

## U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

+ + + + +

Friday, May 13, 2005

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The Commission convened in Room 540 at 624  
Ninth Street, N.W., Washington, D.C. at 9:30 a.m.,  
Gerald A. Reynolds, Chairman, presiding.

## PRESENT:

GERALD A REYNOLDS, Chairman

ABIGAIL THERNSTROM, Vice Chairman

JENNIFER C. BRACERAS, Commissioner

PETER N. KIRSANOW, Commissioner

ASHLEY L. TAYLOR, JR., Commissioner

MICHAEL YAKI, Commissioner

KENNETH L. MARCUS, Staff Director

**STAFF PRESENT:**

JOHN BLAKELEY

TERESA BROOKS

CHRISTOPHER BYRNES

DEBRA CARR, ESQ., Associate Deputy Staff Director

IVY DAVIS, Chief, Regional Programs Coordination Unit

BARBARA DELAVIEZ

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**STAFF PRESENT (Continued):**

TERRI DICKERSON, Assistant Staff Director

PAMELA A DUNSTON, Chief, Administrative Services and  
Clearinghouse Division

BARBARA FONTANA

LATRICE FOSHEE

LIA GARVIN, Intern

DORELLE GRAY

ALFREDA GREENE

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

SETH JAFFE

ELLEN LUU, Intern

SOCK-FOON MACDOUGALL

TINALOUISE MARTIN, Director for Management, Office of  
Management

EMMA MONROIG, Solicitor/Parliamentarian

ANNA MARIA ORTIZ

JENNY PARK

VANESSA WILLIAMSON

AUDREY WRIGHT

TIFFANY WRIGHT

MIREILLE ZIESENISS

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**COMMISSIONER ASSISTANTS PRESENT:**

CHRISTOPHER JENNINGS

LISA NEUDER

KIMBERLY SCHULD

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

(9:38 a.m.)

**I. Approval of Agenda**

CHAIRMAN REYNOLDS: Okay. The meeting will come to order.

The first item on the agenda is the approval of the agenda. May I have a motion to approve the agenda?

VICE CHAIRMAN THERNSTROM: So moved.

CHAIRMAN REYNOLDS: Second?

COMMISSIONER YAKI: Second.

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

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Okay. Any in opposition?

(No response.)

CHAIRMAN REYNOLDS: Okay. The motion passes.

**II. Approval of Minutes of April, 8, 2005 Meeting**

The second item is the approval of the minutes of the April 8th meeting. May I have a motion?

COMMISSIONER BRACERAS: So moved.

CHAIRMAN REYNOLDS: May I have a second?

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1 COMMISSIONER TAYLOR: Second.

2 CHAIRMAN REYNOLDS: Any changes,  
3 discussions?

4 COMMISSIONER BRACERAS: Yes, small change  
5 actually. It lists me as present, but actually I came  
6 in by telephone, and in the past that had been  
7 indicated if somebody was not physically present but  
8 was participating electronically that was mentioned.  
9 So I just thought to be clear that should be changed.

10 CHAIRMAN REYNOLDS: Okay. Do we have any  
11 objections to that change?

12 (No response.)

13 CHAIRMAN REYNOLDS: Okay. Very good.

14 COMMISSIONER YAKI: Next time we'll just  
15 get a little cardboard cutout and put it.

16 (Laughter.)

17 CHAIRMAN REYNOLDS: Go for it.

18 VICE CHAIRMAN THERNSTROM: Jennifer, you  
19 were so present we couldn't tell the difference.

20 CHAIRMAN REYNOLDS: Okay. Let's see. We  
21 need to vote on the motion as amended. All in favor?

22 (Chorus of ayes.)

23 CHAIRMAN REYNOLDS: Any in opposition?

24 (No response.)

25 CHAIRMAN REYNOLDS: The motion passes.

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### III. Announcements

1  
2 Next up are the announcements. The first  
3 thing I'd like to do is to point out that Commissioner  
4 Yaki has been reappointed to a six-year term ending  
5 May 3rd, 2001. This has been included in the  
6 Congressional Record.

7 Commissioner Yaki, I'm glad to see that  
8 you're still with us.

9 COMMISSIONER YAKI: Thank you.

10 CHAIRMAN REYNOLDS: Now, if you could help  
11 us get Elsie back I'd appreciate it.

12 (Laughter.)

13 CHAIRMAN REYNOLDS: Okay. Also, I am  
14 pleased to announce that May is the month in which  
15 Mexicans and Americans of Mexican descent celebrate  
16 the holiday of Cinco de Mayo, the 5th of May. Cinco  
17 de Mayo commemorates a joyful moment in Mexican  
18 history, the victory of an outnumbered Mexican militia  
19 led by General Zaragoza over the French army at the  
20 Battle of Pueblo in 1862.

21 The U.S. Civil Rights Commission  
22 encourages all Americans to enjoy these cultural  
23 celebrations while also learning about the  
24 contributions that more than 25 million men and women  
25 of Mexican origin make to American culture every day.

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1                   Also, I would like to announce that May  
2 5th was Holocaust Remembrance Day, a day of  
3 commemoration for Jews who perished and those who  
4 showed resistance and heroism during the Holocaust.  
5 As many of you are aware, the Holocaust is the term  
6 used to refer to the period from 1933 to 1945 before  
7 and during World War II where Adolph Hitler and Nazis  
8 systematically persecuted and murdered nearly six  
9 million Jews. More than one third of world Jewry, as  
10 well as another five million non-Jews throughout  
11 Europe, were killed during this time period. So as we  
12 take these few minutes to say these insignificant  
13 words of remembrance, it is more important to leave  
14 here today with a renewed sense of vigilance and  
15 responsibility in order that we can some day say with  
16 the pride that only comes with accomplishment, "Never  
17 again."

18                   Commission staff is serving on the  
19 steering committee of the U.S. Interagency Committee  
20 on the Holocaust. In addition, the Commission was a  
21 sponsor of the 12th Annual Interagency Holocaust  
22 Program.

23                   On May 11th, 2005, over 20 federal  
24 agencies sponsored the event marking the remembrance  
25 of the Holocaust, which highlighted the attempted

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1 genocide in Rwanda in 1994. The event features  
2 survivors of both the Holocaust and Rwanda.

3 I am pleased to announce that May 8th  
4 through the 15th is Jewish Heritage Week. During  
5 Jewish Heritage Week, we celebrate and honor Jewish  
6 Americans with their contributions to this country and  
7 for their helping to shape our national character.  
8 Jewish Americans' commitment to excellence has  
9 enriched our nation and enhanced American culture.

10 As we celebrate Jewish Heritage Week, the  
11 U.S. Commission on Civil Rights encourages all  
12 Americans to celebrate the contributions of Jewish  
13 Americans to the United States with appropriate  
14 programs and activities.

15 Okay. A man who has shaped my view of the  
16 world died recently. I would like to pay tribute to  
17 Harold Wright Cruse, a prominent voice in black social  
18 and political thought, perhaps best known for his 1967  
19 book *The Crisis of the Negro Intellectual*. He died  
20 May 25th in Ann Arbor, Michigan at the age of 89.

21 Mr. Cruse was born in Petersburg,  
22 Virginia, where he grew up in New York. While he was  
23 determined at an early age to be a writer, he also  
24 became interested in the arts owing to an aunt who  
25 took him to black vaudeville shows on the weekend.

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1           He joined the Army during World War II and  
2 served in Italy, North Africa, Northern Ireland and  
3 Scotland.

4           After the war, he attended the George  
5 Washington Carver School in Harlem and was exposed to  
6 civil rights leaders W.E.B. Dubois during a lecture.

7           Mr. Cruse briefly attended City College in  
8 New York. He also wrote for newspapers, magazines,  
9 and taught black history at the Black Arts Repertory  
10 Theater in Harlem. In 1967 at the time of race riots  
11 and integration fears, Mr. Cruse wrote Crisis, an  
12 Indispensable History and Urgent Critique of the Black  
13 Left from the Harlem Renaissance through the Black Art  
14 Movement.

15           From Harlem cultural institutions to  
16 broader issues, such as mass media, communism,  
17 black-Jewish relationships, and the revolutionary use  
18 of force, Cruse searched out an authentic black  
19 culture based on political self-consciousness and  
20 economic independence. At the time the New York Times  
21 Review predicted that the book will infuriate almost  
22 everyone, and it did.

23           In 1968, Mr. Cruse became a professor at  
24 the University of Michigan and taught African American  
25 studies. He played a major role in starting the

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1 University Center for Afro-American and African  
2 studies.

3 I am saddened by Mr. Cruse's death and  
4 convey deepest sympathy to his family and friends. I  
5 ask the Commission to join with me in paying tribute  
6 to Harold Wright Cruse, an important voice in American  
7 political and social thought.

8 Do we have any other announcements? Yes,  
9 Commissioner Yaki.

10 COMMISSIONER YAKI: Yes, thank you very  
11 much, Mr. Chair, and thank you for the honor  
12 announcing that May 2005 is Asian Pacific American  
13 Heritage month. Americans have celebrated Asians and  
14 Pacific Islanders in the U.S. during the month of May  
15 since 1978.

16 The month of May actually was chosen to  
17 commemorate the immigration of the first Japanese to  
18 the United States on May 7th, 1943, and to mark the  
19 anniversary of the completion of the transcontinental  
20 railroad on May 10th, 1869, in which Asian Americans  
21 participated in making that connection.

22 Asian Pacific Islanders in America had  
23 profoundly influenced many aspects of American  
24 culture, including scientific progress, architectural  
25 achievement, music and art, contributing to their

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1 significant overall contribution to the United States.

2 I would add at this time there are 13 and  
3 a half million Asian Americans in the United States.  
4 Of those who are foreign born, 52 percent are now U.S.  
5 citizens, which contrasts with 38 percent of average  
6 for foreign born in the United States today, and in  
7 particular, as a lawyer, it was a Chinese American who  
8 was the first case under the equal protection clause  
9 of the 14th Amendment, called Yuquo v. Hopkins, in my  
10 home town, San Francisco, where there were  
11 supervisors, which I also sat on many, many, many eons  
12 ago, who decided that everyone could have a laundry  
13 except the Chinese, and they said, "Well, I don't  
14 think that's right." They brought a case and they  
15 actually won.

16 That was the first interpretation of the  
17 equal protection clause.

18 Another San Franciscan, a Chinese American  
19 named Wong Kim Ark (phonetic), established the  
20 principle that those who are born in the United States  
21 are citizens of the United States. He was born in the  
22 U.S. He went back to China for a visit, and when he  
23 tried to return, the United States at that time had  
24 the anti-Chinese immigration acts on the books.

25 He said, "I was born here. I'm a

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1 citizen."

2 They said, "No, you're Chinese. You're  
3 not."

4 He took it to the United States Supreme  
5 Court, and he won. So as we celebrate Asian Pacific  
6 American Heritage Month, the United States Commission  
7 on Civil Rights encourage all Americans to celebrate  
8 the extraordinary contributions and the  
9 accomplishments of Asian Pacific Americans with  
10 community festivals, education activities, and  
11 meetings such as this,

12 COMMISSIONER YAKI: Mr. Chairman, I don't  
13 know when is appropriate, but I had earlier E-mailed  
14 everyone on the Commission about the incident in  
15 Nevada and did not know when would be an appropriate  
16 time to bring that up. Should it be later in the  
17 agenda?

18 CHAIRMAN REYNOLDS: Let's do it now.

19 COMMISSIONER YAKI: Okay. So on the heels  
20 of the fact that this is Asian Pacific American  
21 Heritage month, there was an incident in Nevada that  
22 brings up why our civil rights laws are so important  
23 and also why this Commission is so important.  
24 Japanese American educator in southern Nevada is  
25 having an elementary school named after him this week.

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1           Last week a white supremacist group called  
2 the National Alliance began distributing flyers in his  
3 neighborhood decrying the values of diversity and  
4 other things which in polite company we choose not to  
5 repeat.

6           The National Alliance has a chapter in Las  
7 Vegas of all places, and there were also some  
8 coincidental, we hope, leavings of dead animals on the  
9 doorstep of said former principal and others in the  
10 community of Asian American descent.

11           The Nevada State Advisory Committee has  
12 called for a Department of Justice investigation, and  
13 I would move to suspend the rules and allow a motion  
14 to ask the staff director to write a letter to the  
15 Department of Justice asking them to investigate the  
16 incident as well on behalf of the United States  
17 Commission on Civil Rights.

18           CHAIRMAN REYNOLDS: Do we have a second?

19           COMMISSIONER TAYLOR: Second.

20           CHAIRMAN REYNOLDS: Okay. A vote. All in  
21 favor.

22           (Chorus of ayes.)

23           CHAIRMAN REYNOLDS: Any in opposition?

24           (No response.)

25           CHAIRMAN REYNOLDS: The motion passes.

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1 VICE CHAIRMAN THERNSTROM: I actually  
2 wanted to ask Commissioner Yaki a question.

3 Do we know that the Justice Department has  
4 made no move?

5 COMMISSIONER YAKI: At this time there  
6 hasn't been anything one way or another. I just  
7 checked this morning. Obviously local police are  
8 concerned about it, but this may be -- since this is a  
9 national group, I think there's some concern about the  
10 fact that it actually formed a formal chapter in  
11 Nevada and what activities it may be doing.

12 I wouldn't be surprised if they were  
13 already on a watch list of some sort or another, but  
14 I'd like to see at least our expression of support for  
15 any such investigation be conveyed.

16 CHAIRMAN REYNOLDS: Okay. Do we have any  
17 other announcements?

18 COMMISSIONER TAYLOR: Mr. Chairman.

19 CHAIRMAN REYNOLDS: Yes.

20 COMMISSIONER TAYLOR: I wanted to make a  
21 motion that's for the National Guard and Reserve.

22 CHAIRMAN REYNOLDS: Well, before we do  
23 that, let me finish up with the announcements.

24 COMMISSIONER TAYLOR: Announcements?

25 Okay.

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1 CHAIRMAN REYNOLDS: Okay. I have some  
2 announcements related to personnel moves. I am going  
3 to announce that Deborah Reid has left the Office of  
4 General Counsel. Deborah Reid was an attorney advisor  
5 in the Office of the General Counsel, and she left the  
6 Commission earlier this week after ten years of  
7 excellent and dedicated service.

8 Deborah has accepted a position as staff  
9 attorney at the National Health Law Program where she  
10 will focus on legal analysis of health care issues.  
11 On behalf of the Commission, I wish her the best of  
12 luck in her new endeavors and thank her for her work  
13 at the Commission.

14 Also, I'd like to announce that John Wynn,  
15 a second year law student at George Washington  
16 University Law School, has begun a summer internship  
17 with the Office of General Counsel. Is Mr. Wynn  
18 present?

19 Okay. Well, take a bow. Welcome aboard.

20 COMMISSIONER YAKI: Who's the guy in the  
21 suit in the back?

22 (Laughter.)

23 CHAIRMAN REYNOLDS: Well, I'm sure that  
24 he'll be in his jeans tomorrow.

25 But in any event, his internship at the

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1 Commission is being funded by the Patton Boggs Public  
2 Policy Scholarship. Prior to interning at the  
3 Commission, John worked as a research assistant at the  
4 George Washington Law and Public Justice Advocacy  
5 Clinic, as well as completing internships at the Fair  
6 Housing Alliance in Washington, D.C., and the New  
7 Orleans Fair Housing Action Center.

8 And finally, I would like to take this  
9 opportunity to thank Lia Garvin, an intern in the  
10 Eastern Regional Office on behalf of the Commission  
11 for her work over the summer. Ms. Garvin is a native  
12 of San Francisco, California, and she is a third year  
13 sociology student at UCLA.

14 Lia's internship was completed under the  
15 auspices of UCLA's Center for American Politics and  
16 Public Policy.

17 Thank you, Lia. Are you here? Okay.

18 COMMISSIONER YAKI: From San Francisco?

19 MS. GARVIN: Yes.

20 COMMISSIONER YAKI: And you went to UCLA?

21 Oh, dear.

22 (Laughter.)

23 CHAIRMAN REYNOLDS: Commissioner Yaki --

24 COMMISSIONER YAKI: I'm just kidding. My  
25 parents went to UCLA.

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1 CHAIRMAN REYNOLDS: Commissioner Yaki, I'm  
2 surprised that you haven't straightened her out and  
3 that you haven't had her transferred.

4 (Laughter.)

5 COMMISSIONER YAKI: I can arrange that.

6 CHAIRMAN REYNOLDS: Okay. At this point I  
7 don't have any other announcements. Do we have any  
8 other announcements?

9 (No response.)

10 CHAIRMAN REYNOLDS: Okay. Commissioner  
11 Ashley Taylor, if you don't mind, I'd like to wait  
12 until we get to -- well, a little further in the  
13 proceedings before we deal with motions. At this  
14 point though, I would like to hear from the Staff  
15 Director. I'd like to hear the Staff Director's  
16 report.

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

18 STAFF DIRECTOR MARCUS: Thank you, Mr.  
19 Chairman, Madam Vice Chairman and Commissioners.

20 If it please the Commissioners, I'd like  
21 to supplement my written report this month with  
22 additional remarks concerning management and  
23 operations, and I'd like to begin with a few remarks  
24 regarding the Anti-deficiency Act.

25 I have indicated in prior meetings of this

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1 Commission that there have been concerns raised  
2 regarding whether the Commission has complied with the  
3 Anti-deficiency Act during 2004, and prior years there  
4 have, in fact, been issues raised regarding 2002,  
5 2003, and 2004. Our legal and financial staff have  
6 been looking very closely at these issues for some  
7 time, and I expect that we will shortly be required to  
8 report to the White House, Congress, and others that  
9 there was, in fact, a violation of the Anti-deficiency  
10 Act during 2004.

11 That was the year in which it appears that  
12 approximately \$75,000 in rent was deferred from  
13 September 2004 into the 2005 fiscal year. We are  
14 developing both a report regarding that deferral and  
15 the ramifications of that deferral as well as  
16 developing procedures to insure that we will comply  
17 with the Anti-deficiency Act in the future.

18 Anti-deficiency Act matters are, of  
19 course, an extremely serious legal matter. They  
20 relate to the power of Congress over the purse. There  
21 are both civil and potentially criminal violations,  
22 penalties for violation of the Anti-deficiency Act.  
23 So we have been taking this research very seriously  
24 regarding 2004. More work will need to be done  
25 regarding 2003 or prior issues as well.

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1           Now, it is in the context of our concern  
2 to insure that we live within our means and not  
3 violate the Anti-deficiency Act during this fiscal  
4 year that we have looked very closely at the projected  
5 deficits that we assessed during the last couple of  
6 meetings.

7           As you know, we have discussed in the past  
8 projections that if we did not make changes to our  
9 financial affairs, we had an anticipated budget  
10 deficit of \$265,000. We made a series of interim  
11 financial corrections which reduced that figure.

12           For instance, several of the Commissioners  
13 have agreed not to obtain the services of special  
14 assistants during this fiscal year. Through measures  
15 of this sort, we were able to reduce the projected  
16 deficit to \$135,000 during this year.

17           We also took a number of other steps to  
18 try to reduce that number even further. They  
19 included, for instance, offering voluntary early  
20 retirement, as well as placing a freeze on new-hires  
21 and a freeze on spending. Those were very significant  
22 cuts.

23           We also had a discussion last month about  
24 more significant reforms that would be necessary in  
25 order to live within our budget not only during this

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1 fiscal year, but during the next fiscal year when we  
2 anticipate that the deficit could expand further.

3 Those measures that were agreed to by the  
4 Commissioners included a four-person reduction in  
5 force this fiscal year, an additional furlough of any  
6 number of days necessary in order to close the gap, as  
7 well as the closure of two offices during the next  
8 fiscal year, with an estimated date of October 31st.  
9 We have identified the two offices for which a closure  
10 is recommended as being Denver and Kansas City.

11 I would like to report that since the last  
12 meeting there have been a number of changes in our  
13 financial condition, which have lessened some of the  
14 impacts of the financial concerns that we mentioned.  
15 The Chairman has just announced the departure of one  
16 of the attorneys in the Office of General Counsel,  
17 Deborah Reid.

18 In addition, we have had further  
19 attrition. There are three members of the staff who  
20 have been separated since the last meeting. That  
21 attrition has more than halved the remaining deficit  
22 for this fiscal year.

23 In addition, we have had other financial  
24 developments which have impacted positively on our  
25 financial condition for this fiscal year. For

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1 example, as you are aware, there remain two vacancies  
2 on the Commission. By virtue of the fact that we have  
3 no had expenditures for those two Commissioners as  
4 well as the special assistants, we have had further  
5 reductions in the projected spending.

6 Moreover, we have taken a number of other  
7 measures in order to reduce costs. As you may recall  
8 during the last meeting, Commissioners urged that we  
9 look at further means of trying to reduce the fiscal  
10 consequences of our tight budget. We have done a  
11 number of them.

12 In addition to -- well, to begin with,  
13 many of us have availed ourselves of an option that  
14 management provided last month to take voluntary leave  
15 without pay. Several staff members have committed to  
16 taking some period of time without pay.

17 We have worked with GSA and agReid to give  
18 back a substantial amount of space on the fifth floor  
19 and the seventh floor of headquarters. We have also  
20 sought a waiver on our obligation to pay rent for  
21 headquarters for the month of September of this year,  
22 although we have not gotten a response back.

23 In addition, we've received determinations  
24 from the Office of General Counsel that we are not  
25 obligated to make certain payments out of this fiscal

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1 year's appropriations that we had otherwise  
2 anticipated that we would have to pay.

3 Moreover, we have made a large number of  
4 cost cutting measures. I would say that these cost  
5 cutting measures have been difficult, but they have  
6 been really a team effort. Some of them were  
7 suggested by the Commissioners. Some were developed  
8 by management. Other cost cutting measures were  
9 developed and recommended by employees either directly  
10 or working through the union. They are starting to  
11 work.

12 Between the various measures that I've  
13 just discussed and especially attrition since the last  
14 meeting, as well as the vacancies on the Commission  
15 and the lower use of Commissioner time than expected,  
16 we are in a better financial situation this month than  
17 it appeared last month.

18 Given the savings from attrition and from  
19 the other measures that I have discussed, I am  
20 recommending that we hold off for the time being on  
21 those financial corrections that would have required  
22 immediate actions and specifically, the reduction in  
23 force that would otherwise have taken place today.

24 Given the attrition and given the effect  
25 of some of the other savings, my recommendation and

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1 what I plan to do if it is agreeable with the  
2 Commissioners is to hold off until at least the next  
3 month's meeting to see whether we continue to enjoy  
4 these savings and to at least temporarily withdraw the  
5 reprogramming request sent to appropriations that  
6 indicated, among other things, the need to do a  
7 reduction of four persons during this fiscal year.

8 Some of the measures that I've just  
9 described will affect 2006, as well as 2005, and  
10 others will not. We will need to assess the extent to  
11 which they help us with 2006. The fact is that we  
12 still expect that the 2006 fiscal year will have a  
13 substantial shortfall notwithstanding the items that I  
14 just discussed, but more analysis is going to be  
15 required by our financial staff between this meeting  
16 and the next.

17 At this point I would say we are still  
18 under extremely tight financial circumstances. We  
19 still have not only a significant financial challenge  
20 for this year, but also an anticipated serious  
21 financial challenge for next year. But given the  
22 attrition and the other circumstances that I just  
23 described, I am hopeful that we can at least hold off  
24 on some of the measures that would otherwise have had  
25 an immediate serious consequence on at least certain

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1 staff members.

2 CHAIRMAN REYNOLDS: Okay. Just looking at  
3 some of the measures that we took that resulted in a  
4 savings, it seems to me that most of these are one-  
5 time savings, and most of them do not do anything to  
6 deal with our structural deficit. Is that a correct  
7 assessment?

8 STAFF DIRECTOR MARCUS: It's a correct  
9 assessment that it's a mixed bag. Some of these will  
10 affect us in future years, and some of them will not.

11 So that, for instance, the give-back of office space  
12 should help us with next year, but the voluntary leave  
13 without pay will not help us for next year.

14 So some of them will help, but in general  
15 they do not as a whole provide the same level of  
16 relief for next year --

17 CHAIRMAN REYNOLDS: Isn't the office  
18 space, handing over some office space, isn't that the  
19 only measure that's going to result in savings for  
20 '06?

21 STAFF DIRECTOR MARCUS: That and the  
22 attrition.

23 CHAIRMAN REYNOLDS: Well, that wouldn't  
24 include the Commissioner vacancies and the fact that  
25 Commissioners have not hired -- some Commissioners

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1 have not hired special assistants.

2 STAFF DIRECTOR MARCUS: That's correct,  
3 and some of the attrition, at least one of the three  
4 people was a special assistant to a Commissioner. So  
5 if we assume for budgetary purposes that all  
6 Commissioners fill their special assistant positions  
7 for next year, this will not help the 2006.

8 CHAIRMAN REYNOLDS: Okay. So the bottom  
9 line, if I got this right, is that these measures will  
10 help us for fiscal year '05, but we're going to be in  
11 the same boat that we're -- we're going to be in a  
12 similar situation next year.

13 STAFF DIRECTOR MARCUS: I expect that we  
14 will still face a shortfall for next year apart from  
15 the financial corrections we've discussed. In other  
16 words, without those corrections, we will have a  
17 shortfall next year.

18 CHAIRMAN REYNOLDS: You've had  
19 conversations with the Bureau of Public Debt. Could  
20 you let us know, give us a sense of how much it's  
21 going to cost? What are the estimates for using its  
22 services?

23 STAFF DIRECTOR MARCUS: I'd be happy to,  
24 Mr. Chairman.

25 The Bureau of Public Debt, as the

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1 Commissioners may inquire, is the agency within the  
2 Department of Treasury which provided full accounting  
3 services to the Commission for a period of time up  
4 until early 2004. They terminated their relationship  
5 with the Commission, among other reasons because they  
6 were concerned that the Commission did not have in  
7 place adequate internal financial controls, and that  
8 it was not taking sufficiently seriously the  
9 Anti-deficiency Act requirements.

10 We have had various conversations with the  
11 Bureau of the Public Debt over the last several weeks  
12 to try to find out from them the nature of their  
13 concerns, what we would have to do in order to allay  
14 their concerns, what we would have to do in order to  
15 make sure that we have the sorts of controls that they  
16 are concerned about, and what we would have to do in  
17 order to be the sort of agency that they would be  
18 willing to do business with.

19 They have discussed with us their  
20 concerns, and I think that they are consistent with  
21 the requirement of the sorts of reforms that we have  
22 been talking about as a group, and consistent with the  
23 sorts of reforms that we are looking at in terms of  
24 GAO implementation and changing and strengthening our  
25 financial and operational controls.

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1           In addition, they provided us with a  
2 proposal for what would be required financially in  
3 order for them to provide us with additional services  
4 next year. They indicated to us that in order to  
5 provide us with full budget and financial services,  
6 they would require that we also purchase from them  
7 travel and procurement related services. They have  
8 expressed over a period of years a concern that our  
9 procurement and travel related services are  
10 inadequate, and that it might in a sense taint the  
11 financial records that they deal with unless we can  
12 correct the procurement and travel related problems.

13           So they have indicated to us that they  
14 will provide us with accounting and financial services  
15 only if we accept as a package a full range of  
16 services, including the procurement, the travel, the  
17 budget, the finance, and additional monies to  
18 transition from our current service provider to them.

19           They have indicated that for fiscal 2006  
20 their assessment of what our needs are in light of  
21 what they view as the problems that we have as an  
22 agency and the challenges we have and the difficulty  
23 that it would take in order to transfer from our  
24 current accounting services to their services. They  
25 have asked for \$860,000 for next year.

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1 CHAIRMAN REYNOLDS: Does that include  
2 transition costs?

3 STAFF DIRECTOR MARCUS: That includes  
4 transition costs, but it does not include the cost of  
5 filling the budget and finance chief position that  
6 they are concerned about as well.

7 Now, in future years, of course, we would  
8 not have to pay the transition costs. So they have  
9 estimated as \$700,000 as the annual cost that they  
10 would charge us to receive those services.

11 I have assigned staff responsibility for  
12 speaking with other agencies to try to determine what  
13 other services could be available from alternative  
14 institutions, given that this amount of money is such  
15 a large percentage of our budget, but this is an  
16 indication of at least one agency's assessment of the  
17 extent of the challenge that we would face in turning  
18 around our budget and financial situation.

19 CHAIRMAN REYNOLDS: So in '06 what we're  
20 looking at is the structural deficit. We're looking  
21 at the transition cost associated with using --  
22 assuming we went with the Bureau of Public Debt, we're  
23 looking at their transition cost and their annual  
24 fees.

25 And in addition to that, we would have to

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1 -- and they're requiring this -- we would have to hire  
2 an experienced budget person.

3 STAFF DIRECTOR MARCUS: Yes, they have  
4 insisted as a condition that we have an experienced,  
5 competent and responsive budget person in the budget  
6 and finance office to act as a liaison and to handle  
7 the internal work.

8 CHAIRMAN REYNOLDS: At this point do you  
9 have an idea whether, at least as compared to what  
10 other federal agencies would charge, are these figures  
11 high, low or average?

12 STAFF DIRECTOR MARCUS: I hope to have an  
13 assessment during next month's meeting of that. I  
14 suspect that these figures may incorporate the Bureau  
15 of Public Debt's assessment as to the peculiar  
16 circumstances and difficulties that we are in as an  
17 agency.

18 CHAIRMAN REYNOLDS: Yes?

19 VICE CHAIRMAN THERNSTROM: I just had a  
20 question about the -- you're talking about ten percent  
21 of our budget and 900,000 the first year, which  
22 includes transitional costs. You're talking about  
23 700,000 in subsequent years, but the 900,000 does not  
24 include hiring an experienced budget person. The  
25 salary for such a person would be on top of the

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1 700,000; is that correct?

2 So the 700,000 is an under estimate in  
3 subsequent years; is that correct?

4 STAFF DIRECTOR MARCUS: That's correct,  
5 Vice Chairman Thernstrom, and let me be clear that I  
6 am conveying the information they provided as opposed  
7 to making any sort of recommendation.

8 VICE CHAIRMAN THERNSTROM: Right. Well,  
9 but there will be that additional salary.

10 STAFF DIRECTOR MARCUS: Yes.

11 VICE CHAIRMAN THERNSTROM: And presumably  
12 -- I'm a little confused about the office space  
13 question as well. If you fill some of the positions  
14 that you now believe must be filled, including a  
15 position for somebody overseeing the budget, will we  
16 still be okay in cutting back on the office space that  
17 we currently hold?

18 STAFF DIRECTOR MARCUS: Yes, I believe we  
19 will be okay. Now, the one caveat I should mention  
20 deals with special assistants, which is that we are  
21 assuming for budget purposes that the Commissioners  
22 will each have a special assistant in the future.  
23 Historically, offices have not been provided to  
24 special assistants in Washington headquarters, except  
25 to the extent that they happen to be empty and

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1 available.

2 This has worked out in the sense that only  
3 some assistants have wanted space here and others not,  
4 but aside from the question of special assistant  
5 office space, we will have adequate space here in  
6 headquarters next year even with the --

7 VICE CHAIRMAN THERNSTROM: So that is  
8 definitely a continuing saving.

9 STAFF DIRECTOR MARCUS: Yes. That is a  
10 continuing savings that I expect to be approximately  
11 \$100,000 during fiscal 2006.

12 VICE CHAIRMAN THERNSTROM: And the travel  
13 and procurement concerns of the Bureau of Public Debt  
14 are specifically what?

15 STAFF DIRECTOR MARCUS: Our concerns  
16 generally are that we have not had adequate safeguards  
17 to insure the integrity of our systems for determining  
18 appropriate expenditures on travel and other  
19 procurement matters. They are concerned about the  
20 specific matters that are related in the GAO reports,  
21 but they are also more generally concerned based on  
22 their experience with us as an agency, that  
23 historically we have not had adequate protections.

24 VICE CHAIRMAN THERNSTROM: And when you  
25 look at the budget, when you look towards the future

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1 and thinking about the budget, we are obviously not  
2 traveling now. That is a break with the historic  
3 pattern, that in the years that I've been part of the  
4 Commission, there was a certain amount of travel on  
5 the part of the Commission as a whole to hold hearings  
6 elsewhere and so forth.

7 Are you assuming that given our financial  
8 situation, given the flat budget that we're still  
9 dealing with, that we would continue to be unable to  
10 hold hearings outside of Washington, and so that would  
11 be a continuing source of savings?

12 STAFF DIRECTOR MARCUS: What I would  
13 anticipate, assuming we receive an appropriations that  
14 is comparable to the President's budget and comparable  
15 to this year's appropriation, is that we keep travel  
16 expenses very low next year as they have been this  
17 year. That's right.

18 CHAIRMAN REYNOLDS: Ken, assuming that the  
19 estimate provided by the Office of Public Debt is  
20 reasonable, once we look at what other agencies would  
21 offer, are we in a position to pay that amount with  
22 our current budget?

23 STAFF DIRECTOR MARCUS: Well, let me say  
24 first that we are not in a position yet to assess the  
25 reasonableness or competitiveness of their proposal.

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1 We simply don't know.

2 What I would say is that our current  
3 budget does not provide that amount of money for those  
4 services. So it is not yet clear how we would be able  
5 to increase the amount we're paying on those services  
6 by that amount.

7 CHAIRMAN REYNOLDS: Well, because of our  
8 flat budget and increasing salaries. We start out --  
9 well, every year we're in the hole. If the costs were  
10 reduced to \$500,000 or \$300,000, we still wouldn't be  
11 able to afford it unless we took other measures. We'd  
12 have to free up some funds that are currently being  
13 used for other things at the Commission; is that  
14 right?

15 STAFF DIRECTOR MARCUS: If the amount were  
16 approximately \$300,000, I believe we would be able to  
17 afford it if we assume that we take all of the  
18 financial corrections that were approved during the  
19 last month's meeting.

20 CHAIRMAN REYNOLDS: If we don't make those  
21 corrections?

22 STAFF DIRECTOR MARCUS: Let me say that we  
23 need to do more analysis over the next month based on  
24 the new information about attrition and other cost  
25 savings, but I don't see how that would work if we

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1 don't make financial corrections. We still are  
2 looking at a projected deficit for 2006.

3 CHAIRMAN REYNOLDS: And it's not limited  
4 to 2006. If we keep a flat budget, it is every year.

5 STAFF DIRECTOR MARCUS: That's right.

6 CHAIRMAN REYNOLDS: Okay.

7 STAFF DIRECTOR MARCUS: The deficit would  
8 expand every year in which our appropriations are kept  
9 flat and our costs continue to rise.

10 VICE CHAIRMAN THERNSTROM: And my  
11 understanding from pervious conversations with you is  
12 that there is no way we are going to get a proper  
13 financial audit for \$300,000 of this agency. That is  
14 really -- we're really talking about more money than  
15 that if we do the kind of proper job that seems to be  
16 essential; is that correct?

17 There's no way of bumping that figure down  
18 that low.

19 STAFF DIRECTOR MARCUS: I don't know how  
20 far we will be able to limit the fee, and again, this  
21 is for financial and accounting services as opposed to  
22 audit, but --

23 VICE CHAIRMAN THERNSTROM: Right, okay.  
24 I'm sorry.

25 STAFF DIRECTOR MARCUS: But I do

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1 anticipate that it will be a substantial cost for  
2 future years.

3 CHAIRMAN REYNOLDS: Any other questions,  
4 comments? Commissioner Kirsanow.

5 COMMISSIONER KIRSANOW: We've already  
6 addressed this, but have you factored in -- to what  
7 extent has the current attrition that we experienced  
8 in the last month exceeded that which was originally  
9 anticipated when we were discussing potential RIFs?

10 STAFF DIRECTOR MARCUS: For budget  
11 purposes we have to assume that everyone on the  
12 payroll stays on the payroll. Over the last many  
13 months we had lower attrition than we historically  
14 had, and we were not able to assume that that would  
15 change. So for our budget projections we were  
16 expecting that there would not be attrition. The fact  
17 that there has been is why our projected deficit has  
18 been cut in half and then reduced further by the other  
19 measures that I discussed.

20 COMMISSIONER KIRSANOW: The fee related to  
21 the Bureau of Public Debt, presumably many of the  
22 services they would be providing would supplant  
23 services already being conducted in house, or am I  
24 mistaken about that?

25 STAFF DIRECTOR MARCUS: If we went with

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1 the Bureau of Public Debt proposal, they would replace  
2 our current outside accounting service provider, and  
3 they would also supplant some work that is currently  
4 being done in house as well.

5 COMMISSIONER KIRSANOW: And probably I  
6 know you indicated you needed to assess these things  
7 a little bit more, but do you have any kind of a  
8 handle on to what extent that fee or what portion of  
9 that fee exceeds what our current baseline is for  
10 performing the same services?

11 STAFF DIRECTOR MARCUS: If your question  
12 is related to out-of-pocket costs as opposed to salary  
13 and benefit of internal personnel, it's easily  
14 \$500,000 more than current expenditures.

15 COMMISSIONER KIRSANOW: Okay.

16 CHAIRMAN REYNOLDS: Any other questions,  
17 comments? Mr. Yaki.

18 COMMISSIONER YAKI: Yes. I want to thank  
19 the Staff Director for alerting us to this information  
20 at the earliest opportunity. I know that the -- I  
21 keep on forgetting not to do that on the microphone --  
22 I remember that at the last meeting none of us thought  
23 it was a very sanguine thing that we did in having to  
24 approve the RIFs and the '06 corrections, and I know  
25 that we took that knowing full well, you know, what

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1 the consequences would be and how we will be devoting  
2 some amount of time to figuring out how to insure --  
3 not really figuring out. I think that we know that we  
4 can and will continue on the Commission. It would  
5 just be done a little differently, a little tighter.

6 But then, again, the Commission apparently  
7 has been doing that for the last ten or 15 years with  
8 the budget that has been given. Each year just gets a  
9 little worse and a little more painful, but it's a  
10 reality that I know that we have to face.

11 I also know that it's not something that  
12 can be corrected overnight. I think anyone who  
13 expects that we can turn it around today, wave a magic  
14 wand and say here's the help we're going to do doesn't  
15 understand the depth to which the finances were in a  
16 mess, I guess would be the best way to say it, over a  
17 period of years.

18 And so I am wondering at some point if  
19 there should be a subcommittee of the Commissioners to  
20 just sort of focus on some of this, and the reason I  
21 say that is not because I don't think the Staff  
22 Director is doing a great job. Far from it, but I  
23 think that in doing that, we can not occupy so much of  
24 our Commission time actually talking about the fiscal  
25 issues and spend a little more time working on those

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1 issues that I know all of us do care and were  
2 appointed to this Commission about.

3 And it might be somebody that we might  
4 want to consider. I would certainly volunteer to do  
5 it, and I certain will continue to state that as long  
6 as we have these current budget problems, I will go  
7 without an assistant. That's just my own person point  
8 of view because I want to make sure that there is  
9 money for the staffing at the level where it is really  
10 needed, and that is at OCRE and OGC and at the  
11 regions, to insure that the mission goes on.

12 But I guess I wanted to say I wanted to  
13 commend the Staff Director for taking the step today  
14 at least of saying, well, we have some better news.  
15 It's not perfect news, but at least we should take a  
16 look and see what its ramifications are so that we do  
17 not act precipitously in terms of issuing the RIFs and  
18 to say that certainly on my part I would be willing to  
19 help out as much as I can in that effort and in that  
20 analysis as we go forward because, again, maybe the  
21 more we can do some of this off line and then bring  
22 the other Commissioners up to speed, the more that our  
23 public time here can be spent debating the weighty and  
24 meaty issues that all of us care and love and, indeed,  
25 why we are here today.

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1 CHAIRMAN REYNOLDS: Yes, Commissioner  
2 Braceras.

3 COMMISSIONER BRACERAS: I have two  
4 questions. The first one has to do with the money  
5 that you said Counsel's office determined could not be  
6 paid from the current appropriations.

7 STAFF DIRECTOR MARCUS: Yes.

8 COMMISSIONER BRACERAS: The debts that  
9 were -- that were owed but cannot be paid?

10 STAFF DIRECTOR MARCUS: Yes.

11 COMMISSIONER BRACERAS: Out of these  
12 appropriations. So I'm confused as to how those are  
13 being dealt with. If they can't be paid out of the  
14 current appropriations, are they -- will they ever be  
15 paid or are they effectively waived?

16 STAFF DIRECTOR MARCUS: Commissioner, I  
17 will try to answer that question to the best of our  
18 present knowledge and information and with the caveat  
19 that there is legal analysis that is ongoing.

20 Our understanding is that for -- let me  
21 start with the \$75,000 for 2004.

22 COMMISSIONER BRACERAS: Okay.

23 COMMISSIONER YAKI: Point of order, Mr.  
24 Chair.

25 CHAIRMAN REYNOLDS: Yes.

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1                   COMMISSIONER YAKI: To the extent that any  
2 discussion legally might jeopardize our legal position  
3 with regard to any of these matters, I would just ask  
4 for caution.

5                   CHAIRMAN REYNOLDS: Okay.

6                   COMMISSIONER YAKI: Just in case.

7                   CHAIRMAN REYNOLDS: If you feel, if anyone  
8 feels that we are wading into dangerous territory,  
9 please raise a hand.

10                  VICE CHAIRMAN THERNSTROM: You already  
11 feel --

12                  COMMISSIONER YAKI: All of a sudden it  
13 just occurred to me that when it comes to an existing  
14 legal obligation if we were disclosing perhaps -- if  
15 (a) there's ongoing analysis and (b) that's going to  
16 come to a legal conclusion that we will be asserting  
17 for any legal obligation that currently exists, I  
18 would just caution that then any statements we start  
19 making become part of that record.

20                  I mean, am I -- I'm looking at some of the  
21 other lawyers on this --

22                  (Laughter.)

23                  CHAIRMAN REYNOLDS: I agree that we should  
24 be sensitive to these matters, but at the end of the  
25 day if we have a strong legal position that the law

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1 prevents us from paying the debt, then that's just the  
2 fact.

3 COMMISSIONER YAKI: I'm just from a  
4 litigious California.

5 VICE CHAIRMAN THERNSTROM: There's nothing  
6 but lawyers --

7 STAFF DIRECTOR MARCUS: Let me venture a  
8 few general comments.

9 COMMISSIONER BRACERAS: Okay.

10 STAFF DIRECTOR MARCUS: And perhaps our  
11 solicitor will indicate if there's any concern for  
12 further discussion in general session.

13 First, it's a general proposition that's  
14 been indicated to me that obligations must be paid for  
15 out of the account for the fiscal year in which they  
16 arise and not out of a subsequent fiscal year, except  
17 under some exceptions that don't seem to apply.

18 COMMISSIONER BRACERAS: Okay.

19 STAFF DIRECTOR MARCUS: So the first step  
20 has to be to extinguish the debt or liability out of  
21 the remaining funds for that fiscal year.

22 Now, for fiscal 2004, we are still on the  
23 financial side determining the exact amount that is  
24 remaining within that account, and that is a more  
25 complicated analysis than you might think in part

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1 because there are some obligations that have not yet  
2 been expended, and there is question as to whether  
3 they will lapse or not.

4 For instance, there are some travel  
5 related obligations which may be lapsing. So the  
6 exact amount of money left in the '04 account is  
7 something that is susceptible to further research.

8 Whatever the exact number is going to be  
9 though, it is going to be less than \$75,000.

10 COMMISSIONER BRACERAS: All right.

11 STAFF DIRECTOR MARCUS: Because any  
12 interpretation of what could lapse or not would leave  
13 us with significantly less. So the next question is  
14 to the extent that there is a shortfall, what is done  
15 with that, and for that there are a variety of legal  
16 questions to be looked at regarding the possibility of  
17 using unexpended remaining funds from other prior  
18 fiscal years within the past five years or issues of  
19 potential supplemental appropriation requests.

20 Those are two possible avenues to look at:  
21 supplemental appropriations or use of other prior  
22 years' funds.

23 CHAIRMAN REYNOLDS: Could you unpack that?

24 It was my belief that any funds not used in a year  
25 would go back to Treasury, and that that money is gone

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1 forever. Apparently my belief is mistaken.

2 STAFF DIRECTOR MARCUS: I can take a step  
3 at that now and then we can address in the future  
4 further issues, but I can say it is my general  
5 understanding that five years' accounts remain open  
6 within the Department of Treasury. That money can be  
7 used for only limited purposes, and so one of the  
8 questions we have is the extent to which the  
9 unexpended money from the last five years can be used.

10 But, for instance, in the 2004 account,  
11 it's still open. We can't use it for 2005  
12 obligations, of course, but we can use it to satisfy  
13 2004 obligations.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER BRACERAS: Okay.

16 CHAIRMAN REYNOLDS: Any other questions?  
17 Commissioner Kirsanow.

18 COMMISSIONER KIRSANOW: Virtually this is  
19 something that Commissioner Yaki had raised, and that  
20 is the potential for having a subcommittee to address  
21 financial matters, financial and related matters, so  
22 that we're not taking up as much Commission meeting  
23 time with these matters, and I think that's a very  
24 good proposal.

25 We're now in the fifth meeting of the

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1 year, and we have, I think, consumed every single  
2 meeting principally with financial and oversight  
3 matters, all of which I think were extraordinarily  
4 important, and I don't think we could have obviated  
5 it.

6 But the Commission was authorized for a  
7 particular reason, and it's not to continue to talk  
8 about our financial problems.

9 Now, consistent with, I think, the  
10 obligation that we have to maintain transparency,  
11 which transparency I don't think was lacking in the  
12 past, I think it nonetheless makes good sense to have  
13 a subcommittee that would address these things,  
14 consistent with the Sunshine Act, and then report back  
15 similar to what the Working Group on Reform is doing,  
16 and you know, so that the public is aware of what's  
17 going on financially, but I think it's imperative that  
18 we now begin utilizing Commission related time for  
19 addressing our charter obligations.

20 And I don't know if this requires a motion  
21 at this particular time, if we even know what the  
22 parameters of that subcommittee would be, and maybe  
23 that is something we should do off line and then maybe  
24 have a subsequent vote, but I think Commissioner Yaki  
25 makes a very good point.

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1           Second is a question. I think initially  
2 when you made your report, Mr. Staff Director, you had  
3 indicated that the savings that we are enjoying as a  
4 result of the RIF and some of these other one-time  
5 savings -- I'm sorry -- the attrition and some of the  
6 other one-time savings might be such that we should  
7 reconsider a RIF or postpone a RIF until such time as  
8 we have a handle on what the savings are.

9           Now, my own believe, and I hear what the  
10 Chairman is saying, is that the structure deficit is  
11 such that we're going to still have to take fairly  
12 substantial actions to close the gap. But I think  
13 that a RIF really -- we start cutting into muscle and  
14 bone.

15           So it would be my -- I don't know if it  
16 would be appropriate at this time to make a motion to  
17 postpone doing the RIF until we have a report back  
18 from the Staff Director in the next meeting as to what  
19 the projected savings would be and whether or not a  
20 RIF or to what extent a RIF may be necessary.

21           CHAIRMAN REYNOLDS: Well, I think that we  
22 should vote on that issue, but before I'm fully  
23 responding, I would like to go back to Commissioner  
24 Yaki's point.

25           I think that he is right. I think that we

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1 have spent a lot of time dealing with financial and  
2 managerial issues. But I think that we have to.

3 The way I look at our situation I think  
4 that the Commission is basically fighting for its  
5 life. This cannot go on. I think that the  
6 uncertainties surrounding the Commission, it's a huge  
7 distraction to the Commissioners and the employees. I  
8 think that we are going to over time lose good  
9 employees who are tired of working under these  
10 conditions.

11 I think that we need to spend as much time  
12 as necessary to fix these problems so that we can  
13 truly focus on our mission, and that's not to say that  
14 I don't think that Commissioner Yaki's suggestion is a  
15 bad one, but I just want to emphasize the importance  
16 of fixing these problems. The structural deficit will  
17 result in these conversations every year, and our  
18 attention should be focused on doing what we can to  
19 convince folk that we're serious about reform and that  
20 we are good stewards, and at that point we will be in  
21 a position to ask for a budget that is tied to the  
22 yearly increases in our expenses.

23 COMMISSIONER KIRSANOW: Mr. Chairman, I  
24 couldn't concur more with you, and as you know, I  
25 think over the last several months I've been one of

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1 the more vocal persons, Commissioners, along the lines  
2 of what you are just suggesting. I do think, however,  
3 that the subcommittee can address things over and  
4 above what we're doing right here, not that it would  
5 supplant what we're doing here, but it would actually  
6 be in addition to.

7 And my hope would also be that it would  
8 allow us to spend some Commission time on what we're  
9 here for. I still think we're going to be discussing  
10 financial issues, but similar to what the process is  
11 with the working group on reform from whom we'll be  
12 hearing shortly, they're going to be doing a lot of --  
13 this subcommittee I would suspect would be doing a lot  
14 of heavy lifting, getting into nuts and bolts, numbers  
15 and so forth, and much of this would be done outside  
16 of the Commission meeting, but then a presentation  
17 could be done at a Commission meeting, and we would  
18 discuss it.

19 And I would suspect here we are. We've  
20 spent an hour discussing financial related matter. We  
21 may still consume another hour of financial related  
22 matters even with the subcommittee in existence.

23 So I'm not saying that we should sweep  
24 that off the table at Commission meetings. I think we  
25 could do a better job if we have someone concentrating

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1 full force on us and assisting the Staff Director with  
2 making some of these judgments.

3 That's my only point.

4 CHAIRMAN REYNOLDS: Vice Chair.

5 VICE CHAIRMAN THERNSTROM: That's not a --  
6 do you want? Go ahead. Go ahead.

7 COMMISSIONER BRACERAS: I'll go after you.  
8 Go ahead.

9 VICE CHAIRMAN THERNSTROM: Well, I was  
10 just going to say that I also like Commissioner Yaki's  
11 suggestion very much, and I would hope in fact, it  
12 would reduce the time that the entire Commission  
13 spends on these matters, and as Commissioner Yaki has  
14 said, he hopes, I hope it would free up some time to  
15 discuss the real business of this Commission, which is  
16 the substantive business, the projects that we are  
17 working on and so forth.

18 Just a quick question for the Staff  
19 Director. Deborah Reid has left OGC. Is that a  
20 position that we can afford to keep empty?

21 CHAIRMAN REYNOLDS: We are struggling to  
22 do more with less. We are at a situation where  
23 currently our legal staff is fully occupied handling  
24 legal analysis and is barely able to cover the legal  
25 issues at a time when they are not doing any work on

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1 reports.

2           During future fiscal years, I expect that  
3 they will return to doing projects as well. My hope  
4 is that as we get past this fiscal crisis and the  
5 unusual amount of legal analysis required to deal with  
6 situations like the Anti-deficiency Act, there will be  
7 less in the way of a demand for legal analysis, and  
8 that we will return to a situation more like prior  
9 years where less legal analysis was required.

10           What I would say is it will be a struggle  
11 to maintain legal quality while still doing even as  
12 much as one report a year with the current staffing.  
13 But the Legal Office is working extremely hard under  
14 the circumstances to get as much done as possible.

15           VICE CHAIRMAN THERNSTROM: Well, you know,  
16 as we think about financially restructuring this  
17 agency, I think we have to keep very much in mind that  
18 the OGC is, indeed, supposed to be working on  
19 substantive reports, and that this agency is not  
20 fulfilling its mission if the OGC spends, continues to  
21 spend all of its time on these financial matters.

22           And the cost of getting the work done that  
23 is the rationale for the agency has to be factored in.

24           STAFF DIRECTOR MARCUS: I would agree that  
25 the Office of General Counsel is substantially under

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1       staffed right now.

2                   CHAIRMAN REYNOLDS:   Commissioner Braceras.

3                   COMMISSIONER BRACERAS:   Well, I don't even  
4       know if this is appropriate, but is that a way that a  
5       working group or subcommittee could be of assistance  
6       in terms of answering some of those legal questions,  
7       particularly if some of the members of the  
8       subcommittee are attorneys?

9                   CHAIRMAN REYNOLDS:       Well, I've been  
10       wearing numerous hats since I started. I've been a  
11       financial planner --

12                   (Laughter.)

13                   CHAIRMAN REYNOLDS:       -- providing legal  
14       analysis and --

15                   COMMISSIONER YAKI:       Selling insurance on  
16       the side.

17                   (Laughter.)

18                   CHAIRMAN REYNOLDS:       -- and I encourage all  
19       of the other Commissioners to lend a hand. I know we  
20       all have different areas of expertise.

21                   Commissioner Yaki.

22                   COMMISSIONER YAKI:       Yes. I just wanted to  
23       echo what Commissioner Kirsanow said and you said. I  
24       don't see this as necessarily limiting the amount of  
25       time we might spend debating the subject when it comes

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1 up in public, but I'm thinking that what the  
2 subcommittee can do is accelerate the time frame so  
3 that we're not still doing this in month eight, but  
4 that we can get it done in month six or month seven or  
5 month five as we're going down the track, and at month  
6 five it may be a two-hour thing, but it may be on  
7 everything that we want to try and get done rather  
8 than the fact that the Staff Director has to work on  
9 this, bring it up, and then all of us sort of hammer  
10 him with questions that he has to go back and then  
11 we're waiting another month to come back.

12 That's all I'm trying to do is think of a  
13 way to help compress the time so that when we do have  
14 the presentation, it's fuller. It's more robust. The  
15 debate and the discussion -- well, there's not much  
16 debate -- there's discussion about what it is that we  
17 can and we cannot do, and then take the actions, move  
18 on, clear the decks, and get to the fun stuff.

19 COMMISSIONER BRACERAS: So do you want to  
20 move to establish that?

21 VICE CHAIRMAN THERNSTROM: Yeah, do we  
22 want a motion on this?

23 COMMISSIONER YAKI: Now?

24 COMMISSIONER KIRSANOW: Yes.

25 (Laughter.)

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1 COMMISSIONER BRACERAS: Yeah, let's do it.

2 COMMISSIONER YAKI: I should always  
3 remember to shut my mouth while I'm ahead. No, I  
4 think that I would move that the Chair appoint a  
5 working group on fiscal -- what should we call it?  
6 Fiscal reform, financial reform?

7 COMMISSIONER KIRSANOW: Fiscal and  
8 administrative --

9 COMMISSIONER YAKI: Annuity planning? No.

10 COMMISSIONER KIRSANOW: Something along  
11 the -- the core of this has to do with fiscal,  
12 financial difficulties that we're currently facing and  
13 to what extent we can address those things off line  
14 and then report back.

15 COMMISSIONER YAKI: How about the working  
16 committee on the budget?

17 COMMISSIONER KIRSANOW: That's good  
18 enough. That's broad enough that we can fold in a  
19 number of things into it and then throw out any things  
20 that we don't want to work on.

21 CHAIRMAN REYNOLDS: Okay. Well, before we  
22 get a second and start voting, I just want to say up  
23 front that since it was phrased in a way that the  
24 Chairman would appoint people, I hope you have some  
25 time because it's your idea.

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1 (Laughter.)

2 CHAIRMAN REYNOLDS: So, Commissioner Yaki,  
3 I would like to be on that subcommittee.

4 VICE CHAIRMAN THERNSTROM: I do not want  
5 to be on it. I can't even manage my own budget.

6 CHAIRMAN REYNOLDS: Commissioner Kirsanow,  
7 and Jennifer, do you have an interest?

8 COMMISSIONER BRACERAS: Sure.

9 CHAIRMAN REYNOLDS: Okay. That's one,  
10 two, three, four. So --

11 COMMISSIONER BRACERAS: So I'm sorry.  
12 That was what? There were three or four?

13 CHAIRMAN REYNOLDS: Four is the maximum.  
14 Am I right? Including me.

15 So that would be the line-up. So we have  
16 a motion. Do we have a second?

17 VICE CHAIRMAN THERNSTROM: I second it.

18 CHAIRMAN REYNOLDS: Okay. All in favor?

19 (Chorus of ayes.)

20 CHAIRMAN REYNOLDS: All in opposition?

21 (No response.)

22 CHAIRMAN REYNOLDS: The motion passes.

23 Okay. At this point I guess we need a  
24 little good news. Commissioner Taylor, do you have  
25 any?

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1 (Laughter.)

2 **V. Motion Recognizing National Guard and Reserve**

3 COMMISSIONER TAYLOR: I do. I want to  
4 make a motion for the National Guard and Reserve. I  
5 wanted to move that the Commission recognize the  
6 National Guard and Reserve as essential to the  
7 strength of our nation and the well-being of our  
8 communities.

9 In light of the highest American  
10 tradition, the patriotic men and women of the Guard  
11 and Reserve serve voluntarily in an honorable and  
12 vital profession. They train to respond to their  
13 community and their country in time of need. They  
14 deserve the support of every segment of our society.

15 If these volunteer forces are to continue  
16 to serve our nation, increased public understanding is  
17 required of the essential role of the Guard and  
18 Reserve in preserving our national security. Their  
19 members must have the cooperation of all American  
20 employers and encouraging employee participation in  
21 the Guard and Reserve.

22 Therefore, I move that the Commission join  
23 other employers by signing a statement of support for  
24 the Guard and Reserve, pledging that:

25 One, employment will not be denied because

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1 of service in the Guard or Reserve;

2 Two, the employee job and career  
3 opportunities will not be limited or reduced because  
4 of service in the Guard or Reserve;

5 Three, employees will be granted leaves of  
6 absence for military service in the Guard or Reserve  
7 consistent with existing laws without sacrifice of  
8 vacation; and

9 Four, this agreement and its resultant  
10 policies will be made known throughout the Commission.

11 I thank the Chair for the honor of making  
12 this motion, in part, because it serves to honor my  
13 father's 35 years in the Air Force and 25 years in the  
14 D.C. Air National Guard, and while he had no  
15 difficulty since his full-time job was as a technician  
16 in the Air Force with respect to his leave issue,  
17 various colleagues that he worked with did have this  
18 issue when he served with the National Guard.

19 And he often reminded me of the difficult  
20 situation folks would find themselves in having to go  
21 to their current employer and say that "I'm going to  
22 be out of pocket unexpectedly for two weeks," and the  
23 strain and difficulty that could place on a family.

24 So thank you, again, for the honor.

25 CHAIRMAN REYNOLDS: Okay. Is there a

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1 second?

2 COMMISSIONERS: Second.

3 COMMISSIONER KIRSANOW: Second. I would  
4 also like to just note that obviously there's federal  
5 legislation that protects members of the Guard and  
6 Reserve when they're on service and protects their  
7 positions with respect to employment in terms of  
8 seniority escalators and so on and so forth.

9 However, what I find is that despite the  
10 fact that there is sufficient legislative protection  
11 there for members of the Guard and Reserve, probably  
12 out of sheer ignorance many employers are not even  
13 aware of the requirements of protecting those  
14 positions for individuals that go into the Guard and  
15 Reserve while they're in service and maintaining their  
16 seniority benefits.

17 I think it was just in the last week there  
18 was a judgment of I believe it was \$875,000 against  
19 one firm that had failed to comply with the federal  
20 legislation protecting the positions of individuals  
21 that serve in the Guard and Reserves.

22 So the penalties are not light, but again,  
23 out of, I think, lack of information, out of  
24 ignorance, this happens quite often. And I know in my  
25 practice on a fairly regular basis, especially in

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1 times such as now with a number of call-ups in the  
2 Iraq war, we get a lot of inquiries about this, and a  
3 number of employers are not familiar with what their  
4 obligations are in that regard.

5 So I would second that.

6 CHAIRMAN REYNOLDS: Okay. All in favor?

7 (Chorus of ayes.)

8 CHAIRMAN REYNOLDS: Any in opposition?

9 (No response.)

10 CHAIRMAN REYNOLDS: The motion passes.

11 **VI. Update on Working Group on Reform**

12 Okay. Next up, at the Commission meeting  
13 of January 7th of '05, a Working Group on Reform was  
14 appointed to make specific --

15 COMMISSIONER KIRSANOW: Mr. Chairman.

16 CHAIRMAN REYNOLDS: Yes.

17 COMMISSIONER KIRSANOW: I may be out of  
18 order here, but my recollection is that in the Staff  
19 Director's report there was some reference made to the  
20 RIF.

21 CHAIRMAN REYNOLDS: Oh, that's right,  
22 that's right, that's right.

23 **VII. Motion to Postpone Consideration of RIFs**

24 VICE CHAIRMAN THERNSTROM: We need a  
25 motion on that.

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1                   COMMISSIONER KIRSANOW:       I think I've  
2 already moved to postpone that until the next meeting,  
3 consideration to the next meeting.

4                   VICE CHAIRMAN THERNSTROM:    Right, and I  
5 second that.

6                   CHAIRMAN REYNOLDS:   All in favor?

7                   (Chorus of ayes.)

8                   CHAIRMAN REYNOLDS:   Any in opposition?

9                   COMMISSIONER TAYLOR:   Just a question or  
10 clarification.   In our last meeting did we actually  
11 approve the RIFs in terms of actually executing the  
12 RIFs or simply delegate authority?   So with every  
13 change in our fiscal condition we're going to come  
14 back every month and have to make this decision?   That  
15 is, if there's an improvement in our condition, next  
16 month we have to come back and do the same thing  
17 again?

18                  VICE CHAIRMAN THERNSTROM:   Yeah, I thought  
19 we were doing this very fast.   I thought, "Wait a  
20 minute.   Next month are we going to have to, you  
21 know?"

22                  COMMISSIONER TAYLOR:   That's what we are  
23 if we are.   I just want to make sure I understand  
24 where we are.

25                  CHAIRMAN REYNOLDS:    I think that it's

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1 prudent at this point to postpone taking any actions  
2 and to spend the next month just gathering data.

3 VICE CHAIRMAN THERNSTROM: But why did we  
4 pick a one month?

5 COMMISSIONER BRACERAS: Could I speak to  
6 that?

7 VICE CHAIRMAN THERNSTROM: Why couldn't we  
8 simply have had a motion saying postponing any action  
9 rather than put some kind of --

10 COMMISSIONER BRACERAS: May I speak to  
11 that?

12 CHAIRMAN REYNOLDS: Yes.

13 COMMISSIONER BRACERAS: My impression was  
14 -- and correct me if I'm wrong -- that the Staff  
15 Director already had the authority to make those  
16 decisions, but he came to us last month to get our  
17 seal of approval on the plan that he recommended, and  
18 we did approve that plan.

19 My inclination at this point would be  
20 simply to delegate it back to him with the assumption  
21 that he will keep us informed.

22 CHAIRMAN REYNOLDS: Well, I think that  
23 this is -- I mean, there are a whole lot of issues  
24 wrapped up into this problem. We have to make sure  
25 that we, as good stewards, help the Staff Director

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1 make these difficult decisions since they will  
2 possibly involve the livelihoods of our employees.

3 In addition to that, there are larger,  
4 broader issues involved, specifically the structural  
5 deficit, and our need to free up some money in order  
6 to implement some reform measures.

7 So I think that we all as Commissioners  
8 need to be involved in the decision making process.

9 COMMISSIONER BRACERAS: Right, but my  
10 sense was that in some respects that's what the  
11 subcommittee will do, is sort of act as a  
12 clearinghouse for the Commissioners on those issues so  
13 that when we come to the meetings we can just vote and  
14 move on without having quite so many questions because  
15 the Commissioners involved in the subcommittee can be  
16 available to the Commissioners who are not to answer  
17 questions. Because we will then have the information  
18 because we will have worked with the Staff Director in  
19 doing that.

20 CHAIRMAN REYNOLDS: Okay.

21 COMMISSIONER BRACERAS: So if we just  
22 delegate it back to that process, I think what we're  
23 going to do today is not to go forward with the RIFs  
24 right now, and to delegate back to the Staff Director  
25 the decision making it to work with the subcommittee

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1 to make those decisions going forward, and we will  
2 come back to the Commission, the full Commission, and  
3 everybody will be informed, but --

4 CHAIRMAN REYNOLDS: And vote on it.

5 COMMISSIONER BRACERAS: Yes, but there  
6 will be less need for discussion at that point. Is  
7 that how you envision it?

8 CHAIRMAN REYNOLDS: Okay. Any other  
9 comments, questions, concerns? Vice Chair Thernstrom?

10 VICE CHAIRMAN THERNSTROM: It seems to me,  
11 Commissioner Braceras, that what you just said  
12 suggests that perhaps the language of postponement for  
13 one month is a little --

14 COMMISSIONER BRACERAS: Imprecise.

15 VICE CHAIRMAN THERNSTROM: Well, imprecise  
16 and incorrect, not quite what we wanted, what we  
17 should be doing here. What we really want is for the  
18 Staff Director and the working group on the budget to  
19 get back to us at whatever point it is appropriate to  
20 do so.

21 COMMISSIONER BRACERAS: As soon as is  
22 practical.

23 VICE CHAIRMAN THERNSTROM: Yeah. So I'm a  
24 little unhappy with the wording of the motion that  
25 somehow went by us at 1,000 miles an hour.

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1                   COMMISSIONER TAYLOR: Well, why don't we  
2 amend that motion to state something to the effect  
3 that the RIF will be held in abeyance until such time  
4 as the working group on the budget in conjunction with  
5 the Staff Director recommend that some action be taken  
6 with respect to that RIF.

7                   VICE CHAIRMAN THERNSTROM: That further  
8 discussion by the whole Commission is warranted.

9                   COMMISSIONER TAYLOR: Yes, that would be  
10 find.

11                   VICE CHAIRMAN THERNSTROM: I'd like to  
12 second that amendment.

13                   CHAIRMAN REYNOLDS: Okay. Let's vote.  
14 All in favor?

15                   (Chorus of ayes.)

16                   CHAIRMAN REYNOLDS: Any in opposition?

17                   (No response.)

18                   CHAIRMAN REYNOLDS: The motion carries.

19                   Yes, Commissioner Braceras, let's hear  
20 about all this great work that --

21                   COMMISSIONER BRACERAS: Oh, no, before  
22 that, there was a small procedural motion. I wanted  
23 to move that the letter signed by all Commissioners to  
24 the officials at the Smithsonian Institution urging  
25 them to place the National Museum for African American

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1 History and Culture at a prominent site on the Mall in  
2 Washington, D.C. be posted on the Commission Website  
3 at the earliest possible time.

4 CHAIRMAN REYNOLDS: Is there a second?

5 VICE CHAIRMAN THERNSTROM: Second.

6 CHAIRMAN REYNOLDS: Any discussion?

7 (No response.)

8 CHAIRMAN REYNOLDS: Very good. All in  
9 favor.

10 (Chorus of ayes.)

11 CHAIRMAN REYNOLDS: Any in opposition?

12 (No response.)

13 CHAIRMAN REYNOLDS: The motion carries.

14 **VIII. Working Group on Reform**

15 At this point Commissioner Braceras will  
16 update us on the work of the Working Group on Reform.  
17 All righty.

18 COMMISSIONER BRACERAS: Do you want me  
19 just to move the rules and then open it for discussion  
20 at that point?

21 CHAIRMAN REYNOLDS: Yes.

22 COMMISSIONER BRACERAS: Okay. So I have  
23 two motions. It's broken down into two separate  
24 sections.

25 I will first move that the 13 proposed

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1 rules submitted by the Working Group on Reform, which  
2 address external and internal communications, be  
3 adopted as one package.

4 CHAIRMAN REYNOLDS: Is there a second?

5 COMMISSIONER YAKI: Second.

6 CHAIRMAN REYNOLDS: Discussion.

7 COMMISSIONER BRACERAS: Okay. So these 13  
8 rules that we came up with here basically seek to  
9 address internal and external communications. The  
10 second set of rules which I'll move separately involve  
11 the project planning process.

12 Basically what these 13 rules do is they  
13 seek to strike a balance between Commissioners micro  
14 managing the staff and increased transparency and  
15 access to the staff and input into projects.

16 And it also seeks to clarify the rules  
17 about formal statements of the Commission, be it press  
18 releases or letters to public officials, and seeks to  
19 basically have a process for putting those into the  
20 public domain where we can all have input into those  
21 documents before they go out.

22 So unless there are questions about  
23 specific rules, you know, and I'm happy to answer any  
24 questions that people might have, the only thing I'd  
25 want to add is just to thank the people who worked on

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1 this, the members of the working group and the Staff  
2 Director and the members of the staff, Seth Jaffe,  
3 Deborah Vagins and Mireille -- I'm not going to be  
4 able to pronounce your last name -- Zieseniss, is that  
5 right?

6 And TinaLouis Martin, all of whom worked  
7 on this project. So that's it unless there are  
8 questions on the 13 rules.

9 CHAIRMAN REYNOLDS: Okay. I have, I  
10 guess, some slight concerns about two rules, Rules 7  
11 and 8.

12 COMMISSIONER BRACERAS: Okay.

13 CHAIRMAN REYNOLDS: I guess my concern is,  
14 well, this Commission has had in the past and still  
15 has some strong willed Commissioners, and looking at  
16 proposed Rule 8, I can see a situation obviously not  
17 involving any of the present Commissioners --

18 (Laughter.)

19 CHAIRMAN REYNOLDS: -- but --

20 COMMISSIONER BRACERAS: Of course not.

21 CHAIRMAN REYNOLDS: -- a Commissioner  
22 suggesting in strong language to a staffer that a  
23 report be written in a particular way. And while it  
24 may be couched as a suggestion, coming from a  
25 Commissioner that has a lot of weight, and I just want

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1 to put that on the table as a concern.

2 COMMISSIONER BRACERAS: Well, let me try  
3 to address that.

4 What we specifically did in proposed Rule  
5 No. 7 is open the door for Commissioners to contact  
6 the Staff Director, the General Counsel or the  
7 Director of OCRE to ask questions so that individual  
8 staff members wouldn't feel harassed or feel overly  
9 burdened by Commissioner requests.

10 And we left it to the senior staff,  
11 basically, to filter our requests and to determine in  
12 their judgment whether or not it's appropriate for  
13 individual staff to then have a conversation with a  
14 Commissioner. So we were hoping that that kind of  
15 struck that balance there.

16 And then proposed Rule No. 8 really talks  
17 about the flow of communication in the other  
18 direction, and it simply states that -- it simply  
19 lifts the ban on a member of the staff picking up the  
20 phone and calling a Commissioner if they have a  
21 question.

22 If the staff is working on a report on  
23 education and they want to ask Commissioner Thernstrom  
24 a question about her book or her research in this  
25 area, they should feel free and, indeed, are

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1 encouraged to do that.

2           You know, likewise if they're doing  
3 something on employment law or labor law, they should  
4 feel free to pick up the phone and consult, you know,  
5 with Commissioner Kirsanow or the other attorneys on  
6 the Commission. They don't have to do that, but  
7 they're welcome to.

8           And I wanted to, you know, encourage them  
9 to tap into the collective wisdom of the Commission,  
10 but the members of the staff are by no means forced to  
11 do that.

12           CHAIRMAN REYNOLDS: I think it's a good  
13 idea. I'm just thinking about a worst case scenario.

14           You have an obstreperous employee who does not like  
15 his boss' approach with respect to a particular issue,  
16 and now that obstreperous employee has a means of  
17 circumventing the boss basically and calling a  
18 Commissioner and trying to enlist a Commissioner's  
19 support.

20           And, again, it is a worst case scenario,  
21 and I think that it's unlikely, but because of some  
22 current issues that I'm dealing with in my day job,  
23 the issue stuck.

24           In any event, any other?           Yes,  
25 Commissioner Yaki.

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1                   COMMISSIONER YAKI: I'm just wondering on  
2 proposed Rule 7 perhaps we should add a statement that  
3 addresses your concern as I'm thinking about this,  
4 something along the lines of notwithstanding no  
5 Commissioner nor their staff may in any way interfere  
6 with an ongoing project.

7                   I don't know if that would --

8                   CHAIRMAN REYNOLDS: If I were the strong  
9 willed Commissioner who wanted it my way, I'm just  
10 making suggestions. That's all.

11                  COMMISSIONER YAKI: Okay.

12                  COMMISSIONER BRACERAS: Well, look. I  
13 think the bottom line is, and this comes up with  
14 respect to project planning, too, is that the staff  
15 works very hard on these reports, and it's a shame  
16 when they bring the reports to us and they get voted  
17 down.

18                  So it is in the interest of the staff to  
19 take into consideration suggestions that may increase  
20 the likelihood of passage of the report. If it's just  
21 one Commissioner that has their own agenda and it's  
22 not the agenda of the rest of the Commission, that  
23 report is not going to get passed if it includes that  
24 one person's agenda.

25                  But if the suggestion is a reasonable one

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1 that reflects the agenda of the Commission as a whole,  
2 it would make sense for the staff to adopt it.

3 So I think that there's a natural  
4 mechanism for kind of sorting out what suggestions  
5 should be adopted and what shouldn't.

6 I mean, before we basically had a Chinese  
7 wall between the Commissioners and the staff which  
8 made no sense in terms of we had no information on not  
9 only the status of projects, but the content of  
10 projects, and then by the time projects were completed  
11 and presented to us, we had too many questions or  
12 problems with them to be able to support them as a  
13 whole.

14 So if we increase the communication along  
15 the way, there's a better chance of reports -- I think  
16 the reports will be a higher quality, and I think  
17 there's more of a chance that you will have unanimous  
18 support for projects if we all feel invested in them.

19 And I try to tackle that in other ways in  
20 the second set of motions, but basically, you know, we  
21 just want to be able to have access to information,  
22 and we don't want the staff to feel in any way  
23 intimidated from approaching us and asking us for our  
24 input if they feel it would be helpful.

25 If they don't feel it would be helpful,

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1 that's fine, too.

2 CHAIRMAN REYNOLDS: Well, I think that my  
3 concerns are, well, this Commission is structured in a  
4 way where personalities really matter, and I think  
5 that the current group works well together, and my  
6 concern, I don't think that we're going to have any  
7 problems with this set of Commissioners. I was just  
8 thinking down the road.

9 And quite frankly, if there is a problem I  
10 think that we could deal with it. So, again, I  
11 started off by describing my concern as, well, slight.  
12 Commissioner or Vice Chair.

13 VICE CHAIRMAN THERNSTROM: Well, I  
14 understood your concern, but obviously as part of the  
15 working group, I was coming from exactly the same  
16 place that Commissioner Braceras was and coming from  
17 considerable previous experience in feeling very  
18 frustrated with the wall between the staff and the  
19 Commissioners.

20 Is there some small change that you would  
21 like to see in the wording of this that would address  
22 your concerns?

23 CHAIRMAN REYNOLDS: No, I am comfortable.  
24 I just wanted to put my concern on the table. I can  
25 live with this language. If any Commissioner were to

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1 abuse their rights under this rule, we can address it  
2 at the time. I'm not suggesting that we change the  
3 language.

4 VICE CHAIRMAN THERNSTROM: I mean, there  
5 is a check here of sorts in that the relevant senior  
6 staff has some power here to protect staff members  
7 under his or her jurisdiction from, as it were,  
8 harassment by a single Commissioner.

9 COMMISSIONER BRACERAS: Maybe we want to  
10 add that check to proposed Rule No. 8. In other  
11 words, we have the senior staff acting as a filter  
12 from communications to Commissioners to staff. Maybe  
13 we want them to act as a filter in the other direction  
14 as well, that if the staff wants to contact a  
15 Commissioner about something they would first go  
16 through -- yeah, but it says in consultation with. It  
17 doesn't say --

18 VICE CHAIRMAN THERNSTROM: Well, I think -  
19 -

20 COMMISSIONER BRACERAS: I mean, if you  
21 think that's not strong enough.

22 VICE CHAIRMAN THERNSTROM: I think  
23 "consultation" is appropriate.

24 CHAIRMAN REYNOLDS: With eight I am  
25 presuming that the chain of command remains intact,

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1 that the staff role will talk to his or her boss, make  
2 sure everything is okay.

3 COMMISSIONER BRACERAS: And would say no  
4 if you wanted to make it more specific to reflect the  
5 language in number seven.

6 VICE CHAIRMAN THERNSTROM: I think eight  
7 is fine. There isn't the same danger with eight.

8 COMMISSIONER BRACERAS: Right. I Agree.

9 CHAIRMAN REYNOLDS: Commissioner Yaki.

10 COMMISSIONER YAKI: Yeah, thank you very  
11 much, Mr. Chair. It's interesting when I was reading  
12 these rules for the first time the other day and  
13 thinking how when I was on the Board of supervisors I  
14 just called anyone at all times, and it was alarming  
15 to me to know that there had been a barrier between  
16 staff and Commissioners.

17 COMMISSIONER BRACERAS: You don't know the  
18 Stalinist regime under which we toiled.

19 COMMISSIONER YAKI: I understand.

20 CHAIRMAN REYNOLDS: Be nice. Be nice.

21 COMMISSIONER YAKI: But I would simply say  
22 that I would hope that in this sort of -- in sort of  
23 the free flow of information going back and forth,  
24 that it be free and flowing in every direction so that  
25 if we want -- so staff do not feel that they have to

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1 hide the ball on anything from anyone about who spoke  
2 to them about this or that or anything like that;  
3 that, you know, if Commissioner Thernstrom wants to  
4 know, "Did you get that crazy idea from Yaki?" you  
5 know, she can go, "Yeah, yeah. I got this crazy idea  
6 from Yaki," and stuff like that. I just wanted to be  
7 clean open.

8 COMMISSIONER BRACERAS: Free and open, all  
9 for it.

10 VICE CHAIRMAN THERNSTROM: I mean you  
11 could have an additional sentence in eight making  
12 clear that staff is also free to go to the Staff  
13 Director and indicate a sense of being under pressure,  
14 under undue pressure from a particular Commissioner if  
15 you wanted, if you want to make this super protective.

16 CHAIRMAN REYNOLDS: How about this?  
17 Unless there is other discussion, unless there are  
18 other comments, I'm comfortable voting on it as it's  
19 written. I think that the discussion, the comments  
20 made suggest that everyone is aware and sensitive to  
21 the potential problem and that we will act on -- we  
22 will respond forcefully if there is any undue pressure  
23 applied to the staff.

24 So with that understanding I'm comfortable  
25 voting on these matters as written, but we haven't

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1 gone through everything yet, and we have 13 items.  
2 Comments on any other item?

3 VICE CHAIRMAN THERNSTROM: I have one  
4 comment. On proposed Rule 11, "The Office of Staff  
5 director shall maintain a binder of the minutes from  
6 all Commission meetings." I would like that binder to  
7 contain minutes from previous -- I would like a binder  
8 for every calendar year so that it's not starting  
9 today, but retroactive. I do not believe that exists.

10 CHAIRMAN REYNOLDS: Is that possible? Do  
11 we have -- I assume that we've -- okay.

12 VICE CHAIRMAN THERNSTROM: I'm sorry. I  
13 didn't hear you.

14 MS. MONROIG: The library has the minutes  
15 of the meeting.

16 The library has a copy of the meetings  
17 from back from --

18 VICE CHAIRMAN THERNSTROM: Are they in  
19 binders?

20 MS. MONROIG: Yes.

21 VICE CHAIRMAN THERNSTROM: So that you can  
22 just flip through it and --

23 MS. MONROIG: Yes.

24 VICE CHAIRMAN THERNSTROM: Okay. So that  
25 we are proposing something already in place?

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1 MS. MONROIG: I don't know.

2 CHAIRMAN REYNOLDS: Well, we're  
3 establishing a formal policy. We do it apparently.

4 COMMISSIONER BRACERAS: The library has  
5 done it as a matter of practice, but some of these  
6 things were formalizing things that were done before  
7 or that this current Staff Director has already begun  
8 to do.

9 VICE CHAIRMAN THERNSTROM: But I just --

10 COMMISSIONER BRACERAS: For example,  
11 number 13, the Staff Director has already begun to do  
12 that at the suggestion of the working group, but we're  
13 formalizing it for the sake of the historical record.

14 VICE CHAIRMAN THERNSTROM: Right. I did  
15 not realize that was true of 11, and I wanted to make  
16 sure that, indeed, minutes of previous meetings were  
17 as accessible as they turn out to be.

18 COMMISSIONER BRACERAS: I mean, part of  
19 the history of this, of the genesis of this has to do  
20 with the fact that under the previous regime the Chair  
21 would always say, "Well, we've always done X, Y, and  
22 Z," without necessarily being able to point to the  
23 rule.

24 So here are the rules just so we're all on  
25 the same page and in the interest of clarity, and

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1 other of these rules or events, you know, are new and  
2 are meant to protect the rights of the political  
3 minority on the Commission which I think we all agree  
4 is very important.

5 COMMISSIONER YAKI: Yep.

6 COMMISSIONER BRACERAS: So those are the  
7 thoughts behind this.

8 VICE CHAIRMAN THERNSTROM: All except to  
9 Michael Yaki at least it's important.

10 COMMISSIONER BRACERAS: So should I move  
11 the question?

12 VICE CHAIRMAN THERNSTROM: Yes.

13 COMMISSIONER YAKI: Second.

14 CHAIRMAN REYNOLDS: Okay. All in favor?

15 (Chorus of ayes.)

16 CHAIRMAN REYNOLDS: Any in opposition?

17 (No response.)

18 CHAIRMAN REYNOLDS: The motion passes.

19 COMMISSIONER YAKI: Mr. Chairman.

20 CHAIRMAN REYNOLDS: Yes, Commissioner  
21 Yaki.

22 COMMISSIONER YAKI: I was only appointed  
23 for one meeting, but I just wanted to commend  
24 Commissioner Braceras for her hard work on creating  
25 these rules and for all the other members of the

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1 working group.

2 COMMISSIONER BRACERAS: Thank you.

3 VICE CHAIRMAN THERNSTROM: And the work is  
4 finished.

5 COMMISSIONER BRACERAS: Nope.

6 VICE CHAIRMAN THERNSTROM: Oh.

7 COMMISSIONER BRACERAS: We have the second

8 --

9 CHAIRMAN REYNOLDS: Motion number two.

10 VICE CHAIRMAN THERNSTROM: The work of the  
11 working group is finished.

12 COMMISSIONER BRACERAS: Yes. Okay. So  
13 I'd like to now move that the proposed rules submitted  
14 by the Working Group on Reform that addressed project  
15 planning and execution be adopted as one package.

16 COMMISSIONER YAKI: Second.

17 CHAIRMAN REYNOLDS: Discussion?

18 COMMISSIONER BRACERAS: Okay. So this  
19 section of the document that was distributed is  
20 basically an outline or a template, if you will, for  
21 how we think the staff should manage projects going  
22 forward, and the goal here was basically, again, to  
23 strike a balance between having Commissioner input, on  
24 the one hand, and not micro managing on the other.

25 So the idea is to have certain specific

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1 points in time where for every project the Commission  
2 will have input, and we basically broke it down to  
3 four discrete stages of input. Well, actually, I  
4 guess five, the first being when the Commission votes  
5 to authorize a project, which we've always had input  
6 at that stage, but then in the past that's basically  
7 where our inputs stopped until the point in time where  
8 the staff brought the report to us for a vote.

9 Now we've added these additional points of  
10 input, the first one being we call it "Stage 1,  
11 Background and Planning," and that's after the staff  
12 has conducted the initial research and literature view  
13 and they've done a more detailed outline of where they  
14 think they're going with the project and they come  
15 back to us at that point for further authorization.

16 And then the second point, the second new  
17 point of input would be -- and conceivably these could  
18 be done at the same time. The staff could come to a  
19 Commission meeting with both their detailed outline  
20 and their Stage 2 discovery plan. It doesn't have to  
21 be spread out by months, but the point is that we will  
22 authorize in two stages, one, the detailed outline and  
23 scope and direction of the project and, two, the  
24 discovery plan.

25 And it's that point where we as a

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1 Commission would like to see basically a detailed plan  
2 in the same sense that a lawyer would put forward a  
3 discovery of plans to the court, and so the staff will  
4 tell us what depositions they plan to take, what  
5 interrogatories they plan to issue, subpoenas,  
6 document requests, and other forms of discovery that  
7 they think are necessary to researching and collecting  
8 all of the data they need to collect for the project.

9 And so the Commission will authorize the  
10 discovery plan at that point, maybe making amendments  
11 or changes to the plan, but then authorizing them to  
12 go forward and conduct that discovery.

13 Stage three would be a draft report which  
14 would be presented to the Commission. Commissioners  
15 would have four weeks to comment on the draft report  
16 and make suggestions both in terms of format or style,  
17 as well as content that may have been missed or that  
18 should be deleted.

19 And then stage four would be the final  
20 report that we would vote to approve or reject.

21 And then just to be clear, I've added a  
22 section saying that basically nothing in this rule is  
23 intended to require us to adopt reports in total. If  
24 there's a portion of a report that has a majority of  
25 support from the Commission but the rest of the report

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1 fails to achieve that support, we can adopt a portion  
2 of the report.

3 So it doesn't have to be an all or nothing  
4 end game, which was part of the problem, I think,  
5 before. So we can divide it as we see fit and make  
6 those decisions specific to the report in question. I  
7 think that will vary from report to report, how we  
8 want to handle that.

9 And of course, dissents will be published  
10 with the report, and I think it should be really left  
11 up to the dissenting Commissioner whether -- or  
12 Commissioners -- whether they want to write one  
13 dissent for attachment at the end or whether they want  
14 to integrate their points of dissension with the  
15 report after specific recommendations or findings. If  
16 they just wanted dissent from them within the text of  
17 the report, that's fine, too, and I think that's  
18 something that should be left to the dissenters to  
19 work out with the Staff Director.

20 CHAIRMAN REYNOLDS: Commissioner Braceras,  
21 the statement of dissent, now I can see someone  
22 submitting basically a competing report. We have our  
23 100 page report, and there is a dissent that has as  
24 much paper or is larger --

25 COMMISSIONER BRACERAS: My own personal

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1 view is that that's fine. I mean, the way the courts  
2 work is the dissenter writes as much as they feel they  
3 need to write to explain why they don't agree.

4 I know this harkens back to the Florida  
5 report, but the fact of the matter is if a dissenter  
6 wants to take the time to go out and gather competing  
7 sets of data or, you know, undergo a complete  
8 competing analysis. I think more information for the  
9 public is better, and the public can decide, can weigh  
10 them, and it is what it is. It's a dissent. If it  
11 only speaks for one or two people, it says that quite  
12 clearly on it.

13 And I think more information is better,  
14 and it should be left to the dissenter to decide how  
15 much effort and time and energy they want to put into  
16 that.

17 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

18 VICE CHAIRMAN THERNSTROM: Mr. Chairman,  
19 as Commissioner Braceras indicated, this did come up  
20 with respect to the very long dissent that I wrote in  
21 conjunction with the Florida report, a dissent that  
22 was not published as such, as a dissent in its final  
23 form, never saw the light of day, and at the time, the  
24 Vice Chair Cruz Reynoso said this is not a dissent.  
25 Dissents are two or three pages. You have done

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1 separate work, separate data collection. This is  
2 completely inappropriate. The Commission has never  
3 accepted, you know, this kind of substantial work  
4 before and published it as a dissent, and the proposal  
5 to squash it on those grounds was defeated.

6 It was suppressed on other grounds  
7 completely, but nobody on the Commission was willing  
8 to go along with the notion that dissents were simply,  
9 you know, a few pages saying, "I disagree."

10 COMMISSIONER BRACERAS: Right, and  
11 frankly, I also anticipate that dissents won't need to  
12 be as long because we are changing the whole process,  
13 which will allow for input along the way, and I think  
14 that as the Commission feels more invested in the work  
15 product that's coming out of the Commission, there may  
16 not be the need for that type of dissent.

17 But I welcome hardy dissents, and I think  
18 the public benefits from hardy dissents. We're  
19 supposed to be a clearinghouse for information, and I  
20 think it will make our reports stronger.

21 VICE CHAIRMAN THERNSTROM: A clearinghouse  
22 of information and a forum for competing ideas, and I  
23 think to the extent to which we lay out the landscape  
24 of differing opinions, different ways of looking at  
25 data, and so forth. Again, the public benefits.

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1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER BRACERAS: I don't know if  
3 there are any other questions about the project  
4 planning process. There's also a section here that  
5 deals with project resource management, which were  
6 some of the issues that Commissioner Redenbaugh had  
7 been concerned with and a section that basically  
8 defines for the record the differences between  
9 hearings, briefings and speakers. It indicates  
10 basically that all three of those events need  
11 Commission approval.

12 So that's really it. The only thing is if  
13 I can make two small amendments to my own document  
14 here, I believe there's a typo on page 6, which is  
15 Subsection D(a). I'm not sure because this is from  
16 the statute, but where it says "Attendance of  
17 Witnesses or the Production of Written or Other  
18 Matters," I wasn't sure whether that was supposed to  
19 be written materials. But anyway, that is something  
20 that can be checked --

21 VICE CHAIRMAN THERNSTROM: Where is this?

22 COMMISSIONER BRACERAS: -- because that's  
23 the statutory language. Page 6.

24 COMMISSIONER YAKI: 702.1(e), third  
25 sentence.

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1 VICE CHAIRMAN THERNSTROM: Fine.

2 COMMISSIONER BRACERAS: But anyway, we  
3 should just make sure that it reflects the exact  
4 statutory language. That's all I wanted --

5 VICE CHAIRMAN THERNSTROM: It's got to be  
6 materials. It doesn't make sense otherwise.

7 COMMISSIONER BRACERAS: Right. That's  
8 what I thought but I'm not sure because who knows how  
9 these things get drafted.

10 Okay, and then the other small amendment I  
11 wanted to make is on page 4. I don't think I was  
12 quite clear under III(B)(1), Project Implementation,  
13 Stage I, I had clearly indicated what type of outline  
14 the staff should present to us but I don't think I was  
15 clear that the Commission needed to approve it at that  
16 point.

17 So I just wanted to add a sentence there  
18 that says, "The Commission will consider the outline  
19 and may, at its discretion, vote to alter or amend the  
20 scope and focus of the project." So I just want to be  
21 clear there that that is a point at which the  
22 Commission either signs off or makes changes and then  
23 signs off.

24 CHAIRMAN REYNOLDS: Okay. At this point  
25 are we - - additional comments? Commissioner Yaki?

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1                   COMMISSIONER YAKI:     Yes, just one, I  
2 think, discrepancy in -- on page 4 under III(B)(3),  
3 the draft is supposed to be held in strictest of  
4 confidence but I think if we make an editorial  
5 suggestion at the Commission, it becomes public. So I  
6 would -- I wonder if we should just strike the word  
7 Commission meeting? Do you see what I mean?

8                   COMMISSIONER BRACERAS:   Yes, I do see what  
9 you mean. I wonder what --

10                   COMMISSIONER YAKI:     Just say make  
11 editorial suggestions before final draft is prepared.  
12 Just strike the -- either in writing or at a  
13 Commission meeting because --

14                   COMMISSIONER BRACERAS:   Yes.     Okay.  
15 Right.

16                   CHAIRMAN REYNOLDS:   Okay. At this point,  
17 are we ready to -- no, we're not.

18                   COMMISSIONER KIRSANOW:   Just a couple  
19 questions. The draft report when it is submitted for  
20 editorial board review, what is that? I mean before -  
21 -

22                   COMMISSIONER BRACERAS:   Well, they usually  
23 go through their own editing process where they check  
24 -- they go through the legal sufficiency and they send  
25 it out to the different agencies. And that's --

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1 COMMISSIONER KIRSANOW: Okay. It means it  
2 goes to the Washington Post.

3 (Laughter.)

4 COMMISSIONER BRACERAS: Right.

5 VICE CHAIRMAN THERNSTROM: See if it  
6 conforms to their style.

7 COMMISSIONER BRACERAS: Basically it is  
8 before they finalize it.

9 COMMISSIONER KIRSANOW: I'm just curious  
10 as to who they is.

11 COMMISSIONER BRACERAS: The staff.

12 COMMISSIONER KIRSANOW: And who will be  
13 part of the editing process?

14 COMMISSIONER BRACERAS: I'd say maybe the  
15 staff wants to speak to that. I don't know who  
16 specifically has responsibility for --

17 COMMISSIONER KIRSANOW: The word Board,  
18 that's --

19 COMMISSIONER BRACERAS: Editing the draft  
20 or conducting the legal sufficiency review. I mean,  
21 yes --

22 VICE CHAIRMAN THERNSTROM: The word Board  
23 perhaps should be struck there.

24 COMMISSIONER BRACERAS: Right.

25 VICE CHAIRMAN THERNSTROM: Commissioner

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1 Yaki is right.

2 STAFF DIRECTOR MARCUS: Mr. Chairman, if I  
3 may, for all reports that are issued by the  
4 Commission, historically before they have gone to the  
5 Commissioners, they have gone through a couple of  
6 processes and one is formation of a Board of staff  
7 members appointed by the Staff Director with the  
8 Division Heads, either OCRE or OGC to do a editorial  
9 review as well as the legal analysis.

10 COMMISSIONER BRACERAS: It is basically,  
11 as I understand it, so that the people who did not  
12 work on the report have a chance to eyeball it and  
13 edit it.

14 COMMISSIONER KIRSANOW: All right. I  
15 just wanted to know who it was. And I want to make  
16 sure --

17 COMMISSIONER BRACERAS: Because they're  
18 not as invested in it as the people who wrote it.

19 COMMISSIONER KIRSANOW: -- you know, if --  
20 when other organizations, economic institutions, for  
21 example, if there is a paper that is going to be  
22 issued or a report that is going to be issued, there  
23 is peer review, for example, and there are systems in  
24 place to make sure that there is economic integrity to  
25 whatever the final draft is. And so I trust the Staff

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1 Director to appoint the appropriate people to make  
2 sure that happens.

3 COMMISSIONER BRACERAS: Right. And we're  
4 now part of that process as well.

5 STAFF DIRECTOR MARCUS: If I may say, the  
6 editorial board review is really more editorial as  
7 opposed to the --

8 COMMISSIONER BRACERAS: Substance.

9 STAFF DIRECTOR MARCUS: -- sort of  
10 substance. Historically this agency has not  
11 participated in the form of academic peer review  
12 that's described.

13 COMMISSIONER KIRSANOW: The other thing is  
14 I'm presuming that the discovery plan, the discovery  
15 process, whether it be interrogatories, everything  
16 else, also includes briefings and hearings, correct?

17 COMMISSIONER BRACERAS: Well, I don't  
18 think -- hearing --

19 COMMISSIONER KIRSANOW: Well, briefings  
20 possibly?

21 COMMISSIONER BRACERAS: Well, let me just  
22 describe it as I understand it. That hearings are  
23 conducted in conjunction with a project concept that  
24 has been approved and voted on. And there will be  
25 some sort of document that comes out of it. So to

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1 answer your question, yes.

2 COMMISSIONER KIRSANOW: Okay.

3 COMMISSIONER BRACERAS: The discovery plan  
4 will include -- and maybe we should state that  
5 specifically -- we can just add it here. It says the  
6 discovery plan will describe with as much detail as  
7 practicable the subpoenas, interrogatories, document  
8 requests, and plans for hearings. I don't know if we  
9 can stick it in there. I sort of assumed that fell  
10 into other forms of discovery because when we bring  
11 people here to testify, that's a form of discovery.

12 COMMISSIONER KIRSANOW: Okay. I just  
13 wanted to be clear on that.

14 COMMISSIONER BRACERAS: I mean if you want  
15 to add this precise language, that's fine.

16 COMMISSIONER KIRSANOW: Oh, I'm  
17 comfortable with that. I just wanted clarity on that.

18 COMMISSIONER BRACERAS: Right. And in the  
19 back --

20 COMMISSIONER KIRSANOW: One other thing --

21 COMMISSIONER BRACERAS: -- the statutory  
22 part in the back, if you look under Section D, it's  
23 already incorporated into the statutory language --  
24 no, not the statutory language, the regulatory  
25 language, excuse me, that describes hearings.

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1 COMMISSIONER KIRSANOW: Yes.

2 COMMISSIONER BRACERAS: Must be approved  
3 by a majority of the Commission. And then we  
4 basically added the same authorization requirements  
5 for briefings and public speakers.

6 COMMISSIONER KIRSANOW: Okay.

7 COMMISSIONER BRACERAS: So in other words,  
8 if the Staff Director decides, you know, it would be a  
9 great idea to do a briefing on college antisemitism,  
10 in the past we would just show up and the speakers  
11 would be here and they'd brief us. And we had no  
12 input into the topic or even knew what the topic was  
13 until we walked into the room.

14 So now under these rules, the Commission  
15 must approve the topics. Well, first of all, they  
16 must approve the concept in general and decide whether  
17 or not to have a briefing. And then approve the topic  
18 for the briefing and give some input into the list of  
19 invitees. And that has to be at least one month prior  
20 --

21 COMMISSIONER KIRSANOW: Okay.

22 COMMISSIONER BRACERAS: -- to the  
23 briefing. So --

24 COMMISSIONER KIRSANOW: You think we want  
25 to change that to 60 days instead of one month? I'm

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1 aware of the whole 60 day --

2 COMMISSIONER BRACERAS: Yes.

3 COMMISSIONER KIRSANOW: -- deal.

4 COMMISSIONER BRACERAS: I mean the only  
5 reason I said one month is so we can do it at one  
6 meeting and have the briefing at the next meeting if  
7 need be.

8 COMMISSIONER KIRSANOW: No big deal.

9 COMMISSIONER BRACERAS: But, you know, I'm  
10 not wedded to any particular time frame.

11 COMMISSIONER KIRSANOW: Okay. I don't  
12 know if it is doable in 60 days. I don't know if we  
13 can -- if we're able to do that. No, the language is  
14 fine as far as I'm concerned.

15 One other question which is with the Stage  
16 4 final report. The staff is going to incorporate  
17 comments from the Commissioners in the final draft.  
18 I'm wondering if it makes sense to have a final draft  
19 that has -- might be similar to what you get in a  
20 court opinion where you have findings of fact or  
21 findings and then recommendations -- or maybe not a  
22 court opinion, where the recommendations would be the  
23 opinion portion of it.

24 And whether -- I'm not sure that  
25 recommendations are something that is necessarily

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1 appropriate for staff to come up with. Maybe that's  
2 something for the Commissioners.

3 COMMISSIONER BRACERAS: I think they have  
4 -- in the past, reports have included both findings  
5 and recommendations.

6 COMMISSIONER KIRSANOW: Does it make sense  
7 to kind of separate the two though so that  
8 Commissioners are focused on recommendations? It is  
9 the prerogative or responsibility of Commissioners to  
10 do the recommendation portion since that is policy?

11 CHAIRMAN REYNOLDS: I would think that --  
12 yes, gathering the data -- if we're -- well, you know,  
13 we have some good people here. And so gathering  
14 accurate data, that's -- I would hope that we're not  
15 going to have too many debates over what the facts  
16 are. But what those facts mean or should mean, that  
17 falls within the Commissioners province. That's  
18 policy.

19 VICE CHAIRMAN THERNSTROM: Mr. Chair, it  
20 isn't quite that simple. The underlying questions,  
21 the drive, the gathering of data are Commission  
22 business. That is there isn't a bright and clear line  
23 between gathering facts and how you frame the issue  
24 which spills over into larger policy questions so  
25 that, you know, different scholars ask different

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1 questions about the same topic and gather data  
2 differently that is Commission business.

3 COMMISSIONER BRACERAS: I agree and I  
4 think that we sort of discussed this in the working  
5 group and decided that it would be better just to  
6 handle it on an ad hoc basis because there may be  
7 times when, as the Chair said, the facts are not in  
8 dispute but only the recommendations are. And there  
9 may be other times, as the Vice Chair pointed out,  
10 where the facts themselves are controversial as they  
11 are presented.

12 So that's why I want to make clear that  
13 when a report is presented to the Commission, there  
14 does not have to be an up or down vote on the report  
15 as a whole. We can discuss sections of it. We can  
16 discuss particular findings of facts that we have  
17 objections to. And remove them, amend them, whatever,  
18 if a majority deems fit.

19 And same thing with the recommendations.  
20 And to the extent that the staff can, you know, break  
21 things down in terms of their format so that we can  
22 discuss things in that way, that would be helpful.  
23 But I think we should let them kind of figure out how  
24 to do that and work through it on a case-by-case  
25 basis.

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1                   VICE CHAIRMAN THERNSTROM:  And where there  
2                   are instances in which the staff is gathering  
3                   particular facts and we think that the questions being  
4                   asked are either -- might be framed in a different way  
5                   or are insufficient in their breadth, do not take into  
6                   account other questions that can be raised with  
7                   respect to particular phenomenon, then, you know,  
8                   Commissioners have to have input into that.

9                   COMMISSIONER BRACERAS:  And hopefully that  
10                  will be sorted out in Stages 1 and 2.  At the time the  
11                  staff comes forward with an outline, which discusses  
12                  the methodology and frames the questions, that would  
13                  be the point in time --

14                 VICE CHAIRMAN THERNSTROM:  Right.

15                 COMMISSIONER BRACERAS:  -- to suggest  
16                 other questions or other sources of data.  And also  
17                 with the discovery process, that would be a time for  
18                 Commissioners to suggest different witnesses,  
19                 different questions to be asked in interrogatories, a  
20                 different makeup of speakers at a hearing.

21                 VICE CHAIRMAN THERNSTROM:  Right.

22                 COMMISSIONER BRACERAS:  So those would be  
23                 the points in time, the discreet points in time at  
24                 which we'd have the opportunity to do that instead of  
25                 all along the process picking up the phone and

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1 harassing them -- what about this idea, what about  
2 this idea?

3 We'd have these two discreet time periods  
4 where we could do just what you suggest. And do it as  
5 a group. And do it openly.

6 VICE CHAIRMAN THERNSTROM: I have a  
7 question of the Staff Director. To the best of your  
8 knowledge, is there any aspect of what we're proposing  
9 here that the staff feels will create substantial  
10 problems in terms of their ability to work on these  
11 projects? And if so, you know, it would be nice to  
12 know about them up front.

13 STAFF DIRECTOR MARCUS: I think that the  
14 senior staff generally believes that this is a  
15 workable framework. I have heard concerns expressed  
16 about whether some aspects of this could have  
17 ramifications for timing, especially for the statutory  
18 report. They are concerned about whether we still  
19 will be able to meet our deadlines given this timing.

20 COMMISSIONER BRACERAS: You mean for this  
21 year? Or going forward?

22 STAFF DIRECTOR MARCUS: In general.

23 COMMISSIONER BRACERAS: In general.

24 STAFF DIRECTOR MARCUS: In general. And  
25 whether having such a highly structured approach could

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1 be workable. That's a concern that I've heard.

2 But I've not heard any, you know, senior  
3 staff indication that it is impossible. It's simply a  
4 question sort of going forward about whether we can be  
5 flexible about it and revisit it in the event that it  
6 causes problems for meeting our statutory timeliness  
7 requirement.

8 COMMISSIONER BRACERAS: Well, I guess  
9 maybe one thing we could do is, you know, we don't  
10 necessarily have to wait until the next Commission  
11 meeting. If the staff is ready and wants to get  
12 going, we could convene by teleconference and, of  
13 course, complying with the Sunshine Act in whatever  
14 way we need to, noticing it in the Federal Register  
15 and et cetera, et cetera.

16 But if the staff gets to a point where  
17 they want approval of a discovery plan and they don't  
18 want to wait three weeks until the next Commission  
19 meeting, then by all means, a teleconference should be  
20 convened. And I don't know, maybe we want to add that  
21 formally to the document.

22 CHAIRMAN REYNOLDS: I think that that's a  
23 good idea to the extent that we need flexibility. It  
24 should be clear that these rules permit a notational  
25 vote via teleconference.

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1                   COMMISSIONER BRACERAS:    So why don't we  
2 just make a -- under Project Implementation, which is  
3 B, add a number five.  And --

4                   VICE CHAIRMAN THERNSTROM:  Saying that the  
5 timing of each stage is flexible and the  
6 implementation of any stage can take place with a  
7 conference call and a notational vote.

8                   COMMISSIONER BRACERAS:  The timing of each  
9 of the above-referenced stages is flexible and may be  
10 conducted by a notational vote.

11                  VICE CHAIRMAN THERNSTROM:       And the  
12 implementation of any stage may be conducted.

13                  COMMISSIONER BRACERAS:    So have it the  
14 timing and implementation of each of the  
15 above-referenced --

16                  VICE CHAIRMAN THERNSTROM:  The timing is  
17 flexible.  The implementation can take place through a  
18 process of --

19                  COMMISSIONER BRACERAS:    But not without a  
20 vote.

21                  VICE CHAIRMAN THERNSTROM:  No.  Through a  
22 process of conference call and a notational vote.  
23 Sorry.  I mean I don't want the staff waiting around  
24 for us --

25                  COMMISSIONER BRACERAS:    Yes.

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1 VICE CHAIRMAN THERNSTROM: --

2 unnecessarily.

3 CHAIRMAN REYNOLDS: Okay.

4 COMMISSIONER BRACERAS: So --

5 CHAIRMAN REYNOLDS: Is everyone  
6 comfortable with the amendment?

7 COMMISSIONER BRACERAS: Great. Thank you  
8 for raising that. Is there anything else? Ken? That  
9 would cause concern?

10 STAFF DIRECTOR MARCUS: The other concern  
11 was whether this staging will necessarily make sense  
12 for all kinds of projects. And whether there might be  
13 some projects that are more streamlined or minor  
14 projects that either don't have discovery or  
15 substantial discovery where we might want to have a  
16 more streamlined process. That's something that --

17 COMMISSIONER BRACERAS: I guess to --

18 STAFF DIRECTOR MARCUS: -- was mentioned.

19 COMMISSIONER BRACERAS: -- that I would  
20 say if that type of project comes about, then come to  
21 us and ask for a waiver of this process and where it  
22 makes sense, we'll do that.

23 And I guess the only thing is that in  
24 Stage -- on page 4, Stage 1, we need to delete the  
25 language at a regular monthly meeting. So it will now

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1 say the staff will conduct background research and a  
2 literature review of the topics. Staff shall then  
3 present to the Commission a detailed outline of the  
4 project.

5 CHAIRMAN REYNOLDS: Thoughts, additional  
6 thoughts, comments?

7 (No response.)

8 CHAIRMAN REYNOLDS: Okay. At this point,  
9 as amended, do we -- will all in favor for this motion  
10 as amended say aye?

11 (Chorus of ayes.)

12 CHAIRMAN REYNOLDS: Any in opposition?

13 (No response.)

14 CHAIRMAN REYNOLDS: The motion passes.

15 **IX. Program Planning**

16 Okay. At this point, we're up to Program  
17 Planning. And -- okay, all right, on that note, will  
18 the Staff Director please walk us through Project  
19 Planning and Execution?

20 STAFF DIRECTOR MARCUS: Certainly. This  
21 is the time during the year -- we're actually a few  
22 months delayed for the time for setting an agenda for  
23 fiscal year 2007.

24 In addition, there has been a discussion  
25 among Commissioners about the appropriateness at this

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1 time with the new composition of the Commission of re-  
2 looking at fiscal year 2006 and 2005.

3 Although 2007 seems like a long way off,  
4 we are, in fact, past the time at which a budget call  
5 is usually made in connection with projects for 2007.

6 So it is important that we get an agreement on  
7 projects for 2007 in order to be able to get a budget  
8 proposed to the Commissioners by the July meeting in  
9 order to get things to OMB by September as is  
10 required.

11 We have circulated to Commissioners the  
12 previously proposed projects as well as a series of  
13 new concepts of potential projects and suggested that  
14 preferences be indicated as to which projects we  
15 should do for 2005, 2006, and 2007.

16 Based on that discussion, we have a  
17 proposed slate of projects which is as follows:

18 For the Office for Civil Rights  
19 Evaluation, the reauthorization of the Voting Rights  
20 Act, minority employment, and the wealth gap,  
21 effectiveness of Historically Black Colleges and  
22 Universities, disparity studies as evidence of  
23 discrimination in federal contracting, and voter fraud  
24 in Washington State gubernatorial election.

25 For the Office for General Counsel, the

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1 proposals would be elementary and secondary school  
2 desegregation and either role of race in magnet school  
3 admissions or minority representation in the census.

4 In terms of scheduling order, the proposal  
5 is that the Voting Rights Act be 2006, minority  
6 employment, 2005, Historically Black Colleges and  
7 Universities, `07, disparity studies, `07, voter fraud  
8 in Washington State gubernatorial election, `06.

9 We have indicated a proposal under which  
10 elementary and secondary school desegregation be `06  
11 and that either magnet school admissions or minority  
12 representation in the census be `07.

13 However, staff have recently indicated  
14 that based on the Census Bureau's schedule for  
15 preparing for the next census, if we do handle the  
16 census matter, it is probably something that we should  
17 do sooner rather than later in order to be able to  
18 effect that in that if we handle the -- if we take on  
19 the census, it should probably be `06 and  
20 desegregation `07.

21 So if that were to vote, it would be the  
22 recommendation that those two be flipped in order.

23 CHAIRMAN REYNOLDS: Okay. All right. At  
24 this point, discussion? We have the slate of items.  
25 Commissioner Braceras?

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1                   COMMISSIONER BRACERAS: Yes. In thinking  
2 about the OGC projects and whether to choose -- I  
3 guess we're choosing between the Role of Race in  
4 Magnet School Admissions and Minority Representation  
5 in the Census? I just -- I have a few thoughts that  
6 I'd like to get people's feedback on.

7                   The first is that it seems to me that  
8 rather than do two education-related topics, it might  
9 be better to diversity our portfolio. And if we're  
10 doing desegregation, then to add the census one as a  
11 nice complement instead of doing two things that dealt  
12 with education.

13                   But my second thought is that if we do do  
14 that, I personally would like to see the census topic  
15 altered or expanded or tweaked, if you will, to  
16 include a discussion of the efficacy of the categories  
17 used on the census. And there is a debate -- there is  
18 an ongoing debate about whether there should be a  
19 multiracial category or whether people should just be  
20 able to self report in a more open-ended question.

21                   And I believe that the way the project was  
22 originally phrased was that it was going to look at  
23 minority under-representation in the census. There's  
24 probably also over-representation for a variety of  
25 reasons including both ignorance and confusion.

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1 I mean there's no doubt in my mind that at  
2 some point, people look at these categories and put  
3 themselves into categories that they don't actually  
4 belong in. Not because that's how they actually  
5 identify themselves but because they don't understand  
6 the phraseology.

7 So I'd rather open it up and yes,  
8 definitely look at under-representation but also look  
9 at over- representation. And look at, you know, from  
10 a theoretical perspective, why certain races and  
11 categories are on there and others aren't. And why we  
12 call them what we call them.

13 CHAIRMAN REYNOLDS: Okay. I would like to  
14 hear from Vice Chair Thernstrom.

15 COMMISSIONER BRACERAS: Oh, definitely.

16 CHAIRMAN REYNOLDS: I know that she has  
17 some view on this topic. But during the meantime, any  
18 other comments on that particular one or --

19 COMMISSIONER TAYLOR: Yes. I just want to  
20 grow with the first thought that I think we should, at  
21 least as best we can, try to have a diverse portfolio  
22 of issues. And to the extent we can collapse some of  
23 these, I think we should do so.

24 CHAIRMAN REYNOLDS: Okay. Commissioner  
25 Yaki?

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1                   COMMISSIONER YAKI:    Yes, I would second  
2 Commissioner Braceras' motion -- not that motion but  
3 suggestion that we diversify our portfolio.  I think  
4 the census is one of the most important acts that the  
5 United States government does.  And I think that our  
6 input on that would be important.

7                   I'm not sure if I would at this point -- I  
8 guess because -- to try and fine tune what exactly  
9 this says, I think that actually the process that we  
10 just adopted allows us to do that kind of fine tuning.

11                  But I understand what it is you are saying.

12                  I don't know if I would say over  
13 representation.  I think that that has loaded terms to  
14 it.  I would rather talk about -- more about just the  
15 categorization of racial and ethnic categorizations  
16 and then just sort of leave it at that --

17                  COMMISSIONER BRACERAS:  Yes.

18                  COMMISSIONER YAKI:  -- in terms of how the  
19 analysis goes forward at least for the purposes of  
20 today.  And then, of course, through the project  
21 planning process that we adopted, we can do the fine  
22 tuning --

23                  COMMISSIONER BRACERAS:  Yes.

24                  COMMISSIONER YAKI:  -- on the methodology  
25 as we go forward.  But I would say that yes, we need a

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1 diverse portfolio.

2 COMMISSIONER BRACERAS: Yes, maybe even  
3 some sort of title or concept that would basically  
4 encompass the notion that we want to look at the  
5 accuracy of this. And it can be inaccurate both in  
6 the sense that it's not recording all of the people  
7 that should be recorded. And in the sense that maybe  
8 the categories are too blunt or in some cases, you  
9 know, too sharp.

10 COMMISSIONER YAKI: Right. I just know  
11 that from the Asian American point of view, that our  
12 community fought a long time to try and get it broken  
13 down so we just weren't Asian American --

14 COMMISSIONER BRACERAS: Right.

15 COMMISSIONER YAKI: -- because when you  
16 disaggregate the data, you find that for the Southeast  
17 Asian population, poverty rates are much different  
18 than those for the Japanese-Americans, than for the  
19 Filipino-American, et cetera, et cetera.

20 And that has an impact on how Title VI  
21 applies and what kind of access to programs --

22 COMMISSIONER BRACERAS: Right.

23 COMMISSIONER YAKI: -- we provide. So I  
24 think that -- though I agree with what you're saying,  
25 I think that -- but I agree with your broader

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1 sentiment which is have a diverse portfolio.

2 So, Mr. Chair, just for the purposes of  
3 the structure of this discussion, should we focus on  
4 one like OGC? I guess since we opened up OGC, should  
5 we just focus on OGC right now and then do OCRE later?

6 CHAIRMAN REYNOLDS: Yes.

7 COMMISSIONER YAKI: Okay. Because aside  
8 from that, I'm content with the `06-'07 suggestions  
9 with the `06 one being the census one moved by  
10 Commissioner Braceras and the `07 being the  
11 desegregation examination.

12 CHAIRMAN REYNOLDS: Okay. Well, it looks  
13 like we have a consensus but before --

14 COMMISSIONER BRACERAS: Can I just  
15 summarize my thoughts quickly for Abi?

16 CHAIRMAN REYNOLDS: Yes.

17 COMMISSIONER BRACERAS: Abi, we're talking  
18 about the OGC projects. And there we have a choice  
19 between assuming we're going to do elementary and  
20 secondary school desegregation, there's then a choice  
21 between the magnet school topic and the census topic.

22 And my view, which I think some other  
23 Commissioners share, is that if we're already doing  
24 one education project, it might be nice to diversity  
25 the portfolio and do the census topic instead of the

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1 magnet school project. However, I wanted to expand  
2 the scope of the census project to look at the  
3 categorization used by the census and whether they  
4 make sense.

5 (Laughter.)

6 COMMISSIONER YAKI: I'm sorry.

7 COMMISSIONER BRACERAS: Did I miss  
8 something?

9 COMMISSIONER KIRSANOW: Mr. Yaki is  
10 telling jokes, that's all.

11 CHAIRMAN REYNOLDS: Let's pause a moment  
12 here. I wasn't here, you know, two years ago. But  
13 the idea of people telling jokes during the --

14 (Laughter.)

15 CHAIRMAN REYNOLDS: -- Committee meeting -  
16 -

17 (Laughter.)

18 CHAIRMAN REYNOLDS: -- we've made a lot of  
19 progress.

20 (Laughter.)

21 COMMISSIONER YAKI: But in full  
22 disclosure, Mr. Chair, it was not actually a joke. It  
23 was an observation that the two assistant-led  
24 Commissioners here are smelling the coffee, hearing  
25 the sound of the --

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1 (Laughter.)

2 VICE CHAIRMAN THERNSTROM: I just ordered  
3 coffee. And Ashley has just ordered a Coke. And if  
4 you want coffee, I'll just go down and get one for  
5 you.

6 COMMISSIONER YAKI: That's fine. I'm just  
7 teasing you.

8 VICE CHAIRMAN THERNSTROM: Jennifer, you  
9 were saying you want to expand it. I have got some  
10 problems with the census question.

11 COMMISSIONER BRACERAS: Well, I have some  
12 problems with the census question that way it is  
13 currently framed. But --

14 VICE CHAIRMAN THERNSTROM: Where are we?

15 CHAIRMAN REYNOLDS: You're book is  
16 different from mine.

17 VICE CHAIRMAN THERNSTROM: Let me get the  
18 relevant page here. Go on. Okay.

19 COMMISSIONER BRACERAS: Well, I have  
20 problems with the way it is currently phrased and the  
21 way it is currently outlined. But if we expanded the  
22 topics to look, like I said, not just at  
23 representation -- under representation but at the  
24 categories themselves and whether -- how accurate they  
25 are and the efficacy of using those particular

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1 categories, that, I think, might make an interesting  
2 project.

3 CHAIRMAN REYNOLDS: Vice CHAIRMAN  
4 Thernstrom?

5 VICE CHAIRMAN THERNSTROM: Okay. I am  
6 extremely interested in the topic that you just  
7 suggested, the irrationality of the categories and the  
8 history. I mean it is an insane history of how the  
9 categories have evolved.

10 The question of under representation,  
11 there is this enormous literature on it. The Census  
12 Bureau -- I mean a lot of scholars have put out  
13 reports. I just don't see how we're going to add  
14 anything to the existing very thorough discussion of  
15 that matter.

16 COMMISSIONER BRACERAS: I mean one  
17 possibility in terms of narrowing the scope might be  
18 to take one particularly community, you know for  
19 example the Hispanic community and look at -- do sort  
20 of a short literature view on under-representation  
21 issues in that community. And then talk about how  
22 that community is described on the census, what boxes  
23 people are allowed to check, whether that makes sense,  
24 the whole use of the term --

25 VICE CHAIRMAN THERNSTROM: Our use of the

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1 term racial and ethnic -- racial groups, ethnic  
2 groups.

3 COMMISSIONER BRACERAS: Right. And the  
4 whole racial categories -- categorization of the  
5 Hispanic community.

6 I mean that wouldn't give us as broad a  
7 perspective in terms of necessarily influencing the  
8 way things are done in the future. But it would be a  
9 discreet topic that if we just took one ethnic group  
10 and looked at both sides of that coin, that way I  
11 think it would be doable.

12 VICE CHAIRMAN THERNSTROM: Well, I think  
13 it might, in fact, have an impact on how things are  
14 done in the future since, as I say, the other question  
15 is, you know, has been mined and mined and mined, I  
16 mean it has been discussed ad nauseam.

17 So I mean we know what the debates are.  
18 We know what the problems are. It's a complicated  
19 issue, the whole counting, the estimations are  
20 complicated. The Census Bureau --

21 COMMISSIONER BRACERAS: But if there is a  
22 lot of stuff out there --

23 VICE CHAIRMAN THERNSTROM: -- tries to do  
24 a very careful job on this but I like the questions  
25 you asked.

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1                   COMMISSIONER BRACERAS: I mean maybe we  
2 could be useful if there is a lot of stuff out there  
3 in doing a thorough literature review and summarizing  
4 the data and the arguments on both sides of that.

5                   CHAIRMAN REYNOLDS: I believe that there  
6 is also value in not just -- well, yes, there is a  
7 mountain of data out there.

8                   VICE CHAIRMAN THERNSTROM: It's not only  
9 data but discussion of how that data is gathered, how  
10 it is analyzed, what the assumptions made.

11                   CHAIRMAN REYNOLDS: Would putting it in a  
12 package that could be disseminated for the public --

13                   VICE CHAIRMAN THERNSTROM: Well, it's  
14 already in packages to disseminate.

15                   CHAIRMAN REYNOLDS: So it's broken down  
16 for guys like me?

17                   VICE CHAIRMAN THERNSTROM: Oh, absolutely.

18                   COMMISSIONER BRACERAS: But in an unbiased  
19 way that includes the analyses by left-wing groups as  
20 well as conservative groups as well as, you know,  
21 moderate groups --

22                   VICE CHAIRMAN THERNSTROM: Yes, I can  
23 double check --

24                   COMMISSIONER BRACERAS: -- sort of lays it  
25 all out there.

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1                   VICE CHAIRMAN THERNSTROM:    -- on this.  
2                   But I believe we would be replicating work already  
3                   done.

4                   CHAIRMAN REYNOLDS:   Commissioner Kirsanow?

5                   COMMISSIONER       KIRSANOW:            I     think  
6                   Commissioner Thernstrom makes a good point in terms of  
7                   there being a lot of data.  I would say, though, that  
8                   that data is such that very often when the Commission  
9                   says something -- or any governmental agency makes a  
10                  determination or says something about a particular  
11                  matter, it has some currency to it that private groups  
12                  or private studies may not have.

13                  And with respect to this particular issue,  
14                  there is kind of toxic proliferation of rumor,  
15                  innuendo, urban legends related to the failure to  
16                  count individuals from certain ethnic groups.

17                  And although there may be a lot of data  
18                  suggesting that the census is relatively accurate and  
19                  there may not be the kind of under representation  
20                  that's alleged by many, this myth continues to  
21                  persist.     And it's being used for political  
22                  imperatives also that are not very helpful.

23                  So it may be helpful for the Commission to  
24                  go through a literature review and make a  
25                  pronouncement of some sort on this also because I will

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1 tell you that in my community, I mean in almost every  
2 other community, if you go to Cleveland and you are in  
3 urban Cleveland, my neighborhood is 99.99 percent  
4 black, every election cycle, you're going to have  
5 politicians talking about the fact that, you know, we  
6 need to have a certain group in there to make sure  
7 that you are counted because you're not going to be  
8 counted. And because you're not counted, we're not  
9 getting money. And all this other stuff.

10 And it's out there. And I tell you it is  
11 very powerful. No one here has looked at what you're  
12 talking about. I think -- I don't know if that can be  
13 --

14 VICE CHAIRMAN THERNSTROM: And the whole  
15 process of statistical adjustment that the census  
16 makes and what assumptions go into that process of  
17 adjustment and so forth -- okay, I mean I'm not  
18 opposed.

19 I am personally, because of the volume of  
20 literature on that question, personally more  
21 interested in what -- in the question Jennifer raises  
22 which is absolutely fundamental of the categorization  
23 on the census which, of course, have changed over  
24 time.

25 COMMISSIONER BRACERAS: I don't know if we

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1 need a motion to amend the projects before we vote on  
2 whether to do it or not. But --

3 VICE CHAIRMAN THERNSTROM: Do we need a  
4 motion? I'm sorry. I am not sick. This is a  
5 leftover cough from being sick.

6 COMMISSIONER KIRSANOW: I don't know what  
7 -- I think Commissioner Yaki made a good point --

8 VICE CHAIRMAN THERNSTROM: I'm not  
9 infecting the entire room. I'm just hacking away  
10 here.

11 COMMISSIONER KIRSANOW: -- I don't know  
12 that the title necessarily needs to be amended at this  
13 particular point because thanks to the great work of  
14 the working group on reform, we've got a number of  
15 opportunities to tweak things as we go forward.

16 VICE CHAIRMAN THERNSTROM: Right. So this  
17 constitutes a message to the staff --

18 COMMISSIONER KIRSANOW: Yes.

19 VICE CHAIRMAN THERNSTROM: -- as to how we  
20 envision that project.

21 COMMISSIONER BRACERAS: Right. And they  
22 could come forward with, you know, I don't know if it  
23 is manageable. But if it is manageable, then they can  
24 lay out for us what a subset of data that they could  
25 handle might look like.

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1           VICE CHAIRMAN THERNSTROM: I suspect there  
2 is a good Congressional Research Service report on  
3 statistical adjustments and so forth.

4           COMMISSIONER YAKI: And I think there is a  
5 GAO report on it as well.

6           VICE CHAIRMAN THERNSTROM: And a GAO  
7 report on it as well, right.

8           COMMISSIONER TAYLOR: The one thing I  
9 would say is that what I hope we -- I think we can all  
10 remember is that we are supposed to have a distinct  
11 voice in the chorus. So that even if this issue or  
12 any issue may have been addressed by a variety of  
13 folks, Congress and otherwise, that we are supposed to  
14 be independent.

15           And if we think it is an issue that is  
16 important in terms of driving the public debate or I  
17 know what you mean. In Richmond, the Richmond Free  
18 Press is the urban free paper. And I see it all the  
19 time. Your vote is not being counted. They're  
20 ignoring you message.

21           And in my mind, at least, the United  
22 States Commission on Civil Rights has a distinct  
23 voice. And if it is important, we need to go on  
24 record despite what anybody else may say.

25           That's my general thought about any topic

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1 by the way.

2 VICE CHAIRMAN THERNSTROM: No, I  
3 understand that. I just -- the under-representation  
4 question is a very complicated statistical issue. But  
5 I'm fine with just leaving it as is. And with the  
6 assumption that this discussion constitutes a message  
7 to the staff that the topic has been expanded to  
8 include the -- I think I'll keep this. I like it.  
9 The discussion has been expanded to include the  
10 concerns about the categories and the structure of the  
11 census questions that Commissioner Bracer raised.

12 COMMISSIONER TAYLOR: May I add one point?

13 VICE CHAIRMAN THERNSTROM: Yes.

14 COMMISSIONER TAYLOR: One additional  
15 point. I think this also may be a good opportunity  
16 for us to discuss the role of government, the point of  
17 the census, self-identification versus identification  
18 by the public. I understand that the census is used  
19 to dole out certain government benefits, identify  
20 groups or individuals that may need access to X, Y,  
21 and Z.

22 But then as an individual is filling out  
23 the form, I'd like a discussion as to, you know, what  
24 we're asking people, those categories that  
25 Commissioner Yaki described, why they're important.

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1           And there is a -- I say this because my  
2 kid is a multiracial. So it's -- and we have this  
3 debate in our home all the time. You know, what's  
4 important?           Self     identification?           Public  
5 identification?     In terms in government benefits  
6 particularly, what's important?

7           CHAIRMAN REYNOLDS: Well, I find it --

8           COMMISSIONER TAYLOR:        So that's a  
9 discussion I think we should put on the table at some  
10 point.

11          VICE CHAIRMAN THERNSTROM: Well, that's  
12 right. And that, it seems to me, is part Commissioner  
13 Braceras' concern. And, by the way, the counting, of  
14 course, is important after every census. Well, of  
15 course after ever census. It is important for  
16 redistricting --

17          COMMISSIONER TAYLOR: That's right.

18          CHAIRMAN REYNOLDS:    -- purposes as well  
19 not only for benefits.

20          CHAIRMAN REYNOLDS: Well, I find -- well,  
21 as amended, I think that it is a wonderful project.  
22 And it's not just race and ethnicity as least as  
23 established by the Brazilian culture, at least in some  
24 points of the world also goes into the mix when it  
25 comes to, you know, which box you check.

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1           We've taken a different approach here in  
2 the United States but I think that looking at how  
3 other societies look at race would be informative.

4           Okay. Have we settled on anything? I  
5 stepped out of the room. Have we worked out the  
6 issues?

7           COMMISSIONER YAKI: You are now Vice  
8 Chair.

9           (Laughter.)

10          CHAIRMAN REYNOLDS: Here you go, Abi.  
11 I've been demoted so -- you know I stepped out of the  
12 room so I just wanted to get up to speed on the  
13 progress we made with respect to --

14          VICE CHAIRMAN THERNSTROM: Well, we talked  
15 about you when you were out of the room.

16          CHAIRMAN REYNOLDS: Well, it's all true.  
17 It's all true. I did it and I'm responsible.

18          COMMISSIONER KIRSANOW: It appears to be  
19 the consensus is on the OGC projects to do elementary  
20 and secondary school desegregation and minority  
21 representation in the census as amended, altered,  
22 expanded.

23          CHAIRMAN REYNOLDS: And the first item,  
24 elementary and secondary school desegregation, that  
25 would be in `07?

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1 COMMISSIONER KIRSANOW: Right.

2 COMMISSIONER BRACERAS: Correct.

3 CHAIRMAN REYNOLDS: We'll flip it?

4 COMMISSIONER KIRSANOW: Yes, right.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER KIRSANOW: Because it appears  
7 that we need to get something done with respect to the  
8 census now to have any kind of effect on the upcoming  
9 census.

10 CHAIRMAN REYNOLDS: Okay.

11 STAFF DIRECTOR MARCUS: It might be useful  
12 for clarity to have motions on what is being approved  
13 and clarity that, I believe, the Commissioners are  
14 dispensing with the previously-approved projects to  
15 the extent that they're not discussed today.

16 COMMISSIONER KIRSANOW: I think that makes  
17 good sense.

18 COMMISSIONER BRACERAS: Okay. So I move  
19 that OGC will take on minority representation in the  
20 census for an `06 project.

21 COMMISSIONER KIRSANOW: Second.

22 CHAIRMAN REYNOLDS: Okay. We've had the  
23 discussion. Unless there are some additional  
24 comments, all in favor?

25 (Chorus of ayes.)

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1 CHAIRMAN REYNOLDS: All in opposition?

2 (No response.)

3 CHAIRMAN REYNOLDS: The motion passes.

4 COMMISSIONER BRACERAS: And I move that  
5 OGC take on elementary and secondary school  
6 desegregation as a 2007 project.

7 COMMISSIONER KIRSANOW: Second.

8 CHAIRMAN REYNOLDS: All in favor?

9 (Chorus of ayes.)

10 CHAIRMAN REYNOLDS: All in opposition?

11 (No response.)

12 CHAIRMAN REYNOLDS: The motion passes.

13 But for clarity, for clarity I just want  
14 to make sure that -- well, I just want it to be on the  
15 record that the other projects that were on the OGC  
16 list, we are not going to move forward with these  
17 projects. We're just going to do the two projects  
18 that were just voted upon.

19 STAFF DIRECTOR MARCUS: I would recommend  
20 a motion on that just so that the staff will know that  
21 they are no longer required to do for `06 -- or `05  
22 any other projects that had been previously agreed to  
23 by the Commission.

24 VICE CHAIRMAN THERNSTROM: I so move.

25 COMMISSIONER KIRSANOW: I second.

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1 CHAIRMAN REYNOLDS: Discussion?

2 (No response.)

3 CHAIRMAN REYNOLDS: All in favor?

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: All in opposition?

6 (No response.)

7 CHAIRMAN REYNOLDS: The motion passes --  
8 well, is there a question about what we're voting on?

9 VICE CHAIRMAN THERNSTROM: No.

10 CHAIRMAN REYNOLDS: Okay. So the motion  
11 passes.

12 VICE CHAIRMAN THERNSTROM: Yes. But I do  
13 have a question. This does not -- I'm sorry,  
14 Jennifer, go ahead.

15 COMMISSIONER BRACERAS: Oh, I just wanted  
16 to make sure because Ken had mentioned in his memo  
17 that some of these could nevertheless be done as  
18 briefings.

19 VICE CHAIRMAN THERNSTROM: I was going to  
20 make the same point.

21 COMMISSIONER BRACERAS: And we have, I  
22 guess, four topics on our agenda to discuss as future  
23 briefings. But some of the ones that are not on the  
24 agenda that are listed here might make very  
25 interesting briefings.

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1 VICE CHAIRMAN THERNSTROM: Right.

2 COMMISSIONER BRACERAS: I don't know how  
3 you want to take that up.

4 VICE CHAIRMAN THERNSTROM: Yes, no that  
5 was exactly the point I was about to make. That I  
6 think we should keep them in mind as topics for  
7 briefings.

8 CHAIRMAN REYNOLDS: I don't think there is  
9 anything -- we haven't done anything today that would  
10 prevent us from picking one of these topics.

11 COMMISSIONER BRACERAS: Okay. So when we  
12 get to the second on the agenda where we discuss  
13 briefings, then we can feel free to resurrect some of  
14 these topics.

15 CHAIRMAN REYNOLDS: Yes.

16 COMMISSIONER BRACERAS: Okay.

17 VICE CHAIRMAN THERNSTROM: But in  
18 addition, as we go along and really turn this  
19 Commission from its preoccupation with budgetary  
20 issues to a preoccupations with the substantive  
21 issues, we can add briefings that come off this list  
22 because every single one of these topics is  
23 interesting. And I don't think all the briefings have  
24 to be decided today.

25 CHAIRMAN REYNOLDS: Okay. At that point,

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1 OCRE projects. Ken, you want to walk us through?

2 STAFF DIRECTOR MARCUS: Yes. I believe  
3 that it is the consensus of the Commission that we  
4 should continue on the work on Adarand as re-approved  
5 last month. And, in addition, for 2005 to do the  
6 project on minority employment and the wealth gap.  
7 But to dispense with any other projects previously  
8 approved for 2005. That might be an appropriate  
9 motion as well for now.

10 COMMISSIONER YAKI: So moved.

11 COMMISSIONER BRACERAS: Second.

12 CHAIRMAN REYNOLDS: I'm sorry. I was --

13 VICE CHAIRMAN THERNSTROM: I am sorry.  
14 Two people here were not listening.

15 COMMISSIONER YAKI: This struggle for  
16 power is unbecoming.

17 (Laughter.)

18 STAFF DIRECTOR MARCUS: There has been a  
19 motion and a second to continue 2005 OCRE work on  
20 Adarand and on minority employment and the wealth gap.

21 But otherwise to discontinue work on any other 2005  
22 OCRE projects for 2005.

23 CHAIRMAN REYNOLDS: Okay.

24 VICE CHAIRMAN THERNSTROM: Okay.

25 CHAIRMAN REYNOLDS: Let me get this

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1 straight. Okay. While we were chatting over here,  
2 did we have discussions?

3 COMMISSIONER BRACERAS: No.

4 CHAIRMAN REYNOLDS: Are we ready to vote?

5 COMMISSIONER BRACERAS: We did not have  
6 discussion.

7 CHAIRMAN REYNOLDS: Okay.

8 COMMISSIONER BRACERAS: You were about to  
9 --

10 STAFF DIRECTOR MARCUS: Oh, the Director  
11 of OCRE has pointed out that one of the  
12 previously-approved projects for OCRE for 2005 is  
13 federal funding for federal civil rights enforcement  
14 which was ranked No. 7 of the projects.

15 VICE CHAIRMAN THERNSTROM: Well, I mean we  
16 have got three topics at the very top here of the list  
17 that are -- the support for which was dramatically  
18 different than that for any of the other topics. And  
19 I think that there is really a clear -- as a  
20 consequence, a clear and bright line here.

21 COMMISSIONER KIRSANOW: With respect to  
22 the ongoing work, how much ongoing work has there  
23 been?

24 STAFF DIRECTOR MARCUS: There has been a  
25 substantial amount of ongoing work on minority

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1 employment and the wealth gap as well as on the  
2 funding report and Adarand. They are very --

3 VICE CHAIRMAN THERNSTROM: Well, but  
4 Adarand we're continuing with.

5 STAFF DIRECTOR MARCUS: That's right. The  
6 others are very far advanced in terms of the research,  
7 analysis, and even the rough drafting.

8 COMMISSIONER BRACERAS: I'm sorry. Which  
9 ones? Adarand?

10 STAFF DIRECTOR MARCUS: Adarand, funding  
11 federal civil rights enforcement for 2006, and  
12 minority employment and the wealth gap.

13 VICE CHAIRMAN THERNSTROM: Well, but the  
14 minority employment and the wealth gap is not at issue  
15 in that it's the second on the list. What is at issue  
16 is the --

17 COMMISSIONER BRACERAS: Funding.

18 VICE CHAIRMAN THERNSTROM: -- funding of  
19 federal civil rights enforcement.

20 STAFF DIRECTOR MARCUS: That's right.  
21 Funding federal civil rights enforcement was  
22 relatively low on the list of priorities. It is  
23 something that is fairly advanced in terms of work  
24 that was done.

25 COMMISSIONER KIRSANOW: I guess obviously

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1 I would prefer the reauthorization of the Voting  
2 Rights Act, something I'm very interested in. But I'm  
3 also very concerned that we spend or have spent time,  
4 effort, resources, on something that I guess we are  
5 going to be abandoning it wholesale?

6 STAFF DIRECTOR MARCUS: If that is the  
7 vote, then we would be abandoning it. Now if the  
8 Commissioners want to continue on it, I believe that  
9 it could be completed probably consistent with being  
10 able to complete the other projects that we have  
11 discussed today. However, it would take some time  
12 away from -- I suppose it might mean that the start of  
13 one of the projects is delayed a little bit. Most of  
14 the staff- level work on funding has been done.

15 COMMISSIONER BRACERAS: I guess with  
16 respect to the merits of the funding topic, first of  
17 all I'm not sure that the Commission's value added is  
18 that great on this topic. In other words, I'm not  
19 sure that -- it seems to me that there are other  
20 organizations out there that collect this information.  
21 Maybe I'm wrong. But that it is available to the  
22 public in other ways.

23 And secondly, I would say that the premise  
24 of the topic is one with which I have had some  
25 trouble. And that is that there's always going to be

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1 a sense that there is not enough money and that civil  
2 rights enforcement is underfunded. And so I'm not  
3 sure on a yearly basis what we're contributing to the  
4 discussion on civil rights.

5 I think some of these other topics we can  
6 contribute more in terms of the debate on civil rights  
7 instead of just beating the same drum that there is  
8 not enough money, there needs to be more money.

9 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

10 VICE CHAIRMAN THERNSTROM: There is  
11 another point here. We don't actually know how long  
12 it would take to finish this project because it has  
13 not gone through the stages that we have outlined for  
14 future projects. So there hasn't been the kind of  
15 input at each stage in drafting this report.

16 And, indeed, it may turn out that a  
17 certain number of Commissioners, perhaps the majority  
18 of Commissioners, have problems with the report such  
19 that you really are talking about a great deal more  
20 work and a great deal of time that will eat into the  
21 projects that have gotten 18 points, 17 points, 17  
22 points, when we're talking here about a project that  
23 got only five points.

24 COMMISSIONER BRACERAS: Right. And part  
25 of my problem in the past with these funding reports

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1 has been that they look pretty much at one criteria,  
2 which is money, without looking at the effectiveness  
3 of civil rights enforcement programs. And so the  
4 conclusions they draw are not necessarily complete or  
5 accurate.

6 And, therefore, on the merits, at least as  
7 currently conceptualized and using the template that  
8 has been used in the past, I would be against going  
9 forward with the funding project.

10 CHAIRMAN REYNOLDS: Is there any support  
11 for the funding project? Mr. Yaki?

12 COMMISSIONER YAKI: Yes. How were the  
13 points? I'm trying to remember how the points were  
14 scored. It's five for our first choice and what --  
15 four --

16 STAFF DIRECTOR MARCUS: Four for a second,  
17 three for our third, two for the fourth --

18 COMMISSIONER YAKI: Okay.

19 STAFF DIRECTOR MARCUS: -- and one for our  
20 fifth.

21 COMMISSIONER YAKI: I was just trying to  
22 remember if all the five points were from me or not.

23 (Laughter.)

24 COMMISSIONER YAKI: And it's not actually  
25 a stupid question because the question is whether it

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1 was present on enough people's list at a one- or a  
2 two- point level that maybe the total number wasn't  
3 but the over -- you know there is an overweight on  
4 some of how the scoring goes. If three people did the  
5 Voting Rights Act, that would come out at 15. If two  
6 people didn't, and list something -- you see what I'm  
7 saying here?

8 VICE CHAIRMAN THERNSTROM: Yes.

9 COMMISSIONER BRACERAS: I think all of us  
10 had voting rights at some level.

11 COMMISSIONER YAKI: I think I have an  
12 issue that actually is different from -- I mean there  
13 are two issues. One, I think that there is a role for  
14 us to - - part of our mission historically has been to  
15 be the watchdog on federal government's efforts to  
16 deal with federal funding enforcement.

17 And to the extent that we sing the same  
18 tune each year that there isn't enough funding for  
19 civil rights enforcement, I don't see why necessarily  
20 that is a bad thing. I mean we sing the same tune  
21 every year ourselves that we don't have enough money  
22 to do the job that we would really like to do.

23 So hopefully, sooner or later, you know,  
24 someone listens to that song and puts it on their iPod  
25 or something like that, Number One.

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1           Number Two, and more importantly, is that  
2 to the extent that there is a substantial amount of  
3 time and effort that has been expended to this  
4 already, just from the tenure of some of the questions  
5 that I received in follow up from the subcommittee, I  
6 am loathe to sort of toss it to the side given their  
7 concern about how we allocate and spend our resources.

8           That's just my own point of view. I've  
9 been having difficulty answering some of these  
10 questions without going haywire as you can probably  
11 imagine. But I don't necessarily want to be in the  
12 position of saying that the Commission abandoned a  
13 substantial amount of time, effort, and person power  
14 into doing something at this point in time.

15           And I would say that in terms of what I do  
16 not like on the OCRE schedule, I think that quite  
17 frankly the - - I don't know if it is a lesson but the  
18 experience that this Commission went through on  
19 Florida may make us be a little more cautious in  
20 wading into the gubernatorial election, especially two  
21 years out, on Washington.

22           And I would, if it can be done, like to  
23 see the federal funding for some substitute of that  
24 one at least. And maybe, you know, maybe it is done  
25 in a way that's not perspective. Maybe it's

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1 retrospective.

2 This report, maybe it comes out in `06  
3 rather than `05. So maybe it's a -- it may be a day  
4 late and a dollar short but it's still a good  
5 historical and analytical document about what funding  
6 has been for federal civil rights enforcement in this  
7 country.

8 And, again, to reiterate, maybe it is a  
9 song that has been played before but it's a song, I  
10 think, that needs to continue to be played.

11 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

12 COMMISSIONER KIRSANOW: Yes. The reason I  
13 raised the issue with respect to the funding of  
14 federal civil rights enforcement is similar to what  
15 Commissioner Yaki just mentioned and that is I can  
16 just see a year from now or two years from now or  
17 whenever Congress or GAO saying the Commission had  
18 done the work on a particular project, expended  
19 resources, time, and energy on it. And then just  
20 threw it under the bus.

21 Now that doesn't mean that, you know, we  
22 necessarily blindly go forth on every single project.

23 We can revisit certain things. But I think there is  
24 a certain utility to utilizing whatever data we have  
25 collected if we can.

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1                   And I'm wondering -- and I raise that  
2 because I'm wondering if maybe Terri Dickerson can  
3 tell us if there is any utility -- if there is  
4 anything that can be given to the Commission? It  
5 doesn't have to be a report.

6                   But if there has been data collected to  
7 this point, or if there have been certain conclusions  
8 reached -- I'm not sure where it is, is there  
9 something useful that can be provided to the  
10 Commission at this point so it's not as if we've just  
11 gone down this path and then abandoned it.

12                   CHAIRMAN REYNOLDS: Well, at this point,  
13 Ms. Dickerson, would you please grab a microphone?

14                   MS. DICKERSON: Thank you. We issued  
15 interrogatories on this project in October. And  
16 someone has worked to not only collect the data but to  
17 make the changes that I believe former Commissioner  
18 Redenbaugh asked us to make last year which was to  
19 address output and outcome measures as a function of -  
20 - to talk about the budget in the context of what the  
21 GPRA measures were and how the agencies were measuring  
22 their effectiveness and efficiency given the budget  
23 that they were supplied by Congress.

24                   So in addition to the President's request,  
25 it also looks at what Congress appropriated all in the

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1 context of what the agency's strategic plan is.

2 CHAIRMAN REYNOLDS: Ms. Dickerson, could  
3 you give us a sense of how much time has been spent on  
4 this?

5 MS. DICKERSON: This report was to come to  
6 you, I believe, at this meeting. We are -- just  
7 because of a couple of interrogatories that came in  
8 late, we were running a little bit late. But I'm  
9 believing this report -- I've already seen two drafts  
10 of it. And I'm believing this report would be  
11 forwarded to the Staff Director next week.

12 COMMISSIONER KIRSANOW: Okay. At this  
13 point, I think we should -- we need to go forward on  
14 this.

15 COMMISSIONER BRACERAS: Can I make a --

16 CHAIRMAN REYNOLDS: Well, I guess my two  
17 cents is that whenever there is a changing of the  
18 guard, there's the possibility and probability that  
19 there will be a different focus. And so agendas being  
20 changed, projects being modified, and dropped, that is  
21 -- that can't be avoided in my view.

22 As drafted, I have some concerns about the  
23 value. I mean it rests upon a presumption that  
24 increased expenditures equals improved enforcement  
25 activities. And I don't think that that link has been

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1 demonstrated.

2 COMMISSIONER KIRSANOW: Mr. Chairman, I'm  
3 not sure that that's -- we had this issue in the past  
4 where Commissioner Redenbaugh addressed, you know, the  
5 whole issue of inputs versus outputs. And I think his  
6 recommendations will be very salutary in this report.

7 I haven't seen the report. I don't know what it is  
8 going to say. But I think -- I know that OCRE worked  
9 with Commissioner Redenbaugh on this type of issue  
10 before with good result.

11 And second is we're very close -- and,  
12 again, I probably would not have voted for this  
13 particular project if we had come to this point a year  
14 ago. But since we are at this point now, I'm not sure  
15 it is a good use of Commission resources to abandon it  
16 when we're so close to the finish line.

17 And number three is I agree with you  
18 entirely that very often there is a change in focus  
19 whenever there is a changing of the guard. And we  
20 shouldn't have these kinds of considerations  
21 necessarily.

22 But in know that in a couple of other  
23 issues in this last year when the Commission decided  
24 to go in a different direction, there were howls and  
25 screams that, you know, the Commission was being

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1 hijacked. And I think if we abandon a project when we  
2 are, you know, at the three yard line, people will  
3 suggest that we are trying to, you know, kind of shove  
4 things under the rug so they don't see the light of  
5 day.

6 CHAIRMAN REYNOLDS: Well, if there is  
7 sufficient support for the project in its current  
8 form, then by all means, we vote on it. But at this  
9 point, I don't --

10 COMMISSIONER BRACERAS: Can I make a  
11 suggestion?

12 CHAIRMAN REYNOLDS: Yes, Commissioner  
13 Braceras?

14 COMMISSIONER BRACERAS: First of all, I  
15 hadn't realized that Russell's suggestions -- I knew  
16 they had been incorporated earlier. I didn't know  
17 that you were going to continue to use his model.

18 I guess part of my problem is I haven't  
19 seen the report or a template for it. And don't know  
20 exactly what questions have been asked. But given  
21 that the work is virtually complete and given that you  
22 say you look at the question of outputs as well as  
23 inputs, I guess I would reverse course on what I said  
24 before and be willing to support the project if we can  
25 take a look at what you have prepared.

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1           It's too late to go through the whole  
2 process that we just adopted. But if we could take it  
3 as a draft instead of a final draft and have an  
4 opportunity to make suggestions or changes --

5           CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

6           COMMISSIONER BRACERAS: -- and at least  
7 have some input into the conclusions, then I might be  
8 willing to go forward with this project. I think if  
9 it comes to us and we have to vote on it in an up or  
10 down fashion, I'm not sure I'm going to be able to  
11 support it. But --

12          CHAIRMAN REYNOLDS: So, would this come in  
13 as a Stage 3 draft report?

14          VICE CHAIRMAN THERNSTROM: Well, let me  
15 speak to that a second.

16          COMMISSIONER BRACERAS: Yes.

17          VICE CHAIRMAN THERNSTROM: I don't think  
18 that it can come in quite as a Stage 3 draft report.  
19 That is -- I'm also very sympathetic to what  
20 Commissioner Yaki has said. Well, what both  
21 Commissions Kirsanow and Braceras has said.

22                 I don't think it can quite come in as a  
23 Stage 3 draft report given the fact that we have had -  
24 - we have not had any look at it before. If it comes  
25 in as a draft -- and I think it should come in as a

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1 draft given how much work they have done -- there  
2 should be an understanding that we can raise even at  
3 this point the questions that in the future we will be  
4 raising at Stages 1 and 2.

5 That is we can look at the draft and raise  
6 some fundamental issues about the questions that have  
7 been asked, the way the issue has been framed, and so  
8 forth. In the future, by Stage 3, we will have been  
9 asked all of those inquiries.

10 So I would support, given how much work  
11 you've done on it, I would support your bringing it to  
12 us as a draft with the understanding that we are not  
13 really at Stage 3 as it is contemplated for the  
14 future.

15 COMMISSIONER KIRSANOW: My presumption is  
16 this is not detracting from being able to perform any  
17 work on reauthorization of Voting Rights Act or  
18 anything else that we may approve here.

19 VICE CHAIRMAN THERNSTROM: Well, it may.  
20 It depends.

21 CHAIRMAN REYNOLDS: Well -- right, right.

22 VICE CHAIRMAN THERNSTROM: It may.

23 CHAIRMAN REYNOLDS: But we don't know at  
24 this point.

25 COMMISSIONER KIRSANOW: Well, yes. Maybe

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1 it is a question we can pose to Ms. Dickerson.

2 VICE CHAIRMAN THERNSTROM: Well, she can't  
3 answer it without us having looked at this to say what  
4 our problems are.

5 CHAIRMAN REYNOLDS: Well, how about this?  
6 Why don't we, once the draft is completed, just  
7 distribute the draft and get it on the agenda so we  
8 can see how much work will be involved in -- pardon me  
9 -- we need to see how much work would be involved and  
10 what shape it is in, whether it reflects a document  
11 that this Commission wants to move forward with.

12 So I don't know if we need --

13 VICE CHAIRMAN THERNSTROM: And what the  
14 competing considerations are in terms of other  
15 projects --

16 CHAIRMAN REYNOLDS: Time and resources,  
17 yes.

18 VICE CHAIRMAN THERNSTROM: -- and so  
19 forth. But I think given how much work we've done  
20 now, we cannot turn our back on your staff and simply  
21 drop it.

22 CHAIRMAN REYNOLDS: Commissioner Taylor?

23 COMMISSIONER TAYLOR: Any expectation as  
24 to when you will be able to circulate a draft?

25 MS. DICKERSON: My plan is to give the

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1 draft -- but it would be the first draft -- to the  
2 Staff Director next week. And, of course, there may  
3 be things that he wants us to do with that draft.

4 COMMISSIONER TAYLOR: May I?

5 MS. DICKERSON: Sure.

6 COMMISSIONER TAYLOR: Under our recently  
7 adopted Stage 3, just so I understand the process  
8 because we're trying to plug it in here at Stage 3,  
9 what would normally happen? I know we would have four  
10 weeks to review it once we've been provided a draft  
11 copy. But would it normally go from you to the Staff  
12 Director? It is the normal vetting process?

13 COMMISSIONER YAKI: Actually under the new  
14 rules, it says the first draft goes to us --

15 COMMISSIONER TAYLOR: See, that's what I  
16 thought.

17 COMMISSIONER YAKI: -- pending --

18 COMMISSIONER TAYLOR: That's why I was  
19 asking --

20 COMMISSIONER YAKI: -- the editorial --

21 COMMISSIONER TAYLOR: -- the question.  
22 That sounded different than the proposed rule or the  
23 rule we just adopted.

24 COMMISSIONER YAKI: Right.

25 STAFF DIRECTOR MARCUS: Well, I believe

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1 they all go to the Staff Director.

2 COMMISSIONER BRACERAS: Yes.

3 STAFF DIRECTOR MARCUS: Each draft goes  
4 first to the Staff Director and then to the  
5 Commissioners --

6 COMMISSIONER BRACERAS: Right.

7 STAFF DIRECTOR MARCUS: -- after Staff  
8 Director comments are incorporated.

9 COMMISSIONER TAYLOR: Okay. I'm asking  
10 this series of questions because I think it's  
11 important that we follow through-- we're too far down  
12 this road.

13 COMMISSIONER BRACERAS: Yes.

14 COMMISSIONER TAYLOR: I think it should be  
15 incumbent upon us -- we've given ourselves four weeks  
16 here in our recently-adopted rule. I think we should  
17 put pressure on ourselves to turn this around in two  
18 weeks if necessary once it is circulated among the  
19 Commissioners so that if at all possible, we can  
20 address this issue at the next meeting. I don't think  
21 it is something we should put off and rely on our four  
22 weeks that we've given ourselves here. So that's my  
23 recommendation.

24 COMMISSIONER KIRSANOW: Keep in mind also  
25 that this, to my recollection, is the only report that

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1 we voted on eight-zip to approve back last year.

2 VICE CHAIRMAN THERNSTROM: Terri, how long  
3 is this report likely to be?

4 MS. DICKERSON: I think it is about 60  
5 pages long.

6 VICE CHAIRMAN THERNSTROM: So the two  
7 weeks is manageable.

8 COMMISSIONER TAYLOR: Yes.

9 VICE CHAIRMAN THERNSTROM: I think we've  
10 got a plan of action here.

11 CHAIRMAN REYNOLDS: Okay. So do we need a  
12 motion?

13 VICE CHAIRMAN THERNSTROM: I don't -- do  
14 we need a motion? I mean this is a project approved a  
15 long time ago. It's now going to go forward --

16 CHAIRMAN REYNOLDS: Okay. So we voted --

17 VICE CHAIRMAN THERNSTROM: -- to the Staff  
18 Director.

19 CHAIRMAN REYNOLDS: -- it's been voted on  
20 in the past.

21 STAFF DIRECTOR MARCUS: Technically, I  
22 believe for `05 for OCRE, the projects we're talking  
23 about are Adarand, minority employment, and federal  
24 funding for `06. There are no other projects that  
25 were previously approved.

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1           And I think that the consensus of the  
2 Commissioners is that we go forward on those. So for  
3 `05 OCRE, I don't believe that we need a new motion or  
4 a new vote at this time.

5           CHAIRMAN REYNOLDS: Okay.

6           COMMISSIONER BRACERAS: So --

7           STAFF DIRECTOR MARCUS: We do need them  
8 for `06 and for `07 for OCRE.

9           CHAIRMAN REYNOLDS: Okay. What's next.

10          STAFF DIRECTOR MARCUS: Staff could  
11 certainly use guidance at this point for the projects  
12 that the Commissioners would like OCRE to undertake in  
13 2006. I believe that the consensus of the  
14 Commissioners is that for 2006, OCRE should do  
15 projects regarding a reauthorization of the Voting  
16 Rights Act and voter fraud in Washington State.

17          COMMISSIONER YAKI: Well, it's not a  
18 consensus.

19          VICE CHAIRMAN THERNSTROM: No, wait a  
20 minute. Wait a minute. How did we get to there?  
21 What happened to --

22          COMMISSIONER BRACERAS: We were talking  
23 about -- we're doing it by year.

24          VICE CHAIRMAN THERNSTROM: Oh, we're  
25 talking about by year, yes.

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1 COMMISSIONER BRACERAS: I would just jump  
2 in and second what Commissioner Yaki said before about  
3 the Washington State --

4 VICE CHAIRMAN THERNSTROM: Yes, me, too.

5 COMMISSIONER BRACERAS: -- topic. I don't  
6 think it will be timely. And it's too narrow.

7 CHAIRMAN REYNOLDS: Well, I think that  
8 recently we've had allegations of fraud. And I think  
9 there may be some value in trying to ferret out what  
10 that exactly means or should mean, what constitutes  
11 intimidation, what constitutes fraud.

12 So I do believe it would have value. And  
13 for me what happened in Washington State is not what  
14 is key for me. What is important, though, is to try  
15 to develop a common understanding in the 21st century  
16 of what voter fraud means, what voter intimidation  
17 means.

18 COMMISSIONER BRACERAS: Could that be done  
19 through a briefing?

20 CHAIRMAN REYNOLDS: Sure, sure.  
21 Commissioner Yaki?

22 COMMISSIONER YAKI: I was going to suggest  
23 that the difficulty, I think, with a full-blown report  
24 one is that it is two years out. Memories start to  
25 fade a little bit.

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1           Number two is that I think for it to be as  
2 fair as it could be, it would involve the kind of  
3 expenditure of resources that we don't have right now,  
4 namely going to Washington.

5           CHAIRMAN REYNOLDS:    Yes, that's a good  
6 point, right.

7           COMMISSIONER YAKI:    I think to have it  
8 here would subject the Commission to all sorts of  
9 scrutiny about who would be able to actually manage to  
10 attend.  And it is the voters in Washington who are  
11 the ones who were effected.

12           But if there was a question of what kinds  
13 of voter fraud and intimidation reports have existed  
14 in recent elections, including the State of  
15 Washington, I think that a briefing here or a hearing  
16 here would be sufficient.

17           There are enough scholars out there who  
18 have done and written about it that I just don't think  
19 as a project report it's a wise use of our resources.

20           CHAIRMAN REYNOLDS:  Vice Chair Thernstrom?

21           VICE CHAIRMAN THERNSTROM:  I'm in complete  
22 agreement with what Commissioner Yaki just said.  And  
23 look, this is an unfolding story.  By the time we get  
24 to it, the facts may be fairly clear and the effected  
25 parties in the State of Washington are certainly

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1 deeply engaged in the issue of what happened in that  
2 election.

3 I'm in agreement with having a hearing on  
4 it but I'm opposed to a report as well.

5 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

6 COMMISSIONER KIRSANOW: Yes, I think this  
7 is an extraordinarily important issue. It is one that  
8 has dominated two presidential elections. And has  
9 potentially undermined government -- or, I'm sorry,  
10 citizens' belief or confidence in the integrity of the  
11 electoral system.

12 VICE CHAIRMAN THERNSTROM: The larger --  
13 you're talking about the larger issue.

14 COMMISSIONER KIRSANOW: Yes, that being  
15 said -- and again I think it is an extraordinarily  
16 important issue, I'm not sure that we have the ability  
17 to address the issue in a credible fashion that moves  
18 the question forward or even answers a couple of  
19 questions.

20 Number two is that there is ongoing  
21 litigation in Washington and I believe in Milwaukee  
22 and in other locales related to this issue where I  
23 think the facts will be more definitively adduced. We  
24 could probably conduct a briefing -- I think we should  
25 conduct a briefing given the extraordinary importance

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1 of the issue here.

2 And I think as Commissioner Yaki and Vice  
3 Chair Thernstrom indicated there are people with a lot  
4 of resources who can address this before us in a  
5 briefing including the Civil Rights Division of the  
6 Department of Justice. We could probably get somebody  
7 to come here. They've got ongoing investigations on  
8 some of these things.

9 I think it deserves an airing but it is an  
10 airing that probably, if we're going to do it in a  
11 credible fashion, would consume our entire budgetary  
12 resources.

13 CHAIRMAN REYNOLDS: Okay. So there seems  
14 to be a majority of Commissioners who would either  
15 like to have a hearing on the issue or not address the  
16 issue at all.

17 CHAIRMAN REYNOLDS: And a hearing does not  
18 --

19 COMMISSIONER BRACERAS: Or a briefing.

20 VICE CHAIRMAN THERNSTROM: -- the question  
21 of a hearing --

22 COMMISSIONER BRACERAS: A briefing.

23 VICE CHAIRMAN THERNSTROM: -- does not  
24 need to be decided now.

25 CHAIRMAN REYNOLDS: Right.

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1 COMMISSIONER BRACERAS: But the  
2 distinctions are important.

3 VICE CHAIRMAN THERNSTROM: Briefing. And  
4 it doesn't have to be decided now. Let us see how  
5 this story unfolds.

6 CHAIRMAN REYNOLDS: Okay. So we have --  
7 have we --

8 COMMISSIONER BRACERAS: So we're voting on  
9 '06. We have the Voting Rights Act. That's one.

10 COMMISSIONER YAKI: Can we move up the  
11 HBCUs to '06? Or is that too much in addition to the  
12 Voting Rights Act? Because I know Commissioner  
13 Thernstrom was asking about -- wondering if that could  
14 be moved up.

15 COMMISSIONER BRACERAS: Yes.

16 VICE CHAIRMAN THERNSTROM: Yes, I would  
17 like that moved up to '06.

18 COMMISSIONER KIRSANOW: Just as a point of  
19 clarification, I think we had a discussion in a  
20 meeting either last month or the month before where we  
21 involved OCRE as to what their capabilities were. And  
22 I'm not sure that we're, at this point, if we approve  
23 another topic, whether they can do that. I'm just  
24 asking. I mean --

25 CHAIRMAN REYNOLDS: Well, let's establish

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1 a preference. And then ask --

2 COMMISSIONER KIRSANOW: Okay.

3 CHAIRMAN REYNOLDS: -- staff whether they  
4 have the capacity to do it.

5 COMMISSIONER KIRSANOW: Right.

6 VICE CHAIRMAN THERNSTROM: Is it my  
7 understanding --

8 STAFF DIRECTOR MARCUS: I mean given  
9 projected staffing, it's our understanding that OCRE  
10 can do two major projects in 2006.

11 CHAIRMAN REYNOLDS: That is my  
12 understanding. But we'll circle around just to  
13 confirm.

14 COMMISSIONER BRACERAS: The Staff Director  
15 was explaining the feasibility of going forward with  
16 the HBC project.

17 STAFF DIRECTOR MARCUS: What I indicated  
18 is that given the projected staffing for next year, we  
19 anticipate that OCRE should be able to do two major  
20 projects during the course of the year.

21 VICE CHAIRMAN THERNSTROM: And the first  
22 one will be the re-authorization of the Voting Rights  
23 Act.

24 COMMISSIONER BRACERAS: There seems to be  
25 a consensus for that.

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1 CHAIRMAN REYNOLDS: Yes, I think so.

2 VICE CHAIRMAN THERNSTROM: Yes. Okay. So  
3 we've got another project they can possibly do.

4 COMMISSIONER YAKI: And I would move the  
5 effectiveness of the HBCUs second.

6 VICE CHAIRMAN THERNSTROM: And I second  
7 that.

8 CHAIRMAN REYNOLDS: Okay. Any comments?  
9 Any discussion?

10 STAFF DIRECTOR MARCUS: If I may, I would  
11 suggest that either as part of this motion or a  
12 subsequent we indicate that staff is not directed to  
13 do work on other projects previously approved for  
14 2006.

15 COMMISSIONER BRACERAS: So moved.

16 VICE CHAIRMAN THERNSTROM: Second.

17 COMMISSIONER YAKI: I'll take that  
18 amendment.

19 CHAIRMAN REYNOLDS: Okay. All in favor?

20 (Chorus of ayes.)

21 CHAIRMAN REYNOLDS: All against?

22 (No response.)

23 CHAIRMAN REYNOLDS: Motion passes.

24 CHAIRMAN REYNOLDS: Okay. Effectiveness  
25 of HBCUs.

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1 VICE CHAIRMAN THERNSTROM: That's the  
2 second one.

3 CHAIRMAN REYNOLDS: I'm sorry?

4 VICE CHAIRMAN THERNSTROM: That's the  
5 second one for `06.

6 CHAIRMAN REYNOLDS: Right. Okay. All  
7 right. Moving right along. Okay. So we have `05 and  
8 `06 done for OCRE. And `07 we have the Adarand  
9 Project.

10 VICE CHAIRMAN THERNSTROM: No.

11 STAFF DIRECTOR MARCUS: I'm sorry, if I  
12 may, the other federal contracting project. Not  
13 Adarand.

14 VICE CHAIRMAN THERNSTROM: Adarand is `05.

15 STAFF DIRECTOR MARCUS: But the question  
16 of disparity studies as evidence of discrimination in  
17 federal contracting.

18 CHAIRMAN REYNOLDS: Okay. Okay. Okay.  
19 So that's one topic for `07. Any discussion about  
20 another project for `07?

21 Vice Chair Thernstrom?

22 VICE CHAIRMAN THERNSTROM: Well, I'm  
23 curious how the Patriot Act, which I thought  
24 Commissioner Yaki had a great interest in at least,  
25 ended up so far to the bottom.

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1 (Laughter.)

2 CHAIRMAN REYNOLDS: Well, there are a  
3 couple of ways to explain that.

4 (Laughter.)

5 COMMISSIONER YAKI: I think there is some  
6 voter intimidation going on.

7 (Laughter.)

8 CHAIRMAN REYNOLDS: I guess we need to do  
9 some work to define our terms.

10 VICE CHAIRMAN THERNSTROM: On its face --

11 COMMISSIONER YAKI: Polls closed early? I  
12 don't know.

13 VICE CHAIRMAN THERNSTROM: Wait a minute.

14 On its face, it is, it seems to me, a more important  
15 issue than some of the others that would seem to have  
16 priority.

17 COMMISSIONER YAKI: But, Commissioner  
18 Thernstrom, thank you for your kind comments. I think  
19 that I can't -- I don't think we can foresee sort of -  
20 - this was a much more timely topic than it was a  
21 future topic.

22 VICE CHAIRMAN THERNSTROM: Right, '07.

23 COMMISSIONER YAKI: So I think in '07, I  
24 would --

25 VICE CHAIRMAN THERNSTROM: Yes, yes.

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1 COMMISSIONER YAKI: -- much rather that be  
2 a briefing --

3 VICE CHAIRMAN THERNSTROM: Okay. That's  
4 fine.

5 COMMISSIONER YAKI: -- in the near future.

6 VICE CHAIRMAN THERNSTROM: Okay.

7 COMMISSIONER YAKI: So I would withdraw  
8 that.

9 VICE CHAIRMAN THERNSTROM: That's fine.  
10 All right.

11 CHAIRMAN REYNOLDS: Any other  
12 recommendations for `07?

13 COMMISSIONER BRACERAS: I just have a  
14 question.

15 CHAIRMAN REYNOLDS: Yes?

16 COMMISSIONER BRACERAS: What is it exactly  
17 we're trying to achieve with the disparity studies  
18 topic? It wasn't one of my top ones and I'm just  
19 trying to understand the enthusiasm of others for it.

20 CHAIRMAN REYNOLDS: Well, the ability of  
21 the federal government depends on a certain factual  
22 predicate. And I guess there are a number of  
23 Commissioners that want to ensure that that factual  
24 predicate has been satisfied.

25 COMMISSIONER BRACERAS: So what exactly

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1 are we looking at though?

2 CHAIRMAN REYNOLDS: The disparity studies  
3 that form the factual basis for the use of racial  
4 classifications.

5 COMMISSIONER BRACERAS: Right. And we're  
6 looking at whether those are valid?

7 CHAIRMAN REYNOLDS: Whether those studies  
8 are solid or just basically junk science.

9 COMMISSIONER KIRSANOW: When you take a  
10 look at Adarand, for example --

11 COMMISSIONER BRACERAS: So it's a more  
12 statistical - -

13 COMMISSIONER KIRSANOW: -- up and down the  
14 appellate chain, there are a number of studies upon  
15 which defendants rely to maintain -- well, let me back  
16 up, Richmond v. Kerson, the imperative that you always  
17 have, these ongoing disparity studies kind of to  
18 justify set aside contracts.

19 COMMISSIONER BRACERAS: I guess my  
20 question is I'm trying to understand whether this is a  
21 more statistical project or a more theoretical project  
22 because this question can be looked at either or both  
23 ways.

24 COMMISSIONER KIRSANOW: My understanding  
25 was it was going to be statistical.

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1 CHAIRMAN REYNOLDS: Okay. Well my  
2 understanding is that it would be broader. That there  
3 would be statistical analyses but also other types of  
4 analyses to assess the soundness of these studies.

5 VICE CHAIRMAN THERNSTROM: It is  
6 inevitably --

7 COMMISSIONER BRACERAS: Theoretical?

8 VICE CHAIRMAN THERNSTROM: -- yes, it  
9 involves, you know, the whole question of how you  
10 measure discrimination. I wonder whether this is more  
11 appropriate for a briefing.

12 COMMISSIONER BRACERAS: Well, I guess  
13 that's why I asked because it seems to me that on  
14 those big theoretical questions as to whether or not  
15 these types of studies, disparity studies should be  
16 used as evidence of discrimination, that's an age-old  
17 debate that maybe we'd get consensus in this  
18 particular group of Commissioners but I'm not sure  
19 we're going to change the debate at large until -- I'm  
20 just not sure what we can bring to that.

21 VICE CHAIRMAN THERNSTROM: I agree with  
22 this.

23 CHAIRMAN REYNOLDS: Commissioner Yaki?

24 COMMISSIONER YAKI: Mr. Chair, thank you  
25 very much. Just a naive question from the newbie.

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1 What is the drop dead for actually selecting an `07  
2 project because it sounds to me as if what we have  
3 here is a situation where maybe fertile minds could,  
4 within the next couple months, come up with some  
5 substantive weighty projects that would part of the  
6 OCRE agenda for `07.

7 But if we need to adopt it now, we need to  
8 adopt it now. But I'm looking down the list and  
9 probably more than one of this is thinking as we're  
10 looking down the list --

11 COMMISSIONER BRACERAS: You're not fired  
12 up.

13 VICE CHAIRMAN THERNSTROM: Not fired up  
14 about `07?

15 CHAIRMAN REYNOLDS: I wonder how that's  
16 going to read on the transcript.

17 (Laughter.)

18 CHAIRMAN REYNOLDS: Well, I believe it's  
19 the budget issue.

20 STAFF DIRECTOR MARCUS: Yes. Under our  
21 rules, the decision should have been made either in  
22 January or February with March essentially having been  
23 the real deadline. We're now a couple months behind  
24 in terms of the budget call, which should have been  
25 based on that.

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1           At this point, given that the soonest  
2 we'll make the decision is today, that means that we  
3 will not be able to have a draft budget available in  
4 June, which would be the usual method. And, instead,  
5 it will have to be July.

6           I think that if we waited any longer, we  
7 would very seriously jeopardize our ability to get the  
8 final budget in by September, especially since we  
9 don't have a planned meeting in August.

10           CHAIRMAN REYNOLDS: Okay.

11           VICE CHAIRMAN THERNSTROM: On this budget  
12 question, I don't really understand why one project  
13 results in a budget estimate of X and another project  
14 results in a budget estimate of Y. And why we can't  
15 view the '07 projects, since they're not going to  
16 start tomorrow, why we can't view them as kind of  
17 tentative decisions depending on how we see the  
18 landscape down the road.

19           COMMISSIONER YAKI: Mr. Chair, as a point  
20 of personal privilege here. In true Washington  
21 bureaucratic appropriations gaming, we should simply  
22 pick two of the largest possible things --

23           (Laughter.)

24           COMMISSIONER BRACERAS: Civil rights.

25           (Laughter.)

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1                   COMMISSIONER YAKI: Well, we have the  
2 right, as we have exercised, to timely change and  
3 amend what those projects have been.

4                   As long as those programs come with a  
5 budget and as long as our substitutes come within  
6 those budget numbers, I think that in terms of the  
7 Staff Director's ability to make a presentation to OMB  
8 et cetera for the preparation of the FY `07 budget, I  
9 think that would be sufficient. I don't mean to be  
10 quite so cynical but I sort of see it that way.

11                  CHAIRMAN REYNOLDS: Well, no. I mean a  
12 little honesty is appreciated so it seems to me that  
13 unless a project is going to require a significant  
14 amount of outside resources, I mean if we're just  
15 looking at internal costs, salaries and -- Commission  
16 salaries, then it really doesn't make a difference.  
17 And there are no additional expenditures over, you  
18 know, wages and benefits.

19                  COMMISSIONER YAKI: And I have another  
20 naive question, a point of order, Mr. Chair.

21                  What differentiates one being an OGC  
22 versus OCRE? There is some good stuff in OGC we could  
23 move over to OCRE. But I don't know why.

24                  CHAIRMAN REYNOLDS: Well, I'm sure there  
25 is an internal wrestling match to see who gets the

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1 good projects.

2 COMMISSIONER BRACERAS: No but what is the  
3 answer to that.

4 (Laughter.)

5 CHAIRMAN REYNOLDS: Mr. Staff Director?

6 STAFF DIRECTOR MARCUS: The criterion  
7 include whether -- well first, some of them are  
8 derived from either OCRE or OGC. Second, some are  
9 anticipated to require a hearing and potentially a  
10 request for subpoena power, in which case it would be  
11 OGC.

12 COMMISSIONER BRACERAS: Okay.

13 STAFF DIRECTOR MARCUS: And some of them  
14 may require more legal analysis or social science  
15 analysis. Those are some of the criterion.

16 CHAIRMAN REYNOLDS: In other words, he  
17 just picks.

18 COMMISSIONER BRACERAS: I have a question  
19 though. So if voting rights is under OCRE, does that  
20 mean we cannot have a hearing on the topic?

21 STAFF DIRECTOR MARCUS: Voting rights is a  
22 two-part project. It is both an OGC and an OCRE  
23 project. The OGC portion was approved at least a  
24 couple of years ago. And OGC work was complete I  
25 believe earlier in this fiscal year.

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1           And I believe that there were hearings --  
2 no, there have not been hearing on it. But if the  
3 Commission wanted to have hearings, we could use OGC's  
4 subpoena power.

5           COMMISSIONER BRACERAS: But just  
6 typically, if you approve something as an OCRE  
7 project, you're not anticipating having a hearing on  
8 it?

9           STAFF DIRECTOR MARCUS: It could be a  
10 briefing but it is not anticipated that it would be a  
11 hearing.

12           COMMISSIONER BRACERAS: Subpoena power.

13           STAFF DIRECTOR MARCUS: That's right.

14           COMMISSIONER BRACERAS: Okay.

15           CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

16           VICE CHAIRMAN THERNSTROM: Well, two  
17 points here. By the way, it should not read the  
18 reauthorization of the Voting Rights Act. The Voting  
19 Rights Act is not up for reauthorization. The  
20 temporary provisions of the Voting Rights Act are up  
21 for reauthorization. The core of the Voting Rights  
22 Act is permanent.

23           CHAIRMAN REYNOLDS: No, now Commissioner  
24 Thernstrom, I think you're intimidating the staff here  
25 with your level of expertise.

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1           VICE CHAIRMAN THERNSTROM: Well, but no.  
2 The wording is important because there is an urban  
3 legend out there that the Voting Rights Act is going  
4 to expire and there will be -- we're back to wide  
5 disenfranchisement when that happens. And it is a  
6 pernicious and dangerous rumor.

7           But look -- oh no --

8           (Laughter.)

9           VICE CHAIRMAN THERNSTROM: I apologize to  
10 everybody. But in terms of the OGC portion of the  
11 project being complete, I do not think that the draft  
12 that I have seen constitutes a completion of the OGC  
13 portion of this project.

14          STAFF DIRECTOR MARCUS: I perhaps was  
15 imprecise in my phrasing. What I probably should have  
16 said is that they have completed at a staff level  
17 their draft work on the project. And they don't  
18 anticipate doing any further work without prior to  
19 getting instructions for revisions or rewriting or  
20 something of that sort.

21          CHAIRMAN REYNOLDS: So are there plans to  
22 distribute that document so that we can take a look at  
23 it? I know it doesn't fall within our recently-  
24 adopted procedure.

25          STAFF DIRECTOR MARCUS: I would be happy

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1 to identify the document for Commissioners. It was in  
2 a prior distribution but it was a few months back.

3 COMMISSIONER BRACERAS: But that -- I'm  
4 sorry, is that the document that a consultant  
5 prepared?

6 STAFF DIRECTOR MARCUS: Exactly.

7 COMMISSIONER BRACERAS: Okay. That's my  
8 confusion.

9 VICE CHAIRMAN THERNSTROM: Yes, it's the  
10 document the consultant prepared.

11 COMMISSIONER BRACERAS: It didn't come --

12 STAFF DIRECTOR MARCUS: That's right. It  
13 was the Posner Report.

14 COMMISSIONER BRACERAS: Okay. And that  
15 document --

16 CHAIRMAN REYNOLDS: Was it distributed  
17 already?

18 COMMISSIONER BRACERAS: Yes.

19 STAFF DIRECTOR MARCUS: Yes.

20 CHAIRMAN REYNOLDS: Okay. Well, someone  
21 send it to me again. I don't recall seeing it.

22 COMMISSIONER BRACERAS: Okay. I was  
23 confused about the purpose of that document. So is  
24 that something that we need to approve or adopt or --  
25 I thought it was --

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1                   STAFF DIRECTOR MARCUS:    That was legal  
2 work that was commissioned in order to provide OCRE  
3 with legal analysis --

4                   COMMISSIONER BRACERAS:    Okay.

5                   STAFF DIRECTOR MARCUS:    -- that they may  
6 use in the course of preparing a final report.

7                   COMMISSIONER BRACERAS:    Okay.

8                   COMMISSIONER YAKI:     But we still need the  
9 entire process to go through.

10                  CHAIRMAN REYNOLDS:    Vice Chair Thernstrom?

11                  VICE CHAIRMAN THERNSTROM:    Yes.    But I  
12 have a problem with that report and, therefore, I have  
13 a problem with OCRE using that as the basic legal  
14 analysis with which they are going to work.    And I  
15 don't know what we do about that.

16                  And by the way, just to reiterate what I  
17 have said before, I do very strongly urge the  
18 Commission to change the title of the project to the  
19 Reauthorization of the Temporary Provisions of the  
20 Voting Rights Act so that we do not perpetuate --

21                  COMMISSIONER YAKI:     So moved.

22                  CHAIRMAN REYNOLDS:    Second.

23                  COMMISSIONER BRACERAS:    Second.

24                  CHAIRMAN REYNOLDS:    All in favor?

25                  (Chorus of ayes.)

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1 CHAIRMAN REYNOLDS: All in opposition?

2 (No response.)

3 CHAIRMAN REYNOLDS: Passes.

4 VICE CHAIRMAN THERNSTROM: Okay. But I  
5 don't know what we do about the fact that to use that  
6 legal analysis that has been produced by an outside  
7 consultant as the basis upon which OCRE goes forward  
8 is unsatisfactory to me.

9 CHAIRMAN REYNOLDS: Commissioner Yaki?

10 COMMISSIONER YAKI: Mr. Chair, I think  
11 that the concerns expressed by Commissioner Thernstrom  
12 are addressed in the first phase of the Braceras  
13 Process, as I will now call it --

14 (Laughter.)

15 COMMISSIONER YAKI: -- which includes the  
16 methodology and scope. And I think that's where you  
17 can raise the questions and make the changes necessary  
18 at that time.

19 VICE CHAIRMAN THERNSTROM: That's fine  
20 except that it already came to us.

21 COMMISSIONER BRACERAS: But that doesn't  
22 mean they have to rely on it for their  
23 recommendations.

24 VICE CHAIRMAN THERNSTROM: Okay.

25 COMMISSIONER BRACERAS: I mean they'll

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1 come to us with an outline and a literature review.  
2 And at that point, you can raise your objections.

3 VICE CHAIRMAN THERNSTROM: All right.

4 COMMISSIONER BRACERAS: And hopefully by  
5 that time, you will have time to, you know, elaborate  
6 on your reasons for --

7 VICE CHAIRMAN THERNSTROM: Okay, okay.

8 COMMISSIONER BRACERAS: -- not agreeing  
9 with the report --

10 VICE CHAIRMAN THERNSTROM: I was just  
11 concerned.

12 COMMISSIONER BRACERAS: -- so that we can  
13 all understand where your concerns are.

14 VICE CHAIRMAN THERNSTROM: Okay.

15 COMMISSIONER YAKI: It's in '07 though.

16 CHAIRMAN REYNOLDS: Okay.

17 VICE CHAIRMAN THERNSTROM: Wait, no.  
18 Reauthorization of the Voting Rights Act is '06.

19 CHAIRMAN REYNOLDS: Right.

20 COMMISSIONER BRACERAS: I raised that as  
21 an example because Commissioner Yaki had raised the  
22 question of what is OGC, what is OCRE, and how is that  
23 decided.

24 So the only reason that came back up again  
25 was I was asking the question of whether or not you

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1 can have a hearing on the topics that are slated to go  
2 forward under OCRE. And as I understand the Staff  
3 Director's answer to that question, you can have a  
4 briefing or -- you just can't necessarily use the  
5 subpoena power. Is that right.

6 STAFF DIRECTOR MARCUS: That's right.

7 CHAIRMAN REYNOLDS: Okay. At this point,  
8 I just want to bring up a personal matter. I have to  
9 catch a plane. So I am going to have to leave. And  
10 so you mentioned that you enjoyed having the gavel in  
11 your possession so in any event, I think things are  
12 going well.

13 VICE CHAIRMAN THERNSTROM: They'll go even  
14 better after you leave.

15 (Laughter.)

16 CHAIRMAN REYNOLDS: There you go. In any  
17 event, I bid everyone a fond farewell. And I shall  
18 see you next month.

19 VICE CHAIRMAN THERNSTROM: And we lost our  
20 whole audience. So how much more business do we have  
21 here?

22 COMMISSIONER YAKI: Who moves to the Vice  
23 Chair to the Vice Chair? What's the line of  
24 succession?

25 (Laughter.)

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1 VICE CHAIRMAN THERNSTROM: All right.

2 Good. Where are we?

3 COMMISSIONER YAKI: `07.

4 VICE CHAIRMAN THERNSTROM: `07.

5 COMMISSIONER YAKI: Right.

6 VICE CHAIRMAN THERNSTROM: I very much  
7 like Commissioner Yaki's suggestion we pick the most  
8 expensive projects and throw them into the budget.

9 COMMISSIONER TAYLOR: Well, the term  
10 placeholder comes to mind.

11 COMMISSIONER YAKI: Absolutely.

12 VICE CHAIRMAN THERNSTROM: Yes, they are a  
13 placeholder.

14 COMMISSIONER TAYLOR: I don't think it's a  
15 -- I think we identify a couple placeholders and move  
16 on.

17 VICE CHAIRMAN THERNSTROM: All right.  
18 What are our placeholders here? Somebody speak.

19 COMMISSIONER BRACERAS: Well, we can pluck  
20 them from OGC if we want to I suppose.

21 COMMISSIONER YAKI: Could we? I like  
22 that. I like the state foster care system.

23 COMMISSIONER TAYLOR: I do as well.

24 COMMISSIONER BRACERAS: I do, too.

25 COMMISSIONER TAYLOR: I do as well.

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1 VICE CHAIRMAN THERNSTROM: I do very much.

2 COMMISSIONER TAYLOR: Yes.

3 VICE CHAIRMAN THERNSTROM: Do we want to  
4 expand it to adoption?

5 COMMISSIONER TAYLOR: I'd like that even  
6 better.

7 COMMISSIONER YAKI: Sure. That's one.

8 VICE CHAIRMAN THERNSTROM: Okay. Do we  
9 need a motion to expand it to adoption? Emma, are you  
10 trying to get a hold of me? I'm sorry, Emma, what is  
11 the definition of an enforcement report?

12 MS. MONROIG: It's enforcement of civil  
13 rights.

14 VICE CHAIRMAN THERNSTROM: That's what I  
15 assumed. So that the state foster care systems  
16 obviously can't qualify.

17 COMMISSIONER BRACERAS: But we've already  
18 approved that.

19 VICE CHAIRMAN THERNSTROM: So that the  
20 candidates in terms of the enforcement would be --

21 COMMISSIONER BRACERAS: Well, may I ask a  
22 question - -

23 VICE CHAIRMAN THERNSTROM: Yes.

24 COMMISSIONER BRACERAS: -- of the  
25 solicitor I guess. Does the enforcement report have

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1 to come from OCRE?

2 MS. MONROIG: No.

3 COMMISSIONER BRACERAS: So why can't the  
4 desegregation one for '07 count as the enforcement  
5 report which we've already approved for OGC? Could  
6 that --

7 STAFF DIRECTOR MARCUS: Well, I can't  
8 think of a reason why it couldn't be the statutory  
9 enforcement report.

10 VICE CHAIRMAN THERNSTROM: Yes. Good. So  
11 we've got that one already.

12 COMMISSIONER YAKI: Good.

13 VICE CHAIRMAN THERNSTROM: So the second -  
14 - and as I understand it --

15 COMMISSIONER YAKI: Yes, the United States  
16 Office of Civil Rights and Education Department --

17 STAFF DIRECTOR MARCUS: As well as the  
18 U.S. Department of Justice.

19 COMMISSIONER YAKI: -- Justice, right.

20 VICE CHAIRMAN THERNSTROM: Right. Right.  
21 So we've got our statutory enforcement project there.  
22 And as I understand it, the second one that is being  
23 suggested and, I sign on to this, minority children --  
24 as I understand it, the second '07 report that is  
25 going to function as a placeholder would be minority

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1 children in state foster care and their eligibility  
2 for adoption.

3 COMMISSIONER BRACERAS: That's the first -  
4 -

5 COMMISSIONER YAKI: That's the first.

6 COMMISSIONER BRACERAS: -- for OGC.

7 VICE CHAIRMAN THERNSTROM: Oh, that's the  
8 first for OGC?

9 COMMISSIONER YAKI: No, no, no, no. We  
10 switched that to OCRE.

11 COMMISSIONER BRACERAS: I mean for OCRE.  
12 Right. So that's the first. We need a second. In  
13 other words, we've already taken care of OGC. We  
14 voted to do desegregation in `07 and census in `06.  
15 Now we're doing OCRE. But we don't need to worry  
16 about one of them in `07 is an enforcement project  
17 because one of the OGC ones counts as that. So we've  
18 got the --

19 VICE CHAIRMAN THERNSTROM: I don't  
20 understand why we can't move minority children in  
21 state foster care - -

22 COMMISSIONER BRACERAS: We are.

23 VICE CHAIRMAN THERNSTROM: -- and adoption  
24 into OCRE.

25 COMMISSIONER BRACERAS: We are. We are.

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1 COMMISSIONER YAKI: We did. We just did.

2 VICE CHAIRMAN THERNSTROM: We did? Oh,  
3 okay.

4 COMMISSIONER BRACERAS: But we need a  
5 second one.

6 COMMISSIONER TAYLOR: That was the first  
7 for `07.

8 VICE CHAIRMAN THERNSTROM: Fine. Somebody  
9 speak.

10 COMMISSIONER BRACERAS: Well, I guess --  
11 and again these are just placeholders -- but I'd be  
12 interested in the Blaine Amendments, anti-Catholicism  
13 topic or the voting rights in the U.S. territories.

14 COMMISSIONER KIRSANOW: I prefer the  
15 Blaine Amendments myself.

16 COMMISSIONER YAKI: I prefer voting  
17 rights. It sounds bigger, more expensive.

18 VICE CHAIRMAN THERNSTROM: No, the Blaine  
19 Amendments require looking at every state.

20 COMMISSIONER BRACERAS: Blaine Amendments  
21 is massive.

22 VICE CHAIRMAN THERNSTROM: It's massive.  
23 It requires looking at every state.

24 COMMISSIONER BRACERAS: State legislation.

25 COMMISSIONER YAKI: No, I understand. But

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1 do you understand how far away some of the territories  
2 are?

3 COMMISSIONER KIRSANOW: That's right. It  
4 would probably require travel.

5 COMMISSIONER YAKI: Absolutely.

6 (Laughter.)

7 COMMISSIONER BRACERAS: Are we going to  
8 Guam?

9 COMMISSIONER BRACERAS: It's six of one,  
10 half a dozen of the other to me. They're both very  
11 interesting topics. And if they're placeholders, I'm  
12 not -- I don't feel strongly. I really -- I very much  
13 like them both.

14 VICE CHAIRMAN THERNSTROM: Commissioner  
15 Kirsanow, you got any --

16 COMMISSIONER KIRSANOW: My preference  
17 would have been the Blaine Amendments also.

18 VICE CHAIRMAN THERNSTROM: It is just a  
19 placeholder you understand.

20 COMMISSIONER YAKI: Madame Chair? Madame  
21 Chair, my preference for saying voting rights in U.S.  
22 territories is not the facetious I gave but rather it,  
23 again from a placeholder point of view for the  
24 budgetary process, it just -- how should I put it --  
25 it sounds more civil rights Commissioney.

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1 COMMISSIONER BRACERAS: Commissionery?

2 (Laughter.)

3 COMMISSIONER BRACERAS: I guess my counter  
4 to that would be that that could be, I think, done  
5 nicely in a briefing format whereas the Blaine  
6 Amendments I think would --

7 COMMISSIONER YAKI: Well, I'm not going to  
8 get in the way. Why don't we just -- if that's where  
9 the preference is, as a placeholder, I have no stake.  
10 So if Commissioner Braceras and Commissioner Kirsanow  
11 want to move it, I won't get in the way.

12 COMMISSIONER KIRSANOW: Yes, I would move  
13 that we do the Blaine Amendments proposal in 2007.

14 VICE CHAIRMAN THERNSTROM: You got to  
15 second it.

16 COMMISSIONER BRACERAS: Second.

17 VICE CHAIRMAN THERNSTROM: All in favor?

18 (Chorus of ayes.)

19 VICE CHAIRMAN THERNSTROM: Okay. So we've  
20 got our `07.

21 COMMISSIONER YAKI: Okay. Yeah.

22 VICE CHAIRMAN THERNSTROM: What else do we  
23 have here on the agenda? Proposed future briefings.  
24 Oh, right. We have not taken a vote on minorities in  
25 foster care and the adoption process.

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1 COMMISSIONER KIRSANOW: I would move that  
2 for 2007 we also schedule minority children in state  
3 foster care systems and the adoption process also.

4 COMMISSIONER YAKI: Second.

5 VICE CHAIRMAN THERNSTROM: And --

6 COMMISSIONER BRACERAS: That's the same  
7 thing isn't it?

8 VICE CHAIRMAN THERNSTROM: No. Foster  
9 care and adoption? Not the same thing.

10 COMMISSIONER BRACERAS: No, I know they're  
11 not the same thing. But the --

12 COMMISSIONER KIRSANOW: It's going to be  
13 folded into one project.

14 COMMISSIONER BRACERAS: -- the title you  
15 mentioned and the title --

16 COMMISSIONER KIRSANOW: Yes, it's foster  
17 care and adoption are going to be addressed.

18 VICE CHAIRMAN THERNSTROM: It's not the  
19 same thing as what is down on paper here --

20 COMMISSIONER KIRSANOW: Right.

21 VICE CHAIRMAN THERNSTROM: -- which  
22 mentions only foster care.

23 COMMISSIONER BRACERAS: Right. I  
24 understand that part. Okay.

25 VICE CHAIRMAN THERNSTROM: Okay. We had a

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1 second on that. All in favor?

2 (Chorus of ayes.)

3 VICE CHAIRMAN THERNSTROM: That is a  
4 unanimous vote.

5 So we move on to proposed future  
6 briefings.

7 **X. Future Briefings**

8 COMMISSIONER YAKI: Madame Vice Chair?

9 VICE CHAIRMAN THERNSTROM: Yes.

10 COMMISSIONER YAKI: Two things. One, I  
11 have to go catch a plane pretty soon. But two, we've  
12 identified a lot of issues here today that could be  
13 the stuff of briefings -- of future, near future, or  
14 far future. I am just wondering given time,  
15 budgetary, and personnel considerations what is our  
16 ability to hold briefings? How many? At what time?  
17 Et cetera, et cetera. Before we start approving.

18 All of these actually I like. I mean I  
19 would -- but I also know there is a bunch that we  
20 talked about during the project planning process that  
21 we might also want to have. And then prioritizing  
22 those for you I think is in some ways for us -- for me  
23 at least a question of our resources at this point.

24 VICE CHAIRMAN THERNSTROM: And do we have  
25 any briefings scheduled at this point?

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1                   STAFF DIRECTOR MARCUS:       We have no  
2 briefings scheduled at this point. I think it would  
3 take about two to -- about 60 to 90 days to get the  
4 first one started. And then we might try them for  
5 about every couple of months assuming that we're doing  
6 briefings that do not require material expenditures --

7                   VICE CHAIRMAN THERNSTROM: Right.

8                   STAFF DIRECTOR MARCUS: -- which is to say  
9 witnesses who are local or who do not need travel  
10 expenses.

11                   VICE CHAIRMAN THERNSTROM: Right. I mean  
12 there are some briefings here that require no expense  
13 whatsoever. For instance, Douglas Besharov is will to  
14 come with his team on a very good collection of people  
15 across the political spectrum to talk about the  
16 stagnation of the black middle class. He's been doing  
17 some very interesting work. And, again, this would be  
18 -- it's not politically driven in any sense.

19                   So that seems to be a no-brainer.

20                   COMMISSIONER BRACERAS: Can we vote to --  
21 I don't know that we need to necessarily approve all  
22 the briefings. But can we vote to authorize them to  
23 get started on one since it may take two months at  
24 least to have it. We could at least -- if we  
25 authorize one, they could get started --

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1 VICE CHAIRMAN THERNSTROM: Right.

2 COMMISSIONER BRACERAS: -- in preparing.

3 VICE CHAIRMAN THERNSTROM: And I would  
4 like to make a motion to authorize the stagnation of  
5 the black middle class. I don't think it is going to  
6 take two months. Besharov is ready to go on this.  
7 And he has lined up people who would speak on the  
8 question.

9 So there is a motion on the table.  
10 Somebody second it?

11 COMMISSIONER YAKI: I want to amend it.

12 VICE CHAIRMAN THERNSTROM: Yes.

13 COMMISSIONER YAKI: I would actually like  
14 -- not just because I want in here -- I'd like to  
15 approve all four as proposed future briefings, number  
16 one.

17 Number two, ask that the staff be directed  
18 to begin preparations for the stagnation of the black  
19 middle class as the first briefing.

20 And then number three, to start  
21 identifying of the remainder, what kind of resources  
22 would be required, the expectations for local versus  
23 out-of-state, that kind of stuff, and the cost  
24 identified with those.

25 So at least we can get rolling on doing

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1 the analysis. I think all four of them are very good.  
2 I know that Commissioner Redenbaugh was very  
3 interested in the campus anti-Semitism one as am I.

4 So that would be my amended motion.

5 VICE CHAIRMAN THERNSTROM: And I accept  
6 that amendment.

7 COMMISSIONER TAYLOR: We are going screw  
8 up the process here I know. But I would have a  
9 concern about that motion in the sense that there is  
10 something that I'd like to add.

11 If we're going to begin, I think, to  
12 identify the topics for future briefings, I wanted to  
13 add religious discrimination to that so if we're going  
14 to -- as opposed to just identifying the first one and  
15 moving forward, if we're going to create a list, I  
16 would like to at least discuss placing religious  
17 discrimination on that list.

18 COMMISSIONER BRACERAS: And I'd like to  
19 add voting rights in the U.S. territories to the list.

20 COMMISSIONER YAKI: I'll accept those as  
21 friendly amendments. Commissioner Kirsanow? Is there  
22 one on your list?

23 COMMISSIONER KIRSANOW: We already  
24 addressed or raised the issue of voter fraud as a  
25 briefing.

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1 COMMISSIONER YAKI: Okay. And voter  
2 fraud.

3 STAFF DIRECTOR MARCUS: I guess -- just so  
4 that staff can know what we're doing, I guess it would  
5 be useful for clarification whether Commissioner  
6 Taylor means religious discrimination specifically in  
7 the workplace and whether Commissioner Kirsanow is  
8 referring to voter fraud specifically in either  
9 Washington, Milwaukee, or other locations.

10 COMMISSIONER TAYLOR: Right now it is not  
11 in my own mind limited to the workplace. It is also  
12 in the area of contracting and other areas so the  
13 answer right now is no. But I could be -- quite  
14 frankly if I got a briefing on workplace because it  
15 was easier, I would probably concede the point. So as  
16 of now, no.

17 COMMISSIONER KIRSANOW: Mr. Staff  
18 Director, with respect to my point, mine is not  
19 specific to Washington State or Milwaukee. It goes to  
20 our previous discussion as to what, in fact,  
21 constitutes voter fraud and/or disenfranchisement  
22 although that sounds much more expansive.

23 There are a lot of allegations out there  
24 about what's going on and, you know, IDs and so on and  
25 so forth. It's something, I think, geared towards

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1 reducing the incidence -- manifest incidence of voter  
2 fraud.

3 STAFF DIRECTOR MARCUS: Thank you.

4 VICE CHAIRMAN THERNSTROM: Let us see if  
5 we can get on top of the final shape of this motion.  
6 And as I understand the question of briefings, there  
7 is nothing written in stone about this list. That is  
8 in the future, as events unfold, it is possible to add  
9 a topic that seems urgent at the time.

10 Commission Yaki, do you want to rephrase  
11 now a complete motion.

12 COMMISSIONER YAKI: Okay.

13 VICE CHAIRMAN THERNSTROM: I'm going to  
14 withdraw my motion and let you make a motion.

15 COMMISSIONER YAKI: Okay. I would like to  
16 move that we approve all the items on Item 7 of the  
17 agenda as well as to add to that item religious  
18 discrimination in the workplace that previously is a  
19 project under project planning, voting rights in the  
20 U.S. territories, which was previously under project  
21 planning, a briefing on the issues and nature of  
22 allegations regarding voter fraud in recent elections  
23 in the United States, and to further direct the staff  
24 to prepare, consistent with the Braceras Process,  
25 discovery plans and processes for all of the above but

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1 to immediately begin preparations for a briefing at  
2 the earliest possible date for stagnation of the black  
3 middle class.

4 COMMISSIONER KIRSANOW: Second.

5 VICE CHAIRMAN THERNSTROM: Second.

6 COMMISSIONER BRACERAS: Discussion? I  
7 don't think the Braceras Plan kicks in with a briefing  
8 except to the extent that they would come back to us  
9 and we would have input into the list of speakers at  
10 the briefing because these aren't going to be --

11 COMMISSIONER YAKI: Okay.

12 COMMISSIONER BRACERAS: -- there aren't  
13 going to be interrogatories.

14 COMMISSIONER YAKI: Then let me amend that  
15 to say to the Secretary, that's of the Braceras  
16 Process, to prepare cost and time estimates for each  
17 of the briefings in order that we are able to begin  
18 prioritizing the remainder for scheduling at our  
19 regular Commission meetings. Is that okay?

20 COMMISSIONER BRACERAS: That's okay.

21 COMMISSIONER KIRSANOW: Certainly.

22 COMMISSIONER YAKI: Okay.

23 VICE CHAIRMAN THERNSTROM: I have a  
24 question on this. I'm sorry. And at what point do  
25 the Commissioners have an input into who testifies at

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1 these briefings?

2 COMMISSIONER BRACERAS: I think it's --  
3 what did we say?

4 COMMISSIONER YAKI: That's the Braceras  
5 Process?

6 COMMISSIONER BRACERAS: Yes, it's --

7 VICE CHAIRMAN THERNSTROM: Okay.

8 COMMISSIONER BRACERAS: -- I'm looking it  
9 up right now. It's one monthly meeting prior to the  
10 meeting at which the briefing will take place.

11 VICE CHAIRMAN THERNSTROM: Fine. Okay.  
12 All right. I had forgotten that. All right. We have  
13 a motion on the table.

14 COMMISSIONER KIRSANOW: Second.

15 VICE CHAIRMAN THERNSTROM: That motion has  
16 been seconded. All in favor?

17 (Chorus of ayes.)

18 VICE CHAIRMAN THERNSTROM: Unanimously  
19 passed.

20 I believe that a motion is in order to  
21 adjourn this meeting unless anybody has any other  
22 business.

23 COMMISSIONER KIRSANOW: So moved.

24 VICE CHAIRMAN THERNSTROM: Seconded?

25 COMMISSIONER BRACERAS: Second.

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(Whereupon, the above-entitled meeting was  
concluded at 1:10 p.m.)