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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C. at 9:30 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ROBERTA ACHTENBERG, Commissioner*

GAIL HERIOT, Commissioner

DAVID Kladney, Commissioner*

MICHAEL YAKI, Commissioner*

MARLENE SALLO, Staff Director

* Present via telephone

ALSO PRESENT:

BLAKE AINSWORTH, U.S. GAO

KATHY PEYMAN, U.S. GAO

SHANNON SMITH, U.S. GAO
STAFF PRESENT:

MARGARET BUTLER
BARBARA de LA VIEZ, Deputy Director
PAMELA DUNSTON, Chief, ASCD
ALFREDA GREENE
TINALOUISE MARTIN, Director, OM
LENORE OSTROWSKY, Acting Chief, PAU
JOHN RATCLIFFE, Chief, BFD
EILEEN RUDERT
ROREY SMITH, General Counsel, OGC
MICHELE YORKMAN, Director, IT

COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL
KENESHIA GRANT
CARISSA MULDER
JUANA SILVERIO
ALISON SOMIN
KIMBERLY TOLHURST
A-G-E-N-D-A

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Chairman Castro: All right. We have a quorum now, so I'm going to gavel this meeting to order.

Good morning, everyone. This is a business meeting of the U.S. Commission on Civil Rights. It's taking place today, April 11, 2014. The hour is now 9:30 exactly and we're meeting at the Commission's headquarters, 1331 Pennsylvania Avenue, N.W., in Washington, D.C.

I'm Chairman Marty Castro. The Commissioners who are present with me are Commissioner Heriot. As you can see, our other Commissioners are participating by phone. They are Commissioner Achtenberg, Commissioner Kladney and Commissioner Yaki. We don't believe that Commissioner Kirsanow will be participating today, but if he does, I'm sure he'll let us know when he's on the phone.

Is the court reporter present? Yes. We have a quorum present. Is the staff director present?

Ms. Sallo: Present.

Chairman Castro: Okay. So the meeting will now come to order. The first item of course as always is Approval of the Agenda.
I. APPROVAL OF AGENDA

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

COMMISSIONER HERIOT: Second.

COMMISSIONER Kladney: Second.

CHAIRMAN CASTRO: Okay. Are there any amendments?

(No audible response.)

CHAIRMAN CASTRO: Hearing none, let's vote to approve the agenda. All in favor, say aye?

(Chorus of ayes.)

CHAIRMAN CASTRO: Any opposed?

(No audible response.)

CHAIRMAN CASTRO: Any abstentions?

(No audible response.)

CHAIRMAN CASTRO: Okay. The ayes have it, unanimously.

So the first item on our agenda is Program Planning.

II. PROGRAM PLANNING

Discussion of Concept Papers and Future Briefings

CHAIRMAN CASTRO: We're going to have a update on various projects. And for that, I will turn

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it over to our staff director who will talk to us about concept papers and future briefings, etcetera.

MS. SALLO: Good morning.

CHAIRMAN CASTRO: Good morning.

MS. SALLO: I wanted to first address the submission of concept papers for potential briefings to be scheduled during fiscal year 2015. I wanted to advise everyone that we received a total of 22 concept papers. Those concept papers need to be reviewed by our Office of General Counsel. The concept papers will then be returned to their respective Commissioners with an indication as to whether the concept paper needs to be revised or whether the concept paper -- not revised, but tweaked or whether the concept paper is completely outside the scope of the jurisdiction. And then at that point in time we would ask for the Commissioners to make the necessary changes, if they choose to do so, and then resubmit with the hope that we can have finalization of all of the papers to be considered at the June meeting.

I also wanted to remind everyone that we currently have several papers in the pipeline. I know that the sex trafficking and the Arab Muslim paper -- the Commissioners were kind enough already to provide us with their edits. Both papers will be submitted for
legal sufficiency review with the hope that we can get that completed and returned to the Commissioners for consideration at the May meeting. If that is not possible, then we will definitely target it for the June meeting.

In addition, we still have three other briefing papers. That's the NVRA Section 7, the Religious Liberties paper, as well as the Vets and Civil Rights paper. I will be circulating at least one next week for review by the Commissioners, hopefully two, so that we can also put that in queue and start the process.

And we continue to work on the Patient Dumping paper. I believe that next week, April 14th, is the deadline for public comments for a statutory enforcement report on a hearing that occurred last month. And I will keep you updated as to where we are at with the drafting of the statutory enforcement report.

CHAIRMAN CASTRO: If I could just interrupt you, Madam Staff Director.

The Commissioners on the phone, could you mute your phone? We're getting a little bit of background noise. Thank you.

Go ahead.
MS. SALLO: I'm sorry. So that's the concept papers.

So then we also have two that are pending. We have the -- well, it's for briefing. It's not papers. I'm sorry. And so those are scheduled for July, as well as a date that needed to be set as it applied to the Stand Your Ground. So first, I want to give you an update on the Stand Your Ground, because it was left to the decision of the Chair and the Staff Director as to which date it would be. Based on the feedback that I received from the Commissioners and their availability and based on the fact that September should not be a month that we travel, because that is when I close out the fiscal year.

We are looking to do the Stand your Ground briefing in October. As such, next week on Monday we will be visiting some of the sites in Orlando to try to ascertain which would be the best site for us to hold the briefing. And so I will then circle back and provide that information to the Commissioners. So as it stands, it will have to be in October of this year, the briefing for Stand your Ground.

And then we also have the Sexual Harassment briefing that's scheduled for July. So at this point
in time we've identified speakers and we are also in the process of setting up the process to receive any discovery that we need. So I wanted to provide you with that information as well.

CHAIRMAN CASTRO: Thank you, Madam Staff Director. I don't know if there's any questions with that. Actually, I have one.

I understand that, Commissioner Heriot, when we approved your initial concept for the July briefing it involved universities and now it's been expanded, to my understanding, to include K through 12 in the schools. And I think that that's a little bit of a -- well, a lot of a broad expansion beyond what we had agreed upon. So what I'd like to do is kind of open that for discussion with the other Commissioners. I think it's only fair that, you know, we vote on something in terms of the substantive focus and that that not change dramatically as this appears to have done. And if in fact you do want to include -- I'll give you a chance to talk -- if you do want to include colleges and universities and K through 12 together, then I would suggest we need to re-vote on that, or vote on a separate paper on K through 12.

So go ahead and respond and then I'll open
it up to any other Commissioners that have comments.

COMMISSIONER HERIOT: My understanding is it is in the transcript for the meeting, that we did in fact vote on both and that it was mentioned in the meeting, it was clear in the meeting, and that's what we voted on.

CHAIRMAN CASTRO: That's not my recollection. I don't know if anyone has any information on that.

COMMISSIONER HERIOT: Why don't we check the transcript then?

CHAIRMAN CASTRO: So is Alison going to go get a copy?

COMMISSIONER HERIOT: Yes, she's going to go try to get a copy of it.

CHAIRMAN CASTRO: In the interim, do we have any other Commissioners who want to address this issue?

COMMISSIONER KLANDNEY: I do, Mr. Chairman.

CHAIRMAN CASTRO: Yes, go ahead, Commissioner Kladney.

COMMISSIONER KLANDNEY: My concern is that in the blurb it talks about getting documents from DOJ and I think Department of Education OCR and it talked
about misstating the law. There were concerns about misstatement of the law in the new guidance, which I think was in May of 2013, something like that. And also there were concerns about whether it would infringe upon constitutionally-protected speech of the university students, faculty and staff. There was no mention of obtaining documents from all these schools, whether K through 12 or university, and I think that's beyond the scope of the paper because it was -- these two issues, that would be the briefing and then we would do so with government enforcement people, experts on either side of the issue regarding the misstatement of the law on whether it chilled constitutional rights and scholars. I didn't foresee reams and reams of documents coming from nine universities, nor was there any mention of it in the blurb. So I would object to that type of discovery.

COMMISSIONER HERIOT: Blurbs never contain all of the information about what a briefing does. That's why they're called blurbs. They're usually three sentences long.

COMMISSIONER ACHTENBERG: Mr. Chairman?

CHAIRMAN CASTRO: Commissioner Achtenberg?
COMMISSIONER ACHTENBERG: (No audible response.)

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER KLADNEY: Hello?

CHAIRMAN CASTRO: Sounded like you were asking to speak.

COMMISSIONER ACHTENBERG: Mr. Chairman?

CHAIRMAN CASTRO: Yes, Commissioner Achtenberg, go ahead.

COMMISSIONER ACHTENBERG: Hello?

CHAIRMAN CASTRO: Hello?

COMMISSIONER KLADNEY: You've got me, Roberta.

COMMISSIONER ACHTENBERG: Oh, okay.

CHAIRMAN CASTRO: Go ahead.

COMMISSIONER KLADNEY: This is Kladney.

CHAIRMAN CASTRO: We can hear you, Commissioner Achtenberg. Can you hear us?

COMMISSIONER ACHTENBERG: So we don't have the others?

COMMISSIONER KLADNEY: I don't think so.

Hold on a second.

CHAIRMAN CASTRO: Commissioner Kladney, can you hear me?
COMMISSIONER Kladney: (No audible response.)

Chairman Castro: Well, we're not on mute, so --

Commissioner Kladney: I just messaged Kaneesha. Hopefully she'll get back to me and let me know.

Commissioner Achtenberg: I thought you stated it very well. I was just going to speak up to concur.

Commissioner Kladney: We can't hear him.

Commissioner Achtenberg: Hello?

Commissioner Kladney: Hello?

Chairman Castro: We can hear you. Can you hear us?

Commissioner Kladney: Hello? Hello?

Commissioner Yaki: That was me joining, rejoining.

Commissioner Kladney: Well, we're talking to each other. Oh, you can hear us?

Chairman Castro: Yes, we can hear you. Can you hear us?

Commissioner Kladney: We can't hear them.

Chairman Castro: We can hear you. You
obviously cannot hear us. They still can't hear us.

COMMISSIONER ACHTENBERG: So I just got an email from Marty saying we can hear you.

COMMISSIONER KLADNEY: Right. They can hear us, but we can't hear them.

COMMISSIONER ACHTENBERG: Right.

CHAIRMAN CASTRO: So --

MEMBER KLADNEY: I'm going to ask them if we should call back in. Wait a minute.

COMMISSIONER YAKI: I just did that.

MEMBER KLADNEY: Oh, you got us?

COMMISSIONER YAKI: Yes, so it's got to be on their end.

MEMBER KLADNEY: Yes, they can hear us.

CHAIRMAN CASTRO: Now, I have a question. Do these emails have to be a part of the transcript now?

(Laughter.)

COMMISSIONER YAKI: So I can't start making colorful comments about technology.

COMMISSIONER ACHTENBERG: Yes, I was about to say. No joke, you guys.

MEMBER KLADNEY: They can hear us, so let's be quiet and try and see what they want us to do here.

COMMISSIONER ACHTENBERG: Okay. So they
said go ahead and discuss because they can hear us.

CHAIRMAN CASTRO: So I just told them to go ahead and discuss their points. So let them finish.

COMMISSIONER ACHTENBERG: So I was going to ask for recognition from the Chair to express my concurrence with the views as expressed by Commissioner Kladney.

COMMISSIONER YAKI: And I will ask for recognition and virtually receive recognition --

(Laughter.)

COMMISSIONER YAKI: -- and join my colleagues Commissioners Achtenberg and Kladney with my understanding that the vote had been limited to the university college level and not to K through 12.

COMMISSIONER ACHTENBERG: And --

COMMISSIONER YAKI: I yield back the floor to the virtual other Commissioners.

CHAIRMAN CASTRO: I just texted them to let them know we're going to take the system down and reboot it.

COMMISSIONER ACHTENBERG: Mr. Chairman, I was just going to inquire of Commissioner Yaki whether or not is concurrence extends to the question that Commissioner Kladney expressed with regard to polling
the nine university campuses, none of which was made
mention of in the concept paper and seems like quite an
extension beyond the government --

(Whereupon, at 9:43 a.m. off the record
until 9:49 a.m.)

CHAIRMAN CASTRO: Okay. We're going to go
back on the record.

I have been handed portions of the
transcript of the meeting where we voted on this topic,
and the motion as it was put forward by me. Apparently
we couldn't find the transcript exactly where the issue
came up, but Commissioner Heriot surmises she sent us
an email indicating that she was going to add K through
12 because in the motion it says, as we were replacing
the ADA concept paper with this one, quote, "And in
addition, comma, that we would replace the ADA Online
Accessibility concept paper previously approved by the
Commission as a briefing topic and replace it with a
topic presented by Commissioner Heriot on sexual
harassment and higher education, period. And also she
amended that to add K through 12. So that is the motion.
Is there a second?"

And it was seconded by Commissioner Yaki.

And the vote occurred. Let's see, we don't have the
vote here, but obviously -- yes, Commissioner Yaki voted yes; Commissioner Kladney, yes; Commissioner Heriot, yes; Commissioner Achtenberg, yes; Kirsanow, yes; the Vice-Chair, yes; myself, yes.

So that does address the K through 12 expansion. I'm not sure if it addresses the issues that you raised, Commissioner Kladney, so -- and that is about the -- I think you were talking about subpoenas.

MEMBER KLADNEY: The discovery, yes.

CHAIRMAN CASTRO: Yes.

MEMBER KLADNEY: The discovery was -- because this is how I felt, was it was a new guidance and we were going to look into whether it followed the current law; and it was the Harris case. And we were going to see how DOJ and the Office of Civil Rights of DOE was enforcing it by getting their documents. We weren't going to go to nine universities and nine school districts and get all their documents regarding sexual harassment or anything like that. That is not what this blurb said. That was never mentioned. And I object to any of that discovery. And I make a motion that we not conduct that discovery. We don't need discovery from DOJ and DOE Office of Civil Rights.

CHAIRMAN CASTRO: Is there a second to that
motion?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Discussion?

Commissioner Heriot?

COMMISSIONER HERIOT: Let's see, how can I put this?

MEMBER KLANDNEY: Can she turn her mic on, please?

CHAIRMAN CASTRO: Yes, you need to put your mic on.

COMMISSIONER HERIOT: Sorry. I'm trying to think of a polite way to put this. We tried to come up with a bipartisan set of issues that we would address. And the Chairman told Commissioner Kirsanow and I that we would be able to pick a topic. And the idea was that we would cooperate in your topics and in return you would let us have a topic as the minority. The first thing that happened to unravel this deal was that Commissioner Kladney objected somehow, somewhere to something and had to undo the entire deal. Instead of the topic that we had selected for the majority, he wanted a different topic and we had to unravel that deal, recreate the deal. And this is basically an unraveling of a deal after you've gotten the votes. I object to
We had two people come in from the GAO yesterday and talk to me, and they're here today. And I mistakenly told them that the Commission had been doing reasonably well in cooperating on topics. I hereby withdraw that statement. I find this to be outrageous that after we have worked on this thing -- and let's face it, ladies and gentlemen, we have not turned out as many reports as we should. But now we're unraveling the deal and that's going to make it that much more difficult to turn out good reports. I am outraged.

MEMBER KLASTNEY: May I speak, Mr. Chairman?

CHAIRMAN CASTRO: Go ahead, Commissioner Kladney.

MEMBER KLASTNEY: In regards to the changing of topics, it was not my idea, nor did I put the idea forward of switching topics, Commission Heriot. What occurred was the Office of General Counsel scratched the topic that we had, our topic, my topic that I put forward, and we had to come up with another one. They said that there was no -- it wasn't the federal question in the topic that we put forth. We didn't say that you had to put forth a different topic.
You did that of your own discretion. That was not anything that was done at the Commission level with the Commissioners or with the staff. So I want the record to reflect that. It was the Office of General Counsel that required our side to obtain a new topic, which we did. You at your own discretion decided to change the topic and put forward this subject in this blurb in this form.

CHAIRMAN CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: Okay. Number one, the idea is a deal if we select topics as a package. The original idea was that the conservatives would select a topic that they could agree to from the list that the majority had submitted and vice versa. And so it went from we had picked the topic from your list that we thought was the best and you guys had picked a topic from our list that you thought was the best. When you switched to a topic that you liked better -- and let me add the OGC does not tell you which topics are with our jurisdiction and which are not. The staff works for the Commission. You do not work for the staff. So, no, I believe that topic was within our jurisdiction and you obviously though so, too, since you voted for it. So that was an unraveled deal.
Let me add that when the current Commissioners came on board two years ago, we scratched several topics that were in the pipeline where reports were being already prepared. That's why we don't have as many reports as we should have, I believe. You know, we're just putting ourselves in a position now where we're going to create a report that is doing no good whatsoever. It is something that we voted on. The blurb was never intended to be a list of all the discovery options. If you had wanted to vote on the discovery, then you could have done that, but it's months, months, months later now. To now go back and say we need to start again is just silly.

CHAIRMAN CASTRO: Commissioner Heriot --
MEMBER Kladney: I would ask the --
COMMISSIONER YAKI: Mr. Castro?
CHAIRMAN CASTRO: Commissioner Kladney, let me just insert here a second.

We're not changing your topic. I mean, I think you've proven to us that there's an expansion here to K through 12, so that's the topic. We're not changing the topic. The issue I guess is the scope of the discovery. I'm going to have Commission Yaki and then I'll send it back to you, Commission Heriot.
Commissioner Yaki, go ahead.

COMMISSIONER YAKI: Yes, I am not going to try and respond to everything that Commissioner Heriot said, but I will say that as the current, with the exception of Commissioner Kirsanow, who's not present, most-senior member of the Commission, there are some things that she did raise that I need to respond to.

First, while I gladly accede to Commissioner Heriot's correctness in what topic was that we voted for, there is nowhere in that topic and nowhere in any topic that we have done that completely -- unless it was specifically mentioned and specifically discussed and specifically voted on, as we did, for example, in the Stand Your Ground investigation discussion, mention of how we would conduct specific discovery. And that is not usually -- that is not up to the discretion of staff to do. This is not just directly in discovery. This is specific directed and specific university discovery. And I would just like to remind -- not remind, but to educate the members of the audience who might be hearing this slightly -- a history of what the Commission may or may not have done, that this is not something that is usual or normal. And if it is the desire of Commissioner
Heriot to direct discovery at these particular universities, then that is something that, yes, the Commission can decide on, but the Commission should at least vote on, which we have not been given the opportunity to do.

Upon looking at the list of the universities, I am somewhat -- I don't want to say suspicious. I would just simply say that we have in the past had a situation where we became entangled with the privacy and confidentiality issues with universities in the past and to the point where a Commissioner had to be told by the General Counsel to give up that data after we had completed the report because it violated the confidentiality provisions; which took months and months and months, by the way, to negotiate with these universities.

So when you go in this manner, when you target specific universities and you're targeting potentially confidential data that they may possess, I can tell you firsthand that that alone, if I recall correctly from that one briefing that we had, required months of negotiation and discussion with these universities, which means that the likelihood of anything happening in July is unlikely and unrealistic.
to begin with.

Secondly, as I said before, that was a product of specific discussion and both by the Commission as to those specific universities in that particular case -- and in this opportunity we were not given that opportunity, nor given the opportunity to contact or interview universities to see whether they were even predisposed to even negotiating with us in any timely manner or not, not that anything that would involve them would require their permission. Obviously that's not the case, but certainly would go a long way towards ascertaining what kind of a fight we may or may not have with regard to discovery on these kinds of issues.

So, you know, with that being said, I would strongly object to any discovery in any particular university mandated by any Commissioner as a part of a report. And as to what a deal is or not, you know, as frequently the lone Commissioner in the minority on this Commission for a period of five to six years, the notion that I would have complete carte blanche over any topic that may have been a part of any deal with the full majority, which I was in the minority, is something that would have happened only my dreams. Every topic that
I tried to get through, every topic that I tried to compose, every topic that I did manage to get through was controlled solely, completely and totally by the staff director in attempts by me to do anything otherwise were met with resistance and outright hostility by both staff and by the other Commissioners.

So I would say that in this instance we've been more than fair. We've been more than open. We are just simply stating that in this particular instance, as in any other instance that we might have, that the issue of how this would be conducted, how this would be put together is at the discretion of the staff. And if the Commissioner has specific concerns or ideas or direction in which he or she wants it to go, they can bring that up specifically to the Commission and the Commission will specifically vote and thereby direct staff in order to conduct it.

In this case we have not done that with these nine universities proposed by Commissioner Heriot and I think that therefore is out of order.
thing, Commissioner Yaki, the one thing that we have agreed on consistently in the past --

COMMISSIONER YAKI: Wait, wait, wait.

We --

CHAIRMAN CASTRO: Commissioner Yaki, please let her finish.

COMMISSIONER YAKI: No, no, no. Seriously, what do you mean discovery is a bad thing? Go through the entire transcript of what I just said, Commissioner Heriot. I never said anything of the sort. I didn't say discovery is a bad thing. I said this particular discovery, this particular narrowing and specifying of certain universities is not something we discussed on. It's not something that we voted on and it is and has in the past been the subject of extensive negotiation and time-consuming negotiations between the Commission and universities.

CHAIRMAN CASTRO: Okay. Commissioner Heriot, please continue.

COMMISSIONER HERIOT: Again, the one thing that Commissioner Yaki and I have agreed on consistently in the past is that having briefings that don't produce actual data are not good, that we really ought to be doing exactly what then majority leader Lyndon Baines
Johnson said that the Commission was for, and that is to go out and find facts.

We have not been good at that. We have frequently brought professional talking heads to talk to us. They have said the same things they've said in the articles that they have written. What we really need to do is spend more time finding actual facts. There is no confidential material that we're talking about here. These are policies and presentations we're asking these universities to produce. And it seems to me a pretty easy thing. This is not time-consuming. This is something that can be done relatively quickly and I think it is useful.

As to whether or not we voted on this, I actually expected that this would have been put on the agenda. I was asked to produce a more complete concept paper. I did that. I expected it to be on the agenda. It never made it onto the agenda. I don't set the agenda. But after something has been lying around as many months as this, suddenly to be told that despite months and months of planning, you know, this is just off the agenda, after I voted in favor of projects that the majority wanted, to now be ambushed this way I think is completely inappropriate. CHAIRMAN CASTRO:
Madam Staff Director?

MS. SALLO: I just want to put on the record that the General Counsel will be providing an opinion as to whether any concept paper is beyond the scope or not even meeting the scope of what we are required to do. That is the General Counsel's job, and that is what we will be doing.

CHAIRMAN CASTRO: And --

MEMBER KLADNEY: Mr. Chairman?

CHAIRMAN CASTRO: Commissioner Kladney?

MEMBER KLADNEY: I would ask the staff director to correct the record as far as Commissioner Heriot's comments go about the statutory report and whether in fact OGC directed that that be the statutory report, the one about prisons and sentencing.

MS. SALLO: That is correct, Commissioner Kladney. The General Counsel did meet with Commissioner Kladney and a special assistant to advise them that the report as written did not meet the requirements of our statute, and therefore we were not able to use that as a topic because it was beyond the scope of our mission.

CHAIRMAN CASTRO: And in fact that's why we're --
MEMBER KLANDNEY: And also we never asked Commissioner Heriot or any other Commissioner to change the other topic, did we? Did the staff do that?

COMMISSIONER HERIOT: That was not my argument. The point was that we had been asked to pick from that list that the majority had the topic that we were happiest with. And the majority picked from our list the topic they were happiest with. And so for you then to be able to pick a different topic meant that we should be able to pick the topic we wanted most as well.

MEMBER KLANDNEY: Commissioner Heriot, we did not choose to pick a different topic. We did not try to do that at all.

COMMISSIONER HERIOT: That's not what I've heard.

MEMBER KLANDNEY: We were barred from using our topic. I would have preferred to have done that topic, but I was told it did not fit the jurisdictional parameters of the statutory report.

COMMISSIONER HERIOT: So we got another Nevada topic.

MEMBER KLANDNEY: That did not require you to go about choosing another topic.

CHAIRMAN CASTRO: Okay.
MEMBER Kladney: You did that in your own discretion.

Commissioner Heriot: I don't think you understand what I'm saying.

Chairman Castro: All right. Okay. Here's what we're going to do: I think, you know, we've addressed the substantive matters here. We have the process that we're now instituting where we are actually having the OGC review our concept papers beforehand, not afterwards so we don't end up in this problem again.

You do have your topic. It was voted on. It's very clear. You made the case that it is higher ed and K through 12. We are not taking that topic away from you. The only concern is the scope of the discovery. And so with a motion pending on that specific issue, not removing your topic, but dealing with the discovery issue, your topic remains in place. You've obviously shown that, you know, we were in error, that I was in error on my understanding of the expansion of it.

And so now we will call the question on Commissioner Kladney's motion.

Could you restate the motion, Commissioner, just so that we're really clear?
MEMBER KLADNEY: The motion is to limit the discovery on this paper to what is stated in the blurb. That would be obtaining documents from DOJ and DOE, the Office of Civil Rights, that there be no discovery to school districts or universities.

CHAIRMAN CASTRO: And that motion has been seconded. I'm going to take a roll call vote on that. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: This is a first of many no votes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

MEMBER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes, but after this vote I'm going to offer a possible substitute amendment.

CHAIRMAN CASTRO: Okay. And then I also vote yes. So the motion passes.

Now, Commissioner Yaki, you have a substitute motion?
COMMISSIONER YAKI: Yes, I would say that I do agree with Commissioner Heriot on her characterization of my position that too often this Commission has not been engaged in the past; I'm talking about when I was in the minority, in getting real data for its reports, whether they were a briefing or whether they were statutory. I understand her point of view and I would simply say that the briefings, as I've often stated, are often a way of getting the full flavor, full facts, the full range of issues and discussions. And one of my concerns with where this particular briefing was headed was that I did not unfortunately any logic as to the selection of those particular universities and how they related to this particular topic in specific.

I do believe that -- simply that if in the discretion of the staff it would be useful to obtain any policies and procedures from any particular, from any randomly selected or easily accessible school districts or universities in their discretion in order to augment and fully flesh out the topic, I would say that would be appropriate, but I would leave that in the discretion of the staff for the purposes of managing the briefing. Because if we all really think about it, this could be a very long briefing if we were to attempt to go quite
as far afield as it already is right now with regard to
the addition of the K through 12. So in that instance,
I would simply say I would direct the staff to in their
discretion and if needed in order to make this briefing
more well-rounded, if in their discretion they seek to
find some sample or representative policies from in each
school district or university in their discretion, I
would not object to that.

CHAIRMAN CASTRO: So is that --

COMMISSIONER ACHTENBERG: Is that a
motion?

CHAIRMAN CASTRO: -- a motion,
Commissioner?

(Laughter.)

COMMISSIONER YAKI: Yes.

CHAIRMAN CASTRO: Okay. Is there a
second?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Any additional
discussion, or any discussion?

COMMISSIONER ACHTENBERG: Mr. Chairman, I
think that sounds imminently reasonable and quite
salutatory, which I think is a very good idea under the
circumstances. So I want to thank Commissioner Yaki
for contributing such a Solomon-like addition to the
prior motion.

CHAIRMAN CASTRO: Okay.

MEMBER KLANDNEY: And if I may add --

CHAIRMAN CASTRO: Yes, Commissioner Kladney.

MEMBER KLANDNEY: -- some clarification, Commissioner Yaki? Is that the staff director makes
these decisions? I mean, there has to be one person,
right, not just the staff?

COMMISSIONER YAKI: Well, I mean, all
these are ultimately at the discretion of the staff
director working with the staff, so yes, it's going to
be the judgment of the -- and ultimately it's the
judgment of the staff director who is ultimately
responsible for making an arranged brief.

MEMBER KLANDNEY: Then I can concur.

CHAIRMAN CASTRO: Any other questions,
comments?

(No audible response.)

CHAIRMAN CASTRO: Hearing no, we'll vote
on that motion.

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: No.
CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

MEMBER Kladney: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Aye.

CHAIRMAN CASTRO: And I vote yes. It passes 4 to 1.

Okay. We now move onto Management and Operations, and I'll turn it over to the staff director to give us her monthly report.

MEMBER Kladney: Mr. Chairman?

CHAIRMAN CASTRO: Yes?

MEMBER Kladney: I'd like to make one comment.

CHAIRMAN CASTRO: Okay.

MEMBER Kladney: Someone said that this concept paper has been around for months. We just received it in my office this month, just like two weeks ago. So I just want to put that for the record. I don't know why it wasn't distributed widely before that, but
CHAIRMAN CASTRO: Okay. We're moving on now to Management and Operations. Madam Staff Director?

**III. MANAGEMENT AND OPERATIONS**

MS. SALLO: Yes, sir. I wanted to advise everyone that unfortunately for the Commission Eileen Rudert will be retiring after 29 years with the Commission. So I wanted to let everyone know that she will be greatly missed. I've truly enjoyed working with her in the almost three years that I've been here and it's a great loss for the Commission. So I just wanted to let everyone know that and to thank her for all of her years of commitment to us.

CHAIRMAN CASTRO: Congratulations, Eileen. You'll definitely be missed. So thanks for all the work you've done and the support you've given to the Commission over your career, and especially in the three years I've been Chairman. I appreciate that. You'll be missed.

MS. SALLO: And her last day with us --

CHAIRMAN CASTRO: Commissioner Yaki, go ahead.

COMMISSIONER YAKI: Yes, and I would say,
Eileen, as long as I've been on the Commission you've been a great resource and a great public servant. And thank you for your service to this Commission and to this country and I wish you all the best in your next endeavor.

CHAIRMAN CASTRO: You were going to say, Madam Staff Director?

MS. SALLO: I was going to say her last day with us is April 30th.

CHAIRMAN CASTRO: Okay. Thank you.

MS. SALLO: I also wanted to advise the Commissioners that we've now completed the alignment of our strategic plan with our performance appraisal system. And so we will be now meeting. The managers will be meeting individually with the employees to ensure that we go over the revised performance appraisal plans. And those will hopefully go into effect across the Commission for July 1st of this year.

We are also preparing for our audit that you know happens annually. So we will be in the process of trying to find an auditor who can come in and start the process. And as we you know, we are working with GAO for the next I guess 60-some-odd days. So I am the contact person and I will be providing them with any all
documents or information that they require. And that is all, sir.

CHAIRMAN CASTRO: Yes, Madam Staff Director, you have in the past done what I think is a great job of periodically -- not at every meeting, but periodically reporting to us on where we stand in terms of hitting the goals of your strategic plan. Maybe for the next month's meetings, because I think it's been at least a month --

MS. SALLO: I did it last month.

CHAIRMAN CASTRO: Yes.

MS. SALLO: So I do it every other month.

CHAIRMAN CASTRO: So if we can do it every other month?

MS. SALLO: Yes.

CHAIRMAN CASTRO: I think that's really helpful to keep us on task as to what we need to do.

MS. SALLO: Yes.

CHAIRMAN CASTRO: So thank you. Any other questions for the staff director?

(No audible response.)

CHAIRMAN CASTRO: Hearing none, we will then move on to State Advisory Committee Appointments.

IV. STATE ADVISORY COMMITTEE (SAC) APPOINTMENTS

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701
(202) 234-4433 (202) 234-4433
CHAIRMAN CASTRO: Today's agenda gives us one, and that is for Idaho. So I am now going to make a motion that the Commission appoint the following individuals to the Idaho State Advisory Committee based upon the recommendation of our staff director:


These members will serve as uncompensated government employees. Under this motion the Commission authorizes the staff director to execute the appropriate paperwork for the appointments. Is there a second?

(No audible response.)

CHAIRMAN CASTRO: Do I have a second on the motion?

COMMISSIONER HERIOT: Second.

CHAIRMAN CASTRO: Thank you. Any discussion? Any questions?

(No audible response.)

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WASHINGTON, D.C. 20005-3701
(202) 234-4433
CHAIRMAN CASTRO: Hearing none, I'll take a vote.

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: (No audible response.)

MS. SALLO: Did we lose them?

CHAIRMAN CASTRO: Have we lost them?

Commissioner Kladney?

MEMBER KLADNEY: (No audible response.)

CHAIRMAN CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: (No audible response.)

CHAIRMAN CASTRO: All right. Well, we're going to put it on hold until we get the Commissioners back.

(Whereupon, at 10:19 a.m. off the record until 10:26 a.m.)

CHAIRMAN CASTRO: Okay. We're back on.

COMMISSIONER ACHTENBERG: We're all on.

CHAIRMAN CASTRO: Can you hear us?

MEMBER KLADNEY: Yes.
COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: We'll move quickly before we lose connection again. So we had made a motion and it was seconded. Did you hear the motion on the Idaho State Advisory Committee?

COMMISSIONER YAKI: Yes, we all voted.

COMMISSIONER ACHTENBERG: We did.

CHAIRMAN CASTRO: Okay. All right. So now we're going to take a vote.

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

MEMBER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: I vote yes. The Idaho Committee passes unanimously. Thank you.

V. ADJOURN BRIEFING

I now move to adjourn. Is there a second?
COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: All those in favor, say aye?

(Chorus of ayes.)

CHAIRMAN CASTRO: All right. Thank you, everyone. It is now adjourning at 10:26 a.m. Eastern Time.

(Whereupon, the meeting was adjourned at 10:26 p.m.)