

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY,

APRIL 8, 2005

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The Commission convened at 9:30 a.m. in Room 540 of the U.S. Commission on Civil Rights, 645 Ninth Street, N.W., Washington, D.C., Chairman Gerald A. Reynolds presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman

ABIGAIL THERNSTROM, Vice Chairman

JENNIFER C. BRACERAS, Commissioner, via
teleconference

PETER N. KIRSANOW, Commissioner

ELSIE M. MEEKS, Commissioner

ASHLEY L. TAYLOR, JR., Commissioner

MICHAEL YAKI, Commissioner

KENNETH L. MARCUS, Staff Director

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STAFF PRESENT:

JOHN BLAKELEY

TERESA BROOKS

MARGARET BUTLER

CHRISTOPHER BYRNES

DEBRA CARR, Esq., General Counsel

IVY L. DAVIS, Director, Eastern Regional
Office

BARBARA DELAVIEZ

TERRI DICKERSON, Assistant Staff Director

PAMELA A. DUNSTON, Chief, Administrative
Services and Clearinghouse Division

BARBARA FONTANA

LATRICE FOSHEE

DORELLE GRAY

GEORGE M. HARBISON, Director, Human Resources
Division/Acting Chief, Budget and
Finance Division

SETH JAFFE

SOCK-FOON MacDOUGAL

TINALOUISE MARTIN, Director for Management,
Office of Management

JANICE MINOR

EMMA MONROIG, Solicitor/Parliamentarian

ANA MARIA ORTIZ

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STAFF PRESENT:

JENNY PARK

BERNARD QUARTERMAN

MICHELLE ROYSTER

EILEEN RUDERT

DEBBIE VAGINS

VANESSA WILLIAMSON

AUDREY WRIGHT

TIFFANY WRIGHT

MIREILLE ZIESENISS

COMMISSIONER ASSISTANTS PRESENT:

PATRICK DUFFY

CHRISTOPHER JENNINGS

LISA NEUDER

KIMBERLY SCHULD

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(10:00 a.m.)

CHAIRMAN REYNOLDS: Okay. We have a quorum. The meeting will come to order.

I. Approval of Agenda

The first item on the agenda is the approval of the last meeting's agenda.

VICE CHAIRMAN THERNSTROM: So moved.

CHAIRMAN REYNOLDS: May I have a second?

COMMISSIONER MEEKS: Second.

CHAIRMAN REYNOLDS: All in favor indicate by saying aye.

COMMISSIONER BRACERAS: Excuse me, Jerry. This is Jennifer.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: I just wanted to table the discussion of the Working Group on Reform until May until we have all of the proposals and we can consider them all together.

CHAIRMAN REYNOLDS: Okay. I guess that will require a motion.

COMMISSIONER BRACERAS: Okay. So I move that we remove the report of the Working Group on Reform from today's agenda.

CHAIRMAN REYNOLDS: A second?

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1 VICE CHAIRMAN THERNSTROM: Second it.

2 CHAIRMAN REYNOLDS: Okay. All those in
3 favor please indicate by saying aye.

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: Any in opposition?

6 (No response.)

7 CHAIRMAN REYNOLDS: Okay. The motion
8 passes.

9 All right. Back to approval of the
10 agenda as amended. I guess now that it has been
11 amended I'd need a motion.

12 COMMISSIONER KIRSANOW: So moved.

13 CHAIRMAN REYNOLDS: Okay. A second?

14 COMMISSIONER MEEKS: Second.

15 CHAIRMAN REYNOLDS: All in favor?

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Any in opposition?

18 (No response.)

19 CHAIRMAN REYNOLDS: The motion carries.

20 **II. Approval of Minutes of**

21 **March 18, 2005 Meeting**

22 Okay. The second item is approval of the
23 minutes of the March 18th meeting. May I have a
24 motion?

25 COMMISSIONER BRACERAS: So moved.

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1 CHAIRMAN REYNOLDS: A second?

2 VICE CHAIRMAN THERNSTROM: Second.

3 CHAIRMAN REYNOLDS: Any changes or
4 discussion?

5 (No response.)

6 CHAIRMAN REYNOLDS: Okay. All in favor
7 indicate by saying aye.

8 (Chorus of ayes.)

9 CHAIRMAN REYNOLDS: Any in opposition?

10 (No response.)

11 CHAIRMAN REYNOLDS: Okay. The motion
12 passes.

13 **III. Announcements**

14 Okay. I would like to make an
15 announcement.

16 Fred Korematsu passed. I regret to
17 report that he passed away March 30th at the age of
18 86. As many of you well know, Fred Korematsu became
19 a symbol of the civil rights movement for challenging
20 the World War II internment orders that sent 120
21 Japanese Americans to government camps.

22 COMMISSIONER YAKI: One hundred and
23 twenty thousand.

24 CHAIRMAN REYNOLDS: Oh, I'm sorry.

25 That's right. One hundred and twenty thousand

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1 Japanese Americans to American camps.

2 His conviction for opposing the
3 internment was finally overturned in the U.S.
4 District Court in 1983. When the internment order
5 came down in February 1942 after the Japanese bombing
6 of Pearl Harbor, the U.S. Army issued orders to round
7 up 120,000 Japanese Americans living on the West
8 Coast into ten internment camps.

9 Mr. Korematsu did not turn himself in and
10 was arrested, jailed, and convicted of a felony for
11 failing to report for evacuation in late 1942. He
12 appealed his case to the U.S. Supreme Court alleging
13 the constitutionality of President Roosevelt's
14 Executive Order 90-66 authorizing -- It couldn't have
15 been Roosevelt. Any historians here?

16 In any event --

17 VICE CHAIRMAN THERNSTROM: It was
18 Roosevelt.

19 COMMISSIONER YAKI: Yeah, it was FDR.

20 CHAIRMAN REYNOLDS: Oh, okay, okay.

21 VICE CHAIRMAN THERNSTROM: Yeah.

22 CHAIRMAN REYNOLDS: In any event,
23 challenging the constitutionality of Roosevelt's
24 Executive Order 90-66 that authorized the internment.

25 The high Court ruled against him

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1 declaring in 1944 that the internment was justified
2 by the need to combat sabotage and espionage. I'd
3 just like to point out that that war was not -- that
4 war was also fought against Italy and Germans, and
5 there were German Americans and Italians walking
6 around the United States and that order did not apply
7 to them.

8 And also I believe that the order did not
9 apply to the Japanese living in Hawaii.

10 In any event, Mr. Korematsu's case stood
11 for almost 40 years, until the early 1980's when
12 Asian American lawyers and civil rights advocates
13 unearthed new evidence that undermined the internment
14 order. It was on this basis that the Korematsu case
15 was reopened in 1983 resulting in the erasure of his
16 criminal conviction for defying the internment.

17 In 1988, President Reagan declared the
18 internment a grave injustice and signed legislation
19 authorizing the reparations of \$20,000 each to
20 thousands of surviving internees, including
21 Korematsu. In 1999, President Clinton awarded
22 Korematsu a Presidential Medal of Freedom, the
23 nation's highest civilian honor.

24 Mr. Korematsu remained active in civil
25 rights throughout his life, and President Clinton

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1 noted the significance of these achievements when he
2 said, "In the long history of our country's constant
3 search for justice some names of ordinary citizens
4 stands for millions of souls, Plessey, Brown, Parks.

5 To that distinguished list we now add the name of
6 Fred Korematsu."

7 On behalf of the U.S. Commission on Civil
8 Rights, I wish to acknowledge Mr. Korematsu's long
9 and distinguished service to his country and, as
10 well, acknowledge the enormous debt owed to him by
11 all Americans. His passing is a significant loss for
12 the United States and the world.

13 COMMISSIONER YAKI: Mr. Chair.

14 CHAIRMAN REYNOLDS: yes.

15 COMMISSIONER YAKI: Could I just add a
16 few words to that?

17 CHAIRMAN REYNOLDS: Oh, sure.

18 COMMISSIONER YAKI: My father and his
19 family were interned in camps pursuant to Executive
20 Order 90-66, and I also knew Fred Korematsu
21 personally. I worked with him on a number of
22 occasions.

23 Most recently I saw him at the annual Day
24 of Remembrance of Events in February, which marks the
25 anniversary date that the Japanese American community

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1 observed every year for the internment order. And I
2 was as shocked as anyone that just a few weeks later
3 he had passed.

4 But I just wanted to say on behalf of the
5 Japanese American community thank you for your kind
6 words. I will be attending his service in California
7 on the 16th, and just want to say that it is one of
8 the great injustices perpetrated in our
9 constitutional history, and I think that a sad
10 reminder of a terrible time in our nation's history

11 What is unfortunate though and still
12 remains is that while his personal conviction was
13 overturned, as well as those of four other
14 plaintiffs, who produced by clear and convincing
15 evidence that there was no wartime sabotage, there
16 was no fifth column of enemy aliens in the United
17 States among the Japanese community, that the
18 decision in Korematsu v. United States still remains
19 on the books and still is there, unfortunately, as
20 precedent for the future, and that, I think, is an
21 unfortunate legacy that still remains, but can't
22 detract away from the personal courage and honor that
23 Fred Korematsu showed throughout his entire life.

24 CHAIRMAN REYNOLDS: Thank you.

25 Yes?

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1 VICE CHAIRMAN THERNSTROM: However,
2 Michael, we do not agree that it is a disgraced
3 decision. It goes down in history, along with, you
4 know, a short list of decisions in which the Supreme
5 Court reacted appallingly.

6 COMMISSIONER YAKI: I think that, without
7 a doubt, when you put up there with Dred Scott,
8 Plessey and Korematsu the only unfortunate thing is
9 that the other two decisions were overturned either
10 by an act of amending the Constitution or an act of
11 the Supreme Court. The last one has yet to be.

12 VICE CHAIRMAN THERNSTROM: Well, and
13 arguably, Plessey has yet to be, I mean, in very
14 narrow legal terms, but we won't go further into that
15 now. But in legal terms, Plessey hasn't been
16 overturned either, of course. Brown v. Board didn't
17 overturn Plessey, but anyway --

18 COMMISSIONER YAKI: I think it did.

19 VICE CHAIRMAN THERNSTROM: Well, the
20 point is well taken.

21 CHAIRMAN REYNOLDS: Okay. We have --
22 would you hold a moment?

23 (Pause in proceedings.)

24 CHAIRMAN REYNOLDS: Okay. Well, during
25 our last meeting we discussed the need to take

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1 corrective actions in order to avoid exceeding our
2 budget authority for fiscal year 2005.

3 The Staff Director and a number of
4 Commissioners have spent a lot of hours trying to
5 come up with a battle plan that is going improve the
6 fiscal health of the institution.

7 We have a battle plan. The battle plan is
8 unfortunately going to be painful, but we don't have
9 any choice in the matter. I think that this is going
10 to be the first step that we take along the road of
11 recovery.

12 At this point I will ask the Staff
13 Director to provide his report.

14 **IV. Staff Director's Report**

15 MR. MARCUS: Thank you, Mr. Chairman.

16 Mr. Chairman, Madame Vice Chairman,
17 Commissioners, if it please the Commissioners, I
18 would like to supplement my written report for this
19 month with additional remarks concerning the
20 financial condition of the agency. It may be that
21 there are other issues that the Commissioners would
22 also like to discuss, but the fact is that over the
23 last few weeks since our last meeting, we have been
24 focused intensely on addressing the immediate
25 financial concerns that I described in the last

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1 meeting.

2 As you know, those current concerns are
3 intense, and they are immediate, and that is why the
4 solutions will necessarily be painful ones.

5 During the Commission's February 18, 2005
6 meeting, I indicated that this would be a
7 particularly austere year financially, and I added to
8 that in testimony on March 17, 2005, before the U.S.
9 House Judiciary Committee, Subcommittee on the
10 Constitution, indicating that as of my arrival the
11 spending plans and assumptions of the Commission
12 place the agency on course to overspend its
13 appropriations by a considerable sum and that we are
14 now working on cost cutting measures to close this
15 gap and provide a sufficient cushion against
16 unexpected costs.

17 I indicated further during the March 18
18 meeting that we had yet to determine the precise
19 parameters of the shortfall, but that based on
20 present spending patterns and assumptions, we had a
21 range of figures that could be as low as \$45,000 or
22 as high as over \$200,000.

23 And subsequently I have indicated that as
24 our Office of Management refined those figures, that
25 we had no room for optimism, and that, in fact, the

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1 shortfall based on current spending patterns and
2 assumptions as of March was well over \$200,000, and
3 in fact, in the range of 260 or \$265,000 if
4 corrective measures were not taken as of March.

5 Now, we've also indicated some interim
6 corrective measures that are bringing those numbers
7 down, but we'll need to discuss today additional
8 measures to make sure that we are serving at least
9 five goals.

10 First, we need to fully close the
11 shortfall that we have projected to have in fiscal
12 2005.

13 Second, to do so in a way that
14 anticipates and closes the shortfall that we would
15 otherwise have in fiscal year 2006.

16 Third, that enables us to do at least
17 those sorts of reforms that the Commission has
18 discussed to date for fiscal year 2005 and 2006.

19 Fourth, and not in any particular order,
20 fourth, we need to make sure that we are doing each
21 of these things in a way that protects and advances
22 the ability of the Commission to achieve its mission.

23 And, fifth, and all throughout as we look
24 at any options to do so in a manner that as best as
25 possible preserved the well-being of the dedicated

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1 employees of this agency.

2 Those are very important goals. They're
3 very difficult goals, and we attempt to reach those
4 goals in the context of the Anti-deficiency Act,
5 which has very strict penalties for agencies and
6 leadership of agencies which overspend their
7 appropriations or otherwise act in a manner which
8 fails to comply with the appropriations laws.

9 So these are very serious, very serious
10 matters, indeed. We know that as recently as 2004 an
11 arm of the U.S. Department of Treasury cut off its
12 dealings with the U.S. Commission on Civil Rights,
13 and a significant part of their reason for
14 terminating the relationship was a concern that the
15 Commission in 2003 and 2004 was not sufficiently
16 seriously dealing with the provisions of the Anti-
17 deficiency Act in a conversation with senior staff of
18 that agency.

19 Earlier this week, they indicated to me
20 that their biggest concern was an attitude of denial
21 towards the shortfalls that we've had in prior years.
22 It is my commitment to insure that we are focused
23 with seriousness on complying with our requirements
24 under the various appropriations laws, including the
25 Anti-Deficiency Act.

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1 We have looked at a number of short-term
2 measures that can provide very quick reductions in
3 spending. Some of these are items that I generated
4 together with senior staff.

5 In addition, the entire staff of this
6 agency has been very helpful in developing ideas for
7 how we might reduce cost expenditures. Some of them
8 were provided directly to management, some through
9 union officials who have been helpful in facilitating
10 the transmission of ideas.

11 Of those ideas, some of them we've looked
12 at. Some of them we will continue to look at, but
13 there are certainly a number of ways that we will
14 continue to focus on for how we can reduce costs.
15 Some of them I'll mention right now.

16 First, we have placed a freeze on new
17 hires in this agency. I'm very much aware that some
18 of the Commissioners of this agency have made the
19 sacrifice of doing without full-time special
20 assistants, which Commissioners have all
21 traditionally had.

22 The decision to go without special
23 assistants for the rest of the fiscal year for those
24 Commissioners who have not brought them on brings
25 down the shortfall tremendously from \$265,000, and

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1 has helped cut the figure down into the ballpark of
2 \$135,000 for this year.

3 In addition, we have made serious cuts in
4 spending, including ceasing to use temporary staff at
5 this agency, curtailing travel and other
6 discretionary expenditures, making every cut that we
7 can in discretionary expenditures as severely as we
8 can.

9 And, third, we have sought authorization
10 from the Office of Personnel Management to offer
11 voluntary early retirement to employees within
12 certain offices within the agency.

13 Now, given the restrictions in the rules
14 regarding voluntary early retirement, that will, at
15 most, affect a small number of employees at the
16 agency, but given the numbers of the agency as a
17 whole. Certainly any savings could make a difference
18 in terms of the sort of pain that could be
19 experienced by other employees of the agency.

20 As the Commissioners are aware, the bulk
21 of the budget for this agency falls within the
22 categories of salary, benefit and rent. The
23 expenditures for all other categories are so small
24 that there is really very little room to materially
25 affect the status of the agency without touching one

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1 or more of those three areas.

2 Now, that is not to say that we will
3 continue aggressively to seek ways of cutting
4 expenditures in other categories, but the fact is
5 that a shortfall of this fiscal year of 265,000 or
6 even \$135,000 cannot be met without looking to one of
7 those three categories.

8 Moreover, we know that we have had for
9 many years a flat line budget of approximately \$9
10 million. We also know that we have seen federal
11 salaries increase by approximately three or four
12 percent or so per year, including the locality pay
13 adjustments for the areas where the bulk of our
14 employees reside.

15 In addition, we know that benefits have
16 continued to rise each year. Assuming that the
17 federal wages continue to increase in the range of
18 three to four percent and that the benefits increase,
19 we would be looking without serious corrections to a
20 deficit for fiscal year 2006 which not only equaled
21 the shortfall of 135 or \$265,000, depending on the
22 use of special assistants, but which increased by an
23 amount beyond that, which could be 180 or 200 or 220
24 or \$250,000, depending on the extent of any increase
25 in federal wages and the extent of any increases in

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1 health and other benefits.

2 So what we are looking at is not only a
3 significant shortfall for this year, but a projected
4 shortfall for next year which is substantially
5 greater.

6 The three main categories of long-term
7 corrections that could address some or all of those
8 challenges would have to include a furlough, a
9 reduction in force, a closure of offices and
10 associated RIFs. Those are the three categories of
11 changes that would have the greatest material effect
12 on our ability to close that gap.

13 We do not look lightly at any one of
14 those prospects. We are committed to the mission of
15 the agency. We are committed to the welfare of the
16 employees of the agency, and we know that any one of
17 those changes would have a very serious effect on the
18 lives of all of the people who are dedicated to this
19 organization and will create very significant
20 challenges as we attempt to achieve our mission in
21 future years. At the same time we're obligated by
22 law to live within our means.

23 The prospect of a furlough would have an
24 ability during this fiscal year to close the gap, but
25 it has certain disadvantages. First, it would have

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1 an adverse financial impact on every single employee
2 of this agency. The only kind of furlough that I
3 have considered or that I would consider appropriate
4 would be a furlough on every single employee,
5 including management and including the Staff
6 Director.

7 At this point in the year, are furloughs
8 sufficient to close the gap for fiscal year 2005? It
9 appears based on Office of Management calculations to
10 be necessarily at least seven days in duration. A
11 furlough of less than that period of time would not
12 meet that gap.

13 Moreover, even a furlough of seven or
14 eight days during this fiscal year would have no
15 impact on the much greater shortfall that we are
16 anticipating for next year. If the shortfall were
17 increased by another \$200,000, we would be looking at
18 approximately another ten days of furlough next year,
19 which is to say at least 17 or 18 days furlough next
20 year if we continue to go that route, which is to say
21 close to a month's time.

22 Moreover, since even that would not
23 affect in any way the shortfall anticipated for
24 further years if straight fall, if flat line budgets
25 increased, this would put us in a position where we

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1 are simply expanding every year in fairly dramatic
2 terms the amount of time that people are out of work,
3 and that is certainly not sustaining over time. It
4 would within a very short order reach the point at
5 which the furlough actually would constitute a
6 reduction in force since 30 days or more is
7 considered a reduction in force.

8 Moreover, it would not really enable us
9 to effect savings of any sort or to reform or correct
10 any of the problems within the agency. It would
11 simply be a matter of delaying resolution of our
12 problems if it were done to the exclusion of any
13 other sort of remedy.

14 We have also looked at the question of
15 closure of offices, and again, as with any of the
16 other options, even considering this is something
17 that has been very painful to us because we know that
18 every office within this agency has historically and
19 currently provided great contributions.

20 The regional offices, for instance, do
21 the important work of servicing our state advisory
22 committees in providing the regional and state
23 reports that they have done over the years.

24 Moreover, the employees of our regional
25 office are as important to us as the employees here

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1 at headquarters.

2 Closure of regional offices can enable
3 the agency to appreciate substantial savings over a
4 period of time. However, we have reached the point
5 in this fiscal year, given the notice requirements
6 involved, given the requirements of the GSA and other
7 entities of the federal government, that there are
8 very few offices that could be closed with net gains
9 for this year.

10 There may be one or two offices whose
11 closure would enable us to appreciate any savings
12 this fiscal year. Any of the other offices would be
13 closed at a net cost to us through this fiscal year.

14 On the other hand, closures taking place
15 early in a subsequent fiscal year would enable us to
16 appreciate a more substantial savings so that any
17 plan involving a closure of regional offices would
18 enable us to deal with long term structural deficit
19 problems, including fiscal year 2006 fiscal problems,
20 but would not be sufficient to enable us to correct
21 the problems with respect to this fiscal year.

22 Finally, there is a question of a
23 reduction in force. A reduction in force that would
24 not involve office closure could address the
25 shortfall that we have within the agency. Now, this

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1 is an extremely painful and difficult issue to
2 consider and to discuss because it has arguably the
3 most severe impact on those employees who are
4 affected.

5 At this point in the fiscal year, a
6 reduction in force of two or three or four or five
7 individuals taken alone would not be sufficient to
8 close the shortfall. According to Office of
9 Management Calculations, it would likely require, if
10 a reduction in force were the sole means of
11 addressing the shortfall, it would likely require as
12 many as 11 employees to be separated from the agency
13 if that were the sole means of addressing the
14 shortfall or a reduction in force of approximately
15 nine employees if combined with a short furlough of
16 one or two days.

17 Those are the basic alternatives. Beyond
18 that, of course, there are various sorts of
19 combinations of those three approaches that we have
20 looked at.

21 None of the combinations of those three
22 elements is an attractive one. All of them involve a
23 great deal of pain for the agency. As we have looked
24 at various permutations though, there is one
25 permutation that appears to achieve the sorts of

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1 goals that we described and to do so in a way that
2 balances the desire to protect as many employees as
3 we can while still achieving the savings that we need
4 in order to live within our means.

5 And that proposal would entail closing
6 two offices early in the next fiscal year, presumably
7 during the first fiscal quarter of fiscal year 2006,
8 and affecting both a reduction in force of four
9 employees during this fiscal year and a furlough of
10 such time as is required to fill the remaining
11 shortfall during this fiscal year, and that period of
12 time will need to be calculated by the Office of
13 Management, but we expect it to be shorter than ten
14 days and perhaps as short as approximately four to
15 five days.

16 That combination of measures would be an
17 extremely painful one. There are other alternatives
18 that would give us a much greater ability to effect
19 reforms and otherwise to advance strategic
20 initiatives in future years, but which would come at
21 a cost of separating a greater number of employees
22 than under this proposal.

23 There are other proposals that would
24 involve fewer cuts, but which would not enable us to
25 deal in a serious, long-term manner with the problems

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1 that we face.

2 This is a combination that appears to be
3 among all of the difficult, painful alternatives, one
4 that can meet the objectives that I've articulated.

5 CHAIRMAN REYNOLDS: Okay. So that we can
6 get the discussion started, I would like to move that
7 we have a four-person RIF, also an office closure,
8 well, actually two office closures that would take
9 place during the first quarter of fiscal '06, and a
10 furlough. We would furlough -- we would choose a
11 number of days sufficient to insure that we did not
12 exceed our budget authority.

13 May I have a second?

14 VICE CHAIRMAN THERNSTROM: Second.

15 CHAIRMAN REYNOLDS: Discussion? Yes.

16 COMMISSIONER KIRSANOW: Ken, you
17 mentioned a seven day furlough. That's seven working
18 days? I know you said a possibility. You weren't
19 sure of how many days it would be, but you said seven
20 days, and I'm wondering is that calendar days or
21 working days. Obviously a seven working day would
22 affect a cost savings.

23 MR. MARCUS: I'm sorry. Under the
24 proposal that I characterized, it would be
25 approximately five, for five working days.

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1 COMMISSIONER KIRSANOW: Could that be
2 offset by any leaves of absence that may be taken
3 during the course of the year?

4 MR. MARCUS: Yes. Thank you,
5 Commissioner Kirsanow.

6 We have looked at ways of offsetting both
7 the reduction in force and the furlough, and here is
8 what I am planning to do with respect to potential
9 offsets. We are still aggressively looking for any
10 way of cutting costs that could reduce those numbers
11 if done quickly enough, and there are possibilities
12 that we would be able to effect some savings that
13 would enable us to reduce the numbers both with
14 respect to the furlough and with respect to the
15 reduction in force.

16 You've asked about the furlough. What we
17 are looking into is the prospect of permitting
18 employees to take additional leave without pay for
19 periods beyond the furlough, if there are some who
20 are able to, and there are certainly employees who
21 have approached me and who have said that if it could
22 help their fellow employees, they would potentially
23 take a longer leave without pay.

24 To the extent that the sum of the savings
25 leaves without pay are sufficient to reduce the

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1 furlough, we will do that. However, we will need
2 working with the Office of Management to provide very
3 specifically the circumstances and conditions under
4 which that leave without pay would have to take place
5 including the period of time within which we would
6 have to receive notification of that intent.

7 So if the leave without pay is taken
8 within the parameters of the conditions that I will
9 work out with the Office of Management and for which
10 I hope union representatives may have input, there is
11 a possibility of ameliorating the furlough.

12 Similarly, to the extent that we are
13 permitted by the Office of Personnel Management to
14 offer voluntary early retirement and to the extent
15 that there are employees who are provided that option
16 and who accept under the terms that we will need to
17 promulgate, we would look into reducing the number of
18 persons subject to a reduction in force.

19 Since the number of persons who would
20 appear to be subject to a reduction in force is as
21 small as four, it's a large number in some respects,
22 but since the number is four, it is possible that
23 that could be substantially affected by voluntary
24 early retirements.

25 COMMISSIONER KIRSNOW: And what would be

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1 the time frame by which you could determine whether
2 or not you could simply do this either completely or
3 in the main by voluntary early retirement as opposed
4 by RIF?

5 Presumably you have a time frame in which
6 you have to engage the RIF and complete it for a
7 notice standpoint. If early voluntary retirement was
8 being offered, what is the time frame for that so
9 that you could then make plans to either implement a
10 RIF or not implement a RIF?

11 MR. MARCUS: Commissioner Kirsanow, we
12 would need to know that information very soon because
13 the plan works the way it does with the smallest
14 number of RIFs and the shortest furlough days only if
15 we get notices out very quickly to the employees who
16 are subject to these matters.

17 If we are to notify people in the very
18 early part of May, we would need to know at some
19 point in late April of the decision that employees
20 make with respect to voluntary early retirement.

21 Now, I will need to work with the Office
22 of Management and perhaps speak with union
23 representatives in terms of setting an exact date,
24 but I believe that it would need to be in late April
25 and in the ballpark of the third week of April.

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1 COMMISSIONER KIRSANOW: And without
2 getting into too much detail, I know you've addressed
3 this to some extent insofar as the bulk of any
4 savings would be achieved through salary and benefit
5 cuts or rent. You indicated that you're trying to
6 put freezes or reduce the amount of discretionary
7 travel.

8 Does anybody have a ballpark figure for
9 how much Commissioner travel on an annualized basis
10 would be?

11 MR. MARCUS: I don't have that on the top
12 of my head. We could try and see if staff can look
13 that up perhaps during a break.

14 COMMISSIONER KIRSANOW: It would probably
15 be marginal, but I think it might be helpful to see
16 where we can achieve cost savings to minimize any
17 pain that may be spread throughout staff, and also
18 making sure we can discharge our mission.

19 I think there's a balancing act. I think
20 from time to time staff -- I mean Commissioners do
21 need to meet face to face, but to the extent we might
22 be able to affect or have meetings by teleconference,
23 if, in fact, that does give any kind of substantial
24 cost savings, that's something we might want to
25 consider.

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1 VICE CHAIRMAN THERNSTROM: On that last
2 point, is there not a statutory obligation that we
3 actually meet once a month?

4 MR. MARCUS: I don't believe that there
5 is a requirement that there be a face-to-face meeting
6 once a month, and I'm confirmed in that by legal
7 counsel.

8 COMMISSIONER BRACERAS: Excuse me. This
9 is Jennifer.

10 Even if we were required to meet face to
11 face once a month, that doesn't mean we all have to
12 be there face to face. I mean, I'm not there now,
13 and again, I don't know how much this would save, but
14 perhaps there could be for the next couple of months
15 a rotating system of people who don't come and come
16 in by phone, and if that would save us, you know,
17 some pains for some of the staff at least in terms
18 of, you know, furlough days, I'd be willing to do
19 that.

20 CHAIRMAN REYNOLDS: I think that these
21 are all things that should be considered, but I think
22 that it's important to note that what we're wrestling
23 with is a structural deficit.

24 COMMISSIONER BRACERAS: Yes.

25 CHAIRMAN REYNOLDS: And these types of

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1 recommendations will affect our ability to discharge
2 our obligations to fulfill our mission. So at the
3 end of the day I think, yes, we should consider them,
4 but these are stop-gap measures.

5 COMMISSIONER BRACERAS: Right. I mean,
6 obviously we need the longer term solutions, but in
7 terms of, you know, furloughs for this year, if I can
8 help the staff in any way --

9 CHAIRMAN REYNOLDS: Sure.

10 COMMISSIONER BRACERAS: -- you know, I'm
11 willing to make that sacrifice because, you know, I
12 can participate from here. So it's just something to
13 think about or at least to consider how much it would
14 save us. Maybe it's so negligible that it wouldn't
15 make a difference. I don't know.

16 VICE CHAIRMAN THERNSTROM: Look. I feel
17 very strongly also about protecting the staff to the
18 degree to which we can. At the same time, this
19 agency has to function, and I'm not sure that -- I
20 suspect that fiddling around with some kind of
21 teleconferencing meeting or rotating participation in
22 person at these meetings -- we're really into serious
23 compromises at this point in terms of the functioning
24 of the agency.

25 Jennifer, I'm sure you would be the first

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1 person to say it is not the same to come in by phone
2 as it is to meet, and I am concerned. Obviously I'm
3 concerned about the staff, but I am also concerned
4 about crippling the agency.

5 CHAIRMAN REYNOLDS: Commissioner
6 Kirsanow.

7 COMMISSIONER KIRSANOW: I just use their
8 competing considerations. I just want to make sure
9 that we do everything we can pursuant to, I think,
10 what Commissioner Yaki had indicated last month, and
11 that is that we take whatever cuts that seem to be
12 necessary only after we have exhausted all other
13 alternatives.

14 And I am persuaded by what Jennifer had
15 to say in terms of it's not going to affect the
16 structural deficit. We know that, and we're probably
17 talking about pennies, but pennies mean a lot to the
18 staff in terms of making rent and everything else.

19 A furlough is a big hit, and if we can
20 reduce the number of furlough days, if it's possible,
21 I don't know if it is, but I think it is something
22 that is worth examining.

23 And I'm also interested and I'm just not
24 familiar with what the agency does, whether or not
25 there are any -- in the private sector whenever we

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1 implement RIFs, we have out-placement programs.
2 We've got things that are done for staff who are
3 affected, if any are going to be affected by a RIF,
4 to ease the transition, possibly help them find other
5 opportunities.

6 Is there anything like that that we have
7 examined or can we examine something like that?

8 MR. MARCUS: Our Office of Management is
9 looking into what we can do within the parameters of
10 our budget and ability on that.

11 COMMISSIONER KIRSANOW: Does OPM have any
12 kind of role in that?

13 MR. MARCUS: We have been regularly in
14 touch with OPM about what we're planning to do and
15 the resources that they can make available. I am not
16 aware of any resources that they have yet provided
17 regarding out-placement specifically, but we'll
18 certainly see if they can provide any help in that
19 regard.

20 CHAIRMAN REYNOLDS: Commissioner Yaki.

21 COMMISSIONER YAKI: Yes. Thank you very
22 much, Mr. Chair and Mr. Staff Director.

23 As you know, I've had some difficulty
24 with this arrangement, and I just think that there
25 are some questions that I think we will need to put

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1 out there so that the staff knows why it is we're
2 taking the action that we're doing.

3 My understanding is that although a
4 furlough could close the gap for this year, and let
5 me just say that in terms of, you know, sacrifice or
6 whatever you want to call it, I have chosen, I have
7 deliberately chosen, as has the Chairman, not to hire
8 a special assistant for this year, and I have
9 indicated that if it is needed I will do so for the
10 following year as well.

11 That, of course, means that this pile in
12 front of me will get ever messier every month, but I
13 think we can live with that.

14 But so although a furlough for this year
15 could close the gap in and of itself, that would not
16 achieve the savings for next year, correct?

17 MR. MARCUS: That's correct, Commissioner
18 Yaki. It would not reduce the gap for next year or
19 provide any additional savings.

20 COMMISSIONER YAKI: Now the next question
21 I have is in the scenario that you described, which
22 is the four-person RIF this year plus the two office
23 closure next year, what is the anticipated savings
24 estimated for fiscal year '06?

25 MR. MARCUS: That's a good question,

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1 Commissioner Yaki, and I appreciate the word
2 "anticipated" because it's difficult to predict
3 exactly for a number of reasons, including the fact
4 that once one does a reduction in force, it tends to
5 take on, as some people have said, a life of its own,
6 which is to say it is not always possible to
7 determine exactly in advance the individuals who will
8 necessarily be subject to it and the amount of
9 savings to the institution for future years will, of
10 course, depend on which individuals unfortunately
11 have to be subject to --

12 COMMISSIONER YAKI: Sure, but you must
13 have a ballpark.

14 MR. MARCUS: We do. The ballpark figure
15 that we have for the total savings in fiscal year
16 2006 from both the four person reduction in force
17 plus, the office closure involving two offices and
18 associated employees and expenses next year would be
19 between seven and \$800,000, roughly in the middle
20 sevens, and of course, that would be required both to
21 close the shortfall for that year and to provide some
22 additional cushion.

23 COMMISSIONER YAKI: Then that's the next
24 question I want to ask. What is the delta between
25 the anticipated shortfall and the savings that you

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1 would achieve, in other words, the cushion that you
2 talk about for next year?

3 MR. MARCUS: Well, as I tried to
4 indicate, Commissioner Yaki, the shortfall for this
5 year is approximately 135 or \$265,000, the difference
6 between those figures being largely the freeze on
7 hires, including Commissioner assistants.

8 Based on either figure, the 265 or the
9 135, depending on whether assistants are hired next
10 year, would increase by an amount of that could be as
11 low as \$180,000, but could be \$250,000. It will be
12 somewhere in that vicinity.

13 COMMISSIONER KIRSANOW: So we're talking
14 about a cushion that could be anywhere between 500 or
15 \$250,000, depending on how it breaks on the high end
16 or low end. Is that --

17 MR. MARCUS: That's about right. I would
18 think 500,000 would require a lot of things breaking
19 in the favor of the Commission, but that's an
20 approximate range.

21 COMMISSIONER YAKI: And I assume that in
22 our budget submission for next year, we would be
23 anticipating what we would hopefully be spending that
24 money on. So what is it that we would be using the
25 cushion for if we could and why?

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1 MR. MARCUS: Well, let me tell you,
2 Commissioner Yaki, some of the things that we need,
3 and it's a question of what we will be able to
4 afford, based in part on whether the savings are at
5 the low end or at the high end. We need stronger
6 accounting services than what we have now. That is a
7 big one, and that includes in-house staff and
8 potentially additional expenditures to outside staff
9 to insure that we are able to get a clean audit.

10 We have not been able to get a clean
11 audit in the past. I think it's extremely unlikely
12 that we would get a clean audit for 2003 or 2004
13 based on the accounting services we have right now.
14 I think it's extremely unlikely that we could get a
15 clean audit for this fiscal year. I think it's
16 already too late in the year for that to happen.

17 I think we need to focus on getting the
18 accounting services required for a clean audit for
19 2006.

20 In addition, to general accounting
21 services, we will need to get a full-scope audit.
22 That is something that is required by law and that we
23 have not had yet.

24 In addition, we may need other services
25 provided by an Inspector General's audit team. Those

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1 are among the highest on our list.

2 We also have certain critical vacancies,
3 not all of which could be filled. We may be able to
4 fill some or none of them depending on how the
5 figures break. Certainly filling the General Counsel
6 position would be high on the list. We also have
7 vacancies for the head of Congressional Affairs,
8 Public Affairs, and Deputy Staff Director.

9 We certainly wouldn't be able to fill all
10 of those positions. I'm not sure if we would be able
11 to fill any of those positions, but they certainly
12 are on the list of things that we might do depending
13 on what money we have.

14 So I would say the highest on the list
15 would be accounting and related services, both
16 internal and external.

17 COMMISSIONER YAKI: So that would be a
18 combination of in-house hire and external contracting
19 for the services that are currently provided by this
20 other company that we have right now?

21 MR. MARCUS: That's right.

22 COMMISSIONER YAKI: And have we estimated
23 the delta between what the contract is for the
24 current accounting company and another one as well,
25 what that would be?

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1 MR. MARCUS: We have requested cost
2 information from the Treasury Department's Bureau of
3 the Public Debt, and we have asked them questions
4 about what we would have to do in order to become the
5 sort of agency that they would be willing to have
6 contractual relationships with again.

7 What they have told us is that they
8 believe we need additional procurement services that
9 we're not receiving in order to insure that we are
10 not violating procurement laws and regulations, as
11 well as additional budget services to rectify what
12 they consider problems in that area.

13 We have not yet gotten those cost
14 estimates. It was Mr. Harbison's recollection that
15 in the past when they have indicated the services
16 that they believed that we required, but do not have,
17 that the figure was over \$100,000, but we don't yet
18 have that figure.

19 COMMISSIONER YAKI: That wouldn't be new
20 100,000 because that would be just the difference
21 between what we're paying the current company and
22 what BPD would be asked. So you've got a full 100
23 there.

24 MR. MARCUS: It would be -- it would be -
25 -

1 COMMISSIONER YAKI: Well, I mean in terms
2 of the agency overall budget it wouldn't be an
3 additional 100,000 spent because we're already
4 spending some amount on accounting services already.

5 It would just be that difference over and above that
6 would be the net requirement for our budget for next
7 year.

8 MR. MARCUS: It was his understanding
9 that it would be an additional \$100,000.

10 COMMISSIONER YAKI: Over and above what
11 we're currently paying.

12 MR. MARCUS: That's right. That's right.

13 Now, I should say again that we have
14 requested cost estimates and not yet received them.

15 COMMISSIONER YAKI: And how much would it
16 cost for in-house budget personnel that you're
17 indicating? What kind of positions are we talking
18 about?

19 MR. MARCUS: A senior budget official
20 with sufficient level of expertise to serve as a
21 chief budget officer at a GS-15 level who could
22 assist both with basic budget matters and also to
23 turn around the strategic planning process at this
24 agency, which has been so severely criticized would
25 probably cost in the ballpark of \$150,000, more or

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1 less, depending on the step at which the person comes
2 in, including salary and benefits.

3 The highest, I believe, salary could be
4 about \$135,000, but depending on seniority, it could
5 be a bit lower than that, with the benefits being
6 approximately a quarter of whatever the salary is.

7 COMMISSIONER YAKI: Okay. It's just
8 important, I think, to get this information out there
9 because, as you know, I've been troubled by the drive
10 to create I wouldn't call it a surplus, but the
11 cushion, as you call it, for each year. I understand
12 that it is your feeling and the Chair's feeling that
13 we need to demonstrate these kinds of reforms to
14 Congress in order to put ourselves on a better
15 footing with them, and I certainly appreciate that.

16 You know, as we go forward, I just want
17 you to know, and I don't think it's any secret, that
18 I'm hoping that at some point we can make the case
19 that for this agency to function we need more money
20 to work.

21 I know that's your feeling, Mr. Chair,
22 and the feeling of every single person here not
23 because -- simply to keep up for the lack of
24 purchasing power or personnel that we've lost over
25 the past ten and 15 years.

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1 I appreciate the fact that we have to
2 engage in actions this year to close the deficit. I
3 understand and appreciate the fact that we have to do
4 so next year. I wish we didn't have to do it in a
5 way or in a manner that was based on a timetable that
6 seems almost forced upon us by others, but that being
7 the case, as you know, I've been working very closely
8 with you and the Chair on how to make this work and
9 how to preserve our core mission at headquarters as
10 much as possible, and in the end, I will support
11 this, but I just think we need to be able to say why
12 it is we're doing, what it is we're doing, and,
13 again, for my part if it were not for, as you have
14 said to me repeatedly, the need to demonstrate
15 reform, I would have another alternative in mind.

16 CHAIRMAN REYNOLDS: Okay.

17 COMMISSIONER KIRSANOW: Mr. chairman.

18 CHAIRMAN REYNOLDS: Actually I'm going to
19 exercise the Chair's prerogative.

20 COMMISSIONER KIRSANOW: Okay.

21 CHAIRMAN REYNOLDS: The problems that we
22 are wrestling with now are problems that have been
23 festering for a number of years, and, Commissioner
24 Yaki, I share your concerns, but I think that at this
25 point we are going to have to -- we don't have any --

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1 there are no good decisions. All of the options that
2 we have, all of the viable options that we have are
3 bad, and it's just a matter of picking the best of
4 the bad choices.

5 I think that it's important to our staff
6 that we make the hard decision now and create that
7 cushion so that we don't have to go through this
8 process again in '06. I think it's important that
9 '06 staff and the Commissioners and the special
10 assistants have some space so that we can get our
11 arms around the problems that we have, come up with a
12 battle plan without having to worry about RIFs,
13 layoffs, furloughs, office closures.

14 So while the options that we have will
15 adversely affect the lives of some of our employees,
16 I think over the long term, we have to make this
17 decision. This decision will put us on the road to
18 restoring the fiscal health of the agency, and at the
19 end of the day we can't fulfill our mission if the
20 back office issues, like budget matters and
21 operational matters aren't dealt with.

22 Commissioner Kirsanow.

23 COMMISSIONER KIRSANOW: Yes, Mr. Chair.
24 Thanks very much.

25 I concur in large part with comments made

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1 by Commissioner Yaki. I think it's extremely
2 important to have a great deal of transparency when
3 it comes to making decisions such as this. For the
4 time that I've been on the Commission we have been
5 kicking the can down the road, so to speak, and not
6 been making hard choices, and I think that has gotten
7 us to the point where we now have to do this, which
8 is an extremely unpleasant task.

9 Possibly we could have avoided this at
10 some point. I'm not sure if we could have, but if
11 things had been done earlier, maybe we would not be
12 in this particular spot.

13 The one thing that I am a little
14 concerned with, Commissioner Yaki is troubled by the
15 cushion. I'm troubled by the cushion from a
16 different perspective, and it seems to be consumed
17 almost completely by our need, in fact, our mandate
18 to implement structural reforms that haven't been
19 implemented over the course of a number of years.

20 That leaves us with virtually no
21 additional revenues, no additional money for
22 discharging our statutory mission, and at least
23 that's my perspective, but I'm wondering if you might
24 be able to give us an explanation of what you
25 perceive to be our ability to do what we're here to

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1 do, that is, produce reports, look at the issues
2 pertaining to civil rights throughout the country.

3 In 2006, for example, if much of the
4 cushion is consumed by audits and all of the other
5 things that have been deferred for years and years
6 and years, will we have the ability, for example, to
7 conduct hearings, fly people in if necessary? Will
8 we be able to discharge our mission?

9 MR. MARCUS: Yes, Commissioner, the work
10 of the Commission will continue despite the cutbacks.
11 Just as we have less resources than last year and
12 last year than the year before, we will have less
13 resources next year than a year ago.

14 However, we will still be able to hold
15 hearings and briefings even under the tighter
16 circumstances. We will need to be a little bit
17 tighter in terms of expenses in '06 than we have been
18 in prior years.

19 Even this year we have fewer in the way
20 of analysts and related staff to do reports than
21 we've had in the recent past, and certainly
22 significantly fewer than in the distant past, and
23 we'll have somewhat fewer again next year.

24 Whether this reduces -- I think it will
25 reduce the number of reports that we do, but we will

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1 still be doing reports. We will still be doing
2 analyses. We will still be holding hearings and
3 briefings if that is the Commissioners' intent, and I
4 expect it will be.

5 CHAIRMAN REYNOLDS: Vice Chair, Vice
6 Chair Thernstrom.

7 VICE CHAIRMAN THERNSTROM: I just have
8 with respect to what Commissioner Yaki said just one
9 question for him.

10 I very much appreciate what you said.
11 I'm in agreement with it, but there was one point you
12 made that I think could be easily misunderstood. You
13 said you understood the necessity of impressing
14 Congress with the seriousness of our dedication here
15 to reform. You would agree, I hope, that we're not
16 simply here talking about a public relations problem
17 as it were, but we are talking about restoring the
18 fiscal health of the agency, which is not -- I mean,
19 the question of impressing Congress is, you know,
20 simply one aspect of that larger picture, in that
21 it's important to communicate the seriousness of our
22 commitment to restoring the fiscal health, but you
23 seem to imply that this was driven solely by the need
24 to impress Congress.

25 And I'm sure that was a misunderstanding,

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1 but --

2 COMMISSIONER YAKI: May I respond?

3 VICE CHAIRMAN THERNSTROM: Yes.

4 COMMISSIONER YAKI: No, that wasn't a
5 misunderstanding at all. Since I have been appointed
6 to the Commission and been in meeting after meeting,
7 it has been stated over and over that we are taking
8 these particular reforms in response to Congress.

9 And to me the point is that if I had my
10 druthers, which I will not and which is why I'm
11 supporting this, I think, kinder, gentler version of
12 what had originally been talked about, is because
13 that I'm not going to win the argument of perception,
14 which is that I believe that we have taken serious
15 steps toward reform.

16 Our internal agency instructions have
17 been amended to the nth degree by the Staff Director
18 and by the other members of the Commission before I
19 came on. I'm being very meticulous in all of my
20 record keeping to meet all of GAO's requirements so
21 that I don't charge anything that I shouldn't.

22 I have foregone a special assistant, as
23 has the Chair, because I take my contribution to this
24 very seriously, but I do not believe and continue to
25 not believe that we need to go as far as we need to

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1 at this time and at this moment to maintain our
2 fiscal health. I think that natural attrition will
3 come in. I think the voluntary buyouts are part of
4 it.

5 On the other hand, I recognize the
6 handwriting on the wall, and when so many people have
7 said to me over and over again, you know, we're being
8 watched, we need to take serious action and we have
9 to show that we're committed to all of these things,
10 which I really think we are. That's why I agree to
11 go along with this proposal, because, to put it
12 bluntly, I just want to make it less worse than it
13 is.

14 And no one likes what we're doing. I
15 know that the Chair, I know that the Staff Director
16 nor you, Vice Chair nor any of the other
17 Commissioners who are here want to do what it is that
18 we're doing. I certainly don't, and I don't because
19 I don't believe that the timing is such that we
20 actually need to do everything all at once.

21 And I think that we have the ability, and
22 I think we have the means and bipartisan basis to go
23 forward to policy makers and say, "We have gotten
24 your message."

25 We certainly did that at the hearing last

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1 month. This is what we are doing. This is what
2 we're going to continue to do. I would rather have
3 seen a three-four year plan rather than an overnight
4 plan that forces us to engage in essentially, you
5 know, a five to ten percent cut of our staff in the
6 next year and a half.

7 But I don't have the majority on this
8 Commission, and in wanting to work constructively
9 with a majority in this Commission, I'm willing to
10 say that I do not separate myself out and just be a
11 naysayer and say no. I understand that's where they
12 want to go. That's the perception. Whatever I can
13 do to make it less worse, so to speak, I will, and
14 that's why I support what the Staff Director and the
15 Chair put forward.

16 But make no mistake. I do not have any
17 misunderstanding in all my conversations over the
18 past two months about why we are being driven down
19 this road at this time.

20 CHAIRMAN REYNOLDS: well, I'd like to
21 respond.

22 Commissioner Yaki, the two of us, we've
23 had conversations about these ugly choices, and I
24 just want to be clear that I share many of the
25 concerns that members of Congress have expressed

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1 about this agency. The decisions that we're making
2 today I don't believe are driven solely by Congress.

3 Is it a factor, and an important factor? Yes.

4 But we can't get a clean audit in our
5 present state. We don't have an accounting system in
6 place. This agency has neglected over the years, and
7 that's why we've reached this point.

8 And I believe that strong measures are
9 needed now, not down the road, and these measures are
10 needed in order to enable us to function.

11 And after saying that though I appreciate
12 the fact that while we disagree on some issues, I
13 appreciate the manner in which we have disagreed and
14 the manner in which we have worked to reach
15 compromise.

16 VICE CHAIRMAN THERNSTROM: Staff
17 Director, I wonder if you have anything to add to
18 that.

19 MR. MARCUS: The measures which we are
20 taking are necessary to deal with the problems that
21 we have. If they also serve to send a signal of our
22 seriousness either to Congress or to anyone else,
23 that may be helpful, but we would need to take
24 measures of this sort regardless.

25 The fact that we are on target to

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1 overspend our budget unless various corrections are
2 taken, that's a fact. Now, there are many ways of
3 dealing with it, some of which demonstrate a
4 seriousness of reaching long-term solutions and some
5 of them are not, but we need to do what we need to do
6 because it's legally required and because it's the
7 right thing to do regardless of whether it also
8 pleases any of our stakeholders.

9 CHAIRMAN REYNOLDS: Commissioner Yaki.

10 COMMISSIONER YAKI: Thank you, Mr. Chair.

11 Just by way of clarification, has the
12 number that we've put forth for next year -- does
13 that include the fact that I probably will not hire a
14 staff assistant or not?

15 MR. MARCUS: I've tried to give both sets
16 of figures, Commissioner Yaki, some on the assumption
17 that the Commissioners hire special assistants and
18 some on the assumptions that they do not, and that's
19 part of why there's a range.

20 All of them, all of the figures that I've
21 given you, however, are predicated on the assumption
22 that as the Staff Director I do not hire any of the
23 four Schedule C special assistants that I'm
24 authorized to hire because I think it's important to
25 demonstrate that resolve.

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1 CHAIRMAN REYNOLDS: Commissioner
2 Thernstrom?

3 VICE CHAIRMAN THERNSTROM: Can I just say
4 something on the special assistant question? I have
5 repeatedly expressed my willingness to, as it were,
6 being so lucky as to have a special assistant,
7 repeatedly expressed my willingness to share my
8 special assistant so that other Commissioners have
9 some help as well.

10 You know, I think we're all here ready to
11 pitch in in any way that we can. Again, going back
12 to our concern for the staff and our concern for the
13 impact on the regional offices and so forth of the
14 measures that are on the table here.

15 CHAIRMAN REYNOLDS: Commissioner
16 Kirsanow?

17 COMMISSIONER KIRSANOW: I just want to
18 emphasize I think with both what Staff Director and
19 yourself said, that we came to this pass not in a
20 vacuum. Even in the few meetings we've had so far
21 this year, we were told astonishing things, things
22 that we were not told for at least my tenure on the
23 Commission, and we discovered were pretty
24 significant, pretty serious.

25 We were told we didn't even have a

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1 general ledger. That in and of itself should send
2 sirens wailing throughout the Capitol.

3 We did not implement GAO reforms. When
4 you read GAO reports, they try to say things in a
5 kind of sterile manner, but anyone who has read any
6 kind of accounting reports or assessments of an
7 agency or a firm would look at it and say this place
8 is completely out of control and is spiraling into a
9 ditch quickly.

10 We have not implemented or did not
11 implement prior to Staff Director coming on board OPM
12 recommendations. We did not have an audit for 12
13 years. Every time I would pick up the paper to read
14 about the agency, it would have something to do with
15 how it is completely out of control.

16 So we did not come to this pass without
17 any history, and we did not get here -- the measures
18 that are being taken are not being done in a vacuum.

19 I think everybody here would prefer not to have done
20 this, but I think had we had the kind of information
21 that the Staff Director provided to us over the last
22 three months, had we taken a hard look and a sober,
23 responsible look at this agency in the past, we may
24 not have had to take these kinds of Draconian
25 actions.

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1 I still think we have a structural
2 deficit with which we would have to deal, but it's
3 conceivable we could have implemented controls and
4 reforms that would have cushioned the blow a little
5 bit more.

6 So are we trying to impress people? I
7 agree with the Staff Director. Whether it impresses
8 anybody or not, and I frankly doubt that it will
9 because I don't think anybody is paying a whole lot
10 of attention to what we're doing, these are reforms
11 that need to be taken, and my only concern is are we
12 going far enough.

13 What I don't want to do is have to
14 revisit the issue two years down the road, a year
15 down the road. I'm persuaded by what the Staff
16 Director has to say that we're taking cuts
17 significant enough or sufficient enough to avoid that
18 eventuality.

19 CHAIRMAN REYNOLDS: Any other comments,
20 questions?

21 COMMISSIONER KIRSANOW: I'd move the
22 question.

23 CHAIRMAN REYNOLDS: Okay. Second?

24 VICE CHAIRMAN THERNSTROM: Second.

25 CHAIRMAN REYNOLDS: Okay. Let's vote.

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1 All in favor say aye.

2 (Chorus of ayes.)

3 CHAIRMAN REYNOLDS: All in opposition?

4 (No response.)

5 CHAIRMAN REYNOLDS: The motion passes.

6 Okay. At this point let's take a ten-

7 minute break -- I'm sorry?

8 COMMISSIONER MEEKS: Could I? Before we
9 leave the Staff Director's report, because I assume
10 that's what we're doing now.

11 CHAIRMAN REYNOLDS: Yes.

12 COMMISSIONER MEEKS: I just wanted to ask
13 one question which is completely off the subject of
14 the budget, but can you tell me what the status of
15 the request that the Indian Affairs Committee put
16 forth to the Commission to testify regarding the
17 Indian health care report, the Broken Promises
18 Report?

19 CHAIRMAN REYNOLDS: Okay. That
20 invitation was sent to me. I declined for various
21 reasons. So that's --

22 COMMISSIONER MEEKS: Well, and the reason
23 I ask is because then they have gotten hold of me
24 because they were disappointed, and I am disappointed
25 to say the least, because, I mean, they felt like it

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1 was protocol asking you, but in fact, I mean, they
2 would have been happy with -- I mean, they actually
3 did want me to testify, and if that wasn't possible,
4 then anyone from the Commission, Debra Carr's office
5 or someone to go testify and report concerning what
6 the contents of that report was.

7 So, you know, I really am very
8 disappointed that this Commission would turn down the
9 Indian Affairs Committee, to appear before them.

10 CHAIRMAN REYNOLDS: Well, It was a --
11 Jennifer, were you about to jump in?

12 COMMISSIONER BRACERAS: Oh, I'm just
13 confused, but, Elsie, did you say they asked you?

14 COMMISSIONER MEEKS: Well, according to
15 them, protocol they felt required them to ask the
16 Chair, to extend the invitation to the Chair, but you
17 know, assuming he could not do it, that it then would
18 be passed to someone else.

19 CHAIRMAN REYNOLDS: Okay. The issues,
20 well, some of the complexities of this issue at least
21 for me, I wasn't here when that report was issued,
22 and that report, I believe, was approved by four
23 Commissioners and there was four abstentions.
24 There's a lot in that document that I agree with and
25 support, but there are other issues that I have

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1 serious concerns about, but that's me.

2 And I felt that it was not -- I don't
3 think it would be appropriate for me to be unable to
4 give my full support to a Commission document, and so
5 those are some of the reasons why I --

6 COMMISSIONER MEEKS: Fine. The report
7 was approved though.

8 CHAIRMAN REYNOLDS: That's correct.

9 COMMISSIONER MEEKS: And so the fact that
10 the Indian Affairs Committee wanted someone to come
11 talk to them about that report, you could disagree
12 with part of it if you wished, but you know, I just
13 am -- I think that the Indian Affairs Committee, for
14 one thing, deserves more respect than that.

15 I also think that this was a very
16 important report, and things haven't gotten better in
17 Indian Country since that report, but it's a very,
18 very important report.

19 CHAIRMAN REYNOLDS: Well, the conditions
20 in Indian Country are issues that I hope one day we
21 would be able to -- well, I want to spend some time
22 looking at some of the issues in Indian Country, but
23 getting back to the current issue, now, are you
24 suggesting that, okay, fine, I may be uncomfortable
25 but you, on the other hand, would be willing?

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1 COMMISSIONER MEEKS: I would certainly
2 be. I mean, in the past, I know that Terri
3 Dickerson, if it was her report, went and, you know,
4 testified. This came out of OGC. So, you know,
5 someone from there. I mean, depending on budget, it
6 would mean an extra trip out here for me so --

7 CHAIRMAN REYNOLDS: Okay. How about
8 this? Let's --

9 COMMISSIONER MEEKS: -- I would be glad
10 to do it.

11 CHAIRMAN REYNOLDS: Let's talk about our
12 options. We still have some time.

13 COMMISSIONER MEEKS: It's next week.

14 VICE CHAIRMAN THERNSTROM: Is it? I was
15 about to say isn't it next week.

16 COMMISSIONER MEEKS: Yes. But I would
17 very much like someone to go.

18 COMMISSIONER BRACERAS: Well, excuse me.
19 This is Jennifer.

20 I mean, why don't you do it? You seem to
21 be the most knowledgeable about the report and the
22 most passionate about the report, and it seems that
23 you would be the best person to do it.

24 COMMISSIONER MEEKS: I'm happy to do it.

25 VICE CHAIRMAN THERNSTROM: Commissioner

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1 Meeks would obviously be the best person to do it.
2 As we're talking about saving pennies here, the only
3 question is whether we should send somebody from the
4 staff instead, and why don't we leave this for
5 Commissioner Meeks and the Chair to settle?

6 COMMISSIONER BRACERAS: Right, okay.

7 COMMISSIONER MEEKS: I'm fine with that.

8 CHAIRMAN REYNOLDS: Okay. Let's take a
9 ten-minute break.

10 (Whereupon, the foregoing matter went off
11 the record at 10:47 a.m. and went back on
12 the record at 11:15 a.m.)

13 **V. Management and Operations**

14 CHAIRMAN REYNOLDS: Okay. We're going to
15 start.

16 Next on the agenda is Management and
17 Operations, and I believe Commissioner Kirsanow has
18 several motions.

19 COMMISSIONER KIRSANOW: Thank you, Mr.
20 Chair.

21 Last month we discussed several different
22 motions and that we would revisit them at this
23 particular meeting. Since that time we have had GAO
24 come out with their report. One of the motions, you
25 may recall, was a motion to adopt GAO and OPM

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1 recommendations within an expedited nine-month time
2 frame.

3 And to ward that end, I move that the
4 Commission adopt the policy recommendations of the
5 GAO reports of 2005, 2004, 2003, and 1995, and also
6 the OPM report of 1997, and that the Staff Director
7 implement those recommendations within a nine-month
8 time frame consistent, however, with any strictures
9 or confines imposed by the Anti-deficiency Act, of
10 course.

11 VICE CHAIRMAN THERNSTROM: I'm sorry. I
12 don't seem to have a copy of these motions.

13 Oh, okay.

14 COMMISSIONER BRACERAS: Can somebody
15 recap the minutes? I don't know if that makes a
16 difference one way or the other.

17 CHAIRMAN REYNOLDS: I'm sorry. Jennifer,
18 please repeat what you just said.

19 COMMISSIONER BRACERAS: Our discussion of
20 this the last time was not recapped in the minutes
21 for some reason I don't believe.

22 CHAIRMAN REYNOLDS: Okay. I haven't
23 reviewed the minutes.

24 COMMISSIONER BRACERAS: It's -- I don't
25 know.

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1 COMMISSIONER KIRSANOW: Jennifer, it's
2 not in the minutes per se.

3 CHAIRMAN REYNOLDS: It's here.

4 COMMISSIONER KIRSANOW: Well, I see it
5 here. It is in the minutes under Management and
6 Operations.

7 COMMISSIONER BRACERAS: Oh, okay. I'm
8 sorry. My mistake then. I was looking in another
9 section.

10 CHAIRMAN REYNOLDS: Okay. Is there a
11 second?

12 VICE CHAIRMAN THERNSTROM: Yeah, I second
13 it.

14 CHAIRMAN REYNOLDS: Okay. Discussion.
15 Commissioner Yaki.

16 COMMISSIONER YAKI: Yeah, I would just
17 like to add a friendly amendment, hopefully a
18 friendly amendment to say that after the nine month
19 thing, to the extent they are non-repetitive and to
20 the extent funds are available because I would not
21 want us to -- I understand what you meant by the
22 Anti-deficiency Act, but there are also other -- even
23 within their priorities regarding which of these
24 things we're going to do, there are money costs
25 associated with each.

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1 CHAIRMAN REYNOLDS: Commissioner
2 Kirsanow, do you accept that as a friendly amendment?

3 COMMISSIONER KIRSANOW: Yeah, I have no
4 objection to it.

5 And I'd also want to just state for the
6 record that I would like these implemented as quickly
7 as possible, but I told the Staff Director off line
8 that I wasn't going to hang him if he didn't have
9 them within nine months. We understand he's laboring
10 under a lot of pressures right now.

11 CHAIRMAN REYNOLDS: Any other discussion?
12 Any other comments? Okay.

13 COMMISSIONER BRACERAS: Well, I'm sorry.
14 I'd just like to hear from the Staff Director
15 whether there are any in particular of these
16 recommendations that are problematic either from a
17 financial point of view or a management point of
18 view. Does he have any concerns about seeing all of
19 these take place?

20 MR. MARCUS: Commissioner Braceras, I do
21 not have any concerns about any single recommendation
22 from either of those two perspectives under the
23 motion as amended. There are some recommendations
24 that may require expenditures, including, for
25 instance, some that may require either additional

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1 training or that may require purchase of software.
2 We will need to assess the cost in order to comply
3 with the motion, but it seems to me that I would not
4 recommend accepting any single one of the
5 recommendations. I think it is appropriate to move
6 forward on all of them.

7 COMMISSIONER BRACERAS: Okay. I just
8 wanted to make sure that you were supportive of this
9 before I signed on, but if you're supportive of it,
10 then since you're the one who has to implement them
11 all, I'm on board.

12 MR. MARCUS: Thank you, Commissioner,
13 and, yes, I do wholeheartedly support this.

14 CHAIRMAN REYNOLDS: Okay. Time to vote.
15 All in favor?

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Any objections?

18 (No response.)

19 CHAIRMAN REYNOLDS: The motion passes.

20 COMMISSIONER KIRSANOW: Mr. Chair, I've
21 got another motion. This is fairly simple. I move
22 the Commission authorize the Staff Director to post
23 documents on the Commission Web site, specifically
24 the congressional testimony of Commissioners Yaki and
25 Redenbaugh, and also the correspondence sent to

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1 Congress by Commissioners Braceras and Vice Chair
2 Thernstrom.

3 CHAIRMAN REYNOLDS: Would that include
4 the testimony of Staff Director?

5 COMMISSIONER KIRSANOW: I'm sorry. Yes,
6 also the Staff Director. That's correct.

7 CHAIRMAN REYNOLDS: A second?

8 VICE CHAIRMAN THERNSTROM: And I'll
9 second it.

10 CHAIRMAN REYNOLDS: Discussion?

11 (No response.)

12 CHAIRMAN REYNOLDS: Okay. All in favor?

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Any objections?

15 (No response.)

16 CHAIRMAN REYNOLDS: The motion passes.

17 COMMISSIONER KIRSANOW: I have one last
18 motion for right now, and last meeting we had a
19 discussion with respect to conducting a full scope
20 audit of the Commission. As a preliminary matter we
21 had determined it was necessary to engage in an
22 examination of what the costs would be, what the
23 scope would be, and chronologically when we should
24 fit this in, given that we have GAO and some other
25 things going on. We were possibly talking about a

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1 restructuring of the Commission in terms of a RIF.

2 During that period of time, there has
3 been an examination as to what the costs would be and
4 whether or not, in fact, we could even conduct an
5 audit, and as a result of that particular
6 examination, it was determined that the Commission is
7 not in auditable shape; in other words, that
8 reputable auditing firms, major auditing firms would
9 not even take on the Commission because of the fact
10 that we don't have the appropriate financial
11 controls, and they couldn't conduct an audit that
12 they can put their name to.

13 They indicated that before that would
14 happen, certain necessary controls would have to be
15 put into place, and before that happened an
16 assessment would need to be done as to the nature of
17 the controls and what else needed to be done so that
18 we would be audit ready.

19 So toward that end, I would simply move
20 that the Staff Director take all necessary steps to
21 make the Commission audit ready as soon as
22 practicable.

23 I know that's a very large or expansive
24 motion. It's not specific, but I would leave it to
25 the discretion of the Staff Director to employ

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1 whatever means are necessary, whether it be engaging
2 a contractor to conduct that assessment. However, if
3 we could do it inside, in house, if that can be
4 accomplished, that's fine also.

5 CHAIRMAN REYNOLDS: Is there a second?

6 VICE CHAIRMAN THERNSTROM: I second it.

7 I would like to hear from -- you were
8 about to say, "Any discussion?" -- I would like to
9 hear from the Staff Director any thoughts.

10 MR. MARCUS: Well, I think that
11 Commissioner Kirsanow raised some very good points.
12 It is distressing to hear that several of the major
13 accounting firms that were contacted have indicated
14 that they suspect that we are not auditable at this
15 point or that they could not conduct the audit. I
16 think it will be very difficult at this point to be
17 able to entice a large major accounting firm to do
18 such an audit, and questions about whether we could
19 get a mid-size firm.

20 So I think that it is appropriate to do
21 preparatory work to get to the point where we can be
22 auditable.

23 CHAIRMAN REYNOLDS: Staff Director, do we
24 have a sense of how far away we are from being
25 auditable? Have we established the scope of our

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1 problem yet?

2 MR. MARCUS: We have gotten preliminary
3 information, as I believe Commissioner Kirsanow
4 indicated.

5 COMMISSIONER KIRSANOW: I can speak to
6 that. The Staff Director and I had a brief
7 discussion about this.

8 It may take about four weeks for someone
9 to do whatever assessment is necessary to make
10 recommendations as to what controls are put into
11 place.

12 So it's conceivable that after today's
13 meeting that if we worked diligently, then maybe by
14 the June meeting we'd be in a position where we would
15 know what controls need to be put into place and
16 possibly even put those controls into place, and then
17 thereafter we could perhaps commission an audit.

18 Obviously we're going to have to take a
19 look at the costs, but the preliminary step before we
20 do all of this, and we must have an audit, is to
21 conduct this assessment.

22 CHAIRMAN REYNOLDS: Are you suggesting
23 that we can't audit prior years? I mean once we put
24 the controls in place, our ability to conduct an
25 audit, that would be prospective.

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1 COMMISSIONER KIRSANOW: Right.

2 CHAIRMAN REYNOLDS: What about the prior
3 years?

4 COMMISSIONER KIRSANOW: My understanding
5 is it's unlikely we could do that effectively. Now,
6 I think what you're referring to would have to be
7 done in a forensic way. They'd have to reconstruct a
8 whole lot.

9 CHAIRMAN REYNOLDS: And have we had any
10 discussions about a forensic audit so that we will --

11 COMMISSIONER YAKI: Sounds like "CSI."

12 CHAIRMAN REYNOLDS: Have we had those
13 types of discussions?

14 COMMISSIONER KIRSANOW: No, not
15 specifically with respect to forensics. My
16 understanding is though, I mean, I've done this
17 before, not personally, but I've been involved
18 situations where that has happened. A forensic is
19 obviously a little bit more time consuming and a lot
20 more expensive.

21 CHAIRMAN REYNOLDS: All right. Are we
22 ready to vote? Okay. All in favor say aye.

23 (Chorus of ayes.)

24 CHAIRMAN REYNOLDS: All in opposition?

25 (No response.)

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1 CHAIRMAN REYNOLDS: The motion passes.

2 Okay. Pete, Commissioner Kirsanow, you
3 have another motion.

4 COMMISSIONER KIRSANOW: Okay. This is a
5 motion to amend the scope of the approved project on
6 federal procurement following the Supreme Court's
7 decision in Adarand v. Pena, and this is the motion:

8 I move that OCRE reshape the scope of the
9 Adarand enforcement study to include information on
10 federal agencies' use of race-neutral contracting
11 vehicles, in addition to elements of the original
12 project proposal. The resulting study will, one,
13 report the amount of federal procurement funds going
14 to small, disadvantaged, and HUBZone businesses; two,
15 analyze continuing barriers facing socially and
16 economically disadvantaged firms; and, three, examine
17 the role of federal agencies, including SBA in
18 implementing procurement programs for these firms
19 following the Supreme Court decision that government
20 procurement activity involving racial classification
21 be subject to strict scrutiny.

22 Specifically, OCRE --

23 COMMISSIONER BRACERAS: I'm sorry. This
24 is Jennifer. I can't hear people well because I'm
25 picking up interference from somebody else's

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1 microphone.

2 COMMISSIONER KIRSANOW: Okay. Let me go
3 back to --

4 CHAIRMAN REYNOLDS: Do we have copies of
5 this?

6 COMMISSIONER BRACERAS: I think I have a
7 copy here, but --

8 COMMISSIONER KIRSANOW: Okay.

9 COMMISSIONER BRACERAS: -- I just wanted
10 to let you know that I'm picking up murmurings from
11 other people.

12 COMMISSIONER KIRSANOW: I believe the
13 Chair was murmuring.

14 COMMISSIONER BRACERAS: Jerry, stop
15 murmuring.

16 (Laughter.)

17 COMMISSIONER KIRSANOW: Hold on, Pete.

18 A copy of the motion was circulated
19 electronically, Commissioner Yaki. Unfortunately we
20 just brought down a single copy.

21 Well, no, hold on. The cavalry has
22 arrived.

23 COMMISSIONER YAKI: You always have
24 copies. Audrey is the -- thank you.

25 COMMISSIONER KIRSANOW: I left off where

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1 I indicated, made reference to the Supreme Court's
2 decision regarding racial classification subject to
3 strict scrutiny. Specifically, OCRE will research if
4 and how federal contract or federal agencies changed
5 procurement practices to fulfill the compelling
6 interest and narrow tailoring components of the
7 Adarand v. Pena decision.

8 VICE CHAIRMAN THERNSTROM: Excuse me.
9 Commissioner Braceras, have you now got the entire
10 motion or do you need Commissioner Kirsanow to read
11 it?

12 COMMISSIONER BRACERAS: Oh, no, I have
13 it. I just wanted to make you aware that I was
14 having trouble hearing.

15 VICE CHAIRMAN THERNSTROM: Oh, okay.

16 COMMISSIONER BRACERAS: Because of the
17 microphone issue.

18 VICE CHAIRMAN THERNSTROM: Okay.

19 CHAIRMAN REYNOLDS: Okay.

20 COMMISSIONER KIRSANOW: That's the
21 motion.

22 CHAIRMAN REYNOLDS: Is there a second?

23 COMMISSIONER TAYLOR: Second.

24 CHAIRMAN REYNOLDS: Discussion.

25 Commissioner Yaki.

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1 COMMISSIONER YAKI: I want to thank the
2 Chair and the other Commissioners in pulling this
3 together. I just need time to read it in view of
4 what I had done before. Can I ask a question of
5 staff on this one?

6 CHAIRMAN REYNOLDS: Sure.

7 COMMISSIONER TAYLOR: Ms. Dickerson.

8 MR. MARCUS: I would add that Ms.
9 Dickerson is prepared to give a few words on this
10 that would also require some transparencies if you
11 would like and some discussion.

12 CHAIRMAN REYNOLDS: Do you have a mic?
13 Yes. Okay, great.

14 COMMISSIONER YAKI: I'm trying to get the
15 original wording. Ms. Dickerson, can you sort of
16 tell me what you now understand the scope of the
17 presently moved but not yet approved project to be?

18 MS. DICKERSON: Would it be okay to
19 explain that with some of the presentation?

20 COMMISSIONER YAKI: Yes.

21 MS. DICKERSON: Because it might be
22 helpful to look along with me at a few things.

23 COMMISSIONER YAKI: Sure.

24 MS. DICKERSON: This is Teresa Brooks.
25 She's the secretary in OCRE, and she's going to help

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1 out a little bit.

2 I understand we don't have a PowerPoint
3 projector anymore.

4 VICE CHAIRMAN THERNSTROM: Wait a minute.

5 COMMISSIONER YAKI: That was on eBay last
6 week, wasn't it?

7 CHAIRMAN REYNOLDS: Well, in order to
8 avoid violating the Anti-deficiency Act, we had to
9 auction off a few things.

10 (Laughter.)

11 MS. DICKERSON: This is just in response
12 to some of the questions that came up at the last
13 meeting, and I just thought I would do a quick
14 comparison of the original scope compared to the race
15 neutral one.

16 So the first transparency has the program
17 ceiling start. It does point out that one effect of
18 the change in scope is that whereas the original
19 scope was going to focus on procurement trends and
20 procurement itself and how Adarand changed
21 procurement strategies, the new focus, which is on
22 the right side, would be race neutral strategies to
23 achieve contracting goals.

24 Okay. This isn't working.

25 VICE CHAIRMAN THERNSTROM: I'm sorry,

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1 Terri. Can I ask you a question?

2 MS. DICKERSON: It doesn't matter how
3 close you sit to that one. It's not going to work.
4 This one does.

5 VICE CHAIRMAN THERNSTROM: Terri, could I
6 ask a question here?

7 MS. DICKERSON: Yes.

8 VICE CHAIRMAN THERNSTROM: Now, those are
9 two separate questions. One is not really a
10 substitute for the other. They are both legitimate
11 questions. The reason you came down on the side of
12 one being a substitute for the other is what?

13 MS. DICKERSON: Well, maybe I can fast
14 forward to sort of the time line of what's happened
15 with staff.

16 If you could just fast forward to number
17 28, and I'll go over.

18 Some of the significant dates with
19 respect to what has occurred with the statutory
20 report. December 1st was when staff submitted draft
21 interrogatories, but that was to the former Staff
22 Director, and those were presented for the former
23 Staff Director's and Chair's signature and approval.

24 And so I assume those were undergoing an
25 approval process, and then there was a change in the

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1 Staff Director's office.

2 So by December 17th, the staff had
3 revised -- I believe Mr. Marcus may have been named
4 around the 8th, and I don't know. I mean, it was
5 just my recollection. I think maybe he was in the
6 building by the 13th.

7 MR. MARCUS: I came in around December
8 16th or 17th.

9 MS. DICKERSON: Sixteenth or 17th. Okay.
10 So the day after the new Staff Director was here,
11 along with a mountain of other things he was dealing
12 with, we presented the new. That's going to be where
13 we end up.

14 We presented the new and revised
15 interrogatories with just the signature block
16 changed. That was December 17th.

17 On January 10th, the Staff Director had
18 reviewed those, you know, just like we were waiting
19 for the former Staff Director to review and comment,
20 and he asked us to expand on some of the questions,
21 which we did.

22 And then by the 13th of January, he gave
23 us a little bit more guidance on some of being more
24 specific and less vague on some of the race neutral
25 questions.

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1 Meanwhile the staff was still working on
2 the project, and they submitted to me a draft report
3 according to the plan that the Commission had
4 approved last year. So the original draft came to me
5 at that time. It was kind of sketchy and lacked some
6 detail, but it was our first draft.

7 By the 26th, I met with the Staff
8 Director and he gave me kind of his last changes on
9 the interrogatories, and we revised that, and by then
10 the concept paper, it was really a shift because
11 there was a lot more focus on whereas the race
12 neutral component had been a part of the original
13 concept, we were elaborating on it so much that the
14 concept paper necessarily, you know, became
15 different as well.

16 So by February 1st, we had revised the
17 interrogatories, and we submitted those for signature
18 and approval. By the 8th we had received changes
19 from the front office, and we sent those
20 interrogatories to agencies.

21 The deadline to the agencies was February
22 28th. Most of the agencies requested extensions, and
23 some just stated that they disliked the February 28th
24 deadline because they were only getting it on the
25 8th, but we only received requests for extensions

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1 from some of them.

2 By February 8th, we had received no
3 replies to our interrogatories -- on February 28th,
4 which was the deadline.

5 Between March 3rd and March 21st, we had
6 received all of the interrogatories by March 21st,
7 but we had only gotten five by March 11th.

8 By the 31st, we, the staff, submitted to
9 me the new report draft because that had to start
10 coming to me, and now today is April 8th. We're
11 hoping to get some guidance on which of these
12 directions we're supposed to go. By the 11th, the
13 draft report is due to the Staff Director.

14 And then the last date I have posted
15 here, May 24th through June 8th is legal sufficiency
16 review. The 24th through June 8th is also the
17 editorial review. According to the schedule or, you
18 know, what we could see as a doable revised schedule,
19 by June 16th we would give it to the Staff Director
20 in the hope that that would be the version that would
21 go to the Commissioners, and their review would be
22 simultaneous with affected agencies, which would be
23 June 16th through 29th, and I assume looking to a
24 discussion in July, at the July meeting.

25 Those are a review of some of the things

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1 that occurred. Maybe it would be helpful then to go
2 back to two to talk.

3 VICE CHAIRMAN THERNSTROM: Yeah, let's do
4 that.

5 MS. DICKERSON: Okay. Oh, back to one,
6 yeah. That's right.

7 VICE CHAIRMAN THERNSTROM: That one.

8 MS. DICKERSON: Yeah. So because of the
9 more specificity that we were getting from the front
10 office, the focus of the project really did change
11 from how Adarand changed procurement strategies to
12 how agencies are really implementing race neutral
13 strategies to achieve contracting goals.

14 In the original version we were going to
15 look at minority and women owned businesses, and in
16 the revised version we're only looking at minority
17 owned businesses. This is partly because -- well,
18 I'll get to that in the next slide.

19 And then in the original we were going to
20 look at procurement trends, 1994 to 2004. That was
21 really because we were looking at right after
22 Adarand, but then in the revision we were only
23 looking at what agencies had been able to implement.

24 So we were looking at programs that they had
25 started, 2000 to 2004.

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1 The HUBZone project or program that Mr.
2 Kirsanow referred to didn't even start I don't think
3 until about 2000. So agencies had to have time to
4 get those programs in place that were going to
5 comport with Adarand, and so we changed the date of
6 what we were looking at from 1994 to beginning with
7 2000.

8 I want to amplify the second bullet. Can
9 you put the next slide up?

10 I want to amplify the second bullet is
11 reasons we're not studying the women owned -- it's
12 number three -- reasons that we're not looking at the
13 women owned businesses along with minority owned
14 firms.

15 Number one, because different legal
16 standards apply to women owned procurement. Women
17 owned firms are subject to intermediate and not
18 strict scrutiny, and agencies sometimes nonetheless
19 apply policies to both, but the legal basis for doing
20 so is very different.

21 So I think we probably would have,
22 irrespective of which direction we had gone, we would
23 have had to come to that conclusion anyway, that it's
24 almost a separate study to look at women owned firms.

25 There's a different program infrastructure. There

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1 are, you know, sometimes women owned procurement
2 offices that are separate from the minority offices
3 within agencies. There are, as I said, different
4 statutory mandates, and the character of women owned
5 businesses is different.

6 So that component wouldn't be addressed
7 at this point.

8 And another aspect of the changed
9 emphasis is that we would not be relating procurement
10 trends to Adarand. That is foremost, I guess because
11 we didn't ask for data exactly post Adarand. As I
12 said, we made the data request from 2000 to 2004, and
13 not 1994 or pre-Adarand through 2000 because the
14 whole nature of the project changed. We really
15 weren't looking at procurement post Adarand.

16 But within that there were also so many
17 other legislative and regulatory changes, changes to
18 federal acquisition streamlining, changes to small
19 business programs and policy. Those probably could
20 not be isolated anyway and analyzed separately from
21 the effects of the Adarand decision.

22 I guess I'm kind of getting into some of
23 our findings, preliminary findings, with you at this
24 point. So it's advantageous that I'm able to present
25 this to you, but this is another component of the

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1 original concept that we would not be able to
2 deliver, but I don't think we would have been able to
3 get to this anyway even if we had ten years' worth of
4 data. We would have been able to look at trends a
5 little bit more from 1994 to 2004, but I don't think
6 we would have been able to isolate the effects of
7 Adarand from all of the other legislative and
8 regulatory changes that have occurred in that ten-
9 year period.

10 CHAIRMAN REYNOLDS: Okay. Ms. Dickerson,
11 before you go on, going back to Vice Chair
12 Thernstrom's point, the shift from looking at
13 procurement to race neutral policies, do we have
14 sufficient information to do both, sufficient
15 information and time?

16 MS. DICKERSON: Oh, to do both? Yes, we
17 can do some aspects of the original and as well as
18 the race neutral piece.

19 CHAIRMAN REYNOLDS: And still meet the
20 deadlines that were in that earlier --

21 MS. DICKERSON: Yes, provided we get that
22 specific direction from you today.

23 VICE CHAIRMAN THERNSTROM: You know, I
24 understand your point here, looking at trend lines
25 from '94 to '04 you can't separate out the effects of

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1 Adarand from other legislative and regulatory
2 changes, but nevertheless the trend lines in
3 themselves are interesting to me.

4 You know, I think if it's possible for
5 you to provide information on them worth looking at.

6 MS. DICKERSON: It's not on the slide,
7 but I do have kind of an idea of an outline that the
8 staff has generated in this whole discussion of
9 what's possible to cover at this point, which I would
10 like to -- there would be six chapters, and I'm only
11 -- would only indicate broadly what they would cover
12 just to give an indication of what would be covered
13 and what wouldn't.

14 Chapter 1 would certainly just be the
15 introduction, scope, methodology, et cetera, overview
16 of the Adarand case, narrow tailoring what it means,
17 strict scrutiny, all of that, the DOJ guidance, just
18 sort of like to lay the landscape for what
19 procurement is all about and has been in the last ten
20 years.

21 Chapter 2 is based on data that we
22 received from agencies, and as well as literature
23 review. We would present data on federal
24 contracting, data on minority owned businesses,
25 federal contract growth, barriers to contract

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1 opportunities, et cetera. We would really deal with
2 procurement and looking at the seven agencies that
3 we're now looking at.

4 Maybe you can just post the seven
5 agencies, Teresa so that everybody has an idea of
6 which ones we're looking at now. Do you have that?
7 Number five, yes. Thank you.

8 In the original, we were only looking at
9 DOD, DOT, SBA, and GSA. And in the revised we've
10 dropped GSA because we were really looking at the GSA
11 schedule, and effect of the GSA schedule on minority
12 and women owned businesses and not implementation.

13 So we kind of dropped them, but we added
14 agencies that do a fair amount of federal
15 procurement. We added energy, housing, and urban
16 development, Department of State, and the Department
17 of Education. So now we're looking at seven
18 agencies, and so Chapter 3 would be looking at, you
19 know, their level of procurement with minority and
20 women owned businesses.

21 The third chapter we would -- would be
22 where we would discuss race conscious aspects of
23 federal procurement. I guess the small disadvantaged
24 business programs, the 8(a) program, et cetera, and
25 that was in the original proposal.

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1 We also would talk about other federal
2 programs like mentor protege program, which may or
3 may not be race specific depending on the agency and
4 also the HUBZone program, which is a non-race --
5 well, it does have race conscious aspects, but it was
6 something that was implemented after Adarand.

7 Chapter 4 would focus specifically on
8 race neutral alternatives in federal contracting.
9 Some of the ones that have been identified so far in
10 the research are, for example, financial assistance,
11 relaxed bonding requirements, unbundling of
12 contracts, outreach and technical assistance, those
13 things that do not have race conscious aspects.

14 How agencies define race neutrality and
15 narrow tailoring, and this we would get from the
16 interrogatories that we've sent. The programs and
17 strategies that benefit all small businesses
18 irrespective of gender or race.

19 And then Chapter 5 would be any other
20 elements of narrow tailoring. For example,
21 enforcement, and again, I'm kind of getting into
22 findings, but one of our chief findings is that there
23 really isn't an enforcement mechanism within all of
24 this. I mean, all of these agencies have Title VI
25 responsibilities, but there's not really an agency or

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1 an entity that is functioning making sure that these
2 programs do not have discrimination. So there's not
3 an enforcement aspect to it.

4 Also, how do agencies measure the
5 effectiveness of their race conscious or race neutral
6 programs? What are they doing to determine whether
7 they should expand these, the extent to which they
8 should be offering them?

9 We want to make some recommendations with
10 respect to that, how they should periodically
11 evaluate programs, whether they're race neutral or
12 race conscious, and the periodic evaluation and
13 review, which don't seem to be built in very much to
14 any of these programs.

15 And then Chapter 6, we would offer
16 findings and recommendations.

17 VICE CHAIRMAN THERNSTROM: And as you
18 outlined those chapters, you feel able to do the work
19 you just depicted?

20 MS. DICKERSON: Yes.

21 VICE CHAIRMAN THERNSTROM: I mean, well,
22 the word "capable" may have some unfortunate
23 connotations.

24 MS. DICKERSON: Yes.

25 VICE CHAIRMAN THERNSTROM: I just meant

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1 given the time, given the staff, given, you know,
2 whatever.

3 MS. DICKERSON: I was taking it that way.

4 VICE CHAIRMAN THERNSTROM: Yes.

5 MS. DICKERSON: But, you know, the time
6 had definitely been compressed, and it has been a
7 little bit of a moving target, but, yes, we do feel
8 that we can do this.

9 There's been one person on the team from
10 the beginning of the fiscal year. Someone joined the
11 team around November. Dr. Rudert has been on from
12 the beginning, and Mireille Zieseniss since about
13 November. Ana Maria Ortiz joined that team in
14 January, and then on a part-time basis Latrice Foshee
15 in addition to her compliance analysis duties is also
16 a part of that time.

17 So if we can keep that team together and
18 moving toward those states, we ought to be able to
19 deliver what I just said.

20 VICE CHAIRMAN THERNSTROM: Okay.

21 CHAIRMAN REYNOLDS: Commissioner Meeks.

22 COMMISSIONER MEEKS: And so to be clear,
23 this motion will not change the scope as Terri has
24 outlined.

25 CHAIRMAN REYNOLDS: Geez, I don't believe

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1 so, but let me take a quick look here.

2 VICE CHAIRMAN THERNSTROM: Well, let's
3 ask Commissioner Kirsanow. Do you envision that this
4 motion would have an impact on the --

5 COMMISSIONER KIRSANOW: I am not the
6 proponent of the motion.

7 VICE CHAIRMAN THERNSTROM: I thought you
8 were. I'm sorry.

9 COMMISSIONER KIRSANOW: I'm simply the
10 mouthpiece.

11 CHAIRMAN REYNOLDS: I believe that the
12 motion as drafted is broad enough so that it would
13 encompass the approach that's just been discussed.

14 COMMISSIONER MEEKS: Well, I mean, I can
15 support this motion as long as the contents that
16 Terri has outlined is included in the report.

17 VICE CHAIRMAN THERNSTROM: And I would
18 second that.

19 COMMISSIONER TAYLOR: Can we ask Terri
20 what her view of it is?

21 CHAIRMAN REYNOLDS: Oh, sure, sure.

22 MS. DICKERSON: Yes. I believe if I
23 heard the motion correctly that we are --

24 VICE CHAIRMAN THERNSTROM: Terri, let's
25 have you look at the exact wording.

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1 MS. DICKERSON: Okay. Thank you.

2 Yes, it is true. The only thing that it
3 doesn't have, which isn't addressed in the motion or
4 what I just said is, you know, we would like to skip
5 the women owned business piece.

6 VICE CHAIRMAN THERNSTROM: Right.

7 MS. DICKERSON: Okay. So, yes, I think
8 this comports with our new outline.

9 CHAIRMAN REYNOLDS: Commissioner Yaki.

10 COMMISSIONER YAKI: Seeing as this is a
11 motion that was the progeny of a discussion that
12 Commissioner Braceras and I had at the last meeting
13 and given that Terri has committed her team to get
14 this done, I'm satisfied and will support the motion
15 and move it.

16 CHAIRMAN REYNOLDS: Any other questions
17 or comments?

18 VICE CHAIRMAN THERNSTROM: But I second
19 moving it.

20 CHAIRMAN REYNOLDS: Okay. We've had the
21 discussion. Unless there are additional questions or
22 comments, Jennifer, anything from you?

23 COMMISSIONER BRACERAS: No. I obviously
24 couldn't see the visuals, but everything that Terri
25 spoke about seemed on track with what I had hoped to

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1 have the Commission produce. So that sounds great.

2 CHAIRMAN REYNOLDS: Okay. All in favor
3 say aye.

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: All in opposition say
6 nay.

7 (No response.)

8 CHAIRMAN REYNOLDS: Okay. The motion
9 carriers.

10 **VI.Future Agenda Items**

11 Okay. Now, future agenda items. Are
12 there any times that the Commissioners definitely
13 want to discuss at our next meeting?

14 VICE CHAIRMAN THERNSTROM: Don't you have
15 one that you wanted to discuss?

16 PARTICIPANT: I thought we were short on
17 one motion.

18 CHAIRMAN REYNOLDS: Actually that motion
19 wasn't circulated.

20 COMMISSIONER BRACERAS: I thought there
21 was another motion.

22 CHAIRMAN REYNOLDS: Yes, there was a
23 another motion, but after discussion, it was not
24 clear that this motion was circulated, and I believe
25 that our Commission rules require that motions be in

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1 writing and be circulated so that Commissioners would
2 have an opportunity to review them before the
3 meeting.

4 VICE CHAIRMAN THERNSTROM: That is
5 correct.

6 COMMISSIONER YAKI: Which motion are we
7 talking about?

8 VICE CHAIRMAN THERNSTROM: Special ed.

9 CHAIRMAN REYNOLDS: Okay.

10 COMMISSIONER YAKI: I haven't seen that.

11 VICE CHAIRMAN THERNSTROM: Yeah. No, we
12 have to have prior notification.

13 CHAIRMAN REYNOLDS: Okay. May I have a
14 motion to adjourn?

15 VICE CHAIRMAN THERNSTROM: So moved.

16 CHAIRMAN REYNOLDS: Second?

17 COMMISSIONER MEEKS: Second.

18 COMMISSIONER KIRSANOW: Before doing so,
19 I just wanted to make note, and I should have done it
20 earlier during the announcements portion, of the
21 passing of John Paul II, who probably is one of the
22 chief human rights activists in the history of the
23 last 100 years.

24 Anyone reading Veritatis Splendor, Gospel
25 of Truth, or any of his other writings see him not

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1 just as a human rights activist but, by extension, a
2 civil rights activist, and I think his passing is
3 obviously mourned by millions, if not billions,
4 throughout the world.

5 COMMISSIONER BRACERAS: Thank you, Pete.
6 I agree with that statement.

7 CHAIRMAN REYNOLDS: Okay. Well, folks,
8 until we meet again, this meeting is adjourned.

9 (Whereupon, the foregoing matter went off
10 the record at 11:54 a.m. and went back on
11 the record at 11:55 a.m.)

12 CHAIRMAN REYNOLDS: Commissioner Meeks'
13 appointment is coming to an end. I hope that she is
14 reappointed. While we have disagreements on the
15 substantive issues, I believe that her voice adds to
16 the --

17 COMMISSIONER BRACERAS: Hello?
18 (Laughter.)

19 CHAIRMAN REYNOLDS: Welcome back,
20 Jennifer.

21 COMMISSIONER YAKI: We thought your baby
22 was teething on the microphone there.

23 CHAIRMAN REYNOLDS: Jennifer, I was just
24 commenting, well, just pointing out that Commissioner
25 Meeks, her term is up, and I was saying that I hope

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1 that you're reappointed.

2 Again, while we have a different approach
3 to dealing with these issues, I think that you have
4 taken principled positions and that the manner in
5 which you have disagreed has been a model. This is
6 how this agency should operate, where we have people
7 who have different views, but who understand the
8 importance of fighting in a respectful manner.

9 So I want to thank you for the quality of
10 conversations that we've had since December, and
11 again, if it were my decision, you would be
12 reappointed. So I keep my fingers crossed.

13 VICE CHAIRMAN THERNSTROM: I would like
14 to kind of second that. I'd very much like to see
15 Commissioner Meeks reappointed, and I don't think of
16 her as somebody I will necessarily disagree with in
17 the end to all matters at all, and I think this is a
18 remarkably collegial group as it stands, and she is
19 part of that collegiality.

20 And I have a great deal of respect for
21 her opinions when I agree with them and when I
22 disagree with them. So I hope that she will be back
23 sitting in that chair, and I hope that there's some
24 way of communicating to the minority in Congress our
25 hopes.

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1 COMMISSIONER MEEKS: And if I can just
2 say I actually am pleasantly surprised to say that I
3 think we've had some good agreement and that we've
4 also been able to disagree. I agree with that.

5 This has been a learning experience, and
6 I've said that I had a lot to learn, and so this has
7 been quite an education for me these last six years.

8 The one message I did send, you know, to
9 the powers that be is that whether I get appointed or
10 not, I really very much have an interest in someone
11 from Indian Country being appointed because I think
12 these issues need to continue to be looked at.

13 And so it's with mixed emotions then I
14 say goodbye or maybe I'll say hello.

15 VICE CHAIRMAN THERNSTROM: Right.

16 CHAIRMAN REYNOLDS: Until we meet again.

17 VICE CHAIRMAN THERNSTROM: Thank you very
18 much. I'm glad that you remembered that, Jerry.

19 CHAIRMAN REYNOLDS: On, no, actually it
20 was Commissioner Yaki.

21 VICE CHAIRMAN THERNSTROM: Oh. I'm glad
22 Commissioner Yaki remembered it.

23 CHAIRMAN REYNOLDS: Okay. We're now
24 adjourned.

25 (Whereupon, at 11:58 a.m., the Commission

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1 meeting was concluded.)

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