

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

+ + + + +

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

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STAFF PRESENT (continued):

VANESSA WILLIAMSON

AUDREY WRIGHT

MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON

LISA NEUDER

RICHARD SCHMELCHEL

KIMBERLY SCHULD

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P R O C E E D I N G S

9:33 A.M.

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

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1 the agenda. The first is to add under the Staff
2 Director's Report a discussion of the budget issues
3 following the appropriations for FY08.

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

14 CHAIRMAN REYNOLDS: Okay. Comments?

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

23 COMMISSIONER YAKI: Why is it premature?

24 CHAIRMAN REYNOLDS: Big document, haven't
25 read it. We need to have the Office of the General

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1 Counsel review it and provide us with some guidance.

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

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

22 CHAIRMAN REYNOLDS: I am anxious to wade
23 through all of the issues. Apparently, there are a
24 lot of them. As you know, the complaint, if that's
25 what it is, has over 200 pages. I have not read it.

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1 Other Commissioners have not read it and I think that
2 since this is probably a legal matter, it's important
3 to have the Office of the General Counsel review the
4 document and provide us with guidance before we have a
5 conversation about this matter before knowing what all
6 the facts are.

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

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

24 Surely, given the fact that this was filed
25 earlier and surely the fact that the Commission was

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1 named, it's something that even -- whatever merit it
2 may or may not have should have caused some action to
3 be taken with regard to understanding at least the
4 rudimentary basics.

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

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

25 CHAIRMAN REYNOLDS: We have a

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

13 Commissioner Melendez?

14 COMMISSIONER MELENDEZ: Yes. Just to add
15 to Commissioner Yaki, I have a concern on this whole
16 issue because I think this happened way before I came
17 on the Commission and one of my concerns would be and
18 any other new Commissioners that have come on board
19 since that time, our concern would be that for the
20 record we want to make sure that we address the issue,
21 whether that's in a closed session, so that if for
22 some reason we get formal litigation from the people
23 that are litigating against us, we'd have an option to
24 either settle out of Court, that's why it's tied to
25 the budget in some reason to know exactly what our

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1 options are. Because if we're hit with a lawsuit say
2 all of a sudden we receive the formal lawsuit in
3 another week it's going to be too late for us to even
4 look at any alternatives prior to that.

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

12 COMMISSIONER YAKI: From my experience,
13 when I was on the Board of Supervisors we got sued all
14 the time. The city got sued all the time, and we as
15 members of the board were often named in these
16 lawsuits. Whether they have any merit or not, the
17 fact of the matter is that a lawsuit may or may not be
18 filed. A demand has been made upon the Commission to
19 do specific acts. And I just want to say for the
20 record I find it astonishing we have a General Counsel
21 who is hired who is paid a fair amount of money, at
22 least under the federal system to be the General
23 Counsel for the Agency. And if it's 200 pages long,
24 frankly, to be quite honest I don't care if it's long
25 or not.

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1 The whole point of having a General
2 Counsel is for that General Counsel to act as General
3 Counsel to the Commission. And if someone has filed
4 something that large against us, to not even have a
5 rudimentary explanation to the Commission about what
6 it is, what is the nature of it without getting into
7 the substance, what is the response of the Agency?
8 Are there any deadlines that we have to respond to?
9 Are there any deadlines before the next meeting? If
10 that answers -- even if that answer came forward which
11 is we have no deadline before the February 8th meeting
12 that that is a lot better than I don't know, we've got
13 to read it and figure it out as we go along.

14 That to me is irresponsible and bad
15 management.

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

22 COMMISSIONER YAKI: But I'm talking
23 procedurally, Mr. Chairman. Procedurally, are there
24 any deadlines that we have to worry about between now
25 and February 7th?

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1 CHAIRMAN REYNOLDS: We are not being sued.

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

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

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

9 VICE CHAIR THERNSTROM: We have not been
10 sued.

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

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

15 CHAIRMAN REYNOLDS: If we have been sued
16 --

17 COMMISSIONER YAKI: The question is
18 whether or not under any extant federal procedures
19 regarding any whistle-blower complaints, what have
20 you, whatever CFR there may be, the question is I
21 don't know. And it would be nice if the General
22 Counsel could at least explain to us what that process
23 is. And the fact that we have more than ample time to
24 respond to it without jeopardizing it, without it
25 going to a lawsuit before any of us have any ability

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1 to make a decision or learn more about it. That's all
2 I'm asking. If that can't be answered, then --

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

6 COMMISSIONER YAKI: It's not piecemeal.
7 That's what I'm trying --

8 VICE CHAIR THERNSTROM: It is piecemeal.

9 COMMISSIONER YAKI: It is not piecemeal.
10 Piecemeal would be --

11 VICE CHAIR THERNSTROM: Okay --

12 COMMISSIONER YAKI: The question is --

13 CHAIRMAN REYNOLDS: Commissioner Kirsanow,
14 Commissioner Kirsanow --

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

17 CHAIRMAN REYNOLDS: Commissioner Yaki,
18 allow your fellow Commissioners to make comments.

19 COMMISSIONER YAKI: I will.

20 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

21 COMMISSIONER KIRSANOW: Thank you, Mr.
22 Chairman.

23 I agree with Commissioner Yaki that we
24 should follow the procedure. This is not a complaint.
25 We should follow the same procedure that we typically

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

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

16 VICE CHAIR THERNSTROM: I call the
17 question.

18 COMMISSIONER MELENDEZ: Could I ask a
19 question?

20 CHAIRMAN REYNOLDS: Commissioner Melendez.

21 COMMISSIONER MELENDEZ: Are we talking
22 about specific time frames here? If we were to let
23 our internal staff -- or the General Counsel look at
24 this, what are we talking about that we don't let this
25 drag on and we have a specific --

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1 COMMISSIONER KIRSANOW: I think we should
2 ask the General Counsel how long he thinks it takes
3 him to digest it and respond. Apparently, there're
4 200 and something plus pages with a number of
5 allegations, as you said.

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

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

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

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

22 In fact, let's just vote on each item
23 separately. The first motion would be to discuss
24 budget issues under the Staff Director's Report. All
25 in favor, please say aye.

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1 (Chorus of ayes.)

2 Any abstentions?

3 Any objections?

4 (No response.)

5 The motion passes unanimously.

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

11 All in favor, please say aye.

12 (Ayes.)

13 Any objections?

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

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

20 COMMISSIONER YAKI: Yes.

21 CHAIRMAN REYNOLDS: Any comments?

22 Anyone uncomfortable with that?

23 Okay, so amended, for a second time, all
24 in favor of discussing Commissioner Yaki's request for
25 a Special Assistant and having that discussion after

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1 the discussion of the budget issues, please say aye.

2 (Chorus of ayes.)

3 Any objections?

4 (No response.)

5 Any abstentions?

6 (No response.)

7 The motion carries unanimously.

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

12 (Ayes.)

13 Any objections?

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

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

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

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1 have this agenda --

2 COMMISSIONER YAKI: How could it not?

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

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

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

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

20 All in favor, please say aye.

21 (Ayes.)

22 Objections?

23 COMMISSIONER YAKI: Opposed.

24 COMMISSIONER MELENDEZ: Opposed.

25 CHAIRMAN REYNOLDS: Please let the record

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1 reflect that Commissioners Melendez and Yaki oppose
2 the motion. That's odd. So if we had, if at least
3 the majority had agreed with you what you wanted would
4 have been off the table because of the placement.

5 Anyway, the motion passes.

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

8 CHAIRMAN REYNOLDS: That's exactly what it
9 was.

10 COMMISSIONER YAKI: Okay.

11 CHAIRMAN REYNOLDS: Okay --

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

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

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

21 COMMISSIONER YAKI: Aye.

22 COMMISSIONER MELENDEZ: Aye.

23 CHAIRMAN REYNOLDS: All opposed?

24 (Nays.)

25 Any abstentions? Commissioner Taylor,

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1 what did you say? Thank you. Let me know when you
2 finish.

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

10 CHAIRMAN REYNOLDS: I can support that
11 motion.

12 Okay, we have a substitute motion on the
13 table.

14 Is there a second?

15 COMMISSIONER KIRSANOW: Second.

16 CHAIRMAN REYNOLDS: Discussion?

17 All in favor, please say aye.

18 (Ayes.)

19 Any objections?

20 COMMISSIONER YAKI: Oppose.

21 COMMISSIONER MELENDEZ: Opposed.

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

24 COMMISSIONER YAKI: No, we want to discuss
25 it at this meeting.

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1 CHAIRMAN REYNOLDS: Okay. All right,
2 please let the record reflect that Commissioners
3 Melendez and I believe Yaki oppose the motion.

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

6 CHAIRMAN REYNOLDS: Okay. The motion
7 carries.

8 **II. Approval of Minutes of December 3, 2007 Meeting**

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

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

14 VICE CHAIR THERNSTROM: Second.

15 CHAIRMAN REYNOLDS: Discussion?
16 Commissioner Melendez?

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

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

25 COMMISSIONER MELENDEZ: I want to make

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

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

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

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

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

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

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

21 COMMISSIONER YAKI: I have a procedural
22 question on this. Who keeps records -- whose
23 responsibility is it to determine when a term has
24 expired and to record when an appointment has been
25 made? The reason I ask that is I remember when I was

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1 appointed in February of 2005, I remember getting a
2 frantic phone call in May saying that my appointment
3 was expiring because my predecessor's term expired May
4 something or other and we needed to get it into -- we
5 needed to get the Speaker to make the appointment in
6 order for me to appear at the next meeting.

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

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

24 CHAIRMAN REYNOLDS: That is a very good
25 point.

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1 Mr. Staff Director?

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

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

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

22 (Static sounds.)

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

25 STAFF DIRECTOR MARCUS: Typically, I am

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1 informed by the appointing authority. I can't say
2 that I recall exactly the specifics on dates from
3 hearing on Commissioner Kirsanow, but I do recall that
4 it was in November prior to the expiration of his term
5 that I was notified of his reappointment by the White
6 House.

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

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

23 COMMISSIONER YAKI: Okay, thank you.

24 CHAIRMAN REYNOLDS: Commissioner
25 Thernstrom?

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

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

12 CHAIRMAN REYNOLDS: That question is
13 directed to --

14 COMMISSIONER YAKI: At you or whoever.

15 CHAIRMAN REYNOLDS: Staff Director?

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

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

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

25 CHAIRMAN REYNOLDS: Commissioners Melendez

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1 and Yaki, they raise a good point. We need to have a
2 procedure. We need to document when terms begin and
3 expire. We need to document how we were notified that
4 someone was appointed. This -- it's too loose.

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

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

20 COMMISSIONER KIRSANOW: I think there is a
21 record kept though, Michael, as I recall from my case.
22 Somewhere in the bowels of the White House, I
23 understand that there's something that indicates
24 there's -- they had it with Victoria Wilson and others
25 that indicates what those appointment dates were, when

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1 those announcements were made. Maybe someone
2 remembers this, but I think they were produced in
3 District Court. I may be mistaken, but it would be --
4 I agree with you, Mr. Chairman, that it would be good
5 to -- I don't know if it requires an administrative
6 instruction, but some type of a rule where if you're
7 notified by the White House or whomever, the
8 Commissioner provides notice to the Commission on such
9 appointment and then that would be followed up by
10 official documentation to be secured by the
11 Commissioner from the appropriate appointing authority
12 and then it's placed in some type of a ledger that we
13 keep.

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

20 CHAIRMAN REYNOLDS: Commissioner Melendez?

21 COMMISSIONER MELENDEZ: Just a question
22 because it pertains to these minutes, and if there is
23 a gap and we held a meeting within that gap of
24 November 27th to the 6th and our meeting was on the
25 3rd, it would affect the minutes, because Commissioner

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1 Kirsanow actually voted in that meeting. So just to
2 play it safe would we kind of hold off on the minutes
3 until you find that out and table them until the next
4 time? Otherwise, it doesn't matter to me if we want
5 to go ahead and vote on it, but I'm just --

6 CHAIRMAN REYNOLDS: I'm comfortable --

7 COMMISSIONER MELENDEZ: What it actually
8 means.

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

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

16 **III. Announcements**

17 CHAIRMAN REYNOLDS: Announcements are
18 next.

19 Last week, the Commission on Civil Rights
20 marked the 50th anniversary of the swearing in of the
21 first Commissioners at the White House ceremony on
22 January 3, 1958. President Eisenhower had been forced
23 -- only a few months before, President Eisenhower had
24 been forced to take the drastic step of federalizing
25 and dispatching the National Guard to Little Rock,

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1 Arkansas to enforce a court order to integrate a
2 public high school in the face of defiance by
3 Arkansas' Governor Faubus. Historian Foster Ray
4 Dulles notes that against this tense backdrop,
5 Eisenhower was especially anxious to find men to serve
6 on the Commission who might have an ameliorating
7 effect on the prejudices and passions inflamed by the
8 Little Rock crisis; men, thoughtful men, who would
9 command the full public confidence. He found those
10 men in John Hannah, president of Michigan State
11 University, who was named chairman; Robert Storey,
12 Dean of the Southern Methodist University's Law School
13 who was named Vice Chairman; John Battle, a former
14 Governor of Virginia; Father Theodore Hessler,
15 president of Notre Dame; James Ernest Wilkins, an
16 Assistant Secretary of Labor; and finally, Doyle
17 Colton, a former Governor of Florida. Though their
18 appointments were met with general approval, a number
19 of newspapers and magazines expressed doubt at the
20 time that the Commission's ultimate recommendations
21 would amount to much.

22 An editorial for The Nation noted that the
23 Commission was not likely to break many lances
24 crusading for civil rights. History has proven that
25 that is wrong.

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1 The Commission's first project was to look
2 for evidence of racial discrimination in connection
3 with voting rights in Montgomery, Alabama. From
4 there, it went on to hold hearings on the
5 implementation of Brown v. Board of Ed. in Nashville
6 and on housing discrimination in Atlanta, Chicago, and
7 New York. The facts gathered in these and other
8 hearings, along with the Commission's recommendations
9 were presented not just to Congress and the President,
10 but to the American people. These findings of facts
11 and recommendations became part of the foundation upon
12 which the Civil Rights Act of 1960, the Civil Rights
13 Act of 1964, the Voting Rights Act of 1965, and the
14 Fair Housing Act of 1968 were built.

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

19 The next announcement --

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

22 CHAIRMAN REYNOLDS: That is correct.

23 VICE CHAIR THERNSTROM: Generic term.

24 COMMISSIONER YAKI: Well, historically
25 accurate. I'm sure that's what they thought.

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1 CHAIRMAN REYNOLDS: Next week marks the
2 birthday of Martin Luther King, Jr. Reverend King was
3 one of the main leaders of the American civil rights
4 movement. A Baptist minister by training, Dr. King
5 became a civil rights activist early in his career
6 leading the Montgomery bus boycott and helping to
7 found the Southern Christian Leadership Conference.
8 His efforts led to the 1963 march on Washington where
9 King delivered "I Have a Dream" speech raising public
10 consciousness of the civil rights movement and
11 establishing King as one of the greatest orators in
12 American history.

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

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

23 And finally, I want to -- we've already
24 put the issue on the table, but Staff Director Marcus
25 will be leaving us, I believe, on January 18th.

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1 STAFF DIRECTOR MARCUS: Nineteenth.

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

10 VICE CHAIR THERNSTROM: Here, here.

11 CHAIRMAN REYNOLDS: Staff Director's
12 Report.

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

14 STAFF DIRECTOR MARCUS: Thank you, Mr.
15 Chairman. This is, as you will understand, an
16 emotional time for me as today is my last Staff
17 Director's Report after three years of service. I am
18 grateful to the President for providing me with the
19 opportunity to serve with such outstanding men and
20 women on issues of such ultimate importance to this
21 country. I am grateful to the Chairman, the Vice
22 Chair and the Commissioners for their leadership
23 through both difficult times and important successes.
24 And I am endlessly grateful to this staff for the
25 grace, professionalism, perseverance and courage with

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1 which they dealt with problems and challenges greater
2 than most on the outside would imagine.

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

7 (Laughter.)

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

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

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

25 As you may recall, Mr. Chairman, when I

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1 arrived, the Agency had just gone anti-deficient,
2 although that fact was not publicly known nor had it
3 been disclosed to Commissioners, and moreover, we were
4 able to determine shortly after my arrival that the
5 Commission was headed towards further anti-deficiency
6 without further changes which it appeared could
7 require office closures and/or layoffs. We also spoke
8 with an auditor who was unable to provide any sort of
9 an audit, unable to locate a financial ledger, and
10 unable after many, many months even to provide a
11 qualified, let alone an unqualified opinion on our
12 financial statements.

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

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1 especially the career staff of this Agency.

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

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

17 At the same time, the Commission had been
18 producing reports of a quality which created concerns
19 for the incoming Commissioners and which created
20 concerns that were expressed to me by many members of
21 the staff. We created new procedures. We did new
22 work and we have over the last year, few years,
23 generated an extraordinary number of reports. Some of
24 them love them, some people don't love them, but I
25 don't think that there's any question that the staff

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1 work that has gone into them has been extraordinary.
2 Some of the people are here today. Eileen Rudert and
3 Maja Jweied and Sook-Foon MacDougal, Margaret Butler,
4 Eileen Rudert -- I don't want to leave people out, but
5 I would say that all of the programmatic staff went
6 through extraordinary efforts to implement new
7 procedures, to issue an extraordinary number of
8 reports, to issue an extraordinary number of briefings
9 at a time that our budget was reduced, where we had
10 fewer and fewer staff and where each person had to do
11 more and more at a time when this situation of the
12 Agency was uncertain. And I have to say that that was
13 absolutely astonishing for me, particularly in the
14 early years.

15 I hate to single people out because I
16 don't want to avoid people and anyone whom I don't
17 mention I certainly don't mean offense. It seems to
18 me that there are a couple of people who might be
19 mentioned just because they are representative and
20 because they may not be known to members of the
21 Commission. And these are just two representative
22 stories. I think the Commissioners are aware that we
23 had a long-term librarian who was an institution here
24 and provided invaluable service for many years. At
25 her retirement, we were unable to backfill position.

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1 I had hoped to use that slot to hire a congressional
2 and public affairs expert which is something that had
3 actually been recommended to me by congressional
4 staff. We may not be able to do that now, but at any
5 rate we were not able to backfill the librarian.

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

25 I'll mention as another one, we have, as

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1 you know, only one IT person for this Agency, Michele
2 Yorkman Ramey, who also has other responsibilities
3 beyond IT and yet, not only has she been able to deal
4 with the challenges of a somewhat antiquated system,
5 with the challenges of purchasing new system, she was
6 able single-handedly to build a website to serve as
7 the centerpiece of a Campus Anti-Semitism Program, to
8 do it herself so that we did not have to use
9 additional taxpayer money and did it in an unsung
10 manner. These are just a few of the examples in
11 national operations, in our regions, in headquarters.

12 We have had people who have worked with
13 extraordinarily creativity and dedication and
14 devotion.

15 Looking back at the challenges that we
16 faced three years ago, I don't think that I could have
17 imagined that people could rally together as they have
18 done and to do as well as they have done. The staff
19 remained under extraordinary pressure to do too much
20 with too little and yet they continue each day to
21 shoulder those burdens because of the dedication and
22 commitment that they have to civil rights and I salute
23 every member of this Agency for that extraordinary
24 work which they have done, again, from the members of
25 the Commission to the members of the executive staff

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1 to all members of the staff. It really has been
2 personally and professionally an extraordinary
3 privilege.

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

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

18 (Applause.)

19 Thank you.

20 **V. Management and Operations**

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

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1 Sigma.

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

4 STAFF DIRECTOR MARCUS: Lean Six Sigma.
5 As I indicated over the last few years, we implemented
6 a number of procedures that deal with a wide range of
7 issues including program planning and rechartering of
8 State Advisory Committees. And I believe that those
9 procedures have been extraordinarily helpful in
10 improving quality and efficiency within the Agency.
11 At the same time we have had the challenge of trying
12 to implement new and complicated procedures at a time
13 of small budgets and significant demands on staff.

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

22 I brought together a significant part of
23 the staff, including regional staff, and office staff,
24 working with consultants from Booz Allen to use the
25 management process known as Lean Six Sigma to identify

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1 areas of waste or inefficiency and to figure out how
2 we can address these problems.

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

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

15 As a result of the work of staff,
16 including line staff end managements working with Booz
17 Allen, we now have a standardized document in uniform
18 SAC member recruitment process that reflects input
19 from regional offices, a list of quality indicators
20 used by the regional office when recruiting SAC
21 members and preparing SAC appointment packages, and a
22 reduction in the time that expectations for SAC
23 recruitment and outreach, application completion
24 review and evaluation, etcetera, as well as new tools
25 to track and monitor progress. This is reflected in

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1 the materials that had been distributed and for
2 regional staff we will be discussing these procedures
3 and tools next week.

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

18 It was my observation at the beginning
19 that we institutionally had the know-how to deal with
20 the various challenges we had, but it was dispersed in
21 different parts of the Agency, that there were some
22 people who would have best practices in one area and
23 others in another. And one of the key aspects of this
24 process has been to identify the challenges or
25 weaknesses, identify the best practices, articulate

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1 them, separating wheat from chaff, work with all of
2 the staff members to try to get a common understanding
3 and then develop processes which would be feasible and
4 which would also enable us to charter the State
5 Advisory Committees more rapidly and provide stronger
6 reports in a more efficient manner.

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

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

24 The feedback that I have gotten from staff
25 consistently has been that it is difficult, if not

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1 impossible, to provide that first draft within the
2 requisite time frame and that as a result, they are
3 spending a lot of time early on trying to polish
4 something up for Commission review at the detriment of
5 doing research that they should be doing in that
6 phase. I would expect at a later time there might be
7 a reconsideration of tweaking that.

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

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

24 If there are any questions, I could give
25 it a try and I'll also say that we have Ken Thompson

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1 of Booz Allen who is here as well. Not only did the
2 staff do a good job on this project, but Booz Allen
3 was extraordinarily helpful to us throughout this
4 entire process.

5 CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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

13 COMMISSIONER YAKI: Which was?

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

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

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

24 COMMISSIONER YAKI: Thank you.

25 CHAIRMAN REYNOLDS: Any other questions?

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1 VICE CHAIR THERNSTROM: I don't have a
2 question, I just -- I would like to very briefly
3 respond to the Staff Director's Report, if that's all
4 right.

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

23 I am incredibly grateful to what you've
24 done for the Agency. I did not want to miss the
25 opportunity to say something on the record to that

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1 effect.

2 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

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

8 One thing stood in mind, Ken graciously
9 gave credit to the staff and staff does, in fact,
10 deserve credit. I always try to extend credit to the
11 staff which I think is under appreciated and at least
12 by members of the public and maybe our stakeholders
13 who don't realize the yeoman's work that staff does.
14 I'm always impressed by the reports and the witnesses
15 that we get for the hearings and everything else that
16 the staff does. And every time I have questions or I
17 have issues, the staff does a great job, but I think
18 to a large extent that comes from the leadership. I
19 recall the time and Commissioner Thernstrom will
20 remember this when the Staff Director prohibited us
21 from even speaking to the staff, not this Staff
22 Director. And I recall when Ken first came on board,
23 one of the first things we did was initiate an audit.
24 And I remember sitting in Ken's office talking with
25 the auditor two months after the audit began and asked

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1 him where things stood and he had a deer in the
2 headlights look on his face. He was completely and
3 utterly baffled. He had no clue where anything was.
4 We didn't have a general ledger sheet. And in the
5 last two years, thanks to Ken's leadership we've had a
6 clean audit for the first time.

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

19 The one thing that was extraordinary to me
20 though and this goes back to the audit was when we
21 first came on board and we insisted that for the first
22 time in 12 years this Commission had an audit, we went
23 through -- I remember making a motion that we have
24 interviews with a number of auditing agencies and we
25 brought in everybody, a dog and pony show, and

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1 virtually every one ran screaming from the assignment.

2 They refused to even engage. That's how bad we were.

3 And this is a tiny Agency. It's not as if
4 we said could you please audit the Defense Department?

5 This place was in such bad shape that no one wanted
6 to undertake it and miss maybe incurring a liability
7 or the embarrassment of not being able to reconcile
8 where we were. And that's how bad we were and now I'm
9 pleased to say with Ken's departure all those things
10 have been rectified and that's why I look forward with
11 trepidation to the next few months with Ken.

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

15 STAFF DIRECTOR MARCUS: Thank you.

16 CHAIRMAN REYNOLDS: Are we ready to
17 discuss budget issues?

18 STAFF DIRECTOR MARCUS: I was able to find
19 an answer. As I had indicated, Booz Allen is good,
20 but we did have to pay for the value they provided.
21 The number that I just received is that it was
22 \$129,500.

23 CHAIRMAN REYNOLDS: Commissioner Melendez?

24 COMMISSIONER MELENDEZ: Yes, just a
25 question since this is the first time I've looked at

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1 this document. And since you'll be leaving also, is
2 it possible for Booz Allen to come back after I read
3 this over that we could ask some questions as to this
4 at some later business meeting?

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

8 COMMISSIONER MELENDEZ: Yes.

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

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

16 STAFF DIRECTOR MARCUS: They're in
17 Atlanta.

18 CHAIRMAN REYNOLDS: Commissioner Yaki?

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

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1 STAFF DIRECTOR MARCUS: He's here.

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

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

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

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

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

16 COMMISSIONER YAKI: What's your first name
17 again?

18 MR. THOMSON: Ken Thomson.

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

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

25 MR. THOMSON: Both.

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

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

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

21 MR. THOMSON: Not the report itself.

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

24 MR. THOMSON: I was told the history, but
25 we did not research that.

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1 COMMISSIONER YAKI: The fact that that was
2 a report that was done in -- from start to finish
3 including a vote by the Commission in five months
4 surprise you?

5 MR. THOMSON: Oh, yes.

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

9 MR. THOMSON: Stripped its findings from
10 it?

11 COMMISSIONER YAKI: Stripped it.

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

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

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

23 MR. THOMSON: We looked at each report,
24 but we did not study it in this. This was a study of
25 the process to generate the report. The report

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1 itself, as the final product was not the topic. The
2 topic was how can we get the reports through the
3 process in a more timely fashion.

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

7 MR. THOMSON: Does anyone else have
8 questions?

9 Thank you for your time.

10 CHAIRMAN REYNOLDS: Thank you very much.

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

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

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

22 MR. THOMSON: The part of studying the
23 process is to find every point in the process where
24 the process moves quickly or slows down. So one of
25 the things that we analyzed, in this very room we went

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1 through an exercise called value stream mapping.
2 You'll see it is a very dense page in there and we
3 apologize for that, but it was the length of this wall
4 that we have covered, and it showed every step in the
5 process, how long everything takes, the basic cycle
6 times and lead times, cycling time it takes to do the
7 process and then lead time which you talked about.

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

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

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

21 MR. THOMSON: Both of them were fast.

22 COMMISSIONER YAKI: We're talking July --

23 MR. THOMSON: Both of those are fast
24 processes.

25 COMMISSIONER YAKI: End of July, August,

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1 September, October, vote.

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

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

24 Our job is to document here is the window
25 of time that it takes. Depending on the type of

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1 report and difficulty, you now have an ability to look
2 inside of there and find the cycle time that you can
3 expect when the Commission comes back to you and says
4 I need time to do these things. You'll be able to
5 look inside of that document and say okay, so this
6 research is going to take 45 days. This is going to
7 take this long, and you'll have a good understanding
8 and clarity, transparency I think I heard earlier,
9 about how long that process will take.

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

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

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

21 I think that there are a number of
22 variables and one of them is whether there is a
23 particular priority as a result of external events
24 like pending legislation or some reason why we need to
25 do something quickly.

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1 I think that some offices have been
2 quicker than others and we've found variation among
3 the amounts of time that some offices have taken
4 versus others; and some individual staff more quickly
5 than others. I also think that we were able to do
6 some projects more quickly earlier on than more
7 recently for different reasons, including the fact
8 that we've had attrition over time and additional
9 procedures added. There are a number of variables
10 that I can think of off the top of my head.

11 MR. THOMSON: The ones that stuck out most
12 for us were things like the sheer volume of data that
13 needed to be crunched. That was one that popped up.
14 We saw that rework was one of the primary things,
15 rework from going back and forth internally, back and
16 forth to the Staff Director, back and forth with you.
17 So depending on how much and how significant that
18 rework was, that's what began to draw the time out.
19 So one of the things you'll see in there and it's true
20 for the SAC process as well, as we're trying to define
21 -- help you be able to define for those who are
22 writing reports, giving you SAC charters, what's
23 called -- it's basically called critical to quality
24 which is -- I'm sorry for the jargon, but it means
25 what is important for this report to happen? What are

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1 the things that you are looking for to make sure it
2 answers the mail? And it's almost a punch list of
3 things you go through and say yes, yes, yes, it has
4 this. If it has that, then I heard the word
5 procedural brought up -- procedurally, they've done
6 everything right, and at that point it gets down to
7 thinking about the message itself and how you want to
8 craft that message, but at least you're comfortable
9 that they have gone through every step in a very
10 logical, thoughtful way and a common way, a
11 standardized way as you can see that.

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

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

19 COMMISSIONER YAKI: Yes.

20 MR. THOMSON: In sequencing order of said
21 reports?

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

24 MR. THOMSON: That is something that is
25 definitely handled on a higher level, depending on the

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1 sequencing and the resource, if it happens. You'll
2 see on the -- it's called the value stream map, but
3 you'll see how many people it takes to do it. And in
4 all cases and in any industry or government, if you
5 bring more bodies to an equation, it's going to pick
6 up speed. So it says it takes this long -- if you
7 want to change priorities and you shift resources, you
8 can pick up that cycle time and that's kind of what
9 happens.

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

16 MR. THOMSON: We did dissect how they're
17 made, how they're made. I kind of wish we kind of
18 kept the value steam maps on the wall here to see
19 that, but it was literally the length of this entire
20 wall probably back to where you see that tape paper
21 and it talked through every stage and the entire staff
22 came up and they did a wonderful job of going through
23 and themselves clarifying amongst themselves when
24 things are supposed to take -- when they're supposed
25 to be done and how long it's supposed to take. So

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1 that was the best practices that Mr. Marcus was
2 bringing up and saying that they were able to amongst
3 themselves say here's the best way to do it. We had a
4 SAC chartering process. We had someone who was a --
5 I'll say an ace at it who had a lot of best practices
6 figured out. And sharing that right there, live fire,
7 sharing it, going through the sector side saying wow
8 you did that? How did you get somebody to come back
9 so fast? Here's what I did. And then we were able to
10 document that process as how the best process and how
11 everyone is taking it back to their own process and
12 using it going forward.

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

19 MR. THOMSON: Actually, both those reports
20 were brought up in our discussions as an example.
21 Here's an example of -- because that's one of the
22 questions we asked, how long? What was -- I'll say
23 what was the most painful one? What took the longest?
24 What was the hardest? Because what we're looking for,
25 as Ken said, is we're trying to identify waste and

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1 value, that's what we talk about. When you find a
2 process that's sped up, that's expedited which is
3 apparently what happened in those two cases, then what
4 you had most likely was a very strict focus on value
5 and a lot less waste in the process. So by doing that
6 we have a good understanding of what the best process,
7 we call it improved state future/future state could
8 look like, should look like and here's what reality
9 looks like and here's the swing of variation between.

10 And we try to move closer to that. We experience
11 this a lot across governments.

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

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

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

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

25 COMMISSIONER YAKI: See, that's what I was

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1 asking, I was asking if anyone mapped out how those
2 two reports were expedited versus the other reports
3 which haven't been done or took a lot longer or what
4 have you.

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

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

24 COMMISSIONER YAKI: And future state is
25 sort of what you want -- what the ideal would be to do

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1 going forward?

2 MR. THOMSON: Correct.

3 COMMISSIONER YAKI: Does that accommodate
4 backlog?

5 MR. THOMSON: It accommodates backlog?

6 COMMISSIONER YAKI: Does it accommodate
7 backlog?

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

10 COMMISSIONER YAKI: Okay.

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

15 COMMISSIONER YAKI: Thank you.

16 CHAIRMAN REYNOLDS: Commissioner
17 Thernstrom?

18 VICE CHAIR THERNSTROM: Commissioner Yaki
19 referred to reports and I quote him "run out of the
20 door" and it seems to me quite a loaded description as
21 if there was something fishy about getting work done
22 expeditiously with the implication, it seems to me,
23 that the process was ideologically and inappropriately
24 -- was inappropriately, ideologically driven. And I
25 hope I've heard wrong there.

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1 Obviously, as we've just heard, there are
2 many factors that go into the timing and I -- well,
3 again, those words caught my ear and the -- it seems
4 to me the implication, hearing between the lines, as
5 it were, is most unfortunate.

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

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

10 COMMISSIONER YAKI: You have a very good
11 ear.

12 VICE CHAIR THERNSTROM: Yes, well.

13 CHAIRMAN REYNOLDS: Any other questions?
14 Commissioner Melendez?

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

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

24 COMMISSIONER MELENDEZ: So for today,
25 we're under the old process?

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1 STAFF DIRECTOR MARCUS: That's right.

2 CHAIRMAN REYNOLDS: Any other questions?

3 COMMISSIONER YAKI: Yes, just a question.

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

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

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

15 CHAIRMAN REYNOLDS: Thank you, sir, very
16 much.

17 COMMISSIONER YAKI: No, just one question.
18 I would really -- given that --

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

22 COMMISSIONER YAKI: I understand, but
23 that's -- unfortunately, as you've pointed out,
24 hearing that something is going to be implemented in a
25 week, given that are just given this today, that's

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1 what prompted me to take a look at this really
2 quickly.

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

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

20 COMMISSIONER YAKI: Mr. Chairman, with all
21 due respect, I'm talking about the criteria within the
22 AI and I'm looking at some of these issues and I just
23 need to really fully understand their impact on the
24 selection criteria that we voted on. So I do think
25 that even as much as I respect your assertion or the

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1 Staff Director's assertion that we are not deviating
2 from the AIs, the fact that there are values and
3 checklists that mention issues or criteria that I'm
4 not sure were within the new criteria or not, warrants
5 some evaluation by the Commission.

6 CHAIRMAN REYNOLDS: I don't have an
7 objection.

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

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

22 CHAIRMAN REYNOLDS: Commissioner Melendez
23 was next.

24 COMMISSIONER MELENDEZ: My question would
25 be can changes be made to the process, even though

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1 it's been set in place if for some reason we look at
2 this -- issues like whether or not recommendations
3 should be attached to reports. Is that addressed in
4 your -- I haven't looked at this so if I do read it
5 and those questions come up later and we decide that
6 it's included in here or it's more finite --

7 STAFF DIRECTOR MARCUS: That would be a
8 policy question.

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

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

18 Vice Chair Thernstrom?

19 VICE CHAIR THERNSTROM: I was going to ask
20 the same question, why cannot we go ahead with the
21 Staff Director training, the staff implementing these
22 recommendations, and then surely they are not set in
23 stone. We modify them as time goes on and the
24 modification may not occur immediately. It may come
25 out of experience. So surely we cannot regard these

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1 as -- I mean we're signing our life away here. We're
2 starting a process that will evolve over time
3 inevitably.

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

8 CHAIRMAN REYNOLDS: Mr. Thomson?

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

19 And at the regular meetings you could
20 adjust or if they are just fundamental changes you can
21 adjust, but you always evolve this, to always say this
22 is working, this is getting better. You give it a
23 fair run time to give yourself a proof of concept and
24 a pilot. You run through those and make sure that you
25 get it, but it always evolves and always changes. And

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1 if you do that, you'll always have -- because what
2 will happen if you leave it static is it will become
3 dogmatic and that's when things begin -- and then it
4 becomes a liability itself, so we don't want that.
5 You always want to revisit, evaluate, and improve.

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

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

9 COMMISSIONER YAKI: Just to state for the
10 record, as much as I respect the fact that you can
11 always change the process, as I look at the -- and
12 again, I'm just seeing this for the first time. This
13 is not included in the package that we got a week ago.

14 It was not included in anything until it appeared on
15 the desk today. But when I see here on the critical
16 quality parameters for SAC recruitment, and the first
17 six criteria that I'm looking at on page 20 are an
18 extremely top down process, whereas a lot of the
19 history and especially the people who were booted off
20 after term with this were more of a grass roots
21 uptight type individuals, I just want to make sure --
22 I have questions about how this is going to occur. I
23 have questions about the impact of this prioritization
24 or sequencing, because that is clearly not within the
25 AIs. We do not say in the AIs that we are going to

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1 solicit applicants of national prominence. Maybe I'm
2 wrong. I can't remember that, but I don't think that
3 we were --

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

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

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

24 CHAIRMAN REYNOLDS: Let me guess which
25 half.

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1 COMMISSIONER YAKI: B- reason. When you
2 say B- the words that sort of B- that rocked me a
3 little bit was that we give the Office of the Staff
4 Director the direction and the ability to do these
5 sorts of things every day, and that's going to be an
6 issue beyond B-

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

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

24 CHAIRMAN REYNOLDS: Commissioner Yaki, I
25 am trying to agree with you. If you want to suspend

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1 the implementation of these process improvements, as I
2 said, I think that based on the arguments you made,
3 that is a sound recommendation. All I'm asking is B-
4 I'm trying to get you to weigh-in one way or the
5 other on training. Again, I think it's important.

6 COMMISSIONER YAKI: But if you're training
7 --

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

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

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

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

25 COMMISSIONER YAKI: I will B- that's fine.

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1 Do that. My only concern is that the criteria issue
2 is one that I have B- I just want to go on record as
3 expressing deep reservations about, I would hope that
4 the training, as it goes forward, not focus on those
5 components, but more the technical/procedural aspects
6 of processing, rather than going forward.

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

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

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

14 CHAIRMAN REYNOLDS: That we will hold off
15 implementing B-

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

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

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

22 CHAIRMAN REYNOLDS: All right. To the
23 extent that these documents contain recommendations
24 that undermine or change AIs, could we be B- do we
25 agree that that would require a vote? But this

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1 document cannot be the vehicle for changing AIs.

2 COMMISSIONER HERIOT: No one disagrees
3 with that.

4 CHAIRMAN REYNOLDS: Okay.

5 COMMISSIONER HERIOT: But B-

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

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

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

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

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

23 CHAIRMAN REYNOLDS: That was your
24 opportunity, Michael.

25 (Laughter.)

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

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

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

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

24 COMMISSIONER TAYLOR: I'm not disagreeing.
25 I guess my question is, would you prefer that to B-

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1 COMMISSIONER YAKI: Because I have just
2 been glancing at this during this discussion, and yet
3 here we were screaming about the fact that we couldn't
4 read 200 documents that were given to us six days ago
5 to give even a partial opinion as of what the heck was
6 going on with that letter.

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

12 COMMISSIONER HERIOT: Not if it shuts down
13 the process.

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

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

20 (Off the record comments.)

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

23 MR. THOMPSON: Yes, sir.

24 CHAIRMAN REYNOLDS: Okay. Well, I will
25 convey my condolences.

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1 (Laughter.)

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

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

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

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

14 CHAIRMAN REYNOLDS: And I agree with B-

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

17 CHAIRMAN REYNOLDS: Mr. Yaki B-

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

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

24 COMMISSIONER HERIOT: No, where we
25 continue to use the old process. The point is, this

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1 should not be shut down.

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

7 CHAIRMAN REYNOLDS: How long is B-

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

12 CHAIRMAN REYNOLDS: Do you have a
13 solution?

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

18 COMMISSIONER YAKI: But you would not be
19 doing that.

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

22 COMMISSIONER YAKI: That strikes me -B

23 CHAIRMAN REYNOLDS: Mr. Thompson have a
24 solution?

25 COMMISSIONER YAKI: Then why is it so

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1 important that B-

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

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

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

21 COMMISSIONER YAKI: Okay.

22 STAFF DIRECTOR MARCUS: My hope a while
23 back was that we would be able during the month of
24 January to do both, but we realized that with
25 everything else, we would only be able to handle one,

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1 so we're doing the one for which staff have time in
2 their schedule.

3 CHAIRMAN REYNOLDS: Okay. Mr. Thompson.

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

14 And, as you know, NTEU, a very strong
15 union environment, as well. So in every scenario, we
16 were never able to simply turn the switch. We went
17 through a very rigorous process of prove a concept
18 pilot, extend the pilot, and then full roll-out.
19 Between each you do an entire refinement, so you go
20 through, and one thing it does require is trust the
21 process for a length of time. I heard you say you
22 have four state charters coming up. Run those four
23 through the process, do your own after action review
24 and say how did that go? Do we have, like you said,
25 is criteria fair, is it not, can we add more, can we

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1 refine the wording? Because that was critical to
2 quality things from the time we did it, because we had
3 to develop the attributes by which quality is measured
4 for all processes in IRS.

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

11 CHAIRMAN REYNOLDS: Never happen here.

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

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

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

24 VICE CHAIR THERNSTROM: We've signed no
25 contract to say that we will never change what they've

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1 got in this report.

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

4 VICE CHAIR THERNSTROM: Implementing,
5 training and implementing.

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

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

11 COMMISSIONER TAYLOR: I've got a
12 substitute motion.

13 CHAIRMAN REYNOLDS: Okay.

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

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1 CHAIRMAN REYNOLDS: Gail, is that motion
2 okay with you?

3 COMMISSIONER HERIOT: Second.

4 COMMISSIONER TAYLOR: That would be my
5 motion.

6 CHAIRMAN REYNOLDS: Second?

7 COMMISSIONER HERIOT: That's second.

8 CHAIRMAN REYNOLDS: Okay. Let's vote.
9 All those in favor, please say aye. Objections?

10 (Vote taken.)

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

14 COMMISSIONER YAKI: I have a question.

15 CHAIRMAN REYNOLDS: Does it have to do
16 with this?

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

20 MR. THOMPSON: A pilot is a formalized
21 test. It's a test where you go in and you identify
22 critical criteria going in, saying here's what we want
23 to get out of this pilot. And you basically say in
24 things like in terms of quality, that you want to have
25 consistency, you want to have repeatability, you want

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1 to have fairness and those sorts of things, and you
2 define operational definitions for each one. You run
3 the pilot for a very set period of time. Our case it
4 was typically 30 or 60 days, with a control group, and
5 you run through the entire process. And you say at
6 the end you have a formal after action review, and you
7 step through those success criteria, and ask
8 yourselves did everything work, what needs refinement?
9 And then you B-

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

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

14 CHAIRMAN REYNOLDS: We voted B-

15 COMMISSIONER HERIOT: That isn't what we
16 B-

17 (Simultaneous speech.)

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

24 COMMISSIONER HERIOT: We could just make a
25 motion to reassess this.

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1 COMMISSIONER TAYLOR: I'm not opposed to
2 that.

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

6 (Simultaneous speech.)

7 CHAIRMAN REYNOLDS: Has memorialized what
8 he said. Right?

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

14 CHAIRMAN REYNOLDS: We have voted, and we
15 have lost. And it seems like we'll continue B-

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

19 VICE CHAIR THERNSTROM: The motion is what
20 it is.

21 COMMISSIONER YAKI: And he proposed B-

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

24 COMMISSIONER YAKI: He proposed a pilot,
25 and the entire discussion, the first discussion,

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1 pilot, live fire, blah, blah, blah, blah, blah. I'm
2 starting to get some of this, don't worry, so I'm
3 going to say that I understand that to be included in
4 the motion.

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

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

11 Last year the Commission requested \$8.8
12 million for fiscal year 2008. Initially, the
13 President approved the \$8.8 million, and the House and
14 Senate proposed increasing the amount to \$9 million,
15 which would have been roughly in line with the
16 Agency's 2007 funding of \$8,951,000. However,
17 Congress passed an Omnibus Appropriations Bill signed
18 by the President on December 26th, which cut the
19 Commission's fiscal year 2008 appropriations down to
20 \$8,460,000, a significant cut.

21 Fortunately, the Commission, while under a
22 continuing resolution, had been operating well within
23 its projected appropriations, and had numerous
24 vacancies on the staff, so the reduced appropriations
25 will not require any of the drastic sorts of cutbacks

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1 that we had to contemplate a few years ago. It will,
2 however, require making some changes to what we have
3 otherwise planned to do.

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

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

25 It may be possible by the end of the

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1 fiscal year through these savings, and perhaps
2 additional attrition to bring on one additional staff
3 member, and it would be my assessment that of the
4 five, the Human Resources Director is particularly
5 urgent.

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

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

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1 capacity will be diminished.

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

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

22 In some ways, though, the loss of the HR
23 Director may be an especially significant challenge.
24 Not only will that continued vacancy mean continued
25 delays in hiring and other personnel matters, but it

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1 will also impact necessary human capital planning, and
2 other long-term Human Resource strategy.

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

17 As you know, in September the Commission
18 submitted a fiscal year 2009 budget request for
19 approximately \$11.7 million. In November, OMB passed
20 the budget back to the Commission, suggesting a budget
21 of \$8.8 million instead. We appealed the pass-back,
22 hoping to receive at least \$9,382,522, and while we
23 have been hopeful that we would receive much or all of
24 that, after the Omnibus Appropriations Bill for 2008
25 came back, we received input from OMB that the amount

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1 we are likely to submit to Congress will be the \$8.8
2 million, rather than the \$11.7 million we had
3 initially hoped for.

4 CHAIRMAN REYNOLDS: Comments, questions?

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

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

12 CHAIRMAN REYNOLDS: Vice Chair Thernstrom.

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

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

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1 frees up for attrition, or cost-cutting, or other
2 reasons.

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

15 CHAIRMAN REYNOLDS: Commissioner Yaki.

16 COMMISSIONER YAKI: Yes, I have a
17 question. In the prioritization of hires, I'm
18 confused. Why would we go ahead and hire another
19 Attorney Advisor for the Office of the Staff Director
20 versus an HR Director, number one? And, number two,
21 what job is Derrick Horne performing? He's in
22 Atlanta, but is he in OSD? I don't quite understand
23 that. Are we paying for his travel back and forth to
24 do OSD work? I mean, I've been confused by that from
25 the beginning, but as we look at B- but if we look at

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1 what our priorities are, and how we're going to be
2 dealing with budgetary issues, I've just got to ask a
3 question why we went ahead with an Attorney Advisor in
4 OSD, when we had the crying need, as you put it, for
5 an HR Director. And I just have a question as to what
6 Derrick Horne is doing.

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

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

25 COMMISSIONER YAKI: Okay.

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

5 COMMISSIONER YAKI: Right.

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

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

22 STAFF DIRECTOR MARCUS: The Office of
23 Regional Programs is part of OSD, so he will remain in
24 OSD, but his work will be regional, programs,
25 coordination.

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1 COMMISSIONER YAKI: So he's an Attorney
2 Advisor within OSD, but he's not really doing OSD
3 work?

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

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

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

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

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

25 COMMISSIONER YAKI: So we have a Regional

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1 Director, and an Attorney Advisor in the Southern
2 Regional Office, but no one in the Western Region
3 Office, and no one in B- okay.

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

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

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

16 COMMISSIONER YAKI: Sure.

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

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

25 STAFF DIRECTOR MARCUS: I have one

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1 Attorney Advisor within OSD, and it's Kara
2 Silverstein, and she's a regular career Attorney
3 Advisor. Mr. Byrnes is now in the Regional Program.

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

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

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

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

16 COMMISSIONER YAKI: It isn't?

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

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

25 STAFF DIRECTOR MARCUS: I don't know if

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1 that's the case.

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

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

7 COMMISSIONER YAKI: Okay.

8 CHAIRMAN REYNOLDS: Commissioner Melendez.

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

11 STAFF DIRECTOR MARCUS: HR.

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

14 STAFF DIRECTOR MARCUS: No.

15 COMMISSIONER YAKI: Okay.

16 COMMISSIONER MELENDEZ: My concern would
17 be the amount of money that we have left, any type of
18 carry-over, and how would we know that, as
19 Commissioners? Would we have some type of a budget
20 for the last quarter if the fiscal year ended on
21 September 30th, so we could see something that kind of
22 updates the Commissioners as to what the budget looks
23 like, as far as carry-overs from the point of
24 September 30th would be the fiscal year that ended. So
25 I was just wondering, is it possible to get some type

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1 of budget to look at, as far as savings, or what we're
2 actually talking about here?

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

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

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

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

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

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1 last fiscal year.

2 COMMISSIONER YAKI: Are we under a hiring
3 freeze now?

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

6 COMMISSIONER YAKI: We're not? Okay.

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

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

19 COMMISSIONER MELENDEZ: Okay.

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

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

24 STAFF DIRECTOR MARCUS: Yes. No, I have
25 to say those figures do require explanation, so you

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1 may want to have some questions. They're difficult to
2 understand at first, because there are B- you can tell
3 how much money has been obligated, but you need to
4 think about things like whether there's some large
5 things that were obligated in the first quarter, or
6 that weren't obligated, but need to be
7 disproportionately obligated in the second quarter,
8 whether there are distortions because some people have
9 not put in salary and expense, things of that sort.

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

24 CHAIRMAN REYNOLDS: Commissioner Melendez,
25 we've been robbing Peter to pay Paul now for quite

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1 some time, and I agree that hiring someone to run HR
2 is extremely important, but there are other positions
3 that are also important. I mean, if you look at our
4 organizational chart, we have lots of boxes, and a
5 significant number of these org boxes don't have any
6 employees. And I'll say it again, this organization
7 is starved for funds, and I say that B- I'm a small
8 government man, but this organization, if it's going
9 to fulfill its statutory obligations in an effective
10 manner, the continuation of B- well, the practice, the
11 decades long practice of a frozen budget, accompanied
12 by modest increases, or significant reductions, I
13 mean, you can close the Commission down by closing it
14 down through the front door, or you can freeze the
15 budget and just watch it fall apart over time, and the
16 folks on the Hill have elected to close it down by
17 going through the back door. Vice Chair Thernstrom.

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

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

24 VICE CHAIR THERNSTROM: Well over 100,
25 that was B-

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1 COMMISSIONER KIRSANOW: It could have been
2 120, 130.

3 VICE CHAIR THERNSTROM: Yes.

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

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

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

11 MS. BUTLER: Eighty-five.

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

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

19 CHAIRMAN REYNOLDS: Commissioner Yaki.

20 COMMISSIONER YAKI: Yes. I'm going to
21 withdraw my agenda item on the Special Assistant for
22 the time being, for this reason. I do want to say
23 this. One, I was sort of the - two years ago, three
24 years ago, actually - the architect of the decision to
25 forego a Special Assistant, to which, at that time, I

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1 was entitled to, and could have hired in order to save
2 programs that the Staff Director told me were at risk,
3 which were the Western and the Mid-Western, the
4 Central and the Rocky Mountain Regional Offices, among
5 others. And I'm pleased and proud that the Chairman
6 joined me in that, and other new Commissioners did, as
7 well.

8 CHAIRMAN REYNOLDS: Can I jump in for a
9 moment?

10 COMMISSIONER YAKI: Yes.

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

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

17 COMMISSIONER YAKI: I would say B- well,
18 Commissioner Thernstrom, I would argue that the
19 appropriations language does discuss clearly the fact
20 that we're entitled to Special Assistants. But be
21 that as it may, I'm not getting into that debate now.
22 What I am troubled by, and why I'm not going to bring
23 it up at this time is, instead, to make a point; and
24 that is, we talk about how the Agency has done this,
25 or done that, or Congress doesn't give this money, or

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1 that money, what have you. The fact of the matter is,
2 is that as I look at this, I notice that a lot of
3 vacancies in this Agency, especially from OCRE and
4 others, have been reconsolidated into career positions
5 inside the Office of the Staff Director. We have one
6 person in the office, and some of them now are in
7 Atlanta, when we have only a clerical assistant in the
8 Western Region. But I just want to point out that I'm
9 not going to bring it up, because we need an HR
10 Director. That's clear.

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

18 I respect him as a person. He's a good person. I do
19 not understand why in the last week before he leaves,
20 he hires another position for his staff, when it's
21 clear that we've been without a Human Resources
22 Director for quite some time. OCRE is starved, as it
23 is, and we've lost a lot of good people in OCRE in
24 those career positions, and so I withdraw my agenda
25 item, and let's move on.

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1 CHAIRMAN REYNOLDS: Okay. A quick
2 response. One of the reasons that we have two clean
3 audits in a row, in my opinion, is the fact that we
4 have, indeed, enlarged the Staff Director's office.
5 We've provided more resources there. Does it come out
6 of the costs? Yes, it does. As I said earlier, we're
7 robbing Peter to pay Paul, and until our
8 appropriations are increased to enable us to staff up
9 so we can perform our functions without cannibalizing
10 ourselves, this will continue.

11 Commissioner Kirsanow.

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

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

24 COMMISSIONER YAKI: Well, just for
25 information. Until the Omnibus Bill came out, which I

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1 think, unlike the Chairman, I do not think was a back-
2 handed attack on the Commission. I think there was
3 language in there that the Chairman interpreted as an
4 attack on the existing leadership, but the fact of the
5 matter is, is that the original bills, as they
6 cleared, did come out with \$9 million. And, in fact,
7 there are many signs that there is a desire to put in
8 even more funds, so there are a lot of reasons why a
9 lot of different agencies didn't get as much funding
10 as they did right now.

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

23 I mean, I was really unaware B- I had
24 assumed that Chris, Kara, and Derrick, and before
25 Chris there was someone else, who I can't remember,

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1 were the four Schedule Cs that the Director is
2 entitled to, as I say "entitled", just as we are
3 entitled to Special Assistants. But now I found out
4 that they were all actually career positions that were
5 from other parts of the Agency.

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

16 COMMISSIONER YAKI: I understand. One
17 last thing for the Staff Director's report. We
18 received in by fax B- oh, by the way, two things. One
19 is, if there's going to be a notational vote, I would
20 request that an email be sent out to that effect, and
21 not just a fax, because faxes, in and of themselves,
22 may not get lost, an email alert that there is a
23 notational vote, and a fax arriving would be
24 important, number one. Number two, I've told staff
25 people at least on three or four occasions, I have a

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1 different fax number that comes directly to my
2 computer, so I can view any fax that comes in. The
3 fax that is constantly being used is the one that goes
4 to the generic big mill that sometimes B-

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

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

9 CHAIRMAN REYNOLDS: Yes.

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

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

19 COMMISSIONER YAKI: Okay.

20 CHAIRMAN REYNOLDS: Next.

21 COMMISSIONER MELENDEZ: I have a question.

22 CHAIRMAN REYNOLDS: Oh, sorry.

23 COMMISSIONER MELENDEZ: As far as the
24 briefings for the next year, did you say that we were
25 going to cut those down to three? And, if so, which

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1 ones, and does that mean that we would have more
2 business meetings? What were you actually referring
3 to?

4 COMMISSIONER YAKI: We have to discuss
5 that.

6 COMMISSIONER MELENDEZ: Yes, is that B-

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

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

17 CHAIRMAN REYNOLDS: Promise?

18 COMMISSIONER YAKI: At the last meeting,
19 over my strenuous objection, the Commission voted to
20 send a letter to CalTRANS. Did they, indeed, send the
21 letter, because I have not seen a copy? Generally, in
22 the first year that I was here, letters that were sent
23 by the Commission or by Commissioners, or certainly by
24 the Commission were circulated to all members of the
25 Commission. I do not know if that is happening any

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1 more, but certainly, if a letter to CalTRANS has been
2 sent, I have not seen hide nor hare of it, and that
3 leads me to just this one comment; which is, I am not
4 too sure what this is that we received here today in
5 our packet, which is a Performance and Accountability
6 for FY 2007.

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

19 CHAIRMAN REYNOLDS: A handsome fellow
20 there.

21 COMMISSIONER YAKI: Reference to many of
22 the reports that are contained in here, the collective
23 "we" is used, without acknowledgment that there is any
24 dissent. And, in addition B- again, I just have been
25 scanning this, because I just received it today. Like

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1 on page 16, it implies that "we", the Commission,
2 informed and guided national policy with testimony
3 before the Judiciary Committee. And my understanding
4 is that testimony was done by individual
5 Commissioners, not speaking on behalf of the
6 Commission, as a whole.

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

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

16 COMMISSIONER YAKI: May I see a draft?

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

25 COMMISSIONER YAKI: That's fine, but I

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1 also wanted to note that if you read this, what you
2 just said was not followed.

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

5 COMMISSIONER YAKI: Okay. Thank you.

6 CHAIRMAN REYNOLDS: Okay. Next. Okay.

7 On August 30th, 2006, the Commission published a
8 proposed regulation on outside employment in Federal
9 Register for notice and comment the proposed
10 regulation would require employees of the Commission,
11 other than Special Government Employees, to obtain
12 prior approval B- the proposed regulation would
13 require employees of the Commission, other than
14 Special Government Employees, to obtain prior approval
15 before engaging in outside employment.

16 The proposed regulation was intended to
17 supplement the Standards of Ethical Conduct for
18 employees of the Executive Branch issued by the Office
19 of Government Ethics. The period for comments ended
20 on September 29th, 2006. No comments were received.
21 Before we were able to publish the regulation in
22 final, the Commission issued the Administrative
23 Instruction on volunteer services. Officials at the
24 U.S. Office of Government Ethics were of the opinion
25 that the regulation and the Administrative Instruction

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1 were in contradiction. A new version of the
2 regulation had to be negotiated with the Office of
3 Government Ethics. This proposed final draft reflects
4 revisions resulting from this negotiation. I move
5 that the Commission adopt the final regulations for
6 employees of the Commission regarding outside
7 employment. The regulations would supplement the
8 Standards of Ethical Conduct for Employees of the
9 Executive Branch issued by the Office of Government
10 Ethics. Is there a second?

11 COMMISSIONER KIRSANOW: Second.

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

15 (Vote taken.)

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

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

23 CHAIRMAN REYNOLDS: Yes.

24 VICE CHAIR THERNSTROM: Yes.

25 CHAIRMAN REYNOLDS: Okay. As you will

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1 recall, we approved the Strategic Plan for 2008
2 through 2013 on October 12th, 2007. One of the
3 strategic goals we agreed was the shaping of a
4 national conversation on current and future Civil
5 Rights issues that identified Civil Rights priorities
6 for policy makers.

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

23 The Commission hopes to answer these
24 questions on shaping national conversation on Civil
25 Rights issues in part by commissioning a multi-state

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1 report in which the Commission's individual SACs
2 identify Civil Rights priorities facing their states
3 and regions. The opportunity for the SACs to identify
4 emerging Civil Rights issues in their states fulfills
5 the GAO recommendations, and reaffirms the National
6 Office's commitment to incorporate the SACs in our
7 project planning and execution.

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

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

15 Is there a second?

16 COMMISSIONER TAYLOR: Second.

17 CHAIRMAN REYNOLDS: Thank you.

18 Discussion?

19 Commissioner Yaki.

20 COMMISSIONER YAKI: Yes. In terms of the
21 ---- I was looking at the description for this, and it
22 talks about how they would not B- they would ask
23 members of the SAC to identify all issues that they
24 consider to be important, without any limitation as to
25 number. My question goes to the issue of subject

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1 matter, because as I've said on more than one
2 occasion, I believe that the question of gay, lesbian,
3 and trans-gender rights is something that this
4 Commission can and should look into. And I'm just
5 wondering if it's your understanding that that would
6 be permissible under this rubric, and whether or not
7 we can insure that people know that they can raise
8 that issue, if they believe that is, indeed, one of
9 the more urgent Civil Rights issues that they identify
10 in their state.

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

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

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

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1 constraint on what we can do in the future.

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

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

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

13 STAFF DIRECTOR MARCUS: May I address
14 that?

15 CHAIRMAN REYNOLDS: Sure.

16 STAFF DIRECTOR MARCUS: The traditional
17 understanding which has been communicated to SACs and
18 everyone else, is that this Agency can deal only with
19 issues within its jurisdiction, and that's true for
20 the Commission, and it's true for the State Advisory
21 Committees. Now questions regarding rights of gay,
22 lesbian, and related groups have come up from time to
23 time, and it's been the consistent position of the
24 Agency that we do have jurisdiction to deal with those
25 issues to the extent that they address the

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1 administration of justice; that our jurisdiction does
2 not broadly include sexual orientation as one of the
3 issues that we have jurisdiction to spend money on and
4 address, but that to the extent that issues arise
5 dealing with administration of justice, which might
6 include marriage laws or things of that sort, that is
7 something within the jurisdiction of the Agency, and
8 that's B-

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

14 CHAIRMAN REYNOLDS: Commissioner Melendez.

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

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

24 COMMISSIONER MELENDEZ: Okay. The other
25 question is, are we trying to identify the specific

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1 Civil Rights problems in each state? Is that what
2 this is about, or is this more of a generic list of
3 things that could be potential issues within the
4 state?

5 CHAIRMAN REYNOLDS: Well, it was my
6 understanding that each individual SAC that chooses to
7 participate would decide B- would identify the issues
8 that they want to address.

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

16 CHAIRMAN REYNOLDS: Okay. Did we vote on
17 this?

18 COMMISSIONER: We have not voted on it.

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

21 (Vote taken.)

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

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1 so the motion carries.

2 **VII. State Advisory Committee Issues**

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

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

23 VICE CHAIR THERNSTROM: Second.

24 CHAIRMAN REYNOLDS: Discussion?

25 COMMISSIONER MELENDEZ: Yes, I had a

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1 question. It sounded to me like, in reading this,
2 that there were seven members from the old SAC who
3 could have been reappointed, trying to keep some
4 continuity within, if we could. Is there a reason why
5 we didn't reappoint any of the seven members, and we
6 only appointed two of those?

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

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

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

15 COMMISSIONER MELENDEZ: Okay.

16 STAFF DIRECTOR MARCUS: It's a ratio of 3-
17 2 of the ones that didn't respond to us, versus moved
18 out of the District of Columbia. And the other two
19 are recommended.

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

24 STAFF DIRECTOR MARCUS: That's right.

25 CHAIRMAN REYNOLDS: Other questions,

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1 comments? Are we ready to vote?

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

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

11 CHAIRMAN REYNOLDS: Could we wait until we
12 get there?

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

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

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

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

21 CHAIRMAN REYNOLDS: Okay.

22 COMMISSIONER MELENDEZ: I have a question.
23 On this fellow by the name of Vernon Ingraham, did he
24 have any experience, any Civil Rights?

25 STAFF DIRECTOR MARCUS: It's my

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1 recollection that he was a Commissioner
2 recommendation, and that Commissioner Braceras vouched
3 for his qualifications and background on Civil Rights
4 issues.

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

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

16 CHAIRMAN REYNOLDS: Are we ready to vote?

17 VICE CHAIR THERNSTROM: Yes.

18 CHAIRMAN REYNOLDS: All in favor, please
19 say aye.

20 (Chorus of ayes.)

21 CHAIRMAN REYNOLDS: Any objections?

22 COMMISSIONER YAKI: Opposed.

23 CHAIRMAN REYNOLDS: Is there another
24 objection?

25 COMMISSIONER MELENDEZ: Yes.

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1 CHAIRMAN REYNOLDS: Okay. Any
2 abstentions? Okay. Commissioners Melendez and Yaki
3 oppose the motion, the remaining Commissioners voted
4 in favor. The motion passes.

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

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

23 COMMISSIONER KIRSANOW: Second.

24 CHAIRMAN REYNOLDS: Discussion?

25 COMMISSIONER MELENDEZ: Yes. I have a

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1 question on some of these that were recommended; Laura
2 Bagby doesn't seem to have any Civil Rights
3 experience, or very limited.

4 CHAIRMAN REYNOLDS: Okay.

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

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

19 COMMISSIONER MELENDEZ: Marsha Lee Frey.

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

22 VICE CHAIR THERNSTROM: Fire and CIR.

23 CHAIRMAN REYNOLDS: Oh, yes, Fire and CIR,
24 both groups that deal with Civil Rights issues. Any
25 other comments?

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1 COMMISSIONER YAKI: Interesting way to put
2 it.

3 VICE CHAIR THERNSTROM: Call the question.

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

6 (Chorus of ayes.)

7 CHAIRMAN REYNOLDS: Objections?

8 COMMISSIONER YAKI: Opposed.

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

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

22 I also move that the Commission appoint
23 Michael Podgursky as chair of the newly re-chartered
24 Missouri State Advisory Committee. These members
25 will, of course, serve as uncompensated government

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1 employees. Is there a second?

2 VICE CHAIR THERNSTROM: Second.

3 CHAIRMAN REYNOLDS: Discussion?

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

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

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

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

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

24 COMMISSIONER YAKI: I had my hand up.

25 VICE CHAIR THERNSTROM: Oh, I'm sorry.

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1 CHAIRMAN REYNOLDS: Yes?

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

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

16 COMMISSIONER YAKI: Someone against Civil
17 Rights?

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

20 COMMISSIONER YAKI: Okay.

21 CHAIRMAN REYNOLDS: And when we have a
22 plebiscite, including California, when the issue is
23 put on the table, there is a significant number of
24 Americans who have a different view of Civil Rights
25 than some other folks.

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1 COMMISSIONER YAKI: And we know how
2 plebiscites have done for the rights minorities in the
3 past.

4 CHAIRMAN REYNOLDS: Okay. Next. Vote?

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

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

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

12 CHAIRMAN REYNOLDS: Just happens to be
13 factually accurate.

14 VICE CHAIR THERNSTROM: Let us not get
15 into B-

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

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

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

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

25 (Chorus of ayes.)

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1 CHAIRMAN REYNOLDS: All those who object?

2 COMMISSIONER YAKI: Opposed.

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

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

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

22 COMMISSIONER KIRSANOW: Second.

23 CHAIRMAN REYNOLDS: Discussion?
24 Commissioner Yaki.

25 COMMISSIONER YAKI: Yes. I just wanted to

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

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

12 COMMISSIONER KIRSANOW: So do I.

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

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

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

23 VICE CHAIR THERNSTROM: Well, I think I
24 got interrupted here. I agree that that is a
25 different question from the question of whether

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1 somebody else finds the term actually offensive.

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

4 (Chorus of ayes.)

5 COMMISSIONER YAKI: No.

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

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

13 COMMISSIONER YAKI: Yes.

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

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

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1 on with the White House, and what are the expectations
2 for the transitional period in terms of who is running
3 the Agency?

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

13 COMMISSIONER YAKI: And why is that?

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

16 COMMISSIONER YAKI: Is it? What does OPM
17 say? My understanding is that OPM has to be notified
18 upon Ken's departure that the B- this is under what, 5
19 CFR 2 and 3, 3.3 something or other. I don't know,
20 Emma, if you know, or our General Counsel knows, but
21 my question is, what is that authority? I understand
22 that there are certain minimum qualifications required
23 under OPM for someone running our Agency to have, and
24 I want to ensure that those qualifications from OPM
25 have been met, so that we don't run into any buzz saw

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1 later on about whether we complied with federal law or
2 not, in terms of how we treated the vacancy.

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

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

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

23 STAFF DIRECTOR MARCUS: Yes, OGC has
24 looked into that, and found that there is no
25 distinction.

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1 COMMISSIONER YAKI: Who has looked into
2 that?

3 STAFF DIRECTOR MARCUS: Office of General
4 Counsel.

5 COMMISSIONER YAKI: Which Office of
6 General Counsel?

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

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

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

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

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

24 COMMISSIONER YAKI: Well, I would hope
25 that you would do that before you leave. And I

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1 understand that during times when you have been out
2 interviewing, getting yourself ready, which I
3 understand you have to do, that B-

4 CHAIRMAN REYNOLDS: Where did you get all
5 this information?

6 COMMISSIONER YAKI: Pardon?

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

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

15 CHAIRMAN REYNOLDS: Hard to get
16 information?

17 COMMISSIONER YAKI: Hard to get
18 information.

19 COMMISSIONER TAYLOR: Is the question B-

20 COMMISSIONER YAKI: The question is,
21 Commissioner Taylor, whether or not we are in
22 compliance with OPM guidelines as to who is qualified
23 to have supervisory and executive authority over our
24 Agency, and over other employees who may have higher
25 rank, or different classifications, because, as I

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1 understand how OPM guidelines tend to work, that there
2 are certain minimum qualifications required in order
3 to exercise supervisory capacity. My question is
4 not with regard to the AI. I understand in the past
5 that when Terri Dickerson was here, sometimes she
6 would be delegated, I don't know if she ever was, but
7 she could have been delegated Acting Staff Director in
8 your absence. But if I recall what Ms. Dickerson's
9 classification was, it was fundamentally different
10 than that of the current head of OCRE.

11 CHAIRMAN REYNOLDS: Well, how about this?

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

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

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

24 CHAIRMAN REYNOLDS: We will make that a
25 priority. Okay. That is it, folks, so I adjourn the

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1 meeting. Thanks for all B-

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

4 CHAIRMAN REYNOLDS: Oh, good.

5 COMMISSIONER MELENDEZ: Having to do with
6 appointment.

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

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

19 CHAIRMAN REYNOLDS: Where are we going to
20 send him?

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

23 CHAIRMAN REYNOLDS: Where are we going to
24 send him?

25 COMMISSIONER KIRSANOW: You're going to

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1 deport me?

2 (Laughter.)

3 CHAIRMAN REYNOLDS: Okay, folks. Thanks.

4 **VII. Adjournment**

5 COMMISSIONER YAKI: Are we adjourned?

6 CHAIRMAN REYNOLDS: Yes.

7 VICE CHAIR THERNSTROM: We're adjourned.

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

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