

U.S. COMMISSION ON CIVIL RIGHTS

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COMMISSION MEETING

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FRIDAY, FEBRUARY 8, 2008

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The meeting convened in Room 540 at 624
Ninth Street, N.W., Washington, D.C. at 9:00 a.m.,
Gerald A. Reynolds, Chairman, presiding.

PRESENT:

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

DR. ROBERT LERNER, Delegated the Authority
of the Staff Director, OSD

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel, OGC
TERESA BROOKS
MARGARET BUTLER, EEO Director
CHRISTOPHER BYRNES, Chief, Regional Programs
Coordination Unit
DEBRA CARR, Esq., Associate Deputy Staff Director, OSD
DEMITRIA DEAS
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
MAJA JWEIED
MONICA KIBLER
SOCK-FOON MACDOUGALL, Acting Chief, PAU
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
EILEEN RUDERT
KARA SILVERSTEIN, Attorney Advisor, OSD
KIMBERLY TOLHURST

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VANESSA WILLIAMSON
AUDREY WRIGHT
MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

DOMINIQUE LUDVIGSON
RICHARD SCHMELCHEL
KIMBERLY SCHULD

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B-U-S-I-N-E-S-S M-E-E-T-I-N-G

9:00 a.m.

CHAIRMAN REYNOLDS: On the record. Okay.
Good morning. This is Chairman Reynolds. The meeting
will come to order.

This is a meeting of U.S. Commission on
Civil Rights starting at 9:00 a.m. on February 8,
2008. The meeting is held at 624 9th Street, N.W.,
Room 540, Washington, D.C.

It gives me great pleasure to announce
that on February 6, 2008 pursuant to Section II of the
Civil Rights Commission's Amendments Act of 1994 and
upon the recommendation of the Minority Leader and the
Speaker Pro Tem of House of Representatives, appointed
Todd Gaziano of Falls Church, Virginia as a member of
the Commission. Commissioner Gaziano is currently the
Director of The Center for Legal and Judicial Studies
of The Heritage Foundation. So let's all give him a
round of applause. Welcome aboard.

(Applause.)

COMMISSIONER GAZIANO: Thank you very
much.

CHAIRMAN REYNOLDS: Would you care to take
a few moments just to make some remarks about your
background and what you've done?

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1 COMMISSIONER GAZIANO: If it's all right,
2 I'll defer that for another time.

3 CHAIRMAN REYNOLDS: That's fine. I like
4 that. Time management.

5 **I. APPROVAL OF AGENDA**

6 CHAIRMAN REYNOLDS: Okay. Let's see. All
7 the Commissioners are present and we will now continue
8 with the first item on the agenda. The first item on
9 the agenda is the approval of the agenda.

10 I move that we approve the agenda. Is
11 there a second?

12 VICE CHAIR THERNSTROM: Second.

13 CHAIRMAN REYNOLDS: Discussion?

14 COMMISSIONER YAKI: Two questions. One,
15 may we ask the new commissioner for the pronunciation
16 of his name so none of us butcher it for the rest of
17 the meeting?

18 COMMISSIONER GAZIANO: That I would be
19 glad to do. Gaziano.

20 COMMISSIONER YAKI: Gaziano. Secondly,
21 under the Management and Operations, I believe that
22 what we discussed was to deal only with moving forward
23 with the recommendations from Booz Allen Hamilton as
24 it pertained to the SAC because the changes in the
25 reports would have required, will require, changes in

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1 the AI and I believe most of them are debates centered
2 on SAC implementation if not report implementation.

3 CHAIRMAN REYNOLDS: I'm having a little
4 difficulty. Does that relate to the issue that's on
5 the table now?

6 COMMISSIONER YAKI: Yes, it says that we
7 are accepting this recommendation to begin the user
8 process suggested by DAH which also includes, which
9 included, the entire thing.

10 CHAIRMAN REYNOLDS: Okay.

11 VICE CHAIR THERNSTROM: I don't know
12 anything about any of these documents. What are you
13 looking at?

14 COMMISSIONER YAKI: I'm looking at the
15 minutes.

16 VICE CHAIR THERNSTROM: We're doing the
17 agenda now.

18 COMMISSIONER YAKI: Oh, you're doing the
19 agenda. Okay. I thought we already approved the
20 agenda.

21 COMMISSIONER HERIOT: And I don't have a
22 copy of either.

23 VICE CHAIR THERNSTROM: Me either. We're
24 a little handicapped here.

25 COMMISSIONER YAKI: We can accommodate

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1 that. I apologize. I thought we had zoomed through
2 the agenda and we were onto the minutes.

3 CHAIRMAN REYNOLDS: Okay. So we had a
4 second.

5 VICE CHAIR THERNSTROM: Second.

6 COMMISSIONER MELENDEZ: I had a question.

7 CHAIRMAN REYNOLDS: Yes.

8 COMMISSIONER MELENDEZ: I had sent, I
9 believe, an email asking the Commissioners about the
10 importance of our budget and my understanding in the
11 email I sent was that 2009 budget was actually due at,
12 I believe --

13 CHAIRMAN REYNOLDS: Yes, in December.

14 COMMISSIONER MELENDEZ: And I didn't
15 receive an answer. I think it's an important issue as
16 far as where we stand on the budget based on the
17 amount of money we had, the \$8.8 million, of the post
18 \$11.7 that we originally thought we were going to get.

19 So that means that we have to make some adjustments
20 with our budget.

21 There was also a question of whether or
22 not we would have to cut back some of the briefings
23 that we were going to hold this year and I'm not sure
24 where we stand on that and I think it's a topic for
25 discussion because we need to determine (Inaudible)

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1 we'll be coming to. So we really held one today. So
2 that means that based on the Staff Director's
3 suggestion the last time, if you were suggesting we
4 were only going to hold three, that means there's only
5 two more and the question would be which two are
6 there.

7 So, I mean, there are some important
8 issues we have to at some point address in either a
9 business meeting or after this agenda in this meeting
10 to get some clarification.

11 CHAIRMAN REYNOLDS: You're right. We must
12 deal with these issues and they will be dealt with
13 next month at the next business meeting.

14 COMMISSIONER MELENDEZ: Okay. Just one
15 question. What about the importance of the budget
16 that's already due by, I believe, by this past week?

17 CHAIRMAN REYNOLDS: We did not meet that
18 deadline. We are in a transition period and, in
19 addition to that, we need to have conversations
20 amongst ourselves. The staff is working on a revision
21 to our budget to take into account the cut that we
22 received.

23 Okay.

24 COMMISSIONER MELENDEZ: One more thing.
25 We had also had an email on the fiscal briefing

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1 complaint and there was supposed to be some looking
2 into that issue and then getting back to us. We
3 haven't heard anything on that also.

4 CHAIRMAN REYNOLDS: Well, I'm expecting a
5 motion to amend the agenda to discuss that either from
6 you or Commissioner Yaki.

7 COMMISSIONER MELENDEZ: Okay.

8 VICE CHAIR THERNSTROM: Can I just ask
9 something on the question of briefings for a minute?
10 We did have a briefing of the schedule in April. I
11 hope that that topic will be up for discussion next
12 month as well.

13 CHAIRMAN REYNOLDS: Sure. Okay, folks.

14 VICE CHAIR THERNSTROM: And that's going
15 fast.

16 CHAIRMAN REYNOLDS: Folks, we need to try
17 to focus on the agenda. We have a lot to cover today.

18 So we have a motion to amend the agenda
19 and I presume that the items that you would like to
20 add are the letter that received on the personnel
21 issues as well as transition issues.

22 COMMISSIONER YAKI: Yes.

23 CHAIRMAN REYNOLDS: I second it.
24 Discussion?

25 (No verbal response.)

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1 CHAIRMAN REYNOLDS: All in favor please
2 say aye.

3 (Chorus of ayes.)

4 CHAIRMAN REYNOLDS: Any abstentions?

5 (No verbal response.)

6 CHAIRMAN REYNOLDS: Any in opposition?

7 (No verbal response.)

8 CHAIRMAN REYNOLDS: The motion carries
9 unanimately.

10 **II. APPROVAL OF MINUTES OF JANUARY 11 MEETING**

11 Okay. Now, Commissioner Yaki, we're about
12 to discuss the minutes. The second item is the
13 approval of the minutes of January 11, 2008. I move
14 that we approve the minutes. Is there a second?

15 COMMISSIONER TAYLOR: Second.

16 CHAIRMAN REYNOLDS: Discussion?
17 Commissioner Yaki.

18 COMMISSIONER YAKI: Yes, as I said before
19 in the previous agenda item, I believe that the
20 recommendation that we voted on pertained only to the
21 SACs and not to the reports by the Commission, the
22 recommendations regarding reports made by Booz Allen
23 Hamilton. I'd like the minutes to reflect that.

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER HERIOT: I don't quite

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1 understand.

2 CHAIRMAN REYNOLDS: I'm not following.

3 COMMISSIONER YAKI: Booz Allen Hamilton
4 had a multi-tiered packet. The one packet had to deal
5 with State Advisory Committee special process. The
6 other part of the packet had to do with the national
7 report and reporting process. In the reporting
8 process, they truncated and made some changes to that
9 process that it would require an adjustment of our AI
10 for compliance.

11 And most of our discussion though did not
12 center on that part at all. It centered on the debate
13 over whether or not we should be moving forward with
14 the recommendations on the streamline SACs selection
15 process which I objected to and which passed by a four
16 to three margin. We kept on talking about we'll do
17 that and we'll incorporate it and we'll see how it
18 works and we were all clearly talking about the SACs,
19 the SAC recommendations in the transcript.

20 So I would like the minutes to reflect
21 that and not to reflect a general implementation of
22 the entire thing. Simply because as a matter of
23 administration law, we can't do the second part until
24 we change our AIs.

25 CHAIRMAN REYNOLDS: Okay. Commissioner

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1 Yaki, you have me at a disadvantage. I'm not -- I
2 guess I will have to review the materials. Would you
3 be amenable to tabling the vote on the January 11th
4 minutes?

5 COMMISSIONER YAKI: Sure. Absolutely.

6 CHAIRMAN REYNOLDS: Okay. All in favor of
7 --

8 COMMISSIONER MELENDEZ: I make a motion to
9 table.

10 CHAIRMAN REYNOLDS: Okay. I second. Any
11 discussion?

12 COMMISSIONER HERIOT: We're tabling simply
13 the request that the minutes be changed.

14 CHAIRMAN REYNOLDS: We're tabling the vote
15 on approving the minutes for the January 11th meeting.

16 COMMISSIONER HERIOT: Okay.

17 VICE CHAIR THERNSTROM: That's it.

18 CHAIRMAN REYNOLDS: We're just punting
19 until we had a chance to take a look at it. Okay.
20 All in favor please say aye.

21 (Chorus of ayes.)

22 CHAIRMAN REYNOLDS: Any objections?

23 (No verbal response.)

24 CHAIRMAN REYNOLDS: Any abstentions?

25 (No verbal responses.)

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1 CHAIRMAN REYNOLDS: The motion passes
2 unanimately.

3 III. MANAGEMENT AND OPERATIONS - TRANSITION ISSUES

4 CHAIRMAN REYNOLDS: Okay. Next we'll
5 discuss several transition issues. At the last
6 Commission meeting, Commissioner Yaki requested that
7 the General Counsel provide a report of a letter sent
8 by Nathan Penley, an attorney representing two former
9 Commission assistants.

10 In order to discuss the letter, the
11 following item is a motion to close a portion of the
12 meeting pursuant to the Commission's regulations
13 implementing the Sunshine Act. General Counsel and
14 the Solicitor, please certify that the meeting can be
15 closed pursuant to Commission regulations.

16 DAVID BLACKWOOD: So certified.

17 CHAIRMAN REYNOLDS: Thank you. General
18 Counsel and Solicitor, based on our knowledge of why
19 the agenda requires a closed portion of the meeting --
20 We certify in writing that this meeting can be closed
21 and the information pertaining to the same can be
22 withheld pursuant to the following exemption provided
23 for in the Commission regulations at 45 CFR Section
24 702.54: Exemption 2 that it relates to the internal
25 personnel rules and practices of the Commission;

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1 Exemption 6 that might involve disclosing information
2 of a personal nature where disclosure might constitute
3 a clearly unwarranted invasion of personal privacy;
4 Exemption 10 when the meeting might involve the
5 Commission's participating in a civil action or
6 proceeding.

7 I move that we close this meeting pursuant
8 to Exemptions 2, 6 and 10 of the Closed Meeting
9 Procedures for the Commission's meetings and
10 furthermore to authorize Dr. Lerner to place in a
11 location accessible to the public within one working
12 day of the public vote to close the meeting an
13 explanation of the decision to close the meeting and a
14 list of all persons attending the meeting.

15 Is there a second?

16 VICE CHAIR THERNSTROM: Second.

17 CHAIRMAN REYNOLDS: Discussion?

18 COMMISSIONER YAKI: Point of information.

19 When we go to closed session, everything shuts off,
20 including the tape or the transcript.

21 CHAIRMAN REYNOLDS: I don't believe so.

22 VICE CHAIR THERNSTROM: No.

23 COMMISSIONER YAKI: There's a transcript
24 of the closed proceeding.

25 VICE CHAIR THERNSTROM: There is a

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1 transcript.

2 COMMISSIONER YAKI: I just wanted to make
3 sure.

4 VICE CHAIR THERNSTROM: Yes.

5 CHAIRMAN REYNOLDS: Okay. All in favor
6 please say aye.

7 (Chorus of ayes.)

8 CHAIRMAN REYNOLDS: Any objections?

9 (No verbal response.)

10 CHAIRMAN REYNOLDS: Any abstentions?

11 (No verbal response.)

12 CHAIRMAN REYNOLDS: The motion passes
13 unanimously.

14 (Whereupon, at 9:13 a.m., the above-
15 entitled matter recessed for closed session and
16 reconvened at 9:48 a.m. to open session.)

17 CHAIRMAN REYNOLDS: On the record. Please
18 tell the folks to come back in.

19 (Off the record comments.)

20 CHAIRMAN REYNOLDS: Okay. We're back in
21 open session. I'm sorry.

22 VICE CHAIRMAN THERNSTROM: We have some
23 more people.

24 CHAIRMAN REYNOLDS: All right. Okay.
25 We're back in open session. At this point, I believe

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1 we have a motion from Commissioner Yaki.

2 COMMISSIONER YAKI: Yes. Thank you very
3 much, Mr. Chair. I would like to make a motion that
4 the Commission vote upon the vote to approve the
5 delegation of the authority of the staff director to
6 Robert Lerner given the fact that it is late, getting
7 later, in the Presidential term. With no assurance
8 one way or another whether or not there will be
9 forthcoming a permanent staff director, I believe it
10 is incumbent upon this Commission to exercise its
11 responsibility in approving the temporary appointment
12 of, the temporary delegation of, Dr. Lerner to the
13 authority of the staff director.

14 CHAIRMAN REYNOLDS: Is there a second?

15 COMMISSIONER MELENDEZ: Second.

16 COMMISSIONER GAZIANO: I move to table the
17 motion on the ground that it can have no consequential
18 effect and that such a motion is not in the, such a
19 vote would just be deleterious.

20 CHAIRMAN REYNOLDS: Second? Is there a
21 second?

22 COMMISSIONER HERIOT: Second.

23 CHAIRMAN REYNOLDS: Discussion?

24 COMMISSIONER YAKI: Yes. I'm a little --
25 I would like to know how you would find a vote to be

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1 deleterious. The vote might take --

2 COMMISSIONER HERIOT: Is the motion to
3 table -- a motion?

4 COMMISSIONER YAKI: I don't think it is.

5 COMMISSIONER HERIOT: Does a motion to
6 table -- Doesn't that have to be just up or down?

7 COMMISSIONER YAKI: That's fine.

8 COMMISSIONER GAZIANO: I think a motion to
9 table is non-debatable.

10 CHAIRMAN REYNOLDS: Okay. The motion is
11 on the table. Additional discussion?

12 COMMISSIONER MELENDEZ: Which motion?

13 COMMISSIONER GAZIANO: Which motion are we
14 voting on?

15 CHAIRMAN REYNOLDS: Additional discussion
16 on the motion to table?

17 COMMISSIONER GAZIANO: Point of order. I
18 don't know that there can be discussion on a motion to
19 table which is why I made the motion.

20 COMMISSIONER HERIOT: The whole point of a
21 motion to table is to just do it.

22 COMMISSIONER GAZIANO: That would be a
23 substitute motion.

24 CHAIRMAN REYNOLDS: So just to stir up a
25 now vote.

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1 COMMISSIONER GAZIANO: That's right.

2 CHAIRMAN REYNOLDS: Okay. All in favor
3 please say aye.

4 (Chorus of ayes.)

5 CHAIRMAN REYNOLDS: All in opposition?

6 COMMISSIONER YAKI: No.

7 COMMISSIONER MELENDEZ: Aye.

8 CHAIRMAN REYNOLDS: Did you say aye?

9 COMMISSIONER YAKI: He meant aye to the
10 opposition.

11 CHAIRMAN REYNOLDS: Okay. Please let the
12 record reflect --

13 COMMISSIONER YAKI: Which is a no.

14 CHAIRMAN REYNOLDS: Please let the record
15 reflect that Commissioners Yaki and Melendez voted
16 against the motion and the motion carries.

17 **IV. ADJOURN MEETING**

18 CHAIRMAN REYNOLDS: So at this point,
19 we're going to adjourn the business meeting and I
20 apologize for the delay of the start of the briefing.

21 COMMISSIONER YAKI: Commissioner Reynolds,
22 I just want to make one brief announcement that I will
23 be requesting the HR director to process my
24 application for a special assistant.

25 CHAIRMAN REYNOLDS: Okay. We're going to

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1 have to talk about that, too.

2 COMMISSIONER YAKI: No. You can --

3 VICE CHAIR THERNSTROM: Wait a minute. He
4 wants to file a form.

5 CHAIRMAN REYNOLDS: He can file it.

6 COMMISSIONER YAKI: I can file it.

7 CHAIRMAN REYNOLDS: Yes. Okay. Run the
8 paperwork through. Off the record.

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