

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, JUNE 10, 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 Chairman

ROBERTA ACHTENBERG, Commissioner

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

(via telephone)

DINA TITUS, Commissioner

MICHAEL YAKI, Commissioner

KIMBERLY TOLHURST, Delegated the Authority of
the Staff Director

STAFF PRESENT:

KANYDAH BELLAMY, Intern, OCRE

MARGARET BUTLER, Acting Chief, OCRE

CHRISTOPHER BYRNES

IVY DAVIS

DEMITRIA DEAS

BARBARA DE LA VIEZ, ERO

PAMELA A. DUNSTON, Chief, ASCD

BRANDON FOSHEE, Intern, B&F

LATRICE FOSHEE

ALFREDA GREENE

MAX LESKO, Intern, OGC

PETER MINARIK, Acting RPCU Chief

(via telephone)

LENORE OSTROWSKY, Acting Chief, PAU

JOHN RATCLIFFE, Chief, Budget and Finance

EILEEN RUDERT

DAVID SNYDER

KATE THOMPSON, Intern, OGC

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN

ALEC DEULL

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

ALISON SOMIN

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

9:34 a.m.

CHAIRMAN CASTRO: Good morning, everyone.

The meeting will come to order. This is a business meeting of the U.S. Commission on Civil Rights. It is currently 9:34 a.m. on June 10, 2011. This meeting is taking place at the Commission's Headquarters located at 624 9th Street, N.W. in Washington, D.C.

I'm Chairman Marty Castro. Commissioners who are present including myself are Vice Chair Thernstrom, Commissioner Heriot, Commissioner Gaziano, Commissioner Yaki, Commissioner Titus, Commissioner Achtenberg and by phone Commissioner Kirsanow will be participating in today's meeting. A quorum of the Commissioners are present.

Is the person delegated the authority of Staff Director present?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: I am.

CHAIRMAN CASTRO: Is the court reporter present?

COURT REPORTER: I am.

CHAIRMAN CASTRO: Okay. And therefore the meeting will come to order.

I. APPROVAL OF AGENDA

1 CHAIRMAN CASTRO: The first item on the
2 agenda is the approval of the agenda. Do we have any
3 amendments to the agenda?

4 (No response.)

5 Hearing none, do we have a motion on the
6 agenda?

7 COMMISSIONER ACHTENBERG: So moved.

8 CHAIRMAN CASTRO: Do we have a second?

9 COMMISSIONER YAKI: Second.

10 CHAIRMAN CASTRO: All those in favor
11 please say aye.

12 (Chorus of ayes.)

13 Okay. All those opposed?

14 (No response.)

15 Any abstentions?

16 (No response.)

17 Okay. And with the Chair it's a unanimous
18 vote.

19 IA. ANNOUNCEMENT

20 CHAIRMAN CASTRO: Actually, before I move
21 onto the approval of the minutes, I want to make an
22 important announcement. Today is the birthday of
23 Nicholas Colten. And we want to wish him well and
24 congratulate him.

25 (Off the record comment.)

1 I should have amended the agenda -- that's
2 right -- to have an announcement section. Happy
3 Birthday.

4 (Applause.)

5 COMMISSIONER YAKI: Excuse me, Mr. Chair.

6 CHAIRMAN CASTRO: Yes, sir.

7 COMMISSIONER YAKI: I would like the
8 record to reflect that it was both sad and tragic and
9 delicious that Mr. Colten baked his own cakes
10 yesterday, brought them to the office. And
11 unbeknownst to all of us, Mr. Colten served unlike
12 some of us in this room, naming myself by implication,
13 a hard-working job as a baker for many years. And the
14 cake certainly reflected his years of experience.

15 COMMISSIONER TITUS: Why didn't you save
16 us a piece?

17 COMMISSIONER YAKI: Because that's how
18 good a baker he is.

19 VICE CHAIR THERNSTROM: I was going to say
20 what is the fact that we never got the cake.

21 (Laughter.)

22 CHAIRMAN CASTRO: Well, the slices were
23 quite big. So I think I got the better of that.

24 II. APPROVAL OF APRIL 8, 2011 MEETING MINUTES

25 CHAIRMAN CASTRO: Next item on the agenda

1 is the approval of the April 8th meeting minutes. Is
2 there a motion on that?

3 COMMISSIONER YAKI: So moved.

4 CHAIRMAN CASTRO: Do we have a second?

5 VICE CHAIR THERNSTROM: Second.

6 CHAIRMAN CASTRO: Any discussion?

7 COMMISSIONER GAZIANO: I have a minor
8 amendment to request hopefully unanimously accepted.
9 On page two of the minutes, there's a discussion of a
10 motion that I made that originally passed and then
11 there was a reconsideration of that motion. And the
12 motion upon reconsideration failed.

13 There is a sentence that I think is not
14 very clear and somewhat inaccurate. And rather than
15 go through the record on the bottom of page two the
16 discussion regarding reconsideration is "Following
17 discussion on whether the approved motion would merely
18 not alter the draft timeline or whether it would
19 prevent Commissioners from later offering a motion
20 that any comments they have on the draft be
21 incorporated."

22 I don't know what that means. But as I
23 recall there was disagreement about what the previous
24 motion was and rather than try to sort that all out I
25 would simply suggest that those who want to go back to

1 the record can read the record. We would just strike
2 all that which I just read and the minutes would begin
3 "Commissioners approved a motion by Commissioner
4 Achtenberg to reconsider a previous vote." They can
5 go into the record and figure out why.

6 Is that in the interest of time
7 acceptable?

8 CHAIRMAN CASTRO: I think that is a
9 unanimous consent. It's acceptable.

10 COMMISSIONER YAKI: I have to abstain
11 because I was not here.

12 CHAIRMAN CASTRO: Thank you. So then the
13 vote on the minutes will reflect Commissioner Yaki's
14 abstention on that point. So we can vote on this.

15 All those in favor of this motion with the
16 change on the minutes signify by saying aye.

17 (Chorus of ayes.)

18 Any opposed?

19 (No response.)

20 And we have one abstention.

21 III. PROGRAM PLANNING

22 CONSIDERATION OF STATUTORY

23 REPORT TOPICS FOR FY 2013

24 CHAIRMAN CASTRO: The next item on the
25 agenda is our program planning update and discussion

1 of projects. We have up on our calendar today the
2 consideration of statutory report topics for fiscal
3 year 2012.

4 Before we get into the discussion, I just
5 want to let folks know that in light of developments
6 in Alabama and other recent developments for the
7 moment I want to put off the consideration of our
8 proposed 2012 statutory topic until the July meeting.

9 We're happy to consider your topics today, vote on
10 them or we could kick it over to July. You can make
11 any refinements, changes, provide additional topics if
12 you want. But I want to give you the courtesy of
13 letting you either move forward today or wait until
14 July and have them all consider in an omnibus fashion.

15 COMMISSIONER GAZIANO: I suppose I have a
16 question or two.

17 CHAIRMAN CASTRO: Sure.

18 COMMISSIONER GAZIANO: About could --
19 First, would you mind elaborating how the recent
20 events that you mentioned I think in Alabama might
21 affect the proposal and what else -- what do you
22 suggest is our procedure moving forward to consider
23 the topic?

24 And how -- We've done it slightly
25 different ways in the past. Sometimes we've taken

1 about two months of discussion before we actually come
2 to a vote. I was going to make a suggestion or two
3 along those lines.

4 CHAIRMAN CASTRO: Well, the good thing I
5 think is that as far as I know we started a little
6 earlier on this process this year. So it gives us a
7 little leeway.

8 But Alabama in my view yesterday signed
9 probably one of the more draconian state anti-
10 immigration laws. And I want to take a closer look at
11 that which I have not had a chance to see how -- As
12 you know, from the proposal I put forward there is a
13 big chunk of that reference is state action.

14 So I want to take a closer look at it and
15 provide maybe some refinements, maybe change that a
16 little bit but also again give us all an opportunity
17 to think about whether we want to or you want to make
18 refinements to yours, whether we want to supplement
19 any potential projects. And I also at some point
20 start looking at what our 2012 briefing topics are
21 going to be.

22 A question or concern that was raised by
23 one of these kind of have more of a set calendar as
24 we're going into the new year. So it would be a good
25 idea I think for us to even begin to consider what

1 some 2012 briefing topics might be. Some of these
2 might be support topics that don't get supported this
3 time. So I think it's maybe a little easier to try to
4 deal with those in a context rather than by piecemeal.

5 COMMISSIONER GAZIANO: One possibility
6 then is I was going to suggest that even if we adopted
7 a topic today and I think it might be better not even
8 to vote on a topic today is that the concept paper of
9 the topic that's selected is not approved anyway.
10 That concept paper, whatever one it would have been,
11 is redrafted to reflect the additional comments of all
12 the Commissioners.

13 So I guess that's one possibility. But
14 I'm willing if other Commissioners are to just
15 postpone all discussion until July.

16 CHAIRMAN CASTRO: That's what I'd like to
17 do with our topic and again give it a courtesy.

18 Vice Chair Thernstrom has a comment.

19 VICE CHAIR THERNSTROM: Yes. I mean it is
20 very important to look at the question of the
21 statutory topic in the context of discussing briefing
22 topics. Because I for one would like to think if we
23 do this statutory topic or don't do this statutory
24 topic it affects the scheduled briefing topics in X or
25 Y way.

1 In other words, it is a package for me.
2 So I think it's extremely important to put this off
3 and have a bunch of briefing topics in from us, have a
4 bunch of potential statutory topics in front of us and
5 sort it out simultaneously.

6 CHAIRMAN CASTRO: Commission Yaki.

7 COMMISSIONER YAKI: So, Mr. Chair, I have
8 one comment. I also think that there was also some
9 discussion about why refinement was needed. I think
10 that there was some -- Obviously, I think a lot of us
11 also want to take a look at the Supreme Court
12 certiorari on Hazelwood.

13 CHAIRMAN CASTRO: Hazelton.

14 COMMISSIONER YAKI: Hazelton and how that
15 affects things. And I know you brought that us as
16 well. So that's another reason why, Commissioner
17 Gaziano.

18 I would say -- I want to echo Commissioner
19 Thernstrom's remarks. I think that perhaps the best
20 thing to do would be to also encourage people to put
21 together their briefing proposals as well for the July
22 meeting so that we can sort of start getting a handle
23 on the field of battle, as it were, in terms of how
24 all of this is going to play out.

25 CHAIRMAN CASTRO: Yes. Commissioner

1 Gaziano.

2 COMMISSIONER GAZIANO: I do just want to
3 mention one general concern I had with the way the
4 immigration concept paper was written that might
5 relate to what you mentioned. That's why I asked
6 about it.

7 We have certainly jurisdiction and
8 authority to investigate civil rights issues regarding
9 state enforcement. We typically do that through a
10 number of means other than the enforcement report.
11 The Federal enforcement report that's the year long --
12 And sometimes we put, by the way, too much emphasis on
13 the energy that goes into that one as opposed to some
14 other projects. Just because we're fulfilling that
15 statutory requirement doesn't mean it has to receive
16 60 percent of the resources of the Commission.

17 But the primary, the statutory,
18 requirement and the primary is to examine the
19 effectiveness of the Federal law enforcement focus.
20 And I saw much more in the concept paper that looked
21 at examining state enforcement across state
22 enforcement. Some of those issues -- I don't think
23 all of them -- could certainly be recast. But I'm
24 just telling you all if you're thinking of rewriting
25 that it was going to be one of the lines of concern

1 that I wanted to raise.

2 And it doesn't mean that if our primary
3 focus isn't on Federal enforcement we can't or don't
4 need to look at some issue at the state level. But
5 with that, I'm happy to postpone discussion.

6 But, Pete, there were a couple that you --
7 Pete, you're on I take it.

8 COMMISSIONER KIRSANOW: I am.

9 COMMISSIONER GAZIANO: Commissioner
10 Kirsanow. Did you want to discuss -- to begin
11 discussion of any of your whether they're an
12 enforcement topic or whether they would be considered
13 as a briefing topic for the next fiscal year?

14 COMMISSIONER KIRSANOW: Thanks
15 Commissioner Gaziano. I concur with Commissioner
16 Thernstrom. I would like to discuss all the these
17 things as a whole.

18 CHAIRMAN CASTRO: I appreciate that.

19 Commissioner Gaziano, I hear what you're
20 saying. And I'm sure we'll all take that to heart
21 when we're looking at making the revisions. I
22 appreciate your comments on that.

23 Vice Chair Thernstrom.

24 VICE CHAIR THERNSTROM: And just to make
25 this absolutely clear, we can come in at the next

1 meeting and we obviously would have to notify
2 Commissioners beforehand of what we're thinking about.

3 But we can come in with new proposals.

4 CHAIRMAN CASTRO: Absolutely. Sure. And
5 what I would suggest therefore is that we try to get
6 those to staff by July 1st.

7 DELEGATED THE AUTHORITY OF THE STAFF
8 DIRECTOR TOLHURST: Okay.

9 CHAIRMAN CASTRO: So that staff can then
10 process them and get them to us in advance of the July
11 meeting for review.

12 VICE CHAIR THERNSTROM: That's right.

13 CHAIRMAN CASTRO: Again a lot of the work
14 has already been done. To the extent something new
15 comes up we still want to give folks additional time.

16 VICE CHAIR THERNSTROM: Right.

17 CHAIRMAN CASTRO: Commissioner Heriot.

18 COMMISSIONER HERIOT: Just to clarify.

19 CHAIRMAN CASTRO: Sure.

20 COMMISSIONER HERIOT: New proposals for
21 the enforcement report or new briefing proposals?

22 CHAIRMAN CASTRO: Either.

23 COMMISSIONER HERIOT: Okay. Some of the
24 proposals for an enforcement report I assume that we
25 don't have to submit it both ways.

1 CHAIRMAN CASTRO: Right. They could be
2 considered for both. You could indicate that you'd
3 like them considered for either or. Right.

4 COMMISSIONER GAZIANO: Exactly.

5 CHAIRMAN CASTRO: But we don't want to
6 make additional work for folks unless they want to do
7 it.

8 COMMISSIONER GAZIANO: And is it okay --
9 And maybe this is an easier request for you to respond
10 to since it's in the abstract rather than in concrete.

11 CHAIRMAN CASTRO: Okay.

12 COMMISSIONER GAZIANO: Because there is a
13 lot of additional resource on the enforcement reports,
14 there's usually discovery, interrogatory, sometimes
15 hearings, depositions, that if we are going to choose
16 an enforcement report at the next meeting that we not
17 necessarily vote on a final concept paper.

18 The concept paper would be sufficient it
19 seems to me to choose the topic. But then we could
20 put off to a later meeting whatever refinements to
21 whatever concept paper. Part of this is I don't know
22 when we're going to see the next concept paper. And
23 I'm not sure that -- usually discussion is a better
24 way of refining things than emails going back and
25 forth.

1 CHAIRMAN CASTRO: I guess the question is
2 sufficiently abstract that I can't say yes or no. I
3 don't know the answer to that. I think let's revisit
4 that in July.

5 Anything else on this topic?

6 (No response.)

7 III. PROGRAM PLANNING

8 EMINENT DOMAIN BRIEFING

9 CHAIRMAN CASTRO: If not, we will move
10 onto our next topic and that an update on our briefing
11 on eminent domain.

12 Ms. Tolhurst.

13 DELEGATED THE AUTHORITY OF THE STAFF

14 DIRECTOR TOLHURST: The eminent domain briefing will
15 be held on August 12th. And as you know much of the
16 preparation had already been done because this
17 briefing was previously scheduled. OCRE has been kind
18 enough to take over the logistics of the briefing.
19 They've sat through three panels and are working on
20 two additional panels.

21 CHAIRMAN CASTRO: Okay. Any questions on
22 that?

23 VICE CHAIR THERNSTROM: Yes.

24 CHAIRMAN CASTRO: Vice Chair Thernstrom.

25 VICE CHAIR THERNSTROM: Have the three

1 panelists who we've secured have they said they can
2 make it on that date?

3 CHAIRMAN CASTRO: And this is keeping with
4 the commitment we made to the --

5 VICE CHAIR THERNSTROM: I understand that.

6 CHAIRMAN CASTRO: I wanted to make sure.

7 VICE CHAIR THERNSTROM: But I was
8 wondering that the panelists had committed to an
9 earlier date.

10 CHAIRMAN CASTRO: Right.

11 VICE CHAIR THERNSTROM: And now that the
12 date was changed, I wanted to make sure that they're
13 still committed.

14 DELEGATED THE AUTHORITY OF THE STAFF
15 DIRECTOR TOLHURST: They're still committed.

16 CHAIRMAN CASTRO: Any questions on that?

17 (No response.)

18 Any further update?

19 (No response.)

20 If not, we're going to move onto state
21 advisory committee issues.

22 IV. STATE ADVISORY COMMITTEE ISSUES

23 DISCUSSION OF COMMISSIONER MEMBERSHIP ON SACs

24 CHAIRMAN CASTRO: We have today two SACs
25 that need to be rechartered. But before we go into

1 that, I think we circulated a proposed amendment to
2 the AI5-9 Section 2. That would add to the list of
3 general guidelines that apply to all SAC members.

4 The language of that amendment which again
5 was circulated a few days ago is "Commissioners shall
6 not serve on state advisory committees." And I'm
7 going to make a motion that we adopt that amendment to
8 our AI. Is there a second before going on to
9 discussion?

10 COMMISSIONER YAKI: Second.

11 CHAIRMAN CASTRO: Second. Just to clarify
12 why I'm putting this forward, there is a reason I mean
13 I was a member of and then ultimately a chair of the
14 Illinois SAC and I felt that I needed to resign before
15 I joined the Commission because I felt that there was
16 an inherent conflict in my mind in serving in both. I
17 know Commissioner Gaziano recently also stepped down
18 from a SAC that he was on.

19 But in addition since joining the
20 Commission I became aware of the Federal Advisory
21 Committee Act which governs SACs and it provides that
22 "the advice and recommendations of advisory committees
23 will not be inappropriately influenced by appointing
24 authorities or by any special interests, but instead
25 will be the result of the advisory committee's

1 independent judgment." So since we Commissioners are
2 the appointing authority for the SACs I just think and
3 I feel that's probably more appropriate for the
4 appointing authority not to also serve on the SACs.

5 And so even if it's not intentional
6 efforts I think it's just an appearance issue at the
7 minimum. What I would like to do is open that up for
8 discussion.

9 Commissioner Heriot.

10 COMMISSIONER HERIOT: I think I'm the only
11 member of the Commission -

12 - If you resigned from the
13 Illinois SAC.

14 CHAIRMAN CASTRO: Yes, I was.

15 COMMISSIONER HERIOT: I am the only
16 Commissioner who is now on a SAC. I don't have any
17 real conflict with a rule that says Commissioners
18 can't serve on SACs. I don't find that's a terrible
19 thing.

20 I believe that our former general counsel,
21 David Blackwood gave the opinion that it's not in
22 violation of the statute. But even so we could adopt
23 a policy that prevents Commission members from being
24 voting members of SACs. That said, I think we have a
25 much, much larger problem than the problem of
Commission members having more influence than what

1 somebody might think is appropriate on a state
2 advisory committee.

3 And remember it's not true that
4 Commissioners are the appointing authority. The
5 Commission is the appointing authority. And what we
6 have now is a system under which Commission staff
7 members have what I regard as much, much greater
8 influence on what state advisory committees do. In
9 fact, if there's a problem with the appointing
10 authority, that is the Commission, having too much
11 influence on SACs it derives from the fact that our
12 staff members actually write the report for the SAC
13 members. And they're frequently the only liaison with
14 state advisory committees.

15 I believe that the tradition on the
16 Commission was for Commissioners to frequently attend
17 SAC meetings. And I believe this provides a very
18 valuable counterweight to what otherwise could be too
19 much influence by an individual staff member. And
20 again the staff members are actually writing the
21 reports.

22 When I was chair of the California SAC
23 before I was appointed to the Commission, I was
24 basically just a beginner at this. And there at the
25 time a now retired staff member who basically told me

1 what to do in ways that upon -- now I know more about
2 how the Commission works I think were actually quite
3 inappropriate. And I think this is something that we
4 have to address and I think it is massively more
5 important than the very minor effect that a Commission
6 member being on the staff.

7 If that statute applies to us, I don't
8 think there's any doubt in the world that the
9 appointing authority via the staff has too much effect
10 on state advisory committees. And if we are going to
11 address the problem of Commission members being a
12 member and regard that as a problem then this is the
13 elephant that's in the room.

14 It cannot be that it's inappropriate for
15 an individual Commissioner to serve on a SAC, but that
16 it's okay for the staff members to be drafting
17 advisory committee reports and having as much effect
18 as they do. And I think it's --

19 My solution to this is to go back to the
20 system that I'm told that the Commission had in years
21 past and that is that the Commissioners should
22 frequently attend SAC meetings. There isn't any need
23 to be on a SAC and to have a vote. But I think having
24 more than one Commissioner and Commissioners who
25 represent different points of view more routinely

1 attend SAC meetings. I think the value of having
2 Commissioners on the SAC is really -- They don't need
3 to have a vote. There's no need for that.

4 I'm not going to defend that. I'm happy
5 to present it to the SAC if that's what the Commission
6 wants to do. But I'm very, very interested in coming
7 up with some way to act as a counterweight to the
8 problem of individual staff members.

9 And I'm not criticizing particular
10 individual staff members here. I attended a staff
11 meeting that Peter Minarik supervised and I thought he
12 did a great job. Although I did have some
13 disagreements with him that I talked to him about
14 after the meeting.

15 Peter, are you on the line?

16 MR. MINARIK: I am.

17 COMMISSIONER HERIOT: For instance, Peter,
18 remember when we had lunch afterwards. One thing that
19 Peter was encouraging, not encouraging, but saying
20 that he didn't want to approve a committee report that
21 wasn't unanimous. I don't actually feel the staff
22 member has the right to make that point.

23 CHAIRMAN CASTRO: Commissioner Heriot, I
24 wanted -- This is a very limited motion.

25 COMMISSIONER HERIOT: Yes, but --

1 CHAIRMAN CASTRO: I understand what you're
2 saying.

3 COMMISSIONER HERIOT: That I move to
4 amend.

5 CHAIRMAN CASTRO: Well, here's what I'm
6 going to suggest because there are a number of other
7 SAC tweaks we might want to do. Let's put together --
8 If you have a motion on these, we'll put these
9 together and we'll look at them in July. And you and
10 I share the view of getting our Commissioners more
11 active in attending SAC meetings.

12 COMMISSIONER HERIOT: Well, we saved a lot
13 of time on the earlier issues on the agenda. I think
14 we should talk about this.

15 CHAIRMAN CASTRO: Okay. And I'm
16 responding. I would like to be going and visiting and
17 seeing more of what our SACs are doing. So I don't
18 disagree with you there.

19 But what I think is important is if we
20 have any proposed revisions on any SAC issues that we
21 try to put forward a thoughtful motion and circulate
22 it. Because these issues as you're presenting are
23 much more complex than this and I'd rather consider
24 those at another time. Not to say that they're not
25 issues, but I want to keep this limited right now.

1 Commissioner Gaziano.

2 COMMISSIONER GAZIANO: I'd rather not vote
3 on the motion then in isolation if we're going to
4 consider another motion. But I do want to speak to
5 the motion since I was on the Virginia SAC as you
6 know.

7 When this came up twice in the past few
8 years, I thought the idea that I was continuing as a
9 voting member somehow had more influence than or more
10 inappropriate influence than if I attended as an ex
11 officio member was ridiculous. But I resigned in part
12 for two reasons. One was to allow someone else to be
13 appointed to the Virginia SAC.

14 But I also made a commitment at that time
15 that I wanted to attend more of the SACs. And I
16 specifically asked twice now at Commission meetings
17 that I be informed of especially Maryland, D.C. and
18 Virginia so that I could attend as many of them. And
19 then I communicated that separately to staff. And I
20 have not received notices of when those meetings were
21 even going to take place.

22 So I'm seconding Commissioner Heriot's
23 concerns and suggesting that -- I'm not saying that
24 there was a motive to keep me from attending. But my
25 request was not taken sufficiently seriously that it

1 was followed through. And I found out about SAC in
2 those states near where I live that happened where
3 they were already scheduled and I was not included.

4 By the way, the tradition and it's been
5 the advice from staff directors and general counsels
6 as far as I know that Commissioners, ex officio
7 without a vote and deciding on reports or what the
8 reports shall be, can attend any briefings and ask
9 questions and can participate in the discussion. And
10 I think that that informs the work of the committees.

11 It's consistent as a matter in fact with
12 the Democratic Commissioners' -- one of the
13 recommendations in your concept paper to participate
14 with SACs.

15 CHAIRMAN CASTRO: Yes.

16 COMMISSIONER GAZIANO: So when this motion
17 is considered, I would like it to also include the
18 following:

19 So I think this discussion that notices of
20 SAC meetings or other significant briefings or events
21 be sent to all Commissioners on a regular basis.

22 Secondly, I think we should be specific
23 about a few types of undue influence. We should
24 probably specify that any reports be actually written
25 by the SAC members and not written in any significant

1 way by staff.

2 CHAIRMAN CASTRO: Yes. Just a second and
3 I'll recognize you, Madam Vice Chair. I don't accept
4 that as an amendment to this. Again these are --

5 COMMISSIONER GAZIANO: I'm suggesting that
6 it could be on this other motion that you're talking
7 about.

8 CHAIRMAN CASTRO: Not on this other
9 motion. This is the motion, a very limited motion.
10 Again, these issues we can bring them up later,
11 Commissioner.

12 Vice Chair Thernstrom.

13 VICE CHAIR THERNSTROM: Yes. I want to
14 vote just on this issue at this time because I've got
15 a bunch of issues having to do with SACs and the way
16 they're run also and the funding available for them.
17 And, by the way, I don't believe on the basis of my
18 conversations with the Chair of the Virginia SAC that
19 there has been a Virginia SAC meeting since you left.

20 COMMISSIONER GAZIANO: No, some of the
21 other SACs.

22 VICE CHAIR THERNSTROM: Some of the SACs,
23 okay. But the fact that there hasn't is part of a
24 larger package of SAC problems that I think we should
25 legitimately discuss but not today. And I mean they

1 really are separate from this.

2 CHAIRMAN CASTRO: If there are no other
3 comments, I'm calling for a -- I'm sorry, Commissioner
4 Heriot.

5 COMMISSIONER HERIOT: I mean I think these
6 issues are connected. I can't vote for a motion
7 that's going to eliminate what little counterweight we
8 have to staff influence. But I could vote for it
9 easily if it were packaged with a program where we
10 really did try to deal with SAC independence.

11 I assume you would rather have votes in
12 favor of this. And that can be done. That can be
13 arranged. I'd be happy to vote for this if it was
14 something that deals with the independence issue
15 generally.

16 CHAIRMAN CASTRO: The Chair recognizes the
17 Vice Chair and then Commissioner Yaki.

18 VICE CHAIR THERNSTROM: I'm a little
19 confused, Commissioner Heriot. I mean we don't --
20 There is in place an open door for any of us to go to
21 the SAC meetings. We don't need to -- If we want to
22 have influence by arriving there and asking questions
23 and participating we can do that.

24 COMMISSIONER HERIOT: We're not informed
25 of when the meetings are.

1 VICE CHAIR THERNSTROM: Okay.

2 COMMISSIONER HERIOT: For goodness sake.

3 DELEGATED THE AUTHORITY OF THE STAFF

4 DIRECTOR TOLHURST: They're posted in the Federal
5 Register, but we can certainly send you all an email.

6 VICE CHAIR THERNSTROM: Yes.

7 COMMISSIONER HERIOT: But that commitment
8 has been made before.

9 CHAIRMAN CASTRO: This is a different
10 staff.

11 COMMISSIONER HERIOT: You've been
12 wonderful. I'm not prepared to vote for something
13 unless I -- You know, we're dealing with the issue of
14 SAC independence more broadly and I think it can be
15 done. I think it can easily be done.

16 CHAIRMAN CASTRO: Vice Chair Thernstrom,
17 are you done with your comments?

18 VICE CHAIR THERNSTROM: Yes, I'm done with
19 my comments.

20 CHAIRMAN CASTRO: Commissioner Yaki.

21 COMMISSIONER YAKI: Thank you very much,
22 Mr. Chair. I have for several years raised issues
23 regarding SAC and SAC reform. I agree with some of
24 what Commissioner Gaziano has spoken about in regard
25 to and Commissioner Heriot in terms of visiting more

1 SACs, being able to go see what's going on, getting
2 timely notice, etc. But I think those in many ways
3 are staff related issues that I think under your
4 leadership I'm sure you'll take care of.

5 But I think we have here a valid, crystal
6 clear, clean amendment to our AIs that I think we
7 should just simply vote and get out of the way and
8 discuss further the other issues because trust me.
9 This is nowhere near the exhaustion of issues
10 involving SACs that I would want to bring up. But we
11 did not notice it for this time and I'm not prepared
12 to discuss every single nuance of what that is.

13 Thank you.

14 CHAIRMAN CASTRO: Thank you, Commissioner
15 Yaki.

16 If there are no other comments, I'd like
17 to call this for a question. Vice Chair Thernstrom,
18 how do you vote?

19 VICE CHAIR THERNSTROM: Yes.

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

22 COMMISSIONER KIRSANOW: Could you state
23 the motion again?

24 CHAIRMAN CASTRO: Sure. The motion is --
25 Bear with me a second.

1 COMMISSIONER YAKI: Commissioner Kirsanow,
2 is that you ferociously typing away on your typewriter
3 that we hear?

4 COMMISSIONER KIRSANOW: No, I'm sure
5 that's someone else.

6 (Off the record comments.)

7 COMMISSIONER YAKI: It sounded like a
8 typewriter. That's why I was wondering.

9 CHAIRMAN CASTRO: The motion would amend -
10 - it's a motion to amend the AI5-9 Section 2 and would
11 add to the list of general guidelines that apply to
12 all SACs. The language of the amendment is
13 "Commissioners shall not serve on state advisory
14 committees."

15 COMMISSIONER KIRSANOW: I vote no.

16 CHAIRMAN CASTRO: No.

17 Commissioner Heriot?

18 COMMISSIONER HERIOT: I vote no and again
19 I would be happy to vote yes if this package was in a
20 more appropriate approach to the problem of SAC
21 independence.

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

24 COMMISSIONER GAZIANO: I vote no for the
25 same reason Commissioner Heriot expressed.

1 CHAIRMAN CASTRO: Commissioner Yaki.

2 COMMISSIONER YAKI: I vote yes for the
3 opposite reasons.

4 CHAIRMAN CASTRO: Commissioner Titus.

5 COMMISSIONER TITUS: Yes.

6 CHAIRMAN CASTRO: Commissioner Achtenberg.

7 COMMISSIONER ACHTENBERG: Yes.

8 CHAIRMAN CASTRO: And the Chair votes yes.
9 We have five yeses and three nos. The motion passes.

10 COMMISSIONER GAZIANO: Just for the
11 record.

12 CHAIRMAN CASTRO: Commissioner Gaziano.

13 COMMISSIONER GAZIANO: I want to reexamine
14 the actual vote. The Federal Advisory -- The general
15 counsel on this point was actually right. The Federal
16 Advisory Committee doesn't actually bind us. It binds
17 Congress in creating advisory committees. Just for
18 the record.

19 VICE CHAIR THERNSTROM: Okay. But we can
20 amend our own AI.

21 COMMISSIONER GAZIANO: Sure. And I would
22 be for that. But the idea that we've been proceeding
23 in illegal path I thought it was worth correcting.

24 CHAIRMAN CASTRO: Not illegal. But maybe
25 something we should take a look at as well.

1 IV. STATE ADVISORY COMMITTEE ISSUES

2 RE-CHARTERING THE CONNECTICUT SAC

3 CHAIRMAN CASTRO: The next item is the
4 Connecticut SAC. It's up for consideration. I would
5 move that the Commission re-charter the Connecticut
6 State Advisory Committee.

7 Under this motion, the Commission appoints
8 the following individuals to that committee based upon
9 the recommendation to our Staff Director. Those
10 individuals are Jay Bergman, Dove Burns, Christine
11 Corgel, Marilyn Ford, Elizabeth Haynes, John
12 Herrington, Adelaide Jones, Brian Langdon, Frederick
13 McKinney, Ingrid Moll, Werner Oyanadel, Melanie
14 Rausch, David Reynolds, John Tanski, Charles Venator-
15 Santiago, Richard Wilson, Margaret Young.

16 Pursuant to this motion, the Commission
17 appoints Richard Wilson as chair of this re-chartered
18 Connecticut State Advisory Committee. These members
19 will serve as uncompensated government employees.
20 Under this motion, the Commission authorizes the Staff
21 Director to execute the appropriate paperwork for
22 appointment.

23 Is there a second?

24 COMMISSIONER YAKI: Second.

25 CHAIRMAN CASTRO: Any discussion?

1 Vice Chair Thernstrom.

2 VICE CHAIR THERNSTROM: I have a question
3 about that I could have raised a long time ago, but
4 I'm raising it now. Why is the religion of SAC
5 members identified? Why is that relevant?

6 CHAIRMAN CASTRO: Madam Acting Staff
7 Director.

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR TOLHURST: I actually think it's not
10 appropriate to ask that dealing with the origin of --
11 I presume someone in good faith was trying to get many
12 types of diversity and that's why they asked. But I
13 would not have approved that.

14 VICE CHAIR THERNSTROM: Yes. I don't want
15 it included. Why are all these -- always Jewish?

16 COMMISSIONER HERIOT: Why is that? Where
17 is everything else?

18 COMMISSIONER YAKI: Mr. Chair, I would
19 suggest that would be part of the discussion of --

20 CHAIRMAN CASTRO: Yes.

21 VICE CHAIR THERNSTROM: That's fine.

22 CHAIRMAN CASTRO: Any discussion on the
23 substantive candidates?

24 COMMISSIONER GAZIANO: I have two.

25 CHAIRMAN CASTRO: Commissioner Gaziano.

1 COMMISSIONER GAZIANO: Two matters to
2 raise. First of all, we've had a tradition and I
3 think a very, very important one of letting
4 Commissioners know -- Our AIs suggest and we've had
5 many discussions over the years and sort of amendments
6 by way of discussion to the AIs that certain efforts
7 should be made, certain groups should be contacted, to
8 solicit names.

9 One of the most important is
10 Commissioners. And Commissioners were not told that
11 this state -- unless I'm mistaken -- but through
12 diligent search I'm unaware that Commissioners were
13 told that either of the two states on the agenda today
14 were going to be re-chartered and to ask for our
15 suggestions.

16 We obviously have a lot of contacts and
17 suggestions are only that, of course, like any other
18 group that the staff -- so for that reason alone I
19 would ask that Commissioners be solicited, that the
20 vote be postponed, that we be able to make
21 suggestions. I think one of the states is
22 particularly lopsided.

23
24 But I also have particular concern about
25 one of the candidates. And I think that I would
request that if my request that we postpone the vote

1 on these SACs is not that I would ask that we go into
2 executive session and that we explore some concerns I
3 have with at least one of the candidates. And that
4 might or might not be a reason to postpone voting on
5 that particular SAC. So in the interest of time I
6 wonder if we could just postpone voting on both SACs.

7 CHAIRMAN CASTRO: Well, you know, in the
8 materials I review every month for this meeting
9 there's an indication of when the SACs are expiring.
10 I think that's one thing that should trigger in my
11 mind as Commissioners to let the Staff Director know
12 that we have some recommendations. We can certainly
13 ask staff to send us an advanced reminder of what SACs
14 may be coming up for re-charter before the next
15 meeting or the next cycle.

16 But I would like to move forward with
17 these SACs today. So if you do have something you
18 want to discuss in executive session then we'll have
19 to move into executive session and discuss that.

20 COMMISSIONER GAZIANO: Okay. Well, let me
21 just -- Without defeating the purpose of executive
22 session, there is one of these candidates, I think,
23 whose writing suggests would be intemperate and
24 possibly unable to work constructively with people on
25 the SAC that he disagrees with. And that's been the

1 most common ground we have for expressing concern
2 about a SAC member.

3 Generally, in that situation, we allow the
4 candidate to respond. And then we make our decision
5 on that particular candidate. Is that sufficient, Ms.
6 Staff Director, Acting as General Counsel, whatever,
7 to go into executive session? Or do you need more
8 information than that?

9 DELEGATED THE AUTHORITY OF THE STAFF
10 DIRECTOR TOLHURST: I may need a little more because
11 if they're published writing, I don't think they have
12 any privacy interests which is debating things in the
13 public forum. If it's a personal --

14 COMMISSIONER GAZIANO: Yes. It's a close
15 call. But it is a -- And the way this rule is
16 operated it could go either way. I want to discuss
17 what I think the writing shows about his or her
18 personality and what the writing suggests about how
19 that might reflect his or her actions on the SAC. But
20 I'm happy to discuss it on the record as well.

21 CHAIRMAN CASTRO: I know Commissioner
22 Heriot had her hand up and then Commissioner Yaki and
23 then the Vice Chair.

24 Commissioner Heriot.

25 COMMISSIONER HERIOT: I just had a comment

1 related to what you were saying about whether or not
2 we were alerted to this issue so that we can make
3 proposals for members. We frequently have a long list
4 of SACs that have expired. That doesn't mean they're
5 coming up soon. Some kind of this has expired for
6 quite a long time. So it's not really adequate
7 notice.

8 CHAIRMAN CASTRO: That's why I suggested
9 the Staff Director sort of let us know what's coming.

10 COMMISSIONER HERIOT: Yes. I really think
11 it's quite important to know to get a chance to make
12 proposals in the Connecticut and the Tennessee SACs.

13 CHAIRMAN CASTRO: Commission Yaki and then
14 the Vice Chair.

15 COMMISSIONER YAKI: Yes. I just wanted to
16 say to the Chair that I disagree somewhat with
17 Commissioner Gaziano's characterization of the history
18 or treatment of these types of cases. One of my
19 continuing problems with SACs over the years has been
20 the rather haphazard treatment of exactly how things
21 did or did not go forward, how individuals did or did
22 not go forward, with procedures.

23 I think the procedure that Commissioner
24 Gaziano is referring to was rather ad hoc and done in
25 a way that I felt was unfair to some individuals

1 involved. So I just don't want you to have any
2 impression that there was certainty unanimity in the
3 past about how these would be treated.

4 CHAIRMAN CASTRO: I appreciate it.

5 Madam Vice Chair.

6 VICE CHAIR THERNSTROM: I'm happy to go
7 into executive session to talk if we need to about a
8 particular candidate. But I'm a little concerned and
9 maybe Commissioner Gaziano just because he was
10 speaking not in executive session but in the public
11 arena about thinking we can't -- about the notion that
12 we can't have "intemperate people" on the SACs. I'm
13 not sure what that means.

14 I mean we don't want to start eliminating
15 people with strong, passionate views. And we
16 certainly haven't in the past. And so there's a line
17 that you got in mind that somebody crosses. But I'm
18 not sure we've ever discussed and I'm not sure we
19 could define --

20 COMMISSIONER GAZIANO: There was a
21 particular candidate from Vermont that no one voted
22 for after the issue was raised.

23 VICE CHAIR THERNSTROM: Well, I remember.
24 Yes.

25 COMMISSIONER GAZIANO: Yes, we may draw

1 that line differently, but it's sort of -- I hope
2 everyone has passion for its civil rights.

3 VICE CHAIR THERNSTROM: Well, exactly.

4 COMMISSIONER GAZIANO: It's whether
5 they're name callers in such a way. I'm just using
6 that as an example.

7 VICE CHAIR THERNSTROM: Right.

8 COMMISSIONER GAZIANO: Whether they're
9 name callers in such a way. You know, SACs as you
10 know, -- those of us who have served on it -- it's
11 uncompensated. You have to either take vacation or
12 make up the work. You have to travel to the location.

13 And if there's one person who can't get along and
14 engages in name calling and accusations it really
15 ruins it for everyone else.

16 VICE CHAIR THERNSTROM: Okay.

17 CHAIRMAN CASTRO: Commissioner Yaki.

18 COMMISSIONER YAKI: I just need to say
19 this on the record because the insinuation that
20 Commissioner Gaziano just made about the person from
21 Vermont is absolutely wrong. This was a person who
22 had been on the SAC and had worked very well with
23 them.

24 And this had to do with an article that
25 Commissioner Gaziano disagreed with. There were some

1 issues with the Commission about that. But the fact
2 is that there was no evidence whatsoever he could not
3 play well with others and that I think is one of the
4 concerns that Commissioner Thernstrom brought up.

5 I just want -- I do not want this record
6 to reflect ill on this one particular individual with
7 regard to the temperament and inability to work with
8 other people. Because that was clearly not
9 demonstrated at all.

10 COMMISSIONER GAZIANO: I apologize if I --
11 for that particular individual, there were some other
12 issues.

13 COMMISSIONER YAKI: Right.

14 COMMISSIONER GAZIANO: But as I recall no
15 one voted for him. No one.

16 COMMISSIONER YAKI: No one voted. I have
17 a feeling that if you look at the record the way it
18 was done was different because certainly it was -- It
19 would have been my intention to handle it differently.

20 CHAIRMAN CASTRO: Both points are well
21 taken. I appreciate you both raising them.

22 So in terms of the executive session, do
23 you want to proceed?

24 COMMISSIONER GAZIANO: We have to go with
25 -- This may be a close call. You have to give the

1 opinion first.

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: So I have a suggestion. I'm not
4 sure what you're going to say. And it may be said
5 that it should be in an executive session. So why
6 don't we go into executive session with Commissioners
7 being warned that after the fact I'll read the
8 transcript. And if the conversation ends up not
9 touching on anything that really implicates a privacy
10 right, we'll then open that part of the transcript and
11 play it back in the public.

12 Is that acceptable?

13 VICE CHAIR THERNSTROM: Sounds good.

14 DELEGATED THE AUTHORITY OF THE STAFF
15 DIRECTOR TOLHURST: And we need a vote to go into
16 executive session.

17 CHAIRMAN CASTRO: So we have a motion.

18 COMMISSIONER GAZIANO: Second.

19 CHAIRMAN CASTRO: Second.

20 Vice Chair Thernstrom, how do you vote on
21 going into executive session?

22 VICE CHAIR THERNSTROM: Yes.

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

25 COMMISSIONER KIRSANOW: Yes.

1 CHAIRMAN CASTRO: Commissioner Heriot.
2 COMMISSIONER GAZIANO: How do we get Peter
3 off the line?
4 CHAIRMAN CASTRO: Commissioner Heriot.
5 COMMISSIONER HERIOT: Yes.
6 CHAIRMAN CASTRO: Commissioner Gaziano.
7 COMMISSIONER GAZIANO: Yes.
8 CHAIRMAN CASTRO: Commissioner Yaki.
9 COMMISSIONER YAKI: Abstain.
10 CHAIRMAN CASTRO: Commissioner Titus.
11 COMMISSIONER TITUS: Yes.
12 CHAIRMAN CASTRO: Commissioner Achtenberg.
13 COMMISSIONER ACHTENBERG: Yes.
14 CHAIRMAN CASTRO: The Chair votes yes.
15 So we will go into executive session. Can
16 someone assure that the public line is off and that
17 only Commissioners are on the phone? And we would ask
18 everyone else from the audience to please step out.
19 Peter, you'll need to log off the call
20 please.
21 MR. MINARIK: Fifteen minutes or?
22 CHAIRMAN CASTRO: Pam Dunston will call
23 you back.
24 MR. MINARIK: Okay. Thanks very much.
25 CHAIRMAN CASTRO: I'm sorry. Forgot.

1 (Off the record comments.)

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: Everyone who's here.

4 CHAIRMAN CASTRO: Everyone who is here can
5 stay. Okay. Off the record.

6 (Whereupon, at 10:17 a.m., the above-
7 entitled matter went off the record and resumed at
8 10:30 a.m.)

9 COMMISSIONER YAKI: Point of order, Mr.
10 Chair and this is directed to the Staff Director.

11 Based on your characterization, I take it
12 that essentially it would probably be your
13 determination that the entire discussion that we had
14 really did not belong in executive session and will be
15 part of the --

16 DELEGATED THE AUTHORITY OF THE STAFF
17 DIRECTOR TOLHURST: Will be part of the full
18 transcript.

19 CHAIRMAN CASTRO: Okay. So we're back in
20 regular session. If there is no further discussion on
21 this, I'd like to call the question on the Connecticut
22 SAC.

23 COMMISSIONER GAZIANO: I move to amend and
24 severe the vote on Mr. Venator-Santiago.

25 COMMISSIONER HERIOT: I'll second that.

1 CHAIRMAN CASTRO: All those in favor. Let
2 me go down the scope one-by-one. Vice Chair
3 Thernstrom, how do you vote?

4 VICE CHAIR THERNSTROM: No.

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

7 COMMISSIONER KIRSANOW: I could barely
8 hear the motion. Was it to sever Santiago from the
9 rest of the SAC.

10 CHAIRMAN CASTRO: Yes, it was.

11 COMMISSIONER KIRSANOW: I vote no.

12 CHAIRMAN CASTRO: Commissioner Heriot.

13 COMMISSIONER HERIOT: I'll vote yes.

14 CHAIRMAN CASTRO: Commissioner Gaziano.

15 COMMISSIONER GAZIANO: Yes.

16 CHAIRMAN CASTRO: Commissioner Yaki.

17 COMMISSIONER YAKI: No.

18 CHAIRMAN CASTRO: Commissioner Titus.

19 COMMISSIONER TITUS: No.

20 CHAIRMAN CASTRO: Commissioner Achtenberg.

21 COMMISSIONER ACHTENBERG: No.

22 CHAIRMAN CASTRO: Chairman Castro votes
23 no. So the motion to sever fails.

24 COMMISSIONER HERIOT: Move to approve.

25 COMMISSSIONER YAKI: We're calling a

1 question on the motion to approve.

2 Vice Chair Thernstrom, how do you vote?

3 VICE CHAIR THERNSTROM: Yes.

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

6 COMMISSIONER KIRSANOW: I vote no again.
7 It's not based on any individual member. It's based
8 on the balance of this particular SAC.

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

11 COMMISSIONER HERIOT: I vote no not based
12 on any particular person in the SAC and not just based
13 on the balance but also based on the fact that I was
14 unaware that this SAC was being put together and
15 therefore did not have an opportunity to make
16 proposals.

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

19 COMMISSIONER GAZIANO: I vote no primarily
20 because of the lack of opportunity to recommend
21 candidates.

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

24 COMMISSIONER YAKI: I vote yes because for
25 six years I never got to vote yes for the SAC.

1 CHAIRMAN CASTRO: Commissioner Titus.

2 COMMISSIONER TITUS: Yes.

3 CHAIRMAN CASTRO: Commissioner Achtenberg.

4 COMMISSIONER ACHTENBERG: Yes.

5 CHAIRMAN CASTRO: And the Chair votes yes.

6 We have five yeses. The majority passes. The SAC is
7 approved.

8 IV. STATE ADVISORY COMMITTEE ISSUES

9 RE-CHARTERING THE TENNESSEE SAC

10 CHAIRMAN CASTRO: Next we move onto the
11 Tennessee SAC. As Chair, I move that the Commission
12 re-charter the Tennessee State Advisory Committee.
13 Under this motion, the Commission appoints the
14 following individuals to the committee based upon the
15 recommendations of our Staff Director: Tiffany Cox,
16 Diane Di Ianni, Brian Fitzpatrick, Amber Dancy
17 Gooding, J. Gregory Grisham, John Harris, Mary Jean
18 Howard-Hill, Nika Jackson, Jason A. Johnson, Bernie
19 Miller, Eliud Trevino.

20 Pursuant to this motion, the Commission
21 appoints Bernie Miller as chair of this re-chartered
22 Tennessee State Advisory Committee. These members
23 will serve as uncompensated government employees.
24 Under this motion, the Commission authorizes the Staff
25 Director to execute the appropriate paperwork for the

1 appointment. Is there a second?

2 VICE CHAIR THERNSTROM: Second.

3 CHAIRMAN CASTRO: Okay. Any discussion?

4 (No response.)

5 Hearing none, I will call the question.

6 Vice Chair Thornstrom, how do you vote?

7 VICE CHAIR THERNSTROM: Yes.

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

10 COMMISSIONER KIRSANOW: Yes.

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

13 COMMISSIONER HERIOT: I vote no for the
14 same reasons that I gave for the Connecticut SAC.

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

17 COMMISSIONER GAZIANO: No, for the same
18 reasons that we weren't given an opportunity to make
19 recommendations.

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

22 COMMISSIONER YAKI: Yes.

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

25 COMMISSIONER TITUS: Yes.

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

3 COMMISSIONER ACHTENBERG: Yes.

4 CHAIRMAN CASTRO: And the Chair votes yes.
5 That's a majority vote. And the Tennessee SAC is
6 approved.

7 V. MANAGEMENT AND OPERATIONS:

8 STAFF DIRECTOR'S REPORT

9 CHAIRMAN CASTRO: Now we move onto our
10 management and operations agenda item. Our next item
11 is our staff director's report. Ms. Tolhurst.

12 DELEGATED THE AUTHORITY OF THE STAFF
13 DIRECTOR TOLHURST: A couple of items of interest. We
14 have posted the job opening for the Director of the
15 Office of Civil Rights Evaluation and we will begin
16 interviewing candidates next week.

17 We will hopefully be signing a lease for
18 our new location this month. Until it's signed, I
19 can't say more about it. But I think people will be
20 pleased with the location.

21 VICE CHAIR THERNSTROM: And what are we
22 talking about?

23 COMMISSIONER YAKI: You can't say where it
24 is.

25 DELEGATED THE AUTHORITY OF THE STAFF

1 DIRECTOR TOLHURST: Not until it's signed.

2 CHAIRMAN CASTRO: GSA.

3 DELEGATED THE AUTHORITY OF THE STAFF

4 DIRECTOR TOLHURST: Because there are rules and we'll
5 have to rebid it if it falls through.

6 COMMISSIONER GAZIANO: We asked for some
7 conditional input on that before. This sounds like a
8 commitment that the Commission staff would be making.

9 DELEGATED THE AUTHORITY OF THE STAFF

10 DIRECTOR TOLHURST: It is a commitment and I agree
11 with you that more input should have been had earlier.

12 But it was too late in the process by that time.

13 VICE CHAIR THERNSTROM: What are we
14 talking about --

15 DELEGATED THE AUTHORITY OF THE STAFF

16 DIRECTOR TOLHURST: I would have liked to have been
17 asked as well. Sorry. We have to move in 2012, the
18 summer of 2012.

19 VICE CHAIR THERNSTROM: The summer.

20 DELEGATED THE AUTHORITY OF THE STAFF

21 DIRECTOR TOLHURST: Because our lease is up in the
22 building.

23 COMMISSIONER GAZIANO: Then can you
24 explain to me and you may well be right, but for my
25 own sake explain to me why we can't be told that this

1 is --

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: Well, we haven't signed and I just
4 don't want to get public until it's -- I just don't
5 want to announce where it is until it's signed.

6 COMMISSIONER HERIOT: Well, is this
7 something that's appropriate for an executive session
8 again? I mean it really does matter where we're going
9 to be located.

10 VICE CHAIR THERNSTROM: But are we going
11 to have a choice?

12 COMMISSIONER HERIOT: Well, I don't know.

13 COMMISSIONER GAZIANO: We can I suppose
14 instruct staff --

15 COMMISSIONER YAKI: I'm sure Heritage has
16 some excess space.

17 CHAIRMAN CASTRO: Why don't we raise our
18 hands to be recognized? I don't want everyone to talk
19 over each other.

20 Commissioner Gaziano.

21 COMMISSIONER GAZIANO: Let me get -- One
22 concern that someone at staff who will go unnamed
23 mentioned to me is that if it's not near a Metro stop
24 that's really important to them. So we have
25 responsibility for our staff --

1 DELEGATED THE AUTHORITY OF THE STAFF
2 DIRECTOR TOLHURST: You can walk there from here.

3 COMMISSIONER GAZIANO: Okay. That's a
4 nice answer. That's a helpful answer.

5 (Laughter.)

6 CHAIRMAN CASTRO: Commissioner Heriot.

7 COMMISSIONER HERIOT: Actually that was
8 such a very helpful answer.

9 CHAIRMAN CASTRO: Is it near -- Anybody
10 else on this?

11 (No response.)

12

Okay. Please continue your report.

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

15 The English Only Policy in the Workplace
16 Report has been finalized for printing. I also would
17 like to introduce some interns that are joining us
18 this summer. In the Office of the General Counsel we
19 have Max Lesko, a 1L at Georgetown.

20 (Applause.)

21 And Pete Thompson who is a 2L at Emory.

22 (Applause.)

23 COMMISSIONER YAKI: So you brought the
24 heat.

25 DELEGATED THE AUTHORITY OF THE STAFF

1 DIRECTOR TOLHURST: And OCRE also has an intern. I
2 hope I'm saying this right, Kanydah Bellamy.

3 COMMISSIONER YAKI: You mispronounced her
4 name so much --

5 DELEGATED THE AUTHORITY OF THE STAFF
6 DIRECTOR TOLHURST: And she's a senior science major
7 at the University of North Carolina.

8 CHAIRMAN CASTRO: Thank you for being with
9 us.

10 DELEGATED THE AUTHORITY OF THE STAFF
11 DIRECTOR TOLHURST: And the only thing I have left is
12 it's not the Staff Director. It's the General Counsel
13 statutory report update.

14 CHAIRMAN CASTRO: Okay.

15 V. MANAGEMENT AND OPERATIONS:

16 GENERAL COUNSEL STATUTORY REPORT UPDATE

17 DELEGATED THE AUTHORITY OF THE STAFF
18 DIRECTOR TOLHURST: So we've received Commissioner
19 comments on May 31st. OGC is finishing today
20 incorporating those comments. And they will probably
21 go out for editorial and revisions and review on
22 Monday. With that, we're still on target to deliver
23 to the President and Congress by our statutory
24 deadline.

25 I just wanted to note and hopefully next

1 year when there's more time both for staff and more
2 time for Commissioners to work on these reports and
3 have input. Hopefully you'll pick a topic in July.
4 So we all have all the time we need.

5 And perhaps this is obvious but I want to
6 point out. Your comments were diametrically opposed.

7 And a process where Commissioners perhaps talk to
8 each other a little more. I know this time there
9 wasn't time but just for going forward.

10 A situation where no one is happy and
11 staff is hearing from one side "This data is horrible.

12 Why did you put this data in?"

13 And we're hearing from another side, "Why
14 isn't there more of this data? We love this data."

15 So it puts staff in a position of having
16 to make a call which we know three or four people
17 won't like. Or three or four people over here won't
18 like. I'm not sure there's a solution for it.

19 But again for next year if there's more
20 time if you all want to think about how to approach it
21 and ways that you might want to talk to each other
22 about what you're hoping will be in the report. Maybe
23 those are things you could work out prior to giving
24 your comments to staff and accommodations you could
25 make for each other.

1 I left feeling that I'm creating a report
2 and I'm trying to be fair and incorporate comments
3 from both sides. It creates a report that no one is
4 going to love.

5 VICE CHAIR THERNSTROM: We don't have to
6 love the report.

7 DELEGATED THE AUTHORITY OF THE STAFF
8 DIRECTOR TOLHURST: That's true. But it's
9 unsatisfying.

10 CHAIRMAN CASTRO: Commissioner Yaki, do
11 you have a comment?

12 COMMISSIONER YAKI: Yes, I just wanted to
13 make this comment because I was not here at the time
14 that the statutory report was approved. But I just
15 want to make this observation.

16 In looking at it, I always felt all along
17 that the comment period time can sometimes be the tail
18 wagging the dog in terms of how much time and
19 resources staff has to deal with the actual
20 intricacies and analysis that part of this. And in
21 this particular case it's even more so.

22 And I would just simply note that I think
23 that I doubt we can do -- I doubt we can revisit it
24 for the report as it's approved right now. If we
25 could, I would urge the Commission to do it.

1 But in looking at the schedule I saw that
2 after the vote on the findings and recommendations
3 there is one week for statements to be made. And then
4 it is a delay of three weeks before rebuttals are to
5 be made. And I have always been against the whole
6 concept of rebuttal. I think it's a waste of time. I
7 think it's a waste of money.

8 I think that the history that the
9 Commission does not have a long history of this
10 process. It came about rather hurriedly and certainly
11 over my objection in the last two years of my service
12 on the Commission, perhaps even less. It came about
13 because for lack of a better way of putting it people
14 did not like what I wrote in my statements. And I was
15 stating the fact that the majority at that time had
16 the opportunity in both the actual body of the report
17 itself and in their own individual statements to make
18 their case.

19 Three weeks is a long time for a rebuttal.

20 And I think that the arguments, the case to be made,
21 can all be contained in a Commissioner's statement.
22 And rebuttals if they do exist at all should be short
23 and sweet and draw really only upon the data that's
24 previously presented by a person within their
25 statement. I think that if you were to take away some

1 of those three weeks from that report and give it to
2 the staff in order to accomplish their work they would
3 feel a greater sense of relief in their ability to
4 process and get this thing done.

5 I just want to state that. I know I
6 wasn't part of what happened during that time. But
7 just my observation for the record and the history of
8 this, I think it's important to make because I just
9 find it astonishing that the amount of time that we
10 are spending in the statement and rebuttal stages is
11 almost equal to if not almost more than the amount of
12 time that we're giving staff to do the writing and the
13 analysis of the statutory report.

14 CHAIRMAN CASTRO: Thank you.

15 Vice Chair Thernstrom is recognized by the
16 Chair.

17 VICE CHAIR THERNSTROM: Mr. Chairman, I
18 realize you have made a commitment on the rebuttal
19 question. But I would nevertheless like us to discuss
20 this matter and there's some middle ground between no
21 rebuttals and full rebuttals and the three weeks and
22 all that. I'd like to put this as an item on the July
23 agenda for discussion simply because -- I mean I also
24 feel if you've got something to say, say it in your
25 statement, write it carefully and never -- the last

1 word. So if somebody said something, we've got to
2 answer it.

3 I'm simply requesting that this be a topic
4 in our next business meeting.

5 CHAIRMAN CASTRO: I will take that under
6 advisement. I'm not sure I can do that, but we'll
7 see.

8 Commissioner Gaziano and then if no one
9 else has any other questions we'll move onto the next
10 item.

11 Commissioner Gaziano.

12 COMMISSIONER GAZIANO: I'm going to talk
13 on another subject, but suggest that to Commissioner
14 Yaki the purpose of the rebuttal period was discussed
15 at length and particularly the timing of this
16 particular report. If you have time to go through the
17 record of that date, you can understand.

18 COMMISSIONER YAKI: Especially in the hour
19 long point between when the meeting started, yes.

20 COMMISSIONER GAZIANO: I have a motion to
21 raise on the enforcement report and this may hopefully
22 help the staff director making the final edits. And I
23 might not have brought the motion but for two reasons.

24 The first is that the motion regards the
25 most important data that I did not see in the report.

1 And I'd like the Commission as a whole to take a vote
2 on whether that should be flagged, identified or put
3 in so that that gives clarity to the staff director.

4 The other is that it is data that by my
5 count four Commissioners at the briefing constantly
6 requested the witnesses at the briefing to identify.
7 And I think the problem is made a little bit more
8 acute by the previous vote which I first won and then
9 lost that we be given a second opportunity to look at
10 the changes beforehand.

11 So with that I'm going to pass out
12 something I finished this morning. My apologies that
13 I did not -- Can you give one copy to the court
14 reporter, too? And as soon as it's passed out let me
15 if you wouldn't mind make my motion.

16 CHAIRMAN CASTRO: I don't understand why
17 we're making this motion to add something to the
18 report when other Commissioners put comments that they
19 wanted to see in the report. Otherwise we would have
20 brought those for the motion. I don't understand why
21 this should be treated any different.

22 COMMISSIONER GAZIANO: Let me make my
23 motion. I invite other Commissioners to make similar
24 motions as well if they want. But this will help the
25 staff director if -- What the vote turns out on this

1 will help her determine -- I hope she approves 100
2 percent of my nine pages of recommendations. But this
3 may help her.

4 I move to have the 2011 Enforcement Report
5 state in a prominent manner in the chapter where other
6 data and studies on peer-to-peer bullying or
7 harassment is discussed whether or not there is an
8 reliable data that shows and to set forth such data if
9 it exists:

10 (a) the frequency or amount of peer-to-
11 peer bullying of students in federally-protected
12 classes that is severe and pervasive enough to
13 constitute prohibited harassment under Federal law,
14 i.e., that which denies or limits students' federally-
15 protected civil rights if schools were to know about
16 it and took inadequate steps to address it;

17 (b) the frequency or amount of such
18 federally-prohibited peer-to-peer harassment in (a)
19 that the schools did know or should have known about
20 and took or were alleged to have taken insufficient
21 action to address;

22 (c) if it is available a breakdown of
23 such data for (a) and (b) for each class of students
24 protected or allegedly protected under Federal law,
25 e.g., severe, pervasive bullying that constitutes

1 prohibited harassment based on race, ethnicity,
2 gender, disability, failure to conform to stereotypes
3 regarding the same; and

4 (d) if is available consistent and
5 reliable data that shows changes in (a), (b) and (c)
6 over the relevant time periods as determined by
7 Commission staff, e.g., five or ten year intervals or
8 any other relevant time periods.

9 If such data does not exist in (a), it
10 probably doesn't exist for (b), (c) and (d). So then
11 the motion if that's the case would just have the
12 effect of requiring that to be disclosed in the
13 Commission report.

14 CHAIRMAN CASTRO: Is there a second on
15 that motion?

16 COMMISSIONER HERIOT: I'll second.

17 CHAIRMAN CASTRO: Discussion.
18 Commissioner Yaki.

19 COMMISSIONER YAKI: Yes. I rise in
20 opposition of this. This is something that
21 Commissioner Gaziano who apparently just lectured me
22 upon reading their discussion about the statutory
23 report should have brought up in that discussion of
24 the statutory report. This is inappropriate at this
25 point in time.

1 The language itself I think is directive
2 in its nature to the staff while they're trying to do
3 their hard work. And I think that this is something
4 that if he wishes to bring up in his statement to the
5 report he can. But this is something that should have
6 been brought up and should have been discussed at the
7 very outset, not at a critical point in time when
8 we're readying this report for discussion amongst the
9 Commission.

10 CHAIRMAN CASTRO: The Chair recognizes
11 Commissioner Achtenberg.

12 COMMISSIONER ACHTENBERG: Mr. Chairman, I
13 want to both oppose the motion for reasons that I will
14 explain and to underscore my own support for the
15 comments made by the Acting Staff Director because I
16 do think that going forward it won't just make the
17 staff's work easier. It will make our deliberations
18 more worthy of the United States Commission on Civil
19 Rights.

20 So I take the admonition quite seriously.

21 And if that means we have to devote some meetings to
22 a genuine give-and-take between Commissioners about
23 disparate viewpoints then I think that's part of our
24 job for which we are not particularly handsomely paid.

25 But it's part of our responsibility.

1 I view this motion -- I thought we were
2 supposed to provide our comments, our critiques, to
3 the staff draft one of the staff report. That was the
4 forum in which we were to attempt to make our case and
5 that I view this as well consistent with the comments
6 of Commission Yaki as these are interesting points and
7 perhaps they should now be made when we debate whether
8 or not to adopt what will be the final draft by the
9 staff of the staff report. And in some cases, I
10 understand we can substitute our judgment for theirs.

11 And if we get an majority vote for such substitution
12 then that becomes the body of the statutory report.

13 But I view this motion as at least to my
14 understanding of the procedure by which the Commission
15 governs itself wholly inappropriate and designed to
16 influence the staff in ways that are not part of the
17 grand design of the Commission, at least, based on my
18 minimal understanding.

19 CHAIRMAN CASTRO: Commissioner Heriot.

20 COMMISSIONER HERIOT: I would just like to
21 speak to Commissioner Achtenberg's point. I think
22 actually regardless of what one thinks of the
23 substance of this motion that this is exactly what the
24 Commission should be doing.

25 Our Acting Staff Director was I think

1 rightly a little concerned that with the comments that
2 have been provided. And they disagree with each
3 other. She doesn't know whose comments reflect the
4 consensus of the Commission.

5 The staff does not have any power
6 whatsoever under the statute. They are not the
7 independent body that is supposed to make the
8 judgment. The statute only gives power to a
9 Commission consisting of eight members. We are the
10 body. The staff is simply here to assist. We do not
11 defer to the staff. The staff defers to the body.

12 So, in fact, the notion of making a motion
13 where we determine do we have a majority of the
14 Commission members behind a particular approach to a
15 particular paragraph to a particular sentence that's
16 what we should be doing rather than waiting until the
17 end when it's very difficult to put the stamp of the
18 Commission on.

19 But again we have a statute. It tells us
20 who has power. It defines the Commission as the eight
21 members of the Commission. It gives absolutely no
22 power to staff. All power has to be delegated from
23 the Commission to the staff.

24 It is perfectly appropriate for us to go
25 through and to have a majority vote on what the

1 punctuation should be. It may be stupid for us to do
2 that, but it's not inappropriate. All responsibility
3 is ours. And the staff has only that responsibility
4 that is delegated to it.

5 So I think in fact it's not simply that
6 this motion is in order. This is the approach we
7 should be taking to try to help the staff know where
8 the consensus actually is, you know, what the majority
9 actually -- and we can go through the particular
10 comments that were given to the Staff Director and
11 say, "Hey, I think there's a majority behind this but
12 not behind this." That's what we should be doing.

13 And Commissioner Gaziano is making an
14 effort to do that. If it turns out that his motion is
15 turned down, then that just means that's not where the
16 majority of the Commission is. But it's critically
17 appropriate to do this and we should be doing more of
18 it.

19 CHAIRMAN CASTRO: The Chair recognizes in
20 the following order Commissioner Yaki, Commissioner
21 Titus and Commissioner Gaziano.

22 COMMISSIONER YAKI: Just to respond very
23 briefly as much as being a former bench leader I
24 always espoused the view that legislators when it came
25 to matters of legislation, public policy, has final

1 say. I did not do so in a manner that required my
2 staff to genuflect or do the four Stations of the
3 Cross whenever I walked by.

4 This is -- We also have the ability (1)
5 that's a misreading of the statute. The staff
6 director has an immense amount of power under the
7 statute. And in terms of what the staff director is
8 empowered to do by the statute absolutely.

9 (2) The fact is that I think it's so
10 arrogant to assume that just because we have power to
11 do something means that we have absolute right to do
12 whatever it is we want. We can also choose to do
13 which is what I have reflected in my comments and
14 Commissioner Achtenberg reflected in her comments to
15 delegate some of that authority and that power to the
16 staff director or to the staff to continue working on
17 the report in a manner that reflects the outline that
18 was approved by the Commission earlier.

19 So I don't understand this idea that under
20 your theory that we should be basically camped outside
21 each of their offices watching whatever they do every
22 single moment of the day to make sure they're doing
23 exactly what we want them to do. That's not how this
24 is supposed to work.

25 That's not how the Commission has ever

1 worked. The imperial power description of the
2 Commission I think is an offense to all the hard-
3 working people on the staff who do the best that they
4 can to interpret and stay out of the middle of the
5 crossfire that we engage in here at this Commission.
6 And in fact the more that we do our best not involve
7 in that crossfire the better off we are not as
8 Commissioners but as human beings.

9 CHAIRMAN CASTRO: Commissioner Titus.

10 COMMISSIONER TITUS: Thank you, Mr.
11 Chairman.

12 I agree that the report should reflect the
13 Commissioners' position or the Commission's position,
14 not staff's interpretation of the Commission's
15 position. But if you go down that road, you can't
16 vote for this separately. You're going to have to
17 pull out every suggestion that was made, all the
18 responses to the reports that came in, your nine
19 pages, reports from Commissioner Achtenberg and vote
20 on every one of those.

21 And I suspect if you do that you'll find
22 very little left that reflects the majority to put
23 into the report and you'll in effect have two separate
24 reports. So unless you want to do that, I don't see
25 how you can pick and choose what parts you're going to

1 vote for and what you're not.

2 CHAIRMAN CASTRO: Commissioner Gaziano and
3 then Commissioner Heriot and then after that I'll call
4 the question.

5 COMMISSIONER GAZIANO: I hope again that
6 99.9 percent of my recommendations were so brilliant
7 and so obviously right that the Staff Director would
8 approve them on her own. So, no, I don't think it's
9 necessary to raise everyone to the Commission's
10 attention.

11 But I did want to respond to two. I'm
12 going to disagree with Commissioner Heriot in one
13 respect. If this motion passes, I think it will be
14 the view of the Commission -- it is an instruction --
15 to the staff to either include such data or to include
16 a prominent mention that such data cannot be obtained.

17 If this motion fails, then I think it will be up to
18 the Staff Director because different Commissioners who
19 may vote against it have expressed different reasons.

20 It sounds to me like they might want to defer to her.

21 But as far as the appropriateness of
22 bringing this one to the Commission's attention I
23 think it's most relevant data, maybe the only relevant
24 data on bullying. And as I counted it, there were
25 four Commissioners at the briefing that asked witness

1 after witness whether such data exists. There was
2 generally silence. Crickets as I characterized them.

3 And one witness said that some of this
4 data did not exist. But I don't know if that witness
5 -- I don't know if the question was presented
6 precisely enough because it was my question then.
7 This presents it a little bit more clearly.

8 And what I didn't see in the draft report
9 was any acknowledgment of those four Commissioners'
10 request for that in the document. So I think it is of
11 such central importance that I wanted to raise it with
12 you all and get you all's vote.

13 Commissioner Titus, if you have three or
14 four or two or one of your top things that you wanted
15 our vote on, I would be willing to consider those as
16 well.

17 CHAIRMAN CASTRO: Commissioner Heriot and
18 then I'll call the question.

19 COMMISSIONER HERIOT: I wanted to agree
20 with Commissioner Titus on the notion that it is the
21 Commission, the eight members of the Commission, that
22 ultimately should have their stamp on the report and
23 disagree with Commissioner Yaki that (1) no there is
24 nothing in the statute that gives the staff director
25 power. That's a delegated power and that's fine.

1 And power needs to be delegated to the
2 staff director. There needs to be a lot of discretion
3 on the part of the staff director. But ultimately the
4 object of the game here is to have a report that
5 reflects the majority of the members of the
6 Commission.

7 That doesn't mean that everything has to
8 be brought up in a meeting. But when there is
9 something important enough to an individual member of
10 the Commission to bring it up and that gets a second
11 then those are the things that we discuss.

12 This motion should be a matter of whether
13 you agree with the substance of it or not and not
14 whether it's an appropriate motion to bring. It is
15 certainly an appropriate motion to bring.

16 CHAIRMAN CASTRO: Thank you.

17 I'm calling the question on Commissioner
18 Gaziano's motion. Vice Chair Thernstrom, how do you
19 vote?

20 VICE CHAIR THERNSTROM: No.

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

23 COMMISSIONER KIRSANOW: No.

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

1 COMMISSIONER HERIOT: Yes.

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

4 COMMISSIONER GAZIANO: Yes.

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

7 COMMISSIONER YAKI: No.

8 CHAIRMAN CASTRO: Commissioner Titus.

9 COMMISSIONER TITUS: No.

10 CHAIRMAN CASTRO: Commissioner Achtenberg.

11 COMMISSIONER ACHTENBERG: No.

12 CHAIRMAN CASTRO: The Chair votes no. We
13 have a majority defeats the motion.

14 Anything else on your report?

15 VICE CHAIR THERNSTROM: Can I just say one
16 thing on my vote on this? Commissioner Gaziano, I'm
17 not in disagreement with the substance of what you're
18 saying here. I just think at this point I mean the
19 acting staff director has had a really -- from her own
20 description at this meeting -- difficult time juggling
21 our various statements.

22 COMMISSIONER HERIOT: That's why the
23 motion was made in the first place.

24 VICE CHAIR THERNSTROM: And I want her to
25 just be able to move on and close the books on this.

1 I'm not in disagreement with the data.

2 COMMISSIONER GAZIANO: I appreciate your
3 clarification. I appreciate your support for the
4 substance.

5 VICE CHAIR THERNSTROM: Okay.

6 COMMISSIONER GAZIANO: Thank you.

7 CHAIRMAN CASTRO: Let me just add once
8 again my thanks, our thanks, to the staff that put the
9 Herculean effort in putting together the briefing and
10 I want to thank the Commissioners on how that briefing
11 went. I appreciate that.

12 I think the suggestion of the
13 Commissioners talking with one another on future
14 briefing in terms of how the report looks is a great
15 idea. But I also want to thank the Office of the
16 General Counsel for putting the draft report together
17 so quickly and I thought it was an excellent report
18 even though we all had comments. And I just want to
19 again acknowledge the work of our staff on this.

20 COMMISSIONER GAZIANO: Mr. Chairman, I
21 have one other question of clarification regarding the
22 enforcement report. I thought we were going to have
23 proposed findings and recommendations in the first
24 draft. When will there be proposed findings and
25 recommendations for the Commission? Will we have any

1 opportunity other than the final vote since I thought
2 it should have been included and we could have made
3 comments on it previously?

4 DELEGATED THE AUTHORITY OF THE STAFF
5 DIRECTOR TOLHURST: That's for you all to decide. I
6 was operating under the assumption that Commissioners
7 wanted to draft the findings and recommendations
8 themselves.

9 VICE CHAIR THERNSTROM: Yes, I assume we
10 do.

11 COMMISSIONER HERIOT: So can we have some
12 understanding about when those are going to be
13 distributed?

14 DELEGATED THE AUTHORITY OF THE STAFF
15 DIRECTOR TOLHURST: Do you want to set a deadline to
16 submit them to me and then I can circulate them?

17 CHAIRMAN CASTRO: It's not in the
18 calendar.

19 DELEGATED THE AUTHORITY OF THE STAFF
20 DIRECTOR TOLHURST: No. You're voting on August 12th.

21 CHAIRMAN CASTRO: So what would be good
22 for you to get our findings and recommendations to
23 give you enough time to incorporate them?

24 DELEGATED THE AUTHORITY OF THE STAFF
25 DIRECTOR TOLHURST: Well, again that depends on your

1 side. If you want to be able to talk about them in
2 July, you would want to submit them earlier.

3 CHAIRMAN CASTRO: Okay. How does July 1st
4 sound along with the -- Or is that too soon?

5 COMMISSIONER ACHTENBERG: The findings and
6 recommendations.

7 CHAIRMAN CASTRO: Yes.

8 COMMISSIONER ACHTENBERG: July 1st, that's
9 --

10 CHAIRMAN CASTRO: Too soon.

11 VICE CHAIR THERNSTROM: It's too soon.

12 CHAIRMAN CASTRO: So what dates are we
13 working? Do you want to talk about it at the August
14 meeting?

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR TOLHURST: You're voting on the report at the
17 August meeting.

18 CHAIRMAN CASTRO: So it has to be before
19 August.

20 COMMISSIONER YAKI: How about if you took
21 some of that time back on the vote to give them time?

22 CHAIRMAN CASTRO: How about a constructive
23 suggestion here on a date, folks? Anybody?

24 COMMISSIONER GAZIANO: It also does help
25 to see the final report.

1 COMMISSIONER HERIOT: Yes. It's kind of
2 hard to draft findings and recommendations without the
3 report.

4 VICE CHAIR THERNSTROM: You know, it might
5 be easier if the staff draft some findings and
6 recommendations and then with plenty of time for us to
7 put our two cents in. We can scrap all of them. We
8 can, you know, submit an alternative list ourselves.
9 We can whatever. But somebody needs to --

10 COMMISSIONER ACHTENBERG: That will delay
11 things.

12 VICE CHAIR THERNSTROM: No, I think not.
13 I mean I think the problem is somebody needs to get
14 the ball rolling and it can't be eight.

15 CHAIRMAN CASTRO: Here's a suggestion.

16 VICE CHAIR THERNSTROM: Yes. Good.

17 CHAIRMAN CASTRO: The meeting is July
18 15th. We can send -- Commissioners can send their
19 proposed findings and recommendations to the staff by
20 July 10th and she will circulate them to the --

21 VICE CHAIR THERNSTROM: All right. That's
22 fine.

23 CHAIRMAN CASTRO: That gives a little
24 extra time.

25 COMMISSIONER GAZIANO: But when in the

1 schedule do we see the --

2 CHAIRMAN CASTRO: August 12.

3 COMMISSIONER GAZIANO: -- so-called final
4 version of the report.

5 CHAIRMAN CASTRO: The 12th of August.

6 COMMISSIONER GAZIANO: No, when do we see
7 it? See a copy of it?

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR TOLHURST: July 29th.

10 CHAIRMAN CASTRO: July 29th.

11 COMMISSIONER GAZIANO: It's hard to be
12 very precise in findings and recommendations without
13 it.

14 CHAIRMAN CASTRO: I know.

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR TOLHURST: Yes.

17 CHAIRMAN CASTRO: That's unfortunately the
18 circumstances we're under. So we'll do the best we
19 can under the circumstances this time. Okay?

20 COMMISSIONER GAZIANO: Okay.

21 CHAIRMAN CASTRO: Commissioner Yaki.

22 COMMISSIONER YAKI: I'm just trying to
23 work out the mechanics of this. So we're going to
24 have a briefing on eminent domain in August. And
25 we're also going to be discussing the statutory report

1 in August. So we are basically going to -- This is
2 going to be an all day thing if we can get it even
3 finished in one day.

4 CHAIRMAN CASTRO: That's fine. We'll work
5 hard.

6 DELEGATED THE AUTHORITY OF THE STAFF
7 DIRECTOR TOLHURST: The eminent domain briefing is one
8 panel.

9 CHAIRMAN CASTRO: One panel. Okay. It's
10 not going to be huge. So we'll be able to do it.

11 Commissioner Heriot.

12 COMMISSIONER HERIOT: I just want to state
13 this so we can adjust for it. I may be leaving the
14 country on Friday in August. So I need to know when
15 the meeting is going to be.

16 CHAIRMAN CASTRO: Leaving?

17 COMMISSIONER HERIOT: Leave.

18 CHAIRMAN CASTRO: August 12th.

19 COMMISSIONER HERIOT: I mean I need to
20 know when it's going to end so I can get a flight. So
21 as soon as we can sort of work out that it would be
22 better for me.

23 CHAIRMAN CASTRO: I understand.

24 COMMISSIONER HERIOT: I also have a
25 question for the acting staff director about the

1 process for hiring the OCRE head. What is the process
2 for that? Are there interviews being conducted? Will
3 any of the Commissioners be part of that or not?

4 DELEGATED THE AUTHORITY OF THE STAFF
5 DIRECTOR TOLHURST: The current plan is that I will
6 conducting interviews with some combination of Chris
7 Byrnes and Tina Martin sitting in.

8 COMMISSIONER HERIOT: And that is no
9 Commissioner.

10 DELEGATED THE AUTHORITY OF THE STAFF
11 DIRECTOR TOLHURST: That hasn't been the past
12 practice.

13 COMMISSIONER HERIOT: So no Commissioners
14 will be present.

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR TOLHURST: Yes.

17 VI. ANNOUNCEMENTS

18 CHAIRMAN CASTRO: If there are no other
19 questions on the staff director, we'll move onto the
20 announcements. Are there any announcements on the
21 agenda?

22 (No response.)

23 VII. ADJOURN

24 CHAIRMAN CASTRO: Then the next item is
25 adjournment. I move to adjourn the meeting. Is there

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a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN CASTRO: All those in favor?

(Chorus of ayes.)

Any opposed?

(No response.)

I thought I'd ask. Thank you, everybody.

The time is now 11:09 a.m. Eastern Time. And we are
adjourned. Off the record.

(Whereupon, at 11:09 a.m., the above-
referenced matter was concluded.)

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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 Commission on Civil Rights

Date: 06-10-11

Place: Washington, DC

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