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U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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MONDAY, DECEMBER 19, 2011

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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 1:00 p.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ROBERTA ACHTENBERG, Commissioner

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KладNEY, Commissioner

MICHAEL YAKI, Commissioner

KIMBERLY TOLHURST, Delegated the Authority of the Staff Director (via telephone)

FRANCES GARCIA, Inspector General
STAFF PRESENT:
TERESA BROOKS
MARGARET BUTLER
IVY DAVIS
BARBARA DE LA VIEZ
PAMELA A. DUNSTON, Chief, ASCD
ALFREDA GREENE
MYRNA HERNANDEZ
TINALOUISE MARTIN, Director, OM
PETER MINARIK, Chief, RPCU
TORRANCE MONTGOMERY
LENORE OSTROWSKY, Acting Chief, PAU
EILEEN RUDERT
DAVID SNYDER
VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELLE YORKMAN
MS. SELEW

COMMISSIONER ASSISTANTS PRESENT:
NICHOLAS COLTEN
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
MARLENE SALLO
RICHARD SCHMECHEL
ALISON SOMIN
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P-R-O-C-E-E-D-I-N-G-S

(1:04 p.m.)

CHAIRPERSON CASTRO: The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is 1:03 p.m. on December 19th, 2011. This meeting is taking place at the Offices of the U.S. Commission on Civil Rights located at 624 Ninth Street, Northwest in Washington, D.C.

I am Chairman Marty Castro. Commissioners who are present at this meeting are myself, Commissioners Heriot, Commissioner Gaziano, Commissioner Kirsanow, Commissioner Kladney, Commissioner Yaki, and Commissioner Achtenberg. Vice Chair Thernstrom is unable to join us today.

A quorum of the Commissioners is present.

Is the person delegated the Authority of Staff Director present?

ACTING STAFF DIRECTOR TOLHURST: Yes.

CHAIRPERSON CASTRO: And that is Kimberly Tolhurst participating by phone because she has a case of the flu and we don't want everyone else here to have that.

Is the court reporter present? That is an affirmative.
Okay, so meeting shall now come to order. and the first item is the approval of the agenda.

I. APPROVAL OF AGENDA

CHAIRPERSON CASTRO: I move that we approve the agenda. Do we have a second?

COMMISSIONER YAKI: Second.

CHAIRPERSON CASTRO: Are there any amendments? The Chair recognizes Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Mr. Chairman, I would move to amend the agenda to undertake a consideration of the Lincoln Cottage proposal under Program Planning Update and Discussion of Projects as the first item.

CHAIRPERSON CASTRO: Okay, do we have a second on that?

COMMISSIONER KLADNEY: I'll second it.

CHAIRPERSON CASTRO: Okay, are there any further amendments? If not, let us vote to approve the agenda.

COMMISSIONER GAZIANO: May I ask --

CHAIRPERSON CASTRO: Yes.

COMMISSIONER GAZIANO: Just a point of information. I see we have the Inspector General here.
Is that in the agenda?

CHAIRPERSON CASTRO: Yes, I was going to acknowledge and have her say a few words, if you think we need to amend the agenda to do that.

COMMISSIONER GAZIANO: Perhaps so.

CHAIRPERSON CASTRO: Okay, then we will make a motion to allow our Inspector General to make a brief presentation to the Commission. Do I have a second on that?

COMMISSIONER GAZIANO: I second.

CHAIRPERSON CASTRO: Okay. Any further? Commissioner Yaki.

COMMISSIONER YAKI: Can we do so with an unconditional grant of immunity?

(Laughter.)

CHAIRPERSON CASTRO: You have to negotiate that separately.

Okay, any further motions to amend the agenda? If not, all those in favor say aye.

(Chorus of aye.)

CHAIRPERSON CASTRO: All those opposed?

(No response.)

CHAIRPERSON CASTRO: Any abstentions?

(No response.)
CHAIRPERSON CASTRO: In the opinion of the Chair, the eyes have it.

Before actually we move on to the approval of the minutes, I would actually like to take the opportunity to say a few words about an important occasion that is coming up. I want to recognize Audrey Wright. Is Audrey here? There you are, Audrey.

II. RECOGNITION OF AUDREY WRIGHT'S SERVICE

I want to recognize Audrey because as some of you know, she will be leaving us shortly. But I want to recognize her for her 38 years of service to the Civil Rights Commission for a total of 42 years of service with the federal government. Her tenure embodies the true meaning of public service. Audrey has worked in several offices, including the Office of the General Counsel, the Office of the Staff Director, and she has been the go-to person here at the Commission and she is going to be taking a vast amount of our institutional knowledge along with her upon her retirement.

Since my arrival here almost a year ago, Audrey has been extremely helpful to me in assisting me as I become acclimated to the Commission, as well
as providing me with guidance and institutional direction, and just always being a friendly, cheerful, supportive person. And I just want you to know that I will always appreciate that and that you will be sorely missed by all of us, especially by me. We hope that you will not be a stranger.

I know you were already telling me about coming back for one of our briefings just to see what is going on. And that is true service. So I want to acknowledge it and actually make a motion that these remarks be put in a form of a resolution that will be presented to Audrey at a future point in time.

We actually have a few other things here we are going to present to her before we move on with the program.

Do I have a second on that?

COMMISSIONER HERIOT: Second.

CHAIRPERSON CASTRO: All those in favor?

(Chorus of aye.)

CHAIRPERSON CASTRO: Any opposed or abstentions? Of course not.

Let's hear it for Audrey.

(Appause.)
CHAIRPERSON CASTRO: We actually have a few things to present you. Now as you may recall, I said Audrey had 42 years of service, but this certificate is awarded to her in recognition of her 40 years of service, which apparently did not happen when she reached that milestone two years ago. So it is my pleasure as Chairman of the United States Commission on Civil Rights on behalf of the Commission to present you with this certificate for your 40 years of service and then some.

(Applause.)

CHAIRPERSON CASTRO: And since you can't carry that around with you everywhere you go, we are going to have a little pin that you can wear on your lapel that is a symbol of that 40 years of service.

MS. WRIGHT: Thank you.

CHAIRPERSON CASTRO: Thank you the service you have given to the people of the United States.

And a little something that may not last as long as those but a breath of fresh air to you as you were to me when I joined the Commission.

Thank you.
MS. WRIGHT: Thank you.

(Applause.)

CHAIRPERSON CASTRO: Thank you, Audrey.

Do you want to say something?

MS. WRIGHT: No, thank you.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER YAKI: Mr. Chair?

CHAIRPERSON CASTRO: Yes, sir.

COMMISSIONER YAKI: I would like to say a few words. First, I wonder if it is within the powers of the Inspector General to revoke her retirement because I just don't know what we are going to do without her. She has been, since I have been on the Commission for over six years now, Audrey has been steadfast and a rock, who is unfailingly polite. No matter how many times I tell her to call me Michael, she just keeps calling me, she goes, yes, Commissioner. It drives me crazy.

But she is just a joy to work with and to know as a human being. And I wish her all the best in her retirement and please, really, if you value your sanity at all, don't come back here.

(Laughter.)

COMMISSIONER YAKI: We have audio, you
can push it by audio. You can listen to music or play with your cats or do whatever you want else. But I will miss you. Personally, I just want to say I will miss you very deeply. And thank you for everything that you have done on behalf of this Commission, to this country and to me personally.

CHAIRPERSON CASTRO: Thank you. Here, here.

(Applause.)

CHAIRPERSON CASTRO: Okay, so before we go to approval of the minutes, I would like to present our Inspector General. As you all know, the Government Accounting Office is going to be our Inspector General for the U.S. Commission on Civil Rights.

III. Introduction of Inspector General

CHAIRPERSON CASTRO: Frances Garcia, the Inspector General is here and will introduce herself and her staff. And you have the floor, Madam Inspector General.

MS. GARCIA: Okay. Thank you, Chairman. It is a pleasure to be here with you today. And I'm sure it was a big surprise to you as it was to us to find out exactly last month, the
18th, that we were now going to be also the Inspector
General for the Commission of Civil Rights. And
with me is my Deputy Director, Cathy Helm, and our
General Counsel, Michael Volpe.

I thought this would be just like a meet
and greet so that you could attach faces for folks
here. And while I will be wearing two hats, I will
be not only the Inspector General here but I will
continue my current position as the Inspector
General for GAO. But I want you to know that you
will not be neglected. We will do our best to make
you feel like part of the -- We are here to help
you.

One of the things that we did that I
thought would be quick and easy, we put a brochure
together for you that just kinds of talks about the
authorities of the Inspector General and also some
of the responsibilities. And this is pretty cut
and dry for all the Inspector Generals and it is
all their responsibilities are covered under the
Act and so are the responsibilities that we have.

And we are seriously going to have a
hotline. Right now we have our hotline that we put
in here but we will have your own separate hotline
for any concerns that people might have. And most of the time those will be anonymous unless we absolutely have to disclose the individual that made those complaints.

One of the things that we were here to do today is to just solicit some input from you in some of the areas that you think we should be looking into, some areas that you have concerns. I know that this is a last minute thing that we are asking you to do this. So if you could just send us an email or call us or you can get a hold of us that way or call me directly. My phone number and our contacts are in the back of this.

We will also be reaching out to the staff. We will have someone coming in and talking to the staff and seeing what areas of concerns they have that they think we should be looking into. We have also reached out to the Congressional staff that are responsible for this that have the oversight and also that wrote the legislation where we would be the IG and to see if there was any concerns that they had in mind when they put the legislation together.

And after we have done that, we will also
be coming here and spending a couple of days. We have already met with Kimberly, just a quick meet and greet. We will be doing a risk assessment of your policies and procedures and see what areas that we think that need to be looked at. We will assign a risk assignment to them and then we will be looking into those areas.

Now the way I understand this will work and the way we have done it, and so I just want you to know that when we do look at these things, especially when we do the auditing and we do the reviews, there will not be any surprises. We will have thoroughly talked to your staff about them and gotten an agreement where they may not agree with our conclusions but the facts are right. And of course we will talk to Kimberly and I am sure that she will in turn discuss the review.

And I plan to come and be a frequent guest of yours to talk to you about any concerns that we might have or any input that we might need from you individually.

I think that pretty much wraps it up. It is very general. If you have any specific questions, I would be happy to answer them.
CHAIRPERSON CASTRO: Are there any questions? Not yet. I'm sure that they will at some point. Oh, I'm sorry. Commissioner Gaziano?

COMMISSIONER GAZIANO: More of a comment. First of all, thank you for taking on this duty and bringing such a high level of delegation to our meeting. I imagine we are rather small numerically compared to the General -- How many personnel are there in the General Accounting Office?

MS. GARCIA: Approximately 3200.

COMMISSIONER GAZIANO: Yes, I thought so.

MS. GARCIA: Not in the IG's shop.

COMMISSIONER GAZIANO: So I don't know -- We won't tell GAO they should be jealous that we are getting more attention than our numbers. But thank you.

And one of the things I think you might be able to help those who drafted an earlier version of the legislation and us is to confirm there were one or two notions in it about our financial, the record keeping being out of order that I think were out of date referred to an earlier period in the
Commissioner's history. At least I hope that is no longer the case.

And so I think part of the service that you call can provide is to confirm if our impression is right, we commissioners are part-timers and we try to stay on top of the Agency's budget. But do you, not only could confirm for us but hopefully confirm for members of Congress and the public generally, whether we have made those improvements in recent years.

MS. GARCIA: Definitely Commissioner, after we do a risk assessment, we will be in the position to know what the risks are and what your policies and procedures are, and what the internal controls are and whether you have segregation of duties in areas where you shouldn't be and where you are vulnerable.

COMMISSIONER GAZIANO: Okay.

MS. GARCIA: Obviously we can't do it now but once we do a risk assessment. And we will have some pretty experienced people here that have a background in this area. Everybody in the IG's Office and is a GAO long-time employee, they have come off the line to work with the Inspector...
General's Office. So they are very familiar with analyzing and reviewing other agencies' policies and procedures and internal controls in areas of vulnerability.

COMMISSIONER GAZIANO: So part of the reason I just wanted to comment was that it was in one of the report language. You will, I'm sure if not already up to speed, will be brought up to speed with concerns that existed eight years ago and certain attempts at correcting them five years ago, four years ago, and so on. But that might be some helpful background for you as you get up to speed.

MS. GARCIA: We have reviewed that. I have also looked at your latest performance and accountability report and I see where you have made some progress. But then again, you know, we will do an independent review of all that.

COMMISSIONER GAZIANO: Thank you, very much.

MS. GARCIA: Thank you.

CHAIRPERSON CASTRO: I think we just got our sixth straight clean audit in a row. So that is always good, too.

MS. GARCIA: We had a CPA that was very
happy to see that.

CHAIRPERSON CASTRO: Any other questions for our Inspector General? If not, I want to thank you for taking the time to be with us and we look forward to working with you and your staff and appreciate your service to the Commission. Thank you.

MS. GARCIA: One of the things that we did, Mr. Chairman, is we have reviewed the minutes and since this is public, we plan to stay with you for the rest of the day just to sort of observe.

CHAIRPERSON CASTRO: Absolutely, you are welcome to stay for the entire meeting.

MS. GARCIA: Thank you, very much. And again like I said, please feel free to call us to ask any questions that you might have. And as time goes by, we will come back and meet with you and we will let you know if we are progressing. And when we have our hotline, we will definitely let you know here so that you can post it on your webpage.

CHAIRPERSON CASTRO: Great. Thank you. We will now move on to the approval of the November 18th, 2011 meeting minutes.
IV. APPROVAL OF THE NOVEMBER 18, 2011

MEETING MINUTES

CHAIRPERSON CASTRO: Do we have a motion on that? Or I will move that. Do we have a second on the motion?

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Any discussion? None? Okay, all those in favor of approving the minutes say aye.

(Chorus of aye.)

CHAIRPERSON CASTRO: I'm sorry.

COMMISSIONER GAZIANO: I'll abstain, if you don't mind.

CHAIRPERSON CASTRO: Okay, one abstention.

COMMISSIONER HERIOT: Two abstentions.

CHAIRPERSON CASTRO: Two abstentions.

COMMISSIONER KLADENEY: Let's make it three abstentions.

CHAIRPERSON CASTRO: Okay. Any opposed? Is there a reason? Is there something in there that --

COMMISSIONER HERIOT: It's not worth it, no.
CHAIRPERSON CASTRO: Okay.

COMMISSIONER KLANDNEY: Is that our Christmas present?

COMMISSIONER GAZIANO: It's not worth bothering about.

CHAIRPERSON CASTRO: Five -- Four in favor. So the minutes pass.

So that we are moving on now to Program Planning. As you know when we amended the agenda, we said we would add a discussion of the Lincoln Cottage.

V. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

- LINCOLN COTTAGE PROPOSAL

CHAIRPERSON CASTRO: So I defer to Commissioner Achtenberg on the Lincoln Cottage.

COMMISSIONER ACHTENBERG: Thank you, Mr. Chairman.

CHAIRPERSON CASTRO: Thank you.

COMMISSIONER ACHTENBERG: So as members may recall, at our last meeting we had a discussion about the proposed project to be done jointly with the Lincoln Cottage to commemorate the 150th anniversary of the Emancipation Proclamation. We
discussed at that time that we would look further at putting a proposal together in consultation with colleagues. I circulated for your consideration a proposal dated December 14, 2011. I believe we circulated that last Wednesday. It went to everybody Friday morning. And I want to move that proposal and then there are additional -- there concerns that people have raised that we need to discuss and then there are perhaps friendly amendments or amendments to certain of the phraseology that certain members want to propose.

So is that an appropriate way to put to you --

CHAIRPERSON CASTRO: Yes. So we have a motion. Is there a second?

COMMISSIONER HERIOT: I'm happy to second with my friendly amendments.

CHAIRPERSON CASTRO: Of course. Yes, are they already in here?

COMMISSIONER ACHTENBERG: No, they are not.

COMMISSIONER HERIOT: No, we just -- We had a ten-minute meeting before this meeting.

CHAIRPERSON CASTRO: Sure. So we are seconding this for discussion purposes and then you
COMMISSIONER HERIOT: Okay.

CHAIRPERSON CASTRO: So we have a motion and a second. So let's have some discussion. The Chair recognizes Commissioner Heriot.

COMMISSIONER HERIOT: I think that it is a very good idea for the Commission to be involved in some sort of a celebration of the Emancipation Proclamation. I believe that it is one of the most important events in American history and it is one of the most important events in the history of the world. So we shouldn't let it go by without marking it and I think doing so with the Lincoln Cottage organization, it is a good idea. And this program is what Commissioner Achtenberg and I with the help from our special assistants have tried to work out.

The one thing I am keen on doing that is not yet reflected in the proposal that you have before you is that I believe it is important to focus upon the Emancipation Proclamation as an important event in itself, the end of slavery. I'm willing to put the Thirteenth Amendment in with that, since that then applies the Emancipation Proclamation to the rest of the states.
But at the same time, there is some sentiment both at the Lincoln Cottage and within the Commission that we also talked to some degree about more contemporary issues. And I am perfectly happy with that, so long as they are directly related to the Emancipation Proclamation or to the Thirteenth Amendment.

And so the language that I have that is somewhat different from what you have in front of you, on page three we talk about the themes that the scholars who would be working on our anthology of essays, what they would be talking about. And about two-thirds of the way down the page there is a paragraph that begins with "Both the U.S. Commission on Civil Rights and President Lincoln's Cottage will communicate" and this is what we would be telling the potential authors about what they should be writing about.

And right now, it says that we will "communicate to the author whose participation they have secured the focus of the volume of essays is on Lincoln, the Emancipation Proclamation, and the debates about the Proclamation that took place at the time." That sentence is fine.
The second sentence is the sentence that I want to offer a somewhat different language on. In my version, what I am trying to do is to make sure that these, the contemporary issues will be directly relevant to the end of slavery and the Thirteenth Amendment and that that includes things like reparations, since reparations was an issue at the time and it is an issue about what you do about the end of slavery. Slavery around the world, or as I have written, slavery and human trafficking, those are issues that are directly related to the Emancipation Proclamation.

So my sentence reads: "In addition to these historical themes, topics may include contemporary questions that are directly relevant to the end of slavery and/or to the Thirteenth Amendment, including but not necessarily limited to, reparations, slavery and human trafficking around the world, the military draft, and the controversy over whether the federal hate crimes legislations' constitutional basis can be properly located in the Thirteenth Amendment (and not hate crimes in general)."

CHAIRPERSON CASTRO: Okay.
COMMISSIONER HERIOT: I'm writing that down myself here.

I am happy to do a program with the Lincoln Cottage in the future that deals with equal protection issues, deals with general race relations, but I think this should be something that focuses on the Emancipation Proclamation and doesn't let it get mixed up with the many other issues that are very interesting and worthy of discussion. But what I would like to see is something that is more directly related to Emancipation than the sentence that we have now, which talks about issues that are really quite broad like race relations.

CHAIRPERSON CASTRO: Could you do me the favor and repeat the clause about the hate crimes legislation?

COMMISSIONER HERIOT: You want me to read the whole sentence again?

CHAIRPERSON CASTRO: Yes.

COMMISSIONER HERIOT: Okay. "In addition to these historical themes, topics may include contemporary questions that are directly relevant to the end of slavery and/or to the
Thirteenth Amendment, including but not necessarily limited to, reparations, slavery and human trafficking around the world, and the controversy over whether the federal hate crimes legislation's constitutional basis can be properly located in the Thirteenth Amendment (and not hate crimes in general)."

COMMISSIONER ACHTENBERG: You didn't include military service.

COMMISSIONER HERIOT: Oh, did I -- sorry. Put that back in there, the military draft.

CHAIRPERSON CASTRO: The Chair recognizes Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Yes, Mr. Chairman, on the issue of military service and citizenship, this was actually a specific request from the -- could you pull that up again please -- from the Lincoln Cottage, which I do want to read to you so that it can elucidate the discussion.

"The Emancipation Proclamation explicitly gave African Americans the right to serve in the Union Army and to bear arms. We might look at how service in the military is viewed as a right and a responsibility of citizenship." That was
their comment about additional --

COMMISSIONER HERIOT: Is that right?

I did not know that the Emancipation Proclamation mentions military service specifically.

COMMISSIONER ACHTENBERG: Yes.

COMMISSIONER HERIOT: Let me pull up the Emancipation Proclamation here. If that is in there, I am very happy to include. Fortunately you only have to write E-M-A-M and Google immediately goes for Emancipation Proclamation.

COMMISSIONER YAKI: Not Immanuel Kant?

COMMISSIONER HERIOT: No.

COMMISSIONER GAZIANO: Commissioner Achtenberg?

CHAIRPERSON CASTRO: The Chair recognizes Commissioner Gaziano.

COMMISSIONER GAZIANO: Just a point of clarification. From what you understand from the Lincoln Cottage folks, they would like to be able, for the scholars to be able, to address military service generally sort of a right to it rather than just issues relating to the draft. What is the scope -- What do you understand the scope of their interest is?
COMMISSIONER ACHTENBERG: My understanding was it relates to African American Service in particular and, therefore, could relate in terms of more current day issues, the reason I put in integration of the military is because it seems to me that that is an issue directly related to an issue that flowed from the Emancipation Proclamation.

COMMISSIONER HERIOT: I'm looking for the actual text here.

COMMISSIONER KLASNEY: I thought that was Harry Truman.

COMMISSIONER HERIOT: Yes, integration is somewhat different from the right to serve.

COMMISSIONER ACHTENBERG: Well in terms of a more current issue to which it relates.

(Pause.)

CHAIRPERSON CASTRO: And while Commissioner Heriot looks that up, my suggestion is maybe she can read through all her proposed amendments and we can have some discussion around those. And maybe before we vote if the Democratic Caucus would like to talk about how we -- get your input on how we view this and then come back and
take a vote.

COMMISSIONER ACHTENBERG: Yes, I think we might want a caucus. That would be a great way to deal with it.

COMMISSIONER GAZIANO: We could have a proposed to have a more general discussion of other issues besides the amendments Commissioner Heriot is offering?

COMMISSIONER KLADNEY: Do you have other things you want to bring up?

COMMISSIONER GAZIANO: I don't. I would just like to hear from other commissioners and I just wonder whether we should hear that before we --

CHAIRPERSON CASTRO: Yes, well why don't we address the amendments first and then --

COMMISSIONER GAZIANO: But you don't want to vote on them. Okay.

CHAIRPERSON CASTRO: Not until --

COMMISSIONER GAZIANO: That's fine.

CHAIRPERSON CASTRO: -- we have discussed it amongst ourselves.

COMMISSIONER GAZIANO: No, I understand. Or do you want to discuss what we are
COMMISSIONER GAZIANO: I'm wondering before we take a break if there are other commissioners who have other concerns or interests.

CHAIRPERSON CASTRO: Oh, other amendments, etcetera. Yes, we will ask that.

Commissioner Heriot?

COMMISSIONER HERIOT: I can read to you what the Emancipation Proclamation says. "And I further declare and make known that such persons of suitable condition will be received into the armed service of the United States to garrison forts, positions stations, and other places, and to man vessels of all sorts in said service."

Given that that is in there, I am willing to have like a special -- but we might need to caucus to figure out the language for this.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER HERIOT: The other issue, do you want me to mention the other issue here?

CHAIRPERSON CASTRO: Yes, please.

COMMISSIONER HERIOT: I don't have language for the other issue --

CHAIRPERSON CASTRO: Okay.
COMMISSIONER HERIOT: -- but I just wanted to have a provision in case, you know, the way this reads now each commissioner can select a scholar. In case one or more commissioners fails to designate a scholar rather than the Commission not have its eight scholars, I would prefer that we have some backup provision so that if someone doesn't participate, that the members of the Commission who are appointed by the same party's appointing authority would be able to get together and come up with someone.

And I assume everybody is going to --

CHAIRPERSON CASTRO: You don't have language for it but we can talk --

COMMISSIONER HERIOT: I don't have language for it but I think that should be pretty noncontroversial. We all want to have eight --

COMMISSIONER GAZIANO: You just said it sufficiently, I think, if we approve that.

CHAIRPERSON CASTRO: Yes.

COMMISSIONER HERIOT: Okay.

COMMISSIONER GAZIANO: I don't know that we need to come up with exact.

COMMISSIONER HERIOT: I think we might
need to talk a little bit about how to word the military part, though.

CHAIRPERSON CASTRO: Yes, let's do that now, then, unless there are other --

COMMISSIONER GAZIANO: Yes, I do -- Are there other commissioners with other questions?

CHAIRPERSON CASTRO: Any other amendments to this? Because we have a motion pending with amendments. So why don't we kind of clear that up first before we go on to the broader discussion?

COMMISSIONER KLADNEY: I'm a little confused.

CHAIRPERSON CASTRO: Commissioner Kladney?

COMMISSIONER KLADNEY: You only wanted to limit the military service to what was said in the Emancipation Proclamation but then you wanted to talk about these other things that were not in the Emancipation Proclamation.

COMMISSIONER HERIOT: Yes, things are directly --

COMMISSIONER KLADNEY: Why did you want to limit one and not the other things? Why do you
want to bring the other ones that are current events
as opposed to the historical limitation that you
wanted to place on the military?

COMMISSIONER HERIOT: My understanding
is that some people wanted to be able to talk about
more current issues. And in order to make that
possible for them, I wanted to make sure that the
issues that they talked about were directly related
to the Emancipation Proclamation or to the end of
the slavery through the Thirteenth Amendment. And
I think the issues that I picked out are intended
to be either legally related to the Thirteenth
Amendment. The federal hate crimes legislation,
for example, claims as part of its basis the
thirteenth Amendment. And there is a controversy
over whether or not the Thirteenth Amendment will
actually support that argument. And so I wouldn't
mind someone having an essay about whether the
Thirteenth Amendment supports that argument.

Reparations, that is directly related
to the end of slavery. It happens to still be an
issue but it is, the whole point of it is slavery
ended and now there should be compensation for that
slavery.
It is not like the ordinary race relations issues or discriminations issues. It is all about slavery. The people who would be entitled to reparations would be someone who is claiming on the basis of their family's status as slaves at some point in the past.

Slavery around the world, that is related to slavery.

COMMISSIONER ACHTENBERG: Well and human --

COMMISSIONER HERIOT: Human trafficking.

COMMISSIONER ACHTENBERG: By slavery and human trafficking you say that is also domestically, --

COMMISSIONER HERIOT: Yes.

COMMISSIONER ACHTENBERG: -- and around the world. That is implied. Right?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: We should just state it explicitly domestically and around the world. Will you be fine with that?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Okay. So do we
have any other amendments, proposed amendments, friendly amendments, unfriendly amendments?

So what I would suggest is we could take a brief recess. The Democratic Caucus can talk about your proposed amendments and then we can come back and vote on those, presumably.

COMMISSIONER HERIOT: We need to get together on the military aspect of this.

CHAIRPERSON CASTRO: The military, okay.

COMMISSIONER HERIOT: Roberta and I have to talk at some point. So we could probably like take a ten minute break, you guys talk, and then Roberta when you are done talking to them, come talk to us.

COMMISSIONER KLABDNEY: Why don't you talk about that language first and then we take the ten-minute break. How does that sound?

CHAIRPERSON CASTRO: You want us to talk about the language now on the record?

COMMISSIONER KLABDNEY: Take a break and you and Roberta work out the language and then we will be in the caucus at the same time.

CHAIRPERSON CASTRO: So that would --
COMMISSIONER ACHTENBERG: By that am I assuming that the current language which says military service and integration of the armed forces doesn't capture it. Is that right, Gail, I mean Commissioner Heriot?

COMMISSIONER HERIOT: I don't know whether that captures it because I would like to talk to my colleagues.

COMMISSIONER ACHTENBERG: Oh, okay. I beg your pardon. No problem.

CHAIRPERSON CASTRO: Here is what we will do. We are going to take a ten-minute recess.

COMMISSIONER ACHTENBERG: Everyone talk to their respective colleagues.

CHAIRPERSON CASTRO: Right and then the two commissioners will nail down the language on the military. We will come back and then discuss that on the record and vote for one or the other.

Okay, ten-minute recess. It is now 1:35 so we will be back at 1:45.

(Whereupon, the foregoing matter went off the record at 1:35 p.m. and went back on the record at 2:02 p.m.)

CHAIRPERSON CASTRO: Okay, we're back
on the record. It is 2:01 and Commissioners Heriot and Achtenberg, we had an initial proposed amendment that had not been seconded yet but we have now --

COMMISSIONER ACHTENBERG: It's gone.

CHAIRPERSON CASTRO: It's gone. So is there another motion to amend?

COMMISSIONER HERIOT: I have different wording now.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER HERIOT: We are talking about replacing the same sentence and under the version that I believe that everybody's good with. It would now read, "In addition to these historical themes, topics may include the following contemporary questions: 1) Slavery and human trafficking domestically and internationally;" -- no, not semicolon -- "and 2) military service and racial integration of the armed forces."

CHAIRPERSON CASTRO: Okay and then your other motion amendment was to give the opportunity to name a second --

COMMISSIONER ACHTENBERG: Can we deal with the amendments separately?

CHAIRPERSON CASTRO: Separately?
Okay. So that first amendment. Do we have a second on that amendment?

COMMISSIONER ACHTENBERG: I consider that a friendly amendment.

CHAIRPERSON CASTRO: Okay, great. So let's vote on that. Let's do this individually.

COMMISSIONER HERIOT: It's a friendly amendment. It's already in.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER ACHTENBERG: Right.

COMMISSIONER HERIOT: So we can just go on to the next one.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER YAKI: Does that assume everyone thinks it's friendly? I'm just teasing.

COMMISSIONER KLADNEY: Could you repeat the language, please? May include?

COMMISSIONER HERIOT: "In additional to these historical themes, the topics may include the following contemporary questions: 1) Slavery and human trafficking domestically and internationally and 2) military service and racial integration of the armed forces."

COMMISSIONER KLADNEY: Do you
understood may to mean these subjects it may include but is limited to?

COMMISSIONER ACHTENBERG: It may include them but --

COMMISSIONER HERIOT: Yes. Otherwise, nothing else is included.

COMMISSIONER ACHTENBERG: Right.

COMMISSIONER Kladney: Okay.

COMMISSIONER HERIOT: Would you prefer that I use can include?

COMMISSIONER Kladney: Only includes.

COMMISSIONER ACHTENBERG: Only includes, yes.

COMMISSIONER Kladney: Is limited to.

COMMISSIONER HERIOT: May only include.

COMMISSIONER Kladney: Or is limited to.

COMMISSIONER ACHTENBERG: Or is limited to --

CHAIRPERSON CASTRO: Or is limited to, yes.

COMMISSIONER ACHTENBERG: -- the following topics.

COMMISSIONER HERIOT: In addition to
the historical themes, other topics are limited to
the following contemporary questions, colon.

COMMISSIONER KLANDNEY: Thank you.

COMMISSIONER HERIOT: Okay.

CHAIRPERSON CASTRO: Correct. So that
is the friendly amendment then.

COMMISSIONER KLANDNEY: Fine.

COMMISSIONER HERIOT: Okay.

CHAIRPERSON CASTRO: Do you have
another friendly amendment?

COMMISSIONER HERIOT: I don't have any
wording for the other one but what I wanted was to
include language that would say that if one
commissioner fails to or declines to designate a
scholar for the anthology of essays, that the three
members of the Commission who were appointed by
authorities from the same party would be able to
get together and select a scholar for that slot.

CHAIRPERSON CASTRO: And our court
reporter has got that down, so that would be the
perfect language to put in for the amendment. So,
good.

Are there any other friendly amendments?

If not, shall we have a discussion then on the
proposal as amended? Any further discussion on that? Any? If not, then let us vote on that.

Okay, Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: With respect to the --

CHAIRPERSON CASTRO: To the proposal.

I have asked if there is discussion on the proposal.

COMMISSIONER KLADNEY: Yes, I just wanted to make a point.

CHAIRPERSON CASTRO: I'm sorry. Commissioner Kladney.

COMMISSIONER KLADNEY: Commissioner Kirsanow and I, at least you have voiced in the past your concern about staff time, and so I took it upon myself because I too had a concern about that. And I had a list of things that our staff, which is currently short several people in vital positions were doing now, and so I spoke with Commissioner Achtenberg about it. And Ms. Tolhurst found a memo from HHS regarding doing projects with cosponsors outside our thing, our Commission and it cites all the statutes, and requirements, and guidance that is necessary. And in my discussion with
Commissioner Achtenberg, she has said that the special assistants who will be working on this project with Lincoln Cottage will follow this in terms of negotiations of the contracts between the parties and that the Lincoln Cottage will do the drafting and we will do the reviewing and that the essays will do the reviewing along with the commissioners who were assigned to the project in align with this memo which covers most every problem there is so that when OGC has to review it, it should be complete. In other words, they won’t have to spend a lot of time on it.

I just wanted to make that point. I wanted to have it in the record that that is the case. And if you want a copy of the memo, I would be more than happy to give it you.

COMMISSIONER KIRSANOW: Thank you.

CHAIRPERSON CASTRO: All right. Thank you, Commissioner Kladney. Commissioner Gaziano?

COMMISSIONER GAZIANO: If I could just add that I think that the current proposal also answered some of my questions that some of the similar questions in that it does not commit the commission to much, if any staff time, other than
Commissioners and the special assistants and it does not commit us to money or much money.

CHAIRPERSON CASTRO: Absolutely.

COMMISSIONER GAZIANO: And so it is possible that this won't ever take place because of the condition. But that is fine. I'm willing to -- I was happy with that if it is consistent with the laws that you have specified, that our collaborator get the outside funding and that is, it seems to me, spelled out in the proposal we are voting on, then that has alleviated several of my concerns.

COMMISSIONER KLANDNEY: Yes, and also interestingly enough, as I peruse this document, it talks about fundraising and if Lincoln Cottage goes about fundraising for this event, they cannot use us as a fundraising mechanism.

CHAIRPERSON CASTRO: The Chair recognizes Commissioner Heriot.

COMMISSIONER HERIOT: I just wanted to say that in the event that this does all fall through, we do need to have some sort of celebration of the Emancipation Proclamation. So let's cross our fingers and hope that this works.
CHAIRPERSON CASTRO: Okay. Any other discussion or comments? If not, we will vote.

Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: I'm going to abstain and only because I really have not had an opportunity to go through this in the type of detail I would like because I have been extremely tied up on other matters. But I commend Commissioner Achtenberg for putting this together and Commissioner Heriot's input, and also Commissioner Kladney going through the steps of trying to ascertain the funding issues. And I think it is important that we commemorate it but I will abstain.

CHAIRPERSON CASTRO: All right.

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I vote yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRPERSON CASTRO: Commissioner Achtenberg how do you vote?
COMMISSIONER ACHTENBERG: Aye.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRPERSON CASTRO: And I vote yes.

So we have six yeses and one abstention. Almost unanimous so that is good, though. This is good.

And thank you again. I want to also express my thanks to both Commissioners Achtenberg and Heriot as well as Commissioner Kladney. This is great. It took a little longer but it was bipartisan and I am confident that because of the nature of how we approached this, that we will be able to move forward and celebrate the Emancipation Proclamation. So thank you all for the very thoughtful way we approach this.

We will now move on --

COMMISSIONER GAZIANO: May I make one more motion relating to the matter --

CHAIRPERSON CASTRO: Certainly.

COMMISSIONER GAZIANO: -- before we move on?

CHAIRPERSON CASTRO: Okay.

COMMISSIONER GAZIANO: I don't know,
I'm trying to find the passage, it contemplates that if approved we would almost immediately I think nominate --

CHAIRPERSON CASTRO: That's right.

COMMISSIONER GAZIANO: -- or adopt I think at this meeting the two commissioners who would represent the commission.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER GAZIANO: So I propose that we do that.

CHAIRPERSON CASTRO: Okay. Well, certainly I think on our Democratic Caucus side we would propose Commissioner Achtenberg and Commissioner Heriot.

So let's have a motion that Commissioners Heriot and Achtenberg represent our various caucuses with the Lincoln Cottage on this. Is there a second?

COMMISSIONER GAZIANO: I second.

CHAIRPERSON CASTRO: Okay. Any discussion? Okay, could we do this by acclamation?

COMMISSIONER GAZIANO: Sure.

CHAIRPERSON CASTRO: So all in favor say aye.
(Chorus of aye.)

CHAIRPERSON CASTRO: Any opposed, any abstentions?

(No response.)

CHAIRPERSON CASTRO: Okay, great. So update on our -- well now we go to Program Planning, update on our 2012 Statutory Enforcement Report.

- UPDATE ON 2012 STATUTORY ENFORCEMENT REPORT PLANNING

CHAIRPERSON CASTRO: Ms. Tolhurst, I take it you are still on the line?

ACTING STAFF DIRECTOR TOLHURST: I am.

CHAIRPERSON CASTRO: Okay.

MS. PATTERSON: As you know, the discovery requests were issued on December 9th to the State and to the Department of Justice. I have since been having conversations with people from the state and DOJ in working out a way to get this information out as completely and quickly as possible. For some of these states, in particular Texas, it is quite a busy time for them in terms of the redistricting litigation but I think we will have a satisfactory response.

The next step in this process for
commissioners is that on January 13th, they will receive a very detailed annotated outline for the report.

CHAIRPERSON CASTRO: Okay.

ACTING STAFF DIRECTOR TOLHURST: And of course, the briefing is February third.

CHAIRPERSON CASTRO: Okay. Any questions for Ms. Tolhurst?

Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes. There is Miss Authority who is exercising the staff -- what is her title?

CHAIRPERSON CASTRO: Person Designated with Authority of the Staff.

COMMISSIONER GAZIANO: Person Designated -- I have a question for you.

I know there has been some discussion with my special assistant and you and perhaps others on a date by which states or the federal government, once they respond to us and it makes sense to ask for a prompt response to all the discovery but things are going to be changing throughout the year. And if they have supplemental answers, I think that there was a date I read to sort of cut off those
supplemental answers that seemed a little earlier than necessary. And I understand there was a little bit of flexibility on your part. And in part, I'm sure that staff needs some sort of, or would like at least some sort of certainty in advance of when you are drafting the report for us.

But even beyond then, I think if something changes on the ground in a state where the federal government discovers something or has some -- that they want to supplement their answers, that we ought to be willing to take it up to the point when commissioners are writing their statements. Is there a problem with that so that we would certainly understand that you wouldn't be able to integrate supplemental information from them after a certain point but that we and the rest of the Commission might?

CHAIRPERSON CASTRO: Did you hear that question?

ACTING STAFF DIRECTOR TOLHURST: Yes. Yes, certainly you know, it is my understanding that the statements are statements regarding the report and the report gets pretty locked in in early March. That is because of all of the reviews and
the multiple 30-day periods commissioners demand
to review the project.

So it gets back to the point that any
new information coming in after early March is not
usable because it wouldn't be able to go through
all of these required reviews.

COMMISSIONER GAZIANO: Well I mean,
some of the reviews are just our review before it
is sent off. And in our review and comments to you,
if we have new information and you have new
information, it could be integrated into the next
draft.

ACTING STAFF DIRECTOR TOLHURST: But by
early March it has already gone out for the legal
sufficiency review, the editorial review. We can't
be adding new information after those reviews.

Further, Dave and I are unable to
continue to add new information after a certain
point. We are already under an avalanche of
information for this report and we do need, as you
say, a cut-off in order to reasonably assess what
data we have already received by the discovery
deadline. And I just picked a date that I thought
was doable and that is what is doable.
CHAIRPERSON CASTRO: The Chair recognizes Commissioner Heriot.

COMMISSIONER HERIOT: I'm just a little confused. Is there any reason that we can't continue to accept it and just let commissioners look at it, and have an internal cut-off of what gets incorporated into the report? But stuff that comes in later may nevertheless be valuable and to sort of cut us off from that information strikes me as a mistake.

CHAIRPERSON CASTRO: Did you hear that, Madam Acting Staff Director?

ACTING STAFF DIRECTOR TOLHURST: No, I didn't hear it.

CHAIRPERSON CASTRO: Could you speak up a little louder? I'm sorry.

COMMISSIONER HERIOT: Sorry. Maybe my microphone is not in the right spot.

It makes perfect sense that the Commission staff can only take information in up to a certain date. But the commissioners themselves are on a somewhat different schedule and I would hate to cut us off from information just because we have reached the deadline for
incorporation into the report itself.

And so I would rather continue to receive
the information and just pass it on to
commissioners. You know, something may come along
that is hugely important and for us to cut ourselves
off from that I think is a mistake.

ACTING STAFF DIRECTOR TOLHURST: Well
again, I think your statements are supposed to be
on the report, which will have been locked in. And
when there are new pieces of information that are
vitally important, those are all going to be public
information. We will see what happens in the Texas
litigation. We will see if additional dates get
pre-cleared.

None of the new important information
coming in is going to be anything that we can't get
for you and provide to you --

COMMISSIONER HERIOT: Yes, but you are
not going to get it for me and provide it to me.

ACTING STAFF DIRECTOR TOLHURST: --
through the database by update on all the
pre-clearance filings. And that we could certainly
continue to compile for you.

COMMISSIONER HERIOT: I would still
prefer not to tell the states don't send us information.

CHAIRPERSON CASTRO: Commissioner Heriot, if one person could talk at a time. Ms. Tolhurst had not finished her answer.

What were you saying? What was the last thing you were saying, Ms. Tolhurst?

ACTING STAFF DIRECTOR TOLHURST: I was saying that all of the new information of any importance is going to come in the form of public data that we wouldn't be getting from the states or DOJ. It is going to be court decisions and pre-clearance filing results, which Dave and I can provide the commissioners as they occur. But it is not really going to be in the form of additional information from the agencies.

COMMISSIONER HERIOT: How do you know if you haven't received the information yet?

ACTING STAFF DIRECTOR TOLHURST: Well by the nature of the questions, which are if you look at what we ask, there is information about their understanding of their guidance and of the law that will change. And there is questions about each state's results and that what is all the public data.
Our requests to them were quite extensive. I don't think we are letting them off easy in any way. And I think we are going to get information that you need in the way that I have --

COMMISSIONER HERIOT: Kim, the fear is that they are going to blow you off on some of these because the questions are indeed quite extensive and so they are going to do a quickie job at answering and then feel off the hook for the next six months or so, actually it is a little more than six months before the Commissioners' statements are actually due, when we could have gotten a lot information in that period had they been told yes, they do have to send us everything. To then cut them off that early, and that is really quite an early cut-off and I understand why you have the early cut-off but you know, another seven months is going to go by and information that is valuable could come in during that period. I would prefer not to tell them don't bother to send us anything.

CHAIRPERSON CASTRO: The Chair recognizes Commissioner Kladney.
COMMISSIONER KLANDNEY: I think first of all there is an obligation for them to continue to provide us information in the discovery.

Second of all, I think if they blow us off, what are we going to do, subpoena them here and have a hearing to make them give us more than they already have? I mean, I doubt very much that we should go with the assumption that they are going to blow us off --

COMMISSIONER HERIOT: Well you were just saying they have an obligation to supplement but --

COMMISSIONER KLANDNEY: Commissioner, let me finish. They do.

COMMISSIONER HERIOT: -- we're not going to get it.

COMMISSIONER KLANDNEY: We don't know. We don't know whether they are going to fulfill their obligation and completely answer those interrogatories and discovery requests until we get the answers. And then once we get the answers, then we can have this discussion. There is no reason having a pre-discussion about it until we get the responses. It is the same thing like if you are
in court. You have to wait until you get the
responses before you take the next step. So why
are we having this discussion now --

COMMISSIONER YAKI: I think in our --

CHAIRPERSON CASTRO: The Chair
recognizes --

COMMISSIONER Kladney: -- as an
assumption?

CHAIRPERSON CASTRO: Commissioner Yaki
after Commissioner Kladney is done and then
Commissioner Gaziano.

Commissioner Yaki?

COMMISSIONER YAKI: Were you finished,
Commissioner?

COMMISSIONER Kladney: I'm finished.

COMMISSIONER YAKI: I just wanted to add
my own historical context to this discussion. We
faced a similar situation when we were -- when the
previous Commission was busy chasing the New Black
Panther Party around the country. And to the extent
that they kept on extending and re-extending the
deadline for incorporation of discovery and
information to the point where we were having
hearings in June and July and other information was
coming in even then, what it did was it threw the
report into turmoil. It resulted in us essentially
blowing the statutory deadline.

I mean one of the problems and it is a
problem but it is one that is set up by Congressional
statute, is that with any report that we do, we are
necessarily dealing with a frozen moment in time.

And that frozen moment in time is governed by our
ability to have dedicated staff to unearthing issues
and analyzing them. And it is frozen in time by
the fact that there are procedures that we have to
follow in order to have a product that conforms to
our own guidelines and the guidelines set by the
federal government. It is not perfect by any
stretch of the imagination. It is one, however,
we have to follow if we are supposed to meet these
deadlines set to us by Congress.

So we can talk all we want about trying
to open this and open up that and why can't we use
this and why can't we use that. I can just tell
you that our own experience, I would think that some
of my own fellow commissioner's experience with that
other report he referred to showed what a procedural
writing, analytical mess it turned out to be with
stuff being piled on at the last minute, not being subject to the same quality standards. And I think to the detriment of the Commission at that time, I would rather acknowledge our limitations, acknowledge the fact in our report, governed by what we are limited to and understand that for people who are reading it, what the limitations are. There may be other materials that are coming in but we could not include them because they could not be subject to the rigorous scholarly analysis that we are obligated to by law, and by statute, and by administrative instructions and guidelines.

CHAIRPERSON CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: My response is to Commissioner Kladney. The normal discovery rule is that you must supplement discovery. I think the discovery that our commission has sent out reverses that. I am just looking at, and Ms. Tolhurst, if you changed it please let me know, but I am looking at one of them that was sent December 9th to the State of Alabama with an initial discovery request due in 30 days. And number seven of the instructions says, "These information requests and
document requests are continued in nature. And to the extent that a state acquires new information on or before February 3, 2012 that is responsive to these requests, the state should supplement its response."

And so it looks like the instruction to the state is different than the normal discovery, one, and is sort of telling them that they have one month to respond and if they miss it, whatever when it gets to December third, all bets are off.

COMMISSIONER KLANDNEY: February third.

COMMISSIONER GAZIANO: Yes, February third.

So I think certainly that it is understandable that the Staff Director or staff needs to cut off their examination but that we could go at least a little bit, everyone could go beyond that and commissioners can consider it for some time after that.

ACTING STAFF DIRECTOR TOLHURST: Well, in addition to the written discovery, I am also in conversations with these states. And many states are already pre-cleared. They have all the information now. Their cycle is over.
For other states like Texas, I have already been in talks with them. We have already agreed to be getting some information much later into February. So it is not just what is on the written page. I am in talks with states where it makes sense to let them extend their time line. Where we know there will be changed information, I am already arranging with them that they will be providing that.

CHAIRPERSON CASTRO: The Chair recognizes Commissioner Heriot.

COMMISSIONER HERIOT: You know, even for states that are already pre-cleared, we ask for things like how much money did they spend on attorneys. They don't necessarily get the bills as quickly as we are contemplating. You know, we actually approved this topic months before the interrogatories went out. And you know, I think we got the interrogatories in a reasonably expeditious manner. But you have got to understand, we are asking them to answer questions in the course of 60 days and it is hard to martial the information that quickly. Things are going to be coming in on their part later and we are telling
them that even though there are seven months to go before the Commissioners' statements are due, that they should stop supplementing us as of early February. You know, that is an awfully early cut-off and we may want to cut it off for the purposes of the report, since that has to then be approved by the commission and it takes a few months to do that.

But that is, you know, a very short period for them to get their information in and there may well be some supplements we are going to be interested in. There may even be some important things they want to tell us but we have told them that we don't have to, or that they could tell us.

CHAIRPERSON CASTRO: Why don't we do this. I know that we are starting to repeat some of the concerns we have here. Ms. Tolhurst has explained to us that she is in continuing conversations with some of these governments already about getting the information beyond February. You have expressed certain concerns.

I think Commissioner Kladney's point is one well taken. When we sit here next month, we will have a better idea of what discovery we have,
what discovery we have to go and get, and we can continue this conversation then if it merits it.

In the interim, I think Ms. Tolhurst understands the points you have raised and she is in those conversations with government agencies as indicated, at least as I heard it, that she is trying to get additional information beyond what is set forth in the written documents there.

So, Commissioner Gaziano and then we are going to move on to the next topic.

COMMISSIONER GAZIANO: Yes. What I was going to say is I think it is fair. I'm glad that you just keep that open.

And it relates to the last somewhat different but related point. I am most interested to hear from the states that are actually in litigation that I understand don't want to send a witness to our hearing. Now I understand we can subpoena them.

CHAIRPERSON CASTRO: That we can or cannot?

COMMISSIONER GAZIANO: We could if we so voted. I would rather not subpoena. But those are the people that I am most interested in hearing
and you know, A) they are busy, and B) they may be reluctance to send a witness who may have to answer questions that may affect their litigation.

And so again I hope in her capacity as General Counsel, I spoke to her and asked whether she would be at least open to the possibility of if the witnesses we did secure for the hearing weren't really representative, whether she would be willing or open to have the General Counsel staff send an attorney down to take a deposition that might supplement our record. I just wanted to raise that kind of issue.

And a state like Texas with regard to the interrogatories, again, I think that their interrogatory responses are going to be even more interesting to me.

But did I characterize our conversation appropriately, Ms. Tolhurst?

ACTING STAFF DIRECTOR TOLHURST: I think that is correct. Just to make it more clear to other commissioners, we would have to physically go to Texas because of our 100 mile radius limitation, if we wanted to make a witness appear.

CHAIRPERSON CASTRO: When you say we,
Ms. Tolhurst, do you mean the entire Commission to have a hearing --

       ACTING STAFF DIRECTOR TOLHURST: No.

       CHAIRPERSON CASTRO: -- or do you mean one person?

       ACTING STAFF DIRECTOR TOLHURST: No. You could have two commissioners go and have a mini-hearing. You could have me go and do a deposition. Actually I cannot go but someone could go.

       COMMISSIONER GAZIANO: I don't think you need a Commissioner for a deposition, do you? We would have to look into that but --

       CHAIRPERSON CASTRO: Well why don't we --

       ACTING STAFF DIRECTOR TOLHURST: Or whether we could compel them to attend if they are resistant.

       And I will tell you in talking with Texas, they, as you know, are in Supreme Court litigation through January and are incredibly busy. At the same time, when I spoke to them they see this request as an opportunity. They are very pleased and made it clear that they absolutely have
information and thoughts that they want to share with us and that into February, once their litigation is over, I do expect that they are going to be cooperative.

CHAIRPERSON CASTRO: Well just keep us posted on that, then. Okay? You have raised your concerns and we will flag those.

Okay, we are moving on now to the Management and Operations.

VI. MANAGEMENT AND OPERATIONS

- STAFF DIRECTOR'S REPORT

CHAIRPERSON CASTRO: The staff director's report. Ms. Tolhurst, wearing your other hat.

ACTING STAFF DIRECTOR TOLHURST: Yes.

I don't have much note to report, other than you all met our IG and they will be starting in full force in January. I have met with them and spoken with them several times.

We are doing preliminary actions to get ready for the move, which is tentatively scheduled for May or June. Again, that just depends on when they finish building out the internal offices in the new space. And part of what the staff is doing,
it is a very time-consuming task to get ready for the move is going through decades and decades of federal records that were not properly sent off to the national archives. So, both to comply with the law and to be realistic about the somewhat smaller space in the new building, staff is going through all of their documents in every office and every employee to eliminate or store records that should properly be at the national archives at this time.

I think that's it. And as the agenda reflects, we are adding a new piece. Peter Minarik is on the phone to give you the update as to SAC activities.

CHAIRPERSON CASTRO: And that is a good segue. And as you will recall, I had mentioned at the last meeting in an effort to try to have us have a better idea of what is going on out in the SACs in the regions, I thought it would be a great idea to have Mr. Minarik regularly telephonically perform a report to us on the activities that are being referred by the SACs out in the regions, in addition to the written report that we have in our packet.
CHAIRPERSON CASTRO: So, Mr. Minarik?

MR. MINARIK: Mr. Chairman, thank you very much.

CHAIRPERSON CASTRO: Thank you.

MR. MINARIK: I'm going to recap basically the items that are already in the monthly report that is before you but I wanted to draw your attention to the SAC charter status.

Right now there are 37 SACs that are chartered, so we are at about 72 percent and we ended the last fiscal year with about 36. You have a Hawaii package before you.

That is not a great concern but I did want to point out that in the next 90 days, another five SACs are going to have their charters expires and in 120 days, an additional two. So there is going to be a number of SACs that are going to be unchartered in the next 120 days.

About SAC meetings, I did want to let the commissioners know that there are right now RPC knows about two meetings that are coming up', a planning meeting by the newly chartered Arizona SAC which will be in Phoenix on January 4th and there will be a meeting of the Louisiana SAC in Baton Rouge
on January 26th.

I wanted to mention that the Commission has a strategic goal of soliciting the State Advisory Committee for National Program Planning and during fiscal year 2011 that did not happen. And to date in fiscal year 2012 that hasn't happened.

And it also calls for a Joint National Office SAC Project every two years. And during fiscal year 2011, that did not happen. And I don't know yet of any joint project at this time.

And that's it, Mr. Chairman.

CHAIRPERSON CASTRO: Sure. I have a couple of questions for you. In your role as Chief of the Regional Programs, do you follow up with the other, for example with these SACs that are going to be expiring in the next 90 to 120 days, what role do you play in ensuring that the regional offices are preparing timely packages for us to look at?

MR. MINARIK: I'm supposed to, under the administrative instructions, give a 90-day plan in advance of the charter's expiration.

CHAIRPERSON CASTRO: Okay.

MR. MINARIK: So if I don't get their
plan 90 days ahead of their expiration, I ask them for it. And then I send it on to the staff director when I get the plan.

CHAIRPERSON CASTRO: So are all those processes under way right now for these SACs that you mentioned today?

MR. MINARIK: They will be this week.

CHAIRPERSON CASTRO: Okay. And also I note that our Eastern Regional Offices have had a webinar and that has generated a lot of interest among the regional SACs in the east in human trafficking. And I mentioned today to our staff at Eastern Regional because I had an open door meeting policy with staff. So periodically I will come in and I met with folks today and suggested that as we are moving forward with our human trafficking report and they are moving forward on theirs, perhaps there is some way we could appropriately coordinate that. So that may very well be one of the points that you raised, Mr. Minarik, where we can do something nationally on work that has already been commenced by the SACs or is contemplated to be commenced by the SACs. In work that we have contemplated, there may be
similar areas in some of the other topics that we have now or that we may take up.

So certainly I think there is an interest there in human trafficking to have some sort of a national effort. So perhaps you might want to, in your role, coordinate that with Eastern Region and see how we could coordinate that here at headquarters.

Any other questions for Mr. Minarik?

If not, thank you. And we will look forward to your report next month as well.

We now move on to State Advisory Committee issues.

VII. STATE ADVISORY COMMITTEE ISSUES

- RE-CHARTERING THE HAWAII SAC

CHAIRPERSON CASTRO: The first committee up, the first item up is the Hawaii State Advisory Committee. So I move that the Commission re-charter the Hawaii State Advisory Committee. Under this motion, the Commission appoints the following individuals to the Committee, based upon recommendations of our Staff Director: Amefil Agbayani, Robert Alm, H. William Burgess, Vernon Char, Linda Coburn, M. Nalani Fujimori Kaina, H.K.
Bruss Keppeler, James Kuroiwa, Michael Lilly, Carmen Lindsey, Paul Smith, Wayne Tanna, and Jacqueline Young.

Pursuant to this motion, the Commission appoints Michael Lilly as Chair of this Re-chartered Hawaii State Advisory Committee. These members will serve as uncompensated government employees.

Under this motion the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment.

Is there a second? Do we have a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Second. Okay.

Is there any discussion? The Chair recognizes Commissioner Yaki and then Commissioner Gaziano.

COMMISSIONER YAKI: I would like to, well there is two things. One, -- Actually I have an issue with one member who has been appointed.

But before I do that, my preference at this time --

(Sound of train.)

COMMISSIONER YAKI: And the train is indeed leaving the station -- the Hawaii SAC be postponed for consideration at the January meeting.
because there are now more than one issue that I realize that I would like to discuss in more detail.

CHAIRPERSON CASTRO: Okay. Would folks be willing to agree to put that off until January?

COMMISSIONER GAZIANO: Could I hear a little bit more? I have my own question I was going to raise.

CHAIRPERSON CASTRO: Sure.

COMMISSIONER GAZIANO: Can you articulate why it --

COMMISSIONER YAKI: Well I have one question about one potential appointee. But there are other issues surrounding it as I was listening to it, being intimately familiar with the SAC when it was first chartered four years ago that there is a little more consideration on my part. And that's all I can say.

All I can say is I apologize for the late notice but until I fully understood some of the ramifications sitting here right now I realize I really do need -- would ask the Commission's indulgence to push it back until next month.

CHAIRPERSON CASTRO: Can we agree to
that? Commissioners, shall we table this?

 COMMISSIONER GAZIANO: Well, I suppose
 I will agree.

 (Laughter.)

 CHAIRPERSON CASTRO: Can we all agree
to put this off to January?

 COMMISSIONER KIRSANOW: I don't have
any problem with a postponement.

 CHAIRPERSON CASTRO: Okay.

 COMMISSIONER YAKI: Thank you very
much.

 CHAIRPERSON CASTRO: So we will table
it until then.

 COMMISSIONER YAKI: I appreciate it.

 CHAIRPERSON CASTRO: You're welcome.

 So we move next on to the Alaska State
Advisory Committee.

 - NEW CHAIR FOR ALASKA

 CHAIRPERSON CASTRO: As you know, we
have an item for the approval of a new chair. I
move that the Commission approve the appointment
of Dalee Dorough as Chair of the Alaska State
Advisory Committee, based upon the recommendation
of our staff director. This member will serve as
an uncompensated government employee. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Okay, is there any discussion?

COMMISSIONER HERIOT: What happened to our old chair?

CHAIRPERSON CASTRO: I believe the old chair resigned. is that correct, Madam Staff Director, Acting Staff Director?

ACTING STAFF DIRECTOR TOLHURST: Yes.

CHAIRPERSON CASTRO: Yes.

ACTING STAFF DIRECTOR TOLHURST: Yes.

COMMISSIONER HERIOT: Do we know why?

ACTING STAFF DIRECTOR TOLHURST: I wasn't expecting to be out so I don't have my notes in front of me. In one of these two states the chair due to work, extra workload in their career didn't have time. And in the other state, and again I can't remember which was which, in the other state, the chair moved out of state and was no longer eligible to serve.
CHAIRPERSON CASTRO: Mr. Minarik, do you know which of those is the case for Alaska?

MR. MINARIK: I do.

CHAIRPERSON CASTRO: Okay.

MR. MINARIK: Kara Moriarty was the Director for the Oil and Gas Industry and then she received a promotion. And she just informed the Western Regional Office that she could not even serve on the Committee any more.

CHAIRPERSON CASTRO: Okay. Any other -- Oh, sorry.

MR. MINARIK: And in the other state, the previous chair moved out of state.

CHAIRPERSON CASTRO: Okay. Any other questions regarding the Alaska appointment or any other discussion?

If not, I will call the question. Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Abstain.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Abstain.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?
COMMISSIONER GAZIANO: No.

CHAIRPERSON CASTRO: Commissioner

Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRPERSON CASTRO: Commissioner

Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRPERSON CASTRO: Commissioner

Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: And I vote to approve. So it passes with four yeses. We have two abstentions and a no.

- NEW CHAIR FOR NORTH DAKOTA

I also move to approve the appointment of let's see Cheryl Kary-Long Feather as Chair of the North Dakota State Advisory Committee, based upon the recommendation of our staff director. This member will serve as an uncompensated government employee. Under this motion the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

COMMISSIONER ACHTENBERG: Second.
CHAIRPERSON CASTRO: We have a second.

Any discussion? Any additional questions?

(No response.)

CHAIRPERSON CASTRO: If not, I will call the question. Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Abstain.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No. And in this case, just for the record, in this case and the previous state, if we -- this makes it more ideologically balanced, I think that we should have added people to the SAC if we lost people in this way. And people, well conservatives in particular. We are losing conservatives and we are --

CHAIRPERSON CASTRO: Gaining independents?

COMMISSIONER GAZIANO: Well, liberals.

Again, I look at their sort of ideology versus their -- I'm an independent but more right winged than
some right wingers.

CHAIRPERSON CASTRO: We thought you would be pleased to see two more independents as an independent.

Again, I think it is balanced but your right to vote is as said.

Commissioner Yaki?

ACTING STAFF DIRECTOR TOLHURST: Let me clarify. You are not adding an independent. This person was already a SAC.

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

COMMISSIONER YAKI: I was just staggered by Commissioner Gaziano's ideological explanation of himself.

Aye.

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

COMMISSIONER KладNEY: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Aye.

CHAIRPERSON CASTRO: I vote yes. So we have one, two, three, four, five yeses, an
abstention, and a no. So the Chair for North Dakota passes.

Any other -- No other items.

VIII. ADJOURN

So I have a motion to adjourn. Do I have a second?

COMMISSIONER YAKI: Second.

CHAIRPERSON CASTRO: All in favor signify by saying aye.

(Chorus of aye.)

CHAIRPERSON CASTRO: Anybody opposed or abstain? No, okay. So the meeting is adjourned.

COMMISSIONER HERIOT: I abstain.

CHAIRPERSON CASTRO: You can stay if you like. It is now 2:43 p.m.

(Whereupon, at 2:43 p.m., the foregoing meeting was adjourned.)