U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC BUSINESS MEETING

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FRIDAY, FEBRUARY 28, 2020

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The Commission convened via teleconference at 10:00 a.m., Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair
DEBO P. ADEGBILE, Commissioner
PETER N. KIRSANOW, Commissioner
DAVID KLADNEY, Commissioner
MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director
MAUREEN RUDOLPH, General Counsel
STAFF PRESENT:
NICK BAIR
KATHERINE CULLITON-GONZALEZ
PAMELA DUNSTON, Chief ASCD
ALFREDA GREENE
DAVID MUSSATT, RPCU
PILAR VELASQUEZ McLAUGHLIN
WARREN ORR
MICHELE YORKMAN-ramey

COMMISSIONER ASSISTANTS PRESENT:
ALEC DUELL
CARISSA MULDER
AMY ROYCE
RUKKU SINGLE
ALISON SOMIN
IRENA VIDULOVIĆ
AGENDA

I. APPROVAL OF AGENDA ........................................... 5

II. BUSINESS MEETING .............................................. 6

   A. Presentation by Tennessee SAC Chair ............ 6

   B. Discussion and vote on timeline, discovery plan, and outline for Commission project on bail reform ....................................... 12

   C. Consideration of public comment in response to HUD's proposed regulation on affirmatively furthering fair housing .............. 22

   D. Management and Operations Staff Director's Report ....................... 24

III. ADJOURN MEETING ............................................. 25
PROCEEDINGS

(10:02 a.m.)

CHAIR LHAMON: This meeting of the U.S. Commission on Civil Rights comes to order. It's 10:02 a.m. Eastern Time on February 28, 2020. The meeting takes place over the phone.

I'm Chair Catherine Lhamon. I'd like to confirm that each of the Commissioners is on the line, so I'll take a roll call vote here at the outset. Please say present when I say your name.

Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

CHAIR LHAMON: Thank you. Commissioner Heriot? Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIR LHAMON: Thank you. Commissioner Kladney? Commissioner Kladney, if you're speaking, you're on mute.

COMMISSIONER KLADNEY: Yes, it is. Can you hear me?

CHAIR LHAMON: Yes, thank you. Commissioner Yaki?

COMMISSIONER YAKI: I am here.

CHAIR LHAMON: Thank you. Based on that, a quorum of the Commissioners is present. Is
the court reporter present?

THE COURT REPORTER: Yes, Madam Chair.

I'm here.

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

STAFF DIRECTOR MORALES: I am present.

CHAIR LHAMON: Thank you. The meeting now comes to order.

I. APPROVAL OF AGENDA

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

COMMISSIONER YAKI: So moved. Commissioner Yaki.

CHAIR LHAMON: Thank you.

COMMISSIONER ADEGBILE: Second.

CHAIR LHAMON: Is there a second?

COMMISSIONER ADEGBILE: Adegbile.

CHAIR LHAMON: Thank you. I'll begin the call for amendments with two of my own. I move to amend the agenda to add a presentation by our Tennessee Advisory Committee Chair and to add consideration of public comment in response to the federal housing -- HUD's proposed regulation on affirmatively furthering fair housing. Do I have a second?
COMMISSIONER YAKI: Second.

Commissioner Yaki.

CHAIR LHAMON: Thank you. If there are no further amendments, let's vote to approve the agenda as amended. All those in favor, say aye.

(Chorus of aye.)

CHAIR LHAMON: Any opposed?

(No audible response.)

CHAIR LHAMON: Any abstentions?

(No audible response.)

CHAIR LHAMON: The motion passes unanimously.

II. BUSINESS MEETING

PRESENTATION BY TENNESSEE SAC CHAIR

CHAIR LHAMON: We'll hear first from our Tennessee Advisory Committee Chair Diane Di Ianni on the Committee's report titled Legal Financial Obligations in the Tennessee Criminal Justice System. Ms. Di Ianni, welcome.

MS. DI IANNI: Thank you. I'm Diane Di Ianni, Chair of the Tennessee SAC. And thank you for the opportunity to present our most recent report on LFOs or penal debt in Tennessee.

I understand that you all have our report and have had an opportunity to review it.
So I will just very briefly outline our process and then bullet just a few findings and recommendations and leave time for any questions you might have and hope that I can answer them.

First, we decided to do this project in 2018 after the U.S. DOJ had issued its dear colleague letter following the post-Ferguson analysis.

We also here in Tennessee were able to find quickly a 2017 report by our Tennessee Advisory Commission on Intergovernmental Relations which had done a kind of deep dive, again, just the year before in the unchecked growth of fees and taxes and surcharges kind of peppered throughout, scattered throughout our Tennessee laws. And we knew that would be a good resource to get us kind of a basic understanding of what the code is doing.

Third, we had a new governor who had expressed a real interest in rehabilitating formerly incarcerated individuals.

And lastly, just our Tennessee SAC which I'll emphasize is highly diverse and broad. We're a group of broadly differing political view and affinities but had a strong interest, all of us together, and a consensus, a strong interest in
looking at this question of state policies and penal debt.

Our process was a little bit different than the prior report we had done in civil asset forfeiture. And this time we held our hearing in March 2019, a public hearing. And we had the advocates, academic, legislatures, and executive branch officials.

But what we really cared very much about and we did as a group kind of identified and were able to get individuals who themselves were formerly incarcerated and had kind of lived the experience of coming out and in some cases just folks in the criminal justice system who weren't even found guilty, incarcerated but came out with pre-trial debt and so forth.

But to really hear firsthand experiences, to understand what was happening with this, the daylong hearing in downtown Nashville was so compelling. We were so moved as a group, as a SAC by what we heard that we really wanted to get out a writing on the testimony we were hearing and kind of from the voices of the formerly incarcerated.

And we did that and we issued in May,
so just a few months later, a preliminary -- what we call the preliminary memo on the issue in May. And I think you all have that as well. And there again, it was really just a summary of the testimony we heard because we thought it was that important to begin to circulate that.

Then in November 29, we put together our full report with recommendations which you also have. It was released early just in January last month and just at the start -- happily at the start of our legislative session.

So that was the process. And just to bullet very briefly our findings and recommendations, and then we can maybe turn to questions.

Our primary overarching key finding is that the use of penal debt to fund our court and justice systems here in Tennessee directly contradicts our state policy of promoting successful reentry of formerly incarcerated individuals, to reduce recidivism, increase public safety, and increase the health and well-being of our communities. And it contradicts our policy to ensure fair and equitable administration of justice in our state.
We took that kind of key finding, then broke down in our report. As you see, it's kind of two parts, one focusing on the ways in which penal debt undermines successful reentry for the individual and then secondarily the disproportionate ways in which there's a disproportionate impact on women, the poor, and communities of color. And again, if you have questions, we can drill down a little bit on that.

Our recommendation, we have, as you see, one general overarching recommendation. Use of LFO here in the state is so intricately kind of interspersed throughout our code, our state laws, and our state and local budgeting kind of framework.

That said, I will say our Tennessee SAC, this diverse groups of folks, they cover the entire political spectrum. But there was this hard consensus that this practice just has to end. That it is absolutely counterproductive to the goals of our policy.

So understanding that, the idea, our first recommendation for Tennessee to move away from this funding model and end the practice of LFO, realizing, of course, that that's long term
and would take structural changes over time.

    The group -- the SAC very much wanted to also focus in a little bit more and in the alternative to the extent that that change doesn't occur in the near term. We really wanted to focus on the alternative, to have attention to evaluating the role of local counties and judges in establishing -- local jurisdictions in establishing new fees and then judges assessing them.

    Here, our concern is really this concept, this legal framework allows for all kinds of concerning risk of conflicts of interest where you can have basically local jurisdictions deciding to just go to LFOs as a way of raising revenue for their local fund. And, for instance, courts can assess and some of the funds raised can go to enhance judicial salaries for elected officials.

    So we thought that the conflict of interest concerns were very real and immediate and created potential risks of malincentive. And then so that, we really wanted to focus our recommendations on looking at that piece of it, thinking about moving to a state model where there's more monitoring where the use of these funds can be required to be reported and understood.
what's happening.

And then we also looked at more discrete policy reforms with respect to voting rights here in Tennessee. If you currently have outstanding LFOs, you cannot be restored -- have your voting rights restored, although we can talk about that if you have questions. There is a bill on that. We talked about we recommended there be ability to pay uniform analysis and a right to counsel with respect to LFOs.

And then finally, our recommendation was to establish a statewide value to the body to try to bring some kind of data driven policymaking here that they would look at, report, data collect on any new proposals for new fees.

To see how they're being used, and to create oversight for monitoring, kind of private debt collectors and so forth that from what we heard at the hearing can really put pressure on folks threatening that if they don't do this, they don't do that, if they don't make the payment, they'll be pulled right back into jail. So creating a lot of stress and making nonproductive effects.

So those are generally our findings and
recommendations. And I'd be happy to drill down on any of this or talk about our post-report activity as you wish.

CHAIR LHAMON: Thank you so much, Chair Di Ianni.

CHAIR LHAMON: I'll open for questions from fellow Commissioners.

OPERATOR: If you would like to ask a question, please do.

COMMISSIONER KLANDNEY: Madam Chair.

CHAIR LHAMON: Go ahead, Commissioner Kladney.

COMMISSIONER KLANDNEY: Madam Chair.

CHAIR LHAMON: Go ahead.

COMMISSIONER KLANDNEY: I'd really like to -- first of all, I'd like to thank you and the State Advisory Committee for the work you've done on this. I found the recommendation about sending the fines and fees to the general fund very relevant. I know they do that in my state. In Nevada, they do not. They keep it in the jurisdiction, and the court is obviously a moneymaker for the government.

Is there any recommendation on how that money should be divided or is it left to the
legislature? And are you then going to allow the legislature to set the salaries for the local municipal judges or the justice court judges? Or that's still going to be left in the hands of the cities and counties?

MS. DI IANNI: Well, that -- yeah, I mean, that's a good question. I think the feeling and from the testimony that we heard, whether we can get -- I think we agreed as a SAC looking at this question, you're never going to get variability out of the system that all of the places of discretion that we have, whether -- not only whether the local jurisdiction assesses it, but whether it establishes a fine or fee and that goes into their own local revenue fund.

But whether judges -- how judges decide whether someone is indigent, whether to waive fines, fees, and taxes and so forth. That varies greatly across courts, within courts, across judges, urban versus rural, across this state.

And then sadly what we don't know is there's really a lack of any kind of demographic information to understand what is happening at the local level. So I think that's a very good question. I don't know that we as a SAC drilled
down to that level of specificity with respect to our recommendation.

What I think was an overwhelming consensus was that as it stands, there's really insufficient accountability and monitoring and even foundational data to understand who is being assessed demographically, geographically, where there's a lack of consistency, a lack of process or uniformity about establishing indigency and so forth that we felt it -- essentially, really what we're saying is it has to kind of go up and there has to be more oversight.

And I think the SAC would feel that if the state -- if it all went into the general fund -- state general fund and then got allocated out or kind of funding in models or what county courts are going to have, what sheriff's -- ranges or something. There could be a more centralized view to ensure equity across the state, our three Grand Divisions in Tennessee.

COMMISSIONER Kladney: Thank you.

Thank you very much.

(Simultaneous speaking.)

Chair Lhamon: Go ahead, sorry.

Ms. Di Ianni: No, I just was going to
say and we're very -- I don't want to take your time. But we did -- we've been very pleased with some post-report activities that we did. If you can indulge me just a bit.

We did a press release. We got print and radio coverage on it, both in English and Spanish. We did courtesy hard copies to key legislatures to drop off. We had a radio interview which was picked up -- upon this subject which was picked up both in an NPR affiliate station in Memphis and then later a national station picked it up and did some radio segment on the issue.

We have members who kind of got it out through social media and heard that an advocacy group has picked up a report and are going to be using it for their own action alert. We had a criminal justice reporter very interested in the issue, and we were able to put some of our panelists, folks who had been formerly incarcerated, could kind of connect them with the reporter who was working on a deeper dive into the issue to bring more attention to it.

And we have an op-ed. As a SAC, we did an op-ed that our statewide paper, The Tennessean, not only did they publish it but the editor or
opinion editor did a beautiful job. He actually clipped our governor’s recent State of State regarding the need for criminal justice reform and supporting returning individuals took that clip from this and put it right at the top of the online opinion piece.

He embedded other related articles. So it was very -- he attached it to a deeper diver for people to educate themselves. So from an op-ed, it was a highly -- he really enhanced the way, and I think the depth with which the community at large here in Tennessee can really kind of drill down and begin to understand this very important issue and the need for reform. So we are very pleased about that.

CHAIR LHAMON: Diane, thank you so much for letting us know that and also for the energy of the Advisory Committee on this topic. I wanted to say at least a couple things.

One is, this was very exciting, I heard in your recitation of the report that you had a hard consensus among the -- and I want to note that hard consensus resulted in unanimity in support of the report which is terrific to see. And then the report itself is quite comprehensive and really
well done. So I want to thank you for the careful, thorough analysis of the issue.

I was very struck -- in the report, I think it's at page 5 -- that in Tennessee, fines, fees, surcharges, taxes can be assessed against people even when they ultimately are not convicted of an offense. So for the pleasure of being a part of the criminal justice process, people in Tennessee can be required to pay these fines and fees and charges. That was jaw dropping for me. So thank you for bringing attention to that scope of the issue as well.

MS. DI IANNI: Yeah. Well, good. Well, thank all of you for the opportunity. I will say as we really looked at this and looked at what kind of existed, although we have this great technical report by the state agency that looked at fines and fees, what a SAC can do on an issue, and we really see it as we saw it here.

A SAC given our structure, how we work, and having these hearings and being members of the community where we can really put people together and call panelists together because we kind of know the area -- know the field, it really allows for a human story to come out.
There's nowhere where -- this is this big disconnect here between what the policy is in the states and then there's practice which is counter to it. And so to hear the testimony of individuals themselves who have lived it and to understand how it works and how it contradicts our state policy, I think it really shows just how impactful the SAC process can be.

So we're very pleased with it. We're very excited about it. And again, the progress is slow. But we are optimistic that in the year or two or three ahead that there will be reform in this area as we're seeing with our last report.

It's taken a few years, but the commission was wonderful in sending out a letter to our legislatures here, got their attention. There was a deep dive summer study on the CAF or civil asset forfeiture report from 2018. A deep dive study, this summer, 2019, again the slow process but moving. And we now have a bill that would reform and improve our forfeiture laws that will be heard -- filed now and heard next week.

So we're, as a SAC, feeling like we understand the value of what we do, where the reports are, and we really appreciate the support
from the Commission.

CHAIR LHAMON: That's perfect to hear.
And it's terrific to hear about the progress
resulting from your work to see the goal. So thank
you very much, and thank you again for presenting
to us. I really appreciate it.

MS. DI IANNI: Okay. Thank you all.

Thank you. Bye-bye.

DISCUSSION AND VOTE ON TIMELINE, DISCOVERY PLAN,
AND OUTLINE FOR COMMISSION PROJECT ON BAIL REFORM

CHAIR LHAMON: The next item on our
agenda is a discussion and vote on the discovery
materials which are the discovery plan, outline,
and timeline for the Commission project on bail
reform. To begin discussion, I move that we
approve the materials as circulated by OCRE on
Monday, February 24. Is there a second?

COMMISSIONER KLANDNEY: Kladney here.
I'll second.

CHAIR LHAMON: Thank you. To continue
discussion, I'll offer two points. Cash bail and
pre-trail detention practices have long been a fair
administration of justice issue as we saw raised
continuously in our project on the imposition of
fines and fees.
We've heard similar civil rights concerns about legal financial obligations from our Maryland Advisory Committee and just a few minutes ago from our Tennessee Advisory Committee.

The materials we consider today will allow us to dig deep on the bail bond system, including the role of the private bail industry. We'll look at the different systems that have been implemented in a range of states and local jurisdictions around the country in response to constitutional civil rights concerns about the imposition of bail.

I believe these materials set this investigation with a solid foundation, and I look forward to the Commission's briefing on May 8th, 2020. Is there any other discussion of these materials?

(No audible response.)

CHAIR LHAMON: 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 Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney?
COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

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

CONSIDERATION OF PUBLIC COMMENT IN RESPONSE TO HUD'S PROPOSED REGULATION ON AFFIRMATIVELY FURTHERING FAIR HOUSING

CHAIR LHAMON: Next, we will move to an amended item on our agenda which is consideration of a Commission public comment on the Department of Housing and Urban Development's proposed rule regarding the Fair Housing Act's requirement on affirmatively furthering fair housing.

So our typical practice has been to read the full statement under consideration by the Commission. Given the length of this proposed comment, I will instead summarize its main points. They are that HUD has proposed a new rule regarding the Fair Housing Act's requirements on affirmatively furthering fair housing which this comment opposes.

We heard from current and former HUD officials that discrimination in housing continues to be a pervasive problem throughout the United
The Affirmatively furthering fair housing requirement is a crucial provision of the Fair Housing Act.

HUD issued a rule in 2015 to ensure that the provision was actively enforced and this proposed rule returns us to the lax enforcement prior to 2015 as reported to the Commission from D.C. Advisory Committee.

The proposed rule does not adequately address the issues that motivated the creation of the existing rule and is inconsistent with HUD's own mission to create strong, sustainable, inclusive communities and quality affordable homes for all.

We urge HUD to restore the 2015 rule and not adopt a proposed rule. Without a rule that actually holds government entities to account, affirmatively furthering fair housing remains aspirational and powerless against the many challenges still standing in the way of ensuring fair housing for all.

To open the floor for discussion, I move to approve the comment as circulated by my special assistant on Thursday, February 27. Is there a second?
COMMISSIONER KLADNEY: Second, Kladney.

CHAIR LHAMON: Thank you. Open the floor for discussion.

(No audible response.)

CHAIR LHAMON: 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 Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

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

MANAGEMENT AND OPERATIONS

STAFF DIRECTOR'S REPORT

CHAIR LHAMON: Next, we'll hear from Staff Director Mauro Morales giving the Staff Director's report.

STAFF DIRECTOR MORALES: Thank you, Madam Chair. In the interest of time, I have nothing further to add beyond what is contained in
the report. And as always, I remain available to
discuss any particular issue that any Commissioner
sees in the report. So I thank you and that's all
I have. Thank you.

CHAIR LHAMON: Thank you, Mr. Staff
Director.

III. ADJOURN MEETING

CHAIR LHAMON: With that, we can
conclude the business on today's agenda for today's
business meeting. And so if there's nothing
further, I hereby adjourn the meeting at 10:27 a.m.
Eastern Time. Thank you.

(Whereupon, the above-entitled matter
went off the record at 10:27 a.m.)