

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, FEBRUARY 11, 2011

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The Commission convened in Room 540 at 624
Ninth Street, Northwest, Washington, D.C. at 2:05
p.m., Abigail Thernstrom, Vice Chair, presiding.

PRESENT:

ABIGAIL THERNSTROM, Vice Chair

ROBERTA ACHTENBERG, Commissioner

MARTIN R. CASTRO, Commissioner

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DINA TITUS, Commissioner

CHRISTOPHER BYRNES, Delegated the Authority of
the Staff Director

STAFF PRESENT:

IVY DAVIS

DEMETRIA DEAS

LILLIAN DUNLAP

PAMELA A. DUNSTON, Chief, ASCD

LATRICE FOSHEE

TINALOUISE MARTIN, Director, OM

PETER MINARIK, Acting Chief, RPCU

LENORE OSTROWSKY

JOHN RATCLIFFE, Chief, Budget and Finance

MICHELLE RAMEY-YORKMAN

EILEEN RUDERT

DAVID SNYDER

KIMBERLY TOLHURST

AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN

ALEC DEULL

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

ALISON SOMIN

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

(2:05 p.m.)

VICE CHAIR THERNSTROM: Okay. The meeting will come to order. It is a Business Meeting of the U.S. Commission on Civil Rights at 2:04 p.m. on

th

February 11 , 2011. The meeting is taking place at

th

the Commission's headquarters located at 624 9 Street, N.W., Washington, D.C. And the Commissioners who are present at this meeting are Vice Chair Abigail Thernstrom, that's me, Commissioner Gaziano, Commissioner Kirsanow, Commissioner Heriot, Commissioner Titus, Commissioner Achtenberg, and Commissioner Castro, last but not least. So, a quorum of Commissioners is present. Is the person delegated the authority of the Staff Director present?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR BYRNES: I am, indeed.

VICE CHAIR THERNSTROM: And you are delighted to be here. Right?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR BYRNES: As always.

VICE CHAIR THERNSTROM: As always.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR BYRNES: As always, yes.

VICE CHAIR THERNSTROM: Good answer. Is

1 the court reporter on the line?

2 COURT REPORTER: The court reporter is
3 present.

4 VICE CHAIR THERNSTROM: Court reporter is
5 present. I don't know why it says on the line, but it
6 does.

7 The meeting will come to order.

8 Before I begin, I'd like to ask the
9 Commissioners' indulgence to properly welcome, as I
10 promised before the briefing, our three new
11 Commissioners, and I assume I hear no objections.

12 I. WELCOME NEW COMMISSIONERS

13 VICE CHAIR THERNSTROM: So, it is my very
14 great pleasure to welcome Dina Titus, Roberta
15 Achtenberg, and Marty Castro. Senator Harry Reid
16 announced Dina's appointment on December 3, and the
17 White House announced Roberta and Marty's appointments
th

18 on January 26 . This is the first time we've all
19 been together.

20 Before I introduce them, I'd like to make
21 a brief comment. Those who know me, know that I have
22 wanted ever since I got here in 2001 for a Commission
23 to be truly bipartisan. It was not in 2001. It's
24 generally been -- it has long been imbalanced. It was
25 designed to be bipartisan, an agency of eight

1 Commissioners, four-four in terms of the partisan
2 split, but with the addition of our new Democratic
3 colleagues, I am really delighted to say that this
4 Commission can now engage in the work of examining
5 civil rights issues from a truly bipartisan
6 perspective. And I do have great hopes that we will
7 be able as a group to work together, arrive at topics
8 that interest all of us, and that won't necessarily
9 split in typical ways along partisan lines. That is
10 my hope.

11 Now, to welcome our three new
12 Commissioners whom I'm very excited about.
13 Commissioner Dina Titus, I look forward to having Dina
14 as a fellow scholar, a lifelong educator, accomplished
15 author who happens not to be a lawyer, so I've got a
16 little bit of company there.

17 Commissioner Titus brings to this
18 Commission a much needed commodity, her reputation for
19 bipartisanship, both in the Nevada State Senate, as
20 well as in the U.S. Congress. Commissioner Titus is
21 an experienced politician, and educator, having
22 represented Nevada for 20 years in the State Senate,
23 and having taught Political Science at the University
24 of Nevada-Las Vegas for more than 30 years.

25 COMMISSIONER TITUS: Sounds like a long

1 time.

2 VICE CHAIR THERNSTROM: Listen, I'm older
3 than you are, so any complaints about age, or comments
4 on age, I trump everyone else in that regard.

5 Commissioner Roberta Achtenberg has a
6 wealth of corporate and government experience. During
7 the Clinton Administration she served as Assistant
8 Secretary for Fair Housing and Equal Opportunity in
9 the U.S. Department of Housing and Urban Development,
10 that is HUD. And later, as Senior Advisor to the
11 Secretary of HUD. She is currently a member and past
12 Chair of the California State University Board of
13 Trustees, and serves as Vice Chair of the Board of the
14 Bank of San Francisco.

15 In addition to her other accolades, which
16 are many, Ms. Achtenberg is the co-founder of the
17 National Center for Lesbian Rights, a national non-
18 profit serving the needs of the LGBT community. She
19 holds a BA from the University of California at
20 Berkeley, and a JD from the University of Utah.
21 Welcome, Commissioner Achtenberg.

22 COMMISSIONER ACHTENBERG: Thank you.

23 VICE CHAIR THERNSTROM: And Commissioner
24 Marty Castro, do you prefer Martin or --

25 COMMISSIONER CASTRO: Marty in personal

1 interactions, Martin R. when it's written, and Martino
2 when my mother is upset at me.

3 (Laughter.)

4 VICE CHAIR THERNSTROM: I noticed in the
5 kind of official announcement --

6 COMMISSIONER CASTRO: Yes, they kind of
7 mixed it up a little bit.

8 VICE CHAIR THERNSTROM: Okay. Commissioner
9 Martin R. Castro is currently the President of Castro
10 Synergies, LLC, which provides strategic consulting
11 services to corporations, entrepreneurs, and non-
12 profit organizations. He has held senior corporate
13 positions, as well as having held partner positions at
14 a number of prestigious law firms where his practice
15 encompassed corporate law, commercial litigation,
16 diversity consulting, and government affairs.

17 The Governor of Illinois appointed him to
18 chair the Illinois Human Rights Commission, and he has
19 been a member of the Board of the Mexican-American
20 Legal Defense and Education Fund, and the Cook County
21 State Attorneys Hispanic Advisory Council. Why am I
22 stumbling on that? I don't know.

23 Mr. Castro holds a BA from DePaul
24 University, and a JD from the University of Michigan
25 Law School. So, a wonderful new group.

1 COMMISSIONER CASTRO: Thank you.

2 VICE CHAIR THERNSTROM: And I am so
3 looking forward to working with all three of you.

4 COMMISSIONER CASTRO: May we share some
5 comments with our colleagues, or is that not --

6 VICE CHAIR THERNSTROM: Absolutely.

7 COMMISSIONER CASTRO: All right. Well, I
8 just want to say to each of you how much of an honor
9 it is for me to be at this table with all of you.
10 When I think about the fact that my grandfather came
11 here from Mexico in the 1920s, and my mom in the
12 1960s, and I was proudly born in this country. And to
13 see that the President is allowing myself and others
14 to serve, to me, is part of what the American Dream is
15 all about. And this institution, to me, is one of
16 those important government institutions that was
17 created to ensure that that American Dream continues
18 for everybody.

19 And I know that those of us around the
20 table, we may have different political philosophies,
21 different points of view, but I know that we share a
22 lot. And I know one of the things that we all share
23 is a love for this country, and a service to the
24 American people. So, despite the differences that we
25 have, I'm looking forward to finding those areas of

1 commonality where we could work together to ensure
2 that the American Dream that I'm getting to take
3 advantage of and celebrate here today is available to
4 everyone.

5 I just want to say that Commissioner
6 Achtenberg and I had the wonderful pleasure yesterday
7 to spend some time with the staff, and it's an honor
8 to be part of the team that they include. So, just
9 thank you for having me here.

10 VICE CHAIR THERNSTROM: Well, thank you
11 for accepting these appointments. And you both have
12 got busy lives, Dina, too, and it's nice to serve your
13 country, as you said, in this way.

14 Next is approval of the agenda.

15 II. APPROVAL OF AGENDA

16 VICE CHAIR THERNSTROM: I'd like to
17 suggest that we take any motions to amend one by one,
18 vote up and down on each, and then vote to approve the
19 amended agenda. I don't know why I'm losing my voice
20 today, but pardon me.

21 If that procedure meets with the
22 Commissioners' approval, I will begin by offering an
23 amendment of my own. I'd like to make a motion to
24 allow me to read a statement into the record which
25 corrects a misstatement I previously made regarding

1 Eminent Domain and the Institute for Justice's
2 position on the matter.

3 As part of that motion, I'd like to insert
4 this item into the agenda immediately after approval
5 of the agenda. Can I have a second on that?

6 COMMISSIONER CASTRO: Second.

7 VICE CHAIR THERNSTROM: Is there any
8 discussion? All in favor?

9 (Chorus of ayes.)

10 VICE CHAIR THERNSTROM: I think that was
11 unanimous. Was there anybody opposed? Any
12 abstentions? The motion, obviously, passed.

13 Okay. Are there any other amendments to
14 the agenda?

15 COMMISSIONER TITUS: Madam Chairman.

16 VICE CHAIR THERNSTROM: Yes.

17 COMMISSIONER TITUS: Thank you. I have
18 several motions to rearrange the agenda. Do you want
19 me to do them one at a time, they all kind of fit
20 together, read them all, or just -- what's the --
21 maybe just read through all of them?

22 VICE CHAIR THERNSTROM: Yes, read through
23 all of them.

24 COMMISSIONER TITUS: Well, thank you very
25 much. I know we have a number of important issues,

1 and people have to catch planes, as was mentioned, so
2 I think maybe by reordering it in this way we can get
3 to the important things more expeditiously.

4 First, I guess, technically, I move that
5 we strike Welcome New Commissioners from the agenda
6 because we've already done that.

7 (Laughter.)

8 COMMISSIONER TITUS: We appreciate it very
9 much, and we feel very welcome, so thank you.

10 My second motion would be that we swap the
11 placement of the Program Planning section and the
12 Management and Operations section of the agenda, so
13 that Program Planning follows approval of the agenda,
14 and we can get to that right away.

15 I would then move that within the
16 Management and Operations section, the item titled,
17 "Review of Transition, order of succession, continuity
18 of operations," be shifted so that review of the 2010
19 meeting calendar and the Staff Director's report both
20 take place before that.

21 I move that we add as the first item under
22 Program Planning a discussion of the National
23 Conference report. That would be very helpful to the
24 new members. And I move that we reorder the
25 preexisting components of the Program Planning section

1 into the follow sequence after the National Conference
2 report discussion, as follows.

3 One, Gender and the Wage Gap; two, Eminent
4 Domain; three, 2011 Statutory Report; four, Title IX-
5 Sex Discrimination in Liberal Arts College Admissions;
6 five, Disparate Impact in School Discipline Policies;
7 and six, New Black Panther Party.

8 COMMISSIONER ACHTENBERG: Second.

9 COMMISSIONER GAZIANO: May I ask for some
10 clarifications on that? First of all, when you say
11 National Conference report, that's not a term that I
12 am clear on. What do you mean? Do you mean like our
13 Statutory Report for 2011? We had a National
14 Conference in --

15 COMMISSIONER TITUS: That's where we're
16 going. Yes. I'm not talking about the Statutory
17 Report. I'm talking about a report on the conference
18 that you all had before we joined the Commission.

19 COMMISSIONER GAZIANO: Okay.

20 COMMISSIONER TITUS: So we can get more
21 information on it, and talk about the possibility of
22 future conferences.

23 COMMISSIONER GAZIANO: Okay. My other
24 question is, is the transition, order of succession
25 type issues, I think are depending on what the Chair

1 had in mind, and others had in mind for putting it on
2 the agenda, seems to me to take priority, so I'm
3 wondering why you prefer to put all of Management and
4 Operations after all of Program Planning, and you
5 intend to have review transition, order of succession
6 the very last. That was first earlier, and I'm
7 wondering why you want it last?

8 COMMISSIONER TITUS: Well, it seems to me
9 some of the Management and Operations things need to
10 come first before we begin to lose members, especially
11 with as many new members as there are, so we can get a
12 sense of just how the Commission moves forward, how it
13 operates, how the budget is, that sort of thing. It
14 would be helpful information.

15 COMMISSIONER GAZIANO: Well, let me just
16 ask, does any other -- before I vote, does any
17 Commissioner have a motion that they intend to bring
18 under the order of succession, continuity of
19 operations. Was just that information item for
20 everyone?

21 DELEGATED THE AUTHORITY OF THE STAFF
22 DIRECTOR BYRNES: There will be motions.

23 COMMISSIONER GAZIANO: There will be
24 motions? Well, then I'd prefer to keep it the way it
25 is. And I'd prefer to find out what those motions

1 are, and what those -- because that might affect the
2 Program Planning, and the rest of -- it seems to me
3 that that's more of a priority.

4 VICE CHAIR THERNSTROM: Further
5 discussion? Yes, Commissioner Achtenberg.

6 COMMISSIONER ACHTENBERG: I see the
7 Program Planning as the distinct priority, at least it
8 is of mine. This represents an agenda that you all
9 developed, as you had every right and opportunity to
10 do, but it purports to make commitments going forward
11 that I want to talk about, and perhaps make some
12 alterations. And, as such, my own view is sort of
13 consistent with Commissioner Titus, which is that I
14 would prefer that we address it at the front of the
15 meeting, so I'm going to support Commissioner Titus'
16 motion.

17 COMMISSIONER GAZIANO: It isn't my -- I'm
18 not even sure what I think is more important. And I
19 respect anyone's view on what's more important. I'm
20 just making a suggestion as to what seems to me
21 logical. And the agenda, by the way, was set by the
22 Acting Chair without input, at least from any other
23 Commissioner that I'm aware of. But I do think if
24 there are going to be motions on the --

25 VICE CHAIR THERNSTROM: There was input.

1 I'm sorry.

2 COMMISSIONER GAZIANO: On the order. As
3 far as I know, the order of this was set by the Acting
4 Chair, but that's not important either. If there are
5 going to be motions on -- and maybe they're minor
6 motions that I wouldn't care, and we could do them at
7 the end, but it seems to me that that makes more
8 sense. But I don't need to carry on. I don't know if
9 anyone else has any view.

10 COMMISSIONER KIRSANOW: I don't have any
11 strong views. If I do have a view, I do think that
12 the order of succession, continuity of operations is
13 something I'd like to discuss as soon as possible.
14 I've got to leave here to catch a flight at three, and
15 that's at least one thing I'd like to get out of the
16 way.

17 VICE CHAIR THERNSTROM: Can that -- can
18 you push back your plane and leave later?

19 COMMISSIONER KIRSANOW: I'd like to push
20 back the plane, but you know, they got their own
21 ideas.

22 (Laughter.)

23 COMMISSIONER GAZIANO: How about this as a
24 possible compromise. Why don't we just handle that
25 particular one first, and then we can do all the

1 Program Planning in whatever order Commissioner Titus
2 or others prefer.

3 VICE CHAIR THERNSTROM: I would rather not
4 do that. There was -- I think this makes more sense.
5 Obviously, I think it makes more sense.

6 COMMISSIONER GAZIANO: But in deference to
7 Commissioner Kirsanow --

8 VICE CHAIR THERNSTROM: Well, that's --

9 COMMISSIONER GAZIANO: We've done that
10 plenty of times for other Commissioners who have to
11 leave early.

12 VICE CHAIR THERNSTROM: Is there some
13 chance you could leave later?

14 COMMISSIONER KIRSANOW: Well, I can get --

15

16 VICE CHAIR THERNSTROM: We can get to the
17 other part quickly.

18 COMMISSIONER GAZIANO: We'll endeavor to
19 do that.

20 VICE CHAIR THERNSTROM: Yes, let's try to
21 do that. So, I think -- any more discussion?
22 Otherwise, I'm going to call for a vote on this
23 amended agenda.

24 COMMISSIONER HERIOT: Was it seconded?

25 VICE CHAIR THERNSTROM: Yes, it was

1 seconded. All in favor?

2 (Chorus of ayes.)

3 COMMISSIONER GAZIANO: No.

4 VICE CHAIR THERNSTROM: Commissioner
5 Gaziano is opposed.

6 COMMISSIONER KIRSANOW: What's the order
7 again? We're going to do -- the proposal is to do
8 Program Planning first?

9 VICE CHAIR THERNSTROM: Yes.

10 COMMISSIONER KIRSANOW: And then I think
11 Commissioner Castro said something with respect to the
12 review of transition, order of succession. What was
13 that again?

14 COMMISSIONER GAZIANO: That's the very
15 last item under Management and Operations, which it
16 doesn't sound like we're going to get to before you
17 have to leave.

18 COMMISSIONER KIRSANOW: Yes. Then I'd
19 have to vote no.

20 VICE CHAIR THERNSTROM: Okay.

21 COMMISSIONER HERIOT: I guess I'll vote
22 no, too, then.

23 VICE CHAIR THERNSTROM: Three nos,
24 Kirsanow, Heriot, and Gaziano are nos. And
25 Achtenberg, Castro, Titus and Thernstrom are yes.

1 COMMISSIONER GAZIANO: Okay. Would you
2 repeat then for us now that it's been done, what is
3 the order under Program Planning that you proposed?

4 COMMISSIONER TITUS: Can we ask the staff
5 to spell it out again, so we can all get it down
6 clearly? I'd like to read back through all these
7 motions. Okay.

8 That we swap the placement of Program
9 Planning and the Management and Operations section so
10 that Program Planning follows approval of the agenda.

11 I move that within the Management and Operations
12 section that item titled "Review of Transition, order
13 of succession, continuity of operations," be shifted
14 so that the review of the 2010 calendar and the Staff
15 Director's report both take place before that. I move
16 that we add as the first item under Program Planning a
17 discussion of the Conference report, as described
18 earlier. And I move that we reorder the Preexisting
19 components of the Program Planning section into the
20 following sequence after the Conference report
21 discussion, and that sequence would be Gender, Eminent
22 Domain, Statutory report, Title IX-Disparate Impact in
23 School Discipline, and New Black Panther Party.

24 COMMISSIONER KIRSANOW: One more time.

25 COMMISSIONER TITUS: We'll start with

1 agenda.

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR BYRNES: Just the Program Planning.

4 VICE CHAIR THERNSTROM: Right.

5 COMMISSIONER TITUS: Gender, Eminent
6 Domain, Statutory reports. I mean, it says right here
7 "2011 Statutory report." Title IX-Sex Discrimination,
8 Disparate Impact, and then New Black Panther.

9 VICE CHAIR THERNSTROM: Okay. So, that
10 being the agenda, I believe that the first item is my
11 statement --

12 COMMISSIONER GAZIANO: I don't know if we
13 need a separate vote. I think we voted on the
14 amendment. Now, should we vote on the agenda as
15 amended?

16 VICE CHAIR THERNSTROM: Oh, yes, we
17 should. I'm sorry. Haven't we already done that?

18 (Chorus of nos.)

19 VICE CHAIR THERNSTROM: Okay. A vote on
20 the agenda as amended.

21 COMMISSIONER CASTRO: So moved.

22 COMMISSIONER ACHTENBERG: Second.

23 VICE CHAIR THERNSTROM: All in favor?

24 (Chorus of ayes.)

25 COMMISSIONER GAZIANO: No.

1 COMMISSIONER KIRSANOW: No.

2 COMMISSIONER HERIOT: Abstain.

3 VICE CHAIR THERNSTROM: Okay.

4 Commissioner Heriot abstains, Commissioner Kirsanow
5 votes no, Commissioner Gaziano votes no, and otherwise
6 all Commissioners vote aye. Thernstrom votes aye,
7 Achtenberg, Castro, and Titus all vote aye, as well as
8 Thernstrom. So, we got that set. Okay.

9 III. PROGRAM PLANNING: UPDATE AND

10 DISCUSSION OF PROJECTS

11 The first item is, I want to assert -
12 insert, not assert, insert into the record a statement
13 that amends my remarks about the Eminent Domain Topic
14 that I made at the Commission's December 3, 2010
15 meeting.

16 In my remarks, I referred to a
17 conversation I had had with the President of the
18 Institute for Justice, Chip Mellor, concerning Eminent
19 Domain as a possible Commission briefing topic. The
20 conversation had been very brief. Chip was in a very
21 noisy Milwaukee airport. The result, I completely
22 misunderstood what he said.

23 I thought he had expressed doubts about
24 the current vitality of the topic, which I should have
25 known was surely not his message. I have been on the

1 Institute for Justice Board for many years. It is an
2 organization to which I am deeply committed. I knew
3 perfectly well that Eminent Domain remains a burning
4 issue for IJ and for homeowners, and small businesses
5 across the nation.

6 Moreover, IJ had just issued a press
7 release urging the Supreme Court to hear another
8 Eminent Domain case, and it has been engaged in major
9 litigation in California, and plans activity in
10 multiple states in the near future.

11 This intimate knowledge of IJ's commitment
12 to the topic, which, obviously, I share, and its
13 ongoing litigation efforts was unmistakably completely
14 at odds with the message I thought I heard from Chip
15 in that hurried phone call. And, as I said, that
16 should have been perfectly apparent to me at the time.

17 I had no excuse. It was an appalling mistake.

18 Thank you very much for letting me insert
19 that into the record.

20 COMMISSIONER GAZIANO: May I respond
21 briefly, Madam Chair?

22 VICE CHAIR THERNSTROM: Yes. Sure.

23 COMMISSIONER GAZIANO: In a way, I hate to
24 bring this up, but when you made that statement, I
25 expressed some great skepticism that Chip Mellor would

1 mean what you said, and you responded somewhat angrily
2 at me that you never misunderstand people's
3 statements. I am glad that that's been cleared up.
4 I, certainly, did not mean to imply at the time that
5 you intentionally did so, but that's another example
6 of where we have to kind of listen to each other, and
7 try to make sure we don't jump to the wrong
8 conclusion.

9 VICE CHAIR THERNSTROM: Thank you for
10 reminding me that you were correct at the time, and I
11 will certainly be delighted to keep that in mind.

12 PETER MINARIK: All graciously received.

13 VICE CHAIR THERNSTROM: I'm sorry. I
14 missed that.

15 COMMISSIONER GAZIANO: Peter? He must be
16 speaking to someone else.

17 VICE CHAIR THERNSTROM: Okay. Let's move
18 on with the agenda. Program Planning.

19 The first item is the National Conference
20 report.

21 COMMISSIONER ACHTENBERG: Madam Chair, I
22 take it that there was a National Conference held last
23 fall, and that the staff is now proceeding to enshrine
24 the Conference report into a published document. Is
25 that the case?

1 DELEGATED THE AUTHORITY OF THE STAFF
2 DIRECTOR BYRNES: I should clarify. What we're
3 preparing to post on the web are video portions of
4 some of the panels, as well as the transcript of the
5 proceedings.

6 COMMISSIONER ACHTENBERG: Madam Chair, I'd
7 like to move that we suspend work on the publication
8 of Conference materials in an effort to reduce costs,
9 and to conserve funding. And I move that we stop work
10 on that indefinitely, or at least to the Call of the
11 Chair. And that would be my motion.

12 VICE CHAIR THERNSTROM: I've got a second
13 on that?

14 COMMISSIONER TITUS: Second.

15 VICE CHAIR THERNSTROM: Let's have a
16 discussion.

17 COMMISSIONER GAZIANO: What expense is
18 there in putting the transcript on line?

19 DELEGATED THE AUTHORITY OF THE STAFF
20 DIRECTOR BYRNES: I would have to --

21 COMMISSIONER GAZIANO: Delegated the
22 authority of the Staff Director.

23 DELEGATED THE AUTHORITY OF THE STAFF
24 DIRECTOR BYRNES: I would have to consult with our
25 budget folks on that.

1 COMMISSIONER HERIOT: Is the transcript
2 finished at this point?

3 DELEGATED THE AUTHORITY OF THE STAFF
4 DIRECTOR BYRNES: It is finished.

5 COMMISSIONER HERIOT: So, the expense is
6 like the 30 seconds of putting it up on the website?

7 DELEGATED THE AUTHORITY OF THE STAFF
8 DIRECTOR BYRNES: It may be more than that, but at a
9 minimum it would be that. I don't think there would be
10 much expense associated with posting the video links
11 to the panels, because I think they're already on C-
12 SPAN to some extent.

13 VICE CHAIR THERNSTROM: I believe they're
14 only partially on C-SPAN. Was C-SPAN there only part
15 of the day?

16 DELEGATED THE AUTHORITY OF THE STAFF
17 DIRECTOR BYRNES: I think it might be for several of
18 the panels, perhaps, not all.

19 COMMISSIONER HERIOT: All but two.

20 DELEGATED THE AUTHORITY OF THE STAFF
21 DIRECTOR BYRNES: Was all but two.

22 COMMISSIONER GAZIANO: And was the plan to
23 put -- I think it was more than two panels on C-SPAN,
24 but I could be mistaken.

25 COMMISSIONER HERIOT: It was all of them.

1 COMMISSIONER GAZIANO: Oh, all of them. I
2 guess three panels. So, were you planning on -- what
3 were you planning on putting on -- was it exactly what
4 C-SPAN --

5 DELEGATED THE AUTHORITY OF THE STAFF
6 DIRECTOR BYRNES: Just a line to the C-SPAN.

7 COMMISSIONER GAZIANO: Oh, just a link to
8 the C-SPAN.

9 DELEGATED THE AUTHORITY OF THE STAFF
10 DIRECTOR BYRNES: Yes.

11 COMMISSIONER GAZIANO: It doesn't sound
12 like there's really very much expense involved. Is
13 there some other concern with putting the transcript
14 of the National Conference on our website?

15 COMMISSIONER ACHTENBERG: You're saying
16 that there is no staff time involved in putting the
17 remnants of the Conference materials together? Is
18 there any publication being contemplated, or --

19 DELEGATED THE AUTHORITY OF THE STAFF
20 DIRECTOR BYRNES: Not at this time, simply the
21 website.

22 COMMISSIONER ACHTENBERG: And there's no
23 staff --

24 DELEGATED THE AUTHORITY OF THE STAFF
25 DIRECTOR BYRNES: There's always staff time associated

1 with these, but I think it would be de minimis at this
2 point. And we always have GPO involved to help post
3 things.

4 COMMISSIONER ACHTENBERG: I was under the
5 impression, you'll forgive me, that there was
6 additional expense contemplated, and additional staff
7 time contemplated. If you are assuring me that there
8 is no additional expense contemplated, and that
9 there's de minimis staff time contemplated in
10 publishing on the web the conference proceedings, then
11 with that assurance I would withdraw my motion.

12 DELEGATED THE AUTHORITY OF THE STAFF
13 DIRECTOR BYRNES: I would confirm with our budget
14 folks on that. It was my understanding that there
15 wouldn't be that much additional expense associated
16 with --

17 COMMISSIONER ACHTENBERG: Well, then
18 before I withdraw, could you confirm that that's the
19 case.

20 DELEGATED THE AUTHORITY OF THE STAFF
21 DIRECTOR BYRNES: Certainly.

22 COMMISSIONER ACHTENBERG: And upon your
23 assurance, I would withdraw the motion.

24 COMMISSIONER CASTRO: The question is are
25 we going to be hard copy publishing reports.

1 DELEGATED THE AUTHORITY OF THE STAFF
2 DIRECTOR BYRNES: I think it would just be a website
3 publication.

4 COMMISSIONER CASTRO: Can we confirm that?

5 MR. RATCLIFFE: This is John Ratcliffe.
6 The transcript has already been paid for, so it's
7 already done, so there's no cost associated with that.

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR BYRNES: Right. And just linking to the C-
10 SPAN links wouldn't incur too much additional expense.

11 COMMISSIONER ACHTENBERG: What is the
12 expense involved in -- I mean, if we're talking about
13 de minimis, then I withdraw the motion.

14 COMMISSIONER KIRSANOW: The C-SPAN links
15 are already up, aren't they?

16 COMMISSIONER CASTRO: Can you tell us that
17 you're not going to hard copy publish this report? If
18 the Commission votes to decide that, then that's fine.

19 VICE CHAIR THERNSTROM: Do we need a vote
20 on that?

21 DELEGATED THE AUTHORITY OF THE STAFF
22 DIRECTOR BYRNES: I think that would probably be
23 appropriate at this point.

24 COMMISSIONER GAZIANO: But that wasn't
25 your plan.

1 DELEGATED THE AUTHORITY OF THE STAFF
2 DIRECTOR BYRNES: That was not my plan.

3 COMMISSIONER GAZIANO: But if you want to
4 make that motion --

5 (Simultaneous speaking.)

6 COMMISSIONER CASTRO: We don't want the
7 expense of publication, hard copy publication.

8 COMMISSIONER ACHTENBERG: I'd like to
9 minimize all the expense going forward really until we
10 get an assessment of where we stand budget-wise. That
11 was the intention of making the motion, so if you say
12 that we're not going to publish --

13 VICE CHAIR THERNSTROM: Do you want to
14 make a motion that we don't publish?

15 COMMISSIONER ACHTENBERG: I'm willing to
16 take the Staff Director's --

17 COMMISSIONER HERIOT: Just point of order.
18 You've withdrawn the first motion, but the seconder
19 has to withdraw that, as well, because it's still --
20 once it's seconded, it's not up to the mover to do
21 it, so just --

22 VICE CHAIR THERNSTROM: I believe that
23 Commissioner Castro did --

24 COMMISSIONER CASTRO: No, no, it was
25 Commissioner Titus that seconded.

1 COMMISSIONER TITUS: You're going to
2 withdraw the motion?

3 COMMISSIONER ACHTENBERG: This was
4 discussion, and I would be willing to with -- I
5 haven't done anything, upon the Staff Director's
6 assurance that expense will not be incurred beyond the
7 de minimis expense to put it on the web, and a de
8 minimis amount of staff time. And I'd be interested
9 to know how much staff time you think this
10 contemplates. But assuming for a moment that he makes
11 those assurances, I would be willing to withdraw my
12 motion, provided the seconder is willing to withdraw
13 her second.

14 DELEGATED THE AUTHORITY OF THE STAFF
15 DIRECTOR BYRNES: So, we not publish the hard copy of
16 the proceedings.

17 COMMISSIONER ACHTENBERG: And could you
18 tell me how much staff time you imagine is involved in
19 --

20 DELEGATED THE AUTHORITY OF THE STAFF
21 DIRECTOR BYRNES: You know, there's already been, I
22 think, significant progress made on it. I don't think
23 more than a couple of more days; although, I'd have
24 to confirm with our IT people on that. I don't think
25 they're in the room at the moment.

1 COMMISSIONER GAZIANO: It's a matter of
2 uploading at this point.

3 DELEGATED THE AUTHORITY OF THE STAFF
4 DIRECTOR BYRNES: I think so, yes.

5 COMMISSIONER ACHTENBERG: You understand
6 the spirit of the recommendation, so given that you
7 understand the spirit, I will withdraw my motion, if
8 the seconder --

9 COMMISSIONER TITUS: I'll withdraw the
10 second.

11 COMMISSIONER ACHTENBERG: Thank you.

12 VICE CHAIR THERNSTROM: Okay. Gender and
13 the Wage Gap seems to be the next item under Program
14 Planning.

15 COMMISSIONER CASTRO: I don't have any
16 motion on that. I don't know if the other
17 Commissioners do, but simply with regard to this
18 particular project, I know that there's work that's
19 been going on that's been postponed until we had a
20 full set of Commissioners. And I think we're just
21 going to want to take a look at this, as we look at
22 what we want to plan out for the year. So, I don't
23 think we need a motion on that.

24 VICE CHAIR THERNSTROM: Okay. Then third
25 is the --

VICE CHAIR THERNSTROM: Eminent Domain.
Okay. Eminent Domain is next.

VICE CHAIR THERNSTROM: Briefing on March
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11 briefing on Eminent Domain, and that we postpone
further work being done by the staff until we, as new
Commissioners, can get a little more information to
determine how to proceed.

VICE CHAIR THERNSTROM: We've got some discussion on that.

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1 unnecessarily harmed when a briefing on the wage gap
2 was improperly postponed when witnesses turned in
3 testimony and made work and commitments. And I'm
4 concerned about that happening again, if we -- I don't
5 know -- Mr. Delegated the Authority of the Staff
6 Director, whether you're the proper person to address
7 this. I suspect you are. Where are you with the
8 Eminent Domain briefing, and contacting the witnesses
9 so they lock this into their schedule? Are they
10 preparing testimony?

11 DELEGATED THE AUTHORITY OF THE STAFF
12 DIRECTOR BYRNES: I will say that staff has prepared
13 the briefing books. This briefing had been
14 contemplated, I think, for some time, so I don't think
15 there's that much additional staff --

16 COMMISSIONER GAZIANO: About October or
17 November. We've been working on this --

18 DELEGATED THE AUTHORITY OF THE STAFF
19 DIRECTOR BYRNES: Right.

20 COMMISSIONER GAZIANO: -- from what, about
21 October or November?

22 DELEGATED THE AUTHORITY OF THE STAFF
23 DIRECTOR BYRNES: Something like that.

24 COMMISSIONER GAZIANO: Okay.

25 DELEGATED THE AUTHORITY OF THE STAFF

1 DIRECTOR BYRNES: We have reached out to two witnesses
2 who have confirmed their sort of availability and
3 willingness to testify. We have reached out to
4 Commissioners I think in two rounds for potential
5 witnesses to get some suggestions, and we have been
6 reaching out to those, as well. So, at this point,
7 we've got two who are likely to appear.

8 COMMISSIONER HERIOT: Who are they?

9 DELEGATED THE AUTHORITY OF THE STAFF

10 DIRECTOR BYRNES: Ilya Somin and David Beito.

11 COMMISSIONER GAZIANO: I understand the
12 concern about new Commissioners wanting input. One of
13 the reasons -- on briefings. One of the reasons that
14 briefings were -- I think the briefing forum was
15 adopted before I came on. And, by the way, before you
16 three, I was the junior-most so now I feel better, I'm
17 somewhere in the middle.

18 (Laughter.)

19 COMMISSIONER GAZIANO: But I think it was
20 because of a cost-savings method. Another factor that
21 those of us who are now old on this Commission face,
22 when I came on three years ago this month, almost
23 exactly three years ago this day, I was -- things were
24 scheduled for much -- for years in advance almost.
25 And I was told that the next two statutory reports

1 were set in stone, and briefings were set, and that I
2 would have my turn. And, for the most part, I
3 accepted that. One of the things that I helped
4 pioneer, if I was one of a couple of movers, is not to
5 set things more than a quarter in advance, because I
6 thought that the Commission ought to have the
7 flexibility to act on more timely topics. The push-
8 back on that was no, we really need to set these
9 things. It takes time. We need to set these things a
10 year in advance, but I think we finally succeeded,
11 despite the disadvantage of a sort of quarterly
12 approach of -- and despite the disadvantage of not
13 being able to plan 18 months in advance for most of
14 our projects.

15 The quarterly approach has worked pretty
16 well, but I do have a concern with once we invest a
17 fair amount of staff time, and we contact witnesses,
18 and it's the very next month that we postpone that
19 particular briefing. So, based on that kind of
20 practice, I would want to go forward with this one,
21 unless you had some other -- if you had a proposal for

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22 a really important timely briefing on the March 11
23 that our staff could handle, that might change my
24 mind. But I'd rather go forward with this one absent
25 something like that.

1 COMMISSIONER CASTRO: Can I respond?

2 VICE CHAIR THERNSTROM: Yes.

3 COMMISSIONER CASTRO: What my motion
4 contemplates is a postponement. I'm not suggesting at
5 this point in time a suspension, so I'm not
6 necessarily saying let's scrap the work that staff has
7 done. It sounds to me like two folks have been locked
8 in, one of whom is a member of a SAC, who would
9 probably understand this, so the reputational injury
10 probably would not be as great as another situation
11 which you referenced, which, of course, I'm not
12 familiar with. So, I don't think that there'll be
13 that issue.

14 And I understand tradition, but traditions
15 change. And we're just -- we're relatively new. We
16 want to just take a look at this, and have a little
17 more time to determine, maybe this is a great one. I
18 don't know. I've seen some reference to it, some of
19 this work in the SAC applications, and I'm intrigued
20 by it, but I don't know enough at this point. I know
21 my new colleagues -- I'm not suggesting at this point
22 in time with this motion that we suspend and scrap

th

23 that work. I say let's postpone this, March 11. I
24 think we could talk about more fully what other things
25 we might want to suggest going forward in terms of

1 briefings. So, this is just to press the pause
2 button.

3 COMMISSIONER KIRSANOW: If I understand
4 Commissioner Castro's primary impetus behind this, it
5 was budgetary. And if I understand what the Staff
6 Director is saying is, most of the staff work has been
7 done already?

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR BYRNES: On the briefing books it's been
10 completed, but there may be additional travel costs
11 anticipated with the witnesses, depending on where
12 they're coming from.

13 COMMISSIONER KIRSANOW: Okay.

14 DELEGATED THE AUTHORITY OF THE STAFF
15 DIRECTOR BYRNES: And whether they select to seek
16 reimbursement.

17 COMMISSIONER GAZIANO: And you've got to
18 pay the staff if they don't work on this anyway.
19 Right?

20 DELEGATED THE AUTHORITY OF THE STAFF
21 DIRECTOR BYRNES: Right.

22 COMMISSIONER HERIOT: And one of our
23 witnesses is a local. Correct?

24 DELEGATED THE AUTHORITY OF THE STAFF
25 DIRECTOR BYRNES: That's correct.

1 March 11 briefing. And then on March 11 , we could
2 revisit some of the issues that you discussed, that
3 you just mentioned with respect to the balance of the
4 briefings.

5 COMMISSIONER CASTRO: There's printing
6 costs and other things that we haven't even talked
7 about that would be --

8 VICE CHAIR THERNSTROM: Commissioner
9 Achtenberg.

10 COMMISSIONER ACHTENBERG: Actually, I
11 appreciate the substance and the civility of the
12 discourse. My own view is that I'd like to see this
13 postponed, in part because I'd like to see us devote
th

14 the March 11 meeting to a collegial and substantive
15 discussion of what will be the course of the
16 Commission over the next year. And I'd like to be a
17 full fledged member of the group that discusses that.

18 So, the budgetary concern is one concern. The
19 precious time of this Commission is another. And we
20 can disagree about what would be the most important
th

21 thing to do with our time together on March 11 , but
22 my own view is, it would be to entertain a discussion
23 seriously about all of the issues that we might
24 consider going forward, and deal -- and if Eminent
25 Domain remains one of the issues that the Commission

1 seriously wants to consider going forward, then it
2 gets back on the agenda. And if it doesn't, it
th

3 doesn't. So, I'd prefer to see the March 11 meeting
4 devoted to a discussion of ranking our priorities, and
5 putting together an agenda for the rest of the year.

6 COMMISSIONER HERIOT: I just wanted to
7 give a little background on how we selected this
8 topic, how the previous Commission selected the topic.

9 COMMISSIONER ACHTENBERG: Okay.

10 COMMISSIONER HERIOT: We knew that there
11 was a chance that there would be a hiatus. And it
12 turns out there isn't much of a hiatus, we only had
13 the January out. But, particularly with this
14 briefing, we were looking for a topic that we thought
15 you guys would like. We were trying to come up with
16 something that we thought both conservatives and
17 liberals would think of as a good topic. And this is
18 a topic that President Clinton has spoken about. It's
19 one that Maxine Waters is behind, Howard Dean has
20 spoken on this topic. They're all excited about the
21 topic, and we were hoping you would be, too. And
22 maybe you will be, but here's a possible compromise
23 here.

24 If we're concerned about budget, and I can
25 understand that. I mean, you don't want to do a bunch

1 of briefings that you think aren't going to be
2 interesting to you, and aren't going to tackle the
3 issues that you think are tops. But a briefing
4 actually doesn't commit a staff. The briefing is just
5 the briefing. It's the report that ends up costing
6 time on the part of the staff. And I tend to think
7 it's wasted time, generally, that we have staff
8 members simply summarize what was said at the
9 briefing. But if we held the briefing, we could
10 simply make a decision later about whether to assign a
11 staff member to that, and instead, just go with the
12 transcript, because that's really not going to cost us
13 too much.

14 COMMISSIONER GAZIANO: We've done that on
15 other --

16 COMMISSIONER HERIOT: We've done a number
17 of topics where we didn't have quite enough interest
18 to devote staff time to it. But it's not like we're
19 going to come up with another issue before March, and
20 put together a briefing on that. You know, holding
21 the briefing is really not that expensive. Devoting
22 staff time to summarizing everything that was said,
23 that takes up a lot of time. And it also takes up a
24 lot of Commission time to then read through it, make
25 sure it says the right thing, you know, go through

1 several iterations of it.

2 I would suggest we just hold the briefing
3 in March, and then make a decision later about whether
4 or not to turn it into a report.

5 VICE CHAIR THERNSTROM: I have something
6 to say, but I will let Commissioner Gaziano go first.

7 COMMISSIONER GAZIANO: Thank you. Partly,
8 I was just following up on what Commissioner Heriot
9 said, that we've decided (a) not to publish some at
10 all, to only post them on the website. These are all
11 options.

12 With regard to your other point about
th
13 wanting to spend the time on the 11 talking about
14 the future Program Planning and other priorities, I
15 certainly understand that, as well. And most of our
16 briefings don't have quite as many witnesses, don't
17 take quite as much time, so we could still devote a
th
18 good bit of March 11 to that.

th
19 But I also wonder whether March 11 , you
20 would even, necessarily, be ready. I've been curious
21 about the President's designation of Staff Director.
22 I'm sure the Delegated-the-Authority-of-the-Staff-
23 Director is anxious to return to his job, and have
24 another Staff Director. I am curious about the
25 President's designation of Chair, so I think that

those -- we might not want to discuss much until we have an eighth Commissioner, Staff Director, Chair, and so for those reasons, I'm not sure that the

th

reserving 100 percent of the time on the 11 for those issues is the best.

And, finally, it's been our practice and it's something that I, again, argued, I didn't like exactly the way it was done, and we modified it. So, I'd be very interested in all of your input. But what happens is, the real Staff Director collects our suggestions via email, then sends it out to vote, then we rank order. I mean, that's been our process, so I'm not sure that we will have -- you will have the chance to really study, think about all your -- by the

11 . But what we could do is something similar to what Commissioner Heriot suggested in the morning, and then we can begin the very important process that you suggested we do in setting forth the future programs and priorities.

COMMISSIONER CASTRO: Commissioner
Gaziano, I had not even thought about the fact that we
have to get our Staff Director and Chair on board, so
I think that's an even more eloquent argument in
support of motion, to wait until they get on board.
So, thank you for reminding me.

1 VICE CHAIR THERNSTROM: I can let you go
2 first. I have something I would like to say on the
3 topic.

4 COMMISSIONER HERIOT: Go ahead.

5 VICE CHAIR THERNSTROM: Okay. Look, first
6 place I want to say something to Commissioner Gaziano.
7 I would really appreciate it if you would cease
8 referring to my postponement of the Gender Wage Gap
9 briefing as improper.

10 But to go to the Eminent Domain question,
11 look, I really like the topic. I've been devoting
12 years to thinking about this topic as a member of the
13 IJ Board. I am -- it's one, as I said, that deeply
14 interests me, and I, indeed, have suggested to the
15 acting, I'm going to call you Acting Staff Director,
16 it's much easier. I have given him two names, one
17 from the NAACP, and the other an IJ name. So, I love
18 this topic. I don't want more than a postponement on
19 this topic.

20 But two things; one, I really think we --
21 if we have a briefing, it's in the morning, and then
22 we get, as we are getting today, to a business
23 meeting. We've got a lot -- we need to get together
24 with the new Commissioners a year, and perhaps beyond
25 in order. I think we owe these Commissioners a chance

1 to go over the landscape, to discuss with us. I would
2 vote against cancelling an Eminent Domain briefing. I
3 want it very much. I had a wonderful talk with
4 Special Assistant Alison's husband about this issue
5 who is fantastic on it, and his writing is fantastic
6 on it, and I look forward to his testimony.

7 I just want a postponement on it. And in
8 terms of well, we could just have a transcript that we
9 post on the website, and we don't have to do anything
10 more. We don't have to have a hard cover report. We
11 don't have to have findings and recommendations, and
12 so forth. That really -- underestimates the
13 importance, the complexity, the nuance of this issue,
14 and I would not want that to happen to this topic.
15 You can do that with some topics, not with Eminent
16 Domain. It is a nationally important topic. This
17 Commission can contribute something to the national
18 discussion, which is ongoing. And there really is no
th

19 cost, it seems to me, to letting the March 11
20 meeting be a business meeting in which we get a lot of
21 business out of the way, and if the Commission votes
22 on it, I'd be happy to have the Eminent Domain the
23 very next --

24 COMMISSIONER GAZIANO: Let me offer a
25 substitute -- go ahead. I'm sorry.

1 COMMISSIONER KIRSANOW: I'm sorry. Go
2 ahead.

3 VICE CHAIR THERNSTROM: I'm just saying
4 look, I'm just totally opposed to killing this topic.
5 I will vote against killing this topic without any
6 doubt.

7 COMMISSIONER KIRSANOW: A couple of
8 things, Madam Chair. First is, as I think
9 Commissioner Gaziano and Commissioner Heriot noted,
10 today was an anomaly in terms of number of witnesses
11 we typically have. If I hear the staff worker, at
12 best we'll have four witnesses, so that's a half hour
13 testimony.

14 VICE CHAIR THERNSTROM: We don't know that
15 yet.

16 COMMISSIONER KIRSANOW: Well, maybe two --
17 maybe only two witnesses, but I'll ask the Staff
18 Director, how many do you anticipate having?

19 DELEGATED THE AUTHORITY OF THE STAFF
20 DIRECTOR BYRNES: If four would meet with approval by
21 the Commission, that's fine, yes.

22 COMMISSIONER KIRSANOW: So, let's say we
23 have four witnesses. We have a half hour of testimony
24 --

25 VICE CHAIR THERNSTROM: Hold on one

1 second. I need some help here. I've done something
2 terrible to my -- if somebody wants to come and find
3 the rest of it --

4 COMMISSIONER KIRSANOW: I guess my point
5 is we can walk and chew gum at the same time. We have
6 a half hour of testimony, a half hour of questions.
7 We can even begin the hearing, as we have in the past,
8 at 9:00, and we're done at 10:00. If we're done at
9 10:00, that provides us with, and if we go until 3:00,
10 we've got five hours in which to conduct substantive
11 business. That's a considerable amount.

12 Second, to your point with respect to
13 you'd be very happy to vote in favor of -- you
14 wouldn't vote to kill the amendment, or this
15 particular hearing. I'm not sure how the new
16 Commissioners will vote on this. I'm not sure if
17 we'll have an additional Commissioner appointed by the
18 time we're here, but if the motion as currently
19 postured maintains, and we then have to move to
20 conduct the hearing, if there's a four-four split,
21 there will be no hearing, regardless of how
22 enthusiastic you may be about it.

23 VICE CHAIR THERNSTROM: I'd like to assume
24 that there will be some of the new Commissioners, or a
25 reappointed previous Commissioner, who will agree that

1 Eminent Domain is a very important topic that crosses
2 partisan lines. After all, the NAACP has been very
3 interested in it, as well. And my only plea with you
4 is to give this topic the time and consideration that
5 it is due. And I think we lose nothing by, at worst,
6 postponing it --

7 COMMISSIONER GAZIANO: Well, let me offer
8 a substitute --

9 COMMISSIONER HERIOT: Hey, I had my hand
10 up a long time ago.

11 COMMISSIONER GAZIANO: I'm sorry, I
12 thought that --

13 COMMISSIONER TITUS: I call the question.

14 COMMISSIONER HERIOT: No, I've got an
15 argument.

16 COMMISSIONER TITUS: Where is our
17 Parliamentarian? Can you call the question? Doesn't
18 that take precedence over other --

19 VICE CHAIR THERNSTROM: I can call the
20 question, but out of courtesy, I am going to allow
21 just Commissioner Heriot, and nobody else.

22 COMMISSIONER HERIOT: I think we might
23 need to think a little harder about how long it takes
24 to set one of these things up. We've got a long
25 procedure that we have to go through with concept

1 papers and such before we get to the point where a
2 topic has been adopted. So, if we're going to be
3 thinking about March as being the time to discuss
4 topics, I actually think it would be good to
5 streamline our procedure, but it's going to require
6 months to select a topic. That's just the way we've
7 got it in our rules.

8 We have to do concept papers. The concept
9 papers have to be circulated. It takes lots of time,
10 so if you're thinking that like something is going to
11 be setup for April, it's not going to happen. It
12 takes a very long time. And Vice Chair Thernstrom is
13 one of those who tends to be, in the past, at least, a
14 stickler for these things. Now, she has changed her
15 mind on some things, like she's changed her mind on
16 Eminent Domain.

17 VICE CHAIR THERNSTROM: No, I have not
18 changed my mind on Eminent Domain. I simply --

19 COMMISSIONER HERIOT: You're on the record
20 now.

21 VICE CHAIR THERNSTROM: I simply -- you
22 know, I'm not going to keep discussing this.

23 COMMISSIONER GAZIANO: May I offer my
24 substitute motion?

25 VICE CHAIR THERNSTROM: I made a very

1 clear statement. It is not a -- and, indeed, if you
2 go over the transcript from last time, I believe I
3 said that this was a topic that I was deeply committed
4 to. But, in any case, it doesn't matter. It's a
5 stupid argument at this point.

6 COMMISSIONER GAZIANO: May I make my
7 substitute amendment?

8 COMMISSIONER TITUS: Call the question.

9 VICE CHAIR THERNSTROM: I'm calling the
10 question.

11 COMMISSIONER GAZIANO: Well, I think a
12 substitute amendment takes priority. I may be wrong,
13 but I believe --

14 COMMISSIONER TITUS: Where is the -- do we
15 not have Robert's Rules of Order here? Do we not have
16 a Parliamentarian who can --

17 COMMISSIONER GAZIANO: No, not -- it's a
18 vacant position. I think a substitute motion takes
19 precedence. I might be wrong, but I think it does.

20 COMMISSIONER TITUS: Have we got a copy of
21 Robert's Rules of Order around here anywhere? Anybody
22 ever heard of Robert's Rules of Order?

23 (Laughter.)

24 COMMISSIONER TITUS: Okay.

25 VICE CHAIR THERNSTROM: Commissioner

1 | Gaziano, I'd like to call the question.

2 COMMISSIONER GAZIANO: I think this is
3 consistent with your position. I move that we
th

4 postpone the March 11 Eminent Domain, but that the
5 Commission commit to having that sometime in the next
6 six months, such that it would take a majority of the
7 Commission to knock that off of our schedule.

8 COMMISSIONER CASTRO: I'd like a vote on
9 my motion, Madam Chair.

10 COMMISSIONER GAZIANO: Is there something
11 in mind?

12 VICE CHAIR THERNSTROM: There is a motion
13 on the floor.

14 COMMISSIONER GAZIANO: Substitute motion
15 takes priority.

16 COMMISSIONER HERIOT: Well, a motion to
17 substitute, not the substitute motion.

18 COMMISSIONER TITUS: So, we're going to
19 vote on the motion to substitute now?

20 COMMISSIONER ACHTENBERG: I guess, if it
21 takes priority. I mean, I'll accept your assertion to
22 that.

23 COMMISSIONER GAZIANO: I'm not 100 percent
24 positive, but I believe --

25 COMMISSIONER ACHTENBERG: I understand,

1 but that's good enough for government work, as they
2 say.

3 VICE CHAIR THERNSTROM: Your substitute
4 motion is within the next six months, we have --

5 COMMISSIONER GAZIANO: That the Commission
6 is committed to having this briefing subject to the
7 time that the Commission sets, but that it takes a
8 vote of the majority to cancel the briefing.

9 COMMISSIONER HERIOT: Yes, so the
10 Commission could still cancel the briefing. We just
11 have to vote to do it.

12 VICE CHAIR THERNSTROM: I'm waiting for
13 some evidently background discussion.

14 COMMISSIONER HERIOT: It's quicker to vote
15 on the motion to substitute than it is to go and check
16 the book.

17 COMMISSIONER TITUS: That doesn't make it
18 right, though. We need the book for next meeting.
19 I'd like to request that, since we're taking things
20 out of order. But, go ahead.

21 VICE CHAIR THERNSTROM: There's a
22 substitute motion on the table. I don't know if it's
23 been seconded.

24 COMMISSIONER ACHTENBERG: I second.

25 COMMISSIONER CASTRO: So, could you repeat

1 the motion again?

2 COMMISSIONER GAZIANO: Barring some other
3 majority vote of the Commission, it commits the
4 Commission to having this briefing in the next six
5 months at a time that is determined by the Commission,
6 but would require a majority vote to actually cancel
7 the briefing.

8 COMMISSIONER HERIOT: What happens if they
9 don't take -- no action is taken?

10 COMMISSIONER GAZIANO: Then it has to be
11 on the sixth month --

12 (Simultaneous speaking.)

13 COMMISSIONER GAZIANO: It would have to be
14 on the sixth month.

15 COMMISSIONER ACHTENBERG: See what happens
16 when you don't have a copy of Robert's Rules of Order.

17 COMMISSIONER GAZIANO: That's my amended -
18 -

19 COMMISSIONER HERIOT: That's just a
20 drafting issue. I don't think that Robert's Rules
21 will help us there. So, the Staff Director will be --

22

23 (Simultaneous speaking.)

24 COMMISSIONER GAZIANO: I trust my fellow
25 Commissioners in good faith to go forward with that

1 vote, if that's the vote of the Commission.

2 COMMISSIONER CASTRO: So, you're saying
3 this would -- sometime within the next six months
4 based on the date that we would choose, the majority.
5 And if we don't, then it would be on the anniversary
6 of the sixth month.

7 COMMISSIONER ACHTENBERG: Unless a
8 majority of the Commission --

9 COMMISSIONER CASTRO: Unless a majority
10 votes not to move forward. Okay. Fair enough.

11 VICE CHAIR THERNSTROM: All right. I'm
12 calling --

13 COMMISSIONER TITUS: Vote on the motion --

14
15 VICE CHAIR THERNSTROM: Voting on the
16 substitute amendment. All in favor?

17 (Chorus of ayes.)

18 COMMISSIONER HERIOT: That's just a motion
19 to substitute. Now we have to vote on the motion.

20 VICE CHAIR THERNSTROM: Yes, I understand
21 that.

22 COMMISSIONER CASTRO: Okay. Which is
23 identical to that. Right?

24 COMMISSIONER HERIOT: Yes.

25 COMMISSIONER CASTRO: So then I'll second

1 your motion.

2 COMMISSIONER HERIOT: All right.

3 COMMISSIONER CASTRO: Okay?

4 VICE CHAIR THERNSTROM: All right. All in
5 favor of the motion.

6 (Chorus of ayes.)

7 VICE CHAIR THERNSTROM: I think it's
8 unanimous. Okay. Commissioner Gaziano, you have a
9 unanimous vote in favor --

10 COMMISSIONER GAZIANO: Yes, thank you.

11 COMMISSIONER HERIOT: Nice work.

12 VICE CHAIR THERNSTROM: -- of your
13 substitute motion.

14 COMMISSIONER TITUS: Excuse me, Madam
15 Chairman. As we move forward, at some point I'd like
16 for us to have additional input into the witnesses
17 that are --

18 DELEGATED THE AUTHORITY OF THE STAFF
19 DIRECTOR BYRNES: Oh, certainly. And I'd be happy to
20 recirculate a list of the witnesses --

21 VICE CHAIR THERNSTROM: Absolutely. And I
22 would like a show of hands of people on this
23 Commission who have never made a mistake, because
24 evidently I'm the only one to have ever made a
25 mistake, as I did with the --

1 (Laughter.)

2 COMMISSIONER ACHTENBERG: But the Statute
3 of Limitations has already run, so it's okay then.

4 VICE CHAIR THERNSTROM: Well, I've just
5 been handed Robert's Rules for Dummies.

6 COMMISSIONER ACHTENBERG: No reference
7 intended, Madam Chair.

8 VICE CHAIR THERNSTROM: On this subject,
9 I'm happy to be a dummy. And I hope I will not be in
10 this chair, but if I am, I --

11 COMMISSIONER CASTRO: We should all get a
12 copy of that.

13 COMMISSIONER ACHTENBERG: Are we moving on
14 now?

15 VICE CHAIR THERNSTROM: We're moving on.

16 COMMISSIONER ACHTENBERG: Thank you.

17 VICE CHAIR THERNSTROM: Okay.

18 COMMISSIONER GAZIANO: In deference to
19 Commissioner Kirsanow, we've had our -- he can maybe
20 stay five minutes, of the Program Planning, he would
21 like to move to New Black Panther. That's correct?

22 COMMISSIONER KIRSANOW: Yes, if possible.

23 COMMISSIONER GAZIANO: Is there any
24 objection? By unanimous consent, can we move to New
25 Black Panther?

1 COMMISSIONER CASTRO: Yes.

2 COMMISSIONER GAZIANO: Okay.

3 COMMISSIONER CASTRO: So, on New Black
4 Panther, I move that all work toward the physical
5 publication of the New Black Panther report be
6 suspended, so as to allow time for inclusion of a
7 rebuttal by Michael Yaki. And that upon his
8 reappointment, Michael Yaki be permitted 30 days to
9 prepare a rebuttal to the other Commissioner
10 statements.

11 COMMISSIONER TITUS: Second.

12 VICE CHAIR THERNSTROM: Discussion? Yes.
13 I think Commissioner Gaziano was first.

14 COMMISSIONER GAZIANO: I don't know --

15 COMMISSIONER HERIOT: I just wanted to
16 point out that we have a problem here, and that is
17 unlike the other Commissioners, Commissioner Yaki now
18 has the replies of the other members, so that gives
19 him an advantage that he wouldn't have had, had he
20 been on the Commission. And I'm not certain how to
21 deal with that, but there it is.

22 COMMISSIONER GAZIANO: The irony of your
23 motion, Commissioner Castro, is that I tried to move
24 to allow Commissioners whose terms would expire to
25 file, and that was roundly defeated. And I tried

1 again to allow them to sign on to other -- and that
2 was defeated.

3 VICE CHAIR THERNSTROM: I don't think it
4 was roundly defeated. Commissioners -- the Chair and
5 Commissioner Ashley simply said they did not want the
6 opportunity --

7 COMMISSIONER GAZIANO: They thought that
8 it could not be granted. I disagreed with that. And
9 then I asked Commissioners Melendez and Yaki whether
10 that -- and they declined. So, given that, I don't
11 think that it's unreasonable to allow him. But as the
12 motion stands, I might want an opportunity to respond
13 to his rebuttal. The Commission by the majority can
14 obviously change our rule. And your motion to suspend
15 work on it is understandable. But I wonder if we
16 could just leave off the part about how he's the only
17 one who would then be allowed to file something else,
18 or we could amend it further, a friendly amendment,
19 perhaps, to allow for the possibility of going back
20 and forth with other statements.

21 COMMISSIONER CASTRO: I think --
22 obviously, I wasn't here in December, so it sounds
23 like maybe you and I probably would have voted on the
24 same side again there on this issue. But the reason
25 for, I think, treating Mr. Yaki differently is, my

1 understanding is that since his commission expired,
2 any effort by him to do this would be considered
3 volunteer work, hoping and expecting he'll be back
4 among us. If he isn't, then it's not an issue, so I
5 think he sits a little differently than other folks.
6 And at some point, I would imagine -- again, we're new
7 to this, but at some point, I guess you could always
8 just keep going back and forth, and back and forth on
9 these reports with replies, and surreplies, and
10 rebuttals, and surrebuttals. And at some point --

11 COMMISSIONER ACHTENBERG: And I believe
12 his rebuttal is, by definition --

13 COMMISSIONER CASTRO: Allowed.

14 COMMISSIONER ACHTENBERG: -- limited to --

16 COMMISSIONER CASTRO: To the statements.

17 COMMISSIONER ACHTENBERG: To the
18 statements in the affirmative.

19 COMMISSIONER CASTRO: Yes. So, it's going
20 to be very limited, as well.

21 COMMISSIONER GAZIANO: Except that we have
22 a particular simultaneous process to do that. Also, I
23 wonder if we're going to open it up for a
24 Commissioner who wasn't on the Commission during the
25 time these statements were due, whether we ought not

1 to open them up to our former Chair, and Commissioner
2 Taylor, and Commissioner Melendez, if they want to.
3 They were under the impression, for example, that they
4 could not, but if we make some special exception for
5 them, I was of the view that witnesses can prepare
6 statements, so I didn't see why they couldn't. But
7 I'd rather not just make it limited to Commissioner
8 Yaki getting, what's effectively a surrebuttal that no
9 other Commissioner who participated -- no other
10 Commissioner has.

11 VICE CHAIR THERNSTROM: I'm sorry. Go
12 ahead.

13 COMMISSIONER CASTRO: No, I was just going
14 to say, again, I think my statement earlier, that
15 Michael Yaki sort of stands alone in that neither
16 Commissioner -- former Chair Reynolds, or former
17 Commissioner Melendez are prospectively going to be
18 reappointed. Now, I understand that Mr. Yaki is in
19 the process of reappointment. Whether that occurs or
20 not, obviously, is beyond any of us knowing for sure.
21 And if it doesn't happen, well then it's a moot issue.

22 COMMISSIONER GAZIANO: But I'm more
23 concerned about the surrebuttal. It's not really --
24 would not be a rebuttal. We would be making an
25 exception for Commissioner Yaki, and I'm not

1 unsympathetic to that. But if we're going to make an
2 exception, a special rule for him, then would you
3 allow those of us who filed rebuttals to file -- to
4 share -- to see Commissioner Yaki's statement, and
5 adjust our own?

6 VICE CHAIR THERNSTROM: Commissioner
7 Gaziano, there is something distinct -- it seems to me
8 there's a special problem here, that there is not a
9 rebuttal from either of our Democratic Commissioners.

10 We, obviously, only had two, and that in the spirit
11 of a bipartisan Commission, it is important to have a
12 rebuttal from a Democrat, as well as the rebuttals
13 from the Republicans. So, it seems to me that --

14 COMMISSIONER GAZIANO: That argues --

15 VICE CHAIR THERNSTROM: -- is a very
16 strong and important argument for letting Commissioner
17 Yaki--

18 COMMISSIONER GAZIANO: And I'm not arguing
19 with that. I'm not arguing with that at all. I am
20 willing to afford Commissioner Yaki an opportunity. I
21 assume he will be reappointed. I expected it before
22 certainly today. I'm just concerned about the portion
23 of the -- can we amend that motion with a opportunity
24 other Commissioners to review Commissioner Yaki's
25 statement, and amend their own? Would you allow me to

1 amend my own statement after I see Commissioner
2 Yaki's?

3 COMMISSIONER CASTRO: My understanding is
4 that each of you had an opportunity to submit a
5 rebuttal. He did not. His commission expired. His
6 rebuttal, from what I understand, would be based on
7 the statements, not a rebuttal to your rebuttal, which
8 I don't even think mentions him. So, again, I think
9 the situation is --

10 COMMISSIONER GAZIANO: It does.

11 COMMISSIONER CASTRO: Well, the intention
12 here is to allow him to submit a rebuttal, as each of
13 you have. So, I don't -- I think it would be a
14 friendly amendment to add additional rebuttals to this
15 motion.

16 COMMISSIONER GAZIANO: But it wouldn't be
17 a rebuttal, it would be a surrebuttal.

18 COMMISSIONER CASTRO: Surrebuttal.

19 COMMISSIONER HERIOT: I just want to
20 clarify what you're saying. I have complete sympathy
21 for the notion that somehow Yaki's got to be able to
22 have a rebuttal, just like everyone else had. I'm
23 sympathetic to that. But I'm not sympathetic to the
24 notion that he gets an extra opportunity, because he's
25 got more documentation than we had. You know, by

1 going last, he's got more to rebut.

2 Now, what I heard you say was that he
3 would only be rebutting the initial statements. If
4 we're very clear on that --

5 COMMISSIONER GAZIANO: Correct.

6 COMMISSIONER HERIOT: -- that's not a
7 problem.

8 VICE CHAIR THERNSTROM: That's all he
9 would be allowed to do.

10 COMMISSIONER CASTRO: That's all.

11 COMMISSIONER GAZIANO: I think that's
12 rather hard to police.

13 VICE CHAIR THERNSTROM: No, it isn't. It
14 actually isn't hard to police. If we tell him he is
15 only allowed to reply as everybody else did on the
16 first round.

17 COMMISSIONER HERIOT: Well, then if I have
18 your assurances that if he, in fact, goes farther than
19 that, that I would be allowed to respond to anything
20 that concerns my position --

21 VICE CHAIR THERNSTROM: But a very clear
22 message -- that's fine. But a very clear message will
23 be delivered to Commissioner Yaki --

24 COMMISSIONER HERIOT: That's my next
25 question.

1 VICE CHAIR THERNSTROM: -- that his
2 rebuttal will be confined by the same constraints as
3 yours.

4 COMMISSIONER HERIOT: And that if he
5 doesn't do that, we will be allowed the ability to
6 respond.

7 VICE CHAIR THERNSTROM: If he doesn't do
8 that, then --

9 COMMISSIONER CASTRO: Well, I think if
10 that doesn't happen, then we take that up here and
11 address it. But I think -- what I don't want to do is
12 have someone go ahead and start writing surrebuttals
13 because they argue that it's --

14 COMMISSIONER HERIOT: I don't want to
15 fight any more on this topic ever.

16 COMMISSIONER CASTRO: Yes, so --

17 COMMISSIONER GAZIANO: I don't really want
18 to either, except we have an existing surrebuttal
19 rule, which would potentially --

20 COMMISSIONER HERIOT: Yes, the existing --

21
22 COMMISSIONER GAZIANO: Your motion kind of
23 works in a surrebuttal. If someone doesn't follow the
24 rules, then any three Commissioners within seven days
25 can notify, I think it's the Staff Director, or the

1 Delegated the Authority of the Staff Director, that
2 they are going to take their --

3 COMMISSIONER HERIOT: Yes, that's in
4 place.

5 COMMISSIONER GAZIANO: -- surrebuttal.
6 So, I'm just asking you, given that yours is a
7 modification --

8 COMMISSIONER CASTRO: Yes, I'm not seeking
9 to undo that latter process.

10 COMMISSIONER GAZIANO: You would -- your
11 motion -- we have your assurance that you would
12 support our surrebuttal under that circumstance.

13 COMMISSIONER CASTRO: I am not seeking to
14 undo whatever the process would be to trigger a
15 surrebuttal. I'm not familiar with that rule yet, so
16 my motion is not contemplating that. My motion is
17 only contemplating the fairness of giving him an
18 opportunity to submit a rebuttal, should he be
19 reappointed, and to do that within 30 days, again, to
20 put some time limit on him, so that it's done in a
21 timely fashion. So, that's what I'm trying to do
22 here. I'm not trying to undo any other of the rules
23 and regulations.

24 VICE CHAIR THERNSTROM: And if you start
25 to respond to Commissioner Yaki's rebuttal with

1 surrebuttals, then he would be entitled to a
2 surrebuttal for your --

3 COMMISSIONER GAZIANO: Courts do this all
4 the time, but that's --

5 COMMISSIONER HERIOT: This is not as
6 difficult as we make it out to be.

7 COMMISSIONER GAZIANO: Just exchange
8 opinions until they're both satisfied, and all sides -
9 -

10 VICE CHAIR THERNSTROM: This is not a
11 court.

12 COMMISSIONER CASTRO: And I'm not seeking
13 here to start generating more replies and rebuttals,
14 and all that.

15 COMMISSIONER HERIOT: I think we'll call
16 that.

17 COMMISSIONER CASTRO: I just want to give
18 him a fair chance, if he comes back to -- and I'm
19 hopeful, from what I hear, that he would be, but I
20 don't know that. But if he does come back, then he
21 would have the opportunity to submit something that
22 would be limited to your prior statements.

23 COMMISSIONER HERIOT: Yes. I just want to
24 say as a footnote, if we allow people to do their full
25 statement and rebuttal as they rotated off, we

1 wouldn't have issues like this. We'd just be able to
2 do it as a former Commissioner. And I think --

3 COMMISSIONER CASTRO: I think there might
4 have been some volunteer --

5 COMMISSIONER GAZIANO: I disagree with
6 that interpretation.

7 COMMISSIONER CASTRO: I don't know. I
8 wasn't here.

9 COMMISSIONER GAZIANO: I wish you were
10 here.

11 COMMISSIONER CASTRO: I wish I was, too.
12 I wasn't.

13 VICE CHAIR THERNSTROM: The record can be
14 examined, but we don't need to. We can go forward.
15 What is the motion that is now -- it is Commissioner
16 Castro's motion.

17 COMMISSIONER CASTRO: Yes, I'll reread it.
18 I move that all work toward the physical publication
19 of the New Black Panther report be suspended so as to
20 allow time for the inclusion of the rebuttal by
21 Michael Yaki. And that upon reappointment, Michael
22 Yaki be permitted 30 days to prepare a rebuttal to the
23 other Commissioners' statements.

24 COMMISSIONER GAZIANO: To the other
25 Commissioners' initial statements.

1 COMMISSIONER CASTRO: Initial statements.

2 VICE CHAIR THERNSTROM: Initial
3 statements. All right. I'm calling the question.
4 All in favor.

5 (Chorus of ayes.)

6 COMMISSIONER GAZIANO: Aye with the
7 understanding that we --

8 VICE CHAIR THERNSTROM: Yes, we said
9 initial statements.

10 COMMISSIONER GAZIANO: No, I -- hold
11 discussion.

12 COMMISSIONER KIRSANOW: I've got to leave.

13 VICE CHAIR THERNSTROM: Okay. So, one
14 nay. Commissioner Kirsanow has voted nay, and
15 otherwise we have unanimity here of Commissioners
16 Heriot, Gaziano, Thernstrom, Titus, Castro, and
17 Achtenberg.

18 COMMISSIONER ACHTENBERG: Madam Chair, I
19 have an additional motion.

20 VICE CHAIR THERNSTROM: Yes.

21 COMMISSIONER ACHTENBERG: On the New Black
22 Panther Party. And that is that I move that we
23 declare the investigation of the New Black Panther
24 Party -- that we declare the investigation closed with
25 the only addition to the report being the rebuttal of

1 Michael Yaki, should he otherwise be qualified to
2 offer his rebuttal consistent with the prior motion.

3 VICE CHAIR THERNSTROM: A second on that?

4 COMMISSIONER CASTRO: Second.

5 COMMISSIONER HERIOT: With a footnote, I
6 assume, that if the surrebuttal procedure --

7 COMMISSIONER ACHTENBERG: Sure.

8 COMMISSIONER CASTRO: Of course.

9 COMMISSIONER ACHTENBERG: Indeed.

10 COMMISSIONER GAZIANO: Could I just ask if
11 we could suspend. I know Commissioner Kirsanow would
12 want to speak on that. Could we discuss that -- how
13 about this? That we instruct our staff not to do
14 anything more on this until we can discuss this on
th

15 March 11 , and then entertain the motion.

16 VICE CHAIR THERNSTROM: We have a long
17 history of people having to leave the Commission
18 early, having chosen a particular time for their
19 flight back, the Commission business goes on.

20 COMMISSIONER GAZIANO: Normally, no.
21 Normally, we wait until --

22 COMMISSIONER HERIOT: Normally, we do
23 wait.

24 COMMISSIONER GAZIANO: Can I read some of
25 your statements to that effect?

1 COMMISSIONER HERIOT: I'd like to hear
2 them.

3 COMMISSIONER GAZIANO: Or can we just --

4 COMMISSIONER ACHTENBERG: I would have
5 preferred that the Commissioner remain. This is
6 something that I feel strongly about, so I'd like to
7 see a vote on this up or down, unless there's another
8 parliamentary turn. I think it's time that we -- this
9 is my own view. The reason I made the motion is
10 because I think it's time that we turn the page. I
11 want you to complete the integrity of the Commission's
12 prior work, but I'd like to see the Commission record
13 declared closed. And I'm being forthright with you, I
14 think it's time for the Commission to move on. That's
15 my personal view, and that's why I made the motion.

16 COMMISSIONER HERIOT: Ordinarily, the
17 practice of the Commission is that motions are
18 presented to Commissioners before the meeting, so that
19 we have time to consider them. And this has been an
20 issue that the Vice Chair has been particularly active
21 on. She doesn't like motions being made for the first
22 time in a meeting. So, we're not used to this sort of
23 thing. And I would suggest that instead, we just --
24 we could decide to not to do anything on this until
25 the next meeting, and then have Pete have a chance to

1 be here during the discussion of it. This has been an
2 important investigation from his standpoint. I'm sure
3 he'd want to be part of this discussion.

4 VICE CHAIR THERNSTROM: I have complained
5 in the past, they have been very complicated motions
6 suddenly added to the agenda, often requiring
7 extensive reading. I have been overridden on this.
8 This is not a complicated item at all.

9 COMMISSIONER HERIOT: But it is an
10 important one.

11 VICE CHAIR THERNSTROM: You don't need a
12 lot of time to read it and study it, and that has been
13 my complaint in the past.

14 COMMISSIONER GAZIANO: Out of deference to
15 -- I understand that this is important. That's why I
16 was trying to see if we could come to some middle
17 ground where we would ask the staff not only to
18 suspend work in the written report, but also to
19 suspend work on anything else. Given 18 months that
20 some of us have been on, especially Commissioner
21 Kirsanow, I know that he wanted to speak to -- would
22 want to speak to this motion, so I just wonder if we
23 could accept that as a substitute. And then have this
24 discussion. I don't think the outcome will be

th

25 different on March 11 , and I think that you'd be

1 able to make the point that I think you want to make.

2 COMMISSIONER CASTRO: I don't see why we
3 don't proceed with the motion as you suggested.

4 COMMISSIONER ACHTENBERG: And if it
5 doesn't have majority support, then it doesn't. My
6 own view is that it would be worth it to turn the
7 page.

8 VICE CHAIR THERNSTROM: I'm calling the
9 question. All in favor of the motion.

10 (Chorus of ayes.)

11 VICE CHAIR THERNSTROM: Calling for nos.

12 COMMISSIONER GAZIANO: No.

13 COMMISSIONER HERIOT: No.

14 VICE CHAIR THERNSTROM: Two nays, Heriot
15 and Gaziano. The ayes are Achtenberg, Castro, Titus
16 and Thernstrom.

17 COMMISSIONER GAZIANO: I think we took
18 that out of order, because --

19 COMMISSIONER CASTRO: That's Cy Pres.

20 COMMISSIONER GAZIANO: Yes, he wanted to
21 talk about it, Cy Pres.

22 COMMISSIONER ACHTENBERG: Madam Chair, I
23 have a motion regarding statutory report for 2011, Cy
24 Pres. I move that we suspend work on the topic of Cy
25 Pres. That Commissioners prepare and circulate

1 alternative topic proposals until March 4 , and that
th

2 at the March 11 business meeting, we discuss Cy
3 Pres, along with whatever additional topics are
4 submitted for the Commissions' consideration to become
5 the topic of the statutory report for 2011.

6 COMMISSIONER CASTRO: Second that motion.

7 VICE CHAIR THERNSTROM: Discussion.

8 COMMISSIONER GAZIANO: This is one of
9 these items I was told when I first came on the
10 Commission, you needed to choose this at least 18
11 months before you even began. And we were late, very
12 late we were told in picking this topic when we
13 finally settled on it in September. I'm going to ask
14 the Acting Staff Director, whatever he's called, the
15 amount of work on it, but assuming that we -- that the
16 process that Commissioner Achtenberg has set forth

th
17 would enable us to choose a topic on the 11 . And I
18 know that the Vice Chair has objected on ever settling
19 on a statutory report, at least the ones that I've
20 been on, without months of discussion.

21 I don't see how we'd be able to meet our
22 statutory obligation to issue a report to Congress and
23 the President. But with that, first, can you tell me
24 what you -- what staff has been doing on this? I also
25 don't know what staff is going to be working on the

1 next few months, but --

2 VICE CHAIR THERNSTROM: I never recognize
3 these descriptions of myself, but that's all right.

4 COMMISSIONER GAZIANO: I can read some
5 statements of this at the next meeting.

6 VICE CHAIR THERNSTROM: I don't think you
7 need to bother.

8 COMMISSIONER GAZIANO: Okay. Maybe not.
9 We'll see, but --

10 DELEGATED THE AUTHORITY OF THE STAFF
11 DIRECTOR BYRNES: I'd be happy to provide an update on
12 the project. OGC has completed background research on
13 the project. We have also submitted interrogatories
14 to the Department of Justice, to which we have
15 received so far a partial response. I anticipate a
16 complete response very soon. That's where we're at --

17 COMMISSIONER GAZIANO: Within the next
18 week?

19 DELEGATED THE AUTHORITY OF THE STAFF
20 DIRECTOR BYRNES: Early next week.

21 COMMISSIONER GAZIANO: Early next week.
22 But before that, again, for the new Commissioners,
23 correct me if I'm wrong, but we circulated
24 suggestions, we voted on them, we narrowed them down,
25 then concept papers were prepared after the Commission

1 deliberated for two months, the topic was chosen.
2 Then after the Commission committed to that, there was
3 then the staff prepared the, what is it called, the
4 investigative plan?

5 DELEGATED THE AUTHORITY OF THE STAFF
6 DIRECTOR BYRNES: Discovery Plan.

7 COMMISSIONER GAZIANO: Discovery Plan, and
8 that took -- that, typically, takes a couple of
9 months.

10 DELEGATED THE AUTHORITY OF THE STAFF
11 DIRECTOR BYRNES: It could take any length of time. I
12 think in this case it did not take probably more than
13 a couple of months.

14 COMMISSIONER GAZIANO: Yes, I know. In
15 some cases, it's taken one month, and sometimes it's
16 taken a couple of months.

17 DELEGATED THE AUTHORITY OF THE STAFF
18 DIRECTOR BYRNES: Sure.

19 COMMISSIONER GAZIANO: So, it seems --
20 again, correct me if I'm wrong, it seems like if we
21 were to abandon this topic, it might be June until we
22 could, in our normal course, approve a new statutory
23 topic.

24 DELEGATED THE AUTHORITY OF THE STAFF
25 DIRECTOR BYRNES: That's possible.

1 COMMISSIONER HERIOT: Isn't it June when
2 the draft is usually due?

3 DELEGATED THE AUTHORITY OF THE STAFF
4 DIRECTOR BYRNES: I think under previous time lines.

5 COMMISSIONER GAZIANO: I think in May the
6 draft is usually due.

7 COMMISSIONER CASTRO: May I ask a
8 question?

9 VICE CHAIR THERNSTROM: Yes.

10 COMMISSIONER CASTRO: Was the New Black
11 Panther Party report our 2010 statutory report?

12 COMMISSIONER GAZIANO: It was.

13 COMMISSIONER CASTRO: And was it submitted
14 on time?

15 COMMISSIONER GAZIANO: It was submitted
16 late, in part because -- well, later than normal. It
17 was approved in text form on December 10. And I think
18 that it was unfortunate that the Department was
19 stonewalling as much as it did, that required that
20 lateness.

21 COMMISSIONER CASTRO: Well, I know we want
22 to discuss and put forward a topic, including a
23 discussion -- a forward discussion of Cy Pres on March
24 11, with a view that we are definitely going to
25 endeavor to make sure that whatever topic is

1 ultimately chosen, or selected, or remains, be done in
 2 th
 3 time for -- I believe September 30 is our deadline,
 4 so we understand that completely. And if it looks
 5 th
 6 like on March 11 we're not able to do that, then I
 7 think we'll act accordingly.

8 VICE CHAIR THERNSTROM: In how many
 9 previous years have we actually gotten the statutory
 10 report in on time, if that's a relevant question at
 11 all, which I'm not sure it is.

12 DELEGATED THE AUTHORITY OF THE STAFF
 13 DIRECTOR BYRNES: I can't recall, at least for the
 14 first couple of years that I've been here, we've been
 15 on time.

16 VICE CHAIR THERNSTROM: Really?

17 COMMISSIONER ACHTENBERG: Well, my own
 18 view is, I'd rather be right than on time; although, I
 19 think we should endeavor to be on time. And I want a
 20 discussion, again, this is my own view. I'd like work
 21 stopped on this, and it to be up for discussion about
 22 whether or not this is what we want to have as our
 23 statutory report for 2011.

24 COMMISSIONER GAZIANO: Trying to seek
 25 middle ground, again, the Commission, I suppose, can
 throw this aside, and can vote on something else. And
 I'm happy to see everyone's idea for something better,

1 but why does the work need to be stopped on this in
2 the meantime? Why don't we just suggest that the
3 staff continue to make non-extensive investments in
4 the time? They do have to do something, they are
5 being paid.

6 COMMISSIONER ACHTENBERG: Well, since
7 everybody, as far as I can tell, everybody is wearing
8 at least five hats, my guess is that they've got
9 plenty to do just in the order, natural order of
10 events. But my own view is -- and if I have a
11 majority of support of my colleagues, that's the view
12 that will pertain. I don't want, until we have a
13 fuller reading of this issue in comparison to the
14 other issues that we might choose to make the focus of
15 the Commission's statutory report, I would not like to
16 see Commission resources invested in further
17 development of this until we agree that, indeed, that
18 is going to be the topic for the statutory report.
19 And I'd like to have a fuller discussion to that
20 effect, which is why the motion is phrased the way
21 it's phrased.

22 VICE CHAIR THERNSTROM: I'm calling the
23 question. All in favor.

24 (Chorus of ayes.)

25 COMMISSIONER HERIOT: You're supposed to

1 say all opposed.

2 VICE CHAIR THERNSTROM: Yes, well looking
3 at you, all opposed.

4 COMMISSIONER HERIOT: No.

5 COMMISSIONER GAZIANO: No.

6 VICE CHAIR THERNSTROM: Okay. We have,
7 again, no votes from Commissioners Heriot and Gaziano.
8 And I vote, as well as Commissioners Achtenberg,
9 Castro, Titus and Thernstrom.

10 Okay. The next topic is -- where are we,
11 people?

12 COMMISSIONER CASTRO: Management and
13 Operations.

14 DELEGATED THE AUTHORITY OF THE STAFF
15 DIRECTOR BYRNES: No, the Title IX.

16 COMMISSIONER CASTRO: Okay, sorry.

17 VICE CHAIR THERNSTROM: Right. Does
18 somebody have a motion on the Sex Discrimination?

19 COMMISSIONER CASTRO: I don't think we do,
20 no.

21 VICE CHAIR THERNSTROM: Why don't we move
22 on?

23 COMMISSIONER HERIOT: Are we going to
24 report on it?

25 COMMISSIONER CASTRO: I'm sorry. What?

1 COMMISSIONER HERIOT: Yes, why don't we
2 have a --

3 DELEGATED THE AUTHORITY OF THE STAFF
4 DIRECTOR BYRNES: We can receive an update, certainly.
5 Yes.

6 COMMISSIONER CASTRO: Sure.

7 DELEGATED THE AUTHORITY OF THE STAFF
8 DIRECTOR BYRNES: Just for the edification of our new
9 Commissioners, we have received data from 15 of the 19
10 schools that we have subpoenaed for this project,
11 which we continue to analyze. We're getting some
12 preliminary results, but they're under review at this
13 point. Three local holdout schools have been
14 analyzing their admissions data subject to a
15 Commission draft analytical protocol. We're still
16 a couple of steps away from asking for the logistic
17 progression analyses. There are just some things we
18 have to clear up with those schools as we go forward.
19 That's where it stands. I think we're pretty far
20 along, at least on the amount of data we've received
21 at this point.

22 COMMISSIONER CASTRO: Sure. Are there
23 motions?

24 VICE CHAIR THERNSTROM: I understand
25 there's no motions having to do with this topic, and

1 we are left with -- what are we left with here, folks?

2 Yes, is there some discussion of today's briefing?

3 Does somebody have a motion that's relevant to that?

4 COMMISSIONER CASTRO: I think the only
5 question we had was just -- and we were talking a
6 little bit about this at lunch, I think, the selection
7 of the witnesses, and how that went about. And, also,
8 I brought up during the course of the hearing the idea
9 of incorporating our SAC reports to the extent that
10 they match hearings. And I think that as we select
11 witnesses, as well, for the future, there might be a
12 nice wealth of witness resources, and scholarly
13 resources that some of our SACs have already brought
14 together, so I question how we go about doing it.

15 I know we talked a little bit about it
16 informally at lunch, but what's the process for
17 selecting these witnesses?

18 DELEGATED THE AUTHORITY OF THE STAFF
19 DIRECTOR BYRNES: Lenore Ostrowsky, one of the
20 Attorney Advisors in OSD.

21 (Simultaneous speaking.)

22 MS. OSTROWSKY: This was fairly
23 challenging, because it actually was difficult to get
24 people to agree to come. The way I started out was to
25 run up a list of the largest school districts. We

1 didn't want just the largest, but I started out with
2 the largest, and I called up and sent emails to the
3 New York City Department of Education. They were
4 polite, but did not respond. Los Angeles, polite, but
5 did not respond. I found someone, Dr. Hardy Murphy,
6 who is not from Chicago, but he was from Evanston,
7 which is a suburb very close by. It's part of Cook
8 County, with a highly diverse student body.

9 There is someone, I gave Alec a copy of
10 someone named Randy Sprick. When it became clear that
11 it was going to be extremely difficult to find
12 teachers who would be willing to come to our briefing,
13 I found someone who teaches teachers all across the
14 country, and administrators. These methods that you
15 heard referred to, the positive behavior intervention
16 methods. His name is Randy Sprick. And I asked him if
17 he had recommendations for teachers that he had
18 trained in different parts of the country, because I
19 know that he's a great admirer of Skiba, who's a
20 scholar at Indiana, some of whose work I included in
21 the briefing books. You may have seen it. And he was
22 very helpful.

23 He came up with someone who said yes,
24 Susan Schultz. And she was one of the people I was
25 counting on to describe sort of a different view of

1 school discipline than some of the other teachers.
2 She's the one who cancelled precipitously, you know, a
3 few days before the briefing, before today. And that
4 was pretty disappointing.

5 So, we used not only the -- it was a cold
6 call, I guess you'd have to call it, plus, Randy
7 Sprick references, and I got Dr. Gonzalez from him,
8 who I thought was an extremely good witness. He's the
9 one from Fresno, California. And then in addition, I
10 put out calls to people like the General Counsel of
11 the Austin Independent School District, which is a
12 very large school district, and he sent out emails.
13 And we eventually came up with Joe Oliveri -- also,
14 someone I personally thought was -

- who had a lot of
15 valuable things to say, because he's been in charge of
16 all of the students that were removed from Austin
17 schools. So, you can see it's -- I don't know if you'd
18 call it hit or miss, but it was -- I think ad hoc is
19 how you would describe it.

20 COMMISSIONER GAZIANO: Can I ask to
21 clarify a little bit of the process again.

22 MS. OSTROWSKY: Yes.

23 COMMISSIONER GAZIANO: A lot of times for
24 briefings, but even more importantly for the statutory
25 report, we have the idea, the agreement, then there's

1 a concept paper that's drafted, so there was a concept
2 paper. And sometimes the concept paper identifies
3 particular witnesses, but it doesn't identify
4 particular witnesses, it'll identify the type of
5 witnesses. That alerts Commissioners. By the way, we
6 -- I want to put on the record something we did say at
7 lunch. I really agree with Commissioner Heriot, that
8 we should, as Commissioners, take more responsibility
9 to help the staff. It's best, in my view, if we do it
10 at our open meeting, so that I can react to yours, and
11 no, I -- or think of a different idea. No, I want a
12 different type of -- and sometimes, we'll have a vote.

13 No, we don't want any of those kind of witnesses.
14 So, I think the more that we can do in that, the
15 better it is for staff.

16 But then I, just to go back to you,
17 Lenore, you were following the concept paper and the
18 type of witnesses you were following -- you would have
19 certainly been open to any Commissioner. I think the
20 -- I'll probably give you a leading question. Would
21 you be -- would you like Commissioner input and
22 suggestions, or do you not like Commissioner input and
23 suggestions?

24 MS. OSTROWSKY: I would have been so
25 grateful for especially teacher leads, because as you

1 can tell, these are not people who are accustomed to
2 speaking in forums, such as this. They're really
3 not. The superintendents and the principals are well
4 accustomed to this, and it was much easier to get them
5 than it was to get the teachers.

6 COMMISSIONER GAZIANO: Sure.

7 COMMISSIONER HERIOT: That makes sense.

8 MS. OSTROWSKY: I'm sorry -- so, studying
9 the concept paper, and the list that we developed of
10 school districts that appeared to be through research
11 highly diverse. We sent out letters to, I think it
12 was about 28 of them, and we got responses from about
13 16. And on many of them, I called them up, and sent
14 emails, and asked for further information from them.
15 And some of them sent data, which I included in the
16 briefing books. And some of those people, I actually
17 invited. For instance, Doug Wright from Utah is
18 someone who was one of those people on the list. And
19 I was really pleased that he agreed to come, because
20 unlike many other school districts in the country, his
21 students are, I think, majority American Indian. And
22 that was a population that we don't generally hear
23 much about. So, it was that list, and it was, as I
24 said, the list of the largest school districts in the
25 Country; calling General Counsels of these school

1 districts to see if they could -- they were willing to
2 come up with people.

3 COMMISSIONER GAZIANO: Okay.

4 MS. OSTROWSKY: Commissioner Heriot.

5 COMMISSIONER HERIOT: I just had a general
6 comment for the new people on the way we put together
7 briefings. You know, when I got here, I was sort of
8 surprised at how we did this. I'm sort of familiar
9 with two models. I'm familiar with the lawsuit model,
10 where you've got an oral argument before a court, and
11 who gets to speak, well, the parties to the
12 litigation, so you've got somebody who's on one side,
13 and somebody who's on the other side. You know, and
14 that works tolerably well. And then there's sort of
15 the Congressional, the legislative model, where
16 usually you have a committee staff that is majority
17 and minority. And you don't have a staff like we
18 have, that's supposed to be neutral.

19 What happens, I think, in our briefings
20 often, and I hope we correct this in the future, is
21 that they try very hard to put together a balanced
22 panel. Then we'll have like cancellations at the last
23 minute, as we did this time. And Commissioners who
24 feel their side isn't represented, they dump on the
25 staff.

1 We need to think of it as our
2 responsibility to make sure that whatever view we
3 think is correct, or whatever view we don't think is
4 correct, we need to make sure that those witnesses are
5 there, rather than waiting until after the briefing
6 has occurred, and dumping on them, because it's up to
7 us.

8 COMMISSIONER CASTRO: I appreciate that,
9 and agree with that. I'm not proposing that we're
10 dumping on this, just more like hey, how does this
11 happen? How did it work?

12 COMMISSIONER HERIOT: Yes.

13 COMMISSIONER CASTRO: As I was reading
14 this about all the -- maybe some of these folks in
15 this C- so, it's really more informational for myself
16 and my new colleagues as to just how we go about doing
17 this, and how can we be participants in the process,
18 which clear, we are intended to be big participants in
19 the process.

20 COMMISSIONER GAZIANO: Sure. And in my
21 leading questions, I was trying to do the same.

22 COMMISSIONER CASTRO: Yes.

23 COMMISSIONER GAZIANO: But I did want to
24 reiterate that on this topic, I don't think there was,
25 as is clear, that there was only two positions, so I

1 don't know what your view of balance, or my -- I
2 didn't know what to expect. On others where there's
3 kind of a more clear two or three positions, then our
4 staff really does strive hard to find the different --
5 and strong spokesmen. None of us want strong
6 spokesmen for one, and weak spokesmen of another.

7 COMMISSIONER CASTRO: We certainly
8 wouldn't want that.

9 COMMISSIONER GAZIANO: We're adult enough
10 that we want the best.

11 COMMISSIONER CASTRO: Sure.

12 MS. OSTROWSKY: May I make one other
13 comment? I tried very hard to find out what their
14 views were without suggesting to them that I wanted a
15 particular outcome. So, I was pretty delicate. I
16 made certain surmises, and if the KIPP person hadn't
17 pulled out C-

18 VICE CHAIR THERNSTROM: Who was coming
19 from KIPP?

20 MS. OSTROWSKY: Irene Holtzman.

21 VICE CHAIR THERNSTROM: Oh.

22 MS. OSTROWSKY: And, as I said, Susan
23 Schultz, it would have been -- there would have been,
24 I think, a slightly different result. So, I mean,
25 that's -- I would like -- it would be nice, ideally,

1 to use a random sample, so we could make this truly
2 scientific, but it's not -- we're not set up to do
3 things like that.

4 COMMISSIONER HERIOT: You'd have to have
5 an awfully big sample for a scientific -- I'm not sure
6 if I'm willing to sit through that briefing.

7 COMMISSIONER CASTRO: Thank you for
8 answering the question. I appreciate that.

9 VICE CHAIR THERNSTROM: Lenore, I wonder
10 if you have any feeling that, in general, it would be
11 better to have fewer witnesses than we had today?

12 MS. OSTROWSKY: Yes, the short answer is
13 yes. What happens sometimes is one makes invitations,
14 and you hear nothing. And you can't -- staff can't
15 wait, because this thing has to march on, so then we
16 go to the next person and invite them, and they say
17 yes. And then the first person you haven't heard from
18 in two weeks says great, I'm coming. So, that's how
19 this kind of -- the eventual number was slightly
20 larger than I would have liked.

21 VICE CHAIR THERNSTROM: I would think, but
22 I'm not an administrator, and I've never been an
23 administrator in any context, but I would think we
24 might contemplate a rule where as we say look, if you
25 haven't answered by X date, we are going to move on to

1 invite other people, because we do need to limit the
2 number of witnesses.

3 MS. OSTROWSKY: I think that's an
4 excellent suggestion going forward.

5 COMMISSIONER HERIOT: Well, wait, I'm not
6 sure that's -- it might be in some context a good
7 suggestion, but we're dealing with people who are
8 significant people, and it's not always a good idea to
9 tell someone who has a busy schedule we're giving you
10 48 hours to --

11 VICE CHAIR THERNSTROM: No, not 48 hours.

12 COMMISSIONER HERIOT: Any particular
13 length of time.

14 (Simultaneous speaking.)

15 COMMISSIONER HERIOT: Some of these
16 people, you really want them to come, and if you say
17 look, we'll give you --

18 VICE CHAIR THERNSTROM: Always with any
19 particular individual who we really want, but that
20 would protect us. It would allow us to say, in
21 effect, we can say thank you very much. If we really
22 think we want somebody very strongly, I mean, they
23 don't know what --

24 MS. OSTROWSKY: I just have one tiny
25 comment. Because people do drop out, I was a little

1 nervous about limiting the number. That's all.
 2 Because we do have cancellations, and sometimes it's
 3 better to have a few too many, than not enough.

4 VICE CHAIR THERNSTROM: Okay. Folks, I've
 5 just been reminded by Tim Fay that it's already been a
 6 long day, and we have several more agenda items. Let
 7 us move on to, if nobody minds, to Management and
 8 Operations.

9 IV. MANAGEMENT AND OPERATIONS

10 VICE CHAIR THERNSTROM: And we start with
 11 review of the 2011 meeting calendar. Does everybody
 12 have the calendar in front of them?

13 COMMISSIONER CASTRO: Yes.

14 VICE CHAIR THERNSTROM: I guess everybody
 15 except me. No, I've got mine here. Okay. The floor
 16 -- anybody who wants to take the floor, please take
 17 it.

18 COMMISSIONER TITUS: Madam Chairman.

19 VICE CHAIR THERNSTROM: Yes.

20 COMMISSIONER TITUS: I'd like to make a
 21 motion. I think we should -- I'd like to move that we
 22 cancel the telephonic meetings. They're just not
 23 very helpful, they're confusing. It's hard to tell
 24 who's saying what. I think we would be better off
 25 having longer in-person meetings on dates when we can

1 be here, rather than try to do this over the
2 telephone.

3 COMMISSIONER CASTRO: I second that.

4 VICE CHAIR THERNSTROM: Let me add to
5 that, that we have talked on a number of times when we
6 have felt we have a great deal of business, but we
7 have never actually decided to do it. We had talked
8 about having something on Thursday afternoon, as well
9 as Friday. It never has become a necessity. It is
10 always an option, if we feel that's important, and
11 people can make it.

12 COMMISSIONER HERIOT: Not for me. I teach
13 Wednesday nights, and I can't get here that fast. But
14 I can do Saturdays.

15 VICE CHAIR THERNSTROM: All right,
16 whenever.

17 COMMISSIONER CASTRO: Shall we deal with
18 the telephonic issue first?

19 VICE CHAIR THERNSTROM: I'm just saying in
20 cancelling the telephonic meetings, we're not
21 depriving ourselves of a chance. That was my only
22 point.

23 COMMISSIONER CASTRO: Understood. Okay.

24 VICE CHAIR THERNSTROM: Okay. We need a
25 second.

1 COMMISSIONER CASTRO: I seconded it
2 already.

3 VICE CHAIR THERNSTROM: You seconded.
4 Discussion.

5 COMMISSIONER GAZIANO: Madam Chair, I just
6 wanted to say that in the past we've been -- one of
7 the things we've really strived to do is be as
8 solicitous as we can to other people's conflicts. But
9 I think there are ways of starting earlier in the
10 morning for a particular day, and --

11 VICE CHAIR THERNSTROM: Okay. But we're
12 now on the telephonic --

13 COMMISSIONER GAZIANO: I understand. I
14 think that the reason -- I don't want to go into the
15 history, unless someone tries to drag it out of me,
16 why we --

17 (Laughter.)

18 COMMISSIONER GAZIANO: -- added them, but
19 I don't think that -- I think that they can be
20 reinstigated. I don't think the reason we added them
21 was necessary, so I'll support this motion.

22 COMMISSIONER HERIOT: Okay. I do want to
23 go into the history. It's not a very complicated
24 history.

25 COMMISSIONER GAZIANO: No, that's okay.

1 COMMISSIONER HERIOT: Our statute requires
2 us to do only two things in the whole world, and those
3 two things, we don't seem to get done. Number one,
4 we've got to do an enforcement report once a year.
5 Okay, that's aside. Number two, we've got to charter
6 51 SACs.

7 COMMISSIONER GAZIANO: Every two years.

8 COMMISSIONER HERIOT: Every two years, and
9 it's very boring. You'll get really tired of SACs. I
10 mean, the chartering, not the actions of the SACs, but
11 it tends to be pretty cut and dried stuff, and we
12 weren't getting it done. People would be leaving the
13 meetings, sometimes people were walking out of
14 meetings to defeat quorum. Bad stuff was happening,
15 we weren't getting that done. And we need to commit
16 to do what Congress has directed us to do, and that is
17 charter 51 SACs every two years. If we can do that
18 some other way, I'm happy to support the motion. We
19 weren't getting it done in past years. And,
20 basically, the reason we instituted the telephonic
21 meetings was to charter SACs that we thought would be
22 non-controversial, just get on the phone and say aye,
23 and we'd get it over with. It ended up, we put a few
24 other things on the agenda. I always wanted it just
25 to be for SACs, and if we can get our SACs done some

1 other way, that's fine with me. If we can't do it,
2 then I would suggest we go back to the telephonic
3 meetings in the future.

4 COMMISSIONER CASTRO: Yes, I think as the
5 Acting Chair suggested, we can always lengthen the in-
6 person meetings. I think it's always better to sit
7 around the table and talk about issues, and address
8 them, and work together, as opposed to on phones.

9 COMMISSIONER HERIOT: I'm for that, too.
10 You may find Commissioner Yaki doesn't agree with you.

11 COMMISSIONER CASTRO: Yes. Well, to the
12 extent that at some point we might need to do
13 something telephonic, this doesn't prohibit us from
14 doing that. I just think, when I seconded this
15 motion, that the more we can do sitting together face-
16 to-face, if we need longer meetings --

17 COMMISSIONER HERIOT: I'm with you.

18 COMMISSIONER CASTRO: Okay. Because we
19 want to get all our work done.

20 VICE CHAIR THERNSTROM: I think we've got
21 C- it sounds like we've got unanimity here, and I'm
22 going to call the question. All in favor of canceling
23 the telephonic meetings with the understanding that we
24 could always decide to have a telephonic meeting, if
25 we want to in the future. All in favor of canceling

1 the telephonic meetings, please say aye.

2 (Chorus of ayes.)

3 COMMISSIONER ACHTENBERG: You've gotten
4 your unanimous bipartisan vote here.

5 VICE CHAIR THERNSTROM: Terrific. I love
6 it. Now, are there any conflicts for people for the
7 in-person dates?

8 COMMISSIONER ACHTENBERG: I do have one,
9 Madam Chair. The October meeting is a meeting that I
10 cannot make.

11 VICE CHAIR THERNSTROM: So, let us change
12 that. How about other people?

13 COMMISSIONER CASTRO: No major conflicts,
14 th
15 so long as on Friday, August 12 , you have a birthday
16 cake for me.

17 (Laughter.)

18 COMMISSIONER ACHTENBERG: Nice.

19 COMMISSIONER CASTRO: Although, my wife
20 might be upset really if I'll be here for her
21 birthday, but she's pretty --

22 COMMISSIONER GAZIANO: Well, you bring
23 her. Bring her --

24 (Simultaneous speaking.)

25 COMMISSIONER GAZIANO: -- for a vacation
in glorious Washington, D.C.

COMMISSIONER CASTRO: Alternative date for
October.

1 VICE CHAIR THERNSTROM: But any other
2 conflicts here?

3 COMMISSIONER GAZIANO: Let's see when our
4 September one is, so that usually it's best, because
5 sometimes Labor Day -- okay. It looks like we're on
6 th
7 the 9 of September.

8 VICE CHAIR THERNSTROM: Yes.

9 COMMISSIONER GAZIANO: After Labor Day, do
10 th
11 you want to try to -- is the 7 acceptable?

12 COMMISSIONER CASTRO: Of October?

13 COMMISSIONER GAZIANO: Yes.

14 COMMISSIONER ACHTENBERG: Could somebody -
15 - does anybody have the Jewish calendar? Oh, it's Yom
16 Kippur, no.

17 VICE CHAIR THERNSTROM: No, it's no for me
18 too, then.

19 st
20 COMMISSIONER CASTRO: What about the 21 ?
21 st

22 COMMISSIONER GAZIANO: The 21 ? That is
23 a little difficult for me. I could do it -- when is
24 st

25 our -- or number 18. I suppose the 21 is fine.

26 COMMISSIONER CASTRO: Can I suggest
27 something? We had --

28 st
29 COMMISSIONER GAZIANO: The 21 is fine.
30 I'll just make it work.

31 COMMISSIONER CASTRO: Okay. Well, here's

1 Hold on.

2 COMMISSIONER GAZIANO: -- that we check
3 with Pete on -- if we're moving it for one other
4 person.

5 VICE CHAIR THERNSTROM: Of course. Sure,
6 of course.

7 COMMISSIONER GAZIANO: And we probably
8 should reconfirm in March if former Commissioner Yaki
9 --

10 VICE CHAIR THERNSTROM: Yes, absolutely.

11 COMMISSIONER GAZIANO: -- has already
12 penciled these in, and planned his family outing.

13 VICE CHAIR THERNSTROM: Sure.

14 COMMISSIONER GAZIANO: Or whatever.

15 COMMISSIONER CASTRO: Yes, that makes
16 sense.

17 COMMISSIONER GAZIANO: For October.

18 VICE CHAIR THERNSTROM: Okay. So, this is
19 a penciled in schedule.

20 COMMISSIONER GAZIANO: Okay.

21 COMMISSIONER ACHTENBERG: And thank you
22 for the courtesy.

23 COMMISSIONER GAZIANO: Do we need to vote?

24 COMMISSIONER HERIOT: Yes, I think we need
25 to vote on it.

1 VICE CHAIR THERNSTROM: We need to vote.

2 (Simultaneous speaking.)

3 COMMISSIONER GAZIANO: Yes, we developed -
st

4 - tentatively moved to the 21 with the understanding
5 that we're going to --

6 VICE CHAIR THERNSTROM: Okay.

7 COMMISSIONER HERIOT: We'll call it
8 tentative, like we can undo it.

9 COMMISSIONER GAZIANO: We can always undo
10 it later.

11 VICE CHAIR THERNSTROM: We can always undo
12 it. Okay. By acclamation, I think that we have
13 decided on these dates. What is the next --

14 COMMISSIONER CASTRO: Staff Director's
15 report.

16 VICE CHAIR THERNSTROM: Staff Director's
17 report.

18 DELEGATED THE AUTHORITY OF THE STAFF
19 DIRECTOR BYRNES: Thank you, Madam Vice Chair.

20 We submitted a draft of our Congressional
21 budget request for fiscal year 2012 to the Office of
22 Management and Budget for their review. I provided
23 Commissioners a copy of this request last week. For
24 fiscal year 2011, we are operating under a continuing
th

25 resolution which ends March 4 . This continuing

1 resolution limits the agency's funding, but staff is
2 working to ensure that payroll and other essential
3 services can continue until Congress passes an Annual
4 Appropriation's Act. We will not know our final fiscal
5 year 2011 funding level until Congress passes an
6 Appropriations Act, or alternative funding mechanism.

7 Staff has posted the panelists written
8 statements in the transcript of our briefing on school
9 choice, Blaine Amendments, and anti-Catholicism to the

th

10 agency's website. During the December 27 to January
st

11 21 reporting period, our Office of Civil Rights
12 Evaluation received 58 written complaints, one
13 Congressional complaint, one walk-in complaint, nine
14 email complaints, five fax complaints, and 89
15 telephonic complaints of which 30 were repeat calls.
16 In total, staff received and processed 160 complaints
17 during the reporting period.

18 The Commission received a clean or
19 unqualified audit opinion on its fiscal year 2010
20 financial statements. And staff submitted the Human
21 Capital Management Plan to OPM and OMB, I think by

th

22 December 15 , 2010. This plan was called for in our
23 strategic plan, and incorporated input from
24 Commissioners, the senior-level staff working group,
25 and consultants. That's all I have to report.

COMMISSIONER GAZIANO: Something I heard about yesterday, just briefly mentioned to the Staff Director. I understand our lease on this building is up, which is, for those of you -- again, three years ago, this was a dump, this place, and they got it painted, and they got -- so, it's now really -- it gorgeous compared to --

COMMISSIONER GAZIANO: -- what it was.

I've heard the staff, how much labor with filing cabinets everywhere it may not be. But what I'm going to ask the Staff Director, I don't know how much you want to say, and I don't want you to, necessarily, take up more than two minutes on where it is. But as I understand it, there's a lot of -- if the owner of this building isn't willing to renegotiate, there are -- I speak for myself, but I think for others, want input as early as possible on alternatives, rather than just being told this appears to be the direction we're going to go. Is it possible that you could prepare, assuming you're still going to be -- or you could pass on to the next Staff Director, if there is such a vote before then, to give us a report on where

1 we are?

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR BYRNES: I'd be happy to do so.

4 COMMISSIONER GAZIANO: And one of the
5 factors that I want the Staff Director to consider in
6 negotiations on behalf of the Commission, is whether
7 the new building is near a Metro stop. I don't take
8 the Metro any more. I drive, but I know that many of
9 our staff will be interested in -- I think it should
10 be near Falls Church where I live, but they probably
11 would not like that, because I'm not in Falls Church
12 proper, so I'm not anywhere near a Metro stop. So, if
13 you would just add that as a factor.

14 DELEGATED THE AUTHORITY OF THE STAFF
15 DIRECTOR BYRNES: Okay. I will say as sort of a
16 threshold matter that GSA sort of conducts the
17 solicitation process on our behalf, so I'm not sure
18 how much wiggle room we have.

19 COMMISSIONER GAZIANO: But don't we define
20 things that are important? Tell me -- give me two
21 minutes on what the process is.

22 VICE CHAIR THERNSTROM: In the meantime,
23 Tim Fay says there's great real estate near the what
24 stop? Silver Springs.

25 MS. DUNSTON: Good afternoon,

1 Commissioners. The process is basically controlled by
2 GSA. We provide to them information on what our needs
3 are. The Metro consideration that you already spoke
4 about is a part of the considerations that we are near
5 Metro, access bus and rail.

6 COMMISSIONER GAZIANO: Okay. Now, do we -
7 - when is it -- I'm sorry.

8 VICE CHAIR THERNSTROM: No, no, go ahead.
9 I was just going to say --

10 COMMISSIONER GAZIANO: Is it take or leave
11 it then? I mean, don't we have any --

12 MS. DUNSTON: You're taking and leaving is
13 part of the process. We tell them in the beginning
14 here's the Commission's needs for space, offices,
15 number of employees, the type of security issues that
16 we need based on the security assessment, whether we
17 need a conference room, certain things are already put
18 into place that have to do like ADA accommodations,
19 and that kind of thing is taking place already.

20 Now, in terms of whether we are two blocks
21 from Metro, or we're five blocks from Metro --

22 (Simultaneous speaking.)

23 MS. DUNSTON: -- how far you are. Like
24 the bus, for instance, a quarter mile of a bus, a half
25 mile of the Metro. And they can't tell you whether

1 it's a one line versus another line. We tell them
2 what area we want to be in the downtown D.C. area, we
3 want to have Metro access. We like to have certain
4 amenities, certain things for security. We do give
5 them that, and they put together solicitation, and the
6 process from there, basically, is more controlled by
7 GSA than us.

8 COMMISSIONER GAZIANO: But we haven't
9 submitted those requests yet, or those criteria yet.

10 MS. DUNSTON: Those criteria have been
11 submitted. The solicitation was out last night.

12 COMMISSIONER GAZIANO: Oh, it was. Could
13 you share -- I mean, I suppose it's theoretically
14 possible we could ask you all to withdraw it, but
15 that's the kind of thing I wish Commissioners would
16 have input on.

17 MS. DUNSTON: The bulk of the -- the
18 controlling factor was how much space could the
19 Commission afford. We've been in this building about
20 20 years, so our space costs are going to increase
21 substantially, and John can speak to you more about
22 the cost on that, but that controlled a lot of how
23 much space we can have. Additionally, the President
24 has said that federal agencies will decrease their
25 space footprint, which we also have to accommodate

1 that. So, taking those considerations, what we needed
2 and what we currently have, and what our projection
3 increasing staff levels, certain things were assumed
4 and given to GSA, and they put out a solicitation for
5 us.

6 VICE CHAIR THERNSTROM: I am concerned
7 about the space issue. It seems to me that already we
8 could use some more space that we have got. Don't
9 laugh, but --

10 COMMISSIONER GAZIANO: Especially if we
11 fill these vacancies, which we ought to.

12 VICE CHAIR THERNSTROM: Yes, which we
13 ought to. I mean, what have we told them in terms of
14 our future space needs, as opposed to the existing
15 space we have?

16 MS. DUNSTON: Well, we looked at the
17 number of empties that actually currently have, and
18 what the potential there is based on our budget
19 project, so we have to use some assumptions for that.

20 And even for the people that are vacant now, that --
21 you know, like the Staff Director is going to go. We
22 have -- that number is already included, so we just
23 made those assumptions.

24 DELEGATED THE AUTHORITY OF THE STAFF
25 DIRECTOR BYRNES: I should -- yes, the number of FTEs

1 reflected in the fiscal year 2012 Congressional budget
2 justification is consistent with, I think, what we
3 sent along to GSA. That's sort of what I think.

4 COMMISSIONER GAZIANO: I doubt that it'll
5 be an issue here, but new Commissioners will hear me
6 maybe cry and complain that we're not an Executive
7 Branch, and every once in a while when the Executive
8 Branch -- we can't be constitutionally. Every once in
9 a while when they give us some -- usually I think it's
10 fine to go along with the Executive Branch's delusion
11 on that. But is it problematic to share with us what
12 requirements you -- you know, I assume all us being
13 equal, we should see anything that we think is
14 important, but --

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR BYRNES: I can't think of any reason not to.

17 COMMISSIONER GAZIANO: Okay. Could you --

18
19 DELEGATED THE AUTHORITY OF THE STAFF
20 DIRECTOR BYRNES: And I'll consult with staff --

21 COMMISSIONER GAZIANO: Would you share
22 with us that.

23 DELEGATED THE AUTHORITY OF THE STAFF
24 DIRECTOR BYRNES: Sure.

25 COMMISSIONER GAZIANO: I mean, unless it

1 affects the bid process somehow. Certainly, as
2 management of the agency.

3 VICE CHAIR THERNSTROM: Can I suggest we
4 move on at this point, because it's 4:00.

5 COMMISSIONER GAZIANO: Sure.

6 VICE CHAIR THERNSTROM: And people do have
7 planes to make. So, we are at review of transition,
8 order of succession, continuity of operations. What
9 do people -- what would people like to discuss with
10 respect to --

11 COMMISSIONER CASTRO: Well, we have a
12 couple of proposed motions, and I believe staff is
13 passing those out. These motions are to alter the
14 succession. The first motion that is -- both of them
15 are being distributed, but the first one is going to
16 be to adopt changes to the Administrative Instruction
17 1-18C for the purpose of clarifying and amending the
18 succession of General Counsel, delegating the duties
19 to a career staffer, and not at the discretion of the
20 Staff Director until a permanent General Counsel is
21 named. And further move that these changes take
22 effect immediately. So, have those been distributed?

23 Okay. After we distribute these, I'm
24 going to read the motion, the first motion, and then
25 we can take a break so everyone can read them. We'll

1 take, if the Chair agrees, a 5-minute recess. But let
2 me just read into the record the first motion.

3 COMMISSIONER HERIOT: Wait. That's not
4 what's being passed out. This is just rules that
5 already exist?

6 COMMISSIONER CASTRO: It's a modification
7 of the rule. And I'll --

8 COMMISSIONER HERIOT: I take it there's no
9 typewritten motion at this point. Is that right?

10 COMMISSIONER CASTRO: Well, I'm going to -
11 - my motion is that the --

12 COMMISSIONER HERIOT: We don't have copies
13 of it.

14 COMMISSIONER CASTRO: -- that we adopt
15 this proposed 1-18C Administrative --

16 VICE CHAIR THERNSTROM: I've got them in
17 my hand.

18 COMMISSIONER CASTRO: There's two of them.

19 COMMISSIONER HERIOT: Okay.

20 COMMISSIONER CASTRO: So, the first one is
21 Administrative Manual. It's a motion to amend the
22 Administrative Manual, Administrative Instruction 1-
23 18C, Office of the General Counsel. Section 1,
24 "Purpose. The purpose of this Administrative
25 Instruction (AI) Office of General Counsel --

1 COMMISSIONER GAZIANO: I'm glad to move to
2 consider it as read into the record, if someone
3 doesn't -- unless you want to read it.

4 COMMISSIONER CASTRO: I don't,
5 necessarily, have to read it. I just wanted to try to
6 provide you some opportunity to look at it. So, I
7 move that this --

8 COMMISSIONER GAZIANO: I move to have this
9 entered into the record as if it were read.

10 VICE CHAIR THERNSTROM: Second.

11 COMMISSIONER GAZIANO: Would you -- if
12 we're proceeding on -- now, this does seem to be both
13 important, and violate the rule that we share
14 important lengthy motions with each other beforehand,
15 but would you tell me, as I -- maybe if you just give
16 -- I could read it a little bit better, and
17 concentrate a little bit better if I was -- but what
18 is the main change that 1-18C does?

19 COMMISSIONER CASTRO: What it does is, in
20 the absence of the General Counsel --

21 COMMISSIONER GAZIANO: Okay.

22 COMMISSIONER CASTRO: -- and by absence,
23 we define that by inability of an employee to carry
24 out his or her legal function due to vacancy of the
25 position, travel, vacation, or for any other reason,

1 so in the absence of a General Counsel, we want to
2 have orally a system of delegation of authority, so
3 when the General Counsel is absent, the Deputy General
4 Counsel would assume the authority, and manage the
5 Office of General Counsel, so they would keep the line
6 of succession within the General Counsel's office to
7 career staffers. So, when the General Counsel and the
8 Deputy General Counsel are both absent, then the
9 senior attorney in the office of the General Counsel
10 would assume the duties of Acting General Counsel.

11 COMMISSIONER GAZIANO: What's sort of
12 interesting about this is, there aren't so many
13 General Counsels currently in the General Counsel
14 office that could --

15 COMMISSIONER CASTRO: Maybe one day there
16 will be. Right?

17 COMMISSIONER HERIOT: Wait. This
18 substitutes the Acting Deputy -- now, hold on. This
19 person would then take the position of the Staff
20 Director. Is that right?

21 COMMISSIONER CASTRO: There's a second
22 motion, so that's 1-18(b). I'm not dealing with that
23 one right now. There's two separate motions, one on
24 1-18B, which is as to the succession of the General
25 Counsel, and there's going to be a separate motion

1 after we get through this one with the succession of
2 the Staff Director.

3 COMMISSIONER HERIOT: I can't take this
4 this quickly.

5 COMMISSIONER CASTRO: Okay.

6 COMMISSIONER CASTRO: We'll take -- should
7 we take a recess, Madam Chair?

8 COMMISSIONER GAZIANO: We could, but why
9 is this necessary that we take this up at this
10 meeting? We don't -- hopefully, we won't have any
11 further vacancies from the Office of General Counsel
12 in the next --

13 COMMISSIONER CASTRO: I think it's
14 important to, as we begin -- as we come into our
15 positions as Commissioners to have folks who are
16 wearing multiple hats not have to wear so many
17 multiple hats. And one of the folks who's wearing a
18 lot of hats is our Acting General Counsel, Acting
19 Staff Director, and I think there's another hat or
20 two. So, I think it's just important to begin to
21 identify separate folks to begin to do these very
22 important functions.

23 Would you like to take a recess to take a
24 closer look at them?

25 COMMISSIONER HERIOT: No, this is not what

1 we're used to. We're used to having these things long
2 before.

3 VICE CHAIR THERNSTROM: Oh, I wish that
4 were the case.

5 COMMISSIONER HERIOT: You know it is,
6 Abigail.

7 COMMISSIONER GAZIANO: We defer many times
8 when people have objected to not having motions
9 beforehand. But is the effect of both of these
10 motions together to displace the Acting Staff
11 Director?

12 COMMISSIONER CASTRO: Right now I am only
13 focused on the General Counsel.

14 COMMISSIONER GAZIANO: Is the effect of
15 both of these motions to displace the Acting Staff
16 Director?

17 COMMISSIONER ACHTENBERG: If you were to
18 adopt both motions, the Acting Staff Director would
19 assume his prior position, and there would be a new
20 Acting Staff Director. That's right.

21 COMMISSIONER GAZIANO: And the Acting
22 Staff Director would be from the General Counsel's
23 office.

24 COMMISSIONER ACHTENBERG: Correct.

25 COMMISSIONER GAZIANO: That's what I

1 thought.

2 COMMISSIONER HERIOT: Who would be the
3 Acting Staff Director?

4 COMMISSIONER GAZIANO: I'd like a recess.

5 COMMISSIONER CASTRO: Sure.

6 VICE CHAIR THERNSTROM: Five-minute
7 recess. I'm sorry. Let's really make it five
8 minutes, folks, so we're at 4:11, we're back here.

9 (Whereupon, the proceedings went off the
10 record at 4:09 p.m., and resumed 4:35:36 p.m.)

11 VICE CHAIR THERNSTROM: Okay. We continue
12 the meeting, and Commissioner Gaziano has his hand up.

13 COMMISSIONER GAZIANO: The record of the
14 Commission will reflect that I have objected, and I
15 think Commissioner Heriot will speak for herself, but
16 she has, as well, to Commissioners leaving meetings to
17 defeat quorum for insignificant reasons. I said I
18 wouldn't do that, but I consider the procedural
19 motions before us today to constitute such grounds
20 that would justify leaving. But since my new
21 Commissioners aren't aware of all that history, and I
22 think that I can proceed. But I don't think that -- I
23 think is just terribly misguided, the way that this is
24 done.

25 I cannot vote for these as they are. I

1 have not talked to Chris, but we at least had the
2 courtesy of asking Chris when we amended the AI to put
3 him -- because we figured that our previous Staff
4 Director might leave, we asked him whether he was
5 willing to serve. So, I did spend a few minutes
6 talking to Kim, whether she was willing to serve,
7 because I think before I vote, I at least wanted to
8 know that.

9 If you will substitute -- if the
10 Commission, and I don't want to hear why, because we
11 should have gone into Executive Session if we were
12 going to be engaging in these sort of personnel votes
13 that actually replace people in their current
14 positions, so I think it's improper to explain reasons
15 why you want to make this substitute. But if you
16 would just move to substitute Kim for Chris as Acting
17 Staff Director, or Delegated the Authority of Staff
18 Director, since that term came up before, I will
19 actually vote for it.

20 I want to be clear that that is certainly
21 no vote of confidence, or lack of confidence in Chris.
22 I just suspect he would be glad to leave, go back to
23 his old job. But I think that in our Commission's
24 history, someone who's acting in the Office of Civil
25 Rights Evaluation has always been in line of

1 succession, should be in the line of succession. We
2 shouldn't play games with the order of succession for
3 that reason.

4 I know Chris has had to put up with a lot,
5 including wrongful cancellation of the January
6 briefing, and other actions of a rather domineering
7 acting chair, and I assume that he'd be glad to leave.

8 So, with that understanding, I'd be glad to vote for
9 the motion if it was recast. I'm not going to be able
10 to vote for them as they are.

11 COMMISSIONER CASTRO: Commissioner Heriot
12 had something to say.

13 VICE CHAIR THERNSTROM: Oh, I'm sorry,
14 Commissioner Heriot.

15 COMMISSIONER HERIOT: I just wanted to say
16 that with new people on board, sometimes people get
17 confused about the traditions and the procedures that
18 are ordinarily used. This is not what we ordinarily
19 do. I would urge all of the new people to read a
20 number of the briefing, not briefing transcripts, but
21 meeting transcripts, and you'll see -- sometimes
22 motions have been made that aren't -- I'm sorry.
23 Sometimes motions that are made seem kind of last
24 minute, but not as last minute as this. We've always
25 gotten them written.

1 With this, there's not much I can do with
2 this, because I can't see what the original AI looked
3 like. Also, very disappointing when asking what is
4 this for, and instead of telling me oh, we're
5 substituting Kim for Chris, you know, it was very
6 unclear what was being done.

7 If you want to substitute Kim for Chris,
8 make the motion. I think they both do a wonderful
9 job. I think Chris has had a miserable time in the
10 last few weeks, so it wouldn't shock me if Chris were
11 to cast his own vote on this one.

12 VICE CHAIR THERNSTROM: Except he doesn't
13 have a vote.

14 COMMISSIONER HERIOT: I know. But I won't
15 mind if you vote on this one, Chris. Really, I would
16 very much urge you guys to read transcripts of
17 previous meetings, because I think that will give you
18 a sense of what kind of procedural problems we've run
19 into, and what side of the issues various people have
20 been on at various times.

21 And, again, I think it's a very bad idea
22 to vote on an AI on something as important as this.
23 Just to make a change that you want to make, you don't
24 want to have AIs that are bad in place in the future.

25 COMMISSIONER GAZIANO: And a point of

1 clarification. Commissioner Castro, I appreciated
2 your honesty. I didn't -- I just think whatever the
3 plan was, to do it like this is not good. You could
4 have just -- whoever -- but I'm glad you told me at
5 the beginning of the meeting. I sort of knew, could
6 have guessed based on your honest answer that
7 something was afoot, and thank you, Commissioner
8 Achtenberg, for sort of helping me put two and two
9 together. But with that, I'm willing to vote on the
10 motions you have with the understanding of how I'm
11 going to vote, or if we can come up with a substitute
12 motion to put in place Ms. Tolhurst.

13 VICE CHAIR THERNSTROM: May I just say
14 before anybody says anything else, I do not believe
15 that in any way, in any form I have been
16 "domineering." I am really a little bit tired of the
17 adjectives thrown my way, and the incivility. And I
18 don't think, again, there was anything improper in
19 what I did. But with that, let us proceed. Should I
20 call the question?

21 COMMISSIONER CASTRO: Yes, call the
22 question. This is not about persons or personalities.
23 Just about the process.

24 COMMISSIONER GAZIANO: The process is a --
25 I view this as the motions could have been shared,

1 they should have been shared, and certainly they
 2 shouldn't have been done in this manner. And it
 3 really doesn't make sense that we change the order of
 4 succession this way. And I think everyone knows that.

5 But if that's what you prefer to vote on, then that's
 6 fine.

7 COMMISSIONER CASTRO: It's my
 8 understanding the order of succession had been changed
 9 in December, so we're changing it back to what we
 10 believe it should be.

11 COMMISSIONER GAZIANO: No, I --

12 VICE CHAIR THERNSTROM: Okay. Look, I'm
 13 going to call the question. We're not going to argue
 14 about this. The motion -- are we doing 1-18B and then
 15 1-18C? You've made a motion only --

16 COMMISSIONER CASTRO: We have a motion --
 17 we distributed them together, but we made a motion
 18 initially as to 1-18C. So, we could take them
 19 separately, or together.

20 VICE CHAIR THERNSTROM: Let's take them
 21 together.

22 COMMISSIONER CASTRO: Okay. So, the
 23 motion -- I'm sorry? We should take them separately?
 24 Let's take them separately.

25 VICE CHAIR THERNSTROM: You can take them

1 separately, that's fine.

2 COMMISSIONER CASTRO: We have a motion
3 already pending on the floor regarding 1-18C.

4 VICE CHAIR THERNSTROM: 1-18C. Yes, okay.
5 And it has been seconded. All in favor?

6 (Chorus of ayes.)

7 COMMISSIONER HERIOT: Call for a vote.
8 Say, it's your job to say all opposed?

9 VICE CHAIR THERNSTROM: All opposed?
10 Instead of pointing my finger at -- waiting for you to
11 say I am opposed. All opposed, or any abstentions?

12 COMMISSIONER HERIOT: I abstain.

13 VICE CHAIR THERNSTROM: Heriot abstains.

14 COMMISSIONER GAZIANO: If they're done
15 individually, I'll abstain on this one and vote --

16 VICE CHAIR THERNSTROM: Two abstentions,
17 four yeas. It is adopted. Okay, now we move to
18 18(b). We move -- you want to make a motion?

19 COMMISSIONER ACHTENBERG: I move the
20 resolution regarding 18(b), provided it can be adopted
21 without having been read into the record.

22 COMMISSIONER CASTRO: Second.

23 VICE CHAIR THERNSTROM: Okay. Do we need
24 any further discussion? We have discussed it. I'm
25 calling the question. All in favor?

1 (Chorus of ayes.)

2 VICE CHAIR THERNSTROM: All opposed, or
3 any abstentions?

4 COMMISSIONER GAZIANO: No, just based on
5 the order of succession, and with the understanding
6 that I've said before, that it doesn't reflect
7 negatively at all on the persons who the majority of
8 the Commission are trying to have advanced.

9 COMMISSIONER CASTRO: Absolutely.

10 VICE CHAIR THERNSTROM: Okay, so --

11 COMMISSIONER HERIOT: I'm abstaining on
12 the ground that I don't see how I can possibly vote on
13 this given how --

14 VICE CHAIR THERNSTROM: Okay. Heriot is
15 abstaining, Gaziano votes no. The motion has passed.
16 I think we're at the end of the meeting.

17 COMMISSIONER CASTRO: We have a State
18 Advisory Committee --

19 V. STATE ADVISORY COMMITTEE ISSUES

20 VICE CHAIR THERNSTROM: Oh, the State
21 Advisory. Sorry. The Vermont SAC.

22 COMMISSIONER CASTRO: Alabama, we have a
23 motion on Alabama. No? Right?

24 VICE CHAIR THERNSTROM: Right. This is
25 first to approve the Vermont SAC Chair. Somebody make

1 a motion?

2 COMMISSIONER CASTRO: So moved.

3 VICE CHAIR THERNSTROM: I'll second it.

4 Any changes, discussions questions on the Vermont SAC
5 Chair, only.

6 COMMISSIONER GAZIANO: And who is the
7 nominee for Vermont Chair?

8 COMMISSIONER CASTRO: Diane Snelling.

9 COMMISSIONER GAZIANO: That's what I
10 thought it was. I just thought the record needed to
11 reflect.

12 VICE CHAIR THERNSTROM: Yes. Okay. Sorry
13 about that. End of a long day. Any discussion, any
14 questions? All right. Let's have a vote. What are
15 the ayes?

16 (Chorus of ayes.)

17 VICE CHAIR THERNSTROM: Is there any
18 abstentions, and --

19 COMMISSIONER HERIOT: Ask for nos, in case
20 there are nos.

21 VICE CHAIR THERNSTROM: I think it was
22 unanimous.

23 COMMISSIONER HERIOT: Yes, but instead of
24 asking for -- you asked for ayes, ask for nos, ask for
25 abstentions. If you think there might be an

1 abstention, then you must think that somebody hasn't
2 voted who might be a no.

3 VICE CHAIR THERNSTROM: All right, Gail.
4 It's been a long day. That was a unanimous vote. And
5 now the Alabama. Can I have a motion on Alabama?

6 COMMISSIONER TITUS: Madam Chairman.

7 VICE CHAIR THERNSTROM: Yes.

8 COMMISSIONER TITUS: I'd move at this time
9 we postpone the re-chartering of the Alabama SAC and
10 ask the Staff Director to address certain problems
11 that have arisen, so we can improve the ideological
12 balance of that SAC.

13 COMMISSIONER CASTRO: Second.

14 COMMISSIONER GAZIANO: May I ask the --
15 your thoughts on what the problems were? It looks
16 like one of the most balanced SACs that I've seen in a
17 number of years. Let me look at the --

18 COMMISSIONER TITUS: I think if you look
19 at the party distribution, you find it's pretty out of
20 whack.

21 COMMISSIONER GAZIANO: I think -- well,
22 let's go through that. Let's get exact -- according to
23 their self-identification, it's five Republicans, four
24 Democrats, and four Independents. That's about as
25 balanced as it comes. Is that not balanced in your

1 view?

2 COMMISSIONER TITUS: Well, sometimes it's
3 not just about party labels, it's about ideological
4 views. And I think the three of the Independents have
5 made public statements, or statements on the record
6 that indicate that they are very conservative, so I
7 would see that as out of balance, yes.

8 COMMISSIONER GAZIANO: That's not what you
9 said the first time.

10 COMMISSIONER TITUS: Well, I'll correct
11 myself. I'm sorry I misspoke.

12 COMMISSIONER GAZIANO: Okay. I haven't
13 studied them in detail, but I have reviewed, and I
14 disagree with that kind of characterization. What
15 kind of -- I don't know that I want to go through who
16 you think is this, that, or the other, but --

17 COMMISSIONER CASTRO: We shouldn't do
18 that.

19 COMMISSIONER GAZIANO: Well, we have in
20 certain circumstances, but just in general, what's the
21 proper balance? This seems about as balanced as we've
22 come.

23 COMMISSIONER TITUS: I'm only asking that
24 we postpone this re-chartering so we can get some
25 questions answered, and the Staff Director can look

1 into it, and maybe see about recruiting some
2 additional members, and at that time --

3 VICE CHAIR THERNSTROM: And report back to
4 us at the next meeting. I would assume that's what
5 you would like.

6 COMMISSIONER TITUS: That would be fine.

7 COMMISSIONER HERIOT: What is it that the
8 Staff Director is going to be asked to do? And what is
9 she supposed to report back on?

10 COMMISSIONER TITUS: I don't want to put
11 on the record any kind of personal accusations at this
12 point, so we've asked the staff to provide some
13 information about the backgrounds of the different
14 members, some of their public statements, recruit and
15 see if there are other members, maybe former members
16 who'd like to come back or something, if that fits the
17 rules, just so we can have a wider choice, and be sure
18 we're coming up with the best composition possible.

19 COMMISSIONER GAZIANO: Yes, one of the --
20 we do, normally, perhaps in some extenuating
21 circumstances allow reappointments. Most of the SAC
22 are reappointments, as I recall, so that's going to
23 limit the new Acting Staff Director's authority.

24 VICE CHAIR THERNSTROM: I'm calling the
25 question. All in favor?

1 (Chorus of ayes.)
2 VICE CHAIR THERNSTROM: All opposed?
3 COMMISSIONER GAZIANO: Nay.
4 VICE CHAIR THERNSTROM: Commissioner
5 Heriot, how do you vote?
6 COMMISSIONER HERIOT: Please call for
7 abstentions.
8 VICE CHAIR THERNSTROM: All abstentions.
9 COMMISSIONER HERIOT: That would be me.
10 VICE CHAIR THERNSTROM: Thank you. I hope
11 the court reporter has that, one nay, one abstention,
12 the rest are ayes. The meeting is adjourned.
13 COMMISSIONER CASTRO: We have the Minutes.
14 VICE CHAIR THERNSTROM: I need a motion to
15 adjourn it, actually.
16 COMMISSIONER CASTRO: What about the
17 Minutes?
18 DELEGATED THE AUTHORITY OF THE STAFF
rd
19 DIRECTOR BYRNES: The Minutes from December 3 .
20 VICE CHAIR THERNSTROM: Oh.
21 COMMISSIONER CASTRO: We have to approve
rd
22 the Minutes of December 3 .
23 VI. APPROVAL OF DECEMBER 3, 2010
24 MEETING MINUTES
25 COMMISSIONER CASTRO: I move that we

1 approve the Minutes of December 3 .

2 COMMISSIONER GAZIANO: Second.

3 COMMISSIONER CASTRO: Call the question.

4 VICE CHAIR THERNSTROM: Calling the
5 question.

6 (Chorus of ayes.)

7 VICE CHAIR THERNSTROM: All right.
8 Unanimous approval for the Minutes of December 3.

9 VII. ADJOURN

10 COMMISSIONER GAZIANO: I move to adjourn.

11 VICE CHAIR THERNSTROM: Second.

12 COMMISSIONER ACHTENBERG: Without
13 objection.

14 COMMISSIONER CASTRO: By acclamation.

15 VICE CHAIR THERNSTROM: By acclamation.

16 (Whereupon, the proceedings went off the
17 record at 4:51 p.m.)

A				
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Before: US CCR

Date: 02-11-11

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