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U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, JANUARY 13, 2012

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The Commission convened in Room 540 at 624
Ninth Street, Northwest, Washington, D.C. at 9:35
a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ABIGAIL THERNSTROM, Vice Chairman

ROBERTA ACHTENBERG, Commissioner

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (via telephone)

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

KIMBERLY TOLHURST, Delegated the Authority of
the Staff Director + Acting General Counsel

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STAFF PRESENT:

MARGARET BUTLER, Acting Chief, OCRE

CHRISTOPHER BYRNES, Senior Attorney-Advisor

to the Office of the Staff Director

PAMELA DUNSTON, Chief, ASCD

ALFREDA GREENE

TINALOUISE MARTIN, Director, OM

PETER MINARIK, Director, RPCU

TORRANCE MONTGOMERY

LENORE OSTROWSKY, Acting Chief, PAU

MICHELLE RAMEY-YORKMAN

JOHN RATCLIFFE, Chief, Budget and Finance

EILEEN RUDERT

DAVID SNYDER

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTON

ALEC DEULL

TIM FAY

DOMINIQUE LUDVIGSON

JOHN MARTIN

RICHARD SCHAMEL

ALISON SOMIN

MARLENE SALLO

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P R O C E E D I N G S

(9:37 a.m.)

CHAIRPERSON CASTRO: This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is now 9:39 a.m. on January 13th, 2012. This meeting is taking place here at the Commission's headquarters at 624 9th Street, N.W., in Washington, D.C.

I'm Chairman Marty Castro. Commissioners who are present here at the meeting are myself, our Vice Chair, Commissioner Thernstrom, Commissioner Heriot, Commissioner Gaziano, Commissioners Kladney and Achtenberg, and Commissioner Yaki. Commissioner Kirsanow is joining us by phone, and I heard you on there earlier. Is that right, Commissioner Kirsanow, just to confirm?

COMMISSIONER KIRSANOW: That's correct, Mr. Chairman.

CHAIRPERSON CASTRO: A quorum of the Commissioners is present. Is the person delegated the authority of Staff Director present?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Yes.

CHAIRPERSON CASTRO: Is the court reporter present? It's a yes. So, the meeting shall now come to

1 order.

2 The first order is the Approval of the
3 Agenda.

4 **I. APPROVAL OF AGENDA**

5 CHAIRPERSON CASTRO: I move that we approve
6 the agenda. Do we have a second?

7 COMMISSIONER ACHTENBERG: Second.

8 CHAIRPERSON CASTRO: Okay, any amendments?

9 (No response.)

10 CHAIRPERSON CASTRO: Hearing none, let's
11 vote to approve the agenda. All in favor say aye.

12 (Chorus of ayes.)

13 CHAIRPERSON CASTRO: Opposed? Any
14 abstentions? Okay. The motion passes 8-0.

15 Before we move over to the Approval of the
16 Minutes, I just want to acknowledge that Monday is
17 Martin Luther King Day, the federal holiday. And I
18 just want to take an opportunity for us to acknowledge
19 the achievements and the celebration of the life of
20 Dr. Martin Luther King.

21 As you all know, he was a leader of our
22 civil rights movement in the United States from the
23 1950s until the time of his assassination in 1968. His
24 non-violent activism is really what rose the nation's
25 awareness on civil rights violations, and ultimately

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1 earned him the Nobel Prize at the age of 35.

2 Between 1957 and 1968, Dr. King traveled
3 more than a million miles and spoke over 2,500 times
4 appearing wherever there was injustice to be protested
5 and action to be taken.

6 His leadership was fundamental to the
7 civil rights movement's success in ending illegal
8 segregation of African Americans in the south and in
9 other parts of the United States. The contributions
10 made by Dr. King and other civil rights leaders
11 influenced the passage of the Civil Rights Act of
12 1964, and remains truly the basis for the Commission's
13 work and authority today.

14 So, on Monday let's not only celebrate the
15 legacy of Dr. King, but let us continue to work to
16 make that dream that he talked about a true reality in
17 this country.

18 Now, I would like to a motion to approve
19 the December 19th meeting, unless anyone wants to add
20 something.

21 VICE CHAIR THERNSTROM: I want to add
22 something.

23 CHAIRPERSON CASTRO: Madam Vice Chair.

24 VICE CHAIR THERNSTROM: The 1964 Act and
25 the 1965 Voting Rights Act.

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1 CHAIRPERSON CASTRO: Exactly. Thank you
2 for pointing that out. Any other comments? If not,
3 then we will move on to the approval of the Minutes.

4 **II. APPROVAL OF THE DECEMBER 19, 2011**

5 **MEETING MINUTES**

6 CHAIRPERSON CASTRO: I make the motion that
7 we approve the Minutes of the December 19th meeting. Is
8 there a second?

9 VICE CHAIR THERNSTROM: Yes.

10 CHAIRPERSON CASTRO: All those in favor say
11 aye.

12 (Chorus of ayes.)

13 CHAIRPERSON CASTRO: Any opposed? Any
14 abstentions? Okay.

15 Next on the agenda is the Update on the
16 2012 Statutory Enforcement Report under the Program
17 Planning section of our agenda.

18 **III. PROGRAM PLANNING UPDATE AND DISCUSSION**

19 **OF PROJECTS**

20 **UPDATE ON 2012 STATUTORY ENFORCEMENT**

21 **REPORT PLANNING**

22 CHAIRPERSON CASTRO: Ms. Tolhurst.

23 DELEGATED THE AUTHORITY OF THE STAFF

24 DIRECTOR TOLHURST: A couple of updates. Last Friday I
25 circulated the annotated outline to Commissioners. I

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1 hope you all have had a chance to take a look at that,
2 and the comments on the annotated outline are due on
3 February 6th.

4 Of course, next month, February 3rd we
5 will have our briefing to support this report. And
6 also this week we received, or began to receive
7 discovery from both the states and the Department of
8 Justice, OGC Attorney Dave Schneider and I are just
9 now digging into that, and probably would be in a
10 better position next month to give a fuller report on
11 what we got and what it's looking like, but we are
12 continuing to negotiate with both the Department and
13 the states to get the data that we need.

14 CHAIRPERSON CASTRO: Okay. Any questions?
15 If not, can you give us an update on the Trafficking
16 Briefing? I'm sorry, I apologize. The Chair
17 recognizes Commissioner Heriot.

18 COMMISSIONER HERIOT: I have some concerns
19 about the panels as they have been put together, or
20 rather as to one of the panels. Panel 3 as it's
21 currently configured has representatives of three
22 states, and a representative of the ACLU, and the
23 Lawyers Committee on Civil Rights. And I regard that
24 as a very unbalanced panel.

25 Both the ACLU and the Lawyers Committee on

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1 Civil Rights takes similar positions that are left of
2 center, and I think having a representative of an
3 organization that takes a somewhat more conservative
4 approach would be a proper way to balance that panel.

5 Now, I know that -- I believe it was at
6 our November meeting, Commissioner Gaziano suggested
7 that we invite Ed Bloom to be on that panel. I think
8 the other people who would be similarly situation who
9 also would be good on that panel, he takes a somewhat
10 more conservative view of the issues that are involved
11 in this case. I don't think that anybody is wedded to
12 him, in particular, but I do think that the panel as
13 it's currently configured is quite imbalanced, and
14 that it really needs a representative who would be
15 able to speak freely.

16 I don't know what position the state
17 representatives will take, but state representatives
18 obviously have a very different -- different sets of
19 constraints from people who represent organizations
20 like the ACLU and the Lawyers Committee on Civil
21 Rights. And I would like to see an additional witness
22 invited for that panel, and one who would take a more
23 conservative view.

24 CHAIRPERSON CASTRO: Madam Tolhurst -- Ms.
25 Tolhurst?

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1 DELEGATED THE AUTHORITY OF THE STAFF
2 DIRECTOR TOLHURST: I think probably I'll just explain
3 why I set up the panel that I did, and then it's
4 really for you all to discuss and decide. If you want
5 me to alter the panel, I will.

6 I think that Panel 3 is quite balanced.
7 The representative from Louisiana is the Assistant
8 Attorney General. It's a Republican state. The
9 representative for Georgia is actually not working for
10 the state. She's outside counsel and a partner at a
11 law firm with expertise in this area. She's also the
12 General Counsel for the Republican party.

13 The representative from Alabama, John
14 Parks, is at the same law firm, and previously was a
15 visiting Legal Fellow at the Heritage Foundation. So,
16 we have three people who are going to come with
17 conservative views.

18 The reason I declined, and we had
19 extensive back and forth on this to include Mr. Bloom
20 or similar suggestions was that, primarily, because
21 upon looking at their background, their expertise or
22 at least current participation seemed to me to focus
23 largely on the constitutionality of Section 5, which
24 has been explicitly excluded from this work in the
25 Concept paper that Commissioners approved.

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1 So, that's why I set it up, and you all
2 can instruct me to change it if you prefer.

3 CHAIRPERSON CASTRO: It sounds to me like
4 the panel is balanced, and it also concerns me that
5 we're -- these potential speakers would be trying to
6 get into a topic that is not the subject of the
7 concept paper. So, it seems to me that we have
8 balance. And, frankly, I am persuaded that our career
9 staff who come up with this, and made an effort have,
10 indeed, put a balanced panel together. So, I'm sure --
11 -- your objections are noted for the record, but I
12 don't see that we need to change this; although, I'll
13 let Commissioner Gaziano say something, and then we'll
14 move on to the next topic.

15 COMMISSIONER GAZIANO: I hope not just to
16 note my concurrence with Commissioner Heriot's
17 statement for the record, but also to persuade you --
18 some of you all, at least, that we need to add a
19 witness.

20 I do know Jack Park, but I -- and I think
21 I know one of the other witnesses, but the original C-
22 - but they're still constrained. They've still got to
23 represent the states. The states are under the thumb
24 of the federal government in getting their approvals.
25 So, someone who has a obligation to zealously

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1 represent the interests of the state is not free to
2 express his or her own views.

3 Some of the original reasons we heard for
4 -- before these witnesses were even identified didn't
5 make sense to me not to include a third person. There
6 is one individual who we have more recently suggested
7 to be invited who is a state official from Virginia.
8 But if he is asked to testify in his individual
9 capacity, or he has worked with Virginia, would be in
10 a better position to express his own individual views
11 as an alternative.

12 I still don't think the reasons given not
13 to invite Bloom just because he also has a
14 constitutional view which this Committee would not
15 want to hear at the hearing are good ones, but there
16 are plenty of other people to invite who would bring
17 testimony only on the burden of Section 5 as it's
18 currently -- the burden on states and the impact on
19 citizens in those affected states.

20 I think we would -- the witnesses from the
21 ACLU and the Lawyers Committee for Civil Rights
22 minimize whatever burdens there are, so I move that
23 the Staff Director invite an additional witness who
24 has a more skeptical view about the burdens that
25 Section 5 impose.

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1 COMMISSIONER HERIOT: I second that motion.

2 CHAIRPERSON CASTRO: I believe that motion
3 would be out of order because --

4 COMMISSIONER HERIOT: I second that motion.

5 CHAIRPERSON CASTRO: -- truly the Staff
6 Director's purview in terms of putting together -- or
7 in this case, I don't know if you're wearing your
8 Staff Director or your OGC hat, but it's my
9 understanding that you won't have the purview to
10 prepare these panels.

11 DELEGATED THE AUTHORITY OF THE STAFF
12 DIRECTOR TOLHURST: Well, you all are free to --

13 CHAIRPERSON CASTRO: Are we? Okay.

14 DELEGATED THE AUTHORITY OF THE STAFF
15 DIRECTOR TOLHURST: You are free to do that.

16 CHAIRPERSON CASTRO: I just want to make
17 sure. Commissioner Yaki?

18 COMMISSIONER YAKI: Yes, two things. One, I
19 agree with the Staff Director's assessment that her
20 view of one of the extra people added would go to a
21 topic that when we approved this we explicitly said
22 was not going to be within the ambit of the briefing;
23 that is, the constitutionality issue, number one.

24 Number two, more importantly, these are--
25 if I may direct this to the Staff Director. These are

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1 all states that have received pre-clearance at this
2 point?

3 DELEGATED THE AUTHORITY OF THE STAFF
4 DIRECTOR TOLHURST: Yes.

5 COMMISSIONER YAKI: So, in terms --

6 DELEGATED THE AUTHORITY OF THE STAFF
7 DIRECTOR TOLHURST: Although, they weren't selected for
8 that reason, but that's how it turned out.

9 COMMISSIONER YAKI: But in terms of their
10 ability to express the burden, so to speak, as
11 Commissioner Gaziano characterized it, they have
12 certainly gone through the entire process. Having gone
13 through the entire process, I do not believe at that
14 point there is any retaliatory issue involved in terms
15 of any public statements they may make regarding a
16 determination by Justice upon their application
17 because, in fact, they have received pre-clearance.
18 So, I think they're in -- and since some of these
19 states were the ones who yowled the most about this
20 issue, I think that they are perfectly able and
21 willing to provide the kind of robust, vigorous debate
22 that we would need at this hearing.

23 And I think that, in fact, the witnesses I
24 would say for the other side, as it were, are -- could
25 be amplified simply given the fact that their burden

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1 is such that they have to deal with this more than the
2 individual states involved. But I'm content with what
3 you've done.

4 CHAIRPERSON CASTRO: Let me just say just
5 for procedural reasons then, since that motion would
6 be in order, I just want to clarify that the motion
7 was made.

8 OPERATOR: Excuse me. Kathy Helm joins the
9 conference.

10 CHAIRPERSON CASTRO: Thank you.

11 COMMISSIONER YAKI: Who?

12 CHAIRPERSON CASTRO: Commissioner Gaziano
13 made a motion that was seconded by Commissioner
14 Heriot.

15 COMMISSIONER HERIOT: Aye.

16 CHAIRPERSON CASTRO: So, we have a valid
17 motion on the floor for discussion. The Chair first
18 recognizes Commissioner Achtenberg, then Commissioner
19 Heriot.

20 COMMISSIONER ACHTENBERG: Well, I'm
21 distressed to learn that the motion is in order. Let
22 me say that given that the motion is in order, I think
23 it would be extraordinarily bad form and bad policy
24 for us to start taking votes on direction to the Staff
25 Director about who to put on a panel, and who not.

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1 Now, my tenure on this Commission has been
2 brief. I think a year today, and I've been counting
3 every minute of it. And is there precedent for taking
4 a vote to force the Staff --

5 CHAIRPERSON CASTRO: Let me just clarify.

6 COMMISSIONER ACHTENBERG: -- Director to
7 put someone on a panel or not?

8 CHAIRPERSON CASTRO: My -- the question I
9 asked when I said this was out of order, the Acting
10 General Counsel said it's not, so --

11 COMMISSIONER ACHTENBERG: It's in order. I
12 understand it's in order.

13 CHAIRPERSON CASTRO: Okay.

14 COMMISSIONER ACHTENBERG: My objection
15 isn't -- it would be about --

16 CHAIRPERSON CASTRO: I understand.

17 COMMISSIONER ACHTENBERG: -- precedent to
18 set.

19 CHAIRPERSON CASTRO: Okay.

20 COMMISSIONER ACHTENBERG: And I wouldn't
21 like to see that.

22 COMMISSIONER YAKI: If could just
23 briefly --

24 CHAIRPERSON CASTRO: So, first Commissioner
25 Heriot, our Vice Chairman, Commissioner Gaziano.

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1 COMMISSIONER HERIOT: Okay. I guess I have
2 a couple of points to make here. One on the notion
3 that this panel is balanced because the states
4 represent the interests that are posed to ACLU and the
5 Lawyers Committee on Civil Rights.

6 The states are responding to the federal
7 position. We've got another panel where we have a
8 Democratic administration testifying as to their
9 understanding of the law and policy at work here. And
10 the states were responding to that, not to the ACLU.

11 On the issue of the constitutionality, the
12 argument for the unconstitutionality here is based on
13 undue burden which is exactly the issue that we are
14 investigating here. So, you really can't separate the
15 two issues. And anyone who makes the
16 constitutionality issue is building it upon the very
17 issue that the Commission is, in fact, looking into.
18 So, we can truncate it, and not discuss it in terms of
19 constitutionality, but it's the same argument whether
20 we treat it as a constitutional argument, or just an
21 ordinary policy argument.

22 So, it is not the case that these
23 witnesses would be testifying purely to an issue that
24 is off the table. They would be testifying as to the
25 burden created by the Voting Rights Act in this

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1 context.

2 If you exclude witnesses like this, you
3 know, it looks bad for the Commission. They are
4 likely -- I can't say for sure, but it's entirely
5 possible that we would get testimony submitted anyway,
6 and instead it would simply be testimony where they're
7 going to be able to say we have been excluded. And I
8 don't think that's a good thing for the Commission.
9 So, I would much prefer not to have to go down that
10 road and have a report that looks at the issue in a
11 way where we feel we've really been briefed by all the
12 witnesses who need to be here.

13 And as for the Commission's, as opposed to
14 the Staff Director's authority here, you know, I've
15 said it a million times, I'll say it one more time.
16 The eight members of the Commission, we are the
17 Commission. We make all decisions. Things can be
18 delegated to the Staff Director, but anything that can
19 be delegated can be brought up in the ordinary
20 Commission meeting. And I believe we, in fact, have a
21 duty to make sure that this briefing is the best it
22 can be.

23 CHAIRPERSON CASTRO: Vice Chair.

24 VICE CHAIR THERNSTROM: Well, I found what
25 Commissioner Heriot said interesting just now, because

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1 what I was going to say when I raised my hand was that
2 the burden on Section 5 is, in fact, not the topic
3 that we have agreed to investigate. And that is just
4 code words for saying we need to look at the
5 constitutionality. And Commissioner Heriot just said
6 well, they're the same thing. Right. And, therefore,
7 the issue is not on the table, neither the burden nor
8 the constitutionality, which are one and the same, as
9 Commissioner Heriot just said.

10 Second, I don't think it can be argued we
11 are excluding witnesses implicitly on ideological
12 grounds. I think that that is an unfair description of
13 what the Staff Director has done. And, in fact, that
14 panel looks balanced to me, as well.

15 CHAIRPERSON CASTRO: Commissioner Gaziano,
16 then I'll call the question.

17 COMMISSIONER GAZIANO: Yes, just to -- and
18 I suppose Pete wants to be heard.

19 CHAIRPERSON CASTRO: Oh, yes, sorry.

20 COMMISSIONER GAZIANO: The Commissioners
21 bear the responsibility to each other to create
22 balanced panels. And I think that the Acting Staff
23 Director has done a very good job in most respects,
24 but that doesn't mean that in one instance we disagree
25 with the way she's tried to satisfy a majority of us.

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1 And then it's our obligation to each other and to the
2 Commission to -- I think that we -- certainly, in the
3 past we've actually instructed particular people to be
4 invited. Not only particular people, we've subpoenaed
5 -- voted to subpoena particular people. So, my motion
6 is much more deferential and much more respectful of
7 the career staff.

8 There is one -- just for the record,
9 William Herd is one of the people who has expressed a
10 willingness to testify if he were invited, and he is
11 the official from Virginia who would be free, though,
12 to speak in his own capacity, because he wouldn't be
13 representing the state in that. But it is -- I don't
14 think there's a serious argument that can be made that
15 taking all three panels into consideration, there
16 isn't a single person who could speak in their
17 individual capacity as a VRA skeptic, and especially
18 not on the third panel.

19 And I will regret if I have to make that
20 an issue during the briefing, and during any statement
21 that all right, I would much rather -- it seems silly
22 to me not to try to make this concession so that all
23 of us on the Commission feel that there was at least
24 one witness who expressed a view that is common. If I
25 lose the motion, then it will be noted for the record,

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1 but I will probably also note it in dissenting
2 statements, or whatever statement I happen to be a
3 part of. And that's a shame.

4 CHAIRPERSON CASTRO: Ms. Tolhurst, and then
5 we'll call the question.

6 DELEGATED THE AUTHORITY OF THE STAFF
7 DIRECTOR TOLHURST: I would like to put on the record
8 that panel 2 absolutely contains Section 5 skeptics,
9 and I made sure of that in constructing the panel.

10 CHAIRPERSON CASTRO: And then we can also
11 always have to the extent that they're relevant to the
12 topic people who submit written testimony.
13 Unfortunately, we can only have a certain number of
14 people on panels, and it is the very nature of our
15 briefings that we can never have every person that we
16 would all want to have on a panel, so it's just
17 impossible.

18 VICE CHAIR THERNSTROM: Can I -- go ahead.
19 I just want to say one last word.

20 CHAIRPERSON CASTRO: Okay, then I'll call
21 the question. Go ahead, Madam Vice Chair.

22 VICE CHAIR THERNSTROM: Look, into -- among
23 the group of eight of us one Commissioner who is on
24 record in two books 22-years apart is on record as a
25 skeptic of Section 5, so we're not exactly short of

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1 that voice.

2 CHAIRPERSON CASTRO: So, we're going to
3 call the question on this. Commissioner Heriot, how do
4 you vote?

5 COMMISSIONER HERIOT: Yes.

6 CHAIRPERSON CASTRO: Commissioner Gaziano,
7 how do you vote?

8 COMMISSIONER GAZIANO: Yes.

9 CHAIRPERSON CASTRO: Madam Vice Chair, how
10 do you vote?

11 VICE CHAIR THERNSTROM: No.

12 CHAIRPERSON CASTRO: Commissioner Yaki, how
13 do you vote?

14 COMMISSIONER YAKI: No.

15 CHAIRPERSON CASTRO: Commissioner
16 Achtenberg, how do you vote?

17 COMMISSIONER ACHTENBERG: No.

18 CHAIRPERSON CASTRO: Commissioner Kladney,
19 how do you vote?

20 COMMISSIONER KLADNEY: No.

21 CHAIRPERSON CASTRO: Commissioner Kirsanow,
22 how do you vote?

23 COMMISSIONER KIRSANOW: Yes.

24 CHAIRPERSON CASTRO: And I vote no. The
25 motion loses one, two, three, four, five to three.

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1 We will now move on to an Update on
2 Trafficking, the Trafficking Briefing. Madam -- Ms.
3 Tolhurst, Madam Acting General Counsel.

4 **III. PROGRAM PLANNING UPDATE AND**
5 **DISCUSSION OF PROJECTS**

6 **UPDATE ON 2012 TRAFFICKING BRIEFING PLANNING**

7 Acting STAFF DIRECTOR TOLHURST: Yes. So,
8 I circulated in the meeting materials some of the
9 proposed panelists for the Trafficking Briefing.
10 Margaret Butler in OCRE has been taking charge of this
11 briefing, and many of the people included here were
12 suggested, or some of the people here were suggested
13 by Commissioners. If Commissioners have any other
14 suggestions they may send them directly to Margaret.

15 The other piece of this is that on January
16 27th we'll be sending out interrogatories to the
17 relevant agencies, and those have been drafted by
18 Chris Byrnes and are pretty much ready to go.

19 CHAIRPERSON CASTRO: Any questions on
20 Trafficking?

21 (No response.)

22 CHAIRPERSON CASTRO: Hearing none, we'll
23 move on to the next item on the agenda, which is the
24 Scheduling of the 2012 Immigration Briefing.

25 **III. PROGRAM PLANNING UPDATE AND**

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DISCUSSION OF PROJECTS

SCHEDULING OF 2012 IMMIGRATION BRIEFING

CHAIRPERSON CASTRO: At present, we are scheduled to hold our statutory report briefing, as you know, at our February 3rd meeting. The Trafficking Briefing is set up for our April meeting. My goal today is to have for this year at least five or six 2012 briefings so that we fulfill our obligation. It's possible we might be able to squeeze a smaller one in there. It's all going to be ultimately driven by budget.

As you know, we're also going to be moving our facility sometime in May or June, so with regard to the Immigration Briefing, what I'd like to do is set that for our Commission meeting on June 8th. That'll give us time later, as well, to do any other briefings that we would agree on today. So, for example, June -- I'm sorry, July through December we could schedule an additional two to three hearings.

Because there might be a chance due to our move that the conference room here would not be available on June 8th, we can also look to see and talk to the Acting Staff Director about another federal agency possibly hosting us in a room like this so that we don't have to go out and rent space. And that

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1 gives us enough time to prepare for that.

2 So, I would like to move to have the
3 hearing for the Immigration topic for the June 8th
4 meeting.

5 COMMISSIONER HERIOT: Second.

6 CHAIRPERSON CASTRO: Okay. Any discussion
7 on that?

8 (No response.)

9 CHAIRPERSON CASTRO: Hearing none, all
10 those in favor say aye.

11 (Chorus of ayes.)

12 CHAIRPERSON CASTRO: Any opposed? Any
13 abstentions? Okay, that passes unanimously.

14 The next item on the agenda is the
15 Consideration of 2012 Concept Papers based on the --
16 briefing topics based on the concept papers.

17 **III. PROGRAM PLANNING UPDATE AND**

18 **DISCUSSION OF PROJECTS**

19 **REVIEW OF CONCEPT PAPERS/APPROVAL**

20 CHAIRPERSON CASTRO: As you know, Ms.
21 Tolhurst distributed to us a concept paper ranking
22 form. It's my hope today to be able to vote and
23 approve at least, as I said earlier, two topics. That
24 would give us the five that we have for the year. If
25 we can do a sixth one, it maybe might be a small one

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1 depending on budget, if we can get a small panel. We
2 might be able to do six, but what I'd like to do at
3 least today is walk away with two approved so that
4 we've got our 2012 dance card full.

5 If we were to approve more than that, we
6 can certainly begin to do those in Fiscal Year '13.
7 And, in fact, we may be in a position to do that today
8 depending on how these votes go. So, once we decide
9 which concept papers today we want to move forward
10 with, we can then designate which ones, if we have
11 more than a couple, would go on to 2013.

12 We do have this ranking form. We're not
13 necessarily driven by it, but just in the interest of
14 time and trying to take the information we got from
15 the ranking form, what I will do is we will start our
16 discussion with the top six, since we've got 12 papers
17 based on the ranking form.

18 What I'd like to do is take them in order
19 of their ranking from one to six. We will have a brief
20 discussion on each of those proposed concepts, and
21 then we will entertain motions from the Commissioners
22 as to the particular concept papers, not necessarily
23 in the order of discussion.

24 So, what I'd like to do then is begin with
25 a discussion on the Peaceful Coexistence Reconciling

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1 Non-Discrimination Principles with Civil Liberties,
2 which is a paper that was originally prepared by
3 Commissioner Kirsanow. And I know there have been
4 changes that I think Commissioner Kirsanow has
5 accepted from Commissioner Kladney.

6 COMMISSIONER KLADNEY: I believe so. You
7 should ask Commissioner Kirsanow.

8 CHAIRPERSON CASTRO: Yes. So, why don't I
9 open the floor to Commissioner Kirsanow. And to the
10 extent necessary, Commissioner Kladney, to discuss the
11 Peaceful Coexistence Concept Paper.

12 COMMISSIONER YAKI: Is this --

13 COMMISSIONER KIRSANOW: Thanks, Mr.
14 Chairman. The concept paper speaks for itself. In
15 terms of a discussion I had with Commissioner Kladney,
16 it's I think a very timely topic given that the
17 Supreme Court just, in fact, issued the Hosanna-Taber
18 decision, but didn't put an end to continuing First
19 Amendment jurisprudence or an addition in this regard.

20 We've got more and more frequently a
21 flurry of cases involving the intersection between
22 religious rights and liberties and discrimination law,
23 and civil liberties in general. And pursuant to
24 Hosanna-Taber, I suspect the EEOC will be reissuing
25 guidances, and I think a hearing along those lines

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1 would be very helpful.

2 Commissioner Kladney had provided some
3 very helpful amendments to my original concept paper,
4 and we had a discussion concerning the fact that the
5 concept as originally proposed may be somewhat
6 expansive. I still think we can entertain some
7 witnesses or evidence with respect to, for example,
8 the COS case in matters similar to that. And, again,
9 I just think this is a timely topic that the
10 Commission has not addressed at least in my tenure.

11 CHAIRPERSON CASTRO: Commissioner Kladney
12 do you have anything you want to add?

13 COMMISSIONER KLADNEY: No, I think
14 Commissioner Kirsanow said it all. I mean, if everyone
15 has looked at the amended paper -- has everybody had a
16 copy?

17 COMMISSIONER ACHTENBERG: I don't know if
18 it's the amended paper.

19 COMMISSIONER KLADNEY: It starts, "On
20 October 5, 2011." That's how it begins.

21 CHAIRPERSON CASTRO: Correct.

22 COMMISSIONER KLADNEY: I guess everybody's
23 silence means they got it.

24 VICE CHAIR THERNSTROM: I didn't.

25 CHAIRPERSON CASTRO: So, the significant

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1 change that was made to it was -- was there a
2 significant change made?

3 COMMISSIONER KLADNEY: Well, I think we
4 just kind of focused on more relevant pieces. Is that
5 right, Commissioner Kirsanow?

6 COMMISSIONER KIRSANOW: I'm sorry? I didn't
7 hear you, Commissioner Kladney.

8 COMMISSIONER KLADNEY: The Chair asked if
9 we made significant changes, and I said no, I think we
10 just more or less focused on the more relevant pieces
11 of the paper.

12 COMMISSIONER KIRSANOW: I think that's
13 accurate.

14 CHAIRPERSON CASTRO: Okay. So, as I said,
15 we're going to just discuss these, and then we'll come
16 back and we'll see if there's any motions that folks
17 want to make on these. Are there any questions about
18 that, Peaceful Coexistence? If not, we'll move on to
19 the next topic.

20 (No response.)

21 CHAIRPERSON CASTRO: Okay. The next topic
22 is Increasing Compliance with Section 7 of the NVRA.
23 Commissioner Kladney, that's your paper.

24 COMMISSIONER KLADNEY: Yes. And I just
25 thought it was an interesting topic. There's been some

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1 action taken regarding enforcement or asking people to
2 be more cognizant of this in the states. And
3 registrations for people to vote have gone up
4 significantly as a result. Although I have been
5 informed that a lot of these done in DMVs and public
6 assistance places wind up being changes of address
7 which are very relevant. That Ohio, for instance, went
8 from 43,000 in 2006 to 247,000 in I think it's 2010.
9 So, I think if there's more attention paid we can get
10 more people voting. That's the idea behind the paper.

11 CHAIRPERSON CASTRO: Okay. Any questions?
12 The Chair recognizes the Vice Chair.

13 VICE CHAIR THERNSTROM: Well, I would have
14 liked to include in this topic, although maybe it
15 expands it to a degree that people would feel
16 uncomfortable with. I would have liked to have
17 included the whole question of the integrity of the
18 voter rolls. You're about to respond to that.

19 COMMISSIONER KLADNEY: Yes, Madam Vice
20 Chair. I even talked to Mr. Gaziano, and Commissioner
21 Heriot. Commissioner Gaziano, pardon me.

22 COMMISSIONER GAZIANO: That's fine.

23 COMMISSIONER KLADNEY: Commissioner Heriot
24 this morning about that. I was on holiday when the
25 votes were taken on this, and when I got back which

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1 was Monday, I was told that some people had expressed
2 some interest in eight. I haven't had time to look at
3 it myself. No one else has submitted a concept paper
4 on it. If someone would submit a concept paper, I
5 would look at it and research it and take a look. I
6 mean, I don't know that much about eight since I
7 haven't looked at it that much, but if someone would
8 submit a paper on it, we can take a look at it and
9 vote on it. But I do understand your position.

10 CHAIRPERSON CASTRO: Any other questions on
11 that? If not -- I'm sorry, Commissioner Achtenberg.

12 COMMISSIONER ACHTENBERG: Is there a
13 particular timing, Mr. Chairman, that Commissioner
14 Kladney has in mind if this were to be undertaken?

15 COMMISSIONER KLADNEY: I, actually -- when
16 we were speaking this morning we talked about if
17 someone wanted to submit something, we could work on
18 it and look maybe at the end of this year, the
19 beginning of next year.

20 CHAIRPERSON CASTRO: So, Fiscal Year '13?

21 COMMISSIONER KLADNEY: Yes. Yes, whenever
22 the Fiscal Year is.

23 CHAIRPERSON CASTRO: Yes. I think -- all I
24 think about is Fiscal Year now.

25 COMMISSIONER GAZIANO: But as I understand

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1 it, Commissioner Kladney doesn't want to necessarily
2 accept the amendment as a friendly amendment right
3 now.

4 COMMISSIONER KLADNEY: Correct.

5 COMMISSIONER GAZIANO: So, several of us I
6 think are glad to try to help refine the Concept paper
7 if you don't want to do it today.

8 COMMISSIONER KLADNEY: Well, we'll see how
9 the vote is and then we'll working on refining it. We
10 will work on refining it regardless of what the vote
11 is today. How's that?

12 COMMISSIONER GAZIANO: Well, yes, we'll
13 see.

14 COMMISSIONER KLADNEY: Okay.

15 COMMISSIONER GAZIANO: The vote could leave
16 this open. The vote could foreclose it. We'll see.

17 CHAIRPERSON CASTRO: Well, you know, if
18 something loses it doesn't prohibit someone from
19 bringing it back again for consideration as a 2013
20 topic.

21 VICE CHAIR THERNSTROM: No, absolutely not.

22 COMMISSIONER KLADNEY: So, I have lost
23 before.

24 CHAIRPERSON CASTRO: As we all have. The
25 next topic is also one of Commissioner Kladney's,

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1 Disparities in Criminal Sentencing and Alternatives to
2 Incarceration. Commissioner Kladney.

3 COMMISSIONER KLADNEY: On this paper,
4 there's -- this one is more important to me. I've also
5 expressed that to several Commissioners. We have in
6 this country a problem, and it's mass incarceration of
7 people. It turns out that the racial numbers are high,
8 but I'm more interested in as a focus the
9 administration of justice, and how successful we've
10 been or not in terms of 40 years of minimum mandatory
11 sentences, putting people in prison for 15, 20 years
12 at a time, and life. And seeing if there's some way
13 to break the cycle of violence within the inner city
14 neighborhoods, and see if we can bring peace to those
15 neighborhoods, and actually try and stop the
16 incarcerations, which actually affect people very
17 significantly, whether it's their jobs, future
18 education, their family lives, things like that. And
19 I think the paper is fairly self-explanatory in that
20 regard.

21 CHAIRPERSON CASTRO: Any questions for
22 Commissioner Kladney on that? Yes I, too, want to say
23 that -- I agree with everything you said. There's an
24 excellent book on this topic we've discussed as well
25 by Michelle Alexander called the *New Jim Crow*.

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1 There's a lot of resources out there on this, and it's
2 an issue that I've heard a lot about in my travels
3 recently, as well.

4 The next topic -- and Commissioner
5 Kladney's got the trifecta going here. It's three of
6 his papers in a row have made the top six. So, the
7 Anti-Discrimination Provisions in Virginia's State
8 Adoption Regulations, which I understand is a smaller
9 briefing topic.

10 COMMISSIONER KLADNEY: Yes, this would be a
11 -- I would anticipate a one-panel topic. Basically,
12 the -- Virginia has a regulation that says foster
13 parents cannot discriminate on the basis of race,
14 color, gender, national origin, age, religion,
15 political belief, sexual orientation, disability, or
16 family status; yet, they passed a regulation I think
17 it was a month or two ago -- must be two months ago
18 now saying that adoption agencies could not
19 discriminate on the basis of race, color, and I
20 believe national origin, and dropping the rest of
21 that. And I was wondering if we could look at that in
22 terms of does that mean that's a floor, or is that a
23 top in terms of what they're required to look at in
24 terms of discrimination?

25 CHAIRPERSON CASTRO: Okay. Any questions

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1 for Commissioner Kladney on that?

2 (No response.)

3 CHAIRPERSON CASTRO: Hearing none then
4 we'll move on to the next topic, Evaluating Federal
5 Outreach to Arab and Muslim American Communities Post
6 September 11th. Commissioner Yaki?

7 COMMISSIONER YAKI: Thank you very much,
8 Mr. Chair. And this was my only topic that I
9 submitted and for veterans of the Commission, they
10 know each one that I've submitted in the past ten
11 years after 9/11.

12 This Commission early on in early 2002
13 held some hearings regarding some of the rising anti-
14 Muslim and anti-Arab hate crimes and violence, and
15 fear that came about after the 9/11 attacks.

16 Since then, we have not done any
17 evaluation of exactly the many federal efforts that
18 were put into place at that time. I think that what
19 this briefing will do is sort of document what has
20 been going on, what is the state of play in terms of
21 Islamophobia as it exists today.

22 There have been some very public and
23 notorious incidents, but then there are also questions
24 of how widespread is it really? This is to try and
25 get data on it to inform us and policy makers on the

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1 nature of the discrimination that does or does not
2 exist.

3 I would just simply note that I want to
4 thank the Commissioners who have worked on this with
5 me and supported it and who have given lots of
6 feedback that helped me to change its focus and make
7 it more coherent and cohesive in terms of its overall
8 structure.

9 But I would note that from my own point of
10 view, I am concerned about reports of CIA linkages
11 with the New York Police Department. I am concerned
12 about reports of federal surveillance inside houses of
13 worship. I am concerned about some of the opinion
14 polls out there regarding Muslim Americans and the
15 actions by companies such as Lowe's, or Kayak.com in
16 terms of pulling advertising from shows that are
17 actually showing positive values in the Muslim
18 American community.

19 But this is my individual point of view.
20 This is to get a holistic fact-based assessment and
21 review, and I welcome your support.

22 CHAIRPERSON CASTRO: Any questions for
23 Commissioner Yaki? Commissioner Achtenberg.

24 COMMISSIONER ACHTENBERG: Thank you, Mr.
25 Chairman. I was sorry to see those points deleted from

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1 your original paper. I would have voted to adopt the
2 original paper. I will vote to adopt, as well, the
3 modified paper, but as a personal note I just wanted
4 to express my support for the paper as it was
5 originally conceived.

6 COMMISSIONER YAKI: Thank you.

7 CHAIRPERSON CASTRO: Any questions? If not,
8 then we'll move on to the next topic for discussion
9 before we entertain motions. Regulatory and Other
10 Barriers to Entrepreneurship that Impede Business
11 Startups, proposed by Vice Chair Thernstrom. Madam
12 Vice Chair?

13 VICE CHAIR THERNSTROM: Well, I've spoken
14 previously about what I think is the importance of
15 this topic. Let me just add a couple of points. One,
16 it's an opportunity to look at other federal agencies
17 other than DOJ to look, for instance, at the Small
18 Business Administration. It's an opportunity to expand
19 on previous Commission and SAC work in this area.
20 It's a timely topic in terms of -- in the context of
21 today's economy. And examining the impact of
22 regulations on small and startup businesses owned by
23 disadvantaged groups is really central to addressing
24 what I think is a serious problem, particularly for
25 when we look at the state of black America.

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1 There is a paucity of black-owned small
2 businesses, black entrepreneurs in the cities.
3 Everybody will remember when the Los Angeles riots
4 took place that we had the Korean shop owners standing
5 outside of their shops trying to protect them. And in
6 that area where the riot took place there were almost
7 no black businesses. And I just think if you care
8 about the state of black America, particularly black
9 America, because this is a problem that is especially
10 apparent in inner city black communities, if you care
11 about the state of black America, this is a good topic
12 in my view. But I've made that argument before. I'm
13 hoping finally to prevail on it, but hope springs
14 eternal.

15 CHAIRPERSON CASTRO: I have a question.
16 But you would intend to offer minority business --

17 VICE CHAIR THERNSTROM: Oh, of course.
18 Yes, of course.

19 CHAIRPERSON CASTRO: Adversely impacted.

20 VICE CHAIR THERNSTROM: Yes. No, of course.

21 CHAIRPERSON CASTRO: So, this is going to
22 be a -- not focused on any particular state, but it
23 will be national survey, or how --

24 VICE CHAIR THERNSTROM: Well, you know, I
25 would have to work with the Staff Director on how we

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1 would put this together, but it's the question of what
2 the picture looks like, and what -- how it might be
3 addressed, the problem might be addressed would be the
4 starting point.

5 CHAIRPERSON CASTRO: Any other questions
6 for the Vice Chair before we begin to entertain
7 motions? Any questions?

8 (No response.)

9 CHAIRPERSON CASTRO: None? Okay. Does
10 anyone have any motions on any of the topics that we
11 have just discussed here in the initial rankings?

12 COMMISSIONER KIRSANOW: Mr. Chair, Kirsanow
13 here. I'd move for the topic related to Peaceful
14 Coexistence, that it be adopted.

15 CHAIRPERSON CASTRO: Is there a second?

16 VICE CHAIR THERNSTROM: I will second that.

17 CHAIRPERSON CASTRO: Okay. Any additional
18 discussion needed on that?

19 COMMISSIONER GAZIANO: I just want to add
20 one very brief --

21 CHAIRPERSON CASTRO: I'm sorry,
22 Commissioner Gaziano.

23 COMMISSIONER GAZIANO: -- point. I agree
24 with Commissioner Kirsanow's statement that the
25 Hosanna-Taber decision that came out Wednesday -- so,

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1 as up-to-date as this is, it's not even -- doesn't
2 even reflect the last 48 hours or so, Supreme -- not
3 only does not preclude it, but actually makes it more
4 relevant. The majority opinion, or actually the
5 unanimous decision by the Chief Justice left open
6 determinations under the Religious Exception regarding
7 which people were the ministers. But I don't even
8 think that issue, as interesting as it is, relates to
9 most of the non-discrimination provisions in Civil
10 Rights laws.

11 It shows, if anything, that a majority or
12 a unanimous Supreme Court thinks that the First
13 Amendment has some direct bearing and rejected
14 arguments by a variety of people, including the
15 administration that the First Amendment did not have
16 some impact on the anti-discrimination provision at
17 issue in that case. But I think we can play an even
18 more important role in filling in some of the gaps
19 that the Supreme Court opinion leaves.

20 CHAIRPERSON CASTRO: Okay, any other
21 discussion on this motion? Any other comments from
22 other Commissioners?

23 (No response.)

24 CHAIRPERSON CASTRO: If not, we will then
25 vote on this motion. So, Commissioner Heriot, how do

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1 you vote?

2 COMMISSIONER HERIOT: Yes.

3 CHAIRPERSON CASTRO: Commissioner Gaziano,
4 how do you vote?

5 COMMISSIONER GAZIANO: Yes.

6 CHAIRPERSON CASTRO: Madam Vice Chair, how
7 do you vote?

8 VICE CHAIR THERNSTROM: Yes.

9 CHAIRPERSON CASTRO: Commissioner Yaki, how
10 do you vote?

11 COMMISSIONER YAKI: Abstain.

12 CHAIRPERSON CASTRO: Commissioner
13 Achtenberg, how do you vote?

14 COMMISSIONER ACHTENBERG: No.

15 CHAIRPERSON CASTRO: Commissioner Kladney,
16 how do you vote?

17 COMMISSIONER KLADNEY: Yes.

18 CHAIRPERSON CASTRO: Commissioner Kirsanow,
19 how do you vote?

20 COMMISSIONER KIRSANOW: Yes.

21 CHAIRPERSON CASTRO: So, we have -- and I
22 will abstain. So, we have one, two, three, four, five
23 yeses, one no, and two abstentions. So, that is a
24 Concept paper. So, this will be a -- well, we can
25 discuss at the end of this which ones will be 2012 and

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1 2013.

2 The next, we have a motion from
3 Commissioner Yaki.

4 COMMISSIONER YAKI: Yes, I'd like to move
5 approval of my Evaluating Federal Outreach to Arab and
6 Muslim American Communities Post September 11th.

7 CHAIRPERSON CASTRO: Second. Okay, so we
8 have a motion on the table for Commissioner Yaki's
9 paper. Any additional discussion or questions beyond
10 what we had earlier?

11 (No response.)

12 CHAIRPERSON CASTRO: Hearing none, let us
13 take a vote on that. Let me get my notes here. So,
14 Commissioner Heriot, how do you vote?

15 COMMISSIONER HERIOT: Yes.

16 CHAIRPERSON CASTRO: Commissioner Gaziano,
17 how do you vote?

18 COMMISSIONER GAZIANO: I pass.

19 CHAIRPERSON CASTRO: Okay, that's a new
20 one. I'll come back to you then. Madam Vice Chair, how
21 do you vote?

22 VICE CHAIR THERNSTROM: Yes.

23 CHAIRPERSON CASTRO: Commissioner Yaki, how
24 do you vote?

25 COMMISSIONER YAKI: I'll pass until I see

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1 what Gaziano's says.

2 CHAIRPERSON CASTRO: Are you serious?

3 (Laughter.)

4 CHAIRPERSON CASTRO: All right.

5 Commissioner Achtenberg, how do you vote?

6 COMMISSIONER ACHTENBERG: Yes.

7 CHAIRPERSON CASTRO: Commissioner Kladney,

8 how do you vote?

9 COMMISSIONER KLADNEY: Yes.

10 CHAIRPERSON CASTRO: Commissioner Kirsanow,

11 how do you vote?

12 COMMISSIONER KIRSANOW: I would pass, too.

13 CHAIRPERSON CASTRO: Okay, well I vote yes.

14 So, now we'll go back to --

15 COMMISSIONER GAZIANO: Okay. Well, I will

16 match Commissioner Kirsanow's vote on the last motion,

17 so I abstain.

18 CHAIRPERSON CASTRO: Okay.

19 COMMISSIONER GAZIANO: And that's final.

20 CHAIRPERSON CASTRO: Commissioner Yaki, how

21 do you vote?

22 COMMISSIONER YAKI: I will say yes.

23 CHAIRPERSON CASTRO: Okay. Commissioner

24 Kirsanow is the only one left to vote. Is that right?

25 I've got my notes here. Commissioner Kirsanow?

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1 COMMISSIONER KIRSANOW: Abstain.

2 CHAIRPERSON CASTRO: Abstain. So, the
3 motion passes with six votes for yes, two abstentions,
4 and zero nos. Any other motions? Commissioner
5 Kladney?

6 COMMISSIONER KLADNEY: I'd like to move to
7 approve my NVRA paper.

8 CHAIRPERSON CASTRO: Okay. Any discussion,
9 questions?

10 COMMISSIONER GAZIANO: Would you accept as
11 a friendly amendment that voting on it does not
12 necessarily -- that we'll take a subsequent vote, that
13 this will be put -- a subsequent vote on whether it C-
14 - it won't preclude us from taking a subsequent vote
15 on whether to expand it to include Section 8, as well?

16 COMMISSIONER KLADNEY: I think I can accept
17 that.

18 CHAIRPERSON CASTRO: Okay. Any additional
19 discussion or questions? If not, we'll begin to take
20 votes on the NVRA topic. Commissioner Heriot, how do
21 you vote?

22 COMMISSIONER HERIOT: I'm thinking about
23 this. We're not resolving the Section 8 issue yet.

24 VICE CHAIR THERNSTROM: Yes. Right.

25 CHAIRPERSON CASTRO: Correct.

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1 COMMISSIONER HERIOT: I'll pass.

2 CHAIRPERSON CASTRO: Okay. All right. I'm
3 going to make a new column here that's pass.

4 (Laughter.)

5 CHAIRPERSON CASTRO: I'm sorry.
6 Commissioner Gaziano, how do you vote?

7 COMMISSIONER GAZIANO: Yes.

8 CHAIRPERSON CASTRO: Madam Vice Chair, how
9 do you vote?

10 VICE CHAIR THERNSTROM: I'm taking a pass,
11 too.

12 CHAIRPERSON CASTRO: Okay. Commissioner
13 Yaki, how do you vote?

14 COMMISSIONER YAKI: Emphatically with
15 absolutely no hesitation whatsoever, yes.

16 CHAIRPERSON CASTRO: Okay, I thought you
17 were going to abstain.

18 (Laughter.)

19 CHAIRPERSON CASTRO: Commissioner
20 Achtenberg, how do you vote?

21 COMMISSIONER ACHTENBERG: Yes.

22 CHAIRPERSON CASTRO: Okay. Commissioner
23 Kladney?

24 COMMISSIONER KLADNEY: Yes.

25 CHAIRPERSON CASTRO: Commissioner Kirsanow?

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1 COMMISSIONER KIRSANOW: Yes.

2 CHAIRPERSON CASTRO: And I vote yes.
3 Commissioner Heriot?

4 COMMISSIONER HERIOT: I think I'm going to
5 abstain.

6 CHAIRPERSON CASTRO: Okay. Commissioner --
7 I'm sorry, Vice Chair Thernstrom?

8 COMMISSIONER HERIOT: I'm happy to do it
9 with Section 8, though, so that's --

10 CHAIRPERSON CASTRO: Okay. Madam Vice
11 Chair?

12 VICE CHAIR THERNSTROM: Well, that's my
13 problem, too. I'm happy to do it with Section 8, as
14 well. So, I'm sorry, we decided that the motion
15 includes --

16 COMMISSIONER GAZIANO: Keeping open.

17 CHAIRPERSON CASTRO: No, it doesn't include
18 in the future amending it to add that, but it doesn't
19 add it now.

20 VICE CHAIR THERNSTROM: All right. I will
21 vote yes for it then.

22 CHAIRPERSON CASTRO: Okay. So, the motion
23 passes with one, two, three, four, five, six, seven
24 yeses, and one abstention. Any additional motions?
25 Commissioner Kladney?

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1 COMMISSIONER KLADNEY: I'd like to move to
2 approve my Criminal Sentencing Concept Paper but first
3 I would, in response to Commissioner Heriot's
4 discussion I had earlier prior to the meeting, I'd
5 like to ask the agency director exactly do we have
6 jurisdiction over the administration of justice as the
7 Administration of Justice? I haven't asked her that
8 yet, so I'm just asking that now.

9 COMMISSIONER GAZIANO: Or the
10 administration of justice as it relates to race --

11 COMMISSIONER KLADNEY: Yes.

12 DELEGATED THE AUTHORITY OF THE STAFF
13 DIRECTOR TOLHURST: Is that what you're asking?

14 COMMISSIONER KLADNEY: Right.

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR TOLHURST: Yes.

17 COMMISSIONER GAZIANO: Gender.

18 COMMISSIONER KLADNEY: Yes, what?

19 DELEGATED THE AUTHORITY OF THE STAFF
20 DIRECTOR TOLHURST: Yes, we do.

21 COMMISSIONER KLADNEY: Over --

22 DELEGATED THE AUTHORITY OF THE STAFF
23 DIRECTOR TOLHURST: Jurisdiction over the
24 administration of justice.

25 COMMISSIONER KLADNEY: Alone as it stands

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1 by itself, the administration of like crime and
2 courts, and things like that?

3 DELEGATED THE AUTHORITY OF THE STAFF
4 DIRECTOR TOLHURST: Anything, courts, police, any
5 portion of the justice system.

6 COMMISSIONER KLADNEY: Well, like
7 Commissioner Gaziano --

8 COMMISSIONER HERIOT: I think the issue is,
9 is that modified by the equal protection issues, the
10 administration of justice as it relates to equal
11 protection based on race, gender, dah, dah, dah.

12 DELEGATED THE AUTHORITY OF THE STAFF
13 DIRECTOR TOLHURST: Yes, that's right.

14 COMMISSIONER KLADNEY: Okay.

15 DELEGATED THE AUTHORITY OF THE STAFF
16 DIRECTOR TOLHURST: And your paper I think falls well
17 under that.

18 COMMISSIONER KLADNEY: Okay.

19 CHAIRPERSON CASTRO: So --

20 COMMISSIONER KLADNEY: But does it require
21 that it relate to race, or national origin, or sex as
22 the administration of justice, or can it just relate
23 to the administration of justice, and the courts, and
24 policing, and things like that? In other words, if the
25 paper was not so -- didn't have to be focused on

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1 disparate sentencing but just on how justice is being
2 administered in terms of courts, and arrests, and
3 things like that.

4 DELEGATED THE AUTHORITY OF THE STAFF
5 DIRECTOR TOLHURST: But you'd be exploring how it
6 relates to race, or are you saying no?

7 COMMISSIONER KLADNEY: How what?

8 DELEGATED THE AUTHORITY OF THE STAFF
9 DIRECTOR TOLHURST: You'd be exploring still how it
10 relates to race, or gender, or what have you?

11 COMMISSIONER KLADNEY: Yes.

12 DELEGATED THE AUTHORITY OF THE STAFF
13 DIRECTOR TOLHURST: I mean --

14 COMMISSIONER KLADNEY: Right, I mean, is C-
15 - I guess I'm not being clear according to -- the
16 jurisdictional aspect of the paper, one is I put in
17 there, called it disparate sentencing. And then in
18 discussions I've also called it something just
19 regarding the administration of justice in and of
20 itself. Does that give us two independent
21 jurisdictional ways to look at it, or as Commissioner
22 Heriot has described it, does it have to relate to one
23 of our -- the administration of justice as to race, or
24 sex, or age?

25 DELEGATED THE AUTHORITY OF THE STAFF

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1 DIRECTOR TOLHURST: Well, I rather wish I'd be asked in
2 advance because I don't have your paper in front of
3 me.

4 COMMISSIONER KLADNEY: Okay, never mind
5 then.

6 DELEGATED THE AUTHORITY OF THE STAFF
7 DIRECTOR TOLHURST: Well, no. But let me say, when I
8 think the purpose of this Commission would tend
9 towards Commissioner Heriot's view --

10 COMMISSIONER KLADNEY: Okay.

11 DELEGATED THE AUTHORITY OF THE STAFF
12 DIRECTOR TOLHURST: -- in that, for example, we
13 wouldn't -- you all wouldn't want to examine are court
14 clerks rude to people. I mean, right? We want to
15 examine issues related to civil rights.

16 COMMISSIONER KLADNEY: Okay, very good
17 then.

18 DELEGATED THE AUTHORITY OF THE STAFF
19 DIRECTOR TOLHURST: But if you want me to look at your
20 paper --

21 COMMISSIONER KLADNEY: We'll talk about
22 that later.

23 DELEGATED THE AUTHORITY OF THE STAFF
24 DIRECTOR TOLHURST: -- and give you a more --

25 COMMISSIONER GAZIANO: Or the legal

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1 authorities themselves if you're not --

2 COMMISSIONER KLADNEY: Right. And it's --

3 COMMISSIONER HERIOT: Yes, just to clarify.

4 I agree with Commissioner Kladney that the actual
5 language of the statute is a little loose on this.
6 But I think in the full context of the legislative
7 history, I think it's clear that Congress was not
8 attempting to give us jurisdiction over the
9 administration of justice generally, but rather the
10 administration of justice as it relates to equal
11 protection issues based on race, gender, and the rest
12 of the list.

13 COMMISSIONER KLADNEY: Very good then, but
14 I still make my motion then.

15 CHAIRPERSON CASTRO: Okay, so we have a
16 motion. Do we have a second to the motion?

17 COMMISSIONER ACHTENBERG: Second.

18 CHAIRPERSON CASTRO: Okay. So, any
19 additional discussion or questions, even questions
20 from Commissioner Kladney to himself about his paper?

21 (Laughter.)

22 CHAIRPERSON CASTRO: Commissioner Gaziano?

23 COMMISSIONER GAZIANO: I suppose I have one
24 for the Chair.

25 CHAIRPERSON CASTRO: Yes, sir.

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1 COMMISSIONER GAZIANO: And just a
2 statement. Since we have approved three, I didn't
3 know that we were necessarily going to go forward.
4 And my concern as I expressed with Commissioner
5 Kladney individually is that this is such a huge topic
6 that I think that it could benefit from being focused.

7 There are criminologists and criminology departments
8 and universities who can't even agree on the right way
9 to study some of these issues, so I'm not sure I
10 support it in its current form. So, I just wonder
11 whether we should table it for now. But I yield -- I
12 would yield to Commissioner Kladney, as well.

13 COMMISSIONER KLADNEY: I'd be willing to do
14 that. We did speak about that in terms of the entire
15 concept and broad view of the paper. So, why don't C-
16 - maybe we'll do some more work on that, and I'll
17 withdraw my motion.

18 CHAIRPERSON CASTRO: So, you're tabling
19 your sentencing?

20 COMMISSIONER KLADNEY: Yes, but now I'll
21 move on to my -- yes.

22 VICE CHAIR THERNSTROM: Okay. I was going
23 to make a motion on my entrepreneurship.

24 CHAIRPERSON CASTRO: Oh, okay.

25 VICE CHAIR THERNSTROM: Barriers to

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1 entrepreneurship. And I'm -- I've already given my
2 little spiel about why I think this is a good topic,
3 and I've given it in previous meetings. And I would
4 like to have a vote on it once again.

5 CHAIRPERSON CASTRO: Is there a second on
6 that?

7 COMMISSIONER: Second.

8 CHAIRPERSON CASTRO: Okay, any additional
9 discussion?

10 (No response.)

11 CHAIRPERSON CASTRO: Hearing none, I will
12 take --

13 COMMISSIONER HERIOT: I have a question --

14 CHAIRPERSON CASTRO: I'm sorry,
15 Commissioner, question?

16 COMMISSIONER HERIOT: -- about how many of
17 these things we can do.

18 CHAIRPERSON CASTRO: Well, that's -- we can
19 -- we've definitely got space for two additional ones
20 this year, Fiscal Year '12, standard. It's possible
21 that we have --

22 COMMISSIONER HERIOT: And those would be
23 the two that we've just -- we've adopted.

24 CHAIRPERSON CASTRO: We've adopted three.
25 It's possible we could do three -- but Commissioner

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1 Kladney indicated he would be wanting to do his NVRA
2 in Fiscal Year '13.

3 COMMISSIONER KLADNEY: No, that's quite all
4 right. I mean, if you're going to do four, I can wait
5 on the adoption thing. I have no --

6 CHAIRPERSON CASTRO: Yes, well -- so, let's
7 talk this through a little bit. It's possible to do a
8 third if it's small, and we have budget. If not, then
9 we would put -- we could put these on a vote for 2013,
10 or table them and vote on them later as part of a
11 2013--

12 COMMISSIONER HERIOT: If we go with four
13 and we've already got voting rights and human
14 trafficking coming up, are we going to be able to have
15 meetings approving the reports that are going to be up
16 for being approved, or are we going to be listening to
17 briefings and not get around to approving things? I
18 mean, it tends to -- business meetings need to be
19 done, too.

20 CHAIRPERSON CASTRO: Pardon me?

21 COMMISSIONER HERIOT: We need to have
22 business meetings, as well.

23 CHAIRPERSON CASTRO: Oh, absolutely. So, we
24 definitely need to do two more in this fiscal year.
25 So, one could argue that we've already got

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1 Commissioner Yaki's, and Peaceful Coexistence, so this
2 could be the two for Fiscal Year '12. Commissioner
3 Kladney's NVRA for 2013. We could just stop right now
4 and say we'll put these off until later, or we could
5 vote and say that this one -- let's say Vice Chair's
6 passes, for example. She has enough votes for it, we
7 could say that's a 2013 topic, or she might want to
8 push for -- we'd have to figure out amongst ourselves.
9 We can definitely do two more.

10 COMMISSIONER HERIOT: We can decide six
11 months from now.

12 CHAIRPERSON CASTRO: Exactly. We could just
13 move this on to the -- put this off and say we've got
14 enough today for the balance of this year, and
15 possibly already beginning of the Fiscal Year '13. And
16 then move the rest on to consideration later as Fiscal
17 '13 topics.

18 COMMISSIONER HERIOT: Can I be reminded?
19 How many reports have we already had briefings for
20 that we haven't yet turned into reports? What's in
21 the pipeline? We've got Eminent Domain.

22 DELEGATED THE AUTHORITY OF THE STAFF
23 DIRECTOR TOLHURST: There's Eminent Domain.

24 CHAIRPERSON CASTRO: We're finishing up the
25 school discipline. It's already been approved by it

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1 hasn't been published yet. Right?

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: Yes, that's right. And I think
4 that's it. And I just, as a reminder, sometime in
5 late spring we'll be asking you to either identify one
6 of these or select something else for the statutory
7 report topics.

8 CHAIRPERSON CASTRO: For 2013.

9 DELEGATED THE AUTHORITY OF THE STAFF
10 DIRECTOR TOLHURST: So, that should be something you're
11 thinking about.

12 CHAIRPERSON CASTRO: Yes. Right. And then
13 we could come back and consider some of these at that
14 later time for 2013 statutory topics. So, we could
15 just say today we've got a number of them we've
16 already approved. Commissioner Kladney, then
17 Commissioner Achtenberg.

18 COMMISSIONER KLADNEY: I would be more than
19 happy to quasi table the NVRA, and we could work on
20 that, and we could vote on Vice Chair Thernstrom's
21 proposal, if that's -- because you want to try and
22 work on it together, and we can put NVRA off until
23 2013 or something like that. See if we can get it
24 done.

25 CHAIRPERSON CASTRO: Commissioner

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1 Achtenberg?

2 COMMISSIONER ACHTENBERG: Mr. Chairman, it
3 seems to me we've discussed these. We've done the
4 preliminary work on them. I have no hesitation to
5 consider another one from the Vice Chair, another one
6 from Commissioner Kladney, another one from
7 Commissioner Kirsanow or what have you. And is there
8 any problem with scheduling some briefings for the
9 Fiscal Year 2013?

10 CHAIRPERSON CASTRO: No, it's not, but I
11 also don't want to eat up all of 2013's today, because
12 that's still a ways away, and there may be issues that
13 develop between now and then that we might want to
14 cover. I mean, I could see maybe at the most approving
15 a couple for 2013 today, but I wouldn't want to go too
16 much farther than that because I do want to give us
17 some flexibility as to other issues that may come up.
18 So, right now we could say we've got our 2012s, we've
19 already got a 2013 and go from there. So, maybe doing
20 one more 2013. But, again, then we're starting to
21 fill up next year's dance card kind of early.

22 VICE CHAIR THERNSTROM: What is the motion
23 on the table on the -- on my topic?

24 CHAIRPERSON CASTRO: Yes. So, any
25 additional discussion on Vice Chair Thernstrom's

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1 topic, Commissioner Gaziano?

2 COMMISSIONER GAZIANO: I'd like to -- I'll
3 speak on it very briefly, but I'd also have a slight
4 preference not to fill up next year. We don't know
5 what our statutory report is going to be, and that may
6 bump one of these in some way. And there are going to
7 be other issues that are going to come up, so I think
8 that we've done a good job of picking a number of
9 topics.

10 But on the Vice Chair's proposal, it's an
11 issue I've been involved with that I've supported, but
12 the general issue, I don't think there's a lot of
13 evidence, and the Institute for Justice has done some
14 great work, and I know your association on the board
15 of that institution. It's not a lot of evidence that
16 there's intentional -- that they throw up barriers to
17 entrepreneurship intending to hurt certain racial
18 groups. So, the connection to our jurisdiction is
19 tenuous.

20 The argument has to be that these barriers
21 to entrepreneurship have a disparate impact
22 unwittingly on certain racial groups. And, again,
23 while the issue is very, very interesting to me, I
24 don't think it's in the central aspect of our
25 jurisdiction. And so that's why I'm not sure that we

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1 -- it would almost require us to study two issues;
2 what are the barriers to entry, and what is the
3 disparate impact, and is that worth the Commission's
4 time when there are other people who should just be
5 focusing on eliminating these barriers to entry. So,
6 that's my two cents.

7 VICE CHAIR THERNSTROM: Can I just ask the
8 Acting Staff Director --

9 CHAIRPERSON CASTRO: Sure.

10 VICE CHAIR THERNSTROM: Do you have
11 anything to say about the Commission's jurisdiction
12 with respect to this topic?

13 DELEGATED THE AUTHORITY OF THE STAFF
14 DIRECTOR TOLHURST: I don't have that in front of me,
15 but when I read it, I didn't see a jurisdictional
16 problem at all.

17 COMMISSIONER KIRSANOW: Mr. Chairman?

18 CHAIRPERSON CASTRO: Yes, Commissioner
19 Kirsanow?

20 COMMISSIONER KIRSANOW: I think that -- I
21 don't have any problem at this point with the
22 jurisdictional aspect of it, although I respect
23 Commissioner Gaziano's take on this. This is a topic
24 that I think is a good one. I've testified before
25 Congress on it. However, I'm inclined to put on hold

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1 any further votes. We've already got, as you put it,
2 the dance card filled up for this year into 2013 --
3 the Fiscal Year 2013, and I think maybe we want to
4 provide ourselves with a little bit of latitude and
5 not lock ourselves in so far out; not to say that this
6 topic isn't one that we wouldn't vote on, but we can
7 always revisit this even next week, I'm sorry, next
8 month or the month thereafter.

9 CHAIRPERSON CASTRO: Madam Vice Chair, and
10 then Commissioner Yaki.

11 VICE CHAIR THERNSTROM: Well, I would be
12 happy to put this into 2013, but I just want to remind
13 the Commission we have revisited this topic now a
14 number of times, so that I would really -- well, I
15 would very much like to see a vote on it.

16 CHAIRPERSON CASTRO: Commissioner Yaki?

17 COMMISSIONER YAKI: Yes, thank you very
18 much, Mr. Chair. Based on what we did in the past, if
19 -- the question was never so much how much time do we
20 have, but how much interest is there in doing it. It
21 may be that if this a topic in which there's
22 sufficient interest in doing it, I think that we
23 should approve it, and then as time permits we find
24 the time to do it. There have been occasions when we
25 have wanted to do a briefing on Topic A, but because

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1 of the availability or non-availability of witnesses
2 we've had to come -- the staff has had to come back to
3 the Commission and ask to postpone it. Sometimes
4 we've gotten snowed out and then the people can't come
5 back so we have to bring in a different topic.

6 I think that Commissioner Thernstrom's
7 topic lends itself to the kind of I think ease of
8 putting together that we should always have, A, in our
9 back pocket anyway, and B, if there's sufficient
10 interest, we should approve it and then, hopefully,
11 find a time to make it happen. So, I think we should
12 vote.

13 CHAIRPERSON CASTRO: Okay. Any --
14 Commissioner Achtenberg?

15 COMMISSIONER ACHTENBERG: I concur in the
16 views of Commissioner Yaki.

17 CHAIRPERSON CASTRO: Okay.

18 COMMISSIONER KLADNEY: I concur, as well.

19 CHAIRPERSON CASTRO: Okay. Hearing that
20 then I will obviously call the question. So,
21 Commissioner Heriot, how do you vote?

22 COMMISSIONER HERIOT: I think I'm going to
23 vote no on this at this time. I think it's an
24 interesting topic, and I'd like to study it, but I
25 don't want to commit the Commission at this point.

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1 CHAIRPERSON CASTRO: Okay. Commissioner
2 Gaziano, how do you vote?

3 COMMISSIONER GAZIANO: No for that reason,
4 and the other. But just to clarify, I don't think that
5 we couldn't find a way to study this within our
6 jurisdiction. It's just kind of a little artificial.
7 It couldn't be our statutory report, for example, but
8 we probably could frame the issue in a way. And if
9 the rest of the Commission wants to fill up the -- you
10 know, so far in advance, I think there are ways to
11 make this at least interesting, whether it's central
12 to our jurisdiction or not.

13 CHAIRPERSON CASTRO: Okay. Commissioner --
14 - I'm sorry. Madam Vice Chair, how do you vote?

15 VICE CHAIR THERNSTROM: Yes.

16 CHAIRPERSON CASTRO: Commissioner Yaki, how
17 do you vote?

18 COMMISSIONER YAKI: Yes.

19 CHAIRPERSON CASTRO: Commissioner
20 Achtenberg, how do you vote?

21 COMMISSIONER ACHTENBERG: Yes.

22 CHAIRPERSON CASTRO: Commissioner Kladney,
23 how do you vote?

24 COMMISSIONER KLADNEY: Yes.

25 CHAIRPERSON CASTRO: Commissioner Kirsanow,

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1 how do you vote?

2 COMMISSIONER KIRSANOW: Abstain.

3 CHAIRPERSON CASTRO: And I vote yes. So, it
4 passes with five votes, two nos, and one abstention.
5 And as the Vice Chair indicated, she'd be willing to
6 if we needed push this off to 2013, and we can assess
7 as we move forward with the two for 2012, which is
8 Peaceful Coexistence and the Anti-Arab Anti-Muslim
9 paper. Those will be 2012s. 2013 will be NVRA, as
10 we've discussed.

11 And just for the record, I would like to
12 change my Peaceful Coexistence from an abstention to a
13 yes, so that will change. I mean, it doesn't change
14 the outcome, but -- so, then we will put off
15 discussion of the rest of the topics to a later date,
16 and we'll see how 2013 begins to develop.

17 We'll want some time in the spring --
18 we'll then begin to -- we'll want to select a 2013
19 statutory topic so some of these may come back in that
20 context. Does that work for everybody? All right,
21 great. Thank you.

22 So, the next item on the agenda is
23 Management and Operations.

24 **IV. MANAGEMENT AND OPERATIONS**

25 **STAFF DIRECTOR'S REPORT**

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1 CHAIRPERSON CASTRO: Ms. Tollhurst?

2 DELEGATED THE AUTHORITY OF THE STAFF
3 DIRECTOR TOLHURST: As usual, I've circulated the Staff
4 Director's report detailing the activities of staff in
5 this past month, and am available to take questions.

6 If you have questions relating to SACs, I
7 want to note for the Regional Program Report, RPCU
8 Chief is actually here, so if you have questions on
9 that, we'd probably take advantage of him being here.

10 CHAIRPERSON CASTRO: Okay. Mr. Minarik?
11 Please, I think there's a microphone there where you
12 can sit at that table -- at that chair there.

13 **CHIEF OF REGIONAL PROGRAMS' REPORT**

14 MR. MINARIK: Again, from the Staff
15 Director's report you get three parts to the program,
16 chartering. We saw 38 of the 51 SACs are now
17 chartered, and in 90 days you're going to have another
18 seven expiring, and the goal is to be around 80
19 percent. So, I just draw your attention to that.

20 CHAIRPERSON CASTRO: And where are we in
21 the pipeline on those that are expiring, do you know?

22 MR. MINARIK: When you say in the pipeline,
23 Mr. Chairman?

24 CHAIRPERSON CASTRO: In terms of the
25 process that needs to be taken before it gets to us at

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1 the Commission.

2 MR. MINARIK: Of the seven I can tell you
3 that RPCU is aware of five plans, 90-day plans to have
4 these expired charters before the Staff Director
5 several weeks before their expiration.

6 CHAIRPERSON CASTRO: Okay, and as to the
7 other two, is there a plan to get those into --

8 MR. MINARIK: Not that I know of.

9 CHAIRPERSON CASTRO: Okay. What -- bear
10 with me here because I'm glad we've got you here now
11 on some of these questions.

12 What would be the process or the role of
13 the person in your position to make sure that these
14 other two are submitting these 90-day reports to you?
15 Who's responsible for that?

16 MR. MINARIK: The Staff Director. Well,
17 technically, it's the Regional Director who has the
18 responsibility to get the package to the Staff
19 Director --

20 CHAIRPERSON CASTRO: Okay.

21 MR. MINARIK: -- in time so that the
22 charter does not lag inordinarily. So, that falls upon
23 the Regional Directors.

24 As part of the administrative
25 instructions, they're supposed to submit a plan to

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1 RPCU and OSD saying 90-days out this is what we intend
2 to do. When RPCU has the plan in place, it's my job
3 to follow-up with the Regional Directors and see if,
4 indeed, the plan is going according to schedule. And,
5 if not, to note that for the Staff Director.

6 CHAIRPERSON CASTRO: So, is that happening?

7 MR. MINARIK: Well, the -- I only just
8 received the five 90-day plans in the last two weeks,
9 so every one of those plans, the five of them have
10 said we're going to be doing outreach to January.

11 CHAIRPERSON CASTRO: Okay.

12 MR. MINARIK: So, at the end of January I
13 intend to have a discussion with all those Regional
14 Directors and say how are we going with their
15 outreach? Did you reach this level? And are we going
16 on to Stage 2?

17 CHAIRPERSON CASTRO: I also note that
18 there's a couple of SACs that have been
19 administratively inactive since about 2004.

20 MR. MINARIK: That's correct, there's three
21 of those.

22 CHAIRPERSON CASTRO: Okay. What do we do
23 about getting those active? And why has it been so
24 long, do you know?

25 MR. MINARIK: I don't have any personal

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1 knowledge why it's taken so long. But they are part of
2 the backlog that --

3 COMMISSIONER HERIOT: Which SACs are we
4 talking about?

5 CHAIRPERSON CASTRO: In the report that we
6 have. I think one of them is New York.

7 MR. MINARIK: New York, Delaware, and West
8 Virginia have been on the backlog since -- their
9 charters expired in 2012. 2005 the Commissioners
10 enacted new procedures to charter State Advisory
11 Committees.

12 State Advisory Committees having been
13 chartered after that change in policy are considered
14 part of the backlog. So, all -- the other 48 have all
15 been chartered at least once. So, those three still
16 have not been chartered under the new rules.

17 CHAIRPERSON CASTRO: What can we do to get
18 those chartered? I think 2004 is just -- I mean, I
19 could understand some not being re-chartered for a few
20 months just because of the flow, but 2004 seems to me
21 to be unbelievable.

22 COMMISSIONER GAZIANO: Are you aware of a
23 reason for that? Was it -- for those particular
24 states?

25 MR. MINARIK: Not for those particular

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1 states, but to defend Regional Program staff,
2 chartering takes a lot of time, Commissioner. And the
3 particular Regional Director in the east has 14
4 states. I think that might be part and parcel of it.
5 And in addition to doing chartering, the State
6 Advisory Committees they have are active. They want
7 to engage them, and I do know that the Eastern
8 Regional Office is now without administrative support.

9 But I don't know the details about why those
10 particular committees have not gotten to the first
11 threshold.

12 CHAIRPERSON CASTRO: Could you for the next
13 meeting come to us with some information on that,
14 because eight years seems like an awful long time. And
15 we can at least make sure that someone's got a plan in
16 place to get those on line, particularly for the
17 citizens of those states who would, I'm sure, love to
18 have a SAC in their states.

19 MR. MINARIK: With the Staff Director's
20 permission I'll reach out to --

21 CHAIRPERSON CASTRO: Would that be
22 appropriate?

23 DELEGATED THE AUTHORITY OF THE STAFF
24 DIRECTOR TOLHURST: Yes.

25 CHAIRPERSON CASTRO: Thank you. Any other

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1 questions for Mr. Minarik?

2 MR. MINARIK: Got two more topics.

3 CHAIRPERSON CASTRO: Oh, I'm sorry, go
4 right ahead. Thank you.

5 MR. MINARIK: I did want to tell you that
6 there are -- I don't want to walk you through all the
7 projects that are on, but there are several reports
8 that are coming that are -- the SACs have finished
9 them.

10 CHAIRPERSON CASTRO: Okay.

11 MR. MINARIK: And they're about to be
12 released, or have been released. I wanted to tell you
13 about Minnesota, the resources devoted to civil rights
14 enforcement in Nevada, status of civil rights in
15 Nevada is now in OSD. The North Carolina School
16 Discipline report is now in OSD. And in New Jersey,
17 accommodations by the Department of Corrections to
18 inmates with disabilities is under legal sufficiency
19 review. So, those are in the pipeline.

20 CHAIRPERSON CASTRO: Okay.

21 MR. MINARIK: Along that line, my advocacy
22 role for Regional Programs, I couldn't help but notice
23 that there's a briefing on human trafficking. I talked
24 to the Commissioner in January. I lamented at that
25 time that there was a briefing by the Commissioners on

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1 school discipline. Three of the State Advisory
2 Committees in the south had done fact findings on
3 this. None of the chairs were asked to participate.
4 The Texas Advisory Committee has recently released a
5 report on human trafficking. I think the Commissioner
6 should seek to ask the Chairman of the Committee to be
7 part of the briefing.

8 Not only that, I couldn't help but notice
9 in my advocacy role when you're approving these
10 reports, we've talked about anti-Muslim activity. I
11 know the Michigan Advisory Committee has recently done
12 something on that. Voting Rights, Kentucky and
13 Florida have recently issued reports. There was one by
14 Commissioner Kirsanow that you didn't get to on
15 affirmative action. The Arizona Committee has done
16 these things. I would just ask that you consider
17 contacting the regional programs of whether a State
18 Advisory Committee has done some activity recently.

19 CHAIRPERSON CASTRO: Oh, absolutely. In
20 fact, I think at the last meeting I had mentioned that
21 I had spoken to the Eastern Regional staff about the
22 human trafficking, and we had suggested that maybe
23 there's even some way to coordinate the publication of
24 their reports along with ours.

25 In addition, I have personally spoken to

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1 the head of the Texas SAC about the report, not
2 necessarily including human trafficking, but talking
3 to him about the report. But that's a point that's
4 well taken.

5 In terms of the school disciplining
6 briefing, that's something that didn't occur on my
7 watch, but I can assure you it was my first briefing,
8 and I was surprised as well that we didn't integrate
9 that. But I made certain that in my statement that we
10 included the findings of the school discipline reports
11 that had already been published that were public. And
12 as you can see from the other Concept Papers that have
13 been approved earlier this year, for example,
14 immigration, we do contemplate engaging the SACs. The
15 Vice Chair's program that we approved today also
16 contemplates engaging the SACs, so that's something C-
17 those are points well taken. And we would definitely
18 appreciate whatever facilitation you and the Staff
19 Director can provide us in engaging our SACs even
20 more.

21 MR. MINARIK: That's all I have, Mr.
22 Chairman. Thank you.

23 CHAIRPERSON CASTRO: Thank you. All right.
24 Any additional questions for Mr. Minarik? Commissioner
25 Gaziano?

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1 COMMISSIONER GAZIANO: I might have one
2 sort of as applied to the Hawaii SAC, but maybe we
3 should -- I could ask that if and when we take up the
4 Hawaii SAC. Will you remain for --

5 mR. MINARIK: Oh, yes, then I'll change my
6 hats, become Director of the Western Regional Office
7 at that time.

8 CHAIRPERSON CASTRO: Okay. Any additional
9 questions for Mr. Minarik? If not, it's a nice segue.
10 We're moving on now to the State Advisory Committee
11 issues with the only item on the agenda is the re-
12 chartering of the Hawaii SAC.

13 **V. STATE ADVISORY COMMITTEE ISSUES**

14 **RE-CHARTERING OF THE HAWAII SAC**

15 CHAIRPERSON CASTRO: So, I know that there
16 are some questions as they relate to the Chairmanship,
17 but what I will do procedurally is I will go ahead and
18 make the formal motion as it's been submitted, and
19 then if there are any amendments, et cetera, we can
20 deal with those.

21 I move that the Commission re-charter the
22 Hawaii State Advisory Committee. Under this motion,
23 the Commission appoints the following individuals to
24 that committee based upon the recommendations of our
25 Staff Director; Amefil Agbayani, Robert Alm, H.

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1 William Burgess, Vernon Char, Linda Coburn, M. Nalani
2 Fujimori Kaini, H.K. Bruss Keppeler, James Kuroiwa,
3 Michael Lilly, Carmen Lindsey, Paul Smith, Wayne Tann,
4 Jacqueline Young.

5 Pursuant to this motion, the Commission
6 appoints Michael Lilly as Chair of this re-chartered
7 Hawaii State Advisory Committee. These members will
8 serve as uncompensated government employees.

9 Under this motion, the Commission
10 authorizes the Staff Director to execute the
11 appropriate paperwork for appointment. Is there a
12 second?

13 COMMISSIONER GAZIANO: Second.

14 CHAIRPERSON CASTRO: Okay, there's been a
15 motion and it's seconded. Is there discussion? The
16 Chair recognizes Commissioner Yaki.

17 COMMISSIONER YAKI: Thank you very much,
18 Mr. Chair. I have a question for Mr. Minarik. I
19 understood that the -- we had approved term limiting
20 chairs to two 2-year terms. I understand this would be
21 Mr. Lilly's third 2-year term. Is that correct?

22 MR. MINARIK: With respect to Staff
23 Director, is this okay if I take these questions?

24 DELEGATED THE AUTHORITY OF THE STAFF
25 DIRECTOR TOLHURST: Of course.

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1 MR. MINARIK: I report to her. Yes, you
2 understand correctly, Mr. Commissioner.

3 COMMISSIONER YAKI: Okay. In that case, I
4 would like to amend the Chair to -- I've met Mr.
5 Lilly. I think he is a fine individual, and has given
6 great service to the Commission. I hope that he will
7 keep on, but in keeping with our own regulations, I'd
8 like to nominate instead as Chair Ms. Nalani Fujimori
9 Kaina. She's been on the SAC for some time. She is
10 with legal aid. She's not in any one school of
11 thought in terms of issues, and she's not a single-
12 focus issue person, in other words. She's done a lot
13 of work on the issue of housing, discrimination, other
14 things, women's rights that have a broad view of the
15 jurisdiction that the Committee will be engaging in.
16 And I think that it would be -- she would be a credit
17 to the Hawaii SAC, and I would nominate her as the new
18 Chair.

19 CHAIRPERSON CASTRO: So, we have a motion
20 to amend. Is there a second to the motion?

21 COMMISSIONER HERIOT: Second.

22 CHAIRPERSON CASTRO: Okay. So, any
23 discussion on the motion to amend? The Chair
24 recognizes Commissioner Gaziano, Vice Chair
25 Thernstrom, and then Commissioner Heriot.

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1 COMMISSIONER GAZIANO: Mine is just a
2 simple question. What is the rule? I understand it's
3 an administrative instruction, Commissioner Yaki.
4 Could you just for the record or for my benefit repeat
5 the rule that --

6 COMMISSIONER YAKI: Yes. Well, it's
7 actually in two places. One is in a discussion that
8 we had when we amended the SACs early on, but then it
9 was incorporated in recommendations made by --

10 DELEGATED THE AUTHORITY OF THE STAFF
11 DIRECTOR TOLHURST: Lean Six Sigma --

12 COMMISSIONER YAKI: -- the Lean Six Sigma,
13 yes, process that we engaged in a few years back. I
14 think you had just come on the Commission.

15 COMMISSIONER GAZIANO: I, unfortunately,
16 missed the whole Lean Six Sigma --

17 COMMISSIONER YAKI: Fortunately, you missed
18 that? And I have no idea why they call it Lean when it
19 takes so much time. But the suggestion was to keep
20 SACs fresh, that this Commission had imposed term
21 limits on members of the Commission as a whole, I
22 think to, what is it, four 2-year terms, I think, or
23 five? I can't remember which. But in order to ensure
24 that within that group there was a diversity of
25 viewpoints and fresh energy devoted to being Chair,

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1 that it also -- that Chairs were appointed to 2-year
2 terms, as well, be allowed only two 2-year terms. Mr.
3 Lilly has served his second 2-year term.

4 COMMISSIONER GAZIANO: Thank you for the
5 clarification.

6 COMMISSIONER HERIOT: I'm still unclear.

7 COMMISSIONER GAZIANO: Let me just see if I
8 -- just so -- your motion still would be in order, but
9 as I understand your answer, there's no binding AI
10 that would have bound our staff to eliminate him.

11 COMMISSIONER YAKI: That's not quite --
12 actually -- may I respond? That's not quite true,
13 because what the Commission did was to formally adopt
14 the incorporation of the suggestions of the Lean Six
15 Sigma project into our AIs. That is actually what
16 binds the review process for briefing and statutory
17 reports now even as we speak.

18 That was part of their purview, was also
19 to look at the SACs election process and was part of
20 the whole set of recommendations that the Commission
21 at that time adopted wholesale to be incorporated by
22 reference into our AIs.

23 DELEGATED THE AUTHORITY OF THE STAFF
24 DIRECTOR TOLHURST: So, I can explain what happened.

25 COMMISSIONER YAKI: Yes.

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1 DELEGATED THE AUTHORITY OF THE STAFF
2 DIRECTOR TOLHURST: Previous Staff Director issued a
3 memo which I'm happy to forward to all Commissioners
4 saying that the complete SAC set of revisions approved
5 by this in conjunction with Booz Allen sent a memo to
6 Commissioners saying that this, in fact, was the rule
7 and had been -- and will be the rule. For unknown
8 reasons, the Staff Director did not create an AI to
9 reflect that, but Commissioners received a memo saying
10 that this was the rule coming out of Lean Six Sigma.

11 CHAIRPERSON CASTRO: And we've operated
12 with other recommendations already on other matters it
13 sounds like, as well. Commissioner Yaki?

14 COMMISSIONER YAKI: But I'd also say in
15 2005 when the changes to the SACs were made, quite
16 frankly over my objection, one point that I did bring
17 up at the time was to limit the terms of the Chair to
18 two 2-year terms. That actually was -- I'm pretty sure
19 was accepted at that time, but like with many things
20 that as you saw here, never quite incorporate into an
21 AI. But I believe somewhere in one of the debates,
22 and I just did not have the time to go through 12
23 months worth of transcripts because this was debated
24 over -- this was what -- debate over some period of
25 time, that my concern was to insure that Chairs would

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1 rotate in a fairly regular manner, as well.

2 So, we can -- as the Chair said, we have
3 used this rule already. I don't know why we didn't
4 apply this rule to Hawaii. In any case, I think Mr.
5 Lilly has served the Commission well, but I would like
6 to see new blood in there. And I hope Mr. Lilly
7 continues, but I'm convinced that Ms. Fujimori Kaina
8 will, in fact, be a very good and fair Chair for the
9 Hawaii SAC.

10 CHAIRPERSON CASTRO: Okay. Madam Vice
11 Chair, then Commissioner Heriot. You don't have a
12 question any more? Commissioner Heriot, did your
13 question get answered?

14 COMMISSIONER HERIOT: Partly, but I'm still
15 sort of baffled by this whole thing. Am I to
16 understand that this was somehow voted upon and we
17 forgot with regard to Hawaii? What's -- what happened
18 here? If this is a rule that we have, why was it not
19 followed in this case, if it indeed is a rule that we
20 have?

21 CHAIRPERSON CASTRO: Mr. Minarik will have
22 to answer that question. Let's have him come forward,
23 and then --

24 VICE CHAIR THERNSTROM: Okay.

25 CHAIRPERSON CASTRO: Okay, you did follow

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1 the rule?

2 COMMISSIONER GAZIANO: Stay up there
3 because I had a separate --

4 VICE CHAIR THERNSTROM: Yes. I mean, just
5 to follow-up on Commissioner Heriot's --

6 MR. MINARIK: Yes, I knew about the -- I
7 did forget, and --

8 VICE CHAIR THERNSTROM: I see. Okay.

9 MR. MINARIK: Yes. There are times when I
10 make mistakes, and I've told the Staff Director the
11 erasers on my pencils are well worn. However, there
12 are -- we understand that the Regional Offices, we're
13 allowed to make our recommendations for exceptions to
14 these rules. And I did not do so in the memorandum I
15 sent to the Staff Director, but there have been
16 occasions when I did, and I pointed that out. So,
17 when the Staff Director brought it to my attention, I
18 made a mistake.

19 VICE CHAIR THERNSTROM: Okay.

20 CHAIRPERSON CASTRO: Madam Vice Chair, is
21 that --

22 VICE CHAIR THERNSTROM: That's fine. That
23 answers my question.

24 CHAIRPERSON CASTRO: Commissioner Gaziano?

25 COMMISSIONER GAZIANO: I move to amend the

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1 motion or substitute, whichever is more appropriate,
2 that the -- we adopt the slate today or vote on the
3 slate today but that we delegate back to the Staff
4 Director to recommend an appropriate Chair, rather
5 than selecting one ourselves. It seems like in other
6 cases we've -- there have been Commissioners who have
7 objected to our singling out individuals. I would
8 rather this go back to the Staff Director to recommend
9 a different --

10 DELEGATED THE AUTHORITY OF THE STAFF
11 DIRECTOR TOLHURST: Actually, this name came -- I
12 already had asked Peter anticipating this problem to
13 identify an alternate should you all choose to not go
14 with Mr. Lilly. I'd ask him to recommend an alternate
15 to me, and this is the same name that I received and
16 accepted.

17 CHAIRPERSON CASTRO: Commissioner Yaki?

18 COMMISSIONER YAKI: I was just going to --

19 CHAIRPERSON CASTRO: Okay. So, it looks
20 like that process -- that stuff has taken place.

21 COMMISSIONER YAKI: On my motion then.

22 CHAIRPERSON CASTRO: Okay. So, if there's
23 no further questions on the motion to amend, we're
24 going to vote on the motion to amend, which is to
25 substitute Ms. Fujimori for Mr. Lilly as the Chair.

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1 So, I will take a vote. Commissioner Heriot, how do
2 you vote?

3 COMMISSIONER HERIOT: I pass.

4 CHAIRPERSON CASTRO: Okay. Commissioner
5 Gaziano, how do you vote?

6 COMMISSIONER GAZIANO: I pass at this
7 point.

8 CHAIRPERSON CASTRO: Madam Vice Chair?

9 COMMISSIONER HERIOT: Can we take a break
10 for a second?

11 CHAIRPERSON CASTRO: Sure. Okay, we'll take
12 a five-minute recess.

13 COMMISSIONER YAKI: Can we just finish the
14 vote?

15 CHAIRPERSON CASTRO: Oh, wait.

16 VICE CHAIR THERNSTROM: Yes. I mean, can we
17 finish the vote?

18 CHAIRPERSON CASTRO: Okay, hold on a
19 second.

20 VICE CHAIR THERNSTROM: Because you've got
21 two passes, they can come back at that point after
22 we've voted and say they're going to vote in X way.

23 COMMISSIONER YAKI: Let's see if their
24 passes mean anything.

25 CHAIRPERSON CASTRO: You know, I've said

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1 yes, so I'll let them take a couple of minutes to
2 talk. Sorry, but I'd rather they have an opportunity
3 to coordinate with themselves.

4 (Whereupon, the proceedings went off the
5 record at 11:03 a.m., and went back on the record at
6 11:04 a.m.)

7 CHAIRPERSON CASTRO: So, we will begin the
8 vote again. We'll start with Commissioner Heriot, how
9 do you vote?

10 COMMISSIONER HERIOT: I pass.

11 CHAIRPERSON CASTRO: Still?

12 (Laughter.)

13 CHAIRPERSON CASTRO: Commissioner Gaziano?

14 COMMISSIONER GAZIANO: I vote no on the
15 basis that I think Commissioners should have been
16 notified of this change and given us a chance to look
17 at the qualifications of various chairmen. And I
18 still don't see a need to select a chairman right now
19 given that we're not going to be approving the person
20 who for two months we thought was going to be the
21 Chairman.

22 CHAIRPERSON CASTRO: Madam Vice Chair, how
23 do you vote?

24 VICE CHAIR THERNSTROM: Yes.

25 CHAIRPERSON CASTRO: Commissioner Yaki, how

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1 do you vote?

2 COMMISSIONER YAKI: Yes.

3 CHAIRPERSON CASTRO: Commissioner
4 Achtenberg, how do you vote?

5 COMMISSIONER ACHTENBERG: Yes.

6 CHAIRPERSON CASTRO: Commissioner Kladney,
7 how do you vote?

8 COMMISSIONER KLADNEY: Yes.

9 CHAIRPERSON CASTRO: Commissioner Kirsanow,
10 how do you vote? Commissioner Kirsanow, are you there?

11 (No response.)

12 COMMISSIONER YAKI: Mission Control to
13 Peter.

14 CHAIRPERSON CASTRO: Okay. Well, I vote
15 yes. Commissioner Heriot, how do you vote?

16 COMMISSIONER HERIOT: I guess I vote no on
17 the ground that this is something that should have
18 been brought to our attention earlier. It shouldn't
19 have been sprung at this meeting. We ordinarily have
20 rules or at least practices that issues are brought up
21 earlier than this. And if this were a problem, we
22 should have been told about it.

23 CHAIRPERSON CASTRO: Well, this is where we
24 are appropriately bringing up issues. This is the
25 forum we do it, but I think Commissioner Yaki at the

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1 last meeting did indicate there were problems with the
2 SAC. But, so we -- is Commissioner Kirsanow on the
3 phone? If not, then the motion --

4 COMMISSIONER KIRSANOW: Yes, I am. I'm
5 sorry.

6 CHAIRPERSON CASTRO: Okay. How do you vote,
7 Commissioner Kirsanow?

8 COMMISSIONER KIRSANOW: I'm sorry, I had to
9 take another call. I'm going to have to pass.

10 CHAIRPERSON CASTRO: Okay, pass or abstain,
11 because you're the last voter?

12 COMMISSIONER KIRSANOW: I'll abstain.

13 CHAIRPERSON CASTRO: Okay. So, the motion
14 to amend passes with five votes for yes, two for no,
15 one abstention. So, the motion now reads that pursuant
16 to the motion, the Commission appoints, let me get her
17 full name here, Nalani Fujimori Kaina as Chair of the
18 re-chartered Hawaii SAC.

19 Are there any other motions with regard to
20 this SAC before we vote? The Chair recognizes
21 Commissioner Yaki.

22 COMMISSIONER YAKI: Yes, I'd like to sever
23 for separation consideration William Burgess and James
24 Kuroiwa.

25 CHAIRPERSON CASTRO: So, we have a motion

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1 to sever. My understanding is that's a courtesy motion
2 that does not require a second. Is that correct?

3 COMMISSIONER YAKI: Yes.

4 CHAIRPERSON CASTRO: Do you want to say
5 anything about that?

6 COMMISSIONER YAKI: Yes. I think that with
7 regard to Commissioner Heriot's discussion about
8 procedure, I think that this is going -- these are two
9 nominees who have made -- who have taken certain
10 actions and made certain statements that I will ensure
11 that are passed out to the other members of the
12 Commission. And ask that they be given the
13 opportunity to respond.

14 In the case of Mr. Kuroiwa, he has made
15 several public statements and written statements. And
16 these are things that he has written himself, not
17 paraphrased by any reporter regarding his opposition
18 to same-sex marriage, any form of domestic
19 partnership, or in fact his opposition to what he
20 defines as the act of homosexuality. There are a
21 number of different states that he's made on that that
22 I think make him possibly unfit to be a member of the
23 Hawaii SAC, especially given that Hawaii has adopted
24 civil unions.

25 And then with Mr. Burgess, Mr. Burgess has

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1 actually been sanctioned under Rule 11. That was
2 affirmed by the U.S. Court of Appeals for continuing
3 litigation on the Native Hawaiian issue. I have raised
4 my objections to Mr. Burgess from the moment that he
5 was appointed. I think he is a single note member of
6 the Commission that does not provide much in the way
7 of anything other than his continued opposition to
8 recognition for Native Hawaiians, which in and of
9 itself I would understand, but being that he seems to
10 have little to no interest in anything else going on,
11 and in fact has been sanctioned by a court for that
12 action, I think that this needs to go back to Mr.
13 Minarik to communicate to these individuals that the
14 Commission is seeking their -- a response to their
15 actions before we actually can vote on them formally.
16 That is my motion.

17 CHAIRPERSON CASTRO: Okay. The Chair
18 recognizes Commissioner Gaziano.

19 COMMISSIONER GAZIANO: I supported
20 Commissioner Yaki's motion last month to suspend, or
21 to delay, table, whatever. The motion was the Hawaii
22 SAC. But I expected to be informed of any particular
23 issues that we would have to consider well before the
24 meeting date. That's been our practice. We try to
25 alert the Staff Director and each other as soon as we

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1 are aware of any issue that might be of concern to
2 fellow Commissioners.

3 I have a separate concern about the
4 existing balance of this SAC. One of the questions I
5 was going to ask Mr. Minarik, and I'd like to do that
6 at this time. If the rest of the Commission is willing
7 to sever and ask these individuals to -- by the way,
8 usually we ask these -- not always, but when the
9 opportunity presents itself, we ask these individuals
10 privately before the meeting without putting on the
11 record alleged defamatory actions about them. But if
12 we're going to do that at this meeting --

13 COMMISSIONER YAKI: Point of order. There
14 is nothing alleged defamatory when in fact, one, you
15 have a court opinion. And two, you actually have the
16 things that they have actually published themselves.
17 It's another thing when we've had -- and second of
18 all, that is absolutely wrong.

19 If you want to go into the Vermont SAC ad
20 nauseam where you brought stuff at the meeting, and as
21 a courtesy we did the exact same procedure that I'm
22 asking for right now, the exact same procedure,
23 Commissioner Gaziano. I said --

24 COMMISSIONER GAZIANO: Someone hopefully
25 will remind me what we did --

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1 COMMISSIONER YAKI: First of all, it was
2 over the holidays, and I was not going to ask my
3 Special Assistant to kill him or herself at the time
4 to try and dig up a lot of the stuff. I had heard some
5 of the stuff. I did not have anything that would --
6 that I thought would be concrete enough to bring
7 forward that could be potentially defamatory, number
8 one.

9 Number two, as we did in Vermont, in
10 Vermont I heard about this just before the meeting,
11 but it was not actually presented until the meeting
12 regarding a statement made by the proposed Chair of
13 the Vermont State Advisory Committee in a newspaper
14 article. It was actually a quotation, and was actually
15 a Letter to the Editor, I believe.

16 You, at that point, made the comment that
17 it was because he had actually written the letter
18 himself we could consider it, and that we should then
19 ask him -- send it back and ask him to respond, which
20 we did. At the next meeting, the Commission voted not
21 to appoint him to the Commission. That is exactly the
22 same procedure I'm doing right here.

23 I apologize if I didn't give you a heads
24 up on the actual names of the people. I just wanted to
25 C-- I'm doing this today with copies of papers to you.

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1 And asking for the same procedure, which is to send it
2 back to the Regional Office for a response back from
3 the two individuals involved.

4 COMMISSIONER GAZIANO: Commissioner Yaki,
5 I did not interrupt your presentation.

6 COMMISSIONER YAKI: And I --

7 COMMISSIONER GAZIANO: And I did not
8 appreciate you interrupting me, so please let me
9 continue now that you've had your second piece in the
10 middle of my time.

11 I don't believe you've accurately
12 characterized how we proceeded under the Vermont
13 situation. I do remember I think we did put off the
14 entire SAC. I do remember that it was a unanimous vote
15 with no abstentions to take off the Vermont SAC, so
16 there was absolutely unanimous agreement in the end
17 regarding the matter that I brought before the
18 Commission.

19 Now I'd like to ask Mr. Minarik the
20 question that I had raised to sort of further the
21 point that I was going to make. I was a little
22 concerned about the balance of this SAC, and as other
23 Commissioners know, I think what really matters under
24 our previous modifications that it's the ideological
25 balance rather than party registration, as I commented

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1 to others. Both Mary Frances Berry and I were
2 independents but I don't think that necessarily means
3 that Mary Frances Berry and I have the same -- would
4 be described as having the same ideological balance.

5 There were 14 members on the SAC, one as I
6 understand moved out of state. That was a
7 Conservative member. There were no additional efforts
8 -- or I'm not sure there were no additional efforts,
9 but there's no one else in addition that was
10 recommended to the SAC.

11 Pursuant to some suggestions made by Staff
12 Director and others, I focused my recommendations,
13 limited them to one or two per SAC. I made two
14 recommendations which you may or may not be aware of.
15 That's part of what my question is.

16 Also, pursuant to discussions we've
17 previously had here, my Special Assistant contacted
18 each of them to see if they were willing to -- see if
19 they were contacted would they be willing to serve,
20 and they were both willing to serve. Dr. Tate Zao of
21 the University of Hawaii has a particularly remarkable
22 personal story of being denied education in the
23 cultural revolution in China. Her work since she has
24 come to the United States -- educated at Texas A&M and
25 Princeton University after obtaining first a degree

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1 after the cultural revolution in China in teaching
2 English has been particularly, I think compelling.

3 I do not know if these individuals were
4 even contacted, but I'm -- it raises further concerns
5 about maybe it was -- maybe staff looked at them and
6 found something that was disqualifying about them.
7 But I wonder about the procedures that we go through
8 if we don't add a single new member to a SAC.

9 Are you able to comment on -- you may not
10 want to get into particulars, but on whether you're
11 able to add people to the SAC, how -- and why we
12 didn't in this particular case in Hawaii?

13 MR. MINARIK: Can I expand just a little
14 bit?

15 COMMISSIONER GAZIANO: Sure.

16 MR. MINARIK: When this process started,
17 Staff Director Marcus and I had conversations. And I
18 told the Staff Director as a Regional Director that
19 the SAC packages that would come out at the time for
20 the south were intended to have what I considered to
21 have two strong Conservatives, two strong Liberals,
22 two moderate Conservatives, two moderate Liberals, and
23 several real Independents.

24 I also told him that I tried to limit the
25 number of SAC members to 11 or 12, because frankly I

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1 just don't have the resources to support a Committee
2 beyond that. Those were the original packages that I
3 submitted.

4 After those were submitted, Mr.
5 Commissioner, when I started becoming the Acting
6 Director of the West, I inherited an Advisory
7 Committee that was already put in place, so my modus
8 operandi, quite frankly, was if I have a committee
9 where the returning members have a priority to be
10 reappointed, and I'm already at 12 or 13, and I don't
11 have a Civil Rights analyst sitting in the office, I
12 don't even have a secretary any more in the south,
13 that because of the constraints on me, my practice is
14 that I will send a package forward to the Staff
15 Director that doesn't include new individuals. That's
16 my practice.

17 Understanding that I don't make the last
18 call, and that I know that the Staff Director does
19 communicate with Commissioners, and if she doesn't
20 like this procedure, she'll let me know. And she has
21 on occasion. She, frankly, has told me she doesn't
22 like the idea that I only send up 11 people. I must
23 send up more than 11.

24 Mr. Commissioner, that's -- and I don't
25 speak for the other Regional Directors, but that's how

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1 I try to handle it. And I did think in balance that
2 when it played out not only here but in California,
3 that the SACs were reasonably well balanced. And I
4 will also say that why I thought they were reasonably
5 well balanced is because in the south and the west we
6 make real efforts to have unanimous reports. And the
7 Hawaii report that was issued was the first one in a
8 long time that didn't have unanimity, but all of the
9 others. The Nevada report that just got up here,
10 unanimous. Every word that's come out of the Southern
11 Regional Office, and there have been 20 of them, every
12 one of them unanimous, and on difficult subjects,
13 voting rights for ex-felons.

14 So, I personally am not that concerned. In
15 Arizona, Affirmative Action admissions in public
16 colleges and universities, unanimously adopted. Every
17 one gives in a little bit, and I know I cannot force
18 that, but they all know that's my preference. And
19 that's the best answer I can give, Mr. Commissioner.

20 COMMISSIONER GAZIANO: I'm glad the Staff
21 Director has informed you of our discussion that we
22 don't want 11, but I think given that there's two,
23 three, whatever, I thought that the consensus of the
24 Commission was that we want a slate much closer to 18.
25 But I think 12 doesn't have very much room, margin for

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1 error either. But based on my concerns that the
2 package even before Commissioner Yaki's motion to
3 sever was somewhat imbalanced, and this would make it
4 much, much more so, and because I think that some of
5 the concerns -- well, I haven't had time, and none of
6 us have had time to really study the matters and the
7 individuals involved as returning members should be
8 able to respond.

9 I would ask the same consideration that we
10 gave Commissioner Yaki last month, that we postpone
11 vote on the slate, and we consider the slate next
12 month after we've gotten a response back from these
13 returning SAC members.

14 CHAIRPERSON CASTRO: Commissioner Yaki,
15 what say you?

16 COMMISSIONER YAKI: I'm of two minds on
17 this. Maybe I'll just pass, but no.

18 (Laughter.)

19 VICE CHAIR THERNSTROM: Don't do that.

20 COMMISSIONER YAKI: In prior years, let's
21 say 2008 and 2009 to be exact, and most of 2010,
22 generally what we have tended to do is to --
23 especially when here we have what is it, 14 on the --
24 proposed for the Hawaii SAC?

25 MR. MINARIK: Thirteen.

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1 COMMISSIONER YAKI: Thirteen. Subtracting
2 two for the severance, and we'll see what happens with
3 those individuals, that leaves some slots available. I
4 think that part of my preference would be simply to
5 see if there are the votes to approve the remainder,
6 deal with the severance issue, and then what is left
7 over we bring back next week, next month with that,
8 and with any other names that Commissioner Gaziano
9 would like to submit, which I will give as due and
10 full consideration as he would give any of mine.

11 That is sort of my first preference. My
12 second preference would be to simply kick it over
13 again, but I feel now that my own preference would be
14 to approve the Commission as amended without the two
15 names that are severed, and then come back next month
16 with -- because these people are all people who have
17 been there before, have been reappointed, want to be
18 on there. So, I don't see that there -- I don't think
19 there's any consensus to knock anyone off. I think
20 it's an issue of addition rather than subtraction.

21 So, depending on what happens to the fate
22 of Mr. Kuroiwa and Mr. Burgess next month, and what
23 Commissioner Gaziano brings forward next month, I
24 would rather wait for that to happen, but to approve
25 the amended Commission this month.

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1 CHAIRPERSON CASTRO: The Chair recognizes
2 the Vice Chair.

3 VICE CHAIR THERNSTROM: I have a question
4 for Mr. Minarik. What's the -- you've talked about 11
5 is the maximum number, what's the minimum number that
6 we need on a SAC?

7 MR. MINARIK: Eleven, Madam Vice Chair.
8 Eleven.

9 VICE CHAIR THERNSTROM: Eleven is the
10 minimum.

11 MR. MINARIK: Under the rules and
12 regulations.

13 VICE CHAIR THERNSTROM: I see. Okay. I
14 misunderstood you on that. Okay.

15 CHAIRPERSON CASTRO: And what we did say,
16 although we didn't -- there was no consensus that we
17 have 18 members, we did indicate that in a couple of
18 instances recently we had 11-member SACs, members
19 resigned or quit, and that made the SACs inactive, so
20 what we did indicate, and which was communicated to
21 Mr. Minarik is that we wanted more than 11 or 12, just
22 to give us a buffer, but not necessarily to ratchet
23 every one of the SACs up to full capacity because of
24 the budget issues.

25 Any other questions? If not, then we will

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1 call the question on the vote of the SAC.

2 COMMISSIONER GAZIANO: I was asking
3 unanimous consent, but if I don't have that, I move to
4 postpone vote on the --

5 VICE CHAIR THERNSTROM: Well, we've got a
6 motion on the floor.

7 COMMISSIONER GAZIANO: I move to amend,
8 substitute, or whatever so that we postpone voting on
9 Hawaii SAC until we at least get responses from the
10 two individuals, and perhaps Mr. Minarik has an
11 opportunity to contact the two people that I
12 recommended, which apparently never were contacted.

13 COMMISSIONER HERIOT: Second.

14 COMMISSIONER GAZIANO: So that we are able
15 to make a decision on the full SAC at the next
16 meeting.

17 COMMISSIONER HERIOT: Second.

18 CHAIRPERSON CASTRO: It's a seconded
19 motion. Commissioner Yaki?

20 COMMISSIONER YAKI: I would just say that
21 we can -- that can happen in any event. I would prefer
22 we move forward with approving the remainder, and then
23 deal with -- I oppose a motion because I think that we
24 can deal with that issue next month. But I would like
25 to move forward now --

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1 CHAIRPERSON CASTRO: Okay.

2 COMMISSIONER YAKI: -- with approving the
3 remainder of the SAC with the new Chair.

4 CHAIRPERSON CASTRO: We'll move forward and
5 then conduct a vote on Commissioner Gaziano's motion
6 to amend, which is to postpone.

7 Commissioner Heriot, how do you vote?

8 COMMISSIONER HERIOT: I vote yes.

9 CHAIRPERSON CASTRO: Commissioner Gaziano,
10 how do you vote?

11 COMMISSIONER GAZIANO: Yes.

12 CHAIRPERSON CASTRO: Vice Chair Thernstrom,
13 how do you vote?

14 VICE CHAIR THERNSTROM: I don't understand.
15 I thought there was a motion on the floor to sever
16 these two.

17 CHAIRPERSON CASTRO: Yes, but that motion
18 doesn't need to be voted on. It's a courtesy motion.

19 COMMISSIONER GAZIANO: Well, I move to
20 substitute --

21 COMMISSIONER HERIOT: No, this is a motion
22 to substitute.

23 CHAIRPERSON CASTRO: This is a motion to
24 substitute, which does need to be voted on.

25 COMMISSIONER YAKI: This motion is a -- in

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1 Robert's Rules this motion is a substitute the main
2 motion of approving the Committee as amended absent C-
3 - and that amendment, the Committee has -- the motion
4 as amended was the new Chair minus the two severed
5 people. His substitute motion is simply to postpone
6 the whole thing.

7 VICE CHAIR THERNSTROM: I vote no.

8 CHAIRPERSON CASTRO: Commissioner Yaki, how
9 do you vote?

10 COMMISSIONER YAKI: No.

11 CHAIRPERSON CASTRO: Commissioner
12 Achtenberg, how do you vote?

13 COMMISSIONER ACHTENBERG: No.

14 CHAIRPERSON CASTRO: Commissioner Kladney,
15 how do you vote?

16 COMMISSIONER KLADNEY: No.

17 CHAIRPERSON CASTRO: Commissioner Kirsanow,
18 how do you vote?

19 COMMISSIONER KIRSANOW: Yes.

20 CHAIRPERSON CASTRO: And I vote no, so the
21 motion to -- the amended motion fails. So, now we will
22 move on to a vote on the overall SAC as amended to add
23 Ms. Fujimori Kaina as Chair, and to sever --

24 COMMISSIONER YAKI: And the list of names
25 you read absent the two names I --

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1 CHAIRPERSON CASTRO: Severed, right.

2 Absent the two names that have been severed. So,
3 Commissioner Heriot, how do you vote?

4 COMMISSIONER HERIOT: No, given that I
5 can't know what the balance of this Committee is going
6 to be. I don't see how I could possibly vote in favor
7 of that.

8 CHAIRPERSON CASTRO: Commissioner Gaziano,
9 how do you vote?

10 COMMISSIONER GAZIANO: No, for the same
11 reason.

12 CHAIRPERSON CASTRO: Madam Vice Chair, how
13 do you vote?

14 VICE CHAIR THERNSTROM: Yes.

15 CHAIRPERSON CASTRO: Commissioner Yaki, how
16 do you vote?

17 COMMISSIONER YAKI: Yes.

18 CHAIRPERSON CASTRO: Commissioner
19 Achtenberg, how do you vote?

20 COMMISSIONER ACHTENBERG: Yes.

21 CHAIRPERSON CASTRO: Commissioner Kladney,
22 how do you vote?

23 COMMISSIONER KLADNEY: Yes.

24 CHAIRPERSON CASTRO: Commissioner Kirsanow,
25 how do you vote?

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1 COMMISSIONER KIRSANOW: As set forth by
2 Commissioner Heriot, no.

3 CHAIRPERSON CASTRO: And I vote yes, so the
4 amended SAC passes with the severances being addressed
5 next month. The vote is five in favor, and three
6 against.

7 **VI. ADJOURN**

8 CHAIRPERSON CASTRO: So, there being no
9 other business, I move to adjourn the meeting. Is
10 there a second?

11 VICE CHAIR THERNSTROM: Second.

12 CHAIRPERSON CASTRO: All those in favor say
13 aye.

14 (Chorus of ayes.)

15 CHAIRPERSON CASTRO: It is now 11:29
16 Eastern Time, and the meeting is adjourned.

17 (Whereupon, the proceedings went off the
18 record at 11:26 a.m.)

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