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 KLADENEY, Commissioner
KAREN K. NARASAKI, Commissioner
MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director
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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,
a quorum of the commissioners is present. Is the
court reporter present?

    COURT REPORTER: Yes, I'm here.

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

    MR. MORALES: I am.

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

I. APPROVAL OF AGENDA

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

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

    COMMISSIONER ADEGBILE: Commissioner
Adegbile. Second.

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

    Do I have a second for my amendment?

CHAIR LHAMON: Thank you. Is there any further amendments? Hearing none, let's go 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 MAINE ADVISORY COMMITTEE MEMBER

ON THE COMMITTEE'S RECENT REPORT,

THE CRIMINALIZATION OF PEOPLE WITH MENTAL ILLNESSES IN MAINE

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

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

MR. MEHNERT: I am here.

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

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

CHAIR LHAMON: Yes, go ahead.

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

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

It is also important to acknowledge the work that Evelyn Bohor of the Commission and the contract attorney Julie Bush and their efforts in distilling the information received at the public hearing and offering indispensable support putting the report together.
We also want to acknowledge the Advisory Committee's Chair, Diane Khiel, for all her leadership and effort to keeping us moving forward and on task. We'd be remiss if we did not offer our appreciation to the civil rights advocates, law enforcement agencies, jails, attorneys, legislators, family members, and members of the public who gave freely of their time to enter into a conversation and discourse in an attempt to solve the significant problem in Maine's criminal justice system.

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

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

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

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

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

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

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

The cost in human life is even greater.

In 2011, Maine State Police shot nine people in police confrontations. Five of those individuals had mental health issues. All five were killed.

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

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

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

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

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

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

CHAIR LHAMON: Go ahead.

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

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

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

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

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

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

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

COMMISSIONER NARASAKI: Actually, both.

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

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

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

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

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

Are there other questions or comments from other commissioners?

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

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

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

MR. MEHNERT: Thank you.

PRESENTATION BY GEORGIA ADVISORY COMMITTEE MEMBER ON THE COMMITTEE’S RECENT REPORT, DISABILITY RIGHTS AND CIVIL RIGHTS IN GEORGIA

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

Ms. Haley.

MS. HALEY: Good morning, Commission. My name is Chanel Haley. My profession is the Gender Policy Manager at Georgia Equality, and I serve as the
secretary for the Georgia Advisory Committee to the United States Commission on Civil Rights. I also help to actually chair this particular report, co-chair this particular report, and we had a lot of people that helped out with this. We want to give a special notation to the person who brought this to us, our fellow member who actually passed away during the creation of this report, which was Justin Priestly. And if it wasn't for him, this would never have been on our radar.

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

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

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

Insurance companies are not providing the
same payouts in reference to behavioral care as they
would if the person was using insurance for other
disabilities.

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

Supportive housing is usually clustered in
a segregated area, and the community feels that it
should be more mandated to be more spread out.

Employment services for people living with
disabilities has been a problem because there hasn't
been any, so people want to become more self-
sufficient, which is really what the Olmstead was
supposed to be about anyway.

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

And, finally, Georgia, we believe, is
still the only state in the country that still does GNETS. And so what that is is Georgia Network for Educational and Therapeutic Support schools, and this is where kids are sent away to a special school who have behavioral health conditions, and the community was very clear that that was still a discriminatory practice.

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

Also, in relation to our recommendations of what we think should be happening in the future is that we would like it if there was a national study around Olmstead and to making sure if the changes in state disability law are being followed, particularly especially with nursing homes because that nursing
home is the one that people have really dropped the ball on, considering since I said that there's independent reviewers who think that the pre-Olmstead conditions have not changed at all when it comes to nursing homes.

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

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

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

COMMISSIONER NARASAKI: Madam Chair, this is Commissioner Narasaki.

CHAIR LHAMON: All right, Commissioner.

COMMISSIONER NARASAKI: Thank you. This is an incredibly important report, particularly as we
have more people aging and requiring these kinds of services. So very much appreciate the work of the committee.

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

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

I think that it would be great if the U.S. Commission would send a letter to our governor letting them know of where they were lacking of meeting the needs of the requirement. So I think that it's something that, if it was pointed out to them, to our governor and our attorney general, then they would
become in compliance with it or make an effort to at
the very least.

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

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

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

CHAIR LHAMON: Thank you. Ms. Haley, I
found your report devastating and the topic,
obviously, is incredibly compelling. But to read in
the report about people who are in jail having to wait
weeks to have access to a bed that could open up at
Georgia Regional Hospital, so they are spending more
time incarcerated than would be warranted by the alleged criminality, that information about the nursing homes not making any change in the state that brought the Olmstead litigation, and the very deep concern about housing choice voucher programs, the federal program not providing sufficient higher rates for people to be able to find living situations that are independent and sustainable, all of which I found deeply distressing and I appreciate your and your committee shining a light on. So I want to say thank you.

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

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

CHAIR LHAMON: We will turn next to Sondra Cosgrove of the Commission's Nevada Advisory Committee on that committee's most recent report titled Mental Health Implications for Policing Practices and the
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
behavioral and mental health needs are interacting with law enforcement officers due to a lack of available services, as well as a high number of currently incarcerated Nevadans who are being treated for mental or behavioral health disorders. The numbers are so high that we consider this issue to be a crisis.

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

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

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

Thank you. I'm open for questions.

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

COMMISSIONER KLANDNEY: Madam Chair, Dave Kladney here. I'd like to --

CHAIR LHAMON: All right, Mr. Kladney.

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

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

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

And I turn it back to the Chair.

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

COMMISSIONER NARASAKI: This is
Commissioner Narasaki, Madam Chair.

CHAIR LHAMON: Go ahead, Commissioner
Narasaki.

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

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

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

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

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

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

DR. COSGROVE: Thank you.

CHAIR LHAMON: Thank you. Are there other
questions --
Chair Narasaki: And I'll turn it back to the Chair.

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

Dr. Cosgrove: Thank you.

Chair Lhamon: -- on the Nevada Advisory Committee. Thank you for taking the time to speak with us today.

Dr. Cosgrove: Thank you.

Discussion and vote on Commission's report, sexual harassment and free speech on campus

Chair Lhamon: We'll now to a discussion and vote on the Commission's report titled Free to Learn: Speech and Sexual Harassment on Campus. We'll proceed with two votes, first on the report text and then with the findings and recommendations.

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

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

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

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot.

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

CHAIR LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: No.
CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki.

COMMISSIONER NARASAKI: I vote yes.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: Aye.

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

VICE CHAIR TIMMONS-GOODSON: Yes.

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

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

COMMISSIONER NARASAKI: This is Commissioner Narasaki. I second.

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

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

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

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

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

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

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

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

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot.

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

CHAIR LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER Kladney: Yes.

CHAIR LHAMON: Commissioner Narasaki.

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki.
COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson.

VICE CHAIR TIMMONS-GOODSON: Yes.

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

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

CONSIDERATION OF A COMMISSION PUBLIC COMMENTS UNDER DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S PROPOSED RULE REGARDING THE DISPARATE IMPACT STANDARDS UNDER THE FAIR HOUSING ACT

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

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

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

Though the Fair Housing Act prohibited intention housing discrimination in 1968, the Commission and our advisory committees have reported that substantial impediments to fair housing persists today. Disparate income liability under the Fair Housing Act is established in the law. The current standard used to evaluate disparate impact claims under the Fair Housing Act applied by the Courts of Appeals was codified in HUD's current rule and upheld by the Supreme Court four years ago in the Inclusive Communities decision.
The proposed rule is unnecessary and fails to advance the purpose of the Fair Housing Act. The proposed rule represents a departure from the current rule by increasing the burden for plaintiffs in disparate impact actions. The proposed rule replaces the established burden shift impact with a substantial up-front prima facie requirement for plaintiffs and adds several new defenses against liability. We urge HUD to retain the current standard used and not to adopt the proposed rule.

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

COMMISIONER Kladeney: Kladney. I'll second.

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

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

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

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

So I very strongly believe that the strong use of this standard is important for eradicating discrimination which our federal law is designed to
correct, and I hope very much that HUD course corrects and does not move forward with its proposed rule.

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

COMMISSIONER ADEGBILE: Recused.

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: I vote no.

CHAIR LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki.

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson.

VICE CHAIR TIMMONS-GOODSON: Yes.

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

MANAGEMENT AND OPERATIONS - STAFF DIRECTOR'S REPORT

CHAIR LHAMON: Next, we'll hear from Staff Director Mauro Morales for the monthly Staff Director's report.
MR. MORALES: Thank you, Madam Chair. I have nothing further. In the interest of time, I have nothing further to add. It's already contained in the report. As always, I'm available to discuss any particular matter that commissioners or a commissioner may have about a particular issue in the report. But thank you and I appreciate the opportunity to talk.

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

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

III. ADJOURN MEETING

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

(Whereupon, the above-entitled matter went off the record at 10:54 a.m.)
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This is to certify that the foregoing transcript

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Before: USCCR

Date: 10-18-19

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