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

PRESENT:

MARTIN R. CASTRO, Chairman

ABIGAIL THERNSTROM, Vice Chair

ROBERTA ACHTENBERG, Commissioner

TODD F. GAZIANO, Commissioner (via telephone)

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (via telephone)

DAVID Kladney, Commissioner

MICHAEL YAKI, Commissioner

VANESSA EISEMANN, Parliamentarian

LOUISE DIBENEDETTO, Inspector General
STAFF PRESENT:

IVY L. DAVIS, Director, ERO
PAMELA DUNSTON, Chief, ASCD
ALFREDA GREENE
TINALOUISE MARTIN, Director, OM
MONIQUE MURRELL, ASCD
JOHN RATCLIFFE, Chief, Budget and Finance
LAUREN TSUJI, Intern, OGC

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTON
ALEC DEULL
TIM FAY
JOHN MARTIN
CARISSA MULDER
RICHARD SCHMECHEL
MARLENE SALLO
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P R O C E E D I N G S

(9:30:39 a.m.)

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

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

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

COURT REPORTER: Yes, Mr. Chairman.

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

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

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

COMMISSIONER Kladney: Second.

VICE CHAIR THERNSTROM: Second.

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

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

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

COMMISSIONER YAKI: Thank you.

CHAIRMAN CASTRO: Okay. And, in addition, the vote on the 2013 Statutory Enforcement Report topic was inadvertently left off the agenda, so I would move that we would amend the agenda to add that vote.
VICE CHAIR THERNSTROM: I'm sorry, which vote is that?

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

VICE CHAIR THERNSTROM: I second it.

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

COMMISSIONER HERIOT: Second.

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

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

(Chorus of ayes.)

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

MS. EISEMANN: Just thank you very much.

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

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

II. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

DISCUSSION AND VOTE ON STRATEGIC PLAN

CHAIRMAN CASTRO: So, all of the Commissioners should have received two grids via email
last Friday. We're going to first look at the eight-page grid that has the Number Two Header on it. That grid contains the revised goals that were based on the discussions and votes that were held at our June meeting. And then work done by our appointed subcommittee to refine those goals and objectives that a majority of the Commissioners had agreed upon, and to make other refinements. So, hopefully, everyone has had the opportunity to review those goals and we can move forward on each of those.

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

The goal today is -- and we understand from our folks in the Office of Management and Budget, for their budgeting reasons, their purposes all they need from us today is a final approval by a majority of the Commission on our revised goals and objectives. That is then what they can integrate into their budget request. We can then at a later date, as soon as possible thereafter, fill in the text behind an active strategic plan. The most important thing for our
budgeting reasons is to have the goals and objectives available to them. Is that right? Yes, let the record reflect Tina Martin said yes. So, what we'll do then is go through the initial eight-page grid. You should all have that, entitled, "The Revised Goals and Objectives for Strategic Plan FY 2014 to 2018 (2)."

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

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

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

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

COMMISSIONER YAKI: Yes. Thank you very much, Mr. Chair. While I want to commend the Chair and the staff for -- and the Vice Chair and her staff and all the Commissioners for their work on this issue, my -- I think that this is an opportunity to better define -- I won't say redefine because I think that we're
doing what it is that we've always meant to do, but to
to better define with some clarity and specificity what
we are doing and incorporate within that the idea of
how our objectives will be sharpened and focused in a
way that really gets at meeting what those goals are.
And I have a proposal which I have passed out to
everyone for Strategic Goal A which would amend it to
say that instead of functioning as an effective civil
rights watchdog and conduct studies and issues
publications, is more mission oriented and aggressive
by saying that the Commission will provide new
objective information and analysis on civil rights
issues. And by doing -- and the objective through that
is to conduct original fact finding and/or data
reviews in civil rights investigations.

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

    So, as you can see each of this flows into
additional strategies and performance measures. And I
can take questions on those if you wish. But, again,
the idea is that we will be strengthening our mission in terms of what is we do, and doing what it is that the Commission has always done at its best, and when it was in its hay day which was looking at issues in a different light than what's currently out there, using our investigative powers to achieve that, seeing if there are ways, new ways to look at new emerging issues in civil rights that may not have been contemplated previously, or nuances there are on laws already in existence for which civil rights issues are implicated.

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

I want to thank Richard Schmechel for working with me on this, and I leave it to my colleagues to discuss and debate, and hopefully approve. Thank you.
CHAIRMAN CASTRO: Commissioner Yaki, I have a
question.

COMMISSIONER YAKI: Sure.

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

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

CHAIRMAN CASTRO: Okay. Commissioner Heriot?

COMMISSIONER HERIOT: So, how would that
read?

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

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

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

COMMISSIONER YAKI: Well, I was just thinking that perhaps for ease of the merger, it might just be easier to make this Strategic Goal B, and just make B, C, and everything like that, and just put it in that way. That might be cleaner. Then we wouldn't have to worry about stuff.
CHAIRMAN CASTRO: That's fine, too. I mean, it's fine for me. I would like to hear other Commissioners.

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

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

COMMISSIONER YAKI: New B.

CHAIRMAN CASTRO: Commissioner Heriot?

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

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Yes, we anticipated that probability, which is why we said it does not have to be a standalone project. It can be in conjunction with a briefing or enforcement report. I think there are plenty of opportunities in the course of a year to incorporate this kind of work in a briefing or enforcement rather than just a standalone project. So, we were cognizant. We did not certainly want to, as
you point out accurately, Commissioner Heriot, box us into anything that would be unduly restrictive or mandated, so we made sure that we put it either as a standalone project or in conjunction with a briefing or enforcement report. And I believe that that would be a pretty easy threshold to meet.

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


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

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

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

COMMISSIONER YAKI: Yes.

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

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

COMMISSIONER HERIOT: Neither was I, but
there was an effort to uncover useful information.

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

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

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

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

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

COMMISSIONER YAKI: Right.

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

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

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

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

COMMISSIONER YAKI: Well, we --
COMMISSIONER HERIOT: Work with a project that we've actually done.

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

COMMISSIONER HERIOT: But bullying you think did qualify?

COMMISSIONER YAKI: I think bullying did qualify.

CHAIRMAN CASTRO: The Chair recognizes the Vice Chair.

VICE CHAIR THERNSTROM: I mean, one of the things I like very much about this is that it suggests that our findings will be data driven to an extent to which often they have not. And, therefore, it seems to me have failed in this important objective of providing -- well, this important goal of providing
objective information and analysis. So, to the extent to which that is what you have in mind, I very much applaud it.

COMMISSIONER YAKI: That is what I have in mind.

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

COMMISSIONER YAKI: Sure.

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

COMMISSIONER YAKI: Yes.

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

COMMISSIONER YAKI: That's fine with me.

CHAIRMAN CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: I'm looking at this now, and it has a section that says, "Within 30 days of the completion of an investigation the Agency will make publicly available for inspection at its
headquarters office all non-confidential source
documents and data sets gathered in the course of the
investigation." That's committing to do something that
I'm a little worried about here. Non-confidential in
whose view? For instance, in the sex discrimination
study, I don't believe that those things were legally
confidential but the schools were going to fight us in
court if we couldn't commit to that. So, what do we
mean by non-confidential here? Do we mean non-
confidential in the sense that it's not illegal for us
to publish this, or non-confidential in the sense that
we've agreed with the people that are producing this?
I mean, that's a serious issue here.

CHAIRMAN CASTRO: That's a good point.

Commissioner Yaki, can you address that, please?

COMMISSIONER YAKI: Yes. I think that there
are two ways to address it. One is that this will
simply -- we can either do two things. One is, we can
make this part of the disclosure arrangement with
regard to any agency or entity from whom we are
seeking the data request. The second is that I think
we're complicating this slightly. This is simply a
transparency issue for others to seek what it is that
we have been working on. And in many -- and if you
want some clarification, to me this is simply a way of
rather than waiting for in some ways a FOIA request, it's us practically determining what would be eligible under FOIA for someone who had requested any data information, which means the determination would be within the purview of OGC.

CHAIRMAN CASTRO: Commissioner Kladney.

COMMISSIONER KLADEY: Kladney.

(Laughter.)

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

COMMISSIONER KLADEY: I know.

(Simultaneous speech.)

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

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

(Laughter.)

CHAIRMAN CASTRO: They're sitting too close together.

COMMISSIONER KLADEY: My concern is I don't know whether we have anything that's confidential. I can't think of anything that's -- any documents that are confidential that we take from other parties. I
don't know if we can have confidentiality. I think we should make sure that we disclose that to any parties that we receive documents from. My opinion.

CHAIRMAN CASTRO: Vice Chair, and then Commissioner Heriot.

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

CHAIRMAN CASTRO: Commissioner Heriot?

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

VICE CHAIR THERNSTROM: Not satisfactorily.

COMMISSIONER HERIOT: I'm not willing to vote on something like that with as little discussion as we've got right now. I am willing to vote just on the strategic goal.
CHAIRMAN CASTRO: Yes. Commissioner Yaki?

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

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

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Non-confidential. Okay.

COMMISSIONER YAKI: Performance Measure 4.

CHAIRMAN CASTRO: All right. Any other questions?

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

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

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

CHAIRMAN CASTRO: Which one? Okay.

COMMISSIONER YAKI: And I'm going to -- I would like to change Performance Measure 2 to substitute the mandatory will to may on SACs may be solicited, because given the -- I'm not sure exactly what the -- how many SACs might be chartered at any given moment in time. I think may would be more appropriate than will.
COMMISSIONER HERIOT: You want to consider putting approximately in front of the word "annually", so the Commission will approximately annually do this? I don't want some Congressional subcommittee yelling at us about not having done it in a particular year.

(Simultaneous speech.)

VICE CHAIR THERNSTROM: I was going to say -

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

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

COMMISSIONER YAKI: Where would this be?

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

COMMISSIONER YAKI: How about the --

COMMISSIONER ACHTENBERG: How about regularly?

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

CHAIRMAN CASTRO: Okay. Anything else --

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

COMMISSIONER YAKI: -- angular issue.

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

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

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

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

CHAIRMAN CASTRO: Is there a second?

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

CHAIRMAN CASTRO: Okay.

COMMISSIONER YAKI: Got it. Thank you.

CHAIRMAN CASTRO: Okay.
COMMISSIONER YAKI: Okay.

CHAIRMAN CASTRO: Do we have a second?

VICE CHAIR THERNSTROM: I'll second it.

CHAIRMAN CASTRO: All those in favor say aye.

(Chorus of ayes.)


COMMISSIONER KIRSANOW: Kirsanow, abstain.

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

COMMISSIONER YAKI: I thought I had you, Peter.

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

COMMISSIONER YAKI: Second.

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

(Chorus of ayes.)
CHAIRMAN CASTRO: All opposed? Any abstentions? Okay, it's unanimous.

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

COMMISSIONER ACHTENBERG: Second.

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

(Chorus of ayes.)

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

COMMISSIONER GAZIANO: This is Todd Gaziano.

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

COMMISSIONER GAZIANO: Thank you.

CHAIRMAN CASTRO: We're still in the tail end of the strategic plan. So, we've got a motion on what was Strategic Goal C, which has now become Goal D,
"Improve the Commission's profile and effectiveness in communicating with the general public." Is there a second?

COMMISSIONER ACHTENBERG: Second.

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

(Chorus of ayes.)

CHAIRMAN CASTRO: Any opposed? Any abstentions?

COMMISSIONER KIRSANOW: Kirsanow opposed.

CHAIRMAN CASTRO: Okay.

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

CHAIRMAN CASTRO: Okay. Make my notes here.

So, Commissioner Kirsanow abstained, or Commissioner Gaziano abstained on D, and Commissioner Kirsanow opposed D.

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

VICE CHAIR THERNSTROM: Second.

CHAIRMAN CASTRO: Discussion? Any discussion,
questions? Hearing none, I'll move for a vote. All
those in favor signify by saying aye.

(Chorus of ayes.)

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

We now move on to former F now G.

(Off microphone comment.)

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

COMMISSIONER KLADNEY: Second.

CHAIRMAN CASTRO: Discussion? Commissioner
Kladney?

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

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

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

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

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

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

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

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

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Yes. I mean, I think this is the one thing that if it's in our strategic goals and it's going to OMB, and we are affirming a desire to increase the participation of SACs in the Commission's work, we are by implication saying this
is a budgetary priority goal for us, which -- I know, know. But what I'm -- that's what I'm trying to say, is that, to me, is one of the -- my own issues here is that I want to commend Commissioner Kladney for the research that he did. My question is, when we say will be encouraged to participate in at least two briefings, hearings, or in public forums annually, do we mean each SAC, do we mean the SACs -- among 51 there will be two out of 51, or each one will be -- have two or more hearings?

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

COMMISSIONER YAKI: And I guess my problem has been that through the years with the fact that we have almost zero money to budget for SACs for travel, we take a large state, you take even a state like Hawaii where they've got to fly between the Islands, or take Alaska, or take any state with a spread out rural population, or spread out urban and rural populations, unless we figure out a way to group Skype a hearing or a public forum, we're basically almost mandating ourselves to fund this. And if we're mandating ourselves to fund it out of money that we don't have, how are we going to fund it? I mean, this is part of our strategic goal. This is going to OMB.
This is part of our budget justification, and we're saying we're going to do two of these a year for each one. And now we're putting ourselves on the hook to make this happen. You know, they don't -- a lot of these meetings don't just occur out of thin air. They've got to be put together, meetings have to be -- meeting halls -- I mean, we all know how much it costs to do a hearing, but now we're putting ourselves on the hook for it, so I'm actually in a burst of astonishment agreeing with Commissioner Heriot on -- I'm just teasing, Commissioner Heriot. I agree with you on a lot of things, just never in public. Well, uh, I'm just teasing.

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

CHAIRMAN CASTRO: Well, let me suggest something because I think a lot of this is underlined by the fact that each of our regional offices is woefully short-staffed. I'll get to you in a second, Commissioner Heriot. And I think ERO is the only one that has a civil rights analyst, and when you look back at the history of this Commission, those offices in the past had more staff than they do now. And I
think it does all ultimately boil down to a budget issue. So, perhaps what we could say here is to put the caveat on here that provided that we obtain the financial resources to do this, that's our goal, because we are going to need additional resources to accomplish these things.

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

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes?

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

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

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

VICE CHAIR THERNSTROM: Can I just note that it's got here in at least two briefings, hearings, and/or public forums. The public forums are much --
cost much less to hold than the hearings and briefings. So, that's an easier goal to meet.

COMMISSIONER KLADNEY: We can also add fact finding.

VICE CHAIR THERNSTROM: Yes.

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

VICE CHAIR THERNSTROM: Right.

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

VICE CHAIR THERNSTROM: Yes.

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

CHAIRMAN CASTRO: I think so.

VICE CHAIR THERNSTROM: I think, yes.

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

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

CHAIRMAN CASTRO: In fact, I think it would be great if maybe at our September meeting we invite
to participate by phone our regional chairs, I mean regional directors and hear directly from them what the challenges that they face are--

VICE CHAIR THERNSTROM: Right.

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

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

CHAIRMAN CASTRO: Okay, so let's --

VICE CHAIR THERNSTROM: My suggestion is --

CHAIRMAN CASTRO: Do we have a motion on this?

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

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

VICE CHAIR THERNSTROM: Second.

COMMISSIONER YAKI: Second.

CHAIRMAN CASTRO: All those in favor say aye.

(Chorus of ayes.)

CHAIRMAN CASTRO: All those opposed? Any abstentions? Okay. So, now we can move on to the next
item. Thank you, everyone, on this, really appreciate it. Most of these were unanimous, and that's really great.

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

II. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

VOTE ON 2012 FINAL STATUTORY REPORT

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

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

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

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

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, please make your motion.

COMMISSIONER GAZIANO: I don't necessarily need to go first. It's just hard to be recognized on the phone.
CHAIRMAN CASTRO: No, go ahead if you want.

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

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

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

COMMISSIONER HERIOT: I'll second.

CHAIRMAN CASTRO: Okay. Do you want to -- I guess we should discuss these each individually, and then take votes on it, otherwise it'll get a little
confusing. So, is there any discussion on this?

COMMISSIONER ACHTENBERG: What page?

CHAIRMAN CASTRO: Page 29 of the Confidential Draft Report, where it currently reads, "Extremely High Pre-Clearance Rates," which was what was used to replace "Lack of Redistricting Politicization."

Commissioner Gaziano suggests that it just read "Recent Pre-Clearance Rates."

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

CHAIRMAN CASTRO: Any discussion? Commissioner Yaki?

COMMISSIONER YAKI: I'm not sure that's what that section talk -- I mean, that section does talk about the pre-clearance rates, some of the most recent ones, but it also does provide historical discussions about the fact that pre-clearance rates have always tended to be very high. And I think that is an
accurate description of this in the context of the report. That's not -- the fact that these are recent pre-clearance rates we're talking about, but historically there are extremely high pre-clearance rates. That, to me, is a more fundamental assertion of the facts in this section than simply stating it as date fact analysis, which is not really what a fair amount of this section talks about. So, I would object to that amendment.

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

COMMISSIONER GAZIANO: Yes.

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

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

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

COMMISSIONER GAZIANO: I suppose I'll let my
previous comment stand.

CHAIRMAN CASTRO: Okay. Any other--

Commissioner Kladney?

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

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

COMMISSIONER GAZIANO: Recent.

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

COMMISSIONER HERIOT: Yes.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?
COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KLANDNEY: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: No.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLANDNEY: No.

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

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

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

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

CHAIRMAN CASTRO: Okay. But since we're on this particular provision we might as well deal with
any additional motions on this --

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

CHAIRMAN CASTRO: Okay, Commissioner --

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

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

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

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

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: So, I'm clear, are you suggesting that all the -- throughout the report, what has been excised be returned, or are you just talking
about the section under what is currently read
"Extremely High Pre-Clearance Rates."

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

COMMISSIONER HERIOT: No.

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

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

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

CHAIRMAN CASTRO: Okay.

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

COMMISSIONER KLADEY: Also page 29.

COMMISSIONER ACHTENBERG: Also on page 29.

COMMISSIONER YAKI: Thirty-four.

COMMISSIONER ACHTENBERG: I'm sorry?

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

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

CHAIRMAN CASTRO: Okay, so that's the motion.

Is there a second?
COMMISSIONER YAKI: Second.

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

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

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

CHAIRMAN CASTRO: The Chair recognizes
Commissioner Achtenberg.

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

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

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

COMMISSIONER GAZIANO: Mr. Chair?

CHAIRMAN CASTRO: Yes, Commissioner Gaziano.
COMMISSIONER GAZIANO: May I be recognized to speak on this?

CHAIRMAN CASTRO: Yes, you may.

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

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

I don't know why when four of us, as I think the vote will reflect, think that some passage is so inappropriate that the rest would press it either in the body of the report or in the findings. I hope that...
doesn't happen, because I think it will require me to object strenuously in the defense, and I can't speak for other Commissioners, but I suspect that there are two or three others that would do likewise. And I just don't see why we want 100 pages of this -- the eventual point of enforcement report to be debating this particular issue.

CHAIRMAN CASTRO: The Chair recognizes Commissioner Yaki.

COMMISSIONER YAKI: Well, I just want to commend Commissioner Gaziano for his apparent switch on the issue of the propriety of dealing with politicization as part of a statutory report, given that I spent two years of my life combating an attempt at publishing issues of politicization, or allegation of politicization in the 2010 statutory report, which did engender much paper on my part, and probably would have had even more had I been reappointed in a timely fashion to deal with that report as it came out. But I just find it -- I am both pleased and appalled by his statements because to this observer, at least, there is no report by the Inspector General of the Department of Justice concluding politicization has occurred at all with any respect to the divisions at issue here, unlike the -- under the previous
administration where the previous Inspector General for the Office of the Attorney General did, indeed, conclude that there had been politicization in the Department of Justice. So, while where I was arguing from a basis of fact as concluded by both the IG and the Office of Professional Responsibility, I feel very confident that in any dissents or discussions, if this were to be included back in the text, this section, as I believe it should be, and why I supported it, and why I support the efforts of the Chair and Commissioner Achtenberg to put it back in, I would assume that given the paucity of the data underlying politicization in terms of fact, that it would not be 100 pages, and would be substantially shorter unless, of course, we decide to simply make facts up which I don't believe any of us have ever done in the history of the U.S. Commission on Civil Rights.

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

COMMISSIONER HERIOT: No.
CHAIRMAN CASTRO: Commissioner -- I'm sorry, Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: No.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Aye.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

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

COMMISSIONER HERIOT: I handed out a footnote earlier in the meeting here. I move on that material on this sheet of paper be inserted as a footnote somewhere in the section on Extremely High Pre-
Clearance Rates. If you'd like, I could read it but it's just, "The high approval rates may be related to the Supreme Court's decision in Northwest Austin Municipal Utility District Number One v. Holder," gives a cite in which the Court stated that "Section 5 raises serious constitutional concerns, but declined to resolve these concerns until some future case. High approval rates reduced the number of opportunities for the Court to resolve the issue." Then it cites statements by our panelists on that issue and quotes from them. I move that that be included.

CHAIRMAN CASTRO: Is there a second to that motion?

COMMISSIONER GAZIANO: I second it.

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

COMMISSIONER YAKI: Where would this go?

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

CHAIRMAN CASTRO: Any questions or discussion? Commissioner Kladney?

COMMISSIONER KLADEY: I think it's too speculative.

CHAIRMAN CASTRO: Okay. Anyone on the phone?

COMMISSIONER GAZIANO: I think that the --

CHAIRMAN CASTRO: This is Commissioner Gaziano?

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

CHAIRMAN CASTRO: And just for the Commissioners on the phone, if you could identify yourselves when you talk for the purposes of the court reporter, although he may already know the sound of your voices. We want to make sure they're clear.
COMMISSIONER GAZIANO: This is Commissioner Gaziano who just made that statement.

CHAIRMAN CASTRO: All right. Commissioner Yaki?

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

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

VICE CHAIR THERNSTROM: The constitutionality.

CHAIRMAN CASTRO: I agree.

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

CHAIRMAN CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: I agree. This is not a footnote about the constitutionality of Section 5. It brings to the attention of the reader the fact that all of the witnesses attributed the high rates of pre-clearance to this -- not to the substance of the issue...
of constitutionality, but rather to the fact that this is something that would be litigated in the future. I think that the report is highly misleading without pointing out that this is something that our witnesses agreed on. They're not giving their opinion about the constitutionality of Section 5. They're talking about why the rates would be high.

COMMISSIONER Kladney: Maybe.

VICE CHAIR Thernstrom: Maybe. It is speculative.

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

COMMISSIONER Heriot: Yes.

CHAIRMAN Castro: Madam Vice Chair, how do you vote?

VICE CHAIR Thernstrom: I'm abstaining.

CHAIRMAN Castro: Okay. Commissioner Yaki, how do you vote?

COMMISSIONER Yaki: No.

CHAIRMAN Castro: Commissioner Achtenberg, how do you vote?

COMMISSIONER Achtenberg: No.

CHAIRMAN Castro: Commissioner Kladney, how
do you vote?

COMMISSIONER KLANDNEY: No.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

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

COMMISSIONER HERIOT: I've got another one.

CHAIRMAN CASTRO: Okay.

COMMISSIONER HERIOT: This is a simple one, though.

CHAIRMAN CASTRO: All right.

COMMISSIONER HERIOT: In the Table of Contents on page 2, I move that, number one, we conform the lack of politicization section, we need to change that to "Extremely High Pre-Clearance Rates." And, two, under "Statements of Commissioners," I move that when it becomes clear who is filing the statement that rather than have Statements of Commissioners, we have Statement of each Commissioner by name, and a page number that directs the reader's attention to
particular statements. I've had readers complain to me in previous reports that it's hard to find what they're looking for when they just have a long document that says "Statements of Commissioners," and they have to page through it to find out where particular Commissioner's statements are located.

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

(Laughter.)

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

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

COMMISSIONER ACHTENBERG: Second.

COMMISSIONER GAZIANO: I second.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: This is Todd.

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

COMMISSIONER HERIOT: I vote yes.

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

VICE CHAIR THERNSTROM: Yes.
CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

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

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

COMMISSIONER YAKI: Then I abstain.

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

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLASTENB: I abstain.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

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

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

VICE CHAIR THERSTROM: Just one.
CHAIRMAN CASTRO: Okay.

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

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

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

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

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

COMMISSIONER KIRSANOW: Kirsanow second.

COMMISSIONER ACHTENBERG: I have a question.

CHAIRMAN CASTRO: Commissioner Kirsanow seconds.

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

VICE CHAIR THERNSTROM: Well, I think it's misleading, because it is very striking the degree to which there are jurisdictions that are covered which are not in the Deep South. And it is -- the media gets
this wrong all the time, so I think there's a point in saying very explicitly by no means all.

CHAIRMAN CASTRO: Commissioner Yaki?

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

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

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

VICE CHAIR THERNSTROM: It's an interesting point.

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

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

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

COMMISSIONER Kladney: Okay.

CHAIRMAN CASTRO: Okay.

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

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

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

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

COMMISSIONER YAKI: Was it seconded?

COMMISSIONER KIRSANOW: Yes, I seconded it.

CHAIRMAN CASTRO: Okay. So, we'll take a
vote. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

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

VICE CHAIR THERNSTROM: That's my only amendment.

CHAIRMAN CASTRO: Okay. Any other amendments?
COMMISSIONER GAZIANO: Mr. Chair, I have one more quick one.

CHAIRMAN CASTRO: Yes, Commissioner Gaziano?

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

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

COMMISSIONER HERIOT: I'll second.

CHAIRMAN CASTRO: Okay. Any discussion? Commissioner Yaki?

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

COMMISSIONER GAZIANO: I would accept a friendly amendment just to strike any adjective there, and just talk about DOJ's approach. I don't
necessarily even agree with the paragraph that follows, but I think they can speak for themselves. I just think that the word "conservative" is more misleading than helpful. If you object to current, I would just be fine with DOJ's approach.

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

COMMISSIONER KLADNEY: I didn't say a word.

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

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

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

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

(Laughter.)

COMMISSIONER GAZIANO: Okay, I'll modify my
amendment. I think it's recent. Would you-- Commissioner Yaki, would you prefer recent, or as less --

COMMISSIONER YAKI: I don't know.

COMMISSIONER GAZIANO: I didn't hear that.

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

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

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

CHAIRMAN CASTRO: And you accept that?

COMMISSIONER HERIOT: I'm happy with anything.

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

COMMISSIONER HERIOT: I vote yes.

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

VICE CHAIR THERNSTROM: Yes.
CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

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

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

COMMISSIONER ACHTENBERG: I also vote no.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLABDEY: No.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

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

COMMISSIONER HRIOT: I have one more comment.

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

CHAIRMAN CASTRO: Commissioner Achtenberg?

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

COMMISSIONER HERIOT: I'm just correcting error.

(Simultaneous speech.)

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

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

CHAIRMAN CASTRO: I don't know. Without more
information, I don't feel comfortable --

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

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

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

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

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

CHAIRMAN CASTRO: All right, make your
motion.

COMMISSIONER HERIOT: Oh, there's no need for
CHAIRMAN CASTRO: Okay. All right.

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

CHAIRMAN CASTRO: I see. Okay. Commissioner Yaki?

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

COMMISSIONER HERIOT: Well, the Commission can do --

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

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

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

COMMISSIONER YAKI: Okay. Never mind then.

CHAIRMAN CASTRO: Okay?

VICE CHAIR THERNSTROM: And maybe you can make a list that we can hold in our hot little hands.
CHAIRMAN CASTRO: So, now we need to have a motion on Part A, as we've amended it. Is there a motion on Part A?

COMMISSIONER ACHTENBERG: So moved.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER YAKI: Second.

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

COMMISSIONER HERIOT: I abstain.

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

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

CHAIRMAN CASTRO: Okay.

VICE CHAIR THERNSTROM: But get back to me.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

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

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

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COMMISSIONER KIRSANOW: No.

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

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

COMMISSIONER GAZIANO: Yes.

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

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

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

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

CHAIRMAN CASTRO: No, she hasn't. She's abstained. A little clearer than you saying no, or maybe.
VICE CHAIR THERNSTROM: I'm waiting to see what --

COMMISSIONER HERIOT: She passed.

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

COMMISSIONER HERIOT: I abstain.

CHAIRMAN CASTRO: You abstained --

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

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

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

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

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

CHAIRMAN CASTRO: Okay. So the report Part A passes. We move on to Part B, which are "Proposed findings and recommendations." which were circulated. Do I have those? Okay, so we'll go through each proposed finding and make a motion on that. And then have a vote on each of those, and the same thing with each individual recommendation.
So, the first proposed finding is the Civil Rights Division of the U.S. Department of Justice enforces Section 5 of the Voting Rights Act of 1965 as reauthorized in 2006 by granting or denying pre-clearance to redistricting requests from covered jurisdictions. So, I make that motion. Do I have a second?

COMMISSIONER ACHTENBERG: Second.

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

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

CHAIRMAN CASTRO: Madam Vice Chair?

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

COMMISSIONER HERIOT: Someone's got to do it.

CHAIRMAN CASTRO: Commissioner Achtenberg?

So, what are you suggesting?

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

COMMISSIONER ACHTENBERG: Our proposed --

VICE CHAIR THERNSTROM: Pardon me?

COMMISSIONER YAKI: These are our's.
VICE CHAIR THERNSTROM: Or, alternatively, the District Court of the District of Columbia enforce Section 5 of the Voting Rights Act.

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

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

CHAIRMAN CASTRO: Commissioner Achtenberg?

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

CHAIRMAN CASTRO: Go ahead.

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

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

VICE CHAIR THERNSTROM: It's just --

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

VICE CHAIR THERNSTROM: It just makes clear that --

COMMISSIONER YAKI: Why don't we just take
what you wrote in the beginning of your Version 2 and just substitute for this instead? It kind of says the same thing. Right?

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

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

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

VICE CHAIR THERNSTROM: That's correct.
COMMISSIONER HERIOT: Not the '65 Act as passed.

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

CHAIRMAN CASTRO: As --

COMMISSIONER ACHTENBERG: The finding --

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

COMMISSIONER HERIOT: The finding as proposed here?

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: It's wrong.

CHAIRMAN CASTRO: Okay. And Madam Vice Chair?

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

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

VICE CHAIR THERNSTROM: No.

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

COMMISSIONER GAZIANO: No as written.

CHAIRMAN CASTRO: Commissioner Kirsanow, how is your vote?

COMMISSIONER KIRSANOW: No.
CHAIRMAN CASTRO: Commissioner Yaki, your vote?

COMMISSIONER YAKI: I pass.

CHAIRMAN CASTRO: Commissioner Achtenberg, your vote?

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

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

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

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

COMMISSIONER ACHTENBERG: Correct.

CHAIRMAN CASTRO: Okay.
COMMISSIONER HERIOT: Bingo. I vote yes on that one.

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

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

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

COMMISSIONER HERIOT: Yes.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney?

COMMISSIONER KLADEY: I abstain.

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

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

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

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

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

COMMISSIONER HERIOT: Okay.

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

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

"For example, on May 5th, 2006, the Justice Department objected to a proposal by North Harris Montgomery Community College District in Texas to reduce its number of polling places and early voting locations. The objection letter briefly described the impact that the proposal would have, including its disparate impact on minority voters, concluding the assignment of voters to these 12 sites is remarkably
uneven with the site -- I'm sorry, uneven. The site with the smallest proportion of minority will serve 6,500 voters, while the most heavily minority site, 79 percent Black and Hispanic, will serve over 67,000 voters." Footnote 2.

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

"DOJ's factual analysis implied that the proposed change had a discriminatory effect. However, DOJ provided no explicit factual analysis that would typically indicate a finding of discriminatory purpose. Regardless, in its description of its legal determination, DOJ referenced both the effect and purpose standards without specifying which standard it invoked to block the voting change. This would be
either unnecessary or inadequate. If DOJ did not believe that the proposal had a discriminatory purpose, there was no need to cite that standard in its conclusion. If DOJ believed that the proposal may have had a discriminatory purpose, it provided no analysis to support that conclusion. The DOJ belied this confusion by never explicitly stating that the proposal would have a retrogressive effect assuming that the legal theory underlying the objection, and by never providing citations for the legal standards that it invoked.

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

In its analysis, DOJ explained that compared to its previously pre-cleared procedures, fewer election documents were available in Spanish. The county assigned fewer bilingual election workers and some of the county's election documents were translated inadequately. The Department also noted in response to the county's claim that it had difficulty
finding bilingual election workers that minority individuals and organizations had offered to assist the county with meeting federal requirements.

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

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

Since that time, DOJ's objections have included clear and concise descriptions of the
applicable legal standards that they invoke with citations. More importantly, they have provided distinct and discrete analysis with respect to each legal standard. The DOJ believes a proposal has a discriminatory effect -- when the DOJ believes a proposal has a discriminatory effect, the letter concludes explicitly that it has a retrogressive effect.

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

For example, on March 12th"

COMMISSIONER GAZIANO: Mr. Chair?

CHAIRMAN CASTRO: Yes, sir?

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

CHAIRMAN CASTRO: I would have no problem so long as it's fully in the record. Unanimous consent is fine with me. Anybody have an objection to that? I
don't hear none, so unanimous consent --

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

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

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

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

COMMISSIONER YAKI: I was ready to put --

CHAIRMAN CASTRO: I'm happy to do that.

COMMISSIONER YAKI: -- it on my iPod.

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

COMMISSIONER YAKI: Okay.

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

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

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

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: Even after my moving
rendition?

COMMISSIONER HERIOT: It wasn't because --

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

CHAIRMAN CASTRO: Madam Vice Chair?

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

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

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

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

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

CHAIRMAN CASTRO: Thank you, I appreciate
that. Commissioner Achtenberg, yes? Commissioner Kladney?

COMMISSIONER KLANDNEY: Yes.

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

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

COMMISSIONER KLANDNEY: Second.

CHAIRMAN CASTRO: Any discussion? Madam Vice Chair?

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

COMMISSIONER YAKI: Mr. Chair?

CHAIRMAN CASTRO: Yes?

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

CHAIRMAN CASTRO: You got page 6?

COMMISSIONER YAKI: Yes, page --

CHAIRMAN CASTRO: Did I skip some of the proposed findings?
COMMISSIONER YAKI: Yes.

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

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

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

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

CHAIRMAN CASTRO: Okay. Vice Chair Thernstrom?

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

CHAIRMAN CASTRO: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: I pass. I'm rereading
CHAIRMAN CASTRO: Okay. Commissioner Yaki?

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

CHAIRMAN CASTRO: Commissioner Achtenberg?

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

CHAIRMAN CASTRO: Okay. Commissioner Kladney?

COMMISSIONER KLADNEY: I'm reading it.

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

COMMISSIONER KLADNEY: I'll vote yes.

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

COMMISSIONER KLADNEY: Mr. Chair?

CHAIRMAN CASTRO: Yes, sir?

COMMISSIONER KLADNEY: I'll vote yes.

CHAIRMAN CASTRO: Okay.

(Off the record comments.)

COMMISSIONER ACHTENBERG: I agree.

COMMISSIONER YAKI: Pass. Pass right now.

COMMISSIONER ACHTENBERG: Meaning pass --

COMMISSIONER YAKI: Yes.

COMMISSIONER ACHTENBERG: All right.
CHAIRMAN CASTRO: So, is that an abstention?

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

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

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

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

COMMISSIONER KLADNEY: Mr. Chairman?

CHAIRMAN CASTRO: Yes, sir?

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

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

(Simultaneous speech.)

COMMISSIONER YAKI: Three and four now, okay.

CHAIRMAN CASTRO: We have some folks that are
still reading, so when you're done with both --

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

CHAIRMAN CASTRO: Okay. That was Commissioner Gaziano.

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

CHAIRMAN CASTRO: Okay.

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

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

COMMISSIONER HERIOT: I'm a yes.

CHAIRMAN CASTRO: Okay. Commissioner Heriot is a yes.

COMMISSIONER YAKI: We should take --

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

COMMISSIONER YAKI: Yes.

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

COMMISSIONER YAKI: Could we have discussion?

CHAIRMAN CASTRO: Yes. What's your question?

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

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

COMMISSIONER YAKI: Yes.

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

COMMISSIONER HERIOT: On three?

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?
VICE CHAIR THERNSTROM: Yes.
CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?
COMMISSIONER GAZIANO: I abstain.
CHAIRMAN CASTRO: Okay. Commissioner Kirsanow, how do you vote?
COMMISSIONER KIRSANOW: No.
CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?
COMMISSIONER YAKI: No.
CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?
COMMISSIONER ACHTENBERG: No.
CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?
COMMISSIONER KLADNEY: Aye.
CHAIRMAN CASTRO: Yes?
COMMISSIONER KLADNEY: Yes.
CHAIRMAN CASTRO: I vote no, so it's one, two, three, four no's, three yeses, and an abstention, so it fails.

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

VICE CHAIR THERNSTROM: I'll second it so we
can vote.

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

COMMISSIONER HERIOT: I vote yes.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

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

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: No.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

CHAIRMAN CASTRO: Commissioner Kladney, how
do you vote?

COMMISSIONER KLADNEY: Yes.

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

COMMISSIONER YAKI: Waiting for Commissioner Gaziano.

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

COMMISSIONER GAZIANO: I thought you had one abstention.

COMMISSIONER YAKI: That was you.

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

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

CHAIRMAN CASTRO: Okay. So, the motion fails.

Now, we go on to the proposed recommendations. We were talking about and had a motion on proposed Recommendation One. "The DOJ should continue to enforce this VRA Section in a manner which is transparent and depoliticized." And, Madam Vice Chair, you had the floor on that.

VICE CHAIR THERNSTROM: I said that DOJ should continue in a manner that is transparent and
depolarized. I don't recognize that as an accurate
description of what DOJ has been doing.

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

COMMISSIONER YAKI: I'm sorry.

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

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

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

COMMISSIONER HERIOT: No.

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

VICE CHAIR THERNSTROM: No.

CHAIRMAN CASTRO: Commissioner Gaziano, how
do you vote?

COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: Commissioner Kirsanow, how
do you vote?

COMMISSIONER KLADNEY: No.

CHAIRMAN CASTRO: Commissioner Yaki, how do
you vote?
COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Aye.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

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

COMMISSIONER YAKI: Okay.

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

COMMISSIONER YAKI: One finding.

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

COMMISSIONER HERIOT: The one finding looks silly.

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: I move to strike the
one finding.

CHAIRMAN CASTRO: Is there a second on that motion?

VICE CHAIR THERNSTROM: I second that.

COMMISSIONER Kladney: I second.

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

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Madam Vice Chair?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

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

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

II. PROGRAM PLANNING UPDATE AND
DISCUSSION OF PROJECTS

VOTE ON 2013 STATUTORY REPORT TOPIC

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

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

COMMISSIONER YAKI: Second.

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

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

CHAIRMAN CASTRO: I believe that we're clearly looking at, as I've said, there are some subsets of our jurisdiction, race, national origin, disability, and gender that I want to look at, but I want to look at that from the lens of these individuals as veterans. Just, for example, as we did in our bullying report, we looked at various sections
of -- or various parts of the protected communities, but we were looking at them as students that were being bullied. You now, bullying is not a direct coverage that we have in our statute, but we were looking at minority students who were being bullied, so they were victims of bullying and peer-to-peer violence.

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

CHAIRMAN CASTRO: Well, let me finish, as well, human trafficking. We looked at gender discrimination. We weren't looking at victims of sex trafficking per se, but we were looking at those victims of sex trafficking who were being victimized because of their gender. And similarly here, what I am proposing is that we look at the condition of these veterans who are minorities because of their minority status, and seeing how that as veterans they are being further implicated. You look at there's reports that have been done over the last two years by the Department of Veterans Affairs, Office of Minority Advisory Committee, that shows that when it comes to minority veterans there are issues of employment, there are issues of homelessness. They don't track minority data very well for the veterans, and there
are a whole host of other issues that implicate a lack of services that the minority veterans are getting. They don't get into great detail on the civil rights aspects of it, and that's where I think we can make a contribution to this important class of individuals who are currently protected by our existing civil rights laws who happen to be veterans.

COMMISSIONER GAZIANO: Mr. Chair?

CHAIRMAN CASTRO: Yes, Commissioner Gaziano?

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

We should do our best to -- as interesting as this topic is, Mr. Chairman, and I thank you for trying to come up with another topic we might agree
to, I think we need to come up with topics where we
know that all of the resources that we devote to year-
long studies will produce something that is rather
meaningful statistically, and otherwise.

CHAIRMAN CASTRO: Well, that doesn't mean
that there's no data out there on it. The Veterans
Affairs Department needs to better track the race and
ethnicity demographic data. And I think as you look at
our bullying report again, we made some conclusions I
believe that there was a lack of data tracking by the
Department of Justice, and the Department of Education
as it relates to students who were being bullied
because of their LBGT status. And I think should we
determine that, that's an appropriate finding for us
to make. It should not be something that precludes us
from looking at these individuals who are clearly,
because of their minority status, protected by our
civil rights laws, covered by our jurisdiction. And I
think us looking at the issue that they face in
addition because of their veteran or military status
is something that this Commission should do because
these are folks who literally are fighting to insure
the rights that we're supposed to be overseeing. And
when we see from reports from the VA that there are
homeless veterans, and it's important for us to look
at the issue of housing, and it's homeless minority veterans. And when it looks like minority veterans are not being adequately outreached to by the federal government, then I think that implicates whether or not civil rights protections are being adequately afforded to our minority veterans. And I would very much hope that this Commission would take a stand to support the men and women who have fought and died for our rights.

COMMISSIONER Kladney: Time for the question.

Chairman Castro: Commissioner Achtenberg?

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

Now, that doesn't -- I mean, if you are thinking that this is bootstrapping, then I suppose that doesn't change your view. I think that taking a
look at this and seeing the extent to which it really is an issue, and seeing what our Commission can suggest to the Congress, and to the administration is a most worthy endeavor. Maybe there needs to be a new law or what have you, but I don't see who else is -- who is better situated than are we to take a look at how the entire context works. And I think it's particularly worthy given the importance of active service members and veterans to the health of the body politic.

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

CHAIRMAN CASTRO: Thank you, Commissioner. Commissioner Yaki?

COMMISSIONER YAKI: Yes, I just want to say that I'm very sympathetic to what it is you're trying to do, Mr. Chair. I worked with veterans -- I worked with a number of veterans groups, disabled veterans, homeless veterans, ex-Vietnam, ex-Gulf War vets, Wounded Warrior programs for I think the past 20 odd
years of my life. I had an uncle who was one of the first volunteers in the Nisei combat unit in World War II, who lost his arm in Anzio. He recently passed away, as did all the other relatives of mine who fought in that. And when they came back they faced unique struggles in adapting to a society that still viewed them as the enemy, which was very interesting. So, I have a lot of sympathy for this in having had a lot of hands on experience in getting grants for a lot of different veterans programs, Swords of Ploughshares and others in San Francisco. It's something that has always meant a lot to me, and I worked a lot with homeless vets in San Francisco.

The issue -- and I think this is -- part of me is somewhat torn on this, because I understand some of the jurisdiction issues that have been raised by others on this because there is, I think, rather shameful treatment of our returning men and women from the fields of combat by our country in not providing enough transition resources, and not providing enough counseling and dealing with PTSD and traumatic brain injuries and other things that are -- but I also do believe that for minority soldiers coming back there may be a double burden that they are faced with when it comes to finding housing, finding a job, getting
the training that they need. But I don't -- as I think it's been -- you said, others have said, we don't really have the kind of data that we need on that. But that doesn't mean that the data isn't there, could be there, or could be developed, or should be developed to take a look at this.

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

But I think that -- I think it would be -- I don't think we can turn a blind eye to the potentiality that is there, and certainly anecdotal evidence that we've heard is there. And if there is a
double burden being carried by minority soldiers on their return to this country, I think it can and should be drawn out. Anyway, that's not to diminish the burden that all veterans carry coming back.

CHAIRMAN CASTRO: Absolutely, yes.

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

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

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

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

VICE CHAIR THERNSTROM: Right, but any other
CHAIRMAN CASTRO: There's employment issues that are implicated by this.

VICE CHAIR THERNSTROM: Right.

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

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

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

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

CHAIRMAN CASTRO: Well, clearly, the EEOC is on this issue, particularly -- especially when it relates to the disability issue included in the employment context. And they have -- I propose that they be one of the federal agencies that we bring in. The Department of Labor has done an extensive amount of work on data tracking the employment issue as it
relates to veterans, as well as -- you know, the VA doesn't have a technical enforcement authority, but the VA is the point of entry for a lot of these veterans. And, in fact, this Minority Advisory Committee of VA is the one that is developing these C- looking at those areas where there's gaps. So, I think bringing them in and determining what they've seen on the civil rights issue is clearly something that we would consider to be appropriate in terms of federal enforcement report. So, I do list a number of federal agencies here that we can bring in that can testify.

Furthermore, on the interest groups, the groups that I've listed again would be able to provide us with direct information of their members. The American GI Forum is the oldest and largest organization for Latino veterans. The Paralyzed Veterans of America is one of several of the leading groups dealing with disabled veterans. The National Association for Black Veterans, the Iraq and Afghanistan War Veterans, which as you know from the statistics I cite in the report, those soldiers are more diverse than soldiers in the past war. And the American Voters for Equal Rights, or any similar groups, these are individuals who are very
specifically -- will be able to tell us whether they are seeing civil rights violations, and how they have been interfacing with these federal agencies that we have oversight on.

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

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I vote no.

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

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

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

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?
COMMISSIONER GAZIANO: Regrettably, no.

CHAIRMAN CASTRO: Commissioner Kirsanow, give me a yes.

COMMISSIONER KIRSANOW: No, I cannot.

CHAIRMAN CASTRO: Okay.

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

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

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

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

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

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

COMMISSIONER YAKI: Second.

COMMISSIONER ACHTENBERG: Second.

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

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

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

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

CHAIRMAN CASTRO: Yes.

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

CHAIRMAN CASTRO: Absolutely.

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

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRMAN CASTRO: Yes, ma'am.

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

CHAIRMAN CASTRO: No, indeed, but I figured
since we just had a fresh discussion on this right now, and --

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

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

VICE CHAIR THERNSTROM: It's premature.

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

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

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

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

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

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

COMMISSIONER Kladney: Yes, it's for a statutory report. I think sexual assault in the military has become quite a large issue. And I think we could look into that and have basically three
panels, a panel of JAG officers to explain the law, how it's handled in the military, how the prosecutors handle it, how the defense lawyers handle it. The second panel would be of advocacy groups, and the third panel would be a representative from each branch of service explaining exactly what's going on, and how they're handling this very timely subject, and very poorly handled subject in the military.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Discussion?

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

CHAIRMAN CASTRO: Madam Vice Chair?

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

CHAIRMAN CASTRO: Yes.

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

CHAIRMAN CASTRO: I think that's a valid point. I know as Commissioner Gaziano tried to put a gun law proposal on to the standard round, we did ask him to put a concept paper forward.
COMMISSIONER HERIOT: Don't we have to select something today?

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

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

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

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

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

COMMISSIONER KLANDNEY: Do you want us to leave the room?

CHAIRMAN CASTRO: Why don't we --

(Simultaneous speech.)

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

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

CHAIRMAN CASTRO: We are now off the record.
(Whereupon, the proceedings went off the record at 11:42:20 a.m., and went back on the record at 12:01:31 p.m.)

CHAIRMAN CASTRO: Back on the record.

Commissioner Heriot, you had a proposal?

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

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

CHAIRMAN CASTRO: And we would make Commissioner Kladney's vote the statutory enforcement report.
COMMISSIONER HERIOT: That would be the statutory enforcement report.

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

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

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

COMMISSIONER YAKI: Yes, absolutely.

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

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

CHAIRMAN CASTRO: Commissioner Kladney, do you have anything?

COMMISSIONER Kladney: I have no comment.

CHAIRMAN CASTRO: Okay.

VICE CHAIR THERNSTROM: But you can quickly write up a concept paper for us.
CHAIRMAN CASTRO: Okay. Should this be in the form of a motion or is this a general understanding that we can have that this is -- is this acceptable?

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

CHAIRMAN CASTRO: Okay. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN CASTRO: Straw vote.

COMMISSIONER HERIOT: Okay. I vote yes.

CHAIRMAN CASTRO: And there was a second.

Right? You seconded.

COMMISSIONER HERIOT: It's a straw vote.

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

VICE CHAIR THERNSTROM: Yes.

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

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Yes. Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: I vote yes. Commissioner Yaki?

COMMISSIONER YAKI: Sure, why not?

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: I'm going to pass.
CHAIRMAN CASTRO: Okay. Commissioner Kladney?

COMMISSIONER Kladney: I'm going to vote no.

CHAIRMAN CASTRO: And did I miss anybody?

Okay. Commissioner Achtenberg, we'll go back to you.

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

CHAIRMAN CASTRO: Okay.

COMMISSIONER Yaki: Hey, did Commissioner Kladney just vote no?

COMMISSIONER HEREOT: On his own proposal.

CHAIRMAN CASTRO: Yes.

VICE CHAIR THERNSTROM: On his own proposal.

COMMISSIONER YAKI: Well, in that case --

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

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

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

CHAIRMAN CASTRO: This is a straw vote.

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

COMMISSIONER HEREOT: More than any other statutory reports --

COMMISSIONER YAKI: Yes.
COMMISSIONER Kladney: If it passes it passes. I'm not worried about it. I'm just -- it wasn't my proposal, that's all.

Chairman Castro: Yes, we understand that.

But your proposal is --

Commissioner Kladney: But I will prepare the paper.

Chairman Castro: He'll prepare the paper.

Commissioner Kladney: Yes.

Chairman Castro: All right.

Commissioner Kladney: The wish of the Commission.

Chairman Castro: Okay. All right. Then we'll proceed accordingly.

Commissioner Gaziano: Mr. Chair, since I may leave the call now, may I just make a quick request and comment?

Chairman Castro: Yes.

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

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

CHAIRMAN CASTRO: Sure.

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

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

COMMISSIONER GAZIANO: Okay, thank you.

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

II. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

SCHEDULING OF FUTURE BRIEFINGS

CHAIRMAN CASTRO: I don't know if we want to
talk about that now or wait until we do these others.

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

CHAIRMAN CASTRO: Yes.

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

CHAIRMAN CASTRO: Yes, so we'll put that off.

Next is an update on the immigration briefing.

II. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

UPDATE ON IMMIGRATION BRIEFING

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

So, there will be three panels on the immigration briefing. Panel A is going to consist of the government officials and SAC chairs, so the
thought was to merge those to bring some efficiency, instead of having four panels. Panel B is going to consist of representatives of the interests and advocacy groups and affected persons. Panel C will consist of legal scholars and researchers.

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

COMMISSIONER YAKI: These are confirmed?

CHAIRMAN CASTRO: I believe these are all confirmed. So, those are the -- there was some discussion about doing a -- possibly a community open
mike at the end of it, but because of logistics and timing, et cetera, it was decided not do that, so it will just be these three panels.

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

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

COMMISSIONER HERIOT: For the extra hotel night?

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

COMMISSIONER HERIOT: Oh, okay.

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

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

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

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

Basically, there's going to be a room close to the meeting room where your assistants can put your lunch in, and you can have lunch, and staff can sit in there and eat. We will have a staff meeting about 6:00 that evening to go over the last minute details about
the logistics and so forth, so if you all want to
attend, can attend the staff meetings basically with
the staff and just to get the last minute logistics.

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

COMMISSIONER YAKI: I'll be coming.

MS. DUNSTON: Are you sure?

CHAIRMAN CASTRO: Great.

COMMISSIONER ACHTENBERG: Me, too.
CHAIRMAN CASTRO: You know I'm in there.

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

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

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

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

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

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

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

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

CHAIRMAN CASTRO: That must have happened since then. Okay. Anything else? Okay.
COMMISSIONER YAKI: Just a quick question. Do we book ourselves for the Sheraton? Do we contact you?

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

COMMISSIONER YAKI: Okay.

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

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

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

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

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

CHAIRMAN CASTRO: Is that right?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Okay.
COMMISSIONER HERIOT: Mr. Chairman, when do we expect the briefing to be over?

CHAIRMAN CASTRO: 4:00.

COMMISSIONER HERIOT: 4:00.

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

COMMISSIONER HERIOT: Can I amend the motion? I move that the Chairman have the authority to make sort of ordinary ministerial things that ordinarily would be done by the staff director in connection with this event.
CHAIRMAN CASTRO: Is there a second to that?
COMMISSIONER YAKI: Yes.
CHAIRMAN CASTRO: Is there a second to that?
Okay. All those in favor say aye.
(Chorus of ayes.)
CHAIRMAN CASTRO: Any opposed? Any abstentions?
COMMISSIONER YAKI: Does it include picking up the bar tab for all of us?
CHAIRMAN CASTRO: Only if you behave. Okay, thanks.
VICE CHAIR THERNSTROM: Michael, say never.
COMMISSIONER YAKI: Never.
CHAIRMAN CASTRO: Okay. So, next we move on to the discussion of -- actually before that we have Commissioner Yaki has requested to talk about his Stand Your Ground --
COMMISSIONER YAKI: Yes.
CHAIRMAN CASTRO: -- briefing.
COMMISSIONER YAKI: Yes. Thank you very much, Mr. Chair.

II. PROGRAM PLANNING AND DISCUSSION OF PROJECTS
STAND YOUR GROUND BRIEFING

COMMISSIONER YAKI: At the last meeting, the
Commission approved the investigation of racial bias in Stand Your Ground laws, but needed -- wanted to bring back to the Commission for a formal vote the details about the budget, scope, and process for an investigation.

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

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

COMMISSIONER HERIOT: Could you repeat it for me?

COMMISSIONER YAKI: It's a motion to ask -- to request the Director of Management, the Office of General Counsel, and the Acting Director of OCRE to aid me and Richard to prepare the more detailed project outline for the Stand Your Ground investigation, so we can prepare the budget and
project description that you all need. Because normally the Staff Director would do that with us, but we have no Staff Director.

COMMISSIONER HERIOT: Yes.

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

(Chorus of ayes.)


COMMISSIONER YAKI: Thank you.

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

III. MANAGEMENT AND OPERATIONS

DISCUSSION ON AGENCY STAFFING

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

There's something I think that's being either circulated or was at people's desks that was put together by the subcommittee with some recommendations for our review and consideration.
I'm not sure exactly how we would want to handle this, but what I'll ask is folks to take a few minutes to take a look at this. It might be the easiest thing to do to start. And then I remind you as you're looking at this that my understanding is -- our understanding is from Ms. Tolhurst that, of course, we cannot ask staff to do anything that is beyond the realm of their normal duties, so the view with these suggestions is that they are being done and recommended for people from whom this is in their wheelhouse here in terms of the work they do already. Some of them are already doing this, and it would be just a confirmation of that power by the Commission.

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

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

CHAIRMAN CASTRO: I don't.

COMMISSIONER YAKI: I'm ready.

CHAIRMAN CASTRO: Okay. Who would like to -- Commissioner Heriot?
COMMISSIONER HERIOT: I guess there are a couple of issues I want to talk about.

CHAIRMAN CASTRO: Sure.

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

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

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

Another alternative is if there is some checklist, we want to make absolutely certain has been
checked, would be to delegate authority to the
Chairman to sign off on the report in the next few
days. Either of those I think would work.

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

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

COMMISSIONER YAKI: Yes. I just want to state
for historical records that the Commission has prior
to this opted not to publish certain reports, even if
they were approved. So, it is --

COMMISSIONER HERIOT: Could you elaborate on that?

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

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

COMMISSIONER KIRSANOW: I do not.

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

CHAIRMAN CASTRO: Okay. Any other comments?

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

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

COMMISSIONER HERIOT: I don't believe we have the authority to not publish a SAC report. And we spent so much time talking about the SAC independence
and how important it is not to influence them. It strikes me as implausible that we'd have the authority
to say you can't publish this. It may be that we
didn't print one up, but I doubt that it's the case
that we have the authority to just deep six them.

CHAIRMAN CASTRO: Commissioner Kladney?

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

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

COMMISSIONER Kladney: See, I don't know.

COMMISSIONER HERIOT: -- report.

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

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

COMMISSIONER Kladney: My concern was you
were just saying they just need to be signed.
COMMISSIONER HERIOT: I think that's right. I think that's right, that there's like a checklist, it's been checked off, and that the only thing that's preventing this from being published at this point is that we have an AI that says the Staff Director signs off. But I don't believe the Staff Director has authority to do it on the substance.

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

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

COMMISSIONER KLANDNEY: No, no, no. I'm --

CHAIRMAN CASTRO: And what --

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

CHAIRMAN CASTRO: Okay.

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

COMMISSIONER YAKI: Gee, those Californians
aren't writing to me or Commissioner Achtenberg.

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

COMMISSIONER YAKI: We're Commissioners.

CHAIRMAN CASTRO: Commissioner Achtenberg?

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

CHAIRMAN CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: Never has a State Advisory Committee report been brought before the Commission while I have been on the Commission, so I think what that means is -- and I assume we have published some reports. What that has to mean is that assuming for the moment that there might be some authority that we would have to not publish the
report, it must be that individual Commissioners must bring it forward and say I think we should not publish this, because they've been automatically published while I'm on the Commission, and I've got no doubt whatsoever the Staff Director does not have the authority to make a judgment I'm not going to publish this because of some substantive reason.

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

In any event, what we could do is move this thing down the road between now and our next meeting. Delegate to Marty the ability to approve these things,
if it's ministerial. And if someone has a problem with the report and they determine that we have the authority to act substantively, that they make that very promptly known, and we can then vote on it at a later meeting.

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

COMMISSIONER ACHTENBERG: Second.

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

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

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

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

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

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

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

COMMISSIONER HERIOT: Yes.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how
do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: No.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Abstain.

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

COMMISSIONER HERIOT: The other issue that I wanted to try to deal with. At our subcommittee meeting we were trying to come up with ways to deal with the SAC issue. I know this is kind of my hobbyhorse and that we need to get the SAC pipeline open because that's what our statute requires. And the solution to the problem that we have came up was essentially to have a two-person committee. Two persons because either one of those persons can exercise veto power. No one can be a majority. One from the -- those people who were appointed by
Democratic authorities, and one caucus from those appointed by Republican authorities, one person from each. They will work like Roman consuls in that they have to be unanimous. And if they find that the staff has put together a balanced SAC then they -- if they both vote yes, it comes to the Commission; otherwise, it gets sent back to the staff for reworking until finally the staff comes up with a SAC that can get to the Commission. This way we can get these things on the agenda, and I hope get a few of them approved so that we don't fall further and further behind.

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

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

COMMISSIONER ACHTENBERG: Second.
CHAIRMAN CASTRO: Okay. Commissioner Yaki?

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

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

CHAIRMAN CASTRO: Unanimity is required among them.

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

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

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

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

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

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

COMMISSIONER YAKI: Get a Staff Director.

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

COMMISSIONER HERIOT: Yes.
CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Abstaining.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: No.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLANDNEY: Abstain.

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

COMMISSIONER HERIOT: It means it carries.

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

CHAIRMAN CASTRO: Yes.

COMMISSIONER YAKI: I refuse to participate in this. I don't think you can force me to participate in this, so I am not going to participate. I don't
think a vote can compel me to do this.

COMMISSIONER HERIOT: Do what?

COMMISSIONER YAKI: And I'm not going --

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

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Okay.

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

CHAIRMAN CASTRO: Duly noted.

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

CHAIRMAN CASTRO: Okay.

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

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

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

CHAIRMAN CASTRO: The SAC package is balanced.

COMMISSIONER ACHTENBERG: -- SAC package is
balanced, which precludes a no way consideration by
the full Commission --

CHAIRMAN CASTRO: Correct.

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

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

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

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

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

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

(Simultaneous speech.)

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

CHAIRMAN CASTRO: We understand. We
understand to that extent.

COMMISSIONER YAKI: So, I'm shoving this
burden on you guys deliberately.

CHAIRMAN CASTRO: Yes, sir.

COMMISSIONER ACHTENBERG: And why is that,
Michael?

COMMISSIONER YAKI: I do not feel that it is our purview and response -- and I think there are too many questions that can be raised in terms of the responsibility of the final names on that package that I am comfortable dealing with. I cannot vouch for each and every one of those people. And now we've gone beyond a screen to being the screener and dealing with it at that point. I'm just not comfortable doing that.

We have had some serious people slip through the net, and I am not going to have my name put on any of that.

COMMISSIONER HERIOT: You already do it. You vote for SACs all the time. I mean, it's --

COMMISSIONER YAKI: Yes, but I can say with some confidence that there have been at least two levels of screen on there from the Regional office, and the Staff Director signing off on it to the time it reaches us, and even then we still do a screen on that. We are now -- we have no Staff Director --

COMMISSIONER HERIOT: The Staff Director doesn't personally do screenings, so that's --

COMMISSIONER YAKI: Yes, they check to make sure --

CHAIRMAN CASTRO: One at a time, folks. One
at a time, please.

COMMISSIONER YAKI: Well, in that case, you know, I mean, that is not true, and you know that's not true because the former Staff Director prior to the person Acting as the Acting Staff Director and the person prior to that did that all the time. And I am not going to --

(Simultaneous speech.)

COMMISSIONER YAKI: The Staff Director engages in that. That's two levels of screen that we are basically taking out. I am not going to put my name on that. Like I said, there have been some people who have slipped through, and I can say I didn't have the responsibility go three levels down to do it. I just -- what came up. I'm not going to do it.

COMMISSIONER ACHTENBERG: Mr. Chairman?

CHAIRMAN CASTRO: Yes, ma'am?

COMMISSIONER ACHTENBERG: I think that this is a workable way -- I mean, this is a temporary -- I, too, wish we had a Staff Director, and I would urge my colleagues to be cooperative. If ever we were to be presented with someone who could fill that role, I hope we'll give them every consideration so that we might function appropriately. Having said that, however, this seems to me to be a workable substitute
that doesn't violate any consideration at least for my purposes, and we do need to charter SACs. And none of this takes any discretion away from any Commissioner to object or --

COMMISSIONER KIRSANOW: Mr. Chair, Kirsanow signing off.

CHAIRMAN CASTRO: Okay. Thank you, Commissioner. Do we still have a quorum? Yes, we do. Okay. So, Commissioner Kladney?

COMMISSIONER KLASTNEY: I would just add, I think this is a noble way to try and get the SACs moving. I just would like to reiterate that -- with Chairman Yaki -- Commissioner Yaki that we need a Staff Director, and I would urge that we get one brought forward.

CHAIRMAN CASTRO: So, how would we like to deal with the remaining duties and potential recommendations on this list?

COMMISSIONER HERIOT: Is there anything we need to vote on here?

COMMISSIONER KLASTNEY: Let's approve them as a slate.

CHAIRMAN CASTRO: You want to approve it as a slate? Commissioner Yaki, you have a question?

COMMISSIONER YAKI: Yes. I have a question
regarding the -- my questions go toward how things are being handled now, and if we're simply going along the same path, I am starting to get concerned. I'm very concerned about how much money is now being spent on the move. I am very concerned about budget decisions that are being made right now in terms of reallocations within line items that were the privy of the Staff Director, and are not. And I am concerned that the -- that our checks and balances are out of balance, and this will simply certify the continuance of that issue. It has nothing to do with the competence or credibility of any of the people involved, but just how policies have been done in the past, and how decisions are being made in the future. There are some decisions involving the budget, especially on the move, that concern me. There are some issues involving reallocations within line items of the budget toward new -- that had not been approved by prior Directors, and Staff Directors, and have been changed now that I have concerns about.

I think that it is -- and I will admit that my concerns are somewhat selfish because I am concerned about what kind of resources we have available for the projects that we have on the table, including what I'm trying to accomplish with Stand
Your Ground. And I am just very concerned about locking in stone through a vote of the Commission reallocation and determination of duties that may inadvertently be over-inclusive by omission, and by the fact that we just can't micro manage, nor have the ability to micro manage like a Staff Director would day to day, and year-end budget decisions that frequently the Staff Director would go to us to seek policy guidance on. And that was something that used to occur, is not occurring. And even if it wasn't guidance, it at least was being reported to us about where budgetary monies were being reallocated or being spent so we would have the opportunity to ask questions, and in certain situations review and reverse them. And I don't see a process for that in this.

CHAIRMAN CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: I guess I've got the opposite concern, and that is the concern of paralysis. I know that last week we had a situation where an employee was about to retire and wanted an extension to help us get through the move of 60 days, and there was a lot of worry at the time whether any of our staff members had the authority to act. And, ultimately, it was decided that they did have the
authority to act, but if we had needed a Staff Director at that point, we didn't have it, and there was no way that the Commission could meet to extend this employee's contract for another 60 days. So, I'm concerned -- I would like to move that between meetings if there is some ministerial act that our rules require the Staff Director to act on, I would move that the Chairman be authorized to do that in the absence of a Staff Director. And that the Chairman report back to the Commission any such acts that were undertaken at our next meeting. And, again, this is for ministerial acts.

CHAIRMAN CASTRO: What do we define as ministerial?

COMMISSIONER YAKI: Yes.

COMMISSIONER HERIOT: Non-policy.

COMMISSIONER YAKI: I have a -- let me just state, I was part of that discussion involving the staff issue that you were talking about, Commissioner Heriot, and as concerned as you were. But my concern goes exactly to what I'm talking about, because this is a kind of issue that normally through the process of the Staff Director would be brought to the attention of the Commission ahead of time, as in we made a decision to do this prior to the move. This is
the kind of thing -- I mean, this is something where we could have dealt with it in a timely fashion, but because we lack a Staff Director, and lack the normal reporting techniques and abilities, that I just don't want to carte blanche cement in place something that removes that reporting and consultation, and other functions that we used to have. Because I would just tell -- tell to the members of the Commission who are not here in 2010, that the then Acting Staff Director on his own volition made a substantive decision on key personnel issues that were reported almost after-the-fact to the Commission. Had it not been for the Commission being aware of this, and then by unanimous vote, and this was a unanimous vote, reversed that, we would not have known about it. That's the reporting function that I cannot approve -- I can't approve this without insuring that we have a continuation of that reporting function to us on major budget decision and reallocations so that we have some awareness of what's going on.

COMMISSIONER HERIOT: Major budget decisions or policy decisions. I'm talking about kind of --

COMMISSIONER YAKI: Well, what would you -- how would you -- we're about to get into dangerous territory here, but how would you approve of a
reallocation of money into a budget pool that two
Staff Directors have previously said no to, and now
all of a sudden a big chunk of money has been put in
there? Is that -- it's not really a major policy
decision, but -- I mean, how do you determine what's
major and what's not?

COMMISSIONER HERIOT: The choice is paralysis
or have a problem with a little bit of gray areas,
what the --

COMMISSIONER YAKI: Well, a little bit of
gray area --

(Simultaneous speech.)

CHAIRMAN CASTRO: The Chairman isn't gray
here, and I don't want to be any gray areas.

COMMISSIONER YAKI: Yes, that little bit of
gray area is where we could get in some trouble with
the people who are sitting in our audience right now
from the Inspector General's Office.

CHAIRMAN CASTRO: Yes, I don't want to --

COMMISSIONER YAKI: So, yes, I think there is
something that we need to be concerned about.

COMMISSIONER HERIOT: Are we voting then to
have the kind of problem that we had this past week
where we didn't know what to do about somebody who
just wanted a 60-day extension? And what I could do is
change my motion to say the Chairman in consultation informally with Commissioners, but I don't want a situation where we're in the middle of the month, we think we have no power to act. And, as a result, something bad happens.

CHAIRMAN CASTRO: Well, let me just add something here because I'm a little concerned that some factual statements are being made that may or may not be accurate as to the budget pools. And I don't know if we might be able to have Mr. Ratcliffe or someone from the Budget Office address the questions that Commissioner Yaki, or if you're even aware of that.

MR. RATCLIFFE: I would need specifics about what you're talking about, specifically. And I may not be able to answer you today. I may have to research the answer.

CHAIRMAN CASTRO: Okay. All right. I just wanted to see if there was something you could add. Thank you.

Well, we don't have a pending motion, so does someone want to make a motion and we vote on it?

COMMISSIONER HERIOT: I have a pending motion, don't I? It just hasn't been seconded.

CHAIRMAN CASTRO: I know it wasn't seconded.
COMMISSIONER HERIOT: No, it hasn't been seconded.

CHAIRMAN CASTRO: It wasn't -- restate your motion.

VICE CHAIR THERNSTROM: Restate it, please.

COMMISSIONER HERIOT: I move, and if anybody wants me to make changes to this, I'm willing to do it. I move that the Chairman be authorized to take any action that our AIs delegate to the Staff Director in between meetings, that he do so only for what he regards as ministerial actions, and that if it's a gray area, that he consult with members of the Commission about whether or not this is, indeed, a ministerial act before acting.

CHAIRMAN CASTRO: Do we have a second on that? Is there a second?

COMMISSIONER ACHTENBERG: I'll second that.

CHAIRMAN CASTRO: Okay.

COMMISSIONER ACHTENBERG: What's the harm in that?

CHAIRMAN CASTRO: Don't know until something becomes harmful. That's my concern.

COMMISSIONER HERIOT: Who would have predicted the librarian issue? I certainly wouldn't have. It's the sort of thing that --
CHAIRMAN CASTRO: But I would not consider that ministerial. That is actually extending someone's retirement benefits. That goes beyond ministerial.

COMMISSIONER HERIOT: Sixty days?

CHAIRMAN CASTRO: Sixty seconds is more than I felt was --

COMMISSIONER HERIOT: Well, then let me amend my motion to include -- and if it isn't ministerial that he consult with the members of the Commission and insure that he has a majority behind him.

CHAIRMAN CASTRO: Well, do you accept that?

COMMISSIONER HERIOT: It's paralysis.

CHAIRMAN CASTRO: Do you accept that amendment?

COMMISSIONER ACHTENBERG: No.

COMMISSIONER HERIOT: Do you have an alternative for me?

COMMISSIONER ACHTENBERG: That raises --

COMMISSIONER HERIOT: Give me an alternative.

COMMISSIONER ACHTENBERG: I agree with you. I'm sympathetic.

COMMISSIONER HERIOT: Yes, I just -- I don't want to leave here and have something come up two weeks from now that's a big problem, and everybody is saying there's no authority to act.
CHAIRMAN CASTRO: Well, then why don't we just pass this as an omnibus that --

COMMISSIONER HERIOT: Because it may not conclude something, that's why.

CHAIRMAN CASTRO: But at least it's not paralysis. It includes some things.

COMMISSIONER HERIOT: Yes, but --

COMMISSIONER YAKI: Why don't we just change our --

CHAIRMAN CASTRO: Okay.

COMMISSIONER YAKI: Wait, wait, wait, wait. I'm going to --

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: I think we should simply do one thing very quickly, and that is I would like to amend our AIs to obviate the need of the Staff Director to conduct it.

CHAIRMAN CASTRO: To conduct what?

COMMISSIONER YAKI: To conduct a notational vote, because that seems to be sticking around on this stuff. This is the kind of thing that where then you will have -- if you wanted to in this situation, in a situation like this, you would then have on the record rather than people just kind of whispering to you and leaving you hanging out on a limb any decisions like
this where you might have some concern. But I think
that the first step we should take is that at least in
this interim period until, and in the absence of a
Staff Director, that we empower the Office of General
Counsel to be able to conduct notational votes at the
direction of the Chair.

COMMISSIONER KLADNEY: But there's nobody in
charge of the --

COMMISSIONER HERIOT: We don't have an
Acting--

CHAIRMAN CASTRO: Yes, that's a problem.

COMMISSIONER YAKI: No, no, the senior
attorney in the Office of General Counsel.

COMMISSIONER HERIOT: Any staff member.

COMMISSIONER YAKI: Any staff attorney.

COMMISSIONER HERIOT: Any staff member at the
direction of the Chairman.

COMMISSIONER YAKI: Any staff attorney -- no,
no, any staff attorney can --

COMMISSIONER HERIOT: Why attorney?

COMMISSIONER YAKI: -- then conduct a
notational vote. Because it --

CHAIRMAN CASTRO: I just feel very
uncomfortable with having to take on those management
roles.
COMMISSIONER YAKI: Okay, forget about the management roles, though. I think, though, that on -- because the Staff Director does create some sort of blockades to just even things that we normally would vote on as Commissioners, this is separate and apart from the package of things that -- anything that would give anything more to you. But they're clearly items for which you might want to take a notational vote, and right now you're prohibited from doing it. So, why don't we at least --

CHAIRMAN CASTRO: Oh, so you're not talking about the --

COMMISSIONER YAKI: No, no, no.

CHAIRMAN CASTRO: -- the Staff Director duties.

COMMISSIONER YAKI: No, no, we're just talking about --

COMMISSIONER HERIOT: No, just giving you the right to call a vote on whatever you feel like you need a vote on.

COMMISSIONER YAKI: Yes. If you need to call a vote on something, right now you're --

CHAIRMAN CASTRO: Whatever it is.

COMMISSIONER HERIOT: Yes, whatever it is.

COMMISSIONER YAKI: Whatever it is, because
you're stuck with that, so I would like to make a
motion to amend our AIs for a period of six months, a
Sunset provision of six months that will allow any
attorney in the Office of General Counsel at your
direction to conduct a notational vote of the members.

CHAIRMAN CASTRO: On any topic.

COMMISSIONER YAKI: Right.

COMMISSIONER HERIOT: Whatever topic comes
up.

CHAIRMAN CASTRO: I'm fine with that. I
thought you were talking about giving me --

COMMISSIONER YAKI: No, no.

CHAIRMAN CASTRO: -- the duties, which I
don't want.

COMMISSIONER YAKI: I recognize that.

COMMISSIONER HERIOT: Second.

MR. FAY: It would eliminate the requirement
for a Staff Director.

COMMISSIONER YAKI: Exactly, for six months.

COMMISSIONER HERIOT: How about until there's
a Staff Director?

COMMISSIONER YAKI: Because then we get in
the direction of what is a Staff Director, because of
Acting --

COMMISSIONER KLADNEY: You'd have to make it
six months, or if we get a Staff Director in the interim.

COMMISSIONER YAKI: Yes, or if a Staff Director is confirmed in the interim.

CHAIRMAN CASTRO: That's fine with me.

COMMISSIONER YAKI: Okay?

CHAIRMAN CASTRO: Yes. So, that's a motion, and a second?

COMMISSIONER HERIOT: Sure. Yes, second.

CHAIRMAN CASTRO: Okay. Any additional discussion? Let's take a vote on that. Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Madam Vice Chair?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney?

COMMISSIONER KLADENEY: No.

CHAIRMAN CASTRO: And Commissioner Kirsanow is off the line. So, I'll abstain but it passes, one, two, three, four yeses, a no, and an abstention. Okay.

COMMISSIONER HERIOT: Okay. Do we want to
have a motion about the general approval of the list here?

CHAIRMAN CASTRO: Okay, so you're making a motion to approve this list as --

COMMISSIONER HERIOT: I haven't entirely read it. Maybe I shouldn't be the one to --

CHAIRMAN CASTRO: I think something else was suggested by Commissioner Kladney earlier, but do you suggest sort of voting on this as an omnibus?

COMMISSIONER KLADNEY: Just as a slate.

CHAIRMAN CASTRO: Yes, so that is a motion there. Do we have a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Second from Commissioner Achtenberg. Does anyone need additional time to look at this?

COMMISSIONER HERIOT: If you start voting with me last.

CHAIRMAN CASTRO: Okay, we'll start with Commissioner Yaki. How do you vote?

COMMISSIONER YAKI: On the package?

CHAIRMAN CASTRO: Yes, on the package.

COMMISSIONER YAKI: Without a discrete reporting requirement, no.

CHAIRMAN CASTRO: No. Okay. Commissioner
Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADENY: Yes.

CHAIRMAN CASTRO: I vote yes. Madam Vice Chair?

VICE CHAIR THERNSTROM: Get back to me on this. I'm staring at it.

CHAIRMAN CASTRO: Okay. Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: You vote yes. Madam Vice Chair, I think you're the only one we're waiting on.

VICE CHAIR THERNSTROM: All right, I vote no.

CHAIRMAN CASTRO: Okay. In that case it passes 4-2. Okay. I believe that concludes our agenda, so I'll entertain a motion to adjourn.

IV. ADJOURN MEETING

VICE CHAIR THERNSTROM: So moved.

CHAIRMAN CASTRO: Okay. It is now 1:00 p.m. Eastern Time, we're adjourned. Thank you, everybody.

COMMISSIONER HERIOT: We didn't actually vote on it.

CHAIRMAN CASTRO: Oh, okay. All those in favor say aye.
COMMISSIONER HERIOT: I always vote no. I can't get --

CHAIRMAN CASTRO: Okay.

COMMISSIONER YAKI: I abstain.

CHAIRMAN CASTRO: We'll take a notational vote on it later. Thank you, everyone.

(Whereupon, the proceedings went off the record at 1:01:20 p.m.)