

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, APRIL 8, 2011

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The Commission convened in Room 540 at 624
Ninth Street, Northwest, Washington, D.C. at 9:30
a.m., MARTIN R. CASTRO, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ABIGAIL THERNSTROM, Vice Chair

ROBERTA ACHTENBERG, Commissioner

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (via telephone)

DINA TITUS, Commissioner

KIMBERLY TOLHURST, Delegated the Authority of
the Staff Director

STAFF PRESENT:

JORDYNE BLAISE

THERESA BROOKS

CHRISTOPHER BYRNES, Senior

Attorney-Adviser to the Office of the
Staff Director

DEMITRIA DEAS

ALFREDA GREENE

TINALOUISE MARTIN, Director, OM

LENORE OSTROWSKY, Acting Chief, PAU

JOHN RATCLIFFE, Chief, Budget and Finance

MICHELLE RAMEY-YORKMAN

MICHELE ROYSTER

EILEEN RUDERT

DAVID SNYDER, Attorney-Adviser

VANESSA WILLIAMSON

AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN

ALEC DEULL

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

ALISON SOMIN

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

2 (9:36 a.m.)

3 CHAIRMAN CASTRO: Before we all have to go
4 on furlough, we're going to call the meeting to order
5 at I believe 9:38 is the exact time on April 8, 2011.

6 This is a business meeting of the U.S.
7 Commission on Civil Rights. The meeting is taking
8 place here at the Commission headquarters located at
9 624 9th Street, Northwest in Washington, D.C.

10 I am Chairman Marty Castro. The
11 commissioners who are present in the room with us
12 today include myself, our Vice Chair Thernstrom,
13 Commissioner Gaziano, Commissioner Heriot,
14 Commissioner Titus, and Commissioner Achtenberg, and
15 Commissioner Kirsanow is participating by phone.

16 Do we need a motion to allow him to
17 participate by phone? No? Okay. Based on that, a
18 quorum of the commissioners is present.

19 And the person delegated with the
20 authority of the Staff Director, are you present?

21 DELEGATED THE AUTHORITY OF THE STAFF
22 DIRECTOR TOLHURST: I am, just barely.

23 CHAIRMAN CASTRO: Is the court reporter
24 present?

25 THE REPORTER: I am.

1 CHAIRMAN CASTRO: Yes. Okay. So the
2 meeting will come to order.

3 I. APPROVAL OF AGENDA

4 CHAIRMAN CASTRO: The first item on our
5 agenda is the approval of the agenda. Do we have any
6 motions to amend the agenda?

7 COMMISSIONER HERIOT: Mr. Chairman, I've
8 got a motion to amend the agenda. This motion was
9 handed out in electronic form a few days ago. I
10 believe that this morning each member of the
11 commission who was present here was given a hard copy
12 of the motion.

13 I would like to amend the agenda to
14 include a discussion of providing the sex
15 discrimination and admissions project. And during
16 that discussion, I would plan to offer a motion to
17 revive that project or a motion to make the data
18 collected for that project available to the public.

19 I think we made a mistake in canceling
20 this project. And, looking back at the transcripts of
21 our earlier meetings, the problems that some members
22 of the Commission thought that the project had, these
23 problems were already acknowledged early on. And I
24 think that that has been detailed here in the written
25 motion, which I assume everyone has had a chance to

1 look at.

2 CHAIRMAN CASTRO: Okay. Commissioner, you
3 have motion to amend the agenda. So let's get a
4 second on that motion and deal with --

5 COMMISSIONER GAZIANO: Second.

6 CHAIRMAN CASTRO: Okay. So we have a
7 motion to amend the agenda pending before us. Do you
8 have a discussion on the motion to amend? Yes?

9 COMMISSIONER GAZIANO: Yes. I have a
10 procedural reason to want a fuller discussion and a
11 substantive one. The procedural matter that I raised
12 previously with you, Mr. Chairman, is that there's
13 been some discussion about what our practice is in
14 sharing motions with each other in anticipation of
15 meetings to give each other at least a reasonable
16 notice so that they can prepare for that discussion.

17 Some have said that unless an important
18 substantive motion is circulated seven days in advance
19 of a meeting, it should be out of order. I disagreed
20 with that, but I think that the unanimous view of the
21 Commission in the past -- and I hope it is one that we
22 all would agree with today -- is that we have to
23 provide at least as much reasonable notice as we can
24 to each other of a substantive motion that would
25 require or would help with preparation.

1 The motion last month to kill this
2 18-month investigation, there was no notice provided.

3 And, quite frankly, I was caught by surprise. I
4 think Commissioner Heriot was caught by surprise. And
5 Commissioner Kirsanow can speak for himself. But
6 given that they were the two who were serving on the
7 subcommittee, I think some of the arguments that were
8 made in support of killing it were -- you needed some
9 additional studies.

10 So that's why I think that we need -- let
11 me kill that. I'm sorry. I'll turn off that -- need
12 some further discussion. My substantive argument is I
13 don't think that we properly considered the
14 implications of the precedent that we would set if we
15 killed the sex discrimination investigation on the
16 grounds that were offered by those who supported it,
17 including that there were data imperfections, data
18 inconsistencies.

19 So I think that this is certainly worthy
20 of a discussion. And that's all that I ask for from
21 the Commission.

22 CHAIRMAN CASTRO: Okay. You know, we
23 received a motion. I'm sorry. You had one thing to
24 add?

25 COMMISSIONER HERIOT: A couple of things

1 to add. One, let the record reflect when Commissioner
2 Gaziano said, "Let me kill that," he did not mean his
3 previous remarks. He meant his Blackberry.

4 COMMISSIONER GAZIANO: Indeed.

5 (Laughter.)

6 COMMISSIONER HERIOT: And, second, just
7 the particular arguments that were made for killing
8 this particular project, you know, some people were
9 concerned that a few of the schools were not likely to
10 turn up statistically significant evidence. That was
11 already anticipated at the time that this study was
12 adopted.

13 Dr. Lerner, who has since passed away, is
14 the one who designed this, this study. And I know he
15 was very, very interested in it and considered it
16 something that was important to him. At the time he
17 was working on it, the last thing he said to me was
18 that this study was what was keeping him going. And I
19 know I would like to have it get finished.

20 He understood that there would likely be
21 some schools that were not going to deliver
22 significant data to us. And that's why he wanted to
23 do -- I think he said 15 at the time were originally
24 talked about it in the meeting. We ended up doing 18.

25 He was hoping to get 10 or 12 out of those, and we've

1 got more than that at this point.

2 But, again, the reason that a large number
3 of schools were studied was precisely because there
4 was going to be a likelihood that some of them would
5 not completely pan out.

6 As for looking at schools in a particular
7 geographic location, it was at the time far more
8 important, continues to be far more important that you
9 have different kinds of schools, rather than different
10 parts of the country that are concerned. That's why
11 he designed it the way that he did, and I think it is
12 the right design.

13 DELEGATED THE AUTHORITY OF THE STAFF
14 DIRECTOR TOLHURST: I have some comments as well, but
15 I think just a motion to put on the --

16 CHAIRMAN CASTRO: Yes, yes.

17 COMMISSIONER GAZIANO: May I ask you --

18 CHAIRMAN CASTRO: I'm going to -- I'm
19 sorry?

20 COMMISSIONER GAZIANO: Mr. Chair, I just
21 didn't hear whether Commissioner Kirsanow was actually
22 -- Commissioner Kirsanow, if you are on the line,
23 would you respond?

24 COMMISSIONER KIRSANOW: Yes, I am.

25 COMMISSIONER GAZIANO: Okay. Just wanted

1 to know that you are with us. Thank you.

2 CHAIRMAN CASTRO: I did ask him earlier.

3 COMMISSIONER GAZIANO: I didn't hear.

4 Okay. Sorry.

5 CHAIRMAN CASTRO: I understand what you're
6 saying. And we are just voting on the motion to amend
7 at this point, but I did this. You know, we had some
8 e-mail exchanges last week about this as well. And,
9 as I said then and I'll repeat now, I looked
10 thoughtfully at rereading Mr. Byrnes' report last
11 time, upon which the vote was based at the last
12 meeting.

13 I looked back on the minutes of our last
14 meeting, actually also minutes of prior meetings, and
15 looked at other summaries of the report and
16 thoughtfully have looked at this motion and its
17 underlying memo in support of it. And, you know, I
18 don't see anything here that changes the decision we
19 made before.

20 So, as I said, then, I don't see that this
21 is something that should be on our agenda.

22 Unless anyone else has a comment on that,
23 I would like to call the question and vote on your
24 motion to amend.

25 COMMISSIONER KIRSANOW: Mr. Chair, I do

1 have a comment.

2 CHAIRMAN CASTRO: Sure, Commissioner
3 Kirsanow?

4 COMMISSIONER KIRSANOW: I would like to
5 argue in favor of putting it on the agenda for further
6 discussion. And one of the reasons, therefore, in
7 addition to the reasons mentioned by Commissioners
8 Gaziano and Heriot is that it clearly in my estimation
9 is an important inquiry, but it is also an inquiry
10 from which we have devoted a certain amount of
11 resources over the last 16 to 18 months, not the least
12 of which our Commission staffing resources.

13 It's not to say that at any given time,
14 they can't decide as a body to go in a different
15 direction. But given the fact that we have the very,
16 very limited budget, that we've got limited resources
17 and limited staff, it seems to be an unfortunate and
18 colossal waste of our resources to abandon the
19 investigation that is fairly far down the road and
20 really just requires coalition of the data that
21 analysis is in writing the report.

22 So, again, I would argue in favor of
23 putting this on the agenda.

24 CHAIRMAN CASTRO: Thank you, Commissioner
25 Kirsanow.

1 I am going to call the question. I know
2 that resources are an issue. And expending additional
3 resources to address some of the flaws is something
4 that is also of concern. But we will call the
5 question.

6 All those in favor of the motion? Well,
7 let me ask you. I'll go around individually.
8 Commissioner Heriot, how do you vote on the motion?

9 COMMISSIONER HERIOT: Yes

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

12 COMMISSIONER GAZIANO: Yes.

13 CHAIRMAN CASTRO: I vote against it.
14 Commissioner -- I should say Vice Chair Thernstrom,
15 how do you vote on the motion?

16 VICE CHAIR THERNSTROM: I'm voting against
17 it.

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

20 COMMISSIONER KIRSANOW: Yes.

21 CHAIRMAN CASTRO: Commissioner Titus, how
22 do you vote on the motion?

23 COMMISSIONER TITUS: No.

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

1 COMMISSIONER ACHTENBERG: No.

2 CHAIRMAN CASTRO: The motion fails.

3 Any other motions to amend?

4 (No response.)

5 CHAIRMAN CASTRO: If not, then can we have
6 a motion to --

7 COMMISSIONER HERIOT: I'm sorry. Did you
8 vote?

9 CHAIRMAN CASTRO: Yes, I voted no.
10 So that motion fails. Did we vote to
11 approve that agenda?

12 COMMISSIONER HERIOT: No, we haven't done
13 that yet.

14 CHAIRMAN CASTRO: Okay. So do we have a
15 motion to approve the agenda?

16 COMMISSIONER ACHTENBERG: So moved.

17 CHAIRMAN CASTRO: Is there a second?

18 VICE CHAIR THERNSTROM: Second.

19 CHAIRMAN CASTRO: All those in favor,
20 signify by saying aye.

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

22 CHAIRMAN CASTRO: Any opposed?

23 COMMISSIONER HERIOT: No.

24 CHAIRMAN CASTRO: Commissioner Heriot is
25 opposed. Commissioner Gaziano?

1 COMMISSIONER GAZIANO: No, without the
2 amendment.

3 CHAIRMAN CASTRO: Okay. Commissioner
4 Kirsanow?

5 COMMISSIONER KIRSANOW: I abstain.

6 CHAIRMAN CASTRO: Okay. So the motion
7 passes.

8 II. MANAGEMENT AND OPERATIONS

9 CHAIRMAN CASTRO: The next item on the
10 agenda is the Management and Operations. The Staff
11 Director, Acting Staff Director, will provide a
12 report.

13 Ms. Tolhurst?

14 DELEGATED THE AUTHORITY OF THE STAFF
15 DIRECTOR TOLHURST: Thank you.

16 - STAFF DIRECTOR'S REPORT

17 DELEGATED THE AUTHORITY OF THE STAFF
18 DIRECTOR TOLHURST: Once again I am not going to --
19 unless you want me to lift the number of requests we
20 have gotten and calls we have gotten, but I wanted to
21 highlight a few important dates for the commissioners.
22 One is a reminder that English-only rebuttals are due
23 on April 15th. The second is a --

24 COMMISSIONER HERIOT: That's Friday,
25 right?

1 CHAIRMAN CASTRO: No. Next week, I think.

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: Yes.

4 COMMISSIONER HERIOT: Okay. Here's my
5 question on that. If there's a government shutdown
6 and I'm not allowed to work on it this weekend, do we
7 then push it out each day that there's a shutdown?

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR TOLHURST: My suggestion is it's per day.

10 COMMISSIONER HERIOT: Yes.

11 DELEGATED THE AUTHORITY OF THE STAFF
12 DIRECTOR TOLHURST: So a two-day shutdown, two-day
13 extension.

14 COMMISSIONER HERIOT: Yes.

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR TOLHURST: Is everyone amenable to that?

17 Second reminder is per the March 23rd
18 e-mail that I sent out on behalf of the Chair -- and
19 we do ask commissioners to send proposals, concept
20 papers for the 2012 statutory report. And those are
21 due to me by May 13th. We would like to avoid a
22 crunch and give staff and commissioners all of the
23 time they need to do the 2012 report. So to that end,
24 the 13th of May is the deadline for me to receive
25 those. And then I will sort of collate that and send

1 them all out to you, and you can have a discussion
2 about those reports.

3 Another reminder is that your public
4 financial disclosures are due on May 15th. We are
5 going to have a little talk about that in a few
6 minutes on the agenda.

7 Next up, OGC has been very lucky to have a
8 contract attorney, Jordyne Blaise, join us for two
9 months. Jordyne is in the first row there.

10 CHAIRMAN CASTRO: Welcome.

11 DELEGATED THE AUTHORITY OF THE STAFF
12 DIRECTOR TOLHURST: Jordyne is a graduate of
13 Georgetown Law. And, among her other experiences, she
14 did intern for the Department of Education's Office
15 for Civil Rights. So we are happy to have her help us
16 work on the current report. Welcome.

17 I wanted to note that we had a SAC member
18 who recently passed away. And I note her because Dr.
19 Irene Hill-Smith served on the New Jersey SAC
20 Committee for ten years and only left because she was
21 term limited.

22 Dr. Hill-Smith got her elementary
23 education in a one-room segregated schoolhouse in New
24 Jersey and went on to receive her doctorate in
25 humanities from Rowan University in Glassboro, New

1 Jersey.

2 She was a lifetime civil rights activist
3 and eventually became a member of the NAACP's National
4 Board of Directors and served as a National Vice
5 President of NAACP from 1967 to '79.

6 In 1966, her leadership was recognized by
7 President Johnson, who invited her to participate in a
8 White House conference on civil rights. So we
9 recognize her service and mourn her passing.

10 A final note. We are preparing for the
11 furlough. Staff has received instructions regarding
12 the same and will receive more today, our end
13 resolution. If there is a furlough at midnight
14 tonight, staff will report on Monday to complete
15 shutdown only. And that will be for a half day and no
16 more than one full day. And we have a plan that staff
17 well understands on how to function during that
18 shutdown and how to be notified of when to return to
19 work.

20 So if people have questions about that, I
21 can answer those.

22 COMMISSIONER GAZIANO: We are not
23 essential, then?

24 DELEGATED THE AUTHORITY OF THE STAFF
25 DIRECTOR TOLHURST: You're not essential. I'm not

1 essential.

2 CHAIRMAN CASTRO: I know. It's --

3 DELEGATED THE AUTHORITY OF THE STAFF

4 DIRECTOR TOLHURST: It's very sad.

5 (Laughter.)

6 COMMISSIONER GAZIANO: I can accept that,

7 but --

8 (Laughter.)

9 COMMISSIONER GAZIANO: -- who or how is
10 that determined?

11 DELEGATED THE AUTHORITY OF THE STAFF

12 DIRECTOR TOLHURST: It is determined by OPM. If you
13 were an air traffic controller or military --
14 actually, if Marty Dannenfelser were here, he would
15 have been essential because he's a salaried
16 presidential appointee with no vacation day
17 requirements, rather than hourly, which you all are,
18 but an acting person in his role is not essential. So
19 we have --

20 COMMISSIONER HERIOT: Oh, really? So we
21 actually are worse off this time around than we would
22 have been in a different --

23 VICE CHAIR THERNSTROM: It's not going to
24 last long.

25 COMMISSIONER HERIOT: I'm not too worried.

1 CHAIRMAN CASTRO: Do we have any questions
2 for our Acting Staff Director based on her
3 presentation or her written report that was circulated
4 in advance?

5 (No response.)

6 CHAIRMAN CASTRO: Hearing none, then we
7 will move on to the Ethics Officer presentation. Is
8 this something you can do, at least a portion of, in
9 open session? Do we need a closed session for this?

10 ACTING GENERAL COUNSEL TOLHURST: It needs
11 a closed session.

12 CHAIRMAN CASTRO: Okay. So please?

13 III. ETHICS OFFICER PRESENTATION

14 ACTING GENERAL COUNSEL TOLHURST: Okay.
15 As General Counsel, I certify that this meeting can be
16 closed and --

17 COMMISSIONER HERIOT: You wear different
18 hats, too?

19 ACTING GENERAL COUNSEL TOLHURST: As
20 General Counsel --

21 (Laughter.)

22 ACTING GENERAL COUNSEL TOLHURST: -- I
23 certify that this meeting can be closed and the
24 information pertaining to the same may be withheld
25 pursuant to the following exemptions provided for in

1 Commission regulations at 45 CFR 702.53. That's
2 exemption 2, when a meeting is likely to disclose
3 information relating solely to internal personnel
4 rules of the Commission.

5 And then what you would do is take a vote
6 on that.

7 CHAIRMAN CASTRO: Okay.

8 ACTING GENERAL COUNSEL TOLHURST: And then
9 you will announce who may stay in the room.

10 CHAIRMAN CASTRO: Okay.

11 COMMISSIONER GAZIANO: Could we hear who
12 you propose or who we propose to stay in the room? Is
13 it possible that our special assistants can remain?

14 CHAIRMAN CASTRO: Yes, that's
15 contemplated.

16 ACTING GENERAL COUNSEL TOLHURST: They are
17 also a public financial filer. So they should stay in
18 the room.

19 CHAIRMAN CASTRO: Okay. So let's take a
20 vote on the motion to go into closed session. All
21 those in favor say aye.

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

23 CHAIRMAN CASTRO: Any opposed?

24 (No response.)

25 CHAIRMAN CASTRO: Any abstentions?

1 (No response.)

2 CHAIRMAN CASTRO: No? So it's unanimous.

3 (Whereupon, the foregoing matter went off
4 the record at 9:52 a.m. and reconvened in executive
5 session. The open session was reconvened at 10:43
6 a.m., as follows.)

7 CHAIRMAN CASTRO: Okay. Here comes the
8 public. Commissioner Kirsanow, are you still there?

9 COMMISSIONER KIRSANOW: Yes.

10 CHAIRMAN CASTRO: Okay. Welcome back,
11 everyone. Thank you. And apologies for having to
12 step out. We're back in session in order.

13 IV. PROGRAM PLANNING

14 CHAIRMAN CASTRO: Next on the agenda is an
15 update on our statutory report under "Program
16 Planning." Does the Acting General Counsel have any
17 information for us?

18 DELEGATED THE AUTHORITY OF THE STAFF

19 DIRECTOR TOLHURST: I do.

20 COMMISSIONER GAZIANO: How about the
21 Acting Staff Director?

22 CHAIRMAN CASTRO: Did I say General
23 Counsel?

24 COMMISSIONER GAZIANO: You did.

25 CHAIRMAN CASTRO: I'm sorry. Staff

1 Director.

2 COMMISSIONER GAZIANO: I just want to know
3 under each capacity.

4 ACTING GENERAL COUNSEL TOLHURST: The
5 General Counsel.

6 CHAIRMAN CASTRO: Okay. This is your
7 General Counsel capacity. Okay. I had it right, for
8 the record.

9 - UPDATE ON INTER-STUDENT VIOLENCE REPORT

10 ACTING GENERAL COUNSEL TOLHURST: I'm
11 going to give an abbreviated little update. I assume
12 there will be some questions. Basically some thought
13 went into these, and the project proposal was
14 approved. That was on March 11th.

15 On March 15th, OGC distributed a project
16 proposal and timeline. The timeline is extremely
17 aggressive and puts extreme demands on staff.

18 On March 18th, OGC served discovery on the
19 Departments of Education and Justice. Discovery is
20 due to OGC April 18th, barring shutdown. And,
21 similarly, they are giving a day-per-day extension on
22 their discovery if needed.

23 On March 18th also, OGC provided
24 commissioners with copies of those requests.

25 We will have a briefing on May 13th. And

1 we currently have 17 confirmed panelists. Actually, I
2 believe that's 18 now. And that would be out of 20.
3 Commissioners will receive an initial draft.

4 CHAIRMAN CASTRO: Any questions?
5 Commissioner Gaziano?

6 COMMISSIONER GAZIANO: Since this is our
7 first meeting after the time line was proposed --
8 well, first of all, before I say that, I do want to
9 commend the Acting General Counsel, Acting Staff
10 Director, and all of the staff involved. This is a
11 switch that I was not necessarily in favor of, but it
12 does seem like you have all been doing a great job
13 under the constraints.

14 I did want to draw to the other
15 commissioners' attention a few issues under the
16 timeline. And I suppose there's no good answer given
17 where we are in the process right now, but I do want
18 to draw one particular problem I think to your all's
19 attention and see if we can figure out an adjustment
20 together.

21 There is no opportunity in the current
22 timeline for the staff to receive comments from
23 commissioners on what is now called the final draft,
24 but we typically have always had a second draft and
25 prior to the vote.

1 And they, we're going to receive an
2 initial draft, which is going to be very difficult for
3 staff seven days after the briefing. I assume they
4 are already working or will already be working on the
5 report prior to the briefing.

6 But that initial draft may have a lot more
7 issues that we will address. We will provide our
8 comments to the staff. And then they will circulate
9 what is now called the final draft on July 29. And
10 we're supposed to vote roughly two weeks later on it.

11 That final, what's now called that final,
12 draft, maybe I've convinced the staff in my comments
13 to completely cut. You know, they've been completely
14 convinced by Pete and I to cut. And then the final
15 draft is supposedly circulated to us.

16 And we have no option, then, on August 12
17 under this schedule but to vote it up or down. That's
18 kind of -- that doesn't provide a very good fail-safe
19 mechanism. So I'm wondering if we can get a second,
20 what we'll call second, draft a little earlier. And
21 we've always had that in a period where commissioners
22 can then -- by the way, some of what we notice are
23 just nits.

24 You don't have citations here. We want to
25 clean up the -- now we can do that in the final

1 Commission vote, too. We can approve those. But we
2 don't want to be making too many substantive change
3 son the day that we need to to approve that.

4 DELEGATED THE AUTHORITY OF THE STAFF
5 DIRECTOR TOLHURST: Let me say what was skipped versus
6 the last report, you are missing something. Actually,
7 what is being cut is the first item, which would have
8 been the annotated outline on --

9 COMMISSIONER GAZIANO: We are skipping a
10 few things. But I think we can --

11 DELEGATED THE AUTHORITY OF THE STAFF
12 DIRECTOR TOLHURST: It turns out that now --

13 COMMISSIONER GAZIANO: Yes. I think we
14 can --

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR TOLHURST: -- you would have gotten a copy.

17 COMMISSIONER GAZIANO: Right.

18 DELEGATED THE AUTHORITY OF THE STAFF
19 DIRECTOR TOLHURST: You were missing one thing. And I
20 skipped. What I chose to skip was the first thing,
21 the annotated outline.

22 COMMISSIONER GAZIANO: And I think we can
23 do without that.

24 DELEGATED THE AUTHORITY OF THE STAFF
25 DIRECTOR TOLHURST: And after the annotated outline,

1 actually, what did happen under last year's report was
2 then the draft and the final draft.

3 So in terms of giving you drafts, the only
4 piece I skipped was the annotated outline. Let me say
5 again I, under direction of commissioner vote,
6 proposed this timeline, which is horrible, but it's
7 what gets it done on time. And I know that that first
8 set is being cut. And if commissioners vote to change
9 that, we'll abide by whatever you all vote on.

10 This is what lets us get it done by the
11 due date. If commissioners choose that as a priority,
12 we have half the time that we're supposed to have to
13 do this and a third of the staff. This is the
14 timeline that lets us get it done only by asking staff
15 working for me to go to pretty extreme lengths to get
16 it done.

17 And I want to talk about the briefing a
18 little bit, too. When you look back at the paths for
19 statutory reports, they actually contain no summary of
20 the briefing. I would like to change that in the
21 future because to me, that is one of the points worth
22 having the briefing is to have that information.

23 The desegregation statutory report
24 actually had no briefing. It got fogged out and they
25 chose not to reschedule it.

1 And then the last three reports, they had
2 a briefing. The briefing was not at all cited in the
3 report in a few citations. I hope and plan, if at all
4 possible, to have an appendix to this report that is a
5 briefing summary. You know, usually when you have a
6 briefing outside the statutory report, you have a
7 briefing report devoted just to that briefing.

8 That has not happened with our past four
9 statutory reports. And certainly for 2012, assuming
10 everyone votes on the topic, you will want to do that.

11 And here I am proposing to try to add more
12 information from the briefing into an appendix to
13 provide a summary, "Here is what speaker said," that
14 type of thing.

15 But what has been cut? What has been cut
16 most drastically is staff time at every step, but what
17 has been cut is there is one part on what I gave
18 commissioners. And what I chose to cut was that first
19 annotated outline, rather than one of the two drafts
20 because I think drafts are more important.

21 COMMISSIONER GAZIANO: Without going back
22 exactly, I think we did have an opportunity to provide
23 comments, even on what was called the final draft,
24 that those be incorporated and recirculated. But
25 without even arguing because when will you provide,

1 for example, the copy to the agency for affected
2 agency review? I don't see that in the schedule, but
3 you must have that in mind.

4 DELEGATED THE AUTHORITY OF THE STAFF
5 DIRECTOR TOLHURST: Sure. So --

6 COMMISSIONER GAZIANO: Does everyone have
7 a --

8 CHAIRMAN CASTRO: I don't have that with
9 me. We received it, but I didn't bring it with me.

10 COMMISSIONER GAZIANO: I don't know how
11 long. I can go over some of the critical --

12 DELEGATED THE AUTHORITY OF THE STAFF
13 DIRECTOR TOLHURST: Sure.

14 COMMISSIONER GAZIANO: -- or whether we
15 could photocopy this to share.

16 DELEGATED THE AUTHORITY OF THE STAFF
17 DIRECTOR TOLHURST: We can. I'll tell you. What I
18 did was used our AI for editorial and legal
19 sufficiency, and I did give people the minimum time
20 under the AI, but I did -

- adhere to AI, affected
21 agency review. You will have that for -- it's either
22 two or three weeks.

23 COMMISSIONER GAZIANO: Okay. Well, we
24 will receive the first draft May 20. We are to give
25 our comments back May 31. And then the so-called

1 final is almost two months later, July 29th. But the
2 affected agencies will get a copy that incorporates
3 ours some two, three weeks or so before that.

4 And what I'm wondering is if we can't
5 receive the copy and we'll call that near-final draft.

6 I don't care what we call it, but we have some time
7 to comment on that second draft. And then it's
8 recirculated at some point prior to our final vote.

9 CHAIRMAN CASTRO: And here's what I don't
10 want to happen. And maybe you're not suggesting this,
11 but I just want to make clear I don't want to do
12 anything that is going to put us behind in getting
13 this report done to Congress on time and to meet the
14 outline, the dates in the outline there. Thank you.

15 And, to that point, I know we're going to
16 talk about it in a second. You know, realize that
17 even the public comment part of it extended beyond the
18 draft period, the report being done. So, you know, we
19 want to make that adjustment as well to comply with
20 the timetable here. So with that suggestion that you
21 just made, that Commissioner Gaziano just made, do I
22 need to alter the ultimate --

23 DELEGATED THE AUTHORITY OF THE STAFF
24 DIRECTOR TOLHURST: Well, there is one important
25 problem with it. And I don't disagree at all. Again,

1 all I've done is create a timeline that meets the
2 deadline. And if commissioners vote to tell me to
3 extend anything , we will do that. And we will miss
4 the deadline.

5 CHAIRMAN CASTRO: We don't want to do
6 that.

7 DELEGATED THE AUTHORITY OF THE STAFF
8 DIRECTOR TOLHURST: Either way staff will do that.
9 The problem, Commissioner Gaziano -- and I really
10 tried to give everyone but staff as much time as
11 possible at every step -- is that if we gave you
12 another draft and then you had edits, it would have to
13 go re-editorial review and --

14 COMMISSIONER GAZIANO: Yes. And let me --

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR TOLHURST: -- redo legal sufficiency review.
17 And then that would add another --

18 COMMISSIONER GAZIANO: I don't think you
19 would need agency.

20 DELEGATED THE AUTHORITY OF THE STAFF
21 DIRECTOR TOLHURST: But we would have to redo
22 editorial. Any changes beyond little nits and
23 citations has to under our AI, we have undergo
24 editorial review and legal sufficiency review. That is
25 why --

1 COMMISSIONER GAZIANO: That may be. So
2 you do those at the end. I'm not suggesting anything
3 that moves our approval date to changes given -- and
4 so I think that meets the Chairman's concerns that
5 this be done.

6 I'm not actually suggesting any adjustment
7 from August 12 on. Those are things we previously
8 agreed to. What I'm suggesting is sometime in early
9 June the staff is going to give the agencies a copy of
10 this. Why don't we see it at the same time?

11 CHAIRMAN CASTRO: And you said because
12 ultimately changes --

13 DELEGATED THE AUTHORITY OF THE STAFF
14 DIRECTOR TOLHURST: You can see it.

15 CHAIRMAN CASTRO: -- we make will cause
16 that additional work and additional delay.

17 DELEGATED THE AUTHORITY OF THE STAFF
18 DIRECTOR TOLHURST: Correct. I don't mind at all
19 sharing it with you all, but if you have substantive
20 edits, I will have to put it through all the --

21 COMMISSIONER GAZIANO: Let me see if I
22 understand.

23 CHAIRMAN CASTRO: Yes?

24 COMMISSIONER GAZIANO: The legal
25 sufficiency or whatever review doesn't need to be done

1 until --

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: It needs to be done because we
4 don't give commissioners a final draft that isn't
5 legally correct.

6 COMMISSIONER GAZIANO: No, no. We can
7 call it the second draft, then. you don't need to do
8 the sufficiency review until you otherwise would have
9 done the sufficiency review. The only difference is
10 commissioners get -- you know, what I asked for at the
11 last meeting and I think you all will want is a
12 meaningful opportunity to express your views on this
13 report.

14 If it's good enough for the Department of
15 Justice and the Department of Education to see, I
16 think it should be good enough for commissioners to
17 see.

18 DELEGATED THE AUTHORITY OF THE STAFF
19 DIRECTOR TOLHURST: But I won't give it to the
20 Department of Justice unless I've been told it's
21 legally sufficient. So I can't. I won't do that
22 review later. And AI doesn't allow me to do that
23 review later. It has to be legally sufficient before
24 I'll show it to DOJ to avoid embarrassing the agency.
25 That's why I didn't do those reviews later.

1 CHAIRMAN CASTRO: It sounds to me like an
2 affected agency copy cannot be a second draft because
3 of the fact that --

4 COMMISSIONER GAZIANO: Well, it's not
5 going to be the final draft. The final draft, it's
6 going to be given to them what? Give me an estimate.
7 Somewhere around June 1? June 10?

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR TOLHURST: No, no. I honestly can't
10 remember. It may be July 1st.

11 COMMISSIONER GAZIANO: Okay. That's what
12 I --

13 DELEGATED THE AUTHORITY OF THE STAFF
14 DIRECTOR TOLHURST: It's not --

15 COMMISSIONER GAZIANO: Okay.

16 DELEGATED THE AUTHORITY OF THE STAFF
17 DIRECTOR TOLHURST: They're getting --

18 COMMISSIONER GAZIANO: Sometime around
19 July.

20 DELEGATED THE AUTHORITY OF THE STAFF
21 DIRECTOR TOLHURST: Whatever is the minimum. They're
22 getting either two weeks or three weeks. I can't
23 remember. But they're getting the minimum time after
24 it's been initially reviewed and undergone legal
25 sufficiency review.

1 COMMISSIONER GAZIANO: So the agencies,
2 the affected agencies, we're supposed to review they
3 can comment and change this final report, but we
4 cannot because --

5 DELEGATED THE AUTHORITY OF THE STAFF
6 DIRECTOR TOLHURST: Because the AI requires it. I
7 don't --

8 COMMISSIONER GAZIANO: Well, then it can
9 --

10 DELEGATED THE AUTHORITY OF THE STAFF
11 DIRECTOR TOLHURST: I don't see the --

12 COMMISSIONER GAZIANO: Then legal
13 sufficiency review would be very minimal, even if it
14 has to be repeated. I'm not questioning whether it
15 does or not. I'm not sure it does or not. But if
16 you've done it once, then you know the changes the
17 commissioners are making.

18 It would seem to me very minimal to redo
19 the -- but it makes no sense to me that DOJ and
20 Department of Education will see a draft for a month
21 or so before we -- they can affect it. What they say
22 will affect the final draft. But nothing the
23 commissioners can say will.

24 DELEGATED THE AUTHORITY OF THE STAFF
25 DIRECTOR TOLHURST: That's not the case. What you say

1 on your commissioner comments will directly affect --

2 COMMISSIONER GAZIANO: But between May
3 31st, you are going to receive seven or eight sets of
4 commissioner comments.

5 DELEGATED THE AUTHORITY OF THE STAFF
6 DIRECTOR TOLHURST: Correct.

7 COMMISSIONER GAZIANO: You are going to
8 make changes. The agency will see those changes.
9 Commissioners will not.

10 DELEGATED THE AUTHORITY OF THE STAFF
11 DIRECTOR TOLHURST: You will see them --

12 COMMISSIONER GAZIANO: I won't know
13 whether Commissioner Achtenberg has convinced you to
14 do something or Gail and I have convinced you or staff
15 to do some enormous change. The agency will see that
16 change. And they can then comment on that change.

17 Under the current schedule, we will not.

18 DELEGATED THE AUTHORITY OF THE STAFF
19 DIRECTOR TOLHURST: This is actually not departing
20 from the previous practice. And you will see it for
21 the final draft and can vote against it.

22 COMMISSIONER GAZIANO: Yes. We will only
23 have the --

24 DELEGATED THE AUTHORITY OF THE STAFF
25 DIRECTOR TOLHURST: I haven't departed --

1 COMMISSIONER GAZIANO: We will only --
2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: I haven't taken out a commissioner
4 review at that stage. This reflects what happened
5 last year. What I took out was above this. And,
6 again, I'm not at all suggesting this is ideal. This
7 --

8 COMMISSIONER GAZIANO: What it takes out
9 is one opportunity for commissioners to -- the draft
10 that you show the agency, that they can then affect,
11 it will be submitted to us on a take it or leave it
12 basis.

13 DELEGATED THE AUTHORITY OF THE STAFF
14 DIRECTOR TOLHURST: As it was last year.

15 COMMISSIONER GAZIANO: Maybe it was. I
16 just don't remember. But if that is so, then that
17 doesn't sound like a very good plan.

18 CHAIRMAN CASTRO: And, Madam General
19 Counsel, Acting General Counsel, what can an agency
20 really affect, though, in the review?

21 DELEGATED THE AUTHORITY OF THE STAFF
22 DIRECTOR TOLHURST: Nothing they say is mandatory.
23 They make comments, and we reject or accept them. At
24 least I can speak to what I have done with it when I
25 have been the person putting in a review is I use it

1 as a choice for them, a chance for them to help me not
2 look like an idiot.

3 So if I have written "DOJ does this" and
4 then do the X review and they can say, "Oh, can we
5 call it the Y review? You look really silly" I'll
6 change. You know, I'll use it as a check on have I
7 said something wrong or is that not the way what you
8 call it?

9 But they can't just write "We totally
10 disagree with you. It's not our practice." If my
11 research shows it's their practice, I'm going to
12 ignore that comment.

13 CHAIRMAN CASTRO: So, Commissioner, it
14 sounds to me like they are not going to be making any
15 major substantive changes here. And, again, this is
16 certainly not the ideal schedule. I think we can all
17 agree to that. But we are under some time
18 constraints.

19 I hear what you are saying, but --

20 COMMISSIONER GAZIANO: Let me --

21 CHAIRMAN CASTRO: -- I think we can kind
22 of --

23 COMMISSIONER GAZIANO: Let me refocus the
24 last sort of question. I suppose staff doesn't have
25 to ever take our commissioners' views into account,

1 but what is the harm in circulating it to us at the
2 same time it goes to the agency?

3 Maybe some of us have vacation between
4 July 29 and August 12.

5 DELEGATED THE AUTHORITY OF THE STAFF
6 DIRECTOR TOLHURST: Some of us would have to cancel it
7 to get --

8 COMMISSIONER GAZIANO: And I told you I
9 wished you hadn't done that. But, anyway, what is the
10 harm in circulating it to commissioners?

11 DELEGATED THE AUTHORITY OF THE STAFF
12 DIRECTOR TOLHURST: There's not a harm except that it
13 then gives you the impression that I can accept
14 changes from you, which I can't if you want to meet
15 the deadline because then I would have to re-editorial
16 and agency LSR --

17 COMMISSIONER HERIOT: Why don't we just
18 circulate at that point and put in big letters on it
19 "By the way, you're not going to be able to affect
20 this"? Because I would like to see it at that point.

21 It's not that there's no harm to it.

22 DELEGATED THE AUTHORITY OF THE STAFF
23 DIRECTOR TOLHURST: I don't have a problem with that,
24 but I would leave that to the Commission to decide.

25 CHAIRMAN CASTRO: That would require a

1 motion is my understanding.

2 VICE CHAIR THERNSTROM: I really don't
3 understand this. So I look at it that I've got things
4 to say, but I've got this sign saying, "However you
5 react, it really is unimportant. Well, you know, if
6 it's not important, keep your thoughts to yourself,"
7 in effect.

8 COMMISSIONER HERIOT: It's not unimportant
9 to your statement, unimportant to the body of the
10 report.

11 COMMISSIONER GAZIANO: We had compressed
12 time for commissioner statements as well. So, even if
13 staff won't listen to us after May 31, it still will
14 help us significantly to have it at the same time the
15 agency -- I mean, I will be dumbfounded if this
16 Commission doesn't allow us to see the report at the
17 same time that it's sent to the agency.

18 COMMISSIONER HERIOT: Yes. You know, this
19 report is going out to the agency. It seems silly
20 that we don't get to see it.

21 DELEGATED THE AUTHORITY OF THE STAFF
22 DIRECTOR TOLHURST: That's been what happened the last
23 four years.

24 COMMISSIONER HERIOT: Yes, but I've had
25 like lots of drafts of these in the past.

1 COMMISSIONER GAZIANO: And we've had more
2 time.

3 DELEGATED THE AUTHORITY OF THE STAFF
4 DIRECTOR TOLHURST: And we've had more time.

5 COMMISSIONER GAZIANO: Yes. Well --

6 COMMISSIONER HERIOT: We're not affecting
7 your time except that --

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR TOLHURST: You are affecting it, actually,
10 because when I made the timeline, I scrunched staff's
11 time --

12 COMMISSIONER HERIOT: No. It's an e-mail.

13 DELEGATED THE AUTHORITY OF THE STAFF
14 DIRECTOR TOLHURST: -- as the first priority.

15 COMMISSIONER HERIOT: It's just an e-mail.

16 CHAIRMAN CASTRO: Okay. Let's get some
17 order here. You know, we have talked about this, and
18 we hear what you are saying. But absent --

19 COMMISSIONER GAZIANO: Okay. I --

20 COMMISSIONER HERIOT: So moved.

21 COMMISSIONER GAZIANO: I move that the
22 Staff Director, Acting Staff Director, whoever is
23 responsible, circulate a copy of the report that is
24 sent to the affected agencies at the time it's sent to
25 them for affected agency review.

1 CHAIRMAN CASTRO: And, Commissioner
2 Heriot, you have seconded that motion?

3 COMMISSIONER HERIOT: I moved it first.

4 CHAIRMAN CASTRO: I'm sorry. You kind of
5 --

6 COMMISSIONER HERIOT: I'm happy to call it
7 --

8 CHAIRMAN CASTRO: Okay. So I think we've
9 had a sufficient amount of discussion on this. Unless
10 hearing a request for that, I'll call a question on
11 that. All those --

12 COMMISSIONER HERIOT: Just to clarify, all
13 we're talking about is sending an e-mail.

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

16 COMMISSIONER HERIOT: Yes.

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

19 COMMISSIONER GAZIANO: Yes.

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

22 COMMISSIONER KIRSANOW: Aye.

23 CHAIRMAN CASTRO: Vice Chair Thernstrom,
24 how do you vote on the motion

25 VICE CHAIR THERNSTROM: At the moment I'm

1 taking a pass. I can't figure this out.

2 CHAIRMAN CASTRO: Okay. Abstention.

3 Commissioner Titus, how do you vote?

4 COMMISSIONER TITUS: I will abstain, too.

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

7 COMMISSIONER ACHTENBERG: Yes.

8 CHAIRMAN CASTRO: So you're voting in
9 favor of the motion?

10 COMMISSIONER ACHTENBERG: Yes.

11 CHAIRMAN CASTRO: Okay.

12 DELEGATED THE AUTHORITY OF THE STAFF
13 DIRECTOR TOLHURST: Did you vote?

14 CHAIRMAN CASTRO: I didn't vote. I am
15 going to vote against the motion. So where are we?
16 What has that turned out?

17 COMMISSIONER HERIOT: No change. Good.

18 COMMISSIONER GAZIANO: Unless the
19 abstainer -- it won't matter.

20 COMMISSIONER HERIOT: Yes.

21 COMMISSIONER GAZIANO: But those who
22 abstained can express --

23 CHAIRMAN CASTRO: So we have -- what was
24 it?

25 DELEGATED THE AUTHORITY OF THE STAFF

1 DIRECTOR TOLHURST: Three yeses.

2 CHAIRMAN CASTRO: Three yeses?

3 COMMISSIONER HERIOT: Four yeses?

4 CHAIRMAN CASTRO: Four yeses?

5 COMMISSIONER GAZIANO: Abstentions.

6 CHAIRMAN CASTRO: Okay.

7 COMMISSIONER HERIOT: Four yeses.

8 COMMISSIONER GAZIANO: Four yeses, two
9 abstentions.

10 COMMISSIONER TITUS: Mr. Chairman?

11 CHAIRMAN CASTRO: Yes, Commissioner Titus?

12 COMMISSIONER TITUS: I'm okay with
13 distributing it, but I want to make it very clear that
14 this does not open up the process and that any kind of
15 comments that are going to be made will be saved until
16 the final report. This just gives you longer time to
17 read it, that we don't mess up with Kim's schedule or
18 have to go back through the legal review or the
19 editorial review or back to the agencies.

20 It is kind of like the Vice Chair said.
21 That is kind of ridiculous, but if you want it but
22 can't comment on it, I support that. But I want to be
23 sure that that is understood in that motion that just
24 passed.

25 VICE CHAIR THERNSTROM: Okay. And that's

1 exactly where I am as well.

2 CHAIRMAN CASTRO: Is that your
3 understanding?

4 COMMISSIONER GAZIANO: The only motion was
5 that it be circulated. I'm going to try and persuade
6 all of you if I see something blatantly wrong in it,
7 that I'm going to provide comments. And it sounds
8 like it will be ignored. And that is a process you
9 all are going to --

10 CHAIRMAN CASTRO: Well, in that case --

11 COMMISSIONER ACHTENBERG: Let me just say
12 that my vote in the affirmative was predicated on the
13 notion that this was advisory only and that --

14 COMMISSIONER HERIOT: I agree with you.
15 And the only -- you know, I think all --

16 CHAIRMAN CASTRO: Excuse me. One at a
17 time. One at a time.

18 COMMISSIONER HERIOT: -- Todd is saying is
19 that he might have a motion later to reverse that.

20 COMMISSIONER ACHTENBERG: Sure.

21 CHAIRMAN CASTRO: Commissioner Achtenberg?

22 COMMISSIONER HERIOT: You have to make it
23 as a motion.

24 CHAIRMAN CASTRO: Can you repeat what you
25 said?

1 COMMISSIONER ACHTENBERG: I said my vote
2 in the affirmative was predicated on the statement
3 that this was only advisory, meaning that we would be
4 given the report at the same time the agency would be
5 given the report, but that revises in no way either
6 the rest of the schedule or gives us an opportunity to
7 comment that isn't otherwise provided for in the
8 schedule.

9 CHAIRMAN CASTRO: And it sounds like that
10 was not contemplated by this motion.

11 COMMISSIONER TITUS: Yes, it does, though.

12 COMMISSIONER HERIOT: No, no.

13 CHAIRMAN CASTRO: Commissioner Heriot?

14 COMMISSIONER HERIOT: My understanding of
15 the motion is the same as Commissioner Achtenberg's
16 that we have not changed the schedule in any other
17 way.

18 I believe all Commissioner Gaziano was
19 saying is that that motion doesn't prevent him from
20 bringing up the issue as he sees it at some later
21 date, but the motion that we voted on did not change
22 the schedule in any way, does not give commissioners
23 the right for input that must be recognized. It
24 simply gives us -- it sends an e-mail to us. We all
25 get a copy earlier.

1 COMMISSIONER TITUS: Mr. Chairman?

2 CHAIRMAN CASTRO: Yes, Commissioner Titus?

3 COMMISSIONER TITUS: Thank you.

4 Although I also want to be sure that it
5 doesn't open up the door for people who disagree with
6 it to begin to start to harass the staff to change it
7 after they have put all of this work in it and now
8 they're having to work on the next stage because that
9 will slow the process down and if you are going to be
10 making your arguments to convince -- because you have
11 said two or three times, Commissioner, that you worry
12 that Roberta might convince staff to take something
13 out or you might convince staff to take something out.

14 If that is going to be the way it plays out where
15 we're going to start trying to convince staff to
16 change it, then I think that, in effect, throws the
17 whole schedule off.

18 CHAIRMAN CASTRO: Commissioner Achtenberg?

19 Then Vice Chair Thernstrom.

20 COMMISSIONER ACHTENBERG: Mr. Chairman, it
21 seems to me that maybe I should move to reopen the
22 vote since there seems to be a lack of clarity.

23 CHAIRMAN CASTRO: Is there a second on
24 that motion?

25 VICE CHAIR THERNSTROM: I second it.

1 CHAIRMAN CASTRO: All those in favor of
2 reopening the vote signify by saying aye.

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

4 CHAIRMAN CASTRO: Anyone opposed to that?

5 COMMISSIONER HERIOT: I agree with you on
6 your interpretation.

7 CHAIRMAN CASTRO: Vote --

8 COMMISSIONER GAZIANO: I was going to
9 explain on the interpretation.

10 CHAIRMAN CASTRO: We have a motion
11 pending. What is your vote on that?

12 COMMISSIONER GAZIANO: I actually always
13 approve such motions, unlike others in the majority
14 who believe in taking things off, not allowing
15 discussions on the agenda.

16 CHAIRMAN CASTRO: So you're voting in
17 favor of the motion?

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRMAN CASTRO: How do you vote,
20 Commissioner Heriot, on the motion to reopen the vote?

21 COMMISSIONER GAZIANO: Let's just -- we
22 can do --

23 CHAIRMAN CASTRO: I asked for voice. So
24 why don't you do it again? All those in favor say
25 aye.

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

2 CHAIRMAN CASTRO: Any opposed?

3 COMMISSIONER HERIOT: Nay.

4 CHAIRMAN CASTRO: Any abstentions?

5 COMMISSIONER HERIOT: I just think --

6 CHAIRMAN CASTRO: You're opposed?

7 Commissioner Heriot is opposed. Any abstentions?

8 CHAIRMAN CASTRO: Commissioner Kirsanow,
9 how did you vote? I didn't hear you. I'm sorry.

10 COMMISSIONER KIRSANOW: Aye.

11 CHAIRMAN CASTRO: Okay. The motion to
12 reconsider the vote passes.

13 Yes, Vice Chair?

14 VICE CHAIR THERNSTROM: Now, it is my
15 understanding from Commissioner Gaziano and
16 Commissioner Heriot that all they want is an
17 opportunity to look at this in order, solely in order,
18 to be able to think about their statements after the
19 final vote on this report.

20 If there is any other reason for having
21 this earlier than contemplated look at the report,
22 then, you know, the whole picture is changed.

23 COMMISSIONER GAZIANO: Mr. Chair?

24 CHAIRMAN CASTRO: Yes, Commissioner
25 Gaziano?

1 COMMISSIONER GAZIANO: I think
2 Commissioner Heriot got the nature of my motion and
3 purpose exactly right. Regardless of anything else,
4 it will help all of us in preparing our statements as
5 we have agreed to a shorter statement to see it
6 earlier.

7 It also makes no sense to me that our
8 staff will keep a report that they are sending an
9 agency secret from commissioners. So that is valuable
10 in and of itself.

11 My other point was that -- and this may be
12 just too nerdly a point -- no parliament can ever bind
13 a future parliament from considering new motions. And
14 if what we see at some point between now and when we
15 receive that or if at some time after that I have the
16 motion, I am going to share it with you all. I am not
17 going to use it to harass staff. I am not going to --
18 I will draw it to your all's attention. And we ought
19 to not try to bind ourselves when we know we can't
20 bind ourselves. You can always vote it down later.

21 And maybe I won't make such a motion.
22 Maybe it will be such a perfect draft, but the purpose
23 of our providing comments, initial comments, to the
24 staff is that the staff will take them into account.
25 And that's the efficient way, rather than us sharing

1 it amongst each other.

2 And so this next draft that the agency
3 gets may be different in some ways that we will want
4 to incorporate in our statements or we will want to
5 share with each other.

6 CHAIRMAN CASTRO: Okay. Well, let's call
7 the question.

8 Those in favor of the motion to get the
9 report earlier, please say aye. I tell you what.
10 I'll do an individual -- oh, I'm sorry. Vice Chair,
11 how do you vote on the motion?

12 VICE CHAIR THERNSTROM: I'm changing it to
13 a no.

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

16 COMMISSIONER HERIOT: Yes.

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

19 COMMISSIONER GAZIANO: Yes.

20 CHAIRMAN CASTRO: I vote no. Commissioner
21 Titus, how do you vote?

22 COMMISSIONER TITUS: I'll vote no.

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

25 COMMISSIONER ACHTENBERG: No.

1 CHAIRMAN CASTRO: In the opinion of the
2 Chair, the motion fails.

3 COMMISSIONER HERIOT: You forgot
4 Commissioner Kirsanow.

5 CHAIRMAN CASTRO: Oh, I'm sorry.
6 Commissioner Kirsanow, I apologize.

7 COMMISSIONER KIRSANOW: Yes.

8 CHAIRMAN CASTRO: Was that a yes?

9 COMMISSIONER KIRSANOW: Yes.

10 CHAIRMAN CASTRO: Oh, it was a no? Okay.

11 COMMISSIONER KIRSANOW: I vote for the
12 motion.

13 CHAIRMAN CASTRO: Okay. That's a yes,
14 then?

15 COMMISSIONER HERIOT: Yes.

16 CHAIRMAN CASTRO: It was hard to tell
17 based on the --

18 COMMISSIONER GAZIANO: Just to clarify, it
19 is the meaning of the vote just taken that
20 commissioners will see nothing between May 20, the
21 draft that we are supposed to initially comment on,
22 and July 29.

23 And then we will be delivered something on
24 July 29 that affects changes each of us have sent in
25 and the agency and anything else staff may want to do.

1 And we'll have an up or down vote on it?

2 We'll be given a copy on July -- so no
3 other commissioner will see draft, neither the
4 Chairman nor any other commissioner, between then?

5 CHAIRMAN CASTRO: Well, was there another
6 -- Commissioner Achtenberg?

7 COMMISSIONER ACHTENBERG: If I take the
8 Acting Director at her word that this is the process
9 that is consistent with prior processes and that there
10 is not a deviation and whatever practice pertained, I
11 am assuming will continue to pertain. So that is the
12 basis for my vote to ratify the process.

13 CHAIRMAN CASTRO: Commissioner Titus, did
14 you have something?

15 COMMISSIONER TITUS: I was going to say
16 the same thing, that to clarify, that this is the
17 process that has been used at least the last four
18 times. And so why it is suddenly a problem I don't
19 really understand.

20 Also, we have had to compress the
21 calendar. And we do get the final draft on the 29th.

22 We have 13 or so days or however many days in July to
23 review it before we take a vote. And then you have
24 time, another month or so, after that to send in
25 rebuttals. So there is time to review it before you

1 vote and time to rebut it if we disagree with it.

2 So, in keeping with the precedent
3 established when our colleagues were in the majority,
4 as they like to point out often, I don't understand,
5 really, why it is such a serious problem now.

6 COMMISSIONER GAZIANO: I absolutely --

7 CHAIRMAN CASTRO: For the record, you
8 know, we are still, the Democrats are still, the
9 minority on this Commission.

10 COMMISSIONER GAZIANO: I didn't get an
11 answer to my question, though.

12 By the way, I flatly disagree this is the
13 process.

14 CHAIRMAN CASTRO: Okay.

15 COMMISSIONER GAZIANO: This absolutely
16 cuts out an opportunity for commissioners to provide
17 comments on what was called the final. I absolutely
18 disagree.

19 CHAIRMAN CASTRO: Commissioner Gaziano --

20 COMMISSIONER GAZIANO: But my question is

21 --

22 CHAIRMAN CASTRO: -- it has gone on --

23 COMMISSIONER GAZIANO: But my question is

24 --

25 CHAIRMAN CASTRO: Ask one more question

1 because we have kind of debated this motion already --

2 COMMISSIONER GAZIANO: Yes. I just want
3 to --

4 CHAIRMAN CASTRO: -- more than enough.

5 COMMISSIONER GAZIANO: So it is the
6 majority who voted down the last motion's
7 understanding that no commissioner at all will be
8 allowed to see a copy of the report between May 20 and
9 August 29th.

10 Some commissioners won't be able to see
11 it. Some won't. I'm sorry. Between May 20 and July
12 29, no commissioner will be allowed to see a second
13 draft of this report. There won't be some who are
14 privileged and others who are not.

15 CHAIRMAN CASTRO: I don't expect that to
16 be the case.

17 VICE CHAIR THERNSTROM: I don't even
18 understand the question. It's insulting.

19 CHAIRMAN CASTRO: Yes. Let's move on. I
20 think we have debated that motion. It's been voted
21 on. It's failed.

22 DELEGATED THE AUTHORITY OF THE STAFF
23 DIRECTOR TOLHURST: I do want to say, I mean, to be
24 fair, this is condensed. I have cut things. I don't
25 have the AI in front of me. I don't believe I cut

1 another review in between there and there. I had to
2 cut things. Again, we have half the time.

3 And I'll go back and check and send out an
4 e-mail if I have done something radically inconsistent
5 here in between editorial and final.

6 But my intent was to honor the spirit of
7 the AI in half the time. And that is the timeline
8 that I distributed.

9 CHAIRMAN CASTRO: We understand you are
10 under a lot of strain given the time and --

11 DELEGATED THE AUTHORITY OF THE STAFF

12 DIRECTOR TOLHURST: I don't want to pretend I have
13 done the exact AI. I do admit I cut things.

14 CHAIRMAN CASTRO: I understand.

15 DELEGATED THE AUTHORITY OF THE STAFF

16 DIRECTOR TOLHURST: I think this reflects how the
17 order went after that.

18 CHAIRMAN CASTRO: Yes. And to the point
19 of this compressed timeline, I know, you know, we have
20 identified that we need to -- I know there is a motion
21 that is going to be contemplated on making an
22 adjustment to the period of time during which comments
23 are accepted by the public, so, again, with the
24 efforts to try to get this report to Congress on time.

25 Commissioner Achtenberg, do you --

1 COMMISSIONER ACHTENBERG: Yes. Consistent
2 with that, Mr. Chairman, I do want to move that the
3 time frame for submission by the public or to the
4 record be shortened so that we can comply with the
5 aggressive timeline.

6 And typically we have a 30-day period, but
7 I am going to move that we shorten that time frame by
8 14 days so that public submissions would be due
9 Friday, May 27th and by virtue of the AI that governs
10 the amount of time the briefing record remains open.
11 It says that the briefing record will be kept open for
12 a period of 30 days after the briefing or at otherwise
13 established by a majority vote of the commissioners.

14 I recognize that this is not ideal, but
15 given the aggressive time frame and particularly if we
16 let people know now that the record is even open as we
17 speak, it's -- is it not?

18 DELEGATED THE AUTHORITY OF THE STAFF
19 DIRECTOR TOLHURST: To offer that, we could put
20 something on the web saying, "We're having this
21 briefing. Public comments will be welcome" and put
22 the public on notice of the issue. If we're not
23 closed Monday, we could do that Monday.

24 COMMISSIONER ACHTENBERG: Sure but for a
25 certain time frame so that the rest of the things

1 might proceed.

2 CHAIRMAN CASTRO: And the time frame is
3 from 30 days to --

4 COMMISSIONER ACHTENBERG: It's --

5 CHAIRMAN CASTRO: To 15 days?

6 COMMISSIONER ACHTENBERG: From 30 days to
7 15 days.

8 CHAIRMAN CASTRO: Is there a second on
9 that motion? Then I'll go to Commissioner Heriot.

10 COMMISSIONER TITUS: Second.

11 CHAIRMAN CASTRO: Commissioner Titus
12 seconds.

13 Commissioner Heriot?

14 COMMISSIONER HERIOT: I just wanted to say
15 something in my capacity as Commission civil and that
16 is as to both the previous motion and this motion, be
17 careful what you wish for.

18 The early drafts of these reports tend to
19 have lots of errors in them and very serious errors.
20 When we cut off the ability of commissioners to spot
21 those errors, that just means that errors are going to
22 end up in the statements of dissenting commissioners.

23 And that is not in your interest.

24 CHAIRMAN CASTRO: Thank you, Commissioner
25 Heriot.

1 Any discussion on the motion currently on
2 the floor? Commissioner Gaziano?

3 COMMISSIONER GAZIANO: I thought
4 Commissioner Titus was recognized.

5 CHAIRMAN CASTRO: Oh, I'm sorry. No. I
6 recognized her to make a second, second the motion.

7 COMMISSIONER GAZIANO: Oh, I'm sorry.

8 I don't see why the public's comment
9 period should be reduced. You know, the tight
10 schedule is a problem of the Commission's making. And
11 it doesn't matter that I opposed it. I don't see why
12 that burden should fall on the public.

13 Given that even under the reduced period
14 of time they will not be incorporated in the version
15 that commissioners receive, why not give them the full
16 30 days? Given that the only people who will be able
17 to incorporate these in the report are the staff, now
18 that there's this more than two-month period where
19 commissioners won't be able to see the report, why not
20 allow the public the full time?

21 DELEGATED THE AUTHORITY OF THE STAFF
22 DIRECTOR TOLHURST: I have a --

23 CHAIRMAN CASTRO: Madam General Counsel,
24 Acting Staff Director?

25 DELEGATED THE AUTHORITY OF THE STAFF

1 DIRECTOR TOLHURST: So the briefing is on the 13th.
2 And I realize the shortening it down 15 days would be
3 ridiculous. So I wouldn't suggest that. But to the
4 extent that we get comments before the briefing, the
5 day of the briefing, or within those first six days,
6 they actually will be incorporated into the first
7 draft.

8 COMMISSIONER GAZIANO: Sure. Some might.

9 I mean --

10 DELEGATED THE AUTHORITY OF THE STAFF

11 DIRECTOR TOLHURST: I will also note that in past
12 statutory reports, again, public comments were rarely,
13 if ever, cited in the main report, but they were often
14 cited in commissioner statements that opposed.

15 CHAIRMAN CASTRO: Any other discussion on
16 the motion? Hearing none -- I'm sorry. Commissioner
17 Heriot?

18 COMMISSIONER HERIOT: That last sentence
19 there that they're often involved in --

20 DELEGATED THE AUTHORITY OF THE STAFF

21 DIRECTOR TOLHURST: They are available to the --

22 COMMISSIONER HERIOT: That makes sense to
23 keep it open because the statements will not have been
24 started by then. If they're unlikely to be
25 incorporated into the main report anyway, what is the

1 harm in allowing the public statements to be filed
2 somewhat later?

3 DELEGATED THE AUTHORITY OF THE STAFF
4 DIRECTOR TOLHURST: I would like to have as many
5 statements as possible before my first draft. So with
6 the shortened time period, I think it would encourage
7 the public to submit them in times --

8 COMMISSIONER HERIOT: It seems more likely
9 that this means they don't get timely notice.

10 DELEGATED THE AUTHORITY OF THE STAFF
11 DIRECTOR TOLHURST: That's up to you all. My sense is
12 that this issue is already getting a lot of attention.

13 We're probably going to get a lot of attention and
14 that we are probably going to get a lot of comments.

15 COMMISSIONER GAZIANO: Most people work to
16 a deadline. So if the deadline, as proposed, is 15
17 days, they're going to give them to after the report
18 has been circulated to commissioners. So if that's
19 the case, why not give them an extra 15 days?

20 COMMISSIONER HERIOT: It's also certain
21 groups have geared up to comment on this. You shorten
22 the period, and you get comments from people who have
23 already geared up to comment but not so much from
24 people who are inspired to comment as a result of the
25 briefing. So I would think we definitely want to keep

1 this open.

2 CHAIRMAN CASTRO: Any other discussion on
3 this motion?

4 (No response.)

5 CHAIRMAN CASTRO: Hearing none, we will
6 call the question in support of the motion to reduce
7 the time for public comment from 30 days to 15.

8 Vice Chair, how do you vote?

9 VICE CHAIR THERNSTROM: I vote yes.

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

12 COMMISSIONER HERIOT: I vote no.

13 CHAIRMAN CASTRO: Commissioner Gaziano,
14 now do you vote?

15 COMMISSIONER GAZIANO: No.

16 CHAIRMAN CASTRO: I vote yes.

17 Commissioner Titus, how do you vote?

18 COMMISSIONER TITUS: Yes.

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

21 COMMISSIONER ACHTENBERG: Yes.

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

24 COMMISSIONER KIRSANOW: No.

25 CHAIRMAN CASTRO: In the opinion of the

1 Chair, the motion passes.

2 V. STATE ADVISORY COMMITTEE ISSUES

3 CHAIRMAN CASTRO: The next item on our
4 agenda is the State Advisory Committee issues. We are
5 going to be looking at the re-charter of the Alabama
6 SAC, the re-charter of the Illinois SAC, and the
7 re-charter of the Minnesota SAC.

8 - RE-CHARTERING THE ALABAMA SAC

9 CHAIRMAN CASTRO: First up, we have the
10 Alabama State Advisory Committee. I am going to make
11 our standard motion, but I am also going to make a
12 motion to bifurcate one of the members from
13 consideration from the overall. And we may want to go
14 into executive session to discuss that. But, just as
15 I make this motion, I want you to understand that I am
16 done with the bifurcation.

17 So the first motion is that I move that
18 the Commission re-charter the Alabama State Advisory
19 Committee. Under this motion, the Commission appoints
20 the following individuals to that committee based upon
21 the recommendation of our Staff Director, Acting Staff
22 Director: -- I liked her as Staff Director as well --
23 I'll just say Staff Director -- Valerie Askew, David
24 T. Beito, Lula Bridges, Margaret Brown, Richard H.
25 Finley, Leida Javier-Ferrell, Randy B. Kelley, Shana

1 -- actually, are we going to bifurcate that? I've got
2 to do it all at once? Shana J. Kluck, Raphael A.
3 Maharaj, Kevin C. Newsom, Maurice L. Shevin, L'Tryce
4 M. Slade, Edward Still.

5 Pursuant to this motion, the Commission
6 appoints David Beito as Chair of this re-chartered
7 Alabama State Advisory Committee.

8 These members will serve as uncompensated
9 government employees under this motion. The
10 Commission authorizes the Staff Director to execute
11 the appropriate paperwork for the appointment.

12 Is there a second?

13 VICE CHAIR THERNSTROM: Second.

14 CHAIRMAN CASTRO: I will also make a
15 companion motion to sever the consideration of Shana
16 Kluck from the rest of the package, as we have done
17 for other individuals in the past. Do I have a second
18 on that motion?

19 COMMISSIONER ACHTENBERG: Second.

20 CHAIRMAN CASTRO: Okay. Shall we go into
21 executive session here?

22 COMMISSIONER GAZIANO: Can I --

23 CHAIRMAN CASTRO: Sure.

24 COMMISSIONER GAZIANO: -- try and make a
25 motion? Because it may obviate the need to go into

1 executive session.

2 CHAIRMAN CASTRO: Yes?

3 COMMISSIONER GAZIANO: I have some serious
4 questions about the way this SAC was organized. I
5 would be -- I don't know whether for -- let me just
6 mention one of them.

7 When Commissioner Titus wanted to postpone
8 -- I have some issues with some of the other SACs as
9 well -- you know, I took it as good faith that she had
10 some issue she wanted to work out.

11 But since then Professor Seth Norton, who
12 was on the previous package, has been cut from this
13 package -- oh, I'm sorry -- Professor Jim Couch. Oh,
14 I'm sorry. I'm in the wrong state. Now to Alabama.

15 Professor Jim Couch was struck from the
16 package without any reason. I think that anyone who
17 is as well-qualified, as Professor Couch is, and who
18 expresses an interest and goes through the process and
19 applies should not be struck arbitrarily. For
20 whatever reason I don't know, but with regard to some
21 of the other SACs, I have some serious questions about
22 the ideological balance.

23 Our AI, which binds the staff, which binds
24 the staff in how they are to propose these, requires
25 in three regards that they seek an ideological bounds.

1 That's an immortal problem with the other two state
2 SACs.

3 But at this point, I wondered whether our
4 staff could say why Professor Couch was cut from this
5 SAC.

6 CHAIRMAN CASTRO: Can it be done in open?

7 I don't know the reason either.

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR TOLHURST: Sure. This reason bears no
10 reflection on him. So the initial SAC was created or
11 the SAC proposal package was created under Staff
12 Director Dannenfelser. And Commissioner Titus had
13 voiced concerns both about an individual member and
14 about balance generally.

15 And so we went back to the Regional
16 Director, said that there were concerns about balance
17 generally. And her solution in doing that was to cut
18 Mr. Couch because when she looked at the new members,
19 of the new members who were on the conservative side,
20 that there was a lesser sort of civil rights
21 background with some of the other conservatives, whom
22 she chose not to cut.

23 So I believe he was cut strictly for
24 balance reasons to create a panel that was --

25 COMMISSIONER HERIOT: This is ideological

1 balance you're talking about?

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: I'm sorry. Yes.

4 COMMISSIONER GAZIANO: Why can't our staff
5 -- by the way, I disagree with that determination that
6 this is the only SAC that is remotely balanced of the
7 three that --

8 COMMISSIONER HERIOT: Yes. This one is
9 the one that was unbalanced is real trouble.

10 COMMISSIONER GAZIANO: We're being asked
11 to vote. But assuming, assuming, there was some real
12 issue with balance other than stacking the deck for
13 every state in violation of our AI, why couldn't the
14 staff have added members of a different ideological
15 persuasion?

16 To ask someone to go through the process,
17 to have them on a slate, to announce that they were on
18 a slate, to have them ready to vote, and then to tell
19 -- it's hard to get -- this is unpaid, as you know.

20 CHAIRMAN CASTRO: Yes. Commissioner
21 Gaziano, I just want to make clear there is no effort
22 to stack anything here. In fact, my understanding is
23 that the composition of these or at least of this SAC,
24 in particular, was reviewed by our prior person acting
25 as Staff Director and our current career officer

1 acting as Staff Director. So this is not something
2 that, as far as I can tell based on that, is political
3 stacking efforts.

4 DELEGATED THE AUTHORITY OF THE STAFF
5 DIRECTOR TOLHURST: The individual who is the Regional
6 Director for this state said that, in her experience,
7 she had trouble with larger SACs after looking for
8 other members concluded that with the people involved,
9 keeping the SAC smaller as a team was a better choice.

10 And then upon Mr. Byrnes' reviewing it,
11 Mr. Byrnes, having a great deal of experience, not
12 only having worked in OSD much longer than myself but
13 having been the head of the regionals, reviewed this
14 for me. And his belief was -- he is right here. He
15 can correct me if I am wrong, but under the current
16 slate, there were four Republicans, five Democrats,
17 and four independents with three of them leaning
18 Republican.

19 So he, in fact -- and I believe him well
20 qualified and took him at his word that this remained
21 a balanced SAC, whether or not Ms. Kluck remains. And
22 I feel very comfortable validating that review to him.

23 I looked at what he had done and think he did his own
24 job.

25 CHAIRMAN CASTRO: Commissioner Gaziano?

1 COMMISSIONER GAZIANO: Our AIs require
2 that these be between 11 and 17. I don't know if the
3 statute --

4 DELEGATED THE AUTHORITY OF THE STAFF
5 DIRECTOR TOLHURST: Nineteen.

6 COMMISSIONER GAZIANO: I'm sorry.
7 Nineteen. Is that what the statute requires as well?

8 MR. BYRNES: It could be in our --

9 COMMISSIONER GAZIANO: Okay. We think it
10 may be not just an instruction but in some ways
11 binding legally, at least until we change the CFR.

12 DELEGATED THE AUTHORITY OF THE STAFF
13 DIRECTOR TOLHURST: And 13 is within that.

14 COMMISSIONER GAZIANO: Yes, 13 is within
15 it. As I understand, the motion to sever might
16 involve cutting one more. So we're scraping the
17 bottom of the lawful limit.

18 The idea that we need to disinvite someone
19 willing to serve because they're conservative is --
20 and, as I said, this does seem like a balanced package
21 to me. The others are the ones that don't.

22 But if staff on the suggestion of one
23 commissioner -- and that's the way this transpired.
24 The staff decided that they needed to cut someone just
25 because they needed to cut one more conservative, that

1 is troubling.

2 If we are going to vote on this today, I
3 move that we add Professor Jim Couch to the Alabama
4 SAC.

5 COMMISSIONER HERIOT: A friendly
6 amendment. What if we were to do that plus add David
7 Beito's suggestion, who I think was somebody who needs
8 --

9 MR. BYRNES: Norman Baldwin.

10 COMMISSIONER HERIOT: Baldwin?

11 MR. BYRNES: Yes.

12 COMMISSIONER HERIOT: His first name?

13 MR. BYRNES: Norman.

14 COMMISSIONER HERIOT: Norman Baldwin. And
15 that would add somebody leaning left and somebody
16 leaning right.

17 CHAIRMAN CASTRO: I wouldn't accept that
18 as a friendly amendment. I guess, you know, balance
19 is in the eye of the beholder, I suppose, but, you I
20 know, I feel comfortable based on what our Acting
21 Staff Director and our prior Acting Staff Director and
22 the Regional Director have said is balanced, but if
23 you do have a motion on Mr. Couch, you can make that
24 motion.

25 COMMISSIONER HERIOT: Do I make a motion

1 with --

2 CHAIRMAN CASTRO: I'm sorry. Vice Chair,
3 I didn't your hand there. I apologize.

4 VICE CHAIR THERNSTROM: Yes. I don't know
5 what this whole discussion is about. We have got an
6 incredibly balanced SAC here with the political
7 affiliation, as has already been spelled out. If
8 anything, it's leaning slightly conservatively because
9 two independents are, in fact, Republican-leaning. I
10 mean, I don't understand who is not voting this up or
11 down or --

12 COMMISSIONER GAZIANO: I accept
13 Commissioner Heriot's friendly amendment. I move,
14 then, as amended, to add Professor Jim Couch and the
15 left-leaning Norman Baldwin to the SAC --

16 COMMISSIONER HERIOT: Second.

17 COMMISSIONER GAZIANO: -- to keep the
18 ideological balance such as it is.

19 CHAIRMAN CASTRO: Okay. So let's take
20 these motions separately. Now, getting back to the
21 motion that severed Ms. Kluck, do we need to go into
22 executive session? Do folks want to discuss that? If
23 so, we will need to go into executive session. That
24 way we could then vote on each of these motions.

25 COMMISSIONER ACHTENBERG: May I make a

1 motion that we have to vote on the motion to sever Ms.
2 Kluck?

3 CHAIRMAN CASTRO: We did vote on the
4 motion to sever.

5 COMMISSIONER ACHTENBERG: Yes. I did --

6 CHAIRMAN CASTRO: So it's out there. We
7 have three motions. We have the main motion.

8 COMMISSIONER GAZIANO: I thought we
9 approved the motion to sever. We just haven't dealt
10 --

11 CHAIRMAN CASTRO: We haven't voted on the
12 motion to sever. We have severed. So what I'm
13 saying, before we vote on the motion to sever, do we
14 want to go into executive session to discuss that
15 motion?

16 COMMISSIONER GAZIANO: That's fine.

17 CHAIRMAN CASTRO: Okay.

18 COMMISSIONER GAZIANO: Do we really need
19 to go into executive session?

20 CHAIRMAN CASTRO: I have been counseled by
21 --

22 DELEGATED THE AUTHORITY OF THE STAFF
23 DIRECTOR TOLHURST: Well, it depends what you're
24 wanting to talk about.

25 CHAIRMAN CASTRO: I think we probably do

1 need to go into executive session.

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: If you want to talk about her
4 affiliations in any depth, I would err on the side of
5 protecting her privacy. It just depends on what
6 discussion you intend to have.

7 COMMISSIONER GAZIANO: From what I'm
8 assuming will transpire, I don't think that is
9 something that is necessary to go into executive
10 session. And maybe if it turns in that direction, we
11 can go there, but I would like to keep it on the
12 public record.

13 CHAIRMAN CASTRO: Why don't we do this?
14 Well, I think it needs to go into executive session.
15 So if you'd like, we can vote on the main motion,
16 which has already severed Ms. Kluck. We can then vote
17 on your motion and then go into executive session to
18 discuss the Kluck motion. So we'll do that.

19 So on the first motion, which was to
20 approve the --

21 COMMISSIONER GAZIANO: I might vote for
22 the whole package. I might vote. Depending on how
23 these others are, I might vote on the whole package.
24 Why don't we --

25 CHAIRMAN CASTRO: Which is what I was

1 intending to do --

2 COMMISSIONER GAZIANO: Whichever order --

3 CHAIRMAN CASTRO: -- kind of all at once.

4 So why don't we --

5 COMMISSIONER GAZIANO: Yes. Whichever
6 order you want to --

7 CHAIRMAN CASTRO: -- go into executive
8 session?

9 COMMISSIONER GAZIANO: -- do it in.

10 CHAIRMAN CASTRO: Let's go into executive
11 session, then, and have that discussion so that you
12 can be fully informed when you make your vote on all
13 the motions.

14 COMMISSIONER GAZIANO: Let's vote on the
15 motions. Go ahead.

16 DELEGATED THE AUTHORITY OF THE STAFF
17 DIRECTOR TOLHURST: I hereby certify that this meeting
18 can be closed and the information pertaining to the
19 same be withheld pursuant to exemption under 45 CFR
20 702.53, exemption 6, when a meeting is likely to
21 disclose information of a personal nature or
22 disclosure would constitute an unwarranted invasion of
23 personal privacy.

24 CHAIRMAN CASTRO: Okay. All of those in
25 favor of the motion to go into closed session signify

1 by saying aye.

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

3 CHAIRMAN CASTRO: Those opposed?

4 (Whereupon, there was a chorus of "Nays.")

5 COMMISSIONER HERIOT: I don't quite
6 understand how there is something of a personal nature
7 here.

8 CHAIRMAN CASTRO: And any abstentions?

9 (No response.)

10 CHAIRMAN CASTRO: Okay. So the
11 objections, the noes, are Commissioners Heriot,
12 Gaziano, and Kirsanow.

13 (Whereupon, the foregoing matter went off
14 the record at 11:35 a.m. and was reconvened in
15 executive session. The open session was reconvened at
16 12:03 p.m., as follows.)

17 CHAIRMAN CASTRO: We're back in public
18 session. There was a motion made during closed
19 session to strike Ms. Kluck from the SAC
20 consideration. It was a motion made by Commissioner
21 Achtenberg and seconded by Commissioner Titus. We
22 have discussed it. And we will now call the question.

23 I will do it by roll. Madam Vice Chair,
24 how do you vote on the motion?

25 VICE CHAIR THERNSTROM: Hold on a minute.

1 I'm thinking.

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

4 COMMISSIONER HERIOT: I vote no.

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

7 COMMISSIONER GAZIANO: No.

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

10 COMMISSIONER ACHTENBERG: Yes.

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

13 COMMISSIONER TITUS: Yes.

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

16 COMMISSIONER KIRSANOW: Emphatically no.

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

19 THE REPORTER: Could Commissioner Kirsanow
20 repeat his vote?

21 CHAIRMAN CASTRO: Commissioner Kirsanow,
22 would you repeat your vote for the purpose of the
23 Court Reporter?

24 COMMISSIONER KIRSANOW: Emphatically no.

25 CHAIRMAN CASTRO: Emphatically no.

1 CHAIRMAN CASTRO: Got it. Thank you.

2 COMMISSIONER GAZIANO: It's emphatically
3 no. It's not just a no.

4 CHAIRMAN CASTRO: That counts for two?
5 (Laughter.)

6 VICE CHAIR THERNSTROM: If I am voting
7 yes, it's going to end up a yes, yes depending on me.

8 CHAIRMAN CASTRO: Well, I don't want to
9 put you under any pressure.

10 VICE CHAIR THERNSTROM: I am under
11 pressure.

12 COMMISSIONER TITUS: The public is back.

13 CHAIRMAN CASTRO: You're the public,
14 Audrey.

15 (Laughter.)

16 DELEGATED THE AUTHORITY OF THE STAFF
17 DIRECTOR TOLHURST: You're just the only one that --

18 VICE CHAIR THERNSTROM: Abstain.

19 CHAIRMAN CASTRO: Madam Vice Chair
20 abstains. And I will also abstain. The motion fails.

21 The next motion we have we should probably
22 address the motion. Actually, you know what? Can I
23 change? I'm going to vote yes. It's still the same
24 result, but I'm going to vote yes on the motion.
25 Sorry.

1 The two motions that are still pending,
2 one is the motion to add Professor Couch -- and who
3 was the other?

4 COMMISSIONER GAZIANO: Norman Baldwin, who
5 was also --

6 CHAIRMAN CASTRO: Norman Baldwin?

7 COMMISSIONER GAZIANO: -- recommended by
8 the Chair. As I understand it, he was -- is Norman
9 Baldwin, sir, the renewal?

10 COMMISSIONER YAKI: No.

11 CHAIRMAN CASTRO: And we had information
12 on these two individuals in the materials? We had --

13 DELEGATED THE AUTHORITY OF THE STAFF
14 DIRECTOR TOLHURST: They're not in your current
15 materials, but they're not on the slate Couch had
16 been in the previous materials. I don't --

17 COMMISSIONER GAZIANO: As was Baldwin.
18 Yes. Baldwin --

19 CHAIRMAN CASTRO: They were both in the
20 prior materials?

21 COMMISSIONER GAZIANO: They were both in
22 the prior materials.

23 CHAIRMAN CASTRO: Okay. Do I have a
24 question over here?

25 COMMISSIONER TITUS: I'm sorry.

1 CHAIRMAN CASTRO: Okay. Commissioner
2 Heriot?

3 COMMISSIONER HERIOT: Excuse me.

4 CHAIRMAN CASTRO: You had your hand up?

5 COMMISSIONER HERIOT: Do I have my hand
6 up? No. But I wanted to say something.

7 CHAIRMAN CASTRO: Okay.

8 COMMISSIONER HERIOT: And that is, you
9 know, in the past, we have thought that striking
10 somebody just already on the SAC without cause is bad
11 practice. It creates an incentive for arbitrary
12 exclusion.

13 So I think that in general, we ought to
14 keep people who are already on the SAC on the SAC.
15 That means Couch here and if there's a belief that
16 that would -- you know, is not good from the
17 standpoint of balancing ideology, then --

18 DELEGATED THE AUTHORITY OF THE STAFF
19 DIRECTOR TOLHURST: They worked on --

20 COMMISSIONER GAZIANO: They were proposed.
21 They had already been through the process.

22 DELEGATED THE AUTHORITY OF THE STAFF
23 DIRECTOR TOLHURST: They're on the slate. So people
24 aren't going to be --

25 COMMISSIONER GAZIANO: Yes, but the same

1 principle applies for people who have gone through --

2 COMMISSIONER HERIOT: You know, you are
3 going to get arbitrary exclusions here. And I think
4 that is a mistake.

5 CHAIRMAN CASTRO: So we're discussing the
6 motion to add these two other folks right now. Is
7 there any other comment or discussion on these two
8 individuals being added to the slate? Madam Vice
9 Chair? And then Commissioner Achtenberg.

10 VICE CHAIR THERNSTROM: Go ahead. I've
11 just got a question.

12 CHAIRMAN CASTRO: Commissioner Achtenberg?

13 COMMISSIONER ACHTENBERG: It appears that
14 maybe I'm missing something, but what do we do? Do I
15 have information on them?

16 CHAIRMAN CASTRO: Well, that's what I
17 asked about.

18 COMMISSIONER GAZIANO: You have circulated
19 in the last --

20 COMMISSIONER ACHTENBERG: You had them in
21 your last packet, yes.

22 COMMISSIONER GAZIANO: -- in the last
23 packet.

24 COMMISSIONER HERIOT: On both of the
25 exhibits.

1 COMMISSIONER GAZIANO: Was it --

2 COMMISSIONER ACHTENBERG: In January.

3 VICE CHAIR THERNSTROM: So the sole reason
4 for eliminating somebody who had already been on the
5 SAC was in order to maintain the balance. This is a
6 very balanced SAC. And the sole reason for adding
7 this other person is in case the balance is thrown.

8 COMMISSIONER GAZIANO: It's two people,
9 one who is conservative and one who is liberal, --

10 VICE CHAIR THERNSTROM: Yes, right.

11 COMMISSIONER GAZIANO: -- because someone
12 wants to keep the exact balance of the SAC. I am
13 willing to propose to put both of them back on. My
14 main reason, though, is that Professor Jim Couch
15 agreed to serve, had been told that he was on the
16 package, and then he was struck because they wanted to
17 strike a conservative.

18 If we're going to do that, this motion
19 would keep the ideological balance exactly as it is
20 but would allow these gentleman who is willing to
21 serve to serve.

22 CHAIRMAN CASTRO: Commissioner Achtenberg?

23 COMMISSIONER ACHTENBERG: Commissioner
24 Gaziano, then why was the other person not put
25 forward?

1 COMMISSIONER GAZIANO: I don't know.

2 DELEGATED THE AUTHORITY OF THE STAFF

3 DIRECTOR TOLHURST: I don't know. We don't know.

4 That's what she came back with --

5 CHAIRMAN CASTRO: Okay.

6 COMMISSIONER ACHTENBERG: Do we typically
7 -- I mean, isn't the -- I understand that we object to
8 some people and we ratify the SAC composition, but
9 don't we typically defer most of the issues for
10 forming the SAC panel and that to be the judgment of
11 the staff?

12 COMMISSIONER HERIOT: But that would be in
13 favor of the motion and the guy that was originally
14 recommended by the staff. It was only because the
15 Commission believed that it wasn't sufficiently
16 balanced that we don't have them now. So now we're
17 offering him with another legal solution to make
18 everybody happy.

19 The staff originally proposed the
20 conservative on this in the package. And I believe it
21 was Commissioner Titus. Commissioner Titus thought
22 that it was not properly ideologically balanced. Is
23 that right? Is it you who was concerned about that?

24 COMMISSIONER TITUS: But I didn't point
25 out any individual.

1 COMMISSIONER HERIOT: Yes.

2 COMMISSIONER TITUS: I was looking at the
3 overall picture, including Ms. Kluck.

4 COMMISSIONER HERIOT: He got dropped, even
5 though he was in the original proposal from the staff.

6 So we're trying to make everybody happy. The staff
7 would get the whole group that they proposed. Plus,
8 Commissioner Titus' concern over balance would be
9 dealt with by adding a liberal as well.

10 COMMISSIONER ACHTENBERG: So let me recap,
11 if I might, --

12 CHAIRMAN CASTRO: Sure.

13 COMMISSIONER ACHTENBERG: -- Mr. Chairman.
14 You're saying that the original group, as proposed by
15 the staff, included both of these people you're trying
16 to add now.

17 COMMISSIONER GAZIANO: Right.

18 COMMISSIONER ACHTENBERG: Then you're
19 asserting that they were taken off because of
20 Commissioner Titus' expressed concern.

21 COMMISSIONER HERIOT: Yes, they took off a
22 liberal and a conservative and added a liberal. I
23 don't understand either, but that's the way --

24 COMMISSIONER ACHTENBERG: And added a
25 liberal. Who is the liberal they added?

1 COMMISSIONER GAZIANO: Added two liberals.

2 COMMISSIONER ACHTENBERG: Two liberals.

3 Okay.

4 COMMISSIONER GAZIANO: They added two
5 liberals.

6 CHAIRMAN CASTRO: It's my understanding
7 that the male liberal was removed and substituted for
8 a female liberal so that there could also be gender
9 balance.

10 COMMISSIONER GAZIANO: And they added a
11 male liberal as well.

12 COMMISSIONER TITUS: He was there. He was
13 different from the original, but --

14 COMMISSIONER GAZIANO: Could I recognize
15 my -- my special assistant says it was Edward Still.

16 COMMISSIONER THERNSTROM: Somebody I know
17 very well.

18 COMMISSIONER GAZIANO: Leida
19 Javier-Ferrell. And I have no objections to any of
20 these additions. I think they're fine additions. I'm
21 not sure they were necessary, but they're fine. But I
22 disagree that the original package did not meet
23 balance, especially as compared to some of the other
24 SACs that we might vote on. And all I --

25 COMMISSIONER KIRSANOW: This is Kirsanow.

1 May I --

2 CHAIRMAN CASTRO: Sure.

3 COMMISSIONER KIRSANOW: It's my
4 understanding that Mr. Couch was removed and Ferrell
5 was added for gander balance.

6 DELEGATED THE AUTHORITY OF THE STAFF
7 DIRECTOR TOLHURST: It was Baldwin removed.

8 COMMISSIONER KIRSANOW: Baldwin was
9 removed for gender balance.

10 DELEGATED THE AUTHORITY OF THE STAFF
11 DIRECTOR TOLHURST: I don't even know that that's the
12 case, but if Couch was only removed for political
13 balance.

14 COMMISSIONER KIRSANOW: I would just note
15 that we have an AI. And I can't recall the number,
16 but --

17 DELEGATED THE AUTHORITY OF THE STAFF
18 DIRECTOR TOLHURST: I can, yes. It's 701. It's --

19 COMMISSIONER KIRSANOW: That precludes any
20 kind of consideration, age, sex, religion, all the
21 protected classes, in order to achieve the particular
22 demographic balance.

23 DELEGATED THE AUTHORITY OF THE STAFF
24 DIRECTOR TOLHURST: This is the first I'm hearing that
25 that was the reason. And, in fact, this is --

1 CHAIRMAN CASTRO: Someone told me that.
2 So I don't know.

3 DELEGATED THE AUTHORITY OF THE STAFF
4 DIRECTOR TOLHURST: -- remaining five women and eight
5 men. So no one has tried to nor achieve gender
6 balance from what I can see.

7 CHAIRMAN CASTRO: Okay. Well, if there's
8 no further -- oh, Commissioner Heriot, go ahead.

9 COMMISSIONER HERIOT: We do have AIs that
10 say no person is to be denied an opportunity to sit on
11 a State Advisory Committee because of race, age, sex,
12 religion, national origin, or disability.

13 If we're removing people who are on the
14 list and substituting someone because they have a
15 different gender, I think we're violating that rule.
16 I think we should put everybody back if we are
17 concerned about ideology. Again, you know, the
18 pending motion won't affect ideological balance
19 because we're talking about putting both a
20 conservative and a liberal onto the list.

21 And we're playing with fire here where we
22 take the list and manipulate it by taking people off
23 and --

24 CHAIRMAN CASTRO: Well, we're not --

25 COMMISSIONER HERIOT: I don't mind adding

1 people but taking people off. It's dirty pool.

2 CHAIRMAN CASTRO: Let me just clarify.

3 We're not trying to manipulate this. The statement
4 that I made was based on some information that I was
5 provided. I don't have any knowledge as to
6 specifically how this list was put together of people
7 taking --

8 COMMISSIONER HERIOT: Well, that's --

9 CHAIRMAN CASTRO: Let me just say --

10 COMMISSIONER HERIOT: That's worse than --

11 CHAIRMAN CASTRO: I think that what we're
12 being presented here -- well, it's not worse, but let
13 me just finish. So clearly our effort here is not to
14 do anything that would be in violation of our AI or of
15 the law. And so I just want to make that clear.

16 COMMISSIONER HERIOT: That's not clear.
17 You just told me you didn't know why.

18 CHAIRMAN CASTRO: I just told you it's
19 clear but --

20 COMMISSIONER HERIOT: And you don't know
21 why.

22 CHAIRMAN CASTRO: I don't know why,
23 correct.

24 COMMISSIONER HERIOT: So how can you say
25 it's not for a --

1 CHAIRMAN CASTRO: That I do not know why.

2 I don't --

3 COMMISSIONER HERIOT: That's not good
4 enough.

5 CHAIRMAN CASTRO: Well, in any event,
6 Commissioner Achtenberg?

7 COMMISSIONER HERIOT: Willful ignorance is
8 not good enough.

9 CHAIRMAN CASTRO: Commissioner Achtenberg?

10 COMMISSIONER ACHTENBERG: I was going to
11 vote for the motion out of courtesy and also because
12 it seems to me that given that my concern was I don't
13 want to do anything to erode the staff's authority or
14 that's not consistent with past practice and that kind
15 of thing. So that was the nature of my concern.

16 I think to the extent that it is fair if
17 two are appointed and they are of diverse opinions,
18 that is fine with me. But you almost talked me out of
19 it. So if we stop the discussion now, I'll vote with
20 you. If we continue, I may change my mind.

21 VICE CHAIR THERNSTROM: I feel exactly the
22 same way.

23 CHAIRMAN CASTRO: Okay. Well, let's vote
24 on it now, then. And we'll do individual votes. So,
25 Madam Vice Chair, how would you vote?

1 VICE CHAIR THERNSTROM: Yes. Okay. I'll
2 vote for it.

3 CHAIRMAN CASTRO: Votes for the motion.
4 Commissioner Heriot, how do you vote

5 COMMISSIONER HERIOT: Yes.

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

8 COMMISSIONER GAZIANO: Yes.

9 CHAIRMAN CASTRO: I vote yes.

10 Commissioner Kirsanow, how do you vote?

11 COMMISSIONER KIRSANOW: Yes.

12 VICE CHAIR THERNSTROM: Not emphatically?

13 CHAIRMAN CASTRO: Not this time I guess.

14 COMMISSIONER KIRSANOW: Lukewarm.

15 CHAIRMAN CASTRO: Can I change mine to
16 emphatically yes? Commissioner Achtenberg?

17 COMMISSIONER ACHTENBERG: Yes.

18 CHAIRMAN CASTRO: And Commissioner Titus?

19 COMMISSIONER TITUS: Yes.

20 CHAIRMAN CASTRO: I believe the motion
21 passes unanimously.

22 COMMISSIONER GAZIANO: Excellent.

23 CHAIRMAN CASTRO: Okay. So now they are
24 added to the list that we read earlier, as is Ms.

25 Kluck. So our last motion on the Alabama SAC, then,

1 is a motion to approve the slate that was read
2 earlier. I'll just read the names again just to make
3 sure we're clear: Valerie Askew, David Beito, Lula
4 Bridges, Margaret Brown, Richard H. Finley, Leida
5 Javier-Ferrell, Randy B. Kelley, Shana Kluck, Raphael
6 Maharaj, Kevin Newsom, Maurice Shevin, L'Tryce Slade,
7 Edward Still. What is Professor Couch's full name?

8 JOHN MARTIN: Jim Couch.

9 CHAIRMAN CASTRO: Jim Couch. And the
10 other person was?

11 COMMISSIONER ACHTENBERG: Norman Baldwin.

12 CHAIRMAN CASTRO: Norman Baldwin. So
13 those are the individuals that would be on the SAC
14 based on the motion. So if there's no further
15 discussion on that, I'll call the question on that
16 motion. All those in favor of this signify by saying
17 aye.

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

19 CHAIRMAN CASTRO: Any opposed?

20 (No response.)

21 CHAIRMAN CASTRO: Any abstentions?

22 (No response.)

23 CHAIRMAN CASTRO: Okay. It's unanimous.

24 VICE CHAIR THERNSTROM: Mr. Chair, before
25 we move, I want --

1 CHAIRMAN CASTRO: Madam Vice Chair?

2 VICE CHAIR THERNSTROM: -- to do another
3 -- let me just say something I meant to say before. I
4 trust, I assume, that it is far from the truth that,
5 as asserted by Commissioner Gaziano when we were
6 discussing Kluck that half of our SAC members have
7 been in legal trouble of one sort or another, I mean
8 --

9 COMMISSIONER GAZIANO: Or affiliated with
10 someone who has been in legal trouble or --

11 COMMISSIONER HERIOT: If they're lawyers,
12 it seems very likely that it's far more than half.

13 CHAIRMAN CASTRO: Okay. We'll, let's move
14 on to the next SAC. I'm sorry. It's 12:20.

15 VICE CHAIR THERNSTROM: Yes.

16 CHAIRMAN CASTRO: And folks do have planes
17 to catch. I know that.

18 - RE-CHARTERING THE ILLINOIS SAC

19 CHAIRMAN CASTRO: So we'll move on next to
20 the Illinois SAC, State Advisory Committee. I move
21 that the Commission re-charter the Illinois State
22 Advisory Committee. Under this motion, the Commission
23 appoints the following individuals to that committee
24 based on the recommendations of our Staff Director:
25 Barbara J. Abrajano, Nancy C. Andrade, Jonathan J.

1 Bean, James F. Botana, Sunny P. Chico, H. Yvonne
2 Coleman, Louis S. Goldstein, Sandra S. Jackson,
3 Demetri C. Kantzavelos, B. Herbert Martin, Kamran A.
4 Memon, Malik Nevels, Gordon M. Quinn, Cynthia C.
5 Shawamreh, Ennedy D. Rivera, Anthony A. Sisneros,
6 Betsy Shuman-Moore, Farhan Younus.

7 Pursuant to this motion, the Commission
8 appoints Barbara J. Abrajano as Chair of this
9 re-chartered Illinois State Advisory Committee.

10 These members will serve as uncompensated
11 government employees under this motion. The
12 Commission authorizes the Staff Director to execute
13 the appropriate paperwork for appointment.

14 Is there a second?

15 VICE CHAIR THERNSTROM: Second.

16 CHAIRMAN CASTRO: Okay. Discussion?
17 Commissioner Gaziano?

18 COMMISSIONER GAZIANO: By my count, the
19 slate was not put together in compliance with
20 administrative instruction 5-9 in 2 respects. First
21 of all, our particular AI requires that there only be
22 at least one member of every party. Party balance is
23 not a significant concern other than there be at least
24 one of each.

25 What is in three places in the AI is that

1 there is some ideological balance. Section 2.02 says,
2 "Membership shall be established to promote vigorous
3 debate and full exploration of the issues."

4 Section 2.04 says that "State Advisory
5 Committee members shall be fairly balanced in terms of
6 points of view represented and the functions to be
7 performed." By that -- that's section 2 of AI 5-9. I
8 thought I said that before.

9 By my count, there are 2 conservatives, 14
10 liberals, 4 of which I'm not sure it's very clear.
11 One of the so-called Republicans seems quite to be a
12 hard left individual. So this seems wildly
13 imbalanced. And so I would like to inquire about
14 whether that kind of ideological balance was looking.

15 The second mistake -- and I'll just get it
16 out and then maybe the Staff Director can -- is that
17 of the seven people that I recommended, although I
18 think commissioner recommendations should at least be
19 considered, regional staff said that they contacted
20 some, who claimed that they were never contacted.

21 Particularly Professor Seth Norton is one
22 in particular, who was never contacted about whether
23 he was willing -- no. Maybe an e-mail went out, and
24 it wasn't followed up, but my staff was able to
25 contact him. And he denied that he was ever reached

1 by anyone on the staff. And maybe that's why this SAC
2 is so wildly imbalanced in violation of the AI.

3 Do you know, for example, whether
4 Professor Norton was ever contacted?

5 DELEGATED THE AUTHORITY OF THE STAFF
6 DIRECTOR TOLHURST: Well, first I would disagree it is
7 wildly imbalanced, as did Mr. Byrnes, who confirmed
8 for me that it was, in fact, balanced.

9 We did, in fact, follow up with David
10 Beito, who is in charge of the region administering
11 the SAC. He assured us --

12 COMMISSIONER GAZIANO: Beito I don't think
13 is the --

14 DELEGATED THE AUTHORITY OF THE STAFF
15 DIRECTOR TOLHURST: Sorry. Sorry. I was thinking
16 about the last vote. David Mussatt said that he
17 contacted these people. You know, neither Chris nor I
18 if you look at every SAC member would potentially have
19 950 people. We cannot individually call all of them.

20 We have to rely on our regional staff, who are paid
21 to do this job.

22 He said that he contacted them. Then
23 because there were questions encouraged to follow up,
24 he then produced e-mails demonstrating that he had
25 contacted them. And you can speak further to that.

1 MR. BYRNES: We were able to substantiate
2 with e-mails that he had contacted --

3 COMMISSIONER GAZIANO: Do you know about
4 Seth Norton?

5 MR. BYRNES: Specifically? Yes.

6 COMMISSIONER GAZIANO: And Seth Norton
7 said he wasn't interested.

8 MR. BYRNES: I don't believe there was a
9 reply.

10 COMMISSIONER GAZIANO: Okay. So there was
11 maybe an e-mail sent and no

12 MR. BYRNES: Beyond an e-mail being sent,
13 I'm not sure what the --

14 COMMISSIONER GAZIANO: I suppose my deeper
15 problem is sometimes there is shown how many
16 Republicans or Democrats. I think it is a -- and I'm
17 not necessarily blaming staff for the way they have
18 done it in the past, but that factor being highlighted
19 seems to be a mistake in what the AI actually
20 requires.

21 To what extent was there an investigation
22 of their ideological or other perspectives?

23 DELEGATED THE AUTHORITY OF THE STAFF
24 DIRECTOR TOLHURST: Chris can speak to it. We only
25 have the paperwork we have.

1 MR. BYRNES: Right. We --

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: In this SAC, in particular, there
4 were a lot of independents.

5 MR. BYRNES: Yes. And we don't just look
6 at party affiliation. We examine the statement of
7 demonstrated interest and experience in civil rights.
8 We also look at the resumes to sort of get a full
9 picture.

10 COMMISSIONER GAZIANO: Do you Google them?

11 DELEGATED THE AUTHORITY OF THE STAFF

12 DIRECTOR TOLHURST: Yes, we do.

13 CHAIRMAN CASTRO: Commissioner Heriot?

14 COMMISSIONER HERIOT: Our AIs actually say
15 that "a follow-up telephone call shall be made to
16 ensure receipt of the letter when we contact potential
17 SAC members." Did that happen in this case?

18 MR. BYRNES: I can verify that. I'm not
19 sure.

20 CHAIRMAN CASTRO: Is there any other
21 discussion? If there is any other discussion, let me
22 know. Otherwise I'm going to call the question.

23 COMMISSIONER GAZIANO: I move to postpone
24 a vote on this until it's ascertained whether the
25 proper follow-up was made, --

1 COMMISSIONER HERIOT: Yes.

2 COMMISSIONER GAZIANO: -- on at least the
3 people I recommended or my special assistant
4 recommended be considered.

5 COMMISSIONER HERIOT: I would second that
6 motion. I mean, the AIs are quite clear. It says
7 that "A follow-up telephone call shall be made."

8 Mr. Byrnes has said that he doesn't know
9 whether a follow-up call was made. And it seems
10 appropriate in this case. You know, it's unusual to
11 find people who say that they would have been willing
12 to serve and they weren't contacted. You know, it
13 seems very unlikely that that would be untrue.

14 So I would agree with Commissioner
15 Gaziano. We should put this one off for a month. It
16 does seem --

17 CHAIRMAN CASTRO: We're already at 19 on
18 this panel.

19 COMMISSIONER HERIOT: -- very unlikely on
20 --

21 DELEGATED THE AUTHORITY OF THE STAFF
22 DIRECTOR TOLHURST: So I don't even know. Can we even
23 add people on this? We're at 19. One, two, three,
24 four, five, six, seven --

25 DELEGATED THE AUTHORITY OF THE STAFF

1 DIRECTOR TOLHURST: It's 19.

2 CHAIRMAN CASTRO: That's right. You know,
3 I don't accept that motion as a friendly motion to my
4 motion. I want to vote on my motion on the SAC.

5 COMMISSIONER GAZIANO: Well, we extended
6 the courtesy to --

7 COMMISSIONER HERIOT: Yes. It wasn't made
8 as a friendly amendment.

9 COMMISSIONER GAZIANO: We extended the
10 courtesy to Commissioner Titus because she wanted to
11 examine one of the members. I would ask, in addition
12 to examining whether the people I recommended were
13 actually contacted, that they actually look closer so
14 that we can determine whether the ideological balance
15 is really as I think it is, which is 2 conservatives,
16 14 liberals.

17 COMMISSIONER TITUS: Mr. Chairman?

18 CHAIRMAN CASTRO: Commissioner Titus?

19 COMMISSIONER TITUS: Thank you.

20 You know, that's how you see it. I see it
21 very differently. We know that the independent label
22 is not always, especially in performance of a person's
23 ideology, but the way I look at these is very similar
24 to the way our staff reviewed them and came up with
25 the determination that they were balanced. It seems

1 to me that there are two who clearly lean to the
2 right, one or two who lean to the left, and the rest
3 are pretty centrist, which is what seems to me you
4 would want to go for on a committee.

5 COMMISSIONER HERIOT: Which two would you
6 say lean to the right? And which two --

7 COMMISSIONER TITUS: Well, I'm not going
8 to attribute something to people if we don't go into
9 executive session.

10 And I would also ask if the commissioner
11 -- if he was so concerned about these people being on
12 the committee, if he contacted them or you had some
13 communication with them in advance to be sure that
14 they knew about it and were interested and were
15 responding.

16 COMMISSIONER GAZIANO: Yes.

17 CHAIRMAN CASTRO: Vice Chair? Madam Vice
18 Chair?

19 VICE CHAIR THERNSTROM: The analogy that
20 Commissioner Gaziano just made with a question that
21 Commissioner Titus raised about somebody already on
22 the commission or somebody we were already voting on
23 and looking into people who have not as of yet been
24 proposed to be on this slate seems to me a very poor
25 analogy.

1 And Commissioner Titus had questions about
2 somebody we were recommending or had been recommended
3 for the Alabama slate.

4 You are saying something quite different.

5 Well, there are people who haven't been recommended
6 that we should be looking at here, not the same.

7 COMMISSIONER GAZIANO: I'm saying that the
8 staff couldn't answer our questions about the process
9 and whether the process was followed, the
10 administrative instructions, and whether they actually
11 called people who were willing to serve if they had
12 been contacted by staff. So I think that a month to
13 investigate that kind of process is in order.

14 VICE CHAIR THERNSTROM: And it looks to me
15 as if this is pretty balanced anyway.

16 CHAIRMAN CASTRO: Any other questions?
17 Any other discussion?

18 (No response.)

19 CHAIRMAN CASTRO: I'm going to call the
20 question. We're going to vote on it. Madam Vice
21 Chair, how do you vote?

22 VICE CHAIR THERNSTROM: How is the motion
23 --

24 COMMISSIONER HERIOT: Wait. What motion
25 are we voting on here?

1 CHAIRMAN CASTRO: We're voting on the
2 motion which is on the floor, which is to --

3 COMMISSIONER HERIOT: There's been a
4 motion?

5 CHAIRMAN CASTRO: -- approve the slate.

6 COMMISSIONER HERIOT: Didn't we make a
7 motion it wasn't --

8 CHAIRMAN CASTRO: I don't believe so. I
9 mean, he made a motion. It wasn't seconded.

10 COMMISSIONER HERIOT: I seconded.

11 COMMISSIONER TITUS: But you can't make a
12 motion when a --

13 CHAIRMAN CASTRO: Yes. We're in the
14 middle of --

15 COMMISSIONER TITUS: -- motion is on the
16 table.

17 COMMISSIONER HERIOT: Yes, you can.
18 That's not true.

19 COMMISSIONER TITUS: No, you can't. No,
20 you can't.

21 COMMISSIONER HERIOT: It is a motion to
22 amend.

23 COMMISSIONER TITUS: You can't amend a
24 motion up or down.

25 CHAIRMAN CASTRO: No. We're voting on

1 this motion.

2 COMMISSIONER HERIOT: Yes, you can. Todd,
3 what was your motion?

4 COMMISSIONER GAZIANO: The motion was to
5 postpone the vote until next month, until we heard
6 from our staff whether they followed the procedures.

7 CHAIRMAN CASTRO: And I told you I did not
8 accept that motion. It was not seconded. We're in
9 the middle of voting on the main motion.

10 COMMISSIONER HERIOT: It's seconded.

11 CHAIRMAN CASTRO: Then you can vote
12 against this. So the motion again, just to reiterate,
13 is the motion to approve the Illinois SAC, as was
14 read.

15 I'm going to go individually. Madam Vice
16 Chair, do you --

17 VICE CHAIR THERNSTROM: Yes. I agree with
18 it.

19 CHAIRMAN CASTRO: Commissioner Heriot?

20 COMMISSIONER HERIOT: I protest that this
21 is not in order.

22 CHAIRMAN CASTRO: Are you abstaining,
23 then?

24 COMMISSIONER HERIOT: I guess I'll vote
25 no.

1 CHAIRMAN CASTRO: Okay. Commissioner
2 Gaziano?

3 COMMISSIONER GAZIANO: I'm voting no and
4 primarily because my motion was in order and it should
5 have been voted on first.

6 CHAIRMAN CASTRO: Commissioner Kirsanow?

7 COMMISSIONER KIRSANOW: I'm voting no.
8 And that is not a reflection of the competency or
9 integrity of any of the individuals on the SAC but for
10 the same reasons that Commissioner Gaziano challenges
11 it.

12 CHAIRMAN CASTRO: Well-taken. Thank you.
13 Commissioner Achtenberg?

14 COMMISSIONER ACHTENBERG: Yes.

15 CHAIRMAN CASTRO: Commissioner Titus?

16 COMMISSIONER TITUS: Yes.

17 CHAIRMAN CASTRO: Castro? Yes.

18 So we have a majority in favor of the
19 re-chartering the Illinois SAC with the members as we
20 have indicated.

21 - RE-CHARTERING THE MINNESOTA SAC

22 CHAIRMAN CASTRO: We now move on to the
23 Minnesota State Advisory Committee. I move that the
24 Commission re-charter the Minnesota State Advisory
25 Committee. Under this motion, the Commission appoints

1 the following individuals to that committee based upon
2 the recommendations of our Staff Director: Robert Lee
3 Battle, Ryan M. Check, Kenneth O. Doyle, JoAnn
4 Cardenas Enos, John A. Gilbertson, Kirk O. Kolbo,
5 Velma J. Korbel, Nakima V. Levy-Pounds, Teresa J.
6 Nelson, Shamus P. O'Meara, D. Craig Taylor.

7 Pursuant to this motion, the Commission
8 appoints Nakima V. Levy-Pounds as Chair of this
9 re-chartered Minnesota State Advisory Committee.

10 These members will serve as uncompensated
11 government employees under this motion. The
12 Commission authorizes the Staff Director to execute
13 appropriate paperwork for the appointment.

14 Is there a second?

15 COMMISSIONER ACHTENBERG: Second.

16 CHAIRMAN CASTRO: Okay. Discussion?
17 Commissioner Gaziano?

18 COMMISSIONER GAZIANO: I move to postpone
19 consideration of this SAC until the staff determines
20 whether they followed administrative instructions 5.9
21 on several of the people that I recommended, who were
22 interested in serving, were not contacted by the
23 staff, or even any preliminary evaluations or let me
24 put it this way: I'm not sure. I'm not sure whether
25 they were contacted.

1 And this is another wildly imbalanced
2 left-leaning SAC. So I would like it postponed for an
3 evaluation of that, re-evaluation of that, by staff as
4 well.

5 COMMISSIONER HERIOT: Second.

6 DELEGATED THE AUTHORITY OF THE STAFF
7 DIRECTOR TOLHURST: Let me say I am not really in the
8 hobby of assuming --

9 COMMISSIONER HERIOT: Second.

10 CHAIRMAN CASTRO: Thank you.

11 DELEGATED THE AUTHORITY OF THE STAFF

12 DIRECTOR TOLHURST: -- SAC didn't do their job
13 properly. I think these regional directors, we
14 operate under the assumption that they followed the AI
15 unless there is evidence otherwise.

16 COMMISSIONER HERIOT: But there is.

17 COMMISSIONER GAZIANO: I presented
18 evidence.

19 COMMISSIONER HERIOT: There is.

20 COMMISSIONER GAZIANO: I presented
21 evidence.

22 DELEGATED THE AUTHORITY OF THE STAFF

23 DIRECTOR TOLHURST: You said you weren't sure and
24 wanted to know.

25 COMMISSIONER GAZIANO: No, no, no, no, no.

1 I said that it appeared -- first of all, it's wildly
2 imbalanced. So that is --

3 DELEGATED THE AUTHORITY OF THE STAFF
4 DIRECTOR TOLHURST: Regarding the process of
5 contacting people, for the last AI, you have a
6 question about phone calls, which Chris will follow up
7 on with that --

8 COMMISSIONER GAZIANO: And I would like to
9 know unless you can tell me right now whether the four
10 whom I recommended were contacted.

11 DELEGATED THE AUTHORITY OF THE STAFF
12 DIRECTOR TOLHURST: Well, with the last SAC, you
13 seemed to have some affirmation information they were
14 telling you they weren't, but that doesn't seem to be
15 the case here.

16 COMMISSIONER HERIOT: Is it correct that
17 it's the same person working on the SAC?

18 DELEGATED THE AUTHORITY OF THE STAFF
19 DIRECTOR TOLHURST: They're not on the list. So are
20 you assuming they weren't contacted?

21 COMMISSIONER HERIOT: Is it correct that
22 it's the same person working on the SAC?

23 DELEGATED THE AUTHORITY OF THE STAFF
24 DIRECTOR TOLHURST: Yes.

25 COMMISSIONER HERIOT: Okay. I would say

1 we have very clear evidence.

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: What is your --

4 VICE CHAIR THERNSTROM: What is your clear
5 evidence --

6 COMMISSIONER HERIOT: Of failing to
7 contact the people who were recommended by telephone,
8 as required by the AIs.

9 COMMISSIONER GAZIANO: What I'd like to
10 know -- if my motion passes, what I'd like to know is
11 since they told my staff that they were willing to
12 apply, whether they were actually reached, whether
13 such information was solicited.

14 Now, if staff decides not to act on them,
15 that's another matter. But I at least want to know
16 what the process was. And it looks like the final
17 slate is quite imbalanced. So that's a second factor.

18 CHAIRMAN CASTRO: Are there any other
19 comments on this motion?

20 (No response.)

21 CHAIRMAN CASTRO: If not, we'll call the
22 question on the motion to delay.

23 COMMISSIONER GAZIANO: Has it been
24 seconded?

25 CHAIRMAN CASTRO: Yes, it's been seconded

1 by Commissioner Heriot. It was moved by Commissioner
2 Gaziano, seconded by Commissioner Heriot.

3 We will again take a vote. Vice Chair
4 Thernstrom, how do you vote on the motion to delay?

5 VICE CHAIR THERNSTROM: No.

6 CHAIRMAN CASTRO: Commissioner Heriot, how
7 do you vote on the motion to delay?

8 COMMISSIONER HERIOT: Yes.

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

11 COMMISSIONER GAZIANO: Yes.

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

14 COMMISSIONER KIRSANOW: Yes.

15 CHAIRMAN CASTRO: I vote no.

16 CHAIRMAN CASTRO: Commissioner Achtenberg?

17 COMMISSIONER ACHTENBERG: No.

18 CHAIRMAN CASTRO: Commissioner Titus?

19 COMMISSIONER TITUS: No.

20 CHAIRMAN CASTRO: The motion fails.

21 We now move on to the motion, the main
22 motion, on approving the Minnesota SAC as read into
23 the record earlier. Is there any additional
24 discussion on that? Vice Chair?

25 VICE CHAIR THERNSTROM: I just want to

1 make one comment. It seems to me that the last vote
2 was in effect and the previous one as well, in effect,
3 a vote on how much confidence we have in the staff.

4 In fact, my vote in both instances was a
5 vote on competence for the work that the staff has
6 been doing and a thumb's up for Kim Tolhurst, who has
7 really under extraordinary circumstances been I know
8 working night and day.

9 CHAIRMAN CASTRO: I second that motion.

10 DELEGATED THE AUTHORITY OF THE STAFF

11 DIRECTOR TOLHURST: I appreciate that.

12 Let me say regarding the SACs, I don't
13 know all in this case. These were SACs that were
14 created under Staff Director Dannenfelser. These were
15 SACs that Chris Byrnes had assisted me in approving.
16 All I care is that they are properly done. And when
17 Chris assures me that they are with his greater
18 experience than mine regarding SACs, I take that to be
19 true. And I have similar confidence in him that he
20 has conducted the analysis properly.

21 If we learn that a particular regional
22 director is not following the AI regarding calls, we
23 will certainly deal with that. But I don't have
24 evidence of that at the time.

25 CHAIRMAN CASTRO: Thank you.

1 Okay. Hearing no further discussion, we
2 will vote on the motion to approve the Minnesota SAC.

3 All those in favor say aye.

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

5 CHAIRMAN CASTRO: Opposed?

6 (Whereupon, there was a chorus of "No.")

7 CHAIRMAN CASTRO: Commissioners Gaziano
8 and Heriot oppose. Commissioner Kirsanow? Oh, any
9 abstentions?

10 (No response.)

11 CHAIRMAN CASTRO: Commissioner Kirsanow,
12 are you still there?

13 COMMISSIONER KIRSANOW: I am. I vote yes.

14 CHAIRMAN CASTRO: Votes yes to approve?
15 Okay. As do I. So we have two in opposition and the
16 balance in support of the motion. It passes.

17 VI. APPROVAL OF MARCH 11, 2011 MEETING MINUTES

18 CHAIRMAN CASTRO: Next on the agenda is
19 approval of the March 11th meeting minutes. Can we
20 have a motion on that?

21 COMMISSIONER ACHTENBERG: So moved.

22 CHAIRMAN CASTRO: Second?

23 VICE CHAIR THERNSTROM: Second.

24 CHAIRMAN CASTRO: Any discussion, any
25 changes?

1 (No response.)

2 CHAIRMAN CASTRO: If not, all those in
3 favor say aye.

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

5 CHAIRMAN CASTRO: Any opposed?

6 COMMISSIONER HERIOT: I didn't get a
7 chance to vote. I'm still --

8 CHAIRMAN CASTRO: I'm sorry.

9 COMMISSIONER HERIOT: -- conferring with
10 my special assistant here.

11 CHAIRMAN CASTRO: Okay.

12 COMMISSIONER HERIOT: My special assistant
13 has the comment that we have got a heading here that
14 makes it look like we were talking about White House
15 nominees for Acting Chair and Staff Director. We
16 didn't actually do that. I would strike that
17 language.

18 CHAIRMAN CASTRO: I think that was how the
19 actual agenda item read. At the time, we thought that
20 there might have -- it was set up before there was
21 actually a nomination that was sent. So we thought
22 that we might get the Chair and the Staff Director at
23 the same time.

24 So if you look back at the agenda item,
25 the actual agenda, for that date, that is how it was

1 listed. Yes. Okay.

2 So all those in favor -- hold on a second.

3 Okay. Oh, I see. So "White House Nominees for
4 Chair, Vice Chair" is how it was read, not "Acting
5 Chair"? Is that what you're saying? Okay. And Staff
6 Director. So we will make that change.

7 COMMISSIONER HERIOT: It should have said
8 Vice Chair.

9 CHAIRMAN CASTRO: Vice Chair, not Acting
10 Chair. Okay. You're right. Sorry. I misunderstood
11 what you were saying.

12 COMMISSIONER HERIOT: With that change,
13 then.

14 CHAIRMAN CASTRO: Yes. Then all in favor
15 of the motion for the minutes with that change say
16 aye?

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

18 CHAIRMAN CASTRO: Any opposed or
19 abstentions?

20 (No response.)

21 CHAIRMAN CASTRO: Any announcements?

22 (No response.)

23 CHAIRMAN CASTRO: Hearing none, motion to
24 adjourn?

25 VICE CHAIR THERNSTROM: So moved.

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CHAIRMAN CASTRO: All in favor?

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

CHAIRMAN CASTRO: All right. Let's go
home.

(Whereupon, the foregoing matter was
concluded at 12:38 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Commission Meeting

Before: US CCR

Date: 04-08-11

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter

NEAL R. GROSS

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