

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC MEETING

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TUESDAY, SEPTEMBER 20, 2011

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The Commission convened via
teleconference, at 4:00 p.m., MARTIN R. CASTRO,
Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ABIGAIL THERNSTROM, Vice Chair

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

KIMBERLY TOLHURST, Delegated Authority of the
Staff Director

STAFF PRESENT:

CHRISTOPHER BYRNES, Senior
Attorney-Adviser to the Office of the
Staff Director
PAMELA DUNSTON
LILLIAN DUNLAP
ALFREDA GREENE
KALANI LEE
TINALOUISE MARTIN
PETER MINARIK
DAVID MUSSATT
LENORE OSTROWSKY, Acting Chief, PAU
MICHELLE RAMEY
JOHN RATCLIFFE, Chief, Budget
ANGELA TREVINO
VANESSA WILLIAMS
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SOMIN

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2 (4:04 p.m.)

3 CHAIRMAN CASTRO: This is Marty Castro,
4 Chair of the U.S. Commission on Civil Rights. It is
5 4:04 p.m. Eastern time. This is a special meeting of
6 the Commission. And Commissioners Yaki, Kirsanow,
7 Heriot, Gaziano, Kladney, and Vice Chair Thernstrom,
8 in addition to myself, are on the line. Is that
9 right?

10 (Whereupon, there was a chorus of
11 "Yeses.")

12 CHAIRMAN CASTRO: We have before us
13 approval of the agenda, which is essentially --

14 DELEGATED THE AUTHORITY OF THE STAFF
15 DIRECTOR TOLHURST: Marty, can we verify that the
16 Court Reporter is on the line?

17 CHAIRMAN CASTRO: Yes. Is the Court
18 Reporter on the line?

19 THE OPERATOR: The Court Reporter is on
20 the line.

21 DELEGATED THE AUTHORITY OF THE STAFF
22 DIRECTOR TOLHURST: Thank you.

23 CHAIRMAN CASTRO: Okay. Thanks for
24 reminding me about that.

25 I. APPROVAL OF AGENDA

1 CHAIRMAN CASTRO: We have a one-item
2 agenda. Sorry. I would entertain a motion to approve
3 the agenda?

4 VICE CHAIR THERNSTROM: So moved.

5 CHAIRMAN CASTRO: Second?

6 COMMISSIONER KIRSANOW: Second.

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

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

10 CHAIRMAN CASTRO: Any opposed?

11 (No response.)

12 CHAIRMAN CASTRO: Any abstentions?

13 (No response.)

14 II. DISCUSSION OF

15 THE AGENCY'S 2012 APPROPRIATIONS STATUS

16 CHAIRMAN CASTRO: Okay. The purpose of
17 today's call is to discuss the agency's 2012
18 appropriations status. I know that the Acting Staff
19 Director circulated to commissioners and special
20 assistants, I believe it was on Friday, the specifics
21 of the Senate CJS Subcommittee's markup of the
22 appropriation for fiscal year 2012 for our agency.

23 At the top line, it looked like we were
24 only going to be initially proposed for a 188,000 cut.

25 But when we looked closely at the specifics of the

1 draft appropriations, it indicated that \$800,000 from
2 our budget was going to be proposed to be transferred
3 to the EEOC, specifically to the EEOC's Office of
4 Inspector General, to act as Inspector General for our
5 agency due to alleged chronic financial and management
6 problems at our agency.

7 So when we saw that, that was circulated
8 to all of us. And what I want to do is have a
9 discussion today. Having seen that, I reached out to
10 some of the contacts on Friday evening that I have in
11 the Senate, in particular, Senator Durbin's office and
12 Senator Leahy's office, both from appropriations, to
13 try to get some additional information as the
14 information that was on the website for the CJS
15 Subcommittee was not more instructive basically than
16 what I just mentioned to you all.

17 So in the interim -- and the concern here
18 obviously is twofold essentially. One we don't have a
19 problem, at least from my perspective, we don't have a
20 problem with having an Inspector General look at our
21 agency, although I think it's based on outdated
22 information.

23 There are a couple of concerns in there.
24 The agency that they are asking to act in this
25 capacity is an agency that we have some oversight or

1 monitoring responsibility for. And, secondly, the
2 amount of 800,000 coupled with the additional \$188,000
3 proposed reduction in our appropriation is a
4 devastating cut to our agency. And it's also out of
5 proportion with the budget of the EEOC's IG versus the
6 percentage of our budget that's going to them.

7 And so I expressed those general concerns
8 to the folks and to the contacts I have at Durbin's
9 and Leahy's offices. And they were not specifically
10 familiar with what had transpired at CJS but indicated
11 they were going to try to provide some additional
12 information.

13 I was hoping to have additional background
14 for this call to bring you up to speed on. I don't
15 have any specifics yet as to where this is coming
16 from, who put this into the markup or why.

17 I do know that I have been told that this
18 is far from over, that this is not something
19 necessarily we should panic about at this point
20 because there are many steps that need to be taken
21 before any appropriation is finalized from the point
22 of markup to ultimately going to the full Senate and
23 then into conference committee. This may not be
24 ultimately resolved until sometime around Thanksgiving
25 or later.

1 Having said that, I wanted to brief you
2 all on everything that I know and then hear from you
3 any questions and possibly come up with some steps
4 going forward. I would suggest that we probably would
5 want to wait until we get further information as to
6 the background as to why this is happening before we
7 start any balls in motion to educate members of the
8 Senate Appropriation Committee further, but having
9 said that, I want to open it up for some questions.

10 DELEGATED THE AUTHORITY OF THE STAFF
11 DIRECTOR TOLHURST: Marty, this is Kim. Because we're
12 on the phone, if commissioners could say their name
13 before you make a comment for the Court Reporter?

14 CHAIRMAN CASTRO: Thank you.

15 COMMISSIONER KIRSANOW: Marty, this is
16 Kirsanow.

17 First of all, I agree with everything you
18 said. And thanks very much for jumping on this thing.

19 I think it's absurd that \$800,000 be dedicated to the
20 EEOC for purposes of an IG of an agency that the
21 budget is only 10 times larger than the entire amount
22 appropriated for the IG ostensibly.

23 At the Pentagon, they have a \$50 billion
24 IG, but it may be a wise thing after we have gotten
25 all of the information to see if -- just as you have,

1 to go to our respective contacts, anybody that we know
2 on the Hill and see if we can convince them that this
3 is, first of all, unnecessary and the money would be
4 put toward better use if it were incorporated within
5 our budget.

6 I spent some time today. And Vice Chair
7 Thernstrom knows this. We went through a number of
8 different iterations of Altercept to make sure that
9 agency funds were being spent in a responsible
10 fashion, that we have full accountability because the
11 books were in bad shape for a period of time, and have
12 made significant strides toward that. We are not
13 anywhere near where we were before. And having an IG
14 at this particular time makes absolutely no sense.

15 VICE CHAIR THERNSTROM: I do concur on
16 that history. I would --

17 CHAIRMAN CASTRO: That's Vice Chair
18 Thernstrom who is talking now.

19 VICE CHAIR THERNSTROM: Oh, I'm sorry.
20 This is Thernstrom, Vice Chair Thernstrom.

21 COMMISSIONER GAZIANO: This is Gaziano. I
22 have a question first and then perhaps a comment.

23 I should have studied the draft
24 legislation. Is this a proposal just for the -- since
25 it's an appropriation, I suppose it's not a permanent

1 appointment. This is just a one-year --

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

4 COMMISSIONER GAZIANO: -- sort of
5 appointment. I would suggest that we can point out
6 that, regardless of where the money comes from, this
7 amount of money to study us may not be necessary given
8 that our books are in order, but we shouldn't appear,
9 like the Chairman said, too opposed to an Inspector
10 General.

11 My concerns, you know, mimic his two
12 concerns. It is absolutely unacceptable to have the,
13 or in my view, I'll say a little stronger, absolutely
14 unacceptable to have the EEOC's IG play that role when
15 EEOC has been fairly uncooperative of late in our
16 requests. And we have pending reports.

17 They are one of the three big agencies, I
18 would say, that we are responsible for overseeing:
19 Civil Rights Division, maybe OCR being the other.

20 If Congress wants to appoint an IG for one
21 year or more years, then we should suggest that, at
22 least since half of us are appointed from Congress,
23 that this is how the IG for GAO would be more
24 appropriate or the IG from the Library of Congress.

25 COMMISSIONER KIRSANOW: Mr. Chair,

1 Kirsanow here again. Todd, those are very good
2 points. I will say personally I am adamantly opposed
3 to the appointment of an IG. I think it's ridiculous
4 to have an IG over this particular agency at this
5 particular time.

6 I guess I'm not constitutionally opposed
7 to the concept of an IG, but we have gone through GAO
8 review. We have gone through at least -- and Vice
9 Chair Thernstrom can remind me if I'm wrong. My
10 recollection is in the last five to six years, we have
11 three different types of reviews. And we have
12 requested them at times to make sure that everything
13 was in order.

14 It's not just simply the size of the
15 budget quoted in the IG nor the conflict of interest,
16 which I concur are problematic, but it is the simple
17 notion of having an IG with respect to this agency at
18 this particular time.

19 I think this agency is doing a remarkable
20 job given the staffing that we have gotten. And if
21 they wanted to improve the ability of this agency to
22 function, they would dedicate that \$800,000 to making
23 sure we have appropriate personnel systems in place so
24 that we could function the way we were supposed to be.

25 COMMISSIONER GAZIANO: I agree. I think

1 it's more of the way we just present the argument. I
2 think to say that we shouldn't have any oversight,
3 though, might provoke the opposite reaction. I think
4 maybe another way of putting it is that you can employ
5 GAO at any time to oversee us, but we're a little,
6 teeny agency that's under-funded. We don't have but
7 about a third of our staff positions that we are able
8 to fill.

9 But, you know, if you all want to, if any
10 member of Congress or committee, I suppose, wants to
11 direct CRS to study us or wants to direct GAO to look
12 into us, they're free to do so. It is sort of a waste
13 to dedicate -- then make your argument, Pete. It
14 seems like a little bit of a waste of money, certainly
15 to me, to have dedicated funds that, once
16 appropriated, almost have to be spent studying us,
17 regardless of what the initial investigation by those
18 officials yields.

19 DELEGATED THE AUTHORITY OF THE STAFF
20 DIRECTOR TOLHURST: This is Kim.

21 Just for some context, those of you who
22 didn't know it, I think it was Nick Colten that
23 pointed out to me the CJS Subcommittee on the record
24 noted that they were very, very gung-ho about IGs.
25 And so it's not directed at us. Although I certainly

1 agree with Commissioner Kirsanow, it is not directed
2 at us.

3 I think that they are siccing IGs on a lot
4 of folks.

5 CHAIRMAN CASTRO: Okay. That's good to
6 know.

7 Do any other commissioners want to comment
8 or ask questions?

9 (No response.)

10 CHAIRMAN CASTRO: Okay. Well, here's my
11 thought. So I am hoping to be able to connect with
12 the staffer that is on CJS that is responsible for
13 this to get a better idea of what the thinking is
14 behind this and what opportunities to educate them
15 further about the need or lack thereof for these kinds
16 of resources to be directed our away.

17 Once we have that better idea, my thought
18 would be assuming that we need to further educate our
19 senators, my thought would be that at that time we
20 might want to reach out to those senators who are on
21 the CJS Subcommittee that we know or have a
22 relationship with as well as those Senate
23 Appropriations senators who --

24 COMMISSIONER HERIOT: Who are the members?
25 This is Gail, by the way.

1 CHAIRMAN CASTRO: Yes?

2 COMMISSIONER HERIOT: Who are the members?

3 CHAIRMAN CASTRO: It's probably the
4 largest committee that the Senate has. We can
5 circulate the CJS members, but basically on the
6 Democratic side, it's Mikulski, Inouye, Kohl, Leahy,
7 Reed, Lautenberg, Nelson, Pryor, Sherrod Brown. On
8 the Republican side, it's Hutchison, Shelby,
9 McConnell, Alexander, Murkowski, Johnson, Collins, and
10 Graham and other senators. So tier one would be the
11 CJS senators.

12 Tier two would be the other Appropriations
13 Senate members, which were Harkin, Murray, Durbin,
14 Johnson, Landrieu on the Democrat side and on the
15 Republican side Cochran, Kirk, Coats, Blunt, Moran,
16 and Hoeven.

17 But I think at this point, it's probably
18 premature to do that. My sense is that if it turns
19 out that this is something that you need to further
20 educate folks beyond just the staff, that would be my
21 thought.

22 DELEGATED THE AUTHORITY OF THE STAFF
23 DIRECTOR TOLHURST: I just emailed all the
24 commissioners the link to all the names.

25 CHAIRMAN CASTRO: Okay.

1 COMMISSIONER KLADNEY: This is Kladney
2 here. Can I speak?

3 CHAIRMAN CASTRO: Yes.

4 COMMISSIONER KLADNEY: Let me just say
5 that we ought to direct somebody on the staff to put
6 together those three reports and summarize them with
7 an executive summary so that we can be ready to
8 present them when necessary. And they should be
9 circulated among the commissioners.

10 VICE CHAIR THERNSTROM: Good idea. This
11 is Thernstrom. Good idea.

12 COMMISSIONER GAZIANO: This is Todd.
13 Depending on what the reaction is, too, on
14 the Senate side, I think another step would be to talk
15 with the House appropriators in due turn.

16 CHAIRMAN CASTRO: Absolutely, yes. We
17 can't ignore that. And that's another one that's
18 still sitting out there, which put out an \$8 million
19 budget on us. So at some point we'll need to also
20 reach out to them in the same manner and educate them
21 about the status of the agency.

22 Obviously their \$8 million version,
23 there's 8 million for different reasons than the
24 Senate version. And so at some point we'll probably
25 have to talk to the Conference Committee members as

1 well. Hopefully we won't. -- Okay?

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: I think the fear is that in
4 reconciliation, if they put the numbers together to go
5 down towards the House number but leave the Senate IG
6 in, that we basically can't function.

7 CHAIRMAN CASTRO: Either way it's
8 crippling. So, as I said, hopefully I will have some
9 further intelligence as to what the purpose and the
10 permanence, at least for this fiscal year, is of that
11 or whether it's an ability to address it so that it
12 looks different once it is shot out of the Senate.

13 Any other questions?

14 (No response.)

15 CHAIRMAN CASTRO: Hearing none, then what
16 I can do -- and, Madam Acting General Counsel, let me
17 know if this is appropriate -- once I have additional
18 information to share, would we need to schedule
19 another meeting such as this or could it be circulated
20 to all the commissioners in a manner other than a
21 phone call?

22 DELEGATED THE AUTHORITY OF THE STAFF
23 DIRECTOR TOLHURST: If you have just information, you
24 can email it or call them later.

25 CHAIRMAN CASTRO: Okay. All right. So

1 that's where we'll leave it, then, unless there are
2 any other questions or thoughts or suggestions. Okay.

3 Well, I want to thank everybody for making
4 yourselves available today. Again, I wish I had had a
5 little bit more information by the time this call took
6 place, but we will keep moving ahead.

7 (Whereupon, there was a chorus of
8 "Thanks.")

9 (Whereupon, the foregoing matter was
10 concluded at 4:21 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Telephonic Meeting

Before: US CCR

Date: 09-20-11

Place: Washington, DC

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



Court Reporter

NEAL R. GROSS

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