

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC COMMISSION MEETING

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MONDAY, JULY 28, 2008

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The meeting convened via telephone at 10:00 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

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

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
EVELYN BOHOR
DEBRA CARR, Associate Deputy Staff Director, OSD
MALEE CRAFT
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, Admin. Services and
Clearinghouse Division
ROBERT LERNER, Assistant Staff Director for OCRE
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
KARA SILVERSTEIN
AUDREY WRIGHT

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

10:07 a.m.

CHAIRMAN REYNOLDS: On the record. Okay.
This is Chairman Reynolds. It is approximately 10:08
a.m. EST on July 28, 2008. This is a telephonic
meeting of the U.S. Commission on Civil Rights with
our Commissioners participating from different
locations.

ROLL CALL

CHAIRMAN REYNOLDS: I will call the name
of each Commissioner in order to determine if there is
a quorum to hold a meeting.

Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: I'm here.

CHAIRMAN REYNOLDS: Commissioner Gaziano.

COMMISSIONER GAZIANO: Here.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Present.

CHAIRMAN REYNOLDS: Commissioner Heriot.

COMMISSIONER HERIOT: Here.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Here.

CHAIRMAN REYNOLDS: Commissioner Yaki.

(No response.)

CHAIRMAN REYNOLDS: Commissioner Taylor.

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1 COMMISSIONER TAYLOR: Here.

2 CHAIRMAN REYNOLDS: Is the Staff Director
3 present?

4 STAFF DIRECTOR DANNENFELSER: Present.

5 CHAIRMAN REYNOLDS: And is the court
6 reporter on the line?

7 COURT REPORTER: Yes, Mr. Chair.

8 CHAIRMAN REYNOLDS: Okay. The meeting
9 will come to order. If a commissioner wants to make a
10 statement or ask a question, please identify yourself
11 first. Whenever it's necessary to take a vote, the
12 following procedure will be followed. I will call out
13 the name of each commissioner. The commissioner
14 should then answer yes, no or abstain. After the
15 voting is finished, I will read out how each of you
16 has voted in order to ensure that the tally is
17 correct.

18 **I. APPROVAL OF AGENDA**

19 CHAIRMAN REYNOLDS: The first item is the
20 approval of the agenda. I move that we approve the
21 agenda. Is there a second?

22 COMMISSIONER HERIOT: Second.

23 VICE CHAIR THERNSTROM: Second.

24 CHAIRMAN REYNOLDS: Discussion?

25 VICE CHAIR THERNSTROM: That was

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1 Thernstrom seconding.

2 COMMISSIONER MELENDEZ: Commission
3 Melendez here. On the agenda, could I -- Is it
4 possible to have an update on the statutory report as
5 to where we are since we're going to be voting on it
6 on August 19th and we haven't received a final copy?

7 CHAIRMAN REYNOLDS: Marty.

8 STAFF DIRECTOR DANNENFELSER: Yes. Thank
9 you very much. I actually would like to propose that
10 we consider the statutory report at the September 12th
11 meeting rather than the August 19th meeting and what I
12 would propose to be the following time line.

13 COMMISSIONER MELENDEZ: That's not on the
14 agenda.

15 CHAIRMAN REYNOLDS: Marty, are you in a
16 position to discuss this if we put it on the agenda?

17 STAFF DIRECTOR DANNENFELSER: Yes.

18 CHAIRMAN REYNOLDS: Okay. So we'll just
19 include it under Management and Operations.

20 STAFF DIRECTOR DANNENFELSER: Okay.

21 CHAIRMAN REYNOLDS: Update on statutory
22 report. Okay.

23 VICE CHAIR THERNSTROM: When is the
24 September meeting? Excuse me for asking, but I'm not
25 at my desk.

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1 STAFF DIRECTOR DANNENFELSER: September
2 12th.

3 CHAIRMAN REYNOLDS: Commissioner
4 Thernstrom. This is Vice Chair Thernstrom.

5 VICE CHAIR THERNSTROM: Yes, this is Vice
6 Chair Thernstrom. I'm sorry. I'm not at my desk.
7 Can you tell -- can somebody tell me when the
8 September meeting is?

9 STAFF DIRECTOR DANNENFELSER: It's
10 September 12th. This is the Staff Director.

11 VICE CHAIR THERNSTROM: Okay.

12 CHAIRMAN REYNOLDS: Okay. Well, if that's
13 the case, then, folks, vote on the agenda as amended.
14 All those in favor -- I'm sorry. Commissioner
15 Thernstrom, how do you vote?

16 VICE CHAIR THERNSTROM: I'm sorry. I
17 don't think it's been amended. I believe that all the
18 Staff Director is doing is including that item in his
19 report.

20 CHAIRMAN REYNOLDS: Okay. Well, then
21 let's vote on the original agenda.

22 STAFF DIRECTOR DANNENFELSER: But there's
23 not an item for the Staff Director's report on this
24 particular agenda.

25 VICE CHAIR THERNSTROM: I see. Okay.

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1 STAFF DIRECTOR DANNENFELSER: It's
2 appropriate to either include it under Program
3 Planning or Management and Operation.

4 VICE CHAIR THERNSTROM: All right. In any
5 case, it goes under either one.

6 CHAIRMAN REYNOLDS: This is Commissioner
7 Reynolds. I have it under Management and Operation.

8 STAFF DIRECTOR DANNENFELSER: Okay. Then
9 I guess you want to vote on that on amending the
10 agenda to that effect.

11 VICE CHAIR THERNSTROM: It doesn't need to
12 be amended then, I believe.

13 CHAIRMAN REYNOLDS: Okay. Well, then
14 let's vote on the matter of the original agenda. Vice
15 Chair Thernstrom, how do you vote?

16 VICE CHAIR THERNSTROM: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Gaziano?

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

20 COMMISSIONER KIRSANOW: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Heriot?

22 COMMISSIONER HERIOT: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Melendez?

24 COMMISSIONER MELENDEZ: Abstain.

25 CHAIRMAN REYNOLDS: Commissioner Yaki?

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1 I'm sorry. Commissioner Taylor?

2 COMMISSIONER TAYLOR: Yes.

3 CHAIRMAN REYNOLDS: Okay. Commissioners
4 Thernstrom, Gaziano, Kirsanow, Heriot, Taylor and
5 Reynolds voted in the affirmative. Commissioner
6 Melendez abstained. The motion passes.

7 **II. STATE ADVISORY COMMITTEE ISSUES**

8 CHAIRMAN REYNOLDS: Okay. Next up is
9 State Advisory Committee issues. I move that the
10 Commission recharter the Arkansas State Advisory
11 Committee. Under this motion, the Commission appoints
12 the following individuals to that committee based on
13 the recommendations of the Staff Director: Robert
14 Costrell, Jonathan Butcher, Rose Jones, Melissa
15 McJunkins Duke, Julie Greathouse, Andre Guerrero,
16 Terry Hollingsworth, Gary McHenry, Brian Vandiver,
17 Ernestine Weaver and Joseph Wood. I also move that
18 the Commission reappoint Mr. Costrell as the chair of
19 this rechartered Arkansas State Advisory Committee.

20 All the members will serve as
21 uncompensated government employees and the Commission
22 appreciates the hard work that they will no doubt
23 contribute to this state advisory committee. Under
24 this motion, the Commission authorizes the Staff
25 Director to execute the appropriate pay for the

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1 appointment. Is there a second?

2 VICE CHAIR THERNSTROM: Second.

3 CHAIRMAN REYNOLDS: Discussion?

4 COMMISSIONER MELENDEZ: Yes. Commissioner
5 Melendez here. My same question as before as to I had
6 sent a letter into the Staff Director a few weeks back
7 or a month or so ago having to do with the number of
8 organizations that were actually contacted to solicit
9 people for the SAC. Could he comment as to what
10 organizations were contacted on this Arkansas SAC?

11 CHAIRMAN REYNOLDS: Marty.

12 STAFF DIRECTOR DANNENFELSER: Yes. There
13 was outreach to the Office of the Governor of
14 Arkansas, to the Arkansas Democratic Party, to a
15 number of other groups that are active around the
16 state. So those were the main ones. Probably not the
17 same range of groups in that particular case as they
18 have been in some other states, but I think that tends
19 to vary from state to state. We did receive three
20 recommendations from the Arkansas Governor's Office
21 and he's the Democratic governor and also the Arkansas
22 Democratic Party gave us a nomination that is one of
23 the people that was nominated for the process. The
24 Arkansas -- Several commissioners have given
25 recommendations as well in that process for Arkansas.

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1 COMMISSIONER MELENDEZ: Okay. The other
2 question, you know, I have a real concern with how
3 these SACs are made up. Also my understanding is that
4 three of the 12 members selected are faculty members
5 of the same department at the University of Arkansas,
6 the Department of Education. I think that's Butcher,
7 Costrell and Stotsky. The question would be why would
8 we do that.

9 VICE CHAIR THERNSTROM: Stotsky is not on
10 the list.

11 COMMISSIONER MELENDEZ: Who is not on the
12 list?

13 VICE CHAIR THERNSTROM: Stotsky is not the
14 list.

15 STAFF DIRECTOR DANNENFELSER: Stotsky was
16 drawn from the list.

17 COMMISSIONER MELENDEZ: Okay. But that
18 would be a concern of actually those coming out of the
19 same department.

20 VICE CHAIR THERNSTROM: Well, there are
21 now two people out of, this is Thernstrom, two people
22 out of the same. Surely, that's not a source of
23 concern, two people.

24 COMMISSIONER MELENDEZ: I mean, out of the
25 same department in the whole State of Arkansas.

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1 VICE CHAIR THERNSTROM: Yes. That's only
2 two people.

3 COMMISSIONER MELENDEZ: Okay. It's my
4 concern.

5 CHAIRMAN REYNOLDS: Any other questions?
6 Comments?

7 COMMISSIONER MELENDEZ: And there are two
8 members from the same law firm of Cross Gunter &
9 Witherspoon. Is that right?

10 STAFF DIRECTOR DANNENFELSER: I believe
11 that's correct.

12 COMMISSIONER MELENDEZ: Okay. It's just
13 my concern as usual of a real narrow selection in a
14 broad state like Arkansas for the record.

15 CHAIRMAN REYNOLDS: Okay. Well,
16 Commissioner Melendez, one of the important goals that
17 we strive for is ideological diversity and diversity
18 of skill sets. I think that with respect to those two
19 criteria that we're in good shape.

20 STAFF DIRECTOR DANNENFELSER: We also --
21 This is the Staff Director. We also have an
22 individual who is a labor and employment attorney who
23 teaches disability law and employment. So disability
24 is another area that we've been wanting to make sure
25 that we have covered with SAC members.

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1 COMMISSIONER YAKI: Which side of the bar
2 are they on in terms of the employment and disability
3 law?

4 CHAIRMAN REYNOLDS: I'm sorry. Who was
5 speaking?

6 COMMISSIONER YAKI: Yaki.

7 CHAIRMAN REYNOLDS: Okay.

8 VICE CHAIR THERNSTROM: Commissioner Yaki,
9 we didn't know you had joined us.

10 STAFF DIRECTOR DANNENFELSER: Well, we
11 have Ernestine Weaver is the first woman and the first
12 African American to serve as the District Organizing
13 Specialist for the AFL-CIO as one of the members.

14 COMMISSIONER YAKI: That's not what I was
15 talking -- I was talking about whoever that professor
16 was.

17 CHAIRMAN REYNOLDS: I believe that we were
18 talking about individuals who worked at law firms.

19 COMMISSIONER YAKI: Right. Whoever? The
20 law firm person? Is that the same person you just
21 talked about, Martin?

22 STAFF DIRECTOR DANNENFELSER: I'm not sure
23 which one, which law firm person, was raised.

24 COMMISSIONER YAKI: You were talking about
25 you had a law firm person who taught on --

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1 STAFF DIRECTOR DANNENFELSER: Actually no.
2 There were two different people there. I'm sorry.

3 COMMISSIONER YAKI: Tell me. Does she
4 represent management or does she represent --

5 STAFF DIRECTOR DANNENFELSER: Okay. The
6 disability person and the labor person are two
7 different people.

8 COMMISSIONER YAKI: Okay. Disability --

9 STAFF DIRECTOR DANNENFELSER: One is a
10 labor and employment attorney/adjunct professor at the
11 University of Arkansas, Little Rock Law School.
12 That's Brian Vandiver and Ernestine Weaver is the
13 labor union organizer for AFL-CIO.

14 COMMISSIONER YAKI: Okay. Does Brian
15 represent plaintiffs or defendants in --

16 COMMISSIONER HERIOT: Or both? You know,
17 I don't think you can suggest that every lawyer that
18 has a practice with disability law does one side or
19 the other. Frequently, in a plane of law, they do
20 both.

21 COMMISSIONER YAKI: Well, frequently,
22 someone who practices in a law firm, yes, they do.

23 CHAIRMAN REYNOLDS: Okay. Let's --

24 COMMISSIONER YAKI: There are management
25 side firms and there are plaintiff side firms.

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1 CHAIRMAN REYNOLDS: Commissioner Yaki,
2 hold on.

3 COMMISSIONER YAKI: I would just like to
4 know whether or not --

5 CHAIRMAN REYNOLDS: Commissioner Yaki.

6 COMMISSIONER YAKI: -- he practices more
7 management type --

8 CHAIRMAN REYNOLDS: Commissioner Yaki.

9 COMMISSIONER YAKI: What?

10 CHAIRMAN REYNOLDS: Commissioner Yaki.
11 Marty, are you able to answer his question?

12 STAFF DIRECTOR DANNENFELSER: I don't have
13 --

14 CHAIRMAN REYNOLDS: If you can't, that's
15 fine.

16 STAFF DIRECTOR DANNENFELSER: I don't have
17 what side he practices on. I do have a number of
18 things about his background though.

19 CHAIRMAN REYNOLDS: That's fine. We're
20 not able to answer your question at this time.

21 COMMISSIONER YAKI: Oh, come on. That's
22 ridiculous. How can you not answer that? How can you
23 not know that question? How can you not know whether
24 he defends --

25 CHAIRMAN REYNOLDS: Commission Yaki.

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1 COMMISSIONER YAKI: -- companies in suits
2 or not.

3 CHAIRMAN REYNOLDS: Commissioner Yaki, I
4 don't believe that --

5 COMMISSIONER YAKI: That's just totally
6 ridiculous, Mr. Chair.

7 CHAIRMAN REYNOLDS: Commissioner Yaki, you
8 are questioning someone's integrity. Quite frankly, I
9 don't understand why you would do that over this type
10 of issue.

11 COMMISSIONER YAKI: No, it's not over
12 integrity.

13 CHAIRMAN REYNOLDS: If you would like the
14 information, we will provide it to you. We cannot
15 provide it to you at this time.

16 COMMISSIONER YAKI: I was simply wondering
17 which side he practiced on. That's --

18 CHAIRMAN REYNOLDS: We are aware of your
19 question and we've answered it.

20 COMMISSIONER YAKI: It's not a question of
21 integrity. Hear me out. It is not a question of
22 integrity. It was a practice question. That's all.
23 When we talk about --

24 VICE CHAIR THERNSTROM: Commissioner Yaki.

25 COMMISSIONER YAKI: -- ideological

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1 diversity, I just wanted to know which side he tended
2 to fall in. Did he tend to --

3 VICE CHAIR THERNSTROM: Commissioner Yaki.

4 COMMISSIONER YAKI: -- represent people
5 who felt violated under the ABA.

6 CHAIRMAN REYNOLDS: Commissioner Yaki.

7 COMMISSIONER YAKI: Or did he represent
8 people who --

9 CHAIRMAN REYNOLDS: Commissioner Yaki, we
10 understand what you want. We are unable to provide
11 you with an answer at this time.

12 COMMISSIONER YAKI: Well, I find then that
13 the idea that that is an example of ideological
14 diversity a pretty weak argument.

15 COMMISSIONER KIRSANOW: Kirsanow here. To
16 the extent we can discern your ideology I note that
17 Ms. McJunkins is a Democratic and Mr. Vandiver is a
18 Republican. Now that doesn't necessarily mean that
19 they fall on opposite sides. But I think that's the
20 extent to which we have any indication as to where
21 they stand.

22 VICE CHAIR THERNSTROM: And I would like
23 to say for the record that I do not think it is
24 appropriate to label the Staff Director's answer to
25 any question as ridiculous. I just don't like that

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1 name-calling on Commission meetings and I would prefer
2 that a commissioner found another way of expressing
3 discontent.

4 COMMISSIONER YAKI: Well, I did not call
5 the Staff Director ridiculous. I called his answer
6 ridiculous.

7 CHAIRMAN REYNOLDS: Aren't we splitting
8 hairs?

9 COMMISSIONER YAKI: Okay. Well, should I
10 say it's incomplete?

11 CHAIRMAN REYNOLDS: Folks, let's move on.
12 I don't think that there's any additional benefit for
13 continuing this conversation. Any other questions or
14 comments?

15 COMMISSIONER MELENDEZ: Yes, Commissioner
16 Melendez here. I want to know why did the Staff
17 Director select Mr. Costrell to the chair when there
18 were a couple of returning members, Guerrero and
19 McHenry, and given the fact that Costrell has only
20 lived in Arkansas for less than two years.

21 STAFF DIRECTOR DANNENFELSER: Well, there
22 were many very good, well qualified people for the SAC
23 and we just felt that his background as an educator
24 which is an important area that we are looking for was
25 very strong and he has a great deal of expertise both

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1 in education and the whole area of standards. So we
2 thought that he would be very -- a good person to have
3 there.

4 VICE CHAIR THERNSTROM: Let me add --

5 STAFF DIRECTOR DANNENFELSER: There would
6 have been a number of people, several people, that
7 would have been good. We had a number of very good
8 people to choose from.

9 VICE CHAIR THERNSTROM: Let me add a
10 sentence on that. Robert Costrell is a first rate
11 economics who was a professor of economics and I think
12 somebody with strong economic skills is always well on
13 the Commission itself and on SACs. We are very lucky
14 to have people of that quality who decide to devote
15 uncompensated time to a SAC.

16 STAFF DIRECTOR DANNENFELSER: And he has a
17 very strong record as an education reformer who's been
18 focused on closing achievement gaps which is certainly
19 an area for resolving disparities by race and other
20 areas.

21 CHAIRMAN REYNOLDS: Okay. Any other
22 comments or questions?

23 COMMISSIONER MELENDEZ: Just my final
24 comment. Commissioner Melendez. I don't think there
25 is any uniformity in how regional directors have a

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1 hand in nominating SAC members and many times the
2 selections appear politicized and don't reach out to
3 the civil rights community, meaning that I gave a list
4 of a number of organizations that should have been
5 contacted, ACL National Office, Asian American Justice
6 Center, the National Congress of American Indians, the
7 National Council of La Raza, National Partnership for
8 Women and Families, National Urban League, National
9 Women's Law Center, Organization of Chinese Americans.

10 You know, the last time we had talked about this, I
11 don't think any of those had been contacted and I
12 think we have a very narrow selection process.

13 CHAIRMAN REYNOLDS: Commissioner Melendez,
14 why do you believe that none of these organizations
15 have been contacted? I don't believe that we --

16 COMMISSIONER MELENDEZ: Because I just
17 heard the Staff Director saying that he contacted the
18 Governor's Office and a couple others, but I don't
19 believe he's contacted any of these unless he wants to
20 correct me.

21 CHAIRMAN REYNOLDS: Well, I don't believe
22 that -- Marty, correct me if I'm wrong. You've
23 provided the names of the organizations that you
24 remembered or was that the complete list?

25 STAFF DIRECTOR DANNENFELSER: Many of the

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1 groups that Commissioner Melendez mentioned had been
2 contacted over the course of putting together the
3 different SACs. Not every organization is contacted
4 for every state. There is some discretion among the
5 regional directors in the contact and who are the
6 leaders in their particular states. But I did send an
7 email in which I copied Commissioner Melendez I
8 believe on Friday in which I mentioned a number of the
9 organizations on his list that had been contacted over
10 time with various SACs.

11 COMMISSIONER YAKI: This is Commissioner
12 Yaki. I think that we went through this entire
13 rigamarole and charade of going through this process
14 for selecting the SACs that had within it a checklist
15 of boxes and groups and then now we're hearing about
16 the regional direction of discretion which seems to be
17 contrary to the whole purpose of what that exercise
18 was about. So I'm with Commissioner Melendez. I
19 don't think that's sufficient and I think that
20 violates the policy that we had adopted or quite
21 frankly was rammed through by the majority a few
22 months ago.

23 CHAIRMAN REYNOLDS: Well, a few comments.
24 This is the Chairman. I suspect that all votes that
25 you don't win you believe to ram through. We try to

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1 have discussions. We try to find middle ground.
2 Sometimes we're successful. Many times we're not.

3 Now with respect to the procedures that we
4 put in place, those procedures did not squeeze out all
5 discretion from the process. It's not a mechanistic
6 approach. Yes, there are checklists. But that
7 process, the purpose of implementing that process was
8 not to squeeze out all discretion from the process.

9 COMMISSIONER YAKI: It is a mechanistic
10 approach. That's why we adopted that sigma, alpha,
11 alpha, whatever the heck it was was because we wanted
12 to make it more structured and mechanistic so that
13 there would be less controversy over how and why
14 appointments were made and what process was used --

15 VICE CHAIR THERNSTROM: You know,
16 Commissioner --

17 COMMISSIONER YAKI: -- contrary to why we
18 went through this whole thing. If it was a thing of
19 discretion, we could just simply go by the old
20 procedure which is why don't we just see who we get.
21 But that's now what that whole process was about. It
22 was about a formal method of outreach and contact in
23 order to find people for the SACs and giving the
24 regional director the discretion to ignore local
25 chapters of civil rights groups or national

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1 organization for civil rights groups I think it's just
2 wrong.

3 VICE CHAIR THERNSTROM: Commissioner Yaki,
4 can I say something here? This is Thernstrom. Look.
5 It seems to me that by one definition you are asking
6 for a very mechanistic process. You have a very narrow
7 spectrum of groups that you have adopted in your view
8 that have labels of civil rights on them and you say
9 we should be choosing everybody from those groups. I
10 mean, that is the mechanistic --

11 COMMISSIONER YAKI: Not at all.

12 VICE CHAIR THERNSTROM: That is a
13 mechanistic process.

14 COMMISSIONER YAKI: Not at all. I'm
15 simply saying if our outreach process does not include
16 those groups, then we are -- then I think the
17 legitimacy of the selection process is at stake. I'm
18 not saying nor do I expect that someone from each of
19 those groups will be nominated and/or selected to be
20 on the SAC. But the mere fact that we don't -- we
21 give the regional directors apparently discretion to
22 not consult them at all I think undermines the
23 legitimacy of the process and certainly is contrary to
24 the spirit of what was presented to us in that
25 presentation by whoever it was, Booz Allen and their

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1 \$300,000 contract, last year.

2 COMMISSIONER KIRSANOW: Kirsanow here. I
3 have a question for Staff Director. Given that
4 regional directors seemingly have discretion, is that
5 discretion a function of their peculiarized knowledge
6 of the state insofar as, for example, in Ohio and I'm
7 just giving this as an example, not that it's actually
8 fact, but there may be a given organization. Let's
9 say it's National Council of La Raza that doesn't have
10 a chapter or may not have a large presence or is known
11 not to have much depth and would be either futile or
12 it would be futile to even ask them. Is that the
13 discretion that you're talking about?

14 STAFF DIRECTOR DANNENFELSER: Yes, they
15 have to do this within the parameters of the
16 Administrative Instruction 5-9 and, within Section 7
17 of that Administrative Instruction, it lays out a
18 number of the type background that people should be
19 looking for. They should be diverse committees that
20 should include people like educators, lawyers,
21 business and labor leaders, social scientists,
22 individuals who had demonstrated in the civil rights
23 issues of color and race and so on. But there is not
24 a mention of particular groups that are supposed to be
25 sought out, but certainly the groups that are

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1 mentioned are among those that one should consider in
2 reaching out to a broad range of different
3 organizations.

4 COMMISSIONER KIRSANOW: Kirsanow here
5 again. I concur with Commissioner Yaki that we
6 should, and I think this was the discussion that we
7 had, reach out to as many groups as possible. Having
8 said that, there are scores of groups that could
9 arguably call themselves civil rights and sometimes it
10 makes sense to contact them. In a large state such as
11 California, I would suspect that most of those groups
12 have a significant presence. In other states, even in
13 my home state of Ohio which is not a small state, many
14 of the groups that I just heard mentioned aren't known
15 to have a significant presence or a presence at all
16 and that might also be true for Arkansas. I don't
17 know that to be the fact.

18 But if that's the discretion that we're
19 talking about, that you don't kind of mechanistically
20 go through each organization even if you know that
21 it's unlikely to yield any prospects, then I wouldn't
22 have a problem with that. If it isn't the case, I
23 guess the discretion is one that if calculated to
24 yield the desired result, that is, an ideological
25 imbalance which I don't see here from this list, but

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1 if that's the case, I would oppose that and I think
2 that we should instruct everybody, all regional
3 directors, that they have to go through a fairly
4 rigorous process in order to yield as a diverse sample
5 as possible for candidates for the SACs.

6 COMMISSIONER MELENDEZ: This is
7 Commissioner Melendez. Rightly so, I agree with what
8 Commissioner Yaki said was that we weren't asking
9 that, yes, we select these people because we know
10 that's an improbable situation. But what we were
11 asking was that they at least be contacted.

12 The email coming from Staff Director to me
13 which I just found, he went into the history about
14 some states that we're not talking about today like
15 the liaisons to the Arapaho and Shoshone tribes
16 pertaining to Wyoming. So I wasn't really asking
17 about what we had already gone through in the past
18 because we had already discussed those when those SACs
19 were up for nomination and to make that final
20 decision. I was asking about the SACs we're talking
21 about today. So it was kind of a mishmash of history
22 of the past. But I wanted to -- At each SAC, I want to
23 know exactly have we contacted each of those
24 organizations or at least make it kind of look good
25 that we've done that. So that was my question.

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1 CHAIRMAN REYNOLDS: This is Chairman
2 Reynolds. Commissioner Melendez, are you stating that
3 there are certain organizations that should be asked
4 automatically.

5 COMMISSIONER MELENDEZ: What I'm saying is
6 that if there is none like Commissioner Kirsanow. If
7 there's no La Raza in states which I agree that could
8 happen then just state that. Say, "We wanted to let
9 you know there is no organization in this state and
10 that would be good enough for me.

11 CHAIRMAN REYNOLDS: Well, let me back up.
12 Are you saying that we are violating our rules with
13 the methods that we're using?

14 COMMISSIONER MELENDEZ: I think we're not
15 broad enough in reaching out to a lot of the
16 organizations I stated. That's all I'm saying. Hear
17 a little more.

18 COMMISSIONER YAKI: I have a point of
19 information. This is Commissioner Yaki.

20 CHAIRMAN REYNOLDS: Yes.

21 COMMISSIONER YAKI: To the Staff Director.
22 I just wanted to know if the Staff Director was aware
23 of the Booz Allen report recommendation and checklist
24 that was adopted by the Commission earlier this year.
25 No, I should say it was at the end of last fiscal

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1 year.

2 STAFF DIRECTOR DANNENFELSER: This is the
3 Staff Director. Yes, I am.

4 COMMISSIONER YAKI: Did you review those
5 checklists, that checklist and procedure, in
6 determining whether or not the regional directors had
7 followed the procedures outlined?

8 STAFF DIRECTOR DANNENFELSER: I had asked
9 the head of RPCU to do that and to advise me
10 accordingly.

11 COMMISSIONER YAKI: Well, and did that
12 person report back? Did we have a written report as
13 to whether or not those were followed?

14 STAFF DIRECTOR DANNENFELSER: He reported
15 back in the context of the State Advisory Committee
16 membership guidelines on AI 5-9.

17 COMMISSIONER YAKI: Because I have to tell
18 you. It just doesn't seem as if those were followed.
19 I recall this presentation acutely because I couldn't
20 believe we had spent \$300,000 on it. But it just
21 doesn't seem that those steps were taken were followed
22 in the processes. I mean, I know they weren't because
23 certain groups weren't contacted or even consulted.
24 They weren't.

25 CHAIRMAN REYNOLDS: This is Chairman --

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1 COMMISSIONER YAKI: I find that very
2 disturbing that we spent hundreds of thousands of
3 dollars on this report.

4 CHAIRMAN REYNOLDS: Commissioner Yaki,
5 it's not clear to me what -- Commissioner Yaki, is
6 there a specific provision or rule that you believe
7 was violated?

8 COMMISSIONER YAKI: Yes. As I recall the
9 chart and going down through the list, there was a
10 checklist for contact with national organizations and
11 examples of those were listed in and apparently that
12 was not followed.

13 COMMISSIONER HERIOT: Is that apparent?
14 It's not apparent to me.

15 COMMISSIONER KIRSANOW: Yes, I didn't hear
16 that. I heard that some organizations were not
17 contacted or couldn't be contacted.

18 CHAIRMAN REYNOLDS: And some were.

19 COMMISSIONER KIRSANOW: And that was
20 largely a result of regional director discretion. The
21 basis of that discretion is unclear how they exercised
22 it that is, but they may have in good faith exercised
23 discretion because an organization didn't exist in
24 that state or that organization perhaps was contacted
25 and didn't respond. I don't know that I could lead to

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1 the conclusion that --

2 COMMISSIONER YAKI: I don't know that I
3 could lead to the conclusion that there is good faith
4 discretion utilized in the process based on apparently
5 the inability to enumerate exactly which groups were
6 or were not contacted.

7 COMMISSIONER GAZIANO: Do we even know
8 whether all of the applications were received after
9 this wonderful Sigma Six Program was adopted? That
10 was before my time, but I imagine it takes months and
11 months to assess this.

12 CHAIRMAN REYNOLDS: That's Commissioner
13 Gaziano.

14 COMMISSIONER GAZIANO: Yes.

15 STAFF DIRECTOR DANNENFELSER: This is the
16 Staff Director. I'm not sure on the timing on when
17 individually they were received.

18 COMMISSIONER YAKI: Commissioner Gaziano,
19 this is Commissioner Yaki. I do know that there was a
20 bit of a hurry to adopt them specifically for the SACs
21 precisely because they did not want to unduly delay
22 the selection process and this was adopted I think, I
23 believe, prior to the end of the fiscal year last
24 year.

25 COMMISSIONER GAZIANO: That may be. I'm

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1 not sure what significance that has. It's always the
2 case that we're trying to recharter the SACs.

3 CHAIRMAN REYNOLDS: One at a time, folks.

4 VICE CHAIR THERNSTROM: We're not only out
5 of time. Mr. Chair, if there is a larger issue here
6 and we cannot vote on the -- It seems to me that we
7 should vote on these two SAC recommendations. But if
8 there is a larger issue, we should put it on the
9 August agenda if Commissioners Yaki and Melendez
10 really believe they have not been properly heard on
11 this.

12 CHAIRMAN REYNOLDS: This is Chairman
13 Reynolds. Vice Chair Thernstrom, I agree with you.
14 Commissioners Yaki and Melendez, if you have specific
15 issues with respect to how we go about -- If you
16 believe that we have violated our rules with respect
17 to the selection of folks for SAC, please ask that the
18 Staff Director put it on the agenda for the August
19 meeting.

20 COMMISSIONER YAKI: We'll ask him now.

21 VICE CHAIR THERNSTROM: All right. Fine.
22 Let's put it on the agenda for the August meeting.
23 We're all agreed I'm sure.

24 CHAIRMAN REYNOLDS: Okay. Time to vote.
25 Commissioner Thernstrom, how do you vote?

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1 VICE CHAIR THERNSTROM: Yes.

2 CHAIRMAN REYNOLDS: Commissioner Gaziano?

3 COMMISSIONER GAZIANO: Yes.

4 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

5 COMMISSIONER KIRSANOW: Yes.

6 CHAIRMAN REYNOLDS: Commissioner Heriot?

7 COMMISSIONER HERIOT: Yes.

8 CHAIRMAN REYNOLDS: Commissioner Melendez?

9 COMMISSIONER MELENDEZ: No.

10 CHAIRMAN REYNOLDS: Commissioner Yaki?

11 COMMISSIONER YAKI: No.

12 CHAIRMAN REYNOLDS: Commissioner Taylor?

13 COMMISSIONER TAYLOR: Yes.

14 CHAIRMAN REYNOLDS: Okay. Commissioners
15 voting in favor of the motion are Commissioners,
16 Thernstrom, Gaziano, Kirsanow, Heriot, Taylor and
17 Reynolds. Commissioners Melendez and Yaki voted
18 against the motion. The motion passes.

19 Next up is the rechartering of the
20 Wisconsin State Advisory Committee. I move that the
21 Commission recharter the Wisconsin State Advisory
22 Committee under this motion. The Commission adopts
23 the following individuals to that committee based on
24 the recommendations of the Staff Director: Rebecca
25 Grassl Bradley, Naheed Bleecker, Mark Block, Jeffrey

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1 Cooper, Anneliese Dickman, Maria Gamez, Lee Hansen,
2 Daniel Kelly, Demond Means, Adel Mekraz, Frederick
3 Mohs, Karine Morena-Taxman, Dawn Shelton-Williams. I
4 also move that Commission appoint Ms. Bradley as the
5 chair of the rechartered Wisconsin State Advisory
6 Committee. The members will be uncompensated
7 government employees. Under this motion, the
8 Commission authorizes the Staff Director to prepare
9 any appropriate paperwork. Is there a second?

10 VICE CHAIR THERNSTROM: Second. This is
11 Thernstrom.

12 CHAIRMAN REYNOLDS: Discussion?

13 COMMISSIONER MELENDEZ: Yes. This is
14 Commissioner Melendez here. Will the Staff Director
15 please say what organizations and individuals were the
16 original source of the members he has nominated?

17 VICE CHAIR THERNSTROM: I wonder if we
18 can't -- Since we're going to have a whole discussion
19 of this at the August meeting, I wonder if we can not
20 go through the same discussion once again that we just
21 had over Arkansas with respect to Wisconsin and in
22 August we can review the whole process and who's been
23 contacted in the past for what SACs.

24 COMMISSIONER YAKI: This is Commissioner
25 Yaki. I respect Commissioner Thernstrom's views on

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1 this. However, talking about the entire process and
2 not putting objections on the record for the
3 particular state we believe violated the process is
4 kind of like asking us to close a barn door after the
5 horses have left. So, no, I want to discuss as does
6 Commissioner Melendez the process as it pertains to
7 this state as well unless you wish to postpone it to
8 August when we have a conversation on this.

9 STAFF DIRECTOR DANNENFELSER: This is the
10 Staff Director. Well, let me talk a little bit about
11 the outreach that was conducted that the Commission
12 staff reached out to the Governor's Office in
13 Wisconsin, the entire Wisconsin congressional
14 delegation, the NAACP, the Urban League, the ACLU, the
15 Wisconsin Policy Research Institute, the Pax Americana
16 Institute, Marquette University, the University of
17 Wisconsin, Medical College of Wisconsin, Brazo
18 Multicultural Marketing and Communications, the
19 Hispanic Business Counsel, the Institute of World
20 Affairs, the Metropolitan Milwaukee Fair Housing
21 Council, Asset Builders of America Inc., the law firm
22 of Gaskey & Ruffles, Quarles & Brady, Rodney L. Covey
23 law office, White Hirshbach Dudek and --

24 CHAIRMAN REYNOLDS: Excuse me, Mr. Staff
25 Director. How long is your list? It's not clear to

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1 me that this is a good use of time for you to
2 continue.

3 STAFF DIRECTOR DANNENFELSER: That's the
4 list of outreach.

5 COMMISSIONER MELENDEZ: That's a little
6 better. This is Commissioner Melendez. Could I ask
7 another questions?

8 CHAIRMAN REYNOLDS: Sure.

9 COMMISSIONER MELENDEZ: About the chair,
10 Rebecca Grassl Bradley, can you tell me a little bit
11 about her and why she's best qualified to be the chair
12 of the SAC and why she was nominated over two
13 returning members, Dickman and Gamez?

14 STAFF DIRECTOR DANNENFELSER: She is
15 someone who has been very active in the Milwaukee area
16 with the Milwaukee Forum which addresses numerous
17 civil rights issues within the city and has been very
18 active in the area of voting rights which is a
19 particular area of interest to the Commission.

20 CHAIRMAN REYNOLDS: Any other questions?

21 COMMISSIONER MELENDEZ: Can you tell me
22 about Mr. Block? This is Commissioner Melendez and
23 his demonstrated interest in civil rights?

24 STAFF DIRECTOR DANNENFELSER: Well, Mr.
25 Block is someone on a personal level faced, dealt with

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1 discrimination with Korean adopted sons who were
2 growing up in Milwaukee and he's also a former elected
3 official in Winnebago County, Wisconsin and is someone
4 who is known to be interested in the application of
5 voting rights throughout his career.

6 COMMISSIONER MELENDEZ: One more question.
7 Most of these applications are from July or August of
8 2006. Is there -- Were there any additions since
9 then?

10 STAFF DIRECTOR DANNENFELSER: We checked
11 with the regional office on this and there was a
12 question raised earlier about it, an earlier package,
13 and we don't really have a recollection of an earlier
14 package being submitted prior to 2008. So I'm not
15 clear about all the references to 2006 and prior.

16 CHAIRMAN REYNOLDS: Okay. Vice Chair
17 Thernstrom, how do you vote?

18 VICE CHAIR THERNSTROM: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Gaziano?

20 COMMISSIONER GAZIANO: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

22 COMMISSIONER KIRSANOW: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Heriot?

24 COMMISSIONER HERIOT: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Melendez?

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1 COMMISSIONER MELENDEZ: No.

2 CHAIRMAN REYNOLDS: Commissioner Yaki?

3 COMMISSIONER YAKI: Nope.

4 CHAIRMAN REYNOLDS: Commissioner Taylor?

5 COMMISSIONER TAYLOR: Yes.

6 CHAIRMAN REYNOLDS: Okay. The

7 Commissioners voting in favor of this motion are Vice

8 Chair Thernstrom, Commissioners Gaziano, Kirsanow,

9 Heriot, Taylor and Reynolds. Commissioners opposing

10 the motion are Commissioners Melendez and Yaki.

11 Motion passes.

12 III. PROGRAM PLANNING

13 CHAIRMAN REYNOLDS: All right. Next up is

14 the Department of Transportation Guidance Regarding

15 Disadvantaged Business Enterprise Program. In its

16 1995 Adarand decision, the U.S. Supreme Court felt

17 that the Federal programs using racial and ethnic

18 classifications are subject to strict scrutiny. They

19 must serve a compelling government interest and be

20 narrowly tailored to meet that interest.

21 Under this standard, Federal agencies must

22 seriously consider race neutral alternatives to

23 procurement programs that use racial classification.

24 Under this decision and its progeny, the U.S.

25 Department of Transportation issued revised

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1 regulations governing its Disadvantaged Business
2 Enterprise Program that decentralize administration of
3 the program by delegating implementation to state
4 agencies receiving Federal transportation funds.
5 While the DOT sets the aspirational goal of ten
6 percent participation for minority and disadvantaged
7 firms, states are required to make an individualized
8 determination of a level of Disadvantaged Business
9 Enterprise participation that would be expected absent
10 the effects of discrimination as a goal. The state
11 must meet the maximum feasible portion of its goal
12 through race and sex neutral means before resorting to
13 embrace conscious means.

14 A number of courts have upheld the facial
15 constitutionality of the regulations but constitutional
16 as applied challenges continue to arise with respect
17 to state and local implementation. The 9th Circuit
18 recently held that -- requires local deciding
19 discrimination if the Federal DBE program which the
20 Department of Transportation has delegated for
21 implementation to the state is to survive
22 constitutional analysis under strict scrutiny. The
23 Department of Transportation had issued guidance and
24 applied this rule only in the 9th Circuit.

25 It is against that background that we

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1 consider for discussion the draft letter that was
2 circulated to Commissioners. I move that the
3 Commission approve the draft letter recommending the
4 Department of Transportation adopt a uniform standard
5 requiring states implementing its DBE program to make
6 local findings of discrimination before using race
7 conscious goals to achieve local DBE participation. I
8 would further authorize the Staff Director to post
9 this letter on the Commission's website. Is there a
10 second?

11 COMMISSIONER GAZIANO: Second. Todd
12 Gaziano.

13 CHAIRMAN REYNOLDS: Discussion?

14 COMMISSIONER MELENDEZ: Yes. Commissioner
15 Melendez here. I believe that we need more legal
16 analysis on this issue. I know that Congress has
17 debated this issue back and forth and I'm not even
18 sure what their position is on the whole issue. So I
19 would like to see more on that and given more time to
20 do an analysis on the legal position of this whole
21 situation.

22 COMMISSIONER GAZIANO: If I could respond,
23 Mr. Chairman.

24 COMMISSIONER MELENDEZ: Yes.

25 CHAIRMAN REYNOLDS: And you are?

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1 COMMISSIONER GAZIANO: Gaziano.

2 CHAIRMAN REYNOLDS: Yes.

3 COMMISSIONER GAZIANO: I respectfully
4 suggest this is a long overdue letter actually.
5 What's amazing to me is that the United States
6 Government correctly interpreted the applicable
7 Supreme Court law in the Western States Paving
8 decision and it's a decision in that case in the 9th
9 Circuit and then apparently an agency of the Executive
10 branch on its own is engaging in a non-acquiescence
11 policy.

12 It's quite frankly shocking to me that
13 this occurs when the United States won in the first
14 place, even more so when it got the correct position
15 in the first case and that further study would be very
16 curious. What we need to do is ask the administration
17 to explain what it is that this rogue agency, the
18 Department of Transportation, is doing. Was this
19 approved by the Solicitor General to seek the circuit
20 split to get its own victory overturned in the Supreme
21 Court. So I think this letter is a modest but overdue
22 attempt to seek some clarity.

23 CHAIRMAN REYNOLDS: And it's also, I
24 guess, this is Chairman Reynolds, important to point
25 out that we sent out in advance some legal background.

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1 So, Commissioner Melendez, could you give me a sense
2 of what additional information you're looking for?

3 COMMISSIONER MELENDEZ: Well, I know that
4 we have a couple of court cases that you've sent to, I
5 believe, the Commissioners, but I'd still -- Is this
6 an issue that's happening in California or, in
7 particular, is it an issue relating to that?

8 CHAIRMAN REYNOLDS: The California issue
9 as I understand it has been resolved. The 9th Circuit
10 has spoken and the remaining issue is with respect to
11 the remaining circuits where the court hasn't ruled on
12 this particular issue and the public policy
13 implications that flow from the decisions of the
14 Department of Transportation to deviate from the
15 arguments it made in its 9th Circuit brief.

16 COMMISSIONER GAZIANO: Gaziano again. The
17 principle, if I may, is if the United States seeks a
18 position on an important Constitutional issue
19 involving civil rights and wins in the 9th Circuit,
20 should a -- By the way, without any real explanation,
21 should one of the rogue agencies of the United States
22 then tell everyone in every other state outside the 9th
23 Circuit you don't need to follow that and that's all
24 this letter asks the Administration to correct, to
25 look into and correct.

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1 CHAIRMAN REYNOLDS: Additional comments?

2 COMMISSIONER MELENDEZ: Yes. This is
3 Commissioner Melendez. I don't feel comfortable with
4 signing onto the letter. So I'm going to dissent from
5 this letter. Just for the record, I don't want my
6 name on the letter and would ask that my dissenting
7 views be noted in the letter.

8 CHAIRMAN REYNOLDS: Well, we're not going
9 to put your views in the letter. I mean, we will
10 identify the Commissioners that voted in favor of the
11 letter or have the Commissioners that voted in favor
12 of it be signatory.

13 COMMISSIONER YAKI: I thought we were
14 supposed to note the vote of the Commission.

15 CHAIRMAN REYNOLDS: Yes, that's right.
16 We're going to follow our AIs. But I believe that if
17 I understood him correctly, Commissioner Melendez
18 asked that his views be incorporated into the letter.

19 COMMISSIONER YAKI: No, I think
20 Commissioner Melendez asked the fact that he and I
21 dissent from it be incorporated into the letter which
22 is different than saying what our views are.

23 CHAIRMAN REYNOLDS: Okay. If that's the
24 case, we will include the voting tally.

25 COMMISSIONER HERIOT: And we will do what

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1 the AIs require.

2 CHAIRMAN REYNOLDS: Commissioner Heriot.

3 COMMISSIONER YAKI: And I just want to say
4 for the record that I object to the characterization
5 of DOT as a rogue agency. Having followed this
6 process in California as I'm sure Commissioner Heriot
7 has done for quite some time, I would argue that what
8 DOT is doing is fully within the law and expressed by
9 the United States Supreme Court, Commissioner
10 Gaziano's statement notwithstanding, and I believe
11 that moreover if we really wanted a true discussion on
12 this we would have had something more than legal
13 papers that may or may not be reflective of the fully
14 breadth of the discussion and analysis upon which we
15 could base our decision.

16 But I know that the majority is in a hurry
17 to get this out. Commissioner Melendenz and I will
18 not be able to stop that train from leaving the
19 station. But I would like to say that far from being
20 a rogue agency I believe the DOT is acting responsibly
21 and certainly consistent with what I believe is a
22 greater good expressed in statute and in law regarding
23 economic opportunity for disadvantaged and minority
24 contractors and we disagree on that obviously and
25 disagree on that principle and disagree on the means

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1 and that would be reflected in the separate letter
2 that Commissioner Melendez and I will send to DOT.

3 VICE CHAIR THERNSTROM: I don't believe,
4 but I'm not at my desk, we used the term "rogue
5 agency" in the letter. Am I correct on that?

6 CHAIRMAN REYNOLDS: Sure.

7 COMMISSIONER GAZIANO: This is Gaziano.
8 That's my word and I stick by it.

9 VICE CHAIR THERNSTROM: That's what I
10 assumed.

11 COMMISSIONER GAZIANO: I understand,
12 Commissioner Yaki, that you disagree with apparently
13 the 9th Circuit's position. But I take it that you
14 don't think that there's anything odd that we should
15 raise with the United States, the President, when one
16 agency works at cross purpose with the civil rights'
17 position that the Government is secured.

18 COMMISSIONER YAKI: But we --

19 COMMISSIONER HERIOT: Are we ready to call
20 something?

21 CHAIRMAN REYNOLDS: One at a time.

22 COMMISSIONER YAKI: We could argue over
23 your characterization of -- over your last
24 characterization. But rather than again to have a
25 philosophical discussion on the separation of powers

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1 and the Executive branch, let's just move on.

2 CHAIRMAN REYNOLDS: Okay. Vice Chair
3 Thernstrom, how do you vote?

4 VICE CHAIR THERNSTROM: Yes, and let me
5 just add one sentence to that. I would be very
6 unhappy if there were any language that suggested we
7 were trashing an agency as a rogue agency and so forth
8 in the letter. But there is not as I understand it.

9 CHAIRMAN REYNOLDS: That is correct.

10 Commissioner Gaziano, how do you vote?

11 COMMISSIONER GAZIANO: Correct as
12 clarified. My personal views go beyond the letter.

13 COMMISSIONER HERIOT: Is that a yes vote?

14 COMMISSIONER GAZIANO: Yes vote.

15 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

16 COMMISSIONER KIRSANOW: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Heriot?

18 COMMISSIONER HERIOT: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Melendez.

20 COMMISSIONER MELENDEZ: No.

21 CHAIRMAN REYNOLDS: Commissioner Yaki?

22 COMMISSIONER YAKI: Nope.

23 CHAIRMAN REYNOLDS: Commissioner Taylor?

24 COMMISSIONER TAYLOR: Yes, with one
25 comment. That is I do think this is a modest step and

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1 it's my expectation that this will start the
2 discussion rather than finishing it. That's why I was
3 hoping everybody would be in favor of starting this
4 discussion. I think it's important.

5 CHAIRMAN REYNOLDS: Okay. Commissioners
6 Melendez and Yaki voted against the motion.
7 Commissioners Taylor, Heriot, Kirsanow, Gaziano,
8 Thernstrom and Reynolds voted in favor of the motion.
9 It carries.

10 Next up, during the July 11th meeting, the
11 Commission amended the agenda to include a proposal by
12 Commissioner Heriot to discuss the ABA documents held
13 by the Department of Education in connection with its
14 pending renewal of the ABA's accreditation authority.

15 Commissioner Heriot stated her intention to make a
16 motion that the Commission send a letter to the
17 Department of Education requesting access to those
18 documents.

19 Last Monday, on July 21st, you received
20 via email a draft letter to the Department of
21 Education and a copy of a June 20, 2007 letter from
22 Secretary Spellings to the ABA which is referenced in
23 the draft letter. The Commission's draft letter
24 requests access to documents ordered by Secretary
25 Spellings from the ABA.

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1 I move that the Commission approve the
2 draft letter recommending that the Department of
3 Education grant access to members of the Commission or
4 to Commission personnel to review the ABA documents.
5 This motion would furthermore authorize the Staff
6 Director to post this letter on the Commission's
7 website. Is there a second?

8 VICE CHAIR THERNSTROM: Second.

9 CHAIRMAN REYNOLDS: And that was Vice
10 Chair Thernstrom?

11 VICE CHAIR THERNSTROM: Yes.

12 CHAIRMAN REYNOLDS: Discussion?

13 COMMISSIONER MELENDEZ: Yes, Commissioner
14 Melendez. What is the basis for this unusual document
15 request and assignment of staff time? Is a project
16 being proposed on this matter at some point in the
17 future?

18 CHAIRMAN REYNOLDS: This is Chairman
19 Reynolds. Why do you believe that it's unusual?

20 COMMISSIONER MELENDEZ: I'm unsure what
21 the purpose is. And then the other question would be
22 are all of the Commissioners going to receive the
23 documents equitably?

24 COMMISSIONER HERIOT: Any Commission that
25 wants to go can certainly.

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1 COMMISSIONER MELENDEZ: Then it's nothing
2 they can provide for us, send to us.

3 COMMISSIONER HERIOT: I don't think we can
4 force the Department of Education to give everybody
5 documents. But anybody -- The purpose of the letter
6 is to give access to everyone, to you, to me, to
7 anyone who is assigned by Marty to go through the
8 documents.

9 CHAIRMAN REYNOLDS: So basically we would
10 all have the opportunity to review the documents.

11 Other questions? Comments?

12 VICE CHAIR THERNSTROM: Have we lost
13 somebody that that hello signified?

14 CHAIRMAN REYNOLDS: Okay. Let's do a roll
15 call.

16 Vice Chair Thernstrom?

17 VICE CHAIR THERNSTROM: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Gaziano?

19 COMMISSIONER GAZIANO: Yes.

20 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

21 COMMISSIONER KIRSANOW: Yes.

22 CHAIRMAN REYNOLDS: Commissioner Heriot?

23 COMMISSIONER HERIOT: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Melendez?

25 COMMISSIONER MELENDEZ: Opposed.

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1 CHAIRMAN REYNOLDS: Well, no. We're not
2 voting. Just doing a roll call.

3 COMMISSIONER MELENDEZ: Oh.

4 CHAIRMAN REYNOLDS: Just to make sure that
5 we haven't lost anyone.

6 COMMISSIONER YAKI: Commissioner Yaki?

7 COMMISSIONER YAKI: Here.

8 CHAIRMAN REYNOLDS: Commissioner Taylor?

9 COMMISSIONER TAYLOR: Still here.

10 CHAIRMAN REYNOLDS: Okay.

11 STAFF DIRECTOR DANNENFELSER: I'm here.

12 CHAIRMAN REYNOLDS: Additional questions?

13 Comments?

14 (No verbal response.)

15 Okay. Vice Chair Thernstrom, how do you
16 vote?

17 VICE CHAIR THERNSTROM: Yes.

18 CHAIRMAN REYNOLDS: Commissioner Gaziano?

19 COMMISSIONER GAZIANO: Yes.

20 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

21 COMMISSIONER KIRSANOW: Yes.

22 CHAIRMAN REYNOLDS: Commissioner Heriot?

23 COMMISSIONER HERIOT: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Melendez?

25 COMMISSIONER MELENDEZ: No.

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1 CHAIRMAN REYNOLDS: Commissioner Yaki?

2 COMMISSIONER YAKI: No, no, no, no, no.

3 CHAIRMAN REYNOLDS: You only get one no.

4 COMMISSIONER YAKI: I'll give as many nos
5 as I want.

6 CHAIRMAN REYNOLDS: Commissioner Taylor?

7 COMMISSIONER TAYLOR: Taylor votes aye.

8 CHAIRMAN REYNOLDS: Okay. Commissioners
9 Melendez and Yaki voted no. Commissioners Thernstrom,
10 Gaziano, Kirsanow, Heriot, Taylor and Reynolds voted
11 for the motion. The motion passes.

12 **IV. MANAGEMENT AND OPERATIONS**

13 CHAIRMAN REYNOLDS: Next up is the
14 feasibility of hiring temporary special assistants.
15 During the July 11th meeting, Commissioner Yaki raised
16 a question about the feasibility of using surplus
17 fiscal year 2008 to hire temporary special assistants.
18 These temporary employees would work with
19 Commissioners who are not currently assigned special
20 assistants. They would assist in reviewing and
21 responding to the backlog of briefing reports and
22 their terms would expire at the end of fiscal year
23 2008 which is September 30, 2008.

24 The Commissioners agreed to defer
25 discussion of this topic until the staff could conduct

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1 more research on the Commission's options. At this
2 point, I'd like to ask the Staff Director to weigh in
3 as to, the Staff Director and also the General
4 Counsel, to weigh in as to the legality and assuming
5 its legal the options that we have available.

6 STAFF DIRECTOR DANNENFELSER: This is the
7 Staff Director. One of the analysis was budgetary as
8 well and I conclude that this is something we can do
9 within the budget. There are questions about some of
10 the options and one option seems to be the best of
11 all. But I'm going to for the moment turn this to the
12 General Counsel, David Blackwood, to explain his
13 outreach to OPM and discussion of the legal questions
14 regarding the various options.

15 MR. BLACKWOOD: Good morning. This is
16 David Blackwood. Per your request and working with
17 Tinalouise Martin, we helped identify several
18 different options and then discussed those with OPM,
19 specifically a Mike Mahoney of the Strategic Human
20 Resources Policy Division. There are a variety of
21 options that we can pursue, but keep in mind this is a
22 slightly unusual situation in that we're talking about
23 a temporary employment for roughly 60 days.

24 The first option I would call hiring
25 temporary Schedule C appointees and there are two

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1 options within a 30 day temp for a temporary
2 appointment. Both of those have advantages and
3 disadvantages. The advantage being that anybody hired
4 into the authority would have the same power and
5 standing as existing special assistants.

6 There is a critical problem, however.
7 First with regard to the 30 day temporary authority,
8 we don't seem to fit. There's a two part test that
9 you need. You need both a critical need and it is
10 contemplated that you're hiring someone for long-term
11 employment that they're going strictly through a
12 vetting process. Second is under either the 30-day or
13 the 120-day process, we would still have to go as
14 Schedule C appointees through Office of Presidential
15 Personnel which is several Commissioners have voiced
16 an objection to.

17 Lastly, there is greater security of
18 Schedule C appointments during a Presidential election
19 year. So in talking to OPM, they indicated if we're
20 looking at a 60-day quick appointment several days or
21 weeks could be tied-up in strictly going through OPM
22 approval. Basically, it's the same thing with the
23 120-day temporary approval with an added though need
24 for scrutiny because under the 120-day procedure we
25 would have to get certified as an agency with a new

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1 agency head which I think we could easily do since the
2 Staff Director has been recently appointed. But
3 nonetheless that is an addition time period that might
4 be taken up.

5 The second option is what's called a
6 competitive temporary hiring authority and that would
7 be we would have post the jobs like the normal
8 government jobs. There would have to be competition
9 and there would have to be a selection. The problem
10 with this process is there would be virtually no input
11 by the Commissioners about how or who would be
12 selected by them. The time frame could be relatively
13 short, as little as a week. But again, there would be
14 no input as to who was selected. It would have to
15 follow the normal procedures.

16 Lastly is the option of hiring consultants
17 and this actually was the first thing that was
18 mentioned as far as having flexibility with a
19 combination of Hiring consultants, how do you hire
20 core professionals (1) to read a statutory report, (2)
21 to catch up on briefing reports? How do we as an
22 agency stay current. This does have a variety of
23 factors. One, we don't have to advertise it. Two, we
24 don't have to go to OPM for pre-approval. Third, we
25 don't have to go to Presidential Personnel. The job

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1 would simply be posted or actually it's not posted.
2 We could identify individuals working with the
3 Commissioners if they have anyone specifically in
4 mind, to identify those individuals and assuming that
5 they fit within the category that we can draft and get
6 with you all's cooperation about we need a specific
7 skill set and to identify an individual who fits that
8 special skill set. The agency could then hire that
9 individual and then the Staff Director could assign
10 that individual to other Commissioners to work with
11 that person.

12 Also that benefits of allowing/putting a
13 cap on how much we could spend and what is
14 contemplated is we would identify the amount that each
15 commissioner or I because you wouldn't be hiring but
16 the agency would spend on each consultant. That would
17 give flexibility among the various appointments to,
18 for example, say knowing that you have a cap and
19 presuming that the cap is the same for each position,
20 I might want to get someone more experience. So I may
21 pay a higher hourly rate, but that person would, of
22 course, have to work less hours. If someone wants to
23 go with someone less experienced or skilled, they
24 might have a lower hourly rate but be able to spend
25 more time. So there would be again that additional

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1 flexibility and that is all I have to report.

2 STAFF DIRECTOR DANNENFELSER: So I guess
3 the conclusion of that is that the recommendation that
4 I would make to the Commissioners is that we explore
5 the consultant group and it's my understanding that
6 there are four Commissioners who would be interested
7 in being eligible for this if this is agreeable to all
8 Commissioners and that the hourly rate would be
9 subject to the person's background and their salary
10 history. This would be part of the standard process
11 that we would follow in hiring someone that you would
12 look at their salary history.

13 The maximum rate would be the top end of
14 the GS-15 schedule without factoring in locality pay.
15 My understanding is that that would be in the
16 neighborhood of \$124,000 that the hourly maximum rate
17 could pay for that particular salary. Of course, the
18 current Commissioner assistants are GS-13 level. But
19 again, this will vary perhaps to some extent depending
20 on the background and salary of the individual. But
21 as David had pointed out, the number of hours if each
22 commissioner gets a certain dollar amount that they
23 can spend over the next two months, then the number of
24 hours would have some factor related to the hourly
25 rate of that individual. So that would be something

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1 that each Commissioner would have to take into
2 consideration.

3 VICE CHAIR THERNSTROM: Now I have a
4 question. Do I understand that there would be -- When
5 the agency hires somebody, there would be an
6 understanding that there was no possibility that that
7 person could be looking forward to working beyond the
8 end of the fiscal year. So this is not a stepping
9 stone to a long-term job.

10 STAFF DIRECTOR DANNENFELSER: We would
11 have a written agreement with the individual that the
12 employment would end on September 30, 2008 and that
13 there would be a cap on the maximum amount of dollars
14 that that individual could be paid between now and
15 September 30, 2008.

16 CHAIRMAN REYNOLDS: Other questions?

17 (No verbal responses.)

18 Okay. Let me try a different approach.
19 Are there any concerns or objections to going the
20 consultant's route?

21 COMMISSIONER MELENDEZ: Commissioner
22 Melendez. Are these consultants just supposed to help
23 the Commissioners or they're supposed to do something
24 else besides that?

25 CHAIRMAN REYNOLDS: They would be assigned

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1 to the Commissioners.

2 COMMISSIONER MELENDEZ: You're saying that
3 also we're going to be hiring higher than what the
4 assistants now are making?

5 STAFF DIRECTOR DANNENFELSER: This is the
6 Staff Director. There is some flexibility in how that
7 would be done. That would be again the discretion of
8 the Commissioners. We would be looking for
9 recommendations from those four commissioners as to
10 individuals who would have the appropriate background
11 who they would recommend that we hire to perform these
12 services. So again, that would in some respects be a
13 function of the salary history and the experience of
14 that individual. They would have to take that into
15 consideration.

16 COMMISSIONER GAZIANO: Mr. Chairman, this
17 is Gaziano. I think that the consultant route has
18 several advantages over any of the other options and I
19 think the flexibility is quite helpful especially when
20 you're just hiring someone on a temporary basis.

21 My question really to all of the other
22 commissioners is just is this consistent with or would
23 this set a bad precedent? How would this fit in with
24 other consultants that the Commission may also need to
25 hire at the central staff level? I remember Staff

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1 Director telling us at the last meeting. It may make
2 sense to bring in one or two temporary people to help
3 him as well.

4 STAFF DIRECTOR DANNENFELSER: This is the
5 Staff Director again. We have been able to bring in
6 some temporary people through other types of hiring
7 authorities using temporary employment agencies. We
8 have a writer/editor in the Office of Civil Rights
9 Evaluation and we have an administrative assistant in
10 the Office of General Counsel who is helping to relief
11 the burden on the attorneys in that division. So
12 those were hired through employment agencies. But
13 that would be outside of the consultant route.

14 Now in the past, Congress has had a cap on
15 the amount that our agency could spend on consultants
16 and it was \$50,000 and it was in place for a good
17 number of years. It was lifted. It ended after 2005.
18 So it's not technically in place right now. But given
19 the history of that, we felt that it would be a good
20 idea to look at that as the ceiling that we would
21 pursue in terms of consultants. The total amount
22 would be the \$50,000.

23 COMMISSIONER GAZIANO: Is that per
24 individual you mean?

25 STAFF DIRECTOR DANNENFELSER: That would

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1 be total for the agency.

2 COMMISSIONER GAZIANO: For the agency. So
3 50 divided by four?

4 STAFF DIRECTOR DANNENFELSER: Yes. So
5 again, that would be \$12,500. Just as a way of
6 example, if a consultant was paid at a \$50 an hour
7 rate, that person could work 250 hours between now and
8 September 30th and meet that \$12,500 level.

9 VICE CHAIR THERNSTROM: I'm sorry. I know
10 you've answered this before, this is Thernstrom, but I
11 don't remember the answer. So how are we going to
12 identify these people?

13 STAFF DIRECTOR DANNENFELSER: We're
14 encouraging the Commissioners to make recommendations
15 as to individuals that they think would be appropriate
16 since the goal here is to help the Commissioners to do
17 their part in this process of completing the statutory
18 report which we do have a deadline on that coincides
19 with this. It's the deadline for the statutory report
20 is September 30th and the hiring process that we have
21 in mind runs to September 30th. But we also have
22 backlog with the briefing report. So these
23 individuals could assist the Commissioners in
24 reviewing both the statutory report and the briefing
25 report and making recommendations to them on how they

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1 might respond to those reports both in how they might
2 vote on those reports and any changes to the findings
3 and recommendations or any other changes to the report
4 or the body of the report that they would recommend.
5 So they could assist the Commissioners in that way.

6 They would have to be hired through the
7 Office of the Staff Director. But it would be my
8 intention to then assign those individuals to assist
9 individual commissioners in fulfilling those
10 responsibilities.

11 COMMISSIONER YAKI: This is Commissioner
12 Yaki. I have some questions and some serious concerns
13 about this. One, I am not entirely comfortable with
14 the idea that I am not the hiring entity for purposes
15 of the discretion of being able to say this person is
16 working or not working, (2) for confidentiality
17 purposes and (3) for whatever selection criteria we
18 might be bound by if we go through some process
19 through the Staff Director's office. Could you
20 illuminate to me as to whether or not this is
21 something that would have to be noticed, bid for or
22 whatever because I'm not too sure exactly how loose
23 the consultant hiring process is versus the special
24 assistant process which is essentially you find
25 someone who you want to work with, you submit that

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1 name, and let's put it this way. This is how it
2 usually is without the budget issue that we've had.
3 You submit a name. They get hired. They're at your
4 discretion and your pleasure for the purposes of their
5 continuing ability to work or not and I just want to
6 know what the legal differences are in terms of
7 selection, retention and confidentiality between what
8 you're proposing and with the idea that Commissioner
9 Gaziano and I had which was special assistants whose
10 positions simply expired at the end of the fiscal
11 year.

12 VICE CHAIR THERNSTROM: Can I just add a
13 question? I think those are legitimate questions and
14 can I just add one to while you're in the midst of
15 answering them? I get the sinking feeling that this
16 is going to set some kind of precedent we're not going
17 to like down the road. So if you could just add that
18 to Commissioner Yaki's questions which again I think
19 are the right questions.

20 STAFF DIRECTOR DANNENFELSER: Yes. This
21 is the Staff Director. It's a not a Schedule C
22 position and therefore it does not have the same
23 confidentiality issues. It would be more narrow than
24 the range of duties that a Schedule C Commissioner's
25 Assistant would perform. We would justify it on the

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1 basis of the legal requirement relating to the
2 statutory report and also the need of the Commission
3 to resolve the backlog of the briefing reports.

4 So it's not synonymous probably from a
5 commissioner's perspective. It's not an ideal
6 solution, but we have some very serious obstacles in
7 going through the 30-day or the 120-day Schedule C
8 options. So those would probably result in us not
9 being able to get the process off the ground at all
10 between now and September 30th or if we did, it would
11 be so late in the process that commissioners would not
12 be able to get much benefit out of it.

13 So this seems like the best thing overall.
14 Again, it's not an ideal thing for the commissioners,
15 but a person would have to meet certain standards in
16 terms of background. We would have to be able to
17 justify that this person's background is related to
18 the work we do. If you have someone who's an expert
19 carpenter, for instance, that would be a very
20 praiseworthy individual. But if that person didn't
21 also have some background that related to the kind of
22 work we did here, that probably wouldn't be a fit that
23 we could justify.

24 So I think that we have to show that the
25 person has a certain level of educational and

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1 professional background that would justify. You know,
2 we'd have to have to résumé. We'd have to see some
3 salary history. But for the most part it's a process
4 that could be done pretty expeditiously.

5 COMMISSIONER YAKI: I'm not worried about
6 qualifications. I'm worried about the confidentiality
7 provisions. That to me really causes me some concern
8 and, in terms of the timing issue, that's exactly why
9 I wanted to have this resolved at the last meeting
10 rather than drag it out to, you know, keep on dragging
11 it out week by week by week because then the clocks
12 just keeps on ticking.

13 VICE CHAIR THERNSTROM: Let me just -- The
14 question of what kind of precedent this might set was
15 not answered. But also as I understand it on the
16 terms of the confidentiality, is it correct to say
17 that these people will all be working on paper for the
18 Staff Director, on paper, not for the individual
19 commissioners?

20 CHAIRMAN REYNOLDS: This is Chairman
21 Reynolds. Technically, the current special assistants
22 work for the agency. The hiring authority is the
23 agency and the consultants would be hired on the same
24 basis. Now is that right, Marty?

25 STAFF DIRECTOR DANNENFELSER: Well, they

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1 would not be Schedule C employees.

2 CHAIRMAN REYNOLDS: I understand that, but
3 in terms of the hiring authority.

4 MR. BLACKWOOD: This is David Blackwood.
5 As far as the hiring authority, it would be agency.
6 However, once the authority has been granted by the
7 Commission, an individual commissioner is shown as the
8 direct supervisor of the appointees.

9 CHAIRMAN REYNOLDS: Okay. Could we in the
10 agreement with consultants take care of the
11 confidentiality issue?

12 MR. BLACKWOOD: This is David Blackwood
13 again. I mean, this is one of the issues that we
14 looked at and it is a drawback. I mean, it could only
15 be in essence an informal agreement that, for example,
16 if Commissioner Yaki wanted to pursue a specific
17 individual. We would draft the requirements as
18 flexible as possible. So (1) anyone reviewing it
19 would not have an objection, but (2) you would give
20 him the discretion to hire the individual and frankly
21 it would be a matter of trust that you're not going to
22 require him to disclose anything, his communications
23 with Commissioner Yaki.

24 STAFF DIRECTOR DANNENFELSER: And again,
25 we are looking at the recommendations coming from the

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1 Commissioners. So, in Commissioner Yaki's case, we
2 would be looking for him to recommend an individual.
3 So I think the question would be a matter of trust
4 that he has in that individual. But it is not again
5 synonymous with the Schedule C Commissioner's
6 Assistant, but we think it's the best option that's
7 available under the circumstances.

8 VICE CHAIR THERNSTROM: Can I ask
9 Commissioner Yaki a question? Given the fact that
10 you're talking about here a very short time period,
11 would such an assistant be of sufficient benefit to
12 you so that --

13 COMMISSIONER YAKI: The short answer,
14 Commissioner Thernstrom, is yes. I can barely -- I
15 barely have the time right now to focus even on the
16 statutory report, my comments on that, much less the
17 dissent I would like to write with regard to the last
18 report which is due on Friday. I mean, I am just
19 utterly buried and drowning in terms of work and
20 having someone for the reports that got approved,
21 coming out the door, what have you, is going to be
22 very useful to me in the next six weeks or so. I
23 mean, I'm deadly serious. I really need -- I've been
24 asking for this help for the better part of the year
25 and really, really asking for it for like the last

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1 five or six months and if I can get someone even for
2 the last two months, I'd be pretty happy.

3 VICE CHAIR THERNSTROM: So you feel you
4 can find somebody who in effect is you in terms of
5 reviewing.

6 COMMISSIONER YAKI: I don't know how that
7 would sit with the rest of the Commission but yes.

8 (Laughter.)

9 VICE CHAIR THERNSTROM: All right. No.

10 COMMISSIONER GAZIANO: A Mini Yaki. That
11 would be interesting.

12 VICE CHAIR THERNSTROM: I was just
13 curious.

14 COMMISSIONER GAZIANO: This is Todd again.
15 Michael, I appreciate your confidentiality questions.
16 You know, I have some other questions along those
17 lines, but the reason we couldn't vote last time is
18 because we didn't understand the legal authorities for
19 the other options. It still sounds like I'm not 100
20 percent sure we have authority to make temporary hires
21 in that capacity, but it also sounds like assuming the
22 majority of the Commissioners thought we did.

23 But it's unclear how long that would take.
24 So if you're -- it seems like we have to choose
25 between less optimal options. Which of these two give

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1 you more or greater confidence that you'll have
2 someone to help you?

3 COMMISSIONER YAKI: Well, I mean two
4 things. I just wanted to make sure there wasn't
5 anything abnormally weird about the confidentiality or
6 other provisions that would deal with this. I'm fully
7 confident that the person who I would select would be
8 utterly loyal to me and utterly opposed to anything
9 that the majority would do at the Commission.

10 (Laughter.)

11 Just teasing. But I mean, if this is the
12 way to go, I'm willing to do it just so long as there
13 is an understanding that with regard to
14 confidentiality that the Staff Director will not and,
15 in this instance, will not use their authority to
16 attempt to glean information about what the heck I'm
17 doing from the hire.

18 STAFF DIRECTOR DANNENFELSER: I would --

19 VICE CHAIR THERNSTROM: Nobody wants that
20 information, Michael.

21 STAFF DIRECTOR DANNENFELSER: I would just
22 count on the individual commissioner to assure me that
23 the person is performing the work that they've been
24 assigned to do and that will be really the extent of
25 it. But again, at the front end of it, we will have

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1 to be able to satisfy the criteria that this person is
2 someone who has a reasonable professional background
3 that we could justify hiring the person and then that
4 person would have to provide us probably with some
5 kind of pay stub or something that would indicate that
6 they have a salary history that would justify the
7 hourly rate that we would be paying them. But these
8 are just pretty much ministerial functions that
9 normally take place in the hiring process.

10 CHAIRMAN REYNOLDS: Okay. This is
11 Chairman Reynolds. Unless I've gotten this wrong,
12 there seems to be a consensus that the way to go is --
13 Of the three options that were presented, the
14 consultant route is the way to go. Is there any
15 objection? Did I get that wrong?

16 (No verbal response.)

17 Okay. I will interpret that silence to
18 mean that folks agree with everything I say. Do we
19 need a formal vote on this issue?

20 COMMISSIONER YAKI: I would think so.

21 CHAIRMAN REYNOLDS: Okay. If that's the
22 case, I move that we direct the Staff Director to hire
23 consultants who will be assigned to those
24 commissioners that don't have a special assistant and
25 that these individuals would work up to September 30th

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1 and that the salary, whatever the pay scale is, would
2 have to be justified by their skill set. Is there a
3 second?

4 VICE CHAIR THERNSTROM: Second.

5 CHAIRMAN REYNOLDS: Do we need to have any
6 more discussion?

7 (No verbal response.)

8 Okay. If that's the case, Commissioner
9 Thernstrom?

10 VICE CHAIR THERNSTROM: Yes.

11 CHAIRMAN REYNOLDS: Commissioner Gaziano?

12 COMMISSIONER GAZIANO: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

14 COMMISSIONER KIRSANOW: I abstain.

15 CHAIRMAN REYNOLDS: Commissioner Heriot?

16 COMMISSIONER HERIOT: Abstain.

17 CHAIRMAN REYNOLDS: Commissioner Melendez?

18 COMMISSIONER MELENDEZ: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Yaki?

20 COMMISSIONER YAKI: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Taylor?

22 COMMISSIONER TAYLOR: Yes.

23 CHAIRMAN REYNOLDS: Okay. We have two
24 abstentions, Commissioners Kirsanow and Heriot.
25 Commissioners Thernstrom, Gaziano, Melendez, Yaki,

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1 Taylor and Reynolds voted in favor of it. The motion

2 --

3 COMMISSIONER YAKI: Say wait a minute. Am
4 I on the prevailing side of a vote?

5 CHAIRMAN REYNOLDS: Yes, it does happen
6 from time to time.

7 COMMISSIONER YAKI: I wonder if I should
8 just abstain on principle.

9 COMMISSIONER HERIOT: Can I just state for
10 the record that I did not abstain because I don't want
11 people to have these special assistants. I tend to
12 favor that idea. I'm just feel like I haven't
13 thoroughly digested what the ramifications of the
14 spurious choice between the consultants and the
15 Schedule C impact. So it just made me nervous. I'm
16 in favor of people having special assistants.

17 CHAIRMAN REYNOLDS: Okay.

18 VICE CHAIR THERNSTROM: You know what?
19 Mr. Chairman, I want to change mine to an abstention
20 simply because I have not gotten an answer to my
21 nervousness about precedence down the road by doing
22 this. I am nervous about this. So I'm changing to an
23 abstention. You still have the votes I assume.

24 CHAIRMAN REYNOLDS: Yes. Barely.

25 Okay. Let's get off this topic before I

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1 get another abstention.

2 COMMISSIONER GAZIANO: I was going to say
3 motion reconsider.

4 CHAIRMAN REYNOLDS: Okay. Next up, Marty,
5 please walk us through our spending options for 2008.

6 STAFF DIRECTOR DANNENFELSER: Thank you.
7 Thank you, Mr. Chairman.

8 As we previously discussed, the Commission
9 expects to have surplus funds from the FY 2008 budget
10 and I have polled our managers regarding items that
11 they believe would be helpful to their departments so
12 that the Commission can better accomplish its mission
13 and a number of the major items that have been
14 recommended is a Microsoft Project Professional 2007
15 which would cost about \$15,000 and this would enable
16 staff to track the progress of briefing reports and
17 other projects. It's not a web-based application, but
18 documents could be viewed on the server like currently
19 using our S drive.

20 We're also proposing expanded external IT
21 support in the amount of \$65,000. Right now, the
22 Commission uses an external provider to support agency
23 IT services such as software and hardware installation
24 and maintenance and customer service requests by staff
25 and this current agreement provides about five hours

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1 per week of onsite IT support and this expanded amount
2 of resources would enable us to have 15 hours of
3 onsite support per week and would also increase the
4 amount of time the provider is available for offsite
5 work. It would hopefully decrease service response
6 time and support development of long-term IT
7 improvement investment plans.

8 VICE CHAIR THERNSTROM: Folks, you have a
9 quorum if I jump off. I'm really out of time here.
10 So if the Chair does not object, I'm going to put it
11 in everybody else's capable hands.

12 CHAIRMAN REYNOLDS: Okay. Thank you, Vice
13 Chair Thernstrom.

14 VICE CHAIR THERNSTROM: Thank you.

15 STAFF DIRECTOR DANNENFELSER: We've also
16 received a proposal to explore Decision Point software
17 which would cost a little more than \$10,000 and this
18 would allow us to improve our compliance with Federal
19 procurement regulations by automating basic
20 procurement actions from bid solicitation and
21 evaluation through the award of contracts.

22 We've also been asked to explore the
23 possibility of using Monster.com QuickHire software
24 and piggybacking with another agency that already has
25 that software. If we were to purchase that software

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1 by ourselves, it could cost about \$78,000 which we
2 don't believe can be justified given the small staff
3 that we have and the limited amount of hires. But we
4 are exploring whether we could establish a memorandum
5 of understanding with another agency which we could be
6 able to piggyback on that agency at a cost of
7 approximately \$20,000 which would seem to be more
8 justifiable.

9 There is also a proposal for Microsoft
10 Document Sharing which is --

11 COMMISSIONER HERIOT: What would we get
12 for that \$20,000?

13 STAFF DIRECTOR DANNENFELSER: It would
14 help us automate our staffing process.

15 COMMISSIONER HERIOT: Meaning what?

16 STAFF DIRECTOR DANNENFELSER: We'll turn
17 that to Tina to explain it.

18 COMMISSIONER YAKI: Robots. We're hiring
19 robots.

20 MS. MARTIN: Basically what we do now with
21 our hiring process is we manually go through each
22 application and then we send out letters to each
23 applicant letting them know what's the status of their
24 application is. If we get more than five
25 applications, we have to form a panel within the

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1 Commission in order to evaluate each of the
2 applications which is pretty tough to do because we
3 don't have a lot of people that have time to sit down
4 on these panels. Sometimes it takes more than a day
5 or two to even go through as many applications.
6 Sometimes we get 100 applications for one job.

7 So this will automate the process. It
8 would evaluate all of the applications. It would spit
9 out four. It would spit out a certificate that would
10 go to the selecting official and then all the
11 selecting official would have to do is interview and
12 select them.

13 COMMISSIONER HERIOT: How many hires do we
14 do in a given year?

15 MS. MARTIN: We haven't hired any this
16 year because we've been on a hiring freeze. The year
17 before Mr. Marcus left, maybe we had about 10 and 12
18 hires.

19 STAFF DIRECTOR DANNENFELSER: Any other
20 questions on that particular topic?

21 (No verbal response.)

22 Okay. Let me -- I was mentioning the
23 Microsoft Document Sharing which would cost about
24 \$55,000. This works electronically. It stores Word
25 files in a searchable database and would help support

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1 compliance with National Archives records management
2 requirements and similarly there would be -- There was
3 a proposal for an email archiving system at a cost of
4 \$35,000 that again would support compliance with
5 National Archives records management requirements.

6 Our Strategic Plan Goal IV calls for the
7 creation of a Firstgov USA type website and this is
8 supposed to be online by FY2010. However,
9 implementation will take about two years. So this
10 might be an opportunity to use these funds to get that
11 process going and that would be about a \$75,000 item.
12 So that's a significant expenditure, but again it is
13 part of our strategic plan.

14 There was a proposal for Epsco Social
15 Science Index with full text which was \$7350. This is
16 an online service that provides full text of social
17 science journals and it's more comprehensive and
18 easier to access than our current resources.

19 There was a proposal for Retirement
20 Calculation Software. This would be a \$5,000 item
21 that would allow Human Resources Division to compute
22 retirement estimates, prepare retirement packages and
23 complete forms, compute and individual's high three
24 salaries which is part of the mechanism for
25 determining their retirement benefit, their annuity.

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1 There's another proposal for Empower
2 software in the amount of about \$6,000. This is an
3 Oracle-based human capital management system that has
4 the ability to automate the common administrative
5 tasks associated with HR management and reduce
6 internal operation costs.

7 We're also proposing to replace two
8 printers. That would cost a total of \$2,000. We have
9 two printers currently. They are each more than two
10 years old and one of the printers would be in the
11 office of the Staff Director and the other would
12 support the Commissioners' assistants on the sixth and
13 seventh floors, both the Commissioners' assistants on
14 the sixth floor and the Staff Director on the seventh.
15 One of these printers has actually been out of service
16 for almost a month.

17 There's also a proposal for a new copier
18 that would cost about \$10,000. The current copier is
19 more than ten years old and often malfunctions under
20 the stress of the existing work load.

21 There's a proposal for COOP which is the
22 Continuity Of Operations Plan that we're required to
23 participate in. They have what are known as Emergency
24 Go Bags and supplies for the people who are designated
25 as essential personnel. You have to have these bags

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1 ready for them to deploy to a remote location.

2 And consistent with a recommendation a
3 couple of Commissioners made to me after the last
4 meeting, we're looking into wireless routers at the
5 cost of \$1800 and this would allow the press and
6 Commissioners access to wireless network connection
7 which they can't do currently. So this would enable
8 Commissioners to have laptops for instance in the
9 meeting room and to be able to access those laptops
10 during the meetings which they're not currently able
11 to do and this is not something that's in our FY'09
12 budget. So this would be an opportunity to use these
13 funds in that way.

14 There's also a proposal to enhance a
15 printer maintenance contract. That would be about
16 \$5,000. We have data removal immediate sanitation in
17 the amount of \$4,000 and this is a FISMA related item
18 that is required to be installed by October of 2010.

19 We're also proposing to purchase services
20 through Congressional Quarterly for what's known as
21 online budget tracker. This is an online subscription
22 that provides detailed and timely access to budget
23 actions as they occur in Congress and would allow us
24 to develop specific type of email alerts that would be
25 a particular interest to us and would allow us access

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1 to some searchable databases and that would be \$3,400.

2 There's also a proposal for budget
3 accounting and finance software that would be about
4 \$30,000. It would allow the Commission's budget
5 personnel to automate internal tracking and monitoring
6 of non-salary related financial transactions. It
7 would provide faster access to data including the
8 status of purchase requests, purchase orders and
9 travel documents and improves the ability to reconcile
10 financial information and reports that are generated
11 by GSA.

12 And a couple of other smaller items, there
13 is smaller costs, one for \$700 is a scanner that would
14 allow the library to scan certain documents that might
15 be in PDF form.

16 CHAIRMAN REYNOLDS: Excuse me, Marty.
17 This is Chairman Reynolds. Did you cover the big
18 ticket items?

19 STAFF DIRECTOR DANNENFELSER: Yes. So
20 that's really it. There was one other item for a
21 conference table that would be several hundred
22 dollars. But the big ticket items would probably be
23 the external IT support that's \$65,000, the Microsoft
24 Document Sharing \$55,000, the Firstgov USA type
25 website would be \$75,000. So those are among the

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1 bigger items.

2 CHAIRMAN REYNOLDS: Questions?

3 COMMISSIONER MELENDEZ: Yes. Commissioner
4 Melendez here. My feeling is that I think that we
5 have something like \$450,000 to spend, estimate, in
6 the next 60 days. I still contend that with -- We can
7 have all these enhancements and all these different
8 programs and computer systems. But if we don't have
9 the manpower, I think that we're going to continually
10 have these -- If we don't have a handle on our
11 finances, we're always going to have this surplus at
12 the end of the year of a half of million dollars and,
13 as I said before, I think Tina does an outstanding
14 job. But I just don't think that any person, I don't
15 care how many enhancements you have and
16 computerization that's going to be able to do both
17 jobs of keeping us on track with finances, in tracking
18 that, and also doing the human personnel job also.
19 That's always been my real contention that I think
20 that if we were to put money into one of those two
21 positions I think that it would help us into
22 alleviating these backed up surpluses at the end of
23 the year.

24 Because if we sit in this position next
25 year at this time with another surplus, then what I'm

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1 saying is probably going to come true that we should
2 have put more manpower in to operate all these
3 enhancements that you're talking about. So for the
4 record, that's my strong feeling on our weakness in
5 the Civil Rights Commission office.

6 CHAIRMAN REYNOLDS: Okay. Commissioner
7 Melendez, this is Chairman Reynolds. I share some of
8 your concerns, but I want to point out that the funds
9 that we're spending this year -- Well, to do the
10 things that you recommended and I agree that we need
11 to hire some people, we have to make sure that we have
12 a reoccurring stream of funds and while we have money
13 at the end of this year for various reasons, we can't
14 make a hire and incur a permanent obligation if the
15 money that's available we only have it for a year.

16 But as a general proposition though, I
17 agree with what you said and I think that next year we
18 have to give a harder look at shoring up the agency.

19 COMMISSIONER MELENDEZ: Okay. Thank you.

20 CHAIRMAN REYNOLDS: Okay. Marty, would
21 you like to provide us with an update on the statutory
22 report?

23 STAFF DIRECTOR DANNENFELSER: Yes. Thank
24 you, Mr. Chairman.

25 There have been a number of concerns. I

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1 know Commissioner Melendez said in an email last night
2 with his comments on the statutory report and other
3 commissioners have echoed the same concern that the
4 earlier drafts of the report were not as comprehensive
5 as what they would have expected. So there are some
6 concerns about what was available to review at the two
7 review points so far and also some substantive
8 concerns have been raised about legal analysis and the
9 breadth of the report.

10 I think the report generally reflects the
11 outline that the Commissioners adopted. But I think
12 there is some concern that perhaps in looking at it as
13 it come to fruition that perhaps it's too broad, that
14 perhaps we should have been more narrowly focused.

15 So given the comments that have come in
16 and some major changes that we're making to the report
17 as a result of the comments that have been coming in
18 from the Commissioners, I believe it would be
19 appropriate to have the Commissioners get an
20 opportunity to have another look at the report after
21 these changes are made to have another review. And
22 what I propose is that tonight is the deadline in the
23 current run for submitting comments. What I would
24 like to do is to resubmit to the Commissioners after
25 we incorporate these comments, resubmit the report by

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1 August 8th and then ask for the Commissioners to then
2 submit comments on August 22nd. We in turn would
3 incorporate those comments and send the report back,
4 the final report, back to the Commissioners on August
5 29th and that the Commission would then vote at its
6 September 12th meeting.

7 One thing that I would ask is normally
8 we've had I guess two weeks on the back end for the
9 Commissioners to submit their comments. What I would
10 like to do is to limit that to one week so that we
11 would get their comments by the 19th of September and
12 what has happened is the schedule that we have right
13 now envisioned that the Commissioners would get their
14 final report one week before they vote. What I'm
15 proposing is that they get the report two weeks before
16 they vote, but that their comments come in, final
17 comments, one week after voting. So you still have a
18 total of three weeks from the time that the
19 Commissioners would be sent the final report to the
20 point that they'd have to submit their comments.

21 But given the deadlines we're against that
22 would then still provide us with an opportunity to get
23 the report over to GPO at the beginning of the
24 following week and then have them print that in a CD
25 for us. It would then be submitted to Congress by the

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1 30th of September. We would then subsequently have
2 printed copies made and those would be available to
3 the public and members of Congress who would actually
4 want printed copies as well. That would be my
5 proposal for consideration by the Commissioners.

6 CHAIRMAN REYNOLDS: Okay. Any other
7 comments?

8 (No verbal response.)

9 Well, that concludes the items that are
10 listed on the agenda. Unless --

11 COMMISSIONER YAKI: Chairman Reynolds,
12 Commissioner Yaki.

13 CHAIRMAN REYNOLDS: Yes.

14 COMMISSIONER YAKI: I'd like to severe off
15 the \$75,000 Microsoft whatever the heck it was for
16 just a question. Are we buying support for that as
17 well and is our staff currently trained to handle that
18 software or is training part of the purchase?

19 CHAIRMAN REYNOLDS: Staff Director.

20 STAFF DIRECTOR DANNENFELSER: Are you
21 talking about the Firstgov website, Commissioner?

22 COMMISSIONER YAKI: Whatever that \$75,000
23 Microsoft progress, whatever it was, software you were
24 talking about. That big ticket software buy.

25 STAFF DIRECTOR DANNENFELSER: I'm going to

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1 ask our Associate Deputy Director, Debra Carr, to
2 address that question.

3 MS. CARR: The Microsoft Project is only a
4 \$15,000 investment. Included in that \$15,000
5 investment would be staff training. So some training
6 comes with the software.

7 The \$75,000 that you mentioned was not a
8 software package. It's a creation of a new site.
9 Some what like the site we did for the anti-Semitism
10 campaign. You would link all the Commission sites and
11 it would be handled by our IT staff plus GPO.

12 COMMISSIONER YAKI: Okay.

13 **VI. ADJOURN**

14 CHAIRMAN REYNOLDS: Okay. Unless there
15 are other questions or other issues that need to be
16 discussed, we can adjourn the meeting. All right,
17 folks, thank you, and I'll see you at the next
18 meeting. Off the record.

19 (Whereupon, at 11:45 a.m., the above-
20 entitled matter was concluded.)

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