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PRESENT:

MARTIN R. CASTRO, Chairman
ABIGAIL THERNSTROM, Vice Chair
ROBERTA ACHTENBERG, Commissioner
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner (via telephone)
DAVID KLADNEY, Commissioner (via telephone)
MICHAEL YAKI, Commissioner (via telephone)

MARLENE SALLO, Staff Director
JENNIFER CRON HELPER, Parliamentarian
STAFF PRESENT:

MARGARET BUTLER, Acting Chief, OCRE, EEO Director
IVY L. DAVIS, Director, ERO
BARBARA DELAVIEZ, ERO
PAMELA DUNSTON, Chief, ASCD
YASMIN ELHARDY
LATRICE FOSHEE
ALFREDA GREENE
DAVID MUSSATT, Acting Chief, RPCU
LENORE OSTROWSKY, Acting Chief, PAU
JOHN RATCLIFFE, Chief, BFD
EILEEN RUDERT
ELOISE PLATER

COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL
TIM FAY
JOHN MARTIN
CARISSA MULDER
ALISON SOMIN
KIMBERLY TOLHURST
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CHAIRMAN CASTRO: This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is now 9:50 a.m. on July 12, 2013. This meeting is taking place at the Commission's headquarters at 1331 Pennsylvania Avenue, Northwest, Suite 1150, in Washington, D.C.

I am Chairman Marty Castro. Commissioners who are present with me are Vice Chair Thernstrom, Commissioner Achtenberg, Commissioner Gaziano, and Commissioner Heriot. Participating telephonically are Commissioners Kirsanow, Kladney, and Yaki. A quorum of the Commission is present.

Is the court reporter present? That's a yes. Is our Staff Director present?

STAFF DIRECTOR SALLO: Yes.

CHAIRMAN CASTRO: Okay. So the meeting will now come to order.

I. APPROVAL OF AGENDA

CHAIRMAN CASTRO: The first item is the approval of the agenda. Is there a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Are there any amendments?
(No response.)

CHAIRMAN CASTRO: Hearing none -- I'm sorry. Go ahead.

COMMISSIONER GAZIANO: I suppose I could raise this later as well, but if you don't mind, I'd like to amend the agenda to take the approval of the Maine SAC off the agenda, just a postponement. I could just make the motion, but if you want me to explain it, there are two people who have been recommended who I don't think have been given time to respond. And I think the slate without them is unbalanced in my view.

CHAIRMAN CASTRO: So this is just on the motion. So there is a motion to amend. Is there a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Okay. So any discussion on the motion to amend? Madam Staff Director?

STAFF DIRECTOR SALLO: In reference to the SAC slate, that has been ongoing for about three months. Prior to my taking office, I believe since April, they have been considering it. I approved the SAC slate on July 3rd. And I approved it as is based on what was given to me.
I did receive one application midday yesterday, but I had already approved the SAC. And my goal is that once I approve a slate as is, that we can move forward to prevent any late submissions. But that is all I have at this point.

COMMISSIONER GAZIANO: My thought now that we're talking about the motion is that it may well have been very appropriate for you to not on your own take it off an agenda that had been circulated, but that is why I am proposing it to the fellow commissioners.

And, in addition to the one that was I think brought to your attention very recently, there was another potential SAC member who expressed interest in joining earlier but has moved jobs and hasn't been subsequently contacted. And I would just like an additional opportunity to try to reach out to that potential SAC member because I think without those, I would oppose the Maine late, but I think there is a possibility that I would support it if it were given a little extra time.

STAFF DIRECTOR SALLO: And, if I may, I really totally understand your position.

COMMISSIONER GAZIANO: Sure.

STAFF DIRECTOR SALLO: My position is my
concern that it's now inactive. And so putting it off for another month when we are really trying to ramp up all of the SACs and bring everyone to become active is a concern for me. So I just wanted to advise you of that.

CHAIRMAN CASTRO: The Chair recognizes the Vice Chair on the motion to amend.

VICE CHAIR THERNSTROM: I support the motion to amend because I think we are so lucky if people volunteer for duty on a SAC. You know, they are paid nothing. You know, it's not a rewarding, very rewarding, appointment. And if there are some quality people that really want to come on a SAC, I think we should wait and look at their credentials.

CHAIRMAN CASTRO: And just for the record, I found my service on the SAC very rewarding.

VICE CHAIR THERNSTROM: Oh. Well, good, but --

CHAIRMAN CASTRO: Maybe it wasn't the Maine SAC, but I know what you mean.

VICE CHAIR THERNSTROM: You do know what I mean.

CHAIRMAN CASTRO: It's hard work and --

VICE CHAIR THERNSTROM: It's hard work
and -- yes.

CHAIRMAN CASTRO: Any other comments on the motion to amend?

(No response.)

CHAIRMAN CASTRO: If not, we'll vote on the motion to amend. So I'm going to do a roll call vote on this one just to make sure we've got everybody. Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow,
how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Okay. And I'll vote no. So six yeses and one no. The motion to amend passes. So agenda item --

VICE CHAIR THERNSTROM: And your vote doesn't count.

CHAIRMAN CASTRO: No, it doesn't, but I just felt that out of respect to the Staff Director's position, that I would do that. But I think that, you know, we don't want to be in the habit of doing this sort of last minute. We want to try and get this all done so that --

VICE CHAIR THERNSTROM: I know. I understand.

CHAIRMAN CASTRO: -- when the Staff Director does sign off on something, it is signed off on.

So now the full --

COMMISSIONER YAKI: Mr. Chairman?

CHAIRMAN CASTRO: I'm sorry?

COMMISSIONER YAKI: This is Commissioner Yaki. I mistook the vote. Was this to actually remove from the agenda or to discuss postponing on the agenda?
CHAIRMAN CASTRO: No. It was to remove it from the agenda.

COMMISSIONER YAKI: Oh. Then I vote no.

I'm sorry. I mean, I think that, as has been done in other cases in the past, if there are lots of variables still on the Commission and it's not filled to the brim, then I see no reason why we couldn't go forward and consider these two as additions to the committee at the meeting thereafter, as we have done in other circumstances without preventing the full body from being --

CHAIRMAN CASTRO: Okay. So the motion still passes. Now we move on to the approval of the agenda. All of those in favor of the agenda as amended now say say aye.

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: All of those opposed?

(No response.)

CHAIRMAN CASTRO: Any abstentions?

(No response.)

II. PROGRAM PLANNING

CHAIRMAN CASTRO: Okay. So we now move on to Program Planning. We have four agenda items there today. The first one is --
COMMISSIONER KLADNEY: Excuse me, Mr. Chairman.

CHAIRMAN CASTRO: Yes, Commissioner Kladney?

COMMISSIONER KLADNEY: We only put the SAC off for 30 days, right?

CHAIRMAN CASTRO: That's right. It's not --

COMMISSIONER KLADNEY: We didn't --

CHAIRMAN CASTRO: That's correct. It's not on the agenda for today. We'll bring it back later. This does not remove it in perpetuity.

COMMISSIONER KLADNEY: Well, I don't mean later. I mean 30 days absolutely, in our next meeting.

STAFF DIRECTOR SALLO: Yes.

CHAIRMAN CASTRO: Yes.

COMMISSIONER KLADNEY: Okay. Thank you.

CHAIRMAN CASTRO: You're welcome.

- APPROVAL OF FINAL DRAFT OF 2013 STATUTORY ENFORCEMENT REPORT

CHAIRMAN CASTRO: The first item on the program planning is the review and approval hopefully of a final draft of part A of our 2013 statutory enforcement report entitled "Sexual
Assault in the Military." This does not include any findings and recommendations at this point. This is just part A of the report, the six substantive contexts of chapters 1 through 6.

So do we have any discussions or amendments as it relates to the draft report?

COMMISSIONER ACHTENBERG: I'm going to move the adoption of the statutory report in order to put it into discussion.

CHAIRMAN CASTRO: Okay. Is there a second to that? Do we have a second?

COMMISSIONER Kladney: Second.

CHAIRMAN CASTRO: Okay. We have a motion and a second to approve the statutory enforcement report for purposes of discussion.

VICE CHAIR THERNSTROM: We're talking just about part A?

CHAIRMAN CASTRO: Part A only. Part A only. So we have a motion that's been seconded. Then we'll open it for discussion. Any commissioners have any?

COMMISSIONER ACHTENBERG: Mr. Chairman?

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: I want to
commend the staff for I think quite a good draft statutory report. I think it reflects well the record. And I think it is quite evenhanded in its presentation, which I think serves the Commission extremely well. This is a difficult topic, about which there are animated views on all sides of the spectrum. And, as I say, I think the staff did, you know, quite a good job and one where the substantiation I think is pretty substantive and I think quite persuasive.

I also think there is not a compendium of information out there like this. And so, you know, even though I am fairly optimistic that, in addition to adopting a report, we will also adopt meaningful findings and recommendations, I do think that the report in and of itself will make a contribution to the discourse.

CHAIRMAN CASTRO: Thank you, Commissioner Achtenberg. Any other comments? Commissioner Gaziano?

COMMISSIONER GAZIANO: I certainly concur that this is a difficult topic, partially because of the lack of clear, reliable evidence on the topic. I also concur that the staff has done a very good job of improving it as it went along. I'm
very appreciative of the care that they apparently paid, not trying to get them in trouble for making some changes that I, among others, urged, but I think it still has some very rough edges that worry me.

I think we're close. I will offer three amendments that may help get me a little bit closer that I hope other commissioners will consider, but do you want me to offer those at this time, Mr. Chair, or --

CHAIRMAN CASTRO: Yes, please do.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: This would be the appropriate time to do that.

COMMISSIONER GAZIANO: Okay. Unless there are others who want to make general statements first?

CHAIRMAN CASTRO: You've got the floor.

COMMISSIONER GAZIANO: Okay. Let me start with a maybe minor and simple one. On page 8 of the draft report, there is a sentence "On the surface, because sexual assault in both the military and college or university settings may often involve alcohol and substance abuse, the phenomena may appear to be more similar than further analysis
counsels." I would ask to delete that sentence.

I can read it again. I don't understand what it means.

VICE CHAIR THERNSTROM: I was going to say I don't understand what it means either.

COMMISSIONER GAZIANO: And because I certainly don't understand what it means, I would rather not vote for a report with it in. Should I --

CHAIRMAN CASTRO: Do you want to read it again?

COMMISSIONER GAZIANO: -- yes, read it again for those who may not have the report? "On the surface, because sexual assault in both the military and college or university settings may often involve alcohol and substance abuse, the phenomena" -- well, I don't know what the phenomena is by the way -- "the phenomena may appear to be more similar than further analysis counsels."

CHAIRMAN CASTRO: Okay. So your motion is to delete that. Is there a second on that motion?

VICE CHAIR THERNSTROM: I'll second.

CHAIRMAN CASTRO: Okay. So now we have a motion for discussion. Any discussion on that?
Commissioner Achtenberg, did you want to say something? Any of the commissioners on the phone?

(No response.)

CHAIRMAN CASTRO: So the motion is to delete the sentence on page 8 "On the surface" --

COMMISSIONER YAKI: I want to hear what the Staff Director has to say.

CHAIRMAN CASTRO: Okay. I was just going to repeat it for folks. So go ahead.

STAFF DIRECTOR SALLO: This sentence refers to the information that is contained within footnote 43, wherein we pulled together some of the journal articles that were brought to our attention where it discusses the involvement or alcohol playing a role in sexual assault, both on campus -- the reason why this sentence was put in here was because there was a suggestion that we compare both populations. And it is very difficult to compare the populations from what we have seen. It is like comparing apples to oranges.

The underlying common factor in a lot of the cases tends to be alcohol and substance abuse. But aside from that, the environments based on the research done by staff are not comparable. And, therefore, they came up with that sentence to try to
capture that idea.

We can rewrite it if Commissioner Gaziano would feel more comfortable.

COMMISSIONER GAZIANO: I think we need to make a decision on this today to keep on schedule, but I still think it's vague in a few respects. "The phenomena may be more similar" is so open-ended I think it is not very meaningful, but it is also subject to varying interpretations.

STAFF DIRECTOR SALLO: And, if I may, what was included in there was based on edit suggestions that we received. So we can circle back to the person that provided that sentence.

COMMISSIONER GAZIANO: Again, I think we need to try to finalize this today.

CHAIRMAN CASTRO: Is there some way we could wordsmith this now because I would like to see if we can address the concerns you raised. I would like to see if we can address those concerns by doing some quick wordsmithing here so that we can get a report today because I agree we can't kick this off to the next meeting.

VICE CHAIR THERNSTROM: Is this sentence important to keep?

STAFF DIRECTOR SALLO: If I may --
CHAIRMAN CASTRO: Yes?

STAFF DIRECTOR SALLO: It's important because what is contained in the footnote is most definitely attached to it. And I really wish to keep the information that is contained in the footnote.

CHAIRMAN CASTRO: So how could we do that, then? I'm sorry. Commissioner Heriot?

COMMISSIONER HERIOT: The way the sentence is constructed, it's focusing on alcohol and drug aspect of it, which really doesn't have anything to do with the underlying point that these numbers may not --

(Phone interruption.)

COMMISSIONER HERIOT: -- you know, that referring to alcohol and drugs here and saying that they're involved in both the college and university area and the military area, that's not a reason that these things aren't comparable. You know, whether they are or are not comparable is a different issue, but it's not because of the alcohol and drug-related aspects of it.

COMMISSIONER KIRSANOW: May I be heard?

CHAIRMAN CASTRO: Yes, Commissioner? Go ahead.
COMMISSIONER KIRSANOW: It seems to me that they're different because the environments. And a sentence something along the lines that "Both involve alcohol and controlled substances. However, the environments they occur in are different and not comparable." That's what the Director said.

COMMISSIONER GAZIANO: But that's a value. That's a conclusion that I think the predicate can't support. If you want to make that statement, I assume that will be in your commissioner's statement, but I don't think the fact that they both involve alcohol and controlled substances necessarily leads to the conclusion in the second half of that sentence.

COMMISSIONER KIRSANOW: But that's what the Director just got done saying.

CHAIRMAN CASTRO: So this is the Chairman. I am going to suggest something here. Why don't we just delete? This is my suggestion. Delete that sentence but keep the footnote in place. So I guess we would have 42 and 43 be the footnotes on the previous sentence to that. That way we have the important information we do want to have that is contained in the footnote on the issue, but we don't have the sentence that is kind of subject to, as you
indicated, possible misinterpretation or multiple interpretations.

COMMISSIONER GAZIANO: Yes, yes. I suppose what you would do, then, is you would just combine the footnotes into footnote 42. And you might make the reference "See F," instead of "See" or something, "See also," whatever. And I think that works for me.

CHAIRMAN CASTRO: Okay. Does that work for everybody else?

COMMISSIONER ACHTENBERG: It does for me.

CHAIRMAN CASTRO: So then that will be your motion?

COMMISSIONER GAZIANO: Sure. Friendly amendment accepted.

CHAIRMAN CASTRO: Friendly amendment? Okay. The seconder --

COMMISSIONER KIRSANOW: Let me ask if the Staff Director --

CHAIRMAN CASTRO: Yes. She was nodding her head in the affirmative, I believe, but I'll let her speak for herself, Commissioner.

STAFF DIRECTOR SALLO: As long as we can keep the footnote, I am in agreement to delete the
last sentence of paragraph 1 on page 8.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: Yes. I'm happy it allows commissioners or other scholars reading the report to draw what conclusions they want from those studies.

CHAIRMAN CASTRO: Okay. Any further discussion on that motion to amend? If not, then I'll --

COMMISSIONER KIRSANOW: Well, hang on. Wait, wait, wait.

CHAIRMAN CASTRO: Okay. Go ahead.

COMMISSIONER KIRSANOW: My concern is there's a world of difference in a reference between a "See F" and a "See." And there are further facts involved in that footnote that more directly need a more qualifying or absolute statement in the report than merely being a vehicle for inclusion to be a citation, I have a problem. But if the Staff Director thinks it's okay, that's fine. I just want to be absolutely sure that we're not alluding anything by changing its referential value from a "See also" or a "See F."

COMMISSIONER GAZIANO: My amended friendly motion was to defer to the Staff Director
on the appropriate --

STAFF DIRECTOR SALLO: Thank you.

COMMISSIONER GAZIANO: -- reference as long as it's not -- and this means exactly what I think it means, but between reasonable legal references, I would refer to the Staff Director on that.

STAFF DIRECTOR SALLO: Thank you, Commissioner.

CHAIRMAN CASTRO: Okay. With that said -- Yes, Commissioner Kladney? Did you want to say something or are we just --

COMMISSIONER KLADNEY: I haven't said a word.

CHAIRMAN CASTRO: Okay. Oh, I'm sorry. So I'm going to take a vote on this motion to amend. So, Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano,
how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: And I vote yes. So the motion passes unanimously.

Okay. You had another motion, Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes. And the second is more substantive but also will affect my vote on the final report somewhat more. So I hope other commissioners will be reasonable in what I --

COMMISSIONER KIRSANOW: It's regarding?

CHAIRMAN CASTRO: We hope you will be reasonable, too.

COMMISSIONER GAZIANO: -- what I think is a compromise. On the very next page, page 9, there are some sentences, essentially 3 sentences,
interspersed with some other language that seemed to me to be an attempt to walk back language in the second draft to make the conclusion, which I think is more appropriately for the commissioners that you can't compare -- there is no relevant comparison between different college and military sexual assault rates. And I certainly think that it is not easy.

So this is my amendment. After footnote 44, I would strike the sentence "Therefore, available data does not provide a meaningful comparison" and the following words, "For example," begin the next sentence with a capital A and leaving the sentence in that again states the facts that I think the authors want, "A large study of sexual assault on college campuses which was conducted by the National Institute of Justice in 1997 estimated that the victimization rate was 4.9 percent for a 1-year period" with a footnote -- and I am happy to leave that in.

Strike the next sentence, however, because I think it's an inaccurate sentence. "However, there has not been a study focused on college and university women that would provide insight into whether sexual assault rates in that
population have changed over the past 15 years."

Actually, strike also the next sentence.

I think that sentence is erroneous. At least there probably have been studies. And I think whether it provides insight or not is in the eye of the beholder.

The next sentence I want to strike is

"In addition, the DoD includes a wider range of sexual contact, such as groping, in its definition of sexual assault." I also think that is mistaken.

And then I would leave the next sentence, which is factual. And then the sentence I would leave is "Nationally, the U.S. Department of Justice reported a decline in sexual assault rate against women in the general population from a peak of 5 per 1,000 women, .5 percent in 1995, to 2.1 per 1,000 women, 0.21 percent in 2005, and remained unchanged from 2005 to 2010."

And I would strike the next sentence.

And that would conclude my offered amendment. The final sentence I would strike is "The military does a better job than many college campuses in educating its members about and responding to sexual assault, but military leaders have said that more can be done."
COMMISSIONER ACHTENBERG: You want to strike that or keep it?

COMMISSIONER GAZIANO: Strike it. It's argumentative and --

COMMISSIONER HERIOT: There's also no footnote for that. I don't recall anyone saying that.

CHAIRMAN CASTRO: Okay. So we have a motion. Is there a second so we can begin discussion?

COMMISSIONER HERIOT: Second.

CHAIRMAN CASTRO: Okay. So let's take these line by line. So the first sentence that you want to strike from page 9 is after footnote 44, "Therefore, available data does not provide a meaningful comparison"?

COMMISSIONER GAZIANO: I can discuss them line by line, but my --

CHAIRMAN CASTRO: Do you want to do them all in --

COMMISSIONER GAZIANO: -- amendment is --

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: -- to do it all at once.
CHAIRMAN CASTRO: All right.

COMMISSIONER ACHTENBERG: Could we go through the ones that we're striking once again? I'm sorry.

CHAIRMAN CASTRO: Yes. Could you repeat?

COMMISSIONER GAZIANO: Okay. Just the ones I'm striking.

COMMISSIONER ACHTENBERG: Yes, please.

COMMISSIONER GAZIANO: Following footnote 44, the sentence plus the first two words of the next, "Therefore, available data does not provide a meaningful comparison. For example,"

comma. Then I would leave the remainder of that sentence that begins, "A large study."

I would strike the next two sentences after that that begin with "However" and ending with footnote 46. Strike all of that. And then strike the sentence that follows footnote 47.

CHAIRMAN CASTRO: So you would leave "Nationally, the U.S. Department of Justice"? You would leave that in place?

COMMISSIONER GAZIANO: Correct, --

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: -- because that
is just a factual statement.

CHAIRMAN CASTRO: Okay. Any discussion on that motion?

STAFF DIRECTOR SALLO: May I?

CHAIRMAN CASTRO: Yes, Madam Staff Director?

STAFF DIRECTOR SALLO: The only thing that I wish -- well, I strongly need to include in here is in the second sentence, the second set of sentences, that he was trying to strike, where it's like two sentences that starts with "However," the second sentence contained therein, where it says that, "In addition, the DoD includes a wider range of sexual contact, such as groping, in its definition."

That is factual, and that ties in to the first sentence at the very beginning of this paragraph. So would you be amenable to at least moving that up since it's tied into the current definition for the term "sexual assault"?

COMMISSIONER GAZIANO: First of all, different studies have wider range. I think the comparison is to one study, the Fischer study, but it is actually mistaken as to the Fischer study. The Fischer study does include groping. So I think
there are two problems with that sentence. And I

don't know that our time permits us to unravel.

It seems to be a sentence that all
military studies are more expansive than all college
and university studies. I can't support that, but I
also don't think it's true as to the comparison to
the Fischer study, which did include measures of
groping.

COMMISSIONER Kladney: Did it include
sexual harassment? Did it include sexual
provocative photographs in the office? Did it
include hanging that in the halls of the college?

COMMISSIONER Gaziano: But the statement
is that "DoD includes a wider range of sexual
contact in its definition of sexual assault." I
don't --

COMMISSIONER Kladney: Sexual harassment
is part of that definition.

COMMISSIONER Gaziano: No. I'm saying I
don't think that is the case for all other
institutions, all other -- I don't even have
confidence if it's more often true than not. There
are many college campuses that have extremely broad
definitions of sexual assault, so much so that
Saturday Night Live makes fun of them.
CHAIRMAN CASTRO: The Chair recognizes
the Staff Director.

STAFF DIRECTOR SALLO: The reason why we
included this is because it is difficult to pinpoint
just one particular study to show the vast
difference between the campus and the military
campus, but in reference to this particular
definition, if we were to take the Fischer footnote
out and just address it based solely on the
Department of Defense citation, where it actually
does say that they provide a wider range of acts
that fall under their definition of sexual contact.

COMMISSIONER GAZIANO: I think I have a
friendly amendment to mine on this.

COMMISSIONER HERIOT: The sentence that
you're concerned with, "In addition, the DoD
includes a wider range of sexual contact, such as
groping, in its definition of sexual assault," how
about if we change it to this, "In addition, the
DoD, arguably, includes a wider range of sexual
contact in its definition of sexual assault," just
to be a little bit more vague with that sentence?

COMMISSIONER GAZIANO: Yes. And then
remove the footnote to Fischer, which I think --

COMMISSIONER ACHTENBERG: Arguably? How
CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: To Commissioner Heriot, I don't understand how "arguably" addresses the issue?

COMMISSIONER GAZIANO: Well, it allows me to vote for it because I don't know the statement is true otherwise. If you say "arguably," then people can argue it. And if you take away the footnote cite to Fischer and the reference to groping, I think it is more accurate.

I am trying to help you. I am trying to retain most of it, but it isn't accurate that the Fischer study didn't include groping, for example.

CHAIRMAN CASTRO: Madam Staff Director?

STAFF DIRECTOR SALLO: I would be amenable to that.

CHAIRMAN CASTRO: Anybody else?

(No response.)

CHAIRMAN CASTRO: Okay. So as to the balance of the language that you want to take out, are there any other suggestions or comments or opinions on that from the --

COMMISSIONER ACHTENBERG: Could I --
CHAIRMAN CASTRO: Yes, Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Could I address a question to the Staff Director? So to the extent that you might agree to the remark that Commissioner Gaziano just made, how would the sentence read that you tentatively have suggested that you would be amenable to?

COMMISSIONER GAZIANO: Could I read that? Proposed is, "In addition, DoD, arguably," inserting the word "arguably."

COMMISSIONER ACHTENBERG: So it's only that sentence, you're saying?

COMMISSIONER GAZIANO: Yes. And I would --

COMMISSIONER ACHTENBERG: What about the prior sentence?

COMMISSIONER GAZIANO: I would still like to strike that prior sentence in my motion.

COMMISSIONER ACHTENBERG: And does the striking of the prior sentence, Madam Staff Director, in your view impact the efficacy of the current two-sentence statement?

STAFF DIRECTOR SALLO: No.

COMMISSIONER ACHTENBERG: So you're
amenable to striking that sentence?

STAFF DIRECTOR SALLO: Yes, I am amenable to striking that sentence and including the word "arguably." And we can footnote the sexual assault by using a reference to the DoD that defines it and gives us a definition for sexual contact as well.

CHAIRMAN CASTRO: Madam Vice Chair?

COMMISSIONER ACHTENBERG: Thank you very much.

VICE CHAIR THERNSTROM: I have a tiny, little request for the staff that when they're writing reports involving data, we have struck this sentence. Nevertheless, it says, "Therefore." This is just a request with respect to future reports. We have struck the sentence, "Therefore, available data does not." Data is plural. It's got to be "do not provide."

STAFF DIRECTOR SALLO: Yes, ma'am. Thank you.

CHAIRMAN CASTRO: Okay. So on the last sentence, I don't think we have discussed that yet, "The military does a better job." Have we discussed that?

STAFF DIRECTOR SALLO: No, we have not.
CHAIRMAN CASTRO: Okay.

STAFF DIRECTOR SALLO: But I have no objection.

CHAIRMAN CASTRO: Any commissioners have an objection to that?

(No response.)

CHAIRMAN CASTRO: Hearing none, so let me recap, then, so I make sure I understand what we are willing to agree to here. We have been kind of jumping around on this page. So we are going to -- there is a motion to and I believe we will agree to strike the sentence that begins "Therefore" and runs through "For example." And then the next sentence will start with "A large study."

We will then strike the sentence that begins after footnote 45 that starts "However." And we will strike that up to the point of 15 years. That next sentence, we will modify to read, "In addition, the DoD, arguably, includes a wider range of sexual contact in its definition of sexual assault."

And then we will strike the other sentence at the bottom, which starts, "The military does a better job" and ends with "can be done."

Correct?
COMMISSIONER GAZIANO: Correct except that I concur with the Staff Director, replacing the current citation to footnote 46 with Fischer with a definition --

CHAIRMAN CASTRO: Right.

COMMISSIONER GAZIANO: -- with just a plain vanilla definition of sexual assault --

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: -- in the military to support that --

CHAIRMAN CASTRO: Correct.

COMMISSIONER GAZIANO: -- arguable statement.

CHAIRMAN CASTRO: So that is the motion. We have discussed it. So I think we're ready to vote on this. So I will begin a roll call vote. Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner
Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: No. I think it's fine as is.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER Yaki: No.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: And I vote no. So it's four to four. The motion fails.

You said you had one more motion?

COMMISSIONER GAZIANO: Yes, I do.

CHAIRMAN CASTRO: Okay. Commissioner Gaziano, proceed, please.

COMMISSIONER GAZIANO: If I would ask everyone to turn to page 29? Once people turn to 29, this section addresses supposed or perceived barriers to reporting. I think it is quite misleading without an additional sentence that I would like to add. Just to give context to those who may not have it before them, it talks about
various reasons why victims did or supposedly did not make a report.

The sentence I would like to add would be before the first full sentence of page 29, before the word "participants." And I would add the following sentence, "According to DoD's 2012 workplace and gender relation survey, 47 percent of respondents said they did not report incidents because they were not serious enough to report," just another factual statement.

CHAIRMAN CASTRO: Can you restate that for me?

COMMISSIONER GAZIANO: Certainly. "According to DoD's 2012 workplace and gender relation survey, 47 percent of respondents said they did not report incidents because they were not serious enough to report."

CHAIRMAN CASTRO: And when you say, "incidents," you mean incidents involving some sexual assault or misconduct or --

COMMISSIONER GAZIANO: Yes. I think that the context is provided in the previous sentences.

CHAIRMAN CASTRO: Okay. Is there a second to that motion?
VICE CHAIR THERNSTROM: I'll second it.

CHAIRMAN CASTRO: Okay. So we have a motion to amend that has been made and seconded. Discussion? Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: So is the motion merely to interject that sentence?

COMMISSIONER GAZIANO: Correct.

COMMISSIONER ACHTENBERG: It doesn't address the subsequent sentence, right?

COMMISSIONER GAZIANO: Correct. Correct. I am willing to live with that.

COMMISSIONER ACHTENBERG: What is the Staff Director's view on this, Mr. Chairman?

CHAIRMAN CASTRO: Madam Staff Director?

STAFF DIRECTOR SALLO: I would be amenable to that. It doesn't take away from the rest of the sentences.

COMMISSIONER ACHTENBERG: And it's factually accurate, I take it?

STAFF DIRECTOR SALLO: Yes, it is.

COMMISSIONER ACHTENBERG: Okay.

CHAIRMAN CASTRO: Any other commissioners want to comment on or opine on this?

COMMISSIONER YAKI: This is Commissioner Yaki. Would it be more appropriate in a footnote,
rather than in the main body? I mean, I am not quite sure the purpose of having the sentence.

COMMISSIONER GAZIANO: I think it is more appropriate in the main body. I think it is of equal status with the preceding sentence and the following sentence.

CHAIRMAN CASTRO: Any other questions on the phone? Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: I just think given that it is factually correct, I don't have any problem with it being interjected somewhere. It just seems odd to me, Commissioner Gaziano. Is there someplace else where it could be interjected?

And I'm not trying to take away from the -- if, in fact, the survey says 47 percent or insufficiently serious to be reported. I can't quarrel with that.

COMMISSIONER GAZIANO: I think it is almost necessary to make this section complete and not misleading. So I can't see putting it anywhere else because it doesn't -- I'm not sure where else it would go anyway, but I think it is important to place it here in this section.

And it's of equivalent status with the section begins with "Only a fraction of victims
report." And that it proceeds to explain the reasons why. "Fear of negative consequence is a significant factor in many victims' decisions not to report." Well, that is helpful. "A lack of confidence in the military justice system may also contribute to victims' reluctance to sexual," that's relevant. That is interesting.

And then my sentence gives a fuller understanding. Forty-seven percent of them don't report it because they don't think it was serious enough to report.

COMMISSIONER YAKI: No. I think that is totally different. I think that is totally different and doesn't apply there. I mean, what you are essentially trying to do is undermine the entire idea that there is serious under-reporting of significant and major sexual assaults in the military. That's a footnote. I really believe that that is a footnote, rather than something that belongs in the main text.

CHAIRMAN CASTRO: Madam Staff Director?

STAFF DIRECTOR SALLO: I mean it's a factual statement. I understand that, but to have it flow into participants and focus groups conducted by the -- the flow is just not there. So I want to
bring to the surface that, irrespective of the fact that they are indicating that they were not serious enough to report, the folks that did participate in the focus groups indicated that it is difficult to report. And to us, that is very important.

And that is the main take-away from this is, irrespective of whether they thought it was serious enough to report or not, once they went to report, it was difficult to do so. And I need that to come across and, as Commissioner Yaki said, not bring down the tone of what we're trying to get across in the last sentence.

COMMISSIONER YAKI: I mean it trivializes it. It trivializes the tone. And it's one thing to say some people's views of it are so expansive it may have been considered serious stuff or whatever. We're talking about a very serious issue. And this makes it less serious.

And I think if you could couch it is a pen nook somewhere or put it to lists, but within the context of that paragraph, it takes away the value of the punishment and, quite frankly, the seriousness of it.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: I tell you what.
I'm willing to put that sentence anywhere in the text of that paragraph that some other commissioner is willing to suggest. I think it does the least whatever where I placed it and it is the most likely. If you want to place it at the end of the paragraph, participants, fine.

COMMISSIONER ACHTENBERG: Mr. Chairman?

COMMISSIONER GAZIANO: If you want to make it the first sentence after the first one after the -- or the second sentence, fine.

CHAIRMAN CASTRO: Sure. Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: What about the possibility of making it the first sentence?

COMMISSIONER GAZIANO: You mean after -- the first sentence? I'm fine with that.

CHAIRMAN CASTRO: So where would it read? You mean starting the "Additional Barriers" section with --

COMMISSIONER ACHTENBERG: No. You could say, you know, according --

VICE CHAIR THERNSTROM: What page are you on, Roberta?

COMMISSIONER ACHTENBERG: Yes. I'm on page 28, under G, which is "Additional Barriers to
CHAIRMAN CASTRO: Right.

COMMISSIONER ACHTENBERG: If we began the paragraph by making reference to the fact that the study says that according to 47 percent, that is a possibility. I don't know. Does that you think --

COMMISSIONER GAZIANO: I don't know. I suppose I could live with it, but I would suggest --

CHAIRMAN CASTRO: It makes it more prominent. Why wouldn't you want to live with it?

COMMISSIONER GAZIANO: No, no, no. It follows from "Only a fraction report." And then you're trying to explain just sort of grammatically and style-wise.

CHAIRMAN CASTRO: Madam Staff Director?

COMMISSIONER ACHTENBERG: If I may --

COMMISSIONER GAZIANO: If it's the second sentence, Commissioner Achtenberg, would that --

COMMISSIONER YAKI: Footnote it.

COMMISSIONER KLANDNEY: Footnote it.

COMMISSIONER ACHTENBERG: No. It's too important a point just to --

CHAIRMAN CASTRO: Madam Staff Director?

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STAFF DIRECTOR SALLO: The workforce and gender relation survey is just addressing reporting in general; whereas, the current first sentence in section G on page 28, which is addressing restricted reporting -- so you have a very general statement where it's talking about the survey results. And then we are referring to restricted reporting. So, even with the option of restrictive reporting, only a fraction of victims report.

We might be able to tweak that first sentence a little bit better so that it can flow from "According to DoD workplace" if we're going to insert that as a first sentence, but I would make the distinction that the survey talks about reporting and then the other sentences referring to restrictive reporting.

COMMISSIONER ACHTENBERG: So, then, maybe --

COMMISSIONER KLADNEY: Excuse me.

Excuse me.

CHAIRMAN CASTRO: Commissioner Kladney?

COMMISSIONER KLADNEY: So basically we're talking about two different types. We're talking about a restricted and then restricted and non-restricted. So we're talking about apples and
oranges here. Is that correct? Did I read that correctly?

COMMISSIONER YAKI: I think the problem lies in the whole section in reporting as a whole, not on this particular section. Right? That's the point I'm trying to make. If you're talking about over on the -- this is where it more appropriately belongs, not in the category of barriers, in terms of the difficulty going through the reporting process.

COMMISSIONER ACHTENBERG: That's a good point.

CHAIRMAN CASTRO: So, then, that would mean putting it under section B, "Reporting Options," then. That's on page 17.

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, would you consider that?

COMMISSIONER GAZIANO: Give me a minute.

CHAIRMAN CASTRO: Sure.

(Pause.)

COMMISSIONER Kladney: What page are we on?

CHAIRMAN CASTRO: "Reporting Options," section B, starts at page 17 and flows to page 18.
COMMISSIONER ACHTENBERG: That's an excellent recommendation, Commissioner Yaki. I'm quite taken by --

COMMISSIONER YAKI: Sometimes the lack of sleep and getting up --

COMMISSIONER ACHTENBERG: I'm telling you, right? I don't know what's gotten into you.

COMMISSIONER YAKI: -- provide the inspiration.

CHAIRMAN CASTRO: It does not work for the Vice Chair. Will you tell us why, ma'am?

VICE CHAIR THERNSTROM: That lack of sleep?

CHAIRMAN CASTRO: Oh, I thought you meant the motion to amend. I thought the suggestion to move it to section B. And I'm like "Oh, no."

COMMISSIONER GAZIANO: Yes. I'm not sure it's well-taken at all. I'm still trying to find another place if this will help, but the predicate to that section is, "Even with options of restricted reporting." And then it's referring to reporting generally, "Only a fraction of victims report."

So I don't think the point is well-taken that this survey doesn't relate expressly to this
section, but if someone can -- you know, we may bend if someone can help us --

COMMISSIONER ACHTENBERG: I think it does.

COMMISSIONER GAZIANO: -- find a more appropriate place to put this.

CHAIRMAN CASTRO: Well, we have just suggested two of them.

COMMISSIONER GAZIANO: Well, let's be specific.

VICE CHAIR THERNSTROM: If we go back to pages 17 and 18, what are you suggesting?

CHAIRMAN CASTRO: It doesn't fit under "Victim Assistance," "Selection and Training of Victim Advocates," "The Victim Witness Assistance Program." It doesn't fall under "Safe Help Line" or "Health Care." So it's either "Reporting Options" or "Additional Barriers." I think it looks better under "Reporting Options." What is section A?

COMMISSIONER GAZIANO: "Reporting Options" just says what your reporting options are.

CHAIRMAN CASTRO: Yes, I know. I know.

COMMISSIONER GAZIANO: The section that I'm trying to add, where I'm trying to add, it is why victims don't report, whether they have these
various options or not, why they don't. And the
report cites some reasons why they don't report, but
it doesn't cite a very significant reason why they
don't report.

CHAIRMAN CASTRO: Right.

COMMISSIONER KLADNEY: But, Commissioner
Gaziano, we are talking about restricted and
unrestricted reporting.

COMMISSIONER GAZIANO: No, we're not.

No, we're not, Commissioner Kladney.

CHAIRMAN CASTRO: Commissioner Gaziano,
let him finish. And then you can speak.

COMMISSIONER GAZIANO: The sentence
begins, "Even with the option of restricted
reporting," but the rest of the sentence and the
rest of the section don't relate just to restricted
reporting. It's even with all of these wonderful
options, including --

COMMISSIONER KLADNEY: But your
sentence, your sentence, just deals with restricted
reporting.

COMMISSIONER GAZIANO: No, it doesn't.

COMMISSIONER KLADNEY: I mean both
restricted and unrestricted or --

COMMISSIONER GAZIANO: And so does the
rest of the section.

COMMISSIONER ACHTENBERG: Yes.

COMMISSIONER GAZIANO: And so does the rest of the section.

CHAIRMAN CASTRO: The Chair recognizes Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Commissioner Gaziano, if it were the first sentence under "Reporting Options," page 17, I think it would do exactly what you want done. I mean, if that's the same result -

COMMISSIONER GAZIANO: It would leave that section misleading, but --

COMMISSIONER ACHTENBERG: I mean it's a significant point. I accept your point that we need to include that reference. It seems to me that --

COMMISSIONER GAZIANO: I'll accept that, then, if you will support it.

COMMISSIONER ACHTENBERG: I'll support it.

COMMISSIONER GAZIANO: Okay. Then let's be done.

COMMISSIONER ACHTENBERG: Indeed, I am not in the habit of making suggestions I am unwilling to support if you are willing to support
the report.

COMMISSIONER GAZIANO: No, no. I'm not necessarily willing to submit the report. We'll have to see. The last one that was defeated, 4-4, is reconsidered. Maybe --

CHAIRMAN CASTRO: You are going to get two out of three. That's pretty good, bipartisan split, my friend.

COMMISSIONER ACHTENBERG: Two was really important.

CHAIRMAN CASTRO: Let's just get three done because you haven't gotten that yet.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: So this would go under "Reporting Options," section B, page 17. We would begin that sentence, that paragraph, with "According to DoD's 2012 workplace," the sentence that you had previously suggested go on page 29.

COMMISSIONER ACHTENBERG: That is a pretty big concession.

CHAIRMAN CASTRO: Yes. So that would start that section off in front of the words "Service members." Are we all in agreement that that is --

COMMISSIONER GAZIANO: That is okay.
CHAIRMAN CASTRO: Yes? Okay.

COMMISSIONER GAZIANO: That is the motion.

CHAIRMAN CASTRO: That is the motion.

So I'm going to take a roll call on this now. Ready? Set? Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Well, this is a non sequitur now.

(Laughter.)

COMMISSIONER GAZIANO: Yes, it is.

CHAIRMAN CASTRO: When has that stopped us before?

COMMISSIONER GAZIANO: But can we talk -- we have it elsewhere.

VICE CHAIR THERNSTROM: All right.

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

VICE CHAIR THERNSTROM: All right. Yes.

CHAIRMAN CASTRO: -- non sequitur notwithstanding, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Heriot,
COMMISSIONER HERIOT: I just want to state that as a law professor, I am in the habit of making proposals that I can't support, but, nevertheless, on this one, I vote yes.

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

COMMISSIONER ACHTENBERG: With great trepidation, I will vote yes, Mr. Chairman.

(Laughter.)

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLANDNEY: No.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: No.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: And I vote yes. So six yeses to two noes. That motion passes.

Okay. Any other motions?

COMMISSIONER GAZIANO: I think those are my only formal motions, but I wondered whether Vice Chair wants to speak about one that she explained to
me that I have some equal concern about.

VICE CHAIR THERNSTROM: Okay. Here's my

-- I don't know whether we want to do anything about

this. I don't have a formal motion, you know, kind

of written up and thought about.

CHAIRMAN CASTRO: What page?

VICE CHAIR THERNSTROM: Page 14. "The

DoD is also directing its leadership to remove

sexual and sexist material from the military

workplace. In December 2012, under the leadership

of General Mark Welsh, the Air Force conducted a

sweep of pornographic, military song books with

offensive lyrics, other military paraphernalia with

images demeaning to women. In 2013, Secretary of

Defense Chuck Hagel directed the other Services to

follow suit too soon to know what effect these

efforts will have."

You know, I've got a First Amendment

problem with this. People aren't allowed to

privately look at girlie magazines, soft porn. I

mean, you know, the military is a kind of world unto

itself, but this seems to me to, as I said, raise

First Amendment issues. And I have got a "Come on,

folks. Loosen up here a bit" feeling about this.

Anyway --
COMMISSIONER YAKI: Commissioner Thernstrom, this is Commissioner Yaki. I want to say, first off, that I have some sympathy for your point of view because part of this is banning action, not thought. And thought is something that gets into a very tricky situation.

But I wanted to let you know for your edification that there is actually a law passed by Congress in 1996, Military Honor and Decency Act. And that basically bans pornography from military bases and ships already.

It requires DoD to confiscate all sexually explicit material. But the fact is that DoD has basically ignored that ever since its passage. So these are attempts by the military to essentially fulfill the mandate of that statute.

And Congress most recently directed DoD to report back on its compliance with this in a hearing that just occurred I think a few weeks ago regarding the availability of these documents.

First Amendment issues notwithstanding, I just wanted you to be aware of what law currently exists that justifies this kind of behavior.

VICE CHAIR THERNSTROM: That is very useful. And I thank you, Commissioner Yaki, for
pointing that out to me. I did not know that. Nevertheless, it seems to me, one, excessive; two, unenforceable.

COMMISSIONER GAZIANO: Mr. Chair?

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: I wouldn't mind an addition of the reference to the statute, but my main issue is, first of all, you know, the first sentence refers to in the military workforce. You know, it's very hard to distinguish barracks from workforces in the military. And that is partly what heightens the First Amendment concerns and with what the military may be doing, even if it is pursuant to an, arguably, unconstitutional statute.

I suppose these are at least factual statements, but they're misleading the way they are. I think I would feel a little more uncomfortable and I don't know what the Vice Chair would think if there were simply a notation that these raise First Amendment concerns, at least in application. If there was some reference to that, then I would feel more comfortable with these statements in the report.

CHAIRMAN CASTRO: You know, to me --

COMMISSIONER KLADNEY: Mr. Chairman?
CHAIRMAN CASTRO: Yes. Well, let me just --

COMMISSIONER KLADNEY: Dave Kladney here.

CHAIRMAN CASTRO: Yes, Commissioner Kladney. Let me say something. And then I will cede the floor to you.

You know, the military is a different place. And our military officers and our military Service members, they cede a certain amount of their rights when they become part of the military. Some of those include First Amendment rights.

You know the famous situation where one of our generals said something, which any one of us could have said, about our President in the Rolling Stone article, but he couldn't because of the role that he plays in the military. And so there are probably countless incidents like that that differentiate the military environment, whether it is in the barracks or in the tank that would support a statement such as the one in here.

So I don't know if I want to go down this whole route of, you know, debating the First Amendment issues in the military because I think that is where we are going to make the distinction.
COMMISSIONER YAKI: Well, in addition, Mr. Chair, there is a natural field of military justice law called military expression, which is essentially their way of dealing with First Amendment issues in the context of the military. It is a separate field, essentially. It is outside of the law within military law.

And you're right. When you join the military, there are certain things that you agree to in that contract. And part of it is in the extreme case, you're not allowed to broadcast where you are, what field movements you are in, and other things that are normal free speech rights of any other normal American citizen.

But you're not. You're in the military. It is a specific situation. And as much as I sympathize with Commissioner Thernstrom, the fact of the matter is that the military can take many actions that would never pass civilian muster but for the purposes of morale and discipline and unit cohesion, the military is allowed to take these kinds of actions because it is, in fact, the military.

CHAIRMAN CASTRO: Commissioner Kladney?

COMMISSIONER KLADNEY: I'm confused that
Commissioner Gaziano seems to think it is difficult to differentiate between the workplace and the barracks. It's all owned by the military. It's all run by the military. And they make the rules as they go. You can't debate with your officer what you think is right or wrong.

You can do whatever you want off the base. You can do whatever you want with your private property. But you cannot use military equipment in any fashion that they don't want you to. And that's exactly what this is speaking to.

And I don't think it is incorrect at all. If we're going to put things upon people's First Amendment rights, when you join the military, you are in it 24 hours a day. You don't work eight-hour days. I don't see what the problem is.

When you're talking about military song books, jingles for hiking that were sexual in nature, things like that; they can ban any of this stuff. So I'm afraid that the military has the right to do that and it is not constitutionally protected.

COMMISSIONER GAZIANO: Mr. Chair?

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: I concede a few
points, namely that the military is different, which is an argument that I have made and will advance in my commissioner statement. But it certainly is not the case that military personnel lose all of their First Amendment rights ipso facto. It is not accurate that this does not present a serious First Amendment issue.

The example that the Chair used I don't think is apt because the general was not removed from his rank. He was only removed from his position of high command in a particular reporting structure to the President. And I would be shocked if the President did not ask him to resign that position.

But it simply is not the case. I could explain why, the fact that the military, the fact that it controls everything. The officer, for example, cannot deny their religious freedom. And it has special responsibility to honor their other First Amendment rights; for example, their religious liberty. It doesn't necessarily have to allow -- we have had other reports on that in prior years.

So I would suggest the easiest course is just to strike this paragraph. I don't know if the Vice Chair wants to offer that motion. I would
second it. But, failing that, at least some admission that it raises First Amendment concerns would be I think required.

VICE CHAIR THERNSTROM: I would be happy to strike the paragraph.

CHAIRMAN CASTRO: So we have a motion.

Yes, Madam Vice --

COMMISSIONER ACHTENBERG: The paragraph is factual. It says that this was undertaken in the workplace in counter-distinction to the assertion that these things might be more problematic if they were a source of intrusion into the place of residence.

I suppose you could try to make a distinction. But this is in the workplace with regard to government property. I mean, perhaps if you want to say, "Some have argued that these present First Amendment issues," I mean, that is probably a factual statement, too, that I am not sure that I would feel compelled to dispute. But I don't think we should strike the paragraph. It's factual. The military did undertake precisely these activities. And the record, our record, supports that.

COMMISSIONER KLADNEY: And if you want
to speak against it, go ahead and speak against it.

COMMISSIONER YAKI: This is Commissioner Yaki. I think the fact is that from my point of view, it shows a matter of futility -- when it comes to how they are dealing with these issues. And I think it is perfectly appropriate to point it out as a factual statement. I think to remove it might be to actually remove a factual situation and highlight the Band-Aid approach for the military for the serious issue of sexual assault in the military.

And I think it is a perfectly appropriate subject for a commissioner's statement to talk about, among other issues. And I was saying that the Supreme Court opined about the fact that the military standard for First Amendment protection today.

I think, as Commissioner Achtenberg said, as a factual matter. I think it is important to show what actual lead they have taken that they believe will or could address some of the serious issues that this report raises.

And for me, for my purposes, I'm going to use it for the purposes of showing that it's typical of the Band-Aid approaches that they have taken in the past that still continue to result in
serious repercussions over people who are victims of sexual assault in the military.

And I think that if this is true, this is a nice debatable point for a commissioner statement. And then the factual matter is one subject to that kind of debate and should, therefore, remain in the report.

COMMISSIONER GAZIANO: Let me --

CHAIRMAN CASTRO: The Chair recognizes Vice Chair Thernstrom and then Commissioner Gaziano.

VICE CHAIR THERNSTROM: Let Commissioner Gaziano --

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: Let me ask the Vice Chair if she would accept this as a friendly amendment to her motion to strike the paragraph, which I would otherwise second.

At the end of the paragraph, instead of a period before 19 -- well, I suppose we would add a comma, leave that footnote reference where it is on the first part of the sentence so that it would read, "It is too soon to know what effect these efforts will have, footnote, or whether" -- I'm trying to think of a neutral way of putting it -- "or whether they will survive constitutional
It's too early to know that, Commissioner Kladney. I think that is a factual statement.

COMMISSIONER KLADEY: They lost. The Supreme Court already opined on this, U.S. versus Voorhees. They lose.

COMMISSIONER GAZIANO: They lose on some things, not on all applications.

CHAIRMAN CASTRO: Madam Vice Chair?

VICE CHAIR THERNSTROM: I would also like to change the sentence -- it is too soon -- to read "What effect, if any, these efforts will have."

If I had to bet on it, I think the answer, the probability is that the effect will be zero.

COMMISSIONER GAZIANO: Well, I think I would suggest you rephrase your sentence even more. You're not saying what effect these efforts to get rid of the pornography will have in getting rid of the pornography. You're suggesting that getting rid of pornography has no causal effect on sexual assault in the military.

VICE CHAIR THERNSTROM: Both. Both.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: Commissioner?
Commissioner Gaziano, so what is your --

COMMISSIONER GAZIANO: I support some version of Commissioner, Vice Chair, Thernstrom's -- how about this? "It is too soon to know whether eliminating these materials will have the intended effect, and whether they will be constitutionally challenged in court."

VICE CHAIR THERNSTROM: I would accept that.

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: That's okay.

CHAIRMAN CASTRO: Yes?

COMMISSIONER ACHTENBERG: Yes. It's all right with me.

CHAIRMAN CASTRO: Madam Staff Director, what do you think?

STAFF DIRECTOR SALLO: I'm comfortable with the paragraph as is.

CHAIRMAN CASTRO: Okay. Any other commissioners on the phone want to opine on the revised amendment?

(No response.)

CHAIRMAN CASTRO: Okay. Before we vote on it, could you read it back for the record one
more time?

COMMISSIONER GAZIANO: Oh, you had to do that. I'm hoping the court reporter would give it to the --

CHAIRMAN CASTRO: And that's because --

COMMISSIONER GAZIANO: You don't have an instant -- no? Okay. "It is unclear whether the attempt to remove these materials will have the intended effect and whether they will be constitutionally challenged in court."

CHAIRMAN CASTRO: Okay. So Commissioner Kladney?

COMMISSIONER KLADNEY: Excuse me. I thought we weren't rendering opinions. It's not unclear. It's something that you can debate. I thought we weren't putting opinions in this. I thought we were just giving the facts.

VICE CHAIR THERNSTROM: Well, wait a minute. It is a fact that it is unclear.

CHAIRMAN CASTRO: And it's a fact that it is an opinion.

COMMISSIONER YAKI: It's also a fact there's rather a limited but rich body of Supreme Court law on the issue of the First Amendment to the military that basically gives the military almost
the unlimited right to decide what the First Amendment can and will apply to the military, especially when it comes to the specific factor of what is good for the new ordering discipline of the armed forces or they will be -- bring this credit upon the Service.

VICE CHAIR THERNSTROM: That doesn't address the question of whether it will have its intended effect. And that is what is unclear.

CHAIRMAN CASTRO: Okay.

COMMISSIONER YAKI: That can be a finding. That can be a discussion of that fact and point. But the fact is also that they are -- the one fact is that the finding, they are just -- attempt to enforce the 1996 law that I referenced before.

COMMISSIONER KLANDNEY: You can do all of this in your statement.

VICE CHAIR THERNSTROM: What is the harm of saying it is unclear what the impact will be?

COMMISSIONER ACHTENBERG: No harm.

CHAIRMAN CASTRO: So we're going to vote on that sentence now and take a roll call on it.

VICE CHAIR THERNSTROM: Now, wait a minute. What are we voting on?
CHAIRMAN CASTRO: Voting on the revision of the census --

VICE CHAIR THERNSTROM: So the revision as Commissioner Gaziano --

CHAIRMAN CASTRO: Commissioner Gaziano, yes.

VICE CHAIR THERNSTROM: Yes.

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

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

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

(No response.)

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER KLASTNEY: No. No, no.
Kladney. No.

CHAIRMAN CASTRO: And Commissioner Castro votes yes. So six --

COMMISSIONER YAKI: Wait, wait. You skipped over Commissioner Yaki.

CHAIRMAN CASTRO: No. You said no also. I heard you say no.

COMMISSIONER YAKI: No, no. That was Kladney saying no.

CHAIRMAN CASTRO: Oh. He said no on your behalf, then. So Commissioner Yaki?

COMMISSIONER YAKI: No.

CHAIRMAN CASTRO: Okay. So we have six yeses and two noes. That motion to amend passes.

Any other motions to amend? If not, we would like to try to get this report voted on in its totality.

(No response.)

CHAIRMAN CASTRO: Okay. Hearing none, so do we have a motion to approve the report as amended?

COMMISSIONER ACHTENBERG: So moved.

CHAIRMAN CASTRO: Do we have a second?

I'll second it. Any further discussion?

(No response.)
CHAIRMAN CASTRO: If not, I'm going to take a roll call vote on the report. Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: I'm abstaining for the moment. I'm passing.

CHAIRMAN CASTRO: Commissioner Gaziano?

Passing.

VICE CHAIR THERNSTROM: Passing -- I'm sorry -- for the moment.

CHAIRMAN CASTRO: Okay. Commissioner Gaziano?

COMMISSIONER GAZIANO: I'm passing for the moment. The second one that was defeated 4:4 was really the most significant.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I'm going to vote no on the ground that that motion didn't carry and also out of concern that we haven't finalized our findings and recommendations. And that's not going to give me the opportunity to write a statement that addresses the findings and recommendations that go into the report. So I would have to work out something on that before I could vote.

CHAIRMAN CASTRO: Commissioner
Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLASDEY: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: I vote yes. So we go back to the two passes. Madam Vice Chair and Commissioner Gaziano, I think you were the two that passed.

VICE CHAIR THERNSTROM: Yes. All right. Go on.

COMMISSIONER GAZIANO: Would any of the commissioners who voted no on my previous motion care to entertain that again as we negotiated it, I thought, almost to agreement? If so, I would change my vote to abstain.

VICE CHAIR THERNSTROM: I would be delighted to go back to that discussion, as Commissioner Gaziano has suggested. Otherwise it
gets moved to our statement. But I will vote yes on
the report as amended.

CHAIRMAN CASTRO: Okay. Commissioner
Gaziano, I will give you one more chance. You are
still in the pass column? No?

COMMISSIONER GAZIANO: As a
non-consequential vote at this point, I will
abstain.

CHAIRMAN CASTRO: Okay. So we have five
yeses, one abstention, and two noes. So the report
passes. Part A passes as amended. Thank you.

Now we will move on to the next item,
which is a discussion of the proposed findings and
recs. That is, how are we going to handle the
process for that? So I will turn that over to our
Staff Director to discuss our process for that.

- DISCUSSION RE:

PROPOSED FINDINGS AND RECOMMENDATIONS FOR THE

2013 STATUTORY ENFORCEMENT REPORT

STAFF DIRECTOR SALLO: Originally staff
had dropped proposed findings and recommendations
that had been included in the report. I extracted
that from the report, which would have been chapter
7. And I have provided it to the commissioners to
review with the hope that there would be some
consensus on adopting some, if not all, of the findings and recommendations today after a discussion was had.

If we are unable to do so, then we will need to schedule something within the next two weeks to vote on findings and recs prior to when the statements are due on August 4th.

CHAIRMAN CASTRO: So I do know that there are going to be some proposed findings and recommendations that are going to come from the Democratic caucus to be circulated to all commissioners. So we're definitely going to augment what we have seen already from the Staff Director's office.

I presume my colleagues on my left but really on my right are going to have their own proposals they are going to want to put forward for us to consider as well. So my sense is we will need to do something.

The suggestion of doing it in two weeks hopefully addresses the opportunity to give us time to include that in our statements. Does it not?

Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: And, Mr. Chairman, I think we are speaking for my colleagues,
I hope. I think we are prepared to provide our recommendations today. And I regret that we weren't able to get our acts together in advance of today or we would have happily provided them to our colleagues on your left, Mr. Chairman. So I apologize for that, but we are prepared to give you a piece of paper today that you can begin to consider, at which time in some future date, I am hoping, we can address those specifically.

CHAIRMAN CASTRO: Right. Commissioner Gaziano?

COMMISSIONER GAZIANO: I have two concerns. I certainly think we need to close out the possibility of any of the proposed findings and recommendations today, but I don't see how we can in two weeks approve any findings and recommendations and still have the now even condensed period that we agreed to for statements. And I made that concession at the last meeting. And I think it would be very problematic to do it.

Secondly, we have a complement of eight commissioners today because this meeting has been scheduled for many months. And the importance of it has been understood. I certainly would not even consider opening it up to further findings and
recommendations unless there was agreement that all eight commissioners were actually available, but I would rather -- my first choice is to say we missed appreciating your good faith, everyone's good faith, in this.

But we missed our deadline. And, therefore, we will do what we have done in other reports. And we will make our alternative statements and our commissioner statements.

CHAIRMAN CASTRO: Madam Vice Chair?

Commissioner Yaki, the Vice Chair has the floor. Then it will be you.

VICE CHAIR THERNSTROM: Commissioner Yaki can go ahead.

CHAIRMAN CASTRO: Okay. Commissioner Yaki, go ahead.

COMMISSIONER YAKI: I'm sorry, but I'm just sort of confused by Commissioner Gaziano's statement about missing a deadline given that he was involved in the report where we were still taking depositions at this time for another report. So I am just trying to figure what he means by that and whether it is genuinely made in good faith or tongue in cheek.

CHAIRMAN CASTRO: Vice Chair Thernstrom,
then Commissioner Gaziano.

VICE CHAIR THERNSTROM: Look, for many people who might read this report, the only thing they will look at is the findings and recommendations. They are important, and they require a discussion by the Commission at a regular meeting. It is not the same thing to have a phone discussion, but we do have an alternative, which we have adopted before. Skip the findings and recommendations. It's going to be very tough on this Commission to agree to findings and recommendations. I would just skip them unless we can wait and have a discussion at the next in-person meeting.

CHAIRMAN CASTRO: Commissioner Gaziano?

Then I want the Staff Director to opine.

COMMISSIONER GAZIANO: I suppose if -- I am not even sure if there is a minor dissent. I would propose it. But if all commissioners are in agreement that we will get this out sometime in October or November, then we can consider a different schedule that would allow us to consider findings and recs which may never pass.

I suppose two things. If we are going to push this beyond September and we can have an
assurance that we will only vote on, then when all
eight commissioners are present, then I would, but I
don't think that that is workable. Otherwise I
think --

COMMISSIONER YAKI: It violates my First
Amendment rights, Todd.

COMMISSIONER GAZIANO: No, it doesn't.

CHAIRMAN CASTRO: As long as I'm
Chairman of the Board, we have and are going to
continue to submit our report to Congress on time.
But Madam Staff Director?

STAFF DIRECTOR SALLO: We have a
statutory mandate to submit this by the end of
September. And we must remain on schedule. You can
give up submitting rebuttals. We can have our
meeting in August. And we can go over the findings
and recs. And then you can submit your actual
commissioner statements on September 3rd.

COMMISSIONER GAZIANO: Well, then why
don't you just offer your findings and
recommendations now? That's the reasonable
alternative. So then we know whether they are
accepted or not and we can write our statements.

There is no reason to schedule a
separate meeting, notwithstanding your good faith in
trying to get it done. There's no reason not to submit them today.

VICE CHAIR THERNSTROM: I'm sorry. What are you suggesting that we submit? The ones that have been circulated or --

COMMISSIONER GAZIANO: And any others. We are always free to. And I suspect the result will be nothing will be approved and we can finalize the absence of a part B and move on.

CHAIRMAN CASTRO: Just a second. We're going to take a five-minute caucus break. And then we will come back, and maybe we can provide something for review.

VICE CHAIR THERNSTROM: Commissioner Kirsanow, will you stay on the phone until after the break?

CHAIRMAN CASTRO: Commissioner Yaki and Commissioner Kladney, we will call you. And we'll discuss this. Then we'll come back. Ten-minute recess. Okay? We'll return.

(Whereupon, the foregoing matter went off the record at 11:14 a.m. and went back on the record at 11:27 a.m.)

CHAIRMAN CASTRO: Now we're back on the record. It is 11:37 a.m. Have we had a chance to
hand these out to folks?

COMMISSIONER ACHTENBERG: No.

CHAIRMAN CASTRO: Okay. So we are going
to distribute to you findings and recommendations
from the Democratic caucus. They are essentially
revisions made to and additions made to what was
circulated by the Staff Director's office, although
you will note that just in formatting the copies,
the numbers are off. So as we talk about these, we
can refer to them as I guess findings. We'll just
renumber them 1, 2, 3. Is that right, Alec? That's
yes. As he circulates those, we'll begin to discuss
them.

VICE CHAIR THERNSTROM: I'm sorry. I
have a basic question.

CHAIRMAN CASTRO: Yes, ma'am?

VICE CHAIR THERNSTROM: We're supposed
to read carefully and thoughtfully, read all of
these pages --

CHAIRMAN CASTRO: Yes.

VICE CHAIR THERNSTROM: -- and take some
kind of vote today, immediately?

CHAIRMAN CASTRO: Well, that was not the
plan. The plan was that we were going to circulate
these to you all so that you could thoughtfully
review them, but the sense I was getting there from Commissioner Gaziano was that he wanted to vote on something. And so we wanted to present to you what revisions we made to what the Staff Director circulated. It's this or --

COMMISSIONER YAKI: I think what Commissioner Gaziano meant is they were objectionable.

CHAIRMAN CASTRO: Oh. Then I misunderstood. So how would you all like to proceed, then?

VICE CHAIR THERNSTROM: I'd like a vote on skipping findings and recommendations. That's a proposal I --

CHAIRMAN CASTRO: That's a motion.

COMMISSIONER GAZIANO: Is that your substitute amendment?

VICE CHAIR THERNSTROM: It's my substitute amendment. Forget about findings and recommendations. CHAIRMAN CASTRO: Do you have a second?

COMMISSIONER GAZIANO: I second it subject to discussion because I am willing to go through these one by one if other commissioners are. But if there's a majority to just dispense with
findings and recommendations, which I suspect is where we're going to be at the end of the day anyway, then we can all move on to more important matters before the Commission.

CHAIRMAN CASTRO: I believe you will have four votes against that motion on the Democratic side if I can speak for my colleagues. So assuming you had all four votes on your side, it would still lose because your motion would --

COMMISSIONER GAZIANO: To suspend all findings --

CHAIRMAN CASTRO: Correct.

COMMISSIONER GAZIANO: Okay. Well, then I think we've got to go through the -- commissioners have a right to offer findings and recommendations. And we can consider them en masse or we can consider them individually. Our normal procedure is to consider them individually --

CHAIRMAN CASTRO: Correct.

COMMISSIONER GAZIANO: -- unless we have I think unanimous consent otherwise.

CHAIRMAN CASTRO: Correct. And that is how we would intend to do is consider them individually.

VICE CHAIR THERNSTROM: And I withdraw
my motion.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: Okay. I would just ask. I do think that we can since we have them in writing if they have been sent electronically to Commissioner Kirsanow and Commissioners Yaki and Kladney that we dispense with reading them now.

CHAIRMAN CASTRO: Right. Commissioner Kirsanow, I don't think he has gotten them. Alec will do that right now. Commissioners Yaki and Kladney do have them. So Commissioner Kirsanow will be receiving the electronic version momentarily.

VICE CHAIR THERNSTROM: And may I ask if people who are on the phone are going to be willing to stick around for two hours or something like that to go through these one by one, reading them out loud, because that is what we are talking about here.

COMMISSIONER KIRSANOW: I can jump on and off at certain points. This is Kirsanow.

CHAIRMAN CASTRO: Okay. So, then -- well, let's begin since Commissioner Kirsanow doesn't have -- he will have them momentarily, though. We'll begin to read them. And then once you receive them, Commissioner Kirsanow, if you
So the first -- I guess we will need a motion individually on each of these. So the first finding, which is number one, is there a motion on that for discussion purposes?

COMMISSIONER ACHTENBERG: So moved.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN CASTRO: Okay. We have a second and a motion. The first item reads as "As indicated in the body of this report at page blank, the Commission has authority to" -- so this is a jurisdictional issue -- "the Commission has authority to examine questions related to sexual assault in the military because the issues involve both sex discrimination and the denial of equal protection in the administration of justice. The issue of sex discrimination involves female Service members, who represent 14 percent of the military population and the likelihood that they are over five times more likely to experience some form of sexual assault as defined by DoD than their male counterparts. The questions related to a possible denial of equal protection in the administration of justice lead the Commission to examine reports of
many cases in which sexual assault victims as well
as Service members accused of sexual assault who
claim that they are not treated fairly in the
military justice system."

Discussion?

COMMISSIONER ACHTENBERG: Mr. Chairman,
this is taken directly from the report which we just
adopted --

CHAIRMAN CASTRO: Okay.

COMMISSIONER ACHTENBERG: -- as a
statement of jurisdiction.

CHAIRMAN CASTRO: Okay. Hearing no
other comments --

COMMISSIONER YAKI: So moved.

CHAIRMAN CASTRO: So we're going to move
to vote on this. I guess I will do a roll call vote
just to make sure everybody is -- Vice Chair, how do
you vote?

VICE CHAIR THERNSTROM: On this first
finding --

CHAIRMAN CASTRO: Yes, on the first one.

VICE CHAIR THERNSTROM: Yes, right. I'm
passing for the moment. I've got some problems with
it.

CHAIRMAN CASTRO: Commissioner Gaziano,
how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I'm going to be voting against all of these. I would prefer no findings and recommendations. So no.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: And I vote yes. And we have a pass. Madam Vice Chair?

VICE CHAIR THERNSTROM: No. I'm changing it to a no. I'm staring at this. I'm changing it to a no.

CHAIRMAN CASTRO: Okay. So we have four
yeses and four noes. That motion fails.

The next finding would be I guess finding 2, even though it says 1. But I believe that is how it is going to be numbered. Under "Data Collection and Research," "The expansive and generalized manner in which the Uniform Code of Military Justice (UCMJ) defines sexual assault fails to draw fine distinctions between different forms of unwanted sexual contact. The Department of Defense and the UCMJ do not break down sexual assault crimes into categories in which each offense is defined by specific elements. This makes it impossible to determine exactly what offenses occur, how often they occur, and what the range of dispositions is for each of the differing offenses. The net effect of these circumstances is that the DoD keeps insufficient statistics to allow determination of whether its plan to realize its zero tolerance goal regarding sexual assault is fair and effective for victims and accused perpetrators alike."

So do I have a motion on that?

COMMISSIONER ACHTENBERG: So moved.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN CASTRO: Okay. Discussion?
COMMISSIONER Kladney: Call the question.

CHAIRMAN Castro: Pardon me, Commissioner Kladney?

COMMISSIONER Kladney: Call the question.

CHAIRMAN Castro: Okay. All right. Well, I'm going to call the question, then. Madam Vice Chair, how do you vote?

VICE CHAIR Ternstrom: No.

CHAIRMAN Castro: Commissioner Gaziano, how do you vote?

COMMISSIONER Gaziano: No. I don't think it's accurate.

CHAIRMAN Castro: Commissioner Heriot, how do you vote?

COMMISSIONER Heriot: No.

CHAIRMAN Castro: Commissioner Achtenberg, how do you vote?

COMMISSIONER Achtenberg: Yes.

CHAIRMAN Castro: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRMAN Castro: Commissioner Yaki, how do you vote?
COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow,

how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: I vote yes. We have

four yeses, four noes. The motion fails.

The next proposed finding reads, "The
DoD does not maintain sufficient information about
Service members who report sexual assault to
facilitate determination of whether anecdotal
accounts of retaliation against them represent the
exception or the norm."

Do I have a motion?

COMMISSIONER ACHTENBERG: So moved.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN CASTRO: Okay. So any
discussion on that?

(No response.)

CHAIRMAN CASTRO: Seeing none, we'll
vote on that. Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: I'm passing for
the moment.

CHAIRMAN CASTRO: Commissioner Gaziano,

how do you vote?
COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: I vote yes.

VICE CHAIR THERNSTROM: And I'm going to vote no on it, too.

CHAIRMAN CASTRO: Vice Chair votes no.

Four to four. The motion fails.

The next item that is proposed will be finding 4, would read, "To date, the DoD has not comprehensively evaluated each Service branch's sexual assault prevention and response, SAPR,"
training programs and initiatives. Those that are highly effective are not necessarily emulated by other Services."

Do I have a motion?

COMMISSIONER ACHTENBERG: So moved.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN CASTRO: Any discussion?

(No response.)

CHAIRMAN CASTRO: Hearing none, seeing no hands, I'm going to call it for a vote. I'll give you some time. I'm going to start on this end this time. CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: I vote yes, Mr. Chairman.

CHAIRMAN CASTRO: Okay.

COMMISSIONER ACHTENBERG: This is a true fact.

CHAIRMAN CASTRO: Those are the best kind.

COMMISSIONER ACHTENBERG: I'm telling you.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?
COMMISSIONER HERIOT: I vote no.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No. I don't know that it's true. I actually suspect it's not. "Those that are highly effective are not necessarily emulated by the other Services." I think the testimony I heard is those that are effective tend to be emulated by the other Services.

COMMISSIONER ACHTENBERG: That is actually not supported by the record, Commissioner.

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

VICE CHAIR THERNSTROM: Well, I don't know what -- "are not necessarily by other Services" is really squishy language here. And I've also got those that are highly effective. I don't know that we've got the evidence of what is highly effective or not. No.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

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

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: And I vote yes. So we have four yeses and four noes. So the motion fails.

We move on to what would be -- well, it wouldn't be but for our purposes number 5. If it passes, I guess it would be number 1. But the next item under "Resource Allocation in Military Justice" would read, "The services do not" --

COMMISSIONER GAZIANO: Could I, Mr. Chair?

CHAIRMAN CASTRO: Yes?

COMMISSIONER GAZIANO: The headings are not going to go in the report, I assume.

CHAIRMAN CASTRO: Well, we based this off of the version that was originally circulated by the Staff Director. It had those in there.

COMMISSIONER GAZIANO: I had a question about that as well. Since we don't vote on headings, I would --

CHAIRMAN CASTRO: So just make no reference to the heading.

COMMISSIONER GAZIANO: -- just skip those.
CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: But is there a desire to read these into the record orally or can we just --

CHAIRMAN CASTRO: I'm doing this for purposes of the folks on the phone. I don't know if, Commissioner Kirsanow, you have received the electronic copy of this yet.

COMMISSIONER KIRSANOW: I have not.

CHAIRMAN CASTRO: Okay. Then proceed. Let me know --

COMMISSIONER GAZIANO: I'm sorry.

CHAIRMAN CASTRO: -- when he gets it.

COMMISSIONER GAZIANO: Thank you.

CHAIRMAN CASTRO: Until it does, then I'll refrain from doing that.

COMMISSIONER GAZIANO: Thank you.

CHAIRMAN CASTRO: So this next proposed finding would read, "The Services do not consistently implement the mandate of the National Defense Authorization Act for fiscal year 2012, Public Act 112-81, section 581, which requires that sexual assault victims must be provided with legal counsel."

Do I have a motion on that?
COMMISSIONER ACHTENBERG: So moved.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER Kladney: I'll second.

CHAIRMAN CASTRO: Okay. Any discussion?

(No response.)

CHAIRMAN CASTRO: Seeing none, hearing none, we will move on to a vote on this one.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: I vote yes. The record amply supports that statement.

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: Get back to me.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: Yes. Let me explain two problems. First of all, I am not sure that all of the Services ought to even try to be absolutely consistent with each other, but,
secondly, it is so meaningless to say they don't consistently implement something. Does that mean 100 percent perfectly? Ninety-nine percent? It's vague as to the point of being misleading.

VICE CHAIR THERNSTROM: And that is true for an awful lot of the languages. I just eyeballed it.

CHAIRMAN CASTRO: So do you want to vote now, then, Madam Vice Chair, or do you want me to continue to pass?

VICE CHAIR THERNSTROM: No. I'll vote now.

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

COMMISSIONER KLADENY: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: And I vote yes. That's four yeses and four noes. The motion fails.

The next proposed motion would read, "Neither Service members' dependents nor civilian
DoD personnel have the option of making restricted reports of sexual assault, even though they rely on the military for health care and psychological care."

Do I have a motion?

COMMISSIONER ACHTENBERG: So moved.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER KLANDNEY: Second.

CHAIRMAN CASTRO: Okay. Any discussion?

(No response.)

CHAIRMAN CASTRO: If not, I'll move to a vote. You had something, Commissioner Gaziano?

COMMISSIONER GAZIANO: What is the relevance to the core? Assuming it is true, which I am not sure, what is the relevance of this to the core matters that we are trying to report on?

CHAIRMAN CASTRO: Is there someone who would like to answer that?

COMMISSIONER GAZIANO: I can see, if true, it has some sort of tangential relationship. And I'm concerned about the accuracy of it.

CHAIRMAN CASTRO: Does anyone on the Democratic caucus side want to comment on that or the Staff Director? I don't know if this is maybe your original --
STAFF DIRECTOR SALLO: It is our original, yes.

CHAIRMAN CASTRO: Okay. Could you speak to that, then?

COMMISSIONER YAKI: Hello?

CHAIRMAN CASTRO: Yes. The Staff Director is consulting with her counsel right now.

COMMISSIONER GAZIANO: I mean, DoD personnel, for example, don't have a lot of the rights or some of the responsibilities and burdens of full military officers. There may be, assuming it's true, logical reasons why they can't make a restricted report, as defined. But I am not sure that that is really, assuming it is true, central to what we are trying to elucidate.

CHAIRMAN CASTRO: Okay. Madam Staff Director?

STAFF DIRECTOR SALLO: Sorry. I didn't have the light on.

With restricted reporting, you have the added confidentiality that attaches to it for the Service member dependence as well as the Civilian Department of Defense personnel. They reside along with the enlisted members on the base. And so the lack of confidentiality has ramifications for them.
It leads to less protection. It leads to embarrassment. It leads to the topic possibly being made public.

And so if they are required to live on base and if they are required to access the same type of care as enlisted members, this is why we are bringing it forth, because we would want them to have the same type of protection if they have to live in the same environment.

COMMISSIONER HERIOT: It doesn't actually say that here, though.

STAFF DIRECTOR SALLO: Well, this is a finding. And we tried to tie that. You set that forth as a finding so that then we can make the recommendation.

CHAIRMAN CASTRO: Okay. So I'm going to move a vote on this. Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: I vote yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: No.
CHAIRMAN CASTRO: Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: No.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLABDEY: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: I'm at a total loss as to why this wouldn't be a unanimous yes.

CHAIRMAN CASTRO: Okay.

COMMISSIONER YAKI: Quite frankly, it boggles my mind. Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No. And, Mr. Chairman, I have received a copy of the findings and recs.

CHAIRMAN CASTRO: Okay. And I vote yes. So it's four yes and four no. The motion fails.

The next item begins with "Victims lose the ability." So do we have a motion on that?

COMMISSIONER ACHTENBERG: Would you read it into the record, Mr. Chairman?

CHAIRMAN CASTRO: Oh, okay. Because I
thought since Commissioner Kirsanow got it, we
didn't need it into the record, but I will continue
to do that. "Victims lose the ability to make
restricted reports if they disclose their assaults
to anyone other than an SAPR victim advocate, a
sexual assault response coordinator, or a health
care provider."

Do I have a motion on that?

COMMISSIONER ACHTENBERG: So moved.

CHAIRMAN CASTRO: Second, anyone?

COMMISSIONER KLANDNEY: Second.

CHAIRMAN CASTRO: Okay. Any discussion?

Any discussion?

(No response.)

CHAIRMAN CASTRO: Okay. I will move to
a vote on this. Commissioner Heriot, how do you
vote?

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: Commissioner Gaziano,
how do you vote?

COMMISSIONER GAZIANO: Let me pass.

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

VICE CHAIR THERNSTROM: Yes. I'm
passing, too.
CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: I vote yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: I just want to state for the record that when I was in a 6:2 minority, there were still many reports where at the finding state -- I may not agree with the findings and recommendations but some of the findings, I would consider them one by one. I think I would be hard pressed to find them uniformly voting no on every single finding if there are factual issues involved, around which interpretations could be made. But if there are factual issues that I felt were not in dispute, I would support that. Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Okay. I vote yes. Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: No.

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CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: So that's four noes and four yeses. The motion fails.

The next proposed motion is "Commanders are not required to communicate the final disposition of sexual assault allegations to Service members in their command."

Do I have a motion?

COMMISSIONER ACHTENBERG: So moved.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN CASTRO: Okay. Any discussion?

Any discussion?

(No response.)

CHAIRMAN CASTRO: If not, take it to a vote. Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: I vote yes.

CHAIRMAN CASTRO: Commissioner --

COMMISSIONER GAZIANO: I have a friendly amendment. Would you add comma, "And this is a good thing"?

CHAIRMAN CASTRO: Where? At the end?

COMMISSIONER GAZIANO: At the end.
CHAIRMAN CASTRO: I don't know if that's going on -- let's just vote on it as it is right now.

COMMISSIONER ACHTENBERG: Although I consider you a friend, I do not consider that a friendly amendment.

COMMISSIONER GAZIANO: Oh, darn.

CHAIRMAN CASTRO: So you'll have to vote on it as --

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: -- as put forward. So yes or no, Commissioner Gaziano?

COMMISSIONER GAZIANO: No.

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

VICE CHAIR THERNSTROM: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

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

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: And I vote yes. Four yeses, four noes. The motion fails.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: We have gone longer than I think most of us understood this meeting would last. I would like to offer a motion that we consider all of these findings and recommendations en masse.

CHAIRMAN CASTRO: Is there a second?

VICE CHAIR THERNSTROM: Yes. I second that.

CHAIRMAN CASTRO: Any discussion of that motion?

COMMISSIONER KLADNEY: I think we have to go one by one.

COMMISSIONER YAKI: I have a statement to make, which is that normally we do them one by one. We've always done them one by one. If you have an opportunity to look at whether or not there is anything we can agree on or make changes to is how we have always done this. It's how I did, even
when I was being run over by the majority, 6:2. I didn't have to sit there and say, "Well, I just want to get it over with. Just do them all as a whole."

And the fact is that there may be one or two things where there is no controversy and should be no controversy because it's a statement of freaking fact and it's not really amenable to the date or some giggling little good thing comma added to the end of it. So I think we should go through one by one.

CHAIRMAN CASTRO: Madam Vice Chair?

VICE CHAIR THERNSTROM: The problem with your point, Commissioner Yaki, is that there has not been sufficient time to look at this. And so the one by one, it doesn't really work. You know, I might vote differently if I had more time to think about them, but given the time I've got, I'm going with first impression and --

COMMISSIONER YAKI: And Commissioner --

COMMISSIONER KLASTNEY: Mr. Chairman?

COMMISSIONER YAKI: -- I would agree with that. Our suggestion was that we made, but it was Commissioner Gaziano who insisted that we try and go through it today. I did not support that. Did anyone support that? Well, I would be amenable
to giving more time, allow that, and still go
through it one by one at a later time when you have
had the opportunity to review --

COMMISSIONER GAZIANO: Could we caucus
on three minutes to reconsider that?

CHAIRMAN CASTRO: Sure.

COMMISSIONER GAZIANO: Will you allow
that?

CHAIRMAN CASTRO: Okay. I will give you
five minutes, instead of three. How is that?

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: I am feeling
magnanimous today. So a five-minute break for a
caucus.

(Whereupon, the foregoing matter went
off the record at 11:51 a.m. and went back on the
record at 12:02 p.m.)

CHAIRMAN CASTRO: We're back on the
record.

COMMISSIONER GAZIANO: Would the
Chairman entertain a motion?

CHAIRMAN CASTRO: Sure.

COMMISSIONER GAZIANO: Okay. Among
other things, I think Commissioner Kirsanow is back
on the line. I hope commissioners Yaki and Kladney
are as well.

CHAIRMAN CASTRO: Are commissioners on the phone?

COMMISSIONER KIRSANOW: Kirsanow is on the phone.

COMMISSIONER Kladney: Yes. Kladney is on the phone.

CHAIRMAN CASTRO: Yaki?

COMMISSIONER YAKI: We're here.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: Okay. The two-week delay, of course, might not work for us because, again, we haven't reserved this. And we are all here today. But I would move that we would be open to scheduling this sometime in the near future. But we would have to assume each other's good faith to try to schedule that meeting and try to all be there but that we would not -- there are two options.

The first I would prefer is a notational vote, a notational vote where none of us object and everyone could make whatever record they want and everyone can take -- the alternative would be that we actually have to find a time when everyone tries to make it and, in fact, everyone can make, does, in
CHAIRMAN CASTRO: The Chair would prefer the latter simply because I think, yes, these are important topics that merit a discussion. And if we can't do it today -- and I understand that, but I would rather that it be if it is going to be telephonic, that it be a discussion, rather than a notational vote. I'm not even sure how we would do it by notational vote effectively.

So if you are willing to pick item B of you're a/B scenario there, I think --

COMMISSIONER GAZIANO: Yes. I assume some commissioners may have to -- I don't have the rest of my --

CHAIRMAN CASTRO: It will be good faith to make sure that we're all going to be available at that time so that everyone has a full complement of commissioners from their caucus to participate.

COMMISSIONER GAZIANO: And commissioners would have to also entertain amendments to the statement. But let's just try to schedule this as soon as possible.

CHAIRMAN CASTRO: Okay.

COMMISSIONER GAZIANO: Let's try to schedule it within a week if possible, but we're
going to have to work to coordinate appropriate
days. And, again, my motion --

COMMISSIONER YAKI: Well, the Federal

Register --

CHAIRMAN CASTRO: What was that,

Commissioner Yaki?

COMMISSIONER GAZIANO: We'd have the

Federal Register to contend with online in terms of

--

COMMISSIONER GAZIANO: We would have to
get, I suppose --

CHAIRMAN CASTRO: Seven days, Madam

Staff Director?

COMMISSIONER GAZIANO: We would have to
get informal advice, but there is an exception, I

think, under our CFR for --

CHAIRMAN CASTRO: Emergencies.

COMMISSIONER GAZIANO: Yes. I don't

know that it qualifies. We would have to get --

CHAIRMAN CASTRO: We would have to look

at it.

COMMISSIONER GAZIANO: We would have to
get a ruling on that.

CHAIRMAN CASTRO: Commissioner

Achtenberg?
COMMISSIONER ACHTENBERG: I know for a fact I am unavailable any time next week because I am on vacation and out of cell range. I can completely understand the challenge that we are going to face, but I just want to put that out there.

CHAIRMAN CASTRO: When do you live? And when would you be back?

COMMISSIONER ACHTENBERG: I leave tomorrow morning and I am back the following Monday.

CHAIRMAN CASTRO: The 21st?

COMMISSIONER ACHTENBERG: That's the 22nd.

CHAIRMAN CASTRO: The 22nd. So conceivably we could schedule something on your return.

COMMISSIONER ACHTENBERG: Something on the 22nd but not before. I apologize, Mr. Chairman, --

CHAIRMAN CASTRO: Understood.

COMMISSIONER ACHTENBERG: -- but that's the concern.

CHAIRMAN CASTRO: Sure. So would that work?

COMMISSIONER KLANDNEY: Mr. Chairman?
CHAIRMAN CASTRO: Yes, Mr. Kladney?

COMMISSIONER KLANDNEY: I was wondering.

Commissioner Gaziano was concerned about those people who don't have their calendars in front of them, I guess, for scheduling a date now.

COMMISSIONER GAZIANO: That sounds fine to me, too. And the 22nd -- I need to check on a few things but tentatively looks okay for me. But I do want other commissioners to understand my motion also means that we need to pass on such a meeting if someone in good faith can't make the scheduled meeting. And then I would propose we do go to a notational vote. We use a notational vote as an alternative.

CHAIRMAN CASTRO: I don't like the notational vote idea, as I said earlier. I think we --

COMMISSIONER YAKI: I understand, Commissioner Gaziano. I am assuming if we agreed on a date, we agree on a date. It is our responsibility to show up on that date. If someone can't show up on that date because they can't show up, whether it's medically an emergency or whatever -- I mean, that's how we do it at all of these meetings as of right now.
COMMISSIONER GAZIANO: Well, then I change my motion and I just say we will do it by notational vote because if you are going to be -- we are making a concession for you all. It can be done by notational vote. I don't care whether you like it or not. And a notational vote would work just fine for all purposes. Otherwise --

COMMISSIONER YAKI: Really, Todd, I really don't understand why that statement offended you. It simply said none of us can control each and every one of everyone else's schedule. That is the only point I was making. I was saying I agree. Let's set a date.

COMMISSIONER GAZIANO: Then the --

COMMISSIONER YAKI: I don't understand your --

COMMISSIONER GAZIANO: My motion was --

COMMISSIONER YAKI: It's all or nothing when we canceled the meeting because that's not how meetings work.

COMMISSIONER GAZIANO: I think you understand it perfectly.

CHAIRMAN CASTRO: All right. Gentlemen, let's --

COMMISSIONER GAZIANO: I think you
understand it perfectly, Michael.

CHAIRMAN CASTRO: -- calm down here.

COMMISSIONER GAZIANO: The alternative
is if we can't all be present on the phone to deal
with this, we would do it in notational vote. If
that is not acceptable, then my motion is that we
just do it in a notational vote or we continue
today.

CHAIRMAN CASTRO: Why don't we do this?
Let's look at our calendars. Let's try to
tentatively agree right now to a time and date that
works for all of us subject to going back if you
don't have your calendar in front of you and
confirming that.

Let's pick two dates right now that
would work for all of us tentatively. And that will
hopefully forego the issue of people not being
available. And then we'll move forward on one of
those two dates.

COMMISSIONER YAKI: The 24th does not
work for me.

CHAIRMAN CASTRO: Okay. So we said the
22nd I think is what the first date was. And we had
--

COMMISSIONER YAKI: The 22nd and 23rd.
That was --

CHAIRMAN CASTRO: Twenty-second or 23rd, folks?

COMMISSIONER ACHTENBERG: I can't do the 23rd because my board of trustees meets on that --

CHAIRMAN CASTRO: Okay. So 22nd or 25th?

COMMISSIONER GAZIANO: Twenty-fifth doesn't work for me.

CHAIRMAN CASTRO: All right. The 22nd seems to work for everybody?

COMMISSIONER HERIOT: No, not perfectly, but I think we can --

COMMISSIONER KIRSANOW: The 22nd does not work for me. I will be in a hearing.

CHAIRMAN CASTRO: Yes. I'm at a conference, but I am going to make time to do this. So are you in the hearing all day?

COMMISSIONER KIRSANOW: I am. I'll be in a hearing. I'm currently scheduled to go forward in the Eastern District of New York on July 22nd. It's scheduled for five days. There is an off-site chance I will be done by the 26th.

CHAIRMAN CASTRO: How about Sunday, July 21st?
COMMISSIONER HERIOT: I can do that.

COMMISSIONER KLADNEY: I can do it.

COMMISSIONER KIRSANOW: I can do it.

VICE CHAIR THERNSTROM: I thought Commissioner Achtenberg couldn't do it.

CHAIRMAN CASTRO: Oh, that's right because she's on vacation. I'm sorry. I forgot about that. You don't come back until the 22nd.

COMMISSIONER ACHTENBERG: Well, if we did it in late afternoon, I might be able to do that.

CHAIRMAN CASTRO: Okay. Would that work for folks? Late afternoon on Sunday, the 21st?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Late afternoon on Sunday, the 21st?

COMMISSIONER KLADNEY: Would that be East Coast time? West Coast time? Mountain time?

COMMISSIONER ACHTENBERG: Excellent question.

COMMISSIONER KLADNEY: Roberta, what time zone are you --

COMMISSIONER ACHTENBERG: I'll be in the Pacific time zone lest I be viewed as a booster. I have some support in that regard. I can seek
Commissioner Heriot. She's with me on that.

CHAIRMAN CASTRO: That's fine with me.

COMMISSIONER ACHTENBERG: We're at least on the same time zone, right?

COMMISSIONER Kladney: I'm good.

COMMISSIONER Gaziano: What time are you proposing?

CHAIRMAN CASTRO: Let's say --

COMMISSIONER ACHTENBERG: I mean, I can do 3:00 o'clock.

CHAIRMAN CASTRO: -- 3:00 o'clock Pacific time, 6:00 o'clock Eastern. That looks good for folks?

COMMISSIONER ACHTENBERG: Is that possible?

CHAIRMAN CASTRO: 6:00 o'clock Eastern on Sunday, the 21st, 3:00 o'clock Pacific.

COMMISSIONER Kladney: I'm good.

VICE CHAIR THERNSTROM: Well, it's not ideal for me. I've got a dinner date that night.

CHAIRMAN CASTRO: Can you adjust that?

VICE CHAIR THERNSTROM: No.

CHAIRMAN CASTRO: Will your dinner date like to help go through these findings and recs?

COMMISSIONER Gaziano: What would be
comfortable for you on that day?

VICE CHAIR THERNSTROM: Sunday nights are just out for me in general.

COMMISSIONER GAZIANO: And, Roberta, you're not back earlier than 3:00 Pacific time?

COMMISSIONER ACHTENBERG: I'm actually not. I'm trying to --

CHAIRMAN CASTRO: What about a little later on Sunday, after your dinner?

VICE CHAIR THERNSTROM: Yes. I could do it by 8:00 o'clock.

CHAIRMAN CASTRO: 8:00 o'clock Eastern, which would be what, 5:00 Pacific? Would that work for folks? Yes?

COMMISSIONER ACHTENBERG: That will work for me.

CHAIRMAN CASTRO: Okay. Then that's what we'll do.

COMMISSIONER GAZIANO: Okay. But my motion is that if one of us -- I think it sounds like Sunday evening we will all be there, but if one of us, you know, can't make it, that we will then do this by notational vote.

CHAIRMAN CASTRO: No one's going to purposely not show up, right?
COMMISSIONER GAZIANO: No one will not purposely --

CHAIRMAN CASTRO: I don't trust this.

COMMISSIONER GAZIANO: -- exercise to find a time.

CHAIRMAN CASTRO: Yes. I'm fine with that. All right. Let's just get this done. I'm sure that everyone will be there because we have just said we're all available. So I want to move forward in good faith.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: You know, so if that's your motion, I am seconding it. And, Madam Staff Director, you had something to say?

VICE CHAIR THERNSTROM: You're talking about --

CHAIRMAN CASTRO: Sunday.

VICE CHAIR THERNSTROM: At 8:00 o'clock?

CHAIRMAN CASTRO: Yes, Sunday, July 21st at 8:00 p.m. Central time -- I'm sorry -- Eastern time, --

VICE CHAIR THERNSTROM: Eastern time.

CHAIRMAN CASTRO: -- 8:00 p.m. Eastern time. Okay?

STAFF DIRECTOR SALLO: I was verifying
with staff that we can set up a telephonic meeting
and make sure that we have a court reporter that's
available. And staff will also have to be on the
phone to serve as parliamentarian.

CHAIRMAN CASTRO: And that's doable, then?

STAFF DIRECTOR SALLO: Thus far, yes.

CHAIRMAN CASTRO: Okay.

STAFF DIRECTOR SALLO: If I find
something different before the end of today, I will
send out an email. If everything can be confirmed,
then I will submit the agenda.

COMMISSIONER GAZIANO: And my motion
would reflect that we would find another time if
there is some --

CHAIRMAN CASTRO: Okay. Fair enough.

COMMISSIONER GAZIANO: -- difficulty
with --

CHAIRMAN CASTRO: Fair enough.

COMMISSIONER GAZIANO: -- Sunday night,
July 21.

CHAIRMAN CASTRO: Okay. So I seconded
your motion. Any additional discussion?

(No response.)

CHAIRMAN CASTRO: If not --
COMMISSIONER Kladney: Yes.

Chairman Castro: Oh. Yes?

COMMISSIONER Kladney: This is Kladney.

Chairman Castro: Commissioner Kladney, what do you have to say?

COMMISSIONER Kladney: Why don't we set up an alternative date now because why don't we look at it and say the next Saturday or next Sunday? Obviously these things work pretty well for --

Commissioner Gaziano: Because then it makes it difficult for us to meet our September schedule that everyone wants to with our statements.

Chairman Castro: Yes. The longer we wait, the more difficult it is. And it seems like the 21st --

COMMISSIONER Kladney: I thought we had two weeks.

Chairman Castro: Well, the 22nd, the 23rd, and 24th, and the 25th don't work for everybody here. Two weeks is just --

COMMISSIONER Kladney: I know. But two weeks would be like two weeks from tomorrow.

COMMISSIONER Gaziano: But we would have less time if findings and recs were --

Chairman Castro: What Commissioner
Kladney is saying, Commissioner Gaziano, is if, for some reason, there's a problem with the 21st -- because you said you wanted to have a backup date if something happened on the 21st.

COMMISSIONER GAZIANO: The backup is --

CHAIRMAN CASTRO: He's suggesting we pick the backup date now, as opposed to waiting.

COMMISSIONER GAZIANO: Oh, I see.

CHAIRMAN CASTRO: Yes. So it saves us a step.

COMMISSIONER GAZIANO: My alternative date is if there's some sort of impossibility with the staff, real impossibility with the staff, putting this together on a Sunday night.

CHAIRMAN CASTRO: Well, the Staff Director will find out this afternoon if there is a problem. I would be surprised if there is. Let's go with the 21st. If there is a problem, we will circulate some dates very quickly and schedule something right away. Okay?

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: All right.

COMMISSIONER YAKI: It's got to be quick because the --

CHAIRMAN CASTRO: I know. I know. It
will be done today. So --

STAFF DIRECTOR SALLO: If I may, staff

is already --

CHAIRMAN CASTRO: Yes?

STAFF DIRECTOR SALLO: -- looking into it.

CHAIRMAN CASTRO: Okay. So let's take a vote on this motion. I'm going to do a roll call. Madam Vice Chair, how do you vote?

COMMISSIONER Kladney: May I interject?

CHAIRMAN CASTRO: Go ahead.

COMMISSIONER Kladney: What's the exact motion?

CHAIRMAN CASTRO: The motion is? Do you want to restate it, Commissioner Gaziano?

COMMISSIONER GAZIANO: Roughly. Hopefully it's clear enough in the record that we are postponing further action on findings and recommendations until the July 21, where at 8:00 p.m. Eastern, all commissioners will make a good faith effort to participate by phone. If there is a failure of any commissioner to participate who wants to participate, I'll even add, then the further consideration of findings and recommendations will be done shortly thereafter by notational vote.
CHAIRMAN CASTRO: Okay. So I'm going to take a roll call vote on this. Commissioner --

VICE CHAIR THERNSTROM: I couldn't hear you.

COMMISSIONER ACHTENBERG: I'm sorry. So you have asked the motion. I will wait until you open it up for discussion. I apologize.

CHAIRMAN CASTRO: Okay. No. That we have been discussing. I was going to vote on it. So you had a question?

COMMISSIONER ACHTENBERG: Well, my concern is if, for whatever reason -- this is essentially a vote for a notational vote.

COMMISSIONER GAZIANO: I don't think so.

COMMISSIONER ACHTENBERG: No?

CHAIRMAN CASTRO: No. We asked about that.

COMMISSIONER GAZIANO: We are going to make the telephone call. We're all checking our schedule to do that.

COMMISSIONER ACHTENBERG: So I take your assurance with great weight.

COMMISSIONER GAZIANO: I asked my fellow commissioners if anyone --

COMMISSIONER ACHTENBERG: You did. No
worries.

COMMISSIONER GAZIANO: -- is thinking of not joining the call, please speak now because I am representing that we are all going to act in good faith to be on that call.

CHAIRMAN CASTRO: Same here. All right. I am going to take a vote on this now. Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I just want to clarify the motion requires that all members, in fact, be on the call who want to be?

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: Right. Yes. I vote yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: I vote yes.

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

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Abstain.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: And I vote yes. So we have six yeses, one no, and one abstention. The motion passes.

- STATUS UPDATE ON

THE SEX TRAFFICKING: A GENDER-BASED VIOLATION OF CIVIL RIGHTS REPORT

AND

THE FEDERAL CIVIL RIGHTS ENGAGEMENT WITH ARAB AND MUSLIM AMERICAN COMMUNITIES POST 9/11 REPORT

CHAIRMAN CASTRO: Okay. Now we are going to move on to our status report on the status of our sex trafficking and our civil rights engagement with Arab and Muslim communities reports.

Madam Staff Director? And I'll add to that if you will also let us know where we are in the eminent report? So we are going to get a status report from you on the sex trafficking, --

STAFF DIRECTOR SALLO: Yes.
CHAIRMAN CASTRO: -- the Arab/Muslim civil rights report? And then I also ask you to let us know where we are in eminent domain.

STAFF DIRECTOR SALLO: Yes. So as to the sex trafficking report, I should receive the first draft by close of business today. As to the Arab and Muslim report, the target date for the first draft is July 19th. As to the eminent domain report, it was provided to me with all the comments that were incorporated by staff prior to my becoming a Staff Director.

Unfortunately, because of the statutory enforcement report that was coming before everyone today, I did not have an opportunity to continue the review that I had commenced on the eminent domain report. I will complete that by the middle of next week. And then I will disseminate it to the commissioners so that we can vote on it at the August meeting.

CHAIRMAN CASTRO: Okay. My hope is that we get these reports approved before the end of the fiscal year so that we can report that, what we have accomplished, by fiscal year end in our PAR reports.

COMMISSIONER HERIOT: Chairman?

CHAIRMAN CASTRO: Yes? One second.
COMMISSIONER HERIOT: What I am concerned about is time for commissioner statements.

If we have time for commissioner statements, if we have multiple reports out, it is a little difficult to get the commissioner statements. So if we could alter the schedules in ways that would allow us to get these things done by the end of the year without having two and three reports having to be written on at the same time, remembering that the criminal background one is the one that we really, really have to get done by December.

CHAIRMAN CASTRO: Yes. What is the status of that one, too?

STAFF DIRECTOR SALLO: The criminal background is going to the editor now. All the statements have been incorporated. And it will come before the Commission in the August meeting as well for a vote. But I need to bring forth the eminent domain one. It's been --

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: Oh, I don't have any problem with voting on the eminent domain one. What I would like is to have, instead of 30 days, to write a statement a little bit longer so that we can actually get statements written.
STAFF DIRECTOR SALLO: I'll take that.

Once we vote on it next month, we can definitely address that.

CHAIRMAN CASTRO: Okay. Great. Any other questions on that?

(No response.)

IV. MANAGEMENT AND OPERATIONS

CHAIRMAN CASTRO: If not, we're going to move on to management and operations. Our Staff Director will give us her monthly report. Ms. Sallo?

- STAFF DIRECTOR'S REPORT

STAFF DIRECTOR SALLO: I have circulated the written monthly report to everyone. I did want to indicate that we have in the second page of the monthly report under the FOIA section -- we originally indicated that we had completed the quarterly FOIA reports that they still needed to be posted to our website. The zip files have been uploaded, but GPO is currently reviewing it. So I wanted everyone to be aware of that.

We had an ongoing new engagement with the Inspector General. And so David Mussatt will be speaking to everyone to advise them as to what they have requested thus far and what has been provided
to them.

I also wanted to bring to everyone's attention that on Tuesday, the House CJS Appropriations Committee released their 2014, fiscal 2014, budget. And for the Commission on Civil Rights, they have proposed to provide us with $8,763,000 maintaining the status quo, but they did not include in their language that we would have an IG.

That has now been approved for full Committee consideration by voice vote. And that occurred on July 10th. And it's moving forward.

The Senate CJS appropriations are set up for subcommittee markup on Tuesday, July 16th. At 10:00 a.m., they have yet to release their appropriations bill. They normally do that the day of markup. So I wanted to bring that to everyone's attention.

The reorg plan continues. I continue to put together ideas for the reorganization plan. I have spoken to Senate and the House. And Senate would like for the reorg plan to be submitted by July 24th. So I wanted the commissioners to be aware of that as well.

We have circulated the SAC status
appointment, a chart that I do circulate every month. And I just wanted to highlight that before this year ends, calendar year, not fiscal year, we have five SACs that are coming up for reappointment. That would be Oklahoma, which expires on August 23rd; Georgia, which expires on September 13th; California, expires on 10-30; Arizona and Nebraska, expire on November 29th. So if anyone has any ideas as to who might be interested in receiving an application, please advise. And we will go ahead and move forward in contacting them.

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRMAN CASTRO: Yes, Commissioner?

COMMISSIONER HERIOT: Are we going to be seeing a copy of the reorg plan prior to its submission? I would think that is something --

CHAIRMAN CASTRO: Madam Staff Director?

STAFF DIRECTOR SALLO: Once I complete putting it together, yes.

COMMISSIONER HERIOT: And when do you expect that to be?

STAFF DIRECTOR SALLO: I hope to have it done by the middle of next week.

COMMISSIONER HERIOT: Okay.

CHAIRMAN CASTRO: Any other questions
for the Staff Director?

(No response.)

CHAIRMAN CASTRO: None? Okay. Thank you.

Then we'll move on to the report from the Acting Chief of RPCU. Is he on the phone? Mr. Mussatt?

MR. MUSSATT: Yes. How do you do, commissioners?

CHAIRMAN CASTRO: Good.

- ACTING CHIEF OF REGIONAL PROGRAMS' REPORT

MR. MUSSATT: Yes. Just to reiterate what the Staff Director just said of the regions, we are ramping up efforts to get these State Advisory Committees appointed. As part of our efforts to book capacity with the regions, it starts with getting the Advisory Committees appointed in the first place. So we are working on that. And there are a number on the agenda today, as you know.

In regard to the Inspector General, we have been spending quite a bit of time trying to get the documents together that they have asked for. They did send out a sheet on their engagement meeting that I know you were a part of.

And then today we have put together
patched versions of the SAC handbook; the current
versions of the EA-57 and 59; the unified SAC
charter, which charters off all 51 Advisory
Committees; some individual regional documents
regarding their operations that they have put
together as regions.

We have also compiled the RPC monthly
reports and spreadsheets when they were distributed
over the past three fiscal years. And also we have
compiled SAC reports since fiscal year 2010. They
have been published. They have asked for a contact
list for the current and past SAC chairs for all 51
State Advisory Committees. And so we did put that
together as of yesterday. And as of today, that is
all they have asked for.

If you have any questions, I'd be happy
to answer any.

CHAIRMAN CASTRO: Any questions for Mr.
Mussatt? Does anybody on the phone want to ask Mr.
Mussatt a question?

(No response.)

CHAIRMAN CASTRO: Hearing none, thank
you, Mr. Acting Chief, for your report.

MR. MUSSATT: Thank you.

V. APPROVAL OF STATE ADVISORY COMMITTEE
APPOINTMENT SLATES

CHAIRMAN CASTRO: Thank you.

We'll now move on to the next item on our agenda, which is the approval of the State Advisory Committee slates; of course, with the exception of Maine, which was earlier removed from the agenda for 30 days.

- KENTUCKY

CHAIRMAN CASTRO: So I am going to make a motion that the Commission appoint the following individuals to the Kentucky State Advisory Committee based upon the recommendation of our Staff Director: Rosa E. Alvarado, Juliet Banks, Gary W. Brown, Patrick D. Delahanty, Betty Griffin, Monica Harris Kern, Lee Look, Samuel A. Marcosson, Patricia A. Murrell, Osi Onyekwuluje, Mitchell H. Payne, Christopher L. Thacker, and Eugenia Froedge Toma.

Pursuant to this motion, the Commission appoints Betty Griffin as Chair of the Kentucky State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointments.

Do I have a second on my motion?
COMMISSIONER ACHTENBERG: Second.

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

VICE CHAIR THERNSTROMSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: I abstain.

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: And I vote yes. The motion passes with one abstention.

- MINNESOTA

CHAIRMAN CASTRO: Okay. Now I am going to make a motion that the Commission appoint the following individuals to the Minnesota State Advisory Committee based upon the recommendation of our Staff Director: Robert L. Battle, Ryan Check,

Pursuant to this motion, the Commission appoints Nakima Levy-Pounds as Chair of the Minnesota State Advisory Committee. These members will serve as uncompensated government employees.

Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointments.

Do I have a second?

COMMISSIONER ACHTENBERG: Second.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Abstain.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: Commissioner
Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: aye.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: And I vote yes. The motion passes with six yeses, one no, and one abstention.

- NEW HAMPSHIRE

CHAIRMAN CASTRO: I am now going to make a motion that the Commission appoint the following individuals to the New Hampshire State Advisory Committee based upon the recommendation of our Staff Director: Sonu S. Bette; JerriAnne Boggis; Katherine L. Brown; Kelly E. Dowd; Joann Daldo; Joshua Elliot Droficante; Joann Fortier; Mabubu Hasan; Barbara Jago; Rogers J. Johnson; Ginger Lever; Andrique S. Mesa, Jr.; Raphael Rohaus, Jr.; Kevin H. Smith; Carol M. Stamatakis; Alejandro Urrutia; and Jacqueline K. Weatherspoon.

Pursuant to this motion, the Commission appoints JerriAnne Boggis as Chair of the New
Hampshire State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointments.

Do I have a second on my motion?

COMMISSIONER ACHTENBERG: Second.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Abstain.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

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

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: And I vote yes. The motion passes with one abstention.

- NEW YORK

CHAIRMAN CASTRO: I am now going to make a motion that the Commission appoint the following individuals to the New York State Advisory Committee based upon the recommendation of our Staff Director: Iris Y. Chen; Roy C. Cosme; Sandra L. Dunn; Roderick M. Hills; Shani Jamila; Robert A. Klump; Alexandra D. Korry; Gertrude Lenzer; Gloria Lopez; Cynthia Oswald; Robert L. Paquette; Susan P. Sturm; Alex S. Vitale; Norman A. Wagner; Thomas Wahl, Jr.; Earl S. Ward; and Peter W Wood.

Pursuant to this motion, the Commission appoints Alexandra D. Korry as Chair of the New York State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointments.

Do I have a second?

COMMISSIONER ACHTENBERG: Second.
CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: And I vote yes. The motion passes with seven yeses and one no.

I now have a very important motion to make, and that is a motion to adjourn. Do I have a
second?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: All those in favor say "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: Opposed?

(No response.)

CHAIRMAN CASTRO: Abstentions?

(No response.)

CHAIRMAN CASTRO: Okay. Thank you, everybody. We'll talk soon.

(Whereupon, the foregoing matter was concluded at 12:33 p.m.)

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