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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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James and Lorie Jensen, as Civil No. 09-1775 (DWF/BRT)  
parents, guardians, and next  
friends of Bradley J. Jensen;  
James Brinker and Darren Allen,  
as parents, guardians, and next  
friends of Thomas M. Allbrink;  
Elizabeth Jacobs, as parent, BIANNUAL STATUS CONFERENCE  
guardian, and next friend of March 24, 2017  
Jason R. Jacobs; and others 9:34 a.m.  
similarly situated,

Plaintiffs, BEFORE THE HONORABLE  
DONOVAN W. FRANK,  
-v- U.S. DISTRICT COURT  
SENIOR JUDGE

Minnesota Department of Human  
Services, an agency of the State  
of Minnesota; Director,  
Minnesota Extended Treatment St. Paul, Minnesota  
Options, a program of the Courtroom 7C  
Minnesota Department of Human  
Services, an agency of the State  
of Minnesota; Clinical Director,  
the Minnesota Extended Treatment  
Options, a program of the  
Minnesota Department of Human  
Services, an agency of the State  
of Minnesota; Douglas Bratvold,  
Individually and as Director of  
the Minnesota Extended Treatment  
Options, a program of the  
Minnesota Department of Human  
Services, an agency of the State  
of Minnesota; Scott TenNapel,  
Individually and as Clinical  
Director of the Minnesota Extended  
Treatment Options, a program of  
the Minnesota Department of Human  
Services, an agency of the State  
of Minnesota; and the State of  
Minnesota,

Defendants.

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**APPEARANCES :**

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transcript produced by computer.

**P R O C E E D I N G S****I N O P E N C O U R T**

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2  
3 THE COURT: You may all be seated. Thank you.  
4 This matter is set for a Status Conference. And I will  
5 define Status Conference on the *Olmstead* Plan, kind of  
6 receive updates from the parties and feedback on  
7 communications before I kind of give an overview, and we  
8 sent out an agenda, why don't I stop and we can have folks  
9 introduce themselves, starting on my right, counsel's left,  
10 and then we will move over to the other side.

11 MR. O'MEARA: Good morning, Your Honor. Shamus  
12 O'Meara for the Plaintiff Class.

13 MR. IKEDA: Good morning, Your Honor. Scott  
14 Ikeda, Assistant Attorney General for the Defendants. And  
15 then I will go through and introduce the folks from the  
16 State that are here today if that is okay.

17 THE COURT: That would be, yeah. I recognize a  
18 few, of course, so --

19 MR. IKEDA: Your Honor, seated with me at counsel  
20 table is Commissioner Mary Tingerthal. Commissioner  
21 Tingerthal is the Commissioner of the Minnesota Housing  
22 Finance Agency and also the Chair of the Governor's  
23 Subcabinet.

24 We have got DHS Deputy Commissioner Chuck Johnson,  
25 Assistant Commissioner Daron Korte of the Minnesota

1 Department of Education. And then also present in the  
2 courtroom is Anne Smetak who is an attorney with the MHFA.  
3 We have got Karen Sullivan Hook, also an attorney with the  
4 Department of Human Services. And Erin Sullivan Sutton who  
5 works in one of the policy areas at DHS. And then I think  
6 in the last row there in the very back of the courtroom on  
7 your right is Mike Tessneer and Darlene Zangara of the  
8 *Olmstead* Implementation Office -- oh, I'm sorry, and Rosalie  
9 Vollmar.

10 THE COURT: Good morning. The first thing I want  
11 to say before I give kind of a short summary and then kind  
12 of call on the parties, we will go down the Agenda, you will  
13 notice that unlike the last get-together or status  
14 conference, Magistrate Judge Thorson is not sitting with me.

15 This is very important to her, this case, and the  
16 work she has done with all of you. And because it is so  
17 important to her, you can just -- I think, you -- please  
18 accept my representation when I say that because of a  
19 personal commitment that needed to take priority, that it  
20 was better to proceed, as much as I would like her here,  
21 without her -- and we discussed it -- rather than continue  
22 this. So, that is why she is not here, not because it is  
23 not an important hearing to her.

24 Obviously, some people hear the word, not so much  
25 with lawyers even though there are different explanations of

1 status conferences and we have had those before, but this is  
2 on the *Olmstead* Plan that goes back to when the Court in  
3 September of 2015, as the lawyers and other parties know in  
4 the courtroom, approved that Plan.

5 So, today isn't -- the agreement and the setup  
6 wasn't -- we are not hear for the Court to approve  
7 amendments or changes, we are here for an updated report  
8 because the Plan has been approved; but, to get updates on  
9 where we are at, where we are at with measurable goals,  
10 specific timelines. And the parties have been very good  
11 about getting information and feedback to me.

12 And it, frankly speaking, allows DHS and your  
13 representatives and other individuals to kind of give  
14 updates on where we are and how the goals are going, the  
15 success in meeting many of these goals.

16 And then I am going to quote before we begin here,  
17 Ms. Tingerthal, because I think she kind of captured kind of  
18 what this is all about in a correspondence with all of us.

19 And the Plan, obviously, as I think everybody will  
20 agree on, is what I will refer to as an evolving document;  
21 and was set up for kind of annual review and amendment  
22 process central to kind of moving forward with it.

23 And so, obviously, as many of the people in the  
24 room know here, the first Annual Report on the Plan and its  
25 implementation was submitted and established -- it has been

1 submitted, and it has been completed, and then the revised  
2 has been submitted.

3 And so, frankly speaking, while everybody is not  
4 going to agree on everything, I think the Court welcomes the  
5 opportunity to get an update status report. We are kind of  
6 telling everyone, including the public, here is how our  
7 efforts are going trying to meet the needs of the people  
8 with disabilities as it is evolving in the state. So -- and  
9 maybe I could have spared everyone all of that by -- I am  
10 going to refer to the September 29th, 2016 letter from the  
11 Minnesota *Olmstead* Subcabinet signed by its Chair Mary  
12 Tingerthal.

13 I kind of like the way you addressed your letter,  
14 too, to the people of Minnesota. But, on a very serious  
15 note, I think part of that letter captures part of the focus  
16 of *Olmstead* and the Plan and I am going to quote. "The  
17 ultimate success of the *Olmstead* Plan will be measured by an  
18 increase in the number of people with disabilities who based  
19 upon their preferences live close to their friends and  
20 family as independently as possible, work in competitive,  
21 integrated employment, are educated in integrated school  
22 settings and fully participate in community life."

23 I think that kind of captures in so many ways kind  
24 of what -- the work of the Minnesota *Olmstead* Subcabinet and  
25 the *Olmstead* Plan, itself.

1           So, in that context, if I may, what I thought we  
2           would do, consistent with the Agenda that I proposed, and I  
3           will touch base with everyone, I was hoping we could begin  
4           with -- and I am assuming that Ms. Tingerthal will probably  
5           be called upon by counsel -- but identify those notable  
6           areas of success and areas -- and also those areas that you  
7           are saying, well here are the areas of success and here are  
8           the areas that we are striving to improve on.

9           So, if that is acceptable to everyone, I  
10          thought -- would you mind coming to the -- Mr. Ikeda?

11          MR. IKEDA: Well, Your Honor, before Commissioner  
12          Tingerthal speaks, you know, I would like to put on the  
13          record as I did at the last conference that the Defendants'  
14          position is that the Court lacks jurisdiction in this case  
15          entirely.

16          And we have had the -- we put it on the record  
17          before and we have had the discussion about it. So, that is  
18          all I will say is I will note the State's continuing  
19          objection to the Court's jurisdiction.

20          THE COURT: Well, why don't we -- and before --  
21          okay, I will hear briefly from Mr. O'Meara and then I will  
22          kind of maybe suggest something I probably didn't suggest at  
23          the last hearing.

24          Mr. O'Meara?

25          MR. O'MEARA: Thank you, Your Honor. With regard

1 to the Defendants' position that the Court lacks  
2 jurisdiction, we simply don't agree with that position. We  
3 don't think it is supported by the Settlement Agreement, the  
4 facts over the course of the last several years, the conduct  
5 of the Defendants, their appearance in multiple forums,  
6 including this one, and to quote a term that I learned as a  
7 law clerk for the late Judge Gallagher --

8 THE COURT: I won't ask you how many years ago  
9 that was, but go ahead.

10 MR. O'MEARA: I think the position is a  
11 ridiculousness. It is not supported by really anything that I  
12 have read or have been a part of in this case. And to  
13 continue to hear it spoken really at the outset of what is  
14 supposed to be a Status Conference where we are all trying  
15 to come together and move things forward in the light that  
16 has been projected on this Plan by Chair Tingerthal, I  
17 think, is just out of place.

18 Document 586 of the records is a letter that I  
19 wrote to Your Honor on August 24th, 2016 where we spoke to  
20 the issue of the Court's ongoing ancillary jurisdiction with  
21 regard to the Settlement Agreement.

22 At Footnote 1 we stated: "The Court also has  
23 ancillary jurisdiction to enforce a settlement agreement 'if  
24 the parties' obligation to comply with the terms of the  
25 settlement agreement is made part of the order ... either by



1 ... a provision retaining jurisdiction over the settlement  
2 agreement, or by incorporation of the terms of the  
3 settlement agreement in the order." We cited then, Your  
4 Honor, a U.S. Supreme Court case, it's *Kokkonen*,  
5 K-o-k-k-o-n-e-n, versus *Guardian Life*, 511 U.S. 375, 1994,  
6 and also talks about the parties' stipulation as not  
7 depriving the Court to impose sanctions pursuant to its  
8 inherent authority, citing *Fox versus Acadia State Bank*, 937  
9 F.2d 1566, Eleventh Circuit, 1991, as well as *Adduono*,  
10 A-d-d-u-o-n-o -v- World Hockey Association, 824 F.2d 617,  
11 Eighth Circuit 1987. I have more cases, Your Honor.

12 If they really don't think the Court has  
13 jurisdiction, they shouldn't be here. They should just  
14 state that and move on. But, they have developed a Plan  
15 pursuant to a Settlement Agreement. And they are coming  
16 into court as part of the Status Conference.

17 And to have their lawyer stand up and say, this  
18 Court has no business, you know, being involved in that  
19 Plan, has no jurisdiction, it contradicts every fabric of  
20 what this case has been all about for the last six years.  
21 Thank you.

22 THE COURT: Mr. Ikeda anything further before we  
23 go on to Ms. Tingerthal?

24 MR. IKEDA: Just briefly. I know that we had a  
25 discussion at length about this at the last conference, so I

1 don't want to repeat myself. But, you know, jurisdiction is  
2 something that cannot be waived.

3 THE COURT: True.

4 MR. IKEDA: It can't be agreed to by the parties.  
5 The Federal Court -- the parties can't just agree to come to  
6 Federal Court and have a Federal Court decide a particular  
7 issue.

8 So, I am -- the Defendants are a little bit  
9 puzzled by the suggestion from the Plaintiffs that there is  
10 some kind of -- I suppose he didn't use the "W" word, he  
11 didn't say waiver, but that there can be some kind of waiver  
12 or consent or agreement of the parties to do that.

13 And in fact, the *Kokkonen* case that he cites  
14 specifically says the courts, the Federal Courts do not have  
15 automatic ancillary jurisdiction to enforce a settlement  
16 agreement arising from federal litigation.

17 And so, the issue is, what does the Settlement  
18 Agreement say? And there is only one fair reading of the  
19 Settlement Agreement that specifically talks about the  
20 Court's limited jurisdiction and the limited circumstance  
21 under which the Court can extend its jurisdiction. And the  
22 parties can't change that. And the Court doesn't have the  
23 authority to simply assume its own jurisdiction. And so,  
24 you know, I don't have anything more to say than what we  
25 have already said before.

1           And then responding to Mr. O'Meara's second point  
2           about that the Defendants shouldn't be here, you know, there  
3           is an Order in a case in which the Defendants are a party  
4           and they were ordered by the Court to appear for a Status  
5           Conference in that case today at 9:30.

6           I guess I am not sure what Mr. O'Meara is  
7           suggesting the Defendants should have done under those  
8           circumstances, but I will leave that because I just don't  
9           know what he means by that. But, I will say the law, Your  
10          Honor, is just very clear on this point.

11          We looked at the Settlement Agreement. The  
12          Settlement Agreement, itself, is very clear. And the  
13          Defendants' position has been and is, that this Court lacks  
14          jurisdiction.

15          MR. O'MEARA: Your Honor, may I?

16          THE COURT: You may.

17          MR. O'MEARA: My view, Your Honor, of the fact  
18          that the Defendants are here points up, you know, my belief  
19          that they really don't believe the position that Mr. Ikeda  
20          is stating. Had they believed it, they would have moved the  
21          Court pursuant to their position on lack of jurisdiction.  
22          Because they are here, expending money, expending resources,  
23          Mr. Ikeda listed the number of people here. They are all  
24          spending time today. If they really believe that the Court  
25          has no jurisdiction, no business over what is going on here,

1 you know, they should move forward and file a motion to  
2 extricate themselves from the case.

3 *Western Thrift & Loan Corporation versus Rucci,*  
4 *R-u-c-c-i*, 812 F.3d 722, Eighth Circuit, 2016, states,  
5 quote -- states, A, quote, "... well-established rule that a  
6 District Court may retain ancillary jurisdiction to enforce  
7 a settlement agreement when its order dismissing the case  
8 reserves such jurisdiction." End quote.

9 If they are speaking as to personal jurisdiction,  
10 that of course can be waived. This Court spoke to that  
11 issue when it said, quote, "The defense of lack of personal  
12 jurisdiction is waived if not made by motion or included in  
13 a responsive pleading." End quote. *Coleman versus Duluth*  
14 *Police Department*, 2009, Westlaw 921145 at Footnote 11, and  
15 Your Honor's Order of March 31, 2009 citing *Yeldell*,  
16 *Y-e-l-d-e-l-l*, -v- *Tutt*, *T-u-t-t*, 913 F.2d 533, Eighth  
17 Circuit, 1990.

18 If they don't want to be here, they should file a  
19 motion. If they think that they have to follow an Order of  
20 the Court that has no jurisdiction over what they are doing,  
21 then they are here. And let's move forward. But, to  
22 suggest to us as a Settlement Class that this Court has no  
23 jurisdiction over issues that are so fundamentally important  
24 to the lives of people with disabilities and their families  
25 is really, I think, the wrong way to go here, after all we

1 have been through. Thank you.

2 THE COURT: Anything else, Counsel?

3 MR. IKEDA: Well, I think the Court knows that I  
4 disagree with what Mr. O'Meara said, but I don't think there  
5 is anything more that needs to be said.

6 THE COURT: All right. Let me -- I will be very  
7 brief so we can go, proceed on with Ms. Tingerthal. It  
8 seems to me, and something I may not have said when we were  
9 last together in June, I guess June 6th it would be of this  
10 past year. One, of course, the Court -- the parties will  
11 have to do what they have to do. I would like to remain  
12 focused on the issues.

13 But, depending on the view of the parties, there  
14 is another -- there are two ways to go, here. One is -- I  
15 am not suggesting it, but it is certainly the right of  
16 either party and in this case the Defense to file a motion  
17 on the jurisdiction of the Court. Concurrently, now, really  
18 separate from the *Olmstead* issues, we have the Court in the  
19 last time it addressed jurisdiction it reserved it through  
20 December of 2019.

21 But, there is a second option that might serve the  
22 interests of all parties, separate from who would prevail on  
23 the jurisdiction argument today. The parties could open up,  
24 not today during this hearing, but open up some dialogue on,  
25 well here are the things that need to be done so the Court

1 doesn't need updates or status reports. Or, here are the  
2 things that need to be done, and if we could bring closure  
3 to the following issues or reach the following goals,  
4 whether that could be done a year from now, two years from  
5 now, anything less than December of 2019, or whether it was  
6 isolated, for example, on the *Olmstead* issues -- although I  
7 will be the first to say that whether it was contemplated or  
8 not by the parties, one way or the other on the *Olmstead*  
9 issue, it contemplated the Court approving the Plan, which  
10 has already been done.

11 And so, I didn't come into the courtroom assuming  
12 that my role here today is to approve amendments or  
13 revisions, as opposed to getting an update, opening up the  
14 lines of communication, and see what the next steps are; and  
15 also, being as transparent as possible with the public.

16 So, whether or not the parties wanted to look at  
17 something, actually I think that is something that the  
18 lawyers many years ago in the *Welsh* case might have done  
19 when Tom Fable and Warren Spannaus got together with Luther  
20 Granquist and a few other folks and said: Well, can we  
21 with, instead of all of this, some of this additional  
22 litigation, can we have some -- set some goals here? Once  
23 they are met, the Court bows out. But, we will leave that  
24 for another day, but it's, I think, one option. And  
25 obviously, I will leave that up to the parties.

1           So, in that context, I think you were ready to  
2           address the Court, Ms. Tingerthal. I hope you don't mind  
3           that I quoted your September of 2016 letter, but I thought  
4           that kind of captured kind of, if not the only issue, the  
5           key focus of kind of hopefully where we are all headed with  
6           the *Olmstead* Plan. So --

7           COMMISSIONER TINGERTHAL: Thank you, Your Honor.  
8           And I do have to say, I think the initial Plan with that  
9           cover letter to the people of Minnesota really did a good  
10          job of grounding the Subcabinet in what our real guiding  
11          principles are, and we refer to them frequently.

12          THE COURT: I would agree.

13          COMMISSIONER TINGERTHAL: So, you asked in this  
14          item of the Agenda for a report on the Plan implementation.  
15          And what I will talk about is results that have been  
16          included in the Quarterly Reports that have been approved by  
17          the Subcabinet, have been posted for public review, and have  
18          been submitted to the Court.

19          I think our overall message is that we are making  
20          progress in the right direction. And most of the goals  
21          either have been met or are showing significant progress in  
22          the direction of meeting goals. There are some goals where  
23          the first measurement point has not been reached yet. There  
24          are also goals where they have not been met, and we have  
25          talked about those extensively in the Subcabinet. And it is

1 very much an open dialogue between the Subcabinet, the  
2 Implementation Office and the State Agencies. And we will  
3 tell you about steps that are being taken to improve the  
4 progress going forward.

5 One of the things that is very apparent to me is  
6 that this is a very ambitious Plan. And progress on the  
7 Plan towards those goals requires changes in the way that  
8 thousands of people around the State of Minnesota do their  
9 work. And it also requires changes in how people with  
10 disabilities really think about how they want to receive  
11 services.

12 And so, given how many people are impacted by the  
13 changes that have been made, that are being implemented,  
14 that takes time. And so, we measure whether we are making  
15 sufficient progress and talk about that all of the time.

16 As a result of the changes we have implemented  
17 over the last year, there is now a greater ability by State  
18 Agencies to measure progress. When we first met, one of the  
19 concerns that the agencies had is that in many cases there  
20 just wasn't good data in place to be able to measure whether  
21 progress was actually being made. And so over the last two  
22 years there have been investments in data systems. You will  
23 hear about one of those from Assistant Commissioner Korte  
24 that are beginning to improve our ability to actually  
25 measure that progress.



1           The Annual Report which was submitted to the Court  
2           in December shows our progress over the course of the year.  
3           It is more or less a summary of the Quarterly Reports that  
4           were submitted earlier in the year.

5           It is my preference, if it is acceptable, that I  
6           will review some of the areas of success, and then I would  
7           like Deputy Commissioner Johnson and Assistant Commissioner  
8           Korte to come up and address the areas where we need  
9           improvement.

10           THE COURT: Okay.

11           COMMISSIONER TINGERTHAL: So, first of all, areas  
12           of success. The first is the CADI waiver, a waiting list.  
13           This is called waiting list goal number one. And the  
14           commitment there was to eliminate the CADI waiting list by  
15           October 1st. And I am pleased to say that that goal was  
16           met. As of the end of June 2015, there were 1,254 people on  
17           the waiting list. As of September of 2016, there were zero  
18           people on the waiting list.

19           We continue to monitor this goal because we know  
20           that it is something that changes constantly. And the  
21           Department of Human Services reports quarterly on the status  
22           of the waiting list, so we know that it is not a  
23           one-and-done.

24           THE COURT: If I may ask, and maybe you will say  
25           let me finish and then I will talk generally about it. So,

1 given that success that was made, what do you attribute the  
2 key to that success? Obviously, what do you -- there must  
3 have been some efforts by a number of individuals or  
4 something. You know, what kind of made that all happen?

5 COMMISSIONER TINGERTHAL: Your Honor, the  
6 significant change that happened was actually taken by the  
7 State Legislature in 2015 that removed a cap on the amount  
8 of funding that could be provided by the Department of Human  
9 Services in this area.

10 THE COURT: So, should I wait to ask, because this  
11 probably applies to much of almost everything we are doing  
12 today. But, I had a question here that I was going to sit  
13 tight on, but in light of what you just said there, which  
14 doesn't surprise me, but as this success -- and you proceed  
15 with the *Olmstead* Implementation Plan, do you have concerns  
16 that in a positive or a negative way that it will be  
17 affected by, I guess I will use the word, State budget  
18 priorities? Or we probably aren't going to know until we  
19 get down the road apiece in August of this year or when we  
20 kind of see where things are at?

21 COMMISSIONER TINGERTHAL: Your Honor, there is  
22 language in the *Olmstead* Plan as it was initially adopted  
23 and in the Amended Plan that addresses the issue that we are  
24 subject to the act of the Legislature in appropriating funds  
25 for state programs. And so, it is always something before

1 us to continue to make the case for the issues that are  
2 affected in the *Olmstead* Plan, as well as our other  
3 programs. So, it is an every year event to continue to make  
4 the case --

5 THE COURT: Well, and if the Court would ever deem  
6 it appropriate, whether it is in an order or other work,  
7 because I am probably old-fashioned and going to show my age  
8 here, but I still think and actually it may have been a  
9 phrase I am actually borrowing from the late Hubert  
10 Humphrey, it won't be an exact quote. Whether you're a  
11 state agency, a court system, no matter what we are, I think  
12 our communities -- we are judged by how we treat the most  
13 needy and vulnerable amongst us in terms of our -- and so if  
14 there is something -- you know, that is why I suppose it is  
15 so important, we each have our jobs to do. But, working  
16 together -- because I think few people could question that,  
17 well, this is headed in the right direction, and that is  
18 what you are trying to do here with some of the most  
19 vulnerable individuals in our State.

20 And I interrupted you. You headed down to another  
21 one of the goals, I think, and results, so --

22 COMMISSIONER TINGERTHAL: Yes. Thank you, Your  
23 Honor. The second item I would like to call attention to is  
24 known in the goal as positive support goal number three, and  
25 that is the number of individuals approved for use of

1 mechanical restraint. And the goal that was set for 2015  
2 was to reduce that number to 31. And the goal for 2016 was  
3 to reduce that number to no more than 25.

4 Very pleased to say that the accomplishment  
5 numbers were lower in both cases. In 2015, it was down to  
6 21 people approved for use of mechanical restraints. And in  
7 2016 that number dropped to 13 people approved for use of  
8 mechanical restraints.

9 A related issue is also the reduction in the  
10 actual number of restrictive procedures and report of  
11 restrictive procedures for those people approved. And the  
12 goal was to reduce the number of people experiencing a  
13 restrictive procedure by 5 percent, or 54 individuals; that  
14 was in 2015. It was actually reduced by 19 percent, or  
15 2,009 individuals. And in 2016 the goal was to reduce the  
16 number of people experiencing restrictive procedures by 5  
17 percent or 51 individuals. It was actually reduced by 12.2  
18 percent or 106 individuals.

19 The number of reports was reduced dramatically.  
20 The goal in 2015 was to reduce the reports that were  
21 experienced by 430. It was actually reduced by 3,478. And  
22 in 2016, the goal was to reduce by 409. It was actually  
23 reduced by 1,116.

24 We move next to the number of individuals with  
25 disabilities living in integrated housing of their choice.

1 This is also known as housing and services goal number one.  
2 The goal in 2015 was to increase the number of people over  
3 the baseline position by 617 individuals. That was actually  
4 increased by 903 individuals. In 2016 there was quite a  
5 step up in the goal to increase over the baseline by 1,580,  
6 and it actually increased by 1,591 individuals.

7 And I would just comment that as my day job, as  
8 the Head of the Housing Finance Agency, I can just comment  
9 on the unprecedented level of cooperation between the  
10 Department of Human Services which has often the funds that  
11 are available for supporting people with rental assistance  
12 and services, and we often are responsible for the bricks  
13 and mortar, if you will. And we have really enjoyed a very  
14 high level of cooperation with the Department of Human  
15 Services in that regard.

16 THE COURT: Where, if at all, does the issue of --  
17 when you talk of individual housing -- and I can, apart from  
18 your answer, maybe I have asked this before and I will  
19 explain in a moment or two why I am asking. But, where does  
20 like the four-person group home fall, for example, in that  
21 context?

22 COMMISSIONER TINGERTHAL: Your Honor, I would say  
23 that that is not my area of expertise.

24 THE COURT: So -- and I wasn't so much that --  
25 but, in other words, when you're talking, because somebody

1 listening from the outside, whether they are here in the  
2 courtroom or elsewhere, may say, well, I wonder by  
3 individual housing if they mean living literally in their  
4 own apartment or place, with or without a roommate. And you  
5 just answered the question, that is exactly what we mean, as  
6 opposed to the quote "group home" setting, right?

7 COMMISSIONER TINGERTHAL: Yes, that is correct, in  
8 the case of this goal.

9 THE COURT: All right.

10 COMMISSIONER TINGERTHAL: The next goal is  
11 individuals with disabilities in integrated employment.  
12 This is also known as employment goal number one. And there  
13 the focus is on both vocational rehabilitation services and  
14 the State services for the blind, both categories. And the  
15 goal has been exceeded both in 2015 and 2016.

16 In 2015, the goal was 2,853 new individuals moving  
17 into integrated employment. The actual outcome was 3,236.  
18 In 2016 the goal stepped up to 2,911, and the actual  
19 outcomes were 3,248.

20 THE COURT: Now, is there -- and it may again -- I  
21 am sure you will be free to say, well, that is a separate  
22 issue from what you just raised. I have gotten some  
23 letters, and usually depending on the nature of the letter,  
24 and anybody is always -- a party, one of the lawyers and  
25 their clients are always free to come in and say: Well, can

1 we see your box full of letters? I sent some on to the  
2 parties, depending upon the nature. But, it seems like I  
3 have gotten some letters saying -- I am now going to talk  
4 about -- I don't want to single out particular places, but I  
5 remember getting a couple of letters from -- and this isn't  
6 -- I am not speaking positively -- negatively about Merrick,  
7 but I happen to -- from my letters: Our hours have been  
8 reduced there. We are working -- we are sitting in the back  
9 room now because they say we can't work -- we are working  
10 fewer hours than we have ever worked.

11 And I know one thing you are probably for certain  
12 going to say, well that is not what we are talking about  
13 working there. And if you're saying, well, that would be an  
14 area that somebody else would speak to. But I have gotten  
15 some letters like that, and I was kind of -- and I do  
16 confess I don't think I have really followed up on those,  
17 but --

18 COMMISSIONER TINGERTHAL: Your Honor, indeed this  
19 goal particularly does not address a facility like Merrick,  
20 but rather true integrated employment with, I would say,  
21 market employers. And, you know, I am sure we all know that  
22 there are effects going on as things change. And perhaps  
23 when Deputy Commissioner Johnson --

24 THE COURT: In fact I'll -- you may say, well,  
25 that is what Deputy Commissioner Johnson -- and maybe I

1 mentioned this, and if I did I apologize, in one of our last  
2 get-togethers. But, one of the most -- how would I call it?  
3 Vigorous debates, in one of our conferences in chambers,  
4 sometime in the last three years was two individuals. Each  
5 had a son or daughter with a developmental disability. And  
6 one was very upset that there wasn't more efforts to  
7 integrate their child, adult child into the community with  
8 the kind of work you're now -- because this goes back  
9 probably at least three years. And that the -- I guess the  
10 phrase that was used back at that time was "sheltered  
11 workshop," was never intended to be the end of the line.

12 The other parent was equally robust in saying, but  
13 that is the best I can ever hope for for my daughter. And  
14 to condemn all of those -- and I think for different reasons  
15 both parents were correct, you know. So I was just -- and  
16 maybe Deputy Commissioner Johnson -- but yes, so I was  
17 thinking, well, one size doesn't fit all. So, I am hoping  
18 that however this goes forward, that yes, the integration is  
19 the focus in the community for sure, especially the  
20 employment. Because as I said before, one of the most  
21 common questions I am asked when I visit or I have people  
22 with disabilities come to visit the courthouse: Judge, can  
23 you help me get a job where I can use my brain? That is a  
24 fairly common statement that is made.

25 But, I saw this very robust exchange, and they



1 were both correct, probably, for their -- so that is kind of  
2 why I asked the question. There's probably --  
3 hopefully there is room, because I know I won't single out a  
4 couple of the other states. It hasn't happened here. But  
5 actually, between case law and legislation, they prohibited  
6 the so-called sheltered workshops. And I thought of this  
7 parent talking about if it wasn't for that, my daughter  
8 would be sitting at home staring at a television set every  
9 day, alone.

10 So, if anybody can shed any light on that today;  
11 that is fine, too. But I think I can tell by your  
12 submissions that you have never -- you're saying, look it,  
13 we agree, one size doesn't fit all. There has to be this  
14 individualization, so -- I interrupted you again, too.

15 COMMISSIONER TINGERTHAL: Your Honor, I would just  
16 say that your sharing those two stories I think is very much  
17 reflected in another theme from the cover letter for the  
18 Plan. And that is, we very much use the principle of  
19 choice, whenever possible. So, that is at the core of our  
20 debate.

21 THE COURT: And I am glad to hear that. Have you  
22 ever heard -- then I will stop interrupting you. Somebody  
23 once said -- maybe it was in a letter. They didn't say it  
24 during a hearing or a conference. Well, yes, we value  
25 individual choice, but that means an individual, quote,

1 "informed" choice. And that means anybody -- by the way, I  
2 disagreed with what I am about to say they said, but they  
3 said an informed choice means nobody should ever want to  
4 live in a group home. And nobody should ever want to work  
5 anywhere but out -- well, you know, maybe they are not able,  
6 in addition to not wanting to. But their qualifier, which I  
7 respectfully disagreed with was, well, anyone with  
8 "informed" choice would never want to do anything -- I  
9 suspect by you -- you kind of already said that earlier.  
10 So --

11 COMMISSIONER TINGERTHAL: Right.

12 THE COURT: All right. I will be quiet here.

13 COMMISSIONER TINGERTHAL: Thank you, Your Honor.

14 The next item I want to mention is the area of preventing  
15 abuse and neglect. This is a goal area that was added to  
16 the Plan last June. And we are at the early stages of this  
17 particular goal area, but I am pleased to say that the  
18 Subcabinet has authorized the creation of an Abuse and  
19 Neglect Prevention Plan and has authorized the establishment  
20 of a committee which is allowed under our procedures to  
21 oversee the implementation of that Plan.

22 We knew that it was a particular area of  
23 expertise. We are currently in the process of recruiting  
24 co-chairs for that committee and members of that committee.  
25 And our goal is to have the first meeting of that committee

1 established by May of 2017. We use a process within the  
2 Subcabinet of any work that is being done by a committee, we  
3 actually establish a charter, and sign off on the charter  
4 for the work of that committee.

5 The final goal area that I want to comment on is  
6 in transportation. And there we are having some good  
7 results in terms of meeting goals for the number of  
8 accessible pedestrian signals, other goals that weren't  
9 established at the time the Plan was approved have now  
10 established baselines, and we also contemplate an overall  
11 increase in transportation rides, especially in greater  
12 Minnesota where the goal was not met in 2015.

13 We haven't seen those results yet because of the  
14 lag time for that goal, but we do expect progress to be  
15 made. I think one of the most significant areas in  
16 transportation is that given that it is a very  
17 forward-looking endeavor, typically transportation goals are  
18 10 or 15 years out in the future. And during the time that  
19 the Plan has been in place, the Minnesota Department of  
20 Transportation just recently went through a very public  
21 process of revising both what they call their multimodal  
22 plan, as well as their transportation plan. And that covers  
23 all manner of people getting around, walking, bicycling,  
24 transit, automobiles, et cetera.

25 And it is quite noticeable in both of those plans

1 that some of these changes that were culled out in the  
2 *Olmstead* Plan are now incorporated as a matter of course.  
3 So, when there is State funding that is incorporated into a  
4 -- the reconstruction of an intersection, let's say, then  
5 there is a mandate that the accessible pedestrian signals  
6 are just included as a matter of course. So, I think there  
7 has been some real progress made incorporating this in the  
8 normal course of planning, which I think is really a great  
9 direction for us to be moving as a State.

10 THE COURT: Well, and it gets it on their horizon.  
11 So, they obviously can't claim ignorance to, oh, we never  
12 thought about that. So that is a good thing.

13 COMMISSIONER TINGERTHAL: Precisely. The final  
14 comment, before asking Deputy Commissioner Johnson to  
15 address some of the areas of improvement, that I wanted to  
16 talk about is process. I think over the last year the  
17 Subcabinet and the *Olmstead* Implementation Office have  
18 really become a fixture, if you will. And we have  
19 established ongoing processes with the State Agencies, so it  
20 is again a part of the accepted work and routine.

21 We have submitted Quarterly Reports starting in  
22 February of 2016. And the first Annual Report in December  
23 of 2016. We also have a very robust process for refreshing  
24 Workplans. We use those as really the working document that  
25 agencies can tweak and make adjustments as they go along,

1 and very much function as their daily barometer for how  
2 progress is being made on some of the individual things that  
3 have to happen within agencies in order for the larger goals  
4 to be accomplished.

5 We completed our very first annual Plan Amendment  
6 process which we will talk about a little bit later. We had  
7 multiple opportunities for public comment.

8 This may not sound like a big deal, but we do have  
9 regular meetings of the Subcabinet. Currently, we meet  
10 monthly. Some months we have had two meetings, and there is  
11 also an Executive Committee structure to make decisions in  
12 between. And one of the things that I think really speaks  
13 volume is that we have an excellent track record of  
14 attendance, either by commissioners, or in the case that a  
15 commissioner can't be there, it is either a deputy  
16 commissioner or an assistant commissioner that is their  
17 designee. So, at virtually every meeting we have a full  
18 table of the ten representatives on the *Olmstead* Subcabinet.

19 The *Olmstead* Implementation Office is now fully  
20 staffed. And it is really clear to me from the discussions  
21 of the Subcabinet that they have set an expectation of  
22 accountability from the State Agencies.

23 So, it is not a setting where people are very  
24 polite to each other and just let things roll on; but  
25 rather, I have seen the Subcabinet members really take a

1 problem-solving approach when something tough is facing us  
2 and offer suggestions and dialogue with their fellow  
3 commissioners about how we might break through a barrier  
4 that might be before us.

5 And as I mentioned earlier, we now do have some  
6 better ability to measure things that we couldn't before.

7 THE COURT: One other question, I first want to  
8 just comment that I couldn't agree more with you. I think  
9 process is so very important. And I think what you just  
10 described, if it is really going that way, that is a good  
11 thing. Because sometimes people set up -- apart from any of  
12 this litigation, set up committees, then you have a meeting  
13 and nobody shows up. We have all been in situations like  
14 that. But, they will say, the committee meeting was had --  
15 well, who exactly was there, you know? So, no, that is very  
16 good to hear.

17 How is the quality of life surveys coming? I  
18 mean, how's -- and maybe you're going to say, well, you're  
19 not -- you will have somebody -- I am just kind of curious  
20 how those are going.

21 COMMISSIONER TINGERTHAL: Your Honor, I will say  
22 that getting to the survey has taken a little longer than we  
23 had hoped, but it is the first time that anything of this  
24 scope and scale has ever been done. And as we worked with  
25 Colleen Wieck and others, we really decided that it would be

1 best to be deliberate and get the process in place that we  
2 think will give us the kind of robust information that we  
3 are seeking. But, we have now awarded the contract for the  
4 baseline quality of life survey, and we literally are in  
5 process with interviews.

6 We've received contact names from the many people  
7 that are receiving services, from Department of Human  
8 Services and Department of Employment and Economic  
9 Development, and Department of Education. And so we are now  
10 going through the initial calls and have identified a number  
11 of people.

12 We are due to have the results of that survey late  
13 next year. So, that is the baseline.

14 THE COURT: Okay.

15 COMMISSIONER TINGERTHAL: And then as we have  
16 talked with the contractor, we would then conduct either two  
17 or three additional surveys within the next three years.

18 The reason I say two or three, the consultants  
19 have said it might be better to wait 18 months between the  
20 surveys because you have a little better chance for people  
21 to go through the annual cycle and, you know, maybe there  
22 has been a move to a different residence or something like  
23 that in that period of time. And that might give us a  
24 little better reflection of people's stabilized change that  
25 could be reflected.

1 THE COURT: I thought I might hear from the Deputy  
2 Commissioner, and then whether Ms. Opheim or Ms. Wieck have  
3 anything after that in addition to counsel? Is that order  
4 acceptable to everyone? Mr. Ikeda? Mr. O'Meara?

5 MR. O'MEARA: Yes.

6 THE COURT: And we might, depending on where we  
7 are, we will probably take a break before we go back to  
8 that, just for a morning break for my court reporter and  
9 others, here. So, I think you said that the Deputy  
10 Commissioner was going to talk? All right.

11 COMMISSIONER TINGERTHAL: Yes, Your Honor. And  
12 following the Deputy Commissioner, if you would, Assistant  
13 Commissioner Korte from Education also has a comment on one  
14 goal area.

15 THE COURT: All right.

16 COMMISSIONER TINGERTHAL: Thank you.

17 THE COURT: What did we do in the old days without  
18 those podiums that went up and down the --

19 DEPUTY COMMISSIONER JOHNSON: Thank you, Your  
20 Honor. It definitely is a convenience for those of us who  
21 are taller.

22 THE COURT: I probably said before, unrelated to  
23 today, it's why they have architects make these decisions  
24 and not Judges because, you know, while I think we were  
25 respectful to lawyers who could address us or a witness or a



1 jury -- say they couldn't stand for medical reasons or were  
2 in a wheelchair, they would be at counsel table. The fact  
3 is that comes all the way down, and now lawyers can come  
4 right to the podium, even if they have to sit, whether it is  
5 for medical reasons or in a wheelchair. And they can  
6 address whether it is the jury -- so yeah, but it also works  
7 with the height differentials, as well. So, I guess it is  
8 good for all of us. So, whenever you're ready.

9 DEPUTY COMMISSIONER JOHNSON: Thank you, Your  
10 Honor. I want to start by thanking Commissioner Tingerthal  
11 for her leadership around the *Olmstead* Subcabinet and the  
12 great work that has been done there, as the agency that is  
13 actually the Plaintiff in the lawsuit. We have a different  
14 arrangement on some of these issues, but this has just been  
15 a great way to bring other agencies together with the work  
16 that we do at DHS to work on improving services to people  
17 with disabilities. And she has really put a great structure  
18 around that and kept us on task.

19 THE COURT: And it sure looks that way to me, too,  
20 yes.

21 DEPUTY COMMISSIONER JOHNSON: Yes. I wanted to  
22 talk about a couple of the goals that we have been  
23 struggling with and the work that we are doing there. First  
24 of all, transition goals two and three, and I am going to  
25 talk about them together because they are pretty similar.

1 Transition goal two relates to the number of individuals at  
2 the Anoka Psychiatric Hospital who are no longer needing  
3 hospital level of care, and our desire to reduce that  
4 percentage. And transition goal three relates to the  
5 Minnesota Security Hospital and transition of patients out  
6 of the Security Hospital to more integrated settings.

7 The primary challenge with both of these is really  
8 housing in the community for people who have some very  
9 difficult challenges. It makes it difficult for the  
10 community providers to provide placements for people who are  
11 violent, have aggressive behavior, and in some cases have a  
12 sexual predator history, as well as their mental illness or  
13 other disabilities, high-risk for self-injury, medication  
14 issues require a lot of monitoring and a lot of staffing.

15 And so, we have worked on a number of these and  
16 been successful at placing people into the community, but  
17 they tend to be very challenging placements to create in  
18 many instances.

19 Some of the work that we have been doing around  
20 this in a couple of ways, one is obviously the placement  
21 responsibility in the community lies with the county or  
22 local agency. And we work with counties very closely on  
23 this, particularly some of the larger counties that have  
24 more individuals in those two institutions.

25 We also -- and this was not something that made

1 the counties happy, but two years ago we placed 100 percent  
2 county share on the bed days that someone spends in Anoka  
3 when they are not meeting the hospital level of care to  
4 essentially incent counties to work very diligently at  
5 moving individuals out and back into the community. And as  
6 I said that was not well received by counties. But, they  
7 have identified that a \$1,400 a day bill from Anoka is a lot  
8 of money --

9 THE COURT: I suspect so.

10 DEPUTY COMMISSIONER JOHNSON: And that investing  
11 in a community placement can be a significantly less  
12 expensive way to go. So, it has helped, I think, to provide  
13 a certain amount of motivation behind that.

14 We also have proposed before the Legislature now  
15 to take some of those dollars that the counties are now  
16 paying us and actually reinvest them back into some of the  
17 services and supports that counties say they need in order  
18 to successfully make those placements.

19 So, it is something of a compromise with the  
20 counties around how we handle those dollars, recognizing  
21 that they don't always have the resources for these more  
22 complex placements, either; and so trying to address that  
23 issue.

24 We also, and this is something we talked about, I  
25 believe, in the last update, because this was in the works

1 at the time, have created a competency restoration program,  
2 a standalone program in St. Peter, for those individuals who  
3 are committed to the Commissioner for Competency  
4 Restoration. That is a Rule 20 Commitment for people who  
5 are in the legal system who don't need to be at Anoka  
6 because they don't need a hospital level of psychiatric care  
7 and don't need to be at the Minnesota Security Hospital  
8 because they don't need that level of security; but, can be  
9 in a setting that is secure and is locked, but is in the  
10 community, as well.

11 We did open that new program in January of this  
12 year. We have 25 individuals who are now being served in  
13 that setting. Our goal for doing that was really to free up  
14 the beds in the Anoka and St. Peter Security Hospital for  
15 those people who really need to be in those beds, and to  
16 help with this issue of having people getting backed up who  
17 don't really belong in either of those institutions.

18 So, it has been successful so far. We moved a  
19 number of the people over from the Security Hospital  
20 initially when we opened the facility. And I get the  
21 reports weekly and there's always two or three a week from  
22 Anoka who are moving to the St. Peter New Competency  
23 Restoration Program as a more appropriate placement, and we  
24 think that will help in the long run.

25 One of the things we are also going to do with the

1 data around these two measures going forward or proposed as  
2 part of the Plan revision is to separate out those who are  
3 committed to us as mentally ill and those who are committed  
4 to us for competency restoration, and just track those two  
5 sets of data separately so we can see where the differences  
6 are. They are different populations --

7 THE COURT: Yes.

8 DEPUTY COMMISSIONER JOHNSON: -- to some degree.  
9 And we think it might help us to better understand where the  
10 challenges are, who is really getting backed up and what  
11 that means as we go forward to try to make better progress  
12 on these two goals, because they have been ones that have  
13 been vexing us now for the couple of years that we have been  
14 working on it.

15 Now, Mr. Chair -- or, I'm sorry, Your Honor.

16 THE COURT: I will take that.

17 DEPUTY COMMISSIONER JOHNSON: I have been  
18 testifying too much at the Legislature lately, obviously.

19 THE COURT: Because the Chair implies I might have  
20 some fiscal control over some things. I don't.

21 DEPUTY COMMISSIONER JOHNSON: Thank you, Your  
22 Honor. That would be nice if you had some fiscal control  
23 over this.

24 THE COURT: Yeah.

25 DEPUTY COMMISSIONER JOHNSON: Positive supports

1 goal three, this is a goal where we have actually been doing  
2 quite well on half of this goal, and not so well on the  
3 other half. And the half that we have done well on,  
4 Commissioner Tingerthal actually mentioned. And that is the  
5 number of individuals who are subject to mechanical  
6 restraints, where we actually are below with the 13 on and  
7 our current report, the goal for last year, and have been  
8 moving pretty well toward the goal of getting below 7 by  
9 2019.

10 The other half of this goal is the number of  
11 mechanical restraints or the actual instances in which they  
12 are used. And that is the number that we have not done as  
13 well on and are at about twice the goal that we had set for  
14 last year in the Annual Report.

15 This really gets into a lot of individual work.  
16 And we review all of the mechanical restraints that happen.  
17 They are reported to us and we follow-up with all of those  
18 that are outside of the 13 individuals who we have already  
19 given approval for the use of mechanical restraints around.

20 A chunk of this are people who are -- when the  
21 positive supports rule was implemented in 2015, there was a  
22 year phaseout built into it that allowed some of the new  
23 providers who were newly under the positive supports rule to  
24 use mechanical restraints during the phaseout period with  
25 reporting to us and oversight by the agency. And that

1 period has ran out last year, and so we are in the process  
2 of transitioning some people. We expect some of those might  
3 end up being a part of the group that we approved for  
4 mechanical restraints going forward. We were hopefully  
5 trying to eliminate that as much as possible.

6 In our last Quarterly Report, only one of the 161  
7 mechanical restraint instances that were used was actually  
8 an unauthorized and unapproved usage. And when we contacted  
9 that provider, the provider had actually already recognized  
10 it as having been unauthorized and taken corrective action.

11 So, we are providing pretty consistent oversight  
12 to what is happening with these. I think particularly the  
13 issue for us going forward, and we have a team that works on  
14 this, is to work with the providers who are working with  
15 those 13 individuals to try to reduce the number of  
16 restraints that are being used with -- and that was 80 in  
17 the last quarter for those 13 people, which is a fairly high  
18 number.

19 Your Honor, I wanted to mention one other thing,  
20 since we were talking about barriers to *Olmstead*. And you  
21 touched on this a little bit earlier at one level. And I  
22 mentioned this I believe the last time we were here for the  
23 *Jensen* conference, as well. And that is our concern about  
24 what is happening in Washington, actually, today relative to  
25 the Medicaid Program and Medicaid funding.

1           And our concern, strong concern, that the limits  
2           on funding, federal funding for the Medicaid Program will  
3           have an impact that will play out over years in Minnesota  
4           and potentially affect our ability to continue to provide  
5           the level of services that we have of people with  
6           disabilities, as well as other populations within Medicaid,  
7           low-income individuals and seniors who depend on the  
8           services under this program.

9           We have been very active in trying to provide as  
10          much information and advocacy around helping all of those  
11          decision makers involved understand exactly what the impacts  
12          would be for Minnesota. We set up a page on our website.  
13          We put out documents with almost every turn of the new bills  
14          that have come in.

15          Commissioner Piper was out in Washington meeting  
16          with our delegation and others, I believe, the week before  
17          last around this issue as well. But I wanted to talk about  
18          that here, because I understand we were talking about  
19          barriers to success with *Olmstead*. This is certainly  
20          something on the horizon that would change the dynamic  
21          considerably in Minnesota.

22          THE COURT: And it was touched on, I think -- was  
23          it two days ago in the *Minneapolis Trib*? The Commissioner,  
24          and some others, I think Steve Larson and some others, not  
25          to exclude anybody, but there were a number of people, I



1 think, that expressed the same concerns about the impact on  
2 this group it may have. So --

3 DEPUTY COMMISSIONER JOHNSON: So, Your Honor, I  
4 don't have anything else. I would turn it over to Assistant  
5 Commissioner Korte.

6 THE COURT: One question, it has been a couple of  
7 years now since I've -- toured is probably not the right  
8 word -- been to the St. Peter Security Hospital. But, the  
9 new facility, if I were to go there, is there like a -- it  
10 is a locked facility, but would it be -- is there like a --  
11 if I am a resident there, do I have more freedom of movement  
12 there than if I was at, say, Anoka Hospital or St. Peter? I  
13 don't know. Maybe I should know, but I don't.

14 DEPUTY COMMISSIONER JOHNSON: Your Honor, the St.  
15 Peter -- the Community Competency Restoration Program that I  
16 was talking about is actually not on the St. Peter Campus.  
17 It is in the City of St. Peter. It is actually a facility  
18 we used to use for -- I get confused because we made three  
19 moves in all of this. We used to use it for a CD treatment  
20 program. And we essentially moved that program to another  
21 building and repurposed it for the Community Competency  
22 Restoration Program. So, it is not actually on the campus.  
23 It is a separate facility, separate building in the  
24 community.

25 THE COURT: All right, thank you.

1 (Discussion off the record.)

2 THE COURT: Okay, we can go to Commissioner Korte,  
3 and then we will take a break. Not that we are done, but we  
4 will take a short break.

5 And of course you saw that podium go up or down so  
6 you can put it wherever you like it.

7 ASSISTANT COMMISSIONER KORTE: Thank you, Your  
8 Honor. Thankfully Deputy Commissioner Johnson is also a  
9 tall fellow, so I think we are in a good spot here.

10 Your Honor, my name is Daron Korte. I am an  
11 Assistant Commissioner at the Minnesota Department of  
12 Education. I wanted to talk about three goals that we have  
13 in the *Olmstead* Plan that we are working on some  
14 improvements.

15 I will start with positive supports goals five and  
16 four, which are kind of related. They expect a decrease in  
17 the number of students with disabilities receiving -- or a  
18 decrease in the number of incidents of the emergency use of  
19 restrictive procedures in a school setting on students with  
20 disabilities, and then also a similar reduction in the  
21 number of students with disabilities who are receiving those  
22 restrictive procedures.

23 We have not met our goal in these two areas and we  
24 have a couple of reasons why we think that is happening, and  
25 some strategies on how we plan on improving that. We have

1 seen an actual increase in the number of students that are  
2 receiving emergency use of restrictive procedures. And part  
3 of the reason we think that is is because the way we  
4 structured the goal kind of assumes that that student  
5 population is static, when really it is fluid. You know,  
6 kids come in and out. In '15-'16 school year we saw an  
7 increase of 7,375 students during special education --  
8 receiving special education services over the prior year.  
9 So, just because we have a sheer number of increase in the  
10 total number of students, we think that that is probably  
11 part of the reason why we are struggling to meet our goal  
12 here. Part of it is also that we believe our reporting of  
13 these incidents has improved as we continue to ensure that  
14 districts are properly trained on what they are supposed to  
15 be reporting, how they are supposed to be reporting, that we  
16 are actually getting more reports coming in and we are  
17 actually probably getting a little closer to our baseline,  
18 where there was probably some incidents that were going  
19 unreported before.

20 THE COURT: I think you can assume that, yes.

21 ASSISTANT COMMISSIONER KORTE: Yeah.

22 THE COURT: I think so.

23 ASSISTANT COMMISSIONER KORTE: Yeah. So, we do  
24 have a number of strategies on how we are planning on  
25 improving this goal and making some catch-up, and we do have

1 a request in to change the goal to account for that fluid  
2 nature of student enrollment. So, we would be looking at  
3 the percentage of students, the percentage of incidents, as  
4 opposed to just that hard number that may fluctuate over  
5 time. And we are continuing to work with the Restrictive  
6 Procedures Stakeholder Work Group that we have that has  
7 parent advocates, it has school folks, it has special  
8 education directors, it has DHS folks and MDE folks on it.  
9 We have been working together for a number of years and have  
10 had some great success, particularly with the elimination of  
11 the use of prone restraints and prohibition of that in  
12 statute now.

13 And they are going to continue to work on  
14 prioritizing training and resources to reduce the use of  
15 restrictive procedures in the school setting and then  
16 eventually eliminate the use of seclusion altogether in  
17 school settings, which is part of our *Olmstead* Plan.

18 We have a 2017 request in to the Legislature for  
19 funding to support some of that training and those resources  
20 for teachers, and so hopefully we can get some help from  
21 them, as well.

22 THE COURT: I was just about to wait until the  
23 end, but I suppose, in this area of education, I suppose I  
24 would think most educators would be pleased with the  
25 decision the U.S. Supreme Court made earlier in the week.

1 But, we can leave that for a different day, so --

2 ASSISTANT COMMISSIONER KORTE: Absolutely, Your  
3 Honor. We were very pleased to see that. And I think the  
4 National Special Education Directors Association actually  
5 put out an amicus brief in that case supporting the parents'  
6 side and the students' side in that. And part of their  
7 argument is that, and I tend to agree with it, that our  
8 districts are already providing that higher standard of  
9 service.

10 THE COURT: And I understand the lawyer for the  
11 parents kind of wanted to take it one step further, but then  
12 I will just say this, and more than enough said.

13 I mean, I am generally familiar, separate from  
14 that case, with the frustration of a lot of educators for  
15 many years that the Feds, to use that word respectfully,  
16 mandate services but don't pay for most of them. And that  
17 gets passed off to the local school districts, which makes  
18 it -- that creates a whole another issue, but we can't solve  
19 that here this morning. But, I have encountered that over  
20 the years myself in a different context. But, I interrupted  
21 you, so --

22 ASSISTANT COMMISSIONER KORTE: That is fine, Your  
23 Honor. I think that is a great point to make. There  
24 haven't been proposed cuts at the Federal level to this  
25 point to Special Education Services funding, but granted

1 they are only funding at about 13 percent of actual cost in  
2 Minnesota right now.

3 But, we do believe that the cuts to Medicaid would  
4 adversely impact students with disabilities because a number  
5 of the services that are of a medical nature that are  
6 provided to students in a school setting are reimbursed with  
7 Federal Medicaid costs.

8 So, of course, districts would still be required  
9 to provide those services --

10 THE COURT: Right.

11 ASSISTANT COMMISSIONER KORTE: -- but they would  
12 have to absorb those costs, themselves.

13 So, just wanted to move on to our last goal which  
14 we are looking for some improvement on and that is education  
15 goal number two, and that is expecting an increase in the  
16 number of students entering an integrated post-secondary  
17 setting a year after they leave secondary education.

18 And the data source that we have been using for  
19 this is called the Post-School Outcome Survey. It is a  
20 survey that is sent out to all students who leave secondary  
21 education, whether graduating or leaving for other reasons.  
22 And it is a voluntary survey. It is a snapshot in time.  
23 The respondents will change every year.

24 So, in terms of developing consistent strategies  
25 based on trend data, there are some problems with using that

1 survey. So, over time we have seen an actual decrease in  
2 the number of students moving, but part of that is because  
3 of the response rates that we have. Those response rates  
4 vary. So, if you look at the percentage of respondents to  
5 that survey who are entering post-secondary, it has gone up  
6 a little bit, but not to the level that we've expected in  
7 the Plan.

8 So, as I mentioned, the Post-School Outcome  
9 Survey, the fluctuations in the number of students who  
10 graduate every year, the number of students who actually  
11 respond to the survey create some issues with creating trend  
12 data that we can use reliably.

13 So, we have integrated some data elements into a  
14 system we have called the Statewide Longitudinal Data  
15 System. And this is a multipoint data system that tracks  
16 data for all students in this state. So, it is going to  
17 allow us to do complete statistical analysis on this entire  
18 population that has been moved from the, kind of, K-12  
19 system into the higher education system. Our data systems  
20 are aligned between those two kind of agencies. So, we will  
21 be able to more thoroughly track how these students are  
22 moving to a post-secondary setting. And we think that will  
23 yield some better data that will allow us to make some  
24 changes and develop trends.

25 You know, but we would also point out that it is a

1 choice that these students are making, just like it would be  
2 with their non-disabled peers, whether or not they choose to  
3 enter post-secondary settings. So, we want to do everything  
4 we can to encourage them to do so, and support them to do  
5 so, remove barriers for them to do so. But ultimately,  
6 allow them to make that choice themselves.

7 THE COURT: I have often wondered about that  
8 because many of these students, unlike if they are not in  
9 special education classes, they may be there until the age  
10 of 21. And then I have always been curious about what  
11 transitions are planned for, you know, because obviously the  
12 biggest advocates for those children are their parents.  
13 But, I also wonder what kind of transition into what  
14 opportunities are out there. In fact, I forget which TV  
15 station it was on. There was just something I think last  
16 night, there was a short program on about that.

17 ASSISTANT COMMISSIONER KORTE: Your Honor, one of  
18 the things that schools struggle with is under kind of the  
19 old "No child left behind" regime of student accountability.  
20 There was a lot of pressure to graduate students in four  
21 years, whereas those students who had disabilities and may  
22 need some extra time to get those transition services, the  
23 districts are kind of put in this position of: Do we  
24 provide the services, or do we give them the diploma and  
25 take credit for the four-year graduation?



1           So, under the new Every Student Succeeds Act and  
2           the State Plan, we are working on that. We are trying to  
3           develop a plan where students -- or districts would get  
4           credit for that student even if they graduated within seven  
5           years when they are 21. So, it kind of relieves some of  
6           that pressure to push those students out, as opposed to  
7           giving them transition services. So, I have nothing  
8           further, Your Honor, unless you have any questions for me.

9           THE COURT: Thank you. Why don't we take 15  
10          minutes here? And then we will come back and is there  
11          someone else you would like to, on this agenda item, or  
12          should we get then a response from the rest of the folks and  
13          then we will move on?

14          MR. IKEDA: All right, Your Honor.

15          THE COURT: Okay, so then when we come back, Mr.  
16          O'Meara, we will have whatever -- assuming, I am not  
17          requesting any response, but if Ms. Opheim or Ms. Wieck or  
18          others -- and maybe I misspoke. I should have said Dr.  
19          Wieck. But, usually she gets irritated if you call her  
20          Doctor. So, we will take 15 minutes here and see you  
21          shortly. All right, thank you.

22          (Recess taken at 10:47 a.m.)

23          THE COURT: You may be seated. Thank you. I may  
24          have strayed from the agenda. I will go -- we won't spend a  
25          lot of time debating it, but if the parties were planning on

1 also addressing the Amended Report, and then having an  
2 overall response -- and I see everybody shaking their heads.  
3 That would be just fine. And so, thank you. You were both  
4 correct. All right. Whenever you're ready.

5 COMMISSIONER TINGERTHAL: Thank you, Your Honor.  
6 The next question that we have been asked to address today  
7 is report on the Revised *Olmstead* Plan to identify the  
8 amendments that were included and explain why these were  
9 done.

10 We saw changes only to 15 of the 39 goals in the  
11 Plan, and we tried to keep the revisions very modest since  
12 we know the Plan was originally negotiated. And so, we  
13 wanted to make sure we weren't making a lot of changes.  
14 There were also a number of updates to the text of the Plan,  
15 just to make sure that the Plan was up-to-date.

16 We received quite a number of comments, and the  
17 largest category of comments were in the area of concerns  
18 about stresses on the direct service workforce in the  
19 economy as a whole; that is, folks like personal care  
20 attendants --

21 THE COURT: And can I -- you know, I have read  
22 some, apart from the contents of the report, it seems like  
23 maybe not in the last couple of weeks, but the -- and I  
24 would ask this even if I hadn't been a nursing assistant in  
25 between college and law school. And I think I actually was

1 pretty good at it, opinions may vary.

2 But on a very serious note, we seem to be hearing  
3 more about lack of proper pay and maybe there is some  
4 training -- but I was just kind of wondering about that,  
5 too, whether it is something some or all of us can do. I  
6 mean, when somebody says, well, if two of us leave here  
7 today and quit our jobs and I go work as a personal care  
8 attendant and you go work at a restaurant washing dishes,  
9 that you will be paid more than I will be paid. And I am  
10 thinking, I wonder why so many people are so silent about  
11 such things. But anyway, I interrupted you. But yeah,  
12 there have been a number of things really quite apart from  
13 our case that seems to have come out. So, someone has been  
14 bringing that out in the open, I think.

15 COMMISSIONER TINGERTHAL: Your Honor, the comments  
16 we heard were very much in the same character --

17 THE COURT: In that area? Okay.

18 COMMISSIONER TINGERTHAL: -- as you just  
19 mentioned. And to that end, the Department of Human  
20 Services last summer actually convened what they dubbed as a  
21 workforce summit to really get a lot of people from the  
22 industry, direct care workers, themselves, agencies that  
23 employ direct care workers, people with disabilities, as  
24 well as the agency. And they actually developed a set of  
25 recommendations.

1           And in adopting additional language for the  
2           *Olmstead* Plan Amendments, we did not adopt a goal yet  
3           because we feel we don't yet know enough to know what a  
4           meaningful goal would be.

5           But, we did adopt three strategies. And one of  
6           the strategies is to actually incorporate the  
7           recommendations of that workforce summit as something that  
8           we will work from. That we will convene a cross-agency work  
9           group which will include people with disabilities, as well  
10          as the Office of Higher Education, because that is a place  
11          where perhaps career paths can be developed, and colleges  
12          and universities in the Minnesota State system. And that  
13          group will work on developing strategies and workplan  
14          activities that will then incorporate into the *Olmstead*  
15          Workplans.

16          To focus on the recruitment, training and  
17          retention of direct support workers within that arena,  
18          because all three of those areas, recruitment getting people  
19          to think about it as a career, then training them, and then  
20          finding ways that they can be retained are all very  
21          important to being able to address this.

22          And I would say that our Department of Employment  
23          and Economic Development Commissioner is also very acutely  
24          aware of this and has very much been a part of these  
25          discussions, as well.

1 I would be mistaken if I didn't mention that it is  
2 in fact a very challenging area. And as you mentioned  
3 earlier, there was just the *Star Tribune* article earlier  
4 this week --

5 THE COURT: Yeah.

6 COMMISSIONER TINGERTHAL: -- which cited this  
7 ability to pay using Federal and State dollars for this  
8 workforce, is really at the crux of what we'll have to be  
9 wrestling with.

10 The next three goals that were changed, were  
11 changed really in light of experience. And you have already  
12 heard about two of those from Deputy Commissioner Johnson in  
13 the transition services area. There was also a change in  
14 the community engagement goal, really to clarify the number  
15 of individuals in leadership roles, and also better define  
16 what we mean by publicly-funded projects.

17 The next cluster of changes I put under the  
18 heading of "changes to allow for more meaningful data  
19 collection and analysis." I mentioned this in my opening  
20 remarks that we have had the opportunity in several areas to  
21 find better data sources. And you heard about one of those  
22 with Assistant Commissioner Korte using this very robust  
23 SLEDS data and also in the area of crisis service goals,  
24 positive support goals, and also the transportation goals  
25 fall in that category.

1           The next category was really a housekeeping item  
2           and that was the incorporation of several goals that had  
3           been approved during the course of the year, provisionally  
4           approved by the Subcabinet in the crisis services area, and  
5           also one of the transportation goals. So, those had been  
6           discussed in public earlier in the year and simply  
7           incorporated into the Plan.

8           There was one technical correction in the crisis  
9           service goal number three, where it had inadvertently said  
10          45 percent of people, and it meant 45 people or fewer.

11          And finally, there were two other items, one in  
12          the transportation area where the baselines and goals were  
13          established, and there were some changes made to the timing  
14          so that the transportation goals are aligned with those two  
15          transportation plans that I mentioned in my earlier remarks.

16          And finally, with regard to peer support  
17          specialists, which had been a goal under the community  
18          engagement area, after a lot of talk with the Department of  
19          Human Services and Department of Employment and Economic  
20          Development, we felt that that really belonged under the  
21          employment goal, because it is a particular job  
22          classification and thought it would get more appropriate  
23          focus there. So, that really concludes my remarks about the  
24          Revised Plan.

25          THE COURT: All right. Thank you.

1           COMMISSIONER TINGERTHAL: The next item that we  
2 wanted to comment on is the Plan Review and Amendment  
3 process. And you asked that we identify the parts of the  
4 process that worked well and those that might need  
5 improvement.

6           So, just for the benefit of the Court, the process  
7 was commenced on October 25th of 2016, and really commenced  
8 with a very open public comment period that lasted until  
9 November 14th. During that time there were several  
10 in-person meetings, and also a reach-out to the various  
11 Governor-appointed councils that are focused on different  
12 aspects of people with disabilities. And it was a very,  
13 very open, you know, "tell us what you're thinking about"  
14 period.

15           We then had a Subcabinet meeting in which we  
16 drafted the actual first draft of the Plan Amendments and  
17 started to refine what we were hearing from that initial  
18 public comment period. And then the Subcabinet took action,  
19 provisionally approved those Plan Amendments. And it went  
20 back out for public comment for almost a monthly period. So  
21 it was a more focused comment period.

22           And then finally, after a few changes to those  
23 initially adopted Plan Amendments, we had the Subcabinet  
24 approve that and had one more comment period where we  
25 received a few small tweaks and adopted the Plan on February

1 22nd. We then filed the Report or the Plan with the Court  
2 on February 28th. Overall, we received 180 recommendations,  
3 or feedback from 60 individuals or agencies --

4 THE COURT: So, did that 60 number, did that  
5 surprise you as low, high, kind of about what you figured  
6 or -- I realize they made 180 recommendations, too, but was  
7 that -- did you predict how many you might get back?

8 COMMISSIONER TINGERTHAL: Your Honor, I am not  
9 aware that we set a particular goal, but I would say that  
10 from my involvement with some of the earlier iterations of  
11 the Plan, that we were pleased to see this level of  
12 engagement.

13 The other thing that I would say is that I think  
14 the comments we got were far more substantive. In the  
15 earlier stages when I think it was less understood of what  
16 the *Olmstead* Plan really was, we would often get very, very  
17 general comments that are a little hard to react to here.

18 It was clear that a lot of people commenting  
19 really understood that there is a Plan, that this was about  
20 things that are in the Plan and were, I would say, far more  
21 substantive.

22 THE COURT: And it sounds like by kind of what I  
23 read, that a number of the comments are on the  
24 person-centered planning, because they seem to understand  
25 what person-centered planning was, or whoever the



1 individuals -- whatever their relationships were. Because  
2 sometimes when I read things, I don't think a self-advocate  
3 or a parent or loved one -- they would understand it. But  
4 some people, I think, don't really understand the phrase  
5 "person-centered," but it looks like you have got some  
6 comments there, too. So --

7 COMMISSIONER TINGERTHAL: Yes, Your Honor.

8 We think that we got off to a pretty good start,  
9 but we do think that there is some room for improvement.

10 First of all, one of the requests that we will  
11 have is just a slight variation in the schedule for the  
12 Amendment to the Plan. Currently, your Order calls for it  
13 to be submitted at the end of February. And we would like,  
14 based on our experience, to recommend that we have until the  
15 end of March.

16 We would start the process at the same time, but  
17 what we found is that with the other scheduled reports that  
18 we have, the final Quarter Report also comes due in  
19 February. And having both of those documents due at the  
20 same time was difficult, I think both for the staff and for  
21 the public, because it was a little confusing that there  
22 were two things going on at the same time. So, that is  
23 something that would help us out in really keeping these  
24 processes straight.

25 The other thing that we think we can do a better

1 job of is finding ways to really enlarge the opportunities  
2 and the venues and the manner in which we receive input from  
3 the public, particularly people with disabilities and their  
4 families. And we have at the Subcabinet, we have authorized  
5 a work group which we are about to establish at our March  
6 meeting on Monday. And that is a community engagement work  
7 group. And this will be a number of individuals from all  
8 over the state. So, we will have issues of commenting both  
9 in the metro area and in greater Minnesota, and have both  
10 people with disabilities, as well as others on that group  
11 that will work with our Executive Director Darlene Zangara  
12 to really advise us on how we might do a better job in the  
13 coming year of the Amendment process.

14 Also in this past year, we took all of the public  
15 comments and we forwarded them out to the agencies who were  
16 working on the draft goals. And we asked that the people  
17 that presented the proposed amendments to the *Olmstead*  
18 Subcabinet would actually comment in their verbal comments  
19 to the Subcabinet about the comments they've received and  
20 how they had incorporated those comments.

21 I think the verbal process maybe wasn't quite  
22 enough, and so one idea that we will implement is in the  
23 next round of Plan Amendments, we would adopt a process  
24 where there would be an actual written summary of the  
25 comments received. And then whether those comments were

1 adopted or not; and if not, why not. So, that will be a  
2 change that we will make. And that concludes my comments on  
3 that section.

4 THE COURT: All right, thank you.

5 COMMISSIONER TINGERTHAL: Thank you.

6 THE COURT: Dr. Wieck, if you would like to step  
7 to the podium?

8 MS. WIECK: Sure.

9 THE COURT: I don't know if the podium is right at  
10 about the right height for you.

11 MS. WIECK: Thank you, Your Honor. Good morning,  
12 Judge Frank. My name is Colleen Wieck. And I serve as a  
13 consultant to the Court. I agree with Commissioner  
14 Tingerthal's presentation this morning and the submissions  
15 to the Court. I would ask for your consideration to accept  
16 the Amended *Olmstead* Plan, accept the Quarterly and Annual  
17 Reports, and also accept the Workplans that were submitted  
18 last September.

19 THE COURT: What do you think about extending that  
20 date to March? And then maybe if we were going to have a  
21 status conference, have it, say, then in April or something,  
22 or time it so everything comes in so people can see it,  
23 digest it, respond to it. Any thoughts on that?

24 MS. WIECK: Your Honor, I couldn't agree more. On  
25 top of all that we were doing with the *Olmstead* Plan, we

1 also had the *Jensen* Semi-Annual Report due. So, we had even  
2 more work than what has been described this morning. So, if  
3 we could look at that schedule, it would certainly help us.  
4 Thank you.

5 The reason I can ask for all of the acceptances  
6 that, as you heard this morning, the Subcabinet follows very  
7 careful processes not only in reviewing and commenting and  
8 adopting documents, but also being available to the public  
9 being transparent, and being deliberative.

10 Extra meetings are held and Chair Tingerthal  
11 somehow finds the time to schedule these additional meetings  
12 so we can ask questions, we can be briefed, and so forth.

13 I have got several sections of my comments.  
14 First, I will talk about the Amended Plan. In looking back  
15 across the Amendment process, I did submit comments on three  
16 occasions. Some of the suggestions were accepted and many  
17 of the substantive comments will be considered during the  
18 2018 Amendment cycle.

19 And so one area of improvement that has already  
20 been mentioned is to show the direct connection between our  
21 input --

22 THE COURT: Can we stop just a moment?

23 (Discussion off the record.)

24 MS. WIECK: The idea is to show the direct  
25 connection between the public input and any proposed

1 amendments.

2 At our December 7th Council meeting, we spent two  
3 hours reviewing the goals and the results in order to  
4 provide public input to the Subcabinet. We had 17 people  
5 participate, including people with developmental  
6 disabilities, family members, State Agency representatives  
7 and other professionals.

8 Our Council members are not enmeshed in this daily  
9 *Olmstead* flow of information that I receive. So, in  
10 general, our Council members found it difficult to determine  
11 if a measurable goal had been met and by how much. The  
12 general comments from our Council members included the issue  
13 of racial disparities and the concept of intersectionality  
14 of race and disability status.

15 The experiences of families, themselves, differ  
16 from what the aspirational goals might be. The term  
17 "choice" is used throughout the Plan, but our members said  
18 there are very few choices existing in many of our counties.  
19 And one member asked specifically, are the goals actually  
20 being achieved or are we simply re-branding what is already  
21 in the field?

22 And finally, the number one piece of feedback was  
23 the goals were too modest. And serving on our Council are  
24 State Agency representatives. So, there is this balance  
25 that we can listen to both sides. And the State Agency

1 representatives said the goals were realistic, not too  
2 modest. And now their concern is about a punitive approach  
3 if a goal isn't achieved.

4 Now, quality improvement is based upon driving out  
5 fear. We have to be just honest about what the numbers are.  
6 I selected some comments from our Council members just to  
7 show the diversity of opinions. And people commented about  
8 crisis services, and especially the idea that the police are  
9 now being used as a substitute for services or supports.

10 In terms of positive supports, our Council members  
11 wanted to look at racial disparity in who is being  
12 restrained and who is secluded in a public school and look  
13 at the data from the intermediate school districts.

14 In terms of lifelong learning, the families felt  
15 they were the ones leading the effort for integration, for  
16 transition planning, for post-secondary education. They  
17 felt that they were driving locally because they weren't  
18 seeing how these goals were being transmitted locally.

19 Now, in terms of this U.S. Supreme Court decision  
20 this week, just think it is the 60th anniversary of our  
21 first special ed. law. And at that time, those with IQs  
22 below 50 were being excluded. It was permissive only.

23 And to think that we can stand on the courtroom  
24 today and talk about raising the educational standard for  
25 all children, not minimum expectations, is incredible.

1           In terms of employment, we had a lot of people in  
2           the room who have positive experiences with their employment  
3           and they wanted to see that come through. We had other  
4           people who said vocational rehabilitation will not work with  
5           their son or daughter at a certain age. We had a lot of  
6           questions about person-centered planning because we have the  
7           frustration of members who might have a person-centered plan  
8           but it is not being looked at, achieved, implemented.

9           We also had concern about health care. People  
10          couldn't believe that the goal was simply a couple hundred  
11          people will have better oral health care. The Council  
12          members thought, why aren't we using existing health care  
13          guidelines for all people? And then in terms of housing and  
14          supports, a lot of people concerned that we're just  
15          relabeling group homes as something else.

16          In terms of transportation, if we had people with  
17          disabilities in this room, they would say: Where is the  
18          transportation? It is a number one topic. I was at a  
19          meeting recently with 20 providers, and they also expressed  
20          their concerns about a real transportation system.

21          Our Council members did comment on workforce  
22          shortages and the need to have new ideas on how to expand  
23          workforce, and that public input was incorporated into the  
24          February Amended Plan.

25          Now, let me repeat. We are doing a good job in

1 terms of listening and learning. Now we have to incorporate  
2 and act and improve on all of this feedback. And I am sure  
3 next year will be better.

4 In terms of the Quarterly and Annual Reports,  
5 again, we have been given ample opportunities to review  
6 data, to ask questions, to submit comments and to provide  
7 editing suggestions. Commissioner Tingerthal has always  
8 been generous and allowing time for questions during the  
9 Subcabinet meetings. I'm not sure if her gavel is equal to  
10 yours, but she hasn't gaveled me out of order yet, so I am  
11 always happy about that.

12 THE COURT: Ms. Tingerthal, I can give you my  
13 gavel if you want to --

14 MS. WIECK: In reviewing the Quarterly and Annual  
15 Reports, when we analyze the reports and we look at what has  
16 been met, what hasn't been met, it looks like we are at  
17 about a 30 percent goal achievement rate and about 40  
18 percent of the goals are in process. And it just differs  
19 when you look across which time period how to calculate that  
20 statistic. But, I am delighted with the approach we have  
21 taken today in presenting both the measurable goals that  
22 have been achieved and those that we still need to work on.

23 Our Council has also decided to start graphing  
24 results, because it is easier to see a graphic form than to  
25 look at these tables from quarter to quarter. And we could



1 not graph about 26 of the metrics, because we didn't have  
2 three data points. So, we expect that during this  
3 forthcoming year we will be able to add more to the  
4 graphing.

5 I have been around long enough to realize that  
6 this is the first state level cabinet effort since 1984.  
7 Governor Perpich requested 11 State Agency Commissioners to  
8 look at the future state hospitals during a six-month period  
9 back in 1984, like I said. And we have not had a group of  
10 state commissioners focused on the topic of disability since  
11 then.

12 And so, I believe that the Subcabinet is in the  
13 position of not only collecting and analyzing data, but  
14 operating on fact-based management principles. This Plan  
15 hasn't taken hundreds of hours. This Plan has taken  
16 thousands of hours, but it is worth the effort.

17 The next area I would like to mention is on April  
18 5th we will release the results of a household survey of  
19 1,000 Minnesotans. And it is about their attitude toward  
20 people with developmental disabilities.

21 In 1962, the Department of Human Services funded  
22 the very first study in cooperation with the Arc Department  
23 of Minnesota and did a face-to-face interview with 900  
24 different households. Our profile in 2017 matches the  
25 demographics of Minnesota. And I asked if I could see a

1 first cut of the data just so we could share some of these  
2 results with the Court.

3 And the good news is that in general, 90 percent  
4 of Minnesotans agree that people with developmental  
5 disabilities should be integrated and included in the  
6 community. That same level of support was expressed for  
7 companies that hire people with developmental disabilities  
8 as employees.

9 And this sentence reminds me of court orders:  
10 When people with developmental disabilities reach their  
11 highest potential, then we are all better off. And over 90  
12 percent agreed with that statement.

13 The survey asked about whether government should  
14 fund 23 different types of services. And the highest  
15 numbers, about 77 to 81 percent match the goals of the  
16 *Olmstead* Plan. Health care came out at 81 percent followed  
17 by employment, special education, early childhood,  
18 transition, and protection services to prevent abuse.

19 When we asked the respondents about the approach  
20 for housing, and we set up the question as saying that  
21 Minnesota currently uses and predominantly uses a  
22 four-person corporate foster care model versus an  
23 individualized housing approach, 51 percent of the  
24 respondents agreed we should be moving towards housing  
25 supports for individuals. 17 percent said we should stick

1 with the corporate foster care model. And 33 percent didn't  
2 have an opinion.

3 We asked people, why do you think we should move  
4 toward an individualized housing approach? And the general  
5 public used *Olmstead* phrases, because of freedom of choice,  
6 improved quality of life, and enabling people to be more  
7 independent and more productive. For those choosing the  
8 corporate foster care approach, they said people with  
9 developmental disabilities are too vulnerable. They are  
10 unable. They should be with their own kind to be more  
11 social, and it is an approach that currently works.

12 One area that had unanimous support except for 2  
13 percent of the people was that we should investigate all  
14 reports of abuse against people with disabilities. 80  
15 percent said it was very important to do that. 18 percent  
16 said somewhat important.

17 That level of support reinforces the prevention of  
18 abuse topic. And I want to make sure, and I promise I will  
19 send a note to Judge Thorson because she helped us in  
20 mediating that section of the Plan.

21 And finally, in appreciation, I need to -- and  
22 just allowing me this one paragraph, because I had to think  
23 back 30 years ago. I received a phone call from the late Ed  
24 Roberts who founded Independent Living. And he said, you  
25 are working on this national campaign to change Medicaid.

1        Could you step back from that so we can get the Americans  
2        with Disabilities Act passed? We have to have all of the  
3        disability groups on one side. And we did help get the ADA  
4        passed. And we assumed this isn't all about ramps and  
5        wheelchair access. And in those first years, there were no  
6        benefits for people with developmental disabilities. But  
7        because of creative attorneys, the ADA applied to Medicaid  
8        policy.

9                The *Olmstead* decision came down in 1999 and the  
10        *Olmstead* provision included in the *Jensen* Agreement was  
11        released June 2011. The Fairness Hearing, December 1st,  
12        2011. We began discussions January 2012. And the actual  
13        timeline to get to our Plan that was approved by the Court  
14        was 3 years, 8 months. 26 months past the deadline  
15        established in the *Jensen* Settlement Agreement. But, we  
16        made it and we are pleased to be here today.

17                People with disabilities are very patient folks.  
18        I have known people who have waited their entire life to get  
19        a job or to move out of their group home. So, we have been  
20        told we have to keep waiting, but today we can say that we  
21        are underway with the *Olmstead* Plan. So, I want to conclude  
22        by thanking the Court, Governor Dayton, the Attorney  
23        General's Office for signing on to the amicus brief on  
24        behalf of the two women in Georgia, because originally they  
25        were on the wrong side of the issue and we were able to get

1 the Attorney General's Office on the other side,  
2 Commissioner Tingerthal, the Subcabinet, the *Olmstead* staff,  
3 all of whom are here. And then, of course, the State Agency  
4 staff, because if I spent thousands of hours, you have to  
5 multiply that to get to tens of thousands of hours. We have  
6 the Plan, implementation is underway and now we have  
7 measurable results to report to the Court. Thank you.

8 THE COURT: Thank you, Dr. Wieck.

9 Does the Ombudsperson want to come forward,  
10 Roberta Opheim? You can lower that podium if you want. It  
11 is up to you.

12 OMBUDSPERSON OPHEIM: Just so I can read my notes.  
13 Your Honor, I am Roberta Opheim, the State Ombudsman for  
14 Mental Health and Developmental Disability, and a consultant  
15 to the Court and all of the parties in the *Jensen* Settlement  
16 Agreement. And it is difficult to follow the kind of  
17 eloquent talk that Dr. Wieck gave, but I will do my best.

18 I support the acceptance of the Plan Amendments  
19 and the Quarterly Report. I am pleased with the improved  
20 understanding of *Olmstead* and the actual embedding of  
21 concepts in the overall planning, not just of the Subcabinet  
22 but of the individual departments that are charged with  
23 implementing this. I am not so good at reviewing the  
24 minutia detail of how many are on track, how many are not,  
25 that is not my forte. However, I am able to provide some

1 context for real citizens with disabilities, and that is  
2 what I view my role to be.

3 As much as I want to compliment the work that is  
4 ongoing and I am pleased with, I do have a few concerns to  
5 share, both specific to the Plan, and then a couple of  
6 comments related to outside pressures that may be affecting  
7 our ability to move forward with the Plan.

8 I remain concerned about the ongoing delay in the  
9 establishment of abuse and neglect goals and workplan.  
10 Although we have a charter, we have not been able to meet,  
11 per se, as a work group. But past discussions of abuse and  
12 neglect have been primarily focused on why we can't do some  
13 of these things, why we can't measure some of these things,  
14 and less on, well how do we look at this in a new way and  
15 find a way to coordinate numbers, statistics and  
16 establishment of a plan?

17 And I strongly recommend that the Department of  
18 Health place this responsibility not as much with the Abuse  
19 Investigation Reporting Division, although they are critical  
20 to this, I really want them to include their Department of  
21 Epidemiology where we take a very systemic approach to how  
22 to prevent abuse and neglect. We know how to investigate.  
23 What we don't have a good handle on is how to prevent it in  
24 the first place.

25 I have concern for a lack of organized efforts in,

1 you know, less restrictive alternative housing. That  
2 function has always been required of the counties or  
3 delegated to the counties. And we have an inconsistent  
4 approach. Some are aggressive in developing new housing  
5 options, new group homes, which I still consider not to be  
6 complete community living. But, there will be some people  
7 that will need the level of support that has traditionally  
8 been provided in the group homes.

9 Capacity is just not there. And there is no good  
10 flow plan. A lot of people are dealing with this. They are  
11 trying to deal with it. I compliment them on trying to deal  
12 with this. But, I still don't see a light at the end of the  
13 tunnel for the number of housing opportunities, openness,  
14 vacancies that meet the needs of the population of the  
15 disabled.

16 THE COURT: But it does sound like in light of  
17 Commissioner Tingerthal's remarks that there has been a  
18 significant increase in the people moving into those  
19 individual housing? You're just stating that, well, there  
20 has been an increase, but there is still -- what? There is  
21 still an inadequate number of homes for those individuals,  
22 for individuals that would like to be moving into the  
23 community in an individual setting?

24 OMBUDSPERSON OPHEIM: The number of individuals  
25 that are moving is one count. The number of individuals

1 waiting to move is another count. And I'm not sure we know  
2 what that count is, nor can we slice it by those who choose  
3 to live in more restrictive settings for a variety of  
4 reasons we may or may not agree with, and those that want to  
5 move and can't.

6 The counties typically when someone is moving from  
7 an institution, Anoka, St. Peter or Community Behavioral  
8 Health Hospitals, or even ICF/DDs, is to make resources  
9 available whenever possible. But, sometimes they issue an  
10 RFP. It can take nine months, or more, between finding a  
11 location and/or a provider, hiring the staff, training the  
12 staff, and that is way too long.

13 We have to -- you know, I don't see an organized  
14 effort to work with the Department of Administration to  
15 speed it up. I believe that they are trying to do that and  
16 government bureaucracy rules makes it very difficult, but I  
17 think that we could bring some bully pulpit to that issue.

18 It is unclear to me as to whether there is any  
19 visible or organized or implemented specific effort to get  
20 the individuals who are able and desire to move through  
21 person-centered planning and moved into less restrictive  
22 alternatives.

23 Many people report to us: Well, yes, they went  
24 through the person-centered planning process. I have a nice  
25 book. It has pictures of me. And they did ask me where I



1 want to live. But then told me, well, none of that is  
2 available to you.

3 So, the question is, who is responsible for  
4 ensuring that case manager goes out and does it or finds it  
5 or creates it? That is unclear. And yes, there are  
6 multiple factors. I don't want to blame any one staff or  
7 any one classification of staff. There are barriers. But,  
8 we need to change our focus from what we have always done  
9 to, I have never thought of it that way, a new way of  
10 looking at everything.

11 What I want to see is active plans to achieve that  
12 goal. Now, in some cases we have seen some very good case  
13 managers actively work towards that. But, it is  
14 inconsistent, it is not organized, and it is highly  
15 dependent upon your case manager and your county.

16 They lack a thorough understanding of  
17 person-centered planning. Yes, there has been much  
18 training, mostly volunteer in attendance. And we lack a  
19 clear number and demonstrated training outcomes. So, we  
20 know people attended the training. What we don't know is  
21 can they demonstrate what was committed in the training.

22 I remain concerned as others that several items  
23 are behind and that actual numbers are very difficult to  
24 come by. And I think that the Department of Human Services  
25 is working at different ways to collect their numbers and

1 they are also bound by the Minnesota Information Technology  
2 System, which if they don't prioritize it, many times those  
3 things don't get done. But again, we need to push those  
4 issues.

5 Again, I do support the Amended Plan, but I also  
6 continue to raise both at the Subcabinet meetings and here  
7 with the Court that they are not aggressive enough. And as  
8 Dr. Wieck said, yes, it is the fear of punishment mode,  
9 rather than a how far can we stretch mode. And there are  
10 lots of reasons that that type of culture has grown up  
11 within State Government.

12 Two general comments I want to make on the  
13 pressure to accomplish the Plan. One is -- I don't know if  
14 the Court is aware, but many communities are making  
15 concerted efforts to get people with disabilities out of  
16 their community. They are doing it through pressure of law  
17 enforcement trying to get landlords to evict people if they  
18 have had too many police calls.

19 We have had one city, West St. Paul, do a zoning  
20 ordinance that said these converted like six-apartment  
21 buildings, you know, that housed people with disabilities  
22 with supports can only go in a certain area of the  
23 community. No new ones can be developed in the regular what  
24 I call R-1 or R-2 Districts.

25 They are putting pressure on legislators. There

1 have been a number of amendments introduced to kind of hit  
2 home the issue that whether DHS wants to or not, they should  
3 move certain people based on their disability. And of  
4 course, I share Deputy Commissioner Johnson's concern about  
5 both State and Federal legislative resources, the approach  
6 and concern for people with disabilities, and the  
7 willingness to proceed on some of this.

8 So, with that, I will close my comments saying  
9 that while I think we have made tremendous progress in  
10 getting people to understand *Olmstead*, talk about *Olmstead*,  
11 embed *Olmstead* principles, it has taken far too long and not  
12 moving at a pace I would like to see. Thank you.

13 THE COURT: All right, thank you.

14 Mr. O'Meara did you want to step to the podium? I  
15 suspect you want to move the podium, as well?

16 MR. O'MEARA: A little bit.

17 THE COURT: That is entirely up to you.

18 MR. O'MEARA: We also would like to thank the  
19 Court on behalf of the Settlement Class, our office. There  
20 is a lot of great work that has been done with the *Olmstead*  
21 Plan, both from the State, the Department of Human Services,  
22 the consultants, and of course the Court, both Your Honor  
23 and Magistrate Judge Thorson and the Court's staff, and we  
24 really appreciate that a lot.

25 I have not been involved comprehensively in the

1 vetting of any number of the issues that have resulted in  
2 the Plan, you know, firsthand vetting with the Subcabinet.  
3 But, I believe the consultants have done an excellent job  
4 along with the commissioners, deputy commissioners and the  
5 staff of the various agencies. So, I think it is a good  
6 product and it should move forward.

7 I do have a couple of concerns on a few issues  
8 that I would like to put on the record. With respect to the  
9 waiting list numbers, we have the following concerns. Are  
10 people now off the waiver waiting list actually receiving  
11 appropriate services or just limited services or none at  
12 all?

13 Were they ever notified that they were originally  
14 on the waiver waiting list and given an opportunity to  
15 engage in the selection of services appropriate to their  
16 individual needs, or ever told that they are off the list?

17 How did they go off the list? Was it mutual, or  
18 was it through unilateral action by the county and/or the  
19 state? For example, did the county or the state assume that  
20 services would not be needed within a year? Or was the  
21 individual removed from the list because the individual did  
22 not procure approved services within 60 days from receiving  
23 the waiver, such as community-directed supports through a  
24 support plan that has to be approved?

25 What data supports the reduced developmental

1 disability waiver numbers, or the zero number that  
2 Commissioner Tingerthal referenced with regard to the CADI  
3 waiting list. Where is that data? Will it be publicly  
4 provided and how?

5 Did those who left the CADI list ever have an  
6 opportunity to receive or wait for developmental disability  
7 waived services which provide in some respects in relation  
8 to housing, employment and independent living, some broader  
9 services. Will the expected large reduction in the State  
10 budget, including reduced Federal monies for people with  
11 disabilities and their families risk an increase in waiting  
12 lists, or the elimination of the services promised by the  
13 State and DHS and the *Olmstead* Plan? We are very concerned  
14 about this issue and its impact on people with disabilities  
15 and their families.

16 And the concern is pointed up not just by our  
17 office, but also by comments of Commissioner Johnson earlier  
18 today on the Federal Medicaid budgeting issue previously  
19 referenced. And we are talking about a lot of money.

20 THE COURT: I suspect that if not before, sometime  
21 towards the what, the end of August, in that area? We are  
22 going to find out between State and Federal what the  
23 landscape looks like.

24 MR. O'MEARA: I hope you're right. We have to get  
25 to the bottom of this, Your Honor. I am mindful of the

1 Court's Order in this case dated September 29, 2015 at  
2 Docket 510 where the Court said that: It wishes to strongly  
3 emphasize that the State must prioritize its allocation of  
4 funding to meet and achieve the *Olmstead* Plan goals. The  
5 State may not rely on the excuse of insufficient funding to  
6 avoid following through on the important commitments it has  
7 made in this version of the *Olmstead* Plan.

8 I suggested to the Defendants, and also to the  
9 Court an agenda item with regard to funding. How much money  
10 has been allocated? Where is it? Where is the detail?  
11 That didn't get placed on the agenda, but I think it is  
12 implicit -- it is explicit with regard to Your Honor's  
13 September 29, 2015 Order, but also it is implicit in all of  
14 the goals and items with regard to the *Olmstead* Plan. It  
15 has to be funded. They have to get the money somewhere.  
16 They have to account for it. It has to be appropriated and  
17 used appropriately by various agencies, and it has to be  
18 sustainable. I mean, this is a Settlement Agreement that  
19 has a Plan. And the Plan has to be sustainable in order to  
20 provide these services on an ongoing basis to people with  
21 disabilities and their families. Otherwise, why are we  
22 here? Why are we setting goals if we can't simply commit to  
23 funding them on an ongoing basis, regardless of what the  
24 Federal Government is going to do?

25 THE COURT: Well, and I can answer -- I will take

1 responsibility for better, for worse, and that is whether we  
2 have to visit or revisit this post-August, I viewed August  
3 as a date actually almost separate from the Federal  
4 Government when, kind of, we know where the State is at.  
5 Maybe we will know before, but I kind of saw that August  
6 date as that, well, then we are probably going to know what  
7 priorities, where we are at. And then where we go from  
8 there, I guess, will depend of all of the respective parties  
9 on kind of where we are at, if you think there is anything  
10 relevant for the Court to be informed of.

11 MR. O'MEARA: Okay. A couple more points on the  
12 waiting list. How many people are being denied waiver  
13 services because the counties are saying that their needs  
14 are being met with State Plan services? Of those people,  
15 how is DHS ensuring the county determinations about need are  
16 correct? Are people being given partial waivers? Are they  
17 being denied certain categories of services like  
18 community-directed supports? Are they being given temporary  
19 waivers? For example, have they been put on a waiver to buy  
20 a home, buy a home modification and then terminated from the  
21 waiver? Our office and our colleagues understand this is  
22 happening in several counties.

23 So, those are concerns when I see a plan, you  
24 know, with waiting list numbers that are either down to zero  
25 now or have decreased. It is not all of our concerns. We

1 have a related case, obviously, Your Honor, but this is the  
2 *Olmstead* Plan. These issues are part of the Plan, and so I  
3 felt it appropriate to provide these comments with respect  
4 to those waiting lists.

5 THE COURT: And what is the level of communication  
6 going back and forth between -- whether it is between -- if  
7 not between counsel, between, say, the Commissioner, Roberta  
8 Opheim, Colleen Wieck, because obviously there are probably  
9 things that are properly communicated with one another,  
10 concerns and responses, and some things that are not  
11 probably, but --

12 MR. O'MEARA: Right. You know, I think to be  
13 candid, Your Honor, the fact that there is a related case  
14 where we have sued the State with regard to the waiting  
15 list, you know, is an issue that directs the dialogue  
16 probably, you know, between counsel.

17 But, you know, there are any numbers of levels of  
18 dialogue that would have to go on with respect to these  
19 waived services. We are talking about tens of millions of  
20 dollars. And so, it is not just my office that needs to  
21 have a dialogue, you know, with Mr. Ikeda, it is these  
22 agencies. And I suggest that that is happening. But, I am  
23 simply trying to articulate some of our concerns and views  
24 about the numbers.

25 THE COURT: All right.



1 MR. O'MEARA: The last issue is abuse and neglect.  
2 It is part of the *Olmstead* Plan. We talked about this in  
3 some detail at the *Jensen*, the last *Jensen* conference.

4 One of our concerns articulated then and now  
5 articulated here again is the use of variances or waivers to  
6 allow, you know, the State to engage in restraint and, I  
7 guess, seclusion. Because I am seeing now reports and  
8 information that suggests that manual restraint, mechanical  
9 restraint and chemical restraint are all being used in  
10 various settings, either because someone believes that they  
11 are allowed because they have received a variance, or simply  
12 because that is the protocol.

13 There is a report that I received that spoke to  
14 this issue back in December that talked about a vulnerable  
15 adult at the security hospital being manually restrained,  
16 handcuffed, placed in a spit hood, ankle-wrapped and then  
17 placed in seclusion.

18 Maltreatment was found. But, it was important,  
19 you know, for me as I read this to interact with Ms. Opheim,  
20 because I echo her concerns about someone with a  
21 developmental disability being subjected to this kind of  
22 stuff multiple years after the Settlement Agreement was  
23 executed and approved.

24 So, when the investigating body with regard to  
25 this incident says that three types of restraints, manual,

1 mechanical and chemical were used within 15 minutes, and  
2 then the vulnerable adult was placed in seclusion, and then  
3 concludes that that was neglect, I am here to tell you on  
4 behalf of the Class that this type of conduct is still going  
5 on despite the fact that we have a settlement. And when we  
6 see variances being provided, in many instances provided by  
7 DHS, itself, at these licensed facilities, we wonder aloud,  
8 you know, how many of these types of things are going on.

9 We know, historically, that there is an  
10 underreporting of incidents involving people with  
11 developmental disabilities for various reasons. But, it is  
12 important, I think, to highlight the fact that in December  
13 of 2016 this report was provided to us and its multiple  
14 forms of abuse that I believe is prohibited by the  
15 Settlement Agreement.

16 And so, we simply echo our concern that as we move  
17 forward with the process, we continue to be mindful of this  
18 type of conduct and work toward eliminating it.

19 THE COURT: All right, thank you.

20 MR. O'MEARA: Thank you.

21 THE COURT: Ms. Tingerthal?

22 COMMISSIONER TINGERTHAL: Your Honor, I would like  
23 to just respond to a couple of things that we heard.

24 And I would like to start with talking about the  
25 goals and the Plan about abuse and neglect and particularly

1 about Ms. Opheim's comment that in order to really make  
2 progress on the broader issue of abuse and neglect in the  
3 greater community, we agree with her that it really needs  
4 some fresh thinking and it cannot just be the engagement of  
5 those at MDA -- the Department of Health who are charged  
6 with policing of abuse and neglect, but really it is to  
7 introduce some broader thinking.

8 I will be meeting next week with a candidate for  
9 the chairmanship of our Abuse and Neglect Committee who  
10 would co-chair along with Assistant Commissioner Korte. And  
11 I am hopeful that this individual will agree to lead this  
12 because I think this person will bring a very fresh look.

13 As I have spoken with this individual, I agreed  
14 with her that it would be -- the approach we would take  
15 would be to go to each of the commissioners who would be  
16 involved in selecting the staff that will be involved in  
17 this committee, and make sure that we are really getting the  
18 right focus. So, I just wanted to say that we are very much  
19 in alignment with the concerns that Ms. Opheim expressed.

20 And I also wanted to talk just a little bit about  
21 housing. We do have a very serious issue with the issue of  
22 both housing that is affordable for people across the  
23 spectrum. There are over 600,000 households in Minnesota  
24 that pay more than 30 percent of their income for housing.  
25 And those are heavily concentrated in the lowest income

1 households. And many of those households do have either the  
2 head of household or a member of the household with a  
3 disability. So, the cost of housing and the availability of  
4 resources is a chronic issue.

5 And one of the sad truths in this country is that  
6 affordable housing is not an entitlement. And so, there are  
7 many people, both with and without disabilities, who  
8 experience difficulty in finding any housing, much less  
9 housing that is affordable.

10 I think for people with disabilities, that is  
11 complicated by the fact that we have a very tight housing  
12 market in Minnesota. Vacancy rates are very low. And so,  
13 landlords in a market like that often can be very picky  
14 about who they will rent to.

15 In our role enforcing oversight of some of the  
16 issues with housing that is funded by Minnesota Housing, we  
17 are constantly working with landlords to have them review  
18 their tenant screening to make sure that those are in  
19 compliance with fair housing.

20 The issue, though, is that many times people with  
21 disabilities will have a difficult record in terms of  
22 perhaps arrests, or evictions that have occurred. I would  
23 like to say that we are just about to implement at Minnesota  
24 Housing a program where we will be working with a few  
25 counties, it is a pilot program at this point, a risk

1 mitigation pool for landlords.

2 So, if they have concerns that someone may damage  
3 a unit or may cause a disruption, that they can receive  
4 compensation if that is to occur. Because oftentimes it is  
5 more the fear factor of something happening if they are to  
6 accept a tenant that may have a bad track record. And so  
7 this would say, okay, take the risk of renting to this  
8 person. And if it does prove to meet your worst concerns,  
9 there will be a way for you to be financially compensated.  
10 That's a pilot program that was funded by the State  
11 Legislature last year.

12 So, I share many of the concerns that you heard  
13 about, but we do believe that we have some things in the  
14 works that begin to address some of those things.

15 THE COURT: Were you going to -- or is someone  
16 going to move on to the -- we will at the end sum up with  
17 any responses by both parties. But, we are at that point  
18 now where the proposed modifications to the reporting and  
19 amendment process, if you wish?

20 MR. IKEDA: Your Honor, I do want to respond  
21 briefly to Mr. O'Meara's statements.

22 THE COURT: Oh, sure. Sure enough. Fair enough.

23 MR. IKEDA: You know, Commissioner Tingerthal sort  
24 of talked about some of the policy questions and the  
25 questions about, you know, what the State will do as, you

1 know, a member of the Executive Branch. And I sort of feel  
2 compelled as the Defendants' lawyer in the case to sort of  
3 point out -- you know, have everybody on the same page, I  
4 think, or at least let the Court know what the Defendants'  
5 thoughts are in the bigger picture, since we are in a  
6 courtroom. We are in a Federal courtroom. And so, there  
7 are some concerns.

8 And I don't want to reopen the can of worms about  
9 jurisdiction, but to the extent that Mr. O'Meara suggests  
10 that there is some kind of obligation under the settlement  
11 agreement that is being violated, I don't know what my  
12 client would say about this. I don't know that my client --  
13 you know, I sort of defer to the Deputy Commissioner. But,  
14 I know the terms of the Settlement Agreement couldn't be  
15 clearer. The Settlement Agreement terminates at the  
16 termination of the Court's jurisdiction. That, in and of  
17 itself, answers I think the Plaintiffs' question in this  
18 regard.

19 With respect to some of the observations that I  
20 think Ms. Opheim made, you know, those are, I think as a  
21 legal matter -- I would point out to the Court on behalf of  
22 the Defendants that the Federal Court's authority is limited  
23 in the regard that, you know, it seems or it sounds like  
24 what Mr. O'Meara and Ms. Opheim are suggesting are changes  
25 that could make the *Olmstead* Plan better, changes in the

1 implementation of the *Olmstead* Plan by the various State  
2 Agencies. But, as Your Honor knows, and the Eighth  
3 Circuit -- or I'm sorry, the U.S. Supreme Court has  
4 observed, institutional reform injunctions often raise  
5 sensitive federalism concerns, because they commonly involve  
6 areas of core state responsibilities.

7 And, you know, the other Circuit Courts have  
8 talked about District Courts breaching fundamental  
9 principles of fundamentalism and exceeding their authority  
10 when they order a remedy that is not the least intrusive  
11 remedy available, or go beyond the link between remedies and  
12 violations. And the Court knows what this case was about.

13 But, I think as counsel for the Defendant, it is  
14 important for -- at least for the discussion that we had, to  
15 talk about some of the concerns that the Plaintiffs have and  
16 some of the concerns that the Ombudsman has about what the  
17 various state agencies are doing.

18 We are in a Federal Court. There are limitations  
19 on what the Federal Court can do. And I know that Your  
20 Honor started today by explaining that we are not here to  
21 approve or disapprove a Settlement Agreement, but I think it  
22 is worth keeping those basic principles in mind as we have a  
23 conversation here about those things. And I did want to  
24 make sure that from the Defendants' perspective that that is  
25 out there.

1 THE COURT: What I would like to do is -- Jeanne?  
2 So people don't feel like they have got to rush through  
3 towards the end, should we take ten?

4 (Discussion off the record.)

5 THE COURT: Should we take ten minutes here? Then  
6 if somebody here is diabetic, or if somebody needs a snack,  
7 or do whatever you need to do. That way, if we do that,  
8 then I apologize to some of you for going over, and as you  
9 can see, we didn't have the clocks -- we can't rush into  
10 this switching over to daylight savings time. But, we will  
11 come back and give you whatever time you need to sum up so  
12 people don't have to speed through it.

13 Hope that doesn't ruin anybody's schedule. There  
14 are worse places to be than Downtown St. Paul at the noon  
15 hour. We will see you in ten. All right?

16 (Recess taken at 12:12 p.m.)  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 (12:26 p.m. proceedings reconvened)

2 THE COURT: We can proceed whenever you're ready.  
3 And you're not hallucinating. I'm appreciative. I have a  
4 different court reporter helping me out with Jeanne who is  
5 not feeling well today. So whenever you're ready.

6 COMMISSIONER TINGERTHAL: Very good. The item  
7 before us now --

8 THE REPORTER: Could you give me your name?

9 COMMISSIONER TINGERTHAL: I'm sorry. My name is  
10 Mary Tingerthal.

11 THE COURT: That's my fault. Could you spell that  
12 for us?

13 THE REPORTER: I have it here in front of me.

14 COMMISSIONER TINGERTHAL: And I am the Subcabinet  
15 Chair.

16 The item before us is number 7, administrative  
17 issues, and the Subcabinet has two requests for your  
18 consideration. The first I mentioned earlier and that is  
19 moving the filing date for the annual Plan amendment to the  
20 end of March instead of the end of February.

21 The second item is that we would propose that we  
22 cease the submission of the Workplans to the Court for  
23 approval. This is something that I think was new territory  
24 for all of us when we established that procedure. As I  
25 mentioned earlier, the Workplans are very much a working

1 document. The Subcabinet and the *Olmstead* implementation  
2 office do review the progress on the Workplans. We report  
3 on them on a monthly basis. And any time that an agency  
4 needs a revision to the Workplan, because they found that  
5 they need to add some steps or have a different way of  
6 approaching a deadline, it's very much a learning as we go  
7 kind of document and something that is very similar to what  
8 a business might use in managing their day-to-day work  
9 towards those larger goals that are set forth in the Plan.

10 The current state of affairs is that we did submit  
11 an annual set of refreshed Workplans to the Court and those  
12 have now been pending for six months. So we respectfully  
13 request that you consider just not having us submit those.  
14 We do post our Workplans on the website and we also do  
15 publish a report every month with the *Olmstead* package.  
16 That includes the assessment of where we are on the  
17 accomplishment of the goals in the Workplan. So there's  
18 quite high transparency and quite a bit of discussion among  
19 the Subcabinet as to whether Workplans are proceeding as  
20 intended.

21 THE COURT: For -- and this will be for the  
22 benefit of all the parties, I think to maximize input, to  
23 minimize delay and to be fair to everybody, what I'm going  
24 to suggest, and there doesn't have to be anything e-filed or  
25 docketed, is that if I -- and then if somebody says a week

1 is too soon. If I -- and when I say you, whether that means  
2 consultants, you Commissioner, counsel -- you could send in  
3 an e-mail saying here -- and then maybe if there's a little  
4 communication in the next few days on some of these aspects  
5 there will be an agreement on it. But whether there is or  
6 there isn't, send an e-mail; or if the lawyers want to  
7 submit something, it shouldn't exceed three pages although  
8 the e-mails won't be that long. Here's what we asked you to  
9 do on Friday. Here's what we agree on. Here's what we  
10 don't. I'll just promise a meeting both on the Workplan,  
11 the March date.

12 And I might even include on that -- and I'm  
13 getting one step ahead of ourselves here -- but on the next  
14 step we may have a discussion before we adjourn today, well,  
15 should we be having, apart from changes made, should we be  
16 getting together on *Olmstead* issues for an update or status  
17 report more like April of next year versus earlier with or  
18 without some short report. I think we're scheduled to get  
19 together on Jensen in June. But some five-minute report  
20 then.

21 But then what I'm thinking if we did something  
22 like that -- and I'll check in with counsel and everybody at  
23 the end to say, well, everybody can say here's what we agree  
24 on, here's what we don't, here's the changes we want made  
25 for reporting, whether it's Workplan issues and other

1 things. And I'll emphasize the Court's rule, as I kind of  
2 tried to imply at the beginning, is not to formally --  
3 because I've accepted the *Olmstead* Plan so under the  
4 agreement the Court's rule isn't to approve or disapprove of  
5 the amendments, the Workplans, the reports, as opposed to  
6 saying, Well, we're getting together to discuss the  
7 implementation of the Workplan and here's what we're doing.

8 You know, obviously if somebody feels that there  
9 are significant violations of the Plan, then they will --  
10 then I guess that's how we hear from people.

11 So if we did that, I'll get a confirmed -- once I  
12 hear everybody out, if we can get a here's what we know,  
13 here's our proposed changes to be made, does that work for  
14 everybody?

15 My point is we can get these to kind of keep it  
16 more informal, but then whenever somebody wants something on  
17 the docket, because then I would turn a short order and turn  
18 around and say, Okay, this, you know, assuming that we did  
19 exactly as you're proposing, with or without objection,  
20 here's the way -- this is no longer necessary or here's when  
21 the next status conference will be, or extending that date  
22 to the submission date to March versus as you've requested.

23 But if we did something like that -- and you don't  
24 have to answer now. After we've heard everybody out and  
25 before we adjourn, I'll just make sure we're all on the same

1 page procedurally about the next steps. All right. And I  
2 interrupted you. I don't know where you're headed next.

3 COMMISSIONER TINGERTHAL: Your Honor, I'm headed  
4 towards item number 8 on the agenda.

5 THE COURT: All right.

6 COMMISSIONER TINGERTHAL: And really just briefly  
7 you asked us to comment on the efforts to educate the public  
8 about the *Olmstead* Plan and its implementation.

9 THE COURT: And you've mentioned a couple already,  
10 I think.

11 COMMISSIONER TINGERTHAL: I would like to refer to  
12 Dr. Wieck's comments. I was really pleased to hear some of  
13 her input this morning about how people are becoming more  
14 engaged and know more about what the *Olmstead* Plan is trying  
15 to accomplish.

16 One of the roles that the *Olmstead* Implementation  
17 Office has is in handling complaints from community members,  
18 and some of those are forwarded to us by the court. Fewer  
19 than in the past, thankfully.

20 THE COURT: Fewer.

21 COMMISSIONER TINGERTHAL: But just to give you a  
22 little barometer, between November 1st of 2015 and October  
23 31st of 2016, there were 50 dispute resolution cases that  
24 came to the OIO involving 41 unique individuals. Thirty of  
25 those cases were resolved. Nineteen required resource

1 referrals of some type, and one case has -- at least is  
2 currently -- was not resolved as of the end of that period.

3 We talked earlier about the input opportunities  
4 for the *Olmstead* Plan amendments, and I earlier mentioned  
5 that we are in the process of establishing a community  
6 engagement work group.

7 There are also some significant efforts in terms  
8 of communications that have been undertaken by the  
9 Department of Human Services. They have established a web  
10 page that is really a landing spot for people with questions  
11 about items that are covered by the *Olmstead* Plan. They  
12 have developed a quarterly report newsletter, and it's  
13 called *Enabling a Brighter Future*. And four of those have  
14 been issued.

15 It's also a way to communicate not only with  
16 people with disabilities and their parents and guardians but  
17 also with counties and service providers. They have  
18 rebranded and made changes to the disability linkage lines.  
19 They have made several additions, including Disability  
20 Benefits 101 and Housing Benefits 101 to help focus people  
21 on those particular areas.

22 And they have instituted what's called a Vault  
23 Function which allows people at their choice, if they wish  
24 to use it, to store critical documents in an electronically  
25 secure way that then can be used as they, for example, make

1 applications for housing in the community. So it may be  
2 certain determinations. It may be things like a Social  
3 Security number --

4 THE COURT: Sure.

5 COMMISSIONER TINGERTHAL: -- and that sort of  
6 thing. We've found that that's useful also for people who  
7 have experienced homelessness. Often they literally don't  
8 have a place to put those things if they are in hard copy.

9 They have had a number of feedback and focus  
10 groups on topics that have been -- have come up through the  
11 disability linkage line. There's been a lot that's been  
12 done around communication of families on day training and  
13 rehabilitation. As your Honor mentioned earlier, it's  
14 certainly something that bubbles up every time that there  
15 may be a closure or just by choice of the provider or a  
16 diminution of services. And they are constantly making sure  
17 that people are well informed about where those processes  
18 started.

19 We also heard from Ms. Opheim about the fact that  
20 person-centered planning is really just getting its sea legs  
21 and we've just completed the period where everyone has been  
22 through the first phase of person-centered planning. We  
23 will be hearing about the reports on the results of that at  
24 an upcoming Subcabinet meeting; but they have also provided  
25 materials at DHS around what does person-centered planning

1 mean for me.

2 THE COURT: Um-hum.

3 COMMISSIONER TINGERTHAL: And there's still a lot  
4 of education on both the side of the providers, the  
5 counties, and people with -- families with people with  
6 disabilities.

7 So with that I think I will stop.

8 THE COURT: All right.

9 COMMISSIONER TINGERTHAL: And hand it back to you.

10 THE COURT: Any response, both on anything that's  
11 been said here by -- start with Ms. Opheim or Dr. Wieck?

12 UNIDENTIFIED FEMALE: Not at this time.

13 THE COURT: Okay. Mr. O'Meara.

14 MR. O'MEARA: Thank you, your Honor. Just mindful  
15 of -- because of the comments, I think I feel compelled to  
16 make some additional comments.

17 Back as early as May of 2010 and earlier it was  
18 the State and DHS's position that the State was not required  
19 to have an *Olmstead* Plan. And that was stated to us  
20 specifically by the Deputy Commissioner at the time of DHS.

21 We believed so prominently in the protection of  
22 people with developmental disabilities who were abused by a  
23 state-operated facility that we had to do something. Right?  
24 So we started a class action lawsuit. Part of the  
25 settlement negotiations, the comprehensive settlement



1 negotiations, included our position that an *Olmstead* Plan  
2 was required by the State of Minnesota and that it should be  
3 in the stipulated class action settlement.

4 We wanted the *Olmstead* Plan to be developed and  
5 implemented consistent with the U.S. Supreme Court decision  
6 in *Olmstead* versus LC. It was a 1999 decision. And despite  
7 that decision and the requirement to have a plan, the  
8 State's position in 2010 was that we don't have to have a  
9 plan.

10 The Settlement Agreement or the final order  
11 approval the Settlement Agreement, and then the Exhibit A,  
12 the Settlement Agreement itself, states at page 18, "The  
13 State and Department shall develop and implement a  
14 comprehensive *Olmstead* Plan that uses measurable goals to  
15 increase the number of people with disabilities receiving  
16 services that best meet their individual needs and in the  
17 'most integrated setting' and is consistent and in  
18 accordance with the U.S. Supreme Court's decision in  
19 *Olmstead* versus LC (1999)."

20 So I don't know what document Mr. Ikeda is  
21 reading. But I'm reading the Settlement Agreement and  
22 there's a very specific articulated requirement in the  
23 agreement that the State and DHS develop and implement an  
24 *Olmstead* Plan.

25 So what happened. They failed to do that. Our

1 August 24th, 2016 letter, Docket 586, speaks to some of the  
2 ongoing failures of the Defendants to do that which they  
3 promised to do under the Settlement Agreement, including  
4 meeting deadlines to develop and implement the *Olmstead*  
5 Plan.

6 They actually suggested that the Court Monitor  
7 become involved. The Court, in one of the many orders about  
8 these issues, Docket 233, page 7, said: "In lieu of  
9 contempt or other sanctions at this time, the Court requires  
10 Defendants to fulfill their obligations in a timely manner  
11 for the Court's review and approval. Attend any status  
12 conferences that may be scheduled by the undersigned or the  
13 Magistrate Judge Becky R. Thorson regarding the *Olmstead*  
14 Plan, and actively seek input from the consultants to the  
15 parties, Dr. Colleen Wieck and Dr. Opheim in that process."

16 The Court's orders are very specific. It's not  
17 just this one. It's all of them. They really militate  
18 against the position that I think the State is taking which  
19 is the promise of the *Olmstead* Plan is really a promise  
20 until the Court's jurisdiction ends. I don't believe that  
21 to be the case. If they tried to do that, we would be back  
22 before the Court to suggest that there's a contempt  
23 consideration here.

24 The *Olmstead* Plan itself, your Honor, has goals  
25 going out to 2025. The *Olmstead* Plan that's been developed

1 goes beyond the jurisdiction of the Court. Funding is  
2 implicit in all of that. You can't do a lot of these things  
3 without having funding. So when I speak about funding, I'm  
4 speaking about that which is required in the Settlement  
5 Agreement. You need to develop and implement this plan,  
6 it's got to be consistent, it's got to have measurable  
7 goals, and it's got to be in accord with what our Supreme  
8 Court said. That means you've got to go out and get the  
9 money for it.

10 And for someone to suggest that the stipulated  
11 class action settlement has nothing to do with those things  
12 is just -- is not reading the document. Independent of the  
13 Settlement Agreement if the State decided to change its tune  
14 and stop the *Olmstead* Plan process, or not to fund these  
15 goals, I think that would be a violation of our U.S. Supreme  
16 Court's decision in *Olmstead* versus LC, and then we would be  
17 back in court on behalf of the individuals who were wronged  
18 by that conduct to ask the Court for relief.

19 So I'm compelled to reflect on what we did as part  
20 of the process of getting here because of the statements of  
21 the DHS counsel. Thank you.

22 THE COURT: I suspect, Mr. Ikeda, you might  
23 have -- like to make a response.

24 MR. IKEDA: What I think I heard was a long  
25 discussion about the history of this case and the facts of

1 this case. But what the Court didn't hear from the  
2 Plaintiffs is any discussion or any attempt to deal with the  
3 law in this area. There is absolutely clear law that says  
4 the parties cannot waive the issue of jurisdiction, nor can  
5 they agree to the issue of jurisdiction, yet the Plaintiffs  
6 seem to gloss over that and don't engage on those very basic  
7 principles of law.

8 The Settlement Agreement is clear, so I'm glad the  
9 Plaintiffs want to talk about what the Settlement Agreement  
10 actually says because the Settlement Agreement allows the  
11 Court to do two things. One, keep jurisdiction for a year  
12 and extends its jurisdiction on a very limited basis for  
13 very limited reasons for an additional year. What I didn't  
14 hear from the Plaintiffs and what the Defendants are left  
15 wondering is what it is about the Settlement Agreement that  
16 triggered the authority of the Court to extend its own  
17 jurisdiction?

18 As is well settled, you know, the Court can't, on  
19 its own, extend its jurisdiction under a Settlement  
20 Agreement. And part of, you know, one of the things that I  
21 think -- and what that does, your Honor, is you know, the  
22 Plaintiffs are still unwilling to look at the actual  
23 language of termination of the Court's jurisdiction and  
24 would rather talk about sort of the history of how the case  
25 was brought about and the Department's position at some

1 point in litigation. It sounds like seven years or so ago.

2 But there's no engaging with the law. I've not  
3 heard the Plaintiffs talk about the law at all. And, you  
4 know, to talk about this issue of funding, I guess I was a  
5 little surprised because for two reasons. One, my  
6 understanding after Mr. O'Meara on behalf of the Plaintiff  
7 submitted a request to talk about funding and budget and it  
8 was not included, I understood and the Defendants understood  
9 that that issue was not one that would be discussed, and yet  
10 the Plaintiffs want to talk about it and they talk about it  
11 even after, I think, earlier in this hearing, your Honor,  
12 the Court talked about how it doesn't have authority over  
13 funding decisions of the State.

14 And so, you know, this notion that -- and I've  
15 said, and Defendants have said this before -- this notion  
16 that there may be goals in an *Olmstead* Plan that are not met  
17 was contemplated by the parties when they developed -- when  
18 the *Olmstead* Plan was developed. I believed there was a lot  
19 of talk at the time about those goals are reaches. Those  
20 goals should be ambitious. And the fact that goals may not  
21 be met as a legal matter in and of itself doesn't constitute  
22 a violation of the Settlement Agreement even if the Court  
23 had the authority under the Settlement Agreement to enforce  
24 it.

25 And, you know, again, I go back to -- I've cited

1 this case a couple of times but I go back -- it's a consent  
2 decree case so it's different than what we have here, but I  
3 go back to *Horne versus Flores*. And in the case of *Horne*  
4 *versus Flores* the United States Supreme Court was very  
5 concerned about these kinds of agreements and this kind --  
6 and the agreement between the State and the Plaintiff in  
7 that case and sort of what it meant for -- I believe they  
8 said future administrations and the like is my recollection  
9 of the case.

10 And so, you know, I've talked a lot about the law  
11 and I've not -- the Defendants haven't heard anything from  
12 the Plaintiffs on the issue of the law. They have talked,  
13 as I said before, they talked a lot about policy making,  
14 good ideas for the Department or the State's agencies to  
15 improve the work that it does, but those were just in court.  
16 So we're faced with the law and there can be a lot of talk  
17 about the history of case, but at the end of the day there's  
18 got to be an engagement with the law which is very clear on  
19 the issue of jurisdiction. The Settlement Agreement itself  
20 very clear on the issue of jurisdiction. And so that's the  
21 response.

22 THE COURT: Is it the -- your position that  
23 irrespective of the level of compliance or noncompliance  
24 with the other wording in the Settlement Agreement, that  
25 once that second year beyond the date of the -- that one

1 year, once that was, there was no circumstance under which a  
2 federal court could extend jurisdiction of the -- in other  
3 words, at the end of that year, you're really saying the  
4 Court had no jurisdiction?

5 MR. IKEDA: The Court had no jurisdiction beyond  
6 what the parties agreed to in the Settlement Agreement. And  
7 it sounds like there might be a little bit of a dispute  
8 between the Plaintiffs and the Defendants about what that  
9 language means. But the language itself is clear. It talks  
10 about the circumstances under which the Plaintiffs can move  
11 for the additional time to oversee -- for the Court to  
12 oversee the settlement. But they have not done that.

13 I think, you know, the other thing that the Court  
14 has heard today from the Plaintiffs are a lot of questions.  
15 You know, when the Plaintiffs talk about the *Olmstead* Plan  
16 and the concerns that are part of the *Olmstead* Plan, you  
17 know, the Plaintiffs raised a lot of questions but didn't  
18 really come up with facts to say this is -- this is the  
19 specific concern that I, the Plaintiffs, have; or this is  
20 the reason why. Here's the motion that the Plaintiffs  
21 brought to extend -- to trigger the Court's jurisdiction  
22 extension language under the Settlement Agreement. That  
23 just hasn't been said because it didn't happen. And instead  
24 we talked about things that happened, you know, that predate  
25 even the settlement. And that's really inappropriate. It's

1 really to look at the Settlement Agreement.

2 And so the Defendants are clear about this, the  
3 language itself does not allow for ongoing jurisdiction.

4 THE COURT: So -- I don't know if this is the  
5 place to have a discussion -- but maybe perhaps the  
6 Plaintiff was silent but your office, maybe not you, but  
7 your office was silent on the initial extension by this  
8 Court of that one-year period, as well. There was no  
9 response of, Oh, wait a minute. Respectfully or otherwise,  
10 there's no jurisdiction. When that one-year period  
11 extension is done, it's done, over, and no jurisdiction of  
12 the Court. There wasn't -- it doesn't mean you can waive  
13 jurisdiction. It doesn't mean -- nobody was behaving like  
14 there was no jurisdiction by the Court.

15 MR. IKEDA: I think the Court sort of said what my  
16 answer would be, which is that it can't be waived and it's  
17 not -- it's not a material fact on what the Defendants did  
18 or didn't do. What is material with respect to the issue of  
19 jurisdiction is what the Plaintiffs did or didn't do.  
20 Because it was incumbent upon the Plaintiff under limited  
21 circumstances to themselves move for an extension of the  
22 Court's jurisdiction if they wanted to trigger the extra  
23 year.

24 So that's the -- if you look at the agreement,  
25 that should be --



1 THE COURT: But either one, that extra year is  
2 gone anyway. That's long gone, too.

3 MR. IKEDA: Correct. Thank you, your Honor.

4 MR. O'MEARA: May I?

5 THE COURT: You may.

6 MR. O'MEARA: The Court's order at Docket 233 has  
7 an extension of jurisdiction section and it says: "The  
8 Court, having been advised by the Court Monitor that the  
9 parties have agreed that the Court's retention of  
10 jurisdiction on the above-entitled matter may be extended  
11 for an additional year to December 4, 2014, beyond the  
12 current December 4, 2013 date, pursuant to Section 15(b) of  
13 the Settlement Agreement, the Court hereby extends its  
14 jurisdiction of this matter to December 4, 2014. However,  
15 the Court expressly reserves the authority and jurisdiction  
16 to order an additional extension of jurisdiction depending  
17 upon the status of compliance by the Defendants with the  
18 specific provisions of the Settlement Agreement absent  
19 stipulation of the parties."

20 That's Docket 233 at 1 through 3, page 1 through  
21 3, and then it's --

22 THE COURT: If I may, I think a fair  
23 interpretation of counsel, though, is that with or without  
24 response from either party, the Court didn't have  
25 jurisdiction to take it beyond that 2014 date.

1           MR. O'MEARA: I think counsel is dead wrong. I  
2 think your ancillary jurisdiction exists because of the  
3 noncompliance issue. And we cited some cases earlier.  
4 Scott says we haven't given them any law. We've cited a  
5 bunch of cases. We provided letters to the Court,  
6 articulated the case law on our position. It's the conduct  
7 of the Defendants that is driving the Court's jurisdiction,  
8 the involvement of the Court Monitor, and, you know, the  
9 Court's status conferences in 2017 about the implementation  
10 of a plan that should have been in place a long time ago.

11           The Court in that same order said: "For several  
12 reasons it is evident that heightened supervision of  
13 Defendants' actions is appropriate at this time. Two  
14 reasons are set forth above. Compliance continues to be  
15 insufficient and Defendants have not established a  
16 comprehensive Implementation Plan."

17           And then again your March 19, 2015 order, Docket  
18 400 says: "Defendants' request needlessly delays closure  
19 and final approval of the *Olmstead* Plan. The Court reminds  
20 Defendants of their promise to 'develop and implement a  
21 comprehensive *Olmstead* Plan' more than three years ago at  
22 the time of the Settlement Agreement."

23           You know, maybe they don't want to talk about the  
24 facts the last few years because the facts aren't the  
25 greatest for them. Dozens and hundreds of hours have been

1 spent by a lot of people to try to, you know, get this thing  
2 on track, keep it on track and move it forward. And the  
3 suggestion in March of 2017 that somehow your order back in  
4 2013 or '14 was erroneous and all that's been done between  
5 then and now had no court-sanctioned authority isn't the  
6 law.

7 And so if they think that's the way things should  
8 go, they have to file the motion and we'll respond to it.  
9 And we were perfectly fine, your Honor, with the Court's  
10 extension of jurisdiction by stipulation of the parties and  
11 the involvement with the Court Monitor. The Court's warning  
12 to DHS about its noncompliance on repeated occasions as  
13 articulated in many, many orders of this Court; the efforts  
14 of the Court Monitor to move things forward; the efforts of  
15 the parties, candidly, your Honor, to try to move this thing  
16 forward; and all the people that have been involved in the  
17 *Olmstead* Plan in other areas to move things forward.

18 And so I think they are dead wrong on it. I  
19 believe that our view of the case law as applied to the  
20 facts of what happened is correct and that Mr. Ikeda and the  
21 state defendants are wrong when they suggest the Court has  
22 no ongoing jurisdiction to enforcement of the implementation  
23 in the Settlement Agreement.

24 Thank you.

25 THE COURT: Anything further by counsel?

1 MR. IKEDA: No, your Honor. I'll let him have the  
2 last word. We don't agree.

3 THE COURT: Separate from the jurisdiction  
4 discussion that we've had, I think where we -- I was  
5 suggesting that the parties submit with respect to the  
6 Workplan request, the extension of the submission in March  
7 versus February; and then my suggestion, perhaps, is we set  
8 a status conference, absent other agreement of the parties  
9 to follow that, and which would push it to at least April.  
10 That's unrelated to the -- I think the next get-together  
11 we're scheduled to have in June on Jensen.

12 But I was suggesting that much like the e-mails we  
13 got that kind of made it easier for both counsel and the  
14 consultants, Ms. Tingerthal and others, to send notes in.  
15 We kind of arrived on what people agreed on and didn't agree  
16 on. And I'm willing to do an order in e-file or whatever  
17 you wish, separate from my order. If we do that, will we  
18 get any requests that you don't agree on for next week, or  
19 if a week is too soon? And then I'll go ahead. I think  
20 those are kind of separate issues from what has just been  
21 discussed here.

22 Does that work for everyone? I think given what  
23 the Commissioner has said.

24 MR. IKEDA: Well, your Honor, respectfully the  
25 Defendants, as you know, as everyone in the courtroom knows,

1 take the position that the Court does not have jurisdiction.  
2 So the Defendants can't agree that there are some next steps  
3 for the Court to take. The Defendants' position obviously  
4 is that the Court should dismiss whatever action remains.  
5 In fact, I believe that this case is closed on ECF or  
6 something like that.

7 But that's the Defendants' position. Obviously  
8 the Court will order what the Court orders. I'll defer to  
9 Mr. O'Meara for the Plaintiffs' position.

10 MR. O'MEARA: I don't understand what the  
11 Defendants' position is. They are saying the Court will  
12 order what it orders and what will they do. Will they come  
13 to court? Should I waste my time preparing something? What  
14 specifically will the Defendants do with regard to the  
15 Court's request? If they are going to say there's no  
16 jurisdiction and they are not going to show up, then maybe  
17 they will be in contempt of Court. I don't know.

18 But with all due respect to the Court, your Honor,  
19 I would like to -- I would respectfully ask that the State  
20 and DHS articulate specifically whether they are going to  
21 show up in Court, whether they are going to do the things  
22 the Court has asked them to do or not. Because there's a  
23 lot of people that have to do things on our end, on the  
24 consultants' end, to prepare and to do the things that we  
25 were ordered to do by the Court and the Settlement

1 Agreement.

2 THE COURT: Well, what I will do, just given where  
3 everybody is at, in the next week I'll do -- I'll do a short  
4 order and it will have anything in it from, Here's the next  
5 step. I want a brief from Defense or Plaintiff; or I want  
6 this or I -- we're going to do what the Commissioner said.  
7 And without reaching the issue of jurisdiction or with  
8 reaching it with respect to not submitting Workplans, I'll  
9 just, rather than -- I'll get something to everyone and then  
10 say get back to me within a week or so after that. So that  
11 shouldn't -- everybody can keep doing what they are doing  
12 and then I will get something to you so we can decide where  
13 we go from here.

14 All right? Does that work for everyone?

15 MR. O'MEARA: Yes, your Honor.

16 MR. IKEDA: We'll await the Court's order, your  
17 Honor.

18 THE COURT: All right. Sorry to take everybody's  
19 noon hour. I want to say this as we adjourn.

20 The lawyers will have to do what they have to do,  
21 and in some ways it's -- I want to end on a positive note.  
22 Quite separate from the discussions that we've now had on  
23 jurisdiction, I want to -- it looks to me like the cabinet,  
24 Subcabinet Commissioner, MS. Tingerthal and others, along  
25 with the help and input of the consultants and other people,

1 I think a lot of progress has been made. What I think back  
2 on, and maybe I'll go re-read it for the seventh or eighth  
3 time, is what all of the lawyers said at the Settlement  
4 Agreement, both from the Attorney General's office and from  
5 Mr. O'Meara's office, about here's what we're going to do.  
6 Here's what we're going to improve the lives of all these  
7 people. And everybody was working together so well.

8 And so -- but I want to end on a positive note.  
9 Everybody can do what they have to do, because I think a lot  
10 of progress has been made and, you know, we'll let the  
11 public decide a lot of those issues. I think lives have  
12 been improved, are being improved. And so I hope all of  
13 that continues regardless of -- because I really think  
14 there's a lot of good things going on that are improving the  
15 lives of people.

16 And actually it's not a -- again, apart from the  
17 jurisdictional issue, I think that there are few states, and  
18 maybe that's true with or without the Settlement Agreement,  
19 there are few states that have a -- just looking now  
20 strictly at the *Olmstead* Plan and the issues -- there are  
21 few states that have some of the coordination and things  
22 going on with the Cabinet and Subcabinets that looks like  
23 this and actually have set some -- use whatever words you  
24 like -- requirements, aspirational goals.

25 The point is, I think that it's headed in the --

1 it's in the right direction thanks to a lot of work of a lot  
2 of people. And, you know, so with that, I will thank you  
3 for your time. You will hear from me shortly and then we'll  
4 see where we go from there.

5 And everybody have a pleasant weekend and we're  
6 adjourned.

7 All right. Thank you.

8 (Adjournment.)

9  
10 \* \* \*

11  
12 I, Jeanne M. Anderson, certify that the foregoing  
13 is a correct transcript from the record of proceedings in  
14 the above-entitled matter.

15  
16 Certified by: s/ Jeanne M. Anderson  
17 Jeanne M. Anderson, RMR-RPR  
18 Official Court Reporter

19 \* \* \*

20 I, Carla R. Bebault, certify that the foregoing is  
21 a correct transcript from the record of proceedings in the  
22 above-entitled matter.

23  
24 Certified by: s/ Carla R. Bebault  
25 Carla R. Bebault, CRR-RPR  
Official Court Reporter