



COMMISSION TO ELIMINATE CHILD ABUSE AND NEGLECT FATALITIES

COMMISSION MEETING - TELEPHONIC

FEBRUARY 14, 2016

Attendance:

- Chairman, David Sanders
- Commissioner Amy Ayoub
- Commissioner Teri Covington
- Commissioner Bud Cramer
- Commissioner Susan Dreyfus
- Commissioner Wade Horn
- Commissioner Patricia Martin
- Commissioner Michael Petit
- Commissioner Cassie Statuto Bevan
- Acting Executive Director, Amy Templeman

CHAIRMAN SANDERS: So good morning to everybody. We're going to finish in our next two days with an ambitious agenda but I think we have everybody but Commissioners Rodriguez and Rubin joining us today and tomorrow, everybody but Commissioner Rubin and Commissioner Rodriguez should be on.

And I want to thank everybody for all of the input that they provided but I also want to start, and Commissioner Dreyfus did already, by thanking staff for continually taking our input and trying to translate the minds of 11 people into one document. I think they've really done a remarkable job and I know they're listening intently today to the changes that we make because they're going to have to make changes quickly and get them in writing so that we can review them.

So we'll be working on the most recent document, the revised report which was sent to you by Amy on 2/12 and it incorporates the edits and comments from Commissioners, and the comments you see in the margins are the ones that are not yet resolved. And so we've developed the agenda based on those comments and really want to make sure that we're getting to those that are likely to inform Commissioner support of the report. And we'll start with the items that could potentially require the most re-writing of the report depending on our decisions. I think, and -- I think everybody saw a list of the things that we're going through and we're going to start with the American Indian chapter, followed by Disproportionality, followed by the Chapter 2 and 2.1.

But I want to start by just making sure that the -- we are clear about the decision-making process and that for the actual vote on the report, that right now, it's planned to be by email.

I had sent something -- or Amy sent something out suggesting that if people wanted to vote and if we wanted to have a phone meeting to vote, that would be fine but voting by email is the plan right now because I want to make sure everybody has the chance to participate. So think about that as the call goes on and then at the end I'll ask again to make sure that we're still on track for that.

COMMISSIONER DREYFUS: Commissioner Sanders, is it possible as we're going through these chapters when Commissioners are speaking about specific comments or whatever, could staff or someone just refer us to what page number?

CHAIRMAN SANDERS: Sure. Amy, can you be prepared to do that?

AMY TEMPLEMAN: Yes, we can do that.

COMMISSIONER COVINGTON: Can I also -- we received Saturday night -- and I'm sure this is your decision but we received Saturday night the same document that Amy had sent on the 12th but it has comments in there from Commissioner Rubin.

CHAIRMAN SANDERS: Yes. Since Commissioner Rubin wasn't going to be on, he wanted to provide his comments for today and particularly wanted to make sure that we were alerted to the areas that he would like to be part of the discussion on, so I'm going to try and reserve those for tomorrow if possible. But is -- was there something, Commissioner Covington, that you had --

COMMISSIONER COVINGTON: Well, no, I was just wondering if --

CHAIRMAN SANDERS: -- that you wanted to comment --

COMMISSIONER COVINGTON: -- my thought was instead of using the version from the 12th, if we use that version because it does have his additional comments in the margins. That's all.

CHAIRMAN SANDERS: Sure, fair enough.

COMMISSIONER MARTIN: So the one that was sent out yesterday is what we're using?

COMMISSIONER COVINGTON: That's what I was suggesting.

CHAIRMAN SANDERS: If that's not a problem for people. I don't know what people have in front of them.

COMMISSIONER PETIT: David, what I have in front of me is a printed document that was sent out like two days ago. It didn't have the one that said "updated" on three pages because of Commissioner Bevan's additions, so I can -- I don't think there's much in the way of page changes from the original document, but if there is, if somebody could say, you know, we're on page 36, the original document was 37, to locate what people are talking about.

COMMISSIONER AYOUB: This is Amy. Could we just quickly be sent the one that everybody is supposed to be on, with Dr. Rubin's inclusion?

CHAIRMAN SANDERS: Amy, can you do that?

AMY TEMPLEMAN: What?

CHAIRMAN SANDERS: Ms. Templeman.

COURT REPORTER: Good morning. This is the court reporter. Can you hear me?

(No response.)

COMMISSIONER AYOUB: David, while we're waiting, could you explain what that email vote would look like? Would that be --

CHAIRMAN SANDERS: Specifically, it would have to be similar to what we did with the executive director, that we would call for the vote. There would be an email just to me on the vote and it would be a vote "yes" or "no" on the full report.

COMMISSIONER AYOUB: Okay. Thank you.

COMMISSIONER MARTIN: So David, this is Pat Martin, and I'm not saying that I have read through the process you just described, but I do want to know most of those statutorily have to be public.

CHAIRMAN SANDERS: I will ask Amy to describe what's required.

COMMISSIONER MARTIN: Okay. I just want to make certain and I know that you're working hard to do that, but I just want to make it clear what the statute would require of us.

CHAIRMAN SANDERS: Yeah. We can do an email vote and one of the questions will be "Is the specific vote identified in the report?" That would be one of the questions and I believe we have an option but Amy Templeman?

COMMISSIONER CRAMER: Yeah. That's an important question for me, too, and it needs to be answered so I assume we will have an answer.

AMY TEMPLEMAN: Yes. The feedback that we got from GSA when we asked for an opinion on this was that the vote did not need to be taken in a public meeting. It could be a vote that happens by email, by an email to the Chair but that we would need to be prepared to make that information public if it were requested or the Commissioners would decide to put the results of the vote in the report which is an option that I know some other commissions have chosen in the past.

COMMISSIONER COVINGTON: And my thought -- this is Commissioner Covington -- is if we do it by email, it seems -- and they're only going to you, I would still like to know what everyone voted. I mean are these supposed to be secret votes because it seems to me we should know what everyone else is voting.

CHAIRMAN SANDERS: All right. Let me make sure that we devote enough time at the end of this call to make sure that we have all of the pieces of the voting in place. I want to make sure we get to the substantive pieces of the report so, Amy, be prepared at the end to walk through the voting and some of the requirements and the conversations with GSA and what our legal requirements are.

COMMISSIONER COVINGTON: Can I make one more comment about the process related to the voting, David?

CHAIRMAN SANDERS: Yes.

COMMISSIONER COVINGTON: You had said that you wanted it to happen by Tuesday morning but I personally don't feel I'm going to be ready to vote until I see the final draft of the report. I don't know how --

CHAIRMAN SANDERS: The plan will actually be to have --

COMMISSIONER COVINGTON: -- I'm going to turn it around that fast so

CHAIRMAN SANDERS: The plan will be to have a draft completed basically by the end of our call tomorrow. Staff are working in realtime to get to get the draft put together, so we'll see how the conversation goes today and what they can provide but that's the intent.

COMMISSIONER COVINGTON: My concern is that I have to get on a plan first thing Tuesday morning. We're done talking at eight and then I'm working all day Tuesday. I don't see how I can possibly spend the time to read the report.

CHAIRMAN SANDERS: It's going to have to be Tuesday morning. I think that -- why don't we plan to make sure that at the end of this call that we go over everything so that everybody is able to participate in the vote.

So we have the American Indian Chapter - -

COMMISSIONER DREYFUS: Did we get -- did it get resent? Here, it just came through. I just got it.

CHAIRMAN SANDERS: So Commissioner Martin, as one of the participants in the American Indian subcommittee, do you want to walk through this or would you prefer that I do it? Either way is fine.

COMMISSIONER MARTIN: You can do it and then we can all just join on.

CHAIRMAN SANDERS: Okay. I'm going to make one recommendation if it's all right with you. We had -- Commissioner Martin and I had a chance to talk and while this isn't in writing, I would like to propose that we consider moving both the American Indian chapter and Disproportionality chapter up in the report to really be connected to the chapter on the case review that we've identified. And the reason for that is because these are populations that we have identified as needing to be addressed immediately. So we don't have to make a decision on that yet because I'd like to walk through the chapters but at the end want to get a chance to talk about that.

So the American Indian chapter, there were actually a number of comments and I'm going to probably suggest that we start with those who had comments that were identified in the report and it's going to take me a second to pull it up. I know I had some comments.

COMMISSIONER MARTIN: So one comment, David, if you don't mind -- Chairman Sanders -- I'm sorry -- is, and I think it was made by you, and it talked about whether or not, you know, the child safety office that we're recommending in other areas of the report, whether or not the Native American, you know, core person should be and report to the child safety chair or secretary. And one of the things I am somewhat -- well, this is what I believe is currently in place right now. I believe -- I apologize, I have as light cold -- I believe there is a young lady who's currently in the White House with the position responsible for reporting to the Executive Branch about Indian Affairs. My concern is what I understand is that she doesn't

have the authority to pull together BIA and other Indian issues from other agencies and she doesn't have convening authority and no one has the final, you know, buck. No one has the responsibility of saying, you know, there are three different arguments here; based on the facts that I, you know, I'm making a final decision, x, y, z. And so I'm wondering do we just add to the bureaucracy by moving over and moving Indian Affairs over into the child safety cabinet or do we have a better effect, and I would suggest that our effect that we already have in the White House, the power that we already have in the White House for our Native American families is probably sufficient if, in fact, we give her and we give that office the authority to actually convene and make decisions. And so I guess I'd like to talk about that issue. I don't care what order we talk about it but I do think we need to have some conversation about that and kind of what that would look like.

CHAIRMAN SANDERS: So maybe I can sort of note, Commissioner Bevan, Commissioner Dreyfus had some comments but I think that -- why don't I start with my overall comments, Commissioner Martin, and include that one in there.

COMMISSIONER MARTIN: Okay, great.

CHAIRMAN SANDERS: I think that, for me, my concern about the way the Chapter is laid out is primarily that as a commission, it seems that the things that we heard most about were data and jurisdiction and that we have a number of recommendations that go beyond that that we heard from those doing the testimony. I think that what I tried to lay out was a set of recommendations that address the data concerns to try and begin to at least create a forum to have a conversation about the jurisdictional concerns and then to address the issue that you just raised. I'm actually fine changing it to whatever we believe would be the most effective structure and if it's better putting the authority in the White House, that would certainly be fine.

But I think my concern was that we have recommendations that we were trying to convey the depth and breadth of the testimony that we heard but I'm not sure they're recommendations that reflect the areas that we heard that would reduce fatalities, which -- and I think the fact that the 2014 NCANDS data is so different than the 2013 is an example of the data problems that we have.

And so I'm recommending that we focus on data, on jurisdiction, and on structure rather than the broad array of recommendations that we had. And I will stop at that and see if Commissioners Dreyfus or Bevan have anything to add.

COMMISSIONER DREYFUS: Again, can you refer us to the specific page and recommendation right now where we're talking about?

AMY TEMPLEMAN: Starting on page 90 of where the Chairman's recommendations begin.

COMMISSIONER DREYFUS: Thank you.

COMMISSIONER COVINGTON: Commissioner Sanders, are you saying you don't want all the other recommendations in the report? You only want the three areas you were just talking about?

CHAIRMAN SANDERS: Commissioner Covington -- my -- what I would like to see is those recommendations as recommendations that came to the Commission (inaudible) testimony

that we heard and that it's important to convey those recommendations, but I don't believe they are -- they reflect, at least from my view, the Commission's thinking necessarily, that I would want to have a lot more information before making some of the recommendations. But I feel strongly about the recommendations related to jurisdiction and related to data and structure.

COMMISSIONER DREYFUS: So this is Commissioner Dreyfus. I'll just give an overview for my Commissioners of my comments on this. First of all, overall, I felt -- and I'm pleased that we're going to talk about moving these chapters up -- I felt like our chapters on Disproportionality and Alaskan/Native American seemed to almost sound like different reports than being really connected to -- and I always felt that the reason why we were going deep into Disproportionality and Alaskan/Native American was because we knew that within our report, we had to have specific emphasis but this, to me, is sounding -- it's starting to be disjointed from the full report.

So things like I couldn't help but feel like in a number of the recommendations, 6.5(b), 6.5(c), my question is how do we know this is going to prevent child deaths. I don't doubt that it might not be a good idea but I just didn't see how it connected to, you know, reducing deaths. It talked -- when 6.5(a) talks about, you know, something outside of the standard 9 a.m. to 5 p.m. service hours; well, how in the world is Congress to effect services available outside of regular business hours? I'm kind of hung there. And I felt like a number of the recommendations seemed very broad to their ability to really impact abuse and neglect, but I think my overall comment would be I feel like whatever we end up calling the surge, if it truly is used in the integrated way in which we're talking about, not just about kids today but also about kids tomorrow, it makes -- it helps the system be more front-end and preventative. To have the knowledge that Commissioner Martin and our other Commissioners, those two committees got, inform that body of the report just made a lot more sense to me. So I'm going to stop there but those are just some comments I would have, but I just hope they're helpful and they're all written in the sidebar notes that I made.

COMMISSIONER STATUTO BEVAN: My comments are all in the report. I do want to say that I thought a lot of this was beyond the scope. Not only on mandate but what Congress could do. There are a lot of mandates in here and I don't -- you know, other than -- I just don't know how it would be implemented unless you're coming up with a separate Indian -- Native American Indian like we have ICWA. Are we looking at a separate piece, because it's just beyond the scope of where we are unless we integrated this with other children. Some of the recommendations, I don't think we really know the answer to.

COMMISSIONER PETIT: David, this is Michael, and I would agree with both with Susan's thoughts, Cassie's and your own on this one. It feels like trying to -- it's too much.

The other thing that we don't seem to have addressed is the number of children right at the very beginning in terms of what is the number of American Indian-Alaskan Native children that are killed, even a guesstimate. And I would just note that one of the reasons why the numbers do seem to fluctuate the way that they do as presented here is that the numbers are so small that even one or two deaths a year can significantly change the rate. My best guess right now is there are about 30 or 35 Indian children that are killed a year from abuse and neglect based on the numbers that we've seen. So even if you had two more or two less, that affects the number by 10-15 percent so I think we need to keep that in mind as well.

And I don't think there's a good (inaudible) right now (inaudible) to (inaudible). I mean there would have to be some kind of collaboration with BIA that's in a department than, you know, child protection.

COMMISSIONER STATUTO BEVAN: I would also -- and one thing, Judge Martin, I would be concerned about who was in the White House when investing so much into the White House and not having any oversight or ability to negotiate because if it's in the White House, then that's pretty much of a hands off and given the -- given Administration's change, you might not want to do that.

COMMISSIONER PETIT: I agree.

COMMISSIONER DREYFUS: Commissioner Petit, this is Susan. So I was thinking as it relates to the quote, unquote (inaudible) if it (inaudible) something similar but appropriately unique to our sovereign nations in terms of how something similar is done, that allows for not only looking at kids today but also as that learning laboratory that can really help start setting up, implementing those things that indeed can reduce (inaudible) and then still having those key recommendations that I think were very thoughtfully done by the committee on all that we learned about data and ways, you know, that data can be improved. Is there -- you know, and I guess Commissioner Bevan, I'd ask you that, too, with your knowledge of the federal government.

COMMISSIONER PETIT: Listen, I think --

COMMISSIONER MARTIN: Before we go that far, can I address some of the issues that already have been addressed to me --

COMMISSIONER PETIT: I can respond --

COMMISSIONER MARTIN: -- and then we can go through those? So first of all, I appreciate all the recommendations and comments that have been made by my fellow Commissioners. I sincerely look forward to your assistance in helping me make -- helping all of us make certain that our Native families and Native children are protected as well.

And Commissioner Petit, I agree with you. The numbers of actual children who die in Native country is smaller proportionately but the reality is we all know that one death is enough for us to go through this effort. And when we look at the numbers of children who die in general, that is still small compared to the number of children in our general population, so I don't disagree with your argument but I would suggest to you that even though the numbers are small, it's well worth our effort in trying to protect our children in Native land as well.

COMMISSIONER PETIT: Yeah. So --

COMMISSIONER MARTIN: With respect to -- let me just make a couple of comments and then I'll --

COMMISSIONER PETIT: Sure.

COMMISSIONER MARTIN: -- be quiet again.

COMMISSIONER PETIT: And I'd like to be able to move on to that question. So she asked me a question and you've responded to it but I'd like to respond to what she asked me about which

was in terms of the parallel between BIA and Child Protection, and I think that's a very good suggestion. The BIA --

CHAIRMAN SANDERS: Can we have Commissioner Martom finish and then we'll come back to you (inaudible).

COMMISSIONER MARTIN: Thank you. And so in addition to I think that although there are a lot of similarities on Indian country and their state courts are in -- on state land. I think one of the things that we all agree and all of us have recognized through the testimony is that our Native children have some special needs and I don't mean that in the traditional form but special needs in terms of cultural sensitivity issues, in terms of just how they got on these lands, historically how they got on these lands and what has resulted in some of the historical treatment, and I do think that we need in particular attention to those issues.

This whole issue about whether or not these recommendations are too broad or some of them are too broad, I do agree with Chairman Sanders that the biggest issue (inaudible) may be around jurisdiction and data but like everything else in this report, we don't know if it's going to work. This is our best guess at, you know, using not such an attractive term, but this is our best guess, our best hypothesis based on what we've learned throughout these 2-1/2 years plus our expertise that we brought to the table about what will effectuate reducing and eliminating child deaths. So yes, I agree with you that the things that are listed in the recommendations that are listed, I can't guarantee that they're going to work but I certainly would suggest that there is support behind each one of them from the testimony about how they will impact and directly or indirectly impact the deaths of our children. And I thought that was kind of our mission to do that so all of our kids, and particularly with Native American children.

I think there was a comment about moving it up in the report and as I mentioned to Chairman Sanders before, it seems to me that recommendations that offer direct action items or that can be considered as direct action items moved into the report or (inaudible) so that the reader who has not had the privilege of sitting down to all of our -- through all of the testimony and all the deliberations, both, you know, side conversations and deliberations, who haven't had that benefit can understand what we're trying to say and what we think will provide more immediate results for our children and our families.

And then for Commissioner Petit, if you would respond to the issue about BIA and CPS and then I'll respond back to that again.

COMMISSIONER PETIT: I'm responding to the question that Commissioner Dreyfus raised and I agree with her. I think that's where you're going with this thing, that each BIA and HHS could be empowered to do this. I don't think that BIA should have to work through or get permission from DHHS on this although I do think they should obviously consult with them to the extent that this is new territory for them. But a special effort with the surge should be made as well within Indian country and it should be managed by BIA, I guess. I do think that the jurisdictional question that was raised about the White House and so forth, I agree with Commissioner Bevan on that one, that I don't know that we want to go too deep on this. I don't believe that we -- I'm not informed enough, at least, about all of the machinations within the structure or the bureaucracy, separate nations and all that to say it should be this

path versus that path. It's something clearly that should be embraced by both the Executive and Congressional Branches together.

COMMISSIONER MARTIN: And I don't know if I disagree with you or not but I would say that one of -- from -- you know, from someone who didn't have a lot of information about this area, it seems to me that one of our problems is that we've given the responsibility, we meaning Congress, has given the responsibility for Indian Affairs and put it in a lot of different pockets but there's been no real effort to make certain that there is some body that has a final word and where the buck stops. And so what I'm trying to do is make certain that, you know, whatever is the best approach to get where we can get a final word, and I think that really -- that contributes to our problems with jurisdiction, that on one has the responsibility for making a final decision and that's kind of where we get such (inaudible) results across the nation is because federal hand that comes down and says this is the way it goes or that is the way it goes. Now, if -- and I guess what I'm asking my fellow Commissioners, it seems to me that that's going to impact directly on jurisdiction which we all -- I think we all agree will have a direct impact on how we count the deaths of our children. We got to get the numbers and we can't get the numbers when they're counted so vastly different across each of the lands and how the deaths are related to. So some jurisdictions don't let -- or try to restrict state agencies from coming on because they're scared of the body and things that are very legitimate, not that I understand them but they're very legitimate in those cultures and we still have to figure out how to get counts and how to get the numbers and pull the numbers together and aggregate them so we can understand what's going on.

And so all I'm asking is for the advice around this table as to how we get a final answer, how we get someone with authority to say this is the jurisdictional issue, this is the answer, period.

COMMISSIONER DREYFUS: Well, then I also have to ask Commissioner Dreyfus and will all sovereign nations be in agreement with that? I mean this is where this gets, you know, more complicated than simple to say there will just be this one final source. So I don't know that we're equipped today -- I guess I look to Commissioner Covington and I'd say on the whole data committee, I think to have the uniqueness of data as it relates to our Alaskan-Native American children makes a whole lot of sense to me and everything you just said, Commissioner Martin, I'm like yeah, we've got to wrestle through the data and make sure Congress understands it really is -- gets much more complicated when we're dealing with our Alaskan- Native American children and this must be addressed. As far as how that specifically should be done, I'm not sitting here, you know, ready today to say this is how that ought to be done. But I want to be in full agreement that everything that I saw in this chapter that absolutely should be in this Commissioner's report, it's more specific recommendations on how to clean up the data nationally and that includes specifically to this group of kids.

COMMISSIONER MARTIN: Well, you know, so what I'm saying is from my understanding, you know, I agree with you. The one thing that I have learned more or better than anything else is that all of these nations are separate and independent, right. It's not like you can say that two tribes necessarily have the same governing power or control each other and it's a lot of autonomy. But there is already a position at the White House and the idea is whether or not we can vest it with the power and strengthen that position so that it has some authority, and I guess that's why I'm so concerned about moving it to another bureaucratic structure when

we already have some authority in the White House which is, I would assume, water heaters we're doing and why I understand we want to recommend the child advocacy, the Child Safety Bureau, is to make certain that we have a direct line to the White House, whoever is in the White House. And yes, I have personal impressions about who I want to be in the White House or whatever but the issue is making certain that whoever sits in the oval office, that our Indian families have direct access to them. And my question is whether or not it makes more sense to strengthen that position, which is what I'm advocating, or move that position to another bureaucracy that we're trying to create. And I guess I'm just saying that I would rather have the straight line to the White House, whoever is sitting there.

COMMISSIONER PETIT: David, this is Michael. I understand, I think, what Commissioner Martin is talking about but honestly, once the Congress and the Administration treat this document seriously or the problem seriously, I believe that they have the ability to figure out what's the best way to structure this. There are many possible configurations and I don't think we're going to come up -- my guess is we're not going to have a consensus on what the best way to do that is. What they need to do is work backwards from the goal of protecting all children from being killed.

COMMISSIONER MARTIN: We can say that for the whole report then, Mike. I mean quite honestly, that statement would go for not just this Chapter but for the entire report if you take it to its logical conclusion. And I thought our responsibility was to take what we've learned and make our best recommendation, our best pitch forward. And yes, they can pick and choose what they decide to focus on and what they decide to fund and what they decide to go with, but I thought that was our job. And if we allow that argument for the Native children, I would suggest that argument goes for the entire report and every kid we've been talking about who's died during our time together.

COMMISSIONER CRAMER: This is Bud Cramer -- if I could weigh in on this. I think both of you, Michael and Judge, you have points of view that ought to be considered. All along, I have made myself remember that this is a bold policy statement in response to Congressional -- we were congressionally created -- back to the Congress. These are only recommendations but (inaudible) be specific recommendations that hopefully catch the eager eye and resolve of the particular committee that can make our -- can translate our recommendations. So the clearer we are, the simpler we are, I think the better off we are.

CHAIRMAN SANDERS: Let me -- if I could make a couple of points because I think this is a -- this is exactly the issue that we should be talking about. I would point out that the rate according to NCANDS of fatalities for American Indian children due to abuse and neglect was cut almost in half from 2013 to 2014. I think that points to at least questions about the accuracy of the data. And the number went from 14 to 7. And so I think that we have to take on this data issue as a Commission. I think we heard that consistently. I think we've seen it in action with the child maltreatment report from 2013 to 2014. And so that's where I think the bulk of our energy should go.

I think that, Commissioner Martin, the point that you raise about strengthening the authority is exactly right. And my proposal was to do it through the office that we have suggested is going to be responsible across departments for this issue, but I think that, you know, I would defer to those who know the Administration better than I do and how the Administration functions. But I think the intent is the same, to say that this authority needs to rest in one

place and we need to be -- we need to at least make the recommendation that that happen. And I don't know if Commissioner Cramer or Commissioner Bevan or if Commissioner Horn has joined, have any thoughts about the best way to structure this but I think the intent is the same.

COMMISSIONER MARTIN: And so, David, before they respond, let me just make everyone clear or let me make my position clear which is that we already have someone sitting in the Executive that has the ear of the Executive in the White House. Let's not forgo that power position. Let's strengthen the position we already have available to us and that's kind of my thought but I'm prepared to hear and I look forward to hearing the other commissioners' recommendations about that.

COMMISSIONER STATUTO BEVAN: (Inaudible) just to say that I think that our job is to point out what the problems are and the fact that it needs to be a focal point for these children and then let, you know, Congress and the BIA or the White House -- but Congress and the committee figure out how to strengthen it but we need to send a message --

COMMISSIONER COVINGTON: That's exactly the same way we're making the recommendations about the Office of Child Safety. I mean if we're doing -- if we're going to be proscriptive with that, I don't see why we wouldn't be proscriptive with this.

COMMISSIONER CRAMER: I think that's right. This is Bud Cramer. I don't have a problem with that. I just think we -- yes, we should keep in mind it's not only the Congress but the Administration as well. We shouldn't try to play one and say that's our best bet and then ignore reaction from the other.

COMMISSIONER COVINGTON: Commissioner Cramer, I guess I'm hearing what you're saying but I'm not sure you would do with that recommendation.

COMMISSIONER CRAMER: Well, I think we're begging the question. I think we should concentrate on what we -- because of our two-year experience and because of the mandate we were given and the hearings that we've held and our individual backgrounds and experiences, I think we should focus on what we've seen needs to happen. Hopefully, in our report, it will be specific enough to where it will capture Congressional attention as well as Administration attention.

COMMISSIONER HORN: So this is Wade. I have joined the call. Sorry I was a couple of minutes late. So there is always a natural inclination to want to have someone placed within the White House organizational structure as a way of most effectively influencing our national policy. In this space, there's a -- it's not just a certain logic but a certain truth to that.

The countervailing opinion, which I tend to share, is that it also sets up conflict between a person in the Whitehouse and the more operationally focused agencies and personnel within the Executive Branch. And so my concern with having this person located in the White House would be that if there was a difference of opinion between, you know, the person who is in this Office of Child Safety and the person at the White House, who wins, just to put that bluntly.

I think it's better to actually concentrate the power, not disburse it and to have it all in one office. I think then it's much more likely that the office would speak with one voice. I

understand the other view. I get that but if you're asking my -- based upon my experience working in the Executive Branch, I'd rather concentrate the authority rather than disburse it.

COMMISSIONER MARTIN: And I actually think that that makes sense. I mean, you know, I don't -- and I do not have the experience you've had on the Hill. I'm working in Administration but logically, it makes sense. I mean -- and I think that's a direct reason why we have such jurisdictional issues and such number issues in Indian country is because the power or the authority is not concentrated, and that's water heaters we already have a position in the White House. It seems to me the idea is to strengthen that, leave it where it is, give the authority to that position. But again, you know, this is based on what I think makes sense.

CHAIRMAN SANDERS: So can I ask, Commissioner Martin, how you would see that position interacting with the Office of Child Safety?

COMMISSIONER MARTIN: Oh, I think that would be a great way of allowing those two positions, that office that deals with the majority of our children working with -- because the person who has the position in the White House doesn't have just kids. They have all Indian issues and that's the issue. I think Indian children are so special that they need to be under the umbrella of Indian Affairs and Indian issues. But it seems to me that the correlation, just like we're recommending that doctors, lawyers, police officers, and everyone work together on behalf of all of our children, I don't see why the chair of the Child Safety Department, which doesn't exist yet but we're trying to put it in place, would coordinate efforts about children with the person who's currently in the White House already.

I mean, and again, we're talking about expanding the government with the Child Safety bureaucracy. That's fine. I'm not objecting to that. I do think -- you know, I hope people don't misunderstand me. I do think that one of the issues for our children nationwide is that there is -- you know, there are different pockets of money, there are different offices that have authority for children, and that makes it very difficult to coordinate efforts and have some final say. I think that it is also represented in Indian country. The difference is that although -- like I believe it was Commissioner Horn took us through the history of how children were already -- children (inaudible) were already being reported to the White House and now they're further down in the Administration and there's bureaucracy between the White House and our children issues. We don't have a secretary of Children right now.

We currently have a position in the White House for Indian Affairs. Let's not lose it. So although they have a larger umbrella than just our children and our families in need and at risk, it seems to me to keep those issues together. Because of the reasons we have ICWA and all those cultural issues, it makes sense to keep those issues together. Let's not lose the power we have. Let's build more power for this child safety issue so they can report directly to the White House but don't let us lose the path we already have reporting directly to the White House.

COMMISSIONER COVINGTON: Can I make a recommendation as a compromise, which would be to strengthen the position in the White House or Administration, however you call it, to do that but to also make sure that that position partners with the new Office of Child Safety but then to add a third piece which is that all agencies responsible for Indian children issues basically come together to resolve the -- and resolve and address the issues around measurement of these fatalities, that it be done in a cross agency way so that it doesn't

appear that we're basically just saying everything's left just to the White House to take care of.

COMMISSIONER MARTIN: You know, ideally, in - - you know, if I owned the world, I obviously think our children and their issues should be front and center on the agenda of the White House. It doesn't make sense. I mean I really welcomed what Commissioner Petit said a year ago, if not more, which was that demand that there be an annual report to Congress from the White House that goes through a certain series of items every year to report on the status of our children. And so I'm fully in support of having a more broad, a more shining light, a bigger light on our kids and the welfare of our children. I guess what I'm saying is we already have a direct vehicle to the White House on segment of our children, let's not give that up. Let's strengthen that but we also bring and build a vehicle, structure a vehicle for the rest of our children. It just doesn't make sense to give up what we're trying to get for everyone when we already have it for a small segment. That just doesn't make any sense.

COMMISSIONER DREYFUS: But I don't think we would be giving it up. I guess what I'm -- this is Commissioner Dreyfus -- what I'm questioning, Judge Martin, help me understand why is this data issue needing to reside there? I appreciate the role of the White House and the need for there to be, you know, specific attention to children in the White House and to Indian country in the White House at a larger policy level, but why, when it comes to what we know is going to be very specific work that's going to have to be done about the data, why does that need to be done within this White House office, I guess, you know, because you don't want those personalities changing over time can become a problem. And I guess and to remind all of us again, these are sovereign nations. They negotiate with the federal government one by one by one.

COMMISSIONER MARTIN: And that's why --

COMMISSIONER DREYFUS: I also think we're making a lot of assumptions here about what the tribes will and won't accept in terms of how data is to be collected and reported.

COMMISSIONER MARTIN: And I think that basically right there, that statement that you just made, that these tribes are independent sovereign entities and the likelihood of them all reporting their -- we heard testimony over and over how there's this conflict about reporting data to states and trusting states with their data, so why wouldn't we leave that in the person, whether they trust them or not, that they're going to have a better chance with someone who's dealing with only Native issues as opposed to trying to put it in an American bureaucracy and a state bureaucracy. It seems to me that that even supports the position even further. We have a final arbitrator on American Indian Affairs in the White House. It seems to me that what we need to do is support that and strengthen that position so that it includes our children and has a better scope about their responsibilities to our children. That does not preclude -- and I would suggest that there should be encouragement, as Commissioner Covington said earlier, about coordinating with how measurement is done on a state level or in the state courts. But I think we know that there -- our country has given and passed ICWA for a variety of reasons including intergenerational trauma and what has happened historically in our country. It seems to me rather than jeopardize losing that, let's build onto it.

COMMISSIONER PETIT: David, we've now spent 50 minutes on this topic and we're just getting started on the first page. I have many other points that I want to raise in Chapters 6, 7 and elsewhere. What do we need to do to bring this discussion to a close? I think if we try and allot this much time to every issue, we're going to be scheduling next weekend and the weekend after as well. I'd like to get through as much of this today as possible.

COMMISSIONER MARTIN : Well, just --

CHAIRMAN SANDERS: (Inaudible) proposal from Commissioner Covington (inaudible). Commissioner Covington, could you repeat that, at least the gist of it? Commissioner Covington?

COMMISSIONER COVINGTON: I'm sorry, I missed that. I had to plug my phone in. I'm losing power.

CHAIRMAN SANDERS: Yeah. I was just saying could you repeat the gist of what your proposal was which I thought was a good compromise.

COMMISSIONER COVINGTON: Well, I would keep in the piece about strengthening the leadership within the White House and centralizing some of the decision- making and giving that position more power including the ability to convene across agencies. But I would also include that there be a concentrated effort across all Indian-serving agencies that have jurisdiction around children to develop a plan to improve the counting of fatalities and then certainly that that group, that multidisciplinary group across agencies work closely with the office within the White House. That's sort of where I was going.

CHAIRMAN SANDERS: Is there opposition to that as (inaudible).

COMMISSIONER MARTIN: I still would say that I think that the encouragement of working with other entities is great. I would concentrate and leave all the authority for Indian Affairs and the final arbitrator -- make the final arbitrator Indian issues with the position that currently is sitting in the White House today.

COMMISSIONER HORN: Just a Commissioner Martin. Does that position have authority right now?

COMMISSIONER MARTIN: No. My understanding is the position does not have the ability to require people to come and convene together and sit down at a table. There is also no final arbitrator so there's no one that has the authority to make a final decision and so that's what I'm asking for that position -- that's how I'm asking us to recommend that that position be strengthened.

COMMISSIONER HORN: Yeah. I think that final person is the President of the United States.

COMMISSIONER MARTIN: Well, yes, I agree but the final arbitrator to get the recommendation to the President. Yes, I agree with you fully but just like any other Secretary in the Cabinet, they make a final decision about their issue to take to the President and that's what I'm asking for here.

COMMISSIONER HORN: Operationally, in my experience, that's not the way the White House works so you don't take a single recommendation to the President unless there's a consensus about the recommendation. In my experience, when I was in Administration, when you went

to the President, you would list the options if there was disagreement between people. I would worry if the intent of this was to have a single person be able to say this is the only recommendation we're bringing to the President of the United States.

COMMISSIONER MARTIN: And so then with that caveat, then I would allow that person to have that authority. Thank you.

COMMISSIONER HORN: And that's generally the function of the Domestic Policy Council within the White House which is that what the Domestic Policy Council tends to do -- and it doesn't have statutory authority -- what it tends to do is it collects the opinions of the various stakeholders with the Administration, tries to seek consensus. If consensus is made, then perhaps -- then the consensus is brought to the President but it requires his personal sign-off. But absent that, what they do is they package up the various viewpoints and the stakeholders write -- they're the ones that write the memo and then the stakeholders are brought into the Oval Office and various (inaudible) points (inaudible). So if that's what you're asking for, I think that's generally the function of DPC which, I assume, this person is probably organizationally structured within DPC, within the White House. So functionally, that's what that person, that's who DPC sends it to.

COMMISSIONER MARTIN: All I know is that one of the recommendations that was given to us that was that the person doesn't have the authority to convene, and so it would sound to me that if that's the way that the structure is designed to get recommendations to the President, he or she, then I think that we're -- I'm asking and our committee is asking that this person be granted with authority to convene those different positions, to gather them up and understand them and take them to (inaudible).

COMMISSIONER HORN: How do we know that that's true? Is it -- was -- did the person -- did someone from the White House tell us that and verify it? I just --

COMMISSIONER MARTIN: So the person, my understanding, is -- who had the position last, a person named Juliette -- Teri, can you help me out on that?

(No response.)

COMMISSIONER MARTIN: I don't have her name in front of me, sorry, but I believe it's Juliette something and she's recently left, and that was one of the recommendations that she made to us when we went to the White House and talked and sat around the table. That they need the authority to convene or they would wish the authority to convene so that they can bring people together to get all these recommendations and to get these different team views to the White House in a coordinated effort. I can get her name but I don't have it right here unfortunately, it's not in the notes but I can --

AMY TEMPLEMAN: Commissioner Martin, this is Amy. I think you're talking about Juliette Pitman; is that right?

COMMISSIONER MARTIN: I honestly don't remember her last name and that's probably it but I just don't remember her last name. I just thought it was Juliette something.

CHAIRMAN SANDERS: Well, I heard Commissioner Covington's recommendation to be the ability to include the ability to convene. Did I misunderstand that, Commissioner Covington,

because if so, I would go back to her suggestion as a compromise and see what we've missed on that?

(No response.)

CHAIRMAN SANDERS: Commissioner Covington may be off but I think that the idea of bringing together the agencies and it sounds like, Commissioner Horn, that that's traditionally the role of the DPC, that we could strengthen it by indicating that and also indicate that the agencies have to come together around this issue of data.

COMMISSIONER HORN: Yeah, that's -- I mean I heard Commissioner Petit, we've spent an enormous amount of time on this one issue. If what you're saying is that we recommend that that position have the ability to convene, that's fine. I have no objection to that whatsoever. The White House tends to jealousy guard its Executive privilege and part of that is to be able to set up the White House organizational structure anyway it feels fit and it usually is not the function of Congress if that's what this recommendation is saying, to dictate to the White House. And any White House would probably resist it if they did to statutorily include a specific authority of specific positions within the White House organizational structure. But if you want to -- if we want to recommend that the White House, any White House provide this person with the authority to convene meetings, I'm perfectly fine with that.

COMMISSIONER MARTIN: So, you know, I think, Amy, her name was Jodi Gillette and she's -- all I know is that when meeting with her, she was concerned about entities trying to mediate between ACF and BIA, and the issue is whether or not, in my opinion, we can come to somewhere recommending that we strengthen it. And so, you know, Commissioner Covington's position about strengthening that Special Assistant to the President for Native American Affairs and also requesting that they work with other entities around measurements, I think, is a fine way of going about it. I just don't want to lose the strength that we have and I would prefer building onto what we already have in the White House.

CHAIRMAN SANDERS: So it sounds like that is a change we can make and so let me go back to the broader issue which I think is -- we've talked about as we've walked through this for the American Indian Chapter. I propose that we delete the recommendations as our recommendations that are identified and replace them with recommendations that focus on data, that focus on structure, and that focus on jurisdiction. And so I would go back to that as -- and others may disagree although I saw a lot of concerns about overreach and so I would put that back on the table as a proposal for our focus for the American Indian chapter and that we do include those recommendations that were made to us in appendices so that it's clear that we are working to make sure that the voice of those who testified is heard but that our recommendations are focused on jurisdiction, structure, and data.

COMMISSIONER MARTIN: So, David, unfortunately, I can't get that draft up on my computer right now. I work for Cook County so our computers are very slow. Can you just itemize those -- the current recommendation numbers that you're referencing should stay in the body of the document? And then I assume the other ones are the ones you're talking about putting in the appendices?

CHAIRMAN SANDERS: Okay. So hold on one second.

COMMISSIONER MARTIN: I'm sorry. My computer is just so slow.

CHAIRMAN SANDERS: The headings are "recommendation 6.1, address the lack of data on American Indian and Alaska Native children who have died from abuse and neglect by working with tribes to improve and support data collection and by integrating the data into national databases for analysis, research, and the development of effective prevention." That's 6.1.

6.2, "Improve collaborative jurisdictional responsibility for Indian children safety," and then 6.3 would be in the new -- well, we'll change this because we've just talked about this would be strengthening the Domestic Policy Council and the new Office of Child Safety designate one person or office to represent federal leadership in the prevention of American Indian child maltreatment fatalities and to coordinate efforts with tribes to ensure parity with states with regard to resources and related supports.

COMMISSIONER MARTIN: And then 6.5 -- where did that go; I'm sorry --

COMMISSIONER DREYFUS: What did you say about 6.4?

CHAIRMAN SANDERS: So my proposal is to delete them as our recommendations and put them in the appendices and actually --

COMMISSIONER DREYFUS: Yeah, I would agree with that.

CHAIRMAN SANDERS: -- and 1, 2, and 3.

COMMISSIONER PETIT: I agree with that, David.

COMMISSIONER DREYFUS: Now will -- Commissioner Sanders, if -- again I hear Commissioner Martin's response but under each of those sections is a number of recommendations and I did question the accuracy of some of them, especially -- I'll just try to come up with one example real quick. I have got others and I did try to footnote them -- it was -- okay, under -- you said 6.3 was six?

CHAIRMAN SANDERS: Let me quote the -- 6.1, 2, and 3 of the recommendations that I've made actually replace 6.1, 2, 3, 4, and 5 in the current --

COMMISSIONER DREYFUS: Right.

CHAIRMAN SANDERS: -- so --

COMMISSIONER DREYFUS: Okay. So all of the sub- recommendations underneath that get looked at as well?

CHAIRMAN SANDERS: They -- my recommendation would be to include everything that's included in 1, 2, 3, 4, and 5 in the original report in the appendices as recommendations that were made to us by experts who testified but that our recommendations --

COMMISSIONER DREYFUS: Got it.

CHAIRMAN SANDERS: -- with the three that I just proposed.

COMMISSIONER DREYFUS: Okay.

COMMISSIONER MARTIN: Well, you know, the bottom line is -- and I understand how the -- you know, I strongly would object to that but being the only person that objects, I understand. But I cannot agree to take any further of the recommendations out of the body.

So although I object, I understand that recommendations 4, 5 -- no, I'm sorry -- 1, 2, and 3 will be in the body and the others will be put in the appendix.

COMMISSIONER COVINGTON: For me, this kind of goes to the request that Judge Martin made a couple calls ago which is that we vote on these because I mean its' just -- it seems to me that some of these other ones are good recommendations that make sense to us as are a lot of the other recommendations in the report. And just to say we're just going to throw them into an appendix and things people told us in the field -- I just think it's a rash move.

COMMISSIONER DREYFUS: Commissioner Covington, then I would also say that there are a number of them that I would say are not specifically relevant to Indian country but are relevant to child protection and child welfare overall. So, you know, that's what my point was earlier, is that it almost starts sounding like a completely separate report. AND then if we're going to do that, then we really have to start looking at -- if there are going to be recommendations that we're making, then we really have to look at them for their accuracy.

COMMISSIONER MARTIN: So first of all, all the recommendations in the report are recommendations that the Commission is making whether it appears in the appendix or whether it appears in the body. But if you look at like underneath -- I have a report that's not numbered the same way as Commissioner Sanders' but if you the "to generate accurate crime reports for Indian country," we heard testimony that the FBI requests for information from Indian country does not have a box that requires the data of birth of the decedent so, therefore, it's difficult for them to identify whether the person who died is under the age of 18 or under the age of majority or not. And so something like that is not something that should be in the appendix. That should be in the body of this report. And so just -- again, my objection to the process that we just agreed to is that we're taking some of these low-hanging fruit requests that will actually and directly lead to better numbers for our Indian children and just summarily putting them in the appendix, then that (inaudible) --

COMMISSIONER DREYFUS: Wouldn't that be pulled into data though?

COMMISSIONER MARTIN: Like I said, my report is numbered differently so I don't know where it fits in right now but it's not under the data one. It's under the -- well, let me be fair. I don't know. I can't really (inaudible) --

COMMISSIONER COVINGTON: But rather than just deciding we're going to throw them all out, you know, kind of throwing the baby out with the bath water, I think that some of them do have implications for improving data, for example, improving interagency work among the tribes. So I'm just -- my concern is that we just --

CHAIRMAN SANDERS: I would suggest --

COMMISSIONER COVINGTON: -- (inaudible) --

CHAIRMAN SANDERS: -- (inaudible) --

COMMISSIONER COVINGTON: -- can I finish?

CHAIRMAN SANDERS: -- given your concerns, Commissioner Covington and Commissioner Martin, I am perfectly fine with the headings that I proposed. If there is disagreement with those headings, I think we can certainly -- we should certainly hear that. But if not, then I

would suggest if there's -- if we can do it quickly, just going through the recommendations one-by-one and say "yes, they fit into those headings and should be included;" "no, they don't fit into those headings and shouldn't be included" or some alternative to that.

COMMISSIONER COVINGTON: Yeah --

CHAIRMAN SANDERS: I think if we want to go through each of the recommendations, that would be fine.

COMMISSIONER COVINGTON: Yeah. The other piece is that I'm sort of in agreement. I wasn't sure I was but I've always had this lingering feeling that having the two chapters at the very end of the report almost does what we're asking not be done, which is that, you know, Indian children and children (inaudible), you know, issues with (inaudible) disparities kind of takes a back seat. And I -- what I would recommend is that we take the language in the report that describes the problems around Indian children and disparities and includes them in our introduction in the full report and then we include these recommendations where appropriate in the main body of the report --

COMMISSIONER DREYFUS: I would fully support that.

COMMISSIONER COVINGTON: -- so they're not lost.

CHAIRMAN DREYFUS: I would fully --

COMMISSIONER CRAMER: I support that also.

COMMISSIONER HORN: I support that.

COMMISSIONER MARTIN: Can you just repeat that again, Teri? I'm sorry.

COMMISSIONER COVINGTON: I would take all of the lovely background information that was written about the importance of paying close attention to Indian children and (inaudible) disparities and build that into Chapter 1 in the background information so that --

COMMISSIONER MARTIN: Okay.

COMMISSIONER COVINGTON: -- it's really brought to the forefront and then take these recommendations and really build them in wherever we have -- for example, when we have recommendations related to measurements, that we make some strong statements that there are specific issues on measurement related to Indian children and put them there.

COMMISSIONER DREYFUS: Yeah.

COMMISSIONER COVINGTON: I think --

COMMISSIONER MARTIN: I can live with that.

COMMISSIONER DREYFUS: That would be awesome. That would make this --

COMMISSIONER MARTIN: We leave intact the recommendations that David just -- Chairman Sanders just identified in the Native American Chapter, right?

COMMISSIONER COVINGTON: Right.

COMMISSIONER MARTIN: Then I'm in agreement with that. I'm fine with that.

CHAIRMAN SANDERS: So Commissioner Covington, are you suggesting there is still a Native American-American Indian chapter and --

COMMISSIONER MARTIN: Right and the three recommendations you just itemized out, they would stay in that chapter.

COMMISSIONER DREYFUS: That's not what I heard.

COMMISSIONER MARTIN: Oh, I'm sorry. I thought that's what I just asked but okay, I apologize.

COMMISSIONER DREYFUS: Commissioner Covington, can you repeat that again?

COMMISSIONER COVINGTON: I would have -- beyond just the three recommendations that were earlier mentioned, I would go through and say which of all of these recommendations would fit into the bulk of the report that we wouldn't want to remove, that in fact do have implications for eliminating death to Indian children or deaths related to disparities and that we move them up, we move those recommendations in addition to the three. We decide which are the ones we really feel we want to put into the bulk of the report.

COMMISSIONER DREYFUS: And give them emphasis?

COMMISSIONER COVINGTON: Pardon?

COMMISSIONER DREYFUS: Give them emphasis within those --

COMMISSIONER COVINGTON: Yes.

COMMISSIONER DREYFUS: -- chapters of the main report.

COMMISSIONER COVINGTON: Right. I think we'd be actually doing some real justice to kids there because we're putting them up front.

COMMISSIONER DREYFUS: See, what I worry about the way it is right now is people are going to be looking at the main report and that's where the focus is going to be, right?

COMMISSIONER COVINGTON: Yes.

COMMISSIONER DREYFUS: And we don't integrate these kids into that so to -- so I just want to go on record and, again, I'd like to hear, Mike, so we can get this on the finish lines here -- we would not have two separate chapters. We would be specifically calling out these in the very beginning of this report --

COMMISSIONER MARTIN: No.

COMMISSIONER DREYFUS: -- and we would be integrating these recommendations throughout the report and giving them specific emphasis and then again in our conclusion.

COMMISSIONER MARTIN: I won't agree to that. I mean in the beginning, we've learned that there are certain segments of our society that are higher (inaudible) for fatalities. Those are children under the age of three and more importantly, under one -- or more specifically, under one and physically challenged and mentally challenged children, Native Americans, and black children or minority children. And so I don't understand. I fought for, since we've been together and since I've met you -- not you particularly but you, the Commission -- I have

fought for somehow looking at these children and studying them in addition to the rest of our children. I fought for that, finally got there. We finally agreed years ago to have separate chapters. I do not agree to this -- to the way these chapters then put all this information in the body of the report.

Now what I thought I heard Commissioner Covington suggest was in the Native American chapter, have the three main goals dealing with measurement, jurisdiction, and services, as Commissioner Sanders said, in those chapters and take the rest of the information that talks about historical post traumatic stress and trauma and put that in the beginning of the report, in the introduction when we talk about the importance of why we're looking at this issue, why it's important to study it, and put effort and energy behind, and then talk about where some of the other recommendations could be sprinkled throughout the report that gives it greater continuity. I can agree to that but I will definitely not agree to taking away either one, the Native American chapter or the Disproportionality chapter.

COMMISSIONER COVINGTON: Well, I think that's the compromise actually which I can agree with.

CHAIRMAN SANDERS: Say that again, Commissioner Covington?

COMMISSIONER COVINGTON: I think that's a compromise. I think that's a good way to do it and then it will also have the chapters that really kind of highlight it once again. I don't have a problem doing that. And I just think we have to be careful. I don't know if you noticed in my comments (inaudible) report, I have some concerns that we don't have a lot of redundancy and I just want to make sure you don't do that.

COMMISSIONER PETIT: I think, though, that we should not be doing anything that lengthens the documents so if you're going to pull stuff from Chapters 6 and 7 and place it in Chapter 1, that's fine, but it wouldn't also get restated again in 6 and 7. And the other thing I just would note -- this comes to Commissioner Martin's point -- is I think the overriding similarity or commonality with these cases all across the country, all 3,000 children, is poverty. So above all else, I think it's the conditions in which these children live.

CHAIRMAN SANDERS: All right. So it sounds like what we're proposing is to keep a shorter Chapter 6, to intersperse other recommendations and some of the lead in into other sections of the report, and so we need to go through the recommendations to see -- I propose deleting the recommendations. That is opposed by Commissioner Martin. What I understand is that we have some thinking that if we walk through each of the recommendations very quickly, we can decide which ones to include and which ones not to. Is that -- does somebody else have a better proposal than that?

COMMISSIONER DREYFUS: Isn't there a way that staff can -- instead of us going through these one by one by one, that's --

COMMISSIONER MARTIN: I think all of us agree to your first recommendation, Commissioner Sanders, which was to take the three broad recommendations in Native American and leaving them in the chapter. I would then work with staff offline to look at the other recommendations and make recommendations about where the lead in information and those ideas can be interspersed throughout the rest of the report.

CHAIRMAN SANDERS: We can do that --

COMMISSIONER DREYFUS: So what are you agreeing then with, the ones that don't fall under those three areas that -- could -- they would go into the appendix?

COMMISSIONER DREYFUS: I would just -- I just said I would work offline with staff to take some of the information and use it where it's appropriate throughout the rest of the report. That's what I just said.

COMMISSIONER: So one last comment, Chairman Sanders. So if we're going to bring in, for instance, on page 89, the language that's used under the impact of historical trauma and poverty as an example, then there needs to be some very specific citations for the assertions that we are making. And there are some, you know, things in here that I have to question why we as a federal commission would be saying to the United States Government that, for instance, "Assistance given to the tribe is unlike assistance given to states or to other countries. Assistance given to tribes are based on a duty of care and already existing treaties yet to be fully honored in spirit or letter by the United States Government," or when we talk about that "it is well-established that the historical trauma associated with the displacement of American Indians and Alaska Natives has resulted in high incidence of teen suicide, depression, disproportionate substance abuse, human trafficking, and domestic violence on tribal lands." And then it goes on to talk about this, that it's -- "efforts must be made to restore positive self-awareness in Indian country, especially among American Indian and Native Alaskan youth in order to curtail the incidence of child abuse and neglect fatalities including suicide." Something has got to back this stuff up from a research perspective and so if we're going to be bringing these things, one of these things are staying in the report and bring brought forward or even staying in their own chapter, we've got to do better citation and be clear when we're making assertions of how the federal government has and has not honored the existing treaties. Are we --

COMMISSIONER MARTIN: So I --

COMMISSIONER DREYFUS: -- saying that.

COMMISSIONER MARTIN: I'm sorry. So I will tell you that from my perspective, I can go to the testimony that we received, not only in Arizona but throughout the time that we've been together, and give you support for just about each one of those. I would say absolutely every one but because I'm human, I will say just about every one. As a matter of fact, the first draft I ever did with anyone on this Commission has citations to the testimony that was offered and where we got the testimony from each of our recommendations. But I can go through and point that out.

I just said that I will spend time with staff offline because we didn't have time to individually go through each one of the recommendations for our Indian children and take and find places within the report to bring this. Anything that I've asked to put in the report, I can give you a direct cite from our testimony --

COMMISSIONER HORN: So, Commissioner Martin - -

COMMISSIONER MARTIN: -- so -- and I'm prepared to do that.

COMMISSIONER HORN: I think that's great and I think I'd make some suggestions where citations are needed. The one thing I would say is that we want to make sure that when we cite -- when we state an opinion, we don't source somebody else's opinion but as best as we can, we source to either a body of literature or specific evidence that would substantiate the opinion that's being put forth in the report. I think it's very doable. I agree with all of the statements. I just think we need to source those opinions with evidence as opposed to just somebody else's opinion.

COMMISSIONER MARTIN: And I appreciate that comment so I would hope that we would make certain that we're consistent throughout our report so when we talk about other cites in this report, we talk about cites that actually go to literature as opposed to opinions of our experts that we called in to testify to educate us. So let's just be consistent throughout the report.

COMMISSIONER HORN: I completely agree with that.

COMMISSIONER MARTIN: But I will go back and I will work with staff and I will double up on that and make certain that everything has those cites.

COMMISSIONER HORN: Yeah. And I agree with that. I think that we have to be very internally consistent in the report as well. If a citation is to specific testimony, first of all, we need to make sure that the testimony itself includes factual evidence or is referencing a body of literature. And if not, then I think that Commissioner Martin is exactly correct. What we need to do is modify the statement in the report to say -- to indicate that it's really based upon somebody's opinion being given in testimony. I think that's a very, very fair and very important point that we be consistent throughout the report.

COMMISSIONER MARTIN: And so I will find some time to go and get with Amy and whatever other staff who's working on this issue and hopefully, I can do it. I'm in DC right now and I leave tomorrow. In anticipation for this call, I was trying to get home in time for this call, so after this call, I'll call Amy and see if I can work on some time to get with her.

COMMISSIONER COVINGTON: I know we appreciate all the work you've done on this Judge Martin. I know you picked up for Commissioner Zimmerman, but thank you for that.

CHAIRMAN SANDERS: Let's then -- I think we have at least an outline for how we're going to put this together, and we'll have to come back to it with the detail tomorrow of what's included, and particularly the recommendations to be included but I think we have enough to move on for right now.

Let's move to the Disproportionality chapter.

COMMISSIONER MARTIN: Sure. So there were three main comments if I remember about the - and again, you know, my computer, I apologize; I can only do one thing at a time -- on the Disproportionality Chapter, there were some comments made by a couple Commissioners about, oh, when a social worker has the ability to do an override and what the results of that are. And I think I explained last time that one of -- I apologize -- I may have explained to someone individually but the reason for that recommendation and the strong recommendation on that issue was because so many times, these overrides result -- there are safety issues put in place, safety rules and regulations put in place by the state agency or the county agency, and they're put there for a reason, to eliminate not only the abuse and neglect but obviously

serious harm to our children. And to override, that is something that is very important and should be considered very important. So with conversations from other Commissioners, we have gone back and revamped that and rather than having it as a federal -- or a potential federal liability -- criminal liability, we reduced that or we restructured it so that there would have to be a narrative support for an override. And failure for the supervisor to sign off on that negates the override, so the consequences of the worker would be -- fall on her from her agency or his agency.

Let me just get the other three out as I've just remembered them and then we can discuss them and other things. There was an issue about whether or not clergy should be part of the mandated reporters and again, in very poor communities, particularly my Hispanic and black communities, the church is really a cornerstone in those communities. Oftentimes my kids are having childcare services provided by the local churches and the parishes as well as some of the parenting classes, and oftentimes I will find out after the fact that someone in the nursery, someone at the church, particularly the pastor or the clergy, had some sense that (inaudible). And so a couple of our (inaudible) and there was (inaudible) about (inaudible) clergy.

I have actually had the opportunity to talk to some clergy that I work with in Chicago and through Congressman Davis's Juvenile Justice Committee and asked for their recommendations as I've done for just about every meeting I've gone to since I've been a part of this Commission. And one of the things that they asked for is they want to be mandated reporters, they want to understand what that means, but more importantly, though, and how they back up off of it a little bit is that they don't want to have to give their name and that's why they don't call the hotline, because they understand that the DCFS hotline, at least in the state of Illinois, if you don't give your name and if you give an anonymous report, they typically don't consider that on the same level as someone leaving their name.

And so what the clergy I've spoken with -- and I admit, it's a small portion -- but they are asking that they get training about what it is to be a mandated reporter, but they want to be able to make anonymous calls because they don't want to impede their relationship with their congregants and they still want to be able to provide spiritual guidance and counseling but they also want to try to protect children. And so we amended that to -- you can see in the report.

And one of the other big areas I just can't remember off the top of my head, so I'm prepared to answer anyone else's questions.

CHAIRMAN SANDERS: I know that Commissioner Dreyfus had some comments (inaudible).

COMMISSIONER DREYFUS: I'll go ahead and let other people get started. I've got to get back to my computer.

CHAIRMAN SANDERS: Oh, and Amy Templeman, can you tell us what page that this starts on?

AMY TEMPLEMAN: This chapter or this particular issue?

CHAIRMAN SANDERS: The chapter.

AMY TEMPLEMAN: The chapter starts on page 100 -- oh, no, I'm sorry, before that -- 94. Yes, 94 I think. Yeah, 94.

COMMISSIONER DREYFUS: I'm back.

CHAIRMAN SANDERS: Commissioner Dreyfus.

COMMISSIONER STATUTO BEVAN: Can I just say one thing? It's Cassie.

CHAIRMAN SANDERS: Oh --

COMMISSIONER STATUTO BEVAN: I am not going to vote for this entire report and so I don't want to take the time, this -- what's taking a very long time -- to weigh in on specific comments on specific chapters because I think I'll just be wasting your time since I think I'm pretty much overruled. So I'm going to be quiet and let you know that I hope before the Commission ends that I'll be able to explain to you why I'm dissenting. Thank you.

COMMISSIONER MARTIN: Well, I -- this is -- I'm not the Chair and I appreciate that but if you have some dissents about, you know, this general chapter -- oh, and I -- we also changed the title from "eliminating disproportionality" to "eliminating deaths in disproportionately represented or effected community" -- but if you have specific questions about this chapter, I'm more than happy to at least tell you the reasoning, as best I understand it, for what's written. I would welcome that opportunity. But, you know, whatever you think is best.

COMMISSIONER PETIT: David, I have a number of questions.

CHAIRMAN SANDERS: Go ahead.

COMMISSIONER PETIT: -- for the full Commission and for the Chair or the subcommittee perhaps as well. But let me just take one on what is my case 100; it's recommendation 7.1.

COMMISSIONER MARTIN: Seven two one?

COMMISSIONER PETIT: 7.1.

COMMISSIONER MARTIN: Okay.

COMMISSIONER PETIT: And it speaks about one of the strongest components in the disproportionate number of child fatalities in the African American community may be due to a systematic scheme, which routinely produces negative family unit results through medical care, etcetera. That is a very strong statement to suggest that there is a systematic scheme intended. It implies intentionality to produce negative family unit results. I mean what is the basis for that?

COMMISSIONER DREYFUS: I mentioned that, too. This is Commissioner Dreyfus. That was in my comments.

COMMISSIONER MARTIN: Well, we've heard testimony from Rita Cameron Wedding about institutional racism. We've heard about programs and practices that may not have a racist bent to begin with but the implication is racist or the results of those services are racist. And so do you want me to go through particulars or do you want me to cite the testimony that was given or what do you want?

COMMISSIONER PETIT: I recall the testimony that was given and the whole notion of implicit bias as the cornerstone of much of this problem as opposed to, say, poverty is one that I still have problems with. But on this one, a systematic scheme, if one wanted to say, you know,

there is poor judgment being exercised but a systematic scheme suggests intention and I have a hard time believing where the people that we heard and the people that I know in the field that there's intentionality around this disproportionality question. So I just think it ought to be struck. I think it's unnecessarily provocative and I don't know that there's any basis for -- "systematic scheme" is very willful. And is that what's being asserted?

COMMISSIONER MARTIN: Yes. I mean I think we had testimony even though during the -- the title of the testimony was explicit bias, but there were parts of the conversation about intentional racist scheme. Now if, in fact, you don't want to say that generally, that's fine, but that was in the testimony. I can give you the page. But if you want to eliminate that, that's fine. We just vote on it, Mike.

COMMISSIONER PETIT: Yeah, that's fine; yep.

COMMISSIONER HORN: This is Wade. Can I make a comment about the block of recommendations under 7.1? So I don't necessarily disagree with any of these but -- except for this point. I think it's focused at the wrong level.

This is -- when we're talking about structured decision-making tools and, you know, what's the appropriate use of them and so forth, we're talking really about best practices. And generally, Congress does not get so specific about, you know, the practice of a particular field. They usually leave that up to the discretion of the Executive Branch who either does that through a form of regulatory process or through informational memorandums and so forth.

So, for example, while I agree with Congressman Petit that there ought to be standards that are promulgated when it comes to caseloads, I don't think it's Congress's job to say "and every state should have a caseload of x." It's really something that should be done by the Executive Branch.

So I'm wondering if this block of recommendations could be altered so that rather than saying Congress is going to pass a law to do all of these things, which would be very difficult to do, but also I think it's not generally how -- and I would leave this -- you know, Commissioner Cramer, I would be interested in his thoughts on this -- but rather we reframe these so that it's more -- you know, the Children's Bureau or HHS should clarify, for example, the appropriate use of FDM's in a way that does not disproportionately result in whatever. So it would be recommendations to the Executive Branch rather than to Congress.

COMMISSIONER CRAMER: Commissioner Horn, this is Bud Cramer. I couldn't agree with you more. I think that's a less controversial way to deal with this and a much more practical solution.

COMMISSIONER DREYFUS: I would agree but I'd also want to ask Commissioner Covington is there anything here that disconnects with anything that is in our data chapter or -- because again, this, to me, started getting at something that seemed like so much of this, if this is really good, doesn't it belong in the full report? If this is really the better way to practice child protection, then doesn't this belong in the full report? Why is this just sitting here?

COMMISSIONER MARTIN: (Inaudible) --

COMMISSIONER DREYFUS: Just if you're going (inaudible) where these two chapters just disconnect for me in terms of how a reader takes them and pulls them together. I had a

problem with that whole section and I completely agree with Commissioners Horn and Cramer.

CHAIRMAN SANDERS: Let me weigh in because I had recommendation, again, similar to the American Indian chapter and that is that I think there are two things that we should emphasize and one of them is the court place-based initiative that Commissioner Martin recommended, because I think at this point, we don't know what works to reduce fatalities for African American children and that's what drove the creation of the subcommittee and the inclusion of this chapter.

The second piece is that it seems we want strong central oversight from the federal government to assure some of the things that Commissioner Horn just talked about, that the practice issues should be directed at the Administration and the new Office of Child Protection. So I actually propose that we include two recommendations, one on supporting either studies based on the description of the place-based initiative, the court initiative that Commissioner Martin recommended, and the second is directing the Office of Child Safety to incorporate some of the practice changes that are mentioned in the remainder of the recommendations.

COMMISSIONER MARTIN: I -- you know, so what -- let me play devil's advocate for just one moment. I don't have a -- I don't really have a problem with what Commissioner Cramer and Commissioner Horn said about the Executive Branch. But what happens -- just, you know, playing devil's advocate -- that Congress and the Executive Branch do not agree with us and do not establish this, you know, Cabinet for child safety? What happens to the recommendations that we've vested in and we say should emanate from child safety? I mean what happens to that? We have no guarantee that this report's going to be accepted and if accepted what portions are going to be accepted if the whole thing is not accepted. So if, in fact, there is not a child safety Cabinet established or agency established, what happens then?

CHAIRMAN SANDERS: I would defer to Commissioner Horn but perhaps the Secretary for HHS still has a responsibility and we should make that clear. But Commissioner Horn, is that what would happen, that the recommendations would still fall under the responsibility of the Secretary of HHS?

COMMISSIONER HORN: Well, sure, which is why I would suggest that it be broader so that there isn't a dependency between the recommendation to create an Office of Child Safety. And so I would direct this towards HHS as opposed to the Office of Child Safety. You know, at the end of the day, what we're all trying to accomplish -- and I think this is what Commissioner Martin is saying -- is we want to, in a very compelling way and also in a way where our recommendations are bold, that at the same time, we state them in a way that maximizes the likelihood that they're actually going to make a difference, that is adopted and then -- and make a positive change in terms of reducing the number of children who are killed by abuse and neglect.

In order to do that, I think we need to be as respectful as we can of the current way that government operates so that it's more likely that government will receive it. If -- you know, if -- because there's no guarantee that any of these recommendations --

COMMISSIONER MARTIN: Right.

COMMISSIONER HORN: -- (inaudible) body will agree.

COMMISSIONER CRAMER: No kidding -- no kidding. Yeah.

COMMISSIONER HORN: So my point is just, you know, let's -- to be respectful of the way government kind of works and that's why I would say, for example, that this be much more directed towards the Executive Branch than towards Congress. And again, I don't disagree with these. I think we ought -- you know, there ought to be best practices promulgated to ensure that structured decision-making tools are not disproportionately affecting certain racial groups. And so I just think -- well, I've said my piece. Thanks.

COMMISSIONER STATUTO BEVAN: -- can I clarify -- You didn't say the recommendations, that we would direct -- that these recommendations should be directed at HHS because that would be -- that's more likely to be implemented. I mean unless these recommendations are put into legislation, passed by both Houses and signed by the President, none of this -- you can't -- we won't be able to direct anybody to do anything.

COMMISSIONER HORN: I'm not sure I agree with that.

COMMISSIONER CRAMER: I don't agree with that either because I think that there are certain authorities that already exist.

COMMISSIONER CRAMER: Yeah.

COMMISSIONER HORN: -- within the Executive Branch and we're saying they should use those authorities to do x, y, or z. I don't think that Congress has to pass a law that says, you know, only after we pass a law does HHS have the authority to issue policy guidance, for example, when it comes to these kinds of issues. Now they certainly have to pass a law to do things like appropriate more money but I think we're just trying to align this where there's current authority in the Executive Branch to make it clear that's where we think the recommendations should lie.

COMMISSIONER STATUTO BEVAN: What about the child safety czar and some of these others, do you think that is just an Executive Branch decision?

COMMISSIONER HORN: Actually, I do. For example, back in the first Bush Administration, I was part of a major reorganization within HHS which created the Administration on Children and Families by combining the office of Human Development Services and the old Office of Family Assistance. So Congress generally -- again, Congressman Cramer, please chime in -- Congress generally gives broad authority to the Executive Branch to organize itself in the way that it sees fit. Now if it is asking for additional powers or if there is (inaudible) -- statute or money, then it comes to -- then they have to change that.

COMMISSIONER STATUTO BEVAN: Right.

COMMISSIONER CRAMER: I agree with that.

COMMISSIONER STATUTO BEVAN: Okay.

COMMISSIONER MARTIN: So I want to piggyback on a comment that Commissioner Horn mentioned a few minutes ago that's slightly off the subject. But we've been constantly talking about we need to be bold with this report, and I guess I just want to encourage my fellow

Commissioners if we're being bold about the report, let's be bold consistently throughout our report. So when you question me about whether or not there is disproportionate impact or whether or not, you know, there are racist -- institutionalized racism in America, you know, one of our own Commissioners, Dr. Rubin, talked about, in his head trauma study and the screenings, how it was directly seen to be geared or skewed in a disproportional manner.

And so I'm not saying -- and I don't want to reargue the issue, but I just want us to be consistent throughout our report. If we already know that things are happening, and yes, it may be uncomfortable to say, but if we know it to be happening, let's be bold in what we know is happening. It is time for us to start being bold on behalf of our children and families and we can get the same result about taking that stuff out, you know, as a Commission. But I just want us to make certain that when we are talking about being bold about one segment of our children, let's be bold about all of our children. When we have cites or testimony, that we've received studies by our Commissioners, let's also make certain that we're not shying away from making statements that we know to be true when we know they can be helpful, too. And that doesn't mean that all of them are helpful but it does mean that some of them may be helpful in getting our point across.

Going back to this issue again, Commissioner Sanders, I don't have a problem -- the recommendation that was made by Commissioner Horn and Commissioner -- I forgot who else made the recommendation; I'm sorry -- about putting these in the Executive Branch. I don't have a problem with that. I do want to make certain, like Commissioner Horn said, that we're bold enough so that we're not -- we're broad enough so that we're not putting everything and all our eggs into the basket of the child safety branch because -- or Cabinet, because if for some reason that's not established, I don't want these recommendations to lose some of the force or power

CHAIRMAN SANDERS: So my proposal is that we take a look at the -- what I have proposed to restructure, which would be to start with the recommendation related to the place-based court and then to have direction to, and I think appropriately so, HHS versus the Office of Child Safety, on some of the practice issues. I would not incorporate all of the recommendations from my perspective but others may see it differently, but I would at least put that forward as a recommendation for addressing some of the issues that I know have been raised about the chapter.

COMMISSIONER DREYFUS: Okay. So this is Commissioner Dreyfus. So just a couple of things I want to go on record having stated. I have a hard time with us continuing to use the term "minority" to refer to people of color in our country when in many parts of country they are indeed the majority and will increasingly be so in the future. So this continued use of the term "minority," I tried to highlight it every place I saw it but I would hope that it would be reconsidered for saying people of color, children of color but not using the term minority to refer to who we're talking about.

I have a problem with the use of "21st century approach" in this chapter only because it doesn't connect to our larger use of 21st century child protection as we lay it out earlier, and it has to be -- if it's going to be used in this chapter, I would just propose that it needs to connect to and be -- and specifically state that it connects to the larger 21st century vision for child protection that we have as a Commission, not that this in and of itself is the 21st century approach as it seems to infer.

I'm a little bit concerned about the way in which we are talking about poverty, the way in which we're talking about the war on poverty, and the way in which we're simply making poverty the causal factor. Do I believe that the stressors of poverty have a high correlation to the maltreatment of children when 70 percent of maltreatment is neglect? You bet I do. But I really struggle a little bit with saying that our courts are now going to take on being the -- I can't remember the exact wording that was going to be the impetus for this war on poverty with our courts and some of the language that is used in this. It just seemed incredibly inflammatory and just a bit, you know, over the top for me. And I was trying to go back and say, okay, so where did we hear testimony that said poverty is the causal fact. So I think it's a huge correlative factor but I just -- so I just wanted to be on record stating those concerns. I think things can be said in ways that don't have to be such lightning rods and there are things that are said here in the report -- I tried to note them as much as I could in my comments and I just hope, Commissioner Sanders, that they get considered.

COMMISSIONER MARTIN: I don't think there was any intention to mislead the reader about the 21st century title. As a matter of fact, I thought that our efforts were really in an effort to bridge into this global 21st century -- new 21st century that we were all talking about throughout the report. So if that is something that is coming across, I apologize for that because that was never our intent. It was never our intent to mislead the reader and try to think that we were talking about something else different than our original 21st century program that had the interdisciplinary response to our families.

COMMISSIONER DREYFUS: I just think it has to be stated more clearly so I appreciate that.

COMMISSIONER MARTIN: Okay. So I take that and will look at that directly. I forgot my other point so I'm sorry. I apologize.

COMMISSIONER DREYFUS: But I just want to ask the Commission am the only one that felt this way about the language that's used around poverty and the role of the courts in taking on -- it says the courts have the positioning to clearly initiate a war on poverty.

COMMISSIONER PETIT: I raised --this myself in earlier comments that I had made and I continue to hold the same sentiments. I would note that on the disproportionately issue, and while poverty per se is not the cause, some of the things that are associated with poverty certainly contribute heavily.

COMMISSIONER DREYFUS: Absolutely,

COMMISSIONER PETIT: And while --

COMMISSIONER MARTIN: I think we all agree with that. I mean I think we all agree that you can't take kids, you can't start cases just because of poverty.

COMMISSIONER PETIT: Let me just finish this point. The disproportionately between blacks and whites on child best, I would assert also exists between low income blacks and middle income blacks and low income whites and middle income whites so in looking at the number of children who are killed in Maine, which is the whitest state in the Nation, the disproportionately is based on income than the totality of accompanying issues, the stressors that are associated with that, but I think it's important to realize that as strongly as we're speaking about disproportionately on children of color and as strongly as we are in the

American Indians and Native Alaskan children, there are still thousands of other children that are killed each year in which the interventions may or may not differ based on, you know, racial categories.

COMMISSIONER MARTIN: Sure.

COMMISSIONER PETIT: But it is important, I think, to recognize that the disparities also occur within the races themselves according to income. So I did share the concern on war on poverty when we're talking about economic development and economic infrastructure and annual incomes and differential tax policies, economic policies. I mean that's a lot of what goes into this. So war on poverty here is framed as more a social services type thing but I don't think it's addressing the (inaudible) safety net issues that we've been not addressing as a Commission nor do I think we should address them. But I think it's also associated with those things and for me, that would probably be an overreach someone would say war on poverty, Lyndon Johnson, the American government, launch a major effort, here's where we are and now the courts are going to address this somehow. I think it just -- it's probably a little too much.

COMMISSIONER MARTIN: So I agree with you Commissioner Petit that disproportionately does not just mean black kids. There are disproportionate by race, disproportionate by economics, social economic status, disproportionate by a lot of means. And I think that I, like a lot of people, look at the one that is most prevalent in my community and work on that the most. And so I think our Commission started talking about disproportionately, specifically about black kids, but I would agree with you in general that disproportionate treatment can be identified in a number of different areas, not only in race, so I agree with that statement.

CHAIRMAN SANDERS: Let me go back to what I'd, at least, propose and again, there could be significant disagreement with this, but that we look at those two recommendations. And Commissioner Dreyfus, to me, what that would mean is that we include the background as is but that when it comes to the recommendations actually, that we rewrite them to focus on a place-based strategy, which I think emerges from the work in Michigan and Sacramento that we heard about, as something that we need to test further. And Judge Martin has proposed a court-based initiative as a place-based strategy. I think that that's worth testing.

And then the second piece is that the practice issues that are laid out in the sub-recommendations, that that become the second recommendation and that we actually incorporate some of the practice recommendations into -- consolidate them into a second recommendation and that we -- that some of the other recommendations then I would be propose be deleted.

COMMISSIONER MARTIN: Or can we do them the same way that was recommended in the Native American chapter that was recommended by Commissioner Covington? Take the two recommendations that you just talked about, leave them in the Disproportionately chapter and take the background information and put it in where it may be appropriate in another section of the report.

COMMISSIONER DREYFUS: Just clarify for me background information versus specific recommendations that wouldn't stay in. So I heard Chairman Sanders talk about specific recommendations and then Judge Martin both and then Alaskan/Native American conversation, now this one. You keep referring to simply the narrative being woven into the

report which is one thing, but I think on the table is are there recommendations sitting in both of these chapters that would not continue to stay in the report.

COMMISSIONER MARTIN: Well, we already --

COMMISSIONER DREYFUS: I just need clarity on that.

COMMISSIONER MARTIN: -- well, we already decided on the Native American one that the recommendations would be included in other sections of where they may be appropriate in other sections. If they're not relevant and appropriate, they wouldn't be included. But where they will be appropriate, they will be included with other sections and I will work with staff to do that.

COMMISSIONER DREYFUS: That helps me when you say and where appropriate, and I'm not sure how that gets decided but then I would agree.

COMMISSIONER MARTIN: Well, we decided as a Commission we don't have time go through them all individually and that's when I volunteered to work offline staff to do that even though I'm flying out tomorrow.

COMMISSIONER AYOUB: This is Commissioner Ayoub. I just want to make a general observation here for Mike on a point that -- well, two of them actually. One is I think this area is one that some people, not just -- I don't mean on this Commission but just in general people are uncomfortable with or it could be controversial. And to support what Commissioner Martin mentioned and what Commissioner Wade mentioned about being bold and that that needs to be consistent -- Commissioner Cramer mentioned about something would be less controversial. I don't think that should be our goal. I think we're supposed to shake things up and be bold in this report. So to some of the comments I've heard made, for me, I felt that there is concern about upsetting people with language and I don't -- I would just hope we wouldn't do that, that we would be bold, that we would be consistent, and that we wouldn't be afraid to state the facts and the truth.

COMMISSIONER DREYFUS: Right. So I just want to be clear because that's directed at me. This is Commissioner Dreyfus. I have no problem being bold. I have no problem making people uncomfortable. Child protection and abuse and neglect for America's kids should make a lot of people very uncomfortable.

What I have problem with though are the assertions that get made that are not backed up then with either citation or that just on their face are incredibly inflammatory. And I just think as a Commission, before we say those things, we should be thoughtful about that. So I -- you guys all know me well enough. I have no problem being bold and I have no problem showing courage but let's -- just say -- ask and let's be thoughtful about it if in the end what we're trying to do is get folks to take this report and do something with it and have it be a report that gains the kind of bipartisan support it's going to have to need.

COMMISSIONER AYOUB: Right. And I heard, Commissioner -- I heard Commissioner Martin say that she did have connections to that to say where she -- you know, the backup and the -- to substantiate anything she said. I have no reason to believe she doesn't because that's how she's performed all through her time on the Commission as far as I've seen, so I look forward to seeing that. And that wasn't directed at one person by the way.

The second thought I have is that we have said that we don't have time to vote on each one of these and I'm not -- it's my feeling that if we had gone through each one instead of generalizing and -- we've taken all this time where I feel we could have gone through each one and figured out where we all felt that that should go or where the majority felt that that should go and support Commissioner Martin, because we're going to have to -- it's not like by not doing it now we never have to do it. We will be talking about this again tomorrow after the staff (inaudible) and Commissioner Martin work on this, then we still have to discuss it that we agree or don't agree, so

COMMISSIONER SANDERS: Well, we're going to take a break in a couple of minutes. I'm fine if we want to walk through each one of these just quickly and get a yes or no for Chapter 7, of the things that should be included or not. Commissioner Martin, would that help you a lot?

COMMISSIONER MARTIN: Well, it seems to me that we need to make a decision and do it so I'm perfectly prepared to spend this evening and work with staff and if you want to look over them overnight and then say tomorrow, we go through it again, that's fine.

COMMISSIONER AYOUB: Because I also saw with Commissioner Covington, with everything that's going on, she might not be able to read everything and vote on this but we -- so I would like to be clear, Chairman Sanders, these are deadlines that you put out. Are we staying on those deadlines that you put out, that we will be voting after tomorrow's meeting, that we will be sent to the final reporting and voting on that?

CHAIRMAN SANDERS: Yes.

COMMISSIONER AYOUB: All right, because it's not a movable deadline of March 18th, right; we have to meet that?

CHAIRMAN SANDERS: That's correct.

COMMISSIONER HORN: So this is Wade. So that's going to be a challenge. You know, I think there's -- that we've talked about a lot of -- we only got even through one and, you know, a quarter of a chapter. So you're saying that staff is going to -- or somebody is going to make all of these changes based on this conversation and we are going to absolutely, positively have a vote on the entire report on Tuesday?

CHAIRMAN SANDERS: Well, not necessarily. We will have a vote on the recommendations.

COMMISSIONER HORN: On each of the recommendations?

CHAIRMAN SANDERS: Yeah.

COMMISSIONER HORN: Okay. All right. That helps. Thanks.

COMMISSIONER MARTIN: So then when do we vote on the whole report?

COMMISSIONER AYOUB: Yes, because I asked that same question. I thought I asked that same question, Chairman Sanders, and you said we were voting on the full report.

CHAIRMAN SANDERS: Yeah. So what we will have is a clear set of recommendations and that -- and to me, it would be helpful, most helpful by the end of today or by first thing tomorrow for these two chapters to have agreed to a set of recommendations. We will ultimately have

to vote on all of the recommendations by Tuesday because that will make -- that will create the report. There may be some wording changes after that but in terms of the actual recommendations, they would be set after our vote on Tuesday.

COMMISSIONER AYOUB: Okay. And then I just have one question before we take a break. Maybe it's -- but from the beginning, I remember hearing from the beginning meetings and repeatedly hearing that this report has to be unanimous or it loses its credibility and power. So I would like to hear maybe from Commissioners Horn and Cramer what is the -- what would be the outcome or what are some of the challenges of putting forth a report that's not unanimous?

COMMISSIONER STATUTO BEVAN: Before you answer that, can I just state that I would like to have an opportunity before the final vote to explain why I'm opposing the report and what I'm going to propose instead so that --

COMMISSIONER AYOUB: Yes. And I just have that general question --

COMMISSIONER STATUTO BEVAN: -- (inaudible) at the table --

COMMISSIONER AYOUB: -- Commissioner Bevan because you might not be the only person feeling that way.

COMMISSIONER STATUTO BEVAN: Okay. Well, I've been at this table for, you know, 2-1/2 years. I don't intend to leave it now or tomorrow. I'll be here to the bitter end. I just -- what I meant before was I didn't want to take any more time, knowing that time is really precious, explaining my objections to something. And I appreciate it, Commissioner Martin, that you encourage me to continue to offer my comments but I just didn't want to take the time from the Commission. But I will be here at the table until the very end.

COMMISSIONER MARTIN: And I also think that -- I misunderstood, Commissioner Sanders. I thought we were going to vote on the whole report.

CHAIRMAN SANDERS: Yeah.

COMMISSIONER MARTIN: I think there has to be a time that's afforded us an opportunity to not only vote on the recommendations but the whole report. And so maybe we can talk about this and the voting by email and everything but -- when we finish the break or something --

CHAIRMAN SANDERS: Yes.

COMMISSIONER AYOUB: -- but I think we need to get clarity on that again. Could I get an answer to my question?

COMMISSIONER CRAMER: Sure. This is Bud Cramer. I'll, at least, put forth a point of view and I need to go back and I withheld kind of comments to your remark about when I said some comment in a context that would be less controversial.

COMMISSIONER AYOUB: Yes.

COMMISSIONER CRAMER: What I thought I was hearing then were recommendations that would require a number of new laws or further action by the Congress and what I've tried to do all along is keep in mind that we've got policy-makers, in many cases, that are professional

staff of the committee even more so than members of Congress which seem to come and go just like Administrations that would need to see that this was a report that was bold but yet realistic and has a number of suggestions or recommendations that they could react to and accomplish, some that they might not be able to react to or accomplish.

I don't think it's necessary that we be completely unanimous. I thought at first that when I heard the reference made to that there could be letters attached from the different Commissioners, I thought that sounded a bit chaotic at first but the more I thought through that, I think that actually enriches the report that we issue. Look, this is a tough subject and we are tackling chapters of this issue or angles of this issue that are tough, and the Congress, when they created us and the first hearing that we held in DC when the members of the committee came to us, they asked us to be bold. So I think that being bold means that you run the risk of not being unanimous there. So I'm not so concerned about that but if we get really so preoccupied with so many different issues from so many different points of view, then I think we do run the risk of confusing the audiences that we're trying to reach.

COMMISSIONER AYOUB: Thank you so much.

CHAIRMAN SANDERS: All right. So why don't we take a break for 15 minutes. We will come back and we'll walk through. I will call on Commissioner Bevan because it sounds like there's - - that it's going to be related, I think in large part, to the next issue that we have on the agenda, which is Chapter 2.1 and the surge and funding. I will also talk about the -- go through the detail of the process with the vote. So if we could reconvene at 11:20 Pacific Time; I guess most of you, it's probably 2:20.

COMMISSIONER MARTIN: (Inaudible) 2:20. Thank you.

CHAIRMAN SANDERS: Thanks.

(Whereupon, off the record for a brief recess.)

CHAIRMAN SANDERS: After conferring with the Executive Director, it seems that -- and Pat, I know you volunteered your time, but it does seem that it would make the most sense to go through items one-by-one in Chapters 6 and 7 to get an up or down vote whether to include in the body of the report those items that are currently proposed. So I think we'll start with that and then we'll go to the -- that'll give us a better sense of the items that need to be included in the report and the items that are not to be included. Anybody opposed to that?

COMMISSIONER MARTIN: I don't have a problem with that, David. This is Pat Martin. I also want to make certain that if people have to leave the call, we make certain we have the discussion about the voting and voting on the final report and all that, too.

CHAIRMAN SANDERS: Yeah. Okay. So --

COMMISSIONER DREYFUS: Commissioner Sanders, would you have the ability -- because you had -- we had mentioned that there would be some that would fit in to the three sections that would be kept -- how -- we have to do that, too?

CHAIRMAN SANDERS: No. I think at this point, we just want to make sure that we know which ones not to include and then we can still get a chance to see the recommendations and

make a second decision if there are things that are included that shouldn't be. We primarily want to make sure we have support for what ultimately is included.

COMMISSIONER MARTIN: Well, I don't have all those -- I mean so my original draft, the very first one, I had a second set that had all the cites. I don't have that with me here. I'm in DC so I just don't have that with me right now. I mean --

CHAIRMAN SANDERS: Let me get a roll call as to who's on. I know we have Dreyfus, Petit.

COMMISSIONER STATUTO BEVAN: Bevan.

COMMISSIONER CRAMER: Cramer.

COMMISSIONER AYOUB: Ayoub.

COMMISSIONER HORN: Horn.

COMMISSIONER PETIT: So David, is this on the recommendations?

CHAIRMAN SANDERS: Yes.

COMMISSIONER PETIT: And if we have something in the background or the explanation preceding the recommendation that we feel a need to bring up, we can talk about that, right?

CHAIRMAN SANDERS: Commissioner Bevan?

COMMISSIONER STATUTO BEVAN: Excuse me?

CHAIRMAN SANDERS: I'm not sure I understood the question, Commissioner Petit.

COMMISSIONER PETIT: For example, on that question of in Chapter 7 coming up, the "systematic scheme," I want us to specifically address that. It's not a recommendation. It's a finding that is being asserted and I want us to be able to actually vote on whether we retain that language or not. So it's not a recommendation per se but it is within the body of the report.

CHAIRMAN SANDERS: Okay. So at this point, we just want to get an up or down on the recommendations and then we will make revisions for the report and -- but we want to make sure that we have the recommendations, an up or down on the recommendations.

COMMISSIONER AYOUB: Commissioner Martin, is what you're looking for something that could be sent to you? Is that something Amy Templeman has or --

COMMISSIONER MARTIN: No. I don't think I sent this to Amy by email

CHAIRMAN AYOUB: Okay.

COMMISSIONER MARTIN: I don't honestly remember. I can't remember the first place that I gave it to you guys, to be honest, off the top of my head. So when we did the first draft of -- actually, you know, Amy, it was when Cheryl did that first draft. I think there was a separate document that was submitted at the same time that listed all the cites for the information that was listed on it. I just don't remember -- I just don't, off the top of my head, remember what day and what month even that was done.

CHAIRMAN SANDERS: All right. So --

COMMISSIONER MARTIN: But anyway, you can go through the recommendations and I'll try to remember as much as I can off the top of my head.

And let me just say this. You know, I think that this report is a body of work that has been contributed to by each and every one of us and just like when we talked about measurements, just like when we talked about the surge, all of us participated, whether we were the author of the report or not. So I expect to get help from everyone when we go through these recommendations. So I don't expect to be the one defending this report when it's all of our report but I'm here to (inaudible).

CHAIRMAN SANDERS: Okay. So let's get started. We'll -- I will read the recommendations and we'll ask each person to vote "include" or "not include." Say "yes" --

COMMISSIONER COVINGTON: This is Commissioner Covington. Can I ask for a clarification? Are we talking about include in a separate chapter? Are we talking about keeping an appendix? Are we --

CHAIRMAN SANDERS: In the report.

COMMISSIONER COVINGTON: -- talking about move up into the body of the report? Those are three different things that we talked about earlier.

CHAIRMAN SANDERS: Yeah. This is for inclusion in the body of the report.

COMMISSIONER COVINGTON: Is it a -- okay, not as a separate chapter. What about keeping them as a separate chapter, though? There's still going to be Commission recommendations.

CHAIRMAN SANDERS: Included in the body of the report would include -- we'll decide later is it separate chapter or not but are the recommendations included in the body of the report as a recommendation from the Commission.

COMMISSIONER MARTIN: Wait a minute - - wait a minute. I apologize. I thought there were three recommendations that were already going to be included in a separate chapter, for instance, for Native America and the rest of the recommendations we were going to vote on right now as to whether to put in the body of the -- to keep or not. So is there no Native American (inaudible) --

CHAIRMAN SANDERS: (Inaudible) are --

COMMISSIONER MARTIN: -- (inaudible) --

CHAIRMAN SANDERS: -- the headline recommendations of 6.1, for example -- or recommendation 6.1, they're not the sub- recommendations but essentially, it's the same effect. Make sure that we want -- that we're including the things that we want to include and not including those that we don't.

COMMISSIONER DREYFUS: And what about the appendices? What about where we would parking lot things that were recommended but not in the body of the report, what about that comment that was stated earlier about things that could be in the appendices?

CHAIRMAN SANDERS: And so this doesn't impact that. This is deciding what should be included in the body of the report.

COMMISSIONER DREYFUS: Okay.

COMMISSIONER COVINGTON: Now can I -- because I never felt we've agreed on this ever, how are we deciding this? Is it a majority decision?

CHAIRMAN SANDERS: A majority for each of the recommendations. Everybody set? All right. Recommendation 6.1, Congress and the Administration should mandate that the Bureau of Indian Affairs, at a minimum, immediately implement the practice of distinguishing child and adult homicide victims when reporting fatalities in Indian country."

COMMISSIONER DREYFUS: And it's clear that Congress can mandate that?

COMMISSIONER STATUTO BEVAN: Yeah.

COMMISSIONER DREYFUS: Great.

COMMISSIONER CRAMER: Yes, that's my opinion, too.

COMMISSIONER STATUTO BEVAN: Yes, they could.

CHAIRMAN SANDERS: So Commissioner Bevan?

COMMISSIONER STATUTO BEVAN: Fine.

COMMISSIONER PETIT: David, I don't think the term "at a minimum" needs to stay in there. Just say what we're saying. Why say "at a minimum?" There's no discussion of a maximum.

COMMISSIONER DREYFUS: Agreed.

CHAIRMAN SANDERS: Commissioner Covington?

COMMISSIONER COVINGTON: Agreed.

CHAIRMAN SANDERS: Commissioner Dreyfus?

COMMISSIONER DREYFUS: Agreed.

CHAIRMAN SANDERS: Commissioner Ayoub?

COMMISSIONER AYOUB: Agreed.

CHAIRMAN SANDERS: Commissioner Cramer?

COMMISSIONER CRAMER: Agree.

CHAIRMAN SANDERS: Commissioner Horn?

COMMISSIONER HORN: I'm sorry. Agree means agree with it as written?

CHAIRMAN SANDERS: It will be in the report, in the body of the report.

COMMISSIONER HORN: Fine.

CHAIRMAN SANDERS: Commissioner Martin?

COMMISSIONER MARTIN: Agree.

CHAIRMAN SANDERS: And Commissioner Sanders, agreed.

6.1(b), Congress and the Executive Branch should mandate that the FBI identify key data that tribes could track and that the BIA could collect. At a minimum, the FBI should ask BIA to use national incident base reporting system or request that the BIA provide more detailed child specific information. BIA and FBI data collection about American Indian-Native American - - Alaska Native children and child fatalities should be coordinated to be complementary and comprehensive. Commissioner Ayoub?

COMMISSIONER AYOUB: Should mandate that the FBI? Agree.

CHAIRMAN SANDERS: Commissioner Bevan?

COMMISSIONER STATUTO BEVAN: I think they can do this anyway. Why wouldn't the FBI be able to talk -- they're both Administration -- FBI ask BIA -- tell them what to do? Is there some reason they can't?

COMMISSIONER COVINGTON: They don't do it is the problem.

COMMISSIONER CRAMER: Yeah. And think that --

COMMISSIONER COVINGTON: That's the problem.

COMMISSIONER CRAMER: -- they just don't do it.

COMMISSIONER COVINGTON: They oftentimes turn down the request. I've seen it happen --

COMMISSIONER STATUTO BEVAN: Oh, okay.

COMMISSIONER COVINGTON: -- (inaudible) fatalities.

COMMISSIONER STATUTO BEVAN: Okay. Agree.

CHAIRMAN SANDERS: Commissioner Covington?

COMMISSIONER COVINGTON: Agree.

CHAIRMAN SANDERS: Commissioner Cramer?

COMMISSIONER CRAMER: Agree.

CHAIRMAN SANDERS: Commissioner Horn?

COMMISSIONER CRAMER: Agree.

CHAIRMAN SANDERS: Commissioner Petit?

COMMISSIONER PETIT: David, I agree but can we ask in the subsequent ones if there is anyone who disagrees as opposed to a roll call on each one, let them (inaudible). And also, the same question, whether it should be read in its entirety or not, can we just reference 6.1(c) and if anybody has a question about the content, we can read it out loud; otherwise, just vote on that?

CHAIRMAN SANDERS: Commissioner Dreyfus? Sure.

COMMISSIONER PETIT: Just thinking of time.

CHAIRMAN SANDERS: Sure. Commissioner Dreyfus.

COMMISSIONER DREYFUS: Agreed.

CHAIRMAN SANDERS: Commissioner Martin?

COMMISSIONER MARTIN: Agreed.

CHAIRMAN SANDERS: Chairman Sanders agrees.

6.1(c), anybody disagree with that?

COMMISSIONER STATUTO BEVAN: Is that ICWA, Public Law 280?

CHAIRMAN SANDERS: Say that again Commissioner Bevan.

COMMISSIONER STATUTO BEVAN: Is that the Indian Child Welfare Act, Public Law 280

COMMISSIONER MARTIN: I'm trying to find the page right now.

COMMISSIONER STATUTO BEVAN: Oh, okay. Oh -- I don't know.

COMMISSIONER MARTIN: (inaudible) copy so I'm trying to find it.

CHAIRMAN SANDERS: Let's go to the next one, 6.1(d), and we'll come back to 6.1(c); 6.1(d)?

COMMISSIONER COVINGTON: David, you have to read them.

COMMISSIONER STATUTO BEVAN: Yeah.

CHAIRMAN SANDERS: Congress should mandate that death certificates indicate if the child is an American Indian-Alaska Native child, if enrolled or not enrolled in tribal affiliation.

COMMISSIONER COVINGTON: Can I make a comment on that. The only problem with that is that death certificates are designed state by state. It becomes problematic because there's a lot of state control on what gets included in the death certificate. So this might be hard to implement that (inaudible).

COMMISSIONER CRAMER: Yeah. I would have to agree with that.

COMMISSIONER PETIT: Model legislation.

COMMISSIONER COVINGTON: Or another way to do it is that the National Association of State Registrars should work collaboratively to incorporate tribal affiliation on all state death certificates, something along that. But I don't think Congress can mandate what's on a death certificate.

CHAIRMAN SANDERS: So does that mean delete this or make a change.

COMMISSIONER COVINGTON: I would change it. I mean I think it's really an important piece.

COMMISSIONER MARTIN: I would change it, not delete it.

COMMISSIONER DREYFUS: I would change it, not delete it.

COMMISSIONER CRAMER: I would change it, not delete it.

CHAIRMAN SANDERS: Any disagreement with that?

(No response.)

CHAIRMAN SANDERS: Commissioner Martin, do you have the citation for Public Law 280 now?

COMMISSIONER: (Inaudible).

COMMISSIONER STATUTO BEVAN: I have it. It wasn't ICWA. It's a transfer of legal authority jurisdiction from the federal government to state governments which significantly changed the division of legal authority among tribal, federal, and state government. I don't know if I know anymore than that.

CHAIRMAN SANDERS: 6.1(e), anybody disagree?

COMMISSIONER HORN: Can you read it?

CHAIRMAN SANDERS: Ensure the accuracy of data information and ensure that tribes have the capacity and tools to provide that data information.

COMMISSIONER HORN: So I'm not sure to whom this recommendation is directed and how that would happen.

COMMISSIONER DREYFUS: Agreed.

CHAIRMAN SANDERS: So does that --

COMMISSIONER CRAMER: Yeah, I agree, too.

COMMISSIONER DREYFUS: It's just so general.

COMMISSIONER MARTIN: So how would you help get it more narrow? What is your recommendation for narrowing it or do you think the idea is unnecessary?

COMMISSIONER DREYFUS: I think it fits into the larger body of the report in terms of the whole area of accuracy of data information and our need to specifically call out Indian country in that, but I think it fits into the larger body of work we've done around the accuracy of the information. This just seemed really broad to me.

COMMISSIONER HORN: Yeah, I agree with that. I would favor deleting it because it -- because all the recommendations for data accuracy, we don't say, except for Native Americans, so I think it would be incorporated there.

CHAIRMAN SANDERS: Others propose to delete it --

COMMISSIONER MARTIN: Well, I would not delete it. My recommendation is not to delete it. I think all the things that we can relate to the Native American families and children should be in one spot. But I would not delete it and just rely on a general statement that we need better data and assume that the reader will then also recognize that the issues around data inaccuracy in Native country is different than it is in the state courts. That's the problem.

COMMISSIONER DREYFUS: Are you saying that this is -- you would want this to stay as a recommendation or would be more in the narrative about the importance, because I can't

agree with this being a recommendation. It's not a -- it -- there's nothing actionable about this. In fact, a lot of it was just above -- is about accuracy of data and information.

COMMISSIONER MARTIN: I mean (inaudible) -- I apologize.

COMMISSIONER HORN: So I -- for all of the reasons stated above, I would vote to delete it as it stands.

CHAIRMAN SANDERS: I propose to delete it as it stands.

COMMISSIONER DREYFUS: I propose to delete it.

(Whereupon, technical difficulty/court reporter reconnecting to call.)

COMMISSIONER STATUTO BEVAN: (Inaudible) our jurisdiction in terms of crime data. So this would restart.

CHAIRMAN SANDERS: Anybody propose deleting it then?

COMMISSIONER HORN: Deleting the "especially in tribal areas subject to Public Law 280," just that phrase?

CHAIRMAN SANDERS: Deleting the recommendation.

COMMISSIONER STATUTO BEVAN: Oh, no. I want the recommendation. I --

COMMISSIONER HORN: Yeah, I think that should (inaudible) --

COMMISSIONER STATUTO BEVAN: I think -- right. I think deleting just that -- well, because I guess this -- 280 doesn't operate in every -- within every Indian jurisdiction.

COMMISSIONER HORN: I mean if we can't explain adequately the connection of Public Law 280 to this recommendation and why it's there, then I would suggest that we delete it, just the phrase, not the recommendation.

COMMISSIONER MARTIN: Then how would you word the recommendation, David?

COMMISSIONER HORN: Just moreover, to generate accurate crime data -- crime reports for Indian country -- Congress should mandate the FBI reporting requirements, blah-blah-blah. I think that -- I'm not sure why, especially in tribal area -- I don't know what Public Law 280 is so I'm not sure why somebody would call that out unless somebody can tell me why that specific law should be called out.

COMMISSIONER MARTIN: I honestly can't remember from the discussions we've had but I -- (inaudible) getting the (inaudible) recommendation would stay in because I think it's imperative that we really get an understanding of what is going on with our data in Indian country.

COMMISSIONER HORN: Yeah. I'm not arguing against that.

COMMISSIONER STATUTO BEVAN: I know. I think --

COMMISSIONER STATUTO BEVAN: Commissioner Martin, this would -- this is in the direction of the general recommendation. This supports the recommendation. Then keep it. But Public Law 280 is controversial amongst the tribes because they -- it's -- because they want their

jurisdiction and the FBI is taking it over, so it's in the -- if we drop that "especially in tribal areas," we're still fine, the recommendation.

COMMISSIONER MARTIN: I understand.

CHAIRMAN SANDERS: All right. 6.2?

COMMISSIONER COVINGTON: Could you read it, David? I'm sorry.

CHAIRMAN SANDERS: All right.

COMMISSIONER MARTIN: Just read them for us, David, please?

CHAIRMAN SANDERS: 6.2(a), "Mandate the appointment or -- the overall recommendation is "Mandate with equal responsibility information sharing between federal government, state government, and tribal government." 6.2(a), "Mandate the appointment or strengthen (inaudible) role of staff within the Administration with oversight over every federal department concerning Indian Affairs."

COMMISSIONER MARTIN: We talked about this earlier I think.

COMMISSIONER COVINGTON: For me, for the first one, I think it has to be specifically to child fatalities --

COMMISSIONER DREYFUS: Yes.

COMMISSIONER MARTIN: I didn't hear that. It has to be specifically what?

COMMISSIONER COVINGTON: To fatalities and/or serious injuries of children or neglect, child abuse and neglect. (Inaudible).

CHAIRMAN SANDERS: So we'll make that modification. Anybody recommend deleting it?

(No response.)

CHAIRMAN SANDERS: 6.2(b), Congress should mandate that tribal data on American Indian and Alaska Native child abuse and neglect be reported to NCANDS.

COMMISSIONER HORN: I enthusiastically endorse it.

CHAIRMAN SANDERS: Anybody recommend deleting that?

UNIDENTIFIED SPEAKER: Yes.

CHAIRMAN SANDERS: 6.2, link data between the tribal child welfare and tribal law enforcement?

COMMISSIONER DREYFUS: Question, is this at all -- I just don't understand all this well enough. Is this at all redundant with anything that was earlier stated in any of the other recommendations; or is this uniquely different?

COMMISSIONER MARTIN: It's uniquely different in my opinion. Law enforcement specifically is talking about local law that is different from FBI and federal level.

COMMISSIONER DREYFUS: And how much of this can be done by Congress? Who has to do what here? How much of this is at the discretion of local tribal child welfare and tribal law enforcement? So who's doing what to get this recommendation in play?

COMMISSIONER MARTIN: If the agencies are getting federal dollars and police agencies are getting federal dollars --

COMMISSIONER DREYFUS: So you want this as a mandate by Congress?

COMMISSIONER MARTIN: Unless you guys can help me think of a better place to mandate it, I would think Congress is the strongest place to mandate it but if you have a further recommendation, I'm prepared to listen to it. I mean I'm not trying to be difficult when I ask you. I'm asking for help. I mean I think Congress is the strongest place to ask for it to be done, but if you know of a better way, I'm perfectly prepared to listen.

COMMISSIONER DREYFUS: Well, we as a Commission hear over and over and over again the importance of the ability to share data and not just between law enforcement and child welfare. That is one aspect of where we want data shared. We want data shared medically and other things. That's why I'm just asking in our larger report, this is a big scene and --

COMMISSIONER MARTIN: In our larger report, we also ask that it starts with CPS and the police department. We started talking about the domestic violence issues and in our larger report -- I forget which chapter it is -- but we specifically thought that it starts with police departments and CPS and that's why we're trying to be conclusive.

COMMISSIONER DREYFUS: So it would be -- we'd be asking Congress to mandate? I'm just asking -- I mean when this was thought up, I'm sure there was thinking that this needs to happen and the way to make it happen in Indian country is for Congress to mandate it in order to hold the federal dollars, because of the federal funding that they provide both.

COMMISSIONER MARTIN: So does anyone remember off the top of their head in the general report where it is that we also asked for -- in our 21st century new model, we also talked about sharing data and we said start with police departments and CPS?

UNIDENTIFIED SPEAKER: Yes.

COMMISSIONER MARTIN: Am I reading that correctly? I think so.

CHAIRMAN SANDERS: That is correct, yes.

COMMISSIONER MARTIN: And so if we pair it with that, do we say Congress (inaudible) --

CHAIRMAN SANDERS: In that --Administration, that we recommend initiate a support or incentivize the realtime sharing of data between child protection and law enforcement.

COMMISSIONER DREYFUS: But for Indian country, it's going to have to be mandated by Congress.

CHAIRMAN SANDERS: Okay.

COMMISSIONER DREYFUS: Right?

COMMISSIONER COVINGTON: It may be better (inaudible) to when there is one included in the other one about incentivizing and in that recommendation, make a specific reference including, you know, between tribal and -- tribal law enforcement and child welfare so that it (inaudible).

CHAIRMAN SANDERS: That makes sense.

COMMISSIONER DREYFUS: That makes sense; I like that.

CHAIRMAN SANDERS: All right. Next, 2(c), police reporting up front the Bureau of Indian Affairs on tribal and child welfare cases involving American Indian-Alaska Native children.

COMMISSIONER HORN: What does "up front" mean.

COMMISSIONER DREYFUS: Right.

COMMISSIONER MARTIN: The beginning of the process.

COMMISSIONER HORN: What process?

COMMISSIONER MARTIN: If there is a call in about a child welfare case and we're beginning to investigate it, at the beginning of that process.

CHAIRMAN SANDERS: So once a child is identified as American Indian?

COMMISSIONER MARTIN: Right, just like ICWA and every court (inaudible) from the very first date, at the very first initiation when we're (inaudible) files, we have to start asking about ICWA questions, about the (inaudible) don't have to start all over and that's the (inaudible) that (inaudible) to process.

COMMISSIONER HORN: So every single report involving -- I'm just trying to understand this -- involving a Native American kid would have to be reported to the BIA?

COMMISSIONER MARTIN: I think it should. We're trying to get consistent information and we're trying to make certain that we keep track of these kids.

COMMISSIONER HORN: But you're not saying -- because you're saying "up front," so the very beginning, report; a case comes in and they report it to BIA?

COMMISSIONER COVINGTON: (Inaudible) aren't there some tribes though that have taken back child welfare services from the BIA when their tribe (inaudible) control, where the BIA is no longer involved?

CHAIRMAN SANDERS: Yes, that's accurate.

COMMISSIONER DREYFUS: That's true.

CHAIRMAN SANDERS: So proposals to delete this recommendation?

COMMISSIONER STATUTO BEVAN: I think we should delete it because (inaudible) the BIA have a hotline? I mean I just think it's (inaudible) --Without a hotline, don't we (inaudible) --

CHAIRMAN SANDERS: I don't -- I think this is inapplicable to all cases so for that reason, I propose deleting it.

COMMISSIONER HORN: And I would agree.

COMMISSIONER DREYFUS: I agree.

COMMISSIONER PETIT: I agree.

COMMISSIONER CRAMER: I agree.

UNIDENTIFIED SPEAKER: Inaudible.

CHAIRMAN SANDERS: You had a question, Commissioner Covington?

COMMISSIONER COVINGTON: I was wondering -- it's just -- I mean it sounds like everyone's agreeing to strike it but I was wondering what Judge Martin thought.

COMMISSIONER MARTIN: I'm sorry. I was on mute and I didn't realize it. I disagree because I think there's a need for centralized keeping record of our children. And there is another recommendation further down, I believe, about reporting to NCANDS so for the record, I disagree but I'm hoping that we can keep something about at least getting NCAND numbers or centralized numbers on our Native children.

COMMISSIONER HORN: Yeah. That's at the bottom of 6.2(b) and everybody agreed with that.

COMMISSIONER MARTIN: Okay. All right.

CHAIRMAN SANDERS: 6.2(e), Congress should mandate the provision of training and technical assistance for tribes around collecting data and building data systems.

COMMISSIONER STATUTO BEVAN: Does anyone know what currently exists?

COMMISSIONER MARTIN: All I know is that it's very haphazard. We've heard testimony that they don't have infrastructure and most of the Native country, I know that being president of the National Council as well, we tried to include different Native territories in our model court system but because they don't have infrastructure with computers even, they were unable to keep their data sufficient to even become a model court. So I don't know specifically and I don't know where they're sourcing it. A lot of it comes from their territories so if they are a rich tribe -- very few are -- but if they're a rich tribe, they have infrastructure, they have better infrastructure, but if they are a tribe without resources, they have very little.

CHAIRMAN SANDERS: I think for most (inaudible).

COMMISSIONER DREYFUS: Are we talking about data systems beyond child welfare?

COMMISSIONER MARTIN: I'm talking about child welfare to figure out about our kids.

COMMISSIONER DREYFUS: Do we know if the current CCWIS move on the Children's Bureau to modernize SACWIS, what it does or doesn't do specific to Indian country in terms of -- and just kind of go back to thinking in my mind what all is in there and I'm just trying to think is there anything specific? It seems to me that it fits around this whole modernization, David, which the Children's Bureau is calling CCWIS, which is modernization of SACWIS.

CHAIRMAN SANDERS: Right. I would assume, though, it's only, at this point, applicable to tribes who operate IV-E.

COMMISSIONER DREYFUS: Right -- right, right, right, right.

COMMISSIONER MARTIN: But that's very few tribes that get IV-E.

COMMISSIONER DREYFUS: Yeah, it's very few.

COMMISSIONER HORN: It's also a proposed rule so I just think we need to modify this to make it clear that we're talking about child welfare. So Congress should mandate the provision of training and technical assistance for tribes around collecting data and building data systems -

COMMISSIONER STATUTO BEVAN: And who is supposed to do the --

COMMISSIONER HORN: -- report -- child welfare system.

COMMISSIONER STATUTO BEVAN: But who is supposed to do the training? I don't think this has enough. I don't have enough understanding of it. I'll have to vote "no."

COMMISSIONER MARTIN: So I would just ask rather if Cassie -- and I'm not trying to put you on the spot; it's just that you're the last one that spoke -- do you have language that you can recommend that makes it more appealing to you or more palatable to you? I mean do you think -- is it because -- you're voting "no" is because you don't think it's necessary; or are you voting "no" because you don't think the language is specific enough?

COMMISSIONER STATUTO BEVAN: I'm voting "no" because I don't know what currently exists and I don't know what law is currently -- I just don't know enough about -- what's currently being done and to ask a mandate is a big deal, especially when you're talking about building data systems. This could be a lot of money.

COMMISSIONER HORN: So currently, the way that -- to -- is it -- provision of training and technical assistance, so it actually doesn't say to pay for data systems. It says training and technical assistance and that would be through Title IV-E, correct, Cassie?

COMMISSIONER STATUTO BEVAN: Yeah.

COMMISSIONER HORN: So what if we were to say Congress should --

COMMISSIONER STATUTO BEVAN: Because I don't know if it would-- you know, I guess that would depend, like we just said, if the tribe is taking IV-E money.

COMMISSIONER HORN: Yeah, I mean, could Congress expand the availability of title IV-E funds for the purposes of training and technical assistance to tribes for around collecting data and building data systems for child welfare?

COMMISSIONER DREYFUS: Well, even those that are the non-IV-E tribes, the only thing, you know, what the rule says about the modernization of SACWIS, it's all around integration of databases and the ability for databases to speak to one another. And it seems to me that even in the non- IV-E tribes, there's a lot of benefit when -- if there is the ability to use IV-E for -- as the state is modernizing its SACWIS system to build in a greater integration and quality of tribal data.

COMMISSIONER HORN: That's -- yeah, I --

COMMISSIONER STATUTO BEVAN: The 14 states that don't do SACWIS, I mean --

COMMISSIONER DREYFUS: Yeah -- yeah, that's right.

COMMISSIONER STATUTO BEVAN: Well, if we have, you know, a tribe that makes a relationship with their state, and the state doesn't do SACWIS --

COMMISSIONER DREYFUS: What about if this ended with "around the collection and reporting of data" and wasn't -- and didn't go into building data systems? That's where this just gets huge.

COMMISSIONER STATUTO BEVAN: Yeah, right.

COMMISSIONER MARTIN: The problem though is the -- on the ground, though, half the problem is that they don't have data -- I mean we're talking about realtime data for our kids in state courts. They don't even have data systems to aggregate data. That's our problem. I mean if we're really talking about getting to the problem, you know -- I mean that's my position. The fundamental lack of ability to gather is what we're trying to get to with this recommendation.

CHAIRMAN SANDERS: Include it or no? Anybody propose deleting it? I believe we have one --

COMMISSIONER MARTIN: I want to leave it. I want to leave it because it's important that we start giving them or getting some systems in place so they can even get the ability to gather the data.

CHAIRMAN SANDERS: Anybody propose deleting it?

COMMISSIONER DREYFUS: If it stays this broad, I would -- I have a problem with it being a specific recommendation.

CHAIRMAN SANDERS: Would you delete it if -- well, the modification that you proposed was not supported by Judge Martin, so we have two propose --

COMMISSIONER COVINGTON: Can you talk about the modification was?

COMMISSIONER DREYFUS: So what is the cutoff - - what I proposed in order to make this more specific is the -- and again, I agree with Commissioner Bevan. We use this term "mandate" so often that it's kind of striking but this says, "Congress should mandate the provision of training and technical assistance for tribes on, and I would say "on the collection and reporting of data." Where, to me, it -- you would drop it is "and building data systems."

COMMISSIONER COVINGTON: Would it be better to have instead of Congress mandating training and technical assistance, because that's a Secretary or whomever -- shall ensure that all tribes have functioning data systems for their (inaudible) reporting and the collection of data on their child neglect and are provided with training and technical assistance so that they all get on track?

COMMISSIONER DREYFUS: Well, when you get that specific around child abuse and neglect data, which this doesn't say, that starts sounding better to me.

COMMISSIONER COVINGTON: I mean that was -- (inaudible) the fact that the tribes don't have data to support or systems. They don't even have the database infrastructure to be able to collect data (inaudible). I mean Judge Martin, is it broader that child maltreatment?

COMMISSIONER MARTIN: No. I'm just trying to deal with child welfare right now. I think it is broader but we're just trying to deal with child welfare to get, you know, the numbers through the -- for the kids that we -- I mean if we look at trying to ascertain the children who've died, we don't even have enough data to really go at making certain -- collect all those kids on a five-year basis backtracking.

CHAIRMAN SANDERS: We're going to have to decide what we want to do at this point.

COMMISSIONER HORN : I just can't.

COMMISSIONER MARTIN: I want to --

COMMISSIONER HORN: It's overly broad. I just can't. It's overly broad in my opinion and I don't know what it means and it doesn't even qualify saying that it's not child welfare data. So as it stands, I'm against it.

COMMISSIONER SANDERS: I would delete it as it stands. We have four --

COMMISSIONER PETIT: I agree.

COMMISSIONER DREYFUS: I agree.

COMMISSIONER CRAMER: I agree.

COMMISSIONER STATUTO BEVAN: Can we work on creating this in (inaudible) report?

COMMISSIONER DREYFUS: Well, again, I go back to Commissioner Covington and the work of your committee all around data and the need to have -- you know, and the kind of recommendations that are going to be in there, because one of the key pillars of this Commission has been about the integration and the accessibility of inaccuracy of data. So if there is some way that this can get pulled into another recommendation that's very similar and it calls out the specific -- the stuff -- the specific need of this in tribal nations, it seems to make more sense to me in the way you described it.

COMMISSIONER COVINGTON: I think the difference is (inaudible) look at some of the data recommendations that are already included that states have the ability to do because they've already got data infrastructure where tribes don't have it. So the recommendations of those (inaudible) to helping tribes develop data infrastructures.

CHAIRMAN SANDERS: I got to get through the remainder of these and then we'll come back to this one at the end.

The next one, 6.2(f), a pilot program to support the coordinated collection of child welfare and criminal justice data related to child abuse and neglect fatalities in select tribal communities and state (inaudible).

COMMISSIONER DREYFUS: Why a pilot program?

COMMISSIONER MARTIN: Well, we don't know if it's going to work. I mean we'd love to mandate that every tribe do it but the reality is I'm not sure we have the authority to do that. More importantly, we want it just like the court system that's down for disproportionately. We want to make certain that we can make a difference in the number of deaths we have.

CHAIRMAN SANDERS: Any propose deleting this?

COMMISSIONER STATUTO BEVAN: I propose deleting it unless I understand one thing. Who is in charge under -- does the tribe or is it the state that does the oversight for the child in terms of their case review? Who does all these things?

COMMISSIONER DREYFUS: That's through the tribal courts.

COMMISSIONER MARTIN: The tribal court does - - Well, it depends. If the case is a --It depends. That's part of the problem.

COMMISSIONER DREYFUS: It always depends --

COMMISSIONER MARTIN: That's where -- right. There's no clear answer. That's the whole point. That's why when we talk about these recommendations being overly board, I don't disagree but it's the circumstances in which we're dealing with that we're trying to address that mandates that we look at them a little differently. We don't have infrastructure in Indian country. We don't have definite questions, jurisdictional issues like that so, therefore, we can then build onto them. And that's kind of the purpose behind it and that's why I've encouraged you guys rather than just going up and down, give me -- help me figure this out and how to write in a way that addresses the concern and the issue that we're dealing with.

COMMISSIONER DREYFUS: But Commissioner Horn, you just said something really key when you talked about how much we don't know. And I think part of my concerns were these recommendations act as if we do know and they come across overly broad because, as you said, it all depends and it's a very complicated thing. And there's a part of me that things, wow, I hate to pitch things to yet another study, but are there specific areas that are really perplexing this Commission as it relates to how in the world we're going to, one, keep these kids safe and two, have accuracy of data and reporting that would require Congress to be working with the Bureau of Indian Affairs on a specific project as it relates to this, that needs to answer to the following -- you know, the findings need to be around the following key questions that we have.

So I guess that would be the only thing I would just pitch to you to consider is some of this about specific recommendations or what people should do to solve the issue? Or is it that we still have a lot we don't know about how to solve the issue because of the complexity?

COMMISSIONER MARTIN: Well, I think a lot of the reasons we don't know is just like Judge Horn said -- not Judge Horn, I apologize -- Judge Thorne said when he came to testify before us that it depends on different jurisdictions and some tribes, when it's a federal case, when there's a federal crime that is alleged to have been committed, the federal AG's office takes over and they have a specific protocol that they use for jurisdiction. In other jurisdictions, they don't follow the same practice so it's we don't know because different jurisdictions do it different ways. It's not that we don't know because we didn't look into it or ask the question.

CHAIRMAN SANDERS: All right. So we need to get (inaudible) on this. Are we -- I think we have one so far who's proposed deleting it. Anybody else propose deleting it?

COMMISSIONER DREYFUS: This is Susan Dreyfus. I propose deleting it.

CHAIRMAN SANDERS: Okay. Recommendation 6.3, Congress and the Administration should mandate tribal state collaboration to (inaudible) Native children exposed to violence, abuse and/or neglect. 6.3(a), the federal government should mandate the recognition of tribal criminal jurisdictions in Indian country (inaudible) abuse or neglect regardless of the perpetrator's race, i.e. --

COMMISSIONER HORN: So, David, I can't deal with the first one without dealing with the second one because they seem in conflict with each other.

UNKNOWN SPEAKER: You're right.

COMMISSIONER HORN: So we would have a jurisdictional committee made up of state and tribal leaders to determine jurisdiction. It seems that the first recommendation has already determined what that jurisdiction should be.

CHAIRMAN SANDERS: I'm sorry. Commissioner Horn, when you say "first recommendation," you're referring to? That 6.3(a)?

COMMISSIONER HORN: Yes.

COMMISSIONER MARTIN: Can someone put their phone on mute so we can get some of -- reduce the background noise?

COMMISSIONER HORN: So 6.3(a) says that the jurisdiction shall be in Indian country, okay. 6.3(b) says there should be a jurisdictional committee comprised of state tribal leaders to determine jurisdictional issues.

CHAIRMAN SANDERS: Yes.

COMMISSIONER HORN: So I just think those two are in conflict with each other. One says the default is it's going to be the tribes if the child -- I'm not saying I disagree but the second one says there's going to be a committee that's going to decide this, and I just think those two are in conflict with each other.

CHAIRMAN SANDERS: So --

COMMISSIONER MARTIN: Commissioner Horn, which one do you think is the better one? I mean if you feel that they're in conflict, I mean what is the best to get to it?

COMMISSIONER HORN: Well, you try to -- I don't admit to being a judge; I'm not a lawyer so I would lean toward 6.3(b) just because I don't have enough legal background and training to know what the conflicting legal particulars are when it comes to establishing criminal jurisdiction in Indian country versus, you know, the states. It makes logical sense, 6.3(a), in some ways but I'm not sure I know enough so I would prefer 6.3(b) but that may be the wrong one. I don't know. I --

COMMISSIONER DREYFUS: Okay. But 6.3(a) doesn't say fatalities; 6.3(b) does. So I guess to Commissioner Martin, has that too narrowed what you're trying to do here?

COMMISSIONER MARTIN: Well, so (inaudible) the whole thing is that -- two things. This Commission talks about near fatalities and fatalities and so in an effort to make certain that we didn't forget near fatalities, sometimes we worded things a little differently.

The other issue is when it gets to criminal jurisdiction, many of the tribes told us that even if they had the authority, they want the authority, both members -- the defendant may, in fact, be a member of the tribe but oftentimes they don't have the infrastructure sufficient to prosecute the case. And so although they feel that they should have the authority and although they want the authority, they can't prosecute in a way that feel they're getting justice for the defendant or the victim. And so that contributed greatly to the two recommendations you see.

However, after listening to this discussion, it seems to me that maybe we can do something to combine these two to get the issue about fatalities and near fatalities in one recommendation and be a little bit more clear than about -- because I don't want to say if a jurisdiction feels that they can't prosecute, they should prosecute. I don't want to make it that wishy-washy, if you will, or unscripted. But maybe we can narrow the language a little bit.

CHAIRMAN SANDERS: So where do you want to go with 6.3(a). Are there others who'd recommending deleting 6.3(a)? I'd recommend deleting it. I'm concerned that we -- that there are 580-some tribes and that to mandate something that fits all tribes, I just -- I'm concerned that we are making that recommendation. I would prefer to look at it being localized and individualized.

COMMISSIONER PETIT: I agree, David.

COMMISSIONER DREYFUS: I agree.

COMMISSIONER MARTIN: But how do we get there? Give me a recommendation of how we get to that specific issue that the three of you just recommended?

CHAIRMAN SANDERS: I'd prefer 6.3(b).

COMMISSIONER MARTIN: Okay.

COMMISSIONER STATUTO BEVAN: Okay. But --

COMMISSIONER: Fine.

COMMISSIONER : -- in 6.3(b), aren't there states and tribal leaders that, on their own, develop partnerships or MOUs?

COMMISSIONER DREYFUS: Yes.

COMMISSIONER STATUTO BEVAN: (Inaudible) --

COMMISSIONER DREYFUS: Right.

COMMISSIONER MARTIN: Yes, there are.

COMMISSIONER STATUTO BEVAN: So we're not -- and so this would not -- that would not harm that situation? This would just require everybody to do it? Is that it?

COMMISSIONER MARTIN: Well, I certainly think that the people, the jurisdictions that have carved out their own individual or localized MOUs should continue doing that.

COMMISSIONER STATUTO BEVAN: Right -- right. But there must be a reason why these other tribal leaders and states are not getting together, right? (Inaudible) --

COMMISSIONER DREYFUS: Well, a lot of it's a capacity issue. A lot of it is -- the tribe's don't feel they have the capacity to do it and so the state does. But --

COMMISSIONER STATUTO BEVAN: Right. Does it -- but this doesn't give them the capacity.

COMMISSIONER HORN: No, no, but it doesn't say you have -- 6.3(b) simply says there's going to be a jurisdictional committee that will determine jurisdictional issues of general matters associated with child abuse and neglect fatalities. So they could say -- if there's not a capacity within tribe, they could say, okay, given the tribe -- and the tribe may agree they don't -- we don't a process, we don't have a prosecutor, we don't -- I mean some of these tribes are pretty small. And so I would prefer 6.3(b) over 6.3(a).

COMMISSIONER DREYFUS: Is there a way to clarify that in those situations where this is needed, well, you could -- you know, I look at this as just an additional mandate that may not be needed some jurisdictions and this makes it clear it should be everywhere, the jurisdictional committees. And maybe there are places that they're not needed or tribes that don't --

COMMISSIONER MARTIN: I wouldn't say "needed" but make it more objective, right. Do you understand what I'm saying, Susan?

COMMISSIONER DREYFUS: Yeah.

CHAIRMAN SANDERS: All right. So we have, I believe, four who are opposed to 6.3(a); is that it because otherwise, we're including them both most likely?

COMMISSIONER HORN: I think -- why don't we do a roll call so I know what the vote is.

CHAIRMAN SANDERS: Commissioner Horn (inaudible)?

COMMISSIONER HORN: Delete.

CHAIRMAN SANDERS: Commissioner Petit?

COMMISSIONER PETIT: Delete.

CHAIRMAN SANDERS: Commissioner Bevan?

COMMISSIONER STATUTO BEVAN: Delete.

CHAIRMAN SANDERS: Commissioner Cramer?

COMMISSIONER CRAMER: Delete.

CHAIRMAN SANDERS: Commissioner Sanders, I delete. Commissioner Martin?

COMMISSIONER MARTIN: Include.

CHAIRMAN SANDERS: Commissioner Dreyfus.

COMMISSIONER DREYFUS: Delete.

CHAIRMAN SANDERS: Commissioner Ayoub.

COMMISSIONER AYOUB: Delete.

CHAIRMAN SANDERS: Okay, 6.3(b), anybody propose deleting that?

(No opposition posed.)

COMMISSIONER DREYFUS: Will it get modified if we just -- we had this wonderful conversation? I mean it's not going to --

COMMISSIONER MARTIN: How many would like to see it modified?

CHAIRMAN SANDERS: Yes. We will modify it. The idea is that --

COMMISSIONER DREYFUS: If it's modified, I think we should keep it.

CHAIRMAN SANDERS: -- and go through -- the modifications is that we are recognizing the current structures that are in place in states and tribes?

UNIDENTIFIED SPEAKER: Uh-huh.

COMMISSIONER FREYFUS: Yes. And I take it it will be broader than just child abuse and neglect fatalities?

UNIDENTIFIED SPEAKER: More?

CHAIRMAN SANDERS: It's --

COMMISSIONER MARTIN: Well, we talk about near fatalities, too, don't we?

COMMISSIONER DREYFUS: This just says the child abuse and neglect fatalities in 6.3(b); that's all it says.

COMMISSIONER HORN: Okay. I would certainly be supportive of expanding it to near fatalities as well.

COMMISSIONER DREYFUS: Yeah.

CHAIRMAN SANDERS: All right. 6.3(c)?

COMMISSIONER STATUTO BEVAN: I would just like to point out that we have not discussed criminal penalties or anything throughout this entire report. This is the first time we're seeing the word "criminal." I'd just like to point that out.

CHAIRMAN SANDERS: 6.3(c), federal policy should provide incentives for states and tribes to increase participation in deputation agreements and other recognition agreements between state and federal law enforcement agencies.

COMMISSIONER MARTIN: Oftentimes when jurisdictions don't feel they have the capacity to make a prosecution, they will -- the AG's office will work with the tribe and they will deputize different attorneys to become deputy AGs at the time, Assistant AGs for this case or for these cases.

CHAIRMAN SANDERS: So anybody propose deleting this one?

COMMISSIONER STATUTO BEVAN: I don't like "providing incentives." I don't know what's in there.

COMMISSIONER DREYFUS: This is Susan. I recommend deleting it.

COMMISSIONER PETIT: It sounds like a lot of recommendation without much substance on our part.

COMMISSIONER DREYFUS: Agree.

COMMISSIONER PETIT: I would delete it. It seems to be a big recommendation.

CHAIRMAN SANDERS: I'd recommend deleting it.

COMMISSIONER HORN: I would delete it.

COMMISSIONER CRAMER: I would delete it.

COMMISSIONER AYOUB: Delete.

CHAIRMAN SANDERS: 6.3(d), coordination between and among jurisdictions should be mandated, facilitated, and incentivized. I --

COMMISSIONER DREYFUS : Delete.

COMMISSIONER STATUTO BEVAN: Delete.

COMMISSIONER HORN: Delete.

COMMISSIONER CRAMER: Delete.

COMMISSIONER AYOUB: Delete.

CHAIRMAN SANDERS: 6.3(e), Congress should end all grant-based and competitive Indian country criminal justice funding in the Department of Justice and instead pool those monies to establish a permanent recurring funding system for tribal law enforcement and (inaudible).

COMMISSIONER STATUTO BEVAN: I would say delete only because once again, I don't know what currently exists. I don't know how much money. I don't know how it works.

COMMISSIONER DREYFUS: The only thing I could see when I read this, I didn't like the way it was worded but one of the consistencies in our report is about flexibility in current funding. And if this is attempting to get at that, then it seems to be consistent with the overall Commission direction.

COMMISSIONER PETIT: Susan, I think if we said we're trying to provide flexibility, that's one thing. This is more than that. It's --

COMMISSIONER DREYFUS: Oh, I agree with you.

COMMISSIONER PETIT: -- and all grant-based and competitive Indian (inaudible) and instead pool these monies to establish a permanent -- I mean, you know, this -- in other words, that doesn't speak to flexibility necessarily. It could mean something else. I don't know what it is and if somebody could --

COMMISSIONER HORN: Yeah. So I've -- in other contexts, what I've heard is, you know, you have 500- plus pretty recognized tribes in the United States and then what happens in grant and competitions for grants is that there are some tribes with enormous capacity to be able

to put grant proposals together and send them to the federal government and they tend to win because they're able to write really good grants. And then you have these smaller tribes who have less capacity and so they don't -- either aren't able to even submit a grant or if they do, it's not the same quality. And so I think what this is getting at -- now this is just information --

COMMISSIONER MARTIN: No, you're absolutely right.

COMMISSIONER HORN: -- is that it would take the same amount of money that's currently available and instead of making it available based on a competitive basis, so kind of the more -- the tribes with greater capacity keep getting more and more capacity because they get more and more of these grants, that you spread the money out across the tribes on some kind of formula basis. I think that's what this is getting at.

COMMISSIONER MARTIN: Yes, that's the idea. (Inaudible) necessarily (inaudible) planner.

CHAIRMAN SANDERS: Don't know because it's law enforcement and justice, much more broader than I think what we're focused on. That's my concern.

COMMISSIONER DREYFUS: Can it be narrowed to child protection? Then it wouldn't work. It wouldn't work then. Forget that.

CHAIRMAN SANDERS: Anybody else propose deleting this?

COMMISSIONER HORN: So could we rather than saying Congress, could we -- because I have heard this concern before and I think it's a legitimate one. So rather than making it absolute, which as it stands, I'd have to delete it, but I'm wondering if we should say is that, you know, Congress should explore alternative mechanisms to competitive, you know, grant-based and competitively-awarded grant or something like to ensure -- to determine whether there's a method for ensuring that tribes have equal access to funds that are available regarding child welfare, something like that.

COMMISSIONER MARTIN: It doesn't even have to be equal access but fair access.

COMMISSIONER HORN: Fair access, yeah.

COMMISSIONER MARTIN: Right?

COMMISSIONER HORN: Fair access.

COMMISSIONER DREYFUS: Now you just said child protection and this is about criminal justice?

COMMISSIONER HORN: Yeah. I'd rather have it more related to, you know, the charge of the Commission which is, you know, child abuse and neglect fatalities.

COMMISSIONER DREYFUS: But don't you think that starts to get at 6.3(f)?

COMMISSIONER HORN: I haven't got that far.

COMMISSIONER STATUTO BEVAN: Oh, I'll send you that.

CHAIRMAN SANDERS: All right. So let's go to 6.3(f), Congress and the Administration should bring funding for tribal criminal and civil justice systems and child protection systems into parity with the rest of the United States.

COMMISSIONER DREYFUS: This is Susan. I agree with it if you take out "tribal criminal and civil justice systems." But I always -- in the two states I worked in where -- with a number of tribes, I always had to remind myself that tribal children were Wisconsin and Washington residents, too, and -- but I -- where I fall down on this one is the inclusion of "criminal and civil justice systems" but child protection systems into parity -- I would not say with the rest of the United States but -- I would take that out but I do think that is a legitimate issue.

COMMISSIONER MARTIN: I'm sorry, what would you take out again?

COMMISSIONER DREYFUS: "With the rest of the United States" and I would take out "tribal criminal and civil justice systems." I'd keep it focused on child protection.

COMMISSIONER COVINGTON: I think (inaudible). I think criminal justice systems are more important because a lot of them play (inaudible) role because -- I think what we could say is criminal agencies or, you know, relationships to their (inaudible).

COMMISSIONER DREYFUS: I could go with that.

COMMISSIONER HORN: So can we get back to 6.3(e); did we resolve whether that -- again, I would vote to delete it as it currently stands but I'm wondering if we could have Commissioner Martin to come up with an -- something (inaudible).

COMMISSIONER MARTIN: I like the language you proposed. I'm willing to go with that, just not equal but fair opportunity for access to the same funds.

COMMISSIONER CRAMER: And would that language include -- did I hear say, Commission Horn, just Congress should or it should be Congress and Administration?

COMMISSIONER HORN: I think it could be both certainly. Congress and Administration should explore alternatives to blah-blah-blah, so

COMMISSIONER DREYFUS : I like that. And Commissioner Horn, does that include criminal justice?

COMMISSIONER HORN: Sure. I would have no problem with criminal --

COMMISSIONER DREYFUS: So it's not just -- because it doesn't mention children protection in there now. It specifically is on tribal law enforcement and justice services.

COMMISSIONER HORN: Yeah. I think we can mention both.

CHAIRMAN SANDERS: Commissioner Covington, when you're speaking, it's hard to understand you on the speaker phone, so -- because, you know, staff are trying to get all this down. So 6.3(f) (inaudible) --

COMMISSIONER MARTIN: 6.3(f)?

CHAIRMAN SANDERS: We made modifications, taking out "criminal and civil justice" and added "fair access." Is that correct?

COMMISSIONER MARTIN: No, I don't think so.

COMMISSIONER DREYFUS: No -- no. I think this was the larger point of parity of --

COMMISSIONER MARTIN: Yes.

COMMISSIONER COVINGTON: I think fair access. You don't think fair access does it?

COMMISSIONER DREYFUS: No. I think we're talking here about -- like I said, parity, to me, it means that the tribal nations would have been being treated no differently than I was being treated as a state secretary. And I always just had to remind myself those children on those tribal were state residents, too, and we definitely have an issue of parity in this country in terms of how funding gets distributed. So I like where this recommendation was going. I just don't know -- again, I defer to my other Commissioners about how broad it is to tribal criminal and justice systems and child protection systems.

COMMISSIONER COVINGTON: Well, I would think maybe take all three of those out. Let's just say for agencies providing services, support, and investigations in the arena of child welfare in Indian country (inaudible), something like that so that it doesn't just focus on child protection, because I think there are going to be other areas that -- I mean where it's not always quote, unquote, a child protection agency on a tribe (inaudible). Where they (inaudible) completely rely on tribal police for (inaudible) for child welfare (inaudible).

CHAIRMAN SANDERS: So we have something written and then we have two different proposals. One is to take out specific reference to criminal and civil. The other is to take reference out to all three. So let's take it as it is. In terms of deleting as it is, do we have proposals -- anybody who would vote to delete it? I would vote to delete it. I think it's too broad.

COMMISSIONER STATUTO BEVAN: I want to delete.

COMMISSIONER DREYFUS: I just think that I don't know --

COMMISSIONER STATUTO BEVAN: We don't know what exists. I don't know how much funding already exists. I don't know anything.

COMMISSIONER HORN: I would delete as currently drafted.

CHAIRMAN SANDERS: So we have --

COMMISSIONER COVINGTON: I vote keeping it.

CHAIRMAN SANDERS: Say that again?

COMMISSIONER COVINGTON: I want to keep it.

CHAIRMAN SANDERS: So we have five to delete it?

COMMISSIONER PETIT: Yes.

CHAIRMAN SANDERS: Okay. So then Commissioner Dreyfus, you propose deleting the language related to civil and criminal and only including child protection?

COMMISSIONER DREYFUS: Yes.

CHAIRMAN SANDERS: So do we have proposals to delete that language.

COMMISSIONER DREYFUS: That's 6.3(f).

CHAIRMAN SANDERS: With that modification.

COMMISSIONER STATUTO BEVAN: I would oppose it. I don't know what exists and I don't know what a child protection (inaudible) IV-E, IV-B, CAPTA. I don't know what --

COMMISSIONER DREYFUS: Well, at the end of the day, when you're administering these systems at the state level, whether it's IV-B, IV-E, or CAPTA, the fact of the matter is is there parity in what is available to a child welfare agency within Indian country as I had access to as a state, and I would tell you in the two states of - -

COMMISSIONER STATUTO BEVAN: (Inaudible) Congress and Administration to come up with a formula of some kind to establish parity.

COMMISSIONER MARTIN: Well, that's kind of what we're asking for, isn't it? We're asking for there to be some kind of system set up and what we're trying to do is be broad enough so we're not dictating what that system is or how to do but that it should be, that we're bringing attention and that there should be parity. And so the recommendation that Commissioner Covington made talks about in all systems as opposed to limiting it to criminal and civil or just child protection.

CHAIRMAN SANDERS: So it sounds like -- do we have others who would propose deleting what Commissioner Dreyfus proposes? Commissioner --

COMMISSIONER MARTIN: (Inaudible) what your suggestion was.

COMMISSIONER COVINGTON: What did you say?

COMMISSIONER MARTIN: You still have your suggestion up?

COMMISSIONER COVINGTON: My suggestion up? What's that?

COMMISSIONER MARTIN: I thought there was a third recommendation, which was to eliminate the tribal --

CHAIRMAN SANDERS: State which we're proposing again.

COMMISSIONER COVINGTON: I --

COMMISSIONER MARTIN: I thought there was a - -

COMMISSIONER COVINGTON: -- I'm recommending that we don't take out the tribal police (inaudible), just make it simpler (inaudible) just say all tribal, you know -- I would just think of a way of incorporation all of them because I don't think we should just make it child protection.

COMMISSIONER DREYFUS: Commissioner Covington, I'm really having a hard time hearing you. It's like coming in and out.

COMMISSIONER CRAMER: Yeah, I can't hear at all.

COMMISSIONER COVINGTON: I know that (inaudible). (Inaudible).

CHAIRMAN SANDERS: Let's go to 6.3(g) and then we'll come back to this. "The government should release an RFP for demonstration projects containing multidisciplinary approaches to address the needs of American Indian-Alaska Native children and their families that requires tribal, federal, and state partnerships.

COMMISSIONER DREYFUS: So this is Susan. If you guys see my comments on that, I would recommend deleting this as it's worded today unless it got clearly connected to our larger recommendation regarding the quote, unquote, "surge" and not this release of an RFP of for demonstration projects because to me, this is a bit redundant to the surge but yet we were silent in how specifically the surge -- again, I'm using that term because I don't think we have a term for it -- but we didn't -- we were silent on how the surge would uniquely be done in partnership with tribes. So I just felt there was some redundancy to this yet but yet clearly, something I think this committee has pointed out is we have not uniquely thought about the surge as it relates to Indian country.

COMMISSIONER MARTIN: Well, this wasn't to parallel the surge necessarily. This was to go to the 21st century child welfare system where we utilized the idea of not just having child welfare go out and investigate -- offer services and evaluate services but using this multidisciplinary approach so we didn't have gaps in the service provision for children. So I think putting Native Americans and Indian children in the surge would be completely different.

COMMISSIONER DREYFUS: But just to keep in mind, again, as we have moved forward in our articulation of all of the outcomes of the surge, one of those outcomes is to lead us into this 21st century child protection system because we're going to see firsthand the importance of multidisciplinary approaches to child protection. And so the reason my support for the surge was that it connected beautifully to the creation of the 21st century system through the knowledge and experience that folks were going to gain. But again, if I'm incorrect on that, I would need to know that, but that's how I viewed the surge is that the movement into the 21st century system connects right to it and we're creating a learning laboratory for that learning to go on in addition to making sure kids today are safe.

COMMISSIONER MARTIN: And I guess what I'm saying is I've never believed that the surge's second portion when it's designed to look at whether or not we're taking kids from families that we don't believe are safe as opposed to really focusing on the services that families need to make children safe at home. And so this is an effort to make (inaudible) look for the Native children to have an opportunity to make their homes safe without the risk of being removed from their homes like the surge proposes. So --

COMMISSIONER DREYFUS: But the surge would look at past child fatalities and the learning that comes out of what could have kept that from occurring which is where an awful lot of what, you know, you just said is being needed would happen. So it wasn't just about the kids in the system today. It was also looking -- again, people, correct me if I'm wrong but I thought we were also looking at past fatalities.

COMMISSIONER MARTIN: And I don't mind looking at past fatalities. I don't want to look at bringing kids out. If the surge stops that, enhancing the services and strengthening the family to keep the child in, because if it looks at it the way I'm thinking, then there are very few kids that would be removed. Most of the kids would get additional services and different types

of services and support to stay safe in their home. And until the surge is written that way, I have a problem and I object to it so that's why --

COMMISSIONER DREYFUS: I understand.

COMMISSIONER MARTIN: -- 6.3(g) is recommended.

CHAIRMAN SANDERS: Okay. So others who would propose deleting this as written?

COMMISSIONER MARTIN: Then I would like to know why they want to delete, because this is our 21st century thing. So just tell me why. I mean

COMMISSIONER COVINGTON: Yeah. To be honest -- I mean I'm having -- I'm starting to really struggle with all the deletions when I don't feel that we've been given adequate time to explain these, present the case, to consider alternatives. It just seems like we're just deleting things related to Indian children and take this right off the map without the time that we have given to so many other of the recommendations (inaudible).

COMMISSIONER DREYFUS: Well, actually, I agree with a that because I would tell you, Commissioner Martin, what you just said helped me a whole lot. Again, if people are in agreement that the working of this would say as part of, you know, building to the 21st century system, that there's got to be something uniquely done in how that system is realized in Indian country, right, I start to go along with that. This just seems, when I read it on its face, somewhat disjointed from both what we're talking about in terms of the surge -- and you articulately laid out for me why that -- you know, why you -- how you see it differently -- but also, it didn't connect to the 21st century system as clearly as you just said it, so with that additional language, I would be fine.

COMMISSIONER MARTIN: I mean I thought our 21st century system was a multidisciplinary system where CPS had some major responsibilities but the rest of us that touch the lives of our children and family also --

COMMISSIONER DREYFUS: No. I agree but the way --

COMMISSIONER MARTIN: -- have responsibilities.

COMMISSIONER DREYFUS: -- it's worded right now, it doesn't mention the early -- as part of moving to a 21st century child protection system, there has to be a uniqueness and how that is realized in Indian country. So if that -- if this got referenced to the 21st century system and the overall recommendation of the report and if that is (inaudible) this recommendation, just as worded, just kind of plopped in there. But as you articulated it, it made more sense to me.

CHAIRMAN SANDERS: I would note we don't have anybody proposing to delete this at this point so unless that changes, let's move on. Recommendation 6.4, (Inaudible) to sovereign nations' paradigms and funding provisions. 6.4(a), Congress should specify the behavioral health dollars (inaudible) to provide the kinds of services that have traditionally been provided under Title IV-E -- use those -- under IV-B - - excuse me -- use those services and that money to increase home visiting and availability of social workers to monitor and support while child is in the home. Any proposal --

COMMISSIONER MARTIN: I would suggest to you that this dovetails very well into the last recommendation we talked about in improving the services to make kids safe in their homes.

COMMISSIONER DREYFUS: Is this specific to Alaska Native and American Indian children or is this in general?

COMMISSIONER MARTIN: This is in their chapter.

COMMISSIONER DREYFUS: I appreciate that.

COMMISSIONER MARTIN: I'm sorry. Maybe I didn't understand your question.

COMMISSIONER DREYFUS: I'm just saying is this recommendation specific to this chapter or is this a larger recommendation around Medicaid in general, in terms of Medicaid being used for the funding of behavioral health.

COMMISSIONER MARTIN: I'm not really sure that I understand. I heard your words and I guess I'm just brain dead right now but I think there is something comparable --

CHAIRMAN SANDERS: There are references to Medicaid spending in other parts specific to home visiting so I think I get the point that you're raising and as we go through the other recommendations, we should refer back to this one.

COMMISSIONER PETIT: So I mean there's -- in reading this one, as far as I'm concerned, 6.4(b), just strike the word "tribes" and put in "states" or "tribes and states." What this is saying is nothing less than full funding of a comprehensive child welfare system. I'm all for it. It's a lot more than a billion dollars that a number of Commissioners don't want to utter the words, but we're talking about a large sum of money here and I'm all for it, both with 6.4(b) and, again, I'll make the case later this should apply to the states as well.

COMMISSIONER MARTIN: So I'd recommend we keep it in.

COMMISSIONER HORN: If we're going to do this, particularly if -- I do think we have to have some -- I know I'm a broken record on this -- somebody should get -- because it's a lot more than a billion dollars. This is five, six, seven, eight billion -- \$10 billion dollars. I mean this could be -- this is creating an open-ended entitlement for all child welfare services and we just have to, if we're going to make that recommendation, I think we should be honest about what the cost is.

COMMISSIONER PETIT: Yep.

COMMISSIONER MARTIN: Okay. So help me figure out how to find out the cost then.

CHAIRMAN SANDERS: I don't think that would be your task, Commissioner Martin. I think that the -- right now the proposal is in this section but the question raised about funding will be a central question that we have to answer and so I would just suggest that we focus on this question, on whether this should be deleted or not right now and we will -- I'll work with staff to come up with how we want to address the total amount of funding potentially (inaudible).

COMMISSIONER COVINGTON: Commissioner (Inaudible), I did not (inaudible).

COMMISSIONER: Do what?

COMMISSIONER COVINGTON: I would like to keep it.

CHAIRMAN SANDERS: Commissioner Covington, we can't understand you.

COMMISSIONER COVINGTON: I would like to keep it. Can you hear me now better?

COMMISSIONER: Much better.

CHAIRMAN SANDERS: (Inaudible) --

COMMISSIONER CRAMER: Much better.

COMMISSIONER PETIT: Again, going with Commissioner Martin's frequent reminders of the internal consistency of the document. If this applies to tribes, it also applied to the disproportionately issue and it applied to children in the country so I think that Commissioner Horn says it correctly, it's a lot more than a billion dollars. But I think if we're going to say mandate funding, (inaudible) some idea of what we're talking about and at some point, this would be measured against what set of standards in terms of how you define what constitutes an adequate child welfare system.

COMMISSIONER STATUTO BEVAN: Okay. So I think 6.4(b), you're keeping it as it is and you're referring to full funding for everything?

COMMISSIONER PETIT: Well, that's what's here and
(Inaudible)

COMMISSIONER STATUTO BEVAN: Okay. I just want to understand it.

COMMISSIONER PETIT: Yeah. And we're -- yeah, well, we're interested in every kind in the country whoever that kid is, so we want to make sure we have an adequately funded system and that's before we get to the war on poverty --

CHAIRMAN SANDERS: So right at this point, it's on 6.4(a) to delete it or not and there's more work that we'll have to do with funding, and we may have to come back to this. But it sounds like at this point, nobody's proposing deleting 6.4(b)?

COMMISSIONER STATUTO BEVAN: Well, I oppose it. I would delete it but

COMMISSIONER HORN: And I think that -- again, I'm going to be a broken record -- I would -- my support for this is conditional only upon understanding how much money we're talking about and I think we just have to be honest about that.

CHAIRMAN SANDERS: I'm actually, as written, I will oppose it because I think that we have not demonstrated yet the effectiveness for our purposes, specifically of reducing fatalities, of the services under 6.4(b), and I'm concerned that we are suggesting that those services are effective to reducing fatalities, and I don't believe we know that yet. I would -- I think this is -- I think this has merit for further consideration but I'm -- the services under 4(b), we've never looked, for example, at some of the services that are offered, the time to (inaudible) family reunification, vacation, things like that and I'm just not sure that we can speak to the effectiveness of it yet.

COMMISSIONER DREYFUS: Okay, the question -- so we heard a lot about mental health and substance abuse and (inaudible) both with behavioral health, that's both substance abuse and mental health. And it seems we have nation -- we all agreed that what we want -- what we agreed to is parity, that that is the law and that behavioral health should be provided by

Medicaid. So if you took out, you know, this whole idea about 4(b) and, you know, that but just on its face the notion that behavioral health is health and Medicaid should be brought to full parity. Does that start to change this conversation a little bit when we, as a Commission, understood how integral mental health and substance abuse are to these kids that die in terms of causation?

CHAIRMAN SANDERS: Commissioner Dreyfus, I'm reading this a little differently, that it will be expanded to cover the services traditionally funded under IV-B.

COMMISSIONER DREYFUS: Oh, I read it that it was the behavioral health would be through Medicaid so that the kinds of services that IV-B is set up for, that IV-VB is not being used for that purpose. But maybe -- I must be reading this all wrong.

COMMISSIONER PETIT: Susan, I'm reading 6.4(a) and 6.4(b) together and I think that is what explained some of the differences on this. I also would note that again, this is aimed at the tribes but I believe it applies equally to the states. So casting a vote in this direction will set the stage up or down for do we do this for the country as a whole. Or do we just confine it to a really small population, therefore, a relatively small cost.

COMMISSIONER HORN: What -- does Medicaid not pay for some behavioral health services currently?

COMMISSIONER MARTIN: Right. So why don't we do this. Why don't we make a conditional determination on this one? It all depends on medical necessity and that threshold.

CHAIRMAN SANDERS: So I read that Congress should specify that dollars through Medicaid should be used to provide the kinds of services that have traditionally been provided under IV-B. I'm not sure that's talking about providing behavioral health services as opposed to those services under IV-B. That's how I read it.

COMMISSIONER DREYFUS: If it's read the way you read it, I propose deleting it.

COMMISSIONER HORN: Yeah. And if that's the way, Chairman, I would propose deleting it, too.

COMMISSIONER PETIT: David, what's included under IV-B? What would be under IV-B that would be construed as similar to what Medicaid funds?

CHAIRMAN SANDERS: Patient and family support, unlimited family unification.

COMMISSIONER MARTIN: But that's what we're talking about, isn't it, when we talk about the surge, when we talk about our 21st century, is providing services in the home from families to strengthen the family to protect the kid? And I thought those were the IV-B services.

CHAIRMAN SANDERS: Problem with that -- my concern is that we're proposing that Medicaid pay for -- take over the funding of those services.

COMMISSIONER PETIT: Take it over or supplement or complement?

CHAIRMAN SANDERS: This suggests take it over and that those funds would be used for other purposes.

COMMISSIONER MARTIN: All right. Well, where does home nursing come from; is that IV-B?

COMMISSIONER STATUTO BEVAN: (Inaudible). That's MIECHV. That's in another section.

COMMISSIONER DREYFUS: At some stage, the waivers aren't funding home visiting.

COMMISSIONER MARTIN: Right. (Inaudible/crosstalk).

COMMISSIONER STATUTO BEVAN: We're talking about -- she asked a question, was IV-B.

COMMISSIONER MARTIN: So I guess what I was trying to get at on this recommendation -- we heard a lot of information about the need for flexibility with IV-E funding and also the problems of funding for mental health services under Medicaid. And so what I was trying to do is get to monies flexible in a way that we could use them in the most efficient way to keep and support our families together and keeping these kids safe at home utilizing mental health, substance abuse services and the home nursing programs. So that's what I was trying to get to with this.

COMMISSIONER PETIT: Well, I think that's what the overall mission and purpose are, is to enable that to happen whenever it is possible. But I think we all know that the costs of doing that are very, very significant even if you confine it to CPS and related intervention services, most of the broader child well-being schemes. But I'm concerned on it that we lose support from our group. We've been divided on this question overall but I think as we're going through this, if you were to assign a dollar amount, you'd see that the dollars are very substantial. So the (inaudible) of saying there's a down payment, we've been using some (inaudible) billion dollar-- There's a down payment. Congress needs to cost this out. I mean I don't know that we can cost it out. I think this is something that one of the Congressional arms, CBO or OMB or somebody else could cost this out. Maybe in time, David, for the March 18th release date or not or it comes for somebody else but at some point, that's what we're going to be voting on, is are we proposing more resources being invested in stuff that we have (inaudible) children. It's going to be more than a billion.

CHAIRMAN SANDERS: But this is not -- this is a specific recommendation about how Medicaid will be (inaudible). That and I -- if we're going to make a recommendation about expansion of an entitlement, it seems to me that expansion should be into services that we know work, and I think we have not demonstrated that the services under IV-B are effective at reducing fatalities. I think that the argument about resources, to me, (inaudible) but this, I think, is a separate issue. So --

COMMISSIONER HORN: Yeah. I agree with David. If we're creating an open-end entitlement to services, very few of which we can point to empirical evidence that would actually result in reducing child fatalities, then I'm against that. If that's what this does, then I'm against it.

COMMISSIONER CRAMER: Yeah, I agree. I thought I could support this but I couldn't the way this is worded.

CHAIRMAN SANDERS: And I heard Commissioner Martin state that, her intent. And so what I would suggest is that in the -- between today and tomorrow, we work on wording that can be better aligned with the intent, because I don't know that there's opposition to the intent. But I think as this is worded, I just - - I can't see how we can support it.

COMMISSIONER PETIT: David, let me ask you this, though. I understand what Bud and Wade have just stated about this being open-ended entitlement. As we know, Medicaid essentially is a fairly open-ended entitlement. In this case, rather than thinking of expanding it by a single person, you just said the children that are in Medicaid now, this is a service that would be available so that in some states, they haven't opted for the full range of behavioral health services perhaps but in many states they have; right? So in this case, we're talking less about the population of children than the services that they receive.

COMMISSIONER DREYFUS: There's child and parent, though, Michael.

COMMISSIONER HORN: These services aren't currently available under Medicaid. They aren't an option.

COMMISSIONER PETIT: Behavioral services are an option.

COMMISSIONER HORN: Right. But the services under IV-B are not.

COMMISSIONER PETIT: Well, again, it's not expanding a population. It's confining it to the Medicaid population, right? So to that extent, Wade, it's not -- the population isn't mandated to be expanded but the services and it has almost the same effect of -- it has an effect, of course, on expanding the spending.

COMMISSIONER HORN: Yeah. I mean nobody on this call could ever accuse me and this Commission of not having a position of expanding funding for services. I've been pretty vocal about that but I also want to know what it is, so what I've always said is, you know, tell me what you need.

And so I'm not in favor of, you know, expanding -- creating another open-ended entitlement which, first of all, never going to pass but -- creating an open-ended entitlement when I think we have within our grasp the ability to significantly improve the system with some significant increase in resources which we can specify -- that's always been my argument -- and that we have a chance of actually getting Congress to get if not all the way there close to the way there. But this is explicitly providing a new open-ended entitlement.

Not all open-ended entitlements are to the entire population of the United States. They're often quite specific. You can't get Social Security benefits as a retirement benefit when you're 15 or when you're 27. You have to be elderly to do that. You can't get Medicare, you know, when you're 27 and those are open-ended entitlements. So this is a new open-ended entitlement because -- and that, I think, you know, as it currently stands, if we're going to do that, we better say we're doing it because this thing we know works and this thing, what we know works works in this way, and I don't think we can say that about this, so I agree with David.

COMMISSIONER STATUTO BEVAN: Are you saying that -- is it that holds true for 6.4(a), 6.4(b), 6.4(c)?

COMMISSIONER PETIT: They're all related to some --

COMMISSIONER STATUTO BEVAN: -- 6.4(d), 6.4(e)? I mean where does it stop? To me, it covers all of those.

COMMISSIONER PETIT: How about if we pilot it; if we ask Congress to, you know, do a demonstration to states or something like that to see if this is -- you know, makes it more efficient?

COMMISSIONER HORN: So we're talking now about the chapter on the tribes, so we can get to the states. But if what you're saying is, you know -- I'm all for pilot testing things, you know, pilot testing so you can see if they work. So if these were re- worded, this bunch of these were re-worded to talk about, you know, Congress should create a pilot program to study and to provide funding for blah-blah- blah, whatever you want to do, for home visiting to determine its effectiveness in reducing the number of child abuse/neglect fatalities and near fatalities, I'm all for it and with tribes. I'm all for it.

COMMISSIONER PETIT: All right. Let's do that.

CHAIRMAN SANDERS: Okay. Why don't --

COMMISSIONER MARTIN: So, David, can I make a suggestion if you don't mind?

CHAIRMAN SANDERS: Go ahead.

COMMISSIONER MARTIN: Can I suggest that I take 6.4 through 6.4(d) and with the conversation that we had today see if I can re-word these such that they're more narrow-focused and allows for the intent to come through but in a language that people can be more comfortable with?

CHAIRMAN SANDERS: Okay. Let's skip to 6.5 then.

COMMISSIONER HORN: I would be in favor of what Judge Martin just said.

COMMISSIONER PETIT: The whole lot of it.

COMMISSIONER CRAMER: So would I.

COMMISSIONER PETIT: Is that you, Bud?

COMMISSIONER CRAMER: Yes.

COMMISSIONER PETIT: I didn't get what you said.

CHAIRMAN SANDERS: And so would he.

COMMISSIONER MARTIN: I would take 4 --

COMMISSIONER CRAMER: I just agreed. That's a noble offer and I accept her offer.

COMMISSIONER PETIT: Yeah, I agree.

CHAIRMAN SANDERS: All right. So 6.5, implement cultural revitalization paradigm and service provisions. 6.5(a), Congress and the Administration should address the ability within tribes to support child family tribal access to needed services, support early literacy services, home visiting, and education by, at the minimum, promoting access to services, supports, and education outside of the standard 9 to 5 service hours.

COMMISSIONER MARTIN: And we all know that part of the problem is normally, the crises occur outside of the 9 to 5 hours and like (inaudible), my workers are unionized, so I think

there needs to be something specific to talk about the fact that families are multidimensional and they just don't have problems 9 to 5.

CHAIRMAN SANDERS: Anybody propose deleting it.

COMMISSIONER STATUTO BEVAN: Well, I don't see the (inaudible) from -- the impact of historical trauma and poverty cannot be overstated. I mean because we're not talking about reduction in suicide and violence. We're talking about child fatalities so I don't know where source is to -- for suicide and violence and that it's related to cultural approaches. When cultural approaches are utilized, then suicides and violence are decreased and so do we assume that fatalities would be decreased?

COMMISSIONER DREYFUS: So Commissioner Bevan, you're talking about the introductory statement, not the recommendation?

COMMISSIONER STATUTO BEVAN: Right.

COMMISSIONER DREYFUS: Okay.

COMMISSIONER STATUTO BEVAN: That sets the context - - I mean --

COMMISSIONER MARTIN: I'm sorry.

COMMISSIONER STATUTO BEVAN: To me, that sets the context but we could stick with just -

COMMISSIONER DREYFUS: Yeah. I mean I know we're going through the recommendations but if people note my comments, I really had some problems with the introductory paragraph but for many of the reasons Commissioner Bevan did.

COMMISSIONER MARTIN: I think the recommendation should stay in.

COMMISSIONER DREYFUS: Are we on the recommendation 6.5? Doesn't that go back to the earlier ones, what we're going to achieve on the earlier ones with support for access to needed services, home -- you know, isn't that -- and this issue of larger availability, that's not unique to Indian country.

COMMISSIONER MARTIN: Yeah, but we're talking about what's needed in Indian country and what their needs are. So I don't say that it's unique in Indian country. This doesn't mean that it's unique. It can be put in other areas of the report if we think it's necessary, but you guys asked me what did I think -- what did our Commission -- committee think was needed for Indian country and this is one of the elements.

CHAIRMAN SANDERS: So this is basically stating that Congress and Administration (inaudible)?

COMMISSIONER PETIT: That what?

COMMISSIONER DREYFUS: Isn't that what was just said earlier with the ones that Commissioner Martin said she's going to re-work; isn't that, in essence, what those recommendations do?

COMMISSIONER PETIT: I guess, David or (inaudible) remarks, right, like the early literacy services of -- what are we talking about, David, like Head Start or what?

COMMISSIONER MARTIN: We're talking --

COMMISSIONER COVINGTON: (Inaudible).

COMMISSIONER PETIT: Can't understand you.

COMMISSIONER DREYFUS: We can't here you.

COMMISSIONER COVINGTON: I just feel like we're getting way into the weeds on some of these recommendations, that we're messing with other recommendations. And even though, you know, it might hold true for (inaudible), I think we made the decision early and I would like us to keep to it that if it's a particular problem in Indian country, we should highlight that even if we have to say it again in the report so that we know that we're paying special attention to the population.

COMMISSIONER DREYFUS: So everybody who reads this report is being uniquely different from the earlier ones that are being re-worked? I'm the only one that sees it as redundant because I'm--

COMMISSIONER STATUTO BEVAN: I see it the same as -- well, I have a problem with both this chapter and the other chapter. I think the cultural -- all the cultural aspects for fatality, I think we're overdoing it. I just don't -- I don't know if it's cultural competency would decrease fatalities. I don't know where -- what the evidence is.

COMMISSIONER MARTIN: So one of the things just off the top of my head. David Rubin talks about the fact that when we're looking at serious head traumas in infants, sometimes, depending on how people were viewed when they came in and how they were screened, they got different results. So we can't deny that there are some factors that are going on in different communities that impact the outcomes, even if it's just how things are classified. That's a given. Now the issue we have to decide is whether or not we're going to talk about it, we're going to emphasize it and made recommendations to address it.

COMMISSIONER: And Hornstein did not find that race was a given. She said the single most important predictor were reports -- re- reports. She said that the old (inaudible).

COMMISSIONER MARTIN: She (inaudible)

COMMISSIONER STATUTO BEVAN: That was her (inaudible).

COMMISSIONER MARTIN: Did she just -- I'm sorry. She said the single most important factor was not race. I agree with you but that doesn't mean it's not one factor. We've also had other testimony that has demonstrated that it is a factor, not the only factor but a factor. The issue is whether or not we're going to acknowledge it, deal with it and try to address it.

COMMISSIONER PETIT: Well, look --

COMMISSIONER DREYFUS: Are we on 6.5(a)?

COMMISSIONER STATUTO BEVAN: We don't have any evidence that (inaudible) --

COMMISSIONER HORN: Yeah, I don't know where we are. Where are we. If we're talking about (inaudible) --

COMMISSIONER STATUTO BEVAN: -- we don't have any evidence.

COMMISSIONER DREYFUS: Are we on 6.5(a), Chairman Sanders?

CHAIRMAN SANDERS: Yes.

COMMISSIONER DREYFUS: Okay. I want to propose that if the re-write of the recommendations above is going to get at the issue of flexibility and access to needed services and supports for kids and families in Indian country to reduce fatalities, that 6.5(a) be deleted.

As to the issue of hours of operation, I can appreciate calling that out within that larger paradigm, that larger re-write that the availability of these services must reach beyond, you know, normal business hours. It seems a little -- I get it but I would also say that's universal for all kids. But I would recommend deleting if indeed the service hours and the larger intent of 6.5(a) is realized under the re-write of the ones above.

CHAIRMAN SANDERS: So let me just -- because I did earlier talk about the restructure of this. I'd just put my vote out on all of these. I think that they are worthy of mention in our report. I don't think that we have evidence that these will work to reduce fatalities and that's for 6.5(a) through 6.5(h). I think that there's work that we can do to test some of these things out but I'm concerned about having them in this level of detail as recommendations of the Commissioner. So --

COMMISSIONER DREYFUS: So we're not going through them one-by-one? You're --

CHAIRMAN SANDERS: I'm just stating up front that's my --

COMMISSIONER DREYFUS: Because I would agree with you and if you guys all look at my comments, right, I had my most concerns in that section.

COMMISSIONER PETIT: So, David, going ahead on this one, because I think it's related to the 6(a), if you look at 6.5(b), as much as I'd like to see the rewrite of American history over the last 400 years, as important as what 6.5(b) is talking about, I have a hard time connecting it back to the child welfare piece that the Congress, the law of the nation would mandate the development and instrumentation of educational curriculum. I mean that is highly desirable but it would seem to me that that is a big undertaking. I'm not sure how it relates back to child welfare. I'm sure it does in some broad kind of manner but as to putting that forward on our part, Native language renewal, positively presented Native American history, I mean yes, it's critical; I don't know that it's what the Commission is -- that this Commission has been charged with.

CHAIRMAN SANDERS: So 6.5(a), we have three deletes so far. Anybody else?

COMMISSIONER HORN: We're in which one again?

CHAIRMAN SANDERS: 6.5(a).

COMMISSIONER PETIT: David, can you say again within the context of the larger consolidation, 6.5(a) through -- because I feel like, you know, everything that follows is related -- so 6.5(a) through 6.5(h), are you suggesting that that be consolidated in some fashion, there'd be (inaudible) but --

CHAIRMAN SANDERS: It was just I was stating my position on each one of them. If others feel comfortable doing that, then I think we can hurry up this process. If not, then we'll go through them one by one. And thus far, we're on 6.5(a). We have three to delete; otherwise, it would be included.

COMMISSIONER HORN: I would delete it with the idea that we could revisit it if the approach that was being done to the prior section does not incorporate this in some implicit, if not explicit, way.

COMMISSIONER PETIT: 6.5(a), as written, says "should address." That's different than 6.5(b) which you should mandate so should address the ability means, to me, to look at it, is different than mandating the development of a curriculum. So I can live with 6.5(a) as it is but it's not going to carry over to 6.5(b).

CHAIRMAN SANDERS: We'll move to 6.5(b) then.

COMMISSIONER PETIT: What?

CHAIRMAN SANDERS: We'll move to 6.5(b) unless anybody else wants to speak on 6.5(a).

COMMISSIONER MARTIN: Listen, this is Pat Martin. Why don't we revisit what Commissioner Sanders said? If I understood correctly, he would basically take 6.5, that whole series, and look at whether or not we can make 6.5(a) specifically fit into the other recommendations under 6.4 and then take the rest of 6.5 and see if it fits within the document, the body of the report, not in a specific recommendation. So if the rest of my Commissioners or my fellow Commissioners are so inclined, I will do that as well as work with staff on 6.4 tonight.

COMMISSIONER DREYFUS: I'm in agreement with that.

COMMISSIONER HORN: Yeah. I would agree with that.

COMMISSIONER CRAMER: I agree with that.

COMMISSIONER AYOUB: I agree with that. Thank you.

CHAIRMAN SANDERS: So we have two things that I'd like to accomplish today which means that you should get through them more quickly than we got through section six if possible. We're at the end of our time but I think it's important to (inaudible) staff and that includes number seven, which has a number of recommendations as well as I'd like to have Commissioner Bevan's overview of her concerns.

COMMISSIONER MARTIN : And I think we also need to really talk about, with all due respect, David, the issue about voting and whether we're voting -- when we vote not only on the recommendations but the final report.

CHAIRMAN SANDERS: Yep. So I would propose that we take a five-minute break and then come back with section seven and then I will go through the voting and we'll close with Commissioner Bevan at least initiating some comments.

COMMISSIONER COVINGTON: Are you proposing we continue meeting today?

CHAIRMAN SANDERS: Yes.

CHAIRMAN SANDERS: We need to quickly get through section seven and to hear about the voting.

COMMISSIONER COVINGTON: How long will the call go for? We're four hours in, right?

COMMISSIONER MARTIN: Yeah, we are.

COMMISSIONER COVINGTON: I have -- I mean it's a holiday and I have family obligations right now. Can you give us an estimate of how long it can go for?

CHAIRMAN SANDERS: No more than an hour.

COMMISSIONER COVINGTON: Oh I can't do it today.

COMMISSIONER STATUTO BEVAN: I can't stay an hour. I have Mass at five. I have to leave (inaudible).

COMMISSIONER HORN: May I suggest keep that - - when we reconvene, Cassie gets the time, gets to say what she has to say and perhaps other Commissioners who need to drop and those that can stay later, I can stay later, continue going through this. I'm a little bit concerned that we're going to lose the quorum but.

CHAIRMAN SANDERS: Let's do that that Commissioner Horn. So Commissioner Bevan, we'll turn to you right after the break and then we'll go through the voting in section seven, so I'll do the voting right after, Commissioner.

COMMISSIONER PETIT: David, I lost the phone contact a minute. What break? Are we continuing this conversation?

CHAIRMAN SANDERS: Five-minute break, just a five-minute break right now.

COMMISSIONER PETIT: Do we have an end time in mind?

CHAIRMAN SANDERS: No more than hour.

COMMISSIONER PETIT: Five o'clock?

CHAIRMAN SANDERS: Yeah.

COMMISSIONER PETIT: Okay. We reconnect in five minutes?

CHAIRMAN SANDERS: Yep.

COMMISSIONER PETIT: All right.

(Whereupon, off the record for a brief recess.)

CHAIRMAN SANDERS: We'll do two things. One, we will then adjourn after the discussion on voting and we'll start with disproportionately tomorrow morning.

COMMISSIONER COVINGTON: Okay.

COMMISSIONER MARTIN: Great.

COMMISSIONER COVINGTON: So, David, do we --

COMMISSIONER MARTIN: (Inaudible) tomorrow morning.

COMMISSIONER COVINGTON: -- does this mean we're going to do every recommendation in the report this way, with an up or down vote?

CHAIRMAN SANDERS: What I would -- well, why don't we keep to the agenda which is Commissioner Bevan going first. I think we have enough on -- I'd like to yield to Commissioner Bevan.

COMMISSIONER STATUTO BEVAN: Okay. I want to tell you I respect all of you. I respect the process. I respect David. I really would like to negotiate because I think we've gotten down to the last five hours and I guess we've just run out of time. So - - and if we haven't, let me know.

The -- I have a couple of reasons why I'm opposing. I mean one is that the entire child protection system needs to be overhauled. It's not just a billion dollars and a look back experiment. That's not going to do it. It's not going to make the difference, and so that's one reason.

And my second reason is that the services themselves don't work and I think the report -- throughout the report, we continue to talk about services as if they are going to work and we do not focus enough on the fact that we don't want to offer a false promise; we don't want to put kids in jeopardy. We want to make sure that if there is service that it works and I think we need to admit right up front that the system has failed these kids; it's billions of dollars and it's failed over many decades and the services don't work. I think it's pretty clear from all the past reports that, you know, we're not coming up with anything new. When you look at the advisory reports 26 years ago, they are basically saying a lot of the same things that we're saying.

And the fact is there are currently 30 federal programs with the goal of protecting children across 20 agencies and there are 3 different federal departments and yet we're still calling for more departments, more agencies, and more money. Number one, we've never found the money. All of the money that's being spent now, we don't know where it is. We know its title V, it's SAMSHA, it's Medicaid, it's in MIECHV, it's in CAPTA, it's IV-B, it's IV-E, it's Department of Justice but we've never put it together. So we don't have a national strategy because we don't know all the -- where the pockets of money are, what the requirements for those pockets of money are, and we don't know how well their implemented. Similarly, we do not know and we have in place many laws that are addressing these issues, not just CAPTA but ASFA and many, many more that are on the books and not implemented properly with no oversight. We --

Excuse me? So I think that our findings so far are ignoring the biggest issues. We know some things. We know that home visiting works and that's what we know in terms of interventions. We know that the children die very young and we don't know much more about that. And we know that the funding streams are in silos, that you've got IV-B, subpart 1, subpart 2, then IV-E, then CAPTA, title V, Medicaid, all over the place. But we don't have it in one spot and we don't have it in a way where we can really overhaul this entire system.

We've talked a little bit about flexibility but we do need to do probably more with the one thing that's hopefully moving through Congress, which will be the hatch widens, that they'll --

begin with the age of children 16 and over. We want them to begin at infancy. We want them begin zero to five because we need to have priority for the children that we know are going to die. And so that's something that we need to advise Congress on.

We also need to know -- let Congress know that there are ways of doing this. I know nobody wants to touch the social services block grant, I know that and that's part of it because it's never had a face, never. People have never identified it with any one service so it's lost money over the years, but if we can make the case for a child protection block grant, not touching IV-E except for the hatch widen, allow some IV-E to be spent on services for one year for the babies and up to five, focus on them and focus on the service you can give in a year and the mothers and the fathers and, you know, make it count, then I think that we would be moving the needle a bit. I think if we came up with a child protection block grant and after we found all these different funding streams and to see which ones would make sense for child protection, then we would have service money. And, you know, we need research in terms of the service money because we need to know what's going to work.

And in terms of the case review, well, IV-B is supposed to be doing a case review and there are many sections of these different laws that are supposed to be doing case reviews. They're not. We know that but I don't think that the experiment of a surge is going to help us because it's just an experiment. We don't; have the evidence to say it'll work and now we're talking about even more than a billion dollars.

So my feeling is that as much as I respect all of you and I would very much like to continue to work with you, I just don't feel that I can given the way the report has turned out, and I hope that you can understand my position.

COMMISSIONER PETIT: Cassie, this is Michael. Just before any other comments, just you're not suggesting that you're -- or are you -- that you are leaving the Commission?

COMMISSIONER STATUTO BEVAN: No. I'm opposing the Commission's report. I will be writing a minority report. It will not be two pages but I'm writing a minority report because I'm opposing the findings. As long as it's a surge and Wyden bill, I just can't go there because I don't think it'll work. I don't -- you want to get to be bold. I don't think it's bold enough.

COMMISSIONER COVINGTON : So are you opposing the entire report or just sections of it?

COMMISSIONER STATUTO BEVAN: No. I'm not going -- no. I just -- I think to start -- given that we won't even have seen the final report before I can, you know, work on this, I don't see how I can sort of pick and choose especially when it's, you know, these mandates. I think there's money -- a lot of money throughout this report without any acknowledgement of the current laws and the current funding of child protection, broadly defined. And for that reason, I can't. I can't just say, well, I guess this'll work, this mandate when I don't know much about it and there's no evidence it would work.

COMMISSIONER MARTIN: I think there are other Commissioners -- well, sorry.

COMMISSIONER CRAMER: I'm sorry. This is Bud and unfortunately, I had to make a toast to my parents. It's their 70th anniversary and I'm not with them but I got back on this call a little later. I think I've understood all along what concerns and off and on, I've had some concerns as well but -- and maybe you said this. Are you planning to write a reaction to the report or

an addendum to the report or a dissent to the report? And if you are -- I would hope that you could be as positive about some of the issues, because this has been very, very difficult for all of us to work through and from time-to-time, I get confused about what I think we're doing and how effective I think it might be and what's the jurisdiction of the different Congressional committees versus the Administration and all of that. But I think it's an effort for us to take a sledgehammer at a system that is losing kids and families and more children are being killed. So I hope you can find a way to be supportive of a lot of what we've been through.

COMMISSIONER STATUTO BEVAN: I'll try when we see the final report but the main recommendation is a surge and a billion dollars. And, you know, I just think going -- I've looked back since 1988 at all six reports that have been produced to Congress on this issue and, you know, we're not far off from what everybody else has recommended. And we've never once talked about, you know, changing the laws to a felony. We've never talked about the criminality. We've never talked about a lot of issues that we've just buried and we've never gotten to my three reviews. We've never gotten to CAPTA but I've been saying the same thing over and over again. I never got a witness that I had requested. I mean this has been pretty much the way it's been for the past 2 1/2 years and there -- you know, it's just I am really sorry that this is the way it's turned out. I know that many of you are committed and have tried really hard. I know that.

COMMISSIONER MARTIN: This is Pat Martin. First of all, Cassie, it's been a pleasure working with you and meeting you. And I think that all of us have known that each of us individually have had problems with certain sections of the report and maybe still -- and some of us may still have concerns about sections of the report but -- so I don't want you to think that you're alone and (inaudible) --

COMMISSIONER CRAMER: Yeah.

COMMISSIONER MARTIN: -- that there are objections around the table about portions of the report.

CHAIRMAN SANDERS: Cassie, the two issues that you raise are the headlines and if I'm not mistaken, your thinking is that the focus of this is that the funding doesn't work and the services that have been identified don't work. We've only found one evidence-based practice, we found a few things that seemed to correlate with reduced fatalities but nothing substantive at this point, so -- and that we have not yet addressed that -- those two issues (inaudible).

COMMISSIONER STATUTO BEVAN: We haven't addressed the fact that the entire child protection system has failed and it's failed over 30 years and all we do is keep putting money in and putting money in. So, you know, we have the look back factor, IV-E. These kids -- we would have less and less kids going into foster care but we're also going to have less services. So, you know, that deferred incentive has got to end and I think the only -- if we try to do it head-on, we won't get it. I think we have to try to overhaul the whole thing.

CHAIRMAN SANDERS: And the first step is to highlight that what's happening now isn't working?

COMMISSIONER STATUTO BEVAN: Right.

COMMISSIONER PETIT: David, one -- and I think Cassie and all of us -- I think one big issue is the manufacturing of so many kids and families that are not working families -- that are not working well. And one of the reason why child protection is in the crisis it is in is because so many families and children are in crisis. And, you know, we haven't acknowledged clearly enough in this report there is wide variation with states. Some states do a much, much better job on this thing and the federal oversight is very, very poor on this whole matter. So, for example, now when you have a situation in states where local law enforcement or even state law enforcement is behaving in what many people believe is in a proper kind of way, the Department of Justice has the right to go in, look at a system and if necessary, take legal action to cause the state or local jurisdiction to come into compliance with federal law. I've believed from the beginning that there should be something comparable to this on the child welfare side, that, you know, we don't have these standards but we know there are many states that are vulnerable to class action litigation and many of them, with the resources they have, are, in fact, protecting children, just not as many as they should. I mean the resource here is outmatched by the magnitude of the problem.

I don't it's enough to say the system isn't working. It isn't working because of what. And we haven't really dealt with this question of a national lead on this thing. It's still left up to the 3,300 local offices around the country and we get this inconsistent quality of, you know, work production.

So, you know, I agree with some of your findings on this and I heard Bud say early that the more he thought about, you know, the individual letter thing, I think a number of us are probably planning to do the same kind of thing, is maybe here's what we do agree with; here are some concerns that we have, and it'll obviously be different from Commission member to Commission member because if we all agreed on it, there wouldn't be a need for separate letter. But we've all -- we've been on this for a long time. We're going to have to come up with something.

I would say in defense of the surge notion, you know, it is closely related -- it's not modeled after, it's not the same as but it is closely related to the only program that I heard that worked in our 11 hearings, which was Hillsboro. That was the closest thing to actually seeing child deaths reduced, cause and effect relationship. So I think it's unfair to --

COMMISSIONER STATUTO BEVAN: And it's also -- it's related to -- and I saw it in Emily Hornstein's work, too.

COMMISSIONER PETIT: Yeah, except that work maybe doesn't really illuminate the issue (inaudible) fact that single-base predictor is whether they've been referred to child protection. Millions and millions of children (inaudible) referred to child protection so I'm surprised that that would be a predictor. The question is ahead of the fact, which ones -- which of the six billion are we talking about is being in the most jeopardy?

COMMISSIONER DREYFUS: Right. So this is Susan, first of all, thank Commissioner Bevan. I just also want to say I think the work that you did on that policy piece was outstanding. I just really want to commend you for that and I know that you've committed your life's work to wanting to see child protection in this country work.

I just want to remind all of us that when we talk about we have to do something bigger and bolder and we talk about that the system has failed, and I say it in speeches all the time, we

have a failed child welfare system in this nation and -- but I remind you all the reason why we have a failed child welfare system is what we have is a larger adaptive challenge and we keep trying to fix it with technical solutions.

What I love about what we're doing -- and I want us to remember that good things are coming out of this Commission in our recommendations -- I think the surge, whatever we call it, if done in a more expansive way -- and Commissioner Petit, this is where you and I probably have disagreed but I don't agree with the thinking about this surge as just being about this reaction to kids today who are unsafe.

I think the opportunity we have is to finally once and for all understand the child welfare system in this country is a multidimensional, multisystemic system and that the surge is going to absolutely put a spotlight on that. and I believe the knowledge we gain from that, Commissioner Bevan, will start giving us that roadmap of where these intersecting funding streams need to intersect more closely, where they're not working, and where other systems outside of the typical array of quote, unquote "child welfare" need to get aligned and integrated.

So I just want to absolutely agree with Commissioner Bevan about this country's failed child welfare system but I also don't want us to understate what is the potential of what our recommendations are going to achieve if implemented and implemented in this more comprehensive way.

But if the surge simply ends up being just a look at kids today, are they safe today and it doesn't create this larger learning laboratory, then the whole 21st century system being more front-end preventative, more integrative will all fall by the wayside, so those would be my comments.

COMMISSIONER AYOUB: This is Commissioner Ayoub. I totally understand how you feel, Cassie, and appreciate everything you've done. You've taught me a lot and from the conversation, it sounds like we've all been there as far as certain issues, like Commissioner Cramer said, that sometimes we don't agree with everything. It saddens me that we're -- that we seem to be agreeing to include these letters because to me, that just dilutes the report. If we have these suggestions and then there are five letters saying I agree with the report except for this part and there are five letters saying that they do agree with that but they don't agree with something else, it's -- then how do we get those recommendations? Were we just saying yes to get it over with knowing that we had this way to really explain our individual feelings? So I just wanted to throw that out there. It just saddens me that it seems like it's not cohesive at all. It's not going to be strongly presented as a group, not that has to be unanimous but just not just everybody writing and giving, you know, their own opinions on certain areas that affect them personally.

COMMISSIONER CRAMER: I didn't necessarily -- I came around on the letters because, for example, what I have in mind writing would not be something disagreeing necessarily with significant parts of the report, but it would speak kind of from my background on how hard this was to do and how conscientiously --

COMMISSIONER AYOUB: Uh-huh.

COMMISSIONER CRAMER: -- we met and deliberate together and that this report is a consensus report. So I wouldn't just, you know, (inaudible) some issues. I know some others (inaudible) --

COMMISSIONER AYOUB: And that's what -- I just -- I certainly mean that everybody would. I wouldn't. I'm more along what you're saying is what I would write if I write one but from what I saw from the sample letters, there are a lot of -- quite a few of while I agree with some of this report, I don't agree with this, this and this.

COMMISSIONER MARTIN: And I would tend to say that I think the process has been somewhat difficult. You know, just today I've been sitting here trying to defend the work that this one subcommittee has been doing on disagreements or misunderstandings that they've had. But the first time the surge was brought up, there was misunderstanding and disagreements and we worked - - and we've been trying to work through them. No one said -- no one recommended throw that out of the report, just keep going, where that's what I just went through for four hours on a subcommittee report. So there are different ways in which

COMMISSIONER MARTIN: -- so strictly the process and handling of different topics different ways. And so I don't disagree nor would I ask Cassie to change her mind or anything else. I mean I think that there are people who agree with her about the surge and the problems with the surge, problems with the process. And all I want her to understand, at least from my perspective, is that she's not alone on some of these objections and concerns.

COMMISSIONER AYOUB: Absolutely.

COMMISSIONER STATUTO BEVAN: Thank you, Commissioner Martin.

COMMISSIONER CRAMER: Well put, yes.

COMMISSIONER STATUTO BEVAN: But I guess nobody wants to do a child protection block grant.

CHAIRMAN SANDERS: Well, I do think, though, that there are some issues that we, particularly the spending issues that we have not yet resolved and I think that there are some thoughts that you just raised, Cassie, including what are we spending money on; do we know that it works; what are we looking at in terms of current funding; should we be aligning current funding and systems with the kinds of things that we heard, so we know home visiting works; there's money for home visiting; is there more money that should go into home visiting for the population that we're talking about that is in funding streams that currently exist; I think those are all questions that we still have to get to.

I think if I heard you correctly, this issue of the way the funding structure is designed right now has never worked and if we aren't addressing that in some way, then we will not address the issue of child abuse and neglect fatalities.

COMMISSIONER STATUTO BEVAN: Right, it hasn't worked. IV-B has not worked and it overlaps between the two subparts and it's our own service money.

COMMISSIONER MARTIN: So I understand that we're starting to go back into content. I just want to make certain that -- I want to understand how do we get a minority report in? Since Cassie's indicated she's going to write a minority report, how do we get a minority or dissent

submitted in that banners attach to or are submitted with our report to give to Congress and the White House? And then I also want to get to the issue of voting because I'm going to have to get off the phone. Like I said, I came to visit my sister this weekend. I think it's kind of unfair, particularly when I have to get on tomorrow, too.

CHAIRMAN SANDERS: Let me push to then the voting. So actually, today, because we went through Chapter 6 recommendation by recommendation, I actually agree with your point, Commissioner Martin, that we should go through the remainder recommendation-by-recommendation with the same process. That's not how I anticipated it but I think that we walked through that with Chapter 6 so we should do it with the remainder.

I would also note that Chapters 6 and 7 have, by far, the most comments from Commissioners and we'll see if that's reflected tomorrow. So we'll start with Chapter 2 tomorrow and walk through the same process and we will vote recommendation-by-recommendation so by the end of the day, staff should have a sense of where everybody is on the specific recommendations.

The next step will be to (inaudible). That we'll have to do very quickly based on our conversations today and tomorrow to get that in front of us. Let me just ask Amy Templeman, do you have a sense of how long that will take given today's discussion?

AMY TEMPLEMAN: I think it depends on how many changes there are. There was a conversation earlier today about moving chapters up in the report. I'm not sure if that's a step that staff should take or not. I think before you all wrap up today, it would be really good for us to get a clear read on whether or not that's something that we should be doing tonight and tomorrow morning and then also if we should be deleting the recommendations that we think we heard agreed upon for deletion from Chapter 6 and then if there is anything else that we should be doing so that you have it in front of you before the deliberation tomorrow.

COMMISSIONER MARTIN: Well, I think --

CHAIRMAN SANDERS: In less there's opposition, I would suggest that I heard concerns with moving the chapters up, at least for the disproportionately and American Indian children and making the kinds of changes that were suggested around the American Indian chapter and deleting the recommendations that we heard that received the majority votes for deleting, yes.

COMMISSIONER COVINGTON: On that note, was the consensus still if they were deleted, that they go into an appendix?

CHAIRMAN SANDERS: That was my proposal. We did not agree to that but I think that -- I think we don't want to lose those recommendations, at least for the immediate time being because they were recommendations that were made to us.

COMMISSIONER MARTIN: And then there's also some recommendations under, I think it was 6.4, I can't remember off the top of my head, but we agreed that I would look at it and see if I can combine those and reword those, so they weren't deleted in terms of content.

CHAIRMAN SANDERS: That's correct. Amy, did that answer the questions that you had?

AMY TEMPLEMAN: I think it does. Yes, I think this is something that we can turn around within plenty of time with you all looking at it tomorrow before the next deliberations.

CHAIRMAN SANDERS: So to the extent that we're able to go through the remainder of the recommendations, we will have a vote on individual recommendations and the majority position on each of those recommendations by the end of our discussion tomorrow ideally. And if that's the case, then the staff will produce a final report but we will have actually voted on the recommendations for that report which we'll have to revisit during the day tomorrow to figure out (inaudible) --

COMMISSIONER MARTIN: But this -- and so I guess my question is do we get an opportunity -- I guess if I decide to write a minority report and I -- how do I know what the final report is going to be? I mean --

CHAIRMAN SANDERS: Yeah. You would have the final (inaudible) report --

COMMISSIONER MARTIN: -- after tomorrow, I will have a sense of what recommendations we're making and what they basically read but what will I -- when will know what the final report is going to be?

CHAIRMAN SANDERS: I believe that the staff are prepared to turn around the final report quickly, but -- and the -- we have not yet agreed to either a minority report or letters. That actually is ultimately the decision both of the Commission, but more specifically, of the Chair. And so I think that after we get a sense of where we are tomorrow and everybody will get a chance to vote on the recommendations, my leaning is for us to have a discussion about how we express consent and then you would need to see the report before actually having to do letters.

COMMISSIONER HORN: Just for clarifications say. So if somebody -- and Cassie has indicated that she's going to write a -- the Commission cannot vote that she can't write a minority report?

CHAIRMAN SANDERS: (Inaudible) --

COMMISSIONER HORN: Anyone can write a minority report and dissent from the full vote on the full report. The question is does the Commission want to cooperate with the publication of a minority report. And so that, it seems -- and so the question is not can Cassie write a minority report. It's does the Commission have an obligation to include the minority report attached to the report that is supported by the majority of the Commissioners. That is --

CHAIRMAN SANDERS: (Inaudible).

COMMISSIONER: Right.

CHAIRMAN SANDERS: Okay.

COMMISSIONER AYOUB: And what happens if there's a majority of Commissioners writing minority reports?

COMMISSIONER HORN: There would be no report because there would be no majority so in that case, the Commission would have failed in its task to achieve a -- to come up with a -- at least a report that is supported by the majority of Commissioners.

COMMISSIONER AYOUB: Thank you.

CHAIRMAN SANDERS: I would distinguish that from letters, at least the letters that I saw as part of the children's commission, the earlier children's commission.

COMMISSIONER HORN: Yeah. The National Commission on Children was a unanimously-approved report.

COMMISSIONER MARTIN: So I guess the only thing I have to ask this evening, so if, in fact, we finish going through all the recommendations tomorrow and we have an understanding of what recommendations are included and what are going to be infused in the body of the report and what's going to be in the appendix and what are going to be deleted entirely, then is that when we will think a -- that will be the time in which we'll note how a minority report, whether it will be included in the final report?

CHAIRMAN SANDERS: Yes. At the -- we should have some sense by the end of tomorrow, yes.

COMMISSIONER STATUTO BEVAN: I didn't think that you -- I thought the minority had a right to a report; at least that's how it is on the Hill. I'm surprised if I don't have the right but maybe it'll all (inaudible) tomorrow.

COMMISSIONER HORN: So my clarification was you have the absolute right.

CHAIRMAN SANDERS: Yes. The issue workshop the publication. It's not that the writing of the report. Commissioner Horn is correct.

COMMISSIONER STATUTO BEVAN: It's anonymous to me. Okay.

COMMISSIONER MARTIN: And is this all subscribed or laid out in the enacting legislation that the Chair decides whether or not, you know, the minority report is printed?

CHAIRMAN SANDERS: Amy Templeman?

AMY TEMPLEMAN: No. Our legislation doesn't address minority reports at all so we went to GSA for a consultation around that and the advice that they gave us is captured in the process for deliberations document that went out this week.

COMMISSIONER MARTIN: Process for -- okay.

CHAIRMAN SANDERS: I know people need to leave. We have a lot to do tomorrow. Anybody need anything else today?

COMMISSIONER MARTIN: No. I am going to have to go so I will talk with everyone tomorrow. Thank you.

CHAIRMAN SANDERS: Thanks.

COMMISSIONER STATUTO BEVAN: Thank you.

CHAIRMAN SANDERS: You all (inaudible). Thank you.

(Whereupon, at 4: 49 p.m., the above meeting was concluded.)