

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC BUSINESS MEETING

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FRIDAY, OCTOBER 18, 2019

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The Commission convened via teleconference at 10:00 a.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

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STAFF PRESENT:

NICHOLAS BAIR

KATHERINE CULLITON-GONZALES

PAMELA DUNSTON, Chief, ASCD

ALFREDA GREENE

WARREN ORR

JUANDA SMITH

BRIAN WALCH

MARIK XAVIER-BRIER, PhD.

COMMISSIONER ASSISTANTS PRESENT:

ALEC DUELL

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

PEACH SOLTIS

ALISON SOMIN

IRENA VIDULOVIC

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1 P R O C E E D I N G S

2 (10:01 a.m.)

3 CHAIR LHAMON: This meeting of the U.S.
4 Commission on Civil Rights comes to order at 10:01
5 a.m. Eastern Time on October 18th, 2019. The
6 meeting takes place over the phone.

7 I'm Chair Catherine Lhamon. I'd like
8 to confirm each of the commissioners is on the
9 line, so I'll take a roll call here. Please say
10 present when I say your name.

11 Vice Chair Timmons-Goodson.

12 (No audible response.)

13 CHAIR LHAMON: Commissioner Adegbile.

14 COMMISSIONER ADEGBILE: Present.

15 CHAIR LHAMON: Commissioner Heriot.

16 COMMISSIONER HERIOT: I'm here.

17 CHAIR LHAMON: Commissioner Kirsanow.

18 COMMISSIONER KIRSANOW: Here.

19 CHAIR LHAMON: Commissioner Kladney.

20 COMMISSIONER KLADNEY: Here.

21 CHAIR LHAMON: Commissioner Narasaki.

22 COMMISSIONER NARASAKI: Here.

23 CHAIR LHAMON: Commissioner Yaki.

24 COMMISSIONER YAKI: Present.

25 CHAIR LHAMON: Thank you. Based on

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1 that, a quorum of the commissioners is present. Is
2 the court reporter present?

3 COURT REPORTER: Yes, I'm here.

4 CHAIR LHAMON: Thank you. Is the staff
5 director present?

6 STAFF DIRECTOR MORALES: I am.

7 CHAIR LHAMON: Thank you. The meeting
8 shall now come to order.

9 **I. APPROVAL OF AGENDA**

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

12 COMMISSIONER NARASAKI: Commissioner
13 Narasaki. I move to approve the agenda.

14 COMMISSIONER ADEGBILE: Commissioner
15 Adegbile. Second.

16 CHAIR LHAMON: I'll begin the call for
17 amendments with a couple of my own. First, I'd
18 like to table the vote on the Maryland and West
19 Virginia State Advisory Committee slates until our
20 next business meeting. Second, I would like to add
21 consideration of the public comments on HUD's
22 proposed rule on the disparate impact standard
23 under the Fair Housing Act.

24 Do I have a second for my amendment?

25 COMMISSIONER KLADNEY: I second.

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1 Kladney.

2 CHAIR LHAMON: Thank you. Is there any
3 further amendments? Hearing none, let's go to
4 approve the agenda as amended. All those in favor,
5 say aye.

6 (Chorus of aye.)

7 CHAIR LHAMON: Any opposed?

8 (No audible response.)

9 CHAIR LHAMON: Any abstentions?

10 (No audible response.)

11 CHAIR LHAMON: The motion passes
12 unanimously.

13 **II. BUSINESS MEETING**

14 **PRESENTATION BY MAINE ADVISORY COMMITTEE MEMBER**

15 **ON THE COMMITTEE'S RECENT REPORT,**

16 **THE CRIMINALIZATION OF PEOPLE WITH MENTAL**

17 **ILLNESSES IN MAINE**

18 CHAIR LHAMON: The first item on the
19 agenda is to hear from Eric Mehnert of the
20 Commission's Maine Advisory Committee on the
21 Committee's most recent report titled
22 Criminalization of People with Mental Illness in
23 Maine. I note that I had the pleasure of joining
24 the Advisory Committee for this briefing, and I
25 very much look forward to hearing his contribution.

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1 Mr. Mehnert, go ahead. Is Mr. Mehnert
2 on the line? Okay. We'll pause and hope that
3 he'll join us later, and we'll turn to the --

4 MR. MEHNERT: I am here.

5 CHAIR LHAMON: Oh, terrific. Mr.
6 Mehnert, go ahead.

7 MR. MEHNERT: Okay. Did they get me
8 through?

9 CHAIR LHAMON: Yes, go ahead.

10 MR. MEHNERT: Okay. Good morning,
11 Chair Lhamon and Commissioners. My name is Eric
12 Mehnert, and I am Chief Judge of the Penobscot
13 Nation, and I serve on the Maine Advisory
14 Committee.

15 The Maine Advisory Committee had a
16 public hearing, and it produced a report seeking
17 decriminalization of mental illness in Maine.
18 Before I begin, it is important to acknowledge the
19 work of all those who made the report possible.
20 That starts with Deputy De La Viez, who works
21 tirelessly in the Eastern Regional Office, and he
22 played a major role in putting this report
23 together.

24 It is also important to acknowledge the
25 work that Evelyn Bohor of the Commission and the

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1 contract attorney Julie Bush and their efforts in
2 distilling the information received at the public
3 hearing and offering indispensable support putting
4 the report together.

5 We also want to acknowledge the
6 Advisory Committee's Chair, Diane Khiel, for all
7 her leadership and effort to keeping us moving
8 forward and on task. We'd be remiss if we did not
9 offer our appreciation to the civil rights
10 advocates, law enforcement agencies, jails,
11 attorneys, legislators, family members, and members
12 of the public who gave freely of their time to
13 enter into a conversation and discourse in an
14 attempt to solve the significant problem in Maine's
15 criminal justice system.

16 The 1960s saw the inception of the
17 movement to de-institutionalize those suffering
18 from mental health challenges. In Maine, that
19 movement led to a class action suit against the
20 state mental hospitals in the 1980s and,
21 eventually, to the appointment of a Special Master.
22 The Special Master in Maine currently is a former
23 chief justice of the State's Supreme Court. The
24 institutions remain under the purview of the
25 Special Master.

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1 Unfortunately, while the de-
2 institutionalization movement sought the
3 commendable goals of providing community services
4 and supports so that individuals with mental health
5 challenges might live at home, the money never
6 followed the policy. So while government was
7 saving money by no longer funding mental health
8 institutions, it was failing to fund community
9 services and supports that were so essential to
10 those with mental health challenges. That failure
11 led directly to a rise in the homelessness of those
12 challenged with mental health issues and a
13 concurrent rise in the criminalization of the
14 mentally ill. The criminalization occurs when an
15 individual suffering from mental health challenges
16 do not have the supports they need in the
17 community. Community members see behaviors that
18 they consider abhorrent or problematic, and they
19 contact law enforcement.

20 Properly trained law enforcement
21 officers are skilled in recognizing an individual
22 with a mental health challenge, and they're skilled
23 in de-escalation. Unfortunately, that is only a
24 fraction of the law enforcement in the state. The
25 former sheriff in Aroostook County advised that,

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1 while 70 percent of his officers had received
2 crisis intervention training, none in any of the
3 ten municipal law enforcement departments in
4 Aroostook County had received similar training.

5 The Maine Criminal Justice Academy has
6 passed a policy providing that 25 percent of the
7 full-time law enforcement officers will receive
8 eight hours of training by January of 2018. We
9 haven't confirmed at this point in time whether
10 that has, in fact, occurred. But the fact of the
11 matter is that eight hours is not enough. Having
12 participated in one of those trainings, it is also
13 clear that those trainings need to be presented by
14 an independent body.

15 The failure of trainings and having a
16 completely trained law enforcement officers with
17 respect to mental health challenges has led to a
18 disproportionate number of individuals with mental
19 health challenges being arrested on petty crimes.
20 We've seen them arrested on crimes such as
21 disorderly conduct, loitering, or public theft.
22 And as a result, 64 percent of the individuals in
23 their jails have a mental health diagnosis.

24 For juveniles in Maine, the rate is
25 astronomically higher. It's about 85 percent of

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1 those at a juvenile detention facility have three
2 or more mental health diagnoses when they came into
3 the facility.

4 The statistics saw individuals with
5 mental health diagnosis will remain in the jails
6 three times longer on misdemeanor charges than
7 those without mental health issues, and the
8 increased financial burden on the jails and the
9 county jails is exponentially greater for those who
10 come into the jails with mental health issues.

11 The cost in human life is even greater.
12 In 2011, Maine State Police shot nine people in
13 police confrontations. Five of those individuals
14 had mental health issues. All five were killed.

15 But there is some hope. At this point
16 in time, many law enforcement officers or agencies
17 are doing what they can. The county sheriffs
18 particularly seem to recognize the problem because
19 they are on the front lines. Police Chief
20 Sauschuck who came up with a co-responder program,
21 which was a leading program in ensuring that, when
22 an individual has a mental health challenge and the
23 police were called, that a mental health
24 professional or a crisis worker went with the
25 police to respond. Police Chief Sauschuck is now

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1 the Commissioner in the Department of the Public
2 Health. Finally, there is Representative Talbert
3 Ross who continues to work tirelessly within the
4 state legislature on criminal justice reform.

5 The advisory group has come to the
6 conclusion and believes that it is essential that
7 evidence-based programs and policies detect and
8 treat individuals who have mental health challenges
9 and who are caught up in the criminal justice
10 system -- excuse me. That there be evidence-based
11 programs and policies to protect and treat
12 individuals caught up in the criminal justice
13 system.

14 It also believes that it is essential
15 that the government fully fund community care
16 systems consistent with evidence-based best
17 practices to prevent individuals with mental health
18 challenges from entering the system.

19 That is essentially the report from the
20 State of Maine and the Maine Advisory Committee. I
21 am open to any questions.

22 CHAIR LHAMON: Thank you so much. I'll
23 open it for questions from my fellow commissioners.

24 COMMISSIONER NARASAKI: Good morning,
25 Madam Chair. Commissioner Narasaki would like to

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1 ask a question.

2 CHAIR LHAMON: Go ahead.

3 COMMISSIONER NARASAKI: Thank you so
4 much for this incredibly comprehensive report. It
5 is an issue that, in my five years on the
6 Commission, I've come to realize it's close to
7 almost all of the issues that we have been working
8 on, including the school-to-prison pipeline. So it
9 was particularly important to see your
10 recommendations around the issue of actually
11 providing mental healthcare.

12 I've talked to many police who have
13 told me that they want to be able to refer people
14 who are clearly having a mental health crisis
15 somewhere, but there's nowhere to take them. So
16 that is clearly a problem that needs to be
17 addressed.

18 You had recommended that the state
19 legislature pass legislation that provides student
20 loan debt relief for mental health professionals to
21 try to get them to the more rural parts of Maine.
22 Is that based on seeing other programs like that,
23 or is that a new idea?

24 MR. MEHNERT: My understanding is it's
25 based on the similar programs of the same nature.

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1 Maine has a significant issue with educators,
2 providers, and even attorneys who could provide
3 support for those who are in the throes of a mental
4 health crisis in rural Maine. We have one county
5 where there are three attorneys in the entire
6 county. In another county, there are supposedly
7 five district attorneys, one district attorney and
8 four assistant district attorneys. All four ADA
9 slots are open.

10 What that causes for a challenge for us
11 is that individuals who are being taken to the jail
12 as a place of last resort are simply not getting
13 processed, and they're languishing in the jail.
14 And so the desire to have some kind of loan
15 forgiveness program have been not only, it strikes
16 me to not only be for providers, although that
17 would be the number one, crisis workers, would
18 absolutely be essential, but also other mental
19 health providers, as well as educators and
20 attorneys, would be a step in the right direction
21 to ensuring that individuals who are essentially
22 disenfranchised are represented in the systems.

23 COMMISSIONER NARASAKI: That's great.
24 And the second question I have is one of your
25 recommendations goes to the need to study and

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1 recalculate the MaineCare reimbursement rates for
2 community programs to reflect the actual costs. Is
3 that, is there a funding issue there, as well as
4 the need to recalculate the rates?

5 MR. MEHNERT: If you're talking about
6 funding to the state government -- are you talking
7 about the funding to the state government or the
8 funding for the providers in the communities?

9 COMMISSIONER NARASAKI: Actually, both.

10 MR. MEHNERT: The funding for providers
11 -- okay. I would say I would not be able to speak
12 definitively to the first, although my impression
13 is absolutely that what we're seeing with regards
14 to the care for individuals in the community is
15 that there is not enough money coming into the
16 state and, second, that a provider, we're having
17 providers leave our rural areas because they simply
18 cannot afford to live. And this ties closely to
19 what you were talking about with the loan
20 forgiveness, that it's really a two-pronged problem
21 for individuals that are working in the rural
22 areas. They have an incredible student loan debt
23 that they have to deal with, and then they're not
24 really being paid enough not only not to cover the
25 student loan debt but to live. That is a real

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1 challenge.

2 So the providers need to be paid more
3 and there needs to be more money in the state on
4 the whole in recognition of some of the challenges
5 that individuals with mental health challenges
6 have.

7 COMMISSIONER NARASAKI: Great. Thank
8 you so much. Madam Chair, I'm turning it back to
9 you.

10 CHAIR LHAMON: Thank you. And I was
11 talking on mute, so thank you for saying that. I
12 want to say again that I had the pleasure of
13 joining this committee for the briefing, and I was
14 blown away by the public comments that the
15 committee received, the emotional testimony about
16 the challenges families of persons with mental
17 illness experience in Maine and also by the
18 leadership from many members of the law enforcement
19 community in trying to improve their own practices
20 and ensure that they respond against what they
21 described as a significant challenge, given the
22 absence of therapeutic care availability for
23 persons with mental illness in Maine.

24 I appreciated reading in this report
25 the hopeful note about some improvements in that

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1 arena in the state this year, so I look forward, as
2 I imagine the Committee does as well, to seeing
3 improvements in that area. And I just want to
4 commend and thank the Committee for its care in
5 receiving information from a variety of
6 perspectives on the topic and in generating a
7 thorough report that includes really
8 comprehensively recommendations and also distills a
9 difficult topic into assessable findings. So thank
10 you very much.

11 Are there other questions or comments
12 from other commissioners?

13 MR. MEHNERT: If I might add just one
14 more thing. I think one of the things, Chair, that
15 you talked about was the law enforcement that I
16 thought was really salient that the law enforcement
17 had said was that they are the only system that
18 cannot say no, and that's a terrible way for us to
19 be dealing with providers. We are defaulting to
20 the only system that can't say no, and their
21 response is to lock the individual up. And they
22 don't want to do it. They don't have the services
23 for it.

24 CHAIR LHAMON: I also found incredibly
25 compelling the testimony from law enforcement about

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1 the safety risk to law enforcement of failing to
2 offer therapeutic care in the state, and I think
3 that's a point that's worth underscoring, as well.

4 Mr. Mehnert, thank you very much for
5 your presentation and for your service and
6 leadership on the Maine Advisory Committee and for
7 taking the time to speak with us today.

8 MR. MEHNERT: Thank you.

9 **PRESENTATION BY GEORGIA ADVISORY COMMITTEE MEMBER**
10 **ON THE COMMITTEE'S RECENT REPORT,**
11 **DISABILITY RIGHTS AND CIVIL RIGHTS IN GEORGIA**

12 CHAIR LHAMON: We'll now turn to our
13 Georgia Advisory Committee and hear from Chanel
14 Haley from the Georgia Advisory Committee on that
15 committee's most recent report titled Disability
16 Rights and Civil Rights in Georgia.

17 Ms. Haley.

18 MS. HALEY: Good morning, Commission.
19 My name is Chanel Haley. My profession is the
20 Gender Policy Manager at Georgia Equality, and I
21 serve as the secretary for the Georgia Advisory
22 Committee to the United States Commission on Civil
23 Rights. I also helped to actually chair this
24 particular report, co-chair this particular report,
25 and we had a lot of people that helped out with

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1 this. We want to give a special notation to the
2 person who brought this to us, our fellow member
3 who actually passed away during the creation of
4 this report, which was Justin Priestly. And if it
5 wasn't for him, this would never have been on our
6 radar.

7 But this is really about the Olmstead
8 Georgia settlement, if or if not they were
9 compliant, and a little background about the 1995
10 Olmstead lawsuit brought by George and Lois Curtis
11 and then later on Elaine Wilson signed on. The
12 lead attorney was Sue Jameson from Atlanta Legal
13 Aid and, you know, the Supreme Court ruled that
14 this was ADA integration by public agencies to
15 provide services for individuals in need with
16 disabilities.

17 And so we fast-forward to then '09
18 where Georgia was found to not have been in
19 compliance and requested to do a settlement, and
20 they had subsequent years in order to become
21 compliant. In February of 2018, on February 27th,
22 we had a hearing with the community, with
23 government officials, with people from the state,
24 that were able to testify on whether or not the
25 compliance had been met.

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1 So the state said that they had
2 definitely met and succeeded all that was required
3 for the settlement. They had even boasted they had
4 spent over \$256 million in order to create a whole
5 new crisis system. However, the community seems to
6 feel very differently about this through the
7 testimony that was given. Some of the issues that
8 they said that was not addressed or where the
9 problem areas was the community, first of all, did
10 not have any insights on reading the plan; that
11 their education information about the community
12 services were not being given to people who
13 qualified for the services; the wait list is
14 extremely too long. Currently, at that time, it
15 was over 6,000 people still waiting to even be
16 approved to receive services. Testimony by the
17 community was not fully funded, contrary to the
18 state claims. So the state has claimed that they
19 spent over \$200 million on this, but when people
20 were asking to receive the funds for community
21 services they were told that there is no funds
22 there. There also were not any funds there to pay
23 for case management to be able to do the services.

24 Insurance companies are not providing
25 the same payouts in reference to behavioral care as

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1 they would if the person was using insurance for
2 other disabilities.

3 There has been little to no oversight
4 of nursing homes. Many nursing homes are in the
5 same conditions as pre-Olmstead. That has been
6 observed by several attorneys and watchdog
7 organizations.

8 Supportive housing is usually clustered
9 in a segregated area, and the community feels that
10 it should be more mandated to be more spread out.
11 Employment services for people living with
12 disabilities has been a problem because there
13 hasn't been any, so people want to become more
14 self-sufficient, which is really what the Olmstead
15 was supposed to be about anyway.

16 The language barriers. You know, in
17 Georgia, if English is not your first language,
18 then you're kind of treated as a second-class
19 citizen. And that also is something that has been
20 implemented within the Olmstead is that, if a
21 person's first language is not English, then they
22 are not getting an education about the services
23 through Olmstead and that they are just not being
24 allowed to be part of the community services.

25 And, finally, Georgia, we believe, is

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1 still the only state in the country that still does
2 GNETS. And so what that is is Georgia Network for
3 Educational and Therapeutic Support schools, and
4 this is when kids are sent away to a special school
5 who have behavioral health conditions, and the
6 community was very clear that that was still a
7 discriminatory practice.

8 So looking forward, you know, Georgia,
9 actually, the settlement, they asked for an
10 extension. That was supposed to end in 2018,
11 actually June 30 of 2018. Obviously, this is a few
12 months after our hearing. Right now, they are
13 waiting to find out what the last independent
14 review is, and that should be coming up, you know,
15 any day now because that actually happened in the
16 fall of 2018. So once that then comes out, we'll
17 have a better understanding of where the money went
18 and if the independent review actually finds out or
19 thinks that if Georgia is actually in compliance.

20 Also, in relation to our
21 recommendations of what we think should be
22 happening in the future is that we would like it if
23 there was a national study around Olmstead and to
24 making sure if the changes in state disability law
25 are being followed, particularly especially with

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1 nursing homes because we feel as if nursing homes
2 is the one that people have really dropped the ball
3 on, considering since I said that there's
4 independent reviewers who think that the pre-
5 Olmstead conditions have not changed at all when it
6 comes to nursing homes.

7 We also would like to see that there
8 should be a working study committee around housing
9 to ensure and make sure that the safe and equal
10 housing practices are being implemented. And there
11 was also an issue around how the money was spent
12 and making sure that there was not just cost
13 savings but that there was smart choices made
14 around the money that is being reported when it
15 comes to implementing all of that.

16 That is a very, very, very brief
17 summary. If there are any questions, I would be
18 willing to take them now.

19 CHAIR LHAMON: Thank you so much, Ms.
20 Haley. I'll open for questions from fellow
21 commissioners.

22 COMMISSIONER NARASAKI: Madam Chair,
23 this is Commissioner Narasaki.

24 CHAIR LHAMON: All right, Commissioner.

25 COMMISSIONER NARASAKI: Thank you.

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1 This is an incredibly important report,
2 particularly as we have more people aging and
3 requiring these kinds of services. So I very much
4 appreciate the work of the committee.

5 I noticed in the recommendations you
6 talked about the issue in terms of the language and
7 the lack of adequate access to translators for
8 limited English-proficient people living in
9 Georgia. Do you see the state taking any steps to
10 try to enforce that? Is it the lack of knowledge
11 about the requirement or lack of will, or what did
12 you find was the issue in terms of that problem?

13 MS. HALEY: So we did not find during
14 the hearings the cause of that. I certainly can
15 say, as a person that used to work in the Georgia
16 House of Representatives and was there when we
17 actually just recently passed a law about what our
18 first language is for the State of Georgia, that
19 the tone is will, not knowledge because that is
20 what's been had in the last five years around
21 legislation here in Georgia.

22 I think that it would be great if the
23 U.S. Commission would send a letter to our governor
24 letting them know of where they were lacking in
25 meeting the needs of the requirement. So I think

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1 that it's something that, if it was pointed out to
2 them, to our governor and our attorney general,
3 then they would become in compliance with it or
4 make an effort to at the very least.

5 COMMISSIONER NARASAKI: Do most nursing
6 facilities, do they receive any federal funding?
7 Because under Title VI there's the federal guidance
8 that requires people to address this issue.
9 Otherwise, it's national origins discrimination.
10 So I'm wondering if there's federal money that
11 would then require the feds to step in.

12 MS. HALEY: That's a question, I'm not
13 aware of that answer. I do not know the answer to
14 that question if they receive federal money, but
15 what we do know is that there isn't an oversight
16 there anyway so it would take a complaint for the
17 federal government to even know that a violation is
18 being made.

19 COMMISSIONER NARASAKI: Great. Thank
20 you very much. I appreciate it. I turn it back to
21 you, Madam Chair.

22 CHAIR LHAMON: Thank you. Ms. Haley, I
23 found your report devastating and the topic,
24 obviously, is incredibly compelling. But to read
25 in the report about people who are in jail having

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1 to wait weeks to have access to a bed that could
2 open up at Georgia Regional Hospital, so they are
3 spending more time incarcerated than would be
4 warranted by the alleged criminality, that
5 information about the nursing homes not making any
6 change in the state that brought the Olmstead
7 litigation, and the very deep concern about housing
8 choice voucher programs, the federal program not
9 providing sufficient higher rates for people to be
10 able to find living situations that are independent
11 and sustainable, all of which I found deeply
12 distressing and I appreciate your and your
13 committee shining a light on. So I want to say
14 thank you.

15 Other questions or comments from other
16 commissioners? Hearing none, I will thank you
17 again for your time and your leadership on the
18 Georgia Advisory Committee and for taking your time
19 to speak with us today.

20 PRESENTATION BY NEVADA ADVISORY COMMITTEE MEMBER ON
21 THE COMMITTEE'S RECENT REPORT,
22 MENTAL HEALTH IMPLICATIONS FOR POLICING PRACTICES
23 AND THE ADMINISTRATION OF JUSTICE IN
24 NEVADA

25 CHAIR LHAMON: We will turn next to

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1 Sondra Cosgrove of the Commission's Nevada Advisory
2 Committee on that committee's most recent report
3 titled Mental Health Implications for Policing
4 Practices and the Administration of Justice in
5 Nevada.

6 Ms. Cosgrove.

7 DR. COSGROVE: Thank you. Good
8 morning. My name is Dr. Sondra Cosgrove, and I'm a
9 history professor and the co-chair of the Nevada
10 Advisory Committee.

11 Our report documents similar findings
12 and makes similar recommendations as Maine's
13 report. The Nevada Advisory Committee to the U.S.
14 Commission on Civil Rights engaged in a year-long
15 study about policing practices impacting
16 individuals with behavioral and mental health
17 needs, specifically in relation to communities of
18 color and veterans.

19 After a jump in the number of incidents
20 in Nevada between law enforcement officers and
21 individuals with behavioral and mental health
22 needs, our committee decided to investigate why
23 these interactions were producing such poor
24 outcomes. When we heard testimony that communities
25 of color and veterans were overrepresented in those

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1 incidents, we explicitly included both populations
2 in our investigation.

3 Based on two hearings, the Nevada
4 Advisory Committee was alarmed over the amount of
5 testimony we heard that revealed how often persons
6 with unmet behavioral and mental health needs are
7 interacting with law enforcement officers due to a
8 lack of available services, as well as a high
9 number of currently incarcerated Nevadans who are
10 being treated for mental or behavioral health
11 disorders. The numbers are so high that we
12 consider this issue to be a crisis.

13 We repeatedly heard testimony about how
14 Nevada's severe shortage of behavioral and mental
15 health providers and services is directly leading
16 to civil rights violations in our prison system,
17 which has caused our prison system to become the
18 largest provider of mental health services, with
19 the women's prison treating close to 60 percent of
20 their inmates for some type of mental health need.

21 The Advisory Committee, therefore, has
22 concluded in our report that Nevada must prioritize
23 addressing mental and behavioral health treatment
24 shortages if we hope to address other pressing
25 issues related to criminal justice, education, and

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1 healthcare reform. We understand that our shortage
2 of providers and services is longstanding and will
3 require investments in multiple areas, such as de-
4 escalation training for law enforcement, workforce
5 development through our higher education system,
6 and higher Medicaid reimbursement rates.

7 But, ethically, we must strongly
8 recommend Nevada do everything it can and as
9 quickly as possible to address the
10 disproportionately high number of incidents that
11 produce poor outcomes between law enforcement and
12 individuals who need mental health treatment, not
13 incarceration.

14 Thank you. I'm open for questions.

15 CHAIR LHAMON: Thank you so much, Dr.
16 Cosgrove. I'll open for questions from my fellow
17 commissioners.

18 COMMISSIONER KLADNEY: Madam Chair,
19 Dave Kladney here. I'd like to --

20 CHAIR LHAMON: All right, Mr. Kladney.

21 COMMISSIONER KLADNEY: Thank you. I'd
22 like to thank Vice Chair Cosgrove and Chair
23 Blaylock. I find their findings and
24 recommendations are comprehensive, they show a path
25 to safer policing for police, the public, and the

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1 disabled. However, the Nevada legislature needs to
2 take note of these recommendations and find funding
3 mechanisms so they can be instituted.

4 Crisis intervention training and de-
5 escalation training are desperately needed. The
6 legislature did pass a law in the last session
7 providing 12 hours of training but over six
8 subjects which were not mandatory as to which ones
9 will be taught.

10 I'd like to thank Chair Blaylock again
11 and Vice Chair Cosgrove and the committee members
12 for their hard work. I attended both sessions,
13 open sessions, public sessions. And I'd also like
14 to thank our staff members, Alejandro Ventura and
15 Ana Fortes, for their work on this matter. I think
16 the report is fairly comprehensive and actually
17 finds findings and recommendations more than has
18 been found just in Maine but even in our work here
19 in the National Commission. So thank you very
20 much.

21 And I turn it back to the Chair.

22 CHAIR LHAMON: Thank you. Other
23 questions or comments from other commissioners?

24 COMMISSIONER NARASAKI: This is
25 Commissioner Narasaki, Madam Chair.

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1 CHAIR LHAMON: Go ahead, Commissioner
2 Narasaki.

3 COMMISSIONER NARASAKI: So I also want
4 to commend you on the report and, sadly, I'm
5 leaving the Commission or I would be trying to
6 convince my fellow commissioners to take up this
7 issue of mental health as a next topic for this
8 commission to consider because, clearly, it is
9 becoming a crisis and flows through so many other
10 issues.

11 I'm wondering, it seems to me like this
12 is an issue where people across the aisle and
13 across the police and sort of criminal justice
14 activists divide could actually come together. Are
15 police in Nevada, is law enforcement in Nevada
16 organizing, is this a topic that they are
17 interested in trying to work with other advocates
18 to move the state legislature on? Because,
19 clearly, it's going to require more funding and
20 some changes and approaches that will require state
21 legislation.

22 DR. COSGROVE: Yes, this is Sondra
23 Cosgrove. That's exactly what we found. When we
24 were doing our hearing, oftentimes we would have
25 sitting at the table law enforcement, advocates for

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1 behavioral and mental health, and legislators and
2 representatives of the criminal justice system, and
3 it was very obvious to us that they're already
4 having these discussions. In real life, if they
5 don't all coordinate together, there's really no
6 way to address this problem.

7 So we're already preparing for the next
8 legislative session to make sure that we keep those
9 coalitions together so that people see the totality
10 of the problem and how many different agencies and
11 different groups of people are coming to the table
12 to work together. And one of the things that this
13 has produced is we're now starting to realize that,
14 when it comes to money, we're already spending a
15 tremendous amount of money incarcerating people
16 with mental illness and it would be actually less
17 expensive if we invested in medical treatments and
18 making sure that we have enough psychologists or we
19 have enough social workers.

20 So we're looking at ways that we can
21 bridge funding from the very expensive and
22 inefficient way and a way that's producing poor
23 outcomes over into a more reasonable, rational
24 system that recognizes behavioral and mental health
25 as a medical condition so that we can use money

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1 that's already in the system before we have to go
2 to the taxpayers and ask for more money.

3 COMMISSIONER NARASAKI: Well, I'm
4 definitely rooting for you to become an example to
5 the other states and also to Congress, so thank you
6 very much for you and your colleagues' work.

7 DR. COSGROVE: Thank you.

8 CHAIR LHAMON: Thank you. Are there
9 other questions --

10 COMMISSIONER NARASAKI: And I'll turn
11 it back to the Chair.

12 CHAIR LHAMON: Thank you. Are there
13 other questions or comments from other
14 commissioners? Okay. Well, hearing none, we'll
15 turn to the next item on our agenda. Thank you,
16 Dr. Cosgrove, for your service --

17 DR. COSGROVE: Thank you.

18 CHAIR LHAMON: -- on the Nevada Advisory
19 Committee. Thank you for taking the time to speak
20 with us today.

21 DR. COSGROVE: Thank you.

22 DISCUSSION AND VOTE ON COMMISSION'S REPORT, SEXUAL
23 HARASSMENT AND FREE SPEECH ON
24 CAMPUS

25 CHAIR LHAMON: We'll now to a

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1 discussion and vote on the Commission's report
2 titled Free to Learn: Speech and Sexual Harassment
3 on Campus. We'll proceed with two votes, first on
4 the report text and then with the findings and
5 recommendations.

6 To open the floor up for discussion, I
7 move to approve the report as circulated by my
8 special assistants on Friday, October 11th. Is
9 there a second?

10 COMMISSIONER NARASAKI: Commissioner
11 Narasaki seconds.

12 CHAIR LHAMON: Thank you. I'll offer
13 some points to begin our discussion. This project
14 began before my tenure on the Commission. I will
15 note it began while I was Assistant Secretary for
16 Civil Rights at the Department of Education, and I
17 was pleased to send my deputy to the Commission to
18 testify about our work at the time and grateful to
19 my Commission colleagues for their interest and
20 commitment to the issue of proper enforcement of
21 Title IX. I thank our Office of General Counsel,
22 including General Counsel Maureen Rudolph and
23 Premier Attorney Advisory Lenore Ostrowsky, for
24 their research and drafting of the report text that
25 we consider today.

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1 I'll open the floor for discussion for
2 additional amendments. Hearing none, I'll call the
3 question and take a roll call vote. Commissioner
4 Adegbile, how do you vote?

5 COMMISSIONER ADEGBILE: Aye.

6 CHAIR LHAMON: Commissioner Heriot.

7 COMMISSIONER HERIOT: I vote no. I was
8 the author of the concept paper for this report,
9 and the report has turned out nothing like the
10 concept report.

11 CHAIR LHAMON: Commissioner Kirsanow.

12 COMMISSIONER KIRSANOW: No.

13 CHAIR LHAMON: Commissioner Kladney.

14 COMMISSIONER KLADNEY: Yes.

15 CHAIR LHAMON: Commissioner Narasaki.

16 COMMISSIONER NARASAKI: I vote yes.

17 CHAIR LHAMON: Commissioner Yaki.

18 COMMISSIONER YAKI: Aye.

19 CHAIR LHAMON: Vice Chair Timmons-
20 Goodson, who has joined us now.

21 VICE CHAIR TIMMONS-GOODSON: Yes.

22 CHAIR LHAMON: And I vote yes. The
23 motion passes. Two commissioners opposed, no
24 commissioner abstained, five of us were in favor.

25 Next, we'll consider findings and

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1 recommendations for the report. To open the floor
2 for discussion, I move to approve the findings and
3 recommendations circulated by my special assistant
4 on Friday, October 11th. Is there a second?

5 COMMISSIONER NARASAKI: This is
6 Commissioner Narasaki. I second.

7 CHAIR LHAMON: Thank you. I'll open
8 the floor for discussion, and I will just note,
9 Commissioner Heriot, I am dismayed to hear that
10 your view is that the report is not responsive to
11 the concept paper or to the ideas that you hoped
12 the Commission would investigate. I note that when
13 I started, among the first drafts that I received,
14 which was a few years ago, was the draft and that
15 draft was subsequently broader in scope and I was
16 prepared and delighted to review and edit that
17 topic. And, Commissioner Heriot, your request was
18 that the report be narrowed to its current scope,
19 and I acceded to that, as I understand that this is
20 a project that you asked the Commission to
21 investigate and that you led. And I am pleased to
22 have the Commission narrow its focus on the topic
23 that you requested as the leader of the report. I
24 am surprised to hear and sorry that your view now
25 is that the narrowed scope or the content of the

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1 report is not as focused as you would have hoped.

2 Some may know that in the five years
3 the Commission held this version you have had
4 plenty of time to lay those concerns and to seek to
5 have different text either in the report or modify
6 or alter the scope of the findings and
7 recommendations. So I'll just say that I am sorry
8 that a topic that you asked the Commission to
9 investigate does not align with what your
10 expectations were. I have been pleased to review
11 the expertise and analysis from our General
12 Counsel's office on the topic, and I think the
13 substantially narrowed scope of the report,
14 nonetheless, makes an important contribution to
15 civil rights investigation, and I support it.

16 COMMISSIONER HERIOT: A lot of what you
17 said broke up, Madam Chair. I think you're a
18 little confused, but I will let the concept paper
19 speak for itself.

20 CHAIR LHAMON: Okay. Is there any
21 further discussion --

22 COMMISSIONER NARASAKI: So, Madam
23 Chair, this is Commissioner Narasaki. I wanted to
24 thank the Chair and her special assistant, for
25 their hard work on trying to finish the report. It

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1 was the first hearing, my first hearing. I came in
2 after, I think, in the middle of the first session
3 because I had been appointed the night before and
4 was trying to get sworn in before the hearing was
5 done. So I'm glad this is being completed before I
6 leave the Commission.

7 I think that the passage of time has,
8 in fact, made it very challenging because many of
9 the issues that were raised, some of the issues
10 that were raised have been altered by the passage
11 of time and changes in policy and changes in
12 administration. I actually had suggested that we
13 just issue the transcript rather than try to do a
14 report given that fact. It remains an incredibly
15 important issue, as the recently published reports
16 on the state of harassment on campuses and the high
17 rates that particularly women students are facing
18 in terms of assaults and harassment and other
19 inappropriate actions happening that hurt their
20 ability to learn and undermine the overall learning
21 on these campuses.

22 So I'm glad that we're finally issuing
23 it and appreciate your efforts to try to put it
24 together, given all the challenges.

25 CHAIR LHAMON: Thank you, Commissioner

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1 Narasaki. Is there any other discussion? Hearing
2 none, I'll call the question and take the roll call
3 vote. Commissioner Adegbile, how do you vote?

4 COMMISSIONER ADEGBILE: Aye.

5 CHAIR LHAMON: Commissioner Heriot.

6 COMMISSIONER HERIOT: I vote no. These
7 findings and recommendations read like an apology
8 for the Department of Education.

9 CHAIR LHAMON: Commissioner Kirsanow.

10 COMMISSIONER KIRSANOW: No.

11 CHAIR LHAMON: Commissioner Kladney.

12 COMMISSIONER KLADNEY: Yes.

13 CHAIR LHAMON: Commissioner Narasaki.

14 COMMISSIONER NARASAKI: Yes.

15 CHAIR LHAMON: Commissioner Yaki.

16 COMMISSIONER YAKI: Aye.

17 CHAIR LHAMON: Vice Chair Timmons-
18 Goodson.

19 VICE CHAIR TIMMONS-GOODSON: Yes.

20 CHAIR LHAMON: And I vote yes. The
21 motion passes. Two commissioners opposed, no
22 commissioner abstained, and all others were in
23 favor. As a point of personal privilege, I will
24 note for the record that I am probably the last
25 person on the planet who would apologize for the

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1 Department of Education.

2 I'll note that with the adoption of the
3 report and the findings and recommendations, the
4 clock begins ticking with respect to the deadlines
5 for statements and rebuttals. Statements will be
6 due on Monday, November 18 with rebuttals due on
7 Wednesday, December 18. Commissioners must file
8 notice of their intention to file a surrebuttal by
9 Thursday, December 26th and then must file the text
10 of their surrebuttal on Thursday, January 2.

11 CONSIDERATION OF A COMMISSION PUBLIC COMMENT ON
12 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S
13 PROPOSED RULE REGARDING THE DISPARATE IMPACT
14 STANDARD UNDER THE FAIR HOUSING ACT

15 CHAIR LHAMON: Next, we will move to
16 the amended item on our agenda, consideration of a
17 Commission public comment on the Department of
18 Housing and Urban Development's proposed rule
19 regarding the disparate impact standard under the
20 Fair Housing Act.

21 While our typical practice is to read
22 out the full statements under consideration by the
23 Commission so we know what we're voting on, given
24 the length of this proposed comment, I will
25 summarize the main points, unless someone would

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1 like for me to read the whole draft.

2 So the main points are that HUD has
3 proposed a new rule regarding the disparate impact
4 standards used under the Fair Housing Act which
5 respondent opposes. Discrimination in housing
6 continues to be a pervasive problem throughout the
7 United States.

8 Though the Fair Housing Act prohibited
9 intentional housing discrimination in 1968, the
10 Commission and our advisory committees have
11 reported that substantial impediments to fair
12 housing persists today. Disparate income liability
13 under the Fair Housing Act is established in the
14 law. The current standard used to evaluate
15 disparate impact claims under the Fair Housing Act
16 applied by the Courts of Appeals was codified in
17 HUD's current rule and upheld by the Supreme Court
18 four years ago in the Inclusive Communities
19 decision.

20 The proposed rule is unnecessary and
21 fails to advance the purpose of the Fair Housing
22 Act. The proposed rule represents a departure from
23 the current rule by increasing the burden for
24 plaintiffs in disparate impact actions. The
25 proposed rule replaces the established burden shift

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1 impact with a substantial up-front prima facie
2 requirement for plaintiffs and adds several new
3 defenses against liability. We urge HUD to retain
4 the current standard used and not to adopt the
5 proposed rule.

6 To open the floor for discussion, I
7 move to approve the comment as circulated by my
8 special assistant yesterday evening. Is there a
9 second?

10 COMMISSIONER KLADNEY: Kladney. I'll
11 second.

12 CHAIR LHAMON: Thank you. I'll open
13 the floor for discussion. Hearing none, I'll call
14 the question and take a roll call vote.

15 COMMISSIONER NARASAKI: Madam Chair,
16 this is Commissioner Narasaki. I just want to
17 heartily support this statement. Disparate impact
18 has existed in the law for a very long time. It's
19 incredibly important, given the fact that, in many
20 cases, discrimination has sort of moved below
21 ground with people becoming sophisticated and
22 knowing that they shouldn't actually state what
23 their intentions might be or when there is actual
24 just lack of understanding about how actions are
25 disproportionately discriminating against

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1 vulnerable communities.

2 So I think it's, I think the HUD
3 direction is incredibly dangerous and a disservice
4 to fairness for vulnerable communities and I am
5 glad that we are issuing this.

6 CHAIR LHAMON: Commissioner Narasaki, I
7 wholeheartedly agree with you, but I think, among
8 the proud moments for this Commission was the
9 Commission's prescient call for use of disparate
10 impact analysis when the Commission, specifically
11 with generating all the reasons for the 1964 Civil
12 Rights Act. And I am pleased that that has
13 persisted and persists in the Title VI Legal Manual
14 for the Department of Justice and has persisted in
15 the Fair Housing Act and in its analysis. And I
16 was delighted that the Supreme Court recognized the
17 importance of the use of that standard because of
18 the kind of forms of discrimination that that
19 analysis allows the department and the nation to
20 see and to correct.

21 So I very strongly believe that the
22 strong use of this standard is important for
23 eradicating discrimination which our federal civil
24 rights laws is designed to correct, and I hope very
25 much that HUD course corrects and does not move

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1 forward with its proposed rule.

2 Any further discussion? Hearing none,
3 I'll call the question and take a roll call vote.
4 Mr. Adegbile, how do you vote?

5 COMMISSIONER ADEGBILE: Recused.

6 CHAIR LHAMON: Commissioner Heriot.

7 COMMISSIONER HERIOT: I vote no.

8 CHAIR LHAMON: Commissioner Kirsanow.

9 COMMISSIONER KIRSANOW: No.

10 CHAIR LHAMON: Commissioner Kladney.

11 COMMISSIONER KLADNEY: Yes.

12 CHAIR LHAMON: Commissioner Narasaki.

13 COMMISSIONER NARASAKI: Yes.

14 CHAIR LHAMON: Commissioner Yaki.

15 COMMISSIONER YAKI: Aye.

16 CHAIR LHAMON: Vice Chair Timmons-
17 Goodson.

18 VICE CHAIR TIMMONS-GOODSON: Yes.

19 CHAIR LHAMON: And I vote yes. The
20 motion passes. One commissioner was recused, two
21 commissioners oppose, all others were in favor.

22 MANAGEMENT AND OPERATIONS - STAFF DIRECTOR'S REPORT

23 CHAIR LHAMON: Next, we'll hear from
24 Staff Director Mauro Morales for the monthly Staff
25 Director's report.

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1 MR. MORALES: Thank you, Madam Chair.
2 I have nothing further. In the interest of time, I
3 have nothing further to add. It's already
4 contained in the report. As always, I'm available
5 to discuss any particular matter that commissioners
6 or a commissioner may have about a particular issue
7 in the report. But thank you and I appreciate the
8 opportunity to talk.

9 CHAIR LHAMON: Thank you, Mr. Staff
10 Director. That concludes the business for our
11 meeting today. If there's nothing further, I --

12 COMMISSIONER NARASAKI: Madam Chair,
13 before we adjourn, this just happened yesterday so
14 we didn't really have an opportunity to do
15 something formal, but I would like to note the sad
16 passing of Congressman Elijah Cummings who has long
17 been a leader on civil rights. And I hope that, at
18 an appropriate time, we can issue a more formal
19 statement on that.

20 **III. ADJOURN MEETING**

21 CHAIR LHAMON: Thank you, Commissioner
22 Narasaki. And if there is nothing further, I
23 hereby adjourn our meeting at 10:54 a.m. Eastern
24 Time. Thank you all.

25 (Whereupon, the above-entitled matter

1

went off the record at 10:54 a.m.)

2