

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY, MAY 9, 2008

The meeting convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C., at 9:30 a.m., Abigail Thernstrom, Vice Chairman, presiding.

PRESENT:

GERALD REYNOLDS, Chairman (via telephone)
ABIGAIL THERNSTROM, Vice Chairman
TODD GAZIANO, COMMISSIONER
GAIL L. HERIOT, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER
ARLAN D. MELENDEZ, COMMISSIONER (via telephone)
ASHLEY L. TAYLOR, JR., COMMISSIONER
MICHAEL YAKI, COMMISSIONER (via telephone)

DR. ROBERT LERNER, Delegated the Authority of the Staff Director, OSD

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
CHRISTOPHER BYRNES, Chief, Programs Coordination Unit
IVY DAVIS, Director, Eastern Regional Office
DEMITRIA DEAS
BARBARA DELAVIEZ
PAMELA A. DUNSTON, Chief, Admin. Services and Clearinghouse Division
YVETTE HAWKINS
MONICA KIBLER
SOCK-FOON McDOUGALL
LENORE OSTROVSKY
EILEEN RUDERT
KARA SILVERSTEIN
KIMBERLY TOLHURST
VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELE YORKMAN

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COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
RICHARD SCHMECHEL
KIMBERLY SCHULD

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P R O C E E D I N G S

(9:46 a.m.)

VICE CHAIR THERNSTROM: Well, good morning. I am Vice Chair Abigail Thernstrom. The meeting will come to order.

I do apologize for the delay. It was in part my fault. I couldn't get a taxi to come in this morning, and whenever it rains a little bit in Washington, you would think there was a tsunami or something.

Anyway, this is a meeting of the U.S. Commission on Civil rights at 9:30 a.m. It's actually not 9:30 anymore. It is quarter of ten, on May 9th, 2008. The meeting is being held at 624 Ninth Street, N.W., Room 540, Washington, D.C.

All Commissioners are present except three of our Commissioners who are on the phone: Chairman Reynolds, Commissioner Yaki, and Commissioner Melendez, and I'm very sorry they can't be here.

The first item on the agenda is the approval of the agenda.

I. APPROVAL OF AGENDA

VICE CHAIR THERNSTROM: Is there a motion to approve the agenda? Is there a motion to approve the agenda?

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1 COMMISSIONER KIRSANOW: So moved.

2 VICE CHAIR THERNSTROM: A second?

3 COMMISSIONER TAYLOR: Second.

4 VICE CHAIR THERNSTROM: Okay. I would
5 like to amend the motion to approve the agenda to
6 strike discussion of the following items: the
7 briefing report on racial categorization in the
8 census; the briefing report on the educational
9 effectiveness of historically black colleges and
10 universities; re-charters of the SACs of Florida,
11 Kentucky, and Wyoming; the FY '09 budget; the 2010
12 program planning.

13 Have I got a motion to that effect, to
14 strike discussion of those items?

15 CHAIRMAN REYNOLDS: So moved.

16 COMMISSIONER KIRSANOW: Second.

17 VICE CHAIR THERNSTROM: Okay. Have we got
18 any discussion of those?

19 (No response.)

20 VICE CHAIR THERNSTROM: Hearing none, all
21 in favor please indicate by say aye.

22 (Chorus of ayes.)

23 VICE CHAIR THERNSTROM: Opposed?

24 (No response.)

25 VICE CHAIR THERNSTROM: Motion to amend

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1 the agenda -- the motion to approve the agenda -- I'm
2 sorry -- the motion to amend the motion to approve the
3 agenda is approved unanimously.

4 I would also like to move that the
5 Commission add a discussion of the following item to
6 the May '08 agenda after the Staff Director's report:
7 concurrence in the appointment of Martin Dannenfelser
8 as Staff Director of the U.S. Commission on Civil
9 Rights.

10 Any discussion of that motion?

11 COMMISSIONER YAKI: I have a question.

12 VICE CHAIR THERNSTROM: Yes.

13 COMMISSIONER YAKI: This is Commissioner
14 Yaki.

15 Were we ever going to get any materials on
16 Dannenfelser?

17 VICE CHAIR THERNSTROM: We evidently have
18 them here. I thought that both of -- well, I knew
19 that Chairman Reynolds wasn't going to be here, but I
20 had hoped that both Commissioners Yaki and Melendez
21 were going to be here, and we had them here for you.
22 If you'd like the --

23 COMMISSIONER YAKI: I notified the staff
24 well ahead of time that I would not be attending in
25 person.

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1 VICE CHAIR THERNSTROM: Yeah, okay.
2 That's my error then, but in any case, would you like
3 them E-mailed right now to you?

4 COMMISSIONER YAKI: That would be pretty
5 helpful, yes.

6 VICE CHAIR THERNSTROM: And, Commissioner
7 Melendez, how about you?

8 COMMISSIONER MELENDEZ: Yes, that will
9 help.

10 VICE CHAIR THERNSTROM: So could we have
11 them E-mailed to both Commissioners Yaki and Melendez?

12 Okay. That's being taken care of right
13 away.

14 Is there any further discussion?
15 Obviously, everybody should have had that material,
16 and there's been a great deal on the Acting Staff
17 Director's plate, and I --

18 COMMISSIONER GAZIANO: Where on the agenda
19 are we placing the concurrence?

20 VICE CHAIR THERNSTROM: It's after the
21 Staff Director's report. So they will have the E-
22 mail versions.

23 So we do have a motion on the table to
24 move that discussion to after the Staff Director's
25 report.

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1 COMMISSIONER GAZIANO: Second.

2 VICE CHAIR THERNSTROM: And any discussion
3 on that?

4 (No response.)

5 VICE CHAIR THERNSTROM: All in favor say
6 aye.

7 (Chorus of ayes.)

8 VICE CHAIR THERNSTROM: And opposed?

9 COMMISSIONER YAKI: Abstain.

10 VICE CHAIR THERNSTROM: Okay. I'm sorry.
11 Was that Commissioner Melendez?

12 COMMISSIONER YAKI: No, Commissioner Yaki.

13 VICE CHAIR THERNSTROM: Commissioner Yaki,
14 I'm sorry. For the reporter's sake, you're going to
15 have to say your name and I don't --

16 COMMISSIONER YAKI: Commissioner Michael
17 Yaki abstains.

18 VICE CHAIR THERNSTROM: Okay. Good. You
19 work on the volume because I could hardly hear you
20 before, which is why I got mixed up as to who it was.

21 COMMISSIONER YAKI: It's my morning voice.
22 What can I say.

23 VICE CHAIR THERNSTROM: I'm sympathetic.
24 The second item is the approval of the minutes for
25 March 7, 2008. Is there a motion to approve the

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1 minutes?

2 COMMISSIONER KIRSANOW: So moved.

3 COMMISSIONER GAZIANO: Second.

4 COMMISSIONER YAKI: Point of order we
5 approved the amendment to amend the agenda have we
6 approved the amended agenda yet?

7 COMMISSIONER HERIOT: No we have not.

8 VICE CHAIR THERNSTROM: I am sorry that's
9 my fault, let us go back and before we have a motion
10 to approve the minutes let's approve the amended
11 agenda.

12 VICE CHAIR THERNSTROM: Yes.

13 COMMISSIONER YAKI: I have a point of
14 information. Commissioner Yaki. In the packet of
15 information that we received it says that we have a
16 proposed change to the 2008 briefing schedule. I do
17 not know what exactly that agenda item means. Does
18 that mean the Heriot concept paper? Does that mean
19 the entire briefing schedule? What does that mean?

20 There's no back-up materials on that other
21 than the Commissioner Heriot's concept paper.

22 VICE CHAIR THERNSTROM: As I understand
23 it, it's the concept paper and moving that briefing to
24 September and canceling what is now scheduled for
25 September.

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1 COMMISSIONER YAKI: Okay. Well, it would
2 be nice if that were spelled out rather than just
3 simply whatever. Okay. Go on. Okay.

4 VICE CHAIR THERNSTROM: You know, just
5 going back to your previous point of order, the way
6 the previous motion read, the motion to amend the
7 motion to approve the agenda is approved is how it
8 read. So I think we did vote.

9 COMMISSIONER HERIOT: Not the usual way
10 it's done.

11 VICE CHAIR THERNSTROM: I'm reading the
12 script here. I'm sorry.

13 COMMISSIONER YAKI: But that was the
14 motion prior to the last motion.

15 VICE CHAIR THERNSTROM: No, it actually
16 was -- let us just have a motion to approve the
17 amended agenda.

18 COMMISSIONER HERIOT: So moved.

19 COMMISSIONER KIRSANOW: Second.

20 VICE CHAIR THERNSTROM: All right. All in
21 favor.

22 (Chorus of ayes.)

23 Anybody opposed?

24 COMMISSIONER YAKI: I abstain.

25 VICE CHAIR THERNSTROM: You abstain.

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1 Okay. So we have Commissioner Yaki abstaining and
2 otherwise all Commissioners approving.

3 Okay. So we're on now to the minutes of
4 March 7th, 2008.

5 II. APPROVAL OF MINUTES OF MEETING, MARCH 7, 2008

6 VICE CHAIR THERNSTROM: Is there a motion
7 to approve these minutes?

8 COMMISSIONER GAZIANO: I think there's a
9 motion to amend.

10 COMMISSIONER HERIOT: Yeah.

11 VICE CHAIR THERNSTROM: Okay.

12 COMMISSIONER HERIOT: I believe it's
13 incorrect here, number four of the motions. It says
14 that we had a motion to discuss, rather to confirm
15 OPM's designation of Robert Lerner as Acting Staff
16 Director, and it says that motion was approved two-
17 zero with six Commissioners abstaining.

18 I believe that those Commissioners
19 dissented and the motion was not passed.

20 (Electronic interference.)

21 VICE CHAIR THERNSTROM: Was that a point
22 somebody was trying to make?

23 COMMISSIONER GAZIANO: I think that we did
24 allow it.

25 COMMISSIONER HERIOT: I don't remember

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1 such a discussion.

2 COMMISSIONER GAZIANO: Right. I thought
3 we allowed it on the agenda, and then we tabled it
4 once we got to it on the agenda, but Commissioners
5 Yaki and Melendez -- I think, Commissioner Yaki, that
6 was your motion. So do you remember the sequence?

7 VICE CHAIR THERNSTROM: I'm told it was
8 tabled by --

9 COMMISSIONER GAZIANO: It was tabled when
10 we got to it, but I think that during the approval of
11 the agenda, and I didn't figure this out until you
12 mentioned it, Gail, that we allowed it to come onto
13 the agenda with most of us abstaining.

14 Commissioner Yaki, are you following this
15 exciting discussion?

16 (No response.)

17 VICE CHAIR THERNSTROM: Commissioner Yaki,
18 we need you.

19 COMMISSIONER YAKI: Well, quite frankly,
20 as the conversation started, someone's Blackberry
21 buzzed off and I missed a crucial sentence as to what
22 in the heck we are talking about.

23 VICE CHAIR THERNSTROM: Okay.
24 Commissioner Gaziano, please go over that again.

25 COMMISSIONER GAZIANO: Well, with help

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1 from Commissioner Heriot, we're looking at the minutes
2 from March 7th, and on the first page there is set out
3 approval of the agenda, one, two, three, four, and
4 it's number four that we're trying to reconcile with
5 the statement on the next page right before program
6 planning that we tabled the actual motion to vote on
7 reconfirming Robert Lerner.

8 The question is --

9 COMMISSIONER YAKI: See, there we went
10 again. Someone's Blackberry just buzzed off again,
11 and whatever you just read I did not hear.

12 COMMISSIONER GAZIANO: The question is
13 whether we approved initially just putting this on the
14 agenda and then we later tabled it. Does number four
15 on the first page of the minutes reflect accurately
16 that we at least allowed it on the agenda?

17 I'm just trying to kind of clarify my
18 recollection of this.

19 COMMISSIONER YAKI: I really do not have
20 any recollection of that.

21 COMMISSIONER GAZIANO: That was your
22 motion. So I'm just trying to --

23 COMMISSIONER YAKI: Well, I understand it
24 was my motion, but since about 98 percent of my
25 motions -- well, all of my motions on this particular

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1 item have lost, I think I have really no burning
2 recollection of exactly procedurally how it went. I
3 do believe that there is a weird vote on it, but you
4 can't have a two-zero vote when there's a majority of
5 Commissioners present voting.

6 VICE CHAIR THERNSTROM: Let me read you
7 what the minutes say on the assumption that they are
8 accurate. "The Commissioners voted six to two to
9 table a motion regarding whether the Commission should
10 vote to confirm OPM's designation of Robert Lerner as
11 Acting Staff Director. Chairman Reynolds, Vice Chair
12 Thernstrom and Commissioners Gaziano, Heriot, Kirsanow
13 and Taylor voted in favor of the motion to table.
14 Commissioners Melendez and Yaki voted against.

15 COMMISSIONER YAKI: Well, that sounds
16 familiar. I do not understand item four under
17 approval of the agenda on the first page.

18 COMMISSIONER GAZIANO: That's my
19 recollection of that, but I suppose we could strike it
20 without doing any harm. The minutes don't have to
21 include every single step that we took. So since no
22 one remembers that, I second -- Commissioner Heriot,
23 was there a motion to strike?

24 COMMISSIONER HERIOT: You can move.

25 COMMISSIONER GAZIANO: I move to strike

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1 four on the first page.

2 COMMISSIONER HERIOT: I second.

3 VICE CHAIR THERNSTROM: Does that satisfy
4 you, Commissioner Yaki?

5 COMMISSIONER YAKI: Why would it satisfy
6 me one way or the other.

7 COMMISSIONER HERIOT: He doesn't care.

8 VICE CHAIR THERNSTROM: You don't care.

9 COMMISSIONER YAKI: I don't care.

10 VICE CHAIR THERNSTROM: Good. That
11 expedites things.

12 We've got a motion on the table, I
13 believe; is that correct? All in favor.

14 (Chorus of ayes.)

15 VICE CHAIR THERNSTROM: Anybody opposed?

16 (No response.)

17 VICE CHAIR THERNSTROM: Okay, and for the
18 record, the motion was to strike item four.

19 And we have not approved the minutes
20 themselves, no. So we need a motion now once again to
21 approve the minutes.

22 COMMISSIONER HERIOT: So moved.

23 VICE CHAIR THERNSTROM: Anybody second?

24 COMMISSIONER KIRSANOW: Second.

25 VICE CHAIR THERNSTROM: Good. Please

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1 second it.

2 Any discussion?

3 (No response.)

4 VICE CHAIR THERNSTROM: All in favor.

5 (Chorus of ayes.)

6 VICE CHAIR THERNSTROM: Anybody opposed?

7 (No response.)

8 VICE CHAIR THERNSTROM: It is unanimously
9 approved.

10 We move on to announcements.

11 COMMISSIONER YAKI: I'm sorry. I abstain.

12 VICE CHAIR THERNSTROM: You abstained.

13 Please correct the record there. Commissioner Yaki
14 has abstained.

15 VICE CHAIR THERNSTROM: All right.

16 Announcements.

17 III. ANNOUNCEMENTS

18 VICE CHAIR THERNSTROM: One announcement
19 on May 2nd, 2008, Mildred Loving died in her home in
20 Milford, Virginia. She was a black woman whose
21 challenge to Virginia's ban on interracial marriage
22 led to the landmark 1967 Supreme Court decision Loving
23 v. Virginia, which invalidated Virginia's anti-
24 miscegenation statute.

25 On January 7th, 1959, the Lovings, who had

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1 married in the District of Columbia and then moved to
2 Virginia, pleaded guilty to violating Virginia's ban
3 on interracial marriages. A trial judge sentenced
4 them to a year in jail, but suspended the sentence on
5 condition that they leave the state for 25 years.
6 "Almighty God," he wrote, "created the races, white,
7 black, yellow, Malay, and red, and He placed them on
8 separate continents. The fact that He separated the
9 races shows He did not intend for the races to mix."

10 At the time -- this is just 41 years ago
11 -- Virginia was one of 16 states banning interracial
12 marriages. The Supreme Court found the law violated
13 both the equal protection and the due process clauses
14 of the 14th Amendment, thereby invalidating all such
15 statutes nationwide.

16 That the Court's decision was roughly four
17 decades ago is certainly a sobering reminder of a not
18 too distant and very racially ugly past. It was not
19 even until some time in the late 1950s, if memory
20 serves me correctly, that surveys of American racial
21 attitudes began to ask questions about interracial
22 marriage. Before then there was no point in asking
23 particularly Southern whites what they thought. We
24 already knew the answer.

25 But remembering Loving v. Virginia serves

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1 to make another point as well, it seems to me. Racial
2 attitudes in this country have come a long way in a
3 remarkably short time by historical standards.

4 COMMISSIONER HERIOT: I think we should
5 note for the record that there never was a better
6 named Supreme Court case than Loving v. Virginia.

7 VICE CHAIR THERNSTROM: Oh, that's a good
8 point. If those of you on the phone can't hear it,
9 Commissioner Heriot just said there was never a better
10 name for a Supreme Court case.

11 But 1967 is the date of my son's, my
12 youngest child's birth, and I thank my God, you know.

13 That was yesterday, and this seems like yesterday
14 that there was still a ban on interracial marriage,
15 too.

16 Anyway, a sobering moment, but also, it
17 seems to me, encouraging.

18 Staff Director's report. Would you care
19 to add something?

20 COMMISSIONER YAKI: Yes, Commissioner
21 Yaki.

22 VICE CHAIR THERNSTROM: Yes.

23 COMMISSIONER YAKI: Point of information.

24 I just read the March 7th transcript. I think the
25 minutes were correct. I think procedurally it was an

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1 error in approving it on the agenda because it was two
2 votes in favor, six abstentions, which should not have
3 put it on the agenda in the first place.

4 But the minutes were technically correct.
5 That is what we did.

6 VICE CHAIR THERNSTROM: And we can leave
7 the minutes as is, I assume.

8 COMMISSIONER YAKI: Yeah, I'm telling you
9 procedurally there was --

10 VICE CHAIR THERNSTROM: Okay.

11 COMMISSIONER YAKI: -- an error, but the
12 minutes were technically correct.

13 VICE CHAIR THERNSTROM: All right. Thank
14 you.

15 We are at the point of the Staff
16 Director's report.

17 IV. STAFF DIRECTOR'S REPORT

18 VICE CHAIR THERNSTROM: Dr. Lerner, your
19 last Staff Director's report.

20 STAFF DIRECTOR LERNER: That is correct.
21 Thank you, Madam Chairman. I appreciate that very
22 much.

23 I'll just report a few things that we're
24 doing. As some of you already know, the C-SPAN link
25 to the video of the April 4th briefing session will

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1 soon be put on our Website. It received a fair amount
2 of publicity, I'm pleased to note.

3 The second point I'd like to make is
4 simply that the statutory report is proceeding apace,
5 and we have, in fact, received our response to
6 interrogatories from most of the components of the
7 Department of Justice, and we are busy working them
8 into the next draft of the statutory report.

9 And aside from that, everything more or
10 less continues on course I'm pleased to say, and
11 that's all.

12 Thank you.

13 VICE CHAIR THERNSTROM: And I want to
14 thank you personally for your service in two jobs at
15 once at this commission, which I know has been one job
16 too many.

17 Does anybody have anything they want to
18 question the Staff Director about?

19 CHAIRMAN REYNOLDS: I'm sorry. This is
20 Commissioner Reynolds.

21 Commissioner Thernstrom, the last ten
22 seconds of your statement I couldn't make out.

23 VICE CHAIR THERNSTROM: Just now?

24 CHAIRMAN REYNOLDS: Yes.

25 VICE CHAIR THERNSTROM: I just thanked Dr.

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1 Lerner for his service and said I appreciated the fact
2 that he was carrying two jobs at once here, and that
3 two jobs at once is always one job too many.

4 CHAIRMAN REYNOLDS: Yes. I would just
5 like to add my thanks for Dr. Lerner's efforts. It
6 was a difficult time for Dr. Lerner and the staff, but
7 thank you for your efforts.

8 STAFF DIRECTOR LERNER: Well, thank you,
9 Mr. Chairman.

10 VICE CHAIR THERNSTROM: Anybody else got
11 anything else to say in response to Dr. Lerner's staff
12 report? Otherwise we'll move on.

13 (No response.)

14 VICE CHAIR THERNSTROM: Commissioners Yaki
15 and Melendez, do you have Martin Dannenfelser's bios?

16 COMMISSIONER YAKI: Not yet.

17 VICE CHAIR THERNSTROM: You do not have
18 them?

19 COMMISSIONER YAKI: E-mail is really slow.
20 So I'm still looking.

21 COMMISSIONER TAYLOR: Just a question as
22 to an acronym. COOP, what does that stand for? It
23 appears to be something within the Administrative
24 Services and Clearinghouse Division.

25 STAFF DIRECTOR LERNER: It is correct. It

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1 has to do with the security plan that we're required
2 to have, and would you like to say something about
3 that?

4 All right. I'm told that it stands for
5 Continued Operations. It's pronounced as "coop" and
6 it has to do with continuing operations for emergency
7 plans in the case of a major disaster, which our
8 capable Chief of ASCD is working on.

9 COMMISSIONER TAYLOR: Thank you.

10 VICE CHAIR THERNSTROM: How is E-mail
11 working?

12 COMMISSIONER YAKI: I received it.

13 VICE CHAIR THERNSTROM: You've got it.
14 Have both of you got it now?

15 I don't want to introduce Mr. Dannenfelser
16 without both of you having the information on him.

17 COMMISSIONER MELENDEZ: I have it.

18 VICE CHAIR THERNSTROM: All right, and do
19 you need any more time to look at it?

20 COMMISSIONER YAKI: I looked at it. It's
21 a one-pager. So thanks.

22 VICE CHAIR THERNSTROM: Okay. Are we set
23 then and I can introduce him?

24 COMMISSIONER YAKI: Yes. Is that the
25 entirety of the Staff Director's report?

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1 VICE CHAIR THERNSTROM: That is the
2 entirety of the Staff Director's report.

3 COMMISSIONER YAKI: There's not even any
4 update on where we are with the '09 budget process?
5 Forgetting the content of the '09 budget process, have
6 we submitted an '09 budget yet?

7 STAFF DIRECTOR LERNER: No, we have not.

8 COMMISSIONER YAKI: That's all I wanted to
9 know.

10 CHAIRMAN REYNOLDS: This is Commissioner
11 Reynolds.

12 I've been working with staff on the '09
13 budget, and our latest conversation took place early
14 this week, and I expect for this issue to be wrapped
15 up by the end of next week.

16 VICE CHAIR THERNSTROM: Is there anything
17 that we need to discuss with respect to what the
18 outstanding issues are?

19 CHAIRMAN REYNOLDS: I had a series of
20 questions and right now staff are just going back to
21 consult with the records so that they can provide me a
22 response.

23 COMMISSIONER YAKI: This is Commissioner
24 Yaki.

25 I would just urge the Chair to consider

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1 the fact that in years prior the Commission has
2 thanked OMB for their recommendation and submitted
3 their own budget, and given the fact that in the
4 appropriation last year before the rescission, we had
5 been approved for a \$200,000 increased over what OMB
6 had recommended that we consider using the prior
7 approved 9.0 million as a baseline with which to
8 structure the '09 budget, assuming hopefully that this
9 year a similar across-the-board recision will not
10 impact our budget.

11 CHAIRMAN REYNOLDS: Well, you're the
12 second Commissioner that has suggested that we
13 entertain the idea of thanking OMB and putting forth a
14 budget that deviates from OMB's budget. I think that
15 the suggestion is definitely worthy of a discussion,
16 and what I'll do is for the next business meeting,
17 which will take place in June, it will be placed on
18 the agenda.

19 COMMISSIONER TAYLOR: When we place it on
20 the agenda, could someone give me a --

21 CHAIRMAN REYNOLDS: I'm sorry?

22 COMMISSIONER TAYLOR: When we place that
23 on the agenda, would someone be available, please, to
24 discuss how we have handled it in the past? I want to
25 have a sense of how we've done this in the past for

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1 various years. I just don't recall here what we've
2 done for the past couple of years, but I'd like to
3 know that information when we discuss this.

4 COMMISSIONER GAZIANO: Sure.

5 CHAIRMAN REYNOLDS: We'll have our budget
6 people ready to answer questions.

7 COMMISSIONER TAYLOR: Thank you.

8 COMMISSIONER GAZIANO: I would like to
9 move that Chair Reynolds -- give him antibiotics
10 because it sounds like he's not feeling very well.

11 CHAIRMAN REYNOLDS: Yes, but I take pride
12 in the fact that I go to work sick.

13 VICE CHAIR THERNSTROM: I'm sure your
14 colleagues appreciate that.

15 (Laughter.)

16 COMMISSIONER YAKI: I'm sure that the
17 productivity of KBL is greatly enhanced by being the
18 vector of infection.

19 VICE CHAIR THERNSTROM: Exactly.

20 CHAIRMAN REYNOLDS: Typhoid Gerry.

21 COMMISSIONER YAKI: A quick question for
22 the Chair from Commissioner Yaki.

23 He said he was, quote, going to wrap it up
24 by the end of next week. Does that mean it will be
25 submitted to Congress prior to our discussion of it in

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1 June?

2 CHAIRMAN REYNOLDS: No. Loose phrase.
3 What I meant by that loose phrase was that I
4 anticipate that my questions and concerns will have
5 been answered and resolved by next week, and then we
6 all have to have a conversation before -- we have to
7 vote on this.

8 COMMISSIONER YAKI: Okay. A final
9 question, Mr. Chair. This may be premature, but in
10 terms of planning for the next meeting, is everything
11 going to be conducted on the 6th? Is that the plan?

12 CHAIRMAN REYNOLDS: I don't think it has
13 been finalized. We have canvassed Commissioners on
14 whether it would be better to have it the day before
15 the briefing or after the briefing that will take
16 place in June, and I believe right now the consensus
17 is that it will take place on June, with the
18 recognition that that means that it's likely that one
19 or more Commissioners will have to stay over until
20 Saturday.

21 COMMISSIONER YAKI: No, that's okay. I
22 don't mind that. I just need that resolved very
23 quickly because I have to juggle some court issues for
24 a couple of my clients that may occur that week in
25 terms of what day I leave, et cetera.

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1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER YAKI: If it is going to be
3 all on June 6th, that's fine. I'll just make my
4 travel arrangements accordingly. If it's going to be
5 June 5th, I have a lot of moving around to do.

6 CHAIRMAN REYNOLDS: Okay.

7 VICE CHAIR THERNSTROM: I have a question
8 on the statement of the Chairman, and you say that one
9 of the Commissioners raised the same question about
10 deviating from the OMB budget.

11 Is it fair to say that if we do so, that
12 our budget is dead on arrival, and you know, a ton of
13 bricks is going to land on us from the administration?

14 COMMISSIONER YAKI: Aren't they all
15 distracted by a marriage going on in Crawford this
16 weekend? Why don't we throw it in right now?

17 COMMISSIONER GAZIANO: This is
18 Commissioner Gaziano for those on the phone, anyway.

19 I think that's why Commissioner Taylor
20 asked for some review of the history, and I just want
21 to second his request for the review of the history.
22 I think that would include, in particular, years in
23 which the Commission deviated from the actual amount,
24 if that has occurred in the past. I understand that
25 it may have occurred in the past, and so a history of

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1 that might inform our discussion.

2 COMMISSIONER HERIOT: And the
3 consequences, what happened when we asked for more.
4 Did we actually get it or did we get clobbered?

5 COMMISSIONER GAZIANO: And one question.
6 When you're dead on arrival, Madam Chairman, usually
7 the reference they use to the Hill, the question is
8 whether this Commission has the authority to request
9 something independent of what OMB has agreed to.

10 CHAIRMAN REYNOLDS: That is the central
11 question.

12 VICE CHAIR THERNSTROM: Chairman Reynolds,
13 you have something to say. I also have a response to
14 that, but go on, please.

15 CHAIRMAN REYNOLDS: Oh, no. I finished my
16 statement.

17 VICE CHAIR THERNSTROM: You said that's
18 the question.

19 But our AIs require us to submit it to
20 OMB.

21 COMMISSIONER GAZIANO: I think we should
22 submit it through OMB. The question is what we submit
23 through OMB.

24 VICE CHAIR THERNSTROM: Yeah, I was just
25 about to say that, but if we reject the OMB

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1 recommendation, it's just going to come back on our
2 lap again, you know.

3 CHAIRMAN REYNOLDS: Isn't this a
4 conversation that we should have in June after we've
5 had the benefit of the staff's analysis of what we've
6 done in the past?

7 VICE CHAIR THERNSTROM: The only reason
8 for my bringing it up now is that you're in the midst
9 of having the conversation with the staff, and I'm a
10 little bothered by the prospect of delaying this
11 further.

12 I also have one other question, which is I
13 wonder if we couldn't in response to Commissioner
14 Taylor's very good request, I wonder if we couldn't
15 get that history before the June meeting so that we
16 can all stare at it and have, you know, some
17 familiarity here with the past process to guide us in
18 thinking about the current one.

19 So if that would be possible for the staff
20 to do -- Dr. Lerner just nodded his head -- and if
21 there's other information that it would be useful for
22 us to have before we actually have a discussion in
23 June, if you don't mind there will be a new Staff
24 Director to contact, but I think that it would
25 expedite and clarify the process if we have more

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1 information rather than less.

2 CHAIRMAN REYNOLDS: Agreed.

3 VICE CHAIR THERNSTROM: Well, let me now -

4 -

5 COMMISSIONER YAKI: This is Commissioner
6 Yaki again on the Staff Director's report.

7 VICE CHAIR THERNSTROM: Yes.

8 COMMISSIONER YAKI: I'd like reports about
9 the discovery request by the Veterans Administration
10 or Veterans Office on a complaint filed against us. I
11 heard that there is an EEO complaint filed against us
12 by somebody else, and I've also heard that we're in
13 the process of some additional hires. I'd like to
14 know what the status of those are.

15 VICE CHAIR THERNSTROM: I'm going to ask
16 David Blackwood to address the first issue.

17 MR. BLACKWOOD: This is David Blackwood.

18 Commissioner, I believe you're referring
19 to the Department of Labor Claim filed by Jack Daily
20 pursuant to the Veterans Employment Opportunities Act.

21 Mr. Daily did file a claim approximately six weeks
22 ago. That claim is now terminated. We received
23 notice just yesterday that Mr. Daily has elected to
24 pursue his claim before the Merit Systems Protection
25 Board.

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1 We have not received anything from the
2 MSPB. I will notify you when we do. At that point he
3 will presumably have to clarify his claims.

4 That's all I have.

5 COMMISSIONER YAKI: What about the
6 discovery requests --

7 MR. BLACKWOOD: Are moot.

8 COMMISSIONER YAKI: -- from DOL went
9 unanswered or what?

10 MR. BLACKWOOD: We filed a response
11 raising a question about the statute of limitations
12 inasmuch as a claim under the VEOA. The Veterans
13 Employment Opportunities Act must be filed within 60
14 days. We are now three years after the fact of Mr.
15 Daily's time here.

16 The Department of Labor refused to
17 respond. The time expired for an election, and Mr.
18 Daily has pursued his claim with the MSPB. Therefore,
19 the discovery was not responded to, and like I say --

20 COMMISSIONER YAKI: Well, I heard there's
21 an additional EEO complaint. Has that been filed by
22 somebody?

23 MR. BLACKWOOD: An additional EEO
24 complaint? There is Mr. Beatty who is now pursuing.
25 He is further down the EEO chain. He has filed with

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1 the EEOC.

2 COMMISSIONER YAKI: He's our former budget
3 something or other, right?

4 MR. BLACKWOOD: No, Tyro Beatty was the
5 former HR Director.

6 COMMISSIONER YAKI: Okay.

7 MR. BLACKWOOD: There is a potential
8 claim, but since it is a potential claim, I don't
9 think we should talk about it at this stage. When it
10 matures, we will, of course, report it if it's pursued
11 further.

12 COMMISSIONER YAKI: Can we get some
13 information about it at some point?

14 MR. BLACKWOOD: Yes.

15 COMMISSIONER YAKI: I mean, I'm really not
16 fond of the idea that someone may be suing us whether
17 it's in our individual or official capacities or what
18 have you, and we don't know about it until much
19 further down the chain.

20 I'd just like to know about these things.
21 That's all.

22 MR. BLACKWOOD: Well, the claim by Mr.
23 Daily has been communicated previously. It's in the
24 monthly report. The VEOA does not provide for any
25 individual liability. We will, of course, when the

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1 claim is filed -- and for the first time Mr. Daily
2 must detail his claims before an authority -- we will
3 provide to all the Commissioners.

4 VICE CHAIR THERNSTROM: Can we move on or
5 are you --

6 COMMISSIONER MELENDEZ: This is
7 Commissioner Melendez. I had one question having to
8 do with the budget. I recognize that we're talking
9 about the 2009 appropriation, but I still have
10 questions on where we stand today on the 2008.

11 I had requested in the past, recognizing
12 that we had far less money, something like 8.4 million
13 to operate in 2008, and that we were going to have to
14 make about 340,000 cuts to it this year, and we're
15 already just about halfway through the year, and I
16 still haven't seen anything as to how we were going to
17 revise the budget for operating for the rest of this
18 year.

19 So I think that's important. I'd like to
20 see something before the June meeting that kind of
21 addresses where those cuts for 340,000 would be
22 actually made or have they been made already.

23 COMMISSIONER YAKI: This is Commissioner
24 Yaki.

25 To add to that, the question that wasn't

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1 answered that I did ask had to do with are we in the
2 process of hiring any new people and what is the
3 status of that and what positions are they.

4 STAFF DIRECTOR LERNER: To my knowledge,
5 we're not hiring any new people, and I certainly
6 haven't signed off on any such things. So the answer
7 is no.

8 VICE CHAIR THERNSTROM: Does that satisfy
9 you?

10 COMMISSIONER MELENDEZ: Commissioner
11 Melendez.

12 If we can get something before the June
13 meeting on addressing 2008, that would satisfy me.

14 COMMISSIONER YAKI: So we're not in the
15 process of hiring anybody?

16 VICE CHAIR THERNSTROM: No. The Staff
17 Director just said we are not in the process of hiring
18 anybody.

19 COMMISSIONER YAKI: Okay.

20 VICE CHAIR THERNSTROM: So tell me again
21 what it is you would like.

22 COMMISSIONER MELENDEZ: Well, I had asked
23 in the past based on the fact that we had received 8.4
24 million, it seemed like we were anticipating something
25 like 8.8 million, which is nearly \$400,000 less to

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1 operate on this year. I had asked in the past what
2 were the revisions that we were going to make for this
3 year's 2008 budget to operate for the rest of the
4 year.

5 I haven't received anything throughout all
6 of those requests, and here we are halfway through the
7 year. I still don't know what the budget is going to
8 look like for the rest of the year as to how we made
9 those cuts.

10 VICE CHAIR THERNSTROM: Dr. Lerner.

11 COMMISSIONER YAKI: To echo Commissioner
12 Melendez's point, when this was reported to us late
13 last year or earlier this year by then Staff Director
14 Marcus, he painted a rather gloomy portrait of doom
15 regarding the Commission's ability to continue on its
16 agenda with regard to briefings and other items.

17 And I had asked this question before with
18 regard to impact on our ability to carry on briefings
19 et cetera because at the time the Staff Director
20 indicated that three or more briefings would have to
21 be cut, blah, blah, blah, blah, blah. So far nothing
22 like that has been done, and I'm just trying to figure
23 out, as is Commissioner Melendez. We don't want to be
24 heading toward any anti-deficiency issues, given the
25 fact that we don't know how exactly the Commission has

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1 dealt with this unexpected downturn in our
2 appropriations.

3 VICE CHAIR THERNSTROM: Okay. Dr. Lerner
4 is ready and eager to answer the question.

5 STAFF DIRECTOR LERNER: Yeah, this is Dr.
6 Lerner.

7 When the previous Staff Director outlined
8 his year's budget, he also made it clear that we could
9 meet the shortfall by not filling five positions --

10 COMMISSIONER YAKI: Just lost it. Hello,
11 sorry. Someone's Blackberry is going berserk over
12 there because it is completely interfering with this.
13 I don't know if the Chair is experiencing the same
14 interference as I am.

15 CHAIRMAN REYNOLDS: I am.

16 VICE CHAIR THERNSTROM: Yeah. No, we all
17 are. I will --

18 COMMISSIONER YAKI: But it's especially
19 bad. You can hear the buzz while you can still talk
20 to each other. When it comes over the phone line --

21 VICE CHAIR THERNSTROM: Yeah, I'm about to
22 look. I don't think it could be my Blackberry, and
23 I've had my Blackberry under the table, but I don't
24 know where my Blackberry is. Wait a minute. I think
25 it's over here.

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1 All right. We will move at least my
2 Blackberry from anywhere near. I have just moved my
3 Blackberry to way away from the chair. So maybe it
4 was mine and I can't find it even to turn it off. So
5 maybe that will solve the problem.

6 Where were we?

7 STAFF DIRECTOR LERNER: I was about the
8 respond to Commissioner Yaki's --

9 COMMISSIONER YAKI: I had heard Staff
10 Director said we could still and then blah, blah,
11 blah.

12 STAFF DIRECTOR LERNER: Thank you.

13 Let me actually fill this out now.
14 Essentially former Staff Director Marcus and our
15 Budget Officer Tina Martin went through our budget,
16 and it was ascertained that if we didn't, in fact,
17 make the five new hires that were originally proposed
18 as part of the 8.8 million budget request that we had
19 made for fiscal '08, that and a couple of other
20 savings, we would, in fact, be able to meet the 8.4
21 million budget that we have without any issues about
22 the Anti-deficiency Act, which I agree, by the way, is
23 a major problem, and it's one of the accomplishments
24 of my predecessor, if I could be so bold, is to say
25 that they managed not to do that in this particular

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1 administration.

2 Now, in addition to that, we have some
3 extra savings because, in fact, we didn't have a Staff
4 Director for about three months, and therefore, his
5 salary is part of what we have saved as well. But I
6 talked to our budget officer, Director of the Office
7 of Management Tina Martin, and as of last week we were
8 going very well, indeed, of meeting that budget target
9 of 8.4 million for the fiscal year.

10 COMMISSIONER YAKI: Okay.

11 COMMISSIONER GAZIANO: I just want to add
12 obviously when we are discussing the budget, I'd also
13 like to see some sort of general information on how
14 we're doing this year as well. I think we're going to
15 get to it later in the agenda, eliminating a September
16 briefing. I had hoped and stated in our March
17 briefing that we could still have one, and so I think
18 we may even take some action at this meeting to
19 eliminate that.

20 So I just appreciate updates, general
21 updates. This is probably for the next Staff
22 Director.

23 VICE CHAIR THERNSTROM: It is definitely
24 for the next Staff Director. This is our day to say
25 goodbye and thank you for Dr. Lerner.

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1 STAFF DIRECTOR LERNER: Thank you very
2 much.

3 VICE CHAIR THERNSTROM: Okay. Can we move
4 on so I can introduce the new staff director and we
5 can have a vote on his appointment?

6 V. CONCURRENCE WITH APPOINTMENT OF

7 MARTIN DANNENFELSER AS STAFF DIRECTOR

8 VICE CHAIR THERNSTROM: Those of you on the
9 phone, any problem with doing so?

10 (No response.)

11 VICE CHAIR THERNSTROM: Okay. On May 1st,
12 2008, the President of the United States announced his
13 intention to appoint Martin J. Dannenfelser, Jr. of
14 Virginia to be Staff Director for the U.S. Commission
15 on Civil Rights. Mr. Dannenfelser has been serving as
16 senior advisor to the Assistant Secretary at the
17 Administration for Children and Families at the
18 Department of Health and Human Services. Prior to
19 this he served as Deputy Assistant Secretary for
20 Policy and external affairs at the Administration for
21 Children and Families, the Department of Health and
22 Human Services.

23 Earlier in his career he served as a Vice
24 President of the family research council and in
25 various positions of the Office of Congressman

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1 Christopher Smith of New Jersey.

2 Pursuant to Section 4 of the Civil Rights
3 Commission Amendments Act of 1994, the Staff Director
4 of the Commission is appointed by the President with
5 the concurrence of the majority of the Commissioners.

6 I will call the name of each Commissioner
7 in order to determine if the majority of Commissioners
8 concur with this appointment.

9 Chairman Gerald Reynolds.

10 CHAIRMAN REYNOLDS: Aye. I support it.

11 VICE CHAIR THERNSTROM: Commissioner Todd
12 F. Gaziano.

13 COMMISSIONER GAZIANO: Aye.

14 VICE CHAIR THERNSTROM: Commissioner Pete
15 -- I never knew the middle initials of everybody
16 before, but here they are -- Commissioner N. Kirsanow.

17 COMMISSIONER KIRSANOW: Just N. Kirsanow?

18 (Laughter.)

19 COMMISSIONER KIRSANOW: I've been demoted.
20 I concur.

21 VICE CHAIR THERNSTROM: Oh, Peter. I left
22 you out.

23 COMMISSIONER KIRSANOW: You forgot my
24 name. What an affront.

25 VICE CHAIR THERNSTROM: It has not been an

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1 easy morning. Sorry about that.

2 Commissioner Peter N. Kirsanow.

3 COMMISSIONER KIRSANOW: Yes, I concur.

4 VICE CHAIR THERNSTROM: Commissioner Gail
5 L. Heriot.

6 COMMISSIONER HERIOT: I concur.

7 VICE CHAIR THERNSTROM: Commissioner Arlan
8 D. Melendez.

9 COMMISSIONER MELENDEZ: Madam Chair, I
10 would abstain mainly because I didn't really receive
11 this, his bio, until just not too long along, and I
12 wasn't really informed of his appointment till really
13 late. So no reflection of Mr. Dannenfelser. I think
14 he'll do a good job for us. I look forward to working
15 with him and especially on the budgets.

16 So thank you.

17 VICE CHAIR THERNSTROM: And I concur that
18 it is unfortunate that you didn't have these materials
19 before.

20 Commissioner Yaki, Michael Yaki.

21 COMMISSIONER YAKI: You're not going to do
22 my middle initial?

23 VICE CHAIR THERNSTROM: Well, I don't have
24 one in front of you, Commissioner Yaki.

25 COMMISSIONER YAKI: I'll give you leave to

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1 sort of make one up.

2 (Laughter.)

3 COMMISSIONER YAKI: For the same reasons
4 as Commissioner Melendez, I welcome Mr. Dannenfelser
5 to the Commission and I wish him the best of luck, but
6 because this was sort of sprung on us at the last
7 minute, I'm going to abstain.

8 VICE CHAIR THERNSTROM: Okay, and
9 Commissioner Ashley L. Taylor.

10 COMMISSIONER TAYLOR: I vote in the
11 affirmative.

12 VICE CHAIR THERNSTROM: And I do as well.
13 Obviously this is Vice Chair Abigail Thernstrom, and I
14 don't seem to have a middle initial though. I missed
15 one.

16 COMMISSIONER YAKI: Do you know yours?

17 VICE CHAIR THERNSTROM: I do know mine, my
18 maiden name.

19 COMMISSIONER HERIOT: Tell, tell.

20 VICE CHAIR THERNSTROM: Oh, it's a deep,
21 dark secret.

22 (Laughter.)

23 COMMISSIONER YAKI: Clinton.

24 VICE CHAIR THERNSTROM: No, it's Obama.

25 Okay. We have two abstentions and

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1 otherwise a unanimous support. So the yeas are Gerald
2 Reynolds, Todd Gaziano -- you'll forgive me if I leave
3 out the middle initials -- Peter Kirsanow, Gail
4 Heriot, Ashley Taylor, and myself, and the two
5 abstentions are Arlan Melendez and Michael Yaki.

6 And we welcome you to the Commission and
7 wish you the best of luck, especially dealing with the
8 budget of problems.

9 (Applause.)

10 VICE CHAIR THERNSTROM: So our
11 congratulations and I hope not our condolences.

12 MR. DANNENFELSER: Thank you very much. I
13 appreciate this, and I'm very honored by your support.

14 And I also wanted to just introduce my
15 wife Marjorie Dannenfelser who is here in the
16 audience.

17 Thank you very much.

18 VICE CHAIR THERNSTROM: Well, thank you
19 for coming, and I hope we'll see you at some future
20 meetings.

21 So next topic on the agenda, proposed
22 changes to the '08 briefing schedule.

23 VI. PROGRAM PLANNING, PROPOSED CHANGES TO

24 2008 BRIEFING SCHEDULE

25 VICE CHAIR THERNSTROM: At the March 7th

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1 meeting, the Commission voted to schedule encouraging
2 minority students to pursue careers in science,
3 technology, engineering and mathematics, to schedule
4 that briefing for July 11th, 2008, pending circulation
5 and approval of a concept paper. Commissioner Heriot
6 circulated her concept paper in advance of this
7 meeting on May 7th, 2008.

8 Can I have a motion that the Commission
9 approve that concept paper?

10 Did everybody get that concept paper?

11 COMMISSIONER MELENDEZ: I haven't received
12 it. This is Commissioner Melendez. If you could send
13 it again to me.

14 VICE CHAIR THERNSTROM: We'd be delighted
15 to since there was some delay here. It was sent by E-
16 mail. Let me get this straight.

17 COMMISSIONER YAKI: Well, I will vouch for
18 the fact that -- Commissioner Yaki -- I will vouch for
19 the fact that I've had a number of bounce-backs from
20 Commissioner Melendez's server over the past two
21 months, and sometimes I had to send stuff two and
22 three times in order for it to get through.

23 VICE CHAIR THERNSTROM: Well, are you
24 willing to let us go forward at this point to have a
25 motion to approve the concept paper? And I

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1 understand, Commissioner Melendez, you will have to
2 abstain since you haven't seen it, and we will make
3 sure it gets to you retroactively, as it were.

4 Can we do that?

5 COMMISSIONER YAKI: I'm not going to speak
6 on behalf of Commissioner Melendez. It's whatever --

7 VICE CHAIR THERNSTROM: No, I'm speaking
8 to Commissioner Melendez.

9 COMMISSIONER MELENDEZ: I had a question.
10 That's going to be in July and what was in July?
11 Another one to the end of the year or something?

12 VICE CHAIR THERNSTROM: I'm sorry. It was
13 a business meeting. I'm a little confused about the
14 calendar by this time, too. Business meeting, we were
15 going to discuss the statutory report and vote on it.
16 So it was a substitute for that.

17 COMMISSIONER GAZIANO: I thought in the
18 March meeting we had set July as the date for this
19 hearing.

20 COMMISSIONER HERIOT: Yeah.

21 VICE CHAIR THERNSTROM: That's what we're
22 saying.

23 COMMISSIONER GAZIANO: Sorry.

24 COMMISSIONER YAKI: I have a question. I
25 had heard rumors we were going to cancel September.

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1 Why don't we just put it in there?

2 COMMISSIONER HERIOT: That's the idea.

3 COMMISSIONER GAZIANO: I think that will
4 be in the next --

5 COMMISSIONER HERIOT: That's what we're
6 planning to do when we get through here.

7 VICE CHAIR THERNSTROM: Yeah. First we
8 have to approve the concept paper, and then we are
9 going to go on to the schedule. So we need a motion
10 to approve the concept paper before we go on to the
11 question.

12 COMMISSIONER HERIOT: I move that we
13 approve the concept paper and that we reschedule this
14 from July to September.

15 VICE CHAIR THERNSTROM: Do we have a
16 second on that?

17 COMMISSIONER KIRSANOW: Second.

18 COMMISSIONER YAKI: What?

19 VICE CHAIR THERNSTROM: The motion is from
20 Commissioner Heriot. We approve the concept paper and
21 move the briefing from July to September, but it is
22 two separate motions. It should be two separate
23 motions, I believe.

24 COMMISSIONER GAZIANO: Why does it need to
25 be?

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1 COMMISSIONER HERIOT: It doesn't need to
2 be two separate motions.

3 COMMISSIONER GAZIANO: Why does it need to
4 be?

5 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,
6 this is Commissioner Reynolds.

7 VICE CHAIR THERNSTROM: Yes.

8 CHAIRMAN REYNOLDS: I am going to get off
9 the phone at this point. I'm getting in the bed.

10 VICE CHAIR THERNSTROM: Feel better.
11 Don't infect too many people at your office.

12 CHAIRMAN REYNOLDS: I will try.

13 COMMISSIONER YAKI: You have a bed in your
14 office? What kind of place is that?

15 (Laughter.)

16 CHAIRMAN REYNOLDS: All right, Michael.
17 Take care.

18 COMMISSIONER HERIOT: Get better, Gerry.
19 Bye-bye.

20 VICE CHAIR THERNSTROM: All right. I have
21 just been told by the Staff Director, but I only could
22 understand half of what he said just because there was
23 other interference, that we really should have two
24 motions here.

25 COMMISSIONER YAKI: Well, the Chair is

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1 gone. So I just want to know who's leading the coup.

2 VICE CHAIR THERNSTROM: Who's leading the
3 coup?

4 COMMISSIONER YAKI: Yes. I mean are you
5 leading the coup, Abby? The Chair is no longer here.

6 VICE CHAIR THERNSTROM: Would you like to
7 lead the coup?

8 COMMISSIONER YAKI: I have led so many in
9 my life it's almost old hat.

10 VICE CHAIR THERNSTROM: It suits you.
11 I've led a lot in my life, too, Michael Yaki.

12 COMMISSIONER YAKI: I'm sure you have.

13 VICE CHAIR THERNSTROM: They're not quite
14 the same coups.

15 COMMISSIONER MELENDEZ: This is
16 Commissioner Melendez again. I think this discussion
17 also ties into the budget for the remainder of the
18 year and how can we talk about additional briefings
19 when we don't even know where we are financially?

20 VICE CHAIR THERNSTROM: I don't believe
21 there are any budgetary implications if we cancel a
22 briefing and replace it with another one.

23 So let's divide this as we originally
24 planned into two motions. Commissioner Heriot, please
25 make the first motion, which is the first half of your

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1 motion, approving the concept paper.

2 COMMISSIONER MELENDEZ: Can I ask a
3 question, please?

4 VICE CHAIR THERNSTROM: Yes.

5 COMMISSIONER MELENDEZ: Mr. Melendez.

6 Can Ms. Heriot kind of just briefly
7 summarize what it is, the concept paper, even though I
8 don't know? I haven't seen it.

9 COMMISSIONER HERIOT: Can we just E-mail
10 it to you?

11 VICE CHAIR THERNSTROM: Well, he's not
12 going to get it in time. He'd like to vote on it.

13 COMMISSIONER HERIOT: Okay. Well, it's
14 the same thing we were talking about in the March
15 meeting. This would be a briefing on math and
16 science. What I've titled it is "Encouraging Minority
17 Students to Pursue Careers in Science, Technology,
18 Engineering, and Math."

19 The idea is that there is no better ticket
20 into the middle class than a degree in math, science,
21 engineering, or math. There are lots of jobs in these
22 areas. The problem is that among the black and
23 Hispanic students who express an interest in majoring
24 in math, science, engineering or technology, they drop
25 out. They fail to pursue that ambition in larger

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1 numbers than white or Asian students do.

2 And the question then becomes why. What
3 is it about black and Hispanic students that causes
4 them to drop their desire to major in this area more
5 often than other students do?

6 And Rogers Elliott, Christopher Strenta
7 and their co-authors have done a study which suggests
8 that mismatch may play a role in this, that students
9 who are getting racial preferences in admissions to
10 colleges will tend to have entering credentials in the
11 bottom part of the class.

12 COMMISSIONER YAKI: Stop.

13 COMMISSIONER HERIOT: And all students in
14 the bottom part of the class tend to shy away from
15 these majors. What Elliott, et al., found was that
16 it's not a matter of individual credentials. It's not
17 simply a matter of lack of preparation, bur rather
18 it's a function of mismatch, and that's why
19 historically black colleges and universities tend to
20 do very well. They turn out more than their
21 proportionate share of math and science majors.

22 VICE CHAIR THERNSTROM: I'd like to just
23 slightly amend that description. Commissioner Heriot
24 said what is it about these students, and I'd like
25 that part what is it about the experience of these

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1 students.

2 COMMISSIONER HERIOT: Friendly amendment.

3 VICE CHAIR THERNSTROM: And so you know,
4 otherwise I'm fine with that description.

5 Are there any reactions?

6 COMMISSIONER YAKI: This is Commissioner
7 Yaki.

8 VICE CHAIR THERNSTROM: You have to speak
9 up, Michael. I'm sorry.

10 COMMISSIONER YAKI: This is Commissioner
11 Yaki.

12 VICE CHAIR THERNSTROM: I love that new
13 voice. I hope you bring it here to the Commission
14 meetings as well.

15 Go ahead.

16 COMMISSIONER YAKI: I want to ask what
17 it's doing for you, Madam Chair.

18 (Laughter.)

19 COMMISSIONER GAZIANO: I don't know for
20 her, but it's the kind of dark, Vaderesque counsel
21 that I appreciate.

22 COMMISSIONER YAKI: Todd, I am your
23 father.

24 (Laughter.)

25 VICE CHAIR THERNSTROM: Say it isn't so.

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1 COMMISSIONER YAKI: My concern about this,
2 I mean, I have many concerns about it, but --

3 VICE CHAIR THERNSTROM: Now, that's a big
4 surprise.

5 COMMISSIONER YAKI: -- in terms of just
6 Commission resources and procedure, this seems to be
7 very much along the lines of a briefing we did last
8 year with Richard Sander on law school admissions. We
9 have a lot of other priorities that have been in the
10 pipeline that have been pushed back to '09, pushed
11 back even to '10. My concern is I have a concern
12 about the content obviously. I have concerns about
13 the scholarship of Mr. Sander, and even though I know
14 that this vote -- would someone please shut off their
15 freaking Blackberry?

16 VICE CHAIR THERNSTROM: You know, there's
17 no Blackberry anywhere near this --

18 COMMISSIONER YAKI: Well, if anyone has a
19 phone that transmits E-mail, that will do it.

20 VICE CHAIR THERNSTROM: Yeah. I've moved
21 my -- no, I don't have a phone that transmits E-mail,
22 and I've moved everything very far away.

23 COMMISSIONER YAKI: I've shut off
24 everything where I am.

25 I have obviously problems with the

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1 content. I have problems with Sander's methodology,
2 and even though I know I'm going to lose on this vote,
3 I would hope that the panel would be balanced with
4 views of those who would not agree with Elliott and
5 Sander, et cetera, number one.

6 Number two, again, I think that I'm not
7 going to vote against this. I will abstain. I
8 believe that Commissioner Heriot and Commissioner
9 Gaziano to me made an argument that they have -- this
10 is something that as newer Commissioners they would
11 like to see. I know this is not Commissioner
12 Gaziano's. He made that clear last night, but in
13 terms of Commissioner Heriot being newer on the
14 Commission, having a right to present this, I will not
15 stand in the way by voting no, but I would hope that
16 the briefing would be balanced, and I just wanted to
17 state for the record that in the context of our
18 overall budget and our overall planning, you know,
19 this issue has been dealt with before as recently, I
20 think, as last year, although I don't know how long
21 the backlog is on some of our reports, and that there
22 are other issues that cry out for the Commission to
23 look at.

24 You know, I have concerns about the role
25 the media has played with regard to race in the

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1 presidential election. I know that will not get done
2 before November, and I'm a realist in that, but I
3 understand that this is something that Commissioner
4 Heriot feels passionately about. It will go forward.
5 I hope it is balanced, but I hope everyone understands
6 the context in which this is being done and how many
7 other, I think, very worthy items of Commissioner
8 scrutiny are still languishing at the bottom of some
9 heap somewhere when we are taking something that has
10 already had a fair amount of exposure, the so-called
11 mismatch theory and report that was released as
12 recently as the end of last year.

13 VICE CHAIR THERNSTROM: Commissioner
14 Taylor has something to say. Let me just say first I
15 will be adamant on the question of a balanced panel.
16 I feel, as you know, very, very strongly about that
17 issue in general, and I agree that there are a lot of
18 other topics that we could address, and I hope we're
19 going to find a way of somehow adding to the list of
20 briefings.

21 But Commissioner Taylor.

22 COMMISSIONER TAYLOR: I don't want to
23 belabor this too much. I want us to get to a vote
24 quickly, but beyond extending the privilege to the
25 fellow Commissioners, particularly the folks that are

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1 new and haven't had a chance to offer briefings in
2 areas that interest them, I think it's critical with
3 respect to the black middle class in asking this
4 question as to why the students are either -- for
5 whatever reason -- I won't characterize the reason --
6 but falling away at some point in the process when
7 they had expressed an interest in the hard sciences
8 early on.

9 Commission Yaki, I don't think it's ground
10 that we're going to replot because, to your point
11 about having a balanced panel, I want to hear a
12 panelist who disagrees on the mismatch theory explain
13 why they are falling away. If not by way of mismatch,
14 I want to know why they're falling away, and if
15 there's a different view on that, I want to make sure
16 that person is at the table.

17 And I support your position, and this will
18 not be, and I will do my best to make sure it's not
19 simply narrow focus. I want to hear that contrary
20 view, not an argument about mismatch, but if the
21 person says mismatch is not the reason, I want an
22 explanation as to what is going on and why the HBCUs
23 seem to be getting it right.

24 So I think it's an important issue.

25 COMMISSIONER YAKI: This is Commission

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1 Yaki again.

2 I think there is one other issue that I had,
3 and it has nothing to do with anything other than
4 timing, which is this is obviously a briefing that I
5 wish to attend, and I have a -- I think July is way
6 too early to get that kind of good panel obviously to
7 put it all together. September would obviously be
8 better towards accommodating that.

9 I have a possible looming conflict on the
10 12th and was wondering if there was any reason to go
11 in October rather than September.

12 VICE CHAIR THERNSTROM: In October rather
13 than September. I don't remember what we've got
14 scheduled for October.

15 COMMISSIONER YAKI: We just have a
16 business meeting scheduled for October. So we slipped
17 the business meeting to September, which would be
18 after our August non--

19 COMMISSIONER GAZIANO: Well, we have some
20 budget issues regarding --

21 VICE CHAIR THERNSTROM: Yes.

22 COMMISSIONER YAKI: I mean I would have
23 liked to have had a briefing in July and September,
24 but if we --

25 VICE CHAIR THERNSTROM: No, but there's

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1 another point.

2 COMMISSIONER YAKI: I understand that's
3 not going to happen, but if we postpone this until
4 October --

5 VICE CHAIR THERNSTROM: We can't do that,
6 Commissioner Yaki, because this has got to be within
7 this fiscal year. Can we look at another date in
8 September, if that's problematic for you? Because we
9 can't go over into the next fiscal year.

10 COMMISSIONER YAKI: Oh, I forgot, I keep
11 on --

12 VICE CHAIR THERNSTROM: And, by the way, I
13 want to add on this question of mismatch, it may well
14 be that we will come out of this briefing with quite a
15 strong consensus that the problem is in the K through
16 12 education rather than the primary explanation being
17 a mismatch.

18 I mean I would certainly myself go into this
19 briefing eager to explore the issue with some
20 intellectual integrity, but anyway, can we talk? If
21 you can't make that September date, do you know that
22 you can't make that September date or is that just
23 simply a possibility?

24 COMMISSIONER YAKI: It's a possibility at
25 this point. I'll know better by the next meeting. So

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1 I would just --

2 VICE CHAIR THERNSTROM: All right. So can
3 we just postpone the question with the understanding -
4 -

5 COMMISSIONER YAKI: Yeah, that's fine.

6 VICE CHAIR THERNSTROM: -- that we have to
7 make it in --

8 COMMISSIONER YAKI: Abigail, that is fine.

9 VICE CHAIR THERNSTROM: Good. I'm not
10 sure I know how to change my voice, but I'm -- great.

11 And as long as the staff can treat it that
12 way, that's fine evidently, as long as the staff
13 understands it will be some time in September, but we
14 have not had yet a motion.

15 COMMISSIONER GAZIANO: I think we do have
16 a motion pending.

17 COMMISSIONER HERIOT: There is a motion.
18 It's the double motion.

19 VICE CHAIR THERNSTROM: We have a motion
20 pending?

21 COMMISSIONER GAZIANO: The contact paper
22 and to move it to September.

23 COMMISSIONER YAKI: I thought we had two
24 motions.

25 VICE CHAIR THERNSTROM: Yeah, we were

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1 going to change it --

2 COMMISSIONER HERIOT: It's one motion.

3 VICE CHAIR THERNSTROM: -- to two motions.

4 COMMISSIONER HERIOT: But that hasn't
5 happened. Nobody said --

6 COMMISSIONER YAKI: The first motion is to
7 accept the contact paper.

8 VICE CHAIR THERNSTROM: The first motion
9 is to accept the contact paper. Am I wrong that --

10 COMMISSIONER HERIOT: We have the double
11 motion on the table.

12 VICE CHAIR THERNSTROM: I'm being told once
13 again that it would be a lot easier if we could
14 separate those two.

15 COMMISSIONER HERIOT: Why?

16 COMMISSIONER TAYLOR: By way of just
17 moving us along, can I offer a substitute motion that
18 we approve the concept paper?

19 COMMISSIONER GAZIANO: Second.

20 COMMISSIONER TAYLOR: Madam Chair, may we
21 have a vote?

22 VICE CHAIR THERNSTROM: Yeah, let's have a
23 vote on this approving the concept paper. All in
24 favor, please say aye.

25 (Chorus of ayes.)

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1 VICE CHAIR THERNSTROM: Nays or
2 abstentions?

3 COMMISSIONER YAKI: I'm voting no.

4 VICE CHAIR THERNSTROM: That's
5 Commissioner Yaki voting not.

6 COMMISSIONER MELENDEZ: Abstaining,
7 Melendez.

8 VICE CHAIR THERNSTROM: Melendez is
9 abstaining.

10 COMMISSIONER TAYLOR: The second motion,
11 Madam Chair, that we tentatively place this for our
12 September 12th meeting, with the understanding that
13 Commissioner Yaki's schedule may become clear at the
14 next meeting and so we may move it, but the staff
15 should be preparing for this for the September
16 meeting.

17 COMMISSIONER HERIOT: Second.

18 VICE CHAIR THERNSTROM: Wait a minute.

19 COMMISSIONER YAKI: And that we have a
20 briefing.

21 VICE CHAIR THERNSTROM: We have to have a
22 motion that the Commission cancel its September 12th
23 briefing on religious discrimination in the workplace,
24 and instead schedule the briefing entitled
25 "Encouraging Minority Students to Pursue Careers in

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1 Science, Technology" --

2 COMMISSIONER TAYLOR: I accept that by way
3 of a friendly amendment.

4 COMMISSIONER HERIOT: Accepted as a
5 second.

6 VICE CHAIR THERNSTROM: Okay. The motion
7 then should read I move that the Commission cancel its
8 September 12, 2008 briefing on religious
9 discrimination in the workplace and instead schedule
10 the briefing titled Encouraging Minority Students to
11 Pursue Careers in Science, Technology, Engineering and
12 Mathematics for September 12th, 2008, with the
13 understanding that the September 12th, that precise
14 date, may be altered in the future.

15 COMMISSIONER HERIOT: Call the question.

16 VICE CHAIR THERNSTROM: So we got a second
17 on that?

18 COMMISSIONER HERIOT: Yes, I seconded.

19 COMMISSIONER MELENDEZ: Question.

20 VICE CHAIR THERNSTROM: Yes.

21 COMMISSIONER MELENDEZ: Commissioner
22 Melendez.

23 Where does religion in the workplace -- is
24 that moved to somewhere else or is it just canceled?

25 VICE CHAIR THERNSTROM: It's canceled in

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1 the language here.

2 COMMISSIONER MELENDEZ: Okay. I'm very
3 interested in that subject, but I hope we can put it
4 back on somewhere in the future.

5 COMMISSIONER HERIOT: We're leaving open
6 that possibility.

7 VICE CHAIR THERNSTROM: Yeah, we are
8 leaving open that possibility. We have yet to
9 schedule or to figure out the precise further
10 briefings.

11 COMMISSIONER MELENDEZ: Okay.

12 COMMISSIONER YAKI: Well, I would like
13 then to amend. This is Commissioner Yaki. I would
14 like to see the religious discrimination in the
15 workplace put on the briefing schedule for 2009.

16 VICE CHAIR THERNSTROM: Would you not be
17 willing to wait until we go over the briefing, the
18 entire briefing schedule for 2009 rather than take
19 this one topic and --

20 COMMISSIONER YAKI: I would object. I
21 believe that this was something that the Commission
22 voted on and approved for putting on there. If we
23 need to move it to accommodate the briefing by
24 Commissioner Heriot, I would simply ask that it's
25 reasonable instead of canceling it to simply remove it

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1 from the schedule and reschedule it at an appropriate
2 time in the 2009 fiscal year.

3 COMMISSIONER MELENDEZ: I would agree with
4 that. Commissioner Melendez.

5 VICE CHAIR THERNSTROM: Well, we've got a
6 motion on the table. That is a friendly --

7 COMMISSIONER GAZIANO: I'm sorry. I
8 thought we already voted on moving it to September.
9 This is --

10 COMMISSIONER YAKI: That was never --

11 COMMISSIONER GAZIANO: It didn't sound
12 like a motion to me, Madam Chairman. It sounded like
13 Commissioners Yaki and Melendez were expressing a
14 preference.

15 COMMISSIONER HERIOT: We haven't voted.

16 VICE CHAIR THERNSTROM: We have not voted.

17 COMMISSIONER GAZIANO: Oh, we haven't?
18 I'm sorry.

19 COMMISSIONER HERIOT: I call the question
20 on Ashley's motion.

21 VICE CHAIR THERNSTROM: We're calling the
22 question on Ashley's motion.

23 COMMISSIONER TAYLOR: As amended.

24 VICE CHAIR THERNSTROM: As amended. Do
25 you want to restate it once again?

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1 COMMISSIONER HERIOT: You just did.

2 VICE CHAIR THERNSTROM: I restated it.
3 Okay. All in favor.

4 (Chorus of ayes.)

5 COMMISSIONER TAYLOR: Have we considered
6 2009?

7 COMMISSIONER HERIOT: Sure, because --

8 COMMISSIONER GAZIANO: Okay. So what --

9 VICE CHAIR THERNSTROM: Wait a minute,
10 wait a minute. I have not heard -- I've got the ayes.
11 I have not heard from those on the phone as to how
12 they're voting.

13 COMMISSIONER MELENDEZ: Could you restate
14 the motion?

15 VICE CHAIR THERNSTROM: Okay.
16 Commissioner Taylor moved that the Commission cancel
17 its September 12th, 2008 briefing on religious
18 discrimination in the workplace and instead schedule
19 the briefing entitled "Encouraging Minority Students
20 to Pursue Careers in Science, Technology, Engineering
21 and Mathematics" for the September 12th, 2008 meeting.

22 So that is the entire motion. We can
23 then --

24 COMMISSIONER HERIOT: Do you understand
25 it?

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1 VICE CHAIR THERNSTROM: With the
2 understanding that the September date, the September
3 12th date may be moved within the month of September.

4 Now, that is the motion on the table. The question
5 has been called. We have got a vote from everybody
6 except Commissioners Yaki and Melendez on that motion.

7 COMMISSIONER MELENDEZ: I abstain.

8 COMMISSIONER YAKI: I abstain also.

9 I'd like to now add a motion that the
10 canceled briefing of religious discrimination in the
11 workplace be placed on the calendar for a briefing in
12 the 2009 fiscal year briefing schedule.

13 VICE CHAIR THERNSTROM: Do we have a
14 second on that?

15 COMMISSIONER MELENDEZ: I second that.
16 Melendez.

17 VICE CHAIR THERNSTROM: So any discussion
18 on that?

19 COMMISSIONER HERIOT: What does that mean
20 to put it on the briefing schedule?

21 COMMISSIONER GAZIANO: I think that means
22 we commit to doing it some time in 2009, and I'm not
23 prepared to commit --

24 COMMISSIONER HERIOT: We don't have the
25 competing ideas.

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1 COMMISSIONER GAZIANO: -- to doing --
2 yeah, I'm not prepared to vote to commit to doing that
3 in 2009.

4 I also want the record to reflect I don't
5 think that Commissioner Yaki meant to include -- that
6 I voted for this briefing which we've now set for
7 September on its merits and not because it was based
8 on any particular Commissioner's turn to have a
9 briefing. So --

10 COMMISSIONER YAKI: Now, Commissioner
11 Gaziano, you're wrong. That's exactly what I said.

12 COMMISSIONER GAZIANO: Well, okay. Then I
13 take -- I differ with you on why I voted that way.

14 COMMISSIONER YAKI: I'm sure we do.

15 VICE CHAIR THERNSTROM: Look. There is an
16 important point here. I believe is it correct we've
17 only got at the moment budgetary -- given our
18 budgetary constraints, we are only having four
19 briefings in '09, and the question is do we really
20 want to settle on any one topic before we now have --

21 COMMISSIONER HERIOT: Put it on the list
22 that we consider when we consider them all.

23 VICE CHAIR THERNSTROM: Yeah, beyond
24 simply on the list that we consider as part of our
25 overall planning?

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1 COMMISSIONER GAZIANO: Sure. That's going
2 to be my ground for voting against the pending motion.

3 I'm just explaining that I'm not necessarily going to
4 vote for it or against it later, but I intend to vote
5 against the pending motion at this time to commit us
6 to any particular topic, especially before we've
7 decided on the budget amount.

8 We're going to discuss in June what amount
9 we're going to request --

10 VICE CHAIR THERNSTROM: Exactly.

11 COMMISSIONER GAZIANO: -- from Congress,
12 and that seems to me to be somewhat relevant to how
13 many briefings we have and what --

14 COMMISSIONER TAYLOR: Madam Chair, point
15 of clarification.

16 VICE CHAIR THERNSTROM: Yes.

17 COMMISSIONER TAYLOR: Commissioner Yaki,
18 is it your intention by this vote that we are voting
19 to hold this as one of our briefings in '09, our
20 fiscal year '09 briefing or that we consider this
21 before we make a final determination as to what
22 briefings will be held in the fiscal year?

23 VICE CHAIR THERNSTROM: I think it's the
24 former, is it not?

25 COMMISSIONER GAZIANO: Let him respond.

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1 COMMISSIONER YAKI: I think that
2 Commissioner -- I think I would agree with
3 Commissioner Melendez that this was something that was
4 approved by the entire Commission, that it would seem
5 important enough in terms of its scope, variety, in
6 terms of topics that we look at, that it seemed worthy
7 of Commission review, and that in that situation if we
8 are going to remove it from the calendar for the
9 purposes of placing another briefing on, that we
10 accommodate the fact that it had previously enjoyed a
11 vote of the Commission and that absent any compelling
12 reason to release it from its priority, I think that
13 it should be one of the four briefings for 2009.

14 COMMISSIONER TAYLOR: Commissioner Yaki, I
15 am with the government, and I am here to help. I have
16 a substitute motion which actually is friendly. It
17 may not sound friendly, but, Madam Chair, I would
18 substitute the following motion: that we place this
19 briefing on religious discrimination in the workplace
20 as a topic to consider for briefings in fiscal year
21 '09 at the same time we consider other briefings, but
22 that we explicitly put this on the list of those that
23 should be considered before we make a final decision.

24 COMMISSIONER YAKI: Commissioner Taylor, I
25 would not consider that a friendly amendment. I would

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1 consider that a hostile takeover. The fact is that in
2 the past, in 2006 and 2007, when we have had briefings
3 that have been approved by majority, actually
4 unanimous votes of the Commission in terms of
5 accepting briefing schedules, when changes were made
6 unless someone who had originally sponsored one
7 voluntarily decided to change it, we had simply moved
8 it, moved it down the pipe from 2006 to 2007, et
9 cetera and to 2008.

10 Actually I can point to briefings in 2006
11 and 2007 that were moved for various reasons, other
12 pressing issues, what have you, from the previous
13 year, but they kept their priority as previously voted
14 upon by the Commission.

15 VICE CHAIR THERNSTROM: Yeah, Commissioner
16 Yaki, you know, we need -- you're into a discussion of
17 this, and we never had a second on Commissioner
18 Taylor's motion. Could you just hold it a minute and
19 let's see if we've got a second on that motion?

20 (No response.)

21 VICE CHAIR THERNSTROM: There's dead
22 silence in this room.

23 COMMISSIONER GAZIANO: The motion dies.

24 VICE CHAIR THERNSTROM: The motion, it has
25 just died Commissioner Yaki.

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1 COMMISSIONER GAZIANO: If there has been
2 sufficient discussion on Mr. Yaki's motion, I'd like
3 to call the question.

4 VICE CHAIR THERNSTROM: Restate the
5 motion, please, Commissioner Yaki.

6 (Pause in proceedings.)

7 VICE CHAIR THERNSTROM: Commissioner Yaki,
8 Commissioner Taylor's motion has died, his friendly
9 amendment. Could you restate your original motion?

10 COMMISSIONER YAKI: My original motion was
11 that the briefing on religious discrimination in the
12 workplace be placed for briefing during the 2009
13 fiscal and operational year, period.

14 VICE CHAIR THERNSTROM: We've got a second
15 on that? Did we have a second before?

16 COMMISSIONER YAKI: I'm pretty sure
17 Melendez seconded.

18 COMMISSIONER MELENDEZ: Yeah, I seconded.

19 VICE CHAIR THERNSTROM: You did second it.
20 That's correct.

21 So now we're into discussion. I'm sorry.
22 Let's have a vote on that. All in favor.

23 COMMISSIONER KIRSANOW: We need
24 discussion.

25 COMMISSIONER GAZIANO: We had a

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1 discussion. It's a further discussion?

2 (No response.)

3 VICE CHAIR THERNSTROM: I'm calling for a
4 vote. We've had a discussion. All those in favor.

5 (Chorus of ayes.)

6 VICE CHAIR THERNSTROM: All those opposed?

7 COMMISSIONER GAZIANO: Opposed or nay.

8 COMMISSIONER HERIOT: Nay.

9 COMMISSIONER TAYLOR: Nay.

10 VICE CHAIR THERNSTROM: Two nays, three
11 nays.

12 I'm abstaining. We've got three nays.
13 How many ayes? I'm sorry.

14 COMMISSIONER KIRSANOW: Three.

15 COMMISSIONER HERIOT: Three. It fails.

16 VICE CHAIR THERNSTROM: It fails.

17 COMMISSIONER HERIOT: Three, three.

18 COMMISSIONER YAKI: I'm changing my vote
19 to a nay so that I can move for reconsideration at the
20 next meeting when the Chair is back.

21 VICE CHAIR THERNSTROM: Okay.

22 COMMISSIONER GAZIANO: You could
23 reconsider anyway, Michael, but sure.

24 VICE CHAIR THERNSTROM: Yeah, I mean,
25 Michael --

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1 COMMISSIONER HERIOT: We're not against
2 considering it in the future.

3 VICE CHAIR THERNSTROM: Nobody is against
4 reconsidering this in the future. The only opposition
5 -- nobody is against this topic. The only opposition
6 was giving it a privileged status.

7 COMMISSIONER YAKI: Well, in the past when
8 we have had to kick a briefing off for time, budget or
9 other pressing issues that came on --

10 VICE CHAIR THERNSTROM: I understand your
11 point. I understand your point.

12 COMMISSIONER YAKI: -- we kicked them back
13 to the follow fiscal year. This is a change. This is
14 a change in precedence in terms of how the Commission
15 has operated in terms of how it has worked.

16 VICE CHAIR THERNSTROM: Well, this has
17 failed, Michael. I don't think the discussion should
18 continue.

19 COMMISSIONER YAKI: Like I said, I change
20 my vote to a nay for the purpose of moving for
21 reconsideration at --

22 VICE CHAIR THERNSTROM: You can move for
23 reconsideration without any -- you know, nothing is
24 stopping you from moving --

25 COMMISSIONER YAKI: I have to be on the

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1 prevailing side in order to move for reconsideration.

2 VICE CHAIR THERNSTROM: Okay.

3 COMMISSIONER YAKI: I'm changing my vote
4 to a nay.

5 VICE CHAIR THERNSTROM: Okay.

6 COMMISSIONER YAKI: I will do so at the
7 next meeting.

8 VICE CHAIR THERNSTROM: All right.
9 Commissioner Yaki has changed his vote to a nay.

10 All right. We're on to the briefing
11 report on voter fraud and voter intimidation.

12 VI. PROGRAM PLANNING, BRIEFING REPORT ON
13 VOTER FRAUD AND VOTER INTIMIDATION

14 VICE CHAIR THERNSTROM: So Part A of the
15 report reflects the Commissioner and panelist input on
16 the briefing the Commission held on October 13th,
17 2006, on voter fraud and voter intimidation, Part A,
18 is distributed in draft form to Commissioners on
19 February 11th, 2008, and as amended to include changes
20 by Commissioners as of April 18th, 2008, contains a
21 briefing overview, summary of the issue, and why the
22 Commission chose to conduct a briefing, summary of the
23 proceedings consisting of synopses of the panelists'
24 oral statements during the briefing, and a synopsis of
25 the question and answer questions and copies of the

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1 panelists' written statements.

2 Can I have a motion that the Commission
3 approve for publication, along with any concurring and
4 dissenting statements submitted by any Commissioner by
5 May 23rd, 2008?

6 Under this motion if the majority of the
7 Commission votes to adopt Part A of the briefing
8 report, the Commission will then open discussion on
9 Part B.

10 If Part A fails to obtain the majority of
11 votes, discussion of Part B obviously becomes moot.
12 This bifurcated vote is taken pursuant to the policy
13 adopted by Commissioners at the April 13th, 2007
14 business meeting.

15 So I need a motion on Part A.

16 COMMISSIONER GAZIANO: I so move.

17 COMMISSIONER KIRSANOW: Second.

18 VICE CHAIR THERNSTROM: Okay. Any
19 discussion of approving Part A, when obviously, once
20 again, the concurring and dissenting statements can
21 still come in?

22 (No response.)

23 VICE CHAIR THERNSTROM: No discussion? I
24 hear no discussion. So let's have a vote. All in
25 favor?

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1 COMMISSIONER YAKI: Wait, wait. My mute
2 button was on and I couldn't find it. I know many of
3 you would like to find my mute button.

4 VICE CHAIR THERNSTROM: We could just put
5 ours on here, Commissioner Yaki.

6 COMMISSIONER YAKI: You can just close
7 your ears because I'm about to talk right now.

8 I had serious concerns about this briefing
9 as it was put together, and I think that part of those
10 concerns were, at the time, enunciated strongly enough
11 that --

12 VICE CHAIR THERNSTROM: I'm sorry. Were
13 what strongly enough?

14 COMMISSIONER YAKI: Enunciated strongly
15 enough --

16 VICE CHAIR THERNSTROM: Enunciated, okay.

17 COMMISSIONER YAKI: -- to the Staff
18 Director that there was some noticeable changes in
19 briefings after that because I did not believe at the
20 time that this was a balanced panel by any stretch of
21 the imagination. We had only one speaker who was
22 concerned with the issue of voter intimidation, and
23 that was Ms. Donna Brazile, and we had two speakers on
24 voter fraud identification. That was Hearn and Fund,
25 and one for the national ID card, Pastore.

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1 I expressed my concern privately to the
2 Chair that this was an unbalanced panel, that the
3 issue of voter intimidation which is something that I
4 expressed during the hearing is something that I am
5 quite familiar with from doing voting monitoring in
6 the southwest and in Southern California, did not
7 receive a proper placement at this briefing, and --

8 VICE CHAIR THERNSTROM: But wait a minute.
9 What is the relevance of this point in terms of --

10 COMMISSIONER YAKI: Well, I think the
11 relevance is that I don't believe this briefing
12 complied with AI Instruction 1-6, and I'd like to know
13 how this report allegedly did comply with the
14 Administrative --

15 VICE CHAIR THERNSTROM: I don't see the
16 relevance of this. We have held the briefing. The
17 question is now the shape of the report on the
18 briefing.

19 COMMISSIONER YAKI: Well, I'm saying that
20 the shape of the report is illegitimate because of the
21 failure to comply with the AI in its formation and --

22 VICE CHAIR THERNSTROM: But we cannot hold
23 the briefing again.

24 COMMISSIONER YAKI: Pardon?

25 VICE CHAIR THERNSTROM: We can't hold the

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1 briefing again, and we do not have in our Part A
2 reports that express the views of people who did not
3 testify at the briefing so that we're not wandering
4 all over the map on subjects and they don't become
5 simply political or academic exercises, more likely
6 academic.

7 COMMISSIONER YAKI: Well, I know, but Part
8 A included -- because I felt that there was -- and, by
9 the way, one of the things that kind of drives me
10 crazy about when we get stuff is when we get stuff in
11 drips and drabs, and this is something where we
12 received the findings, but the entire report I had to
13 then go pull back from E-mails several months back in
14 order to try and find it, you know --

15 VICE CHAIR THERNSTROM: Well, I would like
16 at a future meeting to discuss that issue.

17 COMMISSIONER YAKI: -- which is an issue
18 when you don't have a special assistant.

19 VICE CHAIR THERNSTROM: No, it's --

20 COMMISSIONER YAKI: But I --

21 VICE CHAIR THERNSTROM: It's an issue of
22 short staffing.

23 COMMISSIONER YAKI: To me this goes to the
24 integrity of what these briefing reports are, which
25 has I have said all along I believe that briefing

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1 reports have very little integrity. I believe that
2 they brief the Commission on --

3 VICE CHAIR THERNSTROM: Michael, you're
4 just way off the question here.

5 COMMISSIONER YAKI: -- about points --
6 support other questions or information, but are not
7 and cannot be the final pronouncements on matters and
8 key issues where we refuse to exercise --

9 VICE CHAIR THERNSTROM: Michael, this is a
10 discussion in another context. It is not a discussion
11 that is pertinent to voting on Part A.

12 COMMISSIONER YAKI: I absolutely believe
13 it does because it goes to the legitimacy of this
14 report, and I am expressing my concern about the
15 legitimacy of the findings and recommendations of this
16 report given the fact that we did not follow our
17 administrative instructions and did not have a
18 balanced panel.

19 Some people are trying to move to strike a
20 recommendation that or finding that I actually find
21 to be quite appropriate.

22 VICE CHAIR THERNSTROM: Well, we are going
23 to go through --

24 COMMISSIONER YAKI: And which I had raised
25 during this, and if the answer is, well, it wasn't

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1 adequately covered, my answer back is that of course
2 it was not adequately covered. We didn't have a
3 balanced panel that would allow all aspects of it to
4 have been covered.

5 COMMISSIONER GAZIANO: Madam Chairwoman, I
6 understand Commissioner Yaki's making an argument
7 against my motion to approve Part A and proceed
8 because he thinks perhaps maybe that it shouldn't be
9 published at all. I don't know that he will have a
10 second to his motion or that he will get the votes for
11 his motion, but I --

12 VICE CHAIR THERNSTROM: Well, there is a
13 motion on the table, and it's yours, I believe.

14 COMMISSIONER GAZIANO: That's correct. It
15 has been seconded, and that's fine if he wants to
16 express that opinion. I disagree with it and intend
17 to vote yes on my motion.

18 But thank you very much, Mr. Yaki, for
19 clarifying your thoughts on that.

20 VICE CHAIR THERNSTROM: And I'm calling
21 the question. All of those in favor of voting on Part
22 A.

23 (Chorus of ayes.)

24 VICE CHAIR THERNSTROM: Opposed.

25 COMMISSIONER YAKI: Nay.

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1 COMMISSIONER MELENDEZ: I'll abstain.

2 VICE CHAIR THERNSTROM: Okay. So we have
3 Commissioner Yaki voting nay and Commissioner Melendez
4 abstaining, and the rest of the Commission voting aye.

5 We move on to -- Part A having been
6 approved, we move on to Part B. So Part B contains
7 the Commission's -- as amended by Commissioners as of
8 April 18th, 2008, contains the Commission's findings
9 and recommendations. Under this motion, the
10 Commission will vote individually on each finding and
11 recommendation. These findings and recommendations
12 receiving the majority vote would be included in the
13 report with a vote tally and a sentence explaining any
14 opposition for that item.

15 So I would like a motion that the
16 Commission approve Finding 1, which reads as follows:

17 "In recent years, real and perceived flaws in the
18 election system have resulted in concern and mistrust
19 of the voting process in the United States. These
20 allegations include misplaced and/or" -- it says
21 "indiscernible." I'm not sure that's really the right
22 word, but --

23 COMMISSIONER YAKI: Is that a hanging
24 chad?

25 VICE CHAIR THERNSTROM: Yeah, I guess.

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1 -- "long waits at polling places,
2 confusing or malfunctioning voting mechanisms,
3 uncertainty regarding identification, and other voting
4 requirements. They also include voter fraud and voter
5 intimidation."

6 Can I have a motion on that finding?

7 COMMISSIONER TAYLOR: Second.

8 VICE CHAIR THERNSTROM: Okay. So let us
9 discuss this finding. Surely, Commissioner Yaki, you
10 have something to say.

11 COMMISSIONER YAKI: I'm thinking.

12 COMMISSIONER HERIOT: Call the question.

13 COMMISSIONER YAKI: I will pass for the
14 time being.

15 VICE CHAIR THERNSTROM: Okay. I'm calling
16 the question then. All in favor.

17 (Chorus of ayes.)

18 VICE CHAIR THERNSTROM: Anybody opposed?

19 COMMISSIONER YAKI: I'll abstain.

20 VICE CHAIR THERNSTROM: Commissioner Yaki
21 is abstaining. Commissioner Melendez, how do you
22 vote?

23 COMMISSIONER MELENDEZ: Oh, abstain.

24 VICE CHAIR THERNSTROM: Two abstentions.
25 Yaki and Melendez abstain and otherwise approved.

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1 Okay. Finding 2 reads as follows: "Both
2 voter fraud and voter intimidation disfranchise voters
3 and seriously weaken our political system."

4 May I have a motion?

5 COMMISSIONER KIRSANOW: So moved.

6 COMMISSIONER HERIOT: Second.

7 VICE CHAIR THERNSTROM: Okay. So any
8 discussion?

9 COMMISSIONER YAKI: I'm opposed.

10 VICE CHAIR THERNSTROM: We have not called
11 the question. I'm delighted to do so.

12 COMMISSIONER YAKI: That's my discussion.
13 I oppose this.

14 VICE CHAIR THERNSTROM: That's your
15 discussion.

16 COMMISSIONER GAZIANO: Oh, okay. That's
17 fine.

18 VICE CHAIR THERNSTROM: Have you got
19 anything further to say? Commissioner Melendez, got
20 anything to say? Anybody else got anything to say?

21 Calling the question. Yes or no, all in
22 favor.

23 (Chorus of ayes.)

24 VICE CHAIR THERNSTROM: Opposed.

25 COMMISSIONER MELENDEZ: Opposed, Melendez.

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1 COMMISSIONER YAKI: Opposed, Yaki.

2 VICE CHAIR THERNSTROM: Yaki and Melendez
3 opposed. Everyone else is in favor. It should be
4 noted, of course, that the Chair is no longer with us
5 and, therefore, not voting.

6 Finding 3, "allegations of voter fraud
7 have included claims of multiple voting, voting by
8 dead people, providing false information regarding
9 felon status, vote buying, and submitting false
10 registration information."

11 COMMISSIONER KIRSANOW: So moved.

12 COMMISSIONER HERIOT: Second.

13 VICE CHAIR THERNSTROM: Okay. Any
14 discussion regarding --

15 COMMISSIONER YAKI: I would just like to
16 state that in response to questions at the briefing,
17 no one could really give me great examples of this
18 kind of activity going on, but mere speculation.

19 VICE CHAIR THERNSTROM: Well, but the
20 motion reads "allegations of voting fraud have
21 included." It didn't -- you've been asked to speak up
22 -- but the motion reads "allegations of voting fraud."

23 It does not say hard evidence of voting fraud. So
24 that's pretty squishy language, and by the way, on the
25 previous --

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1 COMMISSIONER MELENDEZ: I'm going to do a
2 very squishy abstain on this one.

3 VICE CHAIR THERNSTROM: Okay. On the
4 previous finding, too, I have a strong preference for
5 using the term "disfranchise" rather than
6 "disenfranchise," but that is my --

7 COMMISSIONER GAZIANO: I second that
8 strongly. I don't like the misuse of English.

9 VICE CHAIR THERNSTROM: Exactly. The word
10 should be "disfranchise."

11 Anyway, we have got a motion on the table
12 on Finding 3. Do we have any further discussion?

13 (No response.)

14 VICE CHAIR THERNSTROM: All in favor.

15 (Chorus of ayes.)

16 VICE CHAIR THERNSTROM: All opposed?

17 (No response.)

18 VICE CHAIR THERNSTROM: Abstentions.

19 COMMISSIONER MELENDEZ: Abstain, Melendez.

20 VICE CHAIR THERNSTROM: Commissioner Yaki,
21 what are you doing?

22 COMMISSIONER YAKI: I'm thinking. I'll
23 vote in favor of this because it's allegations.

24 VICE CHAIR THERNSTROM: Okay. Very nice.
25 We have got only one abstention and otherwise all in

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1 favor.

2 Okay. Finding 4, "allegations of voter
3 intimidation," and again, this is "allegations."
4 "Allegations of voter intimidation have included
5 claims" -- claims, not evidence -- "regarding the
6 imposition of unauthorized identification requirements
7 and the intentional misrepresentation of voter
8 eligibility, the misuse of provisional ballots, and
9 misinformation about the time and place of election
10 and the requirement to vote."

11 COMMISSIONER TAYLOR: So moved.

12 COMMISSIONER HERIOT: Second.

13 VICE CHAIR THERNSTROM: Okay. Discussion
14 of Finding 4.

15 (No response.)

16 VICE CHAIR THERNSTROM: Hearing no
17 discussion, I'm calling the question. All those in
18 favor.

19 (Chorus of ayes.)

20 VICE CHAIR THERNSTROM: All those opposed?

21 (No response.)

22 COMMISSIONER MELENDEZ: Abstention,
23 Melendez.

24 VICE CHAIR THERNSTROM: Melendez abstains,
25 and Yaki does what?

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1 COMMISSIONER YAKI: I already voted yes.

2 VICE CHAIR THERNSTROM: Oh, I didn't hear
3 you. Very nice. Okay. One abstention.

4 COMMISSIONER MELENDEZ: Yes.

5 VICE CHAIR THERNSTROM: Okay. Finding 5.

6 I need a motion to approve Finding 5, which reads,
7 "among the difficulties faced by election officials is
8 the fact that the pool of qualified voters is
9 constantly changing with almost 40 million people
10 moving each year. As a result many jurisdictions have
11 flawed or outdated voter roles."

12 COMMISSIONER HERIOT: So moved.

13 COMMISSIONER TAYLOR: Second.

14 COMMISSIONER YAKI: I'd like to add a
15 comment to this, Commissioner Thernstrom.

16 VICE CHAIR THERNSTROM: Yes.

17 COMMISSIONER YAKI: It's too bad that we
18 didn't get the chance to have more testimony on this
19 item because I would argue that also among the
20 difficulties is finding competent election officials,
21 which as is evidenced by some of the confusion at
22 voting polls and voting areas falls squarely upon the
23 ability of an election official to deal with the
24 challenges of voting on election day.

25 That's just a comment.

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1 COMMISSIONER GAZIANO: I think some of
2 that is covered in some of the recommendations. But
3 your opinion is duly noted.

4 VICE CHAIR THERNSTROM: Yeah, I'm
5 completely sympathetic with the fact that up and down
6 the line of authority on elections there's a great
7 deal of incompetence, but I would add the naughty
8 statement that that's true of the public sector to too
9 great an extent in general, but whatever.

10 COMMISSIONER YAKI: I think you just
11 insulted your own agency then.

12 VICE CHAIR THERNSTROM: Yes, I guess I
13 did, including myself.

14 COMMISSIONER YAKI: I'm abstaining. So it
15 doesn't apply to me.

16 VICE CHAIR THERNSTROM: Okay. I think
17 this is on the floor. Can we call the question?

18 All in favor?

19 (Chorus of ayes.)

20 VICE CHAIR THERNSTROM: Anybody opposed?

21 (No response.)

22 VICE CHAIR THERNSTROM: Is that a
23 unanimous vote?

24 COMMISSIONER MELENDEZ: Yes.

25 VICE CHAIR THERNSTROM: It is a unanimous

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1 vote in favor.

2 Finding 6 reads as follows: "in addition,
3 the growing use of unofficial third party voter
4 registration drives has led to a rise in reports of
5 voter registration fraud, especially fraud committed
6 by those who have been paid by the piece to register
7 voters."

8 Now, again, we have got a rise in reports.
9 It doesn't say whether they're accurate or not.
10 Yeah, we need a motion and we need a second.

11 COMMISSIONER TAYLOR: So moved.

12 COMMISSIONER HERIOT: Second.

13 VICE CHAIR THERNSTROM: Any discussion?

14 COMMISSIONER YAKI: Yes. My concern is
15 that there are official voter registration drives that
16 do use bounties to register voters, and I think that
17 this unfairly smears them by use of the second clause
18 in the sentence.

19 VICE CHAIR THERNSTROM: Well, even though
20 it says "unofficial third party voter registration
21 drives"?

22 COMMISSIONER YAKI: I mean it says
23 "especially fraud committed by those who have been
24 paid by the piece to register voters." That then
25 applies to more than just unofficial third parties.

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1 VICE CHAIR THERNSTROM: It's a
2 modification. It modifies the first half of the
3 sentence, which refers to unofficial third party voter
4 registration drives. I would not read the sentence
5 that way, Commissioner Yaki.

6 COMMISSIONER HERIOT: You can't use the
7 word "especially" unless you're talking --

8 COMMISSIONER YAKI: I thought it was
9 related to the rise of reports of voter registration
10 fraud which can include many other things as well. So
11 whatever. I'm abstaining from this. Let's move on.

12 VICE CHAIR THERNSTROM: Okay. Calling the
13 question. All in favor.

14 (Chorus of ayes.)

15 COMMISSIONER YAKI: Abstain.

16 COMMISSIONER MELENDEZ: Melendez also.

17 VICE CHAIR THERNSTROM: Melendez, how are
18 you voting?

19 COMMISSIONER MELENDEZ: Abstaining.

20 VICE CHAIR THERNSTROM: Two abstentions.

21 COMMISSIONER KIRSANOW: Three abstentions.

22 COMMISSIONER HERIOT: Three.

23 VICE CHAIR THERNSTROM: Oh, three
24 abstentions. Commissioner Kirsanow is also
25 abstaining.

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1 Finding 7, "at the same time such
2 practices as expanded absentee voting, same day
3 registration, and voting exclusively by mail while
4 providing greater voter access have posed difficulties
5 in verifying voter identity and qualifications, as
6 well as protecting against voter intimidation."

7 Can I have a --

8 COMMISSIONER TAYLOR: So moved.

9 VICE CHAIR THERNSTROM: And a second?

10 COMMISSIONER GAZIANO: Second.

11 VICE CHAIR THERNSTROM: Any discussion?

12 (No response.)

13 VICE CHAIR THERNSTROM: No discussion.

14 I'm calling the question.

15 COMMISSIONER YAKI: I just don't
16 understand how protecting the voter and intimidation
17 relates to everything before that, but that's why I'm
18 going to abstain.

19 VICE CHAIR THERNSTROM: Okay. All in
20 favor?

21 (Chorus of ayes.)

22 COMMISSIONER YAKI: Abstain.

23 COMMISSIONER MELENDEZ: Abstain, Melendez.

24 VICE CHAIR THERNSTROM: Two abstentions,
25 Yaki and Melendez, and otherwise it is approved.

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1 Finding 8, "many other democracies have
2 adopted photo identification requirements as a means
3 to defer fraud and increase voter confidence. Indeed,
4 almost 100 democracies already vote via a photo
5 identification card."

6 That is the beginning and end of Finding
7 8. Can I have a motion?

8 COMMISSIONER HERIOT: So moved.

9 COMMISSIONER KIRSANOW: Second.

10 VICE CHAIR THERNSTROM: Discussion? No
11 discussion on this?

12 (No response.)

13 VICE CHAIR THERNSTROM: Okay. Call the
14 question. All in favor?

15 (Chorus of ayes.)

16 COMMISSIONER YAKI: Abstain.

17 COMMISSIONER MELENDEZ: Abstain, Melendez.

18 COMMISSIONER TAYLOR: Opposed, Taylor.

19 VICE CHAIR THERNSTROM: Opposed, Taylor.
20 I will go along with it. Okay. So one opponent,
21 Commissioner Taylor.

22 COMMISSIONER MELENDEZ: I'd like to change
23 mine to opposed against it also, Melendez.

24 VICE CHAIR THERNSTROM: Melendez, two
25 opposed.

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1 COMMISSIONER YAKI: I'll change mine to
2 opposed as well.

3 VICE CHAIR THERNSTROM: Three opposed.
4 Commissioner Taylor has gotten everybody's courage up
5 here.

6 COMMISSIONER TAYLOR: It's not my effort.
7 It's not my effort to have this eliminated. I am
8 very hesitant to begin to refer to other democracies
9 and what other countries do because it's a gate that
10 swings both ways.

11 I try to be careful in that area. That's
12 all.

13 VICE CHAIR THERNSTROM: Well, actually, I
14 think that is an excellent --

15 COMMISSIONER YAKI: I appreciate that,
16 Commissioner Taylor, because --

17 VICE CHAIR THERNSTROM: You'll have to
18 speak up, Commissioner Yaki.

19 COMMISSIONER YAKI: I appreciate that,
20 Commissioner Taylor, because obviously the definition
21 of what constitutes a democracy can be rather, as you
22 say, flexible.

23 VICE CHAIR THERNSTROM: You know, I agree
24 with you. I'm opposed.

25 (Laughter.)

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1 COMMISSIONER HERIOT: Okay. We have a
2 majority now? So we can just strike it.

3 VICE CHAIR THERNSTROM: Strike it. We
4 have a majority opposed. I wish you would have made
5 your argument before.

6 COMMISSIONER HERIOT: Madam Chair, I have
7 a motion to insert a new finding.

8 VICE CHAIR THERNSTROM: So do you want to
9 leave it to the end or this is --

10 COMMISSIONER HERIOT: Actually I was going
11 to put it after eight, but now that eight has been
12 stricken, we can -- I can make a motion that this be
13 considered Finding No. 8.

14 VICE CHAIR THERNSTROM: Okay, all right.

15 COMMISSIONER HERIOT: And it would read
16 this way. It's in light of the Supreme Court's new
17 decision in Crawford.

18 I move that we insert as Finding No. 8 the
19 following: in recently upholding Indiana's voter ID
20 law, the Supreme Court affirmed the state's legitimate
21 and important interest in preventing voter fraud and
22 promoting public confidence in the integrity of the
23 electoral process to encourage citizen participation
24 in the democratic process, Crawford v. Marion County
25 Election Board, and I've got the citation here.

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1 VICE CHAIR THERNSTROM: Right, and as I
2 understand what Commissioner Heriot is saying, she is
3 just repeating what the Supreme Court said.

4 COMMISSIONER HERIOT: Just acknowledging.

5 VICE CHAIR THERNSTROM: Acknowledging.
6 She's not asking whether people agree or disagree --

7 COMMISSIONER HERIOT: Absolutely not.

8 VICE CHAIR THERNSTROM: -- with the
9 holding of the Supreme Court.

10 COMMISSIONER HERIOT: Just want to make
11 sure that anyone reading this knows that we know the
12 decision was made.

13 VICE CHAIR THERNSTROM: Can I have a
14 second on that?

15 COMMISSIONER KIRSANOW: Second.

16 VICE CHAIR THERNSTROM: Discussion?

17 (No response.)

18 VICE CHAIR THERNSTROM: Okay. I'm calling
19 the question. All in favor?

20 (Chorus of ayes.)

21 COMMISSIONER YAKI: Opposed.

22 COMMISSIONER MELENDEZ: Abstain.

23 VICE CHAIR THERNSTROM: So Commissioner
24 Yaki abstains and --

25 COMMISSIONER YAKI: Opposed. Commissioner

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1 Yaki opposed.

2 VICE CHAIR THERNSTROM: I'm sorry.

3 Commissioner Yaki, opposed.

4 COMMISSIONER YAKI: Opposed.

5 VICE CHAIR THERNSTROM: Opposed.

6 Commissioner Melendez is sticking with your
7 abstention?

8 COMMISSIONER MELENDEZ: Yes.

9 VICE CHAIR THERNSTROM: Okay. So Finding
10 9. There is a need for improved administration of
11 elections to assure that votes are accurately counted
12 and verified. This includes a need to address a
13 shortage of trained poll workers.

14 Can I have a motion?

15 COMMISSIONER TAYLOR: I'm going to second
16 Commissioner Yaki's motion on this.

17 VICE CHAIR THERNSTROM: Commissioner Yaki?

18 COMMISSIONER TAYLOR: Because I know this
19 is the theme he --

20 VICE CHAIR THERNSTROM: I would invite you
21 to expand that beyond trained poll workers if you
22 would like. Do you want to expand the group? I mean,
23 poll workers it seems to me is a narrower category
24 than you had in mind a few moments ago.

25 COMMISSIONER YAKI: No, it's not just poll

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1 workers. I think that in many counties around this
2 country, including I would say my own county, we have
3 had serious issues with competency of election
4 officials.

5 VICE CHAIR THERNSTROM: So can we just
6 change it to election officials, striking "poll
7 workers"? Would you like to offer that?

8 COMMISSIONER YAKI: No, I would say that
9 there's a need for improved administration of
10 elections to assure that votes are accurately counted
11 and verified. This includes a need to have in place
12 well in advance of elections qualified election
13 officials and trained poll workers.

14 VICE CHAIR THERNSTROM: You don't regard
15 poll workers as election officials?

16 COMMISSIONER YAKI: No, because they
17 usually are hired like the day of, you know.

18 VICE CHAIR THERNSTROM: Okay. That's
19 fine.

20 COMMISSIONER TAYLOR: Second.

21 COMMISSIONER YAKI: The election officials
22 are the registrars, you know, the city clerks.

23 VICE CHAIR THERNSTROM: Right. I've got
24 it. So that's a friendly amendment to this, and it
25 has just been seconded by Commissioner Ashley.

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1 COMMISSIONER TAYLOR: Taylor.

2 VICE CHAIR THERNSTROM: Commissioner
3 Taylor.

4 COMMISSIONER TAYLOR: Do I get two votes?

5 (Laughter.)

6 VICE CHAIR THERNSTROM: You don't know
7 what my morning was like. Commissioner Taylor. Okay.
8 So has somebody seconded that?

9 COMMISSIONER GAZIANO: Taylor seconded it.

10 VICE CHAIR THERNSTROM: Right. Can you
11 read it back? Commissioner Yaki, read it back.

12 COMMISSIONER YAKI: How can I read it
13 back when I'm just doing it on the fly here?

14 There's a need for improved administration
15 of elections to assure that votes are accurately
16 counted and verified. This requires qualified and
17 competent election officials and trained poll workers
18 in place well in advance of elections, period.

19 VICE CHAIR THERNSTROM: Okay. If there is
20 no discussion, calling the question. All in favor.

21 (Chorus of ayes.)

22 VICE CHAIR THERNSTROM: I'm voting aye.
23 Anybody abstaining? Anybody opposed?

24 (No response.)

25 VICE CHAIR THERNSTROM: That is a

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1 unanimous vote.

2 We move on to the recommendations.
3 Recommendation 1 reads as follows: "state and local
4 governments should undertake efforts to improve an
5 expand training of poll workers on issues of voter
6 eligibility, identification, use of provisional
7 ballots, voting machine operations and standards and
8 the prevention of voter fraud and voter intimidation."

9 May I have a motion?

10 COMMISSIONER KIRSANOW: So moved.

11 COMMISSIONER TAYLOR: Second.

12 VICE CHAIR THERNSTROM: Discussion?

13 (No response.)

14 VICE CHAIR THERNSTROM: All right. I'm
15 calling the question.

16 COMMISSIONER YAKI: Wait, wait, wait.

17 VICE CHAIR THERNSTROM: Wait. Okay.

18 COMMISSIONER YAKI: Has the word "election
19 official."

20 VICE CHAIR THERNSTROM: Yeah, I was
21 waiting for you to do that. I don't have any problem
22 with that.

23 COMMISSIONER GAZIANO: Where?

24 COMMISSIONER YAKI: Expand training of
25 election officials and poll workers.

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1 VICE CHAIR THERNSTROM: Okay. I'll second
2 that. All in favor?

3 (Chorus of ayes.)

4 COMMISSIONER YAKI: Yaki, aye.

5 VICE CHAIR THERNSTROM: Anybody opposed?

6 (No response.)

7 VICE CHAIR THERNSTROM: Okay. Second
8 recommendation, rules concerning poll workers should
9 be modified to facilitate a larger and more qualified
10 pool of poll volunteers, including active recruitment
11 of volunteers who are familiar with digital
12 technology. For example, removing requirements that
13 poll workers staff the polls for an entire day might
14 enable more students and persons who work part time to
15 assist at the poll.

16 COMMISSIONER TAYLOR: So moved.

17 VICE CHAIR THERNSTROM: Second.

18 COMMISSIONER YAKI: So basically we want
19 16 year olds who know how to play "Grand Theft Auto"
20 to help us with our new-fangled touch screens and
21 computer voting?

22 VICE CHAIR THERNSTROM: And they may do a
23 good job. I mean, the implication, it seems to me,
24 Commissioner Yaki, is that jurisdictions would be
25 hiring competent people here. I mean, we're not

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1 suggesting incompetence.

2 COMMISSIONER YAKI: No.

3 VICE CHAIR THERNSTROM: And I don't think
4 a 16 year old is necessarily incompetent.

5 COMMISSIONER HERIOT: I think usually --

6 COMMISSIONER YAKI: Not when it comes to
7 computers, they're not.

8 VICE CHAIR THERNSTROM: Yeah, they require
9 --

10 COMMISSIONER HERIOT: -- other
11 requirements. You have to be a registered voter.

12 VICE CHAIR THERNSTROM: You have to be a
13 registered voter, right.

14 COMMISSIONER HERIOT: Or they can have
15 other requirements. We're not saying that any
16 requirement that states have now they should jettison.
17 We're just saying in addition, among the pool of
18 people who would otherwise be qualified.

19 VICE CHAIR THERNSTROM: Okay. Any further
20 discussion?

21 (No response.)

22 VICE CHAIR THERNSTROM: All in favor.

23 (Chorus of ayes.)

24 VICE CHAIR THERNSTROM: Opposed?

25 (No response.)

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1 VICE CHAIR THERNSTROM: Okay.
2 Recommendation 3, state and local government, as well
3 as civic groups and political parties, should take
4 active steps to advise the public of basic voting
5 procedures, including the information on the times and
6 places of election.

7 This is very uncontroversial. Do I have a
8 motion?

9 COMMISSIONER GAZIANO: So moved.

10 COMMISSIONER KIRSANOW: Second.

11 VICE CHAIR THERNSTROM: Discussion?

12 (No response.)

13 VICE CHAIR THERNSTROM: Calling the
14 question, all in favor.

15 (Chorus of ayes.)

16 VICE CHAIR THERNSTROM: Anybody opposed?

17 (No response.)

18 VICE CHAIR THERNSTROM: That passed
19 unanimously.

20 Four, the Department of Justice must be
21 actively involved in and devote greater resources to
22 the investigation of voter fraud and voter
23 intimidation.

24 COMMISSIONER GAZIANO: Madam Chair, I move
25 to strike the recommendation and renumber subsequent

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1 recommendations. My main ground is that there is no
2 finding of fact that supports this recommendation, and
3 I think there's insufficient evidence in certainly our
4 briefing and I believe elsewhere for us to conclude
5 the Justice Department isn't devoting sufficient
6 resources.

7 COMMISSIONER TAYLOR: Second.

8 COMMISSIONER GAZIANO: Madam Chair, I'd
9 move to strike, and I think Commissioner Ashley has
10 seconded -- Commissioner Taylor. I'm sorry.

11 VICE CHAIR THERNSTROM: You don't have the
12 same excuse I do.

13 COMMISSIONER GAZIANO: Fine.

14 COMMISSIONER YAKI: This is Commissioner
15 Yaki.

16 VICE CHAIR THERNSTROM: Yes.

17 COMMISSIONER YAKI: To me if the
18 Commissioner were still putting out its federal
19 funding report every year as it had for many years, we
20 would be able to look at the budget for this within
21 Justice and compare from year to year and make a
22 determination as to what kind of resources actually
23 are being devoted to investigation of voter fraud and
24 voter intimidation.

25 I do not understand why we would say that

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1 they should be actively involved in the investigation
2 of voter fraud and intimidation. The question of
3 resources, I understand Commissioner Gaziano's concern
4 as to does that mean that they are devoting enough or
5 are they devoting too little. There's an implication
6 there that may or may not be based on fact.

7 I will say, however, that I did find
8 statements in the briefing that would lead me to
9 conclude that they must be actively involved and that
10 when it comes to -- I think we found in the statements
11 of John Fund and others that in the issue of
12 absentees, for example, very little is done to
13 investigate voter fraud in that instance, which I
14 think Mr. Fund called the place most likely for voter
15 fraud to occur.

16 In addition, I can tell you that one of
17 the reasons why the hearing I requested on June 6th is
18 occurring has to do precisely with level of resources
19 devoted to voter intimidation and polling problems
20 that go on.

21 So in some ways this is too restrictive.
22 I think that there are other issues involving election
23 officials, voting machines, the discretion election
24 officials have in terms of insuring that the franchise
25 is exercised by anyone who wants it to be. I

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1 understand Commissioner Gaziano's concern about the
2 squishiness of the words "devoting greater resources
3 to," but I do think that there must be a statement for
4 recommendation that involves DOJ's involvement and
5 active involvement in voter fraud, voter intimidation
6 and the fair conduct of the franchise at the polling
7 place.

8 COMMISSIONER GAZIANO: Sure. Well, let me
9 explain why I propose to strike the whole
10 recommendation then. I appreciate you conceding we
11 have insufficient knowledge to say whether they're
12 spending more or enough or should spend more.

13 I don't think if we strike this that it
14 states our position that the Justice Department should
15 not investigate a lot of voter fraud and a lot of
16 voter intimidation, but this is just kind of also a
17 vague and squishy statement. There may be hundreds of
18 claims of voter fraud or intimidation that the
19 statement and local government can investigate
20 perfectly well in itself. The Department of Justice
21 has particular authority in certain areas, and I think
22 as it stands this statement, you know, may mislead,
23 even striking the "and devote greater resource to"
24 phrase, may be more misleading.

25 Since we're going to take this up in June,

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1 I suppose we can try to craft some statements at that
2 time as to what the Department of Justice's proper
3 authority and role should be.

4 COMMISSIONER YAKI: Well, that would be
5 nice, except that I would highly doubt that we would
6 have a report on that briefing during any time before
7 the next century given the pace at which our reports
8 have been coming out at glacial speed.

9 And I think it would be extremely remiss
10 if we have a report on voter fraud and voter
11 intimidation that doesn't suggest in our role as
12 watchdog of the federal government's civil rights that
13 DOJ must continue to be actively involved in and
14 ensure that adequate resources are devoted to the
15 investigation of voter fraud, voter intimidation and
16 election day decisions by election officials that have
17 a profound impact on the integrity of the vote count.

18 VICE CHAIR THERNSTROM: Yeah, I wonder if
19 we would get some consensus here if we changed this to
20 the original, instead of striking it, the original
21 motion or original recommendation for it to read
22 simply, "The Department of Justice must be actively
23 involved in." Obviously it's going to be.

24 COMMISSIONER GAZIANO: Why don't you say
25 "remain actively involved in"?

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1 VICE CHAIR THERNSTROM: Okay. "Remain
2 actively involved in and devote adequate resources to
3 the investigation of."

4 COMMISSIONER HERIOT: Can we change "must"
5 to "should"? Because to conform to the other
6 recommendations?

7 VICE CHAIR THERNSTROM: Yes, sure.

8 COMMISSIONER HERIOT: Otherwise it makes
9 it look like it's different.

10 VICE CHAIR THERNSTROM: Okay. "Should
11 remain actively involved and devote adequate resources
12 to the investigation of voter fraud and voter
13 intimidation." Commissioner Yaki, would that --

14 COMMISSIONER YAKI: That's fine. I just
15 think it would be silly for us not to have any
16 statement on DOJ.

17 VICE CHAIR THERNSTROM: Okay.

18 COMMISSIONER GAZIANO: With the
19 understanding or the discussion that I've already set
20 forward, obviously they ought to stick to the statutes
21 and the authorities that grant them power in this
22 area. I'm find with that friendly amendment.

23 VICE CHAIR THERNSTROM: Okay. So we now
24 have a friendly amendment on the floor and --

25 COMMISSIONER KIRSANOW: And a second.

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1 VICE CHAIR THERNSTROM: And a second. Can
2 we vote on this? All in favor --

3 COMMISSIONER HERIOT: Read it one more
4 time.

5 VICE CHAIR THERNSTROM: The Department of
6 Justice should remain actively involved in and devote
7 adequate resources to the investigation of voter fraud
8 and voter intimidation.

9 All in favor?

10 (Chorus of ayes.)

11 VICE CHAIR THERNSTROM: Anybody opposed?
12 Anybody abstaining?

13 (No response.)

14 VICE CHAIR THERNSTROM: We have a
15 unanimous vote on that.

16 Recommendation 5, "states should improve
17 public confidence that votes will be counted
18 accurately by insuring that all voting machines are
19 accurate and tamper proof and creating" -- I'm sorry
20 for giggling, but good luck, folks -- "and creating a
21 physical record of votes in employing a voter
22 verification paper audit trail."

23 Can I have a motion on that?

24 COMMISSIONER TAYLOR: So moved.

25 COMMISSIONER HERIOT: Second.

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1 COMMISSIONER GAZIANO: With the
2 understanding that the aside won't be in the actual
3 record.

4 VICE CHAIR THERNSTROM: That's right.

5 (Laughter.)

6 VICE CHAIR THERNSTROM: Have we got a
7 discussion of this?

8 COMMISSIONER YAKI: No.

9 VICE CHAIR THERNSTROM: Aside from my
10 skepticism that, in fact, they're going to be able to
11 actually ensure. Any discussion? No.

12 Okay. Calling the question, all in favor.

13 (Chorus of ayes.)

14 VICE CHAIR THERNSTROM: Anybody abstaining
15 or opposed?

16 COMMISSIONER KIRSANOW: Kirsanow abstains.

17 VICE CHAIR THERNSTROM: Kirsanow abstains.

18 With one abstention, Commissioner Kirsanow, this has
19 been approved.

20 Okay. Recommendation 6, "states need to
21 ensure that HAVA is properly enforced and takes
22 special precautions to make sure that all voter
23 registration forms are accounted for and that
24 registration rolls are as up to date as possible by
25 taking steps, such as, one, assigning each

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1 registration form and its receipt a unique number that
2 can be tracked; two, requiring that forms be returned
3 within 14 days after they have been signed; three,
4 prohibiting third party organizations from paying for
5 voter registrations by the piece; four, making their
6 best effort to coordinate voter information with such
7 materials as death records, driver's licenses, jury
8 duty responses, local tax rolls. Where possible
9 states should also coordinate their voter registration
10 data with the voter registration and other data
11 available from other states."

12 Can I have a motion?

13 COMMISSIONER YAKI: I've got a question.
14 Where did this come from?

15 VICE CHAIR THERNSTROM: I don't know the
16 answer to that. Does somebody else?

17 We're getting you an answer.

18 COMMISSIONER GAZIANO: If this Commission
19 adopts this, what precisely is your question?

20 VICE CHAIR THERNSTROM: Do you think that
21 this was not in the briefing record?

22 COMMISSIONER YAKI: Yeah, I mean, where
23 did these recommendations on the row come from,
24 especially --

25 VICE CHAIR THERNSTROM: We've got the

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1 pages in the transcript here, 115 to 120, 120 to 123.

2 COMMISSIONER YAKI: From whom did they
3 emanate?

4 VICE CHAIR THERNSTROM: From whom did they
5 emanate? Commissioner Yaki wants to know from whom
6 they emanated.

7 We have to go through and look up each
8 one.

9 COMMISSIONER YAKI: Just move on because
10 I'm voting against the whole thing.

11 VICE CHAIR THERNSTROM: Commissioner
12 Taylor, do you have something here?

13 COMMISSIONER TAYLOR: The question is
14 whether the third recommendation, prohibiting third
15 party organizations from paying for voter
16 registrations by the piece -- does that violate HAVA,
17 consistent with HAVA, or just what's the current
18 status? Are we recommending a change to HAVA? That's
19 the question, if we're saying prohibit that practice.

20 MR. BLACKWOOD: This is David Blackwood.

21 That issue is not addressed in HAVA. So
22 it wouldn't require a change in HAVA, and several
23 states have adopted specific provisions of this kind.

24 COMMISSIONER TAYLOR: They have. Okay.

25 COMMISSIONER YAKI: What states?

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1 VICE CHAIR THERNSTROM: What states?

2 MR. BLACKWOOD: I have to look it up, but
3 definitely Missouri.

4 COMMISSIONER YAKI: All right. I'm
5 definitely voting against this whole thing. So let's
6 just move on.

7 COMMISSIONER HERIOT: Don't like Missouri?

8 VICE CHAIR THERNSTROM: Was it Missouri
9 that did it for you?

10 Okay. I'm calling the question. All in
11 favor?

12 COMMISSIONER YAKI: No, no, no, it has
13 nothing to do with Missouri.

14 VICE CHAIR THERNSTROM: Well, those who
15 live in Missouri will be pleased to hear it, and they
16 won't put signs up that you're not allowed to come
17 into the state.

18 (Laughter.)

19 VICE CHAIR THERNSTROM: All in favor.

20 (Chorus of ayes.)

21 VICE CHAIR THERNSTROM: Opposed.
22 Commissioner Yaki, speak up. You're voting against
23 it.

24 COMMISSIONER YAKI: Opposed.

25 VICE CHAIR THERNSTROM: Commissioner

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1 Melendez, we haven't heard --

2 COMMISSIONER MELENDEZ: I abstain.

3 VICE CHAIR THERNSTROM: Okay.

4 Commissioner Melendez abstains. Commissioner Yaki is
5 opposed, and otherwise it is approved.

6 Recommendation 7, "in order to prevent
7 systemic voter intimidation, Congress should pass
8 legislation that will make it unlawful for any person
9 or group to deliberately deceive another person
10 regarding the time, place or manner of an election or
11 the qualifications for or restrictions on voter
12 eligibility for any such election with the intent to
13 prevent such persons from exercising the right to vote
14 in such an election."

15 COMMISSIONER YAKI: That actually may have
16 happened in North Carolina. I'm all for it.

17 COMMISSIONER MELENDEZ: And me.

18 COMMISSIONER GAZIANO: I so move.

19 VICE CHAIR THERNSTROM: Have we got a
20 second on this?

21 COMMISSIONER MELENDEZ: Second.

22 COMMISSIONER TAYLOR: Let me offer a
23 substitute if I could to try to make it, I think,
24 somewhat clearer, and the substitute would read as
25 follows. "There are a number of proposals currently

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1 pending in Congress that purport to deal with the
2 problem of voter intimidation or voter access. Any
3 legislative proposals that treat voter intimidation
4 and access should also address the real and documented
5 problem of voter fraud (or vice versa) if they are to
6 have the intended effect of promoting electoral reform
7 and restoring confidence in the electoral process."

8 VICE CHAIR THERNSTROM: Could you read
9 that again? I'm sorry.

10 COMMISSIONER TAYLOR: I shall. "There are
11 a number of proposals currently pending in Congress
12 that purport to deal with the problem of voter
13 intimidation or voter access. Any legislative
14 proposals that treat voter intimidation and access
15 should also address the real and documented problem of
16 voter fraud (or vice versa) if they are to have the
17 intended effect of promoting electoral reform and
18 restoring confidence in the electoral process."

19 COMMISSIONER GAZIANO: I accept that as a
20 friendly amendment.

21 VICE CHAIR THERNSTROM: Is there any
22 discussion on that?

23 COMMISSIONER MELENDEZ: Yes. Commissioner
24 Melendez.

25 Does that mean what we have in front of us

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1 now having to do with intimidation specifically
2 regarding telling a person -- deceiving them, telling
3 them to go somewhere else to vote and the times and
4 those things, is that specifically included in
5 Ashley's proposed substitute?

6 Because I like this language that's in
7 there now in Recommendation 7 talking specifically
8 about someone telling somebody to go to another
9 polling station and it's the wrong one, those type
10 things that are specific to this what we see in front
11 of us now.

12 COMMISSIONER TAYLOR: Commissioner
13 Melendez, this is Commissioner Taylor.

14 My recommended substitute was not intended
15 to eliminate that specific example that you
16 referenced. My recommendation was to make this clear
17 to encompass your specific recommendation, but to make
18 clear that the Commission wanted to make sure that
19 when Congress addresses this issue, they address the
20 twin issues. Well, "twin" is probably a bad word, but
21 the related issues within the context of insuring
22 integrity and electoral process of both voter
23 intimidation and voter fraud, and that they always do
24 so together, and that to focus on either while
25 ignoring the other wouldn't be prudent, and you need

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1 to address both in any statutory improvements.

2 COMMISSIONER YAKI: This is Commissioner
3 Yaki.

4 What Commissioner Melendez was asking is
5 what happened to that sentence in your amended version
6 because it seemed to disappear.

7 COMMISSIONER TAYLOR: It did. The text
8 did disappear.

9 COMMISSIONER YAKI: I mean, this is a
10 ticky-tacky, little thing, Commissioner Taylor, but if
11 you remove that sentence from what you just wrote, I'm
12 not voting for it.

13 VICE CHAIR THERNSTROM: Please, I'm sorry.
14 Let's get this clear, why you do not think that point
15 has been removed. Read it again. "There are a number
16 of proposals currently pending in Congress that
17 purport to deal with the problem of intimidation and
18 access." Then read the read.

19 COMMISSIONER TAYLOR: To me this is the
20 critical piece. "Any legislative proposals that treat
21 voter intimidation and access should also address the
22 real and documented problem of voter fraud (or vice
23 versa) if they are to have the intended effect of
24 promoting electoral reform and restoring confidence in
25 the electoral process."

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1 The text that you're referring to,
2 Commissioner Yaki, again, I have no specific
3 opposition to that. I just want to make sure that as
4 Congress considers either issue that they do so
5 without ignoring either one. If they're focusing on
6 voter fraud, I want them to focus on intimidation and
7 vice versa. That's all.

8 COMMISSIONER YAKI: Okay. Commissioner
9 Taylor, you just approved a recommendation on HAVA
10 that essentially is all about voter fraud. It goes to
11 voter ID. It goes to all this other kind of stuff.
12 This is the only finding standing alone on voter
13 intimidation, and I think that there is an over
14 abundance of caution on your part, which I think is
15 admirable, but I think is adequately addressed in the
16 recommendations before.

17 And, quite frankly, and this will be, you
18 know, argued ad nauseam in my dissent to this report
19 is that despite the flame throwers of voter fraud that
20 is thrown out by John Fund and others, the actual
21 number of cases, as I think all of us know, are
22 extremely low, whereas the cases of voter
23 intimidation, misleading is undisputed just by the
24 evidence that the Justice Department has.

25 So I mean, to me if you want to take your

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1 thing and make it a secondary Recommendation No. 9 or
2 10, I would be fine with it, but to completely gut the
3 recommendation as it stands on voter intimidation, I
4 think, is something I will not abide.

5 VICE CHAIR THERNSTROM: Well, do you have
6 disagreements, Commissioner Taylor, with
7 Recommendation 7 so that you would have a problem on
8 voting for that and adding yours as well as
9 Commissioner Yaki is suggesting?

10 COMMISSIONER HERIOT: Why not just add
11 something at the end of yours that says we recommend
12 that Congress pass legislation on both those topics
13 together speedily?

14 VICE CHAIR THERNSTROM: I don't think that
15 quite does it.

16 COMMISSIONER YAKI: No, I understand what
17 Commissioner Taylor is trying to do. I would draft it
18 slightly differently as a stand-alone, separate
19 recommendation.

20 VICE CHAIR THERNSTROM: And by the way --

21 COMMISSIONER HERIOT: Standing alone it
22 might suggest that we would endorse the pending
23 legislation, which we don't.

24 VICE CHAIR THERNSTROM: No, I don't think
25 that. It's an "if."

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1 COMMISSIONER GAZIANO: As I understand
2 Commissioner Yaki's motion, it's that we don't want to
3 suggest that it would be effective for Congress to
4 address one versus the other. I think there's a
5 special virtue in that.

6 VICE CHAIR THERNSTROM: Now, wait a
7 minute.

8 COMMISSIONER GAZIANO: It sounds like
9 Commissioner --

10 VICE CHAIR THERNSTROM: Commissioner
11 Taylor's or Commissioner Yaki's?

12 COMMISSIONER GAZIANO: Commissioner
13 Taylor's friendly amendment which I accepted, which is
14 now part of the pending motion, I think is an
15 important improvement on this. What Commissioner Yaki
16 is suggesting might, if it's a separate
17 recommendation, might be read to contradict the force
18 of what Commissioner Taylor has amended.

19 COMMISSIONER HERIOT: I can be taken out
20 of context.

21 COMMISSIONER YAKI: It doesn't necessarily
22 need to be. The next recommendation could be as any
23 part of any comprehensive voter legislation affecting
24 the franchise whether it be voter intimidation or
25 voter fraud, both issues should be addressed, blah,

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1 blah, blah, blah, blah, blah.

2 I don't see how that contradicts.

3 COMMISSIONER GAZIANO: It's the blah,
4 blah, blahs where I have concern.

5 COMMISSIONER YAKI: Blah, blah, blah is
6 what Commissioner Taylor wrote.

7 COMMISSIONER HERIOT: It's going to be
8 taken that we endorse that legislation, and that's the
9 whole point, is to make sure that we don't, but rather
10 we think that the issue should be treated together.
11 You don't want it to have a separate slug.

12 VICE CHAIR THERNSTROM: I don't think that
13 it comes -- well, I think these two can be merged
14 together, and I don't particularly, with all due
15 respect, Commissioner Taylor, like the awkwardness of
16 the "or vice versa." I think we could smooth that
17 out.

18 COMMISSIONER TAYLOR: Okay.

19 COMMISSIONER GAZIANO: Are we going to
20 pass on this recommendation? I kind of wanted to.

21 VICE CHAIR THERNSTROM: We want to approve
22 some version of this recommendation.

23 COMMISSIONER YAKI: If you guys don't want
24 to approve anything about voter intimidation, be my
25 guest.

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1 COMMISSIONER TAYLOR: No, no. I want to.

2 COMMISSIONER YAKI: Please, do it.

3 COMMISSIONER TAYLOR: My thought is that
4 obviously we're concerned about voter intimidation,
5 but the larger message that I am trying to send is
6 that we are concerned about both issues and we are
7 ignoring -- we are not ignoring either issue, and I
8 want to make sure that Congress knows that and that
9 both issues are important, and so I don't --

10 COMMISSIONER YAKI: Commissioner Taylor, I
11 don't see how letting the recommendation stand there
12 on its own be followed by a second recommendation on
13 voter fraud and then a recommendation that says that
14 these issues should be addressed together at the
15 Congress since they are blah, blah, blah, blah, blah,
16 that's fine with me. I just don't think stripping
17 seven and shoving it into what you wrote is (a) at all
18 very powerful and (b) I just think it misses making a
19 statement on a very important point and mashes both of
20 the issues together.

21 VICE CHAIR THERNSTROM: Well, but my
22 understanding, Commissioner Taylor, is that what
23 you're concerned about is that one issue or the other
24 be addressed and not --

25 COMMISSIONER TAYLOR: Correct, lest anyone

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1 misinterpret what we do here to suggest that we have
2 put more emphasis on one or the other. We're trying
3 to send the opposite message, that is, we believe both
4 are important and should be addressed at the same
5 time.

6 VICE CHAIR THERNSTROM: So the question is
7 whether --

8 COMMISSIONER TAYLOR: Let me try this. If
9 -- let me think out loud, which is dangerous. We're
10 going to put Yaki's mic on mute now while I think out
11 loud, but I hope Commissioner Yaki didn't hear that.

12 Michael, that was a joke.

13 There are a number of --

14 VICE CHAIR THERNSTROM: Michael, are you
15 there?

16 COMMISSIONER YAKI: Oh, no, I'm taking
17 notes.

18 COMMISSIONER TAYLOR: If we use the first
19 sentence --

20 COMMISSIONER YAKI: When the revolution
21 comes, Mr. Taylor will be very high on a certain list.

22 VICE CHAIR THERNSTROM: Are we bringing
23 back the guillotine?

24 COMMISSIONER YAKI: No, no, no, nothing
25 quite so --

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1 COMMISSIONER TAYLOR: There are a number
2 of proposals currently pending in Congress. I don't
3 think there's a problem. What you're referring to is
4 a specific recommendation. If we put a specific
5 recommendation into the recommendation, I would want
6 to put something like, "That said, any proposal that
7 treats voter intimidation," and then go on to say what
8 we just said about balance so that if we reference
9 something like we have in the current text, we have a
10 sentence right after it that says we don't make that
11 recommendation without also saying that the
12 legislation should also include something on X.

13 So if you understand what I said,
14 Commissioner Yaki, if that concept works, I can try to
15 write something and we can pass on this for a moment.

16 VICE CHAIR THERNSTROM: We can pass on it
17 for a moment and go on to the next --

18 COMMISSIONER KIRSANOW: Actually I like
19 your initial proposal. Two things. One is all that
20 we've got currently pending in Congress --

21 COMMISSIONER YAKI: I can't hear
22 Commissioner Kirsanow.

23 COMMISSIONER KIRSANOW: To my knowledge,
24 all that we currently have in Congress is legislation
25 specifically, the Deceptive Practices and Voter

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1 Intimidation Act --

2 COMMISSIONER MELENDEZ: Commissioner
3 Kirsanow needs to get closer to his microphone.

4 COMMISSIONER KIRSANOW: I'm as close as I
5 can get.

6 VICE CHAIR THERNSTROM: Take it out and
7 put it up to your mouth.

8 COMMISSIONER KIRSANOW: The facts on the
9 ground are that we have --

10 COMMISSIONER YAKI: Can we adjust the
11 volume? I can hear Commissioner Thernstrom fine.
12 Everyone else is like a two on the ten scale on the
13 dial.

14 COMMISSIONER KIRSANOW: How is this? Is
15 this any better? Can you hear me now? A Verizon
16 commercial. Do I get a royalty?

17 Hello, can you hear me?

18 COMMISSIONER YAKI: I can hear you.

19 COMMISSIONER KIRSANOW: Okay.

20 COMMISSIONER YAKI: But you have to speak
21 slowly and enunciate because it's very dim.

22 COMMISSIONER KIRSANOW: Okay. So am I.

23 We currently have pending in Congress -- I
24 think it's languishing in committee -- the Deceptive
25 Practices and Voter Intimidation Act. I'm not aware

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1 of any other legislation that is currently pending,
2 and it deals only with the topic of intimidation.

3 We have a finding that defines
4 intimidation and addresses voter intimidation, and I
5 think Commissioner Taylor's original friendly
6 amendment addressed the facts on the ground that,
7 given the pending legislation which we have already
8 defined in a finding, that anything that Congress
9 passes address the tandem issues of voter intimidation
10 and voter fraud.

11 If, in fact, there were legislation
12 introduced that dealt with voter fraud, then we would
13 probably revisit and say legislation of that nature
14 should also address the other problem of voter
15 intimidation, but that's not currently the facts on
16 the ground.

17 VICE CHAIR THERNSTROM: Speak,
18 Commissioner Yaki, and you will be heard.

19 COMMISSIONER YAKI: I'm still unclear as
20 to what exactly Commissioner Taylor wishes to do. All
21 I am saying is I would like the integrity of the
22 sentence in Recommendation 7 to be maintained. If he
23 wishes then to add a sentence to that stating that in
24 any legislation affecting voter intimidation, the
25 subject of voter fraud as referenced in finding blah,

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1 blah, blah, blah, blah, blah, should also be -- I
2 mean, I have no objection to that. I just have an
3 objection to taking what is there and smushing it the
4 other way, "smushing" not being exactly a term of art
5 but the best I can do on --

6 VICE CHAIR THERNSTROM: It's a legal term
7 of art, right?

8 COMMISSIONER YAKI: -- four hours of
9 sleep. So.

10 COMMISSIONER TAYLOR: How about this?
11 Again, I'll try to think out loud. I'm going to try
12 to articulate --

13 COMMISSIONER YAKI: Are you going to
14 insult me again, Ashley, if you do that?

15 COMMISSIONER TAYLOR: I didn't insult you.
16 I just turned off your mic.

17 The first sentence I'm going to see if I
18 can construct this so that it's balanced, and then
19 I'll talk the way I would dictate or write.

20 The first sentence is the sentence we have
21 now. "There are a number of proposals currently
22 pending in Congress." That's the first sentence.

23 The second sentence, Commission Yaki,
24 would be the sentence that you like. "Congress should
25 pass X dealing with voter intimidation."

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1 COMMISSIONER HERIOT: As it's written?

2 COMMISSIONER TAYLOR: As it's written now.

3 COMMISSIONER HERIOT: In order to prevent
4 systemic --

5 COMMISSIONER TAYLOR: Right. The third
6 sentence would be a sentence dealing with a specific
7 proposal to address voter fraud. So we have
8 intimidation, on one hand, fraud, on the other, and
9 then the final sentence to wrap up the paragraph would
10 be, "That said," comma, "any legislative proposals
11 that treat voter intimidation and access should also
12 address," so that we have a recommendation from the
13 Commission with respect to intimidation, a
14 recommendation from the Commission with respect to
15 fraud, and then the final sentence saying, that said,
16 we don't want any legislative proposal that only deals
17 with one of the issues and not the tandem issues.

18 COMMISSIONER YAKI: Why don't we put them
19 in three separate recommendations rather than shoving
20 them all into one?

21 VICE CHAIR THERNSTROM: Why?

22 COMMISSIONER GAZIANO: That loses the
23 virtue of saying that they shouldn't do one without
24 the other.

25 COMMISSIONER HERIOT: They get taken out

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1 of context. People don't remember and they're not
2 told about the one about the --

3 COMMISSIONER TAYLOR: As a practical
4 matter, Commissioner Yaki, I would tell you when the
5 press picks up this, I don't want the press to focus
6 on a single finding or recommendation, or
7 recommendation in this case because it's easy, and if
8 they're going to focus on a recommendation and ignore
9 the other one, I personally want to be able to say
10 that the reporter when they wrote the article selected
11 to ignore our next sentence in the same specific
12 recommendation.

13 They probably won't do that, but it's
14 easier for them to do so if we separate them into
15 different recommendations. So I want the public to
16 know that we believe these are tandem issues, which I
17 think is the best way to phrase it, that should always
18 be considered together.

19 VICE CHAIR THERNSTROM: I don't see that
20 you lose anything by accepting Commissioner Taylor's
21 friendly amendment.

22 COMMISSIONER YAKI: Well, I have no idea
23 what in the hell it says. I do have a problem with
24 it.

25 VICE CHAIR THERNSTROM: He can read it

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1 again.

2 COMMISSIONER TAYLOR: The first sentence,
3 Commission Yaki, would read, "There are a" -- well,
4 first of all, there's four sentences. There's an
5 introduction, specific example on intimidation,
6 specific example on fraud. The third sentence demands
7 balance or fourth sentence, rather, demands balance.

8 The first sentence, "there are a number of
9 proposals currently in Congress that purport to deal
10 with the problem of voter intimidation or voter
11 access," period.

12 COMMISSIONER HERIOT: Or voter fraud,
13 don't we?

14 COMMISSIONER TAYLOR: "Or voter fraud,"
15 rather, period.

16 Next sentence, "Congress should pass
17 legislation," and then we use the balance of that
18 sentence. Commissioner Yaki, are you with me?

19 COMMISSIONER YAKI: Yeah, but I don't know
20 why we take out the first clause. Why don't we --

21 COMMISSIONER TAYLOR: Okay.

22 COMMISSIONER YAKI: Why do you not want
23 the word "voter intimidation" in the second sentence?

24 COMMISSIONER TAYLOR: I'm not opposed that
25 that. That's fine. I was trying to make it clean.

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1 That's fine.

2 "In other to prevent systemic voter
3 intimidation," comma --

4 COMMISSIONER YAKI: Taken as is. Okay.

5 COMMISSIONER TAYLOR: Yeah, that would be
6 the second sentence.

7 COMMISSIONER YAKI: Okay.

8 COMMISSIONER TAYLOR: The third sentence
9 would read, "In order to prevent systemic voter
10 fraud," comma, "Congress should," and then we have to
11 insert a specific recommendation to prevent voter
12 fraud.

13 COMMISSIONER HERIOT: Can we have those
14 two sentences just separated by a semicolon?

15 COMMISSIONER TAYLOR: I like that.

16 Commissioner Yaki, I did hear your
17 question about the specific recommendation. Can I
18 hold that question on the sideline until we get to the
19 last sentence and then come back to it?

20 So that the last sentence would read, "Any
21 legislative proposals that treat voter intimidation
22 and access must also address the real and documented
23 problem of voter fraud (or vice versa)" -- I know it's
24 not --

25 COMMISSIONER YAKI: Yeah, yeah. That's

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1 fine.

2 COMMISSIONER TAYLOR: "If they have any,"
3 blah, blah, blah, blah.

4 COMMISSIONER YAKI: I want to know what
5 your examples of fraud are going to be.

6 COMMISSIONER TAYLOR: Right.

7 COMMISSIONER YAKI: We seem to have like
8 20 of them in this report already. We have eight, we
9 have nine, we have ten, we have 11. Are we going to
10 cram them all into one?

11 COMMISSIONER TAYLOR: I would be inclined
12 to have one simple --

13 COMMISSIONER YAKI: Then what's the point
14 of having eight, nine, ten, and 11?

15 VICE CHAIR THERNSTROM: Well, let's get to
16 those next. Why don't we decide --

17 COMMISSIONER YAKI: Commissioner Taylor,
18 this is why having -- I don't understand what the
19 paranoia about the press is on this when we have four,
20 five, six arguable recommendations that go toward
21 voter fraud, and one on voter intimidation.

22 COMMISSIONER HERIOT: This is the only one
23 that's on pending legislation.

24 COMMISSIONER GAZIANO: This is the only
25 one where we're recommending Congress actually pass

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1 legislation, and also there may be some press who are
2 fed something selectively. The press may not read all
3 of our wonderful recommendations, shocking though that
4 may be.

5 COMMISSIONER YAKI: Given the amount of
6 press that the Commission gets nowadays, I don't think
7 that if we tied them to a stake and glued their
8 eyeballs open and made them watch this we'd get
9 anything out of it anyway

10 VICE CHAIR THERNSTROM: But look. You
11 yourself --

12 COMMISSIONER HERIOT: You're protesting
13 too much here.

14 VICE CHAIR THERNSTROM: You yourself
15 raised the issue earlier about having -- raised the
16 question earlier about having a briefing on media
17 handling of the race issue in this presidential
18 election. You are yourself a little skeptical about
19 the quality of reporting in the media.

20 COMMISSIONER YAKI: Yes, and since they do
21 such a great job of not covering us, my skepticism is
22 based more on their general decision to ignore
23 everything that we do.

24 VICE CHAIR THERNSTROM: Well, they can
25 have an episode of deciding to pay attention to us,

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1 and the question is what will happen --

2 COMMISSIONER GAZIANO: I'm happy,
3 Commissioner Taylor, I'm happy to abstain from the
4 amended amended amended motion. I don't know that I'm
5 comfortable in discussing either example, but I
6 understand that Commissioners Yaki and Melendez really
7 like this one.

8 My other problem with it as it originally
9 read is it seems rather broad that we're endorsing a
10 particular piece of legislation that's rather vague.
11 Does this cover grade school elections? Does it cover
12 non-federal elections?

13 But I just wanted to sort of explain why I
14 may abstain from this particular one and why I
15 preferred Commissioner Taylor's original version, but
16 if the rest of you all like it, then fine.

17 VICE CHAIR THERNSTROM: I am comfortable
18 with Commissioner Taylor's most recent formulation of
19 a recommendation.

20 COMMISSIONER YAKI: Well, we still don't
21 know what the third freaking sentence is. So how can
22 anyone be comfortable with what it says?

23 COMMISSIONER TAYLOR: Well, let me try to
24 cut to the quick. If we --

25 COMMISSIONER YAKI: No insult intended,

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1 Commissioner.

2 VICE CHAIR THERNSTROM: No, no, but it was
3 pretty -- you know. There are limited possibilities
4 here.

5 COMMISSIONER TAYLOR: If we think through
6 a specific example that we would want to recommend to
7 Congress with respect to voter fraud, Commissioner
8 Yaki, will it draw your support?

9 I'm willing to go through the exercise if
10 it will draw your support.

11 COMMISSIONER YAKI: Well, let me put it to
12 you this way. I don't know if it will draw my
13 support. I think that if the Commission chooses to
14 not do anything on voter intimidation, then I will
15 have a field day with that with the press, but I don't
16 think the Commission will do that.

17 So then the issue is what are you going to
18 do about it. You are proposing something that I don't
19 know what the third item is going to be or if you want
20 to choose from the menu of eight, nine, ten and 11,
21 all of which -- or five or six -- all of which could
22 -- well, six is clearly federal because HAVA is a
23 federal law.

24 You know, you can do whatever you want. I
25 mean, I'm not -- to me I'm agnostic about it at this

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1 point because if you're going to do it, you're going
2 to do it and you'll probably get the votes. I'm just
3 saying that you have lots of other items that deal
4 with voter fraud. Pick whatever you want to do and
5 put in there. If you just want to put in the general
6 statement that legislation should be twinned with
7 voter fraud stuff, that's your right to do that, but
8 you know, if you want to strike the entire voter
9 intimidation thing altogether, be my guest and I'll
10 have lots of fun with that.

11 VICE CHAIR THERNSTROM: Well, Commissioner
12 Yaki, that's a little bit of a puzzling statement to
13 me since a minute ago you claimed we can't get any
14 press about Commission activities in general, and now
15 you are kind of threatening to have a field day with
16 the press on what we do with this.

17 But in any case, I think --

18 COMMISSIONER YAKI: I didn't say that I
19 couldn't do it.

20 VICE CHAIR THERNSTROM: I see. Well,
21 please be our guest, but --

22 COMMISSIONER GAZIANO: But to clarify,
23 Commissioner Taylor is asking if you would agree and
24 is your answer no?

25 COMMISSIONER YAKI: I don't know what

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1 Commissioner Taylor is going to say in the third
2 sentence.

3 COMMISSIONER GAZIANO: Okay. Let's
4 postpone that then.

5 COMMISSIONER YAKI: What he said I might
6 agree, but if --

7 VICE CHAIR THERNSTROM: Well, we are
8 trying to make a good faith effort to meet your
9 concerns here.

10 COMMISSIONER HERIOT: Do we have the word
11 "systemic" now appearing in this?

12 COMMISSIONER TAYLOR: We do not have.

13 COMMISSIONER HERIOT: Systemic, that sort
14 of functions as a finding, and I would rather strike
15 "systemic" with regard to either voter fraud or voter
16 intimidation.

17 VICE CHAIR THERNSTROM: It sounds like
18 we've got it.

19 COMMISSIONER HERIOT: In order to prevent
20 voter -- okay.

21 COMMISSIONER TAYLOR: If we're included
22 his specific example of what Congress should do, we
23 would have that in there.

24 VICE CHAIR THERNSTROM: Do you want to put
25 this on hold, go on to the next finding and come back

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1 to it?

2 COMMISSIONER TAYLOR: No. I consider this
3 just to be part of the discussion period, and I think
4 my substitute motion with the second is what remains
5 on the floor. So I just --

6 VICE CHAIR THERNSTROM: Well, I thought
7 that you wanted to tweak.

8 COMMISSIONER YAKI: There is no third
9 sentence as far as I can tell. Commissioner Taylor,
10 am I wrong? You keep on saying "the third sentence
11 that would say this," but you haven't said what it is.

12 COMMISSIONER TAYLOR: Let's pass on it for
13 the moment and let me give it some thought.

14 VICE CHAIR THERNSTROM: Okay. That was my
15 question. Would you like to pass for the moment and
16 go on?

17 COMMISSIONER TAYLOR: Yes, ma'am.

18 VICE CHAIR THERNSTROM: Okay.
19 Recommendation 8 reads, "Prior to an election
20 standards should be put in place for conducting voting
21 in the event of voting machine malfunctions and
22 instructions should be provided as to the proper use
23 of provisional ballots."

24 Can I have a motion on that?

25 COMMISSIONER HERIOT: So moved.

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1 COMMISSIONER KIRSANOW: Second.

2 VICE CHAIR THERNSTROM: Okay. Discussion
3 on this.

4 COMMISSIONER YAKI: This is Commissioner
5 Yaki.

6 All right. To whom are we saying
7 standards should be put in place? Are we talking
8 about states, secretaries of state? Are we talking
9 about local registrars? Who's going to promulgate
10 these standards?

11 I mean, not to be nit-picky here, but
12 voting is a multi-headed hydra in terms of who tells
13 who to do what and when.

14 VICE CHAIR THERNSTROM: I mean, this is a
15 perhaps woefully uninformed question of mine, but as I
16 understand it, it would depend. It would vary from
17 state to state who was responsible here. No?

18 COMMISSIONER GAZIANO: Yeah. I think it's
19 a question whether it should be state standards,
20 whether we should leave it blank, that it's just
21 standards at whatever level of government.

22 VICE CHAIR THERNSTROM: Who's responsible?

23 COMMISSIONER GAZIANO: I agree that this
24 is a hydra-headed issue. Why isn't it preferable then
25 just to leave it unmodified, Commissioner Yaki, so

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1 that --

2 COMMISSIONER YAKI: Because the question
3 is --

4 COMMISSIONER GAZIANO: I would hope
5 that --

6 COMMISSIONER YAKI: -- you have city
7 clerk. You have a county registrar. You have a state
8 secretary of state, and they're all looking at each
9 other going, "Well, whose job is it?"

10 COMMISSIONER GAZIANO: Well, that's why I
11 think it's better for us at least at this point
12 sitting here to leave it blank. I mean, the Election
13 Assistance Commission has some role. In different
14 states there are different officials that have
15 different role. So, you know, why can't we just
16 endorse that standards should be put in place and
17 leave it to all the officials that have some
18 responsibility to take their share of responsibility?

19 VICE CHAIR THERNSTROM: Yeah, I just don't
20 see why we have to kind of wade into particulars that
21 are going to vary from locality to locality.

22 COMMISSIONER HERIOT: The alternative if
23 you put it in the active voice would just be to say
24 appropriate authorities should put into place.

25 VICE CHAIR THERNSTROM: Okay. Appropriate

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1 authorities. I'm fine with that.

2 COMMISSIONER YAKI: I'm fine with that,
3 too. That's what I was looking for. Thank you,
4 Commissioner Heriot.

5 VICE CHAIR THERNSTROM: Okay. A friendly
6 amendment here. Appropriate authority should be put
7 in place for the standards for conducting voting in
8 the event of voting machine malfunctions, and there
9 has to be a comma there, and instructions should be
10 provided as to the proper use of provisional ballots.

11 Are we okay with that?

12 (No response.)

13 VICE CHAIR THERNSTROM: Can I call the
14 question on that? Commissioner Kirsanow, you have
15 something?

16 COMMISSIONER KIRSANOW: No.

17 VICE CHAIR THERNSTROM: All in favor?

18 (Chorus of ayes.)

19 VICE CHAIR THERNSTROM: Anybody opposed to
20 that?

21 (No response.)

22 VICE CHAIR THERNSTROM: Okay. That was a
23 unanimous vote in favor.

24 Can I have a motion for Recommendation 9,
25 which reads as follows: "states should adopt a photo

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1 identification requirement for both registration and
2 voting. Such requirement would increase voter
3 confidence to deter fraud and extend to the voting
4 process the same security required to rent a movie,
5 board a flight or enter many federal buildings."

6 COMMISSIONER KIRSANOW: Madam Chair, I'd
7 offer an amendment to that recommendation.

8 VICE CHAIR THERNSTROM: Yes.

9 COMMISSIONER KIRSANOW: It would be
10 essentially the same, but increase the specificity and
11 would read as follows. "States should adopt a photo
12 identification requirement for both registration and
13 voting by, for example, requiring all citizens who
14 register to vote with a mail-in form where the form is
15 actually sent by mail or hand delivered to provide
16 proof of their identity with their registration
17 application or when they appear at the polling
18 station. Such requirement would improve voter
19 confidence, deter fraud, and extend to the voting
20 process the same security common required to board a
21 flight or enter many federal buildings."

22 COMMISSIONER YAKI: I have a friendly
23 amendment to that friendly amendment.

24 VICE CHAIR THERNSTROM: Yeah, go on.

25 COMMISSIONER YAKI: I think that we should

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1 knock out the examples because someone with a non-
2 expiring federal ID was not allowed to vote in
3 Indiana.

4 COMMISSIONER GAZIANO: You'd like that?

5 COMMISSIONER YAKI: They said to the
6 person, "I don't care if you work for blankety-blank
7 agency and I don't care if this is a federal ID.
8 There's no expiration date on it, and you have to go
9 get a state driver's license."

10 VICE CHAIR THERNSTROM: That's actually
11 true at airports. I had a non-expiring Massachusetts
12 State Board of Education ID which was not acceptable.

13 COMMISSIONER YAKI: I would just not have
14 the federal building issue or rent a movie or board a
15 flight. I mean, it's obvious --

16 VICE CHAIR THERNSTROM: Well, its'
17 underscoring the fact that in many contexts a photo ID
18 is essentially.

19 COMMISSIONER YAKI: Yes, but I'm just
20 telling you that in Indiana, a guy that -- oh, by the
21 way, I understand there's a copy of Peter's motion.
22 Is there one that I can get to?

23 VICE CHAIR THERNSTROM: I just got handed
24 a copy.

25 COMMISSIONER GAZIANO: I thought they were

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1 E-mailed.

2 COMMISSIONER YAKI: They were not E-
3 mailed.

4 VICE CHAIR THERNSTROM: I did not have --

5 COMMISSIONER GAZIANO: One of our
6 assistants is nodding that they were E-mailed.

7 COMMISSIONER YAKI: Commissioner Kirsanow?

8 COMMISSIONER KIRSANOW: Yes.

9 COMMISSIONER YAKI: Oh, it's at the bottom
10 of this thing, this thing I got at 7:04 a.m. Yeah, I
11 mean, whatever. I'm going to vote against it. So
12 let's just move on.

13 VICE CHAIR THERNSTROM: Okay. We are
14 voting on the friendly amendment.

15 COMMISSIONER KIRSANOW: You need a second,
16 I believe.

17 VICE CHAIR THERNSTROM: I was going to say
18 --

19 COMMISSIONER GAZIANO: Second.

20 VICE CHAIR THERNSTROM: -- we have not had
21 a second on that.

22 COMMISSIONER GAZIANO: Second. Two
23 seconds.

24 COMMISSIONER YAKI: Let's be factually
25 incorrect about federal IDs. That's just to be really

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1 good about it.

2 VICE CHAIR THERNSTROM: I missed that.

3 COMMISSIONER YAKI: I said let's go ahead
4 and be factually incorrect about federal IDs in this
5 recommendation. It's fine with me.

6 COMMISSIONER HERIOT: What's factually
7 incorrect about it?

8 COMMISSIONER YAKI: Non-expiring federal
9 IDs are not accepted by poll workers. There's a
10 federal employee in Indiana who had to go back and get
11 his driver's license who had a non-expiring federal ID
12 which would have allowed him into a federal
13 building --

14 COMMISSIONER HERIOT: That's not in here.

15 COMMISSIONER YAKI: -- but is not
16 sufficient to allow him to vote.

17 COMMISSIONER HERIOT: It's not in here.

18 COMMISSIONER GAZIANO: You may be raising
19 an interesting point, but it's not part of the
20 recommendation.

21 VICE CHAIR THERNSTROM: It's just not part
22 of the text.

23 COMMISSIONER YAKI: Yes, it is. I'm
24 reading Recommendation No. 9. "Enter many federal
25 buildings." Maybe I'm wrong. Maybe I'm reading the

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1 wrong E-mail.

2 COMMISSIONER GAZIANO: But I thought you
3 were objecting to the additional language that Peter
4 offered as a friendly amendment. So your objection is
5 to the original recommendation.

6 COMMISSIONER YAKI: No, Peter amended No.
7 9 as I'm reading it from the E-mail that was sent to
8 me at 7:04 a.m., and with this.

9 VICE CHAIR THERNSTROM: "Or enter many
10 federal buildings." That's correct.

11 COMMISSIONER YAKI: Period.

12 VICE CHAIR THERNSTROM: Yeah, it does.

13 COMMISSIONER GAZIANO: Yes, but it's a
14 separate sentence. Such a requirement would increase
15 voter confidence. Yaddy-yaddy-yada.

16 COMMISSIONER HERIOT: It is precisely the
17 same requirement with precisely the same --

18 COMMISSIONER YAKI: It will increase voter
19 confidence because the ID that you use in a federal
20 building is good for voting, and that's not true.

21 COMMISSIONER HERIOT: It doesn't say that.

22 VICE CHAIR THERNSTROM: No, it doesn't say
23 that.

24 COMMISSIONER KIRSANOW: That's not what it
25 reads.

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1 COMMISSIONER YAKI: Then why in the heck
2 even put it in there because someone who reads it will
3 say, "Well, the Commission said that it's a fraud
4 and" --

5 COMMISSIONER HERIOT: The Commission says
6 they require an ID at federal buildings, and that's
7 correct. There's nothing here about the details of
8 exactly which ID or exactly how it must be held.

9 COMMISSIONER YAKI: But by giving an
10 examples we're telling people it's as easy as these
11 kinds of IDs. Well, it's not as easy as these kinds
12 of IDs it turns out --

13 COMMISSIONER HERIOT: It's easier because
14 you can vote --

15 COMMISSIONER YAKI: -- if you brought it
16 to the poll and thought that you would get a ballot.

17 VICE CHAIR THERNSTROM: Commissioner
18 Heriot.

19 COMMISSIONER HERIOT: In some ways it's
20 easier to vote because you can vote provisionally even
21 if you don't have an ID.

22 COMMISSIONER YAKI: They did not let this
23 guy in Indiana vote.

24 COMMISSIONER HERIOT: Nobody is --

25 COMMISSIONER YAKI: They sent him home to

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1 get a driver's license.

2 COMMISSIONER HERIOT: -- the requirements
3 are identical. It's just saying they're analogous.

4 VICE CHAIR THERNSTROM: Listen. We are
5 not going to --

6 COMMISSIONER KIRSANOW: Can we agree to
7 disagree and call the question?

8 VICE CHAIR THERNSTROM: -- hang this whole
9 thing on the story of one voter.

10 COMMISSIONER YAKI: Shall we talk about
11 the nuns then?

12 COMMISSIONER KIRSANOW: Call the question.

13 VICE CHAIR THERNSTROM: I call the
14 question. We've got on the table, I believe,
15 Commissioner Kirsanow's substitute.

16 COMMISSIONER YAKI: No, I'm voting no.
17 Let's move on with the vote.

18 COMMISSIONER GAZIANO: Aye.

19 COMMISSIONER YAKI: No.

20 VICE CHAIR THERNSTROM: Have we got two
21 noes there or one no?

22 COMMISSIONER MELENDEZ: No, Melendez.

23 COMMISSIONER HERIOT: Aye.

24 VICE CHAIR THERNSTROM: And is anybody in
25 this room voting no or abstaining? No. So okay. Two

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1 nays and the rest are ayes.

2 Okay. Where are we? Ten, unless we are
3 ready to go back to -- are we ready to go back to
4 eight?

5 PARTICIPANT: Not yet.

6 VICE CHAIR THERNSTROM: Not yet.

7 Okay. Ten reads, "To avoid unnecessary
8 barriers to voting, any required photo identification
9 should be provided without cost to the indigent, and
10 active outreach should be made to register and qualify
11 those who are currently without such identification."

12 Please put a comma after --

13 COMMISSIONER HERIOT: Yeah, there should
14 have been a comma here.

15 VICE CHAIR THERNSTROM: Yeah, you're
16 missing a comma after "indigent."

17 "Those without photo identification should
18 be allowed to vote by provisional ballot."

19 So we are leaving out any recommendation
20 with respect to what happens after a provisional
21 ballot is cast in terms of verifying the
22 identification of the voter.

23 COMMISSIONER HERIOT: Yeah, we are leaving
24 options to the state.

25 VICE CHAIR THERNSTROM: Right.

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1 Discussions -- well, first place, do I have a motion
2 on that?

3 COMMISSIONER KIRSANOW: So moved.

4 VICE CHAIR THERNSTROM: And a second?

5 COMMISSIONER HERIOT: Second.

6 VICE CHAIR THERNSTROM: Okay. Discussion.

7

8 (No response.)

9 VICE CHAIR THERNSTROM: No discussion.

10 I'll call the question. All in favor?

11 (Chorus of ayes.)

12

13 VICE CHAIR THERNSTROM: Melendez and Yaki?

14 COMMISSIONER YAKI: Abstain.

15 VICE CHAIR THERNSTROM: Aye. Okay. We've
16 got a unanimous vote on ten.

17 COMMISSIONER YAKI: What?

18 COMMISSIONER HERIOT: He just abstained.

19 VICE CHAIR THERNSTROM: Oh, you abstained.

20 I'm sorry. Got to get that voice back. Who has
21 abstained? Commissioners Yaki and Melendez both?

22 COMMISSIONER YAKI: Yaki. Yaki abstains.

23 COMMISSIONER MELENDEZ: Melendez approves.

24 It's only.

25 VICE CHAIR THERNSTROM: Melendez approves.

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1 Okay.

2 Recommendation 11. "To address the
3 special challenges posed by absentee ballots, states
4 should adopt requirements that voters' signatures on
5 the absentee ballots be matched with a digitalized
6 version of the signature maintained by election
7 officials."

8 COMMISSIONER GAZIANO: So moved.

9 COMMISSIONER KIRSANOW: Second.

10 VICE CHAIR THERNSTROM: Discussion.

11 (No response.)

12 VICE CHAIR THERNSTROM: All right. Call
13 your question. All in favor.

14 (Chorus of ayes.)

15 COMMISSIONER YAKI: Abstain.

16 COMMISSIONER MELENDEZ: Abstain, Melendez.

17 VICE CHAIR THERNSTROM: Abstain Melendez
18 and Yaki, and otherwise everyone has approved.

19 So we are back to eight -- seven. I'm
20 sorry, seven.

21 COMMISSIONER TAYLOR: I'll take one more
22 stab at it.

23 COMMISSIONER GAZIANO: I have a possible
24 friendly amendment to the friendly amendment when
25 you're done.

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1 COMMISSIONER TAYLOR: Well, I have not
2 been able to come up with a specific example of what
3 we want to recommend or should recommend to Congress
4 they should do in the way of preventing voter fraud.
5 The only thing I could think of would be to add the
6 phrase at the end of the current sentence, which in my
7 proposal was the second sentence. Commissioner Yaki,
8 it's the sentence that starts with "in order to
9 prevent systemic voter intimidation," but then to add
10 so long as Congress also included the specific
11 expansion of or efforts to eliminate voter fraud.

12 COMMISSIONER HERIOT: We're not going to
13 use "systemic," are we? Just in order to prevent
14 voter intimidation.

15 COMMISSIONER TAYLOR: Yeah. We shouldn't
16 have it limited to simply systemic voter.

17 COMMISSIONER HERIOT: Yeah. We shouldn't
18 suggest that we believe it is systemic.

19 COMMISSIONER TAYLOR: Right.

20 COMMISSIONER GAZIANO: Can I offer a
21 suggestion? Again, one of my concerns with including
22 that phrase is that it isn't limited to Congress'
23 authority over federal elections. It sweeps broader
24 than that.

25 I'm also just a little bit uncomfortable

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1 telling Congress what it should do with regard to, you
2 know, this specific provision. What about this for
3 the second and third, to replace the second and third
4 sentences? "Congress should pass legislation to
5 strengthen or expand prohibitions against voter
6 confusion, intimidation, and voter fraud in federal
7 elections," period.

8 VICE CHAIR THERNSTROM: I don't think you
9 can voter confusion is something that you can
10 prohibit.

11 COMMISSIONER GAZIANO: Just to strengthen
12 the --

13 COMMISSIONER YAKI: Karl Rove would be out
14 of a job.

15 (Laughter.)

16 COMMISSIONER GAZIANO: Well, let me put it
17 this way. I think it's clear that Congress'
18 responsibility wouldn't be to make sure that everyone
19 has perfect clarity, but to create prohibitions --
20 well, I don't know. Maybe someone could help me with
21 the language -- someone intentionally trying to create
22 confusion, intimidate or engage in fraud in federal
23 elections.

24 VICE CHAIR THERNSTROM: That's fine.

25 COMMISSIONER GAZIANO: But just make it a

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1 little bit more generic, that those are the three
2 subjects that we are concerned about that we think
3 Congress actually needs to do something on.

4 So this is a positive statement. We
5 really think legislation is necessary. Legislation is
6 necessary in all of these areas, without getting so
7 specific as to what Congress needs to do in one area
8 versus another area.

9 COMMISSIONER TAYLOR: I would accept that
10 friendly amendment, and even to make it closer to the
11 original text, if we started with "in order to prevent
12 voter intimidation and voter fraud," comma, and then
13 we add the friendly amendment.

14 COMMISSIONER YAKI: I have a question.

15 VICE CHAIR THERNSTROM: Please go ahead.

16 COMMISSIONER YAKI: I do not understand
17 the '65 Voting Rights Act to be confined only to
18 federal elections.

19 COMMISSIONER GAZIANO: I'm not saying that
20 that isn't -- that will, of course, still be in place,
21 but where I think we want additional legislation is
22 specifically to cover federal. I don't necessarily
23 want to have third grade class presidents covered, for
24 one thing.

25 COMMISSIONER YAKI: No, but how about

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1 those elections covered by the Federal Voting Rights?

2 VICE CHAIR THERNSTROM: The Federal Voting
3 Rights Act covers all elections, including to water
4 boards or, you know, local school boards or county
5 councils on up the ladder.

6 COMMISSIONER YAKI: But it does not count
7 whether you're going to be vice president of your
8 third grade class.

9 VICE CHAIR THERNSTROM: It does not.

10 COMMISSIONER GAZIANO: But it has other
11 limitations in them, certain jurisdictional limits
12 that I admit I don't fully understand, but I'm not --

13 VICE CHAIR THERNSTROM: Well, it does and
14 it doesn't.

15 COMMISSIONER GAZIANO: -- and I'm not
16 saying that I certainly disagree with those, but
17 what's needed, the additional legislation that's
18 needed --

19 COMMISSIONER YAKI: I mean some of the
20 most egregious examples of voter intimidation have
21 been, in violations of the Voting Rights Act, have
22 been at the local school board levels. I'm not going
23 to be one to limit what we're talking about to simply
24 national or federal elections.

25 COMMISSIONER TAYLOR: Well, in this regard

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1 if we simply make a recommendation to Congress that
2 Congress should do X, implicit in that recommendation
3 is that they should act within their authority.

4 VICE CHAIR THERNSTROM: I can -- yeah.

5 COMMISSIONER TAYLOR: I don't think we
6 have to go any --

7 VICE CHAIR THERNSTROM: Right.

8 COMMISSIONER TAYLOR: I don't think we
9 have to go beyond that point to make it specific. No
10 one is going to --

11 VICE CHAIR THERNSTROM: But, Michael, I'm
12 completely confused about your point. The Voting
13 Rights Act, we're not recommending here that the
14 Voting Rights Act be amended in any way, and the
15 Voting Right Act already empowers the Justice
16 Department and private plaintiffs to go after
17 violations or purported violations of either Section 5
18 or Section 2 of the statute.

19 So, I mean, this is not intended to amend
20 the Voting Rights Act. That's --

21 COMMISSIONER GAZIANO: Sure, and again, I
22 don't -- maybe it's not necessary to put that in the
23 federal election, but let me just explain. You know,
24 I think it's an improvement to say to strengthen or
25 expand because I actually think some of the voter

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1 intimidation and confusion attempts are certainly
2 already covered by federal law, and that's a hot
3 debate. I don't think we should be saying that
4 they're not already covered.

5 COMMISSIONER HERIOT: The Department of
6 Justice is already prosecuting people for voter
7 intimidation under a statute that they believe covers
8 it, but doesn't clarify it perhaps as much as it ought
9 to be. So we don't want to suggest by our
10 recommendations that we think current law does not
11 cover voter intimidation because we don't want to
12 interfere with these prosecutions.

13 VICE CHAIR THERNSTROM: The Fifteenth
14 Amendment also covers voting intimidation.

15 COMMISSIONER HERIOT: But it's not a
16 criminal law.

17 VICE CHAIR THERNSTROM: No.

18 COMMISSIONER HERIOT: We don't want to
19 suggest the statutes do not currently cover this.
20 That's not to say they can't be improved.

21 COMMISSIONER TAYLOR: Can I try this?

22 COMMISSIONER GAZIANO: Sure.

23 COMMISSIONER TAYLOR: Stick with me,
24 Commissioner Gaziano, if you would.

25 First sentence, "there are a number of

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1 proposals currently in Congress that purport to deal
2 with the problem of voter intimidation or voter
3 access," period.

4 COMMISSIONER HERIOT: Or voter fraud.

5 COMMISSIONER TAYLOR: "Or voter fraud,"
6 period. That would be the first sentence.

7 The second sentence would begin, "In order
8 to prevent voter intimidation and voter fraud," comma
9 -- Commissioner Gaziano, I do not have your language
10 in front of me, but then we would insert --

11 COMMISSIONER GAZIANO: "Congress should
12 pass legislation to strengthen or clarify prohibitions
13 against intentional voter confusion, intimidation and
14 voter fraud," period.

15 COMMISSIONER TAYLOR: Period. Madam
16 Chair, are you with me?

17 VICE CHAIR THERNSTROM: Again, "clarify
18 prohibitions against intentional voter"?

19 COMMISSIONER GAZIANO: Confusion.

20 VICE CHAIR THERNSTROM: Confusion.

21 COMMISSIONER GAZIANO: Intimidation -- you
22 can't prevent the unintended confusion.

23 COMMISSIONER TAYLOR: Right.

24 COMMISSIONER GAZIANO: But "the
25 intentional confusion, intimidation and voter fraud,"

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1 period.

2 COMMISSIONER YAKI: You really have put
3 Karl Rove out of a job.

4 VICE CHAIR THERNSTROM: We will ignore
5 that.

6 COMMISSIONER TAYLOR: Then we go to our
7 final sentence. "Any legislative proposals that treat
8 voter intimidation and access should also address the
9 real and documented problem of voter fraud (or vice
10 versa) if they are to have the intended effect of
11 promoting electoral reform and restoring confidence
12 in the electoral process," period.

13 COMMISSIONER KIRSANOW: Second.

14 VICE CHAIR THERNSTROM: Can we just say
15 either voter intimidation or fraud rather than the
16 vice versa?

17 COMMISSIONER TAYLOR: That sounds
18 grammatically correct. Does that capture "or vice
19 versa" though? Does it necessarily make the reader go
20 back and reverse the two? It's a question.

21 COMMISSIONER HERIOT: If you read it as
22 you condition it, it doesn't.

23 VICE CHAIR THERNSTROM: It doesn't quite
24 do that.

25 COMMISSIONER GAZIANO: Can I make one

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1 amendment to my suggested amendment to your amendment?

2 VICE CHAIR THERNSTROM: Oh, no. Wait a
3 minute.

4 COMMISSIONER GAZIANO: Replace "deception"
5 for "confusion." "Intentional deception."

6 VICE CHAIR THERNSTROM: I like that
7 better.

8 COMMISSIONER TAYLOR: That's better.

9 VICE CHAIR THERNSTROM: It is better.

10 COMMISSIONER HERIOT: That's right.

11 COMMISSIONER TAYLOR: How do we put in the
12 concept of vice versa so that it actually reads that
13 way? I know it's a little clumsy.

14 COMMISSIONER HERIOT: Any legislative
15 proposal should treat both.

16 COMMISSIONER KIRSANOW: In tandem.

17 COMMISSIONER TAYLOR: In tandem?

18 VICE CHAIR THERNSTROM: Yeah, that's fine.

19 Both in tandem. Okay. Shall we read this? I
20 actually like it a lot. Shall we read it?

21 And, Commissioner Yaki, it is an attempt
22 to meet your objections, but, you know, that doesn't
23 mean, of course, you're going to sign on.

24 COMMISSIONER TAYLOR: Let me read it again
25 for clarification before we all vote.

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1 VICE CHAIR THERNSTROM: Yes.

2 COMMISSIONER TAYLOR: All right. Here we
3 go.

4 "There are a number of proposals currently
5 in Congress" --

6 VICE CHAIR THERNSTROM: "Pending in
7 Congress"; is that correct?

8 COMMISSIONER TAYLOR: "Currently pending
9 in Congress."

10 VICE CHAIR THERNSTROM: Right.

11 COMMISSIONER TAYLOR: That's "pending in
12 Congress."

13 "That purport to deal with the problem of
14 voter intimidation or voter fraud. In order to
15 prevent voter intimidation or voter fraud," comma,
16 "Congress" --

17 COMMISSIONER GAZIANO: "Should pass
18 legislation to strengthen or improve prohibitions
19 against intentional voter deception, intimidation, and
20 voter fraud."

21 COMMISSIONER TAYLOR: Period. "Any
22 legislative proposals that treat voter intimidation
23 and access should also address" let's say "the tandem
24 problem of voter fraud."

25 COMMISSIONER HERIOT: That doesn't sound

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1 good.

2 COMMISSIONER GAZIANO: Doesn't sound good?

3 COMMISSIONER HERIOT: No.

4 VICE CHAIR THERNSTROM: You had a better.

5

6 COMMISSIONER HERIOT: Yeah. "Any
7 legislative proposal should treat both problems in
8 tandem."

9 One of the problems we have right now is
10 that Todd's language brings up this notion of
11 intentional voter deception as if it's not a subset of
12 voter intimidation. So that makes it sound like yet a
13 third problem.

14 COMMISSIONER GAZIANO: My only reason for
15 doing so was to try to capture some of what I thought
16 Mr. Melendez and --

17 COMMISSIONER HERIOT: Yeah, but why don't
18 we just make it clear that --

19 COMMISSIONER GAZIANO: -- Yaki --

20 COMMISSIONER HERIOT: -- is a subset by
21 saying, "To strengthen or improve prohibitions on
22 voter intimidation, including intentional voter
23 deception"?

24 COMMISSIONER GAZIANO: That's fine.

25 COMMISSIONER HERIOT: "And voter fraud."

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1 COMMISSIONER TAYLOR: That's fine.

2 COMMISSIONER HERIOT: Because that way
3 that makes it clear that that's part of voter
4 intimidation and not a separate category because that
5 way then in the last sentence if we talk about both,
6 it's clear what the both are. We've only got one and
7 two, intimidation and fraud. Any legislative proposal
8 should treat both problems in tandem if the proposals
9 are to have the intended effect of promoting electoral
10 reform and restoring confidence in the electoral
11 process.

12 VICE CHAIR THERNSTROM: I like it.

13 COMMISSIONER TAYLOR: Do you have a
14 recommendation on the last sentence?

15 COMMISSIONER KIRSANOW: No, I think that's
16 the last sentence right there.

17 VICE CHAIR THERNSTROM: Does anybody need
18 it read again?

19 COMMISSIONER MELENDEZ: Just the third
20 sentence, the third paragraph or whatever it is.
21 Could you read that again?

22 COMMISSIONER HERIOT: Third sentence,
23 that's nine. I hope I can do it again. "Any
24 legislative proposal should treat both problems in
25 tandem if those proposals are to have the intended

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1 effect of promoting electoral reform and restoring
2 confidence in the electoral process."

3 VICE CHAIR THERNSTROM: All right. Can we
4 call the question on this? In the first place it has
5 to be in a motion.

6 COMMISSIONER GAZIANO: I thought that was
7 a friendly amendment to my original amendment, and I
8 accept it.

9 COMMISSIONER HERIOT: Second if there was
10 no second.

11 VICE CHAIR THERNSTROM: Right, okay.

12 COMMISSIONER MELENDEZ: I want discussion
13 on this.

14 VICE CHAIR THERNSTROM: Okay. Go ahead.

15 COMMISSIONER MELENDEZ: Melendez here.

16 Really what has happened is the original
17 language has totally disappeared. I was in better
18 shape when I was surrounded by something preceding the
19 original language and then Ashley adding something
20 after the original language, but now it has completely
21 disappeared to something that's totally foreign. So
22 I'm going to support that.

23 VICE CHAIR THERNSTROM: What is foreign
24 about that?

25 COMMISSIONER MELENDEZ: I wanted to have

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1 the original language and basically if we wanted to
2 add something to it, above it or below it, then that
3 was fine, but now it's --

4 VICE CHAIR THERNSTROM: What has been
5 lost?

6 COMMISSIONER MELENDEZ: It's basically
7 just really broadened out, and my opinion is Congress
8 doesn't really do anything when things are really
9 broad. You have to be really specific as to what's
10 actually happening, you know, in real life, on the
11 ground, at the voting places where we hear constantly
12 that people are told to go to the wrong voting
13 station, and that's still happening today. I thought
14 that's what the Commission was all about.

15 We send something in broad and it's
16 probably going to have no effect because everybody
17 knows that we're dealing with intimidation and voter
18 fraud. So you just as well not send anything in.

19 COMMISSIONER GAZIANO: Commissioner
20 Melendez, if I could just reiterate one point I made
21 earlier, as it was originally phrased, it suggests
22 that Congress should pass this legislation. A normal
23 reader would think that such a law doesn't already
24 exist, and I think such a law already exists, and I
25 don't want to undermine the existing prosecutions

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1 because I don't know that Congress is really going to
2 get this done, despite our powerful recommendations.

3 But I don't want someone to be able to
4 sort of argue in court as a defense to a prosecution
5 that the U.S. Commission on Civil Rights doesn't
6 believe that there is such legislation.

7 So that's why to partially meet what I
8 understood to be your and Commissioner Yaki's
9 concerns, I, you know, wanted that word "voter
10 deception" put in there. I think people in Congress
11 know what that means. I hope they do, but I don't
12 want to pass something that implies that there isn't
13 already some legislation that covers that.

14 It can be improved upon. It can be
15 clarified.

16 VICE CHAIR THERNSTROM: It's actually -- I
17 mean, the original legislation is covered by Section 2
18 of the Voting Rights Act.

19 COMMISSIONER TAYLOR: This is Commissioner
20 Taylor. In many ways, I think this new language
21 strengthens, I think, the point of the language
22 previously offered because it broadens the category of
23 intentionally deceiving someone so that, you know, we
24 list these specific incidents, but I think by listing
25 this and telling Congress these are the specific items

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1 they should make unlawful, we limit what we're
2 suggesting, and I think it's important to broaden that
3 category with respect to voter deception generally.
4 Any actions taken to deceive would be included in this
5 new language.

6 COMMISSIONER YAKI: This is Commissioner
7 Yaki.

8 And while I understand Commissioner
9 Taylor's sentiment and intent, to me the problem is
10 one of context, and the context extends back to what I
11 felt was the imbalance of the briefing panel itself
12 and the imbalance in the recommendations. It would be
13 one thing to say that we have improved Recommendation
14 7 in the context of a holistic recommendation on voter
15 intimidation and voter fraud. It's quite another when
16 it's surrounded by a number of pat recommendations
17 that are strictly designed at reinforcing the need for
18 bait or national identity cards for elections.

19 And as much as people want to say we're
20 trying to ensure that only eligible people vote for
21 elections, the real fact of the matter is that the
22 real problem in our voting system nowadays is voter
23 deception, is voter intimidation, and even the record
24 of the hearing suggests that despite the concern that
25 there could be widespread problems with dead people or

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1 other people mastering and other people coming out to
2 vote, the fact of the matter is that when you look at
3 DOJ prosecutions, when you look at state Attorney
4 General prosecutions, when you look at local DA
5 prosecutions, the incidences of voter fraud are
6 extremely low, whereas the documented incidences and
7 the lack of resources that I allege does exist on
8 voter deception and voter intimidation is very real,
9 is targeted at the communities that this Commission
10 was empowered to protect, namely, communities of
11 color, minorities, the poor.

12 And we have a situation here where this is
13 a giant, big valentine to the national ID folks. So
14 you know, what was a good, stand-alone recommendation
15 on the one item that I believe there is a real record
16 of abuse and a real record of prosecutions that gets
17 diminished while voter fraud gets conflated upwards
18 when it may or may not deserve it, and certainly based
19 on the record it may not, notwithstanding the Supreme
20 Court's decision that you can have this kind of idea,
21 but the practical effect is that that's not what the
22 real problem is. That was never what the real problem
23 was, and that's certainly not what the briefing ended
24 up addressing.

25 And that is my concern about this entire

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1 report, this entire briefing, and let's just call the
2 question and get this thing over with so we can get on
3 with our life.

4 VICE CHAIR THERNSTROM: We're calling the
5 question and invite you, of course, to write a dissent
6 to this report, and I would hope you would keep in
7 mind in doing so that the Voting Rights Act does cover
8 voter intimidation, and your argument is really not
9 with a lack of congressional authority in this sphere.

10 But I'm calling the question. All in
11 favor of the last reiteration of this finding, please
12 indicate by saying aye.

13 (Chorus of ayes.)

14 VICE CHAIR THERNSTROM: And --

15 COMMISSIONER YAKI: No. Commissioner Yaki
16 votes no.

17 VICE CHAIR THERNSTROM: And Melendez?

18 COMMISSIONER MELENDEZ: Opposed.

19 VICE CHAIR THERNSTROM: Okay. So we have
20 two opposed and otherwise a unanimous approval.

21 We've got just left here nothing more -- I
22 know everybody wants to adjourn -- the motion to
23 approve the Texas State Advisory Committee nominee.

24 COMMISSIONER YAKI: Point of order.

25 VICE CHAIR THERNSTROM: Yeah.

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1 COMMISSIONER YAKI: I would like to move
2 the due date for dissent back at least a week because
3 it falls upon I think the day before the Memorial Day
4 holiday.

5 VICE CHAIR THERNSTROM: It's now on May
6 23rd; is that correct?

7 COMMISSIONER GAZIANO: Back to the future,
8 back to the past? Which way back?

9 VICE CHAIR THERNSTROM: You want to have a
10 longer time --

11 COMMISSIONER YAKI: Yes.

12 VICE CHAIR THERNSTROM: -- in which to
13 respond. Name a date.

14 COMMISSIONER YAKI: I'm pulling up my
15 calendar. I like June 4th.

16 VICE CHAIR THERNSTROM: Is that acceptable
17 to everybody?

18 COMMISSIONER YAKI: No, no, no. June 5th.
19 What am I talking about? June 3rd is an election
20 day. June 5th.

21 VICE CHAIR THERNSTROM: June what?

22 COMMISSIONER YAKI: Fifth.

23 VICE CHAIR THERNSTROM: Five. If that is
24 acceptable to everybody, let us make it June 5th.

25 Let's move on to the last item.

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1 VII. STATE ADVISORY COMMITTEE ISSUES,

2 APPOINTMENT TO TEXAS SAC

3 At the March 7th, 2008 business meeting, the question
4 was raised as to whether Texas SAC nominee Professor
5 Lino Graglia was eligible for appointment on account
6 of his previous service on the Texas SAC. The
7 Commissioners agreed that in the event he was
8 ineligible to serve because of term limits, they would
9 consider an additional nominee in order to maintain
10 the balance on the SAC. Since Professor Graglia has
11 served on the Texas SAC from '85 to '98, he is
12 ineligible under the ten-year limit memorialized in A-
13 15-9.

14 On April 16th, Dr. Lerner circulated a
15 memo to all Commissioners recommending Professor Glen
16 Thurow as the replacement candidate for appointment on
17 the SAC.

18 May I have a motion to approve Professor
19 Thurow appointment to the Texas SAC?

20 COMMISSIONER KIRSANOW: So moved.

21 VICE CHAIR THERNSTROM: And a second?

22 COMMISSIONER HERIOT: Second.

23 VICE CHAIR THERNSTROM: Any discussion?

24 (No response.)

25 VICE CHAIR THERNSTROM: All in favor say

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1 aye.

2 (Chorus of ayes.)

3 VICE CHAIR THERNSTROM: Opposed?

4 Abstentions?

5 COMMISSIONER YAKI: Opposed.

6 COMMISSIONER MELENDEZ: Opposed, Melendez.

7 VICE CHAIR THERNSTROM: Melendez is

8 opposed.

9 COMMISSIONER YAKI: Opposed, Yaki.

10 VICE CHAIR THERNSTROM: Opposed, Yaki.

11 COMMISSIONER YAKI: Can we make a firm

12 decision that we're going to combine the briefing and

13 our business meeting on the 6th? Can we just do it

14 now?

15 COMMISSIONER GAZIANO: Without the Chair

16 being on the phone, I would suggest we --

17 COMMISSIONER YAKI: -- impinge on having

18 to make this decision now.

19 COMMISSIONER HERIOT: We didn't hear you.

20 COMMISSIONER GAZIANO: Speak up please.

21 Speak up please.

22 COMMISSIONER YAKI: I would like us to

23 make a decision now on whether we're going to

24 consolidate the business meeting and the briefing all

25 on June 6th.

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1 COMMISSIONER GAZIANO: Since the Chairman
2 isn't here and he --

3 VICE CHAIR THERNSTROM: The Chair prefers
4 that evidently.

5 COMMISSIONER GAZIANO: The Chair prefers
6 which?

7 VICE CHAIR THERNSTROM: To consolidate the
8 two on the 6th.

9 COMMISSIONER HERIOT: So an all day
10 meeting?

11 VICE CHAIR THERNSTROM: Yeah.

12 COMMISSIONER MELENDEZ: So the West Coast
13 people would just travel back probably on Saturday?

14 VICE CHAIR THERNSTROM: Yes, that's
15 correct.

16 COMMISSIONER MELENDEZ: All right.

17 COMMISSIONER YAKI: Because they canceled
18 most of the 7:30 flights.

19 VICE CHAIR THERNSTROM: You'd have to stay
20 another night. That's true, but I thought that was
21 what you were just proposing.

22 COMMISSIONER MELENDEZ: Yes.

23 VICE CHAIR THERNSTROM: All right. So
24 you're on board with it.

25 COMMISSIONER MELENDEZ: I'm on board.

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1 VICE CHAIR THERNSTROM: Has anybody got
2 any objection to that?

3 (No response.)

4 VICE CHAIR THERNSTROM: So it's done.

5 COMMISSIONER YAKI: Okay. Thank you.

6 VICE CHAIR THERNSTROM: Anything else
7 before we adjourn?

8 (No response.)

9 VICE CHAIR THERNSTROM: We are adjourned.

10 (Whereupon, at 12:56 p.m., the Commission
11 meeting was concluded.)

12

13

14

15

16

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