Against White Supremacy, which is not meant to be demeaning, white supremacy was the ideal. It went through 14 printings in three years.

Historians have noted that Hitler's Mein Kampf borrows directly from some of these texts. And the authors of these books and the organizers of eugenic societies began lobbying Congress for this change.

Over the course of 1919, eight unique bills are introduced in Congress, all proposing to suspend immigration to the United States totally, for a period of between two and ten years.

In December 1920, the House passes a bill to end all immigration to the U.S. for one year, aimed, and this is a quote, to provide for the protection of citizens of the U.S. That is why they would end immigration, the protect Americans. The vote is bipartisan. It is 293 for, 41 against. It is not close.

The Senate was unwilling to take up that bill as written, but starts considering an amended

version limiting immigration based on national origins.

The idea of national origins is, again, based in eugenics. Eugenicists argued, and this is a quote, immigration is an insidious invasion, just as clearly as and works more certainly in national conquest than an invading army.

The Nordic man, which in its purity, this is another quote, in its purity, has an absolutely fair skin, was the ideal. Racial mixture, they argued, whether it was between black and white or so-called good or bad immigrants, would only result in the lowering of the offspring.

The Ku Klux Klan, which boasted two and a half million members in 1923, led a campaign against Catholics and Jews and foreigners, calling for a 100 percent American campaign. So, these ideas are everywhere.

In 1921, for the first time in U.S. history, the U.S. passes a quota law. The doors to the U.S. remain open, but immigration is now limited. The opportunity available to immigrants is based on their country of birth, privileging so-called Nordic countries, while severely limiting visas available to Southern and Eastern Europeans, places where Jews and

Catholics live.

At the last minute, the Senate rejects a proposed amendment, which would have made a distinction between immigrants and refugees, by exempting immigrants who could prove that they were escaping political or racial persecution from these quotas.

Had this amendment been enacted in 1921, America's response to the refugee crisis in the 1930s might have been very different.

For more than two years after the passage of this Emergency Quota Act of 1921, the quota is administered at the U.S. border. It is chaos. Ships are racing across the Atlantic, trying to deliver their passengers before the monthly quotas are filled on Ellis Island.

Shipping companies start complaining to Congress, because they are being fined if they deliver immigrants and those immigrants, the quotas of those countries have already been filled.

So, to deal with this, Congressman Albert Johnson, who is the Chair of the House Committee on Immigration and a member of the Klan, he had once written that he was in Congress to bring about, and this is a quote, a heavy reduction of immigration by

any method possible.

He proposes a new comprehensive bill, co-authored by Senator David Reed. Johnson is from Washington State, Reed is from Pennsylvania. The Johnson-Reed Immigration Act of 1924 becomes law on May 24, 1924. And it remains U.S. law, with very few amendments, until 1965.

The quota system capped immigration from quota countries, basically, all countries outside of the Western Hemisphere, at approximately 164,000 people per year. And then, it divvied that number up by country.

They did not use the word quota the way that we do today, as in a quota that you have to hit. Instead, the quota is the maximum number of immigrants that could enter, the upper limit, not the goal.

Germany and Great Britain had the highest portion of the quota, since eugenicists saw those immigrants as reliably white and Protestant and easily assimilated into the U.S.

In fact, 86 percent of the quota is reserved for immigrants from Northern and Western Europe. Twelve percent for Southern and Eastern Europe. And two percent for elsewhere.

Some countries had quotas of 100 people per year. The entirety of Africa had 1,100 quota visas available each year.

The Johnson-Reed Act also codifies an Asiatic Barred Zone, defined by longitude and latitude, from which immigration was prohibited entirely.

The law made exceptions for non-quota immigrants, meaning, professors, clergy, rabbis, people born in the Western Hemisphere, those groups were not numerically limited by the Johnson-Reed Act.

And to solve the problem of the ships racing to Ellis Island, State Department Consular Officers were now responsible for approving the paperwork. So, applicants had to wait in their countries to receive their visas.

Although all of this happens in the 1920s, 15 years before the refugee crisis of European Jews, this is when the bulk of the American Government's response to that future refugee crisis is decided.

The seeds are sown long in advance of Nazism and not in response to it. The refugee crisis is the unforeseen. Immigration is limited, those limits are rooted in racism and antisemitism.

Perspective immigrants have to wait in

their countries. It is a slow, deliberate process that is not designed to work in a crisis.

And besides agreeing that people fleeing persecution could be exempted from a literacy test, there's no differentiation between immigrants and refugees.

There's only one process. It will not change until after World War II. There are no new laws passed to let Jews in or keep Jews out in the 1930s, because the Johnson-Reed Immigration Act of 1924 did that.

Most of the U.S. Government's actions or inactions in the 1930s make sense, at least intellectually, when you know these things.

For example, I spoke here a few years ago about the St. Louis, carrying 937 mostly German Jewish passengers, most are on the waiting list for the U.S. to obtain visas and are planning to wait in Cuba for their turn to come up to present their paperwork.

When Cuba turned them away for having fraudulent landing permits, the U.S. does not allow them to enter. We had no refugee or asylum policy and the quota for Germany was filled that year already.

Anti-immigrant sentiment was still strong, and although many Americans expressed sympathy for the

refugees, there's no appetite to change the law or make any sort of exception for them.

I just skipped ahead, so let's go back for a second. After 1924, when Johnson-Reed passes, the quotas are basically filled for a few years. The quota allocations are revised in 1929 and the immigration total is lowered from 164,000 total people to 153,000.

1929, though, is also the year of the stock market crash and the beginning of the Great Depression. And as has happened before and has happened since, economic instability exacerbates anti-immigration sentiment.

Our unemployment problem was transferred to the United States from foreign lands, a Texas Senator complained, and if we had refused admission to the 16,500,000 foreign-born in our midst, there would be no serious unemployment problem to harass us.

President Herbert Hoover issues an instruction to the State Department to strictly enforce a public charge clause of an older immigration law, forcing an immigrant to prove that he or she would never need any sort of public assistance.

Immigration drops from about 147,000 quota immigrants in 1929, to fewer than 13,000 in 1932.

1933, there are 8,220 immigrants that entered the United States. Twenty years ago, it had been over a million.

Adolf Hitler is appointed Chancellor of Germany in January 1933 and Roosevelt takes office a few months later, in March.

And as the front pages of American newspapers spread the word that Nazi Germany was boycotting Jewish businesses and banning and burning subversive books, 25 percent of the American workforce is unemployed.

The Labor Department, which housed the INS, and the State Department, who's Consular Officers are responsible for issuing visas, get into a debate over whether exceptions can be made for German Jewish refugees, and ultimately, nothing changes.

Approximately 90,000 Germans sit on the U.S. waiting list. This is the consistent length of the waiting list from 1931, before the Nazis take power, to 1937, mainly because German Jews who were escaping Nazi Germany are traveling locally, going to France or Belgium or the Netherlands to kind of wait the Nazis out, or because they know they can't qualify to come here.

Between July 1933 and June 1934, the first

full quota year that Hitler is in power, the U.S. only issues about 4,000 visas to people born in Germany, out of the 25,957 visas that are actually available through the law.

Roosevelt adjusts the State Department's interpretation of this public charge clause in 1933 and again in 1937. And as more Germans join the waiting list to get here, the Consulates slowly begin to issue more visas.

It's clear by 1938 that life in Germany is becoming unbearable for Jews. In March, Germany annexes Austria, bringing another 200,000 Jews under the German control.

Thousands wait outside U.S. Consulates every day to get on the waiting list for the U.S. and suicides skyrocket. President Roosevelt combines the German and Austrian quotas, but that still means that only 27,370 people can immigrate each year.

Roosevelt also calls an international conference in Evian, France. Thirty-two nations attend, most declaring, in very polite, diplomatic language, that they are not willing to take any more immigrants, either for economic reasons or because, in the words of the Australian delegate, they do not have a racial problem and they are not interested in

importing a racial problem.

The Kristallnacht attacks in November 1938 are headline news in the U.S. for three weeks, with font much larger than the coverage of the 1938 midterm elections or the 20th anniversary of the end of World War I.

Polls show that Americans overwhelmingly, 94 percent of them, disapprove of the Nazi treatment of Jews, but only 21 percent think the United States should bring in more Jewish immigrants.

Congress is bipartisan in their unwillingness to adjust the immigration laws. The situation is so bad that in April 1938, a group of Jewish Congressmen get together amongst themselves and decide that none of them will introduce any new legislation to open immigration any further that even having the debate will only lead to bills that will restrict immigration.

And dozens of those bills are introduced in 1939, from bills to end quota immigration entirely, to bills to say that an immigrant's entire family has to be subjected to intelligence tests prior to receiving a visa. None of these bills pass, but the few bills that call for opening immigration, none of them do either.

The members of Congress who favor immigration restriction echo public opinion. In January 1938, Americans are asked if they want their member of Congress to open the doors of the United States to more European refugees. Only nine percent say yes.

President Roosevelt is a politician, he is not a humanitarian. And although Eleanor consistently voices her support for Jewish refugees, he prioritizes recovery from the Great Depression and victory from World War II. At times, he acts in small ways to aid refugees. Normally, he does not.

And it is becoming more and more difficult to physically leave Europe, not just because of the quota system and the massive demand on visas, but because in June 1940, the German waiting list is over 300,000 people.

And after September 1, 1939, when World War II begins, it becomes incredibly difficult to physically escape. For example, in October 1938, the month before Kristallnacht, 5,504 Jewish refugees emigrate from Europe to New York on 55 ships from 14 different European cities.

Three years later, in October 1941, the month that Nazi Germany forbids Jewish emigration from

its territory, three ships, all from Lisbon, carrying only 100 passengers, are able to make the crossing. That was it.

Once the war reaches an area, those ports shut down to U.S.-bound transportation. September 1939, Germany ports and Polish ports close. The spring of 1940, ports in the Netherlands, in Belgium, in Norway, in Denmark, in France, close to U.S.-bound transportation.

Passenger ships are converted into troop ships. And by June 1940, refugees have to get to Lisbon if they want to find a ship that can take them to the United States.

Even after World War II begins, most Americans are convinced that the country is going to be able to stay out. There's a robust national debate between groups like America First and the CDAAA, the Committee to Defend America by Aiding the Allies. And those debates happen over what America's role should be in the war and in the world.

Once France falls in June 1940, many Americans believe the U.S. could be dragged unwillingly into war. Spies and saboteurs possibly disguised as Jewish refugees could bring the country down.

Roosevelt capitalizes on this fear in order to urge war preparedness. He says that Jewish refugees could be Trojan horses, their loved ones back in Germany held hostage in exchange for Axis spying and sabotage.

The INS [Immigration and Naturalization Services] moves from the Department of Labor to the Department of Justice, as immigration officially goes from being a question of economics to a question of national security.

Immigration is restricted even further and within a year, U.S. Consulates in Nazi-occupied territory close. Immigrants no longer have a place to go to receive a visa.

The doors to the United States never officially shut and there is no last ship out of Nazi Europe. Instead, many doors are shut on immigrants all along the way, or had been bolted closed years before.

There are many last ships, many almost-made-its, and hundreds of thousands, millions of tragic stories.

We estimate that the United States accepted between 180,000 and 220,000 immigrants fleeing Nazism between 1933 and 1945. That is more

than any other country in the world.

But clearly, as I hope you've heard from my talk, that's not something we should pat ourselves on the back about.

I quoted Philip Roth at the beginning, with the idea that history is the relentless unforeseen. In the 1920s, the refugee crisis is the unforeseen.

But with an immigration law based in eugenic science, racism, antisemitism, isolationism, economic insecurity, and fear, the American Government's response to the refugee crisis that began 15 years later is not surprising.

It's also important to remember that Nazi Germany murdered the Jews, not the United States. Our immigration laws were not generous, but America was not homicidal.

The Nazis were, however, and they were relentless. And in the face of desperate human need, the United States did not bend. We did not relent either.

Thank you very much.

CHAIR LHAMON: Thank you for the sobering talk, really appreciate it. I'll open for questions from my fellow Commissioners. Madam Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Again, thank you so very much, Professor, for joining us. I don't know that I have a question, it's more of a comment.

I visited many museums in my time and the Holocaust Museum that many of us were fortunate to visit today was absolutely incredible. This morning, you presented the context, the information, and then, the action that was taken.

I believe that we can look at -- I took a lot from that, it's a way to look at life and, certainly, look at the issues that this nation is facing at this time. And I thank you for causing us to ask questions of ourselves, along with much of the information that you presented us.

And I will forever take with me the fact that just because an issue, a problem, is huge, often even appearing insurmountable, that one need not hesitate to try to do something about it, that small steps are certainly better than no steps at all.

And I just think that is so profound and I thank you very much for doing that for us. And Madam Chair, I thank you for planning and putting this before us.

DR. ERBELDING: Thank you.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Thank you so much for that presentation, which sounded balanced to me. I mean, I'm not a scholar of that period, but it sounded very balanced to me.

I'm also no scholar of the Bible, but I seem to remember that somewhere in there there's a line about put not your trust in princes, so I thought it would be nice to mention some of the private citizens who did do things that were interesting.

Americans like Varian Fry. Like Mary Jayne Gold, who was like a brilliant character for a novel, I would think. A woman who was a very wealthy heiress, had spent all her life on frivolity, but when the Holocaust came, she was there and she helped. And women like Miriam Davenport

DR. ERBELDING: Yes.

COMMISSIONER HERIOT: -- an art student in France --

DR. ERBELDING: How do you know this story?

COMMISSIONER HERIOT: -- an American, again. And the other one I was trying to think of is Lois Gunden --

DR. ERBELDING: Lois Gunden, yes.

COMMISSIONER HERIOT: -- yes. And so, if you have any comment about the Americans who were

heroes, I'd love to hear it.

DR. ERBELDING: Absolutely. So, you pointed out three women, and it is Women's History Month, and one of the things that I pointed out to the Commissioners this morning is that social work was a very gendered profession at the time and a lot of the refugee aid organizations were headed by and run by women. And I think that's very important to note.

Mary Jayne Gold and Miriam Davenport were both crucial to the success of Varian Fry's operation in Southern France. Varian Fry was a journalist, who went in June -- well, he gets appointed in June 1940, he leaves in August 1940, to try to get 2,000 intellectuals, writers, artists, many of whom were Jewish, some were political opponents of the Nazis, out of France.

He does so, in spectacular fashion, over the course of a year and a half, working with these women, who were in France. Miriam Davenport is an art student, was evaluating the artist to see the unknown names, were they good enough to qualify for one of these limited visas?

Lois Gunden is also amazing. She was a French teacher in Goshen, Indiana, and a Mennonite. And her community asks her to go overseas, go to

France, Southern France, and be in charge of a children's home.

That there were children of Spanish Republicans, whose families had lost the Civil War and had gone into France, and Jewish children, whose parents were in internment camps. Would she go and head a children's home?

And in October 1941, two months before Pearl Harbor, she goes across the ocean. There are very few ships, as I said, crossing west. She goes east.

She goes into an area that is almost certainly going to be a war zone. And at one point, tells the SS that they cannot come into the home. She has been named Righteous Among the Nations.

And in the fall of 1942, she's arrested and interned in Nazi German for over a year, along with American diplomats and the Quakers, who are also still doing relief work in Southern France.

She's amazing. And she goes back to the United States in 1944 and she keeps teaching high school French. Does not make a big deal about this.

This is not -- and I think that is one of the consistent things that you see in rescuers and you see in people who are making the effort to help, is

that they don't think this is a big deal. They don't see any other way to do it. This is what you do. When people are in need, this is what you do.

COMMISSIONER HERIOT: Thank you.

DR. ERBELDING: Thank you.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes. I want to let people know, if you haven't seen the exhibit, it's incredibly well done, very powerful, particularly linking in the voices of everyday Americans and where they stood on the issues, so thank you very much.

I have to say, it was actually a very tough exhibit for me, because of the echoes of the internment of my parents. But I think very important for everyone to see.

I did think that one of the things that struck me was, near the end of the exhibit, there's the discussion of the kids who, at the very end, were allowed to come to the United States, but then, held behind barbed wire, basically.

So, I would like to hear more about that story and how they got there and how they were finally released, because I feel like the Commission is looking now at the detention and separation of families and their kids at our Southern Border. And

when we saw the pictures, many of the Commissioners all reacted the same way, which is, it was very reminiscent to us of what's happening today.

DR. ERBELDING: So, beginning in January 1944, the U.S. has a policy of rescue and relief. There is a War Refugee Board, which is a government agency tasked with trying to do this.

And two months later, in March, the War Refugee Board writes a memo arguing that we should establish refugee camps here in the U.S. that we should bring Jews here to stay for the duration of the war. They can go back after the war, but they should held in safety here.

They argue that this should happen, because we can't let the Nazis say that we never -- point out our hypocrisy, of saying that we care so much about the Jews, but never offered to receive these people.

It takes about two months to get the rest of the government to agree with them. They launch a propaganda campaign, they get friendly newspaper columnists to talk about how great it would be if we could have a refugee camp here.

And finally, in June 1944, they convince Roosevelt to unilaterally announce that this is going

to happen. They can only have the one camp and only bring about 1,000 people here. And they need to find an emergency to convince Roosevelt that this necessary.

They find an emergency, they realize that the U.S. Military is actively turning away rickety wooden boats of refugees that are trying to make it from Yugoslavia to Allied-occupied territory in Italy.

They're turning them away because they're saying that these territories are full and that the Allied Armies need to press on and they can't be taking care of people.

And so, they convince Roosevelt to rescind that order, to say that, no, the U.S. will take anybody who makes it from Yugoslavia to Italy. And also, to relieve some of the pressure of the camps, we will bring 1,000 refugees from Allied-occupied Italy to the United States.

More than 900 of the refugees are Jewish, and they represent 18 different nationalities. They are kept in Fort Ontario, which is an old War of 1812 fort, on the banks of Lake Ontario.

It has a long history and is actually under consideration now to become a National Park, incorporating both the history of the fort in

America's wars and the site of the only refugee camp in the U.S.

Bureaucratically, it is run by the War Relocation Authority, the same agency that was running Japanese internment camps, and the staff are the same people. Bureaucratically, that was how it worked out, this is under the Department of Labor.

So, these refugees arrive in August 1944. They are kept at the camp until January 1946, when they are finally released. Since you can't change your immigration status in the U.S., they board buses, make it to Canada, register at the Consulate in Niagara Falls, and then, have to reenter as legal immigrants.

As I said, the kids are able to attend public school, but the parents cannot work outside the camp and they cannot spend any time outside the camp, even to visit relatives who may have immigrated sooner or to see sons and daughters who are serving in the U.S. Armed Forces, who had immigrated and joined up, their parents are not allowed to leave the camp until 1946.

COMMISSIONER NARASAKI: And I just wanted to note one other crossover, because you had talked about the religious groups who stood up, including the

Quakers. And it was really, the Quakers were really one of the few who actually stood up for Japanese Americans who were interned, and would visit the camps. So, just a shout-out to the Quakers.

CHAIR LHAMON: Commissioner Yaki, I think you might not be on mute, if you could mute your phone, we'd appreciate it.

Dr. Erbelding, I was really struck at the beginning of your talk, when you said that the past is not a foreign country. And that frame is why we have the Speaker Series, to ask us to consider the lessons of the past and how they apply today.

The extraordinary exhibit at the Museum, I think asks each visitor, in each moment of the exhibit, also, to consider that frame also. So, I appreciate the frame now.

Your work leading to this point, your presentation today, your exhibit, was enormously painful, to listen to and also to then witness. And I just want to say thank you to you --

DR. ERBELDING: Thank you.

CHAIR LHAMON: -- for that work. And for helping each of us to remember why we're here on the Commission and why we do what we do in our time. So, I'll thank you.

And I understand that Commissioner Yaki has a question, now that he's on mute. Are you able to come off mute and come and ask? Commissioner Yaki?

COMMISSIONER YAKI: Am I unmuted now?

CHAIR LHAMON: Yes.

COMMISSIONER YAKI: Thank you very much. I'm really sorry I didn't get a chance to see the exhibit today, but I hope I will in the future. It's something that, obviously, every American, every person, I think, who comes to Washington, D.C. should go to.

My question has more to do with how the past is prologue. And I just wanted to get your assessment, if you can give it, on the resurgence of antisemitism worldwide, and even in this country.

As you know, that a cemetery was just vandalized a couple days ago in Massachusetts, including with Nazi symbology and words being scribbled on headstones.

When you see this and you think about the role the Holocaust Museum plays, what are your thoughts as you see the world as it is right now, still having the seeds and the feelings that are out there, that we thought we had extinguished over 50 years ago?

DR. ERBELDING: I would say that I don't necessarily think we had extinguished it 50 years ago and I think the Holocaust Museum, my colleagues in particular, have always been aware that white supremacy and antisemitism has stayed part of our culture, unfortunately.

I think one of the things that you see is that when Hitler is appointed Chancellor of Germany, you don't see an up rise in German citizens protesting his antisemitism. You don't see them taking to the streets in defense of their Jewish neighbors. Few and far between does anyone stand up.

And I think that reminds us that when we see acts of antisemitism and when we see white supremacy, this is something that we can do that can change that equation, is we can stand up and we can do something about it.

And our role, the Museum's role, we feel is in education. So, after Charlottesville, we put out a glossary of terms, of signs and symbols and hate speech, to remind people that the symbols and signs that the marchers used in Charlottesville are not new, that these were people who were deeply immersed in Nazi ideology.

And they are deploying it in the same

propagandistic ways that the Nazis did. And we should be aware of that and aware of where this rhetoric is coming from and the hatred that was bound up in it from the beginning.

COMMISSIONER YAKI: Thank you.

CHAIR LHAMON: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Yes. Thank you very much for the presentation. One of the pieces of the exhibit this morning that I thought was interesting was the extent to which it explored a distance in time between what our government came to know about what was happening in Germany and across Europe and what the plans were and when the American public came to have a broader understanding of the atrocities.

I was wondering if you could comment on that and help us understand what the historical record has revealed on those points.

DR. ERBELDING: What we see is that all along Americans have information. In 1933, they know pretty accurate information about book burning, about boycotts of Jewish stores, about attacks on Jews in the streets of Germany.

As long as there are diplomats and journalists in Nazi-occupied territory, Americans are

getting this information in newspapers. And this is a time when there are foreign correspondents, multiple foreign correspondents, there are 75, at least, foreign correspondents for different newspapers, different American newspapers, who are in Berlin reporting live of what is happening.

And so, Americans can read it. Whether they consider this part of their concern is a different question. But they have this information.

In July 1941, the Consulates close, reporters slowly begin to leave Nazi territory. And at Pearl Harbor, American journalists, the few who are still in Germany are rounded up and interned and have to be prisoner-exchanged out.

December 1941 is also the date the first extermination camp opens. So, the Holocaust really ramps up at the exact same time that American journalists are leaving foreign territory or being kicked out or being interned.

So, the first reports that are coming out about mass murder or a town being rounded up and shot are coming out second and third-hand. They're coming out through the Soviets, they're coming out through the Polish government-in-exile, which is in Britain.

And Americans are unsure about that.

They're unsure whether this is just what happens in war. The enemy is always murdering women and children. That is how people get Americans to fight, how you get anybody to fight, you demonize the enemy.

And so, Americans think that, they remember back to World War I and these atrocity rumors that they later thought were false. And they think that is possibly what is happening here too.

So, in 1942, the American Government or the State Department gets word that this is a Nazi plan, to murder all the Jews of Europe. That becomes public information in November.

But, largely, Americans either don't know what to do or are busy. They are going to work for the first time, they are trying to make up for the absence of husbands and fathers and sons, who are off fighting. They are concerned about the war.

So, they may have information, but it does not translate, for most people, it does not translate to concerted effort on that front. It becomes, if anything, an extra determination to win the war, but not to rescue.

Very few people, really no one, advocates diverting resources from the war towards humanitarian aid, if it will prolong the war. No one is advocating

prolonging the suffering of Allied soldiers or the fight of Allied soldiers in exchange for trying to rescue people. Nor does anyone have any concept of how that would happen anyway.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Thank you. Thank you very much for the morning and this afternoon. I found it excellent.

Along the lines of Commissioner Adegbile's question, this morning, and I got it wrong, because I wasn't taking notes then, like I am now, diligently, you mentioned something about the press and the American public finding things out and there was the exhibit with everything.

And we also had our Ambassador in the 1930s, in Germany. And then, you said something about facts become knowledge become -- and when did all that occur, in a time line, if you can? And I'm sorry, I don't remember all three or four of those subjects that you --

DR. ERBELDING: That's fine.

COMMISSIONER KLADNEY: -- talked about, but I'm sure she'll be able to repeat them now.

DR. ERBELDING: Well, I mean, I think what I was talking about is, you can read something and not

internalize it. So, you may have the information, but it doesn't mean you understand it. And then, it doesn't mean you necessarily, at this time, believe it.

And then, it is -- the biggest jump, I think, is from knowledge and understanding and belief and translating that into some sort of productive action, to deal with what you've read.

To some extent, it is because we have short attention spans. And without knowledge of the future, we don't know where to look. Are we looking at Venezuela? Are we looking at Syria? Are we looking at Myanmar?

Where is the next atrocity going to break out? The Museum does a lot of work with early warning signs, trying to predict that. But as an average consumer, it's hard to know. But that doesn't mean we have the excuse not to act. And so, that, I think, is the gaps that we need to jump.

And in this history, the press reports things, as we went over, at various points, the information is perceived by most Americans to be accurate, or perhaps inaccurate, or perhaps rumor.

And people believe it, and then take action at different points. And that is entirely

based on the individual. Who you are, what your community is doing and saying, and your personal belief and set of values.

So, some people are taking to the streets in 1993 and then, don't pay attention again until 1945. Some are in 1938 trying to sponsor a refugee and going through extraordinary lengths. Some people are going to Europe.

People are responding and making that leap between information and action at different points. For most Americans, they probably do not understand or believe the Holocaust until 1944-1945. To many of them, they need to see it in order to understand what is happening.

COMMISSIONER KLADNEY: And the Government just chose to take a different path.

DR. ERBELDING: And the Government, well, the Government's not a monolith. So, you can say, the State Department clearly takes a different path than the Treasury Department.

The State Department is all-in and the War Department is all-in on this idea that we should just win the war as soon as possible, to not divert resources.

The Treasury Department is favoring and

yes-and approach. That we can win the war, but we can also administer humanitarian aid, we can also try to rescue people, and that that won't divert resources from the war effort.

The Treasury Department wins out in that debate in 1944. And that is why the U.S. has a rescue operation set up in January 1944 that saves tens of thousands of lives before the end of the war. Most of those people who are saved have no idea that the U.S. Government is behind any of that work, but they are.

And that moment in which U.S. and Government response takes the turn, the moment when the Treasury Department starts to win the argument, is a really interesting moment in U.S. history, that they are successful in their argument that we can divert some resources, we can be -- our actions can match our rhetoric about democratic values.

COMMISSIONER KLADNEY: And was there, and I apologize for asking too many questions again, what was the turning point that got Treasury to win? How did they convince the powers that be?

DR. ERBELDING: There are a couple of things at play. There's a resolution in Congress calling for some sort of rescue response. There are activists advocating. There's even an Orthodox

rabbis' march on Washington, in October 1943, advocating for a rescue response.

And then, the Treasury Department lays out a case against the State Department, a case that they have been deliberately delaying humanitarian aid that could be going and helping people. They've been saying that we could do and then, delaying their approvals. And that they are deliberately keeping information about atrocities from the U.S.

And so, they argue that, basically, if we don't do something now, we might as well black out the Statue of Liberty, because we will be forever complicit in the murder of the Jews of Europe.

And that's a very powerful thing, as the Secretary of the Treasury, for him to hear, and then, to take to the President, that your legacy will be forever sullied if we don't do something.

COMMISSIONER KLADNEY: Thank you.

CHAIR LHAMON: To keep us moving, I understand that the Staff Director has a question, and then, Commissioner Adegbile. Commissioner Yaki, when you're not speaking, if you could mute your line, it will make it easier for all of us to hear here.

STAFF DIRECTOR MORALES: Thank you, Madam Chair. Thank you so much for coming to speak to us

again.

COMMISSIONER YAKI: It's not my line, I've been on mute since I last spoke.

CHAIR LHAMON: Then, someone else is making noise. Thank you, and I apologize for casting aspersions on your muteness.

OPERATOR: I believe the noise is actually coming from Jeff. If you could mute your line, sir, when you're not speaking?

CHAIR LHAMON: Mr. Staff Director, go ahead.

STAFF DIRECTOR MORALES: Okay, thank you, Madam Chair. Once again, thank you for coming to speak to us for a second time here about lessons we can learn from the Holocaust.

I was very lucky to have, as a professor, a hero of World War II, Jan Karski, when I was an undergrad at Georgetown. And can mention the role he played and how important that was, especially after the questions that the Commissioners had a few moments ago?

DR. ERBELDING: Absolutely. So, Jan Karski is a Polish resistance fighter. He is smuggled into the Warsaw ghetto, to witness what is happening to Jews, and smuggled to a transit camp outside of the

Belzec extermination camp.

He is then smuggled out to London, where he talks to British Government officials and then, to the United States, with the help of the Polish government-in-exile.

He meets with Roosevelt for about an hour in July 1943, to discuss what Karski is seeing in Poland, not just what's happening to Jews, but what's happening in Poland.

But Karski explains what he's seen in the Warsaw ghetto. So, within the span of a year, he goes from being in the ghetto to being in the Oval Office, explaining to Roosevelt what's happening.

And at the end of their meeting, Karski asks Roosevelt, so what are we going to do about this? This is a 27-year-old Polish man, in the Oval Office, probably intimidated, asking the President, the most powerful man in the world, what are we going to do?

And Roosevelt says, we're going to win the war. That is consistent U.S. policy for this entire period, we are going to win the war as soon as possible, that is how we will stop all the killing, not just the murder of Jews, but all the killing.

And then, finally, again, six months later, Roosevelt signs the Executive Order

establishing a War Refugee Board and a dedicated rescue response.

Roosevelt, because he doesn't live to see liberation, he doesn't live to write his memoirs, he doesn't live to reflect in a post-Holocaust world, we don't know what his motivations really are for establishing the War Refugee Board.

We don't know why that change happens in him. And whether Jan Karski is in the back of his mind, whether he's remembering that meeting, it certainly had an effect on him, because he orders Karski to go see other Government officials to tell his story.

So, Roosevelt is at least clearly moved by what he's heard, even if he doesn't say that rescue is possible. Whether that's still in his mind six months later, when he creates the War Refugee Board, it's hard to say. But it is certainly a pivotal moment and a pretty incredible moment to happen.

CHAIR LHAMON: Commissioner Adegbile, want to bring us home?

COMMISSIONER ADEGBILE: Sure. One factual clarification, at that point, when there's the turning point between the Treasury Department and the Department of State, what's the best understanding of

how many Jews have been killed in Europe?

DR. ERBELDING: Between four and a half and five million have already been killed.

COMMISSIONER ADEGBILE: And picking up on the questions of my colleagues, are there other names, individuals, who carried the debate forward for Treasury, who we should be aware of historically? The people that got in the trenches and said that the United States must do something? Just share their names with us for the record.

DR. ERBELDING: Yes. John Pehle, Assistant Secretary of the Treasury, Josiah DuBois, Assistant to the General Counsel, Randolph Paul, the General Counsel at Treasury, these are major figures in this history. Yes, thanks.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thank you, Madam Chair. You mentioned a lot of Executive Branch individuals who were involved in this.

What, if any, individuals in Congress could you highlight as being advocates for greater refugee influx, doing anything? Were there factions in Congress? Because it strikes me that was notably absent from much of the discussion we had, and you would think that there might be more involvement from

the Legislative Branch?

DR. ERBELDING: Sure. I talked earlier today about a bill for child refugees. That is sponsored by Robert Wagner, a Democrat from New York, and Edith Nourse Rogers, a Republican from Massachusetts. So, that effort is a bipartisan one.

Emanuel Celler, a Democrat from Brooklyn, is a constant voice on behalf of refugees. Samuel Dickstein, as well, also a New York Democrat, constant voices.

Emanuel Celler, the Hart-Celler Act, which replaces the Johnson-Reed Immigration Act, is Emanuel Celler, 20 years after the Holocaust, finally repeals or overturns the Johnson-Reed Immigration Act. That is a career for him spent advocating on behalf of more immigration to the U.S.

There are -- a lot of the Senators and Congressmen who become involved in pushing Roosevelt for a rescue response tended to not be long-term Senators, so they're not names that we know. But Will Rogers, Jr. was a Democrat from California and he -- I think he was a Democrat, I'm sorry.

You actually do have to remember which party people are from, because immigration and refugee matters are bipartisan. It is bipartisan for and

bipartisan against, both camps. It was not a party issue at the time.

And so, I believe he is a Democrat from California. He is in Congress for less than five years, but he really leads the charge in terms of pushing for a resolution, calling on Roosevelt to do more to rescue.

CHAIR LHAMON: Thank you very much --

DR. ERBELDING: Thank you.

CHAIR LHAMON: -- for your presentation. I thank you and also the Holocaust Museum for hosting us today and for sharing your expertise with us now.

We'll take a ten minute recess and come back at 2:40. And look forward to that moment, thanks.

(Whereupon, the above-entitled matter went off the record at 2:28 p.m. and resumed at 2:38 p.m.)

CHAIR LHAMON: I'm going to reconvene us, we're a little bit early, but we are all here, so we'll reconvene now at 2:38 p.m.

B. DISCUSSION AND VOTE ON DISCOVERY MATERIALS FOR THE COMMISSION'S PROJECT ON SEXUAL HARASSMENT IN FEDERAL WORKPLACES

CHAIR LHAMON: The next item is a discussion and vote on the discovery materials, mainly

the discovery plan outline and time line for the Commission's project on sexual harassment in the federal workplace. To begin discussion, is there a motion?

COMMISSIONER ADEGBILE: So moved.

CHAIR LHAMON: Is there a second?

COMMISSIONER KLADNEY: Second.

CHAIR LHAMON: Okay. Commissioner Adegbile, as the sponsor of this project, would you like to begin our discussion.

COMMISSIONER ADEGBILE: Absolutely. So, first, a thank you to our colleagues in OCRE, who have been working diligently to get all of our work flows on track, taking account of the shutdown and the complexities that that added to our work across a number of projects.

It has required some refocusing on when our meeting schedules are, what it will take to be prepared to have votes to advance the projects that are already in the queue, and some projects and briefings and hearings that lie ahead of us.

This is one such project that required some recalibration. And so, the core of the effort is to try and realign the schedule, such that we can have the time to vote on the project line up with the

regularly scheduled end of the year business meeting, which I believe may be moving around, but I think it's the first week in December, is the notion.

And after a lot of hard work and collaboration, under Cathy's leadership, I think we have this proposed schedule that has been circulated to the Commissioners. And I would ask, with thanks to OCRE and with the indulgence of our Commissioners, that we reset the schedule consistent with what has been circulated.

CHAIR LHAMON: Terrific, thank you. To continue the discussion, I'll also offer a few points. The materials presented to us for vote today reflect research from the Office for Civil Rights Evaluation, as Commissioner Adegbile mentioned, as well as from Commissioner Adegbile himself.

I want to thank both that office and the Commissioner for that work. I believe these materials set this investigation with a solid foundation and I look forward to the Commission's briefing in May 2019.

Is there any other discussion of these materials? Hearing none, I'll call the question and take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Sorry, I'm going to have to abstain on this one, I haven't had a chance to look at the materials.

CHAIR LHAMON: Okay. Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: As long as I'm not accused of shuffling papers again, yes.

(Laughter.)

CHAIR LHAMON: Thank you. Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes, one Commissioner abstained, no Commissioner opposed, all others were in favor.

C. DISCUSSION AND VOTE ON STATEMENT DEADLINES FOR THE COMMISSION'S PROJECT ON STAND YOUR GROUND LAWS

CHAIR LHAMON: Our next item of business is the extension of Stand Your Ground statement

deadlines. To begin discussion, is there a motion?

COMMISSIONER YAKI: I have a motion.

CHAIR LHAMON: Go ahead, Commissioner Yaki.

COMMISSIONER YAKI: Yes. With the agreement of Commissioners Heriot and Kirsanow, I move to extend the deadline so the statement is due on May 17, 2019, rebuttals are due June 17, 2019, surrebuttal notice is due on June 24, 2019, and any surrebuttal text will be due on July 1, 2019. That is my motion.

CHAIR LHAMON: Thank you. Is there a second?

COMMISSIONER HERIOT: Second.

CHAIR LHAMON: Thank you. Is there any further discussion? Okay, I'll call the question and take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Abstain.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes, one Commissioner abstained, no Commissioner opposed, all others were in favor.

D. DISCUSSION AND VOTE ON THE WYOMING STATE ADVISORY COMMITTEE CHAIR APPOINTMENT

CHAIR LHAMON: Now, we'll turn to the next item on our agenda, which is a discussion and vote on the Wyoming State Advisory Committee Chair appointment.

Before we begin discussion, I remind my fellow Commissioners that the Commission has a policy not to defame, degrade, or incriminate any person. Each of the individuals on our State Advisory Committees has agreed to volunteer time and energy in the pursuit and protection of civil rights.

With that, I turn to our current appointment. The Staff Director has recommended for appointment Robert Byrd, as Chair of the Wyoming Advisory Committee.

To open the floor for discussion, I move that we approve this appointment. Do I have a second?

VICE CHAIR TIMMONS-GOODSON: Second.

CHAIR LHAMON: Thank you. Any discussion on this appointment? Hearing none, I'll call the question and take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I pass.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes --

COMMISSIONER HERIOT: Wait, but I only passed.

CHAIR LHAMON: Okay.

COMMISSIONER HERIOT: Yes.

CHAIR LHAMON: Do you want to come back?

COMMISSIONER HERIOT: Yes.

(Laughter.)

COMMISSIONER ADEGBILE: I was going to ask for that clarification, whether pass was consistent with abstain or something different, now we know.

CHAIR LHAMON: Okay, good to know. I'll call the question and take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Abstain.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes unanimously. Okay.

E. DISCUSSION AND VOTE ON A DRAFT STATEMENT REGARDING INCREASING HATE CRIME ENFORCEMENT TO

ADDRESS WHITE NATIONALISM

CHAIR LHAMON: We'll now consider the amended business items, beginning with the proposed statement from Commissioner Yaki. I'll first turn it over to Commissioner Yaki to read his proposed statement.

COMMISSIONER YAKI: Yes. I have a statement, which I will now read, omitting the footnotes, as is our tradition.

And the title is, The U.S. Commission on Civil Rights Urges the U.S. Department of Justice and the Trump Administration to Increase Hate Crime Enforcement to Address White Nationalism. And the text goes as follows.

Paragraph. The U.S. Commission on Civil Rights strongly urges the United States Department of Justice and the Trump Administration to increase hate crimes enforcement in response to white nationalism and the violence motivated by hate, targeted at people of color and newcomers to our country.

Paragraph. In the last few years, self-identified white nationalist extremists have sought out and killed people of faith in their houses of worship.

First bullet. The 2015 murders of nine

African American parishioners at the Emanuel African Methodist Episcopal Church in Charleston, South Carolina, a predominantly African American church.

Second. The 2018 hate killings of two African American men in Lexington, Kentucky, after failing first to enter a historically black church.

Next is, the 2018 killing of 11 members of the Tree of Life Synagogue in Pittsburgh, Pennsylvania. Prior to the killing, he expresses hatred of Jews and migrants to America on various extremist websites.

New paragraph. The mass murder of 50 worshipers of Islam at the mosque in Christchurch was allegedly committed by a person with similar animus and very anti-Muslim and anti-immigrant views.

He allegedly posted live video feeds of his killing spree on social media and reached across the globe, including and especially within the United States. Indeed, neo-Nazis based in our country were touting their enjoyment of the video and hailing the actions of the alleged shooter.

Paragraph. White nationalism is not confined to the reign of terror and violence perpetuated by the Ku Klux Klan, but is an active presence that now spans cities, states, nations,

continents, and oceans, aided and abetted by the digital and wireless age in which we live.

Regrettably, its presence in the United States is an infectious virus and an active threat to liberty, equality, and basic human dignity that must be stopped and cured by the sunlight of transparency and the balm of leadership from all sectors of American society, political, business, religious, and our communities.

Paragraph. Our hearts go out to the victims of Christchurch and the good people of New Zealand, and to the victims of similar domestic violence and murder.

And we also know we have a responsibility here, at home, to combat the forces that promote these violent attacks, because, as we have seen time and again, this kind of hate knows no boundaries and no restrictions on geography.

Last paragraph. To not act forcefully and forthrightly in moments such as this is a missed opportunity to say to white nationalist extremist groups and individuals that their actions are intolerable in America.

The United States Department of Justice has the tools and authority to respond effectively to

hate and to lead the country in safeguarding our core civil rights commitments of equality for all. This Commission urges DOJ and the Trump Administration to use every tool available to lead our nation against hate.

CHAIR LHAMON: Thank you, Commissioner Yaki. Is there a motion so we can open the floor for discussion?

VICE CHAIR TIMMONS-GOODSON: Vice Chair Timmons-Goodson --

COMMISSIONER YAKI: So moved.

VICE CHAIR TIMMONS-GOODSON: Hello.

CHAIR LHAMON: I think Commissioner Yaki was moving.

VICE CHAIR TIMMONS-GOODSON: Oh, I'm sorry.

CHAIR LHAMON: Okay. Is there a second?

COMMISSIONER ADEGBILE: Second.

CHAIR LHAMON: And, Madam Vice Chair, did you want to open for discussion?

(Laughter.)

VICE CHAIR TIMMONS-GOODSON: Yes, I did want to thank Commissioner Yaki for his leadership in this. And I guess, I'm still so very moved by our presentation earlier this morning and this afternoon.

And I've just been left with what the

professor shared with us just a short while ago about the fact that, how important it is that when you see something, you ought to stand up for it and do something about it.

And I guess I just feel that this statement is that something that I can do, by voting for it and adding my name to the list of those in support of it. And so, yes, I will be supporting this statement.

CHAIR LHAMON: Thank you, Madam Vice Chair. Any other discussion?

COMMISSIONER KIRSANOW: Yes, Madam Chair. I want to thank Commissioner Yaki for putting this together. I agree with the sentiments expressed herein.

I'm probably going to abstain, only because I'm going to prepare my own statement, which will express many of the same sentiments as contained in Commissioner Yaki's statement, said in a slightly different way.

CHAIR LHAMON: Hearing that, do you want to ask to try to work on a statement that would be joint or do you prefer to --

COMMISSIONER KIRSANOW: I think it's important to get a vote today --

CHAIR LHAMON: Okay.

COMMISSIONER KIRSANOW: -- as quickly as possible. Working on a statement would delay it and I think this is a statement that should go out, and I'll have my own.

CHAIR LHAMON: Okay. Any other discussion? Oh, Commissioner Heriot?

COMMISSIONER HERIOT: I just want to say, I've been working on that with Commissioner Kirsanow. And again, obviously, I agree with almost everything that's said. But I would put it in a somewhat different way.

And I think that probably the best thing to do, unless -- I would support you if you want to do otherwise, but it's probably better just to get it out.

CHAIR LHAMON: Well, it's Commissioner Yaki's proposal. My own preference would be unanimity, if it's possible, and it sounds like it is. So, my own preference would be to try to come together, but this is Commissioner Yaki's statement. Commissioner Narasaki?

COMMISSIONER NARASAKI: I very much appreciate the fact that you are working on a separate statement and supporting us moving forward with the

statement to get something out quickly, because I actually agree that it's important for it to be timely.

And my experience is, it's been a little challenging for us to get agreement on language and tone, and that might delay it. So, I very much actually appreciate your accommodation and I would vote to try to move this.

CHAIR LHAMON: I'll offer a Hail Mary, that as the Chair, I often speak for the Commission and I love it when I'm able to speak unanimously for us. And so, if we are able to get to something that I could represent on behalf of the whole Commission, we have just a few weeks until our next scheduled vote.

COMMISSIONER HERIOT: We can do both, can't we? We can get these statements out and then, like, have something that we all agree with the Chairman when she says blah.

CHAIR LHAMON: That sounds great. Okay. Any other discussion? Okay. I'll call the question and we can take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I abstain and will

have a separate statement.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Abstain, ditto.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes, two Commissioners abstained, no one opposed, and all others were in favor.

F. DISCUSSION AND VOTE ON A DRAFT STATEMENT CONDEMNING THE RECENT ANTISEMITIC STATEMENTS MADE BY CONGRESSWOMEN RASHIDA TLAIB AND ILHAN OMAR

CHAIR LHAMON: We'll next consider the amended business items, beginning with the proposed statement from Commissioner Kirsanow. I'll turn it over to Commissioner Kirsanow to read his proposed statement.

COMMISSIONER KIRSANOW: Thank you, Madam Chair. The statement reads as follows.

The U.S. Commission on Civil Rights

condemns the recent anti-Semitic statements made by Congresswomen Rashida Tlaib and Ilhan Omar. We also express our disappointment that the House of Representatives did not formally rebuke them.

One of the first notable comments made by Congresswoman Tlaib in her new position was to accuse supporters of the anti-BDS, that's Boycott, Divest, and Sanction Movement, bill of dual loyalty, tweeting, quote, they forgot what country they represent, end quote.

Congresswoman Omar has made a number of comments suggesting that Jewish Americans have divided loyalties between the United States and Israel. On February 10, Congresswoman Omar engaged in a Twitter exchange, in which she shared her beliefs that American support for Israel is due to campaign contributions from the American Israel Public Affairs Committee, or AIPAC, despite, quote, unequivocally apologizing, end quote.

Less than three weeks later, Congresswoman Omar stated, at a progressive town hall at which Congresswoman Tlaib was also in attendance, quote, nobody ever gets to have the broader debate of what is happening with Palestine. So for me, I want to talk about the political influence in this country that

says it's okay to push for allegiance to a foreign country.

Congresswoman Nita Lowey responded to the comments by tweeting, quote, lawmakers must be able to debate without prejudice or bigotry. I'm saddened that Representative Omar continues to mischaracterize support for Israel, end quote.

Congresswoman Omar responded, I should not be expected to have allegiance/pledge support to a foreign country in order to serve my country in Congress or serve on a committee.

Congresswoman Omar's suggestion of Jewish allegiances to a foreign power is particularly troublesome because Jews disproportionately are targets of hate crimes.

In New York City, in 2018, 69 separate individuals were arrested for anti-Jewish hate crimes, which was the largest number of people listed for any type of hate crime in that city. Nationally, 523 people were arrested for anti-Semitic offenses in 2017.

Despite being repeatedly informed that questioning the loyalty of Jewish Americans because of their support for Israel is an old and harmful anti-Semitic slur, Congresswoman Omar continues to make

such statements.

This suggests that she actually believes what she says, that American support for Israel is driven by Jewish American's prioritization of Israel's interests. The slur, one of the oldest and most pernicious in history, has no place in public life.

CHAIR LHAMON: Thank you, Commissioner Kirsanow. Is there any discussion? Oh sorry, is there a motion so we can begin discussion?

COMMISSIONER KIRSANOW: I move that the Commission adopt the statement as read.

CHAIR LHAMON: Is there a second?

COMMISSIONER HERIOT: I second, yes.

CHAIR LHAMON: Okay. And now, I'll open for discussion. I'll -- oh, go ahead, Madam Vice Chair.

VICE CHAIR TIMMONS-GOODSON: Madam Chair, and thank you, Commissioner Kirsanow, for bringing up the issue of condemning religious intolerance. I don't think any of us on the Commission endorse that kind of thing.

I have to confess, though, that I'm concerned about personalizing the condemnation so very strongly. I'd be willing to see if we can't work something out that gets to the strength of the

condemnation, yet not personalizing it quite so much.

CHAIR LHAMON: Thank you, Madam Vice Chair. I'll note, as I have said, I welcome unanimity among us, when we can get to it, and I strongly agree that the Commission should continue to speak against religious intolerance.

I asked my Special Assistant to reach out to Commissioner Kirsanow's Special Assistant, to see if we could find common ground, to work on a statement that we can all sign onto. And I would welcome doing that, if we could.

And as I've noted, there is another business meeting in just a few weeks. I would be delighted to work on some edits and see if we could come up with text that I could vote for, for a statement against religious intolerance. Any further discussion?

COMMISSIONER KLADNEY: I would just like to say that I really haven't had enough time to go over the statement. I've read it once and I haven't kept up with this issue, with the Congressperson, so I will be abstaining, if there's a vote.

COMMISSIONER KIRSANOW: Madam Chair, since we've been acting with such comity, I'm glad to postpone this for a couple of weeks.

CHAIR LHAMON: Thank you. I would really welcome the opportunity to work with you on it. So, I appreciate it.

COMMISSIONER KIRSANOW: Okay.

CHAIR LHAMON: Thank you, Commissioner Kirsanow.

G. PRESENTATION BY CONNECTICUT ADVISORY COMMITTEE CHAIR DAVID MCGUIRE ON THE COMMITTEE'S RECENTLY RELEASED ADVISORY MEMORANDUM, SOLITARY CONFINEMENT IN CONNECTICUT

CHAIR LHAMON: Okay. Now, we will turn to presentations by our State Advisory Committees.

First, we'll hear from our Connecticut Advisory Committee Chair, David McGuire, on the Committee's Advisory Memorandum titled Solitary Confinement in Connecticut. Chair McGuire, the floor is yours.

MR. McGUIRE: Hi. Thank you for having me.

CHAIR LHAMON: Thank you.

MR. McGUIRE: So, I was hoping to update you all on our briefing on solitary confinement and then, tell you a bit about an upcoming briefing that we're holding on April 2.

So, if you recall, back in February of 2017, we had a briefing at the Capitol here in

Connecticut on solitary confinement. We had three panels and a really robust open comment period.

And ultimately, we were able to very quickly turn around some recommendations for the legislature in May that ultimately did fuel some legislation that passed the next month, in June.

That law, if you recall, was one that banned the use of solitary confinement on children, anyone under the age of 18. And then, also, it implemented some pretty strict reporting requirements and necessitated a report that the Commissioner would put out in the beginning of 2019. So, he had almost a year and a half to write that report.

And I've just gotten that report and it is a really great document, that details all of the progress that they've made since the law passed in 2017.

One of the things I just wanted to highlight was, prior to the law passing, there were anywhere around 150 to 250 people in solitary confinement at any given time in Connecticut. And right now, there's 29 people in solitary confinement. That's out of a population of about 13,000. So, there's been a very, very steep reduction in the use of solitary confinement.

And I really do attribute a lot of that to the SAC's work and the Hawthorne effect, meaning that the reporting requirements have really moderated the behavior there.

There are still some concerning disparities, in terms of the race of folks that are held in solitary confinement, but that's a much larger criminal justice issue here in Connecticut, that I'll get into here in just a moment, because I think we have to address that in different ways, as a Commission.

The other thing just to note really briefly is that, if you recall, the product our SAC did before the solitary confinement was one on racial profiling. And I actually was not a SAC member at that time, but was an observer and saw how effective the SAC was in advocating for really detailed data reporting on traffic stops.

And Connecticut really does lead the country on that now. California, a couple of years back, modeled their statewide racial profiling law off Connecticut's.

Based on the Connecticut work, we now are able to drill-down to officer-level analysis, meaning, before, we were looking at it as a state, and now,

departments, and we've gotten to the point where we're looking at individual officers.

And similar to the great work we did on solitary, there are now fewer reported cases of racial profiling and the overall trend has gone down.

It's still something that needs to be worked on, but those two briefings that the SAC held make me believe that the briefing we're going to hold on April second is going to be very, very impactful. And that's a briefing that will look at racial disparities and prosecutorial practices here in Connecticut.

As I alluded to with the still alarming racial disparities in the use of solitary, we know that about 65 percent of our prison population are folks that are black or brown. And that is almost three times what the state population is, so there is something at the front end of our system that needs to be addressed.

And we're hoping that, through our briefing on the second, we'll be able to advise the Commission about some of those potential sources, some of those decision points where the racial disparities show up, and make, potentially, some recommendations about increasing transparency and oversight.

We're one of three states in the country that appoint our prosecutors and they're appointed by a body of six people, who the Governor appoints. And it's essentially a rubber stamp, there's not any meaningful oversight or scrutiny there.

I'm excited that we have two really great panels. The first is one that will have criminal justice players in Connecticut give a baseline. So, we'll have two people from the State Attorney's Office, that's what we call prosecutors in Connecticut. We'll have a public defender.

And then, we'll have someone who is the Under Secretary of Criminal Justice Policy and Planning. That person just came to Connecticut from the Council of State Governments and has a really good viewpoint of where Connecticut fits into the national picture.

And then, our second panel is going to look to folks outside of Connecticut, to first of all, weigh in on what they heard on the first panel, and then, talk about their efforts to combat racial disparities in their systems.

So, we'll have someone from Larry Krasner's office in Philadelphia, the head of their Conviction Integrity Unit. We'll have someone from

the University Of Pennsylvania School Of Law, their Administration and Justice Center.

We'll have someone from the Fair and Just Prosecution Organization. They're relatively new, but they're doing a lot with data transparency and trying to come up with some better data-driven decision making in law enforcement, which will lead to hopefully less racial disparities and better public safety outcomes.

And we'll have someone from the Brooklyn D.A.'s [District Attorney's] Office, who's also doing some work around these racial disparities.

So, I'm really excited about the panel that we have. And I think similar to what we did on solitary confinement, we have a real chance to help move some legislation that will hopefully set in course a chain reaction that will identify and reduce racial disparities here in Connecticut. And it's very much tied to the two other projects we've recently done.

So, that's my main presentation. I'm happy to take any questions on any three of those projects I briefly touched on. And I appreciate the Commission's support.

CHAIR LHAMON: Thanks very much. I'll open

for questions from my fellow Commissioners. Commissioner Narasaki?

COMMISSIONER NARASAKI: I really want to thank your Committee for an incredible report. It echoed many of the themes that, in a hearing we just held on women in prison, around the issues around solitary confinement. And I'm hoping that we'll be able to work some of your findings into that report.

I was struck by a couple of things. One was the discussion about, what are the options, alternatives for solitary confinement?

And you quoted that only recently have systems, like Pennsylvania and Rikers, developed model programs that can be used as alternatives. And I'm wondering what alternatives there are, that you are thinking about?

MR. McGUIRE: Well, here in Connecticut, we went from that 250 number down to 29 by really emphasizing officer wellness and training.

As a correction system, we're a unified system. So, all of our prisons and jails are run by one Governor-appointed Commissioner. And that creates some opportunities to really have system-wide change quickly.

So, they've really put an emphasis on

bringing in mental health experts to help officers better identify who really needs mental healthcare and needs to be de-escalated in a different way.

And we're certainly not perfect here and we have some real medical and mental healthcare problems in our system, but since the report came out, it really has been a kind of reflection point and we've seen different programs at different facilities.

So, there's not a one-size-fits-all. But they're really putting an emphasis on the mental healthcare. And you're seeing the people -- the reporting that we get now monthly will tell, by facility, how many people are in solitary and how long they've been in there.

And the really positive piece from the reporting has shown that fewer people are put in it and they're in for a much shorter period of time. And that is, I think, largely due to the mental health de-escalation that they're using. I hope that helps.

COMMISSIONER NARASAKI: Yes, thank you, that was very helpful. And then, I had one other question that also echoed the hearing that we just had. Which is, how realistic the ability is for prisoners to be able to file grievances about how they're being disciplined?

And you have, in Point 10, you talk about the disciplinary tickets and that if a prisoner complains and challenges, then instead of getting a week in solitary, they'll get a month or more.

And the second is, how the grievance system actually does not seen to actually work, that the prisoners aren't really heard and actions are not taken.

So, I'm wondering what recommendations you guys were looking at, in terms of how those issues get addressed, because we heard that as well in our other hearing.

MR. McGUIRE: Yes, that is a huge issue. And as I -- I used to practice in this area and I would often find that prisoners were unable to file the grievances and that they were not responded to in a meaningful way. And like you just mentioned, oftentimes, resulted in retaliation.

We, as a state, are actually piloting now, and I think some of what we brought up in that briefing may have sparked this, an electronic system where prisoners will have a tablet, and they're made for the facilities and they're safe and they're clear, so they can't be used to hide contraband.

But those tables will be used for a number

of things, including legal research, but also the grievance process, so that there is, essentially, an electronic paper trail of who filed what. And it will be used for medical and mental health requests, as well. And it will be a system that can't be as easily manipulated or overused or misused by prisoners. So, it's to everyone's benefit.

So, I would be happy to chase down some information about how that pilot is going and, through Barbara, get that to you, because I think it is a kind of exciting way to address what is a very real problem in a lot of facilities.

COMMISSIONER NARASAKI: That does sound very interesting and it would be really exciting if you could share that with us. Thank you.

MR. McGUIRE: Absolutely.

CHAIR LHAMON: Chair McGuire, this is Catherine Lhamon. I will say to you again here what I have said to your State Advisory Committee separately, which is that I was really wowed when I first started at the Commission to see, as an early work product in my tenure, the first memorandum from the Connecticut State Advisory Committee about the solitary confinement issue.

That it was timely and helped to move

state legislative action in a way that responded to the concerns that your Advisory Committee raised. And that was an inspiration for me and just incredibly exciting to see as something that our State Advisory Committees can do.

I have been delighted, in the two years since, to see several other State Advisory Committees likewise following suit in taking timely and effective action to make progress in their states responsive to the concerns that the Committees address.

And I very much appreciate seeing the ongoing commitment from your Committee to this issue and to continuing to see it through, past even your initial recommendations as an Advisory Committee.

So, I thank you now, and I hope you will share with your fellow Committee members that thanks for the effectiveness of your work and the tenacity of your work.

MR. McGUIRE: Thank you for the support and I will definitely share those comments with them.

CHAIR LHAMON: Thank you. Any other questions from fellow Commissioners? Hearing none --

COMMISSIONER KLADNEY: I would just like to make a statement, and I'd like to thank your Committee as well, because I think solitary confinement is a

very important issue and it has been overused in this country by a longshot, as you can see by the numbers that occurred in your state. So, thank you very much.

MR. McGUIRE: You're most welcome.

CHAIR LHAMON: And with that, Chair McGuire, we thank you for your presentation and we will -- and also for your leadership on your State Advisory Committee.

MR. McGUIRE: Thank you.

H. PRESENTATION BY TENNESSEE STATE ADVISORY COMMITTEE CHAIR DIANE DI IANNI ON THE COMMITTEE'S RECENT REPORT, THE CIVIL RIGHTS IMPLICATIONS OF TENNESSEE'S CIVIL ASSET FORFEITURE LAWS AND PRACTICES

CHAIR LHAMON: And we'll next hear from our Tennessee State Advisory Committee Chair, Diane Di Ianni, on the Committee's Report titled, The Civil Rights Implications of Tennessee's Civil Asset Forfeiture Laws and Practices. Chair Di Ianni, the floor is yours.

MS. DI IANNI: Thank you. Thank you, Madam Chair and Commissioners. Our report on CAF [Civil Assets Forfeiture] was unanimously adopted a little over a year ago, in February 2018. I know that you have the report, so I'm just going to touch on a few

highlights and then, do my best to answer any questions you have.

Our single overarching finding is that Tennessee falls well short of the enacting legislation goals of having a law enforcement tool both consistent with due process of law and protective of innocent owners' property interests.

We found that it does neither. That Tennessee is one of the least protective of the states, in terms of owners' rights, and the policies and practices raise significant civil rights concerns regarding fair and equitable administration.

The timing of our report should be noted. We submitted our proposal in February of 2017, after extensive media coverage in Tennessee of numerous high-profile instances of abusive seizures on Tennessee's interstate highways. So, there was a lot of State interest.

In July, six months later, we had an in-person all day public hearing with enthusiastic participation of 23 panelists, generating a near-400-page transcript.

Not only did we have academics and advocates, I think it was important that we had six legislators, four senior law enforcement officials,

and four lawyers who practiced and represented clients in forfeiture proceedings.

So, there was some real deep knowledge and many points of view that really led to a very robust discussion. We had several written submissions as well.

And a few months after our hearing, the USDOJ's IG issued a report critical of -- they did an audit of Tennessee's DOS, on equitable sharing. And it was a critical report, finding that Tennessee had no accounting or oversight of equitable sharing funds and that funds were being misused for unauthorized items, such as banquet tickets and catering and so forth.

So, we had a substantial record with which to write this report. I'm just going to highlight a few of our specific findings that are detailed in the report.

Tennessee is only one of three states that requires a property owner to post a cash bond, to just even begin the process of challenging the legality of the seizure. And if there's -- you have to post a bond for each reason of seizure. So, you might have to post more than one.

And remarkably, you have to post a cash

bond, even if the property taken is cash itself. Many panelists talked about how that defies logic for the owner to have to post a bond, when it's the State that's holding the property.

We also found that there is substantial due process concerns, with a lack of independent, neutral to hear forfeiture cases, because our hearings are all conducted through one State agency, the Department of Safety.

And DOS [Department of State] employees are both the prosecuting attorney in a forfeiture, as well as the ALJs [Administrative Law Judges] which hear the cases. And if you want to do an administrative appeal of an ALJ's decision on forfeiture, the administrative appeal goes to the ALJ's boss.

This concern about the lack of independent, neutral, is exacerbated by limited judicial oversight and the fact that Tennessee uses the second lowest standard of proof, which is the preponderance of evidence.

There's no right to legal counsel or fee-shifting, even where basic needs, such as transportation and shelter, are at risk.

And in Tennessee, innocent owners are

required to prospectively assign waiver language, waiving Eighth Amendment protections of excessive fees and cruel and unusual punishments for any future criminal prosecution, on the settlement forms.

We also found a lack of accountability, too little accountability, as our local LEAs [Law Enforcement Agency's] could retain 100 percent of the forfeited assets, which they can use without any oversight. It creates a perverse financial interest.

We had some very ample testimony here. One D.A., elected D.A., testified that he knew officers were specifically directed to go out and do seizures to fund their own salaries, trips to conferences, trip to CLEs [Continuing Legal Education], continuing education, and so forth.

And he said flat out that individuals are being subjected to forfeiture procedures that would not otherwise be, if it wasn't -- if CAF was not, his words, a cash cow.

There's a lack of sufficient data collected. And although our General Assembly, a few years ago, started requiring some reporting information, it's all very general statewide aggregates.

And we found it too limited to be useful.

There's no data on how, when, where, and from whom seizures are occurring, and no demographic or geographic data.

The real concern with low-value seizures, particularly when a seizure of $144 or a watch, iPhone, or gift card from people who might not have the -- how might be innocent and not have the ability or wherewithal to post that cash bond, get and file the required legal forms.

There's a very strict time line for owners to file reports with hiring an attorney. And we had testimony that legal fees for these type of pages run $4,000 to $7,000, or more.

All of this -- we also found that, and many of our panelists spoke about serious concerns about disparate impact on low-income individuals, persons of color, and other marginalized communities.

Several spoke of the impact on low-income, low-asset families, who might have a family car and if it's seized because of one member, the family can't get to their jobs.

Even if they ultimately prevail, it can take ten or 11 months to get the property returned from the State. And in that time, people can lose their jobs and fall into an inability to sustain even

basic needs of food and shelter.

With respect to racial disparities, a police lieutenant had testified that traffic stops created, quote, opportunities for seizures.

And we also, later in the hearing, had an attorney involved in a very large driving-while-black study that was done here in Nashville a few years before that empirically showed enormous discrepancies in the percentage of traffic stops for black and white drivers in Nashville.

We had an attorney tell us about -- there are several attorneys who actually, again, did this work and there were some compelling individual stories of their clients facing forfeiture proceedings and how it went.

And one of the attorneys mentioned a client that was a young black man who was pulled over and happened to have $1,200 in cash with him. And although no drugs were found and there was no other suspicious activity of any sort, they took his money anyway, because ten years earlier, he had a misdemeanor marijuana charge.

We also had an immigration attorney talk about the disproportionately high seizures against the immigrant community. And he attributed it to a

variety of vulnerabilities due to language barriers, likelihood of carrying cash, and so forth.

Relatedly, there are many who spoke of the CAF's deleterious effect on police-community relations, the erosion of trust and authority of the police.

And one of the panelists said, it was very concerning, said, some members of our community are more concerned about being robbed by police than by a stranger.

Our recommendations, our report calls for substantial statewide reform. We've divided into near-term, intermediate, and long-term, because we have so many thoughts about reform.

We spelled it out in detail in the report, which you can look at. I'll just summarize that, generally, they fall into one of four categories.

Promoting due process, such as eliminating the bond and other things.

Protecting innocent owners by reducing procedural barriers and fair treatment across communities, with mandatory training and so forth.

Reducing the perverse financial incentive, we have several recommendations that speak to that. I'll point at only an important one of eliminating CAF

when the seized value is under $100,000.

And, then, finally, transparency, improving transparency and accountability through data collection and so forth.

I'm happy to stop here and take any questions, or I'm happy to speak more about some developments in Tennessee since our hearing.

CHAIR LHAMON: Thank you so much, Chair Di Ianni. I'll open for questions from fellow Commissioners. I'll start by just thanking you for your very thorough and comprehensive report.

It's a pleasure to read and to see the depth of information that you took in and also, the very thoughtful findings and recommendations that follow from your report.

I was also pleased to see that your presenters included some presenters that we've seen. In particular, Vikrant Reddy, who has testified to us on related issues in the Commission, whose testimony I found enormously helpful.

So, it was a pleasure to see the thoughtful and generally bipartisan nature of the information that you took in and to get to review your thoughtful recommendations.

COMMISSIONER ADEGBILE: Madam Chair, sorry

to interrupt. Could we just ask everybody that's on the telephone to mute, while we are talking? We're getting cross-talk that is making it difficult to hear.

CHAIR LHAMON: Thank you. Are there any other questions or comments? Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes, thank you. I echo the Chair's comment, this is a really excellent report. I was very struck by a lot of the testimony that was summarized.

Particularly, District Attorney General Crump's testimony that out of 101 seizures, five individuals were never even charged. He was testifying that it only five, but that means one in 20, and I would think that for those five, that was pretty devastating seizure, in any event, and they were innocent.

It seemed to me like the issues are pretty shocking to the conscience in any regard. And then, when you add, others had testimony about the racial disparities that they found that virtual every one of the 50 patrol zones, that there was a racial disparity and it didn't matter if the zone was high-crime, low-crime, or mid-crime.

And that in 90 percent of the searches,

nothing was turned up. In nine percent, it was some kind of drug, usually marijuana.

So, I'm wondering what more has been done around the racial disparity aspect of what is happening there and whether you've gotten any traction?

CHAIR LHAMON: Chair Di Ianni, if you're speaking, we can't hear you.

MS. DI IANNI: Can you hear me now?

CHAIR LHAMON: Yes, thank you.

MS. DI IANNI: Okay. Well, we are continuing on in related areas. We are currently actually in the middle, we have next week a full day hearing on legal financial obligations.

And with the CAF report, we've certainly done our best to get it out. There is, in Nashville proper, there have been lots of developments in terms of racial disparities, that our SAC has not been directly involved with.

But we are pleased that the Metro Nashville Government just passed a resolution earlier this month, and I don't -- to support reform of CAF in Tennessee and expressed in their unanimous resolution, they expressly mentioned our SAC and our report and our findings, quoted from the report as to the concern

with fair and equitable administration of justice.

So, we were very pleased to see that, our report so prominently highlighted by the Metro Nashville Government.

We are also very interested in pursuing -- there's been some reform in the interim between when we adopted our report in early 2018 and when the report issued.

There was a legislative session and there was some few additional, small reforms, some additional data to be collected, and the legislature also allowed for some fee-shifting with capped attorney's fees.

So, that was -- both of those things have been issues and concerns addressed in the hearing. And so, we were pleased to see those changes.

And this year, we are also pleased to see that there is some movement actually on many of the issues that we've identified in our recommendations. It's actually very dynamic, because it's happening right now, we've been trying to follow the bills and the amendments this very week.

We think that -- there are many we are very excited about, like amendments currently to bills that would do great things, like eliminate the 350

bond. Operationalize the Supreme Court's Timbs v. Indiana holding, by allowing for a process to challenge the constitutional disproportionality of the seizure.

Eliminating, which I think would be very, very important, eliminating small-value seizures, not allowing for seizures with currency of less than $1,000 or vehicles less than $2,000. Changing the standard to clear and convincing, and so forth.

So, a lot of important potential amendments. I think this is a real opportunity. I think that Timbs v. Indiana certainly brought CAF back into the consciousness of everyone. And we, as a SAC, are interested in taking the opportunity to perhaps do LTEs or something on this.

Just this week, we heard that some of these items are going to go to summer study, so it's not clear that these will move forward this legislative session. We have citizen legislators, so we have a very short January to April legislative session. It's a two-year session, so these bills will then be back up next year.

So, we now have the opportunity to think about how we as a SAC push some of these reforms forward, particularly in advance of next session.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: That is extremely gratifying, and congratulations to your Committee on the impact that you're having.

The other thing that struck me was Samuel Lester's testimony about how homeless are treated and how even their possession and their cash are being confiscated, and that even if they don't have a hearing, their money, any ready cash they have, are taken, ostensibly for the, quote, cost of their jail.

A lot of that, I'm sure, are issues that are not just happening in your state, and I'm wondering if there's been any special action taken on that? Any discussions with police about how they might be acting differently?

MS. DI IANNI: We are -- actually, that may well be an issue that we look at. We're going to be looking at, in our hearing, as we go forward with legal financial obligations, that idea that, as you list, his testimony about the taking of things from homeless folks, even if they're released, that they've lost their stuff.

Try to hold that discussion, as we look at our hearing next week, with individuals that will focus on some of the impacts of this for incarcerated

and formerly incarcerated individuals.

COMMISSIONER NARASAKI: Great, thank you.

CHAIR LHAMON: Any other questions? Hearing none, thank you very much, Chair Di Ianni, for your service and for your leadership on the Tennessee State Advisory Committee, and for taking the time to speak with us today.

I. PRESENTATION BY OREGON STATE ADVISORY COMMITTEE CHAIR THOMPSON FALLER ON THE COMMITTEE'S RECENT REPORT, HUMAN TRAFFICKING IN OREGON

CHAIR LHAMON: And next, we'll hear from our Oregon State Advisory Committee Chair, Thompson Faller, on their Committee's report, titled, Human Trafficking in Oregon. Chair Faller, the floor is yours.

MR. FALLER: Thank you, Madam Chairman. As you know, the Oregon Advisory Committee submitted a report on human trafficking in Oregon and its impact on communities that are targeted because of their race, color, age, sex, religion, national origin, and disability.

This question came up in Oregon because, in recent years, the state has emerged into the spotlight, national spotlight, as a destination for human trafficking.

This is due to several factors. First of all, the Oregon State Constitution has a very broad free expression clause, which permits a thriving sex industry in Portland.

For example, the Portland metropolitan area became known as a hub for sex trafficking, ranking second for the greatest number of children found in forced protection among all states. We followed Las Vegas in that regard. And that's revealed through a National Federal Law Enforcement sting.

Also, since its inception in 2007, the National Human Trafficking Hotline has received 1,970 calls that led to 450 cases on human trafficking in the state of Oregon.

Also, Oregon has come to the spotlight because of its geography, that includes large swaths of rural, agricultural, and forestry areas, that provide opportunity for labor trafficking of foreign-born workers.

And a third point is that Oregon's proximity to shipping waterways and to the Canadian border provides access for international traffickers.

While Oregon has made several efforts to address this problem of human trafficking, state and

local anecdotes indicate that the trafficking of persons does continue.

The Committee focused its study of human trafficking on the following industries: sex, agriculture, and forestry. Initially, we intended to just concentrate on the sex industry, but as we got into further discussions and held our various public meetings, the agriculture and forestry were added to our consideration.

The Committee also examined the effectiveness of state and local agency programs administered to victims of human trafficking.

Findings in the report are based primarily on the testimonies that are referred to, that were heard during four public meetings, and include, and there's a list, of human trafficking in the form of gender-based discrimination, commercial sexual exploitation of children disproportionately, that effects certain demographics.

Several foreign-born communities are disproportionately affected by human trafficking. That includes victims from Mexico, Central America, and Southeast Asia.

There's a lack of culturally-specific and gender-appropriate services to assist human

trafficking victims.

Another point is, despite service providers noting emergency shelters as the greatest need, there are few options in Oregon for human trafficking victims.

Another point is that data collection on human trafficking-related activities is limited.

We found that the H-2A and H-2B visa programs are problematic and characterized by rampant exploitation of foreign-born workers.

Also, we found that proactive enforcement of state labor laws is needed to support prosecution of human trafficking cases. Government agencies also were found responsible for investigating and prosecuting potential human trafficking cases, that needs further effective methods of communication.

There is also a need for training on how to identify victims and address human trafficking. Public awareness is also critical to ensure that the general public is aware of the prevalence of human trafficking in the state.

And finally, victims of trafficking should be treated as victims instead of criminals.

We elaborated in our report on each of these and so, I would call to the attention of the

Commissioners to those elaborations.

Human trafficking, in most cases, often refers to sex trafficking. In Oregon, victims of sex trafficking are largely female and are forced into sexual exploitation, although there is indication that transgender individuals and males are also affected.

There's also an indication that other protected classes are impacted by sex trafficking, such as the Native American community and foreign-born individuals.

The labor trafficking, as I said, did come up, and it also affects a large significant number of victims across several industries in Oregon, specifically domestic work, agricultural, hospitality, restaurants, and construction.

In Oregon, the forest industry also has emerged as a problem with regard to human trafficking, as workers are largely recruited through international labor agencies. The majority come from Mexico, and workers from Southeast Asia are most likely to be war refugees from Vietnam.

In keeping with its responsibilities and in consideration of the testimony that we heard on this topic, the Oregon Advisory Committee submitted 15 different recommendations to the Commission.

Most of those are actually directed at the federal level, the Federal Bureau of Investigation, the Department of Justice, the Department of Homeland Security, Department of Labor, and so forth.

Those 15 are well delineated in the report and, again, I would call the attention to the Commissioners, if you haven't already had the opportunity to read our report.

But basically, those are the areas that we are tremendously concerned about. Other actions are being taken, both locally and especially in the Portland Metropolitan Area, through the Police Bureau and through the Mayor's Office. We've had some various task forces that have been addressing the issue.

And certainly, at the state level, and even the county level, further action is being taken to address these problems in the state of Oregon and our Metropolitan Area.

I'd certainly welcome any questions or comments from the Commissioners, please.

CHAIR LHAMON: Chair Faller, thank you for that very thoughtful presentation and for the comprehensive and thoughtful report that your Committee prepared. I'll open for questions from my

fellow Commissioners. And I'll start, while people are thinking.

Number one, I enjoy your accounting, with the 15 recommendations, each of which has several subparts. I love your lawyerliness to the Commission.

And I was struck at the beginning of the report and then, in your recommendations, by the reference to Oregon having enacted about 25 new laws in the last 12 years related to human trafficking.

And I wondered, A, why are those laws not sufficient? Why do the many gaps that you identify in the report remain?

And then, in your recommendations that include, as a subpart of the 12th recommendation, that the state legislature continue passing legislation that combats human trafficking, what specifically your State Advisory Committee believes is needed, following the passage of these 25 new laws?

MR. FALLER: Well, basically, of course, there's been, shall I say, challenges to the issue and for the different entities that have been addressing the problem. Funding, of course, and everyone can identify with that.

Basically, the -- in my conversation as Chair with the heads of the various task forces and

here, there seems to be a lack of direction from, again, some of the agencies, the federal agencies that I noted, in coming to grips with the problem.

And then, also, it is, as I mentioned, a diverse problem here. For instance, we were fortunate to have a number of the members of the Committee, of our local Committee, the SAC, who were involved in the labor industry with regard to agricultural. A number of them were from the Hispanic community and are very aware of what the problem is there.

And so, it's been, I think, a factor that somehow or another, the breadth of the problem has caused us to have a diverse interest and focus in that regard. So, more and more, as I say, they're trying to look to address these different problems with the legislation that is appropriate.

CHAIR LHAMON: Thank you, Chair Faller.

MR. FALLER: Certainly.

CHAIR LHAMON: Any other questions? Commissioner Narasaki?

COMMISSIONER NARASAKI: Thank you for your report and the hard work of your Committee. We had just, in December, issued a report, hopefully that you've had a chance to look at, on Native Americans.

And I was struck by the jurisdictional

issues that your report raises, because we saw that very much being raised by Indian Country, the cross-jurisdictional restrictions on their jurisdiction and then, the cross-jurisdictional sharing with the state and local governments, and how that has led to huge gaps where there are significant disappearances of Indian women and girls from reservations at a striking rate, that Congress actually just recently had a hearing on.

So, I was wondering if you were getting much traction on having raised that issue and where you think that might go.

MR. FALLER: Excuse me, would you repeat your question? I'm terribly sorry, the very last part. I heard your statement --

COMMISSIONER NARASAKI: Yes. So --

MR. FALLER: -- but the specific question, please?

COMMISSIONER NARASAKI: So, you had made recommendations about the need to address some of the jurisdictional issues, as they pertain to Native American reservations. And the --

MR. FALLER: Yes.

COMMISSIONER NARASAKI: -- state and federal. So, I'm wondering whether you've been able

to get any traction on the recommendations you've made and what follow-up you're thinking about.

MR. FALLER: To speak very bluntly, there's been not as much traction there as, I will speak for myself, and I'm sure, maybe the community as well, as we would hope.

There's any number of problems that have arisen, at least, come to our attention, as relates to especially some of the number of Native American tribes that we have in the state of Oregon.

There's -- and again, it's diverse and it feeds into the problem of human trafficking. For instance, the absenteeism in the school system, which is an issue we also addressed, as a State Advisory Committee, several years ago.

And the fact is that the Native American tribes do have their own jurisdictional areas and sometimes, it's difficult to permeate that and to get agreement as to how we would deal with the particular issues.

Nevertheless, of course, that doesn't stop us and should not, so we're trying to see where areas of -- that we can make progress in that regard and some of the various task forces that have been set up by the state and various counties and even cities,

have been addressing this particular issue as well.

So, we're hopeful that, by continuing to look at the problem, we would be able to find some solution to the rather large problem that we do have here in the state.

COMMISSIONER NARASAKI: Yes. We are encouraged that, I think there's some states, I think one of them was Minnesota that is looking at sharing jurisdiction, and trying to address those gaps that are created because of the current system. So, look forward to hearing what kind of progress you make. Thank you.

MR. FALLER: Thank you.

CHAIR LHAMON: Chair Faller, thank you very much for your presentation to us and for your service and leadership on your State Advisory Committee. With that, we will --

MR. FALLER: It's been my pleasure, thank you.

J. MANAGEMENT AND OPERATIONS

STAFF DIRECTOR'S REPORT

CHAIR LHAMON: With that, we'll hear next -- oh, I'm sorry, I'm cutting you off and I understand there's a question? Okay, we'll move forward.

With that, we'll hear next from Staff

Director Mauro Morales, for the monthly Staff Director's report.

STAFF DIRECTOR MORALES: Thank you, Madam Chair. I have nothing further to add than what's already contained in the report. I'm more than willing and available to speak to any Commissioner about a particular matter they may have or a question they may have on the report. In the interest of brevity, I think that's all I have.

CHAIR LHAMON: Thank you, Mr. Staff Director. And if there's nothing further -- oh, there is. Commissioner Adegbile?

COMMISSIONER ADEGBILE: I just wanted to take a point of personal privilege to recall that an important civil rights fighter passed away seven years ago today.

The great John Payton, who was a colleague of mine and spent a good portion of his life engaging in civil rights fights, died as the only Director Counsel the NAACP [National Association For The Advancement of Colored People] Legal Defense Fund to die while he was serving.

And John, who was a great man, a great advocate, and a mentor, who created extraordinary opportunities, both through his mentorship and through

his litigation, for generations of Americans, passed away seven years ago today. And so, hat tip to the great John Payton.

CHAIR LHAMON: Thank you for that memory. Commissioner Narasaki?

COMMISSIONER NARASAKI: So, I want to thank you for that recognition of John Payton. He was certainly a mentor of mine.

But I also just want to recognize staff for the incredible work that you've been able to pull together, despite the month-long shutdown that we faced. The hearing that we had and then, the meetings today were incredibly productive and I know that you really had to work hard to make up for that gap that was caused.

So, I just want to share my appreciation and the fact that we know that you're working and we hope that you see the kind of impact that your work is having. So, thank you.

STAFF DIRECTOR MORALES: I can speak on behalf of the staff, thank you so much that means a lot to everybody. Thank you.

III. ADJOURN MEETING

CHAIR LHAMON: And with that, I now adjourn the meeting at 3:44 Eastern time. Thanks to all.

(Whereupon, the above-entitled matter went off the record at 3:44 p.m.)