

## U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, JUNE 8, 2012

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The Commission convened in Room 540 at 624 Ninth Street, North West, Washington, D.C. at 9:40 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ABIGAIL THERNSTROM, Vice Chair

ROBERTA ACHTENBERG, Commissioner (via telephone)

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

FRANCES GARCIA, Inspector General

LOUISE DiBENEDETTO, Assistant Director,

Office of the Inspector General

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STAFF PRESENT:

MARGARET BUTLER, Acting Chief, OCRE

PAMELA DUNSTON, Chief, ASCD

LATRICE FOSHEE

ALFREDA GREENE

JENNIFER CRON HEPLER

TINALOUISE MARTIN, Director, OM

PETER MINARIK, Director, RPCU

TORRENCE MONTGOMERY

LENORE OSTROWSKY, Acting Chief, PAU

MICHELLE RAMEY

JOHN RATCLIFFE, Chief, Budget and Finance

EILEEN RUDERT

KIMBERLY TOLHURST, Senior Attorney, OGC

VANESSA WILLIAMSON

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTON

ALEC DEULL

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

RICHARD SCHMECHEL

MARLENE SALLO

ALISON SOMIN

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P-R-O-C-E-E-D-I-N-G-S

9:40 a.m.

1 CHAIRMAN CASTRO: This meeting will come  
2 to order. This is a meeting of the U.S. Commission on  
3 Civil Rights. It is now 9:40 a.m. on June 8th, 2012.  
4 This meeting is taking place at the Commission's  
5 headquarters at 624 Ninth Street, N.W., in Washington,  
6 D.C.

7 I'm Chairman Marty Castro. Commissioners  
8 who are present at this meeting are myself, Vice Chair  
9 Thernstrom, Commissioner Heriot, Commissioner Gaziano,  
10 Commissioner Yaki and Commissioner Kladney.  
11 Commissioner Achtenberg will be participating by  
12 phone. Commissioner Kirsanow is en route from the  
13 airport now although we've been advised that we can  
14 begin the meeting without him at this point. He will  
15 arrive shortly. So we do have a quorum of  
16 Commissioners present. Is the court reporter present?

17 COURT REPORTER: Yes, Mr. Chairman.

18 CHAIRMAN CASTRO: Thank you.

19 COMMISSIONER GAZIANO: Is Commissioner  
20 Achtenberg on the phone at this time?

21 CHAIRMAN CASTRO: Yes, she is.  
22 Commissioner Achtenberg, do you want to acknowledge  
23 your participation on the phone?  
24  
25

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1 COMMISSIONER ACHTENBERG: I'm here.

2 CHAIRMAN CASTRO: So the meeting shall now  
3 come to order.

4 VICE CHAIR THERNSTROM: Lucky you.

5 CHAIRMAN CASTRO: The first item is the  
6 approval of the agenda for June 8th.

7 **I. Approval of Agenda**

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

10 COMMISSIONER KLADNEY: Second.

11 CHAIRMAN CASTRO: Okay. We do have some  
12 amendments. I have an amendment that would allow our  
13 inspector general's office who has indicated that they  
14 would like to address the Commissioners today to be  
15 able to do that at the beginning of the meeting. Can  
16 we do that by unanimous consent? We have agreement?  
17 Okay.

18 I know Commissioner Yaki has a motion as  
19 does Commissioner Gaziano. The Chair recognizes  
20 Commissioner Yaki.

21 COMMISSIONER YAKI: Yes, I'd like to put  
22 on the agenda at the beginning of Program Planning a  
23 discussion of my concept paper for a special  
24 investigation on stand your ground laws and racial  
25 bias.

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1 CHAIRMAN CASTRO: Okay.

2 COMMISSIONER GAZIANO: My only question  
3 for Commissioner Yaki, is wouldn't that make sense  
4 after we discuss the other statutory report topics  
5 because those that do not receive approval for the  
6 statutory report are also up for discussion as a  
7 briefing topic?

8 COMMISSIONER KLADNEY: Are they really?  
9 Today?

10 COMMISSIONER GAZIANO: Well, we'll keep  
11 them as a briefing topic. So if we're considering one  
12 briefing topic we ought to know what the other slate  
13 of briefing topics are. And I suppose we could decide  
14 today to set one of them as a briefing topic.

15 VICE CHAIR THERNSTROM: His is not a  
16 recommendation for either a statutory report or a  
17 briefing. It's a special investigation.

18 COMMISSIONER GAZIANO: Oh, I see. Okay.

19 CHAIRMAN CASTRO: Yes, and my thought is  
20 that today when we do get to the statutory enforcement  
21 report topics that that's what we're going to work on  
22 today and hopefully come away with one of those that  
23 would be the one that receives majority support. And  
24 if not I don't anticipate today picking additional  
25 briefing topics for 2013.

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1 I know we still have some briefing topics  
2 that we've chosen a few meetings ago that we still  
3 need to determine where they're going to go on our  
4 calendar, and so I don't want to --

5 COMMISSIONER GAZIANO: I defer to you all  
6 then on the order.

7 CHAIRMAN CASTRO: Okay. And Commissioner  
8 Gaziano, you had a motion to amend?

9 COMMISSIONER GAZIANO: Yes, should we --

10 CHAIRMAN CASTRO: Do you want to vote on  
11 that one first? All those in favor of Commissioner  
12 Yaki's motion -- actually, maybe I should take a line  
13 vote. Commissioner Heriot, how do you vote on  
14 Commissioner Yaki's motion to amend?

15 COMMISSIONER HERIOT: Just to amend?

16 CHAIRMAN CASTRO: To amend the agenda to  
17 add his --

18 COMMISSIONER HERIOT: I don't think  
19 anybody's seconded it yet so I'll second it and I'll  
20 vote yes.

21 CHAIRMAN CASTRO: Okay, great.  
22 Commissioner Gaziano?

23 COMMISSIONER GAZIANO: Yes.

24 CHAIRMAN CASTRO: Madam Vice Chair?

25 VICE CHAIR THERNSTROM: Yes.

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1 CHAIRMAN CASTRO: Commissioner Achtenberg?

2 COMMISSIONER ACHTENBERG: Yes.

3 CHAIRMAN CASTRO: Commissioner Kladney?

4 COMMISSIONER KLADNEY: Yes.

5 CHAIRMAN CASTRO: Commissioner Yaki?

6 COMMISSIONER YAKI: Yes.

7 CHAIRMAN CASTRO: And I vote yes so it's  
8 unanimous. The next motion to amend the agenda.

9 COMMISSIONER GAZIANO: Yes, if it is a  
10 friendly amendment that obviates our need to vote, but  
11 to add at the end of Management and Operations a  
12 discussion of the logistics, witness election and  
13 other items relating to the Alabama field hearing in  
14 August.

15 CHAIRMAN CASTRO: Okay. Is there a  
16 second?

17 VICE CHAIR THERNSTROM: Second.

18 CHAIRMAN CASTRO: Okay. All those in  
19 favor of the agenda as amended say aye.

20 (Chorus of ayes)

21 CHAIRMAN CASTRO: Any opposed?

22 (No response)

23 CHAIRMAN CASTRO: Any abstentions?

24 (No response)

25 CHAIRMAN CASTRO: Okay, the motion passes

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1 unanimously.

2 Before we do proceed to having our  
3 inspector general speak I do want to make a couple of  
4 announcements. One is that we want to welcome one of  
5 our new attorneys, Jennifer Hepler, who is now an  
6 attorney in the Office of our General Counsel.

7 Ms. Hepler is going to be primarily  
8 responsible for handling ethics including all  
9 financial disclosures which I remind the Commissioners  
10 are due at the end of the month, and other  
11 administrative legal matters. Ms. Hepler, are you  
12 here?

13 MS. HEPLER: Yes.

14 CHAIRMAN CASTRO: Would you mind telling  
15 us a little bit about yourself? And welcome. Do you  
16 want to come up to the microphone here?

17 MS. HEPLER: Good morning. My name is  
18 Jennifer Cron Hepler. I just came here 3 weeks ago.  
19 I'd been at NIH National Cancer Institute doing ethics  
20 there. Prior to that I was at the Indian Health  
21 Service. They're both parts of the Department of  
22 Health and Human Services.

23 I've also worked at the International  
24 Trade Commission so I have a little commission  
25 experience. And I've worked with the IG. I've been

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1 an IG counsel at International Trade Commission at  
2 Archives and I've also worked at Department of  
3 Transportation and the Postal Service throughout my  
4 federal career.

5 If you have questions please come to me.  
6 Your financial disclosure reports are due at the end  
7 of the month and there's a new act, the Stock Act,  
8 that we'll be implementing because it's a new law.  
9 And I look forward to working with all of you.

10 CHAIRMAN CASTRO: Likewise, thank you and  
11 welcome aboard. And as we have a new addition  
12 unfortunately we have a departure and I just learned  
13 about that early this morning, that one of our  
14 longstanding special assistants, Dominique Ludvigson,  
15 is going to be leaving us on June 22nd.

16 And I just personally want to say to  
17 Dominique how much we appreciate at the Commission all  
18 your years of service, and certainly since I've been  
19 Chair I do appreciate the ability to work with you and  
20 your caucus and our special assistants. You've been a  
21 tremendously wonderful asset to us here at the  
22 Commission and speaking for myself and I know all of  
23 the other Commissioners speak for themselves you are  
24 going to be greatly missed. I don't know if other  
25 Commissioners want to say something about Dominique

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1 but I welcome them to do so now. Commissioner Heriot?

2 COMMISSIONER HERIOT: I've already said  
3 this to Dominique but I should say on the record that  
4 she's been a wonderful asset, I've enjoyed working  
5 with her, very professional and I'm going to miss her.

6 CHAIRMAN CASTRO: Commissioner Gaziano?

7 COMMISSIONER GAZIANO: Me too.

8 (Laughter)

9 COMMISSIONER GAZIANO: But I would also  
10 say that since her direct supervising Commissioner,  
11 Commissioner Yaki, isn't here that we might --

12 CHAIRMAN CASTRO: Commissioner Kirsanow.

13 (Laughter)

14 COMMISSIONER GAZIANO: And you wonder why.

15 CHAIRMAN CASTRO: That is bipartisanship.

16 COMMISSIONER GAZIANO: -- always on  
17 measure mind. But in any event that we might keep the  
18 record -- or allow Commissioner Kirsanow to make a  
19 comment --

20 CHAIRMAN CASTRO: Absolutely. Absolutely.  
21 When he does arrive we'll do that. Commissioner Yaki?

22 COMMISSIONER YAKI: As your acting  
23 designated supervising commissioner according to  
24 Commissioner Gaziano, I've known Dominique for quite  
25 some time. In fact, as I was saying to her earlier

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1 today, so much time that I've known her long enough  
2 that she's had two children while she's been working  
3 with us. And I'm glad that she's getting out in  
4 enough time that the children are not unduly  
5 influenced or even warped by starting to listen to the  
6 proceedings here.

7 But congratulations to you, all the best  
8 to you and your family. You've been a very wonderful  
9 person to be around, a good adversary to have and  
10 notwithstanding the fact that you were supposedly  
11 working for me all this time.

12 (Laughter)

13 CHAIRMAN CASTRO: Thank you. Any other  
14 Commissioners want to add anything?

15 COMMISSIONER KLADNEY: I have expressed my  
16 thanks for her work here at the Commission to her  
17 directly and I appreciate it.

18 CHAIRMAN CASTRO: Okay. Any other  
19 comments? If not --

20 COMMISSIONER ACHTENBERG: I'd like to say  
21 thank you as well.

22 CHAIRMAN CASTRO: And that was  
23 Commissioner Achtenberg. Thank you. Okay, so we will  
24 then move onto the next item. We will ask our  
25 inspector general, Frances Garcia, to please come to

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1 the microphone. Welcome Madam Inspector General.

2 **II. Inspector General Report**

3 INSPECTOR GENERAL GARCIA: Thank you. Mr.  
4 Chairman, Commissioners, I just thought I'd come by,  
5 it's been 6 months, just to give you an update for  
6 where we've been. And what I'd like to do is maybe  
7 come see you quarterly just to -- so you know that we  
8 are here, or that I am here.

9 As we've talked before I'm your IG and  
10 Louise DiBenedetto has been assigned to this full-  
11 time. She's the one that is the face that's  
12 representing our office. And with her is also -- that  
13 we have, William, which we call him Ben, Witt.

14 I just want to keep you in the loop of  
15 what we're doing because we don't want any surprises  
16 and give you an opportunity to be able to express any  
17 ideas that you might have or concerns. And my door is  
18 open to you and you know, come by and see me, call me,  
19 whatever, if you need to talk to me personally. But  
20 as I said, Louise is my face here and she'll be here  
21 with you.

22 Well we are, as you know, working here and  
23 it's been a learning process for us mainly because  
24 we're part of the legislative branch and the  
25 Commission here is regulated by a different statute.

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1 And so we're learning and there's a learning curve for  
2 us. We're doing, you know, we're doing the best we  
3 can.

4 One of the things that we have, we have  
5 five mandates that we have to do before the end of the  
6 year which is 9/30. Two of the mandates, because it's  
7 every 6 months, is the semiannual report that we give  
8 to Congress. We were able to complete the 9/30 one --  
9 I mean, 3/30 one and the next one we'll be working on  
10 is 9/30. And basically what that does is just tell  
11 Congress the work that we've done. And it's a little  
12 different than the one that we do in the legislative  
13 branch in that it has a bunch of tables that we have  
14 to fill out.

15 The second one is the IPERA report which  
16 is the Improper Payments Elimination and Recovery Act  
17 reporting. That was a little bit of a -- we shouldn't  
18 say surprise, but we realized that we had to do that  
19 and we had like a week to turn around. We worked as  
20 hard as we could to get it out on time. We might not  
21 have touched all the bases we needed to touch on that  
22 one. We were really up against the wall trying to get  
23 it out on time because that's one of the things that  
24 we don't have to do in the legislative branch. And  
25 that's some of the little things that are different.

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1           The other one is the FISMA which is the  
2 Financial Information Security Management Act. We do  
3 an evaluation of that and that one is also due  
4 September 30th.

5           The other one is Management Challenges.  
6 And the way we're going to be doing the management  
7 challenges is right now we're working on risk  
8 assessment. And that will give us a feel for the  
9 Commission and what we consider to be the management  
10 challenges. When we do that we will, of course,  
11 discuss them with you and hope we get your buy-in.  
12 And if we feel strongly and you feel strongly the  
13 opposite way there's an opportunity for you to voice  
14 your opinion.

15           VICE CHAIR THERNSTROM: I'm sorry, can I  
16 just interrupt. What kind of management issues are  
17 you covering?

18           INSPECTOR GENERAL GARCIA: It just  
19 depends. We're still doing the risk assessment right  
20 now and so we haven't come up with them, Commissioner.

21           The other thing we found out is that we  
22 also are going to be monitoring -- the financial  
23 statement audit. Next year we'll go out -- this is  
24 the responsibility of the IG under the executive  
25 branch. Next year we'll go out and you know, hire the

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1 auditors. This year we used the same one that you had  
2 last year because of the time constraints.

3 I know that this is a challenging time for  
4 everybody. What we've done is we've come up, and I  
5 think we gave one the last time, a little tri-fold on  
6 whistleblowers. And what this does is just kind of  
7 tells folks a little bit about the authority of the  
8 IG, a little bit about the responsibilities and what -  
9 - how anybody who's going to be a whistleblower, the  
10 reporting that they should do, and also has their  
11 hotline in here which now includes you.

12 And we've also put up a web page so that  
13 anybody that wants to put in a complaint or get in  
14 touch with the Commissioner, they can go straight to  
15 your web page and there's a hotline there and the  
16 information will come directly to our office. We have  
17 the hotline that we have a contractor and it's manned  
18 24/7, 365 days a year.

19 And the biggest challenge for us is the  
20 same one that you have, is that no staff director. So  
21 what we're doing is we're working at the directive of  
22 the department heads for any documents that we've got  
23 to request and we're cc'ing both the chairman and the  
24 vice chair so that they'll know what requests we're  
25 making out.

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1           Again, I want to emphasize we have not any  
2           audit. We're still learning your operations and we're  
3           doing, like I said, the risk assessment. However,  
4           when we do have an audit we'll have a notification  
5           letter. There will be an entrance conference and an  
6           exit conference. And then when we issue the report  
7           there will be an opportunity for everybody to look at  
8           it.

9           And again, like I said, we're hoping there  
10          won't be any surprises, there shouldn't be any  
11          surprises because as we do the work we'll be working  
12          with the appropriate department heads and letting them  
13          know what the challenges are of what we need. And if  
14          they fix it before the report is issued we will  
15          definitely give you credit for the report.

16                    So, any questions I can answer? Yes.

17                    CHAIRMAN CASTRO: The Chair recognizes  
18                    Commissioner Gaziano.

19                    COMMISSIONER GAZIANO: We're going to  
20                    discuss later in this meeting some other -- one issue  
21                    we might discuss, the potential delegations to  
22                    individual staff members to handle some of the staff  
23                    director's duty until the White House is able to make  
24                    an appointment or we're able to figure something else  
25                    out.

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1 I don't know how that will go but I wonder  
2 if we could, with your input, make a motion to  
3 designate one person to be your point of contact. And  
4 I'd like to -- I'll do that if you think that that's  
5 helpful or if you think that the current situation,  
6 you trying to talk to all the department heads, is  
7 about as good.

8 INSPECTOR GENERAL GARCIA: We'd love that  
9 if you could do it. We would love to have one person  
10 to contact. I think it would be easier for all of us  
11 and I think it would make things go faster.

12 COMMISSIONER GAZIANO: Well, when you're  
13 done answering other questions I'll try to make a  
14 motion and see if we can't figure out what we'd have  
15 to do I suppose. Help me out with the motion that I  
16 want to make. It would be that we would designate one  
17 person to serve as your office's point of contact with  
18 the responsibility to get the information from other  
19 employees and the Commission. Is that the nature of  
20 the motion that would help?

21 INSPECTOR GENERAL GARCIA: Yes, it is.  
22 I'm turning around because Louise is the person that  
23 works here. And that would be a big help to us.

24 COMMISSIONER GAZIANO: Okay. Well, I may  
25 have to call someone else to see if we -- or it may

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1 even wait till later in our meeting -- I don't know if  
2 you're going to stay on -- till we figure that out.

3 INSPECTOR GENERAL GARCIA: Louise will be  
4 here for the entire time. Before -- that's Kim who  
5 used to be your person of contact and we would ask her  
6 and then she would either -- she would get the  
7 information for us and so that made it a lot easier.

8 COMMISSIONER GAZIANO: Okay. She might be  
9 the one we move. There may be one other person that  
10 we have in mind who could also serve that role. But  
11 we'd like to at least take care of what issues we can.

12  
13 INSPECTOR GENERAL GARCIA: Thank you,  
14 Commissioner, that would be very helpful.

15 CHAIRMAN CASTRO: Any other questions? I  
16 have one, Madam Inspector General. The Management  
17 Challenges Report. When do you anticipate that that  
18 might be completed?

19 INSPECTOR GENERAL GARCIA: It will be  
20 effective September 30th. So it should be before then  
21 so that we can report out on it.

22 CHAIRMAN CASTRO: Okay, great. Thank you.  
23 Any other questions for our Inspector General? If  
24 not, thank you again for your service. We appreciate  
25 it.

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1 INSPECTOR GENERAL GARCIA: Okay, thank  
2 you. I just want to tell you that we appreciate all  
3 the help that the staff has given us. They've been  
4 very cooperative. And I know it has been a very  
5 different learning curve for all of us because we do  
6 come from the other side, the executive branch as  
7 opposed to legislative -- from the legislative branch  
8 as opposed to executive branch and there's different  
9 rules that apply. So it might just take a little bit  
10 longer and we're trying to learn your operation so  
11 that we can do a good job for you and make sure that  
12 we cover all the bases that need to be covered.

13 CHAIRMAN CASTRO: Thank you, we appreciate  
14 that.

15 INSPECTOR GENERAL GARCIA: Thank you very  
16 much.

17 CHAIRMAN CASTRO: Thank you. Commissioner  
18 Gaziano?

19 COMMISSIONER GAZIANO: Before we leave  
20 this agenda item is it appropriate for us to have that  
21 discussion and the motion of who we would designate to  
22 her to wait for later in our --

23 CHAIRMAN CASTRO: I'd like to deal with it  
24 as a package with the other areas that we had  
25 discussed that possibly could be.

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1 COMMISSIONER GAZIANO: Yes, I don't know  
2 that we're actually going to resolve those others, if  
3 it's possible.

4 CHAIRMAN CASTRO: But there may be some  
5 that we can. There may be others that we can't. But  
6 I think having the discussion, you know, in a unified  
7 manner is probably better.

8 COMMISSIONER GAZIANO: Okay, that's fine.

9 CHAIRMAN CASTRO: So next we'll move onto  
10 Program Planning. The first item on the agenda is  
11 Commissioner Yaki's discussion of his concept paper on  
12 the stand your ground laws.

13 **III. Program Planning Discussion of**  
14 **Commissioner Yaki's Concept Paper on**  
15 **Stand Your Ground Laws**

16 CHAIRMAN CASTRO: Commissioner Yaki, you  
17 have the floor.

18 COMMISSIONER YAKI: Thank you.

19 CHAIRMAN CASTRO: And do you have  
20 additional hard copies of that?

21 COMMISSIONER YAKI: Do we, Richard? Sure.

22 CHAIRMAN CASTRO: Thanks. I forgot to  
23 bring mine. Oh, never mind, I've got it.

24 COMMISSIONER YAKI: Thank you very much  
25 Mr. Chair and members of the Commission. On February

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1 26th, 2012, a young man named Trayvon Martin was  
2 killed while walking home carrying I think a soft  
3 drink and a bag of Skittles. There's been an arrest  
4 made in this case. It's been a national cause  
5 célèbre.

6 And it's brought to the fore an issue  
7 regarding a body of laws that has been -- that has an  
8 ancient common law root but only more recent modern  
9 law expansions and that's called, they're called stand  
10 your ground laws. And basically it goes beyond what's  
11 called the castle doctrine of allowing you to defend  
12 your property and yourself in your home and extends it  
13 outward in a more proactive manner.

14 I think what we have here, what has  
15 happened with the Trayvon Martin case and what has  
16 happened with the controversy on stand your ground is  
17 that there have been issues raised about whether or  
18 not the way the stand your ground laws have been  
19 enacted and applied, more importantly applied and  
20 enforced has with it any type of racial bias.

21 There are certainly allegations made in  
22 the Trayvon Martin case along those lines, but there  
23 are also allegations made in other instances as well.  
24 Justifiable homicides in this country have since the  
25 enactment of these laws allegedly gone up, but the

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1 type of statistical reporting available to us has not  
2 exactly been crystal clear and allowed people to make  
3 very good study of exactly what these laws mean.

4           The reason I want to bring this up to the  
5 Commission is because there are at least two or three  
6 initial data cuts out there that indicate something  
7 that I think is worthy of study. And that is one  
8 study showed that while if you looked at the issue of  
9 someone who is of white background killing a black  
10 person comprised nearly 3.1 percent of all homicides  
11 in certain measured jurisdictions, when you looked at  
12 a white person killing a black person under the rubric  
13 of justifiable homicide that was 15.6 percent of all  
14 such homicides, a 5 percent increase in there.  
15 Whereas with all other categories it stayed relatively  
16 constant among race of the victim/race of the  
17 perpetrator grounds.

18           A very cursory study in Miami of some  
19 Florida laws show that if you were -- if the victim  
20 were African-American the person committing the crime  
21 would walk free 73 percent of the time. If the victim  
22 were of Caucasian background the perpetrator would  
23 walk free -- let me turn that around. That is  
24 actually -- let me just do this right here. Yes. If  
25 someone who killed an African-American would walk free

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1 73 percent of the time under a stand your ground  
2 defense. Someone who killed a white victim would only  
3 walk free 59 percent of the time, in other words, not  
4 being able to avail themselves by a 14 percent  
5 differential of stand your ground laws.

6 I think one of the -- the key issue here  
7 is that this is not something that I think lends  
8 itself easily to conclusion. And what I'm concerned  
9 about and what concerns me and what has concerned  
10 certainly members of the African-American community,  
11 the NAACP and others is whether or not there is, all  
12 things being equal, racial bias in the enforcement and  
13 application of stand your ground laws.

14 I think what's important and why I want  
15 the Commission to look into it and to do something it  
16 has not done in a long time which is why I'm calling  
17 this special investigation, but really is the historic  
18 mission of what the Commission has done over the  
19 years, is to go out into the field and gather real  
20 data. Because there is no real data.

21 Social scientists, criminologists have  
22 bemoaned the fact that when they talk about this issue  
23 they really can't talk about because no one has really  
24 collected statistics on this issue. And for there to  
25 be a real rational discussion on stand your ground

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1 laws, on whether there is any racial bias in it at  
2 all, we need to know the facts.

3 The facts may indeed show there is no  
4 racial bias. The facts may indeed show that there is  
5 no racial skew in terms of how this is being enforced  
6 and applied. But the very minimum I think we owe to  
7 the constituencies who we represent and for whom there  
8 is a perception and for whom there are some facts out  
9 there that would suggest that perhaps there could be.

10 This is perfectly within the jurisdiction  
11 of what we have traditionally done on a bipartisan  
12 basis to go out there, ask questions, subpoena  
13 records, have an investigator which we have not had in  
14 such a long time on this Commission to go forward into  
15 jurisdictions and ask these questions and find out.

16 Because the debate on Trayvon Martin is  
17 not going to go away. The debate on whether or not  
18 stand your ground is tilted against African-Americans  
19 is not going to go away unless and until there is  
20 accurate data for there to be a reasoned, principled  
21 policy debate and discussion about it.

22 If you notice I am doing this in very -- I  
23 am couching this in terms of that is much more fact-  
24 based. I'm not going to -- whether or not I have my  
25 own bias or prejudice in this is irrelevant, quite

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1 frankly, to what we as a Commission can and should do  
2 in this type of instance.

3 It is part of our historic mission; it's  
4 been part of our historic tradition to do these types  
5 of things. I think that given the stakes, given the  
6 outcry, given the interest in this as the nation's  
7 watchdog on civil rights it is singularly appropriate  
8 for us, for the Commission, to initiate an  
9 investigation, to research, to collect the data and  
10 present it in a fact-based way so that decision-makers  
11 and policy-makers have something to base their  
12 opinions, recommendations in changing the policy on,  
13 rather than just -- rather than just jumping to  
14 conclusions or jumping to quick and easy tautologies  
15 or stereotypes on any of these laws that exist.

16 CHAIRMAN CASTRO: Commissioner, would you  
17 make a motion that we can have seconded so that we can  
18 begin discussion?

19 COMMISSIONER YAKI: Yes. So, I would like  
20 to move that the U.S. Commission on Civil Rights adopt  
21 my concept paper and begin the process of a special  
22 investigation into stand your ground laws and racial  
23 bias.

24 CHAIRMAN CASTRO: Do we have a second?

25 COMMISSIONER KLADNEY: I second the

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1 motion.

2 CHAIRMAN CASTRO: Okay. Any discussion  
3 from Commissioners? The Chair recognizes Commissioner  
4 Gaziano.

5 COMMISSIONER GAZIANO: I certainly think  
6 that this kind of fact-based research is within the  
7 Commission's special expertise, but I have a couple of  
8 questions I might raise about the cost and staffing,  
9 whether this reaches a priority. But let me first  
10 address the substance. And I'm going to make a kind  
11 of counter proposal on the scope if we were to proceed  
12 with this investigation.

13 First of all, I appreciate Commissioner  
14 Yaki's frankness in the concept paper in saying that  
15 there is scant evidence on this. I actually think  
16 there's less than scant, and given that there are --  
17 that there's a racial bias.

18 Given that there are hundreds of, or at  
19 least over a hundred I believe criminology departments  
20 at American universities that are always looking for  
21 things to study, the dog that isn't barking may mean  
22 something.

23 But I do want to quote from the Miami  
24 Herald newspaper investigation which is not a peer-  
25 reviewed newspaper. We don't know whether they've

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1 compared. Commissioner Yaki quoted one portion that  
2 seemed to suggest that there was a racial bias, but  
3 that portion of the sentence that he quoted did not  
4 control for the type of homicides at issue or killings  
5 at issue because some were ruled not homicide I think.

6 As you know, stranger killings are treated  
7 very differently than non-stranger. This is what the  
8 Miami Herald, that article that Commissioner Yaki  
9 circulated, said. When you do -- when the newspaper  
10 at least, in their non-peer reviewed study attempted  
11 to actually control for the types of crimes whites who  
12 invoke the law were charged at the same rate as  
13 blacks. Whites who went to trial were convicted at  
14 the same rate as blacks. In mixed race cases  
15 involving fatalities the outcomes were similar.

16 And I'm skipping one sentence, but  
17 overall, black defendants went free 66 percent of the  
18 time in fatal cases compared to 61 percent for white  
19 defendants. So there was a higher rate of black -- so  
20 I -- at the beginning of this I question the  
21 evidentiary basis for assuming there's a disparate  
22 impact worthy of our expense.

23 But if we were going to pursue this I  
24 would like it broadened to I think a racial disparate  
25 impact that is far more clear and far more

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1 significant. And that is that the municipalities in  
2 many states across the country have systematically  
3 denied, abridged, limited the 2nd Amendment rights to  
4 keep and bear arms as incorporated in the 14th  
5 Amendment. And that denial has a much more  
6 significantly negative effect on poor and minority  
7 citizens in high-crime neighborhoods.

8 As the Supreme Court has made clear in  
9 both *Heller v. D.C.* and *McDonald v. Chicago*, as  
10 opposed to some hypothetical right to be free from  
11 stand your ground laws, there is a fundamental  
12 constitutional right that our framers and ratifiers of  
13 the Constitution have established. And we taking an  
14 oath to defend that right ought to be interested in  
15 why municipalities and states are abridging that right  
16 that I think is especially valuable to poor and  
17 minority residents of high-crime neighborhoods.

18 So before I would raise some other  
19 concerns I had with the proposal I'd like to have a  
20 discussion to see if the Commission would pursue that  
21 topic in the investigation.

22 CHAIRMAN CASTRO: Commissioner Kladney,  
23 then Commissioner Yaki.

24 COMMISSIONER KLADNEY: I find an interest  
25 in this law and I think an investigation may well be

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1 good. I also have a question about staffing and  
2 financing such a project. I would think we would need  
3 a report from our finance department and we would  
4 probably have to hire outside people to complete it.  
5 That's just a guess, grabbing that out of the air.

6 The law is a strange law. Usually in  
7 self-defense cases it's a reasonable person standard  
8 as to whether you would feel yourself in jeopardy.  
9 It's my understanding that this statute, if you  
10 personally feel yourself in jeopardy you have a right  
11 to use force. I find that very strange and I would  
12 like to see what kind of differences there are.

13 When you cite who went free and who did  
14 not go free, I don't understand from the article who  
15 went free because the police department decided not to  
16 charge, who went free because the DA decided not to  
17 charge, who went free because nobody did anything, or  
18 how many had to go to trial before they were found  
19 either not guilty or guilty.

20 These jurisdictions within the state of  
21 Florida, my idea, my thought from the article itself  
22 was it's a hodgepodge. You know, if you're in this  
23 county, this happens. If you're in that county, that  
24 happens. If you're over here, this happens. So, I  
25 have concerns about that and I think that is

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1 worthwhile to look into as well.

2 While you're looking at disparate impact,  
3 if you're looking at disparate impact, if this law is  
4 impacting African-Americans more than it is whites,  
5 fine. If it's impacting whites more than it is  
6 African-Americans then I guess we have reverse  
7 discrimination. It would be interesting to look at.

8 As far as your thing about guns, I don't  
9 know if it fits in here. I like guns.

10 (Laughter)

11 COMMISSIONER KLADNEY: Guns are in our  
12 Constitution and the Supreme Court has found so. And  
13 I would assume that any regulation in municipalities  
14 or in different counties will stand the test of the  
15 courts under the definition of the courts. They've  
16 already found the right to bear arms. If you're  
17 trying to say that we should look at whether there  
18 should be no laws and everybody should be able to  
19 carry a gun on their hip I think that's --

20 COMMISSIONER GAZIANO: To clarify, cities  
21 have come up with very restrictive -- Chicago took the  
22 position that was rejected by the Supreme Court one  
23 form of extreme gun control that their citizens  
24 effectively could not possess firearms. D.C. -- the  
25 Supreme Court only decided some very basic issues.

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1 And municipalities -- Nevada is --

2 COMMISSIONER KLADNEY: "Nev-AD-a," I'm  
3 sorry.

4 (Laughter)

5 COMMISSIONER GAZIANO: I know that one of  
6 the -- I think states that most respects the right to  
7 keep and bear arms. But in many other municipalities  
8 there are outrageous denials of the most basic. We  
9 don't know exactly what the contours of the right to  
10 keep and bear arms are, but it's pretty clear that  
11 there's some outrageous denials. Washington is still  
12 dragging its feet on their follow-on on cases.

13 We should investigate the disparate impact  
14 of those denials. There are hundreds of -- for  
15 example, there's a lot more studies on the defensive  
16 use of guns and how valuable it is. And we could  
17 bring in criminologists to discuss the likely impact  
18 that some of these jurisdictions who are denying the  
19 right have on minority citizens.

20 COMMISSIONER KLADNEY: Well, I think  
21 that's another concept.

22 CHAIRMAN CASTRO: Just for the record, you  
23 did pronounce "Chicago" correctly.

24 (Laughter)

25 CHAIRMAN CASTRO: Commissioner Yaki?

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1 VICE CHAIR THERNSTROM: But I want to know  
2 how to pronounce Nevada. What do we?

3 COMMISSIONER YAKI: "Nev-AD-a." You had a  
4 ballot on that, a ballot resolution on that didn't  
5 you?

6 COMMISSIONER KLADNEY: Yes, we had a  
7 ballot resolution on it and it's "Nev-AD-a." We also  
8 have a place called Verdi which some people --

9 VICE CHAIR THERNSTROM: But nobody  
10 pronounces New Orleans correctly.

11 CHAIRMAN CASTRO: Commissioner Yaki?

12 COMMISSIONER YAKI: I think that  
13 Commissioner Gaziano raises an interesting point but  
14 one that I think goes far beyond the scope of what I  
15 am looking at.

16 The fact is that I want to look at I think  
17 primarily those states that have recently enacted  
18 stand your ground laws and where Department of Justice  
19 statistics show that justifiable homicides have risen  
20 in the past 5 or 6 years.

21 There are a number of reasons for which to  
22 do this. One, obviously as Commissioner Gaziano says  
23 a question of resources. The issues that he's raising  
24 go to jurisdictions in areas that would probably not  
25 be at issue in this study in terms of some of the

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1 states we're talking about, Florida, Texas, possibly  
2 Arizona, Arkansas, Alabama and others which have  
3 recently enacted very broad stand your ground laws.  
4 So I think that Commissioner Gaziano issue has a much  
5 broader scope.

6 The second point is that the Miami Herald  
7 article talked basically -- and the reason why, quite  
8 frankly, there are no criminologists on this is  
9 because the fact that there's no data out there to  
10 really look at and grab a hold of.

11 Again, like I said, a lot of these laws  
12 have been enacted in the last 5 or 6 years.  
13 Statistics have only really begun to be collected at  
14 some rate.

15 And one of the issues that Commissioner  
16 Kladney raised which is the fact that these laws are  
17 enforced and applied differentially in different  
18 areas. Some of the statutes allow the police to make  
19 the initial decision. That's how George Zimmerman  
20 walked out of jail the night after the Trayvon Martin  
21 killing. Others allow the prosecutor to make that  
22 decision. Others allow a judge to make that decision  
23 absent a jury. Some, like California, which has a  
24 common law stand your ground type law, require it to  
25 be an affirmative defense at a jury trial.

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1           So as Commissioner Kladney was pointing  
2 out, one of the issues that need to be looked at is  
3 how these are written, how they are enforced, where is  
4 there discretion and in that discretion has there been  
5 -- can you detect or find any pattern or practice that  
6 would indicate racial bias or racial skew in the  
7 application of this.

8           Those are the questions I think we need to  
9 ask. Those are the questions that others are asking  
10 as well and why I think we need this investigation.  
11 But again, to the extent that we do have limited  
12 resources and I appreciate that we will work together  
13 to ensure we have a proper scope of that to move  
14 forward.

15           CHAIRMAN CASTRO: The Chair recognizes the  
16 Vice Chair and then after that Commissioner Heriot and  
17 then Commissioner Kirsanow. Madam Vice Chair?

18           VICE CHAIR THERNSTROM: I think the study  
19 is a good idea. What -- and I so appreciate being a  
20 data person myself, I so appreciate your saying look,  
21 there is no real data out there. And I know it's  
22 true.

23           I mean, my question is, and it's one  
24 that's already been raised, but I think it's a very  
25 serious one. Do we really have the resources to do

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1 the quality study that you're talking about? And  
2 especially because as Commissioner Kladney said, we  
3 have a hodgepodge of laws in different jurisdictions  
4 here. So, it seems to me this is a very large and  
5 difficult problem to investigate. And I'm not sure  
6 this Commission up to it, frankly. Well, that's  
7 really my concern.

8 CHAIRMAN CASTRO: Okay. Commissioner  
9 Heriot?

10 COMMISSIONER HERIOT: I think actually  
11 maybe the Vice Chair said exactly what I was going to  
12 say. You know, that in the abstract this is a topic I  
13 think that is worth studying. As Commissioner Yaki  
14 has said himself there's no data out there. And I  
15 don't see how we're going to be able to produce that  
16 data without undertaking costs that are well beyond  
17 what we are in a position to do.

18 I know Commissioner Yaki has said in his  
19 memo here that we could hire outside organizations to  
20 work for us. I don't think that's a very good idea  
21 and I don't believe the particular organization that's  
22 been proposed would be a good idea. But I can't think  
23 of an organization that would be better. I don't  
24 favor hiring outside organizations to do our  
25 investigations.

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1 VICE CHAIR THERNSTROM: Is it completely  
2 legal to do so anyway? I mean, there are --

3 COMMISSIONER HERIOT: I know that we are  
4 not allowed to accept volunteer services, but what  
5 Commissioner Yaki has suggested is that we actually  
6 pay these organizations. At any event --

7 COMMISSIONER YAKI: Well, we can take that  
8 out. I'm not worried about that.

9 COMMISSIONER HERIOT: I don't favor that  
10 and I don't think that we internally have the  
11 resources at this point in time to conduct this study.  
12 Maybe if we hired up and had some more people in OCRE  
13 we could do something, not necessarily what's been  
14 proposed here, but something.

15 CHAIRMAN CASTRO: Commissioner Kirsanow,  
16 then Commissioner Yaki, Kladney and Gaziano.

17 COMMISSIONER KIRSANOW: I think this is a  
18 fascinating topic and I appreciate Commissioner Yaki  
19 proposing it. I have a concern about resources.

20 I'm I guess inclined to favor something  
21 that incorporates what Commissioner Gaziano suggested.  
22 Again, this implicates resources because it expands  
23 the study.

24 The greatest -- this is a facially neutral  
25 law. The greatest disparate impact we've got that

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1 I've seen is that in the last 40 years there have  
2 been, at least according to one report I saw, 250,000  
3 black males have been murdered. More than 90 percent  
4 of those are black males against black males. That's  
5 the greatest disparate impact.

6 From my perspective in my neighborhood I  
7 like stand your ground laws. Along with Commissioner  
8 Kladney, I like guns. I've personally been involved  
9 in situations where it's a pretty good idea to be  
10 armed. And there are studies out there that show that  
11 to the extent you have a deterrent effect of either  
12 guns or some type of law such as castle laws, home  
13 protection laws, the deterrent effect of those laws  
14 and the availability of weapons for homeowners is  
15 appreciable.

16 If we could potentially narrow the study  
17 to looking at both whether or not there is a disparate  
18 impact in the enforcement by local law enforcement  
19 agencies perhaps just in one jurisdiction as opposed  
20 to others before we leapfrog into other jurisdictions  
21 to address Commissioner Kladney's concern.

22 In addition, the deterrent effect, the  
23 potential deterrent effect of those laws and the  
24 availability of guns to deter crimes in inner city  
25 neighborhoods where I live, where concealed carry

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1 laws, for example, have actually shown counter-  
2 intuitively, at least counter-intuitively to the mass  
3 media, that in fact those laws appreciably reduce the  
4 incidence of crime. I think that might be something  
5 that we can adequately capture and would be something  
6 within the charge of the Commission along with what  
7 Commissioner Yaki had just articulated.

8 CHAIRMAN CASTRO: Commissioner Yaki?

9 COMMISSIONER YAKI: I think that we might  
10 be approaching an area where I think we might have  
11 some common ground for the purposes of moving this  
12 forward. Let me address quickly the resource issue.

13 As someone who's been on the Commission as  
14 long as I have, you've -- much longer as well as  
15 Commissioner Thernstrom, I think you know that I  
16 appreciate the resource issue as much as anyone  
17 because we've had to deal with it from -- I dealt with  
18 it from the first day I got on the Commission in 2005.

19 On the other hand, I also know that we are  
20 in a situation where we have been short of staff for  
21 quite some time. We have some salary savings there.  
22 I would hate for us to say that a topic that there is  
23 widespread agreement on, where I think that decision-  
24 makers and policy-makers in Congress and in state  
25 legislatures welcomes this kind of report, we would

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1 say well, we can't do it because we don't have the  
2 funds. I think we can and I don't think that should  
3 be a showstopper. And I would say that obviously we  
4 would need to carefully figure out how to make this go  
5 forward.

6 But in terms of what you were talking  
7 about I think I would go one step further. I think  
8 it's important to get a comparison of some of these  
9 types of laws that are out there because they do have  
10 differential charging and administration provisions in  
11 each one.

12 I think that may be one of the inherent  
13 problems that people have in grasping how this gets  
14 applied because in one jurisdiction it can be at the  
15 prosecutorial level and then the decision, it can be  
16 at a -- sort of a bench trial preliminary  
17 determination procedure. And it depends.

18 I would say that if you wanted to weave  
19 into there the issue of what is the state of play in  
20 terms of gun ownership and gun availability I think  
21 that probably is a -- something that could be part of  
22 the equation because I think that when you look at the  
23 rise in justifiable homicides at least reported to DOJ  
24 since the enactment of these laws I think you can -- I  
25 think it's legitimate to look at whether or not as

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1 part of the factors in this and part of the issues  
2 that you're talking about, were there any changes or  
3 preexisting laws governing concealed carry, must carry  
4 -- not must carry, but I think they divided it up into  
5 without permit, a must permit, a discretionary permit,  
6 that kind of stuff that goes on.

7 I think that is something that can be  
8 looked into as part of the equation in terms of the  
9 impact of these laws and their usage and the assertion  
10 of the -- and its impact on the assertion of these  
11 defenses in some of these jurisdictions.

12 I wouldn't just focus on one though. I  
13 think that part of the issue has got to be looking at  
14 several, several of these with -- that have different  
15 ways in which this can be asserted. Because as we all  
16 know from all of the other work that we've done and  
17 everything else the points at which discretion occur  
18 are the points at which mischief can or could occur.

19 And I think understanding where discretion  
20 is in each of these laws in each of these different  
21 jurisdictions can help lead us better to interpret the  
22 data in a way that would be much more reasoned and  
23 rational and principled. But I do agree that probably  
24 part of that equation is going to be looking at the  
25 state of play in terms of gun laws in accordance with

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1 each of those limited jurisdictions that we do take a  
2 look at.

3 COMMISSIONER ACHTENBERG: Mr. Chairman,  
4 I'd like to be recognized at the appropriate time.

5 CHAIRMAN CASTRO: Okay. We have  
6 Commissioners Kladney, Gaziano, then Achtenberg, then  
7 Heriot. Commissioner Kladney?

8 COMMISSIONER KLADNEY: Gosh, we've had so  
9 much discussion already. Basically, I believe that  
10 taking one jurisdiction may not be sufficient, but  
11 taking maybe two states or three states and with  
12 similar statutes. You know not different statutes but  
13 similar statutes to see how they differently apply and  
14 the results that occur.

15 As far as collecting data it would  
16 probably go a long way if we could get cooperation  
17 from the courts in those different states on the  
18 filings and things like that. I know our court does  
19 that with the face sheet on all of the complaints as  
20 to the type of crime it is and blah blah blah.

21 However, like I said with some of these  
22 cases, I mean the police department just doesn't  
23 charge, or the DA's office doesn't charge, or the case  
24 is dismissed at prelim, or whatever, and that bothers  
25 me.

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1           But I think a study of this is important.  
2           Someone will have to work out if we decide to do this  
3           the financing and the staffing.

4           As far as the weapon inquiry I think if  
5           you combine a weapon inquiry with this kind of inquiry  
6           it gets to be more confusing, overlapping and  
7           divergent at the same time. That doesn't mean that I  
8           would be opposed to an inquiry on that, but it does  
9           mean that I think you might be mixing a little apples  
10          and oranges. Commissioner Yaki doesn't seem to think  
11          so. I just have that feeling and I just wanted to  
12          voice that opinion.

13                   CHAIRMAN CASTRO: Commissioner Gaziano?

14                   COMMISSIONER GAZIANO: Yes, maybe this  
15                   will add a little clarity. I appreciate -- by the  
16                   way, let me begin by saying I agree with I think  
17                   everyone this is a very interesting question. I don't  
18                   know that there is -- that you can force data to exist  
19                   or obtain it in an affordable way for our Commission.

20                   But I would like to know whether there is  
21                   a racially or other gender-based disparate impact of  
22                   these laws. And I would suspect that it may be  
23                   beneficial to women and those who live in high-crime  
24                   neighborhoods and that may have a disparate benefit.

25                   But, I think that I would not support,

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1 given that I, you know, the data doesn't already exist  
2 and it's hard for us to force it into existence  
3 without a lot of expense, I would not support I think  
4 that kind of investigation without a lot more evidence  
5 of how it could be done and that it's worthy.

6 As for whether my suggestion really fits  
7 in with this I think I heard something different from  
8 Commissioner Yaki, that if those jurisdictions that  
9 have stand your ground laws, he's willing to look at  
10 these questions that might relate to my concern.

11 The jurisdictions that are systematically  
12 denying a right to hold guns are not the ones who are  
13 likely to have stand your ground laws. So, I actually  
14 agree with his first comment -- or your first comment,  
15 Commissioner Kladney, that this broadens the topic.  
16 But if it does my question I think is more important  
17 and my question is more manageable.

18 So if we're going to spend a lot of money  
19 on one of these questions and we can't do both then I  
20 think there's a lot more data on mine, there's a lot  
21 more peer-reviewed criminology studies. We could hire  
22 an investigator to do a meta-analysis of that data  
23 that already exists. We could do some serious social  
24 science in our OCRE department. But if we have to  
25 choose one or the other -- by the way, I appreciate we

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1 only received this yesterday afternoon and I had a  
2 wonderful event to attend with Vice Chair Thernstrom  
3 that partially honored her. And so it was after  
4 midnight that I was poring over these.

5 COMMISSIONER YAKI: Partially?

6 (Laughter)

7 COMMISSIONER GAZIANO: It honored -- it  
8 recognized past honorees of which she is one and  
9 recognizes some new honorees.

10 The -- I just don't -- I think that the  
11 type of investigation I have could not be done on the  
12 same jurisdictions. But if we can't do both then I  
13 think mine is more affordable, more valuable.

14 And then the last point I want to raise is  
15 the question of -- that Commissioner Heriot raised  
16 which is I would not want to choose an outside  
17 organization to fund. If we were going to hire an  
18 investigator we ought to hire an investigator, make he  
19 or she part of our staff, work with OCRE. We've got  
20 an OCRE staff who could do this. But I think that  
21 that's where the real trouble would also exist.

22 If Commissioner Yaki will, you know, agree  
23 to John Lott being our investigator or someone in the  
24 same sort of school as John Lott then I might feel  
25 more comfortable about the amount of money that we're

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1 going to spend. But I don't know that Commissioner  
2 Yaki will agree to John Lott. I'm uncomfortable with  
3 the investigator that he has identified.

4 COMMISSIONER KLADNEY: I'm sure it could  
5 be worked out.

6 VICE CHAIR THERNSTROM: I'm sure it can be  
7 worked out, the issue is John Lott.

8 CHAIRMAN CASTRO: We're now going to have  
9 Commissioner Achtenberg speak who's been waiting and  
10 then Commissioner Heriot. Then I have a suggestion  
11 and see if we can wrap up the discussion. So,  
12 Commissioner Achtenberg?

13 COMMISSIONER ACHTENBERG: Thank you, Mr.  
14 Chairman. I have no idea who John Lott is but I'll  
15 allow myself to be edified in that regard.

16 First I want to say that I think I'm  
17 delighted to hear such an overwhelming endorsement of  
18 the disparate impact rule coming from both sides of  
19 the aisle. So that's an observation.

20 My second point is that I would be  
21 interested in the assessment of gun laws only to the  
22 extent that they are a valid element of any analysis  
23 of the impact of stand your ground rules and not the  
24 other way around. I don't think expanding the scope  
25 as Commissioner Gaziano is proposing is at all

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1 workable and I'm not in favor of that as the primary  
2 subject under investigation.

3 I disagree that it's a more important  
4 issue to be addressing. I certainly don't see it that  
5 way and am not in favor of a tail that wags the dog.

6 And as far as whether or not the  
7 Commission has the resources, I want to commend  
8 Commissioner Yaki for trying to innovate in this  
9 regard.

10 I think we have to come to the recognition  
11 once and for all that we are no longer an organization  
12 of 150 FTEs. We're an organization that is  
13 permanently, at least semi-permanently going to figure  
14 out how to operate in a strategic and vital way with  
15 40 to 50 FTEs.

16 And I think this is a very interesting  
17 proposal on the part of Commissioner Yaki about how we  
18 might harness the assets we do have and make modest  
19 strategic investments in expertise that we don't  
20 currently possess on staff to get some important work  
21 done.

22 And so for those reasons, because I do  
23 think that is not only timely but an important  
24 investigation, one that to the extent that it may  
25 implicate or not the gun possession issue that was

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1 underscored by Commissioner Gaziano, I would be  
2 willing to see that included as an appropriate element  
3 of a proper stand your ground analysis. And the --  
4 innovative in terms of utilizing Commission resources  
5 to get some important work done. I am in favor of  
6 Commissioner Yaki's proposal as written.

7 CHAIRMAN CASTRO: Commissioner Heriot?  
8 Thank you, Commissioner Achtenberg. Commissioner  
9 Heriot?

10 COMMISSIONER HERIOT: I'm not convinced  
11 we're coming to terms with the data collection issues  
12 here. We're going to end up I fear here with no data  
13 at all because we're going to find that this new  
14 information that we're looking for is just not out  
15 there. And if we proceed too far down this road  
16 before we know what data is out there then this is  
17 going to be a fiasco. So I worry about that.

18 I mean, the notion that you can just, you  
19 know, waltz into court as Commissioner Kladney was  
20 suggesting. Not all this stuff occurs in court. A  
21 lot of it occurs at a much earlier stage and so we've  
22 got to be able to know that there's actually data out  
23 there that can be collected.

24 Now, on the legal issues that's a little  
25 different. The suggestion was made here on the fact

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1 issues that we might be able to narrow it down to just  
2 one jurisdiction and do that, and that makes a lot of  
3 sense to me if we're going to proceed down this at  
4 all. But we can look at all the laws and analyze them  
5 in terms of their legal impact as opposed to how they  
6 are being administered actually.

7 There's a lot of misinformation going on  
8 right now about what these laws say. In fact, a lot  
9 of that information has already been, you know, some  
10 of that misinformation has already made it into our  
11 transcript. There are some misunderstandings that we  
12 as Commissioners have.

13 On the other hand, it may be that  
14 academics have a comparative advantage at just looking  
15 at the various statutes. They operate a lot more  
16 quickly than we do. And some law professor is going  
17 to do a law review article I'm certain on this issue  
18 somewhere if it hasn't already been done.

19 CHAIRMAN CASTRO: Let me just say I am  
20 fully supportive of this proposal that was prepared by  
21 Commissioner Yaki. I think it's exactly what this  
22 Commission needs to do to get back to our historic  
23 roots. I think this is an issue that is timely in our  
24 country and we should be taking the lead on this. So  
25 it certainly has my support.

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1 I want to ask Commissioner Yaki how he'd  
2 like to proceed. We can either -- because I'd like to  
3 wrap up the discussion.

4 COMMISSIONER YAKI: Sure.

5 CHAIRMAN YAKI: We do have a number of  
6 other items on the agenda that are substantive as  
7 well.

8 Would you like to either have a vote today  
9 on your paper as drafted or would you like to take the  
10 opportunity to perhaps incorporate some of the  
11 suggestions that you would find acceptable that were  
12 made today into this paper and then bring it back to  
13 us before the July meeting so that in July we can vote  
14 on it? And we can even maybe answer some of the  
15 questions about funding and staffing and if there is  
16 an ability to incorporate some of the ideas, if you  
17 wanted to do that. Or if you wanted to bring it to a  
18 vote today as it is.

19 COMMISSIONER YAKI: Thank you very much,  
20 Mr. Chairman. Let me just first start by thanking the  
21 members of the Commission for this robust discussion  
22 on this because this is exactly the kind of discussion  
23 that I think we need to have more of.

24 My preference today would be to have a  
25 vote with I would say a caveat. And that is the vote

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1 today would be to approve the concept paper and then  
2 to move forward with preparing a budget and scope that  
3 would be subsequently approved by the Commission. I  
4 don't think that's -- and let me just tell you why.

5 I think that some of the issues raised by  
6 my colleagues on the other side of the table are ones  
7 that I think need to be addressed. I think that the -  
8 - I think we definitely -- however, I am of certain  
9 mind of several things.

10 One, we need to look in more than one  
11 jurisdiction because it doesn't behoove us to have us  
12 engage in a national debate if we're dealing only with  
13 one single jurisdiction. We might as well just have a  
14 briefing on it and move on.

15 Secondly, we can identify those  
16 jurisdictions in a way that best provides the type of  
17 range of statutes that we want to look at in terms of  
18 the differential prosecutorial charges and discretions  
19 that are available.

20 Three, I think that I'd be willing  
21 certainly to look at the state of gun laws in extant -  
22 - extant at the time of these jurisdictions adopting  
23 stand your ground laws and what they are right now in  
24 their relationship to them.

25 Four, I think that we can, by approving it

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1 as a concept going forward and then coming back with a  
2 much narrower scope and a budget we can work on the  
3 issues that other people have addressed. But I think  
4 it's important for us to send the signal today, right  
5 now, that this Commission is interested in the  
6 subject, we think it's important.

7 We realize -- and the one thing that --  
8 and I don't mean this the way it's going to sound.  
9 But we have -- one of the things that interested me  
10 about this Commission early on and why I took this is  
11 because of what its power is in order to get data. We  
12 have something the law professors do not have. We  
13 have something that criminologists and institutes do  
14 not have. We have the power of the subpoena if need  
15 be to go and make sure we get the documents that we  
16 need to go forward.

17 It is something that I think if used in a  
18 constructive, positive way to ensure that we get data  
19 can lead us to a path of -- I wouldn't like to say  
20 enlightenment because I sound like I come from  
21 California, but, uh, which I do, but it will give us a  
22 better -- it gives us a better shot at being able to  
23 get this data from jurisdictions. And I think that  
24 that is important and exciting to me because that has  
25 always been part of how we historically have done our

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1 job and what has made us so relevant and so important.

2 In the end this report may end up saying  
3 exactly what Commissioner Gaziano or Commissioner  
4 Heriot or Commissioner Kirsanow may or may -- or  
5 Commissioner Heriot. It may end up being something  
6 entirely different. But until we know, what we do  
7 know is that there is discontent, there are  
8 accusations, there are suspicions out there and we  
9 have the unique ability to try and allay those in one  
10 way or another so that policy-makers know going  
11 forward what they are doing and how it impacts people  
12 in this country.

13 CHAIRMAN CASTRO: Okay. Well, is it  
14 possible that you don't want to vote on this yet? I'd  
15 like to -- okay. Commissioner Kladney had raised his  
16 hand prior to that. And then Commissioners Gaziano,  
17 Heriot and Kirsanow. Then I really want to wrap up  
18 the discussion.

19 COMMISSIONER KLADNEY: Well, I was -- I  
20 was going to make some comments about what we were  
21 speaking about before, but now Commissioner Yaki has  
22 reworked what he's looking for so I will pass to  
23 Commissioner Gaziano.

24 COMMISSIONER GAZIANO: Yes, I want to  
25 speak to the specific motion. Even if I were to lose

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1 in my -- which this motion would eliminate my looking  
2 at, as I understand Commissioner, the explanation  
3 behind his motion is it would only look at  
4 jurisdictional stand your ground laws and not the ones  
5 that I'm concerned about.

6 But even if I were to lose on that point I  
7 still might -- he still might have been able to get my  
8 vote if I -- if I had more confidence that this data  
9 were obtainable, what the budget is, and more  
10 importantly the issue of who the investigator is going  
11 to be, and that it's someone that we reasonably all  
12 trust and it's not a --

13 COMMISSIONER YAKI: Commissioner Gaziano,  
14 can I just address those really quickly, those three  
15 points?

16 COMMISSIONER GAZIANO: No, no --

17 COMMISSIONER YAKI: Seriously. The reason  
18 why is because your -- maybe you did not hear what I  
19 said. And I said as we approve the concept paper we  
20 come back with a scope and a budget so we understand  
21 this so there is a second step going forward. If you  
22 would like me to state right now that I will eliminate  
23 the independent organization I'll do that. But aside  
24 from that this is I think a two-tier process here.

25 COMMISSIONER GAZIANO: Well, let me

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1 finish. I really don't want -- I would have two  
2 problems, three problems. One is it's not  
3 incorporating a look at the jurisdictions that are  
4 more clearly affecting.

5 But even apart from that, two, I don't  
6 think that we should commit the Commission to go  
7 forward when we don't know what -- even if we can  
8 decide what the budget will be we shouldn't commit the  
9 Commission to going forward on a project before we  
10 know what kind of budget will really be necessary. I  
11 might vote for it, and I would need to know more  
12 information on what this investigation is going to be  
13 to know whether the budget really can achieve the  
14 goal.

15 Third, I would probably before I commit to  
16 even the next step want to know that six out of eight  
17 Commissioners or something like that would approve of  
18 the investigator. This is a big expenditure of money  
19 on what I think is a narrow issue that might not turn  
20 up anything, and if we're going to spend that kind of  
21 money on a narrow issue that doesn't seem as clear and  
22 as important as the one that I want to raise I'd like  
23 there to be a little more than, you know, four or  
24 three Commissioners on an investigator that's going to  
25 come to a biased result.

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1                   So I'm not comfortable and I would suggest  
2 to other Commissioners not to vote for the proposal  
3 right now. We can -- it can be brought back at a  
4 later time when those other issues are fleshed out and  
5 then it might gain our majority support.

6                   CHAIRMAN CASTRO: Let me just check.  
7 Commissioner Achtenberg, are you still on the phone?  
8 I think she dropped off. Do you want to make sure,  
9 Alec, she gets back on? Commissioner Heriot, I think  
10 you were next.

11                   COMMISSIONER HERIOT: Yes, I guess  
12 Commissioner Gaziano has covered some of my points.  
13 You know, the basic notion is the request is being  
14 made that we commit to this today and then find out  
15 what it is later. I'm not for that. I mean the  
16 budget matters here. How big this project is matters  
17 a lot.

18                   We're being asked to undertake a huge  
19 program and one that I'm not necessarily going to be  
20 against. If we can get it narrowed down and defined  
21 well there's a good chance it will get my vote.

22                   But I think again we're being very naive  
23 about data. The notion that just because we have  
24 subpoena power, that that is going to help us uncover  
25 the data that we're looking for is simply naive.

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1 There has to be something that's going to be  
2 subpoenaed and we don't know what form this data would  
3 be in.

4 It may be that some of the jurisdictions  
5 we're looking at, they might have files scattered in  
6 odd little places, in odd little offices, all over  
7 county, all over the state in ways that we're not  
8 going to be able to uncover without an army of  
9 investigators. We just don't it at this point. And I  
10 don't want to undertake this study and find out that  
11 it fizzles entirely because we never do find where the  
12 data is.

13 CHAIRMAN CASTRO: Commissioner Kirsanow  
14 and Commissioner Kladney. Then I am going to call the  
15 question.

16 COMMISSIONER KIRSANOW: Thank you, Mr.  
17 Chairman. I'd especially urge that Commissioner Yaki  
18 postpone a vote on this for at least a month so that  
19 we can work on this.

20 Commissioner Yaki, you indicated that you  
21 thought it was important for the Commission to send a  
22 signal of the importance of this topic and I think we  
23 already have by virtue of the fact that I don't think  
24 we've had a dissenting voice here in terms of the  
25 importance of looking at this or the interest in this

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1 particular topic properly framed. I think that gets  
2 to the issue, properly framed.

3 As Commissioner Heriot indicated, we don't  
4 know what the scope is. We don't know what the budget  
5 is. We are a Commission of finite resources. I think  
6 everyone here is poised to vote for something that we  
7 all can agree upon that incorporates the essence of  
8 what Commissioner Yaki's proposal is all about. But  
9 we need to -- I think we want to avoid passing this  
10 concept paper so we can find out what's in it so to  
11 speak.

12 (Laughter)

13 COMMISSIONER KIRSANOW: I think it  
14 requires just a little bit of work. We've already  
15 sent the demonstrative signal that this is something  
16 that we need to look at, but we are, I think in some  
17 respects, a very scholarly organization -- present  
18 company excluded -- that wants to attend to this in I  
19 think a sober fashion. I think that could be done and  
20 I would urge that we take the time the next couple of  
21 weeks to cabin how we're going to approach this.

22 CHAIRMAN CASTRO: Commissioner Kladney.  
23 Then we'll call the question.

24 COMMISSIONER KLADNEY: I think that we do  
25 need a budget. I think we need to know where we're

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1 headed. I think the data issue is an issue but I  
2 think there's an ability to collect most of the data.  
3 You might lose one or two or however many, but it  
4 would be a minority. So I think it's viable and I  
5 think it's doable.

6 But I do think we need a budget. I think  
7 we need some focus on where we want to do this, which  
8 jurisdictions perhaps.

9 COMMISSIONER GAZIANO: How we're going to  
10 do it?

11 VICE CHAIR THERNSTROM: How we're going to  
12 do it?

13 COMMISSIONER KLADNEY: And procedure, yes.

14 As far as your concept being more  
15 worthwhile than Commissioner Yaki's, I would think  
16 that would be in the eye of the beholder.

17 COMMISSIONER GAZIANO: Sure.

18 CHAIRMAN CASTRO: Commissioner Yaki and  
19 then let's vote should that be what you desire.

20 COMMISSIONER YAKI: My -- I just want to  
21 address the issue raised by several of my colleagues.  
22 I guess I'm a little uncertain about exactly how what  
23 you're talking about differs from what I'm proposing.  
24 And perhaps it's because of experience that -- or an  
25 implicit assumption that perhaps I did not make clear.

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1 I would like us to vote today on the  
2 concept of this special investigation moving forward.  
3 I would like us to be able to then present a refined  
4 scope and budget that will also be voted upon by the  
5 Commission.

6 So I am actually, if that is -- it was not  
7 going to be simply a question of approving this and  
8 then I'll come up with a budget and scope and then  
9 we'll just keep on moving forward. I actually did  
10 contemplate that because of the nature of our  
11 organization as it is right now that we would come  
12 back and require sort of a second set of approval on  
13 the final scope and a budget that can be examined,  
14 what have you.

15 To me that -- it may seem like an  
16 unnecessary two-step process but I think it's  
17 important for -- I think it's important for us to,  
18 pardon the expression, take a stand on this at this  
19 meeting and move forward and commit to working on  
20 this. And by committing to working on this and  
21 requiring a vote that requires me to commit to working  
22 on this with you in order to secure the votes  
23 necessary to get the budget and the scope approved by  
24 a majority of the Commission.

25 If it's the Commission's decision that

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1 they'd rather just do it once sometime later on in  
2 July when we have a very -- when our meeting, that's  
3 the same meeting as our statutory report I believe  
4 approval. The whole reason for the July 6 meeting,  
5 wasn't that because of the statutory report?

6 CHAIRMAN CASTRO: We have a number of  
7 items on the agenda. I believe one of them is the  
8 approval. Is that correct, Ms. Tolhurst?

9 COMMISSIONER YAKI: That's going to be a  
10 very heavy schedule that kicks us into August.  
11 August, we're going to be in Birmingham. Perhaps not  
12 all the Commissioners are going to be there in  
13 Birmingham and then we're maybe looking at September.  
14 I'd rather not be re-engaged in the whole discussion  
15 for 3 or 4 months from now.

16 CHAIRMAN CASTRO: So, we're going to call  
17 the question as Commissioner Yaki has indicated this  
18 two-step process for his motion, for his proposal. So  
19 I will go down the --

20 COMMISSIONER KLADNEY: Well, what is the  
21 question?

22 CHAIRMAN CASTRO: He has voted -- he has  
23 indicated that today to vote for the concept. He will  
24 then come back later with a proposed scope and budget  
25 which will also be voted on. Is that correct,

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1 Commissioner Yaki?

2 COMMISSIONER YAKI: Yes.

3 CHAIRMAN CASTRO: And you also indicated  
4 that you would be willing to eliminate the name of  
5 that organization from --

6 COMMISSIONER YAKI: Yes.

7 CHAIRMAN CASTRO: Yes. So that's -- do  
8 you need -- is this --

9 COMMISSIONER GAZIANO: It still seems the  
10 means are completely open and--.

11 CHAIRMAN CASTRO: Did I state that  
12 correctly, Commissioner Yaki?

13 COMMISSIONER YAKI: No, no, you did, you  
14 did.

15 CHAIRMAN CASTRO: What would you have us  
16 do here? Ready to vote or?

17 COMMISSIONER YAKI: I would much rather  
18 have the vote. If it doesn't pass today then I will  
19 just --

20 CHAIRMAN CASTRO: You can revisit it.

21 COMMISSIONER YAKI: I'll just bring it up  
22 again.

23 CHAIRMAN CASTRO: Yes. Okay. So I'm  
24 going to take the vote here. Commissioner Achtenberg,  
25 are you on the line?

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1 COMMISSIONER ACHTENBERG: I am.

2 CHAIRMAN CASTRO: Okay. We'll start with  
3 Commissioner Kirsanow. How do you vote?

4 COMMISSIONER KIRSANOW: Well, for the  
5 reasons I mentioned before since we don't have a scope  
6 or a budget but I'm interested in the topic I'm going  
7 to have vote no as presently constituted.

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

10 COMMISSIONER HERIOT: Again, I think if we  
11 have another report like this where we don't design  
12 what we're going after, we don't have a budget, we  
13 don't know quite what we're doing it's going to end up  
14 being a highly flawed study. We have an opportunity I  
15 think to go back and be much more careful about this,  
16 decide exactly what we're going to do and then vote on  
17 it. So I object to voting on this at this point and I  
18 therefore vote no.

19 CHAIRMAN CASTRO: Commissioner --

20 COMMISSIONER HERIOT: By the way, I forgot  
21 to mention, we got this whole proposal yesterday.

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

24 COMMISSIONER GAZIANO: Yes, I'm even more  
25 concerned about the means and who the investigator is

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1 than -- together with the budget and the scope. And  
2 that's -- we're committing to a project. We don't  
3 know the means; we don't know who the investigator is.  
4 It would then take a majority of the Commission to  
5 somehow change course. So I think I, under the  
6 circumstances of the motion have to vote no.

7 But I would probably, and if the motion  
8 fails it would take someone on the prevailing side to  
9 renew it. But I think one of us on this side of the  
10 table would be willing to make that motion if some of  
11 our -- well, all of our serious concerns are  
12 addressed.

13 CHAIRMAN CASTRO: Thank you. Madam Vice  
14 Chair, how do you vote?

15 COMMISSIONER YAKI: Point of order.

16 CHAIRMAN CASTRO: Did you -- you voted no.  
17 Is that?

18 COMMISSIONER GAZIANO: I voted no.

19 COMMISSIONER YAKI: Point of order on  
20 that. In a pure Robert's parliamentary rule that  
21 would be true but I don't think, at least that I can  
22 recall we don't operate on a pure Robert's  
23 parliamentary rule. And if this were to come back,  
24 trust me, I would be the one bringing it back in a  
25 different format. I don't think that we're governed

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1 by the one shot during session because we don't have  
2 legislative sessions.

3 COMMISSIONER GAZIANO: You yourself have  
4 asserted that rule has applying in this Commission. I  
5 was trying to be gentlemanly to you --

6 COMMISSIONER YAKI: I'm talking about this  
7 in terms --

8 COMMISSIONER GAZIANO: -- by suggesting --

9 COMMISSIONER YAKI: -- rules of procedure  
10 --

11 CHAIRMAN CASTRO: Gentlemen, I think we  
12 can resolve this. Let's just take the vote. So,  
13 we've had other situations where we brought back  
14 topics that had been voted down, some of them that  
15 we're going to talk about again today that are being  
16 brought back by folks who lost the vote. So I think  
17 we have precedent on that.

18 But Madam Vice Chair, how do you vote?

19 VICE CHAIR THERNSTROM: Well, I share a  
20 lot of Commissioner Heriot's concerns and I would want  
21 the second step to be not only defining scope and  
22 budget but also defining process. And so if it did so  
23 --

24 COMMISSIONER YAKI: I would accept that.

25 VICE CHAIR THERNSTROM: -- I can vote yes

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1 on this. But the process is, you know. Again, I  
2 share Commissioner Heriot's skepticism about whether  
3 we can actually collect this data.

4 But anyway, if it will include those three  
5 items in the second step I will vote yes.

6 COMMISSIONER YAKI: I will do so.

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

9 COMMISSIONER KLADNEY: I vote yes.

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

12 COMMISSIONER ACHTENBERG: Yes.

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

15 COMMISSIONER YAKI: Yes.

16 CHAIRMAN CASTRO: And I vote yes. So we  
17 have one, two, three, four, five yeses and three no's  
18 so the motion passes.

19 COMMISSIONER YAKI: Thank you.

20 CHAIRMAN CASTRO: Thank you. Okay, now we  
21 move onto a discussion of our strategic plan.

### 22 **III. Program Planning**

#### 23 **Discussion of Strategic Plan**

24 CHAIRMAN CASTRO: The Commissioners, you  
25 all should have received a grid which contains some

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1 proposed goals and objectives of performance  
2 measurements for the upcoming Strategic Plan. Those  
3 were generated by initial comments that were received  
4 both from myself and Tina Martin and John Ratcliffe  
5 whose proposals actually were reviewed and approved by  
6 OPM. Kim Tolhurst had also provided some comments and  
7 the committee went to work and took some of that and  
8 put it into a grid. Changed some of what were some  
9 initial recommendations.

10 So what you have in front of you and what  
11 our goal today is to maintain your comments on these  
12 proposed goals and objectives that would then,  
13 whatever we in terms of a majority of us have agreed  
14 on, those would then go on and be incorporated into a  
15 final product.

16 The product will not only address what  
17 you've got before you, it will also discuss external  
18 factors that may impede the completion of these goals  
19 and objectives which is one of the requirements under  
20 the Modernization Act that we are governed by in this  
21 case as well as any feedback that we receive from the  
22 Hill which is, again, something that we're required to  
23 do.

24 And to that point, yesterday we were able  
25 to on short notice schedule some meetings on Capitol

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1 Hill with one of our important committees, the  
2 Appropriations Committee. We met with the Senate  
3 Appropriations staff both on the majority and minority  
4 side and we also met with the House Appropriations  
5 staff both on the majority and the minority side. I  
6 want to thank Commissioner Kladney and Commissioner  
7 Heriot and their special assistants along with mine  
8 for accompanying me to the meeting at the Senate and  
9 also Commissioner Heriot and her staff accompanying me  
10 to the meeting at the House.

11 The input that we got from the Senate CJS  
12 Subcommittee was of course as you would imagine they  
13 are always concerned about making sure that the  
14 resources that are appropriated for us are used  
15 properly and for the reasons they've been  
16 appropriated. So they want us to continue to remain  
17 focused on those issues. That was their real primary  
18 comment to us which is a comment that, you know,  
19 doesn't just apply to us but to all agencies big and  
20 small. So they had no particular concern about us,  
21 but for them that is the priority goal as they see us.

22 They did indicate that issues of  
23 oversight, accountability and fund management are  
24 their priorities. And we invited them to provide us  
25 with any additional detail. Prior to the meeting we

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1 did provide each of the staff members with a copy of  
2 our existing Strategic Plan summary and goals, not the  
3 proposed goals, and so at the end of the meeting with  
4 the Senate CJS Committee they actually talked to us.

5 It was a very positive meeting and you  
6 know, talked about -- we talked a little bit about the  
7 idea of possible reorganization and et cetera. But  
8 they also encouraged us to consider for Fiscal `14  
9 asking for additional resources for the Agency.

10 As you may know, and those will be  
11 discussed later, but for the current Fiscal Year `13  
12 budget our request to the Hill was \$9.4 million and  
13 that is what Senate CJS is prepared to recommend.  
14 House CJS is prepared to recommend \$9.2. And of  
15 course from both of those, whichever one ends up  
16 coming out of -- whatever ends up coming out of  
17 conference we'll deduct \$250,000 for our inspector  
18 general. So hopefully the Senate side will win out in  
19 the conference.

20 But we then went over to the House and met  
21 with majority and minority staff on the CJS  
22 Subcommittee. And that conversation revolved  
23 primarily around our existing plan and whether we had  
24 met certain goals.

25 For example, our existing plan spoke to

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1 the issue of moving the appointment terms for SAC  
2 members from 2 to 4 years and they asked if that had  
3 been accomplished. And we indicated not.

4 They asked us of the various existing  
5 goals what we had been able to substantially move  
6 forward on. You know, we explained to them that when  
7 it comes to our financial operations and controls, you  
8 know, we've gotten six clean audits and I think that's  
9 shown that we're successful in moving in that area.

10 We still do need to improve our  
11 information technology and we talked about in the new  
12 facility the ability to have resources that will allow  
13 us to stream our meetings and possibly even record  
14 them. So that would hopefully move forward there.

15 We talked particularly about not having  
16 really done much to partner with other federal  
17 agencies and that there are some questions as to the  
18 scope of our ability to do that. And we talked about  
19 the prior Commission administration's national  
20 conference and how that was a goal that was part of  
21 the national shaping of the conversation. So a lot of  
22 the conversation focused about what our existing goals  
23 were and we did talk a bit about the idea of  
24 reorganization and reauthorization at some point. But  
25 we invited them to provide us with any written

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1 comments that they might have that would be  
2 recommendations for the current Strategic Plan  
3 process.

4 I am hoping to come back on June 20th to  
5 try to schedule more meetings with other committee  
6 members. I've asked my assistant to begin to reach  
7 out to other committee members so I want to let  
8 Commissioners know that those of you who are  
9 available, who might want to be available, that's sort  
10 of a date we're working with. We'll see what  
11 committee members are available to meet with us then.

12 But I would invite either Commissioner  
13 Kladney or Commissioner Heriot to add anything to my  
14 summary of our meetings with the Hill staff.

15 COMMISSIONER HERIOT: I think you've  
16 summed it up well.

17 COMMISSIONER KLADNEY: I think you did a  
18 great job, Mr. Chairman.

19 CHAIRMAN CASTRO: Thank you. Thank you,  
20 Commissioner Kladney. So, that is, as I said, the  
21 requirement that we obtain some input from our  
22 stakeholders. So we're in the process of doing that.

23 So what I'd like to do now is if you all  
24 have the grid, I hope you've got that in front of you  
25 that was circulated with the proposed strategic goals

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1 and objectives and strategies and performance measures  
2 that were prepared and circulated by the subcommittee.

3 What I would like to do is go through  
4 these strategic goals and determine which of them have  
5 majority support among members of the Commission so  
6 that they could then go on to the next stage of being  
7 incorporated into a draft plan that would be  
8 circulated to us for the July meeting.

9 I note, however, and I'm sorry I missed  
10 this when I first took a look at this. I didn't  
11 realize till the morning, but there was one strategic  
12 goal about restructuring the Commission that did not  
13 make the grid. And I don't know if that was an  
14 oversight or if the subcommittee that was working on  
15 this felt that that was a strategic goal that was not  
16 worthy of being added. So, Commissioner Kladney?

17 COMMISSIONER KLADNEY: How are we going to  
18 proceed? Are we just going to go item by item and  
19 then vote on each item?

20 CHAIRMAN CASTRO: Yes, I think that would  
21 be the easiest. And they're in, I think, no  
22 particular order. So we'll vote A, B, C, D. And then  
23 I would add, I would want to add the restructuring  
24 goal because that was something that we -- I know many  
25 of us had been talking about the importance of. So --

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1 COMMISSIONER GAZIANO: Could I ask a few  
2 questions first?

3 CHAIRMAN CASTRO: Sure.

4 COMMISSIONER GAZIANO: And then --

5 CHAIRMAN CASTRO: If I can answer them I  
6 will. If not I may defer to some subcommittee  
7 members.

8 COMMISSIONER GAZIANO: I want the record  
9 to reflect that being Shanghai peer pressured into the  
10 subcommittee that I have at least some -- just want to  
11 provide some information as to how I understand.

12 For example, I understand the  
13 subcommittee, our representatives were deadlocked on  
14 whether to recommend C. C is the human rights  
15 expansion. It did not receive a majority support and  
16 it's still there, which is fine.

17 You, Mr. Chairman I want to commend you  
18 for doing this work that we're required to do, but I  
19 did want to at least state that some of the items that  
20 have appeared here do not necessarily have a majority  
21 blessing from the subcommittee.

22 The -- I also, when we get to it, I think  
23 there are one or two items that we may not be allowed  
24 to even do, for example, Commission SACs to work on  
25 multi-state reports.

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1           But my question at this point is when we  
2 do we have to have this done? What level of detail do  
3 you necessarily need today? There's a few minor  
4 things that I don't know that we need to discuss or we  
5 might not be able to answer, but is it necessary that  
6 we go through this today? When is this due?

7           CHAIRMAN CASTRO: Yes, we do need to at  
8 least agree on the strategic goals today so that then  
9 staff, when I say staff I know Marlene, my special  
10 assistant, and probably some of the folks. Who else  
11 is going to be working on this with you? Probably  
12 just you, right? They'll work on drafting the actual  
13 language that goes behind that.

14           Now, some of these strategic goals are  
15 similar if not identical to the existing strategic  
16 goals that we've got, so some of that will be  
17 essentially a revision of what we have in place. For  
18 example, if we were to be fortunate enough to get the  
19 letter C that would require something being drafted  
20 from scratch.

21           But once that's done then in advance of  
22 the July meeting we'll get a draft which we would vote  
23 on as the Strategic Plan so that our budget staff by  
24 August is my understanding can get this to OMB along  
25 with our budget submission for Fiscal `14.

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1 COMMISSIONER GAZIANO: Okay.

2 CHAIRMAN CASTRO: So if that works then  
3 we'll start. And again, you know, this today will be  
4 an effort to find those strategic goals that a  
5 majority of us agree on. And if a majority doesn't  
6 then that one will not be part of the final plan.

7 COMMISSIONER KLADNEY: Mr. Chairman?

8 CHAIRMAN CASTRO: Yes, Mr. Commissioner.

9 COMMISSIONER KLADNEY: So we're going to  
10 vote on the strategic goals. Are we also going to  
11 vote on the objectives and the strategies to get there  
12 and the performance measures?

13 CHAIRMAN CASTRO: Well yes, it's all a  
14 package. So you know, as you look at this if there's  
15 an issue with any of these measures, you know, raise  
16 them now so that we know if it's an issue.

17 COMMISSIONER KLADNEY: I mean this could,  
18 all I'm saying is that it could take awhile. I would  
19 try and ask the Commissioners to probably keep  
20 comments pointed.

21 CHAIRMAN CASTRO: As my law school  
22 application said, "Brevity is the soul of wit." So  
23 let's attempt to be witty today.

24 VICE CHAIR THERNSTROM: Some of us are not  
25 witty at all.

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1                   CHAIRMAN CASTRO: Well, I said attempt.  
2 But let's -- I know we did take a lot of time earlier  
3 but these are all important, substantive subjects so  
4 let's dig in.

5                   We'll start with letter A, a strategic  
6 goal. The Commission will improve its profile as a  
7 source for analysis and recommendations on civil  
8 rights issues. Commissioner Heriot?

9                   COMMISSIONER HERIOT: I guess I have two  
10 points on A, one of which I think somebody else will  
11 mention but I just wanted to emphasize it.

12                  CHAIRMAN CASTRO: Sure.

13                  COMMISSIONER HERIOT: This notion of a  
14 multi-state report. Since we don't have the power to  
15 actually tell our SACs what to write about --

16                  CHAIRMAN CASTRO: Right.

17                  COMMISSIONER HERIOT: -- setting this up  
18 as a goal of ours to have such a report, we really  
19 don't have any control over that and I don't really  
20 think we're going to get a report that spontaneously  
21 generates. So I would shy away from saying that we  
22 are going to employ the strategy of commissioning a  
23 multi-state report if in fact we have no power to do  
24 so.

25                  CHAIRMAN CASTRO: I think this comes from

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1 the existing Strategic Plan.

2 COMMISSIONER HERIOT: Yes, so it's --

3 CHAIRMAN CASTRO: So a lot of this is  
4 already there and we were supposed to do it.

5 COMMISSIONER HERIOT: We can get rid of  
6 it.

7 CHAIRMAN CASTRO: No, but I just wanted to  
8 let the record reflect that some of these were already  
9 there, that they're not necessarily things that were  
10 suggested.

11 COMMISSIONER HERIOT: Oh, yes. Yes. We  
12 can blame it on like something that happened in the  
13 18th century if we want to.

14 CHAIRMAN CASTRO: Okay. All right.

15 (Laughter)

16 COMMISSIONER HERIOT: Another point that I  
17 would have is that we have, for example, performance  
18 measures, issuing press releases in English and  
19 Spanish which I think is a fine idea. But I guess I  
20 would say that strategic goal D, increase  
21 accessibility to the Commission's work for limited  
22 English-proficient persons, that actually is a subset  
23 of A, and we probably could integrate that all into,  
24 you know, that one strategic goal of getting the word  
25 out. It's just a different form of getting the word

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1 out.

2 CHAIRMAN CASTRO: Okay. Commissioner  
3 Kladney, then the Vice Chair.

4 COMMISSIONER KLADNEY: Just real quickly  
5 on Commissioner Heriot's remark about the multi-state  
6 SAC reports. I mean, they only issue about 24 reports  
7 in three fiscal years.

8 So I think that what we should do first is  
9 start focusing more on having them become more active  
10 and doing more repots. And that is much more  
11 important than trying to make them interact with each  
12 other when they can't act among themselves.

13 CHAIRMAN CASTRO: And that would be goal F  
14 that attempts to do that, so.

15 COMMISSIONER KLADNEY: So I would ask that  
16 we strike the multi-state report part.

17 COMMISSIONER GAZIANO: Yes, I think  
18 there's consensus there.

19 CHAIRMAN CASTRO: Yes, I think that's fine  
20 with me.

21 COMMISSIONER GAZIANO: Can I offer?

22 CHAIRMAN CASTRO: Yes, Commissioner  
23 Gaziano. Wait, actually, Vice Chair had.

24 COMMISSIONER GAZIANO: Oh, I'm sorry.

25 VICE CHAIR THERNSTROM: Go ahead.

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1                   COMMISSIONER GAZIANO: I'm sorry. With  
2 regard to the wording of the strategic goal and the  
3 objective, I think our goal should not just be to  
4 increase the profile alone for what we do, but also to  
5 increase our effectiveness. So I would propose to  
6 amend that. The Commission will improve its profile  
7 and ability to provide reliable analysis and  
8 recommendations on civil rights issues or the reverse  
9 order.

10                   And then in the objective, the primary  
11 objective, strengthen the Commission's instead of  
12 position to be -- that's a little vague. Strengthen  
13 the Commission's effectiveness as an investigative  
14 agency. To me that's a more important goal if we  
15 combine them.

16                   CHAIRMAN CASTRO: Okay. Madam Vice Chair?

17                   VICE CHAIR THERNSTROM: Well, as it's  
18 stated the Commission will improve its profile as a  
19 source for analysis and recommendations. It's too  
20 vague to be controversial. I mean, it doesn't say  
21 anything.

22                   Look, in the years in which Mary Frances  
23 Berry ran this Commission it had a high profile  
24 because we had very controversial topics and a lot of  
25 heat around the room. I think its profile, raising

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1 its profile depends in great part on what kinds of  
2 topics we choose for briefings and/or investigations.

3 I mean, if we were to choose for instance  
4 Michael Yaki's suggestion of today I think that would  
5 probably get us a lot of attention. But a lot of the  
6 topics that we chose have no potential for getting a  
7 lot of media attention. And so it seems to me that A,  
8 as worded, says nothing.

9 COMMISSIONER GAZIANO: Did you -- my  
10 amendment sort of is along the same grounds and I  
11 might have preferred striking "profile" altogether but  
12 I tried to add to it I think that we would also  
13 increase our, either -- the concept is -- my wording  
14 was ability to provide reliable analysis which goes to  
15 the quality.

16 I would also be open to increase our  
17 value, increase our effectiveness, increase our -- I  
18 think we have similar concerns. Does that partially  
19 answer your --?

20 VICE CHAIR THERNSTROM: When we have  
21 discussions about briefing topics I would like us --  
22 part of the conversation should be of how much  
23 interest is this topic to the public and what kind of  
24 attention to the Commission can we bring?

25 And as I say, a lot of the topics we

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1 discuss have no chance of getting any real media  
2 attention. And in recent years we've gotten very  
3 little.

4 COMMISSIONER KLADNEY: That could be one  
5 of the metrics we look at when we look at profiles --  
6 I mean, at concept papers.

7 VICE CHAIR THERNSTROM: Yes, and that's  
8 what I'm suggesting.

9 COMMISSIONER KLADNEY: I don't know if we  
10 have to write that down.

11 VICE CHAIR THERNSTROM: No, we don't have  
12 to write that down but I just think as stated this is  
13 too vague to be meaningless -- meaningful. I'm sorry.

14 (Laughter)

15 CHAIRMAN CASTRO: Well --

16 COMMISSIONER KLADNEY: So, Mr. Chair?

17 CHAIRMAN CASTRO: What I have here was the  
18 Commission will improve its profile and ability to  
19 provide reliable analysis and recommendations on civil  
20 rights issues which you say is still vague.

21 COMMISSIONER KLADNEY: How about relevance  
22 to public --

23 CHAIRMAN CASTRO: Well, here's what I had  
24 at the -- originally that was morphed into this. And  
25 I don't know, maybe the subcommittee felt this was too

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1 vague. For the Commission to be at the forefront of  
2 the national conversations on current and future civil  
3 rights issues and identify civil rights priorities for  
4 policy-makers.

5 VICE CHAIR THERNSTROM: That's much more  
6 specific than this thing which says nothing.

7 CHAIRMAN CASTRO: Again, I don't know why  
8 the -- there might have been a reason for the  
9 subcommittee to make that change. But if folks are  
10 comfortable with substituting that language in if it's  
11 felt more specific.

12 COMMISSIONER GAZIANO: I don't -- it  
13 wouldn't bother me as much. It doesn't get quite at  
14 the same thing. Would you read it again?

15 CHAIRMAN CASTRO: To be at the forefront  
16 of national conversations on current and future civil  
17 rights issues and identify civil rights priorities for  
18 policy-makers.

19 So it has elements of our profile being,  
20 you know, higher although it doesn't say that exactly.  
21 It does talk about us prioritizing issues for policy-  
22 makers. And yes, Commissioner?

23 COMMISSIONER KLADNEY: The Commission will  
24 choose topics relevant to the issues of public  
25 interest of the day and of interest to policy-makers.

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1 Something along those lines.

2 VICE CHAIR THERNSTROM: Can I just say  
3 something about our past history? I mean, we used to  
4 have a small group of media people who were reliably  
5 interested in what the Commission did and had  
6 conversations with us all the time.

7 I mean, I had constant contact with a New  
8 York Times reporter whose name has now slipped, I've  
9 now forgotten. But I mean, that's just gone, that  
10 kind of network of media people who are interested in  
11 the Commission and what it's doing and happy to report  
12 on it.

13 CHAIRMAN CASTRO: Commissioner Heriot, did  
14 you have your hand up?

15 COMMISSIONER HERIOT: Yes. I'm starting  
16 to get the willies about this, that we're spending too  
17 much time talking about our media profile and not  
18 enough time talking about the actual substance of what  
19 we do.

20 We are intended to be an Agency that is a  
21 watchdog. We are supposed to be looking at the  
22 federal government and federal agencies, and making  
23 sure that they are executing the law as they should.  
24 And I would rather be that than seem like that.

25 And so before we talk about our media

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1 profile I think we should have a strategic goal that  
2 says that we will function as an effective civil  
3 rights watchdog and that we will function as an  
4 effective organization that studies and publishes on  
5 important issues of civil rights. And whether they  
6 happen to be important to, you know, the network TV  
7 is, you know, that's nice but it's sometimes beside  
8 the point.

9 I agree with Commissioner Kladney that we  
10 have to think about these issues when we select a  
11 topic but sometimes we're going to be selecting topics  
12 that are going to be a complete snooze for the media,  
13 and yet they are important and we have to go ahead and  
14 study them.

15 And I don't want to be part of a document  
16 that puts media profile first. It makes me quiver.

17 COMMISSIONER ACHTENBERG: Mr. Chairman --

18 CHAIRMAN CASTRO: Yes.

19 COMMISSIONER ACHTENBERG: -- I agree with  
20 Commissioner Heriot.

21 CHAIRMAN CASTRO: Yes.

22 VICE CHAIR THERNSTROM: I really do too.  
23 As she puts it that way I agree with her too.

24 CHAIRMAN CASTRO: I like that too. It  
25 sounds good. It gets to the point which we're trying

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1 to make. So we have a consensus there I think.

2 So what we'll do then, as I read it, I  
3 wrote it down quickly. We will function -- the  
4 Commission will function as an effective civil rights  
5 watchdog and conduct studies and issue publications on  
6 important issues of civil rights.

7 Does that capture what you said?

8 COMMISSIONER HERIOT: Say it again?

9 CHAIRMAN CASTRO: I'll try. The  
10 Commission will function as an effective civil rights  
11 watchdog and conduct studies and issue publications on  
12 important issues of civil rights.

13 COMMISSIONER HERIOT: Right.

14 CHAIRMAN CASTRO: Okay.

15 COMMISSIONER KLADNEY: I would also  
16 probably want to change the strategy where it says  
17 increase the Commission's media profile. Probably  
18 want to say something along the lines of having the  
19 Commission's work brought to the public's attention,  
20 something like that.

21 CHAIRMAN CASTRO: Okay.

22 COMMISSIONER KLADNEY: Or disseminated  
23 through the public's attention.

24 COMMISSIONER GAZIANO: And is it okay to  
25 keep the first strategic objective as we've -- as I've

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1 suggested, amendment with a goal? I think it does --

2 CHAIRMAN CASTRO: Yes, exactly.

3 COMMISSIONER GAZIANO: -- strengthen the  
4 Commission's effectiveness as an investigative --

5 CHAIRMAN CASTRO: Right.

6 COMMISSIONER GAZIANO: Okay.

7 CHAIRMAN CASTRO: And then removal of the  
8 multi-state report references.

9 COMMISSIONER KLADNEY: Yes.

10 CHAIRMAN CASTRO: Okay. So with that what  
11 I'll do is then we'll just, we'll vote on this  
12 particular goal so that we can move onto the next one.  
13 Commissioner Kirsanow, how do you vote?

14 COMMISSIONER GAZIANO: One -- on another  
15 objective. Are we committing ourselves by -- by the  
16 way, I think it's a good idea to try to revise and  
17 reformat the website to improve user-friendliness, but  
18 before we commit to Congress to it do we have the  
19 resources to do that? The know-how?

20 COMMISSIONER YAKI: Dominique's going to  
21 do that on her last day.

22 CHAIRMAN CASTRO: I believe we requested  
23 in Fiscal `13 resources for that. Is that correct,  
24 Mr. Ratcliffe? I don't remember. We did request for  
25 upgrades.

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1 VICE CHAIR THERNSTROM: Is that built into  
2 the new --

3 MR. RATCLIFFE: We requested some money  
4 for IT type of items. That could be one of the items  
5 you could do.

6 VICE CHAIR THERNSTROM: Is that built into  
7 the new headquarters?

8 CHAIRMAN CASTRO: There is some technology  
9 built in already. There's technology built into the  
10 new headquarters for streaming and for recording our  
11 meetings.

12 COMMISSIONER KLADNEY: Does that mean  
13 we'll be able to do it when we -- within the time that  
14 we move in? Or is it within 5 years?

15 CHAIRMAN CASTRO: No, it'll be soon. I  
16 think the equipment will be in there by I'm told  
17 November and it will be functional hopefully by the  
18 beginning of Fiscal Year '14. Is that right? I'm  
19 sorry, Fiscal Year 2013. So, okay.

20 So, we have a motion on this strategic  
21 goal as we have discussed and revised?

22 COMMISSIONER GAZIANO: Voice vote I think.

23 CHAIRMAN CASTRO: Okay, a voice vote. But  
24 we have to have a motion on it before we vote, right?  
25 Or just vote?

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1 COMMISSIONER HERIOT: Do we have to vote  
2 on it?

3 VICE CHAIR THERNSTROM: I think --  
4 Commissioner Yaki has his hand up.

5 CHAIRMAN CASTRO: I'm sorry, Commissioner  
6 Yaki?

7 COMMISSIONER YAKI: So, are we -- I'm a  
8 little confused. Are we actually trying to start  
9 voting on these now and then they're going to be fixed  
10 for the final document?

11 CHAIRMAN CASTRO: Yes. Yes.

12 COMMISSIONER YAKI: Oh, okay.

13 CHAIRMAN CASTRO: We just want to make  
14 sure that each strategic goal has the majority support  
15 of the Commissioners so that it can make it to the  
16 next level. If it doesn't then it won't.

17 COMMISSIONER YAKI: And what's the next  
18 level?

19 COMMISSIONER HERIOT: These are just  
20 goals, right? We're not necessarily approving all the  
21 objective strategies, performance measures --

22 COMMISSIONER GAZIANO: We're amending --  
23 there's another document --

24 CHAIRMAN CASTRO: Yes, they'll be built  
25 into the fuller document that will then come before

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1 us.

2 COMMISSIONER HERIOT: I sometimes have  
3 quibbles with little stuff here that isn't really  
4 worth discussing during a Commission meeting. But I  
5 don't have problems with strategic goals themselves.

6 CHAIRMAN CASTRO: Okay. Well then why  
7 don't we vote on the goal --

8 COMMISSIONER HERIOT: So if I vote yes  
9 that doesn't mean --

10 CHAIRMAN CASTRO: We'll vote on the goal,  
11 you know, certainly we'll incorporate the revisions on  
12 the other aspects that we've said. But once you get  
13 the final document then you can make additional --

14 COMMISSIONER YAKI: So we're only looking  
15 at A, B, C, D, E column, not objective strategies,  
16 performance measures.

17 COMMISSIONER GAZIANO: I think that we  
18 should raise those that we think are worthy of  
19 discussion. And Marlene is nodding her head. But if  
20 there's some minor ones we can raise them later.

21 CHAIRMAN CASTRO: Right.

22 COMMISSIONER HERIOT: Yes.

23 CHAIRMAN CASTRO: Actually, the Chair  
24 recognizes Marlene Sallo. Marlene, microphone. Let me  
25 lend you mine.

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1 MS. SALLO: Whatever is indicated today  
2 I'll reincorporate into the grid and I'll send it out  
3 within a week so everyone can review it and make  
4 further comments.

5 CHAIRMAN CASTRO: Madam Vice Chair, you  
6 had something?

7 VICE CHAIR THERNSTROM: Well, I just want  
8 to make sure that -- because I think Commissioner  
9 Gaziano had some important things in the way of  
10 revisions to say that those got incorporated.

11 CHAIRMAN CASTRO: Yes, they will.  
12 Commissioner Kladney?

13 COMMISSIONER KLADNEY: I would ask that we  
14 take -- there's website stuff under strategy, there's  
15 website stuff under performance measures in the first  
16 goal. There's website stuff in the performance  
17 measures in the second goal. I think maybe we should  
18 just -- I would ask that we have a strategic goal  
19 concerning the website, specifically I think the  
20 website is going to be more and more important for our  
21 outreach and for the citizens to be able to actually  
22 use it effectively.

23 And I think that what you're going to see  
24 in the future is perhaps everything migrating to the  
25 website rather than the libraries and things like

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1 that. It's all going to be on there. And I think  
2 it's going to become a very important thing. And I  
3 think if you're going to have a 5-year document I  
4 think it ought to be a subject.

5 COMMISSIONER GAZIANO: Maybe to  
6 incorporate Commissioner Heriot's earlier suggestion  
7 we have a communications goal. And part of the  
8 communications goal is the outreach to limited  
9 English-proficient, and part of that is improving the  
10 website and IT accessibility and streaming and all  
11 that stuff. Does that make some sense?

12 COMMISSIONER KLADNEY: Marlene? Ms.  
13 Sallo?

14 MS. SALLO: Yes. Yes.

15 CHAIRMAN CASTRO: So on goal A, let's do  
16 this by voice vote. All in favor signify by saying  
17 aye.

18 (Chorus of ayes)

19 CHAIRMAN CASTRO: All opposed?

20 (No response)

21 CHAIRMAN CASTRO: Any abstentions?

22 (No response)

23 CHAIRMAN CASTRO: Okay.

24 COMMISSIONER KLADNEY: With the caveat  
25 that we just made regarding communications.

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1                   CHAIRMAN CASTRO: Yes, yes. We move onto  
2           B.        The Commission will engage in strategic  
3           partnerships with other federal agencies to apprise  
4           individuals of civil rights laws and policies, and to  
5           raise public awareness of civil rights.

6                   And this was essentially from the existing  
7           plan that was in place and not actually really  
8           performed on so that's why it's in here. But I know  
9           that since then there have been raised some issues  
10          about our ability given our oversight function to form  
11          strategic partnerships with certain agencies.

12                   With that in mind I think some of the  
13          objectives here are focusing on those areas where  
14          perhaps we might not have that problem. That is, our  
15          national clearinghouse function and the relationship  
16          that we have with agencies now in terms of the  
17          complaint referral process. There may be other  
18          possible areas that would fit that, but I wanted to  
19          open this up for discussion with the acknowledgment of  
20          the past existence of this and the acknowledgment of  
21          certain concerns about how it would function, if at  
22          all.

23                   Commissioners, any comments? Commissioner  
24           Heriot?

25                   COMMISSIONER HERIOT: I just can't stand

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1       bureaucratic talk and words like "strategic  
2       partnership" sounds like fingernails on a blackboard  
3       to me.

4                       (Laughter)

5                       COMMISSIONER HERIOT:     Particularly when,  
6       you know, our role is in some ways adversarial. We  
7       are a watchdog agency and I think that a term like  
8       that should appear whenever we're talking about our  
9       relationship to other agencies. So I would like to  
10      lose that word "strategic partnership." Even if we  
11      didn't have the problem that we have it's just, it's -  
12      -

13                      COMMISSIONER GAZIANO:     What would you  
14      propose?

15                      COMMISSIONER HERIOT:     Oh my --

16                      COMMISSIONER KLADNEY:     How about just  
17      engage.

18                      COMMISSIONER HERIOT:     The Commission will  
19      cooperate where appropriate with federal agencies.  
20      And to put that word "where appropriate" so people can  
21      look at it and know that we're perfectly aware that we  
22      have a watchdog function here and that we don't want  
23      to compromise that function in any way.

24                      VICE CHAIR THERNSTROM:     I would second  
25      that.

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1 CHAIRMAN CASTRO: That sounds like a good  
2 suggestion.

3 COMMISSIONER KLADNEY: I agree. Good  
4 suggestion, very good suggestion. I'm sure  
5 Commissioner Yaki agrees.

6 CHAIRMAN CASTRO: Yes.

7 COMMISSIONER KLADNEY: Just agreeing for  
8 you.

9 CHAIRMAN CASTRO: And again, if there's  
10 anything in the other parts of the grid on B that you  
11 might want to comment on or change at this point,  
12 knowing it'll come back again for another review.

13 If none, then if folks are prepared we'll  
14 do a voice vote on B. The Commission will cooperate  
15 where appropriate with other federal agencies to  
16 apprise individuals of civil rights laws and policies,  
17 and to raise public awareness of civil rights.

18 All those in favor say aye.

19 (Chorus of ayes)

20 CHAIRMAN CASTRO: All those opposed?

21 (No response)

22 CHAIRMAN CASTRO: Any abstentions?

23 COMMISSIONER KIRSANOW: Abstain.

24 CHAIRMAN CASTRO: Okay, one abstention.  
25 Commissioner Kirsanow abstains. All right, we move

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1 onto C which is to -- and this is slightly different  
2 than what I had I think originally suggested.

3 My original suggestion was seeking to  
4 expand the Commission's mandate to also include human  
5 rights issues and become the nation's national human  
6 rights institution. The subcommittee put forward and  
7 I know not by majority support the strategic goal as  
8 drafted. Expand the Commission's mandate to include  
9 human rights issues and investigation of human rights  
10 violations by government entities.

11 The objectives and strategies and  
12 performance measures are there as we began to discuss  
13 at the last meeting. While I know that some  
14 Commissioners feel that under our existing mandate we  
15 do have the ability to look at human rights issues,  
16 you know, I like to believe that we do but there is  
17 nothing formally in our enabling statute that  
18 explicitly says that.

19 So, when there's nothing explicit in our  
20 statute then that means that a majority of whatever  
21 Commission may be here in the future may say no, it  
22 doesn't, yes, it does. So part of what my suggestion  
23 here is is to actually clearly and formally indicate  
24 that there are some human rights issues that really  
25 are different than civil rights, although there's

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1 clearly a lot of overlap, that we should be engaged  
2 in.

3 Now, there is the companion issue that I  
4 mentioned before that. There has been discussion that  
5 at some point perhaps the United States would create a  
6 Commission on Human Rights that would participate with  
7 other similar agencies at the United Nations. And if  
8 that in fact is going to happen, and it may not  
9 happen, that rather than create a new agency from  
10 whole cloth, rather than to spend the resources to  
11 create another bureaucracy in the federal government,  
12 that should we already be engaged in this topic, that  
13 we should have some role in such an activity.

14 Because what we're doing as a monitoring  
15 and investigatory function is exactly what should be  
16 done by any entity that would be created to determine  
17 whether or not the United States governmental entities  
18 are in comportment with whatever human rights treaties  
19 we may have as they apply here on the domestic front,  
20 not on the international level.

21 But separate from that issue I do believe  
22 that expanding our mandate to include human rights  
23 issues very clearly, making this the United States  
24 Commission on Civil and Human Rights would not only  
25 increase our profile, I think it would increase our

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1 relevance. I know we cannot do it with our current  
2 budget and staff, but I think being allowed to have  
3 Congress expand our mandate to that point would also  
4 hopefully allow us to be able to obtain additional  
5 resources, both financial and human capital, to  
6 address those issues. And I do think they're  
7 complementary to what we're doing already.

8 Commissioner Kladney and Commissioner  
9 Heriot.

10 COMMISSIONER KLADNEY: Mr. Chairman, I  
11 would disagree with you regarding the statutory  
12 interpretation. I think absent it being in the  
13 statute we don't have jurisdiction to address these  
14 things.

15 COMMISSIONER ACHTENBERG: Can I ask  
16 Commissioner Kladney to speak up? I'm having  
17 difficulty hearing.

18 COMMISSIONER GAZIANO: Pull your  
19 microphone.

20 COMMISSIONER KLADNEY: Okay.

21 CHAIRMAN CASTRO: Well, you and I are not  
22 in disagreement on that. I'm saying I agree --

23 COMMISSIONER KLADNEY: Right, so I don't  
24 think --

25 CHAIRMAN CASTRO: -- statute. But other

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1 Commissioners have said that we don't.

2 COMMISSIONER KLADNEY: I don't think we  
3 do.

4 CHAIRMAN CASTRO: I agree.

5 COMMISSIONER KLADNEY: I mean, it's not in  
6 the statute and I don't think we have jurisdiction for  
7 it in a strategic goal. We can't do it as a goal. I  
8 mean, maybe if you want to make the goal lobby  
9 Congress which we can't do anyway and become a human  
10 rights organization that's one thing. But we don't  
11 have jurisdiction to move forward with this and I  
12 think that we should move onto the next subject.

13 CHAIRMAN CASTRO: And that's why one of  
14 the performance measures and one of the strategies is  
15 to actually reach out to the Hill and request that  
16 they do this, particularly since we haven't been  
17 reauthorized since 1994. You know, we're overdue for  
18 a reauthorization and I know you and I have talked  
19 about that issue. And I think in any such  
20 reauthorization that's where this issue would come up.

21 So for example, we have in our existing  
22 plan issues related to extension of the terms of the  
23 SACs from 2 to 4 years. There's a question about our  
24 ability to do that. That has to be done by Congress,  
25 yet we put it in the goal and we've, you know, it

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1 needs to be achieved. So I think just because  
2 Congress needs to do this doesn't mean we shouldn't  
3 aspire to that.

4 Now at the end of the day if we don't  
5 fulfill it it's because we have not been able to  
6 convince Congress to do this. But to say that because  
7 we have to ask Congress we shouldn't do it I don't  
8 think is necessarily the reason to eliminate this.  
9 But I respect your position on that. I just want to  
10 acknowledge that I know we can't do it ourselves.

11 Commissioner Heriot?

12 COMMISSIONER HERIOT: Yes, I guess, you  
13 know, we fundamentally disagree on the notion of  
14 whether or not it's appropriate for the Commission to  
15 ask to expand its own powers.

16 It's not that our argument is that we have  
17 been charged with some duty that we cannot properly  
18 execute unless Congress gives us more power. We're  
19 just lobbying for more power. And you know, this is  
20 utterly Congress's call and not ours. So I don't  
21 believe we should ever have in writing that our goal  
22 is to simply expand our power. So I would oppose  
23 that.

24 On the jurisdiction issue, I disagree with  
25 Commissioner Kladney but I don't think I -- I think I

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1 actually I have a much narrower point here. If  
2 there's an international law that bears on race  
3 discrimination or gender discrimination then it's  
4 within our jurisdiction. If it doesn't bear on race  
5 discrimination, gender discrimination, disability,  
6 religion, then it's not within.

7 COMMISSIONER KLADNEY: I mean, it has to  
8 fall within our jurisdictional mandate.

9 COMMISSIONER HERIOT: Right, it has to  
10 fall --

11 COMMISSIONER KLADNEY: In other words,  
12 we're not going to the international treaty and seeing  
13 if it violates a human right. We're looking at it in  
14 terms of what's in our jurisdiction.

15 COMMISSIONER HERIOT: Yes, but if the  
16 international treaty is on race discrimination then we  
17 can take that and we can say well, is this treaty,  
18 given that it's about race discrimination, is it being  
19 properly executed by the law here in the United  
20 States. Since this is a treaty that we're a part of  
21 and it has the following requirements that bear on  
22 race discrimination.

23 COMMISSIONER KLADNEY: But then we could  
24 have a goal or something that -- the thing of human --  
25 expanding -- doing investigations of human rights

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1 violations as it relates to our jurisdiction. But I  
2 don't even know if we need that, it's redundant.

3 COMMISSIONER HERIOT: I don't think we  
4 need to say that. We said it in the first part --

5 COMMISSIONER KLADNEY: Right.

6 COMMISSIONER HERIOT: -- that we want to  
7 do our job right, and we do.

8 COMMISSIONER KLADNEY: Right.

9 COMMISSIONER HERIOT: So I would oppose  
10 this strategic goal generally. And if Congress were  
11 to propose to devolve that power upon us I would  
12 advise them not to because I don't think we're  
13 actually set up in a way that would make us good at  
14 being a general human rights organization. I would  
15 think that I would much prefer Commissioners who were  
16 appointed, all appointed by the President and approved  
17 by the Senate before I would think that this  
18 organization is set up well for this. So I'm against  
19 it.

20 CHAIRMAN CASTRO: Commissioner Gaziano.

21 COMMISSIONER GAZIANO: Just briefly. As I  
22 stated last week I agree with Commissioner Heriot that  
23 I don't think that we should set as a goal expanding  
24 our -- requesting Congress to expand our power. But I  
25 also think that we can do some things that we don't

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1 set forth as goals.

2 But I would agree again with Commissioner  
3 Heriot that even if we don't make it a goal we  
4 shouldn't be asking Congress to expand our power with  
5 regard to -- the distinction I guess is when we get to  
6 reorganizing the Agency I think that's something I  
7 might be open to do, but I'm not for setting it as a  
8 goal without knowing what it is.

9 But on human rights, the reason I would  
10 even oppose even if we don't put it as a goal seeking  
11 it is, well, I don't need to state that. I think I  
12 did last month.

13 CHAIRMAN CASTRO: Let me say or suggest  
14 this then because, you know, with our human  
15 trafficking briefing we -- and human trafficking  
16 arguably is something that is a human rights issue.  
17 But you know we were able to look at it through the  
18 gender discrimination lens. I believe that almost at  
19 his first meeting former Chairman Reynolds stated on  
20 the record that he did believe that we had the ability  
21 to look at human rights issues. I don't have the  
22 actual language but I did see the transcript to that  
23 effect.

24 COMMISSIONER HERIOT: I think he only  
25 meant with regard to our list.

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1 CHAIRMAN CASTRO: No, I understand. So  
2 what I'm saying is with that in mind, and it's clear  
3 to me we don't have a majority support for C. What I  
4 would suggest if you're all amenable is to take that  
5 idea of us as a Commission looking into those human  
6 rights issues that do implicate our existing mandate  
7 as one of the objectives for performance measures  
8 under A which is to function as an effective civil  
9 rights watchdog. Would that be amenable to folks?

10 COMMISSIONER HERIOT: I object to the term  
11 "human rights" unless we can get a definition of it.

12 COMMISSIONER KIRSANOW: Yes, I don't know  
13 what that means.

14 VICE CHAIR THERNSTROM: Yes, I was about  
15 to say that. I don't know what "human rights" means.

16 CHAIRMAN CASTRO: What do you mean when  
17 you say that? You're saying that we have that?

18 COMMISSIONER HERIOT: I think it's one of  
19 those words that people use and they think it sounds  
20 warm and cuddly, and no two people have the same  
21 thoughts in their minds about what that means. So I  
22 would much prefer to have a term that we can all agree  
23 on, what it means. And that one is --

24 CHAIRMAN CASTRO: Well, let me suggest  
25 this then. Why we don't come up with a definition and

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1 if it's acceptable to folks for the next draft we move  
2 it. If not then --

3 COMMISSIONER HERIOT: Yes, I think what  
4 you're going to find is the term "human rights" means  
5 rights, that it's not really anything special other  
6 than a certain subset of the population think it  
7 sounds cool.

8 CHAIRMAN CASTRO: Well, you know, we can  
9 define what we feel it is.

10 COMMISSIONER HERIOT: We can try.

11 CHAIRMAN CASTRO: Yes. So if that's --

12 COMMISSIONER KLADNEY: No one's stopping  
13 you, Mr. Chairman.

14 CHAIRMAN CASTRO: I was trying to --

15 (Laughter)

16 CHAIRMAN CASTRO: I'm just trying to get  
17 at least a little bit of consensus here so that we all  
18 know that when we bring a next draft we'll try to have  
19 a definition of human rights and a subset of that is a  
20 subset of a goal or objective or a performance measure  
21 under A. And when we look at that draft if folks  
22 don't agree that that's something that we can agree on  
23 then we can take it out. Okay? All right. So  
24 we'll move onto D, increasing accessibility to the  
25 Commission's work for limited English-proficient

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1 persons. And I think that was also, it was a little  
2 broader in the original version but this is what the  
3 subcommittee has brought forward to us.

4 COMMISSIONER GAZIANO: What we had  
5 previously decided I think is to make the goal  
6 something -- and by the way I don't have the wording,  
7 maybe someone else can come up with a better wording -  
8 is improve the Commission's effectiveness in  
9 communicating to the general public. But it probably  
10 needs to be refined a little bit more.

11 And then separate objectives would be on  
12 improve through the internet, streaming, all that, and  
13 then web accessibility and redoing our website, all  
14 that kind of stuff. And then having a separate  
15 objective on improving our communications to limited  
16 English-proficient.

17 CHAIRMAN CASTRO: That makes sense. So  
18 your suggested language, and let's see if this works  
19 for folks then, is to improve the Commission's -- I  
20 can't even read my handwriting here -- effectiveness  
21 in communicating to the general public.

22 COMMISSIONER GAZIANO: Probably someone  
23 can improve that.

24 CHAIRMAN CASTRO: Yes. Okay, and then  
25 under that will fall the subsets that you just

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1 mentioned. Is everyone fine with that as D then?

2 COMMISSIONER GAZIANO: And the one other  
3 one under strategies that I think already is a little  
4 vague is use of technology to facilitate equal access.  
5 I think that should probably be refined a little bit  
6 as to how we're going to use technology or something  
7 that's a little bit more meaningful.

8 CHAIRMAN CASTRO: Okay. We'll have staff  
9 kind of refine that a bit.

10 COMMISSIONER GAZIANO: And then this will  
11 be folded under it. One of the ones that was under  
12 the limited English-proficient is I just want to have  
13 at least a brief discussion whether we should commit  
14 to it by 2018 to translate 10 percent of our  
15 publications issued since 2013. Maybe we can do that.  
16 I don't know how much it costs. You know, maybe going  
17 forward -- I just have a question as to how much  
18 that's going to cost and whether we're going to get a  
19 budget necessarily. Maybe the solution is with  
20 appropriate appropriations or something like that.

21 CHAIRMAN CASTRO: Yes, subject to  
22 appropriations. Yes, okay. Thanks. Madam Vice  
23 Chair?

24 VICE CHAIR THERNSTROM: And I wonder if  
25 the cost would differ if we simply issued those

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1 reports in electronic form rather than hard copies?

2 COMMISSIONER KLADNEY: Mr. Chairman?

3 CHAIRMAN CASTRO: Yes.

4 COMMISSIONER KLADNEY: We spoke about  
5 that. Not to get off the subject, but we spoke about  
6 that a meeting or two ago about the hard copies versus  
7 the electronic copies. And I think Commissioner  
8 Kirsanow was saying we need 150 copies or he needs,  
9 whatever.

10 COMMISSIONER KIRSANOW: I think  
11 Commissioner Heriot said that.

12 COMMISSIONER KLADNEY: Maybe it was her.  
13 I'm -- trying to focus here. And I was wondering have  
14 you rethought that at all?

15 VICE CHAIR THERNSTROM: And if not, you  
16 should.

17 COMMISSIONER HERIOT: I find people are  
18 more likely if you have something to put in front of  
19 them. If you can show them a hard copy, you know,  
20 there are some people that are more likely to read it  
21 in that form. Other people are more likely to read it  
22 in the other form.

23 COMMISSIONER KLADNEY: Okay.

24 CHAIRMAN CASTRO: Okay.

25 COMMISSIONER KLADNEY: Fine.

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1 CHAIRMAN CASTRO: All right, Commissioner  
2 Yaki?

3 COMMISSIONER YAKI: Just on -- as we go  
4 further down in the modified D, let's -- I'm not too  
5 sure how well we are for the hearing disabled and  
6 whatever. I just want to make sure that we -- when we  
7 talk about accessibility we talk about true  
8 accessibility.

9 CHAIRMAN CASTRO: Absolutely. Yes,  
10 exactly. We need to make sure that that's clear.

11 Also, I understand that as a Federal  
12 government we are supposed to be moving more towards  
13 electronic formats as well. So that's not to say that  
14 it would eliminate but I think that's one of the  
15 overall government mandates.

16 So, with those changes then let's have a  
17 vote on D. Do you want me to reread it? Improve the  
18 Commission's effectiveness in communicating to the  
19 general public. All those in favor say aye.

20 (Chorus of ayes)

21 CHAIRMAN CASTRO: Opposed?

22 (No response)

23 CHAIRMAN CASTRO: Any abstentions?

24 (No response)

25 CHAIRMAN CASTRO: Okay. We move onto

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1 letter E, continue to strengthen the Commission's  
2 financial and operational controls and advance the  
3 Commission's mission through management excellence,  
4 efficiency and accountability.

5 This is what OMB has provided to us by way  
6 of John Martin -- Tina Martin and John Ratcliffe in  
7 their original -- not you, John Martin. Sorry about  
8 that. So this has been reviewed and this is what OPM  
9 would like to see. Any questions on this?

10 COMMISSIONER KLADNEY: They would like to  
11 see the goal.

12 CHAIRMAN CASTRO: Yes.

13 COMMISSIONER KLADNEY: As far as the  
14 objective strategies and performance measures, that's  
15 somebody else.

16 CHAIRMAN CASTRO: I think there were --  
17 correct me if I'm wrong, but didn't they also provide  
18 some of these?

19 MS. SALLO: Everything that was placed in  
20 here was just cut and pasted from the document  
21 provided to us from the Management and Budget Office.

22 CHAIRMAN CASTRO: So, any additional  
23 questions, comments on that? If not then let's take a  
24 vote on that. All those in favor of goal E signify by  
25 saying aye.

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1 (Chorus of ayes)

2 CHAIRMAN CASTRO: Any opposed?

3 (No response)

4 CHAIRMAN CASTRO: Any abstentions?

5 (No response)

6 CHAIRMAN CASTRO: Okay. Next we have F,  
7 reinvigorate and better engage the Commission's  
8 network of state advisory committees consistent with  
9 budgetary resources. Comments, Suggestions?  
10 Commiseration?

11 VICE CHAIR THERNSTROM: Commiseration.

12 CHAIRMAN CASTRO: Commissioner Gaziano?

13 COMMISSIONER GAZIANO: A couple are vague,  
14 I think.

15 CHAIRMAN CASTRO: Okay.

16 COMMISSIONER GAZIANO: Under the  
17 objective, the first one, energize the Commission's  
18 SACs by enhancing their institutional role. Maybe we  
19 want it vague so that we can declare victory no matter  
20 what we do.

21 (Laughter)

22 COMMISSIONER GAZIANO: So I just want to  
23 point out that that gives, like Commissioner Heriot,  
24 certain things give me -- certain bureaucratese gives  
25 me the heebie-jeebies. Unless we want to be

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1       bureaucratic    I    think    our    Inspector    General  
2       representative should cover her ears when I say that.  
3       But I'm not sure what that means.

4                   And    the    last    one    under    objectives,  
5       strengthen the SAC's position as an advisory and  
6       investigative committee, again, that's kind of vague  
7       but maybe that's so we can declare victory.

8                   The -- let's see.    The SAC will -- I  
9       suppose I should stop at the objectives.    The  
10      performance measures I have a few questions but maybe  
11      I can raise that with the subcommittee members.

12                   Does anyone else feel that way?    Is there  
13      language that we like better?

14                   COMMISSIONER KLADNEY:    Actually I missed  
15      what you were talking about.

16                   COMMISSIONER    GAZIANO:        You    missed  
17      something?

18                   (Laughter)

19                   COMMISSIONER GAZIANO:    Okay.    The first  
20      and last objective under it seems vague to me.    We're  
21      going to energize the SACs by enhancing their  
22      institutional role.    I can imagine how we can do that.

23                   COMMISSIONER KLADNEY:    I don't have a  
24      clue.

25                   COMMISSIONER GAZIANO:    And then the last

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1 one is strengthen their position as advisory and an  
2 investigative committee. So I'm not sure I know --

3 COMMISSIONER KLADNEY: Don't we just want  
4 them to --

5 COMMISSIONER GAZIANO: Work?

6 COMMISSIONER KLADNEY: -- to increase  
7 their productivity? To be -- to actually have  
8 hearings and public forums?

9 CHAIRMAN CASTRO: And I think those you  
10 find in the performance measures.

11 COMMISSIONER KLADNEY: Right. I mean the  
12 point is they are -- to strengthen them they've got to  
13 be chartered, to be chartered they have to have  
14 hearings. I mean, it's -- there's nothing actually I  
15 think with the state advisory committees that aren't  
16 actually in place that what they're supposed to be  
17 doing is doing what they're doing. I mean, they have  
18 to start doing what they're supposed to --

19 VICE CHAIR THERNSTROM: Except that there  
20 are funding issues.

21 COMMISSIONER KLADNEY: There are some but  
22 -- and maybe that's what we want. Maybe we want to  
23 try and increase their funding or their productivity  
24 through reorganization, things like that. I mean, the  
25 SACs, you know, the SACs are there.

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1           One of the suggestions I heard was we want  
2 to appoint people for 4 years even though we have to  
3 re-charter for every 2 years; that way they don't have  
4 to keep looking for people. There was a thing about,  
5 you know, I added here and I was going to bring this  
6 up under performance measures. It says two briefings  
7 or hearings annually. Well, they can also do public  
8 forums which are a lot cheaper and gives them a  
9 profile and they actually collect a lot of information  
10 that way.

11           There's -- what we're talking about here  
12 is enhancing their role as an institution. I mean,  
13 they are an institution. How do you enhance it any  
14 further?

15           CHAIRMAN CASTRO: Well, part of it is  
16 engaging, literally taking their work and having it  
17 more frequently inform our work. They are to be  
18 advising us and I think a lot of times we don't really  
19 take their reports and do that. I think some of the  
20 things we've been trying to do is engage some of the  
21 SAC members and chairs in our existing briefings and  
22 bringing them in, those sorts of things. A lot of  
23 what's here is actually from the existing report.  
24 Just so you know that we're -- it's not coming out of  
25 whole cloth. Commissioner Yaki?

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1                   COMMISSIONER YAKI: Yes, I've been mulling  
2 this over all meeting long and I think that the  
3 appropriate parting gift for Dominique would be for  
4 her to take the SACs with her.

5                   (Laughter)

6                   CHAIRMAN CASTRO: We can add that as --

7                   (Laughter)

8                   CHAIRMAN CASTRO: Commissioner Heriot?

9                   COMMISSIONER HERIOT: I'm kind of a  
10 pessimist by nature; I sort of expect the fall of  
11 civilization to occur anytime now. It seems to me  
12 that --

13                   COMMISSIONER YAKI: You believe in the  
14 Maya 2012 prophecy, do you?

15                   (Laughter)

16                   COMMISSIONER HERIOT: You know, I -- the  
17 real problem we have is that we don't get these things  
18 commissioned on time, they don't get chartered. And  
19 we've got over here in the performance measures re-  
20 charter the SACs, you know, that are set to expire  
21 within 60 days. We need to sort of give more  
22 prominence to the notion that what we have to do to  
23 change is we've got to get these things chartered on  
24 time.

25                   COMMISSIONER KIRSANOW: We have to get the

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1 staff getting it done.

2 CHAIRMAN CASTRO: And you know, I had a  
3 conversation yesterday with staff members about -- and  
4 I don't have all the information. It sounded  
5 intriguing to me, but the question of whether or not  
6 the appointment of the members is separate from the  
7 charter of the SAC and such that perhaps, and I don't  
8 know if this is doable under FACA, why we can't  
9 charter all of them at once and then do the  
10 appointments separate from that.

11 I don't know if that's doable or not. It  
12 was raised with me just yesterday. So certainly  
13 that's something I'd like us to look in a little  
14 closer to see if there's some way to be able to  
15 separate those two to give in addition to extend --

16 COMMISSIONER GAZIANO: I'm dubious, but --

17 CHAIRMAN CASTRO: Yes.

18 COMMISSIONER GAZIANO: I'm willing to look  
19 into it.

20 CHAIRMAN CASTRO: I don't know. And I'm  
21 also told that we then as Commissioners have the  
22 ability as a Commission to determine the length of the  
23 appointment, that that's not something that's  
24 congressional. The congressional is the frequency of  
25 the charter of the Agency.

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1 COMMISSIONER GAZIANO: I see. Wow.

2 CHAIRMAN CASTRO: So in that case --

3 COMMISSIONER GAZIANO: That's worth  
4 looking into.

5 CHAIRMAN CASTRO: Right. And so I don't  
6 know the best way to go about it. Perhaps we could  
7 have a conversation with our senior attorney after  
8 this, but that was an intriguing idea to me. And  
9 again, I don't have all the facts, but if there is  
10 some way to bifurcate those that would be something  
11 that we would want to have in here as well. So.

12 COMMISSIONER HERIOT: I'd like to see the  
13 whole chartering notion to be made more prominent  
14 here.

15 CHAIRMAN CASTRO: Yes, okay.

16 COMMISSIONER HERIOT: And you know, maybe  
17 language about looking into how we can do this  
18 differently to make it work.

19 CHAIRMAN CASTRO: Yes. Okay.

20 COMMISSIONER KLADNEY: I would also like  
21 to add under performance measures "and/or public  
22 forums."

23 CHAIRMAN CASTRO: Absolutely. Anything  
24 else on this one? Okay, with those comments and  
25 changes we'll take a vote on F. All those in favor

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1 signify by saying aye.

2 (Aye)

3 CHAIRMAN CASTRO: Oh?

4 (Laughter)

5 CHAIRMAN CASTRO: All those against? Do I  
6 need to go roll call here?

7 (No response)

8 CHAIRMAN CASTRO: Any abstentions?

9 COMMISSIONER GAZIANO: I'll abstain  
10 because I think it needs a little work.

11 CHAIRMAN CASTRO: Okay, so let me --

12 COMMISSIONER GAZIANO: But I think we've  
13 hit upon that.

14 CHAIRMAN CASTRO: Okay. So we've got one  
15 abstention.

16 COMMISSIONER HERIOT: Can I abstain on the  
17 grounds --

18 CHAIRMAN CASTRO: Two abstentions? Okay.

19 VICE CHAIR THERNSTROM: Three abstentions.

20 CHAIRMAN CASTRO: Let me just do the vote  
21 so I make sure I have this accurate.

22 COMMISSIONER YAKI: How about my proposal  
23 about Dominique? That's what I want to know.

24 CHAIRMAN CASTRO: Yes, I don't know if it  
25 made it.

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1 COMMISSIONER KLADNEY: Why don't we just  
2 work on this and have them draft something up and have  
3 everybody look at it and have our special assistants  
4 give you input within the next 7 days on this subject?

5 COMMISSIONER HERIOT: That makes sense.

6 COMMISSIONER KLADNEY: Does that work?

7 COMMISSIONER HERIOT: I don't think we  
8 need to vote as a Commission on this as long as we get  
9 some more general consensus.

10 CHAIRMAN CASTRO: I just want to make sure  
11 there's a consensus here. Okay, so that's fine.

12 The last one which didn't make this grid  
13 is the restructuring of the Commission. So I don't  
14 have anything on here in terms of objectives,  
15 strategies, performance measures, but I know that in  
16 individual conversations we've all had that were non-  
17 deliberative that we -- I think there's some consensus  
18 that there needs to be some form of a restructure of  
19 the Agency. And I think it's important to have that  
20 as a strategic goal but I'd like to --

21 COMMISSIONER GAZIANO: I'm certainly in  
22 favor of discussing it, but I'm not sure that -- and  
23 possibly doing it. But I'm not sure that that we have  
24 agreement yet without knowing what the reorganization  
25 is that we should commit to restructuring the Agency.

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1 So I'd rather not promise --

2 CHAIRMAN CASTRO: So why don't we kick  
3 this back to the subcommittee and ask them? I'm  
4 sorry. Okay.

5 COMMISSIONER HERIOT: I would prefer to  
6 not have it as a strategic goal because I don't want  
7 like a year from now a vote occurs where I think that  
8 the particular configuration we have isn't right and  
9 somebody's saying but we have to do it because we said  
10 this was our strategic goal.

11 COMMISSIONER GAZIANO: Yes, that's where I  
12 am.

13 COMMISSIONER HERIOT: You know. That's --  
14 I really don't want to be pressured into something.

15 CHAIRMAN CASTRO: Commissioner Kladney.

16 COMMISSIONER KLADNEY: I think there's an  
17 understanding that we want to look at this. And I  
18 actually think there's an understanding that if we get  
19 an Agency director it's actually that person's  
20 probably duty, job duty. And I think that it would be  
21 safe to say that if our strategic goals did not  
22 include this it would not mean that it would not be a  
23 subject for further discussions.

24 COMMISSIONER GAZIANO: Absolutely.

25 CHAIRMAN CASTRO: Okay, so then we'll

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1 table this one for now. And so that --

2 COMMISSIONER KLADNEY: Being a person who  
3 believes in --

4 CHAIRMAN CASTRO: No, I know you're a  
5 major restructure fan. So we'll -- next item on the  
6 agenda.

7 Actually, before we go to the next item I  
8 neglected to allow Commissioner Kirsanow to say a few  
9 words about Dominique's departure. Before you arrived  
10 we all gave her our accolades and we thought it would  
11 be appropriate for you to do so as well.

12 COMMISSIONER KIRSANOW: She's supposed to  
13 kick back anything she receives.

14 CHAIRMAN CASTRO: There's an inspector  
15 general right there.

16 COMMISSIONER KIRSANOW: That's a joke for  
17 the record.

18 (Laughter)

19 COMMISSIONER KIRSANOW: I just want to  
20 extend my appreciation for everything that Dominique  
21 has done over the last 5 years. Any deficiencies that  
22 I have as a Commissioner are my own. Any successes  
23 I've had are solely attributable to Dominique. She's  
24 been outstanding.

25 COMMISSIONER YAKI: No one's arguing that,

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1 Peter.

2 COMMISSIONER KIRSANOW: I figured that,  
3 but nonetheless it merits being placed on the record.  
4 And she's just been an exemplary assistant in every  
5 regard. I've got the -- I've had the honor of being  
6 on a hiring committee at my firm for more than a  
7 decade and I don't know of anybody that we've ever  
8 hired that's better than Dominique in any regard. So  
9 I want to extend my appreciation to her.

10 (Applause)

11 CHAIRMAN CASTRO: So next we move onto a  
12 discussion of the status of the 2012 Statutory Report.

### 13 **III. Program Planning**

#### 14 **Discussion on 2012 Statutory Report**

15 CHAIRMAN CASTRO: The Commissioners as you  
16 know were scheduled to vote on this at our July 6th  
17 business meeting. As we previously indicated by  
18 email, Ms. Tolhurst has told us that the submission of  
19 findings and recommendations while were not originally  
20 listed on the project schedule should be submitted to  
21 her by June 22nd.

22 The goal will be for Commissioners to  
23 review the findings and recommendations in the 2 weeks  
24 leading up to the July 6th meeting. I know there may  
25 be some concerns over the short turnaround time but we

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1 do have to strive to meet our statutory enforcement  
2 report deadline.

3 I've asked Ms. Tolhurst to speak on any  
4 additional items on that and any questions that the  
5 Commissioners might have.

6 MS. TOLHURST: Yes, so the next step is  
7 for me as I'm doing now to incorporate all of your  
8 comments. Probably more than any report I've worked  
9 on since I've been here the comments are total  
10 opposite. So because this is the one report we are  
11 statutorily obligated to achieve each year and I think  
12 our funders would like to see us continue to do that I  
13 really need for Commissioners, if you will, to talk to  
14 each other before I send you your next draft and see  
15 if there's any room to come together.

16 There are certain edits that if I make  
17 them -- I think I'm getting a pretty even split in the  
18 comments I'm getting. And it would be really helpful  
19 to me if Commissioners might talk to each other across  
20 the aisle and see if there are places where there's  
21 movement so I'm not just bringing a report that only  
22 four of you or four of you will vote for to the table.

23 And I've already begun the process of  
24 putting in the edits. There are plenty of edits that  
25 were simply helpful and that made it a better report,

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1 but there are edits that are problematic for about  
2 half of you. And I'd rather we pass this, you all  
3 pass this so we can meet our statutory obligation.

4 So I just would ask if there are any of  
5 you that would care to reach out to each other. If  
6 you want me to circulate your comments I can do that.

7 CHAIRMAN CASTRO: I wanted to ask that  
8 because I know I have not seen any comments from  
9 anyone and until just a couple of days ago didn't  
10 realize there was an issue. So I think that would be  
11 helpful in order to generate any kind of conversation.

12 MS. TOLHURST: I can do that this  
13 afternoon. So then the next thing I wanted to note is  
14 that the next step would be for me to send this --  
15 once I'm done next week incorporating your comments,  
16 the next step would be for me to send this to the  
17 staff director who has to certify that the general  
18 counsel had balanced panels and was fair and  
19 incorporated comments and all of this.

20 And then the staff director will choose an  
21 external person who doesn't work at this Agency who  
22 has to certify that we did everything properly. I  
23 flagged that because we don't have a staff director to  
24 do that and I particularly don't want to sign off on  
25 saying that I did everything properly. It needs to be

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1 a separate person.

2 CHAIRMAN CASTRO: Do you think it could be  
3 our new attorney?

4 MS. TOLHURST: No. Well, the checklist is  
5 an external person that the staff director must pick.

6 CHAIRMAN CASTRO: Oh.

7 MS. TOLHURST: I don't think someone  
8 that's -- I don't think it would be fair to put her in  
9 that position reporting to me to ask her whether she  
10 thinks I did it properly.

11 CHAIRMAN CASTRO: Sure. Commissioner  
12 Gaziano and then Commissioner Heriot.

13 COMMISSIONER GAZIANO: First of all, I  
14 thank the senior attorney who I hope -- who I think is  
15 also the acting general counsel but we may resolve  
16 that separately. I think by our AIs if she's willing  
17 to serve.

18 But I don't think my comments, I have any  
19 objection to sharing it with other Commissioners. But  
20 I want to make sure that all Commissioners who  
21 submitted comments are -- sometimes we can communicate  
22 I think to you on a one-on-one basis. But let me at  
23 least look at my comments, but I don't think that I  
24 have any concern.

25 But one of the suggestions I made and as

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1 the others will see is that I suspect there are some  
2 things that may be a deal-breaker for four  
3 Commissioners. And my suggestion was subtraction  
4 rather than wholesale changes or addition.

5 And I said that I would be willing for the  
6 senior attorney or whoever to strike things that I  
7 might like that four other -- she's fairly confident  
8 that four other Commissioners will not embrace and  
9 that there's some basis of their objection to take  
10 out.

11 And then we in our Commissioner  
12 statements, maybe in our findings we can resolve it or  
13 at least Commissioner statements. So I think that the  
14 -- I appreciate your suggestion to have some  
15 discussions and I will try to do so, but I think in  
16 your difficult position subtraction is the way that we  
17 can possibly reach compromise and that you -- if we  
18 don't give you direction you may it seems to me -- in  
19 an even basis obviously.

20 Regardless of, I don't know, content, if  
21 there's something that will prevent the report from  
22 getting five votes we can take it up. And maybe  
23 that's sort of evidence or proof that staff shouldn't  
24 attempt to resolve that particular issue.

25 CHAIRMAN CASTRO: Any other comments,

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1 questions? Madam Vice Chair?

2 VICE CHAIR THERNSTROM: I have not yet  
3 submitted comments in part because I really wanted to  
4 see other comments and it would save me a great deal  
5 of time and effort to be able to review what other  
6 people are saying. I think, you know, join them or  
7 not join them as I see fit. But it is very important  
8 for me --

9 MS. TOLHURST: I did see comments that  
10 were under your name so I'm not sure --

11 VICE CHAIR THERNSTROM: Pardon me? Oh  
12 well, you can --

13 (Laughter)

14 VICE CHAIR THERNSTROM: -- thank my staff  
15 assistant for submitting some comments, but --

16 COMMISSIONER GAZIANO: If you don't mind  
17 me interrupting, that's John Martin submitted comments  
18 with a lot of my input, but they weren't actually  
19 mine. So if other -- that was my only concern.

20 VICE CHAIR THERNSTROM: Yes, that's my  
21 problem --

22 COMMISSIONER GAZIANO: I would put the --  
23 I might have edited them slightly, slightly  
24 differently, but I don't disagree with any of them.  
25 But he may have, in executing my wishes, been forced

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1 to do something that I think is --

2 VICE CHAIR THERNSTROM: Yes, and I just  
3 may have other and more specific and perhaps critical  
4 statements to make. But what has been handed in from  
5 me at this point is insufficient.

6 CHAIRMAN CASTRO: So how does that work,  
7 Ms. Tolhurst, in terms of the deadlines?

8 MS. TOLHURST: Well, that's problematic  
9 because now I'm under a really tight deadline  
10 incorporating what I thought were the complete  
11 comments. So obviously I'll try to incorporate any  
12 additional comments as I possibly can. It needs to be  
13 done by June 15th.

14 COMMISSIONER KLADNEY: Can't we just make  
15 the comments in our statements?

16 MS. TOLHURST: You know some Commissioners  
17 gave very specific and helpful line edits or specific  
18 ideas about a certain paragraph. And obviously I want  
19 the report to be as strong as possible so if I get  
20 them soon I would still endeavor to incorporate them.  
21 I just can't promise.

22 CHAIRMAN CASTRO: And whatever doesn't get  
23 incorporated as Commissioner Kladney suggests we all  
24 have the ability to add our statements on the end.

25 MS. TOLHURST: So is the consensus you

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1 want to look at your comments again and then let me  
2 know if I can circulate them? Or that you'd like them  
3 --

4 COMMISSIONER GAZIANO: Just briefly. And  
5 again, I'm sure that John did his best at including my  
6 comments so it would be my failure in communicating to  
7 him. But I think that that's probably fine. But just  
8 give me a day or so to look at that.

9 VICE CHAIR THERNSTROM: Well, I would make  
10 the same statement. Tim just reminded me that what he  
11 put down were things I had already said. I need to go  
12 through them but I want to see other people's  
13 statements as well or edits as well.

14 COMMISSIONER KIRSANOW: Dominique's  
15 comments are fine.

16 CHAIRMAN CASTRO: So we have a consensus  
17 on that? Any other --

18 VICE CHAIR THERNSTROM: The consensus is  
19 that we're going to share --

20 CHAIRMAN CASTRO: Right.

21 VICE CHAIR THERNSTROM: -- the edits.

22 CHAIRMAN CASTRO: Right. Commissioner  
23 Heriot?

24 COMMISSIONER HERIOT: I just wanted to say  
25 that we can't end this meeting today without

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1 appointing somebody to take the staff director's role  
2 so that this gets done.

3 CHAIRMAN CASTRO: Right, so when we do  
4 talk about Agency staffing that will have to be one of  
5 the --

6 COMMISSIONER HERIOT: It has to be  
7 resolved.

8 CHAIRMAN CASTRO: Yes.

9 COMMISSIONER HERIOT: At this meeting.

10 CHAIRMAN CASTRO: Yes.

11 MS. TOLHURST: Yes, that's why --

12 COMMISSIONER GAZIANO: Let me ask one  
13 other question. Do you have written comments from all  
14 Commissioners? Because if I'm going to share mine I'd  
15 like to see at least a certain number on the other  
16 side.

17 MS. TOLHURST: I do not.

18 COMMISSIONER GAZIANO: Or do you only have  
19 oral?

20 MS. TOLHURST: I have written comments  
21 from --

22 COMMISSIONER YAKI: Mine are in Sanskrit.

23 MS. TOLHURST: -- five -- six  
24 Commissioners.

25 COMMISSIONER GAZIANO: Can you say which

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1 ones you have?

2 CHAIRMAN CASTRO: And I didn't provide any  
3 comments because I thought it was fine. So you'd have  
4 nothing in writing from me other than to say it was a  
5 great report.

6 COMMISSIONER YAKI: I submitted.

7 COMMISSIONER ACHTENBERG: That's true for  
8 me as well.

9 COMMISSIONER KLADNEY: I submitted a one-  
10 paragraph comment saying I thought it was fine.

11 CHAIRMAN CASTRO: That's why you don't  
12 have all your --

13 MS. TOLHURST: Okay.

14 CHAIRMAN CASTRO: Okay?

15 MS. TOLHURST: So, before I sit down, just  
16 this is a separate issue. But Commissioner Gaziano,  
17 you amended the agenda to include a discussion of  
18 logistics of witness selection at the Alabama  
19 immigration briefing.

20 And just so that you all are clear when  
21 you're having that discussion it is not a hearing. It  
22 was styled as just a briefing.

23 COMMISSIONER GAZIANO: Sorry. I misspoke.

24 MS. TOLHURST: So it's not witnesses. And  
25 that just -- if you're doling out --

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1 COMMISSIONER GAZIANO: Well they're  
2 witnesses at a briefing, are they not?

3 MS. TOLHURST: They're panelists.

4 COMMISSIONER GAZIANO: Panelists, okay.

5 MS. TOLHURST: And they don't have to be  
6 sworn in and the general counsel -- the general  
7 counsel's office actually has had nothing to do with  
8 this report. I have to credit OSD and Lenore has been  
9 handling it. So if it were a hearing and you were  
10 making additional assignments you would have to worry  
11 about a few more logistical things. And so just to  
12 make sure you realize it's a briefing.

13 COMMISSIONER GAZIANO: I'll try to use the  
14 right terminology.

15 CHAIRMAN CASTRO: Thank you. All right.  
16 So we're done with the 2012 report discussion. We'll  
17 move onto the discussion and vote on the 2013  
18 Statutory Report topics.

19 **III. Program Planning**

20 **Vote on 2013 Statutory Report Topics**

21 CHAIRMAN CASTRO: As you know, rankings  
22 were disseminated and discussed at our May business  
23 meeting. Today we'll be voting on these topics and  
24 determine whether any of them has a 5-vote majority.

25 What I propose as the procedure is looking

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1 at the number of first place, second and third place  
2 rankings. We can discuss or vote on the projects  
3 starting with the one that had the most first place  
4 rankings going down to the one that had the second  
5 most and then factoring in the second and third place  
6 rankings.

7 Having done that the discussion or the  
8 vote by my calculation would start with Commissioner  
9 Kirsanow's "Assessing the Impact of Criminal  
10 Background Checks" and "Equal Employment Opportunity  
11 Commission's Conviction Records Policy on the  
12 Employment of Black and Hispanic Workers" having  
13 received the most number one rankings.

14 The second one would be "Immigration  
15 Detention Facilities and Violations of Civil Rights"  
16 prepared by me. The third one would be Commissioner  
17 Kladney's "Protecting Domestic Violence Victims  
18 Against Discrimination." The fourth would be  
19 Commissioner Kirsanow's "Civil Rights Enforcement and  
20 the Department of Agriculture." Number 5 would be  
21 Commissioner Yaki's "Efforts to End Gender-based  
22 Discrimination in State and Local Law Enforcement  
23 Response to Sexual Violence." And number 6 would be  
24 "The Potential Misuse of Settlement Agreements and  
25 Consent Decrees in Civil Rights Enforcement."

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1                   Now, we did discuss each of these at the  
2 last meeting but if folks wanted to say a few words on  
3 behalf of their paper again before we vote that would  
4 be welcome.

5                   VICE CHAIR THERNSTROM: Mr. Chairman, I'm  
6 confused. Oh, I'm sorry.

7                   CHAIRMAN CASTRO: So I distilled the  
8 rankings that were circulated before.

9                   VICE CHAIR THERNSTROM: I see. I'm sorry.

10                  CHAIRMAN CASTRO: So, Commissioner  
11 Kirsanow, we can start with yours, "Assessing the  
12 Impact of Criminal Background Checks."

13                  COMMISSIONER KIRSANOW: Having already  
14 spoken on this in the previous two meetings and not  
15 recalling precisely what I said there is some  
16 increased salience to this particular issue insofar as  
17 it has been taken up by Congress, both houses of  
18 Congress. There has been a resolution passed by the  
19 House and there has also been at least a letter of  
20 concern that was drafted by the Senate related to the  
21 enforcement of the guidance that was drafted by the  
22 EEOC.

23                  Also, since I practice in this area I'm  
24 well aware that this is a major issue throughout the  
25 country for employers. And in addition to everything

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1 else that this implicates in terms of whether or not  
2 from a policy perspective, a substantive policy  
3 perspective this is a smart idea, however well-  
4 intended, there's also a procedural question as to  
5 whether or not the EEOC even has the authority to do  
6 this or something like this. So I think this is of  
7 great relevance and I would urge that we explore this  
8 topic.

9 CHAIRMAN CASTRO: Okay. So what we'll do  
10 is we'll do a line individual vote of everyone on  
11 these topics. So we'll start with Commissioner  
12 Kirsanow. How do you vote?

13 COMMISSIONER KIRSANOW: Yes.

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

16 COMMISSIONER HERIOT: Yes.

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

19 COMMISSIONER GAZIANO: Yes.

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

22 VICE CHAIR THERNSTROM: Yes.

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

25 COMMISSIONER YAKI: No.

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

3                   COMMISSIONER KLADNEY:   No.

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

6                   COMMISSIONER ACHTENBERG:   No.

7                   CHAIRMAN CASTRO:     And I vote no.     So the  
8     motion fails.

9                   The second one for discussion and vote is  
10    "Immigration Detention -- I'm sorry.

11                  COMMISSIONER HERIOT:   This procedure is  
12    sort of -- it's always going to be rigged against  
13    whatever comes first.     It doesn't -- it's not a  
14    sensible way to do this.   I mean, what if somebody  
15    voted no on that one because they wanted, you know,  
16    number 6, but number 6 ends up getting rejected?

17                  CHAIRMAN CASTRO:     Well, there's always  
18    going to be the issue of what gets voted first so I  
19    tried to be fair here by taking the rankings that we  
20    had and weighing them based on number 1 rankings,  
21    number 2 rankings and number 3 rankings so that those  
22    that had the most votes -- that's why we talked about  
23    them at the last meeting.

24                  COMMISSIONER HERIOT:   That's the opposite  
25    you'd want to do under those circumstances.   Since

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1 it's the one that has the most support rather than  
2 putting that first which is the most disadvantageous  
3 position.

4 CHAIRMAN CASTRO: You want me to start  
5 with the one that has the least support?

6 COMMISSIONER HERIOT: Yes.

7 CHAIRMAN CASTRO: Okay.

8 COMMISSIONER GAZIANO: I don't know which

9 CHAIRMAN CASTRO: It doesn't matter to me.  
10 We'll start with --

11 COMMISSIONER HERIOT: It makes a big  
12 difference.

13 CHAIRMAN CASTRO: I was just trying to be  
14 fair here and I'm happy to start from the bottom  
15 although we started from the top. I'll go next to 6  
16 which is yours, Commissioner Heriot, on the "Potential  
17 Misuse of Settlement Agreements and Consent Decrees."  
18 So if you want to add something to what you've already  
19 said.

20 COMMISSIONER HERIOT: Okay. I think that  
21 I said as much as I need to say about it, so.

22 CHAIRMAN CASTRO: Okay. So then we will  
23 call that for a vote. Commissioner Kirsanow, how do  
24 you vote?

25 COMMISSIONER KIRSANOW: Yes.

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

3 COMMISSIONER HERIOT: No.

4 CHAIRMAN CASTRO: You vote no for your  
5 paper? Really? Okay. Commissioner Gaziano?

6 COMMISSIONER HERIOT: Unless it gets four  
7 other votes in which case I'll change my vote.

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

10 COMMISSIONER GAZIANO: This is a strange  
11 process.

12 COMMISSIONER HERIOT: No, it's not. This  
13 is better.

14 COMMISSIONER GAZIANO: Okay. No, since  
15 it's not my first vote.

16 CHAIRMAN CASTRO: Okay.

17 COMMISSIONER GAZIANO: But I'll change my  
18 vote if it gets --

19 COMMISSIONER HERIOT: No, no, no.

20 (Laughter)

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

23 VICE CHAIR THERNSTROM: No.

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

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1 COMMISSIONER YAKI: Well, since it doesn't  
2 matter anymore I'll abstain.

3 CHAIRMAN CASTRO: Okay.

4 COMMISSIONER YAKI: No, I'm going to vote  
5 no.

6 CHAIRMAN CASTRO: Okay. Commissioner  
7 Kladney, how do you vote?

8 COMMISSIONER KLADNEY: No.

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

11 COMMISSIONER ACHTENBERG: No.

12 CHAIRMAN CASTRO: And I vote no so we have  
13 seven no's and a yes. Yes. So then we move to number  
14 5 which is Commissioner Yaki's "Federal Efforts to End  
15 Gender-based Discrimination in State and Local Law  
16 Enforcement Response to Sexual Violence." Any  
17 additional discussion on that?

18 Let's take a vote then. Commissioner  
19 Kirsanow, how do you vote?

20 COMMISSIONER KIRSANOW: No.

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

23 COMMISSIONER HERIOT: No.

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

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1 COMMISSIONER GAZIANO: No.

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

4 VICE CHAIR THERNSTROM: No.

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

7 COMMISSIONER YAKI: Yes.

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

10 COMMISSIONER KLADNEY: Yes.

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

13 COMMISSIONER ACHTENBERG: Yes.

14 CHAIRMAN CASTRO: And I vote yes. The  
15 motion fails. We move on next to number 4 which is  
16 Commissioner Kirsanow's "Assessing Civil Rights  
17 Enforcement in the Department of Agriculture's Farm  
18 Services Agency Programs." Any additional comments on  
19 that?

20 COMMISSIONER KIRSANOW: No.

21 CHAIRMAN CASTRO: Okay, so we'll take the  
22 vote. Commissioner Kirsanow, how do you vote?

23 COMMISSIONER KIRSANOW: Yes.

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

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1 COMMISSIONER HERIOT: Yes.

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

4 COMMISSIONER GAZIANO: Which one are we  
5 voting on?

6 CHAIRMAN CASTRO: Assessing Civil Rights -  
7 -

8 COMMISSIONER GAZIANO: Yes.

9 CHAIRMAN CASTRO: Yes, okay. Madam Vice  
10 Chair, how do you vote?

11 VICE CHAIR THERNSTROM: Yes.

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

14 COMMISSIONER YAKI: No.

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

17 COMMISSIONER KLADNEY: No.

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

20 COMMISSIONER ACHTENBERG: No.

21 CHAIRMAN CASTRO: And I vote no. The  
22 motion fails. Next I believe is Commissioner  
23 Kladney's "Protecting Domestic Violence Victims  
24 Against Housing Discrimination." Any additional  
25 comment on that, Commissioner Kladney before we vote?

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1 COMMISSIONER KLADNEY: No, Mr. Chairman.

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

4 COMMISSIONER KIRSANOW: No.

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

7 COMMISSIONER HERIOT: No.

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

10 COMMISSIONER GAZIANO: No.

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

13 VICE CHAIR THERNSTROM: No.

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

16 COMMISSIONER YAKI: Yes.

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

19 COMMISSIONER KLADNEY: Yes.

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

22 COMMISSIONER ACHTENBERG: Yes.

23 CHAIRMAN CASTRO: And I vote yes. The  
24 motion fails.

25 Now we'll move onto my proposal on

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1 "Immigration Detention Facilities and Violations of  
2 Civil Rights that may Occur There." I did speak to  
3 this at the last meeting but I just want to emphasize  
4 a few things in terms of the issue of the coverage of  
5 these immigrants.

6 There's been questions that have been  
7 brought up about the fact that the paper would propose  
8 that immigrants that are in detention receive better  
9 protections than non-immigrants and that because some  
10 of them are undocumented that they would not be  
11 subject to certain protections.

12 And I just want to indicate, there's  
13 extensive information out there. In fact, from a  
14 recent report on Georgia's ACLU -- done by Georgia's  
15 ACLU on detention facilities that really makes clear  
16 that there are some important constitutional issues  
17 here that we should look at.

18 For example, it is well established that  
19 non-citizens do have due process rights under the 5th  
20 and 14th Amendments to the Constitution. The Supreme  
21 Court has held that those provisions of the 14th  
22 Amendment are universal in their application. They  
23 apply to all persons within our territorial  
24 jurisdiction without regard to their differences in  
25 race, color, or nationality.

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1           The Supreme Court also expanded this  
2 holding in 1976 when it held that every non-citizen  
3 was entitled to due process, even one whose presence  
4 in this country is unlawful, involuntary or  
5 transitory. The Supreme Court further stated that  
6 prison walls do not form a barrier separating prison  
7 inmates from protections of the Constitution and  
8 immigrant detainees depend on those facilities for  
9 their basic human needs and adequate living  
10 conditions.

11           The 8th Amendment which is made applicable  
12 to the states by the 14th demands that no incarcerated  
13 persons receive cruel and unusual punishment and that  
14 exists when a prisoner is deprived of basic human  
15 needs and treated with deliberate indifference.

16           Under the Fifth Amendment non-citizens do  
17 have basic due process rights in removal proceedings.  
18 And because these removal proceedings are civil in  
19 nature, not criminal, these individuals do not have a  
20 constitutional right to government-funded counsel  
21 based on their indigence. So they are in need of  
22 access to pro bono counsel which in many cases is  
23 being denied to them.

24           This is an area that is getting a lot of  
25 attention nationally and it is the fastest growing

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1 aspect of detention. And not all the individuals that  
2 are being detained which is close to half a million  
3 now are undocumented immigrants. Some of them are  
4 green cardholders, some of them, many of them are  
5 children. Many are asylum-seekers. Many are victims  
6 of trafficking. While there are visas for those folks  
7 to be able to apply for, because they're being denied  
8 access to counsel they can't even seek those let alone  
9 know about them.

10 And as I said, this is the fastest growing  
11 area of detention. And while there are clearly  
12 constitutional standards there are also DHS guidelines  
13 that are in place. And I think it would be important  
14 for us to take a look at this growing area of  
15 detention. Certainly we can look at a lot of areas of  
16 detention but I'm trying to be focused looking at the  
17 one here that I think implicates a lot of the fastest  
18 growing issues involving incarceration of folks who  
19 are being incarcerated with hardcore criminals in many  
20 cases.

21 And at the last meeting I indicated the  
22 breakdown of the various correctional facilities,  
23 detention facilities that exist. Some are DHS-run,  
24 some are privately run, some are run on behalf of DHS  
25 by state and local governments. So, there's a lot of

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1 different agencies that run these detention centers.  
2 So I would ask that we would consider supporting this.

3 If there's any questions I'd be happy to  
4 answer Commissioners.

5 COMMISSIONER GAZIANO: If I could just  
6 state, my concern I think slightly raised at the last  
7 meeting was that the core of this investigation seemed  
8 more to be on the conditions that exist for all those  
9 subject or held in those detention facilities. And  
10 that for an enforcement report we really are trying to  
11 look at the effectiveness of federal agencies'  
12 enforcement of civil rights laws specifically.

13 And I know that there's a portion of the  
14 concept paper that touches upon that, but I think that  
15 the core of this concept paper doesn't really fit our  
16 -- we in our briefings and other investigations can  
17 look at disparate impact and we can look at other  
18 issues, but to me this doesn't implicate a sort of  
19 central tenet of our jurisdiction.

20 CHAIRMAN CASTRO: If I can address that,  
21 it does. And here the Department of Homeland Security  
22 through ICE is the federal agency that is charged with  
23 making sure that these detention facilities, whether  
24 they are run directly by them or whether they are  
25 contracted out to a private entity on their behalf, or

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1 ultimately to a state and local government, it is  
2 ultimately DHS and the Department of Homeland Security  
3 and ICE's responsibility both to ensure that the  
4 constitutional guarantees that these individuals have  
5 as well as the DHS guidelines are being enforced.

6 So I clearly see that there is a federal  
7 connection to whether or not this federal agency, DHS,  
8 is in fact running these detention centers in a way  
9 that is not violative of the civil rights of these  
10 individuals who are a mixture of undocumented  
11 immigrants, green cardholders, family members,  
12 children. And so I do believe that there is a nexus  
13 there.

14 Madam Vice Chair?

15 VICE CHAIR THERNSTROM: Well, Mr.  
16 Chairman, I've got a lot of problems with this concept  
17 paper. And I've given him line by line responses and  
18 I would be happy to share them with anybody else. But  
19 I would want to have this really revised. And let me  
20 just give some sense of the things that were bothering  
21 me.

22 For instance, at the bottom of page 1 it  
23 starts, "Half of all the detained immigrants do not  
24 have a criminal record." Well, that means half do  
25 have criminal records, presumably committed in the

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1 United States.

2 Then it goes on to say they are torture  
3 victims, victims of human trafficking, asylum-seekers,  
4 families with small children or individuals with  
5 serious medical and mental health needs. Well, a lot  
6 of the people in this category and this list do not  
7 fit under one umbrella. How do we know that those  
8 without a criminal record are not simply people who  
9 have managed to come illegally into the country?

10 Then down further on that second page it  
11 says, "This standard has contributed to the death of  
12 129 detainees in ICE custody and to numerous cases  
13 where ICE has failed to respond to all the health  
14 problems of individual detainees or responded only  
15 after considerable delays." Well, 129 over what  
16 period of time? I mean, there have been millions of  
17 people detained. One hundred and twenty-nine out of  
18 four hundred thousand wouldn't be a large percentage.  
19 People die for reasons other than the failure to  
20 respond.

21 It goes on to say, "In addition, according  
22 to government documents nearly 200 claims of sexual  
23 abuse of detainees in detention facilities across the  
24 country have been reported to the Department of  
25 Homeland Security since 2007 alone." Well, there's no

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1 assertion that the prison guards are abusing them. Do  
2 they know how much sexual abuse they experience in  
3 settings from which they came? This is a huge  
4 population of people who live or lived in areas where  
5 the rate of sexual crimes is high. Who's doing the  
6 abusing? Should there be more guards to police this  
7 population?

8 This seems to me a tiny corner altogether  
9 of the civil rights problem. This is a population  
10 that is here because they have broken the laws in  
11 staying in the United States. There's no possibility  
12 that we have the resources to make some real, fresh  
13 discoveries and this account fails to take into  
14 account the resources to make those real and fresh  
15 discoveries.

16 And lastly for the moment, I mean I have a  
17 lot of other comments, but lastly for the moment, how  
18 do we know how many are unreported and are they true?  
19 The Rape Elimination Act which sets a zero tolerance  
20 standard for prison rape and creates guidelines, does  
21 this policy in fact stop rapes? It's a hard problem  
22 to solve. How much would it cost taxpayers to protect  
23 them more effectively and so forth?

24 In any case, I would be happy to see this  
25 rewritten but as it stands I've got an awful lot of

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1 questions as was just apparent.

2 CHAIRMAN CASTRO: Let me try to address  
3 some of them although I don't know I could persuade  
4 you at this point. But I do want to make sure that  
5 it's on the record that regardless of whether half of  
6 these folks have a criminal record and the other half  
7 don't, those that have a criminal record are still  
8 subject to the protection of the Constitution. So  
9 that any of these alleged abuses perpetrated on a  
10 criminal is still something that we should be  
11 concerned about and look at.

12 But as I indicated, half of these folks  
13 are non-criminals. They're there for civil  
14 violations. While you rightly point out that some of  
15 these folks have come in an undocumented manner,  
16 illegally as you say, that is not a criminal charge.  
17 Those are civil charges for which they are then in the  
18 immigration courts to determine civilly whether or not  
19 they will be deported. And not everyone who's charged  
20 ends up being deported so those folks also should be  
21 protected and are protected as I indicated earlier by  
22 the various constitutional guarantees regardless of  
23 whether or not they are here in a documented or  
24 undocumented status.

25 As to the number of persons that have been

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1 reported killed or died in detention, I don't know how  
2 many people have to die in order for it to be a civil  
3 rights concern. Whether it's 1 or 129 I think the  
4 fact that there are people that are dying in detention  
5 is a matter of concern and there are --

6 VICE CHAIR THERNSTROM: Nobody dies except  
7 when they're in detention?

8 CHAIRMAN CASTRO: Well, see that's part of  
9 --

10 VICE CHAIR THERNSTROM: I mean, I may die  
11 tomorrow.

12 CHAIRMAN CASTRO: We have to look at the  
13 issues. As Madam Vice Chair has admonished me in the  
14 past about making sure that concept papers are not  
15 conclusory, a lot of the questions we ask, we ask  
16 because we don't have the answers to and that's why we  
17 bring people forward to try to get those answers.

18 And so to the point of, you know, who's  
19 doing the abusing. Well, if an inmate is abusing  
20 another inmate that should not occur. That's a  
21 violation of that inmate's rights. Or if it's a  
22 watchman or a guard that's doing it. Do I know in  
23 each of those instances what's happening? No, but  
24 that's why we bring panelists forward who have  
25 experience and knowledge and ask them really, the

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1 extent of this problem. Either way it's not something  
2 that should be happening whether it's the guard or  
3 whether it's another prisoner that's conducting the  
4 abuse or the rape.

5           Secondly, does the Rape Elimination Act  
6 prevent rape? I don't know the answer to that  
7 question but that is another thing that we look at is,  
8 are the laws that are on the books effective or not.  
9 And part of our mandate is if we find out that the  
10 Rape Elimination Act is not preventing rapes then why  
11 -- well, why is that happening? We can ask these  
12 experts and then we can make recommendations to  
13 Congress and the President about improving the Act.

14           So, every one of these things are  
15 definitely open questions and that is why we hold  
16 briefings. Because if we had all the answers to them  
17 we would just sit here and write the report.

18           VICE CHAIR THERNSTROM: I would be really  
19 happy if you rewrote this with your answers to my  
20 comments incorporated in a new concept paper.

21           CHAIRMAN CASTRO: I appreciate that.

22           VICE CHAIR THERNSTROM: And strengthen it  
23 as a consequence.

24           CHAIRMAN CASTRO: Commissioner Gaziano and  
25 Commissioner Heriot.

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1                   COMMISSIONER GAZIANO:     Just to clarify  
2     since you responded to mine. I agree that you have --  
3     there is an element of this concept paper and you have  
4     stated something within our jurisdiction. But running  
5     a detention system is very, very difficult and bad  
6     things happen. Running a prison system which is  
7     analogous is very, very difficult and bad things  
8     happen.

9                   To determine the kernel that's within our  
10    jurisdiction which is whether their civil rights were  
11    violated there's a high standard that needs to be met.  
12    I understand the standard, by the way, under the law  
13    in the prison system better, but the analogy still  
14    applies. There's qualified immunity if it was a 1983  
15    suit, for example. I don't know exactly how that  
16    applies.

17                  But to answer the kernel of the question  
18    whether it was just a difficult job and bad things  
19    happen or whether there's a -- we would have to  
20    investigate a huge issue that's not within our normal  
21    jurisdiction to answer that question. And that is are  
22    these just the normal difficulties of running any kind  
23    of detention system or is there really a bias in some  
24    sense or a constitutional failure. So that's my only  
25    suggestion.

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1           Although I agree there is a -- it's stated  
2           in a way that implicates our jurisdiction, to answer  
3           this question would require us to spend so much more  
4           time outside our jurisdiction that it doesn't seem to  
5           me suitable for our enforcement report.

6           CHAIRMAN CASTRO: Commissioner Heriot?

7           COMMISSIONER HERIOT: I guess my point is  
8           essentially the same as Commissioner Gaziano's, that  
9           this is really attenuated from our jurisdiction. You  
10          know, it's a disparate impact theory but even within a  
11          disparate impact theory what we're saying I assume is  
12          that people who are detained as potential illegal  
13          immigrants are disproportionately of particular  
14          national origins. But is it clear that this  
15          population has different incidence of violence and  
16          death while detained than ordinary prisoners, or even  
17          people that aren't imprisoned? So, we haven't even  
18          crossed the threshold here. So I think this is just  
19          too attenuated.

20          CHAIRMAN CASTRO: Let me just add that one  
21          of --

22          COMMISSIONER ACHTENBERG: Mr. Chairman?

23          CHAIRMAN CASTRO: Yes, Commissioner  
24          Achtenberg.

25          COMMISSIONER ACHTENBERG: I'd like to be

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1 recognized.

2 CHAIRMAN CASTRO: Yes, go ahead, please.

3 COMMISSIONER ACHTENBERG: I just want to  
4 say that my colleagues are asking all the right  
5 questions but I think would be properly investigated  
6 and presumably answered to some extent as a result of  
7 preparing this statutory report.

8 I am persuaded that the constitutional  
9 questions and statutory questions are squarely within  
10 our jurisdiction and that the issue is an important  
11 and timely one, and one that is worthy of the years  
12 worth of investigation and analysis that is the  
13 hallmark of our statutory enforcement report.

14 Now, I'm certain that the drafting of the  
15 concept paper could always be improved and if it's the  
16 author's choice to take another stab at that, while I  
17 would be loath to second-guess him, I am prepared to  
18 vote yes today because I think the issue is  
19 appropriate, timely and of the kind of significance  
20 that the Commission should be devoting its expertise,  
21 time, energy and prestige to. So I want to say that I  
22 am prepared to vote yes today.

23 CHAIRMAN CASTRO: Any other questions? If  
24 not, what I'll do is I'll call a vote on this and  
25 we'll see where that ends up. So, those -- starting

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1 with Commissioner Kirsanow, how do you vote?

2 COMMISSIONER KIRSANOW: No.

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

5 COMMISSIONER HERIOT: No.

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

8 COMMISSIONER GAZIANO: No.

9 CHAIRMAN CASTRO: Madam Vice Chair, how do  
10 you vote?

11 VICE CHAIR THERNSTROM: No.

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

14 COMMISSIONER YAKI: Yes.

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

17 COMMISSIONER KLADNEY: Yes.

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

20 COMMISSIONER ACHTENBERG: Yes.

21 CHAIRMAN CASTRO: And I vote yes. The  
22 motion fails. What I will do is since we do need to  
23 pick a topic I will endeavor to incorporate some of  
24 the comments today and see if I can't address some of  
25 them, I know I won't be able to address all of them,

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1 and send them around for the July meeting.

2 And I presume anyone else who might want  
3 to do that with their concept papers that failed  
4 today. Because we do have a timing issue here to make  
5 sure we get this project started so that we have a  
6 statutory report that meets the deadline for next  
7 year. Commissioner Kirsanow?

8 COMMISSIONER KIRSANOW: If I may recommend  
9 --

10 COMMISSIONER ACHTENBERG: Mr. Chairman --

11 CHAIRMAN CASTRO: Commissioner Kirsanow  
12 has the floor now and then we'll go to you,  
13 Commissioner Achtenberg.

14 COMMISSIONER KIRSANOW: Thank you, Mr.  
15 Chairman. If I may recommend that we revisit the  
16 manner in which we rank these topics. Because I have  
17 a feeling that we may find ourselves deadlocking at 4-  
18 4 on a variety of topics regardless of what revisions  
19 are made hereafter.

20 The process that we had used in the past  
21 seemed to work relatively well whereby we'd rank them.  
22 In fact, we did it preliminarily with respect to this  
23 cohort of topics. And we would rank them based on who  
24 got the most first place votes, second place votes and  
25 third place votes. And generally speaking, that will

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1 tend to winnow out the other topics and usually you  
2 end up with a number one.

3 CHAIRMAN CASTRO: Which is just what we  
4 did today and it didn't, so.

5 COMMISSIONER KIRSANOW: No, we didn't.  
6 What we really did is voted for whether or not people  
7 were going to vote for something or against something  
8 as opposed to whether or not something gets your first  
9 place vote, second place vote, third place vote.

10 COMMISSIONER GAZIANO: I'm not sure I  
11 understand because don't we still want a topic that  
12 gets a majority?

13 COMMISSIONER KIRSANOW: Yes, we do.

14 VICE CHAIR THERNSTROM: We have one. It's  
15 Commissioner's Kirsanow "Assessing Civil Rights  
16 Enforcement in the Department of Agriculture."

17 CHAIRMAN CASTRO: But it doesn't have a  
18 majority vote. It has four votes.

19 COMMISSIONER GAZIANO: There's several  
20 that have 4-4.

21 VICE CHAIR THERNSTROM: I see. Okay.

22 COMMISSIONER GAZIANO: And we should -- I  
23 don't know if we should re-vote on EEOC since we  
24 agreed on a different order.

25 CHAIRMAN CASTRO: So, Commissioner

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1 Achtenberg, then Heriot and then Kladney.  
2 Commissioner Achtenberg?

3 COMMISSIONER ACHTENBERG: Mr. Chairman.  
4 Will there be a point where we consider new topics as  
5 well as those already submitted, or -- if that's been  
6 answered. I've been having difficult hearing.

7 CHAIRMAN CASTRO: No, we did not address  
8 that. I don't know what the sense of the committee  
9 is, but certainly I'd be happy to hear people's  
10 thoughts on that. Commissioner Heriot then Kladney.

11 COMMISSIONER HERIOT: I'm just wondering  
12 if there isn't room for compromise here. Do we have  
13 the ability to do two topics?

14 COMMISSIONER GAZIANO: Or do we have the  
15 ability of doing one as the enforcement report and one  
16 as a serious long-term briefing with serious staff  
17 work?

18 COMMISSIONER KLADNEY: If I may --

19 VICE CHAIR THERNSTROM: Or do we have the  
20 ability to pick up one more vote for "Assessing the  
21 Civil Rights Enforcement of the Department of  
22 Agriculture?"

23 CHAIRMAN CASTRO: Commissioner Kladney?

24 COMMISSIONER KLADNEY: Yes, I will say  
25 this. Since you have so given up on your topic so

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1 soon -- you didn't let it go around the second time.

2 (Chorus of voices)

3 COMMISSIONER HERIOT: I moved the first  
4 topic that we voted on.

5 COMMISSIONER KLADNEY: No. I actually have  
6 an interest in Commissioner Kirsanow's subject. I am  
7 -- I know that Mrs. Ludvigson represented that topic  
8 well at the luncheon held at the Heritage Foundation.  
9 And I have an interest in the subject.

10 There are some things that I'm concerned  
11 about and I don't necessarily want to discuss here but  
12 I might be able to bring myself to support that  
13 subject.

14 COMMISSIONER GAZIANO: At this meeting or  
15 at --?

16 COMMISSIONER KLADNEY: Not at this  
17 meeting. This meeting is like past my time already.  
18 I mean, I'm growing older while I'm sitting here.

19 CHAIRMAN CASTRO: I noticed that.

20 COMMISSIONER KLADNEY: So that's all I'm  
21 saying. And if you want to figure out something else  
22 you guys --

23 CHAIRMAN CASTRO: Well, there may be some  
24 options on -- I don't know that we could do two  
25 statutory enforcement reports. I don't know that we

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1 have the resources to do that. But why don't we talk  
2 about that in the interim. And be prepared at our  
3 July meeting to vote on topics again.

4 I would say that within 2 weeks from today  
5 we should circulate any revised papers that we have  
6 and those will then be discussed and voted on at the  
7 July meeting. And then at the July meeting we can  
8 hopefully have an answer as to whether we can do more  
9 than one report or one major report as our statutory  
10 and one briefing report.

11 VICE CHAIR THERNSTROM: Mr. Chairman, it  
12 seems to me we may have five votes for the "Assessing  
13 Civil Rights Enforcement in the Department of  
14 Agriculture" if --

15 CHAIRMAN CASTRO: But he says he needs to  
16 consider more so that conversation --

17 COMMISSIONER HERIOT: Background checks.

18 CHAIRMAN CASTRO: So that conversation --

19 COMMISSIONER GAZIANO: We have three --

20 VICE CHAIR THERNSTROM: All right. All  
21 right.

22 COMMISSIONER GAZIANO: -- votes.

23 CHAIRMAN CASTRO: Commissioner Heriot and  
24 then we'll move onto the next topic.

25 COMMISSIONER HERIOT: We need a decision

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1 on this and if we're going to get it in July we need  
2 to know about the resource issue, not during the  
3 meeting in July but before that so we can work out an  
4 appropriate compromise well before that.

5 CHAIRMAN CASTRO: Absolutely.

6 COMMISSIONER HERIOT: So we need to hear  
7 from staff and from you and from everybody, you know,  
8 weeks ahead of time exactly what our capabilities are.

9 COMMISSIONER GAZIANO: And point of the  
10 personal privilege I think it is.

11 CHAIRMAN CASTRO: Yes.

12 COMMISSIONER GAZIANO: I think I mentioned  
13 two meetings ago that I will not be physically present  
14 nor will I have much time to call in on the July  
15 meeting.

16 CHAIRMAN CASTRO: Okay.

17 COMMISSIONER GAZIANO: So I would ask for  
18 some consideration as I've done with others to hold  
19 certain votes or have the discussion and stack certain  
20 votes so that I could come on the line for a limited  
21 period of time. But as we plan the agenda I'll try to  
22 work with you on that.

23 CHAIRMAN CASTRO: Okay, let's do that.  
24 And then the next item under program planning is the  
25 item that was added by Commissioner Gaziano's motion

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1 to amend. It's a discussion of the status of the  
2 immigration briefing.

3 COMMISSIONER GAZIANO: I could do that  
4 after -- what I thought it would be is after agency  
5 staffing.

6 CHAIRMAN CASTRO: Oh, okay, I  
7 misunderstood you. We'll put it at the end of that  
8 then.

9 So next is discussion of 2012 and `13  
10 budget.

#### 11 **IV. Management and Operations**

##### 12 **Discussion on 2012 Budget and 2013 Budget Request**

13 CHAIRMAN CASTRO: What I really want to  
14 have us hear from our staff on is just where we are in  
15 terms of the budget, actual versus budgeted. There  
16 was reference earlier to potential surpluses that we  
17 have based on a couple of unfilled positions that I  
18 just want personally to get a handle on. And I'm sure  
19 other Commissioners in our individual conversations  
20 also had the same question.

21 And then in terms of the 2013 budget I  
22 think we already talked about where we are based on  
23 the conversations we had with appropriations staff.  
24 So unless Mr. Ratcliffe has anything else to add on  
25 2013 I would ask him to just come up and talk to us

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1 about 2012.

2 VICE CHAIR THERNSTROM: And if you would,  
3 would you answer the question of whether we have a  
4 projected budget surplus this year of two hundred or  
5 three hundred thousand.

6 CHAIRMAN CASTRO: Yes, that's exactly what  
7 I want him to talk about.

8 MR. RATCLIFFE: I did have one comment on  
9 2013, one thing that was not mentioned that could  
10 affect our budget is the Budget Control Act of 2011.  
11 We're facing a potential sequester which would be on  
12 top of, so it would be a reduction on top of whatever  
13 Congress would authorize.

14 CHAIRMAN CASTRO: Could you explain that  
15 further for those of us who are --

16 MR. RATCLIFFE: It's basically, in order  
17 to -- I guess the debt agreement that was done by  
18 Congress and signed by the President allowed automatic  
19 budget cuts to occur if Congress did not act. Those  
20 things are scheduled to occur unless Congress acts.

21 CHAIRMAN CASTRO: And that's for Fiscal  
22 Year 2013.

23 MR. RATCLIFFE: Thirteen, yes.

24 CHAIRMAN CASTRO: Okay. When will we know  
25 if that's going to happen?

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1 MR. RATCLIFFE: Your guess is as good as  
2 mine. I mean, that's up to Congress. You know, you  
3 all could watch the news as best as I can to see  
4 whether they actually do that or not. And even the  
5 impact, we don't even know what the impact even if  
6 these things do occur would be.

7 CHAIRMAN CASTRO: Do we have any idea what  
8 percentage that sequester might be?

9 MR. RATCLIFFE: The only thing I've heard  
10 is some of the news I've seen up to 10 percent. But  
11 that's really, there's a lot of issues that have to be  
12 resolved both in Congress and with how the President  
13 reacts to the reductions. So the President has  
14 certain roles that could affect the number.

15 CHAIRMAN CASTRO: Well, that's good to  
16 know. Thank you. 2012?

17 MR. RATCLIFFE: Okay. I just want to  
18 clarify first of all that the staff director is  
19 responsible for making spending and budget decisions.  
20 My job is to maintain the operating plan. I do not  
21 make funding decisions. I just want to make that  
22 clear. My job is to advise the staff director and the  
23 director of management.

24 In a typical year, you know, with a staff  
25 director, I'd be briefing the staff director and the

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1 staff director would be talking to you.

2 CHAIRMAN CASTRO: Certainly.

3 MR. RATCLIFFE: But for you to understand  
4 the two thousand twelve - budget, we need to begin  
5 back at when we receive the appropriation. We  
6 requested \$9.4 million from Congress. Congress gave  
7 us \$9,193,000 so that was \$236,000 less than we  
8 requested. In addition, they required us to transfer  
9 \$250,000 to GAO for our IG functions. Okay, that  
10 resulted in a reduction of \$486,000.

11 So when we develop our operating plan what  
12 we do is we basically take the budget that we  
13 submitted to Congress, we adjust it based on the  
14 funding levels and make certain assumptions.

15 There was two reductions we had to make in  
16 the 2012 budget to personnel and office move. We knew  
17 we had some vacancies because the -- we didn't do our  
18 operating plan until January of this year so we knew  
19 that certain positions were going to be vacant. So we  
20 took some of those savings.

21 We also reduced what we thought -- our  
22 planned budget for our move cost because we had  
23 thought we had provided a lot of that funding last  
24 year and they weren't going to have to do it this  
25 year. Okay.

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1                   However, we developed that budget. It was  
2 approved by the person delegated as the authority of  
3 the staff director and we began the year within that  
4 budget. The operating plan is not static, it is  
5 always changing based on management decisions. For  
6 example, the Commission chose to do a field hearing so  
7 that would change the budget. Any other management  
8 decisions to approve travel or things like that.  
9 Anything that the Staff Director, who was acting the  
10 staff director, makes any decisions.

11                   Also, fact of life changes. So for  
12 example, it may be a budget. We may budget \$10,000  
13 for something, it may come in at \$80,000. Or there  
14 may be adjustments between offices or within office's  
15 budgets. Those type of things have happened  
16 throughout the year. There's a process in place where  
17 it's basically approved by the staff director or the  
18 director of management, any changes to the operating  
19 plan. There is an approval process there.

20                   The two main changes affecting our budget  
21 this year, our operating plan, were personnel  
22 vacancies. So we did not fill those positions. We  
23 still have 4 months left. We may fill those  
24 positions. My plan, I have to assume that we're going  
25 to fill those because if the President appoints

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1 somebody I have to have enough funding to be able to  
2 pay for those positions. But we also have had  
3 increased move costs, costs that we were not  
4 anticipating.

5 We rely significantly on GSA who is  
6 providing us the management of the move. We've had to  
7 provide them additional funding this year that we were  
8 not anticipating.

9 COMMISSIONER YAKI: Are we sure that's not  
10 going to parties in Vegas?

11 MR. RATCLIFFE: I'm not sure. It's going  
12 into the same fund, but it's basically for specific  
13 things for our move, whether it's the construction,  
14 whether it's furniture.

15 COMMISSIONER YAKI: You've got to worry  
16 about any last-minute markup after what happened.

17 MR. RATCLIFFE: But basically we've got  
18 those and those things have been reviewed, that these  
19 seem to be valid expenses. But at this time we really  
20 do not have any real excess funding on our current  
21 budget. However, we do have some vacant positions  
22 that aren't filled. That funding will become  
23 available.

24 We also have some uncertainty over the  
25 year and -- or the move. We haven't moved yet. We

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1 don't really know what all the costs are going to be.  
2 We had a big surprise about a week ago that we had to  
3 send in all \$56,000. We didn't anticipate that. We  
4 do not know what other things that may come up.

5 COMMISSIONER YAKI: What is the surprise?

6 MR. RATCLIFFE: No, it was a cost that we  
7 had, that we thought we had funded last year but they  
8 were not able to do it out of last year's funding so  
9 we had to fund it with this year's funding.

10 COMMISSIONER KLADNEY: How much has been  
11 the cost overrun for the move?

12 MR. RATCLIFFE: Well, we don't -- for you  
13 to have an overrun you have to have a firm budget and  
14 we have not really had a great budget of what it was.  
15 We had thought we had paid for most of the costs last  
16 year but this year we had to pay about \$315,000.

17 COMMISSIONER KLADNEY: More than you  
18 anticipated?

19 MR. RATCLIFFE: Yes, more than we  
20 anticipated.

21 COMMISSIONER YAKI: When is this move  
22 supposed to happen?

23 MR. RATCLIFFE: I think it's planned for  
24 July but that's really up in the air. There's a lot  
25 of things that have to be done. That's not really my

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1 area.

2 CHAIRMAN CASTRO: I understand that we're  
3 waiting on GSA to get their vendor to move the  
4 furniture in.

5 MR. RATCLIFFE: So at this time we really  
6 don't have money sitting around to do anything with,  
7 nor do we have much time in the year. We only have 4  
8 months left in the year.

9 We also do have, like most agencies we  
10 find ourselves not having enough money at the  
11 beginning of the year. So there's always a list of  
12 things that we maintain for year-end funding. Things  
13 like IT, we pretty much don't budget for any IT  
14 upgrades and things like that. Library subscriptions  
15 that we wait towards the year end, that we kind of  
16 fund towards the year end. So, if the personnel  
17 savings do occur we would anticipate we would have  
18 things that we could apply that funding for.

19 CHAIRMAN CASTRO: But sitting here today  
20 you say we don't have any surplus.

21 MR. RATCLIFFE: Not until the uncertainty  
22 of the move. If something happens and we need to come  
23 up with additional funding we have to come up with it  
24 or we won't be moving.

25 CHAIRMAN CASTRO: Any question -- I'm

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1       sorry.

2                   MR. RATCLIFFE: Please remember, you had a  
3       \$486,000 reduction. That had to come from somewhere.

4                   CHAIRMAN CASTRO: Right.

5                   MR. RATCLIFFE: It basically came from  
6       personnel savings. We thought we were going to have  
7       that excess but these move costs have come up, you  
8       know, have taken that excess.

9                   CHAIRMAN CASTRO: Commissioner Kladney?

10                   COMMISSIONER KLADNEY: Do we have any  
11       funds in reserve in case there's extra moving costs?  
12       And how much are they?

13                   MR. RATCLIFFE: Well, basically what we  
14       have is we have the personnel savings that we know  
15       we're going to have.

16                   COMMISSIONER KLADNEY: We don't know we're  
17       going to have.

18                   MR. RATCLIFFE: Well, we anticipate we're  
19       going to have. And yes, we do have some contingency  
20       funds. But it's not necessarily a slush fund where  
21       you can -- there are areas we will probably not spend  
22       money on.

23                   COMMISSIONER KLADNEY: Can you put a  
24       number on it?

25                   MR. RATCLIFFE: No, I cannot. For

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1 example, Commissioners, are all Commissioners going to  
2 bill all their billable hours? Some years they don't,  
3 some years they do. Will all regional staff do all  
4 their travel that they say they're going to do? I  
5 don't really know. What's the cost of the field  
6 hearing we're going to have? I don't really have an  
7 estimate on that.

8 COMMISSIONER KLADNEY: So you have no cash  
9 right now.

10 MR. RATCLIFFE: We have funding to operate  
11 based on the operating plan. So there's money within  
12 that operating plan to continue operating. There's  
13 just no money outside of that operating plan that can  
14 be used.

15 COMMISSIONER KLADNEY: Okay. Fine with  
16 me.

17 MR. RATCLIFFE: We can move things within  
18 operating plan to come up with cost.

19 CHAIRMAN CASTRO: Any other questions for  
20 Mr. Ratcliffe? None? Thank you, Mr. Ratcliffe. I  
21 appreciate that. Next on the agenda is the discussion  
22 of Agency staffing.

23 **IV. Management and Operations**

24 **Discussion on Agency Staffing**

25 CHAIRMAN CASTRO: As you know we have

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1 amongst ourselves talked non-deliberatively about the  
2 various permutations of how we address the vacancy and  
3 the acting staff director position. The White House  
4 as we've indicated has not sent someone yet but I  
5 understand there's still people in the pipeline  
6 they're looking at. But pending that we need to come  
7 to some resolution.

8 At the last meeting we talked about an  
9 effort to further research the detail issue to  
10 determine whether there was legal authority to move  
11 forward on that. And in addition, in conversations  
12 I've had with Commissioner Gaziano and I'm going to  
13 ask him to talk a little bit about that issue.

14 But also there's a genesis of an idea that  
15 some of us have kicked around early on about spreading  
16 the duties of the staff director position to certain  
17 key employees. And Commissioner Gaziano has discussed  
18 with some of us the idea of sort of an expanded view  
19 of that.

20 So, at this point I would like to turn the  
21 table over to Commissioner Gaziano to sort of  
22 elaborate on that. Commissioner Kladney, you have a  
23 question?

24 COMMISSIONER KLADNEY: Yes. I hate to  
25 throw water on our little thing here but I am a

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1 diabetic and it is close --

2 CHAIRMAN CASTRO: You need to take a  
3 break?

4 COMMISSIONER KLADNEY: Well, not a break.  
5 I mean, it's either like eat or wait or get this over  
6 in about 30 minutes. That's the deal.

7 VICE CHAIR THERNSTROM: Can't we finish in  
8 30 minutes? I need to go home.

9 COMMISSIONER HERIOT: We can finish in 30  
10 minutes, can't we?

11 CHAIRMAN CASTRO: Let's make sure we  
12 finish in 30 minutes then. Are you sure you don't  
13 need anything?

14 COMMISSIONER KLADNEY: No, I'll be fine.

15 COMMISSIONER HERIOT: We need to  
16 prioritize getting somebody in place for the statutory  
17 report.

18 CHAIRMAN CASTRO: Yes. So let's -- but  
19 I'll cede the floor to Commissioner Gaziano.

20 COMMISSIONER GAZIANO: Well, then I'll  
21 make it -- I was just going to try to make it quick.  
22 I'll make it extremely quick.

23 COMMISSIONER KLADNEY: Thank you.

24 COMMISSIONER GAZIANO: I talked to the  
25 senior attorney who I consider to be under the AIs the

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1 acting general counsel about some of the legal issues.  
2 I've made progress but I've also communicated to the -  
3 - and there's one legal issue that the acting general  
4 counsel has raised to me that I'm waiting for  
5 authority to review.

6 But that I think we need to proceed on  
7 some other things first mainly because I'm not sure  
8 we're going to agree to a detailee. And I don't want  
9 to put a whole lot of energy in that. That's a second  
10 or third -- that's a third best. First best is to get  
11 an appointment from the White House. I think we need  
12 to go to the second best. We can have a multiple  
13 track.

14 On the multiple delegation issue, I don't  
15 want to claim it as my issue. I'm just communicating  
16 this recommendation. This is -- I want to give credit  
17 where credit's due. I know that the Chairman and  
18 Commissioner Heriot have discussed it at previous  
19 meetings. But as this meeting has demonstrated I  
20 think that we should discuss that in theory in 10  
21 minutes.

22 I think then we should try to see if we  
23 can pick two or three that we're comfortable with  
24 today if that idea -- or even if that idea doesn't  
25 work. The IG's representative, the person who will

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1 act for the staff director on approving the report.  
2 And there's maybe one or two others we can come up  
3 with.

4 In theory I think that this second best  
5 solution, we could come up with a little bit of work  
6 and discussion amongst ourselves with something that  
7 no one is satisfied with. Because that's the only way  
8 -- that no one is comfortable with. That everyone  
9 thinks is a little bit bad. And among them the  
10 Commissioners and their special assistants would  
11 assume additional -- would be one of the ones who  
12 would receive additional responsibility and I'll raise  
13 one issue later as to what that should be.

14 And then there's one or two that I think  
15 we should specifically say unfortunately probably no  
16 one may have and that's why we need to go to -- and  
17 that is personnel actions. I think that we would not  
18 authorize any individual member -- this is the advice  
19 I'm getting from others -- to take actual personnel.

20 If someone engages in a theft or violence  
21 it needs to be brought to the Commission. I don't  
22 know, I'm a little concerned about that, but I don't  
23 know another way to -- maybe some other contingency.  
24 So that's all I was going to say.

25 CHAIRMAN CASTRO: Okay. That was fast.

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1                   COMMISSIONER KLADNEY:     So, thank you,  
2 Commissioner Gaziano.

3                   CHAIRMAN CASTRO:     So, I think the two  
4 priority positions that we were talking about here,  
5 are there an individual or individuals that we can  
6 identify to be the point person for the IG to interact  
7 with our Agency, and then is there someone that can  
8 take on the responsibility that the staff director  
9 would otherwise have for purposes of approving the  
10 statutory enforcement report. Is that right?

11                  COMMISSIONER GAZIANO:    Could I just ask  
12 for the -- maybe one more minute in theory to see if  
13 there's consensus or comments from other  
14 Commissioners? The other duties we could eventually  
15 direct delegate are approval of SAC packages, approval  
16 of SAC reports, responsibility for the move. I know  
17 we have people acting, but I'd rather ratify that.  
18 Responsibility for -- I mean, I think there are about  
19 eight or nine -- is there agreement in theory,  
20 principle that we would go down this route?

21                  CHAIRMAN CASTRO:    From my perspective, in  
22 principle, in theory, I do. Commissioner Yaki  
23 doesn't. I know Commissioner Kladney's thoughts on  
24 this. I know he and I discussed it briefly yesterday  
25 but he wanted to reflect on it.

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1                   COMMISSIONER KLADNEY:     I'm -- my main  
2 concern basically is, you know, we keep fixing these  
3 things or putting band-aids on them or jerry-rigging  
4 them or stuff like that, and that's not going to help  
5 us get a staff director any faster.     That's my main  
6 opinion.

7                   My second opinion is we talk about the IG.  
8 I'd like to see the IG talk directly to the department  
9 heads rather than go through one person who would act  
10 as a filter.

11                   The third thing I have is as far as the  
12 SACs are concerned I think that we can, if you really  
13 want to jerry-rig the thing we can change some of the  
14 AIs and they can move forward with stuff.

15                   The problem I have is, for instance, for  
16 the SAC, you know, 120 days ago we made a motion that  
17 I made about getting all the SACs re-chartered by now.  
18 That hasn't happened.     Four of the SACs that were  
19 submitted have been kicked back to the regional  
20 director because it's not been balanced already.     I'm  
21 sitting here going these regional directors, this is  
22 their job is to balance these SACs.     So I mean, can we  
23 trust them or not trust them?

24                   Mr. Minarik had a big discussion regarding  
25 what can happen and what can't happen.     I don't know

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1 if anybody saw some of those emails. And I'm not sure  
2 what we can do or can't do in that regard. So can we  
3 delegate those duties? Do we have the authority to  
4 delegate those duties to other people?

5 COMMISSIONER HERIOT: We can delegate  
6 anything. I mean the bottleneck right now is the  
7 staff feels they can't give us any SACs and therefore  
8 we're not -- we're being derelict in our duty to  
9 charter these SACs because there's some rule out there  
10 that says the staff director has to approve it. We  
11 have the power to put a band-aid on that until the  
12 point we have a staff director and I think a band-aid  
13 is all we need.

14 What we need to be able to do is say okay,  
15 you know, for the SACs that are being created by, you  
16 know, this person they have to be approved by this  
17 next person, you know, just some other person that  
18 doesn't work for them so that we can get them to come  
19 to us so we're not going to have like 40 of these that  
20 we have to charter when we finally get a staff  
21 director. We need to keep the thing flowing.

22 COMMISSIONER KLADNEY: And don't we all  
23 have to agree on who these people are? So perhaps  
24 either we can have a subcommittee of special  
25 assistants or something like that that can go ahead

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1 and try and designate these areas that you're talking  
2 about and come up with a consensus of who to do it.  
3 Because otherwise we're going to be sitting here  
4 trying to agree on who's doing it.

5 COMMISSIONER GAZIANO: I agree it's going  
6 to be difficult but we have some ideas of, again, if  
7 it's a sensitive area where we have -- then the  
8 proposal raised I think perhaps initially by Chair is  
9 to have two sign off.

10 But I think part of the job is identifying  
11 -- first of all we need to talk to our staff through  
12 our special assistants and those of us who are -- I  
13 think the former acting staff director, the head, the  
14 acting head of OCRE and others can advise us on what  
15 really are the essential duties we need band-aids on.  
16 And again I think that we'll be able to hammer out  
17 something.

18 COMMISSIONER KLADNEY: Well, let's look at  
19 it but we're not going to hammer it out today.

20 COMMISSIONER GAZIANO: Absolutely.

21 COMMISSIONER HERIOT: This is what we said  
22 last month and the month before.

23 COMMISSIONER KLADNEY: Well, I know. We  
24 should have taken this action last month and had  
25 somebody report to us this month about -- in advance,

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1 not like 3 days before the meeting get a list of who  
2 is going to do what and do whatever. I mean, I just  
3 actually, maybe I might be slower than most people,  
4 but I just don't, you know, I like to think about  
5 things before I take an action.

6 COMMISSIONER GAZIANO: Given the -- I  
7 don't know that we had consensus that we were going to  
8 divide it up in six different ways. And so if we're  
9 getting -- then it's worth the time. If we had that  
10 consensus that it's worth at least looking at then  
11 it's worth the time for us to try to see if we can  
12 figure it out.

13 CHAIRMAN CASTRO: I believe it is worth  
14 looking at this. As I said to you when we spoke,  
15 Commissioner Gaziano, I am personally willing to look  
16 at anything that is reasonable and legal to try to  
17 provide some interim solution. That solution will not  
18 be perfect but it's better than what we have right  
19 now.

20 And I am willing to say that in the  
21 interim we can work together to try to hash out what  
22 those roles are and then who we might be comfortable  
23 playing those roles and maybe even if we had to hold a  
24 special phone meeting to do further discussion.  
25 Because I too would rather not wait till the July

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1 meeting. If there is some consensus we could reach  
2 before then we can have a teleconference meeting and  
3 hash it out, or maybe even come to a resolution.  
4 That's my personal view. Commissioner Achtenberg, I  
5 don't know if there's anything you want to add to  
6 this?

7 COMMISSIONER ACHTENBERG: Mr. Chairman, I  
8 do think that we should at least attempt to delegate  
9 personnel positions if not today then soon thereafter  
10 as colleagues would feel prepared to make some at  
11 least interim decision. I do think it's extremely  
12 important that we fill these positions so that we make  
13 sure that crucial functions don't languish in the  
14 interim.

15 CHAIRMAN CASTRO: So it does seem to me  
16 that while there's some disagreement there is a  
17 consensus that this is something that we are willing  
18 to look at and discuss and try to put some meat to the  
19 bone. So, we can put a subcommittee together or we  
20 can all try to begin to communicate with one another  
21 some ideas through our staff and then have, if  
22 necessary, a telephonic open meeting on this. Does  
23 that sound like a plan to folks?

24 COMMISSIONER GAZIANO: Yes.

25 COMMISSIONER ACHTENBERG: Mr. Chairman?

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1 CHAIRMAN CASTRO: Yes, Commissioner  
2 Achtenberg?

3 COMMISSIONER ACHTENBERG: I do think a  
4 subcommittee would be extremely useful, you know.  
5 With fair representation on both sides we're most  
6 likely to come to a conclusion that would be  
7 satisfactory to people at a telephonic meeting that we  
8 hold sooner than we would otherwise.

9 CHAIRMAN CASTRO: Okay. Actually, Ms.  
10 Tolhurst, could you come forward?

11 COMMISSIONER GAZIANO: We're going to make  
12 a motion on that today.

13 CHAIRMAN CASTRO: So, a motion on the  
14 person who will interact with the IG, is that what you  
15 said?

16 COMMISSIONER GAZIANO: No, the first  
17 motion --

18 CHAIRMAN CASTRO: Oh, on the -- okay.

19 COMMISSIONER HERIOT: And that's a promise  
20 to the IG that we --

21 COMMISSIONER GAZIANO: We would at least  
22 entertain a motion. It may be defeated based on  
23 Commissioner Kladney's vote.

24 CHAIRMAN CASTRO: So let me make sure that  
25 we're on the same page here. So, at least as to the

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1 overall concept do folks want to serve on a  
2 subcommittee?

3 COMMISSIONER GAZIANO: Why not all those  
4 Commissioners who want to serve on the subcommittee  
5 can serve on the subcommittee?

6 CHAIRMAN CASTRO: Yes. And do you want to  
7 identify yourselves now? Otherwise you can let us  
8 know afterwards.

9 VICE CHAIR THERNSTROM: This is just a  
10 subcommittee to decide --

11 COMMISSIONER GAZIANO: A proposal.

12 VICE CHAIR THERNSTROM: A proposal.

13 CHAIRMAN CASTRO: That would be brought  
14 back to us as a Commission. So I'll be happy to serve  
15 on that.

16 COMMISSIONER ACHTENBERG: I'm happy to  
17 serve.

18 CHAIRMAN CASTRO: Okay, someone take notes  
19 on this.

20 COMMISSIONER GAZIANO: I'll serve to  
21 balance as needed.

22 CHAIRMAN CASTRO: Okay, good. Okay, so  
23 now on the topic of a person that we would need to  
24 designate in order to undertake the duties normally  
25 undertaken by the staff director to review and approve

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1 the statutory enforcement report. Do we have any  
2 recommendations on that?

3 COMMISSIONER HERIOT: I have some  
4 questions.

5 CHAIRMAN CASTRO: Sure.

6 COMMISSIONER HERIOT: We don't want to  
7 appoint someone who wrote the statutory report.

8 CHAIRMAN CASTRO: Correct, so can that be  
9 --

10 COMMISSIONER HERIOT: And we don't want to  
11 appoint someone who is subordinate to someone who  
12 wrote the statutory report.

13 CHAIRMAN CASTRO: Right. Yes, absolutely.

14 COMMISSIONER HERIOT: So who's left after  
15 that?

16 COMMISSIONER GAZIANO: I would suggest the  
17 acting head of OCRE but having done so I wonder  
18 whether that dooms her chances. But I think there's a  
19 logical argument.

20 CHAIRMAN CASTRO: Not from my perspective  
21 it doesn't doom her chances.

22 COMMISSIONER GAZIANO: For that --

23 COMMISSIONER YAKI: Dooms her chances for  
24 what?

25 COMMISSIONER GAZIANO: Pardon?

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1 COMMISSIONER YAKI: What do you mean by  
2 dooms her chances?

3 CHAIRMAN CASTRO: For being elected to do  
4 that.

5 MS. TOLHURST: This will show you how  
6 short-staffed we are it depends how particular you  
7 want to get in doing this properly. The acting head  
8 of OCRE was one of the members of the editorial board  
9 has already edited this paper. The other person that  
10 might be logical would be the senior person in OSD,  
11 that's Lenore. She did the legal sufficiency review  
12 for this paper. So, most of the logical staff has  
13 already had their fingers in the paper.

14 COMMISSIONER GAZIANO: Is some involvement  
15 in your view a serious conflict?

16 MS. TOLHURST: That's for you to decide.  
17 I just want you to realize --

18 COMMISSIONER GAZIANO: But I'm asking your  
19 opinion. Do you have an opinion on that?

20 MS. TOLHURST: Some involvement?

21 COMMISSIONER GAZIANO: Or the particular  
22 involvement you mentioned. Let's be particular  
23 because the problem is getting someone -- you've  
24 mentioned to me your concern. Unless they willingly  
25 accept it, of giving a duty that's not germane to

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1 their -- and that's a serious concern to me too. So  
2 we could get someone who has a completely different  
3 job but then it wouldn't be germane to assign that  
4 responsibility to them.

5 MS. TOLHURST: That's right. I think  
6 they're both big problems. The bigger one would be  
7 the person who did the LSR because she has already  
8 certified that it's legally proper.

9 CHAIRMAN CASTRO: And who's that?

10 MS. TOLHURST: That was Lenore.

11 COMMISSIONER GAZIANO: So the person that  
12 I've suggested you think is the lesser of the --

13 MS. TOLHURST: She made contextual and  
14 grammatical changes. I wouldn't prefer it but I guess  
15 it's not a total bar.

16 COMMISSIONER GAZIANO: Do you have any  
17 other suggestions?

18 COMMISSIONER HERIOT: That has its own  
19 problems, you know.

20 CHAIRMAN CASTRO: Is there a regional  
21 director, perhaps?

22 COMMISSIONER HERIOT: For her to suggest  
23 the person.

24 CHAIRMAN CASTRO: Could there be a  
25 regional director --

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1 COMMISSIONER GAZIANO: At first I didn't  
2 want to ask that. You're right, you're right,  
3 Commissioner Heriot, she shouldn't suggest. I think  
4 that the role that the acting head of OCRE does not  
5 sound to me like a serious conflict.

6 COMMISSIONER KLADNEY: I make a motion.

7 CHAIRMAN CASTRO: I second it.

8 COMMISSIONER KLADNEY: Call for the  
9 question.

10 CHAIRMAN CASTRO: All those in favor of  
11 having the acting head of OCRE take on the duties that  
12 the staff director would take on in order to approve  
13 the statutory enforcement report for our review as a  
14 Commission signify by saying aye.

15 (Chorus of ayes)

16 CHAIRMAN CASTRO: Any opposed?

17 (No response)

18 CHAIRMAN CASTRO: Any abstentions?

19 (No response)

20 COMMISSIONER YAKI: Have we checked to  
21 make sure Ms. Butler is available?

22 CHAIRMAN CASTRO: No, I haven't spoken to  
23 her.

24 COMMISSIONER GAZIANO: What do you mean  
25 available?

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1 COMMISSIONER YAKI: Well, I mean some  
2 people have scheduled vacation, that kind of stuff. I  
3 mean a practical question.

4 CHAIRMAN CASTRO: She was here earlier but  
5 she seems to have left so we'll --

6 COMMISSIONER KLADNEY: Hope for the best.

7 CHAIRMAN CASTRO: Yes. Plan for the  
8 worst.

9 COMMISSIONER GAZIANO: See what happens  
10 when you leave the room.

11 CHAIRMAN CASTRO: I know, right? So, is  
12 that it or do we -- do you have another topic you want  
13 to talk about it? Or do you want to save that for  
14 when we talk about --

15 COMMISSIONER GAZIANO: I want to -- no, I  
16 want to listen to maybe Commissioner Kladney  
17 elaborate. I'll make a motion and then see if my  
18 amended version of the motion --

19 VICE CHAIR THERNSTROM: He said he needed  
20 to get out of here.

21 COMMISSIONER GAZIANO: I hear that. Do we  
22 --

23 COMMISSIONER KLADNEY: I'm going to just  
24 tell you I think that the IG talks directly to the --  
25 I mean, we have how many division heads? We probably

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1 have as many division heads as we have employees  
2 pretty much. So the idea is she can -- the IG, not  
3 she. The IG --

4 COMMISSIONER GAZIANO: The General.

5 COMMISSIONER KLADNEY: The General can  
6 speak directly to the department head and get the  
7 information they need. If we put somebody else to go  
8 through, sitting here going who's that going to be  
9 that's familiar enough besides our quasi-acting  
10 general counsel to be able to fill that position and  
11 to know what should be gotten and what should be  
12 provided and what shouldn't be provided.

13 The General knows what she wants or they  
14 want and can ask for it directly and get it. We have  
15 four department heads.

16 COMMISSIONER GAZIANO: The General doesn't  
17 necessarily know where it is though so my motion  
18 should be as -- I move that the Commission encourage  
19 the IG to seek information from all of the department  
20 heads where feasible but that we still appoint,  
21 designate our senior attorney acting general counsel  
22 since she's the one who formerly was staff director to  
23 be the primary point of contact for the Inspector  
24 General. Does that satisfy?

25 COMMISSIONER KLADNEY: That's fine with me

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1 if it's okay with the quasi-acting general counsel. I  
2 mean, the problem is in this entire process, the last  
3 3 or 4 months she's the one who's taken the heat. And  
4 we're making her -- we're asking her to work more.  
5 She's earning less. She has no authority. We're  
6 imposing upon her again and that aggravates me.

7 VICE CHAIR THERNSTROM: Hear, hear.

8 COMMISSIONER GAZIANO: Hear, hear. But  
9 I'm working on the -- one of those issues.

10 COMMISSIONER KLADNEY: Well, I think it's  
11 something that we have to acknowledge.

12 COMMISSIONER GAZIANO: That's appropriate.

13 COMMISSIONER KLADNEY: And I think that  
14 the woman has been very magnanimous with her time and  
15 putting up with what we need.

16 CHAIRMAN CASTRO: So is that a second?

17 COMMISSIONER KLADNEY: Yes, that's a  
18 second.

19 CHAIRMAN CASTRO: Okay. All those in  
20 favor signify by saying aye.

21 (Chorus of ayes)

22 CHAIRMAN CASTRO: Any opposed?

23 COMMISSIONER YAKI: I oppose it.

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

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1 (No response)

2 CHAIRMAN CASTRO: Okay, the motion passes.  
3 Anything else?

4 COMMISSIONER KLADNEY: I have two things.

5 COMMISSIONER GAZIANO: We did but I think  
6 Commissioner Kladney needs to go.

7 CHAIRMAN CASTRO: Okay.

8 COMMISSIONER KLADNEY: Two things. First  
9 of all, two days ago was D-Day and a couple of days  
10 ago were Memorial Day and I think we ought to have a  
11 little resolution thanking those people who have given  
12 their lives to the country.

13 CHAIRMAN CASTRO: Absolutely.

14 COMMISSIONER KLADNEY: And the second  
15 thing is I would like to acknowledge the Vice Chair  
16 for her great interview in the Wall Street Journal.

17 CHAIRMAN CASTRO: Hear, hear.

18 VICE CHAIR THERNSTROM: Thank you very  
19 much.

20 (Applause)

21 CHAIRMAN CASTRO: I would entertain a  
22 motion to adjourn.

23 COMMISSIONER GAZIANO: No, I did add one  
24 item to the agenda. I just wanted --

25 CHAIRMAN CASTRO: Oh, okay.

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1 COMMISSIONER GAZIANO: -- Commissioner  
2 Kladney.

3 CHAIRMAN CASTRO: Okay, I misunderstood  
4 you. Okay. So, you're going to --

5 COMMISSIONER KLADNEY: I'm done.

6 COMMISSIONER GAZIANO: I wanted an update  
7 on the Alabama report.

8 **IV. Management and Operations**

9 **Update on the Alabama Report**

10 CHAIRMAN CASTRO: And do we have Lenore  
11 and Pam Dunston -- on that?

12 COMMISSIONER GAZIANO: And then I had a  
13 question about the witness staffing.

14 COMMISSIONER ACHTENBERG: Mr. Chairman,  
15 I'm going to have to leave the call.

16 CHAIRMAN CASTRO: Okay, thank you.

17 COMMISSIONER ACHTENBERG: Thank you very  
18 much.

19 COMMISSIONER GAZIANO: Panel.

20 CHAIRMAN CASTRO: Yes, no witnesses.

21 COMMISSIONER GAZIANO: Panelists.

22 CHAIRMAN CASTRO: Ms. Ostrowsky, would you  
23 like to give us an update?

24 COMMISSIONER GAZIANO: Yes, my -- just I  
25 had to begin with just some logistical questions.

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1 Where are we having it and what is the cost.

2 CHAIRMAN CASTRO: So in terms of location  
3 and cost of actual logistics of it that would be Ms.  
4 Dunston.

5 MS. DUNSTON: Hi. The location hasn't  
6 been confirmed yet. I'm going now to Alabama to see a  
7 site that we've already discussed. We have looked at  
8 some locations and meeting rooms and so forth. We've  
9 had a couple of the SAC people who have given us some  
10 sites but they didn't work out. We've looked at a  
11 couple of historical civil rights institutions but  
12 their size and the locations of them didn't pan out  
13 for our needs.

14 We are looking at the convention center  
15 down there. We have not firmed up a contract. I will  
16 be going down in a week and a half to see the  
17 location.

18 COMMISSIONER GAZIANO: My question is I  
19 suggested when I -- this was first discussed that we  
20 just get a federal building and the federal building  
21 hopefully will give it to us, their hearing room or  
22 whatever, meeting room, free. How many people do we  
23 think we need to accommodate?

24 MS. DUNSTON: Well, our typical setup is  
25 planning for 100 to 150. We don't typically go to a

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1 federal building when we talk about the subject  
2 matter. The subject matter is immigration. Because  
3 of the people that we happen to serve, some may have  
4 some issues with an immigration hearing coming down to  
5 a federal building. So I talked to the Chair, we  
6 discussed those issues and those kind of challenges to  
7 the people that we're trying to serve.

8 In addition, when you try to contract  
9 services they don't have the services, they don't have  
10 the hours, they don't have the things that we need to  
11 control our site. So going up to a building such as  
12 that doesn't give us what we need to have access, what  
13 we need to maybe have audio/visual or what we want to  
14 do in terms of leaving our material there or A/V and  
15 things like that. So contractually we can't control  
16 that.

17 They don't necessarily have the staff that  
18 we need for A/V that we usually want to do with a  
19 hotel. We can contract them exactly what we want, the  
20 exact hours and availability that we need. So that's  
21 what from the contract side we try to go to a place  
22 that we control.

23 CHAIRMAN CASTRO: Just for the record I  
24 believe we lost a quorum, so.

25 COMMISSIONER GAZIANO: We can continue to

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1 have the discussion. That's fine.

2 CHAIRMAN CASTRO: Yes, I just want --

3 COMMISSIONER GAZIANO: Yes, that's fine.

4 Yes, I didn't need a vote on any of this anyway.

5 CHAIRMAN CASTRO: I just wanted to let you  
6 all know.

7 COMMISSIONER GAZIANO: Okay. Let the  
8 record reflect. The hotel A/V is so much more  
9 expensive usually than contract A/V. It may be easier  
10 to do one-stop shopping but I would still wonder that  
11 there isn't some federal building.

12 I'm a little, I take your point a little  
13 bit that some in the audience who are in the United  
14 States illegally might not feel comfortable coming to  
15 our hearing in a federal building although I don't  
16 know that their immigration status -- their  
17 immigration status isn't going to be checked.

18 COMMISSIONER YAKI: A lot of the federal  
19 buildings, the security now to get into a federal  
20 building is pretty awesome now.

21 CHAIRMAN CASTRO: Yes, that's the concern.

22 COMMISSIONER YAKI: You have --

23 COMMISSIONER GAZIANO: You have to show an  
24 ID to get in the Department of Justice. Yes, I  
25 understand.

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1 MS. DUNSTON: Any federal building you're  
2 going to have to show some state-issued ID. It will  
3 be checked.

4 COMMISSIONER GAZIANO: But that's --

5 COMMISSIONER YAKI: If you have an office  
6 with certain agencies in it or a member of Congress  
7 who has an office in it, there's no way.

8 COMMISSIONER GAZIANO: Okay. Well, apart  
9 from -- hotel A/V is very expensive. I just don't --  
10 whether there's --

11 MS. DUNSTON: Because we go to another  
12 site does not mean we're going to pay for the  
13 services.

14 COMMISSIONER GAZIANO: -- a county  
15 building or something that would just loan us a  
16 facility and then we would hire A/V.

17 CHAIRMAN CASTRO: We may still have this  
18 same access problem. I believe you actually looked at  
19 that, Ms. Dunston?

20 MS. DUNSTON: You're still going to have a  
21 contractual cost. The cost of the actual meeting room  
22 itself is not an expensive and relative to what we  
23 normally pay in terms of the time and because of the  
24 location we're going to. But regardless of where we  
25 go to we have to contract the service. We have to

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1 contract for equipment and the main hours to set up  
2 and to run that. So wherever we go we're going to  
3 have a fee to pay irrespective of whether it's a free  
4 space or it's a hotel.

5 COMMISSIONER GAZIANO: What was the budget  
6 that we had?

7 MS. DUNSTON: Fifty thousand.

8 COMMISSIONER GAZIANO: Fifty thousand.  
9 And is it possible that we could get a kind of  
10 estimate of that that includes, for example, how many  
11 staff need to come down. We have two staffing issues.  
12 One is whether we're going to kind of deplete our main  
13 office and the things we're trying to. But I don't  
14 know whether we're going to be able to afford to bring  
15 our counsels and special assistants. Maybe they don't  
16 really want to go and they would love to be left at  
17 home.

18 CHAIRMAN CASTRO: I also understand  
19 several Commissioners are not coming so that will be a  
20 savings as well.

21 COMMISSIONER GAZIANO: But is it possible  
22 we could get a kind of tentative outline?

23 CHAIRMAN CASTRO: Maybe if folks could let  
24 Pam know who's intending to come then she could --

25 MS. DUNSTON: And how long. So if you're

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1 going to come for 1 day or 3 days that makes a  
2 difference in terms of the number of hotel nights.  
3 Your travel is something, you know, we can just make  
4 an estimate on. But we're going to put together some  
5 preliminary numbers about the cost and I can certainly  
6 give that to the Chair to share with you.

7 COMMISSIONER GAZIANO: Thank you. Well,  
8 if I could just, before --

9 CHAIRMAN CASTRO: I think Lenore had  
10 something she wanted to add to that question.

11 MS. OSTROWSKY: There is a question. Kim  
12 Tolhurst has ruled at least in a preliminary fashion  
13 that we may not invite people to be speakers at the  
14 hearing -- at the briefing, sorry, briefing -- who are  
15 not legally in this country. And that would at least  
16 I think eliminate the problem of using a federal  
17 building.

18 MS. TOLHURST: No, I didn't rule.

19 MS. OSTROWSKY: You didn't, okay.

20 MS. TOLHURST: I'm not in a position to  
21 rule anything. No. My suggestion was that if we  
22 invite undocumented people to be speakers we need to  
23 make it clear we can't guarantee the audience -- any  
24 member of the public can come to the audience. We  
25 can't guarantee that some member of the public won't

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1 then after they're done talking go outside and make a  
2 phone call and say Suzie Smith from whatever country  
3 just admitted she's here without papers and blah blah  
4 blah. And so my concern was that people, when you're  
5 choosing who you want to invite, that they should know  
6 the audience is the public and that we have no control  
7 over public actions following.

8 CHAIRMAN CASTRO: Absolutely. And when I  
9 was in Birmingham for the Democratic Congressional  
10 Caucus briefing that was held in November and it was  
11 held not at a public building. It was held at an  
12 auditorium. And there were undocumented persons that  
13 were testifying. There were I presume also  
14 undocumented persons in the audience. And this is  
15 part of the life that these folks lead. They know  
16 that this is a potential that I think certainly  
17 clearly to the extent any of the folks -- I don't know  
18 that we have anyone yet who's undocumented that is on  
19 the panel, but that certainly should be reminding, we  
20 should be reminding them that it's going to be public.  
21 Many of them are still willing to come forward but  
22 they should know that in advance.

23 MS. TOLHURST: They might -- I know this  
24 isn't ideal for a briefing, but if there are only one  
25 or two they might want to call in by phone and use

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1 their first name.

2 CHAIRMAN CASTRO: That's probably not  
3 ideal.

4 MS. TOLHURST: It might be ideal for them.

5 CHAIRMAN CASTRO: But I believe that given  
6 some of the groups on the ground that I think you're  
7 talking to they should be able to recommend some  
8 people.

9 MS. OSTROWSKY: They are trying but the  
10 fact is since we can't -- because it is a public  
11 hearing or public briefing they have not been able to  
12 find anyone so far.

13 CHAIRMAN CASTRO: Well, maybe we'll  
14 consider that option. Thank you. Yes, another  
15 question?

16 COMMISSIONER GAZIANO: I would -- just on  
17 that last point I'm glad for the clarification because  
18 I had heard that and didn't agree with it. I think we  
19 could hear from those who are in the country illegally  
20 if they want to come forward. But I would rather see  
21 them. But maybe -- let me think that through. I  
22 don't know.

23 My other question and I didn't want -- I  
24 didn't mind putting this at the end but I wish a few  
25 other Commissioners were here. One of the things that

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1 the subcommittee on delegations will need to take up  
2 is sort of who has the responsibility to ensure  
3 balance. And that's as I've discussed with current  
4 Commissioners present I think a matter that until we  
5 have a staff director the Commissioners themselves  
6 need to take responsibility for.

7 And for this particular hearing as you  
8 know, Mr. Chairman, I discussed with you I may not  
9 have the latest update but I commend you for reaching  
10 out to potential panelists and not witnesses. But I  
11 commend you for helping make this hearing that you've  
12 originated strongly represent I think some of the  
13 views that you want raised. But it seems, again, more  
14 on one side.

15 Including the SAC chairmen who are  
16 confirmed and invited and including --

17 CHAIRMAN CASTRO: Actually I did not  
18 extend those invitations. Those were done by Ms.  
19 Ostrowsky.

20 COMMISSIONER GAZIANO: Okay, but --

21 MS. OSTROWSKY: There were just two of  
22 them.

23 COMMISSIONER GAZIANO: Well, I understand  
24 two were invited and Joanne Milner is invited?

25 MS. OSTROWSKY: No.

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1 CHAIRMAN CASTRO: No, she's -- I've spoken  
2 to her briefly. I haven't heard back from her but you  
3 spoke to Georgia and to Alabama, both of whom are  
4 Republican chairs.

5 COMMISSIONER GAZIANO: But against the  
6 law. And the balance that we --

7 CHAIRMAN CASTRO: I don't know what their  
8 position is on the law honestly.

9 MS. OSTROWSKY: They are against the law.

10 CHAIRMAN CASTRO: Okay.

11 COMMISSIONER GAZIANO: They are against.  
12 As Ms. -- as our staffer said they are confirmed.  
13 Certainly my understanding is they are against the  
14 law. So if we count them we have six confirmed who  
15 are against the law, three confirmed who seem to  
16 support the law. We have four more invited who are  
17 against the law and the Southern Poverty Law Center is  
18 trying to find witnesses. And one of the principals  
19 who's one of the witnesses wants to find teachers.  
20 And one of the -- and then we understand that there's  
21 an interest in getting other undocumented workers to  
22 testify.

23 What I don't think is -- I do want to go  
24 and I'm planning on going as long as it's balanced.  
25 Since there are four Commissioners appointed by

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1 Republican authorities regardless of our own  
2 identification, four appointed by Democrats, I think  
3 that we need to ensure that there is either identical  
4 or almost identical number of panelists on each side  
5 of this very divided issue.

6 With the help of my special assistant as  
7 you know I've been reaching out. I may have  
8 identified some others that can be invited. But I  
9 can't keep -- we can't keep pace if there are 18 or 12  
10 or something on the other side. So what I would  
11 suggest is just get your informal reaction since we're  
12 not -- is if we agree on some target that there may be  
13 eight strong witnesses on one side or something like  
14 that and then eight strong witnesses on the other side  
15 that's manageable. And we'll work with Lenore to try  
16 to see that, you know, she agrees with those that we  
17 have in mind.

18 But until we have a staff director we've  
19 got to take more of the responsibility ourselves to  
20 guarantee balance. But is something like eight and  
21 eight reasonable as far as the number of panelists?

22 CHAIRMAN CASTRO: You know, I agree with  
23 you that there should be balance. That's what I want  
24 to see. To the extent that I have been involved it's  
25 been to facilitate sort of an outreach to people that

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1 I know. I think I reached out to three or four  
2 people. Some of them I haven't heard back from. I'm  
3 still waiting to hear from Janet Murguia from the  
4 National Council of La Raza and I forget the other  
5 two.

6 MS.OSTROWSKY: Benson Hale.

7 CHAIRMAN CASTRO: No, I actually asked  
8 Marlene for you to follow up with them.

9 MS. OSTROWSKY: Okay. Yes.

10 CHAIRMAN CASTRO: But I also suggested to  
11 Lenore that because she's expressed to me on more than  
12 one occasion that she's been having trouble finding  
13 folks in favor. And I suggested to her that to me the  
14 folks that would be great to hear from are the actual  
15 drafters and supporters of the legislation. You know,  
16 they're the ones who advocate for this and so they  
17 would be great targets.

18 The number of folks that have already been  
19 selected have been primarily folks that I have not  
20 recommended or suggested. I know there's some  
21 scholars, et cetera, that are there. So I would  
22 definitely want to see balance. I can't say that  
23 based on the number of folks that may have already  
24 been invited by Lenore what the numbers should be,  
25 eight and eight. I think there are a number of people

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1 you've already invited.

2 MS. OSTROWSKY: And disinvented.

3 CHAIRMAN CASTRO: I don't know what the  
4 balance is. Oh, and disinvented as well? There's one  
5 guy who wanted to speak but -- a statistician from Pew  
6 that wanted to speak by phone. Demographer -- these  
7 people in person.

8 COMMISSIONER GAZIANO: Since this is your  
9 hearing, by the way, some people need to be asked to -  
10 - not disinvented but asked to submit written  
11 testimony.

12 CHAIRMAN CASTRO: Well, that's exactly  
13 what --

14 COMMISSIONER GAZIANO: Instead of oral  
15 testimony. I would feel more comfortable in you  
16 deciding for your side with the help of Lenore -- I'm  
17 sorry -- and then I, you know, I'll only somewhat  
18 reluctantly assume the task of helping with my special  
19 assistant in identifying some others. But that we  
20 should do something like that.

21 CHAIRMAN CASTRO: Why don't we do this and  
22 then I'll -- why don't you give me your --

23 COMMISSIONER HERIOT: -- how you're going  
24 to handle this?

25 CHAIRMAN CASTRO: I'm sorry, go ahead.

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1 Give me your thoughts. I apologize.

2 COMMISSIONER HERIOT: Yes, this is just a  
3 microcosm of a much larger issue.

4 CHAIRMAN CASTRO: And we talked about this  
5 --

6 COMMISSIONER HERIOT: And you know, a  
7 couple of things that have been said here I thought  
8 were kind of amusing. Like Todd was talking about  
9 there are two sides of this. Actually there are like  
10 40 sides of this. And you know, Todd knows that.

11 CHAIRMAN CASTRO: It's hard to get  
12 balance. Yes, there's --

13 COMMISSIONER HERIOT: The point I wanted  
14 to make was that people have a much better sense of  
15 the political landscape close to their own views and  
16 the complexity of it, and they have less of a sense of  
17 the complexity of the political landscape for the  
18 views that are farther away from them. So when you  
19 said about the SAC chairs they're Republicans and I  
20 thought they're Libertarians. They may be on the  
21 other side.

22 And like it's much easier for, you know,  
23 people who are basically on the left side of the  
24 political spectrum to get a sense of the different  
25 views on the left side of the political spectrum.

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1 CHAIRMAN CASTRO: Sure.

2 COMMISSIONER HERIOT: It's a little easier  
3 for the people on the right side of the political  
4 spectrum to do that. And that's why I think the  
5 notion that we as Commissioners have to take more, a  
6 more active role in making sure that this thing is  
7 balanced.

8 And I think the best way to do that is to  
9 say okay, given that we're 4-4 now I'll have to have a  
10 different idea later on, but while we're 4-4 now to  
11 say look, you know, a certain number of the witnesses  
12 should be agreed upon by the people who were appointed  
13 by Democratic authorities and a certain number of  
14 witnesses ought to be agreed upon by the people who  
15 were appointed by Republican authorities.

16 And I don't really see how we ever could  
17 do a good job in balancing panels if we don't have  
18 some Commissioner responsibility. Because what we're  
19 going to run into is what we ran into back in the  
20 Reynolds administration where the Democratic appointed  
21 Commissioners were upset that the panel wasn't  
22 balanced. But we needed to say, okay, help us. You  
23 invite them. You tell us who to invite.

24 COMMISSIONER GAZIANO: You take  
25 responsibility.

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1                   COMMISSIONER HERIOT:    Instead of what we  
2                   were getting which was just, you know, screaming and  
3                   yelling about it not being balanced.    So I definitely  
4                   feel that not just for this but for all future  
5                   occasions we need to come up with a procedure that  
6                   makes the Commissioners more involved.    And therefore  
7                   under such a procedure we're going to do a lot better  
8                   job at really balancing things because no one person  
9                   is ever going to be good at that.

10                   COMMISSIONER GAZIANO:    And I absolutely  
11                   agree that that's the goal for the subcommittee, but  
12                   we're moving fast on this one and I want to meet the  
13                   targets.    And that's why I was asking you whether  
14                   eight is the right number.    I hope so because I hate -  
15                   - I don't hate -- I think briefings or hearings, but  
16                   this is a briefing, are more effective if you have  
17                   fewer numbers of great witnesses that we can question  
18                   and interact with than when you -- 16 is already above  
19                   my ideal --

20                   CHAIRMAN CASTRO:    Yes, I thought it was  
21                   kind of high too, but -

22                   MS.    OSTROWSKY:        May I, may I say  
23                   something?

24                   COMMISSIONER GAZIANO:    It's above my  
25                   ideal.    But I hate to disinvite, you know, move--

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1 CHAIRMAN CASTRO: I understand.

2 COMMISSIONER GAZIANO: -- oral witnesses  
3 to written.

4 CHAIRMAN CASTRO: We'll figure that out.

5 MS. OSTROWSKY: May I say something?

6 CHAIRMAN CASTRO: Lenore and then I'll --  
7 yes.

8 MS. OSTROWSKY: First of all, the job  
9 theoretically of the staff person working on these--

10 COMMISSIONER GAZIANO: For the recording  
11 why don't you.

12 MS. OSTROWSKY: -- is to make sure that  
13 they are balanced. That's number one. The number  
14 right now is, basically it's going to be probably 12  
15 people total.

16 COMMISSIONER GAZIANO: You've got six  
17 right now against the law confirmed. And you've got  
18 six --

19 MS. OSTROWSKY: Three for. And we have  
20 invitations out to several people, one of whom is the  
21 chief author of the Alabama statute himself, Scott  
22 Beason.

23 COMMISSIONER GAZIANO: No, I understand,  
24 but --

25 MS. OSTROWSKY: And what I am trying to

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1 say is that I think it'll be closer to 12 rather than  
2 more.

3 COMMISSIONER GAZIANO: Well, the reason  
4 I'm just questioning, you've got six confirmed  
5 witnesses who are against the law. And you've got  
6 invitations outstanding. The principal wants to bring  
7 as I understand --

8 MS. OSTROWSKY: There are three confirmed  
9 against.

10 COMMISSIONER GAZIANO: -- teachers. Yes,  
11 but if you have six and the principal wants to bring  
12 witnesses, and we want to bring undocumented aliens,  
13 and we've got invitations out to La Raza --

14 CHAIRMAN CASTRO: May I suggest something?

15 COMMISSIONER GAZIANO: That's --

16 CHAIRMAN CASTRO: Let me suggest something  
17 here. And I -- now let me talk, okay? So first of  
18 all, I want to thank Pam for all the efforts she's  
19 been doing on the logistics and I want to thank  
20 Lenore. I know Lenore, this is not a substantive  
21 subject area that you're familiar with so you've been  
22 trying to come up to speed on the issues and I've been  
23 trying to assist to that extent as has Marlene.

24 I think we are in a unique situation given  
25 that we don't have the staff director and I want to

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1 ensure that there's balance because I want there to be  
2 no question about the integrity of this briefing that  
3 we have.

4 What I would suggest as it relates to this  
5 briefing only and in this current scenario that we  
6 find ourselves in without a staff director. Not to  
7 say that I'm not amenable in the future to the ideas  
8 we were talking about at lunch.

9 COMMISSIONER HERIOT: I haven't spoken  
10 though. Because like you guys are still talking about  
11 two sides and there's not two sides, there's more  
12 sides.

13 CHAIRMAN CASTRO: I understand.

14 COMMISSIONER HERIOT: And a staff director  
15 isn't going to help this problem. It's going to make  
16 it worse.

17 CHAIRMAN CASTRO: Here's what I'm going to  
18 suggest is that we meaning -- since you've taken on  
19 the mantel of wanting to do this and I and our two  
20 respective special assistants this coming week have a  
21 phone conference with Lenore and kind of go through  
22 this. I think we need to look at each of the panels  
23 and determine who wasn't invited, who needs to be  
24 invited, who might be asked to submit written  
25 testimony so that we know where we have gaps and where

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1 we can make adjustments. And I'm more than happy to  
2 do that again.

3 This is my personal view. We don't have a  
4 Commission here to vote on it but I think given the  
5 exceptional circumstance I'm willing to do that where  
6 we could work with the staff on that.

7 Once we have a staff director in place and  
8 I think there are some valid points that Commissioner  
9 Heriot raised yesterday in looking at how Congress  
10 does their briefings. You know, they split it among  
11 their various caucuses. Maybe that's something to do.  
12 I think that would require a fuller discussion with  
13 the Commission.

14 I'm not averse to that but I think just  
15 for the purposes of this exigent circumstance of  
16 getting this briefing balanced and go forward we'll do  
17 this for this one. Does that make sense?

18 COMMISSIONER GAZIANO: I was -- I don't  
19 want to -- yes.

20 CHAIRMAN CASTRO: Okay.

21 COMMISSIONER GAZIANO: You know the sense  
22 of your caucus. They can overrule us but you know the  
23 sense of your caucus and I think I know the sense of  
24 ours who are going to show up. So I think that we are  
25 proceeding with what the likely consensus of our --

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1 CHAIRMAN CASTRO: I agree, I agree.

2 COMMISSIONER GAZIANO: -- colleagues are  
3 going to be. So I think that works.

4 CHAIRMAN CASTRO: Okay. Did you want to  
5 add something after what I said?

6 COMMISSIONER HERIOT: I hereby cede all  
7 authority that I might have or not have to  
8 Commissioner Gaziano because I know nothing about this  
9 issue.

10 **V. Adjourn Meeting**

11 CHAIRMAN CASTRO: Okay. Well, I would ask  
12 for a motion to adjourn but since we don't have a  
13 quorum I don't even know if we need that, but I'll do  
14 it anyway. Motion to adjourn? Second.

15 COMMISSIONER GAZIANO: Second.

16 CHAIRMAN CASTRO: All in favor?

17 (Chorus of ayes)

18 COMMISSIONER HERIOT: No.

19 CHAIRMAN CASTRO: No, okay?

20 (Laughter)

21 CHAIRMAN CASTRO: What is it, 1:35? Yes.

22 So thank you, everybody.

23 (Whereupon, the foregoing matter went off  
24 the record at 1:35 p.m.)

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