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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
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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(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.
CHAIRMAN CASTRO: Okay. Is the staff director present?

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

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

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

I. APPROVAL OF AGENDA

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

COMMISSIONER NARASAKI: I second.

VICE CHAIR TIMMONS-GOODSON: Second.

COMMISSIONER HERIOT: Mr. Chairman?

CHAIRMAN CASTRO: Are there any amendments?

COMMISSIONER HERIOT: Yes. Mr.
Chairman, can you hear me?

CHAIRMAN CASTRO: Yes, go ahead.

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

COMMISSIONER ACHTENBERG: I'll second that motion.

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

COMMISSIONER ACHTENBERG: I do, Mr. Chairman. I have a motion to amend the agenda to postpone consideration of Part B until our November meeting. Quite frankly, Mr. Chairman, I need additional time to put forward a series of proposed
findings and recommendations on the Peaceful Coexistence project.

CHAIRMAN CASTRO: Okay.

COMMISSIONER ACHTENBERG: So that's my motion.

CHAIRMAN CASTRO: Okay.

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

CHAIRMAN CASTRO: Go ahead.

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

CHAIRMAN CASTRO: Okay.

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

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

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

CHAIRMAN CASTRO: Yes, all the amendments sort of omnibus seconded. I think that's how we
normally do it so --

COMMISSIONER NARASAKI: Mr. Chair?

CHAIRMAN CASTRO: Yes.

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

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

COMMISSIONER ACHTENBERG: I'll second that motion.

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

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

CHAIRMAN CASTRO: Okay.

COMMISSIONER HERIOT: I'll second that.

CHAIRMAN CASTRO: Okay, all right. So
we'll vote first on the amendment to add the consideration of Carl Auerbach's proclamation. All those in favor, say aye.

(Chorus of ayes.)

CHAIRMAN CASTRO: Any abstentions?
(No response.)
CHAIRMAN CASTRO: Any declines?
(No response.)
CHAIRMAN CASTRO: Okay. The motion to push back consideration for Part B of finding some recs for the Peaceful Coexistence report, all those in favor say aye.

(Chorus of ayes.)

CHAIRMAN CASTRO: Any opposed?
COMMISSIONER KIRSANOW: Kirsanow. No.
CHAIRMAN CASTRO: Okay. Kirsanow is opposed.
COMMISSIONER HERIOT: I've abstained.
Heriot abstains.
CHAIRMAN CASTRO: Okay. Heriot abstains. All right. The motion passes. Motion to add a discussion of an amicus brief in the affirmative action case, all those in favor say aye.

(Chorus of ayes.)
CHAIRMAN CASTRO: Any opposed?

COMMISSIONER NARASAKI: Commissioner Narasaki says no.

CHAIRMAN CASTRO: Commissioner Narasaki opposes. Okay. Any abstentions?

VICE CHAIR TIMMONS-GOODSON: Timmons-Goodson abstains.

CHAIRMAN CASTRO: Okay. The one abstention and the no. The motion passes. And then a motion to remove the Maryland SAC from consideration at today's business meeting. All those in favor, say aye.

(Chorus of ayes.)

CHAIRMAN CASTRO: All those opposed?

(No response.)

CHAIRMAN CASTRO: Any abstentions?

(No response.)

CHAIRMAN CASTRO: Okay. So then we will add the discussion of the amicus brief after we discuss at the end the centennial proclamation, okay? So now there's no further amendments. Let's vote to approve the agenda in whole. All those in favor, say aye.

(Chorus of ayes.)

CHAIRMAN CASTRO: Any opposed?
CHAIRMAN CASTRO: Any abstentions?

(No response.)

CHAIRMAN CASTRO: Okay. Program Planning.

II. PROGRAM PLANNING

STATUS ON PENDING COMMISSION REPORTS AND HIRING OF CONTRACTORS BY OCRE

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

MS. FRENCH-BELL: Good morning. My name is Angela French-Bell. I'm the Assistant Staff Director for the Office of Civil Rights Evaluation, and this is our report. The first thing we wanted to cover would be the contractors, followed by an update on reports. We will delve briefly into environmental justice, covering our tentative discuss. We will discuss why we will want the report to focus on coal ash, discuss potential site visits that we could conduct as a part of our environmental justice report, discuss possibly keeping the record open until April.
to make sure that we have all the data that we need for our report, and then Darren Fernandez, a civil rights analysis for OCRE, will discuss the outline that he created as part of this project.

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

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

CHAIRMAN CASTRO: You know, this is fine.

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

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

CHAIRMAN CASTRO: You went to the Native American report?

MS. FRENCH-BELL: Yes.
CHAIRMAN CASTRO: Oh, okay.

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

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

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

CHAIRMAN CASTRO: All right, okay.

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

Further, we have two options. We can either send out reports to you. We have three reports that are in line nearly ready to go out. We can either send them to you every two weeks, or we can send them to you on a monthly basis. The advantages of sending
it out every two weeks will be that we'll get more reports out during the fiscal year. The disadvantage is that it will be more of a burden on the commissioners and their assistants to get it done in a timely manner. It might not provide them adequate time for review.

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

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

MS. FRENCH-BELL: Exactly.

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

MS. FRENCH-BELL: That works.

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

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

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

MS. FRENCH-BELL: Okay. So in terms of
the schedule being doable, is it easier to make them
do it with a month in between or with two weeks in
between? What would be better for you?

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

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

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

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

COMMISSIONER HERIOT: From my standpoint,
stand your ground is more important and, therefore, I want more time for stand your ground.

MS. FRENCH-BELL: Okay.

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

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

COMMISSIONER NARASAKI: If the other commissioners agree.

CHAIRMAN CASTRO: That makes sense.

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

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

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

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

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

The next thing that we wanted to discuss is the coal ash issue and why we wanted to focus the statutory enforcement report on the coal ash issue.
First of all, it's an emerging issue. The EPA just recently put out the coal ash rule. That rule will help to determine the future of coal ash facilities moving forward, so this our chance to be on the cutting edge of an issue that's coming out at the current time.

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

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

It's also meaningful because so many people are suffering as a result of these coal ash...
facilities. There's evidence that there are cancer clusters near these coal ash facilities and other ailments.

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

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

Another area that we could possibly cover
would be Eden, North Carolina. That involves Duke Energy. A pipe burst, spilling toxins into the Dan River, and it's had a very negative impact on the communities that are in that area.

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

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

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

MS. FRENCH-BELL: That is correct. It is. And this will be a chance for us to do more
independent research on the ground to see what's happening to really get a chance to assess some of the negative health impacts that the communities are facing.

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


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

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

I would like to see, and we could talk about how best to do it so it doesn't impede your staff's ability, but I would like to see at least some
discussion about the Gulf state region and the environmental issues that remain for those communities after the hurricanes and the BP oil spill.

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

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

MS. FRENCH-BELL: It is. It's leaking gas. It's particulates. It's sludge that goes into the water where it's stored. But if they don't store it properly, it leaks into the water and contaminates the water. So Darren is going to talk about it more
during his presentation and explain what it is, but it has multiple negative health impacts.

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

MS. FRENCH-BELL: Yes.

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

MS. FRENCH-BELL: Thank you, thank you.

The second to last thing we wanted to talk about was possibly keeping the record open until April. If we end up being able to do a forum meeting, that would probably occur in late February – early March. We would like to have people who were not able to attend the meeting be able to submit comments up to a month later. So if we kept the record open initially, that would enable us to be able to receive all of the public comments that we would need to complete our report.

COMMISSIONER NARASAKI: Mr. Chair, this is Commissioner Narasaki. I am a fan of keeping the record open. It saves us from having to keep revisiting the question. As we learned last year, we need that time to make sure we have a complete record. But I do want to ask about -- I also like the idea of having a town hall outside of D.C., but I want to
understand the impact because we also have hearings planned for the criminal justice topic and the education topic that we adopted. I think at least I'm concerned that the hearing for the education not be so late that we wouldn't be able to have a good chance of getting a report done in this year, this next year.

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

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

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

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

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

COMMISSIONER HERIOT: Can I jump in here, as well, Mr. Chairman? I want to also agree with Commissioner Yaki that having a field hearing of this sort, a briefing, whatever we want to call it, is
important. I also agree with the Chairman that Chicago
is a really nice city, and I also want to point out that,
if we're looking to save money, and I think we always
are here, when we have events outside of Washington,
it costs the Commission a rather sizable chunk of
change. And one thing we could do to try to cut down
on the expense is to appoint a subcommittee to be the
ones that hear what goes on in Chicago, and I would
nominate the Chairman to be one of those since you're
on location. Perhaps Commissioner Kirsanow in
Cleveland and Commissioner Yaki because it was his
proposal, I believe, would make a very nice
subcommittee to do the Chicago thing. If Kirsanow
can't make it, since I'm an old Chicago girl, I love
to come to Chicago, but it seems cheaper to send someone
from Cleveland than it does to send someone from San
Diego, and we might be able to save money that way.

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

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

COMMISSIONER YAKI: Shotgun on the couch.
MS. FRENCH-BELL: Thank you so much. So the next thing that we'll have is Darren Fernandez to talk about the outline.

PRESENTATION OF OUTLINE ON HEARING PLAN FOR 2016 STATUTORY ENFORCEMENT REPORT ON ENVIRONMENTAL JUSTICE

MR. FERNANDEZ: Good morning, Commissioners. This is Darren. Good morning. Thank you for allowing me to speak with you today. I'd like to walk through the outline for you and possibly answer any questions that you might have. Chapter one, if we can start, I have a few sections in here. The first is the introduction and kind of laying out an anecdote to set up the issue and get more of a human feel to it. I plan on introducing Esther Calhoun, who the media has portrayed as being almost the face of the issue when it comes to Alabama, and look at the Tennessee Valley spill and look at coal ash spillage in North Carolina and eventually tie that into environmental justice. In that section, in the environmental justice section, I would like to address what the Commission has done in the past, the Commission's past report, "Not in My Backyard," and then look at the updates of what happened since then.
Turning the page, we'll go onto environmental justice in Title VI and EO. So everything is going to be tied in using transition steps. We're going to look at Title VI and Executive Order 12898 and kind of spell that out.

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

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

COMMISSIONER HERIOT: I was just concerned rather something that's in gaseous form would
still be considered coal ash. I think that Angela
clarified that this could be particulate matter, that
it's gassy but is, in fact, solid if you smash it down.

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

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

COMMISSIONER NARASAKI: Darren, before
you go there, this is Commissioner Narasaki. I just
have a question, and this is not an area I'm an expert,
so this could be very much a stupid question. But are
there state regulations that also impact this area?
And if so, how do you plan to treat that?

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

I don't know if I answered your question.

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

MR. FERNANDEZ: Yes, I will look at the state regulations. This is just a very preliminary outline just to kind of, you know, outline exactly where the direction of the paper is going. But I would be happy to meet with Jason to, you know, further explore the issue.
COMMISSIONER NARASAKI: Well, I mean, just given your description that there's a right now a state piece of it, I think it would be important to at least understand what that is.

MR. FERNANDEZ: Yes.

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

On the other hand, I think just to, generally, the outline is way too heavy on law. The section on equal protection I think needs to go entirely. You know, don't go back and start talking about cases that have nothing to do with our basic topic, other than the just general constitution. Nobody is looking to the U.S. Commission on Civil Rights to explain constitutional law to them. This is not what we should be doing. It's not a good idea. You know, if you do a terrific job, no one will care because other people have done terrific jobs in other contexts. If you do a bad job, on the other hand, then like every
mistake that we make, it will be held against us. So
don't try to, like, invent why we have the concept of
law or anything. I would file a general discussion of
equal protection and due process as way too abstract
for our purposes. We want to talk about this notion
of environmental justice, period.

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

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

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

COMMISSIONER HERIOT: We end up
embarrassing ourselves when we talk about tough --
COMMISSIONER NARASAKI: I think it's hard to --

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

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

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

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

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

COMMISSIONER HERIOT: Bolling v. Sharpe,

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

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

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

COMMISSIONER HERIOT: I don't quite understand what you mean by a university that would be willing to help us. I mean, how would we do this that wouldn't run us into so much time that, by the time we
have something worked out with the university, we've
all died from old age?

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

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

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

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

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

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

COMMISSIONER HERIOT: Okay. I got a
couple of comments. If I'm remembering correctly, there's a place in here where we talk about partnering with EPA. Do you use that word?

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

COMMISSIONER HERIOT: Yes, let me just --

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

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

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

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

MS. FRENCH-BELL: No, that will not happen. We would glean information from what they have
out or perhaps talk to them. They are not our partners.

COMMISSIONER HERIOT: Okay.

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

COMMISSIONER HERIOT: That's great.

Here's my biggest comment, though, is that I always want to see that we have done some research that otherwise is unavailable. And I'm worried that we're going to get in over our head, and if talks about, you know, medical research, you know, we're going to have a very difficult time making a useful comment on that because nobody here is, you know, specializes in medical research. You know, we've got a social scientist here that's going to be good with statistics, but we don't have anybody that is knowledgeable about medical issues.

MS. FRENCH-BELL: Agreed and agreed.

COMMISSIONER HERIOT: And so I'm terrified of this one. I'm just terrified. Here's a proposal I have, and I have no idea whether this is useful or not. But one thing that occurred to me, maybe somebody has already done it, maybe not. But I would just like to know exactly where the coal ash is. You know, is there some way to map out across the country
here are how many coal ash dumps there, here is exactly where it's located, here's the date they started to put coal ash in that spot, and then here's the date they stopped doing it or it's ongoing. And that way, that can be coordinated with census data. That strikes me as a genuine contribution here, just to be able to say nobody else knew exactly where it is, but we can tell you where it is.

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

COMMISSIONER HERIOT: Is it doable?

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

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

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

COMMISSIONER HERIOT: Well, the fact that somebody knows that it's 735 means that maybe it's
already been mapped out well. But at least that's data. You know, maybe we can, like, increase the actual sum total of human knowledge here somewhere, rather than just reporting what somebody else did.

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

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

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

VICE CHAIR TIMMONS-GOODSON: This is Commissioner Timmons-Goodson. I think that's an
excellent idea, Commissioner Heriot. And when you couple that data with a report from interviews with individuals on the ground that are actually living around and with this, I think it makes it even more powerful.

MS. FRENCH-BELL: Thank you. Agreed.

Are there anymore questions for us?

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

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

COMMISSIONER ACHTENBERG: Mr. Chairman, I have one. Ms. French-Bell, is there any possibility that either the National Institutes of Health or a related organization might be in a position to advise us or offer some kind of expert assistance with regard to the medical issues that you propose to address? But
as Commissioner Heriot pointed out, we have very little
resident expertise with which to handle those issues.

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

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

MS. FRENCH-BELL: Thank you for that.

CHAIRMAN CASTRO: Good idea.

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

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

DISCUSSION AND VOTE ON DATES FOR 2016 HEARINGS

MS. FRENCH-BELL: Oh, we wanted to
suggest, after talking with some of the special
assistants, two potential hearing dates. The first
one that we wanted to suggest was during the March
meeting, so I believe that's March 18th, to have the municipal fees briefing and the second one is May 20th and that's for our elementary and secondary education briefing. The reason that we wanted those briefings to be at that time is that, one, we would probably have our money in from the continuing resolution from Congress. The second one is it would give us enough time to be able to finish up some of the other reports that we have in the backlog. Three, it would be staggered, so, unlike last year when the reports were back to back and it was difficult for us to be able to handle our work as efficiently as we would like to, they would be staggered out so that we would be more efficient and better able to handle the briefings and it would also be beneficial to other staff who will be working to help us on the logistics and other issues that go along with the briefings. So we wanted to suggest those dates to you and see if they work.

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

MS. FRENCH-BELL: Yes.

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

MS. FRENCH-BELL: Exactly.
COMMISSIONER NARASAKI: Yes. This is Commissioner Narasaki. I and Vice Chair Timmons-Goodson have talked with staff, and we think these dates work.

VICE CHAIR TIMMONS-GOODSON: Yes.

MS. FRENCH-BELL: Thank you both.

CHAIRMAN CASTRO: So is there a motion?

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

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

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

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

VICE CHAIR TIMMONS-GOODSON: Vice Chair Timmons-Goodson again. One of the reasons that the
schedule appeals to me is that I believe there's enough
time built in that we should be able to get all of the
reports on the table out before any of our deploying
commissioners leave.

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

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

COMMISSIONER YAKI: So moved.

COMMISSIONER ACHTENBERG: Could you
restate the second hearing date?

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

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

CHAIRMAN CASTRO: The Vice Chair moved.

Is there a second?

COMMISSIONER NARASAKI: Narasaki
seconds.

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

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

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

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

COMMISSIONER NARASAKI: I vote yes.

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

COMMISSIONER ACHTENBERG: Yes.

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

VICE CHAIR TIMMONS-GOODSON: Yes.

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

Do we need to vote on your outline for the
environmental justice report, or is this sort of to get our temperature and consensus?

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

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

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

MR. MORALES: Yes. Thank you, Mr. Chairman. I'll try to be as brief as I can. Essentially, you know, you've tasked us with looking at December 11th as a date to have a ceremony commemorating the passage of the 13th Amendment. We've done some preliminary work on that that I'd like to provide to you and then talk about how those, that date can, you know, has some complications in terms of a Commission business meeting.
First of all, I want to, you know, just let you know that we have reserved the Cottage for December 11th. We've been working with the Lincoln Cottage folks. We've been out there twice to see the venue. I'd like to, you know, thank staff, the special assistants that have been particularly helpful. They've been May Royce. Jason has been helpful, as well as Juana and Alison and Carissa, as well, have been helpful in helping us plan some of the preliminary points of this.

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

A second option would be perhaps to move the Commission business meeting to either later that afternoon or earlier the preceding day. And then I kind of threw in, if we did it on a Thursday, the day before the ceremony, we could do it late afternoon and perhaps have a holiday party after the Commission hearing. But I'll get into that in a moment.
Let me just get real quickly into some details about the first option of holding a Commission meeting and a ceremony on the same day. I believe and my investigation reveals that it will result in higher cost and more uncertainty about attendance to the event. The cost of renting the cottage is $5,895. And for that, we get access from 9 a.m. to 12 noon. The room, this is actually the room that will be holding the event, is where President Lincoln wrote the Emancipation Proclamation. He didn't sign it there. He signed it at the White House, pursuant to whatever law was in force at the time. Nevertheless, historical records indicate that he actually created, drafted, and wrote it in that room. So the historical significance, of course, is impressive.

And that room will hold 75 people. And while the acoustics in the room are outstanding, they do not have a microphone system. Obviously, it was a home built almost 200 years ago, 150 years ago. So we would have to rent a microphone system at a cost of approximately $1800. We would have to pay a court reporter to travel and be on-site, and the estimate cost was about $2500. We would incur additional staff travel
time, prep time, breakdown time, and additional cost for staff to drive or travel to take equipment and meeting material. The estimate I was given by our staff was approximately 25 additional man hours of work.

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

The second option I've looked at and I'd like to present to you, if you'll bear with me, would be to hold the Commission business meeting possibly the day before on Thursday the 10th in the afternoon. You know, I know there are some challenges with travel of the commissioners, but, if you'll bear with me, we could perhaps do it from like 3:30 to 5 and then from 5 have a holiday party here at the Commission. Using this option, the Commission could jointly host the 13th Amendment commemorating ceremony with the Lincoln Cottage. And by hosting it jointly with them, the fee
to us would be decreased from $5,895 to $3,895, a savings of $2,000 for us. We'd save the costs of renting a microphone system, transporting, paying for a court reporter, costs incurred by staff to travel.

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

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

So I want to present those to you for discussion. I can also discuss the preliminary agenda for the day or for the event if you'd like. I don't know if you want to get into that at this point. But
I just wanted to throw that out there and get your feedback and see if this is something to consider or if you wanted to go ahead and have the business meeting that morning. So I throw that up for discussion. Thank you.

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

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

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

COMMISSIONER HERIOT: That probably works better for me.

COMMISSIONER YAKI: I don't have a problem.
with that.

COMMISSIONER ACHTENBERG: This is Commissioner --

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

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

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

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

COMMISSIONER NARASAKI: So this is Commissioner Narasaki. I think the partnership is great. Unfortunately, Friday afternoon, I have a standing call that I could not miss. But I would be
okay with the Commission having the business meeting without my presence if that works better for the West Coast commissioners.

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

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

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

COMMISSIONER ACHTENBERG: Yes, I think so.

CHAIRMAN CASTRO: Yes, okay. That's what we shall do then. I don't think we need a vote on that, unless anyone feels strongly about it. It's clear the
direction we want to go. Okay. Then the next item then on the agenda is the consideration of the proclamation centennial Carl Auerbach. Commissioner Heriot, you have the floor.

DISCUSSION OF RESOLUTION HONORING CARL AUERBACH

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

As you know, the Civil Rights Commission was created by the Civil Rights Act of 1957. And at the time, there were a lot of controversies going on. It was very hard to get this bill passed. And one of the sticking points was how to enforce certain parts of the bill that people feared would not be enforced properly by the juries that existed in southern states at the time. And Carl Auerbach, as a remedies
professor, which I am, too, and therefore have a particular soft spot for Professor Auerbach. He came up with a solution that avoided jury trials. And then Senate Majority Leader Lyndon Johnson thought the idea was a good one. He went forward with it and, as a result, the bill got passed.

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

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

COMMISSIONER NARASAKI: Mr. Chair, this is Commissioner Narasaki. I support this statement by the Commission. While Professor Auerbach and I do not see eye to eye on issues, we do see eye to eye on the
importance of the 1957 Act, and I wholeheartedly support it.

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

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

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: Okay. I make the motion.

CHAIRMAN CASTRO: And then anyone want to --

COMMISSIONER ACHTENBERG: I'll second it.

CHAIRMAN CASTRO: Who was that?

COMMISSIONER ACHTENBERG: Achtenberg.

CHAIRMAN CASTRO: I'm sorry. Who?
COMMISSIONER ACHTENBERG: Achtenberg.

CHAIRMAN CASTRO: Achtenberg? Okay.

Any additional discussion?

(No response.)

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

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: Yes.

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

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

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

COMMISSIONER HERIOT: Do it for Carl.
COMMISSIONER YAKI: -- despite that, I'm not going to swim upstream on this one, and I commend Commissioner Heriot for bringing this to our attention. And please send my personal thanks to your colleague, as well.

COMMISSIONER HERIOT: Thank you.

CHAIRMAN CASTRO: So that's a yes?

COMMISSIONER YAKI: Oh, yes. Aye.

CHAIRMAN CASTRO: Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I'll vote yes, as well. So it's unanimous. Will you see then, Commissioner Heriot, that an appropriate copy of this is delivered to the Professor?

COMMISSIONER HERIOT: Thank you.

CHAIRMAN CASTRO: Okay. Next on the agenda is Commissioner Yaki's discussion of his proposal circulated last night for an amicus brief. Commissioner Yaki, you have the floor.

DISCUSSION OF AMICUS BRIEF

COMMISSIONER YAKI: Yes. Thank you very much, Mr. Chair. This is an issue that is important to us. There were sort of other issues that we can
discuss or not discuss that compel me to bring this forward. This is not meant to be the end-all and be-all of briefs from the Supreme Court. This is really concerning two points, one that the majority of the Commission has with regard to where the decision will go on the affirmative action case and, secondly, to express that in a very modest brief that would be drafted, consistent with our pledge to Heriot's jurisdiction by collaborative effort of staff and special assistants to be filed in a timely manner. I realize that this is probably the last meeting we can do this in order to make this happen.

So I wanted to bring up to this a motion to authorize, at the discretion of the staff director or the chair or both, to file a brief on behalf of the Commission expressing our view, support, and our viewpoints on the issue of affirmative action in higher education. And we'll circulate simply a draft. It's not going to be the final one. I'm sure there are people who would wish to make some changes and alterations to it. Ultimately, I think that if a majority of us authorize the staff director and chair to approve the final version, I would be comfortable with that, rather than having it come back and deal with
But I think it's important that we vote officially on position on this important matter. This Commission has done so previously. When I was in the minority, the majority took positions on Supreme Court cases, and I would like us to join that, especially on this very, very important issue.

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

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

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

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

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

CHAIRMAN CASTRO: Okay. Now we can discuss it.

MS. HEPLER: Okay. There are legal issues with us, the Commission, filing an amicus brief. First of all, the Commission does not have authority to file an amicus brief. Our attorneys are the
Department of Justice. We do not have litigation authority. I wasn't prepared for this, so I don't have the statutes; I'll be honest. That's part one.

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

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

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

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

MS. HEPLER: I'm not sure. I said I
wasn't prepared for this. This came up this morning, so I don't have anything. I do know, in the past, it was proposed to give the Commission amicus brief authority, and it did not pass. I can't --

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

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

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

MS. HEPLER: When?

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

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

CHAIRMAN CASTRO: Well, it's not litigating.
MS. HEPLER: Filing in the Supreme Court, the statutory authority is with the Solicitor General.

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

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

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

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

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

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

COMMISSIONER YAKI: But it's the position that's not supposed to be done?
MS. HEPLER: It shouldn't be in the caption. I wrote a memo. I mean, I don't know what happened to it. I think it was circulated a couple of years ago about not using your Commission title in the caption. You can file individually. You're special government employees, the commissioners are. You have an outside life.

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

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

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

MS. HEPLER: Well, I'm not saying -- they may have. But, you know, I've worked for the
government for decades. I have lots of legal experience, and I know the law.

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

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

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

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

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

CHAIRMAN CASTRO: Okay. October 26th?

COMMISSIONER HERIOT: A week from October 26th. It might have been the 24th, but it's like that.
kind of a schedule we're talking about.

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

COMMISSIONER YAKI: Okay, great.

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

COMMISSIONER YAKI: Okay, sure.

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

MS. HEPLER: The sanction?

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

CHAIRMAN CASTRO: Apparently, there's no
real sanctions since it's been done before by some of our colleagues.

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

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

MS. HEPLER:  Right.

COMMISSIONER NARASAKI:  Okay, thank you.

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

COMMISSIONER KIRSANOW:  Mr. Chair?

CHAIRMAN CASTRO:  Yes.

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

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

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

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

CHAIRMAN CASTRO: Okay. Any other
comment? If not, then we will put this off until we
follow up more thoughtfully with our general counsel's
office and examine the historic that may or may not
exist. And then, if needed, we will schedule a
follow-up meeting in time for the deadline to be met if we can do this. If we can't, then obviously we won't do that. Is everyone in consensus with that plan?

COMMISSIONER KIRSANOW: Sure.

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

III. MANAGEMENT AND OPERATIONS

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

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

MR. MORALES: Take it off. Okay. I'm sorry. My bad. Thank you, sir. A couple of things here. One, I wanted to just do a quick shout-out for Barbara de La Viez. I wanted to make sure that the commissioners understood that she stepped up to help us with the Lincoln Cottage and using some of her expertise to help pull it together, and I just wanted to let you know that. She's here in the audience, and I just wanted to acknowledge that and thank Ivy Davis for allowing her to participate, as well. We're hoping
it won't be a lot of her time because she's got a lot of other very important work she does, of course, but we really needed somebody to help us pull it all together, and I just want to acknowledge her contribution, at least to this point. And so we'll look to her to help pull all this together for us, so I just wanted to make that.

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

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

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

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

COMMISSIONER NARASAKI: October.

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

Ms. Rudolph is currently senior counsel
with the U.S. Department of Justice. She comes with over 15 years of legal experience at the Department of Justice. She has extensive litigation in Native American law, natural resources law, and has handled complex legal and policy matters for the Department of Justice. In addition, she has significant administrative law experience.

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

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

CHAIRMAN CASTRO: Okay. Any questions for the staff director? Hearing none, let me just add we also received an email yesterday from my special assistant, Juana Silverio, who is moving on to serve at another federal agency. I know she's not there, but
I just want to publicly thank her for the support she's given not only to me in my role as chairman and her position as my special assistant but really in her overall efforts to the expansion and moving forward the mission of the Commission. She'll be sorely missed. She made a great impact here and left a lot of friends and left an important legacy. She can't be replaced, but we will definitely hire someone to stand in her shoes, and that will happen shortly. I just wanted to put on the record how appreciative we are of the service that she's given us here at the Commission.

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

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

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

CHAIRMAN CASTRO: I'll share it with all commissioners.
COMMISSIONER NARASAKI: Thank you, Mr. Chair. I had the same thought, but it bounced back so --

IV. ADJOURN MEETING

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

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