

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, AUGUST 18, 2006

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WASHINGTON, D.C.

+ + + + +

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

PRESENT:

ABIGAIL THERNSTROM, VICE CHAIRPERSON
JENNIFER C. BRACERAS, COMMISSIONER
PETER N. KIRSANOW, COMMISSIONER
ARLAN D. MELENDEZ, COMMISSIONER
ASHLEY L. TAYLOR, JR., COMMISSIONER
MICHAEL YAKI, COMMISSIONER (via telephone)

KENNETH L. MARCUS, STAFF DIRECTOR

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
TYRO BEATTY, Director, Human Resources Division
CHRISTOPHER BYRNES, Acting Deputy General Counsel, OGC
DEBRA CARR, Associate Deputy Staff Director, OSD
RANITA CARTER
BARBARA FONTANA
DEREK HORNE, Attorney Advisor
MAHA JWEIED
FATIMA JOHNSON
SOCK FOON MACDOUGALL, Acting Assistant Deputy Staff
Director, OCRE
TINALOUISE MARTIN, Director of Management, OM
EMMA MONROIG, Solicitor + Parliamentarian
BERNARD QUARTERMAN
EILEEN RUDERT

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STAFF PRESENT (Continued):

AUDREY WRIGHT
MICHELLE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

CHRISTOPHER JENNINGS
LISA NEUDER
KIMBERLY SCHULD

GUEST:

H. DAVID KOTZ, Inspector General

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P R O C E E D I N G S

(9:34 a.m.)

1
2
3 VICE CHAIRPERSON THERNSTROM: All right.
4 The meeting will come to order.

5 This is the U.S. Commission on Civil
6 Rights, at 624 Ninth Street, Room 540. All of the
7 Commissioners are present, except the Chair, and I'm
8 not sure. Is Commissioner Yaki on? He's coming in by
9 phone at some point.

10 MR. MARCUS: He's on the line now.

11 VICE CHAIRPERSON THERNSTROM: Is he on the
12 line? Commissioner Yaki, are you on the line?

13 COMMISSIONER YAKI: Yes.

14 VICE CHAIRPERSON THERNSTROM: Good. You
15 sound so grave.

16 **I. APPROVAL OF AGENDA**

17 VICE CHAIRPERSON THERNSTROM: First item
18 is approval of the agenda. Can I get a motion to
19 approve?

20 COMMISSIONER TAYLOR: So moved.

21 VICE CHAIRPERSON THERNSTROM: And a
22 second?

23 COMMISSIONER BRACERAS: Second.

24 VICE CHAIRPERSON THERNSTROM: Okay. We

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1 have a number of proposed amendments, proposed motions
2 to amend the agenda. If you look at program and
3 planning, the sub-item labeled "Record Items for the
4 Briefing on Benefits of Diversity in Elementary and
5 Secondary Education," as I said, under program
6 planning. In its place would be a motion to keep the
7 record open for the briefing on affirmative action in
8 American law schools.

9 Can I have a motion on that? Give
10 everybody time to look at what we're doing here.

11 COMMISSIONER BRACERAS: So we're deleting
12 the first bullet under Roman numeral five and
13 substituting?

14 VICE CHAIRPERSON THERNSTROM: Motion to
15 keep the record open for the briefing on affirmative
16 action in American law schools.

17 COMMISSIONER BRACERAS: So moved.

18 VICE CHAIRPERSON THERNSTROM: I need a
19 second.

20 COMMISSIONER MELENDEZ: Just a question.
21 Keep the record open for how long?

22 VICE CHAIRPERSON THERNSTROM: I believe
23 it's -- that's a good question.

24 COMMISSIONER BRACERAS: We're just adding

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1 it to the agenda right now. We're not discussing the
2 merits of it.

3 VICE CHAIRPERSON THERNSTROM: Yes, but
4 it's going to be 30 days. But all we're doing is
5 adding it to the agenda.

6 Do I have a second on that?

7 COMMISSIONER TAYLOR: Second.

8 VICE CHAIRPERSON THERNSTROM: All in
9 favor.

10 (Chorus of ayes.)

11 VICE CHAIRPERSON THERNSTROM: All opposed.

12 (No response.)

13 VICE CHAIRPERSON THERNSTROM: The agenda
14 is amended.

15 Okay. The second proposed motion which
16 would amend the agenda would add a sub-item labeled
17 follow-up on the impact of racial preferences in
18 American law schools. That sub-item would immediately
19 follow discussion of the item labeled "Outline and
20 Discovery Plan for FY 2007, Statutory Enforcement
21 Report on Elementary and Secondary School
22 Desegregation." Now, this is an additional sub-item.

23 COMMISSIONER BRACERAS: So moved.

24 VICE CHAIRPERSON THERNSTROM: Has anybody

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1 got a second?

2 COMMISSIONER KIRSANOW: Second.

3 VICE CHAIRPERSON THERNSTROM: All in
4 favor?

5 (Chorus of ayes.)

6 VICE CHAIRPERSON THERNSTROM: Opposed?

7 (No response.)

8 VICE CHAIRPERSON THERNSTROM: The agenda
9 is amended to add that sub-item.

10 Third, there's a proposed motion to add a
11 discussion of the concept paper that the staff has
12 proposed in order to insure on time completion of the
13 '07 statutory report on elementary and secondary
14 school desegregation.

15 So I need a motion on that.

16 COMMISSIONER TAYLOR: Where are we adding
17 this onto the agenda?

18 VICE CHAIRPERSON THERNSTROM: That is
19 under --

20 MR. MARCUS: That would be the second --

21 VICE CHAIRPERSON THERNSTROM: Bullet.

22 MR. MARCUS: -- point under program
23 planning.

24 VICE CHAIRPERSON THERNSTROM: Right.

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1 MR. MARCUS: Which already discussed
2 elementary and secondary school desegregation.

3 COMMISSIONER TAYLOR: Okay.

4 VICE CHAIRPERSON THERNSTROM: So this is
5 just a discussion. It's a motion to discuss a concept
6 paper. Staff has proposed modifying the -- I'm just
7 looking for my page on the larger point here --
8 modifying our vision of this statutory report to make
9 it manageable.

10 COMMISSIONER BRACERAS: So moved.

11 COMMISSIONER KIRSANOW: Second.

12 VICE CHAIRPERSON THERNSTROM: All in
13 favor?

14 (Chorus of ayes.)

15 VICE CHAIRPERSON THERNSTROM: Any opposed?

16 COMMISSIONER YAKI: Me.

17 COMMISSIONER BRACERAS: You're opposed to
18 adding it to the agenda?

19 COMMISSIONER YAKI: I oppose it.

20 VICE CHAIRPERSON THERNSTROM: Do you
21 oppose adding it to the agenda?

22 COMMISSIONER YAKI: Yes.

23 VICE CHAIRPERSON THERNSTROM: You don't
24 even want a discussion of it?

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1 COMMISSIONER YAKI: I oppose it because
2 getting it a week before has not given me enough time
3 to really delve into it, a full discussion and to have
4 that opportunity to change something as important as
5 our program report. So I oppose it.

6 VICE CHAIRPERSON THERNSTROM: The
7 statutory report, you mean. Yeah, okay.

8 So we have one nay and one, two, three,
9 four, five --

10 COMMISSIONER MELENDEZ: I abstain.

11 VICE CHAIRPERSON THERNSTROM: You're
12 abstaining. Four yeas, one abstention, let the record
13 show.

14 And the agenda has been modified. I need
15 a motion to amend the agenda to eliminate the closed
16 meeting provision. Commissioner (name stricken) now
17 does have the needed documents in and we no longer
18 have to discuss it. So this is just striking that
19 item from the agenda.

20 COMMISSIONER TAYLOR: So moved.

21 COMMISSIONER YAKI: Of course, the fact
22 that we just mentioned his name kind of blows why we
23 were calling it a closed session.

24 VICE CHAIRPERSON THERNSTROM: Michael

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1 Yaki, you are perfectly right, and I apologize.

2 MR. MARCUS: Do you want to strike the
3 name from the record?

4 VICE CHAIRPERSON THERNSTROM: Strike the
5 name from the record, please.

6 COMMISSIONER BRACERAS: Move, move to
7 strike.

8 VICE CHAIRPERSON THERNSTROM: Move to
9 strike. I move to strike the name from the record.

10 COMMISSIONER BRACERAS: Second.

11 VICE CHAIRPERSON THERNSTROM: You got a
12 second, yes.

13 Calling the question, All in favor?

14 (Chorus of ayes.)

15 VICE CHAIRPERSON THERNSTROM: Anyone
16 opposed?

17 (No response.)

18 VICE CHAIRPERSON THERNSTROM: No. Sorry
19 about that.

20 II. Approval of Minutes

21 VICE CHAIRPERSON THERNSTROM: Okay. I
22 think we're up to approval of the minutes of July
23 28th. Could I get a motion to approve them?

24 COMMISSIONER KIRSANOW: So moved.

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1 VICE CHAIRPERSON THERNSTROM: Second?

2 COMMISSIONER MELENDEZ: A question.

3 VICE CHAIRPERSON THERNSTROM: Yes.

4 COMMISSIONER MELENDEZ: I read this. Was
5 there a question as to what time it started? It said
6 12 o'clock.

7 COMMISSIONER BRACERAS: First it needs to
8 be seconded, and then we discuss.

9 COMMISSIONER MELENDEZ: Okay.

10 VICE CHAIRPERSON THERNSTROM: I was going
11 to say can we have a second --

12 COMMISSIONER MELENDEZ: Second.

13 VICE CHAIRPERSON THERNSTROM: -- and any
14 discussion?

15 COMMISSIONER MELENDEZ: It just said that
16 the meeting is convened at 12 noon. I thought it
17 started at 9:30.

18 VICE CHAIRPERSON THERNSTROM: Somebody is
19 doing their homework and looking at these minutes.

20 COMMISSIONER MELENDEZ: The first line
21 just at the top. I wasn't here, but I --

22 MR. MARCUS: That's correct. It did not
23 start at noon. Oh, we had a briefing in the morning
24 and this is only the meeting?

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1 COMMISSIONER BRACERAS: Is it what time
2 the meeting started as opposed to the briefing? I
3 think that's why it says noon.

4 VICE CHAIRPERSON THERNSTROM: Yeah, I
5 think that's correct.

6 MR. MARCUS: I believe that is correct.
7 These are the minutes only of the business meeting
8 itself. The briefing started at 9:30 and ended a
9 little bit before noon.

10 VICE CHAIRPERSON THERNSTROM: Any further
11 discussion of the minutes?

12 COMMISSIONER BRACERAS: Yes.

13 VICE CHAIRPERSON THERNSTROM: Yeah.

14 COMMISSIONER BRACERAS: Because of, I
15 guess, technical snafus or human error or a
16 combination of the two, I was not present for any of
17 the business meeting, except the very last essentially
18 good-byes.

19 VICE CHAIRPERSON THERNSTROM: Yes.

20 COMMISSIONER BRACERAS: So I would like
21 the sentence that reads, "Commissioner Jennifer
22 Braceras was present for part of the meeting via
23 telephone," to be removed because that seems to imply
24 that I was present during votes or discussion of

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1 substantive issues, which I was not.

2 So if that could be deleted I would
3 appreciate that. And then the only other thing is I
4 believe the votes that are reflected in the minutes
5 for the most part reflect the fact that I was not on
6 the call, but one of them it says, "The Commission
7 unanimously, six-zero, passed a motion offered by
8 Chairman Reynolds." It could not have been six-zero,
9 I don't think, if I didn't participate, right? One,
10 two -- right, exactly right. How many? Was I on
11 then? Yes, I was.

12 Okay. Sorry. My assistant has pointed
13 out that I was on the phone at that point. So that
14 vote is correct, and I think the rest are also
15 correct, but just the first sentence. Maybe you want
16 to change it to, "Commissioner Jennifer Braceras was
17 present for only one vote," something to that effect.

18 I just do not want to give the impression
19 that I participated in any of the other substantive
20 conversations.

21 VICE CHAIRPERSON THERNSTROM: All right.
22 Is there any objection to that amendment of the
23 minutes??

24 (No response.)

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1 VICE CHAIRPERSON THERNSTROM: If not, let
2 us regard that as an amendment to the approval of the
3 minutes and vote on it. All in favor?

4 (Chorus of ayes.)

5 VICE CHAIRPERSON THERNSTROM: Opposed?

6 (No response.)

7 VICE CHAIRPERSON THERNSTROM: It passes.

8 **III. Announcements**

9 VICE CHAIRPERSON THERNSTROM: Okay. We
10 have got a few announcements. The period from
11 September 15th to October 15th is National Hispanic
12 Heritage Month.

13 August 6th was the 41st anniversary of the
14 Voting Rights Act.

15 August 26th, 1920, the 19th Amendment of
16 the Constitution was adopted guaranteeing American
17 women the right to vote.

18 So all three events we note and
19 commemorate.

20 **IV. STAFF DIRECTOR'S REPORT**

21 VICE CHAIRPERSON THERNSTROM: And we turn
22 to the Staff Director's report.

23 MR. MARCUS: Thank you, Madam Vice Chair.

24 I would have only a few remarks to add to

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1 my written Staff Director's report regarding the Omaha
2 briefing, the Anti-deficiency Act and our agreement
3 with the Peace Corps to obtain the benefits of
4 services by their Inspector General, Mr. David Kotz,
5 who is present with us today and who also will have a
6 few brief remarks during the course of my Staff
7 Director's report.

8 First let me say a few things about the
9 Omaha briefing, which is coming up early next month in
10 Omaha. Pam Dunston, the head of our Administrative
11 Services and Clearinghouse Division has bid out a
12 contract for a hotel. We had three hotels in Omaha
13 bid, and the successful bidder was the Omaha Hilton.

14 We're in the process of developing a group
15 of people to speak on the topic. We are looking at
16 two panels, one of senior government officials and the
17 other of people who are not state government
18 officials.

19 On the government side, we hope to have
20 two state senators. Senator Ernest Chambers, the
21 primary supporter of the provision in question, has
22 indicated that he would be willing to speak if
23 formally invited. One of the primary opponents of the
24 provision, Senator Patrick Bourne, the chairman of the

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1 Nebraska Senate Judiciary Committee, has also
2 indicated an amenability to speaking.

3 In terms of persons other than government
4 officials, we have had a bit of a challenge in getting
5 a balanced panel in that most of the people that we've
6 been able to identify who are of stature nationally or
7 in Nebraska have been opposed to the provision, and it
8 has been a little bit of a challenge getting people
9 who support it. We've been working with Senator
10 Chambers about his suggestions for people who support
11 his position on it, and he has identified for us Mr.
12 Walter Brooks, a contributing editor of the Omaha Star
13 and supporter of the measure whom we are planning to
14 invite.

15 Some of the other people that we've
16 identified and that we are considering inviting are a
17 former Nebraska State Advisory Committee member who is
18 on the Douglas County Board named Christopher Rogers,
19 Professor Josephine Potuto of the University of
20 Nebraska Law School, and/or an Urban League
21 representative of whom the one identified by Urban
22 League would be Brenda Council of the Urban League of
23 Nebraska.

24 Those are the people we're looking at, and

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1 we will probably be issuing invitations very shortly.

2 VICE CHAIRPERSON THERNSTROM: Is that the
3 School Board that he's a member? You said Board.

4 MR. MARCUS: Brenda Council is a member of
5 the Board of Directors of the Urban League of
6 Nebraska.

7 VICE CHAIRPERSON THERNSTROM: No, no, no.
8 There's a previous.

9 MR. MARCUS: Mr. Rogers is a member of the
10 County Board of Douglas County, which is the Nebraska
11 county in which Omaha is located.

12 VICE CHAIRPERSON THERNSTROM: All right.
13 So we do not have any school officials.

14 MR. MARCUS: We do not have any school
15 officials. That's right.

16 VICE CHAIRPERSON THERNSTROM: We need a
17 school official. We need somebody who is going to
18 talk about --

19 COMMISSIONER YAKI: Are you going to
20 subpoena anybody?

21 MR. MARCUS: I don't know.

22 COMMISSIONER YAKI: Can we make a motion
23 to authorize the Staff Director to subpoena an
24 official from the school district?

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1 MR. MARCUS: Well, I should say first of
2 all that our rules provide for subpoenas in the event
3 of hearings, but not of briefings. So that if we were
4 to consider this, we would first have to convert this
5 to a hearing, if we were to follow our procedures, and
6 then look at all of the ramifications for holding a
7 hearing in lieu of a briefing, which we have not done.

8 COMMISSIONER KIRSANOW: What day is the
9 meeting?

10 COMMISSIONER BRACERAS: September 8th.

11 VICE CHAIRPERSON THERNSTROM: The 8th.

12 COMMISSIONER KIRSANOW: We don't have
13 enough time.

14 COMMISSIONER BRACERAS: Can't do it.

15 VICE CHAIRPERSON THERNSTROM: Well, I do
16 feel very strongly that this is an education issue.
17 The people on the ground that are going to be, you
18 know, dealing with it and that should have views on
19 whether this is educationally beneficial are, you
20 know, first and foremost educators.

21 MR. MARCUS: We certainly could invite a
22 representative of the school system or the school
23 board. Of course, this issue is now in litigation,
24 and I understand there are a couple of cases. So

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1 there may be a willingness to appear, but we can
2 certainly invite them.

3 COMMISSIONER YAKI: Anyone representing
4 either the PTA or teachers?

5 MR. MARCUS: If that's a preference of the
6 Commissioners, we certainly can invite a
7 representative of one or the other, sure.

8 VICE CHAIRPERSON THERNSTROM: What was the
9 first one, Commissioner Yaki? Teachers was the
10 second.

11 MR. MARCUS: PTA.

12 VICE CHAIRPERSON THERNSTROM: PTA? Well,
13 I'm more interested in the teachers, but PTA,
14 whatever. We seem to be a little bit short in terms
15 of people on the ground dealing with kids.

16 COMMISSIONER YAKI: There are a couple of
17 things to look at. One is usually school districts
18 have advisory committees comprised of either PTA
19 members or parents. We should see what advisory
20 committees they have because those are citizens who
21 are not parties of the lawsuit, number one, and then,
22 number two, check on PTA, and then number three check
23 if there's an applicable teacher's group that we
24 should invite as well.

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1 VICE CHAIRPERSON THERNSTROM: Have we got
2 any representative of the African American press in
3 Amon? There must be some sort of a newspaper.

4 MR. MARCUS: To speak there? We can
5 certainly look into that.

6 COMMISSIONER BRACERAS: And the school
7 board you said.

8 VICE CHAIRPERSON THERNSTROM: And the
9 school board. Now, the question is whether they
10 are --

11 MR. MARCUS: They're defendants.

12 VICE CHAIRPERSON THERNSTROM: Yeah,
13 they're defendants in the litigation. I don't think
14 we're going to get anybody.

15 MR. MARCUS: I take it from the discussion
16 so far that there are Commissioners who are open to
17 having a larger number of speakers testify at this
18 briefing than customarily.

19 VICE CHAIRPERSON THERNSTROM: Yeah. I
20 mean, if we're going out there, let's really hear from
21 a wide spectrum of people. Commissioner Yaki, don't
22 you agree?

23 COMMISSIONER YAKI: Yes, I agree.

24 COMMISSIONER BRACERAS: And the school

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1 board, members of the school board, even if they are
2 defendants, can certainly recommend people who would
3 support their positions.

4 MR. MARCUS: We would be happy to speak
5 with them and see if they would either come or
6 recommend others.

7 VICE CHAIRPERSON THERNSTROM: Tell me
8 because I don't remember what was the process here.
9 Was there a vote by the school board? I felt this was
10 action at the state level.

11 MR. MARCUS: This is state legislation.

12 VICE CHAIRPERSON THERNSTROM: It is state
13 legislation. So are we sure that the school board is
14 a defendant here? It was not initiated in the school
15 board.

16 MS. BUTLER: Something was held on
17 Tuesday, and it may -- I haven't read the court case,
18 but in talking to people they said that the school
19 board was named as a defendant.

20 COMMISSIONER KIRSANOW: Yeah, it seems to
21 me that they would be a necessary party.

22 VICE CHAIRPERSON THERNSTROM: Even if they
23 themselves have not initiated or sanctioned.

24 COMMISSIONER KIRSANOW: Because it

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1 directly concerns them. Is this in federal court?

2 MR. MARCUS: I believe it is in federal
3 court.

4 COMMISSIONER KIRSANOW: So more likely
5 than not they must be joined.

6 VICE CHAIRPERSON THERNSTROM: Well, I do
7 think we should expand the list and expand the list of
8 people we're talking to here.

9 MR. MARCUS: We'd be pleased if there's
10 general agreement on it to try to get as many of those
11 groups as possible or all of them, if they'll come.

12 COMMISSIONER KIRSANOW: If we make the
13 trip, let's have a party.

14 MR. MARCUS: Good.

15 VICE CHAIRPERSON THERNSTROM: Yes, and I
16 think Commissioner Kirsanow is right. Okay. If the
17 members of the school board itself can't appear, let
18 us at least contact them and see if --

19 COMMISSIONER BRACERAS: Another
20 possibility for a speaker might be a representative of
21 the Hispanic community since that is part of the
22 mix --

23 VICE CHAIRPERSON THERNSTROM: Right.

24 COMMISSIONER BRACERAS: -- of what we're

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1 going to be discussing.

2 VICE CHAIRPERSON THERNSTROM: Yes. Good
3 idea. Okay. Anything else on that?

4 MR. MARCUS: That's it on the Omaha
5 briefing.

6 Let me say just a word about the Anti-
7 deficiency Act. I indicated a year ago at some length
8 that we had identified multiple violations of the
9 Anti-deficiency Act that occurred prior to the
10 transition to new leadership in the year 2004. We
11 have recently found evidence suggesting the
12 possibility of violation in the year 2003 as well.

13 I've directed the General Counsel to
14 investigate to determine whether there was a violation
15 or multiple violations of the Anti-deficiency Act in
16 2003. He has been working together with our Office of
17 Management, and in the event that we are able to
18 determine that there was a violation, we, of course,
19 will comply with our legal obligations to provide
20 formal notice to various senior governmental
21 officials, including the President and the leadership
22 of Congress, of those facts.

23 COMMISSIONER KIRSANOW: Ken, how did that
24 come to light, first of all?

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1 Second, what would be at least the
2 tentative amount of the deficiency?

3 MR. MARCUS: We have been working now for
4 a considerable length of time with the component of
5 GSA, which is essentially our landlord, to resolve the
6 \$75,000 rent issue from 2004. In the course of trying
7 to resolve that, the landlord component of GSA has
8 been working not only with us but also with our
9 outside full service accounting provide, which is
10 another part of GSA in order to track all of the
11 money.

12 And in the course of tracking what exactly
13 happened in 2004, they went back into 2003 to make
14 sure that they understood the 2004 context. In doing
15 so, they found indication that there had been a
16 deferral of rent not only from 2004 to 2005, but also
17 from 2003 to 2004.

18 Now, that's an indication that they found.

19 This is something that is being investigated. I
20 cannot say that we have determined this with
21 certainty, but it was the evidence of deferrals of
22 rent from '03 to '04 which has led us to investigate
23 to see whether there has been a violation or multiple
24 violations.

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1 Now, Commissioner, you asked me the
2 amount, I believe, of deficiency. This is being
3 looked at now, but it appears that there may be an
4 amount in rent that was deferred of over \$100,000. It
5 might be in the vicinity of \$140,000 or so. We are
6 looking into that. Since we don't know for a
7 certainty whether it happened, we certainly can't say
8 for certainty that that was the amount, but that
9 number has been coming up preliminary on some
10 documentation.

11 In the event that that is the case, there
12 would be a deficiency for that fiscal year in an
13 amount of money that is somewhat less than 140, but
14 that would be material. However, it would also reduce
15 the actual deficiency from 2004. In other words, if
16 the paper work is as we think, it could be that the
17 '04 actual deficiency could be eliminated. There
18 would still be violations of the Anti-deficiency Act
19 in 2004 because it still appears we still know that
20 there were obligations of 2005 funds in fiscal year
21 2004 in advance of the '05 appropriations. So there
22 is still a violation in '04, but it is possible that
23 the deficiency is only in the year 2003.

24 COMMISSIONER KIRSANOW: When do you think

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1 that your review will be concluded?

2 MR. MARCUS: I certainly hope and expect
3 it will be concluded in advance of our next business
4 meeting, which is in October.

5 COMMISSIONER KIRSANOW: Okay. My
6 recollection is during that fiscal year I know a
7 number of Commissioners had made inquiries. I know I
8 did on several occasions as to what the status of our
9 finances were, and representations were made to us
10 repeatedly. This was during a period of time when we
11 were engaged in considerable travel. Representations
12 were made that there were no fiscal problems. So I'd
13 like to continue to pursue that.

14 (Pause in proceedings.)

15 COMMISSIONER BRACERAS: Order in the
16 court.

17 VICE CHAIRPERSON THERNSTROM: Yeah.
18 Commissioner Yaki, have you got a problem?

19 Well, yes. That was an ongoing theme
20 in --

21 COMMISSIONER YAKI: I have one question.
22 Wouldn't we be evicted by now if we weren't paying the
23 rent?

24 MR. MARCUS: We're not aware of any

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1 default on any rental obligation. The issue in 2004
2 was an explicit agreement with General Services
3 Administration to defer the rent. What we're looking
4 into with the possibility of an explicit agreement
5 with GSA that took place in 2003 as well.

6 COMMISSIONER YAKI: I apologize for the
7 lacking. I was confused between Utah while I was
8 trying to make coffee for my wife.

9 (Laughter.)

10 MR. MARCUS: Are there any other questions
11 or comments regarding the Anti-deficiency Act before I
12 move on to the next issue?

13 VICE CHAIRPERSON THERNSTROM: No. Move on
14 to the next issue.

15 MR. MARCUS: As the Commissioners are
16 aware, the Government Accountability Office issued a
17 report in May on quality assurance policies of the
18 Commission and on the agency's utilization of 51 state
19 advisory committees. The report concludes, among
20 other things, that they believe the Commission needs
21 more written policies and procedures insuring the
22 objectivity of national office products as well as
23 additional controls and procedures regarding
24 transparency and accountability for changes to

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1 national office reports, additional or improved
2 utilization of the state advisory committees, and an
3 external accountability mechanism like an Inspector
4 General to insure that the agency's response and
5 related reforms are adequate.

6 The Commission has been working to address
7 GAO recommendations and to strengthen various controls
8 for several weeks, including issuing a revised AI 1-6,
9 which substantially increases formal controls
10 regarding transparency and accountability and
11 formalizes our accountability and objectivity policies
12 and procedures.

13 During late July, I'm delighted to say,
14 the Commission was able to retain the services of an
15 Inspector General whom I referred to earlier through a
16 reimbursable agreement. That Inspector General is Mr.
17 David Kotz of the Peace Corps.

18 Mr. Kotz has begun his work and will be
19 here until September 4, 2006, for a total of six weeks
20 at an estimate cost of less than \$8,000.

21 I must express our gratitude to the Peace
22 Corps for providing Mr. Kotz and for Mr. Kotz for his
23 commitment to public service and his willingness to
24 provide what I think are very important services to

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1 the Commission.

2 He has in his work been extremely
3 thoughtful and serious minded. Many of the
4 Commissioners have spoken with him. Since coming on
5 board, Mr. Kotz has worked swiftly to assess the
6 Commission's operations in light of the GAO report and
7 is reviewing the agency's response and initial efforts
8 at reform.

9 Among other things, he has interviewed
10 several of you. He has met with members of agency
11 senior staff, participated in a conference call
12 meeting with regional directors, and reviewed some of
13 our recent reforms, and as I say, his work is ongoing.

14 He and I have met several times to discuss
15 the work that we're doing to address objectivity and
16 to address the various other reforms that are related
17 to the GAO report, and I am looking forward to
18 continuing to work with him on this issue. Mr. Kotz
19 has come here and is available to say a few more words
20 about the work that he is doing and to answer any
21 questions which the Commissioners might have at this
22 time.

23 Mr. Kotz.

24 **A. Presentation by David Kotz**

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1 MR. KOTZ: Thank you, and I want to first
2 thank all of you for this opportunity to serve in this
3 respect. It has been my experience that I have dealt
4 with civil rights issues for a number of years, and I
5 very much welcome the opportunity to assist in any way
6 I can in the good work that you all do.

7 Let me give you very briefly a little bit
8 about my background. I'm an attorney by training. I
9 graduated from Cornell Law School in 1990,
10 subsequently worked for large law firms in New York
11 City and Washington, D.C., then began to work for the
12 U.S. Agency for International Development both on the
13 legal side and on the management side, and then came
14 to the Peace Corps where I have worked both in the
15 General Counsel's Office until becoming the Inspector
16 General for Peace Corps.

17 During my time working in law firms and in
18 two different agencies, I litigated very often related
19 to matters involving civil rights and EEO type issues.
20 So I have some familiarity.

21 As Ken mentioned, my main role is involved
22 with respect to the GAO 2006 report that was recently
23 issued. My first role in my process was and is
24 ongoing to speak to as many people as I can to get a

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1 wide variety of information about the Commission, how
2 it works, and what could be done to assist in the
3 process.

4 I have spoken on the phone to all the
5 Commissioners, except one who I will shortly speak to,
6 and plan to in addition to Ken and Ken's staff speak
7 to a variety of the SAC members as well, as many as I
8 can over the next few weeks, to try to get as much
9 information as I can about the process.

10 And I want to thank particularly Ken for
11 making himself available for so much time and his
12 staff available to me to assist me in this process.

13 In terms of some of the specifics of what
14 I'm going to be doing, what I plan is at the end of my
15 time, which as Ken mentioned ends in September 4th, I
16 plan to have further revisions to Administrative
17 Instruction 1-6. I did have a chance to look at the
18 initial revisions that Ken put together, and I felt
19 that they made significant progress. There are some
20 additional revisions that I'm going to suggest to that
21 condition, some revisions to Administrative
22 Instruction 5-7 which deals with the SACs and regional
23 program development as well, and then I will draft an
24 exit memorandum which will summarize all of the work

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1 that I've done, and have all of that done by the time
2 frame.

3 In terms of the specific matters in the
4 GAO report that I wish to address, I want to just
5 discuss them briefly. In addition to the overall
6 recommendation that, in effect, the General would be
7 brought in, which my presence will address, there were
8 other specific recommendations made in the GAO report.

9 Specifically documenting the process,
10 concerns about having more documentation in the
11 process, and the way I intend to respond to that is
12 through a checklist. There was a checklist that was
13 discussed in the first revision to Administrative
14 Instruction 1-6, and I plan to expand on that, as
15 well.

16 I think that a checklist can be very
17 useful for the Commission, for the staff director in
18 terms of making sure that all processes are taken care
19 of, and then as well, to create something that's
20 workable and not tremendously time consuming,
21 manageable, but nevertheless that shows and documents
22 all of the steps that I've gone through in connection
23 with the reports, hearings, and briefings.

24 The second issue that the GAO mentioned

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1 was related to the consideration of varied and
2 opposing perspectives, and what I intend in respect to
3 that is to add language to the administrative
4 instruction that throughout the different parts of the
5 process, to have language that describes input from as
6 many sources as possible, again, in a manageable way.

7 The topics, to try to get information on
8 what topics to use, suggestions for topics through
9 background research, proposed witnesses and
10 presenters, try to have language all the way through
11 the process that allows for a wide variety of views.

12 Also to have some language with regard to
13 certain briefings and hearings in terms of the balance
14 of the witnesses. While keeping in mind Ken just
15 mentioned the difficulties in trying to get witnesses,
16 and I do understand that we don't want to set up a
17 rigid formula that prescribes specific numbers in
18 every single case so that it's an unworkable situation
19 where while you would like to get a specific number of
20 witnesses on each side, you may not be able to simply
21 because these folks are not available.

22 So with some flexibility, I still would
23 like to put together some language that prescribes
24 certain balance, you know, in inappropriate cases.

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1 External review is something that the GAO
2 recommended, and you know, part of that is myself
3 being brought in. I don't know that there is the
4 possibility of having an Inspector General full time
5 for a variety of reasons having to do with authority
6 and funding, but to have some method throughout the
7 process of having someone outside look at the
8 procedures, not necessarily in a substantive way, like
9 the peer review was discussed previously, so as not to
10 create an unwieldy situation, but to have some method
11 where we can satisfy that goal, and Ken and I are
12 working very carefully and closely on that.

13 Transparency, I'm suggesting some language
14 that makes clear the Commissioner access to
15 information documents where changes are made, that
16 Commissioners have access to that, Commissioners
17 having sufficient time to review materials, and you
18 know, many of these things are being done.

19 As a matter of fact, I think it's helpful
20 to have specific language in the administrative
21 instructions that's responsive to the GAO report.

22 There is recommendation regarding process
23 for improving state advisory committee charters, and
24 what we've been thinking about in that respect is to

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1 have some kind of tracking system where, in addition
2 to dealing with the charters as they are now to try to
3 get them re-upped, but also to have some kind of
4 tracking system where six months before a charter is
5 about to expire, have that trigger a period where
6 there's a process that goes forward to try to insure
7 that the charter remains in effect.

8 There was a recommendation that separate
9 funds for regional offices, and that's going to depend
10 on, I think, the amount of funds, but assuming that
11 there is an amount of funds available, that's
12 something that I may recommend as well.

13 The time frames for staff director review
14 of SAC reports, again, that's something that I want to
15 put a specific time period on, possibly 65 days, and
16 Ken has already been working on that.

17 And then integrating the SAC mission into
18 the strategic planning. I've had several discussions
19 with Commissioners about ways in which there can be
20 more coordination between SAC groups and the
21 Commission and the Commissioners. I'm going to have
22 more conversations and have conversations with SAC
23 members and all, but try to come up with some method
24 to look at.

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1 You know, I intend to at the end suggest
2 matters that will respond to each one of the GAO
3 recommendations, but at the same time not interfere
4 with the way you are doing business, such that it
5 creates, you know, an unwieldy system where it's
6 difficult to get through the regular business of the
7 Commission because of specific things that are being
8 put into place.

9 While I was at the Peace Corps I did have
10 experience involved in a GAO report of Peace Corps,
11 and we were able to successfully respond to the
12 recommendations, but also continue to do our work in
13 an efficient way.

14 So that's essentially the generality for
15 my plan. I'm continuing to work with Ken, meeting
16 with him regularly, and intend to have all of the
17 language that I suggest to the revisions of the
18 various administrative instructions in place before
19 September.

20 And, again, I thank you very much. I'm
21 happy to remain available after the end of my tenure
22 as an advocate for the work that you all have been
23 doing and in any way I can assist in the future, and
24 that is my brief remarks, and I'm happy to take

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1 questions.

2 VICE CHAIRPERSON THERNSTROM: Well, thank
3 you very much.

4 I don't personally have questions, but do
5 other Commissioners?

6 COMMISSIONER KIRSANOW: David, when do you
7 expect to have this exit memo done? Would it be some
8 time contemporaneously with your exit of September 4th
9 or would it be some time thereafter?

10 MR. KOTZ: Yes, I think the substance of
11 the memo will be done before September 4th. The
12 question is I would like the exit memo to reflect
13 hopefully approval of some of the measures in place
14 and because of timing of the Commission meetings, et
15 cetera, that may not be in place by September 4th, but
16 essentially all of my work will be done by that date.

17 I do not intend to -- other than the mere fact of
18 insuring the approval which may necessitate a later
19 meeting.

20 VICE CHAIRPERSON THERNSTROM: Well, it
21 will necessitate a later meeting.

22 MR. KOTZ: But in terms of the substance
23 of the work and the time, it will all be done by
24 September.

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1 VICE CHAIRPERSON THERNSTROM: Well, we
2 thank you very much for the work that you're doing,
3 and we know it's going to be of high quality already.
4 So we're very appreciative.

5 MR. KOTZ: Thank you.

6 **V. PROGRAM PLANNING**

7 VICE CHAIRPERSON THERNSTROM: So we're on
8 to the Program Planning and a motion to keep the
9 record open for the briefing on affirmative action at
10 American law schools.

11 I believe that the idea here is very
12 simple. In order to give an opportunity to anyone
13 interested in providing information on the briefing
14 that we had on affirmative action in American law
15 schools, I'm recommending that the record be kept open
16 for 30 days from today's date.

17 This is a bit of business we normally
18 would have conducted at the end of the briefing
19 itself. We ran out of time. So I'd like a motion
20 that the Commission keep open the record from June
21 16th, 2006 briefing on affirmative action in American
22 law schools for 30 days from today's date.

23 COMMISSIONER BRACERAS: So moved.

24 COMMISSIONER KIRSANOW: Second.

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1 VICE CHAIRPERSON THERNSTROM: All in
2 favor.

3 (Chorus of ayes.)

4 VICE CHAIRPERSON THERNSTROM: Anybody
5 opposed?

6 (No response.)

7 VICE CHAIRPERSON THERNSTROM: Okay. Then
8 there is the motion to amend the project concept and
9 approve the outline discovery plan for FY 2007
10 statutory enforcement report on elementary and
11 secondary school desegregation.

12 You will all remember the Commission
13 approved on May 13th, 2005 this topic as our statutory
14 enforcement report for FY '07, consistent with the
15 working group on reform rules concerning Commissioner
16 input on national office projects.

17 This sentence, I'm sorry, it does not make
18 sense, but let me start again and see if I can make
19 sense of it.

20 Consistent with the working group on
21 reform rules concerning Commissioner input on national
22 office projects, also passed at the same meeting and
23 later were embodied in Administrative Instructions 1-
24 6, staff have prepared a detailed project outline,

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1 including a time line and a discovery plan for the
2 Commissioners' review and approval at this business
3 meeting.

4 Mr. Staff Director, could you advise the
5 Commissioners of the progress made at the initial
6 project training for this report and the
7 responsibilities at this stage?

8 MR. MARCUS: Madam Vice Chair, I'd be
9 pleased to do so. First let me express the
10 appreciation for the hard work of our new General
11 Counsel, Mr. David Blackwood, and his team within
12 Office of General Counsel in OCRE for their hard work
13 in preparing the outline discovery plan and proposed
14 alterations in the scope of the project. I'm also
15 going to turn to Mr. Black in a few moments to say a
16 few words about the project.

17 As you'll recall, AI 1-6, Section 7.03,
18 requires the program office responsible for a national
19 report to submit a detailed project outline to
20 Commissioners for their vote. This is one of the new
21 procedures that we implemented as a result of the
22 working group on reform last year.

23 Under 1-6, the outline includes a summary
24 of the research performed to date, the proposed

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1 methodology, and a time line for completion. AI 1-6,
2 Section 8.01 requires the program office responsible
3 for a national report to submit a discovery plan also
4 to the Commissioners for a vote. According to the AI,
5 the discovery plan describes in as much detail as
6 practicable the subpoenas, the interrogatories,
7 discovery requests and other forms of discovery and
8 information gathering that the project team proposes
9 to undertake.

10 The plan also provides a timetable for
11 doing so. This is the sort of work that OGC has put
12 together and which is before the Commission.

13 Commissioners should note that the only
14 firm deadline in the proposed timetable is that for a
15 vote on the final report since we're required by
16 statute to submit a statutory enforcement report to
17 Congress and the President before the end of the
18 fiscal year. In other words, the time table that
19 we've provided shows a whole series of very specific
20 interim deadline and sub-deadlines that are an
21 expectation. Some of these may slip, but we're going
22 to try as much as possible to meet all of them. The
23 one that cannot slip is the requirement that we
24 complete the project by the end of the fiscal year.

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1 It should be noted that the current
2 proposed time line builds in significant time for
3 Commissioner input both at the front and back ends in
4 keeping with both the spirit and the letter of the
5 working group on reforms rule, on engaging
6 Commissioners more in the initial phase of the project
7 planning. This will be the first statutory report
8 that we are doing under this process, and our first
9 experience in making sure that it can get done.

10 Of course the more time we have built in
11 at the front end for review and at the back end for
12 review, the less time there is in the middle for the
13 actual development of the product, and that's why I'm
14 particularly please with the very hard work which our
15 depleted OGC staff is doing.

16 I've asked our new General Counsel, Mr.
17 Blackwood, to provide a little bit more detail in how
18 we can complete this report and meet quality standards
19 while complying with all of the new procedural rules
20 concerning both our timing and the diminished staff
21 resources.

22 Mr. Blackwood, would you say a few extra
23 words on that?

24 MR. BLACKWOOD: Hi. As the Staff Director

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1 has indicated, we're creating a new template here. A
2 good part of that is most of OGC is new as well. So
3 we are starting with a clean slate as far as our
4 expectations.

5 As he indicated, we have submitted a
6 project outline, background information, a proposed
7 methodology, and proposed time line, as well as the
8 discovery plan. Let me just walk you through that in
9 a very general way.

10 Most significantly, the original concept
11 paper contemplated that we would rely on information
12 submitted or that we would obtain from the Department
13 of Education. When I arrived here about five weeks
14 ago, I reviewed the background information that career
15 staff had already accumulated, looked at what our
16 regional offices had performed with regard to the
17 issue of desegregation generally.

18 It seemed to me that the information or
19 our project would be much better suited if we were
20 guided by information supplied by the Department of
21 Justice. Frankly, the information we had received
22 from Justice was much more succinct, much more direct,
23 and much more -- well, it was just in a better
24 organized fashion.

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1 Specifically, we had a docket provided by
2 the Department of Justice indicating or listing all of
3 the cases that are currently under court order with
4 regard to desegregation. This allowed us, and
5 frankly, I pass on a lot of credit on this to Peter
6 Minarik, who is head of the Southern Regional Office,
7 who had with this information created a universe of
8 research as far as those cases, or he came up with a
9 project of, first off, look at the Department of
10 Justice information. That defines the parameters as
11 far as those cases currently under court order. Look
12 at the other universe of those cases or those school
13 districts that have obtained unitary status, and
14 third, those jurisdictions which have never been
15 subject to any court order.

16 Now, there is no database that currently
17 lists those three universes. We have the information
18 from the Department of Justice. What Mr. Minarik came
19 up with was the idea that -- and this is unique -- is
20 to make a survey of each school district, specifically
21 using government independent sources of information
22 and school district information itself. He has worked
23 to compile specifically in the Southern Region, and
24 other regions are undertaking similar surveys, to

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1 create a database showing exactly the status of each
2 and every school district within his region.

3 This lone survey is going to be extremely
4 valuable. The Justice Department does not have any
5 similar database, and as far as we're aware of nobody
6 does. So creating, gathering this kind of
7 information, this kind of survey, using with and
8 working with the information we're going to obtain
9 from the Justice Department, specifically the
10 educational opportunity section.

11 The idea is to create an analysis and test
12 whether there is a difference in school level racial
13 integration between those school districts determined
14 to have achieved unitary status in other school
15 districts.

16 Now, this process has already begun. It
17 is very preliminary, but the feedback I have obtained
18 from the career staff is that it is extremely
19 valuable, that it is something that is a new product,
20 that it is not redundant, that it is not duplicative.

21 Now, where it's going to go I can't tell
22 you. As I say, it's all very preliminary, but the
23 idea is to create this database, gather the
24 information first. We're not wedded to a single

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1 method of analysis. I want to emphasize that. We are
2 using a basic -- at this time using an index of
3 dissimilarity to analyze the data for each school
4 district that we have obtained the information with
5 regard to whether they were under a court order, have
6 obtained unitary status or have never been involved in
7 the court system.

8 And we're trying to determine in a very
9 general way, all subject to changes as we go along as
10 to the extent of the information and the value of
11 various means of analysis that greater segregation
12 exists after release of a court order, whether it's
13 less, and we're not going to limit ourselves to just
14 that question. We're going to go where the data takes
15 us.

16 But the process has already begun to
17 collect this data. Already five jurisdictions I won't
18 say are complete, but in the southern region
19 substantially complete or substantially in process to
20 gather this information that I mentioned before about
21 a survey.

22 The analysis itself we believe can be
23 accomplished in a timely fashion. We are, of course,
24 governed by the general terms of AI 1-6, and we are

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1 trying to accomplish that. The guidelines that we
2 have set forth in our discovery guideline are meant to
3 comply with AI 1-6. I can't say that we're going to
4 meet every deadline exactly on the date shown. We are
5 certainly going to try to, and we believe they are at
6 least at this stage realistic. We may have bumps in
7 the road when we request information from various
8 entities whether they comply and whether they comply
9 in a timely fashion, but we do believe it is possible
10 to meet these deadlines.

11 And as you also note, there is
12 considerable time built in for your all's input. We
13 want to be -- as we develop our methodology, we will
14 provide that information to you. If things change, we
15 will provide that information to you and are looking
16 for feedback, but this is, in broad terms, the nature
17 of our program.

18 As I mentioned before, the key issue as
19 far as today is that we have changed our focus from
20 enforcement by the Department of Education to
21 enforcement by the Department of Justice, and that, I
22 believe, is going to require a vote.

23 Yes, ma'am.

24 COMMISSIONER BRACERAS: I'm unclear as to

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1 why the change in focus has been made. I know you
2 said that the information from the Department of
3 Justice was just more crisp and clear and organized,
4 but what is the substantive difference between the
5 information available from OCR and the information
6 available from Justice?

7 MR. BLACKWOOD: Sure. The information
8 with Justice focuses to me -- and, again, coming in
9 with eyes open as far as with a new look -- looking at
10 the background, legal articles, and general social
11 research, they all focus on the emphasis of the
12 changing analysis of unitary status, its value, how it
13 is changed, how the courts interpret it.

14 That necessarily focuses more on a role by
15 the Department of Justice, which is focused
16 exclusively on enforcement as opposed to the
17 Department of Education, which is a mix of enforcement
18 and funding. The Justice Department is going to be
19 dealing with court orders that define unitary status.

20 The Department of Education --

21 COMMISSIONER BRACERAS: The smaller
22 universe.

23 MR. BLACKWOOD: Correct. It's a smaller
24 universe. It's more discrete, but it's also clearer

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1 as far as the courts are involved. You can't say that
2 necessarily with the kind of agreements that the
3 Department of Education did.

4 COMMISSIONER BRACERAS: Okay.

5 MR. BLACKWOOD: Yes, ma'am.

6 VICE CHAIRPERSON THERNSTROM: Well, it is
7 obviously a smaller universe, but out in the larger
8 universe, of course, there are racial balancing plans
9 that have not been court ordered. There is other
10 forms of desegregation strategies, and they do take
11 various forms, that it seems to me if one is really
12 going to properly evaluate what is going on in terms
13 of official efforts to create racial mix in schools,
14 we're not going to get a proper picture without
15 looking at that wider universe.

16 This is bothering me a little looking
17 simply at the Justice Department aside from the fact
18 that there are also some definitional questions here
19 of exactly what is the meaning of desegregation,
20 what's the meaning of racial balance.

21 I mean we just had a briefing on the
22 Seattle and Louisville cases in which, you know,
23 Seattle has done this wild thing of you are either
24 white or non-white, and measuring racial balance in

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1 that multi-cultural sitting by criteria that don't
2 make much sense --

3 COMMISSIONER YAKI: I would object to that
4 characterization, but just to let you know.

5 VICE CHAIRPERSON THERNSTROM: Okay. But
6 in any case, there are -- and I think Commissioner
7 Yaki's intervention here illustrates it -- there are
8 very complicated, sticky issues here, and I'm a little
9 bothered by kind of going with Justice Department
10 definitions and confining ourselves to the data which
11 involves only court ordered, but yes.

12 COMMISSIONER BRACERAS: I have to disagree
13 with the Vice Chair just because I think we're limited
14 in what we can do by our manpower and our time frame,
15 and I think that rather than produce something that
16 tries to do more and ends up doing it less well, we
17 need to just focus on a discrete area so we can
18 analyze thoroughly, of course making note of the fact
19 in the report that there are other areas for research
20 and perhaps listing what they are.

21 I just think we get into the problem then
22 which we had. You know, if we bite off more than we
23 can chew, we get into the problem that we had under
24 the previous regime where these reports are throwing

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1 in everything but the kitchen sink, and they're not
2 focused, and they become virtually unusable.

3 VICE CHAIRPERSON THERNSTROM: Yes, look.
4 I'm not in disagreement with that. What I would want
5 to see is a discussion up front of just how limited a
6 window this is through which we're looking.

7 MR. BLACKWOOD: Absolutely. We recognize,
8 and I think Commissioner Braceras hit the nail on the
9 head, that we're limited by our time, by our
10 resources. What I was encouraged by was that this is
11 something new. It is something distinct. It is a
12 part of the puzzle. Obviously you can't address the
13 whole issue, but it will have value to anyone who is
14 interested in the issue.

15 People can take it where they will,
16 results for different policy reasons, but it will
17 provide them with some additional new data to help
18 them determine what is the proper role of unitary
19 status, how is it being applied, and then it will be
20 up to decide where they want to take it.

21 VICE CHAIRPERSON THERNSTROM: Yes, okay.
22 As long as both at the beginning and end there is a
23 very clear statement as to the limits of what we are
24 looking at here.

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1 MR. BLACKWOOD: Absolutely.

2 VICE CHAIRPERSON THERNSTROM: And what you
3 can conclude from the data present.

4 COMMISSIONER BRACERAS: Just to follow up
5 on the Vice Chair's point about terminology, and
6 perhaps this is something that we'll discuss again
7 when we see actual language in the form of a draft,
8 but the Vice Chair correctly points out that the
9 terms, "segregation," are sometimes poorly defined.
10 So you're using a definition that's based on
11 Department of Justice guidelines?

12 MR. BLACKWOOD: What we are going to do is
13 solicit from the -- well, I will tell you this. We're
14 going to obviously solicit this information from the
15 Department of Justice. What standards do they use?
16 How are they applying it? And we're going to be
17 seeking that from them.

18 At the same time kind of as a second
19 component we're going to be doing our own analysis
20 using Corps data information together with the survey
21 that we are working on with regard to every school
22 district. It should sweep up information, not only
23 what Justice Department is doing, individual
24 plaintiffs are doing, and we are soliciting and have

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1 received from many of these school districts what is
2 their intention to seek unitary status, and we're
3 getting anecdotal evidence which may or may -- you
4 know, we're seeing where that goes. If you haven't
5 sought unitary status, why not? If you are seeking
6 it, what factors did you look at?

7 That's more anecdotal, but that
8 information is beginning to come in.

9 COMMISSIONER BRACERAS: And so essentially
10 it would be a database, a list, if you will, of
11 schools that have achieved unitary status, schools
12 that have not and schools that have partially achieved
13 it, and then with that information you're going to
14 analyze. That's where I'm confused.

15 MR. BLACKWOOD: The main analysis, and I
16 wrote it down so I would follow it correctly, is --
17 and this is only partial. We may expand it. We may
18 refine this -- but test whether there is a difference
19 in school level racial integration between those
20 school districts determined to have achieved unitary
21 status and other school districts.

22 COMMISSIONER BRACERAS: Okay. I guess I
23 have a normative question there, which is, you know,
24 we all assume that integration is a good thing, and of

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1 course, as far as freedom of choice and legal
2 barriers, it is; breaking down legal barriers, it is.

3 But I'm not necessarily sure that all of us here and
4 all of us in the larger world agree that a school is
5 necessarily better or worse based on the percentage of
6 blacks and whites that attend the school.

7 In other words, do you understand what I'm
8 getting at?

9 MR. BLACKWOOD: Yes.

10 COMMISSIONER BRACERAS: I am concerned
11 about the implicit assumption, I think, in the
12 analysis that a school that is racially balanced is
13 necessarily better than a school that is not racially
14 balanced, and I'm concerned with the assumption that
15 Justice Thomas has often pointed out, that a school
16 that is majority black is necessarily a bad thing.

17 MR. BLACKWOOD: This report is not going
18 to be approaching with that kind of analysis. It's
19 not going to take a position other than saying, "Here
20 is the way the law has been developing. Here is what
21 Justice Department is doing," and we have to gather
22 that information. "Here is what we're seeing as far
23 as those jurisdictions that have obtained unitary
24 status. Is there a difference?"

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1 We're not saying it's good, bad or
2 indifferent.

3 COMMISSIONER BRACERAS: Right.

4 MR. BLACKWOOD: Is there a difference
5 between the levels of integration in those states or
6 school districts that have obtained unitary status and
7 those that have not.

8 COMMISSIONER BRACERAS: Right, and I think
9 that's useful information for a whole variety of
10 folks. I would phrase it in terms of demographics
11 because demographics is to my mind a neutral term.
12 So, in other words, you're saying these are the
13 schools that fall into the particular legal
14 categories, and this is what the demographics look
15 like in those schools.

16 MR. BLACKWOOD: Correct.

17 COMMISSIONER BRACERAS: The word
18 "demographic" doesn't convey necessarily that it's a
19 good thing or a bad thing. It just it is what it is.
20 So I raise that mainly to piggyback on the Vice
21 Chair's comments about terminology. Sometimes when we
22 use the words "integrated," "segregated,"
23 'desegregated,' you know, "racially balanced,"
24 "racially imbalanced," those are more politically

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1 charged words that have different sociological and
2 legal meanings depending on the context.

3 So I think if the report sticks to the
4 language of demographics then social scientists and
5 policy makers can do with it what they will, but it
6 will appear, I think, a little less value laden.

7 COMMISSIONER YAKI: This is Commissioner
8 Yaki. I'm a little confused by that. I mean, the
9 fact is that part of the legal standard that is used
10 utilizes the description in terms of race, in terms of
11 balance, in terms of, you know, de jure de facto,
12 whatever you want to call it, and then I'm also
13 concerned with how we can possibly opine on what the
14 law is when the law is kind of a (unintelligible) as
15 can be determined by two or three briefings we have
16 already had.

17 The Commission, subject to wildly
18 different interpretations of exactly what the meaning
19 of different Supreme Court decisions have with regard
20 to elementary and secondary school education, much
21 less desegregation.

22 So how are we going to be determining what
23 the, quote, unquote, legal standard is against which
24 we are comparing, quote, unquote, data from DOJ.

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1 MR. BLACKWOOD: I think, Commissioner, if
2 that's the impression I left you I misspoke. We're
3 not trying to make a resolution. We are pointing out
4 that there is confusion. Virtually every article that
5 I have read on the topic indicates that the law is in
6 flux.

7 So what I --

8 COMMISSIONER YAKI: I understand that. I
9 understand that, but then the question I ask is then
10 if there isn't confusion and we're simply going to be
11 doing the report, the reports on the confusion, what
12 real value of that report is there?

13 COMMISSIONER BRACERAS: Can I speak to
14 that?

15 MR. BLACKWOOD: Yes.

16 COMMISSIONER BRACERAS: I think the value,
17 Commissioner Yaki, is that it would lay out in one
18 place the different standards that courts have applied
19 and significantly the standards that are currently
20 being used by the Department of Justice, and so those
21 will all be laid out in one place, and in the same
22 volume there will be the numerical data and the
23 sociological and demographic data that shows, that
24 sort of fleshes out the picture of what schools that

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1 have been labeled X, Y or Z by a particular court
2 actually look like.

3 And as I understand it, there is no place
4 currently where somebody, a researcher can go to get
5 all of that information, and so I do think that that's
6 useful.

7 I agree with you that it's risky to try to
8 opine on where the law should go in this area, but I
9 think it's a very valuable service to collect this
10 information in one place.

11 COMMISSIONER YAKI: For all 366 cases?

12 MR. BLACKWOOD: No, no. Here's where
13 you'll find -- I believe it's in one of the footnotes
14 in our report or the proposal. We are going to
15 because of time restraints, because of statistical
16 restraints as far as what is valuable. We're not
17 going to be able to look at all 366, although that may
18 be accomplished over a little bit longer period of
19 time.

20 But the report itself will focus more on
21 those jurisdictions which the social scientists have
22 informed me require a critical mass within a state
23 because this is a state-by-state analysis of those
24 that have a critical mass of court ordered cases.

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1 At this time it is likely that most of
2 those states will be in the South because those have
3 the majority of the actual court ordered situations in
4 school districts. As our analysis proceeds, we are in
5 the process of trying to determine whether this kind
6 of survey can be done in a time sensitive manner to
7 include other jurisdictions.

8 I believe in the report we point out right
9 now that there are five states that we feel
10 substantially sure that we will be completed and be
11 able to analyze: Georgia, North Carolina, South
12 Carolina, Florida, and Alabama.

13 We're recently getting information that we
14 may be able to include also Mississippi and Louisiana,
15 but that is going to vary depending on our resources
16 and how fast we can get these surveys completed.

17 So we are not going to be able to complete
18 a nationwide analysis.

19 MR. MARCUS: Let me add just a couple of
20 points.

21 COMMISSIONER YAKI: Well, I just have a
22 quick question. This goes into a general complaint
23 about -- and maybe this is just because as someone who
24 doesn't have an assistant, agendas that flow between

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1 meeting to meeting and refer back to one another give
2 me headaches, and sometimes I wish when we get agendas
3 that talk about an issue, that they ask that for that
4 item refer back to agenda whatever it is packet as we
5 go on because the project concept that I have in my
6 briefing book is three pages long, and I'm not finding
7 that list of states you're talking about, which is
8 part of the reason why I objected to having this thing
9 come on, because I thought, boy, this is not too much
10 stuff for a big change in direction.

11 But if we're going back to the original
12 project description, which is an agenda two or three
13 items ago, I have to dig through a lot more stuff to
14 find it, and sometimes it has been sort of a recurrent
15 irritant to me in that since we are doing all of this
16 by E-mail anyway, it's not that hard to throw in stuff
17 that was two or three months ago so that we can cross-
18 reference whether or not we're going to need it or not
19 for a particular meeting that we have.

20 So anyway, I only have three. Are we
21 talking about the memorandum as well?

22 MR. MARCUS: It is on the project outline,
23 page 5, Footnote 6.

24 COMMISSIONER YAKI: Okay. I don't have a

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1 page 5. Okay. Back here. Okay.

2 VICE CHAIRPERSON THERNSTROM: Yes, you do.

3 MR. MARCUS: While Commissioner Yaki is
4 turning to that page, let me just make a couple of
5 other observations in answer to the question what is
6 the value we're adding.

7 It is surprising how little information
8 there is out there even just on the basics regarding
9 the status of desegregation in various states. So
10 even the preliminary information showing the status of
11 court cases saying the State of Alabama is something
12 you will not be able to find in other places that will
13 be available because of this work that's now ongoing
14 both in the regional office and in the Office of
15 General Counsel.

16 So that in itself, I think, is a
17 substantial value added. The other point is that I
18 would also emphasize within the outline that we are
19 indicating that we will also attempt to analyze
20 whether school districts are capable of achieving all
21 of the so-called green factors and to what extent
22 impediments exist to achieving these factors and why
23 certain school districts have or have not achieved
24 unitary status and been released from school

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1 supervision.

2 That's a somewhat ambitious part of it.

3 COMMISSIONER BRACERAS: Where is that
4 exactly?

5 MR. MARCUS: That's on the same page 5 we
6 were looking at, and it's Item No. 6 under the purpose
7 of this study.

8 COMMISSIONER BRACERAS: That more
9 ambitious part is where I start to get a little
10 nervous because I think, well, two things. Number
11 one, it is simply more ambitious and time consuming,
12 but also I've always felt that the best role for this
13 Commission to play is as a national clearing house of
14 information, and the more we can stick to the data and
15 avoid commentary in reports like this I think the more
16 credibility they will have because we will all have
17 different views, I think, on the meaning of the data.
18 I'm not sure it's necessarily -- in a large report
19 like this, I'm not sure it's necessarily our role to
20 opine.

21 VICE CHAIRPERSON THERNSTROM: I mean, it
22 seems to me there's a blurry line between data and
23 opining. That is, what if you were asked the bottom
24 line question, which is does the racial makeup of a

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1 district have any implications for student
2 performance?

3 COMMISSIONER BRACERAS: But we're not
4 asking that question.

5 VICE CHAIRPERSON THERNSTROM: And we're
6 not asking that question, but it is obviously the
7 bottom line question with respect to --

8 COMMISSIONER BRACERAS: But that's for
9 other researchers to take our data and to then go ask
10 that question and come to their own conclusions.
11 That's sort of second tier analysis.

12 VICE CHAIRPERSON THERNSTROM: Right. I'm
13 just -- okay.

14 COMMISSIONER BRACERAS: I guess I'm not
15 interested in using this data to make a political
16 point one way or the other. I'm interested in
17 collecting this data and putting it out there in the
18 public sphere to allow people from all sides of the
19 political spectrum in all --

20 VICE CHAIRPERSON THERNSTROM: No, I agree
21 with that.

22 COMMISSIONER BRACERAS: -- you know,
23 academics and clinicians and various --

24 VICE CHAIRPERSON THERNSTROM: I agree with

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1 that.

2 COMMISSIONER BRACERAS: -- you know,
3 practitioners to use the data in the way that they see
4 fit.

5 COMMISSIONER TAYLOR: Vice Chair.

6 VICE CHAIRPERSON THERNSTROM: Yes.

7 COMMISSIONER TAYLOR: I don't think we're
8 well equipped to go to that next level of analysis.

9 VICE CHAIRPERSON THERNSTROM: No, we're
10 not.

11 COMMISSIONER TAYLOR: I just think we get
12 on shaky ground when we do so, despite our intentions,
13 but for me at least Item 6 is a classic example of the
14 right direction that we can achieve the goal of the
15 Commission, I think, which is to -- Commissioner
16 Braceras calls it a clearing house. I tend to think
17 of it as shining a spotlight on relevant national
18 issues and providing a platform for the larger
19 society, policy makers, et cetera, academics to engage
20 in discussion.

21 And so what I hope we can always do is we
22 can put issues on the table and then in some way step
23 away and initiate a debate without necessarily getting
24 caught up in the debate.

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1 And Item No. 6, as soon as I read it I
2 thought rather than determining whether or not a
3 school district is capable, an analysis of those
4 school districts that have, indeed, achieved those
5 standards, and if you don't have a lot of school
6 districts achieving those standards, the facts speak
7 for themselves.

8 And I think we can do a great service to
9 the discussion by just identifying what exactly is
10 going on at this point in time, which you know, for me
11 at least throughout the discussion I was somewhat
12 concerned about the direction we were going in this
13 area, but I'm more satisfied now that ultimately this
14 will be a product not only that we can be proud of,
15 but that will be very useful.

16 And to Commissioner Yaki's concern, as I
17 heard, at least, I see the role of this Commission as
18 offering what is often lost in the national debate,
19 that is, a snapshot in time as to where we are today,
20 and are we having the right discussion for the right
21 issues and are we taking the right tools to the right
22 task for today.

23 And in this context, since the law is in
24 flux, the next comment I want to make goes back to the

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1 question of demographics versus segregation, and
2 Commissioner Yaki is right in terms of the legal
3 language. I would argue, I think, that we want to
4 perhaps back away from the legal language in one sense
5 because Item 4 is what we really want to get to. That
6 is, we want an analysis or a comparison as to the
7 demographic profile of those districts that have
8 achieved unitary status and those that have not.

9 That is what I think we're really
10 concerned about. We're not concerned about whether
11 they're classified as being segregated or
12 desegregated. We want the world to say, "Look at this
13 demographic profile and compare it to this demographic
14 profile. Does it make sense? Does it matter?"

15 COMMISSIONER BRACERAS: Right, and that
16 will generate further research questions by other
17 social scientists. I mean, for example, a district
18 can be unitary and be majority/minority. It can be
19 overwhelmingly African American and still have
20 achieved unitary status.

21 Now, there are normative questions about
22 whether that's good, bad or indifferent, and what the
23 quality of that school is and what the achievement
24 level of those students are, and all of those things

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1 are important questions. But they're not questions
2 that we can ask and answer in this limited time.

3 COMMISSIONER TAYLOR: And because I agree
4 with Commissioner Yaki's concern, as soon as we try to
5 do that, then we end up arguing in this forum about
6 what it means. I think we can go about this in a way
7 that eliminates those issues, but nevertheless really
8 informs the national debate, and I hope focuses
9 everyone back on the issues at hand.

10 COMMISSIONER BRACERAS: So I would
11 recommend or make a motion perhaps to eliminate number
12 six because it seems that the question of whether
13 school districts are capable of achieving all six
14 green factors, you know, is a very subjective
15 analysis. I mean, some school districts are going to
16 argue they're not capable of achieving one or the
17 other for a variety of reasons, and other people are
18 going to say they absolutely are capable of achieving
19 them.

20 And as far as identifying the impediments,
21 again, that's a much more subjective question. So I
22 would in the interest of time and efficiency and
23 objectivity, I would eliminate number six on this page
24 5, this list of goals for the study.

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1 VICE CHAIRPERSON THERNSTROM: I don't
2 object to that. You know, I still have other problems
3 here, and I do agree with Commissioner Taylor's remark
4 there, but, for instance, provide analysis as to
5 whether there's significant difference in racial
6 integration between school districts that have
7 achieved unitary status in other schools.

8 Well, Boston, for instance, has achieved
9 unitary status. We're down to 13 percent whites.

10 COMMISSIONER BRACERAS: That's my point.

11 VICE CHAIRPERSON THERNSTROM: You know,
12 are those whites properly spread around? Is that the
13 question?

14 I mean, you know, the white population and
15 the middle class black and Latino populations have
16 left the Boston school district. You know, is that a
17 unitary system? We have no whites left in it, to
18 speak of. Most of those whites are in either the
19 exempt schools or the very early grades.

20 So we are not able to strip -- even
21 getting rid of six, we're not able to strip this of
22 some complexities.

23 MR. BLACKWOOD: The complexities are going
24 to exist. Even preliminary review of what we think

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1 we're going to end up with is a long the lines of
2 Commissioner Taylor's view. You're going to be able
3 to, in our mind, go wherever you want to go
4 normatively. What it is going to show is basically
5 over the period -- the target is using school year
6 '92-'93 as the baseline. See how these districts have
7 changed from then to school year '03-'04 or -- I'm
8 sorry -- I think it's '03-'04, and then compare those
9 districts that have obtained unitary status as viewed
10 by the courts, not obtained unitary status, or never
11 were in the court district.

12 VICE CHAIRPERSON THERNSTROM: I'm sorry.
13 Where does the '92 baseline come from? How did you
14 arrive at that?

15 MR. BLACKWOOD: The '92-'93 we came to
16 because that was the time the Dowell decision was
17 made.

18 VICE CHAIRPERSON THERNSTROM: I see.
19 Okay.

20 MR. BLACKWOOD: That was the basis of it.
21 Now, as I say, we may change some of these baselines
22 depending on, you know, whether we find it
23 statistically makes sense, but that was the basic
24 premise. During that time period it is the '92-'93

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1 school year versus school year '03-'04. What
2 happened? Is there a difference between those school
3 districts that obtained unitary status? Is there no
4 change?

5 And certainly there are a variety of
6 scholars that said there are dramatic changes. Others
7 have said none. We're going to look at the data and
8 say, "Here it is."

9 COMMISSIONER BRACERAS: Are you looking at
10 all in changes in population data during the same time
11 period?

12 MR. BLACKWOOD: We are looking as to
13 whether we can do that.

14 COMMISSIONER BRACERAS: Okay.

15 MR. BLACKWOOD: I mean, as Commissioner
16 Thernstrom pointed out, there are going to be
17 limitations, and we will spell out what those
18 limitations are and what our parameters are.

19 COMMISSIONER BRACERAS: Right.

20 MR. BLACKWOOD: We may be able to expand
21 it depending on what we have and the time we have and
22 our resources. But this is the core of what we are
23 trying to do. If we can add other issues that we
24 believe statistically we can find out and present

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1 additional information, we'll do that and we'll inform
2 you. But I can't say that yet.

3 COMMISSIONER BRACERAS: No, I think that
4 the Vice Chair's point about the Boston School
5 District though illustrates exactly the type of
6 information we should be collecting and also what we
7 shouldn't be saying. In other words, looking at
8 Boston, the report would say, you know, this is the
9 legal status of Boston unitary. This is the
10 sociological, demographic data, 13 percent white, X
11 percent whatever else, and not necessarily draw
12 conclusions from that.

13 There are -- you know, certainly other
14 useful information would include data about changes in
15 the population of the City of Boston, but I don't
16 think any conclusion should be drawn about, you know,
17 whether or not it's good or bad to have only 13
18 percent of the students be white or where they should
19 be or how they should be spread. That's all second
20 tier.

21 VICE CHAIRPERSON THERNSTROM: I agree with
22 that. It's just there has got to be some
23 acknowledgement in the report of the complexities of
24 the notion of a unitary school district when you have

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1 -- you know, Boston is not alone -- when you have
2 cities like Boston where the definition of achieving
3 unitary is you basically have a non-white school
4 population.

5 COMMISSIONER BRACERAS: Right, but I mean,
6 certainly as with, you know, other social science
7 papers, a natural section would be identifying areas
8 for further research.

9 VICE CHAIRPERSON THERNSTROM: Yes, yes.

10 COMMISSIONER BRACERAS: And that would be
11 one of the questions.

12 VICE CHAIRPERSON THERNSTROM: No, I just
13 think that that's incredibly important in this, the
14 limits of what we've done, areas for further research.
15 The same thing.

16 COMMISSIONER BRACERAS: So do I need to
17 formally move to strike number six?

18 VICE CHAIRPERSON THERNSTROM: Yes.

19 COMMISSIONER TAYLOR: Well, before you do,
20 that raises a question in my mind at least. One of
21 the things that number six raises, again, is perhaps a
22 school district has sought unitary status and been
23 denied by the court. So that you may have a number of
24 situations where the school districts themselves

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1 identify impediments and argue to the court these are
2 structural impediments and, therefore, we should be
3 either excused or it somewhat mitigates a particular
4 problem.

5 A discussion of those issues without any
6 commentary, I'd like to see that as part of this
7 because that would help inform the debate and without
8 the Commission necessarily taking a position on what
9 the school district said as to whether it's right or
10 wrong, but just raising the point the school district
11 raises. It was rejected by the court and it didn't
12 find its way into its final rule.

13 MR. BLACKWOOD: But what we are asking for
14 and so far the school districts generally are working
15 with us, is we ask, you know, are you seeking unitary
16 status, and I don't think we have put it in terms of
17 what are the impediments, but what factors have you
18 considered? If you are not seeking unitary status,
19 why?

20 You know, it depends. As I say, anecdotal
21 as opposed to statistical, but we were thinking along
22 the lines of potentially depending on the response
23 rate attaching that with no comment about it, but this
24 is what we have received from a survey. The survey

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1 obviously would have limitations, particularly
2 scientific, but we need to see what the results are
3 first. Is it useful? Do we get a real sample? Do we
4 only get, you know, some responding just, "We decided
5 not to"? Are they going to spell out the reasons?

6 But that is one of the things we were
7 thinking along the lines that might have some value.
8 Without our making comment, this is what the school
9 districts themselves have said what they are
10 considering or why they have not sought unitary status
11 or what problems they have.

12 COMMISSIONER BRACERAS: But that's more of
13 a cataloging of individual school districts' efforts
14 and the response of the courts. That's different than
15 the way I read number six, which is to say analyze on
16 a global level what the problems are, and to what
17 extent those problems can be resolved.

18 I don't think that there should be a
19 global conclusion drawn or an analysis done of, you
20 know, these are the trends necessarily. These are the
21 big problems. I just think we should let the data
22 speak for itself, and I have no objection to
23 cataloguing the times that districts apply for unitary
24 status and are rejected or that they haven't applied

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1 and there are reasons why. I don't mind cataloging
2 those.

3 I just don't want to opine because I guess
4 I'm -- you know, I fear having bias sort of creep into
5 this report, and this is really, as the Staff Director
6 said, the first statutory report that we'll be putting
7 out under these new guidelines and these new processes
8 that we adopted, and I'd really like to see it be
9 something where we can get as much agreement from as
10 many Commissioners as possible and have it be as
11 neutral and objective as possible.

12 And if that means biting off, you know,
13 tinier pieces, then so be it.

14 VICE CHAIRPERSON THERNSTROM: Commissioner
15 Taylor, I wonder if there's a way of framing the
16 question you would like answered without the problems
17 that Commissioner Braceras --

18 COMMISSIONER TAYLOR: Oh, I think so. I
19 think it's useful information. It's information I
20 think that would inform the debate, and frankly, I'm
21 taking this position from the viewpoint that if we go
22 about this the right way, I suspect the facts that we
23 catalogue and present to the public will speak
24 volumes, and if we weave into that our opinion, it

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1 will actually detract from the argument.

2 VICE CHAIRPERSON THERNSTROM: Right.

3 COMMISSIONER TAYLOR: So I just want to
4 make sure we don't lose what I think may be some very
5 good facts about what's going on out there, what
6 school districts have argued that have been rejected,
7 what they have not argued because this is their
8 position. I think all of those facts -- I don't want
9 that to get lost if we --

10 COMMISSIONER BRACERAS: Well, I don't mind
11 the cataloguing, the analysis.

12 VICE CHAIRPERSON THERNSTROM: Right. Can
13 you reword six so that it becomes a matter of
14 cataloguing rather than analyzing?

15 COMMISSIONER BRACERAS: I wouldn't use the
16 word "analyze," and I wouldn't use the word "capable."
17 I would just say collect information or data on failed
18 attempts by school districts to achieve unitary status
19 and/or, you know, decisions by school districts not to
20 seek a determination of unitariness.

21 VICE CHAIRPERSON THERNSTROM: All right.
22 We want to have something about, don't you, for
23 something about impediments that they have identified
24 as --

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1 COMMISSIONER BRACERAS: Sure, yeah.
2 Catalogue -- I don't know. I'll leave that to the
3 general counsel and the --

4 COMMISSIONER TAYLOR: Catalogue, collect,
5 survey, anything along those lines, anything other
6 than analyze, render opinion, determine whether.

7 VICE CHAIRPERSON THERNSTROM: Capability,
8 right.

9 COMMISSIONER BRACERAS: And their
10 capability, right.

11 VICE CHAIRPERSON THERNSTROM: Right.

12 COMMISSIONER BRACERAS: I think he knows
13 what we're getting at.

14 MR. MARCUS: Let me just make sure that
15 we're on the same page and that we understand. We are
16 no longer analyzing and, in particular, not providing
17 subjective opinions on the topic, but we are
18 collecting data regarding the decisions by school
19 districts not to seek unitary status or reason for
20 their failure to do it. This would not be a formal
21 survey, but would involve a cataloguing of
22 information.

23 We will have to look at our new
24 objectivity criteria to determine to what extent we

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1 need to get information from multiple sources on this.
2 So we might if we're cataloging, it might mean
3 cataloguing information from not just the school
4 district, but from others. But it's not for the
5 purpose of analyzing or coming up with ultimate
6 conclusions. It's simply for the matter of finding
7 out what information our data is out there.

8 COMMISSIONER BRACERAS: Yes, there's two
9 categories though. I mean there's the category where
10 districts make a determination not to seek a finding
11 of unitariness, and that may be harder to catalogue
12 for the reasons you said, that we may need to get so
13 many other people to give their views that it may be
14 unwieldy. I'm not sure. We'll have to see what
15 happens.

16 But the second category is districts that
17 have sought unitary status and have been rejected, and
18 that will be easier to catalogue.

19 COMMISSIONER TAYLOR: That's the
20 information I think which will be particularly useful
21 because before you make an argument like that to a
22 judge, that will have been vetted, and that will be
23 the real policy position of the school board.

24 COMMISSIONER BRACERAS: Right, because

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1 you'll have the school's argument and you'll have the
2 judge's rejection. So you'll have both sides.

3 MR. MARCUS: Just for the sake of clarity
4 there are going to be reasons why school districts
5 don't seek it that are totally unrelated to the
6 specific arguments that are presented before the
7 court. So there are two categories of information.

8 COMMISSIONER TAYLOR: The difficulty with
9 that, I think, is going to be getting a, quote,
10 official position as to why they did not seek status.

11 VICE CHAIRPERSON THERNSTROM: Yes.

12 COMMISSIONER TAYLOR: That is going to be
13 a little tricky.

14 COMMISSIONER BRACERAS: Yeah, I mean,
15 we'll just have to see what --

16 MR. BLACKWOOD: I will say one of the
17 things that we are looking into is realistically in
18 what way could we offer some form of confidentiality
19 because already people are telling us, well, we got
20 this back in the mail, and then I talked to them and
21 they said, well, also X, Y, and Z, but that's off the
22 record.

23 COMMISSIONER BRACERAS: Well, and the
24 other thing is, I mean, you have group think, right?

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1 I mean any time a committee or a group of people
2 decide not to do something, you know, different
3 members may agree not to proceed for their own
4 personal reasons. So I think --

5 COMMISSIONER YAKI: I can't imagine that
6 ever happening here.

7 COMMISSIONER BRACERAS: Yes, exactly. So
8 I think that part of it will be very hard to come
9 down, reasons why they did not seek it.

10 But you know, in cases where they did seek
11 it and were rejected, I see why that's extremely
12 useful. I mean, I think the bottom line here that I
13 would like to convey is that because this is a
14 statutory report, we are concerned mostly with
15 enforcement and not with making policy
16 recommendations.

17 VICE CHAIRPERSON THERNSTROM: No, I
18 understand that.

19 COMMISSIONER BRACERAS: And making
20 recommendations for, you know, what direction the law
21 should go in. So I think --

22 VICE CHAIRPERSON THERNSTROM: I understand
23 that.

24 COMMISSIONER BRACERAS: -- we have a real

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1 opportunity here.

2 VICE CHAIRPERSON THERNSTROM: So can you
3 get back to us with new language on that?

4 MR. MARCUS: Well, I could. However, I
5 think we need to have a consensus here because if we
6 wait for the next meeting to achieve language on this,
7 I don't know that we can make the other deadlines.

8 VICE CHAIRPERSON THERNSTROM: Right.

9 MR. MARCUS: But perhaps we can come up
10 with directives on how to change this, and then we can
11 be acting based on that.

12 VICE CHAIRPERSON THERNSTROM: Well, I
13 think that those directives have really been given
14 between Commissioners Taylor and Braceras.

15 MR. MARCUS: So let me make sure that I
16 understand now. The current language for Item No. 6,
17 let me go with this but with the understanding that we
18 would be making changes to the other related documents
19 to conform to it. In other words --

20 VICE CHAIRPERSON THERNSTROM: No, we would
21 not go with the language as stated.

22 MR. MARCUS: that's right. We're deleting
23 six and replacing it with new language, and then we'll
24 make conforming language to --

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1 VICE CHAIRPERSON THERNSTROM: Right.

2 MR. MARCUS: -- the outlined concept
3 paper, anything else that includes information tied to
4 six.

5 VICE CHAIRPERSON THERNSTROM: Right.

6 MR. MARCUS: Instead of six we'll simply
7 indicate that we are obtaining or collecting data
8 regarding the efforts by school districts to seek
9 unitary status, and the arguments that they've
10 articulated for achieving unitary status and the
11 reasons for their failure to achieve it. Is that
12 essentially it?

13 And we are not looking into the question
14 of --

15 VICE CHAIRPERSON THERNSTROM: Their stated
16 reasons for.

17 MR. MARCUS: Their stated reasons. We are
18 not looking beyond that, and we are not asking the
19 question as to why some school districts that may have
20 achieved unitary status in fact are not seeking a
21 court order recognizing it.

22 Is that the consensus?

23 COMMISSIONER YAKI: Is that assuming that
24 we know when, that we can make the judgment that we

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1 know when the school has achieved --

2 COMMISSIONER TAYLOR: I was going to say
3 it's when the demographic profile is one that may look
4 like they've achieved unitary status because, you
5 know, Commissioner Yaki's point is that we can't make
6 that determination and then work backwards.

7 MR. MARCUS: That's right, and we are not
8 going to ask that question. We are not going to look
9 at school districts which are not seeking a
10 determination of unitary status to ask why they're not
11 seeking it.

12 COMMISSIONER TAYLOR: Correct.

13 MR. MARCUS: We are cataloging information
14 on school districts which have unsuccessfully sought a
15 determination of unitary status to see what their
16 arguments have been.

17 COMMISSIONER BRACERAS: And what the
18 response was.

19 VICE CHAIRPERSON THERNSTROM: And what the
20 impediments to that to be.

21 MR. MARCUS: And that could be based
22 simply on court papers.

23 COMMISSIONER BRACERAS: Exactly. That's
24 why I think that's doable, whereas the other side of

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1 it is not.

2 VICE CHAIRPERSON THERNSTROM: So,
3 Commissioner Yaki, are you okay with that? Have you
4 still got problems with it?

5 COMMISSIONER YAKI: Well, I mean, am I
6 okay with the overall thing? --

7 VICE CHAIRPERSON THERNSTROM: No. Let's
8 just concentrate on this.

9 COMMISSIONER YAKI: On that particular
10 topic, I'm satisfied by the answer.

11 VICE CHAIRPERSON THERNSTROM: Okay.

12 COMMISSIONER BRACERAS: What are your
13 overarching concerns? I understand you seem to have a
14 process concern, but I haven't heard you voice a
15 substance --

16 COMMISSIONER YAKI: Well, the process
17 concern is related to the substantive concern, which
18 is I'm just wondering to what extent -- I take what
19 OGC is saying at face value. I'd like more backup as
20 to why we're changing from the DOE cases to DOJ cases,
21 and I'm just wondering if there's a substantive
22 content impact in terms of the quality or types of
23 cases or issues that we're looking at.

24 I mean, DOJ intervention is obviously one

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1 avenue, but there are a number of other avenues, I
2 mean, via the whole settlements with the DOE. I just
3 like to know why there is a impossibility factor when
4 it appears even in this arena we've done some paring
5 back and focus which is needed. But I'm just
6 wondering why we can't do the same thing with the DOE
7 contact.

8 MR. BLACKWOOD: The straightforward answer
9 is time and resources.

10 VICE CHAIRPERSON THERNSTROM: What are we
11 losing, in your view, by getting rid of the DOE data?

12 MR. BLACKWOOD: Part of it is I have to
13 rely on background information I've received from
14 others, that it is likely to include more information.
15 It is likely to include extraneous information; that
16 it is more -- and, again, this is second hand. I am
17 familiar with the Department of Justice type materials
18 as a lawyer. I'm not as familiar with Department of
19 Education, but that it's going to have information.
20 In essence, these 441(b) agreements are contracts, but
21 they are not court ordered documents, but they often
22 are not reviewed by courts.

23 Part of it is time and resources. We
24 would have to go through each 441(b) as opposed to the

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1 Department of Justice, although we're going to look at
2 the procedures and the standards, et cetera. There's
3 either a court order or there is not. It's rather
4 straightforward. I don't need to know or we're not
5 going to have the time or resources in the Department
6 of Justice case to look at each court file. We're not
7 trying to because we already know there is a court
8 order or there is not.

9 And part of that is also the work that was
10 previously done before I got here, was focused more on
11 the Justice Department because the Justice Department
12 information was easier to obtain.

13 COMMISSIONER BRACERAS: So I think that's
14 just something where it needs to be clearly noted
15 that, you know, another area, another line of inquiry
16 would be to look at the Department of Education
17 materials, but it's just beyond the scope of this
18 particular project, and someone else can pick that up
19 or we can pick it up another year, but you know, we
20 just can't bite off too much.

21 VICE CHAIRPERSON THERNSTROM: Commissioner
22 Yaki?

23 COMMISSIONER YAKI: Well, I just -- hello?

24 VICE CHAIRPERSON THERNSTROM: Yeah, we're

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1 listening.

2 COMMISSIONER YAKI: I'm sorry. I'm trying
3 to get ready. I'm going to be dropping off of this
4 line and having to go to my cell phone in about five
5 minutes. I'll give that announcement when I have to
6 do it. So if you hear clanking, it's because I'm
7 trying to get out the door.

8 My concern, I guess, and it goes back to
9 some of my concerns I had with the Voting Rights Act
10 report in that simply looking at DOJ data gives a very
11 not just small, but depending on what DOJ data you
12 look into, I mean, DOJ may have officially intervened,
13 and those are the cases that we're looking at. There
14 may be other cases where DOJ threatened to intervene
15 and a 441(d) order resulted from that.

16 I guess my concern is not really with --
17 well, my concern is that we are taking not just the
18 snapshot. We are taking a very, very small snapshot
19 of this, and I just wonder how in that case we have to
20 be very straightforward about the fact that it is a
21 really very small snapshot that privilege only
22 conclusions or opinions or further whatever it is can
23 we draw from that particular snapshot, and the more
24 that we just confine ourselves to the data, the more

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1 I'm more comfortable with it because I don't think
2 there's any way you can extrapolate from this
3 particular type and moment in time case to any broader
4 discussion about the issue in general.

5 COMMISSIONER BRACERAS: That's true of all
6 social science research. I mean every social science
7 report is limited to the parameters that it
8 establishes and, you know, raises further questions
9 for others to study later because you can't study
10 everything in one survey.

11 VICE CHAIRPERSON THERNSTROM: Well, I'm
12 actually very sympathetic to what Commissioner Yaki is
13 saying, but I think I have to take seriously the
14 General Counsel's word that the project becomes
15 unmanageable from his perspective given our depleted
16 staff if we further broaden it. I mean, you know,
17 that's why I'm willing to go along with this, and I
18 would actually like to call the question on this.

19 Let's have a vote on this. All in favor
20 of going with the amended description of this project.

21 I vote aye.

22 COMMISSIONER BRACERAS: Yeah, I think
23 there are two separate votes, right? One, to approve
24 the discovery plan --

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1 VICE CHAIRPERSON THERNSTROM: Oh, right.

2 COMMISSIONER BRACERAS: -- and one to
3 amend the scope.

4 VICE CHAIRPERSON THERNSTROM: Right.
5 Okay. First vote on approving the discovery plan.
6 All in favor.

7 COMMISSIONER BRACERAS: I think we need to
8 do the scope first and then --

9 VICE CHAIRPERSON THERNSTROM: You're
10 perfectly right. I'm not thinking this morning. I'm
11 very short on sleep today and very distracted by other
12 things.

13 COMMISSIONER YAKI: Let me say please
14 don't say short on sleep to the guy who woke up at
15 5:00 a.m. to take this call.

16 COMMISSIONER BRACERAS: That's okay,
17 Michael. I woke up at 4:00 a.m. to get here.

18 VICE CHAIRPERSON THERNSTROM: And Ashley
19 Taylor as well. So we've got a number of people here
20 with a little bit of a numb state, but --

21 COMMISSIONER YAKI: That explains a lot
22 then. Okay. Can I have a motion that the scope of
23 this report be clarified to reflect the scope
24 contained in the concept paper distributed to the

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1 Commission on August 11th as explained by the General
2 Counsel?

3 MR. MARCUS: And with the modification
4 based on the changes that we discussed regarding
5 purpose number six on page 5 of the outline.

6 VICE CHAIRPERSON THERNSTROM: Right.
7 Thank you.

8 Swimming under water here.

9 COMMISSIONER TAYLOR: So moved.

10 COMMISSIONER BRACERAS: Second.

11 VICE CHAIRPERSON THERNSTROM: All in
12 favor.

13 (Chorus of ayes.)

14 VICE CHAIRPERSON THERNSTROM: Commissioner
15 Yaki?

16 COMMISSIONER YAKI: Abstain.

17 VICE CHAIRPERSON THERNSTROM: Abstained.
18 Okay. Let the record note one abstention.

19 COMMISSIONER TAYLOR: And let the record
20 note that he's not here.

21 VICE CHAIRPERSON THERNSTROM: Oh, and
22 Commissioner Kirsanow is not participating in this
23 vote. Okay.

24 COMMISSIONER TAYLOR: The motion passes.

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1 VICE CHAIRPERSON THERNSTROM: The motion
2 passes, right. Really, really swimming under water.

3 COMMISSIONER BRACERAS: Discovery plan.

4 VICE CHAIRPERSON THERNSTROM: Okay, and is
5 there a motion to approve the outline and discovery
6 plan with the understanding that the deadlines are
7 tentative?

8 All in favor?

9 COMMISSIONER TAYLOR: So moved.

10 COMMISSIONER BRACERAS: So moved.

11 VICE CHAIRPERSON THERNSTROM: So moved,
12 yeah. Okay. Second?

13 All in favor?

14 (Chorus of ayes.)

15 VICE CHAIRPERSON THERNSTROM: Opposed?

16 (No response.)

17 VICE CHAIRPERSON THERNSTROM: Abstentions?

18 COMMISSIONER YAKI: Me.

19 VICE CHAIRPERSON THERNSTROM: Pardon me?

20 COMMISSIONER YAKI: Me.

21 VICE CHAIRPERSON THERNSTROM: You're
22 abstaining. Okay.

23 COMMISSIONER YAKI: Where is Peter?

24 VICE CHAIRPERSON THERNSTROM: Peter has

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1 disappeared at this very important moment in the
2 history of the Commission. He is absent.

3 COMMISSIONER TAYLOR: In legislative
4 vernacular, he is taking a walk during the vote.

5 VICE CHAIRPERSON THERNSTROM: All right.
6 Let the record note that Commission Kirsanow was not
7 here to vote. Commissioner Yaki abstains and the
8 motion carries.

9 MR. MARCUS: And we will recirculate
10 versions of these documents that are revised to
11 reflect the changes.

12 COMMISSIONER BRACERAS: Commissioner
13 Kirsanow reenters.

14 VICE CHAIRPERSON THERNSTROM: Commissioner
15 Kirsanow, you have missed the two votes and you were
16 sorely missed because obviously they would have gone
17 the other way had you been here.

18 All right. Next on the business.

19 COMMISSIONER BRACERAS: Thank you.

20 VICE CHAIRPERSON THERNSTROM: Where are
21 we? Okay. Do we actually need to discuss the motion
22 to eliminate the closed meeting or we just eliminated
23 it? That's all.

24 Where are we?

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1 MR. MARCUS: I think we're on page 10, top
2 of 11.

3 VICE CHAIRPERSON THERNSTROM: All right.
4 We are at the question of the follow-up on the impact
5 of racial preferences in American law schools, and at
6 the last Commission meeting Commissioner Kirsanow
7 indicated he'd like at this meeting to discuss the
8 Commission undertaking for the research on the work
9 done on higher education by Professor Richard Sander
10 specifically on the mismatch effects.

11 Commissioner Kirsanow, you have the floor.

12 COMMISSIONER KIRSANOW: Yeah, I'd like to
13 just make this very briefly. I think the memorandum
14 was distributed to everybody concerning Professor
15 Sander's proposal or his kind of analysis of the
16 potential proposal, and I think it's quite ambitious
17 before that --

18 COMMISSIONER BRACERAS: Actually, I do not
19 have that memorandum.

20 COMMISSIONER KIRSANOW: You don't? Well,
21 for that reason we'll keep it even shorter.

22 COMMISSIONER BRACERAS: And I don't
23 believe I ever received it.

24 Oh, it was? I'm sorry. Did it come in E-

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1 mail form? For some reason I must have just not
2 printed this one out because I do have the motion and
3 everything else prior.

4 COMMISSIONER KIRSANOW: I'm not prepared
5 at this point to make a motion because I think it
6 really does require a little bit more analysis. In
7 fact, what I would propose --

8 VICE CHAIRPERSON THERNSTROM: A bit more
9 of what kind of analysis?

10 COMMISSIONER KIRSANOW: A bit more
11 evaluation and analysis.

12 COMMISSIONER YAKI: Just a second. Point
13 of order. I need to switch to my cell phone now. So
14 could the appropriate individual to deal with it call
15 me back on my cell?

16 VICE CHAIRPERSON THERNSTROM: Yes.
17 Evidently the answer is yes.

18 COMMISSIONER YAKI: Okay.

19 VICE CHAIRPERSON THERNSTROM: So do we
20 need a motion on that, whether we call Commissioner
21 Yaki back?

22 COMMISSIONER KIRSANOW: Let's not.

23 (Laughter.)

24 COMMISSIONER YAKI: You'll be called back.

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1 Please call if you -- well, you will be called back.

2 COMMISSIONER YAKI: Thank you.

3 COMMISSIONER KIRSANOW: Preliminarily as
4 you know, Professor Sander had, along with Professor
5 Lempert suggested that the Commission further evaluate
6 the mismatch effect not just at the law school level,
7 but at other graduate school levels to the extent that
8 they're measurable, and he indicated that he believes
9 and he sets forth in greater detail in this particular
10 proposal that he thinks that the mismatch effect can
11 be analyzed with objective data and reliable data
12 because you've got certain set points such as Bar
13 passage rates, GRE passage rates, Med Cats, so on and
14 so forth. They could give you a pretty good picture
15 as to whether or not there is, in fact, a broader
16 mismatch beyond law schools and within law schools
17 themselves because, as you know, Professor Sander's
18 proposal --

19 VICE CHAIRPERSON THERNSTROM: Hold on,
20 Commissioner Kirsanow.

21 Do you need --

22 PARTICIPANT: Commissioner Yaki?

23 COMMISSIONER YAKI: Hello.

24 VICE CHAIRPERSON THERNSTROM: You're

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1 there. Okay. Commissioner Kirsanow is just spelling
2 out his interest in the Sander or elaborating on the
3 Sander report.

4 COMMISSIONER KIRSANOW: To continue,
5 Professor Sander only had a limited data set upon
6 which he could base his two law review articles
7 related to the mismatch effect among law students and
8 attorneys. In other words, he's like to broaden it,
9 to put it very briefly.

10 My own view is that this proposal needs
11 more evaluation and possibly more work, and I also
12 think in the interest of time that it would be
13 feasible for us to cherry pick the proposal at this
14 particular point.

15 I think it's of sufficient merit that
16 requires more sober deliberation and evaluation, and
17 what I would propose instead of making a motion at
18 this particular meeting is to possibly simply make a
19 referral to staff to take a look at this particular
20 proposal, maybe work through it, and identify
21 weaknesses in it, strengths in it, and maybe come back
22 to us with certain recommendations as to how this
23 proposal could be refined.

24 It doesn't necessarily have to be at the

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1 next meeting, and maybe it could be done by E-mail,
2 but when I've gone through this proposal a couple of
3 times and I've spoken with Professor Sander -- I know
4 some other Commissioners have also -- it has got
5 tremendous substantive merit, but there are a lot of
6 things in here that I think would cause the Commission
7 some difficulty in adapting this proposal to our
8 methods, our operations.

9 So rather than make the printed sure
10 motion at this point, I'd like to take this under
11 further advisement with the assistance of staff. To
12 be more specific with respect to what I'd like the
13 staff to do is, he makes certain proposals in here
14 related to partnering with other agencies or funding
15 organizations, also seeking possibly a supplemental
16 appropriation for funding this, having a panel of
17 scholars advise, and all of these things are very
18 interesting, but there are things that exceed, at
19 least in my tenure the operational dictates and
20 authority that the Commission has embarked upon in the
21 past.

22 So it would require us to do some pretty
23 innovative things as far as what the Commission has
24 done, and I think it requires a little bit more

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1 thought and refinement, although I think the mission
2 that he proposes is one that could be of extreme
3 value.

4 So what I'd like the staff to do is to
5 take a look at this, see if we can form this proposal
6 more closely to what we have done in the past, and
7 number two, are capable of doing, and two, take a look
8 at what the probable costs may be, presuming, of
9 course, that we could partner with somebody else who
10 might be able to provide us with additional money,
11 which in and of itself is a big deal because, you
12 know, the parameters of that, the legal constraints
13 upon us in doing that, for example, may be something
14 that may not be surmountable.

15 So my motion is to have staff further
16 evaluate this, report back to us either by E-mail or
17 at the next meeting or possibly even the October
18 meeting, as to how we can feasibly do this or
19 accomplish the objective of having a broader based
20 report with respect to the mismatch effect.

21 I don't know if that requires a motion or
22 a second or anything. I'm simply just asking staff to
23 take this and give us a report.

24 COMMISSIONER BRACERAS: To evaluate the

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1 feasibility.

2 COMMISSIONER KIRSANOW: Yeah.

3 COMMISSIONER TAYLOR: Does it require a
4 motion?

5 VICE CHAIRPERSON THERNSTROM: It doesn't
6 require a motion you're saying. No, it doesn't
7 require a motion.

8 Commissioner Yaki, have you got any input
9 on this? Commissioner Yaki, there?

10 COMMISSIONER YAKI: I'm here. I'll see
11 what comes back.

12 MR. MARCUS: I'm not sure I heard that.

13 VICE CHAIRPERSON THERNSTROM: He'll just
14 see what comes back.

15 MR. MARCUS: Okay. So if that's the
16 consensus of the Commission, we'll be pleased to do
17 that.

18 COMMISSIONER KIRSANOW: Thanks.

19 VICE CHAIRPERSON THERNSTROM: Okay. Well,
20 that's taken care of nicely, very fast. I think we're
21 at the motion regarding the campus anti-Semitism
22 public education campaign.

23 At the July meeting the Staff Director
24 described the anti-Semitism public education campaign.

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1 After he described the Website, the Commissioners
2 approved the poster.

3 At that meeting the Staff Director also
4 said he might recommend that the Commission approve a
5 brochure to provide further information, particularly
6 with respect to the availability of information on our
7 Website pending on further research conducted by the
8 staff.

9 So, Mr. Staff Director, do you have
10 anything to communicate to us on this matter?

11 MR. MARCUS: I'd be pleased to, Madam Vice
12 Chair.

13 Since the last meeting, we have had a
14 working group type meeting with a number of
15 organizations that are focused on the issue of anti-
16 Semitism generally and specifically with respect to
17 college campuses.

18 We had a meeting that included, for
19 instance, representatives of the Anti-Defamation
20 League, the Israel On Campus Coalition, and Hillel, as
21 well as the American Jewish Committee, and we
22 discussed with them the methods that we were talking
23 about to communicate to college students their rights
24 to be free from anti-Semitic harassment, including the

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1 idea of having a portion of our Website dedicated to
2 this issue, as well as a poster that would inform
3 students of the issue and of our Website and our
4 complaint line, and we discussed also the idea that
5 staff had suggested to me that we might need also a
6 brochure to reach a greater number of students and to
7 make sure that they were aware both of our Website as
8 well as our complaint file.

9 And the feedback that we got back is that
10 the brochure could be helpful, and in fact, we have
11 preliminarily started talking to GPO about a brochure,
12 but what some of the groups indicated to us is that
13 for college students, just limiting a campaign to
14 paper and a Website does not necessarily reach enough
15 students, and that if we had to choose, they would
16 suggest some form of virtual or viral marketing for
17 the campaign, specifically that we look into some form
18 of electronic banner or button that might be developed
19 relatively inexpensively, that we could develop that
20 would in some way direct people to our Websites, and
21 which might be posted various other Websites.

22 None of the groups made a formal
23 commitment that we could use their Websites, but they
24 indicated that it might be a possibility, and that

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1 moreover that there might be forms of electronic
2 banners or similar devices that could also be passed
3 from organization to organization and from student to
4 student, and that might be a more effective way of
5 getting the information out.

6 So we have in addition to the Website and
7 the poster, the two possibilities of doing a brochure,
8 which might cost in the vicinity of, say, \$15,000 or
9 so for distribution and/or a virtual or viral
10 marketing campaign consisting of something like an
11 electronic banner or button, which would be
12 considerably less expensive, although we've not yet
13 had the opportunity to cost it out in any way.

14 VICE CHAIRPERSON THERNSTROM: So I'd like
15 to have a motion that the Commission authorize the
16 Staff Director to work with GPO to create a proposed
17 brochure and/or alternative electronic means of
18 communication for Commission review for use in the
19 Commission's public education campaign on campus anti-
20 Semitism.

21 MR. MARCUS: And just for clarification,
22 in the event that GPO isn't doing the virtual side of
23 it, we might also be working with others that could do
24 that.

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1 VICE CHAIRPERSON THERNSTROM: Right,
2 right.

3 COMMISSIONER TAYLOR: So moved as
4 modified.

5 VICE CHAIRPERSON THERNSTROM: Have I got a
6 second?

7 COMMISSIONER BRACERAS: Second.

8 VICE CHAIRPERSON THERNSTROM: Okay. All
9 in favor?

10 (Chorus of ayes.)

11 VICE CHAIRPERSON THERNSTROM: All opposed?

12 (No response.)

13 VICE CHAIRPERSON THERNSTROM: Anyone
14 abstaining?

15 (No response.)

16 VICE CHAIRPERSON THERNSTROM: Passed
17 unanimously.

18 **VI. MANAGEMENT AND OPERATIONS**

19 VICE CHAIRPERSON THERNSTROM: Okay. We
20 move on to Management and Operations here, and we have
21 now the strategic plan performance measures, and if
22 Commissioner. Kirsanow isn't here, maybe Commissioner
23 Braceras could answer this.

24 Have performance measures been -- oh, here

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1 you are. We're on performance measures, Commissioner
2 Kirsanow. So have performance measures been approved
3 by the task force? Where are we here?

4 COMMISSIONER KIRSANOW: We have
5 preliminary approval. We had left it up to the
6 working group to keep open the performance measures.
7 For a moment I thought -- my understanding was that
8 Commissioner Braceras might have some additional input
9 on this. I have not received the input, but pending
10 that and if there is none, yes, we would recommend the
11 performance measures be approved.

12 VICE CHAIRPERSON THERNSTROM: I'd like to
13 have a discussion of this before a motion. I'm not
14 sure we want to move that they be approved, but
15 there's some possibility of tabling this.

16 COMMISSIONER BRACERAS: Well,
17 unfortunately I was not on the last working group
18 call. I was actually on vacation. So I didn't have a
19 chance at that point to give my input.

20 Essentially, I agree with 99 percent of
21 the performance measures as they're outlined in the
22 most recent document we received. I just have a few
23 recommendations that I'd like to throw out there that
24 may require us to table this while we develop some new

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1 language.

2 Should I go through them?

3 COMMISSIONER KIRSANOW: Before you do
4 that, just the question I have though is if we've got
5 to revise this language, we do have some time
6 considerations here, Ken, with respect to budget.

7 MR. MARCUS: You know, I've checked again,
8 and I understand that we can get the performance
9 budget together using the strategic goals and
10 objectives. So as long as the changes don't affect
11 the strategic goals and objectives, we'll base our
12 budget on that. So if there are changes to the
13 performance --

14 COMMISSIONER BRACERAS: Well, and maybe
15 they can be addressed right here at this meeting.
16 There aren't too many of them. So should I just --

17 COMMISSIONER KIRSANOW: Okay.

18 COMMISSIONER BRACERAS: With respect to
19 Strategic Goal No. 1, and this is just really an
20 organizational point, Performance Measure 3(c), it
21 just seems to me to be misplaced because we're talking
22 there about measures of performance with respect to
23 the national conference, that we plan on convening in
24 FY 2009, and the Performance Measure 3(c) speaks

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1 specifically about investigating allegations of
2 discrimination and deprivations of voting rights, and
3 that seems to me not to necessarily flow from the
4 conference.

5 The conference as I understand it will be
6 more about identifying key policy areas for the 21st
7 Century and beyond and not focused so much on
8 allegations of past wrongdoing and prior wrongdoing.
9 So I do think that that should remain, you know, a
10 performance measure or a task that we perform, that
11 is, investigating discrimination. It's part of our
12 statutory mandate.

13 But I don't think it's properly placed
14 within the Strategic Goal No. 1.

15 COMMISSIONER KIRSANOW: Do you think it
16 should go under Strategic Goal No. 3? That's the
17 clearing house goal.

18 COMMISSIONER BRACERAS: Yeah, wait.
19 What's number two? Oh, either two or three. I'm not
20 sure. I mean in some sense it is --

21 VICE CHAIRPERSON THERNSTROM: It should be
22 three. Go on.

23 COMMISSIONER BRACERAS: Well, in some
24 sense it is enhancing the ability of the federal

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1 agency to do its job because if we identify, for
2 example, widespread voting rights deprivations and we
3 lay a factual predicate, then the Justice Department
4 could then take our findings and do something about
5 them.

6 So in that sense we are enhancing the
7 ability of other agencies to do their jobs. So it
8 could go there, but it also -- as I said before, I
9 view Strategic Goal No. 3 as more of the sociological
10 data collection side of what we're doing, and for
11 example, you know, the clearing house function is not
12 the same as our investigatory function. So in other
13 words, Strategic Goal No. 3 deals with gathering data
14 and making it accessible to the public as we are doing
15 with the desegregation report, right? Whereas
16 Strategic Goal No. 2 has more to do with partnering
17 with other agencies for two reasons: public awareness
18 and enforcement. Right?

19 So number one is -- the first strategic
20 goal, as I've said before, is sort of visionary and
21 has to do with policy priorities for the future.
22 Strategic Goal No. 2 has to do with, you know, both
23 communications and enforcement, and Strategic Goal No.
24 3 is sort of data collection and sociological, and

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1 Strategic Goal No. 4 is administrative.

2 So I would put it under number two.

3 COMMISSIONER KIRSANOW: Okay, and would it
4 be maybe under 2.3, in other words, partner with other
5 agencies to collect and analyze data on various civil
6 rights topics? Maybe we'd have to create another
7 category there in terms of objectives.

8 COMMISSIONER BRACERAS: I think it would
9 go under number five.

10 COMMISSIONER KIRSANOW: Promote public
11 awareness?

12 COMMISSIONER BRACERAS: Of current civil
13 rights laws, remedies and enforce -- well, I mean, I
14 think that there's an objective missing really, which
15 is, you know, simply investigating allegations of
16 systemic discrimination.

17 No, because -- so that's what I've been
18 grappling with. I mean, I think we all agree that
19 Performance Measure 3(c) is something we need to have
20 in our mission statement. It's just a matter of where
21 it goes.

22 VICE CHAIRPERSON THERNSTROM: I mean, the
23 problem with putting it under two, it seems to me, is
24 you at this meeting very correctly have been

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1 emphasizing the importance of data collection, not
2 coming to public policy judgments in areas that are
3 part of a war zone, as it were, and it does seem to me
4 investigating allegations of widespread deprivation of
5 voting rights, pervasive discrimination, et cetera, we
6 do want to confine that as we have with the elementary
7 and secondary school report to data collection.

8 COMMISSIONER BRACERAS: But that's part of
9 our statutory mandate. I mean --

10 COMMISSIONER KIRSANOW: That is our
11 statutory mandate.

12 COMMISSIONER BRACERAS: -- that is our
13 statutory mandate. That may not be what we're doing
14 with the statutory enforcement report, but we do have
15 statutory authority to investigate --

16 VICE CHAIRPERSON THERNSTROM: Well, no,
17 that is true.

18 COMMISSIONER BRACERAS: -- these things,
19 and --

20 VICE CHAIRPERSON THERNSTROM: It's just --
21 all right. Whatever.

22 COMMISSIONER BRACERAS: So it needs to be
23 in there. It's just --

24 VICE CHAIRPERSON THERNSTROM: No, I was

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1 simply arguing for moving it to three, but whatever,
2 it doesn't --

3 COMMISSIONER BRACERAS: I mean this is one
4 of the issues I was going to raise at the last meeting
5 when unfortunately I wasn't able to participate
6 because of a technical SNAFU, but I do think we need
7 probably another objective or goal which simply
8 restates this statutory mandate. This may not be
9 where we want to focus our resources right now, but
10 it's still part of our mandate.

11 COMMISSIONER KIRSANOW: I wonder if this
12 should just be a separate strategic goal.

13 COMMISSIONER BRACERAS: I think so. And
14 it's not drawing from the conference and report. It's
15 simply, you know, investigate allegations, blah, blah,
16 blah.

17 MR. MARCUS: May I suggest that if we
18 can't figure out a goal to put it under that we table
19 for the time being discussion of the change of --

20 COMMISSIONER KIRSANOW: Let's do this.
21 We've got a working group on reform meeting on Monday
22 anyway.

23 VICE CHAIRPERSON THERNSTROM: Are you
24 going to be able to participate, Jennifer?

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1 COMMISSIONER BRACERAS: What time is it?

2 COMMISSIONER KIRSANOW: One o'clock on
3 Monday.

4 COMMISSIONER BRACERAS: I have a meeting
5 that gets me home at about one. So if we can --

6 COMMISSIONER KIRSANOW: This may be a
7 separate strategic goal, and it may be simply making
8 the strategic goal investigate allegations of
9 widespread deprivations, voting rights, et cetera, and
10 then making one of the objectives -- I'm sorry -- one
11 of the performance measures 3(c), drawing from the
12 conference report, investigate.

13 COMMISSIONER BRACERAS: But it's not going
14 to be drawing from the conference report because the
15 conference report will --

16 COMMISSIONER KIRSANOW: But what I'm
17 saying is that will be one of the performance measures
18 of investigating allegations.

19 COMMISSIONER BRACERAS: But it has nothing
20 to do with the conference report.

21 COMMISSIONER KIRSANOW: The conference
22 report would inform the nature of the investigation or
23 could inform the nature of the investigation.

24 COMMISSIONER BRACERAS: I guess here is

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1 where I see it differently. I see the conference
2 report as saying, you know, these are issues based on
3 changing demographics and trends that are emerging
4 that civil rights groups and enforcement agencies need
5 to focus on going forward, whereas investigating, the
6 investigatory function is more like -- excuse me --
7 has more to do with things that are happening on the
8 ground right now.

9 In other words, we hear through our
10 complaint line. We're getting a lot of calls that
11 there's harassment of, you know, whatever, Jewish
12 students on college campuses, Muslim, you know,
13 business owners, whatever. We're getting chatter
14 about widespread discrimination in a certain community
15 or a certain area, and we decide to investigate that
16 particular problem.

17 That would be something that we might
18 decide to do because of that type of information, not
19 just because we held a conference and people came
20 forward and talked about different issues. So I don't
21 want to tie our investigative powers simply to this
22 big conference we're going to hold.

23 You know, there could be race riots in
24 Detroit tomorrow and we're going to want to go

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1 investigate.

2 COMMISSIONER KIRSANOW: It is simply one
3 of the performance measures. That's all. In other
4 words, the strategic goal is not solely drawing from
5 the conference report, but as with every one of the
6 other strategic goals, it's one of the performance
7 measures.

8 I'm just throwing this out. We have a
9 conference, and they say, "Okay. Here are the areas
10 that we're having problems with. We're not having
11 anymore problems with ADEA or with some other aspect
12 of Title VII, but here's where the critical mass,
13 here's where the gravity is with respect to civil
14 rights violations.

15 Drawing from that conference report we
16 investigate those specific areas.

17 COMMISSIONER BRACERAS: But that's 3(d),
18 right? Drawing from the conference report, we're
19 identifying issues and researching topics, you know,
20 putting things on our programmatic agenda based on
21 what we heard at the conference.

22 That has nothing to do with, you know,
23 race riots break out tomorrow in New York City and we
24 decide we need to be present in this discussion.

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1 COMMISSIONER KIRSANOW: Okay.

2 VICE CHAIRPERSON THERNSTROM: Or Omaha
3 goes to breaking up the school district into three --

4 COMMISSIONER KIRSANOW: Let me recommend
5 that we revisit this rather than take up time.

6 VICE CHAIRPERSON THERNSTROM: Yeah. I
7 would prefer --

8 COMMISSIONER BRACERAS: Wait.

9 VICE CHAIRPERSON THERNSTROM: Go ahead,
10 yeah.

11 COMMISSIONER BRACERAS: I guess I feel
12 that we're constantly tabling and revisiting, and I
13 think we need to sort of bite the bullet on some of
14 these things and deal with them. Now, are there
15 logistical problems with doing that?

16 MR. MARCUS: If we try to change the goals
17 today, formally change the goals and think that in
18 just a few weeks we're going to file a budget
19 submission with OMB that are based on the new goals, I
20 just don't think that there's a chance we're going to
21 be able to do any --

22 COMMISSIONER BRACERAS: I guess that's
23 what I don't understand because it seems -- I don't
24 understand why that's so because basically 3(c)

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1 basically restates our statutory mandate. So that has
2 to be one of our goals or one of our objectives, and
3 I'm not sure that that takes any additional budgetary
4 line items than what we're already doing because we're
5 already doing that. We're already responding to
6 what's happening in Omaha and going there to
7 investigate. That's exactly the type of thing we're
8 already doing. So --

9 MR. MARCUS: I don't think that there are
10 going to be any new budget line items.

11 COMMISSIONER BRACERAS: Okay.

12 MR. MARCUS: What my concern is that in
13 the course of developing a performance based budget
14 with the sort of narrative that's necessary to link
15 our spending to the specific goals and objectives,
16 there's some writing that has to be done that is being
17 done to explain the connection between our approved
18 goals and objectives in the different items.

19 COMMISSIONER BRACERAS: Okay, and you
20 don't think that can be done?

21 MR. MARCUS: I don't think it can. At any
22 rate, what I would say is it creates a significant
23 danger that we're not going to be able to get to --

24 COMMISSIONER BRACERAS: Okay. What I

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1 would recommend then is simply deleting it here today,
2 deleting 3(c) because it doesn't make sense there, and
3 I don't want to tie our investigatory -- two things.
4 I don't want to tie our investigatory power to the
5 conference, and I don't want to tie the measure of
6 whether the conference is a success to whether or not
7 we then go out and investigate things that are talked
8 about at the conference. I think they may not be
9 separate, but they could be completely separate.

10 So I would like to take that out.

11 VICE CHAIRPERSON THERNSTROM: Well, wait a
12 minute. I don't quite understand what you just said.
13 Would you prefer from your point of view that we do
14 not have a vote today on the performance measures?

15 COMMISSIONER BRACERAS: No, he doesn't
16 want to change the goals.

17 MR. MARCUS: I prefer that we not change
18 the goals and objectives.

19 COMMISSIONER BRACERAS: There's a lot of
20 bureaucratic-speak.

21 MR. MARCUS: Yes.

22 COMMISSIONER BRACERAS: Goals, objectives,
23 performance measures. You know, I know the Vice Chair
24 is thinking who cares what we call them; let's just

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1 deal with the substance. I feel your pain. Okay?

2 But what he's saying, if you have this
3 document in front of you, is that the things in yellow
4 which we're calling the strategic goals --

5 VICE CHAIRPERSON THERNSTROM: Right.

6 COMMISSIONER BRACERAS: -- and the
7 objectives in the left column are to remain untouched
8 for purposes of discussion.

9 VICE CHAIRPERSON THERNSTROM: Okay, and
10 the performance --

11 COMMISSIONER BRACERAS: But the
12 performance measures we are discussing.

13 VICE CHAIRPERSON THERNSTROM: Right.

14 COMMISSIONER BRACERAS: And in that case,
15 I would like -- in an ideal world I would like to move
16 Performance Measure 3(c) and turn it into either its
17 own goal or its own objective. But since for
18 logistical reasons that's not possible to do today, I
19 would simply like to delete it.

20 VICE CHAIRPERSON THERNSTROM: Okay, and my
21 question is: on the performance goals specifically,
22 do you have any problem with voting on performance
23 measures today?

24 COMMISSIONER YAKI: I've got a real

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1 problem.

2 VICE CHAIRPERSON THERNSTROM: Yes?

3 COMMISSIONER YAKI: A real problem with
4 deleting 3(c) and not putting it anywhere because it's
5 so-called logistical problems. What in the heck is
6 that about? I don't get that.

7 Three (c) is parts of what we do and --

8 COMMISSIONER BRACERAS: Right. It's our
9 statutory mission.

10 COMMISSIONER YAKI: We do it because of
11 things that happen or are brought to our attention.

12 COMMISSIONER BRACERAS: Right.

13 COMMISSIONER YAKI: That's not to say,
14 well, if we can't figure out what way to go then its
15 crap.

16 COMMISSIONER BRACERAS: Well, Michael, I
17 agree with you, and that's why I want to highlight it
18 more because in my view that is the core of what we're
19 charged with doing, and it shouldn't be a sub-bullet.
20 It should be a goal or objective in and of itself.
21 It's not a performance measure. It's our mandate.

22 VICE CHAIRPERSON THERNSTROM: It's our
23 statutory mandate, right.

24 COMMISSIONER YAKI: Why then do we remove

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1 it entirely from the entire list?

2 COMMISSIONER BRACERAS: Well, I don't want
3 to remove it entirely. I just want it to be where it
4 should go because if we leave it where it is, and this
5 is bureaucratic gobbly-gook --

6 COMMISSIONER YAKI: Just take 3.4 and make
7 3(c) another three.

8 VICE CHAIRPERSON THERNSTROM: Pardon me?
9 Say it again.

10 COMMISSIONER YAKI: Make Strategic Goal
11 No. 3 Strategic Goal No. 4, and take 3(c) and make it
12 number three, taking out the first clause, going to
13 conference and report.

14 COMMISSIONER KIRSANOW: The problem is, as
15 Ken just indicated, we've got some logistical problems
16 in terms of the budgetary submission and changing any
17 strategic goals.

18 COMMISSIONER BRACERAS: Can we make it an
19 objective? Are you concerned with changing the goals
20 or also the objectives?

21 See, the bureaucratic part of it is lost
22 on me.

23 COMMISSIONER YAKI: No, what I mean is
24 within Strategic Goal No. 1 --

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1 COMMISSIONER BRACERAS: No, I know that.
2 I'm asking -- I just have a question for Ken.

3 MR. MARCUS: It's both the goals and
4 objectives.

5 COMMISSIONER BRACERAS: Neither the goal
6 nor the objective can change.

7 COMMISSIONER YAKI: Where did that come
8 from?

9 COMMISSIONER BRACERAS: See, Michael, I
10 agree with you. This is where my mind is boggled by
11 the bureaucracy.

12 MR. MARCUS: I'm not sure if you were on
13 your cell phone. so you might have missed a few
14 minutes of the conversation. The challenge that I've
15 just raised is that we are just a few weeks from the
16 deadline to get our budget submission to OMB for
17 fiscal year 2008. It was only at the very last
18 minute, which is to say last month, that we finally
19 came up with strategic goals and objectives.

20 So now there has been work since then to
21 sort of scramble to try and translate or interpret
22 that into narrative that can be part of our
23 performance based budget to justify the money that
24 we're asking for.

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1 The concern that I have is that with a
2 limited period to try and have to redo that work and
3 to rewrite a new, new narrative on the performance
4 base with different goals and objectives endangers our
5 ability.

6 COMMISSIONER BRACERAS: But it's not
7 rewriting the whole thing, and it's not really a new
8 goal. I guess I feel that what's been lost in this
9 whole process, and I wasn't able to articulate this at
10 the last meeting for the reasons I've already stated,
11 is we've limited our goals here to the visionary
12 aspects and the partnering with other federal agencies
13 aspect, and the serving as a national clearing house
14 aspects, and the key component of what we do has
15 somehow been lost, and I'm not sure how that happened
16 or where in the process it happened, but it did, and I
17 know that we as a Commission haven't forgotten it
18 because going to Omaha is a perfect example of how
19 we're actually doing it.

20 But in terms of having it incorporated
21 into this document, it was administratively lost.

22 VICE CHAIRPERSON THERNSTROM: Well, it
23 should be Strategic Goal No. 1 since it is our
24 statutory mandate, and the others should be bumped.

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1 MR. MARCUS: Well, let me --

2 VICE CHAIRPERSON THERNSTROM: Wait a
3 minute. Commissioner Melendez has been trying to get
4 in here for quite a while.

5 COMMISSIONER MELENDEZ: No, I agree it
6 should be a goal. After I looked at this again, I
7 just don't know how we're going to do it based on that
8 time frame.

9 MR. MARCUS: May I could suggest this. If
10 this becomes a strategic goal, then presumably we're
11 going to need to develop not just the new goal, but a
12 series of new objectives to go with the goal, and then
13 performance measures to go with that, and that will
14 take a little bit of time and presumably work by the
15 strategic working group.

16 Perhaps we can agree that since that can't
17 be done right now as we sit here, we'll continue with
18 our OMB submission to rely on the approved goals and
19 objectives, but have the working group try to develop
20 a new set of -- you know, translate 3(c) into a new
21 strategic goal and come up with new objectives to go
22 with it.

23 COMMISSIONER YAKI: All I can say is that
24 if we send a document that doesn't have our basic

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1 mandate in it, we're going to look like morons.

2 COMMISSIONER BRACERAS: I agree, and I
3 guess I don't understand why it has to be that
4 complicated. I don't understand why it has to be that
5 complicated.

6 VICE CHAIRPERSON THERNSTROM: Not for the
7 first time, Commissioner Yaki.

8 COMMISSIONER BRACERAS: I mean, you know,
9 that's the strategic goal. I don't know. This
10 objective performance measure bureaucratic gobbly-gook
11 is mind boggling to me. I don't understand, but I'm
12 sure somebody could parse out the necessary language
13 that would go underneath this goal.

14 VICE CHAIRPERSON THERNSTROM: Well, wait a
15 minute. Since it is our statutory mandate, is it
16 essential to have objectives and performance measures?
17 Why can't it simply be stated goal number one? It is
18 our statutory mandate?

19 COMMISSIONER BRACERAS: Because
20 bureaucrats need minutiae to worry about.

21 MR. MARCUS: We would not get through and
22 be a budget that did not present specific strategic
23 objectives to go with each of our strategic goals.
24 That's a concern.

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1 Now, we can discuss these activities:
2 investigate allegations of deprivations of voting
3 rights, et cetera, et cetera in the course of one of
4 the existing goals and objectives.

5 VICE CHAIRPERSON THERNSTROM: No, but I
6 mean everybody who has spoken to this issue is right.
7 This just simply restates our statutory mandate. It
8 needs to stand alone.

9 MR. MARCUS: Without objectives?

10 VICE CHAIRPERSON THERNSTROM: Well,
11 whatever, but it cannot be kind of sprinkled as it
12 were throughout these other goals as if this is not
13 the primary goal.

14 COMMISSIONER BRACERAS: I mean, that's the
15 goal, and the objectives are, number one, you know,
16 respond to timely events as they develop by
17 investigating the facts or something of that -- you
18 know, I mean, something like that. That's the
19 objective: the performance measures, hold a hearing
20 as necessary. Done. I don't understand why it's more
21 complicated than that.

22 Am I misunderstanding something?

23 MR. MARCUS: I don't think it's
24 necessarily that hard to come up with objectives to go

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1 with it. I don't know that we're going to do it
2 today. Maybe we will do it on Monday.

3 COMMISSIONER BRACERAS: Why isn't it that
4 simple? Why isn't it that simple that the objective
5 is to respond in a timely manner to civil rights
6 issues as they develop in our public discourse and the
7 performance measure is, you know, to be on the ground,
8 to hold a hearing.

9 VICE CHAIRPERSON THERNSTROM: You've got
10 language here. Investigate allegations of widespread
11 deprivations.

12 COMMISSIONER BRACERAS: That's the goal.

13 VICE CHAIRPERSON THERNSTROM: Civil
14 rights, whatever, yeah.

15 COMMISSIONER BRACERAS: Right. So the
16 objective is respond in a timely manner to allegations
17 of civil rights deprivations, period. The performance
18 measure is hold the briefing or hold the hearing,
19 right? No?

20 MR. MARCUS: Well, I don't know what it
21 is.

22 COMMISSIONER BRACERAS: It seems really
23 basic.

24 MR. MARCUS: I think it is going to take a

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1 little bit of time to figure out exactly what is it.
2 Is it to hold briefings, to hold hearings, to --

3 COMMISSIONER BRACERAS: Well, what are the
4 other possibilities?

5 MR. MARCUS: I'm sure we could hash it out
6 in a little bit of time.

7 COMMISSIONER BRACERAS: I guess I'm
8 misunderstanding what needs to be hashed out.

9 MR. MARCUS: Why don't you --

10 COMMISSIONER BRACERAS: I'm not a
11 bureaucrat. I'm sorry. I don't get it. I don't get
12 it.

13 VICE CHAIRPERSON THERNSTROM: Commissioner
14 Yaki, have you got something to say on this?

15 MR. MARCUS: If you want to suggest some
16 specific objectives --

17 COMMISSIONER BRACERAS: I just did.

18 MR. MARCUS: -- maybe we can do it that
19 quick. We'll hold a briefing or hold a hearing.

20 VICE CHAIRPERSON THERNSTROM: No, those
21 were the performance measures.

22 COMMISSIONER BRACERAS: Okay. The goal
23 is, quote, investigate allegations of widespread
24 deprivations of voting rights, semicolon, or

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1 allegations of pervasive discrimination on the basis
2 of race, comma, color, comma, religion, comma, sex,
3 comma, age, comma, disability or national origin,
4 comma, or in administration of justice, period.
5 That's the goal.

6 The objective is to respond in a timely
7 manner to allegations --

8 VICE CHAIRPERSON THERNSTROM: Of civil
9 rights --

10 COMMISSIONER BRACERAS: -- of widespread
11 civil rights deprivations because we're not
12 investigating individual complaints like the EEOC
13 would. We're investigating patterns and practices.
14 So to respond in a timely manner to allegations of
15 widespread civil rights deprivations.

16 VICE CHAIRPERSON THERNSTROM: Right.

17 COMMISSIONER BRACERAS: Period. That's
18 the objective. The performance measure is holding a
19 hearing or a briefing. That's the performance
20 measure. That's where you see the Civil Rights
21 Commission in action. We're there on the ground, for
22 example, in Omaha, right?

23 MR. MARCUS: I would feel more comfortable
24 having someone with a little bit of training and

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1 experience in strategic planning go over these and,
2 for instance, advise on whether a goal with one
3 objective is satisfactory, whether this is --

4 COMMISSIONER BRACERAS: Okay. But that's
5 a separate point. I mean that could certainly be one
6 objective and performance measure. Maybe we can come
7 up with others if the bureaucracy requires that we
8 have more than one. Then I'm sure we can come up with
9 one, but --

10 VICE CHAIRPERSON THERNSTROM: Another one.

11 COMMISSIONER BRACERAS: -- I don't see the
12 -- if somebody disagrees with those particular
13 objectives or performance measures, please speak up.
14 I don't understand why it's controversial.

15 COMMISSIONER YAKI: (Unintelligible) do
16 this easily because --

17 COMMISSIONER BRACERAS: Michael, you're
18 bleeping.

19 COMMISSIONER YAKI: I know. I need
20 someone to call me back if I disappear. Can you hear
21 me now?

22 COMMISSIONERS: Yes.

23 COMMISSIONER YAKI: I mean, if worse comes
24 to worse just bang out something on the word

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1 processor, circulate it amongst us with a week
2 deadline and then do a phone poll, yes or no, and put
3 it in.

4 COMMISSIONER BRACERAS: I mean, I'm
5 curious to your view on my specific proposal. Am I
6 off the mark with where I'm going?

7 COMMISSIONER YAKI: Well, no, believe it
8 or not, you're not off the mark.

9 (Laughter.)

10 VICE CHAIRPERSON THERNSTROM: A rare day
11 at the Commission.

12 COMMISSIONER BRACERAS: So.

13 COMMISSIONER YAKI: I would add to some of
14 what you've done, but I think you're absolutely on the
15 right track, and I don't see why it would take more
16 than, you know, a few hours of concentrated effort to
17 get it done, circulate it amongst us, do a phone poll,
18 get it done, and off we go.

19 COMMISSIONER BRACERAS: I mean, I think
20 what I'm hearing though is that I don't hear any
21 objections to having that added as a goal. So I don't
22 think it's going to be -- you know, if we have a poll
23 vote, it should almost be pro forma because it seems
24 that everybody agrees that that should be a goal.

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1 COMMISSIONER YAKI: Right. I'm just
2 saying the poll vote because I don't know what the
3 bureaucrats will say trying to terminate our --

4 (Laughter.)

5 VICE CHAIRPERSON THERNSTROM: And, by the
6 way, I reiterate my point.

7 COMMISSIONER YAKI: I'm going through a
8 turn right now that may cut me off. So if you don't
9 hear my dulcet tones in about 30 seconds, it means
10 I've been blipped off.

11 VICE CHAIRPERSON THERNSTROM: Okay.

12 COMMISSIONER BRACERAS: What I would
13 propose, which is what I've been trying to propose
14 from the beginning is to actually have this be
15 strategic goal number two, not because it's not
16 important, but because I see this mission statement as
17 going from the broad to the most narrow, in other
18 words, from the visionary to the minutiae of
19 administration, and so the national conference should
20 be goal number one because it's the broadest, and then
21 the next level is the investigatory, and then the
22 level below that is partnering with the other
23 agencies, and then it goes down from there in an
24 upside down triangle.

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1 So I'm not really particularly wedded to
2 whether it's Goal No. 1 or Goal No. 2, but I think it
3 would flow best if it were Goal No. 2.

4 VICE CHAIRPERSON THERNSTROM: I do think
5 that if it's going to be more abbreviated than the
6 other goals in terms of spelling out the objectives
7 and the performance measures and we are simply, in
8 effect, restating our statutory mandate, that it makes
9 more sense to have it as in effect a preamble as our
10 statutory mandate. The other goals follow from it.
11 Whatever; I don't care. I mean, it's -- you know.

12 COMMISSIONER BRACERAS: Well, I mean,
13 which sort of brings us back to the option of deleting
14 it, which I don't think anybody was happy with, but it
15 is in the preamble of the document which we're not
16 voting on today, but --

17 COMMISSIONER YAKI: I said that was a good
18 idea, Abby, by the way.

19 VICE CHAIRPERSON THERNSTROM: Oh, that's a
20 first for me.

21 COMMISSIONER YAKI: No, it's not. On one
22 hand.

23 (Laughter.)

24 COMMISSIONER BRACERAS: I mean, so in

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1 other words, the other idea of deleting it, we're not
2 deleting it as part of our mission. You know, if we
3 take it out as part of the preamble and these are the
4 strategic goals that flow from that core mission,
5 which is stated at the top, in other words, where it
6 says mission statement, if it's incorporated in that.

7 COMMISSIONER YAKI: I think it would --

8 VICE CHAIRPERSON THERNSTROM: Say that
9 again, Michael.

10 COMMISSIONER YAKI: I'd be good with that.

11 VICE CHAIRPERSON THERNSTROM: All right.

12 COMMISSIONER YAKI: Different ideas that
13 you two have both proposed, on both I do not violently
14 object. So --

15 COMMISSIONER TAYLOR: What does the Staff
16 Director think of that? What does that do to the
17 process?

18 MR. MARCUS: I'm not sure. I'm going to
19 have to consult either later today or Monday with the
20 staff who are focused on drafting the budget. The
21 budget is due with me at the beginning of next week.
22 Obviously we're not going to be able to get that in.
23 We'll just do the best we can.

24 VICE CHAIRPERSON THERNSTROM: The Staff

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1 Director looks as if --

2 COMMISSIONER BRACERAS: Ken, I'm sorry,
3 and I don't want to --

4 VICE CHAIRPERSON THERNSTROM:
5 Complicating.

6 COMMISSIONER BRACERAS: -- be making work
7 and complicating things, but I feel strongly that this
8 either has to be a separate goal or be incorporated
9 into the mission statement above.

10 MR. MARCUS: In prior years the agency
11 routinely missed its deadline for getting budget
12 submissions in, and developed a certain reputation for
13 it. We might just miss our deadline again.

14 (No response.)

15 COMMISSIONER BRACERAS: I don't understand
16 why this can't simply be cut and paste.

17 COMMISSIONER TAYLOR: If I were to guess,
18 I would guess that it would cause less of a disruption
19 in the bureaucratic process to come to some conditions
20 that --

21 COMMISSIONER BRACERAS: That's what I'm
22 thinking.

23 COMMISSIONER TAYLOR: If I were to guess.
24 So I'd be happy --

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1 MR. MARCUS: I'm sorry. You're suggesting
2 only put it there in the mission statement, not in
3 the --

4 VICE CHAIRPERSON THERNSTROM: Yes.

5 COMMISSIONER BRACERAS: That's my second
6 alternative to alleviate your troubles.

7 COMMISSIONER KIRSANOW: Let's do that.
8 Let's put it in the mission statement.

9 MR. MARCUS: -- that way, then that will
10 not create any problems with our submission.

11 COMMISSIONER KIRSANOW: Let's put it in
12 the mission statement.

13 COMMISSIONER BRACERAS: Right. Solved.

14 COMMISSIONER KIRSANOW: Because another
15 argument for all of this is that it's peculiar to put
16 your -- in one way having your charter requirement be
17 a goal. It's almost a presumption.

18 COMMISSIONER BRACERAS: A different level
19 of --

20 COMMISSIONER KIRSANOW: Right. So let's
21 just do that. Take it out. This way it doesn't
22 disturb strategic goals. We may be able to get a
23 budget submission in a more timely fashion than we
24 have in the past.

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1 VICE CHAIRPERSON THERNSTROM: Okay. So
2 let's make sure we're all on board.

3 COMMISSIONER BRACERAS: The mission
4 statement should read as follows: to inform the
5 development of national civil rights policy and
6 enhance enforcement of federal civil rights laws by
7 investigating allegations of widespread deprivations
8 and blah, blah, blah, blah, blah, blah, and through
9 quality research, objective findings, something like
10 that. I don't know. It's getting a little long
11 there.

12 COMMISSIONER KIRSANOW: Let's have staff
13 wordsmith that. This is not rocket science.

14 COMMISSIONER BRACERAS: You have a good
15 point. It shouldn't be.

16 VICE CHAIRPERSON THERNSTROM: Commissioner
17 Yaki, are you there? He's not, but I think he said
18 before --

19 COMMISSIONER BRACERAS: Well, the point is
20 we're moving it up to the mission statement, and staff
21 can wordsmith it.

22 VICE CHAIRPERSON THERNSTROM: And staff
23 can work on the wording. Commissioner Braceras, you
24 had other problems.

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1 COMMISSIONER BRACERAS: Well, that's
2 number one.

3 COMMISSIONER YAKI: I will deal with it.
4 I was in the middle of changing three lanes.

5 COMMISSIONER BRACERAS: Okay. Moving on
6 to Goal No. 2, enhancing the ability of federal
7 agencies to raise public awareness and efficiently and
8 effectively execute their civil rights enforcement
9 responsibilities.

10 Objective 5 under that goal is to promote
11 public awareness of current civil rights laws,
12 remedies, and enforcement agencies. Great. The
13 performance measure for that objective, one of them,
14 5(h), is to increase the number of times the
15 Commission's reports, et cetera, are cited to. And
16 then it gives various places where we could be cited
17 to.

18 I am uncomfortable making this a benchmark
19 of our success when it is 100 percent outside our
20 control.

21 COMMISSIONER KIRSANOW: And that's
22 precisely why I think it should be a benchmark. I
23 think it gives us more credibility and integrity if
24 somebody else independently makes a judgment that the

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1 integrity of our reports or the substance of our
2 reports is sufficient to which it should be cited.

3 COMMISSIONER BRACERAS: But that's not
4 going to be -- the number of times we're cited doesn't
5 necessarily mean that somebody else thinks our work is
6 fabulous. It could depend completely on the topic we
7 pick. If we are looking at a really trendy, timely
8 topic that a lot of people want to write on, we will
9 be cited. If we're looking at a topic that's
10 complicated, like desegregation and not necessarily
11 sexy, we may not be cited a lot.

12 COMMISSIONER KIRSANOW: But there are two
13 problems here. One is this is to some extent within
14 our control because we're saying increase. We're
15 starting from a baseline of right now increasing from
16 right now, whatever that may be.

17 Number two is that in the past, the
18 Commission -- and there are a variety of reasons why
19 this happened. Some of it was because the Commission
20 was actually doing work such as informing the debate
21 with respect to the implementation of the '64 Civil
22 Rights Act, the '68 Fair Housing Act, '65 Voting
23 Rights Act, so on and so forth, that would necessarily
24 require or result in more citations.

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1 But after a point in time, about the mid-
2 '70s, there was still nonetheless a significant
3 decrease in the number of times we had been cited to
4 any one of these measures in congressional debates,
5 executive policy position fitness reports, any of
6 these.

7 Chris did a very exhaustive analysis of
8 the number of times the Commission was cited, and even
9 after those major events of the '64 Civil Rights Act,
10 '65 Voting Rights Act, et cetera, passed, there was an
11 incredible drop off specifically because I think the
12 Commission began to develop a reputation for shoddy
13 work product, partisan work product, and I think this
14 really lends credibility to what we do.

15 The number of times, you know, I agree
16 that could fluctuate, but it is a measure, maybe not
17 the definitive measure, and that's not where we're
18 saying that because we've got other performance
19 measures in here.

20 COMMISSIONER BRACERAS: I'm just not sure
21 it is --

22 COMMISSIONER KIRSANOW: But it is aimed at
23 it.

24 COMMISSIONER BRACERAS: I'm just not sure

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1 it tells us anything. If Mike Barnacle writes, you
2 know, 17 columns saying the U.S. Commission on Civil
3 Rights is a joke and here the reports that they did
4 that show you that they're a joke, is that a citation
5 that we're going to use to prove our effectiveness?

6 COMMISSIONER KIRSANOW: No, but for
7 example, there are a number of measures here, and I
8 don't think anyone with any --

9 COMMISSIONER YAKI: I'm all for it.

10 COMMISSIONER KIRSANOW: -- I don't think
11 anyone is going to say credibly that Mike Barnacle
12 stands in the same stead as being cited in the Supreme
13 Court opinion, but this year --

14 COMMISSIONER BRACERAS: Well, it's a
15 newspaper article. It's a journalistic editorial or a
16 news report.

17 COMMISSIONER KIRSANOW: But look.

18 COMMISSIONER BRACERAS: That's where
19 you've listed.

20 COMMISSIONER KIRSANOW: I think there are
21 qualitative differences that no one is going to
22 mechanically apply the number of times that Mike
23 Barnacle cites us in the same fashion as --

24 VICE CHAIRPERSON THERNSTROM: I've got

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1 another objection.

2 COMMISSIONER BRACERAS: Well, you've
3 listed here the number of times we're cited in
4 journalistic editorials and news reports, an emergent
5 and electronic and Internet-based mediums. Do you
6 know how many times we're listed on Internet spaced
7 mediums having nothing to do with the substance or the
8 quality of our work?

9 VICE CHAIRPERSON THERNSTROM: There's a
10 more fundamental objection here. The desire for the
11 likelihood of citations by members of Congress or
12 whoever are going to begin to drive our agenda. That
13 is, we're going to be asking ourselves and looking at
14 topics. Well, is this something Congress is going to
15 unlikely --

16 COMMISSIONER BRACERAS: A back door way to
17 make us a research arm for Congress.

18 VICE CHAIRPERSON THERNSTROM: Exactly.

19 COMMISSIONER KIRSANOW: And that really
20 says something about us. Look. I would not have an
21 objection to deleting maybe news reports. I'm not
22 sure about that, but emergent electronic and Internet-
23 based mediums.

24 VICE CHAIRPERSON THERNSTROM: No, I don't

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1 care whether Congress cites us either.

2 COMMISSIONER KIRSANOW: Because the fact
3 of the matter is this is not the definitive measure,
4 but I feel extraordinarily strongly that we have to
5 have some things in here that are, in fact, beyond our
6 control because otherwise then we can manipulate how
7 well we have achieved our strategic goals.

8 COMMISSIONER BRACERAS: Well, that may be
9 true, but --

10 COMMISSIONER KIRSANOW: We are different
11 than a lot of other agencies insofar as EEOC can say,
12 "All right. We're going to process 5,000 more ADA
13 complaints."

14 COMMISSIONER BRACERAS: Right.

15 COMMISSIONER KIRSANOW: And they can
16 measure that. We don't have those kinds of tangible
17 mechanisms by which we can say we have achieved
18 objectives. One of the best ways, and let me just say
19 this. Based on much research that Chris and I have
20 done, we can show most of these citations would be to,
21 say, either Congressional Research Service, the
22 Congressional Quarterly, law review articles, court
23 opinions, and sometimes citations like, for example,
24 more recently we have been cited a number of times in

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1 debate leading up to reauthorization of the Voting
2 Rights Act.

3 VICE CHAIRPERSON THERNSTROM: Only because
4 Commissioners put that in.

5 COMMISSIONER KIRSANOW: The Akaka bill,
6 and so forth.

7 But it's a reflection, I think, of the
8 esteem in which the Commission is held.

9 COMMISSIONER BRACERAS: Not really. I
10 think the voting rights report was cited quit a bit,
11 and I think it's a piece of crap.

12 COMMISSIONER KIRSANOW: For ten years --

13 VICE CHAIRPERSON THERNSTROM: Not only
14 that. It was only cited because you and I went to
15 hearings and put it in the record.

16 COMMISSIONER KIRSANOW: But that is just
17 simply one --

18 COMMISSIONER BRACERAS: Not that voting
19 rights, but the Florida voting rights.

20 VICE CHAIRPERSON THERNSTROM: The Florida
21 voting rights.

22 COMMISSIONER KIRSANOW: That is one
23 measure. It is simply one measure.

24 COMMISSIONER BRACERAS: The voting rights

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1 report is not a piece of crap, I would like to
2 reflect.

3 COMMISSIONER KIRSANOW: There's pretty
4 good data to show that --

5 COMMISSIONER BRACERAS: The Florida
6 report.

7 COMMISSIONER KIRSANOW: -- during the
8 tenure of the previous regime, there was a precipitous
9 drop off in the number of times the Commission was
10 cited. Now, you can say that's because, you know,
11 they were maybe trying to -- they were held hostage to
12 some Congress or something, but the fact is I think
13 there's a pretty good argument to be made that one of
14 the reasons for the decline was the Commission's
15 reputation suffered because the quality of the reports
16 suffered, the quality of the --

17 COMMISSIONER BRACERAS: But that's my
18 point. The Florida voting rights report was extremely
19 poor quality, and it was cited up the wazoo.

20 VICE CHAIRPERSON THERNSTROM: And still is
21 being cited.

22 COMMISSIONER BRACERAS: That's my point.
23 It is --

24 COMMISSIONER KIRSANOW: Not in comparison

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1 to other citations that the Commission has had in the
2 past.

3 COMMISSIONER BRACERAS: Right. Well, if
4 you go back to the 1950s and '60s, of course not,
5 because that was the cutting edge.

6 COMMISSIONER KIRSANOW: We have an ability
7 here starting in 2006 to start afresh and say, "Here.
8 We're increasing the number of times," because now
9 we're not necessarily hostage to the civil rights or
10 the voting rights -- I'm sorry -- the 2000 Florida
11 report, and go forward from there. I do think this is
12 a very -- look. Back in the '60s, quite often the
13 Commission would be cited in Supreme Court decisions.

14 VICE CHAIRPERSON THERNSTROM: The '60s is
15 a century away --

16 COMMISSIONER KIRSANOW: I understand that.

17 VICE CHAIRPERSON THERNSTROM: -- from
18 civil rights issues.

19 COMMISSIONER KIRSANOW: And my point is
20 the citations would be to the Supreme Court Law Review
21 articles, and there was still citations within the
22 '70s and '80s --

23 VICE CHAIRPERSON THERNSTROM: I do not
24 want our agenda --

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1 COMMISSIONER KIRSANOW: -- and guess what.
2 Almost contemporaneously with the ascension of
3 certain people to the leadership of this place, it
4 went off the cliff. There's a reason for that.

5 VICE CHAIRPERSON THERNSTROM: I don't want
6 our agenda driven by --

7 COMMISSIONER YAKI: Nielsen ratings.

8 COMMISSIONER BRACERAS: Exactly.

9 VICE CHAIRPERSON THERNSTROM: -- Nielson
10 ratings, exactly.

11 COMMISSIONER BRACERAS: I just want to say
12 I agree with Commissioner Kirsanow 100 percent that it
13 would be wonderful to be cited by the Supreme Court
14 and to be cited by Congress and to have people
15 recognize the good work that the staff is doing and to
16 recognize the fact that we are turning this Commission
17 around the beginning to put out more objective
18 reports.

19 I agree that that would be wonderful. I
20 just don't want to have to say in a document like this
21 that if we don't get cited because for whatever
22 reason, that somehow we have failed. I don't think we
23 have failed if we do not get cited because there are a
24 lot of reasons why we might not get cited that are

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1 different from, separate from quality.

2 COMMISSIONER KIRSANOW: I really think
3 that sometimes you put performance measures in where
4 you're not absolutely certain that you're going to be
5 able to meet them. They are aspirational. Maybe if
6 we don't have as many citations we failed in this
7 regard.

8 VICE CHAIRPERSON THERNSTROM: No.

9 COMMISSIONER BRACERAS: That is not a
10 barrier.

11 VICE CHAIRPERSON THERNSTROM: -- to our
12 agenda.

13 COMMISSIONER KIRSANOW: I don't think it
14 will change our agenda at all, except to issue quality
15 reports unless you say --

16 VICE CHAIRPERSON THERNSTROM: We're are
17 already issuing quality reports.

18 COMMISSIONER KIRSANOW: Because otherwise
19 that's saying something about the manner in which
20 we're operating, that somehow we're going -- if we are
21 going to be looking at Performance Measure No. 5(h)
22 and causing that to be the loadstar by which we drive
23 this Commission, I don't think --

24 COMMISSIONER BRACERAS: Then why is it in

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1 there?

2 COMMISSIONER KIRSANOW: Because I think
3 it's one of the best ways of establishing on an
4 objective basis. I don't think we're going to be
5 driven by this. I don't think we're going to look at
6 this and say, "Now we're going to craft reports that
7 we get cited that are written" --

8 COMMISSIONER BRACERAS: I don't want any
9 member of Congress or any bureaucrat to say or anyone
10 from GAO or anywhere else to say the Commission failed
11 in meeting its objective because they weren't cited by
12 the Supreme Court this year or by a member of
13 Congress.

14 COMMISSIONER KIRSANOW: I would be amazed
15 if that happened. I think any GAO person who picks
16 something like that up would look like a moron.

17 VICE CHAIRPERSON THERNSTROM: I don't know
18 what the point of putting this in.

19 COMMISSIONER BRACERAS: Then what is the
20 point?

21 COMMISSIONER KIRSANOW: Because I think,
22 frankly, I will tell you this. Of all the measures we
23 have in this, I think this is one of the best ways of
24 determining whether or not the Commission is actually

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1 doing anything.

2 COMMISSIONER BRACERAS: Does it matter if
3 you get cited in dissents or majority opinions?

4 COMMISSIONER KIRSANOW: Look. I'll let
5 somebody else make that decision.

6 VICE CHAIRPERSON THERNSTROM: No.

7 COMMISSIONER KIRSANOW: These are
8 qualitative determinations.

9 VICE CHAIRPERSON THERNSTROM: When you
10 write something, do you write it with, you know,
11 whether it's an article or something, that what you've
12 got in mind is am I going to get cited? No, you write
13 it because it's what you believe in.

14 COMMISSIONER KIRSANOW: That goes to my
15 point. That goes precisely to my point. We don't
16 care if we're going to be cited. We don't care --

17 VICE CHAIRPERSON THERNSTROM: Well, we do.

18 COMMISSIONER KIRSANOW: When we produce a
19 report, that's not driving our agenda.

20 What happens is somebody looks at it and
21 says, "Damned good report."

22 VICE CHAIRPERSON THERNSTROM: Look. I am
23 deeply opposed to this. Commissioner Yaki --

24 COMMISSIONER KIRSANOW: I'm deeply in

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1 favor of this.

2 VICE CHAIRPERSON THERNSTROM: Commissioner
3 Yaki.

4 COMMISSIONER KIRSANOW: And frankly, I
5 will tell you I cannot support anything without this
6 in here.

7 VICE CHAIRPERSON THERNSTROM: Okay, okay.
8 If you want to lay down a marker like that, that's
9 fine.

10 COMMISSIONER KIRSANOW: I will. I think
11 this is one of the best measures.

12 VICE CHAIRPERSON THERNSTROM: That's fine.
13 Go ahead.

14 Commissioner Yaki, did you want to get in
15 here?

16 COMMISSIONER KIRSANOW: Because I want to
17 make one other point. Taking something like this out
18 is a reversion back to where the Commission had been
19 before.

20 VICE CHAIRPERSON THERNSTROM: I think
21 that's ridiculous.

22 COMMISSIONER KIRSANOW: We want some other
23 measure to determine how we are performing our work
24 other than things solely within our control because

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1 that is manipulatable.

2 VICE CHAIRPERSON THERNSTROM: Commissioner
3 Yaki, are you there?

4 COMMISSIONER YAKI: I just don't want to
5 be graded by GAO or by Congress as to whether or not
6 any of our reports for any given year. I mean,
7 sometimes things take time to mature. Some issues we
8 may be ahead of the curve, but people aren't really
9 all that excited about it, but then they get excited
10 about it two years later.

11 I mean I just think that -- I understand
12 what Peter is saying. He's talking about and he cares
13 about the reputation of the Commission and the work
14 product it produces, but I don't think that citation
15 alone is the way to do it, and I'm sorry I disagree
16 with him.

17 VICE CHAIRPERSON THERNSTROM: Well, that's
18 very well put from my point of view.

19 Anybody else got anything? Is there any
20 further discussion on this?

21 COMMISSIONER TAYLOR: I guess the only
22 thing I would say is that I sense that we're trying to
23 establish a measurement tool for our relevancy, and
24 I'm having a difficult time getting my mind around how

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1 we measure that. That's what we're talking about.

2 VICE CHAIRPERSON THERNSTROM: Right.

3 COMMISSIONER TAYLOR: Because it's not an
4 example of the demonstration of necessary quality.

5 VICE CHAIRPERSON THERNSTROM: Right.

6 COMMISSIONER TAYLOR: But it does in some
7 way indicate that we are contributing to the national
8 debate, and that's, I think, what we're trying to
9 measure.

10 VICE CHAIRPERSON THERNSTROM: I don't see
11 how you can measure that. Let us do quality work and
12 assume that that's a contribution to the national --

13 COMMISSIONER TAYLOR: Let's be honest, and
14 maybe I shouldn't say this, but I'll say it anyway.
15 Of course we consider what we do. We talk all the
16 time in this Commission about using a product that's
17 timely because the Supreme Court will be considering
18 something at a particular point in time. So we; take
19 those things into consideration.

20 And I don't think there's anything wrong
21 with that. We want to be relevant, and I think that's
22 what you're trying to measure and you're trying to do
23 it by way of a source we can manipulate.

24 Just because I wake up in the morning and

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1 think I'm relevant, great. Doesn't necessarily mean
2 that I am. I don't know. I don't think this measures
3 it. In fact, I was thinking maybe we should, you
4 know, focus on the Supreme Court. Is that a real
5 test?

6 And I thought no because I don't know who
7 on the Supreme Court would be citing us and for what
8 purpose. So I even felt uncomfortable with the
9 Supreme Court piece.

10 But, you know, frankly, I think our
11 measure of relevancy will be determined by our ability
12 to look ourselves in the eye and look at each other.
13 I'm having a hard time getting a third party
14 validation tool.

15 Let me just say this.

16 COMMISSIONER BRACERAS: Well, here's why I
17 think there's a disconnect between the objective and
18 the performance measure. The objective number five is
19 to promote public awareness not of ourselves, but of
20 current civil rights laws, remedies and enforcement
21 agencies.

22 Now, let's say we have our briefing and
23 our report on desegregation and there is subsequently
24 an up tick in the number of news articles and Law

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1 Review articles and other things on the topic of
2 desegregation. That's great. Then we're increased
3 public awareness of that particular topic whether they
4 cite our work or not.

5 The question is not whether they cite our
6 work. The question is are more people aware of their
7 rights, aware of the debates that are festering in
8 society, aware of the remedies, aware of all of these
9 other things. That's the objective, to make people
10 aware of the law and of the issues and of their
11 rights, not necessarily to make them aware of us.

12 COMMISSIONER KIRSANOW: They don't have to
13 be aware of us. They have to be aware of the work
14 that we're doing, and I'll just say one more thing and
15 then I'll stop. And that is that there is no doubt
16 that for a variety of reasons the Commission was more
17 relevant in the '60s. For very obvious reasons it was
18 more relevant.

19 In the '70s, after the major civil rights
20 acts were passed, you would think that the
21 Commission's relevancy would have dropped off the
22 table, but it did not. Not even in the '80s did it
23 really drop off. There were no really giant pieces of
24 legislation that were being considered at least that

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1 the Commission was informing, but the Commission's
2 work was still being treated with a great amount of
3 respect and the quality of the work was, and it was
4 timely and relevant.

5 One of the ways you can measure that is
6 are we informing the debate. One of the ways you
7 determine whether you're informing a debate is who's
8 debating. Who else is talking? We know quite clearly
9 that for the last five, six years, excluding maybe the
10 last two years, the Commission's work has been going
11 into a dust bin. They will produce a report.
12 Jennifer said it very eloquently earlier, where we put
13 a mishmash of things together in the report. It was
14 too big, voluminous, not focused on a particular
15 subject matter, and no one would care about it, never
16 get cited anywhere, not even to the Internet.

17 But when you've got something of quality,
18 we are informing the debate because people are
19 reading. Policy makers, decision makers are reading
20 academic journals, advocacy briefs, Congressional
21 Quarterly, Supreme Court decisions. That's one of
22 the best measures of whether or not we are informing
23 the debate.

24 COMMISSIONER BRACERAS: I just want to --

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1 COMMISSIONER KIRSANOW: By enhancing the
2 quality.

3 COMMISSIONER BRACERAS: I want to be clear
4 about something because this performance measure is
5 basically listed a couple of times here with respect
6 to different objectives. So Pete keeps referring back
7 to this being a measure of the quality and objectivity
8 of our reports, and that's where I feel particularly
9 strongly that it's not indicative of the objective
10 we're dealing with.

11 But it's also listed above where I first
12 raised it, is with respect to our PR function which is
13 making people aware of the laws and the remedies and
14 their rights. It's more relevant there because at
15 least then every time we're cited it may not say
16 something about our scholarship, but it at least flags
17 the public that there's an issue.

18 If our report --

19 COMMISSIONER KIRSANOW: Where is that?
20 I'm sorry, Jennifer. I --

21 COMMISSIONER BRACERAS: Well, under
22 Strategic Goal 2, Performance Measure 5(h) --

23 VICE CHAIRPERSON THERNSTROM: It's got the
24 same problem.

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1 COMMISSIONER BRACERAS: Okay.

2 VICE CHAIRPERSON THERNSTROM: It's got
3 exactly the same problem.

4 COMMISSIONER BRACERAS: Well, it's not
5 quite the same problem, but the point is that we're
6 getting all confused by the bureaucratic boxes once
7 again, but the point is that citations to our work I
8 don't think really ever say anything about the quality
9 and objectivity of our report. They may on some
10 occasions help us achieve our objective of making
11 people aware of certain civil rights issues and laws,
12 not always; sometimes. They may help to achieve that
13 objective.

14 But where I feel most strongly about it is
15 as an indication of the quality of the scholarship.

16 VICE CHAIRPERSON THERNSTROM: Well, look.
17 I mean, the person who, the institution that is most
18 cited by the Supreme Court, by members of Congress, by
19 the media on school desegregation issues is the
20 Harvard project on civil rights headed by Gary
21 Orfield.

22 Now, Michael Yaki and I will disagree on
23 the quality of that work, but if you want to measure
24 it simply by times cited, they're doing a great job.

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1 The fact is I don't think they're doing a great job.

2 COMMISSIONER KIRSANOW: But they're
3 informing the debate and that's because the Commission
4 is falling --

5 VICE CHAIRPERSON THERNSTROM: They are not
6 informing the debate.

7 COMMISSIONER KIRSANOW: -- down on the
8 job.

9 COMMISSIONER BRACERAS: Okay. Informing
10 the debate, but that's a different goal. There's two
11 goals. There's informing the debate and there's
12 strengthening the quality of --

13 COMMISSIONER KIRSANOW: I don't care about
14 bureaucratic boxes either. I don't care what box you
15 want to put it in. I just think that this is one of
16 the superior measures of what the Commission is doing.

17 COMMISSIONER TAYLOR: The first goal we
18 have listed is support a national conversation on
19 current civil rights issues.

20 COMMISSIONER BRACERAS: Correct.

21 COMMISSIONER TAYLOR: That is the first
22 goal we have, and I would agree not necessarily using
23 the -- maybe using the term "support," that if you
24 cite to the number of times you are cited, it clearly

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1 demonstrates that you're participating in the national
2 discussion, and frankly, it has no bearing on whether
3 or not they're saying your work is of quality, shoddy.

4 COMMISSIONER BRACERAS: Then let's put it
5 there.

6 COMMISSIONER TAYLOR: But it does
7 demonstrate you're participating in the national
8 conversation.

9 VICE CHAIRPERSON THERNSTROM: Well, but
10 wait a minute.

11 COMMISSIONER BRACERAS: Then that's where
12 it goes. Then that's where it goes.

13 VICE CHAIRPERSON THERNSTROM: Commissioner
14 Yaki said before, and I don't want all of this
15 language there; as Commissioner Yaki said before,
16 issues may not be ripe. We may do work that three
17 years from now becomes part of the national debate.
18 This is not a performance measure.

19 COMMISSIONER TAYLOR: Let me address that.

20 VICE CHAIRPERSON THERNSTROM: And it will
21 drive the agenda of this Commission in pernicious
22 ways.

23 COMMISSIONER BRACERAS: I understand
24 Commissioner Taylor's point, which is that it may not

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1 be indicative of our quality, Goal No. 3, but it can
2 be indicative of our first goal which is basically
3 reinvigorating the discussion, and although I'm
4 uncomfortable with it as a performance measure
5 generally, if it is going to stay in, I can only
6 support it if it moves to a performance measure under
7 Goal No. 1.

8 I absolutely will not support it as a
9 measure of our quality under Goal No. 3, never ever,
10 ever.

11 VICE CHAIRPERSON THERNSTROM: There is a
12 majority here for eliminating it.

13 COMMISSIONER KIRSANOW: Wait a minute. We
14 haven't had a vote yet.

15 VICE CHAIRPERSON THERNSTROM: Well, there
16 seems to be on the basis of --

17 COMMISSIONER KIRSANOW: I think putting it
18 on -- I'm in favor of putting it under Strategic Goal
19 No. 1.

20 VICE CHAIRPERSON THERNSTROM: Commissioner
21 Yaki?

22 COMMISSIONER YAKI: Which is that I still
23 think that there's this pernicious threat here because
24 we may not even be able to reinvigorate the debate,

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1 but we need to decide, gee, something is hot. Let's
2 make sure that we do something they can throw in a
3 niche because we need to meet that performance goal of
4 getting cited.

5 And then there's the final point, which is
6 how in the hell are you really going to accurately
7 measure the citation aspect anyway? I mean, depending
8 on what kind of research you do, you'll get nine
9 million things on this and that, and it's a rather --
10 given our limited staff resources, do we want our
11 staff ready and referencing, doing our bibliography of
12 whether or not, you know, Gary Orfield says that he --
13 like Abby and Abby doesn't like Gary Orfield.

14 (Laughter.)

15 VICE CHAIRPERSON THERNSTROM: He's a
16 perfectly nice guy.

17 COMMISSIONER BRACERAS: And then we can go
18 around to different law schools and pay students to
19 cite us in their notes.

20 COMMISSIONER KIRSANOW: To answer your
21 question whether or not we can do this --

22 COMMISSIONER BRACERAS: This is ludicrous.

23 COMMISSIONER KIRSANOW: -- let me answer.

24 COMMISSIONER YAKI: -- promised to cite us

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1 in their note.

2 COMMISSIONER KIRSANOW: Let me say a few
3 things about this. First is this can be measured very
4 easily, especially if you take out the last Internet-
5 based mediums. You know, if we're cited to blogs, I
6 don't care about that.

7 But in terms of Commissioner reports,
8 congressional debates, policy positions, rulemakings,
9 judicial opinions, advocacy briefs, state and local
10 law making bodies, my assistant was able to do that
11 very easily and -- not easily, but he was able to do
12 it and comprehensively, and showed where we were being
13 cited, what types of reports we were being cited, and
14 the decreasing citations over a 30-year period. It
15 was eye opening, quite illuminating, and I think if
16 anyone takes --

17 COMMISSIONER BRACERAS: Can you share with
18 us?

19 COMMISSIONER KIRSANOW: We have no
20 problems with that if anyone takes a look at, in fact,
21 we think it should -- I was thinking it should
22 actually be a project of ours to take a look at how
23 has the Commission been impacting the debate because
24 we're operating in a vacuum here.

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1 We were impacting the debate at one time,
2 even past the passage of the major civil rights laws,
3 and now we have been irrelevant for quite a period of
4 time talking to one another, not caring about whether
5 or not we are, in fact, driving the debate on civil
6 rights, and we're not.

7 VICE CHAIRPERSON THERNSTROM: And you
8 would change that by having that a performance goal?

9 COMMISSIONER KIRSANOW: I think it's one
10 of the best means --

11 COMMISSIONER BRACERAS: I mean, we're
12 going to change it by having our conference and doing
13 these other things.

14 COMMISSIONER KIRSANOW: -- by which we
15 determine whether other -- look. Otherwise we're
16 simply treading water.

17 VICE CHAIRPERSON THERNSTROM: We're not
18 simply treading water. We have --

19 COMMISSIONER KIRSANOW: This is one of the
20 best ways of determining whether or not we're out
21 there in the ether. Otherwise, if we don't measure
22 whether or not we're having an impact on the debate,
23 how do we know whether or not we're having an impact
24 on the debate?

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1 VICE CHAIRPERSON THERNSTROM: Hold on.
2 Commissioner Melendez.

3 COMMISSIONER MELENDEZ: I said I've got to
4 catch a plane.

5 VICE CHAIRPERSON THERNSTROM: You've got
6 to catch a plane. Would you like to come in on this?

7 COMMISSIONER MELENDEZ: Well, I just feel
8 that it sounds like we've got more work to do on this
9 whole strategic plan, and I'm just wondering if we're
10 going to cover some of it --

11 VICE CHAIRPERSON THERNSTROM: We need to
12 table this. I agree. Let's not have a vote on this.

13 COMMISSIONER KIRSANOW: We need a vote.
14 We have the strategic goals, right?

15 MR. MARCUS: We have everything we need
16 right now from the staff's point of view.

17 COMMISSIONER KIRSANOW: Okay.

18 VICE CHAIRPERSON THERNSTROM: I don't want
19 to vote on it with you gone, and I also think you're
20 right. We need some work on this.

21 COMMISSIONER BRACERAS: Well, let me leave
22 it at this so that you know where I am and I think
23 where the Vice Chair and others may be as well. I
24 would like to see this language deleted from Strategic

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1 Goal No. 2 and Strategic Goal No. 3 as performance
2 measures. If you want to discuss adding the language
3 under Strategic Goal No. 1, I'm open to discussing
4 that. I haven't thought it through fully, but I'm
5 open to discussing that.

6 But I am vehemently opposed to having it
7 be a performance measure for either Goal No. 2 or Goal
8 No. 3, and that is where I will leave it. I would
9 like to see the performance measures for Strategic
10 Goal No. 3 be linked to our processes. I think this
11 is a really important point. I think that the way we
12 measure the quality and objectivity of our reports is
13 not going to be by looking at who agrees with it or
14 who cites it. It's going to be looking to see whether
15 we have a fair and balanced and objective process
16 because people will always disagree with the outcome.
17 There will always be critics with the substance.

18 So I would like to see the performance
19 measure linked to process, not substance and not
20 citations. So that's where I stand on that.

21 But I am open to the possibility of
22 measuring the citations under Strategic Goal No. 1.

23 COMMISSIONER KIRSANOW: Well, I think
24 everybody knows where I stand. I've got no problems

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1 putting it under Goal No. 1, but I think this is one
2 of the best measures, and to respond to claims that
3 somehow this is going to be paying people to cite us,
4 and I guess under Strategic Goal No. 1 we'd be paying
5 people to attend the civil rights conference or any of
6 these other goals that are capable of manipulation.

7 The key about this one is this is less
8 able to be manipulated by us and, therefore, a better
9 means by which to gauge whether or not we're doing
10 anything out there in the ether because, frankly, I
11 think we've been talking to ourselves for a long time,
12 and one other --

13 VICE CHAIRPERSON THERNSTROM: What is
14 going to change that, Pete, if that is so?

15 COMMISSIONER KIRSANOW: I think what
16 changes that -- I disagree that it doesn't have an
17 impact on the quality of our reports.

18 COMMISSIONER BRACERAS: Then take it out
19 of that section.

20 COMMISSIONER KIRSANOW: Fine.

21 VICE CHAIRPERSON THERNSTROM: No.

22 COMMISSIONER KIRSANOW: The quality of our
23 reports, it's n imperfect measure of the quality, but
24 directly relates to the quality because no one at the

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1 Supreme Court is citing to shoddy work.

2 VICE CHAIRPERSON THERNSTROM: But wait a
3 minute. What is going to change? So we have this as
4 one of the performance issues here. What are we going
5 to do differently unless what you're saying is what we
6 should do different is being driven by congressional
7 agendas?

8 COMMISSIONER KIRSANOW: No. We've been
9 doing it differently for the last year and a half.

10 VICE CHAIRPERSON THERNSTROM: Okay.

11 COMMISSIONER KIRSANOW: This is a means by
12 which we can now measure and track it over the next
13 five years.

14 VICE CHAIRPERSON THERNSTROM: If we've
15 already been doing it differently, then what is it
16 that you think we're going to get out of --

17 COMMISSIONER KIRSANOW: A lot of the stuff
18 we're not doing differently in these goals. We're
19 doing it the same way, but we're determining it's a
20 measure. It's a metric. We have metrics of all kinds
21 of performance --

22 VICE CHAIRPERSON THERNSTROM: So we find
23 out the New York Times isn't citing us very much
24 because they don't like what we have to say. What

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1 does that tell us?

2 COMMISSIONER KIRSANOW: I don't care about
3 the New York Times, frankly.

4 VICE CHAIRPERSON THERNSTROM: Well, what
5 do you care about?

6 COMMISSIONER KIRSANOW: What it does tell
7 us is this, and I think Jennifer is right about maybe
8 one of the best places to put it is enhancing the
9 conversation. It tells us whether or not we're
10 involved in the mix. It's the best way of determining
11 it. Because look. There are no reporters here.
12 Rarely are reporters here because nobody cares --

13 VICE CHAIRPERSON THERNSTROM: Wait a
14 minute.

15 COMMISSIONER KIRSANOW: -- about what the
16 Commission does.

17 VICE CHAIRPERSON THERNSTROM: We're
18 issuing quality reports, and by that measure we don't
19 measure. What is the consequence, that we pay more
20 attention to what we might be cited more?

21 COMMISSIONER KIRSANOW: This is a measure
22 of how we are impacting the discussion of civil rights
23 out there, also whether or not we're driving the
24 discussion of civil rights out there, and I also think

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1 it's an indirect measure of the quality and integrity
2 of our reports.

3 Law review articles don't cite to the
4 environmental discrimination report of 2002. They
5 don't do that kind of crap or any of the other things
6 that Jennifer was referring to in terms of these
7 omnibus reports that were issued. They will cite to
8 reports with respect to the Hawaii bill. They will
9 cite to, you know, the secondary education of the
10 Seattle case. They will cite to those things.

11 VICE CHAIRPERSON THERNSTROM: You know, I
12 have a --

13 COMMISSIONER KIRSANOW: -- it to produce
14 quality reports --

15 VICE CHAIRPERSON THERNSTROM: I have a
16 Google search --

17 COMMISSIONER KIRSANOW: -- for the best
18 measures is who's citing us. Of the last 40 years our
19 citations both in the quality of the citations, that
20 is, the Harvard Law Review or the Supreme Court, and
21 in the number have fallen off the map.

22 VICE CHAIRPERSON THERNSTROM: Well, my
23 view is we do quality work and hope that somebody
24 notices, but I have a Google search every single day

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1 for citations to the Voting Rights Act. I get more
2 crap. I get at least ten a day. Who in the hell
3 cares whether these people --

4 COMMISSIONER KIRSANOW: We can take out
5 the blog section, the Internet section. That's fine.

6 COMMISSIONER BRACERAS: But I think we
7 don't have to agree on this now. I think the bottom
8 line is what we have agreed to do is to move
9 Performance Measure 3(c) under Goal No. 1 up into the
10 mission statement. We've agreed on that, and we've
11 agreed that we're not going to vote on the performance
12 measures today because we need to discuss this further
13 and at least come up with something, some way to deal
14 with this citation issue, but first and foremost it's
15 dead on arrival in my book if it's a measure of our
16 quality and objectivity.

17 If it is being used to measure that aspect
18 of our work, it is dead on arrival.

19 COMMISSIONER KIRSANOW: I don't have a
20 problem with that. I can put it under one. I don't
21 care about boxes.

22 VICE CHAIRPERSON THERNSTROM: But you just
23 kept talking about --

24 COMMISSIONER KIRSANOW: Well, I just said

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1 I think it's an indirect measure. I don't have a
2 problem with where it's put, but I do think it's an
3 indirect measure of our quality.

4 VICE CHAIRPERSON THERNSTROM: I do not
5 think we work for the media. We don't work for
6 Congress. We don't work for the Supreme Court. We
7 turn out quality.

8 COMMISSIONER KIRSANOW: We're not working
9 for them. We are working for the American public, and
10 the American public doesn't know jack about the
11 Commission, doesn't care jack about the Commission
12 because we haven't been producing quality reports that
13 find themselves reflected in the discussion in --

14 VICE CHAIRPERSON THERNSTROM: We have been
15 producing quality reports.

16 COMMISSIONER KIRSANOW: -- the last year
17 and a half.

18 COMMISSIONER BRACERAS: Okay. Let's move
19 on.

20 COMMISSIONER KIRSANOW: There's an echo
21 effect.

22 VICE CHAIRPERSON THERNSTROM: Let's move
23 on. Jennifer, have you got another.

24 COMMISSIONER BRACERAS: No, those are the

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1 crux of my concerns.

2 COMMISSIONER KIRSANOW: That's where I
3 need to go.

4 COMMISSIONER BRACERAS: Again, just so
5 we're all aware for the call on Monday and future
6 discussion, I would like to see the performance
7 measure for Strategic Goal No. 3 be focused on our
8 internal processes.

9 VICE CHAIRPERSON THERNSTROM: I agree with
10 that.

11 There is still some business to do, and
12 there's a memorandum of understanding with the
13 Thurgood Marshall Library, approval of a memorandum of
14 understanding or agreement which constitutes and
15 outlines an agreement between the U.S. Government
16 Printing Office, the University of Maryland School of
17 Law, Thurgood Marshall Law Library, United States
18 Commission on Civil Rights, for permanent access to
19 content in the electronic collection of historical
20 publications of the U.S. Commission on Civil Rights of
21 the Thurgood Marshall Library.

22 COMMISSIONER BRACERAS: We need to know if
23 Commissioner Yaki is still on to find out if we have a
24 quorum, right?

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1 VICE CHAIRPERSON THERNSTROM: Commissioner
2 Yaki, are you still there?

3 COMMISSIONER YAKI: Yes.

4 VICE CHAIRPERSON THERNSTROM: We have a
5 quorum.

6 COMMISSIONER YAKI: For what.

7 COMMISSIONER BRACERAS: To continue the
8 meeting.

9 VICE CHAIRPERSON THERNSTROM: And,
10 Commissioner Melendez, when do you have to go?

11 COMMISSIONER MELENDEZ: (Speaking away
12 from the microphone location.)

13 VICE CHAIRPERSON THERNSTROM: On the
14 rechartering? Let us just skip --

15 COMMISSIONER BRACERAS: Isn't the
16 memorandum of understanding with the library fairly
17 uncontroversial?

18 VICE CHAIRPERSON THERNSTROM: Yes, yes.

19 COMMISSIONER BRACERAS: Okay. So why
20 don't we vote on that.

21 VICE CHAIRPERSON THERNSTROM: Yes, can I
22 have a motion?

23 COMMISSIONER MELENDEZ: I make a motion to
24 approve that.

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1 VICE CHAIRPERSON THERNSTROM: Okay.

2 Second?

3 COMMISSIONER TAYLOR: Second.

4 VICE CHAIRPERSON THERNSTROM: Okay. All
5 in favor?

6 (Chorus of ayes.)

7 VICE CHAIRPERSON THERNSTROM: Any
8 opposition?

9 (No response.)

10 VICE CHAIRPERSON THERNSTROM: No. Motion
11 is approved.

12 **VII. State Advisory Committee Issues**

13 VICE CHAIRPERSON THERNSTROM: Okay. The
14 state advisory committee issue. Let us go right to --
15 because I know that Commissioner Yaki wants to speak
16 to it.

17 COMMISSIONER YAKI: What's the issue?

18 COMMISSIONER BRACERAS: SAC re-chartering.

19 VICE CHAIRPERSON THERNSTROM: Let's go
20 immediately to the California re-chartering of the
21 California state advisory committee.

22 COMMISSIONER YAKI: I have a point of
23 information.

24 VICE CHAIRPERSON THERNSTROM: yes.

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1 COMMISSIONER YAKI: What is the quorum
2 problem that we have right now?

3 VICE CHAIRPERSON THERNSTROM: We're fine
4 until Commissioner Melendez leaves, and that's why I
5 moved the California question up, because it's the
6 most important of these.

7 COMMISSIONER YAKI: What if I leave?

8 COMMISSIONER BRACERAS: The same thing.

9 VICE CHAIRPERSON THERNSTROM: When we
10 don't have a quorum obviously.

11 COMMISSIONER YAKI: I want to have a
12 chance to discuss this with the Chair. We have not
13 had a chance to discuss it yet.

14 VICE CHAIRPERSON THERNSTROM: This is up
15 to you.

16 COMMISSIONER YAKI: I'd rather table it
17 until the next meeting.

18 VICE CHAIRPERSON THERNSTROM: Well, if you
19 leave it gets tabled. We do not have a quorum if you
20 leave.

21 COMMISSIONER YAKI: Are you going to try
22 and vote on it?

23 VICE CHAIRPERSON THERNSTROM: Pardon me?

24 COMMISSIONER YAKI: If I don't leave are

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1 you telling me you're going to try and vote on it?

2 VICE CHAIRPERSON THERNSTROM: I assume so.

3 COMMISSIONER YAKI: Then I'm leaving.

4 COMMISSIONER BRACERAS: Well, what about
5 Maine and Georgia? Do you want to do that and keep
6 them in the room?

7 VICE CHAIRPERSON THERNSTROM: Do you want
8 to stay for Maine and Georgia then and leave after
9 that?

10 COMMISSIONER YAKI: Well, first of all, I
11 don't know who this Maine person is. We haven't got
12 anything in our packet about who this individual
13 person is. So I have an objection with Maine.
14 Georgia I don't have too much other than an objection
15 to but you know (unintelligible). But I do know the
16 people from California, and I want to have an
17 opportunity to talk to the Chair about that.

18 If the intent of the Commission is to vote
19 on California today and on Maine today, then I implore
20 you that I have to leave the room.

21 COMMISSIONER BRACERAS: Well, maybe we can
22 do Georgia.

23 VICE CHAIRPERSON THERNSTROM: Let's go
24 Georgia, Commissioner Yaki. Can I have a motion to

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1 re-charter the Georgia State Advisory Committee?
2 Under this motion the Commission appoints the
3 following individuals to that committee based on the
4 recommendations of the Staff Director.

5 Do I need to read all of these names into
6 the record?

7 MR. MARCUS: Yes, please.

8 VICE CHAIRPERSON THERNSTROM: Yes.

9 Charles B. Tanksley.

10 Tony K. Boatwright.

11 Alvin Arch Culbreth, I guess it is.

12 Julius Wayne Dudley.

13 Herbert W. Garrett.

14 Sharon L. Gosling.

15 William H. Jordan.

16 Ann L. Casun.

17 Luis L. Perez -- somebody help me with the
18 pronunciation. Michael, do you have the pronunciation
19 there? Eguiarte.

20 Arch Y. Stokes.

21 Pamela White-Colbert.

22 I also move that the Commission appoint
23 the Honorable Charles B. Tanksley as Chair of the
24 newly re-chartered Georgia State Advisory Committee.

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1 These members will serve as uncompensated government
2 employees and the Commission appreciates the heard
3 work they will no doubt contribute to this state
4 advisory committee.

5 Under this motion, the Commission
6 authorizes the Staff Director to execute the
7 appropriate paper work for the appointment, and I
8 apologize to any of these members of the SAC if I have
9 pronounced their name incorrectly.

10 So can I get a motion to approve?

11 COMMISSIONER TAYLOR: So moved.

12 VICE CHAIRPERSON THERNSTROM: And a
13 second?

14 COMMISSIONER MELENDEZ: Second.

15 VICE CHAIRPERSON THERNSTROM: Second.

16 Okay. All in favor?

17 (Chorus of ayes.)

18 VICE CHAIRPERSON THERNSTROM: Anybody
19 opposed?

20 (No response.)

21 VICE CHAIRPERSON THERNSTROM: Okay. The
22 motion is approved unanimously.

23 And as I understand it, we are losing our
24 quorum.

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1 COMMISSIONER YAKI: (Unintelligible) --
2 Maine and California?

3 **VIII. FUTURE AGENDA ITEMS**

4 VICE CHAIRPERSON THERNSTROM: Pardon me?
5 Are there any other items?

6 COMMISSIONER BRACERAS: Future agenda
7 items.

8 VICE CHAIRPERSON THERNSTROM: Oh, future
9 agenda items. We have just lost our quorum anyway.

10 COMMISSIONER YAKI: We did?

11 VICE CHAIRPERSON THERNSTROM: Yes.
12 Commissioner Melendez has just gone.

13 COMMISSIONER YAKI: Okay. Goodbye.

14 COMMISSIONER BRACERAS: Goodbye.

15 VICE CHAIRPERSON THERNSTROM: The meeting
16 is adjourned.

17 (Whereupon, at 12:43 p.m., the meeting was
18 concluded.)

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