U.S. COMMISSION ON CIVIL RIGHTS

MEETING

FRIDAY, JUNE 8, 2012

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

PRESENT:

MARTIN R. CASTRO, Chairman
ABIGAIL THERNSTROM, Vice Chair
ROBERTA ACHTENBERG, Commissioner (via telephone)
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
DAVID KLADENEY, Commissioner
MICHAEL YAKI, Commissioner
FRANCES GARCIA, Inspector General
LOUISE DiBENEDETTO, Assistant Director,
Office of the Inspector General
STAFF PRESENT:
MARGARET BUTLER, Acting Chief, OCRE
PAMELA DUNSTON, Chief, ASCD
LATRICE FOSHEE
ALFREDA GREENE
JENNIFER CRON HEPLER
TINALOUISE MARTIN, Director, OM
PETER MINARIK, Director, RPCU
TORRENCE MONTGOMERY
LENORE OSTROWSKY, Acting Chief, PAU
MICHELLE RAMEY
JOHN RATCLIFFE, Chief, Budget and Finance
EILEEN RUDERT
KIMBERLY TOLHURST, Senior Attorney, OGC
VANESSA WILLIAMSON

COMMISSIONER ASSISTANTS PRESENT:
NICHOLAS COLTON
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
RICHARD SCHMECHEL
MARLENE SALLO
ALISON SOMIN
A-G-E-N-D-A

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9:40 a.m.

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

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

COURT REPORTER: Yes, Mr. Chairman.

CHAIRMAN CASTRO: Thank you.

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

CHAIRMAN CASTRO: Yes, she is. Commissioner Achtenberg, do you want to acknowledge your participation on the phone?
COMMISSIONER ACHTENBERG: I'm here.

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

VICE CHAIR THERNSTROM: Lucky you.

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

I. Approval of Agenda

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

COMMISSIONER KLADNEY: Second.

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

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

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

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

COMMISSIONER KLANDNEY: Are they really? Today?

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

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

COMMISSIONER GAZIANO: Oh, I see. Okay.

CHAIRMAN CASTRO: Yes, and my thought is that today when we do get to the statutory enforcement report topics that that's what we're going to work on today and hopefully come away with one of those that would be the one that receives majority support. And if not I don't anticipate today picking additional briefing topics for 2013.
I know we still have some briefing topics that we've chosen a few meetings ago that we still need to determine where they're going to go on our calendar, and so I don't want to --

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

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

COMMISSIONER GAZIANO: Yes, should we --

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

COMMISSIONER HERIOT: Just to amend?

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

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

CHAIRMAN CASTRO: Okay, great. Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Madam Vice Chair?

VICE CHAIR THERNSTROM: Yes.
CHAIRMAN CASTRO: Commissioner Achtenberg?
COMMISSIONER ACHTENBERG: Yes.
CHAIRMAN CASTRO: Commissioner Kladney?
COMMISSIONER Kladney: Yes.
CHAIRMAN CASTRO: Commissioner Yaki?
COMMISSIONER YAKI: Yes.
CHAIRMAN CASTRO: And I vote yes so it's unanimous. The next motion to amend the agenda.
COMMISSIONER GAZIANO: Yes, if it is a friendly amendment that obviates our need to vote, but to add at the end of Management and Operations a discussion of the logistics, witness election and other items relating to the Alabama field hearing in August.
CHAIRMAN CASTRO: Okay. Is there a second?
VICE CHAIR THERNSTROM: Second.
CHAIRMAN CASTRO: Okay. All those in favor of the agenda as amended say aye.
(Chorus of ayes)
CHAIRMAN CASTRO: Any opposed?
(No response)
CHAIRMAN CASTRO: Any abstentions?
(No response)
CHAIRMAN CASTRO: Okay, the motion passes
unanimously.

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

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

MS. HEPLER: Yes.

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

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

I've also worked at the International Trade Commission so I have a little commission experience. And I've worked with the IG. I've been
an IG counsel at International Trade Commission at Archives and I've also worked at Department of Transportation and the Postal Service throughout my federal career.

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

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

And I just personally want to say to Dominique how much we appreciate at the Commission all your years of service, and certainly since I've been Chair I do appreciate the ability to work with you and your caucus and our special assistants. You've been a tremendously wonderful asset to us here at the Commission and speaking for myself and I know all of the other Commissioners speak for themselves you are going to be greatly missed. I don't know if other Commissioners want to say something about Dominique
but I welcome them to do so now. Commissioner Heriot?

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

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: Me too.

(Laughter)

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

CHAIRMAN CASTRO: Commissioner Kirsanow.

(Laughter)

COMMISSIONER GAZIANO: And you wonder why.

CHAIRMAN CASTRO: That is bipartisanship.

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

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

COMMISSIONER YAKI: As your acting designated supervising commissioner according to Commissioner Gaziano, I've known Dominique for quite some time. In fact, as I was saying to her earlier
today, so much time that I've known her long enough that she's had two children while she's been working with us. And I'm glad that she's getting out in enough time that the children are not unduly influenced or even warped by starting to listen to the proceedings here.

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

(Laughter)

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

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

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

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

CHAIRMAN CASTRO: And that was Commissioner Achtenberg. Thank you. Okay, so we will then move onto the next item. We will ask our inspector general, Frances Garcia, to please come to
the microphone. Welcome Madam Inspector General.

II. Inspector General Report

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

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

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

Well we are, as you know, working here and it's been a learning process for us mainly because we're part of the legislative branch and the Commission here is regulated by a different statute.
And so we're learning and there's a learning curve for us. We're doing, you know, we're doing the best we can.

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

The second one is the IPERA report which is the Improper Payments Elimination and Recovery Act reporting. That was a little bit of a -- we shouldn't say surprise, but we realized that we had to do that and we had like a week to turn around. We worked as hard as we could to get it out on time. We might not have touched all the bases we needed to touch on that one. We were really up against the wall trying to get it out on time because that's one of the things that we don't have to do in the legislative branch. And that's some of the little things that are different.
The other one is the FISMA which is the Financial Information Security Management Act. We do an evaluation of that and that one is also due September 30th.

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

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

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

The other thing we found out is that we also are going to be monitoring -- the financial statement audit. Next year we'll go out -- this is the responsibility of the IG under the executive branch. Next year we'll go out and you know, hire the
auditors. This year we used the same one that you had last year because of the time constraints.

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

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

And the biggest challenge for us is the same one that you have, is that no staff director. So what we're doing is we're working at the directive of the department heads for any documents that we've got to request and we're cc'ing both the chairman and the vice chair so that they'll know what requests we're making out.
Again, I want to emphasize we have not any audit. We're still learning your operations and we're doing, like I said, the risk assessment. However, when we do have an audit we'll have a notification letter. There will be an entrance conference and an exit conference. And then when we issue the report there will be an opportunity for everybody to look at it.

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

So, any questions I can answer? Yes.

CHAIRMAN CASTRO: The Chair recognizes Commissioner Gaziano.

COMMISSIONER GAZIANO: We're going to discuss later in this meeting some other -- one issue we might discuss, the potential delegations to individual staff members to handle some of the staff director's duty until the White House is able to make an appointment or we're able to figure something else out.
I don't know how that will go but I wonder if we could, with your input, make a motion to designate one person to be your point of contact. And I'd like to -- I'll do that if you think that that's helpful or if you think that the current situation, you trying to talk to all the department heads, is about as good.

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

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

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

COMMISSIONER GAZIANO: Okay. Well, I may have to call someone else to see if we -- or it may
even wait till later in our meeting -- I don't know if
you're going to stay on -- till we figure that out.

INSPECTOR GENERAL GARCIA: Louise will be

here for the entire time. Before -- that's Kim who

used to be your person of contact and we would ask her

and then she would either -- she would get the

information for us and so that made it a lot easier.

COMMISSIONER GAZIANO: Okay. She might be

the one we move. There may be one other person that

we have in mind who could also serve that role. But

we'd like to at least take care of what issues we can.


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

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

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

CHAIRMAN CASTRO: Okay, great. Thank you. Any other questions for our Inspector General? If not, thank you again for your service. We appreciate it.
INSPECTOR GENERAL GARCIA: Okay, thank you. I just want to tell you that we appreciate all the help that the staff has given us. They've been very cooperative. And I know it has been a very different learning curve for all of us because we do come from the other side, the executive branch as opposed to legislative -- from the legislative branch as opposed to executive branch and there's different rules that apply. So it might just take a little bit longer and we're trying to learn your operation so that we can do a good job for you and make sure that we cover all the bases that need to be covered.

CHAIRMAN CASTRO: Thank you, we appreciate that.

INSPECTOR GENERAL GARCIA: Thank you very much.

CHAIRMAN CASTRO: Thank you. Commissioner Gaziano?

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

CHAIRMAN CASTRO: I'd like to deal with it as a package with the other areas that we had discussed that possibly could be.
COMMISSIONER GAZIANO: Yes, I don't know that we're actually going to resolve those others, if it's possible.

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

COMMISSIONER GAZIANO: Okay, that's fine.

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

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

CHAIRMAN CASTRO: Commissioner Yaki, you have the floor.

COMMISSIONER YAKI: Thank you.

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

COMMISSIONER YAKI: Do we, Richard? Sure.

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

COMMISSIONER YAKI: Thank you very much Mr. Chair and members of the Commission. On February
26th, 2012, a young man named Trayvon Martin was killed while walking home carrying I think a soft drink and a bag of Skittles. There's been an arrest made in this case. It's been a national cause célèbre.

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

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

There are certainly allegations made in the Trayvon Martin case along those lines, but there are also allegations made in other instances as well. Justifiable homicides in this country have since the enactment of these laws allegedly gone up, but the
type of statistical reporting available to us has not exactly been crystal clear and allowed people to make very good study of exactly what these laws mean.

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

A very cursory study in Miami of some Florida laws show that if you were -- if the victim were African-American the person committing the crime would walk free 73 percent of the time. If the victim were of Caucasian background the perpetrator would walk free -- let me turn that around. That is actually -- let me just do this right here. Yes. If someone who killed an African-American would walk free
73 percent of the time under a stand your ground defense. Someone who killed a white victim would only walk free 59 percent of the time, in other words, not being able to avail themselves by a 14 percent differential of stand your ground laws.

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

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

Social scientists, criminologists have bemoaned the fact that when they talk about this issue they really can't talk about because no one has really collected statistics on this issue. And for there to be a real rational discussion on stand your ground
laws, on whether there is any racial bias in it at all, we need to know the facts.

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

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

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

If you notice I am doing this in very -- I am couching this in terms of that is much more fact-based. I'm not going to -- whether or not I have my own bias or prejudice in this is irrelevant, quite
frankly, to what we as a Commission can and should do in this type of instance.

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

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

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

CHAIRMAN CASTRO: Do we have a second?

COMMISSIONER Kladney: I second the
CHAIRMAN CASTRO: Okay. Any discussion from Commissioners? The Chair recognizes Commissioner Gaziano.

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

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

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

But I do want to quote from the Miami Herald newspaper investigation which is not a peer-reviewed newspaper. We don't know whether they've
compared. Commissioner Yaki quoted one portion that
seemed to suggest that there was a racial bias, but
that portion of the sentence that he quoted did not
control for the type of homicides at issue or killings
at issue because some were ruled not homicide I think.

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

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

But if we were going to pursue this I
would like it broadened to I think a racial disparate
impact that is far more clear and far more
significant. And that is that the municipalities in many states across the country have systematically denied, abridged, limited the 2nd Amendment rights to keep and bear arms as incorporated in the 14th Amendment. And that denial has a much more significantly negative effect on poor and minority citizens in high-crime neighborhoods.

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

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

CHAIRMAN CASTRO: Commissioner Kladney, then Commissioner Yaki.

COMMISSIONER KLANDNEY: I find an interest in this law and I think an investigation may well be
good. I also have a question about staffing and financing such a project. I would think we would need a report from our finance department and we would probably have to hire outside people to complete it. That's just a guess, grabbing that out of the air.

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

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

These jurisdictions within the state of Florida, my idea, my thought from the article itself was it's a hodgepodge. You know, if you're in this county, this happens. If you're in that county, that happens. If you're over here, this happens. So, I have concerns about that and I think that is
worthwhile to look into as well.

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

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

(Laughter)

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

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

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

(Laughter)

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

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

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

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

(Laughter)

CHAIRMAN CASTRO: Commissioner Yaki?
VICE CHAIR THERNSTROM: But I want to know how to pronounce Nevada. What do we?

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

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

VICE CHAIR THERNSTROM: But nobody pronounces New Orleans correctly.

CHAIRMAN CASTRO: Commissioner Yaki?

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

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

There are a number of reasons for which to do this. One, obviously as Commissioner Gaziano says a question of resources. The issues that he's raising go to jurisdictions in areas that would probably not be at issue in this study in terms of some of the
states we're talking about, Florida, Texas, possibly Arizona, Arkansas, Alabama and others which have recently enacted very broad stand your ground laws. So I think that Commissioner Gaziano issue has a much broader scope.

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

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

And one of the issues that Commissioner Kladney raised which is the fact that these laws are enforced and applied differentially in different areas. Some of the statutes allow the police to make the initial decision. That's how George Zimmerman walked out of jail the night after the Trayvon Martin killing. Others allow the prosecutor to make that decision. Others allow a judge to make that decision absent a jury. Some, like California, which has a common law stand your ground type law, require it to be an affirmative defense at a jury trial.
So as Commissioner Kladney was pointing out, one of the issues that need to be looked at is how these are written, how they are enforced, where is there discretion and in that discretion has there been -- can you detect or find any pattern or practice that would indicate racial bias or racial skew in the application of this.

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

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

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

I mean, my question is, and it's one that's already been raised, but I think it's a very serious one. Do we really have the resources to do
the quality study that you're talking about? And especially because as Commissioner Kladney said, we have a hodgepodge of laws in different jurisdictions here. So, it seems to me this is a very large and difficult problem to investigate. And I'm not sure this Commission up to it, frankly. Well, that's really my concern.

CHAIRMAN CASTRO: Okay. Commissioner Heriot?

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

I know Commissioner Yaki has said in his memo here that we could hire outside organizations to work for us. I don't think that's a very good idea and I don't believe the particular organization that's been proposed would be a good idea. But I can't think of an organization that would be better. I don't favor hiring outside organizations to do our investigations.
VICE CHAIR THERNSTROM: Is it completely legal to do so anyway? I mean, there are --

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

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

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

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

COMMISSIONER KIRSANOW: I think this is a fascinating topic and I appreciate Commissioner Yaki proposing it. I have a concern about resources. I'm I guess inclined to favor something that incorporates what Commissioner Gaziano suggested. Again, this implicates resources because it expands the study.

The greatest -- this is a facially neutral law. The greatest disparate impact we've got that
I've seen is that in the last 40 years there have been, at least according to one report I saw, 250,000 black males have been murdered. More than 90 percent of those are black males against black males. That's the greatest disparate impact.

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

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

In addition, the deterrent effect, the potential deterrent effect of those laws and the availability of guns to deter crimes in inner city neighborhoods where I live, where concealed carry
laws, for example, have actually shown counter-intuitively, at least counter-intuitively to the mass media, that in fact those laws appreciably reduce the incidence of crime. I think that might be something that we can adequately capture and would be something within the charge of the Commission along with what Commissioner Yaki had just articulated.

CHAIRMAN CASTRO: Commissioner Yaki?

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

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

On the other hand, I also know that we are in a situation where we have been short of staff for quite some time. We have some salary savings there. I would hate for us to say that a topic that there is widespread agreement on, where I think that decision-makers and policy-makers in Congress and in state legislatures welcomes this kind of report, we would
say well, we can't do it because we don't have the funds. I think we can and I don't think that should be a showstopper. And I would say that obviously we would need to carefully figure out how to make this go forward.

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

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

I would say that if you wanted to weave into there the issue of what is the state of play in terms of gun ownership and gun availability I think that probably is a -- something that could be part of the equation because I think that when you look at the rise in justifiable homicides at least reported to DOJ since the enactment of these laws I think you can -- I think it's legitimate to look at whether or not as
part of the factors in this and part of the issues that you're talking about, were there any changes or preexisting laws governing concealed carry, must carry -- not must carry, but I think they divided it up into without permit, a must permit, a discretionary permit, that kind of stuff that goes on.

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

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

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

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

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

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

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

However, like I said with some of these
cases, I mean the police department just doesn't
charge, or the DA's office doesn't charge, or the case
is dismissed at prelim, or whatever, and that bothers
me.
But I think a study of this is important. Someone will have to work out if we decide to do this the financing and the staffing.

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

CHAIRMAN CASTRO: Commissioner Gaziano?

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

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

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

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

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

So if we're going to spend a lot of money
on one of these questions and we can't do both then I
think there's a lot more data on mine, there's a lot
more peer-reviewed criminology studies. We could hire
an investigator to do a meta-analysis of that data
that already exists. We could do some serious social
science in our OCRE department. But if we have to
choose one or the other -- by the way, I appreciate we
only received this yesterday afternoon and I had a
wonderful event to attend with Vice Chair Thernstrom
that partially honored her. And so it was after
midnight that I was poring over these.

COMMISSIONER YAKI: Partially?

(Laughter)

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

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

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

If Commissioner Yaki will, you know, agree
to John Lott being our investigator or someone in the
same sort of school as John Lott then I might feel
more comfortable about the amount of money that we're
going to spend. But I don't know that Commissioner Yaki will agree to John Lott. I'm uncomfortable with the investigator that he has identified.

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

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

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

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

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

My second point is that I would be interested in the assessment of gun laws only to the extent that they are a valid element of any analysis of the impact of stand your ground rules and not the other way around. I don't think expanding the scope as Commissioner Gaziano is proposing is at all
workable and I'm not in favor of that as the primary subject under investigation.

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

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

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

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

And so for those reasons, because I do think that is not only timely but an important investigation, one that to the extent that it may implicate or not the gun possession issue that was
underscored by Commissioner Gaziano, I would be willing to see that included as an appropriate element of a proper stand your ground analysis. And the -- innovative in terms of utilizing Commission resources to get some important work done. I am in favor of Commissioner Yaki's proposal as written.

CHAIRMAN CASTRO: Commissioner Heriot?

Thank you, Commissioner Achtenberg. Commissioner Heriot?

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

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

Now, on the legal issues that's a little different. The suggestion was made here on the fact
issues that we might be able to narrow it down to just one jurisdiction and do that, and that makes a lot of sense to me if we're going to proceed down this at all. But we can look at all the laws and analyze them in terms of their legal impact as opposed to how they are being administered actually.

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

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

CHAIRMAN CASTRO: Let me just say I am fully supportive of this proposal that was prepared by Commissioner Yaki. I think it's exactly what this Commission needs to do to get back to our historic roots. I think this is an issue that is timely in our country and we should be taking the lead on this. So it certainly has my support.
I want to ask Commissioner Yaki how he'd like to proceed. We can either -- because I'd like to wrap up the discussion.

COMMISSIONER YAKI: Sure.

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

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

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

My preference today would be to have a vote with I would say a caveat. And that is the vote
today would be to approve the concept paper and then
to move forward with preparing a budget and scope that
would be subsequently approved by the Commission. I
don't think that's -- and let me just tell you why.

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

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

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

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

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

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

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

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

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

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

COMMISSIONER GAZIANO: Yes, I want to speak to the specific motion. Even if I were to lose
in my -- which this motion would eliminate my looking at, as I understand Commissioner, the explanation behind his motion is it would only look at jurisdictional stand your ground laws and not the ones that I'm concerned about.

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

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

COMMISSIONER GAZIANO: No, no --

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

COMMISSIONER GAZIANO: Well, let me
finish. I really don't want -- I would have two problems, three problems. One is it's not incorporating a look at the jurisdictions that are more clearly affecting.

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

Third, I would probably before I commit to even the next step want to know that six out of eight Commissioners or something like that would approve of the investigator. This is a big expenditure of money on what I think is a narrow issue that might not turn up anything, and if we're going to spend that kind of money on a narrow issue that doesn't seem as clear and as important as the one that I want to raise I'd like there to be a little more than, you know, four or three Commissioners on an investigator that's going to come to a biased result.
So I'm not comfortable and I would suggest to other Commissioners not to vote for the proposal right now. We can -- it can be brought back at a later time when those other issues are fleshed out and then it might gain our majority support.

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

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

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

But I think again we're being very naive about data. The notion that just because we have subpoena power, that that is going to help us uncover the data that we're looking for is simply naive.
There has to be something that's going to be subpoenaed and we don't know what form this data would be in.

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

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

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

Commissioner Yaki, you indicated that you thought it was important for the Commission to send a signal of the importance of this topic and I think we already have by virtue of the fact that I don't think we've had a dissenting voice here in terms of the importance of looking at this or the interest in this
particular topic properly framed. I think that gets to the issue, properly framed.

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

(Laughter)

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

CHAIRMAN CASTRO: Commissioner Kladney.

Then we'll call the question.

COMMISSIONER KLABDNEY: I think that we do need a budget. I think we need to know where we're
headed. I think the data issue is an issue but I think there's an ability to collect most of the data. You might lose one or two or however many, but it would be a minority. So I think it's viable and I think it's doable.

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

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

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

COMMISSIONER KLADNEY: And procedure, yes. As far as your concept being more worthwhile than Commissioner Yaki's, I would think that would be in the eye of the beholder.

COMMISSIONER GAZIANO: Sure.

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

COMMISSIONER YAKI: My -- I just want to address the issue raised by several of my colleagues. I guess I'm a little uncertain about exactly how what you're talking about differs from what I'm proposing. And perhaps it's because of experience that -- or an implicit assumption that perhaps I did not make clear.
I would like us to vote today on the concept of this special investigation moving forward. I would like us to be able to then present a refined scope and budget that will also be voted upon by the Commission.

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

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

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

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

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

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

COMMISSIONER Kladney: Well, what is the question?

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

COMMISSIONER YAKI: Yes.

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

COMMISSIONER YAKI: Yes.

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

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

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

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

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

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

CHAIRMAN CASTRO: You can revisit it.

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

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

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

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

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

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

CHAIRMAN CASTRO: Commissioner --

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

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes, I'm even more concerned about the means and who the investigator is
than -- together with the budget and the scope. And that's -- we're committing to a project. We don't know the means; we don't know who the investigator is. It would then take a majority of the Commission to somehow change course. So I think I, under the circumstances of the motion have to vote no.

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

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

COMMISSIONER YAKI: Point of order.

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

COMMISSIONER GAZIANO: I voted no.

COMMISSIONER YAKI: Point of order on that. In a pure Robert's parliamentary rule that would be true but I don't think, at least that I can recall we don't operate on a pure Robert's parliamentary rule. And if this were to come back, trust me, I would be the one bringing it back in a different format. I don't think that we're governed
by the one shot during session because we don't have legislative sessions.

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

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

COMMISSIONER GAZIANO: -- by suggesting --

COMMISSIONER YAKI: -- rules of procedure --

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

But Madam Vice Chair, how do you vote?

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

COMMISSIONER YAKI: I would accept that.

VICE CHAIR THERNSTROM: -- I can vote yes
on this. But the process is, you know. Again, I share Commissioner Heriot's skepticism about whether we can actually collect this data.

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

COMMISSIONER YAKI: I will do so.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: I vote yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

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

COMMISSIONER YAKI: Thank you.

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

III. Program Planning

Discussion of Strategic Plan

CHAIRMAN CASTRO: The Commissioners, you all should have received a grid which contains some
proposed goals and objectives of performance
measurements for the upcoming Strategic Plan. Those
were generated by initial comments that were received
both from myself and Tina Martin and John Ratcliffe
whose proposals actually were reviewed and approved by
OPM. Kim Tolhurst had also provided some comments and
the committee went to work and took some of that and
put it into a grid. Changed some of what were some
initial recommendations.

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

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

And to that point, yesterday we were able
to on short notice schedule some meetings on Capitol
Hill with one of our important committees, the Appropriations Committee. We met with the Senate Appropriations staff both on the majority and minority side and we also met with the House Appropriations staff both on the majority and the minority side. I want to thank Commissioner Kladney and Commissioner Heriot and their special assistants along with mine for accompanying me to the meeting at the Senate and also Commissioner Heriot and her staff accompanying me to the meeting at the House.

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

They did indicate that issues of oversight, accountability and fund management are their priorities. And we invited them to provide us with any additional detail. Prior to the meeting we
did provide each of the staff members with a copy of our existing Strategic Plan summary and goals, not the proposed goals, and so at the end of the meeting with the Senate CJS Committee they actually talked to us.

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

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

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

For example, our existing plan spoke to
the issue of moving the appointment terms for SAC members from 2 to 4 years and they asked if that had been accomplished. And we indicated not.

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

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

We talked particularly about not having really done much to partner with other federal agencies and that there are some questions as to the scope of our ability to do that. And we talked about the prior Commission administration's national conference and how that was a goal that was part of the national shaping of the conversation. So a lot of the conversation focused about what our existing goals were and we did talk a bit about the idea of reorganization and reauthorization at some point. But we invited them to provide us with any written
comments that they might have that would be recommendations for the current Strategic Plan process.

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

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

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

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

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

So what I'd like to do now is if you all have the grid, I hope you've got that in front of you that was circulated with the proposed strategic goals.
and objectives and strategies and performance measures that were prepared and circulated by the subcommittee.

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

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

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

CHAIRMAN CASTRO: Yes, I think that would be the easiest. And they're in, I think, no particular order. So we'll vote A, B, C, D. And then I would add, I would want to add the restructuring goal because that was something that we -- I know many of us had been talking about the importance of. So --
COMMISSIONER GAZIANO: Could I ask a few questions first?

CHAIRMAN CASTRO: Sure.

COMMISSIONER GAZIANO: And then --

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

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

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

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

The -- I also, when we get to it, I think there are one or two items that we may not be allowed to even do, for example, Commission SACs to work on multi-state reports.
But my question at this point is when we do we have to have this done? What level of detail do you necessarily need today? There's a few minor things that I don't know that we need to discuss or we might not be able to answer, but is it necessary that we go through this today? When is this due?

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

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

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

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

COMMISSIONER KLANDNEY: Mr. Chairman?

CHAIRMAN CASTRO: Yes, Mr. Commissioner.

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

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

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

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

VICE CHAIR THERNSTROM: Some of us are not witty at all.
CHAIRMAN CASTRO: Well, I said attempt. But let's -- I know we did take a lot of time earlier but these are all important, substantive subjects so let's dig in.

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

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

CHAIRMAN CASTRO: Sure.

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

CHAIRMAN CASTRO: Right.

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

CHAIRMAN CASTRO: I think this comes from
the existing Strategic Plan.

COMMISSIONER HERIOT: Yes, so it's --

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

COMMISSIONER HERIOT: We can get rid of it.

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

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

CHAIRMAN CASTRO: Okay. All right.

(Laughter)

COMMISSIONER HERIOT: Another point that I would have is that we have, for example, performance measures, issuing press releases in English and Spanish which I think is a fine idea. But I guess I would say that strategic goal D, increase accessibility to the Commission's work for limited English-proficient persons, that actually is a subset of A, and we probably could integrate that all into, you know, that one strategic goal of getting the word out. It's just a different form of getting the word
CHAIRMAN CASTRO: Okay. Commissioner Kladney, then the Vice Chair.

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

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

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

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

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

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

COMMISSIONER GAZIANO: Can I offer?

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

COMMISSIONER GAZIANO: Oh, I'm sorry.

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

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

CHAIRMAN CASTRO: Okay. Madam Vice Chair?

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

Look, in the years in which Mary Frances Berry ran this Commission it had a high profile because we had very controversial topics and a lot of heat around the room. I think its profile, raising
its profile depends in great part on what kinds of topics we choose for briefings and/or investigations.

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

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

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

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

And as I say, a lot of the topics we
discuss have no chance of getting any real media attention. And in recent years we've gotten very little.

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

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

COMMISSIONER Kladney: I don't know if we have to write that down.

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

(Laughter)

CHAIRMAN CASTRO: Well --

COMMISSIONER Kladney: So, Mr. Chair?

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

COMMISSIONER Kladney: How about relevance to public --

CHAIRMAN CASTRO: Well, here's what I had at the -- originally that was morphed into this. And I don't know, maybe the subcommittee felt this was too
vague. For the Commission to be at the forefront of the national conversations on current and future civil rights issues and identify civil rights priorities for policy-makers.

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

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

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

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

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

COMMISSIONER KLADNEY: The Commission will choose topics relevant to the issues of public interest of the day and of interest to policy-makers.
Something along those lines.

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

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

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

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

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

And so before we talk about our media
profile I think we should have a strategic goal that says that we will function as an effective civil rights watchdog and that we will function as an effective organization that studies and publishes on important issues of civil rights. And whether they happen to be important to, you know, the network TV is, you know, that's nice but it's sometimes beside the point.

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

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

COMMISSIONER ACHTENBERG: Mr. Chairman --

CHAIRMAN CASTRO: Yes.

COMMISSIONER ACHTENBERG: -- I agree with Commissioner Heriot.

CHAIRMAN CASTRO: Yes.

VICE CHAIR THERNSTRÖM: I really do too.

As she puts it that way I agree with her too.

CHAIRMAN CASTRO: I like that too. It sounds good. It gets to the point which we're trying
to make. So we have a consensus there I think.

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

Does that capture what you said?

COMMISSIONER HERIOT: Say it again?

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

COMMISSIONER HERIOT: Right.

CHAIRMAN CASTRO: Okay.

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

CHAIRMAN CASTRO: Okay.

COMMISSIONER KLANDNEY: Or disseminated through the public's attention.

COMMISSIONER GAZIANO: And is it okay to keep the first strategic objective as we've -- as I've
suggested, amendment with a goal? I think it does --

CHAIRMAN CASTRO: Yes, exactly.

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

CHAIRMAN CASTRO: Right.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: And then removal of the

multi-state report references.

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Okay. So with that what
I'll do is then we'll just, we'll vote on this
particular goal so that we can move onto the next one.

Commissioner Kirsanow, how do you vote?

COMMISSIONER GAZIANO: One -- on another

objective. Are we committing ourselves by -- by the
way, I think it's a good idea to try to revise and
reformat the website to improve user-friendliness, but
before we commit to Congress to it do we have the

resources to do that? The know-how?

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

CHAIRMAN CASTRO: I believe we requested

in Fiscal `13 resources for that. Is that correct,
Mr. Ratcliffe? I don't remember. We did request for

upgrades.
VICE CHAIR THERNSTROM: Is that built into the new --

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

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

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

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

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

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

COMMISSIONER GAZIANO: Voice vote I think.

CHAIRMAN CASTRO: Okay, a voice vote. But we have to have a motion on it before we vote, right? Or just vote?
COMMISSIONER HERIOT: Do we have to vote on it?

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

CHAIRMAN CASTRO: I'm sorry, Commissioner Yaki?

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

CHAIRMAN CASTRO: Yes. Yes.

COMMISSIONER YAKI: Oh, okay.

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

COMMISSIONER YAKI: And what's the next level?

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

COMMISSIONER GAZIANO: We're amending --

CHAIRMAN CASTRO: Yes, they'll be built into the fuller document that will then come before
COMMISSIONER HERIOT: I sometimes have quibbles with little stuff here that isn't really worth discussing during a Commission meeting. But I don't have problems with strategic goals themselves.

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

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

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

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

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

CHAIRMAN CASTRO: Right.

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Actually, the Chair recognizes Marlene Sallo. Marlene, microphone. Let me lend you mine.
MS. SALLO: Whatever is indicated today I'll reincorporate into the grid and I'll send it out within a week so everyone can review it and make further comments.

CHAIRMAN CASTRO: Madam Vice Chair, you had something?

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

CHAIRMAN CASTRO: Yes, they will. Commissioner Kladney?

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

And I think that what you're going to see in the future is perhaps everything migrating to the website rather than the libraries and things like
that. It's all going to be on there. And I think it's going to become a very important thing. And I think if you're going to have a 5-year document I think it ought to be a subject.

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

COMMISSIONER KLADNEY: Marlene? Ms. Sallo?

MS. SALLO: Yes. Yes.

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

(Chorus of ayes)

CHAIRMAN CASTRO: All opposed?

(No response)

CHAIRMAN CASTRO: Any abstentions?

(No response)

CHAIRMAN CASTRO: Okay.

COMMISSIONER KLADNEY: With the caveat that we just made regarding communications.
CHAIRMAN CASTRO: Yes, yes. We move onto B. The Commission will engage in strategic partnerships with other federal agencies to apprise individuals of civil rights laws and policies, and to raise public awareness of civil rights.

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

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

Commissioners, any comments? Commissioner Heriot?

COMMISSIONER HERIOT: I just can't stand
bureaucratic talk and words like "strategic partnership" sounds like fingernails on a blackboard to me.

(Laughter)

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

COMMISSIONER GAZIANO: What would you propose?

COMMISSIONER HERIOT: Oh my --

COMMISSIONER KLADEY: How about just engage.

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

VICE CHAIR THERNSTRÖM: I would second that.
CHAIRMAN CASTRO: That sounds like a good suggestion.

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

CHAIRMAN CASTRO: Yes.

COMMISSIONER KLADNEY: Just agreeing for you.

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

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

All those in favor say aye.

(Chorus of ayes)

CHAIRMAN CASTRO: All those opposed?

(No response)

CHAIRMAN CASTRO: Any abstentions?

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN CASTRO: Okay, one abstention. Commissioner Kirsanow abstains. All right, we move
onto C which is to -- and this is slightly different than what I had I think originally suggested.

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

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

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

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

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

But separate from that issue I do believe that expanding our mandate to include human rights issues very clearly, making this the United States Commission on Civil and Human Rights would not only increase our profile, I think it would increase our
relevance. I know we cannot do it with our current budget and staff, but I think being allowed to have Congress expand our mandate to that point would also hopefully allow us to be able to obtain additional resources, both financial and human capital, to address those issues. And I do think they're complementary to what we're doing already.

Commissioner Kladney and Commissioner Heriot.

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

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

COMMISSIONER GAZIANO: Pull your microphone.

COMMISSIONER KLADNEY: Okay.

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

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

CHAIRMAN CASTRO: -- statute. But other
Commissioners have said that we don't.

COMMISSIONER KLADNEY: I don't think we do.

CHAIRMAN CASTRO: I agree.

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

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

So for example, we have in our existing plan issues related to extension of the terms of the SACs from 2 to 4 years. There's a question about our ability to do that. That has to be done by Congress, yet we put it in the goal and we've, you know, it
needs to be achieved. So I think just because Congress needs to do this doesn't mean we shouldn't aspire to that.

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

Commissioner Heriot?

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

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

On the jurisdiction issue, I disagree with Commissioner Kladney but I don't think I -- I think I
actually I have a much narrower point here. If there's an international law that bears on race discrimination or gender discrimination then it's within our jurisdiction. If it doesn't bear on race discrimination, gender discrimination, disability, religion, then it's not within.

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

COMMISSIONER HERIOT: Right, it has to fall --

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

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

COMMISSIONER KLADNEY: But then we could have a goal or something that -- the thing of human -- expanding -- doing investigations of human rights
violations as it relates to our jurisdiction. But I don't even know if we need that, it's redundant.

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

COMMISSIONER KLADNEY: Right.

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

COMMISSIONER KLADNEY: Right.

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

CHAIRMAN CASTRO: Commissioner Gaziano.

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

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

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

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

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

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

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

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

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

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

CHAIRMAN CASTRO: Well, let me suggest this then. Why we don’t come up with a definition and
if it's acceptable to folks for the next draft we move it. If not then --

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

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

COMMISSIONER HERIOT: We can try.

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

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

CHAIRMAN CASTRO: I was trying to --

(Laughter)

CHAIRMAN CASTRO: I'm just trying to get at least a little bit of consensus here so that we all know that when we bring a next draft we'll try to have a definition of human rights and a subset of that is a subset of a goal or objective or a performance measure under A. And when we look at that draft if folks don't agree that that's something that we can agree on then we can take it out. Okay? All right. So we'll move onto D, increasing accessibility to the Commission's work for limited English-proficient
persons. And I think that was also, it was a little broader in the original version but this is what the subcommittee has brought forward to us.

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

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

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

COMMISSIONER GAZIANO: Probably someone can improve that.

CHAIRMAN CASTRO: Yes. Okay, and then under that will fall the subsets that you just
mentioned. Is everyone fine with that as D then?

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

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

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

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

VICE CHAIR THERNSTROM: And I wonder if the cost would differ if we simply issued those
reports in electronic form rather than hard copies?

COMMISSIONER Kladney: Mr. Chairman?

Chairman Castro: Yes.

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

COMMISSIONER Kirsanow: I think Commissioner Heriot said that.

COMMISSIONER Kladney: Maybe it was her. I'm trying to focus here. And I was wondering have you rethought that at all?

Vice Chairman Thernstrom: And if not, you should.

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

COMMISSIONER Kladney: Okay.

Chairman Castro: Okay.

COMMISSIONER Kladney: Fine.
CHAIRMAN CASTRO: All right, Commissioner Yaki?

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

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

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

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

(Chorus of ayes)

CHAIRMAN CASTRO: Opposed?

(No response)

CHAIRMAN CASTRO: Any abstentions?

(No response)

CHAIRMAN CASTRO: Okay. We move onto
letter E, continue to strengthen the Commission's financial and operational controls and advance the Commission's mission through management excellence, efficiency and accountability.

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

COMMISSIONER KLADNEY: They would like to see the goal.

CHAIRMAN CASTRO: Yes.

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

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

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

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

CHAIRMAN CASTRO: Any opposed?

(No response)

CHAIRMAN CASTRO: Any abstentions?

(No response)

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

VICE CHAIR THERNSTROM: Commiseration.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: A couple are vague, I think.

CHAIRMAN CASTRO: Okay.

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

COMMISSIONER GAZIANO: So I just want to point out that that gives, like Commissioner Heriot, certain things give me -- certain bureaucratese gives me the heebie-jeebies. Unless we want to be
bureaucratic I think our Inspector General representative should cover her ears when I say that. But I'm not sure what that means.

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

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

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

COMMISSIONER KLANDNEY: Actually I missed what you were talking about.

COMMISSIONER GAZIANO: You missed something?

(Laughter)

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

COMMISSIONER KLANDNEY: I don't have a clue.

COMMISSIONER GAZIANO: And then the last
one is strengthen their position as advisory and an
investigative committee. So I'm not sure I know --

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

    COMMISSIONER GAZIANO: Work?

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

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

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

    VICE CHAIR THERNSTROM: Except that there
are funding issues.

    COMMISSIONER KLADNEY: There are some but
-- and maybe that's what we want. Maybe we want to
try and increase their funding or their productivity
through reorganization, things like that. I mean, the
SACs, you know, the SACs are there.
One of the suggestions I heard was we want to appoint people for 4 years even though we have to re-charter for every 2 years; that way they don't have to keep looking for people. There was a thing about, you know, I added here and I was going to bring this up under performance measures. It says two briefings or hearings annually. Well, they can also do public forums which are a lot cheaper and gives them a profile and they actually collect a lot of information that way.

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

CHAIRMAN CASTRO: Well, part of it is engaging, literally taking their work and having it more frequently inform our work. They are to be advising us and I think a lot of times we don't really take their reports and do that. I think some of the things we've been trying to do is engage some of the SAC members and chairs in our existing briefings and bringing them in, those sorts of things. A lot of what's here is actually from the existing report. Just so you know that we're -- it's not coming out of whole cloth. Commissioner Yaki?
COMMISSIONER YAKI: Yes, I've been mulling this over all meeting long and I think that the appropriate parting gift for Dominique would be for her to take the SACs with her.

(Laughter)

CHAIRMAN CASTRO: We can add that as --

(Laughter)

CHAIRMAN CASTRO: Commissioner Heriot?

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

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

(Laughter)

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

COMMISSIONER KIRSANOW: We have to get the
staff getting it done.

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

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

COMMISSIONER GAZIANO: I'm dubious, but --

CHAIRMAN CASTRO: Yes.

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

CHAIRMAN CASTRO: I don't know. And I'm also told that we then as Commissioners have the ability as a Commission to determine the length of the appointment, that that's not something that's congressional. The congressional is the frequency of the charter of the Agency.
COMMISSIONER GAZIANO: I see. Wow.

CHAIRMAN CASTRO: So in that case --

COMMISSIONER GAZIANO: That's worth looking into.

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

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

CHAIRMAN CASTRO: Yes, okay.

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

CHAIRMAN CASTRO: Yes. Okay.

COMMISSIONER KLASTNEY: I would also like to add under performance measures "and/or public forums."

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

(Aye)

CHAIRMAN CASTRO: Oh?

(Laughter)

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

(No response)

CHAIRMAN CASTRO: Any abstentions?

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

CHAIRMAN CASTRO: Okay, so let me --

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

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

COMMISSIONER HERIOT: Can I abstain on the grounds --

CHAIRMAN CASTRO: Two abstentions? Okay.

VICE CHAIR THERNSTROM: Three abstentions.

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

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

CHAIRMAN CASTRO: Yes, I don't know if it made it.
COMMISSIONER KLANDNEY: Why don't we just work on this and have them draft something up and have everybody look at it and have our special assistants give you input within the next 7 days on this subject?

COMMISSIONER HERIOT: That makes sense.

COMMISSIONER KLANDNEY: Does that work?

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

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

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

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

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

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

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

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

CHAIRMAN CASTRO: Commissioner Kladney.

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

COMMISSIONER GAZIANO: Absolutely.

CHAIRMAN CASTRO: Okay, so then we'll
table this one for now. And so that --

COMMISSIONER KLADNEY: Being a person who believes in --

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

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

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

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

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

(Laughter)

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

COMMISSIONER YAKI: No one's arguing that,
COMMISSIONER KIRSANOW: I figured that, but nonetheless it merits being placed on the record. And she's just been an exemplary assistant in every regard. I've got the -- I've had the honor of being on a hiring committee at my firm for more than a decade and I don't know of anybody that we've ever hired that's better than Dominique in any regard. So I want to extent my appreciation to her.

(Applause)


III. Program Planning

Discussion on 2012 Statutory Report

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

The goal will be for Commissioners to review the findings and recommendations in the 2 weeks leading up to the July 6th meeting. I know there may be some concerns over the short turnaround time but we
do have to strive to meet our statutory enforcement report deadline.

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

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

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

And I've already begun the process of putting in the edits. There are plenty of edits that were simply helpful and that made it a better report,
but there are edits that are problematic for about half of you. And I'd rather we pass this, you all pass this so we can meet our statutory obligation.

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

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

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

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

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

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

CHAIRMAN CASTRO: Oh.

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

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

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

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

But one of the suggestions I made and as
the others will see is that I suspect there are some
things that may be a deal-breaker for four
Commissioners. And my suggestion was subtraction
rather than wholesale changes or addition.

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

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

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

CHAIRMAN CASTRO: Any other comments,
questions? Madam Vice Chair?

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

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

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

(Laughter)

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

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

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

COMMISSIONER GAZIANO: I would put the -- I might have edited them slightly, slightly differently, but I don't disagree with any of them. But he may have, in executing my wishes, been forced
to do something that I think is --

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

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

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

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

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

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

MS. TOLHURST: So is the consensus you
want to look at your comments again and then let me know if I can circulate them? Or that you'd like them --

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

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

COMMISSIONER KIRSANOW: Dominique's comments are fine.

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

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

CHAIRMAN CASTRO: Right.

VICE CHAIR THERNSTROM: -- the edits.

CHAIRMAN CASTRO: Right. Commissioner Heriot?

COMMISSIONER HERIOT: I just wanted to say that we can't end this meeting today without
appointing somebody to take the staff director's role so that this gets done.

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

COMMISSIONER HERIOT: It has to be resolved.

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: At this meeting.

CHAIRMAN CASTRO: Yes.

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

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

MS. TOLHURST: I do not.

COMMISSIONER GAZIANO: Or do you only have oral?

MS. TOLHURST: I have written comments from --

COMMISSIONER YAKI: Mine are in Sanskrit.

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

COMMISSIONER GAZIANO: Can you say which
ones you have?

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

COMMISSIONER YAKI: I submitted.

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

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

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

MS. TOLHURST: Okay.

CHAIRMAN CASTRO: Okay?

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

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

COMMISSIONER GAZIANO: Sorry. I misspoke.

MS. TOLHURST: So it's not witnesses. And that just -- if you're doling out --
COMMISSIONER GAZIANO: Well they're witnesses at a briefing, are they not?

MS. TOLHURST: They're panelists.

COMMISSIONER GAZIANO: Panelists, okay.

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

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

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

III. Program Planning

Vote on 2013 Statutory Report Topics

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

What I propose as the procedure is looking
at the number of first place, second and third place rankings. We can discuss or vote on the projects starting with the one that had the most first place rankings going down to the one that had the second most and then factoring in the second and third place rankings.

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

The second one would be "Immigration Detention Facilities and Violations of Civil Rights" prepared by me. The third one would be Commissioner Kladney's "Protecting Domestic Violence Victims Against Discrimination." The fourth would be Commissioner Kirsanow's "Civil Rights Enforcement and the Department of Agriculture." Number 5 would be Commissioner Yaki's "Efforts to End Gender-based Discrimination in State and Local Law Enforcement Response to Sexual Violence." And number 6 would be "The Potential Misuse of Settlement Agreements and Consent Decrees in Civil Rights Enforcement."
Now, we did discuss each of these at the last meeting but if folks wanted to say a few words on behalf of their paper again before we vote that would be welcome.

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

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

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

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

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

Also, since I practice in this area I'm well aware that this is a major issue throughout the country for employers. And in addition to everything
else that this implicates in terms of whether or not from a policy perspective, a substantive policy perspective this is a smart idea, however well-intended, there's also a procedural question as to whether or not the EEOC even has the authority to do this or something like this. So I think this is of great relevance and I would urge that we explore this topic.

CHAIRMAN CASTRO: Okay. So what we'll do is we'll do a line individual vote of everyone on these topics. So we'll start with 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: Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: No.
CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: No.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

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

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

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

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

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

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

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

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: I don't know which

CHAIRMAN CASTRO: It doesn't matter to me.

We'll start with --

COMMISSIONER HERIOT: It makes a big difference.

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

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

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

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

COMMISSIONER HERIOT: No.


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

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: This is a strange process.

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

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

CHAIRMAN CASTRO: Okay.

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

COMMISSIONER HERIOT: No, no, no.

(Laughter)

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

VICE CHAIR THERNSTROM: No.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?
COMMISSIONER YAKI: Well, since it doesn't matter anymore I'll abstain.

CHAIRMAN CASTRO: Okay.

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

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

COMMISSIONER KLADNEY: No.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

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

Let's take a vote then. 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.

CHAIRMAN CASTRO: Commissioner Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: No.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADENEY: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

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

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Okay, so we'll take the vote. 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: Which one are we voting on?

CHAIRMAN CASTRO: Assessing Civil Rights -

COMMISSIONER GAZIANO: Yes.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: No.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: No.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

CHAIRMAN CASTRO: And I vote no. The motion fails. Next I believe is Commissioner Kladney's "Protecting Domestic Violence Victims Against Housing Discrimination." Any additional comment on that, Commissioner Kladney before we vote?
COMMISSIONER KLADNEY: No, Mr. Chairman.

CHAIRMAN CASTRO: Okay. 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.

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

VICE CHAIR THERNSTROM: No.

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 Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

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

Now we'll move onto my proposal on
“Immigration Detention Facilities and Violations of Civil Rights that may Occur There.” I did speak to this at the last meeting but I just want to emphasize a few things in terms of the issue of the coverage of these immigrants.

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

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

For example, it is well established that non-citizens do have due process rights under the 5th and 14th Amendments to the Constitution. The Supreme Court has held that those provisions of the 14th Amendment are universal in their application. They apply to all persons within our territorial jurisdiction without regard to their differences in race, color, or nationality.
The Supreme Court also expanded this holding in 1976 when it held that every non-citizen was entitled to due process, even one whose presence in this country is unlawful, involuntary or transitory. The Supreme Court further stated that prison walls do not form a barrier separating prison inmates from protections of the Constitution and immigrant detainees depend on those facilities for their basic human needs and adequate living conditions.

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

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

This is an area that is getting a lot of attention nationally and it is the fastest growing
aspect of detention. And not all the individuals that are being detained which is close to half a million now are undocumented immigrants. Some of them are green cardholders, some of them, many of them are children. Many are asylum-seekers. Many are victims of trafficking. While there are visas for those folks to be able to apply for, because they're being denied access to counsel they can't even seek those let alone know about them.

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

And at the last meeting I indicated the breakdown of the various correctional facilities, detention facilities that exist. Some are DHS-run, some are privately run, some are run on behalf of DHS by state and local governments. So, there's a lot of
different agencies that run these detention centers. So I would ask that we would consider supporting this.

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

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

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

CHAIRMAN CASTRO: If I can address that, it does. And here the Department of Homeland Security through ICE is the federal agency that is charged with making sure that these detention facilities, whether they are run directly by them or whether they are contracted out to a private entity on their behalf, or
ultimately to a state and local government, it is ultimately DHS and the Department of Homeland Security and ICE's responsibility both to ensure that the constitutional guarantees that these individuals have as well as the DHS guidelines are being enforced.

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

Madam Vice Chair?

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

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

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

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

It goes on to say, "In addition, according to government documents nearly 200 claims of sexual abuse of detainees in detention facilities across the country have been reported to the Department of Homeland Security since 2007 alone." Well, there's no
assertion that the prison guards are abusing them. Do they know how much sexual abuse they experience in settings from which they came? This is a huge population of people who live or lived in areas where the rate of sexual crimes is high. Who's doing the abusing? Should there be more guards to police this population?

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

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

In any case, I would be happy to see this rewritten but as it stands I've got an awful lot of
questions as was just apparent.

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

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

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

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

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

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

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

And so to the point of, you know, who's doing the abusing. Well, if an inmate is abusing another inmate that should not occur. That's a violation of that inmate's rights. Or if it's a watchman or a guard that's doing it. Do I know in each of those instances what's happening? No, but that's why we bring panelists forward who have experience and knowledge and ask them really, the
extent of this problem. Either way it's not something that should be happening whether it's the guard or whether it's another prisoner that's conducting the abuse or the rape.

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

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

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

CHAIRMAN CASTRO: I appreciate that.

VICE CHAIR THERNSTROM: And strengthen it as a consequence.

CHAIRMAN CASTRO: Commissioner Gaziano and Commissioner Heriot.
COMMISSIONER GAZIANO: Just to clarify since you responded to mine. I agree that you have -- there is an element of this concept paper and you have stated something within our jurisdiction. But running a detention system is very, very difficult and bad things happen. Running a prison system which is analogous is very, very difficult and bad things happen.

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

But to answer the kernel of the question whether it was just a difficult job and bad things happen or whether there's a -- we would have to investigate a huge issue that's not within our normal jurisdiction to answer that question. And that is are these just the normal difficulties of running any kind of detention system or is there really a bias in some sense or a constitutional failure. So that's my only suggestion.
Although I agree there is a -- it's stated in a way that implicates our jurisdiction, to answer this question would require us to spend so much more time outside our jurisdiction that it doesn't seem to me suitable for our enforcement report.

CHAIRMAN CASTRO: Commissioner Heriot?

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

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

COMMISSIONER ACHTENBERG: Mr. Chairman?

CHAIRMAN CASTRO: Yes, Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: I'd like to be
recognized.

CHAIRMAN CASTRO: Yes, go ahead, please.

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

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

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

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

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

VICE CHAIR THERNSTROM: No.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADENEY: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: And I vote yes. The motion fails. What I will do is since we do need to pick a topic I will endeavor to incorporate some of the comments today and see if I can't address some of them, I know I won't be able to address all of them,
and send them around for the July meeting.

And I presume anyone else who might want
to do that with their concept papers that failed
today. Because we do have a timing issue here to make
sure we get this project started so that we have a
statutory report that meets the deadline for next
year. Commissioner Kirsanow?

COMMISSIONER KIRSANOW: If I may recommend

--

COMMISSIONER ACHTENBERG: Mr. Chairman --

CHAIRMAN CASTRO: Commissioner Kirsanow

has the floor now and then we'll go to you,
Commissioner Achtenberg.

COMMISSIONER KIRSANOW: Thank you, Mr.
Chairman. If I may recommend that we revisit the
manner in which we rank these topics. Because I have
a feeling that we may find ourselves deadlocking at 4-
4 on a variety of topics regardless of what revisions
are made hereafter.

The process that we had used in the past
seemed to work relatively well whereby we'd rank them.
In fact, we did it preliminarily with respect to this
cohort of topics. And we would rank them based on who
got the most first place votes, second place votes and
third place votes. And generally speaking, that will
tend to winnow out the other topics and usually you end up with a number one.

CHAIRMAN CASTRO: Which is just what we did today and it didn't, so.

COMMISSIONER KIRSANOW: No, we didn't. What we really did is voted for whether or not people were going to vote for something or against something as opposed to whether or not something gets your first place vote, second place vote, third place vote.

COMMISSIONER GAZIANO: I'm not sure I understand because don't we still want a topic that gets a majority?

COMMISSIONER KIRSANOW: Yes, we do.

VICE CHAIR THERNSTROM: We have one. It's Commissioner's Kirsanow "Assessing Civil Rights Enforcement in the Department of Agriculture."

CHAIRMAN CASTRO: But it doesn't have a majority vote. It has four votes.

COMMISSIONER GAZIANO: There's several that have 4-4.

VICE CHAIR THERNSTROM: I see. Okay.

COMMISSIONER GAZIANO: And we should -- I don't know if we should re-vote on EEOC since we agreed on a different order.

CHAIRMAN CASTRO: So, Commissioner
Achtenberg, then Heriot and then Kladney. Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Mr. Chairman. Will there be a point where we consider new topics as well as those already submitted, or -- if that's been answered. I've been having difficult hearing.

CHAIRMAN CASTRO: No, we did not address that. I don't know what the sense of the committee is, but certainly I'd be happy to hear people's thoughts on that. Commissioner Heriot then Kladney.

COMMISSIONER HERIOT: I'm just wondering if there isn't room for compromise here. Do we have the ability to do two topics?

COMMISSIONER GAZIANO: Or do we have the ability of doing one as the enforcement report and one as a serious long-term briefing with serious staff work?

COMMISSIONER KLA DNEY: If I may --

VICE CHAIR THERNSTROM: Or do we have the ability to pick up one more vote for "Assessing the Civil Rights Enforcement of the Department of Agriculture?"

CHAIRMAN CASTRO: Commissioner Kladney?

COMMISSIONER KLA DNEY: Yes, I will say this. Since you have so given up on your topic so
soon -- you didn't let it go around the second time.

(Chorus of voices)

COMMISSIONER HERIOT: I moved the first topic that we voted on.

COMMISSIONER KLADNEY: No. I actually have an interest in Commissioner Kirsanow's subject. I am -- I know that Mrs. Ludvigson represented that topic well at the luncheon held at the Heritage Foundation. And I have an interest in the subject.

There are some things that I'm concerned about and I don't necessarily want to discuss here but I might be able to bring myself to support that subject.

COMMISSIONER GAZIANO: At this meeting or at --?

COMMISSIONER KLADNEY: Not at this meeting. This meeting is like past my time already. I mean, I'm growing older while I'm sitting here.

CHAIRMAN CASTRO: I noticed that.

COMMISSIONER KLADNEY: So that's all I'm saying. And if you want to figure out something else you guys --

CHAIRMAN CASTRO: Well, there may be some options on -- I don't know that we could do two statutory enforcement reports. I don't know that we
have the resources to do that. But why don't we talk about that in the interim. And be prepared at our July meeting to vote on topics again.

I would say that within 2 weeks from today we should circulate any revised papers that we have and those will then be discussed and voted on at the July meeting. And then at the July meeting we can hopefully have an answer as to whether we can do more than one report or one major report as our statutory and one briefing report.

VICE CHAIR THERNSTROM: Mr. Chairman, it seems to me we may have five votes for the "Assessing Civil Rights Enforcement in the Department of Agriculture" if --

CHAIRMAN CASTRO: But he says he needs to consider more so that conversation --

COMMISSIONER HERIOT: Background checks.

CHAIRMAN CASTRO: So that conversation --

COMMISSIONER GAZIANO: We have three --

VICE CHAIR THERNSTROM: All right. All right.

COMMISSIONER GAZIANO: -- votes.

CHAIRMAN CASTRO: Commissioner Heriot and then we'll move onto the next topic.

COMMISSIONER HERIOT: We need a decision
on this and if we're going to get it in July we need
to know about the resource issue, not during the
meeting in July but before that so we can work out an
appropriate compromise well before that.

CHAIRMAN CASTRO: Absolutely.

COMMISSIONER HERIOT: So we need to hear
from staff and from you and from everybody, you know,
weeks ahead of time exactly what our capabilities are.

COMMISSIONER GAZIANO: And point of the
personal privilege I think it is.

CHAIRMAN CASTRO: Yes.

COMMISSIONER GAZIANO: I think I mentioned
two meetings ago that I will not be physically present
nor will I have much time to call in on the July
meeting.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: So I would ask for
some consideration as I've done with others to hold
certain votes or have the discussion and stack certain
votes so that I could come on the line for a limited
period of time. But as we plan the agenda I'll try to
work with you on that.

CHAIRMAN CASTRO: Okay, let's do that.

And then the next item under program planning is the
item that was added by Commissioner Gaziano's motion
to amend. It's a discussion of the status of the immigration briefing.

    COMMISSIONER GAZIANO: I could do that after -- what I thought it would be is after agency staffing.

    CHAIRMAN CASTRO: Oh, okay, I misunderstood you. We'll put it at the end of that then.

    So next is discussion of 2012 and `13 budget.

IV. Management and Operations

Discussion on 2012 Budget and 2013 Budget Request

    CHAIRMAN CASTRO: What I really want to have us hear from our staff on is just where we are in terms of the budget, actual versus budgeted. There was reference earlier to potential surpluses that we have based on a couple of unfilled positions that I just want personally to get a handle on. And I'm sure other Commissioners in our individual conversations also had the same question.

    And then in terms of the 2013 budget I think we already talked about where we are based on the conversations we had with appropriations staff. So unless Mr. Ratcliffe has anything else to add on 2013 I would ask him to just come up and talk to us
about 2012.

VICE CHAIR THERNSTROM: And if you would, would you answer the question of whether we have a projected budget surplus this year of two hundred or three hundred thousand.

CHAIRMAN CASTRO: Yes, that's exactly what I want him to talk about.

MR. RATCLIFFE: I did have one comment on 2013, one thing that was not mentioned that could affect our budget is the Budget Control Act of 2011. We're facing a potential sequester which would be on top of, so it would be a reduction on top of whatever Congress would authorize.

CHAIRMAN CASTRO: Could you explain that further for those of us who are --

MR. RATCLIFFE: It's basically, in order to -- I guess the debt agreement that was done by Congress and signed by the President allowed automatic budget cuts to occur if Congress did not act. Those things are scheduled to occur unless Congress acts.

CHAIRMAN CASTRO: And that's for Fiscal Year 2013.

MR. RATCLIFFE: Thirteen, yes.

CHAIRMAN CASTRO: Okay. When will we know if that's going to happen?
MR. RATCLIFFE: Your guess is as good as mine. I mean, that's up to Congress. You know, you all could watch the news as best as I can to see whether they actually do that or not. And even the impact, we don't even know what the impact even if these things do occur would be.

CHAIRMAN CASTRO: Do we have any idea what percentage that sequester might be?

MR. RATCLIFFE: The only thing I've heard is some of the news I've seen up to 10 percent. But that's really, there's a lot of issues that have to be resolved both in Congress and with how the President reacts to the reductions. So the President has certain roles that could affect the number.

CHAIRMAN CASTRO: Well, that's good to know. Thank you. 2012?

MR. RATCLIFFE: Okay. I just want to clarify first of all that the staff director is responsible for making spending and budget decisions. My job is to maintain the operating plan. I do not make funding decisions. I just want to make that clear. My job is to advise the staff director and the director of management.

In a typical year, you know, with a staff director, I'd be briefing the staff director and the
staff director would be talking to you.

CHAIRMAN CASTRO: Certainly.

MR. RATCLIFFE: But for you to understand the two thousand twelve - budget, we need to begin back at when we receive the appropriation. We requested $9.4 million from Congress. Congress gave us $9,193,000 so that was $236,000 less than we requested. In addition, they required us to transfer $250,000 to GAO for our IG functions. Okay, that resulted in a reduction of $486,000.

So when we develop our operating plan what we do is we basically take the budget that we submitted to Congress, we adjust it based on the funding levels and make certain assumptions.

There was two reductions we had to make in the 2012 budget to personnel and office move. We knew we had some vacancies because the -- we didn't do our operating plan until January of this year so we knew that certain positions were going to be vacant. So we took some of those savings.

We also reduced what we thought -- our planned budget for our move cost because we had thought we had provided a lot of that funding last year and they weren't going to have to do it this year. Okay.
However, we developed that budget. It was approved by the person delegated as the authority of the staff director and we began the year within that budget. The operating plan is not static, it is always changing based on management decisions. For example, the Commission chose to do a field hearing so that would change the budget. Any other management decisions to approve travel or things like that. Anything that the Staff Director, who was acting the staff director, makes any decisions.

Also, fact of life changes. So for example, it may be a budget. We may budget $10,000 for something, it may come in at $80,000. Or there may be adjustments between offices or within office's budgets. Those type of things have happened throughout the year. There's a process in place where it's basically approved by the staff director or the director of management, any changes to the operating plan. There is an approval process there.

The two main changes affecting our budget this year, our operating plan, were personnel vacancies. So we did not fill those positions. We still have 4 months left. We may fill those positions. My plan, I have to assume that we're going to fill those because if the President appoints...
somebody I have to have enough funding to be able to pay for those positions. But we also have had increased move costs, costs that we were not anticipating.

We rely significantly on GSA who is providing us the management of the move. We've had to provide them additional funding this year that we were not anticipating.

COMMISSIONER YAKI: Are we sure that's not going to parties in Vegas?

MR. RATCLIFFE: I'm not sure. It's going into the same fund, but it's basically for specific things for our move, whether it's the construction, whether it's furniture.

COMMISSIONER YAKI: You've got to worry about any last-minute markup after what happened.

MR. RATCLIFFE: But basically we've got those and those things have been reviewed, that these seem to be valid expenses. But at this time we really do not have any real excess funding on our current budget. However, we do have some vacant positions that aren't filled. That funding will become available.

We also have some uncertainty over the year and -- or the move. We haven't moved yet. We
don't really know what all the costs are going to be. We had a big surprise about a week ago that we had to send in all $56,000. We didn't anticipate that. We do not know what other things that may come up.

COMMISSIONER YAKI: What is the surprise?

MR. RATCLIFFE: No, it was a cost that we had, that we thought we had funded last year but they were not able to do it out of last year's funding so we had to fund it with this year's funding.

COMMISSIONER Kladney: How much has been the cost overrun for the move?

MR. RATCLIFFE: Well, we don't -- for you to have an overrun you have to have a firm budget and we have not really had a great budget of what it was. We had thought we had paid for most of the costs last year but this year we had to pay about $315,000.

COMMISSIONER Kladney: More than you anticipated?

MR. RATCLIFFE: Yes, more than we anticipated.

COMMISSIONER YAKI: When is this move supposed to happen?

MR. RATCLIFFE: I think it's planned for July but that's really up in the air. There's a lot of things that have to be done. That's not really my
area.

CHAIRMAN CASTRO: I understand that we're waiting on GSA to get their vendor to move the furniture in.

MR. RATCLIFFE: So at this time we really don't have money sitting around to do anything with, nor do we have much time in the year. We only have 4 months left in the year.

We also do have, like most agencies we find ourselves not having enough money at the beginning of the year. So there's always a list of things that we maintain for year-end funding. Things like IT, we pretty much don't budget for any IT upgrades and things like that. Library subscriptions that we wait towards the year end, that we kind of fund towards the year end. So, if the personnel savings do occur we would anticipate we would have things that we could apply that funding for.

CHAIRMAN CASTRO: But sitting here today you say we don't have any surplus.

MR. RATCLIFFE: Not until the uncertainty of the move. If something happens and we need to come up with additional funding we have to come up with it or we won't be moving.

CHAIRMAN CASTRO: Any question -- I'm
sorry.

MR. RATCLIFFE: Please remember, you had a $486,000 reduction. That had to come from somewhere.

CHAIRMAN CASTRO: Right.

MR. RATCLIFFE: It basically came from personnel savings. We thought we were going to have that excess but these move costs have come up, you know, have taken that excess.

CHAIRMAN CASTRO: Commissioner Kladney?

COMMISSIONER KLADEY: Do we have any funds in reserve in case there's extra moving costs? And how much are they?

MR. RATCLIFFE: Well, basically what we have is we have the personnel savings that we know we're going to have.

COMMISSIONER KLADEY: We don't know we're going to have.

MR. RATCLIFFE: Well, we anticipate we're going to have. And yes, we do have some contingency funds. But it's not necessarily a slush fund where you can -- there are areas we will probably not spend money on.

COMMISSIONER KLADEY: Can you put a number on it?

MR. RATCLIFFE: No, I cannot. For
example, Commissioners, are all Commissioners going to bill all their billable hours? Some years they don't, some years they do. Will all regional staff do all their travel that they say they're going to do? I don't really know. What's the cost of the field hearing we're going to have? I don't really have an estimate on that.

COMMISSIONER KLADNEY: So you have no cash right now.

MR. RATCLIFFE: We have funding to operate based on the operating plan. So there's money within that operating plan to continue operating. There's just no money outside of that operating plan that can be used.

COMMISSIONER KLADNEY: Okay. Fine with me.

MR. RATCLIFFE: We can move things within operating plan to come up with cost.

CHAIRMAN CASTRO: Any other questions for Mr. Ratcliffe? None? Thank you, Mr. Ratcliffe. I appreciate that. Next on the agenda is the discussion of Agency staffing.

IV. Management and Operations

Discussion on Agency Staffing

CHAIRMAN CASTRO: As you know we have
amongst ourselves talked non-deliberatively about the various permutations of how we address the vacancy and the acting staff director position. The White House as we've indicated has not sent someone yet but I understand there's still people in the pipeline they're looking at. But pending that we need to come to some resolution.

At the last meeting we talked about an effort to further research the detail issue to determine whether there was legal authority to move forward on that. And in addition, in conversations I've had with Commissioner Gaziano and I'm going to ask him to talk a little bit about that issue.

But also there's a genesis of an idea that some of us have kicked around early on about spreading the duties of the staff director position to certain key employees. And Commissioner Gaziano has discussed with some of us the idea of sort of an expanded view of that.

So, at this point I would like to turn the table over to Commissioner Gaziano to sort of elaborate on that. Commissioner Kladney, you have a question?

COMMISSIONER KLADNEY: Yes. I hate to throw water on our little thing here but I am a
diabetic and it is close --

CHAIRMAN CASTRO: You need to take a break?

COMMISSIONER Kladney: Well, not a break. I mean, it's either like eat or wait or get this over in about 30 minutes. That's the deal.

VICE CHAIR THERNSTROM: Can't we finish in 30 minutes? I need to go home.

COMMISSIONER HERIOT: We can finish in 30 minutes, can't we?

CHAIRMAN CASTRO: Let's make sure we finish in 30 minutes then. Are you sure you don't need anything?

COMMISSIONER Kladney: No, I'll be fine.

COMMISSIONER HERIOT: We need to prioritize getting somebody in place for the statutory report.

CHAIRMAN CASTRO: Yes. So let's -- but I'll cede the floor to Commissioner Gaziano.

COMMISSIONER GAZIANO: Well, then I'll make it -- I was just going to try to make it quick. I'll make it extremely quick.

COMMISSIONER Kladney: Thank you.

COMMISSIONER GAZIANO: I talked to the senior attorney who I consider to be under the AIs the
acting general counsel about some of the legal issues. I've made progress but I've also communicated to the - - and there's one legal issue that the acting general counsel has raised to me that I'm waiting for authority to review.

But that I think we need to proceed on some other things first mainly because I'm not sure we're going to agree to a detailee. And I don't want to put a whole lot of energy in that. That's a second or third -- that's a third best. First best is to get an appointment from the White House. I think we need to go to the second best. We can have a multiple track.

On the multiple delegation issue, I don't want to claim it as my issue. I'm just communicating this recommendation. This is -- I want to give credit where credit's due. I know that the Chairman and Commissioner Heriot have discussed it at previous meetings. But as this meeting has demonstrated I think that we should discuss that in theory in 10 minutes.

I think then we should try to see if we can pick two or three that we're comfortable with today if that idea -- or even if that idea doesn't work. The IG's representative, the person who will
act for the staff director on approving the report. And there's maybe one or two others we can come up with.

In theory I think that this second best solution, we could come up with a little bit of work and discussion amongst ourselves with something that no one is satisfied with. Because that's the only way -- that no one is comfortable with. That everyone thinks is a little bit bad. And among them the Commissioners and their special assistants would assume additional -- would be one of the ones who would receive additional responsibility and I'll raise one issue later as to what that should be.

And then there's one or two that I think we should specifically say unfortunately probably no one may have and that's why we need to go to -- and that is personnel actions. I think that we would not authorize any individual member -- this is the advice I'm getting from others -- to take actual personnel.

If someone engages in a theft or violence it needs to be brought to the Commission. I don't know, I'm a little concerned about that, but I don't know another way to -- maybe some other contingency. So that's all I was going to say.

CHAIRMAN CASTRO: Okay. That was fast.
COMMISSIONER KLADENEY: So, thank you, Commissioner Gaziano.

CHAIRMAN CASTRO: So, I think the two priority positions that we were talking about here, are there an individual or individuals that we can identify to be the point person for the IG to interact with our Agency, and then is there someone that can take on the responsibility that the staff director would otherwise have for purposes of approving the statutory enforcement report. Is that right?

COMMISSIONER GAZIANO: Could I just ask for the -- maybe one more minute in theory to see if there's consensus or comments from other Commissioners? The other duties we could eventually direct delegate are approval of SAC packages, approval of SAC reports, responsibility for the move. I know we have people acting, but I'd rather ratify that. Responsibility for -- I mean, I think there are about eight or nine -- is there agreement in theory, principle that we would go down this route?

CHAIRMAN CASTRO: From my perspective, in principle, in theory, I do. Commissioner Yaki doesn't. I know Commissioner Kladney's thoughts on this. I know he and I discussed it briefly yesterday but he wanted to reflect on it.
COMMISSIONER KLANDNEY: I'm -- my main concern basically is, you know, we keep fixing these things or putting band-aids on them or jerry-rigging them or stuff like that, and that's not going to help us get a staff director any faster. That's my main opinion.

My second opinion is we talk about the IG. I'd like to see the IG talk directly to the department heads rather than go through one person who would act as a filter.

The third thing I have is as far as the SACs are concerned I think that we can, if you really want to jerry-rig the thing we can change some of the AIs and they can move forward with stuff.

The problem I have is, for instance, for the SAC, you know, 120 days ago we made a motion that I made about getting all the SACs re-chartered by now. That hasn't happened. Four of the SACs that were submitted have been kicked back to the regional director because it's not been balanced already. I'm sitting here going these regional directors, this is their job is to balance these SACs. So I mean, can we trust them or not trust them?

Mr. Minarik had a big discussion regarding what can happen and what can't happen. I don't know
if anybody saw some of those emails. And I'm not sure what we can do or can't do in that regard. So can we delegate those duties? Do we have the authority to delegate those duties to other people?

COMMISSIONER HERIOT: We can delegate anything. I mean the bottleneck right now is the staff feels they can't give us any SACs and therefore we're not -- we're being derelict in our duty to charter these SACs because there's some rule out there that says the staff director has to approve it. We have the power to put a band-aid on that until the point we have a staff director and I think a band-aid is all we need.

What we need to be able to do is say okay, you know, for the SACs that are being created by, you know, this person they have to be approved by this next person, you know, just some other person that doesn't work for them so that we can get them to come to us so we're not going to have like 40 of these that we have to charter when we finally get a staff director. We need to keep the thing flowing.

COMMISSIONER KLADNEY: And don't we all have to agree on who these people are? So perhaps either we can have a subcommittee of special assistants or something like that that can go ahead
and try and designate these areas that you're talking about and come up with a consensus of who to do it. Because otherwise we're going to be sitting here trying to agree on who's doing it.

COMMISSIONER GAZIANO: I agree it's going to be difficult but we have some ideas of, again, if it's a sensitive area where we have -- then the proposal raised I think perhaps initially by Chair is to have two sign off.

But I think part of the job is identifying -- first of all we need to talk to our staff through our special assistants and those of us who are -- I think the former acting staff director, the head, the acting head of OCRE and others can advise us on what really are the essential duties we need band-aids on. And again I think that we'll be able to hammer out something.

COMMISSIONER KLASNY: Well, let's look at it but we're not going to hammer it out today.

COMMISSIONER GAZIANO: Absolutely.

COMMISSIONER HERIOT: This is what we said last month and the month before.

COMMISSIONER KLASNY: Well, I know. We should have taken this action last month and had somebody report to us this month about -- in advance,
not like 3 days before the meeting get a list of who is going to do what and do whatever. I mean, I just actually, maybe I might be slower than most people, but I just don't, you know, I like to think about things before I take an action.

COMMISSIONER GAZIANO: Given the -- I don't know that we had consensus that we were going to divide it up in six different ways. And so if we're getting -- then it's worth the time. If we had that consensus that it's worth at least looking at then it's worth the time for us to try to see if we can figure it out.

CHAIRMAN CASTRO: I believe it is worth looking at this. As I said to you when we spoke, Commissioner Gaziano, I am personally willing to look at anything that is reasonable and legal to try to provide some interim solution. That solution will not be perfect but it's better than what we have right now.

And I am willing to say that in the interim we can work together to try to hash out what those roles are and then who we might be comfortable playing those roles and maybe even if we had to hold a special phone meeting to do further discussion. Because I too would rather not wait till the July
meeting. If there is some consensus we could reach before then we can have a teleconference meeting and hash it out, or maybe even come to a resolution. That's my personal view. Commissioner Achtenberg, I don't know if there's anything you want to add to this?

COMMISSIONER ACHTENBERG: Mr. Chairman, I do think that we should at least attempt to delegate personnel positions if not today then soon thereafter as colleagues would feel prepared to make some at least interim decision. I do think it's extremely important that we fill these positions so that we make sure that crucial functions don't languish in the interim.

CHAIRMAN CASTRO: So it does seem to me that while there's some disagreement there is a consensus that this is something that we are willing to look at and discuss and try to put some meat to the bone. So, we can put a subcommittee together or we can all try to begin to communicate with one another some ideas through our staff and then have, if necessary, a telephonic open meeting on this. Does that sound like a plan to folks?

COMMISSIONER GAZIANO: Yes.

COMMISSIONER ACHTENBERG: Mr. Chairman?
CHAIRMAN CASTRO: Yes, Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: I do think a subcommittee would be extremely useful, you know. With fair representation on both sides we're most likely to come to a conclusion that would be satisfactory to people at a telephonic meeting that we hold sooner than we would otherwise.

CHAIRMAN CASTRO: Okay. Actually, Ms. Tolhurst, could you come forward?

COMMISSIONER GAZIANO: We're going to make a motion on that today.

CHAIRMAN CASTRO: So, a motion on the person who will interact with the IG, is that what you said?

COMMISSIONER GAZIANO: No, the first motion --

CHAIRMAN CASTRO: Oh, on the -- okay.

COMMISSIONER HERIOT: And that's a promise to the IG that we --

COMMISSIONER GAZIANO: We would at least entertain a motion. It may be defeated based on Commissioner Kladney's vote.

CHAIRMAN CASTRO: So let me make sure that we're on the same page here. So, at least as to the
overall concept do folks want to serve on a subcommittee?

COMMISSIONER GAZIANO: Why not all those Commissioners who want to serve on the subcommittee can serve on the subcommittee?

CHAIRMAN CASTRO: Yes. And do you want to identify yourselves now? Otherwise you can let us know afterwards.

VICE CHAIR THERNSTROM: This is just a subcommittee to decide --

COMMISSIONER GAZIANO: A proposal.

VICE CHAIR THERNSTROM: A proposal.

CHAIRMAN CASTRO: That would be brought back to us as a Commission. So I'll be happy to serve on that.

COMMISSIONER ACHTENBERG: I'm happy to serve.

CHAIRMAN CASTRO: Okay, someone take notes on this.

COMMISSIONER GAZIANO: I'll serve to balance as needed.

CHAIRMAN CASTRO: Okay, good. Okay, so now on the topic of a person that we would need to designate in order to undertake the duties normally undertaken by the staff director to review and approve
the statutory enforcement report. Do we have any recommendations on that?

COMMISSIONER HERIOT: I have some questions.

CHAIRMAN CASTRO: Sure.

COMMISSIONER HERIOT: We don't want to appoint someone who wrote the statutory report.

CHAIRMAN CASTRO: Correct, so can that be --

COMMISSIONER HERIOT: And we don't want to appoint someone who is subordinate to someone who wrote the statutory report.

CHAIRMAN CASTRO: Right. Yes, absolutely.

COMMISSIONER HERIOT: So who's left after that?

COMMISSIONER GAZIANO: I would suggest the acting head of OCR but having done so I wonder whether that dooms her chances. But I think there's a logical argument.

CHAIRMAN CASTRO: Not from my perspective it doesn't doom her chances.

COMMISSIONER GAZIANO: For that --

COMMISSIONER YAKI: Dooms her chances for what?

COMMISSIONER GAZIANO: Pardon?
COMMISSIONER YAKI: What do you mean by dooms her chances?

CHAIRMAN CASTRO: For being elected to do that.

MS. TOLHURST: This will show you how short-staffed we are it depends how particular you want to get in doing this properly. The acting head of OCRE was one of the members of the editorial board has already edited this paper. The other person that might be logical would be the senior person in OSD, that's Lenore. She did the legal sufficiency review for this paper. So, most of the logical staff has already had their fingers in the paper.

COMMISSIONER GAZIANO: Is some involvement in your view a serious conflict?

MS. TOLHURST: That's for you to decide. I just want you to realize --

COMMISSIONER GAZIANO: But I'm asking your opinion. Do you have an opinion on that?

MS. TOLHURST: Some involvement?

COMMISSIONER GAZIANO: Or the particular involvement you mentioned. Let's be particular because the problem is getting someone -- you've mentioned to me your concern. Unless they willingly accept it, of giving a duty that's not germane to
their -- and that's a serious concern to me too. So we could get someone who has a completely different job but then it wouldn't be germane to assign that responsibility to them.

MS. TOLHURST: That's right. I think they're both big problems. The bigger one would be the person who did the LSR because she has already certified that it's legally proper.

CHAIRMAN CASTRO: And who's that?

MS. TOLHURST: That was Lenore.

COMMISSIONER GAZIANO: So the person that I've suggested you think is the lesser of the --

MS. TOLHURST: She made contextual and grammatical changes. I wouldn't prefer it but I guess it's not a total bar.

COMMISSIONER GAZIANO: Do you have any other suggestions?

COMMISSIONER HERIOT: That has its own problems, you know.

CHAIRMAN CASTRO: Is there a regional director, perhaps?

COMMISSIONER HERIOT: For her to suggest the person.

CHAIRMAN CASTRO: Could there be a regional director --
COMMISSIONER GAZIANO: At first I didn't want to ask that. You're right, you're right, Commissioner Heriot, she shouldn't suggest. I think that the role that the acting head of OCRE does not sound to me like a serious conflict.

COMMISSIONER Kladney: I make a motion.

CHAIRMAN CASTRO: I second it.

COMMISSIONER Kladney: Call for the question.

CHAIRMAN CASTRO: All those in favor of having the acting head of OCRE take on the duties that the staff director would take on in order to approve the statutory enforcement report for our review as a Commission signify by saying aye.

(Chorus of ayes)

CHAIRMAN CASTRO: Any opposed?

(No response)

CHAIRMAN CASTRO: Any abstentions?

(No response)

COMMISSIONER YAKI: Have we checked to make sure Ms. Butler is available?

CHAIRMAN CASTRO: No, I haven't spoken to her.

COMMISSIONER GAZIANO: What do you mean available?
COMMISSIONER YAKI: Well, I mean some people have scheduled vacation, that kind of stuff. I mean a practical question.

CHAIRMAN CASTRO: She was here earlier but she seems to have left so we'll --

COMMISSIONER KLANDNEY: Hope for the best.

CHAIRMAN CASTRO: Yes. Plan for the worst.

COMMISSIONER GAZIANO: See what happens when you leave the room.

CHAIRMAN CASTRO: I know, right? So, is that it or do we -- do you have another topic you want to talk about it? Or do you want to save that for when we talk about --

COMMISSIONER GAZIANO: I want to -- no, I want to listen to maybe Commissioner Kladney elaborate. I'll make a motion and then see if my amended version of the motion --

VICE CHAIR THERNSTROM: He said he needed to get out of here.

COMMISSIONER GAZIANO: I hear that. Do we --

COMMISSIONER KLANDNEY: I'm going to just tell you I think that the IG talks directly to the -- I mean, we have how many division heads? We probably
have as many division heads as we have employees pretty much. So the idea is she can -- the IG, not she. The IG --

COMMISSIONER GAZIANO: The General.

COMMISSIONER KLADNEY: The General can speak directly to the department head and get the information they need. If we put somebody else to go through, sitting here going who's that going to be that's familiar enough besides our quasi-acting general counsel to be able to fill that position and to know what should be gotten and what should be provided and what shouldn't be provided.

The General knows what she wants or they want and can ask for it directly and get it. We have four department heads.

COMMISSIONER GAZIANO: The General doesn't necessarily know where it is though so my motion should be as -- I move that the Commission encourage the IG to seek information from all of the department heads where feasible but that we still appoint, designate our senior attorney acting general counsel since she's the one who formerly was staff director to be the primary point of contact for the Inspector General. Does that satisfy?

COMMISSIONER KLADNEY: That's fine with me
if it's okay with the quasi-acting general counsel. I mean, the problem is in this entire process, the last 3 or 4 months she's the one who's taken the heat. And we're making her -- we're asking her to work more. She's earning less. She has no authority. We're imposing upon her again and that aggravates me.

VICE CHAIR THERNSTROM: Hear, hear.

COMMISSIONER GAZIANO: Hear, hear. But I'm working on the -- one of those issues.

COMMISSIONER KLASTNEY: Well, I think it's something that we have to acknowledge.

COMMISSIONER GAZIANO: That's appropriate.

COMMISSIONER KLASTNEY: And I think that the woman has been very magnanimous with her time and putting up with what we need.

CHAIRMAN CASTRO: So is that a second?

COMMISSIONER KLASTNEY: Yes, that's a second.

CHAIRMAN CASTRO: Okay. All those in favor signify by saying aye.

(Chorus of ayes)

CHAIRMAN CASTRO: Any opposed?

COMMISSIONER YAKI: I oppose it.

CHAIRMAN CASTRO: Okay, one opposed. Any abstentions?
(No response)

CHAIRMAN CASTRO: Okay, the motion passes.

Anything else?

COMMISSIONER KLANDNEY: I have two things.

COMMISSIONER GAZIANO: We did but I think Commissioner Klandney needs to go.

CHAIRMAN CASTRO: Okay.

COMMISSIONER KLANDNEY: Two things. First of all, two days ago was D-Day and a couple of days ago were Memorial Day and I think we ought to have a little resolution thanking those people who have given their lives to the country.

CHAIRMAN CASTRO: Absolutely.

COMMISSIONER KLANDNEY: And the second thing is I would like to acknowledge the Vice Chair for her great interview in the Wall Street Journal.

CHAIRMAN CASTRO: Hear, hear.

VICE CHAIR THERNSTROM: Thank you very much.

(Applause)

CHAIRMAN CASTRO: I would entertain a motion to adjourn.

COMMISSIONER GAZIANO: No, I did add one item to the agenda. I just wanted --

CHAIRMAN CASTRO: Oh, okay.
COMMISSIONER GAZIANO: -- Commissioner Kladney.

CHAIRMAN CASTRO: Okay, I misunderstood you. Okay. So, you're going to --

COMMISSIONER KLA DNEY: I'm done.

COMMISSIONER GAZIANO: I wanted an update on the Alabama report.

IV. Management and Operations

Update on the Alabama Report

CHAIRMAN CASTRO: And do we have Lenore and Pam Dunston -- on that?

COMMISSIONER GAZIANO: And then I had a question about the witness staffing.

COMMISSIONER ACHTENBERG: Mr. Chairman, I'm going to have to leave the call.

CHAIRMAN CASTRO: Okay, thank you.

COMMISSIONER ACHTENBERG: Thank you very much.

COMMISSIONER GAZIANO: Panel.

CHAIRMAN CASTRO: Yes, no witnesses.

COMMISSIONER GAZIANO: Panelists.

CHAIRMAN CASTRO: Ms. Ostrowsky, would you like to give us an update?

COMMISSIONER GAZIANO: Yes, my -- just I had to begin with just some logistical questions.
Where are we having it and what is the cost.

CHAIRMAN CASTRO: So in terms of location and cost of actual logistics of it that would be Ms. Dunston.

MS. DUNSTON: Hi. The location hasn't been confirmed yet. I'm going now to Alabama to see a site that we've already discussed. We have looked at some locations and meeting rooms and so forth. We've had a couple of the SAC people who have given us some sites but they didn't work out. We've looked at a couple of historical civil rights institutions but their size and the locations of them didn't pan out for our needs.

We are looking at the convention center down there. We have not firmed up a contract. I will be going down in a week and a half to see the location.

COMMISSIONER GAZIANO: My question is I suggested when I -- this was first discussed that we just get a federal building and the federal building hopefully will give it to us, their hearing room or whatever, meeting room, free. How many people do we think we need to accommodate?

MS. DUNSTON: Well, our typical setup is planning for 100 to 150. We don't typically go to a
federal building when we talk about the subject
matter. The subject matter is immigration. Because
of the people that we happen to serve, some may have
some issues with an immigration hearing coming down to
a federal building. So I talked to the Chair, we
discussed those issues and those kind of challenges to
the people that we're trying to serve.

In addition, when you try to contract
services they don't have the services, they don't have
the hours, they don't have the things that we need to
control our site. So going up to a building such as
that doesn't give us what we need to have access, what
we need to maybe have audio/visual or what we want to
do in terms of leaving our material there or A/V and
things like that. So contractually we can't control
that.

They don't necessarily have the staff that
we need for A/V that we usually want to do with a
hotel. We can contract them exactly what we want, the
exact hours and availability that we need. So that's
what from the contract side we try to go to a place
that we control.

CHAIRMAN CASTRO: Just for the record I
believe we lost a quorum, so.

COMMISSIONER GAZIANO: We can continue to
have the discussion. That's fine.

    CHAIRMAN CASTRO: Yes, I just want --

    COMMISSIONER GAZIANO: Yes, that's fine.

Yes, I didn't need a vote on any of this anyway.

    CHAIRMAN CASTRO: I just wanted to let you all know.

    COMMISSIONER GAZIANO: Okay. Let the record reflect. The hotel A/V is so much more expensive usually than contract A/V. It may be easier to do one-stop shopping but I would still wonder that there isn't some federal building.

I'm a little, I take your point a little bit that some in the audience who are in the United States illegally might not feel comfortable coming to our hearing in a federal building although I don't know that their immigration status -- their immigration status isn't going to be checked.

    COMMISSIONER YAKI: A lot of the federal buildings, the security now to get into a federal building is pretty awesome now.

    CHAIRMAN CASTRO: Yes, that's the concern.

    COMMISSIONER YAKI: You have --

    COMMISSIONER GAZIANO: You have to show an ID to get in the Department of Justice. Yes, I understand.
MS. DUNSTON: Any federal building you're going to have to show some state-issued ID. It will be checked.

COMMISSIONER GAZIANO: But that's --

COMMISSIONER YAKI: If you have an office with certain agencies in it or a member of Congress who has an office in it, there's no way.

COMMISSIONER GAZIANO: Okay. Well, apart from -- hotel A/V is very expensive. I just don't -- whether there's --

MS. DUNSTON: Because we go to another site does not mean we're going to pay for the services.

COMMISSIONER GAZIANO: -- a county building or something that would just loan us a facility and then we would hire A/V.

CHAIRMAN CASTRO: We may still have this same access problem. I believe you actually looked at that, Ms. Dunston?

MS. DUNSTON: You're still going to have a contractual cost. The cost of the actual meeting room itself is not an expensive and relative to what we normally pay in terms of the time and because of the location we're going to. But regardless of where we go to we have to contract the service. We have to
contract for equipment and the main hours to set up and to run that. So wherever we go we're going to have a fee to pay irrespective of whether it's a free space or it's a hotel.

COMMISSIONER GAZIANO: What was the budget that we had?

MS. DUNSTON: Fifty thousand.

COMMISSIONER GAZIANO: Fifty thousand. And is it possible that we could get a kind of estimate of that that includes, for example, how many staff need to come down. We have two staffing issues. One is whether we're going to kind of deplete our main office and the things we're trying to. But I don't know whether we're going to be able to afford to bring our counsels and special assistants. Maybe they don't really want to go and they would love to be left at home.

CHAIRMAN CASTRO: I also understand several Commissioners are not coming so that will be a savings as well.

COMMISSIONER GAZIANO: But is it possible we could get a kind of tentative outline?

CHAIRMAN CASTRO: Maybe if folks could let Pam know who's intending to come then she could --

MS. DUNSTON: And how long. So if you're
going to come for 1 day or 3 days that makes a
difference in terms of the number of hotel nights.
Your travel is something, you know, we can just make
an estimate on. But we're going to put together some
preliminary numbers about the cost and I can certainly
give that to the Chair to share with you.

COMMISSIONER GAZIANO: Thank you. Well,
if I could just, before --

CHAIRMAN CASTRO: I think Lenore had
something she wanted to add to that question.

MS. OSTROWSKY: There is a question. Kim
Tolhurst has ruled at least in a preliminary fashion
that we may not invite people to be speakers at the
hearing -- at the briefing, sorry, briefing -- who are
not legally in this country. And that would at least
I think eliminate the problem of using a federal
building.

MS. TOLHURST: No, I didn't rule.

MS. OSTROWSKY: You didn't, okay.

MS. TOLHURST: I'm not in a position to
rule anything. No. My suggestion was that if we
invite undocumented people to be speakers we need to
make it clear we can't guarantee the audience -- any
member of the public can come to the audience. We
can't guarantee that some member of the public won't
then after they're done talking go outside and make a phone call and say Suzie Smith from whatever country just admitted she's here without papers and blah blah blah. And so my concern was that people, when you're choosing who you want to invite, that they should know the audience is the public and that we have no control over public actions following.

CHAIRMAN CASTRO: Absolutely. And when I was in Birmingham for the Democratic Congressional Caucus briefing that was held in November and it was held not at a public building. It was held at an auditorium. And there were undocumented persons that were testifying. There were I presume also undocumented persons in the audience. And this is part of the life that these folks lead. They know that this is a potential that I think certainly clearly to the extent any of the folks -- I don't know that we have anyone yet who's undocumented that is on the panel, but that certainly should be reminding, we should be reminding them that it's going to be public. Many of them are still willing to come forward but they should know that in advance.

MS. TOLHURST: They might -- I know this isn't ideal for a briefing, but if there are only one or two they might want to call in by phone and use
their first name.

CHAIRMAN CASTRO: That's probably not ideal.

MS. TOLHURST: It might be ideal for them.

CHAIRMAN CASTRO: But I believe that given some of the groups on the ground that I think you're talking to they should be able to recommend some people.

MS. OSTROWSKY: They are trying but the fact is since we can't -- because it is a public hearing or public briefing they have not been able to find anyone so far.

CHAIRMAN CASTRO: Well, maybe we'll consider that option. Thank you. Yes, another question?

COMMISSIONER GAZIANO: I would -- just on that last point I'm glad for the clarification because I had heard that and didn't agree with it. I think we could hear from those who are in the country illegally if they want to come forward. But I would rather see them. But maybe -- let me think that through. I don't know.

My other question and I didn't want -- I didn't mind putting this at the end but I wish a few other Commissioners were here. One of the things that
the subcommittee on delegations will need to take up
is sort of who has the responsibility to ensure
balance. And that's as I've discussed with current
Commissioners present I think a matter that until we
have a staff director the Commissioners themselves
need to take responsibility for.

And for this particular hearing as you know, Mr. Chairman, I discussed with you I may not
have the latest update but I commend you for reaching out to potential panelists and not witnesses. But I
commend you for helping make this hearing that you've originated strongly represent I think some of the views that you want raised. But it seems, again, more on one side.

Including the SAC chairmen who are confirmed and invited and including --

CHAIRMAN CASTRO: Actually I did not extend those invitations. Those were done by Ms. Ostrowsky.

COMMISSIONER GAZIANO: Okay, but --

MS. OSTROWSKY: There were just two of them.

COMMISSIONER GAZIANO: Well, I understand two were invited and Joanne Milner is invited?

MS. OSTROWSKY: No.
CHAIRMAN CASTRO: No, she's -- I've spoken to her briefly. I haven't heard back from her but you spoke to Georgia and to Alabama, both of whom are Republican chairs.

COMMISSIONER GAZIANO: But against the law. And the balance that we --

CHAIRMAN CASTRO: I don't know what their position is on the law honestly.

MS. OSTROWSKY: They are against the law.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: They are against. As Ms. -- as our staffer said they are confirmed. Certainly my understanding is they are against the law. So if we count them we have six confirmed who are against the law, three confirmed who seem to support the law. We have four more invited who are against the law and the Southern Poverty Law Center is trying to find witnesses. And one of the principals who's one of the witnesses wants to find teachers. And one of the -- and then we understand that there's an interest in getting other undocumented workers to testify.

What I don't think is -- I do want to go and I'm planning on going as long as it's balanced. Since there are four Commissioners appointed by
Republican authorities regardless of our own identification, four appointed by Democrats, I think that we need to ensure that there is either identical or almost identical number of panelists on each side of this very divided issue.

With the help of my special assistant as you know I've been reaching out. I may have identified some others that can be invited. But I can't keep -- we can't keep pace if there are 18 or 12 or something on the other side. So what I would suggest is just get your informal reaction since we're not -- is if we agree on some target that there may be eight strong witnesses on one side or something like that and then eight strong witnesses on the other side that's manageable. And we'll work with Lenore to try to see that, you know, she agrees with those that we have in mind.

But until we have a staff director we've got to take more of the responsibility ourselves to guarantee balance. But is something like eight and eight reasonable as far as the number of panelists?

CHAIRMAN CASTRO: You know, I agree with you that there should be balance. That's what I want to see. To the extent that I have been involved it's been to facilitate sort of an outreach to people that
I know. I think I reached out to three or four people. Some of them I haven't heard back from. I'm still waiting to hear from Janet Murguia from the National Council of La Raza and I forget the other two.

MS. OSTROWSKY: Benson Hale.

CHAIRMAN CASTRO: No, I actually asked Marlene for you to follow up with them.

MS. OSTROWSKY: Okay. Yes.

CHAIRMAN CASTRO: But I also suggested to Lenore that because she's expressed to me on more than one occasion that she's been having trouble finding folks in favor. And I suggested to her that to me the folks that would be great to hear from are the actual drafters and supporters of the legislation. You know, they're the ones who advocate for this and so they would be great targets.

The number of folks that have already been selected have been primarily folks that I have not recommended or suggested. I know there's some scholars, et cetera, that are there. So I would definitely want to see balance. I can't say that based on the number of folks that may have already been invited by Lenore what the numbers should be, eight and eight. I think there are a number of people
you've already invited.

   MS. OSTROWSKY: And disinvited.

   CHAIRMAN CASTRO: I don't know what the
balance is. Oh, and disinvited as well? There's one
guy who wanted to speak but -- a statistician from Pew
that wanted to speak by phone. Demographer -- these
people in person.

   COMMISSIONER GAZIANO: Since this is your
hearing, by the way, some people need to be asked to -
- not disinvited but asked to submit written
testimony.

   CHAIRMAN CASTRO: Well, that's exactly
what --

   COMMISSIONER GAZIANO: Instead of oral
testimony. I would feel more comfortable in you
deciding for your side with the help of Lenore -- I'm
sorry -- and then I, you know, I'll only somewhat
reluctantly assume the task of helping with my special
assistant in identifying some others. But that we
should do something like that.

   CHAIRMAN CASTRO: Why don't we do this and
then I'll -- why don't you give me your --

   COMMISSIONER HERIOT: -- how you're going
to handle this?

   CHAIRMAN CASTRO: I'm sorry, go ahead.
Give me your thoughts. I apologize.

COMMISSIONER HERIOT: Yes, this is just a microcosm of a much larger issue.

CHAIRMAN CASTRO: And we talked about this --

COMMISSIONER HERIOT: And you know, a couple of things that have been said here I thought were kind of amusing. Like Todd was talking about there are two sides of this. Actually there are like 40 sides of this. And you know, Todd knows that.

CHAIRMAN CASTRO: It's hard to get balance. Yes, there's --

COMMISSIONER HERIOT: The point I wanted to make was that people have a much better sense of the political landscape close to their own views and the complexity of it, and they have less of a sense of the complexity of the political landscape for the views that are farther away from them. So when you said about the SAC chairs they're Republicans and I thought they're Libertarians. They may be on the other side.

And like it's much easier for, you know, people who are basically on the left side of the political spectrum to get a sense of the different views on the left side of the political spectrum.
CHAIRMAN CASTRO: Sure.

COMMISSIONER HERIOT: It's a little easier for the people on the right side of the political spectrum to do that. And that's why I think the notion that we as Commissioners have to take more, a more active role in making sure that this thing is balanced.

And I think the best way to do that is to say okay, given that we're 4-4 now I'll have to have a different idea later on, but while we're 4-4 now to say look, you know, a certain number of the witnesses should be agreed upon by the people who were appointed by Democratic authorities and a certain number of witnesses ought to be agreed upon by the people who were appointed by Republican authorities.

And I don't really see how we ever could do a good job in balancing panels if we don't have some Commissioner responsibility. Because what we're going to run into is what we ran into back in the Reynolds administration where the Democratic appointed Commissioners were upset that the panel wasn't balanced. But we needed to say, okay, help us. You invite them. You tell us who to invite.

COMMISSIONER GAZIANO: You take responsibility.
COMMISSIONER HERIOT: Instead of what we were getting which was just, you know, screaming and yelling about it not being balanced. So I definitely feel that not just for this but for all future occasions we need to come up with a procedure that makes the Commissioners more involved. And therefore under such a procedure we're going to do a lot better job at really balancing things because no one person is ever going to be good at that.

COMMISSIONER GAZIANO: And I absolutely agree that that's the goal for the subcommittee, but we're moving fast on this one and I want to meet the targets. And that's why I was asking you whether eight is the right number. I hope so because I hate -- I don't hate -- I think briefings or hearings, but this is a briefing, are more effective if you have fewer numbers of great witnesses that we can question and interact with than when you -- 16 is already above my ideal --

CHAIRMAN CASTRO: Yes, I thought it was kind of high too, but --

MS. OSTROWSKY: May I, may I say something?

COMMISSIONER GAZIANO: It's above my ideal. But I hate to disinvite, you know, move--
CHAIRMAN CASTRO: I understand.

COMMISSIONER GAZIANO: -- oral witnesses to written.

CHAIRMAN CASTRO: We'll figure that out.

MS. OSTROWSKY: May I say something?

CHAIRMAN CASTRO: Lenore and then I'll --

yes.

MS. OSTROWSKY: First of all, the job theoretically of the staff person working on these--

COMMISSIONER GAZIANO: For the recording why don't you.

MS. OSTROWSKY: -- is to make sure that they are balanced. That's number one. The number right now is, basically it's going to be probably 12 people total.

COMMISSIONER GAZIANO: You've got six right now against the law confirmed. And you've got six --

MS. OSTROWSKY: Three for. And we have invitations out to several people, one of whom is the chief author of the Alabama statute himself, Scott Beason.

COMMISSIONER GAZIANO: No, I understand, but --

MS. OSTROWSKY: And what I am trying to
say is that I think it'll be closer to 12 rather than
more.

COMMISSIONER GAZIANO: Well, the reason
I'm just questioning, you've got six confirmed
witnesses who are against the law. And you've got
invitations outstanding. The principal wants to bring
as I understand --

MS. OSTROWSKY: There are three confirmed
against.

COMMISSIONER GAZIANO: -- teachers. Yes,
but if you have six and the principal wants to bring
witnesses, and we want to bring undocumented aliens,
and we've got invitations out to La Raza --

CHAIRMAN CASTRO: May I suggest something?

COMMISSIONER GAZIANO: That's --

CHAIRMAN CASTRO: Let me suggest something
here. And I -- now let me talk, okay? So first of
all, I want to thank Pam for all the efforts she's
been doing on the logistics and I want to thank
Lenore. I know Lenore, this is not a substantive
subject area that you're familiar with so you've been
trying to come up to speed on the issues and I've been
trying to assist to that extent as has Marlene.

I think we are in a unique situation given
that we don't have the staff director and I want to
ensure that there's balance because I want there to be no question about the integrity of this briefing that we have.

What I would suggest as it relates to this briefing only and in this current scenario that we find ourselves in without a staff director. Not to say that I'm not amenable in the future to the ideas we were talking about at lunch.

COMMISSIONER HERIOT: I haven't spoken though. Because like you guys are still talking about two sides and there's not two sides, there's more sides.

CHAIRMAN CASTRO: I understand.

COMMISSIONER HERIOT: And a staff director isn't going to help this problem. It's going to make it worse.

CHAIRMAN CASTRO: Here's what I'm going to suggest is that we meaning -- since you've taken on the mantel of wanting to do this and I and our two respective special assistants this coming week have a phone conference with Lenore and kind of go through this. I think we need to look at each of the panels and determine who wasn't invited, who needs to be invited, who might be asked to submit written testimony so that we know where we have gaps and where
we can make adjustments. And I'm more than happy to
do that again.

This is my personal view. We don't have a
Commission here to vote on it but I think given the
exceptional circumstance I'm willing to do that where
we could work with the staff on that.

Once we have a staff director in place and
I think there are some valid points that Commissioner
Heriot raised yesterday in looking at how Congress
does their briefings. You know, they split it among
their various caucuses. Maybe that's something to do.
I think that would require a fuller discussion with
the Commission.

I'm not averse to that but I think just
for the purposes of this exigent circumstance of
getting this briefing balanced and go forward we'll do
this for this one. Does that make sense?

COMMISSIONER GAZIANO: I was -- I don't
want to -- yes.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: You know the sense
of your caucus. They can overrule us but you know the
sense of your caucus and I think I know the sense of
ours who are going to show up. So I think that we are
proceeding with what the likely consensus of our --
CHAIRMAN CASTRO: I agree, I agree.

COMMISSIONER GAZIANO: -- colleagues are going to be. So I think that works.

CHAIRMAN CASTRO: Okay. Did you want to add something after what I said?

COMMISSIONER HERIOT: I hereby cede all authority that I might have or not have to Commissioner Gaziano because I know nothing about this issue.

V. Adjourn Meeting

CHAIRMAN CASTRO: Okay. Well, I would ask for a motion to adjourn but since we don't have a quorum I don't even know if we need that, but I'll do it anyway. Motion to adjourn? Second.

COMMISSIONER GAZIANO: Second.

CHAIRMAN CASTRO: All in favor?

(Chorus of ayes)

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: No, okay?

(Laughter)

CHAIRMAN CASTRO: What is it, 1:35? Yes.

So thank you, everybody.

(Whereupon, the foregoing matter went off the record at 1:35 p.m.)