

## U.S. COMMISSION ON CIVIL RIGHTS

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## TELEPHONIC BUSINESS MEETING

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FRIDAY, DECEMBER 4, 2020

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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

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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

RUKKU SINGLA

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12:01 p.m.

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.

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1 COMMISSIONER KIRSANOW: Here.

2 CHAIR LHAMON: Commissioner Kladney.

3 COMMISSIONER KLADNEY: Here.

4 CHAIR LHAMON: Commissioner Yaki.

5 COMMISSIONER YAKI: Presente.

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

9 COURT REPORTER: Present.

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

12 MR. MORALES: I am present.

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

15 I. DISCUSSION AND APPROVAL OF AGENDA

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

22 COMMISSIONER YAKI: Second. Second by  
23 Commissioner Yaki.

24 CHAIR LHAMON: Thank you. Are there any

25 --

1 (Simultaneous speaking.)

2 COMMISSIONER HERIOT: Madam Chair? Madam  
3 Chair?

4 CHAIR LHAMON: Commissioner Heriot.

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

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

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

14 CHAIR LHAMON: Okay, is there a second  
15 for Commissioner Heriot's amendment?

16 COMMISSIONER KIRSANOW: Kirsanow  
17 seconds.

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

23 CHAIR LHAMON: Okay. I think we have a  
24 motion that has been seconded. I hear the objection.  
25 But I do think we have a motion that's pending. So

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1 let me just pause and see if there's any other  
2 amendments that anyone wants to offer for the  
3 agenda.

4 COMMISSIONER YAKI: Commission Lhamon,  
5 Commissioner Yaki.

6 CHAIR LHAMON: Commissioner Yaki.

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

10 CHAIR LHAMON: Is there a second?

11 COMMISSIONER KLADNEY: Kladney will  
12 second.

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

18 COMMISSIONER HERIOT: I'm not  
19 understanding what the procedure is at this point.

20 CHAIR LHAMON: Well, your motion that's  
21 pending. And as you point out, subject to objection  
22 because the item was not timely. I understand that  
23 there's a reason it was not timely, that his death  
24 was recent and folks worked as quickly as possibly  
25 to be able to offer a statement, and Commissioner

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1 Adegbile has said that he would like more time, so.

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

7 CHAIR LHAMON: Okay, thank you.

8 COMMISSIONER HERIOT: But I don't  
9 remember who seconded.

10 CHAIR LHAMON: I think Commissioner  
11 Kirsanow seconded.

12 COMMISSIONER KIRSANOW: Kirsanow  
13 seconded. I'll withdraw.

14 COMMISSIONER HERIOT: So now are you  
15 willing to withdraw?

16 COMMISSIONER KIRSANOW: Yes, I'm willing  
17 to withdraw.

18 COMMISSIONER HERIOT: Okay, let's  
19 withdraw and do it in January.

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

23 (Chorus of aye.)

24 CHAIR LHAMON: Opposed? Any abstentions?  
25 The motion passes unanimously, thank you.

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1                   We will first hear from our Advisory --  
2                   Arizona Advisory Committee Chair, Lorena Van Assche,  
3                   on the Committee's recently released report titled  
4                   Sub-Minimum Wages for Arizona Persons with  
5                   Disabilities, Under Section 14(c) of the Fair Labor  
6                   Standards Act.

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

12                  Chair Van Assche.

13                  II: REPORT FROM ARIZONA ADVISORY COMMITTEE

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

17                  The Arizona Advisory Committee took up  
18                  the issue of sub-minimum wages for Arizona persons  
19                  with disabilities under Section 14(c) of the Fair  
20                  Labor Standards Act. And we held a hearing on  
21                  October 18, 2019 where we heard testimony from  
22                  different -- ten different panelists on this issue.  
23                  And we submitted the report that the Commissioners  
24                  have had before them and have read in April of this  
25                  year.

1           We heard from the various groups, and  
2           there was divide between the groups as to the  
3           benefits or being in favor and opposing both  
4           eliminating and retaining Section 14(c). One of the  
5           groups who were in favor retaining were -- they  
6           identified many reasons for that, and some of the  
7           reasons were as follows.

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

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

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

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1 available to them.

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

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

22 By contrast, there are, and this is  
23 testimony that was received in 2019, that at time  
24 the testimony was that we have -- we had about 44  
25 employers with the 14(c) certificates and about 2000

1 -- and I think about 2000 and like 50 -- people with  
2 disabilities who were receiving benefits under this  
3 program in Arizona.

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

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

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

22 That it wouldn't, that it not be abrupt  
23 because there were -- there was a concern that the  
24 employees who were in the program where all of a  
25 sudden found themselves without the program and the

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1 employers did in fact no longer employ them, that  
2 there would -- there would need to be a transition  
3 period for the employees to make sure that they were  
4 able to be cared for if they needed to during the  
5 hours that they were otherwise employed, or that  
6 they found other employment.

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

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

22 This panelists also recommended to limit  
23 the time. He said that in too many cases, 14(c) is  
24 no longer a training ways but a destination. And if  
25 we're going to say that 14(c) is honestly only being

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1 used to assist individuals as they built skills,  
2 then it probably shouldn't go on forever. It seems  
3 punitive to arbitrarily pick a number.

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

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

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

25 CHAIR LHAMON: Thank you so much, Chair

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1 Van Assche. I'll open for questions from fellow  
2 Commissioners.

3 COMMISSIONER KLADNEY: Madam Chair,  
4 David Kladney here.

5 CHAIR LHAMON: Commissioner Kladney.

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

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

22 COMMISSIONER KLADNEY: Okay, well, we'll  
23 refer to that later. Also, did you find that there  
24 was a lack of coordination between state agencies  
25 that interact with 14(c) providers in providing

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1 people with disability jobs like book rehab, say  
2 your Board of Education and the Labor Department?  
3 Was there any discussion as to that problem -- or  
4 issue, I should say?

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

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

21 COMMISSIONER KLADNEY: And was there any  
22 discussion, testimony or information that you found  
23 regarding the cost-effectiveness or lack of, of the  
24 14(c) program?

25 MS. VAN ASSCHE: There was testimony



1 that we heard from a professor at University of  
2 Arizona Sonoran Center for Excellence in Disability  
3 who cited to a report that Arizona really benefitted  
4 from the program because employers who employed  
5 these individuals who qualified under their program  
6 favorably looked upon by consumers, and that drove a  
7 real economic benefit to the state.

8 COMMISSIONER KLADNEY: Right. Okay,  
9 that's all the questions I have, thank you.

10 MS. VAN ASSCHE: Thank you.

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

13 COMMISSIONER GILCHRIST: Madam Chair,  
14 Steven Gilchrist here.

15 CHAIR LHAMON: Commissioner Gilchrist.

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

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

25 COMMISSIONER GILCHRIST: Well, I guess

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1       what I'm asking is if the Congress passes the  
2       Transformation to Competitive Employment Act, would  
3       that effectively make this issue a moot issue?

4                   MS. VAN ASSCHE: I don't think I'm -- I  
5       don't know, I don't think I can answer that. I'm  
6       sorry.

7                   COMMISSIONER GILCHRIST: Okay, that's  
8       fine. Thank you.

9                   CHAIR LHAMON: Any other questions?  
10      Chair Van Assche, I just want to thank you and your  
11      committee members again. As I know you know, we  
12      relied on your thorough and comprehensive report in  
13      our own report on the same topic, and we're very  
14      grateful to be able to have the specific information  
15      and to benefit from the Committee's expertise.

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

21                   MS. VAN ASSCHE: Thank you.

22                   CHAIR LHAMON: Our next item is to hear  
23      from the Michigan Advisory Committee Chair, Susan  
24      Glisson, on that committee's recently released  
25      report title Prosecutorial Discretion and Civil

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1 Rights in Mississippi.

2 Chair Glisson.

3 III. REPORT FROM MISSISSIPPI ADVISORY COMMITTEE

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

7 CHAIR LHAMON: Sorry about that.

8 MS. GLISSON: That's okay, that's okay.  
9 Michigan is an awesome state, so I'd be happy to  
10 claim it. I thank you for the opportunity to present  
11 today. We are truly grateful for the Commission's  
12 leadership.

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

18 The first illustration is the well-known  
19 Curtis Flowers case. Mr. Flowers, an African  
20 American man, served 23 and a half years in jail,  
21 suffering through six trials for murders that he did  
22 not commit. The Mississippi Supreme Court noted the  
23 racial animus and the prosecutorial misconduct of  
24 Doug Evans, the prosecutor, and yet, Evans was  
25 allowed to continue malicious prosecutions. The case

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1 was finally was just dismissed by the Mississippi  
2 Attorney General this past September.

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

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

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

21 Despite ending the vile process two  
22 centuries ago, Mississippi in effect has created a  
23 debtors' prison system, and it disproportionately  
24 targets Black and Brown residents. We know long  
25 pretrial detentions are not unheard of elsewhere in

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1 the United States of course, but as we learned from  
2 testimony from scholars, advocates, victims, and  
3 prosecutors, poverty, scarce resources, and a pattern  
4 of locking up people for low-level crime makes them  
5 particularly prevalent here in the country's poorest  
6 state.

7 A recent survey of Mississippi jails  
8 that was conducted by the MacArthur Justice Center  
9 of the University of School of Mississippi School of  
10 Law showed that 2500 defendants, more than one-third  
11 of all those jailed before trial, have been in jail  
12 90 or more consecutive days. More than 600 of them  
13 have been in jail for longer than a year.

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

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

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1 statewide public defender system.

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

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

18 Only six counties that I have been to  
19 have full-time public defenders. Seventy-six  
20 counties have part-time public defenders who also  
21 have their own private practices, which makes it  
22 very difficult to spend substantial time on public  
23 defender work. And these part-time defenders are  
24 picked by the whole team of judges. They handle 90%  
25 of public cases.

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1                   The Sixth Amendment Center's recent  
2 criticism of Mississippi's system highlighted the  
3 deficiencies in it and noted in particular its lack  
4 of independence.

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

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

22                   Whether our judges, especially  
23 Mississippi Supreme Court, apply the law when  
24 properly presented is doubtful. In order to ensure  
25 equal protection before the law, we urgently require

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1 systematic examination just to get transparency in  
2 the system to learn exactly where and the extent --  
3 and what the extent of the problems are so that we  
4 can begin to address them.

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

10 CHAIR LHAMON: Thank you so much for the  
11 presentation. I'll open for questions from my fellow  
12 Commissioners.

13 COMMISSIONER KLADNEY: Commissioner  
14 Kladney here.

15 CHAIR LHAMON: Go ahead, Commissioner  
16 Kladney.

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

24 MS. GLISSON: I don't know it very well,  
25 I can certainly find out. But I do know that it's

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1 quite low pay. I think that it varies by county. But  
2 it is definitely -- it's definitely quite low.

3 COMMISSIONER KLADNEY: And you don't  
4 know whether it's by the hour or by the case. I know  
5 --

6 MS. GLISSON: No, sir.

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

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

17 COMMISSIONER KLADNEY: Thank you very  
18 much.

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

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

23 CHAIR LHAMON: Go ahead, Commissioner  
24 Gilchrist.

25 COMMISSIONER GILCHRIST: Just one quick

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1 question. Thank you again for the report. I was very  
2 curious about the points system that was articulated  
3 in the report. Could you help me understand a little  
4 bit more how the points system would actually work?  
5 And this was the --

6 MS. GLISSON: Apologies, yes.

7 (Simultaneous speaking.)

8 MS. GLISSON: Go ahead, I'm sorry.

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

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

23 So my understanding would be that there  
24 would be a committee of attorneys and prosecutors  
25 and others who would begin to try to create that

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1 sort of standardized system in order to determine  
2 what points should be assigned for, you know,  
3 context, aggravating circumstances, all that sort of  
4 thing.

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

12 COMMISSIONER GILCHRIST: Absolutely.

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

16 COMMISSIONER GILCHRIST: Okay, thank you  
17 very much.

18 MS. GLISSON: Yes, sir.

19 COMMISSIONER ADEGBILE: Madam Chair,  
20 Commissioner Adegbile.

21 CHAIR LHAMON: Go ahead, Commissioner  
22 Adegbile.

23 COMMISSIONER ADEGBILE: Thank you very  
24 much for your report. I was just wondering, to what  
25 extent is there a view that structural investment in

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1 a statewide public defender apparatus, or a well-  
2 developed public defender system would ameliorate  
3 the problems that you have spoken about?

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

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

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

19 COMMISSIONER ADEGBILE: Thanks very  
20 much.

21 MS. GLISSON: Yes, sir, thank you.

22 COMMISSIONER KLADNEY: Madam Chair, it's  
23 David Kladney again, David Kladney again.

24 CHAIR LHAMON: Go ahead, Commissioner  
25 Kladney.

1                   COMMISSIONER KLADNEY: Following up on  
2                   that response, what is -- is there an appetite to  
3                   establish one, a public defender system in  
4                   Mississippi at the time through the legislature and  
5                   the executive branch, or is this just a debate going  
6                   on right now?

7                   MS. GLISSON: I wish that I could report  
8                   there was an appetite for it in our legislature and  
9                   in our governor's office, but there does not seem to  
10                  be. The energy is coming from a few district  
11                  attorneys, from advocates, the ACLU. There are a  
12                  number of really great human rights groups. It's  
13                  especially coming from victims who have been  
14                  targeted.

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

18                  COMMISSIONER KLADNEY: Thank you, and  
19                  thank you again for the good report. Thank your  
20                  committee for their work.

21                  MS. GLISSON: Yes, sir, thank you, I  
22                  will. Yes, sir, thank you so much.

23                  CHAIR LHAMON: Are there other questions  
24                  for Chair Glisson?

25                  Hearing none I'll just end with a note

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1 of my own about how timely this report is for our  
2 own investigations of bail reform, block quota, our  
3 briefing is in several weeks. We will be glad to be  
4 mindful of the information in your committee's  
5 report on the topic of this as we continue our  
6 investigations also.

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

11 MS. GLISSON: Absolutely.

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

14 MS. GLISSON: Thank you so very much.  
15 Thank you.

16 IV. PROPOSED APPOINTMENTS TO THE  
17 CALIFORNIA ADVISORY COMMITTEE

18 CHAIR LHAMON: For our next agenda item,  
19 to begin discussion, I move that the Commission  
20 appoint the following individuals to the California  
21 Advisory Committee, based on the recommendation of  
22 the Staff Director: Brian Moriguchi, Chance Franklin  
23 Minor, Jennifer Friedman, Javier Gonzalez, Gunnar  
24 Gundersen, Darryl Hunter, Velma Montoya, Daniel  
25 Ortner, Star Parker, Clare Pastore, Alison Dundes

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1 Rentein, Rogelio Ruiz, Maimon Schwarzschild, Rachel  
2 Sigman, and Christopher Yost.

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

11 Do I have a second for this motion?

12 COMMISSIONER ADEGBILE: Adegbile  
13 seconds.

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

18 COMMISSIONER ADAMS: Yes.

19 CHAIR LHAMON: Commissioner Adegbile.

20 COMMISSIONER ADEGBILE: Aye.

21 CHAIR LHAMON: Commissioner Gilchrist.

22 COMMISSIONER GILCHRIST: Aye.

23 CHAIR LHAMON: Commissioner Heriot.

24 COMMISSIONER HERIOT: I vote yes.

25 CHAIR LHAMON: Commissioner Kirsanow.

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1 COMMISSIONER KIRSANOW: Yes.

2 CHAIR LHAMON: Commissioner Kladney.

3 COMMISSIONER KLADNEY: Yes.

4 CHAIR LHAMON: Commissioner Yaki.

5 COMMISSIONER YAKI: Aye.

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

8 V. PROPOSED APPOINTMENTS TO  
9 THE PENNSYLVANIA ADVISORY COMMITTEE

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

19 With this motion, the Commission will  
20 also appoint Steven Irwin as the Chair of the  
21 Pennsylvania Advisory Committee. All of these  
22 members will serve as uncompensated government  
23 employees. If the motion passes, the Commission will  
24 authorize the Staff Director or his designee to  
25 execute the appropriate paperwork for the

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1 appointments, which will begin after the current  
2 committee expires.

3 Do I have a second for this motion?

4 COMMISSIONER KLADNEY: Kladney seconds.

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

9 COMMISSIONER ADAMS: Yes.

10 CHAIR LHAMON: Commissioner Adegbile.  
11 Commissioner Adegbile? Commissioner Gilchrist.

12 COMMISSIONER GILCHRIST: Aye.

13 CHAIR LHAMON: Commissioner Heriot.

14 COMMISSIONER HERIOT: I vote yes.

15 CHAIR LHAMON: Commissioner Kirsanow.

16 COMMISSIONER KIRSANOW: Yes.

17 CHAIR LHAMON: Commissioner Kladney.

18 COMMISSIONER KLADNEY: Yes.

19 CHAIR LHAMON: Commissioner Yaki.

20 COMMISSIONER YAKI: Aye.

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

23 Next we will move to consideration of a  
24 Commission statement on the passing of Drew Days. So  
25 we know what we are considering, I'll ask

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1 Commissioner Yaki to read the statement as he  
2 proposes it.

3 VI. PROPOSED STATEMENT ON THE  
4 PASSING OF PROFESSOR DREW DAYS

5 COMMISSIONER YAKI: Thank you very much,  
6 Madam Chair.

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

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

21 The United States Commission on Civil  
22 Rights mourns the passing of Professor Drew S. Days  
23 III, who among his many notable accomplishments was  
24 the first Black person to serve as the Assistant  
25 Attorney General for Civil Rights at the Department

1 of Justice and later served as the Solicitor General  
2 of the United States.

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

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

20 After graduation in 1966, he spent a  
21 year practicing law in Chicago, where he met Martin  
22 Luther King Jr. during the fair housing  
23 negotiations, and then spent two years in the Peace  
24 Corps in Honduras before returning and joining the  
25 NAACP Legal Defense Fund in 1969.

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1                   For the next eight years, he litigated  
2                   on behalf of the LDF until he received a call in  
3                   1977 from President Jimmy Carter's designee for  
4                   Attorney General, Judge Griffin Bell. The Washington  
5                   Post recounted how Mr. Days's initial conversation  
6                   with Bell went.

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

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

23                  His proudest achievement, he said, was  
24                  working with Senators Kennedy and Hatch on the Civil  
25                  Rights for Institutionalized Persons Act of 1980.

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1           This law created a right of action for  
2           the Civil Rights Division of the Justice Department  
3           to investigate and to intervene directly on behalf  
4           on persons in mental institutions, jails, hospitals,  
5           and juvenile facilities. Extending this legacy, a  
6           recent report, Police Use of Force in Examination of  
7           Modern Policing Practices, from the US Commission on  
8           Civil Rights returned to these issues.

9           After the Justice Department, in 1981 he  
10          joined the faculty of the Yale Law School, where he  
11          remained for the next 35 years. In 1992, he became  
12          the Alfred M. Rankin Professor of Law at Yale. In  
13          1993, he took a leave of absence that lasted three  
14          years as he was named by President Clinton as the  
15          Solicitor General of the United States and became  
16          only the third Black man in our nation's history,  
17          after Thurgood Marshall and Wade McCree, to hold the  
18          post.

19          While Solicitor General, Drew Days  
20          argued 17 cases before the Supreme Court. During  
21          that time, his name was frequently mentioned as a  
22          potential Supreme Court nominee. But as his friend,  
23          colleague, and former Dean of the Yale Law School  
24          and also former Solicitor General Harold Hongju Koh  
25          said in an interview with the New York Times, Drew

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1 was committed to principle, not politics. It would  
2 have been easy for him to do the politically  
3 expedient thing to get ahead, but that was not in  
4 his DNA.

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

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

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

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1 his belief in the rule of law.

2 Thank you very much.

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

6 COMMISSIONER YAKI: I move this  
7 statement.

8 CHAIR LHAMON: Thank you, is there a  
9 second?

10 COMMISSIONER HERIOT: Heriot second.

11 CHAIR LHAMON: Thank you. We'll open the  
12 floor for discussion, beginning with Commissioner  
13 Yaki.

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

21 So other than that, I mean, we're  
22 gradually approaching a time when the people who  
23 were born and lived and experienced segregation are  
24 moving on from this life into the next, and it  
25 increases every. And it's important for all of us to

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1 remember these people who were the pioneers, the  
2 people who paved the trail for all of us to be here  
3 today. And Drew Days was one of those people.

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

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

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

20 COMMISSIONER HERIOT: Madam Chair.

21 CHAIR LHAMON: Commissioner Heriot.

22 COMMISSIONER HERIOT: I met Drew Days  
23 only once. It was over the course of a three-day  
24 roundtable conference that was held here in San  
25 Diego. I think it must have been at least 25 years

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1 ago.

2 But what impressed me about Drew Days  
3 was his willingness to engage with people who didn't  
4 necessarily agree with him. And that is an  
5 increasingly rare quality these days. And so he was  
6 a very impressive man.

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

9 COMMISSIONER ADEGBILE: Madam Chair,  
10 it's Commissioner Adegbile.

11 CHAIR LHAMON: Commissioner Adegbile, go  
12 ahead.

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

23 And principally I just want to add one  
24 idea to that note about who he was as a person. He  
25 was a very lovely and decent man whose work, I

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1 think, was motivated by a deep sense of humanism and  
2 a respect for human beings and a recognition that  
3 the circumstances of their birth need not limit  
4 their possibilities in our nation.

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

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

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

18 COMMISSIONER ADAMS: Yes.

19 CHAIR LHAMON: Commissioner Adegbile.

20 COMMISSIONER ADEGBILE: Aye.

21 CHAIR LHAMON: Commissioner Gilchrist.

22 COMMISSIONER GILCHRIST: Aye.

23 CHAIR LHAMON: Commissioner Heriot.

24 COMMISSIONER HERIOT: I vote yes.

25 CHAIR LHAMON: Commissioner Kirsanow.

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1 COMMISSIONER KIRSANOW: Yes.

2 CHAIR LHAMON: Commissioner Kladney.

3 COMMISSIONER KLADNEY: Yes.

4 CHAIR LHAMON: Commissioner Yaki.

5 COMMISSIONER YAKI: Aye, with thanks.

6 CHAIR LHAMON: And I vote yes. The

7 motion passes unanimously. Thank you all.

8 VII. REMARKS FROM CHAIR LHAMON

9 CHAIR LHAMON: Before I turn to the  
10 Staff Director, I want to take a few moments to  
11 thank my fellow Commissioner and the staff for their  
12 hard work this year under very challenging  
13 circumstances. In March 2020, the rise in the COVID-  
14 19 pandemic led to an unprecedented disruption to  
15 the Commission's regular operations.

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

22 The Commission moved swiftly to change  
23 course to assess the civil rights implications of  
24 the COVID-19 pandemic, issuing several statements to  
25 report on our civil rights concerns and urging

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1 federal agencies to take appropriate action to  
2 address these impacts.

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

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

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

25 The committees also moved swiftly to

1 address the civil rights concerns of the pandemic  
2 itself, approving statements and holding briefings  
3 to gather testimony about health disparities and  
4 other issues that have come into stark relief during  
5 this pandemic.

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

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

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

24 And Staff Director Morales, I thank you  
25 for your leadership, as always, and especially in

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1 this challenging year.

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

4 VII. REMARKS FROM THE STAFF DIRECTOR

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

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

19 You know, and also I want to let the  
20 Commissioners know I'm preparing a list of the  
21 Commission accomplishments for 2020 that I do every  
22 year. You should look for that in the next week or  
23 so. It's been a trying year, but we've met several  
24 goals and milestones. I echo your comments, Chair  
25 Lhamon, and I want to thank the staff for their

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1 dedication and work in this momentous and  
2 challenging year.

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

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

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

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