

## U.S. COMMISSION ON CIVIL RIGHTS

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## MEETING

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FRIDAY, FEBRUARY 17, 2006

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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, Chairperson, presiding.

## PRESENT:

GERALD A. REYNOLDS, Chairperson  
 ABIGAIL THERNSTROM, Vice Chairperson  
 JENNIFER C. BRACERAS, Commissioner  
 PETER N. KIRSANOW, Commissioner  
 ARLAN D. MELENDEZ, Commissioner  
 MICHAEL YAKI, Commissioner  
 KENNETH L. MARCUS, Staff Director

## STAFF PRESENT:

CHRISTOPHER BYRNES, Attorney Advisory to the Office  
 of the Staff Director  
 DEBRA CARR, ESQ., Associate Deputy Staff Director  
 IVY DAVIS, Acting Director, Regional Programs  
 Coordination Unit  
 TERRI DICKERSON, Assistant Staff Director  
 PAMELA A. DUNSTON, Chief, Administrative Services  
 and Clearinghouse Division  
 BARBARA FONTANA  
 PATRICIA JACKSON, Chief, Budget and Finance Division  
 SETH JAFFE, Attorney Advisor  
 SOCK-FOON MACDOUGALL  
 EMMA MONROIG, Solicitor/Parliamentarian  
 AUDREY WRIGHT  
 MIREILLE ZIESENISS

## COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS  
 LISA NEUDER

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

(9:37 a.m.)

CHAIRPERSON REYNOLDS: The meeting will come to order. This is a meeting with most of the commissioners participating in person here at Commission headquarters. Commissioner Taylor will not participate in this meeting.

**I. APPROVAL OF AGENDA**

CHAIRPERSON REYNOLDS: The first item on the agenda is the approval of the agenda. May I have a motion to amend the agenda so as to remove item IX from the agenda?

COMMISSIONER KIRSANOW: So moved.

CHAIRPERSON REYNOLDS: Discussion?

(No response.)

CHAIRPERSON REYNOLDS: All in favor?

(Whereupon, there was a chorus of "Ayes.")

CHAIRPERSON REYNOLDS: I guess I should put some flesh on that. This motion would remove item IX, which initially we had planned to have the staffers from the House of Representatives Committee on the Judiciary come and discuss various aspects of our strategic planning process.

We invited the staff to provide us with

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1 some feedback and to provide some recommendations, but  
2 they have decided not to address the Commission today.

3 Okay. May I have a motion to approve the  
4 agenda as amended?

5 COMMISSIONER KIRSANOW: So moved.

6 CHAIRPERSON REYNOLDS: Discussion?

7 (No response.)

8 CHAIRPERSON REYNOLDS: All in favor?

9 (Whereupon, there was a chorus of "Ayes.")

10 CHAIRPERSON REYNOLDS: Okay. The motion  
11 carries unanimously.

12 **II. APPROVAL OF MINUTES OF JANUARY 20, 2006 MEETING**

13 CHAIRPERSON REYNOLDS: The second item on  
14 the agenda is approval of the minutes of the January  
15 20th, 2006 meeting. May I have a motion for approval  
16 of these minutes?

17 VICE CHAIRPERSON THERNSTROM: So moved.

18 CHAIRPERSON REYNOLDS: Is there a second?

19 COMMISSIONER KIRSANOW: Second.

20 CHAIRPERSON REYNOLDS: Any discussion?

21 (No response.)

22 CHAIRPERSON REYNOLDS: All in favor?

23 (Whereupon, there was a chorus of "Ayes.")

24 CHAIRPERSON REYNOLDS: Anyone in

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1 opposition?

2 (No response.)

3 CHAIRPERSON REYNOLDS: Any abstentions?

4 (No response.)

5 CHAIRPERSON REYNOLDS: The motion passes  
6 unanimately.

7 **III. ANNOUNCEMENTS**

8 CHAIRPERSON REYNOLDS: At this point, we  
9 move to the announcements. I am saddened to announce  
10 that on January 31st, 2006, Coretta Scott King, one of  
11 the most prominent leaders of the civil rights  
12 movement for the past 50 years, passed away. She was  
13 78 years old.

14 Among her many contributions, Mrs. King  
15 was the founding president, chair, and chief executive  
16 officer of the Dr. Martin Luther King Center for  
17 Nonviolent Social Change in Atlanta from 1968 to 1995,  
18 where tens of thousands of people were trained in Dr.  
19 King's philosophy and methods.

20 Although Coretta Scott King is no longer  
21 with us in body, her courage, dedication, and  
22 accomplishments will forever serve as beacons to  
23 others.

24 I am pleased to announce that February is

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1 Black History Month. During Black History Month, we  
2 honor the heritage accomplishments of black Americans  
3 and recognize their extraordinary contributions to the  
4 United States. I call upon public officials and all  
5 people of the United States to observe this month with  
6 appropriate programs and activities that highlight and  
7 honor the contributions black Americans have made to  
8 our nation.

9 Next up we have the staff director's  
10 report.

11 STAFF DIRECTOR MARCUS: Thank you, Mr.  
12 Chairman, Madam Vice Chair, commissioners.

#### 13 IV. STAFF DIRECTOR'S REPORT

14 STAFF DIRECTOR MARCUS: I would like to  
15 say a few words about recent reports on reforms by the  
16 Commission. During the month of January, we issued  
17 the second of our reports to the Senate Appropriations  
18 Committee at their request. In addition, we issued  
19 our performance and accountability report.

20 These reports collectively demonstrate a  
21 wide range of operational and financial reforms that  
22 we have implemented over the course of the last year  
23 based on a decision by the commissioners to implement  
24 all GAO and OPM recommendations.

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1           Just to mention a few of the reforms that  
2 are discussed in these recent reforms, they would  
3 include issuing formal travel guidance that is  
4 comprehensive and consistent with the federal travel  
5 regulation; creating procedures to ensure preparation  
6 of annual Commission performance and accountability  
7 reports; creating Anti-Deficiency Act or procedures to  
8 ensure compliance in the future; producing a  
9 procurement guide for use by procurement and budget  
10 personnel; establishing agency goals, principles, and  
11 financial controls consistent with OMB requirements;  
12 and, of course, bringing GSA fully on board as of  
13 October 1, 2005 as the agency's full-service  
14 accounting provider.

15           These are a few of the recent changes.  
16 They are cumulative with a wide range of changes that  
17 were implemented and discussed earlier in the year.

18           At the same time with our performance and  
19 accountability report, we issued the audit that we  
20 received for the last fiscal year by Williams Adley.  
21 It is not a surprise in that it documents a number of  
22 material weaknesses in the Commission that we have  
23 been aware of for quite some time because they are the  
24 weaknesses that were previously identified by the GAO.

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1           For this reason, these weaknesses have  
2 been the subject of the reform efforts that have been  
3 underway. Many of them have been addressed by reform  
4 measures that were implemented during the last fiscal  
5 year but which will show up only during next year's  
6 audit. Others are underway currently.

7           In addition, I would like to mention the  
8 good news that the President's budget for 2007  
9 provides an increase for this agency. If Congress  
10 should appropriate for us the amount requested by the  
11 President, it would be the first increase in quite  
12 some time. It would be an increase from this year's  
13 post-recission figure of \$8,932,000 to an amount of  
14 \$9,308,000.

15           The increase is intended both to reflect  
16 the increased cost of living, including the  
17 anticipated increased federal wages and benefits as  
18 well as additional funds for the specific purposes of  
19 hiring additional attorneys for the Office of General  
20 Counsel, issuing the public service announcements, and  
21 providing at least some modest funds for some state  
22 advisory committees to engage in travel during 2007.

23           We're very pleased by this request by the  
24 President, which we take as a vote of confidence in

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1 the operational and financial management reforms that  
2 we have undertaken at the agency.

3 That is my report. I would be pleased to  
4 respond to any questions.

5 CHAIRPERSON REYNOLDS: Quiet bunch today.

6 Yes?

7 COMMISSIONER YAKI: I don't know if we're  
8 going to address this later on in the meeting or not,  
9 but what is the latest news in terms of this year's  
10 rescission or any new budget news just on the  
11 remainder of fiscal year '06 for the agency that has  
12 come up between the January meeting and today that  
13 might have a bearing on items before us today?

14 STAFF DIRECTOR MARCUS: For this fiscal  
15 year, the latest news is that we have a rescission and  
16 across-the-board one percent budget cut, which have  
17 reduced the amount of our appropriations for this  
18 fiscal year to the amount that I indicated a moment  
19 ago, which is to say approximately \$8.9 million.

20 That amount is actually an absolute as  
21 well as a relative cut from last year. It's the  
22 lowest amount that we have had in quite some time. So  
23 the \$8.9 million is a low amount for this year.

24 COMMISSIONER YAKI: Right.

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1                   STAFF DIRECTOR MARCUS:     Now, what is  
2                   enabling us to work successfully within that lower  
3                   appropriations is that we had an amount of attrition  
4                   late in the last fiscal year which was sufficient not  
5                   only to avert the budget cuts we otherwise would have  
6                   needed last year --

7                   COMMISSIONER YAKI:    Right.

8                   STAFF DIRECTOR MARCUS:   -- but also to put  
9                   us in a pretty good position this year.   During the  
10                  long period of the continuing revolution, we were not  
11                  in a hiring mode.   We are now working to fill a  
12                  critical positions.

13                  We brought on, of course, a budget chief  
14                  --

15                  COMMISSIONER YAKI:    Right.

16                  STAFF DIRECTOR MARCUS:   -- and will bring  
17                  on a few other people.   But, as a result of the  
18                  attrition and the significant reduction in payroll  
19                  this year, as opposed to last year, we're doing fine  
20                  for this year.

21                  COMMISSIONER YAKI:    Okay.

22                  STAFF DIRECTOR MARCUS:   As for next year,  
23                  the House Appropriations Committee has asked for a  
24                  briefing from the staff on our 2007 budget request.

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1 And we will provide that. I believe it's during the  
2 next week, middle of next week.

3 COMMISSIONER YAKI: Right.

4 STAFF DIRECTOR MARCUS: It's too soon to  
5 know whether we're likely to get the amount that the  
6 President has requested.

7 CHAIRPERSON REYNOLDS: Commissioner  
8 Kirsanow?

9 COMMISSIONER KIRSANOW: Ken, is the  
10 President's proposed budget, the additional \$400,000  
11 or so, earmarked for expenses related to the General  
12 Counsel's office, anything else that you mentioned?

13 STAFF DIRECTOR MARCUS: It was provided  
14 specifically in the budget for that purpose. I don't  
15 know whether "earmark" is the technical word since  
16 it's not a congressional earmark, but money was  
17 specifically provided for the purposes I identified as  
18 well as for an increase in the general payroll  
19 expenses.

20 Now, that amount does not reflect a  
21 rescission. And so we would anticipate that it's  
22 likely to be reduced by a rescission and a possible  
23 additional intergovernmental across-the-board cut. So  
24 we may get less than that. But it still is a --

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1 COMMISSIONER YAKI: What they didn't tell  
2 you, Peter, is that from next year's budget, 400,000  
3 was cut from the NLRB.

4 CHAIRPERSON REYNOLDS: Commissioner  
5 Thernstrom?

6 COMMISSIONER KIRSANOW: I'm sorry. I just  
7 had a follow-up.

8 VICE CHAIRPERSON THERNSTROM: No. Go  
9 ahead.

10 COMMISSIONER KIRSANOW: It's not a  
11 question, but it simply makes sense for us to probably  
12 try to talk with anyone we can up on the Hill in  
13 support of that increase.

14 STAFF DIRECTOR MARCUS: I certainly plan  
15 to support it in my conversations. And I think that  
16 it is an excellent idea for anyone who is able to to  
17 join in that.

18 CHAIRPERSON REYNOLDS: Vice Chair  
19 Thernstrom?

20 VICE CHAIRPERSON THERNSTROM: All right.  
21 I'm listening to this dreary picture drawn. I wonder  
22 if the staff director could give us with respect to  
23 2007 under the best scenario, we have what. If we  
24 make the worst assumptions, what will be the impact?

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1                   STAFF DIRECTOR MARCUS:       I'm sorry,  
2 Commissioner Thernstrom. Are you asking if we assume  
3 that we get the amount that the President has  
4 requested or if we make assumptions that we don't get  
5 that?

6                   VICE CHAIRPERSON THERNSTROM: Well, if we  
7 make the most rosy assumption and with a much less  
8 rosy one, you know, how is this agency going to be --  
9 I mean, it seems to me, you know, we've got to play  
10 here with the various possibilities in thinking what  
11 kind of money we can spend on what.

12                   STAFF DIRECTOR MARCUS: Let me take a stab  
13 at answering that question. Please tell me if I  
14 haven't answered it properly. The President's budget  
15 provides for an increase in budget for next year, but  
16 it also specifies certain things that we are to do  
17 with the budget.

18                   The new things that we are supposed to do  
19 are likely to cost a little bit more than the  
20 increase. In other words, when we actually hire the  
21 new attorneys, issue the public service announcements,  
22 and approve a level of SAC travel consistent with what  
23 they have specified, it will be somewhat in excess  
24 likely of the increase, which means that our budget

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1 for all other purposes is slightly decreased from this  
2 year.

3 Now, this year would already be an  
4 extremely tight year. The reason that we're doing  
5 fine this year is that we had substantial attrition  
6 last year and we also don't have a full complement of  
7 either commissioners or commissioners' assistants next  
8 year.

9 We need to assume for budget purposes that  
10 by the end of this year we will have fully staffed up  
11 to what we're planning, which is to say we'll bring  
12 the critical people on. And we need to assume, of  
13 course, that we'll have eight commissioners.

14 Under those assumptions, I would expect  
15 that we will have very little money for discretionary  
16 spending again next year. So, in other words, it will  
17 be an extremely tight year next year, although we will  
18 have the ability to do a few things that we're not  
19 able to do this year.

20 And that is under a somewhat rosy  
21 assumption that we get the increase that the President  
22 requested. If we get less than the President  
23 requested or if we have other unanticipated  
24 expenditures, then we could be in a more difficult

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1 position.

2 Of course, it's always possible also that  
3 we'll get more than the President requested.

4 CHAIRPERSON REYNOLDS: What's the  
5 likelihood of that happening?

6 STAFF DIRECTOR MARCUS: Well, experience  
7 says that it's very low. The experience of this  
8 agency over the last many years is that we seldom get  
9 more than the President requests and we often get  
10 less.

11 VICE CHAIRPERSON THERNSTROM: And if we  
12 get less than the President requested, I mean, it  
13 seems to me we don't have -- there aren't obvious cuts  
14 that can be made in our operating budget. Is that  
15 correct? Where are we going to --

16 STAFF DIRECTOR MARCUS: We do not have a  
17 lot of areas for cutting. We have a very small amount  
18 for awards, approximately \$50,000, maybe slightly more  
19 than that. We have a small amount of money for  
20 training.

21 There are a few pots of money that are  
22 important for the agency but discretionary. But we  
23 don't have very much in the way of areas that could be  
24 cut.

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1 CHAIRPERSON REYNOLDS: Any other comments  
2 or questions?

3 (No response.)

4 CHAIRPERSON REYNOLDS: Okay. I guess,  
5 actually, I have one. Just to push this a little  
6 further, if we don't get the amount of money requested  
7 by the administration, is there a possibility that  
8 there could be additional rescissions?

9 STAFF DIRECTOR MARCUS: I would expect  
10 that we will receive a rescission. So I would expect  
11 that the amount that we receive in our appropriations  
12 will be less than the amount that I specified.

13 Now, the amount of the rescission is hard  
14 to predict because it's varied from year to year. It  
15 could be 50,000, 70,000, 100,000.

16 CHAIRPERSON REYNOLDS: So there have been  
17 no indications from folks on the Hill or OMB? They  
18 don't have a number in mind? We just know that as a  
19 general concept, they're tightening the belt. This  
20 belt tightening, it will apply to most, if not all,  
21 agencies?

22 STAFF DIRECTOR MARCUS: That's right.

23 **V. BRIEFING REPORTS**

24 **- VOTING RIGHTS ACT BRIEFING REPORT**

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1 CHAIRPERSON REYNOLDS: Okay. I want to  
2 read the next motion into the record, "I move that the  
3 Commission approve the report produced by staff on the  
4 briefing the Commission held on October 7th, 2005 on  
5 the reauthorization of the temporary provisions of the  
6 Voting Rights Act together with the written statements  
7 of Vice Chair Thernstrom and Commissioner Yaki. This  
8 report, distributed in draft form to commissioners on  
9 February 9th, 2006, incorporates revisions to an  
10 earlier draft distributed to the commissioners on  
11 January 12th of 2006."

12 Is there a second?

13 VICE CHAIRPERSON THERNSTROM: I second it.

14 CHAIRPERSON REYNOLDS: Discussion?  
15 Commissioner Yaki?

16 COMMISSIONER YAKI: Yes. Thank you, Mr.  
17 Chair.

18 I have a problem with one clause of one  
19 paragraph on the second page of the report. In the  
20 third paragraph, actually the second full paragraph on  
21 the page, second sentence, it says, "Further" --

22 COMMISSIONER BRACERAS: I'm sorry. What  
23 page?

24 COMMISSIONER YAKI: Page two of the

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1 summary.

2 COMMISSIONER BRACERAS: Okay.

3 COMMISSIONER YAKI: Second full paragraph,  
4 third line down or fifth line up from the bottom of  
5 the unfootnoted text, "Further, as noted above,  
6 Congress amended section 2 to provide that the  
7 plaintiff in a jurisdictional nature could establish a  
8 violation without having to prove discriminatory  
9 purpose, thus circumventing the legal standards of the  
10 Fourteenth Amendment, which previously applied."

11 I have some problems with the "thus  
12 circumventing the legal standards of the Fourteenth  
13 Amendment." I don't know where that conclusion comes  
14 from. If there is a case law out there, I would like  
15 to see it cited.

16 Absent that, Congress has been given, the  
17 Supreme Court has consistently held -- maybe not  
18 consistently because it's rather inconsistent in a lot  
19 of things. At least the Supreme Court has held that  
20 Congress has broad authority under section 5 of the  
21 Fourteenth Amendment to create and enforce powers and  
22 rights of action. And I'm not sure why we would,  
23 thus, put a conclusion that in 1982, they basically  
24 violated the Fourteenth Amendment.

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1 CHAIRPERSON REYNOLDS: Vice Chair  
2 Thernstrom?

3 VICE CHAIRPERSON THERNSTROM: I don't  
4 think there is any suggestion here about violating the  
5 Fourteenth Amendment. This point is very, very  
6 simple.

7 The amendment of section 2 was in direct  
8 response -- and the legislative record makes this  
9 abundantly clear -- was in direct response to the  
10 court's decision in 1980 in Mobile versus Bolden, --

11 COMMISSIONER YAKI: Right.

12 VICE CHAIRPERSON THERNSTROM: -- in which  
13 the court said that voting rights cases brought under  
14 the Fourteenth Amendment must prove discriminatory  
15 intent. And the amendment of section 2 was, the point  
16 of amending section 2 was, to avoid in the future  
17 having to bring constitutional Fourteenth Amendment  
18 suits so that all suits that were previously brought  
19 under the Fourteenth Amendment could subsequently be  
20 brought under section 2, where there would not be the  
21 same intent requirement. That is the explicit reason  
22 for the results language in section 2.

23 So I think this is simply a statement of  
24 fact.

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1 CHAIRPERSON REYNOLDS: Commissioner  
2 Braceras?

3 COMMISSIONER BRACERAS: I agree with the  
4 Vice Chair. However, I'm not sure that removing that  
5 language would undermine your point and if it would  
6 satisfy commissioner -- I mean, would you be satisfied  
7 if the sentence just ended with a period after  
8 "purpose" and there was no conclusion, one way or the  
9 other, drawn about it, no additional citations, just  
10 stop the sentence after "purpose"?

11 It seems to me that your objection to the  
12 language is really with the word "circumventing"  
13 because circumventing implies --

14 VICE CHAIRPERSON THERNSTROM: Or you can  
15 say "avoiding the necessity." Pardon me?

16 COMMISSIONER KIRSANOW: "Relieving  
17 plaintiff of their obligations to meet the legal  
18 standards of the Fourteenth Amendment."

19 COMMISSIONER YAKI: To me, let me just say  
20 if we had the -- and you'll have to forgive me that  
21 perhaps because I don't have an assistant, but that's  
22 my own fault, I didn't have time to go into the  
23 legislative history of section 2.

24 But the history of congressional actions

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1 following Supreme Court decisions on matters such as  
2 this has been basically to specifically invoke section  
3 5 of the Fourteenth Amendment to justify why they are  
4 essentially attempting to correct, in their words, the  
5 Supreme Court interpretation that had existed before  
6 they did that with the -- Congress did that with the  
7 Alaskan cannery case, which name now escapes me, they  
8 did that with --

9 COMMISSIONER BRACERAS: That's a Title VII  
10 case. That's not constitutional.

11 COMMISSIONER YAKI: Yes. But they did it  
12 with the religious freedom case, where the Supreme  
13 Court said they couldn't do it. But I just wanted to  
14 make sure that we're not -- to me it's just kind of a  
15 red flag whenever you say, "Well, they're trying to  
16 circumvent" this law or that law, especially when  
17 you're saying you're circumventing the Constitution  
18 because obviously if it's the Constitution,  
19 circumvention is not --

20 COMMISSIONER BRACERAS: Is a bad thing.

21 COMMISSIONER YAKI: Right.

22 COMMISSIONER BRACERAS: That's why I'm  
23 wondering. Would you be satisfied with ending the  
24 sentence after the word "purpose" because it seems to

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1 me that that would eliminate the need to even have the  
2 debate?

3 VICE CHAIRPERSON THERNSTROM: I like  
4 Commissioner Kirsanow's suggestion better. Look,  
5 Bolden assumed that the Fourteenth Amendment required  
6 a showing of discriminatory purpose.

7 The witnesses from the civil rights  
8 community in the 1982 amendment said that suggests we  
9 need to come up with a smoking gun. That's  
10 ridiculous. And so let us change the statute so that  
11 suits do not have to be brought under the Fourteenth  
12 Amendment with its intent, built-in intent, standard.

13 I mean, that was --

14 COMMISSIONER BRACERAS: What language are  
15 you proposing?

16 COMMISSIONER KIRSANOW: Why don't for that  
17 purpose simply say "thereby relieving plaintiff of  
18 obligation to" --

19 COMMISSIONER BRACERAS: To plead their  
20 case under the Fourteenth Amendment?

21 COMMISSIONER KIRSANOW: Yes or meet the  
22 legal standards under the Fourteenth Amendment.

23 VICE CHAIRPERSON THERNSTROM: Yes. That's  
24 fine, too.

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1 COMMISSIONER YAKI: If we're not 100  
2 percent certain exactly what it is we're saying, why  
3 don't we just take it out?

4 COMMISSIONER KIRSANOW: I do think it's  
5 instructive to state the bases for which this was  
6 done.

7 COMMISSIONER YAKI: Well, then let's get  
8 the history of section 2 before we say that.

9 VICE CHAIRPERSON THERNSTROM: I know that  
10 history backwards and forwards, Michael.

11 CHAIRPERSON REYNOLDS: The bottom line is  
12 we have two legal standards: one constitutional and  
13 the other statutory. One requires a higher level of  
14 proof. The other, there is a lesser standard.

15 I think that Pete's friendly amendment  
16 addresses your concern that we're suggesting that  
17 Congress did something untoward while at the same time  
18 maintaining the information that is provided by having  
19 that clause in that sentence.

20 VICE CHAIRPERSON THERNSTROM: Yes.  
21 Nobody's suggesting Congress did anything it wasn't  
22 entitled to do. Again, I do think that Commissioner  
23 Kirsanow's suggested change addresses any implication  
24 to the contrary.

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1 COMMISSIONER BRACERAS: So it would say  
2 that's eliminating the need for plaintiffs to plead  
3 their case under the Fourteenth Amendment?

4 VICE CHAIRPERSON THERNSTROM: Yes,  
5 exactly.

6 COMMISSIONER BRACERAS: I have no  
7 objection to the language.

8 CHAIRPERSON REYNOLDS: Commissioner Yaki?

9 COMMISSIONER YAKI: I have objections, but  
10 I won't object.

11 CHAIRPERSON REYNOLDS: Okay. Good enough.  
12 Commissioner Melendez?

13 COMMISSIONER MELENDEZ: Yes. A few months  
14 back, I had asked, you know, about the inclusion of  
15 commissioner statements in this. I think I sent a  
16 statement in to the Commission. Was it for this or  
17 was it for something else?

18 STAFF DIRECTOR MARCUS: Commissioner  
19 Melendez, you did ask about the standards. And you  
20 specifically indicated that you would like to send in  
21 a statement on this briefing report.

22 COMMISSIONER MELENDEZ: Right.

23 STAFF DIRECTOR MARCUS: But I don't  
24 believe we received it.

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1                   COMMISSIONER MELENDEZ:    We sent it in.  
2                   Virginia Davis actually sent it over to your office.  
3                   She was working with me through National Congress of  
4                   American Indians.  And it really basically just gave  
5                   some input as far as the languages on section 203  
6                   because of the Native Americans and their languages.

7                   It's not even mentioned in this report.  
8                   And I think it should be.  And then also I think it  
9                   was just a one-pager, I believe it was, but it  
10                  covered, at least from the problems with franchise  
11                  happening on Native American reservations and also the  
12                  language, which is a very important issue.

13                  CHAIRPERSON REYNOLDS:  Well, is there an  
14                  objection to including Commissioner Melendez's  
15                  comments?

16                  VICE CHAIRPERSON THERNSTROM:  No, of  
17                  course not.  We want to include them.  Obviously the  
18                  staff director somehow didn't have them.

19                  STAFF DIRECTOR MARCUS:  Would you please  
20                  ask Ms. Davis to resubmit?

21                  COMMISSIONER MELENDEZ:  I'll have her send  
22                  them today.

23                  STAFF DIRECTOR MARCUS:  Thank you.

24                  CHAIRPERSON REYNOLDS:  Any other questions

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1 or comments?

2 VICE CHAIRPERSON THERNSTROM: Do we have  
3 the new language for page 2 straight here?

4 CHAIRPERSON REYNOLDS: Okay. Who's taking  
5 notes on this one?

6 VICE CHAIRPERSON THERNSTROM: Okay.  
7 Because I think Commissioner Braceras had the same  
8 thing as Commissioner Kirsanow, basically.

9 COMMISSIONER BRACERAS: Thus eliminating  
10 the need for plaintiffs to plead their case under the  
11 Fourteenth Amendment, period.

12 VICE CHAIRPERSON THERNSTROM: Yes, right.

13 CHAIRPERSON REYNOLDS: Okay. At this  
14 point we can vote. All in favor?

15 (Whereupon, there was a chorus of "Ayes.")

16 CHAIRPERSON REYNOLDS: Any objections?

17 (No response.)

18 CHAIRPERSON REYNOLDS: Any abstentions?

19 (No response.)

20 CHAIRPERSON REYNOLDS: The motion passes  
21 unanimously.

22 Okay. I'll read the next --

23 VICE CHAIRPERSON THERNSTROM: I would like  
24 to make one further statement. I would like to just

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1 say once again to those staff members who are in the  
2 room and who worked on this from beginning to end that  
3 I am extremely appreciative of the work that they did.  
4 Well, that is it, just expressing my appreciation  
5 once again.

6 STAFF DIRECTOR MARCUS: Thank you, Madam  
7 Vice Chair.

8 - **CAMPUS ANTI-SEMITISM BRIEFING:**

9 **FINDINGS AND RECOMMENDATIONS**

10 CHAIRPERSON REYNOLDS: Okay. The next  
11 motion reads, "I move that the Commission approve the  
12 revised finding, then recommendations resulting from  
13 the November 18th, 2005 briefing on campus  
14 anti-semitism. These revised findings and  
15 recommendations were circulated to commissioners on  
16 February 9th, 2006."

17 Is there a second? Is there a second?

18 COMMISSIONER KIRSANOW: Second.

19 CHAIRPERSON REYNOLDS: Thank you.

20 Discussion? Vice Chair Thernstrom?

21 VICE CHAIRPERSON THERNSTROM: Yes. Well,  
22 this continues a conversation that we have started  
23 privately. I'm not happy with the deletions from or  
24 the additions from the changes that were made to the

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1 original report.

2 And the Chair and I have been discussing  
3 the logic of them. And it really turns on an  
4 interpretation of Title VI, the current position of  
5 OCR, where there is a discrepancy between what OCR has  
6 on its Web site in terms of the coverage of  
7 anti-semitism versus what OCR's actual policy is and  
8 so forth.

9 And I do think we need to first perhaps  
10 hear from the Chair as to why he did the strike-outs,  
11 suggested the strike-outs that he did and the  
12 additions that he did. And I do not seem to have the  
13 strike-out.

14 CHAIRPERSON REYNOLDS: Okay. The changes  
15 that I made, the purpose behind the changes was to  
16 clarify the fact that jurisdiction rests on race,  
17 national origin, color. So to the extent anti-semitic  
18 conduct did not fall in one of those three buckets,  
19 OCR lacks jurisdiction.

20 That was the purpose for the changes. And  
21 so most of my changes had to do with just making sure  
22 that when we had a discussion of anti-semitism, it was  
23 clear that it had to be, the conduct had to be, based  
24 on race, national origin, or color.

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1           That is my personal view.    And I also  
2 believe -- there is somewhat of a dispute over this.  
3 I also believe that it is the position of OCR. I have  
4 had conversations with both staff and the assistant  
5 secretary. And they have voiced concerns about the  
6 original approach that we had taken.

7           VICE CHAIRPERSON THERNSTROM: Now, I would  
8 actually like to hear from the staff director on this  
9 since OCR was once his home.

10          STAFF DIRECTOR MARCUS: Certainly, Madam  
11 Vice Chair. The notion that anyone at OCR disagrees  
12 with the OCR policy is news to me. To the best of my  
13 knowledge, the OCR policy on this subject is precisely  
14 what the Department of Education says it is on their  
15 public Web site. If that's not the case, again,  
16 that's news to me.

17          The public Web site of the Department of  
18 Education indicates what their policy is. And it  
19 consists of two policy statements that I am familiar  
20 with by way of disclosure. They were issued under my  
21 name, and I wrote them.

22          And they indicate that anti-semitic  
23 harassment on either college campuses or in elementary  
24 or secondary schools is prohibited by Title VI and

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1 that the Office for Civil Rights will pursue cases of  
2 anti-semitic harassment.

3 Now, this is a difficult issue,  
4 specifically for a reason that I think the Chairman  
5 had in mind, which is that Title VI of the Civil  
6 Rights Act of 1964 prohibits various categories of  
7 discrimination, including race and national origin,  
8 but does not prohibit discrimination on the basis of  
9 religion.

10 There were cases prior to 2004 in which  
11 the Office for Civil Rights declined to prosecute a  
12 case of anti-semitic harassment on the grounds that  
13 discrimination against Jews is religious and not  
14 either ethnic or racial.

15 In 2004, the Office for Civil Rights  
16 clarified the policy to indicate that while Jews are  
17 members of a religious group, they're also members of  
18 a group that has ethnic or racial characteristics.

19 In that policy, Office for Civil Rights  
20 also cites two Supreme Court cases, which under a  
21 different civil rights statute hold that Jews may be  
22 considered to be a race under civil rights purposes.

23 COMMISSIONER BRACERAS: And under which  
24 statute?

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1                   STAFF DIRECTOR MARCUS:       That was, I  
2 believe, the 1866 Act.   It was the post-Civil War  
3 civil rights act.

4                   So the policy of the Office for Civil  
5 Rights as indicated on their public Web site remained  
6 the policy, indicating that anti-semitic harassment is  
7 prohibited by Title VI, regardless of the country that  
8 the Jewish student is from or their color or race.  In  
9 other words, if it is anti-semitic, it is prohibited.

10                  Now, it is still the case that there may  
11 be some forms of purely religious discrimination,  
12 which do not constitute anti-semitism under the stated  
13 policy; that is, cases in which there is some sort of  
14 discrimination based only on doctrinal views, but that  
15 is not something that appears to happen very often and  
16 certainly is not something that --

17                  CHAIRPERSON REYNOLDS:  Are you saying that  
18 if conduct is directed religion, that that is not  
19 anti-semitism?

20                  COMMISSIONER BRACERAS:       Well, it's  
21 anti-semitism.  It just might not violate Title VI.

22                  CHAIRPERSON REYNOLDS:  That's exactly my  
23 point.

24                  COMMISSIONER BRACERAS:  Right?

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1                   STAFF DIRECTOR MARCUS: Well, I don't know  
2 that the quibbling over words matters. I suppose  
3 there is a question of whether you would consider  
4 anti-semitism to refer to purely religious, as opposed  
5 to racial, discrimination.

6                   And I guess it could be theoretically  
7 argued either way in the sense that the term "Semite"  
8 is an ethnic or racial term, as opposed to a religious  
9 term. So one could take a narrow approach to the  
10 meaning of the word "anti-semitism," under which by  
11 definition it refers only to national origin or racial  
12 discrimination or one could read the word more  
13 broadly, as people tend to do in common discourse, as  
14 referring to discrimination against Jews, regardless  
15 of the specific nature.

16                   Now, of course, where we see it typically,  
17 the bigots don't usually specify what they're talking  
18 about, but most of what one sees appears to be ethnic  
19 or racial, as opposed to purely doctrinal.

20                   CHAIRPERSON REYNOLDS: Well, just a quick  
21 follow-up. There seems to be a dispute over what  
22 OCR's policy is. It seems to be that it would be  
23 instructive to submit the document, the original  
24 document, to OCR and ask them to weigh in on the

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1 topic.

2 We do that in cases. We do that. For  
3 example, we are doing that with the Justice Department  
4 with respect to our statutory report. I think that it  
5 is not a good idea for us to characterize a policy  
6 position of an agency when the head of the agency has  
7 indicated that that, indeed, is not the position.

8 And also I think that the presumption, our  
9 approach, the approach that is being proposed proposes  
10 or it collapses the concept of ethnicity and  
11 anti-semitism. It equates the two when the way OCR  
12 operates, there is an investigation to gather the  
13 facts to see whether the conduct was directed toward  
14 religion, in which case OCR lacks jurisdiction or race  
15 or ethnicity. Our approach would basically do away  
16 with the need for an investigation whenever  
17 anti-semitism is involved.

18 Who had their hand up first?

19 VICE CHAIRPERSON THERNSTROM: Everybody's  
20 got their hands up, but I think Michael Yaki did  
21 first. Okay.

22 CHAIRPERSON REYNOLDS: That's all right.  
23 Commissioner Kirsanow?

24 COMMISSIONER KIRSANOW: This is actually a

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1 follow-up to what you said because I was thinking kind  
2 of along the same lines. I am unclear as to the  
3 policy on the Web site, whether that's an official OCR  
4 policy.

5 You know, at Chevron, we defer to the  
6 interpretation of the statute that governs the  
7 particular agency or their interpretation and whether  
8 or not OCR has interpreted Title VI as has been  
9 described in a formal fashion and maybe whether we  
10 could just solicit that interpretation from them.

11 COMMISSIONER BRACERAS: Wait. We don't  
12 have to defer to anything. We make recommendations.

13 VICE CHAIRPERSON THERNSTROM: Briefing  
14 reports are never --

15 COMMISSIONER KIRSANOW: This is not  
16 deferring to --

17 CHAIRPERSON REYNOLDS: This is not  
18 deferring. This is gathering information. Our  
19 decision will be made based on a vote of this  
20 Commission, but gathering data from the agency as to  
21 its interpretation of a statute it has jurisdiction  
22 over seems to me it could benefit our deliberations.

23 COMMISSIONER BRACERAS: It may benefit the  
24 deliberations. I don't deny that. But the whole

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1 point is that, even if OCR didn't have this policy on  
2 its Web site, we would still be within our rights to  
3 recommend that they adopt this policy.

4 CHAIRPERSON REYNOLDS: I agree with that.

5 COMMISSIONER BRACERAS: And so we need to  
6 come to an independent conclusion as a Commission as  
7 to whether or not we think this is the direction that  
8 the law should take. And if so, we should feel free  
9 to issue these recommendations.

10 CHAIRPERSON REYNOLDS: Commissioner  
11 Braceras, I agree with everything that you just said,  
12 but I think that our independent decisions should be  
13 based on all the relevant facts. And that in my  
14 opinion would include finding out what OCR's  
15 interpretation of Title VI is.

16 I'm not saying that its determination will  
17 govern what we do here. And in this particular case,  
18 I don't think that anyone is suggesting that OCR  
19 change its interpretation. What we're doing here, I  
20 believe, is trying to resolve a dispute amongst the  
21 commissioners as to what the existing policy is.

22 COMMISSIONER BRACERAS: I don't think it  
23 matters what the existing policy is because we're  
24 making findings based on the testimony that we heard

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1 at our briefing and making recommendations to other  
2 governmental agencies as to what they should do about  
3 those findings.

4 CHAIRPERSON REYNOLDS: I feel differently.  
5 I don't believe that we are advocating a change in  
6 policy for OCR. That's not --

7 COMMISSIONER BRACERAS: It may not be a  
8 change in policy, but we're simply making  
9 recommendations as to -- whether it's a change in  
10 policy or not, I just don't think it matters. I think  
11 that the question is, what is our policy, what is the  
12 Commission's policy on this matter.

13 And what the OCR's policy on the matter is  
14 we're either recommending full enforcement or we're  
15 recommending a change in policy. It doesn't matter.  
16 We have to make our own decision.

17 CHAIRPERSON REYNOLDS: I think it does  
18 matter. It matters to the extent that it's a matter  
19 of getting our facts right. If we --

20 COMMISSIONER BRACERAS: Well, I agree with  
21 that.

22 CHAIRPERSON REYNOLDS: If we're going to  
23 characterize OCR's position, I think it's important,  
24 especially in light of the fact that OCR has indicated

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1 that our characterization is incorrect, that we, at a  
2 minimum --

3 COMMISSIONER BRACERAS: That's fine. But  
4 their determination is not dispositive.

5 CHAIRPERSON REYNOLDS: I agree.

6 COMMISSIONER BRACERAS: We want to  
7 recommend it.

8 COMMISSIONER KIRSANOW: I think that's  
9 right. My suggestion was not that it be dispositive.  
10 It would really be informative if we've got a  
11 determination from the agency as to their  
12 interpretation of the governing statute.

13 CHAIRPERSON REYNOLDS: Vice Chair  
14 Thernstrom?

15 VICE CHAIRPERSON THERNSTROM: Did you want  
16 to say something? He had his hand up before I did.

17 COMMISSIONER YAKI: Thank you very much.

18 Just on a note of -- I don't know if I  
19 would call it sensitivity or what, but to me I would  
20 understand why -- I would hope that an agency in the  
21 lack of statutory authorization would attempt to or  
22 should attempt to extend the enforcement of Title VI  
23 with regard to this kind of behavior, but I just want  
24 to be very careful that the agency shouldn't and I

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1 think neither should we fall into the trap that you  
2 can simply stretch and in order to define anti-semitic  
3 behavior as behavior that discriminates on the basis  
4 of a racial or national origin.

5 I think that it falls into to me a  
6 stereotype or trap that is very dangerous to use. It  
7 certainly was during the 1930s the rhetoric of Adolf  
8 Hitler was such that he sought to demean members of  
9 the Jewish community by creating stereotypes of  
10 physical characteristics and other types of things.

11 I think that certainly what he chose to do  
12 in the extermination of the Jews of Europe was not  
13 based on that. It was if you had any Jewish blood in  
14 you whatsoever, if you were a member of that religion,  
15 you were headed for Dachau or Auschwitz or any of the  
16 other places that he created.

17 I am very uncomfortable with taking an  
18 interpretation of anti-semitism and basing it solely  
19 on racial or national origin. I would think that,  
20 regardless of how we want to characterize what OCR  
21 does or does not have jurisdiction, I don't think we  
22 want to fall into that trap.

23 And I think that we should say very  
24 specifically and clearly that it is based upon

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1 religious discrimination in this case because if a  
2 professor were to say to a class, "Anyone here who is  
3 Jewish, I don't want to hear from you," he's not going  
4 to try and look around and decide, you know, who is a  
5 Semite or who is not in terms of who he's going to  
6 call on or not or she is going to call on or not. I  
7 just would be very uncomfortable with that.

8 And I just want to put that on the record.

9 And if we need to modify the findings to include that  
10 one of the difficulties that exists is the current  
11 exclusion of religion from Title VI, then it's  
12 something that we believe the Congress should fully  
13 investigate and hold hearings on and that we should as  
14 well because it is not just about Israel. It's about  
15 the Jewish people. And I'm concerned that I don't  
16 want us to fall into that trap.

17 CHAIRPERSON REYNOLDS: Vice Chair  
18 Thernstrom?

19 VICE CHAIRPERSON THERNSTROM: Okay. A  
20 couple of things. In terms of turning to OCR and  
21 getting response, we do that with a statutory report.  
22 We have never done that with briefing reports. And I  
23 don't think that that sets a good precedent here at  
24 all.

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1           It is possible to describe what OCR's  
2 policy is based on the OCR Web site without, you know,  
3 getting involved in interagency disputes over at OCR.

4           Commissioner Yaki, I mean, Jews do think  
5 of themselves as an ethnic group if we don't live in  
6 Germany in the 1930s. I mean, I appreciate what  
7 you're saying, but I do think that the basis of our  
8 whole briefing was an assumption that these are  
9 matters covered by Title VI and Jews are an ethnic  
10 group. I think if we had started with your  
11 assumption, we wouldn't have this briefing.

12           Then, finally, there are deletions here  
13 that just don't even -- aren't related to the  
14 conversation we have been having.

15           CHAIRPERSON REYNOLDS: Oh, no, I didn't  
16 say -- I mean, that is the primary --

17           VICE CHAIRPERSON THERNSTROM: But there  
18 are mysterious deletions here. For instance, delete  
19 such propaganda should be distinguished from  
20 legitimate discourse regarding foreign policy. What  
21 is wrong with that statement? Many college students  
22 --

23           CHAIRPERSON REYNOLDS: Would you like to  
24 finish the first topic first? We can go on and

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1 discuss each deletion one by one. I would think that  
2 it would be more orderly if we would just finish one  
3 topic before going on to the next.

4 COMMISSIONER YAKI: I just want to say one  
5 thing in response to Commissioner Thernstrom.

6 VICE CHAIRPERSON THERNSTROM: Yes.

7 COMMISSIONER YAKI: I by no means was  
8 trying to exclude what we were trying to do. I'm just  
9 saying that I think that much of what the discourse  
10 centered upon was the satisfaction with what OCR was  
11 or was not doing with regard to enforcement of Title  
12 VI.

13 And while I applaud any effort to make  
14 Title VI cover anti-semitic, anti-Jewish behavior, I  
15 am all for that. What I am saying is that it would be  
16 a lot cleaner if it were done the other way.

17 I would be the first one to say and I am  
18 the first one to say, figure out some way to stretch  
19 it to cover this kind of stuff because we need to do  
20 something about it.

21 VICE CHAIRPERSON THERNSTROM: Okay. Can  
22 that be an additional point in the --

23 COMMISSIONER YAKI: Yes, yes, absolutely.

24 VICE CHAIRPERSON THERNSTROM: And the

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1 briefing, right. Okay. We would like to see some  
2 kind of congressional discussion of amending Title VI  
3 so that it covers as well religious discrimination,  
4 purely religious discrimination. That's fine with me.

5 CHAIRPERSON REYNOLDS: I don't know if the  
6 briefing we had focused on religious. So the factual  
7 predicate for that recommendation would seem to be  
8 thin.

9 And I would suggest that if we were going  
10 to go down that road, that we would have another  
11 briefing that focuses on this.

12 COMMISSIONER BRACERAS: I disagree because  
13 the recommendation will be based on making sure that  
14 there wasn't a loophole, right? I mean, if we decide  
15 as a group to recommend to Congress that Title VI be  
16 amended to prohibit discrimination on the basis of  
17 religion, the factual predicate for that is that we  
18 heard testimony of anti-semitic incidents on a variety  
19 of campuses.

20 And we want to make sure that Title VI  
21 covers those instances, whether you classify them as  
22 racially based or religiously based. And we want to  
23 close a loophole. So I don't think we need further  
24 testimony. It's procedural.

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1                   VICE CHAIRPERSON THERNSTROM: I agree with  
2 that.

3                   CHAIRPERSON REYNOLDS: Okay. Well, let me  
4 --

5                   COMMISSIONER BRACERAS: And just with  
6 respect to the point as to whether or not Judaism is  
7 an ethnicity or not, I was raised Jewish. I'm half  
8 Puerto Rican, half Jewish. And I was always told  
9 growing up to define myself that way. When people  
10 said, you know, "Where do your ancestors come from?" I  
11 was specifically told by my parents not to say,  
12 "Russia and Poland" because we rejected that ethnicity  
13 and considered ourselves Jews from that side of our  
14 family.

15                   I really have never met a Jewish person  
16 who doesn't define themselves ethnically as a Jew.  
17 Even friends of mine who were raised Jewish and  
18 converted to Christianity, they may say that their  
19 religion is Catholic or Episcopal or Unitarian, but  
20 they define themselves ethnically as Jews, even though  
21 their religion has changed.

22                   So I know that my personal experience  
23 isn't scientific data, but I don't know of any Jews  
24 who would be offended by this construct.

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1                   CHAIRPERSON REYNOLDS: Well, if we can, in  
2 an attempt to bring this to some type of conclusion,  
3 again, I would suggest that we settle the  
4 jurisdictional issue as to -- well, just getting OCR's  
5 interpretation of the extent of its jurisdiction, it's  
6 an important question.

7                   Anything that has not been authorized by  
8 Congress is illegal. And I think that that is an  
9 important issue. And it's of such an importance that  
10 it should not be decided by having research that  
11 consists of looking at a Web site, especially when we  
12 know that OCR has expressed concerns about the  
13 interpretation, the original recommendations and the  
14 original characterization of its jurisdiction.

15                  VICE CHAIRPERSON THERNSTROM: OCR has not  
16 expressed. There are people you have talked to within  
17 OCR who have expressed some concern. That is an  
18 important distinction.

19                  There is an OCR Web site statement. And,  
20 again, we are not in the habit and I don't want to  
21 begin the habit of sending briefing reports for  
22 affected agency review.

23                  CHAIRPERSON REYNOLDS: My recommendation  
24 is not that all briefings go through that review

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1 process. What I am suggesting is that in this  
2 particular case, since there is a dispute here and  
3 since OCR, members of OCR, including the assistant  
4 secretary, the highest ranking person in that  
5 particular agency, has expressed concerns about our  
6 interpretation, it seems to me that under those  
7 circumstances, we would be remiss in our duties if we  
8 didn't investigate this.

9 And, finally, there is nothing wrong with  
10 getting more information. More information is a good  
11 thing. More information from the agency that  
12 interprets Title VI is a good thing.

13 Again, our determinations, what we finally  
14 do is not going to be governed by what OCR has to say  
15 one way or the other, but at least our decision will  
16 be informed by credible, solid information from the  
17 agency.

18 VICE CHAIRPERSON THERNSTROM: I'm sorry,  
19 Chair. I don't think that is what we are going to  
20 get. We are going to get from the agency a fact we  
21 already know, which is that there are different forces  
22 within the agency that are saying different things.

23 CHAIRPERSON REYNOLDS: No. We are asking  
24 them for the policy. We can --

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1 COMMISSIONER BRACERAS: The policy is  
2 available online, right?

3 CHAIRPERSON REYNOLDS: As a matter of just  
4 being good lawyers, relying on a Web site is just a  
5 bad thing.

6 COMMISSIONER YAKI: I see Web sites all  
7 the time.

8 COMMISSIONER BRACERAS: Actually, that's  
9 good. I think as a matter of being good lawyers, we  
10 should look to the policy and not to the individuals.  
11 I mean, we're a nation of laws not men.

12 CHAIRPERSON REYNOLDS: No, no, no, no, no.  
13 I'm talking about getting the official position from  
14 OCR, asking them what their official position is.

15 VICE CHAIRPERSON THERNSTROM: It's on the  
16 Web site.

17 COMMISSIONER YAKI: But in terms of policy  
18 --

19 CHAIRPERSON REYNOLDS: Why is there such  
20 resistance? Why is there such resistance to gathering  
21 information?

22 VICE CHAIRPERSON THERNSTROM: It's not  
23 gathering information. You already know the  
24 information.

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1                   COMMISSIONER KIRSANOW: I want to disagree  
2 slightly with what you have to say, Michael. I think  
3 this has nothing to do in terms of what Gerry is  
4 saying, I think, with to whom we defer or anything.  
5 We can make all the recommendations in the world we  
6 want to, but to whom we make the recommendations.

7                   First of all, the Web site policy is not a  
8 policy. And it is not going to hold up anywhere. The  
9 policy is a determination that is issued by the  
10 appropriate individual, whether it's the secretary or  
11 assistant secretary of the affected department or  
12 agency. Then we have a determination.

13                   Whatever is on the Web site cannot be  
14 relied upon as policy under the law. It won't do. So  
15 the point is we can, as we have habitually done as the  
16 U.S. Civil Rights Commission -- I'm not suggesting we  
17 build this here over party to this. The Commission  
18 can expound and say all kinds of things that it wants  
19 to and get roundly ignored because it is just simply  
20 saying things.

21                   If we don't ascertain what the policy is,  
22 then we are directing our recommendations perhaps to  
23 the wrong source. It should, rather, be directed to  
24 Congress to amend Title VI if, in fact, the official

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1 determination coming from the assistant secretary is  
2 that it doesn't encompass religion, Title VI doesn't  
3 encompass religion.

4 Under the Chevron decision, the agency has  
5 the responsibility to whom everyone else defers in  
6 terms of what the interpretation of the governing  
7 statute is. That doesn't mean we've got to be  
8 complicit in that or that we have to defer to them,  
9 but it does go to to whom do we make the  
10 recommendations and how do we make them. Otherwise  
11 we're simply saying recommendations to someone for  
12 whom it is simply going to fall on deaf ears.

13 COMMISSIONER YAKI: Mr. Chair, in part, I  
14 agree with Commissioner Kirsanow in that you want to  
15 have integrity in whatever we issue because that  
16 certainly has importance to whether or not it is  
17 received properly.

18 You know, listening to this continue some  
19 more, you know, part of me thinks that if there is  
20 this kind of confusion -- and certainly the testimony  
21 that we received would conclude that there is no real  
22 set policy at OCR on this, that there are differing  
23 viewpoints on the enforcement of this.

24 I mean, we may not have to go as far as,

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1 say, amend Title VI. We may only go as far as to say  
2 that we believe that anti-semitic behavior should be  
3 considered discrimination on national origin, not  
4 maybe but should be or is or that we recommend that it  
5 be classified as such if it is not already done and  
6 should be clarified and made into official  
7 interpretive policies and enforcement policies of OCR.

8 I just wonder if we need to tailor this  
9 firm up and try and work it all out. But I would  
10 rather not. I think I would like to go forward except  
11 we're tabling everything all the time. But on this  
12 one, I'm wondering if perhaps we need to be a little  
13 more careful with the language or more stronger or  
14 more assertive with the language if -- I sense from  
15 the Commission that there was a desire to be more  
16 assertive and stronger with the language in some  
17 instances but also some reluctance to do so by stating  
18 rather boldly whatever we believe the OCR policy to  
19 be.

20 CHAIRPERSON REYNOLDS: Well, I separate  
21 the two issues. For me, we can recommend anything we  
22 want. And I don't think that there is a debate around  
23 this table on that issue.

24 My focus is just getting the

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1 jurisdictional question answered. That is basically  
2 OCR's interpretation. And if we want the official  
3 word, we could ask the assistant secretary to discuss  
4 this issue.

5 We could subpoena her if we feel that that  
6 is necessary, but I feel that it is extremely  
7 important that we get it right.

8 COMMISSIONER BRACERAS: Maybe I'm confused  
9 here, but my understanding is there is an official  
10 policy. It is posted on the Web. The current  
11 administration of OCR may disagree with it and may  
12 wish to change it, but they have not done so yet.

13 And as long as it is the official policy,  
14 it is what it is. And we can cite to it. Just  
15 because the people who currently staff the office may  
16 have a problem with what the prior regime did doesn't  
17 mean it's not the policy.

18 CHAIRPERSON REYNOLDS: Well, based on my  
19 conversations with staff and the assistant secretary,  
20 their position is that the policy -- basically the  
21 change occurred when these, I think at least two,  
22 letters were issued by the staff director. That is  
23 where the controversy centers.

24 What's on the Web site, what we have is a

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1 battle over interpretations. They read their Web  
2 site, and they interpret it in a way that differs from  
3 what we're proposing.

4 STAFF DIRECTOR MARCUS: If I may clarify,  
5 of course, I issued these policy statements as the  
6 official statements of the Department of Education  
7 Office for Civil Rights in my capacity as the person  
8 delegated the authority of the assistant secretary.

9 At the time they were issued, they were  
10 issued as the formal policy of the Office for Civil  
11 Rights and the Department of Education. They were not  
12 intended to be proposals or suggestions but, rather,  
13 clarifications of the existing --

14 CHAIRPERSON REYNOLDS: That's right. When  
15 those letters were issued, did you change the rules?

16 STAFF DIRECTOR MARCUS: Well --

17 CHAIRPERSON REYNOLDS: Is it a  
18 clarification or is it a change?

19 STAFF DIRECTOR MARCUS: That's an  
20 interesting question.

21 CHAIRPERSON REYNOLDS: It's a basic  
22 question.

23 STAFF DIRECTOR MARCUS: They were viewed  
24 as a clarification in the sense that previously the

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1 Office for Civil Rights had not taken a formal policy  
2 decision on the topic.

3 There had been numerous analyses done that  
4 came out in slightly different ways. And there were  
5 decisions made at the level of regional offices on the  
6 issue. But there hadn't been a formal policy.

7 Now, it might have been a slightly  
8 different thinking than some staff members have had,  
9 but because there had not been a prior contrary  
10 policy, it was considered simply a clarification of  
11 the formal regulation on Title VI.

12 CHAIRPERSON REYNOLDS: Well, we have  
13 interpretations on top of interpretations. And we  
14 have no clarity. I think that the obvious thing to do  
15 is to ask OCR what this policy is. And then we just  
16 make our decision.

17 And this shouldn't take long. We can send  
18 the document over there and ask them, is this an  
19 accurate characterization of OCR's current policy.  
20 The answer will be yes, no, or maybe.

21 Then we can vote and make our  
22 recommendations, whether it's expanding the scope, the  
23 jurisdictional scope of Title VI, or something else.

24 Commissioner Yaki?

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1                   COMMISSIONER YAKI: I would not send over  
2 what we have. I would simply send over a letter and  
3 say, "We had a hearing on this issue. What is your  
4 policy," pure and simple, "on the application of Title  
5 VI to anti-semitic behavior on college campuses and  
6 universities," period.

7                   CHAIRPERSON REYNOLDS: That'll do it.

8                   COMMISSIONER YAKI: And then we don't want  
9 to give them a chance to rift off anything that we  
10 say. Well, you know what I mean, circumvent, water,  
11 whatever we say. We want them to just simply say it.  
12 And then we have it. And then we can say okay.

13                   And maybe we can use that in part of the  
14 finding to reconcile it with the obvious frustration  
15 that some of the panelists felt with what is actually  
16 happening at OCR. I think that would actually be a  
17 very useful finding to make.

18                   CHAIRPERSON REYNOLDS: Vice Chair  
19 Thernstrom?

20                   VICE CHAIRPERSON THERNSTROM: I am  
21 confused about where in this report there are  
22 sentences that suggest it is important to get  
23 precisely what OCR's current policy is. We are  
24 suggesting on a number of occasions what we have

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1 recommendations, like to the extent race, color, and  
2 national origin are involved. OCR should continue to  
3 protect college students from anti-semitic.

4 Do we need some kind of clarification  
5 because of that kind of statement? I mean, we are  
6 asking OCR should conduct a public education campaign  
7 to inform college students of the rights and  
8 jurisdictions afforded to them. I mean, does this  
9 kind of language require that we hear from OCR?

10 CHAIRPERSON REYNOLDS: The language, the  
11 issue, the concept that's on the table is the extent  
12 of its jurisdiction.

13 VICE CHAIRPERSON THERNSTROM: Well, but I  
14 do not see -- and maybe I'm missing the relevant pages  
15 here because I only got a limited one, but I do not  
16 see a statement that in our report on a briefing we  
17 held here, the briefing being based on the assumption  
18 that anti-semitism was indeed covered by Title VI.

19 I do not see any kind of statement that  
20 makes presumptions about what the official position of  
21 the OCR is when, in fact, we know that, you know,  
22 you've got differing positions and an unresolved issue  
23 at OCR.

24 CHAIRPERSON REYNOLDS: How about this? I

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1 move that we send a letter, the Yaki letter, over to  
2 OCR inquiring about their jurisdiction over this  
3 issue. And once we get that information, we would  
4 make our findings and recommendations, having the  
5 benefit of knowing what the official position is.

6 VICE CHAIRPERSON THERNSTROM: I would like  
7 to hear the staff director's response to that.

8 STAFF DIRECTOR MARCUS: I don't know that  
9 in my capacity as staff director I have a response to  
10 it. If the Commission were to issue such a letter, I  
11 would want specificity as to whether we have a  
12 response date to make sure that we have it in time for  
13 future meetings.

14 There are policy arguments, either for  
15 sending the letter or opposed to sending the letter,  
16 but I don't have a procedural point to add to it.

17 VICE CHAIRPERSON THERNSTROM: And what  
18 would we do with the response that we got? So you've  
19 got somebody at OCR. I don't care whether the person  
20 is assistant secretary. And if that opinion is in  
21 conflict with the Web site, there is a question of  
22 what, in fact, the policy is. What do we do with  
23 whatever that letter says?

24 CHAIRPERSON REYNOLDS: I guess it depends

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1 on what the response is. I don't know.

2 COMMISSIONER KIRSANOW: I actually think  
3 that one of the best things is to find out what the  
4 policy is. Maybe that's one of the best things that  
5 could happen from something like that.

6 COMMISSIONER BRACERAS: We know what the  
7 policy is.

8 COMMISSIONER KIRSANOW: Apparently not.

9 COMMISSIONER BRACERAS: Well, I think by  
10 sending a letter to them, we are pushing them to  
11 either affirm or rescind a policy that is already  
12 there. That is what sending the letter to them is  
13 doing.

14 COMMISSIONER KIRSANOW: I think it's --

15 COMMISSIONER BRACERAS: It's pushing them  
16 to think about it again and to either affirm it or  
17 rescind it.

18 CHAIRPERSON REYNOLDS: If they rescind it,  
19 then they are going to have to go through notice and  
20 comment.

21 COMMISSIONER KIRSANOW: Because apparently  
22 what we have heard in testimony is if it is their  
23 policy, it's a policy that they are not following.

24 So I think it's important to see the

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1 agency that is charged with doing this actually  
2 enunciate a policy that it is going to follow. I  
3 think that has a salutatory effect.

4 Second is I think when we get that  
5 information, whatever the letter says, if it says  
6 this, in fact, is our policy, that policy that was  
7 issued by our current staff director, is, in fact, our  
8 policy which we intend to enforce, then we can direct  
9 our recommendations to them or they just say this is  
10 our policy.

11 Then we can direct our recommendations to  
12 them saying, "Then enforce the thing" because our  
13 testimony is that we have frustration among people who  
14 are affected by its stakeholders that it's not being  
15 enforced.

16 If it is not their policy, then we send to  
17 Congress the recommendation that Title VI be amended  
18 so that, in fact, it is clear that anti-semitism falls  
19 within the purview.

20 Otherwise I think we're simply doing what  
21 the Commission typically does and bloviates.

22 CHAIRPERSON REYNOLDS: Vice Chair  
23 Thernstrom?

24 VICE CHAIRPERSON THERNSTROM: In the

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1 Adarand briefing, we were not describing current  
2 policy. We were recommending making a series of  
3 recommendations that, indeed, if we had sent a letter  
4 over, we would not have gotten anybody to sign up.

5 We are in a very unusual position here of  
6 having the Chair, I mean -- and I don't say this in  
7 any negative way but just to point out that it's  
8 unusual of having had some private conversations with  
9 members of the OCR staff bringing information to us.  
10 I mean, it's not the way we usually operate.

11 CHAIRPERSON REYNOLDS: It's more than  
12 that. The chair is also the former assistant  
13 secretary, who enforced Title VI at OCR. This issue,  
14 it's a complicated issue. At the end of the day, if  
15 we have notice, if we are on notice, that the agency  
16 charged with enforcing the statute has a different  
17 position, I don't think that there is any harm in  
18 hearing what they have to say.

19 Our decision doesn't turn on anything that  
20 they have to say. But it is useful information that  
21 will help us make an informed decision.

22 VICE CHAIRPERSON THERNSTROM: About what?

23 CHAIRPERSON REYNOLDS: About whatever. We  
24 could decide to recommend that Title VI be expanded to

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1 include religion. There is a whole host of things  
2 that we could do. But let's get the facts right.

3 Commissioner Yaki?

4 COMMISSIONER YAKI: Commissioners, Mr.  
5 Chair, Madam Vice Chair, I think that there is a lot  
6 of utility in having the agency that is being subject  
7 to questioning by members of the public to have it  
8 stake its position out there in the public for all to  
9 see.

10 I think that more than just saying whether  
11 or not you see something privileged or not, I think  
12 one of our recommendations might have been, in the  
13 first place, why don't you clarify what the heck it is  
14 you are doing because you are confusing the heck out  
15 of a lot of people out there as to whether or not what  
16 you say on your Web site and what you do in practice  
17 are one and the same thing.

18 I think I would not like this to be like a  
19 six-month, three-month, or even a two-month. I would  
20 like to see if we could get an answer using the good  
21 offices of the Chair to get an answer in time for the  
22 next meeting from the department.

23 And I think that if they can't do that  
24 after having expressed these private thoughts to the

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1 Chairman, then I think that they are themselves  
2 bloviating. And then we should simply take action on  
3 our own without having to wait for them.

4 I think in this instance, with I think the  
5 integrity of the recommendations that we want to make  
6 being so important and also the fact that for the  
7 public and for the concerned individuals or  
8 organizations that came before us in the briefing,  
9 having those here enunciate what they believe their  
10 policy is today is important for us to fashion a  
11 recommendation and to be responsive, quite frankly, to  
12 the confusion out there in the community as to what  
13 OCR is or is not doing.

14 But I would second the motion to send a  
15 letter.

16 CHAIRPERSON REYNOLDS: Commissioner  
17 Melendez?

18 COMMISSIONER MELENDEZ: I would agree that  
19 in a sense, we're of differing opinions here. And I  
20 think what we want to do is come as close to consensus  
21 as we can.

22 Whether or not we will, you know, I think  
23 if there are still some questions out there that we  
24 need more time, but I don't think we ought to go more

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1 than the next meeting. So it's important for missing  
2 the obvious that just to satisfy your concern on a  
3 position from the department sounds all right to me.

4 CHAIRPERSON REYNOLDS: Any other comments?

5 (No response.)

6 CHAIRPERSON REYNOLDS: Okay. So do we  
7 need to vote on this?

8 COMMISSIONER MELENDEZ: Yes.

9 CHAIRPERSON REYNOLDS: Well, the motion is  
10 that we send a letter, the Yaki letter, a letter  
11 basically asking the department to state its position,  
12 its official position, on this issue.

13 What do you say we give them ten days to  
14 turn this around?

15 COMMISSIONER KIRSANOW: That won't happen.

16 I think we have to make it realistic. I can't  
17 imagine they will do it in ten days. But by the next  
18 meeting, we can --

19 COMMISSIONER YAKI: Actually, as a point  
20 of information, we have assured turnaround to the next  
21 meeting, correct?

22 COMMISSIONER BRACERAS: March 10th, right?

23 COMMISSIONER YAKI: Yes. We're March  
24 10th.

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1 CHAIRPERSON REYNOLDS: Let's just give  
2 them ten days. And if they do it, fine. If not, then  
3 we just go ahead and --

4 COMMISSIONER YAKI: Move on.

5 CHAIRPERSON REYNOLDS: Yes. Okay. All in  
6 favor?

7 (Whereupon, there was a chorus of "Ayes.")

8 CHAIRPERSON REYNOLDS: Objections?

9 VICE CHAIRPERSON THERNSTROM: I object.

10 COMMISSIONER BRACERAS: I'm opposed.

11 CHAIRPERSON REYNOLDS: Abstentions?

12 (No response.)

13 CHAIRPERSON REYNOLDS: Commissioner  
14 Melendez?

15 COMMISSIONER MELENDEZ: I was for the  
16 motion.

17 CHAIRPERSON REYNOLDS: Let the record  
18 reflect that the motion passes with Commissioners  
19 Melendez, Yaki, Kirsanow and the Chairman voting in  
20 favor and Commissioners Braceras and the Vice Chair  
21 Thernstrom voting against.

22 COMMISSIONER YAKI: So we would postpone  
23 this item until the March 10th agenda?

24 CHAIRPERSON REYNOLDS: Yes.

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1 COMMISSIONER YAKI: Okay.

2 VICE CHAIRPERSON THERNSTROM: There are  
3 other deletions. Do we want to save them for the  
4 March 10th meeting?

5 CHAIRPERSON REYNOLDS: I would prefer to  
6 save them. I would prefer to push them off.

7 VICE CHAIRPERSON THERNSTROM: That's fine.  
8 They make no sense to me whatsoever.

9 COMMISSIONER BRACERAS: Well, maybe we can  
10 resolve them privately.

11 COMMISSIONER YAKI: Actually, it would be  
12 helpful, I think, for me, Madam Vice Chair, if you  
13 could circulate some of those comments, objections  
14 prior to the March 10th meeting so that we can --

15 VICE CHAIRPERSON THERNSTROM: Why don't we  
16 stare at what has been deleted and try to figure out  
17 the logic of some of these seemingly innocuous  
18 statements?

19 COMMISSIONER YAKI: Okay.

20 COMMISSIONER BRACERAS: Right now?

21 VICE CHAIRPERSON THERNSTROM: No.

22 COMMISSIONER KIRSANOW: Can we start them  
23 now?

24 COMMISSIONER YAKI: We don't have a

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1 redline with us at the moment.

2 CHAIRPERSON REYNOLDS: As long as we don't  
3 have to discuss it.

4 **VI. MANAGEMENT AND OPERATIONS**

5 **- WORKING GROUP ON THE BUDGET**

6 CHAIRPERSON REYNOLDS: I will read the  
7 following motion into the record, "The working group  
8 on the budget recommends that the Commission hire a  
9 special assistant for Commissioner Melendez and that  
10 the special assistant be hired at a grade no higher  
11 than a GS-12 level. I move that the Commission vote  
12 to accept this recommendation of the working group on  
13 the budget."

14 Is there a second?

15 COMMISSIONER YAKI: Second.

16 CHAIRPERSON REYNOLDS: Discussion?

17 VICE CHAIRPERSON THERNSTROM: Yes.

18 Commissioner Melendez, I think you deserve a special  
19 assistant. That goes without saying.

20 I am a little concerned that the working  
21 group on the budget made this recommendation before  
22 the last information it received on the final  
23 condition of this agency. And I wonder if we need to  
24 postpone this decision or, you know, in what other way

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1 we need to respond to the financial uncertainty,  
2 budgetary uncertainty.

3 CHAIRPERSON REYNOLDS: Commissioner  
4 Melendez, I, too, as I have expressed in the past, am  
5 sympathetic to your request. And I voted as a member  
6 of the working group for this. However, that vote  
7 took place before we got news that we were going to  
8 have approximately \$100,000 taken out of the budget.

9 The way things look now, if we were to  
10 move forward and hire a special assistant, we would be  
11 in a position of having to -- well, just a combination  
12 of unpleasant measures, including possibly a reduction  
13 in force.

14 So I have grave concerns about our moving  
15 forward with the hiring of a special assistant until  
16 we get more information as to the scope of the  
17 rescission and also to see if we are going to get the  
18 amount of money recommended by the President, which  
19 apparently generally the President gets less than  
20 requested.

21 Vice Chair Thernstrom?

22 VICE CHAIRPERSON THERNSTROM: Can I say  
23 one more thing on the possible trade-offs here? I do  
24 not want to see the staff with members who deserve

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1 bonuses to have to do without them. I don't want us  
2 to forego staff training that is essential to the  
3 functioning of the agency.

4 Again, you deserve a special assistant.  
5 This is not a pretty situation that we are in. And I  
6 do think, unfortunately, that this decision needs to  
7 be postponed.

8 CHAIRPERSON REYNOLDS: Other comments?

9 COMMISSIONER KIRSANOW: I would simply  
10 just encourage Commissioner Melendez and Commissioner  
11 Yaki to the extent they are comfortable doing so and  
12 to the extent that commissioners who have special  
13 assistants are willing to do so to avail themselves of  
14 the special assistants who currently are on the  
15 payroll.

16 I know that is a difficult proposition,  
17 but to the extent that can possibly be done, it might  
18 be a way of kind of alleviating some of the burden.

19 VICE CHAIRPERSON THERNSTROM: Absolutely.  
20 And my assistant already is doing that. And she is  
21 happy to do it for anybody else. I am sharing my  
22 assistant currently.

23 COMMISSIONER YAKI: Well, I think she just  
24 grimaced back there. I'm just teasing.

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1 (Laughter.)

2 VICE CHAIRPERSON THERNSTROM: No. I know  
3 she didn't. I didn't have to look at her because I  
4 know that she does that.

5 COMMISSIONER BRACERAS: I think the  
6 problem with that, though, is that it's the two  
7 Democratic members who don't have assistants. And I  
8 think they want to be able to have a confidential  
9 research person.

10 VICE CHAIRPERSON THERNSTROM: I understand  
11 that. I understand that. And I think they deserve  
12 that kind of assistance. I just don't know how to  
13 provide it at this moment.

14 CHAIRPERSON REYNOLDS: Ken, do we have any  
15 -- I'm sorry. Commissioner Melendez?

16 COMMISSIONER MELENDEZ: Well, hopefully it  
17 could become part of the budget formulation. You  
18 know, I know that there are essential components to  
19 the Commission. It's not to say that every part of  
20 the budget isn't important, but I think that if you  
21 start at the top down and you look at the Commission  
22 -- and I even had a concern with eliminating regional  
23 offices because before I came, I heard that that was  
24 going to be part of someone's decision to do that.

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1           The way I look at it is you look at the  
2 Commission as what are the essential components of it.  
3 Well, it's probably the eight members that make up the  
4 Commission. If you look at the top down, everything  
5 else probably, and then you look at the regional  
6 offices, if those are important to keep open, then  
7 you've kind of got to staff whatever the core elements  
8 of the Commission are.

9           I would hate to go into the year and then,  
10 all of a sudden, it's like any other budget issue that  
11 something that you have termed "essential" takes the  
12 place of so that we're not handicapped as  
13 commissioners, not only that because I know that a  
14 comment was made that we're all attorneys. Well,  
15 we're not all attorneys.

16           I think there are a couple of us on the  
17 Commission who are not attorneys who basically are  
18 probably in probably more need of assistance than  
19 maybe people who are attorneys, basically can fend for  
20 themselves on really doing analysis on the very thing  
21 that we just discussed. And so you can see that it's  
22 real important at some point.

23           I don't have a problem, but I would hate  
24 to see that, you know, we get into the budget again

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1 and, all of a sudden, you know, another general  
2 counsel comes on board and then this assistant to  
3 myself, which I think is a key element of what the  
4 Commission is all about, making sure that the  
5 commissioners, who basically make a lot of these  
6 decisions, aren't handicapped and they can basically  
7 fulfill their mission.

8 And I'm just saying I kind of look at a  
9 top-down approach as to the essence of what makes up  
10 this Commission. And you want to make sure that is  
11 running right before you start talking about  
12 everything else that is probably included in the  
13 budget.

14 That's just my concern.

15 CHAIRPERSON REYNOLDS: Commissioner Yaki?

16 COMMISSIONER YAKI: I want to apologize,  
17 Commissioner Melendez, because, of course, I'm the  
18 idiot who proposed the hiring freeze to begin with on  
19 commissioner assistants, but I would hope that we --  
20 and I think that this actually may help us in the  
21 budget discussions for next year, that one thing that,  
22 of course, Congress is very sensitive to is resource  
23 allocation between the parties.

24 I think that I would hope that one of the

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1 points we can make in the discussion for next year's  
2 budget is the need to have a confidential staff for  
3 the democratic side of the Commission, not that there  
4 are any real differences between them, but that just  
5 in terms of how we pose the issue of resource  
6 allocation and fairness here I think is certainly the  
7 kind of thing that covers what I think you would be  
8 receptive to is a frustration for Commissioner  
9 Melendez because he is not an attorney.

10 I asked the question earlier about the  
11 budget and how it would affect future items, which was  
12 my kind of lead-in to the staff director to say, can  
13 we afford this position?

14 And I guess now what I am starting to hear  
15 is that maybe despite the fact that we are okay, we're  
16 okay as is. We're not okay as is plus. Is that  
17 basically the best way to describe it, Mr. Staff  
18 Director?

19 STAFF DIRECTOR MARCUS: I believe that  
20 based on the most recent information about 2006  
21 expenditures, we have enough money to do what we have  
22 committed to do and hire a special assistant at the  
23 GS-12 level for 2006. And we would have no problems  
24 in 2006.

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1                   However, if we're hiring a permanent  
2 employee, we would have to ask the question, will we  
3 have enough money to continue the person on board in  
4 2007? Two thousand seven looks tighter because, of  
5 course, we will have the people on board. We have the  
6 advantages in 2006 that we will not have in 2007.

7                   To the extent that we get congressional  
8 appropriations that are identical to what the  
9 President has proposed, we could find a way possibly  
10 to hire a special assistant at the level of GS-12 who  
11 would continue through 2007.

12                   But based on the expenditures we're  
13 committed to, the only way that we have been able to  
14 figure out of doing that would involve essentially  
15 eliminating the modest sum of money that is in the  
16 budget currently for awards as well as pretty much all  
17 the modest amount for training. And I think there was  
18 another pot I think that would come to mind that we  
19 would have to eliminate as well.

20                   So the answer is that based on all of our  
21 projections and assumptions, we could get through 2007  
22 with an additional GS-12 special assistant if we get  
23 the amount requested by the President and we make  
24 those cuts.

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1                   COMMISSIONER YAKI:    Can I just focus on  
2   2006 for a moment?    If we were to hire a special  
3   assistant for Commissioner Melendez for the remainder  
4   of fiscal '06, would that have an impact on any  
5   projected issues of staffing or bonuses for the  
6   remainder of the year?

7                   Commissioner Melendez, I can't speak for  
8   you, obviously, but certainly there is a certain  
9   amount of start-up period that all commissioners  
10  require.    And I'm just wondering if we could do it  
11  without adversely affecting other kinds of activities  
12  that we had planned for this year.

13                  I do think this is a priority for  
14  Commissioner Melendez.    If he could hire someone for  
15  the remaining seven months of '06, to at least help  
16  the commissioner do whatever the commissioner needs to  
17  do in the initial part of his term, I don't see why we  
18  wouldn't want to at least give him that opportunity.

19                  CHAIRPERSON REYNOLDS:    Could we afford it?  
20   I guess that is the first question.

21                  COMMISSIONER YAKI:    I heard the staff  
22  director say yes.

23                  STAFF DIRECTOR MARCUS:    I did say yes.  
24  Now, I said yes to the question we could bring the

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1 person on. I believe Commissioner Yaki added a  
2 wrinkle to that in you have asked without affecting --

3 CHAIRPERSON REYNOLDS: Right.

4 STAFF DIRECTOR MARCUS: -- the bonuses or  
5 anything of that sort.

6 I think the answer is -- and we have been  
7 very modest in the amount we have been able to have in  
8 bonuses. In fact, we have been able to have them the  
9 last couple of years. I think the answer is still  
10 going to be yes. I think that I would want to  
11 double-check the numbers on that and get back to you.

12 But I think that the answer is going to be yes for  
13 2006.

14 CHAIRPERSON REYNOLDS: Vice Chair  
15 Thernstrom?

16 VICE CHAIRPERSON THERNSTROM: Okay. I  
17 really want the answer to that question because,  
18 again, I'm extremely sympathetic, Commissioner  
19 Melendez, to your request here. But I am also very  
20 concerned about staff morale and about, you know, the  
21 availability of having at least modest awards for  
22 excellent work and also about training.

23 COMMISSIONER YAKI: That's why I asked the  
24 question.

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1                   VICE CHAIRPERSON THERNSTROM: Yes. And I,  
2 too, am impressed with Commissioner Yaki's political  
3 point here that going to Congress and saying, "Look,  
4 neither of the Democrats on the Commission have a  
5 special assistant. Don't you want to fix that?"

6                   CHAIRPERSON REYNOLDS: They'll say, "Yes.  
7 Why don't you give them one of yours?" I think that  
8 is going to be the response if we --

9                   VICE CHAIRPERSON THERNSTROM: Well, I  
10 mean, there are people who have been hired. I don't  
11 think the response is going to be "Fire the people  
12 you've got." I mean, I do think there is a possible  
13 political point that Commissioner Yaki has made.

14                   Then, finally, as sympathetic as I am to  
15 Commissioner Melendez's point about there are lots of  
16 lawyers around the table, I don't happen to be one  
17 myself, in fact, luckily for both of us, very few  
18 discussions -- today is a perfect example in our whole  
19 discussion on the briefing report on anti-Semitism --  
20 very few of our discussions, almost none, depend upon  
21 any legal expertise. It is a judgment call about --  
22 you know, I'm not interested in what lawyers have to  
23 say on the --

24                   (Laughter.)

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1 VICE CHAIRPERSON THERNSTROM: It's not  
2 that I am putting down the legal profession.

3 COMMISSIONER YAKI: This has to be a  
4 violation of some --

5 VICE CHAIRPERSON THERNSTROM: The point is  
6 --

7 COMMISSIONER YAKI: You lost on the  
8 Constitution. That requires you to have a lawyer  
9 present.

10 VICE CHAIRPERSON THERNSTROM: The point is  
11 that they are not fundamentally legal questions.  
12 They're not legal questions, most of what we discuss.

13 CHAIRPERSON REYNOLDS: Well, I think that  
14 often we do wrestle with legal questions.

15 VICE CHAIRPERSON THERNSTROM: Well, look,  
16 again, I'm --

17 CHAIRPERSON REYNOLDS: But the bottom line  
18 is everyone is sympathetic. I think that there is  
19 unanimity on this issue that we all want to get  
20 Commissioner Melendez an assistant, but we have to  
21 also be good stewards. And we can't spend what we  
22 don't have. I think that Commissioner Yaki's  
23 recommendation is a good one, and I look forward to  
24 receiving the answer.

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1 I would just also say that if the outlook,  
2 the budget outlook in '07, could be such that we are  
3 in a position where we're going to have to lose that  
4 assistant that we hired for '06 or at least one  
5 assistant going into '07 if we don't get the number  
6 that the President recommended.

7 And I know that once you get your  
8 assistant, assuming that we could do this for '06,  
9 that you are going to grow mighty accustomed to having  
10 one. And the prospect of in '07 not having one, well,  
11 that's another fight. And I guess we'll just punt  
12 that issue until we see what the '07 budget looks  
13 like.

14 VICE CHAIRPERSON THERNSTROM: I have a  
15 question on this. The process of hiring an assistant  
16 in the past has been rather lengthy. That is, you  
17 can't hire these assistants on a dime is my  
18 impression. Am I wrong?

19 COMMISSIONER KIRSANOW: Is there any  
20 possibility we could get one detailed?

21 VICE CHAIRPERSON THERNSTROM: Get one  
22 detailed. Okay.

23 CHAIRPERSON REYNOLDS: I guess that would  
24 turn on Commissioner Melendez agreeing to -- I mean,

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1 this is a personal, confidential relationship in many  
2 cases. And if we could find someone who is already in  
3 the federal government that Commissioner Melendez  
4 finds acceptable, then I do believe that that would  
5 speed up the process.

6 STAFF DIRECTOR MARCUS: Of course, it  
7 would also answer the budgetary question since  
8 detailees are usually paid by the sending agency.

9 CHAIRPERSON REYNOLDS: Well, I want a  
10 detail if that's the case, then. That is interesting.

11 VICE CHAIRPERSON THERNSTROM: Yes. That  
12 is very interesting.

13 COMMISSIONER YAKI: Are you trying to get  
14 rid of somebody at the NLRB?

15 STAFF DIRECTOR MARCUS: Now, I have to say  
16 that there may be some HR legal questions about how we  
17 would have to do that because typically one cannot  
18 detail a career employee into a Schedule C non-career  
19 position.

20 CHAIRPERSON REYNOLDS: Okay.

21 STAFF DIRECTOR MARCUS: I don't know  
22 whether there is a clever way around that or whether  
23 there isn't.

24 COMMISSIONER BRACERAS: Well, in the

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1 Schedule C, people in this administration are going to  
2 be Republicans, right? It doesn't solve the political  
3 problem of them wanting somebody who is politically  
4 simpatico with their views to perform research and  
5 help them analyze these issues from the democratic  
6 perspective.

7 COMMISSIONER KIRSANOW: Why don't we see  
8 if we can get someone on staff in the interim examine  
9 the possibility of getting detailees who may not have  
10 to satisfy Schedule C imperatives or SES, whatever it  
11 may be, because the if we can save on the budget and  
12 we can get somebody detailed quickly, we may be in  
13 better shape and Gerry, too. Commissioner Yaki, if we  
14 can get all kinds of detailees, we'll be in great  
15 shape. But maybe someone can just do that research,  
16 rather than us just speculating.

17 STAFF DIRECTOR MARCUS: Staff would be  
18 pleased to do that research if there's an interest  
19 from the Commission.

20 CHAIRPERSON REYNOLDS: Okay. Well, how  
21 about this as a motion? I move that we table this  
22 issue and wait for the staff director to see if it is  
23 feasible to hire a special assistant for Commissioner  
24 Yaki for the remainder of 2006.

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1 VICE CHAIRPERSON THERNSTROM: No. It's  
2 Commissioner Melendez.

3 CHAIRPERSON REYNOLDS: Oh, I'm sorry. I'm  
4 sorry. Commissioner Melendez for the remainder of  
5 2006. And also I guess a second motion would be that  
6 the staff director look into the possibility of having  
7 some folks detailed over to the Commission and also  
8 complying with all of the rules.

9 STAFF DIRECTOR MARCUS: That's fine. By  
10 way of clarification, I think, Mr. Chairman, in your  
11 motion, when you ask for consideration of feasibility,  
12 it's a question of legality and consistency with the  
13 rules and regulations.

14 Of course, there is another question about  
15 feasibility, which goes to whether there is another  
16 agency that is willing to do that or not, which would  
17 be a more difficult question.

18 CHAIRPERSON REYNOLDS: Is there a second?

19 VICE CHAIRPERSON THERNSTROM: I second  
20 that.

21 CHAIRPERSON REYNOLDS: All in favor?

22 (Whereupon, there was a chorus of "Ayes.")

23 CHAIRPERSON REYNOLDS: Any objections?

24 (No response.)

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1 CHAIRPERSON REYNOLDS: Any abstentions?

2 COMMISSIONER MELENDEZ: Yes, I abstain.

3 CHAIRPERSON REYNOLDS: Let the record  
4 reflect that Commissioner Melendez abstains. All  
5 other commissioners voted in favor of the motion.

6 VICE CHAIRPERSON THERNSTROM: And, then,  
7 every commissioner is committed, if possible, to  
8 getting you the assistant you want.

9 CHAIRPERSON REYNOLDS: Okay. Next up, a  
10 related issue. The motion reads, "I move that the  
11 Commission continue to refrain from hiring  
12 commissioners, special assistants through fiscal year  
13 2007 with the possible exception of hiring one special  
14 assistant for Commissioner Melendez."

15 Is there a second?

16 COMMISSIONER YAKI: Second.

17 CHAIRPERSON REYNOLDS: Discussion?

18 COMMISSIONER YAKI: I would like to add a  
19 semicolon after "Commissioner Melendez," "provided  
20 that the hiring of a special assistant for  
21 Commissioner Melendez is a budget priority for 2007."

22 CHAIRPERSON REYNOLDS: I'm sorry? Please

23 --

24 COMMISSIONER YAKI: I would just like to

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1 make it a budgetary priority for 2007.

2 CHAIRPERSON REYNOLDS: Okay. Budgetary  
3 priority. I guess my initial question is to the staff  
4 director. We made a commitment that some of the funds  
5 would be used to hire to fill a certain position. Is  
6 that correct?

7 STAFF DIRECTOR MARCUS: The way it worked  
8 is that we were given a certain amount of money  
9 initially by OMB, and we appealed. We made a special  
10 appeal asking for additional money for some other  
11 purposes.

12 The appeal was resolved. And the  
13 resolution was such that we got specific additional  
14 monies from OMB for the specific use of hiring  
15 attorneys, doing the PSA, and allowing the staff  
16 travel.

17 CHAIRPERSON REYNOLDS: Okay. So there is  
18 an understanding between the Commission and OMB that  
19 the certain portion of our funds would be used for  
20 specific purposes?

21 STAFF DIRECTOR MARCUS: I think it's a  
22 formal requirement, yes.

23 CHAIRPERSON REYNOLDS: Okay. Vice Chair  
24 Thernstrom?

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1                   VICE CHAIRPERSON THERNSTROM: I wonder if  
2 the language does not need to be slightly altered to  
3 read and that the Commission continue to refrain from  
4 hiring additional commissioner special assistants.  
5 And I do not say this on the basis of, you know, I  
6 don't know anything anybody else doesn't know, but  
7 suppose one of our special assistants were to leave.

8                   CHAIRPERSON REYNOLDS: Then we would have  
9 a very interesting conversation.

10                  VICE CHAIRPERSON THERNSTROM: No, no. The  
11 point is we would want to be able to replace that  
12 special assistant with another special assistant, not  
13 necessarily for the person.

14                  CHAIRPERSON REYNOLDS: No. That's right.

15                  VICE CHAIRPERSON THERNSTROM: But we would  
16 want to keep the same number of special assistant,  
17 total number. So I would just refrain from hiring  
18 additional commissioner special assistants so the  
19 number, total number, doesn't go down. That's my only  
20 point.

21                  I'm not saying that any particular  
22 commissioner is entitled to a special assistant.

23                  COMMISSIONER YAKI: I agree.

24                  CHAIRPERSON REYNOLDS: Okay.

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1                   COMMISSIONER MELENDEZ:       That was my  
2 concern, I think, when we were talking about the total  
3 budget. When I asked the question, I could have asked  
4 the question at the very beginning when you were  
5 talking about budget cuts and there were certain  
6 commissioners that had an assistant.

7                   One of the questions I believe I asked Mr.  
8 Marcus, I said that with such a budget concern to the  
9 Commission, why wouldn't nobody actually have an  
10 assistant? Then it would have been fair across the  
11 board.

12                   What my understanding was, because those  
13 people actually were hired for some reason, they were  
14 kind of locked in and there was no way to -- you know,  
15 that was one of the big issues why as far as the  
16 fairness that you went to eliminate everybody's  
17 special assistant and then everybody has kind of like  
18 got the same in the same situation. And even that  
19 would still be that you would still have attorneys who  
20 would probably fend for themselves on the issue.

21                   So I asked that question early, but I  
22 believe the answer I got was that because those were  
23 already hired people on a permanent basis, really, you  
24 couldn't really do anything about that. You only

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1 could do any cutting on the budget on the new  
2 commissioner that is coming in, the eighth person, or  
3 myself.

4 But then Ms. Thernstrom brings up a good  
5 point. What if somebody should leave specifically the  
6 assistant that she has? Does that mean that the  
7 question would be that if you bring up a person and  
8 you didn't want to lose that assistant as part of  
9 numbers, that assistant could actually shift over to  
10 Mr. Yaki and myself?

11 VICE CHAIRPERSON THERNSTROM: Sure.

12 CHAIRPERSON REYNOLDS: I think that there  
13 is a strong argument. And I will put my cards on the  
14 table. If a slot opens up, I am predisposed to voting  
15 that that slot go to one of the two Democrats.

16 VICE CHAIRPERSON THERNSTROM: Absolutely.  
17 So my suggestion was simply to clarify the fact that  
18 we now have three special assistants at least. Isn't  
19 that correct? That number three does not get reduced  
20 if one of the special assistants leaves.  
21 Nevertheless, my inclination as well would be to say  
22 if there is an opening.

23 And yes, I have no idea whether there is  
24 going to be an opening. This is pure speculation.

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1 CHAIRPERSON REYNOLDS: Now, my  
2 predisposition, it hinges on support from the  
3 Democrats when we have enough money that you would  
4 support me when I go for a special assistant. That's  
5 a joke. It's a bad joke. It's a bad joke. I'll  
6 stick with my day job.

7 In any event, do we have --

8 VICE CHAIRPERSON THERNSTROM: So I'm  
9 proposing the word "additional."

10 CHAIRPERSON REYNOLDS: Any objections to  
11 this friendly amendment?

12 (No response.)

13 CHAIRPERSON REYNOLDS: I think that with  
14 the clarification, I don't believe there are any  
15 objections. Okay. I'll accept silence as  
16 acquiescence.

17 Okay. There was an amendment by  
18 Commissioner Yaki. And it's not clear to me. I don't  
19 know if we resolved that issue, the last clause that  
20 you wanted to add.

21 COMMISSIONER YAKI: I proposed it. Do you  
22 want to second it?

23 (Laughter.)

24 COMMISSIONER MELENDEZ: Basically, what he

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1 was saying is what I brought up, that it becomes a  
2 priority at some point. And I guess it solidifies it  
3 a little by including it in the motion that it's just  
4 like any budget. Some other important thing cumpers  
5 up. And then my assistant or Michael's assistant kind  
6 of gets pushed off as the things keep becoming  
7 priorities.

8 And I think he is saying to all of us, it  
9 would be in the motion as a priority to --

10 CHAIRPERSON REYNOLDS: I guess my only  
11 concern was that we have priorities that are baked  
12 into the budget currently. And we have made certain  
13 commitments. I just wanted to make sure that we all  
14 understood that this would not reorder the current set  
15 of budget priorities, that this would be prospective.

16 If that's the understanding, then --

17 COMMISSIONER YAKI: Yes.

18 CHAIRPERSON REYNOLDS: Okay. All right.  
19 All in favor of the motion as amended by Commissioner  
20 Yaki?

21 (Whereupon, there was a chorus of "Ayes.")

22 CHAIRPERSON REYNOLDS: All in opposition?

23 (No response.)

24 CHAIRPERSON REYNOLDS: Any abstentions?

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1 (No response.)

2 CHAIRPERSON REYNOLDS: The motion carries  
3 unanimately.

4 - JANUARY 31, 2006, COMMISSION REPORT TO  
5 **SENATE APPROPRIATIONS**

6 CHAIRPERSON REYNOLDS: Okay. Next up is  
7 the Commission report to the Senate. In the Senate  
8 report 109-88 for fiscal year 2006, the Senate  
9 Committee on Appropriations directed the U.S.  
10 Commission on Civil Rights to produce two written  
11 reports outlining in detail the implementation of  
12 agency reforms as adopted by a vote of the Commission  
13 in April 2005.

14 The Commission submitted its first report  
15 on September 30th, 2005. On January 31st, 2006, the  
16 Commission sent the second of two requested reports on  
17 the structural and management reforms at the  
18 Commission that will lead to more efficient and  
19 effective management.

20 The motion reads, "I move that the  
21 Commission's January 31, 2006 written follow-up report  
22 to the Senate Appropriations Committee outlining the  
23 implementation of GAO and OPM recommendations from the  
24 past several years be posted on the Commission's Web

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1 site at the earliest practical time."

2 Is there a second?

3 VICE CHAIRPERSON THERNSTROM: I second it.

4 CHAIRPERSON REYNOLDS: Discussion?

5 (No response.)

6 CHAIRPERSON REYNOLDS: All in favor?

7 (Whereupon, there was a chorus of "Ayes.")

8 CHAIRPERSON REYNOLDS: Any objections?

9 (No response.)

10 CHAIRPERSON REYNOLDS: Any abstentions?

11 (No response.)

12 CHAIRPERSON REYNOLDS: Let the record  
13 reflect that Commissioners Kirsanow, Braceras,  
14 Melendez; Vice Chair Thernstrom; and the Chairman  
15 voted in favor. Commissioner Melendez has left the  
16 room for this vote.

17 VICE CHAIRPERSON THERNSTROM: It's Yaki.

18 CHAIRPERSON REYNOLDS: I'm sorry. I'm  
19 sorry. I'm sorry.

20 VICE CHAIRPERSON THERNSTROM: You think  
21 all --

22 CHAIRPERSON REYNOLDS: It's tough. It's  
23 like a song that gets stuck in your head.

24 - **PERFORMANCE AND ACCOUNTABILITY REPORT**

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1 CHAIRPERSON REYNOLDS: Okay. Next up is  
2 the performance and accountability report. The  
3 Commission has submitted its first performance and  
4 accountability report.

5 It presents a comprehensive view of the  
6 Commission's program and financial performance during  
7 fiscal year '05. The report identifies the management  
8 weaknesses faced by the Commission and the corrective  
9 actions taken during fiscal year '05.

10 This was a productive year that  
11 strengthened the agency's operations and financial  
12 situation. The report also includes the additional  
13 corrective measures planned for fiscal year '06.

14 I move that the Commission's January 30th,  
15 2006 submission to Congress of our performance and  
16 accountability report, including the fiscal year 2005  
17 audit report of Williams, Adley, and Company be posted  
18 on the Commission's Web site at the earliest  
19 practicable time.

20 Is there a second?

21 VICE CHAIRPERSON THERNSTROM: Second.

22 CHAIRPERSON REYNOLDS: Discussion?

23 (No response.)

24 CHAIRPERSON REYNOLDS: All in favor?

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1 (Whereupon, there was a chorus of "Ayes.")

2 CHAIRPERSON REYNOLDS: Any objections?

3 (No response.)

4 CHAIRPERSON REYNOLDS: Any abstentions?

5 (No response.)

6 CHAIRPERSON REYNOLDS: Okay. The motion  
7 passes unanimously.

8 - **CREATION OF WORKING GROUP ON STRATEGIC PLANNING**

9 CHAIRPERSON REYNOLDS: Next I would like  
10 the staff directors to bring us up to date on the  
11 Commission's strategic planning process.

12 STAFF DIRECTOR MARCUS: I would be pleased  
13 to, Mr. Chairman. The Commission last updated the  
14 strategic plan in 1997, as the commissioners may be  
15 aware, and was required under law to revise it in 2000  
16 and 2003 but did not do so. To try to get the  
17 Commission under private leadership to revise and  
18 update the strategic plan in a timely manner was cited  
19 in several GAO reports, most recently in its April  
20 6th, 2005 report, where it noted that without  
21 revisiting its strategic goals, the Commission does  
22 not have a firm basis on which to develop its annual  
23 goals.

24 Since the arrival of the new

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1 administration, the Commission has recognized and  
2 acknowledged the problems that arise when we do not  
3 have a strategic plan. And we have prioritized  
4 implementation of a new strategic plan as a part of  
5 the initiative to implement all GAO and OPM  
6 recommendations.

7 We have been working closely with the  
8 Congress and, in particular, with the Judiciary  
9 Committee regarding our strategic plan. We have  
10 received various correspondence from them which had  
11 been distributed and have had various meetings, the  
12 most recent of which has been described for  
13 commissioners.

14 Based on the most recent recommendations  
15 from the House Judiciary Committee, if we are to  
16 follow them, it will require that we engage in further  
17 stakeholder communications as well as additional  
18 analysis and rewriting.

19 That is where we are now. Now, during our  
20 conversations with the congressional staff, we  
21 discussed the fact that in order to do all of this  
22 would require a considerable amount of additional  
23 time. This time, of course, will postpone not only  
24 the completion of the strategic plan but also of the

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1 documents that are required to be tied to the  
2 strategic plan, most importantly our human capital  
3 plan.

4 So we are now in a position that we have a  
5 draft strategic plan, but based on input from Congress  
6 and also from GAO, we are contemplating additional  
7 stakeholder outreach as well as additional analysis  
8 and rethinking of our strategic goals and strategic  
9 plans.

10 CHAIRPERSON REYNOLDS: Okay. Questions?

11 (No response.)

12 CHAIRPERSON REYNOLDS: Okay. I have one.

13 The strategic plan that we had in place has been  
14 criticized by the folks on the Hill and also from GAO.

15 I get the impression that the revisions that they're  
16 looking for are not merely increasing stakeholder  
17 participation but they're looking for a fundamental  
18 review of our mission here at the Commission. Is that  
19 accurate?

20 STAFF DIRECTOR MARCUS: That is accurate,  
21 yes. Now, the stakeholder review is considered to be  
22 a part of a process which is intended to involve a  
23 rethinking of the strategic goals of the Commission.

24 So the concern is not just with the

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1 process but also with the question as to what the main  
2 priorities of the Commission are, what the strategic  
3 goals are, what our objectives are, and how we can  
4 measure attainment of those objectives in an objective  
5 manner.

6 CHAIRPERSON REYNOLDS: Oh, so this is not,  
7 then, revisiting the Commission's mission?

8 STAFF DIRECTOR MARCUS: Well, the mission  
9 statement is recommended to be a part of the strategic  
10 goal. So, at a minimum, there is a question as to  
11 whether we should reconsider the mission statement.

12 In addition, congressional staff did  
13 suggest that since we are facing reauthorization, if  
14 commissioners have a view of the mission or how the  
15 mission can best be achieved, which requires further  
16 congressional action, then that's something we should  
17 consider as well.

18 So I would say that the input that we have  
19 received from Congress and the GAO involves big  
20 picture issues about a mission and goals as well as  
21 more technical issues about objectives and measures.

22 CHAIRPERSON REYNOLDS: Commissioner  
23 Kirsanow?

24 COMMISSIONER KIRSANOW: Mr. Chairman,

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1 based on what the staff director said, I think this  
2 provides us with a unique opportunity because we have  
3 been in existence for nearly 50 years and have been  
4 operating on a certain model that may have exhausted  
5 itself or become obsolete or at least semi-obsolete.

6 And if we have commissioners involved in  
7 maybe visiting what the mission of the Commission is,  
8 I think we might be able to position ourselves to be  
9 more responsive to civil rights paths understood in  
10 2006 going forward.

11 CHAIRPERSON REYNOLDS: Okay. I think that  
12 it is a good opportunity, but my only concern -- and  
13 it's a minor concern -- is that this is a significant  
14 undertaking. And it is going to require, at least in  
15 my opinion, a significant amount of time.

16 If we are going to revisit what we do and  
17 how we do it in the Twenty-First Century, that is  
18 going to require a lot of time on the part of both  
19 staff and the commissioners.

20 And so to the extent we have reform  
21 efforts that are contingent upon the completion of our  
22 strategic plan, I think that we should decouple those  
23 reform if that is possible.

24 COMMISSIONER BRACERAS: I'm a little

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1 confused because the strategic plan isn't supposed to  
2 speak towards legislative reform, is it? It's just  
3 supposed to talk about given the current statutory  
4 mandate that we have, how are we going to operate?  
5 And what are our goals within the current strategic  
6 plan?

7 But it seemed to me based on what we were  
8 told about some of the meetings that you had on the  
9 Hill, that they were asking for larger suggestions  
10 about restructuring, which seems like a completely  
11 separate process.

12 STAFF DIRECTOR MARCUS: Yes. I don't know  
13 if it's about restructuring. And I regret that we  
14 can't have them here. So I'll do my best to try and  
15 paraphrase.

16 I think that they are interested in a  
17 strategic plan. And the strategic plan involves  
18 strategic thinking that follows the model that you  
19 described, Commissioner.

20 I think that their comment reflected the  
21 view that as we engage in that strategic thinking, it  
22 may occur to us that there are ideas about how we can  
23 best achieve our mission that may require additional  
24 legislation and that to the extent that that is true,

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1 that they would like to hear those recommendations  
2 from us. And those recommendations may be outside the  
3 scope of the strategic plan.

4 COMMISSIONER BRACERAS: I think they would  
5 all be outside the scope of the strategic plan, right?

6 I mean, if we're making recommendations for statutory  
7 change, that is not going to be part of our strategic  
8 plan because the strategic plan has to operate within  
9 the current framework. No?

10 STAFF DIRECTOR MARCUS: I would have to  
11 give that some thought. And I don't know whether it's  
12 an academic question or if we really do have ideas of  
13 that sort.

14 COMMISSIONER BRACERAS: I mean, I guess it  
15 is a shame that the members, the staff members, of the  
16 committee aren't here to more fully delineate what it  
17 is they had in mind because, as commissioners who  
18 didn't meet with them directly, I think several of us  
19 are very confused as to what exactly it is they have  
20 in mind. And I'm not sure how we can give you  
21 guidance without knowing exactly what it was they were  
22 alluding to.

23 STAFF DIRECTOR MARCUS: I think that there  
24 are some things that are clear in their

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1 recommendations. One is that they would like to see  
2 the commissioners engaged in serious thinking or  
3 reconsideration of what our most pressing strategic  
4 goals are over the next five years and hope that that  
5 thinking will be done at a commissioner level and  
6 preferably in a bipartisan manner. That is something  
7 that was expressed.

8 COMMISSIONER YAKI: Why don't we just tell  
9 them to give us more money?

10 CHAIRPERSON REYNOLDS: We've tried that.  
11 And we'll continue to ask.

12 STAFF DIRECTOR MARCUS: And they also --

13 VICE CHAIRPERSON THERNSTROM: Part of our  
14 strategic plan.

15 STAFF DIRECTOR MARCUS: -- made a  
16 recommendation about the nature of the process that we  
17 use, including stakeholder outreach, and the nature of  
18 the objectives and measures that we have.

19 So it may be that there are some further  
20 questions that we may have for them, but I think that  
21 some of the comments that they have are things that we  
22 can implement.

23 COMMISSIONER BRACERAS: Who are the  
24 stakeholders that they think we should be reaching out

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1 to?

2 STAFF DIRECTOR MARCUS: Well, they didn't  
3 specify the stakeholders. And typically it's the  
4 agency itself, which identifies who the stakeholders  
5 are.

6 COMMISSIONER BRACERAS: So they didn't  
7 express any opinion as to who those should be?

8 STAFF DIRECTOR MARCUS: No.

9 COMMISSIONER BRACERAS: I find it hard to  
10 believe that they don't have such a view. I mean, it  
11 seems from the minutes of the meeting that they  
12 certainly view themselves as a live stakeholder.

13 CHAIRPERSON REYNOLDS: And that's one  
14 reason why we invited the staffers today to have a --

15 COMMISSIONER BRACERAS: Correct.

16 CHAIRPERSON REYNOLDS: -- greater input,  
17 although we do communicate with them and exchange  
18 information on a regular basis.

19 STAFF DIRECTOR MARCUS: And I should say  
20 that we have viewed them as stakeholders and  
21 consistently treated them as stakeholders in our  
22 action and that this is not just a determination we  
23 made. It's something that's part of the requirements  
24 under the gipper statute.

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1 COMMISSIONER BRACERAS: Right. I guess  
2 what I'm trying to get at, though, is what I am trying  
3 to understand is how much more involvement do they  
4 want in the processes of the U.S. Commission on Civil  
5 Rights?

6 I mean, it seems to me -- and, again, I  
7 wasn't in the room, but it seems to me from my  
8 understanding of what transpired at some of the  
9 meetings that they are looking for greater input and a  
10 greater role in not just our strategic plan but our  
11 specific agenda, the early agenda. Am I mistaken? I  
12 guess I would have to ask them.

13 STAFF DIRECTOR MARCUS: They certainly  
14 hope to have a greater degree of communication on the  
15 topics that we're undertaking and how they connect up  
16 with legislative priorities.

17 CHAIRPERSON REYNOLDS: We must consult  
18 with the folks on the Hill.

19 COMMISSIONER BRACERAS: Oh, of course.

20 CHAIRPERSON REYNOLDS: No. I'm not  
21 suggesting that they --

22 COMMISSIONER BRACERAS: But we're not  
23 their research arm.

24 CHAIRPERSON REYNOLDS: Exactly. There is

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1 a line. And I guess I believe where you're going is  
2 that more information would be helpful so that we can  
3 see how close we are to the line because the  
4 day-to-day operations of this agency reside with the  
5 staff director and the commissioners, as opposed to  
6 the --

7 COMMISSIONER BRACERAS: Yes. I mean, I  
8 would be interested in hearing more about what the  
9 folks on the Hill have in mind because, although I  
10 fully support us working with the folks in the other  
11 branches of government so that we can remain relevant  
12 and so that the topics we address are issues of  
13 concern to the political branches of government, I in  
14 no way would like to see us become a research arm of  
15 the United States Congress or a research arm of the  
16 Executive Branch.

17 We are supposed to be independent. And  
18 we're not just supposed to do fact-finding. We are  
19 supposed to make recommendations to them.

20 CHAIRPERSON REYNOLDS: And criticize them.

21 COMMISSIONER BRACERAS: And criticize them  
22 and evaluate them. And so it seems like some of what  
23 they are looking for is not just a closer partnership  
24 with us but -- well, I'm not sure exactly what they

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1 want. And so I would like to hear from them directly  
2 about it, but they're not here to do that.

3 CHAIRPERSON REYNOLDS: I guess the next  
4 question is, what is the most effective way of getting  
5 more information from folks on the Hill to find out  
6 what they want. I mean, they have sent us a letter,  
7 but there are some areas where there is still a fair  
8 amount of ambiguity.

9 What do you think of sending a letter  
10 asking them to -- well, first identifying the areas  
11 where there is ambiguity and where we need more  
12 clarity and then just reducing it to a letter and  
13 sending it to them or having the staff director sit  
14 down with them and discuss this issue a little more so  
15 we can --

16 COMMISSIONER BRACERAS: I mean, I think  
17 the staff director has sat down with them. I'm just  
18 not sure that they have been clear. It seems as if  
19 the staff director has jumped through a lot of hoops  
20 to try to satisfy the folks on the Hill that we are  
21 reforming ourselves and that we are taking our mission  
22 seriously. And, yet, they seem still to be  
23 unsatisfied.

24 And so I'm not sure what it is they're

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1 asking for because it seems to me that the staff  
2 director has gone above and beyond in trying to assure  
3 them that we are reforming and that we are thinking  
4 strategically about our mission and that we are doing  
5 all the things we're supposed to be doing. And, yet,  
6 they remain displeased, it seems. And so I'm not sure  
7 what they want.

8 CHAIRPERSON REYNOLDS: Go ahead.

9 STAFF DIRECTOR MARCUS: If I may, I would  
10 just like to add a couple of things to that. One is  
11 that in the most recent correspondence from the House  
12 subcommittee, the chairman and ranking member  
13 expressed their view that we were cooperating with the  
14 committee. And they expressed some favorable things  
15 about the way that we were approaching strategic  
16 planning.

17 That is something we hadn't seen in the  
18 past. And I think it was a valuable recognition of  
19 the good work that we are doing. And private meetings  
20 with congressional staff, they have also recognized  
21 the good work that we have done in terms of operations  
22 and finance.

23 Their concerns now have to do primarily  
24 with the process in which we do strategic planning. I

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1 think that there is merit to at least many of their  
2 comments and concerns.

3 I think that there are ways of doing  
4 strategic planning to include. I think that I would  
5 look at what we have done so far in strategic planning  
6 in the context in which it was undertaken.

7 We had a vote several months ago to try to  
8 implement all GAO recommendations by mid January.  
9 This strategic plan was prepared in draft form in a  
10 way that would meet that deadline. It was a somewhat  
11 streamlined document that was done in a way that could  
12 be done in that timetable. And we had a document that  
13 we would have been able to finish at that time.

14 The input from Congress is that while we  
15 have done a document that was within that timetable,  
16 they now think that it would be better for us to do  
17 the report in a more considered, thoughtful way with a  
18 more complete process, even if it means taking a  
19 little bit more time.

20 I'm not sure that they would have done it  
21 differently if they had the same timetable we had, nor  
22 am I sure that we would have done it the same way if  
23 we had been thinking on a longer timetable.

24 I think in general, their concern is that

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1 we take a little bit more time and use a more complete  
2 process. That is something that we can do. And  
3 certainly at a staff level, we have a number of ideas  
4 about how the strategic plan could be rethought,  
5 expanded, developed, and made a more useful document  
6 if we have a greater period of time.

7 CHAIRPERSON REYNOLDS: Vice Chair  
8 Thernstrom?

9 VICE CHAIRPERSON THERNSTROM: Well, this  
10 is just a matter of having a record clear here. I  
11 heard before that the congressional staff would like  
12 greater communication with this Commission.

13 And I personally looked forward to hearing  
14 from that staff today and would have found their views  
15 very informative, but it was their decision to decline  
16 the opportunity to clarify for the entire Commission  
17 their views, to clarify precisely their views, on  
18 strategic planning and any other matters of concern to  
19 them.

20 So, again, for the record, I want to  
21 express our openness to hearing from them and my  
22 unhappiness that they did not come today.

23 CHAIRPERSON REYNOLDS: Commissioner  
24 Kirsanow?

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1                   COMMISSIONER KIRSANOW: Mr. Chair, I would  
2 just note that the agenda item says, "Creation of  
3 Working Group on Strategic Planning." Are we going to  
4 create a working group on strategic planning that  
5 would --

6                   CHAIRPERSON REYNOLDS: That's the next  
7 issue. Actually, we can fold it in. I mean,  
8 basically the logical progression leads us right  
9 there.

10                   So let me read the motion. It is "I move  
11 that the Chairman appoint a working group on strategic  
12 planning. The charge of this working group will be to  
13 recommend a proposed final strategic plan to the  
14 Commission working closely with the staff director and  
15 staff. The working group should also consider the  
16 input of Commission stakeholders, including the  
17 pertinent executive agencies and congressional  
18 committees."

19                   Is there a second?

20                   VICE CHAIRPERSON THERNSTROM: I second it.  
21 And I propose that Commissioner Kirsanow probably has  
22 no time whatsoever to be chair of that group.

23                   COMMISSIONER KIRSANOW: Oh, thanks a lot.  
24 I've taken a pay cut. Now I've got to do this, too?

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1 CHAIRPERSON REYNOLDS: Discussion? So we  
2 have one volunteer on this side. Is there a  
3 preference amongst the two Democrats?

4 (Laughter.)

5 VICE CHAIRPERSON THERNSTROM: You've been  
6 conscripted, Michael.

7 CHAIRPERSON REYNOLDS: Well, in all  
8 fairness, Michael has been involved in, I believe, all  
9 of the working groups.

10 COMMISSIONER YAKI: We're going to give  
11 Commissioner Melendez the right of first refusal, but  
12 if he doesn't, feels uncomfortable doing it, I'll be  
13 glad to do it.

14 COMMISSIONER MELENDEZ: What does it  
15 entail as far as meetings? Is it over the phone?

16 CHAIRPERSON REYNOLDS: Yes. It's  
17 teleconferences.

18 COMMISSIONER MELENDEZ: Okay.

19 CHAIRPERSON REYNOLDS: Okay. The fact  
20 that you volunteered Commissioner Kirsanow suggests  
21 that you don't want to be involved.

22 COMMISSIONER BRACERAS: Volunteer  
23 Commissioner Taylor since he's not here.

24 (Laughter.)

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1 CHAIRPERSON REYNOLDS: Right, exactly. So  
2 let's see. Commissioner Kirsanow, Commissioner  
3 Melendez, Commissioner Taylor. One, two, three. And  
4 I'll round out the bunch.

5 VICE CHAIRPERSON THERNSTROM: Good.

6 CHAIRPERSON REYNOLDS: That was a very  
7 good suggestion.

8 COMMISSIONER BRACERAS: Thank you.

9 CHAIRPERSON REYNOLDS: Okay. Next up.

10 VICE CHAIRPERSON THERNSTROM: If  
11 Commissioner Taylor cannot do it, one of us will do  
12 it.

13 COMMISSIONER BRACERAS: Yes. I'll do it  
14 if he doesn't want to do it.

15 CHAIRPERSON REYNOLDS: Right. I do  
16 believe, though, that this approach is a fine  
17 incentive to encourage commissioners to attend all  
18 meetings.

19 (Laughter.)

20 **VII. STATE ADVISORY COMMITTEES**

21 **- COMMISSION CONSIDERATION OF SAC REPORTS**

22 CHAIRPERSON REYNOLDS: Okay. Next up,  
23 let's see. We have a motion to deal with our policy  
24 on the acceptance of state advisory committee reports.

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1 Let's see.

2 I move that the Commission adopt the  
3 following policy regarding reports submitted to us, by  
4 state advisory committees. This new policy will  
5 supersede the policy adopted on November 18th, 2005  
6 and all other previous policies.

7 The new policy reads, the first paragraph  
8 reads, "The Commission will print all SAC reports that  
9 have satisfied the procedural and legal criteria for  
10 such reports to the satisfaction of the staff director  
11 or his designee. Commission members will not be asked  
12 to vote to accept or reject SAC reports."

13 Second paragraph, "The cover of all SAC  
14 reports will include a disclaimer in 14-point font  
15 stating, 'This report is the work of the'" blank. And  
16 the blank will be filled in by the name of the state  
17 "'advisory committee to the U.S. Commission on Civil  
18 Rights. The views expressed in this report and the  
19 findings and recommendations contained herein are  
20 those of a majority of the state advisory committee  
21 and do not necessarily represent the views of the  
22 Commission or its individual members, nor do they  
23 represent the policies of the United States  
24 government.'"

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1 Third paragraph, "The document may state  
2 that it is published by the U.S. Commission on Civil  
3 Rights, but it will not contain the names of  
4 commissioners, nor a narrative description of the  
5 Commission and its work.

6 "It may contain a narrative description of  
7 the SAC and the names of the SAC members. The report  
8 must indicate the number and the names of the SAC  
9 members who voted to approve the report as well as  
10 those who voted against the report. Dissenting SAC  
11 members must be given the opportunity to submit a  
12 short statement, no more than one page, as to why they  
13 voted against the report."

14 Fourth paragraph, "All SAC reports will be  
15 posted on the Commission Web site as a .pdf file under  
16 a heading for SAC reports. The Web page that lists  
17 the SAC reports will also include a disclaimer to the  
18 effect that the findings and recommendations contained  
19 in these reports are the views of a majority of the  
20 members of the state advisory committees that produced  
21 them and do not necessarily represent the views of the  
22 Commission, its individual members, nor the policies  
23 of the United States government."

24 Fifth paragraph, "Staff may assist SACs in

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1 distributing copies of the report."

2 Sixth paragraph, "Staff may assist SACs in  
3 drafting and distributing press releases announcing  
4 SAC reports provided that such press releases do not  
5 bear the seal of the U.S. Commission on Civil Rights  
6 and, instead, are issued solely under the name of the  
7 state advisory committee that produced the report."

8 Is there a second?

9 COMMISSIONER YAKI: Second.

10 CHAIRPERSON REYNOLDS: Discussion?  
11 Commissioner Braceras?

12 COMMISSIONER BRACERAS: I just wanted to  
13 speak to it since I was the person who drafted this  
14 proposed policy. As many of you know, I have been  
15 continuously frustrated with the way we handle SAC  
16 reports and have gone back and forth with many of you  
17 about the best way to deal with these documents.

18 And ultimately I decided that I am most  
19 comfortable with publishing them all, letting the SACs  
20 have their independence, and not involving ourselves  
21 with the content or the substance of their report but  
22 at the same time washing our hands of any  
23 responsibility for them and just allowing them to be  
24 in the public domain without necessarily associating

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1 this Commission with them except insofar as their  
2 reports are received by us and we are the publishing  
3 house for the reports.

4 So I wanted to come down on the side of  
5 the free flow of information and allowing people  
6 access to the work of the SACs, allowing the public  
7 access to the work of the SACs, without necessarily  
8 conveying the impression that the Commission endorses  
9 SAC findings or that SAC findings are the view of the  
10 U.S. government.

11 I think that this policy strikes that  
12 balance. And that is why I proposed that if you  
13 compare it to the policy adopted a few months ago, I  
14 think that the policy that is on the table has much  
15 more clarity to it. And the policy we adopted a few  
16 months ago is very convoluted and confusing to people  
17 outside of this room. And so I think this is the  
18 better course.

19 CHAIRPERSON REYNOLDS: Vice Chair  
20 Thernstrom?

21 VICE CHAIRPERSON THERNSTROM: Yes. I like  
22 this a lot. I would just for clarification -- this  
23 may not be necessary, but in the first recommendation,  
24 "The Commission will print all SAC reports," et

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1 cetera, I wonder if in the last sentence we should  
2 have a reference to the fact that the reports will be  
3 presented to the commissioners but they will not be  
4 asked to vote to accept or reject those reports.

5 COMMISSIONER BRACERAS: In other words,  
6 we'll still receive them?

7 VICE CHAIRPERSON THERNSTROM: Yes, simply  
8 to make it clear that we will receive them, we will  
9 have had a chance. You know, they will be in our  
10 hands, but we will not vote on them.

11 COMMISSIONER BRACERAS: But will they be  
12 presented at meetings? I don't think there should be  
13 any discussion of the reports.

14 VICE CHAIRPERSON THERNSTROM: No, there  
15 should be no discussion of the reports, but --

16 COMMISSIONER BRACERAS: I mean, I don't  
17 think it's our place to, on the one hand, say, "This  
18 is wonderful work, and I agree with the findings" --

19 VICE CHAIRPERSON THERNSTROM: No, no, no,  
20 no, no.

21 COMMISSIONER BRACERAS: -- or the  
22 opposite, "I think it's terrible work."

23 VICE CHAIRPERSON THERNSTROM: Yes. No.  
24 It's a matter of simple courtesy.

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1 COMMISSIONER BRACERAS: Yes, to read them.

2 VICE CHAIRPERSON THERNSTROM: They should  
3 be sent to us.

4 COMMISSIONER KIRSANOW: I agree with the  
5 Vice Chair. In addition to that, in addition to being  
6 a matter of courtesy, I think that -- I may be  
7 mistaken about this, but either pursuant to our  
8 statute or regulations, I think we have to have -- we  
9 can't be completely untethered from at least the  
10 ministerial act of receiving the reports --

11 VICE CHAIRPERSON THERNSTROM: Exactly.  
12 Yes.

13 COMMISSIONER KIRSANOW: -- from the SACs,  
14 which goes -- and this is a whole separate discussion,  
15 but I suppose we are going to have to have a  
16 discussion with respect to SACs and the province of  
17 the SACs. And that might be part of the strategic  
18 planning. I don't know.

19 VICE CHAIRPERSON THERNSTROM: Okay. Then  
20 I have -- go on.

21 COMMISSIONER BRACERAS: So if I may just  
22 tinker with the language here, the last sentence would  
23 then read, "Commissioners will receive all SAC reports  
24 but will not be asked to vote to accept or reject such

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1 SAC reports."

2 COMMISSIONER YAKI: I thought Peter was  
3 saying we need to formally receive it.

4 COMMISSIONER KIRSANOW: I don't know about  
5 formally receive it.

6 COMMISSIONER YAKI: Okay.

7 COMMISSIONER KIRSANOW: I think  
8 Commissioner Bracer's language is fine.

9 COMMISSIONER BRACERAS: All right. So  
10 "Commissioners will receive all SAC reports but will  
11 not be asked to vote to accept or reject them,"  
12 period.

13 VICE CHAIRPERSON THERNSTROM: Period. And  
14 I have one other possible suggested amendment. Under  
15 3, "The document may state that it is published by the  
16 U.S. Commission on Civil Rights, but it will not  
17 contain." Would there be a point of putting a clause  
18 in there mentioning what the Commission does -- again,  
19 this is just for clarification purposes -- or is that  
20 unnecessary?

21 COMMISSIONER BRACERAS: What we currently  
22 do is we insert our boilerplate paragraph on who the  
23 Commission is. I think that conveys a seal of  
24 approval. I think we publish it. That's all we do.

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1 We received it, and we published it.

2 VICE CHAIRPERSON THERNSTROM: That's fine.  
3 That's fine.

4 COMMISSIONER BRACERAS: I mean, that's all  
5 we do with respect to these organizations. I want to  
6 give them autonomy. I just don't want to endorse what  
7 they do, one way or the other.

8 VICE CHAIRPERSON THERNSTROM: Right.  
9 That's fine. That's fine.

10 CHAIRPERSON REYNOLDS: I think that this  
11 is a significant improvement over what we did back in  
12 November. I support it wholeheartedly. And we have  
13 been wrestling with coming up with something that does  
14 not in any way impinge upon content while at the same  
15 time not creating the impression that we own what is  
16 said. And this does it, at least in my view.

17 COMMISSIONER BRACERAS: I would just like  
18 to make a slight edit to paragraph 2 to make the  
19 language more similar to the language in paragraph 4.  
20 I guess I didn't proofread my document quite as  
21 carefully as I should have.

22 So the statement on the front cover of  
23 these documents would say, "This report is the work of  
24 the" blank "advisory committee to the U.S. Commission

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1 on Civil Rights." That sentence remains the same.

2 "The views expressed in this report and  
3 the findings and recommendations contained herein are  
4 those of a majority of the members of the state  
5 advisory committee and do not necessarily represent  
6 the views of the Commission, its individual members,  
7 or the policies of the United States government,"  
8 period.

9 I think that's a little bit clearer. And  
10 it's the same language in paragraph 4 for the Web  
11 site.

12 VICE CHAIRPERSON THERNSTROM: Good.

13 CHAIRPERSON REYNOLDS: Additional  
14 comments?

15 (No response.)

16 CHAIRPERSON REYNOLDS: Okay. All in  
17 favor, please say "Aye."

18 (Whereupon, there was a chorus of "Ayes.")

19 CHAIRPERSON REYNOLDS: Any objections?

20 (No response.)

21 CHAIRPERSON REYNOLDS: Any abstentions?

22 (No response.)

23 CHAIRPERSON REYNOLDS: The motion passes  
24 unanimously.

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1 COMMISSIONER BRACERAS: May I raise an  
2 issue?

3 CHAIRPERSON REYNOLDS: Sure.

4 COMMISSIONER BRACERAS: Just to make  
5 clear, we already had a working group on SACs. And I  
6 think Commissioner Kirsanow just mentioned something  
7 about maybe we need to discuss this more in the  
8 working group on strategic planning. So I just want  
9 to make sure that the jurisdiction of those two  
10 working groups is clear and we're not working at cross  
11 purposes.

12 CHAIRPERSON REYNOLDS: Okay. Are you  
13 referring to the --

14 COMMISSIONER BRACERAS: I'm not referring  
15 to anything in our materials. I'm only referring to  
16 the fact that we just authorized a new working group.  
17 And I want to make clear that the parameters of that  
18 working group are separate from the parameters of the  
19 working group on SACs and that all SAC issues will  
20 continue to go through the working group on SACs.

21 And to the extent that the folks on the  
22 strategic planning committee have SAC issues, we  
23 should make sure that we put our heads together or  
24 they confer with us first to see where we may be

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1 going.

2 CHAIRPERSON REYNOLDS: Right, right.  
3 There is the potential for overlap. And to the extent  
4 there is, we will make sure that we come up with an  
5 arrangement that satisfies I hope all of us. But that  
6 is a good point.

7 COMMISSIONER BRACERAS: So SAC issues stay  
8 with the SAC working group?

9 CHAIRPERSON REYNOLDS: As a general  
10 proposition, yes. And I put that clarification in  
11 there only because it's possible that there could be  
12 issues that are dealt with by the other working group.  
13 It's a possibility. I don't know whether that will  
14 happen or not.

15 COMMISSIONER BRACERAS: Well, presumably  
16 the staff director will be involved in both.

17 CHAIRPERSON REYNOLDS: Yes.

18 COMMISSIONER BRACERAS: And so if an  
19 issues arises in one, he can convey it to members of  
20 the other.

21 STAFF DIRECTOR MARCUS: I would be happy  
22 to. I just want to make sure we're on the same page.  
23 It seems to me that inevitably to do serious  
24 strategic thinking about the agency as a whole, the

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1 strategic planning group will deal with SAC issues,  
2 but I will help to facilitate the communications of  
3 that.

4 Those issues were also considered by the  
5 SAC working group.

6 COMMISSIONER BRACERAS: Right. Otherwise  
7 there's no need for a SAC working group and we can  
8 dissolve it.

9 - SAC CHAIR TERMS

10 CHAIRPERSON REYNOLDS: Okay. Here is the  
11 next motion. I move that the term of a state advisory  
12 committee chair as chair be limited to a duration of  
13 two years, notwithstanding whether Congress should at  
14 the recommendation of the Commission increase the  
15 length of the committee's charter to a longer period.

16 A SAC chair may be reappointed for no more  
17 than two consecutive terms as chair by a vote of the  
18 Commission. This term limitation will not affect the  
19 terms of the state advisory committee chair as a state  
20 advisory committee member.

21 Is there a second?

22 COMMISSIONER YAKI: Second.

23 CHAIRPERSON REYNOLDS: Discussion?

24 COMMISSIONER BRACERAS: So is this

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1 Commissioner Yaki's motion? Can you --

2 COMMISSIONER YAKI: Explain it?

3 COMMISSIONER BRACERAS: -- elaborate on  
4 your rationale, please?

5 COMMISSIONER YAKI: I just think that two  
6 years is a good enough time for someone to establish  
7 whether or not they have the ability to run a SAC.  
8 And if they prove that ability, they then have the  
9 option of asking for a second two-year term.

10 But to the extent that a SAC may get  
11 someone who is not as good an administrator or  
12 facilitator or team leader I don't want the SAC stuck  
13 with that person for four years.

14 COMMISSIONER BRACERAS: And absent passing  
15 this motion, the term is four years, the term as  
16 chair?

17 COMMISSIONER YAKI: Well, the way it works  
18 --

19 STAFF DIRECTOR MARCUS: We could deal with  
20 it in different ways. This motion is one way of  
21 meeting Commissioner Yaki's interest.

22 COMMISSIONER YAKI: Well, the reason it  
23 came about is that originally it was a four-year term.

24 COMMISSIONER BRACERAS: Right.

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1 COMMISSIONER YAKI: I understand right now  
2 the current policy is two years.

3 STAFF DIRECTOR MARCUS: Currently the  
4 policy is two years. And the formal policy requires  
5 that chairs may not serve more than two consecutive  
6 terms.

7 COMMISSIONER YAKI: Why don't we just keep  
8 the policy?

9 STAFF DIRECTOR MARCUS: I take it that is  
10 the intent of your motion.

11 COMMISSIONER YAKI: Right.

12 COMMISSIONER BRACERAS: No because didn't  
13 we just --

14 STAFF DIRECTOR MARCUS: And just for  
15 clarification, the reason why there has to be a motion  
16 to continue to do what we are still doing is that we  
17 recently had a motion to recommend that Congress in  
18 its reauthorization extend the period of the SAC term  
19 to four years. And a letter was recently sent to  
20 Congress embodying that recommendation.

21 COMMISSIONER BRACERAS: Right. So the  
22 question is if their terms are going to be four years,  
23 should the chairmanship be contiguous with --

24 COMMISSIONER YAKI: And I say no.

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1 COMMISSIONER BRACERAS: -- with the term?

2 COMMISSIONER YAKI: I say that four years  
3 is a long time for -- I mean, let me put it as bluntly  
4 as I possibly can. These are individuals who are  
5 citizens who volunteer their time. And I think that  
6 two years is sufficient for them, for everyone to  
7 determine whether or not being a chair versus being a  
8 member, if they're up to the task or not. I don't  
9 want the SAC to be stuck with a bad chair for four  
10 years.

11 COMMISSIONER BRACERAS: I don't feel  
12 strongly one way or the other to be honest with you,  
13 although I thought we had heard from some of the SAC  
14 people that they prefer to have four-year terms for  
15 the chairman. Is that --

16 COMMISSIONER YAKI: That absolutely is  
17 true. And my response to that is so what, seriously.  
18 I mean, I have served, a lot of us have served in a  
19 number of different positions, volunteer, elected,  
20 what have you.

21 Two-year terms are everywhere in this  
22 country. And I just don't see in a situation where  
23 you have individuals who may or may not have had this  
24 kind of experience in running something that they

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1 should just be given the benefit of the full four  
2 years. If they are doing well, they can get  
3 reappointed. And that will probably come as a matter  
4 of course, but I don't want a SAC to be stuck with  
5 dead weight for four years.

6 CHAIRPERSON REYNOLDS: Yes. Like  
7 Commissioner Braceras, I don't feel strongly about  
8 this. You make a good point, although I foresee the  
9 possibility of a SAC chair disagreeing with the  
10 Commission's assessment of his or her performance  
11 because basically at the end of the two-year period,  
12 we're going to judge them. We're going to judge their  
13 performance.

14 COMMISSIONER YAKI: I think that's a good  
15 thing.

16 CHAIRPERSON REYNOLDS: Okay. I just  
17 wanted to put it out there. Additional comments?

18 (No response.)

19 CHAIRPERSON REYNOLDS: Okay. All in  
20 favor?

21 (Whereupon, there was a chorus of "Ayes.")

22 CHAIRPERSON REYNOLDS: Any objections?

23 COMMISSIONER BRACERAS: I abstain.

24 COMMISSIONER MELENDEZ: I abstain, too.

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1 CHAIRPERSON REYNOLDS: Okay.

2 COMMISSIONER BRACERAS: I don't have a dog  
3 in that fight.

4 VICE CHAIRPERSON THERNSTROM: I don't have  
5 a dog in that fight either. I might as well go along.

6 CHAIRPERSON REYNOLDS: Okay. So before  
7 anyone changes their mind, let the record reflect that  
8 Commissioners Kirsanow, Yaki, and Vice Chair  
9 Thernstrom and the Chair vote in favor of the motion  
10 and that Commissioners Braceras and Melendez abstain.

11 VICE CHAIRPERSON THERNSTROM: I've just  
12 been informed by my assistant that it is consistent  
13 with the SAC handbook as well. Is that what I  
14 understood? Yes.

15 STAFF DIRECTOR MARCUS: That's true.

16 CHAIRPERSON REYNOLDS: The next motion.

17 **- ARIZONA SAC REPORT**

18 COMMISSIONER BRACERAS: The next motion is  
19 moot. We don't need to vote on the Arizona SAC  
20 reports.

21 CHAIRPERSON REYNOLDS: No, no, no. I'm  
22 reading. I skipped it.

23 VICE CHAIRPERSON THERNSTROM: It was  
24 crossed out from the agenda.

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1 COMMISSIONER BRACERAS: Oh, okay. It's  
2 still on mine.

3 CHAIRPERSON REYNOLDS: Okay. I move that  
4 the Commission conduct its annual project planning  
5 meeting at the Commission meeting scheduled for March  
6 10th, 2006.

7 Furthermore, as discussions of proposed  
8 briefings and projects would make it difficult to  
9 conduct a briefing during this meeting, I also move  
10 that the previously approved briefing on racial  
11 categorization in the census scheduled for March 10th,  
12 2006 Commission meeting be postponed until April 7th  
13 of 2006.

14 Is there a second?

15 COMMISSIONER KIRSANOW: Second.

16 CHAIRPERSON REYNOLDS: Discussion?

17 VICE CHAIRPERSON THERNSTROM: Did we have  
18 people lined up for that briefing? And do we know  
19 that they can make it in April?

20 STAFF DIRECTOR MARCUS: We do not yet have  
21 people lined up. This will give us a little more time  
22 to line people up and will prevent a situation in  
23 which we have an overloaded schedule in March.

24 VICE CHAIRPERSON THERNSTROM: Okay.

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1 CHAIRPERSON REYNOLDS: Additional  
2 comments?

3 (No response.)

4 CHAIRPERSON REYNOLDS: All in favor?

5 (Whereupon, there was a chorus of "Ayes.")

6 CHAIRPERSON REYNOLDS: Abstentions?

7 (No response.)

8 CHAIRPERSON REYNOLDS: Objections?

9 (No response.)

10 CHAIRPERSON REYNOLDS: The motion passes  
11 unanimately.

12 **VIII. FUTURE BRIEFINGS**

13 **- SCHEDULE FOR FUTURE BRIEFINGS**

14 CHAIRPERSON REYNOLDS: Next up, I move  
15 that the Commission hold the previously approved  
16 briefings on the following dates: May 5th, 2006,  
17 voting rights in the U.S. territories; July 28th,  
18 2006, voter fraud and voter intimidation; September  
19 15th, 2006, effectiveness of historically black  
20 colleges and universities; November 17th, 2006, school  
21 choice, the Blaine amendments, and anti-Catholicism;  
22 December 14th, 2006, religious discrimination in the  
23 workplace; January of 2007, minorities in special  
24 education; February 2007, minority children in state

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1 foster care and adoption.

2 Is there a second?

3 VICE CHAIRPERSON THERNSTROM: I second  
4 that.

5 CHAIRPERSON REYNOLDS: Discussion?

6 VICE CHAIRPERSON THERNSTROM: Yes. On the  
7 February '07, minority children in state foster care  
8 and adoption, are we as well covering the question of  
9 states that have race-based adoption policies; that  
10 is, that have policies in place that insist on an  
11 aggressive effort to match the race or ethnicity of  
12 the children with the adoptive parents?

13 CHAIRPERSON REYNOLDS: I think it's a good  
14 idea. I don't know the answer to the question,  
15 though.

16 Do we have a concept paper?

17 STAFF DIRECTOR MARCUS: We do have. I  
18 believe we have an approved concept paper. And I  
19 think that it is fairly covered within the scope of  
20 that concept paper, but I have to confess that it has  
21 been so long since I have looked at that concept paper  
22 that I would have to -- we can see if we can locate  
23 one now.

24 COMMISSIONER YAKI: We've got a year.

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1 VICE CHAIRPERSON THERNSTROM: Okay. It's  
2 just a question that concerns me.

3 What is the date of the concept paper?  
4 I'm sorry. I don't remember it.

5 STAFF DIRECTOR MARCUS: Well, this  
6 actually was a concept paper that was initially  
7 approved as a national project during our project  
8 planning a year ago. And then it was converted to a  
9 briefing when we changed from a model heavy on reports  
10 to one heavy on briefings. The initial concept paper  
11 would have been from last spring.

12 We will locate the document. And if it  
13 appears that that issue is not fairly within the  
14 scope, then we can raise that as an issue for the next  
15 meeting.

16 CHAIRPERSON REYNOLDS: Commissioner Yaki?

17 COMMISSIONER YAKI: Yes. A couple of  
18 things. One is although I agree to the postponement  
19 of the Patriot Act briefing, I see it gone from the  
20 schedule for the remainder of the year, number one.

21 And, number two, I take it that even  
22 though this is the briefing schedule, if other things  
23 of other priority come about, that can be changed. Is  
24 that correct?

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1 CHAIRPERSON REYNOLDS: Sure. Upon a vote  
2 of the Commission, we can reorder the schedule.

3 COMMISSIONER YAKI: Okay.

4 CHAIRPERSON REYNOLDS: Additional  
5 questions? Comments?

6 COMMISSIONER BRACERAS: I do have one, but  
7 so what is the answer to the issue of the Patriot Act  
8 briefing?

9 CHAIRPERSON REYNOLDS: Well, it's we have  
10 to see if we can reconstitute a panel that has  
11 credentials that are similar to the original panel  
12 that we had put together back in September. And if  
13 I'm correct, we're still working on that issue.

14 COMMISSIONER BRACERAS: All right.

15 STAFF DIRECTOR MARCUS: We made the  
16 determination about a week ago and people pulled out  
17 we were not able to have one today.

18 COMMISSIONER BRACERAS: Right.

19 STAFF DIRECTOR MARCUS: That was the  
20 determination. We would not be able to have it today.

21 Now, I suppose there is a question about whether we  
22 want to have one still at a later date or whether it  
23 is feasible to do so. And if there is a desire, we  
24 would have to figure out when to try to do it for.

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1 CHAIRPERSON REYNOLDS: Vice Chair  
2 Thernstrom?

3 VICE CHAIRPERSON THERNSTROM: Well, at  
4 this point I wonder if Commissioner Yaki would agree  
5 with this. At this point it seems to me, having  
6 delayed it as we have, that it would make more sense  
7 to have a briefing on the Patriot Act when we have a  
8 record of implementation; that is, when we see exactly  
9 how that act is being enforced, and can hold a  
10 briefing on the questions that are being raised by the  
11 enforcement of the act.

12 COMMISSIONER YAKI: You mean Patriot Act 2  
13 versus Patriot Act 1?

14 VICE CHAIRPERSON THERNSTROM: Correct.

15 COMMISSIONER YAKI: Because much of the  
16 controversy over the provisions in the current cord  
17 don't go to the objections raised by the American  
18 Islam or Arab American community that were going to be  
19 the primary focus of much of the testimony.

20 VICE CHAIRPERSON THERNSTROM: But we are  
21 going to be late now in weighing in on that  
22 conversation. Don't you agree?

23 COMMISSIONER YAKI: Sure, we're going to  
24 be late in doing so. It doesn't meant that the

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1 projection of these kinds of facts and evidence would  
2 not weigh on future deliberations of this.

3 I would say at this point let's not waste  
4 time on this discussion now. I think we can  
5 discussion it later.

6 VICE CHAIRPERSON THERNSTROM: All right.  
7 Let's do that.

8 CHAIRPERSON REYNOLDS: Any other?

9 COMMISSIONER BRACERAS: Yes.

10 CHAIRPERSON REYNOLDS: Commissioner  
11 Braceras?

12 COMMISSIONER BRACERAS: I would propose  
13 doing the voting rights in the U.S. territories  
14 briefing at a later time, primarily because I am not  
15 sure if I am going to be able to attend the May 5th  
16 meeting and that topic is of particular interest to  
17 me.

18 But if we do that, that may create an  
19 opening for Commissioner Yaki's Patriot Act briefing.

20 CHAIRPERSON REYNOLDS: So you're talking  
21 about just a replacement of the May 5th briefing?

22 COMMISSIONER BRACERAS: Well, I think we  
23 should still do the U.S. territories briefing. I just  
24 would request that it be held on a different date, a

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1 later date.

2 CHAIRPERSON REYNOLDS: Vice Chair  
3 Thernstrom?

4 VICE CHAIRPERSON THERNSTROM: I'm sorry to  
5 be so ignorant, but what is the current schedule with  
6 respect to, congressional schedule with respect to,  
7 the Patriot Act?

8 COMMISSIONER YAKI: Last I heard they  
9 reached semi-accord, partial accord, full accord in  
10 the Senate depending on who you talk to. Then it will  
11 be moving to the House.

12 VICE CHAIRPERSON THERNSTROM: And the  
13 House schedule looks like it will be?

14 COMMISSIONER YAKI: They may disagree with  
15 the amendment. It just may come over, be taken up on  
16 the floor and voted up and down that way because  
17 basically the House already passed a version the  
18 Senate didn't like and the Senate transcended. So it  
19 would just be sending it back in a conference, I  
20 think.

21 VICE CHAIRPERSON THERNSTROM: But the  
22 latest is likely to be a floor vote is what?

23 COMMISSIONER YAKI: I don't know. I mean,  
24 they keep on giving 60-day extensions, 30-day

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1 extensions. This one currently runs out I think at  
2 the end of this month. If they haven't reached full  
3 accord, they will just do another extension.

4 Let me just say this. I am open to  
5 reformatting exactly what this would look like in a  
6 broader context, mainly because I have some other  
7 things I want to talk about for possible future  
8 briefings of the Commission that may have an impact on  
9 the schedule.

10 VICE CHAIRPERSON THERNSTROM: All right.  
11 That's fine. I mean, I just think, you know, we want  
12 to keep the relevance of the briefing in relation to  
13 congressional action in mind.

14 COMMISSIONER YAKI: Right. I am fully  
15 aware of that.

16 VICE CHAIRPERSON THERNSTROM: Yes.

17 COMMISSIONER YAKI: And that is why I am  
18 saying that there are other issues that I would like  
19 to toss out to the Commission.

20 VICE CHAIRPERSON THERNSTROM: We would be  
21 all delighted to hear them.

22 CHAIRPERSON REYNOLDS: Okay. Commissioner  
23 Braceras, would moving the September 15th briefing to  
24 the May 5th briefing take care of your --

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1 COMMISSIONER BRACERAS: Switch May and  
2 September?

3 VICE CHAIRPERSON THERNSTROM: Switching  
4 May and September? Is that what you are saying?

5 CHAIRPERSON REYNOLDS: Yes.

6 COMMISSIONER BRACERAS: Fine, great.

7 CHAIRPERSON REYNOLDS: Or just it could  
8 read basically just put September at the top and then  
9 the briefing on voting rights in the U.S. territories  
10 would take place in July.

11 COMMISSIONER BRACERAS: I would prefer it  
12 in September. I would prefer switching them.

13 CHAIRPERSON REYNOLDS: Okay. That works.  
14 Any concerns by any of the other commissioners?

15 COMMISSIONER YAKI: No.

16 COMMISSIONER BRACERAS: Thank you.

17 CHAIRPERSON REYNOLDS: Okay. Any other  
18 discussion?

19 (No response.)

20 CHAIRPERSON REYNOLDS: On that note, let's  
21 vote. All in favor of the revised briefing schedule  
22 please say aye.

23 (Whereupon, there was a chorus of "Ayes.")

24 CHAIRPERSON REYNOLDS: Any in opposition?

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1 (No response.)

2 CHAIRPERSON REYNOLDS: Any abstentions?

3 (No response.)

4 CHAIRPERSON REYNOLDS: Let the record  
5 reflect that Commissioner Kirsanow has stepped out of  
6 the hearing room but all other commissioners voted in  
7 favor of the revised briefing schedule.

8 Folks, we are done. We're not done.  
9 Commissioner Yaki?

10 COMMISSIONER YAKI: Yes. I think that we  
11 should have a formal thing on the agenda for -- I  
12 don't know -- potential new business or something like  
13 that because we currently don't and there is no sort  
14 of formal process to sort of bring stuff up.

15 CHAIRPERSON REYNOLDS: Sure, sure.

16 COMMISSIONER YAKI: I would like to take a  
17 point of personal privilege and just say that there  
18 are two things that I think I would like the  
19 Commission to consider taking a look at.

20 One is the, at minimum, perhaps sending a  
21 letter to the Department of Justice regarding the  
22 state of church burnings in the South that occurred in  
23 the first week of February.

24 At least five primarily African American

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1 congregation churches were burned down in the span of  
2 two to three days. I think most of them are Baptists.

3 And there is a question of whether it's anti-Baptist,  
4 whether it's anti-African American.

5 I think that I would like to express the  
6 Commission's concern about that and urge the Justice  
7 Department to investigate these issues to the full  
8 scope of their power and ability.

9 The second one is something that has  
10 really been concerning me for the past month. I  
11 believe that under certainly the administration of  
12 justice is one that I would hope the Commission would  
13 consider taking a look at. I would prefer through a  
14 hearing because I think that only through a hearing  
15 and the issuance and the usage of the subpoena power  
16 are we going to be able to get any information or  
17 compel people to appear.

18 I am deeply concerned about the domestic  
19 surveillance issue in terms of the unauthorized use of  
20 domestic eavesdropping on Americans by the  
21 administration.

22 You know, some may consider this a  
23 partisan issue. I don't. I think that we are in our  
24 charter the watchdog for civil rights in this country.

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1       And I believe that it would be a good thing for this  
2 Commission to do to take a look at what is probably  
3 one of the most relevant and I think important issues  
4 concerning personal civil rights, personal civil  
5 liberties in this country in recent memory.

6               And I just would like to put that out  
7 there. I will try and bring a formal motion for the  
8 agenda in March, but I just wanted to raise that  
9 issue.

10               CHAIRPERSON REYNOLDS: Well, next month  
11 will be when we will be planning.

12               VICE CHAIRPERSON THERNSTROM: The planning  
13 meeting, yes.

14               CHAIRPERSON REYNOLDS: Yes. Wouldn't it  
15 be appropriate to flush out the idea, discuss it at  
16 next month's meeting?

17               COMMISSIONER YAKI: Yes.

18               CHAIRPERSON REYNOLDS: Okay. But before  
19 we go on, though, as for the first request, I  
20 wholeheartedly support it. I think ten churches have  
21 been --

22               COMMISSIONER YAKI: I thought it was ten,  
23 yes.

24               CHAIRPERSON REYNOLDS: Yes, five black,

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1 five white, all Baptist, I believe. So do we need a  
2 vote for this type of issue?

3 COMMISSIONER BRACERAS: Yes.

4 CHAIRPERSON REYNOLDS: Do we have a  
5 consensus on it?

6 VICE CHAIRPERSON THERNSTROM: Well, I've  
7 got a question on it.

8 CHAIRPERSON REYNOLDS: Vice Chair  
9 Thernstrom?

10 VICE CHAIRPERSON THERNSTROM: Before we  
11 send a letter, I would like to know what the Justice  
12 -- you know, I am not in disagreement with you, but I  
13 would like to know what the Justice Department is  
14 already doing so that we don't send a letter to tell  
15 them to do, you know, a slightly insulting letter to  
16 --

17 COMMISSIONER YAKI: Well, I mean, I would  
18 ask that the staff director, you know, ascertain from  
19 reports or whatever he can what it is that they are  
20 doing and just I think that we ought to express our  
21 concern, at the very minimum, for this and --

22 VICE CHAIRPERSON THERNSTROM: Well, that's  
23 fine. Sure.

24 COMMISSIONER YAKI: And in our hope that

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1 we use all resources at our disposal.

2 VICE CHAIRPERSON THERNSTROM: That's fine.  
3 And then I have another question for you, Michael, on  
4 the domestic surveillance question. You, as it were,  
5 corrected yourself at one point and said you had said  
6 civil rights and then you said, "Well, civil  
7 liberties," if I was hearing correctly.

8 It does seem to me a civil liberties  
9 issues. This is not a civil liberties organization.  
10 So I'm got a little bit of concern about whether this  
11 is an appropriate issue for us, as appreciative as I  
12 am of the --

13 COMMISSIONER BRACERAS: I think the  
14 jurisdictional hook is administration of justice,  
15 right? Is that --

16 VICE CHAIRPERSON THERNSTROM: I'm sorry?

17 COMMISSIONER BRACERAS: The jurisdictional  
18 hook would be our power to review --

19 VICE CHAIRPERSON THERNSTROM: I see.

20 COMMISSIONER BRACERAS: -- questions of  
21 the administration of justice.

22 VICE CHAIRPERSON THERNSTROM: I see.  
23 Okay. All right. All right.

24 COMMISSIONER BRACERAS: And insofar as

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1 there may be equal protection issues in the  
2 administration of justice --

3 VICE CHAIRPERSON THERNSTROM: Okay.

4 COMMISSIONER BRACERAS: -- that would  
5 certainly be within our jurisdiction.

6 VICE CHAIRPERSON THERNSTROM: Fine.

7 COMMISSIONER BRACERAS: But, more broadly,  
8 we could look more broadly at administration of  
9 justice issues, I think.

10 VICE CHAIRPERSON THERNSTROM: Okay.

11 CHAIRPERSON REYNOLDS: No. I think that  
12 it is not difficult to imagine a set of facts that  
13 would bring that broad issue within the purview of the  
14 Commission.

15 COMMISSIONER YAKI: I'll work with the  
16 staff director to flesh it out for consideration.

17 STAFF DIRECTOR MARCUS: I would be pleased  
18 to do that.

19 CHAIRPERSON REYNOLDS: Commissioner  
20 Braceras?

21 COMMISSIONER BRACERAS: On the issue of  
22 the letter, I believe that one of the reforms that we  
23 initially passed, the working group on reform, was  
24 that text of letters would be circulated --

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1 CHAIRPERSON REYNOLDS: Yes.

2 COMMISSIONER BRACERAS: -- and  
3 commissioners would have an opportunity to sign on or  
4 not to sign on. I fully support the idea of drafting  
5 a letter. And hopefully we can come up with some  
6 language that we would all agree with. I can't  
7 imagine that we won't.

8 I just want to make sure that the process  
9 that we put in place is followed and that a letter  
10 just doesn't go out on behalf of the full Commission  
11 the commissioners haven't had a chance to review.

12 VICE CHAIRPERSON THERNSTROM: Good.

13 COMMISSIONER YAKI: I didn't mention  
14 certainly, but I wanted to commend Commissioner  
15 Braceras for the SAC report also. She is doing  
16 excellent work on the process and finishing.

17 CHAIRPERSON REYNOLDS: Agreed.

18 COMMISSIONER BRACERAS: Do we need to vote  
19 on authorizing the drafting of the letter or --

20 CHAIRPERSON REYNOLDS: If we want to go  
21 through the motions.

22 COMMISSIONER BRACERAS: Why don't we just  
23 formalize it?

24 CHAIRPERSON REYNOLDS: Okay.

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1 COMMISSIONER YAKI: So moved.

2 VICE CHAIRPERSON THERNSTROM: I second it.

3 CHAIRPERSON REYNOLDS: All in favor?

4 (Whereupon, there was a chorus of "Ayes.")

5 CHAIRPERSON REYNOLDS: Any objections?

6 (No response.)

7 CHAIRPERSON REYNOLDS: Abstentions?

8 (No response.)

9 CHAIRPERSON REYNOLDS: Passes unanimously.

10 Unless there are other questions,  
11 comments, concerns, we are finished for the day.

12 (Whereupon, the foregoing matter was  
13 concluded at 12:20 p.m.)

14

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