U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC BUSINESS MEETING

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FRIDAY, JANUARY 19, 2018

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The Commission convened via teleconference at 11:02 a.m., Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair*

PATRICIA TIMMONS-GOODSON, Vice Chair*

DEBO P. ADEGBILE, Commissioner*

GAIL HERIOT, Commissioner*

PETER N. KIRSANOW, Commissioner*

DAVID Kladney, Commissioner*

KAREN K. NARASAKI, Commissioner*

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director*

MAUREEN RUDOLPH, General Counsel*
STAFF PRESENT:
EVELYN BOHOR
LASHONDA BRENSON
PAMELA DUNSTON, Chief ASCD
ALFREDA GREENE
LENORE OSTROWSKY
MICHELE RAMEY
JOHN RATCLIFFE
SARALE SEWELL
JUANDA SMITH
BRIAN WALCH
MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:
SHERYL COZART
JASON LAGRIA
CARISSA MULDER
AMY ROYCE
RUKKU SINGLA
ALISON SOMIN
IRENA VIDULOVIC
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(11:02 a.m.)

CHAIRMAN LHAMON: This meeting of the U.S. Commission on Civil Rights comes to order at 11:02 a.m. on January 19, 2018. This meeting takes place over the phone.

I'm Chair Catherine Lhamon. I'd like to confirm that each of the Commissioners is on the line so I'll take a roll call here at the outset. Please say present when I say your name.

Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Present.

CHAIRMAN LHAMON: Commissioner Adegbile?

Commissioner Heriot?

COMMISSIONER HERIOT: Present.

CHAIRMAN LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIRMAN LHAMON: Commissioner Kladney?

COMMISSIONER Kladney: Here.

CHAIRMAN LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Present.

CHAIRMAN LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: On the phone.

CHAIRMAN LHAMON: Thank you. Based on that, a quorum of the Commissioners is present. Is
the court reporter present?

COURT REPORTER: I'm here.

CHAIRMAN LHAMON: Thank you. Is the Staff Director present?

STAFF DIRECTOR MORALES: Yes, I am.

CHAIRMAN LHAMON: Thank you. The meeting now comes to order. Is there a motion to approve the agenda for this business meeting?

I. APPROVAL OF AGENDA

COMMISSIONER Kladney: So moved.

COMMISSIONER NARASAKI: This is Commissioner Narasaki, so moved.

CHAIRMAN LHAMON: Thank you. Is there a second?

(Simultaneous speaking)

CHAIRMAN LHAMON: I heard voices, do we have a second actually?

COMMISSIONER YAKI: Yes, this is Michael.

CHAIRMAN LHAMON: Thank you. I think to ease the transcription for the court reporter it would be helpful if those who are not I, the Chair, identify who you are when you speak so the court reporter can appropriately record.

My understanding is that the Vice Chair seconded. Are there any further amendments to the, or
any amendments, to the agenda?

(Simultaneous speaking)

COMMISSIONER HERIOT: Oh, go ahead.

VICE CHAIR TIMMONS-GOODSON: Madam Chair,
Vice Chair Timmons-Goodson. I move to amend the
agenda to include a discussion and vote on the
statement that I sent out a few days ago.

CHAIRMAN LHAMON: Okay, thank you. Is
there a second?

COMMISSIONER YAKI: Commissioner Yaki,
second.

COMMISSIONER HERIOT: This is Gail. I
just want to clarify, I'm working off an agenda here
that already has the Vice Chair's thing on it, is this
the correct agenda? The one that is dated January
18th by email we got?

CHAIRMAN LHAMON: It's a publicly noticed
agenda so it has that on it.

COMMISSIONER HERIOT: Okay.

CHAIRMAN LHAMON: But that's like an
internal agenda.

COMMISSIONER HERIOT: Okay.

CHAIRMAN LHAMON: I'll offer three
amendments in addition. I move to amend the agenda to
add, one, a discussion and vote on an administrative
instruction on the order of succession, two, a
discussion and vote on revised timeline for the FY19
statutory enforcement report on federal civil rights
enforcement efficacy and, three, a discussion and vote
on the statements on the passing of Frankie Muse
Freeman. Do I have a second for those three
amendments?

COMMISSIONER KLADNEY: Kladney seconds.

CHAIRMAN LHAMON: Thank you. Are there
any further proposed amendments?

COMMISSIONER KLADNEY: Madam Chair, is the
higher ED project on the agenda? Because if I have an
agenda, and we're making all the motions, I don't know
if it's on there.

CHAIRMAN LHAMON: It is on the agenda.

Thank you, Commissioner Kladney.

COMMISSIONER KLADNEY: Thank you.

CHAIRMAN LHAMON: If there are no further
amendments, let's vote to approve the agenda as
amended. All those in favor say aye?

(Chorus of ayes)

CHAIRMAN LHAMON: Any opposed? Any
abstentions? The motion passes unanimously.

First, we'll discuss and vote on the
administrative instruction on oral public comments.
II. DISCUSSION AND VOTE ON THE ADMINISTRATIVE INSTRUCTION ON ORAL PUBLIC COMMENTS

CHAIRMAN LHAMON: Open the floor for discussion. I make a motion for the Commission to approve the administrative instruction on oral public comment period as seconded by my special assistant on Wednesday, January 17. Is there a second?

COMMISSIONER NARASAKI: Commissioner Narasaki seconds.

CHAIRMAN LHAMON: Thank you. I offer a few --

COMMISSIONER HERIOT: I --

CHAIRMAN LHAMON: -- points just to begin our discussion. I'll pause. Commissioner Heriot?

COMMISSIONER HERIOT: I would like to make a motion to amend the proposal. I have circulated the text of my amendment, do you want me to read it out loud anyway?

CHAIRMAN LHAMON: I don't object if you would like to but I don't think you need to, I think we all have it.

COMMISSIONER HERIOT: Okay. Because I don't see any point in, because it's long. I mean, it's longer than average.

CHAIRMAN LHAMON: Okay.
COMMISSIONER HERIOT: My point here is that we've gone through this once --

CHAIRMAN LHAMON: Commissioner Heriot, should we wait to see if we have a second for your motion and then have a discussion?

COMMISSIONER HERIOT: Sure.

CHAIRMAN LHAMON: Thanks.

COMMISSIONER KIRSANOW: Kirsanow seconds.

CHAIRMAN LHAMON: Okay, thanks.

COMMISSIONER KIRSANOW: Kirsanow seconds.

CHAIRMAN LHAMON: Thank you. Commissioner Heriot, do you want to describe?

CHAIRMAN LHAMON: Yes, I would like to talk about this. We've had wanted these open mic sessions now, and during that occasion I was worried that the word was not going to get out to everyone about this decision.

And in truth there is some evidence already. The only pole that we have on this, that I'm aware of at least, was by Education Next.

And it showed that most teachers opposed the Obama Administration's policy on school discipline. And yet, all of the persons who responded to our open mic invitation, other than people that I or our special assistants contacted, or people that
were contacted by the people that we contacted, who were on one side of it. Which I think shows that there was something wrong with our list.

And I think that should be something that is accessible to Commissioners. Because otherwise there is the very strong possibility, and I think that we saw it on this last occasion that the list of people that are getting the invitation is slanted.

So I think it's extremely important that this be a list that members of the Commission have access to so that they can supplement that list. And so that is why I am proposing that that list be accessible to Commissioners so that they can conduct outreach that the Commission Staff doesn't, or they can ask the staff to expand that list to include people that might not be on the original list.

CHAIRMAN LHAMON: Thank you. Any other views on this motion.

VICE CHAIR TIMMONS-GOODSON: This is Vice Chair Timmons-Goodson. In looking at the proposed AI under .03, Commissioner Heriot, why does the, and I note the language, or some of the language that your, in your proposal, is indeed included there.

In keeping with the bipartisan structure of the Commission, the Staff Director, Public Affairs
Director and our designees shall reach out to groups and individuals with viewpoints representing the full spectrum of informed opinions on the topic. Nothing herein shall be construed to prohibit the Commissioners or special assistants from conducting their own outreach about it, of why that doesn't take care of your concern.

COMMISSIONER HERIOT: I think that there has been, well, I don't think I know, that there has been a refusal by the Staff Director to share the list. And because of that, special assistants for Commissioner Kirsanow and for me, had to very quickly, after this has already gone out, they had to create their own list not knowing whether they were duplicating the efforts of the Staff because the Staff was keeping their list secret. Which I think is highly irregular. And that's what this is designed to prevent.

I think you can see, from the results that what we had from the last briefing, that the list that the staff was working from, could not have been ideologically diverse because, as I said, even though poles suggest that most people are on the other side of this issue, all the people who showed up were either contacted by people that our special assistants
contacted, were from our outreach and not from the staff's outreach.

So it's pretty clear that they're not doing a good job on that. That's why I think it needs to be supervised by people who care about the issue. And that would mean it has to be supervised by all members of the Commission.

If any single member of the Commission wants to see the list, they ought to be able to see the list rather than having to duplicate efforts.

When the staff is doing a good job, it won't be necessary for special assistants to supplement that. It shouldn't be something that they should have to do. But it was on this last occasion.

CHAIRMAN LHAMON: I think casting, this is the Chair, I think casting aspersions on the efforts of the staff is unwarranted and those aspersions are not demonstrated by the actual results that we received.

But the staff are directed to reach out in a non-partisan way and to try to reach out in a comprehensive way. It's my understanding --

COMMISSIONER HERIOT: So, why are they keeping this a secret?

CHAIRMAN LHAMON: It's my understanding,
it's my understanding the staff reached out to all the
special assistants and asked for contacts, who should
be included. I think that they would welcome, develop
and maintain the appropriate list.

I'm agnostic about, well, whether they
should list them, I think that's a call for the Staff
Director to make, but I don't think it's appropriate
either for us to micro manage the conduct of staff
duties, which is within the purview of the Staff
Director, or to task aspersions on how they conducted
them without having information sufficient to be able
to evaluate them.

COMMISSIONER HERIOT: But the fact that
it's being kept secret is the evidence.

CHAIRMAN LHAMON: That's not --

COMMISSIONER YAKI: Commissioner Yaki.

CHAIRMAN LHAMON: Go ahead Commissioner
Yaki.

COMMISSIONER YAKI: I actually am not
unsympathetic to both Commissioner Heriot's and
Commissioner Kirsanow's points of view on this. I
don't know if I actually agree with the amendments,
but I have a, as someone who has had the experience of
dealing with public comment as a part of my
legislative life, I actually look at it from a
different point of view, which is given the amount of
work that must be done by staff and others on the
Commission already, I don't see why we are even doing
outreach.

The whole point about public comments is
actually to give people who are interested in this and
make the journey to witness, to see what is going on
and hearing whether it's in D.C. or briefing in D.C.
or elsewhere, a chance to add their own point of view
for the record. And I don't actually see why we
should even do any "additional outreach at all."

I think that it, as a part of the notice
of the hearing and briefing, and as part of the
communication that we send to all the people who are
being contacted as or invited or confirmed as
witnesses, that they be informed that there will be
this commentary and they're invited to ask others to
join or attend if they wish to have an opportunity to
comment.

Beyond that, I think that it is difficult
for me to why we should have the, have our staff try
and do additional work at getting people to show up.
I think that from a partisan point of view that it
could be abused. And as someone who has been on both
the majority and the minority, I can see how this
could happen.

But rather than have a situation where we are publicly fighting over who, for who an outreach was given and who was not, I think that instead we have a more passive point of view towards outreach. And if people do show up and are interested and find out that they have an opportunity at the end to make it to say a few words, I'd say let them.

But given our resource limitation, limitations right now, I just don't see why we should burden the Staff Director and the public affairs director and others, to go out there and try and beat the bushes for additional people to show up and then have a situation where the minority may argue that only certain people were called or not and have a whole fight about the entire list.

So I don't want, I don't like -- I think that Commissioner Heriot's amendments, as written, adds too much of a burden to Staff. And I would actually rather just go for deleting the whole motion of additional outreach all together and let come what may, with the appropriate notice on our agenda and the notice to all people who we have contacted or who have been invited to the briefing to let them know there will be this additional period.
COMMISSIONER HERIOT: That argues more for not having open mic than it does for not trying to get the people who might be interested --

COMMISSIONER YAKI: No it doesn't. I don't know where you get to that conclusion.

I have been in hundreds of, at least maybe even more, meetings in my public life, as a public official, whereby law the is a required public comment period for every public meeting that exists. And there are always going to be people who will show up and who have a point of view.

And sometimes, you know, if you are doing something important, you or your staff will go and ask people to show up. In addition to that, the public comment period, to lend support to the structured testimony that is part of the regular hearing.

It happens, it is natural, it is part of democracy in pretty much every, every city council and town hall and township in this country. I've always felt we should have a public comment period anyway whenever we go out and do a briefing or a hearing.

It doesn't say that we don't do it, it just simply says, let the organic nature of democracy work. And if you supplement it with your own help, with your own work, that's fine but it's not the full-
time Commission staff to have to go out and try and
drive people to the public comment period.

The whole thing about the public comment
is comment for the public writ large, not for the
public writ, whoever the Commission staff manages to
make the phone call to.

COMMISSIONER ADEGBILE: Madam Chair?

COMMISSIONER YAKI: If you want your
special assistant to do it, that's great. But I don't
see a reason why this cuts against the entire idea of
public comment.

To me the comment by Commissioner Heriot
about just throw it, the whole with the back water is,
someone is looking down the road thinking, well, I
don't get it, I don't get it at all. I like the idea
of --

CHAIRMAN LHAMON: Okay, Commissioner Yaki,
let's speak to Commissioner --

COMMISSIONER YAKI: -- it's part of
democracy.

CHAIRMAN LHAMON: Commissioner Adegbile,
we've joined us?

COMMISSIONER ADEGBILE: Yes. Madam Chair,
for the record can you just reflect that I have been
on for the entirety of the call?
We were having an audio issue wherein I could hear you but you could not hear me. I just wanted to clarify that for the record.

CHAIRMAN LHAMON: Oh, terrific, I'm glad that you're here. Thank you. Any more comment on Commissioner Heriot's amendments?

COMMISSIONER KIRSANOW: Kirsanow here.

CHAIRMAN LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Thank you. I'm not inclined to vote for this AI, not because I'm opposed to public comment but because I believe no matter what we do to structure this, it is necessarily going to be unbalanced. And that's because, the other public comments that we have are transmitted by letter or email and that's subject to geographical restrictions.

Now, if our public comment AI was restricted to regional hearings that we might have where people had ready access to the Commission's hearing, I might rethink this. Although I'm not fully persuaded that that's necessarily a good idea.

But here, as Commission Heriot has suggested, kind of in a different way however, is that you have certain individuals who have access to the Commission either because they have the funds to get
there, the time to get there or more precisely, they
live close by and we would get skewed public comments.

We have the ability to entertain public
comments by virtue of, as I said, emails and letters.
We've done so in the past.

Someone who has a passionate position on a
given subject that we have a hearing on, who
nonetheless lives in Hawaii or Alaska, will not be
able to make any public comments. Although I'll be
lobbying strenuously for us to have a hearing in
Hawaii, but they will not be able to come to
Washington, D.C., or wherever we have a hearing.
Presumably on the continental United States. In the
continental United States.

So, I'm not sure about the utility or the
value of public comments that are so skewed. So I'll
be voting against this.

COMMISSIONER HERIOT: Excuse me, against
the main motion?

COMMISSIONER KIRSANOW: Against the main
motion, correct.

COMMISSIONER KLADNEY: This is Dave
Kladney.

CHAIRMAN LHAMON: Go ahead, Commissioner
Kladney.
COMMISSIONER KLADNEY: First of all, I would support any motion Commissioner Kirsanow makes to have a meeting in Hawaii.

(Laughter)

COMMISSIONER KLADNEY: So I would like Commissioner Kirsanow to know that that's going to be a bipartisan effort from now on.

COMMISSIONER KIRSANOW: I'll make a motion.

(Laughter)

COMMISSIONER KLADNEY: You got to find a subject. I'm kind of disturbed by the fact that there was a, that the record reads that there's no need to display who has been contacted for the public comment period.

And I'm also disturbed by the fact that Commissioner Heriot's motion goes into way too much detail.

I don't understand why in that the staff, that most of these invitations are sent out for the six weeks prior to the hearing occurring. I am sure that we have to give some lead time.

And I would say that that list should be provided to all the commissioners at the time that the invitations are sent out. Because it seems to me that
that's information anyways.

And I would say that in the future, that then the Commissioners or special assistants could use the same invitation, or should be required to use the same invitation, and inform the staff as to who they invited. I think that would cover that problem, if there is a problem.

And it would lead to more openness within the Commission. It would also address I think some of Commissioner Yaki's concerns in the sense that it would add more people carrying the burden of these invitations.

I would also believe that Commissioners would inform the staff. I'm just missed at this whole thing.

And I'm also, I assume, and I don't have the proposed, Commissioner Heriot's proposed language in front of my right now so I apologize, but it's my understanding she also requested the Commission could read other people's statements. I am against that.

COMMISSIONER HERIOT: That's not part of this motion. That's not part of this motion.

COMMISSIONER KLADNEY: Oh, that's another motion? Okay. Then I have said my piece on this.

CHAIRMAN LHAMON: Okay.
COMMISSIONER KLADNEY: Thank you very much.

CHAIRMAN LHAMON: I want to move us to a vote on this proposed amendment. Is there any more discussion on this amendment?

COMMISSIONER HERIOT: Well, I'm just wondering in view of Commissioner Kladney's statement whether we can like come up with something that will make everybody happy here. Maybe not on this call but at the next meeting.

CHAIRMAN LHAMON: I think that's fine, Commissioner Heriot, and I welcome taking a look at draft language if you would like to take a lead on that.

We do have a motion that's been seconded so why don't we move to voting on it. To be clear, we're not voting on a full proposed administrative instruction we're just voting on the amendment proposed by Commissioner Heriot.

I'll take a roll call vote on that now. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Nay.

CHAIRMAN LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN LHAMON: Commissioner Kirsanow?
COMMISSIONER KIRSANOW:  Yes.

CHAIRMAN LHAMON:  Commissioner Kladney?

Commissioner Kladney?

COMMISSIONER KIRSANOW:  Sorry, I had it on mute. No.

CHAIRMAN LHAMON:  Commissioner Narasaki?

COMMISSIONER NARASAKI:  Nay.

CHAIRMAN LHAMON:  Commissioner Yaki?

COMMISSIONER YAKI:  No.

CHAIRMAN LHAMON:  Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON:  No.

CHAIRMAN LHAMON:  My vote, no. The motion fails. Two Commissioners were in favor, no Commissioner abstained, all the rest opposed.

So we'll now continue discussion on the pending motion to approve the administrative instruction on oral public comment periods circulated by my special assistants on Wednesday, January 17. Is there any discussion of that motion?

COMMISSIONER YAKI:  Wasn't there another amendment offered by someone?

CHAIRMAN LHAMON:  No.

COMMISSIONER HERIOT:  I think Commissioner Kirsanow had a motion.
COMMISSIONER KIRSANOW: No, I didn't have a motion.

CHAIRMAN LHAMON: Okay. So, the floor is open for discussion on the amendment. Hearing none, let's vote on the proposed motion. I will take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIRMAN LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: No.

CHAIRMAN LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIRMAN LHAMON: Commissioner Kladney?

COMMISSIONER KLASTNEY: Abstain.

CHAIRMAN LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRMAN LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN LHAMON: And I vote yes. The motion passes. Two Commissioners opposed, two Commissioners abstained, and four Commissioners were in favor.

Next, we'll consider the release of the
outline and transcript of the Commissions briefing on inequities in higher education funding.

III. THE RELEASE OF THE OUTLINE AND TRANSCRIPT OF THE COMMISSIONS BRIEFING ON INEQUITIES IN HIGHER EDUCATION FUNDING

CHAIRMAN LHAMON: If you'll open up the floor for discussion. Is there a motion?

COMMISSIONER KLANDNEY: Yes, Madam Chair, I would like to make a motion that we approve the transcript on outline for approval of the Commission.

And I believe that this higher education funding -- for the higher education funding project I'd like to thank Aimee Royce and Alison Somin for leading this project, they did an excellent job.

And the other special assistants, which is Rukku Singla, Sheryl Cozart, Irena Vidulovic, I think, Jason Lagria and Carissa Mulder for their assistance as well.

I'm glad to see that we're all seeing this project to completion. I think it was more important to do this, since we were going to do the report, I think it was important that the transcript be summarized and it became useful to the public rather than just publishing the transcript.

I would like to thank them all again and I
would like to thank all their Commissioners for allowing them to partake in this valuable project. Thank you very much.

COMMISSIONER NARASAKI: Commissioner Narasaki seconds.

CHAIRMAN LHAMON: Thanks, Commissioner Narasaki. As we open the floor for discussion I'll add my thanks to the Commission staff who helped us to hold what was a two day briefing and to look at the transcript for further materials, bring the experts who testified to us. I'm very grateful that we have the material. And I will be enthusiastic, if the motion passes, to see the transcript on the web.

Are there any further discussion? Okay, hearing none I'll call the question, take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIRMAN LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Aye.

CHAIRMAN LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN LHAMON: Commissioner Kladney?

COMMISSIONER KLABNEY: Yes.

CHAIRMAN LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.
CHAIRMAN LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIRMAN LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN LHAMON: And I vote yes. The motion passes unanimously. Next item is a discussion vote on the administrative instruction on the order of succession.

IV. DISCUSSION VOTE ON THE ADMINISTRATIVE INSTRUCTION ON THE ORDER OF SUCCESSION

CHAIRMAN LHAMON: I open the floor for discussion. I move for approval of the administrative instruction on the succession, as speculated by my special assistant, on Wednesday, January 17. Do I have a second?

COMMISSIONER ADEGBILE: Second. This is Commissioner Adegbile.

CHAIRMAN LHAMON: Thank you. Open discussion. I'll start with just a few points.

I'm told our General Counsel raised to the Staff Director an inconsistency in our internal administrative instructions with respect to succession in the event of a vacancy in the position of a Staff Director. In order to safe guard the efficient
operation of the Commission, it is necessary to have a clear plan in place in case the circumstances require it.

Historically, the director of the Office of Civil Rights Evaluation has been the designated official who takes on the duties and responsibilities of the Staff Director in the event of a Staff Director vacancy. This proposed administrative instruction uses that past practice as a default model.

The Commission is now very leanly staffed. And with the budget and staffing realities of the Commission, we need to be able to be flexible, to address the circumstances we operate under at the time when we might need to use this proposed administrative instruction.

It's evident to me that so many of our staff where multiple hats and I appreciate their willingness to gap fill when we do not have agency positions filled. Especially given that staff willingness to stretch when we need it.

We do not want to be in a position either of unreasonably adding more to any on person's load or of leaving a Commission with an administrative head of the agency.

For that reason, this proposed
administrative instruction will that process narrowing
the process called for in our statute. That another
member of the Commission staff could exercise the
duties and responsibilities for the Office of the
Staff Director, with a concurrence of a majority of
the Commission.

And since the director of the Office of
Management could serve in this role, with the
concurrence of the majority of the Commission.

Depending on the realities of the time
these circumstances arise, that or another choice, may
make more sense than the OCRE director. Without a
crystal ball, we cannot know the exact circumstances
of when or how this could happen, and I believe we
need a process flexible enough to handle any emergence
issues.

Do we have any other discussion on this
proposed administrative instruction? And I'll start
with the Staff Director, I understand he would like to
weight in.

STAFF DIRECTOR MORALES: Thank you, Madam
Chair. I really appreciate your effort in leading
this.

I couldn't agree with your more about
contingencies on succession if anything were to happen
to me. And so I would say that if anything, what's happened in the last 24 hours, with regards to potential shutdown of the Agency, shows the necessity in having a head of the Agency is essential for the Commission to undertaken its operations.

And lastly, I would just like to remind Commissioners that under our continuation of operations, also known as our COOP plan, in the event of a natural disaster or a national emergency, in the absence of a Staff Director, the director of OCRE is placed in charge of operations. So, this AI is consistent with that plan and with prior historical operations and so I would encourage the Commissioners to adopt the AI.

CHAIRMAN LHAMON: Thank you, Mr. Staff Director. Is there any other discussion?

COMMISSIONER ADEGBILE: Madam Chair, Commissioner Adegbile here.

CHAIRMAN LHAMON: Go ahead, Commissioner Adegbile.

COMMISSIONER ADEGBILE: I would just like to speak in favor of the proposal. In most part because I think that there has been some, there is some conflict between the various rules that govern in this space within our internal documents at this point
and I think adding clarity as to which document internally governs, which instruction governs, could be helpful, should be addressed.

CHAIRMAN LHAMON: Thank you. Any other discussion?

COMMISSIONER KLADNEY: Madam Chair, Dave Kladney here.

CHAIRMAN LHAMON: Commissioner Kladney.

COMMISSIONER KLADNEY: Just a conflict on the rules of succession. When I first came on the Commission, a person was acting as acting director and acting GC [General Counsel]. And then subsequently, also oversaw OCRE.

I always felt that the positions of general counsel, which is a legal job, and the director's job, which is chief of operations, should be kept separate in terms of legal advice. And that type of format, I believe, is well healed in terms of efforts in lawyering them, I guess for lack of a better word or lack of good vocabulary.

And I would support the AI as it's written. For that separation of purpose. That's it.

CHAIRMAN LHAMON: Thank you. Any further discussion? Hearing none, I'll call the question and take a roll call vote. Commissioner Adegbile, how do
you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIRMAN LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I'll vote no.

CHAIRMAN LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN LHAMON: Commissioner Kladney?

COMMISSIONER KLASDNEY: Yes.

CHAIRMAN LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRMAN LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN LHAMON: And I vote yes. The motion passes. One Commissioner voted no, two Commissioners abstained and the other Commissioners were in favor.

Next, we'll consider the revised timeline to the FY19 [Fiscal Year 2019] Statutory Enforcement Report on federal civil rights enforcement efficacy.

V. DISCUSSION AND VOTE ON THE REVISED TIMELINE TO THE FY19 STATUTORY ENFORCEMENT REPORT ON FEDERAL CIVIL RIGHTS ENFORCEMENT EFFICACY
CHAIRMAN LHAMON: I open the floor for discussion. I move for the approval of the revised timeline for the FY19 Statutory Enforcement Report on federal civil rights enforcement efficacy, is there a second?

COMMISSIONER ADEGBILE: Commissioner Adegbile seconds.

COMMISSIONER NARASAKI: Commissioner Narasaki seconds.

CHAIRMAN LHAMON: Thank you. Again, a discussion with a few points. This is a slight revision from the timeline that we approved last month.

The major change is to add a second period of Commissioner review for the report. I thank our staff, particularly the Staff Director and Sarale Sewell, for making this change and taking steps to ensure that the Commissioners and staff have adequate time with the report draft to make the final product as accurate and informative as possible.

Is there any other discussion to this motion? Hearing none, I'll call the question and take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.
CHAIRMAN LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I abstain.

CHAIRMAN LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN LHAMON: Commissioner Kladney?

Commissioner Kladney?

COMMISSIONER Kladney:

CHAIRMAN LHAMON: Thank you. Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIRMAN LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN LHAMON: And I vote yes. Two Commissioners abstained, all other Commissioners voted in favor.

Next item on our amended agenda is a discussion and vote on a proposed statement titled, “U.S. Commission on Civil Rights strongly criticizes Attorney General Jeff Sessions' withdrawal of critical civil rights guidance,” introduced by the Vice Chair.

VI. DISCUSSION AND VOTE ON A PROPOSED STATEMENT TITLED, U.S. COMMISSION ON CIVIL RIGHTS STRONGLY
CRITICIZES ATTORNEY GENERAL JEFF SESSIONS’ WITHDRAWAL
OF CRITICAL CIVIL RIGHTS GUIDANCE

CHAIRMAN LHAMON: Vice Chair Timmons-Goodson, could you please read the statement posed for consideration so we know what it is we're voting on?

VICE CHAIR TIMMONS-GOODSON: Yes. It is entitled, “U.S. Commission on Civil Rights strongly criticizes Attorney General Sessions' withdrawal of critical civil rights guidance.”


Attorney General Sessions trumped the truism that "any guidance that is outdated, you should circumvent the regulatory process or that improperly goes beyond what is provided for in statutes or regulations should not be given effect." That claim does not, however, apply to these recent, narrowly crafted, urgently applicable guidance documents.

For example, the Department issued the Dear Colleague Letters related to access to justice...
for low-income Americans to simply remind state Chief
Justices and state court administrators of what the
Constitution requires regarding the enforcement of
fines and fees and to promote better practices for
municipal courts in dealing with individuals who are
unable to pay.

In September 2017, the Commission released
its statutory enforcement report, "Targeted Fines and
Fees against Low-income People of Color, Civil Rights
and Constitutional Implications." The Commission
found that court imposition of fines and fees for
criminal and civil justice activities has become a
common practice in many jurisdictions across the
country.

And that even after public condemnation of
the excesses of such practices, most states have taken
virtually no steps to conform their actions to the
law. The Commission also heard from judicial
officials who candidly admitted that some of their
judges did not know the law, prohibiting jailing
people for their inability to pay fines and fees.

The Commission's report noted two critical
points relevant to the Department’s guidance in this
area. First, the Dear Colleague Letters have led to
reforms among states and municipalities.
Second, after hearing bipartisan clamor for continued leadership in this area from the department, the Commission recommended that the Department continue to promote core principles identified through its Dear Colleague Letters. Both of these points, and the report in general, highlight the importance of the Department’s guidance to states and localities in limiting unconstitutional practices.

The Commission is similarly troubled by the withdrawal of Department guidance related to civil rights for persons with disabilities. Including a department statement addressing integration of people with disabilities to state and local government employment service systems, as required under Title II of the Americans with Disabilities Act.

This simple statement of existing law serves as a clear reminder that the Department of Justice stands ready to enforce civil rights for these Americans. Withdrawing the guidance, however, sends the opposite message, relegating rights to the vagaries of local will, inconsistent with Congress federal mandate.

The Commission is concerned that the withdrawal of the Dear Colleague's guidance will have unintended consequences. Courts may erroneously

Second, after hearing bipartisan clamor for continued leadership in this area from the department, the Commission recommended that the Department continue to promote core principles identified through its Dear Colleague Letters. Both of these points, and the report in general, highlight the importance of the Department’s guidance to states and localities in limiting unconstitutional practices.

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This simple statement of existing law serves as a clear reminder that the Department of Justice stands ready to enforce civil rights for these Americans. Withdrawing the guidance, however, sends the opposite message, relegating rights to the vagaries of local will, inconsistent with Congress federal mandate.

The Commission is concerned that the withdrawal of the Dear Colleague's guidance will have unintended consequences. Courts may erroneously
determine that jailing the poor when they're unable to pay does not offend the Constitution.

Police officers and courts pressured to raise revenue may revert back to predatory practices in enforcing fines and fees. State and local governments may only offer employment to people with disabilities in a segregated setting.

The Commission calls for Attorney General Sessions immediately to correct the civil rights harm his guidance withdrawal works on our nation's social fabric by reinstating the guidance, signaling the necessary ongoing leadership of our nation's Department of Justice in actually securing justice for the people.

Chair Catherine E. Lhamon stated, "Federal leadership is essential to securing civil rights. Through these repeated guidance withdrawals, the Department of Justice relegates Americans to less justice rather than leading the way to ensure greater justice. The Commission strongly urges the Department of Justice to course correct to fulfill its mandate of equal and impartial justice for all." [End of text of statement]

CHAIRMAN LHAMON: Thank you, Vice Chair.

Do we have a second for the motion to approve the
statement?

COMMISSIONER KLADNEY: Kladney seconds.

CHAIRMAN LHAMON: Thank you. Is there any discussion on this statement? I'll begin with your, Vice Chair, with response to the statement.

VICE CHAIR TIMMONS-GOODSON: Yes. I have continued to read about the actions by the Attorney General, the statements regarding issues that we all care so deeply about.

And I just was concerned that the message from the top is the wrong message at this time, and that as the guardian of civil rights that we ought to say something. Let it be known that is has not gone unnoticed by us, and in fact, encourage our Attorney General to reconsider and go back in the other direction. I ask to support for this statement.

CHAIRMAN LHAMON: Thank you. Any other discussion?

COMMISSIONER ADEGBILE: Commissioner Adegbile here.

CHAIRMAN LHAMON: Go ahead, Commissioner Adegbile.

COMMISSIONER ADEGBILE: Just two points very quickly. And I think the statement speaks to it very well, but in part, the rule of law is enforced
and draws its power from people being treated fairly.

And the difficulty in this area is that if constitutional protections are not followed, there is a widespread, it can lead to the widespread perception, and in some cases, reality, that people are being treated unfairly by our legal system because they are people of modest means. Nothing can be more corrosive to a democracy than to have our highest officials, in some way, take steps that can count against this.

The widespread and shared support of this notion. That it's important for people of modest means to not be treated harshly by our legal system, is manifested in some of the recent briefings that we had where we had an uncommon level of bipartisan support for reform in these areas.

And so I would just like to say that we can choose to be on a better path here and it is my great hope that the Attorney General will revisit the question because I think it enforces the rule of law in a way that matters when constitutional protections are met.

CHAIRMAN LHAMON: Thank you. Do we have any other discussions?

COMMISSIONER HERIOT: Yes.
CHAIRMAN LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: I just wanted to point out that we are talking about guidances here. And I commend Attorney General Sessions for being concerned about the abuse of guidances.

Guidances are not supposed to change the law, they're supposed to simply state it. Therefore, withdrawing a guidance doesn't in any way change the law. The law, if these guidances were correct, then the withdrawal of a guidance doesn't have any effect.

If they misstated the law, then of course withdrawing them is important. So I am going, I haven't read all the guidances that have been withdrawn by the Attorney General so I'm not expressing an opinion on any particular guidance here.

As you know, I agreed with a lot that was in our fines and fees report but I'm going to be voting no on this statement.

CHAIRMAN LHAMON: Thank you.

(Simultaneous speaking)

COMMISSIONER Kladney: Madam Chair?

COMMISSIONER NARASAKI: This is Commissioner Narasaki.

CHAIRMAN LHAMON: Commissioner Narasaki go ahead and then Commissioner Kladney you can go after.
COMMISSIONER NARASAKI: So, I want to add my support to this statement. I think that guidance has played a very important role because it helped provide a roadmap for those who need to comply to understand how they conduct, comply with the law.

And also for the communities who are affected to be able to use those documents and talk in with the agencies and work to get compliance. I think they are very critical to making real the operability and the operation of the law.

So I am very concerned about both the fines and fees and also the documents that were helping to give clear guidance on the Americans with Disabilities Act. Thank you.

CHAIRMAN LHAMON: Thank you. Commissioner Kladney.

COMMISSIONER KLADNEY: Thank you, Madam Chair. I agree with everything that has been said in support of the statement.

I don't believe that the Attorney General, the Attorney General didn't say that these guidances were incorrect. I think the guidances, as stated, were correct. Especially as to fines and fees.

And I find that what the Attorney General, the withdrawal of the guidances, is exactly that. It
will not allow states, and municipalities, to move forward in the proper fashion. Not that they need to move forward in that step, but they need to meet constitutional requirements.

And especially now, there have been two lawsuits brought against jurisdictions. A known case in Biloxi, Mississippi, and a case just recently that was ruled on in New Orleans.

And these suits are succeeding because concurrent practices of jurisdictions are wrongheaded, and the only way to inform these jurisdictions about the constitutional requirements is through these guidances.

And I believe they have had a very positive effect on justice and the administration of justice in our country. So I support the motion.

CHAIRMAN LHAMON: Thank you. Any further discussion?

COMMISSIONER KIRSANOW: Kirsanow please.

CHAIRMAN LHAMON: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Thank you, Madam Chair. I'll be voting against it. Primarily because I think with respect to letters, guidances, even opinion letters, those should be issued, in my opinion, very sparingly and prudentially.
Because on occasion, I'm not saying with respect to these particular letters or guidances, they confuse issues and are inconsistent with the intent of the administrative procedure. I think very often are attempts to circumvent the Administrative Procedure Act.

So it's a matter of administrative hygiene allowing agencies to promulgate guidances and letters in general, is something that should be done very carefully. And executive branch sometimes believe that they are part of the legislative branch. And I think it's a good idea to make sure we do, we separate the powers appropriately.

CHAIRMAN LHAMON: Thank you.

COMMISSIONER KLADNEY: Madam Chair, I would just like to distinguish between an opinion letter and a guidance. I believe an opinion letter is much stronger when it's handed out by the Department of Justice as opposed to a guidance, which allows jurisdictions to make their own decisions.

An opinion letter, it's a much stronger document. And I don't believe that the guidances we're speaking about here, again, were wrongly headed, wrongly written and I, again, support the motion.

CHAIRMAN LHAMON: Thank you. We've heard
from all so I don't have any --

COMMISSIONER ADEGBILE: Madam Chair,

Commissioner Adegbile.

CHAIRMAN LHAMON: Yes.

COMMISSIONER ADEGBILE: One additional point about ADA compliance. In my experience, the ADA is a very important statute, but it's also one that having guidance in place about how to comply can provide a very important service to the community and to businesses and institutions that much prefer to comply and bring their practices in line with legal requirements rather than facing suit or liability. And this is one of the important roles of guidance.

And as some of our Commissioners have said, they likely pass for compliance and for best practice. Now, every entity can decide whether or not they follow the guidance or choose a different course. That is, they're not mandatory in any respect.

But I dare say that in many contexts where there is a lack of clarity or misunderstanding about the law, to have an articulation with respect to compliance in certain areas by the United States Department of Justice can be very helpful. Including for those entities that want to manage in further compliance.
CHAIRMAN LHAMON: Thank you. If I can

call to question and take a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: After all of that

long-winded stuff I vote aye.

(Laughter)

CHAIRMAN LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I vote no.

CHAIRMAN LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIRMAN LHAMON: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIRMAN LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: For those who don't

believe this Administration can do any damage, this is

one of the points of evidence in favor that they can

and so I vote aye.

CHAIRMAN LHAMON: Vice Chair Timmons-

Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN LHAMON: And I vote yes. The

Commission passes. Two Commissioners voted no, all

other Commissioners were in favor.
The next item on our amended agenda is a discussion and vote on a proposed statement titled, statement on the passing of Frankie Muse Freedman.

VII. DISCUSSION AND VOTE ON A PROPOSED STATEMENT TITLED, STATEMENT ON THE PASSING OF FRANKIE MUSE FREEDMAN

CHAIRMAN LHAMON: I will begin by reading the text of the statement into the record.

[Begin text of statement] “We join the nation in mourning the passing of civil rights hero and former Commissioner Frankie Muse Freeman. We offer our heartfelt condolences to her family and friends.

Ms. Freeman began her service with the Commission as a member of our Missouri State Advisory Committee. In 1964, President Johnson appointed her to the Commission, making Ms. Freeman the first woman to serve in that role.

She served the nation with distinction for 16 years as the Commission handled seminal civil rights issues such as evaluating the Voting Rights Act of 1965, the progress of desegregating schools and health and welfare services, and the state of equal employment opportunity.

Ms. Freeman's leadership was evident when
the Commission went to Mississippi in 1965 for a voting rights hearing, she chose to visit Black churches that had been burned after Black People tried to register to vote. The visit was reportedly so moving that Commissioners decided to arrange site visits to coincide with hearings whenever possible thereafter.

Ms. Freeman dedicated her career to fighting for civil rights as a practicing attorney at federal and state levels, advocating for equal education and housing opportunities, among other issues.

In one of her most well-known roles, she was lead attorney in the landmark case, Davis versus St. Louis Housing Authority, which resulted in the end of racial segregation in public housing in the city.

In 2007, her footsteps were added to the International Civil Rights Walk of Fame at the Martin Luther King Jr. National Historic Site. In 2003, she published her memoir, *A Song of Faith and Hope: The Life of Frankie Muse Freeman.*

She served for many years as a Trustee of Howard University, and received honorary doctorates from five American universities. Ms. Freeman's positive impact on civil rights cannot be overstated.
As a nation, we owe her an enormous debt of gratitude. As Commissioners, we are proud to continue her legacy.” [End of text of statement]

I now move to approve the statement and open the floor for discussion. Do I have a second?

COMMISSIONER HERIOT: Second.

CHAIRMAN LHAMON: Thank you. Commissioner Heriot, you seconded?

COMMISSIONER HERIOT: Yes.

CHAIRMAN LHAMON: Thank you. Any discussion on this statement?

VICE CHAIR TIMMONS-GOODSON: Madam Chair, Vice Chair Timmons-Goodson. I am just so pleased to see that we are doing this. Commissioner Freeman deserves nothing less.

I had the pleasure of meeting her in July of 2014, shortly after I was appointed to the Commission. It was in Atlanta at a meeting. And she spoke to the group about how it is that she came to serve on the U.S. Commission on Civil Rights and what it meant to her to be able to step into that role.

And the words that this Commission sent marking, I believe her 100th birthday last year, were very appropriate and spoke movingly about her. And it was in the words of others, a life well lived. And we
are all the beneficiaries of her love for service.

COMMISSIONER NARASAKI: Madam Chair,

Commissioner Narasaki.

CHAIRMAN LHAMON: Commissioner Narasaki,

go ahead.

COMMISSIONER NARASAKI: Yes. I want to

add my voice of support. Too often the women in the
civil rights movement have been forgotten and I think
it's incredibly important to mark those women who play
such an important role in helping our country to move
forward, so I heartedly support this statement.

CHAIRMAN LHAMON: Thank you. I'll add my

own voice of support. Having read the statement but
also just to say that it is truly an honor to pass by
Frankie Freeman's photo with a smiley face, as I walk
in and out of the Commission, and to try to walk in
her footsteps as we do this work.

She is a hero. And I deeply regret her

passing but I am so very grateful for her legacy.

Thank you all, for drafting the statement

and moving us forward on this. And unless there is

further discussion, I'll call the question and take a

roll call vote. Commissioner Adegbile, how do you

vote?

COMMISSIONER ADEGBILE: Aye.
CHAIRMAN LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I vote yes.

CHAIRMAN LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN LHAMON: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIRMAN LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIRMAN LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN LHAMON: And I vote yes. The motion passes unanimously. We are at the end of our agenda, we are also facing the possibility of an eminent shutdown so I'd like to turn to the Staff Director to speak to us about that possibly as the Staff Director Report. Mr. Staff Director.

STAFF DIRECTOR MORALES: Yes, thank you, Madam Chair. I just wanted to remind or point out to Commissioners that I sent a notice this morning per the requirement instructions of the Office of Management and Budget to notify all employees for the potential of a shutdown.
If no budget is passed then all employees will be furloughed on Monday. And Commissioners are always considered to be part-time federal employees so you will not be able to work.

If we do in fact have a shutdown, you are furloughed. And we're going to be meeting with senior management right now, after this meeting, to put up the contingency plan per all on these requests. We had one on our website, but we need to have the new dates for the shutdown.

I think OMB and a lot of folks were caught scrambling in the last 24 hours trying to think that Congress will be able to pass the budget but now it looks like we may go to a shutdown. I will be advising Commissioners as we get to that point, if that happens on Monday. But we'll see what happens over the weekend.

So I ask everybody to give good thoughts and good karma that Congress can pass the budget so we can move forward. We have a field hearing pending and if there's an extensive delay it could impact the ability for us to have a field hearing. But I'll have more to say on that later. Thank you.

VIII. ADJOURNMENT

CHAIRMAN LHAMON: Thank you, Mr. Staff
Director. If there is nothing further, I hereby adjourn the meeting at 12:03 p.m. Eastern time. Thank you all.

(Whereupon, the above-entitled matter went off the record at 12:03 p.m.)