U.S. COMMISSION ON CIVIL RIGHTS

MEETING

FRIDAY, FEBRUARY 11, 2011

The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 2:05 p.m., Abigail Thernstrom, Vice Chair, presiding.

PRESENT:

ABIGAIL THERNSTROM, Vice Chair
ROBERTA ACHTENBERG, Commissioner
MARTIN R. CASTRO, Commissioner
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
DINA TITUS, Commissioner
CHRISTOPHER BYRNES, Delegated the Authority of the Staff Director
STAFF PRESENT:
CHRISTOPHER BYRNES
IVY DAVIS
DEMETRIA DEAS
LILLIAN DUNLAP
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEÉ
TINALOUISE MARTIN, Director, OM
PETER MINARIK, Acting Chief, RPCU
LENORE OSTROWSKY
JOHN RATCLIFFE, Chief, Budget and Finance
MICHELLE RAMEY-YORKMAN
EILEEN RUDERT
DAVID SNYDER
KIMBERLY TOLHURST
AUDREY WRIGHT
COMMISSIONER ASSISTANTS PRESENT:
NICHOLAS COLTEN
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SOMIN
C-O-N-T-E-N-T-S

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(2:05 p.m.)

VICE CHAIR THERNSTROM: Okay. The meeting will come to order. It is a Business Meeting of the U.S. Commission on Civil Rights at 2:04 p.m. on February 11, 2011. The meeting is taking place at the Commission's headquarters located at 624 9 Street, N.W., Washington, D.C. And the Commissioners who are present at this meeting are Vice Chair Abigail Thernstrom, that's me, Commissioner Gaziano, Commissioner Kirsanow, Commissioner Heriot, Commissioner Titus, Commissioner Achtenberg, and Commissioner Castro, last but not least. So, a quorum of Commissioners is present. Is the person delegated the authority of the Staff Director present?

ACTING STAFF DIRECTOR BYRNES: I am, indeed.

VICE CHAIR THERNSTROM: And you are delighted to be here. Right?

ACTING STAFF DIRECTOR BYRNES: As always.

VICE CHAIR THERNSTROM: As always.

ACTING STAFF DIRECTOR BYRNES: As always, yes.

VICE CHAIR THERNSTROM: Good answer. Is the court reporter on the line?
COURT REPORTER: The court reporter is present.

VICE CHAIR THERNSTROM: Court reporter is present. I don't know why it says on the line, but it does.

The meeting will come to order.

Before I begin, I'd like to ask the Commissioners' indulgence to properly welcome, as I promised before the briefing, our three new Commissioners, and I assume I hear no objections.

I. WELCOME NEW COMMISSIONERS

VICE CHAIR THERNSTROM: So, it is my very great pleasure to welcome Dina Titus, Roberta Achtenberg, and Marty Castro. Senator Harry Reid announced Dina's appointment on December 3, and the White House announced Roberta and Marty's appointments on January 26. This is the first time we've all been together.

Before I introduce them, I'd like to make a brief comment. Those who know me, know that I have wanted ever since I got here in 2001 for a Commission to be truly bipartisan. It was not in 2001. It's generally been -- it has long been imbalanced. It was designed to be bipartisan, an agency of eight Commissioners, four-four in terms of the partisan
split, but with the addition of our new Democratic colleagues, I am really delighted to say that this Commission can now engage in the work of examining civil rights issues from a truly bipartisan perspective. And I do have great hopes that we will be able as a group to work together, arrive at topics that interest all of us, and that won't necessarily split in typical ways along partisan lines. That is my hope.

Now, to welcome our three new Commissioners whom I'm very excited about. Commissioner Dina Titus, I look forward to having Dina as a fellow scholar, a lifelong educator, accomplished author who happens not to be a lawyer, so I've got a little bit of company there.

Commissioner Titus brings to this Commission a much needed commodity, her reputation for bipartisanship, both in the Nevada State Senate, as well as in the U.S. Congress. Commissioner Titus is an experienced politician, and educator, having represented Nevada for 20 years in the State Senate, and having taught Political Science at the University of Nevada-Las Vegas for more than 30 years.

COMMISSIONER TITUS: Sounds like a long time.
VICE CHAIR THERNSTROM: Listen, I'm older than you are, so any complaints about age, or comments on age, I trump everyone else in that regard.

Commissioner Roberta Achtenberg has a wealth of corporate and government experience. During the Clinton Administration she served as Assistant Secretary for Fair Housing and Equal Opportunity in the U.S. Department of Housing and Urban Development, that is HUD. And later, as Senior Advisor to the Secretary of HUD. She is currently a member and past Chair of the California State University Board of Trustees, and serves as Vice Chair of the Board of the Bank of San Francisco.

In addition to her other accolades, which are many, Ms. Achtenberg is the co-founder of the National Center for Lesbian Rights, a national non-profit serving the needs of the LGBT community. She holds a BA from the University of California at Berkeley, and a JD from the University of Utah.

Welcome, Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Thank you.

VICE CHAIR THERNSTROM: And Commissioner Marty Castro, do you prefer Martin or --

COMMISSIONER CASTRO: Marty in personal interactions, Martin R. when it's written, and Martino
when my mother is upset at me.

(Laughter.)

VICE CHAIR THERNSTROM: I noticed in the kind of official announcement --

COMMISSIONER CASTRO: Yes, they kind of mixed it up a little bit.

VICE CHAIR THERNSTROM: Okay. Commissioner Martin R. Castro is currently the President of Castro Synergies, LLC, which provides strategic consulting services to corporations, entrepreneurs, and non-profit organizations. He has held senior corporate positions, as well as having held partner positions at a number of prestigious law firms where his practice encompassed corporate law, commercial litigation, diversity consulting, and government affairs.

The Governor of Illinois appointed him to chair the Illinois Human Rights Commission, and he has been a member of the Board of the Mexican-American Legal Defense and Education Fund, and the Cook County State Attorneys Hispanic Advisory Council. Why am I stumbling on that? I don't know.

Mr. Castro holds a BA from DePaul University, and a JD from the University of Michigan Law School. So, a wonderful new group.

COMMISSIONER CASTRO: Thank you.
VICE CHAIR THERNSTROM: And I am so looking forward to working with all three of you.

COMMISSIONER CASTRO: May we share some comments with our colleagues, or is that not --

VICE CHAIR THERNSTROM: Absolutely.

COMMISSIONER CASTRO: All right. Well, I just want to say to each of you how much of an honor it is for me to be at this table with all of you.

When I think about the fact that my grandfather came here from Mexico in the 1920s, and my mom in the 1960s, and I was proudly born in this country. And to see that the President is allowing myself and others to serve, to me, is part of what the American Dream is all about. And this institution, to me, is one of those important government institutions that was created to ensure that that American Dream continues for everybody.

And I know that those of us around the table, we may have different political philosophies, different points of view, but I know that we share a lot. And I know one of the things that we all share is a love for this country, and a service to the American people. So, despite the differences that we have, I'm looking forward to finding those areas of commonality where we could work together to ensure
that the American Dream that I'm getting to take
advantage of and celebrate here today is available to
everyone.

I just want to say that Commissioner
Achtenberg and I had the wonderful pleasure yesterday
to spend some time with the staff, and it's an honor
to be part of the team that they include. So, just
thank you for having me here.

VICE CHAIR THERNSTROM: Well, thank you
for accepting these appointments. And you both have
got busy lives, Dina, too, and it's nice to serve your
country, as you said, in this way.

Next is approval of the agenda.

II. APPROVAL OF AGENDA

VICE CHAIR THERNSTROM: I'd like to
suggest that we take any motions to amend one by one,
vote up and down on each, and then vote to approve the
amended agenda. I don't know why I'm losing my voice
today, but pardon me.

If that procedure meets with the
Commissioners' approval, I will begin by offering an
amendment of my own. I'd like to make a motion to
allow me to read a statement into the record which
corrects a misstatement I previously made regarding
Eminent Domain and the Institute for Justice's
position on the matter.

As part of that motion, I'd like to insert this item into the agenda immediately after approval of the agenda. Can I have a second on that?

COMMISSIONER CASTRO: Second.

VICE CHAIR THERNSTROM: Is there any discussion? All in favor?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: I think that was unanimous. Was there anybody opposed? Any abstentions? The motion, obviously, passed.

Okay. Are there any other amendments to the agenda?

COMMISSIONER TITUS: Madam Chairman.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER TITUS: Thank you. I have several motions to rearrange the agenda. Do you want me to do them one at a time, they all kind of fit together, read them all, or just -- what's the -- maybe just read through all of them?

VICE CHAIR THERNSTROM: Yes, read through all of them.

COMMISSIONER TITUS: Well, thank you very much. I know we have a number of important issues, and people have to catch planes, as was mentioned, so
I think maybe by reordering it in this way we can get to the important things more expeditiously.

First, I guess, technically, I move that we strike Welcome New Commissioners from the agenda because we've already done that.

(Laughter.)

COMMISSIONER TITUS: We appreciate it very much, and we feel very welcome, so thank you.

My second motion would be that we swap the placement of the Program Planning section and the Management and Operations section of the agenda, so that Program Planning follows approval of the agenda, and we can get to that right away.

I would then move that within the Management and Operations section, the item titled, "Review of Transition, order of succession, continuity of operations," be shifted so that review of the 2010 meeting calendar and the Staff Director's report both take place before that.

I move that we add as the first item under Program Planning a discussion of the National Conference report. That would be very helpful to the new members. And I move that we reorder the preexisting components of the Program Planning section into the follow sequence after the National Conference
report discussion, as follows.

One, Gender and the Wage Gap; two, Eminent Domain; three, 2011 Statutory Report; four, Title IX-Sex Discrimination in Liberal Arts College Admissions; five, Disparate Impact in School Discipline Policies; and six, New Black Panther Party.

COMMISSIONER ACHTENBERG: Second.

COMMISSIONER GAZIANO: May I ask for some clarifications on that? First of all, when you say National Conference report, that's not a term that I am clear on. What do you mean? Do you mean like our Statutory Report for 2011? We had a National Conference in --

COMMISSIONER TITUS: That's where we're going. Yes. I'm not talking about the Statutory Report. I'm talking about a report on the conference that you all had before we joined the Commission.

COMMISSIONER GAZIANO: Okay.

COMMISSIONER TITUS: So we can get more information on it, and talk about the possibility of future conferences.

COMMISSIONER GAZIANO: Okay. My other question is, is the transition, order of succession type issues, I think are depending on what the Chair had in mind, and others had in mind for putting it on
the agenda, seems to me to take priority, so I'm wondering why you prefer to put all of Management and Operations after all of Program Planning, and you intend to have review transition, order of succession the very last. That was first earlier, and I'm wondering why you want it last?

COMMISSIONER TITUS: Well, it seems to me some of the Management and Operations things need to come first before we begin to lose members, especially with as many new members as there are, so we can get a sense of just how the Commission moves forward, how it operates, how the budget is, that sort of thing. It would be helpful information.

COMMISSIONER GAZIANO: Well, let me just ask, does any other -- before I vote, does any Commissioner have a motion that they intend to bring under the order of succession, continuity of operations. Was just that information item for everyone?

ACTING STAFF DIRECTOR BYRNES: There will be motions.

COMMISSIONER GAZIANO: There will be motions? Well, then I'd prefer to keep it the way it is. And I'd prefer to find out what those motions are, and what those -- because that might affect the
Program Planning, and the rest of -- it seems to me that that's more of a priority.

VICE CHAIR THERNSTROM: Further discussion? Yes, Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: I see the Program Planning as the distinct priority, at least it is of mine. This represents an agenda that you all developed, as you had every right and opportunity to do, but it purports to make commitments going forward that I want to talk about, and perhaps make some alterations. And, as such, my own view is sort of consistent with Commissioner Titus, which is that I would prefer that we address it at the front of the meeting, so I'm going to support Commissioner Titus' motion.

COMMISSIONER GAZIANO: It isn't my -- I'm not even sure what I think is more important. And I respect anyone's view on what's more important. I'm just making a suggestion as to what seems to me logical. And the agenda, by the way, was set by the Acting Chair without input, at least from any other Commissioner that I'm aware of. But I do think if there are going to be motions on the --

VICE CHAIR THERNSTROM: There was input. I'm sorry.
COMMISSIONER GAZIANO: On the order. As far as I know, the order of this was set by the Acting Chair, but that's not important either. If there are going to be motions on -- and maybe they're minor motions that I wouldn't care, and we could do them at the end, but it seems to me that that makes more sense. But I don't need to carry on. I don't know if anyone else has any view.

COMMISSIONER KIRSANOW: I don't have any strong views. If I do have a view, I do think that the order of succession, continuity of operations is something I'd like to discuss as soon as possible. I've got to leave here to catch a flight at three, and that's at least one thing I'd like to get out of the way.

VICE CHAIR THERNSTROM: Can that -- can you push back your plane and leave later?

COMMISSIONER KIRSANOW: I'd like to push back the plane, but you know, they got their own ideas.

(Laughter.)

COMMISSIONER GAZIANO: How about this as a possible compromise. Why don't we just handle that particular one first, and then we can do all the Program Planning in whatever order Commissioner Titus
or others prefer.

VICE CHAIR THERNSTROM: I would rather not do that. There was -- I think this makes more sense. Obviously, I think it makes more sense.

COMMISSIONER GAZIANO: But in deference to Commissioner Kirsanow --

VICE CHAIR THERNSTROM: Well, that's --

COMMISSIONER GAZIANO: We've done that plenty of times for other Commissioners who have to leave early.

VICE CHAIR THERNSTROM: Is there some chance you could leave later?

COMMISSIONER KIRSANOW: Well, I can get --

VICE CHAIR THERNSTROM: We can get to the other part quickly.

COMMISSIONER GAZIANO: We'll endeavor to do that.

VICE CHAIR THERNSTROM: Yes, let's try to do that. So, I think -- any more discussion? Otherwise, I'm going to call for a vote on this amended agenda.

COMMISSIONER HERIOT: Was it seconded?

VICE CHAIR THERNSTROM: Yes, it was seconded. All in favor?
(Chorus of ayes.)

COMMISSIONER GAZIANO: No.

VICE CHAIR THERNSTROM: Commissioner Gaziano is opposed.

COMMISSIONER KIRSANOW: What's the order again? We're going to do -- the proposal is to do Program Planning first?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER KIRSANOW: And then I think Commissioner Castro said something with respect to the review of transition, order of succession. What was that again?

COMMISSIONER GAZIANO: That's the very last item under Management and Operations, which it doesn't sound like we're going to get to before you have to leave.

COMMISSIONER KIRSANOW: Yes. Then I'd have to vote no.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER HERIOT: I guess I'll vote no, too, then.

VICE CHAIR THERNSTROM: Three nos, Kirsanow, Heriot, and Gaziano are nos. And Achtenberg, Castro, Titus and Thernstrom are yes.

COMMISSIONER GAZIANO: Okay. Would you
repeat then for us now that it's been done, what is
1 the order under Program Planning that you proposed?
2
3 COMMISSIONER TITUS: Can we ask the staff
to spell it out again, so we can all get it down
clearly? I'd like to read back through all these
4 motions. Okay.
5
That we swap the placement of Program
6 Planning and the Management and Operations section so
7 that Program Planning follows approval of the agenda.
8
I move that within the Management and Operations
9 section that item titled "Review of Transition, order
10 of succession, continuity of operations," be shifted
11 so that the review of the 2010 calendar and the Staff
12 Director's report both take place before that. I move
13 that we add as the first item under Program Planning a
discussion of the Conference report, as described
14 earlier. And I move that we reorder the Preexisting
15 components of the Program Planning section into the
16 following sequence after the Conference report
discussion, and that sequence would be Gender, Eminent
17 Domain, Statutory report, Title IX-Disparate Impact in
18 School Discipline, and New Black Panther Party.
19
COMMISSIONER KIRSANOW: One more time.
20
COMMISSIONER TITUS: We'll start with
21 agenda.
ACTING STAFF DIRECTOR BYRNES: Just the Program Planning.

VICE CHAIR THERNSTROM: Right.

COMMISSIONER TITUS: Gender, Eminent Domain, Statutory reports. I mean, it says right here "2011 Statutory report." Title IX-Sex Discrimination, Disparate Impact, and then New Black Panther.

VICE CHAIR THERNSTROM: Okay. So, that being the agenda, I believe that the first item is my statement --

COMMISSIONER GAZIANO: I don't know if we need a separate vote. I think we voted on the amendment. Now, should we vote on the agenda as amended?

VICE CHAIR THERNSTROM: Oh, yes, we should. I'm sorry. Haven't we already done that?

(Chorus of nos.)

VICE CHAIR THERNSTROM: Okay. A vote on the agenda as amended.

COMMISSIONER CASTRO: So moved.

COMMISSIONER ACHTENBERG: Second.

VICE CHAIR THERNSTROM: All in favor?

(Chorus of ayes.)

COMMISSIONER GAZIANO: No.

COMMISSIONER KIRSANOW: No.
COMMISSIONER HERIOT: Abstain.

VICE CHAIR THERNSTROM: Okay.

Commissioner Heriot abstains, Commissioner Kirsanow votes no, Commissioner Gaziano votes no, and otherwise all Commissioners vote aye. Thernstrom votes aye, Achtenberg, Castro, and Titus all vote aye, as well as Thernstrom. So, we got that set. Okay.

III. PROGRAM PLANNING: UPDATE AND DISCUSSION OF PROJECTS

The first item is, I want to assert - insert, not assert, insert into the record a statement that amends my remarks about the Eminent Domain Topic that I made at the Commission's December 3, 2010 meeting.

In my remarks, I referred to a conversation I had had with the President of the Institute for Justice, Chip Mellor, concerning Eminent Domain as a possible Commission briefing topic. The conversation had been very brief. Chip was in a very noisy Milwaukee airport. The result, I completely misunderstood what he said.

I thought he had expressed doubts about the current vitality of the topic, which I should have known was surely not his message. I have been on the Institute for Justice Board for many years. It is an
organization to which I am deeply committed. I knew perfectly well that Eminent Domain remains a burning issue for IJ and for homeowners, and small businesses across the nation.

Moreover, IJ had just issued a press release urging the Supreme Court to hear another Eminent Domain case, and it has been engaged in major litigation in California, and plans activity in multiple states in the near future.

This intimate knowledge of IJ's commitment to the topic, which, obviously, I share, and its ongoing litigation efforts was unmistakably completely at odds with the message I thought I heard from Chip in that hurried phone call. And, as I said, that should have been perfectly apparent to me at the time. I had no excuse. It was an appalling mistake.

Thank you very much for letting me insert that into the record.

COMMISSIONER GAZIANO: May I respond briefly, Madam Chair?

VICE CHAIR THERNSTROM: Yes. Sure.

COMMISSIONER GAZIANO: In a way, I hate to bring this up, but when you made that statement, I expressed some great skepticism that Chip Mellor would mean what you said, and you responded somewhat angrily
at me that you never misunderstand people's statements. I am glad that that's been cleared up. I, certainly, did not mean to imply at the time that you intentionally did so, but that's another example of where we have to kind of listen to each other, and try to make sure we don't jump to the wrong conclusion.

VICE CHAIR THERNSTROM: Thank you for reminding me that you were correct at the time, and I will certainly be delighted to keep that in mind.

PETER MINARIK: All graciously received.

VICE CHAIR THERNSTROM: I'm sorry. I missed that.

COMMISSIONER GAZIANO: Peter? He must be speaking to someone else.

VICE CHAIR THERNSTROM: Okay. Let's move on with the agenda. Program Planning.

The first item is the National Conference report.

COMMISSIONER ACHTENBERG: Madam Chair, I take it that there was a National Conference held last fall, and that the staff is now proceeding to enshrine the Conference report into a published document. Is that the case?

ACTING STAFF DIRECTOR BYRNES: I should
clarify. What we're preparing to post on the web are video portions of some of the panels, as well as the transcript of the proceedings.

COMMISSIONER ACHTENBERG: Madam Chair, I'd like to move that we suspend work on the publication of Conference materials in an effort to reduce costs, and to conserve funding. And I move that we stop work on that indefinitely, or at least to the Call of the Chair. And that would be my motion.

VICE CHAIR THERNSTROM: I've got a second on that?

COMMISSIONER TITUS: Second.

VICE CHAIR THERNSTROM: Let's have a discussion.

COMMISSIONER GAZIANO: What expense is there in putting the transcript on line?

ACTING STAFF DIRECTOR BYRNES: I would have to --

COMMISSIONER GAZIANO: Delegated the authority of the Staff Director.

ACTING STAFF DIRECTOR BYRNES: I would have to consult with our budget folks on that.

COMMISSIONER HERIOT: Is the transcript finished at this point?

ACTING STAFF DIRECTOR BYRNES: It is
COMMISSIONER HERIOT: So, the expense is like the 30 seconds of putting it up on the website?

ACTING STAFF DIRECTOR BYRNES: It may be more than that, but at a minimum it would be that. I don't think there would be much expense associated with posting the video links to the panels, because I think they're already on C-SPAN to some extent.

VICE CHAIR THERNSTROM: I believe they're only partially on C-SPAN. Was C-SPAN there only part of the day?

ACTING STAFF DIRECTOR BYRNES: I think it might be for several of the panels, perhaps, not all.

COMMISSIONER HERIOT: All but two.

ACTING STAFF DIRECTOR BYRNES: Was all but two.

COMMISSIONER GAZIANO: And was the plan to put -- I think it was more than two panels on C-SPAN, but I could be mistaken.

COMMISSIONER HERIOT: It was all of them.

COMMISSIONER GAZIANO: Oh, all of them. I guess three panels. So, were you planning on -- what were you planning on putting on -- was it exactly what C-SPAN --

ACTING STAFF DIRECTOR BYRNES: Just a line
COMMISSIONER GAZIANO: Oh, just a link to the C-SPAN.

ACTING STAFF DIRECTOR BYRNES: Yes.

COMMISSIONER GAZIANO: It doesn't sound like there's really very much expense involved. Is there some other concern with putting the transcript of the National Conference on our website?

COMMISSIONER ACHTENBERG: You're saying that there is no staff time involved in putting the remnants of the Conference materials together? Is there any publication being contemplated, or --

ACTING STAFF DIRECTOR BYRNES: Not at this time, simply the website.

COMMISSIONER ACHTENBERG: And there's no staff --

ACTING STAFF DIRECTOR BYRNES: There's always staff time associated with these, but I think it would be de minimis at this point. And we always have GPO involved to help post things.

COMMISSIONER ACHTENBERG: I was under the impression, you'll forgive me, that there was additional expense contemplated, and additional staff time contemplated. If you are assuring me that there is no additional expense contemplated, and that
there's de minimis staff time contemplated in publishing on the web the conference proceedings, then with that assurance I would withdraw my motion.

ACTING STAFF DIRECTOR BYRNES: I would confirm with our budget folks on that. It was my understanding that there wouldn't be that much additional expense associated with --

COMMISSIONER ACHTENBERG: Well, then before I withdraw, could you confirm that that's the case.

ACTING STAFF DIRECTOR BYRNES: Certainly.

COMMISSIONER ACHTENBERG: And upon your assurance, I would withdraw the motion.

COMMISSIONER CASTRO: The question is are we going to be hard copy publishing reports.

ACTING STAFF DIRECTOR BYRNES: I think it would just be a website publication.

COMMISSIONER CASTRO: Can we confirm that?

MR. RATCLIFFE: This is John Ratcliffe. The transcript has already been paid for, so it's already done, so there's no cost associated with that.

ACTING STAFF DIRECTOR BYRNES: Right. And just linking to the C-SPAN links wouldn't incur too much additional expense.

COMMISSIONER ACHTENBERG: What is the
expense involved in -- I mean, if we're talking about
de minimis, then I withdraw the motion.

COMMISSIONER KIRSANOW: The C-SPAN links
are already up, aren't they?

COMMISSIONER CASTRO: Can you tell us that
you're not going to hard copy publish this report? If
the Commission votes to decide that, then that's fine.

VICE CHAIR THERNSTROM: Do we need a vote
on that?

ACTING STAFF DIRECTOR BYRNES: I think
that would probably be appropriate at this point.

COMMISSIONER GAZIANO: But that wasn't
your plan.

ACTING STAFF DIRECTOR BYRNES: That was
not my plan.

COMMISSIONER GAZIANO: But if you want to
make that motion --

(Simultaneous speaking.)

COMMISSIONER CASTRO: We don't want the
expense of publication, hard copy publication.

COMMISSIONER ACHTENBERG: I'd like to
minimize all the expense going forward really until we
get an assessment of where we stand budget-wise. That
was the intention of making the motion, so if you say
that we're not going to publish --
VICE CHAIR THERNSTROM: Do you want to make a motion that we don't publish?

COMMISSIONER ACHTENBERG: I'm willing to take the Staff Director's --

COMMISSIONER HERIOT: Just point of order.

You've withdrawn the first motion, but the seconder has to withdraw that, as well, because it's still -- once it's seconded, it's not up to the mover to do it, so just --

VICE CHAIR THERNSTROM: I believe that Commissioner Castro did --

COMMISSIONER CASTRO: No, no, it was Commissioner Titus that seconded.

COMMISSIONER TITUS: You're going to withdraw the motion?

COMMISSIONER ACHTENBERG: This was discussion, and I would be willing to with -- I haven't done anything, upon the Staff Director's assurance that expense will not be incurred beyond the de minimis expense to put it on the web, and a de minimis amount of staff time. And I'd be interested to know how much staff time you think this contemplates. But assuming for a moment that he makes those assurances, I would be willing to withdraw my motion, provided the seconder is willing to withdraw
her second.

ACTING STAFF DIRECTOR BYRNES: So, we not
publish the hard copy of the proceedings.

COMMISSIONER ACHTENBERG: And could you
tell me how much staff time you imagine is involved in
--

ACTING STAFF DIRECTOR BYRNES: You know,
there's already been, I think, significant progress
made on it. I don't think more than a couple of more
days; although, I'd have to confirm with our IT
people on that. I don't think they're in the room at
the moment.

COMMISSIONER GAZIANO: It's a matter of
uploading at this point.

ACTING STAFF DIRECTOR BYRNES: I think so,
yes.

COMMISSIONER ACHTENBERG: You understand
the spirit of the recommendation, so given that you
understand the spirit, I will withdraw my motion, if
the seconder --

COMMISSIONER TITUS: I'll withdraw the
second.

COMMISSIONER ACHTENBERG: Thank you.

VICE CHAIR THERNSTROM: Okay. Gender and
the Wage Gap seems to be the next item under Program
Planning.

COMMISSIONER CASTRO: I don't have any motion on that. I don't know if the other Commissioners do, but simply with regard to this particular project, I know that there's work that's been going on that's been postponed until we had a full set of Commissioners. And I think we're just going to want to take a look at this, as we look at what we want to plan out for the year. So, I don't think we need a motion on that.

VICE CHAIR THERNSTROM: Okay. Then third is the --

COMMISSIONER CASTRO: Eminent Domain is next, isn't it?

VICE CHAIR THERNSTROM: Eminent Domain. Okay. Eminent Domain is next.

COMMISSIONER CASTRO: I do have a motion on Eminent Domain. I know that -- my understanding is that we're going to have a briefing on that, or is it a hearing on the --

VICE CHAIR THERNSTROM: Briefing on March 11.

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COMMISSIONER CASTRO: On March 11, so since we're new to this, and we're still trying to figure out what our resources are, as well as what we...
want to do with the balance of the year, obviously, and more thoughtful consultation with everyone, I wanted to move that we indefinitely postpone the March briefing on Eminent Domain, and that we postpone further work being done by the staff until we, as new Commissioners, can get a little more information to determine how to proceed.

COMMISSIONER ACHTENBERG: Second.

VICE CHAIR THERNSTROM: We've got some discussion on that.

COMMISSIONER GAZIANO: Yes, I'd like to -- the Commission's reputation was, I think, unnecessarily harmed when a briefing on the wage gap was improperly postponed when witnesses turned in testimony and made work and commitments. And I'm concerned about that happening again, if we -- I don't know -- Mr. Delegated the Authority of the Staff Director, whether you're the proper person to address this. I suspect you are. Where are you with the Eminent Domain briefing, and contacting the witnesses so they lock this into their schedule? Are they preparing testimony?

ACTING STAFF DIRECTOR BYRNES: I will say that staff has prepared the briefing books. This briefing had been contemplated, I think, for some
time, so I don't think there's that much additional staff --

COMMISSIONER GAZIANO: About October or November. We've been working on this --

ACTING STAFF DIRECTOR BYRNES: Right.

COMMISSIONER GAZIANO: -- from what, about October or November?

ACTING STAFF DIRECTOR BYRNES: Something like that.

COMMISSIONER GAZIANO: Okay.

ACTING STAFF DIRECTOR BYRNES: We have reached out to two witnesses who have confirmed their sort of availability and willingness to testify. We have reached out to Commissioners I think in two rounds for potential witnesses to get some suggestions, and we have been reaching out to those, as well. So, at this point, we've got two who are likely to appear.

COMMISSIONER HERIOT: Who are they?

ACTING STAFF DIRECTOR BYRNES: Ilya Somin and David Beito.

COMMISSIONER GAZIANO: I understand the concern about new Commissioners wanting input. One of the reasons -- on briefings. One of the reasons that briefings were -- I think the briefing forum was
adopted before I came on. And, by the way, before you
three, I was the junior-most so now I feel better, I'm
somewhere in the middle.

(Laughter.)

COMMISSIONER GAZIANO: But I think it was
because of a cost-savings method. Another factor that
those of us who are now old on this Commission face,
when I came on three years ago this month, almost
exactly three years ago this day, I was -- things were
scheduled for much -- for years in advance almost.
And I was told that the next two statutory reports
were set in stone, and briefings were set, and that I
would have my turn. And, for the most part, I
accepted that. One of the things that I helped
pioneer, if I was one of a couple of movers, is not to
set things more than a quarter in advance, because I
thought that the Commission ought to have the
flexibility to act on more timely topics. The push-
back on that was no, we really need to set these
things. It takes time. We need to set these things a
year in advance, but I think we finally succeeded,
despite the disadvantage of a sort of quarterly
approach of -- and despite the disadvantage of not
being able to plan 18 months in advance for most of
our projects.
The quarterly approach has worked pretty well, but I do have a concern with once we invest a fair amount of staff time, and we contact witnesses, and it's the very next month that we postpone that particular briefing. So, based on that kind of practice, I would want to go forward with this one, unless you had some other -- if you had a proposal for a really important timely briefing on the March 11 that our staff could handle, that might change my mind. But I'd rather go forward with this one absent something like that.

COMMISSIONER CASTRO: Can I respond?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER CASTRO: What my motion contemplates is a postponement. I'm not suggesting at this point in time a suspension, so I'm not necessarily saying let's scrap the work that staff has done. It sounds to me like two folks have been locked in, one of whom is a member of a SAC, who would probably understand this, so the reputational injury probably would not be as great as another situation which you referenced, which, of course, I'm not familiar with. So, I don't think that there'll be that issue.

And I understand tradition, but traditions
change. And we're just -- we're relatively new. We want to just take a look at this, and have a little more time to determine, maybe this is a great one. I don't know. I've seen some reference to it, some of this work in the SAC applications, and I'm intrigued by it, but I don't know enough at this point. I know my new colleagues -- I'm not suggesting at this point in time with this motion that we suspend and scrap that work. I say let's postpone this, March 11. I think we could talk about more fully what other things we might want to suggest going forward in terms of briefings. So, this is just to press the pause button.

COMMISSIONER KIRSANOW: If I understand Commissioner Castro's primary impetus behind this, it was budgetary. And if I understand what the Staff Director is saying is, most of the staff work has been done already?

ACTING STAFF DIRECTOR BYRNES: On the briefing books it's been completed, but there may be additional travel costs anticipated with the witnesses, depending on where they're coming from.

COMMISSIONER KIRSANOW: Okay.

ACTING STAFF DIRECTOR BYRNES: And whether they select to seek reimbursement.
COMMISSIONER GAZIANO: And you've got to pay the staff if they don't work on this anyway. Right?

ACTING STAFF DIRECTOR BYRNES: Right.

COMMISSIONER HERIOT: And one of our witnesses is a local. Correct?

ACTING STAFF DIRECTOR BYRNES: That's correct.

COMMISSIONER CASTRO: And, again, sorry, let me just respond. We met with several staff yesterday, and we understand that based on what the budget looks like now for the balance of the -- for this fiscal year, we have five of these sorts of things that we could do. We did one today. If we do one on March 11, that leaves three. So, again, I'm saying this is a cost issue, because there would be, again, I don't know how much additional cost, how many more witnesses, but want to be able to better assess that as we determine what else we're going to want to do with the other three or four, depending on how we handle this, hearings, or briefings that we're allowed to do.

COMMISSIONER KIRSANOW: I understand that. And when I came to the Commission, I had the same experience as Commissioner Gaziano. I guess my view
is, if the budgetary impact is de minimis, or not significant, and it's something that's going to occur within the next month, we could also on March 11 have a more full discussion as to the remaining topics, and still get this particular briefing done. So, I'd be inclined, with all due respect and understanding what you want to accomplish here, I'd be inclined to move forward at least with respect to the March 11 briefing. And then on March 11, we could revisit some of the issues that you discussed, that you just mentioned with respect to the balance of the briefings.

COMMISSIONER CASTRO: There's printing costs and other things that we haven't even talked about that would be --

VICE CHAIR THERNSTROM: Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Actually, I appreciate the substance and the civility of the discourse. My own view is that I'd like to see this postponed, in part because I'd like to see us devote the March 11 meeting to a collegial and substantive discussion of what will be the course of the Commission over the next year. And I'd like to be a full fledged member of the group that discusses that.
So, the budgetary concern is one concern. The precious time of this Commission is another. And we can disagree about what would be the most important thing to do with our time together on March 11, but my own view is, it would be to entertain a discussion seriously about all of the issues that we might consider going forward, and deal -- and if Eminent Domain remains one of the issues that the Commission seriously wants to consider going forward, then it gets back on the agenda. And if it doesn't, it doesn't. So, I'd prefer to see the March 11 meeting devoted to a discussion of ranking our priorities, and putting together an agenda for the rest of the year.

COMMISSIONER HERIOT: I just wanted to give a little background on how we selected this topic, how the previous Commission selected the topic.

COMMISSIONER ACHTENBERG: Okay.

COMMISSIONER HERIOT: We knew that there was a chance that there would be a hiatus. And it turns out there isn't much of a hiatus, we only had the January out. But, particularly with this briefing, we were looking for a topic that we thought you guys would like. We were trying to come up with something that we thought both conservatives and liberals would think of as a good topic. And this is
a topic that President Clinton has spoken about. It's one that Maxine Waters is behind, Howard Dean has spoken on this topic. They're all excited about the topic, and we were hoping you would be, too. And maybe you will be, but here's a possible compromise here.

If we're concerned about budget, and I can understand that. I mean, you don't want to do a bunch of briefings that you think aren't going to be interesting to you, and aren't going to tackle the issues that you think are tops. But a briefing actually doesn't commit a staff. The briefing is just the briefing. It's the report that ends up costing time on the part of the staff. And I tend to think it's wasted time, generally, that we have staff members simply summarize what was said at the briefing. But if we held the briefing, we could simply make a decision later about whether to assign a staff member to that, and instead, just go with the transcript, because that's really not going to cost us too much.

COMMISSIONER GAZIANO: We've done that on other --

COMMISSIONER HERIOT: We've done a number of topics where we didn't have quite enough interest
to devote staff time to it. But it's not like we're going to come up with another issue before March, and put together a briefing on that. You know, holding the briefing is really not that expensive. Devoting staff time to summarizing everything that was said, that takes up a lot of time. And it also takes up a lot of Commission time to then read through it, make sure it says the right thing, you know, go through several iterations of it.

I would suggest we just hold the briefing in March, and then make a decision later about whether or not to turn it into a report.

VICE CHAIR THERNSTROM: I have something to say, but I will let Commissioner Gaziano go first.

COMMISSIONER GAZIANO: Thank you. Partly, I was just following up on what Commissioner Heriot said, that we've decided (a) not to publish some at all, to only post them on the website. These are all options.

With regard to your other point about wanting to spend the time on the 11 talking about the future Program Planning and other priorities, I certainly understand that, as well. And most of our briefings don't have quite as many witnesses, don't take quite as much time, so we could still devote a
good bit of March 11 to that.

But I also wonder whether March 11, you would even, necessarily, be ready. I've been curious about the President's designation of Staff Director. I'm sure the Delegated-the-Authority-of-the-Staff-Director is anxious to return to his job, and have another Staff Director. I am curious about the President's designation of Chair, so I think that those -- we might not want to discuss much until we have an eighth Commissioner, Staff Director, Chair, and so for those reasons, I'm not sure that the reserving 100 percent of the time on the 11 for those issues is the best.

And, finally, it's been our practice and it's something that I, again, argued, I didn't like exactly the way it was done, and we modified it. So, I'd be very interested in all of your input. But what happens is, the real Staff Director collects our suggestions via email, then sends it out to vote, then we rank order. I mean, that's been our process, so I'm not sure that we will have -- you will have the chance to really study, think about all your -- by the 11. But what we could do is something similar to what Commissioner Heriot suggested in the morning, and then we can begin the very important process that you
suggested we do in setting forth the future programs
and priorities.

COMMISSIONER CASTRO: Commissioner Gaziano, I had not even thought about the fact that we
have to get our Staff Director and Chair on board, so
I think that's an even more eloquent argument in
support of motion, to wait until they get on board.
So, thank you for reminding me.

VICE CHAIR THERNSTROM: I can let you go
first. I have something I would like to say on the
topic.

COMMISSIONER HERIOT: Go ahead.

VICE CHAIR THERNSTROM: Okay. Look, first
place I want to say something to Commissioner Gaziano.
I would really appreciate it if you would cease
referring to my postponement of the Gender Wage Gap
briefing as improper.

But to go to the Eminent Domain question,
look, I really like the topic. I've been devoting
years to thinking about this topic as a member of the
IJ Board. I am -- it's one, as I said, that deeply
interests me, and I, indeed, have suggested to the
acting, I'm going to call you Acting Staff Director,
it's much easier. I have given him two names, one
from the NAACP, and the other an IJ name. So, I love
this topic. I don't want more than a postponement on this topic.

But two things; one, I really think we -- if we have a briefing, it's in the morning, and then we get, as we are getting today, to a business meeting. We've got a lot -- we need to get together with the new Commissioners a year, and perhaps beyond in order. I think we owe these Commissioners a chance to go over the landscape, to discuss with us. I would vote against cancelling an Eminent Domain briefing. I want it very much. I had a wonderful talk with Special Assistant Alison's husband about this issue who is fantastic on it, and his writing is fantastic on it, and I look forward to his testimony.

I just want a postponement on it. And in terms of well, we could just have a transcript that we post on the website, and we don't have to do anything more. We don't have to have a hard cover report. We don't have to have findings and recommendations, and so forth. That really -- underestimates the importance, the complexity, the nuance of this issue, and I would not want that to happen to this topic. You can do that with some topics, not with Eminent Domain. It is a nationally important topic. This Commission can contribute something to the national
discussion, which is ongoing. And there really is no
cost, it seems to me, to letting the March 11
meeting be a business meeting in which we get a lot of
business out of the way, and if the Commission votes
on it, I'd be happy to have the Eminent Domain the
very next --

COMMISSIONER GAZIANO: Let me offer a
substitute -- go ahead. I'm sorry.

COMMISSIONER KIRSANOW: I'm sorry. Go
ahead.

VICE CHAIR THERNSTROM: I'm just saying
look, I'm just totally opposed to killing this topic.
I will vote against killing this topic without any
doubt.

COMMISSIONER KIRSANOW: A couple of
things, Madam Chair. First is, as I think
Commissioner Gaziano and Commissioner Heriot noted,
today was an anomaly in terms of number of witnesses
we typically have. If I hear the staff worker, at
best we'll have four witnesses, so that's a half hour
testimony.

VICE CHAIR THERNSTROM: We don't know that
yet.

COMMISSIONER KIRSANOW: Well, maybe two --
maybe only two witnesses, but I'll ask the Staff
Director, how many do you anticipate having?

ACTING STAFF DIRECTOR BYRNES: If four would meet with approval by the Commission, that's fine, yes.

COMMISSIONER KIRSANOW: So, let's say we have four witnesses. We have a half hour of testimony --

VICE CHAIR THERNSTROM: Hold on one second. I need some help here. I've done something terrible to my -- if somebody wants to come and find the rest of it --

COMMISSIONER KIRSANOW: I guess my point is we can walk and chew gum at the same time. We have a half hour of testimony, a half hour of questions. We can even begin the hearing, as we have in the past, at 9:00, and we're done at 10:00. If we're done at 10:00, that provides us with, and if we go until 3:00, we've got five hours in which to conduct substantive business. That's a considerable amount.

Second, to your point with respect to you'd be very happy to vote in favor of -- you wouldn't vote to kill the amendment, or this particular hearing. I'm not sure how the new Commissioners will vote on this. I'm not sure if we'll have an additional Commissioner appointed by the
time we're here, but if the motion as currently postured maintains, and we then have to move to conduct the hearing, if there's a four-four split, there will be no hearing, regardless of how enthusiastic you may be about it.

VICE CHAIR THERNSTROM: I'd like to assume that there will be some of the new Commissioners, or a reappointed previous Commissioner, who will agree that Eminent Domain is a very important topic that crosses partisan lines. After all, the NAACP has been very interested in it, as well. And my only plea with you is to give this topic the time and consideration that it is due. And I think we lose nothing by, at worst, postponing it --

COMMISSIONER GAZIANO: Well, let me offer a substitute --

COMMISSIONER HERIOT: Hey, I had my hand up a long time ago.

COMMISSIONER GAZIANO: I'm sorry, I thought that --

COMMISSIONER TITUS: I call the question.

COMMISSIONER HERIOT: No, I've got an argument.

COMMISSIONER TITUS: Where is our Parliamentarian? Can you call the question? Doesn't
that take precedence over other --

VICE CHAIR THERNSTROM: I can call the
question, but out of courtesy, I am going to allow
just Commissioner Heriot, and nobody else.

COMMISSIONER HERIOT: I think we might
need to think a little harder about how long it takes
to set one of these things up. We've got a long
procedure that we have to go through with concept
papers and such before we get to the point where a
topic has been adopted. So, if we're going to be
thinking about March as being the time to discuss
topics, I actually think it would be good to
streamline our procedure, but it's going to require
months to select a topic. That's just the way we've
got it in our rules.

We have to do concept papers. The concept
papers have to be circulated. It takes lots of time,
so if you're thinking that like something is going to
be setup for April, it's not going to happen. It
takes a very long time. And Vice Chair Thernstrom is
one of those who tends to be, in the past, at least, a
stickler for these things. Now, she has changed her
mind on some things, like she's changed her mind on
Eminent Domain.

VICE CHAIR THERNSTROM: No, I have not
changed my mind on Eminent Domain. I simply --

COMMISSIONER HERIOT: You're on the record now.

VICE CHAIR THERNSTROM: I simply -- you know, I'm not going to keep discussing this.

COMMISSIONER GAZIANO: May I offer my substitute motion?

VICE CHAIR THERNSTROM: I made a very clear statement. It is not a -- and, indeed, if you go over the transcript from last time, I believe I said that this was a topic that I was deeply committed to. But, in any case, it doesn't matter. It's a stupid argument at this point.

COMMISSIONER GAZIANO: May I make my substitute amendment?

COMMISSIONER TITUS: Call the question.

VICE CHAIR THERNSTROM: I'm calling the question.

COMMISSIONER GAZIANO: Well, I think a substitute amendment takes priority. I may be wrong, but I believe --

COMMISSIONER TITUS: Where is the -- do we not have Robert's Rules of Order here? Do we not have a Parliamentarian who can --

COMMISSIONER GAZIANO: No, not -- it's a
vacant position. I think a substitute motion takes precedence. I might be wrong, but I think it does.


(Laughter.)

COMMISSIONER TITUS: Okay.

VICE CHAIR THERNSTROM: Commissioner Gaziano, I'd like to call the question.

COMMISSIONER GAZIANO: I think this is consistent with your position. I move that we postpone the March 11 Eminent Domain, but that the Commission commit to having that sometime in the next six months, such that it would take a majority of the Commission to knock that off of our schedule.

COMMISSIONER CASTRO: I'd like a vote on my motion, Madam Chair.

COMMISSIONER GAZIANO: Is there something in mind?

VICE CHAIR THERNSTROM: There is a motion on the floor.

COMMISSIONER GAZIANO: Substitute motion takes priority.

COMMISSIONER HERIOT: Well, a motion to substitute, not the substitute motion.
COMMISSIONER TITUS: So, we're going to vote on the motion to substitute now?

COMMISSIONER ACHTENBERG: I guess, if it takes priority. I mean, I'll accept your assertion to that.

COMMISSIONER GAZIANO: I'm not 100 percent positive, but I believe --

COMMISSIONER ACHTENBERG: I understand, but that's good enough for government work, as they say.

VICE CHAIR THERNSTROM: Your substitute motion is within the next six months, we have --

COMMISSIONER GAZIANO: That the Commission is committed to having this briefing subject to the time that the Commission sets, but that it takes a vote of the majority to cancel the briefing.

COMMISSIONER HERIOT: Yes, so the Commission could still cancel the briefing. We just have to vote to do it.

VICE CHAIR THERNSTROM: I'm waiting for some evidently background discussion.

COMMISSIONER HERIOT: It's quicker to vote on the motion to substitute than it is to go and check the book.

COMMISSIONER TITUS: That doesn't make it
right, though. We need the book for next meeting.
I'd like to request that, since we're taking things
out of order. But, go ahead.

VICE CHAIR THERNSTROM: There's a
substitute motion on the table. I don't know if it's
been seconded.

COMMISSIONER ACHTENBERG: I second.

COMMISSIONER CASTRO: So, could you repeat
the motion again?

COMMISSIONER GAZIANO: Barring some other
majority vote of the Commission, it commits the
Commission to having this briefing in the next six
months at a time that is determined by the Commission,
but would require a majority vote to actually cancel
the briefing.

COMMISSIONER HERIOT: What happens if they
don't take -- no action is taken?

COMMISSIONER GAZIANO: Then it has to be
on the sixth month --

(Simultaneous speaking.)

COMMISSIONER GAZIANO: It would have to be
on the sixth month.

COMMISSIONER ACHTENBERG: See what happens
when you don't have a copy of Robert's Rules of Order.

COMMISSIONER GAZIANO: That's my amended -
COMMISSIONER HERIOT: That's just a drafting issue. I don't think that Robert's Rules will help us there. So, the Staff Director will be --

(Simultaneous speaking.)

COMMISSIONER GAZIANO: I trust my fellow Commissioners in good faith to go forward with that vote, if that's the vote of the Commission.

COMMISSIONER CASTRO: So, you're saying this would -- sometime within the next six months based on the date that we would choose, the majority. And if we don't, then it would be on the anniversary of the sixth month.

COMMISSIONER ACHTENBERG: Unless a majority of the Commission --

COMMISSIONER CASTRO: Unless a majority votes not to move forward. Okay. Fair enough.

VICE CHAIR THERNSTROM: All right. I'm calling --

COMMISSIONER TITUS: Vote on the motion --

VICE CHAIR THERNSTROM: Voting on the substitute amendment. All in favor?

(Chorus of ayes.)
COMMISSIONER HERIOT: That's just a motion to substitute. Now we have to vote on the motion.

VICE CHAIR THERNSTROM: Yes, I understand that.

COMMISSIONER CASTRO: Okay. Which is identical to that. Right?

COMMISSIONER HERIOT: Yes.

COMMISSIONER CASTRO: So then I'll second your motion.

COMMISSIONER HERIOT: All right.

COMMISSIONER CASTRO: Okay?

VICE CHAIR THERNSTROM: All right. All in favor of the motion.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: I think it's unanimous. Okay. Commissioner Gaziano, you have a unanimous vote in favor --

COMMISSIONER GAZIANO: Yes, thank you.

COMMISSIONER HERIOT: Nice work.

VICE CHAIR THERNSTROM: -- of your substitute motion.

COMMISSIONER TITUS: Excuse me, Madam Chairman. As we move forward, at some point I'd like for us to have additional input into the witnesses that are --
ACTING STAFF DIRECTOR BYRNES: Oh, certainly. And I'd be happy to recirculate a list of the witnesses --

VICE CHAIR THERNSTROM: Absolutely. And I would like a show of hands of people on this Commission who have never made a mistake, because evidently I'm the only one to have ever made a mistake, as I did with the --

(Laughter.)

COMMISSIONER ACHTENBERG: But the Statute of Limitations has already run, so it's okay then.

VICE CHAIR THERNSTROM: Well, I've just been handed Robert's Rules for Dummies.

COMMISSIONER ACHTENBERG: No reference intended, Madam Chair.

VICE CHAIR THERNSTROM: On this subject, I'm happy to be a dummy. And I hope I will not be in this chair, but if I am, I --

COMMISSIONER CASTRO: We should all get a copy of that.

COMMISSIONER ACHTENBERG: Are we moving on now?

VICE CHAIR THERNSTROM: We're moving on.

COMMISSIONER ACHTENBERG: Thank you.

VICE CHAIR THERNSTROM: Okay.
COMMISSIONER GAZIANO: In deference to Commissioner Kirsanow, we've had our -- he can maybe stay five minutes, of the Program Planning, he would like to move to New Black Panther. That's correct?

COMMISSIONER KIRSANOW: Yes, if possible.

COMMISSIONER GAZIANO: Is there any objection? By unanimous consent, can we move to New Black Panther?

COMMISSIONER CASTRO: Yes.

COMMISSIONER GAZIANO: Okay.

COMMISSIONER CASTRO: So, on New Black Panther, I move that all work toward the physical publication of the New Black Panther report be suspended, so as to allow time for inclusion of a rebuttal by Michael Yaki. And that upon his reappointment, Michael Yaki be permitted 30 days to prepare a rebuttal to the other Commissioner statements.

COMMISSIONER TITUS: Second.

VICE CHAIR THERNSTROM: Discussion? Yes. I think Commissioner Gaziano was first.

COMMISSIONER GAZIANO: I don't know --

COMMISSIONER HERIOT: I just wanted to point out that we have a problem here, and that is unlike the other Commissioners, Commissioner Yaki now
has the replies of the other members, so that gives
him an advantage that he wouldn't have had, had he
been on the Commission. And I'm not certain how to
deal with that, but there it is.

COMMISSIONER GAZIANO: The irony of your
motion, Commissioner Castro, is that I tried to move
to allow Commissioners whose terms would expire to
file, and that was roundly defeated. And I tried
again to allow them to sign on to other -- and that
was defeated.

VICE CHAIR THERNSTROM: I don't think it
was roundly defeated. Commissioners -- the Chair and
Commissioner Ashley simply said they did not want the
opportunity --

COMMISSIONER GAZIANO: They thought that
it could not be granted. I disagreed with that. And
then I asked Commissioners Melendez and Yaki whether
that -- and they declined. So, given that, I don't
think that it's unreasonable to allow him. But as the
motion stands, I might want an opportunity to respond
to his rebuttal. The Commission by the majority can
obviously change our rule. And your motion to suspend
work on it is understandable. But I wonder if we
could just leave off the part about how he's the only
one who would then be allowed to file something else,
or we could amend it further, a friendly amendment, perhaps, to allow for the possibility of going back and forth with other statements.

COMMISSIONER CASTRO: I think -- obviously, I wasn't here in December, so it sounds like maybe you and I probably would have voted on the same side again there on this issue. But the reason for, I think, treating Mr. Yaki differently is, my understanding is that since his commission expired, any effort by him to do this would be considered volunteer work, hoping and expecting he'll be back among us. If he isn't, then it's not an issue, so I think he sits a little differently than other folks. And at some point, I would imagine -- again, we're new to this, but at some point, I guess you could always just keep going back and forth, and back and forth on these reports with replies, and surreplies, and rebuttals, and surrebuttals. And at some point --

COMMISSIONER ACHTENBERG: And I believe his rebuttal is, by definition --

COMMISSIONER CASTRO: Allowed.

COMMISSIONER ACHTENBERG: -- limited to --

COMMISSIONER CASTRO: To the statements.

COMMISSIONER ACHTENBERG: To the
statements in the affirmative.

COMMISSIONER CASTRO: Yes. So, it's going to be very limited, as well.

COMMISSIONER GAZIANO: Except that we have a particular simultaneous process to do that. Also, I wonder if we're going to open it up for a Commissioner who wasn't on the Commission during the time these statements were due, whether we ought not to open them up to our former Chair, and Commissioner Taylor, and Commissioner Melendez, if they want to. They were under the impression, for example, that they could not, but if we make some special exception for them, I was of the view that witnesses can prepare statements, so I didn't see why they couldn't. But I'd rather not just make it limited to Commissioner Yaki getting, what's effectively a surrebuttal that no other Commissioner who participated -- no other Commissioner has.

VICE CHAIR THERNSTROM: I'm sorry. Go ahead.

COMMISSIONER CASTRO: No, I was just going to say, again, I think my statement earlier, that Michael Yaki sort of stands alone in that neither Commissioner -- former Chair Reynolds, or former Commissioner Melendez are prospectively going to be
reappointed. Now, I understand that Mr. Yaki is in the process of reappointment. Whether that occurs or not, obviously, is beyond any of us knowing for sure. And if it doesn't happen, well then it's a moot issue.

COMMISSIONER GAZIANO: But I'm more concerned about the surrebuttal. It's not really -- would not be a rebuttal. We would be making an exception for Commissioner Yaki, and I'm not unsympathetic to that. But if we're going to make an exception, a special rule for him, then would you allow those of us who filed rebuttals to file -- to share -- to see Commissioner Yaki's statement, and adjust our own?

VICE CHAIR THERNSTROM: Commissioner Gaziano, there is something distinct -- it seems to me there's a special problem here, that there is not a rebuttal from either of our Democratic Commissioners. We, obviously, only had two, and that in the spirit of a bipartisan Commission, it is important to have a rebuttal from a Democrat, as well as the rebuttals from the Republicans. So, it seems to me that --

COMMISSIONER GAZIANO: That argues --

VICE CHAIR THERNSTROM: -- is a very strong and important argument for letting Commissioner Yaki--
COMMISSIONER GAZIANO: And I'm not arguing with that. I'm not arguing with that at all. I am willing to afford Commissioner Yaki an opportunity. I assume he will be reappointed. I expected it before certainly today. I'm just concerned about the portion of the -- can we amend that motion with an opportunity other Commissioners to review Commissioner Yaki's statement, and amend their own? Would you allow me to amend my own statement after I see Commissioner Yaki's?

COMMISSIONER CASTRO: My understanding is that each of you had an opportunity to submit a rebuttal. He did not. His commission expired. His rebuttal, from what I understand, would be based on the statements, not a rebuttal to your rebuttal, which I don't even think mentions him. So, again, I think the situation is --

COMMISSIONER GAZIANO: It does.

COMMISSIONER CASTRO: Well, the intention here is to allow him to submit a rebuttal, as each of you have. So, I don't -- I think it would be a friendly amendment to add additional rebuttals to this motion.

COMMISSIONER GAZIANO: But it wouldn't be a rebuttal, it would be a surrebuttal.
COMMISSIONER CASTRO: Surrebuttal.

COMMISSIONER HERIOT: I just want to clarify what you're saying. I have complete sympathy for the notion that somehow Yaki's got to be able to have a rebuttal, just like everyone else had. I'm sympathetic to that. But I'm not sympathetic to the notion that he gets an extra opportunity, because he's got more documentation than we had. You know, by going last, he's got more to rebut.

Now, what I heard you say was that he would only be rebutting the initial statements. If we're very clear on that --

COMMISSIONER GAZIANO: Correct.

COMMISSIONER HERIOT: -- that's not a problem.

VICE CHAIR THERNSTROM: That's all he would be allowed to do.

COMMISSIONER CASTRO: That's all.

COMMISSIONER GAZIANO: I think that's rather hard to police.

VICE CHAIR THERNSTROM: No, it isn't. It actually isn't hard to police. If we tell him he is only allowed to reply as everybody else did on the first round.

COMMISSIONER HERIOT: Well, then if I have
your assurances that if he, in fact, goes farther than
that, that I would be allowed to respond to anything
that concerns my position --

VICE CHAIR THERNSTROM: But a very clear
message -- that's fine. But a very clear message will
be delivered to Commissioner Yaki --

COMMISSIONER HERIOT: That's my next
question.

VICE CHAIR THERNSTROM: -- that his
rebuttal will be confined by the same constraints as
yours.

COMMISSIONER HERIOT: And that if he
doesn't do that, we will be allowed the ability to
respond.

VICE CHAIR THERNSTROM: If he doesn't do
that, then --

COMMISSIONER CASTRO: Well, I think if
that doesn't happen, then we take that up here and
address it. But I think -- what I don't want to do is
have someone go ahead and start writing surrebuttals
because they argue that it's --

COMMISSIONER HERIOT: I don't want to
fight any more on this topic ever.

COMMISSIONER CASTRO: Yes, so --

COMMISSIONER GAZIANO: I don't really want
to either, except we have an existing surrebuttal rule, which would potentially --

COMMISSIONER HERIOT: Yes, the existing --

COMMISSIONER GAZIANO: Your motion kind of works in a surrebuttal. If someone doesn't follow the rules, then any three Commissioners within seven days can notify, I think it's the Staff Director, or the Delegated the Authority of the Staff Director, that they are going to take their --

COMMISSIONER HERIOT: Yes, that's in place.

COMMISSIONER GAZIANO: -- surrebuttal. So, I'm just asking you, given that yours is a modification --

COMMISSIONER CASTRO: Yes, I'm not seeking to undo that latter process.

COMMISSIONER GAZIANO: You would -- your motion -- we have your assurance that you would support our surrebuttal under that circumstance.

COMMISSIONER CASTRO: I am not seeking to undo whatever the process would be to trigger a surrebuttal. I'm not familiar with that rule yet, so my motion is not contemplating that. My motion is only contemplating the fairness of giving him an
opportunity to submit a rebuttal, should he be reappointed, and to do that within 30 days, again, to put some time limit on him, so that it's done in a timely fashion. So, that's what I'm trying to do here. I'm not trying to undo any other of the rules and regulations.

VICE CHAIR THERNSTROM: And if you start to respond to Commissioner Yaki's rebuttal with surrebuttals, then he would be entitled to a surrebuttal for your --

COMMISSIONER GAZIANO: Courts do this all the time, but that's --

COMMISSIONER HERIOT: This is not as difficult as we make it out to be.

COMMISSIONER GAZIANO: Just exchange opinions until they're both satisfied, and all sides --

VICE CHAIR THERNSTROM: This is not a court.

COMMISSIONER CASTRO: And I'm not seeking here to start generating more replies and rebuttals, and all that.

COMMISSIONER HERIOT: I think we'll call that.

COMMISSIONER CASTRO: I just want to give
him a fair chance, if he comes back to -- and I'm hopeful, from what I hear, that he would be, but I don't know that. But if he does come back, then he would have the opportunity to submit something that would be limited to your prior statements.

COMMISSIONER HERIOT: Yes. I just want to say as a footnote, if we allow people to do their full statement and rebuttal as they rotated off, we wouldn't have issues like this. We'd just be able to do it as a former Commissioner. And I think --

COMMISSIONER CASTRO: I think there might have been some volunteer --

COMMISSIONER GAZIANO: I disagree with that interpretation.

COMMISSIONER CASTRO: I don't know. I wasn't here.

COMMISSIONER GAZIANO: I wish you were here.

COMMISSIONER CASTRO: I wish I was, too. I wasn't.

VICE CHAIR THERNSTROM: The record can be examined, but we don't need to. We can go forward. What is the motion that is now -- it is Commissioner Castro's motion.

COMMISSIONER CASTRO: Yes, I'll reread it.
I move that all work toward the physical publication of the New Black Panther report be suspended so as to allow time for the inclusion of the rebuttal by Michael Yaki. And that upon reappointment, Michael Yaki be permitted 30 days to prepare a rebuttal to the other Commissioners' statements.

COMMISSIONER GAZIANO: To the other Commissioners' initial statements.

COMMISSIONER CASTRO: Initial statements.

VICE CHAIR THERNSTROM: Initial statements. All right. I'm calling the question. All in favor.

(Chorus of ayes.)

COMMISSIONER GAZIANO: Aye with the understanding that we --

VICE CHAIR THERNSTROM: Yes, we said initial statements.

COMMISSIONER GAZIANO: No, I -- hold discussion.

COMMISSIONER KIRSANOW: I've got to leave.

VICE CHAIR THERNSTROM: Okay. So, one nay. Commissioner Kirsanow has voted nay, and otherwise we have unanimity here of Commissioners Heriot, Gaziano, Ternstrom, Titus, Castro, and Achtenberg.
COMMISSIONER ACHTENBERG: Madam Chair, I have an additional motion.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER ACHTENBERG: On the New Black Panther Party. And that is that I move that we declare the investigation of the New Black Panther Party -- that we declare the investigation closed with the only addition to the report being the rebuttal of Michael Yaki, should he otherwise be qualified to offer his rebuttal consistent with the prior motion.

VICE CHAIR THERNSTROM: A second on that?

COMMISSIONER CASTRO: Second.

COMMISSIONER HERIOT: With a footnote, I assume, that if the surrebuttal procedure --

COMMISSIONER ACHTENBERG: Sure.

COMMISSIONER CASTRO: Of course.

COMMISSIONER ACHTENBERG: Indeed.

COMMISSIONER GAZIANO: Could I just ask if we could suspend. I know Commissioner Kirsanow would want to speak on that. Could we discuss that -- how about this? That we instruct our staff not to do anything more on this until we can discuss this on March 11, and then entertain the motion.

VICE CHAIR THERNSTROM: We have a long history of people having to leave the Commission

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early, having chosen a particular time for their
flight back, the Commission business goes on.

COMMISSIONER GAZIANO: Normally, no.

Normally, we wait until --

COMMISSIONER HERIOT: Normally, we do
wait.

COMMISSIONER GAZIANO: Can I read some of
your statements to that effect?

COMMISSIONER HERIOT: I'd like to hear
them.

COMMISSIONER GAZIANO: Or can we just --

COMMISSIONER ACHTENBERG: I would have
preferred that the Commissioner remain. This is
something that I feel strongly about, so I'd like to
see a vote on this up or down, unless there's another
parliamentary turn. I think it's time that we -- this
is my own view. The reason I made the motion is
because I think it's time that we turn the page. I
want you to complete the integrity of the Commission's
prior work, but I'd like to see the Commission record
declared closed. And I'm being forthright with you, I
think it's time for the Commission to move on. That's
my personal view, and that's why I made the motion.

COMMISSIONER HERIOT: Ordinarily, the
practice of the Commission is that motions are
presented to Commissioners before the meeting, so that we have time to consider them. And this has been an issue that the Vice Chair has been particularly active on. She doesn't like motions being made for the first time in a meeting. So, we're not used to this sort of thing. And I would suggest that instead, we just -- we could decide to not to do anything on this until the next meeting, and then have Pete have a chance to be here during the discussion of it. This has been an important investigation from his standpoint. I'm sure he'd want to be part of this discussion.

VICE CHAIR THERNSTROM: I have complained in the past, they have been very complicated motions suddenly added to the agenda, often requiring extensive reading. I have been overridden on this. This is not a complicated item at all.

COMMISSIONER HERIOT: But it is an important one.

VICE CHAIR THERNSTROM: You don't need a lot of time to read it and study it, and that has been my complaint in the past.

COMMISSIONER GAZIANO: Out of deference to -- I understand that this is important. That's why I was trying to see if we could come to some middle ground where we would ask the staff not only to
suspend work in the written report, but also to
suspend work on anything else. Given 18 months that
some of us have been on, especially Commissioner
Kirsanow, I know that he wanted to speak to -- would
want to speak to this motion, so I just wonder if we
could accept that as a substitute. And then have this
discussion. I don't think the outcome will be


different on March 11, and I think that you'd be
able to make the point that I think you want to make.

COMMISSIONER CASTRO: I don't see why we
don't proceed with the motion as you suggested.

COMMISSIONER ACHTENBERG: And if it
doesn't have majority support, then it doesn't. My
own view is that it would be worth it to turn the
page.

VICE CHAIR THERNSTROM: I'm calling the
question. All in favor of the motion.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Calling for nos.

COMMISSIONER GAZIANO: No.

COMMISSIONER HERIOT: No.

VICE CHAIR THERNSTROM: Two nays, Heriot
and Gaziano. The ayes are Achtenberg, Castro, Titus
and Thernstrom.

COMMISSIONER GAZIANO: I think we took
that out of order, because --

COMMISSIONER CASTRO: That's Cy Pres.

COMMISSIONER GAZIANO: Yes, he wanted to talk about it, Cy Pres.

COMMISSIONER ACHTENBERG: Madam Chair, I have a motion regarding statutory report for 2011, Cy Pres. I move that we suspend work on the topic of Cy Pres. That Commissioners prepare and circulate alternative topic proposals until March 4, and that at the March 11 business meeting, we discuss Cy Pres, along with whatever additional topics are submitted for the Commissions' consideration to become the topic of the statutory report for 2011.

COMMISSIONER CASTRO: Second that motion.

VICE CHAIR THERNSTROM: Discussion.

COMMISSIONER GAZIANO: This is one of these items I was told when I first came on the Commission, you needed to choose this at least 18 months before you even began. And we were late, very late we were told in picking this topic when we finally settled on it in September. I'm going to ask the Acting Staff Director, whatever he's called, the amount of work on it, but assuming that we -- that the process that Commissioner Achtenberg has set forth would enable us to choose a topic on the 11. And I
know that the Vice Chair has objected on ever settling on a statutory report, at least the ones that I've been on, without months of discussion.

I don't see how we'd be able to meet our statutory obligation to issue a report to Congress and the President. But with that, first, can you tell me what you -- what staff has been doing on this? I also don't know what staff is going to be working on the next few months, but --

VICE CHAIR THERNSTROM: I never recognize these descriptions of myself, but that's all right.

COMMISSIONER GAZIANO: I can read some statements of this at the next meeting.

VICE CHAIR THERNSTROM: I don't think you need to bother.

COMMISSIONER GAZIANO: Okay. Maybe not. We'll see, but --

ACTING STAFF DIRECTOR BYRNES: I'd be happy to provide an update on the project. OGC has completed background research on the project. We have also submitted interrogatories to the Department of Justice, to which we have received so far a partial response. I anticipate a complete response very soon. That's where we're at --

COMMISSIONER GAZIANO: Within the next
1 week?

    ACTING STAFF DIRECTOR BYRNES: Early next week.

    COMMISSIONER GAZIANO: Early next week. But before that, again, for the new Commissioners, correct me if I'm wrong, but we circulated suggestions, we voted on them, we narrowed them down, then concept papers were prepared after the Commission deliberated for two months, the topic was chosen. Then after the Commission committed to that, there was then the staff prepared the, what is it called, the investigative plan?

    ACTING STAFF DIRECTOR BYRNES: Discovery Plan.

    COMMISSIONER GAZIANO: Discovery Plan, and that took -- that, typically, takes a couple of months.

    ACTING STAFF DIRECTOR BYRNES: It could take any length of time. I think in this case it did not take probably more than a couple of months.

    COMMISSIONER GAZIANO: Yes, I know. In some cases, it's taken one month, and sometimes it's taken a couple of months.

    ACTING STAFF DIRECTOR BYRNES: Sure.

    COMMISSIONER GAZIANO: So, it seems --
again, correct me if I'm wrong, it seems like if we were to abandon this topic, it might be June until we could, in our normal course, approve a new statutory topic.

ACTING STAFF DIRECTOR BYRNES: That's possible.

COMMISSIONER HERIOT: Isn't it June when the draft is usually due?

ACTING STAFF DIRECTOR BYRNES: I think under previous time lines.

COMMISSIONER GAZIANO: I think in May the draft is usually due.

COMMISSIONER CASTRO: May I ask a question?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER CASTRO: Was the New Black Panther Party report our 2010 statutory report?

COMMISSIONER GAZIANO: It was.

COMMISSIONER CASTRO: And was it submitted on time?

COMMISSIONER GAZIANO: It was submitted late, in part because -- well, later than normal. It was approved in text form on December 10. And I think that it was unfortunate that the Department was stonewalling as much as it did, that required that
COMMISSIONER CASTRO: Well, I know we want to discuss and put forward a topic, including a discussion -- a forward discussion of Cy Pres on March 11, with a view that we are definitely going to endeavor to make sure that whatever topic is ultimately chosen, or selected, or remains, be done in time for -- I believe September 30 is our deadline, so we understand that completely. And if it looks like on March 11 we're not able to do that, then I think we'll act accordingly.

VICE CHAIR THERNSTROM: In how many previous years have we actually gotten the statutory report in on time, if that's a relevant question at all, which I'm not sure it is.

ACTING STAFF DIRECTOR BYRNES: I can't recall, at least for the first couple of years that I've been here, we've been on time.

VICE CHAIR THERNSTROM: Really?

COMMISSIONER ACHTENBERG: Well, my own view is, I'd rather be right than on time; although, I think we should endeavor to be on time. And I want a discussion, again, this is my own view. I'd like work stopped on this, and it to be up for discussion about whether or not this is what we want to have as our
statutory report for 2011.

COMMISSIONER GAZIANO: Trying to seek middle ground, again, the Commission, I suppose, can throw this aside, and can vote on something else. And I'm happy to see everyone's idea for something better, but why does the work need to be stopped on this in the meantime? Why don't we just suggest that the staff continue to make non-extensive investments in the time? They do have to do something, they are being paid.

COMMISSIONER ACHTENBERG: Well, since everybody, as far as I can tell, everybody is wearing at least five hats, my guess is that they've got plenty to do just in the order, natural order of events. But my own view is -- and if I have a majority of support of my colleagues, that's the view that will pertain. I don't want, until we have a fuller reading of this issue in comparison to the other issues that we might choose to make the focus of the Commission's statutory report, I would not like to see Commission resources invested in further development of this until we agree that, indeed, that is going to be the topic for the statutory report. And I'd like to have a fuller discussion to that effect, which is why the motion is phrased the way
it's phrased.

VICE CHAIR THERNSTROM: I'm calling the question. All in favor.

(Chorus of ayes.)

COMMISSIONER HERIOT: You're supposed to say all opposed.

VICE CHAIR THERNSTROM: Yes, well looking at you, all opposed.

COMMISSIONER HERIOT: No.

COMMISSIONER GAZIANO: No.

VICE CHAIR THERNSTROM: Okay. We have, again, no votes from Commissioners Heriot and Gaziano.

And I vote, as well as Commissioners Achtenberg, Castro, Titus and Thernstrom.

Okay. The next topic is -- where are we, people?

COMMISSIONER CASTRO: Management and Operations.

ACTING STAFF DIRECTOR BYRNES: No, the Title IX.

COMMISSIONER CASTRO: Okay, sorry.

VICE CHAIR THERNSTROM: Right. Does somebody have a motion on the Sex Discrimination?

COMMISSIONER CASTRO: I don't think we do, no.
VICE CHAIR THERNSTROM: Why don't we move on?

COMMISSIONER HERIOT: Are we going to report on it?

COMMISSIONER CASTRO: I'm sorry. What?

COMMISSIONER HERIOT: Yes, why don't we have a --

ACTING STAFF DIRECTOR BYRNES: We can receive an update, certainly. Yes.

COMMISSIONER CASTRO: Sure.

ACTING STAFF DIRECTOR BYRNES: Just for the edification of our new Commissioners, we have received data from 15 of the 19 schools that we have subpoenaed for this project, which we continue to analyze. We're getting some preliminary results, but they're under review at this point. Three local holdout schools have been analyzing their admissions data subject to a Commission draft at analytical protocol. We're still a couple of steps away from asking for the logistic progression analyses. There are just some things we have to clear up with those schools as we go forward. That's where it stands. I think we're pretty far along, at least on the amount of data we've received at this point.

COMMISSIONER CASTRO: Sure. Are there
motions?

VICE CHAIR THERNSTROM: I understand there's no motions having to do with this topic, and we are left with -- what are we left with here, folks? Yes, is there some discussion of today's briefing? Does somebody have a motion that's relevant to that?

COMMISSIONER CASTRO: I think the only question we had was just -- and we were talking a little bit about this at lunch, I think, the selection of the witnesses, and how that went about. And, also, I brought up during the course of the hearing the idea of incorporating our SAC reports to the extent that they match hearings. And I think that as we select witnesses, as well, for the future, there might be a nice wealth of witness resources, and scholarly resources that some of our SACs have already brought together, so I question how we go about doing it.

I know we talked a little bit about it informally at lunch, but what's the process for selecting these witnesses?

ACTING STAFF DIRECTOR BYRNES: Lenore Ostrowsky, one of the Attorney Advisors in OSD.

(Simultaneous speaking.)

MS. OSTROWSKY: This was fairly challenging, because it actually was difficult to get
people to agree to come. The way I started out was to run up a list of the largest school districts. We didn't want just the largest, but I started out with the largest, and I called up and sent emails to the New York City Department of Education. They were polite, but did not respond. Los Angeles, polite, but did not respond. I found someone, Dr. Hardy Murphy, who is not from Chicago, but he was from Evanston, which is a suburb very close by. It's part of Cook County, with a highly diverse student body.

There is someone, I gave Alec a copy of someone named Randy Sprick. When it became clear that it was going to be extremely difficult to find teachers who would be willing to come to our briefing, I found someone who teaches teachers all across the country, and administrators. These methods that you heard referred to, the positive behavior intervention methods. His name is Randy Sprick. And I asked him if he had recommendations for teachers that he had trained in different parts of the country, because I know that he's a great admirer of Skiba, who's a scholar at Indiana, some of whose work I included in the briefing books. You may have seen it. And he was very helpful.

He came up with someone who said yes,
Susan Schultz. And she was one of the people I was counting on to describe sort of a different view of school discipline than some of the other teachers. She's the one who cancelled precipitously, you know, a few days before the briefing, before today. And that was pretty disappointing.

So, we used not only the -- it was a cold call, I guess you'd have to call it, plus, Randy Sprick references, and I got Dr. Gonzalez from him, who I thought was an extremely good witness. He's the one from Fresno, California. And then in addition, I put out calls to people like the General Counsel of the Austin Independent School District, which is a very large school district, and he sent out emails. And we eventually came up with Joe Oliveri -- also, someone I personally thought was --

-- who had a lot of valuable things to say, because he's been in charge of all of the students that were removed from Austin schools. So, you can see it's -- I don't know if you'd call it hit or miss, but it was -- I think ad hoc is how you would describe it.

COMMISSIONER GAZIANO: Can I ask to clarify a little bit of the process again.

MS. OSTROWSKY: Yes.

COMMISSIONER GAZIANO: A lot of times for
briefings, but even more importantly for the statutory report, we have the idea, the agreement, then there's a concept paper that's drafted, so there was a concept paper. And sometimes the concept paper identifies particular witnesses, but it doesn't identify particular witnesses, it'll identify the type of witnesses. That alerts Commissioners. By the way, we -- I want to put on the record something we did say at lunch. I really agree with Commissioner Heriot, that we should, as Commissioners, take more responsibility to help the staff. It's best, in my view, if we do it at our open meeting, so that I can react to yours, and no, I -- or think of a different idea. No, I want a different type of -- and sometimes, we'll have a vote. No, we don't want any of those kind of witnesses. So, I think the more that we can do in that, the better it is for staff.

But then I, just to go back to you, Lenore, you were following the concept paper and the type of witnesses you were following -- you would have certainly been open to any Commissioner. I think the -- I'll probably give you a leading question. Would you be -- would you like Commissioner input and suggestions, or do you not like Commissioner input and suggestions?
MS. OSTROWSKY: I would have been so grateful for especially teacher leads, because as you can tell, these are not people who are accustomed to speaking in forums, such as this. They're really not. The superintendents and the principals are well accustomed to this, and it was much easier to get them than it was to get the teachers.

COMMISSIONER GAZIANO: Sure.

COMMISSIONER HERIOT: That makes sense.

MS. OSTROWSKY: I'm sorry -- so, studying the concept paper, and the list that we developed of school districts that appeared to be through research highly diverse. We sent out letters to, I think it was about 28 of them, and we got responses from about 16. And on many of them, I called them up, and sent emails, and asked for further information from them. And some of them sent data, which I included in the briefing books. And some of those people, I actually invited. For instance, Doug Wright from Utah is someone who was one of those people on the list. And I was really pleased that he agreed to come, because unlike many other school districts in the country, his students are, I think, majority American Indian. And that was a population that we don't generally hear much about. So, it was that list, and it was, as I
said, the list of the largest school districts in the 
Country; calling General Counsels of these school 
districts to see if they could -- they were willing to 
come up with people.

COMMISSIONER GAZIANO: Okay.

MS. OSTROWSKY: Commissioner Heriot.

COMMISSIONER HERIOT: I just had a general 
comment for the new people on the way we put together 
briefings. You know, when I got here, I was sort of 
surprised at how we did this. I'm sort of familiar 
with two models. I'm familiar with the lawsuit model, 
where you've got an oral argument before a court, and 
who gets to speak, well, the parties to the 
litigation, so you've got somebody who's on one side, 
and somebody who's on the other side. You know, and 
that works tolerably well. And then there's sort of 
the Congressional, the legislative model, where 
usually you have a committee staff that is majority 
and minority. And you don't have a staff like we 
have, that's supposed to be neutral.

What happens, I think, in our briefings 
often, and I hope we correct this in the future, is 
that they try very hard to put together a balanced 
panel. Then we'll have like cancellations at the last 
minute, as we did this time. And Commissioners who
feel their side isn't represented, they dump on the staff. We need to think of it as our responsibility to make sure that whatever view we think is correct, or whatever view we don't think is correct, we need to make sure that those witnesses are there, rather than waiting until after the briefing has occurred, and dumping on them, because it's up to us.

COMMISSIONER CASTRO: I appreciate that, and agree with that. I'm not proposing that we're dumping on this, just more like hey, how does this happen? How did it work?

COMMISSIONER HERIOT: Yes.

COMMISSIONER CASTRO: As I was reading this about all the -- maybe some of these folks in this C- so, it's really more informational for myself and my new colleagues as to just how we go about doing this, and how can we be participants in the process, which clear, we are intended to be big participants in the process.

COMMISSIONER GAZIANO: Sure. And in my leading questions, I was trying to do the same.

COMMISSIONER CASTRO: Yes.

COMMISSIONER GAZIANO: But I did want to
reiterate that on this topic, I don't think there was,
as is clear, that there was only two positions, so I
don't know what your view of balance, or my -- I
didn't know what to expect. On others where there's
kind of a more clear two or three positions, then our
staff really does strive hard to find the different --
and strong spokesmen. None of us want strong
spokesmen for one, and weak spokesmen of another.

COMMISSIONER CASTRO: We certainly
wouldn't want that.

COMMISSIONER GAZIANO: We're adult enough
that we want the best.

COMMISSIONER CASTRO: Sure.

MS. OSTROWSKY: May I make one other
comment? I tried very hard to find out what their
views were without suggesting to them that I wanted a
particular outcome. So, I was pretty delicate. I
made certain surmises, and if the KIPP person hadn't
pulled out C-

VICE CHAIR THERNSTROM: Who was coming
from KIPP?

MS. OSTROWSKY: Irene Holtzman.

VICE CHAIR THERNSTROM: Oh.

MS. OSTROWSKY: And, as I said, Susan
Schultz, it would have been -- there would have been,
I think, a slightly different result. So, I mean, that's -- I would like -- it would be nice, ideally, to use a random sample, so we could make this truly scientific, but it's not -- we're not set up to do things like that.

COMMISSIONER HERIOT: You'd have to have an awfully big sample for a scientific -- I'm not sure if I'm willing to sit through that briefing.

COMMISSIONER CASTRO: Thank you for answering the question. I appreciate that.

VICE CHAIR THERNSTROM: Lenore, I wonder if you have any feeling that, in general, it would be better to have fewer witnesses than we had today?

MS. OSTROWSKY: Yes, the short answer is yes. What happens sometimes is one makes invitations, and you hear nothing. And you can't -- staff can't wait, because this thing has to march on, so then we go to the next person and invite them, and they say yes. And then the first person you haven't heard from in two weeks says great, I'm coming. So, that's how this kind of -- the eventual number was slightly larger than I would have liked.

VICE CHAIR THERNSTROM: I would think, but I'm not an administrator, and I've never been an administrator in any context, but I would think we
might contemplate a rule where as we say look, if you haven't answered by X date, we are going to move on to invite other people, because we do need to limit the number of witnesses.

MS. OSTROWSKY: I think that's an excellent suggestion going forward.

COMMISSIONER HERIOT: Well, wait, I'm not sure that's -- it might be in some context a good suggestion, but we're dealing with people who are significant people, and it's not always a good idea to tell someone who has a busy schedule we're giving you 48 hours to --

VICE CHAIR THERNSTROM: No, not 48 hours.

COMMISSIONER HERIOT: Any particular length of time.

(Simultaneous speaking.)

COMMISSIONER HERIOT: Some of these people, you really want them to come, and if you say look, we'll give you --

VICE CHAIR THERNSTROM: Always with any particular individual who we really want, but that would protect us. It would allow us to say, in effect, we can say thank you very much. If we really think we want somebody very strongly, I mean, they don't know what --
MS. OSTROWSKY: I just have one tiny comment. Because people do drop out, I was a little nervous about limiting the number. That's all. Because we do have cancellations, and sometimes it's better to have a few too many, than not enough.

VICE CHAIR THERNSTROM: Okay. Folks, I've just been reminded by Tim Fay that it's already been a long day, and we have several more agenda items. Let us move on to, if nobody minds, to Management and Operations.

IV. MANAGEMENT AND OPERATIONS

VICE CHAIR THERNSTROM: And we start with review of the 2011 meeting calendar. Does everybody have the calendar in front of them?

COMMISSIONER CASTRO: Yes.

VICE CHAIR THERNSTROM: I guess everybody except me. No, I've got mine here. Okay. The floor -- anybody who wants to take the floor, please take it.

COMMISSIONER TITUS: Madam Chairman.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER TITUS: I'd like to make a motion. I think we should -- I'd like to move that we cancel the telephonic meetings. They're just not very helpful, they're confusing. It's hard to tell
who's saying what. I think we would be better off having longer in-person meetings on dates when we can be here, rather than try to do this over the telephone.

COMMISSIONER CASTRO: I second that.

VICE CHAIR THERNSTROM: Let me add to that, that we have talked on a number of times when we have felt we have a great deal of business, but we have never actually decided to do it. We had talked about having something on Thursday afternoon, as well as Friday. It never has become a necessity. It is always an option, if we feel that's important, and people can make it.

COMMISSIONER HERIOT: Not for me. I teach Wednesday nights, and I can't get here that fast. But I can do Saturdays.

VICE CHAIR THERNSTROM: All right, whenever.

COMMISSIONER CASTRO: Shall we deal with the telephonic issue first?

VICE CHAIR THERNSTROM: I'm just saying in cancelling the telephonic meetings, we're not depriving ourselves of a chance. That was my only point.

COMMISSIONER CASTRO: Understood. Okay.
VICE CHAIR THERNSTROM: Okay. We need a second.

COMMISSIONER CASTRO: I seconded it already.

VICE CHAIR THERNSTROM: You seconded.

Discussion.

COMMISSIONER GAZIANO: Madam Chair, I just wanted to say that in the past we've been -- one of the things we've really strived to do is be as solicitous as we can to other people's conflicts. But I think there are ways of starting earlier in the morning for a particular day, and --

VICE CHAIR THERNSTROM: Okay. But we're now on the telephonic --

COMMISSIONER GAZIANO: I understand. I think that the reason -- I don't want to go into the history, unless someone tries to drag it out of me, why we --

(Laughter.)

COMMISSIONER GAZIANO: -- added them, but I don't think that -- I think that they can be reinstated. I don't think the reason we added them was necessary, so I'll support this motion.

COMMISSIONER HERIOT: Okay. I do want to go into the history. It's not a very complicated
history.

COMMISSIONER GAZIANO: No, that's okay.

COMMISSIONER HERIOT: Our statute requires us to do only two things in the whole world, and those two things, we don't seem to get done. Number one, we've got to do an enforcement report once a year. Okay, that's aside. Number two, we've got to charter 51 SACs.

COMMISSIONER GAZIANO: Every two years.

COMMISSIONER HERIOT: Every two years, and it's very boring. You'll get really tired of SACs. I mean, the chartering, not the actions of the SACs, but it tends to be pretty cut and dried stuff, and we weren't getting it done. People would be leaving the meetings, sometimes people were walking out of meetings to defeat quorum. Bad stuff was happening, we weren't getting that done. And we need to commit to do what Congress has directed us to do, and that is charter 51 SACs every two years. If we can do that some other way, I'm happy to support the motion. We weren't getting it done in past years. And, basically, the reason we instituted the telephonic meetings was to charter SACs that we thought would be non-controversial, just get on the phone and say aye, and we'd get it over with. It ended up, we put a few
other things on the agenda. I always wanted it just
to be for SACs, and if we can get our SACs done some
other way, that's fine with me. If we can't do it,
then I would suggest we go back to the telephonic
meetings in the future.

COMMISSIONER CASTRO: Yes, I think as the
Acting Chair suggested, we can always lengthen the in-
person meetings. I think it's always better to sit
around the table and talk about issues, and address
them, and work together, as opposed to on phones.

COMMISSIONER HERIOT: I'm for that, too.
You may find Commissioner Yaki doesn't agree with you.

COMMISSIONER CASTRO: Yes. Well, to the
extent that at some point we might need to do
something telephonic, this doesn't prohibit us from
doing that. I just think, when I seconded this
motion, that the more we can do sitting together face-
to-face, if we need longer meetings --

COMMISSIONER HERIOT: I'm with you.

COMMISSIONER CASTRO: Okay. Because we
want to get all our work done.

VICE CHAIR THERNSTROM: I think we've got
C- it sounds like we've got unanimity here, and I'm
going to call the question. All in favor of canceling
the telephonic meetings with the understanding that we
could always decide to have a telephonic meeting, if we want to in the future. All in favor of canceling the telephonic meetings, please say aye.

(Chorus of ayes.)

COMMISSIONER ACHTENBERG: You've gotten your unanimous bipartisan vote here.

VICE CHAIR THERNSTROM: Terrific. I love it. Now, are there any conflicts for people for the in-person dates?

COMMISSIONER ACHTENBERG: I do have one, Madam Chair. The October meeting is a meeting that I cannot make.

VICE CHAIR THERNSTROM: So, let us change that. How about other people?

COMMISSIONER CASTRO: No major conflicts, th so long as on Friday, August 12, you have a birthday cake for me.

(Laughter.)

COMMISSIONER ACHTENBERG: Nice.

COMMISSIONER CASTRO: Although, my wife might be upset really if I'll be here for her birthday, but she's pretty --

COMMISSIONER GAZIANO: Well, you bring her. Bring her --

(Simultaneous speaking.)
COMMISSIONER GAZIANO: -- for a vacation in glorious Washington, D.C.

COMMISSIONER ACHTENBERG: Yes, so it's your weekend in our nation's capitol.

COMMISSIONER CASTRO: I might just do that. That's a great idea.

VICE CHAIR THERNSTROM: Wait a minute. That raises the question, in many years that I was here, we did not have an August meeting.

COMMISSIONER HERIOT: Who's in favor of having an August meeting?

COMMISSIONER GAZIANO: We don't have to. We can cancel it later.

COMMISSIONER CASTRO: Let's leave it on there, because I think in light of Commissioner Heriot's point, that we need --

VICE CHAIR THERNSTROM: Okay, that's fine.

COMMISSIONER CASTRO: -- we've got a lot of work to do, we can always decide later. But I think we'll be here August 12, so --

VICE CHAIR THERNSTROM: That's fine. So, aside from the condition of having a birthday cake on August 12, are there any other meetings that --

COMMISSIONER HERIOT: We have to decide on an alternate date for October.
COMMISSIONER CASTRO: Alternative date for October.

VICE CHAIR THERNSTROM: But any other conflicts here?

COMMISSIONER GAZIANO: Let's see when our September one is, so that usually it's best, because sometimes Labor Day -- okay. It looks like we're on the 9 of September.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER GAZIANO: After Labor Day, do you want to try to -- is the 7 acceptable?

COMMISSIONER CASTRO: Of October?

COMMISSIONER GAZIANO: Yes.

COMMISSIONER ACHTENBERG: Could somebody -- does anybody have the Jewish calendar? Oh, it's Yom Kippur, no.

VICE CHAIR THERNSTROM: No, it's no for me too, then.

COMMISSIONER CASTRO: What about the 21?

COMMISSIONER GAZIANO: The 21? That is a little difficult for me. I could do it -- when is our -- or number 18. I suppose the 21 is fine.

COMMISSIONER CASTRO: Can I suggest something? We had --

COMMISSIONER GAZIANO: The 21 is fine.
I'll just make it work.

COMMISSIONER CASTRO: Okay. Well, here's what I was just going to suggest. Presumably, you have the 28 of October. Oh, is that the date that you can't work?

COMMISSIONER ACHTENBERG: I can't.

COMMISSIONER CASTRO: Okay, sorry.

(Simultaneous speaking.)

COMMISSIONER CASTRO: Okay. The 28 was one of the telephonic dates, so presumably --

COMMISSIONER GAZIANO: No, I think it's generally better --

VICE CHAIR THERNSTROM: No, let's not lose so much time.

COMMISSIONER GAZIANO: -- to keep our three to four weeks --

COMMISSIONER CASTRO: 21?

VICE CHAIR THERNSTROM: 21.

COMMISSIONER ACHTENBERG: That's fine.

VICE CHAIR THERNSTROM: Okay. So, we need a separate motion here that the existing in-person dates stay with the exception of a change in the October meeting, changed from October 14 to 21.

COMMISSIONER TITUS: So moved.

COMMISSIONER GAZIANO: Could I ask that --
COMMISSIONER TITUS: Oh, wait a second.
Hold on.

COMMISSIONER GAZIANO: -- that we check
with Pete on -- if we're moving it for one other
person.

VICE CHAIR THERNSTROM: Of course. Sure,
of course.

COMMISSIONER GAZIANO: And we probably
should reconfirm in March if former Commissioner Yaki
--

VICE CHAIR THERNSTROM: Yes, absolutely.

COMMISSIONER GAZIANO: -- has already
penciled these in, and planned his family outing.

VICE CHAIR THERNSTROM: Sure.

COMMISSIONER GAZIANO: Or whatever.

COMMISSIONER CASTRO: Yes, that makes
sense.

COMMISSIONER GAZIANO: For October.

VICE CHAIR THERNSTROM: Okay. So, this is
a penciled in schedule.

COMMISSIONER GAZIANO: Okay.

COMMISSIONER ACHTENBERG: And thank you
for the courtesy.

COMMISSIONER GAZIANO: Do we need to vote?
COMMISSIONER HERIOT: Yes, I think we need to vote on it.

VICE CHAIR THERNSTROM: We need to vote.

(Simultaneous speaking.)

COMMISSIONER GAZIANO: Yes, we developed -
st - tentatively moved to the 21 with the understanding that we're going to --

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER HERIOT: We'll call it tentative, like we can undo it.

COMMISSIONER GAZIANO: We can always undo it later.

VICE CHAIR THERNSTROM: We can always undo it. Okay. By acclamation, I think that we have decided on these dates. What is the next --

COMMISSIONER CASTRO: Staff Director's report.

VICE CHAIR THERNSTROM: Staff Director's report.

ACTING STAFF DIRECTOR BYRNES: Thank you, Madam Vice Chair.

We submitted a draft of our Congressional budget request for fiscal year 2012 to the Office of Management and Budget for their review. I provided Commissioners a copy of this request last week. For
fiscal year 2011, we are operating under a continuing resolution which ends March 4. This continuing resolution limits the agency's funding, but staff is working to ensure that payroll and other essential services can continue until Congress passes an Annual Appropriation's Act. We will not know our final fiscal year 2011 funding level until Congress passes an Appropriations Act, or alternative funding mechanism.

Staff has posted the panelists written statements in the transcript of our briefing on school choice, Blaine Amendments, and anti-Catholicism to the agency's website. During the December 27 to January 21 reporting period, our Office of Civil Rights Evaluation received 58 written complaints, one Congressional complaint, one walk-in complaint, nine email complaints, five fax complaints, and 89 telephonic complaints of which 30 were repeat calls. In total, staff received and processed 160 complaints during the reporting period.

The Commission received a clean or unqualified audit opinion on its fiscal year 2010 financial statements. And staff submitted the Human Capital Management Plan to OPM and OMB, I think by December 15, 2010. This plan was called for in our strategic plan, and incorporated input from
Commissioners, the senior-level staff working group, and consultants. That's all I have to report.

VICE CHAIR THERNSTROM: Any questions for the Staff Director? Yes, Commissioner Gaziano.

COMMISSIONER GAZIANO: Something I heard about yesterday, just briefly mentioned to the Staff Director. I understand our lease on this building is up, which is, for those of you -- again, three years ago, this was a dump, this place, and they got it painted, and they got -- so, it's now really -- it gorgeous compared to --

(Laughter.)

COMMISSIONER GAZIANO: -- what it was.

I've heard the staff, how much labor with filing cabinets everywhere it may not be. But what I'm going to ask the Staff Director, I don't know how much you want to say, and I don't want you to, necessarily, take up more than two minutes on where it is. But as I understand it, there's a lot of -- if the owner of this building isn't willing to renegotiate, there are -- I speak for myself, but I think for others, want input as early as possible on alternatives, rather than just being told this appears to be the direction we're going to go. Is it possible that you could prepare, assuming you're still going to be -- or you
could pass on to the next Staff Director, if there is such a vote before then, to give us a report on where we are?

ACTING STAFF DIRECTOR BYRNES: I'd be happy to do so.

COMMISSIONER GAZIANO: And one of the factors that I want the Staff Director to consider in negotiations on behalf of the Commission, is whether the new building is near a Metro stop. I don't take the Metro any more. I drive, but I know that many of our staff will be interested in -- I think it should be near Falls Church where I live, but they probably would not like that, because I'm not in Falls Church proper, so I'm not anywhere near a Metro stop. So, if you would just add that as a factor.

ACTING STAFF DIRECTOR BYRNES: Okay. I will say as sort of a threshold matter that GSA sort of conducts the solicitation process on our behalf, so I'm not sure how much wiggle room we have.

COMMISSIONER GAZIANO: But don't we define things that are important? Tell me -- give me two minutes on what the process is.

VICE CHAIR THERNSTROM: In the meantime, Tim Fay says there's great real estate near the what stop? Silver Springs.
MS. DUNSTON: Good afternoon, Commissioners. The process is basically controlled by GSA. We provide to them information on what our needs are. The Metro consideration that you already spoke about is a part of the considerations that we are near Metro, access bus and rail.

COMMISSIONER GAZIANO: Okay. Now, do we -- when is it -- I'm sorry.

VICE CHAIR THERNSTROM: No, no, go ahead.

I was just going to say --

COMMISSIONER GAZIANO: Is it take or leave it then? I mean, don't we have any --

MS. DUNSTON: You're taking and leaving is part of the process. We tell them in the beginning here's the Commission's needs for space, offices, number of employees, the type of security issues that we need based on the security assessment, whether we need a conference room, certain things are already put into place that have to do like ADA accommodations, and that kind of thing is taking place already.

Now, in terms of whether we are two blocks from Metro, or we're five blocks from Metro --

(Simultaneous speaking.)

MS. DUNSTON: -- how far you are. Like the bus, for instance, a quarter mile of a bus, a half
mile of the Metro. And they can't tell you whether it's a one line versus another line. We tell them what area we want to be in the downtown D.C. area, we want to have Metro access. We like to have certain amenities, certain things for security. We do give them that, and they put together solicitation, and the process from there, basically, is more controlled by GSA than us.

COMMISSIONER GAZIANO: But we haven't submitted those requests yet, or those criteria yet.

MS. DUNSTON: Those criteria have been submitted. The solicitation was out last night.

COMMISSIONER GAZIANO: Oh, it was. Could you share -- I mean, I suppose it's theoretically possible we could ask you all to withdraw it, but that's the kind of thing I wish Commissioners would have input on.

MS. DUNSTON: The bulk of the -- the controlling factor was how much space could the Commission afford. We've been in this building about 20 years, so our space costs are going to increase substantially, and John can speak to you more about the cost on that, but that controlled a lot of how much space we can have. Additionally, the President has said that federal agencies will decrease their
space footprint, which we also have to accommodate that. So, taking those considerations, what we needed and what we currently have, and what our projection increasing staff levels, certain things were assumed and given to GSA, and they put out a solicitation for us.

VICE CHAIR THERNSTROM: I am concerned about the space issue. It seems to me that already we could use some more space that we have got. Don't laugh, but --

COMMISSIONER GAZIANO: Especially if we fill these vacancies, which we ought to.

VICE CHAIR THERNSTROM: Yes, which we ought to. I mean, what have we told them in terms of our future space needs, as opposed to the existing space we have?

MS. DUNSTON: Well, we looked at the number of empties that actually currently have, and what the potential there is based on our budget project, so we have to use some assumptions for that. And even for the people that are vacant now, that -- you know, like the Staff Director is going to go. We have -- that number is already included, so we just made those assumptions.

ACTING STAFF DIRECTOR BYRNES: I should --
yes, the number of FTEs reflected in the fiscal year 2012 Congressional budget justification is consistent with, I think, what we sent along to GSA. That's sort of what I think.

COMMISSIONER GAZIANO: I doubt that it'll be an issue here, but new Commissioners will hear me maybe cry and complain that we're not an Executive Branch, and every once in a while when the Executive Branch -- we can't be constitutionally. Every once in a while when they give us some -- usually I think it's fine to go along with the Executive Branch's delusion on that. But is it problematic to share with us what requirements you -- you know, I assume all us being equal, we should see anything that we think is important, but --

ACTING STAFF DIRECTOR BYRNES: I can't think of any reason not to.

COMMISSIONER GAZIANO: Okay. Could you --

ACTING STAFF DIRECTOR BYRNES: And I'll consult with staff --

COMMISSIONER GAZIANO: Would you share with us that.

ACTING STAFF DIRECTOR BYRNES: Sure.

COMMISSIONER GAZIANO: I mean, unless it
affects the bid process somehow. Certainly, as
management of the agency.

VICE CHAIR THERNSTROM: Can I suggest we
move on at this point, because it's 4:00.

COMMISSIONER GAZIANO: Sure.

VICE CHAIR THERNSTROM: And people do have
planes to make. So, we are at review of transition,
order of succession, continuity of operations. What
do people -- what would people like to discuss with
respect to --

COMMISSIONER CASTRO: Well, we have a
couple of proposed motions, and I believe staff is
passing those out. These motions are to alter the
succession. The first motion that is -- both of them
are being distributed, but the first one is going to
be to adopt changes to the Administrative Instruction
1-18C for the purpose of clarifying and amending the
succession of General Counsel, delegating the duties
to a career staffer, and not at the discretion of the
Staff Director until a permanent General Counsel is
named. And further move that these changes take
effect immediately. So, have those been distributed?

Okay. After we distribute these, I'm
going to read the motion, the first motion, and then
we can take a break so everyone can read them. We'll
take, if the Chair agrees, a 5-minute recess. But let me just read into the record the first motion.

COMMISSIONER HERIOT: Wait. That's not what's being passed out. This is just rules that already exist?

COMMISSIONER CASTRO: It's a modification of the rule. And I'll --

COMMISSIONER HERIOT: I take it there's no typewritten motion at this point. Is that right?

COMMISSIONER CASTRO: Well, I'm going to -- my motion is that the --

COMMISSIONER HERIOT: We don't have copies of it.

COMMISSIONER CASTRO: -- that we adopt this proposed 1-18C Administrative --

VICE CHAIR THERNSTROM: I've got them in my hand.

COMMISSIONER CASTRO: There's two of them.

COMMISSIONER HERIOT: Okay.

COMMISSIONER CASTRO: So, the first one is Administrative Manual. It's a motion to amend the Administrative Manual, Administrative Instruction 1-18C, Office of the General Counsel. Section 1, "Purpose. The purpose of this Administrative Instruction (AI) Office of General Counsel --
COMMISSIONER GAZIANO: I'm glad to move to consider it as read into the record, if someone doesn't -- unless you want to read it.

COMMISSIONER CASTRO: I don't, necessarily, have to read it. I just wanted to try to provide you some opportunity to look at it. So, I move that this --

COMMISSIONER GAZIANO: I move to have this entered into the record as if it were read.

VICE CHAIR THERNSTROM: Second.

COMMISSIONER GAZIANO: Would you -- if we're proceeding on -- now, this does seem to be both important, and violate the rule that we share important lengthy motions with each other beforehand, but would you tell me, as I -- maybe if you just give -- I could read it a little bit better, and concentrate a little bit better if I was -- but what is the main change that 1-18C does?

COMMISSIONER CASTRO: What it does is, in the absence of the General Counsel --

COMMISSIONER GAZIANO: Okay.

COMMISSIONER CASTRO: -- and by absence, we define that by inability of an employee to carry out his or her legal function due to vacancy of the position, travel, vacation, or for any other reason,
so in the absence of a General Counsel, we want to have orally a system of delegation of authority, so when the General Counsel is absent, the Deputy General Counsel would assume the authority, and manage the Office of General Counsel, so they would keep the line of succession within the General Counsel's office to career staffers. So, when the General Counsel and the Deputy General Counsel are both absent, then the senior attorney in the office of the General Counsel would assume the duties of Acting General Counsel.

COMMISSIONER GAZIANO: What's sort of interesting about this is, there aren't so many General Counsels currently in the General Counsel office that could --

COMMISSIONER CASTRO: Maybe one day there will be. Right?

COMMISSIONER HERIOT: Wait. This substitutes the Acting Deputy -- now, hold on. This person would then take the position of the Staff Director. Is that right?

COMMISSIONER CASTRO: There's a second motion, so that's 1-18(b). I'm not dealing with that one right now. There's two separate motions, one on 1-18B, which is as to the succession of the General Counsel, and there's going to be a separate motion.
after we get through this one with the succession of
the Staff Director.

COMMISSIONER HERIOT: I can't take this
this quickly.

COMMISSIONER CASTRO: Okay.

COMMISSIONER CASTRO: We'll take -- should
we take a recess, Madam Chair?

COMMISSIONER GAZIANO: We could, but why
is this necessary that we take this up at this
meeting? We don't -- hopefully, we won't have any
further vacancies from the Office of General Counsel
in the next --

COMMISSIONER CASTRO: I think it's
important to, as we begin -- as we come into our
positions as Commissioners to have folks who are
wearing multiple hats not have to wear so many
multiple hats. And one of the folks who's wearing a
lot of hats is our Acting General Counsel, Acting
Staff Director, and I think there's another hat or
two. So, I think it's just important to begin to
identify separate folks to begin to do these very
important functions.

Would you like to take a recess to take a
closer look at them?

COMMISSIONER HERIOT: No, this is not what
we're used to. We're used to having these things long
before.

VICE CHAIR THERNSTROM: Oh, I wish that
were the case.

COMMISSIONER HERIOT: You know it is,
Abigail.

COMMISSIONER GAZIANO: We defer many times
when people have objected to not having motions
beforehand. But is the effect of both of these
motions together to displace the Acting Staff
Director?

COMMISSIONER CASTRO: Right now I am only
focused on the General Counsel.

COMMISSIONER GAZIANO: Is the effect of
both of these motions to displace the Acting Staff
Director?

COMMISSIONER ACHTENBERG: If you were to
adopt both motions, the Acting Staff Director would
assume his prior position, and there would be a new
Acting Staff Director. That's right.

COMMISSIONER GAZIANO: And the Acting
Staff Director would be from the General Counsel's
office.

COMMISSIONER ACHTENBERG: Correct.

COMMISSIONER GAZIANO: That's what I
COMMISSIONER HERIOT: Who would be the Acting Staff Director?

COMMISSIONER GAZIANO: I'd like a recess.

COMMISSIONER CASTRO: Sure.

VICE CHAIR THERNSTROM: Five-minute recess. I'm sorry. Let's really make it five minutes, folks, so we're at 4:11, we're back here.

(Whereupon, the proceedings went off the record at 4:09 p.m., and resumed 4:35:36 p.m.)

VICE CHAIR THERNSTROM: Okay. We continue the meeting, and Commissioner Gaziano has his hand up.

COMMISSIONER GAZIANO: The record of the Commission will reflect that I have objected, and I think Commissioner Heriot will speak for herself, but she has, as well, to Commissioners leaving meetings to defeat quorum for insignificant reasons. I said I wouldn't do that, but I consider the procedural motions before us today to constitute such grounds that would justify leaving. But since my new Commissioners aren't aware of all that history, and I think that I can proceed. But I don't think that -- I think is just terribly misguided, the way that this is done. I cannot vote for these as they are. I
I have not talked to Chris, but we at least had the courtesy of asking Chris when we amended the AI to put him -- because we figured that our previous Staff Director might leave, we asked him whether he was willing to serve. So, I did spend a few minutes talking to Kim, whether she was willing to serve, because I think before I vote, I at least wanted to know that.

If you will substitute -- if the Commission, and I don't want to hear why, because we should have gone into Executive Session if we were going to be engaging in these sort of personnel votes that actually replace people in their current positions, so I think it's improper to explain reasons why you want to make this substitute. But if you would just move to substitute Kim for Chris as Acting Staff Director, or Delegated the Authority of Staff Director, since that term came up before, I will actually vote for it.

I want to be clear that that is certainly no vote of confidence, or lack of confidence in Chris. I just suspect he would be glad to leave, go back to his own job. But I think that in our Commission's history, someone who's acting in the Office of Civil Rights Evaluation has always been in line of
succession, should be in the line of succession. We 
shouldn't play games with the order of succession for 
that reason.

I know Chris has had to put up with a lot, 
including wrongful cancellation of the January 
briefing, and other actions of a rather domineering 
acting chair, and I assume that he'd be glad to leave. 
So, with that understanding, I'd be glad to vote for 
the motion if it was recast. I'm not going to be able 
to vote for them as they are.

COMMISSIONER CASTRO: Commissioner Heriot 
had something to say.

VICE CHAIR THERNSTROM: Oh, I'm sorry, 
Commissioner Heriot.

COMMISSIONER HERIOT: I just wanted to say 
that with new people on board, sometimes people get 
confused about the traditions and the procedures that 
are ordinarily used. This is not what we ordinarily 
do. I would urge all of the new people to read a 
number of the briefing, not briefing transcripts, but 
meeting transcripts, and you'll see -- sometimes 
motions have been made that aren't -- I'm sorry. 
Sometimes motions that are made seem kind of last 
minute, but not as last minute as this. We've always 
gotten them written.
With this, there's not much I can do with this, because I can't see what the original AI looked like. Also, very disappointing when asking what is this for, and instead of telling me oh, we're substituting Kim for Chris, you know, it was very unclear what was being done.

If you want to substitute Kim for Chris, make the motion. I think they both do a wonderful job. I think Chris has had a miserable time in the last few weeks, so it wouldn't shock me if Chris were to cast his own vote on this one.

VICE CHAIR THERNSTROM: Except he doesn't have a vote.

COMMISSIONER HERIOT: I know. But I won't mind if you vote on this one, Chris. Really, I would very much urge you guys to read transcripts of previous meetings, because I think that will give you a sense of what kind of procedural problems we've run into, and what side of the issues various people have been on at various times.

And, again, I think it's a very bad idea to vote on an AI on something as important as this. Just to make a change that you want to make, you don't want to have AIs that are bad in place in the future.

COMMISSIONER GAZIANO: And a point of
clarification. Commissioner Castro, I appreciated your honesty. I didn't -- I just think whatever the plan was, to do it like this is not good. You could have just -- whoever -- but I'm glad you told me at the beginning of the meeting. I sort of knew, could have guessed based on your honest answer that something was afoot, and thank you, Commissioner Achtenberg, for sort of helping me put two and two together. But with that, I'm willing to vote on the motions you have with the understanding of how I'm going to vote, or if we can come up with a substitute motion to put in place Ms. Tolhurst.

VICE CHAIR THERNSTROM: May I just say before anybody says anything else, I do not believe that in any way, in any form I have been "domineering." I am really a little bit tired of the adjectives thrown my way, and the incivility. And I don't think, again, there was anything improper in what I did. But with that, let us proceed. Should I call the question?

COMMISSIONER CASTRO: Yes, call the question. This is not about persons or personalities. Just about the process.

COMMISSIONER GAZIANO: The process is a -- I view this as the motions could have been shared,
they should have been shared, and certainly they
shouldn't have been done in this manner. And it
really doesn't make sense that we change the order of
succession this way. And I think everyone knows that.
But if that's what you prefer to vote on, then that's
fine.

COMMISSIONER CASTRO: It's my
understanding the order of succession had been changed
in December, so we're changing it back to what we
believe it should be.

COMMISSIONER GAZIANO: No, I --
VICE CHAIR THERNSTROM: Okay. Look, I'm
going to call the question. We're not going to argue
about this. The motion -- are we doing 1-18B and then
1-18C? You've made a motion only --

COMMISSIONER CASTRO: We have a motion --
we distributed them together, but we made a motion
initially as to 1-18C. So, we could take them
separately, or together.

VICE CHAIR THERNSTROM: Let's take them
together.

COMMISSIONER CASTRO: Okay. So, the
motion -- I'm sorry? We should take them separately?
Let's take them separately.

VICE CHAIR THERNSTROM: You can take them
separately, that's fine.

COMMISSIONER CASTRO: We have a motion already pending on the floor regarding 1-18C.

VICE CHAIR THERNSTROM: 1-18C. Yes, okay. And it has been seconded. All in favor?

(Chorus of ayes.)

COMMISSIONER HERIOT: Call for a vote. Say, it's your job to say all opposed?

VICE CHAIR THERNSTROM: All opposed? Instead of pointing my finger at -- waiting for you to say I am opposed. All opposed, or any abstentions?

COMMISSIONER HERIOT: I abstain.

VICE CHAIR THERNSTROM: Heriot abstains.

COMMISSIONER GAZIANO: If they're done individually, I'll abstain on this one and vote --

VICE CHAIR THERNSTROM: Two abstentions, four yeas. It is adopted. Okay, now we move to 18(b). We move -- you want to make a motion?

COMMISSIONER ACHTENBERG: I move the resolution regarding 18(b), provided it can be adopted without having been read into the record.

COMMISSIONER CASTRO: Second.

VICE CHAIR THERNSTROM: Okay. Do we need any further discussion? We have discussed it. I'm calling the question. All in favor?
(Chorus of ayes.)

VICE CHAIR THERNSTROM: All opposed, or any abstentions?

COMMISSIONER GAZIANO: No, just based on the order of succession, and with the understanding that I've said before, that it doesn't reflect negatively at all on the persons who the majority of the Commission are trying to have advanced.

COMMISSIONER CASTRO: Absolutely.

VICE CHAIR THERNSTROM: Okay, so --

COMMISSIONER HERIOT: I'm abstaining on the ground that I don't see how I can possibly vote on this given how --

VICE CHAIR THERNSTROM: Okay. Heriot is abstaining, Gaziano votes no. The motion has passed. I think we're at the end of the meeting.

COMMISSIONER CASTRO: We have a State Advisory Committee --

V. STATE ADVISORY COMMITTEE ISSUES

VICE CHAIR THERNSTROM: Oh, the State Advisory. Sorry. The Vermont SAC.

COMMISSIONER CASTRO: Alabama, we have a motion on Alabama. No? Right?

VICE CHAIR THERNSTROM: Right. This is first to approve the Vermont SAC Chair. Somebody make
COMMISSIONER CASTRO: So moved.

VICE CHAIR THERNSTROM: I'll second it.

Any changes, discussions questions on the Vermont SAC Chair, only.

COMMISSIONER GAZIANO: And who is the nominee for Vermont Chair?

COMMISSIONER CASTRO: Diane Snelling.

COMMISSIONER GAZIANO: That's what I thought it was. I just thought the record needed to reflect.

VICE CHAIR THERNSTROM: Yes. Okay. Sorry about that. End of a long day. Any discussion, any questions? All right. Let's have a vote. What are the ayes?

(Chorus of ayes.)

VICE CHAIR THERNSTROM: Is there any abstentions, and --

COMMISSIONER HERIOT: Ask for nos, in case there are nos.

VICE CHAIR THERNSTROM: I think it was unanimous.

COMMISSIONER HERIOT: Yes, but instead of asking for -- you asked for ayes, ask for nos, ask for abstentions. If you think there might be an
abstention, then you must think that somebody hasn't voted who might be a no.

VICE CHAIR THERNSTROM: All right, Gail.

It's been a long day. That was a unanimous vote. And now the Alabama. Can I have a motion on Alabama?

COMMISSIONER TITUS: Madam Chairman.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER TITUS: I'd move at this time we postpone the re-chartering of the Alabama SAC and ask the Staff Director to address certain problems that have arisen, so we can improve the ideological balance of that SAC.

COMMISSIONER CASTRO: Second.

COMMISSIONER GAZIANO: May I ask the -- your thoughts on what the problems were? It looks like one of the most balanced SACs that I've seen in a number of years. Let me look at the --

COMMISSIONER TITUS: I think if you look at the party distribution, you find it's pretty out of whack.

COMMISSIONER GAZIANO: I think -- well, let's go through that. Let's get exact -- according to their self-identification, it's five Republicans, four Democrats, and four Independents. That's about as balanced as it comes. Is that not balanced in your
view?

COMMISSIONER TITUS: Well, sometimes it's not just about party labels, it's about ideological views. And I think the three of the Independents have made public statements, or statements on the record that indicate that they are very conservative, so I would see that as out of balance, yes.

COMMISSIONER GAZIANO: That's not what you said the first time.

COMMISSIONER TITUS: Well, I'll correct myself. I'm sorry I misspoke.

COMMISSIONER GAZIANO: Okay. I haven't studied them in detail, but I have reviewed, and I disagree with that kind of characterization. What kind of -- I don't know that I want to go through who you think is this, that, or the other, but --

COMMISSIONER CASTRO: We shouldn't do that.

COMMISSIONER GAZIANO: Well, we have in certain circumstances, but just in general, what's the proper balance? This seems about as balanced as we've come.

COMMISSIONER TITUS: I'm only asking that we postpone this re-chartering so we can get some questions answered, and the Staff Director can look
into it, and maybe see about recruiting some
additional members, and at that time --

VICE CHAIR THERNSTROM: And report back to
us at the next meeting. I would assume that's what
you would like.

COMMISSIONER TITUS: That would be fine.

COMMISSIONER HERIOT: What is it that the
Staff Director is going to be asked to do? And what is
she supposed to report back on?

COMMISSIONER TITUS: I don't want to put
on the record any kind of personal accusations at this
point, so we've asked the staff to provide some
information about the backgrounds of the different
members, some of their public statements, recruit and
see if there are other members, maybe former members
who'd like to come back or something, if that fits the
rules, just so we can have a wider choice, and be sure
we're coming up with the best composition possible.

COMMISSIONER GAZIANO: Yes, one of the --
we do, normally, perhaps in some extenuating
circumstances allow reappointments. Most of the SAC
are reappointments, as I recall, so that's going to
limit the new Acting Staff Director's authority.

VICE CHAIR THERNSTROM: I'm calling the
question. All in favor?
(Chorus of ayes.)

VICE CHAIR THERNSTROM: All opposed?

COMMISSIONER GAZIANO: Nay.

VICE CHAIR THERNSTROM: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Please call for abstentions.

VICE CHAIR THERNSTROM: All abstentions.

COMMISSIONER HERIOT: That would be me.

VICE CHAIR THERNSTROM: Thank you. I hope the court reporter has that, one nay, one abstention, the rest are ayes. The meeting is adjourned.

COMMISSIONER CASTRO: We have the Minutes.

VICE CHAIR THERNSTROM: I need a motion to adjourn it, actually.

COMMISSIONER CASTRO: What about the Minutes?

ACTING STAFF DIRECTOR BYRNES: The Minutes from December 3rd.

VICE CHAIR THERNSTROM: Oh.

COMMISSIONER CASTRO: We have to approve the Minutes of December 3rd.

VI. APPROVAL OF DECEMBER 3, 2010 MEETING MINUTES

COMMISSIONER CASTRO: I move that we
approve the Minutes of December 3.

COMMISSIONER GAZIANO: Second.

COMMISSIONER CASTRO: Call the question.

VICE CHAIR THERNSTROM: Calling the question.

(Chorus of ayes.)

VICE CHAIR THERNSTROM: All right.

Unanimous approval for the Minutes of December 3.

VII. ADJOURN

COMMISSIONER GAZIANO: I move to adjourn.

VICE CHAIR THERNSTROM: Second.

COMMISSIONER ACHTENBERG: Without objection.

COMMISSIONER CASTRO: By acclamation.

VICE CHAIR THERNSTROM: By acclamation.

(Whereupon, the proceedings went off the record at 4:51 p.m.)
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CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: Commission Meeting

Before: US Commission on Civil Rights

Date: 02-11-11

Place: Washington, DC

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

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Court Reporter

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