

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, JULY 6, 2012

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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 9:30 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ABIGAIL THERNSTROM, Vice Chair

ROBERTA ACHTENBERG, Commissioner

TODD F. GAZIANO, Commissioner (via telephone)

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (via telephone)

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

VANESSA EISEMANN, Parliamentarian

LOUISE DIBENEDETTO, Inspector General

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STAFF PRESENT:

IVY L. DAVIS, Director, ERO

PAMELA DUNSTON, Chief, ASCD

ALFREDA GREENE

TINALOUISE MARTIN, Director, OM

MONIQUE MURRELL, ASCD

JOHN RATCLIFFE, Chief, Budget and Finance

LAUREN TSUJI, Intern, OGC

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTON

ALEC DEULL

TIM FAY

JOHN MARTIN

CARISSA MULDER

RICHARD SCHMECHEL

MARLENE SALLO

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P R O C E E D I N G S

(9:30:39 a.m.)

CHAIRMAN CASTRO: This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It's 9:30 on June, I'm sorry, July 6th, 2012. This meeting is taking place here at the Commission's headquarters at 624 9th Street, N.W.

I'm Chairman Marty Castro, and the Commissioners who are present here with me are, of course, myself, Vice Chair, Ms. Thernstrom, Commissioners Heriot and Achtenberg, Commissioners Yaki and Kladney, Commissioner Kirsanow is currently on the phone and will be participating by phone for the meeting. And we also expect at approximately 10:00 for some short period of time Commissioner Gaziano will be joining the call.

There is, therefore, a quorum of the Commission present. Is the person who is the court reporter present?

COURT REPORTER: Yes, Mr. Chairman.

CHAIRMAN CASTRO: Thank you. So, this meeting shall now come to order.

The first item is the approval of the agenda for the July 6th meeting.

I. APPROVAL OF AGENDA**NEAL R. GROSS**

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CHAIRMAN CASTRO: I move that we approve the agenda. Is there a second?

COMMISSIONER KLADNEY: Second.

VICE CHAIR THERNSTROM: Second.

CHAIRMAN CASTRO: Okay. Do I have any amendments to the agenda? Commissioner Yaki?

COMMISSIONER YAKI: I would like to amend the agenda to include an item regarding requesting staff to work with myself and my special assistant on drafting the development plan that we discussed at the last meeting for the stand your ground investigation. This would not be starting any work on it, it would just be working on issues involving budget and planning to help us to get the benefit of the expertise of OGC and OCRE on consultants, expenses, and things like that.

CHAIRMAN CASTRO: Okay. If we can put that at the end of program planning, that would be good.

COMMISSIONER YAKI: Thank you.

CHAIRMAN CASTRO: Okay. And, in addition, the vote on the 2013 Statutory Enforcement Report topic was inadvertently left off the agenda, so I would move that we would amend the agenda to add that vote.

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1 VICE CHAIR THERNSTROM: I'm sorry, which
2 vote is that?

3 CHAIRMAN CASTRO: Well, first let's do a
4 second on Commissioner Yaki's amendment. Is there a
5 second to that?

6 VICE CHAIR THERNSTROM: I second it.

7 CHAIRMAN CASTRO: Okay. So, then I move
8 that we amend the agenda to add the vote on the 2013
9 Statutory Enforcement topic which was inadvertently
10 left off the final agenda that was sent around. So, do
11 I have a second on that?

12 COMMISSIONER HERIOT: Second.

13 CHAIRMAN CASTRO: And, also, I think I
14 mentioned earlier we want to try to accommodate
15 Commissioner Gaziano as he joins us by phone. He asked
16 us to be available. He'll be available at 10:00, and
17 he'd like to be able to talk about the 2012 Statutory
18 Enforcement report, so we'll try to hopefully have
19 some flexibility to allow that conversation, unless I
20 have any objections to that. Any other amendments?

21 Okay. So, all those in favor of the agenda
22 as amended signify by saying aye.

23 (Chorus of ayes.)

24 CHAIRMAN CASTRO: Any opposed? Any
25 abstentions? Okay.

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1 Before we proceed with the next item I
2 want to actually take the opportunity welcome some new
3 members to our team. Our new attorney, Vanessa
4 Eisemann. She's sitting back here because she's
5 actually our parliamentarian in addition to other
6 duties. And then we have Carissa Mulder who is now
7 working as special assistant to Commissioner Kirsanow
8 who's sitting over here. And then Lauren, our intern
9 in the Office of the General Counsel, so if any of you
10 would like to say a few words, you are welcome to. If
11 you don't want to, that's fine, too.

12 MS. EISEMANN: Just thank you very much.

13 CHAIRMAN CASTRO: Short and sweet, that's
14 great. So, we now move on to program planning. We have
15 a very aggressive agenda today so we'll try to get
16 through it. And I know folks want to make their
17 planes, as well.

18 So, the first item on the program planning
19 agenda is a discussion and vote on the strategic
20 planning goals and objectives.

21 **II. PROGRAM PLANNING UPDATE AND**

22 **DISCUSSION OF PROJECTS**

23 **DISCUSSION AND VOTE ON STRATEGIC PLAN**

24 CHAIRMAN CASTRO: So, all of the
25 Commissioners should have received two grids via email

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1 last Friday. We're going to first look at the eight-
2 page grid that has the Number Two Header on it. That
3 grid contains the revised goals that were based on the
4 discussions and votes that were held at our June
5 meeting. And then work done by our appointed
6 subcommittee to refine those goals and objectives that
7 a majority of the Commissioners had agreed upon, and
8 to make other refinements. So, hopefully, everyone has
9 had the opportunity to review those goals and we can
10 move forward on each of those.

11 In addition, Commissioner Yaki had prepared
12 an alternative goal A, which was also circulated as
13 part of the package. So, we should also feel free to
14 discuss that along with the goals and recommendations
15 from the subcommittee that was voted on by the
16 majority of the Commissioners.

17 The goal today is -- and we understand from
18 our folks in the Office of Management and Budget, for
19 their budgeting reasons, their purposes all they need
20 from us today is a final approval by a majority of the
21 Commission on our revised goals and objectives. That
22 is then what they can integrate into their budget
23 request. We can then at a later date, as soon as
24 possible thereafter, fill in the text behind an active
25 strategic plan. The most important thing for our

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1 budgeting reasons is to have the goals and objectives
2 available to them. Is that right? Yes, let the record
3 reflect Tina Martin said yes. So, what we'll do then
4 is go through the initial eight-page grid. You should
5 all have that, entitled, "The Revised Goals and
6 Objectives for Strategic Plan FY 2014 to 2018 (2)."

7 So, as we did at the last meeting we'll
8 start with Strategic Goal A, which reads:

9 "The Commission will function as an
10 effective civil rights watchdog and conduct studies
11 and issue publications on important issues of civil
12 rights."

13 As you can see, there are various
14 objectives, strategies, performance measures, and
15 responsible parties that come after that.

16 I know Commissioner Yaki had some additional
17 comments on that, but I'd like to open that up for
18 either questions, discussions, or a motion on
19 subparagraph A. Commissioner Yaki?

20 COMMISSIONER YAKI: Yes. Thank you very much,
21 Mr. Chair. While I want to commend the Chair and the
22 staff for -- and the Vice Chair and her staff and all
23 the Commissioners for their work on this issue, my --

24 I think that this is an opportunity to better define
25 -- I won't say redefine because I think that we're

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1 doing what it is that we've always meant to do, but to
2 better define with some clarity and specificity what
3 we are doing and incorporate within that the idea of
4 how our objectives will be sharpened and focused in a
5 way that really gets at meeting what those goals are.
6 And I have a proposal which I have passed out to
7 everyone for Strategic Goal A which would amend it to
8 say that instead of functioning as an effective civil
9 rights watchdog and conduct studies and issues
10 publications, is more mission oriented and aggressive
11 by saying that the Commission will provide new
12 objective information and analysis on civil rights
13 issues. And by doing -- and the objective through that
14 is to conduct original fact finding and/or data
15 reviews in civil rights investigations.

16 I think this goes to -- in some ways this
17 goes to what I'm trying to achieve with the Stand Your
18 Ground investigation, but it also, more importantly,
19 just goes to what I think we have been trying to
20 grapple with in the past year, which is how do we make
21 our Commission more relevant and more important in the
22 21st century.

23 So, as you can see each of this flows into
24 additional strategies and performance measures. And I
25 can take questions on those if you wish. But, again,

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1 the idea is that we will be strengthening our mission
2 in terms of what is we do, and doing what it is that
3 the Commission has always done at its best, and when
4 it was in its hay day which was looking at issues in a
5 different light than what's currently out there, using
6 our investigative powers to achieve that, seeing if
7 there are ways, new ways to look at new emerging
8 issues in civil rights that may not have been
9 contemplated previously, or nuances there are on laws
10 already in existence for which civil rights issues are
11 implicated.

12 That's the reason why I want to do it. It's
13 certainly not -- it is meant as a supplement to and
14 strengthening of what it is we are saying in A with a
15 little oomph that I think says to OMB, and says to
16 lawmakers, and says to our constituencies outside this
17 room that this is a Commission that takes its job
18 seriously. I know we all do, but as far as a strategic
19 mission goes and is stated, does so in a way that
20 substantially bulks up our mission and objectives, I
21 think for the better. And that's why I did it.

22 I want to thank Richard Schmechel for
23 working with me on this, and I leave it to my
24 colleagues to discuss and debate, and hopefully
25 approve. Thank you.

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1 CHAIRMAN CASTRO: Commissioner Yaki, I have a
2 question.

3 COMMISSIONER YAKI: Sure.

4 CHAIRMAN CASTRO: I like what you proposed. I
5 think it's an important addition. I don't, however,
6 think it's mutually exclusive to some of the points
7 already in A, because they are different. So, for us,
8 I think it's important to try to be effective civil
9 rights watchdog, as well as conducting studies and
10 publications on important issues. And would you be
11 amendable to merging your Goal A so that we would
12 begin with your Goal A as "The Commission will provide
13 new and objective information and analysis on civil
14 rights issue, and will function as an effective
15 watchdog," et cetera. Because I think each of those is
16 related but separate, and so all of them are
17 important.

18 COMMISSIONER YAKI: I think that, Chairman,
19 you have stated, I think, an excellent point and one
20 which I was hoping would be brought up. And I think a
21 merger is perfectly acceptable. And not just
22 acceptable, I think strengthens both documents and I
23 would agree with that.

24 CHAIRMAN CASTRO: Okay. Commissioner Heriot?

25 COMMISSIONER HERIOT: So, how would that

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1 read?

2 CHAIRMAN CASTRO: So, I would -- what I said,
3 it would read -- it would start out with "The
4 Commission will provide new objective information and
5 analysis on civil rights issues," and then I'm not a
6 punctuation expert. I don't know if we put a semi-
7 colon in there, a period or whatever, but then we
8 would say -- so the next thing would be "and function
9 as an effective civil rights watchdog, and conduct
10 studies and issue publications on important issues of
11 civil rights," so that we're getting the three themes
12 in there. We can punctuate it the way we want, but it
13 would be --

14 COMMISSIONER HERIOT: And we're not messing
15 with "objective strategies, performance measures" --

16 CHAIRMAN CASTRO: No, we could integrate the
17 objective strategies and performance measures that are
18 related to revised Goal A into these, I would imagine.
19 Commissioner Yaki?

20 COMMISSIONER YAKI: Well, I was just thinking
21 that perhaps for ease of the merger, it might just be
22 easier to make this Strategic Goal B, and just make B
23 , C, and everything like that, and just put it in that
24 way. That might be cleaner. Then we wouldn't have to
25 worry about stuff.

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1 CHAIRMAN CASTRO: That's fine, too. I mean,
2 it's fine for me. I would like to hear other
3 Commissioners.

4 COMMISSIONER HERIOT: Which one is A, and
5 which one is B?

6 CHAIRMAN CASTRO: So, A is the current A, and
7 you're A is the new B.

8 COMMISSIONER YAKI: New B.

9 CHAIRMAN CASTRO: Commissioner Heriot?

10 COMMISSIONER HERIOT: I think the only
11 problem I have about is that if we commit to doing
12 this and we fail to do it, we're going to look really
13 bad. And in the past we cancelled studies that would
14 have fit under this. And what's going to happen if we
15 have a year where we don't get such a study off the
16 ground?

17 CHAIRMAN CASTRO: Commissioner Yaki?

18 COMMISSIONER YAKI: Yes, we anticipated that
19 probability, which is why we said it does not have to
20 be a standalone project. It can be in conjunction with
21 a briefing or enforcement report. I think there are
22 plenty of opportunities in the course of a year to
23 incorporate this kind of work in a briefing or
24 enforcement rather than just a standalone project. So,
25 we were cognizant. We did not certainly want to, as

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1 you point out accurately, Commissioner Heriot, box us
2 into anything that would be unduly restrictive or
3 mandated, so we made sure that we put it either as a
4 standalone project or in conjunction with a briefing
5 or enforcement report. And I believe that that would
6 be a pretty easy threshold to meet.

7 COMMISSIONER HERIOT: Well, could you let me
8 know what projects have we done in the past that you
9 think would fit under this? When have we successfully
10 done this?

11 COMMISSIONER YAKI: Probably 1960, 1961, and
12 probably 1962. Probably the ADA Report, probably the
13 report on Violence and Women back in 1975.

14 COMMISSIONER HERIOT: Okay. So, you don't
15 think that religious liberties topic --

16 COMMISSIONER YAKI: It might be. I'm just
17 going by what I know, but I certainly believe that --

18 COMMISSIONER HERIOT: Well, you were here for
19 that one.

20 COMMISSIONER YAKI: Yes.

21 COMMISSIONER HERIOT: Are you saying that
22 doesn't --

23 COMMISSIONER YAKI: I'm not sure because I
24 wasn't a big fan of that report to begin with.

25 COMMISSIONER HERIOT: Neither was I, but

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1 there was an effort to uncover useful information.

2 COMMISSIONER YAKI: And I remember that part
3 of it, so I would say that that's -- I guess that's
4 what I mean by saying it is -- it won't be that hard
5 of a threshold to meet.

6 COMMISSIONER HERIOT: But that's actually one
7 of our better efforts. I'm wondering if --

8 COMMISSIONER YAKI: But I do believe that --
9 no, on that particular point, actually, you are
10 correct. And I think that this -- what this does is
11 give us -- I won't say a higher bar because I think we
12 all meet a very high bar here regardless of party or
13 political affiliation. And I think that -- but I think
14 that this is a very significant statement going
15 forward that we are in some ways recommitting
16 ourselves to that which has brought us to a good point
17 in the past. And we want to take this with us into the
18 future. That's why I wanted to put it in there.

19 COMMISSIONER HERIOT: I'm still concerned
20 about making sure that this is our goal, and this is
21 our objective, that we are going to be able to meet
22 it. I mean, it seems to me our gender bias study would
23 have easily qualified here. The cy-pres study might
24 well quality depending upon how you are looking at it.

25 COMMISSIONER YAKI: Right.

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1 COMMISSIONER HERIOT: The English Only
2 started out as a briefing that was going to have some
3 discovery in it, and we rolled over when the EEOC was
4 not willing to provide us that discovery.

5 COMMISSIONER YAKI: Right.

6 COMMISSIONER HERIOT: You know, what happens
7 if we run into problems like that again? I don't want
8 to be sitting here having failed to achieve this;
9 although, to me this is a great goal. I'm very happy
10 at the idea of stating this as a goal. I just want to
11 make sure that we're going to agree on what it means,
12 and we set the goal realistically so we can, in fact,
13 achieve it.

14 Would you agree that our efforts in cy-pres
15 of sending out questionnaires to the judiciary would
16 have qualified here about what sort of cy-pres
17 projects they have approved?

18 COMMISSIONER YAKI: To be totally honest,
19 Commissioner Heriot, I don't recall at this point.
20 What I can say is that the efforts that the Commission
21 will be making with regard to Stand Your Ground
22 certainly qualify for that in terms of --

23 COMMISSIONER HERIOT: We don't know what that
24 project is yet. You haven't given us the --

25 COMMISSIONER YAKI: Well, we --

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1 COMMISSIONER HERIOT: Work with a project
2 that we've actually done.

3 COMMISSIONER YAKI: I would say that
4 certainly some of the information that we requested at
5 the -- on the report that we did on bullying,
6 requested new data that had not yet been out there was
7 novel. And in some ways the kind of statistics that we
8 were asking for with regard to sexual identification
9 were new, and novel. So, I think we -- this is -- I
10 think to encourage us to continue along that mode, and
11 if there are issues that you think will qualify in the
12 future, you will have this goal to help you push it
13 forward.

14 COMMISSIONER HERIOT: But bullying you think
15 did qualify?

16 COMMISSIONER YAKI: I think bullying did
17 qualify.

18 CHAIRMAN CASTRO: The Chair recognizes the
19 Vice Chair.

20 VICE CHAIR THERNSTROM: I mean, one of the
21 things I like very much about this is that it suggests
22 that our findings will be data driven to an extent to
23 which often they have not. And, therefore, it seems to
24 me have failed in this important objective of
25 providing -- well, this important goal of providing

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1 objective information and analysis. So, to the extent
2 to which that is what you have in mind, I very much
3 applaud it.

4 COMMISSIONER YAKI: That is what I have in
5 mind.

6 CHAIRMAN CASTRO: And let me just add
7 something. I believe we had suggested last night to
8 your special assistant, Commissioner Yaki, the
9 possibility of under Performance Measures adjusting a
10 couple of the dates. I think the first performance
11 measure -- well, it's actually the second one listed
12 there by 2013 to be by 2014 --

13 COMMISSIONER YAKI: Sure.

14 CHAIRMAN CASTRO: -- given the start date of
15 the plan.

16 COMMISSIONER YAKI: Yes.

17 CHAIRMAN CASTRO: And then making 2014, 2015,
18 so that it's consistent with the time line of the
19 plan.

20 COMMISSIONER YAKI: That's fine with me.

21 CHAIRMAN CASTRO: Commissioner Heriot?

22 COMMISSIONER HERIOT: I'm looking at this
23 now, and it has a section that says, "Within 30 days
24 of the completion of an investigation the Agency will
25 make publicly available for inspection at its

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1 headquarters office all non-confidential source
2 documents and data sets gathered in the course of the
3 investigation." That's committing to do something that
4 I'm a little worried about here. Non-confidential in
5 whose view? For instance, in the sex discrimination
6 study, I don't believe that those things were legally
7 confidential but the schools were going to fight us in
8 court if we couldn't commit to that. So, what do we
9 mean by non-confidential here? Do we mean non-
10 confidential in the sense that it's not illegal for us
11 to publish this, or non-confidential in the sense that
12 we've agreed with the people that are producing this?
13 I mean, that's a serious issue here.

14 CHAIRMAN CASTRO: That's a good point.
15 Commissioner Yaki, can you address that, please?

16 COMMISSIONER YAKI: Yes. I think that there
17 are two ways to address it. One is that this will
18 simply -- we can either do two things. One is, we can
19 make this part of the disclosure arrangement with
20 regard to any agency or entity from whom we are
21 seeking the data request. The second is that I think
22 we're complicating this slightly. This is simply a
23 transparency issue for others to seek what it is that
24 we have been working on. And in many -- and if you
25 want some clarification, to me this is simply a way of

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1 rather than waiting for in some ways a FOIA request,
2 it's us practically determining what would be eligible
3 under FOIA for someone who had requested any data
4 information, which means the determination would be
5 within the purview of OGC.

6 CHAIRMAN CASTRO: Commissioner Kladney.

7 COMMISSIONER KLADNEY: Kladney.

8 (Laughter.)

9 CHAIRMAN CASTRO: I'm sorry. My glasses were
10 down, I couldn't tell. I can't see without these
11 things.

12 COMMISSIONER KLADNEY: I know.

13 (Simultaneous speech.)

14 CHAIRMAN CASTRO: I saw a hand somewhere
15 between the two of you, and I wasn't sure who it was,
16 so I --

17 COMMISSIONER YAKI: She has long hair, and he
18 has no hair, so --

19 (Laughter.)

20 CHAIRMAN CASTRO: They're sitting too close
21 together.

22 COMMISSIONER KLADNEY: My concern is I don't
23 know whether we have anything that's confidential. I
24 can't think of anything that's -- any documents that
25 are confidential that we take from other parties. I

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1 don't know if we can have confidentiality. I think we
2 should make sure that we disclose that to any parties
3 that we receive documents from. My opinion.

4 CHAIRMAN CASTRO: Vice Chair, and then
5 Commissioner Heriot.

6 VICE CHAIR THERNSTROM: I have one other
7 perhaps small concern, and that is, I don't think
8 there's entire agreement within this Commission on
9 what constitutes -- what the definition is of civil
10 rights and a civil rights violation. And I think we're
11 heading into that problem with a couple of proposals,
12 and it's got to be part of the conversation as we
13 think about what our goals is, that we arrive at -- or
14 that we at least have a discussion of the meaning, the
15 definition of a civil rights issue.

16 CHAIRMAN CASTRO: Commissioner Heriot?

17 COMMISSIONER HERIOT: We actually have a
18 statute that tells us what a civil rights issue is,
19 but that aside, I'm still back on the issue of
20 confidentiality.

21 VICE CHAIR THERNSTROM: Not satisfactorily.

22 COMMISSIONER HERIOT: I'm not willing to vote
23 on something like that with as little discussion as
24 we've got right now. I am willing to vote just on the
25 strategic goal.

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1 CHAIRMAN CASTRO: Yes. Commissioner Yaki?

2 COMMISSIONER YAKI: I think that this is
3 something that we're perhaps gilding the lily, and I'd
4 be more than happy to simply remove it.

5 CHAIRMAN CASTRO: You're talking about the
6 confidential section.

7 COMMISSIONER YAKI: Yes.

8 CHAIRMAN CASTRO: Non-confidential. Okay.

9 COMMISSIONER YAKI: Performance Measure 4.

10 CHAIRMAN CASTRO: All right. Any other
11 questions?

12 COMMISSIONER HERIOT: Yes. I've still got to
13 look at these. I'm sorry.

14 CHAIRMAN CASTRO: Okay, we'll give you a
15 second to do that then, maybe two seconds.

16 COMMISSIONER YAKI: Let's take out five, as
17 well. I was just getting to that.

18 CHAIRMAN CASTRO: Which one? Okay.

19 COMMISSIONER YAKI: And I'm going to -- I
20 would like to change Performance Measure 2 to
21 substitute the mandatory will to may on SACs may be
22 solicited, because given the -- I'm not sure exactly
23 what the -- how many SACs might be chartered at any
24 given moment in time. I think may would be more
25 appropriate than will.

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1 COMMISSIONER HERIOT: You want to consider
2 putting approximately in front of the word "annually",
3 so the Commission will approximately annually do this?
4 I don't want some Congressional subcommittee yelling
5 at us about not having done it in a particular year.

6 (Simultaneous speech.)

7 VICE CHAIR THERNSTROM: I was going to say -

8 CHAIRMAN CASTRO: I thought so. I thought I'd
9 just say it for you. So, is that acceptable? Is it
10 approximately acceptable?

11 COMMISSIONER HERIOT: Or some other fudge
12 word. Give us a little --

13 COMMISSIONER YAKI: Where would this be?

14 COMMISSIONER HERIOT: Objective, Objective 1,
15 something to fudge on annually.

16 COMMISSIONER YAKI: How about the --

17 COMMISSIONER ACHTENBERG: How about
18 regularly?

19 COMMISSIONER YAKI: Yes. The Commission will
20 -- that's what I was just about to say. Thank you very
21 much, Commissioner Achtenberg.

22 CHAIRMAN CASTRO: Okay. Anything else --

23 COMMISSIONER YAKI: And then we have to
24 conform then Strategy A to again put in the word
25 regular. And I think that takes care of any --

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1 CHAIRMAN CASTRO: Okay.

2 COMMISSIONER YAKI: -- angular issue.

3 CHAIRMAN CASTRO: Commissioner Kirsanow, I'm
4 sorry we were ignoring you on the phone, but I'm
5 assuming you would have spoken up had you had anything
6 to add to this.

7 COMMISSIONER KIRSANOW: No, I don't have
8 anything to add. I do have a reservation as to our
9 capacity to do this both from a financial and a
10 manpower standpoint, but I'm sympathetic to the idea.

11 CHAIRMAN CASTRO: Okay. So, if there are no
12 other additions or comments to this what is now
13 proposed Section B, why don't we take a vote. So,
14 Commissioner Yaki, do you want to move to -

15 COMMISSIONER YAKI: I'd like to move to
16 incorporate my proposal as new Strategic Goal B with
17 the amendments as reported and discussed during this
18 discussion.

19 CHAIRMAN CASTRO: Is there a second?

20 COMMISSIONER HERIOT: Just one more regular
21 instead of annual under performance measures. That
22 first one there.

23 CHAIRMAN CASTRO: Okay.

24 COMMISSIONER YAKI: Got it. Thank you.

25 CHAIRMAN CASTRO: Okay.

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1 COMMISSIONER YAKI: Okay.

2 CHAIRMAN CASTRO: Do we have a second?

3 VICE CHAIR THERNSTROM: I'll second it.

4 CHAIRMAN CASTRO: All those in favor say aye.

5 (Chorus of ayes.)

6 CHAIRMAN CASTRO: Any opposed? Any
7 abstentions? Okay.

8 COMMISSIONER KIRSANOW: Kirsanow, abstain.

9 CHAIRMAN CASTRO: Oh, sorry, one abstention,
10 Commissioner Kirsanow.

11 COMMISSIONER YAKI: I thought I had you,
12 Peter.

13 CHAIRMAN CASTRO: So, we move on now to the
14 original Strategic Goal A as revised by the
15 subcommittee. "The Commission will function as an
16 effective civil right watchdog, and conduct studies
17 and issue publications on important issues of civil
18 rights." Any discussion? Why don't I actually move,
19 and then we can discuss? So, I move that this
20 strategic goal be approved.

21 COMMISSIONER YAKI: Second.

22 CHAIRMAN CASTRO: Okay. Any discussion on
23 this? Hearing none, let's take a vote on this. All in
24 favor signify by saying aye.

25 (Chorus of ayes.)

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1 CHAIRMAN CASTRO: All opposed? Any
2 abstentions? Okay, it's unanimous.

3 And we move on to what is now formerly B,
4 now C, "The Commission will cooperate where
5 appropriate with other federal agencies to apprise
6 individuals of civil rights laws and policies, and to
7 raise public awareness of civil rights." I would move
8 this. Do I have a second?

9 COMMISSIONER ACHTENBERG: Second.

10 CHAIRMAN CASTRO: Discussion? Hearing none
11 I'll call the vote on this. All those in favor signify
12 by saying aye.

13 (Chorus of ayes.)

14 CHAIRMAN CASTRO: Any opposed? Any
15 abstentions? Okay. We now move on to what is now
16 Section D, former C, "Improve the Commission's profile
17 and effectiveness in communicating with the general
18 public." So, I move this. Do I have a second?

19 COMMISSIONER GAZIANO: This is Todd Gaziano.

20 CHAIRMAN CASTRO: Hey, Todd. Welcome,
21 Commissioner Gaziano.

22 COMMISSIONER GAZIANO: Thank you.

23 CHAIRMAN CASTRO: We're still in the tail end
24 of the strategic plan. So, we've got a motion on what
25 was Strategic Goal C, which has now become Goal D,

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1 "Improve the Commission's profile and effectiveness in
2 communicating with the general public." Is there a
3 second?

4 COMMISSIONER ACHTENBERG: Second.

5 CHAIRMAN CASTRO: Okay. Any discussion?
6 Hearing none, I would move the passage of this. All
7 those in favor say aye.

8 (Chorus of ayes.)

9 CHAIRMAN CASTRO: Any opposed? Any
10 abstentions?

11 COMMISSIONER KIRSANOW: Kirsanow opposed.

12 CHAIRMAN CASTRO: Okay.

13 COMMISSIONER GAZIANO: Let me abstain because
14 I am still getting up to speed.

15 CHAIRMAN CASTRO: Okay. Make my notes here.
16 So, Commissioner Kirsanow abstained, or Commissioner
17 Gaziano abstained on D, and Commissioner Kirsanow
18 opposed D.

19 We now move on to D, which is now E,
20 "Continue to strengthen the Commission's financial and
21 operational controls and advance the Commission's
22 mission through management, excellence, efficiency,
23 and accountability." I move that. Is there a second?

24 VICE CHAIR THERNSTROM: Second.

25 CHAIRMAN CASTRO: Discussion? Any discussion,

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1 questions? Hearing none, I'll move for a vote. All
2 those in favor signify by saying aye.

3 (Chorus of ayes.)

4 CHAIRMAN CASTRO: Any opposed? Any
5 abstentions? Okay, that passes.

6 We now move on to former F now G.

7 (Off microphone comment.)

8 CHAIRMAN CASTRO: Oh, it is still F? Okay, so
9 we just somehow -- did I miss anything? Okay, so it
10 stayed F. I guess we had a -- so, , "Increase the
11 participation of SACs to the Commission's work." I'll
12 make a motion. Any second?

13 COMMISSIONER KLADNEY: Second.

14 CHAIRMAN CASTRO: Discussion? Commissioner
15 Kladney?

16 COMMISSIONER KLADNEY: I passed out a one-
17 sheet bar graph, if you all have it. I'm sorry the
18 Commissioners on the phone do not. This has to do with
19 the SAC reports over the past four years, and in
20 published reports, I'll do this for the people on the
21 phone. The Southern Regional office for four years has
22 issued nine reports. The Eastern Regional office has
23 issued eight. The Midwest Regional office has issued
24 four, as the Western Regional office has. The Central
25 Regional office and the Rocky Mountain Regional office

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1 has issued zero reports in four years.

2 The top bar graph shows how many briefings
3 or public forums each of these regions has had for the
4 fiscal years 2009 through 2011. I don't want to go
5 through and say the numbers but, basically, the top
6 Eastern Regional office has had seven pretty much for
7 each year, and the lowest looks like one from many of
8 the regions in many of the years.

9 I think it's important that if we're going
10 to continue paying for these regional offices and
11 paying quite a bit of money, I figured roughly we pay
12 one million two to a million five a year, that
13 somebody ought to be doing something besides the
14 Eastern Regional office, what they do on an annual
15 basis.

16 So, I think it's real important that under
17 the performance measures we have here that the SACs
18 start doing at least two briefings or hearings, or we
19 set some standard. That's all. Yes?

20 COMMISSIONER HERIOT: You know, I'm torn on
21 this because it just seems to me that our statute was
22 written at a time when our budget was much higher.
23 Congress wanted us to have 51 SACs, and we are, as
24 I've said many times now, we are commanded to come up
25 with 51 SACs. It's really hard for a tiny little staff

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1 to turn out a lot of these reports.

2 In some ways -- I mean, if I were in charge
3 of making a decision I might simply abolish the SACs.
4 So, I don't know how to vote given that my view is
5 that if they're not going to increase our budget, I
6 think the best thing to do would be for them to change
7 the statute so that we don't have SACs. I don't want
8 to make it look like I am arguing that we should keep
9 the SACs by voting for this.

10 COMMISSIONER KLADNEY: Right. Oh, I
11 understand that. But I just think that we ought to be
12 getting some reports out of --

13 COMMISSIONER HERIOT: I'm willing to vote yes
14 if I could vote yes with a reservation that my view is
15 that unless Congress in its infinite wisdom wants to
16 expand our budget; footnote, I wouldn't if I were
17 them, I would abolish the SACs. But given that they're
18 here, and given that we have to have them, I want them
19 to turn out more work.

20 CHAIRMAN CASTRO: Commissioner Yaki?

21 COMMISSIONER YAKI: Yes. I mean, I think this
22 is the one thing that if it's in our strategic goals
23 and it's going to OMB, and we are affirming a desire
24 to increase the participation of SACs in the
25 Commission's work, we are by implication saying this

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1 is a budgetary priority goal for us, which -- I know,
2 know. But what I'm -- that's what I'm trying to say,
3 is that, to me, is one of the -- my own issues here is
4 that I want to commend Commissioner Kladney for the
5 research that he did. My question is, when we say will
6 be encouraged to participate in at least two
7 briefings, hearings, or in public forums annually, do
8 we mean each SAC, do we mean the SACs -- among 51
9 there will be two out of 51, or each one will be --
10 have two or more hearings?

11 COMMISSIONER KLADNEY: I think it's meant for
12 each SAC.

13 COMMISSIONER YAKI: And I guess my problem
14 has been that through the years with the fact that we
15 have almost zero money to budget for SACs for travel,
16 we take a large state, you take even a state like
17 Hawaii where they've got to fly between the Islands,
18 or take Alaska, or take any state with a spread out
19 rural population, or spread out urban and rural
20 populations, unless we figure out a way to group Skype
21 a hearing or a public forum, we're basically almost
22 mandating ourselves to fund this. And if we're
23 mandating ourselves to fund it out of money that we
24 don't have, how are we going to fund it? I mean, this
25 is part of our strategic goal. This is going to OMB.

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1 This is part of our budget justification, and we're
2 saying we're going to do two of these a year for each
3 one. And now we're putting ourselves on the hook to
4 make this happen. You know, they don't -- a lot of
5 these meetings don't just occur out of thin air.
6 They've got to be put together, meetings have to be --
7 meeting halls -- I mean, we all know how much it costs
8 to do a hearing, but now we're putting ourselves on
9 the hook for it, so I'm actually in a burst of
10 astonishment agreeing with Commissioner Heriot on --
11 I'm just teasing, Commissioner Heriot. I agree with
12 you on a lot of things, just never in public. Well,
13 uh, I'm just teasing.

14 On this one, there is a serious issue of if
15 this is what we're stating as part of our priorities;
16 how we unwittingly mandated ourselves to spend money
17 we don't have to make it happen.

18 CHAIRMAN CASTRO: Well, let me suggest
19 something because I think a lot of this is underlined
20 by the fact that each of our regional offices is
21 woefully short-staffed. I'll get to you in a second,
22 Commissioner Heriot. And I think ERO is the only one
23 that has a civil rights analyst, and when you look
24 back at the history of this Commission, those offices
25 in the past had more staff than they do now. And I

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1 think it does all ultimately boil down to a budget
2 issue. So, perhaps what we could say here is to put
3 the caveat on here that provided that we obtain the
4 financial resources to do this, that's our goal,
5 because we are going to need additional resources to
6 accomplish these things.

7 COMMISSIONER HERIOT: Commissioner Gaziano is
8 short on time, so can we skip this and go on to the
9 things that he was concerned with?

10 CHAIRMAN CASTRO: Commissioner Gaziano?

11 COMMISSIONER GAZIANO: Yes?

12 CHAIRMAN CASTRO: You only have a half hour.
13 Is that right?

14 COMMISSIONER GAZIANO: I could possibly
15 squeeze an extra five or ten minutes, but I was going
16 to ask something similar if you had more on this
17 topic. But I also agree with your last caveat if you
18 want to make a quick vote on this last point.

19 CHAIRMAN CASTRO: Yes, this is the last
20 point. If we can come to some real quick conclusion,
21 then we can move on to the next. Vice Chair
22 Thernstrom?

23 VICE CHAIR THERNSTROM: Can I just note that
24 it's got here in at least two briefings, hearings,
25 and/or public forums. The public forums are much --

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1 cost much less to hold than the hearings and
2 briefings. So, that's an easier goal to meet.

3 COMMISSIONER KLADNEY: We can also add fact
4 finding.

5 VICE CHAIR THERNSTROM: Yes.

6 COMMISSIONER KLADNEY: Because they do fact
7 finding, as well.

8 VICE CHAIR THERNSTROM: Right.

9 COMMISSIONER HERIOT: Soliciting input from
10 SAC members for all reports, as well.

11 VICE CHAIR THERNSTROM: Yes.

12 COMMISSIONER HERIOT: But could we just put
13 subject to budgetary constraints, comma, increase the
14 participation of SACs.

15 CHAIRMAN CASTRO: I think so.

16 VICE CHAIR THERNSTROM: I think, yes.

17 COMMISSIONER KLADNEY: But while we do that,
18 I would like the Commission to really note the dearth
19 of reports, and if we can encourage the regional SAC
20 people to get going on doing something, I would
21 appreciate it.

22 VICE CHAIR THERNSTROM: Well, and I would
23 like to hear what the obstacles they face --

24 CHAIRMAN CASTRO: In fact, I think it would
25 be great if maybe at our September meeting we invite

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1 to participate by phone our regional chairs, I mean
2 regional directors and hear directly from them what
3 the challenges that they face are--

4 VICE CHAIR THERNSTROM: Right.

5 CHAIRMAN CASTRO: --and what the
6 opportunities that are there if they have additional
7 resources and support, and what they think might be
8 changed that would do better.

9 VICE CHAIR THERNSTROM: Good. So, let us move
10 on.

11 CHAIRMAN CASTRO: Okay, so let's --

12 VICE CHAIR THERNSTROM: My suggestion is --

13 CHAIRMAN CASTRO: Do we have a motion on
14 this?

15 VICE CHAIR THERNSTROM: -- that before we
16 lose Commissioner Gaziano, yes.

17 CHAIRMAN CASTRO: So, we have a motion on
18 this with the changes that we've discussed. Is there a
19 second on that?

20 VICE CHAIR THERNSTROM: Second.

21 COMMISSIONER YAKI: Second.

22 CHAIRMAN CASTRO: All those in favor say aye.

23 (Chorus of ayes.)

24 CHAIRMAN CASTRO: All those opposed? Any
25 abstentions? Okay. So, now we can move on to the next

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1 item. Thank you, everyone, on this, really appreciate
2 it. Most of these were unanimous, and that's really
3 great.

4 We move on now to a discussion on the vote
5 on the 2012 statutory report on the voting rights act.

6 **II. PROGRAM PLANNING UPDATE AND**
7 **DISCUSSION OF PROJECTS**

8 **VOTE ON 2012 FINAL STATUTORY REPORT**

9 CHAIRMAN CASTRO: So, everyone should have
10 received both Part A and Part B. So, of course, we'll
11 deal with Part A first.

12 As you know, the report was circulated by
13 the Commissioner -- to the Commissioners by Kim last
14 month, and so are there any motions, any comments on
15 this? Commissioner --

16 COMMISSIONER GAZIANO: When appropriate, Mr.
17 Chairman, I have a few motions.

18 CHAIRMAN CASTRO: Okay. Shall I let
19 Commissioner Gaziano go forward?

20 VICE CHAIR THERNSTROM: Yes.

21 CHAIRMAN CASTRO: Commissioner Gaziano,
22 please make your motion.

23 COMMISSIONER GAZIANO: I don't necessarily
24 need to go first. It's just hard to be recognized on
25 the phone.

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1 CHAIRMAN CASTRO: No, go ahead if you want.

2 COMMISSIONER GAZIANO: Okay. The revisions
3 were substantially better, and I think I'm almost
4 willing to vote for it, or at least not to vote
5 against it. But I did a few minor matters that conform
6 with some of the amendments.

7 My first motion relates to the title was
8 changed from -- let's see, on page 29 of the draft I
9 have, it was "Lack of Redistricting Politicization,"
10 which several of us objected to. But the substitute
11 title is "Extremely High Pre-Clearance Rate," but
12 there's no comparison to any previous pre-clearance
13 rate, so that is a relative term that I think is
14 inappropriate without any factual basis. I would move
15 to simply change it to "Recent Pre-Clearance Rate."

16 I also disagree with the reasoning in the
17 rest of the chapter, but not so much that it would
18 make me vote against it. So, my motion in short is to
19 change "Extremely High Pre-Clearance Rates," to
20 "Recent Pre-Clearance Rates," and let the facts speak
21 for themselves.

22 COMMISSIONER HERIOT: I'll second.

23 CHAIRMAN CASTRO: Okay. Do you want to -- I
24 guess we should discuss these each individually, and
25 then take votes on it, otherwise it'll get a little

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1 confusing. So, is there any discussion on this?

2 COMMISSIONER ACHTENBERG: What page?

3 CHAIRMAN CASTRO: Page 29 of the Confidential
4 Draft Report, where it currently reads, "Extremely
5 High Pre-Clearance Rates," which was what was used to
6 replace "Lack of Redistricting Politicization."
7 Commissioner Gaziano suggests that it just read
8 "Recent Pre-Clearance Rates."

9 COMMISSIONER GAZIANO: Mike, just to speak to
10 it, I also object to some of the text where they talk
11 about Republican controlled states without defining
12 what that is. And I think they overstate the number of
13 Republican legislative plans. But, again, I can
14 possibly live with that, but the -- I think it is even
15 more factually problematic to have extremely high
16 rates of pre-clearance when no previous pre-clearance
17 rate was compared to the current rates.

18 CHAIRMAN CASTRO: Any discussion?
19 Commissioner Yaki?

20 COMMISSIONER YAKI: I'm not sure that's what
21 that section talk -- I mean, that section does talk
22 about the pre-clearance rates, some of the most recent
23 ones, but it also does provide historical discussions
24 about the fact that pre-clearance rates have always
25 tended to be very high. And I think that is an

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1 accurate description of this in the context of the
2 report. That's not -- the fact that these are recent
3 pre-clearance rates we're talking about, but
4 historically there are extremely high pre-clearance
5 rates. That, to me, is a more fundamental assertion of
6 the facts in this section than simply stating it as
7 a date fact analysis, which is not really what a fair
8 amount of this section talks about. So, I would object
9 to that amendment.

10 CHAIRMAN CASTRO: Commissioner Achtenberg,
11 and then is that you, Commissioner Gaziano?

12 COMMISSIONER GAZIANO: Yes.

13 CHAIRMAN CASTRO: Okay, so Commissioner
14 Achtenberg, and then Commissioner Gaziano.

15 COMMISSIONER ACHTENBERG: I agree with
16 Commissioner Yaki that, in fact, these are extremely
17 high pre-clearance rates. And I'm in favor of the
18 prior characterization, which is they evince a lack of
19 redistricting politicization, so I certainly am not
20 going to vote to take this in the other direction,
21 with all due respect.

22 CHAIRMAN CASTRO: I presume you'll have a
23 motion on that after the discussion on this. All
24 right. Commissioner Gaziano.

25 COMMISSIONER GAZIANO: I suppose I'll let my

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1 previous comment stand.

2 CHAIRMAN CASTRO: Okay. Any other--
3 Commissioner Kladney?

4 COMMISSIONER KLADNEY: I would just say that
5 I think internally looking at the clearance rate for
6 what has been just this year -- just this time around
7 has been presented to DOJ, and what they've pre-
8 cleared is high, as opposed to even having to relate
9 it back to past years.

10 CHAIRMAN CASTRO: And I would imagine if it
11 were the opposite we would be blazoning that out, as
12 well. But any other comments or discussions on this
13 particular motion? If not, then we will take a vote on
14 Commissioner Gaziano's motion to amend "Extremely High
15 Pre-Clearance Rates" to "Current" was it "Recent Pre-
16 Clearance Rates?"

17 COMMISSIONER GAZIANO: Recent.

18 CHAIRMAN CASTRO: Recent. So, Commissioner
19 Heriot, how do you vote?

20 COMMISSIONER HERIOT: Yes.

21 CHAIRMAN CASTRO: Madam Vice Chair, how do
22 you vote?

23 VICE CHAIR THERNSTROM: Yes.

24 CHAIRMAN CASTRO: Commissioner Gaziano, how
25 do you vote?

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1 COMMISSIONER GAZIANO: Yes.

2 CHAIRMAN CASTRO: Commissioner Kirsanow, how
3 do you vote?

4 COMMISSIONER KLADNEY: Yes.

5 CHAIRMAN CASTRO: Commissioner Yaki, how do
6 you vote?

7 COMMISSIONER YAKI: No.

8 CHAIRMAN CASTRO: Commissioner Achtenberg,
9 how do you vote?

10 COMMISSIONER ACHTENBERG: No.

11 CHAIRMAN CASTRO: Commissioner Kladney, how
12 do you vote?

13 COMMISSIONER KLADNEY: No.

14 CHAIRMAN CASTRO: Commissioner Castro votes
15 no, so the motion fails. Do we have another motion on
16 this?

17 COMMISSIONER HERIOT: Had other motions. Was
18 that Todd's only?

19 CHAIRMAN CASTRO: Oh, Todd, is --
20 Commissioner Gaziano, is that your only motion on
21 this?

22 COMMISSIONER GAZIANO: I have one more but I
23 could wait.

24 CHAIRMAN CASTRO: Okay. But since we're on
25 this particular provision we might as well deal with

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1 any additional motions on this --

2 COMMISSIONER GAZIANO: I don't have any other
3 on this.

4 CHAIRMAN CASTRO: Okay, Commissioner --

5 COMMISSIONER GAZIANO: -- any other
6 amendment on this provision, except to also -- as it
7 relates -- never mind. I'll wait on point if anyone
8 else has --

9 CHAIRMAN CASTRO: Yes, Commissioner
10 Achtenberg has something. Commissioner Achtenberg.

11 COMMISSIONER ACHTENBERG: Yes, Mr. Chairman.
12 Consistent with the proposal that I -- that was
13 circulated under your name, my name, and Commissioner
14 Yaki's name, I want to move the re-inclusion of the
15 deleted language, first as part of the report. And if
16 that were to fail, the deleted language in the proper
17 format to be made part of the findings of the
18 statutory report.

19 CHAIRMAN CASTRO: Well, let's deal with the
20 report first, then we'll deal with the findings aspect
21 of it when we get to Part B.

22 COMMISSIONER ACHTENBERG: Yes.

23 CHAIRMAN CASTRO: So, I'm clear, are you
24 suggesting that all the -- throughout the report, what
25 has been excised be returned, or are you just talking

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1 about the section under what is currently read
2 "Extremely High Pre-Clearance Rates."

3 VICE CHAIR THERNSTROM: And has been revised
4 to read "Recent Pre-Clearance Rates."

5 COMMISSIONER HERIOT: No.

6 CHAIRMAN CASTRO: That hasn't been. The
7 motion failed.

8 VICE CHAIR THERNSTROM: Oh, that motion
9 failed. I'm sorry.

10 COMMISSIONER ACHTENBERG: Yes, there's -- as
11 delineated in the document that was circulated, it's
12 pages 26 through 29.

13 CHAIRMAN CASTRO: Okay.

14 COMMISSIONER ACHTENBERG: And then there's a
15 briefer deletion -- what page is that?

16 COMMISSIONER KLADNEY: Also page 29.

17 COMMISSIONER ACHTENBERG: Also on page 29.

18 COMMISSIONER YAKI: Thirty-four.

19 COMMISSIONER ACHTENBERG: I'm sorry?

20 COMMISSIONER YAKI: There's a small deletion
21 on page 34.

22 COMMISSIONER ACHTENBERG: Small deletion on
23 page 34, as well.

24 CHAIRMAN CASTRO: Okay, so that's the motion.
25 Is there a second?

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1 COMMISSIONER YAKI: Second.

2 CHAIRMAN CASTRO: Okay, Commissioner Yaki
3 seconds. Let's have some discussion on this. Anybody
4 want to discuss this? Commissioner Heriot? No? I'm
5 sorry, Madam Vice Chair. I didn't see your hand.

6 VICE CHAIR THERNSTROM: I'll discuss it.
7 Look, we don't -- I mean, if we had been able to get
8 hold of actual objection and internal analyses of
9 submissions and the decision of DOJ to object or pre-
10 clear to submitted redistricting or other changes in
11 electoral method, then one could talk about
12 politicization or lack thereof. But the fact is we
13 cannot, and we do not have that information. And
14 neither did the people who testified at our briefing.

15 The DOJ uses boilerplate language and they
16 can say they're not still using boilerplate language,
17 but that is not the case. They've got these new
18 regulations issued in April 2011 lifted from Arlington
19 Heights which was a 1977 housing discrimination case,
20 and filled with undefined terms, and criteria to which
21 no weight is given so that you can determine the
22 importance of one versus another. And there is no way
23 of properly judging the question of alleged
24 politicization or lack thereof.

25 CHAIRMAN CASTRO: The Chair recognizes

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1 Commissioner Achtenberg.

2 COMMISSIONER ACHTENBERG: Well, Mr. Chairman,
3 I would only, with all due respect to my colleagues'
4 expert analysis in this regard, which I would never
5 suggest my own could ever hope to rival. Let me say
6 that I believe that actually the results speak for
7 themselves, and that the characterization offered in
8 the draft report is one that I think is amply
9 substantiated by the results that were achieved in the
10 pre-clearance process by the Department of Justice.
11 And pulling those references out, I think it was
12 unwarranted. And, frankly, I was surprised to see the
13 extent to which those references -- to see the
14 references removed in advance of a discussion between
15 Commissioners about whether or not in our judgment
16 there -- we hadn't even had a discussion, and the
17 proposed report was so drastically amended, I mean, I
18 think we could have this discussion. But I was
19 shocked, quite frankly --

20 CHAIRMAN CASTRO: I think some might say it
21 was eviscerated.

22 COMMISSIONER ACHTENBERG: -- to see the
23 report so amended.

24 COMMISSIONER GAZIANO: Mr. Chair?

25 CHAIRMAN CASTRO: Yes, Commissioner Gaziano.

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1 COMMISSIONER GAZIANO: May I be recognized to
2 speak on this?

3 CHAIRMAN CASTRO: Yes, you may.

4 COMMISSIONER GAZIANO: I think the basis for
5 removing this is justified on about four or five
6 different grounds. For one, politicization is almost
7 impossible to define. It's usually in the eyes of the
8 beholder, but certainly not defined in the previous
9 draft. But, moreover, those of us who have been on the
10 Commission believe that the Commission has adduced
11 significant evidence of politicization of the division
12 in other contexts, and politicization with regard to
13 redistricting in the public record.

14 I think that it is in all of our interests
15 not to try to restore the draft that would result in
16 100 pages of Commissioner statements and rebuttals
17 that would devolve into a sideshow that I think this
18 report needn't step into. I think it's in all of our
19 interests to have a factual report that at least most
20 of us can either vote for, or aren't violently opposed
21 to.

22 I don't know why when four of us, as I think
23 the vote will reflect, think that some passage is so
24 inappropriate that the rest would press it either in
25 the body of the report or in the findings. I hope that

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1 doesn't happen, because I think it will require me to
2 object strenuously in the defense, and I can't speak
3 for other Commissioners, but I suspect that there are
4 two or three others that would do likewise. And I just
5 don't see why we want 100 pages of this -- the
6 eventual point of enforcement report to be debating
7 this particular issue.

8 CHAIRMAN CASTRO: The Chair recognizes
9 Commissioner Yaki.

10 COMMISSIONER YAKI: Well, I just want to
11 commend Commissioner Gaziano for his apparent switch
12 on the issue of the propriety of dealing with
13 politicization as part of a statutory report, given
14 that I spent two years of my life combating an attempt
15 at publishing issues of politicization, or allegation
16 of politicization in the 2010 statutory report, which
17 did engender much paper on my part, and probably would
18 have had even more had I been reappointed in a timely
19 fashion to deal with that report as it came out. But I
20 just find it -- I am both pleased and appalled by his
21 statements because to this observer, at least, there
22 is no report by the Inspector General of the
23 Department of Justice concluding politicization has
24 occurred at all with any respect to the divisions at
25 issue here, unlike the -- under the previous

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1 administration where the previous Inspector General
2 for the Office of the Attorney General did, indeed,
3 conclude that there had been politicization in the
4 Department of Justice. So, while where I was arguing
5 from a basis of fact as concluded by both the IG and
6 the Office of Professional Responsibility, I feel very
7 confident that in any dissents or discussions, if this
8 were to be included back in the text, this section, as
9 I believe it should be, and why I supported it, and
10 why I support the efforts of the Chair and
11 Commissioner Achtenberg to put it back in, I would
12 assume that given the paucity of the data underlying
13 politicization in terms of fact, that it would not be
14 100 pages, and would be substantially shorter unless,
15 of course, we decide to simply make facts up which I
16 don't believe any of us have ever done in the history
17 of the U.S. Commission on Civil Rights.

18 CHAIRMAN CASTRO: Any other comments on this?
19 Hearing none, let's call the question on Commissioner
20 Achtenberg's motion to restore the deleted sections
21 found in pages 26 through 29, and the portions on page
22 34 of the draft report. We already had a motion and a
23 second, so we'll take a vote. We'll do it
24 individually. Commissioner Heriot, how do you vote?

25 COMMISSIONER HERIOT: No.

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1 CHAIRMAN CASTRO: Commissioner -- I'm sorry,
2 Vice Chair Thernstrom, how do you vote?

3 VICE CHAIR THERNSTROM: No.

4 CHAIRMAN CASTRO: Commissioner Gaziano, how
5 do you vote?

6 COMMISSIONER GAZIANO: No.

7 CHAIRMAN CASTRO: Commissioner Kirsanow, how
8 do you vote?

9 COMMISSIONER KIRSANOW: No.

10 CHAIRMAN CASTRO: Commissioner Yaki, how do
11 you vote?

12 COMMISSIONER YAKI: Aye.

13 CHAIRMAN CASTRO: Commissioner Achtenberg,
14 how do you vote?

15 COMMISSIONER ACHTENBERG: Aye.

16 CHAIRMAN CASTRO: Commissioner Kladney, how
17 do you vote?

18 COMMISSIONER KLADNEY: Yes.

19 CHAIRMAN CASTRO: And I vote yes, so the
20 motion fails. Okay, do we have any other motions?
21 Commissioner Heriot, and then the Vice Chair.

22 COMMISSIONER HERIOT: I handed out a footnote
23 earlier in the meeting here. I move on that material
24 on this sheet of paper be inserted as a footnote
25 somewhere in the section on Extremely High Pre-

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1 Clearance Rates. If you'd like, I could read it but
2 it's just, "The high approval rates may be related to
3 the Supreme Court's decision in Northwest Austin
4 Municipal Utility District Number One v. Holder,"
5 gives a cite in which the Court stated that "Section 5
6 raises serious constitutional concerns, but declined
7 to resolve these concerns until some future case. High
8 approval rates reduced the number of opportunities for
9 the Court to resolve the issue." Then it cites
10 statements by our panelists on that issue and quotes
11 from them. I move that that be included.

12 CHAIRMAN CASTRO: Is there a second to that
13 motion?

14 COMMISSIONER GAZIANO: I second it.

15 CHAIRMAN CASTRO: Okay, Commissioner Gaziano
16 seconds. Let's have some discussion?

17 COMMISSIONER YAKI: Where would this go?

18 COMMISSIONER HERIOT: The easiest place to
19 put it would be on what is page 29 in the draft that
20 I'm looking at under, "Nevertheless, Republican
21 controlled states do not appear to be at a
22 disadvantage in the current process," just because
23 that sentence doesn't happen to have a footnote.
24 Otherwise, it can go in any of these spots if someone
25 prefers to put it in a different place, as long as

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1 it's in that section.

2 CHAIRMAN CASTRO: Any questions or
3 discussion? Commissioner Kladney?

4 COMMISSIONER KLADNEY: I think it's too
5 speculative.

6 CHAIRMAN CASTRO: Okay. Anyone on the phone?

7 COMMISSIONER GAZIANO: I think that the --

8 CHAIRMAN CASTRO: This is Commissioner
9 Gaziano?

10 COMMISSIONER GAZIANO: I think all of us seem
11 to agree with that point, and it was witnesses on all
12 sides of the political spectrum. No witness in my
13 recollection disagreed with this rather obvious point,
14 so I strongly urge the acceptance, because it does
15 explain. To the extent that some of you think there
16 are higher than normal pre-clearance rates, or high
17 pre-clearance rates, it explains probably the most
18 logical reason according to the experts who testified
19 before us why that was so. It's misleading without the
20 footnote.

21 CHAIRMAN CASTRO: And just for the
22 Commissioners on the phone, if you could identify
23 yourselves when you talk for the purposes of the court
24 reporter, although he may already know the sound of
25 your voices. We want to make sure they're clear.

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1 COMMISSIONER GAZIANO: This is Commissioner
2 Gaziano who just made that statement.

3 CHAIRMAN CASTRO: All right. Commissioner
4 Yaki?

5 COMMISSIONER YAKI: I just have a question. I
6 thought that we weren't dealing with this issue as a
7 part of the scope of the report, so why would we back
8 door it in a footnote is --

9 CHAIRMAN CASTRO: And this should be in the
10 constitutionality --

11 VICE CHAIR THERNSTROM: The
12 constitutionality.

13 CHAIRMAN CASTRO: I agree.

14 COMMISSIONER GAZIANO: But if I could just
15 say, it doesn't go to the merits of the constitutional
16 concern at all. It just goes to the fact that
17 everyone, including the DOJ, knows it's hanging out
18 there. And that has an effect, whether it's -- whether
19 some think it's meritorious or not.

20 CHAIRMAN CASTRO: Commissioner Heriot?

21 COMMISSIONER HERIOT: I agree. This is not a
22 footnote about the constitutionality of Section 5. It
23 brings to the attention of the reader the fact that
24 all of the witnesses attributed the high rates of pre-
25 clearance to this -- not to the substance of the issue

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1 of constitutionality, but rather to the fact that this
2 is something that would be litigated in the future. I
3 think that the report is highly misleading without
4 pointing out that this is something that our witnesses
5 agreed on. They're not giving their opinion about the
6 constitutionality of Section 5. They're talking about
7 why the rates would be high.

8 COMMISSIONER KLADNEY: Maybe.

9 VICE CHAIR THERNSTROM: Maybe. It is
10 speculative.

11 CHAIRMAN CASTRO: Okay. Any other discussion
12 on this? If not, we've got a motion that's been
13 seconded. I'll call the question. Commissioner Heriot,
14 how do you vote?

15 COMMISSIONER HERIOT: Yes.

16 CHAIRMAN CASTRO: Madam Vice Chair, how do
17 you vote?

18 VICE CHAIR THERNSTROM: I'm abstaining.

19 CHAIRMAN CASTRO: Okay. Commissioner Yaki,
20 how do you vote?

21 COMMISSIONER YAKI: No.

22 CHAIRMAN CASTRO: Commissioner Achtenberg,
23 how do you vote?

24 COMMISSIONER ACHTENBERG: No.

25 CHAIRMAN CASTRO: Commissioner Kladney, how

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1 do you vote?

2 COMMISSIONER KLADNEY: No.

3 CHAIRMAN CASTRO: Commissioner Gaziano, how
4 do you vote?

5 COMMISSIONER GAZIANO: Yes.

6 CHAIRMAN CASTRO: Commissioner Kirsanow, how
7 do you vote?

8 COMMISSIONER KIRSANOW: Yes.

9 CHAIRMAN CASTRO: And I vote no. The no's are
10 four no's to three yeses and an abstention, so the
11 motion fails.

12 COMMISSIONER HERIOT: I've got another one.

13 CHAIRMAN CASTRO: Okay.

14 COMMISSIONER HERIOT: This is a simple one,
15 though.

16 CHAIRMAN CASTRO: All right.

17 COMMISSIONER HERIOT: In the Table of
18 Contents on page 2, I move that, number one, we
19 conform the lack of politicization section, we need to
20 change that to "Extremely High Pre-Clearance Rates."
21 And, two, under "Statements of Commissioners," I move
22 that when it becomes clear who is filing the statement
23 that rather than have Statements of Commissioners, we
24 have Statement of each Commissioner by name, and a
25 page number that directs the reader's attention to

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1 particular statements. I've had readers complain to me
2 in previous reports that it's hard to find what
3 they're looking for when they just have a long
4 document that says "Statements of Commissioners," and
5 they have to page through it to find out where
6 particular Commissioner's statements are located.

7 CHAIRMAN CASTRO: I could agree with the
8 latter if you just leave the lack of politicization
9 in.

10 (Laughter.)

11 COMMISSIONER HERIOT: You got it. The other
12 one is kind of mandatory, I'm afraid.

13 CHAIRMAN CASTRO: Didn't think you'd catch
14 that one. So, we have a motion. Is there a second?

15 COMMISSIONER ACHTENBERG: Second.

16 COMMISSIONER GAZIANO: I second.

17 CHAIRMAN CASTRO: Okay.

18 COMMISSIONER GAZIANO: This is Todd.

19 CHAIRMAN CASTRO: All right. Any additional
20 discussion? I'm just going to go down the vote line.
21 Commissioner Heriot, how do you vote?

22 COMMISSIONER HERIOT: I vote yes.

23 CHAIRMAN CASTRO: Madam Vice Chair, how do
24 you vote?

25 VICE CHAIR THERNSTROM: Yes.

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1 CHAIRMAN CASTRO: Commissioner Yaki, how do
2 you vote?

3 COMMISSIONER YAKI: I vote yes on the first
4 one, and no on the second.

5 CHAIRMAN CASTRO: It's one motion so you've
6 got to --

7 COMMISSIONER YAKI: Then I abstain.

8 CHAIRMAN CASTRO: Okay. Commissioner
9 Achtenberg, how do you vote?

10 COMMISSIONER ACHTENBERG: Yes.

11 CHAIRMAN CASTRO: Commissioner Kladney, how
12 do you vote?

13 COMMISSIONER KLADNEY: I abstain.

14 CHAIRMAN CASTRO: Commissioner Gaziano, how
15 do you vote?

16 COMMISSIONER GAZIANO: Yes.

17 CHAIRMAN CASTRO: Commissioner Kirsanow, how
18 do you vote?

19 COMMISSIONER KIRSANOW: Yes.

20 CHAIRMAN CASTRO: And I vote yes, so it's
21 one, two, three, four, five, six yeses to two
22 abstentions. The motion passes.

23 Okay. Now, I believe, Madam Vice Chair, you
24 have a couple of motions.

25 VICE CHAIR THERNSTROM: Just one.

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1 CHAIRMAN CASTRO: Okay.

2 VICE CHAIR THERNSTROM: A small editorial
3 matter on the -- you should have a sheet that says
4 "Version 2. Commissioner Thernstrom's proposal to
5 amend the VRA report, version 2." And it's an edit to
6 the first paragraph in Chapter 2, page 4 on my copy of
7 the June 21st draft, as follows. The edited text would
8 read as follows:

9 "Section 5 of the Voting Rights Act requires
10 certain jurisdictions," I would cross out "with a
11 history of Voting Rights discrimination," to submit to
12 the U.S. Department of Justice or the U.S. District
13 Court for the District of Columbia, DDC, any proposed
14 changes they intend to make in their voting -- to
15 their voting practices and procedures, including
16 redistricting plans.

17 Then, I would add "Most of the covered
18 jurisdictions, but by no means all are in the Deep
19 South and had a history of egregious racial
20 discrimination when the act was passed in 1965." And
21 picking up on the old language, "The submitting
22 jurisdiction must demonstrate in its submission that
23 its proposal neither has the purpose nor will have the
24 effect of denying or abridging the right to vote on
25 account of race, color, or membership in a language

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1 minority group."

2 I mean, the fact is that yes, at one time in
3 1965 all the covered jurisdictions were in the Deep
4 South with a history of egregious discrimination.
5 That's no longer the case. I mean, we've got three
6 boroughs in New York covered, and a lot of townships
7 in New Hampshire, and I would argue other covered
8 jurisdictions that should not be covered, and should -
9 - and for which a very weak case was made at the time.
10 So, I would like to simply say, "Most of the covered
11 jurisdictions, but by no means all are in the Deep
12 South, and had a history of egregious racial
13 discrimination." I think it's just more accurate.

14 CHAIRMAN CASTRO: Is there a second to that
15 motion? Is there a second?

16 COMMISSIONER KIRSANOW: Kirsanow second.

17 COMMISSIONER ACHTENBERG: I have a question.

18 CHAIRMAN CASTRO: Commissioner Kirsanow
19 seconds.

20 COMMISSIONER ACHTENBERG: Wouldn't most -- by
21 using the word "most", doesn't that --

22 VICE CHAIR THERNSTROM: Well, I think it's
23 misleading, because it is very striking the degree to
24 which there are jurisdictions that are covered which
25 are not in the Deep South. And it is -- the media gets

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1 this wrong all the time, so I think there's a point in
2 saying very explicitly by no means all.

3 CHAIRMAN CASTRO: Commissioner Yaki?

4 COMMISSIONER YAKI: Yes. This is for the Vice
5 Chair. I have great respect for your history and
6 knowledge on the issue of the Voting Rights Act, and
7 especially Section 5. As a lay person reading this,
8 I'm wondering if actually the reverse effect would be
9 the result to a layman reading this in that it
10 accentuates the fact that the covered jurisdictions
11 are in the Deep South, because we don't mention it in
12 the original language. You want to make it more
13 historically and legally correct with your revisions,
14 but by using the capitalized D, capitalized S for Deep
15 South, I think in one way you're almost drawing more
16 attention to it than not.

17 I would -- to me, the original language is
18 less pejorative to the jurisdiction than now looking
19 to go, yes, it's the Deep South because they were the
20 racists. And that's probably true in some way, but I'm
21 just wondering is that the effect you have, because
22 now I read it and my eyes are just drawn to the fact
23 that if I'm writing about this, I go yes, it's those
24 jurisdictions in the Deep South, the ones who are --
25 had egregious racial discrimination. Just a --

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1 (Simultaneous speech.)

2 COMMISSIONER YAKI: But I defer to your
3 expertise on this.

4 VICE CHAIR THERNSTROM: It's an interesting
5 point.

6 CHAIRMAN CASTRO: Any additional comments or
7 questions? Commissioner Kladney?

8 COMMISSIONER KLADNEY: I would also note that
9 the Act has been reauthorized several times since '65.

10 VICE CHAIR THERNSTROM: Right. And I've got
11 problems with some of the additional coverage --

12 COMMISSIONER KLADNEY: Okay.

13 CHAIRMAN CASTRO: Okay.

14 VICE CHAIR THERNSTROM: -- under those
15 reauthorizations, because they weren't well thought
16 out. I mean, usual Congressional carelessness.

17 CHAIRMAN CASTRO: Anyone on the phone have
18 any comments? If not --

19 COMMISSIONER GAZIANO: Not on this, but I'll
20 support it.

21 CHAIRMAN CASTRO: Okay. All right. Then we'll
22 call the question. We had a motion that was seconded.

23 COMMISSIONER YAKI: Was it seconded?

24 COMMISSIONER KIRSANOW: Yes, I seconded it.

25 CHAIRMAN CASTRO: Okay. So, we'll take a

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1 vote. Commissioner Heriot, how do you vote?

2 COMMISSIONER HERIOT: Yes.

3 CHAIRMAN CASTRO: Madam Vice Chair, how do
4 you vote?

5 VICE CHAIR THERNSTROM: Yes.

6 CHAIRMAN CASTRO: Commissioner Yaki, how do
7 you vote?

8 COMMISSIONER YAKI: Yes.

9 CHAIRMAN CASTRO: Commissioner Achtenberg,
10 how do you vote?

11 COMMISSIONER ACHTENBERG: Yes.

12 CHAIRMAN CASTRO: Commissioner Kladney, how
13 do you vote?

14 COMMISSIONER KLADNEY: Yes.

15 CHAIRMAN CASTRO: Commissioner Kirsanow, how
16 do you vote?

17 COMMISSIONER KIRSANOW: Yes.

18 CHAIRMAN CASTRO: Commissioner Gaziano, how
19 do you vote?

20 COMMISSIONER GAZIANO: Yes.

21 CHAIRMAN CASTRO: And I vote yes, so it
22 passes. So, this was the only amendment you had?

23 VICE CHAIR THERNSTROM: That's my only
24 amendment.

25 CHAIRMAN CASTRO: Okay. Any other amendments?

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1 COMMISSIONER GAZIANO: Mr. Chair, I have one
2 more quick one.

3 CHAIRMAN CASTRO: Yes, Commissioner Gaziano?

4 COMMISSIONER GAZIANO: On page 62 of the
5 current draft there is a title that refers to "DOJ's
6 conservative approach," and certainly in this context
7 it's unclear what conservative means. And it would
8 tend to mislead. Here I would also move to strike the
9 word "conservative," and either replace it with maybe
10 "DOJ's Current approach."

11 CHAIRMAN CASTRO: So, there's a motion. Is
12 there a second?

13 COMMISSIONER HERIOT: I'll second.

14 CHAIRMAN CASTRO: Okay. Any discussion?
15 Commissioner Yaki?

16 COMMISSIONER YAKI: What is the -- I'm just
17 trying to take a look. The time frame -- what is --
18 this goes back to my concerns about the amendment on
19 the first section, which is what is the breadth of
20 time that we are talking about here? Is it really
21 current, or is it beyond current? And what do we call
22 -- and what is current?

23 COMMISSIONER GAZIANO: I would accept a
24 friendly amendment just to strike any adjective there,
25 and just talk about DOJ's approach. I don't

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1 necessarily even agree with the paragraph that
2 follows, but I think they can speak for themselves. I
3 just think that the word "conservative" is more
4 misleading than helpful. If you object to current, I
5 would just be fine with DOJ's approach.

6 CHAIRMAN CASTRO: Commissioner Kladney, you
7 looked like you'd like to say something.

8 COMMISSIONER KLADNEY: I didn't say a word.

9 CHAIRMAN CASTRO: Okay. I saw words coming
10 out. Anyone else have a comment? Commissioner
11 Yaki, back to you.

12 COMMISSIONER YAKI: That tale seems rather
13 lacking. Can we give it a little more specificity,
14 like DOJ's approach to what?

15 COMMISSIONER GAZIANO: I would -- if you're
16 satisfied, I would recommit it to our General Counsel
17 to come up with an appropriate word. I think it's an
18 odd section to begin with, but just not conservative.

19 CHAIRMAN CASTRO: We need to decide this
20 today. And, frankly, I don't see anything wrong with
21 conservative. You know, you guys got most of
22 everything you wanted, I think you can leave us one
23 word.

24 (Laughter.)

25 COMMISSIONER GAZIANO: Okay, I'll modify my

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1 amendment. I think it's recent. Would you--
2 Commissioner Yaki, would you prefer recent, or as less
3 --

4 COMMISSIONER YAKI: I don't know.

5 COMMISSIONER GAZIANO: I didn't hear that.

6 COMMISSIONER YAKI: Commissioner Gaziano, I
7 just -- so we know, because I don't know -- to me,
8 maybe it's my cultural heritage, recent could be as
9 back as 3,000 years ago so, I mean, I just don't know.

10 CHAIRMAN CASTRO: All right. I think we'll
11 call the --

12 COMMISSIONER GAZIANO: Let me modify my own
13 motion. I just move to strike the word "conservative."
14 DOJ's approach. If it makes sense to --

15 CHAIRMAN CASTRO: And you accept that?

16 COMMISSIONER HERIOT: I'm happy with
17 anything.

18 CHAIRMAN CASTRO: Okay. So we're going to
19 vote on that now. So, the motion is to strike the word
20 "conservative" from that particular section.
21 Commissioner Heriot, how do you vote?

22 COMMISSIONER HERIOT: I vote yes.

23 CHAIRMAN CASTRO: Vice Chair Thernstrom, how
24 do you vote?

25 VICE CHAIR THERNSTROM: Yes.

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1 CHAIRMAN CASTRO: Commissioner Yaki, how do
2 you vote?

3 COMMISSIONER YAKI: Well, I think that
4 because we are trying to be fair and balanced, keeping
5 the word conservative in is just, so I'm going to vote
6 no.

7 CHAIRMAN CASTRO: Okay. Commissioner
8 Achtenberg, how do you vote?

9 COMMISSIONER ACHTENBERG: I also vote no.

10 CHAIRMAN CASTRO: Commissioner Kladney, how
11 do you vote?

12 COMMISSIONER KLADNEY: No.

13 CHAIRMAN CASTRO: Commissioner Gaziano, how
14 do you vote?

15 COMMISSIONER GAZIANO: Yes.

16 CHAIRMAN CASTRO: Commissioner Kirsanow, how
17 do you vote?

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIRMAN CASTRO: And I vote no, so the
20 motion fails. Conservative stays in. Any other
21 changes, any other definitions for words that are
22 unclear or vague? No? All right. So, now we have to --

23 COMMISSIONER HERIOT: I have one more
24 comment.

25 CHAIRMAN CASTRO: One more comment?

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1 COMMISSIONER HERIOT: And that is my
2 recollection is that I made some proposed changes that
3 were not controversial, that were sort of mandatory
4 errors, and that Ms. Somin found that one of them
5 wasn't made, but she's not here. I suspect there are a
6 couple of just errors here, and I think we need to
7 reserve the ability to make minor non-controversial
8 changes next month or in September before this goes
9 out just in the interest of preventing error.

10 CHAIRMAN CASTRO: Commissioner Achtenberg?

11 COMMISSIONER ACHTENBERG: How about if we --I
12 would agree to ministerial as opposed to
13 discretionary, but controversy, again, is in the eye
14 of the beholder.

15 COMMISSIONER HERIOT: I'm just correcting
16 error.

17 (Simultaneous speech.)

18 COMMISSIONER YAKI: You're talking Blue Book
19 and stuff?

20 COMMISSIONER HERIOT: It was -- I can't
21 remember what it is, but it was something that was
22 just an error, and not something that anybody would
23 disagree with. I just want to make sure we can fix
24 things that might embarrass us.

25 CHAIRMAN CASTRO: I don't know. Without more

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1 information, I don't feel comfortable --

2 VICE CHAIR THERNSTROM: Yes, I need more
3 information, too.

4 CHAIRMAN CASTRO: Not having seen the changes
5 that other Commissioners have proposed in advance, or
6 even to this point, I just feel uncomfortable saying
7 that. Now, presumably if there's some typos or some
8 wrong footnote, someone in our office is going to look
9 over that before they send this for publication, and
10 they'll find that. So, I don't think we should --

11 COMMISSIONER HERIOT: I think it was
12 something like whether the population was X or Y. It
13 was a wrong number or wrong characterization of
14 whether something had gone up or gone down. It's not
15 something that Democrats and Republicans are going to
16 disagree on. I don't think you can rule it as
17 impossible to make such a motion.

18 CHAIRMAN CASTRO: I'm not saying it's
19 impossible to make the motion. I'm saying I feel
20 uncomfortable without --

21 COMMISSIONER HERIOT: I think by the time I
22 come up with it you won't feel uncomfortable.

23 CHAIRMAN CASTRO: All right, make your
24 motion.

25 COMMISSIONER HERIOT: Oh, there's no need for

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1 motion.

2 CHAIRMAN CASTRO: Okay. All right.

3 COMMISSIONER HERIOT: It's just -- I will
4 make a motion in September to fix an error.

5 CHAIRMAN CASTRO: I see. Okay. Commissioner
6 Yaki?

7 COMMISSIONER YAKI: Well, I mean, but these
8 are changes that if they have to be made have to be
9 made, and the question is who do we empower to make
10 the changes. And I'd be more comfortable if these
11 changes were brought to the attention and signed off
12 on by both the Chair and the Vice Chair.

13 COMMISSIONER HERIOT: Well, the Commission
14 can do --

15 COMMISSIONER YAKI: Well, I mean, if we're
16 not going to be back by -- I mean, I don't know what
17 the time --

18 CHAIRMAN CASTRO: Well, this is due September
19 30, so --

20 COMMISSIONER HERIOT: Yes, we'll be back in
21 September.

22 COMMISSIONER YAKI: Okay. Never mind then.

23 CHAIRMAN CASTRO: Okay?

24 VICE CHAIR THERNSTROM: And maybe you can
25 make a list that we can hold in our hot little hands.

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1 CHAIRMAN CASTRO: So, now we need to have a
2 motion on Part A, as we've amended it. Is there a
3 motion on Part A?

4 COMMISSIONER ACHTENBERG: So moved.

5 CHAIRMAN CASTRO: Is there a second?

6 COMMISSIONER YAKI: Second.

7 CHAIRMAN CASTRO: Okay. I don't know if
8 there's any additional discussion on Part A. If not, I
9 would like to call the question. Any additional
10 comments? No? All right. So, Commissioner Heriot, how
11 do you vote on Part A?

12 COMMISSIONER HERIOT: I abstain.

13 CHAIRMAN CASTRO: Commissioner -- I'm sorry,
14 Vice Chair Thernstrom, how do you vote on Part A?

15 VICE CHAIR THERNSTROM: For the moment I'm
16 abstaining, as well.

17 CHAIRMAN CASTRO: Okay.

18 VICE CHAIR THERNSTROM: But get back to me.

19 CHAIRMAN CASTRO: Commissioner Gaziano, how
20 do you vote?

21 COMMISSIONER GAZIANO: I pass for now. It's
22 either abstain or no without the amendments, but I
23 maybe want to see how the other Commissioners vote.

24 CHAIRMAN CASTRO: Okay. Commissioner
25 Kirsanow, how do you vote?

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1 COMMISSIONER KIRSANOW: No.

2 CHAIRMAN CASTRO: Okay. Commissioner Yaki,
3 how do you vote?

4 COMMISSIONER YAKI: Well Commissioner
5 Gaziano, are you waiting to see how I vote?

6 COMMISSIONER GAZIANO: Yes.

7 COMMISSIONER YAKI: Yes.

8 CHAIRMAN CASTRO: Commissioner Achtenberg,
9 how do you vote?

10 COMMISSIONER ACHTENBERG: Yes.

11 CHAIRMAN CASTRO: Commissioner Kladney, how
12 do you vote?

13 COMMISSIONER KLADNEY: Yes.

14 CHAIRMAN CASTRO: I vote yes reluctantly,
15 because I wish we did have those provisions that were
16 removed in there, but I am fully cognizant of our
17 statutory obligation to have a report; therefore, I'm
18 voting yes.

19 So, Commissioner Gaziano, have you decided
20 what you want to do yet?

21 COMMISSIONER GAZIANO: Has Commissioner --
22 has the Vice Chair made her final say?

23 CHAIRMAN CASTRO: No, she hasn't. She's
24 abstained. A little clearer than you saying no, or
25 maybe.

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1 VICE CHAIR THERNSTROM: I'm waiting to see
2 what --

3 COMMISSIONER HERIOT: She passed.

4 CHAIRMAN CASTRO: Okay. She said pass. You
5 said pass.

6 COMMISSIONER HERIOT: I abstain.

7 CHAIRMAN CASTRO: You abstained --

8 COMMISSIONER HERIOT: Yes, I abstained in the
9 interest of wanting to get the report out. Otherwise,
10 I would vote no.

11 CHAIRMAN CASTRO: Madam Vice Chair, do you
12 stand by your abstention?

13 VICE CHAIR THERNSTROM: I'm going to stand by
14 my abstention.

15 CHAIRMAN CASTRO: Okay, Commissioner Gaziano,
16 you're the last vote.

17 COMMISSIONER GAZIANO: Since you all now have
18 the votes to pass it, I will vote my conscience, no.

19 CHAIRMAN CASTRO: Okay. So the report Part A
20 passes. We move on to Part B, which are "Proposed
21 findings and recommendations." which were circulated.
22 Do I have those? Okay, so we'll go through each
23 proposed finding and make a motion on that. And then
24 have a vote on each of those, and the same thing with
25 each individual recommendation.

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1 So, the first proposed finding is the Civil
2 Rights Division of the U.S. Department of Justice
3 enforces Section 5 of the Voting Rights Act of 1965 as
4 reauthorized in 2006 by granting or denying pre-
5 clearance to redistricting requests from covered
6 jurisdictions. So, I make that motion. Do I have a
7 second?

8 COMMISSIONER ACHTENBERG: Second.

9 CHAIRMAN CASTRO: Any discussion? Any
10 discussion? If not, we'll take a vote on this.
11 Commissioner Heriot, how do you vote?

12 COMMISSIONER HERIOT: That's just one option.
13 This is unclear. This is -- no. I guess I have to vote
14 no, since there's the option of using courts.

15 CHAIRMAN CASTRO: Madam Vice Chair?

16 VICE CHAIR THERNSTROM: Well, can this be
17 rewritten to make that option clear?

18 COMMISSIONER HERIOT: Someone's got to do it.

19 CHAIRMAN CASTRO: Commissioner Achtenberg?
20 So, what are you suggesting?

21 VICE CHAIR THERNSTROM: Well, the Civil
22 Rights Division of the U.S. Department of Justice --

23 COMMISSIONER ACHTENBERG: Our proposed --

24 VICE CHAIR THERNSTROM: Pardon me?

25 COMMISSIONER YAKI: These are our's.

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1 VICE CHAIR THERNSTROM: Or, alternatively,
2 the District Court of the District of Columbia enforce
3 Section 5 of the Voting Rights Act.

4 COMMISSIONER HERIOT: You don't want to use a
5 word like "enforce" for courts. I mean, you can turn
6 it around and say covered jurisdictions may seek pre-
7 clearance from the Civil Rights Division of the U.S.
8 Department of Justice, or from --

9 VICE CHAIR THERNSTROM: Good. I think that is
10 a good suggestion.

11 CHAIRMAN CASTRO: Commissioner Achtenberg?

12 COMMISSIONER ACHTENBERG: I'm sorry, Mr.
13 Chairman.

14 CHAIRMAN CASTRO: Go ahead.

15 COMMISSIONER ACHTENBERG: No, I don't seek to
16 be back on this.

17 CHAIRMAN CASTRO: Oh, no, no. I was asking
18 what your thoughts were on the proposed change to the
19 proposed --

20 VICE CHAIR THERNSTROM: It's just --

21 COMMISSIONER ACHTENBERG: Could you restate
22 it? I'm sorry.

23 VICE CHAIR THERNSTROM: It just makes clear
24 that --

25 COMMISSIONER YAKI: Why don't we just take

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1 what you wrote in the beginning of your Version 2 and
2 just substitute for this instead? It kind of says the
3 same thing. Right?

4 CHAIRMAN CASTRO: Why don't you restate what
5 you just said, if you could, Madam Vice Chair.

6 VICE CHAIR THERNSTROM: Section 5, everybody
7 wants that to "require certain jurisdictions to submit
8 to the U.S. Department of Justice or the U.S. District
9 Court for the District of Columbia, DDC, any proposed
10 changes that they intend to make to their voting
11 practices and procedures, including redistricting
12 plans. Most of the covered jurisdictions, but by no
13 means all are in the Deep South and had a history of
14 egregious racial discrimination when the Act was
15 passed in 1965. The submitting jurisdiction must
16 demonstrate in its submission that its proposal
17 neither has the purpose nor will have the effect of
18 denying or abridging the right to vote on account of
19 race, color, or membership in a language minority
20 group."

21 COMMISSIONER HERIOT: You'll need to make
22 clear that that language is not -- that's one of the -
23 - that's the language from one of the amendments, is
24 it not? Not the '65 Act?

25 VICE CHAIR THERNSTROM: That's correct.

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1 COMMISSIONER HERIOT: Not the '65 Act as
2 passed.

3 COMMISSIONER ACHTENBERG: Mr. Chairman, I
4 think we should adopt that.

5 CHAIRMAN CASTRO: As --

6 COMMISSIONER ACHTENBERG: The finding --

7 CHAIRMAN CASTRO: Okay. Well, then we'll call
8 the question on that. So, you voted no already.

9 COMMISSIONER HERIOT: The finding as proposed
10 here?

11 CHAIRMAN CASTRO: Yes.

12 COMMISSIONER HERIOT: It's wrong.

13 CHAIRMAN CASTRO: Okay. And Madam Vice Chair?

14 VICE CHAIR THERNSTROM: Yes, I think there
15 needs to be a reference to the alternative of pre-
16 clearance by the District Court of the District of
17 Columbia.

18 CHAIRMAN CASTRO: Yes. So, what is your vote?

19 VICE CHAIR THERNSTROM: No.

20 CHAIRMAN CASTRO: Okay. Commissioner Gaziano,
21 how do you vote?

22 COMMISSIONER GAZIANO: No as written.

23 CHAIRMAN CASTRO: Commissioner Kirsanow, how
24 is your vote?

25 COMMISSIONER KIRSANOW: No.

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1 CHAIRMAN CASTRO: Commissioner Yaki, your
2 vote?

3 COMMISSIONER YAKI: I pass.

4 CHAIRMAN CASTRO: Commissioner Achtenberg,
5 your vote?

6 COMMISSIONER ACHTENBERG: Well, Mr. Chairman,
7 I would be willing to incorporate -- it seems to me
8 that the first sentence --

9 COMMISSIONER HERIOT: That'll do it. That
10 covers what you're trying to say.

11 COMMISSIONER ACHTENBERG: Yes, exactly. And
12 that the rest of the editorialization that I was
13 willing to agree to as part of the report doesn't
14 really -- I think it's not necessary, and that change
15 cures the problem that you identified.

16 CHAIRMAN CASTRO: So, just so that we're
17 clear then, we're agreeing that the following would be
18 proposed Finding One. Section 5 of the Voting Rights
19 Act requires certain jurisdictions to submit to the
20 U.S. Department of Justice, or the U.S. District Court
21 for the District of Columbia any proposed changes that
22 they intend to make to their voting practices and
23 procedures, including redistricting plans.

24 COMMISSIONER ACHTENBERG: Correct.

25 CHAIRMAN CASTRO: Okay.

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1 COMMISSIONER HERIOT: Bingo. I vote yes on
2 that one.

3 CHAIRMAN CASTRO: Okay. So, that's the
4 substitute finding.

5 COMMISSIONER HERIOT: I have to second that.
6 I'll second that.

7 CHAIRMAN CASTRO: You'll second it? Okay. So,
8 now we're revote. So, Commissioner Heriot?

9 COMMISSIONER HERIOT: Yes.

10 CHAIRMAN CASTRO: Commissioner -- I'm sorry,
11 Vice Chair Thernstrom?

12 VICE CHAIR THERNSTROM: Yes.

13 CHAIRMAN CASTRO: Commissioner Gaziano?

14 COMMISSIONER GAZIANO: Yes.

15 CHAIRMAN CASTRO: Commissioner Kirsanow?

16 COMMISSIONER KIRSANOW: Yes.

17 CHAIRMAN CASTRO: Commissioner Yaki?

18 COMMISSIONER YAKI: Yes.

19 CHAIRMAN CASTRO: Commissioner Achtenberg?

20 COMMISSIONER ACHTENBERG: Yes.

21 CHAIRMAN CASTRO: Commissioner Kladney?

22 COMMISSIONER KLADNEY: I abstain.

23 CHAIRMAN CASTRO: And I vote yes, so it
24 passes. Okay, so we have one finding.

25 Next we move on Two, "Comprehensive evidence

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1 demonstrates that from 2009 through May of 2012 close
2 of the Commission's records in these inquiry, DOJ
3 enforce Section 5 of the Voting Rights Act in a manner
4 which appears overall to be more transparent and
5 apolitical than was the case in recent years. (A)
6 Transparency. Beginning in 2009, DOJ significantly
7 improved its communication with covered jurisdictions
8 about the substance of the few objections that it has
9 interposed to redistricting plans. DOJ objection
10 letters are now transparent in that they with
11 specificity state why the Department is objecting to a
12 county's voting changes and how the Department reached
13 this conclusion.

14 As stated at pages 26 through 29 of the
15 Commission's May 8, 2012 draft report with original
16 footnotes included, "In recent years, the Justice
17 Department has greatly improved the quality and
18 clarity of the objection letters that it issues when
19 it declines to pre-clear a voting change. In
20 particular --

21 COMMISSIONER HERIOT: Do you need to read the
22 whole thing?

23 CHAIRMAN CASTRO: I want to -- yes, I do.

24 COMMISSIONER HERIOT: Okay.

25 CHAIRMAN CASTRO: "In particular, DOJ's

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1 objection letters since 2009 have begun to provide
2 distinct and discrete analysis with respect to each
3 legal standard that it invokes. Historically, DOJ's
4 objection letters have contained inconsistent
5 structure, boilerplate language, and varying degrees
6 of specificity. For instance, the Department's
7 objection letter did not always explicitly state which
8 Section 5 standard the voting change violated; i.e.,
9 whether the objection was caused by the jurisdiction's
10 failure to show that its proposal has no
11 discriminatory effect, discriminatory purpose, or
12 both.

13 This lack of clarity and consistency made it
14 difficult for covered jurisdictions and the public to
15 fully understand DOJ's reasoning in the given
16 objection." I won't read the footnotes, but that's
17 footnote 1.

18 "For example, on May 5th, 2006, the Justice
19 Department objected to a proposal by North Harris
20 Montgomery Community College District in Texas to
21 reduce its number of polling places and early voting
22 locations. The objection letter briefly described the
23 impact that the proposal would have, including its
24 disparate impact on minority voters, concluding the
25 assignment of voters to these 12 sites is remarkably

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1 uneven with the site -- I'm sorry, uneven. The site
2 with the smallest proportion of minority will serve
3 6,500 voters, while the most heavily minority site, 79
4 percent Black and Hispanic, will serve over 67,000
5 voters." Footnote 2.

6 It then provided the following boilerplate.
7 "Section 5 provides that the submitting authority has
8 the burden of establishing that the proposed changes
9 will not have a retrogressive effect on minority
10 voters to participate in the political process and
11 elect candidates of their choice, and that the
12 proposed changes were not adopted with such a
13 discriminatory purpose. We cannot conclude that the
14 statutory burden has been met in this instance.
15 Accordingly, the Assistant Attorney General must on
16 behalf of the Attorney General interpose an objection
17 to the proposed changes." Footnote 3.

18 "DOJ's factual analysis implied that the
19 proposed change had a discriminatory effect. However,
20 DOJ provided no explicit factual analysis that would
21 typically indicate a finding of discriminatory
22 purpose. Regardless, in its description of its legal
23 determination, DOJ referenced both the effect and
24 purpose standards without specifying which standard it
25 invoked to block the voting change. This would be

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1 either unnecessary or inadequate. If DOJ did not
2 believe that the proposal had a discriminatory
3 purpose, there was no need to cite that standard in
4 its conclusion. If DOJ believed that the proposal may
5 have had a discriminatory purpose, it provided no
6 analysis to support that conclusion. The DOJ belied
7 this confusion by never explicitly stating that the
8 proposal would have a retrogressive effect assuming
9 that the legal theory underlying the objection, and by
10 never providing citations for the legal standards that
11 it invoked.

12 In a more recent example, on March 24th,
13 2009 DOJ objected to Gonzalez County, Texas' change to
14 its Spanish language election procedures. The
15 Department found that it could not conclude that the
16 county had sustained its burden by showing that the
17 proposed change does not have a retrogressive effect
18 or discriminatory purpose.

19 In its analysis, DOJ explained that compared
20 to its previously pre-cleared procedures, fewer
21 election documents were available in Spanish. The
22 county assigned fewer bilingual election workers and
23 some of the county's election documents were
24 translated inadequately. The Department also noted in
25 response to the county's claim that it had difficulty

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1 finding bilingual election workers that minority
2 individuals and organizations had offered to assist
3 the county with meeting federal requirements.

4 Despite concluding that the county did not
5 meet its burden with respect to either the
6 discriminatory effect or discriminatory purpose
7 standards, the letter never explained which facts
8 indicated a failure to meet the burden for which
9 standard. Although the objections unfavorable
10 comparisons to the county's prior procedures clearly
11 implied that the voting change would have a
12 discriminatory effect, DOJ never explicitly engaged in
13 discriminatory purpose analysis. As a result, it is
14 difficult, if not impossible, to determine from the
15 face of the letter whether DOJ actually based its
16 objections on alleged discriminatory purpose.

17 By May 2009, however, DOJ appeared to have
18 addressed the inadequacies of its past objection
19 letters. Beginning with an objection on May 29th of
20 that year to a voter verification program proposed by
21 the State of Georgia, DOJ's objection letters
22 evidenced increased clarity, took on a new structure,
23 and included a new boilerplate language.

24 Since that time, DOJ's objections have
25 included clear and concise descriptions of the

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1 applicable legal standards that they invoke with
2 citations. More importantly, they have provided
3 distinct and discrete analysis with respect to each
4 legal standard. The DOJ believes a proposal has a
5 discriminatory effect -- when the DOJ believes a
6 proposal has a discriminatory effect, the letter
7 concludes explicitly that it has a retrogressive
8 effect.

9 When DOJ believes a proposal has a
10 discriminatory purpose, DOJ provides clear
11 discriminatory purpose analysis with a citation to the
12 factors set forth in the Village of Arlington Heights
13 v. Metropolitan Housing Corporation.

14 For example, on March 12th --

15 COMMISSIONER GAZIANO: Mr. Chair?

16 CHAIRMAN CASTRO: Yes, sir?

17 COMMISSIONER GAZIANO: Would you mind if I
18 seek unanimous consent to have this entered into our
19 record as if it were read? It's been circulated
20 before. I'm well beyond the time I was supposed to be
21 on this call. Would other Commissioners object to
22 that?

23 CHAIRMAN CASTRO: I would have no problem so
24 long as it's fully in the record. Unanimous consent is
25 fine with me. Anybody have an objection to that? I

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1 don't hear none, so unanimous consent --

2 COMMISSIONER YAKI: I'm kind of liking your
3 narrative.

4 CHAIRMAN CASTRO: I know. I was actually
5 going to start --

6 COMMISSIONER YAKI: I was thinking an audio
7 book was going to come out of this.

8 CHAIRMAN CASTRO: Well, we're going to try to
9 reduce our printing, so a lot of our books and
10 publications may come out in audio.

11 COMMISSIONER YAKI: I was ready to put --

12 CHAIRMAN CASTRO: I'm happy to do that.

13 COMMISSIONER YAKI: -- it on my iPod.

14 CHAIRMAN CASTRO: And I'll even do the
15 Spanish versions, too.

16 COMMISSIONER YAKI: Okay.

17 CHAIRMAN CASTRO: So, with that unanimous
18 consent, we will add those findings. So, now let's
19 vote on it. We have a motion --

20 COMMISSIONER YAKI: Todd trying to pull it as
21 a sure thing now that's going to --

22 CHAIRMAN CASTRO: Yes. So, Commissioner
23 Heriot, how do you vote?

24 COMMISSIONER HERIOT: No.

25 CHAIRMAN CASTRO: Even after my moving

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1 rendition?

2 COMMISSIONER HERIOT: It wasn't because --

3 COMMISSIONER YAKI: Can we split this in two
4 votes, one vote on the quality of your dramatic
5 reading, and then the second on --

6 CHAIRMAN CASTRO: Madam Vice Chair?

7 VICE CHAIR THERNSTROM: No. And, you know,
8 these letters that are quoted are not even about
9 redistricting, and our report is about redistricting.
10 No.

11 CHAIRMAN CASTRO: Commissioner Gaziano, how
12 do you vote?

13 COMMISSIONER GAZIANO: No, for the reasons
14 the Vice Chair stated, and others.

15 CHAIRMAN CASTRO: Commissioner Kirsanow, how
16 do you vote?

17 COMMISSIONER KIRSANOW: No.

18 CHAIRMAN CASTRO: Commissioner Yaki, how do
19 you vote?

20 COMMISSIONER YAKI: Yes.

21 CHAIRMAN CASTRO: Commissioner Achtenberg,
22 how do you vote?

23 COMMISSIONER YAKI: And yes, I wanted to vote
24 yes for the dramatic appreciation, as well.

25 CHAIRMAN CASTRO: Thank you, I appreciate

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1 that. Commissioner Achtenberg, yes? Commissioner
2 Kladney?

3 COMMISSIONER KLADNEY: Yes.

4 CHAIRMAN CASTRO: And I vote yes. The motion
5 fails. So, we move on to proposed recommendations.

6 Proposed recommendation one, "DOJ should
7 continue to enforce VRA Section 5 in a manner which is
8 transparent and depoliticized." So, I move that. Do I
9 have a second?

10 COMMISSIONER KLADNEY: Second.

11 CHAIRMAN CASTRO: Any discussion? Madam Vice
12 Chair?

13 VICE CHAIR THERNSTROM: "Should continue to
14 enforce VRA Section 5." That suggests that it is now
15 enforcing Section 5 in a manner which is transparent
16 and depoliticized. I object to that description of
17 what DOJ is currently doing.

18 COMMISSIONER YAKI: Mr. Chair?

19 CHAIRMAN CASTRO: Yes?

20 COMMISSIONER YAKI: As a point of procedure,
21 were there -- on page -- where is number 2?

22 CHAIRMAN CASTRO: You got page 6?

23 COMMISSIONER YAKI: Yes, page --

24 CHAIRMAN CASTRO: Did I skip some of the
25 proposed findings?

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1 COMMISSIONER YAKI: Yes.

2 CHAIRMAN CASTRO: Yes, I read them all as
3 one, so we'll vote on them separately, sorry. So,
4 we'll hold on the recommendations. We'll go back to
5 page 6. We have numbers 3 and 4. Is that right? No, we
6 have -- where is number 2?

7 COMMISSIONER YAKI: Two is the one you just
8 read. Two is the one you just read.

9 CHAIRMAN CASTRO: Oh, two is the -- we voted
10 on two already. So, number 3 which we read into the
11 record, "DOJ periodically seeks the assistance," well,
12 they've already been on the record, so let's vote on
13 three. Well, I should move, and do we have a second?
14 So, I don't think I moved that. So, second from
15 Commissioner Achtenberg. How do you vote on proposed
16 Finding 3, Commissioner Heriot?

17 COMMISSIONER HERIOT: I pass, I'm reading it.

18 CHAIRMAN CASTRO: Okay. Vice Chair
19 Thernstrom?

20 VICE CHAIR THERNSTROM: I pass, too. I'm just
21 reading it.

22 CHAIRMAN CASTRO: Commissioner Kirsanow?

23 COMMISSIONER KIRSANOW: No.

24 CHAIRMAN CASTRO: Commissioner Gaziano?

25 COMMISSIONER GAZIANO: I pass. I'm rereading

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1 it.

2 CHAIRMAN CASTRO: Okay. Commissioner Yaki?

3 COMMISSIONER YAKI: I'm passing because I'm
4 rereading it in the context of not having two.

5 CHAIRMAN CASTRO: Commissioner Achtenberg?

6 COMMISSIONER ACHTENBERG: Well not being
7 interesting in vesting even further defeat from the
8 jaws of victory, I'm going to vote yes.

9 CHAIRMAN CASTRO: Okay. Commissioner Kladney?

10 COMMISSIONER KLADNEY: I'm reading it.

11 CHAIRMAN CASTRO: Okay. I'll vote yes. Let me
12 know when you're all done reading it so I --

13 COMMISSIONER KLADNEY: I'll vote yes.

14 CHAIRMAN CASTRO: Yes. And while you're at
15 it, you might as well read number 4.

16 COMMISSIONER KLADNEY: Mr. Chair?

17 CHAIRMAN CASTRO: Yes, sir?

18 COMMISSIONER KLADNEY: I'll vote yes.

19 CHAIRMAN CASTRO: Okay.

20 (Off the record comments.)

21 COMMISSIONER ACHTENBERG: I agree.

22 COMMISSIONER YAKI: Pass. Pass right now.

23 COMMISSIONER ACHTENBERG: Meaning pass --

24 COMMISSIONER YAKI: Yes.

25 COMMISSIONER ACHTENBERG: All right.

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1 CHAIRMAN CASTRO: So, is that an abstention?

2 COMMISSIONER ACHTENBERG: I'm passing for
3 right now, unless our voting is concluded, I guess.

4 CHAIRMAN CASTRO: No, we have to vote on --
5 we have a lot of passes. We're still on three because
6 there's people still reading it. There were several
7 passes, so I think I'm going to have to retake this
8 vote since some people's vote could change.

9 COMMISSIONER GAZIANO: I'm sorry, Mr.
10 Chairman. Could you tell me where the vote stands now?

11 CHAIRMAN CASTRO: Now we have one no, we had
12 three yeses, but I think one of those yeses has become
13 a pass, and the balance are one, two, three, four,
14 five passes.

15 COMMISSIONER KLADNEY: Mr. Chairman?

16 CHAIRMAN CASTRO: Yes, sir?

17 COMMISSIONER KLADNEY: May I suggest that we
18 wait until everybody is ready to vote and then just
19 take the vote again?

20 CHAIRMAN CASTRO: Yes, that's what I was
21 saying. I want to make sure everyone is done reading
22 both three and four so we can just go through it.

23 (Simultaneous speech.)

24 COMMISSIONER YAKI: Three and four now, okay.

25 CHAIRMAN CASTRO: We have some folks that are

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1 still reading, so when you're done with both --

2 COMMISSIONER GAZIANO: You can record my vote
3 on three as an abstain.

4 CHAIRMAN CASTRO: Okay. That was Commissioner
5 Gaziano.

6 VICE CHAIR THERNSTROM: I'm going to vote yes
7 on three.

8 CHAIRMAN CASTRO: Okay.

9 VICE CHAIR THERNSTROM: I agree that the
10 guidance is not particularly clear or helpful.

11 CHAIRMAN CASTRO: Okay. So, we have three
12 yeses, one abstain, and one no.

13 COMMISSIONER HERIOT: I'm a yes.

14 CHAIRMAN CASTRO: Okay. Commissioner Heriot
15 is a yes.

16 COMMISSIONER YAKI: We should take --

17 CHAIRMAN CASTRO: Wait. Should we start over
18 again? Is it confused here?

19 COMMISSIONER YAKI: Yes.

20 CHAIRMAN CASTRO: Okay. Let's start over on
21 three.

22 COMMISSIONER YAKI: Could we have discussion?

23 CHAIRMAN CASTRO: Yes. What's your question?

24 COMMISSIONER YAKI: My question is standing
25 alone I'm uncomfortable with -- as a proponent of a

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1 package of amendments along with yourself and with
2 Commissioner Achtenberg, I am now uncomfortable with
3 the standalone provision of three without it being
4 balanced by two. It also -- that concern also extends
5 to four because four in some ways was not totally
6 complete because DOJ had in its last correspondence to
7 us indicated they were revising some of the procedures
8 involving the tracking data. And while I would have
9 been somewhat comfortable with four standing as is
10 absent any new information from DOJ, again without the
11 balance of two, I am less than comfortable with it
12 standing alone. So, I am going to -- I am now
13 withdrawing my name from three as a proponent of three
14 and four because of the defeat of number two.

15 CHAIRMAN CASTRO: So, then let's vote on each
16 of these individually.

17 COMMISSIONER YAKI: Yes.

18 CHAIRMAN CASTRO: So, we have a motion on
19 three, so we'll start a vote again. Commissioner
20 Heriot, how do you vote?

21 COMMISSIONER HERIOT: On three?

22 CHAIRMAN CASTRO: Yes.

23 COMMISSIONER HERIOT: Yes.

24 CHAIRMAN CASTRO: Madam Vice Chair, how do
25 you vote?

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1 VICE CHAIR THERNSTROM: Yes.

2 CHAIRMAN CASTRO: Commissioner Gaziano, how
3 do you vote?

4 COMMISSIONER GAZIANO: I abstain.

5 CHAIRMAN CASTRO: Okay. Commissioner
6 Kirsanow, how do you vote?

7 COMMISSIONER KIRSANOW: No.

8 CHAIRMAN CASTRO: Commissioner Yaki, how do
9 you vote?

10 COMMISSIONER YAKI: No.

11 CHAIRMAN CASTRO: Commissioner Achtenberg,
12 how do you vote?

13 COMMISSIONER ACHTENBERG: No.

14 CHAIRMAN CASTRO: Commissioner Kladney, how
15 do you vote?

16 COMMISSIONER KLADNEY: Aye.

17 CHAIRMAN CASTRO: Yes?

18 COMMISSIONER KLADNEY: Yes.

19 CHAIRMAN CASTRO: I vote no, so it's one,
20 two, three, four no's, three yeses, and an abstention,
21 so it fails.

22 Now moving on to four, so I make a motion
23 for four for discussion purposes. Will someone second
24 that so we can vote?

25 VICE CHAIR THERNSTROM: I'll second it so we

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1 can vote.

2 CHAIRMAN CASTRO: Okay. I think -- any other
3 discussion on four besides what Commissioner Yaki
4 stated earlier? Hearing none, we'll take a vote on
5 proposed Finding Four. Commissioner Heriot, how do you
6 vote?

7 COMMISSIONER HERIOT: I vote yes.

8 CHAIRMAN CASTRO: Okay. Vice Chair
9 Thernstrom, how do you vote?

10 VICE CHAIR THERNSTROM: Yes.

11 CHAIRMAN CASTRO: Commissioner Gaziano, how
12 do you vote?

13 COMMISSIONER GAZIANO: Let me pass. I'm not
14 sure I know enough to know whether this is true or
15 not. I'll pass for now.

16 CHAIRMAN CASTRO: Commissioner Kirsanow, how
17 do you vote?

18 COMMISSIONER KIRSANOW: No.

19 CHAIRMAN CASTRO: Commissioner Yaki, how do
20 you vote?

21 COMMISSIONER YAKI: No.

22 CHAIRMAN CASTRO: Commissioner Achtenberg,
23 how do you vote?

24 COMMISSIONER ACHTENBERG: No.

25 CHAIRMAN CASTRO: Commissioner Kladney, how

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1 do you vote?

2 COMMISSIONER KLADNEY: Yes.

3 CHAIRMAN CASTRO: I vote no, so we have --

4 COMMISSIONER YAKI: Waiting for Commissioner
5 Gaziano.

6 CHAIRMAN CASTRO: Yes. Right now we have four
7 no's, and three yeses, and we're waiting on
8 Commissioner Gaziano.

9 COMMISSIONER GAZIANO: I thought you had one
10 abstention.

11 COMMISSIONER YAKI: That was you.

12 CHAIRMAN CASTRO: That was you. You said
13 pass. Did you abstain?

14 COMMISSIONER GAZIANO: Oh, no, I said pass.
15 I'll vote -- I suppose it won't pass if I vote yes, so
16 I'll abstain.

17 CHAIRMAN CASTRO: Okay. So, the motion fails.
18 Now, we go on to the proposed recommendations. We were
19 talking about and had a motion on proposed
20 Recommendation One. "The DOJ should continue to
21 enforce this VRA Section in a manner which is
22 transparent and depoliticized." And, Madam Vice Chair,
23 you had the floor on that.

24 VICE CHAIR THERNSTROM: I said that DOJ
25 should continue in a manner that is transparent and

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1 depoliticized. I don't recognize that as an accurate
2 description of what DOJ has been doing.

3 CHAIRMAN CASTRO: Any other comments,
4 questions on this? If not, we'll call the question.

5 COMMISSIONER YAKI: I'm sorry.

6 CHAIRMAN CASTRO: That's okay. Do you have
7 something?

8 COMMISSIONER YAKI: Yes, Mr. Chair. Again, to
9 me, one is the defining tone of this, and if one
10 fails, I will be withdrawing my name from two and
11 three, as well.

12 CHAIRMAN CASTRO: Okay. So, we're going to
13 vote on one. Commissioner Heriot, how do you vote?

14 COMMISSIONER HERIOT: No.

15 CHAIRMAN CASTRO: Madam Vice Chair, how do
16 you vote?

17 VICE CHAIR THERNSTROM: No.

18 CHAIRMAN CASTRO: Commissioner Gaziano, how
19 do you vote?

20 COMMISSIONER GAZIANO: No.

21 CHAIRMAN CASTRO: Commissioner Kirsanow, how
22 do you vote?

23 COMMISSIONER KLADNEY: No.

24 CHAIRMAN CASTRO: Commissioner Yaki, how do
25 you vote?

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1 COMMISSIONER YAKI: Aye.

2 CHAIRMAN CASTRO: Commissioner Achtenberg,
3 how do you vote?

4 COMMISSIONER ACHTENBERG: Aye.

5 CHAIRMAN CASTRO: Commissioner Kladney, how
6 do you vote?

7 COMMISSIONER KLADNEY: Yes.

8 CHAIRMAN CASTRO: And I vote yes, so the
9 motion fails, even split. Do we have a motion on
10 proposed recommendation 2? No motion. Hearing no
11 motion, no second, no motion. All right. So, I move on
12 to three. Is there a motion on three? No motion on
13 three. And that's all we have. Right?

14 COMMISSIONER YAKI: Okay.

15 CHAIRMAN CASTRO: Yes. So, we have one
16 proposed recommendation -- no, actually, that failed,
17 too, so no recommendations and --

18 COMMISSIONER YAKI: One finding.

19 CHAIRMAN CASTRO: -- one finding. Okay. So,
20 we are now done with Part B, and we have a statutory
21 enforcement report for this year. Pardon me?

22 COMMISSIONER HERIOT: The one finding looks
23 silly.

24 CHAIRMAN CASTRO: Yes.

25 COMMISSIONER HERIOT: I move to strike the

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1 one finding.

2 CHAIRMAN CASTRO: Is there a second on that
3 motion?

4 VICE CHAIR THERNSTROM: I second that.

5 COMMISSIONER KLADNEY: I second.

6 CHAIRMAN CASTRO: Any discussion? Okay. How
7 do you vote on that, Commissioner Heriot?

8 COMMISSIONER HERIOT: Yes.

9 CHAIRMAN CASTRO: Madam Vice Chair?

10 VICE CHAIR THERNSTROM: Yes.

11 CHAIRMAN CASTRO: Commissioner Yaki?

12 COMMISSIONER YAKI: Yes.

13 CHAIRMAN CASTRO: Commissioner Achtenberg?

14 COMMISSIONER ACHTENBERG: Yes.

15 CHAIRMAN CASTRO: Commissioner Kladney?

16 COMMISSIONER KLADNEY: Yes.

17 CHAIRMAN CASTRO: Commissioner Gaziano?

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRMAN CASTRO: Commissioner Kirsanow?

20 COMMISSIONER KIRSANOW: Yes.

21 CHAIRMAN CASTRO: And I vote, so we have
22 removed that.

23 Okay. So, now we move on to a discussion of
24 the 2013 statutory report topic.

25 **II. PROGRAM PLANNING UPDATE AND**

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DISCUSSION OF PROJECTS**VOTE ON 2013 STATUTORY REPORT TOPIC**

CHAIRMAN CASTRO: As you know, at our last meeting we considered a number of topics, none of which obtained a majority of Commissioners support, so what I did in the interim over the July 4th holiday, apropos, I read a concept paper and I made a revision as well that I circulated to everyone on the idea of looking into the issue of veterans civil rights, obviously with an emphasis looking at the minority veterans given that we have a jurisdiction looking at issues of discrimination based on a number of areas, including color, race, gender, disability, religion, and national origin. So, I propose that we look at the condition of the civil rights of our minority veterans, in particular based on race, national origin, gender, and disability; particularly given the massive number of veterans and former service members that are coming back home in light of what's happening with the drawdown of the war in Iraq and in Afghanistan. And my paper is entitled, "Is the Federal Government adequately protecting the civil rights of our veterans and service members who fought for our rights?"

I hope everyone has had a chance to take a

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1 look at that. And I would like for us to discuss and
2 vote on that. And if there is any folks who also want
3 to re-raise the former concept papers that we had, as
4 well, to see if there's been any change of heart in
5 the last month, although I don't know that that's been
6 the case, but I would like to make a motion that we
7 consider this veteran's concept paper for discussion
8 purposes. I don't know if I can get a second on that?

9 COMMISSIONER YAKI: Second.

10 CHAIRMAN CASTRO: Thank you. Any discussion,
11 Commissioner Heriot?

12 COMMISSIONER HERIOT: My primary concern is
13 that we don't have jurisdiction over discrimination
14 against veterans as veterans. And, hence, this ends up
15 being a study apart from the voting issue on
16 discrimination on the basis of disability or
17 discrimination on the basis of race. And I guess I'm
18 not -- it's not a topic that is inspiring.

19 CHAIRMAN CASTRO: I believe that we're
20 clearly looking at, as I've said, there are some
21 subsets of our jurisdiction, race, national origin,
22 disability, and gender that I want to look at, but I
23 want to look at that from the lens of these
24 individuals as veterans. Just, for example, as we did
25 in our bullying report, we looked at various sections

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1 of -- or various parts of the protected communities,
2 but we were looking at them as students that were
3 being bullied. You now, bullying is not a direct
4 coverage that we have in our statute, but we were
5 looking at minority students who were being bullied,
6 so they were victims of bullying and peer-to-peer
7 violence.

8 COMMISSIONER HERIOT: If you recall, I
9 thought that was a stretch, too, so --

10 CHAIRMAN CASTRO: Well, let me finish, as
11 well, human trafficking. We looked at gender
12 discrimination. We weren't looking at victims of sex
13 trafficking per se, but we were looking at those
14 victims of sex trafficking who were being victimized
15 because of their gender. And similarly here, what I am
16 proposing is that we look at the condition of these
17 veterans who are minorities because of their minority
18 status, and seeing how that as veterans they are being
19 further implicated. You look at there's reports that
20 have been done over the last two years by the
21 Department of Veterans Affairs, Office of Minority
22 Advisory Committee, that shows that when it comes to
23 minority veterans there are issues of employment,
24 there are issues of homelessness. They don't track
25 minority data very well for the veterans, and there

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1 are a whole host of other issues that implicate a lack
2 of services that the minority veterans are getting.
3 They don't get into great detail on the civil rights
4 aspects of it, and that's where I think we can make a
5 contribution to this important class of individuals
6 who are currently protected by our existing civil
7 rights laws who happen to be veterans.

8 COMMISSIONER GAZIANO: Mr. Chair?

9 CHAIRMAN CASTRO: Yes, Commissioner Gaziano?

10 COMMISSIONER GAZIANO: I think you just kind
11 of reinforced my concern. Although, I think this is
12 even more far afield of our jurisdiction compared to
13 the minority students in bullying, and the gender
14 inequity in the trafficking issue, I think you just
15 said that there's a lack of data on the minority. And
16 that's my understanding, by the way, too, on minority
17 vets. So, I think that it would be impossible for us,
18 or highly, highly unlikely that we could come to any
19 meaningful conclusions that disaggregate the effect
20 that certain vets have because they're vets, and those
21 same vets have because they fit one or another
22 minority grouping.

23 We should do our best to -- as interesting
24 as this topic is, Mr. Chairman, and I thank you for
25 trying to come up with another topic we might agree

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1 to, I think we need to come up with topics where we
2 know that all of the resources that we devote to year-
3 long studies will produce something that is rather
4 meaningful statistically, and otherwise.

5 CHAIRMAN CASTRO: Well, that doesn't mean
6 that there's no data out there on it. The Veterans
7 Affairs Department needs to better track the race and
8 ethnicity demographic data. And I think as you look at
9 our bullying report again, we made some conclusions I
10 believe that there was a lack of data tracking by the
11 Department of Justice, and the Department of Education
12 as it relates to students who were being bullied
13 because of their LGBT status. And I think should we
14 determine that, that's an appropriate finding for us
15 to make. It should not be something that precludes us
16 from looking at these individuals who are clearly,
17 because of their minority status, protected by our
18 civil rights laws, covered by our jurisdiction. And I
19 think us looking at the issue that they face in
20 addition because of their veteran or military status
21 is something that this Commission should do because
22 these are folks who literally are fighting to insure
23 the rights that we're supposed to be overseeing. And
24 when we see from reports from the VA that there are
25 homeless veterans, and it's important for us to look

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1 at the issue of housing, and it's homeless minority
2 veterans. And when it looks like minority veterans are
3 not being adequately outreached to by the federal
4 government, then I think that implicates whether or
5 not civil rights protections are being adequately
6 afforded to our minority veterans. And I would very
7 much hope that this Commission would take a stand to
8 support the men and women who have fought and died for
9 our rights.

10 COMMISSIONER KLADNEY: Time for the question.

11 CHAIRMAN CASTRO: Commissioner Achtenberg?

12 COMMISSIONER ACHTENBERG: I just want to say
13 that this provides us with the kind of opportunity not
14 only to at least potentially to break new ground, to
15 provide a service to both the Executive and to the
16 Congress in terms of mapping existing protections and
17 underscoring where the gaps in protections might lie.
18 It looks to me like this is a very siloed undertaking
19 as it currently stands, and given how important this
20 group of people is to the integrity of the nation, I
21 think we have a particularly rich opportunity to be of
22 real assistance to real people.

23 Now, that doesn't -- I mean, if you are
24 thinking that this is bootstrapping, then I suppose
25 that doesn't change your view. I think that taking a

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1 look at this and seeing the extent to which it really
2 is an issue, and seeing what our Commission can
3 suggest to the Congress, and to the administration is
4 a most worthy endeavor. Maybe there needs to be a new
5 law or what have you, but I don't see who else is --
6 who is better situated than are we to take a look at
7 how the entire context works. And I think it's
8 particularly worthy given the importance of active
9 service members and veterans to the health of the body
10 politic.

11 I mean, if people were being lynched when
12 they came home from service, I don't know that we'd be
13 -- as they once were. I don't know that we'd be
14 parsing so carefully the distinction between whether
15 or not they're being lynched because they're veterans
16 or because they're African -- do you see what I'm
17 saying? So, I think it's worthy of an examination.

18 CHAIRMAN CASTRO: Thank you, Commissioner.
19 Commissioner Yaki?

20 COMMISSIONER YAKI: Yes, I just want to say
21 that I'm very sympathetic to what it is you're trying
22 to do, Mr. Chair. I worked with veterans -- I worked
23 with a number of veterans groups, disabled veterans,
24 homeless veterans, ex-Vietnam, ex-Gulf War vets,
25 Wounded Warrior programs for I think the past 20 odd

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1 years of my life. I had an uncle who was one of the
2 first volunteers in the Nisei combat unit in World War
3 II, who lost his arm in Anzio. He recently passed
4 away, as did all the other relatives of mine who
5 fought in that. And when they came back they faced
6 unique struggles in adapting to a society that still
7 viewed them as the enemy, which was very interesting.
8 So, I have a lot of sympathy for this in having had a
9 lot of hands on experience in getting grants for a lot
10 of different veterans programs, Swords of Ploughshares
11 and others in San Francisco. It's something that has
12 always meant a lot to me, and I worked a lot with
13 homeless vets in San Francisco.

14 The issue -- and I think this is -- part of
15 me is somewhat torn on this, because I understand some
16 of the jurisdiction issues that have been raised by
17 others on this because there is, I think, rather
18 shameful treatment of our returning men and women from
19 the fields of combat by our country in not providing
20 enough transition resources, and not providing enough
21 counseling and dealing with PTSD and traumatic brain
22 injuries and other things that are -- but I also do
23 believe that for minority soldiers coming back there
24 may be a double burden that they are faced with when
25 it comes to finding housing, finding a job, getting

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1 the training that they need. But I don't -- as I think
2 it's been -- you said, others have said, we don't
3 really have the kind of data that we need on that. But
4 that doesn't mean that the data isn't there, could be
5 there, or could be developed, or should be developed
6 to take a look at this.

7 I think it's interesting. I haven't totally
8 made up my mind on it, but the fact is, is that
9 certainly to me this is -- this meets any threshold
10 for a briefing, number one. And as for a statutory
11 report, I think it's something where we can come
12 close, and given that all of these are things that
13 once they're approved they still get developed and
14 refined over time, I think that this is something that
15 has the potential to be developed in a way that does
16 meet all the criterion and jurisdiction. I appreciate
17 the fact that you wrote it. That's how I wrote my
18 Stand Your Ground investigation, was basically
19 overnight. And -- well, not overnight, but you know C-
20 - we looked at it. Do three or four iterations and
21 then people tell us we're crazy, and we try again.

22 But I think that -- I think it would be -- I
23 don't think we can turn a blind eye to the
24 potentiality that is there, and certainly anecdotal
25 evidence that we've heard is there. And if there is a

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1 double burden being carried by minority soldiers on
2 their return to this country, I think it can and
3 should be drawn out. Anyway, that's not to diminish
4 the burden that all veterans carry coming back.

5 CHAIRMAN CASTRO: Absolutely, yes.

6 COMMISSIONER YAKI: But it doesn't help if C-
7 - and maybe there isn't, but if there is, I think
8 there's a duty for us to look at it and determine
9 whether or not that burden is there, and what can be
10 done about it.

11 CHAIRMAN CASTRO: Any other comments or
12 questions? Madam Vice Chair.

13 VICE CHAIR THERNSTROM: Well, I agree we have
14 too many homeless veterans. I am not sure what
15 relationship that bears, if any, to civil rights
16 violations. Maybe there's some relationship here, but
17 -- and maybe you would say well, that's the question
18 we would be looking at, but I start out as skeptical
19 that there is a connection between -- what we're
20 looking at here is a lack of enforcement of civil
21 rights statutes when we're looking at, for instance,
22 homelessness among veterans.

23 CHAIRMAN CASTRO: And homelessness is just an
24 example. It's not --

25 VICE CHAIR THERNSTROM: Right, but any other

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1 example.

2 CHAIRMAN CASTRO: There's employment issues
3 that are implicated by this.

4 VICE CHAIR THERNSTROM: Right.

5 CHAIRMAN CASTRO: And I think we don't want
6 to come -- you've always said to me, Madam Vice Chair,
7 and I've taken this to heart, do not make conclusions
8 in your concept paper. I could -- if said I believe
9 that the reason for this is because they are minority,
10 but I think it's important for us to go out there and
11 determine the data. Some of the data that I read does
12 indicate that minority veterans are more likely to be
13 homeless than non-minority veterans. Now, I don't know
14 what the reason for that is, but I think it's an
15 important area for us to look into when there is
16 clearly a -- minority veterans are being treated
17 differently than non-minority veterans. Maybe it's not
18 a civil rights violation, but we will never know that
19 until the United States Commission on Civil Rights
20 takes a look at it. And it could be that at the end of
21 our result we conclude you know what, there isn't. But
22 I don't want to prejudge that now, but there is enough
23 of a -- when there's smoke I think we should look into
24 whether there's a fire or not. Madam Vice Chair? I
25 mean -- I just promoted you. Commissioner Heriot.

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1 She's trying to get other jobs.

2 COMMISSIONER HERIOT: Yes, I agree with the
3 Vice Chair, and I think we need to emphasize, this is
4 supposed to be the enforcement report, so we're
5 supposed to be focused in on whether or not a federal
6 agency is falling down on the job in some way. So,
7 even if there is a civil rights violation in the sense
8 of there is a Title 7 violation but no complaints have
9 been made to the EEOC, that would make it a
10 substantive issue for an enforcement report.

11 CHAIRMAN CASTRO: Well, that's why I asked to
12 bring the EEOC --

13 COMMISSIONER HERIOT: We need to be so much
14 more focused. By the time we decide what we're going
15 to look at here, the year is going to be up, and we're
16 never going to be able to gather data on this. We need
17 a more hard-edged issue where we already know what the
18 enforcement issue is.

19 CHAIRMAN CASTRO: Well, clearly, the EEOC is
20 on this issue, particularly -- especially when it
21 relates to the disability issue included in the
22 employment context. And they have -- I propose that
23 they be one of the federal agencies that we bring in.
24 The Department of Labor has done an extensive amount
25 of work on data tracking the employment issue as it

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1 relates to veterans, as well as -- you know, the VA
2 doesn't have a technical enforcement authority, but
3 the VA is the point of entry for a lot of these
4 veterans. And, in fact, this Minority Advisory
5 Committee of VA is the one that is developing these C-
6 - looking at those areas where there's gaps. So, I
7 think bringing them in and determining what they've
8 seen on the civil rights issue is clearly something
9 that we would consider to be appropriate in terms of
10 federal enforcement report. So, I do list a number of
11 federal agencies here that we can bring in that can
12 testify.

13 Furthermore, on the interest groups, the
14 groups that I've listed again would be able to provide
15 us with direct information of their members. The
16 American GI Forum is the oldest and largest
17 organization for Latino veterans. The Paralyzed
18 Veterans of America is one of several of the leading
19 groups dealing with disabled veterans. The National
20 Association for Black Veterans, the Iraq and
21 Afghanistan War Veterans, which as you know from the
22 statistics I cite in the report, those soldiers are
23 more diverse than soldiers in the past war. And the
24 American Voters for Equal Rights, or any similar
25 groups, these are individuals who are very

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1 specifically -- will be able to tell us whether they
2 are seeing civil rights violations, and how they have
3 been interfacing with these federal agencies that we
4 have oversight on.

5 Now, in terms of scholars, I have no idea
6 who they would be, so I just kind of put that down.
7 But any other questions? If not, then I'll call the
8 question on this report.

9 Commissioner Heriot, how do you vote?

10 COMMISSIONER HERIOT: I vote no.

11 CHAIRMAN CASTRO: Madam Vice Chair, how do
12 you vote?

13 VICE CHAIR THERNSTROM: Go around and get
14 back to me.

15 CHAIRMAN CASTRO: Okay. Commissioner Yaki,
16 how do you vote?

17 COMMISSIONER YAKI: Yes.

18 CHAIRMAN CASTRO: Commissioner Achtenberg,
19 how do you vote?

20 COMMISSIONER ACHTENBERG: Yes.

21 CHAIRMAN CASTRO: Commissioner Kladney, how
22 do you vote?

23 COMMISSIONER KLADNEY: Yes.

24 CHAIRMAN CASTRO: Commissioner Gaziano, how
25 do you vote?

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1 COMMISSIONER GAZIANO: Regrettably, no.

2 CHAIRMAN CASTRO: Commissioner Kirsanow, give
3 me a yes.

4 COMMISSIONER KIRSANOW: No, I cannot.

5 CHAIRMAN CASTRO: Okay.

6 COMMISSIONER KIRSANOW: This is an important
7 topic, I do think it's not within our jurisdiction. I
8 do think there are other agencies better suited, such
9 as the Department of Veterans of Affairs has its own
10 office of Resolution Management dealing with these
11 types of issues. As important an issue this is, I
12 don't think it's within the scope of our jurisdiction,
13 so I vote no.

14 CHAIRMAN CASTRO: Commissioner Kirsanow, the
15 Office of Resolution Management I believe deals with
16 internal diversity issues for the employees of the
17 Department, rather than the external.

18 COMMISSIONER KIRSANOW: In addition to that,
19 that Division does specifically look at discrimination
20 against veterans, qua veterans. And I'm -- I just
21 don't know that we've got the jurisdictional hook
22 here. Are Black veterans, for example, treated
23 differently on the basis of veteran status than White
24 veterans are? In other words, does veteran status have
25 different implication based on what demographic group

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1 you belong to? And I'm not convinced that we've got
2 jurisdiction to look at that.

3 CHAIRMAN CASTRO: Right. And I'm not
4 intending to do that. I think I specifically said
5 looking at those areas of race, national origin, sex,
6 or gender, and disability. Although, I do give a lot
7 of background just to show the milieu right now in
8 Congress on expanding the rights of veterans. So, you
9 voted no. Madam Vice Chair?

10 VICE CHAIR THERNSTROM: I'm going to vote no
11 for precisely the reasons that Commissioner Kirsanow
12 just outlined.

13 CHAIRMAN CASTRO: Okay, so this fails as a
14 statutory enforcement report. Let me ask would folks
15 be willing to treat this as a 2013 briefing topic as
16 opposed to the statutory enforcement report? I'll make
17 that motion.

18 COMMISSIONER YAKI: Second.

19 COMMISSIONER ACHTENBERG: Second.

20 CHAIRMAN CASTRO: Okay. With that
21 understanding, so --

22 COMMISSIONER HERIOT: How many briefing
23 topics have we now approved that are now pending?

24 CHAIRMAN CASTRO: For 2013? I think we only
25 picked one for 2013. The ones -- well, actually, I'm

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1 incorrect.

2 COMMISSIONER GAZIANO: Mr. Chair, I think we
3 have about four or five in mind, and at some point
4 it's probably appropriate for us to reconsider what
5 order to put them in.

6 CHAIRMAN CASTRO: Yes.

7 COMMISSIONER GAZIANO: I think some, of
8 course, priority to go to the order in which we
9 adopted them.

10 CHAIRMAN CASTRO: Absolutely.

11 COMMISSIONER GAZIANO: But maybe certain
12 Commissioners would yield on ones that they sponsored.
13 But I think, if I'm not mistaken, we have three or
14 four in mind.

15 CHAIRMAN CASTRO: Yes.

16 COMMISSIONER HERIOT: Mr. Chairman?

17 CHAIRMAN CASTRO: Yes, ma'am.

18 COMMISSIONER HERIOT: It looks like we're
19 going to have to have some sort of a compromise on
20 what the enforcement report is going to be, so I think
21 we need to figure out how we're going to work that
22 first. And it may well be that this will work its way
23 into that, but we need to figure out what that
24 compromise is going to be so that we can get started.

25 CHAIRMAN CASTRO: No, indeed, but I figured

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1 since we just had a fresh discussion on this right
2 now, and --

3 COMMISSIONER HERIOT: I think we need to make
4 that compromise now, rather than --

5 CHAIRMAN CASTRO: Well, I'd like to move that
6 this be a 2013 briefing, not enforcement topic. And
7 then we'll move on to the other --

8 VICE CHAIR THERNSTROM: It's premature.

9 COMMISSIONER HERIOT: I might be able to help
10 you, except I can't until I know what the --

11 CHAIRMAN CASTRO: Okay. Fine, we'll put it
12 off.

13 VICE CHAIR THERNSTROM: It's premature for
14 me, too.

15 CHAIRMAN CASTRO: We'll put it off. So,
16 Commissioner Kladney?

17 COMMISSIONER KLADNEY: I have a briefing
18 topic I'd like to put forward, although I haven't put
19 it in writing, and I apologize.

20 COMMISSIONER ACHTENBERG: It's a potential
21 for statutory report?

22 COMMISSIONER KLADNEY: Yes, it's for a
23 statutory report. I think sexual assault in the
24 military has become quite a large issue. And I think
25 we could look into that and have basically three

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1 panels, a panel of JAG officers to explain the law,
2 how it's handled in the military, how the prosecutors
3 handle it, how the defense lawyers handle it. The
4 second panel would be of advocacy groups, and the
5 third panel would be a representative from each branch
6 of service explaining exactly what's going on, and how
7 they're handling this very timely subject, and very
8 poorly handled subject in the military.

9 CHAIRMAN CASTRO: Is there a second?

10 COMMISSIONER ACHTENBERG: Second.

11 CHAIRMAN CASTRO: Discussion?

12 COMMISSIONER HERIOT: I'm just wondering if
13 we shouldn't caucus on this since -- I might want to
14 take like a five-minute break to talk to my
15 colleagues.

16 CHAIRMAN CASTRO: Madam Vice Chair?

17 VICE CHAIR THERNSTROM: Yes. I mean, I need a
18 concept paper written out.

19 CHAIRMAN CASTRO: Yes.

20 VICE CHAIR THERNSTROM: And it's just -- I'm
21 not ready to vote on that.

22 CHAIRMAN CASTRO: I think that's a valid
23 point. I know as Commissioner Gaziano tried to put a
24 gun law proposal on to the standard round, we did ask
25 him to put a concept paper forward.

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1 COMMISSIONER HERIOT: Don't we have to select
2 something today?

3 CHAIRMAN CASTRO: Well, should we go back to
4 -- I mean, it's up --

5 COMMISSIONER HERIOT: We don't seem to have a
6 majority on anything else.

7 CHAIRMAN CASTRO: Okay, do you want to caucus
8 and talk about this? What's the druthers of the
9 majority of the Commissioners? All right, we'll take a
10 10-minute recess. Is 10 minutes enough?

11 VICE CHAIR THERNSTROM: We've got two members
12 of our caucus who are on the phone.

13 CHAIRMAN CASTRO: So, you're going to have
14 to--

15 COMMISSIONER KLADNEY: Do you want us to
16 leave the room?

17 CHAIRMAN CASTRO: Why don't we --

18 (Simultaneous speech.)

19 CHAIRMAN CASTRO: We ask -- we apologize to
20 the audience, if we could all step out to allow our
21 conservative colleagues the room so that they can
22 caucus on the phone.

23 PARTICIPANT: Are we on the record, or off
24 the record?

25 CHAIRMAN CASTRO: We are now off the record.

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1 (Whereupon, the proceedings went off the
2 record at 11:42:20 a.m., and went back on the record
3 at 12:01:31 p.m.)

4 CHAIRMAN CASTRO: Back on the record.
5 Commissioner Heriot, you had a proposal?

6 COMMISSIONER HERIOT: Here is our proposal. I
7 think a number of the Commissioners who were appointed
8 by Republican authorities, that is the caucus that was
9 moving in here just a moment ago, we're not opposed to
10 David's idea. We are opposed to voting in an
11 enforcement report where there's no documentation yet,
12 so what we propose is this.

13 Number one, Commissioner Kladney goes out
14 and as quickly as possible writes this up. Number two,
15 in addition to that we would want to also vote in the
16 EEOC criminal background topic as a briefing. And we
17 are willing to abstain, or at least some of us are
18 willing to abstain on the veterans briefing so that we
19 would be voting in three things, but we would have to
20 do it either with a notational vote or with a
21 telephonic meeting as soon as Commissioner Kladney has
22 something in writing.

23 CHAIRMAN CASTRO: And we would make
24 Commissioner Kladney's vote the statutory enforcement
25 report.

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1 COMMISSIONER HERIOT: That would be the
2 statutory enforcement report.

3 CHAIRMAN CASTRO: And the other two would be
4 briefing topics.

5 COMMISSIONER HERIOT: The other two would be
6 briefings. And I think we would want to make sure that
7 our's was scheduled promptly, and we're quite willing
8 for your's to be scheduled promptly, and that is
9 priority over the ones that have already been
10 approved.

11 CHAIRMAN CASTRO: Okay. Well, that seems like
12 a reasonable proposal to me. I don't know if my
13 colleagues want to comment or discuss that?

14 COMMISSIONER YAKI: Yes, absolutely.

15 CHAIRMAN CASTRO: Commissioner Yaki? I'm
16 sorry, I thought you were raising your hand.

17 COMMISSIONER YAKI: No, I was just thinking
18 that this has an interesting way of playing out, so
19 I'm very happy about it.

20 CHAIRMAN CASTRO: Commissioner Kladney, do
21 you have anything?

22 COMMISSIONER KLADNEY: I have no comment.

23 CHAIRMAN CASTRO: Okay.

24 VICE CHAIR THERNSTROM: But you can quickly
25 write up a concept paper for us.

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1 CHAIRMAN CASTRO: Okay. Should this be in the
2 form of a motion or is this a general understanding
3 that we can have that this is -- is this acceptable?

4 COMMISSIONER GAZIANO: Why don't we take a
5 quick vote? I so move.

6 CHAIRMAN CASTRO: Okay. Is there a second?

7 COMMISSIONER KIRSANOW: Second.

8 CHAIRMAN CASTRO: Straw vote.

9 COMMISSIONER HERIOT: Okay. I vote yes.

10 CHAIRMAN CASTRO: And there was a second.
11 Right? You seconded.

12 COMMISSIONER HERIOT: It's a straw vote.

13 CHAIRMAN CASTRO: Okay. So, Commissioner --
14 Vice Chair --

15 VICE CHAIR THERNSTROM: Yes.

16 CHAIRMAN CASTRO: Yes. Commissioner Gaziano,
17 you voted yes already, or no?

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRMAN CASTRO: Yes. Commissioner Kirsanow?

20 COMMISSIONER KIRSANOW: Yes.

21 CHAIRMAN CASTRO: I vote yes. Commissioner
22 Yaki?

23 COMMISSIONER YAKI: Sure, why not?

24 CHAIRMAN CASTRO: Commissioner Achtenberg?

25 COMMISSIONER ACHTENBERG: I'm going to pass.

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1 CHAIRMAN CASTRO: Okay. Commissioner Kladney?

2 COMMISSIONER KLADNEY: I'm going to vote no.

3 CHAIRMAN CASTRO: And did I miss anybody?
4 Okay. Commissioner Achtenberg, we'll go back to you.

5 COMMISSIONER ACHTENBERG: Yes, I'm going to
6 vote no.

7 CHAIRMAN CASTRO: Okay.

8 COMMISSIONER YAKI: Hey, did Commissioner
9 Kladney just vote no?

10 COMMISSIONER HERIOT: On his own proposal.

11 CHAIRMAN CASTRO: Yes.

12 VICE CHAIR THERNSTROM: On his own proposal.

13 COMMISSIONER YAKI: Well, in that case --

14 COMMISSIONER KLADNEY: No, it wasn't my
15 proposal, all three papers. It's not my proposal.

16 CHAIRMAN CASTRO: Okay. So, we have one, two,
17 three, four, five, six yeses and two nos.

18 COMMISSIONER YAKI: But this is a straw,
19 straw vote.

20 CHAIRMAN CASTRO: This is a straw vote.

21 COMMISSIONER KLADNEY: I mean, I'll still
22 prepare the paper.

23 COMMISSIONER HERIOT: More than any other
24 statutory reports --

25 COMMISSIONER YAKI: Yes.

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1 COMMISSIONER KLADNEY: If it passes it
2 passes. I'm not worried about it. I'm just -- it
3 wasn't my proposal, that's all.

4 CHAIRMAN CASTRO: Yes, we understand that.
5 But your proposal is --

6 COMMISSIONER KLADNEY: But I will prepare the
7 paper.

8 CHAIRMAN CASTRO: He'll prepare the paper.

9 COMMISSIONER KLADNEY: Yes.

10 CHAIRMAN CASTRO: All right.

11 COMMISSIONER KLADNEY: The wish of the
12 Commission.

13 CHAIRMAN CASTRO: Okay. All right. Then we'll
14 proceed accordingly.

15 COMMISSIONER GAZIANO: Mr. Chair, since I may
16 leave the call now, may I just make a quick request
17 and comment?

18 CHAIRMAN CASTRO: Yes.

19 COMMISSIONER GAZIANO: First of all, thank
20 you for bearing with me being on the phone. This is
21 the first meeting I think -- scheduled meeting since
22 I've been on the Commission I had to miss, but my
23 extended family could find no other week to get
24 together, so I thank you all for your indulgence.

25 I apologize that I can't stay on for a

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1 discussion of the immigration briefings, but I've
2 worked constructively with the Chairman and our
3 special assistants have done a lot of good work on
4 that to try to make it as -- I'm sorry I still don't
5 have -- you may be reporting but I'll touch base with
6 you later on a couple of questions that I still have
7 on it.

8 CHAIRMAN CASTRO: Sure.

9 COMMISSIONER GAZIANO: And I would ask if
10 appropriate that you recognize John, if necessary, if
11 he had any clarifications when you have that
12 discussion. And I would ask if possible folks can call
13 me if they think that they really need me for another
14 vote, but I would prefer putting off sort of other
15 controversial votes if possible until whenever the
16 notational or telephonic call is.

17 CHAIRMAN CASTRO: All right. Duly noted.
18 Thank you, Commissioner Gaziano.

19 COMMISSIONER GAZIANO: Okay, thank you.

20 CHAIRMAN CASTRO: Thank you. So, next on
21 schedule is the scheduling of the future briefings.

22 **II. PROGRAM PLANNING UPDATE AND**

23 **DISCUSSION OF PROJECTS**

24 **SCHEDULING OF FUTURE BRIEFINGS**

25 CHAIRMAN CASTRO: I don't know if we want to

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1 talk about that now or wait until we do these others.

2 COMMISSIONER HERIOT: I think we need to wait
3 until we --

4 CHAIRMAN CASTRO: Yes.

5 VICE CHAIR THERNSTROM: We're not ready to do
6 that.

7 CHAIRMAN CASTRO: Yes, so we'll put that off.
8 Next is an update on the immigration briefing.

9 **II. PROGRAM PLANNING UPDATE AND**

10 **DISCUSSION OF PROJECTS**

11 **UPDATE ON IMMIGRATION BRIEFING**

12 CHAIRMAN CASTRO: Pam Dunston has been
13 working on the logistics behind that, and I also have
14 sort of a summary here from -- based on the
15 information that Lenore Ostrowsky has provided to us.
16 She is not here today, so what I'll do is give you a
17 brief update on the briefing topic. I think Marlene is
18 circulating the summary here, and then we'll ask Pam
19 to be available to answer any questions on the
20 logistics. I know that the hotels have been selected
21 and there are some other logistics that we want to
22 talk to folks about.

23 So, there will be three panels on the
24 immigration briefing. Panel A is going to consist of
25 the government officials and SAC chairs, so the

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1 thought was to merge those to bring some efficiency,
2 instead of having four panels. Panel B is going to
3 consist of representatives of the interests and
4 advocacy groups and affected persons. Panel C will
5 consist of legal scholars and researchers.

6 At the present time, according to Lenore
7 Ostrowsky, the present speakers that we have are
8 Alabama State Representative Chris England, Kansas
9 Secretary of State Kris Kobach, Alabama State Senator
10 Scott Beason, David Beito, Alabama SAC Chair, Charles
11 Tanksley, our Georgia SAC Chair, Professor Doris Marie
12 Provine of Arizona State University, Tammy Besherse,
13 an attorney in Appleseed in South Carolina, Bill
14 Lawrence, a principal at the local school in Alabama,
15 Isabel Rubio, the Hispanic Interest Coalition of
16 Alabama, Michele Waslin of the American Immigration
17 Council, Linda Chavez, a former SAC Chair and former
18 staff director of this Commission, Mark Krikorian of
19 the CIS, Michael Hethmon of IRLI, and Chuck Ellis, a
20 City Councilman in Albertville, Alabama who also is a
21 state trooper.

22 COMMISSIONER YAKI: These are confirmed?

23 CHAIRMAN CASTRO: I believe these are all
24 confirmed. So, those are the -- there was some
25 discussion about doing a -- possibly a community open

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1 mike at the end of it, but because of logistics and
2 timing, et cetera, it was decided not do that, so it
3 will just be these three panels.

4 And, in addition, we're asking folks who
5 already haven't informed us that they're going, the
6 Commissioners and their staff assistants, we want to
7 encourage you to begin to make your flight
8 arrangements because the sooner we book those, the
9 better the price is.

10 We're thinking about doing on Thursday an
11 organized tour of the Civil Rights Museum and some of
12 the civil rights sites, so it would be great to have
13 folks who are interested in that to come in on
14 Wednesday. But I just want to say if we do that, I
15 would suggest that it be at the Commissioner's cost,
16 not at the Commission's cost to do that.

17 COMMISSIONER HERIOT: For the extra hotel
18 night?

19 CHAIRMAN CASTRO: For the -- no, for the
20 tour.

21 COMMISSIONER HERIOT: Oh, okay.

22 CHAIRMAN CASTRO: Whatever the cost of the
23 tour would be. And I'm not sure. We're looking into
24 that, but I think it would be a great opportunity for
25 us to actually see some of the historic sites while

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1 we're there before the briefing.

2 Ms. Dunston, if you could come forward and
3 give us some more details about the planning and
4 logistics. And, again, thank you for all the work
5 you've been doing on that.

6 MS. DUNSTON: You're welcome. The meeting
7 will be held at the Sheraton Hotel which is connected
8 to the BJCC Center. It is a major facility down there,
9 so the people who are in the city and live in the
10 area, it's somewhat easily found.

11 The Sheraton Hotel is connected to that
12 center. We will actually be in the hotel in the
13 Birmingham Ballroom. It is about seven miles from the
14 airport so it's very close. They do have a shuttle, so
15 for those of you who are coming in I would arrange to
16 have the shuttle. You know, call the hotel, say I'm
17 coming in such and such a time so they can kind of
18 make sure the staff is there. As you're leaving in the
19 morning, it leaves every half an hour to go out to the
20 airport.

21 Basically, there's going to be a room close
22 to the meeting room where your assistants can put your
23 lunch in, and you can have lunch, and staff can sit in
24 there and eat. We will have a staff meeting about 6:00
25 that evening to go over the last minute details about

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1 the logistics and so forth, so if you all want to
2 attend, can attend the staff meetings basically with
3 the staff and just to get the last minute logistics.

4 As far as the tour, we want to know who is
5 going to be coming in, who's interested in doing the
6 tour. There is the 16th Street Baptist Church where the
7 bombing happened with the four African American kids,
8 and it's across the street from the Civil Rights
9 Institute. The Civil Rights Institute is celebrating
10 it's 23rd anniversary, so I thought maybe if you all
11 are coming in the area and had not been, since we are
12 the Commission, what we do is civil rights, those two
13 things may be interesting to you. I need to know how
14 many, who's going, and then we need to arrange a time,
15 somewhere around 1:00 or so to take care -- the
16 institute takes about maybe an hour and a half to go
17 through. It depends on how much you read and how much
18 you do, and then across the street is the church. I
19 don't know what the tour is, but I'll find out more
20 information on the tour about how long that will take.
21 Any questions?

22 COMMISSIONER YAKI: I'll be coming.

23 MS. DUNSTON: Are you sure?

24 CHAIRMAN CASTRO: Great.

25 COMMISSIONER ACHTENBERG: Me, too.

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1 CHAIRMAN CASTRO: You know I'm in there.

2 MS. DUNSTON: All right. And are you -- just
3 let me know. Marlene is giving me something, send me
4 an email like when you will be coming in so I can make
5 hotel reservations. I will make the hotel
6 reservations, you will need to make your air flight or
7 trans -- yes, ma'am?

8 VICE CHAIR THERNSTROM: Linda Chavez, who is
9 a very good friend of mine, says she's not coming.

10 CHAIRMAN CASTRO: She is not? Oh, she told me
11 she was. Did she change her mind?

12 VICE CHAIR THERNSTROM: She's got something -
13 - she's got a conflict.

14 CHAIRMAN CASTRO: She may not have conveyed
15 that to Lenore yet. So, would you make sure we let
16 Lenore know that. Okay.

17 VICE CHAIR THERNSTROM: I mean, I will double
18 check with her. I would like to see her go.

19 CHAIRMAN CASTRO: I had asked her, and then I
20 conveyed the --

21 VICE CHAIR THERNSTROM: But she said as it
22 turns out, she has a conflict. That's the last I heard
23 from her.

24 CHAIRMAN CASTRO: That must have happened
25 since then. Okay. Anything else? Okay.

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1 COMMISSIONER YAKI: Just a quick question. Do
2 we book ourselves for the Sheraton? Do we contact you?

3 MS. DUNSTON: No, I will book your room
4 reservations for the hotel. If you just tell Marlene
5 what dates you're coming, and when you're going to
6 leave out.

7 COMMISSIONER YAKI: Okay.

8 MS. DUNSTON: I know that some people are
9 trying to leave at 7:00. It just depends on what time
10 we end up and how you get to the hotel. It's a Friday.
11 Now, it's not a big hotel, I mean a big airport, but
12 it's still security, it's still a Friday, and we don't
13 know what's going to go on in the city --

14 COMMISSIONER YAKI: So, we don't know
15 anything about rush hour, and traffic, and stuff like
16 that.

17 CHAIRMAN CASTRO: The hotel is very close to
18 the airport.

19 MS. DUNSTON: Well, we know it's seven miles
20 on the highway, so I'm not sure how much time --

21 COMMISSIONER YAKI: Because the only flight
22 that gets us back to the west coast is at 5:00.

23 CHAIRMAN CASTRO: Is that right?

24 COMMISSIONER YAKI: Yes.

25 CHAIRMAN CASTRO: Okay.

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1 COMMISSIONER HERIOT: Mr. Chairman, when do
2 we expect the briefing to be over?

3 CHAIRMAN CASTRO: 4:00.

4 COMMISSIONER HERIOT: 4:00.

5 CHAIRMAN CASTRO: 4:00, yes. And, also,
6 actually while we're talking about flight
7 arrangements, certainly I think Commissioner's special
8 assistants can do their travel and the Chair -- the
9 Commissioner's travel, but as far as travel goes for
10 the panelists, we need to designate someone on our
11 staff to do that. Lenore indicated that she's unable
12 to do that, so the suggestion was that perhaps Lillian
13 in the Office of the General Counsel who is able and
14 willing to do it provided that she's given formal
15 direction to do it, I would ask that we as
16 Commissioners request that she would do the travel for
17 those panelists. So, is that comfortable for everyone?
18 I don't know if we need a formal motion on this, but
19 -- maybe we'll just do a motion. I move that Lillian
20 Dunlap be charged with doing the travel for the --

21 COMMISSIONER HERIOT: Can I amend the motion?
22 I move that the Chairman have the authority to make
23 sort of ordinary ministerial things that ordinarily
24 would be done by the staff director in connection with
25 this event.

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1 CHAIRMAN CASTRO: Is there a second to that?

2 COMMISSIONER YAKI: Yes.

3 CHAIRMAN CASTRO: Is there a second to that?

4 Okay. All those in favor say aye.

5 (Chorus of ayes.)

6 CHAIRMAN CASTRO: Any opposed? Any
7 abstentions?

8 COMMISSIONER YAKI: Does it include picking
9 up the bar tab for all of us?

10 CHAIRMAN CASTRO: Only if you behave. Okay,
11 thanks.

12 VICE CHAIR THERNSTROM: Michael, say never.

13 COMMISSIONER YAKI: Never.

14 CHAIRMAN CASTRO: Okay. So, next we move on
15 to the discussion of -- actually before that we have
16 Commissioner Yaki has requested to talk about his
17 Stand Your Ground --

18 COMMISSIONER YAKI: Yes.

19 CHAIRMAN CASTRO: -- briefing.

20 COMMISSIONER YAKI: Yes. Thank you very much,
21 Mr. Chair.

22 **II. PROGRAM PLANNING AND**

23 **DISCUSSION OF PROJECTS**

24 **STAND YOUR GROUND BRIEFING**

25 COMMISSIONER YAKI: At the last meeting, the

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1 Commission approved the investigation of racial bias
2 in Stand Your Ground laws, but needed -- wanted to
3 bring back to the Commission for a formal vote the
4 details about the budget, scope, and process for an
5 investigation.

6 Unfortunately, this is something that
7 normally I would have worked on with the Staff
8 Director. And in the absence of the Staff Director, I
9 need a little assistance from staff. And since there's
10 no Staff Director to authorize it, I thought the most
11 appropriate thing would be to make a motion to request
12 that the Director of Management, that OGC and the
13 Acting Director of OCRE work with me and my assistant
14 to prepare the more detailed project outline and
15 budget for presentation to the Commission.

16 CHAIRMAN CASTRO: I'll second that motion.
17 Any discussion?

18 COMMISSIONER HERIOT: Could you repeat it for
19 me?

20 COMMISSIONER YAKI: It's a motion to ask --
21 to request the Director of Management, the Office of
22 General Counsel, and the Acting Director of OCRE to
23 aid me and Richard to prepare the more detailed
24 project outline for the Stand Your Ground
25 investigation, so we can prepare the budget and

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1 project description that you all need. Because
2 normally the Staff Director would do that with us, but
3 we have no Staff Director.

4 COMMISSIONER HERIOT: Yes.

5 CHAIRMAN CASTRO: So, any discussion on that?
6 If not, we'll vote. All those in favor say aye.

7 (Chorus of ayes.)

8 CHAIRMAN CASTRO: Any opposed? Any
9 abstentions? Okay.

10 COMMISSIONER YAKI: Thank you.

11 CHAIRMAN CASTRO: You're welcome. Now, we
12 move on to Agency Staffing.

13 **III. MANAGEMENT AND OPERATIONS**

14 **DISCUSSION ON AGENCY STAFFING**

15 CHAIRMAN CASTRO: As you recall, at the last
16 meeting we asked a subcommittee to take a look at the
17 duties of the Staff Director, and determine which of
18 those were the most pressing and come up with a
19 proposal for consideration by the full Commission of
20 those duties and who within our staff might be able to
21 take on those duties.

22 There's something I think that's being
23 either circulated or was at people's desks that was
24 put together by the subcommittee with some
25 recommendations for our review and consideration.

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1 I'm not sure exactly how we would want to
2 handle this, but what I'll ask is folks to take a few
3 minutes to take a look at this. It might be the
4 easiest thing to do to start. And then I remind you as
5 you're looking at this that my understanding is -- our
6 understanding is from Ms. Tolhurst that, of course, we
7 cannot ask staff to do anything that is beyond the
8 realm of their normal duties, so the view with these
9 suggestions is that they are being done and
10 recommended for people from whom this is in their
11 wheelhouse here in terms of the work they do already.
12 Some of them are already doing this, and it would be
13 just a confirmation of that power by the Commission.

14 Just for a note on this partial list of
15 staff director functions, it references the name John.
16 It's not John Martin, it's John Ratcliffe. Has
17 everyone had a chance to look at this yet? It looks
18 like they're still reading. Let us know when you're
19 done reading.

20 VICE CHAIR THERNSTROM: Do we have any idea
21 when Kim is going to be able to come back?

22 CHAIRMAN CASTRO: I don't.

23 COMMISSIONER YAKI: I'm ready.

24 CHAIRMAN CASTRO: Okay. Who would like to --
25 Commissioner Heriot?

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1 COMMISSIONER HERIOT: I guess there are a
2 couple of issues I want to talk about.

3 CHAIRMAN CASTRO: Sure.

4 COMMISSIONER HERIOT: One of them is the SAC
5 reports that have been completed have gone -- have
6 jumped through all the hoops. And the one thing that
7 hasn't happened to them, my understanding, is that the
8 Staff Director is required to a ministerial sign off,
9 and that hasn't happened.

10 One of the SACs, that is the California SAC,
11 has been emailing me over the course of the last year
12 and they are at the point where they are talking about
13 going to visit members of Congress to complain that
14 their report hasn't been released.

15 My understanding is that there's absolutely
16 nothing that has to be done except for a signature
17 from the Staff Director, so I would like to come up
18 with some method by which we can get this done. One
19 alternative is simply for the Commission to vote now
20 to publish these reports. We, of course, have no
21 authority to change the substance of these reports.
22 Even if we hated the substance, we can't vote against
23 them. That's not the way it works.

24 Another alternative is if there is some
25 checklist, we want to make absolutely certain has been

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1 checked, would be to delegate authority to the
2 Chairman to sign off on the report in the next few
3 days. Either of those I think would work.

4 If the California report -- you know, I'm
5 getting responses from it, maybe other people are
6 complaining about the other SAC reports.

7 CHAIRMAN CASTRO: Yes. In fact, I think we
8 did get some information from Mr. Minarik that
9 indicates that there's also a fact finding report by
10 the South Carolina Advisory Committee on Equal
11 Educational Opportunity for African American students
12 in South Carolina disparately affected by suspensions
13 and alternative education placements, a fact finding
14 report by the Georgia Advisory Committee on School
15 Discipline, African American students,
16 disproportionate discipline in Georgia schools, the
17 California report, and a briefing report by the Ohio
18 Advisory Committee on housing issues in Ohio. And
19 let's see, also two additional reports, a fact finding
20 report from Tennessee Advisory Committee. Actually,
21 that's not ready for signature yet. Right?
22 Commissioner Yaki?

23 COMMISSIONER YAKI: Yes. I just want to state
24 for historical records that the Commission has prior
25 to this opted not to publish certain reports, even if

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1 they were approved. So, it is --

2 COMMISSIONER HERIOT: Could you elaborate on
3 that?

4 COMMISSIONER YAKI: I can't remember what it
5 was, but I'm pretty sure it was done by the former
6 majority on this Commission when I was in my first
7 term. I think there were one or two reports that were
8 not published as a direct result of a vote by the
9 Commission. I don't know if you were on --

10 COMMISSIONER HERIOT: Pete, do you have any
11 recollection of that?

12 COMMISSIONER KIRSANOW: I do not.

13 COMMISSIONER YAKI: Well, I do, because I
14 remember fighting about it.

15 CHAIRMAN CASTRO: Okay. Any other comments?

16 COMMISSIONER YAKI: So, in other words, I
17 think that it's more than a ministerial duty by the
18 Staff Director, and it's something where I'm
19 uncomfortable just giving a carte blanche publication
20 button push.

21 CHAIRMAN CASTRO: Any other comments,
22 questions? Commissioner Heriot?

23 COMMISSIONER HERIOT: I don't believe we have
24 the authority to not publish a SAC report. And we
25 spent so much time talking about the SAC independence

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1 and how important it is not to influence them. It
2 strikes me as implausible that we'd have the authority
3 to say you can't publish this. It may be that we
4 didn't print one up, but I doubt that it's the case
5 that we have the authority to just deep six them.

6 CHAIRMAN CASTRO: Commissioner Kladney?

7 COMMISSIONER KLADNEY: If you do this, I
8 would put a caveat on the report that it's not
9 approved by the Staff Director, nor the Commission. In
10 other words, for legal sufficiency, things like that.

11 COMMISSIONER HERIOT: I think it's been
12 through its legal sufficiency --

13 COMMISSIONER KLADNEY: See, I don't know.

14 COMMISSIONER HERIOT: -- report.

15 COMMISSIONER KLADNEY: I don't know who's
16 seen them, who hasn't seen them. I don't know what the
17 process is. Do you?

18 COMMISSIONER HERIOT: Yes, that's what we can
19 take care of by having a motion that simply delegates
20 to the Chairman the authority to check to make sure
21 that all the proper hoops have been jumped through.
22 And then if they have, and I believe that they have,
23 then publish the report.

24 COMMISSIONER KLADNEY: My concern was you
25 were just saying they just need to be signed.

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1 COMMISSIONER HERIOT: I think that's right. I
2 think that's right, that there's like a checklist,
3 it's been checked off, and that the only thing that's
4 preventing this from being published at this point is
5 that we have an AI that says the Staff Director signs
6 off. But I don't believe the Staff Director has
7 authority to do it on the substance.

8 CHAIRMAN CASTRO: According to Mr. Minarik,
9 those four reports that were mentioned earlier have
10 gone through all the required report processes of AI5-
11 7. And, again, I'm not sure what that means, but I'm
12 just conveying that from Mr. Minarik.

13 COMMISSIONER HERIOT: And this has been
14 pending for a year. I think these people are quite
15 justified in being upset.

16 COMMISSIONER KLADNEY: No, no, no. I'm --

17 CHAIRMAN CASTRO: And what --

18 COMMISSIONER HERIOT: And upset is probably
19 understatement. They are going -- they're bouncing off
20 the walls.

21 CHAIRMAN CASTRO: Okay.

22 COMMISSIONER HERIOT: And I don't want to be
23 blamed for this. Since I'm a Californian, I get
24 written.

25 COMMISSIONER YAKI: Gee, those Californians

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1 aren't writing to me or Commissioner Achtenberg.

2 COMMISSIONER HERIOT: You weren't on the SAC
3 and I was.

4 COMMISSIONER YAKI: We're Commissioners.

5 CHAIRMAN CASTRO: Commissioner Achtenberg?

6 COMMISSIONER ACHTENBERG: Well, this raises -
7 - I mean, Commissioner Yaki's question, it seems to me
8 to be an important one, which is the assertion at
9 least that publication of SAC reports is not nearly a
10 ministerial function after establishing legal
11 sufficiency. I mean, I don't know if it is or it
12 isn't, but seems to me that -- and I'm happy to be
13 educated on this matter, but if, in fact, there is
14 either precedent for it, or it's within our
15 jurisdiction to consider then some non-ministerial
16 function may have to be performed here. I just am
17 unaware.

18 CHAIRMAN CASTRO: Commissioner Heriot?

19 COMMISSIONER HERIOT: Never has a State
20 Advisory Committee report been brought before the
21 Commission while I have been on the Commission, so I
22 think what that means is -- and I assume we have
23 published some reports. What that has to mean is that
24 assuming for the moment that there might be some
25 authority that we would have to not publish the

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1 report, it must be that individual Commissioners must
2 bring it forward and say I think we should not publish
3 this, because they've been automatically published
4 while I'm on the Commission, and I've got no doubt
5 whatsoever the Staff Director does not have the
6 authority to make a judgment I'm not going to publish
7 this because of some substantive reason.

8 So, what I would propose is that we move to
9 give Marty the authority to sign off on these reports
10 on the basis of what AI say, if that is a ministerial
11 job, and if someone on the Commission believes that a
12 report -- that they have the authority and that the
13 report should not be published, that they bring that
14 forward at our telephonic meeting maybe that we're
15 going to be doing anyway, or bring it forward
16 promptly. I suspect that nobody is going to have any
17 problem, that nobody is going to want to deal with
18 these reports. I don't think we want to go down the
19 road of looking at these reports closely, because in
20 theory at least there's supposed to be a lot of them.
21 And if we were to spend time doing that, I think it
22 would be a bad use of our time.

23 In any event, what we could do is move this
24 thing down the road between now and our next meeting.
25 Delegate to Marty the ability to approve these things,

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1 if it's ministerial. And if someone has a problem with
2 the report and they determine that we have the
3 authority to act substantively, that they make that
4 very promptly known, and we can then vote on it at a
5 later meeting.

6 CHAIRMAN CASTRO: Okay, so that's your
7 motion. Is there a second to that motion?

8 COMMISSIONER ACHTENBERG: Second.

9 CHAIRMAN CASTRO: Okay. Any additional
10 discussion? Commissioner Yaki?

11 COMMISSIONER YAKI: Yes. I mean, I just want
12 to say, and maybe my recollection is faulty, or it's
13 being mixed up with another project, but I distinctly
14 recall that the issue was not whether to approve the
15 project. The question was whether to approve any funds
16 to actually publish the report. And I remember strong
17 arguments being made by the other side that this was a
18 report going out with our name on it so, therefore, we
19 had every right to take a look at it and determine
20 whether or not we would allocate any money to have it
21 disseminated beyond that which -- beyond simply being
22 a report. And I remember asking questions about what
23 that means and everything like that, but in the end it
24 was done that way. I just -- I bring that up --

25 COMMISSIONER HERIOT: Is it the printing cost

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1 you're talking about at this point?

2 COMMISSIONER YAKI: Yes. But it was beyond
3 even printing cost, it went actually even to our own
4 website which was astounding to me on this one report.
5 And I can't remember which it is, and I'll try and
6 find out what it was.

7 COMMISSIONER HERIOT: Could you like get back
8 to us in time so that --

9 COMMISSIONER YAKI: I will. I'll try. I've
10 got to go back through six years worth of stuff.

11 COMMISSIONER HERIOT: If someone has an
12 objection to the report, let them bring it up very
13 soon is all I'm saying. And then if they have that
14 objection, if they have the belief that we have the
15 authority to act, then it can be dealt with at the
16 September meeting.

17 CHAIRMAN CASTRO: Okay. So, we have a motion
18 and a second. Any additional discussion? If not, I'll
19 call the question. Commissioner Heriot, how do you
20 vote?

21 COMMISSIONER HERIOT: Yes.

22 CHAIRMAN CASTRO: Madam Vice Chair, how do
23 you vote?

24 VICE CHAIR THERNSTROM: Yes.

25 CHAIRMAN CASTRO: Commissioner Kirsanow, how

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1 do you vote?

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIRMAN CASTRO: Commissioner Yaki, how do
4 you vote?

5 COMMISSIONER YAKI: No.

6 CHAIRMAN CASTRO: Commissioner Achtenberg,
7 how do you vote?

8 COMMISSIONER ACHTENBERG: Yes.

9 CHAIRMAN CASTRO: Commissioner Kladney, how
10 do you vote?

11 COMMISSIONER KLADNEY: Abstain.

12 CHAIRMAN CASTRO: So, I will vote yes. That's
13 one, two, three, four, five yeses, a no, and an
14 abstention. Okay. Commissioner Heriot?

15 COMMISSIONER HERIOT: The other issue that I
16 wanted to try to deal with. At our subcommittee
17 meeting we were trying to come up with ways to deal
18 with the SAC issue. I know this is kind of my
19 hobbyhorse and that we need to get the SAC pipeline
20 open because that's what our statute requires. And the
21 solution to the problem that we have come up was
22 essentially to have a two-person committee. Two
23 persons because either one of those persons can
24 exercise veto power. No one can be a majority. One
25 from the -- those people who were appointed by

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1 Democratic authorities, and one caucus from those
2 appointed by Republican authorities, one person from
3 each. They will work like Roman consuls in that they
4 have to be unanimous. And if they find that the staff
5 has put together a balanced SAC then they -- if they
6 both vote yes, it comes to the Commission; otherwise,
7 it gets sent back to the staff for reworking until
8 finally the staff comes up with a SAC that can get to
9 the Commission. This way we can get these things on
10 the agenda, and I hope get a few of them approved so
11 that we don't fall further and further behind.

12 Again, if we are to keep up with these
13 things we have to be approving an average of two SACs
14 per month, and we haven't come close to that, so we
15 need to get this rolling. The two-person committee
16 would simply be in charge of getting SACs to our
17 agenda. They don't have to be the exclusive way to get
18 on the agenda. I assume any Commissioner can always
19 amend an agenda with a list of potential SAC members
20 and say I want to vote on this if people are willing -
21 - if the Commission is willing to adopt that. But this
22 would just be a way of getting the pipeline moving.

23 CHAIRMAN CASTRO: Okay, so that's a motion.
24 Let's have a second for purposes of discussion.

25 COMMISSIONER ACHTENBERG: Second.

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1 CHAIRMAN CASTRO: Okay. Commissioner Yaki?

2 COMMISSIONER YAKI: One question, what if
3 your Roman consul partner is named Cassius or Brutus?
4 Anyway, the question I have is what do you mean by
5 "veto power?"

6 COMMISSIONER HERIOT: It's a two-person
7 committee, for them to vote to send this to the
8 Commission it would require that both vote yes.

9 CHAIRMAN CASTRO: Unanimity is required among
10 them.

11 COMMISSIONER HERIOT: Yes, it requires
12 unanimity. It seems to me that way we can then get
13 these things back to the staff in case there's not
14 unanimity. Get it balanced. Once you get the vote of
15 both members, then the Commission can vote on it.
16 Because otherwise this is just sitting around and
17 nothing is happening, nothing is getting to the
18 Commission. The idea here is to get things moving.

19 CHAIRMAN CASTRO: So, these two people would
20 be Commissioners or Special Assistants?

21 COMMISSIONER HERIOT: I think they'd
22 officially be Commissioners, but I suspect that most
23 of the work is going to be done by Special Assistants.
24 It's just in the nature of things.

25 CHAIRMAN CASTRO: Okay. Commissioner Yaki?

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1 COMMISSIONER YAKI: I'm just really
2 uncomfortable with this entire idea. I think that,
3 one, I don't know if we have statutorily enough hours
4 budgeted for each of us to deal with this added
5 responsibility, because this is more than -- this is
6 not chump change in terms of time, because you've got
7 bios and you're engaging now beyond just reading bios.
8 You're engaging in a whole other effort all together.
9 So, I think from a practical standpoint we have an
10 issue there.

11 From another practical standpoint, I just am
12 uncomfortable having any SAC be the province and
13 domain of two Commission members. It just doesn't sit
14 right with me, it doesn't feel right, and I realize C-
15 - I commend Commissioner Heriot for trying to make the
16 best out of a bad situation, but I don't think this is
17 the way to do it.

18 COMMISSIONER HERIOT: The alternative is to
19 do nothing, and if somebody has a better idea, I'd
20 love to hear it.

21 COMMISSIONER YAKI: Get a Staff Director.

22 CHAIRMAN CASTRO: Any other discussion? All
23 right. I'll call the question on this. Commissioner
24 Heriot, how do you vote?

25 COMMISSIONER HERIOT: Yes.

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1 CHAIRMAN CASTRO: Madam Vice Chair, how do
2 you vote?

3 VICE CHAIR THERNSTROM: Abstaining.

4 CHAIRMAN CASTRO: Commissioner Kirsanow, how
5 do you vote?

6 COMMISSIONER KIRSANOW: Yes.

7 CHAIRMAN CASTRO: Commissioner Yaki, how do
8 you vote?

9 COMMISSIONER YAKI: No.

10 CHAIRMAN CASTRO: Commissioner Achtenberg,
11 how do you vote?

12 COMMISSIONER ACHTENBERG: Yes.

13 CHAIRMAN CASTRO: Commissioner Kladney, how
14 do you vote?

15 COMMISSIONER KLADNEY: Abstain.

16 CHAIRMAN CASTRO: And I vote -- I abstain, so
17 we have three yeses, three abstentions, and a no. So,
18 what does that mean?

19 COMMISSIONER HERIOT: It means it carries.

20 COMMISSIONER YAKI: Just I have a problem,
21 and a question.

22 CHAIRMAN CASTRO: Yes.

23 COMMISSIONER YAKI: I refuse to participate
24 in this. I don't think you can force me to participate
25 in this, so I am not going to participate. I don't

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1 think a vote can compel me to do this.

2 COMMISSIONER HERIOT: Do what?

3 COMMISSIONER YAKI: And I'm not going --

4 CHAIRMAN CASTRO: To be the Commissioner to
5 do it, you mean?

6 COMMISSIONER YAKI: Yes.

7 CHAIRMAN CASTRO: Okay.

8 COMMISSIONER YAKI: I don't think any vote
9 can compel any of us to do this. And if we don't want
10 to do it, I'm just saying, you know, that means I am
11 shoving my burden onto the rest of you, because I am
12 not going to do it.

13 CHAIRMAN CASTRO: Duly noted.

14 COMMISSIONER HERIOT: We need some mechanism
15 to figure out who's on the subcommittee.

16 CHAIRMAN CASTRO: Okay.

17 COMMISSIONER HERIOT: I volunteer for my
18 side, but it's --

19 CHAIRMAN CASTRO: Do we have any volunteers
20 on the Democratic side?

21 COMMISSIONER ACHTENBERG: To be the group
22 that decides yea or nay on whether or not the --

23 CHAIRMAN CASTRO: The SAC package is
24 balanced.

25 COMMISSIONER ACHTENBERG: -- SAC package is

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1 balanced, which precludes a no way consideration by
2 the full Commission --

3 CHAIRMAN CASTRO: Correct.

4 COMMISSIONER ACHTENBERG: -- in the way we
5 typically --

6 COMMISSIONER HERIOT: Yes, it's just a way to
7 get it to the full Commission.

8 CHAIRMAN CASTRO: Just to start the product
9 line moving back in front of us.

10 COMMISSIONER HERIOT: Basically, if you're
11 the volunteer, you'd be volunteering your SA's time.

12 COMMISSIONER ACHTENBERG: I voted yes, so I
13 suppose that creates some kind of obligation on my
14 part.

15 COMMISSIONER YAKI: I just want to point out
16 that --

17 (Simultaneous speech.)

18 COMMISSIONER YAKI: Nor would I allow my SA
19 to engage in any of these activities at all.

20 CHAIRMAN CASTRO: We understand. We
21 understand to that extent.

22 COMMISSIONER YAKI: So, I'm shoving this
23 burden on you guys deliberately.

24 CHAIRMAN CASTRO: Yes, sir.

25 COMMISSIONER ACHTENBERG: And why is that,

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1 Michael?

2 COMMISSIONER YAKI: I do not feel that it is
3 our purview and response -- and I think there are too
4 many questions that can be raised in terms of the
5 responsibility of the final names on that package that
6 I am comfortable dealing with. I cannot vouch for each
7 and every one of those people. And now we've gone
8 beyond a screen to being the screener and dealing with
9 it at that point. I'm just not comfortable doing that.

10 We have had some serious people slip through
11 the net, and I am not going to have my name put on any
12 of that.

13 COMMISSIONER HERIOT: You already do it. You
14 vote for SACs all the time. I mean, it's --

15 COMMISSIONER YAKI: Yes, but I can say with
16 some confidence that there have been at least two
17 levels of screen on there from the Regional office,
18 and the Staff Director signing off on it to the time
19 it reaches us, and even then we still do a screen on
20 that. We are now -- we have no Staff Director --

21 COMMISSIONER HERIOT: The Staff Director
22 doesn't personally do screenings, so that's --

23 COMMISSIONER YAKI: Yes, they check to make
24 sure --

25 CHAIRMAN CASTRO: One at a time, folks. One

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1 at a time, please.

2 COMMISSIONER YAKI: Well, in that case, you
3 know, I mean, that is not true, and you know that's
4 not true because the former Staff Director prior to
5 the person Acting as the Acting Staff Director and the
6 person prior to that did that all the time. And I am
7 not going to --

8 (Simultaneous speech.)

9 COMMISSIONER YAKI: The Staff Director
10 engages in that. That's two levels of screen that we
11 are basically taking out. I am not going to put my
12 name on that. Like I said, there have been some people
13 who have slipped through, and I can say I didn't have
14 the responsibility go three levels down to do it. I
15 just -- what came up. I'm not going to do it.

16 COMMISSIONER ACHTENBERG: Mr. Chairman?

17 CHAIRMAN CASTRO: Yes, ma'am?

18 COMMISSIONER ACHTENBERG: I think that this
19 is a workable way -- I mean, this is a temporary -- I,
20 too, wish we had a Staff Director, and I would urge my
21 colleagues to be cooperative. If ever we were to be
22 presented with someone who could fill that role, I
23 hope we'll give them every consideration so that we
24 might function appropriately. Having said that,
25 however, this seems to me to be a workable substitute

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1 that doesn't violate any consideration at least for my
2 purposes, and we do need to charter SACs. And none of
3 this takes any discretion away from any Commissioner
4 to object or --

5 COMMISSIONER KIRSANOW: Mr. Chair, Kirsanow
6 signing off.

7 CHAIRMAN CASTRO: Okay. Thank you,
8 Commissioner. Do we still have a quorum? Yes, we do.
9 Okay. So, Commissioner Kladney?

10 COMMISSIONER KLADNEY: I would just add, I
11 think this is a noble way to try and get the SACs
12 moving. I just would like to reiterate that -- with
13 Chairman Yaki -- Commissioner Yaki that we need a
14 Staff Director, and I would urge that we get one
15 brought forward.

16 CHAIRMAN CASTRO: So, how would we like to
17 deal with the remaining duties and potential
18 recommendations on this list?

19 COMMISSIONER HERIOT: Is there anything we
20 need to vote on here?

21 COMMISSIONER KLADNEY: Let's approve them as
22 a slate.

23 CHAIRMAN CASTRO: You want to approve it as a
24 slate? Commissioner Yaki, you have a question?

25 COMMISSIONER YAKI: Yes. I have a question

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1 regarding the -- my questions go toward how things are
2 being handled now, and if we're simply going along the
3 same path, I am starting to get concerned. I'm very
4 concerned about how much money is now being spent on
5 the move. I am very concerned about budget decisions
6 that are being made right now in terms of
7 reallocations within line items that were the privy of
8 the Staff Director, and are not. And I am concerned
9 that the -- that our checks and balances are out of
10 balance, and this will simply certify the continuance
11 of that issue. It has nothing to do with the
12 competence or credibility of any of the people
13 involved, but just how policies have been done in the
14 past, and how decisions are being made in the future.
15 There are some decisions involving the budget,
16 especially on the move, that concern me. There are
17 some issues involving reallocations within line items
18 of the budget toward new -- that had not been approved
19 by prior Directors, and Staff Directors, and have been
20 changed now that I have concerns about.

21 I think that it is -- and I will admit that
22 my concerns are somewhat selfish because I am
23 concerned about what kind of resources we have
24 available for the projects that we have on the table,
25 including what I'm trying to accomplish with Stand

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1 Your Ground. And I am just very concerned about
2 locking in stone through a vote of the Commission
3 reallocation and determination of duties that may
4 inadvertently be over-inclusive by omission, and by
5 the fact that we just can't micro manage, nor have the
6 ability to micro manage like a Staff Director would
7 day to day, and year-end budget decisions that
8 frequently the Staff Director would go to us to seek
9 policy guidance on. And that was something that used
10 to occur, is not occurring. And even if it wasn't
11 guidance, it at least was being reported to us about
12 where budgetary monies were being reallocated or being
13 spent so we would have the opportunity to ask
14 questions, and in certain situations review and
15 reverse them. And I don't see a process for that in
16 this.

17 CHAIRMAN CASTRO: Commissioner Heriot?

18 COMMISSIONER HERIOT: I guess I've got the
19 opposite concern, and that is the concern of
20 paralysis. I know that last week we had a situation
21 where an employee was about to retire and wanted an
22 extension to help us get through the move of 60 days,
23 and there was a lot of worry at the time whether any
24 of our staff members had the authority to act. And,
25 ultimately, it was decided that they did have the

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1 authority to act, but if we had needed a Staff
2 Director at that point, we didn't have it, and there
3 was no way that the Commission could meet to extend
4 this employee's contract for another 60 days. So, I'm
5 concerned -- I would like to move that between
6 meetings if there is some ministerial act that our
7 rules require the Staff Director to act on, I would
8 move that the Chairman be authorized to do that in the
9 absence of a Staff Director. And that the Chairman
10 report back to the Commission any such acts that were
11 undertaken at our next meeting. And, again, this is
12 for ministerial acts.

13 CHAIRMAN CASTRO: What do we define as
14 ministerial?

15 COMMISSIONER YAKI: Yes.

16 COMMISSIONER HERIOT: Non-policy.

17 COMMISSIONER YAKI: I have a -- let me just
18 state, I was part of that discussion involving the
19 staff issue that you were talking about, Commissioner
20 Heriot, and as concerned as you were. But my concern
21 goes exactly to what I'm talking about, because this
22 is a kind of issue that normally through the process
23 of the Staff Director would be brought to the
24 attention of the Commission ahead of time, as in we
25 made a decision to do this prior to the move. This is

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1 the kind of thing -- I mean, this is something where
2 we could have dealt with it in a timely fashion, but
3 because we lack a Staff Director, and lack the normal
4 reporting techniques and abilities, that I just don't
5 want to carte blanche cement in place something that
6 removes that reporting and consultation, and other
7 functions that we used to have. Because I would just
8 tell -- tell to the members of the Commission who are
9 not here in 2010, that the then Acting Staff Director
10 on his own volition made a substantive decision on key
11 personnel issues that were reported almost after-the-
12 fact to the Commission. Had it not been for the
13 Commission being aware of this, and then by unanimous
14 vote, and this was a unanimous vote, reversed that, we
15 would not have known about it. That's the reporting
16 function that I cannot approve -- I can't approve this
17 without insuring that we have a continuation of that
18 reporting function to us on major budget decision and
19 reallocations so that we have some awareness of what's
20 going on.

21 COMMISSIONER HERIOT: Major budget decisions
22 or policy decisions. I'm talking about kind of --

23 COMMISSIONER YAKI: Well, what would you --
24 how would you -- we're about to get into dangerous
25 territory here, but how would you approve of a

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1 reallocation of money into a budget pool that two
2 Staff Directors have previously said no to, and now
3 all of a sudden a big chunk of money has been put in
4 there? Is that -- it's not really a major policy
5 decision, but -- I mean, how do you determine what's
6 major and what's not?

7 COMMISSIONER HERIOT: The choice is paralysis
8 or have a problem with a little bit of gray areas,
9 what the --

10 COMMISSIONER YAKI: Well, a little bit of
11 gray area --

12 (Simultaneous speech.)

13 CHAIRMAN CASTRO: The Chairman isn't gray
14 here, and I don't want to be any gray areas.

15 COMMISSIONER YAKI: Yes, that little bit of
16 gray area is where we could get in some trouble with
17 the people who are sitting in our audience right now
18 from the Inspector General's Office.

19 CHAIRMAN CASTRO: Yes, I don't want to --

20 COMMISSIONER YAKI: So, yes, I think there is
21 something that we need to be concerned about.

22 COMMISSIONER HERIOT: Are we voting then to
23 have the kind of problem that we had t his past week
24 where we didn't know what to do about somebody who
25 just wanted a 60-day extension? And what I could do is

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1 change my motion to say the Chairman in consultation
2 informally with Commissioners, but I don't want a
3 situation where we're in the middle of the month, we
4 think we have no power to act. And, as a result,
5 something bad happens.

6 CHAIRMAN CASTRO: Well, let me just add
7 something here because I'm a little concerned that
8 some factual statements are being made that may or may
9 not be accurate as to the budget pools. And I don't
10 know if we might be able to have Mr. Ratcliffe or
11 someone from the Budget Office address the questions
12 that Commissioner Yaki, or if you're even aware of
13 that.

14 MR. RATCLIFFE: I would need specifics about
15 what you're talking about, specifically. And I may not
16 be able to answer you today. I may have to research
17 the answer.

18 CHAIRMAN CASTRO: Okay. All right. I just
19 wanted to see if there was something you could add.
20 Thank you.

21 Well, we don't have a pending motion, so
22 does someone want to make a motion and we vote on it?

23 COMMISSIONER HERIOT: I have a pending
24 motion, don't I? It just hasn't been seconded.

25 CHAIRMAN CASTRO: I know it wasn't seconded.

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1 COMMISSIONER HERIOT: No, it hasn't been
2 seconded.

3 CHAIRMAN CASTRO: It wasn't -- restate your
4 motion.

5 VICE CHAIR THERNSTROM: Restate it, please.

6 COMMISSIONER HERIOT: I move, and if anybody
7 wants me to make changes to this, I'm willing to do
8 it. I move that the Chairman be authorized to take any
9 action that our AIs delegate to the Staff Director in
10 between meetings, that he do so only for what he
11 regards as ministerial actions, and that if it's a
12 gray area, that he consult with members of the
13 Commission about whether or not this is, indeed, a
14 ministerial act before acting.

15 CHAIRMAN CASTRO: Do we have a second on
16 that? Is there a second?

17 COMMISSIONER ACHTENBERG: I'll second that.

18 CHAIRMAN CASTRO: Okay.

19 COMMISSIONER ACHTENBERG: What's the harm in
20 that?

21 CHAIRMAN CASTRO: Don't know until something
22 becomes harmful. That's my concern.

23 COMMISSIONER HERIOT: Who would have
24 predicted the librarian issue? I certainly wouldn't
25 have. It's the sort of thing that --

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1 CHAIRMAN CASTRO: But I would not consider
2 that ministerial. That is actually extending someone's
3 retirement benefits. That goes beyond ministerial.

4 COMMISSIONER HERIOT: Sixty days?

5 CHAIRMAN CASTRO: Sixty seconds is more than
6 I felt was --

7 COMMISSIONER HERIOT: Well, then let me amend
8 my motion to include -- and if it isn't ministerial
9 that he consult with the members of the Commission and
10 insure that he has a majority behind him.

11 CHAIRMAN CASTRO: Well, do you accept that?

12 COMMISSIONER HERIOT: It's paralysis.

13 CHAIRMAN CASTRO: Do you accept that
14 amendment?

15 COMMISSIONER ACHTENBERG: No.

16 COMMISSIONER HERIOT: Do you have an
17 alternative for me?

18 COMMISSIONER ACHTENBERG: That raises --

19 COMMISSIONER HERIOT: Give me an alternative.

20 COMMISSIONER ACHTENBERG: I agree with you.
21 I'm sympathetic.

22 COMMISSIONER HERIOT: Yes, I just -- I don't
23 want to leave here and have something come up two
24 weeks from now that's a big problem, and everybody is
25 saying there's no authority to act.

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1 CHAIRMAN CASTRO: Well, then why don't we
2 just pass this as an omnibus that --

3 COMMISSIONER HERIOT: Because it may not
4 conclude something, that's why.

5 CHAIRMAN CASTRO: But at least it's not
6 paralysis. It includes some things.

7 COMMISSIONER HERIOT: Yes, but --

8 COMMISSIONER YAKI: Why don't we just change
9 our --

10 CHAIRMAN CASTRO: Okay.

11 COMMISSIONER YAKI: Wait, wait, wait, wait.
12 I'm going to --

13 CHAIRMAN CASTRO: Commissioner Yaki?

14 COMMISSIONER YAKI: I think we should simply
15 do one thing very quickly, and that is I would like to
16 amend our AIs to obviate the need of the Staff
17 Director to conduct it.

18 CHAIRMAN CASTRO: To conduct what?

19 COMMISSIONER YAKI: To conduct a notational
20 vote, because that seems to be sticking around on this
21 stuff. This is the kind of thing that where then you
22 will have -- if you wanted to in this situation, in a
23 situation like this, you would then have on the record
24 rather than people just kind of whispering to you and
25 leaving you hanging out on a limb any decisions like

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1 this where you might have some concern. But I think
2 that the first step we should take is that at least in
3 this interim period until, and in the absence of a
4 Staff Director, that we empower the Office of General
5 Counsel to be able to conduct notational votes at the
6 direction of the Chair.

7 COMMISSIONER KLADNEY: But there's nobody in
8 charge of the --

9 COMMISSIONER HERIOT: We don't have an
10 Acting--

11 CHAIRMAN CASTRO: Yes, that's a problem.

12 COMMISSIONER YAKI: No, no, the senior
13 attorney in the Office of General Counsel.

14 COMMISSIONER HERIOT: Any staff member.

15 COMMISSIONER YAKI: Any staff attorney.

16 COMMISSIONER HERIOT: Any staff member at the
17 direction of the Chairman.

18 COMMISSIONER YAKI: Any staff attorney -- no,
19 no, any staff attorney can --

20 COMMISSIONER HERIOT: Why attorney?

21 COMMISSIONER YAKI: -- then conduct a
22 notational vote. Because it --

23 CHAIRMAN CASTRO: I just feel very
24 uncomfortable with having to take on those management
25 roles.

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1 COMMISSIONER YAKI: Okay, forget about the
2 management roles, though. I think, though, that on --
3 because the Staff Director does create some sort of
4 blockades to just even things that we normally would
5 vote on as Commissioners, this is separate and apart
6 from the package of things that -- anything that would
7 give anything more to you. But they're clearly items
8 for which you might want to take a notational vote,
9 and right now you're prohibited from doing it. So, why
10 don't we at least --

11 CHAIRMAN CASTRO: Oh, so you're not talking
12 about the --

13 COMMISSIONER YAKI: No, no, no.

14 CHAIRMAN CASTRO: -- the Staff Director
15 duties.

16 COMMISSIONER YAKI: No, no, we're just
17 talking about --

18 COMMISSIONER HERIOT: No, just giving you the
19 right to call a vote on whatever you feel like you
20 need a vote on.

21 COMMISSIONER YAKI: Yes. If you need to call
22 a vote on something, right now you're --

23 CHAIRMAN CASTRO: Whatever it is.

24 COMMISSIONER HERIOT: Yes, whatever it is.

25 COMMISSIONER YAKI: Whatever it is, because

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1 you're stuck with that, so I would like to make a
2 motion to amend our AIs for a period of six months, a
3 Sunset provision of six months that will allow any
4 attorney in the Office of General Counsel at your
5 direction to conduct a notational vote of the members.

6 CHAIRMAN CASTRO: On any topic.

7 COMMISSIONER YAKI: Right.

8 COMMISSIONER HERIOT: Whatever topic comes
9 up.

10 CHAIRMAN CASTRO: I'm fine with that. I
11 thought you were talking about giving me --

12 COMMISSIONER YAKI: No, no.

13 CHAIRMAN CASTRO: -- the duties, which I
14 don't want.

15 COMMISSIONER YAKI: I recognize that.

16 COMMISSIONER HERIOT: Second.

17 MR. FAY: It would eliminate the requirement
18 for a Staff Director.

19 COMMISSIONER YAKI: Exactly, for six months.

20 COMMISSIONER HERIOT: How about until there's
21 a Staff Director?

22 COMMISSIONER YAKI: Because then we get in
23 the direction of what is a Staff Director, because of
24 Acting --

25 COMMISSIONER KLADNEY: You'd have to make it

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1 six months, or if we get a Staff Director in the
2 interim.

3 COMMISSIONER YAKI: Yes, or if a Staff
4 Director is confirmed in the interim.

5 CHAIRMAN CASTRO: That's fine with me.

6 COMMISSIONER YAKI: Okay?

7 CHAIRMAN CASTRO: Yes. So, that's a motion,
8 and a second?

9 COMMISSIONER HERIOT: Sure. Yes, second.

10 CHAIRMAN CASTRO: Okay. Any additional
11 discussion? Let's take a vote on that. Commissioner
12 Heriot?

13 COMMISSIONER HERIOT: Yes.

14 CHAIRMAN CASTRO: Madam Vice Chair?

15 VICE CHAIR THERNSTROM: Yes.

16 CHAIRMAN CASTRO: Commissioner Yaki?

17 COMMISSIONER YAKI: Yes.

18 CHAIRMAN CASTRO: Commissioner Achtenberg?

19 COMMISSIONER ACHTENBERG: Yes.

20 CHAIRMAN CASTRO: Commissioner Kladney?

21 COMMISSIONER KLADNEY: No.

22 CHAIRMAN CASTRO: And Commissioner Kirsanow
23 is off the line. So, I'll abstain but it passes, one,
24 two, three, four yeses, a no, and an abstention. Okay.

25 COMMISSIONER HERIOT: Okay. Do we want to

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1 have a motion about the general approval of the list
2 here?

3 CHAIRMAN CASTRO: Okay, so you're making a
4 motion to approve this list as --

5 COMMISSIONER HERIOT: I haven't entirely read
6 it. Maybe I shouldn't be the one to --

7 CHAIRMAN CASTRO: I think something else was
8 suggested by Commissioner Kladney earlier, but do you
9 suggest sort of voting on this as an omnibus?

10 COMMISSIONER KLADNEY: Just as a slate.

11 CHAIRMAN CASTRO: Yes, so that is a motion
12 there. Do we have a second?

13 COMMISSIONER ACHTENBERG: Second.

14 CHAIRMAN CASTRO: Second from Commissioner
15 Achtenberg. Does anyone need additional time to look
16 at this?

17 COMMISSIONER HERIOT: If you start voting
18 with me last.

19 CHAIRMAN CASTRO: Okay, we'll start with
20 Commissioner Yaki. How do you vote?

21 COMMISSIONER YAKI: On the package?

22 CHAIRMAN CASTRO: Yes, on the package.

23 COMMISSIONER YAKI: Without a discrete
24 reporting requirement, no.

25 CHAIRMAN CASTRO: No. Okay. Commissioner

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1 Achtenberg, how do you vote?

2 COMMISSIONER ACHTENBERG: Yes.

3 CHAIRMAN CASTRO: Commissioner Kladney, how
4 do you vote?

5 COMMISSIONER KLADNEY: Yes.

6 CHAIRMAN CASTRO: I vote yes. Madam Vice
7 Chair?

8 VICE CHAIR THERNSTROM: Get back to me on
9 this. I'm staring at it.

10 CHAIRMAN CASTRO: Okay. Commissioner Heriot?

11 COMMISSIONER HERIOT: Yes.

12 CHAIRMAN CASTRO: You vote yes. Madam Vice
13 Chair, I think you're the only one we're waiting on.

14 VICE CHAIR THERNSTROM: All right, I vote no.

15 CHAIRMAN CASTRO: Okay. In that case it
16 passes 4-2. Okay. I believe that concludes our agenda,
17 so I'll entertain a motion to adjourn.

18 **IV. ADJOURN MEETING**

19 VICE CHAIR THERNSTROM: So moved.

20 CHAIRMAN CASTRO: Okay. It is now 1:00 p.m.
21 Eastern Time, we're adjourned. Thank you, everybody.

22 COMMISSIONER HERIOT: We didn't actually vote
23 on it.

24 CHAIRMAN CASTRO: Oh, okay. All those in
25 favor say aye.

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1 COMMISSIONER HERIOT: I always vote no. I
2 can't get --

3 CHAIRMAN CASTRO: Okay.

4 COMMISSIONER YAKI: I abstain.

5 CHAIRMAN CASTRO: We'll take a notational
6 vote on it later. Thank you, everyone.

7 (Whereupon, the proceedings went off the
8 record at 1:01:20 p.m.)

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