

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, NOVEMBER 18, 2011

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

PRESENT:

MARTIN R. CASTRO, Chairman
ABIGAIL THERNSTROM, Vice Chairman
ROBERTA ACHTENBERG, Commissioner
(via telephone)
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
(via telephone)
DAVID KLADNEY, Commissioner
MICHAEL YAKI, Commissioner

KIMBERLY TOLHURST, Delegated the Authority of
the Staff Director

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STAFF PRESENT:

MARGARET BUTLER
CHRISTOPHER BYRNES, Senior Attorney-Advisor to the
Office of the Staff Director
PAMELA A. DUNSTON, Chief, ASCD
ALFREDA GREENE
TINALOUISE MARTIN, Director, OM
TORRANCE MONTGOMERY
LENORE OSTROWSKY, Acting Chief, PAU
JOHN RATCLIFFE, Chief, Budget
DAVID SNYDER (via telephone)
VANESSA WILLIAMSON

COMMISSIONER ASSISTANTS PRESENT:

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

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P R O C E E D I N G S

(9:35 a.m.)

CHAIRPERSON CASTRO: This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is November 18th at approximately 9:36 a.m. The meeting is taking place here at the offices of the U.S. Commission on Civil Rights at 624 9th Street, N.W.

The Commissioners who are present at this meeting are myself, Vice Chair Thernstrom, Commissioner Heriot, Commissioner Gaziano, Commissioner Kladney, Commissioner Yaki, Commissioners Kirsanow and Achtenberg are joining us by telephone.

There is a quorum of the Commission present. Is the person delegated the authority of Staff Director present?

STAFF DIRECTOR TOLHURST: Yes.

CHAIRPERSON CASTRO: Is the court reporter present?

COURT REPORTER: Yes.

CHAIRPERSON CASTRO: Yes. The meeting shall now come to order.

The first item is the Approval of the Agenda.

I. APPROVAL OF AGENDA**NEAL R. GROSS**

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1 CHAIRPERSON CASTRO: I move that we approve
2 the agenda. Is there a second?

3 COMMISSIONER KLADNEY: Second.

4 CHAIRPERSON CASTRO: Okay. Are there any
5 amendments?

6 COMMISSIONER ACHTENBERG: Mr. Chairman?

7 CHAIRPERSON CASTRO: Yes, Commissioner
8 Achtenberg?

9 COMMISSIONER ACHTENBERG: I'd like to move
10 to amend the agenda for discussion purposes only to
11 discuss the memo that I wrote disseminated to each
12 Commissioner regarding the commemoration of the 150th
13 anniversary of the Emancipation Proclamation, and the
14 proposal that the Commission consider co-producing
15 educational events along with the President Lincoln's
16 Cottage for historic preservation site.

17 COMMISSIONER HERIOT: Second.

18 CHAIRPERSON CASTRO: Okay. Any discussion
19 on that motion? Oh, wait. We also have a motion to
20 amend and remove for discussion today the Hawaii SAC,
21 so I'll make that motion.

22 COMMISSIONER YAKI: Second.

23 COMMISSIONER GAZIANO: Okay. Where would
24 the discussion of the Lincoln Cottage proposal go in
25 the agenda?

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1 CHAIRPERSON CASTRO: Why don't we put it
2 before the update on the Statutory Enforcement Report
3 under Program Planning.

4 Okay. Any discussion, further discussion?

5 All right. So, all those in favor of the amendments
6 to the agenda signify by saying aye.

7 (Chorus of ayes.)

8 CHAIRPERSON CASTRO: Any opposed? Any
9 abstentions?

10 (No response.)

11 CHAIRPERSON CASTRO: Okay. The next item on
12 the agenda is the Approval of the October 21 Meeting
13 Minutes.

14 **II. APPROVAL OF THE OCTOBER 21, 2011**

15 **MEETING MINUTES**

16 CHAIRPERSON CASTRO: I move that we
17 approve.

18 COMMISSIONER GAZIANO: I second.

19 CHAIRPERSON CASTRO: Any discussion?

20 COMMISSIONER HERIOT: Mr. Chairman?

21 CHAIRPERSON CASTRO: Yes?

22 COMMISSIONER HERIOT: I had an addition to
23 the Minutes.

24 CHAIRPERSON CASTRO: Okay.

25 COMMISSIONER HERIOT: On page 2 where it

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1 says "Chairman Castro advised Commissioners that he
2 would discuss the possibility of either a page
3 limitation or a word count limitation on statements,
4 dissents, rebuttals," add the words "and/or addenda"
5 at that point. Can we do that by unanimous consent?

6 CHAIRPERSON CASTRO: Yes. I don't remember
7 saying it quite that way, but that --

8 COMMISSIONER HERIOT: Didn't you?

9 CHAIRPERSON CASTRO: Did I say "and/or?"

10 COMMISSIONER HERIOT: Well, the basic
11 meaning.

12 CHAIRPERSON CASTRO: Sure, that's fine.

13 COMMISSIONER ACHTENBERG: It's very
14 difficult -- I don't know if it is for Pete, but it's
15 very difficult for me to hear what was just said.

16 CHAIRPERSON CASTRO: Okay, we'll try to
17 move our mikes a little closer.

18 COURT REPORTER: Can you --

19 COMMISSIONER HERIOT: I'm sorry,
20 Commissioner Achtenberg.

21 I would like to change the Minutes by
22 unanimous consent to add the words "and/or addenda" to
23 the list of things that Chairman Castro said that he
24 would be discussing at this meeting. So, it would be
25 "statements, dissents, rebuttals, and/or addenda."

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1 COMMISSIONER ACHTENBERG: Got it. Thank
2 you.

3 CHAIRPERSON CASTRO: All those in favor
4 signify by saying aye.

5 (Chorus of ayes.)

6 CHAIRPERSON CASTRO: Any opposed? Any
7 abstentions?

8 (No response.)

9 CHAIRPERSON CASTRO: Okay, the Minutes
10 pass.

11 So, the next item is the Program Planning
12 Update. And since we amended the agenda to add the
13 Lincoln Cottage to the beginning of that, I'll cede
14 the floor to Commissioner Achtenberg.

15 **III. PROGRAM PLANNING UPDATE AND**

16 **DISCUSSION OF PROJECTS**

17 **LINCOLN COTTAGE**

18 COMMISSIONER ACHTENBERG: Thank you, Mr.
19 Chairman.

20 The Lincoln Cottage which is an adjunct of
21 the National Trust for Historic Preservation
22 approached me with a proposal that the Commission
23 consider holding jointly with the Lincoln Cottage a
24 series of educational events that commemorate the
25 150th anniversary of the Emancipation Proclamation.

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1 In the memo, it outlines some possible
2 educational programs that could be produced and
3 jointly sponsored by the Cottage and the Commission.
4 It also outlines some proposed methodology for us
5 achieving agreements about how we would propose to
6 work with the Cottage, and how we would agree upon the
7 development of our piece of the contributions to the
8 conduct of these jointly sponsored events.

9 It also -- so, those are issues for our
10 consideration. I tried to make it clear in the
11 drafting of the memo, and I would like to make it
12 clear now that this anticipates only a methodology
13 whereby all sides of our Commission agree on a
14 particular list of scholars, or a particular program
15 offering, and we would need to have bipartisan
16 agreement, or multi-partisan agreement, however you
17 want to express that with any proposal that we make to
18 them about how to go forward.

19 In the discussion that I had with
20 Commissioner Heriot, I manifested my agreement that we
21 take a brief opportunity today to discuss it at the
22 Commission with some possibility that if the majority
23 of the Commissioners are in favor, we might consider
24 adopting some methodology that looked something
25 similar to what the memo outlines at our December

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1 meeting, but that a possible way of concluding the
2 discussion today might be, if there is interest among
3 the Commissioners, might be for a Commissioner from
4 each side of the aisle and his or her special
5 assistants put their heads together, special
6 assistants put their heads together, and do some work
7 in the intervening months and come forward with a
8 bipartisan proposal that might enjoy the support of
9 the majority of the Commission in December.

10 So, I'll leave it at that, and ask people
11 to opine if they wish.

12 CHAIRPERSON CASTRO: Open the floor to some
13 discussion on that. Commissioner Heriot?

14 COMMISSIONER HERIOT: I agree with
15 Commissioner Achtenberg that the 150th anniversary --

16 COMMISSIONER ACHTENBERG: I can't hear, I'm
17 sorry.

18 COMMISSIONER HERIOT: I'm sorry. I agree
19 with you that the 150th anniversary of the
20 Emancipation Proclamation is an event that really
21 deserves to be celebrated in some way, and that the
22 Commission should have some role in that.

23 Whether this is the exact program that we
24 ought to be following I think is subject to the
25 opinions of everyone here, but I definitely think we

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1 should be doing something. And I think acting in
2 association with the Lincoln Cottage is a good idea,
3 and I think it just is a question of working out the
4 various particulars of the program.

5 Personally, I thought the idea of rounding
6 up a group of Lincoln scholars and working in that
7 vein makes a lot of sense. I think there are
8 variations that we come up with on this.

9 What concerns me is making sure that we
10 don't simply have a one-sided view of the Emancipation
11 Proclamation, and making sure that we have scholars
12 that represent a variety of views.

13 I am not keen on the idea of developing a
14 curriculum because I think that's a difficult task,
15 and I think it's going to be one that is going to
16 swallow a lot of Commission time. And my thought was
17 this is a better project for the Lincoln Cottage to
18 pursue by itself. But the Lincoln scholars idea I
19 like very much. The inviting former Presidents is
20 fine. I'm kind of indifferent to that one.

21 As I told Commissioner Achtenberg, I'm not
22 usually one that likes to hear politicians give
23 speeches, but --

24 CHAIRPERSON CASTRO: How about former
25 politicians?

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(Laughter.)

COMMISSIONER HERIOT: I'm willing to sit still for it. But the Lincoln scholars idea I liked, and I would like to see some form of that idea developed.

CHAIRPERSON CASTRO: Commissioner Gaziano.

COMMISSIONER GAZIANO: I think Commissioner Yaki had his --

CHAIRPERSON CASTRO: Oh, I'm sorry. Commissioner Yaki.

COMMISSIONER YAKI: Not yet.

COMMISSIONER GAZIANO: I also agree we -- it is important for us to commemorate the 150th anniversary. And if we have -- we have pretty good budget news, which we're going to get to later, so I was going to say prior to that, we have to pick and choose carefully. If we did something in collaboration with someone else, that takes up more time, energy.

One of the points of the memorandum suggested that this collaboration with the Lincoln Cottage didn't anticipate any financial contribution.

That raises two issues that we just need to work through; one is, Commission time certainly is a budgetary issue, and Commissioner hours, of course, are scarce by any token. So, I don't -- but I don't

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1 know whether us collaborating with the Lincoln Cottage
2 makes it more difficult for us to do something on our
3 own, what the other alternatives are.

4 To echo a few of the -- I heard something
5 from Commissioner Achtenberg today that puts my mind a
6 little bit more at ease about one aspect of -- and
7 this relates -- if we don't contribute money, then
8 maybe the Lincoln Cottage side of any collaboration
9 will want to assert more control over the speakers for
10 the program.

11 I don't think I want to vote for something
12 that relegates my view to one-third of one-half or
13 something. And one of the slight questions I had was
14 the question of what the Emancipation means then and
15 now.

16 When you sort of Google what the
17 Emancipation means now, I think it should mean
18 something very similar to what it meant then, that
19 states in rebellion who have slaves will -- the slaves
20 will go free. And that was a wonderful consequence of
21 the Emancipation Proclamation.

22 When you Google sort of what the
23 Emancipation means now, to a lot of scholars it means
24 reparations. And maybe that's worth delving into, but
25 I think that we would want to kind of work through

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1 what that means.

2 CHAIRPERSON CASTRO: Commissioner Yaki?

3 COMMISSIONER YAKI: Not yet.

4 CHAIRPERSON CASTRO: Okay. Any other --
5 Vice Chair Thernstrom?

6 VICE CHAIR THERNSTROM: No. If somebody
7 else wants to speak, I will be happy to yield.

8 CHAIRPERSON CASTRO: I think you're next.

9 VICE CHAIR THERNSTROM: Okay. Well, impact
10 of the Emancipation Proclamation today, I don't even
11 know what that means. I mean, I don't know what the
12 possible answers are to that.

13 And then there's a sentence, "Lincoln
14 modeled individual responsibility and collective
15 action in the pursuit of greater equality." Well,
16 that's not a sentence that I understand, and even --
17 it, I'm sorry to say, seems like gobbledygook to me,
18 but in any case, we've got a basic problem here.

19 Lincoln -- image of Lincoln in pursuit of
20 greater equality, yes, legal equality, but let us not
21 pretend that he even believed in Black Suffrage, for
22 instance. I mean, let's not turn this into some sort
23 of -- which I think is a great danger -- into some
24 sort of ahistorical exercise.

25 I mean, it's too close in my mind to -- I

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1 mean, every good high school teacher will tell his or
2 her students don't ever ask the question, "What would
3 Lincoln think today."

4 Well, what is the impact of the
5 Emancipation Proclamation today is too close to that,
6 for me. Again, it's ahistorical, and we -- you know,
7 let's -- I mean, I think we should celebrate, find
8 some way of celebrating the Emancipation Proclamation,
9 but this is not it, to me. And I don't have any
10 particular appetite for getting my picture taken with
11 former Presidents who have -- going to have nothing to
12 say of interest.

13 I mean, if we could take LBJ, bring LBJ
14 back, maybe he'd have some things to say that we don't
15 know, the historians don't know about the crafting of
16 the great Civil Rights legislation of the mid-1960s,
17 but I just can't imagine what -- I mean, I along with
18 Gail have a hard time listening to politicians in
19 general, but I just can't imagine what Bush, Clinton
20 and Carter would have -- do I have to listen to them
21 talk about this, their Civil Rights accomplishments?

22 Look, if we could think of a way of
23 celebrating or -- well, celebrating, that's the right
24 word, the Emancipation Proclamation as central to --
25 you know as, obviously, a landmark event in American

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1 history, that's absolutely great. But I just -- this
2 is not it, to me. Let's think of some better way of
3 doing it. Aside from that fact that I suspect that
4 there are all sorts of problems of working with the
5 Lincoln Cottage, aside from the very good problems
6 that Commissioner Gaziano rightly pointed out, but I
7 don't know. It seems to me there's some sticky --
8 undoubtedly going to be some sticky financial and
9 legal questions here.

10 And the last thing is, we seem to take
11 months in this place deciding on just letterhead, and
12 this is a huge project, and it's not free. Because as
13 either Commissioner Gaziano or Commissioner Heriot, I
14 don't know which one, pointed out staff time isn't
15 free, Commissioner time isn't free.

16 This is a time-consuming project, and we
17 don't even seem to be able to get letterhead questions
18 settled expeditiously. So, that's all -- that's my
19 little negative package. But, again, having said
20 that, I -- of course, I think we should celebrate, and
21 find some way of celebrating the Emancipation
22 Proclamation without lying about what Lincoln's quest
23 for equality amounted to.

24 CHAIRPERSON CASTRO: Any other comments?
25 Commissioner Kladney?

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1 COMMISSIONER KLADNEY: Just briefly, before
2 I make a decision I'd like to get some sort of
3 estimate as to how much staff time this is going to
4 take, and what that's going to involve.

5 COMMISSIONER GAZIANO: Do you have your
6 mike -- pull your microphone up so Roberta can hear
7 you.

8 COMMISSIONER KLADNEY: Sorry.

9 COMMISSIONER ACHTENBERG: I'm having a hard
10 time hearing you, Dave.

11 COMMISSIONER KLADNEY: Yes. I'm sorry. I
12 would just like an estimate of how much staff time is
13 going to go into this before I make an absolute final
14 decision on it. But that's always been my concern, is
15 how much time.

16 I don't -- I'm not that concerned about
17 Commissioner time, because it's Commissioner time.

18 VICE CHAIR THERNSTROM: Wait until you run
19 out of time, because you're working -- doing a lot of
20 work for the Commission.

21 COMMISSIONER GAZIANO: Mr. Chair?

22 CHAIRPERSON CASTRO: Yes?

23 COMMISSIONER GAZIANO: Were you done with
24 your comment?

25 COMMISSIONER KLADNEY: I yield.

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1 COMMISSIONER GAZIANO: It was sort of
2 related to your question, but I'm sorry, I thought you
3 were --

4 COMMISSIONER KLADNEY: I am done.

5 COMMISSIONER GAZIANO: Okay. If the answer
6 to that, how much staff time, might, I suppose, relate
7 to how many of the different sub-projects in
8 Commissioner Achtenberg's memo we might be interested
9 in. I second Commissioner Heriot's concern that the
10 curriculum development is problematic. And I think it
11 may take the most time for us to all agree on an
12 approved curriculum.

13 I would just -- my Special Assistant who
14 used to work in the Department of Education reminds me
15 that the Department of Education is prohibited by law
16 from suggesting curriculum. And we're not, probably,
17 explicitly prohibited, but that's kind of a reflection
18 of what Congress wants federal agencies to do. They
19 probably don't imagine the Defense Department is
20 working on a curriculum, so they limit their
21 prohibition to the Department of Education. But I
22 think for a variety of reasons that's one that we
23 might want to avoid.

24 So, I don't know if -- that may be a very
25 fine project for others to work on, but I'd rather

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1 avoid that.

2 COMMISSIONER YAKI: Chairman --

3 VICE CHAIR THERNSTROM: I second that, by
4 the way, having worked on curricula matters for more
5 than a decade for one state that turned out to be a
6 model curriculum for many, many states. It's really
7 tough going.

8 CHAIRPERSON CASTRO: The Chair recognizes
9 Commissioner Yaki.

10 COMMISSIONER YAKI: Thank you very much.
11 As an ex-politician who knows where to put his
12 microphone and speak loudly at the same time, when I
13 was growing up, and I think it's still hopefully the
14 same today, you were sort -- in grade school and in
15 college you're sort of taught and knew that there were
16 several important documents that are sort of
17 benchmarks for American history; the Constitution --
18 the Declaration of Independence being one, the
19 Constitution being another, and then right on its
20 heels was the Emancipation Proclamation.

21 What that did to singularly change the
22 character of our country and what it had been, and
23 what it could be is something that is not just worthy
24 of celebration. It's worthy of the kind of deep
25 discussion and debate surrounding its enactment,

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1 because I know that there are a number of critical
2 scholars who have different views about why Lincoln
3 did it, why Lincoln only went so far, why it was
4 limited to the states in the south. But I think that
5 you will find no debate amongst a vast majority of the
6 African American community about what it meant for
7 them, and what it meant for African Americans who had
8 been slaves in this country for hundreds of years
9 under conditions that none of us would ever want to
10 see again.

11 And my concern is not whether the
12 Commission should do it, but whether the Commission,
13 and I hate to say it so bluntly, in its current format
14 will just go around in circles and muck it up. And I
15 don't mean that in any sort of negative way, but in
16 practicality when we start having debates about
17 carelessly using words like sides in terms of the
18 debate on the Emancipation, when we talk about fights
19 over curricula. I've never thought of an educational
20 program as the kind of curricula that is equivalent to
21 what the Department of Education is doing any more
22 than any historical program put on by NASA about the
23 moon shot, or Defense about the development of
24 weaponry is any more curricula. This is an
25 educational program that is not just worthy but

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1 necessary for someone to engage in any real, and deep,
2 and considerate, and thoughtful way.

3 I would hate for us to be an agency that
4 is seen as a hindrance to that goal because we cannot
5 be united behind some central core ideas of what the
6 Emancipation Proclamation was, and what it did for
7 this country, and for African Americans who were
8 enslaved in this country. And what it meant for them
9 for their future, and the struggles that continued
10 from Reconstruction on through the enactment of the
11 Civil Rights Act and beyond.

12 So, my trepidation is not one of what it
13 can do, it's what we might do to it, which is
14 something that I think about very seriously. But I
15 cannot imagine that this should go off without our
16 participation, but only if we are united, and only if
17 we have agreement, and only if we do not turn this
18 into a partisan squabble about how we go forward.

19 And as, Abby -- I think Commissioner
20 Thernstrom aptly pointed out, you go --

21 COMMISSIONER ACHTENBERG: I can't hear what
22 you're saying.

23 COMMISSIONER YAKI: Well, what I was saying
24 is that I -- my concern is that we may not be able to
25 do it the justice that it deserves. And unless I have

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1 confidence that we are united in purpose going
2 forward, we may have some issues as they pop along.
3 But unless we're united in purpose and moment behind
4 this, I am very concerned about our association with
5 it because I don't want to screw it up. And this is
6 far too important a moment -- celebration of a moment
7 in history, and its consequences to the formation of
8 this nation for us to do anything other than to give
9 it our best effort, and to give it our best thought
10 and consideration to make it as truly important and as
11 special as it should be.

12 CHAIRPERSON CASTRO: Commissioner Kirsanow,
13 do you -- I'm sorry. Let me ask Commissioner Kirsanow
14 is he wanted to speak since he's on the phone, and we
15 can't see a hand from him.

16 COMMISSIONER KIRSANOW: Yes. Thanks, Mr.
17 Chairman. I would just like to commend Commissioner
18 Achtenberg for bringing this to the Commission. And I
19 mentioned to her, I have an open mind about this, but
20 I would, I think, align my thoughts with those of
21 Commissioner Kladney.

22 From a practical perspective, I think I
23 need a little bit more information as to what, if any,
24 staff involvement would be involved here, a little bit
25 more about the logistics of the matter. I think all of

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1 the comments that have been expressed thus far have
2 something to say to them. I think Commissioner, or
3 Vice Chair Thernstrom makes a lot of very, very good
4 points along these lines, as does Commissioner Yaki.

5 I would just like to a little bit more
6 information, and I do think, though, that this
7 Commission needs to do something in celebration of the
8 150th anniversary.

9 When we had the 50th anniversary of the
10 1964 Civil Rights Act, we really didn't do much more
11 than simply issue a statement or proclamation.

12 There was an event at the White House that
13 was attended by a number of Civil Rights leaders.
14 Commissioners were invited also. I recall Vice Chair
15 Thernstrom and I, along with Chairman Berry where in
16 attendance, but there really wasn't anything more than
17 that. And I think that that was unfortunate, but I
18 think it was also a reflection of something that
19 Commissioner Yaki just mentioned; and that is, you
20 know, it's the vicissitudes of the Commission. And we
21 need to make sure that we have all our ducks in a row
22 before we take any kind of action on this.

23 CHAIRPERSON CASTRO: And let me just say C-
24 - and thank you for that. And I want to wrap up the
25 discussion, because that was intended to be a

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1 preliminary discussion today, to really address some
2 of the questions, put out a discussion point, and then
3 hopefully go back and see how we can address some of
4 these concerns.

5 But I just want to say from my personal
6 perspective from the point in time that Commissioner
7 Achtenberg raised this with me, I thought and continue
8 to think this would be a great thing for us to do as a
9 Commission, is to be part -- an important part, and a
10 high profile part of the commemoration of the
11 Emancipation Proclamation.

12 How we do it, of course, is something that
13 we want to have a conversation and discussion about.
14 Obviously, we hear today there are some things that we
15 think we can work with, and some things that we want
16 to address more fully.

17 Today was not intended to be a decision
18 day. Today was intended to really begin to have a
19 broad conversation among the Commissioners about this.

20 And I think that is why, hopefully, we'll be able to
21 do something like this, because we will work -- and as
22 I made a commitment to everyone when I became Chair,
23 we're going to try to work as much as possible in a
24 bipartisan fashion. And that may mean sometimes we
25 deliberate a little longer on some things, whether

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1 it's how we use our letterhead, et cetera, but I'd
2 rather work to try to find common ground than to try
3 to ram anything through in a ham handed or iron fisted
4 way, not that I could because I don't have the votes,
5 but I want to be a Chair that at least allows folks to
6 address these concerns.

7 And when we have -- if we do make a
8 decision on this and move forward, whether it's a
9 panel for Presidents or not, folks don't have to
10 attend those particular ones, but I hope that when we
11 -- if we do come to a decision, it'll be something
12 that we can all work with, and work towards. So,
13 Madam Vice Chair, and then we'll end the discussion.

14 VICE CHAIR THERNSTROM: Okay, just a last
15 word. Commissioner Yaki, I totally agree with much of
16 what you said, but you are talking about the impact of
17 the Emancipation at the time, and in subsequent
18 decades close to that time.

19 Half of the question here is the impact of
20 the Emancipation then, the then I agree with, and now.
21 I don't know what "now" means. And I think we could
22 get unanimity on this Commission on doing something.
23 Yes, absolutely. We all agree on that. But the
24 question is precisely what. And you get into its
25 impact today, and I'm afraid we're just going to get

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1 into a discussion which is -- which we will no longer
2 be unified on.

3 CHAIRPERSON CASTRO: Well, Commissioner
4 Achtenberg, I think you've got a lot of input from a
5 all the Commissioners around the table. I presume
6 next you'll reach out to folks and see if there's some
7 proposal that can be developed that can be presented
8 to the Commission that is agreeable to folks at some
9 point in the not too distant future.

10 COMMISSIONER ACHTENBERG: Very good.

11 CHAIRPERSON CASTRO: Okay, great.

12 COMMISSIONER KLADNEY: What is --

13 CHAIRPERSON CASTRO: Sorry.

14 COMMISSIONER KLADNEY: Excuse me. What is
15 the time frame on this that we need to -- what is the
16 time frame we need to make this decision?

17 COMMISSIONER ACHTENBERG: Well, I think the
18 proposed activities -- the Lincoln Cottage is going to
19 begin their activities in September of 2012, and then
20 extending through the first quarter of 2013. So, we
21 have -- we probably need to decide whether and to what
22 extent we are going to participate with them or not at
23 our next meeting; although, I'll have more particular
24 information from the Lincoln Cottage about whether or
25 not December would be really the last time we could

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1 make a decision that would impact their activities.
2 So, I think we would need to decide next month, but I
3 will double check with them on that and a whole host
4 of other issues pursuant to the discussion that I just
5 heard.

6 CHAIRPERSON CASTRO: Okay. Ms. Tolhurst,
7 you had a question?

8 STAFF DIRECTOR TOLHURST: Yes. I think what
9 I'm hearing at least from Commissioners Kladney and
10 Kirsanow is you all need a little bit of something
11 from me, because if you're asking about fact time,
12 this is a subject that I think no one here is an
13 expert on, but we would want to make sure we did it
14 properly in terms of no matter which panel is chosen,
15 we need to say is this going to be a co-sponsorship,
16 is this a cooperative agreement? How do you make sure
17 we're not using gratuitous services? How do we make
18 sure we're following the letter of the law?

19 I know I'm always Debbie Downer on this
20 stuff, but I don't want us to break the law, so I
21 think we're going to need maybe for me to give a
22 guesstimate of how lawyer time that would take to
23 answer that question --

24 CHAIRPERSON CASTRO: Sure.

25 STAFF DIRECTOR TOLHURST: -- by the next

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1 meeting.

2 CHAIRPERSON CASTRO: Right. I do understand
3 that Commissioner Achtenberg has had some preliminary
4 conversations with you about those legal issues
5 already. Is that right?

6 STAFF DIRECTOR TOLHURST: Yes.

7 CHAIRPERSON CASTRO: But those are good
8 points. Okay, so we'll wrap this up and we'll go on
9 to our next item, which is an Update on the 2012
10 Statutory Enforcement Report Planning. Ms. Tolhurst?

11 **III. PROGRAM PLANNING UPDATE AND**

12 **DISCUSSION OF PROJECTS**

13 **UPDATE ON 2012 STATUTORY ENFORCEMENT**

14 **REPORT PLANNING**

15 STAFF DIRECTOR TOLHURST: So, I emailed
16 Commissioners on the 11th giving them a couple of
17 upcoming dates so they would be aware of what's going
18 on internally. On 11/10 we distributed a list of
19 proposed panelists for the briefing. The briefing,
20 again, is scheduled for February, and we asked for
21 Commissioner feedback by November 17th. We'd like to
22 start inviting people before the holidays kick in and
23 they've over-committed.

24 And then on 11/28, I had promised that I
25 would issue the discovery to the Commissioners for

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1 their review, so that they could have input prior to
2 us sending it over to the Department of Justice and to
3 the states. That's it.

4 CHAIRPERSON CASTRO: Okay. Any questions on
5 that topic? Commissioner Kladney?

6 COMMISSIONER KLADNEY: I was just
7 wondering, I want to bring this up. I've spoken with
8 you about it; whether we can have the hearing on a
9 Thursday and the business meeting on Friday, so then I
10 -- we can -- one, we'll have enough time to ask
11 questions and spend some with the panelists. And,
12 two, I can catch my 3:00 plane back instead of staying
13 over another night. But I could stay another night;
14 I like Washington.

15 CHAIRPERSON CASTRO: The Chair recognizes
16 the Vice Chair.

17 VICE CHAIR THERNSTROM: I would just like
18 to commend the Acting Staff Director for the list of
19 possible witnesses for the briefing. I think it is
20 fair and balanced as it should be, and it's an
21 impressive list of people who could bring to the table
22 a very interesting discussion, it seems to me.

23 CHAIRPERSON CASTRO: Commissioner Gaziano.

24 COMMISSIONER GAZIANO: I, too, think the
25 Acting Staff Director did a good job, particularly a

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1 good job given the concept paper. But as we move
2 forward as a Commission I'd like to raise some
3 individual questions that I hope might improve it
4 somewhat.

5 The first is that I think at least two of
6 us don't like the practice of giving -- privileging
7 the U.S. Government with their own panel all by
8 themselves, but I'm particularly almost bemused that
9 states which are coequal sovereigns, and in this case
10 have a potential claim that the U.S. Government is
11 unconstitutionally impinging on their sovereignty are
12 put at the very end, and thrown in with a bunch of
13 stakeholders that I'll have a question about later.

14 So, my first question is whether we
15 couldn't have all of the government sovereigns,
16 representatives of the government sovereigns on the
17 same panel, whether it be the first panel, the second
18 panel, or third panel. Is that -- will Commissioners
19 go along with that, so they could respond to each
20 other, so that we could ask them questions at the same
21 time.

22 CHAIRPERSON CASTRO: Actually --

23 STAFF DIRECTOR TOLHURST: Do you want to
24 know why we did it that way?

25 COMMISSIONER GAZIANO: Yes.

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1 CHAIRPERSON CASTRO: Madam Acting Staff
2 Director, then we also want to get an answer to
3 Commissioner Kladney's question, as well. So, go
4 ahead, Ms. Tolhurst.

5 COMMISSIONER KLADNEY: I can wait.

6 CHAIRPERSON CASTRO: Okay.

7 STAFF DIRECTOR TOLHURST: So, I know you
8 wanted the panel to be different. But even if it
9 stayed the same, we could certainly flip panels two
10 and three.

11 The reason that we put panel three
12 together the way we did is these are people in
13 litigation in these states, so you have the states on
14 one side presumably saying the Department is going too
15 far. And then you have these intervenors and other
16 participants on the other side saying oh, DOD is not
17 going far enough. So, it's sort of both sides being
18 critical from different perspectives of what the
19 Department is doing, and people actively involved in
20 the litigation.

21 CHAIRPERSON CASTRO: Makes sense. Vice
22 Chair Thernstrom, then Commissioner Heriot.

23 VICE CHAIR THERNSTROM: Commissioner
24 Gaziano, I just want to make -- I understand perfectly
25 what you're saying, but I want to make very sure that

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1 we are not sneaking in the back door the question we
2 are not addressing in this briefing, which is the
3 constitutionality of Section 5. And I think --

4 COMMISSIONER GAZIANO: Do you want me to
5 respond to that now? I think we must. The
6 Constitution compels us to take an oath to defend the
7 Constitution. We have taken that oath. When there is
8 a serious question, where the Supreme has -- the
9 majority of the Supreme Court has indicated that it
10 has grave constitutional doubt, it is our absolute
11 obligation to look at the constitutional question.

12 But beyond that, it also implicates the C-
13 - how this works. You have to implement a statute to
14 avoid grave constitutional doubt somewhat differently
15 than one where there's no constitutional doubt. So,
16 the same questions that are in the constitutional
17 issue; is it congruent and proportional to the
18 discrimination in the various section, Section 5, is
19 also a practical question.

20 So, I think that we ought to address it
21 head on, we must address it head on. But even if we're
22 not addressing it head on, that question is lurking so
23 large in the background that we can't ignore it.

24 CHAIRPERSON CASTRO: Well, if that happens,
25 those questions will be ruled out of order. That is

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1 not the subject of the concept paper, so just --
2 Commissioner Heriot?

3 COMMISSIONER HERIOT: I just wanted to
4 agree with Commissioner Gaziano about the practice --
5 it's not just this Commission, but lots of
6 institutions within the Beltway of providing a panel
7 upon which the federal official involved has his or
8 her own panel.

9 This practice gives me the heebie-jeebies.
10 I know Congress does this, as well; will put a federal
11 official and treat that person like royalty where --
12 I'm recalling one where I was -- when I was working
13 briefly for the Senate Judiciary Committee, where Bill
14 Gates was sort of herded in with lots of other
15 witnesses, but the Assistant Assistant Secretary of
16 whatever gets like the first panel and gets treats as
17 if his time is worth so much.

18 I don't believe we should follow that
19 practice. I think that's a very dangerous practice. It
20 sends just the wrong message. And I would much prefer
21 to see the federal official that comes to us be on the
22 same panel with the various state officials.

23 CHAIRPERSON CASTRO: Any other questions?
24 If not -- Madam Vice Chair.

25 VICE CHAIR THERNSTROM: Well, I mean,

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1 Commissioner Gaziano, I understand, obviously,
2 perfectly what you're saying, but we did agree on a
3 concept paper here, and we would not have gotten
4 through this topic were we to take up the large
5 question of the constitutionality, which the Supreme
6 Court may or may not decide this year. And we now have
7 five cases out there challenging the
8 constitutionality.

9 I think we can have a really informative,
10 important briefing leaving that question aside for
11 perhaps another day, depending on what the court says.

12 But it is very important to know in the wake of the
13 new regulations, the April regulations, and in light
14 of a really radically shifting racial and ethnic
15 landscape since Section 5 was last looked at, exactly
16 how DOJ is handling the complicated problems of race,
17 ethnicity, and politics, and the interaction.

18 COMMISSIONER GAZIANO: Putting aside the
19 issue, I'll try to visit the Chairman about, the
20 constitutional issue. I hear no disagreement among
21 Commissioners to move the states to the first panel?

22 (Simultaneous speech.)

23 CHAIRPERSON CASTRO: No, we just --

24 COMMISSIONER YAKI: Silence is not consent
25 in this one.

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1 COMMISSIONER GAZIANO: I was trying to draw
2 out some disagreement. Okay, now I got it.

3 CHAIRPERSON CASTRO: We disagree.

4 COMMISSIONER GAZIANO: Why?

5 CHAIRPERSON CASTRO: Well, I think all the
6 reasons that Ms. Tolhurst said. It makes sense to have
7 the litigants on the same panel. And we have given
8 the federal government courtesy, as well. And I think
9 that both those reasons, but more importantly, the
10 reason that they're grouped together as litigants
11 makes eminent sense to me. And perhaps the other
12 Commissioners will want to give their points of view,
13 but I disagree with putting them all on one panel, all
14 the sovereigns on one panel. Commissioner Yaki?

15 COMMISSIONER YAKI: I would just say that
16 since the Articles of Confederation are dissolved, I
17 do not believe that the states are coequal sovereigns
18 to the federal government.

19 COMMISSIONER HERIOT: Isn't DOJ also --

20 CHAIRPERSON CASTRO: So, they're going to
21 be separate.

22 COMMISSIONER HERIOT: So that argument
23 doesn't work.

24 CHAIRPERSON CASTRO: Well, they're going to
25 be kept separate. Any other questions? If not, can we

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1 -- oh.

2 COMMISSIONER GAZIANO: I do have one.

3 COMMISSIONER HERIOT: Allowing one litigant
4 to have an entire panel, and the others have to be
5 herded in like cows.

6 STAFF DIRECTOR TOLHURST: Well, it's not
7 just the litigant, it's the main -- this is our
8 Enforcement Report, the object of which is to examine
9 their behavior. And my putting them there in
10 addition to following past practices, members of both
11 parties, I was mainly not trying to treat them like
12 royalty, but rather to subject them to a longer period
13 of questioning, perhaps aggressive, the exact opposite
14 of treating them like royalty, questioning by
15 Commissioners about how they are enforcing Section 5.

16 CHAIRPERSON CASTRO: Commissioner Gaziano.

17 COMMISSIONER GAZIANO: Yes, my other -- I
18 will -- if there is not consensus to move the states
19 with the federal government, I would still request
20 that the states have their own panel then, and that
21 that be the second.

22 By my last question is -- and, by the way,
23 I think the main speakers on most of these panels,
24 except for the third, look pretty good. There's no
25 real -- but I have some serious concern about the

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1 alternatives, so I hope that we can receive some input
2 if the main speakers are unavailable.

3 I would support Commissioner -- it's the
4 easiest for me of anyone, and I suppose close to
5 Commissioner -- Vice Chair Thernstrom to be here on
6 Thursday, but I'd be happy to -- what little
7 difference it makes to me to accommodate Kim.

8 On the third panel, I -- there are others
9 in litigation that aren't represented, but the states
10 may take a very middle of the road position in this
11 litigation. There's a project for Fair Judiciary,
12 there are CIR, and Center for Equal Opportunity that I
13 think however you define stakeholders, that's a term
14 that in this case is very odd to me.

15 Does it mean that your stock goes up if
16 you can sue people more? I don't know. But I think
17 that we should hear from CIR, which has a suit
18 pending, the Project on Fair Judiciary, and Center for
19 Equal Opportunity to --

20 COMMISSIONER HERIOT: Fair Judiciary, is
21 that?

22 COMMISSIONER GAZIANO: I'm sorry. Project
23 for -- who's bringing the --

24 VICE CHAIR THERNSTROM: That's the Ed Bloom
25 project.

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1 COMMISSIONER HERIOT: Fair Representation.

2 COMMISSIONER GAZIANO: Fair Representation,
3 I'm sorry.

4 VICE CHAIR THERNSTROM: Fair
5 Representation.

6 COMMISSIONER HERIOT: Yes. Ed Bloom I
7 think would be an excellent witness.

8 VICE CHAIR THERNSTROM: And I do not think
9 he would be an excellent witness.

10 COMMISSIONER HERIOT: Your personal
11 problems with Ed Bloom should not influence your
12 decision.

13 VICE CHAIR THERNSTROM: I do not think he
14 is a scholar who knows very much about the Voting
15 Rights Act. Go on.

16 CHAIRPERSON CASTRO: So, your
17 recommendations have been noted, I think, by the
18 Acting Staff Director. So, there will certainly be
19 discussions about those as we follow-up. The panels I
20 think should stay one, two, three, and I have no
21 problem with coming in a day early to accommodate
22 Commissioner Kladney. Do you have a problem coming in
23 a day early?

24 COMMISSIONER HERIOT: I'm not sure. I hope
25 I don't. I don't know what my teaching schedule is

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1 right now, but I know I'm teaching in the evening on
2 Wednesday night. And this would require me to take
3 the Red Eye. And it's just a question of whether or
4 not class is over in time for me to catch the Red Eye.

5 CHAIRPERSON CASTRO: So, the date of --

6 COMMISSIONER HERIOT: But I can check and
7 find out.

8 COMMISSIONER KLADNEY: It'll be fine with
9 me. I'm just thinking we have three panels here, and
10 when we had the only briefing I've ever been to, the
11 Eminent Domain briefing, with three panels, that
12 should take the whole day. And I don't know how we get
13 done with the business meeting, if you want to ask --
14 I mean, I just --

15 CHAIRPERSON CASTRO: Well, we've done it
16 before, though.

17 COMMISSIONER KLADNEY: That's all I --

18 COMMISSIONER HERIOT: Yes, I agree with you
19 on all that. It's just a question of whether or not I
20 can make the plane.

21 VICE CHAIR THERNSTROM: Can you come in a
22 day early or you have to --

23 COMMISSIONER HERIOT: No, I'm teaching on
24 Wednesday, so if class is out at 8:40, I won't make
25 the Red Eye.

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1 VICE CHAIR THERNSTROM: Yes, I understand.

2 COMMISSIONER HERIOT: But if it's out
3 earlier, I can make the Red Eye.

4 COMMISSIONER KLADNEY: When will you know?

5 COMMISSIONER HERIOT: I just have to ask my
6 Associate Dean what the schedule is.

7 VICE CHAIR THERNSTROM: And you can't ask
8 the Associate Dean whether you can switch days around.
9 I'm just asking.

10 COMMISSIONER HERIOT: It's very hard to
11 take 80 people and switch their schedules around for
12 an upper level class.

13 VICE CHAIR THERNSTROM: Yes, okay. All
14 right. I was just hoping we could --

15 CHAIRPERSON CASTRO: Commissioner Yaki.

16 COMMISSIONER YAKI: No, I was just going to
17 say that in prior years sometimes when we encountered
18 this problem we would simply determine whether or not
19 there's adequate business for that particular meeting,
20 and just shift it all to the following month. And
21 then just simply have the briefing as the sole purpose
22 of that particular meeting.

23 CHAIRPERSON CASTRO: That's a possibility.
24 What I would want to at least do is given the water
25 we're treading in, getting the SACs lined up, is if we

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1 did anything, I would want to at least make sure we
2 did a business meeting to approve some SACs. And we
3 would want to get through, but I don't anticipate
4 anything else between now and then, but who knows.
5 The White House might send us a Staff Director that we
6 have to vote on. I mean, there's -- we should be so
7 lucky, right? But there are things that we can't
8 foresee now that might become pressing, but --

9 COMMISSIONER HERIOT: Have we rattled their
10 cage at the White House recently?

11 CHAIRPERSON CASTRO: Yes. The person who
12 is responsible for the search is on maternity leave
13 until the 28th of November, so --

14 (Laughter.)

15 CHAIRPERSON CASTRO: So, once that -- they
16 come -- I will rattle that cage/cradle.

17 COMMISSIONER HERIOT: Crib.

18 (Laughter.)

19 COMMISSIONER YAKI: No baby shaking. No
20 baby shaking.

21 COMMISSIONER KLADNEY: Before we change
22 everybody's schedule, perhaps -- how long does it take
23 before we know if we're going to have enough business
24 for a business meeting? I mean, to approve SACs
25 probably wouldn't take that long.

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1 CHAIRPERSON CASTRO: It wouldn't take long.
2 That's what I'm saying. That would be the only thing
3 I -- sitting here today, that would be the only thing
4 I would want to make sure we do, is at least get a
5 couple of those, if not more, done. And then I don't
6 anticipate any other issues right now. That's why I
7 said, the only other thing is unanticipated issues
8 that --

9 COMMISSIONER KLADNEY: I mean, I'm just
10 saying that we should have enough time to ask
11 questions of each panel.

12 CHAIRPERSON CASTRO: I think we would have
13 enough time.

14 COMMISSIONER KLADNEY: Okay.

15 CHAIRPERSON CASTRO: So, shall we move --
16 let's work under the assumption that we'll try to
17 eliminate or minimize the business meeting to the bare
18 minimum, and then move forward with the briefing on
19 the same day, and that way we don't have to worry
20 about schedules, and we can accommodate you, as well.

21 COMMISSIONER KLADNEY: Fine with me.

22 CHAIRPERSON CASTRO: Okay?

23 COMMISSIONER KLADNEY: If that's what
24 everybody wants. Very cool.

25 CHAIRPERSON CASTRO: All right. So, if

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1 there's nothing else on the Statutory Enforcement
2 topic, we have an Update on Trafficking.

3 **III. PROGRAM PLANNING UPDATE AND**

4 **DISCUSSION OF PROJECTS**

5 **UPDATE ON TRAFFICKING BRIEFING PLANNING**

6 STAFF DIRECTOR TOLHURST: So, Staff has
7 performed background research on trafficking. Several
8 of us went to a conference on night in September
9 called "One Size Does Not Fit All," fifteen
10 trafficking victims. And Staff was able to meet at
11 the conference with some of the government people that
12 would likely be involved at our briefing.

13 OCRE, under the direction of Margaret
14 Butler, has already prepared background materials and
15 begun a list of perspective panelists; although, she
16 would still welcome Commissioner input in creating
17 that list. Chris Byrnes has begun drafting discovery
18 and then reviewing that first draft for him now.

19 What we really need is for Commissioners
20 to decide when they want to have this briefing so that
21 we can better develop a panel, and better think about
22 when we want to issue the discovery.

23 CHAIRPERSON CASTRO: Does April work for
24 folks? How does that look for our schedule? We're
25 done with the briefing for VRA in February, so that

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1 gives us a month buffer time for folks to --

2 COMMISSIONER KLADNEY: When is the meeting
3 in April?

4 CHAIRPERSON CASTRO: What's the April date?
5 April 13th, Friday the 13th.

6 COMMISSIONER KLADNEY: I guess I could fly
7 in. I'm not --

8 CHAIRPERSON CASTRO: Fly in on the 12th,
9 that way you don't have to worry about bad luck.

10 COMMISSIONER KLADNEY: I'm probably going
11 to be in Europe at the time, but I can fly back for
12 it.

13 CHAIRPERSON CASTRO: Oh, okay.

14 VICE CHAIR THERNSTROM: You're going to fly
15 back from Europe in order to come to --

16 COMMISSIONER KLADNEY: Well, it's my
17 obligation, isn't it? I mean, it's an obligation of
18 mine.

19 COMMISSIONER GAZIANO: Unless you can get
20 on the telephone --

21 COMMISSIONER KLADNEY: For four hours, five
22 hours? I -- that costs you more than --

23 CHAIRPERSON CASTRO: Yes, more than the
24 airfare.

25 VICE CHAIR THERNSTROM: No, we want you

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1 here, obviously, for that particular meeting,
2 especially for that particular meeting.

3 COMMISSIONER KLADNEY: I want to be here,
4 but -- I mean, it can work then, I'm sure. But it's C-
5 - well, I'm going to be gone April and May, so --

6 CHAIRPERSON CASTRO: Oh, so even May is
7 bad?

8 COMMISSIONER KLADNEY: Yes. I'm not going
9 to be back until June.

10 CHAIRPERSON CASTRO: Oh, really. Okay.

11 COMMISSIONER KLADNEY: Yes.

12 CHAIRPERSON CASTRO: All right. Yes, we
13 want to do it before June. So, then April 13th, does
14 that work for folks? So, let me make a motion that we
15 schedule the briefing on Sex Trafficking as a Form of
16 Gender Discrimination for Friday, April 13th, 2012. Is
17 there a second?

18 VICE CHAIR THERNSTROM: I'll second.

19 CHAIRPERSON CASTRO: Okay. Any additional
20 discussion?

21 (No response.)

22 CHAIRPERSON CASTRO: Madam Vice Chair, how
23 do you vote?

24 VICE CHAIR THERNSTROM: Yes.

25 CHAIRPERSON CASTRO: Commissioner Kirsanow,

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1 how do you vote?

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIRPERSON CASTRO: Commissioner Heriot,

4 how do you vote?

5 COMMISSIONER HERIOT: Yes.

6 CHAIRPERSON CASTRO: Commissioner Gaziano,

7 how do you vote?

8 COMMISSIONER GAZIANO: Yes.

9 CHAIRPERSON CASTRO: Commissioner

10 Achtenberg, how do you vote?

11 COMMISSIONER ACHTENBERG: Yes.

12 CHAIRPERSON CASTRO: Commissioner Yaki, how

13 do you vote?

14 COMMISSIONER YAKI: Aye.

15 CHAIRPERSON CASTRO: Commissioner Kladney,

16 how do you vote?

17 COMMISSIONER KLADNEY: Yes.

18 CHAIRPERSON CASTRO: And I vote yes, so

19 it's unanimous. Great, thank you.

20 Next we move on to the Approval of Part B

21 of the School Discipline Briefing Report, the Findings

22 and Recommendations.

23 **III. PROGRAM PLANNING UPDATE AND**

24 **DISCUSSION OF PROJECTS**

25 **APPROVAL OF SCHOOL DISCIPLINE**

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REPORT - FINDINGS AND RECOMMENDATIONS

1
2 CHAIRPERSON CASTRO: Today, we're going to
3 vote on the individual findings and recommendations.
4 As we did the last time, what I'll do is I will read
5 through the individual Findings for both proposals,
6 we've got two proposals. And then we'll vote on those
7 one by one, and then I will also then go to the
8 individual Recommendations and read those through line
9 by line. And then we'll have votes on those
10 individual recommendations.

11 So, first we'll start out with the
12 Democratic Proposed Findings, which everyone should
13 have received a copy of. And I will read the first
14 finding, and move that, and then we'll have a second
15 on this, and then we'll discuss and vote on it.

16 Proposed Finding One. I move that we
17 accept that: "Data collected by the U.S. Department of
18 Education, Office of Civil Rights, OCRE for the 2005-
19 2006 school year shows an increase in the number of
20 students receiving out-of-school suspensions and
21 expulsions nationwide when compared to 2001-2002
22 school data." Do I have a second?

23 COMMISSIONER ACHTENBERG: Second.

24 CHAIRPERSON CASTRO: Okay. Any discussion?

25 Any discussion?

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1 (No response.)

2 CHAIRPERSON CASTRO: Hearing none, I will
3 take a vote. Vice Chair, how do you vote?

4 VICE CHAIR THERNSTROM: I'm shuffling
5 papers here, go around.

6 CHAIRPERSON CASTRO: Okay, sure. Let me
7 start with someone else then. Commissioner Heriot, how
8 do you vote?

9 COMMISSIONER HERIOT: No.

10 CHAIRPERSON CASTRO: Commissioner Gaziano,
11 how do you vote?

12 COMMISSIONER GAZIANO: No.

13 CHAIRPERSON CASTRO: Commissioner Yaki, how
14 do you vote?

15 COMMISSIONER YAKI: Aye.

16 CHAIRPERSON CASTRO: Commissioner Kladney,
17 how do you vote?

18 COMMISSIONER KLADNEY: Aye.

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

21 VICE CHAIR THERNSTROM: Aye.

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

24 COMMISSIONER KIRSANOW: No.

25 CHAIRPERSON CASTRO: I vote yes. Vice

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1 Chair, how do you vote?

2 VICE CHAIR THERNSTROM: I abstain.

3 CHAIRPERSON CASTRO: Okay, so we have three
4 nos, one abstention, and one, two, three, four yeses.
5 So, Finding One is approved.

6 We'll move on now. I move Proposed Finding
7 Two, Nationwide Implementation of School Discipline
8 Policies - I'm sorry - Disciplinary Policies that
9 resulted in the disproportionate removal of racial and
10 ethnic minority students, males, and low socio
11 economic status students from regular education
12 settings." Do I have a second?

13 COMMISSIONER ACHTENBERG: Second.

14 CHAIRPERSON CASTRO: Okay. Any discussion?

15 COMMISSIONER GAZIANO: What is the data
16 that supports this finding?

17 CHAIRPERSON CASTRO: In the record we have
18 the statement of Andrea Smith at page 7, Jamie Frank
19 at page 8, Luis Sang at page 8 and 9, Patrick Welsh at
20 page 9, and Joseph Oliveri at page 13.

21 COMMISSIONER GAZIANO: Thank you.

22 CHAIRPERSON CASTRO: Any additional
23 discussion or questions?

24 VICE CHAIR THERNSTROM: Yes, I have
25 additional discussion here. It's -- the way it's

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1 stated is not simply offering factual information. If
2 we look at the data, there's a -- I mean, the word
3 "disproportionate" is in itself loaded. But it's -- it
4 implies that there's some wrongdoing going on here,
5 not simply that we have got a problem that is -- tends
6 to be clustered associated with certain demographic
7 groups. And that the use of the word
8 "disproportionate," the implication is that
9 disciplinary policies if they were fair would be
10 proportionally distributed across all groups; that is
11 that group there would be no disproportion between one
12 group and another.

13 And this is a very loaded statement that I
14 think is open to question. I mean, the implication is
15 that discipline would be randomly distributed if it
16 were fair across racial and ethnic groups. It's just --
17 -- I mean, that's a statement I can't support. There's
18 no reason to believe that that would be the case.

19 CHAIRPERSON CASTRO: OCR data actually
20 shows that there is a disproportion, though, so it's
21 based on the data that they --

22 VICE CHAIR THERNSTROM: But the word
23 "disproportion" is a very loaded meaning. It means
24 that racial fairness is -- the measure of racial
25 fairness is random distribution. And I don't agree

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1 with that.

2 CHAIRPERSON CASTRO: So, would greater
3 removal? Is it just the word "disproportion" would --
4 because I want to understand, so if --

5 VICE CHAIR THERNSTROM: Okay. I'm just
6 going to vote no on it, and I'll leave it at that.
7 Yes, go on. I can't come up with --

8 COMMISSIONER GAZIANO: The reason I asked
9 for your citation was the testimony of the education
10 official was that this was somewhat ambiguous, and he
11 said that better data was needed. I have some concern
12 with the way it's worded, also, but it seems to me
13 that this is a rather -- the vagueness also concerns
14 me when OCR itself couldn't really quantify that.

15 CHAIRPERSON CASTRO: So, if we were to say
16 something to the effect of this resulted in the --

17 COMMISSIONER YAKI: Higher number?

18 CHAIRPERSON CASTRO: Yes, higher number of
19 -- a higher rate of removal of racial and ethnic
20 minority students so that we're not using the word
21 that you have a concern with.

22 COMMISSIONER GAZIANO: I think the people
23 that you cited were individual teachers or school
24 district officials, and their experience. I'm not sure
25 that there really is data in our record to make the

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1 claim that nationwide what the rates are.

2 CHAIRPERSON CASTRO: We also do have our
3 SAC reports that have indicated that, as well, so
4 they're -- only one of them I think is in the record,
5 but since this briefing was done, some of our other
6 SACs have concluded that African American students are
7 disproportionately disciplined compared to non-African
8 American students.

9 VICE CHAIR THERNSTROM: For reasons that
10 are -- for race-driven reasons, or reasons of
11 prejudice?

12 CHAIRPERSON CASTRO: Well, if you go to our
13 -- which we'll get to Finding 7, we talk about a
14 number of factors that may result in this, as well.
15 And we'll get to that when we get to seven, including
16 lack of supportive services for teachers, poor school
17 climate, lack of cultural sensitivity in school
18 personnel, poor parental involvement, racial bias, as
19 well as inequitable application of disciplinary
20 policies, so there's a number of factors.

21 VICE CHAIR THERNSTROM: Well, yes, but that
22 list of factors is not a very good list, in my view. I
23 think number 2 implies that these kids are -- have --
24 there's no reason why these kids should -- you've got
25 high numbers of African American kids who are

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1 disciplined, and find themselves in -- being
2 disciplined in school. I mean, you know, this is not
3 because people are racist.

4 CHAIRPERSON CASTRO: I'm not saying that
5 here. This doesn't -- nowhere in this statement do we
6 call people racists.

7 VICE CHAIR THERNSTROM: No. There is the
8 implication that there's something very wrong in the
9 way that these kids are being treated.

10 CHAIRPERSON CASTRO: So, would a higher
11 rate or higher level be a comfortable substitute for
12 you to disproportionality?

13 VICE CHAIR THERNSTROM: I would have to
14 think about exactly what kind of wording would satisfy
15 me here that doesn't -- isn't loaded. And if somebody
16 else can come up with wording, somebody basically
17 who's got somewhat similar concerns, I'd be delighted
18 to hear it.

19 CHAIRPERSON CASTRO: All right. Why don't
20 we put aside Finding 2 for now, and move on to Finding
21 3, so we can reflect on that.

22 I move proposed Finding 3, that "African
23 American males and students with disabilities - here's
24 the same word again - "have been disproportionately
25 suspended, and the suspensions have been ineffective

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1 in correcting the offending behavior." Do I have a
2 second?

3 COMMISSIONER ACHTENBERG: Second.

4 CHAIRPERSON CASTRO: Discussion?

5 (No response.)

6 CHAIRPERSON CASTRO: Hearing none, let's
7 take a vote. Commissioner Heriot, how do you vote?

8 COMMISSIONER HERIOT: No.

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

11 COMMISSIONER GAZIANO: No.

12 CHAIRPERSON CASTRO: Madam Vice Chair, how
13 do you vote?

14 VICE CHAIR THERNSTROM: No.

15 CHAIRPERSON CASTRO: Commissioner Yaki, how
16 do you vote?

17 COMMISSIONER YAKI: Aye.

18 CHAIRPERSON CASTRO: Commissioner Kladney,
19 how do you vote?

20 COMMISSIONER KLADNEY: Yes.

21 CHAIRPERSON CASTRO: Commissioner
22 Achtenberg, how do you vote?

23 COMMISSIONER ACHTENBERG: Yes.

24 CHAIRPERSON CASTRO: Commissioner Kirsanow,
25 how do you vote?

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1 COMMISSIONER KIRSANOW: For the reasons
2 raised by Commissioner Thernstrom, no.

3 CHAIRPERSON CASTRO: And I vote yes, so it
4 is 4-4. That does not pass.

5 I move for proposed Finding 4, that "In
6 the Fresno, California school district, African
7 Americans are referred for expulsion at a rate three
8 times greater than their population numbers." Do I
9 have a second?

10 COMMISSIONER ACHTENBERG: Second.

11 CHAIRPERSON CASTRO: Any discussion?

12 (No response.)

13 CHAIRPERSON CASTRO: Seeing none, shall we
14 vote? Commissioner Heriot, how do you vote?

15 COMMISSIONER HERIOT: No.

16 CHAIRPERSON CASTRO: Commissioner Gaziano,
17 how do you vote?

18 COMMISSIONER GAZIANO: No.

19 CHAIRPERSON CASTRO: Madam Vice Chair, how
20 do you vote?

21 VICE CHAIR THERNSTROM: No.

22 CHAIRPERSON CASTRO: Commissioner
23 Achtenberg -- I'm sorry, Commissioner Yaki, how do you
24 vote?

25 COMMISSIONER YAKI: Aye.

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1 CHAIRPERSON CASTRO: Commissioner Kladney,
2 how do you vote?

3 COMMISSIONER KLADNEY: Yes.

4 CHAIRPERSON CASTRO: Commissioner
5 Achtenberg, how do you vote?

6 COMMISSIONER ACHTENBERG: Yes.

7 CHAIRPERSON CASTRO: Commissioner Kirsanow,
8 how do you vote?

9 COMMISSIONER KIRSANOW: No.

10 CHAIRPERSON CASTRO: And I vote yes. We
11 have 4-4, so that does not pass.

12 Proposed Finding 5, I move that "In Duval
13 County, Florida exclusionary school discipline
14 policies that include out-of-school suspensions,
15 alternative school placement, and expulsions
16 contribute to higher rates of school dropout, an
17 identified risk for incarceration.

18 In addition, as the severity of the
19 disciplinary action increases, the over-representation
20 of African American students receiving harsher
21 discipline also increases." Do I have a second?

22 COMMISSIONER ACHTENBERG: Second.

23 CHAIRPERSON CASTRO: Any discussion?

24 (No response.)

25 CHAIRPERSON CASTRO: We have a vote. Vice

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1 Chair Thernstrom, how do you vote?

2 VICE CHAIR THERNSTROM: No.

3 CHAIRPERSON CASTRO: Commissioner Heriot,
4 how do you vote?

5 COMMISSIONER HERIOT: No.

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

8 COMMISSIONER GAZIANO: No.

9 CHAIRPERSON CASTRO: Commissioner Yaki, how
10 do you vote?

11 COMMISSIONER YAKI: Aye.

12 CHAIRPERSON CASTRO: Commissioner Kladney,
13 how do you vote?

14 COMMISSIONER KLADNEY: Yes.

15 CHAIRPERSON CASTRO: Commissioner
16 Achtenberg, how do you vote?

17 COMMISSIONER ACHTENBERG: Yes.

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

20 COMMISSIONER KIRSANOW: No.

21 CHAIRPERSON CASTRO: And I vote yes. It's
22 4-4, proposed Finding 5 fails.

23 Proposed Finding 6, I move "OCR uses both
24 disparate treatment and disparate impact theories in
25 its investigations under Title 6 with most cases

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1 involving disparate treatment." Do I have a second?

2 COMMISSIONER ACHTENBERG: Second.

3 CHAIRPERSON CASTRO: Any discussion?

4 (No response.)

5 CHAIRPERSON CASTRO: Okay. Do you want to
6 say something, Madam Vice Chair?

7 COMMISSIONER GAZIANO: Would you accept a
8 friendly amendment?

9 CHAIRPERSON CASTRO: I'm sorry. What is it?

10 COMMISSIONER GAZIANO: OCR says both
11 disparate treatment and disparate impact theories in
12 its investigations under Title 6." I'm sorry, me
13 first. I yield.

14 CHAIRPERSON CASTRO: Go ahead.

15 COMMISSIONER HERIOT: It seems to me that
16 these findings and recommendations are supposed to be
17 something of a narrative, so if we have like three
18 quarters of them knocked out because they didn't pass,
19 what we're going to end up with is a couple of random
20 statements that don't really add up to anything. And
21 if it looks like these are not going to pass, and so
22 far it's not looking good, I would say that rather
23 than go through each one of these, we should instead
24 have a motion, and I hereby make such a motion, that
25 we dispense with Findings and Recommendations in this

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1 report.

2 CHAIRPERSON CASTRO: Do you have a second
3 on that motion?

4 VICE CHAIR THERNSTROM: I will second it.

5 CHAIRPERSON CASTRO: Okay. What I would
6 like to do is take a few minute recess to caucus with
7 my colleagues to discuss that.

8 Commissioner Achtenberg, we'll have to
9 call you. Perhaps we could take the conference room
10 out there. So, we'll take a 10-minute recess.

11 (Whereupon, the proceedings went off the
12 record at 10:44 a.m., and went back on the record at
13 10:54 a.m.)

14 CHAIRPERSON CASTRO: Okay. It is five
15 minutes to 11:00. We're back on the record.

16 We have a motion pending by Commissioner
17 Heriot to have the School Discipline Briefing Report
18 be without Findings and Recommendations. We have
19 discussed it, and while we feel very, very strongly
20 about our proposed Findings and Recommendations, as I
21 know you do about your's, we are willing to support
22 that motion, so we will take a formal vote on that,
23 unless there's any other discussions or statements
24 Commissioners want to put on the record.

25 (No response.)

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1 CHAIRPERSON CASTRO: Not, so, Madam Vice
2 Chair, how do you vote?

3 VICE CHAIR THERNSTROM: Yes. I don't know
4 if we have to go through each one. I mean, we have
5 unanimous consent here.

6 CHAIRPERSON CASTRO: Okay. Do --

7 COMMISSIONER GAZIANO: Can I have
8 clarification, we would still then have statements.

9 CHAIRPERSON CASTRO: Of course, yes.
10 Absolutely.

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

13 CHAIRPERSON CASTRO: Not trying to deny you
14 that right, nor do I want to dias that right, so this
15 is just as to the Findings and Recommendations. Can
16 we do this by unanimous consent? All those in favor
17 say aye.

18 (Chorus of ayes.)

19 CHAIRPERSON CASTRO: Anybody opposed, any
20 abstentions?

21 (No response.)

22 CHAIRPERSON CASTRO: Okay. So, that passes.
23 Madam Vice Chair?

24 VICE CHAIR THERNSTROM: I do want to
25 acknowledge the common sense here that Commissioner

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1 Heriot has exhibited in having counted so far how many
2 Findings we've agreed on, and saying wait a minute.
3 We're headed down a road here which is going to be
4 ridiculous. Anyway, I thank her.

5 CHAIRPERSON CASTRO: Okay. So, next we're
6 moving on to review --

7 COMMISSIONER HERIOT: Mr. Chairman?

8 CHAIRPERSON CASTRO: Yes?

9 COMMISSIONER HERIOT: I have one
10 clarification. In the -- what was it, the bullying
11 report, Commissioner Achtenberg's statement had a
12 number of things that purported to be Findings and
13 Recommendations. I had asked her to amend her
14 statement so that it would say "proposed Finding or
15 proposed Recommendations," and she declined to do
16 that. We may be running down the same road here where
17 one side puts their's in as Findings and
18 Recommendations, and so does the other side, and they
19 appear to be in conflict.

20 I would ask that we agree that in our
21 statements, if we put things that are called "Findings
22 and Recommendations," we put the word "proposed" in
23 front of them, so that they don't appear to be the
24 Findings and Recommendations of the Commission, so we
25 don't have battling Findings and Recommendations. We

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1 can all simply put them in as proposed so it's clear
2 to the reader who just happens to open the booklet up
3 that these are not the Commission's Findings or
4 Recommendations.

5 CHAIRPERSON CASTRO: I find that acceptable
6 because, as you know, from our prior discussions we'll
7 talk about later, I don't want to see anything that
8 looks like shadow reports happening as a result of
9 anything that we do, so I would -- I have personally
10 no problem with that. I don't know how the other
11 Commissioners feel about it, but that's something I
12 could certainly agree to. Anybody have any objections
13 to it? Anybody have any objections to -- is
14 Commissioner Achtenberg back on the line?

15 COMMISSIONER ACHTENBERG: I'm here, Mr.
16 Chairman.

17 CHAIRPERSON CASTRO: Okay.

18 COMMISSIONER ACHTENBERG: I don't concur
19 with Commissioner Heriot's characterization of the
20 form that my statement took. Let me just state that
21 for the record.

22 COMMISSIONER HERIOT: But are you willing
23 to put the word "proposed" in front of your Findings
24 and Recommendations on this occasion?

25 CHAIRPERSON CASTRO: Commissioner

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1 Achtenberg?

2 COMMISSIONER ACHTENBERG: I don't see any
3 problem with that.

4 CHAIRPERSON CASTRO: So, I hear no
5 objections to it.

6 Okay, so moving on to discussion of the
7 Concept Papers.

8 **III. PROGRAM PLANNING UPDATE AND**

9 **DISCUSSION OF PROJECTS**

10 **REVIEW OF CONCEPT PAPERS/APPROVAL**

11 CHAIRPERSON CASTRO: Let me lay the table
12 for this a bit. I know that there in the past have
13 been the ranking that has been used prior to my
14 becoming Chairman. At our meeting in July when we
15 were voting on the Statutory Enforcement Report, as
16 well as whether it be one briefing topic that got
17 approved, we dealt with each of these individually.
18 And, as Chairman, I feel that the direction I prefer
19 to go in is one where we actually have the opportunity
20 to talk about each of the proposals that are coming
21 forward, and not rank something such that if a
22 proposal does not receive enough support, it would not
23 be discussed.

24 I think every Commissioner who puts
25 forward a concept paper should have the right to at

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1 least briefly have a discussion on it and a vote. So,
2 what we're going to do today is put forward concept
3 papers. Each of us will have an opportunity to
4 discuss those concept papers that we want to support.

5 And then once we've gone through those concept
6 papers, we'll go back to the top, and we will then
7 vote on those individual concept papers.

8 That gives us all an opportunity to have
9 our concept papers heard. And also dealing with them
10 in an individual way I think allows Commissioners to
11 have conversations about where they might be able to
12 find common ground as we come into these meetings.
13 So, that's how we're going to move forward today.

14 I do know that Commissioner Yaki has
15 requested some additional time to do some more work on
16 his Islamophobia paper, so I want to give him the
17 courtesy of putting that over until January. I know
18 Commissioner Kladney also is working on some proposals
19 that we're going to want to take a look at. So, what
20 we'll do on those is we'll put those off to January.
21 We'll make some decisions today. I want to have at
22 least my -- I know I want to have my immigration paper
23 heard today.

24 I'll give every Commissioner the courtesy
25 if you want to have your's heard today and voted on,

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1 we'll do that. If you'd like to put some of them over
2 until January, we'll give you the courtesy to do that.

3 Of course, some today have been up before us and been
4 voted down, and they're coming up for a second bite.
5 I presume if they vote today, bring them back in
6 January and see if things change. But what I want to
7 do is give everyone the opportunity to have their's
8 heard. Madam Vice Chair?

9 VICE CHAIR THERNSTROM: I have a question
10 on --

11 CHAIRPERSON CASTRO: Yes, ma'am.

12 VICE CHAIR THERNSTROM: -- a process here.
13 We do want to put Commissioner Yaki, and Commissioner
14 Kladney's proposal off for a different day when they
15 have formulated them in ways that are satisfactory to
16 them, but the fact that we are going to be -- we
17 already know that we are going to have other proposals
18 before us, does have implications, it seems to me, for
19 how many we should allow ourselves to agree on today.
20 Do you disagree with that?

21 CHAIRPERSON CASTRO: No, I don't. Ideally,
22 I'd like to walk away with one, but -- and then we'd
23 have two to pick in January. Because, of course, we
24 have five briefings we do. We've already picked two,
25 your voting rights concept paper, the trafficking

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1 reports. That leaves us sitting here today with
2 three, so --

3 VICE CHAIR THERNSTROM: Three left --

4 CHAIRPERSON CASTRO: Three left for the
5 fiscal year.

6 VICE CHAIR THERNSTROM: For the fiscal
7 year, and we've got at least two coming in from two
8 Commissioners.

9 CHAIRPERSON CASTRO: Yes, and then we've
10 got another several today that are up. We have one,
11 two -- two from Commissioner Heriot. We have one,
12 two, three, four, five from Commissioner Kirsanow who
13 is clearing earning his pay.

14 (Laughter.)

15 VICE CHAIR THERNSTROM: Even though he
16 doesn't show up at meetings in person.

17 CHAIRPERSON CASTRO: Well, he's busy
18 writing concept papers.

19 COMMISSIONER HERIOT: Yes.

20 COMMISSIONER KIRSANOW: Well, you know, my
21 clients have the temerity of thinking that because
22 maybe paying millions of dollars, they expect me to be
23 present. I don't know where they get this concept
24 from.

25 CHAIRPERSON CASTRO: I don't know about

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1 those job creators, Pete. You've got to talk to them.

2 VICE CHAIR THERNSTROM: And I'm impressed
3 by the millions.

4 CHAIRPERSON CASTRO: So, even if we dealt
5 with them all today, there's no way all of them are
6 going to -- whether it's one, two, or three slots. I
7 mean, we could always put this all off, but I really
8 feel that there's an urgency to what's going on on the
9 immigration front, and I want to have at least that
10 hopefully considered today, and hopefully approved, so
11 that the Staff can begin the process of working on
12 that sooner rather than later.

13 COMMISSIONER KIRSANOW: Mr. Chair, may I
14 speak for a moment?

15 CHAIRPERSON CASTRO: Yes, Commissioner
16 Kirsanow, and then Vice Chair Thernstrom.

17 COMMISSIONER KIRSANOW: Thanks very much. I
18 have two things. First, I think because I believe that
19 the ranking system that had been used in the past, and
20 I'm not wedded to past practice, but I think it had a
21 considerable amount of merit to it. I understand your
22 position of discussing each one of these, and I fully
23 concur with that. In fact, that's what we did under
24 the previous system, we discussed every single concept
25 paper. But it was done in a manner in which we had

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1 already -- well, sometimes we'd discuss them twice,
2 but we would have already ranked them our personal
3 preferences so that we'd have a greater idea as to
4 which concepts had the greatest preliminary support.
5 That didn't discount the other concepts, but we --
6 that promoted the efficiency of the voting process.
7 But also, at the same time, gave fair hearing to each
8 one of them.

9 And it strikes me that the approach that
10 we are about to undertake here necessarily privileges
11 whatever concepts are voted on first, possibly to the
12 derogation of other concepts, because we only have a
13 finite number of concepts that we can actually
14 consider in any given year. I think it's better if we
15 first rank them, and then vote on them seriatim. We
16 can discuss every single one of them.

17 And number two is, I would move that all
18 of my concepts be moved in deference to Commissioner
19 Yaki and anyone else who has concept papers they want
20 to continue to work on, consideration of those be
21 moved to a later date.

22 CHAIRPERSON CASTRO: Your objection is duly
23 noted, but I still intend to use my process. Vice
24 Chair Thernstrom, then Commissioner Yaki.

25 VICE CHAIR THERNSTROM: I yield to

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1 Commissioner Yaki.

2 CHAIRPERSON CASTRO: Commissioner Yaki.

3 COMMISSIONER YAKI: This is going to sound
4 very strange, but every once in a while I have
5 cerebral edema and agree with --

6 COMMISSIONER ACHTENBERG: Can you speak up?
7 I can't hear.

8 COMMISSIONER YAKI: Every once in a while I
9 have cerebral edema and --

10 VICE CHAIR THERNSTROM: He's having an
11 episode.

12 (Laughter.)

13 COMMISSIONER YAKI: -- agree with
14 Commissioner Kirsanow, because this was actually a
15 process that I helped develop, actually, when I was on
16 the Commission with Commissioner Kirsanow, and
17 Commissioner Thernstrom. And I agree with
18 Commissioner Heriot, as well, on this one. Now, I'm
19 really going -- starting to have shakes. But the --

20 COMMISSIONER HERIOT: If you move it, I'll
21 second it.

22 (Laughter.)

23 COMMISSIONER HERIOT: I think that the idea
24 of ranking served two purposes. One, as Commissioner
25 Kirsanow said, it gave greater clarity on what the

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1 universe of agreement may or may not be on this.

2 Secondly, it also helped, I thought, to
3 sort of coalesce what was important to both the
4 majority and the minority at the time in terms of what
5 was a priority. And it helped focus discussion a
6 little bit more in terms of what was likely or what
7 was not likely to succeed, but it did not prevent
8 anything from happening.

9 As a matter of fact, on at least one
10 occasion there was a topic that was getting some
11 support, but then because of various modifications
12 ended up being withdrawn, as a result. I mean, there
13 are a number of different ways that this thing goes,
14 but I think that having the ranking has some time
15 efficiency purpose to it, and some allocation,
16 proportional allocation issues, as well, in terms of
17 how briefings were divided at the time.

18 So, I know that Commissioner Thernstrom
19 doesn't like the word "proportional." So, the -- I
20 actually agree with Commissioner Thernstrom,
21 Commissioner Kirsanow and Commissioner Heriot, and
22 believe that we should engage in a ranking system.

23 CHAIRPERSON CASTRO: Madam Vice Chair, and
24 then Commissioner Heriot.

25 VICE CHAIR THERNSTROM: Yes, I think there

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1 could be a compromise here. The Chair is really hoping
2 that we can agree today on at least his immigration
3 proposal. And I suggest we get -- we see how much
4 support he has for that proposal. And if he has the
5 majority of the Commission in support of it, then we
6 agree, we have decided on one proposed topic, and we
7 can then go on to what we do next. But at least we've
8 got one on the table.

9 I mean, we've really got a problem here in
10 terms of the total number of being only five, and two
11 of our Commissioners still coming in with proposals.

12 CHAIRPERSON CASTRO: I would find that
13 acceptable. Commissioner Heriot?

14 COMMISSIONER HERIOT: I so move that we
15 rank these topics subject to whatever decision we make
16 today about -- we can pick something today without
17 ranking. For example, if we were to pick the
18 immigration project. Obviously, if we take a vote on
19 that without having rank, it's fine. That becomes our
20 project. But in the future, we rank them before we
21 have meetings.

22 And, of course, in the past this was not a
23 big deal in terms of we're not committed to our
24 rankings. It's just helpful for people to know when
25 they're voting. So, I move that we rank them in the

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1 future.

2 CHAIRPERSON CASTRO: I find that
3 acceptable, so I'll second -- are you going to second
4 this?

5 COMMISSIONER YAKI: I just want to make a
6 friendly amendment; in that, I think out of deference
7 to the Chair on this one, I think that rather than get
8 into a long discussion of which one we should actually
9 talk about today, if we're going to do ranking, let's
10 do ranking but exempt the Chair's topic for discussion
11 today. And if it doesn't get it, it goes back into
12 the pool for overall ranking. If it does make it
13 today, then we simply rank the remaining proposals.

14 I don't want to get into a long discussion
15 which one we're going to actually try and talk on
16 today, because then we're getting -- it obviates the
17 whole purpose of the ranking process.

18 COMMISSIONER ACHTENBERG: I can't hear.

19 VICE CHAIR THERNSTROM: I am, too, and I
20 was making really quite a different proposal, which
21 was to separate immigration.

22 COMMISSIONER YAKI: That's what I was
23 doing.

24 VICE CHAIR THERNSTROM: And to say let us
25 just see if there's support for -- majority support

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1 for immigration.

2 COMMISSIONER YAKI: That's what I was
3 saying.

4 VICE CHAIR THERNSTROM: If there's a
5 majority support, we've got a topic.

6 COMMISSIONER YAKI: Okay.

7 CHAIRPERSON CASTRO: So, why don't I move
8 to -- move that we adopt the immigration concept paper
9 as a briefing concept?

10 VICE CHAIR THERNSTROM: Seconded.

11 CHAIRPERSON CASTRO: Okay. Then we can
12 discuss it and vote on it, and then we can move on.

13 COMMISSIONER YAKI: Okay.

14 COMMISSIONER GAZIANO: We had a prior
15 motion on the floor, I think.

16 COMMISSIONER HERIOT: Yes, so that becomes
17 a substitute. That's fine.

18 CHAIRPERSON CASTRO: Substitute this motion
19 for that one.

20 COMMISSIONER HERIOT: And then I'll remake
21 my motion.

22 COMMISSIONER YAKI: Fine.

23 CHAIRPERSON CASTRO: So, substituting the
24 motion that we adopt --

25 COMMISSIONER YAKI: I think we're all

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1 talking the same thing anyway.

2 CHAIRPERSON CASTRO: Yes, I think we are,
3 we're just saying it differently. At least we're
4 talking about the same thing. That's good. That's
5 good movement.

6 So, I move that we substitute Commissioner
7 Heriot's motion for my motion that we accept the Civil
8 Rights implications of the state immigration --

9 VICE CHAIR THERNSTROM: I think it's my
10 motion.

11 CHAIRPERSON CASTRO: I'm sorry. Whosever
12 motion it was the record will reflect it, because we
13 do have a person here who's keeping track of that;
14 that we adopt the immigration concept paper as a
15 briefing concept. Is there a second?

16 COMMISSIONER YAKI: Second.

17 CHAIRPERSON CASTRO: The reason I put this
18 forward is, we've talked about the immigration issue
19 in the past, but I think what's been happening at the
20 state level is creating an atmosphere that may be
21 potentially violating, or causing violation of the
22 Civil Rights of not just immigrants and undocumented
23 immigrants or documented, but also United States
24 citizens as a result; especially when we see what's
25 going on in the south right now in Alabama, South

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1 Carolina. And, to me, it harkens back in a very
2 frightening way to what was happening in the '60s. And
3 I feel it's important for the Commission to look at
4 what's been going on there, not only in terms of the
5 actual state laws, but the impact that those laws had
6 on individuals based on whether it's national origin,
7 race, perceived immigration status in areas that --
8 and, as I said in the paper, focus on, I believe,
9 increased racial profiling, increased discrimination,
10 possible implications on rights under Tyler versus
11 Doe, as well as implications for communities
12 cooperating with the police; and, thus, jeopardizing
13 public safety.

14 I think this is an important and timely
15 topic for the Commission to look at. I propose it to
16 be a D.C. hearing. I'd love to have a field hearing,
17 but I know we don't have the funds for it. But I
18 think it's important for us to address this issue
19 given what's going on right now in the South.
20 Commissioner Gaziano.

21 COMMISSIONER GAZIANO: I'm sorry, I don't
22 have your concept paper with me, Mr. Chair, but I
23 support your proposal. And although I have maybe
24 annoyed you by pointing out areas where I don't think
25 the Chair has unilateral action, I do believe

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1 deference is due the Chair, particularly on choosing
2 one topic at this point in your tenure. So, that's
3 another reason I'm supporting it.

4 I just would ask, since I don't have the
5 concept paper with me today, that we try to work
6 together to come up with a consensus list of
7 witnesses.

8 CHAIRPERSON CASTRO: Absolutely.
9 Absolutely. Commissioner Heriot?

10 COMMISSIONER HERIOT: I think actually Todd
11 expressed most of what I wanted to say. This, I
12 think, was my ninth favorite topic on the list, but I
13 believe that the Chairman should get the issue that he
14 thinks is important, at least now and then.

15 CHAIRPERSON CASTRO: I appreciate that very
16 much, Commissioner Heriot. Any other comments or
17 discussion? At least it wasn't tenth. Any other
18 discussion? Any other comments? If not, then I will
19 take a vote.

20 Vice Chair Thernstrom, how do you vote?

21 VICE CHAIR THERNSTROM: Yes.

22 CHAIRPERSON CASTRO: Commissioner Heriot,
23 how do you vote?

24 COMMISSIONER HERIOT: Yes.

25 CHAIRPERSON CASTRO: Commissioner Gaziano,

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1 how do you vote?

2 COMMISSIONER GAZIANO: Yes.

3 CHAIRPERSON CASTRO: Commissioner Yaki, how
4 do you vote?

5 CHAIRPERSON CASTRO: Aye.

6 CHAIRPERSON CASTRO: Commissioner Kladney,
7 how do you vote?

8 COMMISSIONER KLADNEY: Yes.

9 CHAIRPERSON CASTRO: Commissioner Kirsanow,
10 how do you vote?

11 COMMISSIONER KIRSANOW: Yes.

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

14 COMMISSIONER ACHTENBERG: Yes.

15 CHAIRPERSON CASTRO: And I vote yes. It is
16 unanimous, so thank you very much. I appreciate that.

17 Now, do we want to discuss the ranking
18 today, or put that off to the next meeting? However
19 you all would like.

20 COMMISSIONER HERIOT: Do it -- let's put
21 through the motion about ranking now.

22 CHAIRPERSON CASTRO: Okay.

23 COMMISSIONER HERIOT: And then rank by
24 email or something.

25 CHAIRPERSON CASTRO: Okay, so let's -- who

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1 wants to make the ranking motion?

2 COMMISSIONER HERIOT: I move that the
3 Commission adopt the procedure of having each member
4 rank the proposed briefing topics, and then vote at a
5 meeting when we have the information that is tabulated
6 by the Staff Director or her delegate, when we have
7 that information in front of us, then we should
8 discuss briefings and vote upon them.

9 CHAIRPERSON CASTRO: Do we have a second to
10 that motion?

11 COMMISSIONER GAZIANO: I second.

12 CHAIRPERSON CASTRO: Okay. Any discussion?
13 Madam Vice Chair?

14 COMMISSIONER KIRSANOW: Mr. Chair? Is that
15 the Vice Chair?

16 CHAIRPERSON CASTRO: Pardon me? That was
17 Commissioner Heriot that made motion.

18 COMMISSIONER HERIOT: That was me.

19 CHAIRPERSON CASTRO: Commissioner Gaziano
20 seconded it, and I was about to recognize the Vice
21 Chair.

22 VICE CHAIR THERNSTROM: No, please
23 recognize Commissioner Kirsanow.

24 CHAIRPERSON CASTRO: You want to go ahead,
25 Commissioner Kirsanow? Go ahead.

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1 COMMISSIONER KIRSANOW: Thank you, Madam
2 Vice Chair. It strikes me that Commissioner Heriot's
3 motion might be a little -- I'll put it this way. The
4 current practice has been to rank, so it strikes me
5 that we are changing the practice.

6 COMMISSIONER GAZIANO: Reconfirmed the
7 practice.

8 COMMISSIONER HERIOT: Let's call it a
9 friendly amendment. I want to reconfirm the practice
10 that we have had up until very recently.

11 COMMISSIONER KIRSANOW: Okay.

12 CHAIRPERSON CASTRO: Madam Vice Chair?

13 VICE CHAIR THERNSTROM: Well, we get a lot
14 of proposals here, and I just wonder if we can, as we
15 did with immigration, can zero in in this case, let's
16 say two, or three, maybe only one that there is
17 enormous support for within the Commission. Because
18 we're going to walk out of here only with two having
19 been decided, as I understand this.

20 CHAIRPERSON CASTRO: Well, we have three
21 counting the VRA.

22 VICE CHAIR THERNSTROM: Oh, all right.

23 CHAIRPERSON CASTRO: We have human
24 trafficking. Now we have immigration. That leaves
25 two spots.

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1 VICE CHAIR THERNSTROM: Okay, that leaves
2 two spots. Okay, so maybe we -- if there is some way
3 of whittling this list down to a couple of topics that
4 there was enormous procedure -- enormous enthusiasm
5 for, or quite a lot of enthusiasm for, without going
6 through the whole ranking process, I think it would
7 serve us well; especially because the ranking process,
8 it seems to me in my experience, we end up with topics
9 at the top of the rank that a lot of us are not happy
10 with at all. But if we could find some topics here
11 that the majority really would be happy to support
12 today, one or two, then it would advance the ball.

13 CHAIRPERSON CASTRO: Let me just ask, my
14 understanding of the ranking process is even though
15 you've ranked them, that doesn't mean that they're not
16 going to be voted on. So, you still have the
17 opportunity to address them.

18 VICE CHAIR THERNSTROM: You do. I'm just
19 trying to shortcut this process.

20 CHAIRPERSON CASTRO: No, I understand that.
21 And I know that as we said earlier, Commissioner Yaki
22 wants to do some additional work on his paper. I know
23 Kladney has had some conversations about possibly
24 talking to one of the other Commissioners about their
25 concept paper. So, maybe there might be some

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1 commonality once we've had some of these papers --

2 VICE CHAIR THERNSTROM: Okay. I just wonder
3 if there isn't one right now. I've got a --

4 CHAIRPERSON CASTRO: Commissioner Gaziano.

5 COMMISSIONER GAZIANO: Yes, I was just
6 going to point out, I think that I agreed with the
7 Chair's earlier statement that we are encouraged to
8 engage in discussions, lobbying, not bribery, but --
9 and I think --

10 VICE CHAIR THERNSTROM: I'm open to bribes.

11 (Laughter.)

12 COMMISSIONER GAZIANO: I think that the --
13 that would be illegal. The ranking system might
14 actually encourage more of that, so I hope that it
15 does. I'm certainly open to discussions, if you -- the
16 fact that the ranking may have a slight psychological
17 advantage when we enter discussions, it encourages
18 those of us to talk to each other, and try to refine
19 the statements.

20 And what I would just ask the Staff
21 Director to do is to give us some sort of schedule by
22 which we can send in revisions to our concept papers,
23 and know when they are -- you're going to send them
24 out for vote so that we have -- we're all -- you're
25 busy, we're busy, so that we have some dates to work

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1 against.

2 CHAIRPERSON CASTRO: That seems fair.

3 STAFF DIRECTOR TOLHURST: Well, if you all
4 tell me what day -- at what meetings you ultimately
5 want them.

6 CHAIRPERSON CASTRO: Well, I think we want
7 to vote on these at the January meeting, so maybe work
8 backwards from that.

9 COMMISSIONER YAKI: Okay.

10 STAFF DIRECTOR TOLHURST: I will send out
11 an email.

12 CHAIRPERSON CASTRO: Does that work for
13 you, Commissioner Yaki?

14 COMMISSIONER YAKI: Yes.

15 CHAIRPERSON CASTRO: Okay. All right,
16 good.

17 COMMISSIONER HERIOT: We didn't vote on it,
18 though.

19 CHAIRPERSON CASTRO: I know. So, we had
20 discussion on that, so now we're going to call a vote
21 on the reconfirmation of the ranking process. Madam
22 Vice Chair, how do you vote?

23 VICE CHAIR THERNSTROM: That's fine. I
24 mean, I'm just going to -- I don't think I made my
25 point in a very lucid way. I think if there was a

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1 majority of this Commission right now that knew it's
2 number one vote was going to be on a particular topic,
3 we could expedite this whole process.

4 CHAIRPERSON CASTRO: I think you were
5 clear. I just don't think based on what was said that
6 that's the case right now.

7 VICE CHAIR THERNSTROM: All right. Okay.

8 COMMISSIONER YAKI: It's like trying to
9 pick the winner of American Idol in week one. It's
10 just not going to --

11 (Laughter.)

12 VICE CHAIR THERNSTROM: What did he say?

13 CHAIRPERSON CASTRO: He said it's like
14 trying to pick the winner of American Idol in week
15 one.

16 COMMISSIONER GAZIANO: And I'd rather not
17 vote before hearing Commissioner Kladney's proposals
18 either.

19 COMMISSIONER ACHTENBERG: Mr. Chairman?

20 CHAIRPERSON CASTRO: Yes, Commissioner
21 Achtenberg.

22 COMMISSIONER ACHTENBERG: I just want to
23 say that when the votes get called, I'm going to vote
24 no, because I think this -- while it might have been
25 past practice, I think it interferes unreasonably with

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1 the prerogative of the Chair, and I don't concur in
2 that regard.

3 CHAIRPERSON CASTRO: I appreciate that.

4 COMMISSIONER ACHTENBERG: I'm going to vote
5 no. Well, whoever is Chair, so it's not particular to
6 you, Mr. Chair, with all due respect.

7 CHAIRPERSON CASTRO: I don't take it
8 personally, positive or negative. All right. So,
9 Madam Vice Chair, how do you vote?

10 VICE CHAIR THERNSTROM: Yes.

11 CHAIRPERSON CASTRO: Commissioner Gaziano,
12 how do you vote?

13 COMMISSIONER GAZIANO: Yes.

14 CHAIRPERSON CASTRO: Commissioner Heriot,
15 how do you vote?

16 COMMISSIONER HERIOT: Yes.

17 CHAIRPERSON CASTRO: Commissioner Yaki, how
18 do you vote?

19 COMMISSIONER YAKI: Aye.

20 CHAIRPERSON CASTRO: Commissioner Kladney,
21 how do you vote?

22 COMMISSIONER KLADNEY: Yes.

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

25 COMMISSIONER KIRSANOW: Yes.

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

3 COMMISSIONER ACHTENBERG: No.

4 CHAIRPERSON CASTRO: And I'll vote yes, so
5 we have one, two, three, four, five, six, seven yeses
6 and a no. The motion passes.

7 Okay. So, now we move on to our Management
8 and Operations Report.

9 **IV. MANAGEMENT AND OPERATIONS**

10 **STAFF DIRECTOR'S REPORT**

11 STAFF DIRECTOR TOLHURST: As usual, unless
12 you have questions on the Staff Director's Report, in
13 this instance everything I have is related to budget,
14 so I'm pleased to move on to budget.

15 CHAIRPERSON CASTRO: Okay. Actually, before
16 you do that, I neglected to mention that Commissioner
17 statements for the School Discipline Report are due on
18 December 18th. It turns out December 18th is a Sunday,
19 but I guess that's -- by the calculation, that's the
20 date it would be due. And rebuttals are due the close
21 of business, that's Eastern Time, on January 17th.
22 Okay?

23 COMMISSIONER GAZIANO: By prior rule --
24 yes, the Pacific Coast Commissioners, previous I
25 think to Commissioner Achtenberg and Kladney, agreed

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1 that we would make it midnight Pacific time.

2 COMMISSIONER YAKI: Right.

3 CHAIRPERSON CASTRO: Madam Staff Director,
4 is that fine? Okay.

5 COMMISSIONER YAKI: Because we -- I wanted
6 to watch Todd work until 3 a.m.

7 CHAIRPERSON CASTRO: Okay. That's fine.

8 COMMISSIONER GAZIANO: He gets great joy in
9 that.

10 (Laughter.)

11 CHAIRPERSON CASTRO: So, midnight Pacific
12 time on January 17th is when rebuttals are due.

13 COMMISSIONER YAKI: Isn't there some
14 religion that prevents working on Sunday that I can
15 join.

16 CHAIRPERSON CASTRO: And December 18th is
17 when the original statements are due. Okay.

18 So, now moving on to the Budget.

19 **IV. MANAGEMENT AND OPERATIONS**

20 **BUDGET/APPROPRIATIONS UPDATE**

21 CHAIRPERSON CASTRO: I, first of all, want
22 to thank each and every Commissioner and staff member
23 who reached out and helped us educate both members of
24 Congress, specifically members of the CJS Committees,
25 as well as the Conferees about our budget situation.

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1 We, as you know, are facing very dire
2 million dollar cuts on each side of the bicameral
3 chamber, and today -- was it today? The Senate
4 passed, and yesterday the House passed the Minibus
5 that includes our budget, which is only going to be
6 reduced by \$250,000 as opposed to a minimum over a
7 million, probably more than if we took both versions
8 of what the House and the Senate were talking about.

9 Our Inspector General will not be the EEOC
10 Inspector General; rather, the Government Accounting
11 Office Inspector General, so this couldn't have been
12 done without the bipartisan effort that was asserted
13 by all of us. And I very much appreciate everyone who
14 participated in that. So, Commissioner Heriot?

15 COMMISSIONER HERIOT: And I believe the
16 Chairman deserves a lot of credit, too.

17 CHAIRPERSON CASTRO: Thank you. Thank you.
18 So, we look to fight another day. Now, we're off to
19 deal with 2013, but I think if we continue to work as
20 we've done on this, we stand a better chance of
21 continuing to move in the right direction. So, thank
22 you. Madam Acting Staff Director.

23 STAFF DIRECTOR TOLHURST: I just want to
24 correct maybe a misimpression.

25 CHAIRPERSON CASTRO: Okay.

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1 STAFF DIRECTOR TOLHURST: The 250 was theC-

2 CHAIRPERSON CASTRO: That goes to the IG.

3 STAFF DIRECTOR TOLHURST: Yes.

4 CHAIRPERSON CASTRO: Yes.

5 STAFF DIRECTOR TOLHURST: But we also
6 received \$438,000 less than FY '11, so if you add
7 those together, the total less is \$438,000 than we had
8 in FY '11, which is still a 5 percent cut.

9 CHAIRPERSON CASTRO: It's certainly a cut,
10 but it's not as bad as we thought it would be. And we
11 actually --

12 COMMISSIONER YAKI: It's a mild amputation.

13 CHAIRPERSON CASTRO: Right. So, we lost a
14 finger instead of two legs, but we --

15 COMMISSIONER GAZIANO: And part of that is
16 a benefit of having an IG look at us, and tell us how
17 we could possibly improve, so it's not all lost on
18 either.

19 CHAIRPERSON CASTRO: And we're expecting
20 that the President is going to sign this by Saturday
21 night. Anything else on budget?

22 STAFF DIRECTOR TOLHURST: Well, again, not
23 to be a wet blanket but you'll recall that in the 2013
24 discussions, 5 percent cut triggered staff cuts. I am
25 happy to report that in 2012 despite that fact, we

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1 don't anticipate having to cut any staff. That's
2 largely because we were able to fund more of the move
3 out of 2011 money. It's also because the salaries of
4 the Staff Director, General Counsel, and Senior
5 Attorney Advisors are being not paid to this one
6 person, sadly.

7 (Laughter.)

8 COMMISSIONER HERIOT: You don't get all of
9 that money? That's just terrible.

10 STAFF DIRECTOR TOLHURST: So, we're able to
11 fund the move with that money, and with some --

12 COMMISSIONER YAKI: I was hoping for a 10
13 percent cut on --

14 CHAIRPERSON CASTRO: And that's why I say,
15 it's off to 2013, because there's -- as you cross one
16 finish line you start another race. And I think,
17 though, one of the very positive aspects of us doing
18 what we did to save 2012 is that we've opened up lines
19 of conversation that did not exist before with -- or
20 at least haven't in a while with our appropriators and
21 educate them about the conditions under which we're
22 operating, many of whom were not aware of that. So,
23 hopefully, that continued education and dialogue will
24 allow us to protect and maybe address some of these
25 issues; although, we are under a very difficult

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1 economic climate. Nonetheless, I think it's a step in
2 the right direction.

3 STAFF DIRECTOR TOLHURST: And I know
4 Commissioner Heriot was concerned about this. I
5 believe we will be able to look at starting the OCRE
6 hearing process again.

7 CHAIRPERSON CASTRO: Which is good. And,
8 actually, let me also mention one other thing. I have
9 asked the person designated the authority of Staff
10 Director to, beginning at our next meeting, report on
11 our -- at our agenda how we're tracking our strategic
12 goals. And I just found this out the other day, when I
13 received a draft performance and accountability report
14 that goes annually to OMB, and apparently its tracked
15 based on our former strategic plan, our existing
16 strategic plan, where the goals in that plan are
17 actually measured. And then we indicate whether we've
18 met those goals.

19 And we actually did pretty well, but it
20 would be nice to know during these meetings what those
21 goals are, and how we are as we progress through the
22 year meeting or not meeting them, so that we can
23 monitor that and know when the end of the fiscal year
24 comes what shape we're in. So, we'll figure out how to
25 best do that, but I'd ask the Acting Staff Director to

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1 do that.

2 And, also, this is probably something more
3 akin to the State Advisory Committee issues, but I've
4 also asked starting the next month to have the head of
5 RPCU on the phone, and have him do a report, a brief
6 report every month on the work and status of our SACs,
7 Regional Programs Coordination Unit. Yes, I got it.

8 COMMISSIONER HERIOT: I'm not cut out for
9 work on a government --

10 CHAIRPERSON CASTRO: So, I --

11 COMMISSIONER HERIOT: I can't do acronyms.

12 CHAIRPERSON CASTRO: So, it's another way
13 for us to have a better handle on -- hear from our SAC
14 representatives on the work that they're doing. And to
15 help better inform us of their work, is really what
16 I'd like to have done.

17 Anything else on your report?

18 (No response.)

19 CHAIRPERSON CASTRO: So, we'll move on to
20 a discussion of the use of Commission Letterhead and
21 Approval of a proposed AI.

22 **IV. MANAGEMENT AND OPERATIONS**

23 **DISCUSSION OF THE USE OF COMMISSION**

24 **LETTERHEAD/APPROVAL OF AI**

25 CHAIRPERSON CASTRO: Have we distributed

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1 the draft? Okay. We've had many discussions on this,
2 and I'm pleased to say that I think we've reached
3 compromise language on this. Can I have a copy of
4 that? Do you have it? Okay. So, we have -- does
5 everyone have a copy of it?

6 COMMISSIONER YAKI: I've got it.

7 CHAIRPERSON CASTRO: Okay. So, we have
8 Administrative Instruction 9-1, which the copy I have
9 doesn't indicate what changes were made to it, but the
10 substantive change is that we agree to -- oh, here we
11 go.

12 Section -- what was Section A has become
13 now Section A and B, and at the end of Section B we
14 indicate, "When using Commission letterhead in their
15 individual capacities, Commissioners shall begin their
16 correspondence with this disclaimer. We write to you
17 in my/our individual capacity (capacities) as
18 Commissioner(s) of the Eight-Member U.S. Commission on
19 Civil Rights, and not on behalf of the Commission as a
20 whole."

21 And then we propose to clarify Section C
22 to say that, "Whenever the Chair or Staff Director
23 speak publicly about matters before the Commission in
24 their capacities as designated spokespersons for the
25 Commission, he or she may not purport to speak for the

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1 entire Commission without acknowledging the existence
2 of assenting viewpoints." And I think those were the
3 main changes, and we changed C to D.

4 So, I move this. Do I have a second?

5 COMMISSIONER ACHTENBERG: I second.

6 VICE CHAIR THERNSTROM: I second, but I
7 want some discussion.

8 CHAIRPERSON CASTRO: Okay. So, we have a
9 second, and then Madam Vice Chair?

10 VICE CHAIR THERNSTROM: I would like to
11 strengthen the first sentence just slightly by saying,
12 "Please note that," and then continue as the language
13 reads. I just, you know, I deal with idiot reporters
14 all the time. I just -- like this is just a way of
15 underlining, "Please note." In case your eyes are
16 glazing, in case you have no sleep, in case you --

17 CHAIRPERSON CASTRO: Well, this is right in
18 the beginning of the correspondence, they're just
19 going to have to note it.

20 (Simultaneous speech.)

21 COMMISSIONER GAZIANO: I think it seems a
22 little condescending if we're writing to members of
23 Congress who have requested it.

24 VICE CHAIR THERNSTROM: Oh, I was thinking
25 of reporters rather than members of Congress.

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1 COMMISSIONER GAZIANO: I understand, but
2 the letter is going to be addressed to members of
3 Congress.

4 VICE CHAIR THERNSTROM: All right, I'll
5 withdraw it.

6 CHAIRPERSON CASTRO: Any other discussion?

7 COMMISSIONER HERIOT: Yes.

8 CHAIRPERSON CASTRO: Oh, I'm sorry.
9 Commissioner Heriot.

10 COMMISSIONER HERIOT: In Section C, the
11 provision originally said, "When the Chair, Vice
12 Chair, or other Commissioners or Staff Directors,"
13 blah, blah, blah, blah, blah, and we've taken out the
14 Vice Chair or other Commissioners. Here's a problem
15 that I see with that.

16 There are occasions when other
17 Commissioners are delegated the responsibility of
18 speaking; like, for example, a few years ago Chairman
19 Reynolds asked me in my -- as an individual to testify
20 before a Congressional committee about the anniversary
21 of the 1957 Civil Rights Act. And nothing
22 controversial was said during that testimony, but if
23 there comes an occasion when the Chairman delegates
24 the duty to speak to someone, whether he delegates it
25 to anyone other than the Staff Director who's covered

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1 by the rule here, we still want that clarification,
2 that if there's a dissenting viewpoint, that should be
3 pointed out.

4 So, I would like to -- rather than take
5 that -- well, still take that language out, but just
6 say whenever the Chair, the Staff Director, or their
7 delegate speaks publicly.

8 CHAIRPERSON CASTRO: That's fine. I think
9 that's good. Anybody else?

10 (No response.)

11 CHAIRPERSON CASTRO: So, we'll accept that
12 as a friendly amendment.

13 COMMISSIONER HERIOT: And the verb is wrong
14 there. It should be "speaks" since it's or.

15 CHAIRPERSON CASTRO: Okay. Any other
16 questions, discussion?

17 (No response.)

18 CHAIRPERSON CASTRO: If not, with that
19 change, we'll vote on this.

20 Madam Vice Chair, how do you vote?

21 VICE CHAIR THERNSTROM: Yes.

22 CHAIRPERSON CASTRO: Commissioner Heriot,
23 how do you vote?

24 COMMISSIONER HERIOT: It also says "their"
25 instead of "his or her."

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1 CHAIRPERSON CASTRO: Okay, so we'll make
2 that change.

3 COMMISSIONER HERIOT: So, I think they need
4 to correct that.

5 CHAIRPERSON CASTRO: Okay.

6 COMMISSIONER HERIOT: And with that, I vote
7 yes.

8 CHAIRPERSON CASTRO: Commissioner Gaziano,
9 how do you vote?

10 COMMISSIONER GAZIANO: I vote yes, and I
11 agree to be bound by this. I hope I don't make any
12 mistakes. My only minor nit is that I do question
13 whether -- apart from our agreement, whether AIs can
14 bind the Commissioners in this way, but -- so, the
15 word "shall" preceding the sentence, it gives me a
16 little bit of pause, but I don't think it -- with that
17 understanding, I vote yes.

18 CHAIRPERSON CASTRO: Okay. Commissioner
19 Yaki, how do you vote?

20 COMMISSIONER YAKI: Yes.

21 CHAIRPERSON CASTRO: Commissioner Kladney,
22 how do you vote?

23 COMMISSIONER KLADNEY: Before I vote, I'd
24 just like to thank Commissioner Gaziano when we
25 negotiated this. I thought it went very well, pretty

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1 easy. I vote yes.

2 CHAIRPERSON CASTRO: Okay. Commissioner
3 Achtenberg, how do you vote?

4 COMMISSIONER ACHTENBERG: It's very touchy,
5 but we'll see.

6 COMMISSIONER KLADNEY: A substitute.

7 COMMISSIONER ACHTENBERG: I vote yes.

8 (Laughter.)

9 CHAIRPERSON CASTRO: Okay. Commissioner
10 Kirsanow, how do you vote?

11 COMMISSIONER KIRSANOW: Yes.

12 CHAIRPERSON CASTRO: And I vote yes, so
13 it's unanimous. Thank you.

14 We now move on to a discussion on the Page
15 Limitation, Word Limitation issue.

16 **IV. MANAGEMENT AND OPERATIONS**

17 **DISCUSSION OF IMPLEMENTATION OF PAGE**

18 **LIMITS FOR COMMISSIONER STATEMENTS/APPROVAL**

19 CHAIRPERSON CASTRO: Again, in an effort to
20 foment conversation and discussion, I raised it at
21 the last meeting. I had a good call with the -- my
22 colleagues, Commissioners Kirsanow, Heriot, and
23 Gaziano explaining why I felt it was important, as
24 well as hearing from them, the concerns that they had.
25 And as I expressed during our call, what I don't want

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1 to see is a proliferation of reports that we see the
2 rebuttal, surrebuttal statements outweighing or over-
3 shadowing the report, which I consider to be the
4 primary work of the Commission.

5 But more specifically, as I indicated to
6 them, what I don't want to see is at some point the
7 creation of what I would consider, and what some of us
8 would consider to be shadow reports.

9 And you indicated to me that is not your
10 intent, and I know the concerns that you have about
11 limitation of your expression on these. It's not my
12 intention at all to deny you the right to make a
13 statement, or a rebuttal, or a surrebuttal, but I
14 think I -- and we also talked about attachments to
15 those statements, and rebuttals, and surrebuttals.
16 And while I don't really see any of that happening
17 right now, I don't want that to become a proliferation
18 of attachments being made.

19 So, with the understanding that I
20 understand where you're coming from, and the concerns
21 that I had, which I think you acknowledged you don't
22 want to start create shadow reports and attaching a
23 whole lot of things to your rebuttals and
24 surrebuttals, I'm willing to push this off and put it
25 on the back burner, and not deal with it.

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1 If, however, we see that that
2 understanding is not something that is being
3 respected, then I reserve the right to, at some point
4 in the future, readdress it. But for now, I think the
5 conversation that we had, we've both made clear the
6 concerns that we have on both sides of this.

7 VICE CHAIR THERNSTROM: So, you're
8 proposing to --

9 CHAIRPERSON CASTRO: To keep it in abeyance
10 for now, leave things how they are.

11 VICE CHAIR THERNSTROM: Okay, great. So,
12 we don't have to vote on this today.

13 CHAIRPERSON CASTRO: No. No, we're not.

14 VICE CHAIR THERNSTROM: Good.

15 CHAIRPERSON CASTRO: But I just wanted to -
16 - Commissioner Gaziano?

17 COMMISSIONER GAZIANO: Yes, I thank you for
18 reaching out to us, listening to us. I just want to
19 repeat one point that I -- maybe to some of the other
20 Commissioners.

21 I don't like to write long statements. I
22 know Commissioner Yaki likes to see me turn them in at
23 2:58.

24 COMMISSIONER YAKI: Nine.

25 COMMISSIONER GAZIANO: Nine.

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1 (Laughter.)

2 COMMISSIONER GAZIANO: But part of it is
3 that some reports I feel compelled to write more.
4 And, by the way, if I write jointly with Pete, it only
5 is half as much. You should cut it in half. But it
6 also is a little bit of a safety -- by the way, I
7 think I would have to write less on many reports, the
8 more we can work together on witnesses and the way the
9 report looks.

10 It also a safety valve if -- that I don't
11 necessarily have to spend as much time in a business
12 meeting and fight on every issue if I can just write
13 about it in a dissent. So, I think it's wise that we
14 avoid trying to limit the page numbers, because it
15 will also make our business meetings and briefings
16 potentially go smoother, as well.

17 CHAIRPERSON CASTRO: Any other questions or
18 comments?

19 (No response.)

20 CHAIRPERSON CASTRO: If not, I will move on
21 to SAC Advisory Committee issues.

22 **V. STATE ADVISORY COMMITTEE ISSUES**

23 **RE-CHARTERING THE ARIZONA SAC**

24 CHAIRPERSON CASTRO: As you know, we've
25 taken Hawaii off for now, and we only have Arizona

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1 before us. So, let me move that the Commission re-
2 charter the Arizona State Advisory Committee. Under
3 this motion, the Commission appoints the following
4 individuals to that Committee based upon the
5 recommendations of our Staff Director; Clint Bolick,
6 Blanca Esparza, Jose Esparza, Lawrence Gallagher, Keli
7 Luther, Andrea Martinez, Jose Matus, James McKenzie,
8 Catherine Medina, Perry Jude Redicic, Frederick
9 Taylor, Lorena Van Assche, Thomas Patterson.

10 Pursuant to this motion, the Commission
11 appoints Andrea Martinez as Chair of this re-chartered
12 Arizona State Advisory Committee. These members will
13 serve as uncompensated government employees.

14 Under this motion, the Commission
15 authorizes the Staff Director to execute the
16 appropriate paperwork for the appointment. Is there a
17 second?

18 COMMISSIONER ACHTENBERG: Second.

19 CHAIRPERSON CASTRO: Okay. Any discussion?

20 (No response.)

21 CHAIRPERSON CASTRO: There's no discussion?

22 Okay, I call the question. Madam Vice Chair, how do
23 you vote?

24 VICE CHAIR THERNSTROM: Yes.

25 CHAIRPERSON CASTRO: Commissioner Kirsanow,

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1 how do you vote?

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIRPERSON CASTRO: Commissioner Heriot,
4 how do you vote?

5 COMMISSIONER HERIOT: Yes.

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

8 COMMISSIONER GAZIANO: Yes.

9 CHAIRPERSON CASTRO: Commissioner Yaki, how
10 do you vote?

11 COMMISSIONER YAKI: No.

12 CHAIRPERSON CASTRO: Commissioner Kladney,
13 how do you vote?

14 COMMISSIONER KLADNEY: Yes.

15 CHAIRPERSON CASTRO: Commissioner
16 Achtenberg, how do you vote?

17 COMMISSIONER ACHTENBERG: Yes.

18 CHAIRPERSON CASTRO: And I vote yes, so we
19 have one no, and the balance yeses, so it passes.

20 **VI. ADJOURN**

21 At this point, I move to adjourn the
22 meeting. Is there a second?

23 VICE CHAIR THERNSTROM: Second.

24 CHAIRPERSON CASTRO: All right. It is now
25 11:41 a.m. Thank you, everybody.

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(Whereupon, the proceedings went off the
record at 11:40 a.m.)