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U.S. COMMISSION ON CIVIL RIGHTS

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MEETING **UNEDITED**

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FRIDAY, JULY 29, 2016

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The Commission convened by teleconference
at 1:00 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 NARASAKI, Commissioner
MICHAEL YAKI, Commissioner

JENNIFER HEPLER, Parliamentarian
MAURO MORALES, Staff Director
MAUREEN RUDOLPH, General Counsel/Solicitor and
Acting Assistant Staff Director for OCRE

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STAFF PRESENT:

SEAN GOLIDAY, Social Scientist, OCRE
MARY KENAH, Summer Legal Intern
TINALOUISE MARTIN, Director, OM
KIM TOLHURST, Acting General Counsel, OGC

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART
ALEC DUELL
CARISSA MULDER
ALISON SOMIN
IRENE VIDULOVIC

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

(1:06 p.m.)

1
2
3 OPERATOR: Good day, everyone, and
4 welcome to the telephonic meeting conference call, and
5 at this time I would like to turn the conference over
6 to Martin Castro. Please go ahead, sir.

7 CHAIRMAN CASTRO: Thank you. This is
8 Martin Castro, Chairman of the U.S. Commission on Civil
9 Rights. It is now 1:06 p.m. Eastern Time, and I'm
10 calling this special telephonic meeting of the U.S.
11 Commission on Civil Rights to order.

12 Our first item will be confirming that we
13 have a quorum. And based on the roll call that was done
14 just as we were coming into the call, those of us on
15 the phone are myself, Commissioners Achtenberg, Yaki,
16 Kladney, Narasaki, Heriot, and Kirsanow. That
17 represents a quorum of the Commission.

18 The Vice Chair, has she joined the call
19 yet, Vice Chair Timmons-Goodson? Okay. She is
20 expected to join the call soon.

21 Is the Court Reporter present?

22 COURT REPORTER: Yes, the Court Reporter
23 is present.

24 CHAIRMAN CASTRO: Thank you. Is the
25 Staff Director, Mr. Mauro Morales, present?

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1 MR. MORALES: Yes, I am present.

2 CHAIRMAN CASTRO: Thank you. Also
3 available for us are members of the Commission staff
4 who may talk at some point during the course of the
5 agenda.

6 Prior to approving the agenda, I just want
7 to remind all of those on the phone who are speaking
8 to mention your name before speaking, so that the Court
9 Reporter can accurately take the minutes of the
10 meeting.

11 The first item is the approval of the
12 agenda.

13 **I. APPROVAL OF AGENDA**

14 CHAIRMAN CASTRO: Do I have a motion?

15 COMMISSIONER NARASAKI: So moved. This
16 is Karen Narasaki.

17 CHAIRMAN CASTRO: Thank you, Commissioner
18 Narasaki. Is there a second?

19 COMMISSIONER YAKI: Second.
20 Commissioner Yaki.

21 CHAIRMAN CASTRO: Okay. All those in
22 favor, signify by saying aye.

23 (Chorus of ayes.)

24 CHAIRMAN CASTRO: Any opposed? Any
25 abstentions? Okay. The agenda is approved.

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1 As you know, we have two items for this
2 meeting under Program Planning.

3 **II. PROGRAM PLANNING**

4 CHAIRMAN CASTRO: The first is a
5 discussion and vote on the findings and recommendations
6 for our 2016 statutory enforcement report. I believe
7 those were circulated a few days ago by our special
8 assistant, so hopefully all Commissioners have had an
9 opportunity to look at those revised findings and
10 recommendations.

11 I will open the floor for a motion or for
12 discussion.

13 COMMISSIONER YAKI: I move the findings
14 and recommendations as revised. Commissioner Yaki.

15 CHAIRMAN CASTRO: Is there a second?

16 COMMISSIONER ACHTENBERG: Second.
17 Commissioner Achtenberg.

18 CHAIRMAN CASTRO: Commissioner
19 Achtenberg seconds. Okay. Any discussion? In terms
20 of the Chair, they were I think pretty straightforward.
21 I think the version that was circulated was also
22 redlined. So to the extent that folks wanted to see
23 what changes were made, you should have all of that in
24 front of you. Any questions, comments, concerns?

25 Hearing none, then what I will do is call

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1 the question. I will take a roll call vote.
2 Commissioner Achtenberg, how do you vote?

3 COMMISSIONER ACHTENBERG: I vote aye.

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

6 COMMISSIONER YAKI: Aye.

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

9 COMMISSIONER KLADNEY: Aye.

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

12 COMMISSIONER NARASAKI: Yes.

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

15 COMMISSIONER HERIOT: It's not going to
16 surprise anyone, but I'm voting no.

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

19 COMMISSIONER HERIOT: I think he's
20 recused.

21 CHAIRMAN CASTRO: Oh, he's recused? I'm
22 sorry, I forgot. And then I vote yes, and it sounds
23 like the Vice Chair is on the call. Madam Vice Chair,
24 how do you vote on the findings and recommendations?

25 VICE CHAIR TIMMONS-GOODSON: Yes.

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1 CHAIRMAN CASTRO: Yes. So we have a
2 motion that is passed. One, two, three, four, five,
3 six yeses, a no, and a recusal. Okay.

4 We now move on to the next item on the
5 agenda, which is a discussion and vote on the concept
6 paper for 2017 statutory enforcement report.

7 Again, a day or so ago you also received
8 a revised version from what we saw at our last meeting,
9 and I will now open the floor to Commissioner Achtenberg
10 or Commissioner Kladney. It is their concept paper.
11 If they would like to make a motion for discussion
12 purposes, I'd invite them to do so now.

13 COMMISSIONER ACHTENBERG: Mr. Chairman,
14 I'd like to move the adoption of the concept paper for
15 the 2017 statutory enforcement report, Women in Prison:
16 Disparate Treatment, Disparate Impact, and the Duty of
17 Care.

18 COMMISSIONER KLADNEY: I'll second that.

19 CHAIRMAN CASTRO: Thank you, Commissioner
20 Achtenberg. That's a second from Commissioner
21 Kladney.

22 COMMISSIONER KLADNEY: Yes.

23 CHAIRMAN CASTRO: I open the floor for
24 discussion.

25 VICE CHAIR TIMMONS-GOODSON: This is

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1 Commissioner Timmons-Goodson. As I said before, I
2 like the concept. It's something that I believe would
3 allow us to make a contribution in this area, but I have
4 to confess I still have some reservations about, from
5 the list of things we planned, the plan is for us to
6 be interviewing folks that's in prison, and how that
7 would be incorporated into this.

8 Initially, I expressed, and to some degree
9 still have some reservations about the broadness of
10 this. I don't see how the men's prison solution does
11 anything to reduce or define or constrict in any way
12 the topics that we're looking at. Anything we
13 do, I want us to do this, and I just -- I just have
14 reservations.

15 CHAIRMAN CASTRO: Thank you, Madam Vice
16 Chair. Anyone that would like to comment?

17 COMMISSIONER NARASAKI: This is
18 Commissioner Narasaki. I also share the Vice Chair's
19 concern. I have been very enthusiastic about the
20 topic, but I am concerned about making sure we have the
21 staff capacity to do it justice. And I am also
22 concerned about the budget implications, about doing
23 a field visit.

24 CHAIRMAN CASTRO: Thank you, Commissioner
25 Narasaki. Would anyone like to respond?

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1 COMMISSIONER ACHTENBERG: Yes, Mr.
2 Chairman.

3 CHAIRMAN CASTRO: Yes.

4 COMMISSIONER ACHTENBERG: Commissioner
5 Achtenberg. This concept paper has gone through
6 significant revision. It was our hope that we had
7 incorporated the concerns as expressed most
8 articulately and forcefully by our Vice Chair and
9 others as well as the guidance that we were given by
10 the Office of General Counsel, to the extent that the
11 reformulation might prove to be one that -- for which
12 there would be sufficient staff capacity to support.

13 Additionally, a number of colleagues
14 wanted additional issues explored, and in a -- in what
15 I hope will be viewed as collegiality and a desire to
16 have the -- this particular statutory report embraced
17 by as many colleagues as possible.

18 We included some additional comparisons
19 that I do think will shed light on whether or not the
20 treatment of women in prison, how it compares and
21 contrasts, at least in some narrow -- with regard to
22 some narrow questions, how it compares and contrasts
23 with the treatment of men. I think that is certainly
24 a relevant inquiry. I understand that in -- it can be
25 viewed as a broad inquiry.

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1 We tried to make it as narrow as it could
2 be while still yielding worthwhile information. To
3 the extent that that -- you know, we expect to be working
4 extensively with the staff as the inquiry goes forward.
5 And if any of these issues prove unworkable, for
6 whatever reason, obviously, then, modifications can be
7 made.

8 I do -- on the issue of -- on the issue of
9 the resources to do institutional visits and whether
10 or not that can be made possible, and whether or not
11 we can speak with in any meaningful way incarcerated
12 persons, obviously, that will be for the staff to
13 explore. And assuming that something meaningful can
14 be brought to bear, then we would go forward with it.
15 But, I mean, nobody is -- you know, if it's not workable,
16 or nothing meaningful can come of it, then obviously
17 we would -- we would reconsider.

18 But I don't see any reason why not to
19 explore this, and I do think that to the extent that
20 we did a similar inquiry with regard to the immigrant
21 detention issue, I think it was a worthwhile inquiry,
22 and I'm imagining something similar could be brought
23 to bear here.

24 But as I said, upon consideration and
25 activity by the staff, if that's not to be, then

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1 obviously this would be reconsidered.

2 CHAIRMAN CASTRO: This is the Chair. So
3 I guess we'll understand that if it does pass as it is
4 drafted, that it's with the understanding that the
5 logistics and costs of a visit would be -- that a visit
6 will be contingent on confirmation of logistical and
7 financial reasonableness. Is that right,
8 Commissioner Achtenberg? Is that what you're saying?

9 COMMISSIONER ACHTENBERG: Absolutely.
10 But, Mr. Chairman, the only thing I would add to that
11 is that when we adopt it, it does make it our
12 Commissioners' priority, obviously. This is the
13 statutory report. It's the single most important
14 inquiry that we undertake in any given year.

15 Recommendations are made directly to the
16 Congress and to the President of the United States, and,
17 therefore, I would hope that by adoption by
18 Commissioners this would become the priority of the
19 Commission, which doesn't mean that if it's unworkable,
20 it won't be reconsidered. But it seems to me that means
21 that every effort will be made to make this a priority,
22 both funding-wise as well as staff resource-wise.

23 CHAIRMAN CASTRO: Understood. And just
24 for the record, this is the Chair again, I support the
25 idea of a site visit or site visits. I know that,

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1 clearly, we need to be mindful of the issues that were
2 raised by the Vice Chair and Commissioner Narasaki, but
3 also I know that there had been some thought of possibly
4 looking at maybe some detention -- or, excuse me, some
5 prisons that are near the Commission offices and
6 possibly could be done in conjunction with some of our
7 visits.

8 So there may be some creative ways to look
9 at this. And I think you're right: the visits we did
10 to the detention centers as part of our statutory
11 enforcement report last year were extremely powerful
12 and I think made the report what it is today. So I value
13 the opportunity to go and speak with some of the
14 incarcerated men and women as you contemplate in the
15 report.

16 But any additional thoughts,
17 Commissioners? Commissioner Narasaki, Madam Vice
18 Chair, does Commissioner Achtenberg's comments comfort
19 you, or do you have further questions?

20 COMMISSIONER NARASAKI: I still am
21 concerned, because it's not just the cost of travel that
22 I'm concerned about.

23 CHAIRMAN CASTRO: That's Commissioner
24 Narasaki, by the way. Just for the record, Commissioner
25 Narasaki is speaking. All right. Go ahead.

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1 COMMISSIONER NARASAKI: Sorry, Mr. Chair.
2 Because I have realized since I had tried to do this
3 with the environmental justice report, how much staff
4 time is spent trying to set these things up, and the
5 fact that we are -- have some openings in our staffs,
6 that we just have less bandwidth I think on staff to
7 be able to execute that, and it takes away time from
8 the kind of work we need to do to finish up the reports
9 that -- from the great hearings that we have done this
10 year and to finish up last year.

11 So that's my concern. It's not just
12 dollars. It's actual staff time, given what our
13 current staffing is.

14 CHAIRMAN CASTRO: This is the Chair.
15 Commissioner Narasaki, maybe what we might be able to
16 do -- that's a good point, obviously. Our staff is
17 always being challenged by the things that we're asking
18 them to do because we want to do a lot, and we have
19 limited resources.

20 But when we did the investigation into the
21 immigration detention centers, I think it was our
22 special assistants, led by my former special assistant,
23 Juana, who did the bulk of the legwork in setting up
24 the logistics behind those visits, and maybe what we
25 could do is not that our special assistants are without

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1 their own workload, but perhaps they can supplement and
2 assist the career staff in setting up such meetings.

3 VICE CHAIR TIMMONS-GOODSON: This is Vice
4 Chair Timmons-Goodson again. My concern is not just
5 about finances. It occurs to me that the individuals
6 that we would be speaking with have little to no power.
7 They are in powerless positions. And for us to go in,
8 briefing, and let's say we even get folks to speak with
9 us, we are going to get what we want out of it, but I'm
10 not sure where that leaves them or the possibility that
11 it leaves them with less power.

12 I wonder if perhaps we might be able to get
13 at the very same groups of people if we were to try to
14 get individuals that have been incarcerated but
15 recently released to come in to testify before the
16 Commission. We can ask them to --

17 COMMISSIONER ACHTENBERG: I think that --
18 I'm sorry, go ahead.

19 VICE CHAIR TIMMONS-GOODSON: I was just
20 going to say we can ask all kinds of questions. There
21 would not be the financial implications, and I would
22 be more comfortable with not placing any prisoners in
23 a position with less power or in a weakened position
24 that there is --

25 COMMISSIONER ACHTENBERG: Mr. Chairman,

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1 Commissioner Achtenberg.

2 CHAIRMAN CASTRO: Yes, please.

3 COMMISSIONER ACHTENBERG: May I speak?
4 Thank you.

5 CHAIRMAN CASTRO: Yes.

6 COMMISSIONER ACHTENBERG: I do -- Madam
7 Vice Chair, I do contemplate that a number of recently
8 incarcerated persons will be asked to testify. I think
9 the issue is a significant one, and I think it will be
10 important to hear from the people themselves.

11 And, again, the ability to undertake an
12 inquiry inside a prison will have to be explored as to
13 whether or not it is not only logistically possible,
14 but it's possible in order to respect people's rights.
15 I don't know the answer to that question, about whether
16 or not something can be undertaken that does -- you
17 know, that answers the concerns that you have just
18 expressed.

19 In the event that it is impossible to do
20 such a thing, in consultation with the Bureau of Prisons
21 as well as the legal and advocacy organizations that
22 are there to protect the rights of incarcerated
23 persons, I think it would be important for the United
24 States Commission on Civil Rights to undertake such a
25 direct inquiry.

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1 But if it is not possible, given -- I mean,
2 nobody wants to harm, you know, or to leave incarcerated
3 persons less well off than we found them as a result
4 of our inquiry. So I understand the concern.

5 I do believe, though, that the staff of the
6 U.S. Civil Rights Commission, as understaffed as we
7 are, has the capacity to undertake a direct inquiry,
8 or it's not -- if it doesn't have the ability -- if we
9 don't have the ability to leave -- to do no harm, or,
10 you know, to do some good there, then I agree with you,
11 it should not be undertaken. But I would urge my
12 colleagues to agree to allow our staff and special
13 assistants to make an effort to undertake this project
14 as proposed.

15 COMMISSIONER KLADNEY: This is Dave
16 Kladney.

17 COMMISSIONER HERIOT: Mr. Chairman?

18 CHAIRMAN CASTRO: Commissioner Kladney,
19 then Commissioner Heriot.

20 COMMISSIONER HERIOT: Thank you.

21 COMMISSIONER KLADNEY: Thank you. I
22 would just say that on the immigration detention
23 investigation, when we went to the detention centers,
24 they were kind enough to gather a bunch of people for
25 us that we were able to question.

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1 I would say that we would want, so the Vice
2 Chair's concerns are assuaged, that we would be able
3 to speak with these incarcerated persons privately
4 without other people from the prison staffs there,
5 number one; and, number two, as I recall, the Chair had
6 numerous conversations with people that were very
7 helpful in determining what went into our report
8 concerning the immigration detentions outside of that
9 group meeting. And hopefully we can get that kind of
10 freedom granted us from the Bureau of Prisons.

11 So I think there are ways around the issue
12 of causing harm to those who are incarcerated.

13 Thank you.

14 CHAIRMAN CASTRO: Thank you, Commissioner
15 Kladney. Commissioner Heriot?

16 COMMISSIONER HERIOT: I wanted to say,
17 first, that I think the general topic of, you know,
18 looking into women's prisons is a good one, and so I
19 favor that. I think the very essence of the Commission
20 is to look into issues of equal protection, and,
21 therefore, if really necessary, to make the comparisons
22 to men's prisons.

23 I also think that field visits are
24 extremely important here. That said, I do think the
25 concept paper is still too sprawling. But rather than

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1 look, you know, into as many issues as we are talking
2 about here, it should be narrowed to particular issues,
3 and so I think we have a real problem here.

4 As I've said now a million times, we need
5 to be modest in what we investigate, because every topic
6 always turns out to be more complicated than it was
7 thought to be. And the more modest we are, the more
8 we look at something narrow, the better.

9 As for the issue of speaking to prisoners
10 who are incarcerated now, or people who have been
11 recently incarcerated but released, I have a real
12 problem with the notion of bringing in recently
13 released prisoners. Invariably, that is going to be
14 filtered through some advocacy organization who has
15 picked out the speaker for us, and we basically become
16 the Commission on Civil Rights that listens to other
17 inside-the-Beltway organizations, and I object to
18 that.

19 I would very much like to do something more
20 along the lines of what Commissioner Kladney just
21 mentioned, which is basically modeled after what we did
22 at the immigration detention centers. And so I would
23 definitely, definitely favor that.

24 As to the issue of staff being spread too
25 thin, I think that the Chairman is correct that we

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1 should rely in part on our special assistants to
2 schedule our field visits and to manage that issue.

3 But another issue I think that the special
4 assistants could be very effective on is at some point
5 very early in this process, we need to decide what sort
6 of interrogatories should be addressed to the prisons
7 that we are interested in. And we've got some people
8 who have done litigation before, and so creating a
9 subcommittee of three special assistants or so who
10 could take the first cut at drafting those
11 interrogatories, I think that would be very useful, and
12 I would advocate doing that.

13 Another thing I advocate is that instead
14 of waiting until summertime, we should be deciding what
15 our next enforcement report is going to be in the next
16 couple of months, so that we can give it a whole lot
17 more thought than we have previous proposals of this
18 sort, because I have basically been disappointed in
19 every enforcement report ever written during my tenure
20 on the Commission.

21 I sure would like to see one that -- where
22 we are not running with our hair on fire trying to get
23 something done as rapidly as possible, because the
24 results have not been great in the past.

25 So I would propose, as soon as we have this

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1 done, making a call for papers again on enforcement
2 reports, and see if we can't have something done, you
3 know, ready as a proposal six months earlier than usual.

4 CHAIRMAN CASTRO: This is the Chair.
5 Thank you, Commissioner Heriot. Is there anyone else
6 who would like to speak on the topic of the current
7 enforcement report, 2017?

8 COMMISSIONER YAKI: This is Commissioner
9 Yaki. I just wanted to support the concept by
10 Commissioner Achtenberg. I think it's an important
11 topic, and I think that we can work our way through this
12 as we always have. And it may be not ideal, but I think
13 it's the way to go.

14 CHAIRMAN CASTRO: This is the Chair.
15 Thank you, Commissioner Yaki. Anyone else?

16 COMMISSIONER NARASAKI: This is -- go
17 ahead, Pat.

18 VICE CHAIR TIMMONS-GOODSON: Vice Chair
19 Timmons-Goodson. I am going to support this. I
20 indicated early on that I thought it was an important
21 topic. My entire focus has been simply on us
22 narrowing. I ask that if we go forward with it the way
23 that it is written, that indeed the special assistants
24 and the staff work to narrow it. They said they'd work
25 to narrow it.

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1 I do believe it won't be long before we will
2 see that some of the advocates are not what we thought
3 they might have been for the areas and need to be cut
4 off. So I ask that we narrow it in processing and going
5 over the actual outline and parts of it. At least that
6 is my hope.

7 CHAIRMAN CASTRO: Thank you, Madam Vice
8 Chair. Commissioner Narasaki, was that you who
9 indicated a desire to speak?

10 COMMISSIONER NARASAKI: Yes, it was me.
11 I'm wondering, Mr. Chair, if it's possible to ask the
12 Staff Director about his opinion in terms of the breadth
13 and the ability of staff to cover what is proposed.

14 CHAIRMAN CASTRO: Mr. Staff Director,
15 could you address that, please? You may have to unmute
16 your phone.

17 MR. MORALES: Yes, thank you. I am
18 actually on the way to catch a train, but I will opine
19 and tell you that I have had conversations with our
20 staff.

21 CHAIRMAN CASTRO: Mr. Staff Director, we
22 --

23 MR. MORALES: I'm sorry. I'm sorry.
24 Yes. No, we are -- sorry, I'm in a cab on the way to
25 the train station. I apologize. But after having

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1 consultations with staff, certainly our desire is
2 always to carry out -- hold on one second.

3 (Pause.)

4 MR. MORALES: I'm sorry. I'm in a cab.

5 Again, so we are -- after having had a
6 conversation with the staff, you know, it is our
7 intention always to carry out the wishes of the
8 Commissioners and do the best we can.

9 I think the caveat that Commissioner
10 Achtenberg had presented that if we could work with the
11 special assistants and the Commissioners and advise
12 them as to when we reach, you know, a point where we
13 have concerns about staff ability and bandwidth and
14 also a budget to carry out, you know, what's in the
15 concept paper, that they would -- you know, that you
16 would all work with us in trying to overcome or to meet
17 those challenges.

18 And, with that, I would say, you know, our
19 job here as staff is to carry out the wishes of the
20 Commissioners, and we remain committed to do so.

21 Thank you.

22 CHAIRMAN CASTRO: This is the Chair.
23 Thank you, Mr. Staff Director. Any other questions or
24 comments from anyone as to this point?

25 COMMISSIONER NARASAKI: So this is

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1 Commissioner Narasaki. I just want to know where we
2 are with Commissioner Timmons-Goodson's suggestion
3 that we -- that we -- she might be comfortable moving
4 forward if there is an agreement that our staff will
5 continue to work with Commission staff to try to focus
6 the paper more.

7 COMMISSIONER KLADNEY: Wait. What --
8 focus the paper more? No one said it was unfocused.
9 The director just said that, as we go along, we will
10 look at things to see if they are possible or not
11 possible. Now you want to --

12 CHAIRMAN CASTRO: That is Commissioner
13 Kladney speaking for the record. Sorry. Go ahead.

14 COMMISSIONER KLADNEY: Sorry, Mr.
15 Chairman.

16 CHAIRMAN CASTRO: It's okay.

17 COMMISSIONER KLADNEY: I don't -- I don't
18 see where you are going with that, Commissioner
19 Narasaki, especially in light of the director's
20 statement.

21 COMMISSIONER NARASAKI: I feel that my own
22 -- my concern is not just the field trip in terms of
23 staff capacity. I think that both the Vice Chair as
24 well as Commissioner Heriot and I have all expressed
25 the concern that it's attempting to cover a lot of

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1 ground.

2 And I'm not, again -- like others, I'm not
3 against the concept. I'm not against what it's trying
4 to do. I'm just concerned about the staff's capacity
5 to be able to do all of this justice.

6 And what I understood, and perhaps I
7 misunderstood, but what I understood the Vice Chair to
8 be saying is that there would be effort as we go along
9 to figure out what we could really, of all those things,
10 you know, some of the issues may have a lot of useful
11 information coming out, some may turn out to be too
12 difficult to collect the data on, that we have an
13 agreement that we will try to look at that and trim as
14 we go along as opposed to we are going to try to
15 accomplish everything that's there.

16 COMMISSIONER KLADNEY: You know, it seems
17 to me -- okay, I'm sorry. Go ahead.

18 VICE CHAIR TIMMONS-GOODSON: Vice Chair
19 Timmons-Goodson. Following up on that, if we could,
20 the outline when we -- now, granted, ours was not a
21 statutory report. We were just going to do a briefing,
22 but I saw how critical the outline was. I believe that
23 the outline might provide another place and another
24 time for us to make sure that we are indeed touching
25 on the issues that we want to touch on and that are

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1 achievable, attainable, not too far out.

2 So if we could pay close attention to those
3 outlines and take a look at where we are there.

4 CHAIRMAN CASTRO: This is the Chair. I
5 think the comments that the Staff Director provided and
6 that related to the human capital aspects of this I
7 would imagine are just as applicable as if -- as we begin
8 to flesh out the report itself on the issues. If we
9 run into some issues where it's obviously not going to
10 be doable or there are some concerns, then come back
11 to us and say, hey, we've run into some issues here.

12 You know, the longer we take to begin to
13 put forward something final, the longer it is going to
14 -- it is going to impact our scheduling. So I would
15 like for us to make a decision today and not further
16 refine or further revise, but with the understanding
17 that as we begin to move forward on this report, when
18 and if there are some bumps in the road, whether it's
19 human capital or a focus on the topics, that the staff
20 comes back to us and we address it then, if necessary.

21 COMMISSIONER NARASAKI: Mr. Chair, this
22 is Commissioner Narasaki. This is what I was
23 suggesting. I was not suggesting holding off the vote,
24 even though I don't think I am prepared to vote in
25 support of it, but others are. I just want to make sure

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1 we have agreement about how we're going to move forward.

2 And the second thing is I wanted to comment
3 on Commissioner Heriot's observations about going into
4 the field. I think the main reason why the field trip
5 in the -- for the report of detained mothers and
6 children in terms of talking to people was a little bit
7 unusual in that we were able to, or at least the Chair
8 was able to speak Spanish, talk to people that we happen
9 to encounter.

10 Those women were not included in the group
11 that was produced by the company who was in charge of
12 imprisoning these women. And what they put in the pool
13 were mainly women who had only been there for like a
14 week and really couldn't say much about what the
15 experience was.

16 So I did not feel like that was actually a useful
17 exercise. But for the fact that we encountered the
18 women in the field and they talked to us over the
19 objections of the Department of Homeland Security
20 personnel and the corporate prison, I am not sure we
21 would have walked away with very much. I very much am
22 more supportive of what the Vice Chair is suggesting,
23 and I understand Commissioner Heriot's concern that
24 obviously it is quite likely there will be a group
25 involved in -- because someone will have had to help

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1 identify the former felons.

2 But I do think that they would be more free
3 to speak, and we'd be more likely to get useful
4 information.

5 CHAIRMAN CASTRO: Thank you, Commissioner
6 Narasaki. This is the Chair. Anyone else wish to
7 speak?

8 COMMISSIONER HERIOT: Let me. Mr.
9 Chairman, this is Commissioner Heriot.

10 CHAIRMAN CASTRO: Commissioner Heriot?

11 COMMISSIONER HERIOT: Yes, I would like
12 people to consider more seriously what I said just a
13 minute ago about a three special assistant committee
14 consisting at least of Alec, because he did the work
15 on the concept paper, but also someone who has
16 substantial litigation experience and someone from the
17 minority commissioners as well.

18 So Alec, I think Kim may have litigation
19 experience; Jason may. I'm not certain. And, you
20 know, either Carissa or Alison in a committee, have them
21 sit down and work through what the interrogatories
22 should look like. It may -- during that exercise, it
23 may occur to them which parts of the proposal just
24 aren't going to work. We won't be able to get
25 information that will be useful.

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1 And because the special assistants are
2 closer to the Commissioners, it just seems to me that's
3 going to work a lot faster than waiting on the regular
4 staff to tell us when something isn't working out. And
5 so I would propose that we have such a committee.

6 COMMISSIONER ACHTENBERG: Mr. Chairman,
7 it's Commissioner Achtenberg. And I consider that a
8 friendly amendment, and I'm happy to incorporate that
9 as a very constructive suggestion by Commissioner
10 Heriot into the motion.

11 CHAIRMAN CASTRO: And may I --

12 COMMISSIONER HERIOT: Can we select the
13 members for that right now? You know, it seems to me
14 that Alec should be on it, either Carissa or Alison
15 should be on it, and someone who has had a lot of
16 litigation experience drafting interrogatories and
17 knows the pitfalls of asking the wrong questions should
18 be on it.

19 MS. TOLHURST: So this is Kim. If
20 Commissioner Yaki is okay, I've written tons of
21 interrogatories.

22 MR. MORALES: And just so you understand,
23 this is to assist our General Counsel's office, not to
24 replace them.

25 COMMISSIONER HERIOT: No, right.

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1 COMMISSIONER ACHTENBERG: Of course.
2 Absolutely. It will move things along faster I think.
3 So if we had Kim, Alison, and Alec, I propose as our
4 subcommittee, and just try to move things along a little
5 faster.

6 And others may participate as they wish.
7 For example, Dave's assistant will -- was extremely
8 valuable in the undertaking as well.

9 CHAIRMAN CASTRO: Thank you, Commissioner
10 Achtenberg. And I will add one other friendly
11 amendment, assuming once we vote, if this passes, that
12 our staff be directed to issue a press release next week
13 about the source of this topic.

14 MR. MORALES: Absolutely. Mr. Chairman,
15 this is the Staff Director, Mauro Morales.

16 CHAIRMAN CASTRO: Yes.

17 MR. MORALES: I'd like to add, I would
18 find, you know, such a committee useful, but I want to
19 make sure that we understand. They are serving in a
20 recommendation and an advisory capacity that --

21 COMMISSIONER ACHTENBERG: Only in an
22 advisory capacity.

23 MR. MORALES: Okay. Thank you.

24 COMMISSIONER ACHTENBERG: Yes. That's
25 exactly correct.

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1 CHAIRMAN CASTRO: That was Commissioner
2 Achtenberg.

3 COMMISSIONER HERIOT: But just doing a
4 first cut on interrogatories and advising, you know,
5 not -- not just orally but producing a written product,
6 because I think --

7 MR. MORALES: That's fine.

8 COMMISSIONER HERIOT: -- that is going to
9 move us a lot faster. Yes.

10 CHAIRMAN CASTRO: That was Commissioner
11 Heriot.

12 COMMISSIONER KLADNEY: The staff should
13 have the final say on the interrogatories according to
14 the director?

15 CHAIRMAN CASTRO: Yes.

16 COMMISSIONER KLADNEY: I mean, that's --

17 CHAIRMAN CASTRO: The staff should have
18 the final say, OGC staff.

19 COMMISSIONER KLADNEY: Absolutely.

20 COMMISSIONER HERIOT: No, the Commission
21 has the final say.

22 COMMISSIONER KLADNEY: Okay.

23 CHAIRMAN CASTRO: Anyone else? Anyone
24 else? I'm going to call the question then to vote.
25 Everyone ready?

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1 Commissioner Achtenberg, how do you vote?

2 COMMISSIONER ACHTENBERG: I vote aye.

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

5 VICE CHAIR TIMMONS-GOODSON: Yes.

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

8 COMMISSIONER YAKI: Aye.

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

11 COMMISSIONER KLADNEY: Aye.

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

14 COMMISSIONER NARASAKI: Reluctantly,
15 yes.

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

18 COMMISSIONER HERIOT: I originally
19 intended to vote no, and then I thought maybe I would
20 abstain. But we're trying here, so I'm going to vote
21 yes. I continue to think that the topic is just too
22 sprawling.

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

25 COMMISSIONER KIRSANOW: No.

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1 CHAIRMAN CASTRO: And I vote yes, so the
2 motion passes with seven yeses and one no. We almost
3 got unanimous. Okay. So the motion passes.

4 **V. ADJOURN MEETING**

5 CHAIRMAN CASTRO: I think staff has the
6 direction we have given, and with that we have no other
7 items on the agenda, so I hereby adjourn this telephonic
8 meeting at 1:47 p.m. Eastern Time.

9 Thank you, everyone.

10 (Whereupon, the above-entitled matter
11 went off the record at 1:47 p.m.)

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