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MEETING
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FRIDAY, JANUARY 22, 2016
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The Commission convened by teleconference at 10:41 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

PATRICIA TIMMONS-GOODSON, Vice Chair

ROBERTA ACHTENBERG, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID Kladney, Commissioner

KAREN NARASAKI, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel
STAFF PRESENT:

LATRICE FOSHEE
PAMELA DUNSTON, Chief, ASCD
ANGELA FRENCH-BELL
DARREN FERNANDEZ
ANGELA FRENCH-BELL
GERSON GOMEZ
ALFREDA GREENE
LENORE OSTROWSKY
JUWANDA SMITH
MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART
ALEC DUELL
AMY GRANT
JASON LAGRIA
CARISSA MULDER
ALISON SOMIN
KIMBERLY TOLHURST
IRENA VIDULOVIC
T-A-B-L-E  O-F  C-O-N-T-E-N-T-S

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CHAIRMAN CASTRO: Commissioners, we're going to move right into the business portion.

First item is what I'd like to do is discuss when we're going to reschedule the balance of this briefing. Now, that rescheduling has implications, as I said earlier, for the timing of our Quiet Crisis and/or Town Hall. So I think it's probably easiest to discuss them all as a unit.

So we were talking about February 5th being a possible date for rescheduling this. If we can have our OCRE staff come up here and begin a discussion on this quickly so that we can wrap up. Angela French-Bell, our OCRE director is now at the microphone. Go ahead.

MS. FRENCH-BELL: Good afternoon to everyone. We just wanted to kind of provide a little bit of facts that may help you with the --

CHAIRMAN CASTRO: Can you speak a little --

MS. FRENCH-BELL: Sure. We just want to provide a little bit of facts that may make it
Okay. So February 5th, when we did a survey of the panelists who are available for February 5th, we found that all but one were available. When we did a survey of February 12th, we would lose about six or seven panelists. So that's a factor for consideration. Also for OCRE the earlier that we can have the briefing, the more likely it is that we will be able to maintain our deadline. So for us those are two critical factors that make it better for us to have it on February 5th.

CHAIRMAN CASTRO: Staff director, you want to say something?

DIRECTOR MORALES: No, I just wanted to say given that, what is the reality and the likelihood of both your team and the administrative office to be able to put that hearing together -- briefing, I'm sorry, together on the 5th or the 12th?

MS. FRENCH-BELL: It would be much easier to put it together on the 5th from the perspective of OCRE. I can't speak for ASCD, but they've -- well, I can't speak for them. But for
us it would be easier because we would have all but 
one of the panelists. We wouldn't have to go back 
out, recruit different panelists, get them to come, 
ensure that they're able to make it. So for us the 
5th would be easier.

DIRECTOR MORALES: But you were also at 
a meeting where the administrative office had 
expressed their preference, and their preference 
was the 5th or the 12th?

MS. FRENCH-BELL: Well, they were able 
to work with either date from my understandi ng. 
The problem would be the subsequent briefing and 
ensuring that we didn't have two many briefings in 
the same month.

DIRECTOR MORALES: Thank you.

CHAIRMAN CASTRO: Commissioners, now 
does February 5th work for you all?

COMMISSIONER HERIOT: I cannot -- 
(Simultaneous speaking)

CHAIRMAN CASTRO: Okay. How about the 
other Commissioners?

PARTICIPANT: I'm available.

COMMISSIONER YAKI: I'm available.

PARTICIPANT: I'm available.
PARTICIPANT: I'm available, Mr. Chairman.

CHAIRMAN CASTRO: Okay. So the only Commissioner not available is Commissioner Heriot?

VICE-CHAIR TIMMONS-GOODSON: Pete, are you available?

COMMISSIONER KIRSANOW: Yes, I'm available.

CHAIRMAN CASTRO: Could you participate by phone, Gail?

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: Well, and I'm sorry that --

COMMISSIONER HERIOT: Well, let's call on the 12th here.

PARTICIPANT: How about the 12th?

PARTICIPANT: No.

CHAIRMAN CASTRO: I cannot. So let's have a motion on February 12th. Is there a motion for that?

COMMISSIONER Kladney: Mr. Chair, I thought we were going to discuss all three at the same time and then maybe make a vote on all three. Oh, you're doing it one at a time?
COMMISSIONER HERIOT: We're not doing three.

CHAIRMAN CASTRO: Well, we can set the date of the 5th now that we know that it's in February. Then we have to decide what we're going to do with the other two. One of the other two. Okay? We can vote on it all at once. I don't mind. So --

COMMISSIONER HERIOT: Yes, I move that the hearing be placed the 5th, because otherwise we're going to lose too many witnesses. And I'm sorry, Commissioner Heriot.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN CASTRO: I'm going to call it for a vote. Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: Yea.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLASNEY: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: No.
CHAIRMAN CASTRO: Commission Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Madam Vice-Chair, how do you vote?

VICE-CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Abstain.

CHAIRMAN CASTRO: And I vote yes, so the motion passes. We have six yeses and we have one no and one abstention.

Okay. Now let's discuss the timing of Town Hall and/or the Quiet Crisis.

MS. FRENCH-BELL: Okay. So from my understanding we have a couple of different options that we could look at. And thank you so much for allowing OCRE to have a voice and input on this process.

Because there would now be briefings on the 5th, the 19th and the 26th, we would advocate...
moving or adjusting some of those briefings. So here are two proposals:

The first proposal is that we have the Alabama Town Hall remain the same. That would enable us to get the report and get the information in on time, but that the Quiet Crisis briefing be moved until April 15th. That would make it easier for staff who are arranging all of these events to be able to do all of these things and then still do other things that we need to do. And as you know, timely completion of the statutory enforcement report is extremely vital. It's important for us to have a town hall or to at least collect information in some form to ensure that we have independent research for this report. Of all of the things, the Quiet Crisis report can be moved with the least amount of inconvenience because a local event would be easier for a later date.

The second proposal is that instead of conducting an Alabama Town Hall, OCRE would conduct a field investigation. That has advantages and disadvantages as well. It would be more difficult for the Commissioners to be a part of that, and we realize that. What the investigation would entail
is OCRE conducting a series of interviews with local Uniontown residents to be on a questionnaire. We would also make sure that we got potential people interviewed both from environmental activists in the area as well as from industry officials. It would still allow us to complete our report on time. It would still allow us to conduct independent research. It would save the agency a considerable amount of money and would cause less disruption to the Quiet Crisis briefing.

And so we wanted to lay those two proposals to you and we definitely appreciate your feedback.

CHAIRMAN CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: Yes, I just had one concern about moving the Quiet Crisis to the 15th, and that is my understanding is the consultant who's been hired to write the report and who's already put in a considerable amount of time into research, his contract terminates in April. And it had been my hope that we would be able to get his first draft in some time to respond to that draft before he left. Because my concern is if we
do n't get the draft with time to respond before he leaves, then when we have questions and want to make changes, whoever is taking over that for staff is going to have a hard time because they won't have the familiarity with the extensive amount of research that's required for that report.

So I don't know. I know that I posed a question to the staff director about the ability to extend that contract to make that doable, otherwise I think it doesn't work to move that to the 15th.

MS. FRENCH-BELL: Our recommendation; and we would have to get approval for this, would be to extend the time period for the contractor in the case that the briefing would move to April 15th.

CHAIRMAN CASTRO: Commissioner Heriot?

COMMISSIONER KLABNEY: Who would you need to get approval from?

CHAIRMAN CASTRO: Dave, hold on. Commissioner Heriot has a question.

COMMISSIONER HERIOT: I'm not keen on eliminating the Town Hall on Alabama, so I liked your first proposal best.
One thing that makes sense to me though is why not, given we're dealing with local witnesses, have them send in their written testimony early enough to where our contractor can sink his teeth into that even though he's not going to --

MS. FRENCH-BELL: You're talking about the Quiet Crisis, not the Town Hall?

COMMISSIONER HERIOT: Yes, I'm talking about -- yes. Sorry. Sorry.

MS. FRENCH-BELL: We all had a blank look on our faces.

COMMISSIONER HERIOT: Sorry. Sorry. I don't know what I said, but what I meant was with the witnesses for the Quiet Crisis, if we could have them submit their testimony as if we were still going to do it in February, that way the contractor's in a little bit better position than he would be to get the draft in.

MS. FRENCH-BELL: Just for a matter of clarification I just want to make sure that we're saying the same thing. So when we're talking about Quiet Crisis, we would have a Quiet Crisis panelist submit their statement ahead of time? My
understanding is that they're still working to do
that so that the contractor --

(Simultaneous speaking)

COMMISSIONER HERIOT: Yes, basically
not ahead of time, but the schedule that we
currently have --

MS. FRENCH-BELL: Absolutely.

COMMISSIONER HERIOT: -- and then tell
them, okay, but your oral testimony won't be until
April. So in effect it will be really early to get
it in. The contractor will be able to work with
it, and that's what makes the most sense to me
because I think having a Town Hall in Alabama is
actually important.

MS. FRENCH-BELL: Thank you.

CHAIRMAN CASTRO: Any other
Commissioners who want to comment?

COMMISSIONER ACHTENBERG: I agree with
Commissioner Heriot.

COMMISSIONER Kladney: I was
wondering --

CHAIRMAN CASTRO: Okay. One at a
time. Commissioner Kladney, then Commissioner
Achtenberg.
COMMISSIONER ACHTENBERG: No problem.

COMMISSIONER KLADNEY: I was wondering if there is a possibility that we -- I mean, my concern is losing that Quiet Crisis contractor. And I want to know, one, if we have the money to extend the contract. Two, what is the optimum date of completion if the briefing is moved to April 15th. And in the alternative I'm also thinking in the Town Hall, if we are going to attempt to do all three next month, which -- and the Town Hall, OCRE can conduct the Town Hall and perhaps any Commissioners that want to attend can attend. And I don't see where that creates a huge problem to be able to do that. But that's just my opinion.

MS. FRENCH-BELL: I would like to address each of your comments in turn. Thank you so much for that comment, Commissioner Kladney.

As far as the budget, I would leave that to the staff director and to our budget individual in OM. As far as the date, if we move the Quiet Crisis, we would extend the date by one month. That was due mid-April. It would now be due mid-May.

As far as OCRE conducting that Town
Hall, we're willing to do whatever is best for the Commissioners, however, it would still put certain staff members at a disadvantage because there still would be work and logistics that would need to take place even if OCRE were to conduct the Town Hall. So those are just considerations that I would like to bring up. And I appreciate the time to do so.

COMMISSIONER KLADEY: One thing I forgot is if OCRE conducts the Town Hall and a Commissioner goes and runs the meeting or whatever, we could all really have the transcript from a reporter there, so we would be able to see what the folks are saying. That's all. Okay. I'm done.

CHAIRMAN CASTRO: The staff director will respond and then Commissioner Achtenberg.

DIRECTOR MORALES: Thank you, Mr. Chair. I will say that depending on how long you keep the contractor, I don't know what the budget figure would be to keep him an additional month or two. I'm willing to consider that. Of course that puts pressure on other aspects of our budget because we had budgeted for this at this point. And the question with the Town Hall in Alabama isn't necessarily the cost. It's the logistical
complications of bringing down the Commissioners and going out and getting the witnesses and conducting the Town Hall that complies with the history and the integrity of the Commission.

So having all these things back to back in one month would put an undue amount of stress and pressure on our administrative staff to pull it all together in a short period of time, not to mention manpower hours, people traveling down there, working long hours and overtime pay. So those are some of the considerations. I mean, clearly this is not our ideal situation because of what happened today with the weather and having to push back the EJ briefing. And it's kind of a domino effect on all the other impacts. So that's why we've asked for your insight and your decision on how you want to proceed.

CHAIRMAN CASTRO: Commissioner Achtenberg and then Commission Narasaki?

COMMISSIONER ACHTENBERG: Mr. Chair, if we move the Quiet Crisis briefing to the 15th of April, then what about our meeting on the 19th of February? What would that be devoted to and how would that be conducted.
CHAIRMAN CASTRO: Well, I'm hoping that we will have some state advisory committees to come up. And I circulated a letter today only because that one is the most time-sensitive, but there are other letters that are going to be similar topics, other civil rights topics that will be presented at that meeting. So there would be a business agenda, a regular business agenda.

COMMISSIONER ACHTENBERG: And would we be conducting that over the telephone or --

CHAIRMAN CASTRO: If we move the Quiet Crisis, she said, on the 19th. Well, you've still got February then. We could do it telephonically for those folks who did not want to travel. It's a little more challenging to me to conduct the meeting when everyone's telephonic. Obviously, we can do that if we need to or if we want to maybe effect some cost savings there to be able to try to extend the contract for the writer for the report. So we can play with that aspect of it. Is that your question then, Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes, that's my question.

CHAIRMAN CASTRO: Okay. Commissioner
Narasaki?

COMMISSIONER NARASAKI: So, first of all, I just wanted to acknowledge staff for having to deal with the additional stress of weather interfering with all the incredible work that went into trying to put together the hearing today. So I just want to acknowledge that. That has been very stressful and very much appreciate the fact that staff has risen to the occasion as usual and note that we have the reality of a tight budget and some time tables.

I think that in order to do the Quiet Crisis we'll probably need to extend the contract of the writer for two months because if the hearing is not until the 15th, we still need to get the final draft in time for Commissioners to have input and for that person to respond, because otherwise I think we will have wasted a lot of investment there. And I volunteered, me and my staff, not to go to Alabama, so that frees up some money for that contract.

CHAIRMAN CASTRO: Director?

DIRECTOR MORALES: I would welcome that, and we will find a way to spend up to two
months if we can, if we can find cost savings in other aspects of perhaps the Alabama Town Hall if all the Commissioners don't go. If there's a select group that go, that would probably be a savings of about -- you know, that could be like 5,000 to 10,000 in hotel and travel.

CHAIRMAN CASTRO: What if we make the business meeting just telephonic?

DIRECTOR MORALES: That would help as well.

CHAIRMAN CASTRO: Maybe that's what we do.

DIRECTOR MORALES: And then we can extend -- we might find the window to extend the contractor's time to write the paper in order to move out the Quiet Crisis briefing.

CHAIRMAN CASTRO: If we need to make a decision today, I think I messed up. I think we're going to hold you to finding some of those savings. And if you need to come back to us and say we definitely need to make the 19th meeting all telephonic, we may need to do that. And three or four people can't go to the -- come up with a plan to figure out how to pay for it. But we have to
decide now. So I assume you're going to be able to --

DIRECTOR MORALES: Well, I don't see any reason why we couldn't decide to make the meeting on the 19th telephonic right now. Then we can offer some of the Commissioners who don't feel compelled to travel to Alabama as Commissioner Narasaki so graciously provided. I think that would help a lot. If we could maybe get maybe two more Commissioners not to go in addition to Commissioner Narasaki, that would help.

(Simultaneous speaking)

CHAIRMAN CASTRO: -- we need to do that because we got to find out what the cost of place is going to be for the -- certainly right now we can say we'll make the meeting on the 19th telephonic. I know you have some savings right off the bat and then we could figure out later what else we need to cut.

DIRECTOR MORALES: Okay.

CHAIRMAN CASTRO: Okay?

COMMISSIONER KLANDNEY: This is Kladney. One of the things about the Town Hall meeting I thought initially, you checked and there
was not going to be a call in to listen. And I thought if there was, it would be more conducive for Commissioners to attend telephonically to the Town Hall, thus not having to make the trip. And I was wondering whether that decision not to have a call in could be looked at.

DIRECTOR MORALES: Yes.

COMMISSIONER KLADNEY: I mean, is it very expensive?

DIRECTOR MORALES: No, Commissioner Kladney. It wasn't an issue of the expense. It was an issue of the -- Uniontown is a very small community and the issue was were we going to be able to do this Town Hall in a school? Were we going to be able to do it in the City Council chambers? And so the issue was, or is and remains so will they have the technological ability to take a telephone call or be able to pipe in telephonic participation by Commissioners? And we don't have an answer to that yet because we haven't been able to nail down which of those two sites the Town Hall will occur.

COMMISSIONER KLADNEY: Thank you.

CHAIRMAN CASTRO: I think we have, if I'm not mistaken, seems to be a consensus here
that -- and I'm going to state it and if it's accurate, then someone can make a motion to that effect, that we will move the Quiet Crisis briefing to April 15th with the understanding that we will extend the contractor's contract by at least two months and that that will at least partially be paid by the fact that we will make our February 19th meeting telephonic so the Commissioners do not have to travel here and that cost savings could be attributed then to the writer. And then that also the staff director will look if necessary for other costs savings that might be derived from the Town Hall travel in Alabama. Is that accurate?

(No audible response)

CHAIRMAN CASTRO: Okay. Can I get a motion on that?

VICE-CHAIR TIMMONS-GOODSON: So moved.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: That's Commissioner Achtenberg seconding it?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Okay. Since I know
we've fully discussed this, I'm going to take a roll call vote. Okay?

Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: Reluctantly yes.

CHAIRMAN CASTRO: Okay.

Commissioner --

PARTICIPANT: What did she say?

CHAIRMAN CASTRO: She said reluctantly yes. Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Madam Vice-Chair, how do you vote?

VICE-CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.
Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: And I vote yes, so we have seven yeses and one no, and one of those yeses is reluctant for the record. Thank you.

Now, I'll quickly move on to the draft left that I circulated again. I apologize for doing this on such short notice, but I think this is a time-sensitive letter regarding the ICE raids that are currently taking place focusing on Central American refugees. The letter, which I hope you've had a chance to look at over the last couple hours, focuses on issues related to due process concerns and the underlying detention of some of these Central American refugees, as well as some references to Fourth Amendment issues.

Before we make a motion on this, are there any comments or additions that folks want to put on this letter? Commissioner Kladney, I think you had something.

COMMISSIONER KLADNEY: Yes, I'd like to add -- I mean, I'm concerned about this especially in light of the fact that the Government has suspended Peace Corps operations in El
Salvador. In paragraph 6 the letter states that there's a lack of legal counsel and other due process in orders of deportation. And in the last paragraph, yes, the letter states that they'd like to have their cases reviewed, and I would like to add after the word "reviewed" "for violations of their due process rights" and they continue on and have the opportunity to have pro bono counsel to ensure they had adequate opportunity to present a basis for asylum status." So I would like to add the words "for violation of their due process rights." That's what the cases would be reviewed for.

CHAIRMAN CASTRO: Okay. That's fine. We'll add that. Anything else?

(No audible response)

CHAIRMAN CASTRO: If not, with that addition, can I get a motion on this letter?

VICE-CHAIR TIMMONS-GOODSON: So moved, Mr. Chair.

COMMISSIONER ACHTENBERG: So moved.

CHAIRMAN CASTRO: Okay. That's a second from Commissioner Achtenberg. We'll count that. Any additional discussion on this?
COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Yes, Commissioner Heriot?

COMMISSIONER HERIOT: I suspect that this is also true of Commissioner Kirsanow. We only got this thing at a time when it was absolutely impossible to look at it. We were conducting a briefing. It's obvious that other members of the Commission have seen this long before we did. I object to a letter like this being brought before the Commission at the last minute. It is clear since the letter is quite long that we could have been made privy to earlier drafts, but were not. And so, I believe this is a violation of our rules and I object.

CHAIRMAN CASTRO: Any other comments?

COMMISSIONER HERIOT: And I have no idea what the topic is. I don't think it's possible for anybody under the circumstances to read through this letter and understand this issue unless Commissioners think that understanding it at an extremely superficial level would be appropriate for signing on to such a letter.

CHAIRMAN CASTRO: Thank you. Can we...
add a friendly amendment to the motion to also authorize the staff to do a press release on the letter should we approve it?

COMMISSIONER NARASAKI: So accepted.

Commissioner Narasaki.

CHAIRMAN CASTRO: Commissioner Achtenberg, is that okay with you?

COMMISSIONER ACHTENBERG: No, that's fine. Thank you.

CHAIRMAN CASTRO: Okay. Any other comments?

COMMISSIONER KIRSANOW: Kirsanow here, Mr. Chair.

CHAIRMAN CASTRO: Okay. Go ahead, Peter.

COMMISSIONER KIRSANOW: I do concur with Commissioner Heriot and just for the record I received this at 9:07 and the Commission meeting was already underway at the time. So it did not provide us with any time to -- and it is a lengthy letter -- didn't provide any time to really review it and consider it with due deliberation.

CHAIRMAN CASTRO: Thank you. I'm going to call the question for a vote.
Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: With my amendment, yes.

CHAIRMAN CASTRO: Yes. This is as amended, yes.

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Emphatically no.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Madam Vice-Chair, how do you vote?

VICE-CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: And I vote yes. It
passes with six yeses and two nos. Thank you. The meeting is now adjourned and hopefully those of us who have to travel get home safely. It is now 11:07 Eastern Time. Thank you.

(Whereupon, the above-entitled matter went off the record at 11:07 a.m.)