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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 9:34 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ABIGAIL THERNSTROM, Vice Chairman
(via telephone)

ROBERTA ACHTENBERG, Commissioner
(via telephone)

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner
(via telephone)

DAVID KLADNEY, Commissioner (via telephone)

MICHAEL YAKI, Commissioner (via telephone)

KIMBERLY TOLHURST, Delegated the Authority of the Staff Director + Acting General Counsel
STAFF PRESENT:
MARGARET BUTLER, Acting Chief, OCRE
IVY L. DAVIS, Director, ERO
BARBARA DE LA VIEZ
PAMELA DUNSTON, Chief, ASCD
LATRICE FOSHEE
ALFREDA GREENE
TINALOUISE MARTIN, Director, OM
PETER MINARIK, Director, RPCU (via telephone)
TORRANCE MONTGOMERY
LENORE OSTROWSKY, Acting Chief, PAU
JOHN RATCLIFFE, Chief, Budget and Finance
EILEEN RUDERT
DAVID SNYDER
VANESSA WILLIAMSON

COMMISSIONER ASSISTANTS PRESENT:
NICHOLAS COLTON
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
RICHARD SCHAMEL
ALISON SOMIN
MARLENE SALLO
I. Approval of Agenda .................................... 5

II. Approval of the
Feb. 3, 2012 Meeting Minutes ......................... 9

III. Management and Operations
$ Staff Director's report ............................... 19

IV. Chair addresses passing of Harry McPherson and
Captain Patricia Gromley ............................. 26

V. State Advisory Committee Issues:
$ Review of two Hawaii SAC applicants ............. 27
$ Re-chartering the Indiana SAC .................... 37
$ Re-chartering the Utah SAC ....................... 74

III. Management and Operations (Cont'd)
$ Chief of Regional Programs' report ............... 89
$ Discussion on Agency Staffing ..................... 110

VI. Program Planning Update and discussion of
projects:
$ VRA Statutory Enforcement Report Update .......... 144
$ Human Trafficking Briefing Update ............... 148
$ Immigration Briefing Update. Discussion of
  potential field briefing .......................... 150
$ Discussion on 2013 Statutory Report
  Selection Process .............................. 172

V. State Advisory Committee Issues:
(Cont'd) ............................................. 190
$ Re-chartering the District of Columbia SAC
$ Re-chartering the Maine SAC
$ Re-chartering the Nevada SAC

VI. Adjourn Meeting ................................. 198
P-R-O-C-E-E-D-I-N-G-S

(9:33 a.m.)

CHAIRMAN CASTRO: The meeting is being called to order. It is now 9:34 a.m. This is a meeting of the U.S. Commission on Civil Rights. Today is March 9th, 2012. This meeting is taking place at the Commission's headquarters, located at 624 Ninth Street N.W., in Washington D.C.

I am Marty Castro, Chairman of the Commission. Commissioners who are present physically at this meeting myself, Commissioner Heriot and Commissioner Gaziano. Vice Chair Thernstrom, Commissioner Kladney, Commissioner Yaki and Commissioner Kirsanow are joining us by phone, Commissioner Achtenberg will also be joining us by phone shortly at approximately 9:50.

So it sounds like we have a case of red and blue flu today but we do, nonetheless, still have a quorum in the room. So what I would like you to do, particularly those commissioners that are on the phone, would you please identify yourself by name, when you are speaking so that the court reporter knows who it is that's talking.

A quorum of the commissioners is present. Is the person delegated the authority of
staff director present?

ACTING STAFF DIRECTOR TOLHURST: Yes and I'd also note that if a commissioner on the phone drops off, we need to announce that so we can keep track of quorum.

CHAIRMAN CASTRO: Good thank you. Is the person who is the court reporter present?

COURT REPORTER: Yes Mr. Chairman.

CHAIRMAN CASTRO: Okay. The meeting shall now come to order. The first item is the approval of the agenda.

I. APPROVAL OF THE AGENDA

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

COMMISSIONER GAZIANO: Second if I can amend.

CHAIRMAN CASTRO: Yes.

COMMISSIONER GAZIANO: Offer an amendment.

CHAIRMAN CASTRO: Okay. Are there any amendments?

COMMISSIONER GAZIANO: The one I'd like to offer is to -- because I've heard various commissioners may not be on the phone for that long, I'd like to move the review of at least one of the
two Hawaii SAC applicants, the only one that I think is ready for us to act on, and I'll talk about my disappointment the other one isn't, up to right after -- I suppose Roberta, either Roberta comes on the line, if we could interrupt proceedings, I understand she may have some motions on some of the other SACs.

CHAIRMAN CASTRO: Right.

COMMISSIONER GAZIANO: So I -- maybe my motion is to move up those SAC charter packages on which commissioners -- which Commissioner Achtenberg has concerns, and then I want to move up the one Hawaii SAC applicant too as soon as she is on the line, or the first order of business after the agenda, whichever the rest of the Commission wants.

CHAIRMAN CASTRO: Sure, and those other SACs I understand to be Indiana and Utah so if you would make those part of your motion, that would be --

COMMISSIONER GAZIANO: That's fine.

CHAIRMAN CASTRO: Okay, is there a second to that?

COMMISSIONER HERIOT: I'll second.

CHAIRMAN CASTRO: Okay. Any discussion?

(No response)
CHAIRMAN CASTRO: If not, all those in favor signify by saying aye.

(Chorus of ayes)

CHAIRMAN CASTRO: Okay.

COMMISSIONER HERIOT: I have a motion too.

CHAIRMAN CASTRO: Okay.

COMMISSIONER HERIOT: On Section IV, management and operations --

CHAIRMAN CASTRO: Actually excuse me a second Commissioner Heriot, I forgot to ask if there are any opposition or abstentions on that.

Okay, it was unanimous then.

COMMISSIONER YAKI: I abstain.

CHAIRMAN CASTRO: Okay. Commissioner Yaki abstains.

COMMISSIONER HERIOT: On Section IV, management and operations, so much of what goes into Section IV is going to influence how -- my views on the issues under Section III and there's a lot of manpower issues in Section IV.

I move that we take Section IV and put it above Section III so that we'll have some sense of how to deal with the Section III issues when they come up.
CHAIRMAN CASTRO: Okay. Is there a second on that?

COMMISSIONER GAZIANO: I second.

CHAIRMAN CASTRO: Okay. The only concern I would have is I'd like to have Commissioner Achtenberg on the phone when we discuss, if possible, the agency staffing question.

So I don't know if we put that all up with -- no, I guess she will be --

COMMISSIONER HERIOT: That might make it better.

CHAIRMAN CASTRO: Yes, it's already 10:22, so --

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Okay. Any other questions on that?

COMMISSIONER GAZIANO: And you, Mr. Chair, if you would like to have the agency staffing the first order of business under manager and operations, then, you know --

CHAIRMAN CASTRO: Or we could make that adjustment when we know where we are in the timing.

So we have a motion seconded. Any questions?

(No response)

CHAIRMAN CASTRO: If not, okay, so let's
move on that motion to amend. All those in favor signify by saying aye.

(Chorus of ayes)

CHAIRMAN CASTRO: Any opposed?

(No response)

CHAIRMAN CASTRO: Any abstentions?

COMMISSIONER YAKI: I abstain.

CHAIRMAN CASTRO: Okay. Commissioner Yaki abstains. And I voted aye, so that's all but one. Okay, so the motion passes. Next item then, so is the approval of the minutes of the February 20th, I'm sorry, the February 3rd meeting.

II. APPROVAL OF THE FEBRUARY 3, 2012 MEETING MINUTES

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER GAZIANO: I second.

CHAIRMAN CASTRO: Any questions, comments, changes? Discussion?

(No response)

CHAIRMAN CASTRO: Okay, all those in favor of approving the minutes, say aye.

(Chorus of ayes)

CHAIRMAN CASTRO: Any opposed?

(No response)

CHAIRMAN CASTRO: Any abstentions?
III. MANAGEMENT AND OPERATIONS

STAFF DIRECTOR'S REPORT

CHAIRMAN CASTRO: Okay. So let me make sure here we move this. So the next item, based on the amended agenda, is the discussion of management and operations. So we'll move on to the staff directors' report. Ms. Tolhurst?

ACTING STAFF DIRECTOR TOLHURST: As usual, I sent out a report and will not read it to you. If you have questions I'll answer them. I apologize we did not send out the budget documents since this meeting is a little earlier in the month than usual so I'll be sending the budget documents out by the end of next week.

CHAIRMAN CASTRO: Okay. Any questions for Ms. Tolhurst on the staff director's report?

COMMISSIONER KIRSANOW: Yes this is Commissioner Kirsanow. Are we -- is there an attempt to put up a report, the specifically school discipline report, as well as any other reports that were left pending.

ACTING STAFF DIRECTOR TOLHURST: Yes, I think that would be a good discussion for commissioners to have. We are under some mandates,
well, we are under requests for 2012 and mandates for 2013 to reduce printing and other costs by 20 percent.

We -- the chairman and I had talked about printing in a more limited way, and doing a lot more posting on the web. I would note that when the chairman and I and his assistant went to the Hill, we bought hard copies and most of them didn't even want them and asked us can you just email me a PDF of this document.

So I think there's a movement towards just doing it electronically. So at the present there was not a plan to print school discipline or any future briefing reports, but I or the future staff director obviously will print in whatever way you all vote to print. So --

COMMISSIONER KIRSANOW: As opposed to the staffers on the Hill, I assumed hard copies sometimes to be valuable, obviously, the PDF versions on those too. But I've always found the hard copies to be valuable.

I get questions from people from time to time asking if they can get hard copies of certain of our reports.

I think that it makes sense for us to --
I think just for example the school discipline report, I think is one that is an important one and it could be useful to have that printed. In fact I'd make such a motion, to print the school discipline report and, I think, any other report that you have printed right now, I want to see printed.

COMMISSIONER HERIOT: I would second that.

CHAIRMAN CASTRO: Is there a second?

Okay.

COMMISSIONER HERIOT: I also have a comment when you are ready.

CHAIRMAN CASTRO: Okay, well let's have some discussion on that. I do have one question about the motion to Commissioner Kirsanow. Is there some quantity? I mean I don't know what the usual quantity is historically and whether or not you are proposing that we do this as we have done historically, or some lesser amount.

COMMISSIONER KIRSANOW: What I'd like to hear -- thanks Mr. Chairman -- I'd like to hear from the staff director as to what -- in order to at least come close to the mandate of reducing costs by 20 percent or whatever the mandate is, how many
would be print to accomplish that objective?

ACTING STAFF DIRECTOR TOLHURST: I think
to get you a better answer than a guess, I'll have
to get back to you. But I will say, for all reports
we have between hundreds and thousands of unused
copies sitting in our library, which have not been
requested. So I think we should do a reduction.

For -- I'm trying to think of the most
recent report that I personally was involved with
the printing. It was probably a run of 700. So
that's probably the average in recent years.

Prior to that though, the number was
much larger.

CHAIRMAN CASTRO: The Chair recognizes
Commissioner Heriot.

COMMISSIONER HERIOT: This is actually a
report that I have been very interested in, and I
was hoping to get more than the usual number,
because on some of these reports, I send a lot of
them out.

For example on the STEM report, I sent
out I believe more than 1,000 and this is one that I
would also like to do that same thing for. I had
actually made a request that we print up more than
the usual amount of this one.
I don't know how many that we usually -- that we have, for the STEM report for example that are just sitting around, but I suspect it's not very large because I must have sent out an awful lot of those.

There was a while when they were basically taking up a large part of one of my colleague's office. Fortunately he was away for that period and so --

ACTING STAFF DIRECTOR TOLHURST: And it wouldn't work for you to email the report to people?

COMMISSIONER HERIOT: I have found that when you email a report, the response rate, even though it should be very easy to write back and say on email, thanks for that, it was a wonderful report, I get many more responses when I sent out hard copy.

When people see a pretty picture, they open it up, you know, some of those, I'm sure, never get read, but I think a higher percentage of them do. There's also the fact that on this particular report my special assistant emailed me a copy of the report and the USD email just snatched it and put it in the trash. It's too big, it won't go through. It sent back a little email to her saying we don't
accept this. It's too large.

So I really need hard copy of these to be able to send them out and I think we get a much higher read rate when they are sent out in hard copy.

CHAIRMAN CASTRO: The Chair recognizes Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes, I am going to support the motion that we print reports and we can discuss numbers, unless of course the Commission, by affirmative vote, says otherwise, and you know, I think that's our standard operating procedure.

We have for good reason on occasion decided not to print a report and that should remain our option. But actually, writing reports is you know, seemingly our highest statutory obligation.

You know, another reason for having the published report is that you know, certain people keep it on their shelves and they may not read it in the first instance, but they know it's a reference and they read it later, at least that's practice for a lot of us who still keep printed material.

I understand, acting staff directory, that in response to questions, one of our special
assistants asked that it's -- it's been about 2,300, 2,500 for various reports.

That, I think Congress expects us to use that tiny fraction of our budget on the four to six reports a year that we get out, and my final thought is, you know, this is going to be the case for a lot of reports that other Commissioners, I -- you know, Mr. Chairman, you may want printed reports of your -- the immigration investigation and not the -- my own institute, they had a small limit on the number of, whatever megabytes, that it could receive, and this -- a PDF of any, any report would be too big.

And I would also just be discouraged to print it up. I think there are a lot of people who wouldn't want to do so.

It's also the case, and this is my final question, don't repository libraries, haven't they sought some of our reports? Have we sent them to --

ACTING STAFF DIRECTOR TOLHURST: Some have but for example, the Thurgood Marshall Library, which retains all of our reports, does so exclusively electronically. So it's a mixed bag.

I mean I think as -- it's a younger time and I think everyone younger than me only wants reports by electronic means because they are
searchable, they are, you know, they're so user friendly.

I see your point. I would suggest that what I do, and you know, we had talked about this, we do need to cut costs. Why don't I, between now and the next meeting, get you sort of a per print number cost and you all can say we want this amount.

COMMISSIONER HERIOT: Can we decide on this one now? Because I really would like those reports, you know, as soon as possible.

CHAIRMAN CASTRO: Does anyone, any commissioner on the phone have a comment, since I can't see a hand?

ACTING STAFF DIRECTOR TOLHURST: I can just tell you that Lenore had calculated for this particular report that to print -- if you wanted to print, for example she said 1,400 copies would be $4,000.

COMMISSIONER KLANDNEY: This is Dave, Commissioner Kladney.

I think --

UNIDENTIFIED PARTICIPANT: We can't understand you.

CHAIRMAN CASTRO: Commissioner Kladney, could you pull your phone back a little bit so we
can hear you?

COMMISSIONER Kladney: Is that any better?

MULTIPLE SPEAKERS: Yes.

COMMISSIONER Kladney: Okay. I don't know the price difference 1,400 reports and 700 reports is going to be that much different, at least in my experience of printing up things. I don't know how many reports the other commissioners do send out from time to time. We should look into see if we could print them in-house, I mean, if everybody wants printed reports, or I don't know what you're thinking, in terms of how many you send out to other commissioners.

We should see if we could satisfy them by printing them out in-house.

VICE CHAIRMAN THERNSTROM: Dave, I sent you an email.

COMMISSIONER HERIOT: Thanks for that Abby.

COMMISSIONER Kladney: Actually I think PDFs are fine. That's all I have to say.

CHAIRMAN CASTRO: Okay. I have a question. This is the chairman. How many reports did we print up for the statutory report on bullying
and harassment?

ACTING STAFF DIRECTOR TOLHURST: This is going to be a guess.

CHAIRMAN CASTRO: Okay.

ACTING STAFF DIRECTOR TOLHURST: About a thousand.

CHAIRMAN CASTRO: That was a much larger report too though, so --

ACTING STAFF DIRECTOR TOLHURST: Well, that was the idea, was that our statutory report being at least for the moment our kind of hallmark thing that we would continue to print out each year.

But again, it's up to you. You know, we do have these mandates. We do need to reduce costs. But if people vote to print, then we'll do that.

CHAIRMAN CASTRO: Yes, let me just add here that I know that currently we do have some additional funds in the budget given that we haven't filled a couple of the positions that -- the senior positions on staff.

So perhaps, for purposes of this motion if we understand that it's just limited to this, we are not necessarily just setting a precedent, that every briefing report may end up being you know, 1,400 print run etcetera, you know, maybe that's
something that would be a little more palatable and we are still being able to address the concerns and needs that you have and yet not say that, you know, the next time this issue comes up, because we did it this time we should do it that time, although you know, it may be a good use of these additional dollars.

Commissioner Heriot, then Commissioner Gaziano.

COMMISSIONER HERIOT: I just wanted to say that I am perfectly happy with treating this as a special number. This happens to be one of only two or three reports that I am very interested in sending a lot of copies out on.

As I said, I think I've sent out about a thousand of these kind of reports and I would anticipate a similar, maybe a little bit less on this one.

CHAIRMAN CASTRO: And we may have some more requests when it comes to the trafficking and the immigration reports that are coming up, but I would say we would treat those, depending on what our dollars look like. Commissioner Gaziano?

COMMISSIONER GAZIANO: I was going to say I thought that's entirely reasonable, especially
to not necessarily fix the number, but I hope we have a presumption that our reports are to be printed, a direction to the staff, unless we vote otherwise, and the staff --

COMMISSIONER HERIOT: Which we have done on several occasions.

COMMISSIONER GAZIANO: Which we have, I think that is our standard procedure. And then the staff director can come to us if, if whoever is the acting staff director thinks that this particular report is an exception, or if he or she wants to know the number involved.

But I also would say that I would defer to any commissioner if they want an extra several hundred, because they sponsored that particular hearing, because they want to send it out, because they want to -- it's of particular interest to them.

If they make a case that they will use an extra 500 reports, I would always defer to them.

ACTING STAFF DIRECTOR TOLHURST: We should note though that for 2013, the fact that we have extra money doesn't absolve us of presidential mandates to reduce printing costs.

CHAIRMAN CASTRO: I understand that.

But you know, we can also manage that on other ends
of it as well. You know, we are not -- I think we are not printing our SAC reports. Those are done in-house, at least the ones I've seen.

ACTING STAFF DIRECTOR TOLHURST: That's always been the case.

CHAIRMAN CASTRO: Oh has it? Okay. Well -- let me just ask a question. I think I heard a beep. Is Commissioner Achtenberg on the phone?

COMMISSIONER ACHTENBERG: Yes I am.

CHAIRMAN CASTRO: And then some commissioners are pushing buttons on your phone. If you could, if possible, refrain from that, that would be very helpful.

Any other questions or comments on this?

ACTING STAFF DIRECTOR TOLHURST: Well I think if there's a direction to print this report, I need a number.

CHAIRMAN CASTRO: Okay, so the original motion did not have a number. So do you want to --

COMMISSIONER HERIOT: Pete do you want to amend that to --

COMMISSIONER KIRSANOW: Yes, how about you print 1,500 copies of the school discipline report?

CHAIRMAN CASTRO: Is there a second to
that?

COMMISSIONER HERIOT: Second.

CHAIRMAN CASTRO: Okay. Any additional discussion?

(No response)

CHAIRMAN CASTRO: All right, I'm going to take a roll call vote on this. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: No.

CHAIRMAN CASTRO: Commissioner Achtenberg how do you vote?

COMMISSIONER ACHTENBERG: No.

CHAIRMAN CASTRO: Commissioner Yaki how do you vote?

COMMISSIONER YAKI: No.

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

(No response)
CHAIRMAN CASTRO: I will vote yes. Madam Vice Chair? Did I get all the commissioners?

COMMISSIONER KIRSANOW: Kirsanow votes yes.

CHAIRMAN CASTRO: Okay. Madam Vice Chair? (No response.)

CHAIRMAN CASTRO: Okay, well I'll consider that a no vote then. She must have dropped off the line.

COMMISSIONER HERIOT: No, you can't consider that a no vote.

CHAIRMAN CASTRO: Well, I mean, there's no vote on it. I'm not saying she's not -- there's not a vote. So --

COMMISSIONER HERIOT: Okay, okay, fine.

CHAIRMAN CASTRO: She didn't abstain but it's not recorded as a vote.

COMMISSIONER HERIOT: Whatever.

CHAIRMAN CASTRO: So actually, well I could --

ACTING STAFF DIRECTOR TOLHURST: It's going to matter.

CHAIRMAN CASTRO: It's going to matter. So is there some way we could find out if she's on?

ACTING STAFF DIRECTOR TOLHURST: Tim

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just left to call her.

CHAIRMAN CASTRO: Okay. It will matter.

We'll hold on a second since it's close.

(Pause)

CHAIRMAN CASTRO: Madam Vice Chair?

VICE CHAIRMAN THERNSTROM: I just wanted to tell you, give me a call on my cell --

CHAIRMAN CASTRO: Madam Vice Chair?

VICE CHAIRMAN THERNSTROM: I think I'm still on.

COMMISSIONER ACHTENBERG: You are. And we can hear what you're saying. So --

COMMISSIONER KLADNEY: Abby, if you could tell us the vote, if the Vice Chair doesn't want to participate.

VICE CHAIRMAN THERNSTROM: I need to go back to work; please call me as soon as --

CHAIRMAN CASTRO: Madam Vice Chair? We know she's there so I don't want to just, you know, if we didn't hear her, if she had dropped off, but we can hear her and I don't want to preclude her participation.

ACTING STAFF DIRECTOR TOLHURST: Well, I think the motion will fail unless she --

CHAIRMAN CASTRO: Well, it depends on
how she votes, right? If she votes no --

ACTING STAFF DIRECTOR TOLHURST: That's what I'm saying. So we might want to get her vote.

CHAIRMAN CASTRO: That's what I'm saying. I'm not going to --

COMMISSIONER GAZIANO: She's got to participate.

CHAIRMAN CASTRO: Well we're going to wait for her to get on. Is she -- we are waiting for you Madam Vice Chair. The vote is on the motion to print 1,500 copies of the school discipline report. We currently have four yeses and three nos and we are waiting for your vote.

VICE CHAIRMAN THERNSTROM: I'm abstaining on that.

CHAIRMAN CASTRO: Abstain? The motion passes.

COMMISSIONER GAZIANO: Okay. My prior motion that was approved, now that Commissioner Achtenberg is on the line, could we proceed to the SAC issues?

CHAIRMAN CASTRO: Yes, if we could, just one thing I neglected to do at the beginning. I just wanted to acknowledge a couple of folks and with the readjustment of the agenda, I let it slip.
But before I move on to the next item I want to just take a moment to reflect on the passing of two very important contributors to civil rights issues and have passed away in the last 30 days.

IV. CHAIR ADDRESSES PASSING OF HARRY McPHERSON AND CAPTAIN PATRICIA GROMLEY

CHAIRMAN CASTRO: The first is an individual by the name of Mr. Harry McPherson, who passed away on February 16th. While working in the Senate, Mr. McPherson helped to write legislation that became the Civil Rights Act of 1957, which among other things, created our Commission.

He was a former senior lawyer with DLA Piper and adviser to President Lyndon Johnson, and he came here with 1956 with the Senator. He started working as an assistant general counsel for the Senate, and ultimately ascended to general counsel of the democratic policy committee.

We would not actually be here today if it were not for the contribution of persons such as Mr. McPherson, and we want to acknowledge the service he has given to the people of the United States and his passing is regretted.

The second individual is Captain Patricia Gromley. She was a three-term member of
our New Hampshire state advisory committee. She passed away on February 21st.

Ms. Gromley served the U.S. Navy as a member of the judge advocate general corps for 24 years and following her retirement from the military, continued to serve her country in various capacities within the federal government, including the work she did with our SAC.

So we wanted to acknowledge her service to our country and to our Commission and we also mourn her passing. So we will now move on to a discussion of -- we moved up the -- Commissioner Achtenberg the discussion of the Hawaii, Indiana and Utah SACs so that we can have your participation in those.

V. STATE ADVISORY COMMITTEE ISSUES:

REVIEW OF TWO HAWAII SAC APPLICANTS

CHAIRMN CASTRO: So the first item is the Hawaii SAC. Commissioner Gaziano.

COMMISSIONER GAZIANO: Two months ago, you may remember, when two of the Republican SAC members were severed from the package and postponed, I asked the Commission's understanding that regardless of what happened within that, that the Commission would consider two other Republican
nominations.

One of them has sent in an -- one of the two that was severed, that was in the previous SAC, sent in an explanation but withdrew his nomination.

A Mr. Burgess is the person I'd like to move today, who seeks reappointment, and he has -- the acting staff director has circulated his statement.

I'd like to speak to that, but I do -- right before that, I'll just explain my disappointment that one of my other -- neither -- none of my recommendations were contacted, as you may remember, in the discussion that came up two months ago.

Mr. Peter Minarik promised me both on the record and after the meeting that he would contact them. Apparently an email may have been sent. There was no followup.

The -- the professor at the University of Hawaii that I spoke about said she never received it. This communication was confirmed a few days ago.

So I would ask that consideration of her appointment to the SAC be postponed to a later meeting now that she finally has the application, if the application is suitable.

But because, two months ago, I told the
staff that she wanted to serve, I am disappointed
that more efforts weren't made to actually reach her
one way or the other.

But at this point, I would like to move
to reappoint Mr. Bill Burgess to the Hawaii SAC. I
think I can -- I don't know that I need to talk
about why I think the rule 11 sanction --

CHAIRMAN CASTRO: Why don't we get a
second on the motion?

COMMISSIONER HERIOT: Second. I second
the motion.

CHAIRMAN CASTRO: Okay. And let me just
say that both Mr. Burgess and Mr. Karawa did submit
written responses to the Commission for our review.
Mr. Karawa withdrew his SAC application so Mr.
Burgess is the only two that remain for discussion.

COMMISSIONER GAZIANO: Yes, Mr. Burgess
is the only one today --

CHAIRMAN CASTRO: The only one, yes.

COMMISSIONER GAZIANO: because we don't
have the application from Professor Kate Zhou and I
think she's you know, off doing her human rights
work in China and couldn't, on a day's notice,
submit the application.

But I, on Bill Burgess, I don't need --
I'd be glad to defend why the rule 11 sanction really was more favorable to him. It was, in my view, erroneous anyway.

I think that what he pled, certainly was not, but that, that it's more of a symptom of OHA's abusive litigation tactics to even seek the rule 11 sanction.

The district judge, in my view, gave Mr. Burgess more of the benefit of the doubt by rejecting most of OHA's claims. And the ninth circuit review of course was just an abuse of discretion. I still think, you know, I might have found it abuse of discretion.

But in any event, in its 35-year legal career, Mr. Burgess has done -- provided exemplary service to the community and if you saw in his original application, the work he did in setting up Hawaii public aid and public defenders is exemplary.

CHAIRMAN CASTRO: Are there any other comments or discussion on this question?

COMMISSIONER YAKI: Yes. This is Commissioner Yaki.

CHAIRMAN CASTRO: Yes, Commissioner Yaki, proceed please.

COMMISSIONER YAKI: Having had the least
experience, I think, with the Hawaii SAC of anyone on the Commission, fortunately or unfortunately, I think that the rule 11 sanction is simply a good indicator that, that Mr. Burgess is a single issue-focused individual who does not, I think, bring very much to the table other than his own -- other than his particular viewpoint on a very particular issue in which it is simply to advance that particular political agenda, I don't think he works well with other members of the community and I think that he uses it as a platform for this particular viewpoint and I am -- I think that the rule 11 sanction made him adequately demonstrate the fact that it's all that he cares about and I will be voting to not confirm him.

CHAIRMAN CASTRO: Okay. Any other commissioners have comments on the motion to approve Mr. Burgess?

(No response)

CHAIRMAN CASTRO: Hearing none, I'm going to call the question. Those in favor of the motion to appoint Mr. Burgess to the Hawaii SAC, I'm going to go by roll call.

Madam Vice Chair, are you in favor of the appointment?
CHAIRMAN CASTRO: Okay, we'll come back to the Vice Chair. Commissioner Kirsanow, are you in favor?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Yes. Commissioner Heriot, are you in favor?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes, and like we did in the last motion, I would like to hold the vote open until we hear the Vice Chair's vote.

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?

(Sound of cell phone ringing)

CHAIRMAN CASTRO: Is that a no?

(Laughter)

CHAIRMAN CASTRO: Commissioner Kladney?

We are voting on appointing Mr. Burgess to the
Hawaii SAC. Do you vote no or yes?

COMMISSIONER Kladney: Abstain.

CHAIRMAN Castro: Abstain? Is that correct, Commissioner Kladney, abstain, did I hear you correctly?

COMMISSIONER Kladney: Yes.

CHAIRMAN Castro: Okay, abstain. I vote no. So we have -- we are still waiting for the Vice Chair -- we have one, two, three yeses, three nos and an abstention.

Madam Vice Chair?

(No response)

CHAIRMAN Castro: Oh, she's no longer in the meeting? She's not participating?

VICE CHAIRMAN Thernstrom's SPECIAL ASSISTANT: Correct.

CHAIRMAN Castro: Just let the record reflect that Vice Chair Thernstrom's special assistant informed me that she is no longer on the phone or participating on the meeting.

So we have one, two, three yeses, three nos and an abstention. So the motion fails. I will renew the motion at a later meeting when we have eight commissioners and hopefully when we have the nomination package for Professor Zhou.
The -- thank you. The next item on the agenda, then is the Indiana Sac.

COMMISSIONER YAKI: I'm sorry, what did Commissioner Gaziano just say?

CHAIRMAN CASTRO: Would you repeat what you just said commissioner?

COMMISSIONER GAZIANO: I will renew the motion when we have eight commissioners. We amended the agenda so that we wouldn't --

COMMISSIONER YAKI: His nomination is up and it's over. The matter is closed.

COMMISSIONER GAZIANO: You're wrong.

COMMISSIONER YAKI: No, you can make a motion of reconsideration and that is not in order. His name has been up, it is down. I don't want to see his name up here again.

COMMISSIONER GAZIANO: There was no prevailing party. There was no prevailing side in this motion for one and number two, we amended the agenda until all -- so that all eight commissioners could participate.

We waited while Vice Chair Thernstrom was on, until Commissioner Achtenberg came on. So, pursuant to the previous motion --

CHAIRMAN CASTRO: Gentlemen let me
suggest that between now and the next meeting, we
have someone in our law department look at what the
appropriate rule would be on this.

COMMISSIONER YAKI: I'm going to make a
motion to lay his nomination on the table.

CHAIRMAN CASTRO: We just did and we
voted it down.

COMMISSIONER YAKI: No, I know, to lay
it on the table means that if the majority votes
right now, it might be picked up again.

COMMISSIONER GAZIANO: Point of order.

(Simultaneous speaking)

COMMISSIONER GAZIANO: It takes two
thirds for your motion, Commissioner Yaki, and you
ought to know that. Shame on you.

CHAIRMAN CASTRO: Gentlemen, gentlemen.
You know, let's, let's have a conversation here.

COMMISSIONER GAZIANO: A motion to table
takes two thirds.

COMMISSIONER HERIOT: None of this
matters now.

COMMISSIONER YAKI: Commissioner
Kladney? Is Commissioner Kladney on?

COMMISSIONER KLADNEY: Yes.

COMMISSIONER YAKI: I'm going to ask you
in open session if you might change your vote to a no so we don't have to go through this rigmarole again?

COMMISSIONER GAZIANO: I'm going to ask if you'll vote for yes for an honorable man.

COMMISSIONER KLADNEY: I have problems with this nomination, only in the sense -- the rule 11 motion didn't -- doesn't bother me that much. I looked into it very closely, and it was either dropped the second suit as a result of a mistake, or he wasn't very circumspect about it.

My concern that I had raised with some people is about his, you know, he has this, I guess 501(c)(3) that, for our purposes, is a petition on these two issues that we have already had hearings on.

And my concern is as well, is that we have other members of other SACs that have issues and actually work for organizations that push, it might not be the same issue, but the same types of issue.

And I'm, I just have another real conflict in deciding on these types of things, and maybe I'm too new at this, is how one evaluates a member of the SAC if we are allowing people with
other politically-oriented work or whatever the interest groups, like 501(c)(3)s, how do we evaluate that? So I have an issue and I'm abstaining still.

CHAIRMAN CASTRO: Okay. All right well let's move on to the Indiana SAC.

V. STATE ADVISORY COMMITTEE ISSUES:

RE-CHARTERING THE INDIANA SAC

CHAIRMAN CASTRO: I move that the Commission re-charter the Indiana State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based upon the recommendations of our staff director:


Pursuant to this motion the Commission appoints Diane Clements as Chair of this re-chartered Indiana State Advisory Committee. These members will serve as uncompensated government employees.
Under this motion, the Commission authorizes the staff director to execute the appropriate paperwork for appointment. Is there a second? Is there a second?

(No response)

CHAIRMAN CASTRO: Does somebody want to second it for discussion purposes?

COMMISSIONER HERIOT: Second.

CHAIRMAN CASTRO: Okay. We have a second. Is there a discussion?

COMMISSIONER YAKI: Commissioner Yaki here.

CHAIRMAN CASTRO: Commissioner Yaki please proceed.

COMMISSIONER YAKI: Well, I have two options that I have heard open to the -- to my colleagues. One is to either sever two members of the committee for a separate vote, or the alternative, to send it back for a different alignment to be brought before us.

And the reason I actually prefer the latter is that I am -- for at least one of the candidates, I am uncomfortable having to in open session deal with issues that, that I think shouldn't -- on a threshold qualification issue
you've got another set of weeds at a particular stage for voting.

But be that as -- I thought that the screening process should have taken them out to begin with. It should not have been -- it should not be for us to determine their fitness to serve. I am not talking about whether they are ideologically or politically or whatever, but I am talking about their fitness to serve as members of the Commission.

So I -- so I am of two minds. I would either move to sever DeKemper and Bradley or the alternative, to simply send them back, to send this entire thing back to staff and come up with a different committee configuration.

CHAIRMAN CASTRO: Commissioner Yaki, this is the chairman. When you mention your concern about configuration, are you talking about ideological balance, or something different?

COMMISSIONER YAKI: I'm talking about, I'm talking about the ideological balance with -- well the ideological balance after an appropriate screening has been put on so that certain individuals who are on there don't come up to us for our having a past particular judgement on them.
I don't think it's our role; I am uncomfortable with us having to see that in public session when I do not believe their names should ever have come up to us in the first place.

COMMISSIONER GAZIANO: Mr. Chair?

CHAIRMAN CASTRO: The chair recognizes Commissioner Gaziano. Do you have a question?

COMMISSIONER GAZIANO: Yes, I'm confused about a few things. First of all, I'm confused that Commission Yaki agrees that this is such a left-leaning slate, because it obviously is, ignoring the Republican conservative.

So if his intent is different than that though, he somehow concludes it needs to be even more left-leaning, I don't -- I think that's an improper kind of instruction.

But more to the point, I understand there's an issue with one of the nominees he mentioned who is a new appoint - oh no, I'm sorry, both of them -- okay, with one of them that's a reappoint, I would like to hear what his concern is with Gerard Bradley, who is a respected reappoint and -- since he mentioned the name.

I'm not sure by the way one way or the other whether DeKemper should or should not. I have
a question about Ms. DeKemper, but what's the issue
with Mr. Bradley?

CHAIRMAN CASTRO: Well, perhaps we
should have an appropriate motion on the table then.
These people have not yet been severed so I want to
make sure that if in fact ew are going to be talking
about them, that they have the opportunity to follow
our protocol, to present their side of the case, if
in fact there's a motion to sever them.

But right now we have -- we don't have a
--

COMMISSIONER YAKI: Well I move to send
them back to staff.

CHAIRMAN CASTRO: Okay. Is there a
second on that motion? And then we can have a
discussion. Is there a second?

COMMISSIONER ACHTENBERG: Mr. Chairman,
I second that, but I do want to have a discussion
about both members that I'd like to see severed, but
I mean I don't want to do that in any way that's
improper or unfair to those people.

So I'm unclear as to whether or not that
discussion needs to be had in open session or we
need to retire to closed session in order to have
that discussion.
COMMISSIONER YAKI: Let me clarify my motion for Commissioner Gaziano because he implies some penchant method to my madness. The fact is I want Indiana sent back for the purpose of putting a screw on that for people whose fitness should not be -- when that comes back up to us, one of those names may or may not be back on the list which can then be discussed further. But I think, as a list in its entirety and it's one that I want to give in to in open session simply because I think that we should have a -- we should be able to vote on the committee where, if we have ideological differences, we can talk about it in public, but not one where we have to talk about the fitness of the candidate, and if Commissioner Gaziano confused me, my motion of sever with a motion of witness, I apologize. That is not my intent at all.

It is simply to put on the table that if we are going to go through with the vote, I would be willing to sever that I would rather not go for a vote, send it back and have it come back up with a slightly different configuration, perhaps only person being substituted in or out, but I would rather have a clean slate to talk about than one where we have to get into a question of basic
fitness to serve on the SAC.

CHAIRMAN CASTRO: So, then we have a motion to send this back that's been seconded. Any additional discussion? Commissioner Heriot?

COMMISSIONER HERIOT: It's not clear to me how this motion takes off the table what's already on the table. And that is that you know, Professor Bradley is a superstar and the notion that we cannot, you know, that he's not qualified to be on the SAC, seems very odd.

We are talking about a professor of law from Notre Dame University. We are talking about a person who graduated from Cornell Law School summa cum laude.

We are talking about someone who is in the editorial board of the Catholic Social Science Review, on the editorial board of the National Catholic Bioethics Quarterly.

We are talking about a real star and the notion that one can make you know, innuendo during an open meeting about his fitness, and then just sort of leave it at that, that's really quite outrageous.

We are so lucky that someone like Professor Bradley is willing to serve on the Indiana
SAC. The notion that we can in an open meeting here
suggest that there's something wrong with this man,
is just outrageous.

COMMISSIONER YAKI: Well, obviously
Commissioner Heriot didn't hear a word of what I had
said. So let's move on.

COMMISSIONER ACHTENBERG: Let me say,
the innuendo would be outstanding. My point was if
someone's qualifications are -- need to be debated,
and no prerogative to seek some constructive debate
on the qualifications of a proposed member of a SAC,
it's my understanding that I am entitled to have
such a discussion with all of you, and in an
abundance of a desire not to impugn anyone's
integrity and to follow the rules, at whatever point
in time it's legitimate for us to have that
discussion whether it's in open session or in closed
session, so that no one will be harmed.

I want to undertake that discussion and
vote on my position. But I don't -- I'm not
intending to impugn anyone's integrity or anything
like that. But we do need to have that discussion
at the appropriate time --

COMMISSIONER GAZIANO: Mr. Chair. Mr.
Chair.
CHAIRMAN CASTRO: Yes Commissioner Gaziano.

COMMISSIONER GAZIANO: I would like to give you that opportunity Commissioner Achtenberg. I think that we -- that it's improper to send this whole slate back as the pending motion would do, with this still in the air.

And so I would like -- the proper time to raise your concerns is at this meeting. If -- I don't know the nature of your concerns regarding his qualifications. I think if it's qualifications, it ought to be on the record.

If it's something of a nature I can't imagine, you can discuss whether we should close the meeting. But I think that it is improper to send this slate back with that hanging out there.

And I would, I'm eager to hear your concerns, Commissioner Achtenberg.

CHAIRMAN CASTRO: Any additional comments? If not, I am prepared to call the question.

COMMISSIONER ACHTENBERG: Can I ask Commissioner Yaki whether you see it similarly, or do you think, Commissioner Yaki, feel willing to comment or do you see this as the -- is it --
sending it back will really accomplish for the slate what needs to be accomplished in your view?

COMMISSIONER YAKI: This is more of a procedural issue than a position. And the procedure is one where we adopt the procedures bolstered by staff members that dealt with questions of ethics and suitability and fitness, which are quite different than issues of ideology, political and partisan beliefs.

I believe that staff should be sending us facts where (telephonic interference) about why we think someone should or should not serve on the SAC.

I do not think that staff should be sending stuff for discussion where we have to sever one member, one member of the committee basically because a person should never have made it through the screening process in the first place, and this is going to be repeated by the way, on the Utah SAC as well.

There is a member there who really should not have made it through the screening process. This is not an issue of ideology. This is not an issue of whether Commissioner Gaziano agrees with his or her point of view or I agree with his or
her point of view. It's whether that person, regardless of point of view, should be a representative of the State Advisory Commission to the U.S. Commission on Civil Rights.

And I think that sending it back and asking staff to do that, and they give us back. And I want to know if, in doing that, whether they will have to find a replacement.

You have to deal with a clear issue of what I think is obviously this body would agree that that person should never even have been submitted to us. I would rather not have to have the liability of having to call that question out. It should be one where the staff makes a decision based on the criteria that we have adopted, and they send us facts that we can discuss, that does have balance issues that we can discuss what have you, but where it is about ideology, what have you.

I don't think anybody's questioning the credentials of as Commissioner Gaziano was referring to. That's not who I am referring to. I do realize that depending on the outcome of a fitness screening that we get back and we run a check with a different continuation and we can vote on that and do it piecemeal.
Perhaps it's less an issue of our ability to debate and to send a message to our staff that we would like to get this thing right the first time. It's never going to be perfect. There are going to be people who I may disagree with. But there are still going to be people who we will share no disagreement that because of X, Y and Z, they should not be fit to serve on that particular SAC, regardless of political or ideological beliefs.

That's my concern. That's why I wanted it sent back. And if I wasn't clear enough for Commissioner Gaziano, I don't know how much clearer I can make it.

CHAIRMAN CASTRO: Let me just say before we proceed with the discussion, those commissioners participating by phone, please identify yourself before you speak for the court reporter, although he may already get a feel for who your voices are, I want to make sure the record is accurate.

Secondly, I heard a beep. Did someone join the call?

(No response)

CHAIRMAN CASTRO: Okay. Our commissioner -- is Commissioner Gaziano -- Commissioner Kirsanow on the phone?
COMMISSIONER KIRSANOW: Hello Mr. Chairman, I do have a question.

CHAIRMAN CASTRO: Okay. I just wanted to make sure that we have -- Commissioner Achtenberg, are you on the phone?

COMMISSIONER ACHTENBERG: I am.

CHAIRMAN CASTRO: Commissioner Yaki, I know you are on the phone. Commissioner Kladney are you still there?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Did the Vice Chair join?

(No response)

CHAIRMAN CASTRO: Okay, well, that was an odd beep. Okay, Commissioner Gaziano?

COMMISSIONER GAZIANO: I think I understand Commissioner Yaki's motion, and it is improper in about three different ways. The process of sandbagging us if you have a particular concern is -- about a particular person that you could alert us to beforehand is certainly one concern.

But when the staff makes its judgment, if you have a problem with the way we screen for whatever this, this mythical, ethical problem that keeps being hinted at with regard to Professor
Bradley, that should have been raised to the staff director's attention, as I and my staff have done repeatedly, as we did when we saw an issue with regard to DeKemper.

I think it would be -- so I'm just curious how this proposed procedure would -- so your secret concerns would be secretly conveyed to staff, without the knowledge of other commissioners, so that you could deep six this, this professor and never even have to -- I move either two things Mr. Chairman. I move that we go into executive session to these commissioners can say what their issue is with the so-called screening process, or we caucus, we recess to caucus, whichever other commissioners would prefer.

COMMISSIONER KLADNEY: Dave Kladney here. I'd like to know how many motions are pending right now.

CHAIRMAN CASTRO: Yes, we have the initial motion to approve and then we have Commissioner Yaki's motion to send it back, and also Commissioner Kirsanow had indicated a desire to speak two speakers ago, so I -- do you want to say something right now Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I just
perplexed. I don't know whether even if we were to accept Commissioner Yaki's point, whether -- what evidence we have that this particular SAC was not adequately screened?

In addition to that, I'd like to know if that in fact has not been done, what evidence do we have that it hasn't been. Second is just a point, and that is that at this particular point, whether it was intentional or not, I think we have left in the air and on the record in open meeting, untenably in limbo that needs to be addressed right now, because right now we have besmirched at least one individual, potentially everybody on this particular SAC, and we need to address this right now before it goes any further. We have done these individuals an injustice

CHAIRMAN CASTRO: So Commissioner Gaziano had made a motion to go into executive session. Are you seconding that Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Did I hear Commissioner Achtenberg say something?

COMMISSIONER ACHTENBERG: I merely wanted to say that I have no -- I am not sure the
confusion here in my own view, I have an ethical question about one member of the Indian SAC, but it is not the member that was just identified by -- I have no ethical question about Professor Bradley and to the extent that anyone left that impression, at least, if they think that I may have left that impression, that is mistaken. I have no ethical question about that person.

CHAIRMAN CASTRO: Okay. Prior to proceeding on the motion to go into executive session, I want to ask Ms. Tolhurst if she can give us her opinion in terms of the rules for this, as to whether this is something we can go into executive session for, under the Sunshine Act.

ACTING STAFF DIRECTOR TOLHURST: Yes, obviously I am not sure what concerns will be raised, but generally, I do not think this needs to go into executive session. These are going to be public serving officials. We do have an exception for disclosing information that would clearly invade personal privacy, but if we are talking about someone's public qualifications and job, that could be readily discussed in open session and I wouldn't be comfortable closing it.

CHAIRMAN CASTRO: Okay. Well in that
case then I don't feel that that motion is in order.

So --

COMMISSIONER GAZIANO: Well, it depends on what the commissioner's point is. I've heard all sorts of innuendo about why they are unfit. Commissioner Yaki mentions their ethics. Maybe we can caucus --

COMMISSIONER YAKI: Commissioner Gaziano. This is Commissioner Yaki. Commissioner Gaziano is just simply choosing to conflate these issues and the rhetoric to try and, to try and say that I am casting aspersions upon things that the committee cares about which I am trying not to do, and as I said 55 times, if he ever bothered to listen, that I'm not.

So let's just forget this. I have made my statement on why I think staff is not serving us well on this particular issue. I withdraw my motion. Let's just move to sever these two individuals and discuss them on the merits and move forward.

CHAIRMAN CASTRO: Okay, so Commissioner Yaki withdraws his motion to send it back. He has made a motion to sever and I presume that's Mr. Bradley and Ms. DeKemper? Is that correct?
COMMISSIONER GAZIANO: And I move to sever the sever. I want --

CHAIRMAN CASTRO: Just a second, just a second Commissioner Gaziano, please. Motion to sever, at least the last time we did this, was done as a matter of right. So I don't know that you can sever the sever.

So we have a motion to sever that has been made on Ms. DeKemper and Mr. Bradley. So I --

COMMISSIONER HERIOT: I don't agree there's a right to sever in this situation. These things are packaged deals.

CHAIRMAN CASTRO: Well, we did that in the last meeting and I understand --

COMMISSIONER HERIOT: Yes, it was wrong then, and it's wrong now.

CHAIRMAN CASTRO: But you know, we should probably figure out the appropriate process at some point, because I know in the past, there have been processes used that have been a matter of right as well as a matter of right as well as a matter of votes.

ACTING STAFF DIRECTOR TOLHURST: Why don't you see if there's a second for the motion to sever and you can just --
CHAIRMAN CASTRO: Okay. Is there a motion to sever -- a second on the motion to sever?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Okay. So shall we vote on the motion to sever? I will --

COMMISSIONER GAZIANO: I want it -- I would like it to be a separate vote on each whether to sever each person.

CHAIRMAN CASTRO: Okay. But -- I understand. So Commissioner Yaki, would you be amenable --

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: to making these two separate votes on your motion?

COMMISSIONER YAKI: Of course.

CHAIRMAN CASTRO: One on Bradley, one motion on DeKemper?

COMMISSIONER YAKI: Of course.

CHAIRMAN CASTRO: Okay. So --

COMMISSIONER YAKI: That is what I thought and I assumed we would do individual votes on each.

CHAIRMAN CASTRO: Okay. So that's how we will proceed then. The first vote will be on the vote to sever Mr. Gerard Bradley, and I will do this
by role call.

COMMISSIONER GAZIANO: I would like to speak on the motion.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: I think it's improper to sever someone without some commissioner telling us why we should sever, and if they don't tell us why we should sever Mr. Bradley, then commissioners are, I think, ought to be respectful of other commissioners and the staff who put them on the slate to vote against severing. So --

COMMISSIONER ACHTENBERG: Absolutely we should have a discussion on whether or not we should adopt the motion to sever on this person. No question about it. I agree with you.

COMMISSIONER GAZIANO: Why do you want to sever? Why do you want to sever Gerard Bradley?

COMMISSIONER ACHTENBERG: Do you want me to -- I am happy to speak.

CHAIRMAN CASTRO: Please do Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: I'm happy to.

CHAIRMAN CASTRO: And remember to identify yourself.

COMMISSIONER ACHTENBERG: There's no
question that Commissioner Heriot has correctly
recited the multiple credentials, the legal
credentials of this candidate. But my concern is
slightly different, in that Mr. Bradley's multiple,
sustained arguments against marriage equality for
same sex couples, while cast in terms of his view of
natural law, in my view, cross the line from an
ideological point of view, they move from ideology
to status-based animus towards gay and lesbian
people in my view, and I don't believe that someone
who has evinced such views, has attested to the
unfitness of gay and lesbian people to be the
parents of children and other such lines of
argument, is someone I intend to grace my vote with
to place on a state advisory committee as long as I
have the power of a United States Commissioner on
Civil Rights. So that's my view and I intend to
express it and exercise my prerogative with regard
to candidates who evince such views.

CHAIRMAN CASTRO: The Chair recognizes
Commissioner Gaziano.

COMMISSIONER GAZIANO: Now that I --
thank you Commissioner Achtenberg, and I certainly
respect your judgment and you know, that's a -- that
may be a reasonable interpretation of your
responsibilities.

I, you know, for the record, and I normally would not say so, but in this instance, I will, from what I know of Professor Bradley's writings in this area, and I don't know them very well, I would disagree with them.

But I think that he conducts them in a respectful and scholarly way and I think there's no evidence, unless you have any other evidence, that he isn't respectful in his dealings with people who disagree on him on this issue.

There are people who made statements on both sides of the marriage debate that are threatening, that are ugly, who I could not vote for, and so I am glad to at least hear the explanation. I think it is a matter that we should have discussed in public, but I think that Professor Bradley is an example of someone whose views we may not like or -- we may or may not like -- I won't say that for others -- but who is a person we want on the SAC, someone who can deal well with other people and respectfully on issues that we disagree on.

CHAIRMAN CASTRO: Any other --

COMMISSIONER ACHTENBERG: Might I?

CHAIRMAN CASTRO: Go ahead Commissioner
Achtenberg.

COMMISSIONER ACHTENBERG: I would only say, Commissioner Gaziano, that Mr. Bradley has aligned himself with, through various amicus briefs, supplemented by legally legitimate instruments, but with organizations that I consider to be hate groups and I am not the only one.

The -- so I consider his views are beyond the pail, at least beyond the place which I am meaning to go, and I am imagining and hoping at least, that there are others on our Commission who are willing to align themselves with my view about who, representing what kinds of views, should be involved in the important civil liberties debate that takes place in an advisory committee.

I don't think this person, by virtue of their extreme views, is in a position to make a constructive contribution and that is what I think. I think the person should be severed from consideration. That's my view.

CHAIRMAN CASTRO: The chair recognizes Commissioner Heriot.

COMMISSIONER HERIOT: My understanding of Professor Bradley's views is that they are simply restating basic Catholic doctrine.
COMMISSIONER KIRSANOW: Commissioner Heriot can you speak up?

COMMISSIONER HERIOT: I'm sorry. My understanding of Professor Bradley's views is that they basically restate basic Catholic doctrine, and if Professor Bradley is unfit for that reason to participate in the Indiana SAC, then all practicing Catholics are unfit to participate in one of our SACs.

COMMISSIONER KLADNEY: Commissioner --

COMMISSIONER HERIOT: So I would definitely oppose that.

COMMISSIONER KLADNEY: This is Commissioner Kladney. At this time we're not voting on whether it's free to run, are we?

CHAIRMAN CASTRO: No, we're just voting to sever.

COMMISSIONER KLADNEY: Thank you.

CHAIRMAN CASTRO: Any other comments? Commissioner Gaziano.

COMMISSIONER GAZIANO: I might vote to sever now that I have heard Commissioner Achtenberg's explanation at least, so that we have a separate vote on the merits on him, and if that motion passes I might see if there's unanimous
consent, now that it's out in the open, that we may even postpone a vote on Professor Bradley until we can review these writings.

I would welcome a --

COMMISSIONER HERIOT: Don't we have to? Doesn't he have a right to respond?

CHAIRMAN CASTRO: He has a right to respond. And then we will then discuss the actual merits of the --

COMMISSIONER GAZIANO: He probably should be given a -- I think there's some circumstances where, where your -- well, in this circumstance it probably is the case.

CHAIRMAN CASTRO: Yes. So any other discussion on the motion to sever Mr. Bradley?

COMMISSIONER YAKI: This is Commissioner Yaki.

CHAIRMAN CASTRO: Yes, commissioner?

COMMISSIONER YAKI: This isn't a who did it or what, where -- to me, I am going to echo a little bit about what Commissioner Achtenberg said. This is not really an ideological difference. This goes to the root core of what the Commission on Civil Rights is all about.

It is not, in my view, an institution
that is really engaged in debates over whether or not civil rights should be attached to people or not.

My concern about Professor Bradley as you know, distinguished and scholarly as he is, is that that distinguished scholarship is based upon what I believe is a presupposition that the idea of recognizing gays and lesbians as being able to merge, to join, to be recognized, and opposing that option and proposing -- and siding with those who demonize and marginalize members of the gay and lesbian community, I think that is -- is a belief of any stigmas that I believe can and should apply in this case, which is why I will be supporting the motion to sever.

CHAIRMAN CASTRO: Yes, Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Thank you. I respect what Commissioner Achtenberg and Commissioner Yaki have to say about this although I vehemently disagree with their reasoning and argument.

I don't see that anything that Commissioner -- I'm sorry -- that Professor Bradley has written, I can't say that anything that is of
considerable quip -- the amount of his corpus of writings on a variety of issues is extreme.

I think Commissioner Heriot said he's a superstar and that's an understatement. We are blessed to have somebody of this caliber considering to be a member of one of our SACs.

It is rare to have someone of this caliber, with all due respect to the marvelous individuals in our SACs, of this particular caliber.

What I have read, again not everything, but what I have read of his writings suggests the highest level of intellectual discourse devoid of any animus, of any animus.

They are principled, well-reasoned arguments consistent with well-accepted constitutional jurisprudence, not extreme views. And I am not aware, and I'd like to be enlightened, maybe he is affiliated with certain hate groups, but I am not -- I have never known him it to be affiliated with any hate groups, unless the Catholic Church is a hate group, unless Notre Dame is a hate group. I know that he belongs to the Federalist Society, possibly that's considered a hate group. I know that he has been involved with the Society for Catholic Scholars and the Cardinal Newman Society.
and the Ramsey Colloquium, but I don't know that anybody has identified those as a hate group. I'd like to see involved parties define precisely who it is that is a hate group with whom he is affiliated. But I think that if we are going to be establishing this kind of a test, when we have individuals who have reasoned arguments with which we may disagree, as a test for disqualification, then we have a lot of individuals that we need to revisit on our various SACs.

COMMISSIONER ACHTENBERG: Mr. Chairman.

CHAIRMAN CASTRO: Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Let me just say that you know, Professor Bradley's co-authorship of a book entitled Same Sex Attractions: A Parents Guide, which essentially categorically disqualifies gay and lesbian people from healthy parenting, you can -- you can say all you want about the weight of the scholarship, but that quite frankly, the weight of the scholarship is not Professor Bradley's flavor, far from it, and this is not, this is not a diatribe designed to impugn anyone's integrity, to disqualify Catholics from serving on our Commission, or anything like it.
This man's writings, to me, evince an animus toward gay and lesbian people and gay and lesbian parents that I believe is unwarranted and that the science does not support and as a result it suggests to me that he holds views that I do not want to see dignified by an appointment to a State Advisory Committee on the United States Commission on Civil Rights. End of story, as far as I'm concerned.

This, you know, many Catholics do not hold a similar view, and this is not an indictment of Notre Dame or Catholics in general or anything like that. It is a view that I hold with regard to the views held by this particular professor as evinced by his writings.

CHAIRMAN CASTRO: I know that we have talked about this a lot and I think it's pretty clear where folks' position is on this. To the extent that there's more substantive discussion, that would be more appropriately held when Mr., or Professor Bradley responds. So at this point I'm going to call the question on the motion to sever Professor Bradley.

Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.
CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No, and I want to explain. I didn't hear anything in Commissioner Achtenberg or Yaki's description that wasn't a disagreement with his substantive -- I didn't hear anything, let me -- to be clear, that he wasn't respectful in his discourse with others, and so therefore I don't think that I need further -- further review unless -- unless they can draw to my attention right now where he is disrespectful and wouldn't be a productive member of the SAC.

I'm also just a little bit worried that if another commissioner wants to vote because they disagree with his views, that's fine, but I don't think that we should be trying to characterize whether he's within the mainstream of Catholic doctrine or not. I think we should leave that to the Pope.

So I'm voting no to sever.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote on the motion to sever?
COMMISSIONER YAKI: Mr. Chairman, I'm sorry, I was just trying to figure out what the point of what Commissioner Gaziano was trying to say with regards to Commissioner Achtenberg and myself.

I think we made it pretty clear why we think he is unfit to serve on a State Advisory Commission to the U.S. Commission on Civil Rights and I will be voting yes.

CHAIRMAN CASTRO: Okay, Commissioner Yaki votes yes. Commissioner Achtenberg, how do you vote on the motion to sever?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote on the motion to sever?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: And I vote yes on the motion to sever. That's one, two, three, four in favor, three against. The motion to sever passes.

We'll then move on to the main motion which was to approve the balance of the --

COMMISSIONER GAZIANO: I think we had another motion to sever.

CHAIRMAN CASTRO: We did? Which one was that? Oh, I'm sorry. Stephanie DeKemper. We have a motion to sever Ms. DeKemper. Any discussion on
COMMISSIONER YAKI: Can we quickly skip the motion to sever and just simply go through the ups and downs of Ms. DeKemper?

COMMISSIONER GAZIANO: No, I would like -- I think as a reappoint he has -- she, I should say -- she has a -- should be afforded to address, and I'm not sure which way I'd vote. I know, I know there is an issue with regard to her and I'm not sure whether it's disqualifying or not until I learn more.

COMMISSIONER HERIOT: For the record I don't know about this, so --

COMMISSIONER ACHTENBERG: I'm going to have to step off the phone after this Mr. Chairman.

CHAIRMAN CASTRO: Understood. Thank you Commissioner Achtenberg. So we have a motion to sever Ms. DeKemper. Any discussion?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Heriot.

COMMISSIONER HERIOT: Could somebody please inform me of what the reason for this is?

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Do you want to speak
to that?

COMMISSIONER YAKI: No.

CHAIRMAN CASTRO: Okay.

COMMISSIONER YAKI: Speak to what?

CHAIRMAN CASTRO: To the --

COMMISSIONER YAKI: Motion to sever?

CHAIRMAN CASTRO: Yes.

COMMISSIONER YAKI: Motion to sever. I just think that there have been, there have been issues raised about the -- about Ms. DeKemper's businesses and operations of businesses that I think warrant an inclusive look by staff and by the Commission and that's why I moved to sever.

CHAIRMAN CASTRO: The chair recognizes Commissioner Heriot.

COMMISSIONER HERIOT: I'm still in the dark. Is there something other than she was involved in a company that went bankrupt, that is --

CHAIRMAN CASTRO: Is there a response to that from anyone on the other -- on the phone?

COMMISSIONER HERIOT: And she's probably not the first person --

CHAIRMAN CASTRO: Could you speak louder into your microphone Commissioner Heriot?

Commissioner Yaki said he did not hear what you
said.

COMMISSIONER HERIOT: Is there something beyond the notion that she was involved with a firm that went bankrupt that is driving this? I assume we have lots of SAC members who have had financial difficulties.

COMMISSIONER KIRSANOW: Mr. Chairman, could you repeat what Commissioner Heriot just said?

CHAIRMAN CASTRO: She wants to know if there was more to it than just a bankruptcy.

COMMISSIONER YAKI: That's why -- this is the question we have and that's why I wanted to send it back to staff is that for us to get into it because there have -- there have been sporadic lessons stated in something that we picked up regarding state and federal investigations that I don't know if those are true or not and I don't want it to be the one that you have to limit yourself now in order to get the information.

CHAIRMAN CASTRO: Okay.

COMMISSIONER YAKI: Quite frankly, we've got our hands full with this, regardless of whether there's any -- whether there's any other activity going on, rising from -- we should focus on the U.S. Commission on Civil Rights supervisory commission in
CHAIRMAN CASTRO: Okay, if there are no further comments, I am going to call the question on the motion to sever Stephanie DeKemper.

Commissioner Kirsanow, how do you vote on the motion to sever?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Yes? Okay.

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I'm happy to vote yes if that's what people want to do.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: 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 KLANDNEY: Yes.
CHAIRMAN CASTRO: I vote yes. The motion to sever passes. These two individuals will have an opportunity to respond.

Now we move on to the main motion on approving the balance of the SAC, removing for the moment the two severed candidates. Any additional discussion on that? If not, I'll call the question.

Those in support of the approval of the remaining SAC members?

COMMISSIONER HERIOT: Wait wait wait wait. Hold on for a second.

COMMISSIONER GAZIANO: Now that I -- now that we have severed two people, I support Commissioner Yaki's original motion.

CHAIRMAN CASTRO: He withdrew it though.

COMMISSIONER GAZIANO: Oh, he withdrew -- to -- okay. If there's not likely to -- do you want to make a motion anyway to defer?

COMMISSIONER HERIOT: Well the problem here is that now we have got the ideological balance off on -- and so it seems to me we shouldn't put this off.

CHAIRMAN CASTRO: Well, you know, there's a motion on the floor to move forward with the SAC --
COMMISSIONER HERIOT: I move to substitute a motion that we put this issue onto a later meeting, once we have resolved the other two.

CHAIRMAN CASTRO: Is there a second on that motion?

COMMISSIONER GAZIANO: I second

CHAIRMAN CASTRO: So we have an intervening to send back or to delay, I'm sorry, the --

COMMISSIONER GAZIANO: Delay not send back.

CHAIRMAN CASTRO: Delay the vote on the -- balance of the Indiana SAC. Any discussion?

(No response)

CHAIRMAN CASTRO: Hearing none, I'll call the question. So this is a vote on the motion to delay. Commissioner Kirsanow how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how
do you vote?

COMMISSIONER YAKI: I'm actually right there.

CHAIRMAN CASTRO: Commissioner Achtenberg is off the phone now. Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: And I'll vote yes. So we will delay the Indiana SAC to the --

COMMISSIONER HERIOT: Technically that was the vote on the motion to substitute.

CHAIRMAN CASTRO: Oh, I'm sorry. Okay. So the motion to substitute now. So now back to the motion to delay. Commissioner Kirsenow how do you vote?

COMMISSIONER KIRSENOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Yaki how do you vote?

COMMISSIONER YAKI: Yes.
CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLANDNEY: Yes.

CHAIRMAN CASTRO: And I vote yes, so the motion passes. Next, we are on to Utah.

V. STATE ADVISORY COMMITTEE ISSUES:

RE-CHARTERING THE UTAH SAC

COMMISSIONER GAZIANO: Commissioner Achtenberg was the one who was going to raise motions on this. Do you want to --

CHAIRMAN CASTRO: Well, one of the other commissioners may do that, so what I'm going to do is proceed to Utah, and so the next -- so I'll move that the Commission re-charter the Utah State Advisory Committee.

Under this motion, the Commission appoints the following individuals to that committee, based upon the recommendations of our staff director: Chyleen A. Arbon, Glenn Bailey, William H. Coleman, Virginius "Jinks" Dabney, Marco H. Diaz, Jr., Michael W. Homer, Robyn Ronnow Kaelin, Edward L. Lewis, Jr., Rosa Martinez, Joanne Milner, Anthony A. Peacock, Betty Sawyer, Scott Trujillo, Filia (Phil) H. Uipi and Lynn Wardle.

Pursuant to this motion, the Commission
appoints Joanne R. Milner as chair of this re-chartered Utah State Advisory Committee. These members will serve as uncompensated government employees.

Under this motion, the Commission authorizes the staff director to execute the appropriate paperwork for the appointment. Is there a second? For purposes of discussion, do we have a second?

COMMISSIONER GAZIANO: I second.

CHAIRMAN CASTRO: Okay. Do we have any motions?

COMMISSIONER YAKI: Commissioner Yaki.

CHAIRMAN CASTRO: Commissioner Yaki, please proceed.

COMMISSIONER YAKI: So as not to get into the limbo of the first one, I'm going to send Utah back to staff for another look back for the purposes of ensuring that all candidates eliminated pass an ethical and fitness review before it comes back to us again.

CHAIRMAN CASTRO: Is there a second on that motion?

COMMISSIONER Kladney: I second.

CHAIRMAN CASTRO: Okay since it's been
moved -- Commissioner Gaziano.

COMMISSIONER GAZIANO: I'm going to speak against any motion that just essentially says the staff has not done their work unless the commissioner justifies why the staff didn't do their work. I think it is -- and I think we can handle it like we did with Indiana.

It now is that -- when our staff has completed its work, whether it's done good work or not, and several of us may have issues with how the SACs have been managed and the screening process and we can address that as a separate matter.

But we should either vote them up, vote them down, or say why we can't vote on them today so that we put SAC members on notice that they need to get a response in to us so that we can vote on them in the next meeting.

So I at this time would ask Commissioner Yaki to name the people he doesn't think should have made it through and why he doesn't think they should have made it through.

CHAIRMAN CASTRO: Commissioner Yaki.

COMMISSIONER YAKI: Yes?

CHAIRMAN CASTRO: Would you like to respond to Commissioner Gaziano's question?
COMMISSIONER YAKI: Not really. I think I've -- as I said before, there are issues of ideology and there are issues of ethical fitness, and I think it is wrong to omit, which may disturb the balance of the Commission, which is why I wanted to send it back to staff. To me, if you send it back to staff, rather than putting it out here, because it looks as though it just doesn't matter.

But we have an individual who I will not name who has some issues involving restraining orders, allegations of stalking etcetera, that I think are very troubling and I think that that needs to be considered at the staff level to determine whether that person should be submitted to us, which allows for it to be submitted to staff.

CHAIRMAN CASTRO: Okay. Any other discussion? Commissioner Heriot?

COMMISSIONER HERIOT: I think this notion of making, you know, sending things back to the staff for staff to figure out, again, we are the Commission, we are the ones that are supposed to be doing this, and the notion that we just send it back and like, it comes back with us not knowing what happened or why the reasons for changes have been made, I am against that.
If there is a problem with somebody on the list here, you know, we need to state it on the record.

COMMISSIONER YAKI: This is Commissioner Yaki. I -- the fact is, is that there are a lot of people who apply for SAC appointments who we never hear of and we never learn anything about, and this is one person who I believe probably we would never have known anything about and should never have come to us in the first place.

So to say that we are setting to adopt this, this argument that oh, it must be open in public, and blah blah blah blah blah, is missing the whole point of the vast, 99 percent of the staff selection process, where commissioners are not at the, are not at the stage of shadowing staff and vetting it every single step of the way, and here there was a mistake, we needed to go look back and then we will get a fact that made us focus on real issues involved in SAC composition and not based on qualifications, and you know we would never see, have never been involved in, or very rarely if ever been involved in.

CHAIRMAN CASTRO: Any other discussion?

(No response)
CHAIRMAN CASTRO: Hearing none, I am going to call the question on the motion to send back the Utah SAC. Commissioner Kirsanow, how do you vote on the motion?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Pardon me?

COMMISSIONER KIRSANOW: No.

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

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

COMMISSIONER GAZIANO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRMAN CASTRO: I vote yes. COMMISSIONER Kladney: That's absent any other review.

CHAIRMAN CASTRO: That's 3-3. The motion fails. Okay. So do you have a motion to sever then, Commissioner Yaki?
COMMISSIONER YAKI: Okay, then I move to sever Mr. Diaz.

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

(No response)

CHAIRMAN CASTRO: Is there a second to the motion to sever Mr. Diaz?

COMMISSIONER KLANDNEY: Yes, second. Commissioner Kirsanow.

CHAIRMAN CASTRO: Okay. Are you going to have any other motions of sever, or is that the only one?

COMMISSIONER YAKI: Oh, and -- on behalf of Commissioner Achtenberg, I sever Lynn Wardle.

COMMISSIONER HERIOT: Which one?

CHAIRMAN CASTRO: Lynn Wardle. There's a motion to sever Lynn Wardle. Is there a second?

COMMISSIONER KLANDNEY: Second.

CHAIRMAN CASTRO: Okay. So let's take these individually. On the motion to sever Mr. Diaz, do we have discussion? Commissioner Gaziano.

COMMISSIONER GAZIANO: The motion is on --

CHAIRMAN CASTRO: Commissioner -- Mr. Diaz.
COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Go ahead.

COMMISSIONER GAZIANO: I vote yes.

CHAIRMAN CASTRO: Oh, I'm sorry. I thought you were going to say something. I haven't called the question yet, I'm going -- I just asked if there was discussion.

Hearing none, then I'll move forward.

COMMISSIONER GAZIANO: If I -- I take it it's Mr. Diaz who you, Commissioner Yaki, say there are issues regarding restraining order?

COMMISSIONER YAKI: Yes.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: So I'm going to call the question then, on the motion to sever Mr. Diaz. Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Come back to me -- pass for a moment.

CHAIRMAN CASTRO: All right.

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I'll vote yes on that one.

CHAIRMAN CASTRO: Commissioner Gaziano how do you vote?

COMMISSIONER GAZIANO: Yes. I'd like to
have the applicant and interview him myself.

CHAIRMAN CASTRO: Okay. Commissioner

Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney,

how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: I vote yes.

Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: I vote yes.

CHAIRMAN CASTRO: The motion to sever

Mr. Diaz passes. Mr. Diaz will have an opportunity
to present his response. The next motion is the
motion to sever Lynn Wardle. It's been seconded.

Is there any discussion?

COMMISSIONER HERIOT: Yes, what's the
reason for this?

COMMISSIONER GAZIANO: Yes, I'm going to
oppose the motion to sever unless I hear more. I
think that he is -- based on my -- I'm sorry, she --
based on my knowledge for Professor Wardle is well
qualified. Again, her writings are within the
respectable norm of discourse and she would make a
productive member of -- oh, I'm sorry. Again, Lynn
-- I thought it was a man and corrected and it is --
he is a mean.

But the -- but unless I hear more, I think that we should approve Mr. Wardle today.

CHAIRMAN CASTRO: Commissioner Yaki do you have anything to add?

COMMISSIONER YAKI: I would say that for many of the same reasons that I raised with regard to Professor Bradley, I also raise with regard to Mr. Wardle.

COMMISSIONER HERIOT: Professor Wardle.

CHAIRMAN CASTRO: Okay. Any other discussion? Commissioner Heriot?

COMMISSIONER HERIOT: Again, it seems to be open season on law professors today. Professor Wardle is a distinguished law professor and you know, as far as I know -- I've not read -- I don't think I've read anything by Professor Wardle. But if it's for the same reason that Professor Bradley was being attacked, you know, this is very mainstream within Catholicism. I don't know that Professor Wardle is a Catholic. It may be very mainstream within the religion that he is a member of. But it seems very odd to attack these two academics on that ground.

CHAIRMAN CASTRO: Any other comments or
COMMISSIONER YAKI: This is Commissioner Yaki. I would like to submit out of deference to Commissioner Achtenberg I would like to hold — rather than looking at what will probably happen, we'll have a 3-3 result, and then we'll then proceed to question Utah with Professor Wardle which I will vote no on, rather than having a situation where we have got a 3-3 vote on Utah and figure out a solution actively so we have a discussion on this in your presence or we simply hold the entire Utah approval process until we have Commissioner Achtenberg back, as a courtesy to her.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: I don't think that was your position on Mr. Burgess in Hawaii when we had a 3-3 tie so I would move that we vote on the pending motion, or I would urge that we vote on the pending motion.

CHAIRMAN CASTRO: Let's -- I'm going to call the question on the motion to sever Professor -- -

COMMISSIONER YAKI: If it's 3-3, it was 3 to 1, Commissioner Gaziano if you will recall.

CHAIRMAN CASTRO: So let's -- shall we
vote on the motion to sever then, and --

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: And then we'll see what happens next. So, Commissioner Kirsanow how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KЛАДNEY: Yes. Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: I vote yes, so it's 3-3. Do you have a motion to delay this, Commissioner Yaki?

COMMISSIONER YAKI: I would, Mr. Chair. I move to postpone consideration of the Utah SAC. Commissioner Achtenberg will be back soon and her viewpoints on this as well.
CHAIRMAN CASTRO: Is there a second?

Commissioner Kladney?

COMMISSIONER Kladney: I second, Dave Kladney.

CHAIRMAN CASTRO: Okay. Any discussion on that? Come on folks.

COMMISSIONER YAKI: Is there a second?

CHAIRMAN CASTRO: Yes, we're just --

COMMISSIONER HERIOT: Hold on.

CHAIRMAN CASTRO: Two of our colleagues are deciding whether they want to comment.

COMMISSIONER GAZIANO: Well, let me -- if we delay, is it going to be the same slate, or are we going to all of a sudden get you know, three more liberals put on the slate?

COMMISSIONER HERIOT: We're just delaying. We're not changing the slate here.

CHAIRMAN CASTRO: Well I don't know what -- if there is going to be a change of configuration. I don't know.

COMMISSIONER HERIOT: Well that's very different from delaying consideration.

COMMISSIONER YAKI: We're not sending back to staff. We're holding it for -- holding the vote.
CHAIRMAN CASTRO: He's saying hold the vote.

COMMISSIONER YAKI: Yes.

COMMISSIONER GAZIANO: I'd rather get one SAC done today.

CHAIRMAN CASTRO: Oh, we'll have a couple more down there that will get done. Those should be easier. So --

COMMISSIONER HERIOT: Well, in general I want to delay consideration of SACs where the ideological balance may be upset. We have indeed severed Mr. Diaz. I don't know where he fits into this picture but he has been severed.

So in general, I would like to delay consideration when people are severed, but not subject to reconfiguration.

CHAIRMAN CASTRO: I don't know what's -- I mean I'm not suggesting that's going to happen. It sounds like Commissioner Yaki isn't suggesting it either. I just -- I don't -- I don't --

COMMISSIONER Kladney.

CHAIRMAN CASTRO: Commissioner Kladney, go ahead.

COMMISSIONER Kladney: How can it get
reconfigured if we keep it up at our level?

CHAIRMAN CASTRO: Pardon me?

COMMISSIONER KLANDER: Why don't you just make that part of the motion?

CHAIRMAN CASTRO: Make what part of the motion? I didn't hear you.

COMMISSIONER HERIOT: That it's just being held.

CHAIRMAN CASTRO: Oh, that it's just being held. Not reconfigured. Is that what you're saying?

Okay. Commissioner Yaki, is that fine with you?

COMMISSIONER YAKI: That's fine.

CHAIRMAN CASTRO: Okay. So on that motion, to just hold the SAC, Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: I vote yes out of deference to Commissioner Achtenberg.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: They've persuaded
me. I'll vote yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: And I vote yes, so we'll put Utah off until April.

Okay, now we'll go --

COMMISSIONER GAZIANO: I'm sorry, could I ask for a three minute recess?

CHAIRMAN CASTRO: Certainly.

COMMISSIONER GAZIANO: If we're moving on to operations now.

CHAIRMAN CASTRO: Yes, we'll be moving on to operations. So you want a three minute recess? Okay, but make it three for real though, not 13. We're recessed now.

(Whereupon, the above-entitled matter went off the record at 11:13 a.m. and resumed at 11:18 a.m.)

CHAIRMAN CASTRO: The chief of regional programs report, Mr. Minarik, please proceed with your report.
III. MANAGEMENT AND OPERATIONS

CHIEF OF REGIONAL PROGRAMS' REPORT

MR. MINARIK: Good morning commissioners, With respect to what State Advisory Committee has chartered right now, and one of the nice things about the current chartering process is that I wanted to draw your attention to the fact that the D.C. and Nevada SACs are on the charger agenda today, and that's pretty much the way it's really supposed to work, when they are operating smoothly, because these committees' charters expire in about one week, and if the commissioners were to reappoint these two SACs today, by the time we had the chartering papers filed and signed by the staff director, the charters would have continued without lapse.

So a little improvement in the process.

The other thing that I would like to mention, draw your attention to a second time, is that the strategic plan of the commissioners do call for some collaboration with the State Advisory Committees, at least on an every other year basis.

And nothing happened in program year 2011, and to date I am not aware of anything happening at the Commission level in cooperation in
2012 in a formal way, and so the commissioners might think so how they might want to address that and they do.

And that would be my report, Mr. Chairman.

CHAIRMAN CASTRO: Thank you Mr. Minarik, and I'll point out, I believe for our April briefing on human trafficking, we will be having the Texas SAC chair, Lisa -- a member of the panel. In addition, the June immigration briefing, which we'll discuss later, contemplates having representatives of various of our state SACs that have effective legislation involved, so we definitely do have that on the agenda for at least a couple of our upcoming briefings.

I do have some -- I do have a a couple of questions. And one actually relates to your question about Maine. It was actually going to be my question to you. I don't know why we have -- it seems to me that there was a mass resignation in Maine. Do we know what happened there? I'm sorry, do you know?

ACTING STAFF DIRECTOR TOLHURST: Enough people resigned from the Maine SAC that it went down below 11 to I believe 6 members, and so the regional
director for the ERO asked me if they could do an interim appointment to get it back above 11. And I thought that was reasonable. You don't want want SACs operating under --

CHAIRMAN CASTRO: Right. My question was really, is do we know what caused so many people to resign at once? Was it at once? No?

ACTING STAFF DIRECTOR TOLHURST: It was, it was close together and in dissatisfaction --

CHAIRMAN CASTRO: With?

COMMISSIONER GAZIANO: I understood there were various -- there were some --

ACTING STAFF DIRECTOR TOLHURST: There were a number of --

COMMISSIONER GAZIANO: But it was various reasons.

ACTING STAFF DIRECTOR TOLHURST: Yes.

CHAIRMAN CASTRO: Okay.

ACTING STAFF DIRECTOR TOLHURST: Yes. We knew there were some personality issues. I think people had some problems with the chair and --

CHAIRMAN CASTRO: Didn't two people move?

ACTING STAFF DIRECTOR TOLHURST: Some, yes, at least one person moved.
CHAIRMAN CASTRO: So it was a number of factors. It wasn't one thing, okay.

ACTING STAFF DIRECTOR TOLHURST: So yes, it was multiple.

CHAIRMAN CASTRO: All right. I was just curious. Secondly, or I guess secondly, I know some commissioners -- I think all commissioners have received an email from the North Carolina SAC chair about the school discipline report.

I've had some email correspondence with Mr. Minarik about that and I asked him if he could address that issue for us today. Mr. Minarik?

MR. MINARIK: Yes, Mr. Chairman. First off, the reason there is confusion is because I made a very bad mistake. I don't mean to make excuses but no secretary, most of the lights went out, and the members had a meeting of the Commission -- the committee in March 2000, got preliminary approval and the process started going forward.

During the process I lost my radar screen. I didn't you know, read the affected agency reviews, applying both to the decision. And I made a mistake with the record. The record in January, I thought, oh my goodness, this thing's done, and quite frankly, without double checking and without
getting back with the chair, records desk, made that mistake, talked to a couple of the members and by the chair and I asked to remove the report.

But first, Mr. Grady had a secretary on a program basis. Similar things happened with the Commission report about four or five years ago, there was a school district that was identified in a Commission report. It's never been under a court order but in effect they were and that caused a lot of problems.

That's what I did. He chastised me, and directed me out of the seat and I'm coordinating with the chair and reaching out to the Wake County School District. I did what I had to do. I had to get dropped at the civil rights, where there is an interagency review where that's still in the report. That's the numbers and we've got plans to hold a meeting in April, and I apologize to commissioners, I apologize to the staff director. I wish I had not made a mistake, didn't make the mistake, and I'm now going to correct it. My apologies to the commissioners and to the staff director and to the agency.

CHAIRMAN CASTRO: And I want to correct myself. I said it was an email from the SAC chair
of North Carolina. It was actually a SAC member, and I did ask Mr. Minarik to confirm that we didn't have a similar problem on some of the other school discipline reports from his region and I've heard back from the chair of the Kentucky and Florida SACs indicating that all appropriate steps were taken on those votes so there's no concerns there.

Commissioner Gaziano?

COMMISSIONER GAZIANO: I hope other commissioners speak on this as well. I don't know that a confirmation from the Kentucky chair would necessarily satisfy me, because the chair of North Carolina seemed to be satisfied that their violation, flagrant violation of the AIs, was satisfactory.

The chairman of the North Carolina SAC is positioned indefensible. Our regional staff's position on violating the AIs is indefensible. I think that the letter and the emails to me not only raise a number of problems beyond a simple mistake. There are certain statements that were admitted which are, are, are -- have always worried me, and so the admitted facts are quite problematic.

But I do not think it is the job of our staff to strong-arm staff members for unanimous
reports. I do not think that that is proper. I think that it is wrong. I think that -- and by the way this is symptomatic of -- I've gotten emails.

I think there ought to be an investigation. I think there ought to be an investigation of the management of the SACs and the SAC reports and who writes them and who drafts them and who strong-arms, because I've gotten a number of reports from SAC members in various states that similar conduct has occurred.

And if our own staff can't conduct -- I think, by the way, our own staff ought to. I've raised some of these concerns with the acting staff director and I haven't gotten satisfactory answers.

I understand she's terribly busy doing multiple jobs, but it's a failure of the agency, and if we can't perform a proper investigation, I think Congress has seen to appropriate money to GAO, and you know, I think GAO could do a service both to Congress, the President and to commissioners, to investigate some of the reports I've gotten of votes that were seemingly held open.

I don't, again, I don't know the truth of this, but the matters that were raised in the North Carolina SAC are symptomatic of some things
I've been hearing for a long time.

CHAIRMAN CASTRO: Any other questions or comments for Mr. Minarik? Sorry, Commissioner Heriot?

COMMISSIONER HERIOT: Commissioner Gaziano said that he hoped other people would speak to this, so I think I should say something. I don't have anything to say about the particular North Carolina incident, you know, I'm, you know, I don't know a lot about it, but I accept the notion that this was a mistake.

I do however think that it would be worthwhile for the Commission to be a bit more systematic about the SACs here. We have a lot of issues that have come up over the last couple of years.

I think the basic problem is that when Congress passed the statute back in the early '80s, we were a much larger agency than we are today. We had many more staff members and undertaking to charter 51 SACs and to properly supervise those SACs was much more doable than it is today.

You know, I get emails from various SAC members. One of the issues that I've received emails on recently is in some ways kind of the
opposite of this problem that we're having in North Carolina, and that was the California SAC was very concerned about how slowly their SAC report was being put up, as opposed to, in the North Carolina case, believing that it was premature.

And you know, I sympathize with the members of the staff that are having to deal with, you know, far too much work here, just a few people chartering 51 SACs and then getting those SACs together, conducting briefings, writing reports.

But I think part of the problem is that we really shouldn't be writing reports for the SACs.

When I was chair of the California SAC, much to my surprise, after the briefing was held, I was told by the member of the staff that that was it for the SAC that he was going to write the report and that that was not something that we had to worry our little heads about, which struck me as very odd.

We go out and we try to find qualified people and then it ends up being the staff that writes the reports. A few months ago, as you'll recall, the Commission voted not to allow members to sit on SACs because this was thought to be a conflict of interest.

I think that you know, insofar as that's
a conflict of interest, the conflict of interest
that we have between staff members and SACs are
much, much, much greater.

At this point we have a situation where
staff members decide on how to people the SACs, they
decide how to politically balance it and the
Commission basically takes it as an up or down vote.

Then those same people turn around and
meet the groups together, talk to them about how to
pick a topic, find witnesses to testify before the
SACs, so that they control, you know, who is
testifying in front of the SACs, and then the same
people write the reports.

And you know, I greatly sympathize with
them because I think they have got far too much work
to do but it ends up a huge investment of time and
yet basically it's the product of just a couple of
people rather than the product of the SACs
themselves.

So I think that it's time that we take a
systematic look at this and I hope that we do.

CHAIRMAN CASTRO: Any other questions or
comments?

COMMISSIONER YAKI: This is Commissioner
Yaki.
CHAIRMAN CASTRO: Yes.

COMMISSIONER YAKI: I just -- I can't attest to the truth or veracity of any of the statements that my fellow commissioners have been saying. I would just note that as one of the longer, longest-serving members on the Commission, I haven't received any of those complaints.

But hearing what the other commissioners have had to say, I just wanted to put on the record that I have not received any complaints among the members of State Advisory Committees.

CHAIRMAN CASTRO: Commissioner Gaziano.

COMMISSIONER GAZIANO: Let me clarify. With regard to North Carolina, so I'm not -- I am willing to accept that at least some of the matters that brought the issue to a boil there were simple mistakes. I always assume simple mistakes.

But then some of the other -- so I don't want to, to necessarily say, you know, whether there was a vote or not vote, those sort of mistakes can -- whether there's a failure of memory.

But the seeming -- there's a variety of other things I've mentioned that came out that seem to be in violation of our published, written procedures, and there seem to be people who are
defending them.

I do also want to agree with Commissioner Heriot that I know our limited staff is overworked, and part of the review that I am asking for would direct them to do that which is necessary, efficient and proper, and not spend even more time drafting the reports for the SACs, trying to pick their witnesses, trying to persuade them not to file the one-page dissents that under their AIs, they are entitled to file.

I think that, that kind of -- but there have been -- I don't want to -- there have been a few reports of even improper behavior, and I don't know how to evaluate them, but it would be nice if we could have someone look into them and see if these are isolated incidents, if they are all false, if there's a -- if there's a larger problem.

CHAIRMAN CASTRO: Any other comments or questions?

ACTING STAFF DIRECTOR TOLHURST: I have one.

CHAIRMAN CASTRO: Ms. Tolhurst.

ACTING STAFF DIRECTOR TOLHURST: I think I take your point. I think if people want to examine this, there needs to be some kind of reality
check and we have Mr. Minarik on the phone and we
have Ms. Davis from ERO in the audience.

What I'm told is that SAC members, with
some exceptions, there are some exceptional SACs,
but I understand many of them will not write reports
and don't have that capacity and that that is why
staff is doing it.

Maybe Ivy or Peter could comment on
that.

CHAIRMAN CASTRO: Could you come to the
microphone Ms. Davis please? There's one right on
the edge of the table there. For the record that's
Ivy Davis, regional director of the eastern regional
office.

MS. DAVIS: This one?

CHAIRMAN CASTRO: Either one.

MS. DAVIS: It varies, and for those SACs
that we have members that are willing to, often it's
done on a subcommittee, I mean I'm listening to this
description and it's certainly not how things
operate in my region. The SACs are very much
involved in the process of determining who's going
to make presentations. That's not done -- that's
not done by the staff and says these are the -- this
is who you get and that's it, okay?
Now, there are some SAC members that are good writers, some that are not good writers, all right? Sometimes we give them particularly things to do, like the summaries of the witnesses' statements and we may do a good portion of the report.

They certainly are involved in reviewing. We have had committees that do the actual original draft. They review reports the way commissioners review reports, and the commissioners, as far as I think I understand, don't draft the Commission reports. It's done by staff and you react to it and you make improvements to it and perfect it. That's the process that we go through as well.

CHAIRMAN CASTRO: Commissioner Gaziano.

COMMISSIONER GAZIANO: I don't think that staff should be writing reports. If the, if the particular SAC members don't want to, that's a sad state of affairs. But I don't think staff should.

But let me ask you another question. The month after the Commission encouraged and reaffirmed commissioners' rights to attend SAC meetings, and I called in to participate in the
Maryland SAC that you were organizing, you stopped
the meeting, you called up the operator -- at least
this is what the operator told me -- and you
instructed the operator to remove me from the
speaker line, so that I could just listen as a
member of the -- as any other public. Why did you
do that?

MS. DAVIS: Well, I don't know the
particulars of that.

COMMISSIONER GAZIANO: You don't
remember doing that?

MS. DAVIS: I don't know the particulars
of that, and I can certainly go back and review it
and report back to you, but I do know that there
have been instances where you have attended
committee meetings, and identified yourself as an ex
officio member of a federal advisory committee. And
I don't agree that you are a federal -- you are an
ex officio member.

COMMISSIONER GAZIANO: I was a member of
the Virginia SAC the one time, but --

MS. DAVIS: I understand that, but you
were not at the time that the Virginia committee was
meeting.

COMMISSIONER GAZIANO: No, that's wrong.
MS. DAVIS: Yes.

COMMISSIONER GAZIANO: You're wrong.

But in any event --

MS. DAVIS: You were a member of the Commission.

COMMISSIONER GAZIANO: I was also a member of the SAC at the time. But, but regardless of whether you think my characterization of being an ex officio member, which -- or not, why did you remove me from --

MS. DAVIS: As I said, Commissioner Gaziano, I cannot respond to that question at this point but I will go back and try and reconstruct and answer the question for you.

COMMISSIONER GAZIANO: I think that's a dishonest answer.

MS. DAVIS: Well, it's not a dishonest answer. It's the answer that I'm giving you so that I can give you the best response, an accurate response.

COMMISSIONER GAZIANO: Okay.

MS. DAVIS: I don't carry that in my head.

CHAIRMAN CASTRO: Is there something else, can we move on to another topic, if there are
any other questions? Commissioner Heriot.

COMMISSIONER HERIOT: I just wanted to point out that we really don't get very many SAC reports. It's a very small number given that we have 51 SACs. And again, I can understand the fact that we just don't have very many staff members. We are very understaffed on this sort of thing. It is not shocking to me that they are overworked. It's, it's, it's a problem.

But in terms of drafting reports, I would much rather the SACs draft their own reports and if only a few SACs are interested in that, then we get only a few reports, but we are only getting a few reports now.

CHAIRMAN CASTRO: Any other questions or comments?

MR. MINARIK: May I Mr. Chairman?

CHAIRMAN CASTRO: Yes, Mr. Minarik. Did you have a comment? I'm sorry.

MR. MINARIK: I would like to comment.

CHAIRMAN CASTRO: Okay, go ahead.

MR. MINARIK: It is true that I have talked with advisory committees when they first convened, and told them that this was my preference, that they try to find consensus.
I don't ever think I acted in a way to try to bully them that way. It's just that I really would find over the course of years that there's so much more in common among people who really believe in civil rights than they disagree.

But it should be a conversation towards that end. That's -- that is my take on it.

I don't conduct the votes of the chair, just as you, in this meeting, chose from the meetings in the SACs. And that determines if the chair is the one who sets up, in my place, subcommittees to determine the agendas of the meetings or at the hearings and we could try to follow the report design that the subcommittee puts in place.

I would be delighted. We have been trying to get State Advisory Committee members to write these reports since the early 1990s. They have other professional obligations. It's very difficult -- it's very difficult for them just to give up the few hours of time just to get there.

CHAIRMAN CASTRO: Okay. Thank you Mr. Minarik. Commissioner Heriot, then if no other questions, we'll move on to the next item on the agenda.
COMMISSIONER HERIOT: Yes, I just wanted to point out that I was present at a California SAC meeting, I was no longer chair at this California SAC meeting, but I was a member of the SAC, and Mr. Minarik was there, and gave, you know, the initial presentation.

And I thought Mr. Minarik did fabulously. He was very professional, very charming, and I much admired his leadership there. The only, the only thing that I would want to mention is that I really don't think that we should be asking SACs to be unanimous, you know, that was Mr. Minarik's judgement call, and my view is that he should not ask for that, but he was not being a bully in any way.

I believe our SACs ought to feel free to take on controversial issues when they want to, and that's going to mean there's a dissent, and the dissents I think are valuable too.

So I just wanted to say that I thought Mr. Minarik did a good job, a very good job, in dealing with the California SAC, and was, was, was, you know, they loved him, and he was, he was very charming. But I would think that we really shouldn't ask for, for, for unanimous reports, that
it's better to let them just choose based on what they want to do, and if there's a dissent, fine, there's a dissent.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: Just for the record, I did try to report, or I did ultimately reach the acting staff director on the instance when Ms. Davis instructed the operator to take me off the speaker line, and that's one of the instances where I was dissatisfied that apparent further action wasn't, wasn't taken to resolve it at the same time, which allows Ms. Davis to claim that she doesn't remember doing so.

This is an instance of -- and there were discussions at that particular SAC that I continued to listen into, that I thought were improper. This is, this is just one of the examples that I am mentioning, where, when the Commission takes a vote that commissioners can participate in meetings, and then our staff does everything in their power to wrongfully prevent us from participating, and then engages in the type of influence that I think is questionable, that needs to be investigated.

CHAIRMAN CASTRO: I think Ms. Davis is approaching. Is it a question also of the
difference between participation and attendance?

MS. DAVIS: It's coming back to me now, on Maryland, and that was a meeting of the SAC, as you all are conducting meetings. The -- when we -- and that was a conference call meeting.

Members of the SAC are in speaker mode. Anyone who is not a member of the SAC, is in listen only mode. And I believe that was the status for you.

COMMISSIONER GAZIANO: And, so in your -- your sole interpretation, rather than talking to me, rather than calling me, rather than talking to me about it, you decided that commissioner participation means they can only listen like the general public?

MS. DAVIS: The -- Mr. Gaziano, our rules are what they are, similar to the Commission's rules, and that was a SAC meeting, it was conducted by conference call, and the two types of participants on the call are those that can speak because they are committee members, and members of the public, who are everyone else but a committee member.

COMMISSIONER GAZIANO: Your interpretation of our ruling is untenable, that
commissioners can participate no more than any other member of the public. It's untenable. And for you not to have called me --

MS. DAVIS: I was in the throes, I think again, of conducting the meeting, and that's all I have to say.

COMMISSIONER GAZIANO: You stopped it for 15 minutes until you got your way.

CHAIRMAN CASTRO: Okay, you know, at this point, I think everyone has made their positions clear. Commissioner Gaziano, you have expressed your concern. Ms. Davis has expressed her explanation for how it was handled. I think the matter is clear on the record and we have other items on the agenda that I, that I would like to move on to. So, thank you.

The next item, as you know, is a discussion of our agency staffing situation.

COMMISSIONER KIRSANOW: MANAGEMENT AND OPERATIONS DISCUSSION ON AGENCY STAFFING

CHAIRMAN CASTRO: As all commissioners are aware, Ms. Tolhurst is going to be stepping down from her position as acting staff director on April 13th, at the end of the April board meeting --
At the present, the White House, as you all know, has not sent us a candidate for approval for the staff director position. I have been in very frequent communication with the White House over the last year and even more so within the last couple of weeks.

Even yesterday morning I had a further conversation with the White House, and when I say that, I mean the Office of Presidential Personnel. They have indicated to me that there may be a couple of candidates that they are, that they are going to approach to see if they would be potential candidates.

They are looking for someone, as we would expect, with management and civil rights experience, but as we sit here today, I don't foresee that we are going to have someone in the next 30 days. I'm hoping we do.

So, but for the purposes of this discussion, I think we need to assume that while it's always an option that the White House may send us someone, that that is probably not the option that we are going to sit here and wait for.

So what I'd like to do today is have a thorough and thoughtful discussion with
commissioners about the various options that we have should the White House not send us someone by April 13th.

I want this to be a forward-looking conversation, but I don't think that the plan today is to end up with a conclusion that we will vote on.

I would imagine that we can discuss the various options, get input from commissioners as to what they think the direction or directions we might want to explore further are, with the view that at the April meeting, we will then hopefully have a resolution that we can vote on.

I know our special assistants have met with senior staff, with Ms. Tolhurst, and Ms. Martin and asked a number of questions about various permutations of what might be done.

My understanding is that there are a few options that are on the table. I'll just sort of summarize those based on my understanding and then we can have a discussion.

One is to possibly amend the AI in terms of order of precedence to add one or more career staffers that could either hold the role of acting staff director, and/or acting staff director and acting deputy staff director for management and
operations.

Another possibility is to determine if we can accept a detail from another federal agency and then how we would go about doing that.

A third option is to do nothing and allow the OGC attorneys to sign off on Sunshine Act notices and the director of management and HR to handle management and HR issues.

And again, by saying this I am not saying any of these is the preference. I'm just encapsulating what I understand to be our options.

And then four, I'm hoping that maybe commissioners or staff might have other ideas or options for us that don't encompass the ones that I believe have been discussed prior to us getting here.

So having said that, I think I've set the table and I'd love to hear from commissioners as to their thoughts. Commissioner Heriot?

COMMISSIONER HERIOT: Could I ask a question first?

CHAIRMAN CASTRO: Yes ma'am.

COMMISSIONER HERIOT: What, what things do we need an acting staff director for? Are there things like, you know, making sure that checks are
signed, that just have to be done by somebody with
the title of staff director or acting staff director
or person delegated the responsibilities of staff
director?

CHAIRMAN CASTRO: Sure. Sure. And to
that point, I have asked both Ms. Tolhurst and Ms.
Martin to be prepared to answer our questions today,
so I will defer to one or both of them to answer
that question from you.

ACTING STAFF DIRECTOR TOLHURST: In
terms of -- in the absence of a staff director, and
I made sure of this before I decided to step down
because I didn't want to leave the agency in the
lurch, the rent can still be paid, check -- people
will still receive their salaries, we'll still
function. We can still post our Sunshine Act
notices.

So, those basic things will happen.
What won't happen is, you know, the SAC packages
will stop, many of the organizational things that
all of you call me for, you know, sort of assigning
-- who is going to assign the briefings, who is
going to make sure all of our deadlines are being
met on reports and that kind of thing, who is going
to assign staff and rate staff and that type of
thing becomes more problematic.

But the agency won't collapse. We can prepare bills and prepare staff and have meetings.

COMMISSIONER HERIOT: What about preparing for the move? That's a job in itself.

ACTING STAFF DIRECTOR TOLHURST: That is a job in itself and it's a job largely being done by Pamela, who will continue to do that job. It would be then without a check of a staff director.

COMMISSIONER HERIOT: Okay. Can I comment a little bit more?

CHAIRMAN CASTRO: Yes please go ahead.

COMMISSIONER HERIOT: You know, I -- among the alternatives that you named, I don't really have much of an opinion on how to do that. I tend to approach these things more from a functional standpoint of you know, what jobs are going to need to be done in the medium term, because I suspect that's what matters.

The White House is going to come up with somebody, probably not sooner but --

CHAIRMAN CASTRO: Eventually yes.

COMMISSIONER HERIOT: they'll come up with somebody. Somebody is going to want that job.

I hope they are going to want that job before the
election. I hope they are not going to, they are not going to wait on that.

One possibility you might run by them, if it looks like it's hard to get somebody to do the job, you know, permanently, is to find like an academic who will do it for a semester.

But I'm thinking of it in terms of what jobs need to be done and one thing that's coming up that I think we very much want to keep on track is the immigration hearing briefing and you know, I think that's something that, that you know, we are talking there about a policy issue, and a legal issue, and delegating to that, that to somebody who doesn't, doesn't do policy issues is probably unwise.

Things like selecting the witnesses for the hearing, I think the Commission needs to come up with some way to make that happen, you know, with us doing the selections.

ACTING STAFF DIRECTOR TOLHURST: I'll say, I already assigned that briefing to Lenore, who is selecting and has been working with me to do the background research.

COMMISSIONER HERIOT: Is that something you want to keep on your table then?
ACTING STAFF DIRECTOR TOLHURST: Well -- it wouldn't be on my plate once I step down, but it's already started, it's already been assigned, and any kind of -- well, any hearing would go through the General Counsel's office, so those can still happen.

For briefings, all current briefings have been assigned, so it would be a matter of newly-approved --

COMMISSIONER HERIOT: You know, we may not have anything, you know, in the immediate run on that. And I would suggest that you know, the commissioners take, you know, more of a role in making suggestions to Lenore than they might in other kinds of cases.

CHAIRMAN CASTRO: Absolutely, sure.

COMMISSIONER HERIOT: And I mean, on this list here, report deadlines, I mean the one that matters the most is the enforcement report, and that's what we want to make sure, absolutely positively, you know, goes off on time.

ACTING STAFF DIRECTOR TOLHURST: I will still be responsible.

COMMISSIONER HERIOT: And if that's, if you are still in charge of that, then that's good.
ACTING STAFF DIRECTOR TOLHURST: Not for me, but it's okay.

COMMISSIONER HERIOT: By the way, I misspoke earlier when I started launching into substance. The first thing I should have said for thank you for all you have done. This has ended up being a longer stay in the acting staff director's office than what you intended, I know, so thank you very much for all you have done, and we are amazed that you wore as many hats as you did, for as long as you did.

Then there's like the eminent domain report. Where are we on that?

ACTING STAFF DIRECTOR TOLHURST: That is on my desk.

COMMISSIONER HERIOT: Are you going to keep that on your desk? Are you keeping like all reports still?

ACTING STAFF DIRECTOR TOLHURST: It's on my desk because there are so many other things on my desk that it's been sitting there. But I will attempt to finish that before I step down in April, finish, release it, have it --

COMMISSIONER HERIOT: Release the draft, yes. Okay. SAC packages then would be the big
ACTING STAFF DIRECTOR TOLHURST: Yes.

COMMISSIONER HERIOT: Well, we need to come up with some way to keep SAC packages going.

CHAIRMAN CASTRO: Okay. Commissioner Gaziano.

COMMISSIONER GAZIANO: I'm anxious to hear from other commissioners and open to a variety of short, medium and the long term solution of course is the President nominates someone that is acceptable to a majority of us and I think we all want strong leadership in the Commission.

I think Commissioner Heriot's questions are helpful to me, but as the previous couple of discussions, the SAC votes we had and the other discussion, I think it is important to have someone who is responsible, who we can talk to, who is supervising the re-chartering and various other -- the management of the SACs and the reports.

I think we've -- you know, I regret that the press of other business prevented me from raising some of my concerns earlier, and I apologize to everyone within earshot that some of my word choices probably weren't the most of prudent.

But I think that's one area of concern.
I do think there -- in the very short term, there are two of our, our, our current employees who I think could, could do a good job and we would all have some confidence in to do a fair and -- but I think, you know, given each of those persons' existing jobs, they may also be in the same situation as the acting staff director, who I also want to commend.

So one solution is that commissioners, with our special assistants, take on some of the matters that we normally delegate to the staff in some way that, that -- for example, the witnesses may be set for the immigration hearing; I don't know that that will be completed by the time the staff director -- for that hearing, and for future hearings, you know, maybe the commissioners can take more of a responsibility somehow like we are doing with the Lincoln Cottage proposal, to suggest, maybe each of us suggests witnesses so that that produces a balance, maybe that we could come up with some system where those from one party suggest or help -- are there ways in which -- I'm throwing this out to all the commissioners -- are there ways in which an end to the currently still-acting staff director, are there some things that we can take
responsibility for ourselves in the short term?

    ACTING STAFF DIRECTOR TOLHURST: Well, in terms of the briefings and selecting participants, commissioners, not uniformly, but many commissioners have been pretty active in suggesting people and they can certainly continue to do that.

    I think for the trafficking briefing, that happened quite a bit. We have got many people coming that are, were commissioner recommendations. And I think individual staff, you know, even if there's not a staff director, certainly Lenore is capable of doing research and picking people, just as Margaret was capable of doing research and picking people.

    So we certainly have staff that can do that, whether there's a staff director or not. I think, I think you need to select an acting staff director. I think some things feel inappropriate for commissioners to take on, and some things, you know, we have regulations and we have REIs that say the staff director does X, Y or Z.

    That's not to say those couldn't be amended, but as they sit today, the staff director must put a SAC slate forward to you all and a staff director must make hires and do these types of
things.

So in the absence of a change to our regulations or REIs, you need to select an acting staff director.

COMMISSIONER Kladney: Dave Kladney, Commissioner Kladney.

CHAIRMAN Castro: Commissioner Kladney then Commissioner Heriot, who has raised her hand. Co ahead Commissioner Kladney.

COMMISSIONER Kladney: Commissioner Yaki and I sent a bunch of questions. I absolutely do not know what the authorities are regarding the situation, regarding the power of appointment, regarding actually any approach we can make, and to do so under the rules and regulations, and I was wondering whether we have got a reply to those questions.

I would also like to thank the acting staff director for all the work in the last year. I think it's been exemplary.

ACTING STAFF DIRECTOR Tolhurst: Thank you.

CHAIRMAN Castro: Commissioner Heriot.

COMMISSIONER Heriot: I wanted to back up a little bit about, you know, what's going to
happen if this ends up being a, you know, a six-
month period that we're waiting and that's, you
know, that's -- we don't want to hold off holding
briefing that long a period.

COMMISSIONER YAKI: This is Commissioner
Yaki --

(Simultaneous speaking)

COMMISSIONER HERIOT: Can you not hear
me? You know, if we don't get a staff director in
six months, you know, that's a very long time and I
don't think that we should be holding off on holding
briefings during that period.

One suggestion I might have about how we
can do it with a smaller staff, some briefings
really don't need a report from the Commission
staff. You can simply take the transcript of the
briefing and the commissioners can try to come up
with findings and recommendations, and maybe we'll
come up with them, and even if we don't, we can
still do commissioner statements, and I think have a
very useful report. It doesn't have to be
summarized by a staff member.

And if it's not summarized by a staff
member, that means that staff member is freed up to
do some of the other work that they might --
I need to do.

I mean I think we have had several, several briefing reports where what happens is, you know, a staff member spends a lot of time summarizing what was said, but it really was already said by the witnesses. It's just a summary.

And that's a massive undertaking to summarize one of those things and it has to go through several approvals and we really could produce reports much more quickly without such a summary, instead just publishing the transcript of the meeting and publishing findings and recommendations -- an executive summary I think would still be necessary, but not the sort of medium-length summary, the 80, 90 100 page summary that we do today.

I have never quite understood why we put so much effort into that and I think it would make a lot of sense to do some briefing reports that don't have them, to free up the staff a little bit.

The two issues that the acting staff director just mentioned that I think are, are issues that really the Commission can't participate, there's really nothing we can do here, and so we really need someone -- hires. I don't want to touch
federal hiring with a 10-foot pole. I don't want to get involved in it because you know, there's complex law behind that, and I figure whatever I do is, you know, either I will, you know, accidentally violate some rule I don't know about, or if I don't, I'll be accused of it even if I didn't do it. So I don't want to touch it.

And I don't want to touch balancing the slates for SACs, because that has to be done by one individual hand, and either voted up or down. I mean people can have input, but in the end, you know, somebody has got to come up with what they consider to be the balanced slate and I think it makes sense to have a staff director that does that and then refers it to the Commission to vote it up or down.

So you know, I'm happy with the notion that we are probably not going to be in a position to do that. That said, the SACs are important, because it's, it's -- not because I think they are important in themselves, it's because the statute requires us to do it, so we have to do it, you know, we don't have any choice. Those things have to be done.

We can't say gosh, in our discretion, we
decided that that was not a priority. Congress has said it's a priority so it's a priority. So I'm very worried about that.

But I think a lot of the other stuff, with added input from the commissioners, we can get through this and we can get this done, and we have to remember always, that all the power that the Commission has was delegated by Congress to the Commission, which is defined as the eight members. It is not the staff. The staff only has the power that was delegated to them, and anything that is delegated to the staff can be undelegated and it can be undelegated just for a particular occasion.

So if we, on any occasion, decide to do anything as the Commission, we have implicitly undelegated that particular aspect of the power. The AIs govern the staff. They don't govern the Commission, and I don't think we should be violating the AIs routinely, but when we are in a position where in order to get the work done, we have to take on a somewhat more, more, more hands-on approach, then that's what we have to do.

CHAIRMAN CASTRO: Okay. I'll just say I don't agree on the not summarizing the briefing reports. I think it's important. But that doesn't
mean that we can't possibly delay doing that but I am not saying that's --

COMMISSIONER HERIOT: Or just not do it on one.

ACTING STAFF DIRECTOR TOLHURST: Well, that's really a totally separate debate.

CHAIRMAN CASTRO: Yes.

ACTING STAFF DIRECTOR TOLHURST: It's not like I was writing briefing reports.

CHAIRMAN CASTRO: No, it's a -- we have staff that are still going to do that, right.

ACTING STAFF DIRECTOR TOLHURST: So my stepping down doesn't change stuff --

CHAIRMAN CASTRO: So I don't think that would necessarily impact. What is the real issue, though, I think, is this -- the SACs. No, the SACs. And we need to figure that --

COMMISSIONER HERIOT: But no, we still have -- it's not just that Ms. Tolhurst is stepping down. Mr. Byrnes has resigned, you know, he was writing reports. And now Ms. Ostrowsky has to, you know, take more control of the immigration briefing, and she was writing reports, you know, something has to give. This is not just a question of there not being an acting staff director. We are understaffed
and we are not going to get work done unless we come up with some way to make -- to get it done, and that was my suggestion. If there's some other way to do it, let me know what it is.

CHAIRMAN CASTRO: Absolutely but my point was, you know, I think the fairly pressing issues of the ones that you've laid out is really the SAC issue and that's, that's something that we would I think need a staff director. I don't think it's something that we as commissioners can appropriately do.

But you know, your points are well taken.

COMMISSIONER KLANDNEY: Mr. Chairman.

CHAIRMAN CASTRO: Yes, Commissioner Kladney?

COMMISSIONER KLANDNEY: I did ask a question of the staff director and I didn't get an answer.

CHAIRMAN CASTRO: I'm sorry. What was your question?

COMMISSIONER KLANDNEY: My question was the questions about the answers to the questions that Commissioner Yaki and I posed early last week I think or this week.
CHAIRMAN CASTRO: Ms. Tolhurst?

ACTING STAFF DIRECTOR TOLHURST: So, there were a long list of questions that we received, and I might have to ask Tina to come forward and help with some of those. But we are in a really unique situation. It's not like I can go on Westlaw and find what to do in the essence of a staff director or general counsel or anything like that.

Tina had gone to OPM. We got pretty little assistance. I am able to answer some of --

CHAIRMAN CASTRO: Could you speak up just a little bit Ms. Tolhurst?

ACTING STAFF DIRECTOR TOLHURST: Sure. I'm able to answer some of these questions. I don't know if Commissioner Kladney wanted to go through them one by one, or what he was wanting.

COMMISSIONER KLADNEY: Well, I just want to know if we got answers, if we are going to be provided those answers, with the authorities and issue as to asking what we can do and what we can't do.

MS. MARTIN: Commissioner Kladney I was saying that I could email you the answers to the questions. I do have answers to your questions.
COMMISSIONER KLADNEY: Right. Thank you very much.

CHAIRMAN CASTRO: And also, I should have said earlier that when I spoke with the White House Office of Presidential Personnel, at least as it relates to the question of a detail, they said they were going to seek some guidance from the White House Counsel's office on that and get that guidance back to us so I'm sure that would be helpful.

When I receive that, should I receive it, I'll share it. Commissioner Gaziano then Commissioner Heriot.

COMMISSIONER GAZIANO: Thank you. I was going to say please, please do share it, and, and Commissioner Kladney and Yaki, if you think it would be helpful to us to share your questions, please, please do. If you think some of them are ones you don't want to share with us, that's fine. I have asked you know, some of the same questions I think the chairman did about operation of a detail.

I think a detail would be acceptable to most of us and we ought to -- we need to, at the receiving agency, needs to ratify it in some way, and even if we don't need to, we ought to.

It would be difficult but at least we
ought to investigate. At least we ought to investigate that possibility.

But I wanted to also just comment on a couple of other ways, again, that we can deal with the short term. As I understand it, we are going to have to designate someone at all times so that will be done.

But I think that that -- who we designate will be in a similar position to the current acting staff director and reports that have to be summarized also have to be edited by the acting staff director, and they have to -- the review is more complicated than just a transcript.

But I do want to go back to the sort of witness situation. We can certainly try to make more recommendations for witnesses for briefings as we have done, but if the staff still has the ultimate responsibility, should one witness not be available and the other, it's hard to contact the commissioners and know whether they are acting appropriately, and it doesn't really save a lot of time and responsibility, it seems to me, for us to just give more suggestions, more names.

If we did something that's analogous for one briefing or another, maybe we could try it as an
experiment, that we are doing similar to the Lincoln Cottage, then it's the commissioners in some sense who assume responsibility with obtaining witnesses that they think would, would create a slate.

I mean it may not work for every briefing. But that would really relieve at least the staff's you know, back and forth with witnesses, trying to make sure it's a balance, and I don't know the best way to do that.

But I think there are some creative ways that we can take on some of the tasks that the staff director's office is handling in the short term.

CHAIRMAN CASTRO: Let me just say, I'm hopeful that today's conversation will at least flag as many issues and hopefully maybe answer some if possible, and to that point, unless there's some reason not to do this, I'd love to hear the questions and the answers that were received to the questions that were submitted by Commissioners Yaki and Kladney, if we have those answers.

COMMISSIONER HERIOT: Me too. I assume you are going to want to send them on out to everybody.

CHAIRMAN CASTRO: I'd love to have it done here, yes. Well if there's answers now, maybe
they'll contribute to our discussion or maybe they'll take some things off the table. So if it's appropriate, I'd like to hear the input.

COMMISSIONER KLADNEY: I think we should review the questions and answers first before we discuss them right off the top of our heads.

COMMISSIONER YAKI: Actually since I really have only one question about whether I can ship Commissioner Gaziano to another part of the country. So --

(Laughter)

CHAIRMAN CASTRO: So are you objecting to sharing those -- sharing that information right now?

COMMISSIONER YAKI: Well, I'd like to, Mr. Chairman.

CHAIRMAN CASTRO: I just don't, I --

COMMISSIONER YAKI: I would rather review them myself, the questions, and as they -- Commissioner Gaziano was so kind to actually suggest that, that's exactly what we do.

CHAIRMAN CASTRO: So are the questions and answers going to be shared simultaneously with all commissioners?

COMMISSIONER KLADNEY: We asked the
questions. We would like to review the questions and answers.

COMMISSIONER GAZIANO: Okay. Well let me, let me try to get at some of this, though.

COMMISSIONER HERIOT: Is that appropriate?

CHAIRMAN CASTRO: Yes, without --

COMMISSIONER GAZIANO: Well, I think so.

COMMISSIONER HERIOT: To use the resources of the staff director's office for questions and answers that other people can't, can't hear and get the answers from?

COMMISSIONER GAZIANO: I think so.

CHAIRMAN CASTRO: I don't know. I'm here as long as you all are. So --

COMMISSIONER GAZIANO: You know, if I have a personal ethics issue that I want to raise with our ethics officer, I think I should be able to get some ethics advice.

CHAIRMAN CASTRO: Good point.

COMMISSIONER GAZIANO: And then I would read that broadly. But let me ask the other commissioners and/or the staff director and/or personnel director. I always forget your official title. You have two, or three.
MS. MARTIN: Director of management --

COMMISSIONER GAZIANO: Director of management, yes.

MS. MARTIN: is my official title.

COMMISSIONER GAZIANO: Okay, yes. I know you have several hats because you have assumed, like our acting staff director general counsel, you have assumed various acting -- are there matters, I suppose it's a different question, that the commissioners -- are there some questions that you have asked that you could at least share the questions to us?

Are there matters that have been raised that either of these two officials can share with us that they think should be relevant to our consideration?

I mean I could tell you what little I know about the detail situation and the questions I posed on the detail situation, but I think I have already shared that with two or three other -- well, I've shared that with about four, five other commissioners, but I could mention those now.

Are there other matters that would be helpful for us to know right now because by next month, it may be -- we may need the next month to
resolve some of these issues.

ACTING STAFF DIRECTOR TOLHURST: Well, let me say that you may also have seven additional days because payroll has asked me to stay on until April 20th. So --

COMMISSIONER GAZIANO: Payroll as an identity, an inanimate entity, asked you to --

ACTING STAFF DIRECTOR TOLHURST: So if you like then you can have that. No, I think, Tina might be able to describe generally, I mean, there are obviously several distinct options you have that are legal and doable, and I don't know if you have questions about options that she might say HR prohibits you from doing in terms of Schedule Cs or -- and I'm not sure what the questions might be, but maybe Tina, you want to describe generally what you see as the main permissible options here?

MS. MARTIN: Well, basically the options that the chair put out are all viable options. I just want to note that I did talk with OPM and OPM came back to the agency and said that they are not going to tell us how to operate internally, that it's up to the Commission to decide how we will continue to operate as long as it's within the law and the regulations.
COMMISSIONER GAZIANO: Can I add a clarification? Are they going to advise us what's lawful?

(Laughter)

COMMISSIONER GAZIANO: Can they give us that help?

MS. MARTIN: There are regulations out there that we can refer to, which is the 5 CFR.

CHAIRMAN CASTRO: So they would ask our lawyers to tell us that, is what you're saying?

MS. MARTIN: Yes.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: But they won't give us -- but again I think Ms. Tolhurst's comment was sort of appropriate. We are in some unclear areas for two reasons, one because of our status -- I don't think we are an executive, we can't be an executive branch for example. They -- some of those laws may still apply to us, but I think that there aren't off the shelf answers to some of the questions.

MS. MARTIN: Right, and some of them that aren't governed by particular rules or regulations is basically internal operations of an agency.
COMMISSIONER GAZIANO: Yes, but I'll give you, I'll give you one example that I know has been pending at least. This is one of the questions I asked -- I'll tell the staff director one of the questions, in her general counsel capacity I asked her, and as I understand it, unless she has an answer, she hasn't received it.

If we were considering a detail, I know the law off the shelf says the loaning agency has to agree at an appropriate level, the receiving agency has to agree. There's maybe an internal issue of whether that can be just at the staff level, if it's going to be someone who might assume the acting or whether it should be ratified by the Commission. I think as a matter of policy it should be ratified by the commissioners.

But the other question is, is that enough? For someone who would then assume the acting staff director position, because essentially, we would have that person possibly detailed in -- somewhere in the line of succession.

And then that person -- does that need OPM sign off? Well it seems to me OPM should tell us whether that needs OPM sign off, and that seems to be not one of those obvious answers and did you
get an answer to that?

ACTING STAFF DIRECTOR TOLHURST: No, and I -- I mean, these are unique questions, and I am very frustrated with OPM because although, sure, we have some internal management, there are as you say regulations, and none of us here are experts at them, and we do need this guidance.

CHAIRMAN CASTRO: Commissioner Heriot.

COMMISSIONER HERIOT: Just as an idea on getting a detail, maybe this has already been explored, but it seemed to me that we might be able to attract somebody here if they actually are already familiar with us.

I was thinking of Maha, whose last name I cannot pronounce, is it possible she might be interested in coming here for three months?

ACTING STAFF DIRECTOR TOLHURST: No.

COMMISSIONER HERIOT: Okay.

CHAIRMAN CASTRO: You know, one of the questions the White House had, the presidential asked for I think the counsel's offices, given the uniqueness of us being -- this position being a presidential appointment, you know, how would a detail work or not in that situation too. So maybe when we get an answer --
COMMISSIONER HERIOT: It wouldn't have to be staff director because again, I'm not just concerned with the vacancy in the staff director's office, but rather, you know, would someone like Maha be interested in coming here and be assigned a particular task, like, do the eminent domain report.

CHAIRMAN CASTRO: I see. Okay.

COMMISSIONER HERIOT: You know, a three-month assignment --

CHAIRMAN CASTRO: Understood.

COMMISSIONER HERIOT: that would, you know, therefore make it a little bit easier for our other staff members to get done what they need to get done, because again, we're not just missing the staff director. We just lost Mr. Byrnes.

CHAIRMAN CASTRO: Right, thanks for the clarification on that. Commissioner Gaziano.

COMMISSIONER GAZIANO: That does raise one other question. I know we have advertised one job. What is the prospect of filling that, and you know, are there other opportunities to do something -- to do something like that in the next month?

ACTING STAFF DIRECTOR TOLHURST: So, that job, I'll receive the resumes today.

CHAIRMAN CASTRO: That job is which one?
Could you let -- for the record --

ACTING STAFF DIRECTOR TOLHURST: It's a, it's an attorney job, attorney adviser. I changed the job description a little from what Chris did, based on our needs. We had also lost our solicitor, so I required that this attorney also be able to do EEO work and FOIA and that type of thing as well as civil rights, so it's sort of a very broad attorney position, a high-level attorney position that I hope to hire in the next -- ASAP. I'll be doing interviews as soon as they can come in.

COMMISSIONER YAKI: Commissioner Yaki.

CHAIRMAN CASTRO: Yes, proceed Commissioner.

COMMISSIONER YAKI: You know, the reason that Commissioner Kladney and I wrote the questions the way we did is -- and I'm sure Commissioner Gaziano will appreciate this -- being lawyers, we want to understand not just the answers, but the rationale behind the answer, and that includes appropriate cites to whatever applicable or seemingly applicable regulations, whether AIs, whether federal personnel, whether -- whatever it is, sort of reversed a little bit on that.

I thought I heard Commissioner Heriot
she doesn't want to start hiring with a 10-foot pole. Neither would I and neither did I want to run afoul of some action that is not totally grounded in the law.

And in questions and answers, which they will be really happy to share, with our colleagues, it's more than just some answer to questions brought today. Because I want to see for myself of the actual underlying statutes or authorities so that we are all 100 percent fully confident about what it is we are doing going forward, because I am very, very leery about some of the materials that have been put out there. I'm not that crazy about commissioners dedicating themselves to tasks of having to put not what a detailee could or could not do.

You know, the responsibility about what the staff director position really is, and I'm just -- overall I think that at the agency we continue to have issues regarding morale, and I just think that we should be -- I'd like to know what it is -- what the lay of the land is so we know how to proceed forward in the best interests of the agency and that's why I am very interested in getting the answers in writing, with appropriate citations. Otherwise I'm just -- I'm not as confident going
forward.

Because I have heard -- but I have heard representations made by other staff directors and whatever in the past and then it's found later that that may not have been as grounded as it could have been if we'd have provided the appropriate citations.

CHAIRMAN CASTRO: Commissioner Heriot.

COMMISSIONER HERIOT: I just wanted to clarify briefly that when I said I don't want to touch federal hiring with a 10-foot pole, that does not mean that the Commission does not have supervisory authority.

If ever there were some reason to believe that something was -- had happened inappropriately, the Commission does have a duty to look into it. But I hope that never happens because it's a complicated area of the law, and I hope to never have to deal with it.

CHAIRMAN CASTRO: Okay. Are there any other comments or questions or suggestions on this topic?

ACTING STAFF DIRECTOR TOLHURST: I have a suggestion.

CHAIRMAN CASTRO: Ms. Tolhurst.
ACTING STAFF DIRECTOR TOLHURST: I mean, we have these questions and Tina has some answers, which she will circulate. And then we'll see what else we need to do to get -- supplement those if necessary.

But I think what is clear is -- what is allowable is to pick another person here, amend the AI. As super-awesome as I think am, there's 39 more people here and --

COMMISSIONER HERIOT: We think you're super-awesome too.

ACTING STAFF DIRECTOR TOLHURST: There are other people here and so -- people who I would be willing to help, and that is a clear, legal, clean way to fix it, while we wait and see what the White House can do, or while you come Pu with another solution you are more comfortable with in the longer term. So --

CHAIRMAN CASTRO: A good point.

COMMISSIONER GAZIANO: One other question.

CHAIRMAN CASTRO: Commissioner Gaziano.

COMMISSIONER GAZIANO: Trying as much as possible to preserve the confidentiality of Commissioner Yaki and Kladney's questions, I wonder
if in the process, after, after you and our director of management have given them whatever you think is reasonable and possible, whether that might spark your imagination as to some things that the rest of us might want to know and you could formulate a memo without of course indicating whatsoever whether those issues were prompted by Commissioner Yaki or Kladney, and opine on a few issues that you think may be relevant to us.

Is it possible that that way, we can get at least some of the answers that you -- the benefit of your research, the benefit of your time, on those issues.

ACTING STAFF DIRECTOR TOLHURST: I think so. It's mainly going to be Tina's research, it's an area far beyond my ken, but --

COMMISSIONER GAZIANO: Do you think you can, you can -- without identifying what -- it may have been my question, it may have been yours, it may have been out of the ether, okay.

CHAIRMAN CASTRO: It may have been from this meeting here, right?

COMMISSIONER GAZIANO: Okay. It may have been from this meeting here.

CHAIRMAN CASTRO: Okay. Any other
comments, questions, suggestions on this topic?

(No response)

CHAIRMAN CASTRO: Okay, if not, I thank all the commissioners, and again, I join my other colleagues in thanking Ms. Tolhurst for the extraordinary service that she has given us these last, what, 13 months, and for the next even extra seven days we thank you for that too. So --

ACTING STAFF DIRECTOR TOLHURST: The last seven, this was going to --

CCC the last seven will get you, get you your retirement benefits. That'll pay. So the next item, let me just make sure, since I've moved this around a little bit, now we are going to program planning update and discussion of projects.

VI. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

VRA STATUTORY ENFORCEMENT REPORT UPDATE

CHAIRMAN CASTRO: So the first item up is the VRA statutory enforcement report update. Ms. Tolhurst?

ACTING STAFF DIRECTOR TOLHURST: Okay. So let's see. We have received much of the document --

COMMISSIONER YAKI: Commissioner, Mr.
Chairman?

CHAIRMAN CASTRO: Yes, Commissioner

Yaki?

COMMISSIONER YAKI: Can we have our votes taken? I unfortunately have a conflict. If you have no other votes scheduled, I need to go.

CHAIRMAN CASTRO: Well, we were going to have a vote on the D.C., Maine and Nevada SACs and then I was going to ask for support to make the immigration briefing a field briefing. But if you go off, do we break quorum?

ACTING STAFF DIRECTOR TOLHURST: Not if Dave and --

COMMISSIONER HERIOT: Do we still have Commissioner Kirsanow?

ACTING STAFF DIRECTOR TOLHURST: Are Pete and Dave still on?

CHAIRMAN CASTRO: Commissioner Kirsanow and Kladney, are you going to be on for the balance of the meeting?

COMMISSIONER KIRSANOW: I'm here.

COMMISSIONER KLADENEY: Yes.

COMMISSIONER GAZIANO: Yes, let's move fast through the agenda now that we have -- the good guys have a majority. No.
(Laughing)

CHAIRMAN CASTRO: Okay. Okay, Commissioner Yaki, we'll have quorum still, so please do take care of your family emergency. Thank you.

COMMISSIONER YAKI: Thank you.

CHAIRMAN CASTRO: So, Ms. Tolhurst.

ACTING STAFF DIRECTOR TOLHURST: So, we received most of the production, the remainder of the production is actually to arrive today. So I can't quite assess how complete it was until I look at that.

We -- I did have a talk with DOJ on the 6th where I asked them some followup questions, where I felt that their interrogatory responses had not given me what I needed to write the report.

They are collecting additional information in response to that meeting. So partly why, in addition to not knowing anything about it, but partly why I haven't been able to answer all these pressing personnel questions is that Dave and I have had a -- we have a deadline of today to get the first draft of the report out for legal sufficiency review and editorial review.

So today the report will be going out.
for those two reviews, and then we'll get it back. The next step will be affected agency review, and then once it's nice and clean and reviewed, it will go to commissioners for their review and another round of edits.

I want to note that there is a wrinkle, in terms of our timeline, and depending on how things go it will be something for you all to decide, but the Texas case has been a little delayed in the district court and the outcome of that case could significantly impact our analysis of the guidance and of the, of the law in this area.

So at present, it's possible we'll get a decision April, but we don't know. So we have some holes in the report that will have to --

COMMISSIONER GAZIANO: That would only be a decision of the three judge court anyway.

ACTING STAFF DIRECTOR TOLHURST: Well, but we don't want to -- I'd like the report to be as -- yes, as up to date as possible.

COMMISSIONER GAZIANO: I understand. I'm just saying that that wouldn't be the definitive word anyway given that they reversed, in January, 20.

ACTING STAFF DIRECTOR TOLHURST: Fair
enough.

COMMISSIONER GAZIANO: Whatever they come up with is -- may not be the final word.

ACTING STAFF DIRECTOR TOLHURST: Fair enough. I'm just alerting you that we have holes right now because we are not comfortable until we have -- that comes out.

So, the next -- this will go out as I say today, for those reviews. I don't know -- I am able to answer any questions you have, but that's I think the extent of my update.

CHAIRMAN CASTRO: Okay. Any questions, additional questions?

(No response)

CHAIRMAN CASTRO: All right. Now human trafficking briefing update.

VI. PROGRAM PLANNING UPDATE AND DISCUSSION

OF PROJECTS HUMAN TRAFFICKING

BRIEFING UPDATE

CHAIRMAN CASTRO: That would be -- who would give us that? Margaret?

ACTING STAFF DIRECTOR TOLHURST: I can, I can just tell you that.

CHAIRMAN CASTRO: Okay.

ACTING STAFF DIRECTOR TOLHURST: So,
Margaret Butler has been working on that and she has assembled a very, very good briefing. It's a three panel. That's going to be on April 13th. And if you have questions of her, she's here.

And also, we are receiving, you'll recall that project involved interrogatories, so we, Lenore has -- after Chris left, Chris was on charge of that. So Lenore has been working on, working with the agencies to get the interrogatories, which are just now starting to come in. But if you have questions about the briefing, Margaret can answer them.

CHAIRMAN CASTRO: And let me just say, I want to thank Margaret Butler for her overwhelming work on this. It's going to be a tremendous briefing. So thank you. Thanks, Lenore, for stepping in in Chris's shoes.

COMMISSIONER HERIOT: I just wanted to say how much I think it's a good idea for our briefings to routinely include interrogatories. I think we uncover useful information there.

And back on the voting rights one, you know, again, very useful and there was a time a few years ago, when we had some reports where we put in
our report, we asked the Department of Justice X --
I think this was the religious liberties report --
and they didn't respond or they told us that this
was something that they didn't have to respond to,
and that was a very embarrassing thing to have in a
report.

We should also pursue and get the
information that we need for our reports, you know.
Sometimes it requires you know, working extra hard,
but you know, this is valuable information and we
should never have a report that says gosh, we asked
this question, but they told us they didn't have to
answer.

CHAIRMAN CASTRO: Okay. Any other
questions on human trafficking?

(No response)

VI. PROGRAM PLANNING UPDATE AND
DISCUSSION OF PROJECTS

IMMIGRATION BRIEFING UPDATE

CHAIRMAN CASTRO: Lenore, did you want
to say something or would you like -- I'm sorry.
You need a mic. Sorry about that.

MS. OSTROWSKY: This is Lenore
Ostrowsky. I have talked to a great number of
people who are potential speakers and would very
much appreciate if the commissioners and special
assistants would forward to me any suggestions that
they have.

I can actually make a master list if you
like, and send it around to show you who I have
spoken to. Many of them have indicated an interest
in being speakers. Some of them have not.

But I think that you should see the
universe of people who are involved in this area.

COMMISSIONER GAZIANO: Well I know the
chairman wants to propose the field hearing. Do you
think -- I think it may be relevant to you trying to
secure witnesses if you tell them whether it's going
to be here in D.C. or in Alabama.

MS. OSTROWSKY: With the exception of
individuals who have been affected, and these are
people who most likely would not be documented,
would be undocumented, I think that would make
little difference.

But it would make a huge difference as
to people who have been directly affected, and I
think certainly with small business owners who don't
have the opportunity, or the -- they don't really
have the capacity to take time away from their
businesses and certainly for individuals who have
been affected, they might be most unwilling to travel.

CHAIRMAN CASTRO: Travel here?

MS. OSTROWSKY: To travel here because -

- 

COMMISSIONER HERIOT: They would prefer Alabama?

CHAIRMAN CASTRO: Yes.

MS. OSTROWSKY: Yes.

CHAIRMAN CASTRO: So, any questions?

(No response)

CHAIRMAN CASTRO: If not, what I would like to do is to have a discussion, since the original concept paper did say it was going to be a briefing in D.C., I wanted to seek the support of my fellow commissioners to convert this to a briefing in Alabama.

One, we do have some additional resources in terms of dollars due to the fact that some of the high-level positions have not been filled. I don't know the exact number but I estimate maybe there's $275,000 out there that could be utilized for different things.

The reason I think it's important for us to go out there is multiple. One is, as Lenore just
said, I think it would facilitate us hearing from
some of the affected parties who would find it
difficult to come here.

COMMISSIONER HERIOT: Where in Alabama
are we thinking of?

CHAIRMAN CASTRO: Well, I was thinking
Birmingham, given its historic role in the civil
rights movement, and as I think I mentioned, though
it might have been to Commissioner Gaziano and to
other commissioners in the past, in November I went
on my own, at my own expense, to a briefing that was
done by members of Congress in Birmingham on this
issue, and I saw their ability to really have some
of the local, both elected officials as well as
affected parties there, and Birmingham's historic
role in the civil rights movement, to me would seem
to be an appropriate venue for us to hold this.

I would think that we could very likely
find, I would hope, a federal facility or some other
government facility that would be large enough to
accommodate, so that we wouldn't have to go to the
expense of renting a facility, because as you know,
here we were talking about possibly doing it at the
FTC, due to our move, so I think we would still be
able to find a cost savings in that regard.
I also believe that, given that Alabama seems to be the focal point now of these various state laws, it would be really significant for us to go there, especially given our historic past, in the early days of the Commission especially, going down to the south on the issues, voting rights and discrimination, it has, I think, a symbolic value as well.

And since we do have some additional resources that we should utilize for mission purposes, I think this would be something. Now the cost of it, it's hard to estimate, but I had my special assistant look back to some past briefings. I think there was one in 1997 that cost about $30,000. Last year when I was kicking some ideas around I asked Ms. Tolhurst what a briefing might cost in the field and she estimated around 50.

I don't know the exact number. A lot of it will depend on how, you know, the site we find, firstly. But what I was thinking is that, you know, if we could agree that no more than $65,000, it'll probably be less, but just to have some idea of the number that's out there.

But I think significantly it would also put our Commission back out into the field, into the
community, and I think that's important for us to do as well, so I'm happy to answer any questions on that and I'd love to be able to actually put it in the form of a motion and get a second for further discussion.

COMMISSIONER GAZIANO: I'll second that.

CHAIRMAN CASTRO: Thank you Commissioner Gaziano. Any comments or questions or discussions on that?

COMMISSIONER GAZIANO: I do, but I'll yield to folks on the phone first since we get recognized first and then I'll get in line.

CHAIRMAN CASTRO: Okay, someone on the phone?

COMMISSIONER KLADNEY: Dave Kladney here.

CHAIRMAN CASTRO: Commissioner Kladney, proceed please.

COMMISSIONER KLADNEY: I'm -- I know we have some extra funds, but I am concerned about staffing at the agency, and I believe I've discussed with you Mr. Chairman my concern about filling more slots in the OGC and I think that would help us a lot going forward without a full-time staff director.
And I'm concerned about that. That issue has never been addressed to the Commission. I'd like to ask the acting staff director what the staffing requirements are, how much money it would run us the rest of the year, or something like that and whether that's valuable.

I think that our staffing problems have been discussed absolutely, totally today, over our three-hour meeting so far, and we have these problems and I think we should look at them before I can make up my mind on anything else.

ACTING STAFF DIRECTOR TOLHURST: If the question is whether the general counsel's office needs another attorney, the answer is yes, yes, yes, we could use three more attorneys, particularly if, as Commissioner Heriot was saying, people want to continue the trend of using interrogatories, we certainly need another attorney.

At the same time, this is sort of a one-time savings, so it -- we'll be looking at using the funds for maybe a year-long contract hire, because presumably we will have a staff director at some pont, and so we won't have those savings anymore with which to hire additional lawyers.

So yes, I would like to use the leftover
funds to hire someone to help here, but it wouldn't be a permanent hire. I would note in terms of discussion, when we are estimating the budget, we need to, if we have a field hearing, it would unfortunately be at the exact moment when the staff is in the middle of the move, so people like Pam, who would normally go to Alabama and set it up, would be unavailable.

So we would need to budget in some kind of hire of someone in Alabama who could help us with the physical setup.

CHAIRMAN CASTRO: Let me just say, you know, my estimate of 275, even if we were to say it's 65, that still leaves 210 on the table, plus my understanding of it is every month that goes by that we don't hire a staff director in OCRE is another $50,000 that's there. So you could hire a couple of contract lawyers temporarily with those dollars.

So, and I would be, and I had this conversation briefly with Commissioner Gaziano for different reasons, I would be amenable to, if the Commission would be as well, to move the briefing later so that it would not conflict with staff's responsibilities for moves, whether it means moving it off to July, possibly, so that we wouldn't have
to hire contract people on the ground. I'd be amenable to that. Commissioner Gaziano?

COMMISSIONER GAZIANO: Actually, that answers one of the questions I was going to ask anyway. I want to agree with both Commissioner Kladney and our chairman. I think the funding issues, we ought to take seriously, and I also agree that staffing is more important, proper staffing. But I don't see why we can't get the proper staffing and do a field hearing.

And what I want to explore is how we can make sure that we keep the costs low so that we meet every legitimate concern. You know, I'd be willing to vote to make, you know, a conditional move forward on the field hearing, you know. I see no reason why we can't get a free facility, some government somewhere --

CHAIRMAN CASTRO: I agree.

COMMISSIONER GAZIANO: Ought to be able to, whether it's a federal facility or a county facility or a city facility. I think that we ought to, although our staff is stretched then, insist that we not make the perfect be the enemy of the good, and you know, maybe if it would get more of a consensus, we could agree to go forward contingent
on certain funding issues and then get a report back on that figure.

Because I bet we could, if we really, we could have almost as great a hearing for $20,000 or $30,000 than we could for 65, without some --

Chairman Castro: You're absolutely right.

Commissioner Gaziano: without some of the bells and whistles.

Chairman Castro: Yes.

Commissioner Gaziano: On the -- by the way, on the estimate, are we talking about how much more than it costs to have one here, because of course it costs some money to fly witnesses --

Acting Staff Director Tolhurst: Yes, I have that if you want to know.

Commissioner Gaziano: Okay. Yes can you --

Acting Staff Director Tolhurst: The estimate for here is 14,000. The estimate for a field hearing is about 50,000.

Commissioner Heriot: How much of that is building rental?

Acting Staff Director Tolhurst: None.

Commissioner Gaziano: Okay, can you
give us --

ACTING STAFF DIRECTOR TOLHURST: It's the travel. It's the staff travel, commissioner travel, some commissioners are local so they are some added expense. So that could go down of course depending on the site that we would find, but --

COMMISSIONER GAZIANO: Could you send that estimate to us, because who knows, we may have some suggestions to reduce it. I mean, if -- we don't normally pay for witness travel, is that correct?

ACTING STAFF DIRECTOR TOLHURST: No, we do. We always do.

COMMISSIONER GAZIANO: Okay, well then there may be some savings for some of our --

ACTING STAFF DIRECTOR TOLHURST: I mean, if you want all of your assistants to go, we are paying for eight people, airfare, hotel, etcetera.

COMMISSIONER GAZIANO: We may, you know I'm up for -- they may not want to go. They may beg us to not make them. Otherwise, you know, I'd like to see if we could accommodate them.

But you know we should, we should consider not only -- by the way the other reason I'd like to support this, is because I think the
chairman made a good argument on the merits, that
this particular hearing may -- the tenor of it may be different.

I think there is a good argument on the merits for it. But I also want to defer to him on this one issue as well, and his judgement on it. But we ought to take into account not only you know, the cost of transferring witnesses, but if we are not going to get some here, that's a non-monetary cost that's somewhat high.

As for the month, let me get one thing - - I unfortunately misspoke about my availability on July. I'd like to participate. If it's moved to July 6th, which is a regular scheduled one, I may not be able to participate. My other argument besides moving it from June, was it might be better for the Supreme Court to have spoken on a related state issue, and they are not going to do that until the end of June. But if that argument is applicable, then early July probably isn't a lot better for the witnesses. There's hardly time for them to incorporate that -- you know, their written testimony would be due at the same time if it were July.

So I'm willing to go forward in June.
If it's July, I don't know if it would make sense to move the hearing date just because of me, but I might not be able to make the 6th and that is the holiday weekend. I don't know if August is, is too far into the future. But I want to support the general notion of doing this as a field hearing and just -- would you be able to send that cost estimate to us?

ACTING STAFF DIRECTOR TOLHURST: Sure.

Yes.

CHAIRMAN CASTRO: Commissioner Heriot.

COMMISSIONER HERIOT: I was just looking at the internet. There are far more federal buildings in Alabama than I ever dreamed that there could be, and it seems to me that the chairman's notion that this should be in Birmingham makes perfect sense. It is the largest city.

I checked that. I didn't know that when you said it.

CHAIRMAN CASTRO: I didn't know that either.

COMMISSIONER HERIOT: But it is larger than Montgomery. But if it turns out that a free or low-cost federal room in Birmingham is not possible, there's also Mobile or Montgomery, and if we do
this in July and August, the hotels have got to be really cheap because nobody in their right mind wants to be in Alabama.

CHAIRMAN CASTRO: Bring your linen suits and straw hats. So just in terms of planning this, because we are, you know, we are going to want to make sure we start contacting witnesses etcetera, might I then -- might I suggest that, I mean, July -- June still becomes a problem given that Ms. Tolhurst indicated that staff will be focused on the move. I'd like to be able to see if we could resolve this today so that we can go and start locking witnesses in and things of that nature.

Would it be amenable to folks to say that we would move it to -- instead of 60,000, we'd say 50, that's the estimate you gave us, with the view that we'd try to come in less than that. And then I'd be willing to move it to August because I'd love to have Commissioner Gaziano's participation and I think keeping it in June would increase the cost, and doing that would give us the time to be able to move forward.

COMMISSIONER GAZIANO: Another day in July would be fine with me, but that may be harder.

CHAIRMAN CASTRO: Right, and since
commissioners are not here and I know that July date was really hard to arrive at, I don't want to change July dates. So I'd rather, in the interests of you know, coming to some conclusion on this, push it to August and reduce what I estimate the budget is based on what Ms. Tolhurst has indicated here in her estimate.

Commissioner Heriot, you were going to say something?

COMMISSIONER HERIOT: Oh, I was just going to say that if we move the July date around, I need to know as soon as possible, because I have got something that I am trying to plan.

CHAIRMAN CASTRO: Yes, I don't want to do that.

COMMISSIONER HERIOT: Okay.

CHAIRMAN CASTRO: It would make it too difficult. So --

COMMISSIONER KLADNEY: Commissioner Kladney here.

CHAIRMAN CASTRO: Yes commissioner.

COMMISSIONER KLADNEY: I'm more than willing to go along with the group here, but I do also want us to authorize that one contract lawyer in OGC at the same time. If we have to spend these
funds, we might as well get them out now.

CHAIRMAN CASTRO: Okay. Do we have an estimate on the cost of a contract -- well let's deal with them separately, but I'm not against that. I think we need to discuss that. But I appreciate that thought. Commissioner Kirsanow, do you have anything to add?

COMMISSIONER KIRSANOW: I concur with Commissioner Kladney's statement. I am concerned about the cost. I would like to defer to the chairman in terms of his prerogatives in having the field hearing, but it is a significant concern with respect to the cost and the staffing that we have.

We are really operating on fumes. I know that Ms. Tolhurst has been working like crazy, and others within the Commission, to just try to keep us afloat, so I would really want to make sure that, in terms of husbanding resources, that we absolutely make a clear commitment to getting a contract lawyer or somebody in the GC's office.

CHAIRMAN CASTRO: Absolutely. So what I'll do then is I'll call the question on the motion to move the immigration hearing to a field briefing in Birmingham, Alabama, and that it be in August.

COMMISSIONER GAZIANO: August 17 is the
COMMISSIONER HERIOT: Can't we say Birmingham or another Alabama city?

CHAIRMAN CASTRO: Yes, we can say that.

COMMISSIONER HERIOT: Just so that we don't have to have another motion.

CHAIRMAN CASTRO: Right, okay. The friendly amendment is accepted.

COMMISSIONER HERIOT: Okay.

CHAIRMAN CASTRO: So I'm going to call the question. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Hold on a second, I'm being asked -- oh did I say hearing? Oh it has to be a hearing? Or briefing? Can it be either?

It's a briefing. I think we had it set up as a briefing. So if I said hearing I meant briefing.

COMMISSIONER HERIOT: Can we call it hearing and/or briefing, just in case you want to do it as a hearing?

CHAIRMAN CASTRO: That's fine with me.

COMMISSIONER HERIOT: I think of fact witnesses as basically being for a hearing.

CHAIRMAN CASTRO: Okay.
COMMISSIONER HERIOT: And we are going
to have some fact witnesses, aren't we?

CHAIRMAN CASTRO: Okay, that's --

ACTING STAFF DIRECTOR TOLHURST: It
depends how you want it structured. If you have a
hearing, it's led by the general counsel's office
and then commissioner questions come after.

CHAIRMAN CASTRO: Yes.

ACTING STAFF DIRECTOR TOLHURST: It's
more formal.

CHAIRMAN CASTRO: I think we'll have it
as a briefing.

ACTING STAFF DIRECTOR TOLHURST: I think
you guys want a briefing.

COMMISSIONER HERIOT: Is it okay to have
a briefing where the witnesses are fact witnesses?

CHAIRMAN CASTRO: We have had that,
haven't we?

ACTING STAFF DIRECTOR TOLHURST: It
depends what you -- by fact witness, I mean, it's
not litigation. At a hearing, they are sworn in
with a more official oath and -- is that what you're
--

COMMISSIONER HERIOT: I'm just concerned
about whether it's appropriate to have somebody who
is testifying here with my experience as an individual, as opposed to something else.

COMMISSIONER GAZIANO: Why don we just keep it open? We have had hearings by the way where commissioners lead the questions and --

COMMISSIONER HERIOT: Yes, we're not --

ACTING STAFF DIRECTOR TOLHURST: Under our regulations, the general counsel leads hearings.

COMMISSIONER GAZIANO: Well, you may be in charge, but we have remembered some where commissioners led -- anyway. Maybe not. Maybe I'm wrong.

CHAIRMAN CASTRO: And if it turns out to revisit it, we'll have time between now and August to convert it to a hearing.

So it's -- the vote is on a briefing in Birmingham or another Alabama city, and a budget no more than $50,000, and so I'll start the voting again now that we are clear on the motion.

Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: I'll pass for now.

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

COMMISSIONER HERIOT: Given that I think
this is the sort of thing that the chairman should have some prerogative on, I vote yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: I vote yes, but I hope that we can in future meetings try to get the cost down even less.

CHAIRMAN CASTRO: Absolutely. Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: I abstain.

CHAIRMAN CASTRO: Okay, and I'll vote yes. So the motion passes. Now, Commissioner Kladney had mentioned the desire to hire a contract lawyer for OGC. Is that something that requires a motion by us, or do we --

ACTING STAFF DIRECTOR TOLHURST: No.

CHAIRMAN CASTRO: procedurally? Okay.

ACTING STAFF DIRECTOR TOLHURST: As long as I'm the staff director, I can just do that.

CHAIRMAN CASTRO: Okay. So the consensus of our Commission is that we think it should be done as well, okay?
COMMISSIONER GAZIANO: For the record, I think it should be done. Yes. And I would suggest, is it -- this is a question I posed the acting staff director -- I would suggest unless you can -- it may be within your discretion, but I'd like to -- that it be within the office of the staff director.

I understand your, your arguments or your reasoning made sense to shift what was essentially Mr. Byrnes' job into the general counsel's office, but if we are going to hire another contract officer, and we may have some other acting person, does it make sense to keep that person in the staff director's office?

ACTING STAFF DIRECTOR TOLHURST: Not to me. I hoped for them to be in the general counsel's office.

COMMISSIONER GAZIANO: Who is going to be the -- what will your role be when you step down? Who will run the general counsel's office?

ACTING STAFF DIRECTOR TOLHURST: I will, but not as general counsel. I'll be senior attorney adviser.

COMMISSIONER GAZIANO: Okay.

COMMISSIONER HERIOT: As what?

ACTING STAFF DIRECTOR TOLHURST: Senior
attorney adviser, my normal job.

COMMISSIONER HERIOT: Okay. You won't be acting general counselor?

ACTING STAFF DIRECTOR TOLHURST: I could be. It would have to be reposted. I've already served that post for 120 days so it's silliness, but yes, I could. I could be.

COMMISSIONER GAZIANO: I see advantages and disadvantages of both. I --

ACTING STAFF DIRECTOR TOLHURST: Historically the staff director's office did not have attorneys. It has one now, Lenore. It used to have political slots so that the new staff director could bring in their own adviser from their own party, and maybe that's what we should get back to. But that would require us to have a staff -- a politically-appointed staff director. So==

In terms of report writing and that kind of thing, to have a lawyer outside of the general counsel's office, makes less sense to me.

COMMISSIONER GAZIANO: Well, I just wondered if that person would be able to do double duty in helping whoever the new acting staff director is on reviewing SACs, and then --

ACTING STAFF DIRECTOR TOLHURST: The new
acting staff director would have the authority to
detail anyone as they saw fit, so --

COMMISSIONER GAZIANO: Oh, detail
someone from the -- from -- so this contract
attorney, too?

ACTING STAFF DIRECTOR TOLHURST: Sure.

COMMISSIONER GAZIANO: Contracting
attorney could be -- maybe that answers my question.
I just wanted to raise it with you and the other
commissioners, if they want to -- if they had a
thought on it.

CHAIRMAN CASTRO: Okay. All right. So
we 'll move on to the next item. It's discussion of
the 2013 statutory report selection process.

VI. PROGRAM PLANNING UPDATE AND
DISCUSSION OF PROJECTS
DISCUSSION ON 2013 STATUTORY
REPORT SELECTION PROCESS

CHAIRMAN CASTRO: Ms. Tolhurst had
indicated to me that we should vote on the statutory
report topic during the April business meeting. As
a result, if we did that, we'd need to submit
concept papers to her by 6 p.m. on Friday, March
23rd. She would then disseminate concept papers by
Monday, March 26th, and we would vote on them at our
April meeting. We would need to decide whether we are going to do an April 13th meeting since we have got a pretty full trafficking briefing, or if we would try to maybe do that meeting the day before on April 12th. We'll get to that in a second.

However I do know and understand that there's been a concern raised by the conservative caucus that maybe that date of April -- considering the report topic, April might be too aggressive. So I want to have a discussion about, about when we would consider our 2013 topics. Am I right in that sentiment or --

COMMISSIONER GAZIANO: Yes. Yes. I just wondered whether -- we are not going to be ready to vote for 2013 topics next month.

CHAIRMAN CASTRO: Did we lose a commissioner? Commissioner Kladney are you there?

COMMISSIONER KLASTNEY: Yes I am.

CHAIRMAN CASTRO: Commissioner Kirsanow are you t here?

(No response)

CHAIRMAN CASTRO: Oh-oh, we might have just lost our quorum.

COMMISSIONER HERIOT: That doesn't mean we can't talk about stuff. We just can't --
CHAIRMAN CASTRO: Can't vote on it.

COMMISSIONER GAZIANO: No, we can't vote.

CHAIRMAN CASTRO: I know we can't vote on it, yes. Can someone try and find out what happened to Commissioner Kirsanow?

COMMISSIONER HERIOT: Do we need to vote on anything?

CHAIRMAN CASTRO: We still have Maine, Nevada and D.C. SACs to vote on. We don't need to -- and we're going to vote on this, I would imagine, as well. So -- we can discuss this --

COMMISSIONER HERIOT: Vote on whether to vote?

COMMISSIONER GAZIANO: Vote on whether we are going to be voting on the 2013 enforcement report next month. Given all else that we are -- we are going to be in further -- among other things we are going to be in further discussions about how to staff the agency, acting -- and we have got a number of other things. When is the report -- the current enforcement report draft going to be sent to commissioners?

ACTING STAFF DIRECTOR TOLHURST: To commissioners? May, early May.
COMMISSIONER GAZIANO: I have also thought it odd that agency -- if I could make a motion now, which I can't, since we might not have five commissioners, that we get it at the same time affected agency gets it, but that aside, I think the last time we did this, of course, I think it benefits from a couple of in-person discussions.

We are going to be living with this topic, as everyone knows, for, you know, 15 to 18 months, and it would be nice if we could pick the right topic, refine it, reach close to consensus if not consensus, and I don't think we are going to be ready to do that in April.

COMMISSIONER HERIOT: I'd be shocked if we were ready to do that in April. I think we want to bring this topic up a few times before we commit to what we are going to be studying.

CHAIRMAN CASTRO: Ms. Tolhurst, what's the latest we could do this in terms of the timeline, if you work backwards?

ACTING STAFF DIRECTOR TOLHURST: Well --

CHAIRMAN CASTRO: I know this would be earlier than I think we did it this year, but that doesn't mean it's ideal. But what's, you know, what's our -- what are our options?
ACTING STAFF DIRECTOR TOLHURST: I don't want to talk about the latest because the latest would be what happened on the bullying report.

CHAIRMAN CASTRO: Okay, well what are our viable options then, let me put it way?

ACTING STAFF DIRECTOR TOLHURST: Let me get my calendar out. The problem that happens every year, and even this year it's happening, is because of all the reviews that are required and the steps that are required, by the time the topic is selected, we have to give the agencies or whomever we are serving discovery on, a really tight deadline, because of when our first draft is due, and then you know, they want extensions and we are not in a position to give them. And so, I'd rather have more time, where people legitimately need extensions to get more data. I think we also benefit from more information.

So I'm trying to avoid that by having the topic selected sooner. Let's see. Could you do it by May?

COMMISSIONER HERIOT: The final selection?

ACTING STAFF DIRECTOR TOLHURST: Yes, I mean, this past year you did it July.
CHAIRMAN CASTRO: Did we do it in July?

It looks like we’ve got some time in June now, too.

COMMISSIONER HERIOT: Yes, why don't we do -- why don't we come up with -- discuss it at April, May and June, decide in June.

CHAIRMAN CASTRO: Commissioner Kirsanow, are you back on the line?

COMMISSIONER KIRSANOW: I am.

CHAIRMAN CASTRO: Okay, we have quorum again. Commissioner Kladney, you're still there?

COMMISSIONER KIRSANOW: Yes. I'm in

CHAIRMAN CASTRO: All right. So what did we say here?

COMMISSIONER HERIOT: What if we make the decision in June, but we have it on the agenda for April and May, so we arrive at a real -- as much of a consensus as we'll get, with as much information as we'll get.

And I think the decision on what topic to pick requires a fair amount of time.

CHAIRMAN CASTRO: Why don't we say that we would have an initial discussion at the may meeting, because April is going to be crowded already between the briefing and trying to decide how to handle the SAC --
COMMISSIONER HERIOT: Yes, what's important to me, is we have more than one discussion.

CHAIRMAN CASTRO: Yes, so maybe what we could do is have initial papers distributed for the May meeting and have an initial discussion with a vote to occur in June? That would give you enough time to flesh things out?

COMMISSIONER GAZIANO: Could we, could we possibly have, I mean, start even earlier, with something, maybe have blurbs or something proposed and a, you know, one of our, I don't know at what point we'll have our test -- what do we call it -- test -- lack of sleep, I can't even think straight today.

COMMISSIONER HERIOT: I don't know what you're --

COMMISSIONER GAZIANO: Our little --

COMMISSIONER HERIOT: Concept papers?

COMMISSIONER GAZIANO: No. A tentative vote before even May, before the concept papers are drafted.

COMMISSIONER HERIOT: The rankings.

CHAIRMAN CASTRO: Oh, you can't do that without a concept paper though. You've got to rank
something. I think you've got to rank the concept
paper, so we need to come up with a date by which we
would submit concept papers.

COMMISSIONER HERIOT: But we don't want
to do concept papers for every possible proposal.
We want to have blurbs first, because it's a lot of
work to come up with, you know, a dozen concept
papers, and there may not be any interest in some of
them.

CHAIRMAN CASTRO: Well, I don't know
that -- at least as long as I've been here, it's
only been a year, we haven't done it that way.
We've been through two statutory report processes,
selection processes, and we've never started with a
blurb. We have actually done concept papers.

COMMISSIONER HERIOT: We've done blurbs
in the past haven't we?

COMMISSIONER GAZIANO: We've done blurbs
at some point, but I'm just, just maybe asking you
to think about whether that wouldn't be helpful, to
have blurbs. We see where people are and then you
know, if there's an interest in six concept papers
being written, they could be written before the May
meeting maybe, and we could discuss them at both the
May and the June meeting.
CHAIRMAN CASTRO: What do other folks think? Did someone fall off the phone?

COMMISSIONER YAKI: Commissioner Yaki just joined back in for a little bit.

CHAIRMAN CASTRO: Okay. So we are talking about 2013 concept papers and whether we are going to provide blurbs in advance of concept papers and whether we are going to consider those at the May and June meetings.

Any thoughts from the commissioners on the phone on this?

COMMISSIONER YAKI: Blurbs?

CHAIRMAN CASTRO: Yes.

COMMISSIONER YAKI: What the heck are blurbs?

COMMISSIONER HERIOT: Five or six sentence description of the project so somebody doesn't have to go to all the trouble of doing a four or five page document if nobody is interested in it, like we did when, I guess it was when Ken Marcus, maybe it was with --

COMMISSIONER GAZIANO: Marty Dannenfelser.

COMMISSIONER HERIOT: Marty Dannenfelser, doing just little, you know, a few
sentences to identify the topic.

COMMISSIONER YAKI: Isn't a concept paper essentially a blurb?

COMMISSIONER HERIOT: No, it's like four, five pages long. If we are going to do 15 of those, that's -- and some of the topics nobody has any interest in, there's no point in it.

COMMISSIONER YAKI: You mean essentially an executive summary?

COMMISSIONER HERIOT: If that's what you want to call it, sure.

COMMISSIONER YAKI: A one paragraph.

COMMISSIONER HERIOT: Right.

CHAIRMAN CASTRO: So, so why don't we do those executive summary/blurbs by the April --

COMMISSIONER YAKI: I don't know if the word blurb is in the Federal Register. We should check on that.

CHAIRMAN CASTRO: Yes. Okay. So these summaries, these one-paragraph summaries, let me just suggest here, I'm thinking out loud, we can have those submitted for the April meeting, you know, for -- we'd want those discussed at April?

Again, it's -- we're going to have a lot on the April meeting agenda, already.
COMMISSIONER YAKI: April seems pretty loaded.

CHAIRMAN CASTRO: Yes, so maybe we do that --

COMMISSIONER GAZIANO: But if we could at least, at least have it done before May, and a vote before May, so that we come into the May meeting knowing what the vote is and then we can talk about it.

CHAIRMAN CASTRO: So we can rank, we could distribute the summaries prior to the May meeting, some time -- we could have them due some time in April. At the May meeting we could rank the summaries.

COMMISSIONER GAZIANO: Or we could have the ranking done --

CHAIRMAN CASTRO: In advance of but they would be discussed at the meeting.

COMMISSIONER GAZIANO: And they'd be discussed.

CHAIRMAN CASTRO: And then based on that folks could -- based on the pared-down ideas, folks could submit prior to the June meeting, a concept paper which would be voted on at the June meeting. Okay?
COMMISSIONER GAZIANO: That sounds workable.

CHAIRMAN CASTRO: So we'd need to set some specific dates in advance. Shall we do that now or shall we just say this is the structure and then have our office of the staff director send us the dates by which we need to submit these in advance of the two meetings, to give --

COMMISSIONER YAKI: Mr. Chairman.

CHAIRMAN CASTRO: Yes, Commissioner Yaki.

COMMISSIONER YAKI: I am not entirely comfortable with the idea that if we vote on executive summaries to pare it down to concept papers. I think that a lot of these things tend to be an organic process and sometimes a topic in a concept -- in an executive summary but maybe not the direction, and sometimes there's a very organic process that goes on to get you from A to B, you know, and I'm a little worried if you are short-circuiting that process by going from A to B and then Q to B, we're doing ourselves a disservice in terms of what could be out there.

CHAIRMAN CASTRO: Okay, I'm going to ask --
COMMISSIONER YAKI: And that's my concern.

CHAIRMAN CASTRO: Okay, Commissioner Heriot has got her hand up and then I'm going to ask you to come back and give me a suggestion then. Commissioner Heriot?

COMMISSIONER HERIOT: I think that we would want a process that wouldn't prohibit somebody from going to the trouble of doing a four or five page concept paper if they wanted to, even if nobody expressed interest in it.

You wouldn't have to, to only do those topics that seem to be getting a lot of support. It's just that I don't want to go to the trouble of writing up a longer document if there's no interest in the topics that I propose. So I am just looking to go from blurb to concept paper, you know, in a way that I think would fit into what Commissioner Yaki is calling an organic process. Anybody could submit a longer proposal. It's just it will be good to have some sense --

CHAIRMAN CASTRO: So you're saying that even if your summary didn't get support, you could still submit a concept paper in June --.

COMMISSIONER HERIOT: Yes. Right.
CHAIRMAN CASTRO: for consideration.

Commissioner Gaziano?

COMMISSIONER GAZIANO: I called it blurb originally, but in deference to Commissioner Yaki, I'm trying to find common ground on one issue today. I entirely agree with Commissioner Heriot's idea on that, that you could write a concept paper initially instead of an executive summary, if you want to get -- you could write a concept paper on something that gets no votes but your own.

But that it would be helpful to me to know whether there was support for certain executive summaries that I might propose, so again, and I -- this is a helpful understanding for the motion that you have made.

CHAIRMAN CASTRO: Commissioner Yaki, did you have something else you wanted to add? I'm sorry.

COMMISSIONER YAKI: No. As long as we reserve the right to disregard the fact that the academy didn't vote for our proposal and submit it to the membership, other than that I'm fine.

CHAIRMAN CASTRO: Okay, I think we're clear on that then. So all in favor of that, actually, I probably need to do individual votes,
right? So Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: 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: And I vote yes, so it passes. The next question is do we want to have the business meeting in April the morning of the -- the morning before the briefing on human trafficking or do folks want to try to come in the day before Thursday. Commissioner Heriot.

COMMISSIONER HERIOT: My teaching schedule is such that that would require me to take the red-eye, and I love taking the red-eye.

CHAIRMAN CASTRO: Okay. I'm sorry, is there a question?
ACTING STAFF DIRECTOR TOLHURST: It might have to be -- if you did it the same day, it might have to be the afternoon, because people have already been invited for a briefing that starts at 9:30.

CHAIRMAN CASTRO: Okay. So it would be the afternoon. Oh, I'm sorry.

COMMISSIONER GAZIANO: How many -- I saw the witness list. How many panels?

ACTING STAFF DIRECTOR TOLHURST: Three panels. Three panels of four each.

COMMISSIONER GAZIANO: Is it any -- does it have to be three panels? It seems to me it might go a little quicker if you could divide them into two panels.

CHAIRMAN CASTRO: I'd rather that we keep the structure. As you know, I'm pretty good about trying to get these briefings started on time and end on time, so I got a good track record on that and, you know, we may have to stay a little longer to do a business meeting but I think we --

COMMISSIONER HERIOT: I can't miss my plane so --

CHAIRMAN CASTRO: What time's your plane?
COMMISSIONER HERIOT: It's different every time. It's you know, whatever the last plane to San Diego is. It's usually about 5:15. But it's also out of Dulles. I'm happy to start early.

COMMISSIONER GAZIANO: I don't know if the briefing can be moved to nine?

CHAIRMAN CASTRO: What time is it scheduled right now? It's scheduled to start at 9:30 and what time is it scheduled to end?

ACTING STAFF DIRECTOR TOLHURST: It's not a scheduled end. It's just, you know, each panelist will get seven minutes, they, you know, it's -- I --

CHAIRMAN CASTRO: So it's not going to take eight hours.

ACTING STAFF DIRECTOR TOLHURST: No.

CHAIRMAN CASTRO: It's going to take five hours. It will -- we should be able to accomplish that.

COMMISSIONER HERIOT: If we start at like 8:30, that would make it easier.

CHAIRMAN CASTRO: Start the briefing at 8:30?

COMMISSIONER HERIOT: Yes, start the
briefing at 8:30.

CHAIRMAN CASTRO: Yes, I don't know if
that -- how that would affect the people who already
agreed, the speakers.

COMMISSIONER HERIOT: With that many
speakers, it may be possible to pick the ones that
can start at 8:30.

CHAIRMAN CASTRO: Well, so why don't we
do this? Why don't we say that we'd like to have
the business meeting after the briefing. We'll
investigate, we'll have staff, acting staff director
with Ms. Butler, how we might be able to adjust the
start time of the briefing. If not, then we'll get
a solid feel for the schedule of what these
witnesses, the numbers of the witnesses are and when
we'll get this done, and if we have to come back
we'll let folks know if there's going to be a
problem with that.

COMMISSIONER GAZIANO: And at least
consider the two versus the three a little bit more.
I'm not usually of the view that government
witnesses always have to have their own panel, but
at least the, I suppose concept in some cases is
it's their work that's going to be investigated. I
don't think there's the same level of adversity, or
potential adversity. That's not the right word, but we are not really going to be overseeing their effectiveness in the same way as I think we are in other situations.

So if it's possible to merge the panels --

ACTING STAFF DIRECTOR TOLHURST: I think the way that they are now it would roughly last four and a half hours. So --

COMMISSIONER GAZIANO: Four and a half hours is --

ACTING STAFF DIRECTOR TOLHURST: 9:30.

COMMISSIONER GAZIANO: long. If there's a way you can make it into --

ACTING STAFF DIRECTOR TOLHURST: It's really not long. I don't think it's long.

COMMISSIONER GAZIANO: Two panels. If --

CHAIRMAN CASTRO: If we would be done by 1:30, that would still give us --

COMMISSIONER HERIOT: Then we have to eat something. Then we'd have to herd the cats back in the room. I think we're a lot better off if we can start an hour earlier.

CHAIRMAN CASTRO: Let's see what we can
do in terms of adjusting the start time and the plan right now will be that we will have a business meeting after the trafficking briefing, and we will endeavor to do what we can to make it as expeditious as possible to get through that and --

COMMISSIONER HERIOT: Remember, if I'm going to catch a 5 o'clock plane that means I'm leaving at 3.

CHAIRMAN CASTRO: I understand. Okay. All right. Do we need a vote on this? No, okay. If there's nothing else on that, then we have, let's see, just three more things: voting on the re-chartering of the D.C. and Maine and Nevada SACs.

V. STATE ADVISORY COMMITTEE ISSUES:

RE-CHARTERING THE D.C., MAINE AND NEVADA SACs

So let me find the lists here. Okay. I move that the Commission re-charter the District of Columbia State Advisory Committee.

Under this motion the Commission appoints the following individuals to that committee, based upon the recommendations of our staff director: Sonia Gutierrez, Clyde J. Hart, Chester W. Hartman, Vernon D. Ingram II, Daniel P. Lips, Charles R. Lowery, Alan K. Palmer, Laurence D. Pearl, Edwin G. Peterman, James J. Sandman, Gregory
D. Squires, Winona M. Lake Scott, J. Steven Wagner.

Pursuant to this motion, the Commission appoints Mr. Laurence D. Pearl as chair of the re-chartered District of Columbia State Advisory Committee.

These members will serve as uncompensated government employees. Under this motion the Commission authorizes the staff director to execute the appropriate paperwork for the appointment.

Is there a second?

COMMISSIONER KLADNEY: Second.

CHAIRMAN CASTRO: Is there any discussion?

COMMISSIONER KLADNEY: On to the question.

CHAIRMAN CASTRO: Question is called. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I pass.

CHAIRMAN CASTRO: Pass. Commissioner Gaziano how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote? Commissioner Kirsanow are you there?
COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: You vote yes?

COMMISSIONER KIRSANOW: Yes.

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

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: And I vote yes, and so is your pass an abstention, Commissioner or --

COMMISSIONER HERIOT: No, I'm just trying to finish reading this. Yes.

CHAIRMAN CASTRO: She votes yes so the motion passes. We are one, two, three, four, five, six, unanimous vote.

We move now on to the Maine SAC. I move that the Maine advisory committee -- the following individuals be approved to the Maine advisory committee based upon the recommendation of our staff director: Christina Baker, Jennifer Bailey, Maurice Gilbert, John Hanson, Akiva Herzfeld, Paul Robinson, John Rogers, Carl Toney, Eda Trejo.

These members will serve as uncompensated government employees. Under this
motion the Commission authorizes the staff director
to execute the appropriate paperwork for the
appointment.

Is there a second?

COMMISSIONER KLADEY: Second.

CHAIRMAN CASTRO: Any discussion?

COMMISSIONER KLADEY: On to the
question.

CHAIRMAN CASTRO: Commissioner Gaziano
is about to say something.

COMMISSIONER GAZIANO: I'm going to
oppose this SAC as one of the most ideologically
imbalanced that we have received in my tenure. They
were somehow able to keep or not keep two
conservatives on the SAC. I know there were some
other issues, but the SAC is far from what the
balance of the AI calls for.

CHAIRMAN CASTRO: Any other questions or
comments? I'm sorry, Commissioner Heriot?

COMMISSIONER HERIOT: I'm still
concerned about why we are in this position in the
first place, you know, what's happened here that we
have as many resignations as we have had, you know,
what exactly is going on?

And you know, my understanding is that
the replacements are much further ideologically to
the left than the people that they replaced. So
what has happened here that has made this necessary?

ACTING STAFF DIRECTOR TOLHURST: Barbara
might be able to, or Ivy, but I understand there
were just several dissatisfied people. There were
people that moved. And we ended up going down to
six, and I would note that the SAC as it sits with
the new members would be six Republicans, six
Democrats and three Independents, which doesn't
strike me as ideologically radical.

COMMISSIONER HERIOT: People's party
affiliations are not always indicative of --

ACTING STAFF DIRECTOR TOLHURST:
Sometimes they are.

CHAIRMAN CASTRO: Ms. Davis did you have
something you wanted to add?

MS. DAVIS: Well, as you all discussed
earlier, there were various reasons why members left
-- five left the committee. Two of them had
commitment issues. One a baby, the other had an ill
mother. Two other committee members left because
they weren't really happy with the leadership of the
chair and it came to a head when he sent an email
which he, I think, in his view, thought was a way of
rallying the troops to go onward and work, but those particular individuals took issue with it and decided to resign. And then one committee member moved away, was no longer residing in the state.

CHAIRMAN CASTRO: Okay. Any other questions? Commissioner Gaziano.

COMMISSIONER GAZIANO: You know, I wouldn't raise it if we can defeat this SAC but I have concern about the qualifications of one of the SAC members, one of the new SAC members as well. But again, I have discussed with staff, yes, party affiliation is relevant. It's one of the things. But it's not something that our AIs say overrides ideological balance.

I have been very somewhat amused at the liberal Republicans that have been on these slates, in sometimes very conservative states. I'm not going to try to characterize Maine.

But in Maine, we have two -- I think there are -- as far as I can tell, two individuals on this slate with conservative views. There are 10 with decidedly liberal views. There are some others that I can't tell one way or the other. There are Independents and some Independents, like me, are really independent and some Independents are not.
So I really urge our staff to go beyond
the party labels, which are easy. It takes work but
I think that's what our AIs require.

CHAIRMAN CASTRO: Okay. Any other
comments?

(No response)

CHAIRMAN CASTRO: If not, I'll call the
question. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Pass.

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 Kladney
how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: I vote yes. We have
one, two three yeses, two nos, and a pass,
Commissioner Heriot.

COMMISSIONER HERIOT: I guess I vote no.
CHAIRMAN CASTRO: So we have three yeses and nos. I guess it doesn't pass.

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: Okay. We now move on to the Nevada State Advisory Committee. I move that the Commission re-charter the Nevada State Advisory Committee. Under this motion the Commission appoints the following individuals to that committee, based upon the recommendation of our staff director: Bob Beers, Wendell C. Blaylock, David S. Fott, Belen P. Gabato, Kay P. Kindred, Peggy Micco Koning, Theresa E. Navarro, Michael D. Pennington, Dennis A. Perea, Matthew D. Saltzman, Angela D. Taylor and Michael V. Zieba.

Pursuant to this motion, the Commission appoints Michael D. Pennington as chair of the re-chartered Nevada State Advisory Committee.

These members will serve as uncompensated government employees. Under this motion the Commission authorizes the staff director to execute the appropriate paperwork for the appointment.

Is there a second?

COMMISSIONER GAZIANO: I second.

CHAIRMAN CASTRO: Okay. We have got a
seconded motion. Any discussion?

(No response)

CHAIRMAN CASTRO: Hearing none, I'll call the question. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Pass.

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

COMMISSIONER Kladney: Yes.

CHAIRMAN CASTRO: I vote yes, Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Okay. It passes with one, two, three, four, five, six, six affirmative votes, unanimously. At this point in the meeting I would like to move to adjourn. I hope I have a
second.

COMMISSIONER GAZIANO:  Second.

CHAIRMAN CASTRO:  All those in favor?

(Chorus of ayes)

CHAIRMAN CASTRO:  The meeting is adjourned at 1:19 eastern time.

(Whereupon, the above-entitled matter went off the record at 1:19 p.m.)