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

PRESENT:

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

KIMBERLY TOLHURST, Delegated the Authority of the Staff Director
STAFF PRESENT:

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

COMMISSIONER ASSISTANTS PRESENT:
NICHOLAS COLTEN
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
MARLENE SALLO
ALISON SOMIN
AGENDA

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PROCEEDINGS

(9:35 a.m.)

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

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

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

STAFF DIRECTOR TOLHURST: Yes.

CHAIRPERSON CASTRO: Is the court reporter present?

COURT REPORTER: Yes.

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

The first item is the Approval of the Agenda.

I. APPROVAL OF AGENDA

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

COMMISSIONER Kladney: Second.

CHAIRPERSON CASTRO: Okay. Are there any amendments?

COMMISSIONER ACHTENBERG: Mr. Chairman?

CHAIRPERSON CASTRO: Yes, Commissioner Achtenberg?

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

COMMISSIONER HERIOT: Second.

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

COMMISSIONER YAKI: Second.

COMMISSIONER GAZIANO: Okay. Where would the discussion of the Lincoln Cottage proposal go in the agenda?
CHAIRPERSON CASTRO: Why don't we put it before the update on the Statutory Enforcement Report under Program Planning.

Okay. Any discussion, further discussion?

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

(Chorus of ayes.)

CHAIRPERSON CASTRO: Any opposed? Any abstentions?

(No response.)

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

II. APPROVAL OF THE OCTOBER 21, 2011 MEETING MINUTES

CHAIRPERSON CASTRO: I move that we approve.

COMMISSIONER GAZIANO: I second.

CHAIRPERSON CASTRO: Any discussion?

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRPERSON CASTRO: Yes?

COMMISSIONER HERIOT: I had an addition to the Minutes.

CHAIRPERSON CASTRO: Okay.

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

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

COMMISSIONER HERIOT: Didn't you?

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

COMMISSIONER HERIOT: Well, the basic meaning.

CHAIRPERSON CASTRO: Sure, that's fine.

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

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

COURT REPORTER: Can you --

COMMISSIONER HERIOT: I'm sorry, Commissioner Achtenberg.

I would like to change the Minutes by unanimous consent to add the words "and/or addenda" to the list of things that Chairman Castro said that he would be discussing at this meeting. So, it would be "statements, dissents, rebuttals, and/or addenda."
III. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

LINCOLN COTTAGE

COMMISSIONER ACHTENBERG: Thank you, Mr. Chairman.

The Lincoln Cottage which is an adjunct of the National Trust for Historic Preservation approached me with a proposal that the Commission consider holding jointly with the Lincoln Cottage a series of educational events that commemorate the 150th anniversary of the Emancipation Proclamation.
In the memo, it outlines some possible educational programs that could be produced and jointly sponsored by the Cottage and the Commission. It also outlines some proposed methodology for us achieving agreements about how we would propose to work with the Cottage, and how we would agree upon the development of our piece of the contributions to the conduct of these jointly sponsored events.

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

In the discussion that I had with Commissioner Heriot, I manifested my agreement that we take a brief opportunity today to discuss it at the Commission with some possibility that if the majority of the Commissioners are in favor, we might consider adopting some methodology that looked something similar to what the memo outlines at our December
meeting, but that a possible way of concluding the
discussion today might be, if there is interest among
the Commissioners, might be for a Commissioner from
each side of the aisle and his or her special
assistants put their heads together, special
assistants put their heads together, and do some work
in the intervening months and come forward with a
bipartisan proposal that might enjoy the support of
the majority of the Commission in December.

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

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

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

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

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

Whether this is the exact program that we
ought to be following I think is subject to the
opinions of everyone here, but I definitely think we
should be doing something. And I think acting in
association with the Lincoln Cottage is a good idea,
and I think it just is a question of working out the
various particulars of the program.

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

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

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

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

CHAIRPERSON CASTRO: How about former
politicians?
(Laughter.)

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

CHAIRPERSON CASTRO: Commissioner Gaziano.

COMMISSIONER GAZIANO: I think Commissioner Yaki had his --

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

COMMISSIONER YAKI: Not yet.

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

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

That raises two issues that we just need to work through; one is, Commission time certainly is a budgetary issue, and Commissioner hours, of course, are scarce by any token. So, I don't -- but I don't
know whether us collaborating with the Lincoln Cottage makes it more difficult for us to do something on our own, what the other alternatives are.

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

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

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

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

CHAIRPERSON CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Not yet.

CHAIRPERSON CASTRO: Okay. Any other --

Vice Chair Thernstrom?

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

CHAIRPERSON CASTRO: I think you're next.

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

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

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

I mean, it's too close in my mind to --
mean, every good high school teacher will tell his or her students don't ever ask the question, "What would Lincoln think today."

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

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

Look, if we could think of a way of celebrating or -- well, celebrating, that's the right word, the Emancipation Proclamation as central to -- you know as, obviously, a landmark event in American
history, that's absolutely great. But I just -- this is not it, to me. Let's think of some better way of doing it. Aside from that fact that I suspect that there are all sorts of problems of working with the Lincoln Cottage, aside from the very good problems that Commissioner Gaziano rightly pointed out, but I don't know. It seems to me there's some sticky -- undoubtedly going to be some sticky financial and legal questions here.

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

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

CHAIRPERSON CASTRO: Any other comments? Commissioner Kladney?
COMMISSIONER Kladney: Just briefly, before I make a decision I'd like to get some sort of estimate as to how much staff time this is going to take, and what that's going to involve.

COMMISSIONER Gaziano: Do you have your mike -- pull your microphone up so Roberta can hear you.

COMMISSIONER Kladney: Sorry.

COMMISSIONER Achtenberg: I'm having a hard time hearing you, Dave.

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

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

Vice Chair Thernstrom: Wait until you run out of time, because you're working -- doing a lot of work for the Commission.

COMMISSIONER Gaziano: Mr. Chair?

Chairperson Castro: Yes?

COMMISSIONER Gaziano: Were you done with your comment?

COMMISSIONER Kladney: I yield.
COMMISSIONER GAZIANO: It was sort of related to your question, but I'm sorry, I thought you were --

COMMISSIONER KLANDNEY: I am done.

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

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

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

COMMISSIONER YAKI: Chairman --

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

CHAIRPERSON CASTRO: The Chair recognizes
Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much.

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

What that did to singularly change the
character of our country and what it had been, and
what it could be is something that is not just worthy
of celebration. It's worthy of the kind of deep
discussion and debate surrounding its enactment,
because I know that there are a number of critical scholars who have different views about why Lincoln did it, why Lincoln only went so far, why it was limited to the states in the south. But I think that you will find no debate amongst a vast majority of the African American community about what it meant for them, and what it meant for African Americans who had been slaves in this country for hundreds of years under conditions that none of us would ever want to see again.

And my concern is not whether the Commission should do it, but whether the Commission, and I hate to say it so bluntly, in its current format will just go around in circles and muck it up. And I don't mean that in any sort of negative way, but in practicality when we start having debates about carelessly using words like sides in terms of the debate on the Emancipation, when we talk about fights over curricula. I've never thought of an educational program as the kind of curricula that is equivalent to what the Department of Education is doing any more than any historical program put on by NASA about the moon shot, or Defense about the development of weaponry is any more curricula. This is an educational program that is not just worthy but
necessary for someone to engage in any real, and deep, and considerate, and thoughtful way.

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

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

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

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

COMMISSIONER YAKI: Well, what I was saying is that I -- my concern is that we may not be able to do it the justice that it deserves. And unless I have
confidence that we are united in purpose going forward, we may have some issues as they pop along. But unless we're united in purpose and moment behind this, I am very concerned about our association with it because I don't want to screw it up. And this is far too important a moment -- celebration of a moment in history, and its consequences to the formation of this nation for us to do anything other than to give it our best effort, and to give it our best thought and consideration to make it as truly important and as special as it should be.

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

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

From a practical perspective, I think I need a little bit more information as to what, if any, staff involvement would be involved here, a little bit more about the logistics of the matter. I think all of
the comments that have been expressed thus far have something to say to them. I think Commissioner, or Vice Chair Thernstrom makes a lot of very, very good points along these lines, as does Commissioner Yaki.

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

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

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

CHAIRPERSON CASTRO: And let me just say C- - and thank you for that. And I want to wrap up the discussion, because that was intended to be a
preliminary discussion today, to really address some
of the questions, put out a discussion point, and then
hopefully go back and see how we can address some of
these concerns.

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

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

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

And I think that is why, hopefully, we'll be able to
do something like this, because we will work -- and as
I made a commitment to everyone when I became Chair,
we're going to try to work as much as possible in a
bipartisan fashion. And that may mean sometimes we
deliberate a little longer on some things, whether
it's how we use our letterhead, et cetera, but I'd rather work to try to find common ground than to try to ram anything through in a ham handed or iron fisted way, not that I could because I don't have the votes, but I want to be a Chair that at least allows folks to address these concerns.

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

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

Half of the question here is the impact of the Emancipation then, the then I agree with, and now. I don't know what "now" means. And I think we could get unanimity on this Commission on doing something. Yes, absolutely. We all agree on that. But the question is precisely what. And you get into its impact today, and I'm afraid we're just going to get
into a discussion which is -- which we will no longer be unified on.

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

COMMISSIONER ACHTENBERG: Very good.

CHAIRPERSON CASTRO: Okay, great.

COMMISSIONER Kladney: What is --

CHAIRPERSON CASTRO: Sorry.

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

COMMISSIONER ACHTENBERG: Well, I think the proposed activities -- the Lincoln Cottage is going to begin their activities in September of 2012, and then extending through the first quarter of 2013. So, we have -- we probably need to decide whether and to what extent we are going to participate with them or not at our next meeting; although, I'll have more particular information from the Lincoln Cottage about whether or not December would be really the last time we could
make a decision that would impact their activities. So, I think we would need to decide next month, but I will double check with them on that and a whole host of other issues pursuant to the discussion that I just heard.

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

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

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

CHAIRPERSON CASTRO: Sure.

STAFF DIRECTOR TOLHURST: -- by the next
CHAIRPERSON CASTRO: Right. I do understand that Commissioner Achtenberg has had some preliminary conversations with you about those legal issues already. Is that right?

STAFF DIRECTOR TOLHURST: Yes.

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

III. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

UPDATE ON 2012 STATUTORY ENFORCEMENT REPORT PLANNING

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

And then on 11/28, I had promised that I would issue the discovery to the Commissioners for
their review, so that they could have input prior to us sending it over to the Department of Justice and to the states. That's it.

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

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

CHAIRPERSON CASTRO: The Chair recognizes the Vice Chair.

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

CHAIRPERSON CASTRO: Commissioner Gaziano.

COMMISSIONER GAZIANO: I, too, think the Acting Staff Director did a good job, particularly a
good job given the concept paper. But as we move forward as a Commission I'd like to raise some individual questions that I hope might improve it somewhat.

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

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

CHAIRPERSON CASTRO: Actually --

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

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

COMMISSIONER KLADNEY: I can wait.

CHAIRPERSON CASTRO: Okay.

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

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

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

VICE CHAIR THERNSTROM: Commissioner Gaziano, I just want to make -- I understand perfectly what you're saying, but I want to make very sure that
we are not sneaking in the back door the question we are not addressing in this briefing, which is the constitutionality of Section 5. And I think --

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

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

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

CHAIRPERSON CASTRO: Well, if that happens, those questions will be ruled out of order. That is
not the subject of the concept paper, so just --
Commissioner Heriot?

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

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

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

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

VICE CHAIR THERNSTROM: Well, I mean,
Commissioner Gaziano, I understand, obviously, perfectly what you're saying, but we did agree on a concept paper here, and we would not have gotten through this topic were we to take up the large question of the constitutionality, which the Supreme Court may or may not decide this year. And we now have five cases out there challenging the constitutionality.

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

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

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

(Simultaneous speech.)

CHAIRPERSON CASTRO: No, we just --

COMMISSIONER YAKI: Silence is not consent in this one.
COMMISSIONER GAZIANO: I was trying to draw out some disagreement. Okay, now I got it.

CHAIRPERSON CASTRO: We disagree.

COMMISSIONER GAZIANO: Why?

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

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

COMMISSIONER HERIOT: Isn't DOJ also --

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

COMMISSIONER HERIOT: So that argument doesn't work.

CHAIRPERSON CASTRO: Well, they're going to be kept separate. Any other questions? If not, can we
COMMISSIONER GAZIANO: I do have one.

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

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

CHAIRPERSON CASTRO: Commissioner Gaziano.

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

By my last question is -- and, by the way, I think the main speakers on most of these panels, except for the third, look pretty good. There's no real -- but I have some serious concern about the
alternatives, so I hope that we can receive some input if the main speakers are unavailable.

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

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

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

COMMISSIONER HERIOT: Fair Judiciary, is that?

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

VICE CHAIR THERNSTROM: That's the Ed Bloom project.
COMMISSIONER HERIOT: Fair Representation.

COMMISSIONER GAZIANO: Fair Representation,

I'm sorry.

VICE CHAIR THERNSTROM: Fair Representation.

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

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

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

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

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

COMMISSIONER HERIOT: I'm not sure. I hope I don't. I don't know what my teaching schedule is
right now, but I know I'm teaching in the evening on Wednesday night. And this would require me to take the Red Eye. And it's just a question of whether or not class is over in time for me to catch the Red Eye.

CHAIRPERSON CASTRO: So, the date of --

COMMISSIONER HERIOT: But I can check and find out.

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

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

COMMISSIONER KLADNEY: That's all I --

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

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

COMMISSIONER HERIOT: No, I'm teaching on Wednesday, so if class is out at 8:40, I won't make the Red Eye.
VICE CHAIR THERNSTROM: Yes, I understand.

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

COMMISSIONER KLANDNEY: When will you know?

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

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

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

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

CHAIRPERSON CASTRO: Commissioner Yaki.

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

CHAIRPERSON CASTRO: That's a possibility. What I would want to at least do is given the water we're treading in, getting the SACs lined up, is if we
did anything, I would want to at least make sure we
did a business meeting to approve some SACs. And we
would want to get through, but I don't anticipate
anything else between now and then, but who knows.
The White House might send us a Staff Director that we
have to vote on. I mean, there's -- we should be so
lucky, right? But there are things that we can't
foresee now that might become pressing, but --

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

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

(Laughter.)

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

COMMISSIONER HERIOT: Crib.

(Laughter.)

COMMISSIONER YAKI: No baby shaking. No
baby shaking.

COMMISSIONER KLADNEY: Before we change
everybody's schedule, perhaps -- how long does it take
before we know if we're going to have enough business
for a business meeting? I mean, to approve SACs
probably wouldn't take that long.
CHAIRPERSON CASTRO: It wouldn't take long. That's what I'm saying. That would be the only thing I -- sitting here today, that would be the only thing I would want to make sure we do, is at least get a couple of those, if not more, done. And then I don't anticipate any other issues right now. That's why I said, the only other thing is unanticipated issues that --

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

CHAIRPERSON CASTRO: I think we would have enough time.

COMMISSIONER KLADNEY: Okay.

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

COMMISSIONER KLADNEY: Fine with me.

CHAIRPERSON CASTRO: Okay?

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

CHAIRPERSON CASTRO: All right. So, if
there's nothing else on the Statutory Enforcement topic, we have an Update on Trafficking.

III. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

UPDATE ON TRAFFICKING BRIEFING PLANNING

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

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

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

CHAIRPERSON CASTRO: Does April work for folks? How does that look for our schedule? We're done with the briefing for VRA in February, so that
gives us a month buffer time for folks to --

COMMISSIONER Kladney: When is the meeting in April?

Chairperson Castro: What's the April date?

April 13th, Friday the 13th.

COMMISSIONER Kladney: I guess I could fly in. I'm not --

Chairperson Castro: Fly in on the 12th, that way you don't have to worry about bad luck.

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

Chairperson Castro: Oh, okay.

Vice Chair Thernstrom: You're going to fly back from Europe in order to come to --

COMMISSIONER Kladney: Well, it's my obligation, isn't it? I mean, it's an obligation of mine.

COMMISSIONER Gaziano: Unless you can get on the telephone --

COMMISSIONER Kladney: For four hours, five hours? I -- that costs you more than --

Chairperson Castro: Yes, more than the airfare.

Vice Chair Thernstrom: No, we want you
here, obviously, for that particular meeting, especially for that particular meeting.

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

CHAIRPERSON CASTRO: Oh, so even May is bad?

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

CHAIRPERSON CASTRO: Oh, really. Okay.

COMMISSIONER KLADNEY: Yes.

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

VICE CHAIR THERNSTROM: I'll second.

CHAIRPERSON CASTRO: Okay. Any additional discussion?

(No response.)

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

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow,
how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Commissioner Heriot,

how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano,

how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg,

how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Yaki, how

do you vote?

COMMISSIONER YAKI: Aye.

CHAIRPERSON CASTRO: Commissioner Kladney,

how do you vote?

COMMISSIONER KLASTENE: Yes.

CHAIRPERSON CASTRO: And I vote yes, so

it's unanimous. Great, thank you.

Next we move on to the Approval of Part B

of the School Discipline Briefing Report, the Findings

and Recommendations.

III. PROGRAM PLANNING UPDATE AND

DISCUSSION OF PROJECTS

APPROVAL OF SCHOOL DISCIPLINE

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

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

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

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Okay. Any discussion?

Any discussion?
(No response.)

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

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

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

COMMISSIONER HERIOT: No.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Aye.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

VICE CHAIR THERNSTROM: Aye.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRPERSON CASTRO: I vote yes. Vice
Chair, how do you vote?

VICE CHAIR THERNSTROM: I abstain.

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

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

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Okay. Any discussion?

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

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

COMMISSIONER GAZIANO: Thank you.

CHAIRPERSON CASTRO: Any additional discussion or questions?

VICE CHAIR THERNSTROM: Yes, I have additional discussion here. It's -- the way it's
stated is not simply offering factual information. If we look at the data, there's a -- I mean, the word "disproportionate" is in itself loaded. But it's -- it implies that there's some wrongdoing going on here, not simply that we have got a problem that is -- tends to be clustered associated with certain demographic groups. And that the use of the word "disproportionate," the implication is that disciplinary policies if they were fair would be proportionally distributed across all groups; that is that group there would be no disproportion between one group and another.

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

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

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

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

VICE CHAIR THERNSTROM: Okay. I'm just going to vote no on it, and I'll leave it at that.

Yes, go on. I can't come up with --

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

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

COMMISSIONER YAKI: Higher number?

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

COMMISSIONER GAZIANO: I think the people that you cited were individual teachers or school district officials, and their experience. I'm not sure that there really is data in our record to make the
claim that nationwide what the rates are.

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

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

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

VICE CHAIR THERNSTROM: Well, yes, but that list of factors is not a very good list, in my view. I think number 2 implies that these kids are -- have -- there's no reason why these kids should -- you've got high numbers of African American kids who are
disciplined, and find themselves in -- being disciplined in school. I mean, you know, this is not because people are racist.

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

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

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

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

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

I move proposed Finding 3, that "African American males and students with disabilities - here's the same word again - "have been disproportionately suspended, and the suspensions have been ineffective
in correcting the offending behavior." Do I have a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Discussion?

(No response.)

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

COMMISSIONER HERIOT: No.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

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

VICE CHAIR THERNSTROM: No.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLASTNEY: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?
COMMISSIONER KIRSANOW: For the reasons raised by Commissioner Thernstrom, no.

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

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

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Any discussion?

(No response.)

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

COMMISSIONER HERIOT: No.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

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

VICE CHAIR THERNSTROM: No.

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

COMMISSIONER YAKI: Aye.
CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

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

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

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

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Any discussion?

(No response.)

CHAIRPERSON CASTRO: We have a vote. Vice
Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: No.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: No.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLASDENY: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

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

Proposed Finding 6, I move "OCR uses both disparate treatment and disparate impact theories in its investigations under Title 6 with most cases
involving disparate treatment." Do I have a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Any discussion?

(No response.)

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

COMMISSIONER GAZIANO: Would you accept a friendly amendment?

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

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

CHAIRPERSON CASTRO: Go ahead.

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

Vice Chair Ternstrom: I will second it.

Chairperson Castro: Okay. What I would like to do is take a few minute recess to caucus with my colleagues to discuss that.

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

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

Chairperson Castro: Okay. It is five minutes to 11:00. We're back on the record.

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

(No response.)
CHAIRPERSON CASTRO: Not, so, Madam Vice Chair, how do you vote?

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

CHAIRPERSON CASTRO: Okay. Do --

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

CHAIRPERSON CASTRO: Of course, yes.

Absolutely.

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

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

(Chorus of ayes.)

CHAIRPERSON CASTRO: Anybody opposed, any abstentions?

(No response.)

CHAIRPERSON CASTRO: Okay. So, that passes.

Madam Vice Chair?

VICE CHAIR THERNSTROM: I do want to acknowledge the common sense here that Commissioner
Heriot has exhibited in having counted so far how many Findings we've agreed on, and saying wait a minute. We're headed down a road here which is going to be ridiculous. Anyway, I thank her.

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

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRPERSON CASTRO: Yes?

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

I would ask that we agree that in our statements, if we put things that are called "Findings and Recommendations," we put the word "proposed" in front of them, so that they don't appear to be the Findings and Recommendations of the Commission, so we don't have battling Findings and Recommendations. We
can all simply put them in as proposed so it's clear to the reader who just happens to open the booklet up that these are not the Commission's Findings or Recommendations.

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

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

CHAIRPERSON CASTRO: Okay.

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

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

CHAIRPERSON CASTRO: Commissioner
Achtenberg?

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

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

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

III. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

REVIEW OF CONCEPT PAPERS/APPROVAL

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

I think every Commissioner who puts forward a concept paper should have the right to at
least briefly have a discussion on it and a vote. So, what we're going to do today is put forward concept papers. Each of us will have an opportunity to discuss those concept papers that we want to support. And then once we've gone through those concept papers, we'll go back to the top, and we will then vote on those individual concept papers.

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

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

I'll give every Commissioner the courtesy if you want to have your's heard today and voted on,
we'll do that. If you'd like to put some of them over until January, we'll give you the courtesy to do that. Of course, some today have been up before us and been voted down, and they're coming up for a second bite. I presume if they vote today, bring them back in January and see if things change. But what I want to do is give everyone the opportunity to have their's heard. Madam Vice Chair?

VICE CHAIR THERNSTROM: I have a question on --

CHAIRPERSON CASTRO: Yes, ma'am.

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

Do you disagree with that?

CHAIRPERSON CASTRO: No, I don't. Ideally, I'd like to walk away with one, but -- and then we'd have two to pick in January. Because, of course, we have five briefings we do. We've already picked two, your voting rights concept paper, the trafficking
VICE CHAIR THERNSTROM: Three left --
CHAIRPERSON CASTRO: Three left for the fiscal year.
VICE CHAIR THERNSTROM: For the fiscal year, and we've got at least two coming in from two Commissioners.
CHAIRPERSON CASTRO: Yes, and then we've got another several today that are up. We have one, two -- two from Commissioner Heriot. We have one, two, three, four, five from Commissioner Kirsanow who is clearing earning his pay.
(Laughter.)
VICE CHAIR THERNSTROM: Even though he doesn't show up at meetings in person.
CHAIRPERSON CASTRO: Well, he's busy writing concept papers.
COMMISSIONER HERIOT: Yes.
COMMISSIONER KIRSANOW: Well, you know, my clients have the temerity of thinking that because maybe paying millions of dollars, they expect me to be present. I don't know where they get this concept from.
CHAIRPERSON CASTRO: I don't know about
those job creators, Pete. You've got to talk to them.

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

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

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

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

COMMISSIONER KIRSANOW: Thanks very much. I have two things. First, I think because I believe that the ranking system that had been used in the past, and I'm not wedded to past practice, but I think it had a considerable amount of merit to it. I understand your position of discussing each one of these, and I fully concur with that. In fact, that's what we did under the previous system, we discussed every single concept paper. But it was done in a manner in which we had
already -- well, sometimes we'd discuss them twice, but we would have already ranked them our personal preferences so that we'd have a greater idea as to which concepts had the greatest preliminary support. That didn't discount the other concepts, but we -- that promoted the efficiency of the voting process. But also, at the same time, gave fair hearing to each one of them.

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

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

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

VICE CHAIR THERNSTROM: I yield to
Commissioner Yaki.

CHAIRPERSON CASTRO: Commissioner Yaki.

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

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

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

VICE CHAIR THERNSTROM: He's having an episode.

(Laughter.)

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

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

(Laughter.)

COMMISSIONER HERIOT: I think that the idea of ranking served two purposes. One, as Commissioner Kirsanow said, it gave greater clarity on what the
universe of agreement may or may not be on this.

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

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

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

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

VICE CHAIR THERNSTROM: Yes, I think there
could be a compromise here. The Chair is really hoping that we can agree today on at least his immigration proposal. And I suggest we get -- we see how much support he has for that proposal. And if he has the majority of the Commission in support of it, then we agree, we have decided on one proposed topic, and we can then go on to what we do next. But at least we've got one on the table.

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

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

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

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

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

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

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

COMMISSIONER ACHTENBERG: I can't hear.

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

COMMISSIONER YAKI: That's what I was doing.

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

   COMMISSIONER YAKI: That's what I was saying.

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

   COMMISSIONER YAKI: Okay.

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

   VICE CHAIR THERNSTROM: Seconded.

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

   COMMISSIONER YAKI: Okay.

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

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

   CHAIRPERSON CASTRO: Substitute this motion for that one.

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

   COMMISSIONER YAKI: Fine.

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

   COMMISSIONER YAKI: I think we're all
talking the same thing anyway.

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

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

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

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

COMMISSIONER YAKI: Second.

CHAIRPERSON CASTRO: The reason I put this forward is, we've talked about the immigration issue in the past, but I think what's been happening at the state level is creating an atmosphere that may be potentially violating, or causing violation of the Civil Rights of not just immigrants and undocumented immigrants or documented, but also United States citizens as a result; especially when we see what's going on in the south right now in Alabama, South
Carolina. And, to me, it harkens back in a very frightening way to what was happening in the '60s. And I feel it's important for the Commission to look at what's been going on there, not only in terms of the actual state laws, but the impact that those laws had on individuals based on whether it's national origin, race, perceived immigration status in areas that — and, as I said in the paper, focus on, I believe, increased racial profiling, increased discrimination, possible implications on rights under Tyler versus Doe, as well as implications for communities cooperating with the police; and, thus, jeopardizing public safety.

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

COMMISSIONER GAZIANO: I'm sorry, I don't have your concept paper with me, Mr. Chair, but I support your proposal. And although I have maybe annoyed you by pointing out areas where I don't think the Chair has unilateral action, I do believe
deference is due the Chair, particularly on choosing one topic at this point in your tenure. So, that's another reason I'm supporting it.

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

CHAIRPERSON CASTRO: Absolutely. Absolutely. Commissioner Heriot?

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

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

Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano,
how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

CHAIRPERSON CASTRO: Aye.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

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

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

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

CHAIRPERSON CASTRO: Okay.

COMMISSIONER HERIOT: And then rank by email or something.

CHAIRPERSON CASTRO: Okay, so let's -- who
wants to make the ranking motion?

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

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

COMMISSIONER GAZIANO: I second.

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

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

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

COMMISSIONER HERIOT: That was me.

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

VICE CHAIR THERNSTROM: No, please recognize Commissioner Kirsanow.

CHAIRPERSON CASTRO: You want to go ahead, Commissioner Kirsanow? Go ahead.
COMMISSIONER KIRSANOW: Thank you, Madam Vice Chair. It strikes me that Commissioner Heriot's motion might be a little -- I'll put it this way. The current practice has been to rank, so it strikes me that we are changing the practice.

COMMISSIONER GAZIANO: Reconfirmed the practice.

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

COMMISSIONER KIRSANOW: Okay.

CHAIRPERSON CASTRO: Madam Vice Chair?

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

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

VICE CHAIR THERNSTROM: Oh, all right.

CHAIRPERSON CASTRO: We have human trafficking. Now we have immigration. That leaves two spots.
VICE CHAIR THERNSTROM: Okay, that leaves two spots. Okay, so maybe we -- if there is some way of whittling this list down to a couple of topics that there was enormous procedure -- enormous enthusiasm for, or quite a lot of enthusiasm for, without going through the whole ranking process, I think it would serve us well; especially because the ranking process, it seems to me in my experience, we end up with topics at the top of the rank that a lot of us are not happy with at all. But if we could find some topics here that the majority really would be happy to support today, one or two, then it would advance the ball.

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

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

CHAIRPERSON CASTRO: No, I understand that. And I know that as we said earlier, Commissioner Yaki wants to do some additional work on his paper. I know Kladney has had some conversations about possibly talking to one of the other Commissioners about their concept paper. So, maybe there might be some
commonality once we've had some of these papers --

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

CHAIRPERSON CASTRO: Commissioner Gaziano.

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

VICE CHAIR THERNSTROM: I'm open to bribes.

(Laughter.)

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

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

CHAIRPERSON CASTRO: That seems fair.

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

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

COMMISSIONER YAKI: Okay.

STAFF DIRECTOR TOLHURST: I will send out
an email.

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

COMMISSIONER YAKI: Yes.

CHAIRPERSON CASTRO: Okay. All right,
good.

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

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

VICE CHAIR THERNSTROM: That's fine. I
mean, I'm just going to -- I don't think I made my
point in a very lucid way. I think if there was a
majority of this Commission right now that knew it's number one vote was going to be on a particular topic, we could expedite this whole process.

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

VICE CHAIR THERNSTROM: All right. Okay.

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

(Laughter.)

VICE CHAIR THERNSTROM: What did he say?

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

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

COMMISSIONER ACHTENBERG: Mr. Chairman?

CHAIRPERSON CASTRO: Yes, Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: I just want to say that when the votes get called, I'm going to vote no, because I think this -- while it might have been past practice, I think it interferes unreasonably with
the prerogative of the Chair, and I don't concur in that regard.

    CHAIRPERSON CASTRO: I appreciate that.

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

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

    VICE CHAIR THERNSTROM: Yes.

    CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

    COMMISSIONER GAZIANO: Yes.

    CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?

    COMMISSIONER HERIOT: Yes.

    CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

    COMMISSIONER YAKI: Aye.

    CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

    COMMISSIONER KLADNEY: Yes.

    CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

    COMMISSIONER KIRSANOW: Yes.
CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

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

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

IV. MANAGEMENT AND OPERATIONS

STAFF DIRECTOR'S REPORT

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

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

COMMISSIONER GAZIANO: By prior rule -- yes, the Pacific Coast Commissioners, previous I think to Commissioner Achtenberg and Kladney, agreed
that we would make it midnight Pacific time.

COMMISSIONER YAKI: Right.

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

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

CHAIRPERSON CASTRO: Okay. That's fine.

COMMISSIONER GAZIANO: He gets great joy in that.

(Laughter.)

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

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

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

So, now moving on to the Budget.

IV. MANAGEMENT AND OPERATIONS

BUDGET/APPROPRIATIONS UPDATE

CHAIRPERSON CASTRO: I, first of all, want to thank each and every Commissioner and staff member who reached out and helped us educate both members of Congress, specifically members of the CJS Committees, as well as the Conferees about our budget situation.
We, as you know, are facing very dire
million dollar cuts on each side of the bicameral
chamber, and today -- was it today? The Senate
passed, and yesterday the House passed the Minibus
that includes our budget, which is only going to be
reduced by $250,000 as opposed to a minimum over a
million, probably more than if we took both versions
of what the House and the Senate were talking about.

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

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

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

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

CHAIRPERSON CASTRO: Okay.
STAFF DIRECTOR TOLHURST: The 250 was the C-
CHAIRPERSON CASTRO: That goes to the IG.
STAFF DIRECTOR TOLHURST: Yes.
CHAIRPERSON CASTRO: Yes.
STAFF DIRECTOR TOLHURST: But we also received $438,000 less than FY '11, so if you add those together, the total less is $438,000 than we had in FY '11, which is still a 5 percent cut.

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

COMMISSIONER YAKI: It's a mild amputation.

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

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

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

STAFF DIRECTOR TOLHURST: Well, again, not to be a wet blanket but you'll recall that in the 2013 discussions, 5 percent cut triggered staff cuts. I am happy to report that in 2012 despite that fact, we
don't anticipate having to cut any staff. That's largely because we were able to fund more of the move out of 2011 money. It's also because the salaries of the Staff Director, General Counsel, and Senior Attorney Advisors are being not paid to this one person, sadly.

(Laughter.)

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

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

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

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

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

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

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

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

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

CHAIRPERSON CASTRO: So, I --

COMMISSIONER HERIOT: I can't do acronyms.

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

Anything else on your report?

(No response.)

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

IV. MANAGEMENT AND OPERATIONS

DISCUSSION OF THE USE OF COMMISSION LETTERHEAD/APPROVAL OF AI

CHAIRPERSON CASTRO: Have we distributed
the draft? Okay. We've had many discussions on this, and I'm pleased to say that I think we've reached compromise language on this. Can I have a copy of that? Do you have it? Okay. So, we have -- does everyone have a copy of it?

COMMISSIONER YAKI: I've got it.

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

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

And then we propose to clarify Section C to say that, "Whenever the Chair or Staff Director speak publicly about matters before the Commission in their capacities as designated spokespersons for the Commission, he or she may not purport to speak for the
entire Commission without acknowledging the existence of assenting viewpoints." And I think those were the main changes, and we changed C to D.

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

COMMISSIONER ACHTENBERG: I second.

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

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

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

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

(Simultaneous speech.)

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

VICE CHAIR THERNSTROM: Oh, I was thinking of reporters rather than members of Congress.
COMMISSIONER GAZIANO: I understand, but the letter is going to be addressed to members of Congress.

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

CHAIRPERSON CASTRO: Any other discussion?

COMMISSIONER HERIOT: Yes.

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

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

There are occasions when other Commissioners are delegated the responsibility of speaking; like, for example, a few years ago Chairman Reynolds asked me in my -- as an individual to testify before a Congressional committee about the anniversary of the 1957 Civil Rights Act. And nothing controversial was said during that testimony, but if there comes an occasion when the Chairman delegates the duty to speak to someone, whether he delegates it to anyone other than the Staff Director who's covered
by the rule here, we still want that clarification, that if there's a dissenting viewpoint, that should be pointed out.

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

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

(No response.)

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

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

CHAIRPERSON CASTRO: Okay. Any other questions, discussion?

(No response.)

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

Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: It also says "their" instead of "his or her."
CHAIRPERSON CASTRO: Okay, so we'll make that change.

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

CHAIRPERSON CASTRO: Okay.

COMMISSIONER HERIOT: And with that, I vote yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

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

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

COMMISSIONER YAKI: Yes.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADEY: Before I vote, I'd just like to thank Commissioner Gaziano when we negotiated this. I thought it went very well, pretty
easy. I vote yes.

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

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

COMMISSIONER KLASDNEY: A substitute.

COMMISSIONER ACHTENBERG: I vote yes.

(Laughter.)

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

COMMISSIONER KIRSANOW: Yes.

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

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

IV. MANAGEMENT AND OPERATIONS

DISCUSSION OF IMPLEMENTATION OF PAGE LIMITS FOR COMMISSIONER STATEMENTS/APPROVAL

CHAIRPERSON CASTRO: Again, in an effort to foment conversation and discussion, I raised it at the last meeting. I had a good call with the -- my colleagues, Commissioners Kirsanow, Heriot, and Gaziano explaining why I felt it was important, as well as hearing from them, the concerns that they had. And as I expressed during our call, what I don't want...
to see is a proliferation of reports that we see the rebuttal, surrebuttal statements outweighing or over-shadowing the report, which I consider to be the primary work of the Commission.

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

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

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

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

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

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

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

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

VICE CHAIR THERNSTROM: Good.

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

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

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

COMMISSIONER YAKI: Nine.

COMMISSIONER GAZIANO: Nine.
(Laughter.)

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

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

CHAIRPERSON CASTRO: Any other questions or comments?

(No response.)

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

V. STATE ADVISORY COMMITTEE ISSUES

RE-CHARTERING THE ARIZONA SAC

CHAIRPERSON CASTRO: As you know, we've taken Hawaii off for now, and we only have Arizona
before us. So, let me move that the Commission re-charter the Arizona State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based upon the recommendations of our Staff Director; Clint Bolick, Blanca Esparza, Jose Esparza, Lawrence Gallagher, Keli Luther, Andrea Martinez, Jose Matus, James McKenzie, Catherine Medina, Perry Jude Redicic, Frederick Taylor, Lorena Van Assche, Thomas Patterson.

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

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

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Okay. Any discussion?

(No response.)

CHAIRPERSON CASTRO: There's no discussion? Okay, I call the question. Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow,
how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Commissioner Heriot,

how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano,

how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: Commissioner Yaki, how

do you vote?

COMMISSIONER YAKI: No.

CHAIRPERSON CASTRO: Commissioner Kladney,

how do you vote?

COMMISSIONER KLANDNEY: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

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

VI. ADJOURN

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

VICE CHAIR THERNSTROM: Second.

CHAIRPERSON CASTRO: All right. It is now 11:41 a.m. Thank you, everybody.
(Whereupon, the proceedings went off the record at 11:40 a.m.)