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U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

+ + + + +

FRIDAY, APRIL 8, 2011

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

PRESENT:

MARTIN R. CASTRO, Chairman  
ABIGAIL THERNSTROM, Vice Chair  
ROBERTA ACHTENBERG, Commissioner  
TODD F. GAZIANO, Commissioner  
GAIL L. HERIOT, Commissioner  
PETER N. KIRSANOW, Commissioner (via telephone)  
DINA TITUS, Commissioner

KIMBERLY TOLHURST, Delegated Authority of the  
Staff Director

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STAFF PRESENT:

JORDYNE BLAISE  
THERESA BROOKS  
CHRISTOPHER BYRNES, Senior  
Attorney-Adviser to the Office of the  
Staff Director  
DEMITRIA DEAS  
ALFREDA GREENE  
TINALOUISE MARTIN, Director, OM  
LENORE OSTROWSKY, Acting Chief, PAU  
JOHN RATCLIFFE, Chief, Budget and Finance  
MICHELLE RAMEY-YORKMAN  
MICHELE ROYSTER  
EILEEN RUDERT  
DAVID SNYDER, Attorney-Adviser  
VANESSA WILLIAMSON  
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

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

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P-R-O-C-E-E-D-I-N-G-S

(9:36 a.m.)

CHAIRPERSON CASTRO: Before we all have to go on furlough, we're going to call the meeting to order at I believe 9:38 is the exact time on April 8, 2001.

This is a business meeting of the U.S. Commission on Civil Rights. The meeting is taking place here at the Commission headquarters located at 624 9th Street, Northwest in Washington, D.C.

I am Chairman Marty Castro. The commissioners who are present in the room with us today include myself, our Vice Chair Thernstrom, Commissioner Gaziano, Commissioner Heriot, Commissioner Titus, and Commissioner Achtenberg, and Commissioner Kirsanow is participating by phone.

Do we need a motion to allow him to participate by phone? No? Okay. Based on that, a quorum of the commissioners is present.

And the person delegated with the authority of the Staff Director, are you present?

ACTING STAFF DIRECTOR TOLHURST: I am, just barely.

CHAIRPERSON CASTRO: Is the Court Reporter present?

1 THE REPORTER: I am.

2 CHAIRPERSON CASTRO: Yes. Okay. So the  
3 meeting will come to order.

4 I. APPROVAL OF AGENDA

5 CHAIRPERSON CASTRO: The first item on our  
6 agenda is the approval of the agenda. Do we have any  
7 motions to amend the agenda?

8 COMMISSIONER HERIOT: Mr. Chairman, I've  
9 got a motion to amend the agenda. This motion was  
10 handed out in electronic form a few days ago. I  
11 believe that this morning each member of the  
12 commission who was present here was given a hard copy  
13 of the motion.

14 I would like to amend the agenda to  
15 include a discussion of providing the sex  
16 discrimination and admissions project. And during  
17 that discussion, I would plan to offer a motion to  
18 revive that project or a motion to make the data  
19 collected for that project available to the public.

20 I think we made a mistake in canceling  
21 this project. And, looking back at the transcripts of  
22 our earlier meetings, the problems that some members  
23 of the Commission thought that the project had, these  
24 problems were already acknowledged early on. And I  
25 think that that has been detailed here in the written

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1 motion, which I assume everyone has had a chance to  
2 look at.

3 CHAIRPERSON CASTRO: Okay. Commissioner,  
4 you have motion to amend the agenda. So let's get a  
5 second on that motion and deal with --

6 COMMISSIONER GAZIANO: Second.

7 CHAIRPERSON CASTRO: Okay. So we have a  
8 motion to amend the agenda pending before us. Do you  
9 have a discussion on the motion to amend? Yes?

10 COMMISSIONER GAZIANO: Yes I have a  
11 procedural reason to want a fuller discussion and a  
12 substantive one. The procedural matter that I raised  
13 previously with you, Mr. Chairman, is that there's  
14 been some discussion about what our practice is in  
15 sharing motions with each other in anticipation of  
16 meetings to give each other at least a reasonable  
17 notice so that they can prepare for that discussion.

18 Some have said that unless an important  
19 substantive motion is circulated seven days in advance  
20 of a meeting, it should be out of order. I disagreed  
21 with that, but I think that the unanimous view of the  
22 Commission in the past -- and I hope it is one that we  
23 all would agree with today -- is that we have to  
24 provide at least as much reasonable notice as we can  
25 to each other of a substantive motion that would

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1 require or would help with preparation.

2 The motion last month to kill this  
3 18-month investigation, there was no notice provided.

4 And, quite frankly, I was caught by surprise. I  
5 think Commissioner Heriot was caught by surprise. And  
6 Commissioner Kirsanow can speak for himself. But  
7 given that they were the two who were serving on the  
8 subcommittee, I think some of the arguments that were  
9 made in support of killing it were -- you needed some  
10 additional studies.

11 So that's why I think that we need -- let  
12 me kill that. I'm sorry. I'll turn off that -- need  
13 some further discussion. My substantive argument is I  
14 don't think that we properly considered the  
15 implications of the precedent that we would set if we  
16 killed the sex discrimination investigation on the  
17 grounds that were offered by those who supported it,  
18 including that there were data imperfections, data  
19 inconsistencies.

20 So I think that this is certainly worthy  
21 of a discussion. And that's all that I ask for from  
22 the Commission.

23 CHAIRPERSON CASTRO: Okay. You know, we  
24 received a motion. I'm sorry. You had one thing to  
25 add?

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1 COMMISSIONER HERIOT: A couple of things  
2 to add. One, let the record reflect when Commissioner  
3 Gaziano said, "Let me kill that," he did not mean his  
4 previous remarks. He meant his Blackberry.

5 COMMISSIONER GAZIANO: Indeed.

6 (Laughter.)

7 COMMISSIONER HERIOT: And, second, just  
8 the particular arguments that were made for killing  
9 this particular project, you know, some people were  
10 concerned that a few of the schools were not likely to  
11 turn up statistically significant evidence. That was  
12 already anticipated at the time that this study was  
13 adopted.

14 Dr. Lerner, who has since passed away, is  
15 the one who designed this, this study. And I know he  
16 was very, very interested in it and considered it  
17 something that was important to him. At the time he  
18 was working on it, the last thing he said to me was  
19 that this study was what was keeping him going. And I  
20 know I would like to have it get finished.

21 He understood that there would likely be  
22 some schools that were not going to deliver  
23 significant data to us. And that's why he wanted to  
24 do I think he said 15 at the time were originally  
25 talked about it in the meeting. We ended up doing 18.

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1 He was hoping to get 10 or 12 out of those, and we've  
2 got more than that at this point.

3 But, again, the reason that a large number  
4 of schools were studied was precisely because there  
5 was going to be a likelihood that some of them would  
6 not completely pan out.

7 As for looking at schools in a particular  
8 geographic location, it was at the time far more  
9 important, continues to be far more important that you  
10 have different kinds of schools, rather than different  
11 parts of the country that are concerned. That's why  
12 he designed it the way that he did, and I think it is  
13 the right design.

14 ACTING STAFF DIRECTOR TOLHURST: I have  
15 some comments as well, but I think just a motion to  
16 put on the --

17 CHAIRPERSON CASTRO: Yes, yes.

18 COMMISSIONER GAZIANO: May I ask you --

19 CHAIRPERSON CASTRO: I'm going to -- I'm  
20 sorry?

21 COMMISSIONER GAZIANO: Mr. Chair, I just  
22 didn't hear whether Commissioner Kirsanow was actually  
23 -- Commissioner Kirsanow, if you are on the line,  
24 would you respond?

25 COMMISSIONER KIRSANOW: Yes, I am.

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1 COMMISSIONER GAZIANO: Okay. Just wanted  
2 to know that you are with us. Thank you.

3 CHAIRPERSON CASTRO: I did ask him  
4 earlier.

5 COMMISSIONER GAZIANO: I didn't hear.  
6 Okay. Sorry.

7 CHAIRPERSON CASTRO: I understand what  
8 you're saying. And we are just voting on the motion  
9 to amend at this point, but I did this. You know, we  
10 had some e-mail exchanges last week about this as  
11 well. And, as I said then and I'll repeat now, I  
12 looked thoughtfully at rereading Mr. Byrnes' report  
13 last time, upon which the vote was based at the last  
14 meeting.

15 I looked back on the minutes of our last  
16 meeting, actually also minutes of prior meetings, and  
17 looked at other summaries of the report and  
18 thoughtfully have looked at this motion and its  
19 underlying memo in support of it. And, you know, I  
20 don't see anything here that changes the decision we  
21 made before.

22 So, as I said, then, I don't see that this  
23 is something that should be on our agenda.

24 Unless anyone else has a comment on that,  
25 I would like to call the question and vote on your

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1 motion to amend.

2 COMMISSIONER KIRSANOW: Mr. Chair, I do  
3 have a comment.

4 CHAIRPERSON CASTRO: Sure, Commissioner  
5 Kirsanow?

6 COMMISSIONER KIRSANOW: I would like to  
7 argue in favor of putting it on the agenda for further  
8 discussion. And one of the reasons, therefore, in  
9 addition to the reasons mentioned by Commissioners  
10 Gaziano and Heriot is that it clearly in my estimation  
11 is an important inquiry, but it is also an inquiry  
12 from which we have devoted a certain amount of  
13 resources over the last 16 to 18 months, not the least  
14 of which is Commission staffing resources.

15 It's not to say that at any given time,  
16 they can't decide as a body to go in a different  
17 direction. But given the fact that we have the very,  
18 very limited budget, that we've got limited resources  
19 and limited staff, it seems to be an unfortunate and  
20 colossal waste of our resources to abandon the  
21 investigation that is fairly far down the road and  
22 really just requires the coalitions of data that  
23 analysis is in writing the report.

24 So, again, I would argue in favor of  
25 putting this on the agenda.

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1 CHAIRPERSON CASTRO: Thank you,  
2 Commissioner Kirsanow.

3 I am going to call the question. I know  
4 that resources are an issue. And expending additional  
5 resources to address some of the flaws is something  
6 that is also of concern. But we will call the  
7 question.

8 All those in favor of the motion? Well,  
9 let me ask you. I'll go around individually.  
10 Commissioner Heriot, how do you vote on the motion?

11 COMMISSIONER HERIOT: Yes

12 CHAIRPERSON CASTRO: Commissioner Gaziano,  
13 how do you vote on the motion?

14 COMMISSIONER GAZIANO: Yes.

15 CHAIRPERSON CASTRO: I vote against it.  
16 Commissioner -- I should say Vice Chair Thernstrom,  
17 how do you vote on the motion?

18 VICE CHAIR THERNSTROM: I'm voting against  
19 it.

20 CHAIRPERSON CASTRO: Commissioner  
21 Kirsanow, how do you vote on the motion?

22 COMMISSIONER KIRSANOW: No.

23 CHAIRPERSON CASTRO: Commissioner Titus,  
24 how do you vote on the motion?

25 COMMISSIONER TITUS: No.

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1 CHAIRPERSON CASTRO: Commissioner

2 Achtenberg, how do you vote on the motion?

3 COMMISSIONER ACHTENBERG: No.

4 CHAIRPERSON CASTRO: The motion fails.

5 Any other motions to amend?

6 (No response.)

7 CHAIRPERSON CASTRO: If not, then can we  
8 have a motion to --

9 COMMISSIONER HERIOT: I'm sorry. Did you  
10 vote?

11 CHAIRPERSON CASTRO: Yes, I voted no.

12 So that motion fails. Did we vote to  
13 approve that agenda?

14 VICE CHAIR THERNSTROM: No, we haven't  
15 done that yet.

16 CHAIRPERSON CASTRO: Okay. So do we have  
17 a motion to approve the agenda?

18 COMMISSIONER ACHTENBERG: So moved.

19 CHAIRPERSON CASTRO: Is there a second?

20 VICE CHAIR THERNSTROM: Second.

21 CHAIRPERSON CASTRO: All those in favor,  
22 signify by saying aye.

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

24 CHAIRPERSON CASTRO: Any opposed?

25 COMMISSIONER HERIOT: No.

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1 CHAIRPERSON CASTRO: Commissioner Heriot  
2 is opposed. Commissioner Gaziano?

3 COMMISSIONER GAZIANO: No, without the  
4 amendment.

5 CHAIRPERSON CASTRO: Okay. Commissioner  
6 Kirsanow?

7 COMMISSIONER KIRSANOW: I abstain.

8 CHAIRPERSON CASTRO: Okay. So the motion  
9 passes.

10 II. MANAGEMENT AND OPERATIONS

11 CHAIRPERSON CASTRO: The next item on the  
12 agenda is the Management and Operations. The Staff  
13 Director, Acting Staff Director, will provide a  
14 report.

15 Ms. Tolhurst?

16 ACTING STAFF DIRECTOR TOLHURST: Thank  
17 you.

18 - STAFF DIRECTOR'S REPORT

19 ACTING STAFF DIRECTOR TOLHURST: Once  
20 again I am not going to -- unless you want me to lift  
21 the number of requests we have gotten and calls we  
22 have gotten, but I wanted to highlight a few important  
23 dates for the commissioners. One is a reminder that  
24 English-only rebuttals are due on April 15th. The  
25 second is a --

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1 COMMISSIONER HERIOT: That's Friday,  
2 right?

3 CHAIRPERSON CASTRO: No. Next week, I  
4 think.

5 ACTING STAFF DIRECTOR TOLHURST: Yes.

6 COMMISSIONER HERIOT: Okay. Here's my  
7 question on that. If there's a government shutdown  
8 and I'm not allowed to work on it this weekend, do we  
9 then push it out each day that there's a shutdown?

10 ACTING STAFF DIRECTOR TOLHURST: My  
11 suggestion is it's per day.

12 COMMISSIONER HERIOT: Yes.

13 ACTING STAFF DIRECTOR TOLHURST: So a  
14 two-day shutdown, two-day extension.

15 COMMISSIONER HERIOT: Yes.

16 ACTING STAFF DIRECTOR TOLHURST: Is  
17 everyone amenable to that?

18 Second reminder is per the March 23rd  
19 e-mail that I sent out on behalf of the Chair -- and  
20 we do ask commissioners to send proposals, concept  
21 papers for the 2012 statutory report. And those are  
22 due to me by May 13th. We would like to avoid a  
23 crunch and give staff and commissioners all of the  
24 time they need to do the 2012 report. So to that end,  
25 the 13th of May is the deadline for me to receive

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1 those. And then I will sort of collate that and send  
2 them all out to you, and you can have a discussion  
3 about those reports.

4 Another reminder is that your public  
5 financial disclosures are due on May 15th. We are  
6 going to have a little talk about that in a few  
7 minutes on the agenda.

8 Next up, OGC has been very lucky to have a  
9 contract attorney, Jordyne Blaise, join us for two  
10 months. Jordyne is in the first row there.

11 CHAIRPERSON CASTRO: Welcome.

12 ACTING STAFF DIRECTOR TOLHURST: Jordyne  
13 is a graduate of Georgetown Law. And, among her other  
14 experiences, she did intern for the Department of  
15 Education's Office on Civil Rights. So we are happy  
16 to have her help us work on the current report.  
17 Welcome.

18 I wanted to note that we had a SAC member  
19 who recently passed away. And I note her because Dr.  
20 Irene Hill-Smith served on the New Jersey SAC  
21 Committee for ten years and only left because she was  
22 terminated.

23 Dr. Hill-Smith got her elementary  
24 education in a one-room segregated schoolhouse in New  
25 Jersey and went on to receive her doctorate in

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1 humanities from Rowan University in Glassboro, New  
2 Jersey.

3 She was a lifetime civil rights activist  
4 and eventually became a member of the NAACP's National  
5 Board of Directors and served as a National Vice  
6 President of NAACP from 1967 to '79.

7 In 1966, her leadership was recognized by  
8 President Johnson, who invited her to participate in a  
9 White House conference on civil rights. So we  
10 recognize her service and mourn her passing.

11 A final note. We are preparing for the  
12 furlough. Staff has received instructions regarding  
13 the same and will receive more today, our end  
14 resolution. If there is a furlough at midnight  
15 tonight, staff will report on Monday to complete  
16 shutdown only. And that will be for a half day and no  
17 more than one full day. And we have a plan that staff  
18 well understands on how to function during that  
19 shutdown and how to be notified of when to return to  
20 work.

21 So if people have questions about that, I  
22 can answer those.

23 COMMISSIONER GAZIANO: We are not  
24 essential, then?

25 ACTING STAFF DIRECTOR TOLHURST: You're

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1 not essential. I'm not essential.

2 CHAIRPERSON CASTRO: I know. It's --

3 ACTING STAFF DIRECTOR TOLHURST: It's very  
4 sad.

5 (Laughter.)

6 COMMISSIONER GAZIANO: I can accept that,  
7 but --

8 (Laughter.)

9 COMMISSIONER GAZIANO: -- who or how is  
10 that determined?

11 ACTING STAFF DIRECTOR TOLHURST: It is  
12 determined by OPM. If you were an air traffic  
13 controller or military -- actually, if Marty  
14 Dannenfelser were here, he would have been essential  
15 because he's a salaries presidential appointee with  
16 more vacation day requirements, rather than hourly,  
17 which you all are, but an acting person in his role is  
18 not essential. So we have --

19 COMMISSIONER HERIOT: Oh, really? So we  
20 actually are worse off this time around than we would  
21 have been in a different --

22 VICE CHAIR THERNSTROM: It's not going to  
23 last long.

24 COMMISSIONER HERIOT: I'm not too worried.

25 CHAIRPERSON CASTRO: Do we have any

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1 questions for our Acting Staff Director based on her  
2 presentation or her written report that was circulated  
3 in advance?

4 (No response.)

5 CHAIRPERSON CASTRO: Hearing none, then we  
6 will move on to the Ethics Officer presentation. Is  
7 this something you can do, at least a portion of, in  
8 open session? Do we need a closed session for this?

9 ACTING STAFF DIRECTOR TOLHURST: It needs  
10 a closed session.

11 CHAIRPERSON CASTRO: Okay. So please?

12 III. ETHICS OFFICER PRESENTATION

13 ACTING STAFF DIRECTOR TOLHURST: Okay. As  
14 General Counsel, I certify that this meeting can be  
15 closed and --

16 COMMISSIONER HERIOT: You wear different  
17 hats, too?

18 ACTING STAFF DIRECTOR TOLHURST: As  
19 General Counsel --

20 (Laughter.)

21 ACTING STAFF DIRECTOR TOLHURST: -- I  
22 certify that this meeting can be closed and the  
23 information pertaining to the same may be withheld  
24 pursuant to the following exemptions provided for in  
25 Commission regulations at 45 CFR 702.53. That's

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1 exemption 2, when a meeting is likely to disclose  
2 information relating solely to internal personal rules  
3 of the Commission.

4 And then what you would do is take a vote  
5 on that.

6 CHAIRPERSON CASTRO: Okay.

7 ACTING STAFF DIRECTOR TOLHURST: And then  
8 you will announce who may stay in the room.

9 CHAIRPERSON CASTRO: Okay.

10 COMMISSIONER GAZIANO: Could we hear who  
11 you propose or who we propose to stay in the room? Is  
12 it possible that our special assistants can remain?

13 CHAIRPERSON CASTRO: Yes, that's  
14 contemplated.

15 ACTING STAFF DIRECTOR TOLHURST: They are  
16 also a public financial filer. So they should stay in  
17 the room.

18 CHAIRPERSON CASTRO: Okay. So let's take  
19 a vote on the motion to go into closed session. All  
20 those in favor say aye.

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

22 CHAIRPERSON CASTRO: Any opposed?

23 (No response.)

24 CHAIRPERSON CASTRO: Any abstentions?

25 (No response.)

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1 CHAIRPERSON CASTRO: No? So it's  
2 unanimous.

3 (Whereupon, the foregoing matter went off  
4 the record at 9:52 a.m. and reconvened in executive  
5 session. The open session was reconvened at 10:43  
6 a.m., as follows.)

7 CHAIRPERSON CASTRO: Okay. Here comes the  
8 public. Commissioner Kirsanow, are you still there?

9 COMMISSIONER KIRSANOW: Yes.

10 CHAIRPERSON CASTRO: Okay. Welcome back,  
11 everyone. Thank you. And apologies for having to  
12 step out. We're back in session in order.

13 IV. PROGRAM PLANNING

14 CHAIRPERSON CASTRO: Next on the agenda is  
15 an update on our statutory report under "Program  
16 Planning." Does the Acting General Counsel have any  
17 information for us?

18 ACTING STAFF DIRECTOR TOLHURST: I do.

19 COMMISSIONER GAZIANO: How about the  
20 Acting Staff Director?

21 CHAIRPERSON CASTRO: Did I say General  
22 Counsel?

23 COMMISSIONER GAZIANO: You did.

24 CHAIRPERSON CASTRO: I'm sorry. Staff  
25 Director.

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1 COMMISSIONER GAZIANO: I just want to know  
2 under each capacity.

3 ACTING STAFF DIRECTOR TOLHURST: The  
4 General Counsel.

5 CHAIRPERSON CASTRO: Okay. This is your  
6 General Counsel capacity. Okay. I had it right, for  
7 the record.

8 - UPDATE ON INTER-STUDENT VIOLENCE REPORT

9 ACTING STAFF DIRECTOR TOLHURST: I'm going  
10 to give an abbreviated little update. I assume there  
11 will be some questions. Basically some thought went  
12 into these, and the project proposal was approved.  
13 That was on March 11th.

14 On March 15th, OGC distributed a project  
15 proposal and timeline. The timeline is extremely  
16 aggressive and puts extreme demands on staff.

17 On March 18th, OGC served discovery on the  
18 Departments of Education and Justice. Discovery is  
19 due to OGC April 18th, barring shutdown. And,  
20 similarly, they are giving a day-per-day extension on  
21 their discovery if needed.

22 On March 18th also, OGC provided  
23 commissioners with copies of those requests.

24 We will have a briefing on May 13th. And  
25 we currently have 17 confirmed panelists. Actually, I

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1 believe that's 18 now. And that would be out of 20.  
2 Commissioners will receive an initial draft.

3 CHAIRPERSON CASTRO: Any questions?  
4 Commissioner Gaziano?

5 COMMISSIONER GAZIANO: Since this is our  
6 first meeting after the time line was proposed --  
7 well, first of all, before I say that, I do want to  
8 commend the Acting General Counsel, Acting Staff  
9 Director, and all of the staff involved. This is a  
10 switch that I was not necessarily in favor of, but it  
11 does seem like you have all been doing a great job  
12 under the constraints.

13 I did want to draw to the other  
14 commissioners' attention a few issues under the  
15 timeline. And I suppose there's no good answer given  
16 where we are in the process right now, but I do want  
17 to draw one particular problem I think to your all's  
18 attention and see if we can figure out an adjustment  
19 together.

20 There is no opportunity in the current  
21 timeline for the staff to receive comments from  
22 commissioners on what is now called the final draft,  
23 but we typically have always had a second draft and  
24 prior to the vote.

25 And they were going to receive an initial

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1 draft, which is going to be very difficult for staff  
2 seven days after the briefing. I assume they are  
3 already working or will already be working on the  
4 report prior to the briefing.

5 But that initial draft may have a lot more  
6 issues that we will address. We will provide our  
7 comments to the staff. And then they will circulate  
8 what is now called the final draft on July 29. And  
9 we're supposed to vote roughly two weeks later on it.

10 That final, what's now called that final,  
11 draft, maybe I've convinced the staff in my comments  
12 to completely cut. You know, they've been completely  
13 convinced by Pete and I to cut. And then the final  
14 draft is supposedly circulated to us.

15 And we have no option, then, on August 12  
16 under this schedule but to vote it up or down. That's  
17 kind of -- that doesn't provide a very good fail-safe  
18 mechanism. So I'm wondering if we can get a second,  
19 what we'll call second, draft a little earlier. And  
20 we've always had that in a period where commissioners  
21 can then -- by the way, some of what we notice are  
22 just nits.

23 You don't have citations here. We want to  
24 clean up the -- now we can do that in the final  
25 Commission vote, too. We can approve those. But we

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1 don't want to be making too many substantive change  
2 son the day that we need to to approve that.

3 ACTING STAFF DIRECTOR TOLHURST: Let me  
4 say what was skipped versus the last report, you are  
5 missing something. Actually, what is being cut is the  
6 first item, which would have been the annotated  
7 outline on --

8 COMMISSIONER GAZIANO: We are skipping a  
9 few things. But I think we can --

10 ACTING STAFF DIRECTOR TOLHURST: It turns  
11 out that now --

12 COMMISSIONER GAZIANO: Yes. I think we  
13 can --

14 ACTING STAFF DIRECTOR TOLHURST: -- you  
15 would have gotten a copy.

16 COMMISSIONER GAZIANO: Right.

17 ACTING STAFF DIRECTOR TOLHURST: You were  
18 missing one thing. And I skipped. What I chose to  
19 skip was the first thing, the annotated outline.

20 COMMISSIONER GAZIANO: And I think we can  
21 do without that.

22 ACTING STAFF DIRECTOR TOLHURST: And after  
23 the annotated outline, actually, what did happen under  
24 last year's report was then the draft and the final  
25 draft.

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1 So in terms of giving you drafts, the only  
2 piece I skipped was the annotated outline. Let me say  
3 again I under direction of commissioner vote proposed  
4 this timeline, which is horrible, but it's what gets  
5 it done on time. And I know that that first set is  
6 being cut. And if commissioners vote to change that,  
7 we'll abide by whatever you all vote on.

8 This is what lets us get it done by the  
9 due date. If commissioners choose that as a priority,  
10 we have half the time that we're supposed to have to  
11 do this and a third of the staff. This is the  
12 timeline that lets us get it done only by asking staff  
13 working for me to go to pretty extreme lengths to get  
14 it done.

15 And I want to talk about the briefing a  
16 little bit, too. When you look back at the paths for  
17 statutory reports, they actually contain no summary of  
18 the briefing. I would like to change that in the  
19 future because to me, that is one of the points worth  
20 having the briefing is to have that information.

21 The desegregation report actually had no  
22 briefing. It got fogged out and the nature was not to  
23 reschedule it.

24 And then the last three reports, they had  
25 a briefing. The briefing was not at all cited in the

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1 report in a few citations. I hope and plan, if at all  
2 possible, to have an appendix to this report that is a  
3 briefing summary. You know, usually when you have a  
4 briefing outside of this report, you have a briefing  
5 report devoted just to that briefing.

6 That has not happened with our past four  
7 statutory reports. And certainly for 2012, assuming  
8 everyone votes on the topic, you will want to do that.

9 And here I am proposing to try to add more  
10 information from the briefing into an appendix to  
11 provide a summary, "Here is what speaker said," that  
12 type of thing.

13 But what has been cut? What has been cut  
14 most drastically is staff time at every step, but what  
15 has been cut is there is one part on what I gave  
16 commissioners. And what I chose to cut was that first  
17 annotated outline, rather than one of the two drafts  
18 because I think drafts are more important.

19 COMMISSIONER GAZIANO: Without going back  
20 exactly, I think we did have an opportunity to provide  
21 comments, even on what was called the final draft,  
22 that those be incorporated and recirculated. But  
23 without even arguing because when will you provide,  
24 for example, the copy to the agency for affected  
25 agency review? I don't see that in the schedule, but

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1 you must have that in mind.

2 ACTING STAFF DIRECTOR TOLHURST: Sure. So

3 --

4 COMMISSIONER GAZIANO: Does everyone have

5 a --

6 CHAIRPERSON CASTRO: I don't have that

7 with me. We received it, but I didn't bring it with

8 me.

9 COMMISSIONER GAZIANO: I don't know how

10 long. I can go over some of the critical --

11 ACTING STAFF DIRECTOR TOLHURST: Sure.

12 COMMISSIONER GAZIANO: -- or whether we

13 could photocopy this to share.

14 ACTING STAFF DIRECTOR TOLHURST: We can.

15 I'll tell you. What I did was used our AI for

16 editorial and legal sufficiency, and I did give people

17 the minimum time under the AI, but I did -- here's the

18 AI, affected agency review. You will have that for --

19 it's either two or three weeks.

20 COMMISSIONER GAZIANO: Okay. Well, we

21 will receive the first draft May 20. We are to give

22 our comments back May 31. And then the so-called

23 final is almost two months later, July 29th. But the

24 affected agencies will get a copy that incorporates

25 ours some two, three weeks or so before that.

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1                   And what I'm wondering is if we can't  
2 receive the copy and we'll call that near final draft.

3                   I don't care what we call it, but we have some time  
4 to comment on that second draft. And then it's  
5 recirculated at some point prior to our final vote.

6                   CHAIRPERSON CASTRO: And here's what I  
7 don't want to happen. And maybe you're not suggesting  
8 this, but I just want to make clear I don't want to do  
9 anything that is going to put us behind in getting  
10 this report done to Congress on time and to meet the  
11 outline, the dates in the outline there. Thank you.

12                   And, to that point, I know we're going to  
13 talk about it in a second. You know, realize that  
14 even the public comment part of it extended beyond the  
15 draft period, the report being done. So, you know, we  
16 want to make that adjustment as well to comply with  
17 the timetable here. So with that suggestion that you  
18 just made, that Commissioner Gaziano just made, do I  
19 need to alter the ultimate --

20                   ACTING STAFF DIRECTOR TOLHURST: Well,  
21 there is one important problem with it. And I don't  
22 disagree at all. Again, all I've done is create a  
23 timeline that meets the deadline. And if  
24 commissioners vote to tell me to extend anything, we  
25 will do that. And we will miss the deadline.

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1 CHAIRPERSON CASTRO: We don't want to do  
2 that.

3 ACTING STAFF DIRECTOR TOLHURST: Either  
4 way staff will do that. The problem, Mr. Gaziano --  
5 and I really tried to give everyone but staff as much  
6 time as possible at every step -- is that if we gave  
7 you another draft and then you had edits, it would  
8 have to go re-editorial review and --

9 COMMISSIONER GAZIANO: Yes. And let me --

10 ACTING STAFF DIRECTOR TOLHURST: -- redo  
11 legal sufficiency review. And then that would add  
12 another --

13 COMMISSIONER GAZIANO: I don't think you  
14 would need agency.

15 ACTING STAFF DIRECTOR TOLHURST: But we  
16 would have to redo editorial. Any changes beyond  
17 little nits and citations has to under our AI  
18 re-undergo editorial review and legal sufficiency  
19 review. That is why --

20 COMMISSIONER GAZIANO: That may be. So  
21 you do those at the end. I'm not suggesting anything  
22 that moves our approval date to changes given -- and  
23 so I think that meets the Chairman's concerns that  
24 this be done.

25 I'm not actually suggesting any adjustment

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1 from August 12 on. Those are things we previously  
2 agreed to. What I'm suggesting is sometime in early  
3 June the staff is going to give the agencies a copy of  
4 this. Why don't we see it at the same time?

5 CHAIRPERSON CASTRO: And you said because  
6 ultimately changes --

7 PARTICIPANT: You can see it.

8 CHAIRPERSON CASTRO: -- we make will cause  
9 that additional work and additional delay.

10 ACTING STAFF DIRECTOR TOLHURST: Correct.

11 I don't mind at all sharing it with you all, but if  
12 you have substantive edits, I will have to put it  
13 through all the --

14 COMMISSIONER GAZIANO: Let me see if I  
15 understand.

16 CHAIRPERSON CASTRO: Yes?

17 COMMISSIONER GAZIANO: The legal  
18 sufficiency or whatever review doesn't need to be done  
19 until --

20 ACTING STAFF DIRECTOR TOLHURST: It needs  
21 to be done because we don't give commissioners a final  
22 draft that isn't legally correct.

23 COMMISSIONER GAZIANO: No, no. We can  
24 call it the second draft, then. you don't need to do  
25 the sufficiency review until you otherwise would have

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1 done the sufficiency review. The only difference is  
2 commissioners get -- you know, what I asked for at the  
3 last meeting and I think you all will want is a  
4 meaningful opportunity to express your views on this  
5 report.

6 If it's good enough for the Department of  
7 Justice and the Department of Education to see, I  
8 think it should be good enough for commissioners to  
9 see.

10 ACTING STAFF DIRECTOR TOLHURST: But I  
11 won't give it to the Department of Justice unless I've  
12 been told it's legally sufficient. So I can't. I  
13 won't do that review later. And AI doesn't allow me  
14 to do that review later. It has to be legally  
15 sufficient before I'll show it to DOJ to avoid  
16 embarrassing the agency. That's why I didn't do those  
17 reviews later.

18 CHAIRPERSON CASTRO: It sounds to me like  
19 an affected agency copy cannot be a second draft  
20 because of the fact that --

21 COMMISSIONER GAZIANO: Well, it's not  
22 going to be the final draft. The final draft, it's  
23 going to be given to them what? Give me an estimate.  
24 Somewhere around June 1? June 10?

25 ACTING STAFF DIRECTOR TOLHURST: No, no.

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1 I honestly can't remember. It may be July 1st.

2 COMMISSIONER GAZIANO: Okay. That's what

3 I --

4 ACTING STAFF DIRECTOR TOLHURST: It's not

5 --

6 COMMISSIONER GAZIANO: Okay.

7 ACTING STAFF DIRECTOR TOLHURST: They're

8 getting --

9 COMMISSIONER GAZIANO: Sometime around  
10 July.

11 ACTING STAFF DIRECTOR TOLHURST: Whatever  
12 is the minimum. They're getting either two weeks or  
13 three weeks. I can't remember. But they're getting  
14 the minimum time after it's been initially reviewed  
15 and undergone legal sufficiency review.

16 COMMISSIONER GAZIANO: So the agencies,  
17 the affected agencies, we're supposed to review they  
18 can comment and change this final report, but we  
19 cannot because --

20 ACTING STAFF DIRECTOR TOLHURST: Because  
21 the AI requires it. I don't --

22 COMMISSIONER GAZIANO: Well, then it can  
23 --

24 ACTING STAFF DIRECTOR TOLHURST: I don't  
25 see the --

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1 COMMISSIONER GAZIANO: Then legal  
2 sufficiency review would be very minimal, even if it  
3 has to be repeated. I'm not questioning whether it  
4 does or not. I'm not sure it does or not. But if  
5 you've done it once, then you know the changes the  
6 commissioners are making.

7 It would seem to me very minimal to redo  
8 the -- but it makes no sense to me that DOJ and  
9 Department of Education will see a draft for a month  
10 or so before we -- they can affect it. What they say  
11 will affect the final draft. But nothing the  
12 commissioners can say will.

13 ACTING STAFF DIRECTOR TOLHURST: That's  
14 not the case. What you say on your commissioner  
15 comments will directly affect --

16 COMMISSIONER GAZIANO: But between May  
17 31st, you are going to receive seven or eight sets of  
18 commissioner comments.

19 ACTING STAFF DIRECTOR TOLHURST: Correct.

20 COMMISSIONER GAZIANO: You are going to  
21 make changes. The agency will see those changes.  
22 Commissioners will not.

23 ACTING STAFF DIRECTOR TOLHURST: You will  
24 see them --

25 COMMISSIONER GAZIANO: I won't know

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1 whether Commissioner Achtenberg has convinced you to  
2 do something or Gail and I have convinced you or staff  
3 to do some enormous change. The agency will see that  
4 change. And they can then comment on that change.

5 Under the current schedule, we will not.

6 ACTING STAFF DIRECTOR TOLHURST: This is  
7 actually not departing from the previous practice.  
8 And you will see it for the final draft and can vote  
9 against it.

10 COMMISSIONER GAZIANO: Yes. We will only  
11 have the --

12 ACTING STAFF DIRECTOR TOLHURST: I haven't  
13 departed --

14 COMMISSIONER GAZIANO: We will only --

15 ACTING STAFF DIRECTOR TOLHURST: I haven't  
16 taken out a commissioner review at that stage. This  
17 reflects what happened last year. What I took out was  
18 above this. And, again, I'm not at all suggesting  
19 this is ideal. This --

20 COMMISSIONER GAZIANO: What it takes out  
21 is one opportunity for commissioners to -- the draft  
22 that you show the agency, that they can then effect,  
23 it will be submitted to us on a take it or leave it  
24 basis.

25 ACTING STAFF DIRECTOR TOLHURST: As it was

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1 last year.

2 COMMISSIONER GAZIANO: Maybe it was. I  
3 just don't remember. But if that is so, then that  
4 doesn't sound like a very good plan.

5 CHAIRPERSON CASTRO: And, Madam General  
6 Counsel, Acting General Counsel, what can an agency  
7 really affect, though, in the review?

8 ACTING STAFF DIRECTOR TOLHURST: Nothing  
9 they say is mandatory. They make comments, and we  
10 reject or accept them. At least I can speak to what I  
11 have done with it when I have been the person putting  
12 in a review is I use it as a choice for them, a chance  
13 for them to help me not look like an idiot.

14 So if I have written "DOJ does this" and  
15 then do the X review and they can say, "Oh, can we  
16 call it the Y review? You look really silly" I'll  
17 change. You know, I'll use it as a check on have I  
18 said something wrong or is that not the way what you  
19 call it?

20 But they can't just write "We totally  
21 disagree with you. It's not our practice." If my  
22 research shows it's their practice, I'm going to  
23 ignore that comment.

24 CHAIRPERSON CASTRO: So, Commissioner, it  
25 sounds to me like they are not going to be making any

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1 major substantive changes here. And, again, this is  
2 certainly not the ideal schedule. I think we can all  
3 agree to that. But we are under some time  
4 constraints.

5 I hear what you are saying, but --

6 COMMISSIONER GAZIANO: Let me --

7 CHAIRPERSON CASTRO: -- I think we can  
8 kind of --

9 COMMISSIONER GAZIANO: Let me refocus the  
10 last sort of question. I suppose staff doesn't have  
11 to ever take our commissioners' reviews into account,  
12 but what is the harm in circulating it to us at the  
13 same time it goes to the agency?

14 Maybe some of us have vacation between  
15 July 29 and August 12.

16 ACTING STAFF DIRECTOR TOLHURST: Some of  
17 us would have to cancel it to get --

18 COMMISSIONER GAZIANO: And I told you I  
19 wished you hadn't done that. But, anyway, what is the  
20 harm in circulating it to commissioners?

21 ACTING STAFF DIRECTOR TOLHURST: There's  
22 not a harm except that it then gives you the  
23 impression that I can accept changes from you, which I  
24 can't if you want to meet the deadline because then I  
25 would have to re-editorial and agency analysis --

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1 COMMISSIONER HERIOT: Why don't we just  
2 circulate at that point and put in big letters on it  
3 "By the way, you're not going to be able to affect  
4 this"? Because I would like to see it at that point.  
5 It's not that there's no harm to it.

6 ACTING STAFF DIRECTOR TOLHURST: I don't  
7 have a problem with that, but I would leave that to  
8 the Commission to decide.

9 CHAIRPERSON CASTRO: That would require a  
10 motion is my understanding.

11 VICE CHAIR THERNSTROM: I really don't  
12 understand this. So I look at it that I've got things  
13 to say, but I've got this sign saying, "However you  
14 react, it really is unimportant. Well, you know, if  
15 it's not important, keep your thoughts to yourself,"  
16 in effect.

17 COMMISSIONER HERIOT: It's not unimportant  
18 to your statement, unimportant to the body of the  
19 report.

20 COMMISSIONER GAZIANO: We had compressed  
21 time for commissioner statements as well. So, even if  
22 staff won't listen to us after May 31, it still will  
23 help us significantly to have it at the same time the  
24 agency -- I mean, I will be dumfounded if this  
25 Commission doesn't allow us to see the report at the

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1 same time that it's sent to the agency.

2 COMMISSIONER HERIOT: Yes. You know, this  
3 report is going out to the agency. It seems silly  
4 that we don't get to see it.

5 ACTING STAFF DIRECTOR TOLHURST: That's  
6 been what happened the last four years.

7 COMMISSIONER HERIOT: Yes, but I've had  
8 like lots of drafts of these in the past.

9 COMMISSIONER GAZIANO: And we've had more  
10 time.

11 ACTING STAFF DIRECTOR TOLHURST: And we've  
12 had more time.

13 COMMISSIONER GAZIANO: Yes. Well --

14 COMMISSIONER HERIOT: We're not affecting  
15 your time except that --

16 ACTING STAFF DIRECTOR TOLHURST: You are  
17 affecting it, actually, because when I made the  
18 timeline, I scrunched staff's time --

19 COMMISSIONER HERIOT: No. It's an e-mail.

20 ACTING STAFF DIRECTOR TOLHURST: -- as the  
21 first priority.

22 COMMISSIONER HERIOT: It's just an e-mail.

23 CHAIRPERSON CASTRO: Okay. Let's get some  
24 order here. You know, we have talked about this, and  
25 we hear what you are saying. But absent --

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1 COMMISSIONER GAZIANO: Okay. I --

2 COMMISSIONER HERIOT: So moved.

3 COMMISSIONER GAZIANO: I move that the  
4 Staff Director, Acting Staff Director, whoever is  
5 responsible, circulate a copy of the report that is  
6 sent to the affected agencies at the time it's sent to  
7 them for affected agency review.

8 CHAIRPERSON CASTRO: And, Commissioner  
9 Heriot, you have seconded that motion?

10 COMMISSIONER HERIOT: I moved it first.

11 CHAIRPERSON CASTRO: I'm sorry. You kind  
12 of --

13 COMMISSIONER HERIOT: I'm happy to call it  
14 --

15 CHAIRPERSON CASTRO: Okay. So I think  
16 we've had a sufficient amount of discussion on this.  
17 Unless hearing a request for that, I'll call a  
18 question on that. All those --

19 COMMISSIONER HERIOT: Just to clarify, all  
20 we're talking about is sending an e-mail.

21 CHAIRPERSON CASTRO: Commissioner Heriot,  
22 how do you vote on the motion?

23 COMMISSIONER HERIOT: Yes.

24 CHAIRPERSON CASTRO: Commissioner Gaziano,  
25 how do you vote on the motion?

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1 COMMISSIONER GAZIANO: Yes.

2 CHAIRPERSON CASTRO: Commissioner  
3 Kirsanow, how do you vote on the motion?

4 COMMISSIONER KIRSANOW: Aye.

5 CHAIRPERSON CASTRO: Vice Chair  
6 Thernstrom, how do you vote on the motion

7 VICE CHAIR THERNSTROM: At the moment I'm  
8 taking a pass. I can't get this out.

9 CHAIRPERSON CASTRO: Okay. Abstention.

10 Commissioner Titus, how do you vote?

11 COMMISSIONER TITUS: I will abstain, too.

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

14 COMMISSIONER ACHTENBERG: Yes.

15 CHAIRPERSON CASTRO: So you're voting in  
16 favor of the motion?

17 COMMISSIONER ACHTENBERG: Yes.

18 CHAIRPERSON CASTRO: Okay.

19 ACTING STAFF DIRECTOR TOLHURST: Did you  
20 vote?

21 CHAIRPERSON CASTRO: I didn't vote. I am  
22 going to vote against the motion. So where are we?  
23 What has that turned out?

24 COMMISSIONER HERIOT: No change. Good.

25 COMMISSIONER GAZIANO: Unless the

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1 abstainer -- it won't matter.

2 COMMISSIONER HERIOT: Yes.

3 COMMISSIONER GAZIANO: But those who  
4 abstained can express --

5 CHAIRPERSON CASTRO: So we have -- what  
6 was it?

7 ACTING STAFF DIRECTOR TOLHURST: Three  
8 yeses.

9 CHAIRPERSON CASTRO: Three yeses?

10 COMMISSIONER HERIOT: Four yeses?

11 CHAIRPERSON CASTRO: Four yeses?

12 COMMISSIONER GAZIANO: Abstentions.

13 CHAIRPERSON CASTRO: Okay.

14 COMMISSIONER HERIOT: Four yeses.

15 COMMISSIONER GAZIANO: Four yeses, two  
16 abstentions.

17 COMMISSIONER TITUS: Mr. Chairman?

18 CHAIRPERSON CASTRO: Yes, Commissioner  
19 Titus?

20 COMMISSIONER TITUS: I'm okay with  
21 distributing it, but I want to make it very clear that  
22 this does not open up the process and that any kind of  
23 comments that are going to be made will be saved until  
24 the final report. This just gives you longer time to  
25 read it, that we don't mess up with Kim's schedule or

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1 have to go back through the legal review or the  
2 editorial review or back to the agencies.

3 It is kind of like the Vice Chair said.  
4 That is kind of ridiculous, but if you want it but  
5 can't comment on it, I support that. But I want to be  
6 sure that that is understood in that motion that just  
7 passed.

8 VICE CHAIR THERNSTROM: Okay. And that's  
9 exactly where I am as well.

10 CHAIRPERSON CASTRO: Is that your  
11 understanding?

12 COMMISSIONER GAZIANO: The only motion was  
13 that it be circulated. I'm going to try and persuade  
14 all of you if I see blatantly wrong in it, that I'm  
15 going to provide comments. And it sounds like it will  
16 be ignored. And that is a process you all are going  
17 to --

18 CHAIRPERSON CASTRO: Well, in that case --

19 COMMISSIONER ACHTENBERG: Let me just say  
20 that my vote in the affirmative was predicated on the  
21 notion that this was advisory only and that --

22 COMMISSIONER HERIOT: I agree with you.  
23 And the only -- you know, I think all --

24 CHAIRPERSON CASTRO: Excuse me. One at a  
25 time. One at a time.

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1 COMMISSIONER HERIOT: -- Todd is saying is  
2 that he might have a motion later to reverse that.

3 COMMISSIONER ACHTENBERG: Sure.

4 CHAIRPERSON CASTRO: Commissioner  
5 Achtenberg?

6 COMMISSIONER HERIOT: You have to make it  
7 as a motion.

8 CHAIRPERSON CASTRO: Can you repeat what  
9 you said?

10 COMMISSIONER ACHTENBERG: I said my vote  
11 in the affirmative was predicated on the statement  
12 that this was only advisory, meaning that we would be  
13 given the report at the same time the agency would be  
14 given the report, but that revises in no way either  
15 the rest of the schedule or gives us an opportunity to  
16 comment that isn't otherwise provided for in the  
17 schedule.

18 CHAIRPERSON CASTRO: And it sounds like  
19 that was not contemplated by this motion.

20 COMMISSIONER TITUS: Yes, it does, though.

21 COMMISSIONER HERIOT: No, no.

22 CHAIRPERSON CASTRO: Commissioner Heriot?

23 COMMISSIONER HERIOT: My understanding of  
24 the motion is the same as Commissioner Achtenberg's  
25 that we have not changed the schedule in any other

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1 way.

2 I believe all Commissioner Gaziano was  
3 saying is that that motion doesn't prevent him from  
4 bringing up the issue as he sees it at some later  
5 date, but the motion that we voted on did not change  
6 the schedule in any way, does not give commissioners  
7 the right for input that must be recognized. It  
8 simply gives us -- it sends an e-mail to us. We all  
9 get a copy earlier.

10 COMMISSIONER TITUS: Mr. Chairman?

11 CHAIRPERSON CASTRO: Yes, Commissioner  
12 Titus?

13 COMMISSIONER TITUS: Thank you.

14 Although I also want to be sure that it  
15 doesn't open up the door for people who disagree with  
16 it to begin to start to harass the staff to change it  
17 after they have put all of this work in it and now  
18 they're having to work on the next phase because that  
19 will slow the process down and if you are going to be  
20 making your arguments to convince -- because you have  
21 said two or three times, Commissioner, that you worry  
22 that Roberta might convince staff to take something  
23 out or you might convince staff to take something out.

24 If that is going to be the way it plays out where  
25 we're going to start trying to convince staff to

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1 change it, then I think that, in effect, throws the  
2 whole schedule off.

3 CHAIRPERSON CASTRO: Commissioner  
4 Achtenberg? Then Vice Chair Thernstrom.

5 COMMISSIONER ACHTENBERG: Mr. Chairman, it  
6 seems to me that maybe I should move to reopen the  
7 vote since there seems to be a lack of clarity.

8 CHAIRPERSON CASTRO: Is there a second on  
9 that motion?

10 VICE CHAIR THERNSTROM: I second it.

11 CHAIRPERSON CASTRO: All those in favor of  
12 reopening the vote signify by saying aye.

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

14 CHAIRPERSON CASTRO: Anyone opposed to  
15 that?

16 COMMISSIONER HERIOT: I agree with you on  
17 your interpretation.

18 CHAIRPERSON CASTRO: Vote --

19 COMMISSIONER GAZIANO: I was going to  
20 explain on the interpretation.

21 CHAIRPERSON CASTRO: We have a motion  
22 pending. What is your vote on that?

23 COMMISSIONER GAZIANO: I actually always  
24 approve such motions, unlike others in the majority  
25 who believe in taking things off, not allowing

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1 discussions on the agenda.

2 CHAIRPERSON CASTRO: So you're voting in  
3 favor of the motion?

4 COMMISSIONER GAZIANO: Yes.

5 CHAIRPERSON CASTRO: How do you vote,  
6 Commissioner Heriot, on the motion to reopen the vote?

7 COMMISSIONER GAZIANO: Let's just -- we  
8 can do --

9 CHAIRPERSON CASTRO: I asked for voice.  
10 So why don't you do it again? All those in favor say  
11 aye.

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

13 CHAIRPERSON CASTRO: Any opposed?

14 COMMISSIONER HERIOT: Nay.

15 CHAIRPERSON CASTRO: Any abstentions?

16 COMMISSIONER HERIOT: I just think --

17 CHAIRPERSON CASTRO: You're opposed?  
18 Commissioner Heriot is opposed. Any abstentions?

19 CHAIRPERSON CASTRO: Commissioner  
20 Kirsanow, how did you vote? I didn't hear you. I'm  
21 sorry.

22 COMMISSIONER KIRSANOW: Aye.

23 CHAIRPERSON CASTRO: Okay. The motion to  
24 reconsider the vote passes.

25 Yes, Vice Chair?

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1 VICE CHAIR THERNSTROM: Now, it is my  
2 understanding from Commissioner Gaziano and  
3 Commissioner Heriot that all they want is an  
4 opportunity to look at this in order, solely in order,  
5 to be able to think about their statements after the  
6 final vote on this report.

7 If there is any other reason for having  
8 this earlier than contemplated look at the report,  
9 then, you know, the whole picture is changed.

10 COMMISSIONER GAZIANO: Mr. Chair?

11 CHAIRPERSON CASTRO: Yes, Commissioner  
12 Gaziano?

13 COMMISSIONER GAZIANO: I think  
14 Commissioner Heriot got the nature of my motion and  
15 purpose exactly right. Regardless of anything else,  
16 it will help all of us in preparing our statements as  
17 we have agreed to a shorter statement to see it  
18 earlier.

19 It also makes no sense to me that our  
20 staff will keep a report that they are sending an  
21 agency secret from commissioners. So that is valuable  
22 in and of itself.

23 My other point was that -- and this may be  
24 just too nerdlly a point -- no parliament can ever bind  
25 a future parliament from considering new motions. And

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1 if what we see at some point between now and when we  
2 receive that or if at some time after that I have the  
3 motion, I am going to share it with you all. I am not  
4 going to use it to harass staff. I am not going to --  
5 I will draw it to your all's attention. And we ought  
6 to not try to bind ourselves when we know we can't  
7 bind ourselves. You can always vote it down later.

8 And maybe I won't make such a motion.  
9 Maybe it will be such a perfect draft, but the purpose  
10 of our providing comments, initial comments, to the  
11 staff is that the staff will take them into account.  
12 And that's the efficient way, rather than us sharing  
13 it amongst each other.

14 And so this next draft that the agency  
15 gets may be different in some ways that we will want  
16 to incorporate in our statements or we will want to  
17 share with each other.

18 CHAIRPERSON CASTRO: Okay. Well, let's  
19 call the question.

20 Those in favor of the motion to get the  
21 report earlier, please say aye. I tell you what.  
22 I'll do an individual -- oh, I'm sorry. Vice Chair,  
23 how do you vote on the motion?

24 VICE CHAIR THERNSTROM: I'm changing it to  
25 a no.

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1 CHAIRPERSON CASTRO: Okay. Commissioner

2 Heriot, how do you vote?

3 COMMISSIONER HERIOT: Yes.

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

6 COMMISSIONER GAZIANO: Yes.

7 CHAIRPERSON CASTRO: I vote no.  
8 Commissioner Titus, how do you vote?

9 COMMISSIONER TITUS: I'll vote no.

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

12 COMMISSIONER ACHTENBERG: No.

13 CHAIRPERSON CASTRO: In the opinion of the  
14 Chair, the motion fails.

15 COMMISSIONER HERIOT: You forgot  
16 Commissioner Kirsanow.

17 CHAIRPERSON CASTRO: Oh, I'm sorry.  
18 Commissioner Kirsanow, I apologize.

19 COMMISSIONER KIRSANOW: Yes.

20 CHAIRPERSON CASTRO: Was that a yes?

21 COMMISSIONER KIRSANOW: Yes.

22 CHAIRPERSON CASTRO: Oh, it was a no?  
23 Okay.

24 COMMISSIONER KIRSANOW: I vote for the  
25 motion.

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1 CHAIRPERSON CASTRO: Okay. That's a yes,  
2 then?

3 COMMISSIONER HERIOT: Yes.

4 CHAIRPERSON CASTRO: It was hard to tell  
5 based on the --

6 COMMISSIONER GAZIANO: Just to clarify, it  
7 is the meaning of the vote just taken that  
8 commissioners will see nothing between May 20, the  
9 draft that we are supposed to initially comment on,  
10 and July 29.

11 And then we will be delivered something on  
12 July 29 that affects changes each of us have sent in  
13 and the agency and anything else staff may want to do.

14 And we'll have an up or down vote on it?

15 We'll be given a copy on July -- so no  
16 other commissioner will see draft, neither the  
17 Chairman nor any other commissioner, between then?

18 CHAIRPERSON CASTRO: Well, was there  
19 another -- Commissioner Achtenberg?

20 COMMISSIONER ACHTENBERG: If I take the  
21 Acting Director at her word that this is the process  
22 that is consistent with prior processes and that there  
23 is not a deviation and whatever practice pertained, I  
24 am assuming will continue to pertain. So that is the  
25 basis for my vote to ratify the process.

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1 CHAIRPERSON CASTRO: Commissioner Titus,  
2 did you have something?

3 COMMISSIONER TITUS: I was going to say  
4 the same thing, that to clarify, that this is the  
5 process that has been used at least the last four  
6 times. And so why it is suddenly a problem I don't  
7 really understand.

8 Also, we have had to compress the  
9 calendar. And we do get the final draft on the 29th.

10 We have 13 or so days or however many days in July to  
11 review it before we take a vote. And then you have  
12 time, another month or so, after that to send in  
13 rebuttals. So there is time to review it before you  
14 vote and time to rebut it if we disagree with it.

15 So, in keeping with the precedent  
16 established when our colleagues were in the majority,  
17 as they like to point out often, I don't understand,  
18 really, why it is such a serious problem now.

19 COMMISSIONER GAZIANO: I absolutely --

20 CHAIRPERSON CASTRO: For the record, you  
21 know, we are still, the Democrats are still, the  
22 minority on this Commission.

23 COMMISSIONER GAZIANO: I didn't get an  
24 answer to my question, though.

25 By the way, I flatly disagree this is the

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1 process.

2 CHAIRPERSON CASTRO: Okay.

3 COMMISSIONER GAZIANO: This absolutely  
4 cuts out an opportunity for commissioners to provide  
5 comments on what was called the final. I absolutely  
6 disagree.

7 CHAIRPERSON CASTRO: Commissioner Gaziano

8 --

9 COMMISSIONER GAZIANO: But my question is

10 --

11 CHAIRPERSON CASTRO: -- it has gone on --

12 COMMISSIONER GAZIANO: But my question is

13 --

14 CHAIRPERSON CASTRO: Ask one more question  
15 because we have kind of debated this motion already --

16 COMMISSIONER GAZIANO: Yes. I just want  
17 to --

18 CHAIRPERSON CASTRO: -- more than enough.

19 COMMISSIONER GAZIANO: So it is the  
20 majority who voted down the last motion's  
21 understanding that no commissioner at all will be  
22 allowed to see a copy of the report between May 20 and  
23 August 29th.

24 Some commissioners won't be able to see  
25 it. Some won't. I'm sorry. Between May 20 and July

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1 29, no commissioner will be allowed to see a second  
2 draft of this report. There won't be some who are  
3 privileged and others who are not.

4 CHAIRPERSON CASTRO: I don't expect that  
5 to be the case.

6 VICE CHAIR THERNSTROM: I don't even  
7 understand the question. It's insulting.

8 CHAIRPERSON CASTRO: Yes. Let's move on.  
9 I think we have debated that motion. It's been voted  
10 on. It's failed.

11 ACTING STAFF DIRECTOR TOLHURST: I do want  
12 to say, I mean, to be fair, this is condensed. I have  
13 cut things. I don't have the AI in front of me. I  
14 don't believe I cut another review in between there  
15 and there. I had to cut things. Again, we have half  
16 the time.

17 And I'll go back and check and send out an  
18 e-mail if I have done something radically inconsistent  
19 here in between editorial and final.

20 But my intent was to honor the spirit of  
21 the AI in half the time. And that is the timeline  
22 that I distributed.

23 CHAIRPERSON CASTRO: We understand you are  
24 under a lot of strain given the time and --

25 ACTING STAFF DIRECTOR TOLHURST: I don't

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1 want to pretend I have done the exact AI. I do admit  
2 I cut things.

3 CHAIRPERSON CASTRO: I understand.

4 ACTING STAFF DIRECTOR TOLHURST: I think  
5 this reflects how the order went after that.

6 CHAIRPERSON CASTRO: Yes. And to the  
7 point of this compressed timeline, I know, you know,  
8 we have identified that we need to -- I know there is  
9 a motion that is going to be contemplated on making an  
10 adjustment to the period of time during which comments  
11 are accepted by the public, so, again, with the  
12 efforts to try to get this report to Congress on time.

13 Commissioner Achtenberg, do you --

14 COMMISSIONER ACHTENBERG: Yes. Consistent  
15 with that, Mr. Chairman, I do want to move that the  
16 time frame for submission by the public or to the  
17 record be shortened so that we can comply with the  
18 aggressive timeline.

19 And typically we have a 30-day period, but  
20 I am going to move that we shorten that time frame by  
21 14 days so that public submissions would be due  
22 Friday, May 27th and by virtue of the AI that governs  
23 the amount of time the briefing record remains open.  
24 It says that the briefing record will be kept open for  
25 a period of 30 days after the briefing or at otherwise

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1 established by a majority vote of the commissioners.

2 I recognize that this is not ideal, but  
3 given the aggressive time frame and particularly if we  
4 let people know now that the record is even open as we  
5 speak, it's -- is it not?

6 ACTING STAFF DIRECTOR TOLHURST: To offer  
7 that, we could pull something on the web saying,  
8 "We're having this briefing. Public comments will be  
9 welcome" and put the public on notice of the issue.  
10 If we're not closed Monday, we could do that Monday.

11 COMMISSIONER ACHTENBERG: Sure but for a  
12 certain time frame so that the rest of the things  
13 might proceed.

14 CHAIRPERSON CASTRO: And the time frame is  
15 from 30 days to --

16 COMMISSIONER ACHTENBERG: It's --

17 CHAIRPERSON CASTRO: To 15 days?

18 COMMISSIONER ACHTENBERG: From 30 days to  
19 15 days.

20 CHAIRPERSON CASTRO: Is there a second on  
21 that motion? Then I'll go to Commissioner Heriot.

22 COMMISSIONER TITUS: Second.

23 CHAIRPERSON CASTRO: Commissioner Titus  
24 seconds.

25 Commissioner Heriot?

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1 COMMISSIONER HERIOT: I just wanted to say  
2 something in my capacity as Commission civil and that  
3 is as to both the previous motion and this motion, be  
4 careful what you wish for.

5 The early drafts of these reports tend to  
6 have lots of errors in them and very serious errors.  
7 When we cut off the ability of commissioners to spot  
8 those errors, that just means that errors are going to  
9 end up in the statements of dissenting commissioners.

10 And that is not in your interest.

11 CHAIRPERSON CASTRO: Thank you,  
12 Commissioner Heriot.

13 Any discussion on the motion currently on  
14 the floor? Commissioner Gaziano?

15 COMMISSIONER GAZIANO: I thought  
16 Commissioner Titus was recognized.

17 CHAIRPERSON CASTRO: Oh, I'm sorry. No.  
18 I recognized her to make a second, second the motion.

19 COMMISSIONER GAZIANO: Oh, I'm sorry.

20 I don't see why the public's comment  
21 period should be reduced. You know, the tight  
22 schedule is a problem of the Commission's making. And  
23 it doesn't matter that I opposed it. I don't see why  
24 that burden should fall on the public.

25 Given that even under the reduced period

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1 of time they will not be incorporated in the version  
2 that commissioners receive, why not give them the full  
3 30 days? Given that the only people who will be able  
4 to incorporate these in the report are the staff, now  
5 that there's this more than two-month period where  
6 commissioners won't be able to see the report, why not  
7 allow the public the full time?

8 ACTING STAFF DIRECTOR TOLHURST: I have a  
9 --

10 CHAIRPERSON CASTRO: Madam General  
11 Counsel, Acting Staff Director?

12 ACTING STAFF DIRECTOR TOLHURST: So the  
13 briefing is on the 13th. And I think shortening it  
14 down 15 days would be ridiculous. So I wouldn't  
15 suggest that. But to the extent that we get comments  
16 before the briefing, the day of the briefing, or  
17 within those first six days, they actually will be  
18 incorporated into the first draft.

19 COMMISSIONER GAZIANO: Sure. Some might.  
20 I mean --

21 ACTING STAFF DIRECTOR TOLHURST: I will  
22 also note that in past statutory reports, again,  
23 public comments were rarely, if ever, cited in the  
24 main report, but they were often cited in commissioner  
25 statements that opposed.

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1 CHAIRPERSON CASTRO: Any other discussion  
2 on the motion? Hearing none -- I'm sorry.  
3 Commissioner Heriot?

4 COMMISSIONER HERIOT: That last sentence  
5 there that they're often involved in --

6 ACTING STAFF DIRECTOR TOLHURST: They are  
7 available to the --

8 COMMISSIONER HERIOT: That makes sense to  
9 keep it open because the statements will not have been  
10 started by then. If they're unlikely to be  
11 incorporated into the main report anyway, what is the  
12 harm in allowing the public statements to be filed  
13 somewhat later?

14 ACTING STAFF DIRECTOR TOLHURST: I would  
15 like to have as many statements as possible before my  
16 first draft. So with the shortened time period, I  
17 think it would encourage the public to submit them in  
18 times --

19 COMMISSIONER HERIOT: It seems more likely  
20 that this means they don't get timely notice.

21 ACTING STAFF DIRECTOR TOLHURST: That's up  
22 to you all. My sense is that this issue is already  
23 getting a lot of attention. We're probably going to  
24 get a lot of attention and that we are probably going  
25 to get a lot of comments.

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1 COMMISSIONER GAZIANO: Most people work to  
2 a deadline. So if the deadline, as proposed, is 15  
3 days, they're going to give them to after the report  
4 has been circulated to commissioners. So if that's  
5 the case, why not give them an extra 15 days?

6 COMMISSIONER HERIOT: It's also certain  
7 groups have geared up to comment on this. You shorten  
8 the period, and you get comments from people who have  
9 already geared up to comment but not so much from  
10 people who are inspired to comment as a result of the  
11 briefing. So I would think we definitely want to keep  
12 this open.

13 CHAIRPERSON CASTRO: Any other discussion  
14 on this motion?

15 (No response.)

16 CHAIRPERSON CASTRO: Hearing none, we will  
17 call the question in support of the motion to reduce  
18 the time for public comment from 30 days to 15.

19 Vice Chair, how do you vote?

20 VICE CHAIR THERNSTROM: I vote yes.

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

23 COMMISSIONER HERIOT: I vote no.

24 CHAIRPERSON CASTRO: Commissioner Gaziano,  
25 now do you vote?

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1 COMMISSIONER GAZIANO: No.

2 CHAIRPERSON CASTRO: I vote yes.

3 Commissioner Titus, how do you vote?

4 COMMISSIONER TITUS: Yes.

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

7 COMMISSIONER ACHTENBERG: Yes.

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

10 COMMISSIONER KIRSANOW: No.

11 CHAIRPERSON CASTRO: In the opinion of the  
12 Chair, the motion passes.

13 V. STATE ADVISORY COMMITTEE ISSUES

14 CHAIRPERSON CASTRO: The next item on our  
15 agenda is the State Advisory Committee issues. We are  
16 going to be looking at the re-charter of the Alabama  
17 SAC, the re-charter of the Illinois SAC, and the  
18 re-charter of the Minnesota SAC.

19 - RE-CHARTERING THE ALABAMA SAC

20 CHAIRPERSON CASTRO: First up, we have the  
21 Alabama State Advisory Committee. I am going to make  
22 our standard motion, but I am also going to make a  
23 motion to bifurcate one of the members from  
24 consideration from the overall. And we may want to go  
25 into executive session to discuss that. But, just as

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1 I make this motion, I want you to understand that I am  
2 done with the bifurcation.

3 So the first motion is that I move that  
4 the Commission re-charter the Alabama State Advisory  
5 Committee. Under this motion, the Commission appoints  
6 the following individuals to that committee based upon  
7 the recommendation of our Staff Director, Acting Staff  
8 Director: -- I liked her as Staff Director as well --  
9 I'll just say Staff Director -- Valerie Askew, David  
10 T. Beito, Lula Bridges, Margaret Brown, Richard H.  
11 Finley, Leida Javier-Ferrell, Randy B. Kelley, Shana  
12 -- actually, are we going to bifurcate that? I've got  
13 to do it all at once? Shana J. Kluck, Raphael A.  
14 Maharaj, Kevin C. Newsom, Maurice L. Shevin, L'Tryce  
15 M. Slade, Edward Still.

16 Pursuant to this motion, the Commission  
17 appoints David Beito as Chair of this re-chartered  
18 Alabama State Advisory Committee.

19 These members will serve as uncompensated  
20 government employees under this motion. The  
21 Commission authorizes the Staff Director to execute  
22 the appropriate paperwork for the appointment.

23 Is there a second?

24 VICE CHAIR THERNSTROM: Second.

25 CHAIRPERSON CASTRO: I will also make a

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1 companion motion to sever the consideration of Shana  
2 Kluck from the rest of the package, as we have done  
3 for other individuals in the past. Do I have a second  
4 on that motion?

5 COMMISSIONER ACHTENBERG: Second.

6 CHAIRPERSON CASTRO: Okay. Shall we go  
7 into executive session here?

8 COMMISSIONER GAZIANO: Can I --

9 CHAIRPERSON CASTRO: Sure.

10 COMMISSIONER GAZIANO: -- try and make a  
11 motion? Because it may obviate the need to go into  
12 executive session.

13 CHAIRPERSON CASTRO: Yes?

14 COMMISSIONER GAZIANO: I have some serious  
15 questions about the way this SAC was organized. I  
16 would be -- I don't know whether for -- let me just  
17 mention one of them.

18 When Commissioner Titus wanted to postpone  
19 -- I have some issues with some of the other SACs as  
20 well -- you know, I took it as good faith that she had  
21 some issue she wanted to work out.

22 But since then Professor Seth Norton, who  
23 was on the previous package, has been cut from this  
24 package -- oh, I'm sorry -- Professor Jim Couch. Oh,  
25 I'm sorry. I'm in the wrong state. Now to Alabama.

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1 Professor Jim Couch was struck from the  
2 package without any reason. I think that anyone who  
3 is well-qualified, as Professor Couch is, and who  
4 expresses an interest and goes through the process and  
5 applies should not be struck arbitrarily. For  
6 whatever reason I don't know, but with regard to some  
7 of the other SACs, I have some serious questions about  
8 the ideological balance.

9 Our AI, which binds the staff, which binds  
10 the staff in how they are to propose these, requires  
11 in three regards that they seek an ideological bounds.  
12 That's an immortal problem with the other two state  
13 SACs.

14 But at this point, I wondered whether our  
15 staff could say why Professor Couch was cut from this  
16 SAC.

17 CHAIRPERSON CASTRO: Can it be done in  
18 open? I don't know the reason either.

19 ACTING STAFF DIRECTOR TOLHURST: Sure.  
20 This reason bears no reflection on him. So the  
21 initial SAC was created or the SAC proposal package  
22 was created under Staff Director Dannenfelser. And  
23 Commissioner Titus had voiced concerns both about an  
24 individual member and about balance generally.

25 And so we went back to the Regional

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1 Director, said that there were concerns about balance  
2 generally. And her solution in doing that was to cut  
3 Mr. Couch because when she looked at the new members,  
4 of the new members who were on the conservative side,  
5 that there was a lesser sort of civil rights  
6 background with some of the other conservatives, whom  
7 she chose not to cut.

8 So I believe he was cut strictly for  
9 balance reasons to create a panel that was --

10 COMMISSIONER HERIOT: This is ideological  
11 balance you're talking about?

12 ACTING STAFF DIRECTOR TOLHURST: I'm  
13 sorry. Yes.

14 COMMISSIONER GAZIANO: Why can't our staff  
15 -- by the way, I disagree with that determination that  
16 this is the only SAC that is remotely balanced of the  
17 three that --

18 COMMISSIONER HERIOT: Yes. This one is  
19 the one that was unbalanced is real trouble.

20 COMMISSIONER GAZIANO: We're being asked  
21 to vote. But assuming, assuming, there was some real  
22 issue with balance other than stacking the deck for  
23 every state in violation of our AI, why couldn't the  
24 staff have added members of a different ideological  
25 persuasion?

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1 To ask someone to go through the process,  
2 to have them on a slate, to announce that they were on  
3 a slate, to have them ready to vote, and then to tell  
4 -- it's hard to get -- this is unpaid, as you know.

5 CHAIRPERSON CASTRO: Yes. Commissioner  
6 Gaziano, I just want to make clear there is no effort  
7 to stack anything here. In fact, my understanding is  
8 that the composition of these or at least of this SAC,  
9 in particular, was reviewed by our prior person acting  
10 as Staff Director and our current career officer  
11 acting as Staff Director. So this is not something  
12 that, as far as I can tell based on that, is political  
13 stacking efforts.

14 ACTING STAFF DIRECTOR TOLHURST: The  
15 individual who is the Regional Director for this state  
16 who said that, in her experience, she had trouble with  
17 larger SACs after looking for other members concluded  
18 that with the people involved, keeping the SAC smaller  
19 as a team was a better choice.

20 And then upon Mr. Byrnes' reviewing it,  
21 Mr. Byrnes, having a great deal of experience, not  
22 only having worked in OSD much longer than myself but  
23 having been the head of the regionals, reviewed this  
24 for me. And his belief was -- he is right here. He  
25 can correct me if I am wrong, but under the current

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1 slate, there were four Republicans, five Democrats,  
2 and four independents with three of them leaning  
3 Republican.

4 So he, in fact -- and I believe we took  
5 him at his word that this remained a balanced SAC,  
6 whether or not Ms. Kluck remains. And I feel very  
7 comfortable validating that review to him. I looked  
8 at what he had done and think he did his own balance.

9 CHAIRPERSON CASTRO: Commissioner Gaziano?

10 COMMISSIONER GAZIANO: Our AIs require  
11 that these be between 11 and 17. I don't know if the  
12 statute --

13 ACTING STAFF DIRECTOR TOLHURST: Nineteen.

14 COMMISSIONER GAZIANO: I'm sorry.  
15 Nineteen. Is that what the statute requires as well?

16 MR. BYRNES: It could be in our --

17 COMMISSIONER GAZIANO: Okay. We think it  
18 may be not just an instruction but in some ways  
19 binding legally, at least until we change the CFR.

20 ACTING STAFF DIRECTOR TOLHURST: And 13 is  
21 within that.

22 COMMISSIONER GAZIANO: Yes, 13 is within  
23 it. As I understand, the motion to sever might  
24 involve cutting one more. So we're scraping the  
25 bottom of the lawful limit.

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1           The idea that we need to disinvite someone  
2 willing to serve because they're conservative is --  
3 and, as I said, this does seem like a balanced package  
4 to me. The others are the ones that don't.

5           But if staff on the suggestion of one  
6 commissioner -- and that's the way this transpired.  
7 The staff decided that they needed to cut someone just  
8 because they needed to cut one more conservative, that  
9 is troubling.

10           If we are going to vote on this today, I  
11 move that we add Professor Jim Couch to the Alabama  
12 SAC.

13           COMMISSIONER HERIOT:        A friendly  
14 amendment. What if we were to do that plus add David  
15 Beito's suggestion, who I think was somebody who needs  
16 --

17           MR. BYRNES: Norman Baldwin.

18           COMMISSIONER HERIOT: Baldwin?

19           MR. BYRNES: Yes.

20           COMMISSIONER HERIOT: His first name?

21           MR. BYRNES: Norman.

22           COMMISSIONER HERIOT: Norman Baldwin. And  
23 that would add somebody leaning left and somebody  
24 leaning right.

25           CHAIRPERSON CASTRO: I wouldn't accept

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1 that as a friendly amendment. I guess, you know,  
2 balance is in the eye of the beholder, I suppose, but,  
3 you I know, I feel comfortable based on what our  
4 Acting Staff Director and our prior Acting Staff  
5 Director and the Regional Director have said is  
6 balanced, but if you do have a motion on Mr. Couch,  
7 you can make that motion.

8 COMMISSIONER HERIOT: Do I make a motion  
9 with --

10 CHAIRPERSON CASTRO: I'm sorry. Vice  
11 Chair, I didn't your hand there. I apologize.

12 VICE CHAIR THERNSTROM: Yes. I don't know  
13 what this whole discussion is about. We have got an  
14 incredibly balanced SAC here with the political  
15 affiliation, as has already been spelled out. If  
16 anything, it's leaning slightly conservatively because  
17 two independents are, fact, Republican-leaning. I  
18 mean, I don't understand who is not voting this up or  
19 down or --

20 COMMISSIONER GAZIANO: I accept  
21 Commissioner Heriot's friendly amendment. I move,  
22 then, as amended, to add Professor Jim Couch and the  
23 left-leaning Norman Baldwin to the SAC --

24 COMMISSIONER HERIOT: Second.

25 COMMISSIONER GAZIANO: -- to keep the

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1 ideological balance such as it is.

2 CHAIRPERSON CASTRO: Okay. So let's take  
3 these motions separately. Now, getting back to the  
4 motion that severed Ms. Kluck, do we need to go into  
5 executive session? Do folks want to discuss that? If  
6 so, we will need to go into executive session. That  
7 way we could then vote on each of these motions.

8 COMMISSIONER ACHTENBERG: May I make a  
9 motion that we have to vote on the motion to sever Ms.  
10 Kluck?

11 CHAIRPERSON CASTRO: We did vote on the  
12 motion to sever.

13 COMMISSIONER ACHTENBERG: Yes. I did --

14 CHAIRPERSON CASTRO: So it's out there.  
15 We have three motions. We have the main motion.

16 COMMISSIONER GAZIANO: I thought we  
17 approved the motion to sever. We just haven't dealt  
18 --

19 CHAIRPERSON CASTRO: We haven't voted on  
20 the motion to sever. We have severed. So what I'm  
21 saying, before we vote on the motion to sever, do we  
22 want to go into executive session to discuss that  
23 motion?

24 COMMISSIONER GAZIANO: That's fine.

25 CHAIRPERSON CASTRO: Okay.

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1 COMMISSIONER GAZIANO: Do we really need  
2 to go into executive session?

3 CHAIRPERSON CASTRO: I have been counseled  
4 by --

5 ACTING STAFF DIRECTOR TOLHURST: Well, it  
6 depends what you're wanting to talk about.

7 CHAIRPERSON CASTRO: I think we probably  
8 do need to go into executive session.

9 ACTING STAFF DIRECTOR TOLHURST: If you  
10 want to talk about her affiliations in any depth, I  
11 would err on the side of protecting her privacy. It  
12 just depends on what discussion you intend to have.

13 COMMISSIONER GAZIANO: From what I'm  
14 assuming will transpire, I don't think that is  
15 something that is necessary to go into executive  
16 session. And maybe if it turns in that direction, we  
17 can go there, but I would like to keep it on the  
18 public record.

19 CHAIRPERSON CASTRO: Why don't we do this?  
20 Well, I think it needs to go into executive session.  
21 So if you'd like, we can vote on the main motion,  
22 which has already severed Ms. Kluck. We can then vote  
23 on your motion and then go into executive session to  
24 discuss the Kluck motion. So we'll do that.

25 So on the first motion, which was to

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1 approve the --

2 COMMISSIONER GAZIANO: I might vote for  
3 the whole package. I might vote. Depending on how  
4 these others are, I might vote on the whole package.  
5 Why don't we --

6 CHAIRPERSON CASTRO: Which is what I was  
7 intending to do --

8 COMMISSIONER GAZIANO: Whichever order --

9 CHAIRPERSON CASTRO: -- kind of all at  
10 once. So why don't we --

11 COMMISSIONER GAZIANO: Yes. Whichever  
12 order you want to --

13 CHAIRPERSON CASTRO: -- go into executive  
14 session?

15 COMMISSIONER GAZIANO: -- do it in.

16 CHAIRPERSON CASTRO: Let's go into  
17 executive session, then, and have that discussion so  
18 that you can be fully informed when you make your vote  
19 on all the motions.

20 COMMISSIONER GAZIANO: Let's vote on the  
21 motions. Go ahead.

22 ACTING STAFF DIRECTOR TOLHURST: I hereby  
23 certify that this meeting can be closed and the  
24 information pertaining to the same be withheld  
25 pursuant to exemption under 45 CFR 702.53, exemption

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1 6, when a meeting is likely to disclose information of  
2 a personal nature or disclosure would constitute an  
3 unwarranted invasion of personal privacy.

4 CHAIRPERSON CASTRO: Okay. All of those  
5 in favor of the motion to go into closed session  
6 signify by saying aye.

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

8 CHAIRPERSON CASTRO: Those opposed?

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

10 COMMISSIONER HERIOT: I don't quite  
11 understand how there is something of a personal nature  
12 here.

13 CHAIRPERSON CASTRO: And any abstentions?

14 (No response.)

15 CHAIRPERSON CASTRO: Okay. So the  
16 objections, the noes, are Commissioners Heriot,  
17 Gaziano, and Kirsanow.

18 (Whereupon, the foregoing matter went off  
19 the record at 11:35 a.m. and was reconvened in  
20 executive session. The open session was reconvened at  
21 12:03 p.m., as follows.)

22 CHAIRPERSON CASTRO: We're back in public  
23 session. There was a motion made during closed  
24 session to strike Ms. Kluck from the SAC  
25 consideration. It was a motion made by Commissioner

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1 Achtenberg and seconded by Commissioner Titus. We  
2 have discussed it. And we will now call the question.

3 I will do it by roll. Madam Vice Chair,  
4 how do you vote on the motion?

5 VICE CHAIR THERNSTROM: Hold on a minute.  
6 I'm thinking.

7 CHAIRPERSON CASTRO: Okay. Commissioner  
8 Heriot, how do you vote?

9 COMMISSIONER HERIOT: I vote no.

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

12 COMMISSIONER GAZIANO: No.

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

15 COMMISSIONER ACHTENBERG: Yes.

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

18 COMMISSIONER TITUS: Yes.

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

21 COMMISSIONER KIRSANOW: Emphatically no.

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

24 THE REPORTER: Could Commissioner Kirsanow  
25 repeat his vote?

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1 CHAIRPERSON CASTRO: Commissioner  
2 Kirsanow, would you repeat your vote for the purpose  
3 of the Court Reporter?

4 COMMISSIONER KIRSANOW: Emphatically no.

5 CHAIRPERSON CASTRO: Emphatically no.

6 PARTICIPANT: It's a no.

7 CHAIRPERSON CASTRO: Got it. Thank you.

8 COMMISSIONER GAZIANO: It's emphatically  
9 no. It's not just a no.

10 CHAIRPERSON CASTRO: That counts for two?

11 (Laughter.)

12 VICE CHAIR THERNSTROM: If I am voting  
13 yes, it's going to end up a yes, yes depending on me.

14 CHAIRPERSON CASTRO: Well, I don't want to  
15 put you under any pressure.

16 VICE CHAIR THERNSTROM: I am under  
17 pressure.

18 COMMISSIONER TITUS: The public is back.

19 CHAIRPERSON CASTRO: You're the public,  
20 Audrey.

21 (Laughter.)

22 ACTING STAFF DIRECTOR TOLHURST: You're  
23 just the only one that --

24 MS. WRIGHT: Excuse me.

25 VICE CHAIR THERNSTROM: Abstain.

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1 CHAIRPERSON CASTRO: Madam Vice Chair  
2 abstains. And I will also abstain. The motion fails.

3 The next motion we have we should probably  
4 address the motion. Actually, you know what? Can I  
5 change? I'm going to vote yes. It's still the same  
6 result, but I'm going to vote yes on the motion.  
7 Sorry.

8 The two motions that are still pending,  
9 one is the motion to add Professor Couch -- and who  
10 was the other?

11 COMMISSIONER GAZIANO: Norman Baldwin, who  
12 was also --

13 CHAIRPERSON CASTRO: Norman Baldwin?

14 COMMISSIONER GAZIANO: -- recommended by  
15 the Chair. As I understand it, he was -- is Norman  
16 Baldwin, sir, the renewal?

17 PARTICIPANT: No.

18 CHAIRPERSON CASTRO: And we had  
19 information on these two individuals in the materials?  
20 We had --

21 ACTING STAFF DIRECTOR TOLHURST: They're  
22 not in your current materials, but they're not on the  
23 slate Couch had been in the previous materials. I  
24 don't --

25 COMMISSIONER GAZIANO: As was Baldwin.

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1 Yes. Baldwin --

2 CHAIRPERSON CASTRO: They were both in the  
3 prior materials?

4 COMMISSIONER GAZIANO: They were both in  
5 the prior materials.

6 CHAIRPERSON CASTRO: Okay. Do I have a  
7 question over here?

8 COMMISSIONER TITUS: I'm sorry.

9 CHAIRPERSON CASTRO: Okay. Commissioner  
10 Heriot?

11 COMMISSIONER HERIOT: Excuse me.

12 CHAIRPERSON CASTRO: You had your hand up?

13 COMMISSIONER HERIOT: Do I have my hand  
14 up? No. But I wanted to say something.

15 CHAIRPERSON CASTRO: Okay.

16 COMMISSIONER HERIOT: And that is, you  
17 know, in the past, we have thought that striking  
18 somebody just already on the SAC without cause is bad  
19 practice. It creates an incentive for arbitrary  
20 exclusion.

21 So I think that in general, we are about  
22 to keep people who are already on the SAC on the SAC.

23 That means Couch here and if there's a belief that  
24 that would -- you know, is not good from the  
25 standpoint of balancing ideology, then --

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1 ACTING STAFF DIRECTOR TOLHURST: They  
2 worked on --

3 COMMISSIONER GAZIANO: They were proposed.  
4 They had already been through the process.

5 ACTING STAFF DIRECTOR TOLHURST: They're  
6 on the slate. So people aren't going to be --

7 COMMISSIONER GAZIANO: Yes, but the same  
8 principle applies for people who have gone through --

9 COMMISSIONER HERIOT: You know, you are  
10 going to get arbitrary exclusions here. And I think  
11 that is a mistake.

12 CHAIRPERSON CASTRO: So we're discussing  
13 the motion to add these two other folks right now. Is  
14 there any other comment or discussion on these two  
15 individuals being added to the slate? Madam Vice  
16 Chair? And then Commissioner Achtenberg.

17 VICE CHAIR THERNSTROM: Go ahead. I've  
18 just got a question.

19 CHAIRPERSON CASTRO: Commissioner  
20 Achtenberg?

21 COMMISSIONER ACHTENBERG: It appears that  
22 maybe I'm missing something, but what do we do? Do I  
23 have information on them?

24 CHAIRPERSON CASTRO: Well, that's what I  
25 asked about.

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1 COMMISSIONER GAZIANO: You have circulated  
2 in the last --

3 COMMISSIONER ACHTENBERG: You had them in  
4 your last packet, yes.

5 COMMISSIONER GAZIANO: -- in the last  
6 packet.

7 COMMISSIONER HERIOT: On both of the  
8 exhibits.

9 COMMISSIONER GAZIANO: Was it --

10 COMMISSIONER ACHTENBERG: In January.

11 VICE CHAIR THERNSTROM: So the sole reason  
12 for eliminating somebody who had already been on the  
13 SAC was in order to maintain the balance. This is a  
14 very balanced SAC. And the sole reason for adding  
15 this other person is in case the balance is thrown.

16 COMMISSIONER GAZIANO: It's two people,  
17 one who is conservative and one who is liberal, --

18 VICE CHAIR THERNSTROM: Yes, right.

19 COMMISSIONER GAZIANO: -- because someone  
20 wants to keep the exact balance of the SAC. I am  
21 willing to propose to put both of them back on. My  
22 main reason, though, is that Professor Jim Couch  
23 agreed to serve, had been told that he was on the  
24 package, and then he was struck because they wanted to  
25 strike a conservative.

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1                   If we're going to do that, this motion  
2                   would keep the ideological balance exactly as it is  
3                   but would allow these gentleman who is willing to  
4                   serve to serve.

5                   CHAIRPERSON        CASTRO:           Commissioner  
6                   Achtenberg?

7                   COMMISSIONER    ACHTENBERG:       Commissioner  
8                   Gaziano, then why was the other person not put  
9                   forward?

10                  COMMISSIONER GAZIANO: I don't know.

11                  ACTING STAFF DIRECTOR TOLHURST: I don't  
12                  know. We don't know. That's what she came back with  
13                  --

14                  CHAIRPERSON CASTRO: Okay.

15                  COMMISSIONER ACHTENBERG: Do we typically  
16                  -- I mean, isn't the -- I understand that we object to  
17                  some people and we ratify the SAC composition, but  
18                  don't we typically affirm most of the issues for  
19                  forming the SAC handles to be addressed under the SAC?

20                  COMMISSIONER HERIOT: But that would be in  
21                  favor of the motion and the guy that was originally  
22                  recommended by the staff. It was only because the  
23                  Commission believed that it wasn't sufficiently  
24                  balanced that we don't have them now. So now we're  
25                  offering him with another legal solution to make

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1 everybody happy.

2 The staff originally proposed the  
3 conservative on this in the package. And I believe it  
4 was Commissioner Titus. Commissioner Titus thought  
5 that it was not properly ideologically balanced. Is  
6 that right? Is it you who was concerned about that?

7 COMMISSIONER TITUS: But I didn't point  
8 out any individual.

9 COMMISSIONER HERIOT: Yes.

10 COMMISSIONER TITUS: I was looking at the  
11 overall picture, including Ms. Kluck.

12 COMMISSIONER HERIOT: He got dropped, even  
13 though he was in the original proposal from the staff.

14 So we're trying to make everybody happy. The staff  
15 would get the whole group that they proposed. Plus,  
16 Commissioner Titus' concern over balance would be  
17 dealt with by adding a liberal as well.

18 COMMISSIONER ACHTENBERG: So let me recap,  
19 if I might, --

20 CHAIRPERSON CASTRO: Sure.

21 COMMISSIONER ACHTENBERG: -- Mr. Chairman.  
22 You're saying that the original group, as proposed by  
23 the staff, included both of these people you're trying  
24 to add now.

25 CHAIRPERSON CASTRO: Right.

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1 COMMISSIONER ACHTENBERG: Then you're  
2 asserting that they were taken off because of  
3 Commissioner Titus' expressed concern.

4 COMMISSIONER HERIOT: Yes, they took off a  
5 liberal and a conservative and added a liberal. I  
6 don't understand either, but that's the way --

7 COMMISSIONER ACHTENBERG: And added a  
8 liberal. Who is the liberal they added?

9 COMMISSIONER GAZIANO: Added two liberals.

10 COMMISSIONER ACHTENBERG: Two liberals.  
11 Okay.

12 COMMISSIONER GAZIANO: They added two  
13 liberals.

14 CHAIRPERSON CASTRO: It's my understanding  
15 that the male liberal was removed and substituted for  
16 a female liberal so that there could also be gender  
17 balance.

18 COMMISSIONER GAZIANO: And they added a  
19 male liberal as well.

20 COMMISSIONER TITUS: He was there. He was  
21 different from the original, but --

22 COMMISSIONER GAZIANO: Could I recognize  
23 my -- my special assistant says it was Edward Still.

24 COMMISSIONER HERIOT: Somebody I know very  
25 well.

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1 COMMISSIONER GAZIANO: Leida  
2 Javier-Ferrell. And I have no objections to any of  
3 these additions. I think they're fine additions. I'm  
4 not sure they were necessary, but they're fine. But I  
5 disagree that the original package did not meet  
6 balance, especially as compared to some of the other  
7 SACs that we might vote on. And all I --

8 COMMISSIONER KIRSANOW: This is Kirsanow.  
9 May I --

10 CHAIRPERSON CASTRO: Sure.

11 COMMISSIONER KIRSANOW: It's my  
12 understanding that Mr. Couch was removed and Ferrell  
13 was added for gander balance.

14 ACTING STAFF DIRECTOR TOLHURST: It was  
15 Baldwin removed.

16 COMMISSIONER KIRSANOW: Baldwin was  
17 removed for gender balance.

18 ACTING STAFF DIRECTOR TOLHURST: I don't  
19 even know that that's the case, but if Couch was only  
20 removed for political balance.

21 COMMISSIONER KIRSANOW: I would just note  
22 that we have an AI. And I can't recall the number,  
23 but --

24 ACTING STAFF DIRECTOR TOLHURST: I can,  
25 yes. It's 701. It's --

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1 COMMISSIONER KIRSANOW: That precludes any  
2 kind of consideration, age, sex, religion, all the  
3 protected classes, in order to achieve the particular  
4 demographic balance.

5 ACTING STAFF DIRECTOR TOLHURST: This is  
6 the first I'm hearing that that was the reason. And,  
7 in fact, this is --

8 CHAIRPERSON CASTRO: Someone told me that.  
9 So I don't know.

10 ACTING STAFF DIRECTOR TOLHURST: --  
11 remaining five women and eight men. So no one has  
12 tried to nor achieve gender balance from what I can  
13 see.

14 CHAIRPERSON CASTRO: Okay. Well, if  
15 there's no further -- oh, Commissioner Heriot, go  
16 ahead.

17 COMMISSIONER HERIOT: We do have AIs that  
18 say no person is to be denied an opportunity to sit on  
19 a State Advisory Committee because of race, age, sex,  
20 religion, national origin, or disability.

21 If we're removing people who are on the  
22 list and substituting someone because they have a  
23 different gender, I think we're violating that rule.  
24 I think we should put everybody back if we are  
25 concerned about ideology. Again, you know, the

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1 pending motion won't affect ideological balance  
2 because we're talking about putting both a  
3 conservative and a liberal onto the list.

4 And we're playing with fire here where we  
5 take the list and manipulate it by taking people off  
6 and --

7 CHAIRPERSON CASTRO: Well, we're not --

8 COMMISSIONER HERIOT: I don't mind adding  
9 people but taking people off. It's dirty pool.

10 CHAIRPERSON CASTRO: Let me just clarify.  
11 We're not trying to manipulate this. The statement  
12 that I made was based on some information that I was  
13 provided. I don't have any knowledge as to  
14 specifically how this list was put together of people  
15 taking --

16 COMMISSIONER HERIOT: Well, that's --

17 CHAIRPERSON CASTRO: Let me just say --

18 COMMISSIONER HERIOT: That's worse than --

19 CHAIRPERSON CASTRO: I think that what  
20 we're being presented here -- well, it's not worse,  
21 but let me just finish. So clearly our effort here is  
22 not to do anything that would be in violation of our  
23 AI or of the law. And so I just want to make that  
24 clear.

25 COMMISSIONER HERIOT: That's not clear.

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1 You just told me you didn't know why.

2 CHAIRPERSON CASTRO: I just told you it's  
3 clear but --

4 COMMISSIONER HERIOT: And you don't know  
5 why.

6 CHAIRPERSON CASTRO: I don't know why,  
7 correct.

8 COMMISSIONER HERIOT: So how can you say  
9 it's not for a --

10 CHAIRPERSON CASTRO: That I do not know  
11 why. I don't --

12 COMMISSIONER HERIOT: That's not good  
13 enough.

14 CHAIRPERSON CASTRO: Well, in any event,  
15 Commissioner Achtenberg?

16 COMMISSIONER HERIOT: Willful ignorance is  
17 not good enough.

18 CHAIRPERSON CASTRO: Commissioner  
19 Achtenberg?

20 COMMISSIONER ACHTENBERG: I was going to  
21 vote for the motion out of courtesy and also because  
22 it seems to me that given that my concern was I don't  
23 want to do anything to erode the SAC's authority or  
24 that's not consistent with past practice and that kind  
25 of thing. So that was the nature of my concern.

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1 I think to the extent that it is fair if  
2 two are appointed and they are diverse opinions, that  
3 is fine with me. But you almost talked me out of it.  
4 So if we stop the discussion now, I'll vote with you.  
5 If we continue, I may change my mind.

6 VICE CHAIR THERNSTROM: I feel exactly the  
7 same way.

8 CHAIRPERSON CASTRO: Okay. Well, let's  
9 vote on it now, then. And we'll do individual votes.  
10 So, Madam Vice Chair, how would you vote?

11 VICE CHAIR THERNSTROM: Yes. Okay. I'll  
12 vote for it.

13 CHAIRPERSON CASTRO: Votes for the motion.  
14 Commissioner Heriot, how do you vote

15 COMMISSIONER HERIOT: Yes.

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

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRPERSON CASTRO: I vote yes.

20 Commissioner Kirsanow, how do you vote?

21 COMMISSIONER KIRSANOW: Yes.

22 VICE CHAIR THERNSTROM: Not emphatically?

23 CHAIRPERSON CASTRO: Not this time I  
24 guess.

25 COMMISSIONER KIRSANOW: Lukewarm.

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1 CHAIRPERSON CASTRO: Can I change mine to  
2 emphatically yes? Commissioner Achtenberg?

3 COMMISSIONER ACHTENBERG: Yes.

4 CHAIRPERSON CASTRO: And Commissioner  
5 Titus?

6 COMMISSIONER TITUS: Yes.

7 CHAIRPERSON CASTRO: I believe the motion  
8 passes unanimously.

9 COMMISSIONER GAZIANO: Excellent.

10 CHAIRPERSON CASTRO: Okay. So now they  
11 are added to the list that we read earlier, as is Ms.  
12 Kluck. So our last motion on the Alabama SAC, then,  
13 is a motion to approve the slate that was read  
14 earlier. I'll just read the names again just to make  
15 sure we're clear: Valerie Askew, David Beito, Lula  
16 Bridges, Margaret Brown, Richard H. Finley, Leida  
17 Javier-Ferrell, Randy B. Kelley, Shana Kluck, Raphael  
18 Maharaj, Kevin Newsom, Maurice Shevin, L'Tryce Slade,  
19 Edward Still. What is Professor Couch's full name?

20 PARTICIPANT: Jim Couch.

21 CHAIRPERSON CASTRO: Jim Couch. And the  
22 other person was?

23 PARTICIPANT: Norman Baldwin.

24 CHAIRPERSON CASTRO: Norman Baldwin. So  
25 those are the individuals that would be on the SAC

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1 based on the motion. So if there's no further  
2 discussion on that, I'll call the question on that  
3 motion. All those in favor of this signify by saying  
4 aye.

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

6 CHAIRPERSON CASTRO: Any opposed?

7 (No response.)

8 CHAIRPERSON CASTRO: Any abstentions?

9 (No response.)

10 CHAIRPERSON CASTRO: Okay. It's  
11 unanimous.

12 VICE CHAIR THERNSTROM: Mr. Chair, before  
13 we move, I want --

14 CHAIRPERSON CASTRO: Madam Vice Chair?

15 VICE CHAIR THERNSTROM: -- to do another  
16 -- let me just say something I meant to say before. I  
17 trust, I assume, that it is far from the truth that,  
18 as asserted by Commissioner Gaziano when we were  
19 discussing Kluck that half of our SAC members have  
20 been in legal trouble of one sort or another, I mean  
21 --

22 COMMISSIONER GAZIANO: Or affiliated with  
23 someone who has been in legal trouble or --

24 COMMISSIONER HERIOT: If they're lawyers,  
25 it seems very likely that it's far more than half.

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1 CHAIRPERSON CASTRO: Okay. We'll, let's  
2 move on to the next SAC. I'm sorry. It's 12:20.

3 VICE CHAIR THERNSTROM: Yes.

4 CHAIRPERSON CASTRO: And folks do have  
5 planes to catch. I know that.

6 - RE-CHARTERING THE ILLINOIS SAC

7 CHAIRPERSON CASTRO: So we'll move on next  
8 to the Illinois SAC, State Advisory Committee. I move  
9 that the Commission re-charter the Illinois State  
10 Advisory Committee. Under this motion, the Commission  
11 appoints the following individuals to that committee  
12 based on the recommendations of our Staff Director:  
13 Barbara J. Abrajano, Nancy C. Andrade, Jonathan J.  
14 Bean, James F. Botana, Sunny P. Chico, H. Yvonne  
15 Coleman, Louis S. Goldstein, Sandra S. Jackson,  
16 Demetri C. Kantzavelos, B. Herbert Martin, Kamran A.  
17 Memon, Malik Nevels, Gordon M. Quinn, Cynthia C.  
18 Shawamreh, Ennedy D. Rivera, Anthony A. Sisneros,  
19 Betsy Shuman-Moore, Farhan Younus.

20 Pursuant to this motion, the Commission  
21 appoints Barbara J. Abrajano as Chair of this  
22 re-chartered Illinois State Advisory Committee.

23 These members will serve as uncompensated  
24 government employees under this motion. The  
25 Commission authorizes the Staff Director to execute

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1 the appropriate paperwork for appointment.

2 Is there a second?

3 VICE CHAIR THERNSTROM: Second.

4 CHAIRPERSON CASTRO: Okay. Discussion?  
5 Commissioner Gaziano?

6 COMMISSIONER GAZIANO: By my count, the  
7 slate was not put together in compliance with  
8 administrative instruction 5-9 in 2 respects. First  
9 of all, our particular AI requires that there only be  
10 at least one member of every party. Party balance is  
11 not a significant concern other than there be at least  
12 one of each.

13 What is in three places in the AI is that  
14 there is some ideological balance. Section 2.02 says,  
15 "Membership shall be established to promote vigorous  
16 debate and full exploration of the issues."

17 Section 2.04 says that "State Advisory  
18 Committee members shall be fairly balanced in terms of  
19 points of view represented and the functions to be  
20 performed." By that -- that's section 2 of AI 5-9. I  
21 thought I said that before.

22 By my count, there are 2 conservatives, 14  
23 liberals, 4 of which I'm not sure it's very clear.  
24 One of the so-called Republicans seems quite to be a  
25 hard left individual. So this seems wildly

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1 imbalanced. And so I would like to inquire about  
2 whether that kind of ideological balance was looking.

3 The second mistake -- and I'll just get it  
4 out and then maybe the Staff Director can -- is that  
5 of the seven people that I recommended, although I  
6 think commissioner recommendations should at least be  
7 considered, regional staff said that they contacted  
8 some, who claimed that they were never contacted.

9 Particularly Professor Seth Norton is one  
10 in particular, who was never contacted about whether  
11 he was willing -- no. Maybe an e-mail went out, and  
12 it wasn't followed up, but my staff was able to  
13 contact him. And he denied that he was ever reached  
14 by anyone on the staff. And maybe that's why this SAC  
15 is so wildly imbalanced in violation of the AI.

16 Do you know, for example, whether  
17 Professor Norton was ever contacted?

18 ACTING STAFF DIRECTOR TOLHURST: Well,  
19 first I would disagree it is wildly imbalanced, as did  
20 Mr. Byrnes, who confirmed for me that it was, in fact,  
21 balanced.

22 We did, in fact, follow up with David  
23 Beito, who is in charge of the region administering  
24 the SAC. He assured us --

25 COMMISSIONER GAZIANO: Beito I don't think

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1 is the --

2 ACTING STAFF DIRECTOR TOLHURST: Sorry.  
3 Sorry. I was thinking about the last vote. He said  
4 that he contacted these people. You know, neither  
5 Chris nor I if you look at every SAC member would  
6 potentially have 950 people. We cannot individually  
7 call all of them. We have to rely on our regional  
8 staff, who are paid to do this job.

9 Seth said that he contacted them. Then  
10 because there were questions encouraged to follow up,  
11 he then produced e-mails demonstrating that he had  
12 contacted them. And you can speak further to that.

13 MR. BYRNES: We were able to substantiate  
14 with e-mails that he had contacted --

15 COMMISSIONER GAZIANO: Do you know about  
16 Seth Norton?

17 MR. BYRNES: Specifically? Yes.

18 COMMISSIONER GAZIANO: And Seth Norton  
19 said he wasn't interested.

20 MR. BYRNES: I don't believe there was a  
21 reply.

22 COMMISSIONER GAZIANO: Okay. So there was  
23 maybe an e-mail sent and no

24 MR. BYRNES: Beyond an e-mail being sent,  
25 I'm not sure what the --

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1 COMMISSIONER GAZIANO: I suppose my deeper  
2 problem is sometimes there is shown how many  
3 Republicans or Democrats. I think it is a -- and I'm  
4 not necessarily blaming staff for the way they have  
5 done it in the past, but that factor being highlighted  
6 seems to be a mistake in what the AI actually  
7 requires.

8 To what extent was there an investigation  
9 of their ideological or other perspectives?

10 ACTING STAFF DIRECTOR TOLHURST: Chris can  
11 speak to it. We only have the paperwork we have.

12 MR. BYRNES: Right. We --

13 ACTING STAFF DIRECTOR TOLHURST: In this  
14 SAC, in particular, there were a lot of independents.

15 MR. BYRNES: Yes. And we don't just look  
16 at party affiliation. We examine the statement of  
17 demonstrated interest and experience in civil rights.  
18 We also look at the resumes to sort of get a full  
19 picture.

20 COMMISSIONER GAZIANO: Do you Google them?

21 ACTING STAFF DIRECTOR TOLHURST: Yes, we  
22 do.

23 CHAIRPERSON CASTRO: Commissioner Heriot?

24 COMMISSIONER HERIOT: Our AIs actually say  
25 that "a follow-up telephone call shall be made to

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1 ensure receipt of the letter when we contact potential  
2 SAC members." Did that happen in this case?

3 MR. BYRNES: I can verify that. I'm not  
4 sure.

5 CHAIRPERSON CASTRO: Is there any other  
6 discussion? If there is any other discussion, let me  
7 know. Otherwise I'm going to call the question.

8 COMMISSIONER GAZIANO: I move to postpone  
9 a vote on this until it's ascertained whether the  
10 proper follow-up was made, --

11 COMMISSIONER HERIOT: Yes.

12 COMMISSIONER GAZIANO: -- on at least the  
13 people I recommended or my special assistant  
14 recommended be considered.

15 COMMISSIONER HERIOT: I would second that  
16 motion. I mean, the AIs are quite clear. It says  
17 that "A follow-up telephone call shall be made."

18 Mr. Byrnes has said that he doesn't know  
19 whether a follow-up call was made. And it seems  
20 appropriate in this case. You know, it's unusual to  
21 find people who say that they would have been willing  
22 to serve and they weren't contacted. You know, it  
23 seems very unlikely that that would be untrue.

24 So I would agree with Commissioner  
25 Gaziano. We should put this one off for a month. It

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1 does seem --

2 CHAIRPERSON CASTRO: We're already at 19  
3 on this panel.

4 COMMISSIONER HERIOT: -- very unlikely on  
5 --

6 ACTING STAFF DIRECTOR TOLHURST: So I  
7 don't even know. Can we even add people on this?  
8 We're at 19. One, two, three, four, five, six, seven  
9 --

10 ACTING STAFF DIRECTOR TOLHURST: It's 19.

11 CHAIRPERSON CASTRO: That's right. You  
12 know, I don't accept that motion as a friendly motion  
13 to my motion. I want to vote on my motion on the SAC.

14 COMMISSIONER GAZIANO: Well, we extended  
15 the courtesy to --

16 COMMISSIONER HERIOT: Yes. It wasn't made  
17 as a friendly amendment.

18 COMMISSIONER GAZIANO: We extended the  
19 courtesy to Commissioner Titus because she wanted to  
20 examine one of the members. I would ask, in addition  
21 to examining whether the people I recommended were  
22 actually contacted, that they actually look closer so  
23 that we can determine whether the ideological balance  
24 is really as I think it is, which is 2 conservatives,  
25 14 liberals.

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1 COMMISSIONER TITUS: Mr. Chairman?

2 CHAIRPERSON CASTRO: Commissioner Titus?

3 COMMISSIONER TITUS: Thank you.

4 You know, that's how you see it. I see it  
5 very differently. We know that the independent label  
6 is not always, especially in performance of a person's  
7 ideology, but the way I look at these is very similar  
8 to the way our staff reviewed them and came up with  
9 the determination that they were balanced. It seems  
10 to me that there are two who clearly lean to the  
11 right, one or two who lean to the left, and the rest  
12 are pretty centrist, which is what seems to me you  
13 would want to go for on a committee.

14 COMMISSIONER HERIOT: Which two would you  
15 say lean to the right? And which two --

16 COMMISSIONER TITUS: Well, I'm not going  
17 to attribute something to people if we don't go into  
18 personal session.

19 And I would also ask if the commissioner  
20 -- if he was so concerned about these people being on  
21 the committee, if he contacted them or you had some  
22 communication with them in advance to be sure that  
23 they knew about it and were interested and were  
24 responding.

25 COMMISSIONER GAZIANO: Yes.

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1 CHAIRPERSON CASTRO: Vice Chair? Madam  
2 Vice Chair?

3 VICE CHAIR THERNSTROM: The analogy that  
4 Commissioner Gaziano just made with a question that  
5 Commissioner Titus raised about somebody already on  
6 the commission or somebody we were already voting on  
7 and looking into people who have not as of yet been  
8 proposed to be on this slate seems to me a very poor  
9 analogy.

10 And Commissioner Titus had questions about  
11 somebody we were recommending or had been recommended  
12 for the Alabama slate.

13 You are saying something quite different.

14 Well, there are people who haven't been recommended  
15 that we should be looking at here, not the same.

16 COMMISSIONER GAZIANO: I'm saying that the  
17 staff couldn't answer our questions about the process  
18 and whether the process was followed, the  
19 administrative instructions, and whether they actually  
20 called people who were willing to serve if they had  
21 been contacted by staff. So I think that a month to  
22 investigate that kind of process is in order.

23 VICE CHAIR THERNSTROM: And it looks to me  
24 as if this is pretty balanced anyway.

25 CHAIRPERSON CASTRO: Any other questions?

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1 Any other discussion?

2 (No response.)

3 CHAIRPERSON CASTRO: I'm going to call the  
4 question. We're going to vote on it. Madam Vice  
5 Chair, how do you vote?

6 VICE CHAIR THERNSTROM: How is the motion  
7 --

8 COMMISSIONER HERIOT: Wait. What motion  
9 are we voting on here?

10 CHAIRPERSON CASTRO: We're voting on the  
11 motion which is on the floor, which is to --

12 COMMISSIONER HERIOT: There's been a  
13 motion?

14 CHAIRPERSON CASTRO: -- approve the slate.

15 COMMISSIONER HERIOT: Didn't we make a  
16 motion it wasn't --

17 CHAIRPERSON CASTRO: I don't believe so.  
18 I mean, he made a motion. It wasn't seconded.

19 COMMISSIONER HERIOT: I seconded.

20 COMMISSIONER TITUS: But you can't make a  
21 motion when a --

22 CHAIRPERSON CASTRO: Yes. We're in the  
23 middle of --

24 COMMISSIONER TITUS: -- motion is on the  
25 table.

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1 COMMISSIONER HERIOT: Yes, you can.

2 That's not true.

3 COMMISSIONER TITUS: No, you can't. No,  
4 you can't.

5 COMMISSIONER HERIOT: It is a motion to  
6 amend.

7 COMMISSIONER TITUS: You can't amend a  
8 motion up or down.

9 CHAIRPERSON CASTRO: No. We're voting on  
10 this motion.

11 COMMISSIONER HERIOT: Yes, you can. Todd,  
12 what was your motion?

13 COMMISSIONER GAZIANO: The motion was to  
14 postpone the vote until next month, until we heard  
15 from our staff whether they followed the procedures.

16 CHAIRPERSON CASTRO: And I told you I did  
17 not accept that motion. It was not seconded. We're  
18 in the middle of voting on the main motion.

19 COMMISSIONER HERIOT: It's seconded.

20 CHAIRPERSON CASTRO: Then you can vote  
21 against this. So the motion again, just to reiterate,  
22 is the motion to approve the Illinois SAC, as was  
23 read.

24 I'm going to go individually. Madam Vice  
25 Chair, do you --

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1 VICE CHAIR THERNSTROM: Yes. I agree with  
2 it.

3 CHAIRPERSON CASTRO: Commissioner Heriot?

4 COMMISSIONER HERIOT: I protest that this  
5 is not in order.

6 CHAIRPERSON CASTRO: Are you abstaining,  
7 then?

8 COMMISSIONER HERIOT: I guess I'll vote  
9 no.

10 CHAIRPERSON CASTRO: Okay. Commissioner  
11 Gaziano?

12 COMMISSIONER GAZIANO: I'm voting no and  
13 primarily because my motion was in order and it should  
14 have been voted on first.

15 CHAIRPERSON CASTRO: Commissioner  
16 Kirsanow?

17 COMMISSIONER KIRSANOW: I'm voting no.  
18 And that is not a reflection of the competency or  
19 integrity of any of the individuals on the SAC but for  
20 the same reasons that Commissioner Gaziano challenges  
21 it.

22 CHAIRPERSON CASTRO: Well-taken. Thank  
23 you.

24 Commissioner Achtenberg?

25 COMMISSIONER ACHTENBERG: Yes.

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1 CHAIRPERSON CASTRO: Commissioner Titus?

2 COMMISSIONER TITUS: Yes.

3 CHAIRPERSON CASTRO: Castro? Yes.

4 So we have a majority in favor of the  
5 re-chartering the Illinois SAC with the members as we  
6 have indicated.

7 - RE-CHARTERING THE MINNESOTA SAC

8 CHAIRPERSON CASTRO: We now move on to the  
9 Minnesota State Advisory Committee. I move that the  
10 Commission re-charter the Minnesota State Advisory  
11 Committee. Under this motion, the Commission appoints  
12 the following individuals to that committee based upon  
13 the recommendations of our Staff Director: Robert Lee  
14 Battle, Ryan M. Check, Kenneth O. Doyle, JoAnn  
15 Cardenas Enos, John A. Gilbertson, Kirk O. Kolbo,  
16 Velma J. Korbel, Nakima V. Levy-Pounds, Teresa J.  
17 Nelson, Shamus P. O'Meara, D. Craig Taylor.

18 Pursuant to this motion, the Commission  
19 appoints Nakima V. Levy-Pounds as Chair of this  
20 re-chartered Minnesota State Advisory Committee.

21 These members will serve as uncompensated  
22 government employees under this motion. The  
23 Commission authorizes the Staff Director to execute  
24 appropriate paperwork for the appointment.

25 Is there a second?

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1 COMMISSIONER ACHTENBERG: Second.

2 CHAIRPERSON CASTRO: Okay. Discussion?  
3 Commissioner Gaziano?

4 COMMISSIONER GAZIANO: I move to postpone  
5 consideration of this SAC until the staff determines  
6 whether they followed administrative instructions 5.9  
7 on several of the people that I recommended, who were  
8 interested in serving, were not contacted by the  
9 staff, or even any preliminary evaluations or let me  
10 put it this way: I'm not sure. I'm not sure whether  
11 they were contacted.

12 And this is another wildly imbalanced  
13 left-leaning SAC. So I would like it postponed for an  
14 evaluation of that, re-evaluation of that, by staff as  
15 well.

16 COMMISSIONER HERIOT: Second.

17 ACTING STAFF DIRECTOR TOLHURST: Let me  
18 say I am not really in the hobby of assuming --

19 COMMISSIONER HERIOT: Second.

20 CHAIRPERSON CASTRO: Thank you.

21 ACTING STAFF DIRECTOR TOLHURST: -- SAC  
22 didn't do their job properly. I think these regional  
23 directors, we operate under the assumption that they  
24 followed the AI unless there is evidence otherwise.

25 COMMISSIONER HERIOT: But there is.

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1 COMMISSIONER GAZIANO: I presented  
2 evidence.

3 COMMISSIONER HERIOT: There is.

4 COMMISSIONER GAZIANO: I presented  
5 evidence.

6 ACTING STAFF DIRECTOR TOLHURST: You said  
7 you weren't sure and wanted to know.

8 COMMISSIONER GAZIANO: No, no, no, no, no.  
9 I said that it appeared -- first of all, it's wildly  
10 imbalanced. So that is --

11 ACTING STAFF DIRECTOR TOLHURST: Regarding  
12 the process of contacting people, for the last AI, you  
13 have a question about phone calls, which Chris will  
14 follow up on with that --

15 COMMISSIONER GAZIANO: And I would like to  
16 know unless you can tell me right now whether the four  
17 whom I recommended were contacted.

18 ACTING STAFF DIRECTOR TOLHURST: Well,  
19 with the last SAC, you seemed to have some affirmation  
20 information they were telling you they weren't, but  
21 that doesn't seem to be the case here.

22 COMMISSIONER HERIOT: Is it correct that  
23 it's the same person working on the SAC?

24 ACTING STAFF DIRECTOR TOLHURST: They're  
25 not on the list. So are you assuming they weren't

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1 contacted?

2 COMMISSIONER HERIOT: Is it correct that  
3 it's the same person working on the SAC?

4 ACTING STAFF DIRECTOR TOLHURST: Yes.

5 COMMISSIONER HERIOT: Okay. I would say  
6 we have very clear evidence.

7 ACTING STAFF DIRECTOR TOLHURST: What is  
8 your --

9 VICE CHAIR THERNSTROM: What is your --

10 COMMISSIONER HERIOT: Of failing to  
11 contact the people who were recommended by telephone,  
12 as required by the AIs.

13 COMMISSIONER GAZIANO: What I'd like to  
14 know -- if my motion passes, what I'd like to know is  
15 since they told my staff that they were willing to  
16 apply, whether they were actually reached, whether  
17 such information was solicited.

18 Now, if staff decides not to act on them,  
19 that's another matter. But I at least want to know  
20 what the process was. And it looks like the final  
21 slate is quite imbalanced. So that's a second factor.

22 CHAIRPERSON CASTRO: Are there any other  
23 comments on this motion?

24 (No response.)

25 CHAIRPERSON CASTRO: If not, we'll call

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1 the question on the motion to delay.

2 COMMISSIONER GAZIANO: Has it been  
3 seconded?

4 CHAIRPERSON CASTRO: Yes, it's been  
5 seconded by Commissioner Heriot. It was moved by  
6 Commissioner Gaziano, seconded by Commissioner Heriot.

7 We will again take a vote. Vice Chair  
8 Thernstrom, how do you vote on the motion to delay?

9 VICE CHAIR THERNSTROM: No.

10 CHAIRPERSON CASTRO: Commissioner Heriot,  
11 how do you vote on the motion to delay?

12 COMMISSIONER HERIOT: Yes.

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

15 COMMISSIONER GAZIANO: Yes.

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

18 COMMISSIONER KIRSANOW: No.

19 CHAIRPERSON CASTRO: I vote no.

20 CHAIRPERSON CASTRO: Commissioner  
21 Achtenberg?

22 COMMISSIONER ACHTENBERG: No.

23 CHAIRPERSON CASTRO: Commissioner Titus?

24 COMMISSIONER TITUS: No.

25 CHAIRPERSON CASTRO: The motion fails.

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1 We now move on to the motion, the main  
2 motion, on approving the Minnesota SAC as read into  
3 the record earlier. Is there any additional  
4 discussion on that? Vice Chair?

5 VICE CHAIR THERNSTROM: I just want to  
6 make one comment. It seems to me that the last vote  
7 was and the previous one as well, in effect, a vote on  
8 how much confidence we have in the staff.

9 In fact, my vote in both instances was a  
10 vote on competence for the work that the staff has  
11 been doing and a thumb's up for Kim Tolhurst, who has  
12 really under extraordinary circumstances been I know  
13 working night and day.

14 CHAIRPERSON CASTRO: I second that motion.

15 ACTING STAFF DIRECTOR TOLHURST: I  
16 appreciate that.

17 Let me say regarding the SACs, I don't  
18 know all in this case. These were SACs that were  
19 created under Staff Director Dannenfelser. These were  
20 SACs that Chris Byrnes had assisted me in approving.  
21 All I care is that they are properly done. And when  
22 Chris assures me that they are with his greater  
23 experience than mine regarding SACs, I take that to be  
24 true. And I have similar confidence in him that he  
25 has conducted the analysis properly.

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1 If we learn that a particular regional  
2 director is not following the AI regarding calls, we  
3 will certainly deal with that. But I don't have  
4 evidence of that at the time.

5 CHAIRPERSON CASTRO: Thank you.

6 Okay. Hearing no further discussion, we  
7 will vote on the motion to approve the Minnesota SAC.  
8 All those in favor say aye.

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

10 CHAIRPERSON CASTRO: Opposed?

11 (Whereupon, there was a chorus of "No.")

12 CHAIRPERSON CASTRO: Commissioners Gaziano  
13 and Heriot oppose. Commissioner Kirsanow? Oh, any  
14 abstentions?

15 (No response.)

16 CHAIRPERSON CASTRO: Commissioner  
17 Kirsanow, are you still there?

18 COMMISSIONER KIRSANOW: I am. I vote yes.

19 CHAIRPERSON CASTRO: Votes yes to approve?  
20 Okay. As do I. So we have two in opposition and the  
21 balance in support of the motion. It passes.

22 VI. APPROVAL OF MARCH 11, 2011 MEETING MINUTES

23 CHAIRPERSON CASTRO: Next on the agenda is  
24 approval of the March 11th meeting minutes. Can we  
25 have a motion on that?

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1 COMMISSIONER ACHTENBERG: So moved.

2 CHAIRPERSON CASTRO: Second?

3 VICE CHAIR THERNSTROM: Second.

4 CHAIRPERSON CASTRO: Any discussion, any  
5 changes?

6 (No response.)

7 CHAIRPERSON CASTRO: If not, all those in  
8 favor say aye.

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

10 CHAIRPERSON CASTRO: Any opposed?

11 COMMISSIONER HERIOT: I didn't get a  
12 chance to vote. I'm still --

13 CHAIRPERSON CASTRO: I'm sorry.

14 COMMISSIONER HERIOT: -- conferring with  
15 my special assistant here.

16 CHAIRPERSON CASTRO: Okay.

17 COMMISSIONER HERIOT: My special assistant  
18 has the comment that we have got a heading here that  
19 makes it look like we were talking about White House  
20 nominees for Acting Chair and Staff Director. We  
21 didn't actually do that. I would strike that  
22 language.

23 CHAIRPERSON CASTRO: I think that was how  
24 the actual agenda item read. At the time, we thought  
25 that there might have -- it was set up before there

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1 was actually a nomination that was sent. So we  
2 thought that we might get the Chair and the Staff  
3 Director at the same time.

4 So if you look back at the agenda item,  
5 the actual agenda, for that date, that is how it was  
6 listed. Yes. Okay.

7 So all those in favor -- hold on a second.  
8 Okay. Oh, I see. So "White House Nominees for  
9 Chair, Vice Chair" is how it was read, not "Acting  
10 Chair"? Is that what you're saying? Okay. And Staff  
11 Director. So we will make that change.

12 COMMISSIONER HERIOT: It should have said  
13 Vice Chair.

14 CHAIRPERSON CASTRO: Vice Chair, not  
15 Acting Chair. Okay. You're right. Sorry. I  
16 misunderstood what you were saying.

17 COMMISSIONER HERIOT: With that change,  
18 then.

19 CHAIRPERSON CASTRO: Yes. Then all in  
20 favor of the motion for the minutes with that change  
21 say aye?

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

23 CHAIRPERSON CASTRO: Any opposed or  
24 abstentions?

25 (No response.)

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1 CHAIRPERSON CASTRO: Any announcements?

2 (No response.)

3 CHAIRPERSON CASTRO: Hearing none, motion  
4 to adjourn?

5 VICE CHAIR THERNSTROM: So moved.

6 CHAIRPERSON CASTRO: All in favor?

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

8 CHAIRPERSON CASTRO: All right. Let's go  
9 home.

10 (Whereupon, the foregoing matter was  
11 concluded at 12:38 p.m.)

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