

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, SEPTEMBER 9, 2011

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The Commission convened in Room 540 at 624
Ninth Street, Northwest, Washington, D.C. at 9:35
a.m., MARTIN R. CASTRO, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ABIGAIL THERNSTROM, Vice Chairman

(via telephone)

ROBERTA ACHTENBERG, Commissioner

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (via telephone)

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner (via telephone)

KIMBERLY TOLHURST, Delegated the Authority of
The Staff Director

STAFF PRESENT:

TERESA BROOKS
CHRISTOPHER BYRNES, Senior
Attorney-Adviser to the Office of the
Staff Director
MALEE CRAFT
IVY DAVIS
BARBARA DeLAVIEZ
PAMELA DUNSTON, Chief, ASCD
LATRICE FOSHEE
ALFREDA GREENE
TinaLOUISE MARTIN, Director, OM
PETER MINARIK
TORRANCE MONTGOMERY
LENORE OSTROWSKY, Acting Chief, PAU
JOHN RATCLIFFE, Chief, Budget
FARELLA ROBINSON
VANESSA WILLIAMSON
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL
TIM FAY (via telephone)
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SOMIN

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

(9:35 a.m.)

CHAIRMAN CASTRO: Good morning. The meeting is going to come to order. This is a meeting of the U.S. Commission on Civil Rights. It is currently 9:35 on September 9th, 2011. This meeting is taking place here at the Civil Rights Commission's headquarters at 624 9th Street, Northwest in Washington, D.C. I'm Chairman Marty Castro.

The commissioners who are present at this meeting are myself, Commissioner Heriot, Commissioner Gaziano, Commissioner Kladney, Commissioner Achtenberg. Commissioners Kirsanow and Yaki are joining us by phone. The Vice Chair Thernstrom, is she on the phone?

(No response.)

CHAIRMAN CASTRO: Okay. She is not here.

A quorum of the commissioners is present. Is the person delegated the authority of Staff Director present?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Yes.

I. APPROVAL OF AGENDA

CHAIRMAN CASTRO: Okay. Let's begin by an approval of the agenda. The first item is, are there

1 any amendments to the agenda? I should say we should
2 move to approve the agenda first and then any
3 amendments.

4 COMMISSIONER ACHTENBERG: Do we have
5 anybody on the phone?

6 CHAIRMAN CASTRO: Yes. We have
7 Commissioner Yaki and Commissioner Kirsanow on the
8 phone.

9 COMMISSIONER GAZIANO: Do you know if Vice
10 Chair Thernstrom will be joining us at any point?

11 CHAIRMAN CASTRO: We don't know. She is
12 ill. And I know where Tim Fay is, her Special
13 Assistant. He indicated that he was -- he had spoken
14 to her this morning but was not sure if she was going
15 to be able to participate due to her illness.

16 COMMISSIONER GAZIANO: Could I ask for --
17 Commissioner Kirsanow, I understand that you have a
18 period where you cannot be even on the phone. Did you
19 want to make a request before we -- maybe we need to
20 approve the agenda first.

21 CHAIRMAN CASTRO: Let's move to approve
22 the agenda. Is there a motion?

23 COMMISSIONER KLADNEY: I make a motion. I
24 thought we were -- okay. I make a motion to approve
25 the agenda.

1 CHAIRMAN CASTRO: And then we'll make any
2 motions for minutes.

3 COMMISSIONER GAZIANO: Second.

4 CHAIRMAN CASTRO: All those in favor?
5 (Whereupon, there was a chorus of "Ayes.")

6 CHAIRMAN CASTRO: Any amendments to the
7 agenda?

8 COMMISSIONER KLADNEY: I thought we had
9 discussed the possibility of the California SAC.

10 CHAIRMAN CASTRO: Yes. Commissioner Yaki,
11 did you want to raise the issue of putting over the
12 California SAC until next month?

13 COMMISSIONER YAKI: Yes. If we could do
14 that? I need to review some of the names -- in fact,
15 there are only 13. I just wanted to make sure that we
16 have a right balance. So I would appreciate it if we
17 could put it off for a month.

18 CHAIRMAN CASTRO: I don't know if we could
19 do that by unanimous consent. Otherwise we'll -- is
20 that fine? Is that all right with you?

21 COMMISSIONER GAZIANO: Yes.

22 CHAIRMAN CASTRO: Commissioner Heriot?

23 COMMISSIONER HERIOT: Very well.

24 CHAIRMAN CASTRO: Commissioner Kirsanow,
25 is that all right with you?

1 COMMISSIONER KIRSANOW: Yes.

2 CHAIRMAN CASTRO: All right. By unanimous
3 consent, we'll put that off.

4 In addition, I believe we had a resolution
5 that we wanted to add to the agenda for review. So is
6 there a motion on amending the agenda to allow the
7 review?

8 COMMISSIONER ACHTENBERG: So moved.

9 CHAIRMAN CASTRO: Do we have a second?

10 COMMISSIONER YAKI: Second.

11 COMMISSIONER GAZIANO: Where would you put
12 it in the agenda?

13 CHAIRMAN CASTRO: Let's see. Well, if
14 Commissioner Kirsanow is going to be off the line at
15 some point, I would want to make sure we deal with his
16 report first. So let's do it after the report, after
17 the age discrimination report.

18 COMMISSIONER HERIOT: What are we adding
19 here?

20 COMMISSIONER GAZIANO: This.

21 COMMISSIONER HERIOT: Oh, this. Okay.

22 CHAIRMAN CASTRO: Yes. It was just handed
23 out. It's a short resolution. It's being emailed to
24 Commissioner Kirsanow. Commissioner Yaki already has
25 a copy of it. So we would put it at the end, between

1 "Program Planning" and "Management and Operations."

2 COMMISSIONER GAZIANO: Okay.

3 CHAIRMAN CASTRO: Okay? All those in
4 favor of the amendment, signify by saying, "Aye."

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

6 CHAIRMAN CASTRO: Opposed?

7 (No response.)

8 CHAIRMAN CASTRO: In the opinion of the
9 Chair, the ayes have it.

10 Any other amendments to the agenda?

11 (No response.)

12 CHAIRMAN CASTRO: There being none, let's
13 move on to the approval of the August 12th meeting
14 minutes. Do we have a --

15 COMMISSIONER GAZIANO: Could I ask --

16 CHAIRMAN CASTRO: Yes?

17 COMMISSIONER GAZIANO: -- that you
18 recognize Commissioner Kirsanow now?

19 CHAIRMAN CASTRO: Yes. Commissioner
20 Kirsanow?

21 COMMISSIONER KIRSANOW: Yes. Thank you,
22 Mr. Chair.

23 I, unfortunately, am engaged in
24 litigation, which means that I am going to have to get
25 off the phone in ten minutes. I can return after

1 10:30. And it would be helpful if we could have -- I
2 don't know if we would be able to sandwich in
3 discussion of the age discrimination report in the
4 next ten minutes.

5 If we could, perhaps maybe we could
6 sandwich in a discussion of such topics as the --
7 there's a topic with respect to letterhead, Commission
8 letterhead, but I would like to participate in both of
9 those. I don't know what motion I would make because
10 I just don't know what the timing would be on either
11 of those.

12 COMMISSIONER GAZIANO: Would the
13 Commission entertain a motion that we try to deal with
14 all other agenda items --

15 CHAIRMAN CASTRO: Sure.

16 COMMISSIONER GAZIANO: -- by 10:30 and we
17 try to --

18 CHAIRMAN CASTRO: Put those two off until
19 after 10:30? Is that --

20 COMMISSIONER GAZIANO: Yes.

21 CHAIRMAN CASTRO: Yes. That's fine. Is
22 that unanimous consent for folks? Well, we might be.
23 I don't know. I mean, I want to give Commissioner
24 Kirsanow the courtesy of that.

25 TIM FAY: Mr. Chair, the Vice Chair is on

1 the line.

2 CHAIRMAN CASTRO: Okay. Let the record
3 reflect the Vice Chair is on the phone.

4 VICE CHAIRMAN THERNSTROM: Yes. If we
5 could get stuff done, with all due respect to
6 Commissioner Kirsanow, if we could get as much
7 important stuff done now as, right now as, possible,
8 it would be helpful to me.

9 CHAIRMAN CASTRO: Okay.

10 VICE CHAIRMAN THERNSTROM: I just have no
11 idea whether I -- how long I'm staying, whether I can
12 be back at 10:30.

13 CHAIRMAN CASTRO: Okay. Well, let's try
14 to get the letterhead discussion done before 10:30 and
15 then --

16 VICE CHAIRMAN THERNSTROM: I mean, how
17 long would it take us to go through?

18 CHAIRMAN CASTRO: I don't know.

19 VICE CHAIRMAN THERNSTROM: An important
20 item obviously is the findings and recs or --

21 CHAIRMAN CASTRO: Yes.

22 VICE CHAIRMAN THERNSTROM: -- age
23 discrimination. Commissioner Kirsanow had some
24 proposed findings and recs.

25 COMMISSIONER HERIOT: Can't hear you.

1 CHAIRMAN CASTRO: Yes. We've got it as
2 loud as we can get it.

3 Well, let's move on. And we will endeavor
4 to get to this as quickly as we can. And we'll see if
5 we can have the letterhead discussion if it's okay
6 with folks before --

7 VICE CHAIRMAN THERNSTROM: All right.

8 CHAIRMAN CASTRO: -- Commissioner Kirsanow
9 comes off the line.

10 COMMISSIONER KIRSANOW: Yes, which is in
11 about eight minutes.

12 CHAIRMAN CASTRO: Well, that may not be
13 the case, then. Well, we'll have to try to balance as
14 best we can.

15 COMMISSIONER GAZIANO: Okay. Well, let's
16 --

17 COMMISSIONER KLADNEY: Let's move on.

18 COMMISSIONER GAZIANO: Yes. Let's move
19 on. And since I have some amendments to the minutes,
20 let's go straight to the letterhead issue.

21 CHAIRMAN CASTRO: You have amendments to
22 the minutes?

23 COMMISSIONER GAZIANO: Yes.

24 COMMISSIONER HERIOT: Yes. Let's put that
25 off.

1 COMMISSIONER GAZIANO: Let's put that off.

2 CHAIRMAN CASTRO: Okay.

3 COMMISSIONER GAZIANO: So let's go to the
4 letterhead if you want to try to tackle that.

5 IV. MANAGEMENT AND OPERATIONS

6 - DISCUSSION OF THE USE OF COMMISSIONER LETTERHEAD

7 CHAIRMAN CASTRO: All right. If you go to
8 your books under "Program Management and Operations,"
9 we have a draft AI. And this is a draft AI that is,
10 for all intents and purposes, the existing AI 9-1 to
11 which we're adding, we're moving to add, a provision D
12 that says, "Commission letterhead and the Commission
13 logo shall only be used by the Commission spokesperson
14 specified in 9-1.3.01A above and their designees or in
15 correspondence from commissioners where a majority has
16 voted to approve its use."

17 That's a motion. Do we have a second on
18 that motion?

19 COMMISSIONER YAKI: Second.

20 CHAIRMAN CASTRO: Discussion? Let me just
21 say the reason we're doing this is moving forward.

22 I'm not looking at what may have or have not happened
23 in the past, but this is an effort to make clear what
24 we thought was clear in the AIs, that the
25 spokespersons for the agency are the Chair or Staff

1 Director or a majority of the commissioners and make
2 clear that whenever letters do go out or the logo is
3 used, it is very clear that it is either done by the
4 spokespersons or by a majority.

5 I think it can be confusing to some.
6 Otherwise, if some subset of the Commission is sending
7 letters on what appears to be Commission letterhead
8 and, although there may be disclaimers in those
9 letters, I think the appearance of some sort of
10 official statement of the Commission in writing is
11 something that we want to make very clear going
12 forward represents a majority view of the Commission
13 and also, as we said, the spokespersons that are
14 allowed to speak on behalf of the Commission under
15 this existing AI.

16 COMMISSIONER GAZIANO: Mr. Chair, I will
17 yield to Pete so he say --

18 COMMISSIONER KIRSANOW: Well, thank you,
19 Commissioner Gaziano.

20 Mr. Chair, I just want to make a very
21 brief statement before I have to get off. And I
22 apologize to everybody for having to do so. And thank
23 you for accommodating me.

24 You are correct that in the past, things
25 were done in a different way. That is necessarily on

1 a go-forward basis, we need to do so.

2 We have in the past -- minorities of the
3 Commission have sent out letters with disclaimers
4 indicating that individual commissioners take a
5 particular view of a given matter. And that legend
6 contained in the letter is usually very clear and
7 conspicuous and I think understandable.

8 In addition, when I look at Congress, for
9 example, the minority of any particular committee will
10 often send out letters on the letterhead of a
11 particular committee, subcommittee, or the committee.

12 It is made very clear that it is coming from a
13 ranking member, as opposed to the Chair or it is
14 coming from another member of the committee. And it
15 doesn't cause confusion, but it represents a viewpoint
16 that needs to be heard, I think.

17 As long as it's clear, it strikes me, that
18 the position laid out in the letter that it is coming
19 from fewer than a majority of commissioners, it is
20 coming from simply a few of the commissioners or a
21 minority of the commissioners and doesn't represent
22 the official position of the Commission, I think that
23 use of the letterhead should continue, as it has been
24 in the past.

25 CHAIRMAN CASTRO: Commissioner Gaziano,

1 you wanted to make a comment?

2 COMMISSIONER GAZIANO: Yes. First of all,
3 I'm not sure this is the kind of thing that is
4 appropriate for AIs that bind or purport to bind
5 commissioners. AIs are instructions to our staff.
6 Sometimes they are important. I think that we can
7 after discussion work out what may be a compromise.

8 I at least understand the Chair and
9 whoever has moved and seconded this motion, but to a
10 certain extent if commissioners are members of the
11 Commission, I don't know that even a minority vote can
12 bind us from using the Commission's official
13 letterhead.

14 Notwithstanding that, again, I'll yield
15 now to others. I have a couple of compromise ideas in
16 mind, but I want to at least get on the record that I
17 don't know that this AI or any vote can require us not
18 to use the official agency letterhead, especially
19 where we in footnote 1 of any letter it has been our
20 past practice identify it as only the letter of one or
21 two or a minority of commissioners.

22 CHAIRMAN CASTRO: Commissioner Heriot?

23 COMMISSIONER HERIOT: I guess I agree with
24 both Commissioner Kirsanow and Commissioner Gaziano.
25 Administrative instructions are to the staff. I

1 support you could instruct the staff not to allow a
2 commissioner to have any say in --

3 COMMISSIONER YAKI: Can't hear her.

4 COMMISSIONER HERIOT: But if you do that,
5 it just means that, you know, there's going to be some
6 other stationery that's used that's pretty much
7 identical. I'm sure we can work out a good compromise
8 on this where nobody is being misled, but some
9 stationery has got to be used for letters that go out
10 by commissioners who are in the minority. And we just
11 have to work out how to do that and what kind of
12 statement needs to be made to make it clear that this
13 is the minority, that just passing this AI is not
14 going to get you where you want to go.

15 CHAIRMAN CASTRO: Any other comments from
16 commissioners?

17 COMMISSIONER YAKI: This is Commissioner
18 Yaki.

19 CHAIRMAN CASTRO: One at a time. The
20 Chair recognizes Commissioner Yaki, then Commissioner
21 Achtenberg.

22 COMMISSIONER YAKI: Thank you.

23 As the person with the most experience at
24 being in the minority and having been part of the
25 original AI of this in 2005, where this is worked out

1 when I was on the subcommittee with then Commissioner
2 Braceros, and the intent was to make it clear that
3 this was not official agency action -- and, to that
4 point, it is interesting because at that time no one
5 ever told me or, in fact, I was told not to use
6 official agency letterhead for the frequent, frequent
7 letters I would have to write in response to letters
8 written by the then majority that would either be
9 approved or would be approved after the fact or never
10 approved at all that went out under those auspices.

11 So to deal with that, I actually created
12 at my own expense my own stationery with a disclaimer
13 that it was not printed at government expense and made
14 clear it was my personal stationery and used that for
15 the majority of the letters, although there are some
16 times when the letters -- since I often ran out of
17 that stationery because I didn't think it was worth
18 buying like ten reams of it because I was hoping that
19 things would change, that there are times when that
20 wouldn't work either. And my then Special Assistant,
21 Richard, or then Nicholas would then just cobble
22 together something that was clear, again clear, it was
23 not Commission letterhead because I did not feel it
24 appropriate at that time to use official agency
25 letterhead for the purpose of saying that's the views

1 of the minority when it was very clear from the AIs
2 that Commission letterhead was agency letterhead. And
3 when I was speaking, I was not speaking for the
4 agency.

5 CHAIRMAN CASTRO: Thank you, Commissioner
6 Yaki.

7 Commissioner Achtenberg?

8 COMMISSIONER ACHTENBERG: Mr. Chairman, I
9 was thinking that a possible way to address the
10 concerns expressed by my colleagues might be to create
11 on Commission letterhead a series of pieces of
12 stationery that had the printed name of an individual
13 commissioner. And that would be close to the logo of
14 the Commission, not unlike the way members of the
15 House of Representatives use the House of
16 Representatives logo and then have their own personal
17 names printed. That makes it clear that they're doing
18 it in their capacity as members of the House of
19 Representatives.

20 And I do agree with you that we do have
21 individual prerogatives as individual commissioners as
22 long as it's not confusing in terms of whether or not
23 it represents the view of the Commission.

24 And if you wanted three commissioners to
25 cosign a letter, you might consider doing in that. So

1 that's another way of possibly looking at it. I don't
2 know, but if that were made as an amendment to this
3 motion, I would even vote for my own motion. But it
4 does strike me that there are some parallels --

5 CHAIRMAN CASTRO: Yes. I thought we would
6 --

7 COMMISSIONER ACHTENBERG: -- that we could
8 seek elsewhere.

9 CHAIRMAN CASTRO: Commissioner Kladney?

10 COMMISSIONER KLADNEY: Clearly I think
11 there's a good compromise here. I don't know if we
12 all need our own stationery or whatever. That would
13 be nice. I would love to see my name on there.

14 And I appreciate the attempt with the
15 footnote. I just didn't think that was sufficient,
16 but I always thought that we could put a boldface
17 statement right under the heading of the stationery
18 and just say, "The following letter is not the" --
19 something to the effect of "The following letter is
20 not the opinion of the Commission" or "is only
21 attributable to Commissioner" so and so and so and so
22 and so and so in boldface. Maybe -- I don't know --
23 12-point type would be fine, something like that,
24 rather than everybody having their own stationery.
25 But I think there is a way to do it.

1 COMMISSIONER HERIOT: I'm sure that
2 there's a way to do this. It's just we need to work
3 it out.

4 The hesitance I had about individual names
5 was that it's from three of us. So whose name is
6 going to be on the stationery?

7 COMMISSIONER KLADNEY: Well, you can all
8 sign it.

9 COMMISSIONER GAZIANO: Someone would have
10 to search the footnotes. And it's sort of more likely
11 to mislead if it's from the -- but I still think that
12 -- Commissioner Yaki, you will remind me. I remember
13 you using again a variety of letterheads. I have also
14 looked through. My Special Assistant counsel has
15 found various examples of individuals of current
16 commissioners, you know, using letterhead and not
17 being quite as clear as we attempted to be. You know,
18 I had a little --

19 COMMISSIONER YAKI: I'm sorry,
20 Commissioner Gaziano. Are you saying that I actually
21 ever used official agency letterhead?

22 COMMISSIONER GAZIANO: No, no, no, no.
23 I'm sorry. Let me just put -- I remembered your
24 letterhead looked kind of like ours, which is fine
25 with me. I thought it was appropriate. I am just

1 saying -- and what I remembered is it did have
2 something like the "Office of Commissioner Melendez,"
3 "Office of Commissioner Yaki" or both.

4 Maybe there is an electronic solution to
5 this and we use an electronic letterhead of some sort.

6 But what I would suggest is it seems like we're close
7 to a compromise but, rather than -- and this
8 discussion has been helpful when we're all together,
9 on the phone or otherwise, that maybe we could either
10 form a subcommittee or just discuss it amongst
11 ourselves in email and then try to circulate proposals
12 to each other and then vote on something that --

13 CHAIRMAN CASTRO: I think that's a very
14 fair way to proceed. I think, you know, this has been
15 a good discussion. I think we all kind of know where
16 we are coming from. I think between now and our
17 October meeting, we can exchange some ideas and
18 hopefully come to the October meeting with a
19 resolution that will be supported by a majority, if
20 not all, of us.

21 COMMISSIONER KIRSANOW: Mr. Chairman,
22 thanks for accommodating. I have to leave. I make a
23 motion. And then I hope to return by 10:30. Thank
24 you.

25 CHAIRMAN CASTRO: Okay. So thank you.

1 Why don't we put this off until the
2 October meeting? And we will communicate as
3 commissioners individually to one another and come
4 back with a proposal in October.

5 II. APPROVAL OF THE AUGUST 12, 2011 MEETING MINUTES

6 CHAIRMAN CASTRO: Okay. So now we move on
7 to the minutes. Do we have a motion on the minutes?
8 You said you had some amendments to the minutes?

9 COMMISSIONER GAZIANO: I will, based on
10 the motion to approve. And then I'll amend.

11 CHAIRMAN CASTRO: Any motion to approve?

12 COMMISSIONER ACHTENBERG: So moved.

13 CHAIRMAN CASTRO: Do we have a second?

14 COMMISSIONER KLADNEY: Second.

15 CHAIRMAN CASTRO: Okay. Are there any
16 amendments?

17 COMMISSIONER GAZIANO: Yes. In the
18 minutes, it's our sensible practice, I should say, to
19 at least summarize the substance of any commissioner's
20 motion, whether approved or defeated. In the minutes
21 for the last meeting where we approved our annual
22 report, it lists the substance of certain other
23 commissioners' motions, but it does not summarize the
24 substance of any of my motions amending the findings
25 and recommendations. In fact, it summarizes the

1 motion of one other commissioner, whose motion was
2 withdrawn and not even voted on.

3 So I would just -- it was probably just
4 because they're complicated motions. I'm not saying
5 this is at all nefarious. I would suggest either two
6 -- I will entertain either one of two motions. One is
7 that I would be glad, as amended, to vote for the
8 minutes if they just insert the actual motion, they go
9 back to the transcript, or if they're going to
10 characterize my motion, that we just put it off until
11 next month and I can look at how the motion is
12 characterized.

13 CHAIRMAN CASTRO: And I would think just
14 putting in the actual motion in the transcript seems
15 acceptable to me. It's the most accurate as well.

16 COMMISSIONER GAZIANO: Then I move to have
17 the minutes amended to include the language of the
18 motions that I offered.

19 COMMISSIONER KLADNEY: I second.

20 CHAIRMAN CASTRO: Okay. So all those in
21 favor of the approval of the minutes and the amendment
22 to the minutes, signify by saying, "Aye."

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

24 CHAIRMAN CASTRO: Do we need a voice vote
25 on these? I don't think so.

1 COMMISSIONER HERIOT: Don't we have to
2 vote twice, though?

3 COMMISSIONER GAZIANO: Yes.

4 COMMISSIONER HERIOT: Vote on the
5 amendment and --

6 COMMISSIONER GAZIANO: Now as amended.

7 CHAIRMAN CASTRO: Yes. So the minutes as
8 amended, all those in favor, say "Aye."

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

10 CHAIRMAN CASTRO: All those opposed?

11 (No response.)

12 CHAIRMAN CASTRO: Any abstentions?

13 (No response.)

14 CHAIRMAN CASTRO: Okay. The minutes pass.

15 Actually, before we go on to the rest of
16 the agenda, I put in front of your desks, each
17 commissioner as well as our Staff Director, a book. I
18 want to give this to you each as a gift -- it's under
19 the \$75 threshold -- in honor of Hispanic Heritage
20 Month, which starts next week.

21 This is a book called The African Presence
22 in Mexico. It was prepared by the National Museum of
23 Mexican Art, whose board I chaired up until I became
24 Chair of this organization. And this is a seminal
25 work on the relationship between Latinos and

1 African-Americans, specifically folks of African
2 descent who went to Mexico as well as freed slaves who
3 went down to Mexico and the interrelationship and
4 intermingling of our two cultures.

5 So I thought that in honor of, one,
6 Hispanic Heritage Month; and, two, the work of the
7 Commission, I wanted to give this to each of you as a
8 small token of my appreciation for your service on the
9 Commission.

10 Those commissioners who weren't here, I
11 will make sure that yours gets to you via mail or
12 delivery, as the case may be. So I just wanted to
13 share this with you all.

14 COMMISSIONER ACHTENBERG: Thank you, Mr.
15 Chairman.

16 COMMISSIONER GAZIANO: Thank you very
17 much.

18 CHAIRMAN CASTRO: You're welcome. Okay.
19 So the next item on our agenda since we're going to
20 put off -- we're on "Program and Planning," but we're
21 going to put off the age discrimination briefing
22 report vote until 10:30.

23 III. PROGRAM PLANNING:

24 - APPROVAL OF THE 2012 ENFORCEMENT REPORT

25 PROJECT OUTLINE AND DISCOVERY PLAN

1 CHAIRMAN CASTRO: So we have a proposed
2 enforcement report project outline and discovery plan.
3 Will the person designated as Staff Director please
4 walk us through that?

5 DELEGATED THE AUTHORITY OF THE STAFF
6 DIRECTOR TOLHURST: Well, first, the project outline.
7 It's formatted similarly to the ones you've had in
8 the past except I think we've provided you much
9 greater detail as to the actual structure of the
10 paper.

11 So I don't know that you want me to really
12 walk you through what each chapter would be, but I
13 presume everyone has read.

14 CHAIRMAN CASTRO: Yes.

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR TOLHURST: And I'm happy to answer any
17 questions.

18 CHAIRMAN CASTRO: Okay. So why don't we
19 move to approve it. And then we could have a
20 discussion. So I move that we approve the report
21 project outline and discovery plan. Is there a
22 second?

23 COMMISSIONER ACHTENBERG: Second.

24 CHAIRMAN CASTRO: Do we have any
25 discussion, any questions for the Staff Director

1 designee on this?

2 COMMISSIONER HERIOT: Wait, wait, wait.
3 I'm looking for the discovery plan here.

4 CHAIRMAN CASTRO: It's the first item
5 under your "Program Planning" tab.

6 COMMISSIONER GAZIANO: I have one quick
7 question and then -- by the way, my apology to fellow
8 commissioners. I had some flooding issues the past
9 few days. So I'm not as prepared as I ought to be.

10 On this, I'm looking, turning now to the
11 timetable, which is on page 12. And so it's probably
12 in here somewhere. But when does this discovery plan
13 contemplate we would have a briefing? And that might
14 be a subject that we as commissioners want to discuss
15 or either lock in or not lock in or make this
16 contingent upon that.

17 DELEGATED THE AUTHORITY OF THE STAFF
18 DIRECTOR TOLHURST: It lists a briefing as being in
19 February.

20 COMMISSIONER GAZIANO: Okay. I'm on the
21 wrong page. So it's 11.

22 DELEGATED THE AUTHORITY OF THE STAFF
23 DIRECTOR TOLHURST: Page 11.

24 COMMISSIONER GAZIANO: Is that something
25 that we -- when it was a different topic, we were

1 going to meet -- now I'm confusing myself. Okay.
2 When it was a different topic, we were talking about a
3 field hearing.

4 CHAIRMAN CASTRO: Yes. This is not, yes.

5 COMMISSIONER GAZIANO: So I suppose --
6 well, maybe we want to at least consider this a field
7 hearing. One of the comments that I know I have heard
8 from one fellow commissioner is it's too DOJ-centric.

9 Maybe we should meet in a state that's affected by
10 section 5, but I'll yield on that.

11 CHAIRMAN CASTRO: Unfortunately, we don't
12 have the budget for that. That's why we kind of
13 withdrew the last field hearing idea.

14 COMMISSIONER GAZIANO: Okay.

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR TOLHURST: The February, to allow more action
17 from DOJ to go down the pipeline, I would rather have
18 the briefing later. However, due to the various
19 drafts and reviews that are required, our first draft
20 has to be completed by March 2nd. And I picked
21 February just based on making sure I had time to give
22 you all the various full periods for the reviews that
23 are required.

24 CHAIRMAN CASTRO: Yes. Commissioner
25 Heriot?

1 COMMISSIONER HERIOT: I'm looking at the
2 discovery plan here. Let me just lay out some
3 background from my standpoint. When I first came to
4 the Commission or, rather, the year after I came to
5 the Commission, our topic was religious liberties of
6 prisoners. And there were some deep flaws in the way
7 the discovery plan was put together.

8 CHAIRMAN CASTRO: Did you say "flaws"?
9 I'm sorry. "Deep flaws"?

10 COMMISSIONER HERIOT: Deep flaws.

11 CHAIRMAN CASTRO: Okay.

12 COMMISSIONER HERIOT: In that case, what
13 they did was looked at reported cases to get a sense
14 of what the typical religious liberties case was like.
15 And, as a lawyer, you know that reported cases are
16 not a cross-section of cases. And they're not going
17 to give you a cross-section view of what a typical
18 case is like.

19 And that was when I started insisting on
20 more detailed discovery plans. I felt that was a big
21 mistake that we put so much effort into a discovery
22 plan that by the time the report was written, there
23 was nothing that could be done.

24 Here we have a page and a half of
25 discovery plan. And it basically says we're going to

1 go to DOJ and we're going to have a meeting with them.

2 And we're going to ask for a couple of documents
3 here.

4 That's not good enough. First of all, we
5 should be talking not just to DOJ and not even mainly
6 to DOJ but, rather, to the covered jurisdictions, find
7 out what their experiences have been and not what DOJ
8 says their experience has been. There's all sorts of
9 information that we should be uncovering here that
10 we're not going to get from DOJ.

11 Remember, we're a civil rights watchdog.
12 Watchdogs do not go to the burglar and say, "Gosh, you
13 know, give us your view of what is happening." We're
14 supposed to be viewing DOJ skeptically. And that
15 means going to the people who might disagree with what
16 they're doing, seeing whether or not we might agree
17 with those covered jurisdictions if they have
18 problems.

19 Now, it is also important to get DOJ's
20 side of the story. And in the end, we may conclude
21 that DOJ has done a wonderful job, but we need to go
22 to the covered jurisdictions. We need to be asking
23 not just those that have made applications but also
24 those who wanted to make changes to their laws and
25 decided not to because they didn't want to go through

1 the process. We want to know how much the covered
2 jurisdictions are spending on legal fees.

3 There are all sorts of things we want to
4 know. And it's not here. It's not here. We need
5 that.

6 CHAIRMAN CASTRO: Commissioner Kladney?

7 COMMISSIONER KLADNEY: I agree. We have
8 to hear from others.

9 COMMISSIONER YAKI: Commissioner Castro?
10 Mr. Chair?

11 CHAIRMAN CASTRO: Yes? I'll just
12 recognize Commissioner Kladney. And then you can
13 speak after that.

14 COMMISSIONER YAKI: No. I just had a
15 quick question.

16 CHAIRMAN CASTRO: Okay.

17 COMMISSIONER YAKI: Are all of our votes
18 postponed until 7:30? I ask that because I am on a
19 phone, actually, with somewhat limited battery life.
20 And if we're not having votes until 7:30, I can log
21 off and log on and save my battery.

22 CHAIRMAN CASTRO: No. We just put off the
23 age discrimination briefing report until that time.
24 We may end up having --

25 COMMISSIONER YAKI: So we will be having

1 votes --

2 CHAIRMAN CASTRO: We may end up depending
3 on when this discussion on the discovery plan and
4 outline is concluded.

5 COMMISSIONER YAKI: Okay. I just wanted
6 to make sure.

7 CHAIRMAN CASTRO: Okay. Commissioner
8 Kladney?

9 COMMISSIONER KLADNEY: I agree that we
10 have to hear from others besides DOJ. I was under the
11 impression, though, that the only part of the
12 pre-clearance that we were looking at was the drawing
13 of lines and districts, as opposed to what
14 Commissioner Heriot made it sound like, an overall
15 thing, section 5. Is that your understanding?

16 COMMISSIONER HERIOT: You know, I'm --

17 COMMISSIONER KLADNEY: I'm just trying to
18 get on the same page here. So I thought -- you know,
19 I actually spoke to some people about getting some
20 folks in about redistricting from some of these
21 jurisdictions that have made application and the
22 process. So I don't see any problems with having some
23 folks come here and testify.

24 COMMISSIONER HERIOT: I think not just
25 testify but, you know, have a questionnaire for them

1 and, you know, elicit the same information from lots
2 of people like --

3 COMMISSIONER KLADNEY: As long as we can
4 agree on the questionnaire, I wouldn't have a problem.

5 COMMISSIONER HERIOT: Oh, yes. Yes. But
6 that's what I want to see. I want to see what the
7 questionnaire is.

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR TOLHURST: Is it a questionnaire or do you
10 want to issue interrogatories?

11 COMMISSIONER HERIOT: I'm using the word
12 "questionnaire" loosely.

13 DELEGATED THE AUTHORITY OF THE STAFF
14 DIRECTOR TOLHURST: Why don't you all amend this to
15 make me add number 4, you know, "Send interrogatories,
16 explain these issues to the covered jurisdictions,"
17 with a caveat that if this is an OGC project, there
18 are two of us. I don't know that we can go to every
19 -- well, it's a capacity issue.

20 But I agree and am happy to add if you
21 want to move to add language to have us go to these
22 jurisdictions.

23 COMMISSIONER GAZIANO: So moved with the
24 following suggestions. Yes, one of the problems with
25 section 5 is that it applies to mud districts and

1 thousands of them if you add them all up, but a
2 reasonable cross-section of covered jurisdictions,
3 including, at least including, the major states and
4 maybe all of the states that are covered or partially
5 covered and then a reasonable sample of other
6 municipal county mud districts but not -- you know,
7 within reason. I'm talking about a reasonably small
8 number, not in --

9 COMMISSIONER KLADNEY: What would that be
10 after you just got --

11 COMMISSIONER GAZIANO: I muddied it up.
12 You know, if we're sending it --

13 COMMISSIONER HERIOT: You could take a
14 random selection if that is what is necessary.

15 COMMISSIONER GAZIANO: Yes. If we're
16 talking about -- how many states? Vice Chair
17 Thernstrom, are you on the line?

18 (No response.)

19 COMMISSIONER GAZIANO: At least a handful
20 of certain --

21 COMMISSIONER HERIOT: I think more than a
22 handful.

23 CHAIRMAN CASTRO: I think someone had said
24 earlier interrogatories explaining these issues would
25 be sent to a reasonable cross-section of covered

1 jurisdictions.

2 COMMISSIONER GAZIANO: That's fine. And,
3 to respond to Commissioner Kladney's question, it has
4 been the practice and I assume it will be that draft
5 interrogatories or requests for production -- and you
6 may include requests for production in this as well --
7 are circulated to commissioners in time for their
8 comment.

9 That gives us an opportunity to raise it
10 at a meeting and make a motion or whatever. But
11 usually we just provide our input to staff. And
12 hopefully they do what's wise and --

13 COMMISSIONER KLADNEY: Right. Thank you
14 very much.

15 CHAIRMAN CASTRO: Okay. So we will add
16 that line, which is interrogatories exploring these
17 issues directed to a reasonable cross-section of
18 covered jurisdictions would be item number 4 on page 2
19 of the discovery plan. So, with that amendment or
20 that addition -- do we need a vote on that amendment?

21 Wait. I can do it all at once as a package, right?

22 COMMISSIONER HERIOT: You can have it by
23 unanimous consent?

24 CHAIRMAN CASTRO: Yes. Can we do this by
25 unanimous consent? Commissioners?

1 COMMISSIONER KLADNEY: Does the amendment
2 just limit us to the restructuring, which is the
3 subject matter of the inquiry? We're not going to be
4 looking at anything else under pre-clearance.

5 CHAIRMAN CASTRO: I think that is clear,
6 but we want to --

7 COMMISSIONER GAZIANO: Some of the items
8 Commissioner Heriot mentioned, like attorney fees, and
9 dealing with -- you know, would still apply to
10 whatever it is we're --

11 COMMISSIONER KLADNEY: As long as we're
12 not just talking about voting booths or --

13 CHAIRMAN CASTRO: No. Redistricting is
14 the issue. Okay.

15 So have moved, a motion. And do we have a
16 second on this project discovery plan?

17 COMMISSIONER ACHTENBERG: Second.

18 CHAIRMAN CASTRO: All those in favor?
19 Actually, let me take an individual vote. Vice Chair
20 Thernstrom, how do you vote?

21 (No response.)

22 CHAIRMAN CASTRO: Commissioner Kirsanow?
23 I think he's still off the line.

24 (No response.)

25 CHAIRMAN CASTRO: Commissioner Heriot?

1 COMMISSIONER HERIOT: Are you asking for a
2 vote?

3 CHAIRMAN CASTRO: Yes.

4 COMMISSIONER HERIOT: Well, I guess it's
5 yes.

6 CHAIRMAN CASTRO: Okay. Good.
7 Commissioner Gaziano?

8 COMMISSIONER GAZIANO: Yes.

9 COMMISSIONER HERIOT: That's yes with the
10 understanding that we can like raise motions at later
11 meetings.

12 CHAIRMAN CASTRO: Yes. Commissioner
13 Kladney?

14 COMMISSIONER KLADNEY: Yes.

15 CHAIRMAN CASTRO: Commissioner Achtenberg?

16 COMMISSIONER ACHTENBERG: Yes.

17 CHAIRMAN CASTRO: Commissioner Yaki?

18 COMMISSIONER YAKI: No.

19 CHAIRMAN CASTRO: No? Okay. I vote in
20 favor. So the motion passes with five yeses and one
21 no. Okay. Before we move on to "Management and
22 Operations" --

23 COMMISSIONER YAKI: Someone just came back
24 on the line.

25 TIM FAY: Mr. Chair, I am going to

1 conference the Vice Chair back in one moment.

2 CHAIRMAN CASTRO: Okay.

3 COMMISSIONER HERIOT: Mr. Chairman?

4 CHAIRMAN CASTRO: Yes?

5 COMMISSIONER HERIOT: There was something
6 in this about scheduling that I am concerned about.

7 CHAIRMAN CASTRO: What was that?

8 TIM FAY: Thank you. The Vice Chair is
9 back on line.

10 CHAIRMAN CASTRO: Thank you.
11 What was your concern, Commissioner
12 Heriot?

13 COMMISSIONER HERIOT: Somewhere in here,
14 it shaves the amount of time for commissioners to do
15 their statements. And I can understand why with the
16 bullying report we needed to come up with some way to
17 get the report in on time, but I don't see that we
18 have that problem this time. And I would object to
19 shaving off even a couple of days on --

20 CHAIRMAN CASTRO: I will defer to the
21 Acting Staff Director on that question. Was that the
22 case?

23 DELEGATED THE AUTHORITY OF THE STAFF
24 DIRECTOR TOLHURST: This is your first statements
25 after the --

1 COMMISSIONER KLADNEY: Three days under a
2 month?

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

5 COMMISSIONER HERIOT: Three days can make
6 a lot of difference because for me, it's the weekends
7 that matter.

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR TOLHURST: Well, all I can say is I tried to
10 give you all as close to the 30/30 that are required
11 with all the other reviews. At many stages,
12 commissioners have the report longer than the people
13 that are actually composing it. And in order to
14 preserve as much as I could of your 30/30, I shaved
15 considerable time off of almost every staff period of
16 time to draft the report.

17 And if we ever get a permanent Staff
18 Director, they're going to be pretty annoyed with me
19 because I cut their time almost entirely for review.

20 So I tried to keep commissioners whenever
21 possible and cut my own time to achieve that. And
22 this is the best I could do.

23 COMMISSIONER HERIOT: I object to that.
24 Our initial deal here was that our time would not be
25 cut, that this is something that is still a year away.

1 And I think we've got to work out some way where we
2 get our 30 day.

3 COMMISSIONER GAZIANO: One other. Maybe
4 we should have approved our meeting times first since
5 we haven't approved July 13th and August 17th as our
6 meeting days yet and I was going to suggest an
7 amendment to one of those.

8 So I certainly join Commissioner Heriot in
9 saying that we had an understanding that 30/30 would
10 not be shaved. But it may depend just a teeny --
11 these are contingent on us approving the report on a
12 certain day and our statements being in before -- I
13 suppose it doesn't -- yes, being in on August.

14 So should we hold open the precise dates
15 that commissioner statements will be due and approve
16 the rest until maybe later, after we approve our
17 meeting calendar?

18 CHAIRMAN CASTRO: Is there some adjustment
19 we could make to that, Madam Acting Staff Director, to
20 accommodate that concern somewhere in the calendar?

21 DELEGATED THE AUTHORITY OF THE STAFF
22 DIRECTOR TOLHURST: I don't know about the statements.

23 I see the vote on the final report is on the meeting
24 day if you want to -- you can approve a timeline and
25 say, "Contingent upon the meeting calendar."

1 CHAIRMAN CASTRO: But does that address
2 the concern?

3 DELEGATED THE AUTHORITY OF THE STAFF
4 DIRECTOR TOLHURST: It doesn't. If commissioners want
5 to suggest another place on the timeline where we can
6 shave three days and push everything up? But this is
7 what I can do unless you want to forego some step
8 along the way.

9 Under the AI that created this, the report
10 actually was supposed to start even prior to when it
11 has.

12 CHAIRMAN CASTRO: Well, we could play with
13 the meeting dates, but if that doesn't accomplish
14 giving them the additional time, then I --

15 COMMISSIONER GAZIANO: Well, it is
16 difficult to do one without the other is what I was
17 suggesting. Because our first statement has to be on
18 the report and findings as adopted, you know, it may
19 mean that we -- I don't think we want to meet on July
20 -- maybe we do want to. What's the Friday?

21 COMMISSIONER KLADNEY: July 13th is a
22 Friday. It's not going to even --

23 COMMISSIONER YAKI: Excuse me? What is
24 this discussion about again?

25 CHAIRMAN CASTRO: Commissioners Heriot and

1 Gaziano are concerned that the proposed project
2 outline does not afford them their full 30 days to
3 submit a --

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

6 COMMISSIONER GAZIANO: Is a July 6th
7 meeting day --

8 COMMISSIONER YAKI: I'm sorry. Is there
9 something in the AI that gives them 30 days for
10 rebuttal, please? I know that there was a discussion
11 on 30 days on the prior report, but if we're going to
12 have this discussion, I want a full discussion on
13 this. I don't want to just blow into this whole thing
14 because I have very strong opinions about this.

15 COMMISSIONER GAZIANO: We adopted a motion
16 in February on that.

17 COMMISSIONER YAKI: That was for that
18 statutory report.

19 COMMISSIONER GAZIANO: No. It was an
20 exception that incorporated and codified in a way the
21 practice amongst ourselves to have 30 and 30.

22 COMMISSIONER YAKI: I think this is
23 ridiculous. It's a waste of staff time. It's a waste
24 of resources. If you can't say what you're going to
25 say, I would rather give additional time for

1 statements to be done than to have this back and forth
2 stuff that goes on that really adds nothing other than
3 time and money --

4 COMMISSIONER HERIOT: I understand why you
5 don't like rebuttals, Commissioner Yaki.

6 CHAIRMAN CASTRO: Okay. Let me --

7 COMMISSIONER YAKI: Who was that
8 blathering in the background?

9 CHAIRMAN CASTRO: Let's treat each other
10 with respect, please. So if we were to have our July
11 meeting, instead of on July 13th, which is the
12 proposed date right now, we had our meeting on July
13 6th instead --

14 COMMISSIONER GAZIANO: And people are
15 willing to travel that week, a holiday week. I am.

16 CHAIRMAN CASTRO: It's a question of, are
17 your 30 days more important than traveling on a
18 holiday. So I'm told that if we were to move that to
19 July 6th, you would have your time. So if that's
20 acceptable, I think we can make that change here.
21 Then when we come to vote on the calendar, we'll just
22 make sure it's July 6th, as opposed to July 13th.

23 Does July 6th work for everybody?

24 (No response.)

25 CHAIRMAN CASTRO: Okay. Then that's what

1 we will do. Okay?

2 COMMISSIONER ACHTENBERG: Thank you.

3 CHAIRMAN CASTRO: You're welcome.

4 Any other questions on this? If not, we
5 will move on to discuss --

6 COMMISSIONER YAKI: I am restating my
7 objection of a 30-day rebuttal period. I think when
8 you see what it does, for instance, all of this time I
9 don't believe it's binding on this report. And it's
10 not in keeping with past practices of statutory
11 reports other than the previous one. And I think it's
12 a complete and utter waste of time.

13 CHAIRMAN CASTRO: Thank you, Commissioner
14 Yaki. Actually, I let you retain the floor. We're
15 going to move on now to the resolution on the King
16 memorial. Would you like to --

17 COMMISSIONER GAZIANO: Do we need to now
18 adopt it as amended?

19 CHAIRMAN CASTRO: Yes. So let's make a
20 motion to adopt the --

21 COMMISSIONER GAZIANO: I move that the
22 discovery plan be adopted as incorporating the various
23 amendments.

24 CHAIRMAN CASTRO: Do we have a second?

25 (No response.)

1 CHAIRMAN CASTRO: I'll second it.

2 COMMISSIONER HERIOT: Do we have actual
3 dates now to put in?

4 COMMISSIONER GAZIANO: We just had July
5 6th.

6 CHAIRMAN CASTRO: Yes.

7 COMMISSIONER GAZIANO: It will be adjusted
8 --

9 CHAIRMAN CASTRO: It will be adjusted when
10 we vote on the calendar.

11 COMMISSIONER HERIOT: Okay.

12 CHAIRMAN CASTRO: But you'll make sure you
13 have your 30 days.

14 COMMISSIONER HERIOT: Okay.

15 CHAIRMAN CASTRO: So let's do a vote, an
16 individual vote. Vice Chair Thernstrom, how do you
17 vote?

18 (No response.)

19 CHAIRMAN CASTRO: She's not there. Okay.
20 Commissioner Kirsanow, are you on the phone yet?

21 (No response.)

22 CHAIRMAN CASTRO: No. Commissioner
23 Heriot?

24 COMMISSIONER HERIOT: Yes.

25 CHAIRMAN CASTRO: Commissioner Gaziano?

1 COMMISSIONER GAZIANO: Yes.

2 CHAIRMAN CASTRO: Commissioner Kladney?

3 COMMISSIONER KLADNEY: Yes.

4 CHAIRMAN CASTRO: Commissioner Achtenberg?

5 COMMISSIONER ACHTENBERG: Yes.

6 CHAIRMAN CASTRO: Commissioner Yaki?

7 COMMISSIONER YAKI: No.

8 CHAIRMAN CASTRO: And I vote in favor.

9 The motion passes with five yeses and one no.

10 VICE CHAIRMAN THERNSTROM: It's
11 impossible. What are they voting on now?

12 CHAIRMAN CASTRO: We were voting to amend
13 the proposed timeline to make the Commission's final
14 report except for a vote on July 6th --

15 VICE CHAIRMAN THERNSTROM: I don't have
16 the calendar in front of me. I have no idea whether I
17 can because I don't have my computer. It's in the
18 shop. I have no idea whether I can make a change in
19 the meeting day.

20 CHAIRMAN CASTRO: Okay. So do you vote no
21 or abstain?

22 VICE CHAIRMAN THERNSTROM: I can't
23 participate in this meeting. It's impossible. I can
24 barely hear people. You know, I can't come in.

25 CHAIRMAN CASTRO: We're sorry it's not the

1 ideal situation.

2 VICE CHAIRMAN THERNSTROM: No, but it's
3 very clear that it's impossible. I mean, they rattle
4 on and it's -- you know, I mean, it's not conducive.
5 Aside from the fact that I wasn't heard when I tried
6 to come in before, it's clear.

7 CHAIRMAN CASTRO: No. We know. And
8 that's why we moved away from phone meetings.

9 VICE CHAIRMAN THERNSTROM: It's kind of
10 complicated --

11 CHAIRMAN CASTRO: Because this is --

12 VICE CHAIRMAN THERNSTROM: I advocated --

13 CHAIRMAN CASTRO: I'm sorry, Madam Vice
14 Chair.

15 VICE CHAIRMAN THERNSTROM: The discussion
16 going on about these stupid -- the time given for
17 people to sound off in rebuttals. This is not a forum
18 in which I can participate.

19 CHAIRMAN CASTRO: Yes. We're sorry.
20 Well, to the extent you can stay on, perhaps it will
21 improve.

22 VICE CHAIRMAN THERNSTROM: It's on the
23 phone. It's a different one.

24 CHAIRMAN CASTRO: Okay. Yes. Now we'll
25 move on to the proposed resolution that Commissioner

1 Yaki would like to present. Commissioner?

2 VICE CHAIRMAN THERNSTROM: I can do that,
3 but I wish you would pass a note to Marty that I have
4 no idea -- oh, I see.

5 CHAIRMAN CASTRO: We can hear you, Madam
6 Vice Chair.

7 VICE CHAIRMAN THERNSTROM: I tried you on
8 the sixth floor.

9 CHAIRMAN CASTRO: Commissioner Yaki?

10 COMMISSIONER YAKI: Before I do, I just
11 want to echo what Commissioner Thernstrom said because
12 the only voice that comes out clear and legible,
13 intelligible is yours, Mr. Chair. Everyone else's
14 microphone or whatever either doesn't work very well
15 or isn't patched in at the right level because I can
16 barely hear anything that everyone else says.

17 CHAIRMAN CASTRO: Pam, is there something
18 we could do to check into that, please? We're having
19 staff look into that right now. Again, our apologies.

20 COMMISSIONER GAZIANO: We'll try to --

21 CHAIRMAN CASTRO: If everyone can speak
22 up?

23 COMMISSIONER GAZIANO: -- pull the
24 microphones closer to us and speak into the --

25 COMMISSIONER YAKI: Well, as for my point,

1 I didn't necessarily say that was a bad thing. But
2 anyway --

3 CHAIRMAN CASTRO: Okay.

4 COMMISSIONER YAKI: Let me just start by
5 saying that the Commission in the past voted to
6 support the Martin Luther King Memorial on the Mall.
7 And I think it's a great day that has finally come to
8 fruition through the hard work of a national memorial
9 foundation.

10 However, there has been some controversy
11 involving the inscription on the north face of the
12 statue where after a committee that had worked on
13 choosing a quote had chosen a quote from a sermon that
14 Dr. King gave in 1968. At some point, the designer or
15 some other small subcommittee decided that it was too
16 long and decided to truncate the quote that the
17 earlier committee had approved.

18 In some ways, you might think that might
19 not mean too much as long as we got the gist of what
20 the quote was supposed to be. But the problem is that
21 in some ways by altering and paraphrasing the quotes,
22 there is serious concern that the way in which it was
23 altered turns the intent and mean of the quote on its
24 head.

25 You should now have the information before

1 you about how the quote now, the inscription now reads
2 and what the original quote was, but the point of the
3 sermon that Dr. King gave was to critique and endorse
4 humility and praise for good works, not for good
5 people. And the quote seems to embody more of a
6 self-aggrandizing type of description, which was
7 contrary to what Dr. King wanted to say.

8 A number of newspapers have weighed in in
9 favor of changing the inscription. Maya Angelou, who
10 is on the committee and who approved the original
11 quote but not the truncated quote, has asked for it to
12 be changed.

13 I think as a Commission that owes its
14 legacy to Dr. King and his good works, it would be
15 appropriate for us to weigh in and send a letter to
16 the foundation urging them to restore the quote to its
17 original glory that reflects the full intent and great
18 humility of Dr. King, rather than the quote that
19 stands there today.

20 Ultimately this may be a tempest in the
21 teapot, but I do think that given this Commission's
22 particular debt to Dr. King, we should ask that his
23 original words -- and his original words, as you know,
24 are filled with poetry and thunder and incredible
25 inspiration -- should be the ones that are on the

1 memorial and not what some people chose to paraphrase.

2 Thank you.

3 CHAIRMAN CASTRO: So that's your motion.
4 Do we have a second on the motion for this resolution?

5 COMMISSIONER GAZIANO: I second.

6 CHAIRMAN CASTRO: Okay. Do we have any
7 discussion on this? Commissioner Gaziano?

8 COMMISSIONER GAZIANO: Yes. Commissioner
9 Yaki has noted how strange it is when he joins one of
10 my motions or agrees with me. I not only
11 enthusiastically support this. I commend Commissioner
12 Yaki for bringing it to the Commission's attention.

13 You know, just for the record, I think
14 that I would have chosen even a different -- even if
15 they had the original quote, even that does not
16 provide the power -- I might have chosen a different
17 one because even this doesn't show the -- in context,
18 it's an incredibly powerful statement but absolutely
19 we should urge that it be changed.

20 I won't go into why I thought it was so
21 stupid that the architect said he had prepared one
22 side for -- it is just an unbelievable decision to me.

23 I wish I could remember what Maya Angelou
24 said. It was something like it makes Martin Luther
25 King sound like an egotistical twit, but maybe "twit"

1 is not the right word.

2 (Laughter.)

3 COMMISSIONER ACHTENBERG: Arrogant twit.

4 COMMISSIONER GAZIANO: Arrogant twit.

5 Arrogant twit. Okay. I got the "twit" part right.

6 And I don't amend the motion. The motion
7 is fine the way it is. But I would just ask the Chair
8 if there was an opportunity to circulate the draft
9 letter to that if we had a suggestion or two, that we
10 could provide it to you.

11 CHAIRMAN CASTRO: Yes. And I think it
12 would be great if we all signed it as well so that it
13 shows the individual force of all the commissioners.

14 Commissioner Heriot?

15 COMMISSIONER HERIOT: I just wanted to add
16 this is the first I had heard about this issue. This
17 is a travesty. This is incredible. So I
18 enthusiastically support the motion.

19 CHAIRMAN CASTRO: Any other discussion?

20 COMMISSIONER YAKI: This is Commissioner
21 Yaki. I would just like to thank Commissioners Heriot
22 and Gaziano for their support. And it is a good thing
23 that I am doing this by phone because I am doing this
24 from a prone position on the floor.

25 (Laughter.)

1 CHAIRMAN CASTRO: Okay. If there is no
2 further discussion, we will take a vote. Vice Chair
3 Thernstrom, how do you vote?

4 VICE CHAIRMAN THERNSTROM: Oh, absolutely.
5 And I think there are other things wrong with the
6 memorial as well. I mean, but the starting problem
7 with that memorial is it was contracted out to a
8 Chinese sculptor, who made Martin Luther King look
9 like Mao. I mean, it's very similar to kind of Mao
10 memorials in China.

11 I find the whole memorial disturbing. And
12 since King is one of our founding fathers, in effect,
13 he should have been honored with not only proper
14 inscriptions but I think with a proper memorial
15 designed by somebody who was committed to celebrating
16 his legacy and not somebody completely disconnected
17 from American society.

18 CHAIRMAN CASTRO: All right. Commissioner
19 Kirsanow, are you back on?

20 (No response.)

21 CHAIRMAN CASTRO: Okay. Commissioner
22 Heriot?

23 COMMISSIONER HERIOT: Yes.

24 CHAIRMAN CASTRO: Commissioner Gaziano?

25 COMMISSIONER GAZIANO: Yes.

1 CHAIRMAN CASTRO: Commissioner Kladney?

2 COMMISSIONER KLADNEY: Yes.

3 CHAIRMAN CASTRO: Commissioner Achtenberg?

4 COMMISSIONER ACHTENBERG: Yes.

5 CHAIRMAN CASTRO: Commissioner Yaki?

6 COMMISSIONER YAKI: Yes.

7 CHAIRMAN CASTRO: And I vote yes. So we
8 have a unanimous vote in support of the resolution.
9 We will circulate it for everyone's review and
10 signature.

11 We now move on to our "Management and
12 Operations." Staff Director's report?

13 IV. MANAGEMENT AND OPERATIONS (Continued)

14 - STAFF DIRECTOR'S REPORT

15 DELEGATED THE AUTHORITY OF THE STAFF

16 DIRECTOR TOLHURST: The two main items I had today,
17 one is the budget, which I circulated to commissioners
18 yesterday and is a separate item on the agenda.

19 The other thing is just the very good news
20 that we have finally signed our lease. We will be at
21 1331 Pennsylvania Avenue.

22 COMMISSIONER HERIOT: Say that again.

23 DELEGATED THE AUTHORITY OF THE STAFF

24 DIRECTOR TOLHURST: One three three one Pennsylvania
25 Avenue, which is National Place. I have a map for

1 everybody.

2 CHAIRMAN CASTRO: Great.

3 DELEGATED THE AUTHORITY OF THE STAFF

4 DIRECTOR TOLHURST: You can see where it is, not to
5 diminish the understated grammar that is this
6 building, but I think --

7 (Laughter.)

8 DELEGATED THE AUTHORITY OF THE STAFF

9 DIRECTOR TOLHURST: -- people will be very pleased.
10 Pamela was kind enough to take me on a tour of the
11 building. And the lobby has, I believe, eight
12 functioning elevators, which --

13 CHAIRMAN CASTRO: Just so you know, this
14 is the Chair's office.

15 (Laughter.)

16 COMMISSIONER GAZIANO: According to, for
17 those on the phone, the marble inlay lobby.

18 DELEGATED THE AUTHORITY OF THE STAFF

19 DIRECTOR TOLHURST: So now the move-in date is
20 somewhat tentative because they need to gut the
21 interior and rebuild to our specifications. The hope
22 is that we would move in sometime in late summer next
23 year.

24 CHAIRMAN CASTRO: Great.

25 DELEGATED THE AUTHORITY OF THE STAFF

1 DIRECTOR TOLHURST: And we did receive 14 months' free
2 rent.

3 CHAIRMAN CASTRO: Someone asked what floor
4 we're on.

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

7 CHAIRMAN CASTRO: Moving on up.

8 COMMISSIONER ACHTENBERG: Good number.

9 CHAIRMAN CASTRO: Yes. Any questions on
10 that?

11 COMMISSIONER HERIOT: Could we have gotten
12 --

13 COMMISSIONER ACHTENBERG: Mr. Chairman?

14 COMMISSIONER HERIOT: -- for cheaper?

15 CHAIRMAN CASTRO: Yes, probably.
16 Commissioner Achtenberg?

17 COMMISSIONER ACHTENBERG: Mr. Chairman, to
18 the Staff Director, in terms of layout and all of that
19 good stuff and with particular attention to the modest
20 but important needs of the commissioners, I was
21 wondering if there's going to be or can there be
22 provided some kind of space, like an anteroom or
23 something approximate to the Commission chambers that
24 allows commissioners to step into for caucusing
25 purposes or what have you.

1 I have been the member of many bodies that
2 had that kind of space. And it invariably assists the
3 commissioners in arriving at agreeable results when
4 such agreement is possible, as opposed to impossible.

5 DELEGATED THE AUTHORITY OF THE STAFF
6 DIRECTOR TOLHURST: Certainly. The architect is just
7 now meeting with staff to make plans. And I can pass
8 that request along. It makes a lot of sense.

9 COMMISSIONER ACHTENBERG: Thank you very
10 much.

11 COMMISSIONER GAZIANO: Good. I think it
12 makes a lot of sense. Obviously it could be some sort
13 of multipurpose room --

14 COMMISSIONER ACHTENBERG: It could be a
15 multipurpose room for sure.

16 CHAIRMAN CASTRO: Right.

17 COMMISSIONER GAZIANO: -- so that it
18 doesn't just serve to be available for 15 minutes at a
19 time when we meet once a month.

20 COMMISSIONER ACHTENBERG: Sure.

21 COMMISSIONER GAZIANO: But obviously that
22 makes a lot of sense.

23 COMMISSIONER ACHTENBERG: Indeed.

24 CHAIRMAN CASTRO: Great. Okay. Did you
25 want to talk about the 2013 budget? Any questions?

1 DELEGATED THE AUTHORITY OF THE STAFF
2 DIRECTOR TOLHURST: I passed out materials yesterday.

3 If people have questions, I can answer them, but it's
4 a very preliminary stage. And I will certainly if you
5 don't have questions keep you posted as things move
6 on.

7 - DISCUSSION OF THE 2012 MEETING CALENDAR

8 CHAIRMAN CASTRO: Okay. Now we move on to
9 the important 2012 calendar, which we already began
10 some discussions on.

11 COMMISSIONER GAZIANO: On the budget, if I
12 could just ask -- I would have abstained if there was
13 going to be any vote on it. I just haven't had a
14 chance to study what you sent for my personal reasons.

15 But we had requested about three or more
16 months ago to have sort of periodic detailed
17 information on the budget. And I don't know if --
18 this is the first item that I think I have received
19 since that time.

20 DELEGATED THE AUTHORITY OF THE STAFF
21 DIRECTOR TOLHURST: Nothing has happened since that
22 time. The OMB demand to offer certain proposals in
23 the event that we would receive cuts, which has not
24 been determined, just came out about a week and a half
25 ago. So nothing new happened.

1 COMMISSIONER GAZIANO: What I meant is we
2 had -- I thought there was a general sense of
3 commissioners. And I would join Commissioners Yaki
4 and Melendez when I was, arguably, not in the minority
5 -- as an Independent, I'm always in the minority --
6 even then for regularly how we're spending our money.

7 DELEGATED THE AUTHORITY OF THE STAFF
8 DIRECTOR TOLHURST: Do you want the monthly
9 spreadsheet?

10 COMMISSIONER GAZIANO: Maybe, yes.
11 Probably. And one of the issues that came up -- and
12 I'll just pose this question -- for example, is we
13 would say, "No, we can't do this because we don't have
14 budget," "We can't do this field hearing because we
15 don't."

16 And then we would have \$800,000 left at
17 the end of the year. And we would go into a spending
18 frenzy so that we didn't lose it. I think these desks
19 with these horrible pads that I hate are a function,
20 the chairs.

21 You know, if we could better track not
22 just what our future appropriation or budget is but
23 help the Staff Director. Your current circumstances
24 and staffing needs I perfectly understand a lot of our
25 requests are difficult and we don't have half of the

1 officers and staff that we should.

2 But are we going to have a large surplus
3 like we have had at the end of the fiscal year? Are
4 you engaged in a spending frenzy? And if so, can we
5 make some suggestions?

6 CHAIRMAN CASTRO: Yes. I think it is a
7 helpful idea --

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR TOLHURST: Sure.

10 CHAIRMAN CASTRO: -- to have. Yes.

11 DELEGATED THE AUTHORITY OF THE STAFF
12 DIRECTOR TOLHURST: If we could send the monthly
13 spreadsheet?

14 CHAIRMAN CASTRO: Yes.

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR TOLHURST: I am not engaged in a spending
17 frenzy. I think those days are sadly probably over
18 for us. Our budget is likely to go down. But I am
19 happy.

20 Why don't I for this first one send you
21 the regular spreadsheet and see if that's what you
22 want? And then if you want something different, we
23 can.

24 COMMISSIONER GAZIANO: Okay. Thank you.

25 CHAIRMAN CASTRO: And, as a reminder, I

1 was just reminded that when this question came up a
2 couple of meetings ago, our CFO did indicate to the
3 extent that there were unused funds that this year
4 we're being pushed to use --

5 COMMISSIONER GAZIANO: Oh, that's right.
6 There were some ways for the --

7 CHAIRMAN CASTRO: Yes.

8 COMMISSIONER GAZIANO: -- to prepay for
9 the moving.

10 CHAIRMAN CASTRO: Right.

11 COMMISSIONER GAZIANO: But I hope -- I am
12 sure that it will be done legally, but if we're just
13 building out, it seems like someone is going to have
14 to get those contracts signed, sealed, and it be
15 proper, even if it's six months from now that we're
16 going to move.

17 CHAIRMAN CASTRO: I'm sure the staff is
18 doing it in all appropriate manners, but we will
19 definitely -- I like -- the idea of having a
20 spreadsheet on a monthly basis with our materials we
21 can take a look at is an excellent idea. Thank you.

22 So now on to the 2012 meeting calendar. I
23 circulated through the Staff Director's office some
24 dates, trying to accommodate the dates that some folks
25 have already indicated were not convenient for them

1 and also trying to keep from crossing onto any
2 holidays. Even one of these dates actually turns out
3 to be inconvenient for me: January 13th. I'd prefer
4 another date.

5 Are there any questions, concerns? I know
6 we have already indicated that July will be July 6th.

7 COMMISSIONER KLADNEY: I actually have a
8 question about that.

9 CHAIRMAN CASTRO: Yes?

10 COMMISSIONER KLADNEY: I wasn't actually
11 engaged -- so I apologize -- for July 6th. But is
12 that going to cause -- I was thinking because July 4th
13 is two days before. Is there some other accommodation
14 we can make because of staff and whatever?

15 COMMISSIONER GAZIANO: One possibility --
16 I hasten to say this -- if we keep --

17 COMMISSIONER YAKI: On this one, I really
18 need to be able to hear people. And I can't hear
19 people.

20 CHAIRMAN CASTRO: Commissioner Kladney
21 asked if there was some way to do a date other than
22 July 6 because of the holiday. And so Commissioner
23 Gaziano was about to answer that.

24 COMMISSIONER GAZIANO: If we keep July 13
25 but we move August to the following day, that is

1 another possible way of doing the same thing I was
2 going to suggest earlier. And I would slightly prefer
3 that. I can make these work, but --

4 COMMISSIONER KLADNEY: I would think that
5 would be better, especially for all concerned, when
6 you have staff that gets ready for the meeting. It is
7 a big meeting. It has to whatever -- the 4th is the
8 4th. No? And we have the travel issue on --

9 COMMISSIONER HERIOT: How would that work,
10 though, to move the --

11 COMMISSIONER GAZIANO: It could
12 accommodate 30/30 still.

13 COMMISSIONER HERIOT: Why?

14 COMMISSIONER GAZIANO: Pardon?

15 COMMISSIONER HERIOT: Why does all of this
16 hinge on when the August date is, rather than when the
17 July date is? It's the July date that we vote on the
18 report.

19 COMMISSIONER GAZIANO: You're right.

20 COMMISSIONER HERIOT: And at that point,
21 it's autonomous.

22 CHAIRMAN CASTRO: So I think July -- and
23 it's an inconvenient time, but I think --

24 COMMISSIONER KLADNEY: I just --

25 CHAIRMAN CASTRO: Yes. The July --

1 COMMISSIONER KLADNEY: There was no
2 discussion about it. The light bulb went off.

3 CHAIRMAN CASTRO: To that point, if we
4 could move the January 13th meeting to January 6th?
5 Because I know we can't do it the 20th. Well, there
6 was a concern about the 20th because it's too close to
7 February's meeting and it's always the week of the
8 King holiday.

9 COMMISSIONER GAZIANO: Is that better or
10 worse? Do people want to be in town for the King
11 holiday for some reason?

12 CHAIRMAN CASTRO: Yes. I don't know. I
13 mean, I would prefer that it not be January 13th if we
14 can make an accommodation.

15 COMMISSIONER GAZIANO: I'm happy to have
16 it moved.

17 COMMISSIONER HERIOT: I can't. The 20th
18 is not going to work for me.

19 CHAIRMAN CASTRO: Okay.

20 COMMISSIONER GAZIANO: But the 6th is what
21 he proposed.

22 COMMISSIONER HERIOT: The 6th I can do.

23 CHAIRMAN CASTRO: Yes, the 6th. Would
24 January 6 work for folks? I know it's right after the
25 new year.

1 COMMISSIONER YAKI: I'm supposed to be
2 away that week.

3 CHAIRMAN CASTRO: Okay.

4 COMMISSIONER YAKI: I mean, the question
5 --

6 CHAIRMAN CASTRO: Then we'll just do it
7 the 13th.

8 COMMISSIONER YAKI: Why doesn't the 20th
9 work?

10 CHAIRMAN CASTRO: The 20th?

11 COMMISSIONER HERIOT: The 20th is bad for
12 me.

13 COMMISSIONER YAKI: Well, one of the
14 things I have always wondered is why we're stuck on --
15 if we have to have an alternate day, why are we stuck
16 on Fridays?

17 CHAIRMAN CASTRO: Yes. I mean, that week,
18 could we do it earlier in the week?

19 COMMISSIONER HERIOT: I teach on Mondays
20 and Wednesdays.

21 CHAIRMAN CASTRO: All right. Well, the --

22 COMMISSIONER HERIOT: I could take the red
23 eye and get here on a Thursday, but then I would want
24 somebody to administer coffee to me immediately upon
25 arrival.

1 CHAIRMAN CASTRO: Yes. Let's just keep it
2 the 13th because it complicated that. I'll just make
3 an adjustment on my schedule.

4 COMMISSIONER GAZIANO: I think I can make
5 the 15th. I have a slight preference against it. If
6 someone else does, I won't push it unless it's --

7 CHAIRMAN CASTRO: The 13th you mean?

8 COMMISSIONER GAZIANO: June.

9 CHAIRMAN CASTRO: All right. Well, we're
10 on January here.

11 COMMISSIONER GAZIANO: Oh, I'm sorry.

12 CHAIRMAN CASTRO: Okay.

13 COMMISSIONER GAZIANO: I thought we had
14 moved on.

15 CHAIRMAN CASTRO: No, no. So we'll keep
16 it January 13th, then.

17 Any other dates here that are problematic?
18 You said June?

19 COMMISSIONER GAZIANO: I have a slight,
20 somewhat slight, preference for any day other than the
21 15th, but I could make the 15th. So if someone else
22 has a preference, that's worth moving. Otherwise I'll
23 just keep it that way.

24 COMMISSIONER HERIOT: I can make any day
25 in June.

1 CHAIRMAN CASTRO: The 22nd I can't if we
2 were to move it. That's my wedding anniversary.
3 Maybe I'll bring my wife here. She would love that.

4 COMMISSIONER HERIOT: Have you brought her
5 here yet?

6 CHAIRMAN CASTRO: She's been here but not
7 to a Commission --

8 COMMISSIONER YAKI: We'll do a resolution
9 in support of your marital bliss.

10 (Laughter.)

11 CHAIRMAN CASTRO: That would be great.
12 I'm sure she would appreciate that.

13 TIM FAY: Pardon me, Mr. Chair. This is
14 Tim Fay. Did the Vice Chair have a concern about the
15 September 14th date next year?

16 VICE CHAIRMAN THERNSTROM: Well, that
17 happens to be my birthday. And I would prefer not to
18 have a meeting on my birthday. But, frankly, this is
19 a discussion I find very hard to participate in
20 because I don't have my calendar because, on top of
21 all my other woes, my computer is in the shop. And I
22 won't have it back until Monday. So I have no laptop
23 for my calendar.

24 So the 14th of September? I would prefer
25 not the 14th of September. I would like to do

1 something else on my birthday besides go to a
2 Commission meeting.

3 CHAIRMAN CASTRO: It's really fun, though,
4 I can assure you.

5 COMMISSIONER GAZIANO: I was just going to
6 say we sang "Happy Birthday" to the Chairman.

7 VICE CHAIRMAN THERNSTROM: Yes. Well, to
8 the Vice Chair. But these dates are absolutely set in
9 stone and we can't --

10 CHAIRMAN CASTRO: No, no. They are not
11 set in stone. That's what we're talking about right
12 now.

13 VICE CHAIRMAN THERNSTROM: I know. I
14 know. But we can discuss them further closer to the
15 meeting dates.

16 COMMISSIONER HERIOT: I have to make
17 plans.

18 COMMISSIONER GAZIANO: No. It helps for
19 us to adopt them. Obviously any motion is subject to
20 reconsideration. Madam Vice Chair, this was on the
21 agenda. And dates were circulated.

22 I sympathize with anyone whose computer
23 has crashed. That's why I keep a paper calendar,
24 recommendation --

25 VICE CHAIRMAN THERNSTROM: Right. That's

1 a good idea. Only I can't work with my paper --

2 CHAIRMAN CASTRO: Okay. Why don't we do
3 this? Let's finish June. And then we'll go to
4 September. So June 15th? If we do June 8th?

5 COMMISSIONER GAZIANO: It's not a big
6 deal.

7 CHAIRMAN CASTRO: Okay. June 15th?

8 COMMISSIONER GAZIANO: If someone doesn't
9 have a reason to change, we'll just stick with it.

10 CHAIRMAN CASTRO: Okay. We'll stay with
11 June 15th. So September? Would September 21 work for
12 folks because the week prior to that is Labor Day
13 weekend.

14 COMMISSIONER ACHTENBERG: Let's double
15 check the Jewish holidays, --

16 CHAIRMAN CASTRO: Yes.

17 COMMISSIONER ACHTENBERG: -- which, of
18 course --

19 CHAIRMAN CASTRO: Let's see. I've got a
20 calendar here, but I'm not quite sure how to -- oh,
21 here we go. Rosh Hashanah is the 17th, and Yom Kippur
22 is the 26th.

23 COMMISSIONER ACHTENBERG: Perfect.

24 CHAIRMAN CASTRO: Okay?

25 COMMISSIONER ACHTENBERG: Thank you.

1 CHAIRMAN CASTRO: So would the 21st work
2 for folks, then?

3 COMMISSIONER ACHTENBERG: Yes.

4 CHAIRMAN CASTRO: Okay. And any other
5 dates that are a problem?

6 (No response.)

7 CHAIRMAN CASTRO: Hearing none, can we
8 have a motion, then?

9 COMMISSIONER GAZIANO: Actually, I would
10 reconsider.

11 CHAIRMAN CASTRO: All right.

12 COMMISSIONER GAZIANO: If no one has an
13 objection, could we do June -- is it -- what is seven
14 days before? Eighth. June 8.

15 (Laughter.)

16 CHAIRMAN CASTRO: June 8th? Does that
17 work for folks?

18 COMMISSIONER ACHTENBERG: Fine with me.

19 CHAIRMAN CASTRO: June 8th?

20 VICE CHAIRMAN THERNSTROM: Mr. Chairman?

21 CHAIRMAN CASTRO: Yes, ma'am?

22 VICE CHAIRMAN THERNSTROM: I'm sorry. I
23 don't have a calendar in front of me.

24 CHAIRMAN CASTRO: Okay.

25 VICE CHAIRMAN THERNSTROM: And I think it

1 was Michael Yaki who said, "Well, he keeps a paper
2 calendar." Well, I do, too, but it's in the study. I
3 cannot walk from my bedroom to the study. I'm sure I
4 will be able to within a week or so. But, in any
5 case, I have no way of getting to it. I have no way
6 of getting to it.

7 CHAIRMAN CASTRO: Okay. Madam Vice Chair,
8 may I ask you this? Are all the dates dates that you
9 have not had a chance to look at or just the changes
10 that we have made?

11 VICE CHAIRMAN THERNSTROM: You know, I
12 haven't been able to check them against my calendar,
13 but I work on the general assumption since I live in
14 the D.C. area that dates work for me.

15 CHAIRMAN CASTRO: Well, why don't we do
16 this --

17 VICE CHAIRMAN THERNSTROM: I can't
18 double-check until I have --

19 CHAIRMAN CASTRO: Sure.

20 VICE CHAIRMAN THERNSTROM: -- my computer
21 back or until I can walk.

22 CHAIRMAN CASTRO: Why don't we do this?
23 Why don't we pass this calendar as we have changed it.

24 And if, for some reason, after you have had an
25 opportunity to go back and look at your calendar you

1 have a very big problem with any of these dates, we'll
2 talk about those specific dates at the next meeting
3 and see if we can make any --

4 VICE CHAIRMAN THERNSTROM: That's fine.
5 That's fine.

6 COMMISSIONER HERIOT: February I need to
7 --

8 CHAIRMAN CASTRO: Okay. I think we'll do
9 that. February we'll stick with that just because you
10 need to do that. So does that work for everybody?

11 COMMISSIONER ACHTENBERG: Perfect.

12 CHAIRMAN CASTRO: All right. Subject to
13 that, then, do we have a motion on this calendar?

14 COMMISSIONER ACHTENBERG: So moved.

15 CHAIRMAN CASTRO: Second?

16 COMMISSIONER HERIOT: Second.

17 CHAIRMAN CASTRO: Do I need to take -- can
18 I just do an acclimation vote?

19 COMMISSIONER ACHTENBERG: Absolutely.

20 CHAIRMAN CASTRO: All those in favor, say
21 "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: Okay. And then we'll
3 look again on some of the post-February dates if there
4 is a problem for the Vice Chair.

5 Next on the agenda -- Commissioner
6 Kirsanow, are you on the phone now? Commissioner
7 Kirsanow?

8 (No response.)

9 CHAIRMAN CASTRO: Okay. Well, we will I
10 guess wait for him for the age discrimination report.
11 Let's go to the SAC issues.

12 V. STATE ADVISORY COMMITTEE ISSUES:

13 - RE-CHARTERING THE GEORGIA SAC

14 CHAIRMAN CASTRO: We have already put off
15 by unanimous consent the vote on the California SAC.
16 So that leaves the Georgia SAC. Let me pull that up
17 here.

18 You know, we had put that off from the
19 last meeting to this one to make some adjustments. So
20 I will move that the Commission re-charter the Georgia
21 State Advisory Committee.

22 Under this motion, the Commission appoints
23 the following individuals to that committee based upon
24 recommendations of our Staff Director: Constance
25 Curry, Julius Dudley, Herbert Garrett, Gerardo

1 Gonzalez, Edna Branch Jackson, Joseph Kippenberg, John
2 Mayes, Jamal McFadden, Justin Pressley, Arch Stokes,
3 Charles Tanksley, Jeffrey Tapia.

4 Pursuant to this motion, the Commission
5 appoints Charles Tanksley as Chair of this
6 re-chartered Georgia State Advisory Committee.

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

11 Is there a second? Is there a second?

12 COMMISSIONER GAZIANO: Second.

13 CHAIRMAN CASTRO: Okay. Any discussion?

14 (No response.)

15 CHAIRMAN CASTRO: Hearing none, Vice Chair
16 Thernstrom, how do you vote?

17 (No response.)

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

20 (No response.)

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

23 COMMISSIONER HERIOT: I vote no.

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

1 COMMISSIONER GAZIANO: I vote no. I was
2 prepared to vote for California if we were going to
3 vote. So I'm not a complete contrarian. But the sort
4 of ideological balance is still not even remotely
5 close to even.

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

8 COMMISSIONER YAKI: Aye.

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

11 COMMISSIONER KLADNEY: Aye.

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

14 COMMISSIONER ACHTENBERG: Aye.

15 CHAIRMAN CASTRO: And I also vote to
16 approve the SAC. We have four yeses, two noes. The
17 SAC passes.

18 Is Commissioner Kirsanow expected back?
19 Are there any other items pending his arrival? If
20 not, maybe we can take a short recess pending his
21 coming on. So let's say ten minutes. And then we'll
22 be back at 11:00 o'clock to either move forward or
23 determine whether we're going to maybe pass this if he
24 is not available.

25 (Whereupon, the foregoing matter went off

1 the record at 10:49 a.m. and went back on the record
2 at 10:59 a.m.)

3 CHAIRMAN CASTRO: We're back on the
4 record. Commissioner Kirsanow, you have the floor.
5 Do you want to make a motion?

6 III. PROGRAM PLANNING (Continued)

7 - APPROVAL OF AGE DISCRIMINATION BRIEFING REPORT

8 COMMISSIONER KIRSANOW: I'm not sure where
9 we are, but --

10 CHAIRMAN CASTRO: We are now at your
11 report, the age discrimination report. I know it was
12 your --

13 COMMISSIONER GAZIANO: If you want to
14 speak, we have to approve part A before we have
15 findings.

16 CHAIRMAN CASTRO: So do you want to make a
17 motion on your report? Then we'll get a second, and
18 we'll start discussing it.

19 COMMISSIONER KIRSANOW: I would move that
20 the Commission adopt part A of the age discrimination
21 report.

22 CHAIRMAN CASTRO: Do we have a second? Do
23 we have a second? Do we have a second? Do we have a
24 second?

25 COMMISSIONER GAZIANO: I second.

1 COMMISSIONER HERIOT: Okay. Could we have
2 five minutes?

3 CHAIRMAN CASTRO: Sure.

4 COMMISSIONER HERIOT: With Pete? Pete?

5 CHAIRMAN CASTRO: How do you want to do
6 that? Do you want to -- I guess you can call him from
7 another room.

8 COMMISSIONER GAZIANO: Pete, we'll call
9 you.

10 COMMISSIONER KIRSANOW: Tell you what. Do
11 you want to call my cell?

12 COMMISSIONER GAZIANO: Yes.

13 COMMISSIONER KIRSANOW: Thanks.

14 CHAIRMAN CASTRO: So we have a five-minute
15 recess for the Republicans and Independents to caucus.

16 COMMISSIONER HERIOT: Sorry.

17 CHAIRMAN CASTRO: That's all right. We'll
18 be here.

19 (Whereupon, the foregoing matter went off
20 the record at 11:00 a.m. and went back on the record
21 at 11:05 a.m.)

22 CHAIRMAN CASTRO: We're back on the
23 record.

24 COMMISSIONER GAZIANO: Thank you, Mr.
25 Chairman. I withdraw my second.

1 CHAIRMAN CASTRO: Okay. So we have a
2 motion that's not seconded. Hearing no second, then I
3 think we will not be addressing that motion, that
4 report.

5 There was another item that we wanted to
6 talk about.

7 COMMISSIONER GAZIANO: I move on the same.
8 I move that we not adopt part A at any time.

9 CHAIRMAN CASTRO: Okay. Do we have a
10 second?

11 COMMISSIONER GAZIANO: I just want to make
12 sure that --

13 CHAIRMAN CASTRO: That's fine. Do we have
14 a second on that motion?

15 COMMISSIONER HERIOT: No.

16 CHAIRMAN CASTRO: I'll second that motion.
17 Any discussion?

18 (No response.)

19 CHAIRMAN CASTRO: Okay. We'll take a
20 vote. This is the motion not to approve the report as
21 written. And did you say ever?

22 COMMISSIONER GAZIANO: No. I --

23 CHAIRMAN CASTRO: Okay.

24 COMMISSIONER GAZIANO: The report as
25 written.

1 CHAIRMAN CASTRO: The report as written.

2 COMMISSIONER KLADNEY: Just to be clear,
3 Mr. Chairman, are we talking about the age
4 discrimination report?

5 CHAIRMAN CASTRO: Yes, we are. Yes, we
6 are.

7 Vice Chair Thernstrom, how do you vote?
8 "Yes" would mean this report as written is not going
9 to be approved.

10 VICE CHAIRMAN THERNSTROM: Yes.

11 CHAIRMAN CASTRO: We'll come back to you
12 if you'd like --

13 VICE CHAIRMAN THERNSTROM: Yes. Come
14 back.

15 CHAIRMAN CASTRO: Commissioner Kirsanow?

16 COMMISSIONER KIRSANOW: I'm going to vote
17 no.

18 CHAIRMAN CASTRO: Okay. Commissioner
19 Heriot?

20 COMMISSIONER HERIOT: Yes.

21 CHAIRMAN CASTRO: Commissioner Gaziano?

22 COMMISSIONER GAZIANO: Yes. And, again,
23 because I don't think we had any independent scholars
24 other than the EEOC was my reason. Others can vote
25 against it.

1 COMMISSIONER HERIOT: Right. The EEOC.
2 We're not going to call them scholars.

3 COMMISSIONER GAZIANO: I said -- okay.
4 You had no independent scholars to actually discuss
5 the data.

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

8 COMMISSIONER YAKI: Aye.

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

11 COMMISSIONER KLADNEY: I abstain.

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

14 COMMISSIONER ACHTENBERG: Aye.

15 CHAIRMAN CASTRO: And I vote yes as well.

16 We have four yeses, one abstention, and one no. The
17 motion not to approve the report as written passes.

18 COMMISSIONER ACHTENBERG: You passed the
19 Vice Chair.

20 CHAIRMAN CASTRO: Oh, Vice Chair, I
21 apologize.

22 VICE CHAIRMAN THERNSTROM: I'm abstaining.

23 CHAIRMAN CASTRO: Abstaining. Okay. So
24 the motion carries, and the report does not get
25 approved.

1 IV. MANAGEMENT AND OPERATIONS (Continued)

2 - DISCUSSION OF THE 2013 BUDGET

3 CHAIRMAN CASTRO: We had talked earlier
4 during the break about an item that we wanted to raise
5 during the budget discussion. And that was a
6 conversation that, actually, the Acting Staff Director
7 and I had a while ago and that Commissioner Kladney
8 raised again with us is the idea of moving away from
9 so much paper and trying to make as much of this
10 electronic as possible.

11 Commissioner Kladney, did you want to go
12 into some detail?

13 COMMISSIONER KLADNEY: I just think that
14 making .pdfs, scanning this, and sending this to
15 people makes a lot more sense than -- and you can
16 print off the pages that you're interested in versus
17 running all this paper and all the staff time and all
18 the \$14 to send the books out to the people who are
19 not here in the Washington area. I just --

20 COMMISSIONER KIRSANOW: Pardon me.
21 Commissioner Kladney, I am sorry to interrupt. The
22 Vice Chair and I are having a difficulty hearing you.

23 COMMISSIONER KLADNEY: Okay.

24 COMMISSIONER GAZIANO: Is your mic on?

25 COMMISSIONER KLADNEY: I don't know.

1 (Laughter.)

2 CHAIRMAN CASTRO: What don't you move it
3 up a little higher, Dave.

4 COMMISSIONER KLADNEY: Sorry. Is that any
5 better, Commissioner Kirsanow?

6 COMMISSIONER KIRSANOW: Better.

7 CHAIRMAN CASTRO: Yes, that's better?
8 Okay.

9 COMMISSIONER KLADNEY: Okay. So basically
10 it was just my opinion that making all this paperwork
11 was a waste of paper. It's a waste of money and
12 sending these booklets out to the West Coast. They
13 send \$14-\$20, whatever it is, every time when some of
14 us are more than happy to accept it in electronic
15 form. We can print off the pages we want to notate,
16 as opposed to having -- I think in the last book,
17 there were like 400 pages, something like that size.

18 So that's my opinion. And I'd like some
19 discussion on it to see how everybody feels.

20 CHAIRMAN CASTRO: Commissioner Heriot?

21 COMMISSIONER HERIOT: As another West
22 Coast person, I sometimes get notebooks that are just
23 too heavy for me. And so it's a waste because I can't
24 carry that much. So I think that's --

25 CHAIRMAN CASTRO: Commissioner Gaziano?

1 COMMISSIONER GAZIANO: I approve your
2 effort in the main. Where I think they are very
3 helpful in particular -- and, by the way, I probably
4 will have printed a fair amount or John will assist
5 me. But I find before briefings, particularly our
6 annual report briefings, the collection of scholarly
7 articles I find very helpful in having to collate and
8 print.

9 So what maybe we just have an
10 understanding -- I don't know if we need a motion --
11 is that, upon request, if there is a particular binder
12 -- and I like to have it all in a binder. The
13 scholarly articles would be something I would request
14 if that option were available.

15 CHAIRMAN CASTRO: That's fair enough.

16 COMMISSIONER KLADNEY: That's fine with
17 me. I mean, I'm just trying to be as --

18 VICE CHAIRMAN THERNSTROM: Mr. Chairman?

19 COMMISSIONER KLADNEY: -- conservative as
20 possible.

21 CHAIRMAN CASTRO: Yes, Madam Vice Chair?

22 VICE CHAIRMAN THERNSTROM: Yes. I think
23 that option has to be available. I, for one, do not
24 have an industrial-strength printer. So I have no way
25 of printing out that volume of material. I would want

1 to be able to request of the Commission that it
2 printed it for me, but I think the principle is
3 correct that we are drowning in paper we don't need.

4 CHAIRMAN CASTRO: I agree. And to the
5 extent they are .pdfs, they can also be I understand
6 loaded into e-readers or obviously can be distributed
7 by email. If it's too large, we can always send
8 somebody a disk. So there are definitely ways. And
9 to the extent that there are some voluminous articles,
10 we can always request those be printed.

11 So I don't know that we need a vote, but I
12 think there is a consensus here that we would want to
13 move in that direction. So we would ask the Acting
14 Staff Director for the October meeting, if we could
15 begin to implement this request. Okay?

16 Anything else? Any other business?

17 (No response.)

18 CHAIRMAN CASTRO: Hearing none, I will
19 entertain a motion to adjourn.

20 VICE CHAIRMAN THERNSTROM: So moved.

21 CHAIRMAN CASTRO: Second?

22 (No response.)

23 CHAIRMAN CASTRO: No second? Everybody
24 wants to stay? I'll second.

25 (Laughter.)

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COMMISSIONER HERIOT: I'll second.

CHAIRMAN CASTRO: All those in favor,
signify by saying, "Aye."

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

CHAIRMAN CASTRO: All right. Thank you
all.

(Whereupon, the foregoing matter was
concluded at 11:11 a.m.)

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In the matter of: Meeting

Before: US CCR

Date: 09-09-11

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