U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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Friday, January 11, 2008

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

PRESENT:

GERALD A. REYNOLDS, Chairman
ABIGAIL THERNSTROM, Vice Chairman
GAIL L. HERIOT, Commissioner
PETER KIRSANOW, Commissioner
ARLAN D. MELENDEZ, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
MICHAEL YAKI, Commissioner

KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
TERESA BROOKS
MARGARET BUTLER
CHRISTOPHER BYRNES, Attorney Advisor to the OSD
DEBRA CARR, Associate Deputy Staff Director
IVY DAVIS
DEMITRIA DEAS
BARBARA DeLAVIEZ
PAMELA DUNSTON, Chief, ASCD
LATRICE FOSHEE
MAJA JWEIED
MONICA KIBLER
ROBERT LERNER, Assistant Staff Director for OCRE
SOCK-FOON MacDOUGAL
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor/Parliamentarian
EILEEN RUDERT
KARA SILVERSTEIN
KIMBERLY TOLHURST
STAFF PRESENT (continued):

VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON
LISA NEUDER
RICHARD SCHMELCHEL
KIMBERLY SCHULD
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CHAIRMAN REYNOLDS: This is a meeting of the U.S. Commission on Civil Rights at 9:33 on January 11, 2008. The meeting is being held at 624 9th Street, N.W., Room 540 in Washington, D.C. All the Commissioners with the exception of Vice Chair Thernstrom are present and she will be here momentarily.

I. Approval of the Agenda

The first item on the agenda is the approval of the agenda.

Is there a motion to approve the agenda?

COMMISSIONER KIRSANOW: So moved.

CHAIRMAN REYNOLDS: Very good. A second?

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion?

Commissioner Yaki?

COMMISSIONER YAKI: Yes, I'd like to move to amend the agenda.

CHAIRMAN REYNOLDS: Okay. Is there a second?

COMMISSIONER MELENDEZ: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: I have four items for
the agenda. The first is to add under the Staff Director's Report a discussion of the budget issues following the appropriations for FY08.

   Secondly, to add, I don't care wherever, a discussion at my request for a special assistant. Also add a discussion and I don't know if these go under Executive Session or not, but to explore a complaint has been filed against the Agency. And then fourth, I do not know -- I guess this is a motion. I don't know if it's a motion or not, fourth is a discussion of the fact that our Staff Director is leaving and there will be an Acting Staff Director and I want a discussion of that as well.

   CHAIRMAN REYNOLDS: Okay. Comments?

   All right, I'll start. The first issue, the budget issue, having that discussed after the Staff Report, I support it. The request to discuss your request for a Special Assistant, I also support that as well as the discussion of the fact that Staff Director Marcus is leaving. I support it. However, the request to discuss the personnel matter, that's premature.

   COMMISSIONER YAKI: Why is it premature?

   CHAIRMAN REYNOLDS: Big document, haven't read it. We need to have the Office of the General
Counsel review it and provide us with some guidance.

COMMISSIONER YAKI: I'd like to get some information about what exactly the ramifications of it are even absent any discussion on the merits. I think that we need to know what deadlines are imposed upon the Agency so that if there's any deadlines that occur in between now and the next meeting, we know whether or not we have to respond and how to respond and in what way the Commission would respond or to whom we would delegate the matter of responding.

There are questions about how such a complaint would be defended, by whom and for what budget consequences there would be. I think there are plenty of topics that just from the nature of the complaint being filed in the first place that need to be discussed rather than waiting for another month to go by and for Plaintiff's counsel to do something in the interim that would require emergency action by us and go over as part of that discussion everything that we could, at least start to get some knowledge of and discussion of at this meeting.

CHAIRMAN REYNOLDS: I am anxious to wade through all of the issues. Apparently, there are a lot of them. As you know, the complaint, if that's what it is, has over 200 pages. I have not read it.
Other Commissioners have not read it and I think that since this is probably a legal matter, it's important to have the Office of the General Counsel review the document and provide us with guidance before we have a conversation about this matter before knowing what all the facts are.

COMMISSIONER YAKI: I don't disagree with the substantive nature of the review. I'm talking about the procedural consequences and the procedural issues. Surely our General Counsel or our Solicitor know -- should know or should be prepared to talk about what is the nature -- since this was filed I guess over a week ago, should be prepared to discuss exactly what are at least the procedural postures are involved.

In other words, do we have X number of days to respond? What does it mean when a whistle-blower complaint is filed against us? Is there individual liability attached? Where do we seek budgetary authority for defending it? I think those are preliminary questions that I would like to have answered now so that we're not reinventing the wheel when we talk about the substantive review.

Surely, given the fact that this was filed earlier and surely the fact that the Commission was
named, it's something that even -- whatever merit it may or may not have should have caused some action to be taken with regard to understanding at least the rudimentary basics.

I don't need to know what's in a complaint to know when I have to answer a complaint. I don't know -- I don't need to know what's in a complaint to know that counsel at some point must be retained and where I'm going to try and find budgetary authority to find that counsel.

I don't need to know what's in a complaint to understand at least from the perspective of a federal agency when a federal agency is sued what are the consequences to its individual members or potential consequences to its individual members under the law. I just find it -- if we're not in a position -- if you're telling me that we're not in a position to even discuss the simple procedural aspects of this, then I would say then okay, but I think that's a very, very troubling situation to be in and causes me concern that the Agency would not have prepared for this meeting, at least some type of information for Commissioners other than it's very long and we haven't read it yet.

CHAIRMAN REYNOLDS: We have a
disagreement. I think that proceeding in a piecemeal fashion is the wrong way to go. We recently received the document. It's a large document containing a litany of allegations. Prudence dictates that we take our time, review the documents and then answer -- then get some advice and counsel from our General Counsel, and to the extent any Commissioner has any questions or specific questions that they want answered, then I would suggest that we all provide these questions to the Office of the General Counsel so that once we do have our comprehensive response, those questions can be answered at the same time.

Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes. Just to add to Commissioner Yaki, I have a concern on this whole issue because I think this happened way before I came on the Commission and one of my concerns would be and any other new Commissioners that have come on board since that time, our concern would be that for the record we want to make sure that we address the issue, whether that's in a closed session, so that if for some reason we get formal litigation from the people that are litigating against us, we'd have an option to either settle out of Court, that's why it's tied to the budget in some reason to know exactly what our
options are. Because if we're hit with a lawsuit say all of a sudden we receive the formal lawsuit in another week it's going to be too late for us to even look at any alternatives prior to that.

And I'd still like to see us answer the Pendley law office that we received that, I guess it's kind of like a potential action against us, to at least make sure we let them know that we're looking into this further and we'll at least get back to them because I'm real concerned that action may go forward without us even discussing what our options are.

COMMISSIONER YAKI: From my experience, when I was on the Board of Supervisors we got sued all the time. The city got sued all the time, and we as members of the board were often named in these lawsuits. Whether they have any merit or not, the fact of the matter is that a lawsuit may or may not be filed. A demand has been made upon the Commission to do specific acts. And I just want to say for the record I find it astonishing we have a General Counsel who is hired who is paid a fair amount of money, at least under the federal system to be the General Counsel for the Agency. And if it's 200 pages long, frankly, to be quite honest I don't care if it's long or not.
The whole point of having a General Counsel is for that General Counsel to act as General Counsel to the Commission. And if someone has filed something that large against us, to not even have a rudimentary explanation to the Commission about what it is, what is the nature of it without getting into the substance, what is the response of the Agency? Are there any deadlines that we have to respond to? Are there any deadlines before the next meeting? If that answers -- even if that answer came forward which is we have no deadline before the February 8th meeting that that is a lot better than I don't know, we've got to read it and figure it out as we go along.

That to me is irresponsible and bad management.

CHAIRMAN REYNOLDS: Just to clear up the facts, are we in a position to give you a rudimentary answer? The answer is yes. What I said was prudence dictates that we go another way. That is my position. Yes, we can respond in a piecemeal fashion, but I don't think that that is prudent.

COMMISSIONER YAKI: But I'm talking procedurally, Mr. Chairman. Procedurally, are there any deadlines that we have to worry about between now and February 7th?
CHAIRMAN REYNOLDS: We are not being sued.

COMMISSIONER YAKI: No, we've not been sued. There's been a demand letter.

CHAIRMAN REYNOLDS: And if we had been sued, we would have at least 30 days to respond as opposed to the few days that you want to --

COMMISSIONER YAKI: Well, 30 days would be before the next Commission meeting.

VICE CHAIR THERNSTROM: We have not been sued.

CHAIRMAN REYNOLDS: If we had been sued, say in Federal Court --

COMMISSIONER YAKI: I'm not saying we have been sued. I know we haven't been sued. But --

CHAIRMAN REYNOLDS: If we have been sued --

COMMISSIONER YAKI: The question is whether or not under any extant federal procedures regarding any whistle-blower complaints, what have you, whatever CFR there may be, the question is I don't know. And it would be nice if the General Counsel could at least explain to us what that process is. And the fact that we have more than ample time to respond to it without jeopardizing it, without it going to a lawsuit before any of us have any ability
to make a decision or learn more about it. That's all
I'm asking. If that can't be answered, then --

CHAIRMAN REYNOLDS: It's not that it can't
be answered, it is my recommendation that it not be
answered in a piecemeal fashion. I don't know --

COMMISSIONER YAKI: It's not piecemeal.

That's what I'm trying --

VICE CHAIR THERNSTROM: It is piecemeal.

COMMISSIONER YAKI: It is not piecemeal.

Piecemeal would be --

VICE CHAIR THERNSTROM: Okay --

COMMISSIONER YAKI: The question is --

CHAIRMAN REYNOLDS: Commissioner Kirsanow,

Commissioner Kirsanow --

COMMISSIONER YAKI: Mr. Chairman, it is
not about --

CHAIRMAN REYNOLDS: Commissioner Yaki,

allow your fellow Commissioners to make comments.

COMMISSIONER YAKI: I will.

CHAIRMAN REYNOLDS: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Thank you, Mr.

Chairman.

I agree with Commissioner Yaki that we
should follow the procedure. This is not a complaint.

We should follow the same procedure that we typically
follow when we receive something like this. We got a letter. I read the first page or so and dispensed with it after that I'll allow the General Counsel to read the next 230 pages or so.

Typically, when we get letters, we simply don't respond. We don't discuss them at this particular point. I'm not so sure there's a response necessary, but I think we should follow the procedure the Commission normally follows and that is let the General Counsel digest it, figure out what the next move is. I've been litigating for 30 years. I've never responded to a letter in terms of an answer. There's never been any deadline to letters and I think we should follow the procedures that we typically have in place. And that creates an anomalous situation.

VICE CHAIR THERNSTROM: I call the question.

COMMISSIONER MELENDEZ: Could I ask a question?

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Are we talking about specific time frames here? If we were to let our internal staff -- or the General Counsel look at this, what are we talking about that we don't let this drag on and we have a specific --
COMMISSIONER KIRSANOW: I think we should ask the General Counsel how long he thinks it takes him to digest it and respond. Apparently, there're 200 and something plus pages with a number of allegations, as you said.

CHAIRMAN REYNOLDS: Mr. Blackwood, are you in a position now to tell us how long it would take you to analyze the letter?

MR. BLACKWOOD: First of all, I'd point out several Commissioners have accurately stated, there is no suit. There isn't one of any kind. That said, if you want a type of analysis procedurally as to potential options that someone might pursue, I would say that that would take a week or so longer.

CHAIRMAN REYNOLDS: Okay, so we're looking at having this on the agenda for the next business meeting.

All right, so the motion -- Commissioner Yaki's motion, as I understand it, is that we amend the agenda so that budget issues are discussed under the Staff Director's Report.

In fact, let's just vote on each item separately. The first motion would be to discuss budget issues under the Staff Director's Report. All in favor, please say aye.
(Chorus of ayes.)

Any abstentions?

Any objections?

(No response.)

The motion passes unanimously.

The second motion would be to -- and I would ask that this be discussed after we discuss the State Advisory Committee, the remaining issues, but the motion would be to discuss Commissioner Yaki's request for a Special Assistant.

All in favor, please say aye.

(Ayes.)

Any objections?

COMMISSIONER YAKI: I object. I would rather it be placed, given consistent with the appropriations issues that it be discussed after the Staff Director's Report.

CHAIRMAN REYNOLDS: After the Staff Director's Report, as a part of budget issues?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Any comments?

Anyone uncomfortable with that?

Okay, so amended, for a second time, all in favor of discussing Commissioner Yaki's request for a Special Assistant and having that discussion after
the discussion of the budget issues, please say aye.

(Chorus of ayes.)

Any objections?

(No response.)

Any abstentions?

(No response.)

The motion carries unanimously.

Finally, there's a motion to discuss the current Staff Director's imminent departure and that I would like to discuss after the SACs. All in favor, please say aye.

(Ayes.)

Any objections?

COMMISSIONER YAKI: I object. Why do we do it after the SACs? Why wouldn't we combine it with -- since everything has budgetary implications, why wouldn't we do it all within the -- after the Staff Director's Report?

VICE CHAIR THERNSTROM: I don't think that is a budgetary issue.

CHAIRMAN REYNOLDS: I don't see how -- your first comment, I agree with. It makes perfect sense to discuss what are the issues, along with your request for a Special Assistant, but this last item, I don't see how it impacts the budget. And since we
have this agenda --

COMMISSIONER YAKI: How could it not?

CHAIRMAN REYNOLDS: The Staff Director's position, the salary is the salary.

Are you suggesting that there are going to be added costs associated with hiring -- or what's the budgetary focus? Is it the salary or the replacement or --

COMMISSIONER YAKI: It just seems to me to flow naturally from the Staff Director's Report, etcetera, all together, than to sort of break it up and then jump back into something that deals with the Staff Director, Staff Director's Report, and budget issues, I think is just bizarre, that's all.

CHAIRMAN REYNOLDS: Okay. All right. I want to leave it where it is and we'll vote on it. This discussion, if it's going to take place, I'm moving that it take place after our discussion of the State Advisory Committees.

All in favor, please say aye.

(Ayes.)

Objections?

COMMISSIONER YAKI: Opposed.

COMMISSIONER MELENDEZ: Opposed.

CHAIRMAN REYNOLDS: Please let the record
reflect that Commissioners Melendez and Yaki oppose the motion. That's odd. So if we had, if at least the majority had agreed with you what you wanted would have been off the table because of the placement.

    Anyway, the motion passes.

COMMISSIONER YAKI: I'm sorry, was that an editorial remark or what?

CHAIRMAN REYNOLDS: That's exactly what it was.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: Okay --

COMMISSIONER YAKI: I'm sorry, was there one last motion that we haven't voted on. You may have dismissed it summarily which is an editorial remark, but we need to vote on it.

VICE CHAIR THERNSTROM: The question of the letter we received.

CHAIRMAN REYNOLDS: Okay, the letter that we received, all in favor of having that discussion at this meeting, please say aye.

COMMISSIONER YAKI: Aye.

COMMISSIONER MELENDEZ: Aye.

CHAIRMAN REYNOLDS: All opposed?

    (Nays.)

Any abstentions? Commissioner Taylor,
what did you say? Thank you. Let me know when you finish.

COMMISSIONER TAYLOR: I was thinking about a substitute motion. I don't want to discuss it today, but I'm wondering if we already have a commitment to put it on the agenda to have either a substitute motion or additional motion there is an understanding that we will discuss it at the next meeting if the General Counsel is prepared to do so.

CHAIRMAN REYNOLDS: I can support that motion.

Okay, we have a substitute motion on the table.

Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

All in favor, please say aye.

(Ayes.)

Any objections?

COMMISSIONER YAKI: Oppose.

COMMISSIONER MELENDEZ: Opposed.

CHAIRMAN REYNOLDS: So you don't want a commitment to discuss it at the next meeting?

COMMISSIONER YAKI: No, we want to discuss it at this meeting.
CHAIRMAN REYNOLDS: Okay. All right, please let the record reflect that Commissioners Melendez and I believe Yaki oppose the motion.

COMMISSIONER YAKI: You don't need to believe, I did.

CHAIRMAN REYNOLDS: Okay. The motion carries.

II. Approval of Minutes of December 3, 2007 Meeting

CHAIRMAN REYNOLDS: Second item is the approval of the minutes of the December 3, 2007 meeting.

I move that we approve those minutes. Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion? Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes. I have a question. I know that there's been a question of whether or not we are confirmed about the appointment dates of Commissioners. I want to make sure that Commissioner Kirsanow, is your appointment date December the 6th or so?

COMMISSIONER KIRSANOW: I'm not sure exactly what date --

COMMISSIONER MELENDEZ: I want to make
sure we confirm that because if, for some reason it ended on November 22nd, and he was appointed -- I think he and also Commissioner Thernstrom -- I wanted to make sure there wasn't a gap because we held our meeting on December 3rd.

VICE CHAIR THERNSTROM: There wasn't a gap. Your appointment was effective the day that your term ended.

COMMISSIONER KIRSANOW: I believe my term ended on the 29th.

COMMISSIONER MELENDEZ: Okay, but my understanding was you were appointed on the sixth?

VICE CHAIR THERNSTROM: No, I was appointed on the sixth.

COMMISSIONER MELENDEZ: I want to make sure because if there is a gap --

VICE CHAIR THERNSTROM: No, there was not a gap. I was appointed on the sixth. Commissioner Kirsanow was appointed, his term because that the last term ended. It wasn't a gap.

COMMISSIONER YAKI: I have a procedural question on this. Who keeps records -- whose responsibility is it to determine when a term has expired and to record when an appointment has been made? The reason I ask that is I remember when I was
appointed in February of 2005, I remember getting a frantic phone call in May saying that my appointment was expiring because my predecessor's term expired May something or other and we needed to get it into -- we needed to get the Speaker to make the appointment in order for me to appear at the next meeting.

When I asked if that appointment could be made retroactively I was told no, it had to be done because only from the appointment date could it be sent forward. So my question is and this is not any backhanded attempt at anything. This is sort of procedurally because the question is where does this information occur?

It would be nice to sort of know for certain what the procedure is -- who notifies whom and where that information comes from, simply because just for Commissioner Kirsanow to know that the White House website announced it on the sixth, but we know that it occurred before then. So the question is how does that occur and how did that occur? I know announcements often trail when they actually did it, but it would be nice to sort of know how and when that happens because everything is different.

CHAIRMAN REYNOLDS: That is a very good point.
Mr. Staff Director?

STAFF DIRECTOR MARCUS: There were a few parts to that question. With respect to how we know when terms have begun and end, as a general matter I assigned to the General Counsel some months ago the project of trying to determine the beginning and end date of Commission terms. The reason I had to do that is because there was some confusion, both prior to and subsequent to the judicial decision in the case involving Commissioner Kirsanow a few years ago. In that case, the Court observed that historically and since the 1983 reauthorization, there had been some confusion among the dates and in the Court's opinion some inconsistencies.

The Office of the General Counsel made a determination as to the start and end dates of each term and in order to do it properly actually had to go all the way back to 1983 to find out the beginning and end of each term.

As for how we know when the terms of that person is being appointed --

(Static sounds.)

COMMISSIONER YAKI: Somebody's Blackberry is too close to the microphone.

STAFF DIRECTOR MARCUS: Typically, I am
informed by the appointing authority. I can't say that I recall exactly the specifics on dates from hearing on Commissioner Kirsanow, but I do recall that it was in November prior to the expiration of his term that I was notified of his reappointment by the White House.

COMMISSIONER YAKI: Now do we notify the appointing authority about the impending expiration of a term? Or do we notify the appointed -- do we notify the Commissioner to seek the reappointment? How does that work?

STAFF DIRECTOR MARCUS: In each time that I'm aware of, the Commissioners have been aware of their expiration of their dates. We certainly did provide all of the Commissioners the analysis provided by the Office of the General Counsel indicating when terms are coming to expiration. I don't know if we have an official process for notifying appointing agencies, but the practice has been to give at least an informal heads up to the notifying authority and I have typically done that, both with respect to the congressional and executive appointees.

COMMISSIONER YAKI: Okay, thank you.

CHAIRMAN REYNOLDS: Commissioner Thernstrom?
VICE CHAIR THERNSTROM: I might add that it is not unusual for terms to expire and for there to be a gap between the end of one term and the appointment of somebody else. I came in to take the seat vacated by Carl Anderson, I believe, but there had been quite a gap in time between his resignation and my appointment.

COMMISSIONER YAKI: So just to close this loop, I'm sure we do, but we have official notification that Commissioner Kirsanow's appointment came prior to the December 3rd meeting?

CHAIRMAN REYNOLDS: That question is directed to --

COMMISSIONER YAKI: At you or whoever.

CHAIRMAN REYNOLDS: Staff Director?

STAFF DIRECTOR MARCUS: I would have to look through to see. I don't know whether what you would call official -- I recall oral notification. I don't recall if there was written notification.

VICE CHAIR THERNSTROM: I do remember, plus I remember the two of us had different dates. I remember --

COMMISSIONER KIRSANOW: I did receive a telephone call advising me --

CHAIRMAN REYNOLDS: Commissioners Melendez
and Yaki, they raise a good point. We need to have a procedure. We need to document when terms begin and expire. We need to document how we were notified that someone was appointed. This -- it's too loose.

COMMISSIONER YAKI: I know the congressional appointments are defined because the Speaker has entered them into the Congressional Record. So if you do a search on Thomas, you'll find everyone who was appointed by Congress, whether it was Commissioner Herriot, Commissioner Melendez, myself and Commissioner Thernstrom some years back. That becomes an official paper. And I remember that for my appointment the Staff Director was waiting for that piece of paper to show up, that line to show up in the Congressional Record that Speaker Hastert upon the recommendation of the Minority Leader had appointed me to the Commission.

Presidential seems a little more loosey-goosie, it sounds like.

COMMISSIONER KIRSANOW: I think there is a record kept though, Michael, as I recall from my case. Somewhere in the bowels of the White House, I understand that there's something that indicates there's -- they had it with Victoria Wilson and others that indicates what those appointment dates were, when
those announcements were made. Maybe someone remembers this, but I think they were produced in District Court. I may be mistaken, but it would be -- I agree with you, Mr. Chairman, that it would be good to -- I don't know if it requires an administrative instruction, but some type of a rule where if you're notified by the White House or whomever, the Commissioner provides notice to the Commission on such appointment and then that would be followed up by official documentation to be secured by the Commissioner from the appropriate appointing authority and then it's placed in some type of a ledger that we keep.

STAFF DIRECTOR MARCUS: Mr. Chairman, if I may, the General Counsel has just reminded me that the White House does, in fact, send up a written form, actually a certificate indicating the date, so I believe we must have that and we can certainly confirm that.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Just a question because it pertains to these minutes, and if there is a gap and we held a meeting within that gap of November 27th to the 6th and our meeting was on the 3rd, it would affect the minutes, because Commissioner
Kirsanow actually voted in that meeting. So just to play it safe would we kind of hold off on the minutes until you find that out and table them until the next time? Otherwise, it doesn't matter to me if we want to go ahead and vote on it, but I'm just --

CHAIRMAN REYNOLDS: I'm comfortable --

COMMISSIONER MELENDEZ: What it actually means.

CHAIRMAN REYNOLDS: Okay, so we're going to table the vote. If we can get the information during this meeting, then we'll revisit the vote. If not, then we'll just close it off until we get the confirmation one way or the other.

Okay, folks, the motion that's on the table is the approval -- no, I'm sorry. Never mind.

III. Announcements

CHAIRMAN REYNOLDS: Announcements are next.

Last week, the Commission on Civil Rights marked the 50th anniversary of the swearing in of the first Commissioners at the White House ceremony on January 3, 1958. President Eisenhower had been forced -- only a few months before, President Eisenhower had been forced to take the drastic step of federalizing and dispatching the National Guard to Little Rock,
Arkansas to enforce a court order to integrate a public high school in the face of defiance by Arkansas' Governor Faubus. Historian Foster Ray Dulles notes that against this tense backdrop, Eisenhower was especially anxious to find men to serve on the Commission who might have an ameliorating effect on the prejudices and passions inflamed by the Little Rock crisis; men, thoughtful men, who would command the full public confidence. He found those men in John Hannah, president of Michigan State University, who was named chairman; Robert Storey, Dean of the Southern Methodist University's Law School who was named Vice Chairman; John Battle, a former Governor of Virginia; Father Theodore Hessler, president of Notre Dame; James Ernest Wilkins, an Assistant Secretary of Labor; and finally, Doyle Colton, a former Governor of Florida. Though their appointments were met with general approval, a number of newspapers and magazines expressed doubt at the time that the Commission's ultimate recommendations would amount to much.

An editorial for The Nation noted that the Commission was not likely to break many lances crusading for civil rights. History has proven that is wrong.
The Commission's first project was to look for evidence of racial discrimination in connection with voting rights in Montgomery, Alabama. From there, it went on to hold hearings on the implementation of Brown v. Board of Ed. in Nashville and on housing discrimination in Atlanta, Chicago, and New York. The facts gathered in these and other hearings, along with the Commission's recommendations were presented not just to Congress and the President, but to the American people. These findings of facts and recommendations became part of the foundation upon which the Civil Rights Act of 1960, the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968 were built.

The Commission's efforts contributed to what has become a sea change in public opinion on issues of civil rights and that legacy is one that we honor and carry forward today.

The next announcement --

COMMISSIONER YAKI: And of course, it's not just men any more, but women on the Commission.

CHAIRMAN REYNOLDS: That is correct.

VICE CHAIR THERNSTROM: Generic term.

COMMISSIONER YAKI: Well, historically accurate. I'm sure that's what they thought.
CHAIRMAN REYNOLDS: Next week marks the birthday of Martin Luther King, Jr. Reverend King was one of the main leaders of the American civil rights movement. A Baptist minister by training, Dr. King became a civil rights activist early in his career leading the Montgomery bus boycott and helping to found the Southern Christian Leadership Conference. His efforts led to the 1963 march on Washington where King delivered "I Have a Dream" speech raising public consciousness of the civil rights movement and establishing King as one of the greatest orators in American history.

In 1964, King became one of the youngest persons to receive the Nobel Peace Prize for his efforts to end segregation and racial discrimination through civil disobedience and other nonviolent means.

King was assassinated on April 4, 1968 in Memphis, Tennessee. Martin Luther King Day was established as a national holiday in the United States in 1986. Today, we honor the principles of liberty, equality and nonviolent social change espoused by Dr. King.

And finally, I want to -- we've already put the issue on the table, but Staff Director Marcus will be leaving us, I believe, on January 18th.
STAFF DIRECTOR MARCUS: Nineteenth.

CHAIRMAN REYNOLDS: And I just want to extend my thanks. Ken, you've done a great job. When we first started we had a -- we had some major challenges and in terms of getting our policies and procedures in place, creating more transparency, as well as the substantive issues that we dealt with. I think that you've done a marvelous job under difficult circumstances, so thank you for your service.

VICE CHAIR THERNSTROM: Here, here.

CHAIRMAN REYNOLDS: Staff Director's Report.

IV. Staff Director's Report

STAFF DIRECTOR MARCUS: Thank you, Mr. Chairman. This is, as you will understand, an emotional time for me as today is my last Staff Director's Report after three years of service. I am grateful to the President for providing me with the opportunity to serve with such outstanding men and women on issues of such ultimate importance to this country. I am grateful to the Chairman, the Vice Chair and the Commissioners for their leadership through both difficult times and important successes. And I am endlessly grateful to this staff for the grace, professionalism, perseverance and courage with
which they dealt with problems and challenges greater than most on the outside would imagine.

When the President first offered this position through this staff to me, there was not a single person to whom I spoke who thought it would be a good idea for me to join this Commission.

(Laughter.)

Every single person to whom I turned for advice thought it would be a bad idea for me to come to this Agency which was quite famously at that time an Agency in turmoil with substantial management operations and budget challenges and problems that were very highly publicized as well as problems that were not as well publicized at that time.

Shortly after my arrival, I was cautioned by a Member of Congress that given the extent of the problems that we had here, it was unlikely or impossible that the current staff that I had inherited would be able to help me to succeed in our challenges.

What I have found instead is that we have in this Agency from the Commissioner level down to the lowest level of staff, a group of people who have been able to take challenges greater than people would imagine and turn them into successes.

As you may recall, Mr. Chairman, when I
arrived, the Agency had just gone anti-deficient, although that fact was not publicly known nor had it been disclosed to Commissioners, and moreover, we were able to determine shortly after my arrival that the Commission was headed towards further anti-deficiency without further changes which it appeared could require office closures and/or layoffs. We also spoke with an auditor who was unable to provide any sort of an audit, unable to locate a financial ledger, and unable after many, many months even to provide a qualified, let alone an unqualified opinion on our financial statements.

The situation here was one which a less dedicated, courageous, professional staff would not have been able to deal with. And yet, what I found is that we have people who are able to come together, work together, and deal with challenges, deal with potential layoffs, deal with potentially, personally, financially devastating consequences and to deal with them with grace and maturity and professionalism of a sort that I think people do not know. I'm pleased that there are in the room members of the staff of congressional committees that conduct oversight because I think it's important for them to know the courage of the members of this staff including
especially the career staff of this Agency.

During the first year we were so close to anti-deficiency that we needed on a daily basis to go through the records, cutting costs, making difficult decisions. Tina Martin who is here, and Pam Dunston and I and other staff members on a daily basis, including staff members for whom this was not a part of their responsibility, were coming up with tough challenges and tough solutions.

The union represented here today, Vanessa Williamson is here, work together, the staff, everyone came up with creative ideas for what we could do to get out of the problem. People work together as a team, showing extraordinary dedication at a time which undoubtedly created extraordinary personal stresses for members of the staff.

At the same time, the Commission had been producing reports of a quality which created concerns for the incoming Commissioners and which created concerns that were expressed to me by many members of the staff. We created new procedures. We did new work and we have over the last year, few years, generated an extraordinary number of reports. Some of them love them, some people don't love them, but I don't think that there's any question that the staff
work that has gone into them has been extraordinary. Some of the people are here today. Eileen Rudert and Maja Jweied and Sook-Foon MacDougal, Margaret Butler, Eileen Rudert -- I don't want to leave people out, but I would say that all of the programmatic staff went through extraordinary efforts to implement new procedures, to issue an extraordinary number of reports, to issue an extraordinary number of briefings at a time that our budget was reduced, where we had fewer and fewer staff and where each person had to do more and more at a time when this situation of the Agency was uncertain. And I have to say that that was absolutely astonishing for me, particularly in the early years.

I hate to single people out because I don't want to avoid people and anyone whom I don't mention I certainly don't mean offense. It seems to me that there are a couple of people who might be mentioned just because they are representative and because they may not be known to members of the Commission. And these are just two representative stories. I think the Commissioners are aware that we had a long-term librarian who was an institution here and provided invaluable service for many years. At her retirement, we were unable to backfill position.
I had hoped to use that slot to hire a congressional and public affairs expert which is something that had actually been recommended to me by congressional staff. We may not be able to do that now, but at any rate we were not able to backfill the librarian.

We do have someone who had been filling the role essentially of assistant librarian and her name is Vanessa Williamson. When our librarian left, she then had to do the work of two people instead of one. She had to maintain the library, maintain the document management responsibilities of the library. She had to deal with the customer service responsibilities of the library. She never once complained to me that her work has been doubled and her compensation not doubled. Never once complained about being short-handed. Instead, has been able to perform extraordinary work. We've been able to redo parts of the library in terms of the furnishings that she's managed to do. I hope to get her extra staff. I wasn't able to. She's able to get new books in, really provide extraordinary work. I give this just as one staff example of what I think is the heroism that's performed every day and not really recognized or acknowledged.

I'll mention as another one, we have, as
you know, only one IT person for this Agency, Michele Yorkman Ramey, who also has other responsibilities beyond IT and yet, not only has she been able to deal with the challenges of a somewhat antiquated system, with the challenges of purchasing new system, she was able single-handedly to build a website to serve as the centerpiece of a Campus Anti-Semitism Program, to do it herself so that we did not have to use additional taxpayer money and did it in an unsung manner. These are just a few of the examples in national operations, in our regions, in headquarters. We have had people who have worked with extraordinarily creativity and dedication and devotion.

Looking back at the challenges that we faced three years ago, I don't think that I could have imagined that people could rally together as they have done and to do as well as they have done. The staff remained under extraordinary pressure to do too much with too little and yet they continue each day to shoulder those burdens because of the dedication and commitment that they have to civil rights and I salute every member of this Agency for that extraordinary work which they have done, again, from the members of the Commission to the members of the executive staff.
to all members of the staff. It really has been personally and professionally an extraordinary privilege.

Yesterday, I had an opportunity to meet with a staff person who I will not mention, but the staff member told me that she believes now that she is able to hold her head high in meetings with other federal agencies in a way that she could not a few years ago when we had the problems with finances and otherwise.

I think that there should be no question today that the members of this Agency can hold their head high in meetings with any government or non-government agency because the work that people have done has just been superb and I want to thank you all for the personal privilege of having an opportunity to know you, to learn from you and to work with you.

(Applause.)

Thank you.

V. Management and Operations

STAFF DIRECTOR MARCUS: I believe that the motion was approved for the budget to be discussed after the Staff Director's Report, and if that's the case then I won't address the budget until then, but I would like to address one other topic namely, Lean Six
Sigma.

VICE CHAIR THERNSTROM: I am sorry, what was the topic?

STAFF DIRECTOR MARCUS: Lean Six Sigma.

As I indicated over the last few years, we implemented a number of procedures that deal with a wide range of issues including program planning and rechartering of State Advisory Committees. And I believe that those procedures have been extraordinarily helpful in improving quality and efficiency within the Agency. At the same time we have had the challenge of trying to implement new and complicated procedures at a time of small budgets and significant demands on staff.

I identified some challenges that I felt that we needed to deal with and for which a concentrated management initiative was warranted and important. And the two issues that I was particularly concerned about was the efficiency and quality of our State Advisory Committee rechartering process and the efficiency and standardization and quality of our national report and projects.

I brought together a significant part of the staff, including regional staff, and office staff, working with consultants from Booz Allen to use the management process known as Lean Six Sigma to identify
areas of waste or inefficiency and to figure out how
we can address these problems.

We have gone through this process and we
now have a series of time tables and work tools and
procedures which the staff can use, I believe, to more
efficiently execute the policies which this Commission
has implemented and I believe that they will provide a
useful road map for employees and for my successor.

For the State Advisory Committee, we were
concerned to create a standardized process, to create
quality indicators that reflect the guidance provided
in AI 5.9 as approved in 2006, and to mark the
process, make the process more efficient in terms of
the times to prepare an acceptable SAC process.

As a result of the work of staff,
including line staff end managements working with Booz
Allen, we now have a standardized document in uniform
SAC member recruitment process that reflects input
from regional offices, a list of quality indicators
used by the regional office when recruiting SAC
members and preparing SAC appointment packages, and a
reduction in the time that expectations for SAC
recruitment and outreach, application completion
review and evaluation, etcetera, as well as new tools
to track and monitor progress. This is reflected in
the materials that had been distributed and for regional staff we will be discussing these procedures and tools next week.

For the reports, my concern was to make sure that we are able to complete our statutory reports within the requisite time and that we are able to try to expedite the completion of briefing reports within a more appropriate time frame. As a result of the Lean Six Sigma process, we have a standardized process and timetable for statutory report completion, process and time line for briefing reports, as well as various other new tools and report processes. All of this goes towards ways explaining to staff members how they specifically can implement these policies, what they should be doing, when they should be doing it, etcetera, etcetera, so as to avoid confusion, misunderstanding and nonstandardization.

It was my observation at the beginning that we institutionally had the know-how to deal with the various challenges we had, but it was dispersed in different parts of the Agency, that there were some people who would have best practices in one area and others in another. And one of the key aspects of this process has been to identify the challenges or weaknesses, identify the best practices, articulate
them, separating wheat from chaff, work with all of
the staff members to try to get a common understanding
and then develop processes which would be feasible and
which would also enable us to charter the State
Advisory Committees more rapidly and provide stronger
reports in a more efficient manner.

There is one -- and this is embodied in
these materials for staff we will be discussing. I do
have to flag that there is one issue that was
recommended in this process that I was not able to
approve because I believed it to be a matter of policy
and I will recommend that it be keyed up for
discussion at a future staff meeting, but I wanted to
give you at least a little bit of a heads up on the
issue.

As you may recall in 2005, as a result of
the working group on reform, we amended the process
for preparing reports in order to provide input from
Commissioners. And we changed and restructured that
process in various ways. One way that we did was to
require a very early version of the statutory report
from staff, and get input on that as well as other
drafts as well.

The feedback that I have gotten from staff
consistently has been that it is difficult, if not
impossible, to provide that first draft within the requisite time frame and that as a result, they are spending a lot of time early on trying to polish something up for Commission review at the detriment of doing research that they should be doing in that phase. I would expect at a later time there might be a reconsideration of tweaking that.

Now I should say that the directive that I gave to staff was that if they are going to make a recommendation that reduces in any way the draft that is given early on to Commissioners, that I would find it acceptable only if there were something additional that Commissioners receive at some other point that gives them additional opportunities for input. And I believe through this process there's a suggestion which may be made during a subsequent meeting that attempts to do that.

Other than that one pending issue of policy which I think will be before the Commissioners, whether they want to discuss that, what I think what we have now is a set of tools and timetables which should provide both a road map and a set of instructions to help the staff in their process.

If there are any questions, I could give it a try and I'll also say that we have Ken Thompson
of Booz Allen who is here as well. Not only did the staff do a good job on this project, but Booz Allen was extraordinarily helpful to us throughout this entire process.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Just a question. How much money did we spend on this project and it was over one fiscal year or two?

STAFF DIRECTOR MARCUS: It was one fiscal year and it was an amount of money that was -- we closed the contract at the very end of the fiscal year using money that had not been spent.

COMMISSIONER YAKI: Which was?

STAFF DIRECTOR MARCUS: We would be happy to find that number for you and provide it. I would say that Booz Allen is an extraordinary consultant and we did make a significant investment in this process and I'll be happy to find the information if we haven't provided the information to you already.

COMMISSIONER YAKI: Can we get it before the end of this meeting?

STAFF DIRECTOR MARCUS: We'll give it a try.

COMMISSIONER YAKI: Thank you.

CHAIRMAN REYNOLDS: Any other questions?
VICE CHAIR THERNSTROM: I don't have a question, I just -- I would like to very briefly respond to the Staff Director's Report, if that's all right.

Ken, I should have said this before. I just was asleep on my feet here. The federal government has been lucky to have you. The Commission has been lucky to have you. The American public has been lucky to have you and I was here in the old days, as it were, where there was budgetary chaos, general administrative chaos, no consistent procedural framework within which we operated and an atmosphere of extraordinary distrust and incivility that poisoned what should have been bipartisan work on the part of people who yes, had disagreements, but nevertheless should have been able to work together to produce reports of quality and we did not produce reports of quality and they were not able to work together and again, the whole Agency was in, as we know, in dreadful disarray. And so I salute you, but I also wanted to say I personally really will miss you when you leave.

I am incredibly grateful to what you've done for the Agency. I did not want to miss the opportunity to say something on the record to that
CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Mr. Chair, I'd like to echo what Ms. Thernstrom said. I'm also one of the old timers, along with Commissioner Thernstrom and I recall what it was like and that's why I look forward with trepidation with life without you.

One thing stood in mind, Ken graciously gave credit to the staff and staff does, in fact, deserve credit. I always try to extend credit to the staff which I think is under appreciated and at least by members of the public and maybe our stakeholders who don't realize the yeoman's work that staff does. I'm always impressed by the reports and the witnesses that we get for the hearings and everything else that the staff does. And every time I have questions or I have issues, the staff does a great job, but I think to a large extent that comes from the leadership. I recall the time and Commissioner Thernstrom will remember this when the Staff Director prohibited us from even speaking to the staff, not this Staff Director. And I recall when Ken first came on board, one of the first things we did was initiate an audit. And I remember sitting in Ken's office talking with the auditor two months after the audit began and asked
him where things stood and he had a deer in the headlights look on his face. He was completely and utterly baffled. He had no clue where anything was. We didn't have a general ledger sheet. And in the last two years, thanks to Ken's leadership we've had a clean audit for the first time.

In addition to that, when Commissioner Thernstrom and I first came on board, we had two GAO reports that indicated we were in, as Commissioner Thernstrom said, complete disarray. And there were a number of recommendations made by those GAO reports as to how we could right this -- begin to right this. None of those GAO reports had been implemented for years until Ken came on board and then they were implemented in short order, very methodically and thankfully in a way that I think caused as little dislocation to the operation of the Agency as possible.

The one thing that was extraordinary to me though and this goes back to the audit was when we first came on board and we insisted that for the first time in 12 years this Commission had an audit, we went through -- I remember making a motion that we have interviews with a number of auditing agencies and we brought in everybody, a dog and pony show, and
virtually every one ran screaming from the assignment. They refused to even engage. That's how bad we were.

And this is a tiny Agency. It's not as if we said could you please audit the Defense Department? This place was in such bad shape that no one wanted to undertake it and miss maybe incurring a liability or the embarrassment of not being able to reconcile where we were. And that's how bad we were and now I'm pleased to say with Ken's departure all those things have been rectified and that's why I look forward with trepidation to the next few months with Ken.

Thanks very much, Ken. It's been a pleasure, based on the contrast from what it was before.

STAFF DIRECTOR MARCUS: Thank you.

CHAIRMAN REYNOLDS: Are we ready to discuss budget issues?

STAFF DIRECTOR MARCUS: I was able to find an answer. As I had indicated, Booz Allen is good, but we did have to pay for the value they provided. The number that I just received is that it was $129,500.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes, just a question since this is the first time I've looked at
this document. And since you'll be leaving also, is it possible for Booz Allen to come back after I read this over that we could ask some questions as to this at some later business meeting?

STAFF DIRECTOR MARCUS: They are here to answer questions now. If you want them to come back at a later date --

COMMISSIONER MELENDEZ: Yes.

STAFF DIRECTOR MARCUS: I'm certain that they would be pleased to do that. Whether they can do it within the existing contract or whether it would cost additional money is something we could look into and how much it would be.

COMMISSIONER MELENDEZ: Are they here in D.C.? Where are they?

STAFF DIRECTOR MARCUS: They're in Atlanta.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes, to paraphrase earlier comments, this is 51 pages of very dense material that we've just received right now. It's hard to digest and comment on it right now, but I'm actually going to ask a couple of questions of the Booz Allen person if he or she can make himself available.
STAFF DIRECTOR MARCUS: He's here.

COMMISSIONER YAKI: Who is it? What's your name?

CHAIRMAN REYNOLDS: You may want to pull up a chair, you may be there a while.

COMMISSIONER YAKI: No, you won't. I've only had ten minutes to take a look at this. I can't possibly form an opinion or --

VICE CHAIR THERNSTROM: We do not want to underestimate you, Commissioner Yaki.

MR. THOMSON: My name is Kenneth Thomson. I'm a Senior Associate with Booz Allen Hamilton. I've been with Booz Allen Hamilton for seven years. I'm the Business Manager for the Lean Six Sigma practice.

COMMISSIONER YAKI: What's your first name again?

MR. THOMSON: Ken Thomson.

COMMISSIONER YAKI: Ken. Okay. Thank you, Mr. Thomson.

I just had one quick question. When you were going through the Six Sigma process with regard to the -- you were doing this with regard to statutory or briefing reports or both?

MR. THOMSON: Both.
COMMISSIONER YAKI: Were you given, as part of your analysis, did you do any case studies of any of the reports that had been done and the process from start to finish about how you went from A to Z?

MR. THOMSON: That's correct. We stepped through -- you said Six Sigma. There's two distinct disciplines. There's Lean and Six Sigma. They're used kind of interchangeably, but they're actually not. Six Sigma is about removing defects from a process. The process is creating too many defects. One of the first things we do is come and ask the question what is the problem? There wasn't a problem with defects in reports. The reports were actually very accurate and very well done. The problem was timing, how long it took and the difficulty of getting into the process. So on the side you hear mostly I'll talk about is on the lean side.

COMMISSIONER YAKI: Were you -- did you examine the report on the Native Hawaiian Government Act?

MR. THOMSON: Not the report itself.

COMMISSIONER YAKI: Do you know about the history of that report?

MR. THOMSON: I was told the history, but we did not research that.
COMMISSIONER YAKI: The fact that that was a report that was done in -- from start to finish including a vote by the Commission in five months surprise you?

MR. THOMSON: Oh, yes.

COMMISSIONER YAKI: Would the fact that the Commission stripped all of its findings from the report surprise you?

MR. THOMSON: Stripped its findings from it?

COMMISSIONER YAKI: Stripped it.

MR. THOMSON: That sounds like that would be a possibility to speed the process if that's what happened.

COMMISSIONER YAKI: Actually, it wasn't. It was for other reasons as well. I'm just surprised that given some of the -- given some of the issues of that report and its controversy in terms of its content that you weren't -- you did not look at that as part of your mandate.

Did you take a look at the report on Benefits of Diversity in K through 12 Education?

MR. THOMSON: We looked at each report, but we did not study it in this. This was a study of the process to generate the report. The report
itself, as the final product was not the topic. The topic was how can we get the reports through the process in a more timely fashion.

COMMISSIONER YAKI: That's all the questions I really have for now. All the rest I will need to have time to digest and summarize the content.

MR. THOMSON: Does anyone else have questions?

Thank you for your time.

CHAIRMAN REYNOLDS: Thank you very much.

COMMISSIONER YAKI: I'm sorry, I will ask one more question. When you looked at the -- on the report Benefits of Diversity in K through 12 Education, this was in the -- the briefing was held in July 2006, would it surprise you to know that the report was voted on in November of 2006?

MR. THOMSON: No, that would not surprise me.

COMMISSIONER YAKI: Why? Given the number of reports that have not yet been completed, why would that not surprise you?

MR. THOMSON: The part of studying the process is to find every point in the process where the process moves quickly or slows down. So one of the things that we analyzed, in this very room we went
through an exercise called value stream mapping. You'll see it is a very dense page in there and we apologize for that, but it was the length of this wall that we have covered, and it showed every step in the process, how long everything takes, the basic cycle times and lead times, cycling time it takes to do the process and then lead time which you talked about.

COMMISSIONER YAKI: I'm confused then because you said it would surprise you to learn that the Hawaiian report went from briefing to completion and vote from January to May, but it would not surprise you that the Diversity in K-12 Education report would go from briefing to final report vote from July to November. Why the difference?

MR. THOMSON: What you have is variation in your process and that's one of the first things we're trying to target. The variation was, like you said, one was fast, one took a long time.

COMMISSIONER YAKI: No, no, both of them were fast.

MR. THOMSON: Both of them were fast.

COMMISSIONER YAKI: We're talking July --

MR. THOMSON: Both of those are fast processes.

COMMISSIONER YAKI: End of July, August,
September, October, vote.

MR. THOMSON: What the staff gave us is how fast is fast? What's the fastest you've seen this happen? And when you look in there you're going to see a cycle time as long as or as short as and you're going to see every junction in the process meaning it has taken as little as say one part of the process, one month for that report, and maybe three months for a longer report. And so then you begin to see that there is a difference between those reports.

So look in there and you'll see cycle time. It will be a number dash number and that will tell you as little as and as great as. Now the shortest possible is probably the sum of the little as. The longer reports will be the sum of the bigger number on the right side. You'll see sum, and that's why you'll see from 12 to 17 months. You'll see numbers like that. From, like you said five and a half for that up to 12 months. Seven and a half is the kind of number that popped out. But you'll see that there is a range, there's an acceptable range. If that range is acceptable to you, that is yours to call.

Our job is to document here is the window of time that it takes. Depending on the type of
report and difficulty, you now have an ability to look inside of there and find the cycle time that you can expect when the Commission comes back to you and says I need time to do these things. You'll be able to look inside of that document and say okay, so this research is going to take 45 days. This is going to take this long, and you'll have a good understanding and clarity, transparency I think I heard earlier, about how long that process will take.

COMMISSIONER YAKI: And what are the variables right now that impact that length of time? For example, why would a report in April of 2006 not be done until -- it still hasn't been done; whereas a report in July of 2006 would be run out the door four months later? What are the variables that you saw?

MR. THOMSON: Ken, would you like to answer that or would you like me to answer that?

STAFF DIRECTOR MARCUS: I could take a stab from my experience and if you want to add to it, it's fine.

I think that there are a number of variables and one of them is whether there is a particular priority as a result of external events like pending legislation or some reason why we need to do something quickly.
I think that some offices have been quicker than others and we've found variation among the amounts of time that some offices have taken versus others; and some individual staff more quickly than others. I also think that we were able to do some projects more quickly earlier on than more recently for different reasons, including the fact that we've had attrition over time and additional procedures added. There are a number of variables that I can think of off the top of my head.

MR. THOMSON: The ones that stuck out most for us were things like the sheer volume of data that needed to be crunched. That was one that popped up. We saw that rework was one of the primary things, rework from going back and forth internally, back and forth to the Staff Director, back and forth with you. So depending on how much and how significant that rework was, that's what began to draw the time out. So one of the things you'll see in there and it's true for the SAC process as well, as we're trying to define -- help you be able to define for those who are writing reports, giving you SAC charters, what's called -- it's basically called critical to quality which is -- I'm sorry for the jargon, but it means what is important for this report to happen? What are
the things that you are looking for to make sure it answers the mail? And it's almost a punch list of things you go through and say yes, yes, yes, it has this. If it has that, then I heard the word procedural brought up -- procedurally, they've done everything right, and at that point it gets down to thinking about the message itself and how you want to craft that message, but at least you're comfortable that they have gone through every step in a very logical, thoughtful way and a common way, a standardized way as you can see that.

COMMISSIONER YAKI: How does your chart evaluate what the Staff Director talked about which is essentially prioritization? In other words, what kind of a value is assigned to that and what is its impact in terms of quality control as it goes along?

MR. THOMSON: When you say -- you're talking about the prioritization of the reports?

COMMISSIONER YAKI: Yes.

MR. THOMSON: In sequencing order of said reports?

COMMISSIONER YAKI: In terms of getting it out the door, yes.

MR. THOMSON: That is something that is definitely handled on a higher level, depending on the
sequencing and the resource, if it happens. You'll see on the -- it's called the value stream map, but you'll see how many people it takes to do it. And in all cases and in any industry or government, if you bring more bodies to an equation, it's going to pick up speed. So it says it takes this long -- if you want to change priorities and you shift resources, you can pick up that cycle time and that's kind of what happens.

COMMISSIONER YAKI: I'm just wondering, this will be my last question, I'm just wondering to what extent on any of these reports, you didn't dissect how reports were done, how many people were assigned, why those decisions were made or anything like that?

MR. THOMSON: We did dissect how they're made, how they're made. I kind of wish we kind of kept the value steam maps on the wall here to see that, but it was literally the length of this entire wall probably back to where you see that tape paper and it talked through every stage and the entire staff came up and they did a wonderful job of going through and themselves clarifying amongst themselves when things are supposed to take -- when they're supposed to be done and how long it's supposed to take. So
that was the best practices that Mr. Marcus was bringing up and saying that they were able to amongst themselves say here's the best way to do it. We had a SAC chartering process. We had someone who was a -- I'll say an ace at it who had a lot of best practices figured out. And sharing that right there, live fire, sharing it, going through the sector side saying wow you did that? How did you get somebody to come back so fast? Here's what I did. And then we were able to document that process as how the best process and how everyone is taking it back to their own process and using it going forward.

COMMISSIONER YAKI: I just want to clarify, so for example, like on the Benefits of Diversity in K through 12 Education, again, that was a July 28th briefing report put out the door in November just a few months later. Did you take that as a case example?

MR. THOMSON: Actually, both those reports were brought up in our discussions as an example. Here's an example of -- because that's one of the questions we asked, how long? What was -- I'll say what was the most painful one? What took the longest? What was the hardest? Because what we're looking for, as Ken said, is we're trying to identify waste and
value, that's what we talk about. When you find a process that's sped up, that's expedited which is apparently what happened in those two cases, then what you had most likely was a very strict focus on value and a lot less waste in the process. So by doing that we have a good understanding of what the best process, we call it improved state future/future state could look like, should look like and here's what reality looks like and here's the swing of variation between. And we try to move closer to that. We experience this a lot across governments.

COMMISSIONER YAKI: Do you have notes on those two processes?

MR. THOMSON: We have the actual value stream maps. I think they're still here local, but the notes, everything that happened along the way, we have documented.

COMMISSIONER YAKI: Can I have access to the notes on those two reports?

MR. THOMSON: Particularly, those reports are brought up in conversation while we were talking, so that would be a -- I don't know how that would be captured in such a way that specifically calls out those reports.

COMMISSIONER YAKI: See, that's what I was
asking, I was asking if anyone mapped out how those
two reports were expedited versus the other reports
which haven't been done or took a lot longer or what
have you.

MR. THOMSON: What they do is what -- and
one of the things you'll see in there is a current
state map inside what you're going to see and a future
state. In the future state, if you look at that, it's
going to be as close to what you describe as possible
saying what was the best time that ever happened?
What was the fastest way you get it through? We did
this work for the CDC and for the travel process.
Extremely long process to travel if you're in the CDC
to travel overseas, unless there's something, an
outbreak. And if there's an outbreak they can get
over there as fast as anybody. That's the improved
state that everybody wants to get to and one of the
things we do is document here is a process for
everyone which is several months long and here's one
that can in the order of less than a week.

Current state/future state, so you'll see
both of those for every process in there, for both the
briefing, statutory reports and --

COMMISSIONER YAKI: And future state is
sort of what you want -- what the ideal would be to do
going forward?

MR. THOMSON: Correct.

COMMISSIONER YAKI: Does that accommodate backlog?

MR. THOMSON: It accommodates backlog?

COMMISSIONER YAKI: Does it accommodate backlog?

MR. THOMSON: It actually is the way that you expedite backlog.

COMMISSIONER YAKI: Okay.

MR. THOMSON: We've brought this to industry as well. This is what we use to help them set up and clear out their backlog and collect revenue.

COMMISSIONER YAKI: Thank you.

CHAIRMAN REYNOLDS: Commissioner Thernstrom?

VICE CHAIR THERNSTROM: Commissioner Yaki referred to reports and I quote him "run out of the door" and it seems to me quite a loaded description as if there was something fishy about getting work done expeditiously with the implication, it seems to me, that the process was ideologically and inappropriately -- was inappropriately, ideologically driven. And I hope I've heard wrong there.
Obviously, as we've just heard, there are many factors that go into the timing and I -- well, again, those words caught my ear and the -- it seems to me the implication, hearing between the lines, as it were, is most unfortunate.

COMMISSIONER YAKI: I would just say you have a very good ear, Commissioner Thernstrom.

VICE CHAIR THERNSTROM: I have a very good ear, yes.

COMMISSIONER YAKI: You have a very good ear.

VICE CHAIR THERNSTROM: Yes, well.

CHAIRMAN REYNOLDS: Any other questions?

Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes, the question on rechartering the SAC, are we saying that we're already applying this process or are we saying we're going to apply because we've got four rechartering today. Are we saying that those went through this process or are we going to start this process of this new process later?

STAFF DIRECTOR MARCUS: We're going to roll it out next week.

COMMISSIONER MELENDEZ: So for today, we're under the old process?
STAFF DIRECTOR MARCUS: That's right.

CHAIRMAN REYNOLDS: Any other questions?

COMMISSIONER YAKI: Yes, just a question.

When you say you're going to roll it out next week, does that mean that -- this does not implicate any changes in AIs in terms of the process that we currently used for the SACs, does it?

STAFF DIRECTOR MARCUS: It is simply a method of applying the AIs that have been issued for the SACs.

For the reports, it does include a recommendation for something that could require in the AI and that will not be rolled out until or unless the Commission chooses to make a change.

CHAIRMAN REYNOLDS: Thank you, sir, very much.

COMMISSIONER YAKI: No, just one question.

I would really -- given that --

CHAIRMAN REYNOLDS: Commissioner Yaki, I want to point out that you made that statement about five times now.

COMMISSIONER YAKI: I understand, but that's -- unfortunately, as you've pointed out, hearing that something is going to be implemented in a week, given that are just given this today, that's
what prompted me to take a look at this really quickly.

I would really -- looking at this checklist, I would really like time as a Commissioner to take a look at this before we implement the actual policy, the actual process for the SACs because I am not certain whether the checklist is complete, consistent with our amended guidelines. I really believe that given the importance of this in terms of the appointments of individuals to our State Advisory Committees that a retooled process, given the difficulties that we've had so far is something that as a Commissioner I would at least like the chance to review before it is implemented next week.

CHAIRMAN REYNOLDS: Okay, unless we are going to deviate from an AI, it seems to me that the types of improvements that we're talking about, these are administrative matters that as a general rule Commissioners aren't involved in.

COMMISSIONER YAKI: Mr. Chairman, with all due respect, I'm talking about the criteria within the AI and I'm looking at some of these issues and I just need to really fully understand their impact on the selection criteria that we voted on. So I do think that even as much as I respect your assertion or the
Staff Director's assertion that we are not deviating from the AIs, the fact that there are values and checklists that mention issues or criteria that I'm not sure were within the new criteria or not, warrants some evaluation by the Commission.

CHAIRMAN REYNOLDS: I don't have an objection.

Let me just respond quickly to Commissioner Yaki. I don't have a problem with holding off implementing this unless, of course, the Staff Director -- that's going to cause some problems.

STAFF DIRECTOR MARCUS: The only way that I can be involved in training the staff on what this means is to do it next week which is what we've planned to do. If the training isn't next week, of course, I would not be able to do it. If it's the consensus of the Commission we could do the training next week and let them know that actually implementing what they are being trained on will await a green light which will occur after a subsequent Commission meeting.

CHAIRMAN REYNOLDS: Commissioner Melendez was next.

COMMISSIONER MELENDEZ: My question would be can changes be made to the process, even though
it's been set in place if for some reason we look at
this -- issues like whether or not recommendations
should be attached to reports. Is that addressed in
your -- I haven't looked at this so if I do read it
and those questions come up later and we decide that
it's included in here or it's more finite --

STAFF DIRECTOR MARCUS: That would be a
policy question.

COMMISSIONER MELENDEZ: I just don't know
at this point, but I'm just wondering if we see
something in here at a later point, can we make
changes to this process?

CHAIRMAN REYNOLDS: I think that after any
Commissioner, after reviewing these documents, if they
have a concern that they want to discuss, if we have a
motion that they would like to offer up, then we can
do it.

Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: I was going to ask
the same question, why cannot we go ahead with the
Staff Director training, the staff implementing these
recommendations, and then surely they are not set in
stone. We modify them as time goes on and the
modification may not occur immediately. It may come
out of experience. So surely we cannot regard these
as -- I mean we're signing our life away here. We're starting a process that will evolve over time inevitably.

So I would suggest that we do not delay in the implementation, but that -- you know, items individual recommendations are open for further discussion, next week, next month, 12 months from now.

CHAIRMAN REYNOLDS: Mr. Thomson?

MR. THOMSON: Just one thing I wanted to add to that. It was a very astute observation that when you do make an improvement like this, you do not stop there, and that's one of the most fundamental tenets of all, as soon as you implement these, things are going to start happening, things are going to happen good or bad. And it's called the check X cycle. It's been around for 50 to 60 years, but it's basically look at it, see what comes out, see what's working well, and then adjust.

And at the regular meetings you could adjust or if they are just fundamental changes you can adjust, but you always evolve this, to always say this is working, this is getting better. You give it a fair run time to give yourself a proof of concept and a pilot. You run through those and make sure that you get it, but it always evolves and always changes. And
if you do that, you'll always have -- because what
will happen if you leave it static is it will become
dogmatic and that's when things begin -- and then it
becomes a liability itself, so we don't want that.
You always want to revisit, evaluate, and improve.

VICE CHAIR THERNSTROM: So you're saying
what I just said was correct?

MR. THOMSON: You are correct, yes, ma'am.

COMMISSIONER YAKI: Just to state for the
record, as much as I respect the fact that you can
always change the process, as I look at the -- and
again, I'm just seeing this for the first time. This
is not included in the package that we got a week ago.
It was not included in anything until it appeared on
the desk today. But when I see here on the critical
quality parameters for SAC recruitment, and the first
six criteria that I'm looking at on page 20 are an
extremely top down process, whereas a lot of the
history and especially the people who were booted off
after term with this were more of a grass roots
upright type individuals, I just want to make sure --
I have questions about how this is going to occur. I
have questions about the impact of this prioritization
or sequencing, because that is clearly not within the
AIs. We do not say in the AIs that we are going to
solicit applicants of national prominence. Maybe I'm wrong. I can't remember that, but I don't think that we were --

CHAIRMAN REYNOLDS: Commissioner, the AIs, they provide us with guidelines, but we make decisions at least the Office of the Staff Director makes decisions and exercises discretions every day. I mean what we're talking about here -- let me finish, what we're talking about here is it's an attempt to improve procedures. It is not an attempt to somehow undermine our administrative instructions and to the extent it does, then I think that that's a problem. You're suggestion that we hold off implementation until everyone has had an opportunity to review these documents, I think it's a good recommendation.

So I am -- I support that, provided though that the training goes forward. I think that it's important that the training, that the Staff Director conduct the training because he was intimately involved in this process. So would you be comfortable with that approach?

COMMISSIONER YAKI: I am half comfortable with that approach, for this B-

CHAIRMAN REYNOLDS: Let me guess which half.
COMMISSIONER YAKI: B- reason. When you say B- the words that sort of B- that rocked me a little bit was that we give the Office of the Staff Director the direction and the ability to do these sorts of things every day, and that's going to be an issue beyond B-

CHAIRMAN REYNOLDS: No. I was responding to your suggestion that if it's not in the AIs, you can't do it.

COMMISSIONER YAKI: That's exactly what I'm going to, because nowhere in the AIs do we say we want the political equivalent of rock stars in the State Advisory Committees. And there's a category of prominent members, there's a category of B- when you look at the categories from the first five or six on down, it's a very top-down process, and that's a step beyond B- well, let's put it another way. If this is indicia of the criteria, which I have always suspected all along we have been using on SAC recruitment, I am glad that it's in writing, finally. But, secondly, it concerns me because it is a gloss on the appointment criteria for these individuals that we never discussed.

CHAIRMAN REYNOLDS: Commissioner Yaki, I am trying to agree with you. If you want to suspend
the implementation of these process improvements, as I said, I think that based on the arguments you made, that is a sound recommendation. All I'm asking is B-

I'm trying to get you to weigh-in one way or the other on training. Again, I think it's important.

COMMISSIONER YAKI: But if you're training --

CHAIRMAN REYNOLDS: Let me finish. I think that it's important that the Staff Director be involved in the training. It's not going to be implemented. To the extent that any Commissioner identifies some shortcomings, or just wanted to make some changes to the processes and these documents, we can make those changes, and do that, while at the same time holding implementation in abeyance.

VICE CHAIR THERNSTROM: Why do we have to hold implementation in abeyance? My whole point was you can implement it, then change it. I mean, there is not B- those are not B-

COMMISSIONER YAKI: Because that's like closing the barn door after the horse B-

VICE CHAIR THERNSTROM: No, it isn't. There are going to be changes inevitably down the road.

COMMISSIONER YAKI: I will B- that's fine.
Do that. My only concern is that the criteria issue is one that I have B-I just want to go on record as expressing deep reservations about, I would hope that the training, as it goes forward, not focus on those components, but more the technical/procedural aspects of processing, rather than going forward.

VICE CHAIR THERNSTROM: I'm sorry. I don't know what the top-down means.

CHAIRMAN REYNOLDS: I think we have an agreement. I think we have agreement, so let's just stop.

COMMISSIONER HERIOT: I missed it. What's our agreement now?

CHAIRMAN REYNOLDS: That we will hold off implementing B-

VICE CHAIR THERNSTROM: No, we don't have an agreement.

COMMISSIONER HERIOT: No, I don't agree to that.

VICE CHAIR THERNSTROM: No, we do not have an agreement on that.

CHAIRMAN REYNOLDS: All right. To the extent that these documents contain recommendations that undermine or change AIs, could we be B-do we agree that that would require a vote? But this
document cannot be the vehicle for changing AIs.

COMMISSIONER HERIOT: No one disagrees with that.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: But B-

CHAIRMAN REYNOLDS: And since no one has read these documents B-

COMMISSIONER HERIOT: No one has read the previous unwritten procedures that are used now either. We have been following procedures for a long time that are not reduced to writing, and that we don't B- we've never examined in this B-

CHAIRMAN REYNOLDS: I'm fighting for you, Michael. I'm fighting for you.

COMMISSIONER HERIOT: So what's different about this? At least this is in writing.

VICE CHAIR THERNSTROM: I mean, there is no reason for not implementing this plan, and then discussing problems that one commissioner or another sees. And, by the way, I don't understand what's top-down, but that may be because I am mentally deficient in some way.

CHAIRMAN REYNOLDS: That was your opportunity, Michael.

(Laughter.)
COMMISSIONER TAYLOR: We are in the middle of that process right now, and for the next two weeks, if we delay implementing the new process, we will be using the old process. So at this point, I would turn to Commissioner Yaki and ask him would he rather that we implement the new process, or continue to use the old process for another two weeks while training goes on? Because if we fail to implement the new process, we will continue to use the old process. Work will not stop.

COMMISSIONER YAKI: Well, as far as I can tell, paraphrase who, the new process is the old process, in terms of how people are being selected. And, finally, there are criteria that I can look at and glom onto, and wish to bring up for discussion, because B-

COMMISSIONER TAYLOR: You just argued against implementation. If the new process is the old process, then what's the point of B-

COMMISSIONER YAKI: I am saying that now we have something in writing. I can look at it and discuss it, and review it, because we've never had that opportunity.

COMMISSIONER TAYLOR: I'm not disagreeing. I guess my question is, would you prefer that to B-
COMMISSIONER YAKI: Because I have just been glancing at this during this discussion, and yet here we were screaming about the fact that we couldn't read 200 documents that were given to us six days ago to give even a partial opinion as of what the heck was going on with that letter.

CHAIRMAN REYNOLDS: Commissioner Yaki, I agree that there's nothing important at stake by just providing a little more time, providing everyone with an opportunity to read these documents, to see if these documents contradict an existing AI.

COMMISSIONER HERIOT: Not if it shuts down the process.

CHAIRMAN REYNOLDS: It's not, because the training was B-

COMMISSIONER HERIOT: Yes, but then after the training was done, are we just going to sit on our thumbs for a month, two months, three months? How long is this going to take?

(Off the record comments.)

CHAIRMAN REYNOLDS: Mr. Thompson, do you spend much time in Washington?

MR. THOMPSON: Yes, sir.

CHAIRMAN REYNOLDS: Okay. Well, I will convey my condolences.
(Laughter.)

CHAIRMAN REYNOLDS: All right. So, I guess, are we ready to vote on this matter, or do we want to have B-

VICE CHAIR THERNSTROM: Gail, please don't leave if there's going to be a vote.

COMMISSIONER HERIOT: No, I'm just sitting on my coat.

COMMISSIONER MELENDEZ: I think that any time we have something new that we haven't seen, it could be anything, I think there's a consideration of having more time. And I agree with you, Mr. Chairman B-

CHAIRMAN REYNOLDS: And I agree with B-

COMMISSIONER MELENDEZ: And I don't have a problem with B-

CHAIRMAN REYNOLDS: Mr. Yaki B-

COMMISSIONER MELENDEZ: B- the training going forward, since we're heading that way, anyway, broadly, but there could be some things that B-

CHAIRMAN REYNOLDS: How about this? Say two weeks, and then have a teleconference, a meeting over the phone where we would discuss B-

COMMISSIONER HERIOT: No, where we continue to use the old process. The point is, this
should not be shut down.

COMMISSIONER TAYLOR: I don't think it is.
I think we're going to continue to use the old process
while determining the new process, and in two weeks we
hopefully get the green light to implement the new
process.

CHAIRMAN REYNOLDS: How long is B-

STAFF DIRECTOR MARCUS: Well, basically,
part of a day on I think Tuesday on the SAC re-
chartering. The other portion of the training would
be the following month, I hope.

CHAIRMAN REYNOLDS: Do you have a
solution?

STAFF DIRECTOR MARCUS: It's SAC re-
chartering that would be on one day, this coming week.
The other portion of it we would hope to have
training on the following month.

COMMISSIONER YAKI: But you would not be
doing that.

STAFF DIRECTOR MARCUS: That's right, I
would not be able to do that.

COMMISSIONER YAKI: That strikes me -B

CHAIRMAN REYNOLDS: Mr. Thompson have a
solution?

COMMISSIONER YAKI: Then why is it so
important that B-

STAFF DIRECTOR MARCUS: In the ideal world, I would have been able to participate in the roll-out of both of them. What we realized when we looked at the calendar was that we would not be able to prepare to do the training in both within the next two weeks, but at least we would be able to do it for SAC re-chartering.

COMMISSIONER YAKI: Is that faster than the briefing? Is that basically why? I mean, to me, the statutory and briefing report process is vastly more important than the SAC re-chartering, given the immense backlog that we have in our reporting data right now.

STAFF DIRECTOR MARCUS: I feel they're both important, because we have backlogs in both. And it was simply a matter that quite some time ago we figured that to train on the SAC process, we would need to bring people into Washington, so that's been planned in advance.

COMMISSIONER YAKI: Okay.

STAFF DIRECTOR MARCUS: My hope a while back was that we would be able during the month of January to do both, but we realized that with everything else, we would only be able to handle one,
so we're doing the one for which staff have time in their schedule.

CHAIRMAN REYNOLDS: Okay. Mr. Thompson.

MR. THOMPSON: Yes. Actually, this is not the first time I've had to have this sort of conversation, because I was actually lead of the IRS' entire quality transformation that they went through, since the Revenue Reform Act of `98, and had to develop the process by which now all 60,000 employees, their quality is now measured by. So think of every phone call, tax return, paper correspondence, face-to-face interaction, how the quality was measured for that.

And, as you know, NTEU, a very strong union environment, as well. So in every scenario, we were never able to simply turn the switch. We went through a very rigorous process of prove a concept pilot, extend the pilot, and then full roll-out. Between each you do an entire refinement, so you go through, and one thing it does require is trust the process for a length of time. I heard you say you have four state charters coming up. Run those four through the process, do your own after action review and say how did that go? Do we have, like you said, is criteria fair, is it not, can we add more, can we
refine the wording? Because that was critical to
good quality things from the time we did it, because we had
to develop the attributes by which quality is measured
for all processes in IRS.

The debates that happened around those
were legendary, and that's fine. That's good. Keep
refining those, what you consider critical to quality
until everyone sees and agrees, and there is, as we
say, there's one version of the truth in terms of
quality.

CHAIRMAN REYNOLDS: Never happen here.

MR. THOMPSON: Altruism here, I said the
same thing.

COMMISSIONER YAKI: You're such a
pessimist, Mr. Chair.

MR. THOMPSON: But that's how you go
through, and you can run through this first pilot, and
then refine, and then change, so that way you do not
stop the process. It continues to roll, and everyone
gets to see it live fire, and say this is a good
process or not, and let's refine it this way. And if
it doesn't work, you revisit, and you change, and you
modify, and move forward.

VICE CHAIR THERNSTROM: We've signed no
contract to say that we will never change what they've
got in this report.

CHAIRMAN REYNOLDS: Let's vote at this point. All those in favor of B-

VICE CHAIR THERNSTROM: Implementing, training and implementing.

CHAIRMAN REYNOLDS: All those in favor of holding off the implementation while proceeding with the training, please say aye.

COMMISSIONER HERIOT: That can't be the right motion.

COMMISSIONER TAYLOR: I've got a substitute motion.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER TAYLOR: I offer this because I was persuaded by what Mr. Thompson said just now, so essentially, the substitute motion would be to follow his recommendation that has proven to work in other situations involving the government; that is, a recommendation is made, a process is proposed, it's used, and then it is continued to be monitored, tweaked, improved as we go along. And so in that instance, that would mean that we would begin the process of using this, we would test our quality, if the concerns that Commissioner Yaki raised appear, address B-
CHAIRMAN REYNOLDS: Gail, is that motion okay with you?

COMMISSIONER HERIOT: Second.

COMMISSIONER TAYLOR: That would be my motion.

CHAIRMAN REYNOLDS: Second?

COMMISSIONER HERIOT: That's second.

CHAIRMAN REYNOLDS: Okay. Let's vote.

All those in favor, please say aye. Objections?

(Vote taken.)

CHAIRMAN REYNOLDS: Let the record reflect that Commissioners Yaki, Melendez, and Reynolds object, the motion passes.

COMMISSIONER YAKI: I have a question.

CHAIRMAN REYNOLDS: Does it have to do with this?

COMMISSIONER YAKI: He talked about B-he kept on using the word "pilot". What did you mean by the word "pilot"?

MR. THOMPSON: A pilot is a formalized test. It's a test where you go in and you identify critical criteria going in, saying here's what we want to get out of this pilot. And you basically say in things like in terms of quality, that you want to have consistency, you want to have repeatability, you want
to have fairness and those sorts of things, and you
define operational definitions for each one. You run
the pilot for a very set period of time. Our case it
was typically 30 or 60 days, with a control group, and
you run through the entire process. And you say at
the end you have a formal after action review, and you
step through those success criteria, and ask
yourselves did everything work, what needs refinement?
And then you B-

CHAIRMAN REYNOLDS: Mr. Taylor, is that
what you propose?

COMMISSIONER TAYLOR: I would not be
opposed to that. No, not at all.

CHAIRMAN REYNOLDS: We voted B-

COMMISSIONER HERIOT: That isn't what we
B-

(Simultaneous speech.)

COMMISSIONER TAYLOR: But that's not what
you adopted. That's a, in my view, that is a second
question; that is, if we want to now discuss those
quality controls that he's identified and apply them
to a "pilot" SAC review process, I'm not opposed to
that.

COMMISSIONER HERIOT: We could just make a
motion to reassess this.
COMMISSIONER TAYLOR: I'm not opposed to that.

COMMISSIONER YAKI: Now you guys are completing distorting what he's saying. That's not what he's saying.

(Simultaneous speech.)

CHAIRMAN REYNOLDS: Has memorialized what he said. Right?

COMMISSIONER YAKI: I don't think what he means by "pilot" is go full steam, do 10 or 15 of these and then come back and take a look at it. That's not what he's talking about — that's not how pilots work.

CHAIRMAN REYNOLDS: We have voted, and we have lost. And it seems like we'll continue —

COMMISSIONER YAKI: I don't think we lost, because Commissioner Taylor talked about what he proposed.

VICE CHAIR THERNSTROM: The motion is what it is.

COMMISSIONER YAKI: And he proposed B-

VICE CHAIR THERNSTROM: The motion is what it is. Can we move on?

COMMISSIONER YAKI: He proposed a pilot, and the entire discussion, the first discussion,
pilot, live fire, blah, blah, blah, blah, blah. I'm starting to get some of this, don't worry, so I'm going to say that I understand that to be included in the motion.

CHAIRMAN REYNOLDS: Okay. We will fight that battle at another time. We have a transcript. So next issue on the agenda, Discussion of Budget.

STAFF DIRECTOR MARCUS: Yes, Mr. Chairman. As you are aware, the Commission did not receive the full amount of money requested for the 2008 budget.

Last year the Commission requested $8.8 million for fiscal year 2008. Initially, the President approved the $8.8 million, and the House and Senate proposed increasing the amount to $9 million, which would have been roughly in line with the Agency's 2007 funding of $8,951,000. However, Congress passed an Omnibus Appropriations Bill signed by the President on December 26th, which cut the Commission's fiscal year 2008 appropriations down to $8,460,000, a significant cut.

Fortunately, the Commission, while under a continuing resolution, had been operating well within its projected appropriations, and had numerous vacancies on the staff, so the reduced appropriations will not require any of the drastic sorts of cutbacks...
that we had to contemplate a few years ago. It will, however, require making some changes to what we have otherwise planned to do.

As a result of the budget cut, I believe that we will be financially unable to fill all of the vacant positions which I had hoped to fill in the near future, including the Western Regional Office Director, the Administrative Assistant to the Office of General Counsel, the Public and Congressional Affairs Specialist, the Social Scientist in the office of Civil Rights Evaluation, and the Human Resources Director. We are able to bring on the Attorney Advisor to backfill in the Office of the Staff Director for Mr. Chris Byrnes, who was recently promoted into the Regional Programs position.

We are continuing to assess the budget, and I'm hopeful that we will find ways of cutting costs that create opportunities for us. For instance, the Office of General Counsel was very creative and successful with coming up with ways of reducing the costs that we are going to have to pay for our online legal research, and I believe we will save tens of thousands of dollars on the use of online legal databases, and we will look for other ways of saving.

It may be possible by the end of the
fiscal year through these savings, and perhaps additional attrition to bring on one additional staff member, and it would be my assessment that of the five, the Human Resources Director is particularly urgent.

The staffing cuts will unavoidably have tangible impacts on the Agency's program and operations. Without a Western Regional Office Director, we will not be able to have fully functioning SACs in that region to the extent that we would otherwise have hoped, since that regional currently has no professional staff, although it does have one very hard working administrative staff member. For the time being, I've directed the Regional Program's Chief to oversee the region directly on a part-time basis, so as to have some progress in the Western Regional Office, Regional and Staff Advisory Committee work, but this is certainly not an adequate substitute for full-time professional staffing.

Additionally, since we would not be able to backfill for the most recent Social Scientist's departure in OCRE, and we will not be able to hire a Public Affairs Specialist to take the PAU burden off of OCRE, we can anticipate that OCRE's programmatic
capacity will be diminished.

Similarly, since we are not able to hire a secretary/paralegal to replace the secretary who left OGC, that office's capacity will also be reduced, since attorneys will continue to perform administrative and paralegal work. Of course, we now have fewer attorneys than we did a couple of years ago.

It's difficult to quantify the precise reduction in capacity, but it is my expectation that the Commission will need to revisit the number of briefings and briefing reports that it does in this calendar year. After conversations with staff, it seems to me that in addition to completing this year's statutory report, and beginning next year's statutory report, we would be able to do three briefing reports this calendar year. Whether we would be B- and resolve the backlog of last year's briefings. Whether we will be to do more than three briefings this calendar year would be a very difficult question, in light of the existing staffing.

In some ways, though, the loss of the HR Director may be an especially significant challenge. Not only will that continued vacancy mean continued delays in hiring and other personnel matters, but it
will also impact necessary human capital planning, and
other long-term Human Resource strategy.

For example, we are required to complete a
Human Capital Plan, and doing so with existing staff
within the year would be extremely difficult.
Frankly, at this point, I'm not sure how we will be
able to do that in the near future. I would not be
surprised if we have some sort of review of HR within
a year or two, unless we are able to bring an HR
Director in, and it could be that we will have
weaknesses that would be B- that we would have
identified, so there is no question that the reduced
budget will have impacts for the Agency. Moreover, it
may be that the reduction in the 2008 appropriations
will have an impact for the 2009 appropriations, as
well.

As you know, in September the Commission
submitted a fiscal year 2009 budget request for
approximately $11.7 million. In November, OMB passed
the budget back to the Commission, suggesting a budget
of $8.8 million instead. We appealed the pass-back,
hoping to receive at least $9,382,522, and while we
have been hopeful that we would receive much or all of
that, after the Omnibus Appropriations Bill for 2008
came back, we received input from OMB that the amount
we are likely to submit to Congress will be the $8.8 million, rather than the $11.7 million we had initially hoped for.

CHAIRMAN REYNOLDS: Comments, questions?

COMMISSIONER KIRSANOW: Where are we with respect to an HR Director? Are we going to see kind of a process at this point?

STAFF DIRECTOR MARCUS: Well, we were in a process as of a couple of weeks ago, and we had a number of candidates, but the budget shortfall is the problem.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: Do I remember correctly, there's also a question of funds to update the IT equipment, computers, and all the associated --

STAFF DIRECTOR MARCUS: Most of the funds with which we have historically purchased new technology have come from the end of the year available monies from attrition, as opposed to monies that have been planned in the budget. We may have some money in this year's budget. I'm not sure. Tina Martin B-I think we may have some money for technology purchases, but if we do, if we do, it's very little. Typically, we have little or no money, and then we hope that at the end of the year money...
frees up for attrition, or cost-cutting, or other reasons.

VICE CHAIR THERNSTROM: Well, I'm listening to your list of vacancies here that really do need to be filled, and I'm just B- well, it's a very depressing list. We all want this Agency to be functioning, I would hope we all want it to be functioning. And its functioning depends, as the Staff Director so eloquently said in thanking people, the quality of the staff that we can bring to this Commission. And asking the existing staff to work even harder, to be turning their one job into two jobs in a variety of ways, this is just a very depressing and difficult situation.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes, I have a question. In the prioritization of hires, I'm confused. Why would we go ahead and hire another Attorney Advisor for the Office of the Staff Director versus an HR Director, number one? And, number two, what job is Derrick Horne performing? He's in Atlanta, but is he in OSD? I don't quite understand that. Are we paying for his travel back and forth to do OSD work? I mean, I've been confused by that from the beginning, but as we look at B- but if we look at
what our priorities are, and how we're going to be dealing with budgetary issues, I've just got to ask a question why we went ahead with an Attorney Advisor in OSD, when we had the crying need, as you put it, for an HR Director. And I just have a question as to what Derrick Horne is doing.

STAFF DIRECTOR MARCUS: Well, those are two distinct questions, and I'll try to address them in turn. Looking at the difficulty in trying to manage and coordinate an office, and thinking in terms of how his successor would be able to run things, it seemed to me that it is critical to have at least two people in the Office of the Staff Director doing all of the coordination work that's currently being done. And that that work has to be done, and if we did not have the two Attorney Advisors, it would either mean taking someone from a different office and reassigning them, or, alternatively, taking the work and distributing that same work to a number of different people creating other sorts of management problems.

We simply need to have someone who is handling Congressional interaction when it comes, coordinating all of the reports that we do, AIs, and other things dealing with programmatic.

COMMISSIONER YAKI: Okay.
STAFF DIRECTOR MARCUS: Now for a few months, we've been able to muddle through with the transfer of Chris Byrnes from the Attorney Advisory position to the Regional Programs.

COMMISSIONER YAKI: Right.

STAFF DIRECTOR MARCUS: But that's been largely because the Eastern Regional Office Director has continued to do a substantial amount of that work, while Mr. Byrnes had to continue doing the work of the Office of the Staff Director. What that's meant is that in the interim not only has OSD work suffered, but we have also substantially cramped ERO, and taken resources that I would like to put back into the regional structure. By backfilling for Mr. Byrnes, we would be able to have a Regional Director who's able to put his full-time work into the regions. That slot was, after all, created by the departure of a regional employee, and it really needs to be filled in order to move things through the process.

COMMISSIONER YAKI: So Chris Byrnes will be doing the SAC work, not OSD.

STAFF DIRECTOR MARCUS: The Office of Regional Programs is part of OSD, so he will remain in OSD, but his work will be regional, programs, coordination.
COMMISSIONER YAKI: So he's an Attorney Advisor within OSD, but he's not really doing OSD work?

STAFF DIRECTOR MARCUS: He would be the Regional Programs Chief. Like the Solicitor and the Associate Deputy Staff Director, he's technically within the B-

COMMISSIONER YAKI: But you're not counting him as someone who B- you have Kara, and you have him, and Derrick, which I don't know what he's doing. But you're saying that to backfill for Chris, you had to make this hire over an HR Director, basically?

STAFF DIRECTOR MARCUS: That's right. Derrick Horne is an Attorney Advisor in the Southern Regional Office. He's been there for a few months.

COMMISSIONER YAKI: Whose budget is he out of? Is he out of OSD, or is he out of the West B- out of the Southern B-

STAFF DIRECTOR MARCUS: He's an SRO. For a number of months, he needed to do transitional work, and continue to do some OSD work, including, in particular, helping out with a substantial number of requests from the Commissioner.

COMMISSIONER YAKI: So we have a Regional
Director, and an Attorney Advisor in the Southern Regional Office, but no one in the Western Region Office, and no one in B- okay.

STAFF DIRECTOR MARCUS: We have an Administrative Assistant in the Western Regional Office.

COMMISSIONER YAKI: Oh, we have two top-heavy, for lack of a better word, folks in the Southern Regional Office, which is a good thing. I'm just saying that that was a decision B- so he is no longer one of your four exempt Schedule Cs? He's not an Attorney Advisor under Schedule C?

STAFF DIRECTOR MARCUS: I have four Schedule C Special Assistants. That was a big selling point when I came to the job.

COMMISSIONER YAKI: Sure.

STAFF DIRECTOR MARCUS: They're vacant, though. I did use one slot to hire a General Counsel for the Agency, because the Agency had lost a non-career SES, but my other Special Assistant Schedule Cs, those are vacant.

COMMISSIONER YAKI: So what you're telling me is that the other folks, although they're Attorney Advisors within OSD, are career, and not Schedule C.

STAFF DIRECTOR MARCUS: I have one
Attorney Advisor within OSD, and it's Kara Silverstein, and she's a regular career Attorney Advisor. Mr. Byrnes is now in the Regional Program.

COMMISSIONER YAKI: He's no longer a Schedule C.

STAFF DIRECTOR MARCUS: To the best of my knowledge, Mr. Byrnes has never been a Schedule C.

COMMISSIONER YAKI: Okay. So he was always one of the career slots. Okay. This is very interesting. And so Derrick Horne is not there. He is also career, and so you used the Schedule C for this new Attorney Advisor, who you made the offer to, I understand, this week.

STAFF DIRECTOR MARCUS: Well, that's not true.

COMMISSIONER YAKI: It isn't?

STAFF DIRECTOR MARCUS: Well, I don't know if an offer has been made this week, but the Attorney Advisor in the Office of the Staff Director is a career position under Schedule A.

COMMISSIONER YAKI: Okay. Then excuse my language, an Attorney Advisor offer has been made this week, notwithstanding the fact that we need an HR Director.

STAFF DIRECTOR MARCUS: I don't know if
that's the case.

COMMISSIONER YAKI: You don't know if what's the case?

STAFF DIRECTOR MARCUS: I don't know if an offer has been made. A selection has been made, I don't know whether the offer has been made.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER YAKI: Who would make the offer? I'm just curious.

STAFF DIRECTOR MARCUS: HR.

COMMISSIONER YAKI: Okay. And they haven't told you if they've made the offer or not?

STAFF DIRECTOR MARCUS: No.

COMMISSIONER YAKI: Okay.

COMMISSIONER MELENDEZ: My concern would be the amount of money that we have left, any type of carry-over, and how would we know that, as Commissioners? Would we have some type of a budget for the last quarter if the fiscal year ended on September 30th, so we could see something that kind of updates the Commissioners as to what the budget looks like, as far as carry-overs from the point of September 30th would be the fiscal year that ended. So I was just wondering, is it possible to get some type
of budget to look at, as far as savings, or what we're actually talking about here?

    STAFF DIRECTOR MARCUS: I'm sorry, Commissioner. When you refer to "carry-over", are you referring to unobligated funds?

    COMMISSIONER MELENDEZ: Yes, unobligated funds, because I know that there's a carry-over, even for some of the Commissioners, like myself, I don't even think I use all of the 500 hours that I have, so where does that money go? I mean, it ends at some point. I just wanted to know where carry-over B-

    VICE CHAIR THERNSTROM: You only have 400, I believe.

    COMMISSIONER MELENDEZ: How has he been moved around, and where does that go? There's got to be some savings on positions we haven't hired, but I have no idea how that's moved around, or where that money actually is used for.

    STAFF DIRECTOR MARCUS: Well, to the extent that there are attrition-related savings during the year, they are used to make whatever purchases are needed at the end of the year, including, for instance, technology purchases. I think a few months ago I updated the Commission on the purchases that I was able to make in that way towards the end of the
last fiscal year.

COMMISSIONER YAKI: Are we under a hiring freeze now?

STAFF DIRECTOR MARCUS: We're not under a hiring freeze now.

COMMISSIONER YAKI: We're not? Okay.

COMMISSIONER MELENDEZ: I guess it would be the first quarter of this year, which started October 1, so that we can see, how do we look there. We don't really receive updated budget expenditures, I don't think, as a Commission. As far as the line items, if we call them line items.

STAFF DIRECTOR MARCUS: You know, I will check. I thought that we were providing on a quarterly basis that information. I mean, we can look into providing it in the future, but I believe that it was provided a quarter ago, and that more information would be forthcoming.

COMMISSIONER MELENDEZ: Okay.

STAFF DIRECTOR MARCUS: Unfortunately, it would be after my departure, but we can provide it.

COMMISSIONER MELENDEZ: Yes, it would be the first quarter of this year.

STAFF DIRECTOR MARCUS: Yes. No, I have to say those figures do require explanation, so you
may want to have some questions. They're difficult to understand at first, because there are B- you can tell how much money has been obligated, but you need to think about things like whether there's some large things that were obligated in the first quarter, or that weren't obligated, but need to be disproportionately obligated in the second quarter, whether there are distortions because some people have not put in salary and expense, things of that sort.

COMMISSIONER MELENDEZ: Yes. My concern would be we need line items so that we can see exactly each line item. That's my concern. And I'd also like to see us move towards hiring a Human Resources Director. I think that's a hub of any organization. If we don't have that, I think we're going to really B- and then I'm not sure how we're operating, because I know that B- it sounds to me like one person is kind of oversight over the financial part, and the Human Resource part, and are we being stretched pretty far in doing that? And is it going to affect the audit in any way? I know we have some clean audits, but at some point, all this stuff is going to probably be detrimental to the Commission.

CHAIRMAN REYNOLDS: Commissioner Melendez, we've been robbing Peter to pay Paul now for quite
some time, and I agree that hiring someone to run HR is extremely important, but there are other positions that are also important. I mean, if you look at our organizational chart, we have lots of boxes, and a significant number of these org boxes don't have any employees. And I'll say it again, this organization is starved for funds, and I say that B- I'm a small government man, but this organization, if it's going to fulfill its statutory obligations in an effective manner, the continuation of B- well, the practice, the decades long practice of a frozen budget, accompanied by modest increases, or significant reductions, I mean, you can close the Commission down by closing it down through the front door, or you can freeze the budget and just watch it fall apart over time, and the folks on the Hill have elected to close it down by going through the back door. Vice Chair Thernstrom.

VICE CHAIR THERNSTROM: I just wanted to ask a question of Commissioner Kirsanow. Do you remember how many employees there were when you first arrived?

COMMISSIONER KIRSANOW: Not exactly, but there was well over 100.

VICE CHAIR THERNSTROM: Well over 100, that was B-
COMMISSIONER KIRSANOW: It could have been 120, 130.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: We had 200 at one point, it's my understanding.

VICE CHAIR THERNSTROM: Well, no, but just B- yes, but when we first were here.

COMMISSIONER KIRSANOW: I bet some of the staff would remember. Let's see. Ms. Butler, do you remember?

MS. BUTLER: Eighty-five.

COMMISSIONER KIRSANOW: When was that? I think it was more than that, but I'll go with what she says. I thought it was 100.

VICE CHAIR THERNSTROM: Okay. I'm just underscoring the point. We are really limping along here with, again, heroic efforts on the part of the staff.

CHAIRMAN REYNOLDS: Commissioner Yaki.

COMMISSIONER YAKI: Yes. I'm going to withdraw my agenda item on the Special Assistant for the time being, for this reason. I do want to say this. One, I was sort of the - two years ago, three years ago, actually - the architect of the decision to forego a Special Assistant, to which, at that time, I
was entitled to, and could have hired in order to save programs that the Staff Director told me were at risk, which were the Western and the Mid-Western, the Central and the Rocky Mountain Regional Offices, among others. And I'm pleased and proud that the Chairman joined me in that, and other new Commissioners did, as well.

CHAIRMAN REYNOLDS: Can I jump in for a moment?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Mr. Thompson brought up this notion of a shared version of reality. I have a different recollection as to how that decision was made. But, in any event, continue.

VICE CHAIR THERNSTROM: It's also not an entitlement.

COMMISSIONER YAKI: I would say B- well, Commissioner Thernstrom, I would argue that the appropriations language does discuss clearly the fact that we're entitled to Special Assistants. But be that as it may, I'm not getting into that debate now. What I am troubled by, and why I'm not going to bring it up at this time is, instead, to make a point; and that is, we talk about how the Agency has done this, or done that, or Congress doesn't give this money, or
that money, what have you. The fact of the matter is, is that as I look at this, I notice that a lot of vacancies in this Agency, especially from OCRE and others, have been reconsolidated into career positions inside the Office of the Staff Director. We have one person in the office, and some of them now are in Atlanta, when we have only a clerical assistant in the Western Region. But I just want to point out that I'm not going to bring it up, because we need an HR Director. That's clear.

I do not understand why all these positions have been transferred to OSD. I never understood it. I'm understanding it better now, how they're all career positions that did not used to be in OSD, but were in other parts of the Agency. And I am concerned that with that B- and as I said to the Staff Director, although he has many admirable traits.

I respect him as a person. He's a good person. I do not understand why in the last week before he leaves, he hires another position for his staff, when it's clear that we've been without a Human Resources Director for quite some time. OCRE is starved, as it is, and we've lost a lot of good people in OCRE in those career positions, and so I withdraw my agenda item, and let's move on.
CHAIRMAN REYNOLDS: Okay. A quick response. One of the reasons that we have two clean audits in a row, in my opinion, is the fact that we have, indeed, enlarged the Staff Director's office. We've provided more resources there. Does it come out of the costs? Yes, it does. As I said earlier, we're robbing Peter to pay Paul, and until our appropriations are increased to enable us to staff up so we can perform our functions without cannibalizing ourselves, this will continue.

Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Just an observation. A few years ago, several of us went up on the Hill. I remember Michael and I went jointly up on the Hill to talk to folks to see if we could B- and, believe me, I'm a small government man, like the Chairman is, but there's a difference between small government and no government. Maybe we should revisit that.

We went kind of late in the day, as I recall. We went later toward the end of the appropriations cycle, and maybe we should start talking to folks right away.

COMMISSIONER YAKI: Well, just for information. Until the Omnibus Bill came out, which I
think, unlike the Chairman, I do not think was a back-handed attack on the Commission. I think there was language in there that the Chairman interpreted as an attack on the existing leadership, but the fact of the matter is, is that the original bills, as they cleared, did come out with $9 million. And, in fact, there are many signs that there is a desire to put in even more funds, so there are a lot of reasons why a lot of different agencies didn't get as much funding as they did right now.

I am as unhappy with it as any of you are, and have expressed that to various folks on the Hill. And as Commissioner Kirsanow said, two years ago, he and I did a bunch of visits on the Hill to different members of Appropriations, influential members who would have an impact on the funding for the Committee, and I suggest that we do that again. But I just would like to say that I hope that going forward, that the Commission is kept more abreast of some of how these positions are actually being filled, and for what areas of the Department, of this Agency they're being taken.

I mean, I was really unaware B- I had assumed that Chris, Kara, and Derrick, and before Chris there was someone else, who I can't remember,
were the four Schedule Cs that the Director is entitled to, as I say "entitled", just as we are entitled to Special Assistants. But now I found out that they were all actually career positions that were from other parts of the Agency.

CHAIRMAN REYNOLDS: Okay. Just to clear up my comments, my criticism wasn't limited to this recent decision to cut our budget. We don't find ourselves in this position because of a single action that occurred within the last 30 days or so. Our flat budget, the problem with the flat budget, and having expenses go up every year, reducing our purchasing power, that problem has been in place for over a decade, and that is Republican Administrations, as well as Democratic.

COMMISSIONER YAKI: I understand. One last thing for the Staff Director's report. We received in by fax B-oh, by the way, two things. One is, if there's going to be a notational vote, I would request that an email be sent out to that effect, and not just a fax, because faxes, in and of themselves, may not get lost, an email alert that there is a notational vote, and a fax arriving would be important, number one. Number two, I've told staff people at least on three or four occasions, I have a
different fax number that comes directly to my computer, so I can view any fax that comes in. The fax that is constantly being used is the one that goes to the generic big mill that sometimes B-

CHAIRMAN REYNOLDS: Right. It takes time to get to you.

COMMISSIONER YAKI: B- takes time to get to me.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: So I would ask that. And then the last thing is that, for the Staff Director, we received a letter from Senators Biden and Kennedy in December requesting a meeting with the Staff Director and the Senators. Is there going to be a response to that?

CHAIRMAN REYNOLDS: Working on it. I'm drafting a letter in response, and the letter isn't complete, but there will be a response.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: Next.

COMMISSIONER MELENDEZ: I have a question.

CHAIRMAN REYNOLDS: Oh, sorry.

COMMISSIONER MELENDEZ: As far as the briefings for the next year, did you say that we were going to cut those down to three? And, if so, which
ones, and does that mean that we would have more
business meetings? What were you actually referring
to?

COMMISSIONER YAKI: We have to discuss
that.

COMMISSIONER MELENDEZ: Yes, is that B-

STAFF DIRECTOR MARCUS: I indicated only
that my projections of what we could reasonably do is
that it might be a number no greater than three, but
to actually reduce that number would require a
Commission decision, which, presumably, would be based
on a motion, and discussion about whether to make that
cut, whether to cut it to three, or a different
number. And, if so, which ones to cut.

COMMISSIONER YAKI: I have one final
question. No, this is a procedural B-

CHAIRMAN REYNOLDS: Promise?

COMMISSIONER YAKI: At the last meeting,
over my strenuous objection, the Commission voted to
send a letter to CalTRANS. Did they, indeed, send the
letter, because I have not seen a copy? Generally, in
the first year that I was here, letters that were sent
by the Commission or by Commissioners, or certainly by
the Commission were circulated to all members of the
Commission. I do not know if that is happening any
more, but certainly, if a letter to CalTRANS has been sent, I have not seen hide nor hare of it, and that leads me to just this one comment; which is, I am not too sure what this is that we received here today in our packet, which is a Performance and Accountability for FY 2007.

And the reason for bringing that up, as well, is because part of the AIs that we adopted very early on, this is part of Jennifer Braceras, and actually Commissioner Kirsanow's reforms early on was that communications on behalf of the Commission, official communications would always include the fact that if the Commission was not unanimous in the position, that the fact that dissents or dissenting opinions were a part of that, would always be noted in those official communications. I don't know what this is, if it's just for our internal review or not, but I would just note that references to many of the B-

CHAIRMAN REYNOLDS: A handsome fellow there.

COMMISSIONER YAKI: Reference to many of the reports that are contained in here, the collective "we" is used, without acknowledgment that there is any dissent. And, in addition B- again, I just have been scanning this, because I just received it today. Like
on page 16, it implies that "we", the Commission, informed and guided national policy with testimony before the Judiciary Committee. And my understanding is that testimony was done by individual Commissioners, not speaking on behalf of the Commission, as a whole.

So it goes to the fact of information flow to the minority on the Commission, as well, in keeping with past practice, and in keeping with the protocols we adopted in AI 9.1, which had to do with how we communicate, what we did, and how we did it, to outside and official agencies, if there was dissenting opinion among the Commissioners.

CHAIRMAN REYNOLDS: Commissioner Yaki, apparently, the letter hasn't gone out yet.

COMMISSIONER YAKI: May I see a draft?

VICE CHAIR THERNSTROM: Of course. I mean, we'll have to discuss it before it goes out. And, of course, I mean, I'm in complete agreement with you that there has to be an indication at every opportunity of whether the Commission is speaking with a unanimous voice, or a divided voice. And I would hope we all agree on that, but in any case, let's talk about the CalTRANS letter when there's a letter.

COMMISSIONER YAKI: That's fine, but I
also wanted to note that if you read this, what you just said was not followed.

VICE CHAIR THERNSTROM: Then that really needs to be corrected.

COMMISSIONER YAKI: Okay. Thank you.


On August 30\textsuperscript{th}, 2006, the Commission published a proposed regulation on outside employment in Federal Register for notice and comment the proposed regulation would require employees of the Commission, other than Special Government Employees, to obtain prior approval— the proposed regulation would require employees of the Commission, other than Special Government Employees, to obtain prior approval before engaging in outside employment.

The proposed regulation was intended to supplement the Standards of Ethical Conduct for employees of the Executive Branch issued by the Office of Government Ethics. The period for comments ended on September 29\textsuperscript{th}, 2006. No comments were received. Before we were able to publish the regulation in final, the Commission issued the Administrative Instruction on volunteer services. Officials at the U.S. Office of Government Ethics were of the opinion that the regulation and the Administrative Instruction...
were in contradiction. A new version of the
regulation had to be negotiated with the Office of
Government Ethics. This proposed final draft reflects
revisions resulting from this negotiation. I move
that the Commission adopt the final regulations for
employees of the Commission regarding outside
employment. The regulations would supplement the
Standards of Ethical Conduct for Employees of the
Executive Branch issued by the Office of Government
Ethics. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion? All in
favor, please say aye. Any objections? Any
abstentions?

(Vote taken.)

CHAIRMAN REYNOLDS: The motion passes
unanimously. Oh, yes. Do we have an idea if he's
coming back soon? Okay. Please let the record
reflect that it is not a unanimous vote, that
Commissioner Yaki did not vote.

VICE CHAIR THERNSTROM: Well, he stepped
out of the room.

CHAIRMAN REYNOLDS: Yes.

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Okay. As you will
recall, we approved the Strategic Plan for 2008 through 2013 on October 12th, 2007. One of the strategic goals we agreed was the shaping of a national conversation on current and future Civil Rights issues that identified Civil Rights priorities for policy makers.

The Commission's unique position in the Civil Rights landscape allows it to think and act prospectively regarding Civil Rights, and to ask the questions, is the government's Civil Rights infrastructure equipped to address the Civil Rights challenges of the 21st century? What Civil Rights issues and remedies will emerge over the next five, ten, and twenty-five years? What are the thorniest challenges facing enforcement agencies and the private bar in safeguarding fundamental Civil Rights in an era of dwindling resources? What are the most promising enforcement strategies for identifying pervasive discrimination, and for promoting equal opportunity for all? And what are the root causes of disparities in health, education, housing, and wealth, and are the disparities caused by discrimination?

The Commission hopes to answer these questions on shaping national conversation on Civil Rights issues in part by commissioning a multi-state
report in which the Commission's individual SACs identify Civil Rights priorities facing their states and regions. The opportunity for the SACs to identify emerging Civil Rights issues in their states fulfills the GAO recommendations, and reaffirms the National Office's commitment to incorporate the SACs in our project planning and execution.

Furthermore, this multi-state report will identify discrete Civil Rights topics that will help form the basis of discussion for the 2009 national conference.

I move that the Commission adopt the concept paper for the 2009 multi-state report distributed to the Commissioners on January 3rd, 2008.

Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Thank you.

Discussion?

Commissioner Yaki.

COMMISSIONER YAKI: Yes. In terms of the ---- I was looking at the description for this, and it talks about how they would not B- they would ask members of the SAC to identify all issues that they consider to be important, without any limitation as to number. My question goes to the issue of subject
matter, because as I've said on more than one occasion, I believe that the question of gay, lesbian, and trans-gender rights is something that this Commission can and should look into. And I'm just wondering if it's your understanding that that would be permissible under this rubric, and whether or not we can insure that people know that they can raise that issue, if they believe that is, indeed, one of the more urgent Civil Rights issues that they identify in their state.

CHAIRMAN REYNOLDS: We didn't place any limits on what our SACs can look at, and we didn't place any limits on what we could look at.

COMMISSIONER YAKI: Okay. I was just B- I just worry about the wording of the phrase, "Within our statutory mandate", and how that could be interpreted by some. I hope that the instructions going out to the state chairs would specifically mention that issues of gay, lesbian, and trans-gender rights would not be excluded from the list that people could submit.

CHAIRMAN REYNOLDS: Okay. Well, I have a different approach. I think that it should be clear that we are starting with a blank piece of paper, and that what we've done in the past is not going to be a
constraint on what we can do in the future.

COMMISSIONER YAKI: I would agree with that, Mr. Chair.

CHAIRMAN REYNOLDS: And the SACs then, I would hope, would feel free to explore any issue that they felt important to discuss.

COMMISSIONER YAKI: Okay. I just know, at one point a couple of years ago when I brought this up, there was a question about whether or not it was within the "statutory mandate", but if we're not going to be giving quite that kind of gloss to the state SACs, then I'm happy with your statement.

STAFF DIRECTOR MARCUS: May I address that?

CHAIRMAN REYNOLDS: Sure.

STAFF DIRECTOR MARCUS: The traditional understanding which has been communicated to SACs and everyone else, is that this Agency can deal only with issues within its jurisdiction, and that's true for the Commission, and it's true for the State Advisory Committees. Now questions regarding rights of gay, lesbian, and related groups have come up from time to time, and it's been the consistent position of the Agency that we do have jurisdiction to deal with those issues to the extent that they address the
administration of justice; that our jurisdiction does not broadly include sexual orientation as one of the issues that we have jurisdiction to spend money on and address, but that to the extent that issues arise dealing with administration of justice, which might include marriage laws or things of that sort, that is something within the jurisdiction of the Agency, and that's B-

COMMISSIONER YAKI: Marriage laws, hate crimes, that kind of stuff, I agree. I mean, I would just want to make sure that that is not unduly chilled in the discussions and instructions to the SACs chairs. That's all.

CHAIRMAN REYNOLDS: Commissioner Melendez.

COMMISSIONER MELENDEZ: Yes. Has this already started, or is this something that's going to start shortly?

STAFF DIRECTOR MARCUS: Some of the preparation work has started, but in terms of contacting the SAC members to solicit this input, we've been holding off until giving the Commissioners an opportunity to review the concept paper, to make sure that we're on the same page, as it were.

COMMISSIONER MELENDEZ: Okay. The other question is, are we trying to identify the specific
Civil Rights problems in each state? Is that what
this is about, or is this more of a generic list of
things that could be potential issues within the
state?

CHAIRMAN REYNOLDS: Well, it was my
understanding that each individual SAC that chooses to
participate would decide what issues they want to address.

STAFF DIRECTOR MARCUS: And it would be
existing, or over the next few years. I'm not sure
exactly how we'll write about it, but the idea for the
strategic report -- for the general project, as
reflected in the strategic plan, is that we're looking
at Civil Rights issues as they exist, and are
anticipated to exist over the next few years.

CHAIRMAN REYNOLDS: Okay. Did we vote on
this?

COMMISSIONER: We have not voted on it.

CHAIRMAN REYNOLDS: Okay. All in favor,
please say aye. Any objections? Any abstentions?

(Vote taken.)

CHAIRMAN REYNOLDS: Okay. Please let the
record reflect that Commissioners Yaki and Melendez
abstained, and that Vice Chair Thernstrom is out of
the room. The remaining Commissioners voted in favor,
so the motion carries.

**VII. State Advisory Committee Issues**

**CHAIRMAN REYNOLDS:** Next up is re-chartering of four State Advisory Committees. The SACs that we're going to vote on today are the District of Columbia, Kansas, Missouri, and South Carolina. I move that the Commission re-charter the District of Columbia State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director; Bruce Fien, Cassandra Buitts, Kevin Chavous, Virginia Ford, Sonia Guiterrez, Vernon Ingram, Winona Lake Scott, Daniel Lips, Ted Loza, Allen Palmer, Denyse Sabagh, James Sandman, and Levi Shemtov.

I also move that the Commission appoint Bruce Fien as Chair of the newly re-chartered District of Columbia State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

**VICE CHAIR THERNSTROM:** Second.

**CHAIRMAN REYNOLDS:** Discussion?

**COMMISSIONER MELENDEZ:** Yes, I had a
question. It sounded to me like, in reading this, that there were seven members from the old SAC who could have been reappointed, trying to keep some continuity within, if we could. Is there a reason why we didn't reappoint any of the seven members, and we only appointed two of those?

STAFF DIRECTOR MARCUS: For clarification, Commissioner Melendez, are you referring to the D.C. SAC, or a different SAC?

COMMISSIONER MELENDEZ: Yes, the D.C. SAC.

STAFF DIRECTOR MARCUS: Yes, I believe, and I can get clarification, that several of them moved out of the District of Columbia, and others did not respond to us.

COMMISSIONER MELENDEZ: Okay.

STAFF DIRECTOR MARCUS: It's a ratio of 3-2 of the ones that didn't respond to us, versus moved out of the District of Columbia. And the other two are recommended.

COMMISSIONER YAKI: So, in other words, the two who did express interest were reappointed. The other three either did not express interest, or were gone, the other five.

STAFF DIRECTOR MARCUS: That's right.

CHAIRMAN REYNOLDS: Other questions,
comments? Are we ready to vote?

COMMISSIONER YAKI: I have an amendment to this, which would be, first, that these are not part of the B-right. Would it be useful to do an analysis of this to see how they B- because that's already gone. You only do it with the new criteria, when they choose a new criteria. Correct? He's nodding his head. I'm just explaining that for him. Okay.

There's one question I had, and it has to do with our lovely South Carolina SAC.

CHAIRMAN REYNOLDS: Could we wait until we get there?

COMMISSIONER YAKI: Oh, I thought you were going to do the whole thing. I thought you said you're going to vote on the whole thing.

COMMISSIONER HERIOT: This is a vote on D.C.

CHAIRMAN REYNOLDS: Just working on D.C. now.

COMMISSIONER YAKI: Oh, okay. I'm sorry.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: I have a question.

On this fellow by the name of Vernon Ingraham, did he have any experience, any Civil Rights?

STAFF DIRECTOR MARCUS: It's my
recol
collection that he was a Commissioner recommendation, and that Commissioner Braceras vouched for his qualifications and background on Civil Rights issues.

CHAIRMAN REYNOLDS: Okay. A few things. I mean, he has some technical experience, he's over with the State Department. From his personal background, apparently he has a longstanding interest in Civil Rights. He's also involved with Big Brothers and Big Sisters, and also involved in educational issues.

VICE CHAIR THERNSTROM: Interest in Civil Rights, yes, "Interest in Civil Rights stems from personal experience as a black student in largely white schools", and so forth.

CHAIRMAN REYNOLDS: Are we ready to vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: All in favor, please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any objections?

COMMISSIONER YAKI: Opposed.

CHAIRMAN REYNOLDS: Is there another objection?

COMMISSIONER MELENDEZ: Yes.
CHAIRMAN REYNOLDS: Okay. Any abstentions? Okay. Commissioners Melendez and Yaki oppose the motion, the remaining Commissioners voted in favor. The motion passes.

Okay. Next up is the Kansas State Advisory Committee. I move that the Commission re-charter the Kansas State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director; Donald Prophete, Laurie Bagby, Susan Berson, Chiquita Coggs, Marsha Lee Frey, Delaya Garcia, Brian Johnson, Michelle Johnson, Jennifer Kassenbaum, Kirk Perucca, Charles Scott, Kimberly Shankman, Robert Shands, and Ewa Unoke.

I also move that the Commission appoint Donald Prophete as the Chair of the newly re-chartered Kansas State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment of these members. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: Yes. I have a
question on some of these that were recommended; Laura
Bagby doesn't seem to have any Civil Rights
experience, or very limited.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER MELENDEZ: And, also, Marsha
Lee Frey doesn't also B- the only thing they have in
common is that they're members of the National
Association of Scholars, but I don't see any Civil
Rights experience.

CHAIRMAN REYNOLDS: Okay. With respect to
Ms. Bagby, apparently she's a professor. She teaches
Justice, Equality, and Fairness Doctrine. She serves
on several hiring committees at K-12 and college
levels. She has experience with affirmative action
requirements and procedures. She is a member of the
Kansas Advisory Council to the Bill of Rights
Institute. So I think that that's more than
sufficient. And who was the other individual?

COMMISSIONER MELENDEZ: Marsha Lee Frey.

CHAIRMAN REYNOLDS: Oh, she is another
professor, apparently. And she is active in B-

VICE CHAIR THERNSTROM: Fire and CIR.

CHAIRMAN REYNOLDS: Oh, yes, Fire and CIR,
both groups that deal with Civil Rights issues. Any
other comments?
COMMISSIONER YAKI: Interesting way to put it.

VICE CHAIR THERNSTROM: Call the question.

CHAIRMAN REYNOLDS: Okay. The question is called. All in favor, please say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Objections?

COMMISSIONER YAKI: Opposed.

CHAIRMAN REYNOLDS: No abstentions, so please let the record reflect that Commissioners Yaki and Melendez oppose the motion. The remaining Commissioners voted in favor, the motion passes.

CHAIRMAN REYNOLDS: Okay. Next up is the Missouri State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendation of Staff Director; Michael Podgursky, Sandy Aguirre-Mayer, Timothy Asher, Cenia Bosman, Shamed Dogan, Ron Freeman, John Grimwade, James Hitchcock, Jalesia McQueen, Ronnie Podolefsky, Steven Schieber, and Donayle Whitman.

I also move that the Commission appoint Michael Podgursky as chair of the newly re-chartered Missouri State Advisory Committee. These members will, of course, serve as uncompensated government
employees. Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER MELENDEZ: This person by the name of John Grimwade, what is his experience? I think he works the same place you do, Mr. Reynolds.

CHAIRMAN REYNOLDS: He does. And, in fact, I encouraged him to apply. Bear with me.

VICE CHAIR THERNSTROM: Wide-ranging interactions with the community, making him an invaluable asset to SAC.

CHAIRMAN REYNOLDS: Okay. Well, based on what I know, since I can't get my notes together, John has served as a public official representing a township, and was involved in Civil Rights issues there in terms of hiring. John is also involved in various community activities that intersect with Civil Rights, including the Show-Me State Institute.

VICE CHAIR THERNSTROM: It says here, "Works to assist minority and women-owned businesses in writing proposals that will get them contracts and subcontracts. Familiarity with regulatory processes."

Call the question.

COMMISSIONER YAKI: I had my hand up.

VICE CHAIR THERNSTROM: Oh, I'm sorry.
CHAIRMAN REYNOLDS: Yes?

COMMISSIONER YAKI: I'm going to vote against this, of course, but I wanted to just note for the record that one of the members of the Committee is this person named Tim Asher, who's head of the Missouri Civil Rights Initiative, which continues the trend of appointing to SACs individuals from these various measures, whether it's in Michigan, Colorado, Arizona, California, Friends of Ward Connelly Brigade. Thank you.

CHAIRMAN REYNOLDS: Okay. And I think that that's a good thing. I think that the SACs, as well as headquarters, should represent a full range of views in America, and it will be a strange thing if we had a SAC that did not have B-

COMMISSIONER YAKI: Someone against Civil Rights?

CHAIRMAN REYNOLDS: Well, no, to have someone who had a different vision of Civil Rights.

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: And when we have a plebiscite, including California, when the issue is put on the table, there is a significant number of Americans who have a different view of Civil Rights than some other folks.
COMMISSIONER YAKI: And we know how plebiscites have done for the rights minorities in the past.

CHAIRMAN REYNOLDS: Okay. Next. Vote?

COMMISSIONER HERIOT: I would note this is the same vision of Civil Rights that inspired the Civil Rights Act of 1957, `60, `64, and so on.

VICE CHAIR THERNSTROM: Let us not argue about that. I'm calling the question.

COMMISSIONER YAKI: That's an insult of immense proportions to those people.

CHAIRMAN REYNOLDS: Just happens to be factually accurate.

VICE CHAIR THERNSTROM: Let us not get into B-

CHAIRMAN REYNOLDS: Okay. We could go out to the bar afterwards and continue the debate.

VICE CHAIR THERNSTROM: We are not going to settle that B-

CHAIRMAN REYNOLDS: Although, fueling this discussion with alcohol may not be a good idea. Okay. All in favor, say aye.

COMMISSIONER YAKI: I don't drink, so it doesn't matter.

(Chorus of ayes.)
CHAIRMAN REYNOLDS: All those who object?

COMMISSIONER YAKI: Opposed.

CHAIRMAN REYNOLDS: Okay. Please let the record reflect that Commissioners Yaki and Melendez oppose the motion. The remaining Commissioners voted in favor, the motion carries.

South Carolina. I move that the Commission re-charter the South Carolina State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee, based on the recommendations of the Staff Director; Mignon Clyburn, Daniel Cassidy, Walter Caudle, Wilfredo De Leon, James Gallman, Wanda George-Warren, Park Gillespie, Robert King, Joanne Metrick, Eboni Nelson, Samuel Tennenbaum, Jesse Washington, and Carolina Whitson.

I also move that the Commission appoint Mignon Clyburn as chair of a newly re-chartered South Carolina State Advisory Committee. These committees will serve as uncompensated government employees, yaddy, yaddy, yaddah. Is there a second?

COMMISSIONER KIRSANOW: Second.

CHAIRMAN REYNOLDS: Discussion?

Commissioner Yaki.

COMMISSIONER YAKI: Yes. I just wanted to
note for the record that I hope that, in terms of your
previous reference to bar fights, that at least for
one person on the Commission who B- proposed SAC who
wrote that she finds the term "African American"
extremely offensive, that she or he will get along
well with those on the Committee who identify
themselves as African American, and may do so during
the proceedings. I just wanted to make that
observation.

CHAIRMAN REYNOLDS: Interesting topic. My
grandmother prefers black, so do I.

COMMISSIONER KIRSANOW: So do I.

CHAIRMAN REYNOLDS: And, again, if we had
a plebiscite, I think African American would come in
second in terms of preference.

VICE CHAIR THERNSTROM: It does come in
second on polling, but that is a different question.
Whether it is offensive or not, I would B-

COMMISSIONER YAKI: And I would just add
there, that I respect your view on that, Commissioner
Kirsanow and Commissioner Reynolds, but this person is
in a slightly different position.

VICE CHAIR THERNSTROM: Well, I think I
got interrupted here. I agree that that is a
different question from the question of whether
somebody else finds the term actually offensive.

CHAIRMAN REYNOLDS: Okay, folks. Let's vote. All in favor, please say aye.

(Chorus of ayes.)

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Okay. Let the record reflect that Commissioners Yaki and Melendez voted against the motion. The remaining Commissioners voted for it, the motion carries.

Next up, Commissioner Yaki, I think that of your list, what's remaining is the discussion of the Staff Director departure.

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: So I open up the floor to you.

COMMISSIONER YAKI: Well, my question has to do with the issue of what do we know about the White House's position with regard to filling that position, and in the interim period, who is going to be running the Agency, because I believe that B- well, quite frankly, I was astonished that that subject would not be brought up before the Commission, since that seems to have some importance, given how many staff positions are in OSD, as to who, in fact, is running the show. So I'd like to know what is going
on with the White House, and what are the expectations for the transitional period in terms of who is running the Agency?

CHAIRMAN REYNOLDS: Okay. Well, I have not had any conversations with the White House with respect to filling this position. I don't know if anyone else around the table has. I hope that they would act on this quickly, so that we don't have B-it's imperative that we have that position filled as soon as possible. And it's my understanding that the rules in place, the day-to-day operations of the Agency would fall to the head of OCRE.

COMMISSIONER YAKI: And why is that?

CHAIRMAN REYNOLDS: I believe that that's our rule.

COMMISSIONER YAKI: Is it? What does OPM say? My understanding is that OPM has to be notified upon Ken's departure that the B-this is under what, 5 CFR 2 and 3, 3.3 something or other. I don't know, Emma, if you know, or our General Counsel knows, but my question is, what is that authority? I understand that there are certain minimum qualifications required under OPM for someone running our Agency to have, and I want to ensure that those qualifications from OPM have been met, so that we don't run into any buzz saw...
later on about whether we complied with federal law or not, in terms of how we treated the vacancy.

CHAIRMAN REYNOLDS: Okay. In terms of past practice, we intend to follow the rule that we've followed in the past. And, ultimately, that the head of OCRE B-

STAFF DIRECTOR MARCUS: If I may say, we have a longstanding AI that indicates the succession in the event that the Staff Director departs, and there's an interim before an appointment of a new Staff Director, where the position of Deputy Staff Director is vacant, and there's no Acting Deputy Staff Director. Under the process, the head of the Office for Civil Rights Evaluation has the functions of the Staff Director. I don't know whether that has come up, but it's been on the books for a while.

COMMISSIONER YAKI: Well, I understand that, but I believe, if I am not mistaken, that the position, the classification of the position of head of OCRE in the past is different than the classification of the position of head of OCRE at the present. Is that true?

STAFF DIRECTOR MARCUS: Yes, OGC has looked into that, and found that there is no distinction.
COMMISSIONER YAKI: Who has looked into that?

STAFF DIRECTOR MARCUS: Office of General Counsel.

COMMISSIONER YAKI: Which Office of General Counsel?

STAFF DIRECTOR MARCUS: The U.S. Commission on Civil Rights.

COMMISSIONER YAKI: And has that B- so, in other words, the fact that there was a different classification for the head of OCRE then, and the fact there's a different, very different classification for head of OCRE now, has no impact, whatsoever, on OPM's rules regarding who has what B- what are the minimum qualifications to engage in supervisory authority over other members of the Agency.

STAFF DIRECTOR MARCUS: It does not affect the operation of our Administrative Instruction. We will certainly confirm that there is no B-

COMMISSIONER YAKI: Well, AI kind of is trumped by OPM, don't you believe?

STAFF DIRECTOR MARCUS: We will certainly confirm that there is no change as a result of OPM B-

COMMISSIONER YAKI: Well, I would hope that you would do that before you leave. And I
understand that during times when you have been out interviewing, getting yourself ready, which I understand you have to do, that B-

CHAIRMAN REYNOLDS: Where did you get all this information?

COMMISSIONER YAKI: Pardon?

CHAIRMAN REYNOLDS: Where did you get all this information? I didn't know he was out interviewing.

COMMISSIONER YAKI: Not interviewing, but out doing stuff. The problem is, Mr. Chairman, I'd like to know what's going on, and even though I'm in the minority, and it's hard to get information sometimes, I do try to get information.

CHAIRMAN REYNOLDS: Hard to get information?

COMMISSIONER YAKI: Hard to get information.

COMMISSIONER TAYLOR: Is the question B-

COMMISSIONER YAKI: The question is, Commissioner Taylor, whether or not we are in compliance with OPM guidelines as to who is qualified to have supervisorial and executive authority over our Agency, and over other employees who may have higher rank, or different classifications, because, as I
understand how OPM guidelines tend to work, that there
are certain minimum qualifications required in order
to exercise supervisorial capacity. My question is
not with regard to the AI. I understand in the past
that when Terri Dickerson was here, sometimes she
would be delegated, I don't know if she ever was, but
she could have been delegated Acting Staff Director in
your absence. But if I recall what Ms. Dickerson's
classification was, it was fundamentally different
than that of the current head of OCRE.

CHAIRMAN REYNOLDS: Well, how about this?

COMMISSIONER YAKI: And I believe that
before we engage in any transitional behavior, we
should not just look at our own AIs, but I would not
just request, I think we are required to check with
OPM. I mean, OPM requires that upon return of a
Schedule C appointment, such as this, OPM be notified.

CHAIRMAN REYNOLDS: Commissioner Yaki, I
don't think there's any disagreement. I think that we
are required to ensure that our succession plan is
consistent with the law.

COMMISSIONER YAKI: Well, I'd like a
report on that as soon as possible before Ken leaves.

CHAIRMAN REYNOLDS: We will make that a
priority. Okay. That is it, folks, so I adjourn the
meeting. Thanks for all B-

COMMISSIONER MELENDEZ: We still have the
issue on the Minutes?

CHAIRMAN REYNOLDS: Oh, good.

COMMISSIONER MELENDEZ: Having to do with
appointment.

CHAIRMAN REYNOLDS: Yes. I have a
document here that was brought down. The purpose was
to confirm or refute the notion that Mr. Kirsanow was
appointed on a certain date. Here's what I have. I
have a document here dated November 27th of 2007, but
it is essentially an intention to appoint Commissioner
Kirsanow. My view is that we would be better off to
take a look at his certificate, which has the date, so
the initial suggestion that we table the vote on the
Minutes I think is a good one.

COMMISSIONER YAKI: Can we retroactively
deport Peter for the B-

CHAIRMAN REYNOLDS: Where are we going to
send him?

COMMISSIONER YAKI: Put him in the penalty
box until we B-

CHAIRMAN REYNOLDS: Where are we going to
send him?

COMMISSIONER KIRSANOW: You're going to
deport me?

(Laughter.)

CHAIRMAN REYNOLDS: Okay, folks. Thanks.

VII. Adjournment

COMMISSIONER YAKI: Are we adjourned?

CHAIRMAN REYNOLDS: Yes.

VICE CHAIR THERNSTROM: We're adjourned.

(Whereupon, the proceedings went off the record at 12:30 p.m.)