

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

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P R O C E E D I N G S

(10:01 a.m.)

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

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

Vice Chair Timmons-Goodson.

(No audible response.)

CHAIR LHAMON: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Present.

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: I'm here.

CHAIR LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Here.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER KLADNEY: Here.

CHAIR LHAMON: Commissioner Narasaki.

COMMISSIONER NARASAKI: Here.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: Present.

CHAIR LHAMON: Thank you. Based on that,

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

3 COURT REPORTER: Yes, I'm here.

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

6 MR. 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 like
18 to table the vote on the Maryland and West Virginia
19 State Advisory Committee slates until our next
20 business meeting. Second, I would like to add
21 consideration of the public comments on HUD's proposed
22 rule on the disparate impact standard under the Fair
23 Housing Act.

24 Do I have a second for my amendment?

25 COMMISSIONER KLADNEY: I second. Kladney.

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

4 (Chorus of aye.)

5 CHAIR LHAMON: Any opposed?

6 (No audible response.)

7 CHAIR LHAMON: Any abstentions?

8 (No audible response.)

9 CHAIR LHAMON: The motion passes
10 unanimously.

11 II. BUSINESS MEETING

12 PRESENTATION BY MAINE ADVISORY COMMITTEE MEMBER

13 ON THE COMMITTEE'S RECENT REPORT,

14 THE CRIMINALIZATION OF PEOPLE WITH MENTAL

15 ILLNESSES IN MAINE

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

24 Mr. Mehnert, go ahead. Is Mr. Mehnert on
25 the line? Okay. We'll pause and hope that he'll join

1 us later, and we'll turn to the --

2 MR. MEHNERT: I am here.

3 CHAIR LHAMON: Oh, terrific. Mr. Mehnert,
4 go ahead.

5 MR. MEHNERT: Okay. Did they get me
6 through?

7 CHAIR LHAMON: Yes, go ahead.

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

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

20 It is also important to acknowledge the
21 work that Evelyn Bohor of the Commission and the
22 contract attorney Julie Bush and their efforts in
23 distilling the information received at the public
24 hearing and offering indispensable support putting the
25 report together.

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

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

20 Unfortunately, while the de-
21 institutionalization movement sought the commendable
22 goals of providing community services and supports so
23 that individuals with mental health challenges might
24 live at home, the money never followed the policy. So
25 while government was saving money by no longer funding

1 mental health institutions, it was failing to fund
2 community services and supports that were so essential
3 to those with mental health challenges. That failure
4 led directly to a rise in the homelessness of those
5 challenged with mental health issues and a concurrent
6 rise in the criminalization of the mentally ill. The
7 criminalization occurs when an individual suffering
8 from mental health challenges do not have the supports
9 they need in the community. Community members see
10 behaviors that they consider abhorrent or problematic,
11 and they contact law enforcement.

12 Properly trained law enforcement officers
13 are skilled in recognizing an individual with a mental
14 health challenge, and they're skilled in de-
15 escalation. Unfortunately, that is only a fraction of
16 the law enforcement in the state. The former sheriff
17 in Aroostook County advised that, while 70 percent of
18 his officers had received crisis intervention
19 training, none in any of the ten municipal law
20 enforcement departments in Aroostook County had
21 received similar training.

22 The Maine Criminal Justice Academy has
23 passed a policy providing that 25 percent of the full-
24 time law enforcement officers will receive eight hours
25 of training by January of 2018. We haven't confirmed

1 at this point in time whether that has, in fact,
2 occurred. But the fact of the matter is that eight
3 hours is not enough. Having participated in one of
4 those trainings, it is also clear that those trainings
5 need to be presented by an independent body.

6 The failure of trainings and having a
7 completely trained law enforcement officers with
8 respect to mental health challenges has led to a
9 disproportionate number of individuals with mental
10 health challenges being arrested on petty crimes.
11 We've seen them arrested on crimes such as disorderly
12 conduct, loitering, or public theft. And as a result,
13 64 percent of the individuals in their jails have a
14 mental health diagnosis.

15 For juveniles in Maine, the rate is
16 astronomically higher. It's about 85 percent of those
17 at a juvenile detention facility have three or more
18 mental health diagnoses when they came into the
19 facility.

20 The statistics saw individuals with mental
21 health diagnosis will remain in the jails three times
22 longer on misdemeanor charges than those without
23 mental health issues, and the increased financial
24 burden on the jails and the county jails is
25 exponentially greater for those who come into the

1 jails with mental health issues.

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

6 But there is some hope. At this point in
7 time, many law enforcement officers or agencies are
8 doing what they can. The county sheriffs particularly
9 seem to recognize the problem because they are on the
10 front lines. Police Chief Sauschuck who came up with
11 a co-responder program, which was a leading program in
12 ensuring that, when an individual has a mental health
13 challenge and the police were called, that a mental
14 health professional or a crisis worker went with the
15 police to respond. Police Chief Sauschuck is now the
16 Commissioner in the Department of the Public Health.
17 Finally, there is Representative Talbert Ross who
18 continues to work tirelessly within the state
19 legislature on criminal justice reform.

20 The advisory group has come to the
21 conclusion and believes that it is essential that
22 evidence-based programs and policies detect and treat
23 individuals who have mental health challenges and who
24 are caught up in the criminal justice system -- excuse
25 me. That there be evidence-based programs and

1 policies to protect and treat individuals caught up in
2 the criminal justice system.

3 It also believes that it is essential that
4 the government fully fund community care systems
5 consistent with evidence-based best practices to
6 prevent individuals with mental health challenges from
7 entering the system.

8 That is essentially the report from the
9 State of Maine and the Maine Advisory Committee. I am
10 open to any questions.

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

13 COMMISSIONER NARASAKI: Good morning,
14 Madam Chair. Commissioner Narasaki would like to ask
15 a question.

16 CHAIR LHAMON: Go ahead.

17 COMMISSIONER NARASAKI: Thank you so much
18 for this incredibly comprehensive report. It is an
19 issue that, in my five years on the Commission, I've
20 come to realize it's close to almost all of the issues
21 that we have been working on, including the school-to-
22 prison pipeline. So it was particularly important to
23 see your recommendations around the issue of actually
24 providing mental healthcare.

25 I've talked to many police who have told

1 me that they want to be able to refer people who are
2 clearly having a mental health crisis somewhere, but
3 there's nowhere to take them. So that is clearly a
4 problem that needs to be addressed.

5 You had recommended that the state
6 legislature pass legislation that provides student
7 loan debt relief for mental health professionals to
8 try to get them to the more rural parts of Maine. Is
9 that based on seeing other programs like that, or is
10 that a new idea?

11 MR. MEHNERT: My understanding is it's
12 based on the similar programs of the same nature.
13 Maine has a significant issue with educators,
14 providers, and even attorneys who could provide
15 support for those who are in the throes of a mental
16 health crisis in rural Maine. We have one county
17 where there are three attorneys in the entire county.
18 In another county, there are supposedly five district
19 attorneys, one district attorney and four assistant
20 district attorneys. All four ADA slots are open.

21 What that causes for a challenge for us is
22 that individuals who are being taken to the jail as a
23 place of last resort are simply not getting processed,
24 and they're languishing in the jail. And so the
25 desire to have some kind of loan forgiveness program

1 have been not only, it strikes me to not only be for
2 providers, although that would be the number one,
3 crisis workers, would absolutely be essential, but
4 also other mental health providers, as well as
5 educators and attorneys, would be a step in the right
6 direction to ensuring that individuals who are
7 essentially disenfranchised are represented in the
8 systems.

9 COMMISSIONER NARASAKI: That's great. And
10 the second question I have is one of your
11 recommendations goes to the need to study and
12 recalculate the MaineCare reimbursement rates for
13 community programs to reflect the actual costs. Is
14 that, is there a funding issue there, as well as the
15 need to recalculate the rates?

16 MR. MEHNERT: If you're talking about
17 funding to the state government -- are you talking
18 about the funding to the state government or the
19 funding for the providers in the communities?

20 COMMISSIONER NARASAKI: Actually, both.

21 MR. MEHNERT: The funding for providers --
22 okay. I would say I would not be able to speak
23 definitively to the first, although my impression is
24 absolutely that what we're seeing with regards to the
25 care for individuals in the community is that there is

1 not enough money coming into the state and, second,
2 that a provider, we're having providers leave our
3 rural areas because they simply cannot afford to live.
4 And this ties closely to what you were talking about
5 with the loan forgiveness, that it's really a two-
6 pronged problem for individuals that are working in
7 the rural areas. They have an incredible student loan
8 debt that they have to deal with, and then they're not
9 really being paid enough not only not to cover the
10 student loan debt but to live. That is a real
11 challenge.

12 So the providers need to be paid more and
13 there needs to be more money in the state on the whole
14 in recognition of some of the challenges that
15 individuals with mental health challenges have.

16 COMMISSIONER NARASAKI: Great. Thank you
17 so much. Madam Chair, I'm turning it back to you.

18 CHAIR LHAMON: Thank you. And I was
19 talking on mute, so thank you for saying that. I want
20 to say again that I had the pleasure of joining this
21 committee for the briefing, and I was blown away by
22 the public comments that the committee received, the
23 emotional testimony about the challenges families of
24 persons with mental illness experience in Maine and
25 also by the leadership from many members of the law

1 enforcement community in trying to improve their own
2 practices and ensure that they respond against what
3 they described as a significant challenge, given the
4 absence of therapeutic care availability for persons
5 with mental illness in Maine.

6 I appreciated reading in this report the
7 hopeful note about some improvements in that arena in
8 the state this year, so I look forward, as I imagine
9 the Committee does as well, to seeing improvements in
10 that area. And I just want to commend and thank the
11 Committee for its care in receiving information from
12 a variety of perspectives on the topic and in
13 generating a thorough report that includes really
14 comprehensively recommendations and also distills a
15 difficult topic into assessable findings. So thank
16 you very much.

17 Are there other questions or comments from
18 other commissioners?

19 MR. MEHNERT: If I might add just one more
20 thing. I think one of the things, Chair, that you
21 talked about was the law enforcement that I thought
22 was really salient that the law enforcement had said
23 was that they are the only system that cannot say no,
24 and that's a terrible way for us to be dealing with
25 providers. We are defaulting to the only system that

1 can't say no, and their response is to lock the
2 individual up. And they don't want to do it. They
3 don't have the services for it.

4 CHAIR LHAMON: I also found incredibly
5 compelling the testimony from law enforcement about
6 the safety risk to law enforcement of failing to offer
7 therapeutic care in the state, and I think that's a
8 point that's worth underscoring, as well.

9 Mr. Mehnert, thank you very much for your
10 presentation and for your service and leadership on
11 the Maine Advisory Committee and for taking the time
12 to speak with us today.

13 MR. MEHNERT: Thank you.

14 PRESENTATION BY GEORGIA ADVISORY COMMITTEE MEMBER ON
15 THE COMMITTEE'S RECENT REPORT,
16 DISABILITY RIGHTS AND CIVIL RIGHTS IN GEORGIA

17 CHAIR LHAMON: We'll now turn to our
18 Georgia Advisory Committee and hear from Chanel Haley
19 from the Georgia Advisory Committee on that
20 committee's most recent report titled Disability
21 Rights and Civil Rights in Georgia.

22 Ms. Haley.

23 MS. HALEY: Good morning, Commission. My
24 name is Chanel Haley. My profession is the Gender
25 Policy Manager at Georgia Equality, and I serve as the

1 secretary for the Georgia Advisory Committee to the
2 United States Commission on Civil Rights. I also help
3 to actually chair this particular report, co-chair
4 this particular report, and we had a lot of people
5 that helped out with this. We want to give a special
6 notation to the person who brought this to us, our
7 fellow member who actually passed away during the
8 creation of this report, which was Justin Priestly.
9 And if it wasn't for him, this would never have been
10 on our radar.

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

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

1 the state, that were able to testify on whether or not
2 the compliance had been met.

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

25 Insurance companies are not providing the

1 same payouts in reference to behavioral care as they
2 would if the person was using insurance for other
3 disabilities.

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

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

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

25 And, finally, Georgia, we believe, is

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 this
4 is where kids are sent away to a special school who
5 have behavioral health conditions, and the community
6 was very clear that that was still a discriminatory
7 practice.

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

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

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

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

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

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

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

23 CHAIR LHAMON: All right, Commissioner.

24 COMMISSIONER NARASAKI: Thank you. This
25 is an incredibly important report, particularly as we

1 have more people aging and requiring these kinds of
2 services. So very much appreciate the work of the
3 committee.

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

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

20 I think that it would be great if the U.S.
21 Commission would send a letter to our governor letting
22 them know of where they were lacking of meeting the
23 needs of the requirement. So I think that it's
24 something that, if it was pointed out to them, to our
25 governor and our attorney general, then they would

1 become in compliance with it or make an effort to at
2 the very least.

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

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

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

20 CHAIR LHAMON: Thank you. Ms. Haley, I
21 found your report devastating and the topic,
22 obviously, is incredibly compelling. But to read in
23 the report about people who are in jail having to wait
24 weeks to have access to a bed that could open up at
25 Georgia Regional Hospital, so they are spending more

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

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

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

22 CHAIR LHAMON: We will turn next to Sondra
23 Cosgrove of the Commission's Nevada Advisory Committee
24 on that committee's most recent report titled Mental
25 Health Implications for Policing Practices and the

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Administration of Justice in Nevada.

Ms. Cosgrove.

DR. COSGROVE: Thank you. Good morning.

My name is Dr. Sondra Cosgrove, and I'm a history professor and the co-chair of the Nevada Advisory Committee.

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

After a jump in the number of incidents in Nevada between law enforcement officers and individuals with behavioral and mental health needs, our committee decided to investigate why these interactions were producing such poor outcomes. When we heard testimony that communities of color and veterans were overrepresented in those incidents, we explicitly included both populations in our investigation.

Based on two hearings, the Nevada Advisory Committee was alarmed over the amount of testimony we heard that revealed how often persons with unmet

1 behavioral and mental health needs are interacting
2 with law enforcement officers due to a lack of
3 available services, as well as a high number of
4 currently incarcerated Nevadans who are being treated
5 for mental or behavioral health disorders. The
6 numbers are so high that we consider this issue to be
7 a crisis.

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

16 The Advisory Committee, therefore, has
17 concluded in our report that Nevada must prioritize
18 addressing mental and behavioral health treatment
19 shortages if we hope to address other pressing issues
20 related to criminal justice, education, and healthcare
21 reform. We understand that our shortage of providers
22 and services is longstanding and will require
23 investments in multiple areas, such as de-escalation
24 training for law enforcement, workforce development
25 through our higher education system, and higher

1 Medicaid reimbursement rates.

2 But, ethically, we must strongly recommend
3 Nevada do everything it can and as quickly as possible
4 to address the disproportionately high number of
5 incidents that produce poor outcomes between law
6 enforcement and individuals who need mental health
7 treatment, not incarceration.

8 Thank you. I'm open for questions.

9 CHAIR LHAMON: Thank you so much, Dr.
10 Cosgrove. I'll open for questions from my fellow
11 commissioners.

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

14 CHAIR LHAMON: All right, Mr. Kladney.

15 COMMISSIONER KLADNEY: Thank you. I'd
16 like to thank Vice Chair Cosgrove and Chair Blaylock.
17 I find their findings and recommendations are
18 comprehensive, they show a path to safer policing for
19 police, the public, and the disabled. However, the
20 Nevada legislature needs to take note of these
21 recommendations and find funding mechanisms so they
22 can be instituted.

23 Crisis intervention training and de-
24 escalation training are desperately needed. The
25 legislature did pass a law in the last session

1 providing 12 hours of training but over six subjects
2 which were not mandatory as to which ones will be
3 taught.

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

14 And I turn it back to the Chair.

15 CHAIR LHAMON: Thank you. Other questions
16 or comments from other commissioners?

17 COMMISSIONER NARASAKI: This is
18 Commissioner Narasaki, Madam Chair.

19 CHAIR LHAMON: Go ahead, Commissioner
20 Narasaki.

21 COMMISSIONER NARASAKI: So I also want to
22 commend you on the report and, sadly, I'm leaving the
23 Commission or I would be trying to convince my fellow
24 commissioners to take up this issue of mental health
25 as a next topic for this commission to consider

1 because, clearly, it is becoming a crisis and flows
2 through so many other issues.

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

13 DR. COSGROVE: Yes, this is Sondra
14 Cosgrove. That's exactly what we found. When we were
15 doing our hearing, oftentimes we would have sitting at
16 the table law enforcement, advocates for behavioral
17 and mental health, and legislators and representatives
18 of the criminal justice system, and it was very
19 obvious to us that they're already having these
20 discussions. In real life, if they don't all
21 coordinate together, there's really no way to address
22 this problem.

23 So we're already preparing for the next
24 legislative session to make sure that we keep those
25 coalitions together so that people see the totality of

1 the problem and how many different agencies and
2 different groups of people are coming to the table to
3 work together. And one of the things that this has
4 produced is we're now starting to realize that, when
5 it comes to money, we're already spending a tremendous
6 amount of money incarcerating people with mental
7 illness and it would be actually less expensive if we
8 invested in medical treatments and making sure that we
9 have enough psychologists or we have enough social
10 workers.

11 So we're looking at ways that we can
12 bridge funding from the very expensive and inefficient
13 way and a way that's producing poor outcomes over into
14 a more reasonable, rational system that recognizes
15 behavioral and mental health as a medical condition so
16 that we can use money that's already in the system
17 before we have to go to the taxpayers and ask for more
18 money.

19 COMMISSIONER NARASAKI: Well, I'm
20 definitely rooting for you to become an example to the
21 other states and also to Congress, so thank you very
22 much for you and your colleagues' work.

23 DR. COSGROVE: Thank you.

24 CHAIR LHAMON: Thank you. Are there other
25 questions --

1 COMMISSIONER NARASAKI: And I'll turn it
2 back to the Chair.

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

7 DR. COSGROVE: Thank you.

8 CHAIR LHAMON: -- on the Nevada Advisory
9 Committee. Thank you for taking the time to speak
10 with us today.

11 DR. COSGROVE: Thank you.

12 DISCUSSION AND VOTE ON COMMISSION'S REPORT, SEXUAL

13 HARASSMENT AND FREE SPEECH ON

14 CAMPUS

15 CHAIR LHAMON: We'll now to a discussion
16 and vote on the Commission's report titled Free to
17 Learn: Speech and Sexual Harassment on Campus. We'll
18 proceed with two votes, first on the report text and
19 then with the findings and recommendations.

20 To open the floor up for discussion, I
21 move to approve the report as circulated by my special
22 assistants on Friday, October 11th. Is there a
23 second?

24 COMMISSIONER NARASAKI: Commissioner
25 Narasaki seconds.

1 CHAIR LHAMON: Thank you. I'll offer some
2 points to begin our discussion. This project began
3 before my tenure on the Commission. I will note it
4 began while I was Assistant Secretary for Civil Rights
5 at the Department of Education, and I was pleased to
6 send my deputy to the Commission to testify about our
7 work at the time and grateful to my Commission
8 colleagues for their interest and commitment to the
9 issue of proper enforcement of Title IX. I thank our
10 Office of General Counsel, including General Counsel
11 Maureen Rudolph and Premier Attorney Advisory Lenore
12 Ostrowsky, for their research and drafting of the
13 report text that we consider today.

14 I'll open the floor for discussion for
15 additional amendments. Hearing none, I'll call the
16 question and take a roll call vote. Commissioner
17 Adegbile, how do you vote?

18 COMMISSIONER ADEGBILE: Aye.

19 CHAIR LHAMON: Commissioner Heriot.

20 COMMISSIONER HERIOT: I vote no. I was
21 the author of the concept paper for this report, and
22 the report has turned out nothing like the concept
23 report.

24 CHAIR LHAMON: Commissioner Kirsanow.

25 COMMISSIONER KIRSANOW: No.

1 CHAIR LHAMON: Commissioner Kladney.

2 COMMISSIONER KLADNEY: Yes.

3 CHAIR LHAMON: Commissioner Narasaki.

4 COMMISSIONER NARASAKI: I vote yes.

5 CHAIR LHAMON: Commissioner Yaki.

6 COMMISSIONER YAKI: Aye.

7 CHAIR LHAMON: Vice Chair Timmons-Goodson,
8 who has joined us now.

9 VICE CHAIR TIMMONS-GOODSON: Yes.

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

13 Next, we'll consider findings and
14 recommendations for the report. To open the floor for
15 discussion, I move to approve the findings and
16 recommendations circulated by my special assistant on
17 Friday, October 11th. Is there a second?

18 COMMISSIONER NARASAKI: This is
19 Commissioner Narasaki. I second.

20 CHAIR LHAMON: Thank you. I'll open the
21 floor for discussion, and I will just note,
22 Commissioner Heriot, I am dismayed to hear that your
23 view is that the report is not responsive to the
24 concept paper or to the ideas that you hoped the
25 Commission would investigate. I note that when I

1 started, among the first drafts that I received, which
2 was a few years ago, was the draft and that draft was
3 subsequently broader in scope and I was prepared and
4 delighted to review and edit that topic. And,
5 Commissioner Heriot, your request was that the report
6 be narrowed to its current scope, and I acceded to
7 that, as I understand that this is a project that you
8 asked the Commission to investigate and that you led.
9 And I am pleased to have the Commission narrow its
10 focus on the topic that you requested as the leader of
11 the report. I am surprised to hear and sorry that
12 your view now is that the narrowed scope or the
13 content of the report is not as focused as you would
14 have hoped.

15 Some may know that in the five years the
16 Commission held this version you have had plenty of
17 time to lay those concerns and to seek to have
18 different text either in the report or modify or alter
19 the scope of the findings and recommendations. So
20 I'll just say that I am sorry that a topic that you
21 asked the Commission to investigate does not align
22 with what your expectations were. I have been
23 pleased to review the expertise and analysis from our
24 General Counsel's office on the topic, and I think the
25 substantially narrowed scope of the report,

1 nonetheless, makes an important contribution to civil
2 rights investigation, and I support it.

3 COMMISSIONER HERIOT: A lot of what you
4 said broke up, Madam Chair. I think you're a little
5 confused, but I will let the concept paper speak for
6 itself.

7 CHAIR LHAMON: Okay. Is there any further
8 discussion --

9 COMMISSIONER NARASAKI: So, Madam Chair,
10 this is Commissioner Narasaki. I wanted to thank the
11 Chair and her special assistant, for their hard work
12 on trying to finish the report. It was the first
13 hearing, my first hearing. I came in after, I think,
14 in the middle of the first session because I had been
15 appointed the night before and was trying to get sworn
16 in before the hearing was done. So I'm glad this is
17 being completed before I leave the Commission.

18 I think that the passage of time has, in
19 fact, made it very challenging because many of the
20 issues that were raised, some of the issues that were
21 raised have been altered by the passage of time and
22 changes in policy and changes in administration. I
23 actually had suggested that we just issue the
24 transcript rather than try to do a report given that
25 fact. It remains an incredibly important issue, as

1 the recently published reports on the state of
2 harassment on campuses and the high rates that
3 particularly women students are facing in terms of
4 assaults and harassment and other inappropriate
5 actions happening that hurt their ability to learn and
6 undermine the overall learning on these campuses.

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

10 CHAIR LHAMON: Thank you, Commissioner
11 Narasaki. Is there any other discussion? Hearing
12 none, I'll call the question and take the roll call
13 vote. Commissioner Adegbile, how do you vote?

14 COMMISSIONER ADEGBILE: Aye.

15 CHAIR LHAMON: Commissioner Heriot.

16 COMMISSIONER HERIOT: I vote no. These
17 findings and recommendations read like an apology for
18 the Department of Education.

19 CHAIR LHAMON: Commissioner Kirsanow.

20 COMMISSIONER KIRSANOW: No.

21 CHAIR LHAMON: Commissioner Kladney.

22 COMMISSIONER KLADNEY: Yes.

23 CHAIR LHAMON: Commissioner Narasaki.

24 COMMISSIONER NARASAKI: Yes.

25 CHAIR LHAMON: Commissioner Yaki.

1 COMMISSIONER YAKI: Aye.

2 CHAIR LHAMON: Vice Chair Timmons-Goodson.

3 VICE CHAIR TIMMONS-GOODSON: Yes.

4 CHAIR LHAMON: And I vote yes. The motion
5 passes. Two commissioners opposed, no commissioner
6 abstained, and all others were in favor. As a point
7 of personal privilege, I will note for the record that
8 I am probably the last person on the planet who would
9 apologize for the Department of Education.

10 I'll note that with the adoption of the
11 report and the findings and recommendations, the clock
12 begins ticking with respect to the deadlines for
13 statements and rebuttals. Statements will be due on
14 Monday, November 18 with rebuttals due on Wednesday,
15 December 18. Commissioners must file notice of their
16 intention to file a surrebuttal by Thursday, December
17 26th and then must file the text of their surrebuttal
18 on Thursday, January 2.

19 CONSIDERATION OF A COMMISSION PUBLIC COMMENTS UNDER
20 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S
21 PROPOSED RULE REGARDING THE DISPARATE IMPACT
22 STANDAR D UNDER THE FAIR HOUSING ACT

23 CHAIR LHAMON: Next, we will move to the
24 amended item on our agenda, consideration of a
25 Commission public comments under Department of Housing

1 and Urban Development's proposed rule regarding the
2 disparate impact standard under the Fair Housing Act.

3 While our typical practice is to read out
4 the full statements under consideration by the
5 Commission so we know what we're voting on, given the
6 length of this proposed comment, I will summarize the
7 main points, unless someone would like for me to read
8 the whole draft.

9 So the main points are that HUD has
10 proposed a new rule regarding the disparate impact
11 standards used under the Fair Housing Act which
12 respondent opposes. Discrimination in housing
13 continues to be a pervasive problem throughout the
14 United States.

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

1 The proposed rule is unnecessary and fails
2 to advance the purpose of the Fair Housing Act. The
3 proposed rule represents a departure from the current
4 rule by increasing the burden for plaintiffs in
5 disparate impact actions. The proposed rule replaces
6 the established burden shift impact with a substantial
7 up-front prima facie requirement for plaintiffs and
8 adds several new defenses against liability. We urge
9 HUD to retain the current standard used and not to
10 adopt the proposed rule.

11 To open the floor for discussion, I move
12 to approve the comment as circulated by my special
13 assistant yesterday evening. Is there a second?

14 COMMISSIONER KLADNEY: Kladney. I'll
15 second.

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

19 COMMISSIONER NARASAKI: Madam Chair, this
20 is Commissioner Narasaki. I just want to heartily
21 support this statement. Disparate impact has existed
22 in the law for a very long time. It's incredibly
23 important, given the fact that, in many cases,
24 discrimination has sort of moved below ground with
25 people becoming sophisticated and knowing that they

1 shouldn't actually state what their intentions might
2 be or when there is actual just lack of understanding
3 about how actions are disproportionately
4 discriminating against vulnerable communities.

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

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

23 So I very strongly believe that the strong
24 use of this standard is important for eradicating
25 discrimination which our federal law is designed to

1 correct, and I hope very much that HUD course corrects
2 and does not move forward with its proposed rule.

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

6 COMMISSIONER ADEGBILE: Recused.

7 CHAIR LHAMON: Commissioner Heriot.

8 COMMISSIONER HERIOT: I vote no.

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-Goodson.

18 VICE CHAIR TIMMONS-GOODSON: Yes.

19 CHAIR LHAMON: And I vote yes. The motion
20 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 Staff
24 Director Mauro Morales for the monthly Staff
25 Director's report.

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

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

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

18 III. ADJOURN MEETING

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

23 (Whereupon, the above-entitled matter went
24 off the record at 10:54 a.m.)
25

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In the matter of: Business Meeting

Before: USCCR

Date: 10-18-19

Place: teleconference

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Court Reporter

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