U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

MEETING

+ + + + +

FRIDAY, MARCH 11, 2011

+ + + + +

The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 10:30 a.m., ABIGAIL THERNSTROM, Vice Chairman, presiding.

PRESENT:

ABIGAIL THERNSTROM, Vice Chairman
ROBERTA ACHTENBERG, Commissioner
MARTIN R. CASTRO, Commissioner (elected Chairman during the meeting)
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
DINA TITUS, Commissioner
KIMBERLY TOLHURST:, Delegated the Authority of the Staff Director
STAFF PRESENT:

CHRISTOPHER BYRNE
IVY DAVIS
DEMITRIA DEAS
LILLIAN DUNLAP
PAMELA A. DUNSTON, Chief, ASCD
ALFREDA GREENE
TinaLOUISE MARTIN, Director, OM
LENORE OSTROWSKY, Acting Chief, PAU
JOHN RATCLIFFE, Chief, Budget and Finance
MICHELLE RAMEY-YORKMAN
EILEEN RUDERT
DAVID SNYDER
VANESSA WILLIAMSON

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTON
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SCHMAUCH
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>AGENDA ITEM</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Approval of Agenda</td>
<td>5</td>
</tr>
<tr>
<td>II. White House Nominees for Chair, Vice</td>
<td>6</td>
</tr>
<tr>
<td>Chair and Staff Director</td>
<td></td>
</tr>
<tr>
<td>III. Management and Operations:</td>
<td>31</td>
</tr>
<tr>
<td>- Staff Director's report</td>
<td>31</td>
</tr>
<tr>
<td>IV. Program Planning: Update and discussion of projects</td>
<td>33</td>
</tr>
<tr>
<td>- Consideration of new statutory report topics for FY 2011</td>
<td>33</td>
</tr>
<tr>
<td>- Consideration of briefing/hearing topic(s) for FY 2011</td>
<td>103</td>
</tr>
<tr>
<td>- Title IX - Sex Discrimination in Liberal Arts College Admissions</td>
<td>110</td>
</tr>
<tr>
<td>- English Only in the Workplace Report</td>
<td>128</td>
</tr>
<tr>
<td>- Healthcare Disparities Report</td>
<td>133</td>
</tr>
<tr>
<td>V. State Advisory Committee Issues</td>
<td>134</td>
</tr>
<tr>
<td>- Re-chartering the North Dakota SAC</td>
<td>134</td>
</tr>
<tr>
<td>- Re-chartering the Montana SAC</td>
<td>136</td>
</tr>
<tr>
<td>VI. Approval of Feb. 11, 2011 Meeting Minutes</td>
<td>137</td>
</tr>
<tr>
<td>VII. Announcements</td>
<td>138</td>
</tr>
</tbody>
</table>
(10:30 a.m.)

ACTING CHAIR THERNSTROM: The meeting will come to order. This is a business meeting of the U.S. Commission on Civil Rights. We're starting a little late at 10:30 on March 11th, 2011.

This meeting is taking place at the Commission's headquarters located at 624 9th Street, Northwest, Washington, D.C.

I am Abigail Thernstrom. I am the Vice Chair. And I am temporarily chairing the meeting.

Commissioners who are present at this meeting are myself, Commissioner Gaziano, Commissioner Kirsanow, Commissioner Heriot, Commissioner Titus, Commissioner Achtenberg, and Commissioner Castro.

A quorum of the commissioners is present.

Is the person delegate the authority of the Staff Director present?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: I am.

ACTING CHAIR THERNSTROM: Is the Court Reporter on this line?

THE REPORTER: The Court Reporter is present, Madam Chair.

ACTING CHAIR THERNSTROM: The Court
Reporter is present. And the meeting will come to order.

I. APPROVAL OF AGENDA

ACTING CHAIR THERNSTROM: The first item of business is the approval of the agenda. I suggest that we take any motions to amend one by one, vote up or down on each, and then vote to approve the amended agenda.

If that procedure meets with Commission approval, commissioners' approval, are there any amendments to the agenda?

COMMISSIONER GAZIANO: I move to maybe just bifurcate one item on the agenda. Under "Program Planning," the first item, "Consideration of the new statutory report topic," when we turn to that item, I would propose after discussion that we vote first whether to affirm or reject the current statutory report topic before we proceed to consider alternatives.

ACTING CHAIR THERNSTROM: Have I got a second on that?

COMMISSIONER KIRSANOW: Second.

ACTING CHAIR THERNSTROM: Any discussion?

(No response.)

ACTING CHAIR THERNSTROM: Hearing none,
all in favor?

(Whereupon, there was a chorus of "Ayes.")

ACTING CHAIR THERNSTROM: I guess that is a unanimous vote unless somebody abstained that I didn't --

COMMISSIONER ACHTENBERG: I was going to vote no, but --

(Laughter.)

COMMISSIONER GAZIANO: Hear her out.

ACTING CHAIR THERNSTROM: It's in my view a whatever. I was attempted to vote no also.

Whatever.

Okay. Any other amendments to the agenda?

(No response.)

ACTING CHAIR THERNSTROM: Hearing none, we have a motion to approve the revised --

COMMISSIONER CASTRO: So moved.

COMMISSIONER GAZIANO: Second.

ACTING CHAIR THERNSTROM: All in favor?

(Whereupon, there was a chorus of "Ayes.")

ACTING CHAIR THERNSTROM: That is a unanimous vote. It has been approved.

II. WHITE HOUSE NOMINEES FOR CHAIR, VICE CHAIR AND STAFF DIRECTOR

ACTING CHAIR THERNSTROM: Next on the
agenda, consideration of the White House nomination for Commission Chair. As you all know, at this time the White House has nominated a new Chair. We still do not have a new Staff Director.

Before we discuss the nomination for Chair, I would like to say a few things about what I hope from our Chair and our eventual Staff Director. And when I finish, perhaps other commissioners will want to weigh in.

This Commission needs to support a strong executive, the Staff Director, who is authorized to run the agency with broad input by a majority vote from the Commission. Regarding the authority of the Staff Director, once the Commission affirms the new Staff Director, only the White House obviously can fire him or her.

I would like to add the following expectations on my part. The Staff Director will not permit the staff to be micromanaged by commissioners and their assistants. Neither the Chair nor he commissioners will micromanage the new Staff Director, nor will they undercut the Staff Director's authority over the staff.

Staff should look only to the Staff Director for guidance, assignments, and evaluations.
The Staff Director has the sole authority to make staff assignments and to evaluate the results of their work.

The subcommittees authorized last year for various projects should either be canceled if any are still active or restructured so that the subcommittee only reports to the committee of the whole; that is, the entire Commission, which will then vote whether or not to direct the Staff Director to implement the subcommittees' recommendation.

Finally, I just want to affirm to the Chair nominee the restrictions that our Administrative Instruction 9-2 places upon commissioner-to-staff contact and staff-to-commissioner contact.

And we were going to hand out copies of AI 9-2. Can you start with me? Do people need time to look at these. They certainly can have it.

I also affirm to our nominee the portion of our regulation which describes the function of the Staff Director is the same language used in our Administrative Instruction 1-2, section 3, paragraph 01. And that is the second page of your handout.

Do people need more time? Anybody who needs more time raise their hand?

COMMISSIONER GAZIANO: What's the purpose
of sharing the marginally ultra vires administrative instruction? What's the purpose?

ACTING CHAIR THERNSTROM: Well, I mean, just to get our house in order from the very start and get the procedural expectations clear.

COMMISSIONER GAZIANO: When you are done, I will provide some thoughts on your thoughts.

ACTING CHAIR THERNSTROM: Well, I am done. Of course, the next thing I am going to say is I am pleased to announce the White House has nominated Martin Castro as Chair. And obviously a majority of the commissioners must vote. But so go ahead now.

COMMISSIONER GAZIANO: Could I proceed before commenting on your comment, Madam Vice Chair? I take your word in your e-mail communication from your Special Assistant that the White House did, in fact, nominate Commissioner Castro.

ACTING CHAIR THERNSTROM: Yes.

COMMISSIONER GAZIANO: And I take his word that he has received such a nomination, but he mentioned the letter to us before this meeting. Does someone have it? Could we see a copy? Is it possible that we can --

ACTING CHAIR THERNSTROM: Oh, there was an e-mailed letter.
COMMISSIONER GAZIANO: I didn't receive a copy. We can probably proceed just on you-all's word that he's really -- but it would be kind of nice for those of us who are asked to vote on this that we, in fact, know that this isn't some elaborate trick and that the White House has indeed nominated --

COMMISSIONER HERIOT: We're getting ahead of ourselves here.

ACTING CHAIR THERNSTROM: Should we admit it is an elaborate trick? Do you think?

COMMISSIONER GAZIANO: Does someone have an e-mail that they can -- all right. Thank you.

TIM FAY: I would be glad to print out a copy of the letter and bring it.

ACTING CHAIR THERNSTROM: But it is an elaborate trick. Let's get copies all around.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Yes, I have a copy in my office.

COMMISSIONER CASTRO: Let's just get a copy for everybody, why don't we, all the commissioners?

COMMISSIONER GAZIANO: But we can proceed to discuss.

ACTING CHAIR THERNSTROM: Okay. I was wondering, could we --
COMMISSIONER GAZIANO: Yes, we can proceed.

ACTING CHAIR THERNSTROM: -- proceed without having the elaborate trick exposed. Go on, Commissioner Heriot?

COMMISSIONER HERIOT: I just want to back up some of your earlier statements here and just put on the record that just about everything you said I disagreed with --

ACTING CHAIR THERNSTROM: I understand -- and that it’s especially for you. Yes.

COMMISSIONER HERIOT: -- and that it's especially for you.

ACTING CHAIR THERNSTROM: Yes.

COMMISSIONER HERIOT: It's important to me not to suggest on the record that anybody but the Vice Chair has this view of the Commission. The statute says that the Commission consists of eight commissioners. It does not consist of the staff. We are not an advisory committee to the staff. And I don't think we need to spend more time on that. Just let me say I don't agree with any of that.

But I do agree that it is very, very likely -- and I am going to vote that Marty Castro has been nominated by the President of the United States.
So it would be nice, actually, to have, you know, official notification of that, but I am going to go with it.

COMMISSIONER GAZIANO: If we couldn't produce the letter, I was willing to go with it, too.

COMMISSIONER CASTRO: I believe the letter is coming.

COMMISSIONER GAZIANO: But, anyway, I would like to turn to the discussions we had with the Chair nominee in just a minute. But I do want to explain part of my thoughts with regard to the Vice Chair's statements.

First of all, with regard to our new commissioners, administrative instructions are what the Commission adopts to bind the staff, to instruct the staff. And it is our sort of current understanding amongst each other sometimes that they are our procedures.

This particular administrative instruction, 9-2, you know, dealt with some weird goings-on -- by the way, it was adopted before I was on the Commission. It related to some activities. And to the extent that it is inconsistent with the commissioners' statutory role, it's ultra vires. But in general, of course, we can all agree that
commissioners ought not to micromanage anyone, but commissioners should be running the Commission. And, as far as I know, there was no breach of the policy or principle of this. So I just wanted to get in on the discussion.

But maybe we can now turn to the discussion of the Chair.

COMMISSIONER ACHTENBERG: No. We're waiting for the letter.

ACTING CHAIR THERNSTROM: No, we're not waiting for the letter. They said to go on.

COMMISSIONER GAZIANO: We could go on in the discussion as far as I'm concerned.

ACTING CHAIR THERNSTROM: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: This is an important moment. And while I appreciate the notion that the Chair nominee should be up to date on the way the Commission operates and to the extent that this is the current embodiment of the way the Commission operates, you know, the point being made is well-taken.

But I would hate to lose the importance of the opportunity, at least for me to say on the record to my colleague what an honor it is to be asked by the
President of the United States not only to serve but
to lead the Commission, how thrilled I am that Marty's
selection has been made here.

I certainly intend to vote in the
affirmative. I appreciate very much the way actually
all of the commissioners have conducted themselves
since we have been appointed. And I want to give
particular thanks to Vice Chair Thernstrom for the way
she has introduced us to the Commission, worked with
us to make sure that we understand the Commission's
ways, and, you know, for her even-handed leadership
and having set a very good example that, you know, I
know we intend to follow and I'm certain Marty will
follow as he assumes the role of Chair.

I mean, these are serious issues. This is
an important body. And, you know, I think it is a
wonderful honor. So I just wanted to say that, Mr.
Castro, you will have my vote.

ACTING CHAIR THERNSTROM: And, of course,
I want to second that and to say for those of you who
have not had much experience with Marty Castro -- and
I have had in the last few weeks a certain amount of
experience with him -- I think you will find him a
fair man, a man of civility, a man of integrity. And
I am thrilled to have somebody with those qualities as
Chair. And, you know, I would always welcome a new Chair, but I do so with a special enthusiasm for you. And, with that, I am pleased to announce that the White House has nominated Martin Castro as Chair. And we need obviously to --

COMMISSIONER CASTRO: A motion, right?

ACTING CHAIR THERNSTROM: -- a motion to vote.

COMMISSIONER ACHTENBERG: Where's the letter?

ACTING CHAIR THERNSTROM: Oh, I'm sorry. I'm terribly sorry. Thank you.

COMMISSIONER TITUS: I appreciate that. I think we are running two things together. One was Marty's nomination, and the second was the discussion about the staff's independence. Now, both of these were brought up by the other side. And I think they both deserve to be addressed.

Now, whether in jest or not, they wanted to see the letter. So I think we should get the letter so they can see it. Now, we may pretend that is a joke, but they want to see the letter. So let's get the letter. And then we'll talk about Marty.

The second thing is they now don't think that these rules apply, even though they apparently
have been in place for a long time. And I would like to address that while we are waiting for the letter.

These rules seem to me to make the point that the staff is independent and nonpartisan, as is this Commission. The intent is for it to be objective, for it to look fairly into issues, for us to gather data from all sources at both ends of the political spectrum, and then to consider them. When we vote, it will be perhaps a vote that reflects our own political ideologies or beliefs, but we have all the data in front of us.

If the commissioners can go to the staff independently to try to influence the information that they gather, that seems to me to undercut our objectives. So I think it is totally appropriate that you have a Staff Director that keeps the staff independent, does not subject it to any kind of pressure from any individual on any side, and gets us the best information possible.

So I would totally support keeping with these administrative instructions. And I think it is very appropriate that you brought them up at this point.

Now, second, in relation to Marty with this, now that we have the letter, I certainly
congratulate him and look forward to working with him.

And I think that the great work that you have done, Madam Chairman, in helping this transition is most important. Since I was first nominated in December and you were kind enough to draw the staff together and allow me to come over and meet you all and provide me with information, I am most indebted to you for doing that and for your direction of this Commission in the time that you have served as its Chair and in the long time that you have been a member. And I look forward to continuing that relationship.

ACTING CHAIR THERNSTROM: Well, thank you very much. And thanks to Commissioner Achtenberg for her kind words as well. They are more than welcome after what has been a difficult time at the Commission.

So, with that, I finally turn to needing a motion to affirm the White House's nominee of Martin Castro as our new Chair. I should add I'm not only delighted to have Marty. I'm delighted to give up this seat.

COMMISSIONER TITUS: So moved.

COMMISSIONER ACHTENBERG: Second.

ACTING CHAIR THERNSTROM: Anyway, I need
-- it's been seconded. Okay. Any discussion? Yes?

COMMISSIONER GAZIANO: I don't want to hopefully misspeak for Commissioners Kirsanow and Heriot, but those of us who are now in some respects relieved to find ourselves in the minority, in some respects, enjoyed our opportunity this morning to meet with Commissioner Castro, soon to be our Chair. We are very pleased with what we have seen of his behavior so far but also some of the assurances.

The basic request that we asked of him that we want to put on the record was the continuation of certain rights that both the majority and the minority we think are equally valuable but in our new role we think are very important to us. And namely they are the assurance that he will continue to support the codification of the rules that we adopted for commissioner statements, rebuttals, and the possibility of surrebuttal if three commissioners believe the rule allows it with the following exception. With the exception for the upcoming statutory report for 2011, we would understand that the commissioner statements would follow a different timing, namely a one week after adoption of the report to submit initial statements; three weeks following that for any rebuttal statement; and one week, if that
is necessary, for any sur-reply under the rule.

I think that Commissioners Heriot and Kirsanow may want to talk about that, but is that consistent with your --

COMMISSIONER CASTRO: That is consistent and is an accurate representation of our conversation, our agreement this morning. So I agree.

COMMISSIONER GAZIANO: Commissioner, do you want to make a brief statement as to why you think this is in everybody's interest or --

COMMISSIONER HERIOT: Why don't just move on? Because we're happy right now, aren't we?

COMMISSIONER TITUS: May I make a statement, Madam Chairman, --

ACTING CHAIR THERNSTROM: Of course.

COMMISSIONER TITUS: -- in response to this? I will support that. And I realize that the surrebuttal is kind of a new process, and I will support that.

But you have asked for our assurance or the Chairman's assurance that this would be recognized. I would ask for the minority's assurance that they will not use the surrebuttal process to drag this out forever so that we never get to the point where a report can be issued. If you will put that on
the record, I would appreciate that.

COMMISSIONER HERIOT: I'm happy to say that it is certainly not our intention to abuse this rule so that reports get dragged out. In the past, we have not had to resort to surrebuttals because I think the threat exists that that encourages people to get their arguments in as a statement. It has worked fine. I certainly do not intend to abuse that rule. You know, I will use it only if it is necessary. And I am hoping everybody remembers to put their arguments in their initial statements.

The replies are meant to be rebuttal. And if someone puts an argument in the rebuttal that should have been in the reply -- should have been in their initial statement, only under those circumstances should we resort to surrebuttal. And, even then, if there is like a little, tiny argument in a reply that really should have been made in a statement, that is not necessarily going to cause people to want to invoke the surrebuttals. We all want to get these reports out on time.

COMMISSIONER TITUS: And, Commissioner, are you speaking for your side or are you speaking for yourself --

COMMISSIONER HERIOT: I can't say that I
am speaking for them.

COMMISSIONER GAZIANO: I can speak for myself. No, I have never filed a surrebuttal. I don't want to ever file a surrebuttal. I think its existence keeps the process more fair, more honest. I think that the --

COMMISSIONER KIRSANOW: I concur with Commissioners Gaziano and Heriot on that. And I would say, as I said to soon-to-be-Chair Castro a surrebuttal, to my knowledge, has never been filed. I don't anticipate one to be filed. But if anyone were to file it, I would suspect it would be the majority.

This is something that I would suspect if you give it some thought, you're the ones who are going to want it the most. That has been our experience. And that is the reason why it was put into place.

The other reason it was put into place -- actually, there are a couple more -- is to prevent the abuses that you are talking about. It acted as a surrebuttal component, acted as a check against anyone's desire to go off the reservation on a statement or rebuttal and make ultra vires statements or statements not contained in their original statement.
So I think this is something that modulates or moderates the commissioners here in terms of the statements made on any given briefing or report.

ACTING CHAIR THERNSTROM: Well, you don't know that for a fact that it has acted that way because nobody has ever said, without a surrebuttal option, I would have done X or Y. I mean, it's speculation on your part.

COMMISSIONER KIRSANOW: I think it's one speculation.

COMMISSIONER GAZIANO: We had abuses before we added the surrebuttal. We didn't have abuses. And, by the way, I just want to reconfirm that I think the last month's vote reflected that -- I just want to reaffirm that -- applies to the special exception we have made for if Commissioner Yaki is reappointed, his statement would be limited to what he would have originally been limited to and that if he goes beyond that, that we would have that right because otherwise someone could argue his is a surrebuttal. Anyway, never mind.

ACTING CHAIR THERNSTROM: You do realize that in the 11 years I have been on the Commission, in the first place, almost that entire time, there have
been no surrebuttals allowed.

COMMISSIONER GAZIANO: Yes.

ACTING CHAIR THERNSTROM: And, therefore

--

COMMISSIONER HERIOT: No, no. Jerry always said he would allow surrebuttals. That's why we codified it.

ACTING CHAIR THERNSTROM: Okay.

COMMISSIONER GAZIANO: I thought you meant we hadn't done them.

COMMISSIONER HERIOT: We hadn't done them but no.

ACTING CHAIR THERNSTROM: Okay. Jerry said on the record he would allow them. It was never a part of our process. Mary Frances Berry made it very clear she would not allow them, and she made it

--

COMMISSIONER HERIOT: I don't think you want to use Mary Frances Berry as your --

ACTING CHAIR THERNSTROM: No. But the point is, the point is, that -- in fact, I stated that wrong. She wanted to allow surrebuttals. Christopher Edley stopped her, and the rest of the Commission stopped her from doing so.

It doesn't matter. We are not going to go
through this history. I think we should move on and
take a vote on Martin Castro as our new Chair. And is
there any discussion on that point before we do? Yes?

COMMISSIONER KIRSANOW: I just want to
reiterate what some of the other commissioners have
had to say. I have only had brief interaction with
Marty. The interaction I have had has been extremely
positive. I think he has developed or demonstrated an
interest in acting in good faith and in comity --
that's with i-t-y -- on this Commission very often --
(Laughter.)

COMMISSIONER KIRSANOW: -- and that I
think that he is going to be -- I am hopeful. And I
believe he is going to be a very good Chair, who is
going to protect the interests of all involved and be
open-minded and move the Commission forward in its
statutory mission.

ACTING CHAIR THERNSTROM: Any other
discussion?
(No response.)

ACTING CHAIR THERNSTROM: Well, I am
calling for a vote. All in favor?
(Whereupon, there was a chorus of "Ayes.")

VICE CHAIR THERNSTROM: I believe that is
a unanimous vote. Congratulations, Mr. Chair.
CHAIRMAN CASTRO: Thank you very much.

VICE CHAIR THERNSTROM: And you and I should switch places.

CHAIRMAN CASTRO: Yes.

VICE CHAIR THERNSTROM: Only as a bag lady, I've got to come in and collect my bags. Nobody has ever been happier to get out of this chair than I am.

CHAIRMAN CASTRO: Well, thank you. That was easy.

VICE CHAIR THERNSTROM: The hard part starts now.

CHAIRMAN CASTRO: First of all, I also want to express my gratitude to our Vice Chair for the stewardship that she has given to the Commission in the interim period between the prior Commission's Chairperson and my designation today very much appreciate not only the stewardship of the Commission but also the guidance that you have given me and as my colleagues who are also new to the Commission, have joined it. And all the commissioners who are experienced appreciate the support and the guidance and the historic references that you have given us that are to acclimate ourselves.

As I said before when we had our last
meeting, it's a great honor or said here to be nominated by the President to serve on this Commission but then to have the President designate me to be the Chair of the Commission. And to have you, all of my colleagues, unanimously support that is something that is very humbling.

I understand that I am the eighth Commission Chair in the history of our Commission. And I am, to my full knowledge, the first Latino Chair of this Commission.

And I think that as I look at the work that we have to do as a country, the work that we have to do as a Commission, there is much work out there. Discrimination and violations of voting rights are there. They may be different, take different forms than they have before. Some may be new and obvious. Others may be less obvious. But it is the role of this Commission I believe to be the nation's conscience on issues of civil rights.

And I will look forward to working with each of my commissioners and our staff to continue forward on that mission. And I look forward to making sure that as I lead this organization, this Commission, that I seek to be fair because I know what it is like to be in the minority, but I also have a
very strong passion and belief in issues. We all do.

We have different political perspectives, different ideologies, which is why we are at this table.

That is why this Commission was constructed as it was, to bring the different perspectives that make up this country to the table. It is how we bring those perspectives together and how we move forward that is really the important aspects.

But what I want to make sure my chairmanship is for you guys, I hope the hallmark of it is that we will learn -- and I think we have today -- how to work together, how to possibly agree and when we can't agree to do it as we have done today.

So, again, thank you very much for this great, great opportunity and this great honor to be Chairperson of the U.S. Commission on Civil Rights. Thank you.

(Applause.)

CHAIRMAN CASTRO: It is now my first duty to move on with our next item on the agenda. And I would ask our Staff Director to provide her report on management and operations. Ms. Tolhurst?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: All right. Thank you.

Two things to begin with. First, I want
to offer my congratulations as well.

In my third or fourth hat as Ethics Officer, Marty and I had a very in-depth relationship, let me say. And I feel like we have been through trial by fire already in getting all of your forms approved and in order.

CHAIRMAN CASTRO: There were no problems with the forms.

(Laughter.)

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: No problems.

CHAIRMAN CASTRO: I was just involved in a lot of nonprofit organizations.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: There was a lot of activity.

CHAIRMAN CASTRO: And we had to go through a list, just so the record is clear.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: I will say that I felt that you went out of your way to be incredibly scrupulous and ethical in that process --

CHAIRMAN CASTRO: Thank you. Thank you.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: -- and were a pleasure to work with.
CHAIRMAN CASTRO: Thank you.

DELEGATED THE AUTHORITY OF THE STAFF
DIRECTOR TOLHURST: Secondly, before I start my report, not to have an Al Haig "I'm in charge" moment, but I just want to clarify regarding AIs that the Staff Director being delegated the day-to-day work of the Commission is on dry regs and AIs, at least at present -- and you all can modify AIs by a majority vote -- authorized through AIs without Commission approval and has under the last two Republican Staff Directors issued AIs on their own. They tend to give them to the commissioners when they are of substantive nature reports, et cetera, but it is presumed that you all do not want to deal with an AI on sick leave, for example.

So, even in my brief time as Acting Staff Director, I have issued AIs. For example, OPM required us to issue regulations on how to manage a shutdown. And there was actually not time for a Commission meeting to even comply with that request.

COMMISSIONER HERIOT: And it was too boring for us.

COMMISSIONER GAZIANO: Actually, that makes sense to me.
DIRECTOR TOLHURST: Okay.

COMMISSIONER GAZIANO: But that confirms one of my points, which is that AIs are binding on the staff and not necessarily binding on the Commission. Sometimes some commissioners have acted confused about that, that somehow the Commission can't change an AI or can't make an exception to an AI, can't take a position that is inconsistent.

If we take a position and vote that it is inconsistent, we have amended or made an exception to an AI, but we --

COMMISSIONER HERIOT: It's not an instruction to the Commission. It's an instruction to the staff. It may be binding on us because it's federal law, but it's not binding on us because it is an AI.

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: Correct. And I would say some AIs commissioners by a majority vote have approved setting up rules for themselves, in which case you would have to by a majority vote repeal those rules.

And yes, some AIs are written in direct response to federal law. And we are not going to want to violate or try to repeal those. But the types of sort of rote and banal AIs that need to make this
efficiently function are regularly done by the Staff Director. And, as I said, I have issued them since I have been here and copied you always. But I have not come to you all for every administrative --

COMMISSIONER HERIOT: Thank you for not coming to us --

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: -- instruction that you may not want.

COMMISSIONER GAZIANO: They look good to me.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: So I just wanted to clarify that, that it is, in fact, at some points issued directly by the Staff Director.

III. MANAGEMENT AND OPERATIONS:

- STAFF DIRECTOR'S REPORT

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: So for my report, I am going to depart from past practice unless you tell me otherwise. In general, you have received the written reports. Unless you want me to, I am not going to read to you the number of library requests we received and complaints we have received. They are at the second tab in your report.
So generally what has been up in the last month, we are still under a continuing resolution through 3/18. Our 2012 budget justification was submitted to Congress last month. And you all received a copy of that.

The next opportunity for really meaningful commissioner involvement under current plans would be budget planning for the 2013 budget. And you all will receive a proposed budget in June. And action has to be taken on that by September.

I met, along with others, with our new -- we have a new OMB examiner. And I have had conversations with your assistants and/or some commissioners about the concerns, suggestions, et cetera, of the new OMB examiner.

I am not going to go into those here while we are in open session, but if you all have any questions, please feel free to call me. I have spoken with many of you about his main points. He seems anxious to help and wanting to engage and learn more about our work.

This week we had an ethics audit on Monday. That went very well. They are hoping we can turn our program around. At next month's meeting, I will be speaking with you all about your upcoming 278
financial disclosure. I'll spare you that for now.

Just two more points. Again, I've met
with many of you and/or your assistants regarding
staffing concerns. And, again, I won't say much in
open session, but there is a fairly dire need to fill
all funded positions in the near future. We have
multiple staff members serving two and even three jobs
at the moment. And we have others stepping in to do
work well outside their day-to-day norm helping on a
variety of editorial and other program and
administrative tasks.

So, on that note, I also want to thank the
staff, especially those members who have really
stepped up during this rather awkward period of
transition, vacancies in multiple high-level jobs
here. And many of you have gone above and beyond in
making sure the agency keeps running and that work
continues in a timely and quality manner. I thank you
all for that. You all have been a great help to me.

CHAIRMAN CASTRO: Thank you, Ms. Tolhurst.

IV. PROGRAM PLANNING:

UPDATE AND DISCUSSION OF PROJECTS
- CONSIDERATION OF NEW STATUTORY REPORT TOPICS

FOR FY 2011

CHAIRMAN CASTRO: Next we will move on to
the agenda item on program planning, which also is a
report from Ms. Tolhurst. So we know we have got a
number of items. Actually, I should say it's not a --
sorry. I apologize. It's actually us that's going to
address a number of items.

The first topic, as we have talked about
earlier, is the consideration of a new statutory
report for this year. As you recall, at our last
meeting, there was a motion that was passed to suspend
the work on the fiscal year 2012 cy-près enforcement
report topic so that the commissioners could circulate
alternative topics.

Two proposals have been circulated. There
is a report concept that has been circulated that was
a paper that is drafted by Commissioners Achtenberg,
Titus, and myself, the working title of which is
"Inner Student Violence: The Impact of Discriminatory
Activity in Public Schools" and "The Role of the U.S.
Departments of Justice and Education in Eliminating
Harassment of Students Targeted Due to Race,
Ethnicity, and/or Sexual Orientation."

The other concept paper is a concept paper
circulated by Commissioner Kirsanow. And it is titled
"Assessing Civil Rights Enforcement in the Department
of Agriculture's Farm Services Agency Programs."
I know Commissioner Gaziano asked that we bifurcate the consideration of this. So, with that, Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: So, Mr. Chair, we amended the -- we are going to undertake a dealing with the cy-près issue first. Is that correct?

COMMISSIONER GAZIANO: Can I explain why I did that? And we might be able to dispense? Is that all right?

CHAIRMAN CASTRO: Why don't you explain it?

COMMISSIONER GAZIANO: Sure. I wanted to talk about the procedure that we normally follow and the procedure that we ought to follow if we are going to change it. And I want to do that in the abstract, rather than make it look like we are trying to apply it just to one topic or the other. That's really why. And if you want me to proceed with that, now --

CHAIRMAN CASTRO: Yes. What I would like to do is have a motion on the table so that we could discuss whether that motion is a motion in particular --

COMMISSIONER GAZIANO: I move to reaffirm the cy-près topic. That would allow me, then, to
discuss.

COMMISSIONER HERIOT: Second.

CHAIRMAN CASTRO: Go ahead. What's your topic?

COMMISSIONER GAZIANO: I could go through the exact days and times that I have got in the notes that John prepared for me, but I went over this a little bit last time.

Prior to my arriving on the Commission, the topic was chosen about two to three years in advance of the Commission's calendar, in part to reflect our Commission practices that allowed the SACs to be informed a year ahead of time so that they could adopt parallel investigations that they could then publish before we even began our work. I thought that was a little excessive.

For the past three years, we have had a process that started in June prior to the beginning of the fiscal year.

And, by the way, this is reflected in AI 1-6, if I have my number right. And it requires -- and this is one that the commissioners adopted. And it requires in practice a request by the Staff Director for possible topics. Then little blurbs were written about them. Then commissioners could rank
order and vote on them.

And then we would discuss generally for
about a month or two or at least a month what the
topic -- the two that got the most votes, rather than
just have one or two concept papers.

Then concept papers were developed after
the topic was -- if the concept papers were circulated
in enough time, the commissioners could actually offer
amendments to them when the eventual concept paper was
adopted.

Then the AI requires after the concept,
amended concept, paper that is usually amended is
adopted, the next step is that staff prepares a
projekt, a project outline. And then the Commission
had an opportunity to comment on the project outline.

Then after the project outline is adopted, there is a
discovery plan and so on and so forth. And hopefully
those are done even before or about the time the
fiscal year is started.

If the Commission is going to change the
topic now, my concern is that commissioner input is
going to be nonexistent or almost nonexistent and that
I am not a fan of every jot and tittle of the way -- I
led the charge to not make it three years in advance.

I led the charge to be a little bit more nimble, but
I hope if we are going to change the topic, that we at least try to incorporate some of the feedback elements that allow all commissioners to have input on how the new topic is developed.

And as someone in the minority, I expect most of my input is going to be voted down. But I hope to convince you of a few or I at least like the input, like the opportunity to be voted down. So, for example, I hope if we are going to vote down the cy-près topic, we are going to consider another one -- I commend the person acting as the Staff Director for making shells of discovery plans, but they are not really discovery plans. And discovery plans aren't supposed to even be drafted until the staff hears from the commissioners concerns about the concept paper and a project outline. So I again hope we don't have a discovery plan.

And let me just mention one issue that came up. In June of -- you know, it was the summer. Maybe John will find me the exact month. What was the month? Was it July? June of '08? Okay.

In June of '08, after I was on the Commission for a number of months, I made a motion to add to the agenda a discussion item of whether to discuss changing the topic for the statutory report.
that was going to begin in a few months hence, that
topic having been decided two years previous, before I
was on the Commission.

And the Vice Chair led an effort when
there were a few commissioners absent to vote down
even allowing a discussion to be placed on the agenda
to even discuss the possibility of changing the topic
two months before or three months before the statutory
report was -- and I thought that was wrong. And so I
am not going to make a big -- I don't think any of us
are going to make a big deal if you are going to
jettison the cy-près topic.

But I hope that you will not at least try
to modify whatever process we come up with so that
commissioner input can be meaningful and realistic for
the next topic.

That's all I wanted to say.

COMMISSIONER TITUS: Mr. Chairman?

COMMISSIONER KIRSANOW: Go ahead.

CHAIRMAN CASTRO: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I just want to
associate myself with the statements made by
Commissioner Gaziano. Just a couple of other things,
just some observations. In addition to being in the
minority, I suspect that if the majority feels
strongly about a particular topic, that I will get voted down, but I think it bears some consideration of that.

With respect to changing this particular topic in midstream -- and I will tell you that I am not particularly excited about cy-près, but I wasn't particularly excited about a number of enforcement topics that we have had in the past that you don't have to be excited about a topic.

We only will have approximately six months to get this particular -- if there is a change, whatever it may be, whether it is mine or the one that's been proposed by the majority, that is going to be a prodigious undertaking.

A couple of things. One is we want to do it right, whatever the project is. And I've got only six months or so less seniority than Vice Chair Thernstrom. In my ten years or so of experience here, I can tell you that the statutory enforcement report is something that takes some time to do, to do well, especially if there are going to be commissioner statements or rebuttals, but just doing the initial report is something that poses some significant challenges.

We are currently laboring with a skeletal
staff. Our last briefing reports and enforcement reports have been a challenge for staff because of the understaffing.

In addition, enforcement reports benefit from being very narrowly defined or confined to a very, very specific topic. I am not suggesting how you want to construct a concept paper or how you want to construct a particular briefing or enforcement topic, but to the extent it is on one discrete topic, it I think benefits from our ability to really flesh out various facts and arguments related to that particular topic and do credit to the Commission in presenting a report to the Congress and the President.

I am not sure that the one currently on the table -- cy-près is fairly narrowly defined. I think it is extremely narrowly defined. The intra-student violence one -- and I would like to hear some discussion about it, but at first blush seems to me to be a project that could be expansive. And that is something we can incredibly get our arms around within the short amount of time we have got right now.

Those are my observations. And I hope you take those into consideration.

CHAIRMAN CASTRO: Madam Vice?

VICE CHAIR THERNSTROM: Well, just one
small note. There have been several references from that side of the table to there being a minority and there is a majority here. I do want to remind people that I am a Republican. I remain a Republican.

So I believe there are four conservatives/Republicans/Libertarians, whatever you want to call yourselves, on this Commission. And the Democrats at the moment are in numbers a minority.

So on the chance that anybody has any illusions I have switched parties, I have not. And I want that on the record.

Now, as for cy-près, as I understand it -- and, the Acting Staff Director, it is really a question posed to her. As I understand it, there has basically been no work to speak of that we are throwing out if we change topics. We've got kind of --

COMMISSIONER GAZIANO: How is that? Well, we did all the work on the discovery plan. We had all of the input of the commissioners. So that is work that should not be ignored. But the staff sent out interrogatories. We were supposed to get them back except that our vote last week suspended the receipt of --

COMMISSIONER HERIOT: Yes.
Interrogatories don't grow on trees. Somebody has to draft them. They have to be carefully drafted. And it takes a long time to get those interrogatories --

COMMISSIONER GAZIANO: The response is waiting in a box, as I understand, in the Department of Justice.

CHAIRMAN CASTRO: Let me just -- I said to you I want to make sure I manage these meetings well. So don't take this as an effort to cut you off, but there was a question that was directed to our Acting General Counsel, Acting Staff Director, which I would like to hear an answer to.

Then we have another commissioner, who had her hand up earlier.

COMMISSIONER GAZIANO: Right.

CHAIRMAN CASTRO: So I would like to give her an opportunity. And then we can go back to yours.


Here is where cy-près stands. And first let me say if we're talking about following AI, as it currently stands, concepts are supposed to be assigned by the Staff Director, assigned to staff to develop project concepts. The Staff Director then approves the project concept before it is submitted to
At present, our project concepts are coming from commissioners. So if we are noting where we are departing from the AI, we're departing from the AI from the git-go. And I have been here four and a half years, and we have never fully followed the AI. I don't endorse that at all, but if we want to get back to following it, we should all know there have been in various years various points of departure from the AI.

Regarding cy-près, interrogatories were issued. As you all know and as you said at the last meeting, work on that was suspended. At the time work was suspended, we had an outstanding discovery request to DOJ. I spoke with an attorney at DOJ in consultation with Commissioner Heriot, who was on the Discovery Subcommittee. And what we came to is an understanding that if cy-près remained live after this meeting, Justice would begin a rolling discovery beginning in two weeks.

What we have now if that is the question on the table is --

VICE CHAIR THERNSTROM: That was the question.
DIRECTOR TOLHURST: -- a three-page memo from the Justice Department listing some publicly available cases. It's not meaningful discovery. Nothing has been written on this report.

It is true that interrogatories have been issued and we do have this guarantee that if we select this topic today, we will begin receiving information in two weeks.

CHAIRMAN CASTRO: Commissioner Titus?

COMMISSIONER TITUS: Thank you.

A couple of points that have already been made. One of them was about the minority. And the Vice Chair made that. I mean, I think I can count, too. But I think the bigger point is we need to quit focusing on who is in the minority, who is in the majority, and start working together on some of these topics.

Second, I have heard a lot of references to the discovery plan. I think, too -- and one was that it was done, it was an elaborate plan, a lot of work has gone into it, and that the new plans that were issued for the two potential topics that we'll talk about today are skeletal.

Well, as I reviewed that, I believe they are exact replicas of the discovery plan that was
issued for the cy-près report almost word for word in
the same length of time and space and all.

So I don't think one is skeletal and one
is not. I think they're both pretty minimal, a page
and a half --

COMMISSIONER HERIOT: Actually, they're --

COMMISSIONER TITUS: Excuse me. I'll let
you speak when I finish.

So let's be clear about that. And then
the third thing is if we have these AIs like 1.6 or
whatever it is that governs how we are supposed to
come up with topics and that we're not using it, I
think that we should put that on the agenda to review
and either have a process or not have a process but
not have a process that we don't follow. That makes
no sense to me at all. So I would just make that as a
suggestion.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: I'm glad for an
opportunity to educate on one of the exceptions we
made to the AIs on the record, which was that concept
papers could be initiated either by the staff, as the
AI structure, but we made an express vote that
commissioners could also write concept papers. And in
my practice, it's far superior. That was an exception
we voted on.

And, by the way, I welcome the new commissioners to look through these. There's a lot of good stuff in these AIs. And then there's some stuff that we've wisely modified or abandoned. And maybe we should recodify it.

But the advantage of the process, whether it's skeletal or not, my principal concern was the availability for input into the discovery plan.

The discovery plan, by the way, for the first couple of statutory reports was very lengthy -- oh, I don't know -- ten pages long. And they came after -- but the idea is that commissioners would get this weeks in advance, we would have an opportunity to circulate with each other a week or so before the meeting what we intended to raise.

And if we're going to short-circuit that, I hope -- well, I don't want to follow any AI. They don't bind us every jot and tittle, but to the extent that they have important principles I hope that we all think are worthy, that we should try to follow these important principles.

COMMISSIONER TITUS: Perhaps I misunderstand what a discovery plan is. When I looked at it -- and I am not an attorney -- it seemed to me

Neal R. Gross & Co., Inc.
202-234-4433
it was just like a little page that described kind of what the schedule was going to be for how to pursue whatever topic it was that didn't have a lot of real substance to it. Is that correct, to the Staff Director?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Sure. I would agree with Commissioner Gaziano that in past years, particularly where subjects were approved in August the year before, which at least happened once since I have been here, they have been more detailed for sure.

Your point is correct, though, that the cy-près discovery plan is no more detailed than what was issued on the other two. They are all skeletal. They are not particularly meaningful. And I don't like them. I'm not pretending I like them.

My concern as Staff Director is if staff cannot produce something by deadline unless we are able to issue interrogatories or follow up on the existing ASAP. And that is why I insisted that Justice agree to do the two-week -- back of the topic, we're not going to give them another 30 days.

If one of the new topics, either the farm or the school bullying, becomes it, "I want us to be able to go" and unless you all decide that the
September 30th deadline is what we want to move, we
need to be able to go.

And it's not my preference at all. I'm
not a fan of it. I would rather have a lot of time to
become expert on these topics before engaging with
Justice Department, Department of Education, or
Department of Agriculture.

If you decide to change the subject, we
don't have the luxury of doing the type of plan we
would want to do. I would hope this year would be an
unusual brave exception. And if I'm asked later, I'm
going to talk about 2012 and how I would vehemently
ask you to approve a topic for 2012 by August at the
latest so this never happens again and you can get the
kind of quality background that you deserve and staff
can be respected and have the time they need to do
this reports.

But for this year, what I'm offering is a
way to get it done. Whether it's cy-près and I want
to go get everything we need in two weeks, whether
it's the farming or the school bullying, we need to
go. And that is what I am offering, albeit skeletal.

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Mr. Chair, I
think what the Staff Director just expressed is at
this point in time -- I mean, we need to be serious about this. That is precisely the point.

Let me just lay out my own view here. I intend to vote down, to cast my vote not to make cy-près the statutory report. On the merits, I think it is the wrong topic that I would like to see the Commission pursue.

And the fact that only a very small amount of work has gone into it does matter to me. Had the work been more extensive, that would have weighed on the more, understanding how precious the staff is as a resource. But as a commissioner, I just believe that it is the wrong topic.

I intend to be a forceful proponent for the school bullying topic. I think it is timely. I think it is discrete. I think it is doable with the descriptions, however, that any topic undertaken at this point in time, including the cy-près, is going to be under the same constraints that the director just outlined.

So if we are going to meet the statutory mandate this year within a reasonable time frame, any one of these topics is going to have to be under the same constraint. And we need to understand that and respect that and, as Commissioner Kirsanow said, seek
to produce the highest quality work product that this Commission can produce under the circumstances. That is the situation that we are in.

Your points are well-taken. I did consider your proposal, Commissioner Kirsanow, on the merits. I find my own proposal to be superior to yours, but that, of course, is a matter of judgment.

But I think we're talking about -- and I don't mean to trivialize this discussion, far from it. I think it is what we should be discussing, both the procedure and the merits.

And so I just wanted to say that and just put on the table where I intend to weigh in to take the discussion further.

CHAIRMAN CASTRO: Commissioner Kirsanow and Commissioner Heriot? Then I will say a few words. Then we'll call for a vote on this.

COMMISSIONER KIRSANOW: Very briefly. I respect what Commissioner Achtenberg had to say. I expect, again, as the minority to get voted down.

And, by the way, I do believe we are a minority, regardless of R, D, I, or anything like that. Functionally we have been in the minority. The Vice Chair has been voting with others rather than the three of us for the last two years.
 Nonetheless, I would urge you -- and, again, I don't mean to be saying because I have got seniority you should listen to our experience. I have been in that position before where everyone was telling me we had to do things a certain way. Just because it has been done a certain way doesn't mean it is the right way.

But in terms of the narrowness of the scope, Commissioner Achtenberg, I would disagree with you on that. In terms of the narrowness, I would put cy-près first. I think that is an eminently doable project. I don't mean to put a lot of pressure on the Staff Director and the staff on this. I think it is doable. Of the three, it is the most doable.

I then think that the farm project is narrower than the project that you have proposed. And the reason for that is -- we'll get into it in the discussion. One of them is that we are talking about violence in schools. And we're talking about tens of thousands of schools.

Yes, we can get experts in here. I don't know that data has been collated on this, but this seems to be a gigantic, potentially a gigantic, project that we were going to be trying to devote resources to gathering data and I presume some
anecdotes about a particular topic that I think is
something that this Commission is ill-suited to do in
the span of just six months or so.

CHAIRMAN CASTRO: Commissioner Heriot?

Then I will say a few words. Then we will vote.

COMMISSIONER HERIOT: Okay. I just wanted
to say that, number one, I'm not in love with the
cy-près topic either. I don't think it's a topic that
I want deeply to have studied, but I thought it was a
good topic. And it was a good topic particularly
because, as Commissioner Kirsanow says, it's narrow.
It's something where we actually can study it, we can
actually make some authoritative on.

So that's why I supported it. In fact, I
think it was my idea.

COMMISSIONER GAZIANO: Yes.

COMMISSIONER HERIOT: But, again, it's not
--

COMMISSIONER GAZIANO: Don't abandon it.

COMMISSIONER HERIOT: No, I'm not
abandoning it. It might be about to be abandoned, but
it won't be abandoned by me.

On discovery plans, the point with the
cy-près topic is not that we had an elaborate
discovery plan. I don't even recall the discovery
plan in cy-près. We got all wrapped up with finishing
up New Black Panther.

But the point is that actual discovery has
been undertaken. Interrogatories have been formulated
and issued. And that is a lot of work to come up with
those interrogatories for the Department of Justice.
And I understand that we have the interrogatories for
the nonprofits as well. So that was work.

Number three, narrowness matters a lot.
And you're going to end up being surprised at how
important narrowness is to these topics. And the way
the bullying topic, bullying/violence topic, is now
formulated, it is not narrow. It is very, very, very
broad.

And, second -- oh, not second. Fourth on
my list here, discovery plans. A few years back, when
we did the religious liberties of prisoners, it was
early in my tenure. So I was not privy to the
discovery plan. And I wish I had been because I think
there were deep flaws in the methodology that was
adopted. And by the time the draft came out, it was
impossible to correct it.

I think it basically meant the report was
not worth very much. It was something, some useful
stuff in it. But the main point that the project
attempted it wasn't able to make. And I think that is not going to be a unique circumstance.

The discovery plan will often help glossing it. It will need commissioner input. And if we go with discovery plans, like the quickie that we got last night, you're going to end up being disappointed because basically you're jettisoning your ability to affect the discovery. And you're going to find out that mistakes were made very late in the process. And it's going to be hard to correct.

So this isn't simply a minority defense work. This is majority defense work. You need to be able to know exactly what the staff is doing because you cannot assume that it is going to be what you wanted.


CHAIRMAN CASTRO: Twenty-nine.

COMMISSIONER GAZIANO: Twenty-nine. If the discovery plan for cy-près was weaker than the others before us, it's because it wasn't necessary. It was a normal topic. The topic that I think Commissioner Achtenberg has proposed I think would benefit greatly by a proper discovery plan.

CHAIRMAN CASTRO: Thank you. I appreciate
everyone's thoughtful comments. I just want to add I
could echo everything that Commissioner Achtenberg
said.

I also think that, at least from my
perspective, I do need to be excited about a topic
that we are going to cover. Our resources, as has
been discussed here, are limited. And, therefore, I
don't want to move forward on any topic given the
limited resources and the capacity that our staff is
-- you know, the overcapacity of our staff right now
in terms of their ability to do work that we would
move forward on any topic that we are excited with.

So I am excited about the topic that
myself and Commissioner Titus, Commissioner Achtenberg
have brought forward. And we have a timeline we put
forward. And we will discuss that, I'm sure, after we
vote on this motion.

I do think that this is an exceptional
circumstance as well. We have three new commissioners
that were not here when this topic was first chosen.
And we happen to arrive here in the middle of this
process. So this is not something we foresee
happening often in the future, if at all, but it is
the circumstance under which we find ourselves. And
it is a challenge that we are all going to meet,
whether it is the cy-près report, which, even though it sounds like it might be a little bit ahead, is not significantly so.

So those are my views. And this issue, in particular, I am passionate about it. I saw a parent just on the news yesterday talking about the fact that their child was bullied and took his life. And to me that is something I think is important for us to look at.

So, having said that, I would like to call the vote on this motion that Commissioner Gaziano has put forward on affirming the cy-près. All those in favor of affirming cy-près signify by saying, "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: All those opposed to cy-près' affirmance signify by saying, "Aye" or "Opposed."

(Whereupon, there was a chorus of "Noes.")

CHAIRMAN CASTRO: Opposed, no, that's four. Any abstentions?

(No response.)

CHAIRMAN CASTRO: No. So, in the opinion of the Chair, the motion fails. Commissioners Gaziano, Heriot, and Kirsanow voted in favor of the motion. Commissioners Achtenberg, Titus, Thernstrom,
and Castro voted against the motion.

   Is there another motion that is going to be presented?

COMMISSIONER ACHTENBERG: Mr. Chairman, I would like to move that we adopt the inner student violence topic as our 2011 statutory report topic, but before anybody gets too excited, I am doing this because it seems to me that, as a matter of Robert's Rules, we should have a substantive discussion on the competing topics, if you will, to the Commission's satisfaction before compelling the commissioners to vote on either, but the proper way to do that, it seems to me, is to begin by making a motion so that the discussion that emanates there from is germane.

CHAIRMAN CASTRO: Is there a second on that motion?

COMMISSIONER TITUS: Second.

COMMISSIONER GAZIANO: Might I ask the indulgence of the Commission for a four-minute recess if Commissioner Achtenberg -- would you mind if we would allow a recess, if I could talk to you for about four minutes?

COMMISSIONER ACHTENBERG: Sure.

CHAIRMAN CASTRO: It's going to be four minutes.
VICE CHAIR THERNSTROM: Let's not turn it into 20.

(Whereupon, the foregoing matter went off the record at 11:39 a.m. and went back on the record at 11:46 a.m.)

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: I made a motion, did I not?

CHAIRMAN CASTRO: Yes, and it was seconded by Commissioner Titus.

COMMISSIONER ACHTENBERG: Let me just say that I think this is a serious topic. It's relevant to our mission. It in my mind is quite urgent. Violence in all of its forms can be on the rise. And there is no question that there are many motivations for this violence in our schools.

And this is not meant to suggest that these two categories of student-on-student violence are the only ones to be concerned about, but in the interest of manageability, these seem to be the two most pervasive and important and germane to our mission. And this is why we crafted the topic the way that we did.

There are multiple studies and information out there, expert opinions, books, and treatises, from...
which much information can be gleaned, which is not to say that we know from the outset the answer to the question, which is how pervasive, where is this happening, why is it happening, and what can be done to address it.

One of the important things that I will point out with regard to what I am asserting is the manageability of this as our statutory topic within the time frame is that I have proposed two discrete demographic classes to be investigated. And I have proposed this in a way that focuses on the federal involvement and response and specifically that of the Department of Justice and the Department of Education.

And originally in the original concept paper that I circulated a week ago, we suggested that we might also look at the responses in the various states, the response that our own SACs may have unearthed in the process of doing their work, ordinances and statutes that are being proposed elsewhere than in the federal realm. And I have been since persuaded that that exacerbates an existing problem that you have properly identified, namely making whatever topic we undertake manageable so that we can do a quality job of research analysis and so that our recommendations to the President and to the
Congress will mean something.

So let me restate that that is what I believe and my fellow commissioners believe that we have done here.

We have consulted the staff to determine the manageability of producing any report within the six months that we have. I believe that it is manageable, although it won't be without great difficulty, but that would be true of any topic that we choose.

So unless we are going to forego our statutory report, which I would not recommend, I would respectfully suggest that and would ask for your support in adopting this as the topic for the statutory report for 2011.

CHAIRMAN CASTRO: Commissioner Kirsanow, then Commissioner Gaziano?

COMMISSIONER KIRSANOW: Thank you, Mr. Chair. I just have a question of Commissioner Achtenberg.

There are two concept papers that were issued that were somewhat similar, the first one being the anti-gay bullying concept paper. And I'm wondering in terms of for definitional purposes, are we talking about an examination of inter-student
violence or is it bullying or what are we looking at here or is it both?

COMMISSIONER ACHTENBERG: I'm sorry? Which concept paper? Last Friday?

COMMISSIONER KIRSANOW: No. The one that you recently introduced is inter-student violence -- that one is understood --

COMMISSIONER ACHTENBERG: Correct, yes.

COMMISSIONER KIRSANOW: -- amended by your e-mails that came out I think last night or yesterday.

COMMISSIONER ACHTENBERG: Yes.

COMMISSIONER KIRSANOW: There was a previous concept paper that dealt with -- and it's entitled --

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: The confusion is that OGC, by pure coincidence, had advanced an anti-bullying topic.

COMMISSIONER KIRSANOW: And I just want to be sure as to what we are looking at here.

COMMISSIONER ACHTENBERG: We're talking about the concept paper that the three commissioners authored, the first version of which you received last Friday, which involves race and ethnicity and sexual minority status.

COMMISSIONER KIRSANOW: And is that
violence against? Interested in violence?

COMMISSIONER ACHTENBERG: Is interested in violence, which also includes bullying.

COMMISSIONER KIRSANOW: Okay. And how do you define bullying?

COMMISSIONER ACHTENBERG: It's defined in the -- yes. I mean, it is one example of inter-student violence. It's not the only example, but it's --

COMMISSIONER HERIOT: But it's also a much larger concept than violence. I mean, you can be bullied in a way that isn't violence.

COMMISSIONER ACHTENBERG: Correct, correct.

COMMISSIONER HERIOT: So are you including all of bullying or just that which threatens violence?

COMMISSIONER ACHTENBERG: No. Bullying and -- yes, I am including both in the concept paper.

COMMISSIONER KIRSANOW: That's I guess what we want to kind of unpack is violence as I would view it is some type of assault and/or battery between and among students; whereas, bullying could take a different degree of activity, such as threats, intimidation, --

COMMISSIONER ACHTENBERG: Correct.
COMMISSIONER KIRSANOW: -- coercion, harassment. Is touching, physical touching, considered to be bullying, for example? So I guess you're saying that oral threats, for example -- because I am just trying to get a sense for what we are talking about here.

COMMISSIONER ACHTENBERG: Sure.

COMMISSIONER KIRSANOW: Oral threats, intimidation, coercion, ridicule?

COMMISSIONER ACHTENBERG: Could be.

COMMISSIONER KIRSANOW: Okay. Ridicule it could be. What else? I'm trying to get a sense of the scope because, again, this goes to my previous concern about what we are undertaking here.

I will take your word that there is data out there. I am just unfamiliar with it. But when we start to expand the definition, now we're getting into a fairly large universe of potential topics or potential offenses that we're going to be taking a look at.

COMMISSIONER ACHTENBERG: Correct.

COMMISSIONER KIRSANOW: So if we could get a sense for -- I've just laid out a few of them. Are there any other things that fall within the definition, as you understand it, of the bullying that
we are going to be undertaking to examine?

COMMISSIONER ACHTENBERG: There may be.

Once the staff can ascertain from the Department of Justice and Department of Education what kinds of complaints in this regard they are receiving, what kinds of activities they have been called in to undertake or have initiated legal processes pursuant to, we will have greater clarity on which issues have implications for the civil rights inquiry of the Commission. That is, we need to understand how pervasive and how extensive their activities have been in addressing these varying levels of violence in schools.

COMMISSIONER KIRSANOW: As I understand it, OCR only has jurisdiction or only addresses those things that rise to the level of the hostile environment harassment, something that could be readily equated to the kind of Farrager and Ellerth types of standards in the employment law context. I am not sure.

And, again, I am not sure that bullying, broadly speaking, can be defined as narrowly as OCR looks at it. If, in fact, that is the case, I am not sure to what extent we would have jurisdiction to look at those other things, too.
So, again, I am not sure in terms of trying to cabin the scope of this, whether bullying as broadly defined as to encompass intimidation, harassment, threats, coercion that may be oral, ridicule necessarily falls within our jurisdiction.

CHAIRMAN CASTRO: Commissioner Gaziano, then Commissioner Heriot?

COMMISSIONER GAZIANO: Yes. I was going to address part of that. I think this follows. If this is the topic that is adopted, I would have similar -- propose a similar process if this is defeated and we go to the other topic.

I would then want to be able to be heard on motions to amend the classes that are addressed and the procedures that we are going to use going forward so that there could be commissioner input on the definition of bullying.

But I do want to begin right now with two reasons why. Although I am very interested in this topic of inter-school violence and the federal government's relation to it, I just want to state for the record that it is a better topic for a briefing report for a variety of reasons or for us to determine whether it really is suitable for an enforcement report sometime down the line. And that partially is
tied to the jurisdictional.

In our enforcement report, our statute said we were really going to be studying the federal government, whether the federal government has enforced properly its laws. Our briefing reports, obviously we can look at state practices. We can look at state conduct.

There are individual incidents in this concept paper that are mentioned as examples. There is no indication in the concept paper that any of those, well, I think with the one exception were even known to the school. There was an allegation in one case that it somehow known to the school. But even if there was one incident known to a particular school and there's an allegation that the school didn't take corrective action, that doesn't rise to the level of what Commissioner Kirsanow was talking about as a sort of pattern in practice. OCR and other agencies have jurisdiction over sort of pattern and practice failures. So it seems to me that this topic fits less well as an enforcement report.

The other jurisdictional concern is whether the LGBT discrimination also falls within this Commission's jurisdiction. We don't have jurisdiction under our statute to look at all types of
discrimination but only those under our organic statute because of color, race, religion, sex, age, disability, and national origin. And perhaps Congress will amend our organic statute and expand it, but I have some question about that.

Again, this is why it would be to me either better as an enforcement report down the road, where we could answer that question, or as a briefing report, where we have a little bit, possibly a little bit, more latitude in this regard.

And the final point just by comparison to the farm study, if we are going to do bullying, I am going to have motions to expand it into religion and gender because I think it would be odd if this is our national enforcement report not to cover gender and the religion.

But that makes it even less manageable in the time that we have; whereas, I think that the topics that Commissioner Kirsanow suggested under the farm are very discrete. We have billions of dollars worth of damages owing to countless acts of discrimination, as determined by the courts, at least.

And the discrete -- there are thousands of pages of I think reports and pleadings that are already on file. And the two discrete topics that
Commissioner Kirsanow asked that we study are what steps have the relevant agency or agencies taken to prevent that kind of discrimination in the future and what kind of stuff we are taking to discipline the individuals who were responsible.

So, for those reasons, I am very interested in the student violence topic. And I wish it could be done with justice.

CHAIRMAN CASTRO: Any comments? If not --

COMMISSIONER GAZIANO: I think Commissioner Heriot --

COMMISSIONER HERIOT: I'm still in line here.

CHAIRMAN CASTRO: I apologize. I'm sorry. Go ahead.

COMMISSIONER HERIOT: -- I'm still concerned about this notion of bullying, on the one hand, and violence and threats of violence, on the other hand. They overlap, but they are not the same. There is a lot of violence that I wouldn't put into the category of bullying, violence that I think is better put under the category of gang violence.

Well, you don't really talk about that as bullying. And I think to approach it as bullying means that we are going to make mistakes. You know,
the dynamic going on with gang violence isn't just a
bullying thing. There is something much more going
on. And it is hard to deal with that in a report that
is more I think more you're thinking about bullying
than you are about gang violence.

At the same time, there is a lot of
bullying that isn't violence, you know, insults,
taunting. And I think most of the cases that are
getting a lot of play in the media aren't about
violence or threats of violence. They're about
bullying that is basically taunting.

And then we are going to have to get into
First Amendment issues. If we are going to deal with
nonviolent bullying, which is just nasty, mean
bullying, we are going to have a lot of legal issues
that we wouldn't otherwise have. And I don't see how
we are going to be able to do all of that, the gang
violence; the bullying violence; the bullying that
isn't violent but, nevertheless, can be very
destructive because, you know, we can't deal with that
without dealing with First Amendment questions.

So it just seems to me that this is
overwhelming. Is there some way you could limit this?

COMMISSIONER ACHTENBERG: I think the --

CHAIRMAN CASTRO: Yes? And then after you
respond, our Vice Chair is going to say a few words.

COMMISSIONER ACHTENBERG: The description contained in the concept paper is workable. I think Commissioner Kirsanow's likening it to the equivalent of a hostile work environment is quite appropriate because the notion here is these are the activities being undertaken that then go on to deprive these -- this is in the context of students attending school, right? It goes on to deprive the students of a meaningful ability to enjoy their education.

So that is obviously the federal interest and concern. That is the hook for the review by the Commission, the U.S. Commission on Civil Rights. So to the extent that these things rise to that effect, then they are not protected speech within the context of the First Amendment, but they are --

COMMISSIONER HERIOT: That's actually open for dispute.

COMMISSIONER ACHTENBERG: Well, I mean, that --

COMMISSIONER HERIOT: That issue is going to flow in. You just have to recognize that. That First Amendment issue is going to come in there.

COMMISSIONER ACHTENBERG: Well, I mean, we have a -- there is not a clear line. I will grant you
that. But I think there is a discrete area of inquiry that we can pursue. And it's my proposal that we do pursue it, that this is a serious issue. And I appreciate Commissioner Gaziano's concurrence in that regard.

I think it is important that it be the topic of the statutory report. I understand you're differing on that. And I appreciate that as an honest difference that we have.

CHAIRMAN CASTRO: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Just a couple of things. One, just to note as a statistical matter, most gang violence takes place not in school but outside a school.

Two, it seems to me, Commissioner Gaziano, that one can't both complain about the scope of the report -- and I agree that the scope is a problem. You know, I am also concerned about that question, but you can't complain that the scope is too large and then add other possible categories.

COMMISSIONER GAZIANO: I'll try to explain.

VICE CHAIR THERNSTROM: Pardon me?

COMMISSIONER GAZIANO: I'll try to explain later --
VICE CHAIR THERNSTROM: Well, you know --

COMMISSIONER GAZIANO: -- and make my

motion.

VICE CHAIR THERNSTROM: -- religion, whatever else you added in.

And, three, I would love to hear from the Staff Director on the question of whether, in fact, this should be a concern, whether this project as it now stands is doable. And, of course, I should add we can modify this, the scope of this project, as we go along, I would assume. Commissioner Achtenberg, is that not correct? I assume she would say yes.

But, anyway, I just said I wanted to hear from the Staff Director on the question of the scope and whether this is a doable topic.

But I also said -- and this is what I directed my question to you -- we can modify if we find this is not in some way, some aspects not manageable. You know, we take one step at a time. We can modify the scope as we go along. But, you know, it's hard to predict anyway.

Acting Staff Director, I would love to hear your view on -- it's actually not six months to go.

DELEGATED THE AUTHORITY OF THE STAFF
DIRECTOR TOLHURST: No.

VICE CHAIR THERNSTROM: We've got five months to go.

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: Yes, that's correct.

So two things as a threshold. If now we're not using the existing report, any new topic, any new topic, is going to require a Herculean effort by the staff to get done by the deadline.

That said, on this topic, I was asked when I saw the original proposal what I thought of it. I suggested ways to narrow it: no state survey; very limited exploration of best practices; one briefing, in May, local, no field hearings; interrogatories; not subpoenas issued ASAP, things like that.

Also -- and commissioners would have to agree to this and vote on it, obviously, but staff will be scrambling to get any topic done. Again, if you choose the deadline is important, commissioners would, similarly, have to make some sacrifices, largely in the form of truncating some of their review periods and/or comment periods.

So I am not saying it is doable at all under our normal plan, but our normal plan went out the window last August when we didn't select a report.
So I don't at all want to suggest this is
easy or going to have the level of depth that I would
want had I been working on any topic for the last
several months.

And there are breadth concerns. I think a
federal survey of the law, what is DOJ interpreting
under Title IX, that type of thing is something that
we can do, but we would want to talk about these First
Amendment concerns, other concerns, and how to most
focus the topic in a way that was manageable in a
legitimate way. We don't want to dip into subjects
that we don't have the time to treat adequately and
give an adequate analysis

I think if we can focus on federal
enforcement, what is DOJ doing, what is DOE doing, and
have strict limitations on how deep this examination
will be, that it is possible. But, again, every
single step of the process will be limited and not
match what we have conceived under the AI in the past
in terms of number of reviews, that type of thing.

Whether we choose the USDA issue,
inter-student violence, or someone magically comes up
with issue C that we can pick today, interrogatories
-- and this is why I offered these plans. They're not
good, but interrogatories have to go out really soon.
We can't wait until another meeting for folks to vote.

That is a caveat I have in agreeing. If you want my assessment that we could do any of it, the doing has to start as soon as I leave this room.

Another concern I have for any topic is, you know, usually the person acting as Staff Director isn't writing papers. The ethics officer isn't writing papers. And it wouldn't be alleviated by assigning it to OCRE either because Chris Byrnes, similarly, is doing two and three and four jobs.

So the situation we're in is that getting reports done is contingent of one of about four people not being sick or hit by a bus. So that is a problem, right?

Whatever you pick, whichever, your topics or another one, we will do something to the best of our ability and have it done on deadline. And I will work with you to come up with a schedule, but it will not be easy. I will be giving comp time to people to work on it extra. And it's not going to be pretty at all, but I will and can do either topic on deadline with the understanding it is not going to be at the level of depth I would have preferred.

And so again I will urge you for 2012,
please pick a topic in August so we can give civil rights issues the respect they deserve and get something done really in-depth.

CHAIRMAN CASTRO: Okay. I'm going to call the vote on the question. All those in favor of the motion put forward by Commissioner Achtenberg to have the inter-student violence concept paper be the 2011 statutory report signify by saying, "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: All those opposed?

(Whereupon, there was a chorus of "Noes.")

CHAIRMAN CASTRO: Any abstentions?

(No response.)

CHAIRMAN CASTRO: In the opinion of the Chair, the motion passes with the affirmative vote of Commissioners Achtenberg, Titus, Castro, and our Vice Chair Thernstrom. And those opposed are Commissioners Gaziano, Heriot, and Kirsanow. And there are no abstentions.

Do we have a motion on the discovery plan?

COMMISSIONER ACHTENBERG: Yes. I move the discovery plan that was put forward by the Staff Director so that discovery can proceed.

CHAIRMAN CASTRO: Do we have a second on that?
COMMISSIONER TITUS: Second.

COMMISSIONER GAZIANO: I don't know if it's out of order, but before we adopt the discovery plan, I indicated earlier that I wanted to offer a few motions on the scope. With the Chair's indulgence, would it be all right if we talk about the scope before we talk about the discovery plan?

CHAIRMAN CASTRO: Well, since the discovery plan is so, as you indicted earlier, not that broad, why don't we vote on the discovery plan? Then we can go back and address any issues that you have.

COMMISSIONER GAZIANO: If that's the way that you prefer.

CHAIRMAN CASTRO: Is there any discussion on the discovery plan other than what we had earlier?

COMMISSIONER GAZIANO: A few brief things.

CHAIRMAN CASTRO: Sure.

COMMISSIONER GAZIANO: I haven't read it. As the Vice Chair, I looked at the beyond depth of it. And I have heard about it from others. Our Vice Chair has said that we shouldn't be voting on things that we get late into the night.

I don't know if she is going to make an exception in this case, but I think whatever truncated
schedule you adopt for this new topic, we ought to,
allow more commissioner input.

Again, I know it was meant in good faith
that we just deal with the definition of bullying.
Once we get our discovery back from the Department of
Justice, that will tell us what the scope of our
enforcement report focus is.

I think that is a backward way of doing it. We ought to do, however fast we have to work, the
hard work of figuring that out and nailing those
issues down as best we can so that then the
interrogatories that are issued are tightly written to
that.

So I would oppose adopting a discovery
plan until it has been rewritten to reflect our
discussion today, it has been rewritten to reflect
whatever changes in focus have been adopted.
Commissioners, I know we killed telephone meetings,
but I don't like them. But I am willing to go back to
one if the Commission really thinks that we need to
have input before the next meeting to give the staff
direction they need.

CHAIRMAN CASTRO: Vice Chair Thernstrom?
VICE CHAIR THERNSTROM: Commissioner
Gaziano is perfectly right that I have long objected
to getting material at the last moment. And that
came a regular process on this Commission. However,
this is a really extraordinary circumstance where we
have only five months left. It is unprecedented.

And so I sign onto the procedural
irregularity in this one instance, in spite of the
fact that I have had this long history of saying, can
we not do this to commissioners? I've got papers in
front of me. I haven't had a chance to read, to
digest, to think about.

And but, again, we are really short on
time here. And so I, you know, will go along with a
truncated schedule with the understanding this will
not be our usual practice.

CHAIRMAN CASTRO: Any other discussion?
If not -- oh, Commissioner Heriot?

COMMISSIONER HERIOT: I am Glinda, the
Good Witch of the North. And I could tell you why I
don't think this is going to work, but at this point
you won't believe me. So let's see what happens.

CHAIRMAN CASTRO: I thought you were going
to raise Klingons this time like last --

(Laughter.)

CHAIRMAN CASTRO: -- last month.

VICE CHAIR THERNSTROM: Can we address you
as such, Glinda?

COMMISSIONER GAZIANO: Can I ask for one clarification? Sometimes the commissioners have seen the interrogatories before they go out. Sometimes that's been committed to subcommittees.

By the way, the idea that subcommittees are not a good idea, I think that's insane, but sometimes we can do a lot more work if we split it up and have subcommittees.

Is there any opportunity? What opportunity will commissioners have to look at the discovery requests? We have never completely delegated authority with this little discretion on discovery for an enforcement report like this. What other accommodation is possible?

CHAIRMAN CASTRO: I have every confidence in our Acting General Counsel, frankly. In the very limited time that I have worked with her over the last couple of months, I have found her to be someone who is a career person who, as she said today, honestly this is what she believes. I have absolutely no qualms personally with delegating authority to the Office of the General Counsel under our Acting General Counsel at this point.

We are also, as was said earlier, dealing
with an exceptional circumstance of time in order to meet the September 30th deadline, which is something that is not negotiable. We need to move forward as quickly as possible. And commissioners tinkering with interrogatories, they can best be put together by our legal staff in this instance, I think is not appropriate.

Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: It also seems to me that an extensive part of our April meeting could be and probably should be devoted to a staff report on how things are going; what kinds of problems, if any, they are encountering; what kind of additional guidance they can receive from this body. Is that not a way that we can --

VICE CHAIR THERNSTROM: Absolutely.

COMMISSIONER GAZIANO: In part, what I heard from the Acting Staff Director is that she believes -- it makes perfect sense to me what she believes, that she needs to send the interrogatories out within weeks or days. By the way, I think it has always been the practice that commissioners can look at the interrogatories before.

So I would, at a minimum, move that we have three days just to provide our -- and, by the
way, it doesn't violate any AI that we talk to the
Staff Director -- three --

DELEGATED THE AUTHORITY OF THE STAFF
DIRECTOR TOLHURST: Or the General Counsel.
(Laughter.)

COMMISSIONER GAZIANO: -- that we have --
CHAIRMAN CASTRO: Not at the same time.
(Laughter.)

COMMISSIONER GAZIANO: -- that we have
three days to provide you with our thoughts. I am not
sure that’s an adequate substitute for Commission
decision-making, but I think it might help -
- is that

CHAIRMAN CASTRO: Commissioner Thernstrom?
VICE CHAIR THERNSTROM: Three days isn't
three days. You get three days. And then the Staff
Director/General Counsel has to respond. And then you
respond. And it ends up it's not three days. And, I
mean --

COMMISSIONER GAZIANO: I don't understand
that. The Staff Director/General Counsel can either
take such advice under --

VICE CHAIR THERNSTROM: Okay. As long as
you're not insisting on going back and forth here for
--

CHAIRMAN CASTRO: I don't think we have
the luxury, unfortunately.

VICE CHAIR THERNSTROM: I mean, we just
don't have the luxury to do that.

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: Can I say something as well?

Whatever you decide, discovery is not a one-time
thing. And, as people looked at what we issued,
which, of course, would be shared immediately and in
advance if at all possible, if we just come back and
say, "Why didn't you ask this or that?" or "We wish
you had defined this in a different way," we can issue
supplemental discovery, incorporating any input that
you have.

CHAIRMAN CASTRO: That's an excellent
point. I think that should satisfy any concerns.

Any other questions, discussion?

(No response.)

CHAIRMAN CASTRO: If not, shall we have a
vote on the discovery plan? All those in favor of the
discovery plan signify by saying, "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: All those opposed to the
discovery plan please signify by indicating your
opposition by saying, "No."

(Whereupon, there was a chorus of "Noes.")
CHAIRMAN CASTRO: Any abstentions?

COMMISSIONER KIRSANOW: I abstain.

CHAIRMAN CASTRO: One abstention. So the motion on the discovery plan passes with the affirmative votes of Commissioners Achtenberg, Titus, Thernstrom, Castro. Opposed to the motion were Commissioners Gaziano and Heriot. And Commissioner Kirsanow abstained from that vote. Okay.

COMMISSIONER GAZIANO: May I now offer some motions on the --

CHAIRMAN CASTRO: Go ahead.

COMMISSIONER GAZIANO: If we are doing this as a national enforcement report, there are three classes identified in the most recent concept paper that I looked at at about 12:30 last night, received it about 10:00 in my in box. The three classes were race, inter-student violence based on race, LGBT status, and ethnicity to the extent that ethnicity was foreign-born or language of proficient students.

It seems to me that it gives -- and the examples that were used about the foreign-born students really involved, it seemed to me, discrimination against religious minorities. The fact that they were born in foreign countries seemed to me to be incidental to the claim.
And so my first motion is that if we are going to study some religions, Sikhs, Islam, whatever, that we open it up to any inter-student violence based on religion generally. And I doubt if we are really going to limit this to OCR or the Department of Justice's enforcement, that that is really expanding the scope very much. I think the scope is too big to begin with, but I don't think it is expanding it very much. It is just treating it in a little bit more even-handed way.

CHAIRMAN CASTRO: How many motions do you plan to have? Is it two? One?

COMMISSIONER GAZIANO: Three.

CHAIRMAN CASTRO: Three? Is there any way we can put them all into one motion just for --

COMMISSIONER GAZIANO: Someone might agree to one. For example, would you adopt that as a friendly amendment?

COMMISSIONER ACHTENBERG: Yes, I would.

COMMISSIONER GAZIANO: Okay. And I don't know whether the others --

COMMISSIONER HERIOT: Yes. I think we have to do them one by one. Otherwise they could be voted down for --

CHAIRMAN CASTRO: So let's proceed with
your motion.

COMMISSIONER GAZIANO: It looks like the
author or the sponsor has accepted that one.

COMMISSIONER HERIOT: Could you clarify
that one for me?

COMMISSIONER GAZIANO: Yes.

COMMISSIONER HERIOT: What has just been
accepted?

COMMISSIONER GAZIANO: We're going to look
at all bullying or however we define it later or
inter-student violence on the basis of any religion --

CHAIRMAN CASTRO: A friendly amendment to
--

COMMISSIONER ACHTENBERG: Can I say why I
concurred in that? I thought the commissioner made a
very good point. To the extent that one of the things
that was very -- in fact, the example was suggested
that it was with regard to anti-Muslim animus. It
seemed to me to be correct. Then Commissioner Gaziano
brought to my attention what about students being
bullied because of their Christian beliefs or what
about --

COMMISSIONER GAZIANO: Orthodox Jews in
some schools.

COMMISSIONER ACHTENBERG: -- or bring
bullied because of their Jewish religion. So he asked if I would view this as a modest but friendly expansion. And I said yes.

Obviously I don't have the authority to speak for the other commissioners who concur in the paper in chief, but that was his proposal. And that was my rationale.

CHAIRMAN CASTRO: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Well, I mean, I don't have an objection to expanding it. I suspect that there are no data to speak of, you know, in terms of harassment of Jewish students. And so I don't have an objection to expanding it.

To the extent to which we can, I would like to proceed on the basis of data, rather than some anecdotes here and there.

COMMISSIONER GAZIANO: I think we all would. That's one of the reasons I wish we could have postponed this.

COMMISSIONER HERIOT: Uncovering the fact that there is no data is useful in itself if that were to be the case.

VICE CHAIR THERNSTROM: Yes, if that were to be true, but, you know, the sense is there are religious questions. I mean, that is generally kind
of off the --

COMMISSIONER HERIOT: Yes. Putting that in the report that we have no way of knowing how many of --

VICE CHAIR THERNSTROM: Okay. Done. I don't have an objection to that.

COMMISSIONER HERIOT: Todd, did you have more?

COMMISSIONER GAZIANO: Do we want to vote on this or is this --

CHAIRMAN CASTRO: Do we have acceptance of the amendment?

VICE CHAIR THERNSTROM: We have an acceptance of the amendment.

CHAIRMAN CASTRO: Does the seconder agree? Does the seconder need to agree on it?

VICE CHAIR THERNSTROM: I'll second it.

CHAIRMAN CASTRO: Okay. All those in favor --

COMMISSIONER KIRSANOW: Can we have a short discussion on that because I'm not sure what other motions you've got. This may be superfluous, but I think it might make sense to also include -- and I don't want to expand this. Actually, my concern, Commissioner Achtenberg, was not so much with respect
to the categories but with respect to the scope of the offense.

COMMISSIONER ACHTENBERG: Understood.

COMMISSIONER KIRSANOW: Our organic statute talks about a lot of things, but, in any event, I would think that possibly we would want to also look at the violence or harassment or bullying directed at disabled or those perceived to be disabled.

CHAIRMAN CASTRO: In fact, Commissioner Titus -- and I'll give you a second to talk about that as well. We had these conversations as we were trying to limit the scope of this. And, in fact, folks may not have seen it, but on page 2 of the concept paper, in footnote 2, we indicated that it is also appropriate to leave open the possibility of exploration of how inter-student violence affects other categories of students as the work on this project unfolds with the view that issues such as the one that Commissioner Gaziano raised and issues such as Commissioner Titus has highlighted for us and you have just now, that we are precluding ourselves from looking at those.

And, in fact, in the course of this project, we have no doubt that some of those are going
to come up. And we don't want to ignore those.

So that was our effort to to at least
provide the opportunity for that to occur while at the
same time balancing the concerns that had been raised
about manageability and the staff resources.

So I don't know if that would be
sufficient for folks, but I know, Commissioner Titus,
you want to speak to the issue of special needs.

COMMISSIONER TITUS: Well, I agree. I
mentioned that on several occasions that we need to
look at children with special needs because often they
may be the subject of bullying and wanted to include
that in here but agreeing that we didn't have the
resources of the time, but I thought that it would be
covered under this amendment that when it came across
those cases, we would look at them.

But if we are going to amend the study to
include all of the categories that are covered by our
statute and state that specifically, I would have to
say I want to see that stated in there specifically,
just like religion, just like gender, or these other
things. So if we are going to open that door, I would
like to see that written, spelled out specifically.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: The reason I think
we should go through this process is if the interrogatories are going to be written, we need to make that kind of decision. And if we are really focus on what has DOJ done, what has OCR done, then it is broadening it a little bit but not very much.

But if we don't ask for certain categories in the interrogatories, we're not going to get -- we're on a short time frame. So that's why I think we -- so that's a good second.

My third was going to be gender because I think it also certainly is more explicitly within our jurisdiction. Then the LGBT harassment -- and it's a little bit odd to be focusing on -- you know, not focusing on gender.

CHAIRMAN CASTRO: So let's vote on the religion amendment. And then we'll have a formal motion put forward by Commissioners Titus and Kirsanow on special needs. And then we'll move on to the next topic. So let's vote on this. We've got a motion that's been amended, and the amendment has been seconded. So all of those in favor of adding religion signify by saying, "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: All those opposed?

(No response.)
CHAIRMAN CASTRO: Any abstentions?

(No response.)

CHAIRMAN CASTRO: It passes unanimously.

Which of the two commissioners would like to raise the next motion?

COMMISSIONER KIRSANOW: Go ahead.

COMMISSIONER TITUS: I would move that we include people with disabilities in our study.

COMMISSIONER KIRSANOW: I would include just a slight amendment to that: perceived disabilities also.

COMMISSIONER TITUS: Yes.

CHAIRMAN CASTRO: Okay.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Before you vote, can I make a quick point?

CHAIRMAN CASTRO: Oh, sure.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: If we're adding all of these, on the one hand, I would withdraw my assessment that this is doable with this caveat. And I agree with Commissioner Gaziano. As you approve these, these are all going to need to go to interrogatories. And that we can do: collect and analyze data on any groups that you ask us for.
What you won't get -- I mean, there is a rich history. And you can go back through years and years of law of students facing bullying and violence because of their religion. You're not going to get a rich legal background on any of these individual issues.

You will get the forward-looking. You will get the analysis of what DOJ is doing. But in terms of expectations of if you were to include everything, you are not going to get the analysis I would like to give you had I had a year on in terms of setting the stage of legal protections very broadly for all of these groups.

CHAIRMAN CASTRO: We understand that. We appreciate it.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: But the interrogatories, yes, I totally agree we need to be really clear today so we include anything you want in the data that we get.

CHAIRMAN CASTRO: Okay. Fair enough if that's agreeable.

So we have a motion that has been seconded on the issue of students with disabilities or perceived disabilities. All those in favor signify by saying, "Aye."
(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: Any opposed?

(No response.)

CHAIRMAN CASTRO: Any abstentions?

(No response.)

CHAIRMAN CASTRO: It passes unanimously.

Commissioner Gaziano, did you have another motion?

COMMISSIONER GAZIANO: I move that we ask the same types of questions of the Department of Justice, Department of Education or any other federal regarding their enforcement of federal statutes that prohibit bullying or however it is defined as we ultimately define it on the basis of gender.

CHAIRMAN CASTRO: Okay. Do we have a second on that?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN CASTRO: Any additional discussion on that motion? Vice Chair?

VICE CHAIR THERNSTROM: I'm sorry. I'm being a little stupid or something on this. What does bullying on the basis of gender look like specifically?

COMMISSIONER GAZIANO: There's some notion in the concept paper. We also had some teachers
testify last month about obviously sometimes boys pick
on girls and sometimes girls pick on other girls
because they see them as sexual threats. It was very
interesting testimony.

VICE CHAIR THERNSTROM: The girls picking
on girls, I have seen that a lot, but you are
including that?

COMMISSIONER GAZIANO: Yes, in fact, I
think that was raised as the most prevalent level of
violence.

VICE CHAIR THERNSTROM: Yes, I'm sure.

Girls are horrible to each other in grade school,
middle school mainly.

CHAIRMAN CASTRO: Do we have a second on
that motion, by the way? Yes, we did, right?

Commissioner Heriot?

COMMISSIONER HERIOT: Let me just back up
a little bit. This does have to do with this motion.
But one of the things about this report is that it
deals basically with sexual orientation as a topic.
And it's not clear that that is within our
jurisdiction.

We might bolster our jurisdictional
argument a little bit better if we include gender
here, but one thing I would like is an opinion from
the General Counsel's office about whether or not we can study sexual orientation issues. That would make me feel a lot more comfortable on the jurisdictional issue.

DELEGATED THE AUTHORITY OF THE STAFF
DIRECTOR TOLHURST: Do you want an opinion right now?
COMMISSIONER HERIOT: I want a --
COMMISSIONER GAZIANO: No. I'd rather, you know --
COMMISSIONER HERIOT: Actually, I would like to know a bottom line, but I would also like, you know, some argument.

DELEGATED THE AUTHORITY OF THE STAFF
DIRECTOR TOLHURST: Yes. I mean, going back to your AI, what should happen with all concept papers is before we even talk about them, they would go to the General Counsel, who would write a opinion about jurisdiction and foundation. That hasn't happened in a while.

I can tell you that the previous General Counsel was asked the question. I've not been asked it until now and he believed that it was within our jurisdiction.

I think that what we would look at would be what other federal agencies are doing, including
the Department of Justice, who is explicitly at the moment including sexual orientation under their DOMA protections.

I would also harken back to a time before disability was under our jurisdiction, when we considered disability in helping to frame the laws that were being created to protect people. So there is a question of whether under our administration of justice statute we should as a Commission be looking or you should be looking at is it part of our role to write in quotes "advocating for a group to become or not become a protected class" and something that the Commission should look at. And should the Commission have a role in thinking about that, even before it's under our jurisdiction?

But I would prefer to have a day to think about this and give you something in writing that was a more sophisticated --

COMMISSIONER HERIOT: Yes. I would appreciate getting something in writing.

COMMISSIONER GAZIANO: I would, too. And I did note the authority cited in the concept paper that certainly it is very relevant that the administration is interpreting Title IX in a certain way. But if you could address the other authorities
because we need to make an independent determination
of our jurisdiction.

CHAIRMAN CASTRO: Yes, Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: My question, our enabling statute and the fact that we have purview under the administration of justice and the fact that the Commission in its history has shed light on emerging issues, even before they were part of enumerated classes, is that a fair characterization of some of the activities that the Commission has undertaken in the past? What is the legal significance, if any, Mr. Chairman, of the guidance that has been asked for by the Office of General Counsel, as compared to essentially a vote of this body that we are going to undertaken in the particular -- I mean, is it mad to suggest there is a difference between that and the vote of this body or is it merely to elucidate the issue of jurisdiction?

CHAIRMAN CASTRO: In my view -- and I can't give you a legal opinion because this is the job our counsel here. But we, a majority of our Commission, has already voted on this concept paper that includes as one of the topics the subject areas that we are going to look at as LGBT students. And it
is not the only topic we voted to look at. In fact, we just added a few more.

So I believe in putting forward this concept paper, believe that we have the authority through, as you said, our administration of justice as well as the fact that we are looking at a federal agency which is currently looking at that class of individuals in the context of the topic that we have chosen.

So I would view the report that is being requested from our General Counsel as elucidating to these commissioners who voted against it anyway.

So I would not view that as something that would prevent us from going forward and looking at that additional class of individual. And that is my personal view of the effect of this.

COMMISSIONER GAZIANO: I have the same view, but it might depending on the legal analysis be something we would raise at another meeting but maybe not.

And your point about the administration of justice, that's always been subject to interpretation of our jurisdiction. I think it is a fair point. And it is a fair point that we ought not to interpret unreasonably narrowly either.
CHAIRMAN CASTRO: So we have a motion. And it has been seconded on the issue of addition to the report, that concept paper of gender. Unless there is any further discussion, shall we have a vote? All those in favor of adding gender please signify by saying, "Aye.a"

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: All those opposed? (No response.)

CHAIRMAN CASTRO: Any abstentions? (No response.)

CHAIRMAN CASTRO: The motion passes unanimously.

Any other motions on that? You're done? So now we will move on to a consideration of briefing and hearing topics for fiscal year 2011 --

COMMISSIONER GAZIANO: Just before we close out this. I'm very sorry, but will we will ask -- the Chair working with the Staff Director to circulate a proposed time frame, under our prior plan, which I think has to be abandoned, you get the first draft of the enforcement report in May. I don't think that's going to possible, but I would like -- by the way, I am again speaking as -- what did you say you were, Glinda? I'm --
COMMISSIONER HERIOT: Glinda, the good witch of the North.

COMMISSIONER GAZIANO: Yes. I'm the warlock. I think everybody will be --

(Laughter.)

COMMISSIONER GAZIANO: -- well-served -- I don't need it today but well-served if you allow yourselves time to look at drafts and have changes incorporated. So is that something that unless you have an alternative proposal that you would circulate to us for consideration, what the proposed schedule should be for this report?

CHAIRMAN CASTRO: I believe there is a timeline that has been prepared for this. Has there not, Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Indeed, yes.

CHAIRMAN CASTRO: And we can circulate a copy of that? We have it. Is it in final form?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: I would prepare to conform it more to what commissioners are use to in terms of a timeline if that is all right.

CHAIRMAN CASTRO: Okay.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: We can circulate that on Monday.
- CONSIDERATION OF BRIEFING/HEARING TOPIC(S) FOR FY 2011

CHAIRMAN CASTRO: As you know, at our February 11th hearing, there was a motion by Commissioner Gaziano that we all agreed that the eminent domain briefing would be conducted within six months, which would be sometime before the end of August.

We have been discussing here I think today a lot of issues as to staff capacity and whether or not we have the capability of performing what we voted to perform. And what I wanted to do was have a discussion as to whether or not we have room for other topics at this point in 2011 assuming we're going to move forward with imminent domain, as we have agreed to do within a six-month time period.

So I wanted to ask our General Counsel, our Acting General Counsel, do you think there is room to do another hearing on another topic?

VICE CHAIR THERNSTROM: That is on top of --

CHAIRMAN CASTRO: On top of eminent domain.
VICE CHAIR THERNSTROM: -- eminent domain.

It's not a hearing, a briefing.

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: A briefing?

CHAIRMAN CASTRO: A briefing.

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: Not before October. Well, a couple of things. For eminent domain, I knew you were going to ask me about that. That is a ready-to-go briefing. OGC had done all of the background work. We have briefing binders for commissioners. We have identified speakers. So for imminent domain, it is a really pull the trigger and let's pull a good fix to make sure that briefing happens with the caveat that what I have just committed David Snyder and myself to that we would need OCRE to assist with the logistics of that briefing.

For another briefing, I think I would need to confer with Chris Byrnes as to OCRE's workload because that briefing would most certainly have to come out of OCRE given what the General Counsel's office is committed to.

CHAIRMAN CASTRO: And here's the reason for my question, because I know Commissioner Kirsanow has put forward as a statutory topic, which did not
end up being chosen as the USDA. I don't know if he wants to go forward for us to look at that as a briefing topic.

And if so, what I'm trying to have an idea of is we have already got eminent domain out there. Do we have the capacity to look at something else right now or do we need to wait and see how we play out with what we approve today in terms of the new statutory report? So, you know, that's what I'm trying to get an idea of.

Commissioner Kirsanow, I don't know if you wanted to move this forward today as a hearing/briefing topic or not.

COMMISSIONER KIRSANOW: Yes, I think I would. I appreciate your consideration of it. I do think -- and I will reiterate what I said before. I think this topic is one that is kind of a ready-made project.

I don't want to presume what the staff would do on this or to truncate what they would do, but I do think that we are looking at only two discrete areas of inquiry with respect to the topic.

I think all the data has already been adduced. There's been litigation on this. There's been a settlement. And it would be a very discrete
inquiry as to what USDA is doing or has done to remedy what precipitated what appears to be fairly rampant discrimination that at least in one case, the Pigford case, affected 94,000 individuals and in the Eagles -- I can't remember the name of the other litigation but the ones that affected Hispanic farmers and female farmers. There's another fairly sizeable cohort. But I think that investigative work has been done pursuant to litigation. And we simply -- that would be kind of background material to see what USDA has done to remedy that situation.

CHAIRMAN CASTRO: Sorry. Vice Chair

VICE CHAIR THERNSTROM: Commissioner Kirsanow, I wonder if just out of pity for the staff, as it were, whether you would be willing to have that delayed until October. We don't have --

CHAIRMAN CASTRO: A discussion about it. I mean, are you talking about a discussion about it or vote on it?

VICE CHAIR THERNSTROM: Well, just --

COMMISSIONER KIRSANOW: The briefing?

VICE CHAIR THERNSTROM: Yes, have the motion not contemplate any kind of briefing before the staff gets on its feet again; that is, not until

Neal R. Gross & Co., Inc.
202-234-4433
CHAIRMAN CASTRO: As I understand, I think what I am asking to clarify is before we even have a motion on something like that, I want to make sure that there is a capacity for the staff, not necessarily vote on a topic today, whether it's --

VICE CHAIR THERNSTROM: Right.

CHAIRMAN CASTRO: -- this and then say, "Well, just do it in October." I want to make sure I have an understanding from the staff that they have the capability to do something else beyond the eminent domain or I don't know if folks wanted to swap eminent domain out. I'm not suggesting that, but do we have the capacity for one more item or are we at capacity now?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: That item if you did another one would have to come out of OCRE. So we'll need to get Chris to be able to weigh in. And I see that on our discussion, it looks like Title IX with this other discussion. So probably he can't answer unless he knows what you all want to do with Title IX and what the timeline is for getting any report on Title XI out because that is certainly occupying their time.

CHAIRMAN CASTRO: Maybe what I could
suggest if it's amenable is that we put off a
discussion of this topic as the briefing topic until
next month's meeting so that in the interim, staff can
consult with one another and come back and inform us
as to their capacity to take on anything else, in
addition to what's already on --

COMMISSIONER KIRSANOW: That's agreeable
to me.

CHAIRMAN CASTRO: Does that work for --

VICE CHAIR THERNSTROM: That is the right
thing to do here.

CHAIRMAN CASTRO: And that was the USDA
topic.

I'm sorry. Commissioner Titus?

COMMISSIONER TITUS: One quick question.

You mentioned how things are underway and from the
eminent domain, from the eminent domain briefing. Did
you expand the invited guests who are going to come to
testify or is it still just that limited number that
was someone who is connected to the staff?

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: What we had locked in were two
people that are committed. We had other people we
were speaking with at the time we were asked to stop
work on it. So there are other people on our list.
They had not committed before the trigger was pulled on work.

VICE CHAIR THERNSTROM: But we can go back to them on --

CHAIRMAN CASTRO: We can add folks.

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: We can go back.

CHAIRMAN CASTRO: We can add folks.

VICE CHAIR THERNSTROM: Yes, of course.

CHAIRMAN CASTRO: Okay. Great.

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: Do we need to talk about we need everything to happen, the eminent domain?

VICE CHAIR THERNSTROM: Yes. When are you rescheduling the eminent domain briefing for?

CHAIRMAN CASTRO: We voted at the last meeting that we would conduct it within six months from that date, which would be by the end of August.

So we haven't set a date for it, but maybe what we ought to do is at the next meeting, we could talk about whether or not the capacity is for anything new.

You may want to look at that point as to when we want to set this hearing.

VICE CHAIR THERNSTROM: That's fine.

CHAIRMAN CASTRO: That will also -- I
think the day that this happens will dictated, in large measure, by the staff's ability to move forward on the other thing.

VICE CHAIR THERNSTROM: That's fine.

- TITLE IX - SEX DISCRIMINATION IN LIBERAL ARTS COLLEGE ADMISSIONS

CHAIRMAN CASTRO: Okay. Now we're moving on to Title IX, sex discrimination in liberal arts project. Mr. Byrnes, I believe you have a staff report on this project.

MR. BYRNES: Yes. Thank you, Mr. Chairman.

I did prepare an update on the status of the project that our Acting Staff Director distributed to you all yesterday. I was hoping that would streamline discussion, especially because many aspects of this investigation should be discussed in closed session.

I don't know if anyone has had a chance to read that. I would be happy to take any questions for those who have. Okay. Well, I will try to discuss the status as gingerly as I can without having to force us into closed session.

As I mentioned previously, three schools are working with us to analyze their data subject to a
Commission-drafted research protocol. Two of the
schools have expressed concerns about the Commission's
use of certain intermediate data outputs.

This isn't the logistic regression
analysis. It's not the final analysis. But we had
asked them to generate differences in median SAT
scores for men and women across applicants, admitees,
and enrollees. And they have requested an assurance
from us as to how we would use and publish this data
and what sorts of inferences we could draw on that.

We have offered to include a disclaimer in
the report that our analyses do not perfectly model or
represent any one college's admission process.

With the third school, the ball is in our
court. We distributed Part 1 of the protocol to them
and received the requested listings of values of their
data in return but determined that the school's
variables needed special recoding.

Before we distribute the next step for the
protocol, staff must first resolve how to handle their
high school GPA, which contains data on various
different scales.

So that's where we stand with the three
holdout schools. For the rest of the schools, staff
is developing tables of data showing the proportions
of applicants, admitees, and enrollees by gender, sex-specific admissions rates, and median SAT scores. These represent the intermediate data outputs that concern the two holdout schools. These are mostly complete and proofread for 14 schools.

CHAIRMAN CASTRO: Okay. Thank you, Mr. Byrnes.

MR. BYRNES: Any questions?

CHAIRMAN CASTRO: Any questions? Any motions?

COMMISSIONER TITUS: Mr. Chairman?

CHAIRMAN CASTRO: Yes? Yes, Commissioner Titus?

COMMISSIONER TITUS: As I look through this update, I thank Mr. Byrnes for preparing this for us.

MR. BYRNES: Sure.

COMMISSIONER TITUS: It seems to me if I can just kind of sum it up, some of the schools have not been forthcoming and for various reasons. And those that have been forthcoming have also some -- or we should have some concerns about the data that they have been providing.

As you see, the quality of the data varies from school to school. Some of it is missing for
legitimate reasons. Different schools don't want to provide this because maybe they don't have it.

Other quality data issues arise from the manner in which they code the people who are admitted or rejected so you're comparing apples to oranges. The list just kind of goes on.

So I would say that since the material is incomplete and potentially unhelpful because of the quality of the material and the inconsistency of it. And also another problem, as I understand it -- and correct me, Mr. Byrnes -- is since it's collected by subpoena, we would have to have another hearing to deal with that information?

MR. BYRNES: I conferred with the previous General Counsel. It was his opinion that we would need a hearing to enter the data into the record and then publish the results of that analysis.

COMMISSIONER TITUS: Okay.

MR. BYRNES: But that would be a very pro forma matter from my understanding. It would be ten minutes, all of ten minutes, to swear it in. It wouldn't be sort of the traditional hearing, we're, you know, all the bells and whistle and --

COMMISSIONER TITUS: And debriefing.

Well, for whatever, maybe that is not as big a problem
as the nature of the data. I would say that at this point, having heard that report and concerns with the data, we don't want to put out something based on faulty or incomplete data. I would just move that we suspend this study and move forward with other things.

CHAIRMAN CASTRO: Is there a second to that motion?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Any discussion? Commissioner Gaziano?

COMMISSIONER GAZIANO: I will yield to Commissioner Heriot.

CHAIRMAN CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: I would oppose that motion. I think we have potentially valuable information here. And to cut it off would be a travesty. I don't think we are in a position to say that we have worthless data. I think it is going to be very useful. And the amount of work that is necessary at this point is really quite small.

CHAIRMAN CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes. Reading I would ask the acting head of OCRE, who used to be a different acting head -- but, anyway, to comment on this. There are always inconsistencies in the way
data sets are sent by different institutions. It is a function of statisticians in your office and other offices to try to make sense of that.

That is not, certainly, as I understand it, a rare instance. It is a rare instance when different institutions keep their data in exactly the same way.

But I also understand that analysis of certain institutions is further along -- I'd like a little bit more information on that -- and that information on even a few institutions could be potentially very valuable.

I want to say one other point, but I want to get your answer first.

MR. BYRNES: I think for that, we would have to go into closed session if we start discussing particular institutions. I don't want to sort of --

COMMISSIONER GAZIANO: No. I just meant, without naming them, are there certain institutions that the data has been analyzed?

MR. BYRNES: Yes.

COMMISSIONER GAZIANO: Okay. So --

MR. BYRNES: Along different statistical models, as I laid out in this update.

COMMISSIONER GAZIANO: I read your summary
briefly. How many institutions is there whatever
stage it is, whether it is robust, final, words you
all use? How many institutions have you done a basic
analysis of?

MR. BYRNES: Eleven.

COMMISSIONER GAZIANO: Eleven. Okay.

MR. BYRNES: And this is for the logistic
regression analysis model. This is for the ratios.

COMMISSIONER GAZIANO: Yes, yes. Even if
major further work on this is going to be suspended, I
would have a very strong objection to essentially
burying the work that the Commission has done. That
would be a terrible waste of the Commission's time,
the Commission's money.

I would want this -- even if we are not
going to stand behind it in some form, that we publish
or release or something, the data, even if we are not
going to finish the analysis in the way that we
originally so that other scholars can make what use of
it they want.

Now, I would hope that we actually
complete the job and that we actually publish a report
or data sets that we are comfortable with. But if we
are not going to do that, then I don't want this
buried.
CHAIRMAN CASTRO: Any others?

Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Thank you, Mr. Chair.

I was wondering, Mr. Byrnes, what do you make, if anything, of the criticism of our study that the sample size was too small for results could significant?

And if you could answer that question as well with regard to the criticism of our study that the geography that we had utilized because of the -- I assume it's because we can only, our subpoena can only, extend so far -- that the geographical isolation has on the validity of the statistical findings.

MR. BYRNES: I wasn't on board for the project when we did select the schools. I will say that the schools that we are seeking data from, some 18-19 schools, 2 represent a very wide variety of schools, moderately selective, highly selective, HBCUs, non-HBCOs, public, private, some institutions with a religious affiliation. I think it's a good cross-section.

Again, I am not a statistician. Bear in mind that, even though the number of schools might be small, we are looking at thousands of applicants. So
I think that does give us a very large sample size
from which to analyze data.

COMMISSIONER TITUS: So you're saying that
diversity of the kinds of schools overcomes the
geographical isolation issue or is that a --

MR. BYRNES: Again, I'm not a
statistician, but I think it would tend to make up for
that, tend to mitigate that concern.

CHAIRMAN CASTRO: Vice Chair, do you have
a question?

VICE CHAIR THERNSTROM: Well, yes. And I
thank Mr. Byrnes for this. I mean, I, frankly, am
reading it. I've never been in favor of this project,
but reading this I -- you know, my heart sank some.
And I just feel there are so many problems here with
the data.

I started out with a basic problem of
looking at private schools, which I don't think we
should be doing. I think private schools should be
free to set whatever admissions criteria they want.
And you have just added frosting to that cake, as it
were.

And I thank you for the honesty of this
report.

CHAIRMAN CASTRO: Commissioner Heriot?
COMMISSIONER HERIOT: I just wanted to address the issue of geographic isolation here. It is true that all of these schools are within what, 100-mile radius of Washington. I don't think that presents a problem for us at all. We don't have to say from whatever results we get that this means that discrimination is going on across the country or that it's not going on across the country.

It would be a useful thing to say it's going on within 100 miles of Washington. People can make their own conclusions about whether or not it is going on in Oregon, too. I mean, if they find it is not here, or they find it is here, then I think, you know, that will then mean that, you know if there is such discrimination, we may want to study it more broadly.

But to cut it off, saying we haven't studied enough schools, if you would prefer to think of this as a pilot study to see whether we should do a further study later. You know, that's fine, but, yes, it is very useful to know whether or not there is gender discrimination going on here, here within 100 miles of Washington.

And we may well want to go further or some other entity may want to study it further as to
geography, but I don't think we have any problem with
sample size here.

As for the individual schools, it's not a
sample at all. We're looking at all of their
admissions, not some of their admissions. So
conclusions can be drawn about particular schools if
we find the data does draw us there, but it's not a
question of sample size. I don't think we're going to
have any problem with that.

As for whether or not private schools
should be permitted to discriminate on the basis of
gender, maybe they should be, but that is not what
this study is about. This study is about whether or
not they are discriminating, not whether they should
have that authority.

CHAIRMAN CASTRO: Commissioner Gaziano?
And then we'll vote on this.

COMMISSIONER GAZIANO: Just to clarify,
our beloved former head of OCRE died in the middle of
this process. And, by the way, I was looking for the
plaque. We designated a conference room in Bob
Lerner's name. So someone needs to tell me if we've
put the plaque up. There's no plaque. I would asking
the person acting as Staff Director to see if we can
put a plaque commemorating the conference room that we
named --

CHAIRMAN CASTRO: He said it's up.

COMMISSIONER GAZIANO: Oh, it is?

COMMISSIONER HERIOT: It wasn't in the room we saw.

COMMISSIONER GAZIANO: I missed it.

COMMISSIONER HERIOT: Where is it?

COMMISSIONER GAZIANO: Okay. Let me take that back -- okay. I didn't see. Let me take that back. But, anyway, it was my opinion -- just I have to state this for the record -- that our subpoena for written documents and not compelling testimony does extend beyond 100 miles.

It was also my opinion at the time that through our field offices, we could extend our jurisdiction. But I went along with this because Mr. Lerner opined that the schools within our 100 jurisdiction -- in case some school raised an objection, in case I was wrong, he opined that the schools would be provided actually a pretty good reasonable sample.

But I would concur with what Commissioner Heriot said, that I don't think we need to say that. We could let others draw their conclusion whether the sample that we have obtained means anything about the
rest of the country.

I think it would be valuable to know whether certain of these institutions -- whether the sample that we have chosen, any conclusions can be drawn from.

CHAIRMAN CASTRO: Thank you.

COMMISSIONER TITUS: Can I ask --

CHAIRMAN CASTRO: Sure, Commissioner Titus?

COMMISSIONER TITUS: I'd be the last person to want to bury a study on sex discrimination. I mean, I think it is very important. I think it still exists out there. I think it could be something to study. But if you look at your very own words, "The quality of the data we have received varies from school to school." And then you go on to say, "Our biggest concerns arise from extensive missing data and insufficient information."

And then here's another line. These are your words. "At least 1 of 15 schools that provided data have issues that may preclude any analysis. Staff is still determining whether we can fix and analyze the data in several other schools."

What worries me is that using this data to come up with some kind of report I think will lead to
misleading conclusions. And that is the last thing that we want to do.

As for the sample size, I don't think there's any question about that fact that the schools surrounding Washington are not representative of the entire country, I mean, if you label the title that very specifically, but that is not what the title is. And you cannot tell me that this is not a subset that is different from the deep South or the far West or Las Vegas or other places, too.

So I say that we put a stop to this because we don't want to risk putting out there misleading conclusions based on what we have admitted up front is inadequate or perhaps faulty data.

MR. BYRNES: I do want to speak just really briefly to the possibility of putting out misleading data. Certainly this project does not preclude the possibility of multiple rounds of going back to the schools to say, "Is this data complete?"

We tried to do that in several instances. They would have the opportunity to do so in an affected agency review. So certainly if there were large enough gaps, we would obviously take that concern into account. The investigation does not preclude sort of ongoing verification with the
schools.

Staff has done their best in the meantime to sort of figure out the significance of missing data, whether it is sort of deliberate omission, they just don't keep the data.

COMMISSIONER TITUS: Oh, I was not in any way suggesting it was the staff's fault. I want to make that clear. I think you all do the very best you can. I am amazed how well you do with so few resources. So I don't blame the staff on this data problem at all. I think it's the source of the data and the inability to get it and their unwillingness to give it to us. So I want to be very clear about that.

CHAIRMAN CASTRO: All right. Commissioner Heriot? And then we are going to vote on this because I know this is a topic that was proposed by you. So I will give you the last word before we vote.

COMMISSIONER HERIOT: I would like to say, number one, that if we were to cancel this project on the ground that we have missing data and we have some data collection problems. We have never had a study ever...We always have data collection problems. There are always difficulties in getting facts.

And if this one is canceled when it is almost done on that basis, then we had better cancel
every project we are ever going to do and might as well just go home. You are going to have problems like this in any report you ever look at.

Nowhere in Mr. Byrnes' paper does he tell us that none of the data is adequate. And so the notion of we're going to cancel it because some of the schools may be a problem seems to me just silly.

And, you know, we very much ought to continue this project. There is useful information here. And we shouldn't throw it away.

CHAIRMAN CASTRO: Okay. We're going to call the question. All those in favor of Commissioner Titus' motion to suspend the Title XI sex discrimination in liberal arts college admissions programs signify by saying, "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: All those opposed signify by saying, "No."

(Whereupon, there was a chorus of "Noes.")

CHAIRMAN CASTRO: Any abstentions?

(No response.)

CHAIRMAN CASTRO: In the opinion of the Chair, the ayes have it with the votes, affirmative votes, in favor of the motion, Commissioners Achtenberg, Titus, Vice Chair Thernstrom, Commissioner
Castro; the opposition from Commissioners Gaziano, Heriot, and Kirsanow.

The next item on the agenda --

COMMISSIONER GAZIANO: I had an alternate motion. I'm sorry. If it is going to be killed, I move that the data, be released for other scholars to make of it what they will with such exceptions as this Commission may determine, but that which can be released without our imprimatur, that that will be released for other scholars to study so that the money and time aren't wasted.

COMMISSIONER HERIOT: Second.

CHAIRMAN CASTRO: Do we have any discussion on that motion?

COMMISSIONER TITUS: What about the people who provided us that information? Do they have any problem with that? Is that something that we can do?

MR. BYRNES: I'd have to see, I guess, their permission, their input on what, you know, the limitations would be on the release of the data. They might challenge it.

COMMISSIONER TITUS: That's what I would think.

CHAIRMAN CASTRO: And you have already got an opinion that says we'd have to conduct a hearing
anyway, right?

MR. BYRNES: To enter into data and I think for us to publish it.

CHAIRMAN CASTRO: So it seems to me it's the same problem.

COMMISSIONER HERIOT: It's still there. I mean, let's --

MR. BYRNES: We would have to swear in the data. That would be very pro forma.

CHAIRMAN CASTRO: Okay. Any other questions on this? Otherwise we'll vote on it.

(No response.)

CHAIRMAN CASTRO: All those in favor of Commissioner Gaziano's motion to release the information?

COMMISSIONER GAZIANO: Release such data as we feel that we can reasonably release. And obviously pursuant to law, but I don't think that this Commission should be pretending that we have to seek permission.

Now, if we made an agreement, if we made a promise, then I am concerned about that, but short of a promise we made to an institution, I think it is damaging to this Commission to suggest that we need potential discriminator's permission to release their
data.

CHAIRMAN CASTRO: I just wanted you to rephrase your motion so that we knew what we were voting on. I add to the fact that it is reasonable such a subjective issue here.

Let's vote on the motion. All those in favor of Commissioner Gaziano's motion signify by saying, "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: All those opposed signify by saying, "No."

(Whereupon, there was a chorus of "Noes.")

CHAIRMAN CASTRO: Any abstentions?

(No response.)

CHAIRMAN CASTRO: In the opinion of the Chair, the motion fails. The majority of the folks who voted voted against, and those are Commissioner Achtenberg, Commissioner Titus, Vice Chair Thernstrom, Commissioner Castro. Those who voted in favor of the motion are Commissioner Gaziano, Commissioner Heriot, and Commissioner Kirsanow.

- ENGLISH ONLY IN THE WORKPLACE REPORT

CHAIRMAN CASTRO: We will now move on to the next top on the agenda, which is the English only in the workplace report. And that was a report that
was approved near the end of the previous calendar year. I understand it is currently awaiting commissioner statements and rebuttals.

Some of us were not members of the Commission at that time. And I understand that there is a motion that wants to be made.

COMMISSIONER ACHTENBERG: Mr. Chairman, I would like to move that we have a discussion regarding a possibility that we permit a democratic statement to be included as part of the report.

CHAIRMAN CASTRO: So your motion is to include a democratic statement of the English only report. Do we have a second for that?

COMMISSIONER TITUS: Second.

CHAIRMAN CASTRO: Any discussion?

COMMISSIONER HERIOT: Is there no democratic statement now?

CHAIRMAN CASTRO: No.

VICE CHAIR THERNSTROM: No, no. There was none.

COMMISSIONER GAZIANO: I would probably support that. I'm curious. Now, I know that the timing was extended for various -- maybe possibly even for this reason since I don't know anyone on our side who requested that.
We haven't had any statements yet. Is that correct?

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: Correct. And they're due on the 15th of this month.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: We would submit it on the 15th. We're not asking for additional time. Just leave the file.

COMMISSIONER HERIOT: Who would? Is this a motion of Commissioner Yaki because he was here at the time?

CHAIRMAN CASTRO: No. Commissioners Castro, Titus, and Achtenberg.

COMMISSIONER HERIOT: Okay. Okay.

CHAIRMAN CASTRO: Only existing commissioners.

VICE CHAIR THERNSTROM: I have questions.

CHAIRMAN CASTRO: Commissioner Thernstrom?

VICE CHAIR THERNSTROM: So you're assuming the three of you want to submit one statement --

CHAIRMAN CASTRO: Yes.

VICE CHAIR THERNSTROM: -- desire to have --

COMMISSIONER ACHTENBERG: Concurrences?
VICE CHAIR THERNSTROM: -- individual

 statements.

 CHAIRMAN CASTRO: We feel strongly about
 this issue. And we just feel that it is important to
 stay --

 VICE CHAIR THERNSTROM: And you are all on
 precisely the same page, in other words?

 CHAIRMAN CASTRO: Yes.

 COMMISSIONER TITUS: Yes.

 CHAIRMAN CASTRO: We are going to submit a
 joint --

 COMMISSIONER HERIOT: Okay.

 CHAIRMAN CASTRO: -- democratic statement.

 COMMISSIONER GAZIANO: I would leave that
to you all.

 CHAIRMAN CASTRO: We just wanted to make
 sure that it --

 COMMISSIONER HERIOT: It's right to have a
 motion, I think.

 CHAIRMAN CASTRO: So we have a motion,
 yes.

 COMMISSIONER KIRSANOW: You have a motion.

 And I would just simply note that I would generally
 object to the inclusion of any statements, whether
 it's anybody here, by commissioners who were not part
of the Commission at the time the report was drafted.

COMMISSIONER HERIOT: Approved.

COMMISSIONER KIRSANOW: Right.

COMMISSIONER HERIOT: The time it was approved.

COMMISSIONER KIRSANOW: Right, exactly. I appreciate you have a strong opinion on this. I look forward to reading that opinion. But I think it is essential for purposes of procedure and the integrity of a report, frankly, that only those commissioners who were physically part of the Commission, were authorized to be part of the Commission at the time that the report was approved be permitted to draft statements related to such report.

CHAIRMAN CASTRO: Any other discussion?

COMMISSIONER HERIOT: Unless in this situation there would otherwise be no representation of a particular party.

COMMISSIONER KIRSANOW: Well, for example, I would not have any objection to Commissioner Yaki. I mean, I would have some objection, but --

(Laughter.)

COMMISSIONER KIRSANOW: -- if Commissioner Yaki upon his reappointment and if it were within the time frame decided he wanted to submit a statement --
CHAIRMAN CASTRO: That's not what we're asking for.

COMMISSIONER KIRSANOW: Right. I understand that.

CHAIRMAN CASTRO: Okay. Any other discussion?

(No response.)

CHAIRMAN CASTRO: If not, all those in favor of the motion signify by saying, "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: All those opposed?

COMMISSIONER KIRSANOW: Opposed.

CHAIRMAN CASTRO: So in the opinion of the Chair, the motion passes with the support of all the commissioners with the exception of Commissioner Kirsanow, who opposed the motion.

- HEALTHCARE DISPARITIES REPORT

CHAIRMAN CASTRO: Then we have on the agenda the healthcare disparities report. My understanding is that there were some questions the commissioners had on that but they have since been resolved. I don't believe we have anything on the healthcare disparities report in addition to that. No.

So we will move on to the State Advisory
Committee issues.

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: I would remind you that rebuttals on healthcare are due on the 15th as well.

CHAIRMAN CASTRO: Okay.

V. STATE ADVISORY COMMITTEE ISSUES

- RE-CHARTERING THE NORTH DAKOTA SAC

CHAIRMAN CASTRO: So, as Chair, I move that the Commission re-charter the North Dakota State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based upon the recommendation of our Staff Director:

Dawn Marie Charging --

VICE CHAIR THERNSTROM: Okay. Good.

CHAIRMAN CASTRO: -- Mark Castalustone, Crystal Duker, Carol E. Goodbear, Cheryl Ann Longfeather, David A. Myer, Fahill Padilla, Cheryl Bergian, Thomas Fibigger, Dr. Robert Stanley Heron, Constance L. Nelson, Jordan T. Schultz, Stephanie Wise. Pursuant to this motion, the Commission appoints Dawn Marie Charging as Chair of this re-chartered North Dakota Advisory Committee.

These members will serve as uncompensated government employees under this motion. The Commission authorizes the Staff Director to execute
the appropriate paperwork for the appointment.

Is there a second?

COMMISSIONER TITUS: Second.

CHAIRMAN CASTRO: Is there any discussion?

(No response.)

CHAIRMAN CASTRO: None? Hearing none, then all in favor signify by saying, "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: Any opposed?

(No response.)

CHAIRMAN CASTRO: Any abstentions?

(Whereupon, there was a chorus of "I abstain.")

CHAIRMAN CASTRO: In the opinion of the Chair, the motion passes with the affirmative vote of Commissioners Achtenberg, Titus, Thernstrom, and Castro and the opposition of Commissioners Gaziano, Heriot, and Kirsanow. I'm sorry. Abstained.

Commissioner Kirsanow abstained. I apologize.

COMMISSIONER HERIOT: We all --

CHAIRMAN CASTRO: Yes. You all abstained.

COMMISSIONER KIRSANOW: And I would like just to note for the record the purpose of my abstention has nothing. It's not a reflection on the merit or integrity of any of the individuals. It's
simply that I like to devote a lot of attention to
determining who these individuals are. My schedule
precluded me from doing that.

CHAIRMAN CASTRO: Understood. Okay. So
that was an abstention. The record reflected that.

- RE-CHARTERING THE MONTANA SAC

CHAIRMAN CASTRO: Next we are moving on to
re-charter the Montana State Advisory Committee. I
move that the Commission re-charter the Montana State
Advisory Committee. Under this motion, the Commission
appoints the following individuals to that committee
based upon the recommendation of our Staff Director:
Norma Bixby, Jean Bearicrane, Kyle Graham, Joan Hoff,
Gwendolyn McNeill Kursher, Nancy Noff, Dr. David
Lopez, David S. Morales, Doug L. Betters, Timothy C.
Fox, Dr. Linda Frey, Marilyn M. Kramer, Rev. Denise L.
Rogers, Edward Stafman. Pursuant to this motion, the
Commission appoints Norma Bixby as Chair of this
re-chartered Montana Advisory Committee.

These members will serve as uncompensated
government employees under this motion. The
Commission authorizes the Staff Director to execute
the appropriate paperwork for the appointment.

Is there a second?

COMMISSIONER TITUS: Second.
CHAIRMAN CASTRO: Any discussion?

(No response.)

CHAIRMAN CASTRO: Hearing none, let us vote. All those in favor of the motion signify by saying, "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: Any opposition?

(No response.)

CHAIRMAN CASTRO: Any abstentions?

(Whereupon, there was a chorus of "I abstain.")

COMMISSIONER KIRSANOW: I abstain for the same reasons, although I really regret not be able to vote in favor of somebody named Bearicrane.

CHAIRMAN CASTRO: In the opinion of the Chair, the motion passes with the affirmative vote of Commissioners Achtenberg, Titus, Thernstrom, and Castro. And the following commissioners abstained: Commissioner Gaziano, Commissioner Heriot, and Commissioner Kirsanow.

VI. APPROVAL OF FEB. 11, 2011 MEETING MINUTES

CHAIRMAN CASTRO: We now move on to the approval of the February 11th, 2011 meeting minutes. I move that we approve those minutes for the February 11th, 2011 meeting. Is there a second?
COMMISSIONER TITUS: Second.

CHAIRMAN CASTRO: Second? Okay. Any changes, discussions, or questions regarding the minutes of February 11th?

(No response.)

CHAIRMAN CASTRO: Hearing none, let's vote on that. All those in favor of the motion signify by saying, "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: Any opposed?

(No response.)

CHAIRMAN CASTRO: Any abstentions?

VICE CHAIR THERNSTROM: I abstain because I forgot to read them. I'm sorry.

CHAIRMAN CASTRO: Okay.

COMMISSIONER KIRSANOW: Abstain also.

CHAIRMAN CASTRO: Okay. So the motion passes with the vote affirmatively of Commissioners Achtenberg, Titus, Castro, Gaziano, Heriot, and the abstention of Commissioners Kirsanow and Thernstrom.

VII. ANNOUNCEMENTS

CHAIRMAN CASTRO: Do we have any announcements?

(No response.)

CHAIRMAN CASTRO: Hearing none -- I'm
VICE CHAIR THERNSTROM: Well, I would just like to ask a question about the plaque that is already up for Bob Lerner. Has Althea Lerner been notified so that she could --

DIRECTOR TOLHURST: The answer is yes.

VICE CHAIR THERNSTROM: She has been notified? Good. Thank you very much.

CHAIRMAN CASTRO: Okay. Hearing no other announcements, I would move to adjourn the meeting. Is there a second?

COMMISSIONER ACHTENBERG: Second.


COMMISSIONER ACHTENBERG: Indeed.

(Laughter.)

CHAIRMAN CASTRO: All those in favor say, "Aye."

(Whereupon, there was a chorus of "Ayes.")

CHAIRMAN CASTRO: Opposed or abstentions?

(No response.)

CHAIRMAN CASTRO: Another unanimous vote. Great. Thank you, everyone. I appreciate it.

(Whereupon, the foregoing matter was concluded at 1:18 p.m.)
Neal R. Gross & Co., Inc.
202-234-4433
neal r. gross & co., inc.
202-234-4433
| Page 151 | Neal R. Gross & Co., Inc.  202-234-4433 |
occasions 68:14 92:13
October 104:7
offices 64:19
officer 28:3 76:8
original 68:3
organizations 34:15,22,22
oral 64:4,8 66:4
order 4:4 5:2 9:4
57:19 70:17
overwhelming 70:23
owing 68:21
Padilla 134:17
pages 3:2 8:22 46:4
48:1 90:14 131:7
PAMELA 2:4
Panther 54:2
PAU 2:5
people 8:16,23 20:6
20:20 42:3 76:13
76:20 84:7 93:8
113:4 119:10
perceived 90:8
93:10 94:24
perfect 82:19
perfectly 79:25
perform 103:14
performing 103:13
period 25:16 33:14
103:18
periods 74:22,22
permit 126:19
127:20,25
permit 7:19 129:9
permitted 120:11
132:13
person 4:17 38:11
76:7 81:20 120:24
122:11
personal 100:16
personally 81:22
perspective 56:5
perspectives 27:2,6
27:7
persuaded 60:21
persuasive 59:21
60:3 65:11
PETER 1:12
physical 64:2
physically 132:11
pick 75:23 76:16
77:1 96:1,2
picking 96:5
pigfod 106:3
pilot 119:19
pity 106:15
place 4:7 16:1
21:17,18 22:25
72:13
placed 39:6
places 8:13 25:3
123:10
plane 37:17 38:17
42:19 45:19,20,25
47:9,10,24 48:13
49:9 53:25 54:1
54:19 55:3,20,24
CERTIFICATE

This is to certify that the foregoing transcript

In the matter of: U.S. Commission on Civil Rights

Before: n/a

Date: 03-11-11

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

______________________________
Court Reporter

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com