U.S. COMMISSION ON CIVIL RIGHTS
+ ++ + +

TELEPHONIC BUSINESS MEETING
+ ++ + +

FRIDAY, DECEMBER 4, 2020
+ ++ + +

The Commission convened via teleconference at 12:00 p.m. EST, Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair
J. CHRISTIAN ADAMS, Commissioner
DEBO P. ADEGBILE, Commissioner
STEPHEN P. GILCHRIST, Commissioner
GAIL HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
DAVID KLADNEY, Commissioner
MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director
STAFF PRESENT:

PAMELA DUNSTON, Chief, ASCD
SUSAN GLISSON, Chair, Mississippi Advisory Committee
PILAR MCLAUGHLIN, Parliamentarian
LORENA VAN ASSCHE, Chair, Arizona Advisory Committee

COMMISSIONER ASSISTANTS PRESENT:
THOMAS SIMUEL
RUHKU SINGLA
AGENDA

I. DISCUSSION AND APPROVAL OF AGENDA ........... 5

II. REPORT FROM ARIZONA ADVISORY COMMITTEE...... 9

III. REPORT FROM MISSISSIPPI ADVISORY COMMITTEE. 19

IV. PROPOSED APPOINTMENTS TO THE CALIFORNIA ADVISORY COMMITTEE ......................... 30

V. PROPOSED APPOINTMENTS TO THE PENNSYLVANIA ADVISORY COMMITTEE .......................... 32

VI. PROPOSED STATEMENT ON PASSING OF PROFESSOR DREW DAYS ............................. 34

VII. REMARKS FROM CHAIR LHAMON .................... 43

VIII. REMARKS FROM STAFF DIRECTOR MORALES ......... 46

IX. ADJOURN MEETING .................................... 47
OPERATOR: Good day, and welcome to the Commission telephonic business meeting. Today’s conference is being recorded. At this time, I would like to turn the conference over to Chair Lhamon. Please go ahead.

CHAIR LHAMON: Thank you, Operator. This meeting of the US Commission on Civil Rights comes to order at 12:02 p.m. Eastern Time on December 4, 2020. The meeting takes place over the phone, and because we are on the phone, please state your name. 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 at the outset. Please confirm you’re present when I state your name.

Commissioner Adams.

COMMISSIONER ADAMS: Present.

CHAIR LHAMON: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Present.

CHAIR LHAMON: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: 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 Yaki.

COMMISSIONER Yaki: Presente.

CHAIR LHAMON: Thank you. Based on that roll call, a quorum of the Commissioners is present. Is the Court Reporter present?

COURT REPORTER: Present.

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

MR. MORALES: I am present.

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

I. DISCUSSION AND APPROVAL OF AGENDA

Turning to our agenda for today, I move to approve the agenda posted on the Federal Register with the following amendment. To remove the discussion and vote on the Vermont Advisory Committee appointment. Is there a second for my motion, including the amendment?

COMMISSIONER Yaki: Second. Second by Commissioner Yaki.

CHAIR LHAMON: Thank you. Are there any --
(Simultaneous speaking.)

COMMISSIONER HERIOT: Madam Chair? Madam Chair?

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: I would like to amend the agenda to include a tribute to the late Walter Williams.

CHAIR LHAMON: Thank you. Do you want to make a motion to waive the 48-hour notice statement for that statement?

COMMISSIONER HERIOT: I don’t think you need to make a motion to do that, I think it’s subject to objection.

CHAIR LHAMON: Okay, is there a second for Commissioner Heriot’s amendment?

COMMISSIONER KIRSANOW: Kirsanow seconds.

COMMISSIONER ADEGBILE: Madam Chair, I object to this statement that wasn’t finally circulated. I’d like more time to review the statement and come to understand the civil rights contributions of the late professor.

CHAIR LHAMON: Okay. I think we have a motion that has been seconded. I hear the objection. But I do think we have a motion that’s pending. So
let me just pause and see if there’s any other
amendments that anyone wants to offer for the
agenda.

COMMISSIONER YAKI: Commission Lhamon,
Commissioner Yaki.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: I’d like to amend
the agenda to include a statement by the Commission
on the passing of Profession Drew S. Days III.

CHAIR LHAMON: Is there a second?

COMMISSIONER KLANDNEY: Kladney will
second.

CHAIR LHAMON: I second. Sorry. Are
there any other amendments? Commissioner Heriot,
given the objection and the request for more time on
your motion, do you want to leave your motion
standing?

COMMISSIONER HERIOT: I’m not
understanding what the procedure is at this point.

CHAIR LHAMON: Well, you motion that’s
pending. And as you point out, subject to objection
because the item was not timely. I understand that
there’s a reason it was not timely, that his death
was recent and folks worked as quickly as possibly
to be able to offer a statement, and Commissioner
Adegbile has said that he would like more time, so.

COMMISSIONER HERIOT: I am perfectly happy to withdraw the motion, but it’s been seconded, so I can’t do that. It has to be withdrawn I think by both, with the notion that we will address this next month.

CHAIR LHAMON: Okay, thank you.

COMMISSIONER HERIOT: But I don’t remember who seconded.

CHAIR LHAMON: I think Commissioner Kirsanow seconded.

COMMISSIONER KIRSANOW: Kirsanow seconded. I’ll withdraw.

COMMISSIONER HERIOT: So now are you willing to withdraw?

COMMISSIONER KIRSANOW: Yes, I’m willing to withdraw.

COMMISSIONER HERIOT: Okay, let’s withdraw and do it in January.

CHAIR LHAMON: Okay, thanks all, appreciate the courtesy. Let’s vote to approve the agenda as amended. All those in favor say aye.

(Chorus of aye.)

CHAIR LHAMON: Opposed? Any abstentions?

The motion passes unanimously, thank you.
We will first hear from our Advisory --
Arizona Advisory Committee Chair, Lorena Van Assche,
on the Committee’s recently released report titled
Sub-Minimum Wages for Arizona Persons with
Disabilities, Under Section 14(c) of the Fair Labor
Standards Act.

We were glad to rely on the information
amassed by the Arizona Advisory Committee in the
course of their work on this report for our own
national report on sub-minimum wages, and I look
forward to this presentation today.

Chair Van Assche.

II: REPORT FROM ARIZONA ADVISORY COMMITTEE

MS. VAN ASSCHE: Thank you, Commissioner
Lhamon, and thank you to all the Commissioners. Good
afternoon.

The Arizona Advisory Committee took up
the issue of sub-minimum wages for Arizona persons
with disabilities under Section 14(c) of the Fair
Labor Standards Act. And we held a hearing on
October 18, 2019 where we heard testimony from
different -- ten different panelists on this issue.
And we submitted the report that the Commissioners
have had before them and have read in April of this
year.
We heard from the various groups, and there was divide between the groups as to the benefits or being in favor and opposing both eliminating and retaining Section 14(c). One of the groups who were in favor retaining were -- they identified many reasons for that, and some of the reasons were as follows.

They said that if it was eliminated, it would disincentivize employers from employing people with disabilities that in light of the wage increase in Arizona -- and in January of 2020, there was a wage increase to $12 an hour. That in light of that wage increase, employers had been demanding more.

And they would find, employers would find it more difficult to pay on a full minimum wage to an employee with disabilities if they didn’t have Section 14(c) in place.

They also identified that there would be less opportunities for employees if it was eliminated. They found that -- or they testified, excuse me, that the employer would cut hours if they have to pay the minimum wages for these employees. And ultimately we heard testimony from our panelists that they thought the -- that these employees would lose jobs if they -- if this wasn’t an opportunity
available to them.

On the opposing side of that, we heard from panelists from the -- and this mostly came from a panelist from the Arizona Center for Disability Law, which is a group that advances the rights of people with disabilities. And this person testified that there were abuses in some employers in this area that he felt that the employers viewed people with disabilities had an antiquated view of them and focused more on the disability of the individual and not on the ability of the individual.

And therefore, felt or testified that the employees were viewing this as a destination -- as a destination and not as a place where they could learn more skills to advance and leave the program. They -- the opposing views, although, differed on the benefits and advantages, did come together and testify that they believe that there was little oversight of the program. And because of the little oversight, it was ineffective oversight and little data.

By contrast, there are, and this is testimony that was received in 2019, that at time the testimony was that we have -- we had about 44 employers with the 14(c) certificates and about 2000
-- and I think about 2000 and like 50 -- people with disabilities who were receiving benefits under this program in Arizona.

So although the numbers are small in comparison, even with those small numbers, there was very little data as to what happened when somebody came into the program, received the benefits and if they advanced, you know, how long they were in the program and what were the real benefits that they received.

So the key recommendations -- we asked each of our panelists to give us recommendations of what they thought we could make to the Commission, because of course that we understood the Commission was reviewing it, so we wanted to give the best testimony and recommendations we could.

And the recommendations that we received from the panelists was that -- and this was agreed by the various opposing speakers, that if the decision was made to phase out the program, that it be done in -- over time.

That it wouldn’t, that it not be abrupt because there were -- there was a concern that the employees who were in the program where all of a sudden found themselves without the program and the
employers did in fact no longer employ them, that
there would -- there would need to be a transition
period for the employees to make sure that they were
able to be cared for if they needed to during the
hours that they were otherwise employed, or that
they found other employment.

Other recommendations that we heard was
to, and I know the Commission has read them, but I
will just highlight some of the ones that I think
there was agreement among some panelists and there
was the greater oversight and stricter (telephonic
interference). There was another recommendation of
reexamining who is eligible to work under 14(c).

One of the panelists testified that in
too many cases, it’s become a catch-all for anyone
with a disability, and that is wrong. He added, I
can think of jobs that even those with the most
significant disability could complete and yet they
work under 14(c). And this is one of the panelists
who identified that they felt that there were abuses
under the program.

This panelists also recommended to limit
the time. He said that in too many cases, 14(c) is
no longer a training ways but a destination. And if
we’re going to say that 14(c) is honestly only being
used to assist individuals as they built skills, then it probably shouldn’t go on forever. It seems punitive to arbitrarily pick a number.

Despite this, for me the question is not should we do this, but how should we do this. So even this panelists who felt that there abuses within 14(c) really was focusing more on it being administered properly.

So along with the administration and the oversight, another panelist recommended to establish an advisory committee through the Department of Labor, Wage, and Hour Division. And this community would include community rehabilitation providers such as themselves to review the current administration of Section 14(c) and would make recommendations on streamlining the program and enhancing accountability for certificate holders.

And I know that my time is limited, so I do want to leave time for the questions. Again, I know that the Commission has read the report and I wanted to simply highlight for the Commission the, I think, more important takeaways. But at this time, I will rest and see if the Commission has any questions.

CHAIR LHAMON: Thank you so much, Chair
Van Assche. I’ll open for questions from fellow Commissioners.

COMMISSIONER Kladney: Madam Chair,

David Kladney here.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER Kladney: Did any of the providers that testified before you, were they able to provide any numbers as to the percentage of their employees that they were able to transition into competitive employment, say, in the last five years or something? Were any of them able to provide any data like that?

MS. VAN ASSCHE: There was one, and I’m flipping through my report, I apologize for not having this immediately available. There was one employer who testified that there -- let me see if I can find it quickly. I think the percentage that they had testified was a 20%, but I simply don’t have it in front of me. I do have it in front of me, I’m sorry, but I just don’t know what page that was on.

COMMISSIONER Kladney: Okay, well, we’ll refer to that later. Also, did you find that there was a lack of coordination between state agencies that interact with 14(c) providers in providing
people with disability jobs like book rehab, say your Board of Education and the Labor Department? Was there any discussion as to that problem -- or issue, I should say?

MS. VAN ASSCHE: I’m not sure if there was a discussion between that particular issue. I know that there were various employers who said that there was a real long delay between the questions that they posed. I think one employer testified that just simply filling out the paperwork took a very long time.

And then any question that they had, that they posed, I think it was to the Department of Labor, it took -- they posed the question and it took, I think he testified that it was years before they even heard back. So I think that there is a big disconnect between the -- between the employers who are seeking their certifications and then the groups that are granting the certification. There’s a real delay between that.

COMMISSIONER KLADNEY: And was there any discussion, testimony or information that you found regarding the cost-effectiveness or lack of, of the 14(c) program?

MS. VAN ASSCHE: There was testimony
that we heard from a professor at University of Arizona Sonoran Center for Excellence in Disability who cited to a report that Arizona really benefitted from the program because employers who employed these individuals who qualified under their program favorably looked upon by consumers, and that drove a real economic benefit to the state.

COMMISSIONER KLASNHEY: Right. Okay, that’s all the questions I have, thank you.

MS. VAN ASSCHE: Thank you.

CHAIR LHAMON: Thank you, Commissioner Kladney. Other questions?

COMMISSIONER GILCHRIST: Madam Chair, Steven Gilchrist here.

CHAIR LHAMON: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: I just wanted to ask the advisor or the member, the Transformation to Competitive Employment Act, which was passed in - - or excuse me, was introduced in 2019, just curious to know her opinion whether or not this particular act, if passed, would in some ways mute the discussion around sub-minimum wages.

MS. VAN ASSCHE: This is -- I’m sorry, I didn’t quite understand the question.

COMMISSIONER GILCHRIST: Well, I guess
what I’m asking is if the Congress passes the Transformation to Competitive Employment Act, would that effectively make this issue a moot issue?

MS. VAN ASSCHE: I don’t think I’m -- I don’t know, I don’t think I can answer that. I’m sorry.

COMMISSIONER GILCHRIST: Okay, that’s fine. Thank you.

CHAIR LHAMON: Any other questions?

Chair Van Assche, I just want to thank you and your committee members again. As I know you know, we relied on your thorough and comprehensive report in our own report on the same topic, and we’re very grateful to be able to have the specific information and to benefit from the Committee’s expertise.

So thank you very much for the commitment of time to this issue and for sharing your time today with this presentation. If there is no further questions, we’ll move to the next item on our agenda, and thank you so much, Chair Van Assche.

MS. VAN ASSCHE: Thank you.

CHAIR LHAMON: Our next item is to hear from the Michigan Advisory Committee Chair, Susan Glisson, on that committee’s recently released report title Prosecutorial Discretion and Civil
Rights in Mississippi.

Chair Glisson.

III. REPORT FROM MISSISSIPPI ADVISORY COMMITTEE

MS. GLISSON: Good afternoon, thank you, Chair Lhamon. Mississippi here, on behalf of the Mississippi State Advisory Committee --

CHAIR LHAMON: Sorry about that.

MS. GLISSON: That’s okay, that’s okay.

Michigan is an awesome state, so I’d be happy to claim it. I thank you for the opportunity to present today. We are truly grateful for the Commission’s leadership.

Regarding our current report’s focus on prosecutorial discretion, I’d like to reference just a few examples that we learned about that underscore the urgent need for reform in this city’s criminal justice system.

The first illustration is the well-known Curtis Flowers case. Mr. Flowers, an African American man, served 23 and a half years in jail, suffering through six trials for murders that he did not commit. The Mississippi Supreme Court noted the racial animus and the prosecutorial misconduct of Doug Evans, the prosecutor, and yet, Evans was allowed to continue malicious prosecutions. The case
was finally was just dismissed by the Mississippi
Attorney General this past September.

Mr. Flowers’s story is much more well
known, but what is less understood about Mississippi
is that there is a wide open swath of unchecked
prosecutorial discretion in our state. Coupled with
our long history of racial discrimination, these
abuses have quite the damaging effects.

For example, in 2020, Simone Windom was
jailed for pre-trial detention for almost a year
when she was unable to pay her bail. Her prosecutor
missed at least four of her court dates while she
waited in jail. While she was there, she lost her
housing, she lost the care of her daughter, and she
lost her psychological wellbeing.

In 2018, Jerry Sanders sat in a jail
cell on a relatively minor methamphetamine
possession for more than a year, which was longer
than the sentence he would have gotten if he’d
actually be tried and convicted.

Despite ending the vile process two
centuries ago, Mississippi in effect has created a
debtors’ prison system, and it disproportionately
targets Black and Brown residents. We know long
pretrial detentions are not unheard of elsewhere in
the United States of course, but as we learned from testimony from scholars, advocates, victims, and prosecutors, poverty, scarce resources, and a pattern of locking up people for low-level crime makes them particularly prevalent here in the country’s poorest state.

A recent survey of Mississippi jails that was conducted by the MacArthur Justice Center of the University of School of Mississippi School of Law showed that 2500 defendants, more than one-third of all those jailed before trial, have been in jail 90 or more consecutive days. More than 600 of them have been in jail for longer than a year.

The most recent census conducted by the US Bureau of Justice Statistics since 2013 showed an average pretrial stay in jail of 40 days, the sixth longest in the country. The census also revealed that Mississippi also had the second highest number of local jail inmates per capita, just behind Louisiana.

Lengthy trial detentions result from the fact that Mississippi illegally used money bail as the time limit on how long one can be held after arrest and prior to indictment, and is one of only six states in the country that does not have a
statewide public defender system.

With the absolute immunity that prosecutors enjoy and the qualified immunity that law enforcement has, which Judge Carlton Reeves just spoke to an October decision calling for reform, in practice, the criminal justice system in Mississippi amounts to absolute immunity. There is literally no check and no accountability in our criminal justice system for prosecutors especially. That cries out for systematic study.

Prosecutors can use every part of the criminal justice process. They decide whether to charge, charge, what to seek in bond, and what to seek in sentencing. They are all-powerful, and they operate with limited resistance from a patchwork public defender system that is absolutely overwhelmed.

Only six counties that I have been to have full-time public defenders. Seventy-six counties have part-time public defenders who also have their own private practices, which makes it very difficult to spend substantial time on public defender work. And these part-time defenders are picked by the whole team of judges. They handle 90% of public cases.
The Sixth Amendment Center’s recent criticism of Mississippi’s system highlighted the deficiencies in it and noted in particular its lack of independence.

It took five different law firms over two decades to win Mr. Flowers’s release. We do not as a state have the resources to create that kind of representation that was finally able to free Mr. Flowers for all the other cases that deserve that kind of support. And there are very few people who could withstand 23 years in Parchman Penitentiary, as Mr. Flowers did before he was finally able to experience exoneration.

What memories -- remedies, rather, do we need and want? When asked by the most important criminal -- when asked about the most important criminal justice reform needed in Mississippi, advocates for reform in the state’s criminal justice always suggest that we need a robust public defender system. Prosecutors need to be called out far more than they are.

Whether our judges, especially Mississippi Supreme Court, apply the law when properly presented is doubtful. In order to ensure equal protection before the law, we urgently require
systematic examination just to get transparency in
the system to learn exactly where and the extent --
and what the extent of the problems are so that we
can begin to address them.

We need strong systemic checks in the
court system. We need a robust public defender
system to counter the totalizing of prosecutors. We
believe strongly, as we know you do, that our
citizens deserve equal treatment. Appreciate y’all.

CHAIR LHAMON: Thank you so much for the
presentation. I’ll open for questions from my fellow
Commissioners.

COMMISSIONER KLADNEY: Commissioner
Kladney here.

CHAIR LHAMON: Go ahead, Commissioner
Kladney.

COMMISSIONER KLADNEY: Thank you for the
report. I was wondering, the part-time public
defenders that have private practices, do you know
how much they get paid for to be a public defender?
Is it a flat fee, is it hourly rate? If it is an
hourly rate, how much? Does it vary by county? Do
you know that structure at all?

MS. GLISSON: I don’t know it very well,
I can certainly find out. But I do know that it’s
quite low pay. I think that it varies by county. But it is definitely -- it’s definitely quite low.

COMMISSIONER KLADNEY: And you don’t know whether it’s by the hour or by the case. I know --

MS. GLISSON: No, sir.

COMMISSIONER KLADNEY: Some states used to pay, well, my state in particular a few years, a alternate public defender used to pay $500 a felony, except for murder cases, and people were upset about that, regarding representation. So you wouldn’t know what your state is, do you?

MS. GLISSON: As I said, I don’t actually know the specifics, whether it’s by fee, flat fee, or by the hour, but I can absolutely easily find that out for you.

COMMISSIONER KLADNEY: Thank you very much.

MS. GLISSON: Yes, sir. Thank you for the question.

COMMISSIONER ADEGBILE: Madam Chair. I yield to Commissioner Gilchrist.

CHAIR LHAMON: Go ahead, Commissioner Gilchrist.

COMMISSIONER GILCHRIST: Just one quick
question. Thank you again for the report. I was very curious about the points system that was articulated in the report. Could you help me understand a little bit more how the points system would actually work? And this was the --

MS. GLISSON: Apologies, yes.

(Simultaneous speaking.)

MS. GLISSON: Go ahead, I’m sorry.

COMMISSIONER GILCHRIST: I was going to say this was the recommendation made by Judge Richard (phonetic) to implement this points system to try to bring some semblance of parity to what’s happening with regard to the prosecutions and also could you help me understand a little bit more about that?

MS. GLISSON: Yes, sir. There are some conversations happening that would try to create a standard through which different sorts of infractions or crimes that are accused of the people who are arrested would have a standard across the state so that there would be a sense of equal treatment before the law.

So my understanding would be that there would be a committee of attorneys and prosecutors and others who would begin to try to create that
sort of standardized system in order to determine
what points should be assigned for, you know,
context, aggravating circumstances, all that sort of
ting.

But there is concern from some about
that. There are some who believe that there are
prosecutors who do in fact use their discretion to
be compassionate. Scott Colom in Columbus does his
very best to try to -- he said his job is not to
convict people, his job is to seek justice. That
doesn’t necessarily mean jailing people.

COMMISSIONER GILCHRIST: Absolutely.

MS. GLISSON: So that’s, yes, sir. So
it’s a work in progress, but there’s controversy
about it whether it should go forward.

COMMISSIONER GILCHRIST: Okay, thank you
very much.

MS. GLISSON: Yes, sir.

COMMISSIONER ADEGBILE: Madam Chair,
Commissioner Adegbile.

CHAIR LHAMON: Go ahead, Commissioner
Adegbile.

COMMISSIONER ADEGBILE: Thank you very
much for your report. I was just wondering, to what
extent is there a view that structural investment in
a statewide public defender apparatus, or a well-
developed public defender system would ameliorate
the problems that you have spoken about?

As I read the report, I’m assuming that
that would answer some but not all of the problems
that your state advisory committee has identified.

MS. GLISSON: Yes, sir, thank you for
the question. From everyone that we spoke to who has
tried to envision what reforms might be needed,
there are two things that really rise to the top of
the list of recommendations.

And that is absolutely the creation of a
robust, well-supported public defender system, and
the elimination of cash bail for misdemeanors at the
very least. That would, you know, people sitting in
jail for endless amounts of time awaiting trial and
conviction. So it’s very important, you know, at the
top of the list.

COMMISSIONER ADEGBILE: Thanks very
much.

MS. GLISSON: Yes, sir, thank you.

COMMISSIONER KLADNEY: Madam Chair, it’s
David Kladney again, David Kladney again.

CHAIR LHAMON: Go ahead, Commissioner
Kladney.
COMMISSIONER Kladney: Following up on that response, what is -- is there an appetite to establish one, a public defender system in Mississippi at the time through the legislature and the executive branch, or is this just a debate going on right now?

Ms. Glisson: I wish that I could report there was an appetite for it in our legislature and in our governor’s office, but there does not seem to be. The energy is coming from a few district attorneys, from advocates, the ACLU. There are a number of really great human rights groups. It’s especially coming from victims who have been targeted.

So it’s much more I would say of a grass roots effort. But it’s a challenge, it’s an uphill battle for sure. We need all the help we could get.

COMMISSIONER Kladney: Thank you, and thank you again for the good report. Thank your committee for their work.

Ms. Glisson: Yes, sir, thank you, I will. Yes, sir, thank you so much.

Chair Lhamon: Are there other questions for Chair Glisson?

Hearing none I’ll just end with a note
of my own about how timely this report is for our
own investigations of bail reform, block quota, our
briefing is in several weeks. We will be glad to be
mindful of the information in your committee’s
report on the topic of this as we continue our
investigations also.

Thank you for the timeliness, thank you
for the comprehensive report. And thank you and your
fellow committee members for your service and
leadership on the Mississippi Advisory Committee.

MS. GLISSON: Absolutely.

CHAIR LHAMON: Thank you for taking the
time to speak with us today.

MS. GLISSON: Thank you so very much.

Thank you.

IV. PROPOSED APPOINTMENTS TO THE
CALIFORNIA ADVISORY COMMITTEE

CHAIR LHAMON: For our next agenda item,
to begin discussion, I move that the Commission
appoint the following individuals to the California
Advisory Committee, based on the recommendation of
the Staff Director: Brian Moriguchi, Chance Franklin
Minor, Jennifer Friedman, Javier Gonzalez, Gunnar
Gundersen, Darryl Hunter, Velma Montoya, Daniel
Ortner, Star Parker, Clare Pastore, Alison Dundes
Rentein, Rogelio Ruiz, Maimon Schwarzschild, Rachel Sigman, and Christopher Yost.

With this motion, the Commission will ask to make Brian Moriguchi as the Chair of the California Advisory Committee. All of these members will serve as uncompensated government employees. If the motion passes, the Commission will authorize the Staff Director or his designee to execute the appropriate paperwork for the appointments, which will begin after the current committee expires.

Do I have a second for this motion?

COMMISSIONER ADEGBILE: Adegbile seconds.

CHAIR LHAMON: Thank you. Open the floor for discussion. Hearing none, I’ll call the question and take a roll call vote. Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

CHAIR LHAMON: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: Aye.

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: I vote yes.

CHAIR LHAMON: Commissioner Kirsanow.
COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER Kladney: Yes.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: Aye.

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

V. PROPOSED APPOINTMENTS TO THE PENNSYLVANIA ADVISORY COMMITTEE

CHAIR LHAMON: For our next agenda item, in addition I move that the Commission appoint the following individuals to the Pennsylvania Advisory Committee, based on the recommendation of the Staff Director: Steven Irwin, Jessie Allan, Christopher Brooks, Mary Crossley, Andrew Cuff, Jonathan Goldstein, Daniel Janerette, Guerline Laurore, Romana Lee-Akiyama, Nathan McGrath, Angela McIver, Samuel Park, Karin Sweigart, and Hunter Tower.

With this motion, the Commission will also appoint Steven Irwin as the Chair of the Pennsylvania Advisory Committee. All of these members will serve as uncompensated government employees. If the motion passes, the Commission will authorize the Staff Director or his designee to execute the appropriate paperwork for the
appointments, which will begin after the current committee expires.

Do I have a second for this motion?

COMMISSIONER KLADNEY: Kladney seconds.

CHAIR LHAMON: Thank you. I’ll open the floor for discussion. Hearing none, I’ll call the question and take a roll call vote. Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.


COMMISSIONER GILCHRIST: Aye.

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: I vote yes.

CHAIR LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney. Commissioner Yaki.

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: Aye.

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

Next we will move to consideration of a Commission statement on the passing of Drew Days. So we know what we are considering, I’ll ask
Commissioner Yaki to read the statement as he proposes it.

VI. PROPOSED STATEMENT ON THE PASSING OF PROFESSOR DREW DAYS

COMMISSIONER YAKI: Thank you very much, Madam Chair.

Yes, hang on. Professor Days, Drew Days, was -- Professor Drew Days was a very good friend of mine. At law school, he was the advisor on my substantial paper, which is kind of like a senior thesis in law school. Truly a wonderful human being. We would spend a lot of time in the courtyard of the law school and just shoot the breeze in constitutional law, which is one of the great parts about being a law student.

But this is somebody, this a tribute to him worked on by both the Chair, Chair Lhamon, who also attended Yale Law School, as well as Commissioner Adegbile, who knew Professor Days really well. So this is how it goes.

The United States Commission on Civil Rights mourns the passing of Professor Drew S. Days III, who among his many notable accomplishments was the first Black person to serve as the Assistant Attorney General for Civil Rights at the Department
of Justice and later served as the Solicitor General
of the United States.

Mr. Days was born in Atlanta, Georgia,
in 1941, but spent much of his early youth in Tampa,
Florida, where he went to a segregated school, rode
segregated buses, ate at segregated lunch counters,
and watched his mother’s teaching career affected by
racial discrimination. His father worked at an
insurance firm founded by Mary McLeod Bethune, a
Black woman who was by that time a noted educator,
philanthropist, and civil rights activist.

From an early age, he said, he was
pointed in the direction of a career in civil
rights. After graduating cum laude from Hamilton
College, he attended the Yale Law School, where he
spent his second law school summer working for the
noted civil rights lawyer C.B. King in Albany,
Georgia. That experience focused Days on his career
goal, to be a civil rights litigator.

After graduation in 1966, he spent a
year practicing law in Chicago, where he met Martin
Luther King Jr. during the fair housing
negotiations, and then spent two years in the Peace
Corps in Honduras before returning and joining the
For the next eight years, he litigated on behalf of the LDF until he received a call in 1977 from President Jimmy Carter’s designee for Attorney General, Judge Griffin Bell. The Washington Post recounted how Mr. Days’s initial conversation with Bell went.

I would like to head the Civil Rights Division, Mr. Days, who described the conversation in an oral history with the Touro Law Review, recalled telling him. I don’t know about having a black person heading the Civil Rights Division, Bell replied, the implication being that some African Americans might take offense at the appointment of a Black official to a job whose portfolio was perceived as limited to racial matters.

Judge Bell, Mr. Days responded, no Black person has ever headed any division in the Justice Department, so I don’t think that’s a major problem. Days spent the next four years at the Justice Department and during the time was an aggressive civil rights officer for desegregation, fair housing, and police misconduct.

His proudest achievement, he said, was working with Senators Kennedy and Hatch on the Civil Rights for Institutionalized Persons Act of 1980.
This law created a right of action for the Civil Rights Division of the Justice Department to investigate and to intervene directly on behalf on persons in mental institutions, jails, hospitals, and juvenile facilities. Extending this legacy, a recent report, Police Use of Force in Examination of Modern Policing Practices, from the US Commission on Civil Rights returned to these issues.

After the Justice Department, in 1981 he joined the faculty of the Yale Law School, where he remained for the next 35 years. In 1992, he became the Alfred M. Rankin Professor of Law at Yale. In 1993, he took a leave of absence that lasted three years as he was named by President Clinton as the Solicitor General of the United States and became only the third Black man in our nation’s history, after Thurgood Marshall and Wade McCree, to hold the post.

While Solicitor General, Drew Days argued 17 cases before the Supreme Court. During that time, his name was frequently mentioned as a potential Supreme Court nominee. But as his friend, colleague, and former Dean of the Yale Law School and also former Solicitor General Harold Hongju Koh said in an interview with the New York Times, Drew
was committed to principle, not politics. It would have been easy for him to do the politically expedient thing to get ahead, but that was not in his DNA.

Mr. Days returned to Yale Law and continued to teach. He also served as a Trustee of Hamilton College. Mr. Days led the Supreme Court and Appellate Group at the law firm Morrison & Foerster from 1997 until his retirement in 2011. He retired from Yale in 2017 and lived out the rest of his days in the New Haven area.

Mr. Days is survived by his wife, Connecticut College graduate Ann Langdon-Days, whom he met while they were students mutually indulging their passion for singing Russian at the Yale Russian Chorus. Their daughters, Dr. Alison L. Days and Elizabeth J. Days, two granddaughters, and a sister, Jacquelyn D. Serwer.

Today, the United States Commission on Civil Rights honors the meaningful and the dedication and the contributions of Professor Drew S. Days III to civil rights in our nation, as both a leader and role model. His career, his life, and his legacy are testaments to the power of his character, the passion of his commitment to civil rights, and
his belief in the rule of law.

Thank you very much.

CHAIR LHAMON: Thank you, Commissioner Yaki. To open the floor for discussion, is there a motion?

COMMISSIONER YAKI: I move this statement.

CHAIR LHAMON: Thank you, is there a second?

COMMISSIONER HERIOT: Heriot second.

CHAIR LHAMON: Thank you. We’ll open the floor for discussion, beginning with Commissioner Yaki.

COMMISSIONER YAKI: I think I made my statement earlier when I introduced this, other than to say again I met him -- when I read his biography and realized that he was only 35 when he headed up -- when he was the AAG for Civil Rights at the Department of Justice, I realized just how inadequate my own life was at that point.

So other than that, I mean, we’re gradually approaching a time when the people who were born and lived and experienced segregation are moving on from this life into the next, and it increases every. And it’s important for all of us to
remember these people who were the pioneers, the people who paved the trail for all of us to be here today. And Drew Days was one of those people.

CHAIR LHAMON: Thank you. We’re open for further discussion, just with a note for myself that Professor Days was gone from Yale Law School by the time that I was there, because that was when he was Solicitor General.

But he was legendary in the halls of the schools and his work and his writings about that work have been deeply influential for me in federal service, and in particular in considering how to move from a time of aggressive civil rights to a time of departure and how to rebuild back.

And I’m so grateful for the work that he led and the legacy that he left. I regret not having him here with us anymore, and I hope very much that our tribute to him will be (telephonic interference) that his work lives on.

COMMISSIONER HERIOT: Madam Chair.

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: I met Drew Days only once. It was over the course of a three-day roundtable conference that was held here in San Diego. I think it must have been at least 25 years
But what impressed me about Drew Days was his willingness to engage with people who didn’t necessarily agree with him. And that is an increasingly rare quality these days. And so he was a very impressive man.

CHAIR LHAMON: Thank you. Sounded like someone else was also wanting to speak.

COMMISSIONER ADEGBILE: Madam Chair, it’s Commissioner Adegbile.

CHAIR LHAMON: Commissioner Adegbile, go ahead.

COMMISSIONER ADEGBILE: I had the privilege of knowing Drew Days as one of the distinguished alums of the NAACP Legal Defense Fund and to work with him on various projects through the years. Michael has done such a nice job framing some of his many impressive professional accomplishments, and you and Commissioner Heriot have spoken to what he has represented to so many and how he was personally. And I want -- how he was as a human being personally.

And principally I just want to add one idea to that note about who he was as a person. He was a very lovely and decent man whose work, I
think, was motivated by a deep sense of humanism and a respect for human beings and a recognition that the circumstances of their birth need not limit their possibilities in our nation.

And he saw that in everybody. I think it helped to frame his career fighting for civil rights in many different capacities, and it also was a perspective that he carried with him in his day-to-day interactions with people and with his students.

And so I feel privileged to have known him and to have the opportunity to work with him on some civil rights projects. And I think that it is better for his service. He will be missed.

CHAIR LHAMON: Thank you. Further discussion? Hearing none, I’ll call the question and take a roll call vote. Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

CHAIR LHAMON: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: Aye.

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: I vote yes.

CHAIR LHAMON: Commissioner Kirsanow.
COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER Kladney: Yes.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: Aye, with thanks.

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

VII. REMARKS FROM CHAIR LHAMON

CHAIR LHAMON: Before I turn to the Staff Director, I want to take a few moments to thank my fellow Commissioner and the staff for their hard work this year under very challenging circumstances. In March 2020, the rise in the COVID-19 pandemic led to an unprecedented disruption to the Commission’s regular operations.

And in addition to postponing two briefings previously planned for March and May 2020, the entirety of the Commission moved to telework, placing enormous pressure on our staff to ensure that we could all remain connected and productive while working remotely.

The Commission moved swiftly to change course to assess the civil rights implications of the COVID-19 pandemic, issuing several statements to report on our civil rights concerns and urging
federal agencies to take appropriate action to
address these impacts.

We’ve held two successful virtual
briefings, in July and November, and I am grateful
that we at the Commission have forged ahead in
fulfilling our mandate to collect testimony and
engage in fact-finding about civil rights issues
outstanding in the pandemic.

We published eight reports in the last
year, an astounding output, for which I thank my
fellow Commissioners and our Office of Civil Rights
Evaluation and Office of General Counsel. Eight
advisory committees managed by our regional staff
published dozens of reports, statements, and
memorandums this year. This activity continued
uninterrupted even amid the COVID-19 pandemic.

The state advisory committees, through
their fact-finding events and reports, covered a
broad array of issues, including voting rights,
criminal justice, human trafficking, disability
rights, police reform, and COVID-19. Seven of the
eight reports the Commission published this year
relied in part on testimony to and the findings and
recommendations from our advisory committees.

The committees also moved swiftly to
address the civil rights concerns of the pandemic itself, approving statements and holding briefings to gather testimony about health disparities and other issues that have come into stark relief during this pandemic.

Our work would not be possible without the expert team we have managing our Human Resources budget and administrative services. We said goodbye to several staff this year, but we were glad to welcome many new additions to the Commission, including two new Commissioners and their staff. The remote onboarding was a testament to the new processes worked out by our staff.

And even while learning and using new technologies, we also obtained an unmodified opinion in our audit, which is a credit to the team’s hard work and meticulous efforts throughout the year.

I look forward to what more we will accomplish in 2021, though I know it will not be without challenge as we continue to navigate the coronavirus pandemic and how we can all be healthy and safe while fulfilling our mission at the Commission.

And Staff Director Morales, I thank you for your leadership, as always, and especially in
this challenging year.

Staff Director Morales, we can now hear from you for the monthly Staff Director’s report.

VII. REMARKS FROM THE STAFF DIRECTOR

MR. MORALES: Thank you, Madam Chair. Really appreciate your comments, and I know the staff does as well. I’d just like to say at this time I have nothing further to add than what’s already contained in the Staff Director’s report. And as always, I’m available to discuss particular matters with a Commissioner they may have a question about.

I would tell Commissioners that please be on the lookout for a Zoom holiday party invitation being arranged by the staff. Normally we would have had one probably after this meeting in person. We would have had a holiday party with some food and refreshments, but we can’t do that.

You know, and also I want to let the Commissioners know I’m preparing a list of the Commission accomplishments for 2020 that I do every year. You should look for that in the next week or so. It’s been a trying year, but we’ve met several goals and milestones. I echo your comments, Chair Lhamon, and I want to thank the staff for their
dedication and work in this momentous and challenging year.

I want to wish everybody on the call, all the Commissioners, the SAs, and our staff a safe and wonderful holiday. And until next Commission business meeting in January 2021, I thank you and appreciate the opportunity to address you.

CHAIR LHAMON: Thank you, Mr. Staff Director. That concludes the business on the agenda for today’s business meeting. So if there’s nothing further, I hereby adjourn the meeting at 12:53 Eastern Time. Thank you all.

(Whereupon, the above-entitled matter went off the record at 12:53 p.m.)