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## U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION BUSINESS MEETING **UNEDITED**

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FRIDAY, JUNE 17, 2016

+ + + + +

The Commission convened in Suite 1150 at  
1331 Pennsylvania Avenue, Northwest, Washington, D.C.  
at 12:30 p.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

PATRICIA TIMMONS-GOODSON, Vice Chair

ROBERTA ACHTENBERG, Commissioner\*

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner\*

DAVID KLADNEY, Commissioner\*

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner\*

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

\* *Present via telephone*

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## STAFF PRESENT:

PAMELA DUNSTON, Chief, ASCD

JENNIFER CRON-HEPLER, Parliamentarian

ANGELA FRENCH-BELL

DARREN FERNANDEZ

LATRICE FOSHEE

SEAN GOLIDAY

GERSON GOMEZ

ALFREDA GREENE

DAVID MUSSATT, Director, RPU

MARCLE NEAL

LENORE OSTROWSKY

TINALOUISE MARTIN

JUANDA SMITH

## COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

ALISON SOMIN

KIMBERLY TOLHURST

IRENA VIDULOVIC

## INTERNS PRESENT:

MALIK BROWN, Intern, OCRE

SARAH CHILD, Intern

JESSICA DAVIS, Intern

SCOTT DAWNSON, Intern ERO

DELANEY EARLEY, Intern, MWRO

MARSHALL HATCH, Intern, MWRO\*

HSIN-YUN HAN, Intern

WEISIYU JIANG, Intern

MARY KENAH, Intern

COLIN MULLER, Intern, SRO

SARAHBETH RANGIAH, Intern, OCRE

NICHOLAS REYNOLDS, Intern, OCRE

ANDRES URIARTE, Intern, OGC

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

(12:32 p.m.)

1  
2  
3 CHAIRMAN CASTRO: Calling this meeting to  
4 order. This is a meeting of the U.S. Commission on  
5 Civil Rights. It is our regular monthly meeting. The  
6 time is currently 12:32 p.m. Eastern Time. The meeting  
7 is taking place at our headquarters here in Washington,  
8 D.C. at 1331 Pennsylvania Avenue NW.

9 I am Marty Castro, chairman of the  
10 Commission. Commissioners who are present with me at  
11 this meeting are the vice chair, Vice Chair  
12 Timmons-Goodson; Commissioner Heriot; and  
13 Commissioner Narasaki. Commissioners Achtenberg and  
14 Yaki and Kirsanow are on the phone and will soon be  
15 joined by Commissioner Kladney. Is Commission  
16 Kirsanow on the phone? We will certainly be joined by  
17 him shortly.

18 Nonetheless, we do have a quorum of  
19 Commissioners present. Is the court reporter present?

20 THE COURT REPORTER: I am.

21 CHAIRMAN CASTRO: She is. Is the staff  
22 director present?

23 MR. MORALES: I am present.

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

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1           Before we move forward with the approval  
2 of the agenda, and we have some agenda amendments as  
3 well, I want to just do a couple of things.

4           First and foremost, I want to ask us to  
5 consider what happened recently in Orlando. The  
6 Commission, I am very proud to say, issued a unanimous  
7 and bipartisan statement in the wake of that condemning  
8 the loss of life, condemning not only the act of terror  
9 that it is, but also the act of hate that it is targeting  
10 LGBT community, LGBT Latino communities.

11           And what I would like for us to do before  
12 we get the formal program started is to have a moment  
13 of silence in memory of those that have been lost and  
14 who are injured as a result.

15           Thank you. And again, before we begin the  
16 program, there is actually a brighter side of something  
17 we would like to be able to share with all of you. Our  
18 Commission is a small but tough one, and we are very  
19 fortunate that this time of year, we get an influx of  
20 some additional support to help us meet our mission,  
21 and we have had working with us as Commissioners and  
22 our special assistants as well as other entities within  
23 the agency, other departments within the agency, a  
24 group of interns, student interns, that have been with  
25 us this summer and who are going to be with us throughout

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1 the course of the summer, and I just want to acknowledge  
2 their presence and the work that they've been doing for  
3 us here.

4 They are among the brightest minds in our  
5 law schools and our colleges, and so we want to thank  
6 them for being part of our Commission team this summer.  
7 So I am going to identify those of you that are in the  
8 audience. If you are in the audience, just stand up.  
9 I will also be identifying some that are working in our  
10 regional offices who obviously are not with us here  
11 today.

12 We have Sarah Child, is Sarah here? Mary  
13 Kenah; Jessica Davis; Hsin-Yun Han, also we know her  
14 as Ruby; and Weisiyu Jiang. We also have OCRE interns  
15 SarahBeth Rangiah; Nicholas Reynolds; and Malik Brown.  
16 Have I missed any of our interns?

17 Okay. Interning in the Office of the  
18 General Counsel is Andres -- sorry, Andre Uriarte. Is  
19 Andre here? We also have Scott Dawson interning in  
20 the Eastern Regional Office, and while Marshall Hatch  
21 and Delaney Earley are interning in our Chicago  
22 Regional Office, we want to thank them. And we also  
23 want to thank Colin Muller, who is interning in our  
24 Atlanta Regional Office.

25 So let's please give them all a round of

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1           applause and thank them for their --

2                           (Applause.)

3                           CHAIRMAN CASTRO: Did I lose my mic? No,  
4           there it is.

5   **Approval of Agenda**

6                           Now I want to move that we approve the  
7           agenda. Is there a second?

8                           COMMISSIONER NARASAKI: I second.

9                           CHAIRMAN CASTRO: Okay. We're going to  
10          have a number of amendments, so are there any  
11          amendments? I know some of you are going to be raising  
12          some, and then I'll have some as well, and we'll try  
13          to deal with them as a package.

14                          COMMISSIONER ACHTENBERG: Mr. Chairman?

15                          CHAIRMAN CASTRO: Yes, Commissioner  
16          Achtenberg?

17                          COMMISSIONER ACHTENBERG: I have an  
18          amendment to the agenda. I would ask that the  
19          replacement resolution that takes the place of the  
20          original resolution that was submitted to commemorate  
21          LGBT Pride Month be placed on the agenda, and that the  
22          motion to adopt that would also include directions to  
23          the staff director to send out an appropriate press  
24          release upon adoption of the resolution.

25                          CHAIRMAN CASTRO: Okay. Are there other

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1 amendments?

2 COMMISSIONER KLADNEY: Mr. Chairman, Dave  
3 Kladney here. I would like to amend the agenda to  
4 include the statements from Jack Johnson requesting a  
5 pardon 70 years after his death last week regarding the  
6 one year and one day prison sentence that he was  
7 sentenced to --

8 CHAIRMAN CASTRO: Okay.

9 COMMISSIONER KLADNEY: -- many years ago.

10 CHAIRMAN CASTRO: All right.

11 COMMISSIONER KLADNEY: And I was  
12 wondering Mr. Chairman if that could go further up the  
13 agenda, only because I wanted to make a mention of that.

14 CHAIRMAN CASTRO: All right. What we'll  
15 do is we'll take that right after we amend the agenda.  
16 That way, we can get that out of the way for you. I  
17 know you're -- you're abroad, and it will be easier for  
18 us to do that.

19 Then I have two amendments. One is to add  
20 the discussion and vote on letters to the federal  
21 agencies from the Commission involving the state-level  
22 immigration enforcement report from our State Advisory  
23 Committee in Nebraska, as well as adding an additional  
24 state for consideration today in our SAC package. That  
25 would be the State of Washington.

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1                   So we have four amendments. Can I get a  
2 group second on those?

3                   COMMISSIONER NARASAKI: I second.

4                   CHAIRMAN CASTRO: Okay. So all those in  
5 favor of the agenda as amended, signify by saying aye.

6                   (Chorus of ayes.)

7                   CHAIRMAN CASTRO: Okay. Any opposed?

8                   (No audible response.)

9                   CHAIRMAN CASTRO: Any abstentions?

10                  COMMISSIONER HERIOT: I abstain.

11                  CHAIRMAN CASTRO: Okay. So we have one  
12 abstention from Commissioner Heriot, let the record  
13 reflect that.

14                  So before we get into formal program  
15 planning, then, let us deal with the Jack Johnson --

16                  COMMISSIONER YAKI: I am sorry, Mr.  
17 Chairman. I have to recuse myself from the Nebraska  
18 issue, so I am going to have to abstain on that vote  
19 as well.

20                  CHAIRMAN CASTRO: Okay. Please let the  
21 record reflect Commissioner Yaki also abstains. It  
22 still passes with an overwhelming majority.

23                  Commissioner Kladney, you have the floor  
24 on the Jack Johnson statement.

25                  COMMISSIONER KLADNEY: Thank you, Mr.

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1 Chairman.

2 **Statement on the Pardon of Jack Johnson**

3 COMMISSIONER KLADNEY: Commissioner  
4 Kirsanow and I are sponsoring the statement regarding  
5 Jack Johnson. He was the first African American  
6 heavyweight champion. He defied the Jim Crow laws and  
7 paid the price by being sentenced to prison for a year  
8 and a day. We distributed the proposed statement a  
9 couple of days ago, and I would request a vote. But  
10 before that, I would ask that my assistant, Amy Royce,  
11 read the statement into the record.

12 CHAIRMAN CASTRO: Okay. Do we have a  
13 second?

14 COMMISSIONER HERIOT: Second.

15 CHAIRMAN CASTRO: Any discussion?

16 (No audible response.)

17 CHAIRMAN CASTRO: Any discussion?

18 (No audible response.)

19 CHAIRMAN CASTRO: Go ahead, read it into  
20 the record.

21 MS. ROYCE: Seventy years ago this week,  
22 John Arthur "Jack" Johnson died in a car accident on  
23 June 10th, 1946. Mr. Johnson, the son of former  
24 slaves, rose to become boxing's heavyweight champion  
25 of the world in 1908 and was inducted into the Boxing

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1 Hall of Fame in 1954.

2 An outspoken and controversial figure in  
3 his day, Mr. Johnson was initially denied the  
4 opportunity to fight for the heavyweight title because  
5 the championship was closed to African Americans. He  
6 was a fierce critic of Jim Crow laws and the prevailing  
7 enforced customs of racial segregation.

8 After he gained the title, white Americans  
9 began a search for a white boxer who could defeat Mr.  
10 Johnson, an effort dubbed "The Search for the Great  
11 White Hope." Jim Jeffries, an undefeated former  
12 champion, agreed to come out of retirement to fight Mr.  
13 Johnson as a result of this search. Mr. Johnson's  
14 victory in that fight sparked riots across the country,  
15 as white mobs attacked and murdered African Americans.

16 Racial resentment against Mr. Johnson was  
17 heightened by his relationships with white women. On  
18 October 18th, 1912, he was arrested on a charge that  
19 his relationship with a white woman, Lucille Cameron,  
20 violated the Mann Act, which prohibited interstate and  
21 foreign transportation of women and girls for immoral  
22 purposes. Ms. Cameron refused to cooperate with the  
23 prosecution, and the two married shortly thereafter.

24 Mr. Johnson was arrested less than a month  
25 later on charges stemming from his relationship with

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1 a different white woman years earlier. He was  
2 convicted by an all-white jury in 1913 and sentenced  
3 to one year and one day in federal prison.

4 Mr. Johnson fled the country to avoid  
5 prison. He lost the heavyweight title in 1915 and  
6 returned to the United States in 1920. He turned  
7 himself over to federal authorities and served out his  
8 sentence. He never regained the championship title.

9 Congress has repeatedly called for the  
10 President to posthumously pardon Mr. Johnson for the  
11 racially motivated conviction he endured. Most  
12 recently, the Senate, with the concurrence of the House  
13 of Representatives, passed a resolution calling for his  
14 pardon on December 9th, 2015. Today, 70 years after  
15 his death, the U.S. Commission on Civil Rights joins  
16 the 114th Congress in requesting the President to right  
17 this century-old wrong.

18 As W.E.B. DuBois said, "The reason Jack  
19 Johnson was so beset by his own country, a country  
20 ironically which had only recently reaffirmed that all  
21 men were created equal, was because of his unforgivable  
22 blackness." President Obama should pardon Mr.  
23 Johnson.

24 CHAIRMAN CASTRO: Thank you, Amy. Any  
25 questions or any additional discussion? Commissioner

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1 Heriot?

2 COMMISSIONER HERIOT: I would just like to  
3 say something about this. I think that Jack Johnson's  
4 -- the case of Jack Johnson is a good example of the  
5 problems that occur when Congress passes legislation  
6 that is worded in vague ways. It becomes abused then  
7 by enforcement officers who want that law to mean what  
8 they want it to mean at the time. So I very much --  
9 I very much endorse this statement, and I look forward  
10 to voting for it.

11 CHAIRMAN CASTRO: Thank you, Commissioner  
12 Heriot. Any other Commissioners wish to say anything?

13 COMMISSIONER YAKI: Mr. Chair, it's  
14 Commissioner Yaki.

15 CHAIRMAN CASTRO: Yes.

16 COMMISSIONER YAKI: I remember reading  
17 about Jack Johnson as a young man and seeing the movie  
18 "The Great White Hope" with James Earl Jones as a  
19 teenager, but I saw it in the context of a time when  
20 a young, brash African American boxer was also in the  
21 mix of turmoil led by government prosecution, and that  
22 was Muhammad Ali.

23 And I can't help but think about -- about  
24 this today without also thinking about Muhammad Ali and  
25 what he was able to do that Jack Johnson could not do,

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1 you know, nearly 100 years -- 100 years ago, in terms  
2 of taking defiance of a law and turning it into a symbol,  
3 a symbol for -- for all African Americans, a symbol for  
4 all Americans, a symbol for a generation.

5 And I mourn his passing as much as I -- as  
6 much and more than thinking about how -- how much we  
7 have to do to right an injustice with a pardon for Jack  
8 Johnson. While I fully support this, I cannot help but  
9 remember with fondness and sadness and great pride the  
10 passing last week of Muhammad Ali.

11 CHAIRMAN CASTRO: Thank you, Commissioner  
12 Yaki. Our vice chair has something to say?

13 VICE CHAIR TIMMONS-GOODSON: Yes. Mr.  
14 Chairman, it was my understanding that the last  
15 sentence was to read "We strongly urge President Obama  
16 to pardon Jack Johnson." I believe that is different  
17 from what was read?

18 CHAIRMAN CASTRO: What is the difference?  
19 So you read the wrong version? Okay. So the correct  
20 version will end with?

21 VICE CHAIR TIMMONS-GOODSON: The last  
22 sentence, instead of "President Obama should," I  
23 believe now reads actually "We strongly urge President  
24 Obama to pardon -- "

25 CHAIRMAN CASTRO: Okay.

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1 VICE CHAIR TIMMONS-GOODSON: " -- Jack  
2 Johnson."

3 CHAIRMAN CASTRO: Okay. All right. Any  
4 other -- any other comments or questions from  
5 Commissioners?

6 (No audible response.)

7 CHAIRMAN CASTRO: If not, I'm going to  
8 call the question.

9 Is Commissioner Kirsanow on the line yet?  
10 In case you wanted to say something, I know this was  
11 a joint effort, Commissioner Kirsanow? No? All  
12 right. He will come on later. Commissioner Heriot,  
13 how do you vote? Is that you, Commissioner Kirsanow?  
14 No? Commissioner Heriot, how do you vote?

15 COMMISSIONER HERIOT: I vote yes.

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

18 COMMISSIONER NARASAKI: I vote yes.

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

21 COMMISSIONER KLADNEY: Yes.

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

24 COMMISSIONER ACHTENBERG: Yes.

25 CHAIRMAN CASTRO: Madam Vice Chair, how do

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1 you vote?

2 VICE CHAIR TIMMONS-GOODSON: Yes.

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

5 COMMISSIONER YAKI: Aye.

6 CHAIRMAN CASTRO: And I vote yes. It  
7 passes unanimously. Thank you.

8 COMMISSIONER KLADNEY: Mr. Chairman?

9 CHAIRMAN CASTRO: Yes sir.

10 COMMISSIONER KLADNEY: Can we send this  
11 statement to the White House?

12 CHAIRMAN CASTRO: Yes, we can. We will  
13 have it put in letter form and signed, and then we can  
14 probably the next week maybe issue a press release along  
15 with it, okay?

16 COMMISSIONER KLADNEY: Thank you very  
17 much, Mr. Chairman.

18 CHAIRMAN CASTRO: You're welcome. Thank  
19 you. Thank you in absentia Commissioner Kirsanow for  
20 raising the issue.

21 **Discussion of Proposed Concept Papers for 2017**

22 **Statutory Enforcement Report**

23 Next, I would like to move on to a  
24 discussion on the proposed concept papers for the 2017  
25 Statutory Enforcement Report. I believe we have four

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1 that have been submitted by Commissioners. I want to  
2 give everyone a chance to discuss their paper. While  
3 I don't have and I did not plan for us to vote on this  
4 today, I thought we'd vote on it in July, but, you know,  
5 if Commissioners are inclined today to take action, I  
6 am sure we could do that. But initially, the thought  
7 was, as we've done in the past, kind of get through these  
8 reports and these proposals and have folks present  
9 their arguments in favor of them.

10 So why don't we do that first, and then  
11 we'll see where we go next? The first -- why don't we  
12 -- Commissioner Kirsanow is not here, so I'm going to  
13 skip his papers for now. Commissioner Heriot, you have  
14 a proposal on the potential misuse of settlement  
15 agreements and consent decrees in civil rights  
16 enforcement. If you could present that?

17 COMMISSIONER HERIOT: Actually, my  
18 understanding is the fix is in on this, and that this  
19 one is not going to be voted in. If you want me to spend  
20 time talking about it, I will, but --

21 CHAIRMAN CASTRO: Well, we'll see --

22 COMMISSIONER HERIOT: -- I had understood  
23 that people were behind one of the other concept papers,  
24 and we might be able to move things along more quickly  
25 if we do that.

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1                   CHAIRMAN CASTRO: Well I wouldn't say the  
2                   fix is in, but, you know, clearly there is a thought  
3                   that many of us are progressives, and the Commissioner  
4                   who put forward the most progressive proposal is  
5                   Commissioner Achtenberg, that I know. Some of us  
6                   intend to vote that way. I don't know what the numbers  
7                   are going to be. But I also, as always, want to give  
8                   --

9                   COMMISSIONER HERIOT: I hereby fall on my  
10                  sword --

11                  CHAIRMAN CASTRO: -- give you the  
12                  opportunity --

13                  (Laughter.)

14                  CHAIRMAN CASTRO: -- okay. Would -- so  
15                  Commissioner Kirsanow is not here to fall on his, so  
16                  I don't know how you'd like to proceed, but Commissioner  
17                  Achtenberg, since you're the only other Commissioner  
18                  present who has a proposal, would you please proceed  
19                  with your discussion?

20                  COMMISSIONER ACHTENBERG: I am burnishing  
21                  my sword, Mr. Chairman.

22                  I would like to propose that the Commission  
23                  examine the status of women in prison, whether or not  
24                  they -- they endure disparate treatment, whether that  
25                  treatment results or does not result in disparate

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1 impacts, and whether or not the Bureau of Prisons in  
2 particular would have a statutory duty of care  
3 determining the ways in which that -- the Bureau of  
4 Prisons is or is not exercising its duty of care with  
5 regard to its female prisoners, which would include --  
6 there is a healthy amount of literature on the topic.

7 Although this topic is an issue of first  
8 impressions for our Commission, though our state  
9 advisory committees, I am told a few of them have  
10 considered this topic in years past. We have for the  
11 Commissioners' consideration a list of questions,  
12 although in the way these things usually unfold,  
13 certainly the staff will be adding to and detracting  
14 from the list that I have presented here.

15 It is therefore illustrative in that  
16 respect, although I do think any basic examination of  
17 this topic would need to include comparisons of the  
18 disciplinary measures; comparisons of healthcare to  
19 the extent that healthcare is being provided; not  
20 comparisons, but the extent to which the particular  
21 health requirements of women are being met as would be  
22 incumbent upon the Bureau of Prison as it exercises its  
23 basic duty of care; and a host of other questions as  
24 delineated in the paper.

25 This is -- we have hundreds of thousands

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1 of women are incarcerated, both in the federal system  
2 and in numerous state systems, and while we don't have  
3 the resources, nor would it be appropriate, for us to  
4 examine every state system, to the extent that the staff  
5 determines that there are safe either practices that  
6 should be illuminated in this -- in this discussion,  
7 or best practices, if you will, when it comes to the  
8 recommendations section, I would propose to authorize  
9 the staff to look into those practices as appropriate.

10 The -- I would only add additionally, and  
11 then I'm happy to answer any questions, two things.  
12 One is that I am anticipating a slightly more expanded  
13 version of this concept paper for your consideration  
14 unless people decide they want to -- I hadn't assumed  
15 we were going to adopt it today. I thought that I would  
16 provide a more expanded version of this for people's  
17 consideration in July.

18 The other thing I wanted the Commission to  
19 entertain is the possibility that, if we were to adopt  
20 this paper, we might also consider doing a field hearing  
21 on the topic at an -- a site appropriately selected by  
22 the staff if this research is allowed.

23 CHAIRMAN CASTRO: Commissioner  
24 Achtenberg, it's the chair. I misspoke when I said we  
25 could vote today. Actually, I forgot that our Office

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1 of General Counsel wants to review for jurisdictional  
2 and other --

3 COMMISSIONER ACHTENBERG: Sure.

4 CHAIRMAN CASTRO: -- purposes these so  
5 that we can vote on them in July, so there will not be  
6 a vote today. I got ahead of myself there.

7 COMMISSIONER ACHTENBERG: Sure.

8 CHAIRMAN CASTRO: Commissioner Narasaki?

9 COMMISSIONER NARASAKI: Yes.

10 Commissioner Achtenberg, I am curious as to how it might  
11 be expanded. One of the issues that I have been asked,  
12 that the chair and I were asked by members of Congress,  
13 is whether we would consider looking at the -- whether  
14 there's disparate impact in terms of how women are being  
15 sentenced.

16 COMMISSIONER ACHTENBERG: Well, let me  
17 just say that the commission of crime and sentencing  
18 severity, it is a whole topic unto itself. I mean,  
19 whereas conditions of imprisonment -- I mean, if, you  
20 know, I mean if you thought somehow we had the resources  
21 to entertain both -- both studies, I don't know that  
22 this specifically does not include the question of, you  
23 know, how many crimes do women commit and what crimes  
24 do they commit and -- and sentencing disparities as  
25 well.

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1 I -- I tried to limit it. I'm not  
2 suggesting that if the Congress wants it looked at, we  
3 couldn't look at it, but that isn't currently what this  
4 is -- what this is focused on.

5 CHAIRMAN CASTRO: Yes, that might be a --

6 COMMISSIONER KLADNEY: Mr. Chairman?

7 CHAIRMAN CASTRO: Yes, Commissioner  
8 Kladney, then Commissioner Heriot. Go ahead.

9 COMMISSIONER KLADNEY: I believe if we add  
10 that to the statement, at least the two lines, I mean,  
11 this is part of the -- I think part of the issue that  
12 we've had because topics get so enlarged that they are  
13 very difficult to handle. This is a very statistical  
14 type of proposal, and I think limiting the subject  
15 matter to what was proposed, I mean by Commissioner  
16 Achtenberg, would lead to a much better report.

17 CHAIRMAN CASTRO: Thank you, Commissioner  
18 Kladney. Commissioner Heriot?

19 COMMISSIONER HERIOT: I concur with  
20 Commissioner Kladney that extending this -- and  
21 Commissioner Achtenberg -- would be a mistake. I think  
22 that the error that we make on the Commission year after  
23 year after year is to -- to try to take on more than  
24 we can actually digest well, that we need to always,  
25 always, always remember modesty here. And if we take

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1 -- we have a modest goal, we have a fighting chance of  
2 turning out a report that is going to be worth the read  
3 when members of Congress turn to read it.

4 I do, however, believe that if we're going  
5 to take on the issue of whether or not women as a group  
6 as prisoners are being treated unequally, that we have  
7 to be prepared to take the evidence where it leads us.  
8 And so there are ways in which women's prisons may be  
9 superior to men's prisons, and the area of personal  
10 safety I think is the area that people usually mention  
11 in this regard.

12 Very often, what you hear is that in  
13 women's prisons, the array of vocational education  
14 opportunities is less extensive than what it is for  
15 men's prisons, but on the other hand, personal safety  
16 is greater. If we're going to take on all the issues  
17 comparing women's prisons to men's prisons, I think we  
18 have to take on the personal safety issue as well.

19 We might want to make a decision to go for  
20 just one very targeted area rather than five or six.  
21 Again, every time we take on a topic, what happens is  
22 it turns out to be bigger than we thought it would be,  
23 and we end up being much more superficial than I think  
24 we should be. If we took on simply women's prisons,  
25 vocational education, that I think would be a better

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1 report than one that takes on a few different aspects.

2 CHAIRMAN CASTRO: Yes, and some can argue  
3 things that we've heard, that safety of women prisoners  
4 is worse because they're more often raped by guards and  
5 --

6 COMMISSIONER HERIOT: Maybe.

7 CHAIRMAN CASTRO: -- and --

8 COMMISSIONER HERIOT: That's why it's  
9 worth investigating.

10 CHAIRMAN CASTRO: Yes. So any other  
11 comments, questions on this?

12 CHAIRMAN CASTRO: Okay. Go ahead. Was  
13 that you, Commissioner Achtenberg?

14 COMMISSIONER ACHTENBERG: I am going to  
15 observe that I agree with Commissioner Heriot to the  
16 extent that we need to take the evidence where it leads,  
17 and should that be in any particular instance that  
18 women's treatment is superior to that of men, then so  
19 be it. This doesn't presuppose a particular  
20 conclusion.

21 On the other hand, I would be most  
22 reluctant, and I believe Commissioner Kladney as well,  
23 as my coauthor, would be most reluctant, to limit this  
24 only to something like the vocational programs  
25 available to women as compared to those available to

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1 men.

2 CHAIRMAN CASTRO: Anything else on this  
3 topic?

4 (No audible response.)

5 CHAIRMAN CASTRO: If not, Commissioner  
6 Kirsanow, have you rejoined us? I understand he might  
7 have been on the wrong line?

8 COMMISSIONER KIRSANOW: Yes, I am here.

9 CHAIRMAN CASTRO: Okay. We have two  
10 concept papers that you have. I don't know if you'd  
11 like to discuss them, or, as Commissioner Heriot did,  
12 she forewent hers, but I would encourage you to discuss  
13 yours if you are willing to.

14 COMMISSIONER KIRSANOW: Thank you, Mr.  
15 Chair.

16 I will just make it brief because my  
17 concept paper with respect to identifying and remedying  
18 discrimination against Asian Americans is one that  
19 we've previously talked about, and it's one where there  
20 has been a recent development insofar as some students  
21 have filed complaints against some Ivy League schools  
22 alleging discrimination on the basis of race in  
23 admissions and I believe some other criteria also.

24 I think it remains timely, and it is  
25 something that we should ask of witnesses from say OCR

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1 and maybe Civil Rights Division as to what, if any,  
2 actions are being taken with respect to any potential  
3 -- or any complaints that have been filed. One was  
4 filed and dismissed by OCR, but the basis upon which  
5 such complaints may have been dismissed, the reasoning  
6 behind it, and/or whether or not there's any evidence  
7 of such discrimination, and also adduce evidence from  
8 universities as to the extent to which they engage in  
9 either preferences or discrimination on the basis of  
10 race.

11 CHAIRMAN CASTRO: Okay. Any questions  
12 for Commissioner Kirsanow on that concept paper?

13 (No audible response.)

14 CHAIRMAN CASTRO: Hearing none, would you  
15 describe your second one, Commissioner?

16 COMMISSIONER KIRSANOW: I will forgo  
17 that.

18 CHAIRMAN CASTRO: Pardon me?

19 COMMISSIONER HERIOT: He said he'll  
20 forgo.

21 CHAIRMAN CASTRO: Forgo it? Okay. So  
22 then what we will do is in July, we will vote on these  
23 papers and determine which one will be the 2017 concept  
24 paper for our Statutory Enforcement Report. In the  
25 interim, our Office of General Counsel will review them

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1 to ensure that all jurisdictional requirements, et  
2 cetera, are met so that the version that we do vote on  
3 in July is perfectly within our power to explore.

4 Okay. Next we move on to a discussion and  
5 vote on a letter or statement by the Commission in  
6 support of the Department of Education's Office of  
7 Civil Rights and the U.S. Department of Justice on  
8 transgender students and their protections under Title  
9 IX.

10 **Discussion and Vote Regarding Protections for**  
11 **Transgender Students under Title IX**

12 CHAIRMAN CASTRO: I would like to make a  
13 motion that we approve the letter, and then I would ask  
14 for a second, and then I'll read it so that we can  
15 discuss it.

16 So I make a motion that we approve. Is  
17 there a second?

18 COMMISSIONER NARASAKI: I second.

19 CHAIRMAN CASTRO: Commissioner Narasaki  
20 seconds. Let me read this into the record, and then  
21 we can discuss it. Everyone has already received a  
22 copy of this in advance, so I am not going to read the  
23 footnotes, but you have them in front of you.

24 The proposed statement would read, "The  
25 United States Commission on Civil Rights strongly

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1 supports the joint guidance set forth by the Department  
2 of Education's Office of Civil Rights and the  
3 Department of Justice on the protections for  
4 transgender students under Title IX of the Education  
5 Amendments Act of 1972.

6 Title IX of the Education Amendments Act  
7 of 1972, which we will refer to heretofore as Title IX,  
8 states 'No person in the United States shall, on the  
9 basis of sex, be excluded from participation in, be  
10 denied the benefits of, or be subjected to  
11 discrimination under any education program or activity  
12 receiving federal financial assistance.'

13 The Department of Education's Office for  
14 Civil Rights and the Department of Justice issued  
15 guidance stating that for the purposes of Title IX and  
16 its implementing regulations, 'The Departments treat  
17 a student's gender identity as the student's sex.'

18 To ensure nondiscrimination on the basis  
19 of sex, transgender students must be allowed to  
20 participate in activities, use facilities, and access  
21 housing consistent with their gender identities.  
22 Under Title IX and the Family Educational Rights and  
23 Privacy Act, a school is obligated to protect  
24 transgender students' privacy related to their  
25 transgender status. Schools are required to provide

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1 a safe and non-discriminatory environment, and, when  
2 harassment based on gender identity is discovered,  
3 'must take prompt and effective steps to end the  
4 harassment, prevent its reoccurrence, and, as  
5 appropriate, remedy its effects.'

6 The guidance put forth by the Department  
7 of Education and the Department of Justice reasonably  
8 interprets sex discrimination to necessarily include  
9 gender identity discrimination for purposes of  
10 compliance with Title IX. It is the logical outgrowth  
11 of voluntary resolutions into which both the  
12 Departments -- and within to which both Departments  
13 have entered into in prior litigation. It also serves  
14 as the correct foundation for the recent decision  
15 handed down by the Fourth Circuit that the Department's  
16 interpretation of its own regulations regarding  
17 restroom access by transgender individuals should be  
18 given deference.

19 On April 18th, 2016, the U.S. Commission  
20 on Civil Rights, by a majority vote, strongly condemned  
21 the recent state laws and proposals targeting members  
22 of the lesbian, gay, bisexual, and transgender  
23 community for discrimination, including North  
24 Carolina's legislation forcing transgender people to  
25 use public bathrooms based on sex and not according to

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1 their gender identities. These state laws attempting  
2 to nullify the protections of the Equal Protection and  
3 Due Process Clauses of the 14th Amendment to  
4 individuals based on their gender identity jeopardizes  
5 the dignity and physical safety of transgender people.

6 Today, we support the Departments' joint  
7 guidance on this issue. Commission Chair Martin R.  
8 Castro stated 'Transgender students have the same  
9 rights as other students. Transgender students  
10 present a threat to no one. These students are our  
11 children. Our schools must not be allowed to strip  
12 them of their dignity, and if our states fail to afford  
13 the students their rights, it is incumbent upon the  
14 federal government to intervene and protect those  
15 children.'

16 The Commission therefore stands with the  
17 Department of Education and the Department of Justice  
18 as they ensure the promise of fair educational  
19 opportunities for every student, regardless of their  
20 gender or transgender status."

21 I am happy to discuss this. Any  
22 questions? Commissioner Heriot, did you have a  
23 question?

24 COMMISSIONER HERIOT: For discussion?

25 CHAIRMAN CASTRO: Go ahead.

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1                   COMMISSIONER HERIOT:    I don't have a  
2 question.

3                   CHAIRMAN CASTRO:        Okay, go ahead,  
4 discuss.

5                   COMMISSIONER HERIOT:    I plan to vote  
6 against the motion. To put it plainly, I believe that  
7 the Department of Education is out of control on this  
8 issue. Its pronouncements are in no way tethered to  
9 actual law.

10                  Now, the Commission is following suit, and  
11 I believe this is an example of government bureaucrats  
12 pushing their own agenda and not Title IX. The  
13 recently announced transgender guidance requires  
14 schools across the country to allow intact anatomical  
15 boys who say they psychologically identify as girls to  
16 share toilet, locker room, and shower facilities with  
17 actual girls. It also requires that girls' athletic  
18 teams allow anatomically male students under certain  
19 circumstances to participate.

20                  Congress intended no such thing when it  
21 passed Title IX in 1972. That statute prohibits sex  
22 discrimination by federally funded schools, colleges,  
23 and universities, plain and simple. It makes an  
24 exception for separate living facilities, which was  
25 crystallized in a rule promulgated in 1975 which

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1 explicitly authorizes separate toilet, locker room,  
2 and shower facilities based on sex: actual sex, not the  
3 sex we might desire to be, and not gender, a different  
4 concept.

5 To make the claim that back in the 1970s,  
6 the 92nd Congress intended, or that the American people  
7 understood, Title IX to require schools to require  
8 anatomical boys who view themselves as girls to use  
9 girls' facilities would have been viewed as absurd.  
10 Indeed, the Department of Education doesn't even claim  
11 it.

12 Instead, the Department's argument,  
13 insofar as it has one, is that they just noticed that  
14 a 1989 Supreme Court case, Price Waterhouse v. Hopkins,  
15 requires this result. But no, it does not. Price  
16 Waterhouse concerned a woman who allegedly had not been  
17 promoted because she was perceived as too aggressive.  
18 The Court reasoned that if a male employee with the same  
19 aggressive personality would have been promoted, then  
20 she was indeed discriminated against on account of her  
21 sex, within the meaning of Title VII.

22 That is fine. But let's try to apply that  
23 same line of reasoning in connection with the  
24 transgender guidance. It does not work. Suppose a  
25 school who has a student who is anatomically male but

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1 identifies as female. Would that student be permitted  
2 to use the girls' facilities? If that student had been  
3 in fact a girl, yes, of course. But that is different  
4 from Price Waterhouse because Title IX and its  
5 implementing regulations explicitly permit schools to  
6 provide separate facilities based on sex.

7 More important, note that the same --  
8 applying that same logic would also prove too much.  
9 Consider instead the case of an anatomically male  
10 student who identifies as male, that is, a masculine  
11 male, if you will, a cisgender male. It is still true  
12 that if he had been female, he would be allowed to use  
13 the girls' facilities. And yet we know that under the  
14 regulations, under the statute, separate facilities  
15 based on sex are permitted. That takes the case  
16 outside the Price Waterhouse situation.

17 Now note what I am not saying here. First,  
18 I am not saying that a transgender student needs to  
19 conform to anybody's expectation with regard to sex.  
20 That is what freedom is all about. But I am also not  
21 saying that Title IX requires schools to have separate  
22 facilities based on sex, and by that, again, I mean  
23 anatomic or biological sex, for locker rooms and shower  
24 purposes. They are not required to do that. The  
25 statute simply authorizes them to do so.

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1           Given that sex discrimination was  
2 explicitly forbidden by Title IX, such an explicit  
3 authorization was necessary in order to allow the  
4 ordinary traditional separate facilities. But a  
5 school district is well within its rights to choose to  
6 have unisex facilities, or choose to have facilities  
7 based on gender rather than sex. So if they want to  
8 do it, they can.

9           What is inappropriate here is for the  
10 Department of Education to mandate that they must do  
11 it in a particular way. These schools are authorized  
12 under the actual Title IX, properly interpreted, to do  
13 it any number of ways, and sometimes, that is what is  
14 necessary, the kind of flexibility that you need.  
15 Sometimes in a particular school, particular school  
16 district, particular students, particular transgender  
17 students, you would want to allow that student to remain  
18 with that student's own anatomical sex group. Maybe  
19 they're not giving him a hard time. Maybe the opposite  
20 sex group would be. Maybe both groups will give that  
21 student a hard time, and the best thing to do is to  
22 provide a private facility like the faculty restroom  
23 or the faculty locker room.

24           But under the transgender guidance, that  
25 flexibility disappears, and instead, one size fits all.

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1 I very much object to this. I believe it is not  
2 authorized by Title IX, and I believe that this is a  
3 case of an out-of-control executive agency usurping the  
4 role of Congress to make policy. Title IX does not  
5 allow for this.

6 CHAIRMAN CASTRO: The alleged evolution  
7 and change here really isn't that. I think oftentimes,  
8 we see that how we interpret something today may be  
9 different than what we interpreted it to be in the past,  
10 but this is not an idea that has just popped up in the  
11 Department of Justice, the Department of Education, or  
12 even our head, because we actually were probably ahead  
13 of those agencies in condemning the North Carolina, and  
14 other, laws when we did this in April.

15 But if you really look back, there is a  
16 history of the -- this issue being addressed, not only  
17 by the EEOC, I know that Commissioner Kirsanow had  
18 raised some concerns that that shouldn't apply here,  
19 but also a number of cases that have been settled by  
20 the Departments on this basis. But if you look back,  
21 there is an excellent 1995 law review article from the  
22 University of Pittsburgh Law School entitled The  
23 Central Mistake of Sex Discrimination Law is the  
24 Disaggregation of Sex from Gender.

25 And there, it clearly talks about the

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1 interrelationship between gender identity and sex, and  
2 the inappropriateness of having disaggregated it,  
3 because they are interrelated, and they have the -- the  
4 same -- they should be treated the same for Title IX  
5 purposes, and that is what is happening today.

6 So this is not a concept that has just come  
7 up in the Obama administration that they wanted to  
8 pursue. This is a very thoughtful legal argument that  
9 has been here for almost 20 years, 21 years.

10 COMMISSIONER HERIOT: It is a profoundly  
11 --

12 CHAIRMAN CASTRO: And --

13 COMMISSIONER HERIOT: -- anti-democratic  
14 argument.

15 CHAIRMAN CASTRO: May I finish,  
16 Commissioner? I understand you have your point of  
17 view, and I want to respond to some of what you said,  
18 and then you will have an opportunity to reply if you'd  
19 like.

20 So what we have here is a situation in  
21 which, unfortunately, and I'm not saying you've done  
22 this, Commissioner, but a lot of the media discussion,  
23 a lot of the public policy discussion around this, is  
24 creating a sense of fear in our communities of our  
25 transgender children, our transgender citizens and

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1 fellow residents, a fear that is unfounded, a fear that  
2 somehow it is a danger to allow the transgender  
3 community to use the restrooms that are being required  
4 and mandated here, and that is just not true.

5 It hearkens back, unfortunately, to the  
6 early days of the segregation -- anti-segregation  
7 effort, when we were trying to create situations where  
8 black children and white children could use the same  
9 restroom, and there was a fear that mixing the races  
10 was going to be a threat to white women. And it's that  
11 same kind of fear that I see being created in this  
12 instance, which is not the case.

13 I think it is very clearly based on  
14 thoughtful legal analysis. I think the Fourth Circuit  
15 case is very reasonable in the discussion of what an  
16 agency can do when its regulations are ambiguous, and  
17 it tries to clarify those regulations, it has the right  
18 to legal deference.

19 And that is all we're saying here, and this  
20 is what the Department is saying, and that is why we're  
21 moving forward to make very clear that this Commission,  
22 the nation's conscience on civil rights, will support  
23 the protection of these transgender children.

24 Commissioner Narasaki, then Commissioner  
25 Heriot.

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1                   COMMISSIONER NARASAKI:    Thank you, Mr.  
2                   Chair.

3                   I had the opportunity to know and work with  
4                   Congressman Patsy Mink before she passed, and, as many  
5                   of you know, she was one of the leading voices that  
6                   helped produce Title IX.   And I could tell you without  
7                   a shred of doubt in my mind that Patsy would in fact  
8                   be very pleased with the interpretation of Title IX.

9                   One of the challenges for transgendered  
10                  kids is the kind of discrimination they face at schools.  
11                  82 percent of transgender youth report they feel unsafe  
12                  at school.   44 percent, almost half, have been pushed  
13                  or shoved or otherwise physically abused.   Two-thirds  
14                  have been bullied online.   Two-thirds have had their  
15                  property stolen or destroyed.

16                  There is a suicide rate of transgendered  
17                  youth which is 10 times the national average.   Over  
18                  five percent of the U.S. population has self-reported  
19                  a suicide.   That rate jumps to 10 to 20 percent for  
20                  lesbian, gay, bisexual respondents.   41 percent of  
21                  transgender, nonconforming people surveyed have  
22                  considered suicide.

23                  There is increased violence going on, as  
24                  the Chair has noticed.   72 percent of the hate violence  
25                  homicide victims were transgendered women in 2013.

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1 Transgendered women were almost four times more likely  
2 to experience police violence. Transgendered women  
3 are twice as likely to experience sexual violence. We  
4 have heard extensive testimony at our hearing on the  
5 Employment Nondiscrimination Act last year about the  
6 extensiveness of employment discrimination.

7 So I believe that the Department of  
8 Education was well within its interpretation of the  
9 law, and I very much welcome it. I think it is an  
10 important step forward to make sure that we are  
11 protecting our transgendered kids.

12 CHAIRMAN CASTRO: Commissioner Heriot,  
13 you said you had something else you wanted to add?

14 COMMISSIONER HERIOT: I again will  
15 emphasize the same point. If you want different policy  
16 on this issue, going to Congress to get that different  
17 policy is perfectly permissible. But for an executive  
18 agency to take a statute that is very clear on its face  
19 -- it refers to sex. There is no doubt whatsoever that  
20 in 1972, when that statute passed, Congress meant sex  
21 not in the sense of gender. And in fact, the term  
22 "gender" was adopted precisely because it means  
23 something different from "sex." We use the word "sex"  
24 to refer to the biological, anatomical side of this  
25 issue, and we use "gender" to talk about the cultural

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1 side of it so that someone who is anatomically male may  
2 nevertheless say, hey, I identify with -- with the --  
3 the feminine side. I regard my gender as female, but  
4 my sex as male.

5 But that term was used in a very different  
6 way and meant to be a distinct category from sex. And  
7 for decades, we went on with that notion that gender  
8 is something different from sex. And now, suddenly,  
9 surprise, we're told it's the same. But statutes  
10 derive their authority because they are passed by a  
11 legislature. They have to be interpreted according to  
12 the understanding in a democratic sense.

13 Now, here, do we have even any belief that  
14 most Americans take the position the Department of  
15 Education has taken? I don't think so. In fact, if  
16 there's any indication, it tends to run in the opposite  
17 direction: that is, for example, when the Target  
18 department store announced that it was going to change  
19 its bathroom policy, over a million people signed a  
20 petition saying they objected to it.

21 Now I will stand behind Target's right to  
22 divide their bathrooms any way they want, and I also  
23 stand behind the right of -- right of shoppers to say,  
24 well, then I won't use that restroom, or I won't even  
25 patronize that store. Everybody's got that right,

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1 that freedom. But the freedom that we don't have is  
2 executive agencies do not have the right to command  
3 schools to do something that is not contained in the  
4 statute.

5 CHAIRMAN CASTRO: Commissioner Narasaki?

6 COMMISSIONER NARASAKI: I would just like  
7 to note, Commissioner Heriot, that if Congress decides  
8 that in fact the EEOC has misinterpreted Title IX, they  
9 are in fact free to make that clear through legislation.  
10 As you know, we are talking about policy.

11 Secondly, I do not regard the level of  
12 popular opinion as a measurement of what we should be  
13 doing as a nation morally on these issues. That is the  
14 very definition --

15 COMMISSIONER HERIOT: If we had --

16 COMMISSIONER NARASAKI: -- of --

17 COMMISSIONER HERIOT: -- a congressional  
18 enactment --

19 COMMISSIONER NARASAKI: -- excuse me --

20 COMMISSIONER HERIOT: -- then fine --

21 CHAIRMAN CASTRO: Please --

22 COMMISSIONER NARASAKI: -- excuse me --

23 COMMISSIONER HERIOT: -- but we don't.

24 COMMISSIONER NARASAKI: Excuse me,  
25 Commissioner Heriot. I let you complete your thought.

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1           So my concern is this: we are in fact  
2           created to protect the rights of minorities because in  
3           a democracy, in a democracy, those vulnerable  
4           minorities are often unable to protect themselves.  
5           And I would say this is very much the case with this.

6           I hope that in fact popular opinion may  
7           catch up, but I will say there was once a time where  
8           popular opinion was against interracial marriage, was  
9           for segregation, was for the internment of my parents  
10          in detention camps, even though they were citizens.  
11          Popular opinion unfortunately does not always serve the  
12          moral and human rights imperative.

13                  CHAIRMAN CASTRO: Any other Commissioners  
14          have any comments? Commissioner -- Madam Vice Chair,  
15          then? Who was that on the line?

16                  COMMISSIONER KIRSANOW: Kirsanow.

17                  CHAIRMAN CASTRO: Okay. First the vice  
18          chair, and then you, Commissioner Kirsanow.

19                  VICE CHAIR TIMMONS-GOODSON: Yes, Mr.  
20          Chair.

21                  I simply want to add to the discussion the  
22          fact that the action that we're considering taking is  
23          appropriate, and it is consistent with our role as  
24          watchdog. Again, it is appropriate for us to be having  
25          this conversation.

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1 CHAIRMAN CASTRO: Commissioner Kirsanow?

2 COMMISSIONER KIRSANOW: Thank you, Mr.  
3 Chairman.

4 I concur with what Commissioner Heriot had  
5 to say, and specifically with respect to the actions  
6 of OCR being also a usurpation of the legislative powers  
7 of Congress, and also, I would note that the OCR  
8 guidance actually is discrimination.

9 If you think about what they propose, they  
10 are saying that the issue of gender identity determines  
11 which bathroom you use. This is incoherent when you  
12 think of Title IX and Title VII discrimination.

13 For example, a boy identifies as female.  
14 He has a right under Title IX to use the girls'  
15 restrooms, showers, and that would be discrimination  
16 on the basis of gender identity to then bar a boy who  
17 identifies as a male who is also using those facilities.  
18 It's all based on gender identity. That would mean,  
19 then, that this guidance promotes discrimination  
20 unless all boys were allowed to use any bathroom they  
21 wanted regardless of their gender identity, and all  
22 girls could use any bathroom or any other facilities,  
23 shower facilities, they wanted, regardless of gender  
24 identity. Otherwise, you are discriminating on the  
25 basis of gender identity.

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1           And a final note: I would say that -- I  
2 would caution that we be careful when we ignore the rule  
3 of law because it is minorities who are most vulnerable  
4 when the government ignores the rule of law.

5           One other note. I am sorry.  
6 Respectfully, I would also caution against conflating  
7 racial discrimination of restrooms and this form of  
8 discrimination, if it is in fact discrimination. I  
9 think history shows that they are two significantly  
10 different concepts, both in theory and in practice.

11           CHAIRMAN CASTRO: At the end of the day,  
12 what this Commission over the last five-and-a-half  
13 years has attempted to do in many of the projects that  
14 we've taken on is to examine the rights and provide  
15 statements and recommendations as to how to improve the  
16 protections for our children.

17           The first report we did under my  
18 chairmanship was bullying based on all the protected  
19 classes, including, for the first time ever, LGBT  
20 status. We looked at the issue of immigration last  
21 year. We looked at the conditions of transgender  
22 individuals who are overwhelmingly -- the largest  
23 police force that holds those individuals in custody  
24 is Immigration Customs and Enforcement.

25           And we will continue to protect the rights

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1 of our children. We will continue to protect the  
2 rights of the most vulnerable, who also include members  
3 of our transgender community. The action that the two  
4 Departments have taken, contrary to what my  
5 conservative colleagues have indicated, are  
6 thoughtful, reasoned, legally grounded  
7 interpretations of the regulations, and as  
8 Commissioner Narasaki said, if Congress wants to change  
9 it, they're up in session right now up on Capitol Hill,  
10 and they can do that.

11           Until such day as Congress takes action,  
12 this Commission will join the Department of Education  
13 and the Department of Justice in making clear that if  
14 you're a school district and you discriminate against  
15 transgender children in this manner, that there will  
16 be consequences, and I hope that today, my -- majority  
17 of my Commissioners join us in making that statement.

18           COMMISSIONER HERIOT: Can I just add one  
19 more sentence? Rule of law, you are going to miss it  
20 when it's gone.

21           CHAIRMAN CASTRO: The rule of law is  
22 something that conservative colleagues often raise to  
23 try to block the rights of others, whether it's in the  
24 area of immigration reform, where the rule of law is  
25 raised to keep 11 million undocumented in the shadows.

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1 Now you want to keep transgender kids in the shadows  
2 as well? We're not going to allow that. Not under my  
3 watch.

4 COMMISSIONER KIRSANOW: Mr. Chair, may I  
5 speak?

6 CHAIRMAN CASTRO: Yes, Mr. Kirsanow.

7 COMMISSIONER KIRSANOW: I respectfully  
8 take umbrage at your characterization of the  
9 conservative colleagues in that we don't keep people  
10 in the shadow. Merely because we respect and want to  
11 uphold the rule of law doesn't mean that we favor any  
12 form of discrimination or second-class status, and I  
13 think that's really an insult to those of us who have  
14 an honest and bona fide concern about all these issues,  
15 but also recognize that adherence to the rule of law  
16 is what separates America from all the other countries  
17 in the world.

18 And I will say again: you ignore the rule  
19 of law, you imperil the very folks you seek to protect.

20 CHAIRMAN CASTRO: Thank you,  
21 Commissioner.

22 COMMISSIONER ACHTENBERG: Mr. Chairman --

23 CHAIRMAN CASTRO: Let me just say, I don't  
24 intend to personally impugn you. I respect both you  
25 and Commissioner Heriot, and I am pleased we've worked

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1 together on a number of issues. It was not meant to  
2 be a personal impugment, but more of a policy  
3 impugment.

4 But Commissioner Achtenberg?

5 COMMISSIONER ACHTENBERG: Mr. Chairman, I  
6 would only point out that this is not a trivial matter.  
7 The notion of one needing to claim gender identity that  
8 differs from one's anatomical sex is well-recognized  
9 in medical and psychological standards. This is not  
10 a trivial issue. It's not something to laugh about or  
11 take lightly.

12 These children who are experiencing this  
13 do need our protection. I am pleased that the federal  
14 government, in the form of the Department of Education,  
15 as enforced by the Department of Justice, is exercising  
16 its lawful authority to intervene in this kind of  
17 situation.

18 The Fourth Circuit did not believe this to  
19 be an ultra vires exercise of the legitimate authority  
20 of the Department, so to suggest that one  
21 interpretation upholds the rule of law as compared to  
22 another, I make no suggestion. We have a different --  
23 we have a different opinion of what the law requires.  
24 But the view that is being validated by adoption of the  
25 -- the chairman's resolution is a different

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1 interpretation of what the law requires, but it is not  
2 extra-legal. It is not an abdication of the rule of  
3 law, and that I -- that assertion is one that I do  
4 resent, not as a matter of personal insult, but, you  
5 know, I accord deference to your interpretation of law.  
6 I would be interested to enjoy the same deference.

7 Thank you, Mr. Chairman.

8 CHAIRMAN CASTRO: Thank you, Commissioner  
9 Achtenberg. Unless there's another Commissioner who  
10 hasn't yet spoken who wants to say something, I am going  
11 to call the question.

12 (No audible response.)

13 CHAIRMAN CASTRO: Okay. I am going to  
14 call the question, then.

15 Commission Kirsanow, how do you vote?

16 COMMISSIONER KIRSANOW: No.

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

19 COMMISSIONER HERIOT: I vote no. Title  
20 IX authorizes local school districts to employ a  
21 variety of methods here. They cannot be forced to  
22 apply only one method by the Department of Justice --  
23 the Department of Education and Justice.

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

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1 COMMISSIONER NARASAKI: I vote yes, and I  
2 applaud the administration for moving forward.

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

5 COMMISSIONER KLADNEY: Yes.

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

8 COMMISSIONER ACHTENBERG: Yes.

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

11 COMMISSIONER YAKI: Aye.

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

14 VICE CHAIR TIMMONS-GOODSON: Yes.

15 CHAIRMAN CASTRO: And I vote yes. That's  
16 six yeses and two noes. The motion passes. Thank you.

17 We now move on to a discussion of the  
18 Commission's resolution commemorating Pride Month.  
19 Commissioner Achtenberg, I will give you the floor.

20 **Discussion and Vote on Pride Month Resolution**

21 COMMISSIONER ACHTENBERG: Thank you, Mr.  
22 Chairman.

23 Let me begin by saying -- expressing real  
24 gratitude to every member of this Commission for the  
25 unanimous support that we offered in the wake of the

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1 Orlando tragedy. I thought it was the Commission  
2 acting at its best.

3 This resolution, Mr. Chairman, I believe  
4 it will be the first time that the Commission has  
5 considered adopting a resolution in honor of LGBT Pride  
6 Month. As you can see, I will not read the resolution  
7 into the record. It is extensive, and you will forgive  
8 me the extensive nature of it, but to the extent that,  
9 as I say, it is an issue of first impression, I wanted  
10 to pass a good bit of history into the brief resolution  
11 format.

12 There is a lot to celebrate in that many  
13 strides forward have been made on behalf of LGBT life,  
14 and there are many challenges that the community has  
15 still to face. In the resolution, I have identified  
16 by name a number of significant figures in LGBT history  
17 whose contributions are, in my view appropriately,  
18 recognized by the United States Commission on Civil  
19 Rights, and I would on that basis respectfully request  
20 your support for the resolution.

21 It goes on to identify the fact that gay  
22 people were formerly discriminated against by our  
23 federal government extensively and for a very long  
24 time, and now we have reached the day, happily enough,  
25 that the federal government has become a leader in the

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1 area of non-discrimination, including the United  
2 States military, and to the extent that the United  
3 States military, in addition to lifting the ban on open  
4 service by lesbian, gay, and bisexual servicemembers  
5 hopefully is about to be having that protection  
6 extended to transgender servicemembers. I am told  
7 that that issue is still under consideration and may  
8 be addressed in the upcoming months.

9 So I attempt to identify some of the issues  
10 that have animated the work of the community over 40  
11 or 50 years. I have left some out but hope to include  
12 some highlights so that the first resolution adopted  
13 by our Commission on this topic might be a comprehensive  
14 one and a one that people will want to understand and  
15 learn more about, and I am happy to answer any questions  
16 that any have about what I included, what I didn't  
17 include, and I'm open to constructive suggestions from  
18 any quarter.

19 CHAIRMAN CASTRO: Okay. So we'll  
20 consider that your motion. Do we have a second? A  
21 second on Commissioner Achtenberg's resolution?

22 I will second it. Any discussion? Gail?  
23 I am sorry, Commissioner Heriot?

24 COMMISSIONER HERIOT: Let me say this:  
25 there's a lot in this -- in this document that I agree

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1 with, and I am happy to join with the Commission in  
2 observing LGBT Pride Month 2016. But there is also a  
3 lot in this document that I don't agree with, and having  
4 -- when I read it, it looked like the person who drafted  
5 it was working really hard to talk about things that  
6 they felt very strongly about, and rather than try to  
7 negotiate it to the point where I would be able to sign  
8 onto it, I thought it would be better for me just to  
9 vote no.

10 CHAIRMAN CASTRO: Okay.

11 VICE CHAIR TIMMONS-GOODSON: Mr. Chair --

12 CHAIRMAN CASTRO: Or abstain, less  
13 powerful --

14 COMMISSIONER HERIOT: I am happy to  
15 abstain as --

16 CHAIRMAN CASTRO: Yes.

17 COMMISSIONER HERIOT: -- well.

18 VICE CHAIR TIMMONS-GOODSON: And that's  
19 what I was about to say.

20 COMMISSIONER HERIOT: Yes.

21 VICE CHAIR TIMMONS-GOODSON: I am going to  
22 abstain. I agree in large measure with what  
23 Commissioner Heriot has said. There is a whole lot in  
24 here that I go along with and I applaud, but there are  
25 some portions that give me concern, and for that reason,

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1 I will be abstaining.

2 CHAIRMAN CASTRO: Anyone else like to  
3 comment?

4 (No audible response.)

5 CHAIRMAN CASTRO: Well, Commissioner  
6 Achtenberg, I understand the importance of this,  
7 particularly as the first Pride statement, and so I am  
8 going to very proudly support it when we vote. So any  
9 other Commissioners?

10 COMMISSIONER YAKI: This is Commissioner  
11 Yaki. I just want to commend Commissioner Achtenberg  
12 for her leadership for many years on these and other  
13 issues, not just in my hometown of San Francisco, but  
14 across this nation, and I join heartily in supporting  
15 this resolution.

16 CHAIRMAN CASTRO: Okay. I am going to  
17 call the question. I think I know Commissioner Kladney  
18 has to leave soon.

19 Commissioner Kladney, how do you vote?

20 COMMISSIONER KLADNEY: Yes.

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

23 COMMISSIONER KIRSANOW: For the reasons  
24 stated by Commissioner Heriot and the Vice Chair, I  
25 abstain also.

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1 CHAIRMAN CASTRO: Commissioner Heriot?

2 COMMISSIONER HERIOT: I abstain.

3 CHAIRMAN CASTRO: Commissioner Narasaki?

4 COMMISSIONER NARASAKI: I vote yes.

5 CHAIRMAN CASTRO: Commissioner  
6 Achtenberg?

7 COMMISSIONER ACHTENBERG: Yes. I wanted  
8 to say that I appreciate both the abstentions and the  
9 yes votes.

10 COMMISSIONER HERIOT: Thank you.

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

13 COMMISSIONER YAKI: Aye.

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

16 VICE CHAIR TIMMONS-GOODSON: I abstain.

17 CHAIRMAN CASTRO: And I vote yes. We have  
18 one, two, three, four -- one, two, three, four, five  
19 yeses, and three abstentions. The motion passes.

20 **Discussion and Vote Concerning Work of the Nebraska**  
21 **State Advisory Committee on State-Level Immigration**

22 **Enforcement in Nebraska**

23 CHAIRMAN CASTRO: Okay. We now move on to  
24 the next item on the agenda, which is a discussion and  
25 vote on the letters to federal agencies that we will

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1 be sending, hopefully, as a result of the work of our  
2 Nebraska State Advisory Committee on State-Level  
3 Immigration Enforcement in Nebraska. You may recall  
4 that the chair of that committee appeared before us two  
5 meetings ago and presented the findings and some  
6 concerns about issues in Nebraska, and the SAC  
7 requested that we as the Commission follow up with the  
8 various federal agencies that are involved and request  
9 their taking action as well as sharing with them the  
10 findings and recommendations of the State Advisory  
11 Committee.

12 You each received over the course of the  
13 last week or two the draft letters that have been  
14 prepared along those lines. I'm not going to read them  
15 into the record, but I will move that we approve these  
16 and ask for a second, and then we can have a discussion.

17 COMMISSIONER NARASAKI: I second, Mr.  
18 Chair.

19 CHAIRMAN CASTRO: Okay. Thank you,  
20 Commissioner Narasaki.

21 Is there any discussion on this? And I  
22 understand Commissioner Yaki, you have to recuse  
23 yourself from this, so we'll just make a note in the  
24 record that Commissioner Yaki is recused from this.  
25 Commissioner Narasaki?

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1                   COMMISSIONER NARASAKI: I just want to  
2 note my appreciation for the hard work of the Nebraska  
3 State Advisory Commission. Their report was  
4 excellent, and I think that these letters are important  
5 follow through.

6                   The -- their mission is to advise the  
7 Commission, and our mission is to advise the President  
8 and Congress, and I feel that this -- these letters are  
9 on a very important topic, and I am pleased to support  
10 them.

11                   CHAIRMAN CASTRO: Great. Any other  
12 comments?

13                   (No audible response.)

14                   CHAIRMAN CASTRO: Commissioner Heriot,  
15 are you raising your hand, or are you --

16                   COMMISSIONER HERIOT: No.

17                   CHAIRMAN CASTRO: Okay.

18                   COMMISSIONER HERIOT: Playing with my  
19 hair.

20                   CHAIRMAN CASTRO: All right, wasn't sure.

21                   (Laughter.)

22                   CHAIRMAN CASTRO: Any Commissioners on  
23 the phone?

24                   Okay --

25                   COMMISSIONER KLADNEY: Yes, Mr. Chairman.

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1                   CHAIRMAN CASTRO:       Oh, go ahead  
2 Commissioner Kladney.

3                   COMMISSIONER KLADNEY: I would -- I would  
4 just like to note for the record that I think that we  
5 verify one of these things to see exactly how it works  
6 and if it is replete with errors or not replete with  
7 errors because it has been in existence now for  
8 something like 20 years, and I know that employers --  
9 you'd walk into the store and you say, you verify, that  
10 kind of thing, I think it would be a really good subject  
11 for our Commission.

12                  CHAIRMAN CASTRO: That's a great idea.  
13 We will no doubt discuss that when it comes time to look  
14 at other briefings that we may be able to do in the next  
15 fiscal year.

16                  Okay. Any other comments?

17                  (No audible response.)

18                  CHAIRMAN CASTRO: If not, then I will take  
19 a vote on approving the four letters to the U.S.  
20 Department of Justice Civil Rights Division, U.S.  
21 Citizenship and Immigration Services, U.S. Department  
22 of Health and Human Services Office of Civil Rights,  
23 and the U.S. Department of Education Office of Civil  
24 Rights, and also will ask that sometime next week, a  
25 press release go out on this.

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1 Commissioner Kirsanow, how do you vote?

2 COMMISSIONER KIRSANOW: No.

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

5 COMMISSIONER HERIOT: I feel  
6 insufficiently on top of the eVerify issue to vote on  
7 this, so I am going to abstain.

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

10 COMMISSIONER NARASAKI: Yes.

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

13 COMMISSIONER KLADNEY: Yes.

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

16 COMMISSIONER ACHTENBERG: Yes, Mr.  
17 Chairman.

18 CHAIRMAN CASTRO: Commissioner Yaki is  
19 recusing himself. Madam Vice Chair, how do you vote?

20 VICE CHAIR TIMMONS-GOODSON: Yes.

21 CHAIRMAN CASTRO: And I vote yes. We have  
22 one, two, three, four, five yeses, one recusal, one  
23 abstention, and one no, so the motion passes. The  
24 letters are approved, and we will get those out right  
25 away.

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1           Okay. We now move on to the next item on  
2 our agenda, which is -- let me make sure -- it's the  
3 state advisory committees, right?

4           **Reports Concerning State Advisory Committees**

5           Okay. So we have first and foremost a  
6 presentation today by David Mussatt, the Chief of our  
7 Regional Programs Unit. David, would you please come  
8 to the microphone here? The floor is yours, Mr.  
9 Mussatt.

10           MR. MUSSATT: Good afternoon --

11           CHAIRMAN CASTRO: Good afternoon.

12           MR. MUSSATT: -- Chair Castro, Vice Chair  
13 Timmons-Goodson, and the Commissioners.

14           It is a pleasure to be here today, and thank  
15 you for taking the time on the agenda to allow me the  
16 opportunity to provide you a brief update on the  
17 progress of the Regional Programs Unit, which supports  
18 the work of the agency's 51 advisory committees.

19           As you know, Congress requires that the  
20 agency create and support the work of these committees,  
21 and over the past decade or so, as you at times noted,  
22 we have been challenged to keep advisory committees  
23 appointed, let alone to have them advise the Commission  
24 on the civil rights issues in their respective  
25 jurisdictions, as Congress intended.

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1           But today I wanted to update you on the  
2 steps that have been taken to address these issues,  
3 steps that we plan to take, and also share some of the  
4 progress that we think we've made.

5           In regard to the appointments, the agency  
6 has taken, you know, three important policy steps to  
7 improve the efficiency of the appointments. The  
8 first, as you may remember, we changed the way that the  
9 committees are chartered so that the agency now files  
10 one charter for all 51 advisory committees every two  
11 years, as required under FACA, instead of filing a  
12 separate charter for each individual committee.

13           Second, you the Commission, as the  
14 appointing authority of the advisory committees, voted  
15 over a year ago to extend the appointment terms of  
16 advisory committee members from two years to four  
17 years. So I think both of these steps have greatly  
18 eased the administrative burden and increased our  
19 efficiency, being able to get them done.

20           Finally, a third thing is that the agency  
21 today, hopefully, will be taking a step to approve the  
22 new administrative instruction regarding advisory  
23 committee appointments. The implementation of this AI  
24 was unique in that the process that created it included  
25 the involvement and input of not only the Commissioners

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1 or assistants and executive staff, but also of the  
2 Regional Programs Unit's staff itself, and I think  
3 because of this collaborative effort, I am very  
4 optimistic that some of the hurdles that held up  
5 appointments in the past will be cleared going forward.

6 I think it is somewhat ironic that the  
7 process of getting this AI approved, which is, you know,  
8 this began really in earnest last November at the staff  
9 director's request, may have contributed to the backlog  
10 in the number of committees that now need to be  
11 appointed. However, I am hopeful that the process and  
12 the accountability that this AI establishes make  
13 appointing of advisory committees more efficiently --  
14 we'll be more efficient going forward.

15 As you can see in the monthly report  
16 submitted to you, the plan will be to have all committee  
17 nominations up for your consideration by the end of the  
18 calendar year 2016, and to then maintain the full  
19 appointment status going forward in the future. We  
20 have five or six on the agenda today, so I hope that  
21 we can keep it --

22 CHAIRMAN CASTRO: It's seven on the  
23 agenda.

24 MR. MUSSATT: Seven? I am sorry.

25 Now, in regards to the work advisory

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1 committees are doing to fulfill their mission, I am  
2 pleased to report the progress is evidenced in  
3 quantitative and qualitative regards. From the  
4 quantitative perspective, the Regional Programs Unit  
5 has supported 80 advisory committee meetings this  
6 fiscal year, as of today, and we still have a full  
7 quarter of the fiscal year remaining. As a point of  
8 reference, ten years ago, all 51 advisory committees  
9 held a combined 31 open meetings.

10 In addition, qualitatively, these  
11 meetings have been more successful. All meetings have  
12 been truly open to the public via the public call-in  
13 numbers provided in Federal Register notices and  
14 outreach efforts, and all of these efforts have  
15 resulted in over 325 members of the public attending  
16 committee meetings this year.

17 The meetings have also provided the public  
18 the opportunity to comment, even when the meeting is  
19 held via conference call or web conference, and so they  
20 have also witnessed much greater committee engagement  
21 and involvement throughout the process.

22 In regards to reports themselves to the  
23 Commission, advisory committees have submitted seven,  
24 they've actually published seven reports this fiscal  
25 year, with at least three more scheduled to be submitted

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1 by September 30th. Possibly more importantly than  
2 just the publication, as you voted just now in regard  
3 to the Nebraska Advisory Committee and you will hear  
4 later on today from the Illinois Advisory Committee  
5 chair, finally, these advisory committee reports have  
6 been presented to you by the chairs or other members  
7 of the respective advisory committee.

8 I know that the advisory committee members  
9 appreciate you providing them this opportunity, and  
10 they are particularly pleased to know that some of the  
11 advice that they provided to you has been implemented  
12 through your follow-up actions, like you did today.  
13 But even in instances where you may not agree with the  
14 advice of the advisory committees, the advisory  
15 committees themselves fulfill their mission by you  
16 simply hearing and deliberating on the  
17 recommendations, so thank you again for making these  
18 efforts to support the work of advisory committees.

19 If you have any other questions, I would  
20 be happy to answer them for you.

21 CHAIRMAN CASTRO: Any questions for Mr.  
22 Mussatt?

23 (No audible response.)

24 CHAIRMAN CASTRO: Hearing none, thank you  
25 for the report and the work you outlined, and I

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1 appreciate it. Thank you.

2 Commissioner Narasaki?

3 COMMISSIONER NARASAKI: Yes, so I just  
4 want to really commend David and the rest of the  
5 regional staff. Commissioners are very aware that it  
6 is understaffed, and we appreciate the fact that  
7 everyone is trying to do more with less, but we are  
8 committed to try to garner additional resources to help  
9 ease the load that you currently face, so I just really  
10 want to appreciate everyone's efforts.

11 MR. MUSSATT: Thank you, we appreciate  
12 that.

13 **Vote on Administrative Instruction 5-9 Governing the**  
14 **Appointments of State Advisory Committee Members**

15 CHAIRMAN CASTRO: Thanks. We now move on  
16 to the AI that was foreshadowed in the last  
17 presentation. We've been through our colleagues  
18 working quite diligently on coming up with a process  
19 by which we can move these state advisory committee  
20 packages more effectively and efficiently, and I am  
21 hopeful that what we've come up with will do just that.  
22 So I don't know who wants to make the presentation on  
23 this. Would you like to do that, Commissioner  
24 Narasaki, make the motion, and then explain your  
25 amendment? Or not?

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1                   COMMISSIONER NARASAKI: Do you want to  
2 make a motion on the whole amendment --

3                   CHAIRMAN CASTRO: Okay, so I will move --  
4 sounds fine. I will move that we approve the proposed  
5 Administrative Instruction 5-9 governing the  
6 appointments of state advisory committee members. Is  
7 there a second?

8                   VICE CHAIR TIMMONS-GOODSON: I will  
9 second it, Mr. Chair.

10                  CHAIRMAN CASTRO: Okay. Any discussion?

11                  COMMISSIONER NARASAKI: Yes, Mr. Chair.  
12 I would like to move an amendment, but before I do, I  
13 really want to acknowledge and thank the staff who have  
14 worked hard, as well as the bipartisan effort of the  
15 working group, to deal with complicated issues for  
16 which there are no perfect answers, and I think that  
17 we for the most part hit a happy center area.

18                  There's two things that I want to address.  
19 One is in discussing this with staff, we realized that  
20 the draft did not make it clear enough what we would  
21 do in terms of affecting the current appointees to the  
22 SACs, and so that there was a need for a grandfather  
23 clause. And my staff has provided each of you with what  
24 we've proposed there.

25                  So it is two parts. One is that advisory

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1 committee members who are currently serving two-year  
2 terms or have not yet been appointed to a four-year term  
3 may be reappointed, but serve no more than whatever the  
4 maximum is that we set for term limits. The second is  
5 for those advisory committee members who we've already  
6 authorized to serve a four-year term, regardless of how  
7 many terms they have served, they may be appointed to  
8 serve an additional four-year term, so that there is  
9 more certainty. And for both, there is a potential  
10 waiver if there's sufficient basis for extending the  
11 appointment beyond that additional term.

12 The other area, which is a more substantive  
13 disagreement, is currently the draft contains a term  
14 limit of 12 years, so three four-year terms, and what  
15 I am proposing is a term limit of eight. What we are  
16 trying to address is the fact that under the old  
17 two-year terms, we had a ten-year term limit.  
18 Obviously, four does not go into ten, so we had to decide  
19 whether we were going for eight or for twelve.

20 Normally, I would agree with staff in terms  
21 of concern about additional burdens in terms of having  
22 to come up with the slate every eight years as opposed  
23 to twelve, but I believe that the two changes that David  
24 talked about in terms of moving from a two- to four-year  
25 term, and also the change of reducing the minimum

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1 required for a SAC, hopefully ameliorates trying to go  
2 to an eight-year term.

3 The reason that I would like to see an  
4 eight-year term is because while it is more work to try  
5 to recruit new people, I believe it is important to kind  
6 of refresh the state advisory commissions to allow for  
7 new voices and perspectives. The staff have done a  
8 great job. One of the issues I was raising when I got  
9 on a couple years ago is I hope to see more from the  
10 younger millennial generation put onto these advisory  
11 councils, and by and large, I think staff have really  
12 worked hard to do that.

13 But I do think it is important to continue  
14 this generational renewal because I believe that the  
15 younger generation does see race and gender and LGBT  
16 status and many of these other issues differently than  
17 perhaps those in my generation.

18 The second is I believe that the  
19 demographics in our states are changing rapidly, and  
20 it is important to make sure that we're drawing from  
21 these new voices coming into the states, and when there  
22 is a twelve-year term, it's very hard to tell someone  
23 who is doing a pretty good job and wants to stay that  
24 you want to turn them off, and I feel that eight years  
25 is a reasonable time in order to try to make sure that

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1 we are able to continue to bring on new people who are  
2 reflecting the demographics of that state.

3 Now, I am sympathetic to the fact that some  
4 states do have smaller populations, and they have far  
5 less robust civil and human rights infrastructure to  
6 draw upon. We also look for political balance, and in  
7 some states, they're either very red or very blue, and  
8 that might also be -- make it difficult for the staff  
9 to make sure that the slates are balanced.

10 There is a waiver potential. Again, if  
11 you make the case that you really want to be able to  
12 have the twelve years, it may be difficult for you to  
13 have improvement, and it may be that someone has been  
14 serving well and taking the leadership on the report,  
15 for example, that that would be recognized.

16 I do know that staff are a little bit  
17 concerned that it's not well-defined what those  
18 conditions are, and I believe that is something that  
19 we could return to to work on and clarify in the future.  
20 But I am hopeful that the other Commissioners will  
21 support my amendment.

22 VICE CHAIR TIMMONS-GOODSON: Mr. Chair, I  
23 am --

24 CHAIRMAN CASTRO: Yes.

25 VICE CHAIR TIMMONS-GOODSON: -- willing

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1 to withdraw my second if you are accepting, that  
2 Commissioner Narasaki's suggestion, as a friendly  
3 amendment.

4 CHAIRMAN CASTRO: Yes, I am considering it  
5 a friendly amendment, so we can accept it.

6 VICE CHAIR TIMMONS-GOODSON: All right.  
7 And in that case, I will then second.

8 CHAIRMAN CASTRO: Okay. Any discussion?  
9 Any Commissioners?

10 COMMISSIONER ACHTENBERG: Mr. Chairman, I  
11 have one question.

12 CHAIRMAN CASTRO: Yes, Commissioner  
13 Achtenberg?

14 COMMISSIONER ACHTENBERG: Have we already  
15 resolved the issue of no presumption in favor of the  
16 appointment? Has that issue already been resolved?

17 COMMISSIONER NARASAKI: That's in the  
18 language that we're going to provide when we talk about  
19 what the amendment would be.

20 COMMISSIONER ACHTENBERG: Okay. Okay.  
21 Thank you very much. Yes, that is what I thought.  
22 Okay.

23 CHAIRMAN CASTRO: Commissioner Heriot?

24 COMMISSIONER HERIOT: On the eight years  
25 versus twelve years, you know, our terms as

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1 Commissioners are six years, and it is very, very  
2 ordinary for people to be reappointed. A number of  
3 people on this Commission right now have been  
4 reappointed.

5 I actually would favor the twelve years.  
6 For a number of years now, we have had just an awful  
7 time keeping all 51 of the state advisory committees  
8 chartered at any one time. We have a smaller staff  
9 today than we did a few years back, and it gets harder  
10 and harder.

11 And as Commissioner Narasaki has pointed  
12 out, we've done some things to remedy that, so I think  
13 it will get a little better. But the truth is it was  
14 like beyond terrible there for a while, and I am not  
15 blaming the staff for this because I think this is a  
16 resource issue. But 51 state advisory committees, and  
17 we had very, very few of them going for a while, and  
18 even when we have them chartered, we get even fewer  
19 reports.

20 We need to put massively, massively more  
21 of our efforts into getting reports out, and as little  
22 as possible into just the basic mechanics of keeping  
23 the SACs chartered. And I fear that going down to eight  
24 years is just a step in the wrong direction. I think  
25 that twelve years is simply better, that very often,

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1 you will get somebody, in their first term, they may  
2 not take much of a leadership term at all in the SAC.  
3 The second year, they may, you know, try a little bit  
4 -- in the second term, they may try. But the third one,  
5 they might really be ready to do something that is  
6 worthwhile.

7 So I would definitely go for the twelve  
8 years rather than the ten.

9 CHAIRMAN CASTRO: Madam Vice Chair?

10 VICE CHAIR TIMMONS-GOODSON: I agree  
11 Commissioner Heriot with what you said. I too am more  
12 inclined to go with the twelve years. I proposed what  
13 Commissioner Narasaki has essentially said as a way to  
14 compromise because we can still get to the twelve. I  
15 understood that there was strong opposition, or rather  
16 strong opposition, to twelve, and so --

17 COMMISSIONER HERIOT: I had understood  
18 that among the people that actually work in the regional  
19 offices, that they much preferred the twelve. Is that  
20 right or wrong? I mean, Mr. Mussatt --

21 VICE CHAIR TIMMONS-GOODSON: We are told  
22 there was a split.

23 COMMISSIONER HERIOT: Could you speak to  
24 that?

25 MR. MUSSATT: There were some staff who

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1 strongly felt for twelve. There were some staff that  
2 favored eight. I think as a whole, they favored  
3 twelve. I didn't poll them, but it was somewhat split,  
4 but there were definitely some people strongly in favor  
5 of twelve, and basically, I think when we were working  
6 through it, most people just didn't have a preference  
7 strong enough to, you know, actually have a debate over  
8 whether eight or twelve, so we never actually had a  
9 debate about it, but it's always secure with twelve  
10 because the stronger voices went twelve, so that was  
11 probably --

12 COMMISSIONER HERIOT: Do we really want to  
13 put this as a friendly amendment? Are we going to vote  
14 separately on it?

15 CHAIRMAN CASTRO: No, I consider it  
16 friendly, because ultimately -- here is why I think it's  
17 friendly, because the grandfather clause issue, we  
18 could have easily suggested that -- there could have  
19 been other permutations of it so that you don't -- let  
20 me put it this way. People who are currently serving,  
21 who have already been serving, they are being  
22 grandfathered in so that they have -- so the folks that  
23 you're saying may hit their stride after eight years,  
24 hopefully it's not going to take eight years for someone  
25 to hit their stride on a SAC.

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1           But let's say, you know, that it takes a  
2           little more than three or four or five years. There's  
3           going to be some people who are going to be serving on  
4           these SACs, conceivably, as we've grandfathered them  
5           in, for 20-something years. So there is a cushion  
6           there for people who have already been serving for some  
7           time to continue to serve because we're not going to  
8           kick in the eight years until someone has begun to serve  
9           their first four-year term, as opposed to those who have  
10          been serving and maybe reappointed previously under the  
11          two-year term scenario. So I consider it friendly as  
12          a result of that.

13                   Anything else?

14                   (No audible response.)

15                   CHAIRMAN CASTRO: If not, I am going to  
16          call the question. We are going to vote on the AI as  
17          amended.

18                   Commissioner Kirsanow, how do you vote?

19                   COMMISSIONER KIRSANOW: Yes.

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

22                   COMMISSIONER HERIOT: I pass.

23                   CHAIRMAN CASTRO: I'll come back to you.

24                   COMMISSIONER HERIOT: Yes.

25                   CHAIRMAN CASTRO: Commissioner Narasaki,

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1 how do you vote?

2 COMMISSIONER NARASAKI: Yes.

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

5 (No audible response.)

6 CHAIRMAN CASTRO: He may have already  
7 left. Okay.

8 Commissioner Achtenberg, how do you vote?

9 COMMISSIONER ACHTENBERG: Yes.

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

12 COMMISSIONER YAKI: Aye.

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

15 VICE CHAIR TIMMONS-GOODSON: Yes.

16 CHAIRMAN CASTRO: I vote yes.  
17 Commissioner Heriot, let's make it unanimous, how about  
18 it?

19 COMMISSIONER HERIOT: Yes, I am going to  
20 vote yes --

21 CHAIRMAN CASTRO: Okay.

22 COMMISSIONER HERIOT: -- but I would  
23 prefer the twelve years.

24 (Laughter.)

25 CHAIRMAN CASTRO: Okay, so the motion

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1 passes unanimously. Thank you.

2 Now we move on to -- let's see. We're  
3 going to hopefully pass a few SAC packages, right? And  
4 then we're going to hear from our Illinois SAC chair  
5 after that.

6 **Appointment of members to State Advisory Committees**  
7 **(SACs)**

8 CHAIRMAN CASTRO: So first and foremost,  
9 let me make a motion that the Commission appoints the  
10 following individuals to the Connecticut State  
11 Advisory Committee based upon the recommendation of our  
12 staff director: Abdul-Karim Kashif; Alok S. Bhatt;  
13 Christine Corgel; John Herrington; Meghann LaFountain;  
14 David McGuire; Melanie Rausch; John Tanski; Olivia  
15 White; Avery Gaddis; Douglas Glanville; Leslie  
16 Navarrette; Stephanie Storms; Susan Tolliver; and  
17 Michael Werner.

18 Pursuant to this motion, the Commission  
19 reappoints David McGuire as chair of the Connecticut  
20 State Advisory Committee. These members will serve as  
21 uncompensated government employees. Under this  
22 motion, the Commission authorizes the staff director  
23 to execute the appropriate paperwork for the  
24 appointments. Do I have a second?

25 VICE CHAIR TIMMONS-GOODSON: Second.

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1 CHAIRMAN CASTRO: Okay. Any discussion?

2 (No audible response.)

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

5 COMMISSIONER HERIOT: I am going to vote  
6 no on this one. I don't think it's balanced according  
7 to viewpoint.

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

10 COMMISSIONER KIRSANOW: No.

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

13 COMMISSIONER NARASAKI: Yes.

14 CHAIRMAN CASTRO: Commissioner Kladney I  
15 am assuming is off? Okay.

16 Commissioner Achtenberg, how do you vote?

17 COMMISSIONER ACHTENBERG: Yes.

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

20 COMMISSIONER YAKI: Aye.

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

23 VICE CHAIR TIMMONS-GOODSON: Yes.

24 CHAIRMAN CASTRO: And I vote yes. It's  
25 one, two, three, four, five yeses, and two noes. The

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1 motion passes.

2 I now make a motion that the Commission  
3 appoint the following individuals to the Delaware State  
4 Advisory Committee based upon the recommendation of our  
5 staff director: Lydia S. Cox; Susan M. Dixon; Michael  
6 D. Fleming; Joel E. Friedlander; Enid D. Wallace-Simms;  
7 Leland B. Ware; Bradley L. Baldia; Santino Ceccotti;  
8 Alicia Clark; Carlos J. Cotto; Patrick C. Donahue;  
9 Patricia S. Downing; Shannon B. Griffin; Aaron C.  
10 Kupchik.

11 Pursuant to this motion, the Commission  
12 appoints Lisa B. Goodman as chair of the Delaware State  
13 Advisory Committee. These members will serve as  
14 uncompensated government employees. Under this  
15 motion, the Commission authorizes the staff director  
16 to execute the appropriate paperwork for the  
17 appointments. Is there a second?

18 VICE CHAIR TIMMONS-GOODSON: Second.

19 CHAIRMAN CASTRO: Thank you, Madam Vice  
20 Chair. Any comments, questions?

21 (No audible response.)

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

24 COMMISSIONER HERIOT: This one is even  
25 worse on ideological balance, so I vote no.

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

3 COMMISSIONER KIRSANOW: No.

4 CHAIRMAN CASTRO: That sounds like a no.  
5 Okay. Commissioner Narasaki, how do you vote?

6 COMMISSIONER NARASAKI: Yes.

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

9 COMMISSIONER ACHTENBERG: Yes.

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

12 COMMISSIONER YAKI: Aye.

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

15 VICE CHAIR TIMMONS-GOODSON: Yes.

16 CHAIRMAN CASTRO: And I vote yes. One,  
17 two, three, four, five yeses, and two noes. The  
18 package passes.

19 I will now make a motion that the  
20 Commission appoint the following individuals to the  
21 Minnesota State Advisory Committee based upon the  
22 recommendation of our staff director: Robert K.  
23 Vischer; Robert Lee Battle; Ryan M. Check; Kenneth O.  
24 Doyle; Philip A. Duran; Kirk O. Kolbo; Nekima V.  
25 Levy-Pounds; Teresa J. Nelson; Craig D. Taylor;

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1 Nyagatare Valens; Jacqueline Marie Beaulieu; Matthew  
2 A. Dobratz; Leticia Guadarrama; Denise H. Huynh.

3 Pursuant to this motion, the Commission  
4 appoints Velma J. Korbel as chair of the Minnesota State  
5 Advisory Committee. These members will serve as  
6 uncompensated government employees. Under this  
7 motion, the Commission authorizes the staff director  
8 to execute the appropriate paperwork for the  
9 appointments. Do I have a second?

10 VICE CHAIR TIMMONS-GOODSON: Second.

11 CHAIRMAN CASTRO: Thank you, Madam Vice  
12 Chair. Any comments, questions?

13 (No audible response.)

14 CHAIRMAN CASTRO: Okay. I will call the  
15 question. Commissioner Heriot, how do you vote?

16 COMMISSIONER HERIOT: Same on this one as  
17 the previous, no.

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

20 COMMISSIONER KIRSANOW: No.

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

23 COMMISSIONER NARASAKI: Yes.

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

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1 COMMISSIONER ACHTENBERG: Yes.

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

4 COMMISSIONER YAKI: Aye.

5 CHAIRMAN CASTRO: Commissioner -- Madam  
6 Vice Chair, how do you vote?

7 VICE CHAIR TIMMONS-GOODSON: Yes.

8 CHAIRMAN CASTRO: And I vote yes. It's  
9 one, two, three, four, five yeses, and two noes. The  
10 package passes.

11 I next make a motion that the Commission  
12 appoint the following individuals to the Nevada State  
13 Advisory Committee based upon the recommendation of our  
14 staff director: Bob Beers; Kathleen Bergquist; Sondra  
15 Cosgrove; Carol Del Carlo; Debra Feemster; David Fott;  
16 Emma Guzman; Kara Jenkins; Kay Kindred; Theresa  
17 Navarro; John Ponder; Matthew Saltzman; Ed Williams.

18 Pursuant to this motion, the Commission  
19 appoints Wendell Blaylock -- a second here. How come  
20 Wendell's name was not in the initial list? Okay.  
21 Well, we're assuming that he's also appointed to the  
22 commission.

23 Pursuant to this motion, the Commission  
24 appoints Wendell Blaylock as chair of the Nevada State  
25 Advisory Committee. These members will serve as

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1 uncompensated government employees. Under this  
2 motion, the Commission authorizes the staff director  
3 to execute the appropriate paperwork for the  
4 appointments. Do I have a second?

5 COMMISSIONER NARASAKI: I second.

6 CHAIRMAN CASTRO: Thank you, Commissioner  
7 Narasaki. Any discussion?

8 (No audible response.)

9 CHAIRMAN CASTRO: If not, I'll call the  
10 question. Commissioner Heriot, how do you vote?

11 COMMISSIONER HERIOT: I think this is the  
12 best of the bunch when it comes to ideological balance,  
13 so I vote yes.

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

16 COMMISSIONER KIRSANOW: No.

17 CHAIRMAN CASTRO: Guess not. Okay.

18 (Laughter.)

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

21 COMMISSIONER NARASAKI: There's just no

22 --

23 (Simultaneous speaking)

24 (Laughter.)

25 CHAIRMAN CASTRO: Commissioner Narasaki,

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1 how do you vote?

2 COMMISSIONER NARASAKI: I was just going  
3 to say there is no pleasing Commissioner Kirsanow  
4 today.

5 CHAIRMAN CASTRO: Not today.

6 (Laughter.)

7 COMMISSIONER NARASAKI: I vote yes.

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

10 COMMISSIONER ACHTENBERG: Yes. Yes.

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

13 COMMISSIONER YAKI: Well, since  
14 Commissioner Heriot said it was ideologically  
15 well-balanced in her view --

16 COMMISSIONER HERIOT: I didn't say that.  
17 I said it was the best of the bunch.

18 COMMISSIONER YAKI: I mean, I've got deep  
19 suspicions on voting yes, but in the end, because  
20 Commissioner Kirsanow voted no, I'm going to vote aye.

21 (Laughter.)

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

24 VICE CHAIR TIMMONS-GOODSON: Yes.

25 CHAIRMAN CASTRO: And I vote yes, so we

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1 have six yeases and one no. The package passes.

2 I am now going to make a motion that the  
3 Commission appoint the following individuals to the New  
4 York State Advisory Committee based upon the  
5 recommendation of our staff director: Iris Y. Chen; Roy  
6 Cosme; Sandra L. Dunn; Roderick M. Hills; Gertrud  
7 Lenzer; Robert L. Paquette; Alex S. Vitale; Thomas R.  
8 Wahl, Jr.; Earl S. Ward; Peter W. Wood; Bryanne A.  
9 Hamill; Julian G. Ku; Vivian S. Louie; Johnny Perez;  
10 Steven B. Raga; Kevin Thomas; and Alexandra Korry.

11 Pursuant to this motion, the Commission  
12 appoints Alexandra Korry as chair of the New York State  
13 Advisory Committee. These members will serve as  
14 uncompensated government employees. Under this  
15 motion, the Commission authorizes the staff director  
16 to execute the appropriate paperwork for the  
17 appointments. Do I have a second?

18 COMMISSIONER NARASAKI: I second, Mr.  
19 Chair.

20 CHAIRMAN CASTRO: Thank you, Commissioner  
21 Narasaki. Any questions, comments?

22 (No audible response.)

23 CHAIRMAN CASTRO: We will move the  
24 question. Commissioner Heriot, how do you vote?

25 (Pause.)

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1 CHAIRMAN CASTRO: How do you vote?

2 COMMISSIONER HERIOT: I pass.

3 CHAIRMAN CASTRO: Okay.

4 COMMISSIONER HERIOT: Come back to me.

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

7 COMMISSIONER KIRSANOW: No.

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

10 COMMISSIONER NARASAKI: Yes.

11 CHAIRMAN CASTRO: Commissioner Kladney,  
12 how do you vote? I am sorry, I forgot he's out.  
13 Commissioner Achtenberg, how do you vote?

14 COMMISSIONER ACHTENBERG: Yes.

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

17 COMMISSIONER YAKI: Aye.

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

20 VICE CHAIR TIMMONS-GOODSON: Yes.

21 CHAIRMAN CASTRO: I vote yes.  
22 Commissioner Heriot?

23 COMMISSIONER HERIOT: I vote no on the  
24 same basis that I voted no on the others.

25 CHAIRMAN CASTRO: Okay. So we have five

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1 yeses and two noes, so the motion passes.

2 I am now going to make a motion that we  
3 appoint the following individuals to the Washington  
4 State Advisory Committee based upon the recommendation  
5 of our staff director -- did I miss Vermont? Okay,  
6 sorry.

7 Oh yes, there it is. So make that -- let  
8 me start over.

9 I now make a motion that the Commission  
10 appoint the following individuals to the Vermont State  
11 Advisory Committee based upon the recommendation of our  
12 staff director: John Bloomer; Luther Brown; Natasha  
13 Chang; Ellen Fallon; Wanda Heading-Grant; Leslie  
14 Holman; Cassandra LaRae-Perez; Thomas Little; Phayvanh  
15 Luekhamhan; Terrance Martin; Tuipate Mubiay; Curtiss  
16 Read, Jr.; Eric Sakai; Rubi Simon; Rosario de Swanson;  
17 Dianne B. Snelling.

18 Pursuant to this motion, the Commission  
19 appoints Dianne B. Snelling as chair of the Vermont  
20 State Advisory Committee. These members will serve as  
21 uncompensated government employees. Under this  
22 motion, the Commission authorizes the staff director  
23 to execute the appropriate paperwork for the  
24 appointments. Do I have a second?

25 COMMISSIONER NARASAKI: I second.

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1 CHAIRMAN CASTRO: Thank you, Commissioner  
2 Narasaki. Any questions?

3 (No audible response.)

4 CHAIRMAN CASTRO: I will call the  
5 question. Commissioner Heriot, how do you vote?

6 COMMISSIONER HERIOT: You know, this is a  
7 hard one. I think there's an ideological balance  
8 problem here, but it's also true that Vermont is a  
9 really small state, and it is hard to come up with  
10 everything that you might want, so I am going to vote  
11 yes in a fit of good cheer.

12 CHAIRMAN CASTRO: Great.

13 COMMISSIONER KIRSANOW: Commissioner  
14 Heriot feels the Bern.

15 (Laughter.)

16 CHAIRMAN CASTRO: She feels the Verm --

17 COMMISSIONER HERIOT: That was the whole  
18 country --

19 CHAIRMAN CASTRO: -- the Verm, the  
20 Vermont, right?

21 Commissioner Kirsanow, how do you feel --  
22 I mean, how do you vote?

23 (Laughter.)

24 COMMISSIONER KIRSANOW: I am cheerless.

25 No.

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1 (Laughter.)

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

4 COMMISSIONER NARASAKI: I vote yes.

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

7 COMMISSIONER ACHTENBERG: Yes.

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

10 COMMISSIONER YAKI: Cheerfully, yes.

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

13 VICE CHAIR TIMMONS-GOODSON: Yes.

14 CHAIRMAN CASTRO: And I vote yes, so that  
15 is six yeses and -- no, is -- yes, six yeses and one  
16 no. The package passes.

17 Now I get to go on to Washington State. I  
18 am going to make a motion that the Commission appoint  
19 the following individuals to the Washington State  
20 Advisory Committee based upon the recommendation of our  
21 staff director: Joel Ard; Tony Benegas; Luzviminda  
22 Carpenter; Alexes Harris; Joseph Honick; Amy Huang;  
23 Roxanne Husmann; Alberto Isiordia; Xyanthe Neider;  
24 David Nice; Layne Pavey; Diana Perez; and Paul Guppy.

25 Pursuant to this motion, the Commission

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1 appoints Paul Guppy as chair of the Washington State  
2 Advisory Committee. These members will serve as  
3 uncompensated government employees. Under this  
4 motion, the Commission authorizes the staff director  
5 to execute the appropriate paperwork for the  
6 appointments. Do I have a second?

7 VICE CHAIR TIMMONS-GOODSON: Second.

8 CHAIRMAN CASTRO: Thank you, Madam Vice  
9 Chair. Any comments?

10 (No audible response.)

11 CHAIRMAN CASTRO: If none, I will call the  
12 question. Commissioner Heriot?

13 COMMISSIONER HERIOT: Pass.

14 CHAIRMAN CASTRO: Commissioner Kirsanow?

15 COMMISSIONER KIRSANOW: No.

16 CHAIRMAN CASTRO: Commissioner Narasaki?

17 COMMISSIONER NARASAKI: I pass.

18 CHAIRMAN CASTRO: Commissioner  
19 Achtenberg?

20 COMMISSIONER ACHTENBERG: Yes.

21 CHAIRMAN CASTRO: Commissioner Yaki?

22 COMMISSIONER YAKI: Just -- just to join  
23 the crowd, I will pass.

24 CHAIRMAN CASTRO: Okay. Commissioner --  
25 I mean, I am sorry, Madam Vice Chair, how do you vote?

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1 VICE CHAIR TIMMONS-GOODSON: Yes.

2 CHAIRMAN CASTRO: And I vote yes. So let  
3 me go back to the passers. Commissioner Heriot?

4 COMMISSIONER HERIOT: The problem on this  
5 one I don't think is so much the ideological balance,  
6 but I am going to have to vote no anyway. There are  
7 other problems with this set that I think are beyond  
8 repair.

9 CHAIRMAN CASTRO: Okay. Commissioner  
10 Narasaki?

11 COMMISSIONER NARASAKI: It's my home  
12 state, and I enthusiastically vote yes.

13 CHAIRMAN CASTRO: Okay. Commissioner  
14 Yaki?

15 COMMISSIONER YAKI: To honor Commissioner  
16 Narasaki's home state, I will vote aye.

17 CHAIRMAN CASTRO: Okay. So we have  
18 three, four, five yeases, and two noes. The motion  
19 passes. Thank you.

20 So that was seven SACs today. Great.  
21 Thank you, everybody. Appreciate getting those moving  
22 again.

23 We now move on to a presentation by Juan  
24 Carlos Linares, who is the chair of the Illinois State  
25 Advisory Committee. Juan Carlos has done an amazing

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1 job in the Illinois Advisory Committee's hearing  
2 recently on the issue of environmental justice, and he  
3 is a very well-known and well-respected leader in  
4 Chicago and Illinois, and we are pleased to have him  
5 as the chair of our advisory committee in Illinois, and  
6 I am pleased to welcome him today to present to us on  
7 the recently released Environmental Justice Report.  
8 Mr. Chairman?

9 **Presentation by the Chair of the Illinois Advisory**  
10 **Committee on Environmental Justice**

11 MR. LINARES: Thank you so much, Chairman.  
12 I appreciate you and the Commission allowing us time  
13 to present our report.

14 So -- and we are also -- we are also aware  
15 that the Commission is putting together its own report,  
16 which we hope to provide information on and guidance  
17 from our side in Illinois as well.

18 That said, if I can briefly summarize some  
19 of these findings, what we -- the study area that we  
20 looked at was specifically limited to areas in Chicago,  
21 including the Little Village and Tilton neighborhoods  
22 and the southeast side of Chicago as well. And we also  
23 looked at Waukegan, Illinois, which is on the northern  
24 side of Illinois, near the Wisconsin border.

25 That said, the laws that we looked to in

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1 terms of the nexus to civil rights include the Title  
2 VI of the Civil Rights Act and the regulations from the  
3 Environmental Protection Agency as well as the  
4 executive order from the President's office, 12898,  
5 which requires federal agencies to the greatest extent  
6 practicable and permitted by law to make achieving  
7 environmental justice part of its mission.

8 So those are the laws that we used as a  
9 nexus here and the geographies as well. I do want to  
10 say that we took a neutral posture at the direction of  
11 the subcommittee leading this -- this report. We did  
12 invite academic experts, legal professionals,  
13 government officials from all levels, individual  
14 community members as well, including experts in  
15 renewable energy. I also want to mention that we did  
16 invite industry as well, so none showed up to the panel  
17 hearings. We did receive some letters, specifically  
18 from a group called KCBX Terminals, which sent letters  
19 with regards to control of contamination as well as  
20 their own decision to cease operations in Chicago, and  
21 those letters are found in the record.

22 So without further ado, I would like to  
23 present the findings very briefly. There are seven of  
24 them, and then I'll go into a few recommendations. The  
25 first findings that we found were that industrially

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1 produced toxic waste and air pollutants are  
2 disproportionately concentrated in our jurisdictions  
3 around communities of color, particularly black,  
4 Latino, and American Indian populations, and these  
5 products of toxic waste or toxins contribute to a number  
6 of chronic health issues, including asthma, cancer,  
7 lung disease, and heart disease.

8 So we heard from academics and experts in  
9 this area that gave us information surrounding those  
10 issues. Those increased risks also extend to a radius  
11 of several, perhaps hundreds, of miles surrounding a  
12 pollution site. We also found that an intersection  
13 between race and poverty compounds the health impact  
14 of environmental pollution, particularly in  
15 communities of color.

16 In addition, current housing segregation  
17 in our jurisdiction amplifies this burden of toxic  
18 industrial waste on communities of color. And lastly,  
19 this contamination of industrial waste disrupts the  
20 cultural, recreation, and economic activity in these  
21 areas.

22 A second finding then was that even though  
23 we have strong environmental protection laws in our  
24 jurisdiction, without proper enforcement, these laws  
25 fail the communities who depend upon them. So again,

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1 another way of saying it, despite the existing laws,  
2 environmental standards are not being upheld for  
3 everyone in Illinois.

4 So while community involvement of course  
5 is critical, we find that community-based advocacy is  
6 not sufficient to adequately address the health  
7 impacts. So by way of example, in Chicago, residents  
8 organized for well over a decade before the closure of  
9 a local coal-fired power facility in the neighborhoods.  
10 So it takes a long time for community-based advocates  
11 to see any impacts.

12 With regards to the CAGs, or community  
13 advocacy groups established by the EPA, we find that  
14 industry representation may be disproportionately  
15 influencing investigations or decisions because of  
16 industry funding, and in Illinois, we also find that  
17 there are some industrial facilities -- this was a  
18 surprise to us -- there are some industrial facilities  
19 that have been operating without permits for many  
20 years. So -- and of course community members and  
21 advocates have limited legal recourse to oppose those  
22 operations when they don't have permits in place.

23 We also found that, similarly, with  
24 regards to the community advocacy groups who find that  
25 financial contributions from the industry such as power

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1 companies to the public officials in our jurisdiction  
2 may impede enforcement efforts in that regard as well.

3 There is also, we found, a lack of  
4 coordination between regulators charged with ensuring  
5 the land, air, and water purity, and this may create  
6 a failure of -- the impediment of these enforcement  
7 efforts may create a failure of regulators to consider  
8 the cumulative impact of multiple sources of  
9 contamination on a single community, so we see this in  
10 these communities where we're working with regulators,  
11 but that lack of coordination makes it difficult to see  
12 enforcement efforts.

13 To name one, for example, cases filed with  
14 our own Illinois Attorney General's Office in the  
15 environmental justice arena have remained pending  
16 without resolution for a number of years. So again,  
17 another constraint on the -- the enforcement of  
18 regulation.

19 A third finding then is that under the  
20 EPA's Office of Civil Rights, even with the authority  
21 to withdraw funding from programs that have the effect  
22 of discrimination, these laws are -- largely lack  
23 political support from our local jurisdiction in terms  
24 of enforcement, as I mentioned before, and in fact, the  
25 laws themselves content-wise, disparate impact itself

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1 regarding environmental risks are very limited and  
2 narrowly defined. They do not include odors, noise,  
3 smoke, traffic, or other hazards that we could see being  
4 environmental risks, but are not defined as such under  
5 EPA regulation.

6 Moreover, the -- in Illinois, the  
7 environmental justice program here is one of the  
8 strongest in the U.S., we found, but there are long  
9 delays in case processing and attempts to mediate cases  
10 rather than actually investigate them.

11 We -- a fourth finding, then, we heard from  
12 experts, you know, environmental experts and health  
13 experts, are that small particulate matter in the air,  
14 regardless of the makeup of the particulate, poses a  
15 very significant threat to human health, particularly  
16 to children under 18 and to the elderly over 64, and  
17 the -- the areas that we held hearings on that I  
18 mentioned, the Little Village, Tilton neighborhoods,  
19 southeast side of Chicago, have large populations of  
20 children and older individuals as well.

21 Diesel emissions are also, we found,  
22 considered sources of pollution, and we see this  
23 particularly in these neighborhoods that have large  
24 industrial economic bases. We also found, though we  
25 were largely basing our study on Chicago, that Chicago

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1 and East St. Louis to the south have failed to meet --  
2 have high concentrations of particulate matter and have  
3 failed to meet one or more federal air quality  
4 standards.

5 Older plants, which emit some of these  
6 particulates, continue to operate without controls  
7 that are required of new facilities, so this poses a  
8 constraint to us being able to -- to see positive health  
9 attributes in those communities.

10 A fifth and related finding that we found  
11 is that there's insufficient data to accurately assess  
12 air quality in many of these high-risk areas in the  
13 first place. So the data itself is aggregated by  
14 region, which is not helpful when we're looking at  
15 either census tracts or neighborhoods, particularly  
16 the ones that we studied.

17 And there in fact are few monitors, under  
18 the Clean Air Act, there are very few monitors in  
19 Chicago compared to other major cities in the area, even  
20 if we -- our monitors comply with the minimum standards,  
21 there are fewer than other similar cities around the  
22 country.

23 In Waukegan itself, again, a city near the  
24 Wisconsin border that is just north of Chicago, now,  
25 there's insufficient data there due to mishandling.

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1 So we saw that even the regulators and the data  
2 collectors are not necessarily probably using best  
3 practices, because the data had not been sufficiently  
4 collected.

5 There's also data to show that high  
6 concentrations of fine particulate matter exist within  
7 1,000 feet of our roadways, and again, because of the  
8 industrial nature of these majority minority  
9 neighborhoods, we are finding that the particulate  
10 matter data is higher. And largely, we did find that  
11 the EPA is currently looking at new technologies to  
12 collect additional air data quality.

13 A sixth finding, then, was very surprising  
14 to me personally, was that communities impacted by  
15 industrial contamination may not even benefit  
16 economically from the allegedly offending industries,  
17 particularly in Chicago/Waukegan, even though the  
18 economic benefits are often used to justify the  
19 disparate environmental and health impact in  
20 low-income communities of color. These economic  
21 issues -- also, the health -- the detriment to health  
22 and those effects on economy, whether it's hospital  
23 visits or lost, you know, days off of work to attend  
24 to children, those actually outweigh any gains from  
25 economic benefits to those communities.

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1           Another example of this in terms of  
2 economics is the electricity that's pumped out of these  
3 coal facilities don't actually even serve Illinois.  
4 The electricity is sent out of state, so again, it's  
5 not an actual economic benefit to our specific areas  
6 here in Illinois.

7           And the industrial facilities themselves,  
8 when they close, as we saw both in the Tilton and Little  
9 Village neighborhoods with two facilities that  
10 recently closed there, the facilities themselves are  
11 not required to decontaminate their own sites after the  
12 operations cease, so this we found was devastating for  
13 the economically disadvantaged communities who want to  
14 see renewal of those sites, but can't necessarily do  
15 that themselves. And in fact, studies show, we found,  
16 that it takes 9-30 years to decontaminate any site, so  
17 9 years on the low end, that's already a decade. 30  
18 years on the higher end, that's already a major loss  
19 of economic activity of that site.

20           And then our last finding, then, is that  
21 solar energy, clean energy alternatives are available,  
22 but not always so in disadvantaged communities even  
23 though these new technologies actually provide  
24 economic benefit through retraining of home builders,  
25 electricians, and other skilled tradespeople, and the

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1 grants and rebates available to homeowners might not  
2 always be available in the most disadvantaged  
3 communities because of lack of homeownership or the  
4 type of rental housing that is available there.

5 So to summarize, a few recommendations for  
6 you, the Commission, and again, we really appreciate  
7 from the Illinois State Advisory Board the opportunity  
8 to present these recommendations. We have just a few,  
9 which I will summarize.

10 As part of your Statutory Enforcement  
11 Report, we'd like for you to consider other sources of  
12 environmental-justice-related issues, not just the  
13 coal disposal piece, which I believe you're working on,  
14 but also other sources of land and water contamination  
15 like petroleum coke, polychlorinated biphenyl, and  
16 lead contamination as we see in Michigan particularly  
17 amongst those things that are studied, in addition to  
18 air quality as well and high exposure from diesel  
19 emissions, and lastly, looking to just the cumulative  
20 effects, not just the simple standardized studies, but  
21 looking at cumulative effects.

22 We would also like to see a complete legal  
23 review of federal law. So again, not all agencies are  
24 working together, but let's look at the laws  
25 themselves. Just a few I'll name are the Toxic

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1 Substance Control Act, the Safe Drinking Water Act, and  
2 the Clean Air Act as well.

3 Another -- on that note, another  
4 recommendation we would like to make is to look at the  
5 Superfund sites and how they're designated,  
6 specifically, how Superfund sites are specifically  
7 designated by the EPA and looking at the definitions  
8 and processing there.

9 Congress should -- we're also looking to  
10 make a recommendation that Congress should allocate  
11 financial resources on -- specifically on studying  
12 environmental justice under all these categories that  
13 I just mentioned.

14 And then lastly, we have some specific  
15 recommendations we'd like to make for you in your report  
16 as recommendations to the EPA specifically. So to  
17 start with, to prevent some undue influence, we'd like  
18 to see agencies prohibiting direct industry  
19 contributions to the community advisory groups, so we  
20 feel that from the findings we had, there is the  
21 possibility or even likelihood that industry  
22 contributions could influence community advisory  
23 groups in a way -- away from environmental justice, and  
24 secondly, that the agencies should limit the number of  
25 industry representatives as well so as to not unduly

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1 influence community advisory groups towards -- unduly  
2 towards industry itself.

3 The -- we also want to see that the agencies  
4 should prohibit state partners or any of those  
5 recipients of EPA funds from allowing industrial  
6 facilities in their jurisdiction to operate without the  
7 appropriate permits. This was something almost  
8 egregious that we found here in Illinois, that  
9 facilities do operate without permits, and that should  
10 just not be allowed to happen or to continue to happen.

11 The agencies should increase coordination  
12 as well, the EPA between its different Bureaus of Land,  
13 Air, Water, and others, and then its Office of Civil  
14 Rights should conduct a study of the placement of air  
15 quality monitoring equipment by its Air Data Division.  
16 Data is very important to us, as we saw in our own  
17 findings. Without the full picture of data, or very  
18 accurate or granular data, we -- we really can't move  
19 forward on the environmental justice issue and  
20 remedying some of these things that we saw.

21 I would like to add one personally with  
22 regard to renewable energy, since we had some great  
23 testimony in that area in terms of looking to either  
24 renew, add, or enhance incentives for renewable energy  
25 sources, particularly in disadvantaged communities.

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1           So that is the substance of our report. I  
2 do want to make one other comment as well. We are very  
3 appreciative that you the Commission gave us  
4 information to go forward on our report on  
5 environmental justice. I am -- I was made aware this  
6 was the first time the Illinois Advisory Committee had  
7 followed the lead issue of the U.S. Commission. One  
8 request we have is a bit more of lead time. We were  
9 a new cohort this time up. I think we bonded well  
10 during this presentation. I think to the chairman's  
11 point, it was well done by our committee members, but  
12 it was very much accelerated in terms of its timing,  
13 more so than any other report, I believe, that has been  
14 put out there.

15           So a little bit -- we would love to work  
16 with the Commission in the future again on another  
17 issue, perhaps, and more lead time would very much be  
18 appreciated. So with that, once again, we -- I will  
19 speak on behalf of the committee for the State of  
20 Illinois, that we appreciate your timing in allowing  
21 us to present our report, and I am open to any questions  
22 that you should have.

23           CHAIRMAN CASTRO: Thank you, Mr.  
24 Chairman, for your presentation, for the report, and  
25 for the recommendations. Certainly, we'll include the

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1 relevant information that you have shared with us as  
2 part of our analysis. Part of the reason we're in such  
3 a tight time frame and that we've asked you as well as  
4 North Carolina, who participated, to increase your time  
5 period is that we have a very specific statutory  
6 deadline on this kind of report because it is our  
7 Statutory Enforcement Report, so we have to get it done  
8 and to the President and Congress no later than  
9 September 30th, so that is why all of our -- all of our  
10 deadlines and all of our staff are moving quickly on  
11 this, but we do appreciate that and do look forward to  
12 collaborations on other issues.

13 And I'm going to actually ask Gerson Gomez  
14 who is here, our media person, do we know -- I don't  
15 know if you all know, but the Illinois Advisory  
16 Committee had some Hollywood presence when they did  
17 their hearing. America Ferrera from -- well, she is  
18 from different shows, but she was there as part of the  
19 Year of Living Dangerously, which is a national  
20 geographic TV series, and they're looking at the coal  
21 ash issue. So she was there, and they actually taped  
22 a number of -- of the panels. Do we know when that is  
23 coming out, Gerson?

24 MR. GOMEZ: I don't recall --

25 CHAIRMAN CASTRO: Okay.

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1 MR. GOMEZ: -- September?

2 CHAIRMAN CASTRO: September? Okay. So  
3 we'll keep you posted on that as well because I'm sure  
4 you all will want to see that, as we will. But I'll  
5 open it up to any other Commissioners who want to make  
6 a statement or ask a question. Commissioner Narasaki?

7 COMMISSIONER NARASAKI: I just wanted to  
8 add our thanks to the Illinois SAC as well as the North  
9 Carolina because it was particularly important,  
10 because of budget constraints, we weren't able to do  
11 the field hearing we hoped to do in Alabama, and I think  
12 it is very important to get this very localized view.

13 And also, I just want to commend Illinois  
14 because this was really a spectacularly well-written  
15 report, and I for one support many of the  
16 recommendations and look forward to seeing them in our  
17 final report.

18 CHAIRMAN CASTRO: Any other  
19 Commissioners? Madam Vice Chair? Anyone on the phone?

20 (No audible response.)

21 CHAIRMAN CASTRO: If not, again, Mr.  
22 Chairman, thank you for your work. Please convey our  
23 thanks to all the other members of the Illinois SAC,  
24 and I will see you when I get back home. Take care.

25 MR. LINARES: Thank you, Mr. Chairman, for

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1 the opportunity.

2 CHAIRMAN CASTRO: Thank you. Bye.

3 Now I turn it over to the staff director  
4 for his reports. Mr. Staff Director?

5 **Staff Director's Report**

6 MR. MORALES: Yes, thank you, Mr.  
7 Chairman. In the interest of brevity, I will keep my  
8 comments real brief here.

9 You have the staff director's report, of  
10 course, which you can review, and if you have any  
11 questions, you can contact me. What I would like to  
12 do at this time is just thank staff in particular for  
13 some briefing material they provided this morning, and  
14 I would like to thank John Ratcliffe, Maureen Rudolph,  
15 and David Mussatt for some material they created that  
16 was very helpful to the Commissioners this morning.

17 In addition, I just want to again thank  
18 staff, the working group that was created to work on  
19 AI 5-9. Without their help -- you know, they worked  
20 on it, and they worked on it diligently, and they worked  
21 on it on a regular basis. They really helped us move  
22 the ball forward, to use a sports analogy, and it really  
23 made a big difference here, and I really want to thank  
24 David Mussatt again, Sheryl Cozart, Alison Somin, and  
25 Maureen Rudolph for the work they did and how they

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1 collaborated together in doing that.

2 And lastly, I just want to call to your  
3 attention, I sent an email out to all the Commissioners  
4 about the situation with our agency website, and I just  
5 want to real briefly say -- make some public comments  
6 about it.

7 Over six weeks ago now, GPO, the Government  
8 Printing Office, informed us that they will no longer  
9 host our website. Staff has informed me that they're  
10 in the process of working on website mitigation, that  
11 they have selected a new provider, website host, and  
12 the steps that they have taken are that the ownership  
13 of the website has been transferred from the Government  
14 Printing Office to the Commission.

15 Staff is negotiating an extension with GPO  
16 past the June 30th deadline they initially gave us to  
17 give us a little more breathing room. All files as of  
18 June 10th, 2016 were transferred from GPO to our agency.  
19 Staff has created a test website with the new server  
20 to host the files until the final mitigation --  
21 migration, I am sorry, is scheduled, and our hope is  
22 this will cut down the amount of downtime for potential  
23 new website postings.

24 The website host -- and the staff has  
25 uploaded some files to the test site, and they're

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1 currently working on that. And the progress of the  
2 migration of the website of course is ongoing and being  
3 monitored by the staff.

4 And finally, you know, I just wanted to  
5 share with the Commissioners and -- and everyone that,  
6 you know, staff is working hard to mitigate the impact  
7 of the migration from GPO hosting our website to the  
8 new -- the new host, and these things are always, you  
9 know, fraught, and there's always some, you know,  
10 potential challenges to that, but I really appreciate  
11 the work that they're doing on that, and I just wanted  
12 to let the Commissioners know that as well.

13 So with that, sir, that's all I have.

14 CHAIRMAN CASTRO: Okay. Thank you.

15 There being nothing else, I am hereby  
16 calling this meeting adjourned at 2:39 p.m. Eastern  
17 Time. Thank you, everyone. Until next month.

18 (Whereupon, the above-entitled matter  
19 went off the record at 2:39 p.m.)  
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