U.S. COMMISSION ON CIVIL RIGHTS

BUSINESS MEETING

FRIDAY, AUGUST 19, 2022

UNEDITED

The Commission convened at the National Press Club, 529 14th Street, NW, Washington, D.C., at 10:00 a.m., Norma V. Cantu, Chair, presiding.

PRESENT:

NORMA V. CANTU, Chair
J. CHRISTIAN ADAMS, Commissioner
DEBO P. ADEGBILE, Commissioner*
STEPHEN GILCHRIST, Commissioner
GAIL HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner*
DAVID KLABNEY, Commissioner*
MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director
DAVID GANZ, General Counsel, Parliamentarian*

* Present via telephone
STAFF PRESENT:
ROBERT AMARTEY
LASHONDRA BRENSON
BARBARA DE LA VIEZ
PAMELA DUNSTON, Chief, ASCD
LATRICE FOSHEE
ALFREDA GREENE
JEFF KNISHKOWY
JOHN RADCLIFFE
MICHELE RAMEY
BRIAN WALCH
MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:
JOSHUA DANSBY
ALEC DUELL
JASON LAGRIA
CARISSA MULDER
AMY ROYCE
RUKKU SINGLA
ALISON SOMIN
IRENA VIDULOVIC
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PROCEEDINGS

(10:00 a.m.)

CHAIR CANTU: Good morning. Welcome to the business meeting for the U.S. Commission on Civil Rights. The meeting comes to order at 10:02 a.m. Eastern Standard Time on Friday, August 19th, 2022.

I am Chair Norma V. Cantu.

We thank the staff who completed the public notice needed for this meeting and arranged for today's business meeting. We thank the general public for their interest in today's meeting and in attending. Due to respect for health and safety, the Commissioners are in attendance in person and via conference call. We're hosting the general public by phone conference.

I would like to confirm the Commissioners present both in person and on the line, and we'll take a roll call vote. Please say present or aye when I say your name.

Commissioner Adams.

COMMISSIONER ADAMS: Present.

CHAIR CANTU: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Present.

CHAIR CANTU: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: Present.
CHAIR CANTU: Commissioner Heriot.
COMMISSIONER HERIOT: I'm here.
CHAIR CANTU: Commissioner Kirsanow.
COMMISSIONER KIRSANOW: Here.
CHAIR CANTU: Commissioner Kladney.
COMMISSIONER Kladney: Here.
CHAIR CANTU: Commissioner Yaki.
COMMISSIONER YAKI: Aye.
CHAIR CANTU: Based on the response, a quorum of the Commission is present. Is the court reporter present?
COURT REPORTER: Yes.
CHAIR CANTU: Thank you. Is the Staff Director present?
MR. MORALES: I am present.
CHAIR CANTU: The meeting will come to order. Before we get started, I move to withdraw from our agenda -- we're going to be talking about our agenda.

We have an Item 2 that looks to appointing members to our advisory committees. That item I will move to withdraw from the agenda and expect a report from the advisory committees at our September business meeting.

Do I hear any objection, or do we need to
call a vote on that proposal?

(No audible response.)

CHAIR CANTU: Thank you. The next agenda
to the meeting is, if you're looking at Item C, it
calls for our taking a vote on subjects for fiscal
year '23 and fiscal year '24. The change in that item
will be in our agenda that we will only be discussing
fiscal year 2023. Do I have a second to that change
to the agenda?

COMMISSIONER GILCHRIST: Second, Madam
Chair.

CHAIR CANTU: Thank you, Commissioner
Gilchrist. We then open up for discussion on changing
the item to only discuss today fiscal year 2023.

COMMISSIONER KLADNEY: Madam Chair,
Kladney here. What are the items for 2023?

CHAIR CANTU: The items -- okay, you were
going to ask me that. Let me look at my notes. There
was a briefing report on -- help me out, folks. No,
he asked for '24. Oh, for '23. Oh, that one is easy.
For '23, we have an enforcement report on the civil
rights implications of climate change, and we have a
briefing report on data collected by the U.S.
Department of Justice and civil rights implications on
policy and practice with regards to victims of violent
crimes.

COMMISSIONER Kladney: That's for '23, environmental --

Chair Cantu: Yes, sir, enforcement and --

(Simultaneous speaking.)

COMMISSIONER Kladney: Thank you.

Chair Cantu: Thank you. Any other questions before calling a vote on that change to the -- that amendment to the agenda?

(No audible response.)

Chair Cantu: Wonderful. I'm going to call for the roll call vote. Commissioner Adams, how do you vote?

Commissioner Adams: Aye.

Chair Cantu: Commissioner Adegbiile.

Commissioner Adegbiile: Aye.

Chair Cantu: Commissioner Gilchrest.

Commissioner Gilchrest: Aye.

Chair Cantu: Commissioner Heriot.

Commissioner Heriot: Yes.

Chair Cantu: Commissioner Kirsanow.

Commissioner Kirsanow. I'll come back to you, sir.

Commissioner Kladney.

Commissioner Kladney: Yes.

Chair Cantu: Commissioner Yaki.
COMMISSIONER YAKI: Aye.

CHAIR CANTU: Commissioner Kirsanow.

(No audible response.)

CHAIR CANTU: All right. I vote aye. We have seven voting aye and one absent. He'll come back, maybe.

I. APPROVAL OF AGENDA

CHAIR CANTU: So, now based on that, we'll proceed to vote on the agenda itself. So do I have a second to my motion to approve the agenda as amended?

COMMISSIONER GILCHRIST: So moved, Madam Chair.

CHAIR CANTU: Thank you, Commissioner Gilchrist. Any discussion? We've had discussion already. Okay. I'm going to call for the roll call vote.

Commissioner Adams.

COMMISSIONER ADAMS: Aye.

CHAIR CANTU: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: Aye.

CHAIR CANTU: Commissioner Heriot.

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Commissioner Kirsanow.
II. BUSINESS MEETING

PRESENTATIONS BY STATE ADVISORY CHAIRS ON RELEASED REPORTS AND MEMORANDUMS

CHAIR CANTU: So we have time for our first item, which is going to be, our first order of business is going to be a presentation by the Kentucky State Advisory Committee. The Committee Chair, Ms. Enid Trucios-Haynes, will present the Committee's Advisory Report on Bail Reform. The report is called, "Locked Up for Being Poor: The Need for Bail Reform in Kentucky."

Chair Trucios-Haynes, you've got ten minutes. And then, afterwards, we'll have time for questions from our Commissioners.

You've got the floor.

MS. TRUCIOS-HAYNES: Thank you, Chair Cantu and other members of the Commission, for the
opportunity to share our key findings and recommendations. The Kentucky Committee held hearings about bail reform to understand the variations in pretrial release in different courts, judicial districts, and before different judges throughout the state. The committee requested information about whether the 2013 risk assessment formula adopted by the legislature achieved the goal of reducing the use of cash bail in favor of pretrial release. This culminated in our report, "Locked Up for Being Poor: The Need for Bail Reform in Kentucky," which was released in November 2021.

The testimony established that the failure of the 2013 risk assessment formula called the Public Safety Assessment -- that it failed to enhance public safety. As well, we heard about the extraordinary consequences of unnecessary pretrial detention on the people who are detained, their family, and their communities, our communities in Kentucky.

The committee made ten findings and fixed recommendations, concluding that the Kentucky legislature should eliminate cash bail, except when there is clear and convincing evidence that an individual poses a risk to public safety or a risk of nonappearance at future court hearings.
The most significant findings of the committee include, first, that Kentucky has a high number of incarcerated people. Between 2008 and 2018, Kentucky ranked tenth in the United States for the rate of people incarcerated per capita. By the end of 2018, at a time when prison populations were declining across most of the U.S., the number of people imprisoned in Kentucky had increased three years in a row. And at that time, the growing prison population led to nearly 73 percent of Kentucky jails being at or overcapacity.

A significant percentage of innocent Kentuckians remain in jail simply because they cannot afford to pay cash bail, even when it is under $250. In addition, poverty and the inability to pay bail disproportionately harms people of color, economically disadvantaged communities, and people in our state with substance use and mental health challenges. These communities experience higher rates of pretrial detention because of increased contacts with the criminal legal system due to racial inequities, poverty, and other challenges.

Second, pretrial release varies significantly for similarly-situated defendants across Kentucky. A 2019 Lexington Herald-Leader news report
on bail data found that the likelihood of a defendant being ordered to pay cash bail varies widely from county to county. For example, in 2019, the percentage of cases in which defendants were released before trial without monetary conditions ranged from 5 percent in one county to 68 percent in another county. So the likelihood that a lower-risk is unnecessarily detained due to their inability to pay cash bail varies significantly based on their location in the state.

The Kentucky Supreme Court Chief Justice confirmed this in his 2020 testimony before our committee and has mentioned this in speeches, other speeches in the state. He noted that the current bail system disproportionately affects low-income defendants who aren't able to pay for release after being charged with low-level nonviolent offenses.

Third, the Kentucky legislature's 2013 pretrial assessment formula called the Public Safety Assessment was adopted to reduce the use of cash bail and release more people while they were awaiting their trials. The PSA has not achieved the intended goal of reduced pretrial detention, according to a comprehensive empirical study published in 2018. The study found only a trivial increase in pretrial
release. According to the study, the low number of releases was due in part to discretionary judgments by judges who ignored the presumptive default of non-monetary release in more than two-thirds of the cases. This lack of trust in the pretrial assessment leads to unnecessary detention, and this was confirmed by several witnesses before our committee.

As a result, prosecutors, jailers, and judges do not trust the low-risk scores in individual cases. Cash bail then is unnecessarily imposed in cases in which there is a low to moderate risk of nonappearance at future court dates or threat to public safety. Further, the pretrial risk assessment does not include a person's ability to pay bail, although legislative proposals to include this have been considered.

Fourth, in addition, jailers, judges, and prosecutors have a high level of discretion in individual cases having a low risk or a moderate risk score. Release and the decision to follow the low-risk course varies widely by county. This variation allows greater potential of discriminatory decision-making and a meaningful appeals process is needed to ensure fair decision-making throughout Kentucky.

Fifth, pretrial detention can have
lifelong negative impacts on a person. People are more likely to plead guilty to get released from detention quickly and often do not have a lawyer to advise them about the consequences of a guilty plea. And, obviously, a guilty plea limits a person's access to jobs, housing, banking, and other community resources. Pretrial detention also causes significant harm and trauma to families. Detention causes poverty, creating it or exacerbating it. People in pretrial detention lose their jobs and housing.

Detention harms children. We learned that 15 percent of Kentucky's children experience this harm, which was four times the national average, and that 70 percent of women and 55 percent of men incarcerated in Kentucky have children. Finally, pretrial detention reduces a person's ability to work with their lawyer on their own legal defense.

Seven, alternative pretrial release measures, such as electronic monitoring, drug testing, and supervision also varies widely across Kentucky counties. These measures can be as harmful as cash bail to people, their families, and our community. Electronic monitoring, for example, effectively imposes cash bail because the cost of the monitoring system is shifted to the individual. Further, the
lack of clear standards about when to impose these alternatives and about the factors determining when violations occur can result in disparate treatment. And, eighth, increased pretrial releases are not a threat to public safety. The experience from Kentucky's COVID-19 emergency automatic release policy, which limited discretion in pretrial detention decisions, demonstrates that releasing more people before trial does not compromise public safety. In April 2020, the Kentucky Supreme Court issued an order to expand the group's eligible for release without bail and to require the automatic release of people arrested for specific low-level crimes, including some Class D felonies. Although more than double the amount of people were released in 2020 compared to 2019, the data shows that the percentage of people who were re-arrested in 2020 did not meaningfully increase.

Our recommendations for action included that the Kentucky legislature should eliminate cash bail, except when there's clear and convincing evidence that there's a threat to public safety or a risk of nonappearance.

Second, that specific efforts must be made to ensure that those charged with crimes have pretrial
legal representation at all court appearances to protect their rights.

Third, other no-cost options to pretrial detention are needed. However, in addition, there need to be clear standards to impose these no-cost options in order to ensure equal and consistent treatment across Kentucky and more emphasis and resources are needed for alternatives, such as treatment for substance use and mental health challenges.

Four, reforms are needed to ensure that pretrial detention does not influence a person's decision to enter a guilty plea.

Five, to ensure equal treatment, clear standards are needed for any determination that a person has violated pretrial release conditions.

And, finally, six, more research is needed on discrimination disparities and outcomes because of the Committee's concerns about the overall impact of Kentucky's risk assessment tool, the administration of pretrial services, charging decisions, and case processing. Research is needed on pretrial release rates across counties and judicial districts across the state and research about the cash bail amounts and the extent to which higher bail is set for people of
color and other disadvantaged communities, as well as research on the use of alternative pretrial orders and conditions, particularly electronic monitoring.

And, finally, we recommend that there's research on the long-term physical-psychological relationship and economic impacts on individuals, their families, and our communities.

We recommended further that all of this research should include in-depth peer-reviewed studies and should be conducted in cooperation with the Office of Pretrial Services of the Administrative Office of the Courts of Kentucky.

This is the end of my presentation, and I'm happy to answer any questions that anyone might have.

CHAIR CANTU: Thank you, Chair. That was an excellent presentation. The Commission has undertaken a thoughtful and a sensitive process, and we have been listening and reading your reports. So I'm going to use this period now to allow our Commissioners to ask questions and interact with you, Madam Chair.

Do any of the Commissioners have any questions to ask?

COMMISSIONER KLADEY: Chair Cantu, this
is Commissioner Kladney. I'd like to ask a question or two.

CHAIR CANTU: Yes. Please proceed.

COMMISSIONER KLADEY: Chair Haynes, thank you very much for the complete report. I find it fascinating. Especially -- I think I heard you say one jurisdiction uses the pretrial assessment tool and releases -- or releases -- they may not use it; they release 68 percent of their defendants to pretrial supervision, and another county releases 2 percent. Is that correct? Did you say that?

MS. TRUCIOS-HAYNES: Yes. The range was between 5 percent in one county and 68 percent in another county. And that could be using the PSA, the Public Safety Assessment, or it might not be, because many judges reject the scores that are provided by the PSA.

COMMISSIONER KLADEY: Right. So have there been any studies regarding re-arrest rates comparing the 68-percent county with the 5-percent county or some lower released amount, significantly released amount counting?

MS. TRUCIOS-HAYNES: I don't have that information, but I can tell you the re-arrest data comparing 2020 when the Kentucky Supreme Court order
was in place, which required automatic release, the
re-arrest rate in 2020 was 89 percent -- oh, wait, let
me say that in reverse. Eighty-nine percent of the
people were not re-arrested. In 2019, in comparison,
the year before when the system was in place, 92
percent were not re-arrested. So there was a 3-
percent difference in terms of re-arrests during the
time period when there was the required automatic
release.

COMMISSIONER KLANDNEY: Was your committee
able to find the sweet spot on the judges' discretion
on setting bail, balancing public safety interest;
that is, people who are dangerous to the community or
serial FTAs with their liberty interest? Were you
able to figure that out or, you know, where the judge
should override the PSA, what would constitute a
serial FTA person or a dangerous person to the
community?

MS. TRUCIOS-HAYNES: Thank you for that
question. Well, what we heard from several witnesses
related to that is about the system. So judges are
elected in Kentucky, and many judges feel pressure
from their elected representatives in their voting
districts and worry about, of course, releasing
someone where there might be a re-arrest for a serious
crime, and that the effect of the great discretion that judges have, that that can result in a greater likelihood of imposing cash bail. Judges often assert that they need the discretion because they are most familiar with their communities and may have the ability, therefore, to really assess the situation on the ground.

We did hear from one representative of the legislature who had proposed several bills in the Kentucky legislature that, in smaller rural communities, what can happen is that those who have connections to the criminal legal system either through their family members or otherwise might get released, where someone who can't afford to pay their cash bail as low as an amount of $250 are not. And one thing to think about when you ask about re-arrest rates and failure to appear, that we're comparing those who cannot pay their cash bail to those who might be higher risk and likely are higher risk but are able to pay their cash bail, so there's a higher risk of not appearing at their future court dates or maybe a higher risk to public safety according to the PSA, but they are able to leave detention because they can afford to pay the cash bail. I hope that --

COMMISSIONER KLANDNEY: Just a couple more
questions. What's the cost difference between keeping someone incarcerated and pretrial supervision in Kentucky?

MS. TRUCIOS-HAYNES: We did have -- there was a news report about that, because there's a significant overcrowding in the jails, and I'm trying to remember the exact number. But it was costly, and I'm sorry I don't have that at my fingertips right now to share with you, but I can get that information back to you.

COMMISSIONER KLADNEY: And, finally --

MS. TRUCIOS-HAYNES: Okay. I have that to answer that question. So, Kentuckians -- this was from 2016, so it's a little bit outdated. So, people who were assessed as likely to come back to court and unlikely to be arrested who were held pretrial in 2016 were held for an average of 109 days at a cost of over $100 million. And that is from the Director Spalding of the Kentucky Research Director for the Kentucky Center for Economic Policy.

COMMISSIONER KLADNEY: And I take it that pretrial supervision would be significantly less. I think you said 2 to 10 percent of that cost?

MS. TRUCIOS-HAYNES: I'm not sure, but it is a lot.
COMMISSIONER KLADEY: Okay. And, finally, you seem to think -- or the committee seems to have thought -- not you, the committee seemed to have thought that pretrial supervision with electronic bracelets was a degrading thing for people who were released with them. So is your proposal to keep those people incarcerated at that point or how -- because they must come in higher on a PSA, must be rated as more likely to leave or do something untoward.

MS. TRUCIOS-HAYNES: What the committee found is that people who have low-to-moderate risk on the PSA are still being given high cash bail amounts, right? So they are remaining in jail despite the low or moderate risk assessment on the score. And the way the law is written, it prefers release on their own recognizance so that people should be released on their own recognizance and not necessarily involving electronic monitoring or supervision.

What we did hear from a number of witnesses is part of the challenge, especially in rural Kentucky, is that many people who wind up, who cannot pay their bail are also in poverty and also often have mental health and substance abuse challenges, and judges are hesitant to release individuals if there is not a slot for them to get
into some kind of treatment.

So that is one of the challenges that judges are facing in their own communities. However, our general recommendation is that people should be released on their own recognizance and our concern about electronic monitoring is that it is the defendant, while awaiting trial, who is required to pay for the cost of electronic monitoring, which can be quite high, and effectively results in imposing a form of cash bail.

COMMISSIONER KLANDNEY: Right. So shouldn't the government pick that up in light of the money that they're saving by not having the person in jail?

MS. TRUCIOS-HAYNES: Ideally, that would be the case. And there are different opinions. We heard testimony at the committee from a member of the legislature who believes there was sufficient treatment facilities that are available throughout the state. But we are a state that has rural counties, and it's a little bit more difficult for transportation and other challenges that exist in providing treatment services.

COMMISSIONER KLANDNEY: Thank you very much, Chair Haynes, and please thank the committee for
the excellent report. And, hopefully, I didn't take up too much time. Thank you.

MS. TRUCIOS-HAYNES: Thank you.

CHAIR CANTU: Thank you, Commissioner Kladney and that was valuable additional information through that Q&A. Do we have other Commissioners who would like to pose a question to our Chair, to Chair Haynes? Yes, Commissioner Adams.

COMMISSIONER ADAMS: Thank you, Madam Chair. Chair Haynes, my question focuses on your suggestion that the standard be changed to clear and convincing evidence of risk to public safety or risk of flight. My question relates to the clear and convincing part of that. What is the status quo standard?

MS. TRUCIOS-HAYNES: The status quo standard is preponderance of the evidence generally. And because of the discretion that judges have, there's tremendous, there's a wide variety of decision-making, which is what was established through the report.

One of the challenges and concerns that we've heard in testimony before the committee was about the lack of an effective appeals process for the decisions that are made for bail decisions and whether
or not there's reliance on the Public Safety Assessment.

COMMISSIONER ADAMS: So is preponderance of the evidence, is that the same as more likely than not?

MS. TRUCIOS-HAYNES: Yes, yes, generally.

COMMISSIONER ADAMS: All right. Thanks.

CHAIR CANTU: Thank you. Would any other Commissioner would like to ask a question of Chair Haynes?

COMMISSIONER YAKI: Yes, this is Commissioner Yaki.

CHAIR CANTU: Yes. Please proceed.

COMMISSIONER YAKI: Chair Haynes, thank you very much for the report. Just a quick question. When a judge decides to essentially overrule or ignore the PSA, do they have to give reasons on the record for doing so?

MS. TRUCIOS-HAYNES: No, no. The discretion of the judge is broad, and I will say it's judges' decisions on bail and sometimes prosecutors are involved in discussing, of course, whether a person is truly low risk or moderate risk. And, often, judges will rely, especially in some of the smaller districts, on their knowledge of the community
and perhaps of the individual in smaller communities.

COMMISSIONER YAKI: But they have no, but there's no requirement that they state on the record why they are rejecting the PSA? I say that simply because moving the standard may not be sufficient. I think part of any standard and whether or not you can actually have an appealable right for that standard would depend on the record; and, if the record has absolutely zero in it, other than the judge simply saying I'm going to ignore this and impose blah, blah, blah, blah, blah, I think it creates issues.

MS. TRUCIOS-HAYNES: Absolutely. And there is no requirement, and the risk assessment is conducted by a pretrial services officer after someone is arrested and booked into the jail and based on the interview of the individual, and then that PSA score is presented to the judge during the bail hearing. But there is no requirement, to your question, of stating this on the record why the PSA has been rejected.

COMMISSIONER YAKI: Okay. Thank you very much, and thank you again for the work that the committee did.

CHAIR CANTU: Thank you for that, Commissioner Yaki. Any other Commissioners would like
to speak? May I just be clear? The state advisory committees use the same kind of jurisdiction, and you mentioned one of the constitutional issues dealing with people being held because of inability to pay. Can you, off the top of your head, think of the constitutional aspects of this area of law that you've reported on? Is it the Fourth, the Eighth, the Fifth, the Fourteenth, or all of them?

MS. TRUCIOS-HAYNES: Well, a bit of all of it, including the Sixth, because people are not represented at their bail hearings and arraignments and because, in part, the Department of Public Advocacy is not fully staffed, so people are pleading guilty in order to get out of jail quickly, rather than wait until a public defender is appointed to them. So that's one of the concerns. We're also concerned about the disparate impacts on different communities in Kentucky, as well, and the violation of the right to bail, which is in the Kentucky Constitution, as well as the Federal Constitution.

CHAIR CANTU: Thank you.

MS. TRUCIOS-HAYNES: There's a presumption that liberty should exist for those pretrial.

CHAIR CANTU: Thank you for making that
clear for me. Any other questions from the Commissioners?

(No audible response.)

CHAIR CANTU: Well, thank you, Chair Haynes. We're going to move, now that there are no further questions, we're going to move to the next item of the agenda. And I really do appreciate and we all appreciate your service and leadership as Chair of the Kentucky State Advisory Committee, and we appreciate you taking the time to speak with us today. If you'd like to stay on the line, you can hear the rest of the meeting, or, otherwise, please have a wonderful day and go with our thanks. Thank you, Chair.

MS. TRUCIOS-HAYNES: Well, thank you very much. Thank you very much, and I appreciate all of your time.

C. DISCUSSION AND VOTE ON 2023 TOPICS FOR USCCR REPORTS

CHAIR CANTU: Thank you. The next item, the second item on today's admitted agenda, is a discussion and vote on fiscal year '23. In line with our role as the USCCR, we have a statutory obligation to Congress and to the President to collect data, to report on it, and to send recommendations and findings
to the President and to the White House and to share out that information we gather to the American public.

The purpose of our reports is to ensure civil rights across our federal government, that these rights are being enforced with equity. And so, today, we're going to be voting on fiscal year '23. I move to take up first the Statutory Enforcement Report.

This is a report that we are mandated by Congress to file, and we have one report for consideration and that is the report being the Civil Rights Implications of Climate Change in Minority Communities and Persons with Disabilities.

Would you like to say something, Commissioner Heriot?

COMMISSIONER HERIOT: I'd like to make a motion.

CHAIR CANTU: Yes, please.

COMMISSIONER HERIOT: I move that we adopt both the climate change proposal and the crime increase proposal with these two provisos that we drop the language that says most of the witnesses will come from the Department of Justice for the crime increase report and we replace it with the prior language which said that some of the witnesses will come from the Department of Justice, and that, number two, the
second proviso, that the number of field briefings and
hearings be equal between the two proposals.

So, under this motion, we would adopt both
proposals at the same time and they would get through,
I think, easily. More easily, I hope so.

CHAIR CANTU: Thank you. Is there a
second to her motion, to Commissioner Heriot's motion?

COMMISSIONER GILCHRIST: Second, Madam
Chair.

CHAIR CANTU: Commissioner Gilchrist
seconds. We open for discussion.

COMMISSIONER YAKI: Commissioner Yaki
here.

CHAIR CANTU: Yes, Commissioner, please
proceed.

COMMISSIONER YAKI: I'm a little confused
because I changed the title of the climate change
report that I submitted, and I'm not sure which one it
is that you're looking at right now since I am not
there, number one.

(Simultaneous speaking.)

COMMISSIONER YAKI: Number two, number two
-- I have not yet finished. Number two, regardless of
that, I move to amend the motion to defer this item
until next month.
COMMISSIONER HERIOT: Commissioner Yaki, we would be willing to accept your latest version.

CHAIR CANTU: That is my error. I have a typo in my -- this is Chair Cantu. The typo should reflect the August draft of Commissioner Yaki's proposal.

COMMISSIONER HERIOT: Would you like to withdraw your amendment? We are talking about accepting the one that you want.

COMMISSIONER YAKI: Actually, I still move to push this until the next meeting.

CHAIR CANTU: Is this a friendly amendment to defer --

COMMISSIONER HERIOT: No, I don't --

COMMISSIONER YAKI: It's definitely not a friendly amendment.

CHAIR CANTU: To defer to the next month, you would need a second.

COMMISSIONER ADEGBILE: Adegbile seconds.

CHAIR CANTU: We will vote first on the motion to amend to the next month before proceeding back to your motion, Commissioner Heriot. Any discussion on deferring to the next month?

COMMISSIONER YAKI: Would you like me --

CHAIR CANTU: Yes, please.
COMMISSIONER YAKI: Yes, Chair,
Commissioner Yaki. First of all, the addition made by
Commissioner Heriot, to me, is not acceptable at this
point. I need to review it in its total context,
number one. Number two, I would probably move to
sever and vote on these individually and not as a
package, which I think would be unacceptable to the
other side. But it is a privileged motion and would
happen as a rule of parliamentary procedure that does
not require a second, nor does it require a vote.

I think that there are a couple of item
that still require further discussion on this. I
think that we've made a lot of progress in the past
few weeks, if not days, but I believe that a little
more time is going to be required to get this right.
Otherwise, I am not even voting to support, especially
in combination with the report. Thank you.

CHAIR CANTU: Thank you. Commissioner
Adams.

COMMISSIONER ADAMS: This is discussion on
the motion. This commission has been working on
proposals month after month after month after month
after month, and I have not even counted all the
months. We have an agreement, at least we thought we
did, to support the Commissioner's proposal on climate
change. Yet, somehow we aren't going to do that, it seems, or we might not do that.

The four members of the Commission have given absolutely everything that has been asked. Everything. And it's unreasonable and unfair to continue to string this out for more months. We need to get busy and do something, rather than squabble. That's all I have on discussion on the motion.

COMMISSIONER GILCHRIST: Madam Chair.

CHAIR CANTU: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: I just want to echo Commissioner Adams' comments, as well. You know, it's a little disappointing to know that, for those of us who have worked, at your request, Madam Chair, as a committee to come up with what we think is not only a roadmap forward, but an opportunity to be able to do what this Commission has been required to do by law, all but to be here at the 11th hour to find out that now that there is some concern about the negotiations that have taken place in order to get us to a yes vote on these proposals.

So I just wanted to echo Commissioner Adams' comments, as well, that we worked on this for quite some time, and there is no reason why this commission cannot see our way forward with these two
proposals. So I just wanted to add my comment, Madam Chair.

CHAIR CANTU: Thank you. Commissioner Heriot.

COMMISSIONER YAKI: This is Commissioner Yaki.

COMMISSIONER HERIOT: I just would like to say that, again, echoing what Commissioner Adams and Commissioner Gilchrist have said, that these negotiations have gone on a very long time, and we are required to come up with a 2023 statutory enforcement report. We have given Commissioner Yaki everything he wanted. His proposal, even though he keeps changing it and substituting new version of it, and, even so, even though it goes beyond what we had agreed to, we're still willing to do it. And I cannot imagine what the motivation would be for preventing this from going through.

CHAIR CANTU: Commissioner Yaki, if I may, I'm going to call on you, but I just want to set the record straight. I was the one who told people that each report would stand on its own merits, that the way that this report would be done would not use prior practice of bundling, that I'll vote for yours because you're voting for mine, and then the downside of the
bundling is that people did not read the whole report, did not understand what was in it, and it caused problems.

So I just want to put on the record I take it, as Chair, the responsibility to be sure that each report stands on its own merits.

Commissioner Yaki, I call on you.

COMMISSIONER YAKI: Yes, thank you very much. I'm trying to find the lamentations of my colleagues to be a little interesting, given that we have been attempting to resolve this issue for months. I would note for the record that we have been proceeding along for quite some time with my proposal, which was actually my number one proposal, for a report on Asian hate crimes and the rise in anti-Asian animus and bias in this country over the past few years. That was something that had been, it was on the table, it was part of the discussion, and only last week was I told that, no, all of a sudden, that wasn't going to be in.

So the idea that a paper that I had written some months ago and where it was not a priority of mine at the time is the subject of a, quote, unquote, long negotiation is actually not true, number one.
Number two, the revised paper was only because the other, some of my colleagues made it clear they decided that they were not going to support anything on the Asian hate crime, Asian bias report, because, even though I had made changes in accommodation to some of their members, including one change that one of their members has been pushing for for quite some time, many years as a matter of fact, that they decided they were not going to support that and that they would support this other thing, in which case I decided I would take a look at it and decide if I were going to take a first draft and do something more with it. That's what I put together in good faith.

However, what I do not know and what I do not quite understand is the change that Commissioner Heriot just made on the floor to the Department of Justice report, and it's one where I believe, having not had been privy to any discussion regarding the addition of that and its impact on the structure of that report, that I am going to need some time to do it.

So I think we are close. I think we are close, but, at the same time, I think it's rather pot calling the kettle something, that the idea that
there's last-minute change by me is a little ridiculous because it is not, in fact, what we had discussed as of a couple of weeks ago. It is not where I thought that report was going with regard to what the Chair represented to me at the time.

This amendment is out of the blue, as far as I'm concerned. And we could be able to reach an agreement, but it is not going to be today. And if it is going to be today, I'm going to move to sever these items, which is going to result in probably both of them going down because, as one of my colleagues knows by wanting to put them together as a vote together, it's to ensure that they both pass or they both -- otherwise, they would probably both fail.

So I would just simply say, as a matter of practicality, you know, or we could call a special meeting in between now and then if we can reach some kind of agreement. But it is not going to be today.

CHAIR CANTU: Thank you, Commissioner Yaki. Commissioner Heriot.

COMMISSIONER HERIOT: I just want to say that the language change that I'm referring to for the crime increase report is simply going back to the language that was in there just a few days ago. Somehow, someone put in an edit that took the proposal
from saying some of the witnesses will come from the Department of Justice. It got altered to say most of the witnesses will come from the Department of Justice, and I'm simply going back to the language that Commissioner Yaki would have seen in the proposal before. This is not changing the proposal; it's changing it back from a recent edit where, for some reason, somebody changed it to most, but that's changing it back to some.

CHAIR CANTU: I think I can be helpful on that. I will remove the word most. I will, however, still ask -- I will speak in favor of asking for more time because we have not received any explanations and we've kind of put in a parking lot who the witnesses will be, what kind of topics we expect, what types of witnesses we expect to see in the report dealing with Department of Justice data and civil rights implications.

So the facts are that not knowing about the field briefings, we did not know who would testify. But it doesn't matter. I can withdraw the word most, substitute the word some, and will that get us back to the agenda of being able to vote for the first vote, which is the enforcement. We have to do an enforcement by statute. It's mandatory that we
have an enforcement report. So trying to be gracious here, I will withdraw that language and substitute it with some.

COMMISSIONER HERIOT: It's a motion. You can't, you know --

CHAIR CANTU: I'm asking for a reply from the filer of the motion. How do you feel -- oh, I'm sorry. Commissioner Yaki, would you entertain that since it is your motion to defer until next month, or do you maintain that we do need another month?

COMMISSIONER YAKI: I maintain we do need another month because, at this point, we have given a lot with regard to this topic, which I actually think is not something that is going to be at all very productive to this commission. And if we are going to proceed with that other topic, I actually would like to rethink whether or not, you know, what I'm going to do on this.

But, Madam Chair, look, my preference has been in light of what has happened in our country and in my own community and in my own, in the area in which I live, my number one topic has been and will continue to be the issue of the rise of anti-Asian violence, animus, bias, hate in this country. It is something that was on the table until a week ago. And
as much as I also believe in the climate change report, I think that, quite frankly, if I am going to accept the report that my colleagues wish us to with great fervor to accept, I believe that for me and for my colleagues that the report would be much more acceptable as one of import to the interest that we represent and the communities that we are working to assist, that I may reconsider whether or not we turn it down then, that we engage in further negotiation on the Asian report. If not, you know, we may come back to where we are next month, we can have the vote, and go from there.

But I really do believe that being told a week ago that I had to change everything and then now other changes are occurring now is not in keeping with what we have been discussing. I am still unsure exactly what this amendment change is going to mean, Madam Chair. I know that you want to support it, but I do not. And at this point, I believe that another month is going to be required to get this to a point where both reports could be voted on.

CHAIR CANTU: I thank you for that comment, Commissioner Yaki. Our Staff Director would like to provide us some information.

MR. MORALES: Thank you, Madam Chair and
Commissioners. I'd just like to say that, on behalf of our staff at the USCCR, we support the Commissioners' priorities here. Just to put it in context, the most important thing Commissioners can provide to us as a staff are the topics that staff be working on.

Given the time constraints that the staff is facing, you know, just keep in mind that the longer we prolong this, the more tough and more difficult it gets. If we have a statutory enforcement report and we're voting on it in September, that means we have 12 months. And if we do a second report in the calendar or fiscal year, then we're looking at least two field hearings, if not more, which puts an enormous stress on the staff to pull that together.

So just keep that in mind. I would continue to urge you to work together and to find a means forward. But just to keep in mind that, you know, we're starting to get to a point where the ability to do hearings more than one per topic may be jeopardized. So thank you.

COMMISSIONER KLADNEY: Madam Chair, this is Kladney here.

CHAIR CANTU: Yes. Please proceed.

COMMISSIONER KLADNEY: I would just note
that, I would just note that OCRE and the GC's office had time to review these proposals and give their input, which would, I think, tremendously help, as Director Morales said, getting these reports done within the fiscal year in a timely fashion. Thank you.

CHAIR CANTU: I shared the enforcement report with OCRE staff director. Are there further comments? They did provide any comments. Are there any further?

MR. MORALES: Not beyond what was presented to us. If there are amendments to it, that would change, potentially could change the outcome.

CHAIR CANTU: Okay. So I need to make it clear I incorporated the OCRE comments into what was uploaded into the file, and I did not get anymore comments from OCRE after I uploaded.

MR. MORALES: Right. That's correct. So the comments that were provided stand.

CHAIR CANTU: Okay. So what I am trying to explain to people who are listening is that we have an enforcement report that's been uploaded, shared across all of the Commissioners, that the OCRE has been consulted, that people made an objection to a different report other than the one that I've made a
motion for, and now I'm being asked to defer for another month. Is that where I am?

COMMISSIONER YAKI: Commissioner Cantu, this is Commissioner Yaki. You have my personal word that we'll have a vote, up or down, next month.

COMMISSIONER HERIOT: Call the question.

CHAIR CANTU: It looks like we are at a gridlock, so I am going to call a five-minute break. This is unusual. We have never done this before. We've never been at a gridlock like this before. I'm going to call a five-minute break because the Chair needs to consider where we are right now.

So we will take a pause. If you would like to play elevator music, this is the time to do it.

(Whereupon, the above-entitled matter went off the record at 10:54 a.m. and resumed at 11:04 a.m.)

CHAIR CANTU: Thank you. We took a five-minute recess. We are resuming the discussion. What is pending before us is a vote on the statutory enforcement report, which is on climate change, an important topic. And we've got some motions that deal with possibly a delay.

So, Commissioner Yaki, I'm going to call
back on you to finish your thought on the idea of the one-month delay. And I understand you have your personal voucher that something will happen in that month, but I want to hear some more from you.

COMMISSIONER YAKI: I'm sorry. My audio broke up. I couldn't understand a word you said.

CHAIR CANTU: All right. Where we took a break was with --

COMMISSIONER YAKI: It's still broken up.

CHAIR CANTU: Testing.

COMMISSIONER YAKI: Still broken.

CHAIR CANTU: Yes, we're having audio issues on both sides. Let me call on another Commissioner. Is there another Commissioner on line to see if your audio works?

COMMISSIONER YAKI: Well, can you hear me?

COMMISSIONER ADEGBILE: Commissioner Adegbile here.

CHAIR CANTU: Thank you.

COMMISSIONER YAKI: I can hear Commissioner Adegbile.

COMMISSIONER KIRSANOW: Kirsanow here.

CHAIR CANTU: Thank you, Commissioner Kirsanow.

COMMISSIONER KLABNEY: Kladney.
CHAIR CANTU: Thank you, Commissioner Kladney. Let's try you again, Commissioner Yaki.

COMMISSIONER YAKI: No, it wasn't me. I couldn't hear you. Now the audio seems to be restored.

CHAIR CANTU: Terrific. Did you have anything further to add?

COMMISSIONER YAKI: What you said seemed to take a lot longer than that, so I wanted to hear what it was that you actually did say.

CHAIR CANTU: What I did say is that, before we took the break, we had been discussing the statutory enforcement report on climate change and that we were engaged in a conversation of whether we had a meeting of the minds today and were prepared to vote on that or whether we did not. And you offered an amendment to the motion, and it was not accepted as a friendly amendment, but you are asking to change the motion. The motion was, as I understand it, that we would vote on two reports at the same time.

COMMISSIONER HERIOT: We have a pending motion --

COMMISSIONER YAKI: Well, I mean --

(Simultaneous speaking.)

COMMISSIONER HERIOT: That's got to be
voted on.

CHAIR CANTU: I understand that. So, Commissioner Yaki, I'm calling on you because you've intervened with a motion to put this off for our next business meeting or earlier if we can do it.

COMMISSIONER YAKI: I haven't intervened. I am making a motion to delay this until the next meeting or possibly sooner, if the Commission so decides, for the consideration of the FY 23 statutory and briefing report.

CHAIR CANTU: And it is the most important thing that we do today, so does that motion have a second? A motion to not vote today but to move that for a further date.

COMMISSIONER HERIOT: It was already seconded --

COMMISSIONER KLANDNEY: Kladney will second.

COMMISSIONER ADEGBILE: I seconded it previously, I believe.

COMMISSIONER HERIOT: That's the motion --

CHAIR CANTU: Is that -- please don't interrupt. Is that Commissioner Adegbile?

COMMISSIONER ADEGBILE: Yes, I understood that earlier before the break Commissioner Yaki made
a motion to put off the vote for a month, and I
believe I seconded it. If I didn't, then I have now.

CHAIR CANTU: Thank you. And then, after
that, I believe we had conversation about the effect
that that would have on the Office of Civil Rights
evaluation, which has a deadline to get this mandatory
report finished June 23; is that correct, Staff
Director?

MR. MORALES: A draft to Commissioners by
June 23.

CHAIR CANTU: Thank you. Okay. Is there
any further information that people need to vote on
the motion to delay the vote on climate change for no
longer than a month?

COMMISSIONER YAKI: I'm sorry. My motion
was not on climate change. My motion was for both the
statutory and the briefing report for FY 23 to be
delayed until next month.

CHAIR CANTU: Thank you for the
clarification. Both actions delayed. Thank you. Is
that what the second went to, Commissioner Adegbile?

COMMISSIONER ADEGBILE: Yes.

CHAIR CANTU: Thank you. Is everyone
clear what I'm going to call a vote on? Very good.

Commissioner Adams, how do you vote?
COMMISSIONER ADAMS: No.

CHAIR CANTU: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: No.

CHAIR CANTU: Commissioner Heriot.

COMMISSIONER HERIOT: No.

CHAIR CANTU: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR CANTU: Commissioner Kladney.

COMMISSIONER KLABDNEY: Yes.

CHAIR CANTU: Commissioner Yaki.

COMMISSIONER YAKI: Aye.

CHAIR CANTU: We have three yeses, four noes, and I've not voted.

COMMISSIONER YAKI: You didn't vote, Madam Chair.

CHAIR CANTU: I know. We have a yes from me.

COMMISSIONER YAKI: Typically, we do the votes --

CHAIR CANTU: Yes. And I am saying I am voting in favor of the one-month delay. So we have four noes and the motion fails because we did not get a majority. So we are back to the original motion.
COMMISSIONER ADAMS: Motion to reconsider, Madam Chair.

CHAIR CANTU: Explain what you are doing with a motion to reconsider.

COMMISSIONER ADAMS: Well, I was voting with the prevailing vote, and I want to reconsider my vote to a yes.

CHAIR CANTU: Commissioner Adams changes his vote from no to yes, leading us to five yeses, which means that the motion to delay for a month, with full knowledge of the impact that it's having on our Office of Civil Rights evaluation, the motion carries.

Both matters before us today having been completed, we now turn to the Staff Director's Report. Staff Director Morales, would you like to speak, please?

D. MANAGEMENT AND OPERATIONS

STAFF DIRECTOR'S REPORT

MR. MORALES: Thank you, Madam Chair. In the interest of time, I don't have anything further to add than what's already contained in the report. Commissioners are always welcome to contact me about a specific item in the Staff Director's Report, and I'm happy to talk to them about anything that they would like to discuss.
I would like to take a moment to welcome Mr. Mark Spencer as the new staff director of the Commission on Social Status of Black Men and Boys. He has a distinguished career in public service. He's a native of Washington, D.C. and resides in Maryland, and we're really looking forward to his leadership and his expertise to help lead the Commission on Social Status of Black Men and Boys, which is a commission that was placed within USCCR under the auspices of the staff director by Congress. And so we've been working with that over the last couple of years, and they provided a separate earmarked budget for that commission.

So with that, Madam Chair, I have nothing further to add. I'd ask all Commissioners, as you encounter Mr. Spencer, to welcome him both to USCCR and as the new Director of the Commission on Social Status of Black Men and Boys. Thank you, Madam Chair.

CHAIR CANTU: Thank you. Thank you, Staff Director.

COMMISSIONER ADAMS: Madam Chair.

CHAIR CANTU: Yes, Commissioner Adams.

COMMISSIONER ADAMS: A question for the Staff Director, and I apologize. I couldn't find this in the report, so I'm going to ask you now if that's
okay.

MR. MORALES: Sure. If I can answer it, I will.

COMMISSIONER ADAMS: We're meeting in the National Press Club now, and I've never been to a meeting at the Civil Rights Commission itself. I checked the report for this, and I couldn't find it. Is there a cost associated with meeting here at the National Press Club?

MR. MORALES: There is, and it runs anywhere from $6,000 to $8,000. Our general meetings in the headquarters runs from $5,000 to $7,000, depending on travel. So there is an increased cost to have them here at the National Press Club.

As I had mentioned and I stated in an email to all Commissioners, your special assistants, and the executive team of the IT challenges and the supply chain challenges in getting the meetings back to the hearing room at the Commission, I'm sorry, at the USCCR. One of the primary problems has been the internet bandwidth and requirements that have been placed subsequent to the pandemic on cybersecurity by DHS. And so Homeland Security has upped the security requirements of producing and having internet bandwidth that complies with their requirements.
I will say, if we want -- and the other thing is we're doing that we didn't do when we were in the pandemic is these are being livestreamed. So these are being produced as we speak live to the public. We could tape them and get that to the Commission's hearing rooms or we can do them telephonically in the Commission's hearing rooms. Given the level of fluctuation over the last few months of the pandemic, we didn't believe it was safe yet to have the public return. We're hoping that that could occur here in the near future, and we're hopeful that we can get back to these, and I know the staff is working hard to try to get us back into our hearing rooms in headquarters in the next couple of months. But I don't have a firm deadline, a time for you at this moment. I know they're working with them, and our team is looking at that. So thank you for that question.

COMMISSIONER ADAMS: Real quick follow-up. Do they have the same klieg lights as they do here?

MR. MORALES: No, they do not.

COMMISSIONER ADAMS: All right. Thank you.

MR. MORALES: It's a different setup. The room is differently lit up. This is a studio, and so
it has these bright lights of Broadway for us.

COMMISSIONER ADAMS: Thank you.

CHAIR CANTU: Any other questions?

MR. MORALES: There's a question on the line.

CHAIR CANTU: Yes, please.

COMMISSIONER KLANDNEY: Dave Kladney here.

CHAIR CANTU: Yes, Commissioner.

COMMISSIONER KLANDNEY: Wouldn't it be possible, well, then, from what you said, it's possible to do it live, provide the public with a live presentation, and then run a tape and put it up on YouTube.

MR. MORALES: That is a potential that I've been informed is a possibility. We could tape it at our headquarters' hearing room and then put it up as a tape. It wouldn't be livestreamed, which has been the preference of many Commissioners over the years, but it could be put up either later that afternoon or the next day.

COMMISSIONER KLANDNEY: And have we asked DHS perhaps for a waiver, an interim waiver?

MR. MORALES: They won't give us a waiver. They don't give waivers on cybersecurity and the potential to crash. So thank you.
COMMISSIONER KLADNEY: I mean, I just didn't know what kind of security we had, so I apologize.

MR. MORALES: No, no, it's, as you can imagine, complicated. And it keeps changing because of, you know, hackers developing technology that we had seen. In fact, as you well know, you all received a notice today to up your Apple phones because of a new hack that developed over the last couple of days. And so we encounter this all the time, and the unfortunate aftermath of all this is that it only increases our costs. Our costs for cybersecurity go up, they never go down. And so, you know, but that's the world we all live in, unfortunately.

COMMISSIONER KLADNEY: Thank you, Mr. Director.

MR. MORALES: Thank you, Commissioner. Thank you, Madam Chair.

CHAIR CANTU: Thank you. Hearing no further questions, thank you, Staff Director. That concludes the business on the agenda for today's business meeting. And hearing nothing further, I hereby adjourn the meeting at 11:17 a.m. Eastern Time.

(Whereupon, the above-entitled matter went off the record at 11:17 a.m.)
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In the matter of: Business Meeting

Before: US CCR

Date: 08-09-22

Place: teleconference

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