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U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, MARCH 9, 2012

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

PRESENT:

- MARTIN R. CASTRO, Chairman
- ABIGAIL THERNSTROM, Vice Chairman
(via telephone)
- ROBERTA ACHTENBERG, Commissioner
(via telephone)
- TODD F. GAZIANO, Commissioner
- GAIL L. HERIOT, Commissioner
- PETER N. KIRSANOW, Commissioner
(via telephone)
- DAVID KLADNEY, Commissioner (via telephone)
- MICHAEL YAKI, Commissioner (via telephone)
- KIMBERLY TOLHURST, Delegated the Authority
of the Staff Director + Acting General
Counsel

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STAFF PRESENT:

MARGARET BUTLER, Acting Chief, OCRE

IVY L. DAVIS, Director, ERO

BARBARA DE LA VIEZ

PAMELA DUNSTON, Chief, ASCD

LATRICE FOSHEE

ALFREDA GREENE

TINALOUISE MARTIN, Director, OM

PETER MINARIK, Director, RPCU (via telephone)

TORRANCE MONTGOMERY

LENORE OSTROWSKY, Acting Chief, PAU

JOHN RATCLIFFE, Chief, Budget and Finance

EILEEN RUDERT

DAVID SNYDER

VANESSA WILLIAMSON

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTON

ALEC DEULL

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

RICHARD SCHAMEL

ALISON SOMIN

MARLENE SALLO

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P-R-O-C-E-E-D-I-N-G-S

(9:33 a.m.)

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

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

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

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

1 staff director present?

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

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

8 COURT REPORTER: Yes Mr. Chairman.

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

12 I. APPROVAL OF THE AGENDA

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

15 COMMISSIONER GAZIANO: Second if I can
16 amend.

17 CHAIRMAN CASTRO: Yes.

18 COMMISSIONER GAZIANO: Offer an
19 amendment.

20 CHAIRMAN CASTRO: Okay. Are there any
21 amendments?

22 COMMISSIONER GAZIANO: The one I'd like
23 to offer is to -- because I've heard various
24 commissioners may not be on the phone for that long,
25 I'd like to move the review of at least one of the

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1 two Hawaii SAC applicants, the only one that I think
2 is ready for us to act on, and I'll talk about my
3 disappointment the other one isn't, up to right
4 after -- I suppose Roberta, either Roberta comes on
5 the line, if we could interrupt proceedings, I
6 understand she may have some motions on some of the
7 other SACs.

8 CHAIRMAN CASTRO: Right.

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

16 CHAIRMAN CASTRO: Sure, and those other
17 SACs I understand to be Indiana and Utah so if you
18 would make those part of your motion, that would be
19 --

20 COMMISSIONER GAZIANO: That's fine.

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

23 COMMISSIONER HERIOT: I'll second.

24 CHAIRMAN CASTRO: Okay. Any discussion?

25 (No response)

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1 CHAIRMAN CASTRO: If not, all those in
2 favor signify by saying aye.

3 (Chorus of ayes)

4 CHAIRMAN CASTRO: Okay.

5 COMMISSIONER HERIOT: I have a motion
6 too.

7 CHAIRMAN CASTRO: Okay.

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

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

13 Okay, it was unanimous then.

14 COMMISSIONER YAKI: I abstain.

15 CHAIRMAN CASTRO: Okay. Commissioner
16 Yaki abstains.

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

22 I move that we take Section IV and put
23 it above Section III so that we'll have some sense
24 of how to deal with the Section III issues when they
25 come up.

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1 CHAIRMAN CASTRO: Okay. Is there a
2 second on that?

3 COMMISSIONER GAZIANO: I second.

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

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

10 COMMISSIONER HERIOT: That might make it
11 better.

12 CHAIRMAN CASTRO: Yes, it's already
13 10:22, so --

14 COMMISSIONER HERIOT: Yes.

15 CHAIRMAN CASTRO: Okay. Any other
16 questions on that?

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

21 CHAIRMAN CASTRO: Or we could make that
22 adjustment when we know where we are in the timing.
23 So we have a motion seconded. Any questions?

24 (No response)

25 CHAIRMAN CASTRO: If not, okay, so let's

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1 move on that motion to amend. All those in favor
2 signify by saying aye.

3 (Chorus of ayes)

4 CHAIRMAN CASTRO: Any opposed?

5 (No response)

6 CHAIRMAN CASTRO: Any abstentions?

7 COMMISSIONER YAKI: I abstain.

8 CHAIRMAN CASTRO: Okay. Commissioner
9 Yaki abstains. And I voted aye, so that's all but
10 one. Okay, so the motion passes. Next item then,
11 so is the approval of the minutes of the February
12 20th, I'm sorry, the February 3rd meeting.

13 II. APPROVAL OF THE FEBRUARY 3, 2012

14 MEETING MINUTES

15 CHAIRMAN CASTRO: Is there a second?

16 COMMISSIONER GAZIANO: I second.

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

19 (No response)

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

22 (Chorus of ayes)

23 CHAIRMAN CASTRO: Any opposed?

24 (No response)

25 CHAIRMAN CASTRO: Any abstentions?

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1 (No response)

2 III. MANAGEMENT AND OPERATIONS

3 STAFF DIRECTOR'S REPORT

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

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

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

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

23 ACTING STAFF DIRECTOR TOLHURST: Yes, I
24 think that would be a good discussion for
25 commissioners to have. We are under some mandates,

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1 well, we are under requests for 2012 and mandates
2 for 2013 to reduce printing and other costs by 20
3 percent.

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

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

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

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

25 I think that it makes sense for us to --

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1 I think just for example the school discipline
2 report, I think is one that is an important one and
3 it could be useful to have that printed. In fact
4 I'd make such a motion, to print the school
5 discipline report and, I think, any other report
6 that you have printed right now, I want to see
7 printed.

8 COMMISSIONER HERIOT: I would second
9 that.

10 CHAIRMAN CASTRO: Is there a second?
11 Okay.

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

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

21 COMMISSIONER KIRSANOW: What I'd like to
22 hear -- thanks Mr. Chairman -- I'd like to hear
23 from the staff director as to what -- in order to at
24 least come close to the mandate of reducing costs by
25 20 percent or whatever the mandate is, how many

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1 would be print to accomplish that objective?

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

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

12 Prior to that though, the number was
13 much larger.

14 CHAIRMAN CASTRO: The Chair recognizes
15 Commissioner Heriot.

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

21 For example on the STEM report, I sent
22 out I believe more than 1,000 and this is one that I
23 would also like to do that same thing for. I had
24 actually made a request that we print up more than
25 the usual amount of this one.

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1 I don't know how many that we usually --
2 that we have, for the STEM report for example that
3 are just sitting around, but I suspect it's not very
4 large because I must have sent out an awful lot of
5 those.

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

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

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

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

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1 accept this. It's too large.

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

6 CHAIRMAN CASTRO: The Chair recognizes
7 Commissioner Gaziano.

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

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

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

24 I understand, acting staff directory,
25 that in response to questions, one of our special

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1 assistants asked that it's -- it's been about 2,300,
2 2,500 for various reports.

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

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

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

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

23 I mean I think as -- it's a younger time
24 and I think everyone younger than me only wants
25 reports by electronic means because they are

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1 searchable, they are, you know, they're so user
2 friendly.

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

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

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

14 ACTING STAFF DIRECTOR TOLHURST: I can
15 just tell you that Lenore had calculated for this
16 particular report that to print -- if you wanted to
17 print, for example she said 1,400 copies would be
18 \$4,000.

19 COMMISSIONER KLADNEY: This is Dave,
20 Commissioner Kladney.

21 I think --

22 UNIDENTIFIED PARTICIPANT: We can't
23 understand you.

24 CHAIRMAN CASTRO: Commissioner Kladney,
25 could you pull your phone back a little bit so we

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1 can hear you?

2 COMMISSIONER KLADNEY: Is that any
3 better?

4 MULTIPLE SPEAKERS: Yes.

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

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

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

19 COMMISSIONER HERIOT: Thanks for that
20 Abby.

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

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

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1 and harassment?

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

4 CHAIRMAN CASTRO: Okay.

5 ACTING STAFF DIRECTOR TOLHURST: About a
6 thousand.

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

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

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

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

21 So perhaps, for purposes of this motion
22 if we understand that it's just limited to this, we
23 are not necessarily just setting a precedent, that
24 every briefing report may end up being you know,
25 1,400 print run etcetera, you know, maybe that's

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1 something that would be a little more palatable and
2 we are still being able to address the concerns and
3 needs that you have and yet not say that, you know,
4 the next time this issue comes up, because we did it
5 this time we should do it that time, although you
6 know, it may be a good use of these additional
7 dollars.

8 Commissioner Heriot, then Commissioner
9 Gaziano.

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

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

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

24 COMMISSIONER GAZIANO: I was going to
25 say I thought that's entirely reasonable, especially

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1 to not necessarily fix the number, but I hope we
2 have a presumption that our reports are to be
3 printed, a direction to the staff, unless we vote
4 otherwise, and the staff --

5 COMMISSIONER HERIOT: Which we have done
6 on several occasions.

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

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

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

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

24 CHAIRMAN CASTRO: I understand that.
25 But you know, we can also manage that on other ends

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1 of it as well. You know, we are not -- I think we
2 are not printing our SAC reports. Those are done
3 in-house, at least the ones I've seen.

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

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

9 COMMISSIONER ACHTENBERG: Yes I am.

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

14 Any other questions or comments on this?

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

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

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

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

25 CHAIRMAN CASTRO: Is there a second to

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1 that?

2 COMMISSIONER HERIOT: Second.

3 CHAIRMAN CASTRO: Okay. Any additional
4 discussion?

5 (No response)

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

9 COMMISSIONER HERIOT: Yes.

10 CHAIRMAN CASTRO: Commissioner Gaziano
11 how do you vote?

12 COMMISSIONER GAZIANO: Yes.

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

15 COMMISSIONER KLADNEY: No.

16 CHAIRMAN CASTRO: Commissioner
17 Achtenberg how do you vote?

18 COMMISSIONER ACHTENBERG: No.

19 CHAIRMAN CASTRO: Commissioner Yaki how
20 do you vote?

21 COMMISSIONER YAKI: No.

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

25 (No response)

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1 CHAIRMAN CASTRO: I will vote yes.
2 Madam Vice Chair? Did I get all the commissioners?

3 COMMISSIONER KIRSANOW: Kirsanow votes
4 yes.

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

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

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

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

15 COMMISSIONER HERIOT: Okay, okay, fine.

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

18 COMMISSIONER HERIOT: Whatever.

19 CHAIRMAN CASTRO: So actually, well I
20 could --

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

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

25 ACTING STAFF DIRECTOR TOLHURST: Tim

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1 just left to call her.

2 CHAIRMAN CASTRO: Okay. It will matter.

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

4 (Pause)

5 CHAIRMAN CASTRO: Madam Vice Chair?

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

8 CHAIRMAN CASTRO: Madam Vice Chair?

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

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

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

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

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

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

25 CHAIRMAN CASTRO: Well, it depends on

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1 how she votes, right? If she votes no --

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

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

6 COMMISSIONER GAZIANO: She's got to
7 participate.

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

14 VICE CHAIRMAN THERNSTROM: I'm
15 abstaining on that.

16 CHAIRMAN CASTRO: Abstain? The motion
17 passes.

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

22 CHAIRMAN CASTRO: Yes, if we could, just
23 one thing I neglected to do at the beginning. I
24 just wanted to acknowledge a couple of folks and
25 with the readjustment of the agenda, I let it slip.

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1 But before I move on to the next item I
2 want to just take a moment to reflect on the passing
3 of two very important contributors to civil rights
4 issues and have passed away in the last 30 days.

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

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

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

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

24 The second individual is Captain
25 Patricia Gromley. She was a three-term member of

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1 our New Hampshire state advisory committee. She
2 passed away on February 21st.

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

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

16 V. STATE ADVISORY COMMITTEE ISSUES:

17 REVIEW OF TWO HAWAII SAC APPLICANTS

18 CHAIRMAN CASTRO: So the first item is
19 the Hawaii SAC. Commissioner Gaziano.

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

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1 nominations.

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

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

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

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

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

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

25 But because, two months ago, I told the

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1 staff that she wanted to serve, I am disappointed
2 that more efforts weren't made to actually reach her
3 one way or the other.

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

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

10 COMMISSIONER HERIOT: Second. I second
11 the motion.

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

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

19 CHAIRMAN CASTRO: The only one, yes.

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

25 But I, on Bill Burgess, I don't need --

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1 I'd be glad to defend why the rule 11 sanction
2 really was more favorable to him. It was, in my
3 view, erroneous anyway.

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

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

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

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

21 COMMISSIONER YAKI: Yes. This is
22 Commissioner Yaki.

23 CHAIRMAN CASTRO: Yes, Commissioner
24 Yaki, proceed please.

25 COMMISSIONER YAKI: Having had the least

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

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

19 (No response)

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

24 Madam Vice Chair, are you in favor of
25 the appointment?

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1 (No response)

2 CHAIRMAN CASTRO: Okay, we'll come back
3 to the Vice Chair. Commissioner Kirsanow, are you
4 in favor?

5 COMMISSIONER KIRSANOW: Yes.

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

8 COMMISSIONER HERIOT: Yes.

9 CHAIRMAN CASTRO: Commissioner Gaziano?

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

13 CHAIRMAN CASTRO: Commissioner Yaki, how
14 do you vote?

15 COMMISSIONER YAKI: No.

16 CHAIRMAN CASTRO: Commissioner
17 Achtenberg, how do you vote?

18 COMMISSIONER ACHTENBERG: No.

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

21 (Sound of cell phone ringing)

22 CHAIRMAN CASTRO: Is that a no?

23 (Laughter)

24 CHAIRMAN CASTRO: Commissioner Kladney?
25 We are voting on appointing Mr. Burgess to the

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1 Hawaii SAC. Do you vote no or yes?

2 COMMISSIONER KLADNEY: Abstain.

3 CHAIRMAN CASTRO: Abstain? Is that
4 correct, Commissioner Kladney, abstain, did I hear
5 you correctly?

6 COMMISSIONER KLADNEY: Yes.

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

11 Madam Vice Chair?

12 (No response)

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

15 VICE CHAIRMAN THERNSTROM'S SPECIAL
16 ASSISTANT: Correct.

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

21 So we have one, two, three yeses, three
22 nos and an abstention. So the motion fails. I will
23 renew the motion at a later meeting when we have
24 eight commissioners and hopefully when we have the
25 nomination package for Professor Zhou.

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1 The -- thank you. The next item on the
2 agenda, then is the Indiana Sac.

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

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

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

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

12 COMMISSIONER GAZIANO: You're wrong.

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

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

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

25 CHAIRMAN CASTRO: Gentlemen let me

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1 suggest that between now and the next meeting, we
2 have someone in our law department look at what the
3 appropriate rule would be on this.

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

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

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

11 COMMISSIONER GAZIANO: Point of order.

12 (Simultaneous speaking)

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

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

18 COMMISSIONER GAZIANO: A motion to table
19 takes two thirds.

20 COMMISSIONER HERIOT: None of this
21 matters now.

22 COMMISSIONER YAKI: Commissioner
23 Kladney? Is Commissioner Kladney on?

24 COMMISSIONER KLADNEY: Yes.

25 COMMISSIONER YAKI: I'm going to ask you

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1 in open session if you might change your vote to a
2 no so we don't have to go through this rigmarole
3 again?

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

6 COMMISSIONER KLADNEY: I have problems
7 with this nomination, only in the sense -- the rule
8 11 motion didn't -- doesn't bother me that much. I
9 looked into it very closely, and it was either
10 dropped the second suit as a result of a mistake, or
11 he wasn't very circumspect about it.

12 My concern that I had raised with some
13 people is about his, you know, he has this, I guess
14 501(c)(3) that, for our purposes, is a petition on
15 these two issues that we have already had hearings
16 on.

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

22 And I'm, I just have another real
23 conflict in deciding on these types of things, and
24 maybe I'm too new at this, is how one evaluates a
25 member of the SAC if we are allowing people with

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1 other politically-oriented work or whatever the
2 interest groups, like 501(c)(3)s, how do we evaluate
3 that? So I have an issue and I'm abstaining still.

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

6 V. STATE ADVISORY COMMITTEE ISSUES:

7 RE-CHARTERING THE INDIANA SAC

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

14 Gerard Bradley, Amos Brown III, Teri
15 Cardwell, Elizabeth Cierzniak, Diane Clements,
16 Stephanie DeKemper, Morella Dominguez, Christopher
17 Douglas, Robert Enlow, Susan Fuldauer, James Haigh,
18 Robert Heidt, Leslie Hiner, Jeffrey Kimmell, Tony
19 Kirkland, Patti O'Callaghan, Carlton M. Waterhouse,
20 Ellen Wu, Catherine Zuckert.

21 Pursuant to this motion the Commission
22 appoints Diane Clements as Chair of this re-
23 chartered Indiana State Advisory Committee. These
24 members will serve as uncompensated government
25 employees.

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1 Under this motion, the Commission
2 authorizes the staff director to execute the
3 appropriate paperwork for appointment. Is there a
4 second? Is there a second?

5 (No response)

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

8 COMMISSIONER HERIOT: Second.

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

11 COMMISSIONER YAKI: Commissioner Yaki
12 here.

13 CHAIRMAN CASTRO: Commissioner Yaki
14 please proceed.

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

21 And the reason I actually prefer the
22 latter is that I am -- for at least one of the
23 candidates, I am uncomfortable having to in open
24 session deal with issues that, that I think
25 shouldn't -- on a threshold qualification issue

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1 you've got another set of weeds at a particular
2 stage for voting.

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

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

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

20 COMMISSIONER YAKI: I'm talking about,
21 I'm talking about the ideological balance with --
22 well the ideological balance after an appropriate
23 screening has been put on so that certain
24 individuals who are on there don't come up to us for
25 our having a past particular judgement on them.

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1 I don't think it's our role; I am
2 uncomfortable with us having to see that in public
3 session when I do not believe their names should
4 ever have come up to us in the first place.

5 COMMISSIONER GAZIANO: Mr. Chair?

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

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

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

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

24 I'm not sure by the way one way or the
25 other whether DeKemper should or should not. I have

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1 a question about Ms. DeKemper, but what's the issue
2 with Mr. Bradley?

3 CHAIRMAN CASTRO: Well, perhaps we
4 should have an appropriate motion on the table then.

5 These people have not yet been severed so I want to
6 make sure that if in fact ew are going to be talking
7 about them, that they have the opportunity to follow
8 our protocol, to present their side of the case, if
9 in fact there's a motion to sever them.

10 But right now we have -- we don't have a
11 --

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

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

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

22 So I'm unclear as to whether or not that
23 discussion needs to be had in open session or we
24 need to retire to closed session in order to have
25 that discussion.

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1 COMMISSIONER YAKI: Let me clarify my
2 motion for Commissioner Gaziano because he implies
3 some penchant method to my madness. The fact is I
4 want Indiana sent back for the purpose of putting a
5 screw on that for people whose fitness should not be
6 -- when that comes back up to us, one of those names
7 may or may not be back on the list which can then be
8 discussed further. But I think, as a list in its
9 entirety and it's one that I want to give in to in
10 open session simply because I think that we should
11 have a -- we should be able to vote on the committee
12 where, if we have ideological differences, we can
13 talk about it in public, but not one where we have
14 to talk about the fitness of the candidate, and if
15 Commissioner Gaziano confused me, my motion of sever
16 with a motion of witness, I apologize. That is not
17 my intent at all.

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

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1 fitness to serve on the SAC.

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

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

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

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

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

24 We are so lucky that someone like
25 Professor Bradley is willing to serve on the Indiana

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1 SAC. The notion that we can in an open meeting here
2 suggest that there's something wrong with this man,
3 is just outrageous.

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

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

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

24 COMMISSIONER GAZIANO: Mr. Chair. Mr.
25 Chair.

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1 CHAIRMAN CASTRO: Yes Commissioner
2 Gaziano.

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

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

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

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

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

22 COMMISSIONER ACHTENBERG: Can I ask
23 Commissioner Yaki whether you see it similarly, or
24 do you think, Commissioner Yaki, feel willing to
25 comment or do you see this as the -- is it --

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1 sending it back will really accomplish for the slate
2 what needs to be accomplished in your view?

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

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

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

21 There is a member there who really
22 should not have made it through the screening
23 process. This is not an issue of ideology. This is
24 not an issue of whether Commissioner Gaziano agrees
25 with his or her point of view or I agree with his or

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1 her point of view. It's whether that person,
2 regardless of point of view, should be a
3 representative of the State Advisory Commission to
4 the U.S. Commission on Civil Rights.

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

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

19 I don't think anybody's questioning the
20 credentials of as Commissioner Gaziano was referring
21 to. That's not who I am referring to. I do realize
22 that depending on the outcome of a fitness screening
23 that we get back and we run a check with a
24 different continuation and we can vote on that and
25 do it piecemeal.

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1 Perhaps it's less an issue of our
2 ability to debate and to send a message to our staff
3 that we would like to get this thing right the first
4 time. It's never going to be perfect. There are
5 going to be people who I may disagree with. But
6 there are still going to be people who we will share
7 no disagreement that because of X, Y and Z, they
8 should not be fit to serve on that particular SAC,
9 regardless of political or ideological beliefs.

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

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

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

22 (No response)

23 CHAIRMAN CASTRO: Okay. Our
24 commissioner -- is Commissioner Gaziano --
25 Commissioner Kirsanow on the phone?

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1 COMMISSIONER KIRSANOW: Hello Mr.
2 Chairman, I do have a question.

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

6 COMMISSIONER ACHTENBERG: I am.

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

10 COMMISSIONER KLADNEY: Yes.

11 CHAIRMAN CASTRO: Did the Vice Chair
12 join?

13 (No response)

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

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

22 Bu when the staff makes its judgment, if
23 you have a problem with the way we screen for
24 whatever this, this mythical, ethical problem that
25 keeps being hinted at with regard to Professor

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1 Bradley, that should have been raised to the staff
2 director's attention, as I and my staff have done
3 repeatedly, as we did when we saw an issue with
4 regard to DeKemper.

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

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

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

25 COMMISSIONER KIRSANOW: I just

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

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

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

21 COMMISSIONER KIRSANOW: Yes.

22 CHAIRMAN CASTRO: Did I hear
23 Commissioner Achtenberg say something?

24 COMMISSIONER ACHTENBERG: I merely
25 wanted to say that I have no -- I am not sure the

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1 confusion here in my own view, I have an ethical
2 question about one member of the Indian SAC, but it
3 is not the member that was just identified by -- I
4 have no ethical question about Professor Bradley and
5 to the extent that anyone left that impression, at
6 least, if they think that I may have left that
7 impression, that is mistaken. I have no ethical
8 question about that person.

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

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

25 CHAIRMAN CASTRO: Okay. Well in that

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1 case then I don't feel that that motion is in order.

2 So --

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

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

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

22 CHAIRMAN CASTRO: Okay, so Commissioner
23 Yaki withdraws his motion to send it back. He has
24 made a motion to sever and I presume that's Mr.
25 Bradley and Ms. DeKemper? Is that correct?

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1 COMMISSIONER GAZIANO: And I move to
2 sever the sever. I want --

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

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

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

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

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

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

23 ACTING STAFF DIRECTOR TOLHURST: Why
24 don't you see if there's a second for the motion to
25 sever and you can just --

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1 CHAIRMAN CASTRO: Okay. Is there a
2 motion to sever -- a second on the motion to sever?

3 COMMISSIONER ACHTENBERG: Second.

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

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

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

12 COMMISSIONER YAKI: Yes.

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

15 COMMISSIONER YAKI: Of course.

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

18 COMMISSIONER YAKI: Of course.

19 CHAIRMAN CASTRO: Okay. So --

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

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

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1 by role call.

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

4 CHAIRMAN CASTRO: Okay.

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

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

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

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

20 CHAIRMAN CASTRO: Please do Commissioner
21 Achtenberg.

22 COMMISSIONER ACHTENBERG: I'm happy to.

23 CHAIRMAN CASTRO: And remember to
24 identify yourself.

25 COMMISSIONER ACHTENBERG: There's no

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1 question that Commissioner Heriot has correctly
2 recited the multiple credentials, the legal
3 credentials of this candidate. But my concern is
4 slightly different, in that Mr. Bradley's multiple,
5 sustained arguments against marriage equality for
6 same sex couples, while cast in terms of his view of
7 natural law, in my view, cross the line from an
8 ideological point of view, they move from ideology
9 to status-based animus towards gay and lesbian
10 people in my view, and I don't believe that someone
11 who has evinced such views, has attested to the
12 unfitness of gay and lesbian people to be the
13 parents of children and other such lines of
14 argument, is someone I intend to grace my vote with
15 to place on a state advisory committee as long as I
16 have the power of a United States Commissioner on
17 Civil Rights. So that's my view and I intend to
18 express it and exercise my prerogative with regard
19 to candidates who evince such views.

20 CHAIRMAN CASTRO: The Chair recognizes
21 Commissioner Gaziano.

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

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1 responsibilities.

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

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

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

23 CHAIRMAN CASTRO: Any other --

24 COMMISSIONER ACHTENBERG: Might I?

25 CHAIRMAN CASTRO: Go ahead Commissioner

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1 Achtenberg.

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

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

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

21 CHAIRMAN CASTRO: The chair recognizes
22 Commissioner Heriot.

23 COMMISSIONER HERIOT: My understanding
24 of Professor Bradley's views is that they are simply
25 restating basic Catholic doctrine.

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1 COMMISSIONER KIRSANOW: Commissioner
2 Heriot can you speak up?

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

10 COMMISSIONER KLADNEY: Commissioner --

11 COMMISSIONER HERIOT: So I would
12 definitely oppose that.

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

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

18 COMMISSIONER KLADNEY: Thank you.

19 CHAIRMAN CASTRO: Any other comments?
20 Commissioner Gaziano.

21 COMMISSIONER GAZIANO: I might vote to
22 sever now that I have heard Commissioner
23 Achtenberg's explanation at least, so that we have a
24 separate vote on the merits on him, and if that
25 motion passes I might see if there's unanimous

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1 consent, now that it's out in the open, that we may
2 even postpone a vote on Professor Bradley until we
3 can review these writings.

4 I would welcome a --

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

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

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

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

16 COMMISSIONER YAKI: This is Commissioner
17 Yaki.

18 CHAIRMAN CASTRO: Yes, commissioner?

19 COMMISSIONER YAKI: This isn't a who did
20 it or what, where -- to me, I am going to echo a
21 little bit about what Commissioner Achtenberg said.

22 This is not really an ideological difference. This
23 goes to the root core of what the Commission on
24 Civil Rights is all about.

25 It is not, in my view, an institution

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1 that is really engaged in debates over whether or
2 not civil rights should be attached to people or
3 not.

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

16 CHAIRMAN CASTRO: Yes, Commissioner
17 Kirsanow.

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

23 I don't see that anything that
24 Commissioner -- I'm sorry -- that Professor Bradley
25 has written, I can't say that anything that is of

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1 considerable quip -- the amount of his corpus of
2 writings on a variety of issues is extreme.

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

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

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

14 They are principled, well-reasoned
15 arguments consistent with well-accepted
16 constitutional jurisprudence, not extreme views.
17 And I am not aware, and I'd like to be enlightened,
18 maybe he is affiliated with certain hate groups, but
19 I am not -- I have never known him it to be
20 affiliated with any hate groups, unless the Catholic
21 Church is a hate group, unless Notre Dame is a hate
22 group. I know that he belongs to the Federalist
23 Society, possibly that's considered a hate group. I
24 know that he has been involved with the Society for
25 Catholic Scholars and the Cardinal Newman Society

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1 and the Ramsey Colloquium, but I don't know that
2 anybody has identified those as a hate group. I'd
3 like to see involved parties define precisely who it
4 is that is a hate group with whom he is affiliated.
5 But I think that if we are going to be
6 establishing this kind of a test, when we have
7 individuals who have reasoned arguments with which
8 we may disagree, as a test for disqualification,
9 then we have a lot of individuals that we need to
10 revisit on our various SACs.

11 COMMISSIONER ACHTENBERG: Mr. Chairman.

12 CHAIRMAN CASTRO: Commissioner
13 Achtenberg.

14 COMMISSIONER ACHTENBERG: Let me just
15 say that you know, Professor Bradley's co-authorship
16 of a book entitled Same Sex Attractions: A Parents
17 Guide, which essentially categorically disqualifies
18 gay and lesbian people from healthy parenting, you
19 can -- you can say all you want about the weight of
20 the scholarship, but that quite frankly, the weight
21 of the scholarship is not Professor Bradley's
22 flavor, far from it, and this is not, this is not a
23 diatribe designed to impugn anyone's integrity, to
24 disqualify Catholics from serving on our Commission,
25 or anything like it.

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1 This man's writings, to me, evince an
2 animus toward gay and lesbian people and gay and
3 lesbian parents that I believe is unwarranted and
4 that the science does not support and as a result it
5 suggests to me that he holds views that I do not
6 want to see dignified by an appointment to a State
7 Advisory Committee on the United States Commission
8 on Civil Rights. End of story, as far as I'm
9 concerned.

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

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

24 Commissioner Kirsanow, how do you vote?

25 COMMISSIONER KIRSANOW: No.

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1 CHAIRMAN CASTRO: Commissioner Heriot,
2 how do you vote?

3 COMMISSIONER HERIOT: No.

4 CHAIRMAN CASTRO: Commissioner Gaziano,
5 how do you vote?

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

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

23 So I'm voting no to sever.

24 CHAIRMAN CASTRO: Commissioner Yaki, how
25 do you vote on the motion to sever?

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1 COMMISSIONER YAKI: Mr. Chairman, I'm
2 sorry, I was just trying to figure out what the
3 point of what Commissioner Gaziano was trying to say
4 with regards to Commissioner Achtenberg and myself.

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

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

12 COMMISSIONER ACHTENBERG: Yes.

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

15 COMMISSIONER KLADNEY: Yes.

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

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

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

23 CHAIRMAN CASTRO: We did? Which one was
24 that? Oh, I'm sorry. Stephanie DeKemper. We have
25 a motion to sever Ms. DeKemper. Any discussion on

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1 that?

2 COMMISSIONER YAKI: Can we quickly skip
3 the motion to sever and just simply go through the
4 ups and downs of Ms. DeKemper?

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

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

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

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

19 COMMISSIONER HERIOT: Yes.

20 CHAIRMAN CASTRO: Commissioner Heriot.

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

23 CHAIRMAN CASTRO: Commissioner Yaki?

24 COMMISSIONER YAKI: Yes.

25 CHAIRMAN CASTRO: Do you want to speak

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1 to that?

2 COMMISSIONER YAKI: No.

3 CHAIRMAN CASTRO: Okay.

4 COMMISSIONER YAKI: Speak to what?

5 CHAIRMAN CASTRO: To the --

6 COMMISSIONER YAKI: Motion to sever?

7 CHAIRMAN CASTRO: Yes.

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

14 CHAIRMAN CASTRO: The chair recognizes
15 Commissioner Heriot.

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

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

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

23 CHAIRMAN CASTRO: Could you speak louder
24 into your microphone Commissioner Heriot?
25 Commissioner Yaki said he did not hear what you

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1 said.

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

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

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

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

20 CHAIRMAN CASTRO: Okay.

21 COMMISSIONER YAKI: Quite frankly, we've
22 got our hands full with this, regardless of whether
23 there's any -- whether there's any other activity
24 going on, rising from -- we should focus on the U.S.
25 Commission on Civil Rights supervisory commission in

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1 Indiana.

2 CHAIRMAN CASTRO: Okay, if there are no
3 further comments, I am going to call the question on
4 the motion to sever Stephanie DeKemper.

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

7 COMMISSIONER KIRSANOW: Yes.

8 CHAIRMAN CASTRO: Yes? Okay.

9 COMMISSIONER KIRSANOW: Yes.

10 CHAIRMAN CASTRO: Commissioner Heriot,
11 how do you vote?

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

14 CHAIRMAN CASTRO: Commissioner Gaziano,
15 how do you vote?

16 COMMISSIONER GAZIANO: Yes.

17 CHAIRMAN CASTRO: Commissioner Yaki, how
18 do you vote?

19 COMMISSIONER YAKI: Yes.

20 CHAIRMAN CASTRO: Commissioner
21 Achtenberg, how do you vote?

22 COMMISSIONER ACHTENBERG: Yes.

23 CHAIRMAN CASTRO: Commissioner Kladney
24 how do you vote?

25 COMMISSIONER KLADNEY: Yes.

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1 CHAIRMAN CASTRO: I vote yes. The
2 motion to sever passes. These two individuals will
3 have an opportunity to respond.

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

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

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

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

15 CHAIRMAN CASTRO: He withdrew it though.

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

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

23 CHAIRMAN CASTRO: Well, you know,
24 there's a motion on the floor to move forward with
25 the SAC --

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1 COMMISSIONER HERIOT: I move to
2 substitute a motion that we put this issue onto a
3 later meeting, once we have resolved the other two.

4 CHAIRMAN CASTRO: Is there a second on
5 that motion?

6 COMMISSIONER GAZIANO: I second

7 CHAIRMAN CASTRO: So we have an
8 intervening to send back or to delay, I'm sorry, the
9 --

10 COMMISSIONER GAZIANO: Delay not send
11 back.

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

14 (No response)

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

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIRMAN CASTRO: Commissioner Heriot
20 how do you vote?

21 COMMISSIONER HERIOT: Yes.

22 CHAIRMAN CASTRO: Commissioner Gaziano,
23 how do you vote?

24 COMMISSIONER GAZIANO: Yes.

25 CHAIRMAN CASTRO: Commissioner Yaki, how

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1 do you vote?

2 COMMISSIONER YAKI: I'm actually right
3 there.

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

7 COMMISSIONER KLADNEY: Yes.

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

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

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

16 COMMISSIONER KIRSANOW: Yes.

17 CHAIRMAN CASTRO: Commissioner Heriot
18 how do you vote?

19 COMMISSIONER HERIOT: Yes.

20 CHAIRMAN CASTRO: Commissioner Gaziano
21 how do you vote?

22 COMMISSIONER GAZIANO: Yes.

23 CHAIRMAN CASTRO: Commissioner Yaki how
24 do you vote?

25 COMMISSIONER YAKI: Yes.

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1 CHAIRMAN CASTRO: Commissioner Kladney
2 how do you vote?

3 COMMISSIONER KLADNEY: Yes.

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

6 V. STATE ADVISORY COMMITTEE ISSUES:

7 RE-CHARTERING THE UTAH SAC

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

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

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

25 Pursuant to this motion, the Commission

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1 appoints Joanne R. Milner as chair of this re-
2 chartered Utah State Advisory Committee. These
3 members will serve as uncompensated government
4 employees.

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

10 COMMISSIONER GAZIANO: I second.

11 CHAIRMAN CASTRO: Okay. Do we have any
12 motions?

13 COMMISSIONER YAKI: Commissioner Yaki.

14 CHAIRMAN CASTRO: Commissioner Yaki,
15 please proceed.

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

22 CHAIRMAN CASTRO: Is there a second on
23 that motion?

24 COMMISSIONER KLADNEY: I second.

25 CHAIRMAN CASTRO: Okay since it's been

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1 moved -- Commissioner Gaziano.

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

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

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

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

22 CHAIRMAN CASTRO: Commissioner Yaki.

23 COMMISSIONER YAKI: Yes?

24 CHAIRMAN CASTRO: Would you like to
25 respond to Commissioner Gaziano's question?

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1 COMMISSIONER YAKI: Not really. I think
2 I've -- as I said before, there are issues of
3 ideology and there are issues of ethical fitness,
4 and I think it is wrong to omit, which may disturb
5 the balance of the Commission, which is why I wanted
6 to send it back to staff. To me, if you send it
7 back to staff, rather than putting it out here,
8 because it looks as though it just doesn't matter.

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

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

18 COMMISSIONER HERIOT: I think this
19 notion of making, you know, sending things back to
20 the staff for staff to figure out, again, we are the
21 Commission, we are the ones that are supposed to be
22 doing this, and the notion that we just send it back
23 and like, it comes back with us not knowing what
24 happened or why the reasons for changes have been
25 made, I am against that.

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1 If there is a problem with somebody on
2 the list here, you know, we need to state it on the
3 record.

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

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

24 CHAIRMAN CASTRO: Any other discussion?

25 (No response)

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1 CHAIRMAN CASTRO: Hearing none, I am
2 going to call the question on the motion to send
3 back the Utah SAC. Commissioner Kirsanow, how do
4 you vote on the motion?

5 COMMISSIONER KIRSANOW: No.

6 CHAIRMAN CASTRO: Pardon me?

7 COMMISSIONER KIRSANOW: No.

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

10 COMMISSIONER HERIOT: No.

11 CHAIRMAN CASTRO: Commissioner Gaziano,
12 how do you vote?

13 COMMISSIONER GAZIANO: No.

14 CHAIRMAN CASTRO: Commissioner Yaki, how
15 do you vote?

16 COMMISSIONER YAKI: Yes.

17 COMMISSIONER GAZIANO: Commissioner
18 Kladney, how do you vote?

19 COMMISSIONER KLADNEY: Yes.

20 CHAIRMAN CASTRO: I vote yes.

21 COMMISSIONER KLADNEY: That's absent any
22 other review.

23 CHAIRMAN CASTRO: That's 3-3. The
24 motion fails. Okay. So do you have a motion to
25 sever then, Commissioner Yaki?

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1 COMMISSIONER YAKI: Okay, then I move to
2 sever Mr. Diaz.

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

5 (No response)

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

8 COMMISSIONER KLADNEY: Yes, second.
9 Commissioner Kirsanow.

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

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

15 COMMISSIONER HERIOT: Which one?

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

18 COMMISSIONER KLADNEY: Second.

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

22 COMMISSIONER GAZIANO: The motion is on
23 --

24 CHAIRMAN CASTRO: Commissioner -- Mr.
25 Diaz.

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1 COMMISSIONER GAZIANO: Yes.

2 CHAIRMAN CASTRO: Go ahead.

3 COMMISSIONER GAZIANO: I vote yes.

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

8 Hearing none, then I'll move forward.

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

12 COMMISSIONER YAKI: Yes.

13 COMMISSIONER GAZIANO: Okay.

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

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

19 CHAIRMAN CASTRO: All right.
20 Commissioner Heriot, how do you vote?

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

23 CHAIRMAN CASTRO: Commissioner Gaziano
24 how do you vote?

25 COMMISSIONER GAZIANO: Yes. I'd like to

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1 have the applicant and interview him myself.

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

4 COMMISSIONER YAKI: Yes.

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

7 COMMISSIONER KLADNEY: Yes.

8 CHAIRMAN CASTRO: I vote yes.
9 Commissioner Kirsanow, how do you vote?

10 COMMISSIONER KIRSANOW: I vote yes.

11 CHAIRMAN CASTRO: The motion to sever
12 Mr. Diaz passes. Mr. Diaz will have an opportunity
13 to present his response. The next motion is the
14 motion to sever Lynn Wardle. It's been seconded.
15 Is there any discussion?

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

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

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1 he is a mean.

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

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

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

10 COMMISSIONER HERIOT: Professor Wardle.

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

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

25 CHAIRMAN CASTRO: Any other comments or

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1 discussion?

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

14 CHAIRMAN CASTRO: Commissioner Gaziano?

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

20 CHAIRMAN CASTRO: Let's -- I'm going to
21 call the question on the motion to sever Professor -
22 -

23 COMMISSIONER YAKI: If it's 3-3, it was
24 3 to 1, Commissioner Gaziano if you will recall.

25 CHAIRMAN CASTRO: So let's -- shall we

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1 vote on the motion to sever then, and --

2 COMMISSIONER HERIOT: Yes.

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

6 COMMISSIONER KIRSANOW: No.

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

9 COMMISSIONER KLADNEY: Yes. Yes.

10 CHAIRMAN CASTRO: Commissioner Heriot,
11 how do you vote?

12 COMMISSIONER HERIOT: No.

13 CHAIRMAN CASTRO: Commissioner Gaziano,
14 how do you vote?

15 COMMISSIONER GAZIANO: No.

16 CHAIRMAN CASTRO: Commissioner Yaki, how
17 do you vote?

18 COMMISSIONER YAKI: Yes.

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

22 COMMISSIONER YAKI: I would, Mr. Chair.

23 I move to postpone consideration of the Utah SAC.
24 Commissioner Achtenberg will be back soon and her
25 viewpoints on this as well.

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1 CHAIRMAN CASTRO: Is there a second?
2 Commissioner Kladney?

3 COMMISSIONER KLADNEY: I second, Dave
4 Kladney.

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

7 COMMISSIONER YAKI: Is there a second?

8 CHAIRMAN CASTRO: Yes, we're just --

9 COMMISSIONER HERIOT: Hold on.

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

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

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

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

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

23 COMMISSIONER YAKI: We're not sending
24 back to staff. We're holding it for -- holding the
25 vote.

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1 CHAIRMAN CASTRO: He's saying hold the
2 vote.

3 COMMISSIONER YAKI: Yes.

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

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

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

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

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

21 COMMISSIONER KLADNEY: Commissioner
22 Kladney.

23 CHAIRMAN CASTRO: Commissioner Kladney,
24 go ahead.

25 COMMISSIONER KLADNEY: How can it get

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1 reconfigured if we keep it up at our level?

2 CHAIRMAN CASTRO: Pardon me?

3 COMMISSIONER KLADNEY: Why don't you
4 just make that part of the motion?

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

7 COMMISSIONER HERIOT: That it's just
8 being held.

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

12 Okay. Commissioner Yaki, is that fine
13 with you?

14 COMMISSIONER YAKI: That's fine.

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

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

20 CHAIRMAN CASTRO: Commissioner Heriot,
21 how do you vote?

22 COMMISSIONER HERIOT: Yes.

23 CHAIRMAN CASTRO: Commissioner Gaziano,
24 how do you vote?

25 COMMISSIONER GAZIANO: They've persuaded

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1 me. I'll vote yes.

2 CHAIRMAN CASTRO: Commissioner Yaki, how
3 do you vote?

4 COMMISSIONER YAKI: Yes.

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

7 COMMISSIONER KLADNEY: Yes.

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

10 Okay, now we'll go --

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

13 CHAIRMAN CASTRO: Certainly.

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

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

20 (Whereupon, the above-entitled matter
21 went off the record at 11:13 a.m. and resumed at
22 11:18 a.m.)

23 CHAIRMAN CASTRO: The chief of regional
24 programs report, Mr. Minarik, please proceed with
25 your report.

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III. MANAGEMENT AND OPERATIONS

CHIEF OF REGIONAL PROGRAMS' REPORT

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

So a little improvement in the process.

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

And nothing happened in program year 2011, and to date I am not aware of anything happening at the Commission level in cooperation in

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1 2012 in a formal way, and so the commissioners might
2 think so how they might want to address that and
3 they do.

4 And that would be my report, Mr.
5 Chairman.

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

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

23 ACTING STAFF DIRECTOR TOLHURST: Enough
24 people resigned from the Maine SAC that it went down
25 below 11 to I believe 6 members, and so the regional

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1 director for the ERO asked me if they could do an
2 interim appointment to get it back above 11. And I
3 thought that was reasonable. You don't want want
4 SACs operating under --

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

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

10 CHAIRMAN CASTRO: With?

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

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

15 COMMISSIONER GAZIANO: But it was
16 various reasons.

17 ACTING STAFF DIRECTOR TOLHURST: Yes.

18 CHAIRMAN CASTRO: Okay.

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

22 CHAIRMAN CASTRO: Didn't two people
23 move?

24 ACTING STAFF DIRECTOR TOLHURST: Some,
25 yes, at least one person moved.

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1 CHAIRMAN CASTRO: So it was a number of
2 factors. It wasn't one thing, okay.

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

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

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

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

20 During the process I lost my radar
21 screen. I didn't you know, read the affected agency
22 reviews, applying both to the decision. And I made
23 a mistake with the record. The record in January, I
24 thought, oh my goodness, this thing's done, and
25 quite frankly, without double checking and without

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1 getting back with the chair, records desk, made that
2 mistake, talked to a couple of the members and by
3 the chair and I asked to remove the report.

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

11 That's what I did. He chastised me, and
12 directed me out of the seat and I'm coordinating
13 with the chair and reaching out to the Wake County
14 School District. I did what I had to do. I had to
15 get dropped at the civil rights, where there is an
16 interagency review where that's still in the report.

17 That's the numbers and we've got plans to hold a
18 meeting in April, and I apologize to commissioners,
19 I apologize to the staff director. I wish I had not
20 made a mistake, didn't make the mistake, and I'm now
21 going to correct it. My apologies to the
22 commissioners and to the staff director and to the
23 agency.

24 CHAIRMAN CASTRO: And I want to correct
25 myself. I said it was an email from the SAC chair

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1 of North Carolina. It was actually a SAC member,
2 and I did ask Mr. Minarik to confirm that we didn't
3 have a similar problem on some of the other school
4 discipline reports from his region and I've heard
5 back from the chair of the Kentucky and Florida SACs
6 indicating that all appropriate steps were taken on
7 those votes so there's no concerns there.

8 Commissioner Gaziano?

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

16 The chairman of the North Carolina SAC
17 is positioned indefensible. Our regional staff's
18 position on violating the AIs is indefensible. I
19 think that the letter and the emails to me not only
20 raise a number of problems beyond a simple mistake.

21 There are certain statements that were admitted
22 which are, are, are -- have always worried me, and
23 so the admitted facts are quite problematic.

24 But I do not think it is the job of our
25 staff to strong-arm staff members for unanimous

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1 reports. I do not think that that is proper. I
2 think that it is wrong. I think that -- and by the
3 way this is symptomatic of -- I've gotten emails.

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

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

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

23 I don't, again, I don't know the truth
24 of this, but the matters that were raised in the
25 North Carolina SAC are symptomatic of some things

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1 I've been hearing for a long time.

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

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

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

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

23 You know, I get emails from various SAC
24 members. One of the issues that I've received
25 emails on recently is in some ways kind of the

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1 opposite of this problem that we're having in North
2 Carolina, and that was the California SAC was very
3 concerned about how slowly their SAC report was
4 being put up, as opposed to, in the North Carolina
5 case, believing that it was premature.

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

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

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

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

25 I think that you know, insofar as that's

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1 a conflict of interest, the conflict of interest
2 that we have between staff members and SACs are
3 much, much, much greater.

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

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

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

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

22 CHAIRMAN CASTRO: Any other questions or
23 comments?

24 COMMISSIONER YAKI: This is Commissioner
25 Yaki.

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1 CHAIRMAN CASTRO: Yes.

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

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

12 CHAIRMAN CASTRO: Commissioner Gaziano.

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

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

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

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1 defending them.

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

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

18 CHAIRMAN CASTRO: Any other comments or
19 questions?

20 ACTING STAFF DIRECTOR TOLHURST: I have
21 one.

22 CHAIRMAN CASTRO: Ms. Tolhurst.

23 ACTING STAFF DIRECTOR TOLHURST: I think
24 I take your point. I think if people want to
25 examine this, there needs to be some kind of reality

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1 check and we have Mr. Minarik on the phone and we
2 have Ms. Davis from ERO in the audience.

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

8 Maybe Ivy or Peter could comment on
9 that.

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

15 MS. DAVIS: This one?

16 CHAIRMAN CASTRO: Either one.

17 MS. DAVIS: It varies, and for those SACs
18 that we have members that are willing to, often it's
19 done on a subcommittee, I mean I'm listening to this
20 description and it's certainly not how things
21 operate in my region. The SACs are very much
22 involved in the process of determining who's going
23 to make presentations. That's not done -- that's
24 not done by the staff and says these are the -- this
25 is who you get and that's it, okay?

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1 Now, there are some SAC members that are
2 good writers, some that are not good writers, all
3 right? Sometimes we give them particularly things
4 to do, like the summaries of the witnesses'
5 statements and we may do a good portion of the
6 report.

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

16 CHAIRMAN CASTRO: Commissioner Gaziano.

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

22 But let me ask you another question.
23 The month after the Commission encouraged and
24 reaffirmed commissioners' rights to attend SAC
25 meetings, and I called in to participate in the

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1 Maryland SAC that you were organizing, you stopped
2 the meeting, you called up the operator -- at least
3 this is what the operator told me -- and you
4 instructed the operator to remove me from the
5 speaker line, so that I could just listen as a
6 member of the -- as any other public. Why did you
7 do that?

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

10 COMMISSIONER GAZIANO: You don't
11 remember doing that?

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

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

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

25 COMMISSIONER GAZIANO: No, that's wrong.

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1 MS. DAVIS: Yes.

2 COMMISSIONER GAZIANO: You're wrong.

3 But in any event --

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

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

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

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

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

21 COMMISSIONER GAZIANO: Okay.

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

24 CHAIRMAN CASTRO: Is there something
25 else, can we move on to another topic, if there are

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1 any other questions? Commissioner Heriot.

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

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

15 CHAIRMAN CASTRO: Any other questions or
16 comments?

17 MR. MINARIK: May I Mr. Chairman?

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

20 MR. MINARIK: I would like to comment.

21 CHAIRMAN CASTRO: Okay, go ahead.

22 MR. MINARIK: It is true that I have
23 talked with advisory committees when they first
24 convened, and told them that this was my preference,
25 that they try to find consensus.

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1 I don't ever think I acted in a way to
2 try to bully them that way. It's just that I really
3 would find over the course of years that there's so
4 much more in common among people who really believe
5 in civil rights than they disagree.

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

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

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

22 CHAIRMAN CASTRO: Okay. Thank you Mr.
23 Minarik. Commissioner Heriot, then if no other
24 questions, we'll move on to the next item on the
25 agenda.

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1 COMMISSIONER HERIOT: Yes, I just wanted
2 to point out that I was present at a California SAC
3 meeting, I was no longer chair at this California
4 SAC meeting, but I was a member of the SAC, and Mr.
5 Minarik was there, and gave, you know, the initial
6 presentation.

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

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

20 So I just wanted to say that I thought
21 Mr. Minarik did a good job, a very good job, in
22 dealing with the California SAC, and was, was, was,
23 you know, they loved him, and he was, he was very
24 charming. But I would think that we really
25 shouldn't ask for, for, for unanimous reports, that

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1 it's better to let them just choose based on what
2 they want to do, and if there's a dissent, fine,
3 there's a dissent.

4 CHAIRMAN CASTRO: Okay.

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

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

24 CHAIRMAN CASTRO: I think Ms. Davis is
25 approaching. Is it a question also of the

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1 difference between participation and attendance?

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

6 Members of the SAC are in speaker mode.

7 Anyone who is not a member of the SAC, is in listen
8 only mode. And I believe that was the status for
9 you.

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

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

24 COMMISSIONER GAZIANO: Your
25 interpretation of our ruling is untenable, that

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1 commissioners can participate no more than any other
2 member of the public. It's untenable. And for you
3 not to have called me --

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

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

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

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

19 COMMISSIONER KIRSANOW: MANAGEMENT AND
20 OPERATIONS DISCUSSION ON AGENCY STAFFING

21 CHAIRMAN CASTRO: As all commissioners
22 are aware, Ms. Tolhurst is going to be stepping down
23 from her position as acting staff director on April
24 13th, at the end of the April board meeting --
25 Commission meeting.

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1 At the present, the White House, as you
2 all know, has not sent us a candidate for approval
3 for the staff director position. I have been in
4 very frequent communication with the White House
5 over the last year and even more so within the last
6 couple of weeks.

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

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

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

24 So what I'd like to do today is have a
25 thorough and thoughtful discussion with

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1 commissioners about the various options that we have
2 should the White House not send us someone by April
3 13th.

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

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

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

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

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

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1 operations.

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

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

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

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

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

20 COMMISSIONER HERIOT: Could I ask a
21 question first?

22 CHAIRMAN CASTRO: Yes ma'am.

23 COMMISSIONER HERIOT: What, what things
24 do we need an acting staff director for? Are there
25 things like, you know, making sure that checks are

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1 signed, that just have to be done by somebody with
2 the title of staff director or acting staff director
3 or person delegated the responsibilities of staff
4 director?

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

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

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

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1 thing becomes more problematic.

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

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

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

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

12 CHAIRMAN CASTRO: Yes please go ahead.

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

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

22 CHAIRMAN CASTRO: Eventually yes.

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

25 I hope they are going to want that job before the

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1 election. I hope they are not going to, they are
2 not going to wait on that.

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

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

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

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

24 COMMISSIONER HERIOT: Is that something
25 you want to keep on your table then?

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1 ACTING STAFF DIRECTOR TOLHURST: Well --
2 it wouldn't be on my plate once I step down, but
3 it's already started, it's already been assigned,
4 and any kind of -- well, any hearing would go
5 through the General Counsel's office, so those can
6 still happen.

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

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

16 CHAIRMAN CASTRO: Absolutely, sure.

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

22 ACTING STAFF DIRECTOR TOLHURST: I will
23 still be responsible.

24 COMMISSIONER HERIOT: And if that's, if
25 you are still in charge of that, then that's good.

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1 ACTING STAFF DIRECTOR TOLHURST: Not for
2 me, but it's okay.

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

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

14 ACTING STAFF DIRECTOR TOLHURST: That is
15 on my desk.

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

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

24 COMMISSIONER HERIOT: Release the draft,
25 yes. Okay. SAC packages then would be the big

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1 item?

2 ACTING STAFF DIRECTOR TOLHURST: Yes.

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

5 CHAIRMAN CASTRO: Okay. Commissioner
6 Gaziano.

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

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

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

25 But I think that's one area of concern.

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1 I do think there -- in the very short term, there
2 are two of our, our, our current employees who I
3 think could, could do a good job and we would all
4 have some confidence in to do a fair and -- but I
5 think, you know, given each of those persons'
6 existing jobs, they may also be in the same
7 situation as the acting staff director, who I also
8 want to commend.

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

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1 responsibility for ourselves in the short term?

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

7 I think for the trafficking briefing,
8 that happened quite a bit. We have got many people
9 coming that are, were commissioner recommendations.

10 And I think individual staff, you know, even if
11 there's not a staff director, certainly Lenore is
12 capable of doing research and picking people, just
13 as Margaret was capable of doing research and
14 picking people.

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

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

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1 things.

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

5 COMMISSIONER KLADNEY: Dave Kladney,
6 Commissioner Kladney.

7 CHAIRMAN CASTRO: Commissioner Kladney
8 then Commissioner Heriot, who has raised her hand.
9 Co ahead Commissioner Kladney.

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

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

21 ACTING STAFF DIRECTOR TOLHURST: Thank
22 you.

23 CHAIRMAN CASTRO: Commissioner Heriot.

24 COMMISSIONER HERIOT: I wanted to back
25 up a little bit about, you know, what's going to

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1 happen if this ends up being a, you know, a six-
2 month period that we're waiting and that's, you
3 know, that's -- we don't want to hold off holding
4 briefing that long a period.

5 COMMISSIONER YAKI: This is Commissioner
6 Yaki --

7 (Simultaneous speaking)

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

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

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

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1 need to do.

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

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

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

21 The two issues that the acting staff
22 director just mentioned that I think are, are issues
23 that really the Commission can't participate,
24 there's really nothing we can do here, and so we
25 really need someone -- hires. I don't want to touch

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1 federal hiring with a 10-foot pole. I don't want to
2 get involved in it because you know, there' complex
3 law behind that, and I figure whatever I do is, you
4 know, either I will, you know, accidentally violate
5 some rule I don't know about, or if I don't, I'll be
6 accused of it even if I didn't do it. So I don't
7 want to touch it.

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

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

25 We can't say gosh, in our discretion, we

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1 decided that that was not a priority. Congress has
2 said it's a priority so it's a priority. So I'm
3 very worried about that.

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

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

23 CHAIRMAN CASTRO: Okay. I'll just say I
24 don't agree on the not summarizing the briefing
25 reports. I think it's important. But that doesn't

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1 mean that we can't possibly delay doing that but I
2 am not saying that's --

3 COMMISSIONER HERIOT: Or just not do it
4 on one.

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

7 CHAIRMAN CASTRO: Yes.

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

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

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

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

18 COMMISSIONER HERIOT: But no, we still
19 have -- it's not just that Ms. Tolhurst is stepping
20 down. Mr. Byrnes has resigned, you know, he was
21 writing reports. And now Ms. Ostrowsky has to, you
22 know, take more control of the immigration briefing,
23 and she was writing reports, you know, something has
24 to give. This is not just a question of there not
25 being an acting staff director. We are understaffed

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1 and we are not going to get work done unless we come
2 up with some way to make -- to get it done, and that
3 was my suggestion. If there's some other way to do
4 it, let me know what it is.

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

12 But you know, your points are well
13 taken.

14 COMMISSIONER KLADNEY: Mr. Chairman.

15 CHAIRMAN CASTRO: Yes, Commissioner
16 Kladney?

17 COMMISSIONER KLADNEY: I did ask a
18 question of the staff director and I didn't get an
19 answer.

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

22 COMMISSIONER KLADNEY: My question was
23 the questions about the answers to the questions
24 that Commissioner Yaki and I posed early last week I
25 think or this week.

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1 CHAIRMAN CASTRO: Ms. Tolhurst?

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

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

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

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

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

23 MS. MARTIN: Commissioner Kladney I was
24 saying that I could email you the answers to the
25 questions. I do have answers to your questions.

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1 COMMISSIONER KLADNEY: Right. Thank you
2 very much.

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

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

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

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

25 It would be difficult but at least we

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1 ought to investigate. At least we ought to
2 investigate that possibility.

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

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

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

24 If we did something that's analogous for
25 one briefing or another, maybe we could try it as an

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1 experiment, that we are doing similar to the Lincoln
2 Cottage, then it's the commissioners in some sense
3 who assume responsibility with obtaining witnesses
4 that they think would, would create a slate.

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

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

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

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

24 CHAIRMAN CASTRO: I'd love to have it
25 done here, yes. Well if there's answers now, maybe

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1 they'll contribute to our discussion or maybe
2 they'll take some things off the table. So if it's
3 appropriate, I'd like to hear the input.

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

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

11 (Laughter)

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

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

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

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

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

25 COMMISSIONER KLADNEY: We asked the

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1 questions. We would like to review the questions
2 and answers.

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

5 COMMISSIONER HERIOT: Is that
6 appropriate?

7 CHAIRMAN CASTRO: Yes, without --

8 COMMISSIONER GAZIANO: Well, I think so.

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

13 COMMISSIONER GAZIANO: I think so.

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

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

20 CHAIRMAN CASTRO: Good point.

21 COMMISSIONER GAZIANO: And then I would
22 read that broadly. But let me ask the other
23 commissioners and/or the staff director and/or
24 personnel director. I always forget your official
25 title. You have two, or three.

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1 MS. MARTIN: Director of management --

2 COMMISSIONER GAZIANO: Director of
3 management, yes.

4 MS. MARTIN: is my official title.

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

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

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

23 Are there other matters that would be
24 helpful for us to know right now because by next
25 month, it may be -- we may need the next month to

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1 resolve some of these issues.

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

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

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

18 MS. MARTIN: Well, basically the options
19 that the chair put out are all viable options. I
20 just want to note that I did talk with OPM and OPM
21 came back to the agency and said that they are not
22 going to tell us how to operate internally, that
23 it's up to the Commission to decide how we will
24 continue to operate as long as it's within the law
25 and the regulations.

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1 COMMISSIONER GAZIANO: Can I add a
2 clarification? Are they going to advise us what's
3 lawful?

4 (Laughter)

5 COMMISSIONER GAZIANO: Can they give us
6 that help?

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

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

11 MS. MARTIN: Yes.

12 CHAIRMAN CASTRO: Okay.

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

22 MS. MARTIN: Right, and some of them
23 that aren't governed by particular rules or
24 regulations is basically internal operations of an
25 agency.

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1 COMMISSIONER GAZIANO: Yes, but I'll
2 give you, I'll give you one example that I know has
3 been pending at least. This is one of the questions
4 I asked -- I'll tell the staff director one of the
5 questions, in her general counsel capacity I asked
6 her, and as I understand it, unless she has an
7 answer, she hasn't received it.

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

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

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

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1 get an answer to that?

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

8 CHAIRMAN CASTRO: Commissioner Heriot.

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

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

17 ACTING STAFF DIRECTOR TOLHURST: No.

18 COMMISSIONER HERIOT: Okay.

19 CHAIRMAN CASTRO: You know, one of the
20 questions the White House had, the presidential
21 asked for I think the counsel's offices, given the
22 uniqueness of us being -- this position being a
23 presidential appointment, you know, how would a
24 detail work or not in that situation too. So maybe
25 when we get an answer --

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1 COMMISSIONER HERIOT: It wouldn't have
2 to be staff director because again, I'm not just
3 concerned with the vacancy in the staff director's
4 office, but rather, you know, would someone like
5 Maha be interested in coming here and be assigned a
6 particular task, like, do the eminent domain report.

7 CHAIRMAN CASTRO: I see. Okay.

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

10 CHAIRMAN CASTRO: Understood.

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

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

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

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

25 CHAIRMAN CASTRO: That job is which one?

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1 Could you let -- for the record --

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

12 COMMISSIONER YAKI: Commissioner Yaki.

13 CHAIRMAN CASTRO: Yes, proceed
14 Commissioner.

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

25 I thought I heard Commissioner Heriot

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

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

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

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1 forward.

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

8 CHAIRMAN CASTRO: Commissioner Heriot.

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

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

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

23 ACTING STAFF DIRECTOR TOLHURST: I have
24 a suggestion.

25 CHAIRMAN CASTRO: Ms. Tolhurst.

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

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

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

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

19 CHAIRMAN CASTRO: A good point.

20 COMMISSIONER GAZIANO: One other
21 question.

22 CHAIRMAN CASTRO: Commissioner Gaziano.

23 COMMISSIONER GAZIANO: Trying as much as
24 possible to preserve the confidentiality of
25 Commissioner Yaki and Kladney's questions, I wonder

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1 if in the process, after, after you and our director
2 of management have given them whatever you think is
3 reasonable and possible, whether that might spark
4 your imagination as to some things that the rest of
5 us might want to know and you could formulate a memo
6 without of course indicating whatsoever whether
7 those issues were prompted by Commissioner Yaki or
8 Kladney, and opine on a few issues that you think
9 may be relevant to us.

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

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

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

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

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

25 CHAIRMAN CASTRO: Okay. Any other

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1 comments, questions, suggestions on this topic?

2 (No response)

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

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

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

16 VI. PROGRAM PLANNING UPDATE AND
17 DISCUSSION OF PROJECTS

18 VRA STATUTORY ENFORCEMENT REPORT UPDATE

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

22 ACTING STAFF DIRECTOR TOLHURST: Okay.
23 So let's see. We have received much of the document
24 --

25 COMMISSIONER YAKI: Commissioner, Mr.

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1 Chairman?

2 CHAIRMAN CASTRO: Yes, Commissioner
3 Yaki?

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

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

12 ACTING STAFF DIRECTOR TOLHURST: Not if
13 Dave and --

14 COMMISSIONER HERIOT: Do we still have
15 Commissioner Kirsanow?

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

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

21 COMMISSIONER KIRSANOW: I'm here.

22 COMMISSIONER KLADNEY: Yes.

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

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1 (Laughter)

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

6 COMMISSIONER YAKI: Thank you.

7 CHAIRMAN CASTRO: So, Ms. Tolhurst.

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

13 We -- I did have a talk with DOJ on the
14 6th where I asked them some followup questions, where
15 I felt that their interrogatory responses had not
16 given me what I needed to write the report.

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

25 So today the report will be going out

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1 for those two reviews, and then we'll get it back.
2 The next step will be affected agency review, and
3 then once it's nice and clean and reviewed, it will
4 go to commissioners for their review and another
5 round of edits.

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

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

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

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

21 COMMISSIONER GAZIANO: I understand.
22 I'm just saying that that wouldn't be the definitive
23 word anyway given that they reversed, in January,
24 20.

25 ACTING STAFF DIRECTOR TOLHURST: Fair

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1 enough.

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

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

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

12 CHAIRMAN CASTRO: Okay. Any questions,
13 additional questions?

14 (No response)

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

17 VI. PROGRAM PLANNING UPDATE AND DISCUSSION
18 OF PROJECTS HUMAN TRAFFICKING

19 BRIEFING UPDATE

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

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

24 CHAIRMAN CASTRO: Okay.

25 ACTING STAFF DIRECTOR TOLHURST: So,

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1 Margaret Butler has been working on that and she has
2 assembled a very, very good briefing. It's a three
3 panel. That's going to be on April 13th. And if you
4 have questions of her, she's here.

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

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

18 Commissioner Heriot?

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

23 And back on the voting rights one, you
24 know, again, very useful and there was a time a few
25 years ago, when we had some reports where we put in

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1 our report, we asked the Department of Justice X --
2 I think this was the religious liberties report --
3 and they didn't respond or they told us that this
4 was something that they didn't have to respond to,
5 and that was a very embarrassing thing to have in a
6 report.

7 We should also pursue and get the
8 information that we need for our reports, you know.

9 Sometimes it requires you know, working extra hard,
10 but you know, this is valuable information and we
11 should never have a report that says gosh, we asked
12 this question, but they told us they didn't have to
13 answer.

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

16 (No response)

17 VI. PROGRAM PLANNING UPDATE AND
18 DISCUSSION OF PROJECTS

19 IMMIGRATION BRIEFING UPDATE

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

23 MS. OSTROWSKY: This is Lenore
24 Ostrowsky. I have talked to a great number of
25 people who are potential speakers and would very

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1 much appreciate if the commissioners and special
2 assistants would forward to me any suggestions that
3 they have.

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

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

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

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

20 But it would make a huge difference as
21 to people who have been directly affected, and I
22 think certainly with small business owners who don't
23 have the opportunity, or the -- they don't really
24 have the capacity to take time away from their
25 businesses and certainly for individuals who have

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1 been affected, they might be most unwilling to
2 travel.

3 CHAIRMAN CASTRO: Travel here?

4 MS. OSTROWSKY: To travel here because -
5 -

6 COMMISSIONER HERIOT: They would prefer
7 Alabama?

8 CHAIRMAN CASTRO: Yes.

9 MS. OSTROWSKY: Yes.

10 CHAIRMAN CASTRO: So, any questions?

11 (No response)

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

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

24 The reason I think it's important for us
25 to go out there is multiple. One is, as Lenore just

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1 said, I think it would facilitate us hearing from
2 some of the affected parties who would find it
3 difficult to come here.

4 COMMISSIONER HERIOT: Where in Alabama
5 are we thinking of?

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

18 I would think that we could very likely
19 find, I would hope, a federal facility or some other
20 government facility that would be large enough to
21 accommodate, so that we wouldn't have to go to the
22 expense of renting a facility, because as you know,
23 here we were talking about possibly doing it at the
24 FTC, due to our move, so I think we would still be
25 able to find a cost savings in that regard.

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1 I also believe that, given that Alabama
2 seems to be the focal point now of these various
3 state laws, it would be really significant for us to
4 go there, especially given our historic past, in the
5 early days of the Commission especially, going down
6 to the south on the issues, voting rights and
7 discrimination, it has, I think, a symbolic value as
8 well.

9 And since we do have some additional
10 resources that we should utilize for mission
11 purposes, I think this would be something. Now the
12 cost of it, it's hard to estimate, but I had my
13 special assistant look back to some past briefings.

14 I think there was one in 1997 that cost about
15 \$30,000. Last year when I was kicking some ideas
16 around I asked Ms. Tolhurst what a briefing might
17 cost in the field and she estimated around 50.

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

24 But I think significantly it would also
25 put our Commission back out into the field, into the

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1 community, and I think that's important for us to do
2 as well, so I'm happy to answer any questions on
3 that and I'd love to be able to actually put it in
4 the form of a motion and get a second for further
5 discussion.

6 COMMISSIONER GAZIANO: I'll second that.

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

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

13 CHAIRMAN CASTRO: Okay, someone on the
14 phone?

15 COMMISSIONER KLADNEY: Dave Kladney
16 here.

17 CHAIRMAN CASTRO: Commissioner Kladney,
18 proceed please.

19 COMMISSIONER KLADNEY: I'm -- I know we
20 have some extra funds, but I am concerned about
21 staffing at the agency, and I believe I've discussed
22 with you Mr. Chairman my concern about filling more
23 slots in the OGC and I think that would help us a
24 lot going forward without a full-time staff
25 director.

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1 And I'm concerned about that. That
2 issue has never been addressed to the Commission.
3 I'd like to ask the acting staff director what the
4 staffing requirements are, how much money it would
5 run us the rest of the year, or something like that
6 and whether that's valuable.

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

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

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

25 So yes, I would like to use the leftover

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

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

12 CHAIRMAN CASTRO: Let me just say, you
13 know, my estimate of 275, even if we were to say
14 it's 65, that still leaves 210 on the table, plus my
15 understanding of it is every month that goes by that
16 we don't hire a staff director in OCRE is another
17 \$50,000 that's there. So you could hire a couple of
18 contract lawyers temporarily with those dollars.

19 So, and I would be, and I had this
20 conversation briefly with Commissioner Gaziano for
21 different reasons, I would be amenable to, if the
22 Commission would be as well, to move the briefing
23 later so that it would not conflict with staff's
24 responsibilities for moves, whether it means moving
25 it off to July, possibly, so that we wouldn't have

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1 to hire contract people on the ground. I'd be
2 amenable to that. Commissioner Gaziano?

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

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

18 CHAIRMAN CASTRO: I agree.

19 COMMISSIONER GAZIANO: ought to be able
20 to, whether it's a federal facility or a county
21 facility or a city facility. I think that we ought
22 to, although our staff is stretched then, insist
23 that we not make the perfect be the enemy of the
24 good, and you know, maybe if it would get more of a
25 consensus, we could agree to go forward contingent

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1 on certain funding issues and then get a report back
2 on that figure.

3 Because I bet we could, if we really, we
4 could have almost as great a hearing for \$20,000 or
5 \$30,000 than we could for 65, without some --

6 CHAIRMAN CASTRO: You're absolutely
7 right.

8 COMMISSIONER GAZIANO: without some of
9 the bells and whistles.

10 CHAIRMAN CASTRO: Yes.

11 COMMISSIONER GAZIANO: On the -- by the
12 way, on the estimate, are we talking about how much
13 more than it costs to have one here, because of
14 course it costs some money to fly witnesses --

15 ACTING STAFF DIRECTOR TOLHURST: Yes, I
16 have that if you want to know.

17 COMMISSIONER GAZIANO: Okay. Yes can
18 you --

19 ACTING STAFF DIRECTOR TOLHURST: The
20 estimate for here is 14,000. The estimate for a
21 field hearing is about 50,000.

22 COMMISSIONER HERIOT: How much of that
23 is building rental?

24 ACTING STAFF DIRECTOR TOLHURST: None.

25 COMMISSIONER GAZIANO: Okay, can you

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1 give us --

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

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

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

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

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

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

23 But you know we should, we should
24 consider not only -- by the way the other reason I'd
25 like to support this, is because I think the

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1 chairman made a good argument on the merits, that
2 this particular hearing may -- the tenor of it may
3 be different.

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

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

25 So I'm willing to go forward in June.

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

9 ACTING STAFF DIRECTOR TOLHURST: Sure.
10 Yes.

11 CHAIRMAN CASTRO: Commissioner Heriot.

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

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

20 CHAIRMAN CASTRO: I didn't know that
21 either.

22 COMMISSIONER HERIOT: But it is larger
23 than Montgomery. But if it turns out that a free or
24 low-cost federal room in Birmingham is not possible,
25 there's also Mobile or Montgomery, and if we do

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1 this in July and August, the hotels have got to be
2 really cheap because nobody in their right mind
3 wants to be in Alabama.

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

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

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

25 CHAIRMAN CASTRO: Right, and since

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

8 Commissioner Heriot, you were going to
9 say something?

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

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

16 COMMISSIONER HERIOT: Okay.

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

19 COMMISSIONER KLADNEY: Commissioner
20 Kladney here.

21 CHAIRMAN CASTRO: Yes commissioner.

22 COMMISSIONER KLADNEY: I'm more than
23 willing to go along with the group here, but I do
24 also want us to authorize that one contract lawyer
25 in OGC at the same time. If we have to spend these

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1 funds, we might as well get them out now.

2 CHAIRMAN CASTRO: Okay. Do we have an
3 estimate on the cost of a contract -- well let's
4 deal with them separately, but I'm not against that.

5 I think we need to discuss that. But I appreciate
6 that thought. Commissioner Kirsanow, do you have
7 anything to add?

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

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

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

25 COMMISSIONER GAZIANO: August 17 is the

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1 date.

2 COMMISSIONER HERIOT: Can't we say
3 Birmingham or another Alabama city?

4 CHAIRMAN CASTRO: Yes, we can say that.

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

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

9 COMMISSIONER HERIOT: Okay.

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

12 COMMISSIONER HERIOT: Yes.

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

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

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

22 CHAIRMAN CASTRO: That's fine with me.

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

25 CHAIRMAN CASTRO: Okay.

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1 COMMISSIONER HERIOT: And we are going
2 to have some fact witnesses, aren't we?

3 CHAIRMAN CASTRO: Okay, that's --

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

8 CHAIRMAN CASTRO: Yes.

9 ACTING STAFF DIRECTOR TOLHURST: It's
10 more formal.

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

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

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

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

19 ACTING STAFF DIRECTOR TOLHURST: It
20 depends what you -- by fact witness, I mean, it's
21 not litigation. At a hearing, they are sworn in
22 with a more official oath and -- is that what you're
23 --

24 COMMISSIONER HERIOT: I'm just concerned
25 about whether it's appropriate to have somebody who

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1 is testifying here with my experience as an
2 individual, as opposed to something else.

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

6 COMMISSIONER HERIOT: Yes, we're not --

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

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

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

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

20 Commissioner Kirsanow, how do you vote?

21 COMMISSIONER KIRSANOW: I'll pass for
22 now.

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

25 COMMISSIONER HERIOT: Given that I think

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1 this is the sort of thing that the chairman should
2 have some prerogative on, I vote yes.

3 CHAIRMAN CASTRO: Commissioner Gaziano,
4 how do you vote?

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

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

10 COMMISSIONER KLADNEY: Yes.

11 CHAIRMAN CASTRO: Commissioner Kirsanow,
12 how do you vote?

13 COMMISSIONER KIRSANOW: I abstain.

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

19 ACTING STAFF DIRECTOR TOLHURST: No.

20 CHAIRMAN CASTRO: procedurally? Okay.

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

23 CHAIRMAN CASTRO: Okay. So the
24 consensus of our Commission is that we think it
25 should be done as well, okay?

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1 COMMISSIONER GAZIANO: For the record, I
2 think it should be done. Yes. And I would suggest,
3 is it -- this is a question I posed the acting staff
4 director -- I would suggest unless you can -- it may
5 be within your discretion, but I'd like to -- that
6 it be within the office of the staff director.

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

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

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

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

23 COMMISSIONER GAZIANO: Okay.

24 COMMISSIONER HERIOT: As what?

25 ACTING STAFF DIRECTOR TOLHURST: Senior

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1 attorney adviser, my normal job.

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

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

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

10 ACTING STAFF DIRECTOR TOLHURST:
11 Historically the staff director's office did not
12 have attorneys. It has one now, Lenore. It used to
13 have political slots so that the new staff director
14 could bring in their own adviser from their own
15 party, and maybe that's what we should get back to.

16 But that would require us to have a staff -- a
17 politically-appointed staff director. So==

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

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

25 ACTING STAFF DIRECTOR TOLHURST: The new

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1 acting staff director would have the authority to
2 detail anyone as they saw fit, so --

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

6 ACTING STAFF DIRECTOR TOLHURST: Sure.

7 COMMISSIONER GAZIANO: Contracting
8 attorney could be -- maybe that answers my question.

9 I just wanted to raise it with you and the other
10 commissioners, if they want to -- if they had a
11 thought on it.

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

15 VI. PROGRAM PLANNING UPDATE AND

16 DISCUSSION OF PROJECTS

17 DISCUSSION ON 2013 STATUTORY

18 REPORT SELECTION PROCESS

19 CHAIRMAN CASTRO: Ms. Tolhurst had
20 indicated to me that we should vote on the statutory
21 report topic during the April business meeting. As
22 a result, if we did that, we'd need to submit
23 concept papers to her by 6 p.m. on Friday, March
24 23rd. She would then disseminate concept papers by
25 Monday, March 26th, and we would vote on them at our

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1 April meeting. We would need to decide whether we
2 are going to do an April 13th meeting since we have
3 got a pretty full trafficking briefing, or if we
4 would try to maybe do that meeting the day before on
5 April 12th. We'll get to that in a second.

6 However I do know and understand that
7 there's been a concern raised by the conservative
8 caucus that maybe that date of April -- considering
9 the report topic, April might be too aggressive. So
10 I want to have a discussion about, about when we
11 would consider our 2013 topics. Am I right in that
12 sentiment or --

13 COMMISSIONER GAZIANO: Yes. Yes. I
14 just wondered whether -- we are not going to be
15 ready to vote for 2013 topics next month.

16 CHAIRMAN CASTRO: Did we lose a
17 commissioner? Commissioner Kladney are you there?

18 COMMISSIONER KLADNEY: Yes I am.

19 CHAIRMAN CASTRO: Commissioner Kirsanow
20 are you t here?

21 (No response)

22 CHAIRMAN CASTRO: Oh-oh, we might have
23 just lost our quorum.

24 COMMISSIONER HERIOT: That doesn't mean
25 we can't talk about stuff. We just can't --

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1 CHAIRMAN CASTRO: Can't vote on it.

2 COMMISSIONER GAZIANO: No, we can't
3 vote.

4 CHAIRMAN CASTRO: I know we can't vote
5 on it, yes. Can someone try and find out what
6 happened to Commissioner Kirsanow?

7 COMMISSIONER HERIOT: Do we need to vote
8 on anything?

9 CHAIRMAN CASTRO: We still have Maine,
10 Nevada and D.C. SACs to vote on. We don't need to -
11 - and we're going to vote on this, I would imagine,
12 as well. So -- we can discuss this --

13 COMMISSIONER HERIOT: Vote on whether to
14 vote?

15 COMMISSIONER GAZIANO: Vote on whether
16 we are going to be voting on the 2013 enforcement
17 report next month. Given all else that we are -- we
18 are going to be in further -- among other things we
19 are going to be in further discussions about how to
20 staff the agency, acting -- and we have got a number
21 of other things. When is the report -- the current
22 enforcement report draft going to be sent to
23 commissioners?

24 ACTING STAFF DIRECTOR TOLHURST: To
25 commissioners? May, early May.

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1 COMMISSIONER GAZIANO: I have also
2 thought it odd that agency -- if I could make a
3 motion now, which I can't, since we might not have
4 five commissioners, that we get it at the same time
5 affected agency gets it, but that aside, I think the
6 last time we did this, of course, I think it
7 benefits from a couple of in-person discussions.

8 We are going to be living with this
9 topic, as everyone knows, for, you know, 15 to 18
10 months, and it would be nice if we could pick the
11 right topic, refine it, reach close to consensus if
12 not consensus, and I don't think we are going to be
13 ready to do that in April.

14 COMMISSIONER HERIOT: I'd be shocked if
15 we were ready to do that in April. I think we want
16 to bring this topic up a few times before we commit
17 to what we are going to be studying.

18 CHAIRMAN CASTRO: Ms. Tolhurst, what's
19 the latest we could do this in terms of the
20 timeline, if you work backwards?

21 ACTING STAFF DIRECTOR TOLHURST: Well --

22 CHAIRMAN CASTRO: I know this would be
23 earlier than I think we did it this year, but that
24 doesn't mean it's ideal. But what's, you know,
25 what's our -- what are our options?

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1 ACTING STAFF DIRECTOR TOLHURST: I don't
2 want to talk about the latest because the latest
3 would be what happened on the bullying report.

4 CHAIRMAN CASTRO: Okay, well what are
5 our viable options then, let me put it way?

6 ACTING STAFF DIRECTOR TOLHURST: Let me
7 get my calendar out. The problem that happens every
8 year, and even this year it's happening, is because
9 of all the reviews that are required and the steps
10 that are required, by the time the topic is
11 selected, we have to give the agencies or whomever
12 we are serving discovery on, a really tight
13 deadline, because of when our first draft is due,
14 and then you know, they want extensions and we are
15 not in a position to give them. And so, I'd rather
16 have more time, where people legitimately need
17 extensions to get more data. I think we also
18 benefit from more information.

19 So I'm trying to avoid that by having
20 the topic selected sooner. Let's see. Could you do
21 it by May?

22 COMMISSIONER HERIOT: The final
23 selection?

24 ACTING STAFF DIRECTOR TOLHURST: Yes, I
25 mean, this past year you did it July.

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1 CHAIRMAN CASTRO: Did we do it in July?

2 It looks like we've got some time in June now, too.

3 COMMISSIONER HERIOT: Yes, why don't we
4 do -- why don't we come up with -- discuss it at
5 April, May and June, decide in June.

6 CHAIRMAN CASTRO: Commissioner Kirsanow,
7 are you back on the line?

8 COMMISSIONER KIRSANOW: I am.

9 CHAIRMAN CASTRO: Okay, we have quorum
10 again. Commissioner Kladney, you're still there?

11 COMMISSIONER KIRSANOW: Yes. I'm in

12 CHAIRMAN CASTRO: All right. So what
13 did we say here?

14 COMMISSIONER HERIOT: What if we make
15 the decision in June, but we have it on the agenda
16 for April and May, so we arrive at a real -- as much
17 of a consensus as we'll get, with as much
18 information as we'll get.

19 And I think the decision on what topic
20 to pick requires a fair amount of time.

21 CHAIRMAN CASTRO: Why don't we say that
22 we would have an initial discussion at the may
23 meeting, because April is going to be crowded
24 already between the briefing and trying to decide
25 how to handle the SAC --

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1 COMMISSIONER HERIOT: Yes, what's
2 important to me, is we have more than one
3 discussion.

4 CHAIRMAN CASTRO: Yes, so maybe what we
5 could do is have initial papers distributed for the
6 May meeting and have an initial discussion with a
7 vote to occur in June? That would give you enough
8 time to flesh things out?

9 COMMISSIONER GAZIANO: Could we, could
10 we possibly have, I mean, start even earlier, with
11 something, maybe have blurbs or something proposed
12 and a, you know, one of our, I don't know at what
13 point we'll have our test -- what do we call it --
14 test -- lack of sleep, I can't even think straight
15 today.

16 COMMISSIONER HERIOT: I don't know what
17 you're --

18 COMMISSIONER GAZIANO: Our little --

19 COMMISSIONER HERIOT: Concept papers?

20 COMMISSIONER GAZIANO: No. A tentative
21 vote before even May, before the concept papers are
22 drafted.

23 COMMISSIONER HERIOT: The rankings.

24 CHAIRMAN CASTRO: Oh, you can't do that
25 without a concept paper though. You've got to rank

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1 something. I think you've got to rank the concept
2 paper, so we need to come up with a date by which we
3 would submit concept papers.

4 COMMISSIONER HERIOT: But we don't want
5 to do concept papers for every possible proposal.
6 We want to have blurbs first, because it's a lot of
7 work to come up with, you know, a dozen concept
8 papers, and there may not be any interest in some of
9 them.

10 CHAIRMAN CASTRO: Well, I don't know
11 that -- at least as long as I've been here, it's
12 only been a year, we haven't done it that way.
13 We've been through two statutory report processes,
14 selection processes, and we've never started with a
15 blurb. We have actually done concept papers.

16 COMMISSIONER HERIOT: We've done blurbs
17 in the past haven't we?

18 COMMISSIONER GAZIANO: We've done blurbs
19 at some point, but I'm just, just maybe asking you
20 to think about whether that wouldn't be helpful, to
21 have blurbs. We see where people are and then you
22 know, if there's an interest in six concept papers
23 being written, they could be written before the May
24 meeting maybe, and we could discuss them at both the
25 May and the June meeting.

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1 CHAIRMAN CASTRO: What do other folks
2 think? Did someone fall off the phone?

3 COMMISSIONER YAKI: Commissioner Yaki
4 just joined back in for a little bit.

5 CHAIRMAN CASTRO: Okay. So we are
6 talking about 2013 concept papers and whether we are
7 going to provide blurbs in advance of concept papers
8 and whether we are going to consider those at the
9 May and June meetings.

10 Any thoughts from the commissioners on
11 the phone on this?

12 COMMISSIONER YAKI: Blurbs?

13 CHAIRMAN CASTRO: Yes.

14 COMMISSIONER YAKI: What the heck are
15 blurbs?

16 COMMISSIONER HERIOT: Five or six
17 sentence description of the project so somebody
18 doesn't have to go to all the trouble of doing a
19 four or five page document if nobody is interested
20 in it, like we did when, I guess it was when Ken
21 Marcus, maybe it was with --

22 COMMISSIONER GAZIANO: Marty
23 Dannenfelser.

24 COMMISSIONER HERIOT: Marty
25 Dannenfelser, doing just little, you know, a few

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1 sentences to identify the topic.

2 COMMISSIONER YAKI: Isn't a concept paper
3 essentially a blurb?

4 COMMISSIONER HERIOT: No, it's like
5 four, five pages long. If we are going to do 15 of
6 those, that's -- and some of the topics nobody has
7 any interest in, there's no point in it.

8 COMMISSIONER YAKI: You mean essentially
9 an executive summary?

10 COMMISSIONER HERIOT: If that's what you
11 want to call it, sure.

12 COMMISSIONER YAKI: A one paragraph.

13 COMMISSIONER HERIOT: Right.

14 CHAIRMAN CASTRO: So, so why don't we do
15 those executive summary/blurbs by the April --

16 COMMISSIONER YAKI: I don't know if the
17 word blurb is in the Federal Register. We should
18 check on that.

19 CHAIRMAN CASTRO: Yes. Okay. So these
20 summaries, these one-paragraph summaries, let me
21 just suggest here, I'm thinking out loud, we can
22 have those submitted for the April meeting, you
23 know, for -- we'd want those discussed at April?

24 Again, it's -- we're going to have a lot
25 on the April meeting agenda, already.

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1 COMMISSIONER YAKI: April seems pretty
2 loaded.

3 CHAIRMAN CASTRO: Yes, so maybe we do
4 that --

5 COMMISSIONER GAZIANO: But if we could
6 at least, at least have it done before May, and a
7 vote before May, so that we come into the May
8 meeting knowing what the vote is and then we can
9 talk about it.

10 CHAIRMAN CASTRO: So we can rank, we
11 could distribute the summaries prior to the May
12 meeting, some time -- we could have them due some
13 time in April. At the May meeting we could rank the
14 summaries.

15 COMMISSIONER GAZIANO: Or we could have
16 the ranking done --

17 CHAIRMAN CASTRO: In advance of but they
18 would be discussed at the meeting.

19 COMMISSIONER GAZIANO: And they'd be
20 discussed.

21 CHAIRMAN CASTRO: And then based on that
22 folks could -- based on the pared-down ideas, folks
23 could submit prior to the June meeting, a concept
24 paper which would be voted on at the June meeting.
25 Okay?

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1 COMMISSIONER GAZIANO: That sounds
2 workable.

3 CHAIRMAN CASTRO: So we'd need to set
4 some specific dates in advance. Shall we do that
5 now or shall we just say this is the structure and
6 then have our office of the staff director send us
7 the dates by which we need to submit these in
8 advance of the two meetings, to give --

9 COMMISSIONER YAKI: Mr. Chairman.

10 CHAIRMAN CASTRO: Yes, Commissioner
11 Yaki.

12 COMMISSIONER YAKI: I am not entirely
13 comfortable with the idea that if we vote on
14 executive summaries to pare it down to concept
15 papers. I think that a lot of these things tend to
16 be an organic process and sometimes a topic in a
17 concept -- in an executive summary but maybe not the
18 direction, and sometimes there's a very organic
19 process that goes on to get you from A to B, you
20 know, and I'm a little worried if you are short-
21 circuiting that process by going from A to B and
22 then Q to B, we're doing ourselves a disservice in
23 terms of what could be out there.

24 CHAIRMAN CASTRO: Okay, I'm going to ask
25 --

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1 COMMISSIONER YAKI: And that's my
2 concern.

3 CHAIRMAN CASTRO: Okay, Commissioner
4 Heriot has got her hand up and then I'm going to ask
5 you to come back and give me a suggestion then.
6 Commissioner Heriot?

7 COMMISSIONER HERIOT: I think that we
8 would want a process that wouldn't prohibit somebody
9 from going to the trouble of doing a four or five
10 page concept paper if they wanted to, even if nobody
11 expressed interest in it.

12 You wouldn't have to, to only do those
13 topics that seem to be getting a lot of support.
14 It's just that I don't want to go to the trouble of
15 writing up a longer document if there's no interest
16 in the topics that I propose. So I am just looking
17 to go from blurb to concept paper, you know, in a
18 way that I think would fit into what Commissioner
19 Yaki is calling an organic process. Anybody could
20 submit a longer proposal. It's just it will be good
21 to have some sense --

22 CHAIRMAN CASTRO: So you're saying that
23 even if your summary didn't get support, you could
24 still submit a concept paper in June --.

25 COMMISSIONER HERIOT: Yes. Right.

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1 CHAIRMAN CASTRO: for consideration.
2 Commissioner Gaziano?

3 COMMISSIONER GAZIANO: I called it blurb
4 originally, but in deference to Commissioner Yaki,
5 I'm trying to find common ground on one issue today.
6 I entirely agree with Commissioner Heriot's idea on
7 that, that you could write a concept paper initially
8 instead of an executive summary, if you want to get
9 -- you could write a concept paper on something that
10 gets no votes but your own.

11 But that it would be helpful to me to
12 know whether there was support for certain executive
13 summaries that I might propose, so again, and I --
14 this is a helpful understanding for the motion that
15 you have made.

16 CHAIRMAN CASTRO: Commissioner Yaki, did
17 you have something else you wanted to add? I'm
18 sorry.

19 COMMISSIONER YAKI: No. As long as we
20 reserve the right to disregard the fact that the
21 academy didn't vote for our proposal and submit it
22 to the membership, other than that I'm fine.

23 CHAIRMAN CASTRO: Okay, I think we're
24 clear on that then. So all in favor of that,
25 actually, I probably need to do individual votes,

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1 right? So Commissioner Heriot, how do you vote?

2 COMMISSIONER HERIOT: Yes.

3 CHAIRMAN CASTRO: Commissioner Gaziano,
4 how do you vote?

5 COMMISSIONER GAZIANO: Yes.

6 CHAIRMAN CASTRO: Commissioner Yaki, how
7 do you vote?

8 COMMISSIONER YAKI: Yes.

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

11 COMMISSIONER KLADNEY: Yes.

12 CHAIRMAN CASTRO: Commissioner Kirsanow,
13 how do you vote?

14 COMMISSIONER KIRSANOW: Yes.

15 CHAIRMAN CASTRO: And I vote yes, so it
16 passes. The next question is do we want to have the
17 business meeting in April the morning of the -- the
18 morning before the briefing on human trafficking or
19 do folks want to try to come in the day before?
20 Thursday. Commissioner Heriot.

21 COMMISSIONER HERIOT: My teaching
22 schedule is such that that would require me to take
23 the red-eye, and I love taking the red-eye.

24 CHAIRMAN CASTRO: Okay. I'm sorry, is
25 there a question?

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1 ACTING STAFF DIRECTOR TOLHURST: It
2 might have to be -- if you did it the same day, it
3 might have to be the afternoon, because people have
4 already been invited for a briefing that starts at
5 9:30.

6 CHAIRMAN CASTRO: Okay. So it would be
7 the afternoon. Oh, I'm sorry.

8 COMMISSIONER GAZIANO: How many -- I saw
9 the witness list. How many panels?

10 ACTING STAFF DIRECTOR TOLHURST: Three
11 panels. Three panels of four each.

12 COMMISSIONER GAZIANO: Is it any -- does
13 it have to be three panels? It seems to me it might
14 go a little quicker if you could divide them into
15 two panels.

16 CHAIRMAN CASTRO: I'd rather that we
17 keep the structure. As you know, I'm pretty good
18 about trying to get these briefings started on time
19 and end on time, so I got a good track record on
20 that and, you know, we may have to stay a little
21 longer to do a business meeting but I think we --

22 COMMISSIONER HERIOT: I can't miss my
23 plane so --

24 CHAIRMAN CASTRO: What time's your
25 plane?

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1 COMMISSIONER HERIOT: It's different
2 every time. It's you know, whatever the last plane
3 to San Diego is. It's usually about 5:15. But it's
4 also out of Dulles. I'm happy to start early.

5 COMMISSIONER GAZIANO: I don't know if
6 the briefing can be moved to nine?

7 CHAIRMAN CASTRO: What time is it
8 scheduled right now? It's scheduled to start at 9:30
9 and what time is it scheduled to end?

10 ACTING STAFF DIRECTOR TOLHURST: It's
11 not a scheduled end. It's just, you know, each
12 panelist will get seven minutes, they, you know,
13 it's -- I --

14 CHAIRMAN CASTRO: So it's not going to
15 take eight hours.

16 ACTING STAFF DIRECTOR TOLHURST: No.
17 No. No.

18 CHAIRMAN CASTRO: It's going to take
19 five hours. It will -- we should be able to
20 accomplish that.

21 COMMISSIONER HERIOT: If we start at
22 like 8:30, that would make it easier.

23 CHAIRMAN CASTRO: Start the briefing at
24 8:30?

25 COMMISSIONER HERIOT: Yes, start the

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1 briefing at 8:30.

2 CHAIRMAN CASTRO: Yes, I don't know if
3 that -- how that would affect the people who already
4 agreed, the speakers.

5 COMMISSIONER HERIOT: With that many
6 speakers, it may be possible to pick the ones that
7 can start at 8:30.

8 CHAIRMAN CASTRO: Well, so why don't we
9 do this? Why don't we say that we'd like to have
10 the business meeting after the briefing. We'll
11 investigate, we'll have staff, acting staff director
12 with Ms. Butler, how we might be able to adjust the
13 start time of the briefing. If not, then we'll get
14 a solid feel for the schedule of what these
15 witnesses, the numbers of the witnesses are and when
16 we'll get this done, and if we have to come back
17 we'll let folks know if there's going to be a
18 problem with that.

19 COMMISSIONER GAZIANO: And at least
20 consider the two versus the three a little bit more.

21 I'm not usually of the view that government
22 witnesses always have to have their own panel, but
23 at least the, I suppose concept in some cases is
24 it's their work that's going to be investigated. I
25 don't think there's the same level of adversity, or

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1 potential adversity. That's not the right word, but
2 we are not really going to be overseeing their
3 effectiveness in the same way as I think we are in
4 other situations.

5 So if it's possible to merge the panels
6 --

7 ACTING STAFF DIRECTOR TOLHURST: I think
8 the way that they are now it would roughly last four
9 and a half hours. So --

10 COMMISSIONER GAZIANO: Four and a half
11 hours is --

12 ACTING STAFF DIRECTOR TOLHURST: 9:30.

13 COMMISSIONER GAZIANO: long. If there's
14 a way you can make it into --

15 ACTING STAFF DIRECTOR TOLHURST: It's
16 really not long. I don't think it's long.

17 COMMISSIONER GAZIANO: Two panels. If -
18 -

19 CHAIRMAN CASTRO: If we would be done by
20 1:30, that would still give us --

21 COMMISSIONER HERIOT: Then we have to
22 eat something. Then we'd have to herd the cats back
23 in the room. I think we're a lot better off if we
24 can start an hour earlier.

25 CHAIRMAN CASTRO: Let's see what we can

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1 do in terms of adjusting the start time and the plan
2 right now will be that we will have a business
3 meeting after the trafficking briefing, and we will
4 endeavor to do what we can to make it as expeditious
5 as possible to get through that and --

6 COMMISSIONER HERIOT: Remember, if I'm
7 going to catch a 5 o'clock plane that means I'm
8 leaving at 3.

9 CHAIRMAN CASTRO: I understand. Okay.
10 All right. Do we need a vote on this? No, okay.
11 If there's nothing else on that, then we have, let's
12 see, just three more things: voting on the re-
13 chartering of the D.C. and Maine and Nevada SACs.

14 V. STATE ADVISORY COMMITTEE ISSUES:

15 RE-CHARTERING THE D.C., MAINE AND NEVADA SACs

16 So let me find the lists here. Okay. I
17 move that the Commission re-charter the District of
18 Columbia State Advisory Committee.

19 Under this motion the Commission
20 appoints the following individuals to that
21 committee, based upon the recommendations of our
22 staff director: Sonia Gutierrez, Clyde J. Hart,
23 Chester W. Hartman, Vernon D. Ingram II, Daniel P.
24 Lips, Charles R. Lowery, Alan K. Palmer, Laurence D.
25 Pearl, Edwin G. Peterman, James J. Sandman, Gregory

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1 D. Squires, Winona M. Lake Scott, J. Steven Wagner.

2 Pursuant to this motion, the Commission
3 appoints Mr. Laurence D. Pearl as chair of the re-
4 chartered District of Columbia State Advisory
5 Committee.

6 These members will serve as
7 uncompensated government employees. Under this
8 motion the Commission authorizes the staff director
9 to execute the appropriate paperwork for the
10 appointment.

11 Is there a second?

12 COMMISSIONER KLADNEY: Second.

13 CHAIRMAN CASTRO: Is there any
14 discussion?

15 COMMISSIONER KLADNEY: On to the
16 question.

17 CHAIRMAN CASTRO: Question is called.
18 Commissioner Heriot, how do you vote?

19 COMMISSIONER HERIOT: I pass.

20 CHAIRMAN CASTRO: Pass. Commissioner
21 Gaziano how do you vote?

22 COMMISSIONER GAZIANO: Yes.

23 CHAIRMAN CASTRO: Commissioner Kirsanow,
24 how do you vote? Commissioner Kirsanow are you
25 there?

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1 COMMISSIONER KIRSANOW: Yes.

2 CHAIRMAN CASTRO: You vote yes?

3 COMMISSIONER KIRSANOW: Yes.

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

6 COMMISSIONER YAKI: Yes.

7 CHAIRMAN CASTRO: Commissioner Kladney
8 how do you vote?

9 COMMISSIONER KLADNEY: Yes.

10 CHAIRMAN CASTRO: And I vote yes, and so
11 is your pass an abstention, Commissioner or --

12 COMMISSIONER HERIOT: No, I'm just
13 trying to finish reading this. Yes.

14 CHAIRMAN CASTRO: She votes yes so the
15 motion passes. We are one, two, three, four, five,
16 six, unanimous vote.

17 We move now on to the Maine SAC. I move
18 that the Maine advisory committee -- the following
19 individuals be approved to the Maine advisory
20 committee based upon the recommendation of our staff
21 director: Christina Baker, Jennifer Bailey, Maurice
22 Gilbert, John Hanson, Akiva Herzfeld, Paul Robinson,
23 John Rogers, Carl Toney, Eda Trejo.

24 These members will serve as
25 uncompensated government employees. Under this

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1 motion the Commission authorizes the staff director
2 to execute the appropriate paperwork for the
3 appointment.

4 Is there a second?

5 COMMISSIONER KLADNEY: Second.

6 CHAIRMAN CASTRO: Any discussion?

7 COMMISSIONER KLADNEY: On to the
8 question.

9 CHAIRMAN CASTRO: Commissioner Gaziano
10 is about to say something.

11 COMMISSIONER GAZIANO: I'm going to
12 oppose this SAC as one of the most ideologically
13 imbalanced that we have received in my tenure. They
14 were somehow able to keep or not keep two
15 conservatives on the SAC. I know there were some
16 other issues, but the SAC is far from what the
17 balance of the AI calls for.

18 CHAIRMAN CASTRO: Any other questions or
19 comments? I'm sorry, Commissioner Heriot?

20 COMMISSIONER HERIOT: I'm still
21 concerned about why we are in this position in the
22 first place, you know, what's happened here that we
23 have as many resignations as we have had, you know,
24 what exactly is going on?

25 And you know, my understanding is that

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1 the replacements are much further ideologically to
2 the left than the people that they replaced. So
3 what has happened here that has made this necessary?

4 ACTING STAFF DIRECTOR TOLHURST: Barbara
5 might be able to, or Ivy, but I understand there
6 were just several dissatisfied people. There were
7 people that moved. And we ended up going down to
8 six, and I would note that the SAC as it sits with
9 the new members would be six Republicans, six
10 Democrats and three Independents, which doesn't
11 strike me as ideologically radical.

12 COMMISSIONER HERIOT: People's party
13 affiliations are not always indicative of --

14 ACTING STAFF DIRECTOR TOLHURST:
15 Sometimes they are.

16 CHAIRMAN CASTRO: Ms. Davis did you have
17 something you wanted to add?

18 MS. DAVIS: Well, as you all discussed
19 earlier, there were various reasons why members left
20 -- five left the committee. Two of them had
21 commitment issues. One a baby, the other had an ill
22 mother. Two other committee members left because
23 they weren't really happy with the leadership of the
24 chair and it came to a head when he sent an email
25 which he, I think, in his view, thought was a way of

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1 rallying the troops to go onward and work, but those
2 particular individuals took issue with it and
3 decided to resign. And then one committee member
4 moved away, was no longer residing in the state.

5 CHAIRMAN CASTRO: Okay. Any other
6 questions? Commissioner Gaziano.

7 COMMISSIONER GAZIANO: You know, I
8 wouldn't raise it if we can defeat this SAC but I
9 have concern about the qualifications of one of the
10 SAC members, one of the new SAC members as well.
11 But again, I have discussed with staff, yes, party
12 affiliation is relevant. It's one of the things.
13 But it's not something that our AIs say overrides
14 ideological balance.

15 I have been very somewhat amused at the
16 liberal Republicans that have been on these slates,
17 in sometimes very conservative states. I'm not
18 going to try to characterize Maine.

19 But in Maine, we have two -- I think
20 there are -- as far as I can tell, two individuals
21 on this slate with conservative views. There are 10
22 with decidedly liberal views. There are some others
23 that I can't tell one way or the other. There are
24 Independents and some Independents, like me, are
25 really independent and some Independents are not.

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1 So I really urge our staff to go beyond
2 the party labels, which are easy. It takes work but
3 I think that's what our AIs require.

4 CHAIRMAN CASTRO: Okay. Any other
5 comments?

6 (No response)

7 CHAIRMAN CASTRO: If not, I'll call the
8 question. Commissioner Heriot, how do you vote?

9 COMMISSIONER HERIOT: Pass.

10 CHAIRMAN CASTRO: Commissioner Gaziano
11 how do you vote?

12 COMMISSIONER GAZIANO: No.

13 CHAIRMAN CASTRO: Commissioner Kirsanow,
14 how do you vote?

15 COMMISSIONER KIRSANOW: No.

16 CHAIRMAN CASTRO: Commissioner Yaki, how
17 do you vote?

18 COMMISSIONER YAKI: Aye.

19 CHAIRMAN CASTRO: Commissioner Kladney
20 how do you vote?

21 COMMISSIONER KLADNEY: Yes.

22 CHAIRMAN CASTRO: I vote yes. We have
23 one, two three yeses, two nos, and a pass,
24 Commissioner Heriot.

25 COMMISSIONER HERIOT: I guess I vote no.

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1 CHAIRMAN CASTRO: So we have three yeses
2 and nos. I guess it doesn't pass.

3 COMMISSIONER HERIOT: No.

4 CHAIRMAN CASTRO: Okay. We now move on
5 to the Nevada State Advisory Committee. I move that
6 the Commission re-charter the Nevada State Advisory
7 Committee. Under this motion the Commission
8 appoints the following individuals to that
9 committee, based upon the recommendation of our
10 staff director: Bob Beers, Wendell C. Blaylock,
11 David S. Fott, Belen P. Gabato, Kay P. Kindred,
12 Peggy Micco Koning, Theresa E. Navarro, Michael D.
13 Pennington, Dennis A. Perea, Matthew D. Saltzman,
14 Angela D. Taylor and Michael V. Zieba.

15 Pursuant to this motion, the Commission
16 appoints Michael D. Pennington as chair of the re-
17 chartered Nevada State Advisory Committee.

18 These members will serve as
19 uncompensated government employees. Under this
20 motion the Commission authorizes the staff director
21 to execute the appropriate paperwork for the
22 appointment.

23 Is there a second?

24 COMMISSIONER GAZIANO: I second.

25 CHAIRMAN CASTRO: Okay. We have got a

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1 seconded motion. Any discussion?

2 (No response)

3 CHAIRMAN CASTRO: Hearing none, I'll
4 call the question. Commissioner Heriot, how do you
5 vote?

6 COMMISSIONER HERIOT: Yes.

7 CHAIRMAN CASTRO: Commissioner Gaziano
8 how do you vote?

9 COMMISSIONER GAZIANO: Yes.

10 CHAIRMAN CASTRO: Commissioner Kirsanow,
11 how do you vote?

12 COMMISSIONER KIRSANOW: Yes.

13 CHAIRMAN CASTRO: Commissioner Yaki, how
14 do you vote?

15 COMMISSIONER YAKI: Pass.

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

18 COMMISSIONER KLADNEY: Yes.

19 CHAIRMAN CASTRO: I vote yes,
20 Commissioner Yaki?

21 COMMISSIONER YAKI: Yes.

22 CHAIRMAN CASTRO: Okay. It passes with
23 one, two, three, four, five, six, six affirmative
24 votes, unanimously. At this point in the meting I
25 would like to move to adjourn. I hope I have a

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1 second.

2 COMMISSIONER GAZIANO: Second.

3 CHAIRMAN CASTRO: All those in favor?

4 (Chorus of ayes)

5 CHAIRMAN CASTRO: The meeting is
6 adjourned at 1:19 eastern time.

7 (Whereupon, the above-entitled matter
8 went off the record at 1:19 p.m.)

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