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U.S. COMMISSION ON CIVIL RIGHTS

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MEETING **UNEDITED**

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FRIDAY, JULY 12, 2013

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The Commission convened in Suite 1150,
1331 Pennsylvania Avenue, Northwest, Washington,
D.C.
at 9:51 a.m., MARTIN R. CASTRO, Chairman, presiding.

PRESENT:

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

MARLENE SALLO, Staff Director
JENNIFER CRON HELPER, Parliamentarian

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STAFF PRESENT:

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

COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL
TIM FAY
JOHN MARTIN
CARISSA MULDER
ALISON SOMIN
KIMBERLY TOLHURST

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TABLE OF CONTENTS

AGENDA ITEM	PAGE
I. Approval of Agenda	4
II. Program Planning	10
- Approval of Final Draft of 2013 Statutory Enforcement Report	11
- Discussion re: Proposed Findings and Recommendations for the 2013 Statutory Enforcement Report	69
- Status Update on the Sex Trafficking: A Gender-Based Violation of Civil Rights Report	120
- Status Update on the Federal Civil Rights Engagement with Arab and Muslim American Communities Post 9/11 Report	120
IV. Management and Operations	123
- Staff Director's report	123
- Acting Chief of Regional Programs' report	126
V. Approval of State Advisory Committee Appointment Slates	126
- Kentucky	128
- Minnesota	129
- New Hampshire	131
- New York	133

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

(9:51 a.m.)

CHAIRMAN CASTRO: This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is now 9:50 a.m. on July 12, 2013. This meeting is taking place at the Commission's headquarters at 1331 Pennsylvania Avenue, Northwest, Suite 1150, in Washington, D.C.

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

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

STAFF DIRECTOR SALLO: Yes.

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

I. APPROVAL OF AGENDA

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

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Are there any amendments?

1 (No response.)

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

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

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

16 COMMISSIONER ACHTENBERG: Second.

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

20 STAFF DIRECTOR SALLO: In reference to
21 the SAC slate, that has been ongoing for about three
22 months. Prior to my taking office, I believe since
23 April, they have been considering it. I approved
24 the SAC slate on July 3rd. And I approved it as is
25 based on what was given to me.

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1 I did receive one application midday
2 yesterday, but I had already approved the SAC. And
3 my goal is that once I approve a slate as is, that
4 we can move forward to prevent any late submissions.
5 But that is all I have at this point.

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

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

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

24 COMMISSIONER GAZIANO: Sure.

25 STAFF DIRECTOR SALLO: My position is my

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1 concern that it's now inactive. And so putting it
2 off for another month when we are really trying to
3 ramp up all of the SACs and bring everyone to become
4 active is a concern for me. So I just wanted to
5 advise you of that.

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

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

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

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

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

22 VICE CHAIR THERNSTROM: You do know what
23 I mean.

24 CHAIRMAN CASTRO: It's hard work and --

25 VICE CHAIR THERNSTROM: It's hard work

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1 and -- yes.

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

4 (No response.)

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

9 VICE CHAIR THERNSTROM: Yes.

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

12 COMMISSIONER GAZIANO: Yes.

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

15 COMMISSIONER HERIOT: Yes.

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

18 COMMISSIONER ACHTENBERG: Yes.

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

21 COMMISSIONER KLADNEY: Yes.

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

24 COMMISSIONER YAKI: Yes.

25 CHAIRMAN CASTRO: Commissioner Kirsanow,

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1 how do you vote?

2 COMMISSIONER KIRSANOW: Yes.

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

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

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

14 VICE CHAIR THERNSTROM: I know. I
15 understand.

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

19 So now the full --

20 COMMISSIONER YAKI: Mr. Chairman?

21 CHAIRMAN CASTRO: I'm sorry?

22 COMMISSIONER YAKI: This is Commissioner
23 Yaki. I mistook the vote. Was this to actually
24 remove from the agenda or to discuss postponing on
25 the agenda?

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1 CHAIRMAN CASTRO: No. It was to remove
2 it from the agenda.

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

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

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

18 CHAIRMAN CASTRO: All of those opposed?

19 (No response.)

20 CHAIRMAN CASTRO: Any abstentions?

21 (No response.)

22 II. PROGRAM PLANNING

23 CHAIRMAN CASTRO: Okay. So we now move
24 on to Program Planning. We have four agenda items
25 there today. The first one is --

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1 COMMISSIONER KLADNEY: Excuse me, Mr.
2 Chairman.

3 CHAIRMAN CASTRO: Yes, Commissioner
4 Kladney?

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

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

9 COMMISSIONER KLADNEY: We didn't --

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

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

16 STAFF DIRECTOR SALLO: Yes.

17 CHAIRMAN CASTRO: Yes.

18 COMMISSIONER KLADNEY: Okay. Thank you.

19 CHAIRMAN CASTRO: You're welcome.

20 - APPROVAL OF FINAL DRAFT OF
21 2013 STATUTORY ENFORCEMENT REPORT

22 CHAIRMAN CASTRO: The first item on the
23 program planning is the review and approval
24 hopefully of a final draft of part A of our 2013
25 statutory enforcement report entitled "Sexual

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1 Assault in the Military." This does not include any
2 findings and recommendations at this point. This is
3 just part A of the report, the six substantive
4 contexts of chapters 1 through 6.

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

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

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

12 COMMISSIONER KLADNEY: Second.

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

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

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

22 COMMISSIONER ACHTENBERG: Mr. Chairman?

23 CHAIRMAN CASTRO: Commissioner
24 Achtenberg?

25 COMMISSIONER ACHTENBERG: I want to

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1 commend the staff for I think quite a good draft
2 statutory report. I think it reflects well the
3 record. And I think it is quite evenhanded in its
4 presentation, which I think serves the Commission
5 extremely well. This is a difficult topic, about
6 which there are animated views on all sides of the
7 spectrum. And, as I say, I think the staff did, you
8 know, quite a good job and one where the
9 substantiation I think is pretty substantive and I
10 think quite persuasive.

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

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

21 COMMISSIONER GAZIANO: I certainly
22 concur that this is a difficult topic, partially
23 because of the lack of clear, reliable evidence on
24 the topic. I also concur that the staff has done a
25 very good job of improving it as it went along. I'm

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1 very appreciative of the care that they apparently
2 paid, not trying to get them in trouble for making
3 some changes that I, among others, urged, but I
4 think it still has some very rough edges that worry
5 me.

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

11 CHAIRMAN CASTRO: Yes, please do.

12 COMMISSIONER GAZIANO: Okay.

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

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

18 CHAIRMAN CASTRO: You've got the floor.

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

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1 counsels." I would ask to delete that sentence.

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

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

6 COMMISSIONER GAZIANO: And because I
7 certainly don't understand what it means, I would
8 rather not vote for a report with it in. Should I
9 --

10 CHAIRMAN CASTRO: Do you want to read it
11 again?

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

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

23 VICE CHAIR THERNSTROM: I'll second.

24 CHAIRMAN CASTRO: Okay. So now we have
25 a motion for discussion. Any discussion on that?

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1 Commissioner Achtenberg, did you want to say
2 something? Any of the commissioners on the phone?

3 (No response.)

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

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

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

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

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

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1 capture that idea.

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

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

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

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

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

23 VICE CHAIR THERNSTROM: Is this sentence
24 important to keep?

25 STAFF DIRECTOR SALLO: If I may --

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1 CHAIRMAN CASTRO: Yes?

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

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

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

14 (Phone interruption.)

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

23 COMMISSIONER KIRSANOW: May I be heard?

24 CHAIRMAN CASTRO: Yes, Commissioner? Go
25 ahead.

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1 COMMISSIONER KIRSANOW: It seems to me
2 that they're different because the environments.
3 And a sentence something along the lines that "Both
4 involve alcohol and controlled substances. However,
5 the environments they occur in are different and not
6 comparable." That's what the Director said.

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

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

17 CHAIRMAN CASTRO: So this is the
18 Chairman. I am going to suggest something here.
19 Why don't we just delete? This is my suggestion.
20 Delete that sentence but keep the footnote in place.

21 So I guess we would have 42 and 43 be the footnotes
22 on the previous sentence to that. That way we have
23 the important information we do want to have that is
24 contained in the footnote on the issue, but we don't
25 have the sentence that is kind of subject to, as you

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1 indicated, possible misinterpretation or multiple
2 interpretations.

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

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

11 COMMISSIONER ACHTENBERG: It does for
12 me.

13 CHAIRMAN CASTRO: So then that will be
14 your motion?

15 COMMISSIONER GAZIANO: Sure. Friendly
16 amendment accepted.

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

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

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

24 STAFF DIRECTOR SALLO: As long as we can
25 keep the footnote, I am in agreement to delete the

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1 last sentence of paragraph 1 on page 8.

2 CHAIRMAN CASTRO: Okay.

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

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

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

12 CHAIRMAN CASTRO: Okay. Go ahead.

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

24 COMMISSIONER GAZIANO: My amended
25 friendly motion was to defer to the Staff Director

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1 on the appropriate --

2 STAFF DIRECTOR SALLO: Thank you.

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

8 STAFF DIRECTOR SALLO: Thank you,
9 Commissioner.

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

13 COMMISSIONER KLADNEY: I haven't said a
14 word.

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

18 VICE CHAIR THERNSTROM: Yes.

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

21 COMMISSIONER KIRSANOW: Yes.

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

24 COMMISSIONER HERIOT: Yes.

25 CHAIRMAN CASTRO: Commissioner Gaziano,

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1 how do you vote?

2 COMMISSIONER GAZIANO: Yes.

3 CHAIRMAN CASTRO: Commissioner
4 Achtenberg, how do you vote?

5 COMMISSIONER ACHTENBERG: 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: And I vote yes. So
13 the motion passes unanimously.

14 Okay. You had another motion,
15 Commissioner Gaziano?

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

20 COMMISSIONER KIRSANOW: It's regarding?

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

23 COMMISSIONER GAZIANO: -- what I think
24 is a compromise. On the very next page, page 9,
25 there are some sentences, essentially 3 sentences,

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1 interspersed with some other language that seemed to
2 me to be an attempt to walk back language in the
3 second draft to make the conclusion, which I think
4 is more appropriately for the commissioners that you
5 can't compare -- there is no relevant comparison
6 between different college and military sexual
7 assault rates. And I certainly think that it is not
8 easy.

9 So this is my amendment. After footnote
10 44, I would strike the sentence "Therefore,
11 available data does not provide a meaningful
12 comparison" and the following words, "For example,"
13 begin the next sentence with a capital A and leaving
14 the sentence in that again states the facts that I
15 think the authors want, "A large study of sexual
16 assault on college campuses which was conducted by
17 the National Institute of Justice in 1997 estimated
18 that the victimization rate was 4.9 percent for a
19 1-year period" with a footnote -- and I am happy to
20 leave that in.

21 Strike the next sentence, however,
22 because I think it's an inaccurate sentence.
23 "However, there has not been a study focused on
24 college and university women that would provide
25 insight into whether sexual assault rates in that

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1 population have changed over the past 15 years."

2 Actually, strike also the next sentence.

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

7 The next sentence I want to strike is
8 "In addition, the DoD includes a wider range of
9 sexual contact, such as groping, in its definition
10 of sexual assault." I also think that is mistaken.

11 And then I would leave the next
12 sentence, which is factual. And then the sentence I
13 would leave is "Nationally, the U.S. Department of
14 Justice reported a decline in sexual assault rate
15 against women in the general population from a peak
16 of 5 per 1,000 women, .5 percent in 1995, to 2.1 per
17 1,000 women, 0.21 percent in 2005, and remained
18 unchanged from 2005 to 2010."

19 And I would strike the next sentence.
20 And that would conclude my offered amendment. The
21 final sentence I would strike is "The military does
22 a better job than many college campuses in educating
23 its members about and responding to sexual assault,
24 but military leaders have said that more can be
25 done."

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1 COMMISSIONER ACHTENBERG: You want to
2 strike that or keep it?

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

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

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

11 COMMISSIONER HERIOT: Second.

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

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

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

21 COMMISSIONER GAZIANO: -- amendment is
22 --

23 CHAIRMAN CASTRO: Okay.

24 COMMISSIONER GAZIANO: -- to do it all
25 at once.

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1 CHAIRMAN CASTRO: All right.

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

5 CHAIRMAN CASTRO: Yes. Could you
6 repeat?

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

9 COMMISSIONER ACHTENBERG: Yes, please.

10 COMMISSIONER GAZIANO: Following
11 footnote 44, the sentence plus the first two words
12 of the next, "Therefore, available data does not
13 provide a meaningful comparison. For example,"
14 comma. Then I would leave the remainder of that
15 sentence that begins, "A large study."

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

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

23 COMMISSIONER GAZIANO: Correct, --

24 CHAIRMAN CASTRO: Okay.

25 COMMISSIONER GAZIANO: -- because that

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1 is just a factual statement.

2 CHAIRMAN CASTRO: Okay. Any discussion
3 on that motion?

4 STAFF DIRECTOR SALLO: May I?

5 CHAIRMAN CASTRO: Yes, Madam Staff
6 Director?

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

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

21 COMMISSIONER GAZIANO: First of all,
22 different studies have wider range. I think the
23 comparison is to one study, the Fischer study, but
24 it is actually mistaken as to the Fischer study.
25 The Fischer study does include groping. So I think

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1 there are two problems with that sentence. And I
2 don't know that our time permits us to unravel.

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

9 COMMISSIONER KLADNEY: Did it include
10 sexual harassment? Did it include sexual
11 provocative photographs in the office? Did it
12 include hanging that in the halls of the college?

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

17 COMMISSIONER KLADNEY: Sexual harassment
18 is part of that definition.

19 COMMISSIONER GAZIANO: No. I'm saying I
20 don't think that is the case for all other
21 institutions, all other -- I don't even have
22 confidence if it's more often true than not. There
23 are many college campuses that have extremely broad
24 definitions of sexual assault, so much so that
25 Saturday Night Live makes fun of them.

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1 CHAIRMAN CASTRO: The Chair recognizes
2 the Staff Director.

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

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

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

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

25 COMMISSIONER ACHTENBERG: Arguably? How

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1 is that --

2 CHAIRMAN CASTRO: Commissioner
3 Achtenberg?

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

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

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

16 CHAIRMAN CASTRO: Madam Staff Director?

17 STAFF DIRECTOR SALLO: I would be
18 amenable to that.

19 CHAIRMAN CASTRO: Anybody else?

20 (No response.)

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

25 COMMISSIONER ACHTENBERG: Could I --

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1 CHAIRMAN CASTRO: Yes, Commissioner
2 Achtenberg?

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

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

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

14 COMMISSIONER GAZIANO: Yes. And I would
15 --

16 COMMISSIONER ACHTENBERG: What about the
17 prior sentence?

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

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

24 STAFF DIRECTOR SALLO: No.

25 COMMISSIONER ACHTENBERG: So you're

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1 amenable to striking that sentence?

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

8 CHAIRMAN CASTRO: Madam Vice Chair?

9 COMMISSIONER ACHTENBERG: Thank you very
10 much.

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

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

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

25 STAFF DIRECTOR SALLO: No, we have not.

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1 CHAIRMAN CASTRO: Okay.

2 STAFF DIRECTOR SALLO: But I have no
3 objection.

4 CHAIRMAN CASTRO: Any commissioners have
5 an objection to that?

6 (No response.)

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

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

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

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

5 CHAIRMAN CASTRO: Right.

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

8 CHAIRMAN CASTRO: Okay.

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

11 CHAIRMAN CASTRO: Correct.

12 COMMISSIONER GAZIANO: -- arguable
13 statement.

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

18 VICE CHAIR THERNSTROM: Yes.

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

21 COMMISSIONER GAZIANO: Yes.

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

24 COMMISSIONER HERIOT: Yes.

25 CHAIRMAN CASTRO: Commissioner

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1 Achtenberg, how do you vote?

2 COMMISSIONER ACHTENBERG: No.

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

5 COMMISSIONER KLADNEY: No. I think it's
6 fine as is.

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

9 COMMISSIONER YAKI: No.

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

12 COMMISSIONER KIRSANOW: Yes.

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

15 You said you had one more motion?

16 COMMISSIONER GAZIANO: Yes, I do.

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

19 COMMISSIONER GAZIANO: If I would ask
20 everyone to turn to page 29? Once people turn to
21 29, this section addresses supposed or perceived
22 barriers to reporting. I think it is quite
23 misleading without an additional sentence that I
24 would like to add. Just to give context to those
25 who may not have it before them, it talks about

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1 various reasons why victims did or supposedly did
2 not make a report.

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

11 CHAIRMAN CASTRO: Can you restate that
12 for me?

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

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

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

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

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1 VICE CHAIR THERNSTROM: I'll second it.

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

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

7 COMMISSIONER GAZIANO: Correct.

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

10 COMMISSIONER GAZIANO: Correct.

11 Correct. I am willing to live with that.

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

14 CHAIRMAN CASTRO: Madam Staff Director?

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

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

20 STAFF DIRECTOR SALLO: Yes, it is.

21 COMMISSIONER ACHTENBERG: Okay.

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

24 COMMISSIONER YAKI: This is Commissioner
25 Yaki. Would it be more appropriate in a footnote,

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1 rather than in the main body? I mean, I am not
2 quite sure the purpose of having the sentence.

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

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

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

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

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

24 And it's of equivalent status with the
25 section begins with "Only a fraction of victims

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1 report." And that it proceeds to explain the
2 reasons why. "Fear of negative consequence is a
3 significant factor in many victims' decisions not to
4 report." Well, that is helpful. "A lack of
5 confidence in the military justice system may also
6 contribute to victims' reluctance to sexual," that's
7 relevant. That is interesting.

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

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

21 CHAIRMAN CASTRO: Madam Staff Director?

22 STAFF DIRECTOR SALLO: I mean it's a
23 factual statement. I understand that, but to have
24 it flow into participants and focus groups conducted
25 by the -- the flow is just not there. So I want to

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1 bring to the surface that, irrespective of the fact
2 that they are indicating that they were not serious
3 enough to report, the folks that did participate in
4 the focus groups indicated that it is difficult to
5 report. And to us, that is very important.

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

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

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

24 CHAIRMAN CASTRO: Commissioner Gaziano?

25 COMMISSIONER GAZIANO: I tell you what.

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1 I'm willing to put that sentence anywhere in the
2 text of that paragraph that some other commissioner
3 is willing to suggest. I think it does the least
4 whatever where I placed it and it is the most
5 likely. If you want to place it at the end of the
6 paragraph, participants, fine.

7 COMMISSIONER ACHTENBERG: Mr. Chairman?

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

11 CHAIRMAN CASTRO: Sure. Commissioner
12 Achtenberg?

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

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

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

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

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

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

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1 Reporting."

2 CHAIRMAN CASTRO: Right.

3 COMMISSIONER ACHTENBERG: If we began
4 the paragraph by making reference to the fact that
5 the study says that according to 47 percent, that is
6 a possibility. I don't know. Does that you think
7 --

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

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

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

16 CHAIRMAN CASTRO: Madam Staff Director?

17 COMMISSIONER ACHTENBERG: If I may --

18 COMMISSIONER GAZIANO: If it's the
19 second sentence, Commissioner Achtenberg, would that
20 --

21 COMMISSIONER YAKI: Footnote it.

22 COMMISSIONER KLADNEY: Footnote it.

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

25 CHAIRMAN CASTRO: Madam Staff Director?

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

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

17 COMMISSIONER ACHTENBERG: So, then,
18 maybe --

19 COMMISSIONER KLADNEY: Excuse me.
20 Excuse me.

21 CHAIRMAN CASTRO: Commissioner Kladney?

22 COMMISSIONER KLADNEY: So basically
23 we're talking about two different types. We're
24 talking about a restricted and then restricted and
25 non-restricted. So we're talking about apples and

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1 oranges here. Is that correct? Did I read that
2 correctly?

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

11 COMMISSIONER ACHTENBERG: That's a good
12 point.

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

16 COMMISSIONER YAKI: Yes.

17 CHAIRMAN CASTRO: Commissioner Gaziano,
18 would you consider that?

19 COMMISSIONER GAZIANO: Give me a minute.

20 CHAIRMAN CASTRO: Sure.

21 (Pause.)

22 COMMISSIONER KLADNEY: What page are we
23 on?

24 CHAIRMAN CASTRO: "Reporting Options,"
25 section B, starts at page 17 and flows to page 18.

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1 COMMISSIONER ACHTENBERG: That's an
2 excellent recommendation, Commissioner Yaki. I'm
3 quite taken by --

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

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

8 COMMISSIONER YAKI: -- provide the
9 inspiration.

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

12 VICE CHAIR THERNSTROM: That lack of
13 sleep?

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

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

24 So I don't think the point is well-taken
25 that this survey doesn't relate expressly to this

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1 section, but if someone can -- you know, we may bend
2 if someone can help us --

3 COMMISSIONER ACHTENBERG: I think it
4 does.

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

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

9 COMMISSIONER GAZIANO: Well, let's be
10 specific.

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

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

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

22 CHAIRMAN CASTRO: Yes, I know. I know.

23 COMMISSIONER GAZIANO: The section that
24 I'm trying to add, where I'm trying to add, it is
25 why victims don't report, whether they have these

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1 various options or not, why they don't. And the
2 report cites some reasons why they don't report, but
3 it doesn't cite a very significant reason why they
4 don't report.

5 CHAIRMAN CASTRO: Right.

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

9 COMMISSIONER GAZIANO: No, we're not.
10 No, we're not, Commissioner Kladney.

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

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

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

22 COMMISSIONER GAZIANO: No, it doesn't.

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

25 COMMISSIONER GAZIANO: And so does the

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1 rest of the section.

2 COMMISSIONER ACHTENBERG: Yes.

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

5 CHAIRMAN CASTRO: The Chair recognizes
6 Commissioner Achtenberg.

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

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

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

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

19 COMMISSIONER ACHTENBERG: I'll support
20 it.

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

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

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1 the report.

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

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

9 COMMISSIONER ACHTENBERG: Two was really
10 important.

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

13 COMMISSIONER GAZIANO: Okay.

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

19 COMMISSIONER ACHTENBERG: That is a
20 pretty big concession.

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

25 COMMISSIONER GAZIANO: That is okay.

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1 CHAIRMAN CASTRO: Yes? Okay.

2 COMMISSIONER GAZIANO: That is the
3 motion.

4 CHAIRMAN CASTRO: That is the motion.
5 So I'm going to take a roll call on this now.
6 Ready? Set? Madam Vice Chair, how do you vote?

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

9 (Laughter.)

10 COMMISSIONER GAZIANO: Yes, it is.

11 CHAIRMAN CASTRO: When has that stopped
12 us before?

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

15 VICE CHAIR THERNSTROM: All right.

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

18 VICE CHAIR THERNSTROM: All right. Yes.

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

21 VICE CHAIR THERNSTROM: Yes.

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

24 COMMISSIONER GAZIANO: Yes.

25 CHAIRMAN CASTRO: Commissioner Heriot,

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1 how do you vote?

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

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

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

10 (Laughter.)

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

13 COMMISSIONER KLADNEY: No.

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

16 COMMISSIONER YAKI: No.

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

19 COMMISSIONER KIRSANOW: Yes.

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

22 Okay. Any other motions?

23 COMMISSIONER GAZIANO: I think those are
24 my only formal motions, but I wondered whether Vice
25 Chair wants to speak about one that she explained to

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1 me that I have some equal concern about.

2 VICE CHAIR THERNSTROM: Okay. Here's my
3 -- I don't know whether we want to do anything about
4 this. I don't have a formal motion, you know, kind
5 of written up and thought about.

6 CHAIRMAN CASTRO: What page?

7 VICE CHAIR THERNSTROM: Page 14. "The
8 DoD is also directing its leadership to remove
9 sexual and sexist material from the military
10 workplace. In December 2012, under the leadership
11 of General Mark Welsh, the Air Force conducted a
12 sweep of pornographic, military song books with
13 offensive lyrics, other military paraphernalia with
14 images demeaning to women. In 2013, Secretary of
15 Defense Chuck Hagel directed the other Services to
16 follow suit too soon to know what effect these
17 efforts will have."

18 You know, I've got a First Amendment
19 problem with this. People aren't allowed to
20 privately look at girlie magazines, soft porn. I
21 mean, you know, the military is a kind of world unto
22 itself, but this seems to me to, as I said, raise
23 First Amendment issues. And I have got a "Come on,
24 folks. Loosen up here a bit" feeling about this.
25 Anyway --

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

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

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

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

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

24 VICE CHAIR THERNSTROM: That is very
25 useful. And I thank you, Commissioner Yaki, for

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1 pointing that out to me. I did not know that.
2 Nevertheless, it seems to me, one, excessive; two,
3 unenforceable.

4 COMMISSIONER GAZIANO: Mr. Chair?

5 CHAIRMAN CASTRO: Commissioner Gaziano?

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

15 I suppose these are at least factual
16 statements, but they're misleading the way they are.

17 I think I would feel a little more uncomfortable
18 and I don't know what the Vice Chair would think if
19 there were simply a notation that these raise First
20 Amendment concerns, at least in application. If
21 there was some reference to that, then I would feel
22 more comfortable with these statements in the
23 report.

24 CHAIRMAN CASTRO: You know, to me --

25 COMMISSIONER KLADNEY: Mr. Chairman?

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1 CHAIRMAN CASTRO: Yes. Well, let me
2 just --

3 COMMISSIONER KLADNEY: Dave Kladney
4 here.

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

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

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

22 So I don't know if I want to go down
23 this whole route of, you know, debating the First
24 Amendment issues in the military because I think
25 that is where we are going to make the distinction.

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1 COMMISSIONER YAKI: Well, in addition,
2 Mr. Chair, there is a natural field of military
3 justice law called military expression, which is
4 essentially their way of dealing with First
5 Amendment issues in the context of the military. It
6 is a separate field, essentially. It is outside of
7 the law within military law.

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

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

24 CHAIRMAN CASTRO: Commissioner Kladney?

25 COMMISSIONER KLADNEY: I'm confused that

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1 Commissioner Gaziano seems to think it is difficult
2 to differentiate between the workplace and the
3 barracks. It's all owned by the military. It's all
4 run by the military. And they make the rules as
5 they go. You can't debate with your officer what
6 you think is right or wrong.

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

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

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

23 COMMISSIONER GAZIANO: Mr. Chair?

24 CHAIRMAN CASTRO: Commissioner Gaziano?

25 COMMISSIONER GAZIANO: I concede a few

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1 points, namely that the military is different, which
2 is an argument that I have made and will advance in
3 my commissioner statement. But it certainly is not
4 the case that military personnel lose all of their
5 First Amendment rights ipso facto. It is not
6 accurate that this does not present a serious First
7 Amendment issue.

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

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

23 So I would suggest the easiest course is
24 just to strike this paragraph. I don't know if the
25 Vice Chair wants to offer that motion. I would

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1 second it. But, failing that, at least some
2 admission that it raises First Amendment concerns
3 would be I think required.

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

6 CHAIRMAN CASTRO: So we have a motion.

7 Yes, Madam Vice --

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

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

25 COMMISSIONER KLADNEY: And if you want

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1 to speak against it, go ahead and speak against it.

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

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

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

22 And for me, for my purposes, I'm going
23 to use it for the purposes of showing that it's
24 typical of the Band-Aid approaches that they have
25 taken in the past that still continue to result in

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1 serious repercussions over people who are victims of
2 sexual assault in the military.

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

8 COMMISSIONER GAZIANO: Let me --

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

11 VICE CHAIR THERNSTROM: Let Commissioner
12 Gaziano --

13 CHAIRMAN CASTRO: Okay.

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

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

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1 scrutiny."

2 It's too early to know that,
3 Commissioner Kladney. I think that is a factual
4 statement.

5 COMMISSIONER KLADNEY: They lost. The
6 Supreme Court already opined on this, U.S. versus
7 Voorhees. They lose.

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

10 CHAIRMAN CASTRO: Madam Vice Chair?

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

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

16 COMMISSIONER GAZIANO: Well, I think I
17 would suggest you rephrase your sentence even more.

18 You're not saying what effect these efforts to get
19 rid of the pornography will have in getting rid of
20 the pornography. You're suggesting that getting rid
21 of pornography has no causal effect on sexual
22 assault in the military.

23 VICE CHAIR THERNSTROM: Both. Both.

24 COMMISSIONER GAZIANO: Okay.

25 CHAIRMAN CASTRO: Commissioner?

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1 Commissioner Gaziano, so what is your --

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

8 VICE CHAIR THERNSTROM: I would accept
9 that.

10 CHAIRMAN CASTRO: Commissioner
11 Achtenberg?

12 COMMISSIONER ACHTENBERG: That's okay.

13 CHAIRMAN CASTRO: Yes?

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

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

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

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

23 (No response.)

24 CHAIRMAN CASTRO: Okay. Before we vote
25 on it, could you read it back for the record one

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1 more time?

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

5 CHAIRMAN CASTRO: And that's because --

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

11 CHAIRMAN CASTRO: Okay. So Commissioner
12 Kladney?

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

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

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

22 COMMISSIONER YAKI: It's also a fact
23 there's rather a limited but rich body of Supreme
24 Court law on the issue of the First Amendment to the
25 military that basically gives the military almost

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1 the unlimited right to decide what the First
2 Amendment can and will apply to the military,
3 especially when it comes to the specific factor of
4 what is good for the new ordering discipline of the
5 armed forces or they will be -- bring this credit
6 upon the Service.

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

10 CHAIRMAN CASTRO: Okay.

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

17 COMMISSIONER KLADNEY: You can do all of
18 this in your statement.

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

21 COMMISSIONER ACHTENBERG: No harm.

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

24 VICE CHAIR THERNSTROM: Now, wait a
25 minute. What are we voting on?

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1 CHAIRMAN CASTRO: Voting on the revision
2 of the census --

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

5 CHAIRMAN CASTRO: Commissioner Gaziano,
6 yes.

7 VICE CHAIR THERNSTROM: Yes.

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

10 COMMISSIONER GAZIANO: Yes.

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

13 COMMISSIONER HERIOT: Yes.

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

16 COMMISSIONER ACHTENBERG: Yes.

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

19 COMMISSIONER KIRSANOW: Yes.

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

22 (No response.)

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

25 COMMISSIONER KLADNEY: No. No, no.

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1 Kladney. No.

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

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

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

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

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

12 COMMISSIONER YAKI: No.

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

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

18 (No response.)

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

22 COMMISSIONER ACHTENBERG: So moved.

23 CHAIRMAN CASTRO: Do we have a second?
24 I'll second it. Any further discussion?

25 (No response.)

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1 CHAIRMAN CASTRO: If not, I'm going to
2 take a roll call vote on the report. Vice Chair
3 Thernstrom, how do you vote?

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

6 CHAIRMAN CASTRO: Commissioner Gaziano?
7 Passing.

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

10 CHAIRMAN CASTRO: Okay. Commissioner
11 Gaziano?

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

15 CHAIRMAN CASTRO: Commissioner Heriot,
16 how do you vote?

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

25 CHAIRMAN CASTRO: Commissioner

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1 Achtenberg, how do you vote?

2 COMMISSIONER ACHTENBERG: Yes.

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

5 COMMISSIONER KLADNEY: Yes.

6 CHAIRMAN CASTRO: Commissioner Yaki, how
7 do you vote?

8 COMMISSIONER YAKI: Yes.

9 CHAIRMAN CASTRO: Commissioner Kirsanow,
10 how do you vote?

11 COMMISSIONER KIRSANOW: No.

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

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

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

23 VICE CHAIR THERNSTROM: I would be
24 delighted to go back to that discussion, as
25 Commissioner Gaziano has suggested. Otherwise it

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1 gets moved to our statement. But I will vote yes on
2 the report as amended.

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

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

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

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

17 - DISCUSSION RE:
18 PROPOSED FINDINGS AND RECOMMENDATIONS FOR THE
19 2013 STATUTORY ENFORCEMENT REPORT

20 STAFF DIRECTOR SALLO: Originally staff
21 had dropped proposed findings and recommendations
22 that had been included in the report. I extracted
23 that from the report, which would have been chapter
24 7. And I have provided it to the commissioners to
25 review with the hope that there would be some

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1 consensus on adopting some, if not all, of the
2 findings and recommendations today after a
3 discussion was had.

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

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

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

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

24 COMMISSIONER ACHTENBERG: And, Mr.
25 Chairman, I think we are speaking for my colleagues,

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

10 CHAIRMAN CASTRO: Right. Commissioner
11 Gaziano?

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

21 Secondly, we have a complement of eight
22 commissioners today because this meeting has been
23 scheduled for many months. And the importance of it
24 has been understood. I certainly would not even
25 consider opening it up to further findings and

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1 recommendations unless there was agreement that all
2 eight commissioners were actually available, but I
3 would rather -- my first choice is to say we missed
4 appreciating your good faith, everyone's good faith,
5 in this.

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

10 CHAIRMAN CASTRO: Madam Vice Chair?
11 Commissioner Yaki, the Vice Chair has the floor.
12 Then it will be you.

13 VICE CHAIR THERNSTROM: Commissioner
14 Yaki can go ahead.

15 CHAIRMAN CASTRO: Okay. Commissioner
16 Yaki, go ahead.

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

25 CHAIRMAN CASTRO: Vice Chair Thernstrom,

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1 then Commissioner Gaziano.

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

15 CHAIRMAN CASTRO: Commissioner Gaziano?
16 Then I want the Staff Director to opine.

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

24 I suppose two things. If we are going
25 to push this beyond September and we can have an

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1 assurance that we will only vote on, then when all
2 eight commissioners are present, then I would, but I
3 don't think that that is workable. Otherwise I
4 think --

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

7 COMMISSIONER GAZIANO: No, it doesn't.

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

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

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

24 There is no reason to schedule a
25 separate meeting, notwithstanding your good faith in

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1 trying to get it done. There's no reason not to
2 submit them today.

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

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

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

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

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

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

24 CHAIRMAN CASTRO: Now we're back on the
25 record. It is 11:37 a.m. Have we had a chance to

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1 hand these out to folks?

2 COMMISSIONER ACHTENBERG: No.

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

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

16 CHAIRMAN CASTRO: Yes, ma'am?

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

20 CHAIRMAN CASTRO: Yes.

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

23 CHAIRMAN CASTRO: Well, that was not the
24 plan. The plan was that we were going to circulate
25 these to you all so that you could thoughtfully

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1 review them, but the sense I was getting there from
2 Commissioner Gaziano was that he wanted to vote on
3 something. And so we wanted to present to you what
4 revisions we made to what the Staff Director
5 circulated. It's this or --

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

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

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

15 CHAIRMAN CASTRO: That's a motion.

16 COMMISSIONER GAZIANO: Is that your
17 substitute amendment?

18 VICE CHAIR THERNSTROM: It's my
19 substitute amendment. Forget about findings and
20 recommendations.

21 CHAIRMAN CASTRO: Do you
22 have a second?

23 COMMISSIONER GAZIANO: I second it
24 subject to discussion because I am willing to go
25 through these one by one if other commissioners are.
But if there's a majority to just dispense with

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1 findings and recommendations, which I suspect is
2 where we're going to be at the end of the day
3 anyway, then we can all move on to more important
4 matters before the Commission.

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

10 COMMISSIONER GAZIANO: To suspend all
11 findings --

12 CHAIRMAN CASTRO: Correct.

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

19 CHAIRMAN CASTRO: Correct.

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

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

25 VICE CHAIR THERNSTROM: And I withdraw

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1 my motion.

2 CHAIRMAN CASTRO: Okay.

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

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

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

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

21 CHAIRMAN CASTRO: Okay. So, then --
22 well, let's begin since Commissioner Kirsanow
23 doesn't have -- he will have them momentarily,
24 though. We'll begin to read them. And then come
25 you receive them, Commissioner Kirsanow, if you

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1 could let us know?

2 So the first -- I guess we will need a
3 motion individually on each of these. So the first
4 finding, which is number one, is there a motion on
5 that for discussion purposes?

6 COMMISSIONER ACHTENBERG: So moved.

7 CHAIRMAN CASTRO: Is there a second?

8 COMMISSIONER YAKI: Second.

9 CHAIRMAN CASTRO: Okay. We have a
10 second and a motion. The first item reads as "As
11 indicated in the body of this report at page blank,
12 the Commission has authority to" -- so this is a
13 jurisdictional issue -- "the Commission has
14 authority to examine questions related to sexual
15 assault in the military because the issues involve
16 both sex discrimination and the denial of equal
17 protection in the administration of justice. The
18 issue of sex discrimination involves female Service
19 members, who represent 14 percent of the military
20 population and the likelihood that they are over
21 five times more likely to experience some form of
22 sexual assault as defined by DoD than their male
23 counterparts. The questions related to a possible
24 denial of equal protection in the administration of
25 justice lead the Commission to examine reports of

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1 many cases in which sexual assault victims as well
2 as Service members accused of sexual assault who
3 claim that they are not treated fairly in the
4 military justice system."

5 Discussion?

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

9 CHAIRMAN CASTRO: Okay.

10 COMMISSIONER ACHTENBERG: -- as a
11 statement of jurisdiction.

12 CHAIRMAN CASTRO: Okay. Hearing no
13 other comments --

14 COMMISSIONER YAKI: So moved.

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

19 VICE CHAIR THERNSTROM: On this first
20 finding --

21 CHAIRMAN CASTRO: Yes, on the first one.

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

25 CHAIRMAN CASTRO: Commissioner Gaziano,

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1 how do you vote?

2 COMMISSIONER GAZIANO: No.

3 CHAIRMAN CASTRO: Commissioner Heriot,
4 how do you vote?

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

8 CHAIRMAN CASTRO: Commissioner
9 Achtenberg, how do you vote?

10 COMMISSIONER ACHTENBERG: Yes.

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

13 COMMISSIONER KLADNEY: Yes.

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

16 COMMISSIONER YAKI: Yes.

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

19 COMMISSIONER KIRSANOW: No.

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

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

25 CHAIRMAN CASTRO: Okay. So we have four

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1 yeses and four noes. That motion fails.

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

21 So do I have a motion on that?

22 COMMISSIONER ACHTENBERG: So moved.

23 CHAIRMAN CASTRO: Is there a second?

24 COMMISSIONER YAKI: Second.

25 CHAIRMAN CASTRO: Okay. Discussion?

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1 COMMISSIONER KLADNEY: Call the
2 question.

3 CHAIRMAN CASTRO: Pardon me,
4 Commissioner Kladney?

5 COMMISSIONER KLADNEY: Call the
6 question.

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

10 VICE CHAIR THERNSTROM: No.

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

13 COMMISSIONER GAZIANO: No. I don't
14 think it's accurate.

15 CHAIRMAN CASTRO: Commissioner Heriot,
16 how do you vote?

17 COMMISSIONER HERIOT: No.

18 CHAIRMAN CASTRO: Commissioner
19 Achtenberg, how do you vote?

20 COMMISSIONER ACHTENBERG: Yes.

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

23 COMMISSIONER KLADNEY: Yes.

24 CHAIRMAN CASTRO: Commissioner Yaki, how
25 do you vote?

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1 COMMISSIONER YAKI: Yes.

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

4 COMMISSIONER KIRSANOW: No.

5 CHAIRMAN CASTRO: I vote yes. We have
6 four yeses, four noes. The motion fails.

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

13 Do I have a motion?

14 COMMISSIONER ACHTENBERG: So moved.

15 CHAIRMAN CASTRO: Is there a second?

16 COMMISSIONER YAKI: Second.

17 CHAIRMAN CASTRO: Okay. So any
18 discussion on that?

19 (No response.)

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

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

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

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1 COMMISSIONER GAZIANO: No.

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

4 COMMISSIONER HERIOT: No.

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

7 COMMISSIONER ACHTENBERG: Yes.

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

10 COMMISSIONER KLADNEY: Yes.

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

13 COMMISSIONER YAKI: Aye.

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

16 COMMISSIONER KIRSANOW: No.

17 CHAIRMAN CASTRO: I vote yes.

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

20 CHAIRMAN CASTRO: Vice Chair votes no.
21 Four to four. The motion fails.

22 The next item that is proposed will be
23 finding 4, would read, "To date, the DoD has not
24 comprehensively evaluated each Service branch's
25 sexual assault prevention and response, SAPR,

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1 training programs and initiatives. Those that are
2 highly effective are not necessarily emulated by
3 other Services."

4 Do I have a motion?

5 COMMISSIONER ACHTENBERG: So moved.

6 CHAIRMAN CASTRO: Is there a second?

7 COMMISSIONER YAKI: Second.

8 CHAIRMAN CASTRO: Any discussion?

9 (No response.)

10 CHAIRMAN CASTRO: Hearing none, seeing
11 no hands, I'm going to call it for a vote. I'll
12 give you some time. I'm going to start on this end
13 this time. CHAIRMAN CASTRO: Commissioner

14 Achtenberg, how do you vote?

15 COMMISSIONER ACHTENBERG: I vote yes,
16 Mr. Chairman.

17 CHAIRMAN CASTRO: Okay.

18 COMMISSIONER ACHTENBERG: This is a true
19 fact.

20 CHAIRMAN CASTRO: Those are the best
21 kind.

22 COMMISSIONER ACHTENBERG: I'm telling
23 you.

24 CHAIRMAN CASTRO: Commissioner Heriot,
25 how do you vote?

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1 COMMISSIONER HERIOT: I vote no.

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

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

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

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

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

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

22 COMMISSIONER KLADNEY: Yes.

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

25 COMMISSIONER YAKI: Yes.

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

3 COMMISSIONER KIRSANOW: No.

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

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

11 COMMISSIONER GAZIANO: Could I, Mr.
12 Chair?

13 CHAIRMAN CASTRO: Yes?

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

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

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

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

24 COMMISSIONER GAZIANO: -- just skip
25 those.

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1 CHAIRMAN CASTRO: Okay.

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

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

9 COMMISSIONER KIRSANOW: I have not.

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

12 COMMISSIONER GAZIANO: I'm sorry.

13 CHAIRMAN CASTRO: -- when he gets it.

14 COMMISSIONER GAZIANO: Thank you.

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

17 COMMISSIONER GAZIANO: Thank you.

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

25 Do I have a motion on that?

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1 COMMISSIONER ACHTENBERG: So moved.

2 CHAIRMAN CASTRO: Is there a second?

3 COMMISSIONER KLADNEY: I'll second.

4 CHAIRMAN CASTRO: Okay. Any discussion?

5 (No response.)

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

8 CHAIRMAN CASTRO: Commissioner
9 Achtenberg, how do you vote?

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

12 CHAIRMAN CASTRO: Commissioner Heriot,
13 how do you vote?

14 COMMISSIONER HERIOT: No.

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

17 COMMISSIONER GAZIANO: No.

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

20 VICE CHAIR THERNSTROM: Get back to me.

21 CHAIRMAN CASTRO: Okay.

22 COMMISSIONER GAZIANO: Yes. Let me
23 explain two problems. First of all, I am not sure
24 that all of the Services ought to even try to be
25 absolutely consistent with each other, but,

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1 secondly, it is so meaningless to say they don't
2 consistently implement something. Does that mean
3 100 percent perfectly? Ninety-nine percent? It's
4 vague as to the point of being misleading.

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

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

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

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

15 COMMISSIONER KLADNEY: Yes.

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

18 COMMISSIONER YAKI: Yes.

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

21 COMMISSIONER KIRSANOW: No.

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

24 The next proposed motion would read,
25 "Neither Service members' dependents nor civilian

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1 DoD personnel have the option of making restricted
2 reports of sexual assault, even though they rely on
3 the military for health care and psychological
4 care."

5 Do I have a motion?

6 COMMISSIONER ACHTENBERG: So moved.

7 CHAIRMAN CASTRO: Is there a second?

8 COMMISSIONER KLADNEY: Second.

9 CHAIRMAN CASTRO: Okay. Any discussion?

10 (No response.)

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

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

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

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

22 CHAIRMAN CASTRO: Does anyone on the
23 Democratic caucus side want to comment on that or
24 the Staff Director? I don't know if this is maybe
25 your original --

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1 STAFF DIRECTOR SALLO: It is our
2 original, yes.

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

5 COMMISSIONER YAKI: Hello?

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

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

16 CHAIRMAN CASTRO: Okay. Madam Staff
17 Director?

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

20 With restricted reporting, you have the
21 added confidentiality that attaches to it for the
22 Service member dependence as well as the Civilian
23 Department of Defense personnel. They reside along
24 with the enlisted members on the base. And so the
25 lack of confidentiality has ramifications for them.

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1 It leads to less protection. It leads to
2 embarrassment. It leads to the topic possibly being
3 made public.

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

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

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

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

19 COMMISSIONER ACHTENBERG: I vote yes.

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

22 COMMISSIONER GAZIANO: No.

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

25 COMMISSIONER HERIOT: No.

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

3 VICE CHAIR THERNSTROM: No.

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

6 COMMISSIONER KLADNEY: Yes.

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

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

11 CHAIRMAN CASTRO: Okay.

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

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

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

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

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

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

25 CHAIRMAN CASTRO: Oh, okay. Because I

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1 thought since Commissioner Kirsanow got it, we
2 didn't need it into the record, but I will continue
3 to do that. "Victims lose the ability to make
4 restricted reports if they disclose their assaults
5 to anyone other than an SAPR victim advocate, a
6 sexual assault response coordinator, or a health
7 care provider."

8 Do I have a motion on that?

9 COMMISSIONER ACHTENBERG: So moved.

10 CHAIRMAN CASTRO: Second, anyone?

11 COMMISSIONER KLADNEY: Second.

12 CHAIRMAN CASTRO: Okay. Any discussion?

13 Any discussion?

14 (No response.)

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

18 COMMISSIONER HERIOT: No.

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

21 COMMISSIONER GAZIANO: Let me pass.

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

24 VICE CHAIR THERNSTROM: Yes. I'm
25 passing, too.

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1 CHAIRMAN CASTRO: Commissioner

2 Achtenberg, how do you vote?

3 COMMISSIONER ACHTENBERG: I vote yes.

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

6 COMMISSIONER KLADNEY: Yes.

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

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

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

22 COMMISSIONER KIRSANOW: No.

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

25 VICE CHAIR THERNSTROM: No.

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

3 COMMISSIONER GAZIANO: No.

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

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

10 Do I have a motion?

11 COMMISSIONER ACHTENBERG: So moved.

12 CHAIRMAN CASTRO: Is there a second?

13 COMMISSIONER YAKI: Second.

14 CHAIRMAN CASTRO: Okay. Any discussion?
15 Any discussion?

16 (No response.)

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

19 COMMISSIONER ACHTENBERG: I vote yes.

20 CHAIRMAN CASTRO: Commissioner --

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

24 CHAIRMAN CASTRO: Where? At the end?

25 COMMISSIONER GAZIANO: At the end.

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1 CHAIRMAN CASTRO: I don't know if that's
2 going on -- let's just vote on it as it is right
3 now.

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

7 COMMISSIONER GAZIANO: Oh, darn.

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

10 COMMISSIONER GAZIANO: Okay.

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

13 COMMISSIONER GAZIANO: No.

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

16 VICE CHAIR THERNSTROM: No.

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

19 COMMISSIONER HERIOT: No.

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

22 COMMISSIONER KIRSANOW: No.

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

25 COMMISSIONER KLADNEY: Yes.

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

3 COMMISSIONER YAKI: Aye.

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

6 COMMISSIONER GAZIANO: Okay.

7 CHAIRMAN CASTRO: Commissioner Gaziano?

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

13 CHAIRMAN CASTRO: Is there a second?

14 VICE CHAIR THERNSTROM: Yes. I second
15 that.

16 CHAIRMAN CASTRO: Any discussion of that
17 motion?

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

20 COMMISSIONER YAKI: I have a statement
21 to make, which is that normally we do them one by
22 one. We've always done them one by one. If you
23 have an opportunity to look at whether or not there
24 is anything we can agree on or make changes to is
25 how we have always done this. It's how I did, even

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1 when I was being run over by the majority, 6:2. I
2 didn't have to sit there and say, "Well, I just want
3 to get it over with. Just do them all as a whole."

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

11 CHAIRMAN CASTRO: Madam Vice Chair?

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

19 COMMISSIONER YAKI: And Commissioner --

20 COMMISSIONER KLADNEY: Mr. Chairman?

21 COMMISSIONER YAKI: -- I would agree
22 with that. Our suggestion was that we made, but it
23 was Commissioner Gaziano who insisted that we try
24 and go through it today. I did not support that.
25 Did anyone support that? Well, I would be amenable

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1 to giving more time, allow that, and still go
2 through it one by one at a later time when you have
3 had the opportunity to review --

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

6 CHAIRMAN CASTRO: Sure.

7 COMMISSIONER GAZIANO: Will you allow
8 that?

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

11 COMMISSIONER GAZIANO: Okay.

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

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

18 CHAIRMAN CASTRO: We're back on the
19 record.

20 COMMISSIONER GAZIANO: Would the
21 Chairman entertain a motion?

22 CHAIRMAN CASTRO: Sure.

23 COMMISSIONER GAZIANO: Okay. Among
24 other things, I think Commissioner Kirsanow is back
25 on the line. I hope commissioners Yaki and Kladney

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1 are as well.

2 CHAIRMAN CASTRO: Are commissioners on
3 the phone?

4 COMMISSIONER KIRSANOW: Kirsanow is on
5 the phone.

6 COMMISSIONER KLADNEY: Yes. Kladney is
7 on the phone.

8 CHAIRMAN CASTRO: Yaki?

9 COMMISSIONER YAKI: We're here.

10 CHAIRMAN CASTRO: Okay.

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

20 The first I would prefer is a notational
21 vote, a notational vote where none of us object and
22 everyone could make whatever record they want and
23 everyone can take -- the alternative would be that
24 we actually have to find a time when everyone tries
25 to make it and, in fact, everyone can make, does, in

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1 fact, make the meeting. So that's --

2 CHAIRMAN CASTRO: The Chair would prefer
3 the latter simply because I think, yes, these are
4 important topics that merit a discussion. And if we
5 can't do it today -- and I understand that, but I
6 would rather that it be if it is going to be
7 telephonic, that it be a discussion, rather than a
8 notational vote. I'm not even sure how we would do
9 it by notational vote effectively.

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

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

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

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

23 CHAIRMAN CASTRO: Okay.

24 COMMISSIONER GAZIANO: Let's try to
25 schedule it within a week if possible, but we're

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1 going to have to work to coordinate appropriate
2 days. And, again, my motion --

3 COMMISSIONER YAKI: Well, the Federal
4 Register --

5 CHAIRMAN CASTRO: What was that,
6 Commissioner Yaki?

7 COMMISSIONER GAZIANO: We'd have the
8 Federal Register to contend with online in terms of
9 --

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

12 CHAIRMAN CASTRO: Seven days, Madam
13 Staff Director?

14 COMMISSIONER GAZIANO: We would have to
15 get informal advice, but there is an exception, I
16 think, under our CFR for --

17 CHAIRMAN CASTRO: Emergencies.

18 COMMISSIONER GAZIANO: Yes. I don't
19 know that it qualifies. We would have to get --

20 CHAIRMAN CASTRO: We would have to look
21 at it.

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

24 CHAIRMAN CASTRO: Commissioner
25 Achtenberg?

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

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

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

11 CHAIRMAN CASTRO: The 21st?

12 COMMISSIONER ACHTENBERG: That's the
13 22nd.

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

17 COMMISSIONER ACHTENBERG: Something on
18 the 22nd but not before. I apologize, Mr. Chairman,
19 --

20 CHAIRMAN CASTRO: Understood.

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

23 CHAIRMAN CASTRO: Sure. So would that
24 work?

25 COMMISSIONER KLADNEY: Mr. Chairman?

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1 CHAIRMAN CASTRO: Yes, Mr. Kladney?

2 COMMISSIONER KLADNEY: I was wondering.

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

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

15 CHAIRMAN CASTRO: I don't like the
16 notational vote idea, as I said earlier. I think we
17 --

18 COMMISSIONER YAKI: I understand,
19 Commissioner Gaziano. I am assuming if we agreed on
20 a date, we agree on a date. It is our
21 responsibility to show up on that date. If someone
22 can't show up on that date because they can't show
23 up, whether it's medically an emergency or whatever
24 -- I mean, that's how we do it at all of these
25 meetings as of right now.

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1 COMMISSIONER GAZIANO: Well, then I
2 change my motion and I just say we will do it by
3 notational vote because if you are going to be -- we
4 are making a concession for you all. It can be done
5 by notational vote. I don't care whether you like
6 it or not. And a notational vote would work just
7 fine for all purposes. Otherwise --

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

14 COMMISSIONER GAZIANO: Then the --

15 COMMISSIONER YAKI: I don't understand
16 your --

17 COMMISSIONER GAZIANO: My motion was --

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

21 COMMISSIONER GAZIANO: I think you
22 understand it perfectly.

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

25 COMMISSIONER GAZIANO: I think you

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1 understand it perfectly, Michael.

2 CHAIRMAN CASTRO: -- calm down here.

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

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

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

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

22 CHAIRMAN CASTRO: Okay. So we said the
23 22nd I think is what the first date was. And we had
24 --

25 COMMISSIONER YAKI: The 22nd and 23rd.

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1 That was --

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

4 COMMISSIONER ACHTENBERG: I can't do the
5 23rd because my board of trustees meets on that --

6 CHAIRMAN CASTRO: Okay. So 22nd or
7 25th?

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

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

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

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

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

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

24 CHAIRMAN CASTRO: How about Sunday, July
25 21st?

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1 COMMISSIONER HERIOT: I can do that.

2 COMMISSIONER KLADNEY: I can do it.

3 COMMISSIONER KIRSANOW: I can do it.

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

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

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

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

14 COMMISSIONER HERIOT: Yes.

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

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

19 COMMISSIONER ACHTENBERG: Excellent
20 question.

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

23 COMMISSIONER ACHTENBERG: I'll be in the
24 Pacific time zone lest I be viewed as a booster. I
25 have some support in that regard. I can seek

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1 Commissioner Heriot. She's with me on that.

2 CHAIRMAN CASTRO: That's fine with me.

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

5 COMMISSIONER KLADNEY: I'm good.

6 COMMISSIONER GAZIANO: What time are you
7 proposing?

8 CHAIRMAN CASTRO: Let's say --

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

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

14 COMMISSIONER ACHTENBERG: Is that
15 possible?

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

18 COMMISSIONER KLADNEY: I'm good.

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

21 CHAIRMAN CASTRO: Can you adjust that?

22 VICE CHAIR THERNSTROM: No.

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

25 COMMISSIONER GAZIANO: What would be

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1 comfortable for you on that day?

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

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

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

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

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

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

15 COMMISSIONER ACHTENBERG: That will work
16 for me.

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

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

24 CHAIRMAN CASTRO: No one's going to
25 purposely not show up, right?

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1 COMMISSIONER GAZIANO: No one will not
2 purposely --

3 CHAIRMAN CASTRO: I don't trust this.

4 COMMISSIONER GAZIANO: -- exercise to
5 find a time.

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

11 COMMISSIONER GAZIANO: Okay.

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

15 VICE CHAIR THERNSTROM: You're talking
16 about --

17 CHAIRMAN CASTRO: Sunday.

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

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

22 VICE CHAIR THERNSTROM: Eastern time.

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

25 STAFF DIRECTOR SALLO: I was verifying

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1 with staff that we can set up a telephonic meeting
2 and make sure that we have a court reporter that's
3 available. And staff will also have to be on the
4 phone to serve as parliamentarian.

5 CHAIRMAN CASTRO: And that's doable,
6 then?

7 STAFF DIRECTOR SALLO: Thus far, yes.

8 CHAIRMAN CASTRO: Okay.

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

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

16 CHAIRMAN CASTRO: Okay. Fair enough.

17 COMMISSIONER GAZIANO: -- difficulty
18 with --

19 CHAIRMAN CASTRO: Fair enough.

20 COMMISSIONER GAZIANO: -- Sunday night,
21 July 21.

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

24 (No response.)

25 CHAIRMAN CASTRO: If not --

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1 COMMISSIONER KLADNEY: Yes.

2 CHAIRMAN CASTRO: Oh. Yes?

3 COMMISSIONER KLADNEY: This is Kladney.

4 CHAIRMAN CASTRO: Commissioner Kladney,
5 what do you have to say?

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

10 COMMISSIONER GAZIANO: Because then it
11 makes it difficult for us to meet our September
12 schedule that everyone wants to with our statements.

13 CHAIRMAN CASTRO: Yes. The longer we
14 wait, the more difficult it is. And it seems like
15 the 21st --

16 COMMISSIONER KLADNEY: I thought we had
17 two weeks.

18 CHAIRMAN CASTRO: Well, the 22nd, the
19 23rd, and 24th, and the 25th don't work for
20 everybody here. Two weeks is just --

21 COMMISSIONER KLADNEY: I know. But two
22 weeks would be like two weeks from tomorrow.

23 COMMISSIONER GAZIANO: But we would have
24 less time if findings and recs were --

25 CHAIRMAN CASTRO: What Commissioner

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

5 COMMISSIONER GAZIANO: The backup is --

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

8 COMMISSIONER GAZIANO: Oh, I see.

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

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

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

21 COMMISSIONER GAZIANO: Okay.

22 CHAIRMAN CASTRO: All right.

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

25 CHAIRMAN CASTRO: I know. I know. It

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1 will be done today. So --

2 STAFF DIRECTOR SALLO: If I may, staff
3 is already --

4 CHAIRMAN CASTRO: Yes?

5 STAFF DIRECTOR SALLO: -- looking into
6 it.

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

10 COMMISSIONER KLADNEY: May I interject?

11 CHAIRMAN CASTRO: Go ahead.

12 COMMISSIONER KLADNEY: What's the exact
13 motion?

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

16 COMMISSIONER GAZIANO: Roughly.
17 Hopefully it's clear enough in the record that we
18 are postponing further action on findings and
19 recommendations until the July 21, where at 8:00
20 p.m. Eastern, all commissioners will make a good
21 faith effort to participate by phone. If there is a
22 failure of any commissioner to participate who wants
23 to participate, I'll even add, then the further
24 consideration of findings and recommendations will
25 be done shortly thereafter by notational vote.

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1 CHAIRMAN CASTRO: Okay. So I'm going to
2 take a roll call vote on this. Commissioner --

3 VICE CHAIR THERNSTROM: I couldn't hear
4 you.

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

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

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

14 COMMISSIONER GAZIANO: I don't think so.

15 COMMISSIONER ACHTENBERG: No?

16 CHAIRMAN CASTRO: No. We asked about
17 that.

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

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

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

25 COMMISSIONER ACHTENBERG: You did. No

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1 worries.

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

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

9 VICE CHAIR THERNSTROM: Yes.

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

12 COMMISSIONER GAZIANO: Yes.

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

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

18 CHAIRMAN CASTRO: Yes.

19 COMMISSIONER HERIOT: Right. Yes. I
20 vote yes.

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

23 COMMISSIONER ACHTENBERG: I vote yes.

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

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1 COMMISSIONER KLADNEY: No.

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

4 COMMISSIONER YAKI: Abstain.

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

7 COMMISSIONER KIRSANOW: Yes.

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

11 - STATUS UPDATE ON

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

14 AND

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

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

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

25 STAFF DIRECTOR SALLO: Yes.

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

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

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

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

24 COMMISSIONER HERIOT: Chairman?

25 CHAIRMAN CASTRO: Yes? One second.

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1 COMMISSIONER HERIOT: What I am
2 concerned about is time for commissioner statements.
3 If we have time for commissioner statements, if we
4 have multiple reports out, it is a little difficult
5 to get the commissioner statements. So if we could
6 alter the schedules in ways that would allow us to
7 get these things done by the end of the year without
8 having two and three reports having to be written on
9 at the same time, remembering that the criminal
10 background one is the one that we really, really
11 have to get done by December.

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

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

20 CHAIRMAN CASTRO: Yes.

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

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1 STAFF DIRECTOR SALLO: I'll take that.
2 Once we vote on it next month, we can definitely
3 address that.

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

6 (No response.)

7 IV. MANAGEMENT AND OPERATIONS

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

12 - STAFF DIRECTOR'S REPORT

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

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

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1 to them.

2 I also wanted to bring to everyone's
3 attention that on Tuesday, the House CJS
4 Appropriations Committee released their 2014, fiscal
5 2014, budget. And for the Commission on Civil
6 Rights, they have proposed to provide us with
7 \$8,763,000 maintaining the status quo, but they did
8 not include in their language that we would have an
9 IG.

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

13 The Senate CJS appropriations are set up
14 for subcommittee markup on Tuesday, July 16th. At
15 10:00 a.m., they have yet to release their
16 appropriations bill. They normally do that the day
17 of markup. So I wanted to bring that to everyone's
18 attention.

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

25 We have circulated the SAC status

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1 appointment, a chart that I do circulate every
2 month. And I just wanted to highlight that before
3 this year ends, calendar year, not fiscal year, we
4 have five SACs that are coming up for reappointment.
5 That would be Oklahoma, which expires on August
6 23rd; Georgia, which expires on September 13th;
7 California, expires on 10-30; Arizona and Nebraska,
8 expire on November 29th. So if anyone has any ideas
9 as to who might be interested in receiving an
10 application, please advise. And we will go ahead
11 and move forward in contacting them.

12 COMMISSIONER HERIOT: Mr. Chairman?

13 CHAIRMAN CASTRO: Yes, Commissioner?

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

17 CHAIRMAN CASTRO: Madam Staff Director?

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

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

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

24 COMMISSIONER HERIOT: Okay.

25 CHAIRMAN CASTRO: Any other questions

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1 for the Staff Director?

2 (No response.)

3 CHAIRMAN CASTRO: None? Okay. Thank
4 you.

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

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

10 CHAIRMAN CASTRO: Good.

11 - ACTING CHIEF OF REGIONAL PROGRAMS' REPORT

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

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

25 And then today we have put together

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1 patched versions of the SAC handbook; the current
2 versions of the EA-57 and 59; the unified SAC
3 charter, which charters off all 51 Advisory
4 Committees; some individual regional documents
5 regarding their operations that they have put
6 together as regions.

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

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

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

21 (No response.)

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

24 MR. MUSSATT: Thank you.

25 V. APPROVAL OF STATE ADVISORY COMMITTEE

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APPOINTMENT SLATES

CHAIRMAN CASTRO: Thank you.

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

- KENTUCKY

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

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

Do I have a second on my motion?

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1 COMMISSIONER ACHTENBERG: Second.

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

4 VICE CHAIR THERNSTROMSTROM: Yes.

5 CHAIRMAN CASTRO: Commissioner Kirsanow?

6 COMMISSIONER KIRSANOW: Yes.

7 CHAIRMAN CASTRO: Commissioner Heriot?

8 COMMISSIONER HERIOT: Yes.

9 CHAIRMAN CASTRO: Commissioner Gaziano?

10 COMMISSIONER GAZIANO: I abstain.

11 CHAIRMAN CASTRO: Commissioner
12 Achtenberg?

13 COMMISSIONER ACHTENBERG: Yes.

14 CHAIRMAN CASTRO: Commissioner Yaki?

15 COMMISSIONER YAKI: Yes.

16 CHAIRMAN CASTRO: Commissioner Kladney?

17 COMMISSIONER ACHTENBERG: Yes.

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

20 - MINNESOTA

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

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1 Kenneth Doyle, Phillip A. Duran, Kirk Kilbo, Velma
2 Korbel, Nakima Levy-Pounds, Loretta Munoz, Teresa
3 Nelson, Seamus O'Meara, and Craig Taylor.

4 Pursuant to this motion, the Commission
5 appoints Nakima Levy-Pounds as Chair of the
6 Minnesota State Advisory Committee. These members
7 will serve as uncompensated government employees.
8 Under this motion, the Commission authorizes the
9 Staff Director to execute the appropriate paperwork
10 for the appointments.

11 Do I have a second?

12 COMMISSIONER ACHTENBERG: Second.

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

15 VICE CHAIR THERNSTROM: Yes.

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

18 COMMISSIONER KIRSANOW: Yes.

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

21 COMMISSIONER HERIOT: Abstain.

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

24 COMMISSIONER GAZIANO: No.

25 CHAIRMAN CASTRO: Commissioner

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1 Achtenberg, how do you vote?

2 COMMISSIONER ACHTENBERG: Yes.

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

5 COMMISSIONER YAKI: aye.

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

8 COMMISSIONER KLADNEY: Yes.

9 CHAIRMAN CASTRO: And I vote yes. The
10 motion passes with six yeases, one no, and one
11 abstention.

12 - NEW HAMPSHIRE

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

24 Pursuant to this motion, the Commission
25 appoints JerriAnne Boggis as Chair of the New

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1 Hampshire State Advisory Committee. These members
2 will serve as uncompensated government employees.
3 Under this motion, the Commission authorizes the
4 Staff Director to execute the appropriate paperwork
5 for the appointments.

6 Do I have a second on my motion?

7 COMMISSIONER ACHTENBERG: Second.

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

10 VICE CHAIR THERNSTROM: Yes.

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

13 COMMISSIONER KIRSANOW: Yes.

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

16 COMMISSIONER HERIOT: Abstain.

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

19 COMMISSIONER GAZIANO: Yes.

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

22 COMMISSIONER ACHTENBERG: Yes.

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

25 COMMISSIONER YAKI: Aye.

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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. The
5 motion passes with one abstention.

6 - NEW YORK

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

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

24 Do I have a second?

25 COMMISSIONER ACHTENBERG: Second.

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

3 VICE CHAIR THERNSTROM: Yes.

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

6 COMMISSIONER KIRSANOW: Yes.

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

9 COMMISSIONER HERIOT: Yes.

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

12 COMMISSIONER GAZIANO: No.

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

15 COMMISSIONER ACHTENBERG: Yes.

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

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

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1 second?

2 COMMISSIONER ACHTENBERG: Second.

3 CHAIRMAN CASTRO: All those in favor say

4 "Aye."

5 (Whereupon, there was a chorus of

6 "Ayes.")

7 CHAIRMAN CASTRO: Opposed?

8 (No response.)

9 CHAIRMAN CASTRO: Abstentions?

10 (No response.)

11 CHAIRMAN CASTRO: Okay. Thank you,

12 everybody. We'll talk soon.

13 (Whereupon, the foregoing matter was

14 concluded at 12:33 p.m.)

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