

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, FEBRUARY 11, 2011

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The Commission convened in Room 540 at 624
Ninth Street, Northwest, Washington, D.C. at 2:05
p.m., Abigail Thernstrom, Vice Chair, presiding.

PRESENT:

ABIGAIL THERNSTROM, Vice Chair

ROBERTA ACHTENBERG, Commissioner

MARTIN R. CASTRO, Commissioner

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DINA TITUS, Commissioner

CHRISTOPHER BYRNES, Delegated the Authority of
the Staff Director

STAFF PRESENT:

CHRISTOPHER BYRNES

IVY DAVIS

DEMETRIA DEAS

LILLIAN DUNLAP

PAMELA A. DUNSTON, Chief, ASCD

LATRICE FOSHEÉ

TINALOUISE MARTIN, Director, OM

PETER MINARIK, Acting Chief, RPCU

LENORE OSTROWSKY

JOHN RATCLIFFE, Chief, Budget and Finance

MICHELLE RAMEY-YORKMAN

EILEEN RUDERT

DAVID SNYDER

KIMBERLY TOLHURST

AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN

ALEC DEULL

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

ALISON SOMIN

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P-R-O-C-E-E-D-I-N-G-S

(2:05 p.m.)

VICE CHAIR THERNSTROM: Okay. The meeting will come to order. It is a Business Meeting of the U.S. Commission on Civil Rights at 2:04 p.m. on

th
February 11 , 2011. The meeting is taking place at

th
the Commission's headquarters located at 624 9 Street, N.W., Washington, D.C. And the Commissioners who are present at this meeting are Vice Chair Abigail Thernstrom, that's me, Commissioner Gaziano, Commissioner Kirsanow, Commissioner Heriot, Commissioner Titus, Commissioner Achtenberg, and Commissioner Castro, last but not least. So, a quorum of Commissioners is present. Is the person delegated the authority of the Staff Director present?

ACTING STAFF DIRECTOR BYRNES: I am, indeed.

VICE CHAIR THERNSTROM: And you are delighted to be here. Right?

ACTING STAFF DIRECTOR BYRNES: As always.

VICE CHAIR THERNSTROM: As always.

ACTING STAFF DIRECTOR BYRNES: As always, yes.

VICE CHAIR THERNSTROM: Good answer. Is the court reporter on the line?

1 COURT REPORTER: The court reporter is
2 present.

3 VICE CHAIR THERNSTROM: Court reporter is
4 present. I don't know why it says on the line, but it
5 does.

6 The meeting will come to order.

7 Before I begin, I'd like to ask the
8 Commissioners' indulgence to properly welcome, as I
9 promised before the briefing, our three new
10 Commissioners, and I assume I hear no objections.

11 I. WELCOME NEW COMMISSIONERS

12 VICE CHAIR THERNSTROM: So, it is my very
13 great pleasure to welcome Dina Titus, Roberta
14 Achtenberg, and Marty Castro. Senator Harry Reid
15 announced Dina's appointment on December 3, and the
16 White House announced Roberta and Marty's appointments
17 on January 26 . This is the first time we've all
18 been together.

19 Before I introduce them, I'd like to make
20 a brief comment. Those who know me, know that I have
21 wanted ever since I got here in 2001 for a Commission
22 to be truly bipartisan. It was not in 2001. It's
23 generally been -- it has long been imbalanced. It was
24 designed to be bipartisan, an agency of eight
25 Commissioners, four-four in terms of the partisan

1 split, but with the addition of our new Democratic
2 colleagues, I am really delighted to say that this
3 Commission can now engage in the work of examining
4 civil rights issues from a truly bipartisan
5 perspective. And I do have great hopes that we will
6 be able as a group to work together, arrive at topics
7 that interest all of us, and that won't necessarily
8 split in typical ways along partisan lines. That is
9 my hope.

10 Now, to welcome our three new
11 Commissioners whom I'm very excited about.
12 Commissioner Dina Titus, I look forward to having Dina
13 as a fellow scholar, a lifelong educator, accomplished
14 author who happens not to be a lawyer, so I've got a
15 little bit of company there.

16 Commissioner Titus brings to this
17 Commission a much needed commodity, her reputation for
18 bipartisanship, both in the Nevada State Senate, as
19 well as in the U.S. Congress. Commissioner Titus is
20 an experienced politician, and educator, having
21 represented Nevada for 20 years in the State Senate,
22 and having taught Political Science at the University
23 of Nevada-Las Vegas for more than 30 years.

24 COMMISSIONER TITUS: Sounds like a long
25 time.

1 VICE CHAIR THERNSTROM: Listen, I'm older
2 than you are, so any complaints about age, or comments
3 on age, I trump everyone else in that regard.

4 Commissioner Roberta Achtenberg has a
5 wealth of corporate and government experience. During
6 the Clinton Administration she served as Assistant
7 Secretary for Fair Housing and Equal Opportunity in
8 the U.S. Department of Housing and Urban Development,
9 that is HUD. And later, as Senior Advisor to the
10 Secretary of HUD. She is currently a member and past
11 Chair of the California State University Board of
12 Trustees, and serves as Vice Chair of the Board of the
13 Bank of San Francisco.

14 In addition to her other accolades, which
15 are many, Ms. Achtenberg is the co-founder of the
16 National Center for Lesbian Rights, a national non-
17 profit serving the needs of the LGBT community. She
18 holds a BA from the University of California at
19 Berkeley, and a JD from the University of Utah.
20 Welcome, Commissioner Achtenberg.

21 COMMISSIONER ACHTENBERG: Thank you.

22 VICE CHAIR THERNSTROM: And Commissioner
23 Marty Castro, do you prefer Martin or --

24 COMMISSIONER CASTRO: Marty in personal
25 interactions, Martin R. when it's written, and Martino

1 when my mother is upset at me.

2 (Laughter.)

3 VICE CHAIR THERNSTROM: I noticed in the
4 kind of official announcement --

5 COMMISSIONER CASTRO: Yes, they kind of
6 mixed it up a little bit.

7 VICE CHAIR THERNSTROM: Okay. Commissioner
8 Martin R. Castro is currently the President of Castro
9 Synergies, LLC, which provides strategic consulting
10 services to corporations, entrepreneurs, and non-
11 profit organizations. He has held senior corporate
12 positions, as well as having held partner positions at
13 a number of prestigious law firms where his practice
14 encompassed corporate law, commercial litigation,
15 diversity consulting, and government affairs.

16 The Governor of Illinois appointed him to
17 chair the Illinois Human Rights Commission, and he has
18 been a member of the Board of the Mexican-American
19 Legal Defense and Education Fund, and the Cook County
20 State Attorneys Hispanic Advisory Council. Why am I
21 stumbling on that? I don't know.

22 Mr. Castro holds a BA from DePaul
23 University, and a JD from the University of Michigan
24 Law School. So, a wonderful new group.

25 COMMISSIONER CASTRO: Thank you.

1 VICE CHAIR THERNSTROM: And I am so
2 looking forward to working with all three of you.

3 COMMISSIONER CASTRO: May we share some
4 comments with our colleagues, or is that not --

5 VICE CHAIR THERNSTROM: Absolutely.

6 COMMISSIONER CASTRO: All right. Well, I
7 just want to say to each of you how much of an honor
8 it is for me to be at this table with all of you.
9 When I think about the fact that my grandfather came
10 here from Mexico in the 1920s, and my mom in the
11 1960s, and I was proudly born in this country. And to
12 see that the President is allowing myself and others
13 to serve, to me, is part of what the American Dream is
14 all about. And this institution, to me, is one of
15 those important government institutions that was
16 created to ensure that that American Dream continues
17 for everybody.

18 And I know that those of us around the
19 table, we may have different political philosophies,
20 different points of view, but I know that we share a
21 lot. And I know one of the things that we all share
22 is a love for this country, and a service to the
23 American people. So, despite the differences that we
24 have, I'm looking forward to finding those areas of
25 commonality where we could work together to ensure

1 that the American Dream that I'm getting to take
2 advantage of and celebrate here today is available to
3 everyone.

4 I just want to say that Commissioner
5 Achtenberg and I had the wonderful pleasure yesterday
6 to spend some time with the staff, and it's an honor
7 to be part of the team that they include. So, just
8 thank you for having me here.

9 VICE CHAIR THERNSTROM: Well, thank you
10 for accepting these appointments. And you both have
11 got busy lives, Dina, too, and it's nice to serve your
12 country, as you said, in this way.

13 Next is approval of the agenda.

14 II. APPROVAL OF AGENDA

15 VICE CHAIR THERNSTROM: I'd like to
16 suggest that we take any motions to amend one by one,
17 vote up and down on each, and then vote to approve the
18 amended agenda. I don't know why I'm losing my voice
19 today, but pardon me.

20 If that procedure meets with the
21 Commissioners' approval, I will begin by offering an
22 amendment of my own. I'd like to make a motion to
23 allow me to read a statement into the record which
24 corrects a misstatement I previously made regarding
25 Eminent Domain and the Institute for Justice's

1 position on the matter.

2 As part of that motion, I'd like to insert
3 this item into the agenda immediately after approval
4 of the agenda. Can I have a second on that?

5 COMMISSIONER CASTRO: Second.

6 VICE CHAIR THERNSTROM: Is there any
7 discussion? All in favor?

8 (Chorus of ayes.)

9 VICE CHAIR THERNSTROM: I think that was
10 unanimous. Was there anybody opposed? Any
11 abstentions? The motion, obviously, passed.

12 Okay. Are there any other amendments to
13 the agenda?

14 COMMISSIONER TITUS: Madam Chairman.

15 VICE CHAIR THERNSTROM: Yes.

16 COMMISSIONER TITUS: Thank you. I have
17 several motions to rearrange the agenda. Do you want
18 me to do them one at a time, they all kind of fit
19 together, read them all, or just -- what's the --
20 maybe just read through all of them?

21 VICE CHAIR THERNSTROM: Yes, read through
22 all of them.

23 COMMISSIONER TITUS: Well, thank you very
24 much. I know we have a number of important issues,
25 and people have to catch planes, as was mentioned, so

1 I think maybe by reordering it in this way we can get
2 to the important things more expeditiously.

3 First, I guess, technically, I move that
4 we strike Welcome New Commissioners from the agenda
5 because we've already done that.

6 (Laughter.)

7 COMMISSIONER TITUS: We appreciate it very
8 much, and we feel very welcome, so thank you.

9 My second motion would be that we swap the
10 placement of the Program Planning section and the
11 Management and Operations section of the agenda, so
12 that Program Planning follows approval of the agenda,
13 and we can get to that right away.

14 I would then move that within the
15 Management and Operations section, the item titled,
16 "Review of Transition, order of succession, continuity
17 of operations," be shifted so that review of the 2010
18 meeting calendar and the Staff Director's report both
19 take place before that.

20 I move that we add as the first item under
21 Program Planning a discussion of the National
22 Conference report. That would be very helpful to the
23 new members. And I move that we reorder the
24 preexisting components of the Program Planning section
25 into the follow sequence after the National Conference

1 report discussion, as follows.

2 One, Gender and the Wage Gap; two, Eminent
3 Domain; three, 2011 Statutory Report; four, Title IX-
4 Sex Discrimination in Liberal Arts College Admissions;
5 five, Disparate Impact in School Discipline Policies;
6 and six, New Black Panther Party.

7 COMMISSIONER ACHTENBERG: Second.

8 COMMISSIONER GAZIANO: May I ask for some
9 clarifications on that? First of all, when you say
10 National Conference report, that's not a term that I
11 am clear on. What do you mean? Do you mean like our
12 Statutory Report for 2011? We had a National
13 Conference in --

14 COMMISSIONER TITUS: That's where we're
15 going. Yes. I'm not talking about the Statutory
16 Report. I'm talking about a report on the conference
17 that you all had before we joined the Commission.

18 COMMISSIONER GAZIANO: Okay.

19 COMMISSIONER TITUS: So we can get more
20 information on it, and talk about the possibility of
21 future conferences.

22 COMMISSIONER GAZIANO: Okay. My other
23 question is, is the transition, order of succession
24 type issues, I think are depending on what the Chair
25 had in mind, and others had in mind for putting it on

1 the agenda, seems to me to take priority, so I'm
2 wondering why you prefer to put all of Management and
3 Operations after all of Program Planning, and you
4 intend to have review transition, order of succession
5 the very last. That was first earlier, and I'm
6 wondering why you want it last?

7 COMMISSIONER TITUS: Well, it seems to me
8 some of the Management and Operations things need to
9 come first before we begin to lose members, especially
10 with as many new members as there are, so we can get a
11 sense of just how the Commission moves forward, how it
12 operates, how the budget is, that sort of thing. It
13 would be helpful information.

14 COMMISSIONER GAZIANO: Well, let me just
15 ask, does any other -- before I vote, does any
16 Commissioner have a motion that they intend to bring
17 under the order of succession, continuity of
18 operations. Was just that information item for
19 everyone?

20 ACTING STAFF DIRECTOR BYRNES: There will
21 be motions.

22 COMMISSIONER GAZIANO: There will be
23 motions? Well, then I'd prefer to keep it the way it
24 is. And I'd prefer to find out what those motions
25 are, and what those -- because that might affect the

1 Program Planning, and the rest of -- it seems to me
2 that that's more of a priority.

3 VICE CHAIR THERNSTROM: Further
4 discussion? Yes, Commissioner Achtenberg.

5 COMMISSIONER ACHTENBERG: I see the
6 Program Planning as the distinct priority, at least it
7 is of mine. This represents an agenda that you all
8 developed, as you had every right and opportunity to
9 do, but it purports to make commitments going forward
10 that I want to talk about, and perhaps make some
11 alterations. And, as such, my own view is sort of
12 consistent with Commissioner Titus, which is that I
13 would prefer that we address it at the front of the
14 meeting, so I'm going to support Commissioner Titus'
15 motion.

16 COMMISSIONER GAZIANO: It isn't my -- I'm
17 not even sure what I think is more important. And I
18 respect anyone's view on what's more important. I'm
19 just making a suggestion as to what seems to me
20 logical. And the agenda, by the way, was set by the
21 Acting Chair without input, at least from any other
22 Commissioner that I'm aware of. But I do think if
23 there are going to be motions on the --

24 VICE CHAIR THERNSTROM: There was input.
25 I'm sorry.

1 COMMISSIONER GAZIANO: On the order. As
2 far as I know, the order of this was set by the Acting
3 Chair, but that's not important either. If there are
4 going to be motions on -- and maybe they're minor
5 motions that I wouldn't care, and we could do them at
6 the end, but it seems to me that that makes more
7 sense. But I don't need to carry on. I don't know if
8 anyone else has any view.

9 COMMISSIONER KIRSANOW: I don't have any
10 strong views. If I do have a view, I do think that
11 the order of succession, continuity of operations is
12 something I'd like to discuss as soon as possible.
13 I've got to leave here to catch a flight at three, and
14 that's at least one thing I'd like to get out of the
15 way.

16 VICE CHAIR THERNSTROM: Can that -- can
17 you push back your plane and leave later?

18 COMMISSIONER KIRSANOW: I'd like to push
19 back the plane, but you know, they got their own
20 ideas.

21 (Laughter.)

22 COMMISSIONER GAZIANO: How about this as a
23 possible compromise. Why don't we just handle that
24 particular one first, and then we can do all the
25 Program Planning in whatever order Commissioner Titus

1 or others prefer.

2 VICE CHAIR THERNSTROM: I would rather not
3 do that. There was -- I think this makes more sense.

4 Obviously, I think it makes more sense.

5 COMMISSIONER GAZIANO: But in deference to
6 Commissioner Kirsanow --

7 VICE CHAIR THERNSTROM: Well, that's --

8 COMMISSIONER GAZIANO: We've done that
9 plenty of times for other Commissioners who have to
10 leave early.

11 VICE CHAIR THERNSTROM: Is there some
12 chance you could leave later?

13 COMMISSIONER KIRSANOW: Well, I can get --

14

15 VICE CHAIR THERNSTROM: We can get to the
16 other part quickly.

17 COMMISSIONER GAZIANO: We'll endeavor to
18 do that.

19 VICE CHAIR THERNSTROM: Yes, let's try to
20 do that. So, I think -- any more discussion?
21 Otherwise, I'm going to call for a vote on this
22 amended agenda.

23 COMMISSIONER HERIOT: Was it seconded?

24 VICE CHAIR THERNSTROM: Yes, it was
25 seconded. All in favor?

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(Chorus of ayes.)

COMMISSIONER GAZIANO: No.

VICE CHAIR THERNSTROM: Commissioner Gaziano is opposed.

COMMISSIONER KIRSANOW: What's the order again? We're going to do -- the proposal is to do Program Planning first?

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER KIRSANOW: And then I think Commissioner Castro said something with respect to the review of transition, order of succession. What was that again?

COMMISSIONER GAZIANO: That's the very last item under Management and Operations, which it doesn't sound like we're going to get to before you have to leave.

COMMISSIONER KIRSANOW: Yes. Then I'd have to vote no.

VICE CHAIR THERNSTROM: Okay.

COMMISSIONER HERIOT: I guess I'll vote no, too, then.

VICE CHAIR THERNSTROM: Three nos, Kirsanow, Heriot, and Gaziano are nos. And Achtenberg, Castro, Titus and Thernstrom are yes.

COMMISSIONER GAZIANO: Okay. Would you

1 repeat then for us now that it's been done, what is
2 the order under Program Planning that you proposed?

3 COMMISSIONER TITUS: Can we ask the staff
4 to spell it out again, so we can all get it down
5 clearly? I'd like to read back through all these
6 motions. Okay.

7 That we swap the placement of Program
8 Planning and the Management and Operations section so
9 that Program Planning follows approval of the agenda.

10 I move that within the Management and Operations
11 section that item titled "Review of Transition, order
12 of succession, continuity of operations," be shifted
13 so that the review of the 2010 calendar and the Staff
14 Director's report both take place before that. I move
15 that we add as the first item under Program Planning a
16 discussion of the Conference report, as described
17 earlier. And I move that we reorder the Preexisting
18 components of the Program Planning section into the
19 following sequence after the Conference report
20 discussion, and that sequence would be Gender, Eminent
21 Domain, Statutory report, Title IX-Disparate Impact in
22 School Discipline, and New Black Panther Party.

23 COMMISSIONER KIRSANOW: One more time.

24 COMMISSIONER TITUS: We'll start with
25 agenda.

1 ACTING STAFF DIRECTOR BYRNES: Just the
2 Program Planning.

3 VICE CHAIR THERNSTROM: Right.

4 COMMISSIONER TITUS: Gender, Eminent
5 Domain, Statutory reports. I mean, it says right here
6 "2011 Statutory report." Title IX-Sex Discrimination,
7 Disparate Impact, and then New Black Panther.

8 VICE CHAIR THERNSTROM: Okay. So, that
9 being the agenda, I believe that the first item is my
10 statement --

11 COMMISSIONER GAZIANO: I don't know if we
12 need a separate vote. I think we voted on the
13 amendment. Now, should we vote on the agenda as
14 amended?

15 VICE CHAIR THERNSTROM: Oh, yes, we
16 should. I'm sorry. Haven't we already done that?

17 (Chorus of nos.)

18 VICE CHAIR THERNSTROM: Okay. A vote on
19 the agenda as amended.

20 COMMISSIONER CASTRO: So moved.

21 COMMISSIONER ACHTENBERG: Second.

22 VICE CHAIR THERNSTROM: All in favor?

23 (Chorus of ayes.)

24 COMMISSIONER GAZIANO: No.

25 COMMISSIONER KIRSANOW: No.

1 COMMISSIONER HERIOT: Abstain.

2 VICE CHAIR THERNSTROM: Okay.

3 Commissioner Heriot abstains, Commissioner Kirsanow
4 votes no, Commissioner Gaziano votes no, and otherwise
5 all Commissioners vote aye. Thernstrom votes aye,
6 Achtenberg, Castro, and Titus all vote aye, as well as
7 Thernstrom. So, we got that set. Okay.

8 III. PROGRAM PLANNING: UPDATE AND

9 DISCUSSION OF PROJECTS

10 The first item is, I want to assert -
11 insert, not assert, insert into the record a statement
12 that amends my remarks about the Eminent Domain Topic
13 that I made at the Commission's December 3, 2010
14 meeting.

15 In my remarks, I referred to a
16 conversation I had had with the President of the
17 Institute for Justice, Chip Mellor, concerning Eminent
18 Domain as a possible Commission briefing topic. The
19 conversation had been very brief. Chip was in a very
20 noisy Milwaukee airport. The result, I completely
21 misunderstood what he said.

22 I thought he had expressed doubts about
23 the current vitality of the topic, which I should have
24 known was surely not his message. I have been on the
25 Institute for Justice Board for many years. It is an

1 organization to which I am deeply committed. I knew
2 perfectly well that Eminent Domain remains a burning
3 issue for IJ and for homeowners, and small businesses
4 across the nation.

5 Moreover, IJ had just issued a press
6 release urging the Supreme Court to hear another
7 Eminent Domain case, and it has been engaged in major
8 litigation in California, and plans activity in
9 multiple states in the near future.

10 This intimate knowledge of IJ's commitment
11 to the topic, which, obviously, I share, and its
12 ongoing litigation efforts was unmistakably completely
13 at odds with the message I thought I heard from Chip
14 in that hurried phone call. And, as I said, that
15 should have been perfectly apparent to me at the time.

16 I had no excuse. It was an appalling mistake.

17 Thank you very much for letting me insert
18 that into the record.

19 COMMISSIONER GAZIANO: May I respond
20 briefly, Madam Chair?

21 VICE CHAIR THERNSTROM: Yes. Sure.

22 COMMISSIONER GAZIANO: In a way, I hate to
23 bring this up, but when you made that statement, I
24 expressed some great skepticism that Chip Mellor would
25 mean what you said, and you responded somewhat angrily

1 at me that you never misunderstand people's
2 statements. I am glad that that's been cleared up.
3 I, certainly, did not mean to imply at the time that
4 you intentionally did so, but that's another example
5 of where we have to kind of listen to each other, and
6 try to make sure we don't jump to the wrong
7 conclusion.

8 VICE CHAIR THERNSTROM: Thank you for
9 reminding me that you were correct at the time, and I
10 will certainly be delighted to keep that in mind.

11 PETER MINARIK: All graciously received.

12 VICE CHAIR THERNSTROM: I'm sorry. I
13 missed that.

14 COMMISSIONER GAZIANO: Peter? He must be
15 speaking to someone else.

16 VICE CHAIR THERNSTROM: Okay. Let's move
17 on with the agenda. Program Planning.

18 The first item is the National Conference
19 report.

20 COMMISSIONER ACHTENBERG: Madam Chair, I
21 take it that there was a National Conference held last
22 fall, and that the staff is now proceeding to enshrine
23 the Conference report into a published document. Is
24 that the case?

25 ACTING STAFF DIRECTOR BYRNES: I should

1 clarify. What we're preparing to post on the web are
2 video portions of some of the panels, as well as the
3 transcript of the proceedings.

4 COMMISSIONER ACHTENBERG: Madam Chair, I'd
5 like to move that we suspend work on the publication
6 of Conference materials in an effort to reduce costs,
7 and to conserve funding. And I move that we stop work
8 on that indefinitely, or at least to the Call of the
9 Chair. And that would be my motion.

10 VICE CHAIR THERNSTROM: I've got a second
11 on that?

12 COMMISSIONER TITUS: Second.

13 VICE CHAIR THERNSTROM: Let's have a
14 discussion.

15 COMMISSIONER GAZIANO: What expense is
16 there in putting the transcript on line?

17 ACTING STAFF DIRECTOR BYRNES: I would
18 have to --

19 COMMISSIONER GAZIANO: Delegated the
20 authority of the Staff Director.

21 ACTING STAFF DIRECTOR BYRNES: I would
22 have to consult with our budget folks on that.

23 COMMISSIONER HERIOT: Is the transcript
24 finished at this point?

25 ACTING STAFF DIRECTOR BYRNES: It is

1 finished.

2 COMMISSIONER HERIOT: So, the expense is
3 like the 30 seconds of putting it up on the website?

4 ACTING STAFF DIRECTOR BYRNES: It may be
5 more than that, but at a minimum it would be that. I
6 don't think there would be much expense associated
7 with posting the video links to the panels, because I
8 think they're already on C-SPAN to some extent.

9 VICE CHAIR THERNSTROM: I believe they're
10 only partially on C-SPAN. Was C-SPAN there only part
11 of the day?

12 ACTING STAFF DIRECTOR BYRNES: I think it
13 might be for several of the panels, perhaps, not all.

14 COMMISSIONER HERIOT: All but two.

15 ACTING STAFF DIRECTOR BYRNES: Was all but
16 two.

17 COMMISSIONER GAZIANO: And was the plan to
18 put -- I think it was more than two panels on C-SPAN,
19 but I could be mistaken.

20 COMMISSIONER HERIOT: It was all of them.

21 COMMISSIONER GAZIANO: Oh, all of them. I
22 guess three panels. So, were you planning on -- what
23 were you planning on putting on -- was it exactly what
24 C-SPAN --

25 ACTING STAFF DIRECTOR BYRNES: Just a line

1 to the C-SPAN.

2 COMMISSIONER GAZIANO: Oh, just a link to
3 the C-SPAN.

4 ACTING STAFF DIRECTOR BYRNES: Yes.

5 COMMISSIONER GAZIANO: It doesn't sound
6 like there's really very much expense involved. Is
7 there some other concern with putting the transcript
8 of the National Conference on our website?

9 COMMISSIONER ACHTENBERG: You're saying
10 that there is no staff time involved in putting the
11 remnants of the Conference materials together? Is
12 there any publication being contemplated, or --

13 ACTING STAFF DIRECTOR BYRNES: Not at this
14 time, simply the website.

15 COMMISSIONER ACHTENBERG: And there's no
16 staff --

17 ACTING STAFF DIRECTOR BYRNES: There's
18 always staff time associated with these, but I think
19 it would be de minimis at this point. And we always
20 have GPO involved to help post things.

21 COMMISSIONER ACHTENBERG: I was under the
22 impression, you'll forgive me, that there was
23 additional expense contemplated, and additional staff
24 time contemplated. If you are assuring me that there
25 is no additional expense contemplated, and that

1 there's de minimis staff time contemplated in
2 publishing on the web the conference proceedings, then
3 with that assurance I would withdraw my motion.

4 ACTING STAFF DIRECTOR BYRNES: I would
5 confirm with our budget folks on that. It was my
6 understanding that there wouldn't be that much
7 additional expense associated with --

8 COMMISSIONER ACHTENBERG: Well, then
9 before I withdraw, could you confirm that that's the
10 case.

11 ACTING STAFF DIRECTOR BYRNES: Certainly.

12 COMMISSIONER ACHTENBERG: And upon your
13 assurance, I would withdraw the motion.

14 COMMISSIONER CASTRO: The question is are
15 we going to be hard copy publishing reports.

16 ACTING STAFF DIRECTOR BYRNES: I think it
17 would just be a website publication.

18 COMMISSIONER CASTRO: Can we confirm that?

19 MR. RATCLIFFE: This is John Ratcliffe.
20 The transcript has already been paid for, so it's
21 already done, so there's no cost associated with that.

22 ACTING STAFF DIRECTOR BYRNES: Right. And
23 just linking to the C-SPAN links wouldn't incur too
24 much additional expense.

25 COMMISSIONER ACHTENBERG: What is the

1 expense involved in -- I mean, if we're talking about
2 de minimis, then I withdraw the motion.

3 COMMISSIONER KIRSANOW: The C-SPAN links
4 are already up, aren't they?

5 COMMISSIONER CASTRO: Can you tell us that
6 you're not going to hard copy publish this report? If
7 the Commission votes to decide that, then that's fine.

8 VICE CHAIR THERNSTROM: Do we need a vote
9 on that?

10 ACTING STAFF DIRECTOR BYRNES: I think
11 that would probably be appropriate at this point.

12 COMMISSIONER GAZIANO: But that wasn't
13 your plan.

14 ACTING STAFF DIRECTOR BYRNES: That was
15 not my plan.

16 COMMISSIONER GAZIANO: But if you want to
17 make that motion --

18 (Simultaneous speaking.)

19 COMMISSIONER CASTRO: We don't want the
20 expense of publication, hard copy publication.

21 COMMISSIONER ACHTENBERG: I'd like to
22 minimize all the expense going forward really until we
23 get an assessment of where we stand budget-wise. That
24 was the intention of making the motion, so if you say
25 that we're not going to publish --

1 VICE CHAIR THERNSTROM: Do you want to
2 make a motion that we don't publish?

3 COMMISSIONER ACHTENBERG: I'm willing to
4 take the Staff Director's --

5 COMMISSIONER HERIOT: Just point of order.
6 You've withdrawn the first motion, but the seconder
7 has to withdraw that, as well, because it's still --
8 once it's seconded, it's not up to the mover to do
9 it, so just --

10 VICE CHAIR THERNSTROM: I believe that
11 Commissioner Castro did --

12 COMMISSIONER CASTRO: No, no, it was
13 Commissioner Titus that seconded.

14 COMMISSIONER TITUS: You're going to
15 withdraw the motion?

16 COMMISSIONER ACHTENBERG: This was
17 discussion, and I would be willing to with -- I
18 haven't done anything, upon the Staff Director's
19 assurance that expense will not be incurred beyond the
20 de minimis expense to put it on the web, and a de
21 minimis amount of staff time. And I'd be interested
22 to know how much staff time you think this
23 contemplates. But assuming for a moment that he makes
24 those assurances, I would be willing to withdraw my
25 motion, provided the seconder is willing to withdraw

1 her second.

2 ACTING STAFF DIRECTOR BYRNES: So, we not
3 publish the hard copy of the proceedings.

4 COMMISSIONER ACHTENBERG: And could you
5 tell me how much staff time you imagine is involved in
6 --

7 ACTING STAFF DIRECTOR BYRNES: You know,
8 there's already been, I think, significant progress
9 made on it. I don't think more than a couple of more
10 days; although, I'd have to confirm with our IT
11 people on that. I don't think they're in the room at
12 the moment.

13 COMMISSIONER GAZIANO: It's a matter of
14 uploading at this point.

15 ACTING STAFF DIRECTOR BYRNES: I think so,
16 yes.

17 COMMISSIONER ACHTENBERG: You understand
18 the spirit of the recommendation, so given that you
19 understand the spirit, I will withdraw my motion, if
20 the seconder --

21 COMMISSIONER TITUS: I'll withdraw the
22 second.

23 COMMISSIONER ACHTENBERG: Thank you.

24 VICE CHAIR THERNSTROM: Okay. Gender and
25 the Wage Gap seems to be the next item under Program

1 Planning.

2 COMMISSIONER CASTRO: I don't have any
3 motion on that. I don't know if the other
4 Commissioners do, but simply with regard to this
5 particular project, I know that there's work that's
6 been going on that's been postponed until we had a
7 full set of Commissioners. And I think we're just
8 going to want to take a look at this, as we look at
9 what we want to plan out for the year. So, I don't
10 think we need a motion on that.

11 VICE CHAIR THERNSTROM: Okay. Then third
12 is the --

13 COMMISSIONER CASTRO: Eminent Domain is
14 next, isn't it?

15 VICE CHAIR THERNSTROM: Eminent Domain.
16 Okay. Eminent Domain is next.

17 COMMISSIONER CASTRO: I do have a motion
18 on Eminent Domain. I know that -- my understanding is
19 that we're going to have a briefing on that, or is it
20 a hearing on the --

21 VICE CHAIR THERNSTROM: Briefing on March
22 th
23 11 .

24 th
25 COMMISSIONER CASTRO: On March 11 , so
since we're new to this, and we're still trying to
figure out what our resources are, as well as what we

1 want to do with the balance of the year, obviously,
2 and more thoughtful consultation with everyone, I
3 wanted to move that we indefinitely postpone the March
4 th
5 11 briefing on Eminent Domain, and that we postpone
6 further work being done by the staff until we, as new
7 Commissioners, can get a little more information to
8 determine how to proceed.

8 COMMISSIONER ACHTENBERG: Second.

9 VICE CHAIR THERNSTROM: We've got some
10 discussion on that.

11 COMMISSIONER GAZIANO: Yes, I'd like to --
12 the Commission's reputation was, I think,
13 unnecessarily harmed when a briefing on the wage gap
14 was improperly postponed when witnesses turned in
15 testimony and made work and commitments. And I'm
16 concerned about that happening again, if we -- I don't
17 know -- Mr. Delegated the Authority of the Staff
18 Director, whether you're the proper person to address
19 this. I suspect you are. Where are you with the
20 Eminent Domain briefing, and contacting the witnesses
21 so they lock this into their schedule? Are they
22 preparing testimony?

23 ACTING STAFF DIRECTOR BYRNES: I will say
24 that staff has prepared the briefing books. This
25 briefing had been contemplated, I think, for some

1 time, so I don't think there's that much additional
2 staff --

3 COMMISSIONER GAZIANO: About October or
4 November. We've been working on this --

5 ACTING STAFF DIRECTOR BYRNES: Right.

6 COMMISSIONER GAZIANO: -- from what, about
7 October or November?

8 ACTING STAFF DIRECTOR BYRNES: Something
9 like that.

10 COMMISSIONER GAZIANO: Okay.

11 ACTING STAFF DIRECTOR BYRNES: We have
12 reached out to two witnesses who have confirmed their
13 sort of availability and willingness to testify. We
14 have reached out to Commissioners I think in two
15 rounds for potential witnesses to get some
16 suggestions, and we have been reaching out to those,
17 as well. So, at this point, we've got two who are
18 likely to appear.

19 COMMISSIONER HERIOT: Who are they?

20 ACTING STAFF DIRECTOR BYRNES: Ilya Somin
21 and David Beito.

22 COMMISSIONER GAZIANO: I understand the
23 concern about new Commissioners wanting input. One of
24 the reasons -- on briefings. One of the reasons that
25 briefings were -- I think the briefing forum was

1 adopted before I came on. And, by the way, before you
2 three, I was the junior-most so now I feel better, I'm
3 somewhere in the middle.

4 (Laughter.)

5 COMMISSIONER GAZIANO: But I think it was
6 because of a cost-savings method. Another factor that
7 those of us who are now old on this Commission face,
8 when I came on three years ago this month, almost
9 exactly three years ago this day, I was -- things were
10 scheduled for much -- for years in advance almost.
11 And I was told that the next two statutory reports
12 were set in stone, and briefings were set, and that I
13 would have my turn. And, for the most part, I
14 accepted that. One of the things that I helped
15 pioneer, if I was one of a couple of movers, is not to
16 set things more than a quarter in advance, because I
17 thought that the Commission ought to have the
18 flexibility to act on more timely topics. The push-
19 back on that was no, we really need to set these
20 things. It takes time. We need to set these things a
21 year in advance, but I think we finally succeeded,
22 despite the disadvantage of a sort of quarterly
23 approach of -- and despite the disadvantage of not
24 being able to plan 18 months in advance for most of
25 our projects.

1 The quarterly approach has worked pretty
2 well, but I do have a concern with once we invest a
3 fair amount of staff time, and we contact witnesses,
4 and it's the very next month that we postpone that
5 particular briefing. So, based on that kind of
6 practice, I would want to go forward with this one,
7 unless you had some other -- if you had a proposal for
8 a really important timely briefing on the March 11
9 that our staff could handle, that might change my
10 mind. But I'd rather go forward with this one absent
11 something like that.

12 COMMISSIONER CASTRO: Can I respond?

13 VICE CHAIR THERNSTROM: Yes.

14 COMMISSIONER CASTRO: What my motion
15 contemplates is a postponement. I'm not suggesting at
16 this point in time a suspension, so I'm not
17 necessarily saying let's scrap the work that staff has
18 done. It sounds to me like two folks have been locked
19 in, one of whom is a member of a SAC, who would
20 probably understand this, so the reputational injury
21 probably would not be as great as another situation
22 which you referenced, which, of course, I'm not
23 familiar with. So, I don't think that there'll be
24 that issue.

25 And I understand tradition, but traditions

1 change. And we're just -- we're relatively new. We
2 want to just take a look at this, and have a little
3 more time to determine, maybe this is a great one. I
4 don't know. I've seen some reference to it, some of
5 this work in the SAC applications, and I'm intrigued
6 by it, but I don't know enough at this point. I know
7 my new colleagues -- I'm not suggesting at this point
8 in time with this motion that we suspend and scrap
th
9 that work. I say let's postpone this, March 11 . I
10 think we could talk about more fully what other things
11 we might want to suggest going forward in terms of
12 briefings. So, this is just to press the pause
13 button.

14 COMMISSIONER KIRSANOW: If I understand
15 Commissioner Castro's primary impetus behind this, it
16 was budgetary. And if I understand what the Staff
17 Director is saying is, most of the staff work has been
18 done already?

19 ACTING STAFF DIRECTOR BYRNES: On the
20 briefing books it's been completed, but there may be
21 additional travel costs anticipated with the
22 witnesses, depending on where they're coming from.

23 COMMISSIONER KIRSANOW: Okay.

24 ACTING STAFF DIRECTOR BYRNES: And whether
25 they select to seek reimbursement.

1 COMMISSIONER GAZIANO: And you've got to
2 pay the staff if they don't work on this anyway.
3 Right?

4 ACTING STAFF DIRECTOR BYRNES: Right.

5 COMMISSIONER HERIOT: And one of our
6 witnesses is a local. Correct?

7 ACTING STAFF DIRECTOR BYRNES: That's
8 correct.

9 COMMISSIONER CASTRO: And, again, sorry,
10 let me just respond. We met with several staff
11 yesterday, and we understand that based on what the
12 budget looks like now for the balance of the -- for
13 this fiscal year, we have five of these sorts of
14 things that we could do. We did one today. If we do
15 th
16 one on March 11 , that leaves three. So, again, I'm
17 saying this is a cost issue, because there would be,
18 again, I don't know how much additional cost, how many
19 more witnesses, but want to be able to better assess
20 that as we determine what else we're going to want to
21 do with the other three or four, depending on how we
22 handle this, hearings, or briefings that we're allowed
23 to do.

24 COMMISSIONER KIRSANOW: I understand that.
25 And when I came to the Commission, I had the same
experience as Commissioner Gaziano. I guess my view

1 is, if the budgetary impact is de minimis, or not
2 significant, and it's something that's going to occur
th
3 within the next month, we could also on March 11
4 have a more full discussion as to the remaining
5 topics, and still get this particular briefing done.
6 So, I'd be inclined, with all due respect and
7 understanding what you want to accomplish here, I'd be
8 inclined to move forward at least with respect to the
th th
9 March 11 briefing. And then on March 11 , we could
10 revisit some of the issues that you discussed, that
11 you just mentioned with respect to the balance of the
12 briefings.

13 COMMISSIONER CASTRO: There's printing
14 costs and other things that we haven't even talked
15 about that would be --

16 VICE CHAIR THERNSTROM: Commissioner
17 Achtenberg.

18 COMMISSIONER ACHTENBERG: Actually, I
19 appreciate the substance and the civility of the
20 discourse. My own view is that I'd like to see this
21 postponed, in part because I'd like to see us devote

th
22 the March 11 meeting to a collegial and substantive
23 discussion of what will be the course of the
24 Commission over the next year. And I'd like to be a
25 full fledged member of the group that discusses that.

1 a topic that President Clinton has spoken about. It's
2 one that Maxine Waters is behind, Howard Dean has
3 spoken on this topic. They're all excited about the
4 topic, and we were hoping you would be, too. And
5 maybe you will be, but here's a possible compromise
6 here.

7 If we're concerned about budget, and I can
8 understand that. I mean, you don't want to do a bunch
9 of briefings that you think aren't going to be
10 interesting to you, and aren't going to tackle the
11 issues that you think are tops. But a briefing
12 actually doesn't commit a staff. The briefing is just
13 the briefing. It's the report that ends up costing
14 time on the part of the staff. And I tend to think
15 it's wasted time, generally, that we have staff
16 members simply summarize what was said at the
17 briefing. But if we held the briefing, we could
18 simply make a decision later about whether to assign a
19 staff member to that, and instead, just go with the
20 transcript, because that's really not going to cost us
21 too much.

22 COMMISSIONER GAZIANO: We've done that on
23 other --

24 COMMISSIONER HERIOT: We've done a number
25 of topics where we didn't have quite enough interest

1 to devote staff time to it. But it's not like we're
2 going to come up with another issue before March, and
3 put together a briefing on that. You know, holding
4 the briefing is really not that expensive. Devoting
5 staff time to summarizing everything that was said,
6 that takes up a lot of time. And it also takes up a
7 lot of Commission time to then read through it, make
8 sure it says the right thing, you know, go through
9 several iterations of it.

10 I would suggest we just hold the briefing
11 in March, and then make a decision later about whether
12 or not to turn it into a report.

13 VICE CHAIR THERNSTROM: I have something
14 to say, but I will let Commissioner Gaziano go first.

15 COMMISSIONER GAZIANO: Thank you. Partly,
16 I was just following up on what Commissioner Heriot
17 said, that we've decided (a) not to publish some at
18 all, to only post them on the website. These are all
19 options.

20 With regard to your other point about
21 th
22 wanting to spend the time on the 11 talking about
23 the future Program Planning and other priorities, I
24 certainly understand that, as well. And most of our
25 briefings don't have quite as many witnesses, don't
take quite as much time, so we could still devote a

1 good bit of March 11 to that.

th

2 But I also wonder whether March 11, you
3 would even, necessarily, be ready. I've been curious
4 about the President's designation of Staff Director.
5 I'm sure the Delegated-the-Authority-of-the-Staff-
6 Director is anxious to return to his job, and have
7 another Staff Director. I am curious about the
8 President's designation of Chair, so I think that
9 those -- we might not want to discuss much until we
10 have an eighth Commissioner, Staff Director, Chair,
11 and so for those reasons, I'm not sure that the

th

12 reserving 100 percent of the time on the 11 for
13 those issues is the best.

14 And, finally, it's been our practice and
15 it's something that I, again, argued, I didn't like
16 exactly the way it was done, and we modified it. So,
17 I'd be very interested in all of your input. But what
18 happens is, the real Staff Director collects our
19 suggestions via email, then sends it out to vote, then
20 we rank order. I mean, that's been our process, so
21 I'm not sure that we will have -- you will have the
22 chance to really study, think about all your -- by the

th

23 11. But what we could do is something similar to
24 what Commissioner Heriot suggested in the morning, and
25 then we can begin the very important process that you

1 suggested we do in setting forth the future programs
2 and priorities.

3 COMMISSIONER CASTRO: Commissioner
4 Gaziano, I had not even thought about the fact that we
5 have to get our Staff Director and Chair on board, so
6 I think that's an even more eloquent argument in
7 support of motion, to wait until they get on board.
8 So, thank you for reminding me.

9 VICE CHAIR THERNSTROM: I can let you go
10 first. I have something I would like to say on the
11 topic.

12 COMMISSIONER HERIOT: Go ahead.

13 VICE CHAIR THERNSTROM: Okay. Look, first
14 place I want to say something to Commissioner Gaziano.
15 I would really appreciate it if you would cease
16 referring to my postponement of the Gender Wage Gap
17 briefing as improper.

18 But to go to the Eminent Domain question,
19 look, I really like the topic. I've been devoting
20 years to thinking about this topic as a member of the
21 IJ Board. I am -- it's one, as I said, that deeply
22 interests me, and I, indeed, have suggested to the
23 acting, I'm going to call you Acting Staff Director,
24 it's much easier. I have given him two names, one
25 from the NAACP, and the other an IJ name. So, I love

1 this topic. I don't want more than a postponement on
2 this topic.

3 But two things; one, I really think we --
4 if we have a briefing, it's in the morning, and then
5 we get, as we are getting today, to a business
6 meeting. We've got a lot -- we need to get together
7 with the new Commissioners a year, and perhaps beyond
8 in order. I think we owe these Commissioners a chance
9 to go over the landscape, to discuss with us. I would
10 vote against cancelling an Eminent Domain briefing. I
11 want it very much. I had a wonderful talk with
12 Special Assistant Alison's husband about this issue
13 who is fantastic on it, and his writing is fantastic
14 on it, and I look forward to his testimony.

15 I just want a postponement on it. And in
16 terms of well, we could just have a transcript that we
17 post on the website, and we don't have to do anything
18 more. We don't have to have a hard cover report. We
19 don't have to have findings and recommendations, and
20 so forth. That really -- underestimates the
21 importance, the complexity, the nuance of this issue,
22 and I would not want that to happen to this topic.
23 You can do that with some topics, not with Eminent
24 Domain. It is a nationally important topic. This
25 Commission can contribute something to the national

1 discussion, which is ongoing. And there really is no
th
2 cost, it seems to me, to letting the March 11
3 meeting be a business meeting in which we get a lot of
4 business out of the way, and if the Commission votes
5 on it, I'd be happy to have the Eminent Domain the
6 very next --

7 COMMISSIONER GAZIANO: Let me offer a
8 substitute -- go ahead. I'm sorry.

9 COMMISSIONER KIRSANOW: I'm sorry. Go
10 ahead.

11 VICE CHAIR THERNSTROM: I'm just saying
12 look, I'm just totally opposed to killing this topic.
13 I will vote against killing this topic without any
14 doubt.

15 COMMISSIONER KIRSANOW: A couple of
16 things, Madam Chair. First is, as I think
17 Commissioner Gaziano and Commissioner Heriot noted,
18 today was an anomaly in terms of number of witnesses
19 we typically have. If I hear the staff worker, at
20 best we'll have four witnesses, so that's a half hour
21 testimony.

22 VICE CHAIR THERNSTROM: We don't know that
23 yet.

24 COMMISSIONER KIRSANOW: Well, maybe two --
25 maybe only two witnesses, but I'll ask the Staff

1 Director, how many do you anticipate having?

2 ACTING STAFF DIRECTOR BYRNES: If four
3 would meet with approval by the Commission, that's
4 fine, yes.

5 COMMISSIONER KIRSANOW: So, let's say we
6 have four witnesses. We have a half hour of testimony
7 --

8 VICE CHAIR THERNSTROM: Hold on one
9 second. I need some help here. I've done something
10 terrible to my -- if somebody wants to come and find
11 the rest of it --

12 COMMISSIONER KIRSANOW: I guess my point
13 is we can walk and chew gum at the same time. We have
14 a half hour of testimony, a half hour of questions.
15 We can even begin the hearing, as we have in the past,
16 at 9:00, and we're done at 10:00. If we're done at
17 10:00, that provides us with, and if we go until 3:00,
18 we've got five hours in which to conduct substantive
19 business. That's a considerable amount.

20 Second, to your point with respect to
21 you'd be very happy to vote in favor of -- you
22 wouldn't vote to kill the amendment, or this
23 particular hearing. I'm not sure how the new
24 Commissioners will vote on this. I'm not sure if
25 we'll have an additional Commissioner appointed by the

1 time we're here, but if the motion as currently
2 postured maintains, and we then have to move to
3 conduct the hearing, if there's a four-four split,
4 there will be no hearing, regardless of how
5 enthusiastic you may be about it.

6 VICE CHAIR THERNSTROM: I'd like to assume
7 that there will be some of the new Commissioners, or a
8 reappointed previous Commissioner, who will agree that
9 Eminent Domain is a very important topic that crosses
10 partisan lines. After all, the NAACP has been very
11 interested in it, as well. And my only plea with you
12 is to give this topic the time and consideration that
13 it is due. And I think we lose nothing by, at worst,
14 postponing it --

15 COMMISSIONER GAZIANO: Well, let me offer
16 a substitute --

17 COMMISSIONER HERIOT: Hey, I had my hand
18 up a long time ago.

19 COMMISSIONER GAZIANO: I'm sorry, I
20 thought that --

21 COMMISSIONER TITUS: I call the question.

22 COMMISSIONER HERIOT: No, I've got an
23 argument.

24 COMMISSIONER TITUS: Where is our
25 Parliamentarian? Can you call the question? Doesn't

1 that take precedence over other --

2 VICE CHAIR THERNSTROM: I can call the
3 question, but out of courtesy, I am going to allow
4 just Commissioner Heriot, and nobody else.

5 COMMISSIONER HERIOT: I think we might
6 need to think a little harder about how long it takes
7 to set one of these things up. We've got a long
8 procedure that we have to go through with concept
9 papers and such before we get to the point where a
10 topic has been adopted. So, if we're going to be
11 thinking about March as being the time to discuss
12 topics, I actually think it would be good to
13 streamline our procedure, but it's going to require
14 months to select a topic. That's just the way we've
15 got it in our rules.

16 We have to do concept papers. The concept
17 papers have to be circulated. It takes lots of time,
18 so if you're thinking that like something is going to
19 be setup for April, it's not going to happen. It
20 takes a very long time. And Vice Chair Thernstrom is
21 one of those who tends to be, in the past, at least, a
22 stickler for these things. Now, she has changed her
23 mind on some things, like she's changed her mind on
24 Eminent Domain.

25 VICE CHAIR THERNSTROM: No, I have not

1 changed my mind on Eminent Domain. I simply --

2 COMMISSIONER HERIOT: You're on the record
3 now.

4 VICE CHAIR THERNSTROM: I simply -- you
5 know, I'm not going to keep discussing this.

6 COMMISSIONER GAZIANO: May I offer my
7 substitute motion?

8 VICE CHAIR THERNSTROM: I made a very
9 clear statement. It is not a -- and, indeed, if you
10 go over the transcript from last time, I believe I
11 said that this was a topic that I was deeply committed
12 to. But, in any case, it doesn't matter. It's a
13 stupid argument at this point.

14 COMMISSIONER GAZIANO: May I make my
15 substitute amendment?

16 COMMISSIONER TITUS: Call the question.

17 VICE CHAIR THERNSTROM: I'm calling the
18 question.

19 COMMISSIONER GAZIANO: Well, I think a
20 substitute amendment takes priority. I may be wrong,
21 but I believe --

22 COMMISSIONER TITUS: Where is the -- do we
23 not have Robert's Rules of Order here? Do we not have
24 a Parliamentarian who can --

25 COMMISSIONER GAZIANO: No, not -- it's a

1 vacant position. I think a substitute motion takes
2 precedence. I might be wrong, but I think it does.

3 COMMISSIONER TITUS: Have we got a copy of
4 Robert's Rules of Order around here anywhere? Anybody
5 ever heard of Robert's Rules of Order?

6 (Laughter.)

7 COMMISSIONER TITUS: Okay.

8 VICE CHAIR THERNSTROM: Commissioner
9 Gaziano, I'd like to call the question.

10 COMMISSIONER GAZIANO: I think this is
11 consistent with your position. I move that we

th
12 postpone the March 11 Eminent Domain, but that the
13 Commission commit to having that sometime in the next
14 six months, such that it would take a majority of the
15 Commission to knock that off of our schedule.

16 COMMISSIONER CASTRO: I'd like a vote on
17 my motion, Madam Chair.

18 COMMISSIONER GAZIANO: Is there something
19 in mind?

20 VICE CHAIR THERNSTROM: There is a motion
21 on the floor.

22 COMMISSIONER GAZIANO: Substitute motion
23 takes priority.

24 COMMISSIONER HERIOT: Well, a motion to
25 substitute, not the substitute motion.

1 COMMISSIONER TITUS: So, we're going to
2 vote on the motion to substitute now?

3 COMMISSIONER ACHTENBERG: I guess, if it
4 takes priority. I mean, I'll accept your assertion to
5 that.

6 COMMISSIONER GAZIANO: I'm not 100 percent
7 positive, but I believe --

8 COMMISSIONER ACHTENBERG: I understand,
9 but that's good enough for government work, as they
10 say.

11 VICE CHAIR THERNSTROM: Your substitute
12 motion is within the next six months, we have --

13 COMMISSIONER GAZIANO: That the Commission
14 is committed to having this briefing subject to the
15 time that the Commission sets, but that it takes a
16 vote of the majority to cancel the briefing.

17 COMMISSIONER HERIOT: Yes, so the
18 Commission could still cancel the briefing. We just
19 have to vote to do it.

20 VICE CHAIR THERNSTROM: I'm waiting for
21 some evidently background discussion.

22 COMMISSIONER HERIOT: It's quicker to vote
23 on the motion to substitute than it is to go and check
24 the book.

25 COMMISSIONER TITUS: That doesn't make it

1 right, though. We need the book for next meeting.
2 I'd like to request that, since we're taking things
3 out of order. But, go ahead.

4 VICE CHAIR THERNSTROM: There's a
5 substitute motion on the table. I don't know if it's
6 been seconded.

7 COMMISSIONER ACHTENBERG: I second.

8 COMMISSIONER CASTRO: So, could you repeat
9 the motion again?

10 COMMISSIONER GAZIANO: Barring some other
11 majority vote of the Commission, it commits the
12 Commission to having this briefing in the next six
13 months at a time that is determined by the Commission,
14 but would require a majority vote to actually cancel
15 the briefing.

16 COMMISSIONER HERIOT: What happens if they
17 don't take -- no action is taken?

18 COMMISSIONER GAZIANO: Then it has to be
19 on the sixth month --

20 (Simultaneous speaking.)

21 COMMISSIONER GAZIANO: It would have to be
22 on the sixth month.

23 COMMISSIONER ACHTENBERG: See what happens
24 when you don't have a copy of Robert's Rules of Order.

25 COMMISSIONER GAZIANO: That's my amended -

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COMMISSIONER HERIOT: That's just a drafting issue. I don't think that Robert's Rules will help us there. So, the Staff Director will be --

(Simultaneous speaking.)

COMMISSIONER GAZIANO: I trust my fellow Commissioners in good faith to go forward with that vote, if that's the vote of the Commission.

COMMISSIONER CASTRO: So, you're saying this would -- sometime within the next six months based on the date that we would choose, the majority. And if we don't, then it would be on the anniversary of the sixth month.

COMMISSIONER ACHTENBERG: Unless a majority of the Commission --

COMMISSIONER CASTRO: Unless a majority votes not to move forward. Okay. Fair enough.

VICE CHAIR THERNSTROM: All right. I'm calling --

COMMISSIONER TITUS: Vote on the motion --

VICE CHAIR THERNSTROM: Voting on the substitute amendment. All in favor?

(Chorus of ayes.)

1 COMMISSIONER HERIOT: That's just a motion
2 to substitute. Now we have to vote on the motion.

3 VICE CHAIR THERNSTROM: Yes, I understand
4 that.

5 COMMISSIONER CASTRO: Okay. Which is
6 identical to that. Right?

7 COMMISSIONER HERIOT: Yes.

8 COMMISSIONER CASTRO: So then I'll second
9 your motion.

10 COMMISSIONER HERIOT: All right.

11 COMMISSIONER CASTRO: Okay?

12 VICE CHAIR THERNSTROM: All right. All in
13 favor of the motion.

14 (Chorus of ayes.)

15 VICE CHAIR THERNSTROM: I think it's
16 unanimous. Okay. Commissioner Gaziano, you have a
17 unanimous vote in favor --

18 COMMISSIONER GAZIANO: Yes, thank you.

19 COMMISSIONER HERIOT: Nice work.

20 VICE CHAIR THERNSTROM: -- of your
21 substitute motion.

22 COMMISSIONER TITUS: Excuse me, Madam
23 Chairman. As we move forward, at some point I'd like
24 for us to have additional input into the witnesses
25 that are --

1 ACTING STAFF DIRECTOR BYRNES: Oh,
2 certainly. And I'd be happy to recirculate a list of
3 the witnesses --

4 VICE CHAIR THERNSTROM: Absolutely. And I
5 would like a show of hands of people on this
6 Commission who have never made a mistake, because
7 evidently I'm the only one to have ever made a
8 mistake, as I did with the --

9 (Laughter.)

10 COMMISSIONER ACHTENBERG: But the Statute
11 of Limitations has already run, so it's okay then.

12 VICE CHAIR THERNSTROM: Well, I've just
13 been handed Robert's Rules for Dummies.

14 COMMISSIONER ACHTENBERG: No reference
15 intended, Madam Chair.

16 VICE CHAIR THERNSTROM: On this subject,
17 I'm happy to be a dummy. And I hope I will not be in
18 this chair, but if I am, I --

19 COMMISSIONER CASTRO: We should all get a
20 copy of that.

21 COMMISSIONER ACHTENBERG: Are we moving on
22 now?

23 VICE CHAIR THERNSTROM: We're moving on.

24 COMMISSIONER ACHTENBERG: Thank you.

25 VICE CHAIR THERNSTROM: Okay.

1 COMMISSIONER GAZIANO: In deference to
2 Commissioner Kirsanow, we've had our -- he can maybe
3 stay five minutes, of the Program Planning, he would
4 like to move to New Black Panther. That's correct?

5 COMMISSIONER KIRSANOW: Yes, if possible.

6 COMMISSIONER GAZIANO: Is there any
7 objection? By unanimous consent, can we move to New
8 Black Panther?

9 COMMISSIONER CASTRO: Yes.

10 COMMISSIONER GAZIANO: Okay.

11 COMMISSIONER CASTRO: So, on New Black
12 Panther, I move that all work toward the physical
13 publication of the New Black Panther report be
14 suspended, so as to allow time for inclusion of a
15 rebuttal by Michael Yaki. And that upon his
16 reappointment, Michael Yaki be permitted 30 days to
17 prepare a rebuttal to the other Commissioner
18 statements.

19 COMMISSIONER TITUS: Second.

20 VICE CHAIR THERNSTROM: Discussion? Yes.
21 I think Commissioner Gaziano was first.

22 COMMISSIONER GAZIANO: I don't know --

23 COMMISSIONER HERIOT: I just wanted to
24 point out that we have a problem here, and that is
25 unlike the other Commissioners, Commissioner Yaki now

1 has the replies of the other members, so that gives
2 him an advantage that he wouldn't have had, had he
3 been on the Commission. And I'm not certain how to
4 deal with that, but there it is.

5 COMMISSIONER GAZIANO: The irony of your
6 motion, Commissioner Castro, is that I tried to move
7 to allow Commissioners whose terms would expire to
8 file, and that was roundly defeated. And I tried
9 again to allow them to sign on to other -- and that
10 was defeated.

11 VICE CHAIR THERNSTROM: I don't think it
12 was roundly defeated. Commissioners -- the Chair and
13 Commissioner Ashley simply said they did not want the
14 opportunity --

15 COMMISSIONER GAZIANO: They thought that
16 it could not be granted. I disagreed with that. And
17 then I asked Commissioners Melendez and Yaki whether
18 that -- and they declined. So, given that, I don't
19 think that it's unreasonable to allow him. But as the
20 motion stands, I might want an opportunity to respond
21 to his rebuttal. The Commission by the majority can
22 obviously change our rule. And your motion to suspend
23 work on it is understandable. But I wonder if we
24 could just leave off the part about how he's the only
25 one who would then be allowed to file something else,

1 or we could amend it further, a friendly amendment,
2 perhaps, to allow for the possibility of going back
3 and forth with other statements.

4 COMMISSIONER CASTRO: I think --
5 obviously, I wasn't here in December, so it sounds
6 like maybe you and I probably would have voted on the
7 same side again there on this issue. But the reason
8 for, I think, treating Mr. Yaki differently is, my
9 understanding is that since his commission expired,
10 any effort by him to do this would be considered
11 volunteer work, hoping and expecting he'll be back
12 among us. If he isn't, then it's not an issue, so I
13 think he sits a little differently than other folks.
14 And at some point, I would imagine -- again, we're new
15 to this, but at some point, I guess you could always
16 just keep going back and forth, and back and forth on
17 these reports with replies, and surreplies, and
18 rebuttals, and surrebuttals. And at some point --

19 COMMISSIONER ACHTENBERG: And I believe
20 his rebuttal is, by definition --

21 COMMISSIONER CASTRO: Allowed.

22 COMMISSIONER ACHTENBERG: -- limited to --

23

24 COMMISSIONER CASTRO: To the statements.

25 COMMISSIONER ACHTENBERG: To the

1 statements in the affirmative.

2 COMMISSIONER CASTRO: Yes. So, it's going
3 to be very limited, as well.

4 COMMISSIONER GAZIANO: Except that we have
5 a particular simultaneous process to do that. Also, I
6 wonder if we're going to open it up for a
7 Commissioner who wasn't on the Commission during the
8 time these statements were due, whether we ought not
9 to open them up to our former Chair, and Commissioner
10 Taylor, and Commissioner Melendez, if they want to.
11 They were under the impression, for example, that they
12 could not, but if we make some special exception for
13 them, I was of the view that witnesses can prepare
14 statements, so I didn't see why they couldn't. But
15 I'd rather not just make it limited to Commissioner
16 Yaki getting, what's effectively a surrebuttal that no
17 other Commissioner who participated -- no other
18 Commissioner has.

19 VICE CHAIR THERNSTROM: I'm sorry. Go
20 ahead.

21 COMMISSIONER CASTRO: No, I was just going
22 to say, again, I think my statement earlier, that
23 Michael Yaki sort of stands alone in that neither
24 Commissioner -- former Chair Reynolds, or former
25 Commissioner Melendez are prospectively going to be

1 reappointed. Now, I understand that Mr. Yaki is in
2 the process of reappointment. Whether that occurs or
3 not, obviously, is beyond any of us knowing for sure.
4 And if it doesn't happen, well then it's a moot issue.

5 COMMISSIONER GAZIANO: But I'm more
6 concerned about the surrebuttal. It's not really --
7 would not be a rebuttal. We would be making an
8 exception for Commissioner Yaki, and I'm not
9 unsympathetic to that. But if we're going to make an
10 exception, a special rule for him, then would you
11 allow those of us who filed rebuttals to file -- to
12 share -- to see Commissioner Yaki's statement, and
13 adjust our own?

14 VICE CHAIR THERNSTROM: Commissioner
15 Gaziano, there is something distinct -- it seems to me
16 there's a special problem here, that there is not a
17 rebuttal from either of our Democratic Commissioners.

18 We, obviously, only had two, and that in the spirit
19 of a bipartisan Commission, it is important to have a
20 rebuttal from a Democrat, as well as the rebuttals
21 from the Republicans. So, it seems to me that --

22 COMMISSIONER GAZIANO: That argues --

23 VICE CHAIR THERNSTROM: -- is a very
24 strong and important argument for letting Commissioner
25 Yaki--

1 COMMISSIONER GAZIANO: And I'm not arguing
2 with that. I'm not arguing with that at all. I am
3 willing to afford Commissioner Yaki an opportunity. I
4 assume he will reappointed. I expected it before
5 certainly today. I'm just concerned about the portion
6 of the -- can we amend that motion with a opportunity
7 other Commissioners to review Commissioner Yaki's
8 statement, and amend their own? Would you allow me to
9 amend my own statement after I see Commissioner
10 Yaki's?

11 COMMISSIONER CASTRO: My understanding is
12 that each of you had an opportunity to submit a
13 rebuttal. He did not. His commission expired. His
14 rebuttal, from what I understand, would be based on
15 the statements, not a rebuttal to your rebuttal, which
16 I don't even think mentions him. So, again, I think
17 the situation is --

18 COMMISSIONER GAZIANO: It does.

19 COMMISSIONER CASTRO: Well, the intention
20 here is to allow him to submit a rebuttal, as each of
21 you have. So, I don't -- I think it would be a
22 friendly amendment to add additional rebuttals to this
23 motion.

24 COMMISSIONER GAZIANO: But it wouldn't be
25 a rebuttal, it would be a surrebuttal.

1 COMMISSIONER CASTRO: Surrebuttal.

2 COMMISSIONER HERIOT: I just want to
3 clarify what you're saying. I have complete sympathy
4 for the notion that somehow Yaki's got to be able to
5 have a rebuttal, just like everyone else had. I'm
6 sympathetic to that. But I'm not sympathetic to the
7 notion that he gets an extra opportunity, because he's
8 got more documentation than we had. You know, by
9 going last, he's got more to rebut.

10 Now, what I heard you say was that he
11 would only be rebutting the initial statements. If
12 we're very clear on that --

13 COMMISSIONER GAZIANO: Correct.

14 COMMISSIONER HERIOT: -- that's not a
15 problem.

16 VICE CHAIR THERNSTROM: That's all he
17 would be allowed to do.

18 COMMISSIONER CASTRO: That's all.

19 COMMISSIONER GAZIANO: I think that's
20 rather hard to police.

21 VICE CHAIR THERNSTROM: No, it isn't. It
22 actually isn't hard to police. If we tell him he is
23 only allowed to reply as everybody else did on the
24 first round.

25 COMMISSIONER HERIOT: Well, then if I have

1 your assurances that if he, in fact, goes farther than
2 that, that I would be allowed to respond to anything
3 that concerns my position --

4 VICE CHAIR THERNSTROM: But a very clear
5 message -- that's fine. But a very clear message will
6 be delivered to Commissioner Yaki --

7 COMMISSIONER HERIOT: That's my next
8 question.

9 VICE CHAIR THERNSTROM: -- that his
10 rebuttal will be confined by the same constraints as
11 yours.

12 COMMISSIONER HERIOT: And that if he
13 doesn't do that, we will be allowed the ability to
14 respond.

15 VICE CHAIR THERNSTROM: If he doesn't do
16 that, then --

17 COMMISSIONER CASTRO: Well, I think if
18 that doesn't happen, then we take that up here and
19 address it. But I think -- what I don't want to do is
20 have someone go ahead and start writing surrebuttals
21 because they argue that it's --

22 COMMISSIONER HERIOT: I don't want to
23 fight any more on this topic ever.

24 COMMISSIONER CASTRO: Yes, so --

25 COMMISSIONER GAZIANO: I don't really want

1 to either, except we have an existing surrebuttal
2 rule, which would potentially --

3 COMMISSIONER HERIOT: Yes, the existing --

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5 COMMISSIONER GAZIANO: Your motion kind of
6 works in a surrebuttal. If someone doesn't follow the
7 rules, then any three Commissioners within seven days
8 can notify, I think it's the Staff Director, or the
9 Delegated the Authority of the Staff Director, that
10 they are going to take their --

11 COMMISSIONER HERIOT: Yes, that's in
12 place.

13 COMMISSIONER GAZIANO: -- surrebuttal.
14 So, I'm just asking you, given that yours is a
15 modification --

16 COMMISSIONER CASTRO: Yes, I'm not seeking
17 to undo that latter process.

18 COMMISSIONER GAZIANO: You would -- your
19 motion -- we have your assurance that you would
20 support our surrebuttal under that circumstance.

21 COMMISSIONER CASTRO: I am not seeking to
22 undo whatever the process would be to trigger a
23 surrebuttal. I'm not familiar with that rule yet, so
24 my motion is not contemplating that. My motion is
25 only contemplating the fairness of giving him an

1 opportunity to submit a rebuttal, should he be
2 reappointed, and to do that within 30 days, again, to
3 put some time limit on him, so that it's done in a
4 timely fashion. So, that's what I'm trying to do
5 here. I'm not trying to undo any other of the rules
6 and regulations.

7 VICE CHAIR THERNSTROM: And if you start
8 to respond to Commissioner Yaki's rebuttal with
9 surrebuttals, then he would be entitled to a
10 surrebuttal for your --

11 COMMISSIONER GAZIANO: Courts do this all
12 the time, but that's --

13 COMMISSIONER HERIOT: This is not as
14 difficult as we make it out to be.

15 COMMISSIONER GAZIANO: Just exchange
16 opinions until they're both satisfied, and all sides -
17 -

18 VICE CHAIR THERNSTROM: This is not a
19 court.

20 COMMISSIONER CASTRO: And I'm not seeking
21 here to start generating more replies and rebuttals,
22 and all that.

23 COMMISSIONER HERIOT: I think we'll call
24 that.

25 COMMISSIONER CASTRO: I just want to give

1 him a fair chance, if he comes back to -- and I'm
2 hopeful, from what I hear, that he would be, but I
3 don't know that. But if he does come back, then he
4 would have the opportunity to submit something that
5 would be limited to your prior statements.

6 COMMISSIONER HERIOT: Yes. I just want to
7 say as a footnote, if we allow people to do their full
8 statement and rebuttal as they rotated off, we
9 wouldn't have issues like this. We'd just be able to
10 do it as a former Commissioner. And I think --

11 COMMISSIONER CASTRO: I think there might
12 have been some volunteer --

13 COMMISSIONER GAZIANO: I disagree with
14 that interpretation.

15 COMMISSIONER CASTRO: I don't know. I
16 wasn't here.

17 COMMISSIONER GAZIANO: I wish you were
18 here.

19 COMMISSIONER CASTRO: I wish I was, too.
20 I wasn't.

21 VICE CHAIR THERNSTROM: The record can be
22 examined, but we don't need to. We can go forward.
23 What is the motion that is now -- it is Commissioner
24 Castro's motion.

25 COMMISSIONER CASTRO: Yes, I'll reread it.

1 I move that all work toward the physical publication
2 of the New Black Panther report be suspended so as to
3 allow time for the inclusion of the rebuttal by
4 Michael Yaki. And that upon reappointment, Michael
5 Yaki be permitted 30 days to prepare a rebuttal to the
6 other Commissioners' statements.

7 COMMISSIONER GAZIANO: To the other
8 Commissioners' initial statements.

9 COMMISSIONER CASTRO: Initial statements.

10 VICE CHAIR THERNSTROM: Initial
11 statements. All right. I'm calling the question.
12 All in favor.

13 (Chorus of ayes.)

14 COMMISSIONER GAZIANO: Aye with the
15 understanding that we --

16 VICE CHAIR THERNSTROM: Yes, we said
17 initial statements.

18 COMMISSIONER GAZIANO: No, I -- hold
19 discussion.

20 COMMISSIONER KIRSANOW: I've got to leave.

21 VICE CHAIR THERNSTROM: Okay. So, one
22 nay. Commissioner Kirsanow has voted nay, and
23 otherwise we have unanimity here of Commissioners
24 Heriot, Gaziano, Thernstrom, Titus, Castro, and
25 Achtenberg.

1 COMMISSIONER ACHTENBERG: Madam Chair, I
2 have an additional motion.

3 VICE CHAIR THERNSTROM: Yes.

4 COMMISSIONER ACHTENBERG: On the New Black
5 Panther Party. And that is that I move that we
6 declare the investigation of the New Black Panther
7 Party -- that we declare the investigation closed with
8 the only addition to the report being the rebuttal of
9 Michael Yaki, should he otherwise be qualified to
10 offer his rebuttal consistent with the prior motion.

11 VICE CHAIR THERNSTROM: A second on that?

12 COMMISSIONER CASTRO: Second.

13 COMMISSIONER HERIOT: With a footnote, I
14 assume, that if the surrebuttal procedure --

15 COMMISSIONER ACHTENBERG: Sure.

16 COMMISSIONER CASTRO: Of course.

17 COMMISSIONER ACHTENBERG: Indeed.

18 COMMISSIONER GAZIANO: Could I just ask if
19 we could suspend. I know Commissioner Kirsanow would
20 want to speak on that. Could we discuss that -- how
21 about this? That we instruct our staff not to do
22 anything more on this until we can discuss this on

th

23 March 11 , and then entertain the motion.

24 VICE CHAIR THERNSTROM: We have a long
25 history of people having to leave the Commission

1 early, having chosen a particular time for their
2 flight back, the Commission business goes on.

3 COMMISSIONER GAZIANO: Normally, no.
4 Normally, we wait until --

5 COMMISSIONER HERIOT: Normally, we do
6 wait.

7 COMMISSIONER GAZIANO: Can I read some of
8 your statements to that effect?

9 COMMISSIONER HERIOT: I'd like to hear
10 them.

11 COMMISSIONER GAZIANO: Or can we just --

12 COMMISSIONER ACHTENBERG: I would have
13 preferred that the Commissioner remain. This is
14 something that I feel strongly about, so I'd like to
15 see a vote on this up or down, unless there's another
16 parliamentary turn. I think it's time that we -- this
17 is my own view. The reason I made the motion is
18 because I think it's time that we turn the page. I
19 want you to complete the integrity of the Commission's
20 prior work, but I'd like to see the Commission record
21 declared closed. And I'm being forthright with you, I
22 think it's time for the Commission to move on. That's
23 my personal view, and that's why I made the motion.

24 COMMISSIONER HERIOT: Ordinarily, the
25 practice of the Commission is that motions are

1 presented to Commissioners before the meeting, so that
2 we have time to consider them. And this has been an
3 issue that the Vice Chair has been particularly active
4 on. She doesn't like motions being made for the first
5 time in a meeting. So, we're not used to this sort of
6 thing. And I would suggest that instead, we just --
7 we could decide to not to do anything on this until
8 the next meeting, and then have Pete have a chance to
9 be here during the discussion of it. This has been an
10 important investigation from his standpoint. I'm sure
11 he'd want to be part of this discussion.

12 VICE CHAIR THERNSTROM: I have complained
13 in the past, they have been very complicated motions
14 suddenly added to the agenda, often requiring
15 extensive reading. I have been overridden on this.
16 This is not a complicated item at all.

17 COMMISSIONER HERIOT: But it is an
18 important one.

19 VICE CHAIR THERNSTROM: You don't need a
20 lot of time to read it and study it, and that has been
21 my complaint in the past.

22 COMMISSIONER GAZIANO: Out of deference to
23 -- I understand that this is important. That's why I
24 was trying to see if we could come to some middle
25 ground where we would ask the staff not only to

1 suspend work in the written report, but also to
2 suspend work on anything else. Given 18 months that
3 some of us have been on, especially Commissioner
4 Kirsanow, I know that he wanted to speak to -- would
5 want to speak to this motion, so I just wonder if we
6 could accept that as a substitute. And then have this
7 discussion. I don't think the outcome will be
th

8 different on March 11, and I think that you'd be
9 able to make the point that I think you want to make.

10 COMMISSIONER CASTRO: I don't see why we
11 don't proceed with the motion as you suggested.

12 COMMISSIONER ACHTENBERG: And if it
13 doesn't have majority support, then it doesn't. My
14 own view is that it would be worth it to turn the
15 page.

16 VICE CHAIR THERNSTROM: I'm calling the
17 question. All in favor of the motion.

18 (Chorus of ayes.)

19 VICE CHAIR THERNSTROM: Calling for nos.

20 COMMISSIONER GAZIANO: No.

21 COMMISSIONER HERIOT: No.

22 VICE CHAIR THERNSTROM: Two nays, Heriot
23 and Gaziano. The ayes are Achtenberg, Castro, Titus
24 and Thernstrom.

25 COMMISSIONER GAZIANO: I think we took

1 that out of order, because --

2 COMMISSIONER CASTRO: That's Cy Pres.

3 COMMISSIONER GAZIANO: Yes, he wanted to
4 talk about it, Cy Pres.

5 COMMISSIONER ACHTENBERG: Madam Chair, I
6 have a motion regarding statutory report for 2011, Cy
7 Pres. I move that we suspend work on the topic of Cy
8 Pres. That Commissioners prepare and circulate
th

9 alternative topic proposals until March 4 , and that

th
10 at the March 11 business meeting, we discuss Cy
11 Pres, along with whatever additional topics are
12 submitted for the Commissions' consideration to become
13 the topic of the statutory report for 2011.

14 COMMISSIONER CASTRO: Second that motion.

15 VICE CHAIR THERNSTROM: Discussion.

16 COMMISSIONER GAZIANO: This is one of
17 these items I was told when I first came on the
18 Commission, you needed to choose this at least 18
19 months before you even began. And we were late, very
20 late we were told in picking this topic when we
21 finally settled on it in September. I'm going to ask
22 the Acting Staff Director, whatever he's called, the
23 amount of work on it, but assuming that we -- that the
24 process that Commissioner Achtenberg has set forth

th
25 would enable us to choose a topic on the 11 . And I

1 know that the Vice Chair has objected on ever settling
2 on a statutory report, at least the ones that I've
3 been on, without months of discussion.

4 I don't see how we'd be able to meet our
5 statutory obligation to issue a report to Congress and
6 the President. But with that, first, can you tell me
7 what you -- what staff has been doing on this? I also
8 don't know what staff is going to be working on the
9 next few months, but --

10 VICE CHAIR THERNSTROM: I never recognize
11 these descriptions of myself, but that's all right.

12 COMMISSIONER GAZIANO: I can read some
13 statements of this at the next meeting.

14 VICE CHAIR THERNSTROM: I don't think you
15 need to bother.

16 COMMISSIONER GAZIANO: Okay. Maybe not.
17 We'll see, but --

18 ACTING STAFF DIRECTOR BYRNES: I'd be
19 happy to provide an update on the project. OGC has
20 completed background research on the project. We have
21 also submitted interrogatories to the Department of
22 Justice, to which we have received so far a partial
23 response. I anticipate a complete response very soon.
24 That's where we're at --

25 COMMISSIONER GAZIANO: Within the next

1 week?

2 ACTING STAFF DIRECTOR BYRNES: Early next
3 week.

4 COMMISSIONER GAZIANO: Early next week.

5 But before that, again, for the new Commissioners,
6 correct me if I'm wrong, but we circulated
7 suggestions, we voted on them, we narrowed them down,
8 then concept papers were prepared after the Commission
9 deliberated for two months, the topic was chosen.
10 Then after the Commission committed to that, there was
11 then the staff prepared the, what is it called, the
12 investigative plan?

13 ACTING STAFF DIRECTOR BYRNES: Discovery
14 Plan.

15 COMMISSIONER GAZIANO: Discovery Plan, and
16 that took -- that, typically, takes a couple of
17 months.

18 ACTING STAFF DIRECTOR BYRNES: It could
19 take any length of time. I think in this case it did
20 not take probably more than a couple of months.

21 COMMISSIONER GAZIANO: Yes, I know. In
22 some cases, it's taken one month, and sometimes it's
23 taken a couple of months.

24 ACTING STAFF DIRECTOR BYRNES: Sure.

25 COMMISSIONER GAZIANO: So, it seems --

1 again, correct me if I'm wrong, it seems like if we
2 were to abandon this topic, it might be June until we
3 could, in our normal course, approve a new statutory
4 topic.

5 ACTING STAFF DIRECTOR BYRNES: That's
6 possible.

7 COMMISSIONER HERIOT: Isn't it June when
8 the draft is usually due?

9 ACTING STAFF DIRECTOR BYRNES: I think
10 under previous time lines.

11 COMMISSIONER GAZIANO: I think in May the
12 draft is usually due.

13 COMMISSIONER CASTRO: May I ask a
14 question?

15 VICE CHAIR THERNSTROM: Yes.

16 COMMISSIONER CASTRO: Was the New Black
17 Panther Party report our 2010 statutory report?

18 COMMISSIONER GAZIANO: It was.

19 COMMISSIONER CASTRO: And was it submitted
20 on time?

21 COMMISSIONER GAZIANO: It was submitted
22 late, in part because -- well, later than normal. It
23 was approved in text form on December 10. And I think
24 that it was unfortunate that the Department was
25 stonewalling as much as it did, that required that

1 lateness.

2 COMMISSIONER CASTRO: Well, I know we want
3 to discuss and put forward a topic, including a
4 discussion -- a forward discussion of Cy Pres on March
5 11, with a view that we are definitely going to
6 endeavor to make sure that whatever topic is
7 ultimately chosen, or selected, or remains, be done in
 th

8 time for -- I believe September 30 is our deadline,
9 so we understand that completely. And if it looks
 th

10 like on March 11 we're not able to do that, then I
11 think we'll act accordingly.

12 VICE CHAIR THERNSTROM: In how many
13 previous years have we actually gotten the statutory
14 report in on time, if that's a relevant question at
15 all, which I'm not sure it is.

16 ACTING STAFF DIRECTOR BYRNES: I can't
17 recall, at least for the first couple of years that
18 I've been here, we've been on time.

19 VICE CHAIR THERNSTROM: Really?

20 COMMISSIONER ACHTENBERG: Well, my own
21 view is, I'd rather be right than on time; although, I
22 think we should endeavor to be on time. And I want a
23 discussion, again, this is my own view. I'd like work
24 stopped on this, and it to be up for discussion about
25 whether or not this is what we want to have as our

1 statutory report for 2011.

2 COMMISSIONER GAZIANO: Trying to seek
3 middle ground, again, the Commission, I suppose, can
4 throw this aside, and can vote on something else. And
5 I'm happy to see everyone's idea for something better,
6 but why does the work need to be stopped on this in
7 the meantime? Why don't we just suggest that the
8 staff continue to make non-extensive investments in
9 the time? They do have to do something, they are
10 being paid.

11 COMMISSIONER ACHTENBERG: Well, since
12 everybody, as far as I can tell, everybody is wearing
13 at least five hats, my guess is that they've got
14 plenty to do just in the order, natural order of
15 events. But my own view is -- and if I have a
16 majority of support of my colleagues, that's the view
17 that will pertain. I don't want, until we have a
18 fuller reading of this issue in comparison to the
19 other issues that we might choose to make the focus of
20 the Commission's statutory report, I would not like to
21 see Commission resources invested in further
22 development of this until we agree that, indeed, that
23 is going to be the topic for the statutory report.
24 And I'd like to have a fuller discussion to that
25 effect, which is why the motion is phrased the way

1 it's phrased.

2 VICE CHAIR THERNSTROM: I'm calling the
3 question. All in favor.

4 (Chorus of ayes.)

5 COMMISSIONER HERIOT: You're supposed to
6 say all opposed.

7 VICE CHAIR THERNSTROM: Yes, well looking
8 at you, all opposed.

9 COMMISSIONER HERIOT: No.

10 COMMISSIONER GAZIANO: No.

11 VICE CHAIR THERNSTROM: Okay. We have,
12 again, no votes from Commissioners Heriot and Gaziano.
13 And I vote, as well as Commissioners Achtenberg,
14 Castro, Titus and Thernstrom.

15 Okay. The next topic is -- where are we,
16 people?

17 COMMISSIONER CASTRO: Management and
18 Operations.

19 ACTING STAFF DIRECTOR BYRNES: No, the
20 Title IX.

21 COMMISSIONER CASTRO: Okay, sorry.

22 VICE CHAIR THERNSTROM: Right. Does
23 somebody have a motion on the Sex Discrimination?

24 COMMISSIONER CASTRO: I don't think we do,
25 no.

1 VICE CHAIR THERNSTROM: Why don't we move
2 on?

3 COMMISSIONER HERIOT: Are we going to
4 report on it?

5 COMMISSIONER CASTRO: I'm sorry. What?

6 COMMISSIONER HERIOT: Yes, why don't we
7 have a --

8 ACTING STAFF DIRECTOR BYRNES: We can
9 receive an update, certainly. Yes.

10 COMMISSIONER CASTRO: Sure.

11 ACTING STAFF DIRECTOR BYRNES: Just for
12 the edification of our new Commissioners, we have
13 received data from 15 of the 19 schools that we have
14 subpoenaed for this project, which we continue to
15 analyze. We're getting some preliminary results, but
16 they're under review at this point. Three local
17 holdout schools have been analyzing their admissions
18 data subject to a Commission draft at analytical
19 protocol. We're still a couple of steps away from
20 asking for the logistic progression analyses. There
21 are just some things we have to clear up with those
22 schools as we go forward. That's where it stands. I
23 think we're pretty far along, at least on the amount
24 of data we've received at this point.

25 COMMISSIONER CASTRO: Sure. Are there

1 motions?

2 VICE CHAIR THERNSTROM: I understand
3 there's no motions having to do with this topic, and
4 we are left with -- what are we left with here, folks?

5 Yes, is there some discussion of today's briefing?
6 Does somebody have a motion that's relevant to that?

7 COMMISSIONER CASTRO: I think the only
8 question we had was just -- and we were talking a
9 little bit about this at lunch, I think, the selection
10 of the witnesses, and how that went about. And, also,
11 I brought up during the course of the hearing the idea
12 of incorporating our SAC reports to the extent that
13 they match hearings. And I think that as we select
14 witnesses, as well, for the future, there might be a
15 nice wealth of witness resources, and scholarly
16 resources that some of our SACs have already brought
17 together, so I question how we go about doing it.

18 I know we talked a little bit about it
19 informally at lunch, but what's the process for
20 selecting these witnesses?

21 ACTING STAFF DIRECTOR BYRNES: Lenore
22 Ostrowsky, one of the Attorney Advisors in OSD.

23 (Simultaneous speaking.)

24 MS. OSTROWSKY: This was fairly
25 challenging, because it actually was difficult to get

1 people to agree to come. The way I started out was to
2 run up a list of the largest school districts. We
3 didn't want just the largest, but I started out with
4 the largest, and I called up and sent emails to the
5 New York City Department of Education. They were
6 polite, but did not respond. Los Angeles, polite, but
7 did not respond. I found someone, Dr. Hardy Murphy,
8 who is not from Chicago, but he was from Evanston,
9 which is a suburb very close by. It's part of Cook
10 County, with a highly diverse student body.

11 There is someone, I gave Alec a copy of
12 someone named Randy Sprick. When it became clear that
13 it was going to be extremely difficult to find
14 teachers who would be willing to come to our briefing,
15 I found someone who teaches teachers all across the
16 country, and administrators. These methods that you
17 heard referred to, the positive behavior intervention
18 methods. His name is Randy Sprick. And I asked him if
19 he had recommendations for teachers that he had
20 trained in different parts of the country, because I
21 know that he's a great admirer of Skiba, who's a
22 scholar at Indiana, some of whose work I included in
23 the briefing books. You may have seen it. And he was
24 very helpful.

25 He came up with someone who said yes,

1 Susan Schultz. And she was one of the people I was
2 counting on to describe sort of a different view of
3 school discipline than some of the other teachers.
4 She's the one who cancelled precipitously, you know, a
5 few days before the briefing, before today. And that
6 was pretty disappointing.

7 So, we used not only the -- it was a cold
8 call, I guess you'd have to call it, plus, Randy
9 Sprick references, and I got Dr. Gonzalez from him,
10 who I thought was an extremely good witness. He's the
11 one from Fresno, California. And then in addition, I
12 put out calls to people like the General Counsel of
13 the Austin Independent School District, which is a
14 very large school district, and he sent out emails.
15 And we eventually came up with Joe Oliveri -- also,
16 someone I personally thought was -

- who had a lot of
17 valuable things to say, because he's been in charge of
18 all of the students that were removed from Austin
19 schools. So, you can see it's -- I don't know if you'd
20 call it hit or miss, but it was -- I think ad hoc is
21 how you would describe it.

22 COMMISSIONER GAZIANO: Can I ask to
23 clarify a little bit of the process again.

24 MS. OSTROWSKY: Yes.

25 COMMISSIONER GAZIANO: A lot of times for

1 briefings, but even more importantly for the statutory
2 report, we have the idea, the agreement, then there's
3 a concept paper that's drafted, so there was a concept
4 paper. And sometimes the concept paper identifies
5 particular witnesses, but it doesn't identify
6 particular witnesses, it'll identify the type of
7 witnesses. That alerts Commissioners. By the way, we
8 -- I want to put on the record something we did say at
9 lunch. I really agree with Commissioner Heriot, that
10 we should, as Commissioners, take more responsibility
11 to help the staff. It's best, in my view, if we do it
12 at our open meeting, so that I can react to yours, and
13 no, I -- or think of a different idea. No, I want a
14 different type of -- and sometimes, we'll have a vote.

15 No, we don't want any of those kind of witnesses.

16 So, I think the more that we can do in that, the
17 better it is for staff.

18 But then I, just to go back to you,
19 Lenore, you were following the concept paper and the
20 type of witnesses you were following -- you would have
21 certainly been open to any Commissioner. I think the
22 -- I'll probably give you a leading question. Would
23 you be -- would you like Commissioner input and
24 suggestions, or do you not like Commissioner input and
25 suggestions?

1 MS. OSTROWSKY: I would have been so
2 grateful for especially teacher leads, because as you
3 can tell, these are not people who are accustomed to
4 speaking in forums, such as this. They're really
5 not. The superintendents and the principals are well
6 accustomed to this, and it was much easier to get them
7 than it was to get the teachers.

8 COMMISSIONER GAZIANO: Sure.

9 COMMISSIONER HERIOT: That makes sense.

10 MS. OSTROWSKY: I'm sorry -- so, studying
11 the concept paper, and the list that we developed of
12 school districts that appeared to be through research
13 highly diverse. We sent out letters to, I think it
14 was about 28 of them, and we got responses from about
15 16. And on many of them, I called them up, and sent
16 emails, and asked for further information from them.
17 And some of them sent data, which I included in the
18 briefing books. And some of those people, I actually
19 invited. For instance, Doug Wright from Utah is
20 someone who was one of those people on the list. And
21 I was really pleased that he agreed to come, because
22 unlike many other school districts in the country, his
23 students are, I think, majority American Indian. And
24 that was a population that we don't generally hear
25 much about. So, it was that list, and it was, as I

1 said, the list of the largest school districts in the
2 Country; calling General Counsels of these school
3 districts to see if they could -- they were willing to
4 come up with people.

5 COMMISSIONER GAZIANO: Okay.

6 MS. OSTROWSKY: Commissioner Heriot.

7 COMMISSIONER HERIOT: I just had a general
8 comment for the new people on the way we put together
9 briefings. You know, when I got here, I was sort of
10 surprised at how we did this. I'm sort of familiar
11 with two models. I'm familiar with the lawsuit model,
12 where you've got an oral argument before a court, and
13 who gets to speak, well, the parties to the
14 litigation, so you've got somebody who's on one side,
15 and somebody who's on the other side. You know, and
16 that works tolerably well. And then there's sort of
17 the Congressional, the legislative model, where
18 usually you have a committee staff that is majority
19 and minority. And you don't have a staff like we
20 have, that's supposed to be neutral.

21 What happens, I think, in our briefings
22 often, and I hope we correct this in the future, is
23 that they try very hard to put together a balanced
24 panel. Then we'll have like cancellations at the last
25 minute, as we did this time. And Commissioners who

1 feel their side isn't represented, they dump on the
2 staff.

3 We need to think of it as our
4 responsibility to make sure that whatever view we
5 think is correct, or whatever view we don't think is
6 correct, we need to make sure that those witnesses are
7 there, rather than waiting until after the briefing
8 has occurred, and dumping on them, because it's up to
9 us.

10 COMMISSIONER CASTRO: I appreciate that,
11 and agree with that. I'm not proposing that we're
12 dumping on this, just more like hey, how does this
13 happen? How did it work?

14 COMMISSIONER HERIOT: Yes.

15 COMMISSIONER CASTRO: As I was reading
16 this about all the -- maybe some of these folks in
17 this C- so, it's really more informational for myself
18 and my new colleagues as to just how we go about doing
19 this, and how can we be participants in the process,
20 which clear, we are intended to be big participants in
21 the process.

22 COMMISSIONER GAZIANO: Sure. And in my
23 leading questions, I was trying to do the same.

24 COMMISSIONER CASTRO: Yes.

25 COMMISSIONER GAZIANO: But I did want to

1 reiterate that on this topic, I don't think there was,
2 as is clear, that there was only two positions, so I
3 don't know what your view of balance, or my -- I
4 didn't know what to expect. On others where there's
5 kind of a more clear two or three positions, then our
6 staff really does strive hard to find the different --
7 and strong spokesmen. None of us want strong
8 spokesmen for one, and weak spokesmen of another.

9 COMMISSIONER CASTRO: We certainly
10 wouldn't want that.

11 COMMISSIONER GAZIANO: We're adult enough
12 that we want the best.

13 COMMISSIONER CASTRO: Sure.

14 MS. OSTROWSKY: May I make one other
15 comment? I tried very hard to find out what their
16 views were without suggesting to them that I wanted a
17 particular outcome. So, I was pretty delicate. I
18 made certain surmises, and if the KIPP person hadn't
19 pulled out C-

20 VICE CHAIR THERNSTROM: Who was coming
21 from KIPP?

22 MS. OSTROWSKY: Irene Holtzman.

23 VICE CHAIR THERNSTROM: Oh.

24 MS. OSTROWSKY: And, as I said, Susan
25 Schultz, it would have been -- there would have been,

1 I think, a slightly different result. So, I mean,
2 that's -- I would like -- it would be nice, ideally,
3 to use a random sample, so we could make this truly
4 scientific, but it's not -- we're not set up to do
5 things like that.

6 COMMISSIONER HERIOT: You'd have to have
7 an awfully big sample for a scientific -- I'm not sure
8 if I'm willing to sit through that briefing.

9 COMMISSIONER CASTRO: Thank you for
10 answering the question. I appreciate that.

11 VICE CHAIR THERNSTROM: Lenore, I wonder
12 if you have any feeling that, in general, it would be
13 better to have fewer witnesses than we had today?

14 MS. OSTROWSKY: Yes, the short answer is
15 yes. What happens sometimes is one makes invitations,
16 and you hear nothing. And you can't -- staff can't
17 wait, because this thing has to march on, so then we
18 go to the next person and invite them, and they say
19 yes. And then the first person you haven't heard from
20 in two weeks says great, I'm coming. So, that's how
21 this kind of -- the eventual number was slightly
22 larger than I would have liked.

23 VICE CHAIR THERNSTROM: I would think, but
24 I'm not an administrator, and I've never been an
25 administrator in any context, but I would think we

1 might contemplate a rule where as we say look, if you
2 haven't answered by X date, we are going to move on to
3 invite other people, because we do need to limit the
4 number of witnesses.

5 MS. OSTROWSKY: I think that's an
6 excellent suggestion going forward.

7 COMMISSIONER HERIOT: Well, wait, I'm not
8 sure that's -- it might be in some context a good
9 suggestion, but we're dealing with people who are
10 significant people, and it's not always a good idea to
11 tell someone who has a busy schedule we're giving you
12 48 hours to --

13 VICE CHAIR THERNSTROM: No, not 48 hours.

14 COMMISSIONER HERIOT: Any particular
15 length of time.

16 (Simultaneous speaking.)

17 COMMISSIONER HERIOT: Some of these
18 people, you really want them to come, and if you say
19 look, we'll give you --

20 VICE CHAIR THERNSTROM: Always with any
21 particular individual who we really want, but that
22 would protect us. It would allow us to say, in
23 effect, we can say thank you very much. If we really
24 think we want somebody very strongly, I mean, they
25 don't know what --

1 MS. OSTROWSKY: I just have one tiny
2 comment. Because people do drop out, I was a little
3 nervous about limiting the number. That's all.
4 Because we do have cancellations, and sometimes it's
5 better to have a few too many, than not enough.

6 VICE CHAIR THERNSTROM: Okay. Folks, I've
7 just been reminded by Tim Fay that it's already been a
8 long day, and we have several more agenda items. Let
9 us move on to, if nobody minds, to Management and
10 Operations.

11 IV. MANAGEMENT AND OPERATIONS

12 VICE CHAIR THERNSTROM: And we start with
13 review of the 2011 meeting calendar. Does everybody
14 have the calendar in front of them?

15 COMMISSIONER CASTRO: Yes.

16 VICE CHAIR THERNSTROM: I guess everybody
17 except me. No, I've got mine here. Okay. The floor
18 -- anybody who wants to take the floor, please take
19 it.

20 COMMISSIONER TITUS: Madam Chairman.

21 VICE CHAIR THERNSTROM: Yes.

22 COMMISSIONER TITUS: I'd like to make a
23 motion. I think we should -- I'd like to move that we
24 cancel the telephonic meetings. They're just not
25 very helpful, they're confusing. It's hard to tell

1 who's saying what. I think we would be better off
2 having longer in-person meetings on dates when we can
3 be here, rather than try to do this over the
4 telephone.

5 COMMISSIONER CASTRO: I second that.

6 VICE CHAIR THERNSTROM: Let me add to
7 that, that we have talked on a number of times when we
8 have felt we have a great deal of business, but we
9 have never actually decided to do it. We had talked
10 about having something on Thursday afternoon, as well
11 as Friday. It never has become a necessity. It is
12 always an option, if we feel that's important, and
13 people can make it.

14 COMMISSIONER HERIOT: Not for me. I teach
15 Wednesday nights, and I can't get here that fast. But
16 I can do Saturdays.

17 VICE CHAIR THERNSTROM: All right,
18 whenever.

19 COMMISSIONER CASTRO: Shall we deal with
20 the telephonic issue first?

21 VICE CHAIR THERNSTROM: I'm just saying in
22 cancelling the telephonic meetings, we're not
23 depriving ourselves of a chance. That was my only
24 point.

25 COMMISSIONER CASTRO: Understood. Okay.

1 VICE CHAIR THERNSTROM: Okay. We need a
2 second.

3 COMMISSIONER CASTRO: I seconded it
4 already.

5 VICE CHAIR THERNSTROM: You seconded.
6 Discussion.

7 COMMISSIONER GAZIANO: Madam Chair, I just
8 wanted to say that in the past we've been -- one of
9 the things we've really strived to do is be as
10 solicitous as we can to other people's conflicts. But
11 I think there are ways of starting earlier in the
12 morning for a particular day, and --

13 VICE CHAIR THERNSTROM: Okay. But we're
14 now on the telephonic --

15 COMMISSIONER GAZIANO: I understand. I
16 think that the reason -- I don't want to go into the
17 history, unless someone tries to drag it out of me,
18 why we --

19 (Laughter.)

20 COMMISSIONER GAZIANO: -- added them, but
21 I don't think that -- I think that they can be
22 reinstated. I don't think the reason we added them
23 was necessary, so I'll support this motion.

24 COMMISSIONER HERIOT: Okay. I do want to
25 go into the history. It's not a very complicated

1 history.

2 COMMISSIONER GAZIANO: No, that's okay.

3 COMMISSIONER HERIOT: Our statute requires
4 us to do only two things in the whole world, and those
5 two things, we don't seem to get done. Number one,
6 we've got to do an enforcement report once a year.
7 Okay, that's aside. Number two, we've got to charter
8 51 SACs.

9 COMMISSIONER GAZIANO: Every two years.

10 COMMISSIONER HERIOT: Every two years, and
11 it's very boring. You'll get really tired of SACs. I
12 mean, the chartering, not the actions of the SACs, but
13 it tends to be pretty cut and dried stuff, and we
14 weren't getting it done. People would be leaving the
15 meetings, sometimes people were walking out of
16 meetings to defeat quorum. Bad stuff was happening,
17 we weren't getting that done. And we need to commit
18 to do what Congress has directed us to do, and that is
19 charter 51 SACs every two years. If we can do that
20 some other way, I'm happy to support the motion. We
21 weren't getting it done in past years. And,
22 basically, the reason we instituted the telephonic
23 meetings was to charter SACs that we thought would be
24 non-controversial, just get on the phone and say aye,
25 and we'd get it over with. It ended up, we put a few

1 other things on the agenda. I always wanted it just
2 to be for SACs, and if we can get our SACs done some
3 other way, that's fine with me. If we can't do it,
4 then I would suggest we go back to the telephonic
5 meetings in the future.

6 COMMISSIONER CASTRO: Yes, I think as the
7 Acting Chair suggested, we can always lengthen the in-
8 person meetings. I think it's always better to sit
9 around the table and talk about issues, and address
10 them, and work together, as opposed to on phones.

11 COMMISSIONER HERIOT: I'm for that, too.
12 You may find Commissioner Yaki doesn't agree with you.

13 COMMISSIONER CASTRO: Yes. Well, to the
14 extent that at some point we might need to do
15 something telephonic, this doesn't prohibit us from
16 doing that. I just think, when I seconded this
17 motion, that the more we can do sitting together face-
18 to-face, if we need longer meetings --

19 COMMISSIONER HERIOT: I'm with you.

20 COMMISSIONER CASTRO: Okay. Because we
21 want to get all our work done.

22 VICE CHAIR THERNSTROM: I think we've got
23 C- it sounds like we've got unanimity here, and I'm
24 going to call the question. All in favor of canceling
25 the telephonic meetings with the understanding that we

1 could always decide to have a telephonic meeting, if
2 we want to in the future. All in favor of canceling
3 the telephonic meetings, please say aye.

4 (Chorus of ayes.)

5 COMMISSIONER ACHTENBERG: You've gotten
6 your unanimous bipartisan vote here.

7 VICE CHAIR THERNSTROM: Terrific. I love
8 it. Now, are there any conflicts for people for the
9 in-person dates?

10 COMMISSIONER ACHTENBERG: I do have one,
11 Madam Chair. The October meeting is a meeting that I
12 cannot make.

13 VICE CHAIR THERNSTROM: So, let us change
14 that. How about other people?

15 COMMISSIONER CASTRO: No major conflicts,
16 th
17 so long as on Friday, August 12 , you have a birthday
18 cake for me.

18 (Laughter.)

19 COMMISSIONER ACHTENBERG: Nice.

20 COMMISSIONER CASTRO: Although, my wife
21 might be upset really if I'll be here for her
22 birthday, but she's pretty --

23 COMMISSIONER GAZIANO: Well, you bring
24 her. Bring her --

25 (Simultaneous speaking.)

1 COMMISSIONER GAZIANO: -- for a vacation
2 in glorious Washington, D.C.

3 COMMISSIONER ACHTENBERG: Yes, so it's
4 your weekend in our nation's capitol.

5 COMMISSIONER CASTRO: I might just do
6 that. That's a great idea.

7 VICE CHAIR THERNSTROM: Wait a minute.
8 That raises the question, in many years that I was
9 here, we did not have an August meeting.

10 COMMISSIONER HERIOT: Who's in favor of
11 having an August meeting?

12 COMMISSIONER GAZIANO: We don't have to.
13 We can cancel it later.

14 COMMISSIONER CASTRO: Let's leave it on
15 there, because I think in light of Commissioner
16 Heriot's point, that we need --

17 VICE CHAIR THERNSTROM: Okay, that's fine.

18 COMMISSIONER CASTRO: -- we've got a lot
19 of work to do, we can always decide later. But I
th

20 think we'll be here August 12 , so --

21 VICE CHAIR THERNSTROM: That's fine. So,
22 aside from the condition of having a birthday cake on
th

23 August 12 , are there any other meetings that --

24 COMMISSIONER HERIOT: We have to decide on
25 an alternate date for October.

1 COMMISSIONER CASTRO: Alternative date for
2 October.

3 VICE CHAIR THERNSTROM: But any other
4 conflicts here?

5 COMMISSIONER GAZIANO: Let's see when our
6 September one is, so that usually it's best, because
7 sometimes Labor Day -- okay. It looks like we're on
8 th
9 the 9 of September.

9 VICE CHAIR THERNSTROM: Yes.

10 COMMISSIONER GAZIANO: After Labor Day, do
11 th
12 you want to try to -- is the 7 acceptable?

12 COMMISSIONER CASTRO: Of October?

13 COMMISSIONER GAZIANO: Yes.

14 COMMISSIONER ACHTENBERG: Could somebody -
15 - does anybody have the Jewish calendar? Oh, it's Yom
16 Kippur, no.

17 VICE CHAIR THERNSTROM: No, it's no for me
18 too, then.

19 COMMISSIONER CASTRO: What about the 21 ?
20 st

20 COMMISSIONER GAZIANO: The 21 ? That is
21 a little difficult for me. I could do it -- when is
22 st

22 our -- or number 18. I suppose the 21 is fine.

23 COMMISSIONER CASTRO: Can I suggest
24 something? We had --

25 st
25 COMMISSIONER GAZIANO: The 21 is fine.

1 I'll just make it work.

2 COMMISSIONER CASTRO: Okay. Well, here's
3 what I was just going to suggest. Presumably, you
4 th
4 have the 28 of October. Oh, is that the date that
5 you can't work?

6 COMMISSIONER ACHTENBERG: I can't.

7 COMMISSIONER CASTRO: Okay, sorry.

8 (Simultaneous speaking.)

9 th
9 COMMISSIONER CASTRO: Okay. The 28 was
10 one of the telephonic dates, so presumably --

11 COMMISSIONER GAZIANO: No, I think it's
12 generally better --

13 VICE CHAIR THERNSTROM: No, let's not lose
14 so much time.

15 COMMISSIONER GAZIANO: -- to keep our
16 three to four weeks --

17 COMMISSIONER CASTRO: 21?

18 VICE CHAIR THERNSTROM: 21.

19 COMMISSIONER ACHTENBERG: That's fine.

20 VICE CHAIR THERNSTROM: Okay. So, we need
21 a separate motion here that the existing in-person
22 dates stay with the exception of a change in the

23 th st
23 October meeting, changed from October 14 to 21 .

24 COMMISSIONER TITUS: So moved.

25 COMMISSIONER GAZIANO: Could I ask that --

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COMMISSIONER TITUS: Oh, wait a second.
Hold on.

COMMISSIONER GAZIANO: -- that we check
with Pete on -- if we're moving it for one other
person.

VICE CHAIR THERNSTROM: Of course. Sure,
of course.

COMMISSIONER GAZIANO: And we probably
should reconfirm in March if former Commissioner Yaki
--

VICE CHAIR THERNSTROM: Yes, absolutely.

COMMISSIONER GAZIANO: -- has already
penciled these in, and planned his family outing.

VICE CHAIR THERNSTROM: Sure.

COMMISSIONER GAZIANO: Or whatever.

COMMISSIONER CASTRO: Yes, that makes
sense.

COMMISSIONER GAZIANO: For October.

VICE CHAIR THERNSTROM: Okay. So, this is
a penciled in schedule.

COMMISSIONER GAZIANO: Okay.

COMMISSIONER ACHTENBERG: And thank you
for the courtesy.

COMMISSIONER GAZIANO: Do we need to vote?

1 COMMISSIONER HERIOT: Yes, I think we need
2 to vote on it.

3 VICE CHAIR THERNSTROM: We need to vote.
4 (Simultaneous speaking.)

5 COMMISSIONER GAZIANO: Yes, we developed -
st

6 - tentatively moved to the 21 with the understanding
7 that we're going to --

8 VICE CHAIR THERNSTROM: Okay.

9 COMMISSIONER HERIOT: We'll call it
10 tentative, like we can undo it.

11 COMMISSIONER GAZIANO: We can always undo
12 it later.

13 VICE CHAIR THERNSTROM: We can always undo
14 it. Okay. By acclamation, I think that we have
15 decided on these dates. What is the next --

16 COMMISSIONER CASTRO: Staff Director's
17 report.

18 VICE CHAIR THERNSTROM: Staff Director's
19 report.

20 ACTING STAFF DIRECTOR BYRNES: Thank you,
21 Madam Vice Chair.

22 We submitted a draft of our Congressional
23 budget request for fiscal year 2012 to the Office of
24 Management and Budget for their review. I provided
25 Commissioners a copy of this request last week. For

1 fiscal year 2011, we are operating under a continuing
th
2 resolution which ends March 4 . This continuing
3 resolution limits the agency's funding, but staff is
4 working to ensure that payroll and other essential
5 services can continue until Congress passes an Annual
6 Appropriation's Act. We will not know our final fiscal
7 year 2011 funding level until Congress passes an
8 Appropriations Act, or alternative funding mechanism.

9 Staff has posted the panelists written
10 statements in the transcript of our briefing on school
11 choice, Blaine Amendments, and anti-Catholicism to the
th

12 agency's website. During the December 27 to January
st

13 21 reporting period, our Office of Civil Rights
14 Evaluation received 58 written complaints, one
15 Congressional complaint, one walk-in complaint, nine
16 email complaints, five fax complaints, and 89
17 telephonic complaints of which 30 were repeat calls.
18 In total, staff received and processed 160 complaints
19 during the reporting period.

20 The Commission received a clean or
21 unqualified audit opinion on its fiscal year 2010
22 financial statements. And staff submitted the Human
23 Capital Management Plan to OPM and OMB, I think by

th
24 December 15 , 2010. This plan was called for in our
25 strategic plan, and incorporated input from

1 Commissioners, the senior-level staff working group,
2 and consultants. That's all I have to report.

3 VICE CHAIR THERNSTROM: Any questions for
4 the Staff Director? Yes, Commissioner Gaziano.

5 COMMISSIONER GAZIANO: Something I heard
6 about yesterday, just briefly mentioned to the Staff
7 Director. I understand our lease on this building is
8 up, which is, for those of you -- again, three years
9 ago, this was a dump, this place, and they got it
10 painted, and they got -- so, it's now really -- it
11 gorgeous compared to --

12 (Laughter.)

13 COMMISSIONER GAZIANO: -- what it was.
14 I've heard the staff, how much labor with filing
15 cabinets everywhere it may not be. But what I'm going
16 to ask the Staff Director, I don't know how much you
17 want to say, and I don't want you to, necessarily,
18 take up more than two minutes on where it is. But as
19 I understand it, there's a lot of -- if the owner of
20 this building isn't willing to renegotiate, there are
21 -- I speak for myself, but I think for others, want
22 input as early as possible on alternatives, rather
23 than just being told this appears to be the direction
24 we're going to go. Is it possible that you could
25 prepare, assuming you're still going to be -- or you

1 could pass on to the next Staff Director, if there is
2 such a vote before then, to give us a report on where
3 we are?

4 ACTING STAFF DIRECTOR BYRNES: I'd be
5 happy to do so.

6 COMMISSIONER GAZIANO: And one of the
7 factors that I want the Staff Director to consider in
8 negotiations on behalf of the Commission, is whether
9 the new building is near a Metro stop. I don't take
10 the Metro any more. I drive, but I know that many of
11 our staff will be interested in -- I think it should
12 be near Falls Church where I live, but they probably
13 would not like that, because I'm not in Falls Church
14 proper, so I'm not anywhere near a Metro stop. So, if
15 you would just add that as a factor.

16 ACTING STAFF DIRECTOR BYRNES: Okay. I
17 will say as sort of a threshold matter that GSA sort
18 of conducts the solicitation process on our behalf, so
19 I'm not sure how much wiggle room we have.

20 COMMISSIONER GAZIANO: But don't we define
21 things that are important? Tell me -- give me two
22 minutes on what the process is.

23 VICE CHAIR THERNSTROM: In the meantime,
24 Tim Fay says there's great real estate near the what
25 stop? Silver Springs.

1 MS. DUNSTON: Good afternoon,
2 Commissioners. The process is basically controlled by
3 GSA. We provide to them information on what our needs
4 are. The Metro consideration that you already spoke
5 about is a part of the considerations that we are near
6 Metro, access bus and rail.

7 COMMISSIONER GAZIANO: Okay. Now, do we -
8 - when is it -- I'm sorry.

9 VICE CHAIR THERNSTROM: No, no, go ahead.
10 I was just going to say --

11 COMMISSIONER GAZIANO: Is it take or leave
12 it then? I mean, don't we have any --

13 MS. DUNSTON: You're taking and leaving is
14 part of the process. We tell them in the beginning
15 here's the Commission's needs for space, offices,
16 number of employees, the type of security issues that
17 we need based on the security assessment, whether we
18 need a conference room, certain things are already put
19 into place that have to do like ADA accommodations,
20 and that kind of thing is taking place already.

21 Now, in terms of whether we are two blocks
22 from Metro, or we're five blocks from Metro --

23 (Simultaneous speaking.)

24 MS. DUNSTON: -- how far you are. Like
25 the bus, for instance, a quarter mile of a bus, a half

1 mile of the Metro. And they can't tell you whether
2 it's a one line versus another line. We tell them
3 what area we want to be in the downtown D.C. area, we
4 want to have Metro access. We like to have certain
5 amenities, certain things for security. We do give
6 them that, and they put together solicitation, and the
7 process from there, basically, is more controlled by
8 GSA than us.

9 COMMISSIONER GAZIANO: But we haven't
10 submitted those requests yet, or those criteria yet.

11 MS. DUNSTON: Those criteria have been
12 submitted. The solicitation was out last night.

13 COMMISSIONER GAZIANO: Oh, it was. Could
14 you share -- I mean, I suppose it's theoretically
15 possible we could ask you all to withdraw it, but
16 that's the kind of thing I wish Commissioners would
17 have input on.

18 MS. DUNSTON: The bulk of the -- the
19 controlling factor was how much space could the
20 Commission afford. We've been in this building about
21 20 years, so our space costs are going to increase
22 substantially, and John can speak to you more about
23 the cost on that, but that controlled a lot of how
24 much space we can have. Additionally, the President
25 has said that federal agencies will decrease their

1 space footprint, which we also have to accommodate
2 that. So, taking those considerations, what we needed
3 and what we currently have, and what our projection
4 increasing staff levels, certain things were assumed
5 and given to GSA, and they put out a solicitation for
6 us.

7 VICE CHAIR THERNSTROM: I am concerned
8 about the space issue. It seems to me that already we
9 could use some more space that we have got. Don't
10 laugh, but --

11 COMMISSIONER GAZIANO: Especially if we
12 fill these vacancies, which we ought to.

13 VICE CHAIR THERNSTROM: Yes, which we
14 ought to. I mean, what have we told them in terms of
15 our future space needs, as opposed to the existing
16 space we have?

17 MS. DUNSTON: Well, we looked at the
18 number of empties that actually currently have, and
19 what the potential there is based on our budget
20 project, so we have to use some assumptions for that.

21 And even for the people that are vacant now, that --
22 you know, like the Staff Director is going to go. We
23 have -- that number is already included, so we just
24 made those assumptions.

25 ACTING STAFF DIRECTOR BYRNES: I should --

1 yes, the number of FTEs reflected in the fiscal year
2 2012 Congressional budget justification is consistent
3 with, I think, what we sent along to GSA. That's sort
4 of what I think.

5 COMMISSIONER GAZIANO: I doubt that it'll
6 be an issue here, but new Commissioners will hear me
7 maybe cry and complain that we're not an Executive
8 Branch, and every once in a while when the Executive
9 Branch -- we can't be constitutionally. Every once in
10 a while when they give us some -- usually I think it's
11 fine to go along with the Executive Branch's delusion
12 on that. But is it problematic to share with us what
13 requirements you -- you know, I assume all us being
14 equal, we should see anything that we think is
15 important, but --

16 ACTING STAFF DIRECTOR BYRNES: I can't
17 think of any reason not to.

18 COMMISSIONER GAZIANO: Okay. Could you --

19
20 ACTING STAFF DIRECTOR BYRNES: And I'll
21 consult with staff --

22 COMMISSIONER GAZIANO: Would you share
23 with us that.

24 ACTING STAFF DIRECTOR BYRNES: Sure.

25 COMMISSIONER GAZIANO: I mean, unless it

1 affects the bid process somehow. Certainly, as
2 management of the agency.

3 VICE CHAIR THERNSTROM: Can I suggest we
4 move on at this point, because it's 4:00.

5 COMMISSIONER GAZIANO: Sure.

6 VICE CHAIR THERNSTROM: And people do have
7 planes to make. So, we are at review of transition,
8 order of succession, continuity of operations. What
9 do people -- what would people like to discuss with
10 respect to --

11 COMMISSIONER CASTRO: Well, we have a
12 couple of proposed motions, and I believe staff is
13 passing those out. These motions are to alter the
14 succession. The first motion that is -- both of them
15 are being distributed, but the first one is going to
16 be to adopt changes to the Administrative Instruction
17 1-18C for the purpose of clarifying and amending the
18 succession of General Counsel, delegating the duties
19 to a career staffer, and not at the discretion of the
20 Staff Director until a permanent General Counsel is
21 named. And further move that these changes take
22 effect immediately. So, have those been distributed?

23 Okay. After we distribute these, I'm
24 going to read the motion, the first motion, and then
25 we can take a break so everyone can read them. We'll

1 take, if the Chair agrees, a 5-minute recess. But let
2 me just read into the record the first motion.

3 COMMISSIONER HERIOT: Wait. That's not
4 what's being passed out. This is just rules that
5 already exist?

6 COMMISSIONER CASTRO: It's a modification
7 of the rule. And I'll --

8 COMMISSIONER HERIOT: I take it there's no
9 typewritten motion at this point. Is that right?

10 COMMISSIONER CASTRO: Well, I'm going to -
11 - my motion is that the --

12 COMMISSIONER HERIOT: We don't have copies
13 of it.

14 COMMISSIONER CASTRO: -- that we adopt
15 this proposed 1-18C Administrative --

16 VICE CHAIR THERNSTROM: I've got them in
17 my hand.

18 COMMISSIONER CASTRO: There's two of them.

19 COMMISSIONER HERIOT: Okay.

20 COMMISSIONER CASTRO: So, the first one is
21 Administrative Manual. It's a motion to amend the
22 Administrative Manual, Administrative Instruction 1-
23 18C, Office of the General Counsel. Section 1,
24 "Purpose. The purpose of this Administrative
25 Instruction (AI) Office of General Counsel --

1 COMMISSIONER GAZIANO: I'm glad to move to
2 consider it as read into the record, if someone
3 doesn't -- unless you want to read it.

4 COMMISSIONER CASTRO: I don't,
5 necessarily, have to read it. I just wanted to try to
6 provide you some opportunity to look at it. So, I
7 move that this --

8 COMMISSIONER GAZIANO: I move to have this
9 entered into the record as if it were read.

10 VICE CHAIR THERNSTROM: Second.

11 COMMISSIONER GAZIANO: Would you -- if
12 we're proceeding on -- now, this does seem to be both
13 important, and violate the rule that we share
14 important lengthy motions with each other beforehand,
15 but would you tell me, as I -- maybe if you just give
16 -- I could read it a little bit better, and
17 concentrate a little bit better if I was -- but what
18 is the main change that 1-18C does?

19 COMMISSIONER CASTRO: What it does is, in
20 the absence of the General Counsel --

21 COMMISSIONER GAZIANO: Okay.

22 COMMISSIONER CASTRO: -- and by absence,
23 we define that by inability of an employee to carry
24 out his or her legal function due to vacancy of the
25 position, travel, vacation, or for any other reason,

1 so in the absence of a General Counsel, we want to
2 have orally a system of delegation of authority, so
3 when the General Counsel is absent, the Deputy General
4 Counsel would assume the authority, and manage the
5 Office of General Counsel, so they would keep the line
6 of succession within the General Counsel's office to
7 career staffers. So, when the General Counsel and the
8 Deputy General Counsel are both absent, then the
9 senior attorney in the office of the General Counsel
10 would assume the duties of Acting General Counsel.

11 COMMISSIONER GAZIANO: What's sort of
12 interesting about this is, there aren't so many
13 General Counsels currently in the General Counsel
14 office that could --

15 COMMISSIONER CASTRO: Maybe one day there
16 will be. Right?

17 COMMISSIONER HERIOT: Wait. This
18 substitutes the Acting Deputy -- now, hold on. This
19 person would then take the position of the Staff
20 Director. Is that right?

21 COMMISSIONER CASTRO: There's a second
22 motion, so that's 1-18(b). I'm not dealing with that
23 one right now. There's two separate motions, one on
24 1-18B, which is as to the succession of the General
25 Counsel, and there's going to be a separate motion

1 after we get through this one with the succession of
2 the Staff Director.

3 COMMISSIONER HERIOT: I can't take this
4 this quickly.

5 COMMISSIONER CASTRO: Okay.

6 COMMISSIONER CASTRO: We'll take -- should
7 we take a recess, Madam Chair?

8 COMMISSIONER GAZIANO: We could, but why
9 is this necessary that we take this up at this
10 meeting? We don't -- hopefully, we won't have any
11 further vacancies from the Office of General Counsel
12 in the next --

13 COMMISSIONER CASTRO: I think it's
14 important to, as we begin -- as we come into our
15 positions as Commissioners to have folks who are
16 wearing multiple hats not have to wear so many
17 multiple hats. And one of the folks who's wearing a
18 lot of hats is our Acting General Counsel, Acting
19 Staff Director, and I think there's another hat or
20 two. So, I think it's just important to begin to
21 identify separate folks to begin to do these very
22 important functions.

23 Would you like to take a recess to take a
24 closer look at them?

25 COMMISSIONER HERIOT: No, this is not what

1 we're used to. We're used to having these things long
2 before.

3 VICE CHAIR THERNSTROM: Oh, I wish that
4 were the case.

5 COMMISSIONER HERIOT: You know it is,
6 Abigail.

7 COMMISSIONER GAZIANO: We defer many times
8 when people have objected to not having motions
9 beforehand. But is the effect of both of these
10 motions together to displace the Acting Staff
11 Director?

12 COMMISSIONER CASTRO: Right now I am only
13 focused on the General Counsel.

14 COMMISSIONER GAZIANO: Is the effect of
15 both of these motions to displace the Acting Staff
16 Director?

17 COMMISSIONER ACHTENBERG: If you were to
18 adopt both motions, the Acting Staff Director would
19 assume his prior position, and there would be a new
20 Acting Staff Director. That's right.

21 COMMISSIONER GAZIANO: And the Acting
22 Staff Director would be from the General Counsel's
23 office.

24 COMMISSIONER ACHTENBERG: Correct.

25 COMMISSIONER GAZIANO: That's what I

1 thought.

2 COMMISSIONER HERIOT: Who would be the
3 Acting Staff Director?

4 COMMISSIONER GAZIANO: I'd like a recess.

5 COMMISSIONER CASTRO: Sure.

6 VICE CHAIR THERNSTROM: Five-minute
7 recess. I'm sorry. Let's really make it five
8 minutes, folks, so we're at 4:11, we're back here.

9 (Whereupon, the proceedings went off the
10 record at 4:09 p.m., and resumed 4:35:36 p.m.)

11 VICE CHAIR THERNSTROM: Okay. We continue
12 the meeting, and Commissioner Gaziano has his hand up.

13 COMMISSIONER GAZIANO: The record of the
14 Commission will reflect that I have objected, and I
15 think Commissioner Heriot will speak for herself, but
16 she has, as well, to Commissioners leaving meetings to
17 defeat quorum for insignificant reasons. I said I
18 wouldn't do that, but I consider the procedural
19 motions before us today to constitute such grounds
20 that would justify leaving. But since my new
21 Commissioners aren't aware of all that history, and I
22 think that I can proceed. But I don't think that -- I
23 think is just terribly misguided, the way that this is
24 done.

25 I cannot vote for these as they are. I

1 have not talked to Chris, but we at least had the
2 courtesy of asking Chris when we amended the AI to put
3 him -- because we figured that our previous Staff
4 Director might leave, we asked him whether he was
5 willing to serve. So, I did spend a few minutes
6 talking to Kim, whether she was willing to serve,
7 because I think before I vote, I at least wanted to
8 know that.

9 If you will substitute -- if the
10 Commission, and I don't want to hear why, because we
11 should have gone into Executive Session if we were
12 going to be engaging in these sort of personnel votes
13 that actually replace people in their current
14 positions, so I think it's improper to explain reasons
15 why you want to make this substitute. But if you
16 would just move to substitute Kim for Chris as Acting
17 Staff Director, or Delegated the Authority of Staff
18 Director, since that term came up before, I will
19 actually vote for it.

20 I want to be clear that that is certainly
21 no vote of confidence, or lack of confidence in Chris.
22 I just suspect he would be glad to leave, go back to
23 his own job. But I think that in our Commission's
24 history, someone who's acting in the Office of Civil
25 Rights Evaluation has always been in line of

1 succession, should be in the line of succession. We
2 shouldn't play games with the order of succession for
3 that reason.

4 I know Chris has had to put up with a lot,
5 including wrongful cancellation of the January
6 briefing, and other actions of a rather domineering
7 acting chair, and I assume that he'd be glad to leave.

8 So, with that understanding, I'd be glad to vote for
9 the motion if it was recast. I'm not going to be able
10 to vote for them as they are.

11 COMMISSIONER CASTRO: Commissioner Heriot
12 had something to say.

13 VICE CHAIR THERNSTROM: Oh, I'm sorry,
14 Commissioner Heriot.

15 COMMISSIONER HERIOT: I just wanted to say
16 that with new people on board, sometimes people get
17 confused about the traditions and the procedures that
18 are ordinarily used. This is not what we ordinarily
19 do. I would urge all of the new people to read a
20 number of the briefing, not briefing transcripts, but
21 meeting transcripts, and you'll see -- sometimes
22 motions have been made that aren't -- I'm sorry.
23 Sometimes motions that are made seem kind of last
24 minute, but not as last minute as this. We've always
25 gotten them written.

1 With this, there's not much I can do with
2 this, because I can't see what the original AI looked
3 like. Also, very disappointing when asking what is
4 this for, and instead of telling me oh, we're
5 substituting Kim for Chris, you know, it was very
6 unclear what was being done.

7 If you want to substitute Kim for Chris,
8 make the motion. I think they both do a wonderful
9 job. I think Chris has had a miserable time in the
10 last few weeks, so it wouldn't shock me if Chris were
11 to cast his own vote on this one.

12 VICE CHAIR THERNSTROM: Except he doesn't
13 have a vote.

14 COMMISSIONER HERIOT: I know. But I won't
15 mind if you vote on this one, Chris. Really, I would
16 very much urge you guys to read transcripts of
17 previous meetings, because I think that will give you
18 a sense of what kind of procedural problems we've run
19 into, and what side of the issues various people have
20 been on at various times.

21 And, again, I think it's a very bad idea
22 to vote on an AI on something as important as this.
23 Just to make a change that you want to make, you don't
24 want to have AIs that are bad in place in the future.

25 COMMISSIONER GAZIANO: And a point of

1 clarification. Commissioner Castro, I appreciated
2 your honesty. I didn't -- I just think whatever the
3 plan was, to do it like this is not good. You could
4 have just -- whoever -- but I'm glad you told me at
5 the beginning of the meeting. I sort of knew, could
6 have guessed based on your honest answer that
7 something was afoot, and thank you, Commissioner
8 Achtenberg, for sort of helping me put two and two
9 together. But with that, I'm willing to vote on the
10 motions you have with the understanding of how I'm
11 going to vote, or if we can come up with a substitute
12 motion to put in place Ms. Tolhurst.

13 VICE CHAIR THERNSTROM: May I just say
14 before anybody says anything else, I do not believe
15 that in any way, in any form I have been
16 "domineering." I am really a little bit tired of the
17 adjectives thrown my way, and the incivility. And I
18 don't think, again, there was anything improper in
19 what I did. But with that, let us proceed. Should I
20 call the question?

21 COMMISSIONER CASTRO: Yes, call the
22 question. This is not about persons or personalities.
23 Just about the process.

24 COMMISSIONER GAZIANO: The process is a --
25 I view this as the motions could have been shared,

1 they should have been shared, and certainly they
2 shouldn't have been done in this manner. And it
3 really doesn't make sense that we change the order of
4 succession this way. And I think everyone knows that.

5 But if that's what you prefer to vote on, then that's
6 fine.

7 COMMISSIONER CASTRO: It's my
8 understanding the order of succession had been changed
9 in December, so we're changing it back to what we
10 believe it should be.

11 COMMISSIONER GAZIANO: No, I --

12 VICE CHAIR THERNSTROM: Okay. Look, I'm
13 going to call the question. We're not going to argue
14 about this. The motion -- are we doing 1-18B and then
15 1-18C? You've made a motion only --

16 COMMISSIONER CASTRO: We have a motion --
17 we distributed them together, but we made a motion
18 initially as to 1-18C. So, we could take them
19 separately, or together.

20 VICE CHAIR THERNSTROM: Let's take them
21 together.

22 COMMISSIONER CASTRO: Okay. So, the
23 motion -- I'm sorry? We should take them separately?
24 Let's take them separately.

25 VICE CHAIR THERNSTROM: You can take them

1 separately, that's fine.

2 COMMISSIONER CASTRO: We have a motion
3 already pending on the floor regarding 1-18C.

4 VICE CHAIR THERNSTROM: 1-18C. Yes, okay.
5 And it has been seconded. All in favor?

6 (Chorus of ayes.)

7 COMMISSIONER HERIOT: Call for a vote.
8 Say, it's your job to say all opposed?

9 VICE CHAIR THERNSTROM: All opposed?
10 Instead of pointing my finger at -- waiting for you to
11 say I am opposed. All opposed, or any abstentions?

12 COMMISSIONER HERIOT: I abstain.

13 VICE CHAIR THERNSTROM: Heriot abstains.

14 COMMISSIONER GAZIANO: If they're done
15 individually, I'll abstain on this one and vote --

16 VICE CHAIR THERNSTROM: Two abstentions,
17 four yeas. It is adopted. Okay, now we move to
18 18(b). We move -- you want to make a motion?

19 COMMISSIONER ACHTENBERG: I move the
20 resolution regarding 18(b), provided it can be adopted
21 without having been read into the record.

22 COMMISSIONER CASTRO: Second.

23 VICE CHAIR THERNSTROM: Okay. Do we need
24 any further discussion? We have discussed it. I'm
25 calling the question. All in favor?

1 (Chorus of ayes.)

2 VICE CHAIR THERNSTROM: All opposed, or
3 any abstentions?

4 COMMISSIONER GAZIANO: No, just based on
5 the order of succession, and with the understanding
6 that I've said before, that it doesn't reflect
7 negatively at all on the persons who the majority of
8 the Commission are trying to have advanced.

9 COMMISSIONER CASTRO: Absolutely.

10 VICE CHAIR THERNSTROM: Okay, so --

11 COMMISSIONER HERIOT: I'm abstaining on
12 the ground that I don't see how I can possibly vote on
13 this given how --

14 VICE CHAIR THERNSTROM: Okay. Heriot is
15 abstaining, Gaziano votes no. The motion has passed.

16 I think we're at the end of the meeting.

17 COMMISSIONER CASTRO: We have a State
18 Advisory Committee --

19 V. STATE ADVISORY COMMITTEE ISSUES

20 VICE CHAIR THERNSTROM: Oh, the State
21 Advisory. Sorry. The Vermont SAC.

22 COMMISSIONER CASTRO: Alabama, we have a
23 motion on Alabama. No? Right?

24 VICE CHAIR THERNSTROM: Right. This is
25 first to approve the Vermont SAC Chair. Somebody make

1 a motion?

2 COMMISSIONER CASTRO: So moved.

3 VICE CHAIR THERNSTROM: I'll second it.

4 Any changes, discussions questions on the Vermont SAC
5 Chair, only.

6 COMMISSIONER GAZIANO: And who is the
7 nominee for Vermont Chair?

8 COMMISSIONER CASTRO: Diane Snelling.

9 COMMISSIONER GAZIANO: That's what I
10 thought it was. I just thought the record needed to
11 reflect.

12 VICE CHAIR THERNSTROM: Yes. Okay. Sorry
13 about that. End of a long day. Any discussion, any
14 questions? All right. Let's have a vote. What are
15 the ayes?

16 (Chorus of ayes.)

17 VICE CHAIR THERNSTROM: Is there any
18 abstentions, and --

19 COMMISSIONER HERIOT: Ask for nos, in case
20 there are nos.

21 VICE CHAIR THERNSTROM: I think it was
22 unanimous.

23 COMMISSIONER HERIOT: Yes, but instead of
24 asking for -- you asked for ayes, ask for nos, ask for
25 abstentions. If you think there might be an

1 abstention, then you must think that somebody hasn't
2 voted who might be a no.

3 VICE CHAIR THERNSTROM: All right, Gail.
4 It's been a long day. That was a unanimous vote. And
5 now the Alabama. Can I have a motion on Alabama?

6 COMMISSIONER TITUS: Madam Chairman.

7 VICE CHAIR THERNSTROM: Yes.

8 COMMISSIONER TITUS: I'd move at this time
9 we postpone the re-chartering of the Alabama SAC and
10 ask the Staff Director to address certain problems
11 that have arisen, so we can improve the ideological
12 balance of that SAC.

13 COMMISSIONER CASTRO: Second.

14 COMMISSIONER GAZIANO: May I ask the --
15 your thoughts on what the problems were? It looks
16 like one of the most balanced SACs that I've seen in a
17 number of years. Let me look at the --

18 COMMISSIONER TITUS: I think if you look
19 at the party distribution, you find it's pretty out of
20 whack.

21 COMMISSIONER GAZIANO: I think -- well,
22 let's go through that. Let's get exact -- according to
23 their self-identification, it's five Republicans, four
24 Democrats, and four Independents. That's about as
25 balanced as it comes. Is that not balanced in your

1 view?

2 COMMISSIONER TITUS: Well, sometimes it's
3 not just about party labels, it's about ideological
4 views. And I think the three of the Independents have
5 made public statements, or statements on the record
6 that indicate that they are very conservative, so I
7 would see that as out of balance, yes.

8 COMMISSIONER GAZIANO: That's not what you
9 said the first time.

10 COMMISSIONER TITUS: Well, I'll correct
11 myself. I'm sorry I misspoke.

12 COMMISSIONER GAZIANO: Okay. I haven't
13 studied them in detail, but I have reviewed, and I
14 disagree with that kind of characterization. What
15 kind of -- I don't know that I want to go through who
16 you think is this, that, or the other, but --

17 COMMISSIONER CASTRO: We shouldn't do
18 that.

19 COMMISSIONER GAZIANO: Well, we have in
20 certain circumstances, but just in general, what's the
21 proper balance? This seems about as balanced as we've
22 come.

23 COMMISSIONER TITUS: I'm only asking that
24 we postpone this re-chartering so we can get some
25 questions answered, and the Staff Director can look

1 into it, and maybe see about recruiting some
2 additional members, and at that time --

3 VICE CHAIR THERNSTROM: And report back to
4 us at the next meeting. I would assume that's what
5 you would like.

6 COMMISSIONER TITUS: That would be fine.

7 COMMISSIONER HERIOT: What is it that the
8 Staff Director is going to be asked to do? And what is
9 she supposed to report back on?

10 COMMISSIONER TITUS: I don't want to put
11 on the record any kind of personal accusations at this
12 point, so we've asked the staff to provide some
13 information about the backgrounds of the different
14 members, some of their public statements, recruit and
15 see if there are other members, maybe former members
16 who'd like to come back or something, if that fits the
17 rules, just so we can have a wider choice, and be sure
18 we're coming up with the best composition possible.

19 COMMISSIONER GAZIANO: Yes, one of the --
20 we do, normally, perhaps in some extenuating
21 circumstances allow reappointments. Most of the SAC
22 are reappointments, as I recall, so that's going to
23 limit the new Acting Staff Director's authority.

24 VICE CHAIR THERNSTROM: I'm calling the
25 question. All in favor?

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(Chorus of ayes.)

VICE CHAIR THERNSTROM: All opposed?

COMMISSIONER GAZIANO: Nay.

VICE CHAIR THERNSTROM: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Please call for abstentions.

VICE CHAIR THERNSTROM: All abstentions.

COMMISSIONER HERIOT: That would be me.

VICE CHAIR THERNSTROM: Thank you. I hope the court reporter has that, one nay, one abstention, the rest are ayes. The meeting is adjourned.

COMMISSIONER CASTRO: We have the Minutes.

VICE CHAIR THERNSTROM: I need a motion to adjourn it, actually.

COMMISSIONER CASTRO: What about the Minutes?

ACTING STAFF DIRECTOR BYRNES: The Minutes
rd
from December 3 .

VICE CHAIR THERNSTROM: Oh.

COMMISSIONER CASTRO: We have to approve
rd
the Minutes of December 3 .

VI. APPROVAL OF DECEMBER 3, 2010

MEETING MINUTES

COMMISSIONER CASTRO: I move that we

1 approve the Minutes of December 3 .

2 COMMISSIONER GAZIANO: Second.

3 COMMISSIONER CASTRO: Call the question.

4 VICE CHAIR THERNSTROM: Calling the
5 question.

6 (Chorus of ayes.)

7 VICE CHAIR THERNSTROM: All right.

8 Unanimous approval for the Minutes of December 3.

9 VII. ADJOURN

10 COMMISSIONER GAZIANO: I move to adjourn.

11 VICE CHAIR THERNSTROM: Second.

12 COMMISSIONER ACHTENBERG: Without
13 objection.

14 COMMISSIONER CASTRO: By acclamation.

15 VICE CHAIR THERNSTROM: By acclamation.

16 (Whereupon, the proceedings went off the
17 record at 4:51 p.m.)

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C E R T I F I C A T E

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Before: US Commission on Civil Rights

Date: 02-11-11

Place: Washington, DC

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