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U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING      **UNEDITED**

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WEDNESDAY, OCTOBER 14, 2015

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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C. at 10:00 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman\*

PATRICIA TIMMONS-GOODSON, Vice Chair\*

ROBERTA ACHTENBERG, Commissioner\*

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner\*

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner\*

MAURO MORALES, Staff Director

JENNIFER CRON HEPLER, Solicitor, Parliamentarian

\* *Present via telephone*

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STAFF PRESENT:

IVY L. DAVIS, Director, ERO

BARBARA DE LA VIEZ

PAMELA DUNSTON, Chief, ASCD

DARREN FERNANDEZ

ANGELA FRENCH-BELL

SEAN GOLIDAY

ALFREDA GREENE

TINALOUISE MARTIN, Director, OM

DAVID MUSSATT, Director, RPCU

LENORE OSTROWSKY, Acting Chief, PAU

MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

ALEC DEULL

JASON LAGRIA

CLARISSA MULDER

MAY ROYCE

RICHARD SCHAMEL

ALISON SOMIN

KIMBERLY TOLHURST

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P R O C E E D I N G S

(10:04 a.m.)

CHAIRMAN CASTRO: All right. Well, we'll  
get started. I'm going to call the meeting to order.  
I don't have a gavel here at my home office in Chicago,  
so I'm going to use my fist. It is now 10:03 a.m.  
Eastern Time, and the meeting will come to order. This  
is a meeting of the U.S. Civil Rights Commission.  
Today is October 14th, 2015. The meeting is taking  
place at the Commission's headquarters located at 1331  
Pennsylvania Avenue, N.W., in Washington, D.C. I'm  
Chairman Marty Castro.

The commissioners who are present at the  
headquarters are Commissioners Heriot and Narasaki.  
Joining me on the phone are Vice Chair Timmons-Goodson,  
Commissioners Kladney, Achtenberg, Kirsanow, and Yaki,  
although we're not sure if Kladney is on the phone yet,  
but he will be joining at some point, we understand.

So the quorum of the commissioners is  
present. Given that I'm on the phone, if the court  
reporter could answer in the affirmative that he or she  
is present? Is that a yes?

MR. MORALES: The court reporter has  
indicated that he is present.

1 CHAIRMAN CASTRO: Okay. Is the staff  
2 director present?

3 MR. MORALES: I am, sir, and I would ask  
4 that, as the commissioners speak, that they present  
5 their names so that the court reporter can accurately  
6 take down their comments.

7 CHAIRMAN CASTRO: Okay, great. And also,  
8 if you are interested in speaking, just, you know, say,  
9 "Chairman, I'd like to say something," and then I'll  
10 call on you or put a list together to the extent that  
11 there are more than one person who wants to speak at  
12 a time.

13 Okay. So the meeting will now come to  
14 order. The first item on the agenda is the approval  
15 of the agenda.

16 **I. APPROVAL OF AGENDA**

17 MR. MORALES: I move that we approve the  
18 agenda. Is there a second?

19 COMMISSIONER NARASAKI: I second.

20 VICE CHAIR TIMMONS-GOODSON: Second.

21 COMMISSIONER HERIOT: Mr. Chairman?

22 CHAIRMAN CASTRO: Are there any  
23 amendments?

24 COMMISSIONER HERIOT: Yes. Mr.

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1 Chairman, can you hear me?

2 CHAIRMAN CASTRO: Yes, go ahead.

3 COMMISSIONER HERIOT: This is Gail. I  
4 would like to move to amend the agenda to include an  
5 item to congratulate Professor Carl Auerbach on his  
6 100th birthday. Professor Auerbach is a colleague of  
7 mine at the University of San Diego, and he was  
8 instrumental in getting the Civil Rights Act of 1957  
9 passed. I have sent out a copy of what I would like  
10 to put on the agenda. I think I've got copies here if  
11 any special assistant needs one, but I would like to  
12 move to put this on the agenda anywhere you would like,  
13 Mr. Chairman. But one place to put it might be, might  
14 be at the end.

15 COMMISSIONER ACHTENBERG: I'll second  
16 that motion.

17 CHAIRMAN CASTRO: Okay. And also we have  
18 a couple of other possible amendments. Commissioner  
19 Achtenberg, I think you have something.

20 COMMISSIONER ACHTENBERG: I do, Mr.  
21 Chairman. I have a motion to amend the agenda to  
22 postpone consideration of Part B until our November  
23 meeting. Quite frankly, Mr. Chairman, I need  
24 additional time to put forward a series of proposed

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1 findings and recommendations on the Peaceful  
2 Coexistence project.

3 CHAIRMAN CASTRO: Okay.

4 COMMISSIONER ACHTENBERG: So that's my  
5 motion.

6 CHAIRMAN CASTRO: Okay.

7 COMMISSIONER YAKI: Mr. Chair, it's  
8 Commissioner Yaki. I have a motion, as well.

9 CHAIRMAN CASTRO: Go ahead.

10 COMMISSIONER YAKI: I would like to put  
11 onto the agenda a discussion and a motion regarding  
12 directing the staff director to prepare a brief and  
13 statement regarding the Supreme Court affirmative  
14 action case.

15 CHAIRMAN CASTRO: Okay.

16 COMMISSIONER HERIOT: Do you include a lot  
17 of discussion of whether or not it would be appropriate  
18 to do that? If so, I'd be for the motion.

19 CHAIRMAN CASTRO: Yes, I think that's  
20 embedded in that. Yes, Madam Vice Chair?

21 VICE CHAIR TIMMONS-GOODSON: Yes, I was  
22 going to second Commissioner Achtenberg's motion.

23 CHAIRMAN CASTRO: Yes, all the amendments  
24 sort of omnibus seconded. I think that's how we

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1 normally do it so --

2 COMMISSIONER NARASAKI: Mr. Chair?

3 CHAIRMAN CASTRO: Yes.

4 COMMISSIONER NARASAKI: This is  
5 Commissioner Narasaki. I would respectfully suggest  
6 that we hold off on discussion about the amicus brief  
7 or statement.

8 CHAIRMAN CASTRO: Well, we could take each  
9 of these amendments in turn, so maybe we should have  
10 individuals second. So Commissioner Achtenberg's  
11 motion to amend was seconded by the Vice Chair.  
12 Commissioner Heriot's motion was seconded by  
13 Commissioner Achtenberg. Does Commissioner Yaki's  
14 motion have a second?

15 COMMISSIONER ACHTENBERG: I'll second  
16 that motion.

17 CHAIRMAN CASTRO: Okay. And then we'll  
18 vote on these in turn.

19 COMMISSIONER NARASAKI: Mr. Chair, this  
20 is Commissioner Narasaki, and I also move to amend the  
21 agenda to remove the Maryland SAC from consideration.

22 CHAIRMAN CASTRO: Okay.

23 COMMISSIONER HERIOT: I'll second that.

24 CHAIRMAN CASTRO: Okay, all right. So

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1 we'll vote first on the amendment to add the  
2 consideration of Carl Auerbach's proclamation. All  
3 those in favor, say aye.

4 (Chorus of ayes.)

5 CHAIRMAN CASTRO: Any abstentions?

6 (No response.)

7 CHAIRMAN CASTRO: Any declines?

8 (No response.)

9 CHAIRMAN CASTRO: Okay. The motion to  
10 push back consideration for Part B of finding some recs  
11 for the Peaceful Coexistence report, all those in favor  
12 say aye.

13 (Chorus of ayes.)

14 CHAIRMAN CASTRO: Any opposed?

15 COMMISSIONER KIRSANOW: Kirsanow. No.

16 CHAIRMAN CASTRO: Okay. Kirsanow is  
17 opposed.

18 COMMISSIONER HERIOT: I've abstained.

19 Heriot abstains.

20 CHAIRMAN CASTRO: Okay. Heriot  
21 abstains. All right. The motion passes. Motion to  
22 add a discussion of an amicus brief in the affirmative  
23 action case, all those in favor say aye.

24 (Chorus of ayes.)

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1 CHAIRMAN CASTRO: Any opposed?

2 COMMISSIONER NARASAKI: Commissioner

3 Narasaki says no.

4 CHAIRMAN CASTRO: Commissioner Narasaki

5 opposes. Okay. Any abstentions?

6 VICE CHAIR TIMMONS-GOODSON:

7 Timmons-Goodson abstains.

8 CHAIRMAN CASTRO: Okay. The one

9 abstention and the no. The motion passes. And then

10 a motion to remove the Maryland SAC from consideration

11 at today's business meeting. All those in favor, say

12 aye.

13 (Chorus of ayes.)

14 CHAIRMAN CASTRO: All those opposed?

15 (No response.)

16 CHAIRMAN CASTRO: Any abstentions?

17 (No response.)

18 CHAIRMAN CASTRO: Okay. So then we will

19 add the discussion of the amicus brief after we discuss

20 at the end the centennial proclamation, okay? So now

21 there's no further amendments. Let's vote to approve

22 the agenda in whole. All those in favor, say aye.

23 (Chorus of ayes.)

24 CHAIRMAN CASTRO: Any opposed?

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1 (No response.)

2 CHAIRMAN CASTRO: Any abstentions?

3 (No response.)

4 CHAIRMAN CASTRO: Okay. Program  
5 Planning.

6 **II. PROGRAM PLANNING**

7 **STATUS ON PENDING COMMISSION REPORTS AND**

8 **HIRING OF CONTRACTORS BY OCRE**

9 CHAIRMAN CASTRO: So the first item we  
10 have is a status of the pending Commission report and  
11 the hiring of contractors by OCRE. So, Ms.  
12 French-Bell, if you could inform us of the status of  
13 these two matters.

14 MS. FRENCH-BELL: Good morning. My name  
15 is Angela French-Bell. I'm the Assistant Staff  
16 Director for the Office of Civil Rights Evaluation, and  
17 this is our report. The first thing we wanted to cover  
18 would be the contractors, followed by an update on  
19 reports. We will delve briefly into environmental  
20 justice, covering our tentative discuss. We will  
21 discuss why we will want the report to focus on coal  
22 ash, discuss potential site visits that we could  
23 conduct as a part of our environmental justice report,  
24 discuss possibly keeping the record open until April

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1 to make sure that we have all the data that we need for  
2 our report, and then Darren Fernandez, a civil rights  
3 analysis for OCRE, will discuss the outline that he  
4 created as part of this project.

5 CHAIRMAN CASTRO: Okay. Well, we'll take  
6 that first. I have that as your second item. The  
7 first one was a discussion of the status of the pending  
8 outstanding reports and the contractor status.

9 MS. FRENCH-BELL: Okay. Do you want me to  
10 do it in that order then?

11 CHAIRMAN CASTRO: You know, this is fine.

12 MS. FRENCH-BELL: Okay. Thank you so  
13 much. I appreciate the indulgence. So OCRE did hire  
14 a contractor before the end of the fiscal year. His  
15 name is David Gardner. He comes to us from a rich legal  
16 background, which includes a J.D. at Georgetown  
17 University. He's been doing an excellent job for us.

18 I wanted to briefly highlight the overall  
19 outline that he came up with to discuss the Native  
20 American report with the understanding that this is  
21 only a very basic outline at this time.

22 CHAIRMAN CASTRO: You went to the Native  
23 American report?

24 MS. FRENCH-BELL: Yes.

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1 CHAIRMAN CASTRO: Oh, okay.

2 MS. FRENCH-BELL: I will send out a copy  
3 as soon as the meeting is over. I apologize for that  
4 oversight. What we're also looking to do is to work  
5 with Jason Lagria to develop a team of special  
6 assistants who would like to assist on this project and  
7 help to refine the outline some more and to kind of work  
8 with us going forward, and we'd like to meet with them  
9 on a bi-weekly basis.

10 CHAIRMAN CASTRO: Okay. So this hasn't  
11 been circulated just yet?

12 MS. FRENCH-BELL: Right. So why don't I  
13 just circulate it, and then we'll discuss it? So we'll  
14 move on to the next agenda item.

15 CHAIRMAN CASTRO: All right, okay.

16 MS. FRENCH-BELL: Okay. So for update  
17 for the reports, the first report that you should  
18 receive will be state immigration. That will come out  
19 on Friday. It has been reviewed by OSD.

20 Further, we have two options. We can  
21 either send out reports to you. We have three reports  
22 that are in line nearly ready to go out. We can either  
23 send them to you every two weeks, or we can send them  
24 to you on a monthly basis. The advantages of sending

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1 it out every two weeks will be that we'll get more  
2 reports out during the fiscal year. The disadvantage  
3 is that it will be more of a burden on the commissioners  
4 and their assistants to get it done in a timely manner.  
5 It might not provide them adequate time for review.

6 So I wanted to pose that as a question to  
7 you, get your feedback on that matter so that I know  
8 how to adjust the schedule.

9 COMMISSIONER HERIOT: Are they all ready  
10 to go to the Commission now? This is just a draft that  
11 we just make comments on --

12 MS. FRENCH-BELL: Exactly.

13 COMMISSIONER HERIOT: So send all three of  
14 them out, and then just adjust the times that the  
15 comments are due.

16 MS. FRENCH-BELL: That works.

17 CHAIRMAN CASTRO: Yes, I think the sooner  
18 we get them to us the better.

19 MS. FRENCH-BELL: Okay, perfect. Thank  
20 you. That's very helpful.

21 COMMISSIONER HERIOT: Make sure that we  
22 have a schedule that's doable for getting comments to  
23 you.

24 MS. FRENCH-BELL: Okay. So in terms of

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1 the schedule being doable, is it easier to make them  
2 do it with a month in between or with two weeks in  
3 between? What would be better for you?

4 COMMISSIONER HERIOT: Let me ask you a  
5 question. If what's convenient is for me, like, to  
6 work like crazy and get, like, all three of them out,  
7 but then you don't get comments from Commissioner  
8 Narasaki on, you know, number three until eight weeks  
9 from now, I mean, does it matter to you whether you get  
10 all the comments on the same report in the same week,  
11 or is it okay if we dribble them in in no particular  
12 order?

13 MS. FRENCH-BELL: For me, it would be  
14 easier and more organized if they came in around one  
15 time. It would be easier to incorporate them, it would  
16 be easier to track them. So for me, the easiest thing  
17 would be to have at least a solid deadline for when  
18 they're due.

19 COMMISSIONER HERIOT: Okay. What are the  
20 three? What are the names of the three?

21 MS. FRENCH-BELL: The three reports are  
22 state immigration, civil rights for vets, and stand  
23 your ground.

24 COMMISSIONER HERIOT: From my standpoint,

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1 stand your ground is more important and, therefore, I  
2 want more time for stand your ground.

3 MS. FRENCH-BELL: Okay.

4 COMMISSIONER NARASAKI: This is  
5 Commissioner Narasaki. I agree with Commissioner  
6 Heriot. And what I would suggest is maybe for the first  
7 two, we might try two weeks. But if it turns out that  
8 that is not realistic, then we could adjust it.

9 MS. FRENCH-BELL: Perfect. Thank you so  
10 much.

11 COMMISSIONER NARASAKI: If the other  
12 commissioners agree.

13 CHAIRMAN CASTRO: That makes sense.

14 COMMISSIONER NARASAKI: Yes, I agree with  
15 Commissioner Heriot that we will need more time for  
16 stand your ground.

17 MS. FRENCH-BELL: Thank you. Since that  
18 seems to be the general consensus, and I will include  
19 a time line for the other reports on that time line,  
20 as well, when I send it out. And you should have that  
21 within the next week. The next order of  
22 business is the time line for the statutory enforcement  
23 report. That should be part of the folder that Mauro  
24 created. Okay. So I just wanted to highlight some of

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1 the most important dates and explain --

2 MR. MORALES: Hold on. I didn't get that,  
3 and I didn't forward that time line to them because I  
4 didn't receive that until yesterday afternoon. They  
5 just have the outline.

6 MS. FRENCH-BELL: Okay. So what we will  
7 do then is I will just talk about two of the most  
8 important dates, and we'll send that out to. Okay. So  
9 the interrogatories will be sent to the federal  
10 agencies December 2015. The reason that we're going  
11 to send it out in December is because we've been having  
12 ongoing meetings with EPA, and they're sending us a lot  
13 of information that we already need ahead of time. So  
14 it will be easier for us to be able to find out what  
15 exactly it is that we don't know and to give them a  
16 refined list that reflects the actual documents that  
17 we need to complete the report.

18 The report will be submitted to the  
19 commissioners on June 3rd, 2016. The comments will be  
20 due July 5th, 2016. And the final vote will be July  
21 15th, 2016. So we'll send this out to you, as well.

22 The next thing that we wanted to discuss  
23 is the coal ash issue and why we wanted to focus the  
24 statutory enforcement report on the coal ash issue.

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1 First of all, it's an emerging issue. The EPA just  
2 recently put out the coal ash rule. That rule will help  
3 to determine the future of coal ash facilities moving  
4 forward, so this our chance to be on the cutting edge  
5 of an issue that's coming out at the current time.

6 Also, it's a matter of our chickens coming  
7 home to roost. The U.S. has generated more energy  
8 internally, which is one of our goals. However, there  
9 are costs for that production, and we want to make sure  
10 that the costs are not disproportionately borne by  
11 those who are least able to handle it and especially  
12 that it doesn't disproportionately negatively impact  
13 poor communities of color.

14 Coal ash is also a transcendent issue. It  
15 impacts air, water, and ground. The plants emit  
16 particulate matter, mostly in the form of sulfur  
17 dioxide, which people are breathing in. They're  
18 having negative health impacts with their respiratory  
19 system. Also, coal ash is stored in ponds near those  
20 facilities where it's leaching into the groundwater,  
21 making the groundwater undrinkable. It also is  
22 impacting home prices negatively.

23 It's also meaningful because so many  
24 people are suffering as a result of these coal ash

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1 facilities. There's evidence that there are cancer  
2 clusters near these coal ash facilities and other  
3 ailments.

4 Another reason is that they have an  
5 opportunity to do independent research if we can focus  
6 on one particular issue. To the extent that we focus  
7 on other issues, our attention is divided, and we're  
8 not able to commit as many resources to focus on this  
9 particular issue. We have the best resources and time  
10 to focus on coal ash, but if we keep adding other issues  
11 we reduce our ability to do so.

12 So the next thing that we wanted to talk  
13 about were, if we can focus on coal ash, that we would  
14 like to be able to have one town hall meeting. That  
15 would enable the Commission to be able to hear from the  
16 public at one of four locations. The four locations  
17 are Alabama near Perry County. That is one of the main  
18 topics of the concept paper, and it shows how a  
19 community can be negatively impacted by coal ash. In  
20 that community, there were toxins in the air which you  
21 could smell for miles, which negatively impacted home  
22 values. The water was contaminated. People were not  
23 able to drink the water.

24 Another area that we could possibly cover

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1 would be Eden, North Carolina. That involves Duke  
2 Energy. A pipe burst, spilling toxins into the Dan  
3 River, and it's had a very negative impact on the  
4 communities that are in that area.

5 A third area that we can consider is  
6 Chicago near Joliet. The Will County Generating Plant  
7 and the Midwest Generating Plant are spewing  
8 contaminants which exceed legal limits, which is  
9 leaking into the groundwater and making the water  
10 contaminated, as well.

11 So our goal would be to have the town hall  
12 at one of these venues, and then for the other two venues  
13 to have an investigator from OCRE to go out, similar  
14 to what we did with stand your ground, and to conduct  
15 research by talking with local officials and then bring  
16 that information back to the Commission. We don't have  
17 to vote on it today. We just wanted to propose it as  
18 a possibility.

19 MR. MORALES: This is Staff Director  
20 Morales. Is this in addition to the hearing you're  
21 planning in January, which will be here in Washington,  
22 D.C.; is that correct?

23 MS. FRENCH-BELL: That is correct. It  
24 is. And this will be a chance for us to do more

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1 independent research on the ground to see what's  
2 happening to really get a chance to assess some of the  
3 negative health impacts that the communities are  
4 facing.

5 COMMISSIONER NARASAKI: This is  
6 Commissioner Narasaki. Are you ready for comment or  
7 --

8 MS. FRENCH-BELL: Sure. Absolutely.

9 COMMISSIONER NARASAKI: I want to make  
10 sure you were finished. So I applaud the  
11 thoughtfulness of staff in trying to reign us in and  
12 be focused in an area that Commissioner Heriot has often  
13 said that we should be about generating more original  
14 research. So I do applaud that.

15 I would like to see, and I certainly  
16 understand the tradeoff in terms of focus and breadth,  
17 but when we approved this as a topic and sent out the  
18 press release saying what we're approving, we noted  
19 that coal ash would be one of the featured but that it  
20 was not going to be limited to that. And that's what  
21 I've been discussing with the civil rights community.

22 I would like to see, and we could talk about  
23 how best to do it so it doesn't impede your staff's  
24 ability, but I would like to see at least some

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1 discussion about the Gulf state region and the  
2 environmental issues that remain for those communities  
3 after the hurricanes and the BP oil spill.

4 MS. FRENCH-BELL: Thank you for that. I  
5 definitely appreciate that comment. I think there may  
6 be a way that we could accommodate that while having  
7 our main focus be on coal ash, and we definitely look  
8 forward to talking to you about ways that we can  
9 accomplish that.

10 COMMISSIONER HERIOT: I would definitely  
11 like to commend you on the notion of limiting this to  
12 coal ash. I think that is a step in the right  
13 direction. But I actually would go much further in  
14 that direction. Maybe I'm not really certain what coal  
15 ash is. We were talking a little bit about air  
16 pollution, and I thought the coal ash would be that part  
17 that gets caught in the filters and, therefore, is  
18 solid. So is some of the leaking gasses still within  
19 the definition of coal ash?

20 MS. FRENCH-BELL: It is. It's leaking  
21 gas. It's particulates. It's sludge that goes into  
22 the water where it's stored. But if they don't store  
23 it properly, it leaks into the water and contaminates  
24 the water. So Darren is going to talk about it more

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1 during his presentation and explain what it is, but it  
2 has multiple negative health impacts.

3 COMMISSIONER HERIOT: So should I reserve  
4 other comments on the outline until when Darren speaks?

5 MS. FRENCH-BELL: Yes.

6 COMMISSIONER HERIOT: Okay. On the issue  
7 of should we limit it to coal ash . . .

8 MS. FRENCH-BELL: Thank you, thank you.  
9 The second to last thing we wanted to talk about was  
10 possibly keeping the record open until April. If we  
11 end up being able to do a forum meeting, that would  
12 probably occur in late February - early March. We  
13 would like to have people who were not able to attend  
14 the meeting be able to submit comments up to a month  
15 later. So if we kept the record open initially, that  
16 would enable us to be able to receive all of the public  
17 comments that we would need to complete our report.

18 COMMISSIONER NARASAKI: Mr. Chair, this  
19 is Commissioner Narasaki. I am a fan of keeping the  
20 record open. It saves us from having to keep  
21 revisiting the question. As we learned last year, we  
22 need that time to make sure we have a complete record.  
23 But I do want to ask about -- I also like the idea of  
24 having a town hall outside of D.C., but I want to

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1 understand the impact because we also have hearings  
2 planned for the criminal justice topic and the  
3 education topic that we adopted. I think at least I'm  
4 concerned that the hearing for the education not be so  
5 late that we wouldn't be able to have a good chance of  
6 getting a report done in this year, this next year.

7 MS. FRENCH-BELL: Thank you. That's  
8 absolutely a valid comment and something that we have  
9 been discussing as a team. What we can do is to work  
10 up a little plan to show you how we would work that in  
11 to our time line and present it to you at next month's  
12 meeting.

13 COMMISSIONER YAKI: This is Commissioner  
14 Yaki. I just wanted to add that I think that the idea  
15 of a town hall is important because this is showing that  
16 is, in many ways, hyperlocal and, in other ways, deals  
17 with communities that have probably the least means  
18 with which to communicate the impact and their  
19 experience with this issue to Washington, D.C. So I'm  
20 all in favor of going out to where the problem is because  
21 we're dealing with communities of folks who don't have  
22 the means to come to Washington, D.C. and to have their  
23 voices heard.

24 CHAIRMAN CASTRO: Yes. This is the

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1 Chair. I agree with Commissioner Yaki, the importance  
2 of doing a town hall. Of course, I would like to see  
3 it in Chicago, in addition to Joliet. We have three  
4 other similar communities, two, actually three, two on  
5 the southwest side of Chicago and one on the southeast  
6 side and another in Lake County just north of Chicago.  
7 So this has been a big problem for the Chicago area for  
8 a long time, but I know that we'll be discussing that  
9 location later. But wherever we end up going, I think  
10 it's important for us to at least once a year have a  
11 presence outside of Washington, D.C., and I think this  
12 will be important to do.

13 In addition, I presume that we can still  
14 send you some names of some potential witnesses,  
15 Angela?

16 MS. FRENCH-BELL: Yes, absolutely.  
17 Right now, we're just kind of working on researching  
18 those potential panelists, and we will definitely  
19 appreciate any that you would like to submit to us. So  
20 thank you for that comment.

21 COMMISSIONER HERIOT: Can I jump in here,  
22 as well, Mr. Chairman? I want to also agree with  
23 Commissioner Yaki that having a field hearing of this  
24 sort, a briefing, whatever we want to call it, is

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1 important. I also agree with the Chairman that Chicago  
2 is a really nice city, and I also want to point out that,  
3 if we're looking to save money, and I think we always  
4 are here, when we have events outside of Washington,  
5 it costs the Commission a rather sizable chunk of  
6 change. And one thing we could do to try to cut down  
7 on the expense is to appoint a subcommittee to be the  
8 ones that hear what goes on in Chicago, and I would  
9 nominate the Chairman to be one of those since you're  
10 on location. Perhaps Commissioner Kirsanow in  
11 Cleveland and Commissioner Yaki because it was his  
12 proposal, I believe, would make a very nice  
13 subcommittee to do the Chicago thing. If Kirsanow  
14 can't make it, since I'm an old Chicago girl, I love  
15 to come to Chicago, but it seems cheaper to send someone  
16 from Cleveland than it does to send someone from San  
17 Diego, and we might be able to save money that way.

18 MS. FRENCH-BELL: I absolutely love that  
19 idea. We were planning to work it in as part of our  
20 work plan that we were submitting to you. Thank you  
21 so much.

22 CHAIRMAN CASTRO: And you all can crash  
23 out at my apartment, so that will save money, too.

24 COMMISSIONER YAKI: Shotgun on the couch.

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1 MS. FRENCH-BELL: Thank you so much. So  
2 the next thing that we'll have is Darren Fernandez to  
3 talk about the outline.

4 **PRESENTATION OF OUTLINE ON HEARING PLAN FOR**  
5 **2016 STATUTORY ENFORCEMENT REPORT ON**  
6 **ENVIRONMENTAL JUSTICE**

7 MR. FERNANDEZ: Good morning,  
8 Commissioners. This is Darren. Good morning. Thank  
9 you for allowing me to speak with you today. I'd like  
10 to walk through the outline for you and possibly answer  
11 any questions that you might have. Chapter one, if we  
12 can start, I have a few sections in here. The first  
13 is the introduction and kind of laying out an anecdote  
14 to set up the issue and get more of a human feel to it.  
15 I plan on introducing Esther Calhoun, who the media has  
16 portrayed as being almost the face of the issue when  
17 it comes to Alabama, and look at the Tennessee Valley  
18 spill and look at coal ash spillage in North Carolina  
19 and eventually tie that into environmental justice.  
20 In that section, in the environmental justice section,  
21 I would like to address what the Commission has done  
22 in the past, the Commission's past report, "Not in My  
23 Backyard," and then look at the updates of what happened  
24 since then.

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1                   Turning the page, we'll go onto  
2 environmental justice in Title VI and EO. So  
3 everything is going to be tied in using transition  
4 steps. We're going to look at Title VI and Executive  
5 Order 12898 and kind of spell that out.

6                   After that, I really want to bring up the  
7 issue of coal ash, explain what coal ash is, and why  
8 it can be a problem and really look at the affected  
9 communities, where these coal ash locations are placed,  
10 and finding out the demographics there and really  
11 seeing if there's a disproportionate impact that these  
12 communities are facing in terms of minority  
13 populations.

14                   And I think Commissioner Heriot has some  
15 questions on what is coal ash. Coal ash is essentially  
16 a byproduct for after burning coal. And after the coal  
17 is burnt, it really comprises a lot of metallic elements  
18 into it, and the EPA has stated that there's a lot of  
19 carcinogenic metals that are a part of what builds up  
20 coal ash and are primarily the dominant elements in coal  
21 ash. And that's why it's become an issue. I don't  
22 know if I can answer your question any further.

23                   COMMISSIONER HERIOT: I was just  
24 concerned rather something that's in gaseous form would

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1 still be considered coal ash. I think that Angela  
2 clarified that this could be particulate matter, that  
3 it's gassy but is, in fact, solid if you smash it down.

4 MR. FERNANDEZ: Yes, that is correct.  
5 And then it could also get into the liquid and stuff  
6 like that. And then next I'd like to, after presenting  
7 the coal ash issue, present EPA environmental justice.  
8 This is where I'd like to really lay out who EPA is and  
9 what they do, look at NEPA, the EPA, and their  
10 environmental justice issues. I'd like to highlight  
11 their plan EJ 2014, and then their current plan that  
12 they're coming out with is plan EJ 2020. That's on  
13 their website, and it's up for public comment right now.  
14 But, you know, I think we're still looking to meet with  
15 EPA to get more details on that, and that way we can  
16 put that in our report to kind of add that to the  
17 monitoring enforcement of this report.

18 And then I would conclude and tie that into  
19 chapter two, which would discuss the EPA --

20 COMMISSIONER NARASAKI: Darren, before  
21 you go there, this is Commissioner Narasaki. I just  
22 have a question, and this is not an area I'm an expert,  
23 so this could be very much a stupid question. But are  
24 there state regulations that also impact this area?

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1 And if so, how do you plan to treat that?

2 MR. FERNANDEZ: Yes, that's a very good  
3 question. I address that later on in the outline, but  
4 I can answer that to you right now. Right now, coal  
5 ash, as the way the EPA says it, and they classify this  
6 under their final coal ash rule, it falls under  
7 Subsection D of the RCRA. And Subsection D essentially  
8 states that coal ash is a non-hazardous material and  
9 can be treated, you know, put into places, kind of like  
10 a dump site for ordinary trash. And they essentially,  
11 the EPA left it up to the states to regulate coal ash.  
12 And then they can take the EPA suggestions if they want  
13 to follow them or not, essentially. And that's under  
14 Subsection D.

15 I don't know if I answered your question.

16 COMMISSIONER NARASAKI: So are you going  
17 to look at some of the state regulations? I just don't  
18 see it in the outline. Maybe I'm missing it.

19 MR. FERNANDEZ: Yes, I will look at the  
20 state regulations. This is just a very preliminary  
21 outline just to kind of, you know, outline exactly where  
22 the direction of the paper is going. But I would be  
23 happy to meet with Jason to, you know, further explore  
24 the issue.

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1                   COMMISSIONER NARASAKI:     Well, I mean,  
2                   just given your description that there's a right now  
3                   a state piece of it, I think it would be important to  
4                   at least understand what that is.

5                   MR. FERNANDEZ:     Yes.

6                   COMMISSIONER HERIOT:     Can I comment on  
7                   that, as well?   We're skipping a little bit ahead here.  
8                   But if you're going to be commenting on state  
9                   regulation, there also needs to be a comment on just  
10                  basic common law tort actions available here.   And so,  
11                  you know, the concept of nuisance law, the concept of  
12                  a tort.

13                  On the other hand, I think just to,  
14                  generally, the outline is way too heavy on law.   The  
15                  section on equal protection I think needs to go  
16                  entirely.   You know, don't go back and start talking  
17                  about cases that have nothing to do with our basic  
18                  topic, other than the just general constitution.  
19                  Nobody is looking to the U.S. Commission on Civil Rights  
20                  to explain constitutional law to them.   This is not  
21                  what we should be doing.   It's not a good idea.   You  
22                  know, if you do a terrific job, no one will care because  
23                  other people have done terrific jobs in other contexts.  
24                  If you do a bad job, on the other hand, then like every

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1 mistake that we make, it will be held against us. So  
2 don't try to, like, invent why we have the concept of  
3 law or anything. I would file a general discussion of  
4 equal protection and due process as way too abstract  
5 for our purposes. We want to talk about this notion  
6 of environmental justice, period.

7 COMMISSIONER NARASAKI: Commissioner  
8 Heriot, though, I think the reason that there's  
9 discussion there is because they're trying to explain  
10 the concept of environmental justice. So I agree with  
11 you --

12 COMMISSIONER HERIOT: Already done. I  
13 don't think it's a good idea to talk about equal  
14 protection generally. It is going to be a quagmire  
15 that we will never get out of. I guarantee we will  
16 screw up.

17 COMMISSIONER NARASAKI: I just think it  
18 might be difficult to -- I mean, because not everybody  
19 who reads the Commission's report is going to know. I  
20 agree with you, I agree with you that I wouldn't want  
21 to see pages and pages and pages and pages on the topic  
22 but --

23 COMMISSIONER HERIOT: We end up  
24 embarrassing ourselves when we talk about tough --

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1 COMMISSIONER NARASAKI: I think it's hard  
2 to --

3 COMMISSIONER HERIOT: -- issues of  
4 constitutional law. I don't want to see us embarrassed  
5 anymore.

6 COMMISSIONER NARASAKI: I kind of feel  
7 it's fundamental to the discussion, and I don't see how  
8 you don't mention it at all. So that's --

9 CHAIRMAN CASTRO: Yes, maybe we do  
10 something limited, a sort of a primer on it, for those  
11 who may not be familiar --

12 COMMISSIONER HERIOT: That's what we do in  
13 the first place is primer, and it tends to be bad.  
14 Don't write something that's going to make people that  
15 know about constitutional law not take the rest of our  
16 report seriously.

17 COMMISSIONER NARASAKI: This is  
18 Commissioner Narasaki. Again, I'm not talking about  
19 an exhaustive attempt to have a law review type  
20 discussion. I agree with you that's not necessary.  
21 But I do think some mention and maybe staff should be  
22 allowed to at least do an introductory thing, and we  
23 can decide whether we feel --

24 COMMISSIONER HERIOT: *Bolling v. Sharpe*,

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1 Adickes v. S.H. Kress & Company, Washington v. Davis,  
2 McLaughlin v. Florida? I mean, it's insane for us to  
3 discuss those cases.

4 CHAIRMAN CASTRO: Let's let them do it.  
5 Let's see what it looks like, and we can always make  
6 revisions if we don't --

7 COMMISSIONER NARASAKI: We can work with  
8 staff on limiting the discussion and making sure that  
9 it's on point.

10 MR. FERNANDEZ: Yes. And then chapter  
11 two, I would really like to dive into the EPA and their  
12 involvement in coal ash. I'd really like to highlight  
13 their EPA rule and how it relates to the issue. I  
14 really want to look at why they considered it as a  
15 non-hazardous substance under Subsection D, and this  
16 is where the independent research would come in, where,  
17 you know, we would hopefully be working with some sort  
18 of university who would be willing to help us do this  
19 type of research or look at other groups that, you know,  
20 will take a --

21 COMMISSIONER HERIOT: I don't quite  
22 understand what you mean by a university that would be  
23 willing to help us. I mean, how would we do this that  
24 wouldn't run us into so much time that, by the time we

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1 have something worked out with the university, we've  
2 all died from old age?

3 MS. FRENCH-BELL: You raise a very good  
4 question, and I appreciate it. So what we're looking  
5 at is several universities have ongoing studies that  
6 we could possibly get information from, or they could  
7 do additional testing as part of the research that we're  
8 doing. We'd, of course, have to work with OGC to make  
9 sure we're within legal parameters, and we would  
10 discuss any of that before we actually did it with the  
11 Commission.

12 COMMISSIONER HERIOT: And so I don't think  
13 we'd possibly get our report done in time within that.  
14 That's what I'm worried about.

15 MS. FRENCH-BELL: No, no, we would  
16 definitely get the report done on time. This is only  
17 if it can be done within the confines of the time line.  
18 These are ideas that we're putting forward right now.  
19 This is a tentative outline. It's subject to change  
20 based on realities of our time.

21 COMMISSIONER HERIOT: As long as it's  
22 subject to, gosh, we had to drop that idea because it  
23 just wasn't going to work out.

24 MS. FRENCH-BELL: Absolutely.

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1                   MR. FERNANDEZ:       Again, this is a  
2 preliminary outline, so we're very open to suggestions.  
3 And then, after that, I'd really like to, like I said,  
4 go over why the EPA really classified coal ash as a  
5 non-hazardous waste, and I think we're going to be  
6 meeting with them and meet with their engineers, as  
7 well, to see, you know, to kind of explain the science  
8 to us because, after reading the rule, it's just very  
9 hard to understand. So, you know, I think it would be  
10 helpful to actually go there and speak with their  
11 scientific, explain it at our level.

12                   And then I'd like to look at the  
13 health-related issues concerning coal ash. And then  
14 the next chapter would really be the basis of the paper  
15 is EPA compliance or non-compliance with Title VI.  
16 We're going to look at the EPA complaint process as  
17 thoroughly as we can, and then we're going to go  
18 through, you know, kind of the guidelines for the Title  
19 VI complaint program to really see, you know, why  
20 there's a backlog, in terms of coal ash especially, and  
21 then go over that overall and really analyze whether  
22 EPA is complying or not. And then chapter four, I think  
23 we already had a discussion on.

24                   COMMISSIONER HERIOT:   Okay. I got a

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1 couple of comments. If I'm remembering correctly,  
2 there's a place in here where we talk about partnering  
3 with EPA. Do you use that word?

4 MS. FRENCH-BELL: That was probably the  
5 wrong word to use. We know we cannot partner with other  
6 federal agencies.

7 COMMISSIONER HERIOT: Yes, let me just --

8 MS. FRENCH-BELL: We know that that was  
9 the wrong word. Sorry.

10 COMMISSIONER HERIOT: We are  
11 investigating whether or not they do their job  
12 properly. We are, you know, in a posture with them,  
13 we're looking over their shoulders and trying to  
14 determine whether or not they are being good. They are  
15 not our partner.

16 MS. FRENCH-BELL: No, they're not our  
17 partner. And to the extent that we put that in there,  
18 that was a mistake. Thank you for pointing that out.

19 COMMISSIONER HERIOT: There was also  
20 something in some version about partnering with 60  
21 Minutes, and I just want to go on the record, over my  
22 dead and lifeless body.

23 MS. FRENCH-BELL: No, that will not  
24 happen. We would glean information from what they have

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1 out or perhaps talk to them. They are not our partners.

2 COMMISSIONER HERIOT: Okay.

3 MS. FRENCH-BELL: We will fix that in the  
4 next version.

5 COMMISSIONER HERIOT: That's great.  
6 Here's my biggest comment, though, is that I always want  
7 to see that we have done some research that otherwise  
8 is unavailable. And I'm worried that we're going to  
9 get in over our head, and if talks about, you know,  
10 medical research, you know, we're going to have a very  
11 difficult time making a useful comment on that because  
12 nobody here is, you know, specializes in medical  
13 research. You know, we've got a social scientist here  
14 that's going to be good with statistics, but we don't  
15 have anybody that is knowledgeable about medical  
16 issues.

17 MS. FRENCH-BELL: Agreed and agreed.

18 COMMISSIONER HERIOT: And so I'm  
19 terrified of this one. I'm just terrified. Here's a  
20 proposal I have, and I have no idea whether this is  
21 useful or not. But one thing that occurred to me, maybe  
22 somebody has already done it, maybe not. But I would  
23 just like to know exactly where the coal ash is. You  
24 know, is there some way to map out across the country

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1 here are how many coal ash dumps there, here is exactly  
2 where it's located, here's the date they started to put  
3 coal ash in that spot, and then here's the date they  
4 stopped doing it or it's ongoing. And that way, that  
5 can be coordinated with census data. That strikes me  
6 as a genuine contribution here, just to be able to say  
7 nobody else knew exactly where it is, but we can tell  
8 you where it is.

9 MR. FERNANDEZ: Yes, and I completely  
10 agree with you there, Commissioner. And we have it --

11 COMMISSIONER HERIOT: Is it doable?

12 MR. FERNANDEZ: Yes, it's doable. And we  
13 have that, I think under chapter two or three. I didn't  
14 really talk about it at length during our discussion  
15 here, but there are tools that we can actually compile  
16 that data and provide it in there.

17 COMMISSIONER HERIOT: I think that's, you  
18 know, people in the future who are litigating these  
19 cases, making complaints, if they could say, look, you  
20 know, here are the 54 coal ash, maybe it's 354.

21 MR. FERNANDEZ: Seven-hundred and  
22 thirty-five, yes.

23 COMMISSIONER HERIOT: Well, the fact that  
24 somebody knows that it's 735 means that maybe it's

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1 already been mapped out well. But at least that's  
2 data. You know, maybe we can, like, increase the  
3 actual sum total of human knowledge here somewhere,  
4 rather than just reporting what somebody else did.

5 MR. FERNANDEZ: Yes. And what we would do  
6 is we'd get the coordinates of those coal ash  
7 facilities, which I think there is already compiled  
8 lists, and then look at the demographic data around that  
9 area, just like --

10 COMMISSIONER HERIOT: Well, it's  
11 important to know, like, when did this coal ash dump  
12 get started because, you know, sometimes the  
13 demographics in 1957 when they first started it were  
14 very different from what the demographics are today.  
15 And that's important to know. It's important to get  
16 how this changes over time. So that's what I would love  
17 to see in this report.

18 MR. FERNANDEZ: Absolutely. And I think  
19 we can definitely make that work, and I think we'll have  
20 an updated outline later on to, you know, incorporate  
21 the suggestions that you had made and the Commission  
22 has made and show it to you again.

23 VICE CHAIR TIMMONS-GOODSON: This is  
24 Commissioner Timmons-Goodson. I think that's an

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1       excellent idea, Commissioner Heriot.   And when you  
2       couple that data with a report from interviews with  
3       individuals on the ground that are actually living  
4       around and with this, I think it makes it even more  
5       powerful.

6                   MS. FRENCH-BELL:    Thank you.    Agreed.  
7       Are there anymore questions for us?

8                   COMMISSIONER KIRSANOW:   Kirsanow here.  
9       Just a suggestion.   In addition to the demographic data  
10      that Commissioner Heriot was talking about, I think it  
11      might be also useful to look at any demographic data  
12      related to household income and wages in the areas  
13      affected.

14                   MS. FRENCH-BELL:    Thank you very much.  
15      That's part of our new updated outline that should be  
16      on there, but we'll make sure that we define that out  
17      a little bit more in our next version.   Thank you.  
18      That's a good suggestion.

19                   COMMISSIONER ACHTENBERG:   Mr. Chairman, I  
20      have one.   Ms. French-Bell, is there any possibility  
21      that either the National Institutes of Health or a  
22      related organization might be in a position to advise  
23      us or offer some kind of expert assistance with regard  
24      to the medical issues that you propose to address?   But

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1 as Commissioner Heriot pointed out, we have very little  
2 resident expertise with which to handle those issues.

3 MS. FRENCH-BELL: Yes. Thank you for  
4 that suggestion. We have reached out to NIH. One of  
5 the people that we're particularly looking at for a  
6 possible panelist is from NIH, so we're definitely  
7 following through on that suggestion. Thank you for  
8 that.

9 COMMISSIONER NARASAKI: Mr. Chair, this  
10 is Commissioner Narasaki. We might also consider  
11 reaching out to the surgeon general's office, as well.

12 MS. FRENCH-BELL: Thank you for that.

13 CHAIRMAN CASTRO: Good idea.

14 MS. FRENCH-BELL: Thank you. If there  
15 are no --

16 CHAIRMAN CASTRO: Any other suggestions?  
17 If not, do you have anything else on the agenda for us?  
18 Are you going to discuss with us the hearing dates, or  
19 is that something that's --

20 **DISCUSSION AND VOTE ON DATES FOR 2016 HEARINGS**

21 MS. FRENCH-BELL: Oh, we wanted to  
22 suggest, after talking with some of the special  
23 assistants, two potential hearing dates. The first  
24 one that we wanted to suggest was during the March

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1 meeting, so I believe that's March 18th, to have the  
2 municipal fees briefing and the second one is May 20th  
3 and that's for our elementary and secondary education  
4 briefing. The reason that we wanted those briefings  
5 to be at that time is that, one, we would probably have  
6 our money in from the continuing resolution from  
7 Congress. The second one is it would give us enough  
8 time to be able to finish up some of the other reports  
9 that we have in the backlog. Three, it would be  
10 staggered, so, unlike last year when the reports were  
11 back to back and it was difficult for us to be able to  
12 handle our work as efficiently as we would like to, they  
13 would be staggered out so that we would be more  
14 efficient and better able to handle the briefings and  
15 it would also be beneficial to other staff who will be  
16 working to help us on the logistics and other issues  
17 that go along with the briefings. So we wanted to  
18 suggest those dates to you and see if they work.

19 MR. MORALES: Am I correct in assuming  
20 that you have had discussions with staff assistants --

21 MS. FRENCH-BELL: Yes.

22 MR. MORALES: -- so these dates then kind  
23 of work with them?

24 MS. FRENCH-BELL: Exactly.

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1 COMMISSIONER NARASAKI: Yes. This is  
2 Commissioner Narasaki. I and Vice Chair  
3 Timmons-Goodson have talked with staff, and we think  
4 these dates work.

5 VICE CHAIR TIMMONS-GOODSON: Yes.

6 MS. FRENCH-BELL: Thank you both.

7 CHAIRMAN CASTRO: So is there a motion?

8 COMMISSIONER HERIOT: I would favor later  
9 dates. I would much rather get out reports. I think  
10 August would be a splendid month to have such a briefing  
11 because during that month you guys will have gotten the  
12 statutory report off your plate and can have some other  
13 project while the members of the Commission work on  
14 their statements.

15 MS. FRENCH-BELL: Well, August is  
16 typically a month where a lot of people take vacation,  
17 so it's really hard to do things.

18 COMMISSIONER HERIOT: That's why I love  
19 August. Everybody is on vacation, and we can get some  
20 work done.

21 MS. FRENCH-BELL: But it's harder to get  
22 panelists. The staff will be gone.

23 VICE CHAIR TIMMONS-GOODSON: Vice Chair  
24 Timmons-Goodson again. One of the reasons that the

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1 schedule appeals to me is that I believe there's enough  
2 time built in that we should be able to get all of the  
3 reports on the table out before any of our deploying  
4 commissioners leave.

5 COMMISSIONER NARASAKI: Yes. And this is  
6 Commissioner Narasaki. We're committed to working  
7 with staff. We've already begun to work with staff to  
8 help recruit the people to testify and, you know, try  
9 to provide additional capacity as we can.

10 CHAIRMAN CASTRO: We wanted to vote on  
11 this? I think so, right? Do we have a motion on the  
12 hearing dates that have been proposed?

13 COMMISSIONER YAKI: So moved.

14 COMMISSIONER ACHTENBERG: Could you  
15 restate the second hearing date?

16 CHAIRMAN CASTRO: May 20th for elementary  
17 and secondary school education and March 18th for  
18 municipal fees. So we have a motion. Do we have a  
19 second? Was that a second?

20 VICE CHAIR TIMMONS-GOODSON: I thought  
21 that I was moving.

22 CHAIRMAN CASTRO: The Vice Chair moved.  
23 Is there a second?

24 COMMISSIONER NARASAKI: Narasaki

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1 seconds.

2 CHAIRMAN CASTRO: Okay. Any additional  
3 discussion? If not, I will call a roll. Commissioner  
4 Kirsanow, how do you vote?

5 COMMISSIONER KIRSANOW: Yes.

6 CHAIRMAN CASTRO: Commissioner Heriot,  
7 how do you vote?

8 COMMISSIONER HERIOT: I'm going to be  
9 cantankerous. I vote no. But the dates are okay with  
10 me.

11 CHAIRMAN CASTRO: Okay. Commissioner  
12 Narasaki, how do you vote?

13 COMMISSIONER NARASAKI: I vote yes.

14 CHAIRMAN CASTRO: Commissioner Kladney,  
15 have you joined the call? Okay. Commissioner  
16 Achtenberg, how do you vote?

17 COMMISSIONER ACHTENBERG: Yes.

18 CHAIRMAN CASTRO: Commissioner Yaki has  
19 the vote. Okay. Madam Vice Chair, how do you vote?

20 VICE CHAIR TIMMONS-GOODSON: Yes.

21 CHAIRMAN CASTRO: I vote yes. There are  
22 one, two, three, four, five, six yeses, a no, and then  
23 a non-vote. So the motion passes.

24 Do we need to vote on your outline for the

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1 environmental justice report, or is this sort of to get  
2 our temperature and consensus?

3 MS. FRENCH-BELL: This is a draft version.  
4 Moving forward, I think it would be good to have a vote  
5 on it, but this is a draft.

6 CHAIRMAN CASTRO: Okay. I wanted to make  
7 sure. All right. Well, thank you, Ms. French-Bell.  
8 It's very helpful. We're now going to move on to a  
9 discussion of the December 11th meeting at the Lincoln  
10 Cottage. What I'd like to do is pass this over to the  
11 staff director to discuss with us some alternatives.

12 **DISCUSSION ABOUT WHETHER THE DECEMBER 11TH EVENT AT**  
13 **THE LINCOLN COTTAGE SHOULD INCLUDE A COMMISSION**  
14 **BUSINESS MEETING OR BE LIMITED TO A CEREMONY**  
15 **COMMEMORATING THE PASSAGE OF THE 13TH AMENDMENT**

16 MR. MORALES: Yes. Thank you, Mr.  
17 Chairman. I'll try to be as brief as I can.  
18 Essentially, you know, you've tasked us with looking  
19 at December 11th as a date to have a ceremony  
20 commemorating the passage of the 13th Amendment.  
21 We've done some preliminary work on that that I'd like  
22 to provide to you and then talk about how those, that  
23 date can, you know, has some complications in terms of  
24 a Commission business meeting.

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1                   First of all, I want to, you know, just let  
2                   you know that we have reserved the Cottage for December  
3                   11th. We've been working with the Lincoln Cottage  
4                   folks. We've been out there twice to see the venue.  
5                   I'd like to, you know, thank staff, the special  
6                   assistants that have been particularly helpful.  
7                   They've been May Royce. Jason has been helpful, as  
8                   well as Juana and Alison and Carissa, as well, have been  
9                   helpful in helping us plan some of the preliminary  
10                  points of this.

11                  First of all, let me say the two options  
12                  that I'm looking at that I'd like to discuss, if you'll  
13                  bear with me, is that, you know, the original idea was  
14                  to hold a Commission business meeting and then move into  
15                  a ceremony commemorating the passage of the 13th  
16                  Amendment. That has some pros and cons that I'll  
17                  discuss in a moment.

18                  A second option would be perhaps to move  
19                  the Commission business meeting to either later that  
20                  afternoon or earlier the preceding day. And then I  
21                  kind of threw in, if we did it on a Thursday, the day  
22                  before the ceremony, we could do it late afternoon and  
23                  perhaps have a holiday party after the Commission  
24                  hearing. But I'll get into that in a moment.

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1           Let me just get real quickly into some  
2 details about the first option of holding a Commission  
3 meeting and a ceremony on the same day. I believe and  
4 my investigation reveals that it will result in higher  
5 cost and more uncertainty about attendance to the  
6 event. The cost of renting the cottage is \$5,895. And  
7 for that, we get access from 9 a.m. to 12 noon. The  
8 room, this is actually the room that will be holding  
9 the event, is where President Lincoln wrote the  
10 Emancipation Proclamation. He didn't sign it there.  
11 He signed it at the White House, pursuant to whatever  
12 law was in force at the time. Nevertheless, historical  
13 records indicate that he actually created, drafted, and  
14 wrote it in that room. So the historical significance,  
15 of course, is impressive.

16           And that room will hold 75 people. And  
17 while the acoustics in the room are outstanding, they  
18 do not have a microphone system. Obviously, it was a  
19 home built almost 200 years ago, 150 years ago. So we  
20 would have to rent a microphone system at a cost of  
21 approximately \$1800. We would have to pay a court  
22 reporter to travel and be on-site, and the estimate cost  
23 was about \$2500.

24           We would incur additional staff travel

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1 time, prep time, breakdown time, and additional cost  
2 for staff to drive or travel to take equipment and  
3 meeting material. The estimate I was given by our  
4 staff was approximately 25 additional man hours of  
5 work.

6 So to hold the Commission business meeting  
7 on the same date and at the same venue would cost  
8 approximately \$9,000. Plus, Commission business  
9 meetings, as you well know, are governed by the Federal  
10 Advisory Committee Act. Therefore, the meeting has to  
11 be open to the public, and we have no idea or control  
12 about how many people from the public could or would  
13 be able to attend.

14 The second option I've looked at and I'd  
15 like to present to you, if you'll bear with me, would  
16 be to hold the Commission business meeting possibly the  
17 day before on Thursday the 10th in the afternoon. You  
18 know, I know there are some challenges with travel of  
19 the commissioners, but, if you'll bear with me, we could  
20 perhaps do it from like 3:30 to 5 and then from 5 have  
21 a holiday party here at the Commission. Using this  
22 option, the Commission could jointly host the 13th  
23 Amendment commemorating ceremony with the Lincoln  
24 Cottage. And by hosting it jointly with them, the fee

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1 to us would be decreased from \$5,895 to \$3,895, a  
2 savings of \$2,000 for us. We'd save the costs of  
3 renting a microphone system, transporting, paying for  
4 a court reporter, costs incurred by staff to travel.

5 The downside is we'd have to hold the  
6 business meeting, of course, either the day before or  
7 that afternoon back here at the Commission. Another  
8 downside is, in order to secure the lower rental cost,  
9 we have to allow the Lincoln Cottage to partner with  
10 us. In exchange for doing that, we would allow the  
11 director of the Lincoln Cottage to say a few words of  
12 welcome. They would retain 25 of the 75 seats for the  
13 event for them, leaving the commissioners with 50 seats  
14 to divide among themselves for invited guests.

15 The Lincoln Cottage, however, remarked  
16 that, most likely, they would give back anywhere from  
17 10 to 15 seats. So we'd end up with about 60 to 65 seats  
18 for commissioners for invitations, so that's a little  
19 more than six invites per commissioner. And the basic  
20 cost would just be at the \$3,895 level.

21 So I want to present those to you for  
22 discussion. I can also discuss the preliminary agenda  
23 for the day or for the event if you'd like. I don't  
24 know if you want to get into that at this point. But

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1 I just wanted to throw that out there and get your  
2 feedback and see if this is something to consider or  
3 if you wanted to go ahead and have the business meeting  
4 that morning. So I throw that up for discussion.  
5 Thank you.

6 CHAIRMAN CASTRO: Mr. Staff Director,  
7 this is the Chairman. I think your proposal to do the  
8 meeting before, the afternoon before, and then do the  
9 commemorative event in partnership with the Lincoln  
10 Cottage the next day makes sense. So just agreeing,  
11 financially, I would support that.

12 COMMISSIONER HERIOT: I think most people  
13 would have a hard time getting here in time for an  
14 afternoon meeting, and so it means an extra day of  
15 travel. Is it possible to have the business meeting  
16 after the Lincoln Cottage event instead, like from 1  
17 to 3 here?

18 MR. MORALES: The answer would be yes. It  
19 would be, you know, travel time for you, as well,  
20 getting back to the West Coast. But, yes, we could have  
21 it that afternoon, as well, here.

22 COMMISSIONER HERIOT: That probably works  
23 better for me.

24 COMMISSIONER YAKI: I don't have a problem

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1 with that.

2 COMMISSIONER ACHTENBERG: This is  
3 Commissioner --

4 VICE CHAIR TIMMONS-GOODSON: I have the  
5 same problem Gail does. That works. Doing it on  
6 Friday afternoon works equally well, so that's fine  
7 with me.

8 COMMISSIONER ACHTENBERG: I think the  
9 partnering with the Lincoln Cottage folks is an  
10 outstanding idea. And as long as that takes place, I'm  
11 flexible on the business meeting.

12 VICE CHAIR TIMMONS-GOODSON: I would  
13 point out that we partnered with them on the 14th  
14 Amendment, the Emancipation Proclamation, and, you  
15 know, they're lovely and outstanding partners, so I  
16 like the idea of that, as well, as well as the savings.

17 CHAIRMAN CASTRO: And we're still looking  
18 for commissioners who would like to participate in the  
19 holiday party beforehand to show up the day before,  
20 unless you would just move it to that night, as well.

21 COMMISSIONER NARASAKI: So this is  
22 Commissioner Narasaki. I think the partnership is  
23 great. Unfortunately, Friday afternoon, I have a  
24 standing call that I could not miss. But I would be

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1           okay with the Commission having the business meeting  
2           without my presence if that works better for the West  
3           Coast commissioners.

4                       CHAIRMAN CASTRO:     Okay.     Is there a  
5           particular time where maybe you will be there in the  
6           afternoon?

7                       MR. MORALES:     I was just informed by staff  
8           that to have the meeting at one might be a challenge  
9           getting the staff back here.     But, you know, we could  
10          do it at 2:00 perhaps, you know, start it at 2 or  
11          somewhere close there and after.     And then, you know,  
12          if it ends at, let's say, 4:00, we could, you know,  
13          evolve into a holiday party for staff and commissioners  
14          that are able to attend.     So I think that would be very  
15          workable.

16                      CHAIRMAN CASTRO:     Yes, that seems to work  
17          for most folks, but, unfortunately, Commissioner  
18          Narasaki.     Is there a consensus then that that's how  
19          we proceed?

20                      COMMISSIONER ACHTENBERG:     Yes, I think  
21          so.

22                      CHAIRMAN CASTRO:     Yes, okay.     That's what  
23          we shall do then.     I don't think we need a vote on that,  
24          unless anyone feels strongly about it.     It's clear the

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1 direction we want to go. Okay. Then the next item  
2 then on the agenda is the consideration of the  
3 proclamation centennial Carl Auerbach. Commissioner  
4 Heriot, you have the floor.

5 **DISCUSSION OF RESOLUTION HONORING CARL AUERBACH**

6 COMMISSIONER HERIOT: Thank you, Mr.  
7 Chairman. I would like to have the Commission vote to  
8 congratulate my colleague, Carl Auerbach, on reaching  
9 his 100th birthday. Carl Auerbach is a wonderful man.  
10 He's a democrat, by the way, so you should feel good  
11 about voting for this, a New Deal kind of democrat. He  
12 was teaching at the University of San Diego until he  
13 was about 92, I believe. He's still on our faculty.  
14 He still comes in now and then, and he is as sweet and  
15 wonderful a man as you will ever meet, and he had a great  
16 deal to do with why we're sitting here today.

17 As you know, the Civil Rights Commission  
18 was created by the Civil Rights Act of 1957. And at  
19 the time, there were a lot of controversies going on.  
20 It was very hard to get this bill passed. And one of  
21 the sticking points was how to enforce certain parts  
22 of the bill that people feared would not be enforced  
23 properly by the juries that existed in southern states  
24 at the time. And Carl Auerbach, as a remedies

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1 professor, which I am, too, and therefore have a  
2 particular soft spot for Professor Auerbach. He came  
3 up with a solution that avoided jury trials. And then  
4 Senate Majority Leader Lyndon Johnson thought the idea  
5 was a good one. He went forward with it and, as a  
6 result, the bill got passed.

7 That changed history in lots of ways.  
8 They might have come up with a different solution if  
9 Carl hadn't been around, but this was the solution they  
10 went with. It also gave Lyndon Johnson the credibility  
11 to run for president in 1960, which he otherwise might  
12 not have had. That meant that he was nominated to be  
13 vice president and then later became president. So  
14 also without Carl's article, we might not have had LBJ  
15 as president. All sorts of things would have been  
16 different.

17 Anyway, in addition to his other  
18 achievements, Professor Auerbach is now 100 years old,  
19 and that's an achievement in itself. So I would like  
20 the Commission to honor him on that.

21 COMMISSIONER NARASAKI: Mr. Chair, this  
22 is Commissioner Narasaki. I support this statement by  
23 the Commission. While Professor Auerbach and I do not  
24 see eye to eye on issues, we do see eye to eye on the

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1 importance of the 1957 Act, and I wholeheartedly  
2 support it.

3 VICE CHAIR TIMMONS-GOODSON: This is  
4 Commissioner Timmons-Goodson. I agree with what  
5 you've said, Commissioner Narasaki. I'm a firm  
6 believer that we don't necessarily expect to agree with  
7 everybody on everything, and that when folks do things  
8 worthy of applause and recognition, we should do that.  
9 Even more so, I believe in giving folks their flowers  
10 while they can still sniff them and smell their  
11 fragrance. And this happy birthday from the  
12 Commission I put in that category, and so I say happy  
13 100th, Professor.

14 COMMISSIONER HERIOT: Do we need a motion  
15 on this then to vote on?

16 CHAIRMAN CASTRO: Yes.

17 COMMISSIONER HERIOT: Okay. I make the  
18 motion.

19 CHAIRMAN CASTRO: And then anyone want to  
20 --

21 COMMISSIONER ACHTENBERG: I'll second it.

22 CHAIRMAN CASTRO: Who was that?

23 COMMISSIONER ACHTENBERG: Achtenberg.

24 CHAIRMAN CASTRO: I'm sorry. Who?

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1 COMMISSIONER ACHTENBERG: Achtenberg.

2 CHAIRMAN CASTRO: Achtenberg? Okay.

3 Any additional discussion?

4 (No response.)

5 CHAIRMAN CASTRO: Hearing none, I will  
6 take a roll call vote. Commissioner Kirsanow, how do  
7 you vote?

8 COMMISSIONER KIRSANOW: Yes.

9 CHAIRMAN CASTRO: Commissioner Heriot,  
10 how do you vote?

11 COMMISSIONER HERIOT: Yes.

12 CHAIRMAN CASTRO: Commissioner Narasaki,  
13 how do you vote?

14 COMMISSIONER NARASAKI: Yes.

15 CHAIRMAN CASTRO: Commissioner Kladney,  
16 are you on the line? Commissioner Achtenberg, how do  
17 you vote?

18 COMMISSIONER ACHTENBERG: Yes.

19 CHAIRMAN CASTRO: Commissioner Yaki, how  
20 do you vote?

21 COMMISSIONER YAKI: Well, I was puzzled by  
22 Commissioner Heriot's contrary vote on the previous  
23 item, but, despite that --

24 COMMISSIONER HERIOT: Do it for Carl.

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1 discuss or not discuss that compel me to bring this  
2 forward. This is not meant to be the end-all and be-all  
3 of briefs from the Supreme Court. This is really  
4 concerning two points, one that the majority of the  
5 Commission has with regard to where the decision will  
6 go on the affirmative action case and, secondly, to  
7 express that in a very modest brief that would be  
8 drafted, consistent with our pledge to Heriot's  
9 jurisdiction by collaborative effort of staff and  
10 special assistants to be filed in a timely manner. I  
11 realize that this is probably the last meeting we can  
12 do this in order to make this happen.

13 So I wanted to bring up to this a motion  
14 to authorize, at the discretion of the staff director  
15 or the chair or both, to file a brief on behalf of the  
16 Commission expressing our view, support, and our  
17 viewpoints on the issue of affirmative action in higher  
18 education. And we'll circulate simply a draft. It's  
19 not going to be the final one. I'm sure there are  
20 people who would wish to make some changes and  
21 alterations to it. Ultimately, I think that if a  
22 majority of us authorize the staff director and chair  
23 to approve the final version, I would be comfortable  
24 with that, rather than having it come back and deal with

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1 it again.

2 But I think it's important that we vote  
3 officially on position on this important matter. This  
4 Commission has done so previously. When I was in the  
5 minority, the majority took positions on Supreme Court  
6 cases, and I would like us to join that, especially on  
7 this very, very important issue.

8 CHAIRMAN CASTRO: Thank you, Commissioner  
9 Yaki. So I'll consider that a motion. Do we have a  
10 second for discussion?

11 MS. HEPLER: This is Jennifer in the  
12 Office of General Counsel.

13 COMMISSIONER HERIOT: Don't we need a  
14 second before we need to discuss this?

15 CHAIRMAN CASTRO: Yes, that's why I'm  
16 asking for a second right now.

17 COMMISSIONER ACHTENBERG: I'll second  
18 that. Achtenberg here.

19 CHAIRMAN CASTRO: Okay. Now we can  
20 discuss it.

21 MS. HEPLER: Okay. There are legal  
22 issues with us, the Commission, filing an amicus brief.  
23 First of all, the Commission does not have authority  
24 to file an amicus brief. Our attorneys are the

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1 Department of Justice. We do not have litigation  
2 authority. I wasn't prepared for this, so I don't have  
3 the statutes; I'll be honest. That's part one.

4 But the commissioners, on the other hand,  
5 in their individual capacities, not using government  
6 resources or staff, are capable of filing amicus briefs  
7 in the Supreme Court. It would be in your individual  
8 capacities outside of the job. You can use resources.  
9 You can file on your own in the Supreme Court. You can  
10 file one collectively, but it shouldn't be as  
11 commissioners of the U.S. Commission on Civil Rights  
12 and you shouldn't be using agency resources to do it.  
13 You can do that in your individual capacity, but the  
14 Commission itself does not have authority to file a  
15 brief.

16 CHAIRMAN CASTRO: Well, I think  
17 Commissioner Yaki has indicated that there is a --

18 MS. HEPLER: Actually, there was -- let me  
19 say, in the past, the legislation, it was proposed, but  
20 it did not pass.

21 COMMISSIONER HERIOT: When was it  
22 proposed? Was this the Reagan-era statute that we're  
23 talking about?

24 MS. HEPLER: I'm not sure. I said I

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1 wasn't prepared for this. This came up this morning,  
2 so I don't have anything. I do know, in the past, it  
3 was proposed to give the Commission amicus brief  
4 authority, and it did not pass. I can't --

5 COMMISSIONER YAKI: This is Commissioner  
6 Yaki. Are we talking specifically amicus authority?  
7 Because I know that -- is it specific only to amicus  
8 authority with regard to the --

9 MS. HEPLER: No, no, it's all litigation  
10 authority. If you read --

11 COMMISSIONER YAKI: Okay. But Jennifer,  
12 Jennifer, Jennifer, with all due respect, this  
13 commission has engaged in litigation in the past and  
14 I've actually read transcripts where --

15 MS. HEPLER: When?

16 COMMISSIONER YAKI: -- the board  
17 discussed this in terms of actually intervening,  
18 actually filing and intervening at district and trial  
19 court level.

20 MS. HEPLER: I don't know what they did in  
21 the past. I'm just saying legally the Commission does  
22 not have the authority to litigate.

23 CHAIRMAN CASTRO: Well, it's not  
24 litigating.

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1 MS. HEPLER: Filing in the Supreme Court,  
2 the statutory authority is with the Solicitor General.

3 COMMISSIONER YAKI: Well, Jennifer, let  
4 me ask you this: if there was a filing to the Supreme  
5 Court that listed our position as commissioners on the  
6 front page of the brief, is that legal or illegal?

7 MS. HEPLER: It shouldn't be on there. I  
8 said you could file in your individual capacity.

9 CHAIRMAN CASTRO: Yes. I think that,  
10 clearly, Jennifer, as you indicated, you're not fully  
11 prepared today to opine on this. So I would say that  
12 --

13 MS. HEPLER: I did one a couple of years  
14 ago, but, you know, it's been a couple of years. But,  
15 I mean, you can file in your individual capacity, the  
16 commissioners can. But the --

17 COMMISSIONER YAKI: But you can identify  
18 yourselves as commissioners on the front page, correct?

19 MS. HEPLER: You're not supposed to, no.  
20 You know, the rule on teaching, speaking, writing,  
21 etcetera, is it can be one of many positions and not  
22 more conspicuous than the others.

23 COMMISSIONER YAKI: But it's the position  
24 that's not supposed to be done?

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1 MS. HEPLER: It shouldn't be in the  
2 caption. I wrote a memo. I mean, I don't know what  
3 happened to it. I think it was circulated a couple of  
4 years ago about not using your Commission title in the  
5 caption. You can file individually. You're special  
6 government employees, the commissioners are. You have  
7 an outside life.

8 COMMISSIONER YAKI: So the Commission  
9 cannot even send a, the Commission can't issue a  
10 statement and it cannot take a position on litigation.  
11 Is that what your papers are saying?

12 MS. HEPLER: What I'm saying, you asked  
13 about filing an amicus brief, we do not have legal  
14 authority to file an amicus brief.

15 COMMISSIONER YAKI: Okay. Well, I think  
16 I would ask you to, I would say this is a case I'm not  
17 going to push or force my colleagues into doing anything  
18 that is contrary to what you're stating right now. But  
19 I would urge you to go back into the transcripts of --  
20 I'll get you the date -- where the Commission actually  
21 not only did that but actually hired a lawyer and  
22 intervened in a court proceeding.

23 MS. HEPLER: Well, I'm not saying -- they  
24 may have. But, you know, I've worked for the

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1 government for decades. I have lots of legal  
2 experience, and I know the law.

3 CHAIRMAN CASTRO: Well, I think we need a  
4 more complete analysis than just one where we're sort  
5 of --

6 MS. HEPLER: I said I didn't know this was  
7 coming up today.

8 CHAIRMAN CASTRO: I understand that. So  
9 what I would say is, before we make any determinative  
10 conclusions on the legality or the authority to do this,  
11 I think we do need to have a thoughtful analysis of it.  
12 Having said that, Commissioner Yaki, what's the timing  
13 of getting something like this filed if we were able  
14 to do it?

15 COMMISSIONER YAKI: I'm trying to  
16 remember. I think, for information purposes only,  
17 Commissioner Narasaki, I'd like to brief you and get  
18 deadlines around this case.

19 COMMISSIONER HERIOT: I think the  
20 respondent's brief is due, like, the 26th and this would  
21 be due like a week after that.

22 CHAIRMAN CASTRO: Okay. October 26th?

23 COMMISSIONER HERIOT: A week from October  
24 26th. It might have been the 24th, but it's like that

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1 kind of a schedule we're talking about.

2 CHAIRMAN CASTRO: We actually could have  
3 the Office of the General Counsel take a closer, more  
4 thoughtful look at this issue and make what would be  
5 a better, at least a more reasonable decision on whether  
6 or not this is something we can do or not. In the  
7 interim, we could provide whatever historic data that  
8 we have to support this having been done before.

9 COMMISSIONER YAKI: Okay, great.

10 CHAIRMAN CASTRO: Maybe we can conduct a  
11 special telephonic meeting in order to meet the  
12 deadline if it is, in fact, something we are allowed  
13 to do. Will that work for you?

14 COMMISSIONER YAKI: Okay, sure.

15 COMMISSIONER NARASAKI: Mr. Chair, this  
16 is Commissioner Narasaki. I have a question for  
17 Jennifer. So what is the sanction if commissioners do  
18 put their names on the caption as commissioners and  
19 don't in the caption indicate that they're not  
20 representing the Commission?

21 MS. HEPLER: The sanction?

22 COMMISSIONER NARASAKI: You've indicated  
23 that it's improper and it violates ethical rules.

24 CHAIRMAN CASTRO: Apparently, there's no

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1 real sanctions since it's been done before by some of  
2 our colleagues.

3 MS. HEPLER: You know, I can't, I can, you  
4 know, advise against it, I can say it can't be done.  
5 As you know, there's some issue with use of letterhead  
6 in the Senate report. I don't have, I mean, as an  
7 ethics officer, I'm telling you it's wrong.

8 COMMISSIONER NARASAKI: So that's a gap  
9 that the Commission might look at then?

10 MS. HEPLER: Right.

11 COMMISSIONER NARASAKI: Okay, thank you.

12 CHAIRMAN CASTRO: All right. So we'll  
13 take a closer look at this issue. And then if it looks  
14 like there may be some opportunity to move forward on  
15 this, we can schedule a telephonic meeting to address  
16 the issue specifically. Does that work?

17 COMMISSIONER KIRSANOW: Mr. Chair?

18 CHAIRMAN CASTRO: Yes.

19 COMMISSIONER KIRSANOW: Kirsanow here.  
20 Just a couple of observations. First, Commissioner  
21 Yaki's quote that the Commission, in the past, did hire  
22 an outside counsel did so improperly. I'm sure, if you  
23 look at the circumstance, because it was the occasion  
24 upon which the majority of the Commission sought to kick

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1 me off the Commission.

2 COMMISSIONER YAKI: I tried to keep that  
3 detail out, Commissioner Kirsanow.

4 COMMISSIONER KIRSANOW: That was improper  
5 use of resources. That was not litigated, did not have  
6 to reach that issue because the real issue was whether  
7 certain vacancies had occurred and that was an  
8 overarching issue that had larger and greater  
9 significance.

10 Second, the other observation, and I have  
11 no problem with the majority, of course, voicing its  
12 opinion on a certain matter, I just would note that our  
13 most recent hearings and briefings on this subject are  
14 contrary to the position taken in this particular  
15 brief. We've had briefings in, I think, in 2005, 2007,  
16 and I think the latest was 2010. And if this Commission  
17 is going to take a position, it might be useful to take  
18 a position consistent with the findings and recs that  
19 it deduced.

20 CHAIRMAN CASTRO: Okay. Any other  
21 comment? If not, then we will put this off until we  
22 follow up more thoughtfully with our general counsel's  
23 office and examine the historic that may or may not  
24 exist. And then, if needed, we will schedule a

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1 follow-up meeting in time for the deadline to be met  
2 if we can do this. If we can't, then obviously we won't  
3 do that. Is everyone in consensus with that plan?

4 COMMISSIONER KIRSANOW: Sure.

5 CHAIRMAN CASTRO: Okay, all right. So  
6 next we'll move onto management and operations. Mr.  
7 Staff Director, you have the floor.

8 **III. MANAGEMENT AND OPERATIONS**

9 MR. MORALES: Thank you, Mr. Chairman.  
10 Did you want to, was there a motion in terms of pushing  
11 off the findings and recommendations? Was that up for  
12 discussion, or was that --

13 CHAIRMAN CASTRO: We voted to amend the  
14 agenda to take that off.

15 MR. MORALES: Take it off. Okay. I'm  
16 sorry. My bad. Thank you, sir. A couple of things  
17 here. One, I wanted to just do a quick shout-out for  
18 Barbara de La Viez. I wanted to make sure that the  
19 commissioners understood that she stepped up to help  
20 us with the Lincoln Cottage and using some of her  
21 expertise to help pull it together, and I just wanted  
22 to let you know that. She's here in the audience, and  
23 I just wanted to acknowledge that and thank Ivy Davis  
24 for allowing her to participate, as well. We're hoping

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1 it won't be a lot of her time because she's got a lot  
2 of other very important work she does, of course, but  
3 we really needed somebody to help us pull it all  
4 together, and I just want to acknowledge her  
5 contribution, at least to this point. And so we'll  
6 look to her to help pull all this together for us, so  
7 I just wanted to make that.

8 Second, sir, I'd like to discuss and update  
9 you all on the continuing resolution. I'd like to  
10 again do another shout-out to staff, you know, John  
11 Ratcliffe, Jennifer Hepler, and Tina and all the team,  
12 the executive team we have. We went through a lot of  
13 fire drill in terms of preparing for the shutdown. We  
14 had to meet with OMB, OPM. We were on calls everyday  
15 and all that. And you saw, of course, a lot of the  
16 notices we went out.

17 But I wanted to give you an update on the  
18 continuing resolution. I mean, I don't have much more  
19 than, obviously, we all know. But the Commission  
20 currently is operating under a continuing resolution  
21 on December 11th. We're all hoping, like the rest of  
22 the country, that we'll get full appropriations.

23 But I just want to remind the commissioners  
24 that, under a CR, we operate at a minimal level until

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1 we receive our 2016 appropriation. This will not  
2 impact commissioner travel to Commission meetings or  
3 the December 11th Lincoln Cottage event. However, it  
4 may limit some other activities that we have, but I just  
5 want to put that on your radar. And, of course, we  
6 don't know how long we'll be under continuing  
7 resolution, if they'll continue that after December  
8 11th for a short period until we get the full one. But  
9 I just wanted to bring that to the commissioners'  
10 attention.

11           Lastly, I have, I am pleased to announce  
12 the selection of a new general counsel for the  
13 Commission. Maureen Rudolph accepted the position of  
14 general counsel and will start on Monday, September  
15 19th. Ms. Rudolph is currently --

16           COMMISSIONER     NARASAKI:           October.  
17 October 19th.

18           MR. MORALES:    I'm sorry. What did I say?  
19 My really bad. Boy, that tells you what goes on when  
20 you're trying to juggle a lot of things here. Yes, this  
21 Monday, coming Monday. Sorry. Thank you for the  
22 correction there. That's what happens when you write  
23 things at 10:00 at night.

24           Ms. Rudolph is currently senior counsel

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1 with the U.S. Department of Justice. She comes with  
2 over 15 years of legal experience at the Department of  
3 Justice. She has extensive litigation in Native  
4 American law, natural resources law, and has handled  
5 complex legal and policy matters for the Department of  
6 Justice. In addition, she has significant  
7 administrative law experience.

8 Ms. Rudolph currently supervises a  
9 13-member attorney team, provides legal advice and  
10 representation to senior leadership at the Department  
11 of Justice. I'm confident that Ms. Rudolph will  
12 provide the Commission with outstanding legal advice  
13 to carry out the mission of the Commission, and we look  
14 forward to her and are confident that she'll really be  
15 able to help us out here, especially now that we have,  
16 I think one of her first issues, obviously, is going  
17 to be the ability of the Commission to prepare an amicus  
18 brief.

19 So with that, that's all I have, Mr. Chair.

20 CHAIRMAN CASTRO: Okay. Any questions  
21 for the staff director? Hearing none, let me just add  
22 we also received an email yesterday from my special  
23 assistant, Juana Silverio, who is moving on to serve  
24 at another federal agency. I know she's not there, but

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1 I just want to publicly thank her for the support she's  
2 given not only to me in my role as chairman and her  
3 position as my special assistant but really in her  
4 overall efforts to the expansion and moving forward the  
5 mission of the Commission. She'll be sorely missed.  
6 She made a great impact here and left a lot of friends  
7 and left an important legacy. She can't be replaced,  
8 but we will definitely hire someone to stand in her  
9 shoes, and that will happen shortly. I just wanted to  
10 put on the record how appreciative we are of the service  
11 that she's given us here at the Commission.

12 COMMISSIONER HERIOT: Mr. Chairman, I was  
13 curious. I wanted to be able to write an email message  
14 to Juana telling her that I would miss her and such,  
15 but I figured she wouldn't be on the dot-gov anymore.  
16 Is she still getting dot-gov email for a few more days?

17 CHAIRMAN CASTRO: You know, I sent an  
18 email this morning and it bounced back saying she's no  
19 longer with the Commission, but I can provide you with  
20 her personal email offline so you can do that.

21 VICE CHAIR TIMMONS-GOODSON: And if you  
22 would share that with me, as well, Mr. Chair.

23 CHAIRMAN CASTRO: I'll share it with all  
24 commissioners.

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1                   COMMISSIONER NARASAKI:    Thank you, Mr.  
2                   Chair.  I had the same thought, but it bounced back so  
3                   --

4                                           **IV.  ADJOURN MEETING**

5                   CHAIRMAN CASTRO:  Yes.  Will do.  I'll do  
6                   that after we get off the phone.  Okay.  Well, that's  
7                   our business agenda.  So I'm hereby adjourning the  
8                   meeting.  It is currently 11:29 Eastern Time, and thank  
9                   you, everyone.

10                                       (Whereupon, the above-referred to matter  
11                                       went off the record at 11:29 a.m.)

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